
Restorative justice and reconciliation agenda in Brazil

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1) Introduction

Both topics of restorative justice and reconciliation are relevant to Brazil. Like many other Latin American countries, Brazil has a period of military rule, having left its complicated legacy of divided society. The country attempted to overcome the consequences of political violence by implementing truth and reconciliation commission in 2011 – this measure took much longer to be implemented than in most other neighbor countries. First part of this report explores on the reasons of that belated action and complications it implied.

The second part of the report analyzes restorative practices implemented in Brazil. The country is known for its creative celebration of life. Unfortunately, it is also notorious for its people wealth imbalances and urban violence. In the city of Rio de Janeiro the most luxurious condominiums are located in the close neighborhood with favelas (shantytowns) having no basic facilities. World-famous Ipanema and Copacabana beaches are regularly disturbed by *arrastões* – robbing raids committed by groups of poor presumably favela residents, most of whom are minors. Obviously, the two above-mentioned facts are deep-rooted and interrelated. The society seeks to protect itself; one of the measures introduced in 2015 was to allow city police to convey the groups of black minors from the buses with beach side destination directly to police stations for questioning and verification of identity. Naturally, these measures caused significant public resonance as breaking human rights. This is just one of the examples of challenges that Brazilian society faces on daily basis. The present report will explore in some more details the complex and controversial problem of urban violence in today's Brazil as well as possible solutions to improving the situation.

2) Reconciliation in Brazil

Like many other Latin American nations, Brazil had previously been under military rule. This legacy had and continues to have implications on Brazil's political and social agenda. Brazil's President Dilma Rousseff was a former guerilla who was imprisoned for three years and tortured during the period of military rule. In 2011 it was officially created Brazil's Truth and Reconciliation Commission with the term of two years to investigate and clarify the serious violations of human rights perpetrated under the military rule from 1946 to 1988, when the country was run by a military junta. Thus, Brazil became the ninth country in Latin America to implement it.

Back to 1979, Brazil passed an amnesty law stipulating that no military officer could be tried for any alleged human rights abuses that occurred during the era of military rule. So not everyone was satisfied with the establishment of the Commission, claiming that it does not go far enough. By comparison, other countries that established truth commissions, like Argentina, Chile, and Paraguay, have put some perpetrators behind bars.¹

Brazil's neighbors initiated a process of revision of the amnesty that emphasizes the role of national memory, whereas in Brazil this process divided the decisive political actors.²

Other identified weaknesses of Commission were the following:

- the commission having no budgetary autonomy;
- the sessions closed to the public;
- the Commission composed by only seven persons, including a military, appointed by the Presidency without participation of civil society to investigate such an ample period of time;

¹ Brazil's Truth and Reconciliation Commission: A Small Step in the Right Direction.

<http://www.coha.org/brazils-truth-and-reconciliation-commission-a-small-step-in-the-right-direction/>

² Bruno Konder Comparatol, Cynthia Sarti. Amnesty, Memory, and Reconciliation in Brazil: Dilemmas of an Unfinished Political Transition

<http://files.isanet.org/ConferenceArchive/f2ecc7f25f6147f9ac79067fb7142135.pdf>

- the text of the law that created the Commission mentions truth, memory and national conciliation, but does not refer to justice.³

On the other hand, the torture has never been publicly acknowledged by the military, and the military accused the victims to have the intention to promote a revenge. So the reconciliation process in Brazil left many people unsatisfied, some would even argue that it would be better not to establish the Commission at all considering its limitations. Most researchers agree that in Brazil, the reparations represent almost the unique element of transitional justice effectively carried out, and in a very partial manner as the amounts of money for the victims are much unequal and reproduce social inequalities.⁴

On 10 December 2014, the commission issued a report with its findings. The report identified 377 individuals, close to 200 of them still alive, as responsible for human rights violations during that period, which it considers constitute crimes against humanity, including torture, killings, and enforced disappearances. The commission found that the violations constituted “widespread and systematic actions” and were carried out as part of a “government policy” planned and ordered by officials at the highest level.⁵ The report also documents the suffering of indigenous people, many of whom were forcibly displaced from their land by the government to build infrastructure, mining, or agricultural projects. Entire communities were destroyed.

The prosecution of those responsible for atrocities has been blocked by a judicial interpretation of above-mentioned 1979 law that provided an amnesty for “political crimes.” The amnesty law resulted in the release of hundreds of political prisoners and allowed the return of exiles, according to the report. Brazilian courts subsequently interpreted the amnesty law to shield government agents from prosecution for human rights crimes during the dictatorship.

³ Ibid, p.10.

⁴ Ibid, page 22.

⁵ Brazil: Panel Details ‘Dirty War’ Atrocities
<https://www.hrw.org/news/2014/12/10/brazil-panel-details-dirty-war-atrocities>

A breakthrough occurred on September 10, 2014, when a federal tribunal in Rio de Janeiro allowed the prosecution of five retired members of the Armed Forces stating that the amnesty law did not apply to crimes against humanity or to crimes that are continuing, such as enforced disappearances.⁶

So the report was just the beginning for the hard work to be continued to address past abuses, and to examine and promote measures to end the continued use by security forces of torture and other abusive practices documented in the report.

3) Restorative justice in Brazil

Surprisingly, the first steps towards establishing restorative justice practices in Brazil were taken by the foreigner, deeply shocked with the criminal and poverty situation in the country. It was Dominic Barter who initiated mediation meetings between the chief of police and shantytown residents' associations following the shootings of bus hijacker and passenger by police in 2000.

Later in 2004, there was a pilot project that brought together school administrators, judges, court workers, prison authorities, social service agencies and local community leaders to create a broad restorative response to the most challenging breakdowns in community safety. Projects brought favela youth and school-age children of the elite together to share cooperative ways to play sports, learn computer skills, acquire fresh food and support local health workers. The main principle was: Listen to what local people want and respond to it, rather than arrive with prepackaged answers.

The reasons of the situation may be illustrated by this testimony: "Most youth have absent fathers. Their mothers work long hours as domestic maids. After school, children hang out with the 'uncles,' teenagers employed by the gangs. From nine years old, they are already running errands for the gangs, looking cool and making money. Yet they were always asking for help with conflict, saying they wanted a different life."

Soon after these initial conversations, conference model emerged, known as restorative circles, which involves three key participants: the author of a given act, the

⁶ *ibid.*

recipient of that act and the local community. The process speaks to people because it balances responsibility with empowered decision making and belongs to the community that uses it.

A weakness of these early shantytown conferences was that agreements made with the best of intentions would sometimes vanish as soon as the participants left the meeting room and returned to the social realities of their daily lives.

In 2005, RJ appeared in the Brazilian juvenile justice system of several pilot cities as an alternative approach to dealing with criminality in Brazil. That was a result of Brazilian criminal justice system incapacity and inefficiency to manage social conflicts. Two different models were adopted: Victim-Offender Mediation model and restorative circles model.⁷ With certain differences, the process was used in schools, in the community and in the court. Despite the lack of legal base, RJ is developing in Brazil, with encouraging, having become statewide in October 2016.

The four lines of action are the following: promoting actions of social mobilization and dissemination of culture, promoting the restorative approach and the culture of peace, training human resources to apply the concepts of restorative mode, as well as the implementation of programs related to it.⁸

There is yet a long way to go. Despite many difficulties and drawbacks, the first positive results are already visible, yet need to be analyzed and broaden. However, the first lessons learned from Brazil experience in the field of RJ have already been shared in India, Iran and the Philippines.⁹ And hopefully, will bring more peace and harmony in the communities.

⁷ Achutti, D. & Pallamolla, R. Restorative Justice in Juvenile Courts in Brazil: A brief Review of Porto Alegre and São Caetano Pilot Projects. 2012. file:///C:/Users/Marina%20Khamitsevich/Downloads/2875-15939-1-PB.pdf

⁸ Brazil: Restorative justice to be expanded in Rio Grande do Sul. <http://cpnn-world.org/new/?p=7358>

⁹ Toward Peace and Justice in Brazil: Dominic Barter and Restorative Circles <http://www.iirp.edu/eforum-archive/4413-toward-peace-and-justice-in-brazil-dominic-barter-and-restorative-circles>

4) **Conclusion**

Like other Latin American countries, Brazil went through a violent period of military rule. It took much time and efforts to start overcoming the sad consequences of deep wounds left by the military regime in the Brazilian families and society as a whole. The establishing of Truth and Reconciliation Commission was painful for many. Yet, the first practical results of its work brought about hopes for a better future of democratic Brazil.

From its history, Brazil also inherited major social challenges. At the same time, this major Latin American country also has a unique chance to be pioneer in implementing fundamental changes and establishing the culture of peace through dialogue, thus proving that the challenges can be successfully overcome and showing the best ways to do to the rest of the world.

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