Restorative Justice in Colombia*

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Introduction

The movement for restorative justice has been spreading inconsistently throughout the world. The process of restorative justice has been integrated with justice systems in some nations and resisted in others. The potential for experiencing restorative justice has been made possible for countless individuals in conflict, danger and suffering, while countless others have no idea of its meaning. In Colombia, the level of progress in developing a parallel system of restoration integrated within the criminal justice system is a model for all of the nations of the world which are struggling with the difficulties of restructuring judicial and legal organizations.

The challenges for Colombia in developing a system of restoration are vast. Obstacles arise from many levels and sources. The history of conflict and violence in Colombia is horrendous. Extremes of violence became ordinary. Every family has suffered losses; every family has a story of brutality and terror. The civil war spawned many warring factions so that it was nearly impossible to stay out of the cross fire between the army factions, the leftist-insurgent factions and the paramilitary factions. These long-term disputes have left a background of resentment, suspicion and lack of respect for authority. Violence was glorified.

With 2 to 3 million displaced persons, Colombia presents the highest number of internally displaced people in the western hemisphere, and the second largest displaced population in the world after Sudan http://www.unhcr.org/publ/PUBL/4444d3ce20.html. Large settlements of displaced people have grown into permanent squatter cities without water or electricity. The people living there are not trained, formally educated nor able to find employment, in most cases. Infant mortality and family violence are two major health and welfare concerns. Not even the most basic needs are consistently being met.

The economy of Colombia was corrupted by income from smuggling cocaine and other illicit substances. The crime driven wealth led to vast inequalities in life styles between the majority of impoverished Colombians and the few conspicuously affluent, obviously corrupt citizens. The corruption affected even those individuals who wished to avoid it and the corporations which tried to maintain integrity. Many honest citizens were forced to flee the country; harassment, threats and assassination were common. Others accepted the benefits they gained from the narco-dollar driven economy without asking what the consequences were to be. At the inevitable fall of the cocaine gangsters, who would pay the price? Projects to protect the natural environment, building and construction plans, roadways and pipelines were all major Colombian infrastructural failures because of the corruption of cocaine, the powerlessness of the government and the violence.

Willingness, Community and Interdependence

With such a background of strife it is difficult to imagine how an advanced system of restorative justice could have developed in Colombia. The obstacles of violence and corruption were seemingly
insurmountable. Yet the process of restorative justice in Colombia has been working for more than 15 years. Thousands of cases have been resolved outside of the courtroom yet with the force of law. The system is unique, yet it includes all the important factors in restorative justice. Three of those factors have been discussed in this article: willingness, community and interdependence.

Willingness relates to the voluntary nature of conciliation. Restorative justice is based on mutual agreements from all those involved in the case being heard. Without willing participation, restorative justice becomes coercion. However, in the Colombian system the participants have the choice between conciliation or a burdensome court case, which is a limited choice. Yet the participants voluntarily avoid the court process, none the less.

Community refers to a place as well as a sense of identity. Community and neighborhood identity is built through common activities and goals. The sense of community must be cultivated in Colombia. To have been marked as a community leader in the past was to invite violence from the army, insurgent or para-military factions which were trying to maintain control over the districts in the country.

Interdependence may be difficult to actualize in Colombia where factionalism has such deep and blood stained roots. Without the understanding of the interconnections between all humanity, there is no possibility of restorative justice.

Willingness

By the early 1990’s, the citizens of Colombia were weary of the lack of judicial response. As a result, the Colombian constitution was revised and many of the formal institutions of state were reorganized. The new constitution called for the development of “Houses of Justice” in neighborhoods throughout the country. Within these local justice centers the neighbors could find representatives from the prosecutor’s office, family court magistrates and conciliators. Over time the Colombian law stipulated the types of conflicts which were to be handled by conciliation. Once an agreement is reached between those concerned, a formal agreement is signed and filed with the judge. The conciliation is binding. If the stipulations are not followed, the case will be reopened in criminal court. Conciliation is far preferable to hearings in criminal court in Colombia where court proceedings are extremely long and complex. The outcome is seldom secure and citizens typically do not have a sense of trust in the justice of the court.

Community

Houses of Justice were established in store fronts, office buildings, houses and wherever space could be made available. The key to the success of the Colombian Houses of Justice depends on the communities in which they are found. Community identification is essential. The Houses of Justice which involved local leaders and neighborhood participation, and which were perceived as a community resource are more likely to have continued cooperation leading to successful conciliations as well as other para-legal agreements. In other words, there is no guarantee of success simply because of the establishment of the mechanism for social change, if those to whom it is offered are not included, or if there is no community leadership.

Interdependence

In a volatile country such as Colombia, the bond between citizens is tenuous at best. Trust and openness were replaced by suspicion and reticence. Yet at the same time, networks are being formed and projects are being implemented with some funding from international NGO’s. Other local efforts
are supported by religious groups and leaders from the local schools. Still other activities are handled by local interest groups, for example, mothers, artists, attorneys, health care providers and others. As leaders arise and the community begins to take on an identity, the potential for restorative justice improves.

Colombia

How did a highly developed system of restorative justice evolve in a nation torn by strife and conflict as well as extremes of economic inequality and lack of infrastructure? In answer to this question, conciliators and attorneys in Colombia explain that failures in the traditional legal system led to the necessity for another option. This is no doubt how it happened. Yet, throughout the world few, if any, other nations have responded to the breakdowns of their criminal justice systems by creating a parallel restorative system. For this reason, and many others, the Colombia question is significant for the development of international restorative justice.

Three different sites in the country provide examples of the evolution of the system over the past decade:

Bogota

The Columbian Association of Conciliators has its headquarters at Universidad Santo Tomas in the capital. Lack of funding severely limits their reach and scope, but the association provides a link to conciliators throughout the nation. At the same time, thousands of conciliations are held annually in Bogota in 85 different neighborhoods throughout the city. In some vicinities the conciliators are supported by the Bogota Chamber of Commerce.

Barranquilla

In the coastal city, Conciliation is facilitated by Universidad del Norte School of Law, Department of Community Justice. Volunteer conciliators from all walks of life are trained and mentored by faculty. The motto of the conciliators in Barranquilla is: “By talking we understand ourselves.” The influence of politics is evident in Barranquilla as it is in any city. Support and cooperation of local officials varies in different neighborhoods along with the effectiveness of the conciliators.

Uraba

In the one year period 1996-97, more than 17,000 people were left homeless in the rural region of Uraba near Colombia’s northern border with Panama. [http://www.gppac.net/documents/pbp/2/5_colomb.htm](http://www.gppac.net/documents/pbp/2/5_colomb.htm) The paramilitary factions, in particular, followed a “scorched earth” policy in Uraba turning the region into a gigantic battlefield in which civilians were caught in a no win position. Despite overwhelming difficulties, the Non-governmental Organization known as UNIBAN has successfully organized 137 volunteer conciliators in training. Of these 62 were already in practice in the region in 2008.

Challenges and Opportunities

The three sites are notably different. Though all are part of Colombia, traditional, climatic and economic differences are significant. The system of restorative justice in each site is at a different stage of evolution. The conciliators in each sector are from different levels and professional backgrounds. The common elements among them are their willingness to serve, their knowledge of the community, their successful training and continued interest in learning, and their reputation for integrity. They form
part of a sustained national system of parallel justice which continues despite a formidable set of obstacles, including: lack of logistical support, lack of legal documents, lack of interest on the part of municipal administrators and lack of economic support for volunteer conciliators. Even the basics, such as places in which to hold the conciliations, are problematic in all three locations.

The types of social conflicts which are most likely to be handled by conciliators are also similar in all three sites:

Child Support  
Extra legal arrangements  
Conflict and aggression between partners and spouses  
Traffic violations  
Fights and personal disputes  
Child neglect and abandonment  
Disagreements between neighbors  
Disturbances caused by noise  
Polluting the environment  
Settlement of debts

This list of typical problems gives a picture of the impact and influence the work of conciliators has in Colombia. Their influence covers the spectrum from personal relationships to contracts. The contribution they make to the social order in that nation is vast. A different image of the experience of a conciliator was offered by a volunteer at a group discussion meeting in Barranquilla. The story has been loosely translated from the original Spanish.

My worst case was probably one of my biggest successes too. A woman I was familiar with came to see me several times because she was being threatened by her husband and he was fighting with her. I told her I couldn’t do a conciliation without her husband being present, but he refused to come to conciliation. After a few complaints from her, I decided if he won’t come to conciliation, I will go to him. So I went to their house to talk to her husband. But he was asleep when I arrived and when he woke up and saw me at the door he went into a frenzy. He grabbed a machete and began waving it and making threats toward me. He was rabid. I was in fear for my life for some time. I couldn’t get away. Then their adult son came home too. He could see what was happening and he calmed his father down. After that I was able to talk to him and he was a little apologetic for how he had acted. Then they came in for conciliation, and as far as I know they worked out the problem.

Research Question

The most important question remains unanswered: How did a highly developed system of restorative justice evolve in a nation torn by strife and conflict as well as extremes of economic inequality and lack of infrastructure? In addition there is another question which is also important. How did the unique model of parallel justice in Colombia avoid the attention and interest of researchers in the fields of conflict resolution and restorative justice? Research is necessary not only to answer the large “HOW?” question, but also sub questions about when? where? and what? Three types of data are available for studying Conciliators in Colombia: case documentation and official records, observations of conciliation sessions and interviews with volunteers. With further study, common elements and strategies can be identified. The investigation of the Colombian system is not only interesting, but potentially very useful for other nations developing processes of restorative justice.
Notes

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