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ORIGINAL ARTICLE

Restorative Justice in Uruguay: A Change of Lenses in a Reform of Criminal Justice?

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Abstract
In recent decades, several countries have adopted restorative justice as a means of conflict resolution. While this tradition has deep roots in English-speaking and European countries, the use of restorative justice has been limited in Latin America. In an innovative effort, the Uruguayan Ministry of the Interior developed a restorative justice program as part of a comprehensive reform of the criminal justice system that entailed significant transformations, mainly in the legal system (from an inquisitorial to an adversarial one) and the Uruguayan National Police Force. This article examines this restorative justice initiative in detail, describing the context of its implementation, its implications for the reform of the criminal justice system, its preliminary results and future challenges that lie ahead.

Keywords Restorative justice · Criminal procedure · Criminal justice reform · Police

1 Introduction

The state has a monopoly over criminal justice, and it performs the role of social control through punishment (retribution) with preventive goals (deterrence) (Albrecht 2016). Within the continental system—of which the Uruguayan criminal justice system is a party to—deterrence may be either general or specific and is always intended to prevent future crimes against legally protected interests. Specific deterrence may be positive when its goal is to achieve the re-socialization of the offender or negative when the offender is understood to be dangerous and needs to be separated from the rest of society. When general deterrence is positive, it reaffirms the value of obeying the norms versus the risk of being subject to punishment, implicit

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in the act of offending. When negative, it works by intimidating the population through the fear of being arrested, prosecuted and/or convicted (Hassemer 1998, 2002; Streng 1991). How these preventive goals can be achieved through criminal law remains an unresolved issue for criminologists (Albrecht 2001).

Any criminal sentence entails a significant imposition on the rights of the accused (Hörnle 2017). Such rationality is tutelary, abstract and retributive and legitimizes the power of the state against those who attempt to break the law since it averts any possible rational dialogue to reach an agreement on conflict resolution (Luhmann 2005). Moreover, it emphasizes punishment, ignoring the will and needs of those affected by a crime (both offenders and victims) and blurring the goal of social pacification implicit in the law (Galain Palermo 2016a). Finally, it deliberately ignores academic critiques regarding the negative effects of retribution on rehabilitation and dismisses diverse processes (Galain Palermo 2010) and other means of conflict resolution such as mediation, compensation or reparation (Kerner 1983; Seelmann 2017).

A relatively new approach to justice, developed over the last four decades, challenges such a rationale. It is restorative justice, which focuses on the wishes and needs of those involved in a conflict. This movement puts forward new questions. Instead of asking "who committed an offense?", what really matters is who was harmed, how they were harmed and what were the consequences. Restorative justice seeks to understand how to solve the conflict, and how victims and offenders can jointly bring the conflict to an end (Zehr 2004). A critical issue is whether this new approach can complement the current juridical practices of criminal law, or if it demands a drastic paradigm shift (to paraphrase Zehr 2004) a "change of lenses" for the whole criminal justice system. Moreover, if such a change were to take place, what would this really mean and what transformations would it entail?

This article aims to shed light on these questions by examining a restorative justice program implemented by the Uruguayan Ministry of the Interior in the context of a comprehensive reform of the criminal justice system. The article starts by discussing the conceptual implications of restorative justice. Then, it describes the context of implementation, examining victimization and fear of crime data in Uruguay, as well as the juridical context in which the program is taking place. The program is then described in detail, with a focus on the actions undertaken and the preliminary results, as well as its connection to the reform of Uruguay's Code of Criminal Procedure. Finally, the article discusses the potential outcomes of this program within the context of the new code, and it outlines some questions to guide future examinations of Uruguay's experience of restorative justice.

2 What is Restorative Justice?

Restorative justice is not a contemporary practice, but a revival of traditional conflict resolution practices, characterized by being local, close to people and more effective than mainstream methods when it comes to dealing with the interpersonal relationships behind crimes (Jaamdar 2017). The roots of the contemporary restorative justice movement can be found in pre-industrial societies. Oriental philosophies such as

the Vedas, Buddhism, Taoism and Confucianism, ancient Western civilizations like Greece and Rome and the indigenous peoples of Oceania, all resorted to restorative practices to avoid retaliation between individuals, families and tribes (Braithwaite 2002; Gavrielides 2011; Huxley 1939; Albrecht et al. 2006; Sherman and Strang 2010). For example, countries with ancient cultural roots such as India consider restorative justice as "justice that heals" (Raina and Kumar 2017). The very idea of restorative justice embraces values such as healing, compassion, mercy, mediation, forgiveness, reconciliation and sanctions (Consedine 1995). In spite of its ancient roots, the concept of restorative justice is still subject to debate in the modern world, and it is hard to find a universal definition that encompasses all the perspectives covered by this concept. However, the definition proposed by Marshall (1996) is widely accepted in the specialized literature:

> Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future (Marshall 1996: 37).

Zehr (2004) proposes an alternative definition emphasizing the purpose of the *method of healing*:

> Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible (Zehr 2004: 37)

Others emphasize the *process* of restoration, defining restorative justice:

> …as a process where those primarily affected by an incident of wrong-doing come together to share their feelings, describe how they were affected and develop a plan to repair the harm done or prevent reoccurrence (McCold and Watchel 2002: 113).

The inclusive spirit of these—and other—definitions results in differential applications. In spite of these differences, it could be said that modern restorative justice is an approach to the affairs of criminal law that focuses its efforts on *repairing* the harm caused by criminal activity without blurring the lines between criminal and civil law (Hirsch 1969, 1990).

It has been calculated that restorative practices are currently implemented in approximately 100 countries, with almost 23 different types of prison-based restorative programs in 84 countries, and over 300 victim-offender mediation programs in the USA alone, with a further 700 plus in Europe (Gavrielides 2015). Most of these programs are linked to the assumption that punishment is a chronic problem and recognize the failure of detention and incarceration practices as standard forms of punishment (Kenny and Leonard 2014). In contrast to the standard criminal justice system based on the principle of retribution, restorative justice follows methodical steps to repair the harm done to the victim. The outcome is an agreement freely entered into by the parties that repairs the harm caused (Galain Palermo 2010, 2016a). According to this rationale, imprisonment and other sentences (house arrest,

probation and alternative sentences) are not necessarily suitable for the prevention of recidivism and making reparations to victims, since they are not allowed to participate in the sentencing process. Its advocates argue that the mainstream view in the criminal justice system of victims and offenders is mistaken: it is not about enemies or people with different motivations, interests and stakeholdings, but about people who may work together to deal better with the aftermath of harm. In fact, it is argued that this mainstream assumption can even promote a desire for retaliation from the victim and society toward the offender, ignoring the fact that many offenders see themselves as victims (Sherman and Strang 2007).

Restorative justice places victims at the core of the justice process. Such an idea does not require an entirely different criminal justice system, but a reform that includes restorative agreements pursuant to the "material truth," as sought by the investigative process, plus a "consensual truth" between the parties. This implies the inclusion of alternative solutions and mechanisms that strive for social harmony, going one step further than material truth in seeking reconciliation and pacification (consensual truth). Although all this may sound strange regarding regular crimes, it has been gaining acceptance in the area of transitional justice, where restorative approaches are better suited to offering adequate mechanisms for reconciliation (Knust 2013; Baumann 2012; Galain Palermo 2016b; Fischer and Simić 2016). In this sense, truth commissions and similar political mechanisms of truth-seeking and reconciliation are more suitable than the traditional criminal justice system in dealing with transitional justice processes, since "reparations should be linked to the process of truth recovery" (Maepa 2005: 75). It is important to note, however, that restorative justice is not the only mechanism available to impose proportionate punishment for such a class of serious crimes (Olásolo and Galain 2018).

In practice, restorative justice is used to deal with minor and mid-level offenses. However, in order to achieve restorative goals, these mechanisms should go beyond minor crimes, juvenile and first-time offenders, "with the aim of providing restorative outcomes to a maximum number of crimes in a maximum number of possible situations and contexts, including those whose voluntary agreements are not possible and coercion is needed" (Walgrave 2001: 34). There are no philosophical obstacles to restorative justice being used for more serious crimes and felonies, such as homicide, rape, domestic violence or even human rights violations. But for that to happen, a change of lenses is required in criminal law, to no longer focus just on *making offenders responsible* but rather on having them *taking responsibility for what they have done.* Unlike the notion of accountability embedded in the mainstream criminal justice system, restorative justice is based on the willingness to accept responsibility (Foley 2014). Therefore, until such a change arises, the extension of restorative mechanisms is unlikely.

A key actor embedded in the restorative process is the community. Any restorative approach needs to re-involve the community in the conflict resolution process since conflicts that once belonged to it were "stolen" by public officers (Christie 1977). The role of the community is, however, controversial. While some argue that communities and offenders share responsibility for the loss caused by the crime committed in the first place, others point to community members as "indirect victims" of the crime. But which community members can participate in restorative

practices? Any individual interested in contributing to fulfilling the restorative practice by supporting either the offender or the victim. While preparing a restorative intervention, "facilitators need to identify the most appropriate 'community' to include" (Cunneen and Hoyle 2010: 17). In any circumstances, the whole community has to contribute to the reintegration of the offender. Even police officers can participate in a restorative intervention as community members.

In summary, restorative justice can and should be included in the framework of the mainstream criminal justice system. However, more empirical research is required in order to determine what restorative justice is. Such research will facilitate comparisons with mainstream mechanisms of conflict resolution to determine which one achieves better outcomes.

3 Background

Uruguay has traditionally been one of the safest countries in Latin America, registering crime rates significantly lower than its counterparts on the continent. Still, a consistent increase in major crimes over the last thirty years, tied to a growing public concern about crime and violence, forced the country to engage in a comprehensive reform of its criminal justice system. Some of these changes involved restorative justice as a means to avoid incarceration in the context of the reform of Uruguay's Code of Criminal Procedure. Before examining this reform in detail, it is worth providing some context on recent national crime trends.

Recent available data show that Uruguay has a moderate victimization rate compared to 18 Latin American countries. Despite a recent increase in this indicator, Uruguay has traditionally registered low levels of victimization (Lagos and Dammert 2012). However, in contrast to this, when fear of crime is examined, the country shows a disproportionate public concern considering its moderate victimization rate. Eighteen percent of Uruguayans fear becoming victims of crime, a figure significantly higher than in Venezuela, Mexico, Argentina or the Dominican Republic, all countries with some of the highest crime rates on the continent (Corporación Latinobarometro 2016).

Such incongruence is not surprising. Crime trends have been rising in Uruguay for over four decades. For example, when police data for homicide, robbery and theft crime trends are examined—the three main crime categories in Uruguay—the problem is clearly visible. Although 2016 showed a slight decline in homicide and robbery, all three types of crime show consistent growth in recent years (Ministerio del Interior 2016). While police data have inherent limitations such as under representation or misreporting, it helps to illustrate the failure of the Uruguayan criminal justice system to properly address crime problems, as well as the consolidation of crime as one of the main problems the country faces (Fig. 1).

When crime has a social background, criminal policy must be inclusive. In countries like Uruguay, where there is a marked contrast between victimization and fear of crime, community involvement in conflict resolution prevents potential retaliation and fear of crime from growing, enhancing the positive public perception regarding the intervention of the justice system. This, however, does not exactly apply to

Fig. 1 Homicide 2000–2016. *Source*: Ministry of the Interior of Uruguay

Uruguay, where a lack of trust in law enforcement and justice cannot be explained by high corruption indices, since the country has the lowest rate of corruption in the region. According to the International Corruption Perceptions Index, Uruguay is ranked 23rd in the world as the least corrupt country in Latin America (Transparency 2017).

Another significant problem in Uruguay is its disproportionately high rate of incarceration. With a rate of 321 per 100,000 and 11,149 people behind bars in 2017, Uruguay has the highest incarceration rate in South America (World Prison Brief 2017). With deprivation of liberty being the most common punishment, Uruguayan prisons are suffering from overcrowding and violence (Fig. 2).

In a scenario like this, fear becomes the defining feature of a normative system that violates human rights and the fundamental guarantees of its citizens. Public fear of the criminal justice system and its operators must be turned into trust (Baker et al. 2000), a goal that can only be achieved through a system based on dialogue, free will, reparation, reintegration, participation, inclusion and reconciliation (Jiang 2016). All these principles need to be translated into the justice system and its procedures. This will not be an easy task and requires a *change of lens*es through which the world is viewed by its citizens, who must leave state paternalism behind and adopt responsible post-crime conduct toward both criminals and victims (Galain Palermo 2010). Change must also take place in the "mind" of the administrators of justice, but this will most likely arise as a consequence of the first one (Fig. 3).

There is another factor which could contribute to re-signifying and dignifying the relationship between state and citizens. It relates to the first two (and only)

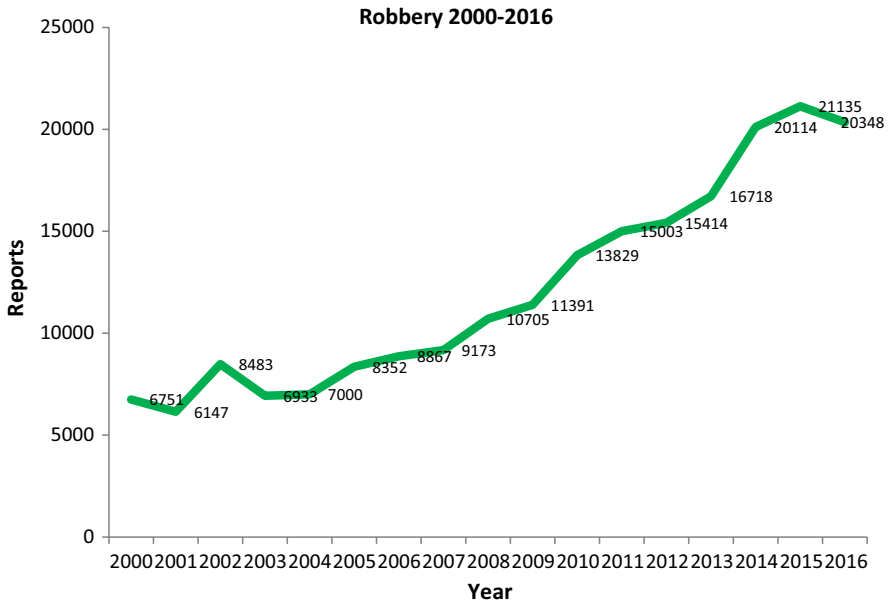

Fig. 2 Robbery 2000–2016. *Source*: Ministry of the Interior of Uruguay

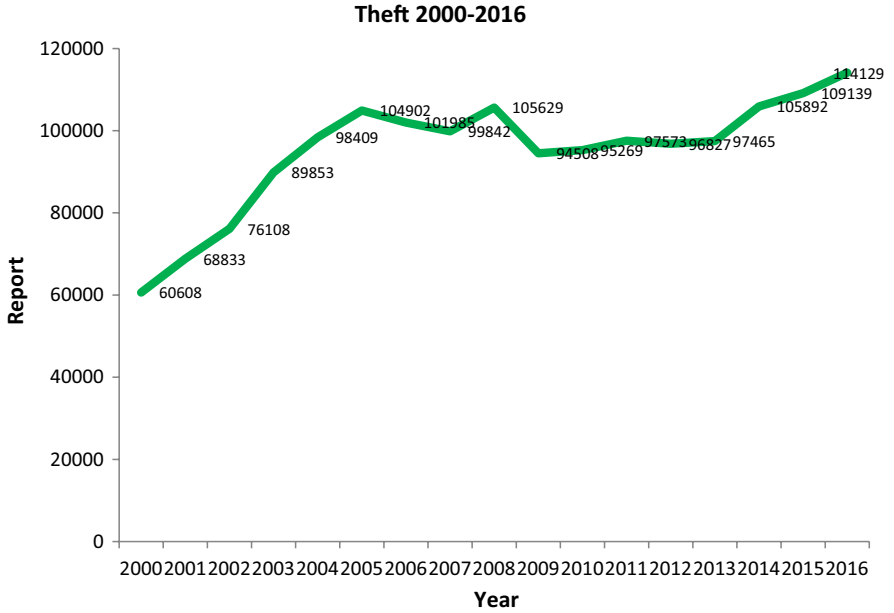

Fig. 3 Theft 2000–2016. *Source*: Ministry of the Interior of Uruguay

Table 1 Victimization rate per country 2016 (Latin America). *Source*: Corporación Latinobarómetro (2016)

Country	Victimization rate (%)
Venezuela	48
Mexico	46
Argentina	41
Dominican Republic	41
Peru	39
Honduras	38
Brazil	37
Chile	37
Guatemala	36
Paraguay	35
Uruguay	35
Costa Rica	35
Colombia	34
Panama	32
El Salvador	31
Nicaragua	31
Bolivia	30
Ecuador	29

condemnatory sentences of the Inter-American Court of Human Rights in 2011[1] and the "amicable agreement" between Uruguay and the Inter-American Commission on Human Rights in 2009, by which a reform of the Uruguayan Code of Criminal Procedure was agreed upon.[2] This raised awareness among Uruguayan citizens about their capacity to seek recourse in international human rights courts to act against the state when it—either through action or omission—violates fundamental norms aimed at their protection (Galain Palermo 2013). Such awareness could favorably influence both public authorities and citizens to take the next step and pursue more human, less violent and more participative ways of conflict resolution in an inclusive and restorative framework of human relationships (Table 1).

But this is not the only conceptual challenge to restorative justice becoming a *new science* (social, legal), as there are wide ranging and disparate views and arguments on the subject which vary according to one's philosophical vantage point such as abolitionism, Christian philosophy, the restorative movement and economic neoliberalism applied to penal theory (Reggio 2010). This topic leads us to the question as to whether we need police officers, prosecutors and judges acting as guarantors, or rather, a community justice system that requires

[1] Case Gelman v Uruguay and case Barbani Duarte and others v Uruguay.

[2] Case Jorge, José and Dante Peirano Baso v Uruguay. Resolution 86/09, Inter-American Commission on Human Rights.

Table 2 Fear of crime per country 2016 (Latin America). *Source*: Corporación Latinobarómetro (2016)

Country	Fear of crime (%)
Guatemala	26
Nicaragua	19
Uruguay	18
Colombia	17
Panama	17
Honduras	14
Costa Rica	14
El Salvador	14
Dominican Republic	14
Argentina	9
Chile	8
Mexico	8
Bolivia	8
Brazil	8
Venezuela	8
Ecuador	7
Peru	6
Paraguay	6

neighbors, social referents, psychologists or social workers acting as mediators. As can be seen, it is not just a question of substituting the binomial crime sanction for conflict reparation, but also of fundamental questions that facilitate such a conceptual evolution within a juridical framework. This ensures the voluntary participation of the parties in conflict resolutions as well as the constitutional premises of equality and legality. Due process is not just concerned with dealing with the asymmetry between the parties in conflict resolution processes but also assigns universal validity to the agreements reached. This means that they have a similar recognition and weight as any other judgement of the courts and are considered to have the force of *res judicata*. Otherwise, those who claim that we would be faced with an inter-partes proceeding, which could not take the place of penal resolutions would be right (Galain Palermo 2010).

In order to address some of the issues just described, the Ministry of the Interior of Uruguay, the government agency responsible for the oversight of the Uruguayan National Police Force (UNP), launched a pilot restorative justice program aimed at mitigating neighborhood conflicts and their consequences (del Castillo et al. 2015). This endeavor, which started in 2013, was framed within an ambitious reform of both the UNP, and Uruguay's Code of Criminal Procedure. This has resulted in the institutionalization of restorative justice within the criminal justice system of Uruguay. The actions undertaken are outlined in the following section (Table 2).

4 Restorative Justice in Uruguay

The UNP's experience of restorative justice dates back to 2013, when the Ministry of the Interior drafted a pilot restorative justice program to be developed in three police precincts in Montevideo: precincts 15th, 19th and 25th. (Precinct 17th was added to these in 2017.) In general terms, the objectives of this program were to consolidate an institutional methodology for the peaceful resolution of social conflicts in Uruguay and to restore the social relationships broken by crimes; in other words, to repair the harm caused to victims of conflicts and violence. To achieve such goals, a series of actions were undertaken.

First of all, starting in 2013, dozens of police officers enrolled in a restorative justice-training program delivered by a team of professors from the University of Cambridge. As a result, 36 officers from Uruguay's police were qualified to develop restorative justice conferences in the country. Unlike other restorative justice programs, conferences are led by police officers acting as facilitators. At the same time, complimentary workshops and events around this initiative were conducted with agents of Uruguay's criminal justice system (judges, prosecutors, public defenders and police officers) to raise awareness about it.

Prior to police officers addressing restorative justice cases, a process of dialogue between the Ministry of the Interior and the Judiciary began in 2014 aimed at building a consensus and adequately implementing restorative justice in compliance with Uruguay's legal framework. This dialogue resulted in a memorandum of agreement that enabled the Ministry to work with extra-judicial cases, meaning those cases reported to the police and dismissed by the Judiciary. Following this agreement, in 2015 the Ministry of the Interior started working with extra-judicial cases in the 15th, 19th and 25th precincts of Montevideo. While the number of cases was low at the beginning, this helped to progressively build proficiency among restorative justice practitioners.

This experience took place prior to the enactment of a new code of criminal procedure in Uruguay, aimed at addressing problems and inefficiencies associated with the inquisitorial system. The timely discussion on the new code offered a good opportunity to consolidate restorative justice in Uruguay as a means of diverting cases from sentencing, and therefore institutionalizing and raising the status of the agreement between the Ministry of the Interior and the Judiciary at the level of the Code of Criminal Procedure. Some of the implications of this scenario are discussed below.

5 Restorative Justice in the New Uruguayan Criminal Procedure Code

The Uruguayan Parliament enacted a new criminal procedure system (Law 19,293 of 2014) which came into force in late 2017, as a consequence of the previously cited *amicable agreement* between Uruguay and the Inter-American Commission on Human Rights. This agreement helped (at least normatively) leave behind

the inquisitorial system of a single judge, who leads the entire investigation and sentencing, put in place during the last civil–military dictatorship (1973–1985). This system was replaced by an accusatorial, adversarial, oral public system, in compliance with the judicial standards of the American Convention on Human Rights. Among the main reforms, the new system introduced was that preventive detention was no longer considered as an advance punishment and procedural rule, becoming instead a protective measure, the use of which must be justified by procedural matters. Perceptive preventive detention after the commission of a second crime was also repealed. At the same time, the victim now participates in the mainstream criminal procedure system, as well as in the newly enacted alternative procedures.

The new code was modified in 2016 by adding an extension to the principle of opportunity to include alternative methods of conflict resolution (articles 382–401) as well as the abbreviated criminal trial (article 272). Not only does the new reform recognize the rights of the victim regarding the gathering of incriminatory evidence by the Public Ministry (articles 79–81), but also achieves reparatory agreements with the author of the crime through the use of penal or extra-judicial mediation. The chapter "Alternative Methods of Conflict Resolution" (Arts. 382 ff), instead of a criminal investigation by the public ministry, provides for the diversion of the case into a mediation process that facilitates an encounter between the victim and the offender aimed at reaching agreement on reparatory measures. The reparations to the victim could also lead to the so-called conditional suspension of the process, whereby the prosecutor can suspend an ongoing investigation through an agreement with the perpetrator of a crime. These procedural figures build on the voluntary admission of responsibility by the author and are applied only if there is no public interest in a criminal prosecution and the crimes are not of a grievous nature (articles 383 and 393).

Thus, two principles justify the extension of the discretionary principle: lack of public interest in prosecutions and the crime being a relatively less serious one. These principles, which lead to a withdrawal of penal action, cannot be solely determined by legislators, but must instead be defined on a case-by-case basis. In order to resort to the discretionary principle, an agreement on the conditions and obligations regarding the reparations for the harm caused must be made between the parties. It must be acknowledged that sometimes the diversion into these alternative measures makes the complete clarification of the case impossible, which is a goal of the principle of legality itself and not a goal of the discretionary principle. This aims to fulfill a procedural function of celerity and efficiency based on selection instead of the material function of truth-seeking. The penal process is itself a burden that the accused must bear (whether innocent or guilty) so that the lack of interest in prosecution and the crime not being grievous in nature enable the justice administration to disregard a process that is expensive in terms of freedom, and unlikely to reveal the *material truth*, opting instead for the *consensual truth.*

Criminal procedure reform always leaves the door open to the possibility of starting a trial in the standard way when no agreement has been reached regarding the alternatives, or when such an agreement has not been honored. In such case, either a new criminal trial starts, or the suspended one is revived. Depending on the nature

of the crime, when clarification of the case is required, criminal procedure should take precedence as the general interest is served by prosecution.

The conditional suspension of the process—an agreement between the prosecutor and the defendant takes place somewhere between the process being formalized, the pressing of charges or the dismissal of the case—shall not proceed when the minimum sentence for the crime is in excess of 3 years in prison; when the defendant is already serving a sentence; and when the accused is facing another process involving conditional suspension (article 384). This feature is not an example of restorative justice but rather of negotiations between the parties that do not necessarily include the victim (although the possibility of mediation between the author of a crime and its victim is provided for in article 386c) as one of the conditions or obligations that could be agreed upon.

However, the reparatory agreement provided for in articles 393 onward could be considered as an instrument that is closer to restorative justice since from the moment of the formalization of the investigation, and throughout the process, both defendant and victim could subscribe to a material or symbolic reparatory agreement that will be made available to the judge for his consideration, with the intervention of the public ministry. It is worth mentioning that these agreements are only possible for less serious offenses, non-intentional crimes, those subject to fines, assault—with the exception of aggravated assault—property crimes, indictable crimes at the request of the victim—with the exception of sex crimes—and crimes against honor.

6 Implementation and Preliminary Results

Through the reparatory agreements introduced in the new Code of Criminal Procedure, restorative justice acquired a formal status in Uruguay, something that positively impacted the pilot program launched by the Ministry. What initially functioned as a means of addressing cases dismissed by the Judiciary has now acquired legal status as an alternative method of conflict resolution. This has led to the consolidation of restorative justice within Uruguay's criminal justice system, and consequently a significant increase in the program's caseload. Nevertheless, considering the small number of cases diverted to mediation in the juvenile criminal system—a mechanism that has been available for more than two decades—we must note the difference between laws on the books and laws in action. A relevant question for future research is that of why, even when conciliation mechanisms for the resolution of social conflict have been established since Uruguay's first Constitution (1830, Art. 107), it has seldom been used in the country. While such a question is beyond the scope of this article, it is important to raise it in order to point out how long it usually takes for these types of initiatives to achieve full implementation in Uruguay.

The mechanisms outlined over the following paragraphs describe the program's implementation in the context of the inquisitorial criminal procedure code that was in force until late 2017. While the program now operates in the same fashion, some things have changed. For example, prosecutors have replaced judges, and communication between facilitators and judicial operators has improved. Nevertheless, the mechanisms are, in general, very similar to each other.

In practice, the program operates as follows. Facilitators start by looking at all incident reports received by the police using the information management software of the UNP. The search is conducted on a monthly basis for extra-judicial cases registered during the previous month at the precincts in which the program operates (15th, 17th, 19th and 25th). Cases are filtered according to their "judicial resolution," meaning whether a judge (now a prosecutor) has made a ruling on it. A set of "potential cases" results from this filtering, which are cases where a judicial decision has been made. These are filtered again to discard cases that: (a) involve sentenced people; (b) police officers or minors are involved in; (c) involve domestic violence; (d) there is no apparent harm involved; (d) do not include any means of contacting the parties involved. Following this selection, a set of "feasible cases" is obtained. These filters are not arbitrarily applied but follow the memorandum of agreement with the Judiciary, and the recommendations of international experts and advisers who advise on the program's implementation.

Later on, feasible cases are filtered to determine which of them fulfill the necessary requirements to conduct a conference (for example, if both parties can be contacted). A list of "workable" cases is then obtained. Facilitators contact the offender first. If he or she agrees to participate in the conference, then facilitators contact the victim. If both parties are willing to move forward, a preparatory interview is coordinated separately with each of them. During this interview, facilitators explain the conference in detail to participants, learn about the conflict and make sure their interest in participating in the conference is entirely voluntary. If both offender and victim confirm their voluntary interest in participating, a conference is then scheduled.

The conference takes place in a neutral room, properly conditioned to develop a conference (sober decoration, chairs arranged in a circular fashion, water dispenser and disposable tissues available, etc.). The conference is not limited to those directly involved in the incident. If there is a consensus between victim and offender, each party is allowed to invite others to the conference. They may be people indirectly involved in the incident, relatives, friends or neighbors, whom participants believe could either add relevant information or provide support to them over the course of the conference. The conference is facilitated by one leading facilitator supported by one assistant facilitator, and it ends with the celebration of a signed agreement drawn up and agreed to by the participants. Both parties commit themselves to fulfilling the agreement over a period of time determined on a case-by-case basis. After the conference, facilitators engage in follow-up actions in the next 15, 30 and 90 days after the agreement was signed or determine whether it is being fulfilled or not.

Data from April 2015 to June 2017, made available by the Ministry shows that facilitators found 466 feasible cases, 51 of which led to a conference (Firpo 2017). This is an effectiveness ratio of approximately 1–9 cases in which a conference was held. Data for 2016 (disaggregated data was not made available for 2017) show that 25 of the 51 conferences held during that year were concluded with a successful agreement after the conference. This is the best possible scenario, where the conflict disappears after the intervention. At the same time, an agreement was signed but not fulfilled and conflict persists in 14% of cases, in 11% the agreement was signed but

not fulfilled, although conflict disappeared, and in the remaining 11%, an agreement was not even reached. While these figures seem promising, it is important to state that serious flaws exist regarding the program's data. First, data are not systematically but rather arbitrarily registered following specific requests from the authorities. This hinders potential assessments of the program's implementation and results, as data are not periodically collated and analyzed. Second, data are not disaggregated, which also makes process and outcome assessments difficult. For example, updated data on case types were not made available and only exist at a raw level. These are serious limitations to be addressed in order to determine the failure or success of the program in fulfilling its goals.

However, while a systematic evaluation of the program remains to be done, preliminary data—although weak—seem promising. If restorative justice is contributing to the mitigation and prevention of conflicts in a pilot program in the jurisdictions of four police precincts, similar results could be achieved in others. The implications of this preliminary data are discussed in the following section.

7 Discussion and Conclusions

Some concluding remarks can be made on the basis of these preliminary results. First, referenced interview data for 2016 show that 25 out of 39 conferences succeeded in solving the original conflict (Firpo 2017). While this number may not have a significant impact on the criminal justice system as a whole, the potential impact of this pilot program should not be underestimated. It must be stated, however, that this is true as far as the original conflict is concerned. Data are not available regarding the potential future preventive effects of the program. A follow-up study involving conference participants could shed some light on this matter.

A positive impact of the program on the experiences of those who participated in the conferences can also be seen. Anecdotal data collected by the Ministry show satisfaction with the restorative process among those who participated in the conferences, who have also declared they were treated with seriousness and respect by facilitators (Firpo 2017). This degree of satisfaction with the restorative process is consistent with the outcomes of other restorative programs reported on in the specialized literature (Latimer et al. 2005; Sherman et al. 2005).

Second, given the bottleneck in Uruguay's criminal justice system, which results in only a few cases being resolved judicially, restorative justice could act as an ideal complement to the mainstream judicial process. This is sustained on at least two grounds. First, in normative terms, preventive and retributive goals can be fulfilled not only through standard sanctions but also through mediation agreements. Second, international experience shows that restorative justice can be implemented at different stages of the judicial process, i.e., prior to, in tandem with or following sentencing, and also as an alternative measure to incapacitation (Sherman and Strang 2010). Such flexibility of restorative justice programs is particularly relevant in Uruguay, given the previously noted limitations of the judicial system to properly address the volume of conflicts in the country.

Third, all of the above have implications in the context of the implementation of the new Code of Criminal Procedure in Uruguay. Criminal justice cannot be understood in terms of a dichotomy between general crime prevention and specific prevention as it is a matter of choosing between the needs of the community and the needs of the perpetrator. The reform of the Uruguayan Code of Criminal Procedure has facilitated the participation of the victim, allowing justice operators (prosecutors) to resort to restorative justice as an alternative way of conflict and dispute resolution. Restorative justice can meet the expectations of those involved in the conflict and of the community, without one being absorbed by the other. Nothing prevents Uruguay from using restorative justice to accomplish both general and specific prevention goals, and at the same time increase the level of satisfaction with the justice system of those who participate in restorative practices (victims and offenders). Whether this is actually adopted in practice by the Uruguayan judicial system remains to be seen, but its formalization in law is undoubtedly an important step toward social harmony and peaceful coexistence among the citizenry.

Finally, it is important to pose some questions to guide future examinations of the process of adoption of restorative justice by Uruguay's criminal justice system. The first is to what extent will Uruguay apply the recently created alternative measures to restore broken social relations, or just to speed up agreements between the prosecutor and counsel for the defense. Secondly, in a context of a high fear of crime and permanent calls for harsh punishments for ordinary crimes, it is worth asking to what extent Uruguay's society and the institutions of its criminal justice system are prepared to accept and adopt a different approach to punishment. Thirdly, will all these transformations result in an improvement of the capacity of the system to properly address violent incidents and conflict, while at the same time preventing future incidents and improving citizens' satisfaction with the justice system?

All these questions are of importance and should guide future investigations of the experience of Uruguay's criminal justice system with restorative justice. Any normative reform in this field will not be successful if the need for real change in the mechanisms for achieving justice and social harmony is not understood by justice operators and society as a whole. Only a transformation in how citizens think—a process that starts by increasing the visibility of the problem, educating, advertising and explaining the disadvantages to which all citizens (not just criminals) are subjected to—leads to an actual change of lenses in Uruguay's criminal justice system. Resistance and lack of interest demonstrated by both legislators and judicial officials against restorative practices will only cease when the benefits of the new system are acknowledged and made visible (even if it is only complementary to the mainstream model) and when every actor involved in the justice process understands that this new model does not signify a loss of power, but rather a redefinition that leads to better access to justice for all.

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