

RESTORATIVE JUSTICE IN COLOMBIA - STILL A LONG WAY TO GO

By Ángela Constanza Jerez
Photos Alberto Sierra
Milagro Castro

Despite the Justice and Peace Law (of 2005) providing a focus on restorative justice in Colombia, its presence is glimpsed only timidly in the larger context of transition from armed conflict to peace. This is due to our culture maintaining an obsession with jail as tantamount to justice; and furthermore, there is no methodology for applying restorative justice nor a way of evaluating it. Researchers from the Universidad del Rosario are working in this direction. They are asking for an opportunity and call on the nation to think about alternatives to jail as ways to exercise justice.

In February 2018, after several months of to and fro, the Council of State of Colombia revoked a previous order to create 16 transitional seats of peace for victims of the armed conflict. According to researchers Laura Ordóñez Vargas and Douglas Rodríguez at the School of Human Sciences of the Universidad del Rosario, this concept is a clear example that Colombia continues to prioritize a definition of justice linked to the deprivation of liberty in jails.

"In the end, the argument of critics of the creation of new seats for victims was the apparent favoritism this would imply for former FARC combatants, situating the victims in the place of the aggressors, and with this revictimizing them (on not complying with what was agreed, and on putting them on a level with ex-combat-



↑
Despite the country having laws for 13 years which were incorporated in the concept of restorative justice, this has been applied very timidly.

ants). The message this communicates is that the victims are once again not central to the definition of justice, thus running against the principles of restorative models of justice. In our country, in normative discourse, victims are "politically correct", but in practice there is still a long way to go," assures Professor Ordóñez Vargas, PhD in Anthropology and main author of the study titled *Restorative Justice in Transitional Contexts in Colombia: Analytical and Methodological Tools for Reflection and Application*.

The peace seats case very well exemplifies what academics and the rest of the team have been coming across over almost a year and a half of research: "Colombia is still not ready for restorative justice because in our culture there is still a deep-rooted obsession with the idea of jail as the only expression of carrying out justice, and for deprivation of liberty as the privileged mechanism of controlling crime." So, despite the country having laws for 12 years which were incorporated in the concept of restorative justice, this has been applied very

timidly, with still no methodologies in place to bring it about, and even fewer indicators for evaluating its efficacy.

The final results will be known halfway through 2018, once researchers conclude several tasks under way, and they can be synthesised as: analysis of documentation (academic, legal and institutional, national and international) on restorative practices and processes linked up in transition contexts; field work in the framework of certain national experiences with elements within restorative justice and applied in transitional scenarios such as detention facilities for youths and adults, victim collectives, and justice and peace tribunals; and a revision of new institutionality for Special Jurisdiction for Peace (JEP), among others.

On the methodological limitations in mapping restorative experiences in transition scenarios, the researchers point out that some do exist that are not defined under the actual restorative heading, although these do contain several of the principles that define this way of thinking about justice or, conversely, those that are self-labelled as restorative experiences without them being such.

THE STUDY'S SCENARIOS

As opposed to ordinary (retributive) justice, which mainly seeks to punish the offender and not consider the victim part of the legal process, restorative justice aims at offenders taking responsibility for their actions and repairing the harm to the victim, so the latter needs to be central to the process. The researchers found that restorative justice experiences in transitional contexts began to appear in Colombia following the activation of “Justice and Peace Law” 975 of 2005. Since then, tension has reached extremes, stirred up by those who consider that restorative justice leads to impunity and violates victims’ rights, thus they advocate a Transitional Justice with Retributive Justice. And there are those who seek a balance between truth, justice, and peace.

“We then decided to go to transitional justice settings where restorative justice was being applied, and we reached the Justice and Peace facilities of some of Colombia’s jails, specifically that of Palmira, which housed members of the old Calima front, responsible for the Alto Naya massacre in the Cauca. We also had the possibility of witnessing the experience of a Ministry of Justice scheme running a training initiative inside the jail, and seeing how it was being received by the prisoners,” points out Rodríguez.

Thus, the researchers found that a large amount of inmates (ex-paramilitaries) saw these restorative justice components aimed at being rules within the Justice and Peace Law as rituals without meaning in practical life, norms that basically served them to move around within processes. This is the specific case of the demand for aggressors to apologise to victims. It was an obligatory, instrumental apology that neither made the aggressors take responsibility nor repaired harm to the victims.

Other scenarios for field work were the Rural Transitional Normalization Zones (ZVTN), FARC demobilization zones (specifically in Mesetas, Meta, Icononzo, and Tolima) and residential units assigned to victims and ex-combatants, known as free government social housing.



Colombia is still not ready for restorative justice because in our culture there is still a deep-rooted obsession with the idea of jail as the only expression of carrying out justice, and for deprivation of liberty as the privileged mechanism of controlling crime, points out researcher Laura Ordóñez.



The life stories found by researchers in these field settings allowed them to affirm that restorative justice faces huge obstacles if it is to be implemented. For example, in a scenario such as Colombia, it is extremely difficult to define who is the victim and who is the aggressor, since the different categories are found in the same subject. Similarly, war crimes exist that ex-combatants (both paramilitaries and guerrillas) are not prepared to confess, such as sexual crimes.

“It is important to take all this into account when we think about restorative justice in a transitional scenario. Transitional justice is the balance between justice and peace. If we want to obtain peace we cannot condemn and prosecute everyone because those who demobilize will not have an incentive to do so if it means they end up in jail. Besides this, we do not have the infrastructure to prosecute everyone. The jails are full, they don’t fulfil their function, and in the end they produce impunity. This is what is happening with the Justice and Peace Law; they wanted to prosecute so many persons that cases ended up passing the expiry time for trial,” says Professor Ordóñez Vargas, recalling that during the first ten years of justice and peace only 47 sentences were passed, while between August 2002 and January 2010, 52,403 persons were demobilized.

THE CHALLENGES, POSSIBILITIES AND LIMITS OF RESTORATIVE JUSTICE

The researchers insist that it is necessary to make Colombians understand that jail is not the only way to penalize, since other sentences exist such as community service. Similarly, the achievements of restorative justice should be criticised and exactly what restorative actually means should be clarified.

What do we need in order to be ready for restorative justice? In the view of researcher Rodríguez, the answers lie in the following: First, give it an opportunity. In the list of tools and



Ordinary justice seeks to punish the offender and does not consider the victim part of the legal process.



instruments available to restorative justice we find there are plenty of efforts made, but there is no analytical reflection or methodology to bring together different perspectives with the aim of designing methodologies more applicable to state policy. We must think about the matter methodologically, in a more rigorous way that enables us to understand that restorative justice is not just any old thing.

“State policy makers have to understand that asking for an apology is not in itself restorative justice, nor is taking victims to gatherings. Second, those tools should lead us to design evaluation instruments for restorative justice. We cannot fall into the trap of utilizing the same indicators as retributive justice,” she underlines.

The researcher adds that justice should not solely be in the hands of lawyers; professionals from human sciences such as anthropology and sociology should also be involved, because social studies have plenty to contribute to the building of these tools in relation to state

RESTORATIVE JUSTICE AIMS AT OFFENDERS TAKING RESPONSIBILITY FOR THEIR ACTIONS AND REPAIRING THE HARM TO THE VICTIM.

policy on justice issues and the management of criminality in Colombia.

Researcher Ordóñez Vargas personally believes there is a need to make an inventory of community experiences of restorative justice, and make them visible so that they are replicated and grow in scale. “What are also needed are awareness campaigns on the fallacy of jail. We are experiencing penal populism. People falsely believe that the danger is contained in jail but this is not necessarily so; when these persons come out they can be enraged and will have learned much more about how to commit crimes. Furthermore, funding for jails comes out of our taxes. One convict costs 13,336,449 pesos annually. Jail is not the only alternative for penalization.”

With these reflections and findings, the researchers will serve state entities with some tools and methodological strategies as input towards the conception of new state policies for issues of criminality and transitional justice. ■