

RESTORATIVE JUSTICE: FAMILY AND COMMUNITY GROUP CONFERENCING (FCGC) IN THAILAND

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In the past, restorative justice was a traditional practice in Thailand because most Thai people lived in extended families and preferred a negotiatory approach to dispute settlement. Before the modernization of the Thai legal system, victims went to authorities only when there were serious cases, e.g., murder or robbery, but for minor conflicts, they went to a traditional and informal mediation committee, composed of the village headman and a group of elders of the village where both parties lived, to settle their dispute in restorative manner. The parties, their families and the community took part in the negotiation process; they accepted the verdict because the committee had strong social support from the whole village to sanction the party who defied the decision. In the 19th century, the Thai legal system was modernized based on the models of Western countries (i.e., the civil and common law system), but under the new legal system there was no law to back up the practice; plus there



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was a notion that granting justice was the exclusive duty of the court and that judges should decide all cases. Restorative justice in Thailand, therefore, gradually faded away.

In the year 2000, the New Zealand government, through its Good Governance programme, invited my colleagues and me to New Zealand to be trained in child-friendly procedures for abused children. During the training we were informed about the process of family group conferencing (FGC), which caught our attention immediately. We started studying the practice in detail and realized that this measure could be adapted to use in Thailand since it is very similar to our traditional approach. From then on, with the support of UNICEF, I organized several seminars and meetings on FGC to inform the public and to explore the possibility of implementing FGC in Thailand. The idea spread and was very well accepted. Moreover, Thai society has a very strong sense of community, playing a very significant role in nearly every aspect of the lives and social functions of the Thai people. The process of FGC, therefore, was adjusted to incorporate community as a significant part of the process, and its name was changed to family and community group conferencing (FCGC).

In March 2003 the Juvenile Observation and Protection Department, Ministry of Justice, planned and prepared regulations and guidelines, including intensive training of staffs for FCGC implementation. The department has 52 Juvenile Observation and Protection Centres throughout the country; each centre has a director and several staff that work under the direction and guidance of the department. They found that FCGC was not difficult to understand because it was similar to traditional Thai practice. After all the preparations, the department launched the FCGC project and conducted its first family and community group conference on 1 June 2003, and then the protection centres in the provinces followed the practice, regulations and guidelines. Thus the process has since been implemented throughout the country.

FCGC in Thailand has been very successful because there is a law to support its practice, and it is fortunate that Thailand

has the necessary law in place, even though it was not drafted with the purpose of benefiting FCGC. The law that prescribes the procedure with child offenders and at the same time enhances the practice of FCGC is the Juvenile and Family Court and Procedure Act, which has two relevant articles—Articles 50 and 63—that facilitate the implementation of the FCGC. Article 50 provides that when a child is arrested the police have the duty to send the child to the protection centre within 24 hours for granting bail or keeping the child in its shelter during the investigation and trial process, which means that the police have the duty to refer every case of child arrest to the protection centre within 24 hours without any exception. Article 63 gives authority to the director of the protection centre to make a proposal to the prosecutor in the jurisdiction for a non-prosecution order. In making such a proposal the director has to use his/her discretion based on three factors: firstly, the offence committed is punishable by not more than five years' imprisonment; secondly, the director is of the opinion that the child can be reformed without being prosecuted in court; and thirdly, the child gives consent to be under the control of the director in follow-up monitoring. The article has been on the books for several decades, but no one ever used it because each director did not want to exercise this discretion all by him/herself. Under the FCGC process, the decision to make a proposal for the non-prosecution order is a collective decision, derived from the brainstorming of all the participants in the conference, while the role of the director is to deliver the collective decision the prosecutor.

At the beginning, during the first three months, very few cases went through the FCGC process because the facilitators and directors of the protection centres throughout the country were not really confident in organizing the conferences. They were very cautious and needed a lot of advice in applying this measure, but as time went by with more and more experiences gained in FCGC, the majority of them admitted that they liked it and felt that it was a good measure in giving the children another chance in life. They agreed

that it provided a venue for a child and his/her parents to openly discuss the problem at hand, created a better understanding within the family, and gave victims the right to speak, participate and share their feelings. It also gave the community a chance to support the children and their parents in solving the problems that affected the community, and as a result, social harmony had been restored through the restorative practice. When the facilitators and directors got used to FCGC, things went smoothly, and FCGC has become one of the routine activities of all the protection centres. They also assessed the satisfaction of the participants, and the results were that most of the participants were satisfied with the process and thought that FCGC was a good and appropriate measure.

To strengthen restorative justice in the form of FCGC, in 2004 the department contacted the International Institute for Restorative Practices (IIRP) for technical support to integrate the Real Justice model into FCGC in Thailand. Mr. Ted Wachtel was invited to speak in a seminar in Bangkok with more than 250 participants, including judges, prosecutors, police, legal academics and the public. Dr. Paul McCold and Ms. Beth Rodman, restorative practice experts with the IIRP, were invited to train several staff in the department to be trainers of FCGC facilitators. The trainers then went out to train other staff in all the protection centres to be efficient conference facilitators based on the Real Justice model.

The participants in a conference are not limited to only the victim and the child and his/her family but also may include representatives from the community and other people who can help the child and the process. Thus, the participants in an FCGC are: the victim, the child offender, the parent/s and relative/s of the child, a psychologist, a social worker, one or more representatives of the community, the director of the protection centre, the police investigator, a prosecutor and the conference facilitator. With such a structure, the FCGC in Thailand is similar to the circle process used in Canada, in that it involves a lot of people, including the community.

Of all the steps in FCGC, the conference preparation is the most difficult and the most vital part of the process. The conference facilitator has to explain the whole process and the details, including the positive and negative aspects of FCGC, to the victim, the child offender and the parents, and in many cases the facilitator has to approach the victim more than once. With good and appropriate preparations, failures in the conferences are very much reduced.

Each director has to report the decision and the result of every FCGC case, including all relevant statistics, to the department every month. The information is gathered and analysed by the Legal and Technical Division, which issues a monthly overall report together with details of interesting cases sent by the protection centres. Furthermore, the directors have to report the cases that could not go through the FCGC process, including the reasons. Not every case within the limit of five years' imprisonment go through FCGC, because several criteria have to be met. These criteria are, e.g., it must be the child's first offence, the child has to plead guilty and want to repair the harm done, and the victim has to give consent to use FCGC. With such a reporting system, the department can closely monitor the performance of every protection centre and the outcomes of the FCGC cases. Furthermore, the department regularly sends supervisors to periodically inspect the process of FCGC in all the protection centres.

The FCGC is not limited only to cases with five years' imprisonment or lower. Some judges, after learning of the process, have shown interest in using the outcomes of FCGC as an alternative in making decisions about juvenile cases in court. In Nakornsawan province, a big city to the north of Bangkok, the chief judge of the juvenile court asked the director of the protection centre to hold the FCGC conferences for cases in the court in which imprisonment was longer than five years. The judge also indicated that he would order the protection centre to organize at least four conferences a month for cases over five years' imprisonment. In another province, Samutprakarn, a city near Bangkok, the director of the protection

centre took his own initiative to organize several conferences and sent the agreements from the conferences to the court for consideration. Some judges agreed with the agreements and rendered the verdicts in accordance with the agreements, while some judges disagreed with them. In Sukothai province, the chief judge ordered the director to conduct the first FCGC for the court.

From the information gathered from all the protection centres, the statistics from 1 June 2003 to 31 June 2005 are as follows:

Num. of children arrested	66,858 persons
Num. of potential FCGC cases	10,220 cases
Num. of FCGCs successfully organized	7,217 cases
Num. of cases w/ non-prosecution orders	5,751 cases
Num. of cases w/ prosecution orders	83 cases
Num. of children reoffending	166 persons

(The other 1,579 cases are under consideration of the prosecutors.)

Num. of FCGCs organized for courts	63 cases
Num. of cases court agreed w/ agreement	28 cases
Num. of cases court disagreed w/ agreement	5 cases

(The other 30 cases are under consideration of the Samutprakarn court.)

From the statistics, it is very interesting to focus on the numbers of children committing their second offence, because from our previous statistics, which varied from year to year, the percentages of children being prosecuted in courts and committing a second offence has been between 15 and 19 per cent; while the number of children being processed through the FCGC and committing the second offence is less than 3 per cent (2.88 per cent). This is a remarkable achievement, with a 12–16 per cent reduction in this group. The department believes that using family and community in solving the problem of children in conflict with the law is the right path; moreover,

it is the indisputable fact that family and community are the two most important factors in helping children to behave and become valuable members of society.

In order to get a fair and unbiased assessment of FCGC, the department has commissioned an academic team from Sukothai University to conduct research through surveying and interviewing parties who have been involved in the FCGC process. The information and the whole process will be assessed and analysed, and the research team will report all information with recommendations to the department on what should be improved or amended. The research is in progress and the result of the study will be used to improve FCGC to best suit Thai culture and society and for the best interest of children.

Another promising sign of a bright future for restorative practice in Thailand is that the prime minister has shown very keen interest in alternative practices. The government's policy is to reduce the heavy workload of the courts, the backlog of the cases in courts, the cost of the criminal justice process, and at the same time to enhance social harmony in society. Alternative justice, therefore, has been an important policy of the government, and restorative justice is a significant measure to serve the policy. FCGC is a process of restorative practice that not only promotes social harmony, but it yields better results when used with children committing minor offences. Moreover, it reduces the cost of criminal justice because FCGC is very inexpensive compared to formal judicial proceedings. The prime minister has firmly supported restorative justice; he once spoke in his own words to the people through Radio Thailand, on 19 January 2002, about this specific issue. In his speech he said:

Restorative justice is a new, viable, alternative for Thai criminal justice. It should be applicable not to all kind of criminal offences but to some particular offences such as in juvenile cases. This new approach allows the three parties, i.e., the society, the victim and the offender, to sit down and discuss informally among them on ways and means to make redress and

restitution to the victims. Although it may not be much, but this will definitely help the victims to feel better. Moreover, through the restorative process, the offender may feel repentant and accept the sanctions, if any, imposed upon him. This will also allow the society to embrace both victims and offenders. This will encourage more public participation in criminal justice and is undoubtedly a better way than the retributive approach.

The public gradually has acknowledged the concept, practice and benefit of FCGC. The department strongly believes in the process of FCGC and restorative practice and will continue pushing for the full acceptance and support of all sectors of society, especially law enforcement officials and legislators. The purpose is to amend the law for FCGC to be used with cases that have higher punishment than five years' imprisonment. Now, it can be said with confidence that FCGC has been firmly established in Thailand in a very systematic manner with a uniform practice and high standards throughout the country. The next and more difficult task is to expand, monitor and maintain high standards of practice and make sure that the process benefits the children as much as possible.

It is also our intention to expand the practice out of the criminal justice field into schools and villages as a preventive measure, even before the conflict with the law reaches the criminal justice system. FCGC can be adjusted and used in schools and in villages when a minor conflict has occurred. The Ministry of Justice is working closely with the Ministry of Education and the Ministry of Public Welfares and Human Security to implement the practice of FCGC in schools and villages, so that the conflicts can be settled there and prevent the cases from entering the criminal process. The two ministries have shown keen interest in FCGC and restorative practice. Some schools have used FCGC, with the help of the protection centres, to solve conflicts among students; the conflicts ended up with satisfactory results and harmony. The Ministry of Justice will persuade the other two ministries to study and use restorative practice in all schools and villages throughout

Thailand with the purpose of establishing restorative practice permanently in school and welfare systems. We believe that to establish a sustainable restorative practice, it must be done with systematic approaches and should be integrated into all sectors of Thai society, i.e., the justice, education and welfare systems of Thailand.