

Penal Mediation Piloted in Argentina

In the 1990s, Argentina began a series of reform efforts to alleviate corruption, overcrowding of jails and prisons, backlogs stalling the court system, and a lack of faith in the justice system. Among those reforms was the Proyecto RAC (Alternative Conflict Resolution Project), a pilot project in penal mediation.

El Proyecto RAC

The National Ministry of Justice and the University of Buenos Aires Law School joined together to launch the pilot project in the province of Buenos Aires. Referring to the experiences in Canada, the United States, Germany, Austria, France, Spain, and the United Kingdom, the Proyecto RAC aimed to explore both the practical and theoretical problems of using alternative measures in criminal matters.

The first step in the process is the preparation of participants. Contacting the victim and offender in separate meetings, the program facilitators discuss

- 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?

These preparatory meetings are used to decide which of the three encounter processes to use, a decision based on the complexity of the conflict.

Mediation is the simplest of the three options. It is seen as offering the most equality to the involved parties. The mediator, a neutral third party, provides a space for open communication between the victim and offender. The process consists of four meetings, including two preparatory meetings. These cases are characterized by

- a low level of conflict,
- a predisposition to communication,
- an openness to an economic settlement on the part of the victim.

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 **conferencia de conciliación con moderador (CCM)** roughly translates as moderated conciliation conference. The CCM is used in cases where the victim and offender do not agree on the facts of the case. It is a means of uncovering the truth, not deciding guilt.

The parties each present their case 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 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 the individual's case. This discussion is 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.

Where do things stand?

The pilot project provided valuable experience for the Ministry of Justice in creating a system of penal mediation. The *National Plan for Judicial Reform* created in 1998 lists the continuation of penal mediation pilots as a goal for improving the legal system. This learning experience has resulted in the expansion of penal mediation in other provinces. Examples are

- The Chaco Province witnessed the first use of penal mediation in cases of land invasions in May 2001.
- Santa Fe has established a mediation center for cases ranging from family disputes to criminal acts within the Office of Public Defense (Defensoria del Pueblo).
- The Judicial office of the Province of Mercedes started a pilot project in penal mediation.
- Several provinces have opened offices of victim assistance, with some including offices of penal mediation.

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 justice...”

For more information you may contact [Silvina Marcela Paz](mailto:silpaz@netverk.com.ar) (silpaz@netverk.com.ar) in either Spanish or English.

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