

Restorative Justice and the Conflict Management: A Case of Khuan So Community

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Abstract

This qualitative research aimed to investigate conflict management for creation of restorative justice establishment in Khuan So Community, Tambon Khuan So, Khuan Niang District, Songkhla Province. In-depth interviews were conducted with community leaders, local government officials, and eleven villages residents along with group discussions, participant and non-participant observations. The research results reflected that there were various conflict concerning several parties: among people in the community, between people in the community and people from outside, and between the government and the community. Some conflicts were at such the level that they were manifest while others were latent, including conflicts of ideas. The causes of most of the conflicts were associated with community resources in the dimensions of land use, making use of resources from the Melaleuca forest, and fishing. All these dimensions were interrelated. The conflict management initiated by this community was negotiations not only through kinship but also through respected and trusted mediators. However, conflicts between people in the community and the government remained to be resolved mutually, and cooperation in community resources management was necessary. It can be concluded that most of the problems and causes of the conflicts and conflict management of most communities are similar in that they are associated with community resources. In addition, when a conflict emerges if the society holds on to a positive concept of compromise focusing on conflict resolutions that rehabilitate relationships between the conflict parties, or mutual understanding with caring and

merciful attitudes, there is a possibility for community conflict reduction. Moreover, there can also be both a systematic and effective way to develop a restorative justice process.

Key words: Restorative Justice, Conflict Management

Introduction

Amid the increasing social injustices, certain fairness is essentially required in every society. According to Satayanurak (2010), at present, it seems that Thai society is, unfortunately, lacking a certain way of thought which can either get rid of or control people's relationship not to reach the state of unlimited exploitation and which can also enhance the establishment of certain relations of various dimensions in which both values and the real meaning of cohabitation can be truly perceived, such as social justice, human rights, and community. Indeed, it seems that people's relations has become increasingly fragmented, whereas there is a decrease in learning, understanding and interaction among each other as well. Hence, these can eventually result in more and more conflicts. However, using only a justice system as a main principle cannot resolve social problems in a sustainable way. As a result, both study of community justice system review and study which is used both to manage conflicts and to establish restoration based on thinking processes, principles, conventions, beliefs and some prevailing community values of each culture can eventually lead to knowledge integration, problems resolutions and prevention of problem expansion within the community.

Indeed, the restorative justice used by the community is actually regarded as a means to patch up people's relationships within the community to make them much closer and to empower community's strength as well. In addition, in Thai society, the way of thinking within each community is generally derived from a certain faith where different forms of justice have been established. According to Musor (2007), the Thai Muslim approach of justice is always based on the Islamic principles which stipulate that the conflicts shall not be enhanced but reconciliation be established between the opposed parties. Similarly, based on the Christian belief, through the confession, people do not only repent but also try to compensate for the loss as well as the damage. It is also considered as a means of restoring the good relationships among themselves as well as perceiving well the true values of being a human. (Laughlim et al.,

2003). For example, in the community of Klong Na Tap, Tambon Na Tap, in Jana District of Songkhla Province, when the conflicts arise people usually turn to mediation which is usually derived from a personal relationship and kinship basis. (Bendem-Ahlee and Parinyasutinun, 2010). Hence, based on such an example above, community's way of faith has reflected the importance of applying not only customs or beliefs but also certain regulations which have been assigned within the community.

Generally, Khuan So community is one of the communities along the lower Songkhla Lake Basin, with abundant resources: forests, fishing and agriculture. The majority of people hold belief in Buddhism through which spiritual unity, harmony and co-existence based on kinship basis have been strongly established within the community. (Khuan So Tambon Administration Organization, 2006). However, certain conflicts stemming from various problems, such as natural resources and environment including other issues still remain in the Khuan So community. Therefore, conflict management by the community in order to establish justice within both the community and society becomes the most interestingly challenging area for further study: how the conflicts are solved, and through what processes and conventions the unity is restored. As a result, other communities may greatly benefit from such a model to establish the unity in their community, to empower the community so as to be able to withstand both influence from outside and the gradual intervention of the state power. Eventually, this may lead to the creation of certain rhetorical discourse which can reduce some injustice so that not only the true justice can be established in the society but also people will get back the power in the future. When all the conflicts and management of resources are taken care of by the community itself, a certain peaceful way of life will surely be restored within the community.

Conflicts and Conflict Management

Generally, most people are aware of “a conflict” as a kind of incident and understand its negative effects more than the positive ones. This is normally due to the surrounding context of each conflict as well

as its causes. Nonetheless, in some situations, places or cases, certain conflicts can sometimes result in creativity which is beneficial to society or the organization as a whole. According to Kanjanapan (2011), social attitudes towards conflicts can be classified in to two types: the negative and the positive ones. In the first type, most conflicts are usually considered negative. As a result, people tend to either avoid or try to find the way to end such troubles, whereas people with positive attitude often look at the optimistic sides of the conflicts. This is due to the fact that people usually have different ideas and requirements, so conflicts are usually regarded as a common part of life. To get rid of all the conflicts is not only impossible, but also considerably inappropriate. In fact, finding the feasible approach how to manage and make those conflicts beneficial or how to initiate some positive changes towards society is considered the best solution. Therefore, it is essential to extensively understand the ideas of those people involved.

In Thai society, at present, the positive attitude towards conflicts is relatively small. On the contrary, the conflicts have been illustrated with more emphasis on their negative effects which have gradually turned more violent through various levels: individual, local areas, provinces and the whole country. For instance, in many cases, the conflicts between the opponents, such as the government VS people, or people VS people can usually lead to more violent counter attack. This, in fact, illustrates the failure of the state as the director who not only provides but also maintains the justice for the people. Interestingly, Taylor (2003) stated that any violent situations or conflicts usually lead to the review of justice in order to develop virtues, behavior and society, and all of which are normally considered as the basic need of mankind. In other words, justice is regarded as the fundamental need which man should be provided based on the principles of human rights.

At present, in Thailand, conflicts from injustice in various forms are likely to rise dramatically every year, particularly, in 2009. There were many problems and cases concerning human rights, especially people's way of life. There were 695 complaints through the

course of one year, approximately 58 cases/month. Based on the classification of those complaints, the highest number of complaints lies in the violation of human rights associated with life and physical assault, approximately 133 cases or 20.59%. Meanwhile, there were 116 cases or 17.96% in violation of the judicial system (National Committee on Human Right, 2009). Hence, the increase in the number of conflicts in Thai society, particularly the complaints of injustice which were mostly involved in violation of human rights has, indeed, reflected the government's failure in the judicial system. There is still a prevailing gap; hence, the government can neither establish the justice for people nor compensate or enhance reconciliation among the opposing parties. Also, the government is unable even to prevent a recurrence. As a result, both the customs and mechanism systems used by the community in the past have been extensively reviewed. Furthermore, there have been laws supporting the reconciliation and dispute resolution process at the community level. Some of the content is included in Government Administration Act (No.7) B. E. 2550 (2007), especially the part on the scope of power and responsibilities of each district as specified in Section 14, in addition to which Section 61/1 (4) further specifies that reconciliations, compromises and concessions are required in order to establish peace and order in society by appointing a panel of knowledgeable and experienced individuals to perform these actions. Regulations and law supporting the system have also been established as specified in Section 61/2 and 61/3 of the Act (Royal Thai Government Gazette, 2007). More attempts have been employed to integrate them in solving conflicts of the judicial system. Accordingly, in order to reform the judicial system, the concept of restorative justice is an alternative approach which has been highly utilized. Eventually, such an integrated application will render various benefits: forgiveness, reconciliation, responsibility towards one's actions as well as respect to other people's rights, and establishment of a peaceful society.

Restorative Justice: a Review Leading to Justice

The restorative justice is a process whose highest aims include: reconciliation, and positive approaches in solving conflicts. Based on the Bantu people's proverb, a local tribe dwelling in the areas of middle and south Africa, it says "We bought a needle and used it to patch and fix the ripped threads of the society but never cut them with scissors".

Interestingly, this proverb can be further elaborated as well as interpreted for better understanding of a restorative thinking process of the past in relation to its application in problem solving at present. In other words, the needle refers to the application of reconciliation in fixing people's broken relationships in society which is full of splits and separation. As a result, a good relationship can be gently established with such an approach. On the contrary, using violence, like a knife, to get rid of all the problems may lead to more widening separations and eventually disharmony. Normally, the restorative justice process is derived from some informal procedures. It, in fact, helps promote community role to participate in solving problems within the community by its members. It is regarded as one of the alternatives where people share their solutions to certain problems together. When a certain conflict is terminated through the restorative process, there will be various advantages. For example, parties to a case do not need to pay for all legal expenses required in the justice process, or they can save a lot of time spent during each step of the legal procedures. Moreover, certain cordial relationships as well as a decrease in recurrence of problems will usually be achieved in the long run. Most importantly, the restorative justice has been developed from three major sources: mediation, philosophy of justice and integration of local customs into a justice process. In the first approach, to mediate through meetings was required in order to deal with conflicts and to enhance relationships. In fact, mediation of all forms are usually derived from customs, regulations or rules. For instance, a kind of a circle or a sitting around meeting was often used by the Mouri people in New Zealand. Also, in northern Africa, a circle meeting where all the participants are facing each others was actually developed from the ones held by the local people of the early

age. The second method is based on philosophy of justice which can be applied to fix relationships of people in a community (Blue and Blue, 2001). Integration of local customs into standard systems with formal patterns in criminal jurisdiction is the final approach to solve problems of crimes and conflicts (Van Ness, 2005).

The study has shown that the judicial process provided by the state alone has usually failed to establish justice in society. In fact, to decrease the power of the state, and to enhance community participation in conflict management, certain community's customs, beliefs, local traditions as well as a close relationships like kinship are often used as a mediation approach to not only solve problems but also create reconciliation. In fact, in various cultures, the traditional systems of conflict management have been used in many communities with similar approaches: mediation and ruling by the third party. Therefore, there are certain advantages: participation of community and a respect towards local norms. For instance, in South Africa, a local organization called "Peace Committee" was founded with the main functions to manage conflicts, crimes, and all local unrest. The members consist of local people who have been trained with a license. Moreover, this kind of organization was also established in the northern part of Kenya in order to deal with all kinds of community conflicts, such as the utilization of water resources, live-stock farming and the problems of unclear dividing line of the lands among neighbors.

In Thailand, especially in Khuan So community, Islamic principles known as "Muzawaroh Approach" have been used to manage community conflicts, and such approaches will be varied depending on situations and the types of conflicts. Furthermore, at present, there is interesting information showing that a concept of restorative justice is also inserted in the new religious teaching approach by the Roman Catholic priests. Indeed, a community justice system existing in all communities nationwide, is regarded as a kind of the justice system of the people which is usually being operated in parallel with the principal justice system. In each community, there are certain systems and mechanism which deal with not only conflicts but also maintenance of peace and order within the

community. (Viriyasakultorn, 2003; Musor, 2006; O'Neill, 2009; Haro, Doyo and Mcpeak, 2010).

The review of the early thinking processes in Thai society which has enabled the community to exist up to now, has essentially led to the development of the justice system in Thai society where people also play a role in directing justice. In fact, both establishment of peace and taking care of the community and society can be achieved through a way of complex thinking, different customs, and beliefs of each community. Hence, at present, in many communities, valuable traditional thinking systems have extensively been applied in creating social justice. In addition, there is a tendency for such concept to be used in parallel with the available main justice system, or to solve some primary conflicts in the community. It will be considered a good solution to amend fractures and enhance amiable feelings among people if the problems are initially solved through customs of the community by its members. However, such an application of restorative justice requires co-operation from various parties concerned to integrate all concepts pertaining to justice.

Khuan So Community and the Conflict Management

Khuan So community is located in the areas of lower Songkhla Lake Basin with an abundant supply of natural resources. According to the study of community conflicts, most problems arise from several causes: usage of natural resources, general causes and abuse of power by some influential figures within the community.

Generally, in the case of a common conflict, such as a quarrel, this is considered as a common issue which can be solved by compromise due to common belief that everyone in the community is related through kinships. In the past, whenever misunderstanding arose, this could be amended through mediation and discussion. Additionally, in some cases, a certain period of time is needed in order to restore such a broken relationship. However, in some severe conflicts, the opponents, in the past, usually felt obliged to resort to violence: a gun. Nevertheless, at present, both conflicts among community members and violent assaults

have considerably decreased. This is due to the fact that more focus is usually placed on earning a living. Therefore, both kinship relations and seniority system often play important roles in solving conflicts in this community and other important ones in Thai society. Based on Suwannapura et al., (2008), at present, religious beliefs, certain community customs and traditions still strongly combined people in the community together. Also, there is a certain mechanism to prevent and to handle both conflicts and some less complicated crimes which are not involved with either the influential figures or some state agencies. However, in some communities, although community regulations are available, people still lack confidence to apply them in dealing with conflicts and crimes in the community as they fear that their family might be affected (Diagram No. 1)

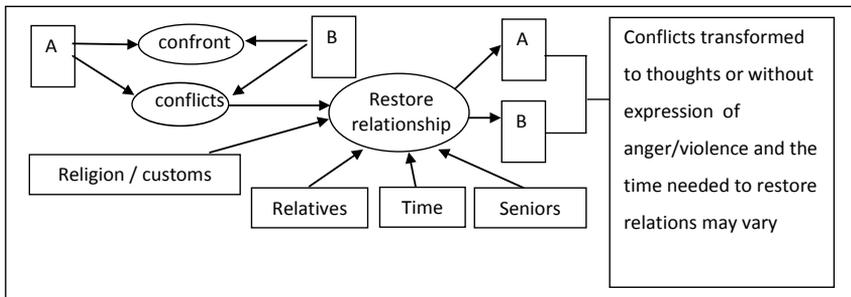


Diagram No. 1: General conflicts with expression level

In the past, there were the conflicts of land utilization, particularly the conflicts between farmers and water buffaloes. A large number of water buffaloes were raised in Khuan So community, with the average of 100-200 stocks per person. However, at present, the number has considerably decreased. A large number of fields have been turned to either rubber or palm plantations. There are about five live-stock farmers in the area of Moo 10, Bantai in Khuan So community. Since most of the animals have been raised freely, they often roam around and sometimes accidentally step on other people’s paddy fields. As a result, buffaloes are considered as one of the major causes of conflicts within the community. When

conflicts arise, the counteractions between the owners of the paddy fields and the buffaloes keepers considerably vary. Most farmers often resort to violence in solving the problems by shooting the herd of animals with anger. Moreover, if a buffalo has been killed, the scale of conflicts is certainly escalated. As a result, a mediation process is initially needed to resolve such a dispute between the two parties concerned by certain community leaders, such as Kamnan or the Head of a village. In case the dispute cannot be settled, it will be presented to state officials. Usually, the result of the mediation is that each party agrees to pay for damage compensation. For instance, the farmer will pay compensation based on the real value of the dead buffalo to its owner, while the buffalo keeper will be responsible for the damage cost of rice which was eaten by the animal. In fact, when being compared, the value of damage cost of the dead buffalo always exceeds that of the rice.

Accordingly, this incident has become quite an amusing topic even among community members. Provided that the conflict is less severe, animal keepers may compensate in terms of supplying fertilizers to the farmers. (Diagram No. 2)

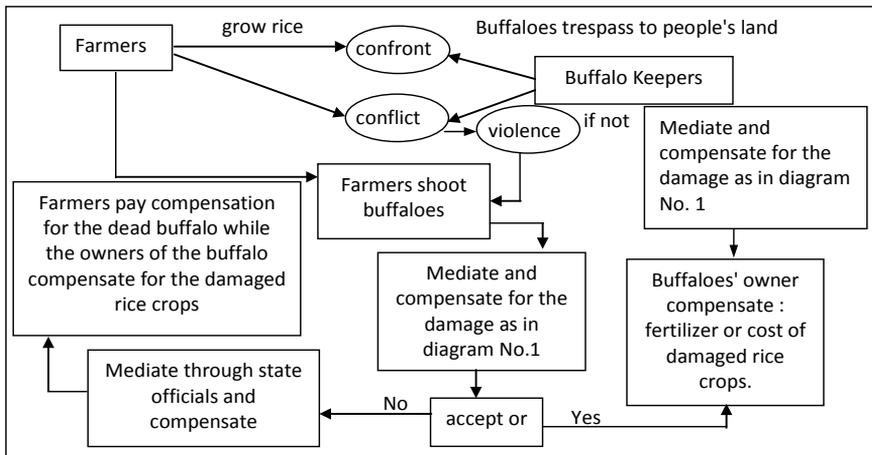


Diagram No. 2: Conflict between farmers and buffaloes.

According to the study by Yasuhiro and Sibounheuang (2010), the conflicts between live-stock raising farmers and agriculturists are common with similar conflict management. For instance, the conflicts between water buffaloes keepers and agriculturists in the northern part of Laos illustrate the importance of such animals and people's way of life in the community.

In almost every community where people earn living on live-stock farming, the number of water buffaloes has decreased by more than half due to the expansion of certain commercial agriculture and economic crops, such as rubber plantations. Obviously, this has resulted in not only the adverse effects to buffaloes farming but also a fall of such animal raising occupation. Similarly, in Khuan So community, the decrease in the number of buffaloes has obviously proven the recession of such occupation. Also, the new trend of modern consumerism which has been spreading into the community is another factor leading to both the decrease in buffalo meat consumption and the increase in the conflicts between water buffaloes and commercial agriculture.

However, both Khuan So community and its counterpart in Laos share similar approaches in dealing with community conflicts. Initially, the conflict management process always starts with mediation by community leaders who play important roles in solving problems. However, there are certain differences in the conflicts of these two communities. For instance in Laos, the conflicts seem more severe, and complicated. As a result, they can be solved through a certain policy, such as clear division of live-stock raising zones and agriculture areas with strict regulations and precise criteria. Inevitably, such an approach has caused considerable complication in raising buffaloes; hence, there is a drastic fall in buffaloes raising occupation.

Interestingly, in Thai society, kinships, seniority as well as community leaders still play important roles in solving conflict problems. In the past, certain values were used in dealing with conflicts in the community. However, there are certain limitations to apply them at present. According to Boonsit (2006), in Thai society, gratitude is

regarded as one of the important features in Thai patronage system particularly at the level of a family or kinship relations. Meanwhile, relying on each other's support which usually consists of two major principles: to return gratitude and to share utilization of public areas in the community, is the main characteristic of community and society relations. In other words, to return gratitude is considered as the establishment of social commitment which usually leads to people's co-operation in performing various activities together. In addition, certain criteria and regulations have been set up to control utilization of the public areas, so the benefits are always shared equally among the community members. Most importantly, in Thai society, community leaders still remain an important mechanism in conflict management. Based on Panyasri's study (2009), both the village Headman and Kamnan played initial roles in mediating community conflicts, such as in Tambon Doi Law, Doi Law District, Chiang Mai Province. Also, in the study by Trakulpitchayachai (2009), the village Headmen played a considerably important role in conflict management which arose in various villages in Nakhon Ratchasima Province. According to Chuapram et al. (2012) whose study was focusing on local community's changing way of living, particularly the Buddhists in those traditional communities along the Songkhla Lake Basin, interestingly, over the past century, (before 1927-2010) the strength of the kinship relations still remained strong.

In the case of fishing, the main occupation of the community, in order to tackle the problems of excessive utilization of natural resources, especially fishery areas, the community committee has worked together to set up certain rules and criteria for the sustainable use of such resources. For example, certain fishing farms are specified for breeding marine animals. There is also prohibition against fishing in fishing farms with penalties ranging from minor to severe ones for any violation. (Diagram No. 3). Since fishing farm is one kind of adjustment mechanism used by communities around the Songkhla Lake Basin in order to protect their resources amid various changing situations and to maintain the resources as a community's living base, the rules of most communities along the Songkhla Lake Basin are quite similar.

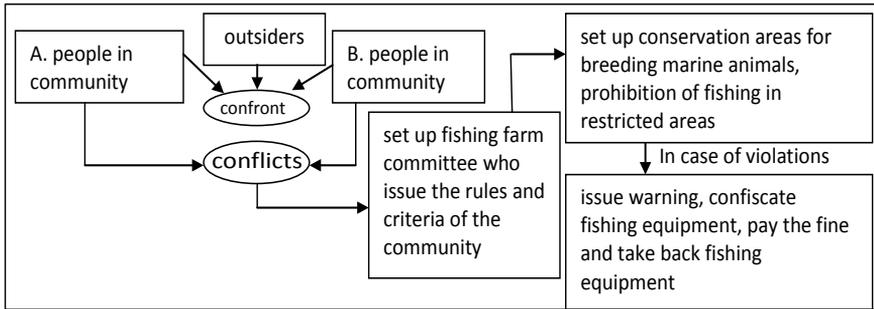


Diagram No. 3: Conflicts from Fishing

Moreover, there are always the conflicts stemming from making use of resources from swamp tree forests between local people and the state, especially around the forests in the areas of Tong Bang Nok Ook, which is considered as one of the important resourceful areas. These conflicts now have become national problems whose clear cut solutions are hardly achieved. Similarly, the problems of evidence of title over the lands which impose on the areas of conserved national forests, still exist in Khuan So community. These unsolved conflicts have eventually resulted in an assembly of local people to submit to the state agency their document of land ownership, to prove their evidence of land possession before the state's declaration which stipulated that community forests shall become the national conserved forests. However, certain co-operation in seeking solutions still continues. For example, there has been an attempt by the state to apply the concept of restorative justice in the justice system of forest resources, (Jankai, 2009) and in the establishment of co-operation in forest management among all stakeholders concerned. Also, according to Montrirak (2010), the mediation committee was set up to handle community conflicts, such as the one in the gold mine, at Tambon Khao Luang, District of Wang Saphung, in Loei Province.

Indeed, in Khuan So community, the approach to solve all community conflicts always starts with mediation by the third party who is not only respected but also trustful and neutral, and this practice is also

in line with other communities in Thai society. For instance, based on the study by Panyapong et al., (2011), the conflicts derived from water resource management problems of the Lam Patow Dam in Chaiyaphum Province could be tackled through such an approach mentioned above. Hence, in the context of Thai society and South East Asian regions, it can be said that mediation has generally been regarded as the fundamental process used in dealing with community conflicts.

Also, at present, a number of different institutes have been founded in the community with specific rules and criteria in order to monitor the sustainable use of resources as well as to play more important roles in extinction of all disputes in the community.

Conclusion

Khuan So Community is another community that even though there are conflicts between members of the community, and between community members and government organizations, especially those related to the Melaleuca forest of the community which is utilized directly and indirectly by people in the community. These conflicts or problems are all related to the people's way of life and occupations. Khuan So Community is not any different from other communities in Thai society in which kinship and seniority play important roles, and therefore, community leaders are important mechanisms for conflict resolutions in the community.

Kinship plays an important role in Thai society as reflected in common sentences such as "Conflict is commonplace." or "You can talk it over." or "We're all relatives". Thus, it can be said that such a relationship can mitigate severity of problems in the community. However, such a reconciliation can result from unwillingness because the reconciliation takes place as a result of considerateness and therefore, the relationship between the conflicting parties after the reconciliation is usually not as good as that before the conflict. Moreover, it takes longer for the relationship to be revived than when the conflicting parties accept the problem and understand each other.

Eventually, returning to more use of custom and traditional mechanisms of the community in resolving conflict as well as earnestly using them in the justice process, and the use of the Government Administration Act (No. 7) B. E. 2550 (2007) to resolve conflict in society, in other words, to reform the judicial system or to use restorative justice at the community level as an alternative integrated judicial system can lead to forgiveness, mending the broken relationship, feeling responsible for one's actions and respecting others' rights. This will eventually make it possible for a peaceful and happy society to exist.

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