



Journal of Liberal Arts and Humanities (JLAH)
Issue: Vol. 1; No. 10; October 2020 pp. 39-44
ISSN 2690-070X (Print) 2690-0718 (Online)
Website: www.jlahnet.com
E-mail: editor@jlahnet.com

The Restorative Justice Systems of Jamaica And Brazil: A Comparative Insight

**Kadean Muschette
Kelvin Edwards
Nichola Francis**

University of the Commonwealth Caribbean
Kingston Jamaica
School of Humanities and Law
Applied Psychology

Corresponding E-mail: kmuschette@stu.ucc.edu.jm, mkay891@hotmail.com

Abstract

Jamaica and Brazil are two countries that have adopted restorative approach in their efforts to address conflicts within their societies. Following their implementation, Jamaica and Brazil have seen rewards utilising this approach. The authors have chosen both countries frameworks to compare, as they fall within the same geographical location regionally. Also, both have changed their punitive approach to resolving conflicts, made constitutional and operational provisions, and other structural changes are parameters to be compared in this study. Both countries have been struggling with managing crimes of various nature, so much so, former Jamaican Minister of National Security, Robert Montague visited Sao Paulo in the past to understand some of their crime-fighting strategies. Thus this shows from a State level; there has been technical cooperation between both governments.

This study aim is to shed light on the effectiveness of Restorative Justice in Brazil and Jamaica. What this comparison suggests is, the legislative framework found in Jamaica's restorative justice system provides the system with a higher level of acceptance to the extent where constitutional provision influences the cultural attitude towards resolving conflict. Additionally, the legislative framework found in the Jamaican restorative justice system provides legal support, which increases the cohesiveness of the design, adding to transparency and accountability, making the Jamaican restorative justice system more reliable. Brazil, on the other hand, has no legislative framework because they are still undergoing reformation in their current laws.

The paper concludes that Jamaica's Restorative Justice System is more effective than that of Brazil to the extent to which Brazil restorative justice system lacks the legislative framework found in that of Jamaica. The research utilises secondary data and as such, has its limitation. Further comparison is needed to provide more insights into the experience of restorative justice participants of both countries to ascertain their views on the impact of the process. This would be meaningful in the creation of more holistic and modern approaches to peacebuilding in both countries.

Keywords: Restorative Justice, Retributive Justice, Jamaica, Brazil and Provisions

Introduction

Restorative justice is a way of responding to criminal behavior. It emphasises repairing the harm caused by crime and 'restoring' harmony as much as possible among the offender, victim and society (United Nations International Children's Emergency Fund, 2010). Thus, restorative justice is beneficial to peacebuilding as it takes into consideration the role and impact of all parties in the conflict, as opposed to the retribution system that focuses on the punitive measures. Hence, restorative Justice uses a holistic approach to restore peace among the victim, offender and community involvement in the conflict.

The history of restorative justice began in 500AD when elements were practice in resolving conflicts (Gavrielides, 2011). By the 1970s, compensatory justice system became a form of mediation between the victims and the offenders (Gavrielides, 2011).

It was during this period Albert Eglash coined the term restorative justice (Gavrielides, 2011). Despite several criticisms, the development continued into the late 1970s; society's acceptance has helped promote the coexistence of the restorative justice system with the system of the state (Gavrielides, 2011). Since then, restorative justice continues to bloom and is now a part of several peacebuilding processes across the world.

Contemporary Times

Brazil remains in third place in the ranking of countries with the largest number of prisoners. According to data from Infopen, the statistical information system of Depen (National Prison Department), published Friday, February 14, the country has 773,151 prisoners (Connecta Human Rights, 2020). Of all the developed countries, Jamaica penal system most closely resembles that of the United States in objective and outcome, Jamaica's prison rate is 168 per 100,000 (Tucker, 2020, p. Xx). These findings draw attention to a disciplinary approach to addressing crime. The result also suggests a level of social unrest within each country's sphere. Since the United Nations recommended the use of restorative justice to address conflict, several countries have taken on the use of this initiative. Jamaica in 2001, implemented the use of restorative justice to tackle the country's increase in the crime rate (Government of Jamaica Ministry of Justice, 2012) and Brazil, in 2005 as adapt the same approach to address conflicts within the country's legal system (Archutti & Pallamola, 2012). While Brazil and Jamaica are a part of the Latin American region with similar restorative justice systems, there are many differences between the two. Both countries have been moving towards an era of development. They have implemented the restorative justice system by changing their disciplinary approach to conflict and violence to a more holistic one. Brazil and Jamaica have since been reporting a high level of effectiveness using this approach to address conflict. Therefore, the essay examines the efficacy of Restorative Justice in Brazil and Jamaica by looking at the made provisions found within each country's system to determine the process' effectiveness; since these parameters are showing many similarities, yet many differences as well.

Comparative Insight

Constitutional provisions are the fundamental laws of a given country that sets the formal structures of the country through defining government and institutional powers; for example, establishing the rights of citizens (Institutional Institute for Democracy and Electoral Assistance, 2014). There are many similarities and differences between the constitutional provisions for Brazil and Jamaica. Both Brazil and Jamaica's restorative justice system is in the fundamental laws that restrict institutional powers, such as the constitutional right of access to Justice (Archutti & Pallamola, 2012); and the protection of the fundamental rights and freedom of person including the right to presume innocence and due to a fair trial (Government of Jamaica Ministry of Justice, 2012). In continuation, both countries constitutional provision incorporates the assumption of the United Nations' fundamental laws. These laws see restorative Justice in practice as an effective way of dealing with conflicts of a penal nature without necessarily applying to the prison system in the traditional moulds (Archutti & Pallamola, 2012). Likewise, they maintain fundamental human rights and provide a more holistic approach to conflict and violence (Archutti & Pallamola, 2012; Government of Jamaica Ministry of Justice, 2012).

Although both countries are changing from a retributive justice system, the accessibility of the service is restricted differently through each country's constitutional provisions. Constitutional provision in Brazil limits access to restorative justice in the merits of low-level laws. An example is Article 129, item 1, of the Brazilian constitution, which grants monopoly of the public action to the public prosecutor's office through the principle of mandatory criminal prosecution (Pereira de Andrade, 2018, p. xx). In contrast, Jamaica constitutional provision makes access to justice a more lengthy process holding back the initiatives of restorative justice within the merits of access to the service; since restorative justice can be implemented at several stages of the justice process. Furthermore, Jamaica's constitutional climate is far less hostile; hence, persons are more inclined to consider the new approach. Data from reports shows that persons do not forget about the practices they learnt in the sessions (Observer News, 2020), as client reviews have shown them implementing the solutions into their lives and not reverting to life before being exposed to the process (Observer News, 2020). Brazil, on the other hand, is still undergoing constitutional reformation from the military era of rigid laws that challenges human rights and the climate of peace. In Brazil, *"agreements made with the best intentions would sometimes vanish as soon as the participants left the meeting room and return to the social reality of their daily lives"* (Watchel, 2009).

To further examine the similarities and differences, the operational conditions of Brazil and Jamaica share many things in common, but each still retains their unique differences as well. Notwithstanding other stakeholders, the Ministry of Justice in Brazil and Jamaica both hold the primary responsibility for the restorative justice system as an alternative to social control. The regulatory framework provides a clear definition of the roles and responsibilities of users within both systems. Both Brazil and Jamaica uses the restorative circle model as their instrument of implementation. The eligibility criteria, referral processing, and protocols in both countries system layout the details for the diversion of cases to benefit from the performance of the system through clearly defined terms. To further add, Brazil and Jamaica both use the feedback method to evaluate the effectiveness of their system.

Despite the similarities, they are some key differences. Brazil's restorative justice system is less cohesive than Jamaica. Brazil's beneficial Justice system began as a pilot project and continues to be a pilot project. The procedural training of each project is carrying out independently to the justice system. Despite the judiciary efforts in Brazil to consolidate a horizontal and democratised restorative justice system, is opened to participation by the parties and the community (Taylor, Chauhan, & Fondacaro, 2012). Judicial restorative justice initiatives are marked by a significantly institutionalised and vertical identity, which ends up reinforcing the retributive system (Taylor, Chauhan, & Fondacaro, 2012). Unlike Brazil, Jamaica's restorative justice system began as a pilot project in 2001. It underwent development in 2016, giving birth to the country's first restorative justice policy providing the system with cohesiveness.

Historically, conflicts exist between the justice system and the public in both countries, since both countries have been facing similar problems with conflicts. As a result of their implementation of restorative justice, both Brazil and Jamaica are yielding positive results. For example, in 2020, four years after its amendments, the Justice Ministry in Jamaica reported a 90% success rate in resolution and settlements that were referral cases through the Restorative Justice process (Observer News, 2020). Another example, since Brazil's beginnings, until 2007, of the 260 restorative circles carried out in schools, community and youth court shows that 88.84% have reached an agreement (Archutti & Pallamola, 2012) which suggest effectiveness. In contrast, Brazil restorative justice is left to deal with low-level crimes while facing structural and conjectural limits to the concretisation of its objectives (Andrade, 2018, p. xx). While Taylor, Chauhan, & Fondacaro, 2012 findings suggest that Jamaicans are more likely to see restorative justice as an alternative if traditional measures such as imprisonment are kept in place. Consistently in an article released by the Jamaica Information Service Associate Professor of Law at Gongza University in the United States (US), Inga Laurent praises the confidence rate of restorative Justice in Jamaica:

"It's clear to see the rising tides of restorative justice sweeping across Jamaica. The government is sensitising, building capacity and providing training" (Dawkins, 2019).

Furthermore, both countries have also adopted a similar holistic approach in their drugs court to address the incarceration of illicit drug users. Statistics from inception to date reveals, from the beginning of the Drug Treatment Courts in Kingston and Montego Bay to January 2012, a total of 721 persons were referred to the program; of that number, 450 were admitted, and among those, some 221 have graduated from the program. This rate is actually consistent with international standards (Haisley, 2013). At the same time, Brazil is also showing a difference. The cultural climate for restorative justice continues to be an issue, Andrade, 2018, showed judges perspective on restorative justice. One finding was that judges believed that the legislative provision in Brazil does not create the appropriate space for therapeutic practice. We put together the people who made this visit, the magistrates, university teachers and founded the 'Brazilian Therapeutic Justice Program', which in fact as we have a different judicial system, we could not simply create drug courts as they were created in the United States (Andrade, 2018, p. xx) also suggest a level of informality to the implementation. Consistently, The prosecutor interviewed reiterates this difference in legislation (Silva, 2019). This adds relevance to the current essay since findings across both country's judiciary system show similarities and differences, suggesting Jamaica as a more stable operational provision to mediation.

Within the sphere of Jamaica, the government is pushing restorative justice as a peaceful way of settling disputes. Nine restorative justice centres have been established across the island since the passing of the Restorative Justice Act in 2016. In addition, 14 parish centres for the training of facilitators are being set up with facilities already established in St. Ann and Portland (Dawkins, 2019 N.d). In Brazil, The first pilot projects began in Porto Alegre (Rio Grande do Sul State), São Caetano do Sul (São Paulo State), and Brasilia (Federal District),

With funding from the Brazilian Ministry of Justice and its Secretariat for the Reform of the Judiciary, and also from the United Nations Development Programme (UNDP) (Archutti & Pallamola, 2012). Currently, besides the projects mentioned above, many other programs are dealing with restorative practices that have nevertheless not yet been researched and evaluated due first and foremost to their short existence (Archutti & Pallamola, 2012). This suggests the implementation in Jamaica is more widespread.

Increasingly, the courts in Jamaica are referring cases to be dealt with by way of restorative justice methods in order to reduce the backlog. A total of 637 of the 810 restorative justice dispute sessions held between January and December 2018, were cases referred from the courts (Dawkins, 2019 N.d). Of the 810 conferences held ended in 691 agreements, reflecting an 85.3 per cent success rate (Dawkins, 2019 N.d). Restorative justice is being well developed in Brazil, and its results are encouraging. Considering the place where the programmes are being designed (inside the Judiciary Power), and the good works of the first three years, it is reasonable to conclude that it tends to collaborate with plans in the country involving the use of restorative practices (Achutti & Pallamolla, 2012, p. xx). Implementation in Brazil started in schools and courts, and they were focused on young offenders. Then they move to the community to reach the youths that commit crimes outside of the schools then implementing it to work with the judicial, district and school systems (Achutti & Pallamolla, 2012, p. xx). However, there are only a few publications on the topic in Portuguese, and many lawyers, judges, public prosecutors and other legal or non-legal actors are still reluctant to discuss its possibilities further. This can be attributed more to ignorance than to disagreement related to Restorative Justice methods and practices, and for this reason, maybe this scenario might change (Archutti & Pallamola, 2012).

The Ministry of Justice funds Jamaica restorative justice. Same can be said about Brazil, even though the legal system does not provide the legal support for the system. The Ministry of Justice, the Secretariat for reformation and the United Development fun, help to fund the project of promoting restorative justice to the justice system (Hachem, 2014, p. xx). For this reason, Jamaicans would be more inclined to use this system as the government plays a critical role in its work with the legal framework and streamlining the project under one program. Another reason for the success could be the legal system that Jamaica inherited from Britain. The "British justice system is the finest in the world" (DARBYSHIRE, n.d.), and this is the system that Jamaica has adopted. The justice system favoured English Parliament Democracy rather than the absolute European monarchy. This allows for the restorative justice system to flourish within Jamaica's legal system. The Brazilian legal system was influenced by the European and English system. This allows for the parties to choose which system they use, and this can impact how the restorative system would be able to be implemented (DARBYSHIRE, n.d.).

In closing the parameters, the institutional framework provision of Brazil and Jamaica are quite similar in many ways, yet they each remain distinct from each other. A normative framework is prevalent in Brazil and Jamaica's restorative justice system. Both countries' goals, values and provision for ethical practices recommended by the United Nations and other human rights conventions are clearly defined. Thus, best-practices are popular in both countries. Due to Brazil's and Jamaica's penal justice system past, the redefining of normative is also common. For example, the disciplinary system places value and focus on the offender, while the restorative approach places value and focus on all parties involved.

Nonetheless, Jamaica's restorative justice system has a more robust structural framework compared to Brazil's restorative justice system, which has a legislative and regulatory influence. Jamaica's structural framework makes several provisions for legislative amendments; for example, the creation of the Child Care and Protection Act in 2004 that challenges the penal nature of the country's juvenile justice system. While Jamaica's restorative justice legislative framework provides guidelines for regulation, Brazil's only has a Normative and methodological framework guiding the principles of restorative justice. Due to Jamaica's legislative framework increase the availability of transparency and accountability in their system. For example the implementation of the Child Care and Protection Act provides juvenile with the protection against issues such as degrading treatment when they interfaced with the Justice system. This legislative structure causes transparency and accountability to be more widespread within Jamaica.

Conclusion

As illustrated, despite the many similarities between Brazil's and Jamaica's constitutional provision, operational provision, and structural framework parameters of their restorative justice system, each of them contains many unique aspects as well.

Notwithstanding, the weakness in the evaluation process found in each country, since using feedbacks as a strategy to collect data can be influenced by several factors to include the role of the person providing the information. The examination shows the extent to which Jamaica's restorative justice system is showing more effectiveness is in the justice ministry's implementation of a legislative framework that provides legal support to the systems increasing transparency and accountability from a local and international level. This legislative framework provides legal support that adds more cohesiveness to the implementation of the system. Thus, the structural guidelines increase the effectiveness of implementation.

Furthermore, a legal framework such as Jamaica's case protects the constitutional provisions within a policy increasing users' security and acceptance of the new approach. Not only that Jamaica legal framework ensures that constitutional provision and policy objectives are in tandem with each other causing a shift in perception of conflict culturally. Based on the findings presented, the paper concludes that Jamaica restorative justice system is more effective than that of Brazil to the extent to which Brazil restorative justice system lacks the legislative framework found in that of Jamaica. This conclusion has also helped the authors to understand why studies have pointed to the Brazilian system lacks legitimacy. Similarly, both justice systems seem to have been hijacked by the same system that they are trying to present an alternative to, specifically Brazil, which has a stronger type of judicial restorative justice. Therefore, the study recommends that Brazil develop a system that is similar to that of Jamaica through the constitutional provision, but being context specific to the needs of Brazil, as this will provide more cohesiveness to the country's justice system. Likewise, the study recommends more government to government dialogue to ascertain best practices on the effectiveness of restorative justice. Further studies are needed to understand the confidence that citizens of both countries have in the process.

References

- [1] (2010). APAC: Brazil restorative justice prison . Retrieved from <http://www.lorenwalker.com/blog/?p=102>
- Andrade, V. R. (2018). Restorative justice and criminal justice: limits and possibilities for Brazil and Latin America. *The International Journal of Restorative Justice*, 1(2018). Retrieved from https://www.elevenjournals.com/tijdschrift/TIJRJ/2018/1/IJRJ_2589-0891_2018_001_001_002.pdf
- [2] Archutti, D., & Pallamola, R. (2012). Restorative justice in juvenile courts in Brazil: A brief of Porto Alegre and Sao Caetano. Retrieved from file:///C:/Users/Student/Downloads/Restorative_Justice_in_Juvenile_Courts_i.pdf
- [3] Centre for Justice for Reconciliation . (). Lesson 1: What is Restorative Justice. Retrieved from <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/#sthash.tGve5MoH.ylgARWA7.dpbs>
- Connecta Human Rights. (2020, February 18). BRAZIL STILL HAS WORLD'S 3RD LARGEST PRISON POPULATION. Retrieved from <https://www.conectas.org/en/news/brazil-still-has-worlds-3rd-largest-prison-population>
- [4] CPNN Culture of Peace News Network . (). Restorative Justice in Brazil: culture of peace instead of punishment . Retrieved from <http://cpnn-world.org/new/?p=16111>
- [5] DARBYSHIRE, P. (n.d.). 'British Justice is the Finest in the World' An Examination of Anglo-American Boasting. Retrieved from <https://core.ac.uk/download/pdf/74394294.pdf>
- [6] Gavrielides , T. (2011). Restorative Practices: From The Early societies to The 1970s. Retrieved from <https://yrpofri.org/wp-content/uploads/2016/11/Gavrielides-History-of-Restorative-Practices-Early-Societies-to-the-1970s.pdf>
- [7] Government of Jamaica Ministry of Justice. (2012). The National Restorative Justice Policy . Retrieved from https://moj.gov.jm/sites/default/files/rj/Restorative%20Justice%20Policy_Revised_%20Final_Policy_March_18.pdf
- [8] Hachem, D. W. (2014). Editorial - Nasce a Revista de Investigações Constitucionais. *Revista de Investigações Constitucionais*, 1(1), 4. doi:10.5380/rinc.v1i1.44818
- [7] Khamitsevich, M. (2018). World Mediation Organisation. Retrieved from <https://worldmediation.org/restorative-justice-and-reconciliation-agenda-in-brazil/>

- [8] Observer News. (2020). Ministry report high success rate for restorative justice program. Retrieved from http://www.jamaicaobserver.com/news/ministry-reports-high-success-rate-for-restorative-justice-programme_186984?profile=1373
- [9] Schuch, P. (2012). Justice, culture and subjectivity. Retrieved from http://www.scielo.br/scielo.php?script=sci_arttext&pid=S1809-43412012000200002
- [10] Taylor, C., Chauhan, P., & Fondacaro, M. (2012, December 6). (PDF) Restorative Justice in Jamaica: Current attitudes and the way forward. Retrieved from https://www.researchgate.net/publication/320623900_Restorative_Justice_in_Jamaica_Current_Attitudes_and_the_Way_Forward
- [11] THE NATIONAL RESTORATIVE JUSTICE POLICY. (2012, August 13). Retrieved from https://moj.gov.jm/sites/default/files/rj/Restorative%20Justice%20Policy_Revised_%20Final_Policy_March_18.pdf
- [12] United Nation International Children's Emergency Fund. (2010, October 18). Toolkit on diversion and alternatives to detention. Retrieved from https://www.unicef.org/tdad/index_56040.html
- [13] Watchel, J. (2009). Toward Peace and Justice in Brazil: Dominic Barter and Restorative Circles. Retrieved from <https://www.iirp.edu/news/toward-peace-and-justice-in-brazil-dominic-barter-and-restorative-circles>