BEYOND CONVICTION AND PUNISHMENT: EXPLORING THE INTEGRATION OF RESTORATIVE JUSTICE IN THE 21ST CENTURY NIGERIA CRIMINAL JUSTICE SYSTEM

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Abstract

It is stale that traditional criminal justice system practiced in Nigeria has long relied on conviction and punishment as its chief apparatuses for addressing crime. Though, this approach has been censured for its limitations in promoting true justice, rehabilitation, and community healing, wherein the actual victim is passive. Recently, restorative justice has been considered as a hopeful substitute, focusing on repairing harm, promoting accountability, and fostering reconciliation between victims, offenders, and communities, absent in the current system. This research explored the integration of restorative justice in the 21st century criminal justice system, and as well examining its potential to transform the way we approach crime and punishment. Through a critical assessment of extant works and case studies, this research considered the benefits and challenges of implementing restorative justice practices, including victim-offender mediation, circle sentencing, and reparative justice. It discovered the prospective of restorative justice to improve victim satisfaction, reduce recidivism, and promote community engagement. It presented recommendations for legislators, legal practitioners, and scholars seeking to uphold more proficient, humane, and just attitudes to addressing crime and promoting community healing.

Keywords: Crime, Punishment, Restorative Justice, Victim.

1. Introduction

Outside the undue delay experienced in our forensic courts, the Nigerian criminal justice system has long been criticized for its failure to deliver true justice[1], rehabilitation, and community healing. The traditional approach, centered on conviction and punishment, has been shown to have limited effectiveness in reducing crime, improving victim outcomes, and promoting community safety. Of recent, a growing movement has emerged, advocating for a shift towards restorative justice, an approach that prioritizes repairing harm, promoting accountability, and fostering reconciliation between victims, offenders, and communities.

Restorative justice though still emerging is not a new concept; its roots can be traced back to indigenous cultures and traditional practices of dispute resolution. It is an acknowledged fact that in African indigenous communities, there is preference for peaceful settlement of disputes and crimes along the lines prescribed by the institutions and values of the community, and its justice systems were based on the restorative approach.[2] However, its modern application in the criminal justice system is a relatively recent development, gaining momentum in the 1970s and 1980s. Today, restorative justice practices are being implemented in various forms around the world, from victim-offender mediation and circle sentencing to reparative justice and community restorative justice programs. Notwithstanding its growing popularity, restorative justice remains a controversial and

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[1]Adesakin v State (2019) 35 WRN 52 C.A.

[2]Crime and Punishment in African Indigenous Law <https://bit.ly/3cv6UY2>; Accessed September 15, 2024.

misunderstood concept. Critics are of the view that it is too soft on crime, prioritizing offender rehabilitation over victim justice. For others, it serves as a threat to the traditional criminal justice system, challenging the supremacy of punishment and retribution. However, proponents argue strongly that restorative justice offers a more effective, humane, and just approach to addressing crime, one that prioritizes human dignity, accountability, and social repair.

Consequently, this study aims to explore the integration of restorative justice in the 21st century criminal justice system, examining its potential to transform the way we approach crime and punishment.

2. Nigerian Criminal Justice System

A system is the organized relationship between the component parts of a structure.[3] A legal system can be described as the interaction of laws within a legal order. It is the laws, courts, personnel of the law and the administration of justice system in a given state, country or geographical entity.[4] Therefore, the Nigerian legal system refers to the totality of laws in Nigeria and the machinery through which these laws are enforced.[5] It has been said that all the laws in a legal system are based on a fundamental norm from which they get their validity. This is referred to as the grundnorm. The grundnorm is the *fons et origo*, that is, the source and origin of every other law and authority in the legal system. The grundnorm in Nigeria after independence became the constitution as it is the most basic law in the country from which all other laws gain their validity. Section 1 (1)[6] provides that the constitution is supreme and its provisions shall have binding force on every authority and person and it states in section 1(3)[7] that any law which is inconsistent with the constitution is void to the extent of its inconsistency.

Just like many other African countries which were colonized by Britain, Nigeria practices the common law system. However, the current legal system being practiced in Nigeria is mostly adopted from the legal system of England. The legal pluralism in the Nigerian legal system allows the co-existence of both the English law, Legislation, Nigerian case law, international law and the Customary/Islamic law. Simply put, legal pluralism is defined as a situation in which two or more legal systems coexist in the same social field. Nigeria, as a common law country, has its courts applying an adversarial or accusatorial system as opposed to the inquisitorial system applied by civil law countries. The judge in an accusatorial system is to be an unbiased umpire and is never to descend into the arena for fear that the dust raised by the disputants may becloud his reasoning.[8] As an institution of social control, criminal justice system is seen as an instrument of practical purposes, accountable for the sufficient and effective reduction of crime largely through distinct mechanisms, deterrence, incapacitation and rehabilitation.[9] It is also an instrument of justice, as a means of holding criminal accountable for their crimes, and simultaneously protecting their constitutional rights. The Nigerian criminal justice system is adversarial. Like other similar systems, it is designed to accommodate only two parties, the prosecution, and the defendant, in the contentious atmosphere of its trial process. Unlike the victim in civil cases, there is no right of audience for victims in criminal litigation to claim remedy for their injuries at the trial. They are only visible as witnesses for the State. Whereas the various domestic laws are enacted to furnish for the offender's rights, they are reticent about the rights of the victim. Conventional criminal justice system focus largely on applying the law, assessing guilt and administering punishment.

[3] The Nigerian Legal System <https://www.learningnigerianlaw.com/learn/legal-system/introduction>; Accessed 18 September, 2024.
[4] Ese Malemi, *The Nigerian Legal System* (Lagos: Princeton Publishing Co., 2012) p. 2.
[5] *Ibid.*
[6] Constitution of FRN, 1999 (as amended).
[7] Constitution of FRN, 1999 (as amended).
[8] Nwafor v Nigeria Custom Service & Ors (2018) LPELR-45034 (CA).
[9] T. I. Gomment (ed), *Essentials of Criminology* (Kogi: Kogi State University Press, 2012) p. 43.

Accordingly, the victims have been reflexive over the years over their feelings of being used and dumped by the Nigerian criminal justice system due to a lack of voice. Thus, there is an urgent need to design a new legal framework where the victim would have an equal voice as the offender.

3. Theoretical Foundations of Restorative Justice

The dominant retributive justice system in Nigeria has not confidently impacted on the crime rate. Retributive justice or retributive punishment is a philosophical approach to justice that focuses on punishing offenders for past wrongdoing. Its primary aim is to inflict punishment commensurate to the harm caused, guaranteeing the offender pays for their actions.[10] Courts resolve civil or criminal disputes by providing a binding decision -making process where an independent and unbiased decision maker, the judge, makes a decision by applying legal and equitable principles to his findings of fact.[11] Consequently, a paradigm shift to restorative justice and its applications hold great potential. Indigenous justice in Nigeria, before the introduction of European concepts of law, was determined by groups of people who included both the alleged offender as well as the victim. Reconciliation, restoration and harmony were seen as the basis for settlements of disputes. The fundamental purpose of the customary law was to determine what harms have been done and to ensure the reparation of harm caused, and placing at the center of the dispute, the victim, offender and community.[12] In general, restorative justice in the area of criminal law, represents a fundamental and ultimately progressive shift on how crime should be perceived; it should no longer be viewed as an act against the state, but one done primarily against an individual and a community.

Restorative justice is an approach to justice in which one of the responses to a crime is to organize a meeting between the victim and the offender, sometimes with representatives of the wider community. The goal is for them to share their experience of what happened, to discuss who was harmed by the crime and how, and to create a consensus for what the offender can do to repair the harm from the offence. This may include a payment of money given from the offender to the victim, apologies and other amends, and other actions to compensate those affected and to prevent the offender from causing future harm. A restorative justice program aims to get offenders to take responsibility for their actions, to understand the harm they have caused, to give them an opportunity to redeem themselves and to discourage them from causing further harm. For victims, its goal is to give them an active role in the process and to reduce feelings of anxiety and powerlessness. Restorative justice is founded on an alternative theory to the traditional methods of justice, which often focus on retribution. Academic assessment of restorative justice is positive. Most studies suggest it makes offenders less likely to reoffend.[13]

According to John Braithwaite, restorative justice is:

> A process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm. With crime, restorative justice is about the idea that because crime hurts, justice should heal. It follows that conversations with those who have been hurt and with those who have inflicted the harm must be central to the process.[14]

In like manner, Carolyn Boyes-Watson from Suffolk University defined restorative justice as:

> A growing social movement to institutionalize peaceful approaches to harm, problem-solving and violations of legal and human rights. These range from international peacemaking tribunals such as the South Africa Truth and Reconciliation Commission to innovations within the criminal and juvenile justice

[10] Criminal Code, Cap C28, LFN, 2004. Section 22.
[11] Odey v Alaga (2021) All FWLR (Pt.1100) 664 at 751.
[12] Kekong Bisong, *Restorative Justice in Conflict Management* (Enugu: Snaap Press Ltd, 2008), p. 7.
[13] *Ibid.*
[14] Concept, Values and Origin of Restorative Justice, <www.unodc.org.crime-prevention-criminal-justice-module-8-key-issues>; Accessed 19 September, 2024.

> systems, schools, social services and communities. Rather than privileging the law, professionals and the state, restorative resolutions engage those who are harmed, wrongdoers and their affected communities in search of solutions that promote repair, reconciliation and the rebuilding of relationships. Restorative justice seeks to build partnerships to reestablish mutual responsibility for constructive responses to wrongdoing within our communities. Restorative approaches seek a balanced approach to the needs of the victim, wrongdoer and community through processes that preserve the safety and dignity of all.[15]

The dialogical and restitutive character of restorative justice is not unique. Similar values and processes are reflected in several indigenous cultures. An early pioneer of restorative justice, Howard Zehr, argued that prior to the emergence of the nation state, wrongdoing was primarily viewed in an interpersonal rather than legal context.[16] The cultural practices of indigenous people have far-reaching implications and examples for how we might embrace humanity and its struggle to be congruent and harmonious with one another. It viewed wrongdoing in profoundly communal rather than legal terms. It provides for collective responsibility to respond to the harm caused by wrongdoing, involving a much wider web of relationships surrounding both offender and victim. Restorative justice is a multicultural phenomenon with roots in indigenous peacemaking practices throughout the world. One primary aim of restorative justice is to restore relationships and bring healing to those who may have been harmed. A second aim is to reintegrate those who have violated the community's norms and relationships. In many indigenous cultures, a council of tribal elders facilitates a process to reintegrate the offender back into the community. The elders' intentions are to seek to heal the issues underlying offender's misconduct. This highlights the misdirection of the Federal Government of Nigeria in prosecuting the #ENDBADGOVERNANCE Protesters with treasonable felony without addressing the cause of the protest.

In more modern times, Zehr expanded the ideals of restorative justice and is considered the grandfather of the movement. He developed a theoretical framework that challenged retributive practices, while providing an alternative approach to righting wrongs.[17] Justice and healing are sought through solutions that are co-constructed by the victim, the offender, and the community, ultimately promoting reconciliation on individual and collectivist levels.

The theoretical foundations of restorative justice draw on various disciplines, including sociology, psychology, philosophy, and law. Contrary to the doctrines of social contract theory, restorative justice challenges the traditional social contract theory, which emphasizes punishment and retribution. Instead, restorative justice seeks to rebuild social bonds and promote community cohesion.[18] This theory of justice prioritizes repairing harm caused by crime, rather than simply punishing offenders. This approach recognizes that crime causes harm to individuals, communities, and society as a whole. Similarly, restorative justice emphasizes offender accountability, but not solely through punishment.[19] Here, offenders are encouraged to take responsibility for their actions, make amends, and work towards rehabilitation. Restorative justice seeks to promote reconciliation between victims, offenders, and communities. This involves addressing the underlying causes of conflict and promoting healing and reparation which is lacking in the current dispensation of criminal justice system in Nigeria. These theoretical foundations provide a framework for understanding restorative justice and its applications in various contexts. By emphasizing repairing harm, promoting accountability, and fostering reconciliation, restorative justice offers a unique approach to addressing crime and promoting social justice.

[15] *Ibid.*
[16] *Ibid.*
[17] Concept, Values and Origin of Restorative Justice, <www.unodc.org.crime-prevention-criminal-justice-module-8-key-issues>; Accessed 19 September, 2024.
[18] *Ibid.*
[19] *Ibid.*

4. Comparative Analysis

Few African countries shall be considered for the purpose of this research. Rwanda, a former colony of Germany from 1894 to 1918, and then Belgium from 1918 to 1962, became independent in 1962.[20] It adopted the civil law legal system of its former colonial masters. During the colonial era, however, the customary laws of the communities were only applicable to those communities and date continue to be part of the current system. After the genocide in 1994, Rwanda sought ways of holding accountable those responsible for the genocide and ending conflicts between its people. In the context of the thousands, if not millions, of suspects involved in the genocide and the limited capacity of the criminal justice system it had inherited from its colonial masters, Rwanda adopted the traditional mechanism of justice, the Gacaca, for the task at hand.

The Gacaca proceedings, unlike the criminal proceedings in the adversarial criminal justice system, fostered an environment that encouraged offenders to accept responsibility for their role in the genocide and seek forgiveness from their victims.[21] This initiative of Gacaca proceedings highlights the need for offenders and victims to collectively chart a course of collective healing. The Gacaca processes are believed to have succeeded in resolving close to two million cases in Rwanda. Some scholars argue that the court system prosecutions do not bring healing to the parties involved even in cases where the offender is jailed; instead, offenders might believe that society owes them nothing. In the restorative justice systems, such as the Gacaca process of Rwanda, however, there is fruitful dialogue between the offender and victim and this helps in putting the past behind the parties involved because it empties the truth of what happened and why it happened, and facilitates future generations to avoid making parallel mistakes.

While it is possible that through the Gacaca process, some offenders and victims may not have fully recovered and healed from the effects of the horrible things that they committed or happened to them during the genocide in Rwanda, the overall significance of the Gacaca process in contributing to resolving conflict and contributing to peaceful co-existence amongst Rwandans cannot be discountenanced.[22] Indeed, no justice system is perfect or can be considered to be fair to everyone; even the much-valued Western justice system that is allegedly superior to African restorative justice systems has its flaws. But on the balance, and given the enormity of the challenge that Rwandans faced after the genocide, in all fairness, it can be asserted, without fear of contradiction, that the Gacaca process contributed to healing and reconciliation between Rwanda's main ethnic communities, the Hutu, Tutsi, and Batwa.[23] In addition to the Gacaca process, Rwanda has another justice system; the Abunzi mediation process. Abunzi in the local language means "those who reconcile."[24] The Abunzi mediation process brings together the parties to a dispute and members of the community to amicably resolve it.

As Kinyanjui observes, Kenya had a restorative justice system before the coming of colonialists.[25] She noted that restorative justice aimed to maintain' relationships, which in essence, were a foundation of the community. As recorded in history, the pre-eminent role of restorative justice and other customs that regulated life and relationships in African communities was, however, disrupted and overthrown with the coming of colonialists in Kenya. The colonial powers imposed their own laws and legal systems onto the existing African legal order. Although Africans were allowed to continue using customary law, it was an inferior legal system to the British common law

[20] <https://www.nyulawglobal.org/globalex/Restorative_Justice_Africa.html>; Accessed 16 January, 2025.
[21] *Ibid.*
[22] Outreach Programme on the Rwanda Genocide and the United Nations, <un.org/preventgenocide/rwanda>; 16 January, 2025.
[23] Outreach Programme on the Rwanda Genocide and the United Nations, <un.org/preventgenocide/rwanda>; 16 January, 2025.
[24] <https://www.nyulawglobal.org/globalex/Restorative_Justice_Africa.html>; Accessed 16 January, 2025.
[25] Kinyanjui, Sarah. "Restorative Justice in Traditional Pre-Colonial 'Criminal Justice Systems' in Kenya." *Tribal Law Journal* 10, 1 (2009). <https://digitalrepository.unm.edu/tlj/vol10/iss1/1>; Accessed 17 January, 2025.

system, which they had made the main legal system of the colony.[26] The colonial powers in Kenya insisted on the use of the common law in almost all matters, except those considered to fall in the realm of native custom; this was the case in all other British African colonies. After independence, Kenya maintained the Western legal system. The British courts before Kenya's independence were meant for the British only but after independence, even Kenyans were allowed to sue or be sued in such courts.

It is within this context, that it is not surprising that restorative justice processes in Kenya have not fully become part of the legal system because the 2010 Kenyan constitution has maintained the repugnancy clause which in essence considers customary laws to be weak compared to the Western laws, unlike in South Africa which recognizes traditional law in the constitution.[27] The case for using restorative justice mechanisms to resolve land disputes in Kenya is even made stronger because of the communal types of land ownership practiced in African communities.

Most of the pastoralist communities in Kenya tend to resolve their conflicts communally without the involvement of the State because they are still bound by kingship and communal ties which they would not want to have violated by other organs. The pre-colonial Agikuyu society handled conflicts with the use of the family, clan, or council of elders depending on the type of conflict.[28] For a minor conflict at the household level, the concerned family was responsible; where the family failed to handle it, the clan leader took up the task; those of a serious nature were handled by council elders. Emphasis was on amicable settlement. Respected elders could speak and pass judgment on a case. It is crucial to include that the most commonly cited is the spirit of *Ubuntu.* The spirit of *Ubuntu,* which connotes solidarity and humanity to others fosters restorative justice with the aim of sustaining community cohesiveness.[29]

Again, the Kenyan legal system upholds the use of customary laws in civil cases but not in criminal matters. It is argued that ignoring criminal customary laws amounts to a negation of some of the traditional dispute mechanisms in Kenya. Nevertheless, the Children Act provides that the Minister for Justice may establish rehabilitation schools for youth offenders[30]. Concerning youth offenders, the Kenyan legal system recognizes the 1990 Tokyo rules that emphasize the use of alternatives to custodial sentences. Despite the existence of some laws, such as the Community Services Act[31], the Probation Act[32] and the Prisons Act[33] the efforts to reintegrate offenders in Kenya still face some challenges, such as lack of expertise in reintegration as well as stigma from community members attached to ex-offenders.

The Ugandan criminal justice system was inherited from its colonial master, Britain. After independence in 1962, Uganda continued to use the colonial criminal justice system to handle criminal matters. But this system is beset with challenges, and various groups and researchers have subjected it to rigorous scrutiny in recent years and called for reforms. Ugandan scholar Simon Robins said that the continuation of inherited laws from the English legal system is irrational because they are irrational to the people.[34]

Uganda responded to criticism of its criminal justice system and introduced some reforms, beginning in 1996, with the enactment of the Children's Statute that incorporated restorative justice practices for cases involving young offenders. The Statute gave the community the authority to handle minor offenses committed by children out of court, with a focus not on punishment but on restoration,

[26] *Ibid.*
[27] *Ibid.*
[28] Kinyanjui, Sarah. "Restorative Justice in Traditional Pre-Colonial 'Criminal Justice Systems' in Kenya." *Tribal Law Journal* 10, 1 (2009). <https://digitalrepository.unm.edu/tlj/vol10/iss1/1>; Accessed 17 January, 2025.
[29] Ibid.
[30] The Children Act 2001, Revised Edition 2012.
[31] (1998)
[32] (Cap.64 Revised Edition 2012),
[33] (Cap 90 Revised Edition 2017),
[34] *Ibid.*

reconciliation, and compensation.[35] The second reform came in 2001 when Uganda introduced a community service programme to address the increasing problem of overcrowding in the Uganda prison system.

Uganda's reforms of the criminal justice system did not go far enough; however, the reforms failed to revive restorative justice as a normative justice paradigm at par with the English criminal justice system it had inherited. Yet, in some regions of Uganda, restorative justice remains popular amongst the communities. In northern and north-western Uganda, for example, the communities ravaged by more than 20 years of civil war consistently insisted on the search for a peaceful end to the conflict through the communities' restorative justice mechanisms.[36] Indeed, some studies of the conflict in northern Uganda have demonstrated that some survivors of the atrocities committed during the war wanted to have a process that allowed them the opportunity to get the truth from the perpetrators. This, they believed, allowed them to grasp the root causes of the killings and enjoined their children to avoid making similar mistakes in the future.

Another concept of restorative justice is the *Baraza* indigenous restorative justice mechanism of the Democratic Republic of Congo (DRC), particularly in the province of North Kivu.[37] It is a traditional structure of elders sitting together to discuss the various aspects of community life and to resolve intra- or inter-community problems so that the community can live together in harmony.[38] Patrick observes that the *Baraza* concept is rooted in the principle of the African palaver. According to him, palaver is to understood as a dialoguing institution and a principal instrument of negotiation, conflict resolution, and peacebuilding. The *Baraza* functions on three main principles: resolving disputes, preventing violent conflict, and healing suffering after conflict. Regarding dispute resolution, victims are granted an opportunity to share their experience of suffering in front of mediators and perpetrators. Then, perpetrators are requested to explain the rationale behind their actions.[39] Throughout the process, victims can ask for reparation if they wish, while perpetrators have the opportunity to be accepted back into the community.

Nigeria's legal system is also a product of British colonial rule. British rule ended in 1960 with independence for Nigeria. It is not contestable that Nigerians had their customary laws before the coming of colonialists, but under colonial rule, these laws were considered barbaric, and their use had to pass a test of repugnancy. Hypocritically, the imposed British law, interestingly, was not subjected to similar repugnancy or any other test to determine whether they were suitable for the Nigerian culture.

Scholars assert that the Nigerian criminal justice system faces challenges, such as corruption, complexity, and delays, resulting in the denial of justice to some community members, especially the poor. Therefore, they argue, there is a need to revive restorative justice mechanisms to complement the current adversarial justice system. Records of courts' proceedings have shown that the current Nigerian justice system does not facilitate a participatory process that allows the victim, offender, and the community to resolve a crime or conflict in a manner that assists the offender in reintegrating into the community.

Ghana's legal system, like that of South Africa, Kenya, Uganda, DRC and Nigeria, was also inherited from the British colonial powers. The people of the different ethnic communities that now form the State of Ghana had their ways of handling crime and conflicts in their communities before the coming of the colonialists. Their methods of handling conflicts were determined by their culture. Simpson explains that the legal system of any community is a result of their culture and political forces

[35] A Macdonald, 'Somehow This Whole Process Became so Artificial': Exploring the Transitional Justice Implementation Gap in Uganda' in *International Journal of Transitional Justice,* Volume 13, Issue 2, July 2019. <https://doi.org/10.1093/ijtl/ijz011>; Accessed 18 January, 2025.
[36] *Ibid.*
[37] P B Murhula, 'Indigenous Restorative Justice Mechanisms as a tool for Transitional Justice in the Democratic Republic of Congo' in *African Journal on Conflict Resolution* AJCR vol. 22 n. 2 Durban 2022.
[38] *Ibid.*
[39] *Ibid.*

over a period of time and that there is no legal system that develops out of the unknown.[40] In this context, the British common law that was exported and enforced on African communities such as in Ghana is a product of British and not African culture. Despite the existence of the Indigenous laws, the British applied their laws and made it the dominant legal system.

Kwame states that the Ghanaian people, culturally, are not inclined to take matters to the courts of law, especially matters that involve the State. That partially explicates why many Ghanaians responded positively to the National Reconciliation Commission (NRC), established to, among other things, "help reconcile the people of Ghana by finding out the truth about past human rights abuses", because its proceedings were not like those in a court of law.[41] However, Dua states that Ghanaians believe that imprisonment is not the best option for offenders in Ghana because the prison services face many challenges.[42] Under present conditions and challenges, Ghana's prisons can hardly contribute towards changing the behavior of offenders or provide them with the necessary training to equip them with the knowledge and skills that will enable them to make a positive contribution to their country upon release from prison. Ghanaians strongly believe that community services should be prioritized over imprisonment especially for minor offences and for first-time offenders, women, and the aged in Ghana.

It is also a common pre-colonial practice in Ghana to have the Kima system of dispute resolution, whereby whenever community members had conflicts, the matter had to be reported to either the clan leader, the subsection leader, or the chief. Having summoned the parties to the conflict, the chance was given for each to tell their part of the story and thereafter a decision was made by the Kima. The decision was meant to unite the disputants and not to cause more enmity; the leaders needed to ensure that the offender paid compensation and asked for forgiveness. Once that was done, then the parties had to eat in the same bowl and, when necessary, dance together as a sign of total forgiveness and unity.

5. Benefits and Advantages of Restorative Justice

Kekong Bisong maintains strongly that restorative justice approaches are not solely concerned with the attempts to deal with the aftermath of crime by restoring, as far as possible, the harm that it inflicts on both individual offenders and communities, rather, it also incorporates a distinctive problem-solving orientation that is both forward-looking and preventive in its aims.[43] Such approaches include but not limited to Victim-Offender Mediation, Conferencing, Circles, Victim Assistance, Ex-Offender Assistance, Restitution, Community Service, etc.

Victim-Offender Mediation became a highly popular issue both in Austrian and German criminal policy and criminology. Recently, it has been introduced in both countries as an alternative for settling offences committed by adult. Now, it has been established as a regular part of legal reactions available to the criminal justice system in general.[44] According to the Austrian doctrine, the victim/offender mediation does not mean compensation for damage in criminal law but restitution in a more comprehensive sense[45]; a method of settling a conflict in an active way that is socially constructive and more directly related to the victim. This method allows parties who have been affected by crime the opportunity to communicate their views to each other. The point pursued here is the emphasis on the acknowledgement of the needs of the victims, the importance of holding offenders accountable for their actions and the value of involving and empowering the wider community in the process.

[40] P A. Awuni and N A. Agyapong, 'Exploring the Practice of Victim-Offender Mediation, to Proceed or Retrieve: The Case of Ghana' in *International Journal of Current Research in the Humanities.* No. 27 2023.
[41] *Ibid.*
[42] <https://www.nyulawglobal.org/globalex/Restorative_Justice_Africa.html>; Accessed 18 January, 2025.
[43] K Bisong, *Restorative Justice in Conflict Management* (Enugu: Snaap Press Ltd, 2008), p. 64.
[44] L. M. Kilchling, "Victim/Offender Mediation and Victim Compensation in Austria and Germany-Stocktaking and Perspectives for Future Research" in *European Journal of Crime, Criminal Law and Criminal Justice,* Vol 5, Issue 1.
[45] *Ibid.*

Another benefit worthy of consideration is the concept of conferencing. The roots of conferencing are found in the *whanau* conference of the Maori, aboriginal peoples of New Zealand.[46] With their strong extended family and kinship relationships, the Maori had been using *whanau* conferences as a means of dealing with their own youth.[47] The conferencing concept was further developed in Australia with a decidedly restorative justice philosophy. In restorative justice conferences decisions are not made dispassionate third parties. They are made by primary stakeholders, the wrongdoers and the victims, and by their respective communities of care and support, through a facilitated consensus decision making process.[48] It has been observed that conferencing programs are similar to victim-offender reconciliation/mediation programs, in that they involve the victim and offender in an extended conversation about the crime and its consequences.

The conference process can be thought of as involving discreet phases: preparation, the conference, and post-conference monitoring.[49] During the preparation, a trained facilitator receives a referral report and consults with justice officials to become familiar with the case. In the post-conference phase, the facilitator monitors completion of the agreement and locates needed resources for families when needed. At these conferences offenders and their victims, in the company of their respective communities of support and care meet to discuss what happened and the effects the incident has had on all parties. A mutually satisfactory resolution, in terms of repairing the harm that has resulted, is then negotiated.

Sentencing circle is also recognized as one of the advantages of restorative justice. It occurred in 1992 in the Yukon Territorial Court in Canada.[50] Referring to the research of David Cayley he maintains that:

> In response to the Crown's assertion that the community wanted a native Canadian a chronic offender convicted of assaulting a police officer to go to jail, Judge Barry Stuart invited members of the offender's actual community to participate in a sentencing circle, thereby reviving the native way of dealing with trouble individuals and situations. In a sentencing circle, interested community people take part in a discussion of what happened, why it happened, what should be done about it, and what should be done to prevent further such incidents. The judge then passes sentence and makes other orders and recommendations, based on what is proposed by the circle. Although called sentencing circles, it should be made clear that the discussions and decisions go well beyond what is conventionally covered in sentencing processes. In particular, circles address issues such as to what extent the community shares responsibility for the crime and for doing something about it.[51]

As with the restorative justice processes of mediation and conferencing, circles provide a space for encounter between the victim and the offender, but it moves beyond that to involve the community in the decision- making process.

Furthermore, Victim-assistance mediation represents an interesting new development in the practices of restorative justice.[52] Unlike the conventional retributive justice, this practice emphasizes the importance of the community and the state taking responsibility to repair the harm or injury on the victim particularly where the offender is at large and cannot be caught. Through the victim assistance programs, the victims are provided with services to facilitate their recovering from the crime.

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[46] K Bisong, *Restorative Justice in Conflict Management* (Enugu: Snaap Press Ltd, 2008), p. 67.
[47] F. McElrea, "Justice in the Community: The New Zealand Experience", in J. Burnside & N. Baker, (eds) *Relational Justice: Repairing the Breach,* (Winchester: Waterside Press, 1994), p. 98.
[48] F. McElrea, "Justice in the Community: The New Zealand Experience", in J. Burnside & N. Baker, (eds) *Relational Justice: Repairing the Breach,* (Winchester: Waterside Press, 1994), p. 98.
[49] J. Hudson and B. Galaway, "Introduction" in J. Hudson & B. Galaway (eds.) *Restorative Justice: International Perspectives* (New York: Criminal Justice Press, 1996) p. 10.
[50] K Bisong, *Restorative Justice in Conflict Management* (Enugu: Snaap Press Ltd, 2008), p. 69.
[51] *Ibid.*
[52] K Bisong, *Restorative Justice in Conflict Management* (Enugu: Snaap Press Ltd, 2008), p. 73.

For proponents of ex-offender assistance, they have argued that crime weakens and often destroys community bonds and relationships.[53] According to Kekong Bisong, prisoner assistance programs provide opportunities for prisoners to make the transition from institutionalization to community membership, from stigmatized offender lacking social capital to restored individual possessing marketable skills. This advanced concept of restorative justice is relatively captured in parole as provided by ACJA 2015. Parole is a conditional release of a prisoner from prison before the completion of their sentence. It allows the prisoner to serve the remaining part of their sentence in the community, under the supervision of a parole officer. Section 468(1)[54] provides thus:

> Where a Comptroller-General of Prisons makes a report to the court recommending that prisoner:
> a) Sentenced and serving his sentence in prison is of good behavior; and
> b) Has served at least one third of his prison term, where he is sentenced to imprisonment for a term of at least fifteen years or where he is sentenced to life imprisonment, the court may, after hearing the prosecution and the prisoner or his legal representative, order that the remaining term of his imprisonment be suspended, with or without conditions, as the court considers fit, and the prisoner shall be released from prison on the order.

Subsection (2) corroborates the profound principle of restorative justice when it provides that A prisoner released under subsection (1) of this section shall undergo a rehabilitation programme in a Government facility or any other appropriate facility to enable him to be properly reintegrated to the society. Whether this is obtainable in Nigeria remains a question of facts. It is uncontestable that the provisions of ACJA on parole are not without ambiguities. For instance, while the Act provides that inmates sentenced to at least 15 years or life imprisonment must serve at least one-third of their sentence before being eligible for parole, it fails to specify the minimum period for prisoners serving less than 15 years. In addition, the ACJA's reticence on determining one-third of life sentence generates vagueness.

Another crucial aspect of restorative justice is restitution. Institutionalized restitution dates back to ancient times.[55] Under the Babylonian Code of Hammurabi, victims were entitled to receive payment for certain property offences. In the Bible, the Mosaic Law required thieves to repay oxen to victims from whom they had stolen oxen. In essence, restitution was treated as a tort in the property law of Mosaic judicial system.[56] In its traditional sense, restitution has been defined as a monetary payment by the offender to the victim for the harm reasonably resulting from the offence.[57] Unlike retributive responses to crime, restitution as a crucial aspect of restorative justice, has the potential to repair the financial and perhaps relational harms that crime has left in its aftermath. It serves to commemorate the gesture of reparation and acknowledgment of wrongdoing. Whereas retributive and rehabilitative responses fail to address the harm inflicted on victims, restitution, when employed as a restorative means, has as its primary motivation reparation to the victim. Conclusively, restitution offers ample opportunity for reaffirming the offender's self-worth, providing an atmosphere to make things right.

Collectively, it is contended that restorative justice places a high premium on having the victim and offender encounter one another with elements such as meeting, narrative, emotion, understanding, and agreement. This alternative is a value-based approach to criminal justice, with a balanced focus on the offender, victim, and community; that is, determining the harm resulting from a crime, what needs to be done to repair the harm, and who is responsible for repairing the harm.

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[53] K Bisong, *Restorative Justice in Conflict Management* (Enugu: Snap Press Ltd, 2008), p. 73.
[54] Administration of Criminal Justice Act (ACJA), 2015.
[55] A. Karmen, *Crime Victims: An Introduction to Victimology* (California: Wardsworth, 1992) p. 279.
[56] Exodus 21:33-34; Leviticus 5: 14-16; Numbers 5:5-7.
[57] J. Hudson and B. Galaway, "Introduction" in J. Hudson & B. Galaway (eds.) *Restorative Justice: International Perspectives* (New York: Criminal Justice Press, 1996) p. 34-35.

6. Integrating Restorative Justice into the 21st Century Nigerian Criminal Justice System

The Administration of Criminal Justice Act of 2015 sets the tune for the integration of restorative justice into our criminal justice system. It is acknowledgeable that the purpose of the ACJA is a radical shift from the concept of crime which confined its aim on punishment of the offender to rehabilitation, and consideration of the victim as well.

Section 270[58] introduces the concept of plea bargain. Plea bargain originated from the American jurisprudence and became established in the case of *Robert M. Bradley v United States.*[59] It is a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange of some concession by the prosecutor usually a more lenient sentence or a dismissal of the other charges. The section provides thus:

(1) Notwithstanding anything in this Act or in any other law, the Prosecutor may:

a) Receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf; or
b) Offer a plea bargain to a defendant charged with an offence.

(2) The Prosecutor may enter into plea bargaining with the defendant, with the consent of the victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence, provided that all of the following conditions are present:

(b) Where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative.

Still within the college of thought, section 319 (1)[60] holds that:

A court may, within the proceedings or while passing judgment, order the defendant or convict to pay a sum of money:

a) As compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict, where substantial compensation is in the opinion of the court recoverable by civil suits;
b) In compensating a bonafide purchaser for value without notice of the defect of the title in any property in respect of which the offence was committed and has been compelled to give it up; and
c) In defraying expenses incurred on medical treatment of a victim injured by the convict in connection with the offence.

Beyond compensation, the Act also provides that a court may, after conviction, order the convict to make restitution or pay compensation to any victim of the crime for which the offender was convicted, or to the victim's estate.[61]

These are laudable provisions to house the philosophies of restorative justice. However, key aspects of restorative justice are ignored. As already established, restorative justice is an approach to justice in which one of the responses to a crime is to organize a meeting between the victim and the offender, sometimes with representatives of the wider community. One of the goals is for them to share their experience of what happened, to discuss who was harmed by the crime and how, and to create a consensus for what the offender can do to repair the harm from the offense. Unlike the considered provisions of the Act, a restorative justice program aims to get offenders to take responsibility for their actions, to understand the harm they have caused, to give them an opportunity to redeem themselves and to discourage them from causing further harm. For victims, its goal is to give them an active role in the process and to reduce feelings of anxiety and powerlessness.

[58] ACJA, 2015.
[59] 397 U.S 742 (90 S. Ct. 1463, 25 L.Ed. 2d 747).
[60] ACJA, 2015.
[61] ACJA, 2015. Section 312 (a) and (b)(i)-(iii).

7. Recommendation and Conclusion

While it may not be sustainable and result-oriented to exclude the practice of the current criminal justice system in Nigeria, the authors strongly recommend a comprehensive reform of the extant *instrumentum laboris* of the system, in such a manner as to address the core weights of restorative justice and its integration. The argument for the integration of restorative justice stems from the shortfalls inherent in the current practice which often excludes the search for the root cause of the offender's act, victim's expression, and strengthening the fabrics of harmonious existence. As observed in other climes within the course of comparative analysis, lessons may be learned that the combination of restorative justice with the current system may positively expand the scope of administration of Nigeria criminal justice system.