

THE ROLE OF ORGANIZED CRIME IN INFORMAL JUSTICE SYSTEMS: THE BRAZILIAN CASE

Enformel Adalet Sisteminde Organize Suçun Rolü: Brezilya Örneği

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Abstract

Informal justice system is an alternative form of justice or dispute resolution mechanisms falling outside the scope of the formal justice system. Also named as non-state justice and security systems, it provides safety, security and access to justice in communities where the state does not fulfil its obligations. Such systems are very common practices in developing countries and countries in transition because they can be more relevant and accessible for poor people than state institutions. However, they may reinforce local power inequities and human rights violations. On the one hand, research associates informal justice with low cost, speed, accessibility, cultural relevance and responsiveness to deprived people's concerns. On the other hand, it is also associated with abuse of power and non-compliance with international human rights standards, such as inhuman and degrading punishments and lack of accountability. Nevertheless, this paper intends to examine the role that organized crime performs in the informal justice systems of Brazilian shanty towns, usually referred to as "favelas". It argues that in such deprived communities, organized crime groups provide safety, security and access to criminal justice by for example, finding the responsible for local crimes such as robbery, rape or homicide and punishing them with the most variable forms of penalties such as gun shot or castration. Meanwhile, they expect respect and compliance from the members of those communities, restricting their freedom under constant life threats and human rights violations.

Keywords: Access to justice, criminal justice, informal justice system, conflict resolution, organized crime.

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Özet

Enformel adalet sistemi, formel adalet sistemi dışında ve formel adalet sistemine bir alternatif veya bir anlaşmazlık çözüm mekanizmasıdır. Devlet dışı adalet veya devlet dışı güvenlik sistemi olarak adlandırılan enformel adalet sistemi, devletin yükümlülüklerini yerine getiremediği yerlerde toplumun güvenlik, emniyet ve adalete erişimini sağlamaktadır. Bu sistem, fakir insanların devlet kuruluşlarına ulaşma imkânlarının kısıtlı olduğu gelişmekte olan veya dönüşmekte olan ülkelerde daha fazla uygulama imkânı bulmaktadır. Ancak, bu durumda da insan hakları ihlalleri ve mahallî güçlerin eşitsiz bir şekilde güçlerini kullanmaları gibi sorunlar ortaya çıkmaktadır. Araştırmalar enformel adalet sisteminin bir yandan düşük maliyet, hız, rahat erişim, kültürel değerlerin göz önüne alınması, dezavantajlı insanların sorunlarıyla ilişkili olduğunu gösterirken, diğer yandan gücün istismar edilmesi, insanlık dışı ve tahkîr edici cezalandırmalar gibi uluslararası insan hakları standartları ile uyumsuzluk ve hesap verebilirlikten yoksunluk gibi olumsuz konularla da ilişkili olduğunu göstermektedir. Bu çalışma, Brezilya'daki "fevelas" denilen gecekondu bölgelerinde karşılaşılan enformel adalet sisteminde organize suçların rolünü incelemeyi amaçlamaktadır. Çalışma, organize suç gruplarının bu gecekondu bölgelerinde enformel adalet sistemini çalıştırarak örneğin gasp, tecavüz ve cinayet gibi mahalli suçların faillerini yakalayıp ateşli silahla vurarak veya hadım ederek sağladıkları güvenlik, emniyet ve adalete erişimi tartışmaktadır. Organize suç grupları bölgede yaşayanların hayatlarına kast ederek ve insan hakları ihlalleri ile sınırladıkları özgürlükler karşılığında mahalli sakinlerden saygı ve iltifat görmeyi beklemektedirler.

Anahtar Kelimeler: Adalete ulaşma, ceza adaleti, enformel adalet sistemi, çatışma çözümü, organize suç.

Introduction

Informal justice system is an alternative form of justice or dispute resolution mechanisms falling outside the scope of the formal justice system. Also named as non-state justice and security systems, it provides safety, security and access to justice in communities where the state does not fulfil its obligations. Such systems are very common practices in developing countries and countries in transition, particularly in Brazil, which is the field research of this paper.

Brazil is a country with an area of 8,456,511 square km and of 180 million inhabitants. The number of foreigners is not high although the country had faced several waves of immigration during the first and second world wars, consisting mostly of nationals from Italy, Germany, Japan, Lebanon and Portugal. However, the mixture of races is a strong character-

ristic of its population, the Brazilian being a mixture of the white European, the black African and the Native Indian (Ribeiro, 1995). The country is a direct democracy divided in states, governed by federal legislation, although states have administrative autonomy and therefore the authority to pass legislation on administrative issues.

Concerning the economic status, the national income per capita is the 64th in the world. This means an average of 5,300 Euro or 10,600 Turkish Lira per capita. This may not seem very low; however there is such inequality in the distribution of welfare that the average of the population has a monthly income of 250 Euro or 502 Turkish Lira. The rate of unemployment was 6.2% as of September 2010 and 14% of the population is illiterate. (Instituto Brasileiro de Geografia e Estatísticas, s.d.).

Brazilian criminal justice system follows the civil law. Crime is a public matter and it is the state that has the right to prosecute and punish. The victim has a very restricted role of assistant to the prosecutor in certain crime types or the classic role of witness if called upon by criminal justice authorities. Therefore, in order to sue someone in case of crime offense, victim should report the crime to the police which starts investigation procedures mostly ex-officio and forwards it to the Public Prosecutor. Only in case of petty offenses or intimate offenses such as rape, the victim may decide whether to prosecute or not the offender (Pedra Jorge, 2005). However, as we will see, for reasons such as lack of credibility in the police, difficulties to reach police stations, lack of knowledge concerning the justice system, lack of resources to pay for a lawyer, lack of state attorneys to guarantee for deprived people's rights, huge length of proceedings, access to the criminal justice system is an issue for Brazilian population, mainly people living in deprived communities.

Yet, shanty towns or favela residents need some type of public-safety mechanism that has coercive power to sanction and control behavior that undermines community interests. Since the 1970s and later in the 1980s, Brazilian and European scholars have highlighted the consequences of lack of access to justice and the implementation of informal justice systems such as organized crime "courts" in deprived communities. Pasárgada or Favela do Jacarezinho was one of the first cases of informal justice studied by social scientists in the country (Junqueira, 1996).

Therefore this paper intends to examine the role that organized crime performs in the informal justice systems of Brazilian shanty towns, particularly using the example of one organized crime group called Primeiro Comando da Capital (PCC) [First Command of the Capital] in São Paulo. It argues that in deprived communities, organized crime groups provide safety, security and access to criminal justice by for example, finding the responsible for local crimes such as robbery, rape or homicide and punishing them with the most variable forms of penalties such as gun shot or castration. Meanwhile, they expect respect and compliance from the members of those communities, restricting their freedom under constant life threats and human rights violations, though their credibility and prestige has increased.

For this purpose, we will first provide to the reader basic information concerning the concept, forms, advantages and disadvantages of informal justice systems. Following, we will briefly describe the world of organized crime in Brazil and highlight the main criminal



organizations to date. Finally, we will explain how criminal organizations such as PCC put into practice informal criminal justice systems of “crime courts” as noticed in the media. At the end we acknowledge the advantages of the formal criminal justice systems in spite of its inefficiency and suggest alternatives for improvement.

1. Informal Justice Systems: Origins and Theoretical Background

Law-making and enforcing is one of the core functions of a state. Citizens have the right for equal treatment under the law, meaning among other rights access to justice. If however state has limited capacity or will to provide for equality of rights to its citizens and for access to justice, marginalized or victimized groups might not recognize law as legitimate and reliable and are likely to create and establish their own systems of justice and rights and their own forms of social control, systems that suit their needs and express their values.

Informal justice system is an alternative system of conflict resolution or a dispute resolution mechanism falling outside the scope of the formal justice system and not administered by the state (Wojkowska, 2006). Also named as non-state justice and security systems or community-based justice it provides safety, security and access to justice in communities where the state does not fulfil its obligations. It is the result of a social demand for access to justice, as well as the result of the movement for alternative forms of justice and conflict resolution which promotes more restorative solutions (Pedroso & Trincão, 2004). It has also its roots in the penal law abolitionist movement, according to which we should resolve conflicts through mediation, conciliation and substitute prison for other forms of social control (Hulsman & Celis, 1997; Andrade, 2006b).

Although “informal justice” is a term that can describe diverse systems of informal justice (indigenous, customary, restorative and popular) it mainly emerged from civil society initiatives in developing countries or post-conflict societies because of the crisis within the formal justice systems and the difficulties that societies found to access justice. Indeed, it is estimated that informal justice systems deal with the vast majority of disputes in many developing countries. (Department for International Development, 2004; Wojkowska, 2006).

They are widely used in rural and poor urban areas, where there is often minimal access to formal state justice, because they can be more relevant and accessible for poor people than state institutions. They tend to address issues that are of deep concern to poor people, including personal security and local crime; protection of land, property and livestock; and resolution of family and community disputes. (Department for International Development, 2004).

Besides its variable nature, some common elements between the diverse systems of informal justice can be identified (Wojkowska, 2006):

- Since conflict is perceived as conflict of all, the solution of the conflict is also of collective interest;
- Decisions are taken based on a process of collective consultation and agreement between the parties;

- Emphasis is on reconciliation and social harmony;
- Mediators are chosen by the community;
- There is a high degree of popular/public participation;
- The system deals with all forms of different conflict and it makes no distinction between criminal or civil cases;
- The execution of the decision is guaranteed through social pressure and sometimes employed by parties themselves.

Nevertheless, it can apply both violent and non-violent forms of conflict resolution. As we will see in the following, on the one hand informal justice systems may enhance the human security of a social group, especially individual security, crime prevention and victims' empowerment. On the other hand, it may enhance fear, violence and empower organized crime. In this regard, criminal organizations in Brazil, such as Primeiro Comando da Capital (PCC) which controls certain shanty towns or favelas in São Paulo, offers individual security and access to criminal informal justice to the urban poor citizens living in those favelas, by finding the responsible for local crimes such as robbery, rape or homicide and punishing them. Meanwhile, they expect respect and compliance from the members of those communities, they apply death penalties and restrict people's freedoms under constant life threats, including their freedom to plead and report crimes to the formal criminal justice system, as we will see in item four of this paper. However, it is important to understand the different forms and the characteristics of informal justice systems before explaining the state of the art of organized crime and informal justice systems in Brazil.

2. Different Forms of Informal Justice Systems

According to literature review there are several different types of informal justice systems all around the globe, both applying violent and non-violent forms of conflict resolution.

Table 1 shows the most common forms as well as also identifies their practice in certain countries providing practical examples of application (Department for International Development, 2004; Faundez, 2003; Goldstein, 2005; Hensler, 2003; Monaghan, 2008; Schärf, n.d., Wojkowska, 2006).

Table 1. Violent and Non-violent forms of Informal Justice Systems

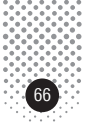
VIOLENT	NON-VIOLENT
<p>Vigilantes or Vigilantism: citizens who have beliefs or values which the state does not enforce or does not enforce sufficiently harshly, and they take it upon themselves to administer the enforcement by the means they believe appropriate. The borderline between vigilantism and a private army is thin. In South Africa for example, suspects are summarily judged in a street hearing and then punished, even executed by various means such as stoning, burning, beating and shooting (Schärf, n.d.; Monaghan, 2008).</p>	<p>Customary justice forums: chiefs or traditional leaders who during pre-modern forms of governance were judges, police and governors wrapped in one personality. They apply customary law which is socially respected. Given the fact that urbanization is very low in most southern African countries, it is the most common form of dispute resolution (Schärf, n.d.).</p>
<p>Private policing or private armies: armed groups usually with the involvement of retired police officers, militaries or soldiers who provide justice with their own hands, executing allegedly criminals. It may take many forms. Social cleansing is one example. Private policing are hired by local businesses to “clean” the streets from beggars, street children, harmless thieves and sexual workers who disturb and give a bad image to their commerce, so they can trade in peace.</p>	<p>Non-government organizations: There are a large range of NGOs that perform non-state justice functions. Some provide victims assistance, others settle disputes peacefully with mediation, and others teach residents how to solve their own disputes peacefully. These are spread world wide.</p>

Militias: groups of paramilitaries who have the role of community protectors and who are responsible to uphold the law in the areas that they control. Such justice involves a range of punitive measures against individuals who violate some community norm, as defined by the paramilitary group. **In Northern Ireland**, statistics on violent crime include “punishment” beatings, and shootings perpetrated by paramilitary groups (Monaghan, 2008).

Street committees: called neighborhood dispute resolution forums. These are the most common form of non-state justice system in urban settlements and townships. Their dispute resolution processes aim to achieve reconciliation over retribution (Department for International Development, 2004). **In the United States of America** for example, community boards were established in San Francisco. These justice centers provided for mediation between people involved in the conflict, seeking remedies for social violence. Besides, they introduced to courts the idea that alternatives forms of dispute resolution might assist courts in dealing with their own caseloads (Hensler, 2003).

Lynching: although lynching occurs both in rural and urban areas, it tends to attract more political attention in urban areas. Lynching is a form of collective violence with the purpose of “serving justice” practiced by groups of residents. It includes more often beating, but it also has been reported hanging, stoning, shooting and burning. In recent years, there have been reported cases of lynching in a variety of countries in Latin America: **Argentina, Brazil, Bolivia, Ecuador, Guatemala, Honduras and Mexico.** (Faundez, 2003).

Religious courts: customary law in **Afghanistan** is steeped in what are perceived as deeply Islamic norms and practices. The primary means of informal dispute resolution is an ad hoc council of village notables and elders, almost always exclusively men, who are gathered to resolve a specific dispute between individuals, families, villages or tribes. These bodies are most often engaged as mediators, using their knowledge of custom, Islam, and the parties – as well as social and financial pressure – to establish a consensual settlement. The fundamental goal is to restore community harmony, which is generally achieved by arriving at an equitable settlement that corrects harm done to honor and/or property (Wojkowska, 2006).



<p>People's courts: established within the townships of South Africa in order to deal with normal crime but by the mid 1980 they were dealing more often with political crimes. Such courts were characterized by their predetermined assumption of guilt of the accused, instant redress, and engagement in human rights abuses.</p>	<p>People's mediation courts: created in 1982 by the Constitution of China, they are more than one million nowadays. Participation in mediation is voluntary in principle, and disputants can take their cases to court if mediation fails. The People's mediation courts handle more than seven million civil cases per year, including family disputes, inheritance issues, land claims, business disputes, and neighbor conflicts (Wojkowska, 2006).</p>
<p>Street gangs and organized crime groups: conflict resolution mechanisms and even "informal justice courts" with public hearings and judgments established by organized crime groups in order to keep the criminal justice system (especially police) away from their territory, enabling them to move on with their businesses in peace. This is the main type of informal justice system which will be analyzed in this paper, particularly its application in Brazil.</p>	

On the one hand, research associates informal justice systems with low cost, speed, accessibility, cultural relevance and responsiveness to deprived people's concerns. On the other hand, it is also associated with abuse of power and non-compliance with international human rights standards, such as inhuman and degrading punishments and lack of accountability. In the following we will review the strengths and weaknesses of informal justice systems. Table 2, adapted from Wojkowska, 2006, points out the strengths and the weaknesses of informal justice systems throughout the world.

Table 2. Strengths and Weaknesses of Informal Justice Systems

STRENGTHS	WEAKNESSES
Process is simple, fast and conducted in the local (and understandable) language	The process has no procedural safeguards. The accused has no right of defense or to contradict the proofs against him/her
Focus is not just on punishment but also on victim’s compensation.	Decisions taken might be inconsistent with basic principles of human rights, such as cruel and inhuman forms of punishment or decisions that perpetuate the subordination of women or the exploitation of children.
Formal and informal justice systems can be good partners. Petty offenses can be dealt by informal criminal justice systems and take off the load of courts.	Informal justice “authorities” may take decisions without taking the formal state law into consideration, thus depriving people of their lawful rights.
Since informal justice system are close to the community, community members often have a sense of ownership towards those systems, which contributes to the enforcement of the decisions.	*Decisions are non-binding and therefore rely primary on social pressure for execution.
Mediator/arbitrator is a member of the community which means that he/she most often understands the problem and is more capable of finding practical solutions	Mediator/arbitrator might decide/judge depending on his/her own knowledge and moral values and not on the legal system.
Informal justice systems are usually close to the homes of the people who fall within their jurisdiction. They are usually free or affordable.	Informal justice systems are not immune from the same political influence or elite domination evident in the courts of some countries. They may reinforce existing power hierarchies and social structures at the expense of disadvantaged groups, such as women, minorities, young people and disadvantaged groups, resulting in an unfair and unequal system.

3. Organized Crime in Brazil: Overview

There is no specific law in the Brazilian legal system which provides the concept of organized crime or criminal organizations. (Barbato Jr., 2007). So far, academy and advocates have been employing the concept provided by the United Nations Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 of 15 November 2000.



Even the Superior Justice Court in Brazil has been applying this concept in its decisions (Gomes, 2009).

However, there is specific legislation providing police and judiciary with legal tools in order to fight organized crime in Brazil - Law n. 9.034 of 1995. Among other issues, this law permits the insertion of intelligence or police agents in criminal groups in search for evidence. During the investigation process, the authorized agents can act as member of a chosen group in order to gather information or proof. Their final objective is to dismantle the organized group. The proof collected by those infiltrated agents, as well as their testimony may be used as proof against the organized group in court (Souza Filho, 2007). Unfortunately, this law went into effect once the phenomenon of organized crime in the country had already spread out.

Though literature is not conclusive about the origins of organized crime in Brazil, it seems that it has its origins in the seventies. It is said that the first criminal organization in the country was the Comando Vermelho (CV) [Red Command]. CV was founded in a state prison called Candido Mendes, in the state of Rio de Janeiro, Ilha Grande, in 1979 by a group of political prisoners³ which came together in order to fight against violations and human rights abuses in prison. They were also responsible for informing common prisoners (not in prison for political reasons) about their rights, motivating in their counterparts instincts of revolution. (Barbato Jr., 2007)

During the 1990s, they were the biggest criminal organization in the country, responsible for drug trafficking and for robberies in banks and jewelry shops. Nowadays most of the leaders of CV are either dead or in jail. There are however other two criminal organizations, which originated from the collapse of CV, which are Terceiro Comando Puro [Pure Third Command] and Amigos dos Amigos [Friends of Friends].

Another author, Paixão (1987), however indicates that the first known groups of organized criminals appeared in the 1980's (the Falange Vermelha, Serpentes Negras), in both Rio de Janeiro and São Paulo. They were a consequence of what he identified as the "modernization of metropolitan criminality". Bank robberies and drug trafficking were criminal activities that required increasing "organized action as a requirement of efficiency." (Paixão, 1987, 77). They became famous for their criminal organized interventions and gained prestige in the world of crime. This was therefore the bases for the constitution of leaders in the prison environment and for the constitution of groups in the world of urban criminality in Brazil (Adorno & Salla, 2007).

There is a more recent big criminal organization in Brazil: PCC. PCC was founded in 1993, in one of the prisons of the state of São Paulo - Casa de Custódia de Taubaté. It first expanded its activities to other prisons in São Paulo. The idea of the organization was to take

3 *Brazil was under dictatorship of the Army from 1964 to 1985. During this period, 424 persons were killed or disappeared and several others were imprisoned as political criminals and tortured. Recognizing the abuses of this period, the Federal Government of Brazil paid compensations of 100 to 150 thousand reais to the direct victims/survivors and/or their families (Secretaria Especial dos Direitos Humanos, 2007).*

the control over the prisons. Suddenly, they took the control over certain poor districts in the capital of São Paulo. Nowadays, they have the control even over other cities in the country. In the areas that they dominate, they control drug dealing, bank robbery, heavy goods vehicle theft and freight highway robbery, kidnapping and attacks to armored vans and to luxurious residences. In the following there is a summary of what they were capable of in May 2006:

From May 12 - 20, 2006, 439 people were killed by gunfire in São Paulo State, according to autopsies prepared by 23 local coroners' offices, which were then examined by the Regional Medical Council. Compared to the same period in previous years, as well as to the weeks before and after this period, the number of deaths was quite high, suggesting an exceptional situation. These deaths were accompanied by waves of violence including: rebellions in 73 prisons in the state, aggression and attacks against public agents, above all police officers and penitentiary agents, against civilians, against private buildings such as banks and against public buildings such as police stations. Fires were also set to public transport vehicles such as buses. The most surprising development was the temporary paralyzation of activities in the country's largest city, São Paulo, quickly exacerbating the fear and insecurity that have long been widespread among residents (Adorno & Salla, 2007, p. 214).

Ninety-five buses were set on fire and metro stations were targeted with gun shots. In the afternoon of May 15, public buses stopped their services and left 5,5 million inhabitants without transport to go home. Guarulhos Airport, the biggest in the country, closed its doors for certain hours due to bomb threat. Several people were harmed and 25 law enforcement officials were killed. Attacks were due to the transfer of 765 prisoners, PCC fellows including their main leader, Marcola, to another prison of maximum security. (Barbato Jr., 2007) Rebellions in correctional facilities in the states of Rio de Janeiro, Minas Gerais, Pernambuco, Alagoas and Mato Grosso also took place under the command of PCC (Teixeira, 2006). PCC's attacks motivated a climate of terror and insecurity which was never witnessed in Brazil. Due to fear, civil society stopped its ordinary activities, closing shops, schools, universities, even the court of justice were closed. (Barbato Jr., 2007; Teixeira, 2006).

Finally, to stop the attacks there are rumors that the governor of the state of São Paulo and the Secretary of Defense negotiated with PCC leaders. They would stop the attacks in exchange of respect to certain prisoners' rights such as sunbath and family and conjugal visit which had been temporarily suspended after the transfers. (Adorno & Salla, 2007; Barbato Jr., 2007; Teixeira, 2006).

In 2001 they had already organized a mega-rebellion that simultaneously shook 29 penitentiary establishments in the state of São Paulo, supported by cell phones and clandestine telephone exchanges, in a synchronized organization never seen before (Adorno & Salla, 2007). Prisoners destroyed, burned and killed other prisoners and harmed correctional agents.

Despite the advances represented by the studies of certain Brazilian authors such as Zaluar (2004), Misse (2006) and Minguardi (1998), little is known about organized criminality in Brazil. Most information has been collected by media which has easier access to shanty towns; places where organized criminal groups hide and conduct most of their operations. Field research is risky and not really worth (in terms of finance).

Certainly, the models of analysis of organized crime such as the Mafias and its form of development in Italian society (Lupo, 2002) since the 19th century, and its later dissemination in the United States in the early decades of the 20th century, does not appear suitable for explaining the forms that collective crime organization has assumed in contemporary Brazilian society (Adorno & Salla, 2007).

However, not much different from other criminal organizations worldwide, organized crime is to a large degree related to drug dealing. The enlargement and empowerment of criminal organizations however in developing countries is certainly due to the failures of the state, either it be the inefficiency of the justice system or the socio-economic problems which facilitate the recruitment of more “soldiers”. They take advantage of the failures of the state which very poorly, or does not provides social rights, “criminal and civil justice, personal safety, and collective security” (Sung, 2004). In Brazil for example criminal organizations recruit urban poor citizens, generally living in large shanty towns on the outskirts of the major cities, without work or with work but searching for more profitable options, to serve as salaried workers. They control drug distribution, points of sale, the circulation of money and debts contracted by consumers and small dealers (Adorno & Salla, 2007).

To the residents of the Brazilian shanty towns they are even a “parallel state” (Barbato Jr, 2007). Indeed, analysis conducted in 59 countries, including Brazil and Turkey, showed that an active underground economy provides criminal organizations with ample opportunities to expand their influence and legitimacy among ordinary citizens (Sung, 2004). According to Alba Zaluar⁴ in the 1990s, an investigation was conducted by the Parliamentary and among their conclusions; they mentioned that 50% of residents’ associations in the shanty towns were controlled by organized crime. Organized crime provides employment, health care, social activities, such as parties and open to the public concerts.⁵ It is the state of the world of crime which fills the gap of the formal state. More recently, it was also observed by the media and certain investigations of the police that they also provide criminal justice systems in the shanty towns, as we will see in the following.

4 During interview to Review Ponto.Urbe (Núcleo de Antropologia da USP) in September 08, 2009. Retrieved October 08, 2010 from: <http://www.pontourbe.net/edicao5-entrevista>.

5 Yet, during such parties in deprived communities, drug market leaders such as Marcola from PCC distribute drugs for free, similarly to what had happened in the USA, in New York City in the early 1970s. The drug lord in the USA, or Frank Lucas (featured by Denzel Washington in the movie *American Gangsters*) used to distribute heroin for free in the streets of Harlem, a neighborhood in the New York City borough of Manhattan. He used to call it “Blue Magic” due to its pureness.

4. Informal Justice Systems in Brazil: The Role of Organized Crime

Criminal Justice System receives severe critics of the Brazilian population due to its inefficiency. It is inefficient because it is selective and promotes discrimination; it puts more often vulnerable people such as poor, black, and young males to jail who are frequently under suspicious of the police (Andrade, 2006a); it does not provide for victims' empowerment and participation (Fernandes, 1995; Pedra Jorge, 2005); courts hold excessively long proceedings (Ribeiro & Duarte, 2009), and it is a corrupted system, close to highly corrupted (Transparency International, 2010).⁶ Moreover, it has been criticized by academy, policy makers and international organizations as a source of human rights violations (Andrade, 2006a) and promoter of the cycle of violence. According to Philip Alston (2010, p. 2) Special Rapporteur on extrajudicial, summary or arbitrary executions concerning his follow-up visit to Brazil:

Extrajudicial killings remain widespread, and the numbers of killings by police continue at unacceptably high levels. Police officers are responsible for unlawful killings of suspected criminals and others, through the use of excessive force or targeted killings in poorly conceived and counter-productive police operations. Militias and death squads continue to operate with the participation of both current and former members of the police, and sometimes with links to senior officials and politicians. Overall, the norm remains that citizens, especially residents of favelas, remain hostage to violence from gangs, militias and the police. Few of the perpetrators are prosecuted or convicted, especially when they are police officers. In addition, gangs reign supreme in the prisons, leading to continued violence and deaths in penitentiaries throughout the country.

Therefore, rule of thumb for the residents of Brazilian shanty towns: even though you are a crime victim, police will consider you a suspect. Thus, as Chico Buarque, a Brazilian composer would say: "call the criminal for help."⁷

For all these reasons, deprived people, usually shanty towns' residents, fear the criminal justice system and mostly its main door which is the police. "Favela residents view the police as a corrupt, arbitrary, and violent force used by the wealthy against them" (Junqueira & Rodrigues, 1993). They do not believe in the rule of law⁸; they fear and they feel intimi-

6 According to *The Transparency International Corruption Perception Index*, which ranks countries in a scale from 0 (highly corrupted) to 10 (very clean), Brazil marks 3.7. Questions to measure perception of corruption in the public sector include topics such as bribery of public officials, kickbacks in public procurement, embezzlement of public funds, and questions that probe the strength and effectiveness of public sector anti-corruption efforts.

7 Chico Buarque de Holanda, a world wide famous Brazilian composer, in a song called "Weak up, my love" written in the 1970s as a reaction to the dictatorship, had already highlighted that citizens should not trust the police, and therefore, they should "call the criminal" instead of calling the police.

8 Shirley (1987) even highlights that the law's lack of legitimacy in Brazil dates of the 19th century. Since the Portuguese Emperor in Brazil, there are three different types of law: the law of the state, which means the law of the richest and the bourgeois; the law of the colonels or the owners of big lands/rural properties; and the law of the rural and urban poor.



dated; they do not understand the system and its language. They have difficulties to access courts and once there, they usually face more problems than solutions for their conflicts. Thus they search for alternative and more reachable methods to solve their conflicts and to have justice served.

Often, they search for solutions in their own communities, meaning criminal organizations.⁹ Certainly, this is an advantage for organized crime. In order to sustain illegal operations, they need to either bribe or to somehow keep police away from their territories. For this purpose, they have to maintain order and social harmony, provide security and conflict resolution mechanisms to the residents of the shanty towns so they have even less reasons to call the police. It is a social contract between organized crime – the parallel state - and residents of shanty towns – citizens of such state: organized crime provides for security, certain social rights and reduces the risk of personal and property crimes and shanty town residents agree not to call the police in case of conflict/crime but to call the organized crime “arbiters” to deal with the problem. Police is away from shanty towns and organized crime can do business in peace.

Boaventura de Souza Santos (1977) and Junqueira and Rodrigues (1992) had already suggested the existence of such informal justice systems led by organized crime in the shanty towns of Rio de Janeiro, particularly in “Favela do Jacarezinho”, also called Pasárgada. Particularly Junqueira and Rodrigues (1992), report five case studies:

1. Resident 1 calls organized crime because the water pump was stolen from his house. Less than 24 hours later, organized crime finds the thief and asks the resident which punishment he/she would like to give him. They suggest shooting his hand.
2. Due to disorder provoked by children who were throwing stones, Resident 2 which felt disturbed by them, calls one in organized crime group who sends one arbiter to reestablish order.
3. One 16 years old adolescent kills a seven years old child by mistake during bus robbery. Fearing police investigation in the favela, organized crime conducts investigation, identifies and kills the criminal whose body is left at the favela entry in purpose to be found by the police.
4. A girl is raped inside the favela. Organized crime finds the criminal and applies the penalty of castration.
5. Two residents argue on the possible edification of a wall between their homes. One of the residents, in order to solve the issue, calls organized crime group that intervenes to make a conciliation between the residents.

Therefore, organized crime, in the early 1980s was already “solving” conflicts between neighbors, crimes, and even executing penalties, such as corporal or death penalties, according to their own codes of conduct. Since December 2008, the federal government,

9 *Although research suggests that other forms of informal justice such as militias, private armies and lynching are also common in Brazil, in this paper our focus is the informal criminal justice system provided by organized crime.*

together with the state government of Rio de Janeiro has been investing in community policing, believing in the philosophy that community interaction and support can help control crime, reduce fear, promote social equality and improve life quality. CV and his fellows are certainly still powerful crime organizations but government seems to be taking more care of its population – for reasons which are obviously not only the human security of its citizens but also because of the pressure from international community since the city of Rio de Janeiro will host the *Games* of the XXXI Olympiad.

Basically, the idea is to re-establish control over territories lost to traffic dealers. Special forces operatives swept into the shanty towns, occupying alleyways and sending drug traffickers scattering. Such kind of operations happened many times in the past in the shanty towns of Rio de Janeiro. This time the difference is that police task force first occupies the territory and weeks later, when the area is “clean”, military police establishes units called UPP (Units of Pacifying Police). Seven of Rio’s 1,000 favelas have been occupied in the last 18 months. By the end of 2010 authorities say 59 new favelas will be occupied. It has been observed that this public policy has helped to slightly reduce the influence of organized crime in certain shanty towns of Rio de Janeiro, such as Cidade de Deus, which became famous worldwide after the 2002 film *City of God*, directed by Fernando Meirelles.¹⁰ But we would rather say that it is too early to assign crime rate reduction (or increase, because certain territories occupied by UPPs had also shown increase) to such public policy.

More recent, one case that has been studied by academy and reported by local media is the informal criminal justice system provided by PCC in the shanty towns of São Paulo. Initially, PCC courts were established in prison in order to judge their own members and any violation of their own codes of conduct happening in prison.¹¹ However, recent police investigations – documents found and transcripts of wire tapping - revealed that such courts are spreading to other territories of PCC and ruling not only violent crimes committed in the communities that are under their control, but also petty offenses such as pick pocketing and purse snatching, small fights between neighbors and even infidelity. (Dias, 2009).

PCC courts are functional tribunals. They function as formal criminal courts. They are organized by PCC fellows just like real court trials in case of violent offenses such as homicide, rape and disloyalty to the PCC faction, in order to provide for the victim a response and to provide for favela residents some type of public-safety mechanism that has coercive power to sanction and control behavior that undermines community interests. As mentioned before, it also provides to the organization the freedom to do business without the interference of the police because favela residents, as a matter of respect and fear of PCC leaders, do not inform the police about conflicts or crimes occurring in the neighborhood.

Police phone tapping, media and scholars research suggests that during such trial

10 To learn more about UPPs in Rio de Janeiro, check the following official website: <http://www.upprj.com/en/>

11 Research suggests that PCC has 16 written codes which are presented to new members the moment they step into the criminal organization and to which they own respect. It is also reported that there are blood rituals of initiation in the criminal organization. (Dias, 2009).



courts, called as “debates”, there is the participation of defense and accusation lawyers, witnesses, victim’s family and of course judges. (Feltran, 2008, 2010; Dias, 2009; Redação Terra, 2008, February 17; 2008, June 26). Not only PCC fellows who are “favela” residents participate, but also PCC high level fellows, or leaders, who are mostly in prison. They participate via phone or even video conferencing. Those have the role of an appeal court which confirm/or not the decision taken during trial and only then PCC fellows are authorized to execute the penalty, often death penalty or other forms of corporal punishment. Sometimes it is the victim who is authorized to execute the penalty.

Feltran (2010) reports with details one of these criminal courts which took place in Pirassununga, São Paulo. A man is killed after a discussion with another man. The victim’s wife witnesses everything. She calls the victim’s brother who is a former prisoner and member of the PCC. He asks for help and authorization to kill. Court trial is fixed for one week later the event. It takes place through phone conferencing between victim’s family, accused, lawyers of both, witnesses, PCC coordinators and PCC leaders who are, by the way, located in seven different prisons in the city of São Paulo. Parties make their speeches; PCC leaders hear witnesses and victim’s family. Decision is death penalty. The court informs the decision to the appeal court, which is confirmed by high level PCC members. Twenty minutes later, the accused is executed by the victims’ brother. It was March, 2007. According to the police, they were investigating the case; meanwhile the accused of homicide had already being murdered by the victim’s brother who was imprisoned days later the execution.

June 2008 police arrested other two PCC fellows under the suspicious of killing other four men accused of pedophilia. According to the police chief, those four men were accused, trialed and executed by PCC coordinators responsible for controlling behavior in favela Marabá, in Itaquera, São Paulo. According to phone tapping, evidence which brought police to the identification of the two PCC fellows, those four men were executed with Samurai swords (Redação Terra, 2008, June 26).

Other trials were also investigated by the police. One trial took place in Guaianases, in São Paulo capital, and another in Araçatuba, city which is 530 km away from São Paulo capital. In Guaianases, the decision was death penalty of five young adults between 18 and 19 years old. In Araçatuba, the decision was death penalty of two adolescents. (Redação Terra, 2008, February 17).

One more crime court was recently revealed in São Paulo. Five corpses were found buried in a forest of the district of Tiradentes. According to police investigation, the arbiters responsible for the “crime court” arrested those five victims to the middle of the forest where they were trialed and executed by hanging or head chop. The victims were accused of pedophilia, disloyalty and debts. (Benites, 2010, October 19).

Feltran (2010) also reports that there are other two forms of conflict resolution: “Advertência” or Warning and “Corretivo” or Corrective Measure. “Advertência” is the procedure used in case of petty offenses. There is no trial but the person/s who is promoting disorder or disrespecting the law of crime receives a warn, a kind of threat that if he/she continues with the same behavior, PCC high level leaders will take care of it. Such warns

are made by PCC “favela coordinators”. In another case in Sapopemba, certain kids were stealing money and beating other children. Ivete, the mother of the victims, explained that during the weekends her boys go to the open market to do petty jobs such as car wash or help people to park¹² in order to make extra cash for the family. Every weekend, on their way home, they used to be beaten and stolen by the same group of kids. Ivete called the drug dealers who “warned” or threatened the kids and they stopped disturbing the family.

“Corretivo” is the procedure in case of medium offenses. It means “to apply corrective measures”, instead of death penalty for example, corporal punishment, such as beating very severely. A man is accused of keeping money from drug dealing instead of passing to the organization. A trial is established, but this time only with the participation of local coordinators because of the level of the offense. There is again accusation and defense. The man is convicted to corporal punishment which is executed immediately after the trial (Feltran, 2010). In another case, a woman is accused of infidelity. There is a simple trial where PCC coordinators decide that her husband, the victim in this case, was authorized to apply a “corretivo” which meant corporal punishment to his wife (Redação Terra, 2008, February 17).

According to Feltran (2010) above the state and the formal criminal justice system, residents of São Paulo shanty towns identify PCC members as authorities capable of solving conflicts and “serving justice”. Even though the law that they apply is based upon the code of conduct that rules criminals’ behaviors, it is perceived as fair by certain deprived communities because it treats people equally. As a result, its legitimacy has progressively increased (Dias, 2009; Feltran, 2010). People are looking for such alternative forms of justice to solve their conflicts. Police reports that not only PCC fellows, friends or their families access such kind of justice, but often other residents of deprived communities with no ties whatsoever with PCC organization. A very common example is of owners of small shops located in these deprived communities who have their goods or money stolen. Usually, instead of calling the police, they call PCC to solve the problem because they are able to find the offenders and to return their goods and money (Redação Terra, 2008, February 17).

Police even complains that it is a phenomenon that has spread out in such a way that during most of the phone calls tapped by the police, instead of gathering information which could provide the police evidence operations of certain crime organizations, they are gathering shanty towns residents’ complaints and pleads to PCC fellows to solve their problems (Redação Terra, 2008, February 17).

On the contrary, the credibility in the criminal justice system has progressively decreased. Citizens of certain deprived communities believe that the formal criminal justice system stands out only to punish, never to help (Feltran, 2010). As victims, people do not believe that police or justice system will solve their problem. (Redação Terra, 2008, February 17). Indeed, the lack of credibility in the criminal justice system has been observed in the last victimization survey which took place in Brazil. Only one third of the victims interviewed declared that they were satisfied with the police; in São Paulo it reduced to 26% (Kahn, 2002).

12 Usually called “flanelinhas” because they wave a tissue in their hands, signaling people to park. The purpose is to help parking and to take care of cars to prevent from being stolen.



Conclusion

Informal Justice Systems: Best or Bad Practices?

According to Junqueira and Rodrigues (1992), certain authors emphasize the importance of informal justice systems and the importance of civil society dealing with its problems without the interference of the state. It is the thesis of informal modes of regulation within the civil society. Informal justice systems can contribute in this regard because they provide for deprived communities access to justice: proceedings are simple and fast, free of costs and “courts” are usually in the same neighborhood of parties. Furthermore, language is understandable and arbiters may have a better comprehension of problems being discussed because they usually live in the same community of the parties. (Wojkowska, 2006). Indeed, although not the topic of this paper, other forms of informal justice in Brazil such as District Associations or Mediation Courts which solve for example land disputes or family issues in deprived districts whose residents have difficult access to justice, have shown best practices (Santos, 1977, 1980) thought research on this topic is not conclusive and very few.

Supporting informal criminal justice systems means leaving shanty towns residents in the hands of organized crime. In the context of this paper we saw that the informal criminal justice systems in Brazil are in the main “crime courts” or courts controlled and ruled by organized crime. It is therefore their main characteristic to disrespect the human rights and the employment of cruel and inhuman forms of punishment. Moreover, decisions are taken based upon moral values or the code of conduct that rules criminals’ behaviors which is far from being human rights oriented or fair.

We also saw that inefficiency and unfairness in the criminal justice system of Brazil is what motivates the existence of informal criminal justice systems. If they exist, it is because Brazilians, in the main deprived young people living in shanty towns and who are more often victims of personal violence such as homicides¹³ (Castro & Abramovay, 2002; Kahn, 2002; Waiselfisz, 2007) do not have access to the police or to the judiciary. More astonishing, even when they have access they do not prefer to refer to them because of reasons such as lack of trust, feeling discrimination, inefficiency, length of proceedings and even secondary victimization, as literature suggests (Andrade, 2006a; Fernandes, 1995; Pedra Jorge, 2005; Philip Alston, 2010; Ribeiro & Duarte, 2009; Transparency International, 2010).

Certainly, informal criminal justice systems would be a best practice and an alternative form of conflict resolution for deprived communities in Brazil if they were not controlled by organized crime. Obviously, such informal criminal justice systems are far from best practices. Although people in deprived communities believe that they solve problems and reestablish peace from a certain point of view. Although they “serve justice” for some (Dias, 2009; Feltran, 2008, 2010) it is private revenge and the attestation of the total inexistence of the state in the shanty towns. Nevertheless, organized crime has been called “parallel state” or “transversal state” (Barbato Jr., 2007; Frossard, 2004, April 28).

13 For example, in Rio de Janeiro, tourist areas such as Copacabana and Ipanema have five homicides per 100,000 people – similar to the safest cities in Europe. In the shanty towns only two to three km away, homicides reach the rate of 150 per 100,000 people. (UNODC Regional Office Brazil, 2009).

Yet, apart from the disadvantages of such form of justice as a result of the role of organized crime, Hensler (2003) recalls that formal justice system or state justice has certain advantages which may never be substituted or observed in informal justice systems. Even though disputes might be efficiently resolved within such informal justice systems and conflict might be avoided, “there are also important political values that derive from widespread access to, and use, of the public justice system” (Hensler, 2003, p. 196). For example, the recognition of the victim status may only be granted by the formal criminal justice system and it is crucial for his/her empowerment and rehabilitation. It is also the formal criminal justice system the best alternative to prosecute authors of violent crimes for reasons such as guaranteeing procedural safeguards and avoid private revenge.

Finally, we believe that different or non state forms of conflict resolution might become good practices whether there is some involvement or control of the state over it. Mediation courts implemented by the state in deprived communities are one example. State courts could also improve in what regards their services and be more accessible to people. Employ the principles of restorative justice in the formal criminal justice system may be an alternative. For example, providing for victims’ participation during criminal proceedings (Pedra Jorge, 2005); implementing conciliation or mediation techniques to solve the problems (Pedra J. B., 2010); embracing a more humanistic approach in order to guarantee both parties – victim and criminal - respect for rights (Pedra, & Aebi, 2009) are certain attitudes which would improve the efficiency of the formal justice system as well as strength or create laces between the state and the community. The purpose of any formal justice system should be adopting the principle of equity or equality, and investigating, prosecuting, and punishing any person who violates law regardless of its ethnic origin, gender, age, profession or wealthy.

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