
UN Congress presentation

Ladies and gentlemen,

Thank you, Mr. Chairman. And I'd like to thank the International Institute of Restorative Practices and Dr. McCold, for supporting this presentation.

When Dr. McCold contacted me last year to present, I think it was because he knows that I did my dissertation on "Restorative Justice and Domestic Violence in Thailand". However, I think that he does not expect me to present only on the dissertation. If you are interested in the details, please access www.voma.org; an article was published in *VOMA Connections*. From last year until now, I have learned a lot by my experience as a trainer, executive, and researcher. So, I would like to tell you about my lessons learned. It might be helpful for emerging countries. And I would like to share my experience with the idea of restorative justice in a different culture.

Looking at my background, I started to seriously study restorative justice five years ago (around 2000) when I was a Ph.D. student at Thammasat University. In 2003, I went to the USA to study with Prof. Ron Claassen at Fresno Pacific University. The 93 hours of individualized study, and 90 hours in class with other students, including training and observation, helped me become so clear in restorative justice, and the relationship between restorative justice and other issues. For me, I perceive that restorative justice is not only a process or method for conflict resolution, but it is also philosophy for human life.

I graduated from the Ph.D. program in January 2004, and suddenly became a key person in running the restorative justice project in the Department of Probation at the Ministry of Justice.

Fortunately, the Director-General of the Department of Probation, Dr. Kittipong Kittayarak, is the leading thinker on restorative justice in Thailand. So, there is a master plan of the justice system which supports restorative justice. The vision in this plan is “to develop the justice system by enabling effective use and also enhancing a just and fair, restorative and peaceful society beyond equilibrium between law enforcement and human dignity”. And the mission is “to promote and to develop the justice system and its mechanisms regarding rights/liberty of people, the community and other organizations. The rights of the victim are emphasized for enhancing a vigorous and harmonious society.”

Restorative justice was included in this plan, under strategy no.6, as a method of dispute resolution.

So, in April 2004, the Director-General of the Department of Probation appointed the restorative justice committee in the Department, which is composed of high level executives. The committee has the authority to assign a framework and policy to run restorative justice projects.

Even though there is no law to support this process, we considered the legal framework for how it could be done. Fortunately, according to the Probation Procedure Act, 1979, article 12 states, “When the court orders a probation officer to do a pre-sentence investigation, the probation officer must act and present the pre-sentence investigation report with the officer’s suggestion within 15 days following the court order. However, the court has authority to extend this period to not more than 30 days when necessary.”

The committee decided to target restorative justice in the pre-sentence investigation stage. It was limited only to cases of victimization, and only some offences. The main reason to limit was because most of the committee understood that

restorative justice can apply only to compoundable cases and not to felony cases.

Even though I do not agree completely, I think it is alright as a beginning.

So we started restorative practice with pilot projects in 11 probation offices. After that, we set a curriculum for mediator training, and compiled a handbook for mediators.

In May 2004, we had the first training course and conducted restorative practice from 11 probation offices. Only four months after that, in September 2004, the committee decided to extend the project to every probation office around the country. Now we have two mediators in each office.

This development shows that even though there is no legislation specifically for restorative justice, we can implement restorative practice through policy. I found that most of the judges know restorative practice by means of pre-sentence investigation reports in which probation officers describe restorative processes and outcomes. They are aware of the victim's voice and victim's needs, which were never previously recognized in criminal justice procedure. The parties' agreement has also been accepted as the court's judgment.

The parties' satisfaction is one way to promote restorative practice. They tell others about restorative practice, their experience in the conference, and how satisfied they are. I do hope the positive evaluation might be powerful enough to create legislation in the future.

My first lesson learned:

I found that it is very important to make clear that restorative justice is a new paradigm, not only a practice or method.

Some understand that restorative justice is a new method for conflict resolution. Some understand restorative justice to be a mediation process for compromise, or for payment. In fact, restorative justice is the new paradigm, a new set of beliefs. To change paradigms means to change ways of thinking, to change beliefs, to change attitudes, to change viewpoints. So, it is very significant to make clear in the paradigm. I have always started the training course by working to instill in my trainees/students an understanding of the paradigm. A good mediator should not only know or understand, but they should also sincerely believe in the paradigm. Sincere belief leads to sincere practice, intentionally working for victim and offender. *They also do the conferencing process by heart.* They understand and know why and how to facilitate conferencing. And they always recognize the goal, the objective of conferencing.

An important issue that I discovered is that when mediators are so clear in the restorative justice paradigm, *they do not need a mediator's script.* In my experience, in the first training course, I drafted the mediator's script. I found that the conference was not smooth, because mediators were so worried and used their brains to try to memorize the script. This contrasts with the second, third and fourth training courses, in which I only told them the objectives of each step and allowed them to create the dialogue. The result is that the conference was very smooth and flowed. Without a mediator's script, everyone communicated by heart, which fit our culture, our social context.

Please note: Do not run restorative practice simply because it is fashionable or the like. I know sometimes we should use its fashion as an opportunity to promote restorative practice. However, please be careful, as this might intentionally or unintentionally abuse a victim or offender. Often when policy makers assign a

minimum number of cases per month or per year, it is like a large quantity of cases indicates success. So, a mediator might work as much as he or she can. Sometimes the mediator tries to force the victim or offender or both to join the conference.

Particularly when the mediator is a probation officer, he or she has the power to pressure someone to join the conference. *Actually, we can evaluate social attitudes regarding the restorative approach by the number of voluntary conferencing cases.*

As I said, a paradigm is a set of beliefs. If we want to establish restorative justice, we must empower society to believe in the restorative justice approach. I would like to say that it is not difficult, but it is not easy. It depends on social attitudes toward offending, offenders, and punishment. I would say that all depends on socialization. I would like to share a traditional Thai proverb which indicates something about social attitudes, I think.

“Loving a cow, you should tie; loving children, you should hit”. This means that you should hit your children when they do wrong or misbehave in order to cause them to fear and to avoid doing a mistake like this again. This proverb shows that children are socialized to respond to misbehavior with violence, with pain, and with fear. When they are adults, they also respond to crime or misbehavior like this. Thus, they sincerely believe that the criminal or wrongdoer should be punished in order to make them fear, through pain. It looks like accepting retributive justice.

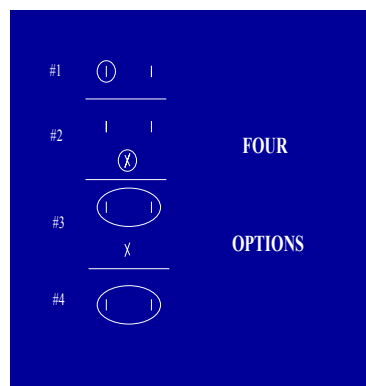
My dissertation found that criminal justice personnel think that the result of restorative justice is soft punishment or compromise. Therefore, some are not certain about the efficacy of restorative justice to resolve the crime problem. Some said that it fits only for compoundable cases. This is the same reason that the committee of Department of Probation limited restorative practice to certain kinds of offences.

My second lesson learned:

I found that sometimes language is the problem. In fact, language is a particularly important problem for the first steps of launching restorative justice in Thailand. We cannot directly translate “restorative justice” into Thai. There are three words in English for which there is only one word in Thai: reformation, rehabilitation, and restoration. So, Dr. Kittipong Kittayarak named restorative justice in Thai with the meaning, “harmony justice”.

The first word that incurs a main problem for running restorative justice programs in Thailand is “mediation”. In Thai, “mediation” means to resolve conflict by compromise, or a negotiation process which arrives at an amount of money to be paid. Victims ask for a lot of money. Offenders try to cut costs to pay at little as they can, as if harm is like goods in a market. Nobody thinks about psychological harm, or emotional harm. There is no repentance, shaming, or embarrassment in the process. Payment seems to be the responsibility for wrongdoing.

I would like to present a model to explain the difference between mediation for compromise and mediation for problem solving, to find out what should be done for restorative justice mediation.



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The “I”s are the people in the conflict.

The “X”s are people who get involved but are not part of the conflict.

The circle or oval is around the one(s) who have the ability to make a decision or control the situation. The circle relates to power.

#1 is where one “I” has the ability to control the situation or make a decision and the other “I” goes along.

#2 is where the “X” (the outside party) makes a decision for the “I”s. Sometimes the “X” is a trusted or respected person and was asked for a decision. Sometimes the “X” is unknown to both parties.

In #3, the role of the “X” is to assist the “I”s inside the oval to decide or to make an agreement together.

#4 is where the parties voluntarily and cooperatively agree.

Mediation in the general Thai meaning is #2, whereas mediation in restorative justice is #3.

I have been speaking on the topic of restorative justice since January 2000, when I first presented at a national seminar at Government House. When I talk about restorative justice and mediation process, most of the criminal justice personnel always say, “I used to be a mediator; I used to do mediation process”. So in their understanding, restorative justice is not more than mediation for compromise or negotiation for payment. In fact, they do mediation according to #2.

I face this problem every time. I have resolved it by avoiding the word “mediation”, and I tell everyone that restorative practice is about finding the best way to resolve conflict together, rather than mediation in our sense.

Furthermore, language is a reason that we should not run restorative conferencing by a mediator’s script. For example, there are the pronouns “I” and “you” in English. However, in Thai, there are more than ten words meaning “I” and

“you”. It depends on age, status, position, situation, and relationship of speaker and listener.

My third lesson learned:

Restorative justice should not be run by a mediator in some cases. My dissertation, entitled “Restorative Justice and Domestic Violence”, found that within Thai social values, family issues are considered private issues. The Thai proverb, **“Do not let inner fire out, do not bring outer fire in”**, means that one does not talk about family issues or family problems to an outsider. And one does not bring others’ family business into their own family. Most males believe this proverb. They believe that it leads to family happiness. However, for females, some said that it is not suitable for all situations. Sometimes they may need someone for help, listening, or counseling.

The “Harmony Family Project” was started for three months as a pilot project, with the cooperation of the Department of Probation and other agencies, such as police offices, hospitals, NGOs, and so on. It deals with spousal abuse cases (physical assault only), through restorative conferencing. In these cases, males were the actors, and females were abused. We found that husbands are not satisfied with the intervention of officers. This is a reason that some refuse to participate in the project. They do not want anyone to intervene.

Certainly, #4 in the diagram fits for this case. The question is “What should we do when the power of gender imbalance is like this?” in situations in which the female is subordinate. In my opinion, one way we can respond is to empower the female to be able to use #4, to be able to run restorative justice by themselves. I mean

that “family empowerment” should be pursued. This is the new role of the mediator in my country.

My fourth lesson learned:

According to the four options model, academically, #3 and #4 are restorative justice, while some say that #2 is not. I realize that restorative justice must seek to avoid domination. However, I would like to ask, “What is domination?” and “Who should define that he or she is being dominated?” Should academics like us, or the victim, offender, and stakeholder? Should it have a different meaning in different cultures? For some actions, one society may call it domination, but others call it advice.

As a researcher, I have been running a research project on “Restorative Justice in Thai Conflict Resolution Culture”. I have found that there are traditional means of conflict resolution in Thai communities, especially in rural communities where a respected person or elder acts as mediator, that look like #2, but which are helpful for restoring relationships, to restore peace in the community. This happens because both the victim and offender respect seniority. I would like to present a Thai proverb, **“To walk, follow the elder; dogs will not bite you”**. This means that when we obey elders, we will be safe, because elders are more experienced, as indicated by the Thai proverb **“being elder; being born first”**. When the victim, offender, and stakeholders speak in their voices, and welcome the elder or respected person to point out what they should do or what they might do, and they gladly accept the elder’s decision, is that domination? If we use #2 and the relationship was restored, especially when that decision is from community’s rule, is it restorative justice?

For me, restorative justice is justice for peace, justice for human relationship. There are several ways to go to peace, different ways in different cultures and different societies. We should not focus only on process, and identify whether that is restorative justice or not. Sometimes the way to restore relationships might involve a different method in a different culture or different society. What do you think?