

The Use of Restorative Practices in Latin America

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The history of Latin America is filled with many kinds of violence and conflict from crime to civil war to government corruption. Combined with large socio-economic disparities, this reality fuels the fires of insecurity and prompts State crackdowns. In this context, the justice systems throughout Latin America have been used as tools of repression, are seen as an enemy to citizens, and are increasingly overburdened by high crime rates (Knight 1992:21-23, Alvarez, A. 1999: Scuro 2000a: 9).

At the same time, civil society¹ groups have stepped up to challenge the status quo of violence and insecurity. In the 1970s and '80s, these efforts included peaceful protests against corrupt regimes and the provision of social services by Church organizations². In the 1990's, this energy for change and reform turned to the criminal justice system and other organizational structures to transform the way justice is conceived and provided. Universities, non-governmental organizations, and even State institutions are looking at processes of inclusion, encounter, amends, and reintegration³ to:

- (1) introduce a culture of peace into society;
- (2) create new spaces of transparency in the justice system;
- (3) provide access to justice for the excluded
- (4) build community in place of insecurity; and
- (5) satisfy the needs of both victims and offenders.

¹ The term 'civil society' refers to organizations and groups that mediate between the state and society. For more on the interaction between restorative justice and civil society see Braithwaite and Strang 2001.

² For examples of these types of movements see Safa and Flora 1992 and Petersen 1996.

³ Inclusion, encounter, amends and reintegration are the four values of restorative justice identified by Van Ness and Strong 2002. All restorative practices referred to in this paper will contain at least one of these elements.

Five countries -- Argentina, Chile, Costa Rica, Brazil, and Mexico -- demonstrate a range of practices and ideas that fall along a continuum of restorativeness. These reforms are attempts to achieve several different goals, each of which are more or less important to the two groups providing most impetus for the reforms. While this mixture of motives results in varying degrees of restorativeness of the resulting reforms, it also may be slowly transforming the Latin American context.

Crime and Criminal Justice in Latin America

In general, Latin American criminal justice systems tend to be highly structured and formalized systems heavily depending on incarceration and the powers of the State to maintain order. With law codes dating to the early twentieth century that rely on the written word and power centralized in the role of the judge, many systems became overwhelmed and stagnant. A 1996 study of the Argentine justice system identified a crisis caused by a lack of resources and inadequate organizational structures (Fundación de Investigaciones Economicas LatinoAmericanas 1996: 13-15; Lemgruber 1999:1; Scuro 2000a: 9).

As crime rates across Latin America doubled in the 1980s and tripled in the 1990s, judicial incapacity was exacerbated. With much of this increase consisting of violent crimes, sensationalized media coverage complicated matters by increasing the feelings of insecurity and fueling calls for tougher policies to combat crime. These factors combined to create not only a crisis in the court system, but also a prison overcrowding situation that resulted in violations of human rights conventions as it continues the cycle of violence

(Chinchilla 1999: 2; Carranza 2001: 17-20). A 2001 study of the continent found that 25 of 26 Latin American and Caribbean countries for which there was data had overcrowded prisons in 1999. The remaining country was at 100% capacity (Carranza 2001: 9).

Reforming the Justice System

In the early 1990s, Latin America began experimenting with legal reforms and modernization. The initiative for these changes came from governments and from civil society. Three major influences on governments were international development agencies, the ADR movement, and growing recognition of the rights of victims.

First, international development agencies (e.g., the InterAmerican Development Bank) began to identify crime and good governance as important focal points for sustainable development. With financial and technical assistance from abroad, many countries undertook studies to identify problems and possible solutions. Changes included separating the inquisitive from the sentencing functions, and creating an oral system in place of the slow, bureaucratic written process (Alvarez, A. 1999: 9-11; Lemgruber 1999: 2; Fundación de Investigaciones Economicas LatinoAmericanas. 1996). Embedded in these governmental structural changes were alternatives to the actual court processes. These include reparative agreements (Chile), conciliation (Costa Rica), and penal mediation (Argentina).

A second major source for change was the Alternative Dispute Resolution (ADR) movement, which previously had focused on civil and commercial conflicts. ADR is used to lower caseloads in the court system and provide speedy resolution to commercial and

civil disputes. Much of the impetus for the adoption of ADR came from international development organizations and the Organization of American States (OAS). ADR was a major theme in the first three meetings of the Ministers of Justice (also of the Ministers of the Interior) from the OAS. These meetings highlighted the benefits of ADR and garnered support for experimenting with these practices. In Argentina, for example, justice reforms included founding and regulating centers for mediation and arbitration. In the early 1990's, the Argentine government developed a National mediation plan concentrated around civil and commercial cases (Alvarez, G. 1999: 14; Cox Urrejola: 2001:vii-3).

Chile followed suit with its own pilot projects in ADR. Ley no. 19.334, in 1994 inserted conciliation of disputes in the *Codigo de Procedimiento Civil* (Civil Law Code). Ley 19.325 in 1994, provided for mediation or conciliation in family violence (Valencia Vazquez and Diaz Gude 2000:7-8). This experimentation with mediation and arbitration paved the way for inclusion of encounter processes in the area of criminal justice.

A third impetus for governments to consider process such as victim-offender mediation was the growing recognition of the needs and rights of victims of crime. The rights of victims to receive compensation and the other forms of care are being written into law codes throughout Latin America. Mexico's revisions to Article 20 of the constitution granted victims right to be informed of the progress in a case, to participate in the prosecutorial process, and to receive reparation for the crime (Parra Barbosa. n.d.: 4). In Chile, the use of reparative agreements is based upon the inclusion of the victim in the system and recognition of his/her rights to compensation (Zarate Campos, Manuel 2001:6).

Grassroots Support for Restorative Practices

Change has not come only through government projects. Civil society has also played an important role. Universities and non-governmental organizations in several countries are introducing the use of restorative practices. In Argentina, the law school at the University of Buenos Aires and the NGO, Fundación Libra are pursuing mediation criminal matters (among others. In Chile, the *Universidad Católica de Temuco* created a mediation center to handle cases ranging from crimes to family disputes to community conflicts; while, the *Fundación Paz Ciudadana* is experimenting with mediation and peace education in schools.

Many organizations and individuals supporting and incorporating restorative practices see their ultimate goal as changing society in ways that decrease violence and increase democracy. As Braithwaite and Strang state in the Introduction to Restorative Justice and Civil Society:

"If the social movement for restorative justice is about more than changing practices of states, if it can have an impact on an entire culture, if it actually succeeds in changing families and schools towards more restorative practices, the effects on crime might be much more considerable." (2001: 6).

This can be seen in the project to introduce conferencing to several schools in Jundiaí, São Paulo, Brazil. Not only did the project researchers and sponsors see this as a means to change school atmosphere and practice but it also was intended to affect the community culture itself. Including community members unknown to the victim and the offender extended the responsibility for change and future support beyond the school

halls. This included the provision of resources that would allow the offender to complete the agreement as well as providing general support. Such cooperation had the impact of teaching community responsibility (Scuro Neto, Pedro 2000b: 629).

This dual support for restorative practice-from both the State and civil society institutions- exists at different levels throughout Latin American countries. In some countries the State has taken a strong lead in the introduction (Costa Rica and Mexico), in others the impetus has come from community organizations (Chile), in yet others, change started in a partnership of the two (Brazil and Argentina).

Argentina

Early proposals for justice reform in Argentina concentrated on the civil and commercial law systems, attacking the causes of corruption and trying to increase efficiency. In 1992, the ADR movement began to influence pilot projects in which mediation was introduced in civil cases. In 1995, law 24.573 expanded mediation or conciliation in this area. Criminal cases were not included in the pilot projects or early laws. However, this groundwork, combined with growing awareness of the victims' needs and of the detrimental effects of imprisonment, led to pilot projects in penal mediation in the province of Buenos Aires (Alvarez, G. 1999:15; (Fundación de Investigaciones Economicas LatinoAmericanas 1996:17).

In 1998, the National Ministry of Justice and the University of Buenos Aires Law School joined together to launch the penal mediation pilot project in the Province of Buenos Aires. Known as Proyecto RAC (Alternative Dispute Resolution Project), this pilot

used the experiences of Canada, the United States, Germany, Austria, France, Spain, and the United Kingdom as a reference point for exploring both the practical and theoretical problems of using alternative measures in criminal matters.

Either the victim or the offender can request mediation in a case. After a complaint is filed with the project staff, the first step is to contact the parties involved and ask for consent to participate in the process. From there, facilitators meet separately with the victim and offender to discuss the following topics:

- What are the acts each party wishes to discuss?
- What does the person expect from the process?
- How does the person think the other will react to his/her story?

From these preparatory meetings, the staff evaluates the complexity of the conflict and the relationships between the participants. This information is used to decide which of the three available encounter processes would best serve the needs of the participants.

Mediation, the simplest of the three options, offers the most equality to the involved parties. The mediator, a neutral third party, creates an open space for communication between the victim and offender. The process consists of four meetings, including two preparatory meetings. Cases referred to mediation are characterized by a low level of conflict; a predisposition of the parties to communication; and an openness to an economic settlement on the part of the victim.

The second method, conciliation, gives the mediator more authority to expose aspects of the conflict and to suggest possible methods for resolution. This process is used when:

- Apparent social inequalities exist
- A poor climate for communication exists

- Many layers of conflict exist
- More than one person is involved on each side

The third mechanism, the *conferencia de conciliación con moderador* (CCM), is a moderated conciliation conference. The CCM is used when the victim and offender do not agree on the facts of the case. Although it serves as a tool to uncover the truth, CCM is not used to decide guilt. The parties present their cases to a panel of three advisors. One of these is affiliated with the Proyecto RAC and has a good understanding of the legal system. The others are trusted community members agreed upon by the participants. In a series of meetings, each side is allowed to present witnesses and evidence to support its own recounting of events. In seeking the truth, the panel members are able to question the witnesses. When both sides are satisfied that their entire story has been told, the panel members retire to discuss the evidence. In individual meetings with the victim and the offender, the panel members discuss the merits of the individual's case based on the strength the case would have in the formal legal system. After these meetings, the two parties decide whether to proceed with the alternative system or to return to the formal. In this way, the CCM is seen as an intermediate step between the formal and alternative systems (Lerner, Maidana, and Rodriguez Fernandez 2000).

The penal mediation project coincided with changes in the Criminal Law Codes and in services offered in the Province of Buenos Aires. This change created two centers within the justice system, the *Centro De Asistencia a la Victima* (Center for Victim Assistance) and the *Centro de Mediación Penal* (Penal Mediation Center). The purpose of the Center for Victim Assistance is to provide for the psychological, physical, and social needs of victims. The Penal Mediation Center continues the work of mediating encounters

between victims and offenders. The Center deals with crimes ranging from theft to rape. The two Centers share services of social workers, psychologists, and a physician. These professionals report on the mental and physical conditions of victims and offenders and on their ability to proceed. In addition, they help victims determine what other assistance should be sought. (Paz 2001; Ministerio de Justicia n.d.). The National Plan for Judicial Reform created in 1998 lists the continuation of penal mediation pilots as a goal for improving the legal system (Dirección Nacional de Política Criminal 1998).

This introduction of penal mediation, as well as other types of dispute resolution, has occurred in partnership with the NGO Fundación Libra. Founded in 1990, the organization participated in pilot projects throughout the country, helped draft legislation for the inclusion of mediation in the justice system, and continues to offer mediation training both nationally and throughout the continent. It also provides training services to prison directors and police (Alvarez, G. 2002).

The use of penal mediation continues to grow in Argentina. Silvina Marcela Paz, a member of the Center for Penal Mediation in the Province of La Plata, sees these changes as "finally beginning a step toward an atmosphere of restorative justice⁴" (Paz 2001).

Brazil

Several Brazilian organizations are exploring restorative justice philosophy and processes as a means of changing justice practice by:

- Creating a victim-centered system that seeks to repair harm and build relationship

⁴ Authors translation.

- Opening the justice system and other organizational systems to become more transparent and democratic
- Providing a new approach to resolving problems, disputes, and crimes
- Creating a space where involvement in the process builds community and teaches justice by promoting peace and tolerance.

Projects in settings as diverse as schools, the justice system, prison and the community seek to meet these goals.

Restorative Justice in Brazilian Schools

Projeto Jundiaí was designed by an international group of researchers in Jundiaí for use in the state of São Paulo. It created a new system of discipline and organization of Brazilian schools. *Câmaras restaurativas* (restorative conferences) is the mechanism incorporated into the system for resolving conflict and disciplinary problems, and creating a sense of safety and order in the schools.

Projeto Jundiaí grew out of the recognition that schools with environments of fear of violence and crime-creating disorder have a strong negative impact on the quality of learning. In the first year of planning, the research team identified key factors to improving this situation. These included:

- Dealing with victimization
- Creating more transparent and consistent disciplinary regulations and methods
- Increasing family involvement
- Increasing community involvement

The group then selected 26 schools serving 40 thousand students to participate in the program (Scuro Neto 2000b: 624).

In March of 2000, the research team met with teachers and school administrators who would form the project's implementation team. Through interviews with several teachers and students, they built an understanding of the current system used in the school. With this background information, the implementation team created a timeline for completing programme phases. These included changing the rules, instituting the *Câmaras restaurativas*, and providing training in restorative justice and conferencing.

The conferences provide a safe place to bring together everyone impacted by a crime or negative behavior to discuss conflicting points of view and to resolve the problem peacefully. This involvement includes members of the community. Projecto Jundiaí identified the community as holding responsibility for helping in this process of repairing harm, minimizing future negative consequences of the behavior, and rebuilding healthy relationships. This inclusion in conferencing provides an opportunity to build a new sense of community responsibility and feelings of belonging among students, their families and community members. All of these factors worked together to provide the students and adults alike an opportunity to learn how to work together as a community (Scuro 200b: 628-629). The next phase of Project Jundiaí, beginning in 2002, will look beyond resolving conflicts to a general method of teaching social norms (Scuro Neto 2002).

Other Restorative Experiments

While Projeto Jundiaí seeks to bring restorative justice principles in schools, other groups or agencies are applying them in additional areas. The youth justice system in Porto Alegre (southern Brazil) is also experimenting with conferencing. The Children and

Adolescent act of 1990 created an opening for using alternative measures for resolving criminal cases. While not specifically dealing with restorative justice processes, the law allows the judge hearing the case to suspend the legal proceeding in cases of first time young offenders of less serious crimes. Article 127 provides for use of sanctions such as reparation, community service, or specified school attendance. In this context, the Porto Alegre youth justice system is piloting the use of *Câmaras restaurativas* (Scuro Neto 2000a: 18-19; Tiffer, Mazera, Carranza 2002: 5).

In 1995, Brazilian Federal law also formalized penal mediation and conciliation. The law of Special Criminal and Civil courts (Federal Law 9.099) creates special courts for conciliation in crimes with a maximum penalty of one year in prison. (This was expanded to two years in 2001 with Federal Law 10.259.) The process allows for more access to the justice system, the oral nature provides transparency and inclusion, and the alternative of conciliation allows the victim and offender to settle their own conflict (Calhau 2002).

In 2000, the desire to create openness in the administration of justice and to enhance community participation led to the Community Justice project in the federal district of Brasilia. While focused on civil claims, the project seeks to inform people of their rights and options, to bring mediation and conciliation processes into the settlement of disputes, and to train community members in the use of these processes. The goals are to:

- Be sensitive to local custom and practices in settling disputes and build a sense of community membership and participation.
- Allow people to settle their own conflicts without resorting to the courts
- Understand justice as a way to promote peace thereby leading people to settle disputes peacefully (Federal District Court of Justice 2000; Scuro Neto n.d.: 8).

Restorative Justice in Prison

Another Brazilian innovation is a unique prison management system developed by the Association for Protection and Assistance to the Convicted (APAC), the Prison Fellowship affiliate in Brazil. Known as the APAC methodology, this system transforms the typical government/community relationship by including community members in the administration of the prison and working with offenders. This inclusion breaks down the barriers between offenders and the community generally created by incarceration and provides groundwork for the reintegration of the offender back into society. This reality helps to create a strong community environment among prisoners and volunteers that fosters spiritual, behavioral and lifestyle changes. The underlying principles of the methodology are highly restorative and reintegrative in working with offenders. In the APAC methodology

- Unconditional love permeates the atmosphere the prison. This is based upon God's love, a sacrificial love for each individual.
- Human Valorization helps the person to become fully aware of his or her innate human dignity and empowered to develop all of his or her capabilities.
- Evangelization includes ministering to physical needs and other needs such as medical care, legal aid, social work, and employment assistance as well as sharing the Gospel.
- Spiritual Transformation provides a participant every opportunity to take the journey from spiritual crisis to renewal.
- Reintegration and restoration address the need to restore and strengthen family relationships, and to integrate prisoners positively into society with the help of godparents, mentors, and other PF volunteers (Parker 2001).

The restorativeness of APAC is limited by this centralized focus on offenders. Work is beginning to address the needs of crime victims. At the moment, this is being done

through offenders providing services to crime victims. There is also interest in starting to work with victim-offender awareness panels.

Chile

Since conflict is a natural part of life, mechanisms for resolving conflict are important. Although the Chilean legal culture leans toward "judicializing" conflicts, there is growing recognition that the justice system does not have the capacity to provide peaceful and lasting solutions. Therefore, Chile is enacting significant justice system reforms that are opening doors for more restorative elements. Problems with crime and lack of trust in the criminal justice system motivated both the government and civil society to seek new options. These include placing more emphasis on victims' issues, creating community mechanisms for dealing with conflict, introducing mediation projects into schools, and including reparative agreements in the new criminal law codes.

Activities of Non-Governmental Organizations (NGOs)

The non-governmental sector is a key promoter of restorative justice processes. The Catholic University of Temuco is one such organization. In 1998, the University identified several problems with using the justice system to resolve conflict. According to this analysis, judicial resolution suffered from a lack of confidence in the justice system, a social inefficiency that rejects alternatives, and the exclusion of different socio-economic groups. The need for peaceful alternatives was seen as a pressing need in Chilean

society. The university's solution was the *Proyecto CREA* -- Center for Alternative Dispute Resolution. The project's aims are to:

- advance the academic knowledge in the area of Alternative Dispute Resolution;
- disseminate information throughout the society;
- study applications international and their applicability to the Chilean context,
- provide services to the community (Valencia Vazquez and Diaz Gude 2000: 7).

Proyecto CREA offers free mediation services in the areas of family, civil, and penal law. The facilitators seek to help parties in conflict find a settlement that helps resolve the problem and create new relationships. The eventual goal of this program is to equip Chilean society to resolve conflicts without turning to retribution.

Another NGO, the *Fundación Paz Ciudadana*, focuses on the issues of justice and reforming the system to protect citizens. One area of particular interest is peace education. In 2000, it conducted an evaluation of the types of conflicts encountered in schools, the background of students, and current methods of handling situations. Out of this study came the Project for Peaceful Conflict Resolution and School Mediation in three high schools in the Cerro Navia community. The *Fundación pas* proposed that these types of programs be implemented in all schools (Valenzuela n.d.).

Government Activities

These NGO responses to the crime problem in Chile are taking place in an atmosphere of reform in the justice system. While not fully restorative, government changes address transparency, access to justice, inclusion, and reintegration.

For alternatives to incarceration, Chile mainly uses conditional remission of sentence, night confinement, and parole. Yet the new penal codes include a more

restorative model that is being tested by two provinces. This new alternative is the "reparative agreement," and it centers on the needs of both the victim and the offender. The process accepts the role of the victim in the justice process and allows the reparative agreement to terminate the penal process (Ruz Donoso 1998:5).

Reparative agreements are a negotiated settlement. The reason for their inclusion in the Chilean reforms demonstrate some of the tension felt around the inclusion of restorative justice processes in governmental efforts for reform. As an alternative method for resolving conflict -- in this case crime -- the reparative agreement is one mechanism to ease congestion in courts and prisons. At the same time, it offers an opening for victims and offenders to have a voice in the justice process. This reduces the negative social and economic impact of incarceration on both the offender and his/her family, thereby aiding reintegration. For victims, the agreements provide direct reparation. An agreement can include an actual payment to the victim or symbolic reparation through community service or gifts to local institutions, or both. (Zarate Campos 2001: 1-3, 23-24). Reparative agreements may be used in some property crimes, fraud, or minor assaults (Ortega Sandoval 2000: 118).

These changes result from the recognition of victims' rights under the new penal codes. These include the right to be informed throughout the justice process, and to receive reparations. To address the needs of victims, Chile created Assistance Units for Victims of Violent Crimes. These units provide psychological, legal, and material support. The mental state and physical needs of the victim are immediately taken into account. Counseling and trauma intervention seek to aid the victim in healing, with services

extending to the family when necessary. At the same time, community activities and support networks are organized to prevent isolation and to sensitize the community to the needs of victims. Legal assistance helps the victim understand the justice process. As a part of the "Access to Justice" movement, this assistance extends to representing the victim in and out of court in seeking reparation (Ortega Sandoval 2000: 118; Chia et. al. n.d.)

In attempting to more successfully reintegrate offenders into society, Chile has sought to involve the community. Halfway houses and shelters form one strategy for providing social support networks to enable offenders to avoid former habits or social patterns leading to offending behavior. The government also partners with community development networks to strengthen the offender's community ties and to provide them education and training.

Community organization and empowerment is a final area reflecting restorative elements. Through identifying respected community leaders and providing them with training to understand the system and dispute resolution processes, the reform effort seeks to transfer some aspects of the justice process into the hands of the community. These *Consultorios Jurdicos Vecinales* (roughly neighborhood judicial consultancy) provide a first option for parties in conflict. Operating along the lines of community mediation, they address a wide array of disputes from disagreements between neighbors to those between organizations or institutions. The objective is to prevent conflict from becoming violent and to give citizens power to resolve their own problems (Cox Urrejola n.d.: 6-9; *ibid* 1999: 3-5).

Each of these projects, both in government and civil society, reveal openings for growth of restorative justice in Chile. The reform process is just beginning and is open to innovative solutions. Aided with the study and renewal of indigenous justice traditions, these beginnings bode well for change in Chile.

Costa Rica

In the Costa Rican context, governmental efforts to reform and modernize the justice system have been instrumental in developing restorative practice, including mediation and conciliation. In 1994, the government hired a consulting firm to evaluate the justice system and make recommendations for reform. The two major problems named were lack of access to justice and lack of alternatives to the court process. This study was the impetus for "*Plan de Modernización de la Administración de Justicia de Costa Rica*" (Plan for the Modernization of the Administration of Justice in Costa Rica), supported by United States Agency for International Development, to develop ADR practices in the justice system. Pursuant to this plan, the Supreme Court instituted a "*Programa de Resolución Alternativa de Conflictos*" (*Programa RAC*, or Program of Alternative Dispute Resolution), which created a pilot project for family mediation (Alvarez, G. 1999: 19; Chavarria n.d.: 1).

When *Programa RAC* ended in 1996, the Court developed the *Comisión Nacional para la Promoción y Difusión de Mecanismos Pacíficos de Solución de Conflictos* (National Commission for the Promotion and Diffusion of Peaceful Conflict Solutions). The Chamber of Commerce received a loan from the InterAmerican Development Bank to

develop ADR practices in commerce. These development efforts culminated in the Ley Sobre Resolución Alternativa De Conflictos y Promoción de la Paz Social (Law of Alternative Conflict Resolution and Social Peace) Ley No. 7727 in 1997 (Alvarez G. 1999: 19; Chavarria n.d.: 2).

Ley 7727 provides the legal basis for mediation, conciliation, and arbitration. Broken into three chapters, it addresses the use of ADR in several contexts. The first chapter, general comments, calls for the inclusion of ADR in the school setting. It states

"Each person has the right to an adequate education about peace in school, which are obligated to help their students understand the nature and manners to construct permanent peace⁵."

The law calls for the development of dialogue processes in the educational setting to teach these values. The second chapter of Ley No. 7727 provides guidelines for using conciliation and mediation. The third chapter deals with arbitration. This legislation prepared the way for the creation of programs in the area of criminal justice as well as civil law.

Another step toward developing restorative process was the *Ley de Justicia Penal Juvenil* (Law of Juvenile Criminal Justice) passed in 1996. Article 61 promotes the use of conciliation in these cases. Participation is voluntary on the part of the victim (or a designated represented) and the offender in the case. Both sides must agree to the terms for settling the case and equality between the parties must exist during the negotiations (Tiffer et. al 2002: 5-6; Alvarez, G.1999: 20).

In 1998, Costa Rica implemented a new criminal justice code. Under this code, conciliation became an option for adults in the criminal justice system. Its provisions

⁵ Author's translation.

concerning which crimes can be resolved through this alternative are similar in both the juvenile and the adult systems: Conciliation may be used in cases of simple crimes with a maximum penalty of three years imprisonment and where it is a first offense. The courts must approve agreements, but once this is done, the criminal action against the offender is dropped. The creation of the *Codigo de la Niñez y la Adolescencia* (Code of Children and Adolescence) in 1998 placed new restrictions on the use of conciliation. This new code created judges specifically responsible for family courts and created a special process for the protection of children and adolescents. While this new structure does recognize conciliation as a legitimate recourse in resolving criminal cases, it places often-contradictory restrictions on the use of alternative processes. It strictly prohibits the use of conciliation in cases of domestic violence or loss or suspension of parental authority. The code also limits the use of conciliation in cases where the victim is a minor with the goal of protecting the minor from more abuse or danger (Cortés Coto 1999: 1-3; Araya Matarrita 2000: 1-6).

Costa Rican juvenile law also provides for certain restorative outcomes. Community service to organizations such as hospitals, schools, and national parks is available. Since this work may not be directly related to the crime, its restorative character is limited. Another available outcome is reparation, defined as work by the offender for the victim in place of paying monetary restitution. Although both the victim and offender must agree to this arrangement, the actual length of service and dollar value of the work to be done is decided by the presiding judge (Tiffer, et. al 2002: 14).

Costa Rica provides a case study for the institutionalization of restorative practices in the criminal justice system. At the same time, it serves as an example of the tension that may be felt in developing countries in incorporating such reforms and the need for a balance between the efforts and the differing goals of the state and civil society. For the government, the main priority is transparency in the justice system, improvement of services, and streamlining the system. At the same time, the State recognizes the detrimental effects of incarceration and the more traditional, strictly punitive approaches to crime. The balance in implementation comes from NGOs such as the Fundación CEPPA whose work pushes the State toward a more restorative mind set by seeking reintegration of those affected by crime and the transformation of society itself to resolve conflicts peacefully. Fundación CEPPA is working with training in schools and community groups with the Alternatives to Violence Project. They have done some work in the prisons and are working to promote restorative justice theory in the criminal justice system as well as the broader society (Garcia 2002).

Mexico

Of the countries examined in this paper, Mexico is the most recent to consider the use of restorative practices. In 2001, the Mexican delegation to the 10th session of the Commission on Crime Prevention and Criminal Justice announced that Mexico had just passed a law instituting restorative justice with additions made to Article 20 of the constitution (Delegación 2001). In actuality, these additions were recognition of victims' rights. They guaranteed victims the right to:

1. legal assistance
2. be informed about developments in the case
3. receive assistance from the prosecutor's office all information requested.
4. receive medical and psychological assistance
5. receive reparation from the offender (Parra Barbosa n.d.: 4).

Although these changes are not fully restorative, they are an indication of the interest for change that exists in Mexico. In a 2001 meeting of attorney generals and judges, Dr. Maria de la Luz Lima spoke about the need to create alternative measures for resolving criminal conflicts in Mexico. She called for establishment of penal mediation as a fruitful and efficient mechanism for moving toward justice. She also asked that prison be reserved for only the most serious offenses. Mexican justice officials attending this meeting demonstrated their recognition that an emphasis on punishment hinders the healing of victims and the reintegration of offenders by issuing a strong call for alternative processes (Comunicados de Prensa. 2001; Cruz 2001). Accompanying the need to increase security and prevent crime has been recognition that civil society should be included in the creation of those mechanisms (Huerta González nd: 7).

While the Mexican government promotes restorative justice values and processes, NGOs are also working to introduce the practices. The *Fundación Centro de Atención para Víctimas del delito* (CENAVID) (Foundation Center for the Attention of Victims of Crime) seeks to introduce a culture of mediation to Mexico through the *Centro de Resolución de Conflictos* (Center for Conflict Resolution). CENAVID was founded in 1993 to provide resources to crime victims-especially women and children. In 1995, CENAVID began a project to introduce ADR practices as nonviolent means of resolving community, family, and civil conflicts in one of the most violent neighborhoods in Guadalajara. They

began with informational lectures and training for children and adults. The training included information on how victims of violence and their families should be treated. The project was eventually taken over by the local Catholic Church, the Parroquia del Señor de la Misericordia with CENAVID continuing training. CENAVID's other activities include training for justice officials and public servants throughout Mexico, the promotion of mediation and ADR, and consultations in creating mediation centers⁶.

Other groups and individuals are working to promote penal mediation in Mexico as well. Dr. Jorge Pesqueira Leal, the director of *the Instituto de Mediación de México*, conducted trainings for public servants in Chiapas as that State set up an informal court process to favor reconciliation and healing of harms created through conflict (La Republica en Chiapas 2000). He also produced a report for the government on the inclusion of penal mediation as a mechanism for crime prevention. In this work, he argues for the inclusion of mediation to create a space to allow social reintegration of offenders and to address the needs of those impacted by crime (2001). In September of 2002, the Supreme Court of the Federal District (Mexico City) and the University of Sonora are sponsoring a conference on mediation including the use of penal mediation and restorative justice. The conference sessions and workshops are meant to introduce justice official, civil servants, and others to the ideas and benefits of penal mediation. The hope is to cultivate support for these practices throughout Mexico.

⁶ Information on CENAVID and the Centro de Resolución de Conflictos is found on the CENAVID website <http://www.cenavid.com/>.

Conclusion

As can be seen in the above examples, a wide range of needs and realities characterize the use of restorative practices in Latin America. The need to lower prison populations, increase transparency in the administration of justice, and ease the overload in the judicial system, is creating impetus for reform. Civil society values of healing and reintegration, as well as the desire to transform Latin American society from a culture of violence to a culture of peace, are moving those reform efforts in a restorative direction.

This duality is characterized by a tension between State and civil society efforts. While government driven reform will lean heavily toward rehabilitation and easing the strains on the justice system, the goals of healing and transformation voiced by civil society groups increases restorativeness. This partnership offers promise for transformation beyond the individual victim and offender to community and society.

In talking about restorative practices in the United States, Kay Pranis argues that restorative justice offers the possibility of creating a new democracy in which the wisdom of ordinary people is used to address complex social problems and the power or ability of community can be tapped to work for the betterment of all community members (2001:1). This is the vision that some hold for restorative justice in Latin America. Pedro Scuro Neto (2000a) talks about restorative justice as a middle-range theory to help his country, and maybe his continent, move away from government corruption and toward real governance and strong communities. Restorative practices are being used to incorporate excluded social groups in community with each other to find solutions to problems. Many of the civil society projects started are based on the need to create a culture of peace and promote

non-violent ways to resolve conflict. In this way, Latin America may serve as a laboratory for the transformative effects of restorative justice.

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