
VISITING EXPERTS' PAPERS

THE EMERGENCE OF VICTIMS' RIGHTS IN THAILAND: TWENTY YEARS AFTER THE U.N. DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER

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This paper presents and discusses strategic policy for victims of crime and its development in Thailand, including victim's support and assistance. It also discusses the major operations undertaken under the Victim Compensation and Restitution for the Accused Person Act, and Witness Protection Act by the Department of Rights and Liberties Protection, Ministry of Justice. This will include questions and practices in other relevant criminal justice agencies.

I. INTRODUCTION

The Thai criminal justice system, as in other countries, emphasized the roles of the public police and public prosecutor, court and prison to bring the offender to justice and the victim served as a crucial witness. Under the present Criminal Procedure Code, the criminal prosecution may be instituted either by the public prosecutor or by the injured person and the person who has the power to act on his behalf.

The injured person is a person who has received injury through the commission of any offence, including any other person who has the power to act on his behalf (Section 2, and (4) Criminal Procedure Code, CPC).

In case the injured person is a married woman, she has the right to lodge a criminal charge without the permission of her husband. Other persons may act on behalf of the injured person: (sections 4, 5, CPC), as follows:

- (1) the legal representative or custodian in respect only of offences committed against the minor or incompetent person under his care;
- (2) the ascendant or descendant, the husband or wife, in respect only of criminal offences in which the injured person is so injured that he died or is unable to act by himself;
- (3) the manager or representatives of a juristic person in respect of any offence committed against such juristic person.

When the injured person institutes his/her own prosecution, the case will not proceed through the ordinary criminal process, as does the public prosecutor. Under the Criminal Code (CC), there are two types of specific offences (crimes), namely, compoundable and non-compoundable offences.

The compoundable offences are regarded as private wrongs provided by the criminal law. These offences, among others, are assault, mischief, fraud, defamation, embezzlement, and offences relating to trade and sexual offences, which are less harmful to the public. However, most offences are not compoundable offences, or so-called offences against the state.

The police officer can make an investigation or inquiry into the case by his own initiative. However, the police have no power to initiate or conduct an investigation into the compoundable offences without an allegation made by the injured person. The Criminal Procedure Code divides fact-finding into:

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- (1) Investigation is a search for facts and evidence, which an administrative or police official has made in accordance with his power and duty, in order to preserve public order and to ascertain the particulars of an offence (section 2, 10).
- (2) Inquiry is the collection of evidence and other proceedings conducted by an inquiry official according to the provisions of the CPC in connection with an alleged offence, for the purpose of ascertaining the facts or establishing the guilt and securing punishment of the offender (section 2, 11).
- (3) Inquiry official is an officer invested by law with the power and duty to conduct an inquiry (section 2, 6).*

In general, most criminal cases (both compoundable and non-compoundable) come to the police in the form of a complaint either made by the injured person (victim) or by the denunciation (witness). In case of a non-compoundable offence charged by an injured person in the trial court, the public prosecutor may file a motion to associate himself as joint prosecutor at any time prior to the case becoming final. (The injured person can do likewise in the public prosecutor charge's case.) If the injured person institutes a criminal prosecution and then he withdraws the charge, such withdrawal shall not prevent the public prosecutor from re-instituting the prosecution, *except where it is a compoundable offence*.

A. Entering the Criminal Justice Process

A person may enter the criminal justice process either by receiving a summons, or arrest with or without a warrant. In practice, the person may be summoned by the inquiry police official in charge of the inquiry to appear before him as a witness or as an alleged offender. However, the inquiry official may conduct an investigation in attendance of the witness, or the alleged offender without issuing a summons.

In general, the police officer can make an arrest or search with a warrant of the court. An exception shall be made under sections 237, 238 of the Constitution.

- (1) No arrest and detention of a person may be made except where an order or a warrant of the Court is obtained, or where such person commits ...
- (2) A flagrant offence or where there is such other necessity for an arrest without warrant as provided by law.
A warrant of arrest or detention of a person may be issued where:
 - a. there is reasonable evidence that such person is likely to have committed a serious offence which is punishable as provided by law; or
 - b. there is reasonable evidence that such person is likely to have committed an offence and there also exists a reasonable cause to believe that such person is likely to abscond, tamper with the evidence or commit any other dangerous act.
- (3) A search in a private place shall not be made except where an order or a warrant of the Court is obtained or there is a reasonable ground to search without an order or a warrant of the Court as provided by law.

B. Investigation and Inquiry

The police, in principle, may conduct an investigation for the prevention or suppression of criminal activities; the so-called proactive as well as reactive crime prevention. In case of an arrest, the inquiry officer will question the alleged offender, but he must be informed of his right to remain silent and that the charge and his testimony will be used against him at the trial. In this respect, the law forbids an inquiry officer to make or cause to be made any deception, threat or promise to any alleged offender, inducing him to make any particular statement concerning the charge against him.

The police officer has the power to hold and interrogate a suspect within forty-eight hours. The arrested person being kept in custody shall be sent to the court for hearing within 48 hours as from the time of his

* An inquiry official, invested by law to keep the public peace, is classified as an "administrative or police official"; for the police, the officer must be head of the police station having the rank of police sub-lieutenant or its equivalent upwards (section 1(15)-(33), on the police ranks, CPC).

arrival at the office of the inquiry police officer. The court shall consider whether there is a reasonable ground under the law for the detention of the arrested person or not, except for the case of force majeure or any other unavoidable necessity as provided by law.

The arrested person may apply for bail when he is kept in custody. The application must be accepted for consideration without delay, and excessive bail shall not be demanded. The refusal of bail must be based upon the grounds specifically provided by law, and the accused or the suspect must be informed of such grounds without delay. In case of refusal the right of the suspect is protected and he may lodge an appeal provided under the Criminal Procedure Law.

In addition, a person being kept in custody, detained or imprisoned has the right to see and consult his advocate in private and receive a visit as may be appropriate.

After having questioned the alleged offender, the inquiry has to prepare the necessary documents, which are collected in an inquiry file. The file together with the officer's opinion will be submitted to the public prosecutor in charge of the case. The public prosecutor himself has no power to conduct an inquiry or interrogate the accused. The prosecution of a criminal case shall not be charged in court without an inquiry made by the police officer. However, he/she may instruct the inquiry officer to make an additional inquiry for further facts and evidence. In short, the criminal process may not be initiated by the public prosecutor.

Once an inquiry has been made in the police stage; the inquiry officer has to submit the inquiry file to the public prosecutor for deliberation. The inquiry officer has to give his opinion whether or not the alleged offender shall be charged in court. He/she has to submit the file together with the alleged offender to the responsible public prosecutor in order to continue the process. The public prosecutor alone, by his discretion, shall decide whether the case will be continued or stayed.

C. Public Prosecution Order

The Thai public prosecutor has discretionary power to issue a prosecution or non-prosecution order in criminal cases. His order shall be based on the police inquiry file and evidence; sometimes the outcome of the case may influence his deliberation. If the evidence collected in the inquiry file is complete, the public prosecutor will make a prosecution order. However, if the inquiry file is complete, but the evidence is insufficient to verify that the offence has been committed, or it is not sufficient to prove beyond a reasonable doubt that the offender is guilty, a non-prosecution order will be made. However, if the public prosecutor is of the opinion that the evidence in the inquiry file is not complete or conclusive to make his order, he may advise the inquiry officer to further investigate or send a witness to him for an examination. The public prosecutor may direct the inquiry officer to find the missing facts or evidence relating to the case.

The prosecution order decided by the public prosecutor is final, but the non-prosecution order, if in Bangkok territorial jurisdiction, shall be reviewed by the Chief or Deputy Chief of police entrusted with the duty of the National Police Agency to give an objection or approval opinion. If it is objected, the case will be submitted to the Attorney General for deliberation. His decision is final.

In the provincial jurisdiction, the non-prosecution order shall be reviewed by the governor of the province (Thailand consists of 76 provinces). If the order is approved, it shall be final. If the case is not approved, the case will be forwarded and decided by the Attorney General, Office of the Attorney General in Bangkok. His order is final. It is worth noting that the non-prosecution order, if it is final, will forbid a new inquiry into the same offence. However, a new inquiry can be made in case there is fresh evidence that may lead to conviction of the offender in the said criminal case. Under the CPC the non-prosecution order shall not bar the right of the injured person to enter his criminal prosecution in the court of first instance (see table 1).

Table 1 Prosecution Orders to Charge and Cases Instituted by Injured Persons in Selected Courts of First Instance, 2004.

No	Court	Public Prosecutors	Injured Persons	
		Plaintiffs		Defendants
Kwaeng Court* in Bangkok				
1	South Bangkok	4,545	322	7,450
2	North Bangkok	13,740	2,796	23,943
3	Thonburi	7,437	604	16,055
4	Patumwan	3,053	362	4,343
5	Phrakanong	7,011	1,324	9,599
6	Dusit	6,949	N/A	10,699
7	Talingchan	10,970	768	15,489
	Total	53,705	6,176	87,578
District Courts in Bangkok				
1	Thonburi	5,781	135	6,281
2	South Bangkok	5,082	233	5,689
3	Minburi	6,998	487	10,302
	Total	17,861	855	22,272
District Courts in the Provinces				
1	Anghong	1,535	27	2,651
2	Chainart	2,092	35	3,417
3	Lopburi	2,172	13	2,979
4	Phranakorn Sriyuthaya	1,831	37	1,869
5	Pratumthani	2,005	99	4,128
6	Nonthaburi	1,846	84	1,930
7	Samutprakarn	4,140	100	4,685
8	Saraburi	4,131	106	6,857
9	Singhaburi	1,293	14	1,327
	Total	18,873	515	29,843
	Grand Total	90,439	7,546	139,693

I have observed that private prosecution cases varied in the provinces and Bangkok as well as in different jurisdictions of the courts of first instance. Usually, private prosecution cases in Kwaeng Courts in Bangkok are higher in comparison than criminal and provincial courts, also known as district courts. Criminal cases in the district courts are more serious, complicated and last longer and require more time, financial, and technical support by professional investigators and lawyers. In serious criminal cases where the accused pleads guilty to the charge, if the punishment is five years imprisonment or heavier, the Court shall not give judgment at once, it must hear the evidence of the prosecution until it is satisfied that the accused is guilty (section 176, CPC).

* Kwaeng Court in Thailand is equivalent to the Magistrates Court in England or Summary Court in Japan. It tries cases where the maximum punishment is not more than three years imprisonment with a single judge.

Source: Office of the Courts, 2004. These statistics are selected from courts that have data available.

D. The Trial

After the prosecutor has filed the charge in court and the trial begins the status of the alleged offender becomes the accused. There is no pre-trial motion. The criminal suit is filed by the public prosecutor, the court need not conduct a preliminary examination because the inquiry process has been completed. However, the court may do so, if it thinks desirable. A preliminary examination of the prosecutor's case rarely happens.

If the injured person entered his own prosecution, the court must order a preliminary examination whether or not there is a prima facie case against the accused (section 165, CPC).

The rule on presumption of innocence is upheld. The prosecutor has a duty to prove his case to the satisfaction of the court that the accused is guilty, if not he will be acquitted.

Where any reasonable doubt exists as to whether or not the accused has committed the offence, the benefit of the doubt shall be given to the offender" (section 227, para. 2, CPC).

The accused has the right to remain silent at all stages of the criminal justice process.

E. Sentencing

If the trial ends in acquittal, the defendant is released and the state can not take further action on the same charge against him/her. In case the trial court's judgment is guilty, the defendant has the right to appeal. He/she may not only appeal against his/her conviction but also against the penalty. In Thailand, the competent judge or a panel of judges makes the decision of guilt and punishment. The judge has discretionary power of sentencing under limitation of the law provided in each offence. (In practice, each court has a guideline table to mete out punishment for most offences in the Criminal Code) In general, petty and other equivalent criminal offences to petty offences are subject to a fine.

Capital punishment may be imposed in heinous crimes, such as premeditated murder, or murder with cruelty, torture and other violent acts. Capital sentences must be submitted to the court of appeal for review, even if no party has lodged an appeal.

F. Summary

1. The public prosecutor shall not enter a criminal charge in court without an inquiry officer having made an inquiry in reference to the offence respecting the charge.
2. The inquiry officer has the power to hold an inquiry into all criminal offences, except compoundable offences. This inquiry must be held after the regular complaint is made by the injured person.
3. An injured person may lodge a written or oral complaint with the inquiry official according to the law.
4. An injured person may also lodge a complaint with any administrative or police official who holds a position subordinate or superior to that of the inquiry official.
5. The complainant (injured person) may at any time modify or withdraw his complaint. This shall be done under conditions of the law provided for non-compoundable offences.
6. The injured person (victim) is entitled to institute all criminal offences against the offender by his own initiative.

II. HISTORY OF VICTIMS' RIGHTS IN THAILAND

The services for victim of crimes were first initiated by community based programmes run by non-governmental organizations; among others were the Council of Social Welfare of Thailand, Population and Community Development Association, the Women's Lawyers Association of Thailand, Friends of Women Organization and the feminist movement in Thailand in the 1970's. These programmes encompassed assistance, counselling, legal aid, social welfare, including shelter and other services drawn from community resources and foreign aid. They were community-based private and non-profit agencies rendering services at local, community or national level under foundations and associations. In those days advocates for victims' rights claimed that the victims were not allowed to participate in the criminal justice process. In addition, the rights of victim were not safeguarded by the Constitution.

In 1985, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power set a stage for the non-governmental movement to convince the government on the rights of victims

in criminal justice administration. The initiative of the victim's rights movement focused on domestic violence against women and children, and offences against sexuality, especially forcible rape.

The basic principles of victims' rights are as follows:

- (1) The right to be treated with respect and recognition
- (2) The right to be referred to adequate support services
- (3) The right to receive information about the progress of the case
- (4) The right to be present and give his/her input to the decision making
- (5) The right to counsel
- (6) The right to protection of physical safety and privacy

In addition, the victim is entitled to compensation from both the offender and the state.

The victim of crime* is legally defined as "an injured person who has received injury through the commission of any offences" (section 2 (4), CPC). The Declaration specified an injury to include physical or mental injury, emotional suffering, economic loss or substantial impairment of the victim's fundamental rights, through acts or omissions that are in violation of criminal laws and abuse of power.

This paper is, however, focused on the crime victim under the Thai criminal justice system, legislation and assistance to the victim. In the past Thailand has not had victim compensation legislation or government services formally provided for the victim of crime. The government programme worth mentioning is a law providing for assistance to and the welfare of any person who is injured in the course of duty as a responsible citizen, assisting authorities, government agencies, or performing other humanitarian acts. This legislation in its context and objectives should be classified as humanitarian law.

On the other hand, programmes initiated and provided by private or community organizations have many forms. Delivery of services and assistance to victims mostly operates under a division of or part of the project. The first victim assistance programme in Bangkok - the Rape Crisis Centre under the auspices of the Population and Community Development Association (PCDA) was distinguished from others and subsequently has been a model for other organizations.

A. Rape Crisis Centre (RCC)

The Centre was established in October 1982 as a programme aimed at assisting victims of rape. The PCDA has engaged in extensive activities since its inception in family planning and birth control services, abortion and medical care related to population development projects. In this respect, the executives of the association have taken further steps to assist the victims of rape because they realized that offences against sexuality were rising rapidly and forcible rape was a major problem.

Other serious sex offences were procuring, seducing or taking away in order to gratify the sexual desire of another person, through indecent acts, of women and children by using deceitful means, threats, violence, unjust influence or modes of coercion by other means. There have been a great number of offenders and victims of the offence, especially seduction and coercion of women and children into prostitution.

Under the influence of women's rights and gender equality guaranteed by the Constitution, the attitude of the public towards rape has altered. The public has concentrated more attention on the rights of women which has coincided with the increasing role of women in Thai society. It should be noted that a development plan for women has become incorporated into the Fifth Social and Economic Development Plan, and subsequent plans ever since. Furthermore, the feminist movement has organized and campaigned actively for equal rights since the 1980's (Friends of Women Magazine, 1983:83-86). In the past decades, studies and research on rape has enormously increased in the field of sociology, criminology and law. These were focused on the traditional role of women rather than the feminist views. The approach found that the incidence of rape was related to victim involvement and more or less participation as demonstrated by the works of many scholars, von Hentig, Mendelsohn, Schafer, Wolfgang and Amir, (Holmstrom and Burgess,

* The studies on the victims of ordinary crimes have concentrated on the subject matter of victimology which had its roots in many fields, such as, criminology, sociology, psychology, law, medicine and social work. These have flourished in their inquiry into etiology, process and the cause of victimization. Earlier inquiry focused on individual victimization and subsequent studies have been extended to cover social structure and societal reaction to the victim (Weis, 1978: 182-195).

1978: 223-225). This view and attitude towards women and rape is changing. Researchers and advocates for victims of rape are interested more in the new paradigm, namely the relation of social process and victims and the victim's experience and response. The public has often not responded to the victim's plight and needs, nor been sympathetic, but chosen to blame the victim; this response began to attract scholarly criticism and given critical consideration. Women's rights groups in Thailand have turned to this approach and begun to take the issue to the public (see, Fattah, *Victimology, Past, Present and Future*, Criminologie, 2000, vol. 33, No. 1).

B. Humanitarian and Charity Foundations

These organizations first operated by religious based groups to assist the poor and provide disaster relief or alleviation of human and natural calamity. A Chinese Charity Foundation, Hua Kiew Poh Tek Tung based in Bangkok has had a significant role since the 1950's to assist the victims of road accidents and victims of crimes that extended to voluntarily assisting law enforcement agencies dealing with their daily heavy duties. These are: identifying the victims of crime, such as, fingerprinting, photographing, collecting and searching for evidence, including transportation of the dead and injured to hospital for autopsy and medical care. Now, there are hundreds of charity organizations performing this task following the model of the first and aforementioned foundation.

C. Council on Social Welfare of Thailand (CSWT)

The Council was organized by the Department of Social Welfare in 1960. It has operated under the Royal Patronage. This is an umbrella of other social welfare organizations in Thailand and also serves as a coordinating agency. The CSWT receives funding from the government as well as the public through charity, such as, the public chest fund, foundations and donations. The activities are wide-ranging to cover all social welfare and charity that is divided into four categories.

1. To provide services and assistance to the poor, unfortunate, handicapped, and inmates, etc.
2. To set up social development projects, such as, organizing community based programmes and social work projects.
3. To organize training programmes, seminars, conferences and academic activities in social welfare.
4. To form and implement projects for the solution of social problems, such as, national security, morals, education, economics, crime and corruption prevention, environment and health.

The services for the victims of crime are part of the work done under the Welfare for the Family and Children Division. This activity is concentrated on the problem of seduction and coercion of women and children into prostitution. Most victims were brought from rural areas, especially the north and recently from the neighbouring countries by means of promises of a better life, work in the cities, marriage and outright seduction. The common characteristics of victims of seduction are the poor, those neglected by their family, uneducated or having cultural and educational deprivation. They are usually sold to prostitution dens and tea houses in the cities and forced to provide sex services to customers. After having been rescued or referred to CSWT, the welfare division provides assistance to the victims. The agency also coordinates with the police to render support to victims in the following ways.

- To provide accommodation, a living allowance, and transportation to return home.
- To facilitate assistance through members of welfare organizations in the victim's home province.
- To provide training and counselling services.

There were 2,867 non-governmental organizations registered with the CSWT (Statistics on Social and Public Welfare, 2000). There were 51 state welfare institutions, out of 284, in the country dealing with the protection of women and children. Of these 17 were protection centres providing shelters and services to women.

In addition, the people eligible for social welfare and social works' benefits are classified into groups as follows:

1. Impoverished children and young persons;
2. Women: (i) needy persons; (ii) prostitutes; (iii) young women completing primary education without further education.
3. Aged persons: (i) all those over 60 years; (ii) Indigent elders or without subsisting income.
4. Vagrants and beggars.
5. Handicapped persons: (i) all handicaps; (ii) registered handicaps.

6. Hill Tribesmen.
7. Members of the state's land reservation for settlement.
8. HIV and Aids patients.
9. People with chronic illness.
10. Poor families.

III. RESTITUTION FOR CRIME VICTIMS

Victim restitution has long been provided by the Criminal Procedure Code, or the victim has had an alternative civil lawsuit to claim for damages under the wrongful acts in section 420 of the Civil and Commercial Code. The existing provisions of the CPC on victim restitution have provided the victim of crime a leeway to access justice by instituting civil proceedings or restitution in connection with criminal prosecution. This, however, presents a number of difficulties in getting a remedy and payment from the offender. The plight of the victim has remained under the system of criminal justice and depends on the ability of the offender to pay. A remedy for grievances and damages was hardly ever achieved from the system. Indeed few victims are able to receive a reasonable claim for damages. The victim alone bears the burden of seeking payment from the offender without financial resources from the state.

Prior to 2002 Thailand did not have victim compensation legislation and a system that would cover injury compensation for crime victims. However, the victims may access assistance from welfare programmes offered by the state and private organizations to alleviate their suffering.

A criminal prosecution is instituted in the court by a public prosecutor or the injured person may file a civil suit in connection with the criminal case being tried in the said court. The trial of a civil case in this connection will proceed under the provisions of the Civil Procedure Code. The evidence given in the criminal trial may be used in the civil case. Hence, the court in giving a civil case's judgment will be bound by the facts as found in the criminal judgment. A criminal prosecution that entered the court by the state public prosecutor did not bar the right of the injured person to file a civil case against the offender.

It is noteworthy that the public prosecutor shall enter a civil case in connection with the criminal prosecution limited to only nine property offences, but the victim can enter a civil lawsuit for every offence against the offender. The victim may either enter the civil case in connection with the criminal prosecution, or a separate civil case in the civil court (section 40, CCP).

Thai law does not prevent victims from exercising claims against an imprisoned offender. In reality, victims rarely brought a restitution lawsuit against a prisoner.

Specifically, an injured person has the right to file a civil lawsuit under these requirements:

- (1) a crime has been committed;
- (2) the injured person has the right to claim restitution for wrongful acts;
- (3) the right to claim restitution in a civil case is connected with the offence.

However, there must be grounds from the criminal offence to civil claims.

Most claims given under (2) will be provided by article 438 of the Civil and Commercial Code whereby *"the court shall determine the manner and the extent of restitution according to the circumstances and gravity of the wrongful act"*. The reparation may include restitution for property loss and other damages caused by the wrongful act.

In certain property crimes, the public prosecutor when he/she institutes the criminal prosecution, shall on behalf of the injured persons, apply for the recovery of the property or the value payable.

These offences are theft, snatching, robbery, gang-robbery, piracy, extortion, cheating and fraud, criminal appropriation and receiving stolen property (section 43, CCP).

The claim in the said offences for restitution or value thereof may be brought by the prosecution either with the criminal charge or by a motion filed at any time during the trial of the criminal case in the court of first instance, section 44 of CCP.

Under the standard of practice, in case of property crimes, the public prosecutor in filing the criminal charge in court, shall claim for property loss or the damage thereof payable to the victim in every case. In case an award is given by the judgment of the court, the victim has a duty to enter the execution of judgment proceedings, under the Civil Procedure Code, by him/herself. This has put a considerable burden on the victim to enforce the court's judgment in a civil case.

The court, in pronouncing a judgment, shall give civil restitution in connection with the criminal trial as part of the judgment in the criminal case.

For civil reparation, the trial will proceed in accordance with the provisions of the law relating to civil liability and does not consider the outcome of the criminal trial. The reparation for the victim's property is limited to its actual value and the amount of restitution will be determined by the court, according to the injury suffered, but it must not exceed the amount of the claim. If the public prosecutor did not file civil claims in connection with the offence in question, the court in rendering its judgment may order the property which has been illegally acquired or confiscated by the authorities to be returned to the owner.

In short, the criminal proceedings, by filing a civil claim in connection with the offence, made victim restitution possible, though simple as it may seem, one must not be misled to think the legal measure will be adequate, let alone a part of a victim compensation programme.

It is widely acknowledged that most criminals are poor and in the lower socio-economic class. They are, therefore, not in a position to be able to repay their victims.

In Thailand, there was a correlation between the lower indigent class and crime. Case studies on inmates concerning economic status and crime revealed that 70 per cent of the serious criminal offenders were unemployed, never worked, or had illegitimate occupations prior to committing crime.

It is evident that there were a number of restitution cases filed in the court. However, only a few victims received payment for damages from the offenders.

In conclusion, there are a number of difficulties arising from instituting civil claims even though the law has provided for extensive rights of the claimant and their dependents. Most victims do not enter a civil case through this channel. The cost of entering a civil lawsuit consists of the court fee at 2.5% of the principal amount claimed, a lawyer's service fee and other contingent expenditures. Unless the victim has applied by motion to institute his case in "forma pauperis" and the fee is to be waived, he is required to demonstrate that his case is substantiated to pursue in court. Besides, the claimant has to bear expenses in the trial proceedings, such as filing and service of pleadings and documents or the expenses for the witnesses. The amount of the award of restitution is another question concerning a wrongful act case. The claimant has to submit evidence demonstrating his damages or loss incurred in the wrongful act. The court will determine the damages and tangible loss at the discretion of the ruling judge in that case, provided under the principle of law, to an exact amount. There is no provision of law and principle on punitive damages.

If any fault on the part of the injured party has contributed in causing the injury, the obligation to award the injured party and the amount of restitution will depend upon the circumstances and how far the party has caused or been involved in the injury. This applies also, even if the fault of the injured party consisted of an omission to call the attention of the other party to the injury or an omission to avert or mitigate the injury.

There have been few victim restitution lawsuits in the civil court or restitution in connection with criminal cases in the trial court. Therefore, very few victims of crime have been compensated, through this avenue, for their loss and damages. Meanwhile, there has not been a legal aid programme for the victim and restitution has never been the answer to the plight of the indigent and powerless victim.

IV. WITNESS PROTECTION

A. Introduction

The major aims of the victim and witness assistant programmes are given in three categories.

1. Provide services to victims and witnesses who need aid or crisis counselling, medical care, therapy

and legal assistance. The programmes may refer clients to other agencies, such as welfare and rehabilitation centres.

2. Assist the victim and witness in the course of criminal proceedings in order to save time and costs of the client, such as accompanying the victim and witness to appear in court.
3. Protect the victim and witness from intimidation and encourage them to report the crime and testify in court. The victim and witness who are reluctant and unwilling to appear in court causes widespread problems for the police and public prosecutors in carrying out their work.

Currently, certain programmes have been implemented by state agencies and services provided by state and non-governmental organizations.

B. Special Provisions in the Revised Criminal Procedure Dealing with Persons under Eighteen Years of Age

One of the directive principles of the state's fundamental policy provides, "the state shall protect and develop children, youth, promote equality between women and men, and create, reinforce and develop family integrity and the strength of communities".

A recent development in the criminal justice system in protecting persons under 18 years of age has been implemented in conformity with the Constitution and UN Convention on the Rights of the Child. The persons in the age group are given extraordinary protection in the investigation and trial phases.

1. A multidisciplinary team approach consisting of an inquiry police officer; public prosecutor, psychologist or social worker shall participate in handling the case.
2. An interagency approach consisting of coordination and cooperation shall gather evidence, conduct interviews and render welfare services and assistance.

The significant amendments of several provisions of the criminal procedural law on investigation, prosecution and trial are applicable to victims, witnesses, and juvenile offenders, as provided throughout the criminal justice process. Investigation and trial in the case of victims, witnesses and juvenile offenders are required by law.

1. The criminal justice process commences with investigation; pre-trial hearing and trial shall consist of a psychologist or social worker, as provided by law on the specified qualification of such persons.
2. In an offence punishable with over three years, or less than three years imprisonment and the victim or witness is a child under eighteen who has requested the presence of an acquaintance. If the case involves the assault of a child, the interrogation of the victim or witness shall be made in an appropriate place for a child. The psychologist, or social worker, or the person requested to be present by the victim shall attend the inquiry. Documents drawn up by the inquiry official shall be made, in addition to notes of the proceedings, by picture and voice recordings (usually video camera) that may be transmitted continually as evidence in the trial phase.
3. Police officers are required to provide appropriate protection and facilities for the child victim or witness to identify the offender. The public prosecutor, psychologist or social worker together with a person requested by the victim/witness shall have to attend the inquiry proceeding.
4. In taking evidence in the court of justice, the witness under eighteen years shall be protected, if the judge sees fit: (a) he shall interview the witness himself on issues of law and of fact during the testimony or may communicate through a psychologist or social worker; (b) shall allow the parties to question, examine, cross-examine or re-examine through the psychologist or social worker.

This practice has become effective all over the country since August 2000.

C. Witness Protection Legislation

The Witness Protection Act of 2003 is derived from the guiding principle of the Constitution. The provision safeguards the right of the witness who is entrusted with the duty to serve justice. The witness shall be treated with decency, and receive the required and appropriate compensation from the state.

"In a criminal case, a witness has the right to protection, proper treatment and necessary and appropriate remuneration from the State as provided by law" (section 244).

The Witness Protection Act is divided into 6 chapters:

- (1) general measures for witness protection;
- (2) special measures for witness protection;
- (3) office of witness protection and proceedings;
- (4) compensation and expenses payable to the witness;
- (5) appeal and penalties.

The Act provides only for protection of witnesses in a criminal case. The Act defines witness as, “a person who shall give a testimony or fact to the competent criminal inquiry official, the authorized criminal investigator, authorized prosecutor or the court entrusted with conducting criminal proceedings, including expert witness, but not including the accused who may testify as a witness” (section 3).

The protection of a witness in this Act is rather focused merely on financial support, providing a security guard, safe accommodation and concealing the witness's identity, however, with the consent of the witness. Therefore, protection in this regard is safety of life, body, health, liberty, reputation, property or any right of, before or after being, the witness. The witness enjoys the rights given under this Act without prejudice to other entitlements.

The competent criminal inquiry, authorized criminal investigator, authorized prosecutor, the court or Office of Witness Protection may provide protection if it thinks the witness needs safeguarding. The protection of the witness is currently under the responsibility of the National Police Agency (NPA), Department of Special Investigation (DSI), and other agencies entrusted with the duty. For example, if the witness is an inmate the prison authority is responsible for his/her protection.

In 2004-2005, the Office of Witness Protection, Department of Rights and Liberties Protection provided protection for 44 witnesses under the general measure in cooperation with the DSI. Most witnesses are protected by the police that have jurisdiction throughout the country. SDI is responsible for protection of witnesses under its legal jurisdiction and duty. The Narcotics Control Board is responsible for protection of witnesses under its drug laws and enforcement.

D. General Measure

The General Measure is provided for the witness in an ordinary criminal case. Usually the process starts with a request made to (1) the inquiry officer, (2) investigating officer, (3) public prosecutor, (4) court, or (5) Office of Witness Protection. Each agency may provide protection if the witness is at risk or refers to the police or other authorized officer to provide protection as the case may be. The measure includes (1) provision of witness's residence under guard, (2) provision of safe accommodation, or (3) concealing the information on the identification of the witness. The protection under the General Measure is provided for a period of time governed by regulation promulgated by each responsible agency.

E. Special Measure

The Special Measure is provided for witness protection under these conditions.

1. Criminal offences relating to drug laws, Money Laundering Control Law, Counter Corruption Law or Customs Law.
2. Criminal offences relating to national security laws under the Criminal Code.
3. Criminal offences relating to sexuality under the Criminal Code, for offences relating to commercialized sex, seduction for indecent acts to gratify other's sexual desire and taking away children and young persons, or an offence under the prevention and suppression of prostitution, or being the owner of or taking care, or managing an activity or whorehouse.
4. Criminal offences relating to organized crime, a member of a secret society and criminal association under the Criminal Code, including other offences committed by criminal groups with a systematic plan and having a network, or organization.
5. Criminal offences punishable with imprisonment for a minimum of ten years or over.
6. Criminal offences that the Office of Witness Protection thinks reasonable.

The Special Measure process starts with a request made to the official in any agency provided for the General Measure protection. The official, however, has to make a request to the Minister of Justice or the authorized person to make a decision for an approval or not. If not the witness may appeal the decision to the

court of first instance, or military court that has jurisdiction to try the said case, or the court in the domicile of the witness. The appeal has to be lodged within 30 days as from the date of notice. The court has to hear the case in camera within 30 days, if necessary the court may extend the time for a reasonable period. The judgment of the court whether or not the protection shall be provided to the witness is final.

F. Discussion

Witness protection and victim assistance in a criminal justice system that deal with serious criminal offences, namely, economic crimes, corruption, organized crime and terrorism are crucial for crime control. The confidence of the victim and witness in their safety is a major difficulty for the witness's cooperation with law enforcement officials. The new legislation is undertaken by criminal justice agencies, such as, the National Police Agency, Department of Special Investigation, Office of the Narcotic Control Board, Office of the Money Laundering Control Board and Office of the Witness Protection (OWP) and Department of Rights and Liberties.

The OWP has dual responsibilities in co-ordination and operation. However, the office has not had its own force to carry out the task, it has to refer the case and rely on other agencies. The protection of witnesses is currently operating under the Witness Protection Act that authorized agencies to enact rules and regulations to perform their different duties. These agencies perform their duties provided by laws that specify authorities and jurisdictions of the agency in dealing with criminal activities. The witness protection may vary according to each agency's standards, methods and services.

The victim and witness may encounter different problems ranging from intrusion on privacy, harassment, intimidation and threat of life. The need for protection is, therefore, varied on a case by case basis.

In addition, certain legislation is needed to strengthen the witness protection system. Criminalization of obstruction of justice is a crucial measure in prevention and control of serious offences. The offence is punishable for an act that interferes with the performance of public officers in doing justice. It also includes acts that obstruct the cooperation, testimony, or the production of evidence in criminal proceedings. In comparing legal measures dealing with obstruction of justice in the Thai laws, they are scattered in several provisions of the Criminal Code and other statutes. These offences may have to be revised and reformed for coherence and unity in dealing with a wide range of the problem. There are shortcomings with certain offences, such as, the crime on promise, offering or giving an undue advantage to induce false testimony or the production of evidence. These problems always encounter efficiency in investigation and prosecution of influential offenders.

V. RESTORATIVE JUSTICE IN THAILAND

A. Introduction

This part deals with restorative justice in the Thai social and cultural settings based on indigenous law and innovative conciliation, mediation and dispute resolution. These informal justice alternatives have been widely used for a long time in the Thai social setting for social harmony in the rural as well as urban communities. Personal relations and close knit social solidarity play a significant role in crime prevention, dispute resolution and social order. Restorative justice in the modern paradigm is relatively new in Thailand and was introduced under the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters a recent approach to solving crime and punishment. The restorative model is different from the justice or just deserts models. The origin of the restorative model developed on the restitution and community service sentence in the 1970's sometimes was dubbed the rehabilitative model. The philosophical attribution of a restorative programme is restoration and reparation for the victim. Restorative justice has similarities and overlaps with the peacekeeping model. The approach between these two models is consistent with the ethics of care and accountability of the offender that emphasize needs rather than retribution. There are certain important questions on the meaning and impact of restorative justice to the offender. The integration of the offender into the community is one thing and reintegration without stigma, banishment, or exclusion is another (Pollock, 1998). The method and principle of restorative justice envisaged in recent literature are sound and promising to resolve human conflict and antagonism.

B. Genesis of Restorative Justice

The dispute settlement in a given society whether informal, community or restorative justice may trace back to customary law, tradition and practice in social and cultural settings in that society. The practices have

been drawn from ancient concepts in western as well as eastern societies. At the time a formal justice system emerged and the system began to define the status of offenders under the sanction of the state. The offender has an obligation to the state rather than the victim. The victim's status is relegated to an assisting role of a witness or a bystander. Modern restorative justice emerged in innovative programmes developed in several countries in the 1970's and 1980's (see Van Ness, 2000). The programmes reported and often cited have been offender-victim mediation, pre-sentence, sentencing and restitution. As Van Ness pointed out in the past 20 years, "restorative justice has become an influential movement in many countries and has been spreading into application in every stage of criminal justice administration".

Tony Marshall, a British Criminologist, defines restorative justice as "a process whereby all the parties with a stake in a particular offence come together to resolve it collectively, how to deal with the aftermath of the offence and its implications for the future." This procedural definition may not settle all issues and questions on restorative justice, but it is helpful as a point of departure to understanding and further discussion. An elaboration by Susan Sharp, a Canadian scholar, has shed light on five key principles of restorative justice as follows, (Van Ness, p.3).

1. To give full participation and consensus between the parties.
2. To try settling differences and heal the broken ties and relations.
3. To find full responsibility and direct accountability.
4. To reunite the divided and broken social order in the community.
5. To strengthen the solidarity in the community to prevent additional harms.

The Basic Principles on the use of Restorative Justice Programmes in Criminal Matters defines the restorative process as any process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party.

Examples of restorative justice include mediation, conferencing and sentencing circles. Under the basic principles, restorative justice programmes are encouraged at all stages of the criminal justice process. All processes should be voluntary and the parties themselves should reach for agreement with reasonable and proportionate obligation. While the restorative process that safeguards the right of parties engaged in the case, the agreement reached or outcome is recognized and binds the parties similar to judicial discharge. However, failure in the restorative process and mediation leads to referral back to the formal process for settlement.

The operation of restorative justice programmes should be established by legislation with standards and guidelines. These are referral, handling, and qualification of personnel, administration and ethical rules governing the operation of restorative justice.

The values and assumptions of restorative justice emphasize the victim's needs, involvement and rights and role in the restorative process. The emergence of the victim rights movement has been based on the reaction to the law and the unrecognized status of the victim in the criminal justice system.

However, restorative justice is not a victim's rights approach (Bazemore and Umbreit, 1996). The proponents of restorative justice promote a victim-centred approach that does not necessarily require the criminal justice policy makers, or administrators to take sides between the victim and offender. Rather the new paradigm emphasizes the victim's needs and the offender is held accountable to the victim. The case value in restorative justice, as pointed out by advocates, is to balance the needs of the offender, victim and community as parties of the criminal justice system.

Restorative justice as a community based mediation programme as well as alternative dispute resolution is less formal and less expensive than arbitration and litigation.

Mediation is a process in which a neutral third-party is called upon by the parties to a dispute to help them resolve that dispute (American Bar Association, 1987).

The mediator shall act as facilitator, neutral and detached; he may see and recommend possible

resolutions that the parties may not consider. The mediator does not give a ruling. The mediation process is negotiation that involves a neutral facilitator to seek voluntary and amicably dispute resolution.

C. Criminal Mediation in Thailand

Alternative measures were considered for formal criminal justice administration in dealing with crime and the offender. In July 10, 2001, the Resolution of the Council of Ministers was passed to support the use of alternative measures to substitute the normal criminal justice proceedings, especially an alternative to settle criminal cases in the formal criminal court. Most measures are similar to United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), 1990. The measures, among others, are suspended prosecution, dispute reconciliation, applying restorative justice to probation works, children and juvenile offenders, community services and justice as an alternative to detention.

The criminal justice system as a whole is blamed for neglecting the victim, or the victim has an insignificant role in the justice administration and process. Although, the victim is entitled to institute a prosecution of the offender on his/her own without restriction, or approval by the state. However, a small number of victims seek their own justice in the courts. Most find recourse in the formal system by lodging their complaint with the police. They subsequently act as witnesses or assistants of the authority in the judicial discharge of their cases.

The Thai legal system has adopted the civil law tradition of Western Europe and is also influenced by the English law and legal education. In fact, the Thai social setting has been rooted in agriculture and an agrarian way of life since the past century. Social and economic development, especially, urbanization, migration and industrialization have transformed the society into modernization. However, several development plans have succeeded in industrialization and urbanization, but rural developments were left further behind.

In an agrarian society, the people are interdependent and depend on their relatives and kinship. Buddhism has played a significant role in their way of life, beliefs, customs and social values. The ruler in the old days adopted a patronage approach to govern at all levels: village, community (Tambon), district, province and the central government. The governors, especially in the province, have paid more attention to the collective well being and feeling of the people as well as peacekeeping in the community. (In the old days, the victim had to lodge his/her complaint to the governor and may institute his/her own criminal prosecution.) Currently, this legacy is adopted in a dual criminal prosecution under the Criminal Procedure Code, section 28. The public prosecutor, with exceptions for certain offences, and the victim (injured person) are entitled to institute criminal charges. (The continental European as well as English laws have influenced the Thai criminal procedural law). In addition, the public prosecutor and the victim may mutually be involved and cooperate in the prosecution of the offender as joint partners. An alternative to criminal prosecution may resolve under a formal and informal justice process.

D. Criminal Mediation and Settlement under the Criminal Procedural Law

In certain criminal law offences, usually lesser, non-aggravating, or compoundable offences, the victim and offender are entitled to settle their own disputes, or resolve them under the mediation of the inquiry police officer, or judicial authorities at any stage of the criminal justice process. The victim and offender usually negotiate for settlement under the supervision of facilitators or legal officers together with restitution payable to the victim.

E. Community-Based Mediation for Dispute Settlement

The Local Administration Act of 1914 and the Administration of Village Volunteer Defence and Development Act of 1979 have provided for conciliation and mediation as alternative dispute resolution both in civil and criminal matters. The laws have entrusted the power and authority to village-based mediation committees and village volunteers for a defence and development committee to settle disputes in all civil cases and certain criminal offences within the village by means of conciliation and mediation. The method and procedure of mediation are specified by the regulations of the Ministry of Interior. For criminal mediation and settlement, the offences are restricted to compoundable offences (private wrongs) provided by the criminal code. The village dispute settlement project is under the administration of the Ministry of Interior and undertaken by the office of the Attorney General. The project has as its main objective the enhancement of community justice, equality and the eradication of exploitation in the rural communities. The project is first implemented by dissemination of legal literacy and legal aid programmes, including the development of people organization in the village to settle their own disputes by means of conciliation and mediation.

Currently, the office of provincial public prosecution and the village mediation committee are taking more responsibility for dispute settlement in the villages and communities. The project has been implemented in coordination with the Chief of the District that oversaw the village as shown below. A Province consists of a number of administrative districts. A District is divided into Tambons (community) and a Tambon is divided into Villages, the smallest local unit. The Governor and Chief District Officer are government officials appointed by the Ministry of Interior. The people in the community elect the head of a Tambon, or Village as their leader and he/she represents the government. Therefore, the head of the Tambon/Village is an official under the supervision of the District Chief.

**Organization of Government, Central, Regional, Province, District, Tambon
and Village and the Number of Organizations as of 2001**

Central Government
Ministry (20)
Regional (9)
Province (76), and Provincial Administration (76)
District (795), Sub-District (81)
Tambon (7,255), and 214 Tambon Councils (6,745)
Village (71,864)
Municipality (1,129)
Municipal Administration, City (20), Town (84), Tambon (1,025), including two special
local administrative areas: Bangkok and Pattaya

Source: Statistics on Local Administration, Department of Local Administration, Ministry of Interior, November 30, 2001. The figures in the brackets are the number of the respective organizations. (Population 61,878,746; Male 30,725,016, Female 31,153,730).

The guidelines and standards of local dispute resolution are provided under the local administration laws and the Ministerial Regulation issued in 1987.

The local Administration department (LAD), Ministry of Interior is jointly responsible with the office of the Attorney General and the National Police Agency in the administration of local dispute settlement. The LAD takes a principal role with the assistance of the public prosecutor and the police. The village mediation committee (VMC) takes the initiative in dispute settlement only for civil and compoundable criminal offences.

The dispute settlement undertaken by the VMC first asks for the voluntary consent of the parties. The process of dispute resolution takes the following steps:

- (1) The parties who wish to settle their dispute inform the head of the village.
- (2) The head of the village first has a duty to make a preliminary investigation as to whether the case is eligible to be pursued in the VMC and give notice to the parties and the venue of settlement.
- (3) The VMC appoints at least two members to hear the case, or may invite other suitable persons to take part in the process as they see fit.
- (4) The head of the village makes an appointment with the VMC to convene the process without delay.
- (5) The VMC are entitled to summon any person concerned with the dispute to answer questions or if necessary inspect the evidence.
- (6) The mediation process is conducted in the presence of the parties at the office of the head of the village, or other place as specified by the VMC.
- (7) The mediation process must be consistent with law or local custom and fairness to the parties.
- (8) In case of difficulty, the VMC members may invite the chief district officer, deputy chief, or a police officer that has legal knowledge and/or a public prosecutor to advise members of the VMC.
- (9) The mediation proceedings are recorded as follows.
 - a) In case of disagreement, the VMC must stop the mediation process and inform the parties, then refer the case to the chief district officer for perusal.
 - b) In case of reconciliation, the VMC makes a compromise agreement with four identical copies according to the requirements of the civil or criminal case. The committee is required to read and explain the essence of the agreement to be clearly understood by the parties. The parties hereunto sign their names and keep one copy each. One copy is kept at the Head of the village's

office and another forwarded to the office of the district. The agreement arising out of the mediation process is used as evidence in the court of justice.

- c) In case of failure, the parties are entitled to submit their case to be heard by the district office, or to proceed in the criminal justice process.

There were only 25 criminal and eight civil cases reported by the Office of Civil Rights Protection and Legal Aid Division, Office of the Attorney General, between October 1988 to September 1999. The village mediation committee settled only half of these cases. The other pilot project carried out in nine provinces by the volunteer community mediation programme of the Judicial Affairs Bureau, Ministry of Justice showed that there were 1,115 civil and cases settled by means of mediation out of 1,234.

F. Discussion

The village mediation-based project carried out in the rural community is rather limited in scope, jurisdiction and offences provided by the criminal law, criminal procedure and regulation. The project utilized in selected villages and communities as alternative dispute resolution was under reported or not reported at all. This may be attributed to the low priority given to it and shortage of funding in the village and the community administration. Other reasons are lack of support, training and consistent policy on the project.

In the past, the local administration department has established innovative mediation projects, such as a village tribunal to resolve minor disputes in selected provinces as an experiment. Meanwhile the experimental programme has not continually been implemented nor set up in the provinces. Other pilot projects and practices were scattered in the family and juvenile court, probation and correction services that addressed diversion and community service. Recently, the government has submitted the first comprehensive state sponsored victim compensation programme to the National Assembly for promulgation.

There has not been a comprehensive restorative justice project aimed at or modeled for an entire criminal justice system. A trained facilitator/mediator is sorely needed to carry out the work at every stage of the criminal justice system.

Finally, integration of the offender into society has to involve members of his/her family, victim and the community. The public and private organizations shall have to take responsibility for monitoring the offender for compliance with probation orders, or the given condition and facilitating the victim into the community.

VI. VICTIM COMPENSATION AND RESTITUTION FOR THE ACCUSED UNDER THE NEW LEGISLATION

A. Introduction

The Constitution has protection provisions for both the crime victim and the accused in case of miscarriage of justice and an abuse of power. Victim compensation and restitution for the accused in the criminal justice system have been promulgated and enforced since 2002. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power is hereby highlighted as follows.

1. Compensation

When compensation is not fully available from the offender or other sources, states should endeavour to provide financial compensation to:

- (a) victims who have sustained significant bodily injury or impairment to physical or mental health as a result of serious crime;
- (b) the family, in particular dependants of persons who have died or become physically or mentally incapacitated because of such victimization.

2. Victims of Abuse of Power

States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and social assistance and support.

The Thai Constitution has promulgated a basic guiding principle as follows:

In a criminal case, an injured person is entitled to the protection, proper treatment and appropriate compensation from the State as provided by law (section 245 of the Constitution).

In case where any person suffers an injury to their life, body or mind as a consequence of the commission of an offence by another person without the injured person participating in such commission of the offence and the person cannot seek a remedy by other means, such person or his or her heir is entitled to receive assistance from the State, upon the conditions and in the manner provided by law (section 245).

(3) Any person who has become an accused in a criminal case and has been detained during the trial shall, if it appears from the final judgment in that case that the accused did not commit the offence, or the act of the accused does not constitute an offence, be entitled to appropriate compensation, expenses, including the recovery of any right lost, on account of that incident, upon the conditions and in the manner provided by law (section 246).

In 1997, the government approved the bill on Crime Victim Compensation and Restitution for the Accused that was proposed by the then Judicial Affairs Office, Ministry of Justice. The National Assembly finally passed the law and it came into effect on November 12, 2001. The structure and the essence of the Act are summarized as follows.

B. Victim Compensation and Restitution Board (VCR)

The VCR board for victims of crime and restitution for the accused, in case of abuse of power is created by law to run the programme.

The Permanent Secretary of the Ministry of Justice is Chairman of the Board. Other members consist of representatives of the National Police Agency, Office of Judicial Administration, Office of the Attorney General, Ministry of Finance, Department of Local Administration, Probation Department, the Judge Advocate General's Department, Department of Correction, Department of Welfare and Labour Protection, Council for Lawyers and five experts at least each in the field of medicine, social welfare, and human rights to be appointed by the Council of Ministers with the recommendation of the Minister of Justice. The Chairman of the Board must appoint an official of the Ministry of Justice as secretary and may appoint an assistant secretary.

The Board may appoint a sub-committee to deliberate or act on behalf of it as the Board may see fit. At present there are ten sub-committees appointed to consider applications for victim compensation and restitution for the accused.

1. Powers and Duties of the Board

The Board is entrusted with the powers and duties as follows:

- (i) to consider an application for compensation, restitution, or benefits under this Act;
- (ii) to make a recommendation to the Minister concerning the measures protecting the rights of the victim and the rights of the accused, including to enact Ministerial Regulations and Proclamations provided under the Act;
- (iii) to make a written inquiry into or summon any person to give testimony or deliver documents or other necessary things for deliberation;
- (iv) perform any other matters under the objects of the Act.

2. Office for Financial Assistance to the Victim and the Accused (OFA)

The office is an agency established under the Department of Rights and Liberties Protection, Ministry of Justice and entrusted with powers and duties in the following.

- (i) to carry out works designated by the Board and sub-committees appointed under the Act;
- (ii) to receive an application for compensation, restitution or benefits and make a recommendation to the Board and sub-committees for deliberation;
- (iii) to coordinate with other government agencies, or any person for investigating the fact or opinion concerning an application for compensation, restitution or benefits;
- (iv) to keep records, compile and analyze data concerning delivery of compensation, restitution or benefits;
- (v) to perform other activities entrusted by the Minister, the Board or sub-committees.

C. Scope of Coverage

The Act creates a state compensation programme for crime victims as well as restitution for accused persons who suffer personal injury from abuse of power or miscarriage of justice.

The compensation is defined as remuneration for the victim of crime and the restitution is for the accused, including benefits given to the victim and the accused.

The compensation or restitution for the victim of crime and the accused is governed by:

- (i) An Act relating to Victim Compensation, Restitution and Benefits of the Accused B.E. 2544 (2001).
- (ii) Ministerial Regulation on Standards, Methods and Rates for Compensation, Restitution and Benefits, B.E. 2546 (2003).
- (iii) Regulation of the Compensation and Restitution for the Accused Board on the Application and Procedure for Compensation, Restitution and Benefits, B.E. 2545 (2002).

The victim who is entitled to receive compensation under the Act shall be injured persons in sections 3 and 17 of the Act.

- (i) An injury is restricted to life and body, including physically or mentally.
- (ii) The injury has occurred by the other person whereby the victim was not involved in the offence.
- (iii) The offences committed by the other are those provided under the Act.

1. Compensation for Crime Victims

The compensation for crime victims is provided under: (1) the expenses necessary for medical care, including physical and mental rehabilitation; (2) compensation for the victim's death, (at the amount not exceeding 100,000 Baht); (3) loss of earnings; (4) compensation for other loss incurred under the discretion of the Board.

The standard, method and rates shall be specified by Ministerial Regulation. The VCR board, however, may award compensation in any item or items given under the regulation, by its own deliberation subject to circumstances, seriousness, nature of loss and other sources of compensation (social welfare programmes, social security, workmen's compensation, insurance and other competing sources). The Board has discretion to award financial assistance based on the gravity of an offence and victim's injury or death (see Figure 1). However, there shall be a broad payment benefits schedule as guidelines for deliberation.

The victim may enter an application for compensation under these conditions. The offence committed against the victim is specified by the schedule attached with the Act, or an offence committed by a state official in connection with the course of his/her duty and the victim is dead or physically or mentally injured.

(i) *Decisions of the Board on Victim Compensation*

a) Case 1 No 194/ 2005 (Awarded)

A woman, the victim, was a passenger in a public bus that collided with a car. She was seriously injured in the accident on April 6, 2004. The board had a meeting on March 24, 2005 and ruled that the victim had applied for compensation: (1) within the legal period; (2) the victim is an injured person under section 3 of the Act. The victim was entitled to receive compensation for loss of earnings for 365 days, at a rate of 142 Baht per day, for a total amount of 51,830 Baht. The decision is payable under section 18 (3), including Ministerial Regulation on Standards, Methods and Rates, B.E. 2546 No. 3 (3).

In case the applicant disagrees with the decision of the board, she is entitled to petition the court of Appeal within thirty days as from the date of receiving the notice.

b) Case 2 No. 214/2005 (Denied)

A man, the dead victim, was riding a motorcycle and collided with another motorcycle and died in the accident on July 31, 2004. The board has considered the application made by his successor and unanimously ruled that the victim rode the motorcycle negligently at high speed and had an accident. The board dismissed the case because he was involved in the offence. Therefore, the victim was not entitled to receive compensation. The applicant is entitled to petition the court of appeal within thirty days.

- (ii) *Judgment of the Court of Appeal*
Victim Compensation
Civil Case No. 11875/2003 (Partially Reversed Decision of the Board).

The applicants, Mr. Suchin and Mrs. Malee Thongkam, filed an appeal against the decision of the Victim Compensation and Restitution of the Accused Board, as successors of the girl, Miss Wasana Thongkam, their daughter who was shot and killed by a gunman. The Board awarded compensation for the dead girl in the amount of Baht 40,000 and funeral expenses at Baht 20,000. The award was not justified because the amount was too low and did not take into consideration the loss of support to the applicants.

The Appeal Court ruled that the award given to the applicants was too low considering the gravity of the offence and circumstances of the case. The applicants have suffered mental anguish on the loss of their daughter, a student in grade 9, who has a duty to take care of her parents. The mother has mental trauma and must be admitted to the Mental Health Hospital for treatment. The Appeal Court concurred partially with the applicants' appeal. The Court, therefore, has given the award as follows: (1) compensation at Baht 70,000; (2) funeral service at the given amount; and (3) loss of support at Baht 30,000. The total amount awarded Baht 120,000.

2. Restitution for the Accused Person

The accused who is entitled to receive restitution and benefits under this Act shall be a person who is charged for an offence in court and consists of these elements:

- (i) he/she is charged by the public prosecutor;
- (ii) he/she is detained pending trial;
- (iii) he/she is subsequently dismissed as innocent or discharged pending trial; or there is a final judgment that the accused is not guilty, or an act of the accused is not a crime.

When the court pronounces a final judgment to reverse or dismiss the case because the accused is dead or the public prosecutor withdraws the case with the court's permission and the fact appears that the accused is not criminally liable to, or mistakenly charged or adjudicated whether with an intention or negligence by any competent state official in the criminal justice system, or rather he/she is a victim in the administration of criminal justice.

The VCR board, under certain circumstances, thinks it is proper that restitution should be awarded to the accused. If the accused is imprisoned, a daily restitution award shall be equivalent to the amount of confinement in lieu of a fine per day, as specified under the criminal code (see Appendix, Figure 2). Medical expenses are provided, including rehabilitation, if illness has occurred directly, as a result of the criminal charge or confinement.

The restitution awarded shall not exceed 100,000 Baht, in case the accused person is dead and the death occurred directly as a result of the criminal charge. A loss of earnings pending the trial shall also be awarded, including expenses for criminal defence under the schedule provided for attorney fees (see Appendix, Figure 3).

Other damages payable may be awarded at the discretion of the Board, but not exceeding Baht 30,000. The Board, however, may award restitution only for an item or items specified under the law with its own deliberation, subject to suffering and other collateral sources of restitution, for example, the Act relating to the liability of government officials on wrongful acts, or abuse of power 1996, social security law and other competing sources (see Appendix, Figure 2).

(i) *Decision of the Board on Restitution for the Accused*

a) Case 1 No 83/2005 (Awarded)

The Accused has filed for restitution and benefits at the Office for Victim Compensation and Restitution for the Accused and Benefits. He was an accused in the forcible rape case and after the trial, Trad Provincial Court dismissed the prosecution case on April 4, 2003. There was no further appeal by the parties, the case was final.

1. In this case the applicant applied for restitution within the legal period.

2. The accused was a defendant who was prosecuted by the public prosecutor and was in custody pending trial under section 20 paragraph (1) and (2) together with the final judgment of the Trad Provincial Court whereby the fact was conclusive that the defendant was not guilty under section 20 paragraph one (3) of the Act of B.E. 2544 (2001).

By virtue of section 8 (1) of the Act, the Board decided that restitution shall be awarded to the accused as follows:

1. Restitution was given for being kept in custody 416 days, at a rate of 200 Baht per day, total amount of 83,200 Baht under section 21 (1) of the Act, including section 30 paragraph one of the Criminal Code.
2. Benefit was given for loss of earnings while in detention for 416 days, a rate at 200 Baht per day, total amount of 83,200 Baht, under section 21 (4) of the Act together with Ministerial Regulation on Standard, Method and Rate B.E. 2546, No 6 (3).

The total amount of restitution was 166,400 Baht. In case the applicant disagrees with the decision of the board, he has a right to petition to the court of appeal within thirty days.

b) Case 2 No 89/2005 (Denied)

The accused, a woman, was prosecuted by the Public Prosecutor in Pitsanuloke Provincial Court for committing a narcotic drug offence. Consequently, the Court dismissed the case on July 2004. There were no further appeals by the party, the case was final. The Board heard the case and ruled on March 24, 2005 that (1) the applicant filed for restitution within the legal period, (2) the accused person was charged by the public prosecutor and kept in custody pending trial under section 20 paragraph one (1) and (2).

However, the final judgment of the Court was that they did not find conclusively that the accused was not guilty. "It did not appear from the final judgment in this case that the accused did not commit the offence, or the act of the accused did not constitute an offence." The court dismissed the case on the ground of doubt.

The case was not applicable to the provision under section 20, paragraph (3) of the Act. The Board, therefore, dismissed the application of the accused. The accused has the right to file an appeal to the court of appeal within thirty days.

(ii) *Judgment of the Court of Appeal*

Restitution for the Accused

Civil Case No. 6037/2004 (Affirmed Decision of the Board)

The applicant filed a petition to the Court of Appeal for restitution because the VCR Board paid the accused an insufficient amount. The fact is that the police accused the applicant of committing a drug offence and arrested the applicant and the public prosecutor charged him in Srisaket Provincial Court. The Court dismissed the case on the ground that the applicant was not guilty and the Court of Appeal, Region 3 affirmed the judgment of the lower court. The applicant was detained pending criminal proceedings in the court of first instance and the court of appeal for 438 days. The VCR Board made a unanimous decision to award the applicant Baht 200 per day for (1) the deprivation of liberty in detention Baht 87,600; (2) loss of earnings of Baht 150 per day, total Baht 65,700; (3) lawyer's fee Baht 30,000. The total amount paid was Baht 183,000.

The applicant requested the Court of Appeal to consider awarding him as follows: (1) loss of earning of Baht 500 per day, total Baht 219,000; (2) loss of support for his son at Baht 100,000, (His son suffered a mental deficiency because the applicant was absent. He gave additional facts that his wife left the family to marry a new man and, as a result, abandoned his son.); (3) physical and mental rehabilitation for himself at Baht 200,000. The total restitution amount claimed was Baht 519,000.

The Court of Appeal denied the applicant's appeal on these grounds.

1. The applicant's son suffered mental illness due to addiction to a solvent substance for six years as evidence shown by the Mental Health Hospital's record in Unbon Rajathani Province.
2. The applicant's claim for loss of earnings of at least Baht 500 per day was not supported with evidence to verify that he had regular work nor income from any work to justify his claim. In

addition, he did not complete any level of education, or have competency, or skill to demand such a wage.

3. An Assistance Application for the Victim and the Accused

The protocol of assistance to the victim and the accused is divided into eight steps.

- (i) Filing an application form.
- (ii) An investigation and recommendation by the competent official.
- (iii) Submitting the case to the sub-committee for deliberation.
- (iv) Presenting the case to the board for decision.
- (v) Informing the applicant of the decision of the board.
- (vi) Right to appeal to the appellate court.
- (vii) Disbursement of compensation or restitution.
- (viii) Keeping the record.

The process from (i) to (vii) takes a maximum of 120 days. In some cases this period may take longer due to the difficulty of investigation and shortcomings of evidence.

4. Application for Compensation, or Restitution, Deliberation and Appeal

An application for compensation, restitution or benefits under the Act must be filed in writing to the office (OFA) within one year as from the day the victim knew the offence had been committed. For the accused, the criminal charges against him/her have to become final.

However, the applicant who has domicile in a province may enter his claim in any office of the Ministry of Justice in the province, namely, Probation Office, Office of the Legal Execution of Judgment or Office of Correction Agency throughout the country.

If the claimant is incompetent or gravely injured that he/she cannot enter the application himself, his legal representative, guardian, ascendant, descendant, spouse or caring person shall apply on his behalf.

If the claimant is not satisfied with the VCR board's decision, he/she has the right to file a petition in the Court of Appeal within 30 days as from the date that he/she is informed of the decision. The judgment of the Court of Appeal shall become final. The petition may also be filed at the aforementioned Ministry of Justice's offices or the Provincial Court that the Claimant has domicile.

The Court of Appeal has power to take additional evidence by its own initiative. Or it may assign the case to be heard in the court of first instance as provided under the provisions of the Civil Procedure Code.

5. Penalties

If the claimant applies for compensation, restitution and benefits with false information, statements or evidence, or he refuses to comply with an order of the VCR board provided under the Act; he shall be criminally liable. A claimant who applies for compensation or restitution with false information shall be punished with imprisonment not exceeding three years or a fine not exceeding sixty thousand Baht, or both.

A person who gives a false statement or produces false evidence relating to the application for compensation or restitution under this Act to the Board, sub-committee or competent official shall be punished with imprisonment not exceeding three years or a fine not exceeding six thousand Baht, or both.

A person who refuses to give a statement or deliver a document, evidence or information as required in compliance with an order of the Board, sub-committee, or competent official shall be punished with imprisonment not exceeding six months or a fine not exceeding one thousand Baht, or both.

The penalty in this Act is in conformity with the same offence as provided for in the Criminal Code.

6. Offence Schedule

The crime victims are entitled to apply for compensation only in regard to the offences provided in the schedule attached to the Act. There are specific offences under the Criminal Code as follows.

- (1) Offences relating to sexuality, sections 276-287.
- (2) Offences against life and body:
 - a) causing death, sections 288-294;
 - b) bodily harm, sections 295-300;
 - c) abortion, sections 301-305;
 - d) abandonment of children, the sick and the aged, sections 306-308.

7. Discussion

A claim for financial assistance or benefits under the Victim Compensation and Restitution for the Accused and Benefits Act shall not prevent the victim, or the accused from receiving benefit otherwise that he/she is legitimately entitled according to other laws. If the claimant is dead, his/her heir shall succeed the benefits. The victim or the accused person who has been paid under other laws or insurance is entitled to claim or he/she is entitled to receive payment from the compensation fund. In principle, the application does not preclude the claimant's dual recovery.

The administration of law is entrusted to the VCR board whose members will serve as policy and decision-makers as well as regulators under the executive branch. On the other hand, the Board has quasi-judicial power in hearing and granting an award to the claimant as well as in settling disputes in contested cases. The OFA that has the duty to assist the victim or the accused is a government agency headed by a Director of the Office under the Department of Rights and Liberties Protection, Ministry of Justice. The office undertakes administrative work and serves as secretariat to the Board. In addition, there are a number of legal officers assigned to investigate the application and make a recommendation firstly to a sub-committee and secondly to the VCR board for decision to award the compensation, restitution or benefits.

The Board has considerable power and discretion in its ruling on compensation awards which is subject to Ministerial Regulation and Regulation enacted by the Board. The Board has power to recommend an appropriate fund for activities under the law (see for a comparison study; Japanese Crime Victim Benefit Payment Law 1980 and the Criminal Compensation Law). There are a number of questions on points of law and policy in compensation/restitution or the conditions clearly defined in the Ministerial Regulation, Regulation of the Board, Decision and Guidelines.

An application for compensation, restitution and benefits shall be made in writing in conformity with the standards, methods, and rates provided by law. The compensation may be awarded to the claimant who is the victim or the accused or to any claimant, if the award would alleviate the loss and suffering of the victim and the accused. However, the board may determine in a particular case to award with a minimum to maximum amount by taking into consideration the circumstances, seriousness of the offence and the nature of damage, including an opportunity to receive other reimbursements and eligibility.

Compensation shall not be awarded if the victim has not made a complaint to an inquiry police officer. He has to file a complaint and cooperate with the police officer. In case of injury the claimant has to see a doctor in a hospital. Or in case of death, the certificate from the competent authority must be submitted together with the application and other relevant documents for consideration. The period of application is limited to one year without an extension. Recently, the Office of Financial Assistance for the Victim and the Accused has developed a procedure and handbooks to speed the assistance process.

Compensation otherwise payable to a claimant in what conditions or moral grounds shall be reduced or denied. The petition, whether on a matter of law or of fact shall be filed in the Court of Appeal in conformity with the Civil Procedure Code. In practice, the petition provision is liberally interpreted in favour of an appeal.

These questions and other questions of procedural justice are resolved by subordinate law and regulations. The law for crime victim's compensation and restitution for the accused person has been a modest movement that has gained momentum under the influence of the Constitution and victim rights. In fact the movement is enhanced by the guiding principles of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

This State financed compensation programme for crime victims is considered a relevant, practical and simplified system in the context of Thailand's socio-political situation and its stage of social and economic development.

In conclusion, the victim of crime in Thailand has three alternatives to seek redress by his/her own initiative: (i) to enter a civil law suit claim against the perpetrator for civil liability; (ii) to institute a criminal complaint or charge the perpetrator in criminal court and file a civil case in connection with an offence; and (iii) to apply for a compensation award to the VCR Board.

An alternative avenue is to seek humanitarian assistance from the governmental or non-governmental welfare service agencies or programmes.

APPENDIX

Figure 1: Benefits Payment Schedule for Victim Compensation

A. Injury Compensation

1. Necessary expenditure for medical care is paid for the actual amount, but not exceeding Baht 30,000.
2. Physical and mental rehabilitation is paid in the actual amount, but not exceeding Baht 20,000.
3. Loss of earnings during absence from regular work at the amount not exceeding Baht 200 per day, for not over one year as from the incapable date of the regular work.
4. Other damages incurred besides, (1), (2) and (3) may be paid under the discretion of the Board, but not exceeding the amount of Baht 30,000.

B. Compensation in Case of Death

1. Compensation in the amount ranging from Baht 30,000 to not exceeding 100,000.
2. Funeral service to be paid in the amount of Baht 20,000.
3. Loss of support to be paid in the amount not exceeding Baht 30,000.

Figure 2: Benefits Payment Schedule for the Accused Person

Restitution and Benefits

1. Necessary expenditure on medical care for illness directly arising from the criminal prosecution and its proceedings to be paid in the actual amount.
2. Physical and mental rehabilitation for illness arising from the criminal prosecution to be paid in the actual amount, but not exceeding Baht 50,000.
3. Loss of earnings during criminal proceedings at the amount of Baht 200 per day, from the incapable date of the regular work.
4. Necessary expenditure for criminal defence.
 - (a) Actual lawyer's fee, but not exceeding the payment schedule in Annex 3.
 - (b) Other expenses incurred in criminal defence at the actual amount, but not exceeding Baht 30,000.

In case the accused person has died as a consequence of criminal prosecution, the benefits payment shall be as follows

1. Restitution to be paid at the amount of Baht 100,000.
2. Funeral service to be paid at the amount of Baht 20,000.
3. Loss of support to be paid at the amount not exceeding Baht 20,000.
4. Other damages incurred besides (1), (2) and (3) to be paid at the discretion of the Board, but not exceeding the amount of Baht 30,000.

Figure 3: Lawyer Fee's Schedule

Category 1: Capital Offence shall be paid the minimum of Baht 4,000 per case up to the maximum Baht 100,000 per case.

Category 2: The Offence punishable by maximum imprisonment of over ten years, but not for capital punishment and shall include several criminal offences and counts, but each count shall not exceed ten years, however, all indictable counts exceeding ten years imprisonment shall be paid at the minimum at Baht 3,000 per case up to the maximum Baht 75,000 per case.

Category 3: Other cases besides category 1 or 2 shall be paid the minimum at Baht 2,000 per case up to the maximum Baht 5,000 per case.

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**Table 1 Application for Victim Compensation and Restitution for the Accused Persons
(Statistics Compiled at June 30, 2005)**

Year	Number of Applicants	Cases Paid	Amount of Money Paid
2002	168	-	-
2003	443	53	13,279,169 Baht
2004	1,962	479	86,720,831 Baht
2005	2,594	662	41,653,225.50 Baht
Total (2002-2005)	5,167	1,194	141,653,225.50 Baht

Source: Office of Financial Assistance for the Victim and the Accused, Department of Rights and Liberties Protection, Ministry of Justice.

Table 2 Victim Compensation, Restitution for the Accused and Expenses Payable from October 1, 2004 - September 30, 2005, Fiscal Year 2005, Budget Allocation at 60,000,000 Baht/Year

Month/ Year	Victim		Accused		Total		Projection For Monthly Paid	%	Annual Projection Payable	Total	%
Oct 04	15	872,591	6	1,817,870	21	2,690,461	-	-	-	8,715,983	174.32
Nov 04	24	1,661,915	17	4,363,607	41	6,025,522	5,000,000	174.32	5,000,000		
Dec 04	28	2,190,503	6	1,397,260	34	3,587,763	10,000,000	35.88	15,000,000	12,303,746	82.02
Jan 05	43	3,100,648	6	1,778,800	49	4,879,448	5,000,000	97.59	20,000,000	17,183,194	85.92
Feb 05	11	693,159	6	1,991,278	17	2,684,437	5,000,000	53.69	25,000,000	19,867,631	79.47
Mar 05	60	4,557,513.50	12	2,746,280	72	7,303,793.50	5,000,000	146.08	30,000,000	27,171,424.50	90.57
Apr 05	76	5,464,283	11	2,356,160	87	7,820,443	5,000,000	156.41	35,000,000	34,991,867.50	99.98
May 05	35	2,906,735	8	1,044,149	43	3,950,884	5,000,000	79.02	40,000,000	38,942,751.50	97.36
June 05	9	577,785	8	2,132,689	17	2,710,474	5,000,000	54.21	45,000,000	41,653,225.50	92.56
Total	301	22,025,132.50	80	19,628,093	381	41,653,225.50	45,000,000		85,000,000	41,653,225.50	92.56

Source: Office of Financial Assistance for the Victim and the Accused, Department of Rights and Liberties Protection, Ministry of Justice.

Table 3 Victim Compensation and Restitution for the Accused (Data Compiled 2002-2005)

Applicants Received	Summary of Application (2002-2005)	Total Granted by the Board (2002-2005)			Decision by the Appeal Court (2002-2005)			Total Granted (2002-2005)	
		Paid (Case)	Not Paid (Case)	Amount (Baht)	Paid (Case)	Not Paid (Case)	Amount (Baht)	No of projected Cases 800	Amount 160,000,000 Baht
The Victim									
BANGKOK	1,109	239	49	17,408,146.55	-	1	-	205	15,560,199
Sex Offences	104	10	2	1,011,097	-	-	-	8	221,097
Life	647	162	34	13,823,459	-	1	-	141	12,822,836
Body	357	67	13	2,573,590.55	-	-	-	56	2,516,266
Abortion	1	-	-	-	-	-	-	-	-
Abandonment	0	-	-	-	-	-	-	-	-
PROVINCES	2,631	684	143	43,419,191.50	4	-	170,000	346	24,737,097.50
Sex Offences	113	30	1	733,393	-	-	-	29	645,793
Life	1,797	345	110	32,952,420.50	4	-	170,000	237	21,430,755.50
Body	718	309	29	9,733,378	-	-	-	80	2,660,549
Abortion	1	-	-	-	-	-	-	-	-
Abandonment	2	-	1	-	-	-	-	-	-
Total Victims	3,740	923	192	60,827,338.05	4	1	170,000	551	40,297,296.50
The Accused						-			
BANGKOK	724	168	108	42,998,830	-	4	-	156	40,087,137
PROVINCES	703	205	88	61,357,489	-	4	-	206	61,268,792
Total Accused	1,427	373	196	104,356,319	-	5	-	362	101,355,929
Total of Victims & Accused	5,167	1,296	388	165,183,657.05	4		170,000	913	141,653,255.50

Source: Office of Financial Assistance for the Victim and the Accused, Department of Rights and Liberties Protection, Ministry of Justice.

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