

The Current Situation of the Republic of China's Initiative in Restorative Justice

I. Introduction

Recently in the Republic of China, the Code of Criminal Procedure has been amended significantly to protect victims' procedural rights. These amendments grant victims the right to express their opinions and to be accompanied in court. As legal litigants, victims are entitled to appoint legal representatives. Victims' participation and rights also have been included in deferred prosecution procedure and plea bargaining processes. However, many victims still believe the existing criminal procedures are in favour of the accused. Such dissatisfaction seems to show that more attentions need to be paid to victims' rights in the criminal justice procedure.

To the Ministry of Justice of the Republic of China, it is an important task to find out why victims still feel dissatisfied with the Code of Criminal Procedure (amended). In the existing Code of Criminal Procedure, indeed, there is more emphases on punishments for offenders than on the feelings and needs of victims. Accordingly, on one hand, victims may neither receive any form of reparation nor feel that justice is fulfilled even if offenders have been punished. On the other hand, families of offenders could also face adversities such as loss of family financial source and estrangement between parent and child. This traditional criminal procedure could not win the trust and satisfaction of all stakeholders; instead, it may create further social problems. These observations seem to disclose that addressing crimes shall assist affected parties to heal harms, to restore balance and to repair broken relationships, not simply to focus on punishment. Justice could be endowed with new meaning by realizing justice in the pursuit of the truth, respect, consolation, responsibility and restoration. Restorative Justice (RJ) appears to be an alternative complementing what is missing in the current criminal justice system.

Since May of 2008, the Ministry of Justice of the Republic of China has adopted Restorative Justice as its priority policies. Restorative Justice is promoted in four main dimensions: "Advocacy", "Introducing Theories", "Experimental program" and "Application in Schools".

II. The Characteristics of Restorative Justice Initiative

1. Named as Restorative Justice Initiative

Generally, restorative justice programs are conducted in a wide range of criminal justice systems, including the police, the prosecution offices, the court systems and prisons. The ideas of restorative justice are also applied in schools, private sectors and social welfare programs in the global trends.

In the Republic of China, the restorative justice initiative is related to the criminal justice system in practice; therefore, such new initiative which promoted by the Ministry of Justice was named as "Restorative Justice Initiative," while the application of restorative justice other than criminal justice was termed as "Restorative Justice."

2. Applied at all stages of criminal justice procedures

According to the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters published by the United Nations Economic and Social Council -ECOSOC (2002), restorative practices should be available at all stages of criminal justice procedures. Similarly, in this Initiative, base on both parties' (victim and offender) willingness of participation, restorative justice practices would be available at all stages of criminal justice procedures.

As for what type of crime can apply this new Restorative Justice Initiative program, such issue shall keep flexibility and left it to District Prosecutors Offices at their respective discretion, because different district has its own type of crime.

3. Adopting VOM (Victim Offender Mediation) model

Victim offender mediation (VOM) is one of the most common practices of restorative justice. With facilitators' assistance, victims and offenders are able to meet each other in a safe environment. In the mediation process, opportunities are provided for the victim to express feelings and ask offenders questions in person; by such process, it allows the offender to understand the consequences of the offense in the hope that the offender can take responsibility for his behavior and make material or emotional reparations to the victim. In the very beginning, due to lack of practical experiences of restorative justice, the Ministry of Justice chose to adopt this VOM model.

4. The Initiative is promoted by and located within the District Prosecutors Offices

In some countries, restorative justice programs are implemented or sponsored by the police department, the department of the attorney-general or the court; in others, restorative justice programs are initiated by non-governmental organizations. After lot of researches and careful consideration, the Ministry of Justice of the Republic of China decided to take New Zealand's model which implementing a VOM model by the court.

The Ministry of Justice of the Republic of China further determined to choose District Prosecutors Offices as the core implementing force, because District Prosecutors Offices, as governmental institutions, are capable of managing their own personnel and networking diverse resources, such as other practitioners in law, counseling, social work, crime prevention, victim protection, offender rehabilitation and other community services.

5. Proceeding under the existing criminal procedures

The Restorative Justice Initiative is planned to be implemented under the existing criminal procedures, with no further amendments to laws. As victims and offenders participate in the restorative justice process, the proceeding of criminal cases they are involved would not be suspended. Under the existing mechanisms including civil mediation, deferred prosecution and plea bargaining, once the agreement achieved by both parties, no matter monetary compensation, apologies, community services and voluntary work are all able to be carried out by both parties. Such agreement could be either sustained by law or taken as an important reference in criminal proceedings, especially for deferred prosecution or plea bargaining procedure.

6. Evaluating this Initiative with more focus on quality than quantity

The aim of this Initiative was to establish a restorative justice model which can fit the Republic of China's social and cultural values and meet the needs of victims as well; furthermore, the evaluation report of this Initiative can be used in future policy-making. Therefore, neither the number of finalized cases nor the proportion of achieved agreement between victims and offenders was taken as the only standard in the evaluation. The problems and experiences shared by participants, judicial officials and facilitators could be carefully designed as evaluating factors of quality standards.

III. The Implementation of the Restorative Justice Initiative

The Ministry of Justice announced the Action Program of Restorative Justice Initiative in June 2010, and selected eight District Prosecutors Offices, including Shilin, New Taipei City, Miaoli, Taichung, Tainan, Kaohsiung, Yilan, and Penghu, to initiate this Action Program in September 2010, and rolled out this Program nationwide on September 1, 2012.

1. Facilitators

Facilitators were selected and appointed by the District Prosecutors Offices in accordance with the nature of the local projects and community resources. Most of the facilitators were professionals such as lawyers, psychologists, social workers, psychiatrists, mediators or other experienced practitioners in the fields of victim protection and ex-offenders' rehabilitation.

In Shilin, New Taipei City, Taoyuan, Taichung, Nantou, Tainan, Kaohsiung, Keelung, and Penghu District Prosecutors Offices, a "two-facilitator" model was adopted. In other words, each case has at least two facilitators co-worked in such Initiative, and is also facilitated by other judicial officials. For example, one facilitator might have a background in law and the other in psychology, so the two of them can work together on a case and complement each other. This model was particularly important for cases involving a large number of participants or cases interwoven with complicated issues. The rest of the District Prosecutors Offices shall assign, at least but not limited to, one facilitator to assume the said tasks.

2. The working model of accompanying person

All cooperating District Prosecutors Offices set up a new position called 'accompanying person' whose mission is to establish relationships with victims and offenders in the initial stage. Function of accompanying is to confirm both victims' and offenders' willingness to participate in the restorative justice process, to assist the facilitators, and to follow up both parties' recover situation after criminal case closure. Most accompanying persons were voluntary workers who were current or past volunteers in After-Care Association, Association for Victim Support or other social welfare groups.

3. Strengthening education and training

In order to further enhance the workers' knowledge and skills necessary for performing the assigned tasks, the Ministry of Justice has so far organized five sessions of Worker Training for Restorative Justice Initiative and Basic Training for Initiative Staff and Facilitators (710 person-times) and 23 sessions of Workshop for Facilitator (1272 person-times).

In addition, in order to help the prosecutors have better picture of the nature and principles of Restorative Justice and the operation model in practice, the Ministry of Justice conducted a seminar of 12 sessions for the prosecutors nationwide from August to October 2013.

4. Strengthening promotion

In order to more vigorously promote Restorative Justice Initiative, further improve social acceptance and shape social attitudes, Ministry of Justice purchased training materials from other countries and organized film festivals, Taichung, Taitung, and Kaohsiung District Prosecutors Office filmed propaganda videos.

To encourage the individuals and organizations for their efforts to promote the Initiative in Restorative Justice, the Ministry of Justice has organized recognition ceremonies since 2014. Upon the recommendation of district prosecutors offices and review by the scholars and experts, 12 meritorious individuals and 2 meritorious organizations were selected and awarded on October 14, 2015. The event received a great response from the media.

IV. The Outcomes of the Restorative Justice Initiative

1. Implementation

By the end of December 2015, 1254 cases had been referred to the restorative justice process; out of 1254 cases, 1086 cases (87%) were accepted after initial assessments. In 1086 accepted cases, 548 cases (51%) entered the final stage of dialogue; 480 cases (44%) were withdrawn; 58 cases (5%) were still being processed. Of 548 finalized cases, 395 cases (72%) were settled with agreement, 153 cases (28%) were closed without any agreement. See Table 1 for details.

2. Type of Cases

The types of the cases in the Restorative Justice Initiative are selected by the respective District Prosecutors Office at its own discretion with priority given to minor offense and juvenile crime; cases without victim and child abuse cases are not yet included. As of the end of December 2015, the types of the cases that have proceeded into the Restorative Justice Initiative are primarily Offenses of Causing Injury (223 cases, 21%) and Domestic Violence Offenses (110 cases, 10%) , followed by Offenses of Negligently Causing Injury (including Negligently Causing Injury in the performance of his occupational duties or activities, 107 cases, 10%), Offenses Against Sexual Autonomy (78 cases, 7%), Manslaughter (76 cases, 7%), Offenses Against Reputation (70 cases, 6%), Offenses of Larceny (64 cases, 6%), Offenses Against Abandonment (55 cases, 5%), Offenses of Homicide (40 cases, 4%), Offenses Against Marriage and Family (39 cases, 4%), and other cases of Offenses of Fraudulent, Offenses of Criminal Conversion, Offenses of Destruction, Abandonment, and Damage of Property, Offenses of Extortion, Offenses of Forging Instruments or Seals, Offenses Against Public Safety, Offenses of Robbery, Offenses of Kidnapping for Ransom, Offenses of Snatch of

Property, Offenses of Breach of Trust, Offences of Malicious Accusation, Violation of the Mountain Slopes Conservation and Utilization Law, Violation of the Copyright Law, Sexual Harassment, Bodily harm resulting in death, Offenses of Desertion, Violation of the Trademark Law.

3. Participant's feedback

The value of the Restorative Justice Initiative is not about the quantity of the cases or the ratio of agreement, but the accumulation of experience in practice; therefore the feelings of the victims and the offenders concerned are the core values of this program. A tracking survey among victims and offenders conducted by the cooperating District Prosecutors Offices at the end of December 2015 with valid responses from 270 victims and 292 offenders suggests the following:

(1) Agreement compliance is consistent to the parties' expectation

After the case is closed and an agreement is reached, 72% of the victim respondents agree with that agreement compliance is consistent to their expectation; 17% of the victim respondents disagree; and the rest are not impressed.

82% of the offender respondents agree with that agreement compliance is consistent to their expectation; 6% of the offender respondents disagree; and the rest are not impressed.

(2) Victims felt that justice has been justified

68% of the victim respondents agree with that justice has been justified, 15% disagree, and the rest are not impressed.

(3) Offenders will try their best to avoid committing a similar offense

92% of the offender respondents agree with that they will try with their best efforts to avoid committing a similar offense, 1% disagree, and the rest are not impressed.

(4) Will recommend others to participate in the Restorative Justice Initiative

73% of the victim respondents will recommend others to participate in the Restorative Justice Initiative, 13% will not, and the rest are not impressed.

84% of the offender respondents will recommend others to participate in the Restorative Justice Initiative, 4% will not, and the rest are not impressed.