

**Restorative Justice for Victims of Crime under Nigeria's Jurisprudence**

**Simeon Olaosebikan ONI  
(LCU/PG/000500)**

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Faculty of Law, Lead City University, Ibadan, Oyo State, Nigeria**

**In Partial Fulfillment of the Requirements for the Award of Doctor of Philosophy (Ph.D)  
Degree in Law**

### **Declaration**

I declare that this thesis titled 'Restorative Justice for Victims of Crime under Nigeria's Legal Jurisprudence' was carried out by me in the Faculty of Law. The work of scholars reviewed are duly acknowledged and appropriate references are made to acknowledge the sources of the materials used in this work.

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**ONI, Simeon Olaosebikan**

**Date**

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## Certification

This is to certify that Simeon Olaosebikan ONI with the matriculation number LCU/PG/000500 carried out this research titled “ Restorative Justice for Victims of Crime under Nigeria’s Legal Jurisprudence” in the department of Public & International Law, Faculty of Law, Lead City University, Ibadan, Oyo State, Nigeria for the award of Doctor of Philosophy Degree (Ph.D) in Law and that this has not been previously submitted.

---

\_\_\_\_\_  
Professor John Oluwole A. Akintayo

LL.B, BL, LL.M, Ph.d  
Faculty of Law,  
Department of Jurisprudence and International Law,  
University of Ibadan,  
Oyo State, Nigeria.

Date

---

\_\_\_\_\_  
Dr. Aderonke Esther Adegbite

LL.B, LL.M, Ph.D  
Associate Professor  
Faculty of Law,  
Department of Private and Business Law,  
Lead City University, Ibadan,  
Oyo State, Nigeria.

Date

## **Dedication**

I dedicate this thesis to God Almighty who made it possible for me to complete this doctoral degree in Law, my wife and son, Pastoress Deborah Ola-Oni and Mr. Stephen Kolade Ola-Oni respectively and my parents, Evangelist John Babatope Oni (deceased) and Mrs. Agness Monisola Oni (deceased).

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*Caveat:* Even though the institutions and persons mentioned have assisted in the process of this thesis, I alone stand responsible for the errors (if any) found in this work.

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## Abstract

Historically, Nigeria's criminal justice system has predominantly focused on punitive measures, often neglecting the needs and rights of victims. This criminal justice system has led to broader societal issues, such as distrust in judicial outcomes and a continued cycle of violence. This thesis examines the application of restorative justice principles to victims of crime within the framework of Nigeria's jurisprudence. It seeks to explore and evaluate the application and potential of restorative justice principles in addressing the needs of crime victims within the Nigerian legal context. The primary objective of this study is to assess how restorative justice can enhance the rights and experiences of victims, promoting a holistic approach to justice that prioritises healing over retribution. The research identifies several issues plaguing the current Nigerian criminal justice system, including the marginalisation of victims, a punitive orientation that prioritises offender punishment, and systemic barriers that hinder victim participation in the justice process. To achieve the research objectives, a mixed-methods approach was employed. Qualitative data was gathered through in-depth interviews with victims of crime, legal practitioners, community leaders, and policymakers. The study also involved a comparative analysis of international restorative justice models to identify best practices applicable to the Nigerian context. Findings from the study indicate a significant gap in the existing legal framework's ability to support victims effectively. Participants expressed a strong desire for more inclusive processes that allow them to express their needs and facilitate meaningful dialogue with offenders. Many victims reported that restorative justice processes yield higher satisfaction levels and promote a sense of closure compared to traditional punitive measures. Furthermore, the research highlights that community involvement plays a crucial role in successful restorative justice implementation. It recommends the development of a comprehensive legal framework to support restorative justice practices, including training for law enforcement officials, judicial officers, and community leaders. Additionally, it suggests the establishment of victim support services and public awareness campaigns to educate communities about restorative justice, and the need for partnership with civil society organisations to facilitate restorative processes. In conclusion, the study advocates for a paradigm shift in Nigeria's criminal justice system from a predominantly punitive framework to one that embraces restorative justice principles. By recognising and prioritising the voices of victims, this thesis posits that Nigeria can foster a more equitable and compassionate justice system that not only addresses the needs of those harmed by crime but also contributes to wider societal healing and reduced recidivism.

Keywords: Jurisprudence, Victims, Restorative, Retributive, Nigeria.

Word Count: 404

**Restorative Justice for Victims of Crime under Nigeria's Jurisprudence**

[oni.simeon@lcu.edu.ng](mailto:oni.simeon@lcu.edu.ng)

+2348074559030

**Supervisor:** Prof. John Oluwole A. Akintayo

+2348036666485

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### List of Acronyms

<b>Abbreviations</b>	<b>Meanings</b>
ACJA	Administration of Criminal Justice Act, 2015
ACJL	Administration of Criminal Justice Law
AU	<b>African Unity</b>
CCA	<b>Criminal Code Act</b>
CFRN	Constitution of the Federal Republic of Nigeria
CA	Court of Appeal
CPA	Criminal Procedure Act
CPC	Criminal Procedure Code
CRA	Child Rights Act
EFCC	Economic and Financial Crimes Commission
FRN	Federal Republic of Nigeria
IGO	Inter-Governmental Organisation
OAU	<b>Organisation of African Unity</b>
PCA	<b>Penal Code Act</b>

SC	Supreme Court
UN	United Nations
UNCRC	United Nations Convention on Rights of a Child
UNDP	United Nations Development Programme
UDHR	Universal Declaration of Human Rights
VOD	Victim-offender Dialogue
VOM	Victim-offender Mediation
VAPP	Violence Against Persons Prohibition

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## **Chapter One**

### **Introduction**

#### **1.1 Background of the Study**

Prior to the emergence of the nation state, wrongdoing was primarily viewed in an interpersonal social justice system rather than a strict legal one. Generally, the period of community justice was far less systematic but had a restorative character. The interpersonal, customary and negotiated features of community justice were replaced by a more institutionalised and centralised legal justice system. The contemporary Nigerian criminal justice jurisprudence is offender-centred that is all the stages of the criminal justice system from arrest, investigation, trial, judgment and post-judgment are geared towards justice to the offender.

The practice of resolving minor conflict and reconciling parties differed and depended on the gravity of the wrong committed and the number of people involved. For example, if a member of the community insults another, the parties to the conflict could attempt to resolve

it themselves but grave offences or serious disputes required the involvement of clan members and the community. This usually happened when members of the community, sitting around the fireplace, and listening attentively to the parties, interrogated them and helped them get to the bottom of the problem and bring out the truth. The community is a place where offenders, victims, and other members live. Hence, people who know the offender and the victim are community members and they are in the best position to restore and reintegrate the victim as well as reconciling the offender by making him or her accountable for his or her criminal acts or conduct.<sup>1</sup>

Regrettably, the emergence of colonialism compelled the indigenous people to surrender their restorative justice system into the hands of the colonial masters who imposed the British laws and regulations on the Nigerian people. This imposition on the indigenous customs and traditions brought about the paradigm shift from the indigenous restorative criminal justice system to the retributive criminal justice system that was introduced by the colonial overlords. In practice, the imposed colonial laws, whether common or civil law or statutes, became the law of the land and gradually replaced the customary laws of the communities under occupation.

On the attainment of independence, Nigeria faced the dilemma of which laws to follow, to either retain the laws imposed by the colonial masters or revert to their customary laws.<sup>2</sup> Regrettably, Nigeria retained retributive justice over restorative justice based on what the

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<sup>1</sup> Rossner, M & Bruce, J, *Community Participation in Restorative Justice: Rituals, Reintegration, and Quasi Professionalization, Victims and Offenders*, 2016, 11(1) cited as Pavlacic, JM, Kellum, KK, & Schulenberg, SE, [Advocating for the Use of Restorative Justice Practices: Examining the Overlap Between Restorative Justice and Behavior Analysis](#), **Behavior Analysis in Practice**, 2022, Volume 15, pp. 1237-1246, <<https://doi.org/10.1007/s40617-021-00632-1>>.

<sup>2</sup> Joireman, S, *The Evolution of the Common Law: Legal Development in Kenya and India*. (Commonwealth and Comparative Politics, 2006) as cited in Prasad, PD, [The Prospect of Restorative Juvenile Justice in India: Insights From Youth Justice in England and Wales](#), **Prasad, Pupul Dutta**, 2022 <<https://theses.lse.ac.uk/4478/>>.

colonialists made them to believe, that the English laws were considered superior to customary laws. The pertinent question is that if it is true that law represents the culture of the people in every given community, can it be said that the British laws reflected the customs of Nigerians?

The criminal justice system as it is constituted and administered is predicated on the aphorism 'If you do the crime you do the time. If you do the time then you've paid your debt to society and justice is done'<sup>3</sup> which is equal to the punishment goals of just deserts, incapacitation and deterrence otherwise known as retributive justice. The retributive theory of punishment attempts to draw on peoples' intuition about what people deserve. Retributive theorists believe that crimes warrant punishment hence, a criminal should be hurt by their punishment. Over the years, this view of punishment has not made the criminal a better person (rehabilitation), nor made the victim better (restoration), and it is not socially beneficial.

In Nigeria, crime is seen primarily as an act against the State rather than against the victim and there is little or no regard for the victim of the offence. Although, justice actually supposed to be a three way traffic: justice for the offender, justice for the State and justice for the victim. The contemporary criminal justice system is offender-centred as special attention is paid to the offender to determining his guilt, innocence and punishment where necessary.<sup>4</sup> Ironically, victim of crime is an observer or a passive participant of the criminal justice process. He is always a prosecution witness to the State.

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<sup>3</sup> Price, M, *Personalizing Crime; Mediating Produces Restorative Justice for Victims and Offenders*, in *Dispute Resolution Magazine* published by the American Bar Association fall 2001, <<http://www.vorp.com>>, as cited in Borrego, R & Maxwell, GM, *The Lingering Effects of Zero-Tolerance: Perceptions of Educators and Former Students*. **Research in Higher Education Journal**, 2021, <[https://scholar.google.com/scholar?hl=en&as\\_sdt=2005&sciodt=0%2C5&cites=16651857676737377688&scipsc=&q=The+Lingering+Effects+of+ZeroTolerance%3A+Perceptions+of+Educators+and+Former+Students.&btnG=>](https://scholar.google.com/scholar?hl=en&as_sdt=2005&sciodt=0%2C5&cites=16651857676737377688&scipsc=&q=The+Lingering+Effects+of+ZeroTolerance%3A+Perceptions+of+Educators+and+Former+Students.&btnG=>)>.

<sup>4</sup>Chinyere, AC, *Extending the Frontiers of Remedies for Crime Victims in Nigeria*, <<https://legalpediaonline.com/extending-the-frontiers-of-remedies-for-crime-victims-in-nigeria/>>.

In the cause of litigation, while the State is represented by a State counsel and the Defendant is represented by a private counsel of his choice,<sup>5</sup> the victim who actually suffered the pain has no legal representation. If the victim is represented by a counsel at all, such counsel only holds ‘watching brief’ for the victim, by that, the counsel can only be seen but cannot be heard in court.<sup>6</sup> Under cross-examination, the victim is rather made to experience secondary victimisation and humiliation to recount what happened through the most revealing and traumatic questions. It is from this background that this research work sets out to discuss the existing criminal justice system and recommend the appropriate justice system that will prioritise the interests of the victims.

## **1.2 Statement of the Problem**

The failure of the contemporary Criminal Justice System in Nigeria to satisfy the three cardinal goals of criminal justice system: justice to the victim, to the offender and to the State, has led to the paradigm shift that makes the criminal justice system more of victim-centeredness rather than the hitherto offender-centeredness. The question, ‘how do we strike a balance between the needs of the offender, the State and that of the victim of crime?’ is the problem that this thesis sets out to resolve by making the criminal justice system an all-encompassing one that accommodates the interests of all parties.

## **1.3 Aim and Objectives of the Study**

The Aim of this research is to examine the retributive nature of the contemporary criminal justice system in Nigeria as regards its heavy reliance on the machinery of punishment against the offender without much regards to the interests of the victims.

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<sup>5</sup> Section 35(2), Nigerian 1999 Constitution (As Amended)

<sup>6</sup> *Adio v FRN* (2019) LPELR-46793(CA) (Pp. 24-26 paras. A)

The specific objectives are to:

- i. examine and trace the historical development of restorative justice from the indigenous concept to the contemporary Nigeria's criminal justice system
- ii. discuss the effect and the impact of jurisprudence of restorative justice on the interests of victims of crime in Nigeria; and
- iii. establish how the interests of victims of crime be prioritised to improve the criminal justice system in Nigeria.

#### **1.4 Research Questions**

- i. How can the historical development of restorative justice to victims of crime in Nigeria be traced from the indigenous concept to the contemporary criminal justice system?
- ii. How effective and impactful is the jurisprudence of restorative justice on the interests of crime victims in Nigeria?
- iii. To what extent can the interests of the victim of crime, be prioritised to improve Nigeria's criminal justice system?

#### **1.5 Significance of the Study**

This research work is one pathway to transformational reform in repairing the distrust caused by crime and providing solutions to the series of questions that are agitating the minds of a reasonable man. In a nutshell, restorative Justice is a theory of justice that emphasizes repairing the harm caused by criminal behaviour. It can only be accomplished through cooperative processes that allow all willing stakeholders to meet for resolution.

The work highlights the justifications for restorative justice as an alternative to the current criminal justice system in Nigeria. The role of cultural acceptance of the implementation of restorative justice is well-established under the indigenous Nigerian criminal justice system and this is responsible for the potential success embedded in the traditional values.<sup>7</sup> The success of restorative justice lies in its capacity to resolve disputes among victims and oppressors and create ways in which social progress can be achieved without obstructive punitive measures.<sup>8</sup>

The purpose of this research work is to assess restorative justice as a system that may provide benefits if fully implemented and embraced by all the States of the federation of Nigeria as an alternative to the existing criminal justice system. The system is designed to identify an efficacious solution to help improve the Nigerian legal system. In Nigeria, the traditional restorative criminal justice system of dispute reconciliation had been neglected.<sup>9</sup> Most of the time, arrest and interrogation create enmity and malice among participants because of the inquisitorial system of trial in Nigeria. Once a policeman is involved in any case, the social relationship between the complainant and the offender is broken. The penal system emphasizes the punishment of the offender, rather than the concern for reconciliation and providing remedy to the victim. The situation is further compounded by the delay in the adjudication of cases and victims' frustration. As such, judicial matters should no longer be

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<sup>7</sup> Dzur, A & Olson, S, *The Value of Community Participation in Restorative Justice*. (Journal of Social Philosophy, 2004) 35(1), 91-107 as cited in Hobson, J, Twyman-Ghoshal, A, Banwell-More, R & Ash, DP *Restorative Justice, Youth Violence, and Policing: A Review of the Evidence MDPI, Laws*, 2022, Volume 11, Issue 4, <<https://www.mdpi.com/2075-471X/11/4/62>>.

<sup>8</sup> Falola, T. *The Power of African Cultures*. (Rochester, NY: University of Rochester Press, 2003) as cited in Bondarenko, DM, *Post-colonial Nations in Historical and Cultural Context*, **Rowman & Littlefield**, 2023, <https://books.google.com.ng/books>.

<sup>9</sup> Omale, J. D. *Restorative Justice and Alternative Dispute Resolution: An Analytical Discourse for African Professionals*. (International Journal of Advanced Legal Studies and Governance, 2011), 2(1), 102- 112, as cited in Schneider, CR & Weber, EU, *Reducing Discrimination & Fostering Prosociality Towards Ex-Prisoners in Nigeria and the United States*, **Journal of Social Issues**, 2020, 76(1), 172-199, <<https://doi.org/10.1111/josi.12374>>.

ultimately left at the mercy of the criminal justice system but should be seen from the African traditional tripartite approach to justice.

This work helps to reintegrate the victim of crime into the society and also repairs the harm done to the community social order that has been broken as a result of the crime. It makes the offenders to take responsibility for their actions, to give them an opportunity to redeem themselves, to discourage them from causing further harm and to understand the impact of the harm they have caused on the victim and the society. It gives the victim an active role in the process and to reduce feelings of anxiety, inferiority and powerlessness.<sup>10</sup> This study presents restorative justice as a replacement of the retributive justice theory, which focuses on Mosaic Law of “an eye for an eye” and also as a complement to traditional criminal justice methods.<sup>11</sup>

The study is also relevant for researchers in other climes as the style of enquiries lays down precedents and principles that are equally useful for the restoration of justice in other countries. This is an important work in the progression towards the attainment of reformed laws on restorative justice. Apart from its capacity to discover newer revelations for legislative intervention, this work provides additional information to policy makers on the reasons for the failure of the existing laws on crime that have failed to reduce the commission of crime in Nigeria.

The study is a written resource for the identification of the philosophies behind the restorative justice in Nigeria. The study is relevant for a better understanding and identification of the series of justice systems that arise as a result of the indigenes ideological positions within the

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<sup>10</sup> Gade, CBN, *Is Restorative Justice Punishment?* **Conflict Resolution Quarterly**, 2020, 38(3), pp, 127–155, 2020. <<https://doi.org/10.1002/crq.21293>>.

multiple systems of criminal law.<sup>12</sup> It exposes the achievement and failures of the existing laws on criminal justice jurisprudence as well as presenting an opportunity for the offender to meet with the victim or the family member of a victim so as to amend for the harm caused by the crime. It leads to settlement of criminal cases against violations of individual interests with a restorative justice approach through penal diversion and mediation.

Restorative justice seeks to address the circumstances which contribute to the crime so as to prevent recidivism once the offender is released. It addresses cultural and legislative issues on the compatibility of the provisions of the Nigerian laws on criminal justice administration. It makes provisions for the means by which the gaps created by varying ideas on justice development might be filled.

### **1.6 Scope of the Study**

The scope of this thesis is to examine the theories of Nigeria's criminal justice system and recommend an appropriate jurisprudence that will integrate the interest of the victims of crime. This work shall introduce the concept of restorative justice as a philosophical principle of Jeremy Bentham's utilitarianism, which postulates that justice should resort to the greatest good for the greatest number of people, with a view to having an all-encompassing criminal justice system that accommodates the interests of all parties to a crime.

### **1.7 Operational Definitions**

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<sup>12</sup> Thorburn, M. *The Impossible Dreams and Modest Reality of Restorative Justice*, 2005) 30 Queen's L.J. 863, 2005. <<https://ssrn.com/abstract=1024774>> Accessed on 10<sup>th</sup> March, 2023. Smith, DP, *A Qualitative Narrative Inquiry Exploring Successful Leadership Behaviors Implemented in Successful Restorative Justice Programs*, A Dissertation Presented in Partial Fulfillment of the Requirements for the Degree Doctor of Management in Organizational Leadership, ProQuest LLC, 2020, <<https://www.proquest.com/openview/60e5039bdb3e40ebd15910258d39a7b4/1?pq-origsite=gscholar&cbl=18750&diss=y>>.

There are certain terms that are used in this work which need to be defined and clarified for ease of understanding. The terms and their meanings are stated below:

**Crime:** It is an action or omission which constitutes an offence and punishable by law. It is the intentional commission of an act that is usually deemed socially harmful, specifically prohibited and punishable under criminal law.

**Restorative Justice:** It is a system of criminal justice that focuses on the restitution to the victim and the resolution of the issues arising from crime. Restorative justice refers to an approach to justice that seeks to repair harm by providing an opportunity for the victims, the offenders and the community to communicate about and address their needs in the aftermath of a crime.

**Retributive Justice:** Retributive justice is a system of criminal justice that focuses solely on punishment, rather than prevention of future crimes and rehabilitation of offenders. It means that criminals should receive as punishment precisely those injuries and damages they had inflicted upon their victims that is the severity of the punishment should be in proportion to the seriousness of the crime committed.

**Traditional Law:** Traditional law refers to the legal processes that are customary in an area, often remaining unmodified. The law is based on custom and embodies local social values and norms. Traditional law in Nigeria is often overseen by community elders, and frequently incorporates elements of restorative justice.

**Victims:** Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss of substantial impairment of their

fundamental rights, through acts or omissions that are in violation of criminal laws operative within Nigeria. The term 'victim' also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

**Offender:** Offender is a legal term used in the context of criminal law to refer to a person who commits a crime. An offender is a person who transgresses moral or civil law. Offender means a defendant in a criminal justice system or a person convicted of a crime.

**Nigeria's Legal System:** This means the totality of laws in Nigeria and the machinery through which these laws are enforced. Nigeria has a mixed legal system comprising of English law, common law, Sharia (Islamic) law and customary law.

**Offender-centred:** This is a process where all the apparatus of the justice system are geared towards the protection, rehabilitation and reintegration of the offender. It is a process where justice is presumed to have been done if only justice is done to the offender.

**Victim-centred:** This is a process where all the apparatus of the justice system are geared towards the protection and reintegration of the victim. It is a process where justice is presumed to have been done if only justice is done to the victim. Victim-Centred means that all the people working on a case make decisions and act in ways that support, protect and reintegrate the victim into the community.

**Recidivism:** Recidivism is generally used for describing repetitious criminal activity, and a recidivist offender is an individual who engages in such activity. When a number of released

prisoners return to prison for the same offence repeatedly. This act of committing the same offence after being punished for that act is known as recidivism.

**Criminal Justice Professionals:** Professionals who work in the criminal justice system police officers, judiciary like judges and magistrates, public prosecutors, lawyers and prison officers who are Nigerians and/or have legal rights to work in these professions in Nigeria without regard to gender, age, religion, and ethnicity.

**Therapeutic Jurisprudence:** This is the study of the effects of law and the legal system on the behaviour, emotions and mental health of people, that is how law and mental health interact with each other, to reform the law so as to create a positive impact on the well-being of the offender under the criminal justice system.

**Criminal Code:** The Criminal Code is a codified law in Nigeria for criminal investigation, trial and punishment of criminals. The States in Southern Nigeria follow the provisions of the Criminal Code.

**Penal Code:** The Penal Code is a codified law in Nigeria for criminal investigation, trial and punishment of criminals. The States in Northern Nigeria follow the provisions of the Penal Code.

## **1.8 Overview of the Chapters**

This work is divided into seven chapters organised as follows:

Chapter One comprises of introduction, background of the study, Statement of the problem, research questions, aims and objectives, significance of the study, and overview of the chapters.

Chapter Two is about the thematised review of the works of scholars on retributive justice, restorative justice, criminal justice system and other related works so as to know the missing gap which forms the basis of this work. It also includes both the conceptual clarification and theoretical frameworks of this thesis.

Chapter Three is about the assessment of existing theories in comparison with contemporary concepts. It provides a nuanced analysis of the methods and approaches used in carrying out this study. It explains the step taken to obtain the materials used for the exploration of the restorative justice analysis in the study areas and also the application of the research methods.

Chapter Four discusses the results and discussion of findings. It examines the origin of restorative justice under the indigenous criminal justice system vis-a-vis the jurisprudence of retributive and restorative justice under the Nigeria's justice system. It also examines the areas of general comparison of both retributive and restorative justice system as they apply to jurisprudence of justice systems under both indigenous and English justice practices.

Chapter Five is about the contemporary jurisprudence of restorative justice for victims of crime in Nigeria. It discusses the theories of criminal justice as well as the theories of restorative justice in Nigeria and also examines the relationship between restorative and retributive justice systems. It discusses the results of investigations on the violation of the rights of the victim of crime and the society vis-à-vis, the enforcement of the rights of the

victim. The theoretical reviews of the theories of criminal justice and schools of thought on restorative justice are also discussed in this chapter

Chapter Six discusses the possibilities of integrating both restorative and retributive justice systems in a way to make the two systems coexist in one legal system. It further discusses how the two justice systems can coexist under the Nigeria's justice system, the benefits of the synergy between the two systems as well as the challenges to coexistence of restorative and retributive justice system in Nigeria. It also explains the protection of the interests of all parties under the synergy as well as the relevant theories. It concludes by fashioning out an appropriate theories for the synergy between both retributive and restorative justice systems.

Chapter Seven is the conclusion of this thesis. It takes a panoramic view of the indigenous and contemporary concepts of restorative justice under the Nigeria's criminal justice system. It recommends and discusses how restorative justice can be funded by the government, public-private partnership, international grants, Non-Governmental Organisations, etc. particularly in the area of compensation to the victims and other ancillary areas that require funding. It enumerates a number of findings from the results of the investigations and suggests relevant recommendations that would be useful to the Nigerian governments in the making of both the regional and national policies on the appropriate justice stem for Nigeria. it also discusses the scope and limitation of study as well as contribution to knowledge.

## **Chapter Two**

### **Literature Review**

#### **2.1 Literature Review**

The review of relevant literature in scholarly work provides the thrust to situate the research in an already existing body of knowledge. The conduct of the literature reviewed provides the needed information about the structures, processes and relationships of the research object in question and it invariably strengthens the depth of this thesis.

This chapter, therefore, examines theories, perspectives and conceptions of restorative justice by looking at ways by which other scholars have approached the subject and tries to clarify

the major concept by linking the literature to the identified study areas. Different scholarly works on restorative justice are reviewed particularly those of African and Western origin. This thesis attempts to juxtapose the observable facts of restorative justice with Nigeria's legal jurisprudence. This Chapter shall also make a conceptual discourse of the key variables of this research work, examine its theoretical framework and contextualise the concept of restorative justice.

**2.2 Restorative Justice Development:** The approach of restorative justice differs from the State's approach to justice, where the State is seen as the primary victim and the primary actor, instead of placing the victim and the offender as well as the community itself, at the centre of the process. Restorative justice puts a great emphasis on the way crime is committed between individuals and directs its process towards satisfying all individuals' interests.<sup>13</sup>

The concept of restorative justice shifts the emphasis from the offender to the victims and seeks for possible ways to return to the victims that which they have lost, or undo the harm which the victims have suffered.<sup>14</sup> This development has caused some scholars to lend their voices on how to make the 21st-century justice system a victim-oriented one. For ease of understanding, this literature review will be thematised as follows:

### 2.2.1 Historical Context of Restorative Justice

The criminal justice system has a history that is older than modern-day civilisation and its awareness spreads from generation to generation. The ancient peoples knew that for the communities to experience peace, crime must be prevented. The Almighty Creator abhors

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<sup>13</sup>Orocter-Legg T, Hobson J. & Quimby, E, *Restorative Justice and Social Justice: An International Perspective Justice Review*, **International Review of Victimology**, 2024, Volume 27, Issue 2-3, pp.218-238 <<https://www.tandfonline.com/doi/full/10.1080/10282580.2024.2414953>>.

<sup>14</sup> Nascimento AM, Andrade J & Rodrigues AC, *The Psychological Impact of Restorative Justice Practices on Victims of Crimes—A Systematic Review*, **Online Sage Publication**, 2023 <<https://journals.sagepub.com/doi/full/10.1177/15248380221082085>>.

crime and that was the reason why He did not spare the first son of Adam and Eve who murdered his younger brother Abel.<sup>15</sup> Given the antiquity history of crime, many scholars have contributed to the Criminal Justice System, some of which are discussed as follows:

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<sup>15</sup> Genesis 4, Holy Bible, (King James Version).

Eglash is generally credited with coining the phrase “restorative justice.” in his article titled *Beyond Restitution: Creative Restitution*.<sup>16</sup> Restorative justice as conceived by him was not new and it was not a “new wave” movement on the fringe of legal practice because such conception of justice has been prominent throughout history. However, with the contemporary legal development, many historical accounts of restorative justice and the administration of justice have obscured these restorative roots.

Zehr, one of the founders of restorative justice states that:

...we must remember that many of the problems in the way we do justice today are rooted in our understanding of justice, and that this particular understanding is only one possible way, one paradigm. Others are possible, others have been lived out, others have actually dominated most of our history. In the long sweep of things, our present paradigm is really quite recent.<sup>17</sup>

However, the concept of justice as propounded by Zehr, devoid of the elements of adequate victim’s compensation that the contemporary justice system requires.

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<sup>16</sup> Eglash, A, *Beyond Restitution: Creative Restitution* (From Restitution in Criminal Justice, By Joe Hudson and Burt Galaway 1977- NCJ-41838), NCJ-47998 as cited in Van Ness, DW, Strong, KH, Derby, J & Parker, LL, *Restoring Justice: An Introduction to Restorative Justice*, New York, Routledge, 2022, 6<sup>th</sup> Edn, <<https://doi.org/10.4324/9781003159773>>.

<sup>17</sup> Zehr, H, *The Little Book of Restorative Justice: Revised and Updated*. New York: Skyhorse Publishing, 2015, As cited in Van Ness, DW, Strong, KH, Derby, J and Parker LL, *Restoring Justice: An Introduction to Restorative Justice*, 6<sup>th</sup> Edition, New York Routledge, 2022, DOI <<https://doi.org/10.4324/9781003159773>>.

Braithwaite, a criminologist believes that throughout most human history, restorative justice has been the dominant model of criminal justice for all the people of the world.<sup>18</sup> According to him, prior 1977, restorative conceptions of justice is not new to Western and non-Western traditions. Therefore, a move towards a restorative model of justice is best understood as a return to the roots of justice, “and not as some new-age cure-all for an ailing system.” However, Braithwaite idea of restorative justice is completely different from the type that this research work proposes for Nigeria’s 21<sup>st</sup> century restorative justice.

Bianchi comments that scholars, particularly those from the West, are so attached and used to the punitive model of justice system that they are unable to contemplate the success of other models in other times and places. He observes that:

[a]lthough punitive criminal law is a rather late development in Western history and, in its present form, is a construction of recent modern times, many learned scholars in this field believe in the shaky dogma and assume that our present punitive structure of crime control depends on some kind of eternal and natural law, having always existed, though in a cruder form, and having survived because it turned out to be more suitable.<sup>19</sup>

Bianchi concept of justice is retributive in nature and it is completely different from restorative justice that considers the interest of the victim of crime.

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<sup>18</sup> Braithwaite, J, *Restorative Justice and Responsive Regulation: New Directions for Research*. (Journal of Law and Society, 2021) 48(3), 491-516. (As cited in Daniel W. Van Ness, Strong, KH, Derby J & L. Lynette Parker, LL, *Restoring Justice: An Introduction to Restorative Justice* (6th ed.), **Routledge**, 2022, p.240.

<sup>19</sup> Bianchi, H, *Individual Accountability for Crimes Against Humanity: Reckoning with the Past, Thinking of the Future* (SAIS Review, 1999) Volume 19, Number 2, pp.97-131 as cited in Pillai, AV, Sharma, S, Mathew, G & Challa, K, *Crimes Against Humanity: Evolution, Prosecution, and Challenges for the International Criminal Court*. **International of E-Journal of Criminal Science**, 2024, <<https://ojs.ehu.eus/index.php/inecs/article/view/26974>>.

Zehr observes that a closer look at the history of justice reveals that other models have predominated throughout most of western history and he describes the challenge brought by such a revelation.

As difficult to realize and that the paradigm which we consider so natural, so logical, has in fact governed our understanding of crime and justice for only a few centuries. We have not always done it like this. ... Instead, community justice has governed understandings throughout most of our history. ... For most of our history in the West, non-judicial, non-legal dispute resolution techniques have dominated. People traditionally have been very reluctant to call in the state, even when the state claimed a role. In fact, a great deal of stigma was attached to going to the state and asking it to prosecute. For centuries the state's role in prosecution was quite minimal. Instead it was considered the business of the community to solve its own disputes.

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While Zehr suggests “community justice” as a more appropriate justice system for early period as disputes were connected to and resolved by the community,<sup>20</sup> Van Ness and Strong believe that the goal of the justice process was to make things right by repairing the damage to those parties, whether the damage was physical, financial or relational.<sup>21</sup> However, the historical perspective of the concept of restorative justice in the West is relevant to this work but it does not in its entirety make a suggestion as to the appropriate restorative justice that will be applicable to Africa particularly a country like Nigeria where the offenders most times are not in the position to correct the wrongs in a way that will restore the victims of crime to their original positions before the crime.

### 2.2.2 Traditional Criminal Justice System

The traditional approach within most Western justice systems focuses on punishing the offender, hence the traditional theorists have considered the way in which punishment takes place, including arguments regarding the role of punishment, whether it is most important to punish the transgressor or to act as a deterrent.<sup>22</sup>

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<sup>20</sup> Morrison, B, *Reflections on Howard Zehr’s Contributions to Restorative Justice: Then and Now*. (Canadian Journal of Law and Society, 2023) 38(1), 55-70 as cited in Sweeney R. in Restorative pedagogy in the university criminology classroom: learning about restorative justice with restorative practices and values, **MDPI Journal**, 2022, Volume 11, Issue 4, <<https://doi.org/10.3390/laws11040058>>.

<sup>21</sup> Van Ness, D, & Strong, KH, *Restoring Justice: An Introduction to Restorative Justice*, 4th Edition, **New York: Routledge**, 2014, as cited in Xiao S. Jhaver S. and Salehi N, Addressing interpersonal harm in online gaming communities: The opportunities and challenges for a restorative justice approach, **ACM Transactions on Computer-Human Interaction**, 2023, Volume 30, Issue 6, Article No. 83, pp, 1-36, <<https://dl.acm.org/doi/full/10.1145/3603625>>.

<sup>22</sup> Kasatkin SN, *Revisiting Legal Positivism: H. Hart’s 1958 Conception of Legal Reasoning in the Lens of G. Postema*, **RUDN Journal of Law**, 2024, Vol 28, No 4, pp. 778-797, <<https://journals.rudn.ru/law/article/view/41929>>.

Zehr asks the question “Does the criminal justice system help victims and offenders? What does justice look like for those who have been harmed? For those who have harmed? Twenty-five years after it was first published, the book remains the classic text of the restorative justice field which changed the landscape of restorative justice and a new section of resources for practitioners and teachers.<sup>23</sup> The book offers a framework for understanding crime, injury, accountability, and healing from a restorative perspective. It uncovers widespread assumptions about crime, the courts, retributive justice, and the legal process and offers provocative new paradigms and proven alternatives for public policy and judicial reforms. However, the mechanism for victim’s compensation particularly when the offender cannot sufficiently do restitution is not discussed in the book.

Jones states that restorative process is built around the notion that the offender takes full responsibility for the crime and is fully accountable for their actions.<sup>24</sup> The goal is to provide a safe space in which victims can express their feelings, offenders can take responsibility for their actions, and both parties can work together to develop a plan for repairing the harm done. This process can be transformative, leading to greater understanding, empathy, and healing for all involved. According to the author, victim-offender mediation not only humanizes the criminal justice process but also empowers individuals to take an active role in shaping the outcomes that affect their lives. By promoting dialogue and collaboration, mediation can help break down barriers, reduce recidivism, and foster stronger, more resilient communities. The book provides a comprehensive understanding of restorative justice and victim-offender

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<sup>23</sup> Harris, J, *Restorative Justice in Action: Practical Applications of Zehr's Principles*. (International Journal of Restorative Justice, 2022) 5(3), 215-231 as cited in Suzuki, M & Jenkins, T, *Redefining Forgiveness in Restorative Justice*, **Criminal Justice Studies**, 2024, Volume 37, Issue 3, 273-289, DOI:10.1080/1478601X.2024.2349586,<<https://doi.org/10.1080/1478601X.2024.2349586>>.

<sup>24</sup> Jones, C, *Restorative Justice and Dissociative Identity Disorder Offenders-An Alternative Path to Healing* **Texas Tech Law Review**, 2021, <[https://texastechlawreview.org/wp-content/uploads/54-Book-3.Jones\\_PUBLISHED.pdf](https://texastechlawreview.org/wp-content/uploads/54-Book-3.Jones_PUBLISHED.pdf)>.,

mediation and examines their historical origins, philosophical underpinnings, and practical applications. It discusses the core principles, practices, and benefits of restorative justice, and also explores its challenges and criticisms. However, as apposite as this book seems, it does not discuss the mechanism of restoring the victim to his original position before the commission of the crime against him.

Palemo in her work discusses restorative justice by placing crime in the context of conflict between the victim and the offender. He elaborates on her approach to understanding crime as a conflict and argues that resolutions should emerge from the individuals directly affected by the crime. According to the author, the resolution must emerge from the parties to that conflict, and state interventions have effectively made the law to steal the resolution of the conflict from the parties who were impacted, constraining any potential opportunity to learn and grow from that conflict, including exercising rights, or accepting and performing duties.<sup>25</sup> By the author's inability to see the importance of law to conflict resolution, the author has left out law being the all-important element in social conflict resolution. The rules upon which society functions through cultural values leading to behavioural expectations are enforced through formal or informal implementation of law. The rules of cultural values are created and enforced to prevent transgressions<sup>26</sup> and influence behaviour.<sup>27</sup> Scholars like Braithwaite and Biles,<sup>28</sup> Vidmar and Miller,<sup>29</sup> Bonta *et al*,<sup>30</sup> and Wenzel *et al*,<sup>31</sup> state that when an individual

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<sup>25</sup> Palemo, G, *Conflict and Crime. Restorative Justice in Italy*, **Frontiers in Sociology**, 2023, <file:///C:/Users/HP/Downloads/fsoc-08-1175291%20(2).pdf>.

<sup>26</sup> Dworkin, R. *A Matter of Principle*, **Cambridge, MA: Harvard University Press**, 1986, as cited in Lovett, F, *The Well-ordered Republic*, 2022, <www.books.google.com>.

<sup>27</sup> Hart, H. L. A. *Legal Positivism: From Positivism and the Separation of Law and Morals*. **Harvard Law Review**, 1958, Vol. 71, No. 4, pp. 593-629, <http://www.jstor.org/stable/1338225> as cited in Rodriguez CM, *Regime Change*, **Harvard Law Review**, 2021, Volume 135, Number 1, 2-159, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/hlr135&div=4&id=&page=>.

<sup>28</sup> Braithwaite, J & Biles, D, *Victims and Offenders: The Australian Experience*, In Block R, (ed), *Victimization and Fear of Crime: World Perspectives*, Washington DC, Department of Justice, 1984 as cited in Kim, S Han, S, & Maskaly, J, *Factors of fear of crime among Korean citizens: The mediating effect of confidence in the police*, **International Journal of Law, Crime and Justice**, 2021, Volume 66. <https://doi.org/10.1016/j.ijlcj.2021.100488Get rights and content>.

violates rules, whether informal or formal, and transgressions occur, the individuals who are most affected are the victims. The victims have psychological deprivation such that deprives individual of suitable respect, their property, or even their lives.<sup>32</sup>

Andrew Karman,<sup>33</sup> while discussing about the traditional criminal justice system, states that in most nations, rightly or wrongly, victims of crime were largely invisible in the criminal justice process. Karman elaborates on how traditional criminal justice frameworks have sidelined victims and advocates for a shift toward their inclusion. He points out the fact that parties to criminal cases are the accused and the state. He also makes it clear that the traditional criminal justice is basically concerned with dispute between the defendant and the state which does not include the victim of the crime. He posits that even if victim is considered at all, it is as a potential witness in that controversy. However, the learned author fails to suggest and make any proposal for paradigm shift in the criminal justice jurisprudence. Marshall while reviewing Zehr that proposes workable principles and practices for making Restorative Justice possible analyses the evolution of restorative justice practices beyond Zehr's original principles, including the challenges and adaptations that have arisen over

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<sup>29</sup> Vidmar, N & Miller, D. T. *Social Psychological Processes Underlying Attitudes Toward Legal Punishment*. **Law and Society Review**, 14, 565–602, 1980 as cited in Marshall, and McAuliffe K, *Children as assessors and agents of third-party punishment*, **Nature Reviews Psychology**, 2022, Department of Psychology and Neuroscience, Boston College, Chestnut Hill, MA, USA. <<https://par.nsf.gov/servlets/purl/10376932>>.

<sup>30</sup> Bonta, J., S. Wallace-Capretta, J. & Rooney, A. *Restorative Justice: An Evaluation of the Restorative Resolutions Project*, Ottawa, Canada: Solicitor General of Canada, 1998 as cited in Altman M, *A theory of legal punishment: Deterrence, retribution, and the aims of the State*, **London Routledge**, 2021, <<https://doi.org/10.4324/9781003143352>>.

<sup>31</sup> Wenzel, M., Okimoto, G., Feather, N. T. & Platow, M. J. *Retributive and Restorative Justice*. *Law and Human Behaviour*, 32, 375-389, 2008 as cited in Xiao, S Jhaver, S & Salehi, N, *Addressing interpersonal harm in online gaming communities: The opportunities and challenges for a restorative justice approach*, **ACM Transactions on Computer-Human Interaction**, 2023, Volume 30, Issue 6, Article No.: 83, Pages 1-36 <<https://doi.org/10.1145/3603625>>.

<sup>32</sup> Ward, T, Fox, K. J & Garber, M, *Restorative justice, offender rehabilitation and desistance*, 2(1), 24-42, 2014 as cited in Kirkwood, S, *A practice framework for restorative justice*, **Aggression and Violent Behavior**, 2022, Volume 63, March–April 2022 <<https://doi.org/10.1016/j.avb.2021.101688>>.

<sup>33</sup> Karmen A, *Crime Victims, An Introduction to Victimology*, (Cengage Learning, 2015), 9<sup>th</sup> Edn, <<https://miemagazine.com/sample/Law/LW100200/LW118/sample%EF%BC%8Crime%20Victims%20An%20Introduction%20to%20Victimology%209th%209E.pdf>> as cited in Angkasa, Wamafma, A & Juanda, O, *Law, Justice and Development: Theories and Practices in Indonesia and Global Context*, **Faculty of Law, Universitas Negeri Semarang, Indonesia**, 2023, <<https://journal.unnes.ac.id/sju/lslr/issue/view/2620>, Volume 7, No 1>.

time.<sup>34</sup> With his emphasis on identifying the justice needs of everyone involved in a crime, he advocates for a worldwide movement of growing influence that is helping victims and communities heal, while holding criminals accountable for their actions. The book is a concrete effort to bring justice and healing to everyone involved in a crime and it explores how restorative justice is different from criminal justice. Zehr presents restorative justice practices as a massive subject and puts it in simple form, without reducing or trivializing it. However, Zehr's concept of restorative justice is peculiar to developed countries and not to a developing country like Nigeria.

In another work of Zehr,<sup>35</sup> the author identifies the justice needs of everyone involved in a crime, is a worldwide movement of growing influence that is helping victims and communities heal while holding criminals accountable for their actions. This is not a soft-on-crime, feel-good philosophy, but rather a concrete effort to bring justice and healing to everyone involved in a crime. Circle processes draw from the Native American tradition of gathering in a circle to solve problems as a community. Peace-making circles are used in neighbourhood, in schools, in the workplace, and in social services to support victims of all kinds, resolve behaviour problems, and create positive climates. However, the mechanisms for victim's compensation is not discussed, hence, its effectiveness cannot be ascertained.

Black's Law Dictionary defines restorative justice as 'An alternative delinquency sanction focused on repairing the harm done, meeting the victim's needs, and holding the offender responsible for his or her actions.'<sup>36</sup> It uses a balanced approach by producing a less

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<sup>34</sup> Marshall, CD, *Restorative Justice*, as cited in Babie, P & Sarre, R. (eds) *Religion Matters*. Springer, Singapore, 2020, <[https://doi.org/10.1007/978-981-15-2489-9\\_7](https://doi.org/10.1007/978-981-15-2489-9_7)>.

<sup>35</sup> Zehr Howard, *Restorative Justice: Four Classic Justice & Peacebuilding*, Amazon, 2015, <[www.amazon.com/big-book-restorative-justice-peacebuilding](http://www.amazon.com/big-book-restorative-justice-peacebuilding)>.

<sup>36</sup> Bryan A. Garner, *Black's Law Dictionary* (10<sup>th</sup> ed.), Thomson Reuters, USA, p. 1542, 2014.

restrictive disposition while holding the offender responsible for providing relief to the victim but does not provide more than the definition of the concept of restorative justice.

Marshall states that restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future. This appears to reflect the reality that is seen, as typical practices used in restorative justice usually include the gathering of the relevant stakeholders that have been impacted by the crime, to talk face-to-face and determine the best way to resolve the injustice.<sup>37</sup> The author does not discuss how the dependants of the victim of crime will be brought into the resolution particularly where the main victim had died as a result of the act of the offender.

The traditional approach within most Western justice systems focuses on punishing the transgressor rather than restoring the victim to his previous position before the crime committed by the offender. Traditional theorists like Dworkin and Hart have considered how punishment takes place, including arguments regarding the role of punishment, and whether it is most important to punish the transgressor or to act as a deterrent. Unlike the traditional concept of justice, restorative justice shifts the emphasis from the offender to the victims themselves and looks at whether it is possible to return to victims that which they have lost, or undo the harm which has been suffered. According to Braithwaite, the concept of restorative justice does not negate the wrongdoing by the transgressor, it only approaches the issue from a different direction with the aim of creating a greater level of justice. Braithwaite's

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<sup>37</sup> Marshall, T. F. *Restorative Justice: An overview. A Report by the Home Office Research Development and Statistics Directorate*. London, England: Home Office, p.5, 1999 as cited in Droubi, S, Heffron, RJ, & McCauley, D, *A Critical Review of Energy Democracy: A Failure to Deliver Justice?* **Energy Research & Social Science**, 2022, Volume 86, <<https://doi.org/10.1016/j.erss.2021.102444>>.

theoretical perspectives on restorative justice can be applied in practical settings, focusing on the creation of justice and community engagement.<sup>38</sup>

Zehr and Mika, assert that a restorative justice model must include the following:

- i. There is a need for everyone including the victim, the criminal, and the community in which they live to be involved in the restoration process because they are all vital participants in criminal justice.
- ii. The use of exclusion practices and coercion should be kept to a minimum level due to the need for the offender to voluntarily participate in restoration to the victim.
- iii. The community has responsibilities to both the victim and the offender to maintain the well-being of community members; however, the needs of the victim should be where the discussions begin.
- iv. Efforts to create a discussion between all involved should be made while keeping the system of justice aware of the results that the crime interventions and victim prevention create.

However, the authors argued that the ideal model of restorative justice as highlighted by Zehr and Mika is deliberately provocative as it is far removed from the reality and practice of criminal justice systems. Williams argued that the characterisation is important in providing “an ideal type” against which to test the claims of particular projects or initiatives that might claim restorative principles. Williams further states that the characteristics and principles of restorative justice as stated by Zehr and Mika are aspirational rather than descriptive of any current system, hence they are unrealistic.

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<sup>38</sup> Braithwaite, J, *Putin's War: Restorative Reflections*, *The International Journal of Restorative Justice*, 2022, DOI: 10.5553/TIJRJ.000117, <[https://johnbraithwaite.com/wp-content/uploads/2022/03/Putin\\_s\\_war\\_restorative\\_reflections.pdf](https://johnbraithwaite.com/wp-content/uploads/2022/03/Putin_s_war_restorative_reflections.pdf)>.

According to Wright, creating a definition of restorative justice can be done by contemplating the overall targets of the process for everyone involved. While the aims of the restorative justice process include not causing additional harm by harming the perpetrator of the crime, it also includes trying to make reparations for the crime, providing support to the victim through their community and allowing the criminal offender to make amends with their victim and the community.<sup>39</sup> The author does not present a conceptual clarification of restorative justice as well as its *modus operandi*.

Scholars like Abrams, Umbreit, and Gordon argue that restorative justice offers a fundamentally different background for responding and understanding crime, victimization and justice. According to them, the importance of restorative justice is in elevating the role of crime victims and community members in the criminal justice system. They state that restorative justice is an avenue for holding offenders directly accountable to the people they violated by restoring emotional and material losses to the victim by providing a range of opportunities for dialogue so that negotiation and problem solving can take place, thereby leading to a greater sense of community safety.<sup>40</sup> The work only advocates the need for greater emphasis and research in the field of restorative justice, it however did not demonstrate any kind of procedure to be adopted for restorative justice.

Zehr offers an approach to life in the area of criminal justice. He points out in his book that victims are side-lined in the traditional criminal justice system. He emphasises that society's laws for handling crime have often resulted in more prisons, increased violence and

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<sup>39</sup> Daly, K, Stepping Out of the Shadow of Transitional Justice: A Theoretical Framework for Institutional Justice, **Victims & Offenders**, 2024, 19(7), 1239–1275. <<https://doi.org/10.1080/15564886.2024.2391478>>.

<sup>40</sup> Abrams LS, Umbreit M & Gordon, A, *Young Offenders Speak About Meeting Their Victims: Implications for Future Programs*. **Contemporary Justice Review**, 2006, 2: 243256, 2006 as cited in Jonas, J, Zebel, S, Claessen, J & Nelen, H, *How Can the Victim-Offender Mediation Process Contribute to a Lower Risk of Reoffending?: A Synthesis Literature Review*, **The International Journal of Restorative Justice**, 2023, Volume 6, Issue 2, <<https://research.utwente.nl/en/publications/how-can-the-victim-offender-mediation-process-contribute-to-a-low>>.

unresolved human cost. He distils restorative justice as a game-changer for the criminal justice system and conflict of all kinds. He demonstrates how restorative justice practices can extend to all of human interactions through respect, relationships, and responsibility. This book does not show how restorative justice can change people's personal lives as well as that of the communities, but also presents the meaning of restorative justice in a convincing and inspiring manner.

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Hill takes a look beyond the criminal mind to find out what motivates a person to delve into the dark world beyond the law and how our society is connected to it. From the politicians using crime statistics to motivate their campaigns to legal professionals who make a living from it to police forces that fight it and all the government agencies designed to facilitate these activities, our world would function very differently if crime did not exist. Some might say that crime is good business and not just for criminals. Of course, in many instances, criminal behaviour is a symptom of a deeper social ill; poverty and crime go hand-in-hand, and often mental illness and crime are linked too. While crime reports in your area may have residents banding together to form community watch groups, are the criminals the real issue? Or are we overlooking the complex tapestry of motivators in which crime is merely the golden thread? The book introduces eight reasons for crime viz: Introducing a sociological perspective investigates: Criminals and victims, Upbringing, Money/Poverty, Drugs, Associates/Gangs, Political crime, Religion, Racial differences, Liberty and Justice for all and Crime and punishment. Will we ever see an end to criminal behaviour? Or is the psychology of crime too intricately woven into our social fabric? Using real-life examples, *Eight Reasons for Crime: Introducing a sociological perspective* looks at these questions and analyses the many aspects that influence its impact on our lives.<sup>41</sup> However, this book discusses only eight reasons for crime, Restorative justice is not in the author's contemplation.

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<sup>41</sup> Hill Marley, *Eight Reasons for Crime: Introducing a Sociological Perspective*, Kindle Edition, 2022 <<https://www.amazon.com>>.

Maynard and Weinstein replace traditional school discipline with a proven system, founded on restorative justice.<sup>42</sup> The authors demonstrate how to eliminate punishment and build a culture of responsible students and independent learners. The books reduces repeated negative behaviours, builds student self-regulation and empathy, enhances communication and collaboration, identifies the true cause of negative behaviours and uses restorative circles to reflect on behaviours and discuss impactful change. The authors provide practical tips and strategies in the context of real-world examples, guided by the imperatives of changing the behaviour and preserving the relationship. The book is good for restorative justice in school setting but not within the purview of the focus of this work.

Ismail, Arsyad and Ahmad state that various studies have identified that there are four main principles that represent a strong and all-encompassing model for restorative justice that focuses on the community and the model is not authentic unless it contains the following four principles:<sup>43</sup>

- i. Crime is essentially committed when one individual infringes on another individual and  
the violation of this makes it more meaningful than simply breaking a law.
- ii. The response to a crime needs to focus on bringing awareness to the perpetrators of the  
harm they have caused, which will hopefully prevent them from committing crime in the future.
- iii. Everyone involved in the crime including the offender, the victim, and their community,

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<sup>42</sup> Nathan Maynard & Brad Weinstein, *Hacking School Discipline: 9 Ways to Create a Culture of Empathy and Responsibility Using Restorative Justice*, 2019. <<https://www.amazon.com/Hacking-School-Discipline-Responsibility-Restorative>>.

<sup>43</sup> Ismail DE, Arsyad Y & Ahmad A, *Collocation of Restorative Justice with Human Rights in Indonesia*, **Legality: Jurnal Ilmiah Hukum**, 2024, Vol 32, No 2, <[www.ejournal.umm.ac.id](http://www.ejournal.umm.ac.id)>.

should all work together in the decision concerning reparations and prevention tactics.

- iv. To best prepare the offenders to join society again, a relationship between them and their victims should be nurtured.

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Van Ness *et al* eliminates the feeling of institutional coercion and enables people who have been injured to heal themselves and also places the offender in a position where to keep any sense of personal integrity, he or she has to live up to community standards.<sup>44</sup> Everyone learns from the experience. Contrast that with our procedures today where the family of the injured person gets a chance to curse the offender after the person has been convicted and the family is further encouraged to announce publicly that they have been partially revenged. Here no one learns anything, and the courtroom becomes merely an arena for institutionalised vengeance. On the surface, it describes the use of circle processes in criminal justice, and all three authors are eminently qualified. However, restorative justice is not about institutionalised vengeance but about restoration of justice to the parties.

Together and separately, they have done circle training for justice professionals across the continent. Van Ness *et al* have consistently seen circles reach far beyond individual disputes to locate, nourish and engage the deepest generosity, wisdom, and courage of the human beings within them. Their descriptions may well take most readers beyond the physical, mental, and emotional aspects of the dispute, to a place where even the most hard-hearted will start to contemplate the notion of spiritual connection between human beings. Van Ness *et al* have been taking circles into industrial, educational and healthcare settings as well. To no one's surprise, they regularly demonstrate an ability to transform "employer-employee relations" just as fundamentally as they transformed "victim-offender relations." However, the Van Ness *et al*'s idea of circle processes in criminal justice is not such that can work in Nigeria.

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<sup>44</sup> Van Ness DW, Strong KH, Derby J & Parker LL, *Restoring Justice: An Introduction to Restorative Justice*, New York Routledge, 2022, 6<sup>th</sup> edn, <<https://doi.org/10.4324/9781003159773>>.

In favour of restorative justice, Bhatti and Rizwan<sup>45</sup> posits that restorative justice is a “theory that seeks to restore the harm caused by crime.” He further explained that the “process of restoration results in forgiveness or at least in a sense of closure for the participants, each having expressed themselves and having determined a mutually satisfactory solution to the infraction” The argument by Skotnicki is important because to forgive, one has to give up pain, resentment, anger, and fear to experience goodness, peace, joy, and love, as well as do away with what you do not want to make room for what you want. This work does not state that restorative justice creates room and opportunity for the offenders to realise their mistakes and to constantly improve upon those mistakes, as well as develop acts of reparation.

Bhatti and Rizwan define procedural fairness as the study of people’s subjective evaluation of the procedure involved in justice delivery. They thought that law is a prominent tool of intervention through which the government can seek to achieve public health goals. Therefore, the paper proposed the use of fairness in the procedure of making laws, for regulating public health, as the only means of conferring legitimacy on the public health authorities. The paper also defines it in terms of whether it is fair or unfair, whether it is ethical or unethical by the people’s standard of fair processes for social interaction and decision-making. The authors believe that there are two key dimensions of procedural fairness judgment which are fairness of decision-making, that is, voice neutrality, and fairness of interpersonal treatment, that is, trust and respect. The research notes that legitimacy is a quality that is possessed by an authority, a law or an institution that leads others few obligated to accept its directives. However, the discussion of the paper on procedural justice is not anchored on the restorative

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<sup>45</sup> Bhatti, MU & Rizwan, MS, *Alternative Dispute Resolution in Criminal Justice System: A Case Study of the Punjab ADR Act 2019*, **Pakistan Journal of Social Research**, 2023, Vol. 5, No. 1, pp.181-195 <[www.pjsr.com.pk](http://www.pjsr.com.pk)>.

justice jurisprudence but rather heavily and largely rested on the government's attempt at achieving effective and efficient public health delivery and concerns.

Rossner and Taylor in their book state that Restorative justice is a collaborative decision-making process that includes victims, offenders, and others who are seeking to hold offenders accountable by having them (a) accept and acknowledge responsibility for their offences, (b) to the best of their ability, repair the harm they caused to victims and communities, and (c) work to reduce the risk of re-offense by building positive social ties to the community. They write in their introduction that as administrators, "We have become deeply committed to the concept and practice of restorative justice. we have experienced how it can work given the very real pressures among administrators to manage high case loads, ensure fair treatment, minimize institutional liability, protect the community, boost morale in a division with high turnover, and help students learn from their mistakes without creating insurmountable obstacles to their future successes."<sup>46</sup> The book does not state how the concept of restorative justice would be affected particularly in the Nigerian setting where the offender does not have the financial capacity to restore the victim to the position he was in before the commission of the crime.

Doolin discusses on procedural justice in legal and quasi-legal settings. In his paper he notes that the adversarial procedure mostly resulted in greater feelings of procedural fairness and satisfaction of all concerned (the accused as well as the victim) with the verdict. He thinks that when the verdict was unfavourable, the disputant in the adversary condition rated the procedure as fairer than the disputant in the inquisitorial hearing condition. The paper

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<sup>46</sup> Rossner M. & Taylor H, *The Transformative Potential of Restorative Justice: What the Mainstream Can Learn From the Margins*, **Annual Review of Criminology**, 2024, Volume 7, 367-381, <[www.annualreviews.org](http://www.annualreviews.org)>.

demonstrates that procedural fairness was an independent contributor to disputant acceptance of outcomes.<sup>47</sup> The research is limited to issues of procedural fairness as it relates to civil suit in court and not to the criminal process. Again, the research does not address the concept of procedural fairness as it affects the victims' participation in the restorative criminal justice system. Doolin researches the use of, and attitudes toward, restorative justice for youth offenders. The research team stated the need for a more rigid ongoing evaluation. The author lists possible advantages of restorative justice used for youth offenders:

- i. It enables the victim to explain to the young offender the harm caused by them.
- ii. It helps victims obtain emotional gratification from having been heard as well as having helped ease their fear/anger towards the offender.
- iii. It gives victims a sense of closure which helps them move on with their lives.
- iv. It allows youth offenders to express remorse for their past actions whilst showcasing their want to change for the better.
- v. It often helps change the young offender's perception on the effects that it caused on their victim(s).
- vi. It may also give youth offenders peace of mind as they feel that they have been able to help their victims.

Restorative Justice views crime as an offence against people and incarceration of an offender should not prevent any chances of making amends. Restorative Justice believes in the equal treatment of both parties where it also offers an alternative prototype of crime intervention.

Most communities involved in the restorative justice programme have the same problems with the young offenders and their victims being geographically too far apart. As a result, it

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<sup>47</sup> Doolin K, *Restorative youth detention: The way forward?* **Criminology & Criminal Justice**, 2022, Volume 22, Issue 3, <<https://doi.org/10.1177/1748895820973251>>.

has failed to accommodate youth offenders within a reasonable distance from their homes. Any contemporary projects organised in prison have high chances of being discarded due to the increase in numbers and possible threats to society. However, several establishments try to overcome this by encouraging young juveniles to write letters of apology to their victims, for youth offenders to participate in community service, mediation, etc. Practices such as these indicate a shift in the replacement of prison disciplinary actions with mediation processes. Despite this, there is confusion on the true representation of what restorative justice really is, which indicates a need to fully establish and educate the community as to what restorative justice really entails. As restorative as this work is, its idea of victim is restricted to the original victim neglecting the interests and concerns of the victim's dependants particularly in a case of murder.

### **2.2.3 Comparative Perspectives on Restorative Justice**

This is about the review of global practices of restorative justice in various jurisdictions which identify the best practices and lessons learned. It is also about the critical analysis of successes and challenges in those jurisdictions. It compares the effectiveness of restorative approaches in different cultural contexts as well as the challenges faced in implementing restorative justice practices of the few jurisdictions that are considered as follows:

#### **2.2.3.1 Restorative Justice in America**

Velez and Peguero structures the United States of America criminal justice system into three sections, each of which corresponds to a different body of work on Latinos.<sup>48</sup> Section One explores the historical dynamics and influence of ethnicity in law enforcement, and focuses on how ethnicity impacts policing field practices, such as traffic stops, use of force, and the subsequent actions that police departments have employed to alleviate these problems. A detailed examination of critical issues facing Latino defendants seeks to better understand the law enforcement process. The history of immigration laws as it pertains to Mexicans and Latinos explains how Mexicans have been excluded from the United States through anti-immigrant legislation. Latino officers must cope with structural and political issues, the community, and media, as these practices and experiences within the American police system are explored. Section Two focuses on the repressive practices against Mexicans that resulted in executions, vigilantism, and mass expulsions.

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<sup>48</sup> Velez M.B. & Peguero A.A, *LatCrit and Criminology: Toward a Theoretical Understanding of Latino/a/x Crime and Criminal Legal System Involvement*, **Annual Review of Criminology**, 2023, Vol. 6:307-338, <[https://scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5&q=LatCrit+and+criminology%3A+Toward+a+theoretical+understanding+of+Latino%2Fa%2Fx+crime+and+criminal+legal+system+involvement&btnG=>](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=LatCrit+and+criminology%3A+Toward+a+theoretical+understanding+of+Latino%2Fa%2Fx+crime+and+criminal+legal+system+involvement&btnG=>)>.

The topic of Latinos and the Fourth Amendment reveals that the constitutional right of people to be protected against unreasonable searches and seizures has been eviscerated for Latinos, and particularly for Mexicans. Possible remedies to existing shortcomings of the court system when processing indigent defendants are presented. Section Three studies the issue of Hispanics and the penal system. The ethnic realities of life behind bars, probation and parole, the legacy of capital punishment, and life after prison are discussed. Section Four addresses the globalization of Latinos, social control, and the future of Latinos in the U.S. Criminal justice system. The race and ethnic experience through the lens of science, law, and the American imagination, are explored, concluding with policy recommendations for social and criminal justice reform, and ultimately humanizing differences. Written for professionals and students of law enforcement, this book will promote the understanding of the historical legacy of brutality, manipulation, oppression, marginalization, prejudice, discrimination, power and control, and white America's continued fear about racial and ethnic minorities. The book is about the American criminal justice system and how it affects the Latinos and the Mexican Americans. It is not related to the scope of restorative justice covered by this dissertation.

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According to Diamantis, victims in the United States of America are no longer silent, and new practices by police, prosecutors, nurses, and rape crisis professionals are resulting in more humane and compassionate treatment of victims and more aggressive pursuit and prosecution of perpetrators. The book covers these new approaches and partnerships. Johnston shows how the people and organizations implementing these new approaches are having far-reaching impacts on helping victims heal and making it more likely that predators will be arrested and sentenced. His in-depth portrayals of the altruistic and hard-working people behind these radical approaches (based on seven years of interviews) provide a template of best practices for other organizations and communities to follow.<sup>49</sup> With sexual assault taking centre stage these days, *Shattering Silences* is more important than ever, but the kind of restorative justice that forms the basis of this dissertation is not only about sexual assault but also covers the different types of crime.

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<sup>49</sup> Diamantis M.E, *Invisible Victims*, **HeinOnline**, 2022, <<https://heinonline.org/HOL/LandingPage?Handle=hein.journals>>.

Fisher states that every day, innocent men across America are thrown into prison, betrayed by a faulty justice system, and robbed of their lives either by decades-long sentences or the death penalty itself.<sup>50</sup> Injustice tarnishes our legal process from start to finish. From the racial discrimination and violence used by backwards law enforcement officers, to a prison culture that breeds inmate conflict, there is opportunity for error at every turn. Award-winning journalist Stanley Cohen chronicles over one hundred of these cases, from the 1973 case of the first ever death row. In the wake of these unjust convictions, grassroots organizations, families, and pro bono lawyers have battled this rampant wrongdoing. Cohen reveals how eyewitness error, jailhouse snitch testimony, racism, junk science, prosecutorial misconduct, and incompetent counsel have populated America's prisons with the innocent. They were arrested, convicted, sentenced to life in prison or death, dragged through the appeals system, and finally set free based on their actual innocence. Although these stories end with vindication, there are those that have ended with unjustified execution. The book is sure to fuel controversy over a justice system that has delivered the ultimate punishment nearly one thousand times since 1976, though it cannot guarantee accurate convictions. This book is merely about faulty American justice system not about restorative justice.

Bonta and Andrew, both agree that the traditional methods do not focus on the major stakeholders, that is, the "victim, offender and the community".<sup>51</sup> On the other hand, they maintained that restorative justice offers a process by which those most directly affected by crime have an opportunity to be involved directly in responding to the offense, holding the offender accountable, offering emotional and material assistance to the victim, and working

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<sup>50</sup> Fisher, A, *A Perfect Storm: Young People, False Confessions & Prosecutorial Involvement Response to Dan Medwed's Barred: Why the Innocent Can't Get out of Prison*, **New England Law Review**, 2023, Volume 58, pp.1-28.

<sup>51</sup> Bonta & Andrew, *The Psychology of Criminal Conduct*, **New York Routledge**, 2023, <<https://doi.org/10.4324/9781003292128>>.

toward the development of a safe and caring community for victim and offender. According to them, the best option and approach to reducing youth crime is restorative justice. They agreed with the three theories which the United States government used in responding to juvenile offences and how restorative justice theory in particular reduces recidivism. The two traditional theories that have been used in the United States are “retributive” and “rehabilitation” while the justice system that will be suggested to the Nigeria’s legal system is restorative in nature.

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Clark in his book states that the America's criminal justice system is grappling with multiple issues like police-officer involved deaths and violence; mass incarceration; racial, gender and sexual orientation bias; the death penalty; public corruption; juvenile justice; disparate sentencing; and the ill effects of Three Strikes laws. These and other issues are examined through the lens of the author's experience as both a career prosecutor and educator of prosecutors. *Roadways to Justice* tells remarkable stories of selected cases, trials, and, above all else, quests for justice. The book argues that the criminal justice system can be changed, and it offers inspiration, practical solutions and roadmaps for how to reform that system. This volume is ideal for anyone interested in understanding how the criminal justice system really works, and it is an indispensable book for the new wave of lawyers, law makers, and others who want to improve it.<sup>52</sup> However, victim's compensation is not discussed in this book hence it has a little relevance to the focus of this work.

The work of Ayodele<sup>53</sup> also exposes and expands the scope of the coast of victimology as well as bringing to the fore certain matters on the effects of criminal victimisation and historical analysis of the role of crime victims in the criminal justice process. The work is discussed extensively on the issue of restorative justice which was anchored on the need for adequate compensation for the victims of crime. However, the work in its entirety is based on the data and fact in the United States of America as it relates to the victims of crime but it is not the same with the kind of restorative justice that is proposed for Nigeria.

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<sup>52</sup> Boots, DP & Kim, B. *Shaping the Future of Criminal Justice Education: Insights From ACJS Leadership Survey Analysis*, **Journal of Criminal Justice Education**, 2024, Volume 35, Issue 2, pp. 397-422, <[https://scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5&q=Boots%2C+DP+and+Kim%2C+B.+Shaping+the+future+of+criminal+justice+education%3A+Insights+from+ACJS+leadership+survey+analysis%2C+%28Journal+of+Criminal+Justice+Education&btnG=>](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Boots%2C+DP+and+Kim%2C+B.+Shaping+the+future+of+criminal+justice+education%3A+Insights+from+ACJS+leadership+survey+analysis%2C+%28Journal+of+Criminal+Justice+Education&btnG=>)>.

<sup>53</sup> Ayodele, J. O, *Normative Capital and Reporting Practices among Crime Victims in South-Western Nigeria*, Inaugural Lecture, **MINDgeneering Publishers**.2024.

The incarcerated individuals in the United States are often regarded as a throw-away population. While the criminal justice system focuses on giving offenders "what they deserve," it does little to restore the needs created by crime or to explore the factors that lead to it. Restorative justice, with its emphasis on identifying the justice needs of everyone involved in a crime, is helping to restore prisoners' sense of humanity while holding them accountable for their actions. In this book, Barb Toews, with years of experience in prison work, shows how people in prison can live restorative justice principles. She shows how these practices can change prison culture and society. Written for an incarcerated audience and for all those who work with people in prison, this book also clearly outlines the experiences and needs of this under-represented and often overlooked part of our society.<sup>54</sup> However, the retributive justice that is the hallmark of Toews' work, is antithetical to the restorative justice that forms the basis of this work.

Khokhar et al <sup>55</sup> define crime from three different perspectives: the consensus, the conflict and the interactionist. This definition was linked to their opinion about restorative justice. The book is an exposition of the victim patterns which the authors explained from eight different angles listed as Age, Income, Gender, Ecological factors, Victim-offender relationships, Race, Repeat victimisation and Marital status,. The work also discusses extensively the various theories of victimisation and how these theories affect the treatment of victims in the criminal justice system. The book is mainly based on research conducted in and for the benefit of the citizens of the United States of America.

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<sup>54</sup> Sweeney, R, *Restorative Pedagogy in the University Criminology Classroom: Learning About Restorative Justice With Restorative Practices and Values* **Laws**, 2022, <[www.mdpi.com](http://www.mdpi.com)>.

<sup>55</sup> Khokha JI, Arshad, M & Afza M.A, *Perceived Effectiveness of Probation System under Criminal Justice Administration: Evidence from the Punjab, Pakistan*, **Qlantic Journal of Social Sciences**, 2023,<<https://doi.org/10.55737/qjssh.573685100>>.

While stating the purpose of re-integrative shaming, Bredewold and Tonkens state that it makes the offender to face the human impact of his or her crime. The victim then is presented with the opportunity to express feelings, ask questions about the offence, and identify desired outcomes from the conference. All participants may contribute to the process of determining how the offender might best repair the harm. By the end of the conference, the participants must reach an agreement on how the youth can make amends to the victim and sign a reparation agreement. The agreement typically includes an apology, and it often includes a requirement that some type of restitution be made to the victim. Some agreements require youth to perform community service or call for other actions such as improving school attendance, completing homework, or performing chores at home or school. A typical conference begins when the victim, the offender, and the supporters of each are brought together with a trained facilitator to discuss the incident and the harm it has caused. It proceeds with the offender describing the incident and each participant describing the impact of the incident on his or her life.<sup>56</sup> Though re-integrative shaming is a theory of restorative justice, it does not in its entirety restore the victim to his original position before the commission of the crime.

Browning *et al*, show how racial justice and restorative justice can transform the African-American experience in America.<sup>57</sup> This work informs scholars and practitioners on the subjects of pervasive racial inequity and the healing offered by restorative justice practices. Addressing the inter-sectionality of race and the United States of America's criminal justice system, social activist Fania Davis explores how restorative justice has the capacity to disrupt

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<sup>56</sup> Bredewold, F & Tonkens E, *Understanding Successes and Failures of Family Group Conferencing: An In-depth Multiple Case Study*, **British Journal of Social Work**, 2021, <<https://www.academic.oup.com/>>.

<sup>57</sup> Browning, S, Duffey, D, Magondu, F, Moore, JA & Way PA, *Little Book of Listening: Listening as a Radical Act of Love, Justice, Healing, and Transformation*, **Simon and Schuster**, 2023, <[https://scholar.google.com/scholar?hl=en&as\\_sdt=2005&sciodt=0%2C5&cites=12533038067725557399&scipsc=&q=Little+Book+of+Listening%3A+Listening+as+a+Radical+Act+of+Love%2C+Justice%2C+Healing%2C+and+Transformation&btnG=>](https://scholar.google.com/scholar?hl=en&as_sdt=2005&sciodt=0%2C5&cites=12533038067725557399&scipsc=&q=Little+Book+of+Listening%3A+Listening+as+a+Radical+Act+of+Love%2C+Justice%2C+Healing%2C+and+Transformation&btnG=>)>.

patterns of mass incarceration through effective, equitable, and transformative approaches. Eager to break the still-pervasive, centuries-long cycles of racial prejudice and trauma in America, Davis unites the racial justice and restorative justice movements, aspiring to increase awareness of deep-seated problems as well as positive action toward change. The Davis' ideas of restorative justice are utilized in schools, justice systems, and communities, intentionally seeking to ameliorate racial disparities and systemic inequities. However, the Davis concept of restorative justice is not the appropriate one for Nigeria as the level of development between the two countries are not at par. Hence, the applicable restorative justice in Nigeria is definitely not the Davis' concept.

Bazemore *et al* state that from a restorative justice perspective, rehabilitation cannot be achieved until the offender acknowledges the harm caused to victims and communities and makes amends. Therefore, restorative justice programs are generally voluntary in nature and require offenders, if they are to participate, to admit responsibility for the illegal act.<sup>58</sup> The authors do not realise that acknowledgment of the crime by the offender does not in itself completely achieve the purpose of restorative justice.

Lamparello in his paper<sup>59</sup> captures the essence of the procedural justice models and its application to the legal system of the United States. Lamparello devotes a substantial part of his work to the issues of reform of the sentencing law of the United States. The paper

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<sup>58</sup> Bazemore, Gordon, & Mark S. Umbreit, *Balanced and Restorative Justice for Juveniles: A Framework for Juvenile Justice in the 21st Century*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. 1997 as cited in Kimbrell, CS & Wilson, DB, in *Restorative Justice Programs and Practices in Juvenile Justice: An Updated Systematic Review and Meta-Analysis for Effectiveness* **Criminology & Public Policy**, 2023, Volume 22, Issue 21, <<https://doi.org/10.1111/1745-9133.12613>>.

<sup>59</sup> Adam Lamparello, *Incorporating the Procedural Justice Model into Federal Sentencing Jurisprudence in the Aftermath of United States V Booker: Establishing United States Sentencing Courts*. RJM Journal, Issue 3, 2010 as cited in Perlin, ML, in *I Hope the Final Judgment's Fair: Alternative Jurisprudences, Legal Decision-Making, and Justice*, **Cambridge University Press**, 2024, pp. 17-31 <[https://digitalcommons.nyls.edu/fac\\_articles\\_chapters/1657/](https://digitalcommons.nyls.edu/fac_articles_chapters/1657/)>.

proposes a solution to the problem facing the federal sentencing jurisprudence in the light of the Supreme Court's judgement in the case of *United States v Booker*,<sup>60</sup> where the Supreme Court of the United States of America held that the sentencing guidelines suffered from a fatal constitutional infirmity and therefore declare the guidelines effectively advisory. He therefore proposes a process-oriented model to sentence criminal defendants who were guilty. The research is predicated upon the empirical data developed by the social psychologist in the area of procedural justice. However, the procedural justice model used does not relate to the increased and improved participation of the victims of crime in the criminal justice system. The paper is criminal-defendants centred and not crimes-victims centred. In addition, the scholar's major proposal is for the improved guideline for the sentencing of the criminal defendant and not for restorative justice to the victim of crime.

Hipple *et al* conclude that out of a total of 215 youths participating in observed family group conferences (FGCs), 11% had reoffended at least once by Month 6 and 42% had reoffended at least once by Month 24.<sup>61</sup> The question the authors raise is do restorativeness, procedural justice, and defiance indicators explain the variation in these rates of reoffending? Their article states that it has found that youths participating in FGCs have lower rates of reoffending when compared to youths in other types of juvenile justice court or diversion programs. The above sample of FGC cases were drawn from the Indianapolis Restorative Justice Experiment. The work sets out to contribute to the understanding of the impact of FGCs by examining whether the degree of restorativeness, procedural justice, and defiance

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<sup>60</sup> (2005) 543 U.S. 220.

<sup>61</sup> Hipple, NK, Gruenewald J, & McGarrell, EF, 'Restorativeness, Procedural Justice, and Defiance as Predictors of Reoffending of Participants in Family Group Conferences, Vol. 60(8) Crime & Delinquency 1131, 2014 as cited in Islam, MS, B Li, B & Anderson, J, in *An Assessment of the Potential Outcomes in Practising Restorative Justice in Criminal Settings in Australia and the United States: A Systematic Review and Meta-analysis* Contemporary Justice Review, 2023, Issues in Criminal, Social, and Restorative Justice, Volume 26, Issue 3, <<https://www.tandfonline.com/doi/abs/10.1080/10282580.2023.2297833>>.

observed in conferences related to reoffending. The more consistent results were found in favour of the restorativeness scale, although the statistical relationship with juvenile recidivism was often weak. It was found that as the degree of restorativeness increased, reoffending at 6 and 24 months decreased. It was also found that remorse on the part of the offending youth related to reduced reoffending. It was found that the reality was that the observational data suggested that the conferences as a whole largely followed principles of re-integrative shaming consistent with the restorativeness scale, rarely generated defiance, and had high levels of procedural justice in terms of respect among the participants. The consistent relationship between having committed a violent offence and reoffending may be consistent with the point that early life experiences significantly affect future offending. However, this work is only on the youth offender but it should be noted that it is not only the youth that can be offenders. The commission of crime is not exclusive of the youth, it cuts across different classes of people.

### **2.2.3.2 Restorative Justice in England and Wales**

Forgays and DeMilio review research conducted on 26 repeat youth offenders who had gone through the teen court system, in order to establish whether or not restorative justice was effective for repeat youth offenders.<sup>62</sup> The teen court in the programme consisted of teachers assigning student volunteers to make up court personnel with an adult judge model (the equivalent to a panel in England and Wales). On the night of the teen court, prior to their hearing, and following the court session, the youth offenders completed multiple questionnaires including: The Harter Self-Perception Profile for Adolescents-Twenty-three

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<sup>62</sup> Forgays, DK & DeMilio, L, *Is Teen Court Effective for Repeat Offenders? A Test of the Restorative Justice Approach*, (International Journal of Offender Therapy and Comparative Criminology, 2005) Volume 49, Issue 1, 107, 2005 as cited in Kimbrell, CS & Wilson, DB, in *Restorative Justice Programs and Practices in Juvenile Justice: An Updated Systematic Review and Meta-Analysis for Effectiveness*, **Criminology & Public Policy**, 2023, Volume 22, Issue 21, <<https://doi.org/10.1111/1745-9133.12613>>.

out of the twenty-six youth offenders agreed to complete this questionnaire. It measures the youth offender's self-image, academic capacity, social acceptance, athletic skills, physical appearance, romantic appeal, behavioural conduct, close friendships and their overall self-worth. The Exit Survey – this is a nine-item survey that asks the youth offender their opinions on the fairness of their sentences. The Harter Self-Perception Profile was given as a questionnaire to the youth offenders in order to measure the adolescents' own self-worth. It seems that the adolescents' low self-acceptance is a cause for concern despite the fact that previous research had shown that youth offenders with a high sense of self-worth may be less receptive to interventions. The authors' goal was to determine whether or not the teen court experience would be effective in preventing youth offenders from re-offending. The results made it clear that the research was a success. The sentence completion rates rose and recidivism six months post-court-appearance was low. These results question previous findings that second-time offenders are more likely to reoffend than first time offenders. As for the youth offenders', they saw community services such as Teen Courts as a bridge of communication with their own community. Previous offenders who were willing to take on court personnel roles give youth offenders a sense of fairness in the Teen Court as they had been at the same place as where the adolescent is now.

While this approach of Forgays and DeMilio to restorative justice concentrates on punishing or treating delinquent youths, the restorative justice process seeks to repair the harm by involving the entire community in rehabilitating offenders and holding them accountable for their behaviour. Under the restorative justice model, questions are framed differently, asking: What is the nature of the harm resulting from the crime? What needs to be done to repair the harm?<sup>63</sup> By bringing together victims, offenders, families, and other key stakeholders in a

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<sup>63</sup> National Center for Mental Health Promotion and Youth Violence 2009

variety of settings, restorative justice helps the offenders to understand the implications of their actions but does not provide an alternative way to achieve restorative justice in case the victim of crime refuses to have a settlement meeting with the offender.

Valandra, in her book, *Colorizing Restorative Justice*, is a wake-up call for European-descended restorative justice practitioners. It is validating for Indigenous practitioners and practitioners of colour and enlightening for anyone wishing to explore the intersections of indigeneity, racial justice, and restorative justice.<sup>64</sup> However, this work makes no significant reference to the concept of restorative justice which is the focus of this work.

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<sup>64</sup>Edward, V, *Colorizing Restorative Justice*, 2020 <[https://www.amazon.com/ Colorizing-Restorative-Justice-Voicing-Realities-ebook](https://www.amazon.com/Colorizing-Restorative-Justice-Voicing-Realities-ebook)>.

### 2.2.3.3 Restorative Justice in China and India

Yuan provides insights into the history, development, and practice of restorative justice methods in China.<sup>65</sup> Traditionally in China, mediation has played an important role in criminal proceedings, which has many characteristics in common with the “Western” concept of restorative justice. Through case studies and theoretical examination, the author of this timely work aims to bridge the research on restorative justice models mainly developed in the West with restorative justice as practiced in China. After a Brief overview and introduction, the author compares and contrasts case studies of restorative justice-like practices from different districts in China. The author examines cases studies from several regions within China, and explores the key question: can the restoration model developed in the West take root in China, and if so what legal, cultural and societal accommodations may need to be made? However, every country has distinct cultures and traditions, hence the restorative justice in China does not on all fours the same as what is practicable in Nigeria.

Paranjape<sup>66</sup> an Indian scholar in his book extensively exposes the theories of criminal victimisation. He is of the view that many victims contribute to their victimisation either by provoking or inciting the criminal or by creating or fostering a situation likely to lead to the commission of the crime. He believes that a victim may consciously or unconsciously play a causal role in the commission of a crime against himself. The learned author buttresses the

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<sup>65</sup> Yuan, X, *Restorative Justice in China: Comparing Theory and Practice*, (Springer Series on Asian Criminology and Criminal Justice, 2017, <<https://www.amazon.com/Restorative-Justice-China-Comparing-Criminology-ebook>> as cited in Rusydianta, M, *Reformulating Fraud Crimes Under Article 378 of The Criminal Code Based On Restorative Justice Values*, **Prophetic Law Review**, 2021, <<https://journal.uui.ac.id/JPLR/article/view/20370>>.

<sup>66</sup> Paranjape, NV *Criminology and Penology with Victimology* (15<sup>th</sup> ed) Allahabad: Central Law. Publication, 2011 as cited in Lokhande, D, in *Criminology, Penology and Victimology*, 2020, <[https://scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5&q=Lokhande%2C+D%2C+in+Criminology%2C+Penology+and+Victimology&btnG=>](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Lokhande%2C+D%2C+in+Criminology%2C+Penology+and+Victimology&btnG=>)>.

fact that by creating different scenarios and examples of situations where victims of crime may become victims out of their involvement in the crime committed either by being careless, negligent, or reckless. However, apart from the fact that the expositions in the book are limited to the Indian community as a nation, the book does not connect victimology with the concept of restorative justice.

#### **2.2.3.4 Restorative Justice in Northern Ireland**

McEvoy and Mika describe the development of community-based restorative justice system as a response to intercommunity violence in Northern Ireland. They favour the practise of ‘informalism’ based on restorative justice. Informalism refers to processes outside the formal criminal justice system. McEvoy and Mika refer to, and then rebut, common critiques of restorative justice. They note that opposition to informalism in Northern Ireland has supported political tensions surrounding the jurisdiction’s justice system. They believe that informalism is possible if it is committed to the principles and practises of restorative justice, has a politically well-controlled and dynamic community, a dedicated workforce and accepts local standards based on human rights values. McEvoy and Mika encourage others to be less sceptical about restorative justice by outlining its success and in Northern Ireland.<sup>67</sup>

It seems that the impact restorative justice had on Northern Ireland has proven to be a better alternative than the previous justice system which took a punitive approach. It is very beneficial, and proactive and encourages peace in the communities as opposed to the previous criminal system. However, the concept of restorative justice that is effective in Northern Ireland may not be effective in Nigeria which has multicultural societies.

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<sup>67</sup> McEvoy, K, & Mika, HM, *Restorative Justice and the Critique of Informalism in Northern Ireland*, **British Journal of Criminology**, 2002, 42, 534 as cited in Albert, A, *Social Workers by Day and Terrorists by Night?*” *Wounded Healers, Restorative Justice, and Ex-Prisoner Reentry*, **Sage Journals**, 2024, Volume 26, Issue 2, <<https://journals.sagepub.com/doi/full/10.1177/14624745231208183>>.

O'Mahony and Campbell study the criminal justice system's approach to dealing with youth offenders in Northern Ireland discuss restorative justice methods practised in that jurisdiction, and critically analyse the youth justice system. Surprisingly, they discovered that Northern Ireland has low levels of crime. Due to the serious terrorists offences reported in the media, people are led to believe that crime is common occurrence. O'Mahony and Campbell support restorative justice, but acknowledge that it is not suitable for very young children. They also argue that it is not be ideal to mix younger and older youth offenders together. O'Mahony and Campbell feel that the introduction of youth conferencing is a progressive process for victim and offender, even if would not be suitable for all cases. They note that although a high percentage of young people commit delinquent offences, there are only a few that commit serious misdemeanours, or will go on to become continuous serious offenders. They believe it to be neither beneficial nor necessary to involve the criminal justice system in every minor misdemeanour, particularly given that young people commonly cease committing offences once they enter adulthood. They mention the Justice (Northern Ireland) Act 2002 and how it allowed the introduction of two procedures focussed on restorative justice.<sup>68</sup> These were reparation orders and community response orders. Reparation orders require the offender to make amends with the victim, rather than just paying compensation. Community response orders are quite similar, save they focuses on community and victim awareness. However, the work in its entirety discusses only justice in Northern Ireland as it relates to the victims of crime.

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<sup>68</sup> O'Mahony, D & Campbell, C, *Mainstreaming Restorative Justice for Young Offenders through Youth Conferencing-the Experience of Northern Ireland*, **International Handbook of Juvenile Justice**, 2008, 93 as cited in Gude, AD and Papic, IN, in *Restorative Justice and Legal Culture*, **Sage Journal**, 2020, Volume 20, Issue 1, <<https://journals.sagepub.com/doi/abs/10.1177/1748895818796549>>.

Payne and Conway state that certain uses of restorative justice have been studied in detail, but that it is now being used in a much broader range of settings such as schools and youths care homes. They are supporters of restorative justice, and their research shows that restorative justice is commonly used in situations where youth offenders and less serious crimes are involved. However, they also found that it can be successfully used in more serious crimes such as sexual assault, domestic violence and serious violence. Cross-fertilisation between the different groups in the restorative justice system has stimulated the development of restorative methods in Northern Ireland, and has made restorative justice organisations more confident in adapting these practises to meet the needs of different situations and circumstances. Payne and Conway agree that the restorative practices can assist keeping families together and reintegrating people back into their community. They do not doubt that the restorative system and its practitioners have the opportunity to grow this method of justice, restoration and understanding.<sup>69</sup>

Darling begins by describing restorative justice as ‘people-centred,’ with an emphasis on building relationships. She has a positive outlook on the restorative justice system, and feels that it has played a large part in decreasing violence and hatred in Northern Ireland. She notes that the main issue fuelling the conflict, after the Good Friday Agreement, was collective memory. This is because people’s beliefs, although stemming from real events, are distorted, biased and selective. It is based on restorative justice principles, focusing on the relationship between victim and offender, face-to-face communication, restoration, responsibility of offenders, empowerment of those involved in the healing process and reintegration to society.

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<sup>69</sup> Payne, B, & Conway, V, *A Framework for a Restorative Society? Restorative Justice in Northern Ireland*, 3 **European Journal of Probation**, 2001, 47 as cited in Payne, B, Young, G & Hobson, J, *Restorative Practices in Schools in Northern Ireland: Towards an 'All School' model*, **Irish Probation Journal**, 2022, <<https://pure.ulster.ac.uk/en/publications/restorative-practices-in-schools-in-northern-ireland-towards-an-a>>.

Hellter and Simpson examine the war crimes trial that have taken place not only in European but also in African and the Australian enclaves in their work on the hidden histories of war crimes trials<sup>70</sup> The book brings to fore some of the instances of the war crimes trials which focus on the historical perspective of most of these wars. However, the book does not make reference to the plight of the victims of the wars as well as touching on restorative justice.

Lind and Tyler collaborate to review and integrate the substantial body of literature that has accumulated for years. Their effort advances the theoretical understanding of subjective reactions of procedure. Their work also documents the importance of procedural fairness in conflict resolution situations in the assessment of political legitimacy and in organisational behaviour of citizens.<sup>71</sup> The research, however, did not anchor this theoretical framework on restorative justice.

Darling believes that applying restorative justice methods to the youth could encourage peace and love between the two opposing political groups in the Northern Island. Whilst she is a supporter of restorative justice methods amongst the youth, she also believes that it can be effective in community programmes for the reconciliation of adults. Darling stresses the need to address the younger generation during this time of transition because it has less collective memory and therefore is less likely to continue the violence. She argues that the lack of integrated schools means that there are very few opportunities for children from different

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<sup>70</sup> Hellter, K & Simpson, G, *The Hidden Histories of War Crimes Trials*, (2<sup>nd</sup> ed), USA, **Oxford University Press**, 2013, as cited in Hassellind, FS, *The International Criminal Trial as a Site for Contesting Historical and Political Narratives: The Case of Dominic Ongwen*, **Social & Legal Studies**, 2021, Volume 30, Issue 5, <<https://journals.sagepub.com/doi/full/10.1177/0964663920971836>>.

<sup>71</sup> Lind, EA & Tyler, TR, *The Social Psychology of Procedural Justice*. (New York. Plenum, 1988) as cited in Nazaretsky, T, Ariely, M, Cukurova, M, and Alexandron, G, *Teachers' trust in AI-powered Educational Technology and a Professional Development Program to Improve it* (British Journal of Educational Technology, 2022), Volume 53, Issue 4, <<https://bera-journals.onlinelibrary.wiley.com/doi/full/10.1111/bjet.13232>>.

religions and political backgrounds to meet. A youth conferencing program was introduced for youth offenders by the Youth Justice Agency.<sup>72</sup>

### **2.2.18 Restorative Justice in the Republic of Ireland**

It is quite clear that restorative justice does not have a very strong standing in the Republic of Ireland justice system because of lack of knowledge. This could change with more support from the Government to achieve a restorative justice society. It would prove to be less costly and more beneficial for the majority if restorative justice had a larger role in Ireland's society. More restorative justice initiatives have been introduced into Ireland, such as the 'Le Chéile' program in Limerick and the Tallaght West initiative in Dublin. As a result of the proximity to Ireland, it would be greatly beneficial to look towards Northern Ireland for guidance and inspiration as their approach towards a new justice system has been very successful. There are not many articles about restorative justice research in Ireland nor is education provided on this subject. Somewhat recently they have started to show more of an interest in these methods and approach to justice, which is why there has been a slow growth of restorative justice in some communities. The opinions of few of the Irish authors are stated below:

McCarthy examines legal practitioners' understandings and awareness of restorative justice in the Irish criminal justice system. He used structured interviews with Irish legal to establish their attitudes. The finding that stood out was that 75% of those surveyed did not know what restorative justice entailed. He believes that a lack of knowledge among legal practitioners will hinder the successful establishment of a restorative justice system in Ireland. Another possible hindrance is that a change towards a restorative based system could pose a threat to practice income. McCarthy does not feel that legal practitioners are entirely to blame for the

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<sup>72</sup> Darling, J, *Restorative Justice: A Tool In Rebuilding Post-Conflict Northern Ireland*, University of San Diego, 2011. 1. <<http://digitalcollections.sit.edu>>.

lack of progress. However, he argues that matters will not improve support from the Government to develop restorative justice. In his research he discovered various benefits including; savings in the resources used to arrest, prosecute, defend, convict and incarcerate or sanction, and reduced injury to the victims.<sup>73</sup> The work focuses more on Irish concept of restorative justice neglecting the global application of the concept which renders justice not only to the victim but also to the community.

Norton focuses on how crime affects victims. She notes that victims are often forgotten in the criminal justice system. She believes that it is a fault of the criminal justice system that it concentrates on the offender, and finding a way to penalise him. The victim and his interests are not considered. In restorative justice, victims are encouraged to help with decision-making regarding by giving victim statements and going through a reparation process. This is beneficial for the victim as it acknowledges and respects their experiences, gives them a voice to express their wishes as the main aim of restorative justice is to bring together all those affected by the offence; the victim, offender and their families, and members of the community. Essentially, it allows them to discuss the ordeal and collectively come to a solution that benefits all. An important factor is that the offender comes out of the experience with a greater understanding of the consequences of his crime. Unsurprisingly, a victim's outlook also benefits the probation officers. It helps them carry out more accurate assessments and gives them more information that could be useful for work with other offenders in the future.<sup>74</sup> However, Norton's idea of restorative justice is restricted to compensation of the

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<sup>73</sup> McCarthy, S, *Perceptions of Restorative Justice in Ireland: The Challenges of the Way Forward* (Irish Probation Journal), 185, 2011 as cited in [Windle, J, Lynch, O, Sweeney, K, O'Neill, M, Donson, F & Cuffe, J, \*Criminology, Crime and Justice in Ireland: An Introduction\*, London, Routledge, 2022, <https://www.taylorfrancis.com/books/mono/10.4324/9781003044284/criminology-crime-justice-ireland-james-windle-maggie-neill-orla-lynch-james-cuffe-fiona-donson-kevin-sweeney>](https://www.taylorfrancis.com/books/mono/10.4324/9781003044284/criminology-crime-justice-ireland-james-windle-maggie-neill-orla-lynch-james-cuffe-fiona-donson-kevin-sweeney)

<sup>74</sup> Norton, S, *The Place of Victims in the Criminal Justice System*, 4 (Irish Probation Journal, 2007) 4, 63 as cited in O'Brien, F & Burrell, A, *The Impact of Property Crime on Victims*, Routledge, 2020, <<https://www.taylorfrancis.com/chapters/edit/10.4324/9781315208237-5/impact-property-crime-victims-freya-brien-amy-burrell>>.

victim forgetting that restorative justice is inclusive of the protection of the community as well.

Bruce and Williams in their article, delve into the competence and validity of restorative justice through the use of victim impact statements in capital cases. There has been dispute over victim impact statements that can radiate anger, retribution and hatred towards the offender. Which may then dissolve any chances of a fair trial and a smooth journey through restorative justice as it change the views of the panel. The authors explore multiple principles in the restorative justice that has been depicted into, the factual and legal limits of victim impact statements analysed, the society's need to punish explored and how it connects towards the extent of forgiveness and compassion in the restorative process.<sup>75</sup> However, the legitimacy and effectiveness of victim impact statements have always been questioned in a criminal court of law, as victim impact statements tend to sensitize the court's decision to the victim's perspective. It has also been noted that the victim's recounting of the crime may be prejudicial and capable of manipulating emotional tendencies. Due the limits of victim impact statements, it has been found that the courtroom setting in a capital case is not an appropriate setting for victims to seek emotional support.

The informal community based panel is found to be a more suitable for victim-offender mediation. Here, it gives victims the chance to be heard, recognised and quite possibly heal from the experience. From further observations, it has been noted that victims as well as their offenders have as much interest in the process of forgiving. The community in which both the

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<sup>75</sup> Arrigo, BA & Williams, CR, *Victim Vices, Victim Voices, and Impact Statements: On the Place of Emotion and the Role of Restorative Justice in Capital Sentencing, Crime and Delinquency* 49, 2003 as cited in Reed, MD, *Courtroom decorum and the rules of conduct: accounts of homicide co-victims' experiences during criminal justice proceedings*, **Criminal Justice Studies**, 2024, Volume 37, Issue 2, <<https://www.tandfonline.com/doi/abs/10.1080/1478601X.2024.2346079>>.

offender and victim are involved in also plays a role in the restorative process, which could result in a victim satisfaction. Victim impact statements are found to be unproductive in a courtroom setting. It is clear that accepting the anger, bitterness and resentment that victims have acquired plays an important role for the healing process. As well as that, offenders may see in turn seek forgiveness and see it offered to them, which too helps with the healing process. However should this occur in a capital case, it could cause a setback for restorative justice.

Karp *et al* examine the results of a survey carried out on volunteers involved in restorative justice programme panels. They also look into the partnership between the community and the government and its characterisation from the perspective of the board volunteers, by analysing their behaviours towards the programme and the sponsoring agency, the Vermont Department of Corrections.<sup>76</sup> In the programme, the panel consists of citizen volunteers, who met with the victims and offenders in order to negotiate and finalise the youth's restorative justice contract. A panel commonly consisted of three to five board members at which they discuss the harm the young offender has caused to the victim, the consequences of their actions, and the steps to be taken by the young offender in order to atone for their crimes and to regain the community's trust.

The authors found that only a small minority of the Vermont community would willingly volunteer to be a panel member. It was also found that the Vermont volunteers tend to be older, with the average age 54 years. However, the Vermont volunteers varied in religious, income, sexual and political orientation as well as gender. Most panel members had

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<sup>76</sup> Karp, DR, Bazemore, G & Chesire, JD, *The Role and Attitudes of Restorative Board Members: A Case Study of Volunteers in Community Justice* 50(4) *Crime and Delinquency* 487, 2004 as cited in Albert, A, in *Walking the Walk: Ex-prisoners, Lived Experience, and the Delivery of Restorative Justice*, **Criminology & Criminal Justice**, 2023, <<https://journals.sagepub.com/doi/full/10.1177/17488958231210218>>.

considerable experience, serving for long periods. Most of the members also lived in the same community as the victim and/or the young offender, which helped to give the impression to both parties that they were all connected as a community. Some members of the community volunteered after having appeared before the board as a victim or offender. The paper fails to address the issue of the generational gap between the youth offenders and the panel members as most of them were older, creating a social distance between them. It was recommended that welfare mothers, the unemployed, adolescents and even former youth offenders should be included into these panels in order to have a variety of opinions and to make the young offenders more comfortable.

A considerable amount of research into the works of researchers on restorative justice underpins the fact that the concept is a fragile area of the justice system that demands cohesive attention, particularly in Nigeria. In order to achieve justice for all the parties to a crime, I believe that restorative justice would be a more appropriate approach to attain the elusive reconciliation, reconstruction and rehabilitation. For this to be achieved, the approach should be voluntary to both the victim and the offender who are to be encouraged to actively participate in the resolution rather than letting the family or friends take control. I find it to be more effective at making the offenders truly understand the consequences of their actions and to feel remorse than to just giving them a punishment. I also find that it would be a healthier experience for the victim, as it could help eliminate fear and self-blame, and give them more comfort than an impersonal court trial and punishment.

#### **2.2.4 Restorative Justice and International Criminal Court**

Okon examines the relationship between the International Criminal Law and the International Humanitarian Law. He noted in his paper that the International Criminal Law is a body of

rules which imposes responsibilities directly on individuals and punishes violators through international mechanism. To him, there is a relationship between the International Humanitarian Law and the International Criminal Law in that most area of International Humanitarian Law is now criminalised as war crimes. This makes the International Humanitarian Law serve as a point of reference in understanding and interpreting the corresponding war crimes provisions.<sup>77</sup> The paper does not address any of the concerns of the victims of armed conflict whether under the International Criminal Court (ICC) or the International Humanitarian Law and states nothing on the concept of restorative justice.

Praveena contends that what makes process fair involves numerous factors including consistency, transparency, legitimacy, impartial and neutral decision making. Her paper traces the ambit of procedural justice from the substantive justice to distributive, restorative as well as retributive and came with the submission that the procedural justice is actually the thread that weaves the various aspects of justice together. She tries to analyse the report of the John Rawls' proposition of the procedural justice theory and contends that in any outcome, the process used is usually and always pivotal to success. She submits that procedural justice is concerned with making and implementing decisions according to fair processes.<sup>78</sup> However, the paper only deals extensively with the theory of procedural justice with no precise attempt to link the theory with the plight of the victims of crime under the criminal justice process.

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<sup>77</sup> Okon, E, *Sources of International Law and International Humanitarian Law*. A paper presented during a Training Course on International Criminal Justice and its Administration August 3-5, 2015. **Lagos NIALs Publication**, 2015, as cited in Murgana, MGA & Injaiana, Ijaiya, *International Principles of Sustainable Development and the Challenges to Environmental Rights Enforcement in Nigeria*, (Brawijaya Law Journal, <<https://pdfs.semanticscholar.org/03c6/eb8e8d832bc32d87a941556c629b77653df6.pdf>>).

<sup>78</sup> Said, MY & Nurhayati, Y, *A review on Rawls Theory of Justice* **International Journal of Law, Environment, and Natural, Stanford University Press**, 2021, <[https://scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5&q=A+review+on+Rawls+Theory+of+Justice+%28International+Journal+of+Law%2C+Environment+%2C+and+&btnG=>](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=A+review+on+Rawls+Theory+of+Justice+%28International+Journal+of+Law%2C+Environment+%2C+and+&btnG=>)>.

Popoola discusses and analyses the humanitarian crises and the duties of the International Criminal Court (ICC) at investigating war crimes with a view to discouraging such unpleasant situations and inhuman treatment to man. The paper, apart from being an analytical and jurisprudential survey of war crimes and the ICC, the paper also traces the historical development of what is described as the “African’s cocktails of humanitarian crises” through Rwanda, the Liberia, Sierra-Leone, Democratic Republic of Congo, and Darfur region of Sudan. In the paper, Popoola views these crises as forming part of those crises which have impacted negatively on the African countries and submits that the birth of ICC is expected to take a holistic steps at solving the problems on a permanent basis.<sup>79</sup> Apart from the failure of the paper to proffer solution to solving the problems of these victims of the humanitarian crises, it also fails to discuss about how the victims of wars can be restored to their original position before the wars through restorative justice.

Akper examines an analytical examination of the crime of genocide under the International Criminal Court. The scholar traced the origin, meaning as well as a working and common definitions of genocide which has been variously described as “massacre”, “mass murder”, “put to the sword”, “act of barbarism”, or “inhumanity” by most scholars in the international criminal law. The paper adopts different definitions of the crime that is the statutory, the judicial and jurisprudential definitions of genocide. It further examines the type of punishment fixed for the offenders who have been found guilty of genocide. The paper does not attempt any discussion on the plight or the concerns of the victims of genocide which is discussed as one of the most serious international crimes but focuses extensively on the offender and no discussion on restorative justice.

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<sup>79</sup> Popoola, A. *The International Criminal Court Regime and the Crime against Humanitarian*, Lagos. NIALS, 2005.

Adekunle tries to address the concerns of the victims, examined the genocide commission, the actions of the International Law Commission (ILC) which forms part of series of activities that led to the establishment of the International Criminal Court. His paper traces the historical development of war crimes and tribunal to 6<sup>th</sup> century B. C. The paper examines the world's first attempt at formulating certain basic policy and strategy of war, which is the Chinese General Sun Tzu, titled the "The Art of War." The paper further examines the Nuremberg tribunals and its influence on the international criminal court *vis-a-vis* other military tribunal and other war crimes' trials. However, the paper does not attempt discussion on the participatory role of the victims under the international criminal court and does not touch on the issue of restorative justice.

Brownlie on international criminal law and international criminal court, provides a comprehensive analysis of the twelve trials of the Nuremberg military tribunal in his book. The book contends that there was little legal content on the trial of crime and it is highly political because it contains a detailed analysis of the Nuremberg trial in a very historical manner. However, the book is mainly on the Nuremberg trial and tribunal. The only mention of the International Criminal Court throughout the discussion is that Nuremberg tribunal serves as a precursor for the International Criminal Court but does not mention anything about restorative justice.

Funk contends for the first time that the International Criminal Court has given a voice to the victims to speak out against their abusers. He presents the analysis of the role of the victims under the International Criminal Court in his book and provides an in-depth analysis of the role of victims at the International Criminal Court. He centers his discussion on the restorative aspect of the treatment of the victims and presents an analysis of the problems in advocacy for

the victims of international crime. The book, therefore, provides a veritable ground and overview of the International Criminal Court trial procedure within its rules.<sup>80</sup> However, the book fails to anchor his submission on restorative justice or any theoretical underpinning in order to drive his idea home.

While Bohm and Haley submit that restorative justice is the process whereby an offender is required to contribute to restoring the health of the community, repairing the harm done, and meeting victims' need,<sup>81</sup> Braithwaite states that restorative justice is a process where all stakeholders affected by an injustice have opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm.<sup>82</sup>

Restorative justice is a matter of "humanizing" criminal justice, in the ways which do not interfere with overall fairness and just procedure, by seeing crime in its social context, taking a forward-looking or problem-solving approach to all the issues that might be involved and by making room for involvement of the offender, victim and the community. Duff states that when restorative justice is combined with legal justice, it might create a "holistic justice," that

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<sup>80</sup> Funk, MT, *Victim's Rights and Advocacy at the International Criminal Court* (2<sup>nd</sup> ed) USA. OUP, 2015 as cited in Kitagawa, R, in *Justice as Fairness or Retribution? Citizen Reactions to Domestic Trials of Wartime Violence*, **Journal of Peace Research**, 2024, Volume 61, Issue 4, <<https://doi.org/10.1177/00223433221148223>>.

<sup>81</sup> Bohm, RM & Haley, KN, *Introduction to Criminal Justice* (4th ed.) New York: McGraw-Hills, p.7, 2005 as cited in Eze, OJ, Obi, DO & Ajah, BO, *Nigerian Criminal Justice System and Victims of Crime Neglect in Enugu Urban*. **FWU Journal of Social Sciences**, 2020, Volume 14, No. 3, pp. 41-53, <<https://www.proquest.com/openview/b6e3c8d84d98d5a839f95f2d60bc6483/1?pq-origsite=gscholar&cbl=55194>>.

<sup>82</sup> Braithwaite, J, *Restorative Justice and De-Professionalization* 13(1) The Good Society, pp. 28-31, 2004 as cited in Van Ness, DW, Strong, KH, Derby, J & Parker LL, in *Restoring Justice: An Introduction to Restorative Justice*, **New York, Routledge**, 2022, 6<sup>th</sup> edn, <<https://www.taylorfrancis.com/books/mono/10.4324/9781003159773/restoring-justice-daniel-van-ness-karen-heetderks-strong-jonathan-derby-lynette-parker>>.

is justice not only from the point of view of the victim and the offender, but also of the judge and the community.<sup>83</sup>

Gilliard explores the history and foundation of mass incarceration, examining Christianity's role in its evolution and expansion. He then shows how Christians can pursue justice that restores and reconciles, offering creative solutions and highlighting innovative interventions. The church has the power to help transform our criminal justice system. Discover how you can participate in the restorative justice needed to bring authentic rehabilitation, lasting transformation, and healthy reintegration to this broken system.<sup>84</sup> Gilliard's idea of restorative justice has religious coloration and this is completely different from the Nigeria concept, particularly in a secular State.

Gilliard further observes that in many jurisdictions, the needs, concerns and rights of victims have not received the attention that they deserve and that there is an urgent need to provide more effective remedies and protective mechanisms for victims to enable them gain access to and participate effectively in the criminal justice system. This includes sensitisation of practitioners to the specific needs and concerns of victims. While trying to highlight and ascribe specific responsibilities to the Police, the Prosecutors, Legal Counsel, the judiciary and other professionals that interact with the victims in the criminal justice process, he considers the general framework for victim's participation in the justice system by making specific suggestion for the interaction between the victims and other stakeholders in the

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<sup>83</sup> Duff, RA, *Responsibility, Restoration and retribution*, (Oxford University Press, 2011), <[https://www.researchgate.net/profile/Robin-Duff/publication/286752857\\_Responsibility\\_Restoration\\_and\\_Retribution/links/5e8581474585150839b5ad3b/Responsibility-Restoration-and-Retribution.pdf](https://www.researchgate.net/profile/Robin-Duff/publication/286752857_Responsibility_Restoration_and_Retribution/links/5e8581474585150839b5ad3b/Responsibility-Restoration-and-Retribution.pdf)>, as cited in Altman, M, in *A Theory of Legal Punishment: Deterrence, Retribution, and the Aims of the State*, **London Routledge**, 2021, <<https://www.taylorfrancis.com/books/mono/10.4324/9781003143352/theory-legal-punishment-matthew-altman>>.

<sup>84</sup> Gilliard, DDB, *Rethinking Incarceration: Advocating for Justice that Restores*, 2018, <<https://www.amazon.com/Rethinking-Incarceration-Advocating-Justice-Restores-ebook>> as cited in Gilliard DDB in *Subversive Witness: Scripture's Call to Leverage Privilege*, **Zondervan**, 2021, <<https://www.amazon.com/Subversive-Witness-Scriptures-Leverage-Privilege/dp/0310124034>>.

criminal justice process. However, the observations raised in the paper are of limited application to the Nigerian situation, and more importantly the proposal was not anchored under any Nigerian concept of restorative justice.

Zehr proposes workable principles and practices for making Restorative Justice possible. He emphasises on identifying the justice needs of everyone involved in a crime as growing influence that is helping victims and communities heal, while holding criminals accountable for their actions. He further states that restorative justice is not soft-on-crime, or a feel-good philosophy, but rather a concrete effort to bring justice and healing to everyone involved in a crime. In this book, Zehr first explores how restorative justice is different from criminal justice, then undertakes a massive and complex subject of restorative justice and puts it in graspable form, without reducing or trivializing it.<sup>85</sup> However, Zehr's idea of restorative justice is still a work in progress, it lacks universal application.

The United Nations Handbook<sup>86</sup> on justice for victims is also a very useful literature in this field. The handbook outlines the basic steps in developing comprehensive assistance services for victims of crime. The handbook contains several assistance services which could be provided to the victims of crime. This is what the handbook refers to as the victim support services. The handbook laid more emphasis on the fact that since there are several categories and levels of victims ranging from one case to the other and moving from one jurisdiction to the other and from one legal system to the other. The handbook observation is not prescriptive

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<sup>85</sup> Zehr, H, *Restorative Justice: Revised and Updated (Justice and Peace-building)*, 2015, <<https://www.amazon.com>> as cited in Altman M, *A Theory of Legal Punishment: Deterrence, Retribution, and the Aims of the State*, London, Routledge, 2021, <<https://www.taylorfrancis.com/books/mono/10.4324/9781003143352/theory-legal-punishment-matthew-altman>>

<sup>86</sup> *Handbook on Justice for Victims*, New York Center for International Crime Prevention, 1999. <http://www.Victimology.org> as cited in Songs, P & Joseph J, *Domestic Minor Sex Trafficking in the United States: A Victim-Centered Approach (An International Perspective on Contemporary Developments in Victimology)*, 2020) <[https://link.springer.com/chapter/10.1007/978-3-030-41622-5\\_10](https://link.springer.com/chapter/10.1007/978-3-030-41622-5_10) pp. 137-149>

but rather it is to serve as a set of examples for jurisdictions to examine, test and adopt within their jurisdiction for their own use.

### 2.2.5 Legal Framework for Restorative Justice in Nigeria

Owoade in his work<sup>87</sup> points out the need for a national criminal justice policy for Nigeria. This, according to him, will cater for all parties involved in the criminal justice administration. The author addresses the concerns of the victim and his dependant just as the interest of the accused as well as that of the society. However, the work fails to anchor on restorative criminal justice policy. The learned scholar was strongly concerned about the need for a change of attitude of the stakeholders in the project of improved criminal justice delivery in Nigeria and condemned the present situation of the victims. He was of the opinion that our laws are obsolete and out of date and need proper review in order to be amenable with the social reality in the administration of criminal justice anywhere in the world, however he fails to align his work with the concept of restorative justice which promotes fairness.

Adewoye noted that the philosophy of African criminal jurisprudence is on restitution. It is believed that crime creates tripartite effects to wit: effect on the offender, effect on the victim and effect on the public and that before the advent of British colonial rule in Nigeria, the traditional legal and judicial systems in operation in the communities that make up the country were largely aimed at reconciling disputants in a conflict and maintaining peace and harmony within the society.

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<sup>87</sup> Owoade M, *Reform of Sentencing in Nigeria: A Note on Compensation, Restitution and Probation*, **Federal Ministry of Justice Law Review Series**. 1990 as cited in Omodanisi, KB, in *Evaluating the Application of Probation as a Non-Custodial Sentence under the Nigerian Administration of Criminal Justice Act 2015: Lessons from Kenya* **Journal of African Law**, 2025, <<https://www.cambridge.org/core/journals/journal-of-african-law/article/abs/evaluating-the-application-of-probation-as-a-noncustodial-sentence-under-the-nigerian-administration-of-criminal-justice-act-2015-lessons-from-kenya/375180643E085A5AB6C39A65DFFEF520>>.

Adeyemi expresses his concerns about why the interest of the victims of crime was relegated to the background and that of the defendant was given prominence in the Nigeria's statutes books, court sittings as well as public debates on policy issues.<sup>88</sup> It is the argument of the author that the accused enjoys numerous provisions enshrined in the Nigerian constitution under the Chapter IV titled Fundamental Human Rights, especially Section 36 of the 1999 constitution. According to the author, while the victim experiences re-victimisation during trial and neglected after trial, the offender is protected during the trial and if found guilty, enjoys 'numerous provisions of the constitution for the protection of the right of a convict as prisoner.' Though the paper provides insights into the ways by which the plights of victim of crime could be taken care of, it however does not suggest ways of promoting the interest of the victims of crime in the Nigerian criminal justice system.

In *Hepa Global Energy v. Federal Republic of Nigeria*, Hon Justice Joseph Ikyegh views restorative justice from legal perspective of Restorative injunction which he states that it normally requires the Defendant or Respondent to restore the Plaintiff or the Applicant to the position the latter occupied before the former committed the wrong complained of. It is by nature reparative. So it comes into play after the wrong complaint had taken place. Usually, the wrong a restorative injunction sets out to remedy is one done by the offending party to steal a march to present the Court with a *fait accompli* by making nonsense and mockery of the pending proceedings between the parties and to remedy illegally or unlawfully completed acts.<sup>89</sup>

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<sup>88</sup> Adeyemi, AA, *Criminology in Contemporary Africa*. Nigerian Journal of Criminology, 1975, Vol. 2, No. 1.

<sup>89</sup> (2016) LPELR-41288(CA) (Pp. 16-17 para. E)

Olatunbosun examines extensively the current status of victims in the criminal justice process in Nigeria as well as the legal positions of the victims of crime.<sup>90</sup> The learned scholar surveyed the existing laws on the Nigeria criminal justice process as it affects the victims of crime by bringing into focus the plight of victims of crime. The work is devoted to the issue of creating an avenue for restorative justice for the victims. He believes that only restorative justice can completely assuage the injuries suffered by the victims of crime in his case. He therefore paints the picture of the paradigm shift in the treatment of the victims of crime in the Nigerian courts. The scholar draws examples from some countries like Germany, France and United Kingdom. Though the interest of the victim of crime is explained in the book but the mechanism for victim's restoration and compensation was not discussed hence, this research work sets out to fill in the gap.

Bamgbose's in her inaugural lecture,<sup>91</sup> analyses sentencing process in both the pre-colonial and contemporary era and compares the principles of sentencing in Nigeria with some other criminal jurisdictions. The author analyses the aims of sentencing and concludes that it is the same with the principles of sentencing which according to her include, but not limited to desert theory, retribution, rehabilitation, deterrence and incapacitation. The author identifies the purpose of sentencing in Nigeria to include the protection of the society from the dangerous action of the offender as well as to reform the offender. It also includes to serve as deterrence to other would-be offender from criminal activities. The work fails to propose restorative justice that benefits victims of crime.

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<sup>90</sup> Olatunbosun, AI, *Restitutive Justice for Victims of Crime in Nigerian Court in Legal Issues for Contemporary Justice in Nigeria* (Essays in honour of Hon. Justice M. O. Onalaja Rtd. JCA), 2010.

<sup>91</sup> Bamgbose O, *The Sentence, the Sentencer, and the Sentenced: Toward Prison Perform in Nigeria* (Inaugural Lecture) University of Ibadan Press, 2010 as cited in Shajobi-Ibikunle, G, in *Insecurity in Nigeria and Correctional Staff and Inmates Safety: A Looming Danger*, **Journal of US-China Public Administration**, 2022 Vol. 19, No. 2, pp. 59-73, <<https://www.davidpublisher.com/Public/uploads/Contribute/62ff3c8d7bae4.pdf>>.

Olatunbosun states that the criminal justice system is more punitive than restitutive, which was the reason why the operators in the criminal justice system have become so insensitive to the yearnings of the victims. He also contends that, punishment for the offender alone is the paramount objective of the criminal law, neglecting other welfare of the victims like rehabilitation and restoration to reduce the chances of re-offending and also increase the victim's satisfactions. He opines that the emphasis of the Nigerian criminal justice system is on the offender and "even those against the person are viewed as offences against the state". It is the scholar's contention that from the arrest of the offenders to sentencing, the law is concerned mainly with the offenders in the Nigerian criminal justice process. He holds the view that even the situation of the victims in cases which are initiated by him and which rely on his participation for success, still offer little direct relief to the victims. He examines the partial involvement of the victims during the trial of his case in court as well as the effects of the outcome of such case on him at the end of the cases. He discusses these effects from the perspectives of the offender being found guilty and when the offender was not found guilty. He observes that the difference in the plight of the victims in both situations is almost the same. He recommends that in order for the victim to feel a sense of belonging in the criminal justice process, he should be well and adequately compensated.<sup>92</sup> However, the recommendation of Olatunbosun for adequate compensation for the victims, which flows from the restorative justice will be an improved offender-victims relationship in the Nigeria criminal justice system, but his work fails to draw inference from international criminal law on restorative justice.

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<sup>92</sup> Olatunbosun, AI. *Compensation to Victims of Crime: A Critical Assessment of Criminal Victim's Relationship* (Journals of the Indian Law Institute, 2002), 44.2 as cited in Idhiarhi, SE, *Appraisal of the Law on Compensation for Victims of Crimes in Nigeria* **Researchgate**, 2024, <[https://www.researchgate.net/profile/Samuel-Idhiarhi/publication/384625852\\_APPRAISAL\\_OF\\_THE\\_LAW\\_ON\\_COMPENSATION\\_FOR\\_VICTIMS\\_OF\\_CRIMES\\_IN\\_NIGERIA\\_PHD\\_THESIS/links/66ffb3fd869f1104c6c5b896/APPRAISAL-OF-THE-LAW-ON-COMPENSATION-FOR-VICTIMS-OF-CRIMES-IN-NIGERIA-PHD-THESIS.pdf](https://www.researchgate.net/profile/Samuel-Idhiarhi/publication/384625852_APPRAISAL_OF_THE_LAW_ON_COMPENSATION_FOR_VICTIMS_OF_CRIMES_IN_NIGERIA_PHD_THESIS/links/66ffb3fd869f1104c6c5b896/APPRAISAL-OF-THE-LAW-ON-COMPENSATION-FOR-VICTIMS-OF-CRIMES-IN-NIGERIA-PHD-THESIS.pdf)>.

Igwe and Odoh in their article,<sup>93</sup> view restorative justice as in consonance with the African philosophy of social control. It is homed and breaded in native law and customs of many societies indigenous to Africa. It reposes confidence on parties to crime that at the end of the proceedings, justice must surely serve its right purpose. The authors did not discuss the importance of bringing the victim, offender and the community together in a way to at least restore the victim to his or her original position before the crime.

Igbo and Nnorom state that restorative justice and restitutive initiatives offer victims a better deal than the retributive conventional criminal justice system as we have in Nigeria.<sup>94</sup> This is because, according to them, the success of any restorative justice initiative hinges on the willingness of the victims to cooperate in the tripartite criminal justice delivery to the victims, offenders and the community. They also stressed the need for African countries and Nigeria in particular to the example of some other countries like Britain, the U.S.A, Canada, Australia, New Zealand and other European countries which have commissioned programmes.

Dambazau<sup>95</sup> in his book on criminology is of the opinion that the state being the guardian of all citizens of a country, has the duty to protect its citizen and if any offence is committed, it is the liability of the state to protect the victim and make them fare better than their previous condition in the society, in his opinion such victims are entitled to share the promises of social

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<sup>93</sup> Igwe, IO & Odoh, SC, *Rethink on Restorative Justice: A Recipe to Restoring Public Confidence in the Nigerian Judiciary*, **Unizik, Law Journal**, 2023, volume 19, No. 1, <<https://journals.ezenwaohaetorc.org/index.php/ULJ/article/view/2281>>.

<sup>94</sup> Igbo EU & Nnorom CP, *Criminal Victimization, Safety and Policy in Nigeria*: Monograph Series No. 3 Lagos CLEEN Foundation. 2005, <<https://cleen.org/monographs/>> as cited in Isgogo, MM & Abdullahi-Lapai, S, *An Evaluation of Public Sector Corruption and Organized Crimes as Impediments to Nigeria's Economic Growth*, **Journal of Economics**, 2024, Volume 8, No.1, <<https://www.ajol.info/index.php/lje/article/view/277989>>.

<sup>95</sup> Dambazau AB, *Criminology and Criminal Justice*, Ibadan Spectrum Book Limited, 2007 as cited in Mahmoud, AT & Mukhtar, J, in "Criminology and Criminal Justice" By Abdulrahman Bello Dambazau: A Review, **Researchgate**, 2021, <[https://www.researchgate.net/publication/350158069\\_CRIMINOLOGY\\_AND\\_CRIMINAL\\_JUSTICE\\_BY\\_ABDULRAHMAN\\_BELLO\\_DAMBAZAU\\_A\\_REVIEW](https://www.researchgate.net/publication/350158069_CRIMINOLOGY_AND_CRIMINAL_JUSTICE_BY_ABDULRAHMAN_BELLO_DAMBAZAU_A_REVIEW)>.

justice contained in the constitution of the Federal Republic of Nigeria 1999. The author also rightly contends that the purpose of criminal justice appears at present to be confined to the simple object of ascertaining the guilt or innocence of the accused and the use of the victim only as a witness. The author, however, fails to anchor his proposal for improvement on this unsatisfactory treatment of the victims on any theoretical framework of restorative justice.

### **2.2.6 Stakeholders in Restorative Justice: Victim-offender Mediation**

Victim-offender mediation is a process that provides victims the opportunity to meet their offenders in a safe and structured setting for dialog, negotiation, and problem-solving. Umbreit and Greenwood state that the goal of the process of victim-offender mediation is in twofold. The first is to hold the offenders directly accountable for their behaviour, learn the full impact of their actions, and develop plans for making amends to the person or persons they violated. The second goal is to foster a sense of empowerment for the victim. Overall, this process is designed to develop empathy in the offender which can help prevent future criminal behaviour, address the emotional and informational needs of the victim.<sup>96</sup> The duo further state that the mediation session involve a dialog between the victim and the offender, facilitated by a professional mediator. According to them, the purpose of dialog is to actively involve the victim and the offender in repairing the emotional and material harm caused by the crime. It also provides an opportunity for both victims and offenders to discuss offences and express their feelings and for victims to get answers to their questions. Furthermore, the dialog presents an opportunity for victims and offenders to develop mutually acceptable restitution plans that address the harm caused by the crime.

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<sup>96</sup> Umbreit, MS, Greenwood, J, Fercello, C & Umbreit, J, *National Survey of Victim-Offender Mediation Programs in the United States*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Victims of Crime, 1999 as cited in Islam, MS, Li, B & Anderson, J, *An Assessment of the Potential Outcomes in Practising Restorative Justice in Criminal Settings in Australia and the United States: A Systematic Review and Meta-Analysis*, **Contemporary Justice Review**, 2023, Volume 26, Issue 3, <<https://www.tandfonline.com/doi/abs/10.1080/10282580.2023.2297833>>.

Zehr defines restorative justice as a particular kind of process that compels perpetrators of crimes to recognize the severity of the harm they have caused to both their victims and their community, and giving the offenders the chance to make amends for the harm caused. The problem with this definition according to scholars like Marshall and Braithwaite is that though it mentions that the individual involved should be brought together, it does not clearly define the specifics of how they should be brought together. However, the definitions do tend to be followed with a general agreement on the way it should occur. Marshall, as well as theorists like Bazemore and Umbreit, indicate that it is the concept that is important and not the actual practice. They state that practices may include victim/offender mediation where a safe environment is located and both the offender and victim are brought together for discussion and possible resolution or the use of family conferences which involve not only the victim and the offender, but their family, friends or supporters.<sup>97</sup>

Kaiser *et al*, jointly edited research publications, a collection of articles which is based on the 7th international symposium on victimology in Rio de Janeiro in Brazil in 1991.<sup>98</sup> The publications are in three volumes with volume one dealing extensively with the immense variation of questions with which victimological research is concerned with questions relating to the assessment of crime, recording the effects of the crime to the victim and the ways of improving the victim's position within the criminal law and procedure. Volume two essentially contains articles relating to the questions of compensation and offenders-victims settlement *vis-à-vis* victim protection. It also contains studies in relation to the field of legal

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<sup>97</sup> Sherman, LW, Strong, H, Angel, C, Woods, D, Barnes, GC, Bennett, S, & Inkpen, N, *Effects of Face-to-Face Restorative Justice on Victims of Crime in Four Randomized, Controlled Trials*. (Journal of Experimental Criminology, 2005) 1, 367–395 as cited in Nascimento, AM & Andrade, J, *The Psychological Impact of Restorative Justice Practices on Victims of Crimes-A Systematic Review*, (Trauma, Violence, & Abuse, 2023), Volume 24, Issue 13, <<https://journals.sagepub.com/doi/full/10.1177/15248380221082085>>.

<sup>98</sup> Kaiser, G, Kury, H and Albrecht, HJ, *Victims and Criminal Justice*, (eds.) (Vols 1, 2 & 3) Eigenverlag max-planck-institut, 1991.

protection, restitution and victim support. Volume three contains articles which are directly related to the issues of business as it concerns the position of victims of crime. The central issue which runs through the three volumes of these publications is that “victims play a central role in determining the input to the justice system” and indeed the victims are expected to be rightly “labelled as the gate-keeper of the criminal justice system”. However the three volume publications do not relate to the extensive research on victims to the status of restorative justice under the Nigeria criminal jurisprudence because it was not written based on the Nigeria criminal justice situation. The volumes of articles compiled in the three volumes are mainly on the criminological researches as they relate to victims in particular European countries such as, Russia, Spain, Austria, Germany, Israel, Greece, Japan as well as Switzerland.

Omale, in his contribution, noted that the goal of restorative justice is to enable offender, victim and the community participate in the criminal justice delivery process which will guide them to bringing solution and heal the damage caused by the offence.<sup>99</sup>

Restorative justice is one of the oldest forms of reparations that has been practiced in the human race. The goal of restorative justice is for the victim and offender to both walk away with a clear understanding of why a crime was committed and how to prevent a pattern of recidivism. Mixing social sciences such as psychology, sociology, and criminal justice, we begin to understand why restorative justice works and the toll on the human psyche that is taken when a victim does not have answers. From the "Compass of Shame" to "Talking

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<sup>99</sup> Omale, D. J, *Restore Justice and Alternative Dispute Resolution Model: Opinions of Victim of Crime, and Criminal Justice Professionals in Nigeria*, (Unpublished Ph.D Thesis submitted to DeMontfort, UK: University of Leicester, 2011) pp. 20- 2, 2009. Cited in Lama, S. in *Looking at Community-Based ADRS in India Through a Restorative Justice Perspective*, **Minding the Gap Between Restorative Justice, Therapeutic Jurisprudence, and Global Indigenous Wisdom**, 2023. <<https://www.igi-global.com/chapter/looking-at-community-based-adrs-in-india-through-a-restorative-justice-perspective/313253>>.

Pieces," we dive into the psychology of the human mind and begin to understand the inner workings of restorative justice and how it is applied in a criminal justice setting.<sup>100</sup>

Ann and Albert extensively discuss the extent to which an offender may render his victim permanently incapable of surviving whatever restorative palliative he is given.<sup>101</sup> It also discusses the importance and the urgency to assist those who are victimised considering the widespread and high rate of violent crimes which cut across boundaries. However, the structure of the work and the instances given do not apply to Nigeria's criminal justice system.

### 2.2.7 Restorative Justice and Sexual Offences

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<sup>100</sup> Barnett J, *Restorative Justice: The Journey of Healing*, Kindle Edition, 2020 <<https://www.amazon.com/Restorative-Justice-Journey-Joe-Barnett-ebook>>.

<sup>101</sup> Burgess, AW & Roberts, AR, *Crime and Victimology*, *Victimology: Theories and applications*, 2010 as cited in Phillips, A & Abdulla, Z, *Judicial Officers' Experiences of Including Victim Impact Reports In The Criminal Justice Process*, **Social Work/Maatskaplike Werk**, 2021, Volume 57, No. 1, <[https://www.scielo.org.za/scielo.php?pid=S0037-80542021000100004&script=sci\\_arttext](https://www.scielo.org.za/scielo.php?pid=S0037-80542021000100004&script=sci_arttext)>.

Williamsen and Wessel address the need to pay attention to self, people, and systems, identities, and power dynamics; the considerations for working restoratively with both complainants and respondents; offers cases and adaptable examples of resolution; and concludes with reflections on institutional implementation from the perspectives of administrators, facilitators, and a student survivor. Recognizing there will always be a need for a formal investigatory approach to cases of sexual misconduct, the book offers a wide range of alternative options that empower those who are most directly affected to make the call for themselves. In doing so, it may increase reporting and, furthermore, in offering a healing justice that addresses individual and community needs, may work to reduce sexual misconduct on campus.<sup>102</sup> While sexual misconduct on our college and university campuses, both public and private, is widespread, it continues to be significantly underreported because most victims perceive that judicial recourse, with its legalistic adversarial approach, fails to address in a healing way, the harms done to them. Fewer still file formal complaints, many for fear that they may lose agency and that the process may rekindle the trauma of their experience. Recognizing the reality that supermajority of sexual harms in higher education are rarely addressed through established legalistic practices, this book offers a range of alternative approaches based on restorative justice. Starting from the premise “What if we started with the goal of healing in mind”, this book opens with an overview of common restorative practices and accounts of application and lessons learned by practitioners who have implemented a range of restorative justice and alternative-based approaches. Subsequent chapters cover procedural elements, recommendations around documentation

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<sup>102</sup> Williamsen, KM, & Wessel, ES, *Applying Restorative Justice to Campus Sexual Misconduct: A Guide to Emerging Practices*, New York, Routledge, 2023, (1st Edition), , <[http://taylorfrancis.com/books/edit/10.4324/9781003443018/applying-restorative-justice-campus-sexual-misconduct-kaaren-williamsen-erik-wessel?\\_ga=1632052397.1718928000](http://taylorfrancis.com/books/edit/10.4324/9781003443018/applying-restorative-justice-campus-sexual-misconduct-kaaren-williamsen-erik-wessel?_ga=1632052397.1718928000)>.

and interventions for individuals who have caused harm through sexual and gender-based misconduct.

Oudshoorn *et al* describe impacts of sexual abuse, and explanations for sexual offending, demonstrating how restorative justice can create hope through trauma.<sup>103</sup> According to the authors, criminal justice approaches tend to re-traumatize victims, and punish offenders to the detriment of accountability. Alternatively, restorative justice centres on healing for victims, while holding offenders meaningfully accountable. Criminal justice responses tend to individualize the problem, and catch marginalized communities, such as ethnic minorities, within its net. Restorative justice recognizes that sexual abuse is a form of gender-based violence. Community-based practices are needed, sometimes in conjunction with, and sometimes to counteract, traditional criminal justice responses. However, restorative justice goes beyond the offence of sexual abuse it includes all other crimes.

Umbreit and Coates believe that victims who meet their offenders tend to be more satisfied with the process than victims whose cases are handled in the formal justice system and are less fearful of being re-victimised. They state further that offenders who meet their victims through mediation are far more likely to be held directly accountable for their behaviour and subsequently commit fewer and less serious crimes as a result of both the process and outcome of victim–offender mediation.<sup>104</sup>

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<sup>103</sup> Oudshoorn, J, Amstutz, LS & Jackett, M, *Restorative Justice for Sexual Abuse: Hope through Trauma*, Kindle Edition), 2015 <<https://www.amazon.com/Little-Restorative-Justice-Sexual-Abuse-ebook>>.

<sup>104</sup> Umbreit, MS & Coates, RB, *Cross-Site Analysis of Victim–Offender Mediation in Four States*. **Crime and Delinquency**, 1993, 39(4):565–85 as cited in Altman, M, in *A Theory of Legal Punishment: Deterrence, Retribution, and the Aims of the State*, London, Routledge, 2021, <<https://www.taylorfrancis.com/books/mono/10.4324/9781003143352/theory-legal-punishment-matthew-altman>>.

Bletzer and Koss discuss the application of restorative justice in cases of sexual assault. They note that there are very few situations where restorative justice is used as an alternative to the criminal justice systems. This article demonstrates that there are methods of restorative justice applicable to, and effective in, sexual assault cases.<sup>105</sup> The authors fail to appreciate the fact that the application of restorative justice is not for sexual offences alone but also extends to both criminal and civil matters.

McAlinden discusses the failings of a punitive approach to sexual offending. She states that the development of restorative justice for these cases is largely due to the failing criminal justice response, and the possibility of a more successful resolution for the victim, family and community. She finds the criminal justice system to be quite ineffective because a huge problem with these cases is that they commonly stay hidden, with many of the victims not reporting the offences, possibly due to anxiety or fear about seeing their offender again in court. Another problem with the criminal justice response is how the offenders are portrayed by the media, making it more difficult for offenders to reintegrate with society and perhaps exposing them to violence from the public. This exclusion from the community and possibly family can also encourage them to reoffend. McAlinden favours restorative justice. She argues that a restorative approach is more likely to help with recovery following an incident than a retributive approach as it takes the victim's needs into consideration. She considers

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<sup>105</sup> Bletzer, KV & Koss, MP, *Restorative Justice and Sexual Assault: Outcome Appraisal through Textual Analysis*, **The Open Area Studies Journal**, 2013, 1 as cited in Julich, S, J Molineaux, J & Green, MD in *The Strategic Use of Terminology in Restorative Justice for Persons Harmed By Sexual Violence*, **International Justice of Restorative Justice**, 2020, Volume 3(2), pp.215-234, <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/ijrestore3&div=26&id=&page=>>>.

restorative justice to be a more meaningful, progressive and cheaper way to deal with sexual offenses.<sup>106</sup>

Though the application of criminal justice system to sexual offences is punitive in nature, the concept of restorative justice as presented by McAlinden has a restricted effect on sexual offences.

Stubbs examines the issues needed to be improved in the restorative justice literature through a feminist viewpoint, whilst focusing on domestic violence. Under the eyes of domestic violence, the article investigates the appeal to contrition, atonement and absolution under restorative justice that highlights and gives importance to the victims' interests. However, it must also be noted that it does not promote or endorse victims' rights campaigns. Although it could not be denied that restorative justice is more beneficial towards the victims of crime, such as; restoring the harm caused, healing, the foreseeable chance of gaining an apology from the offender, the chance to explain their side of the story, the opportunity to hear the offender's side of the story, the possible chance of understanding the offender, the lessening fear of the victims towards the offender, the hope that any residual anger towards the offender lessens that would turn the victim into a more principled person, participating and placing influence on the outcome of the verdict and the less chance of recidivism that may boost the safety of the community and the victim.<sup>107</sup> The paper however focuses on female victim

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<sup>106</sup> McAlinden, AM, *Restorative Justice as a Response to Sexual Offending – Addressing the Failings of Current Punitive Approaches*, 3 *Sexual Offender Treatment*, 1, 2008 as cited in Berryessa, CM, in *The Effects of Essentialist Thinking Toward Biosocial Risk Factors for Criminality and Types of Offending on Lay Punishment Support*, **Behavioral Sciences & the Law**, 2020, Volume 38, Issue 4, pp 355-380. <<https://onlinelibrary.wiley.com/doi/abs/10.1002/bsl.2476>>.

<sup>107</sup> Stubbs, J, *Beyond Apology: Domestic Violence and Critical Questions for Restorative Justice*, **Criminology and Criminal Justice, Researchgate Publication**, 2007, 7(2) as cited in Van Ness DW, Strong, KH, Derby, J, & Parker, LL, *Restoring Justice: An Introduction to Restorative Justice*, **New York, Routledge**, 2022, 6<sup>th</sup> edn, <<https://www.taylorfrancis.com/books/mono/10.4324/9781003159773/restoring-justice-daniel-van-ness-karen-heetderks-strong-jonathan-derby-lynette-parker>>.

rather than giving the concept of restorative justice a broader outlook which includes the male victim as well as the community.

Hudson presents many questions in relation to Restorative Justice such as these. Is Restorative Justice appropriate for difficult cases of domestic and sexual offences? How can retribution and restorative principles be reconciled, and to what degree should these due processes play a part? Is Restorative Justice a peripheral practice, or should it be a key element of the criminal justice system? The use of restorative justice in sexual abuse cases often lies on two sides. One side is that the established formal criminal justice system does little for victims of sexual abuse cases, while the other states that, due to the severity of the crime, the most robust form of justice should be used against them. The latter is an argument that is used by most writers. Restorative Justice is usually used in sexual offence and domestic abuse cases when the most robust form of justice fails to help the victim. Low prosecution rates, low conviction rates and re-victimisation of women during proceedings are usual complaints. This is due to lack of evidence due to the privacy of the happenings and the consequences the prosecution. Victims are afraid of more aggression and more violence if offenders are persecuted. Some victims also don't want the offenders prosecuted, just for the violence to stop. This is often the case between children and parents. Hudson concludes that if elements of restorative justice could be adopted and used for serious offences, and accompanied by procedural safeguards, rights and standards, then a 'better justice' could emerge, as it is clear that the criminal justice system has failed in its goal of responding to domestic abuse and sexual offences.<sup>108</sup> However, Hudson fails to realise that the concept of restorative justice is not only restricted to sexual offences, but also to other offences both civil and criminal.

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<sup>108</sup> Hudson, B, *Restorative Justice and Gendered Violence: Diversion or Effective Justice?* **42 British Journal of Criminology**, 2002, 616 as cited in Rossner, M and Taylor, H, *The Transformative Potential Of Restorative Justice: What The mainstream Can Learn From The Margins*, (Annual Review of Criminology, 2024), <<https://www.annualreviews.org/content/journals/10.1146/annurev-criminol-030421-040921>>.

The article of the Ministry of Justice puts a lot of thought in Restorative Justice both in terms of offenders and victims. It introduces restorative justice in the form of conferencing between victims and offenders, community conferences, mediation between victims and offenders to discuss the offence and the effect of it, and even indirect mediation through telephones or video conferencing which may lead to face to face mediation in the future.<sup>109</sup> There are, of course, problems in relation to applying restorative justice processes and schemes. However, there is low public awareness of restorative justice, especially amongst victims. There is a lack of clarity, and often misunderstanding in what exactly restorative justice processes are to victims.

#### **2.2.8 Restorative Justice under International Law**

Werle in his work focuses mainly on the principles of international law. He discusses some salient points in the activities of the International Criminal Court. He delves extensively on the sources, principles and the operational framework of the international Law. Werle is of the opinion that the international criminal law is part of international law. He discusses to a limited extent the antecedent events which subsequently led to the establishment of the International Criminal Court.<sup>110</sup> However, the work makes insignificant reference to the concept of restorative justice.

Schabas believes that the establishment of the International Criminal Court will definitely put an end to the regime of impunity in the commission of the most serious crime of international dimension. He traces the antecedent events which eventually led to the establishment of the international criminal court to try those who have committed what is mostly described as the

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<sup>109</sup> Ministry of Justice, *Restorative Justice Action Plan for the Criminal Justice System*, Volume 4, 2012.

<sup>110</sup> Werle, G. *Principles of International Criminal Law* (2<sup>nd</sup> edn) **Oxford University Press**, 2020.

most serious crime on a permanent basis.<sup>111</sup> Though the work discusses the international crime as well as the offenders in a great detail, not much is discussed about restorative justice.

Lewis claims that restorative justice is a vibrant social justice movement. It is more than a great idea gone viral, more than the extension of the legal system, and more than enacting new legislation. Beginning in 2015, the contributors of this volume took part in a series of dialogues sponsored by the Zehr Institute for Restorative Justice, exploring the contours of the restorative justice movement. Each one writes from the burgeoning edges of their own context, inviting readers to consider the fidelity and integrity of the movement's growth. As a cadre, the authors highlight new locations of restorative justice application: race, pedagogy, ecology, youth organizing, community violence reduction, and more. These diverse voices put forward a fast-paced, hard-hitting glimpse into the pulse of restorative justice today and what it may look like tomorrow.<sup>112</sup>

Tyler and Mentovich's paper<sup>113</sup> exposes the relationship between the legitimacy and procedural fairness. In the paper procedural fairness is defined as the study of people's subjective evaluation of the procedure involve in the justice delivery. The paper also defines it in terms of whether it is fair or unfair, whether it is ethical or unethical in accordance with the people's standard of fair processes for social interaction and decision making. To the scholars, there are two key dimensions of procedural fairness judgement which are fairness of decision

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<sup>111</sup> Scabas W. *An Introduction to the International Criminal Court* (3<sup>rd</sup> ed) London Cambridge Press, 2007 as cited in Huss, O, Beke, M, Wynarski, J & Slot, B, *Handbook of Good Practices in the Fight Against Corruption*, **European Commission**, 2023, p, 233, <file:///C:/Users/HP /Downloads/handbook-of-good-practices-in-the-fight-against-corruption-DR0723008ENN-2%20(1).pdf>.

<sup>112</sup> Ted, L, *Listening to the Movement: Essays on New Growth and New Challenges in Restorative Justice*, Kindle Edition 2021, <<https://www.amazon.com/Listening-Movement-Challenges-Restorative-Justice-ebook>>.

<sup>113</sup> Tyler, TR & Mentovich, A, *Mechanisms Of Legal Effect: Procedural Justice Theory* (Temple University Beasley School of Law, 2023), <[https://phlr.org/sites/default/files/downloads/resource/CPHLRTheoryMethods2023\\_ProceduralJustice.pdf](https://phlr.org/sites/default/files/downloads/resource/CPHLRTheoryMethods2023_ProceduralJustice.pdf)>.

making, that is, voice neutrality, and fairness of interpersonal treatment, that is, trust and respect. The research notes that legitimacy is a quality that is possessed by an authority, a law or an institution that leads others few obligated to accept its directives. They were of the opinion that law is a prominent tool of intervention through which government can seek to achieve public health goals. Therefore, the paper proposes the use of fairness in the procedure of making laws, for regulating public health, as the only means of conferring legitimacy on the public health authorities. However, the paper heavily and largely rested on the government's attempt at achieving effective and efficient public health delivery rather than anchoring work on the restorative criminal justice jurisprudence.

### **2.2.9 Restorative Justice in Schools**

Aquino *et al* illuminate a theory of youth engagement in restorative justice that seeks to create systems change for more equitable schools.<sup>114</sup> The authors define youth engagement in restorative justice as partnering with young people most impacted by structural injustice as change-makers in all aspects of restorative practices including community building, healing, and the transformation of institutions. Based on Adam Fletcher's version of the Ladder of Youth Engagement, coupled with Barbara Love's model of liberatory consciousness and an analysis of youth engagement in Restorative Justice in three different regions: Western Massachusetts, Oakland, and Houston, the authors provide a theoretical contribution. However, restorative justice is not only about youth engagement, but about human beings.

Shapland challenges assumptions that restorative Justice is primarily a youth justice practice. They explore how Restorative Justice can be situated within the criminal justice system.

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<sup>114</sup> Aquino, E, Wadhwa, A & Bligh, H, Manchester, *Youth Engagement in Restorative Justice*, 2021, <<https://www.amazon.com/Little-Youth-Engagement-Restorative-Justice>>.

‘Restorative Justice does not normally see itself as a forum for determining guilt’, where they try to avoid conflict and tension. Unlike in Restorative Justice, criminal justice already has allocated roles in sessions and cases and these roles are not for negotiation. There are also imbalances in power, especially in abuse cases. The offender already has power established over the victim, and so the victim immediately has less power despite the supposed balance set out in Restorative Justice sessions.<sup>115</sup>



Smith *et al* provide a practical blueprint for creating a cooperative and respectful classroom climate in which students and teachers work through behavioural issues together. After a comprehensive overview of the roots of the restorative practices movement in schools, the authors explain how to establish procedures and expectations for student behaviour that encourage the development of positive interpersonal skills; develop a non-confrontational rapport with even the most challenging students; and implement conflict resolution strategies that prioritize relationship building and mutual understanding over finger-pointing and retribution. The author posit that rewards and punishments may help to maintain order in the short term, but they are at best superficially effective and at worst counterproductive. This book prepares teachers at all levels to ensure that their classrooms are welcoming, enriching, and constructive environments built on collective respect and focused on student achievement.<sup>116</sup> However, the book does not treat restorative justice to the victim of crime as it focuses on students’ behaviour.

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<sup>115</sup> Shapland, J, *Situating Restorative Justice within Criminal Justice*, **Theoretical Criminology**, 2006, 505 as cited in Kapardis, A, *Psychology and Law*, **Encyclopedia of the Philosophy of Law and Social Philosophy**, 2023, pp, 2882-2889, <[https://link.springer.com/rwe/10.1007/978-94-007-6519-1\\_108](https://link.springer.com/rwe/10.1007/978-94-007-6519-1_108)>.

<sup>116</sup> **Smith, D, Fisher, D, & Frey, N**, *Better than Carrots or Sticks: Restorative Practices for Positive Classroom Management, Illustrated Edition*, 2015 <<https://www.amazon.com/Better-Than-Carrots-Sticks-Restorative>>.

Evans and Vaandering state the necessary principles and attributes of a restorative justice as regards the relational and the interconnected school cultures.<sup>117</sup> The wisdom embedded within restorative principles and practices is being welcomed at a time when exclusionary discipline and zero tolerance policies are recognized as perpetuating student apathy, disproportionality, and the school-to-prison pipeline. Relying on the wisdom of early proponents of restorative justice, the daily experiences of educators, and the authors' extensive experience as classroom teachers and researchers, this book guides the growth of restorative justice in education into the future. Incorporating activities, stories, and examples throughout the book, three major interconnected and equally important aspects of restorative justice in education are explained and applied: creating just and equitable learning environments; building and maintaining healthy relationships; healing harm and transforming conflict. The focus of this book is completely different from that of this work. Whereas, this book focuses on restorative justice in school setting, the focus of this research work is restorative justice to the victim of crime.

Goodey examines how justice can be balanced for victims of crime, the defendant and the society. He offers a critique of restorative justice as an alternative to the traditional justice and its claims of balancing the needs, concerns and rights of victims with that of the offenders. The work extensively discussed the promises and the invitation offered by the restorative justice, as a possible paradigm shift in criminal justice should be modified in a way as to meet

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<sup>117</sup> Evans, K & Vaandering, D, in *Restorative Justice in Education: Fostering Responsibility, Healing, and Hope in Schools*, 2022, <<https://www.amazon.com/Little-Book-Restorative-Justice-Education>>.

the victim's need, as a central player in the resolution of their own conflicts. work<sup>118</sup> Goodey's work is useful to this research in explaining some of the reasons for the neglect of the victims concerned in the criminal justice process, as well as the recent upsurge and increased interest and attention in victim-centred criminal justice. However, the work does not recommend an alternative kind of justice paradigm in place of the heavily criticised restorative justice even when he contends that restorative justice may not offer much in the quest for a better deal for the victims of crime in the criminal justice administration.

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<sup>118</sup> Goodey J., *Victims and Victimology: Research Policy and Practice*, Newburn, England. Pearson Education Limited, 2005, as cited in Carrabine, E, Cox, P, Crowhurst, I, Ronco, AD, Fussey, P, Sergi, A, South, N, Thiel, D, & Turton, J, *Criminology: A Sociological Introduction*. London, Routledge, 2020, 4<sup>th</sup> Edn, <<https://www.taylorfrancis.com/books/mono/10.4324/9781315123509/criminology-isabel-crowhurst-anna-di-ronco-anna-sergi-eamon-carrabine-pam-cox-isabel-crowhurst-anna-di-ronco-pete-fussey-anna-sergi-nigel-south-darren-thiel-jackie-turton>>.

O'Brien and Foussard state that the Children who come into conflict with the law are more likely to have experienced violence or adversity than their non-offending peers. Exacerbating the deleterious effects of this childhood trauma, children's contact with the criminal justice system poses undue risks of physical, sexual, and psychological violence. This book examines the specific forms of violence that children experience through their contact with the criminal justice system.<sup>119</sup> Comprising contributions from leading scholars and practitioners in children's rights and youth justice, this book profiles evidence-based prevention strategies and case studies from around the world. It illustrates the diversity of contexts in which various forms of violence against children unfold and advances knowledge about both the nature and extent of violence against children in criminal justice settings, and the specific situational factors that contribute to, or inhibit, the successful implementation of violence prevention strategies. It demonstrates that specialised child justice systems, in which children's rights are upheld, are crucial in preventing the violence inherent to conventional criminal justice regimes. However, the victims and offenders of crime are not limited to children alone as postulated by this book, it cuts across all human beings.

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<sup>119</sup> O'Brien, W & Foussard, C, *Violence against Children in the Criminal Justice System: Global Perspectives on Prevention*, **Amazon**, 2019, 1<sup>st</sup> Edn), <<https://www.amazon.com/Violence-Against-Children-Criminal-Justice-ebook>>.

Bradford and Lesal is about stages of a restorative circle to understanding the importance of conflict. The authors pull no punches in showing that this work is not always easy, but their passion for restorative justice shines out of every page, demonstrating just how valuable this approach can be in bringing the absolute best out of your students and school.<sup>120</sup>

Curwin *et al* provides in-depth guidance for implementing a proven approach to classroom management that can help students make better choices and teachers be more effective. Emphasizing the importance of mutual respect and self-control, the authors offer specific strategies and techniques for building strong relationships with disruptive students and countering the toxic social circumstances that affect many of them, including dysfunctional families, gangs, and poverty.<sup>121</sup>

Aquino *et al*, illuminate a theory of youth engagement in restorative justice that seeks to create systems change for more equitable schools. The authors define youth engagement in restorative justice as partnering with young people most impacted by structural injustice as change makers in all aspects of restorative practices including community building, healing, and the transformation of institutions. Based on Adam Fletcher's version of the Ladder of Youth Engagement, coupled with Barbara Love's model of liberatory consciousness and an analysis of youth engagement in Restorative Justice in three different regions: Western Massachusetts, Oakland, and Houston. The authors provide a theoretical contribution to youth

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<sup>120</sup> Nicholas Bradford & David Lesal. *A Real-World Guide to Restorative Justice in Schools: Practical Philosophy, Useful Tools, and True Stories*, Amazon, 2021, <<https://www.amazon.com/Real-World-Guide-Restorative-Justice-Schools/dp/1787755711>>.

<sup>121</sup> Curwin, RL, Mandler, AN & Mandler, BD, *Discipline with Dignity: How to Build Responsibility, Relationships, and Respect*, Amazon, 2018, <<https://www.amazon.com/Discipline-Dignity-4th-Responsibility-Relationships/dp/141662581X>>.

engagement in restorative justice grounded in liberatory consciousness.<sup>122</sup> Though the book is a comparative case studies from different parts of the country of youth led restorative justice programs, however the book does not explore the cultural and historical context of third world countries like Nigeria.

What is most remarkable about the assortment of discipline programs on the market today is the number of fundamental assumptions they seem to share. Some may advocate the use of carrots rather than sticks; some may refer to punishments as "logical consequences." But virtually all take for granted that the teacher must be in control of the classroom, and that what we need are strategies to get students to comply with the adult's expectations.

Alfie Kohn challenged these widely accepted premises, and with them the very idea of classroom "management," when the original edition of *Beyond Discipline* was published in 1996. Since then, his path-breaking book has invited hundreds of thousands of educators to question the assumption that problems in the classroom are always the fault of students who don't do what they're told; instead, it may be necessary to reconsider what it is that they've been told to do or to learn. Kohn shows how a fundamentally cynical view of children underlies the belief that we must tell them exactly how we expect them to behave and then offer "positive reinforcement" when they obey. Just as memorizing someone else's right answers fails to promote students' intellectual development, so does complying with someone else's expectations for how to act fail to help students develop socially or morally. Kohn contrasts the idea of discipline, in which things are done to students to control their behaviour,

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<sup>122</sup> Aquino, E, Wadhwa, A & Manchester, BH, in *Youth Engagement in Restorative Justice: Intergenerational Partnerships for Just and Equitable Schools*, Amazon, 2021, <[https://www.amazon.com/Little-Youth-Engagement-Restorative-Justice/dp/1680997483/ref=sr\\_1\\_1?crid=HKVRIE303Y3L&dib=eyJ2IjojMSJ9.-y434319NCpdSwMrHjYANg.2TUeER3IH\\_Fiqlu8n2RSi\\_nl0mq6fu2Lf3i8Nqo1fhM&dib\\_tag=se&keywords=Manchester%2C+In+Youth+Engagement+in+Restorative+Justice%3A+Intergenerational+Partnerships+for+Just+and+Equitable+Schools&qid=1754412506&s=digital-text&sprefix=manchester%2C+in+youth+engagement+in+restorative+justice+intergenerational+partnerships+for+just+and+equitable+schools%2Cdigital-text%2C230&sr=1-1-catcorr](https://www.amazon.com/Little-Youth-Engagement-Restorative-Justice/dp/1680997483/ref=sr_1_1?crid=HKVRIE303Y3L&dib=eyJ2IjojMSJ9.-y434319NCpdSwMrHjYANg.2TUeER3IH_Fiqlu8n2RSi_nl0mq6fu2Lf3i8Nqo1fhM&dib_tag=se&keywords=Manchester%2C+In+Youth+Engagement+in+Restorative+Justice%3A+Intergenerational+Partnerships+for+Just+and+Equitable+Schools&qid=1754412506&s=digital-text&sprefix=manchester%2C+in+youth+engagement+in+restorative+justice+intergenerational+partnerships+for+just+and+equitable+schools%2Cdigital-text%2C230&sr=1-1-catcorr)>.

with an approach in which we work with students to create caring communities where decisions are made together. This book is on restorative justice in schools, it is not the same as the focus of this research work which is restorative justice to victim of crime.

#### **2.2.10 Goals of Restorative Justice**

The work of Zehr is basically devoted to restorative justice for the victims of crime. The scholar is of the opinion that the criminal justice is historically an offshoot of retributive, punitive philosophy and advocates for an improved treatment approach for the victims which according to him, the policy makers on criminal justice have failed to adopt over time. It is the contention of the scholar that restorative justice also incorporates the African perspective of criminal justice. He provided empirical evidence to show and demonstrate the value of restorative approach to the criminal justice which he recommends to policy makers and practitioners alike.<sup>123</sup> The author however fails to lay down an acceptable procedure toward making restorative justice a proactive compensatory relief to the victim of crime.

Siegal in one of the chapters on criminal justice administration, emphatically states that assistance to victims of crime in the criminal justice process is of great significance. According to him, this is because victims mostly suffered irreparable damages, and harm as a result of crime committed against them. He therefore calls on the agencies of the criminal justice system to be receptive of the compensatory needs of the victims and address other concerns sincerely and concretely. However, the author limits his analysis on the rights of the victim of crime to compensation.

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<sup>123</sup> Zehr, H. *The Little Book of Restorative Justice Intercourse*, (Good Book, 2015).

Bergseth and Bouffard views restorative justice as a theory of justice that emphasizes repairing the harm caused by criminal behaviour.<sup>124</sup> Practices and programs reflecting restorative purposes will respond to crime by involving all stakeholders identifying, by taking steps to repair harm and by transforming the traditional relationship between communities and government in responding to crime. They state that the goal of restorative justice is to bring together those most affected by the criminal act: the offender, the victim, and community members in a non-adversarial process to encourage offender accountability and meet the needs of the victims to repair the harms resulting from the crime. The authors, however, limits the discussion and the analysis on how to repair the harm done to the victim of crime.

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<sup>124</sup> Bergseth, KJ, & Bouffard, JA, *The Long-Term Impact of Restorative Justice Programming for Juvenile Offenders*. Journal of Criminal Justice 35(4):433–51, 2007 as cited in Lodi, E, Perrella, L, Lepri, GL, Scarpa, ML & Patrizi, P, *Use of Restorative Justice and Restorative Practices at School: A Systematic Literature Review*, **International Journal of Environmental Research and Public Health**, 2021, Volume 19, Issue 1, <<https://www.mdpi.com/1660-4601/19/1/96>>.

Tufo and Gonell state the failures and inhumanity of justice system policies and practices; the unfairness and ineffectiveness of “zero tolerance” and other punitive measures adopted gave rise to the positive impact of restorative practices for the past several decades around the world. According to them, this complex mix has generated an array of programs that utilize restorative ideas and practices in a wide variety of ways, such as court diversion, deeply spiritual circle work, and national and international truth and reconciliation projects that focus on healing and the creation of more empathic relationships. The authors know from experience that there is often a gap between values and the reality of day to day practice. This book strives to find ways to shrink that gap and to bring our practice and the structures and methods that employ them into closer alignment with restorative values. Simply put, this book asks, how can we better align restorative theory and practice in our work? In order to have truly restorative programs that is programs that strive for consistency between their stated values and their real-life practices. The authors offer some ways to integrate restorative practices and values into the strategies used to design, implement, and assess them. They propose the use of transformative practice, Participatory Action Research (PAR), as a powerful ally in the work of developing restorative practices and the programs that hold them.<sup>125</sup> However, the authors do not realise that proposal is different from implementation particularly in a clime like Nigeria where adaptation to the way of life of the people will play a pivotal role.

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<sup>125</sup> Tufo, AD & Gonell, QE, *Restorative Justice Program Design: Using Participatory Action Research to Build and Assess RJ Initiatives*, Amazon 2023, <[https://www.amazon.com/Little-Restorative-Justice-Program-Design/dp/1680998773/ref=sr\\_1\\_1?crd=1STZQHUSTQO0W&dib=eyJ2IjoiMSJ9.lLrknErf1--lhiJPO8hVgQ.6BTSYc6svTraSh6VpWQ24mvcjDKz9\\_mv0xS5cZrBb6I&dib\\_tag=se&keywords=Restorative+Justice+Program+Design%3A+Using+Participatory+Action+Research+to+Build+and+Assess+RJ+Initiatives&qid=1754413065&s=books&sprefix=restorative+justice+program+design+using+participatory+action+research+to+build+and+assess+rj+initiatives%2Cstripbooks%2C669&sr=1-1](https://www.amazon.com/Little-Restorative-Justice-Program-Design/dp/1680998773/ref=sr_1_1?crd=1STZQHUSTQO0W&dib=eyJ2IjoiMSJ9.lLrknErf1--lhiJPO8hVgQ.6BTSYc6svTraSh6VpWQ24mvcjDKz9_mv0xS5cZrBb6I&dib_tag=se&keywords=Restorative+Justice+Program+Design%3A+Using+Participatory+Action+Research+to+Build+and+Assess+RJ+Initiatives&qid=1754413065&s=books&sprefix=restorative+justice+program+design+using+participatory+action+research+to+build+and+assess+rj+initiatives%2Cstripbooks%2C669&sr=1-1)>.

### 2.2.11 Victim's Compensation

Elias evaluates actual victims' compensation programs as well as their political and economic contexts, through the eyes of the victims themselves.<sup>126</sup> Elias traces the experiences of violent-crime victims throughout the entire criminal justice process, comparing New York's and New Jersey's victim compensation programs. He shows how programs differ when compensation is viewed essentially as welfare and when it is viewed as a right. The study uses extensive interviews with officials and with violent crime victims. The book indicates that victims' compensation programs largely fail to achieve their stated goals of improving attitudes toward the criminal-justice system and the government. The programs produce poor attitudes toward government and criminal justice. However, restorative justice is not only about victim's compensation, it is also about considering the other parties to crime.

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<sup>126</sup> Elias, R, *Victims of the System*, Amazon, 2017, <<https://www.amazon.com/Victims-System-Compensation-American-Politics-ebook/>>.

In Compensation for victims of sexual violence in Congolese law, Mongane states that the enactment of laws on sexual violence deserves to be evaluated as a good step forward in the fight against sexual violence in the Democratic Republic of Congo. The rigor with which the 2006 legislators consider the criminal procedure and the criminal sanctions that may follow in matters of sexual violence is not the same as regards the victim's main right, namely compensation. This compensation must in principle be paid by the perpetrator of the offence by virtue of the principle of responsibility provided for in article 258 of the CCLIII.<sup>127</sup> It is noted that the protection of victims through compensation does not seem to be considered by the judge in the sense that the reparation of D.I. can only be pronounced in criminal matters as an accessory to the main sentence.<sup>127</sup> Though the Congolese judges limit themselves to pronouncing the judgment and sentencing the guilty party, the victim's interest is not only to see the perpetrator of the crime sentenced but also, and above all, to see his rights restored.

The Law Library<sup>128</sup> presents the complete text of the James Zadroga 9-11 Victim Compensation Fund Reauthorization Act (US Department of Justice Regulation) (DOJ) (2018 Edition). Updated as of May 29, 2018 On December 18, 2015, President Obama signed into law the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act (the “Reauthorized Zadroga Act”). The Act extends the September 11th Victim Compensation Fund of 2001 which provides compensation to any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001, or the rescue and recovery efforts during the

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<sup>127</sup> Mongane, AB, *Compensation for victims of sexual violence in Congolese law*, Amazon, 2023, <<https://www.amazon.com/Compensation-victims-sexual-violence-Congolese>>.

<sup>128</sup> The Law Library, *James Zadroga 9 - 11 Victim Compensation Fund Reauthorization Act (US Department of Justice Regulation)*. Amazon, 2018, <<https://www.amazon.com/James-Zadroga-Compensation-Reauthorization-Department>>.

immediate aftermath of such crashes or the debris removal efforts that took place in the immediate aftermath of those crashes. Special Master Sheila L. Birnbaum, appointed by the Attorney General to administer the Fund, is issuing this Interim Final Rule to address changes required by the Reauthorized Zadroga Act. Specifically, the statute extends the time period during which eligible claimants may submit claims for compensation until December 18, 2020, increases the Victim Compensation Fund's total funding available to pay claims, creates different categories of claims, directs the Victim Compensation Fund to issue full compensation to eligible claimants and imposes limitations on certain components of future loss calculations. However, the rigor that the victims of crime go through as presented by the book does not make the position of victim any better.

Hays asks questions like; You have been hurt on the job and now you have a lot of questions, but not a lot of answers: Who will pay for all of your medical bills? You don't have health insurance, so how do you get the medical treatment you need for your injuries. How can you recover your lost wages? You are receiving workers' compensation checks, but how do you know it is for the right amount? Do you have to treat with the company doctor? Can you get a second opinion with a doctor you know and trust? What about your future medical needs or lost wages? What are your rights, and what are the insurance company's responsibilities? This is a lot for anyone to handle - all of the phone calls back and forth, the emails and the releases. Will you be able to navigate the workers' compensation law and the State Board of Workers' Compensation Rules on your own? Will you have the time or the knowledge to handle this by yourself? Do you need a guide to help explain the process to you? And ask yourself - do you really want to take on the insurance company and their lawyers by yourself- especially without educating yourself on the claims process here in Georgia? Are you an attorney who is looking to expand your practice to help workers who have been on the job in Georgia? Do

you know enough about the workers' compensation claim process to zealously and ethically represent them? <sup>129</sup> However, restorative justice that forms the subject matter of this dissertation is not only about compensation but all-encompassing.

A former insurance defence lawyer, he now only represents injured victims and their families. Since starting his own firm in 1993, he has helped over 40,000 clients. In this handbook, Attorney Hays provides you a peek behind the curtain to see how his law firm successfully represents his clients. Topics include: What is Workers' Compensation? Definitions: Employer, Employee, Independent Contractor, What is an "accident" in Georgia? What injuries and other illnesses are covered? Hays states that the benefits to injured workers include the following: indemnity, medical, and permanent partial disability. The author also states the typical defense employers/Insurers will try to use. Can I sue my employer? Third-party lawsuits, Employee's rights, Employer/insurer responsibilities. However, too many questions that are begging for answers are asked in the book but restorative justice is not about questions but about real action that will truly establish the victims' compensation.

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<sup>129</sup> Hays, GM, *The Authority on Workers' Compensation Claims*, 2015, <[https://www.amazon.com/Authority-Workers-Compensation-Claims-Definitive-ebook/dp/B014E7RO3U/ref=sr\\_1\\_1?crid=1SV2H5AY26HL&dib=eyJ2ljojMSJ9.TrSWneRA65-isJOhnuIKSQ.-Lfz0LORRRBFJIM6vrohkBPUArEH4JfbCZv-Trp3Fuw&dib\\_tag=se&keywords=The+Authority+on+Workers%27+Compensation+Claims&qid=1754413383&s=books&prefix=the+authority+on+workers%27+compensation+claims%2Cstripbooks%2C461&sr=1-1](https://www.amazon.com/Authority-Workers-Compensation-Claims-Definitive-ebook/dp/B014E7RO3U/ref=sr_1_1?crid=1SV2H5AY26HL&dib=eyJ2ljojMSJ9.TrSWneRA65-isJOhnuIKSQ.-Lfz0LORRRBFJIM6vrohkBPUArEH4JfbCZv-Trp3Fuw&dib_tag=se&keywords=The+Authority+on+Workers%27+Compensation+Claims&qid=1754413383&s=books&prefix=the+authority+on+workers%27+compensation+claims%2Cstripbooks%2C461&sr=1-1)>.

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Shapo describes some of the problems in his penetrating book this way: "Within ten days of the tragedy of September 11th, Congress created a Victim Compensation Fund for those who were injured or lost loved ones in the terrorist attacks of that day.<sup>130</sup> "That Fund paid out more than seven billion dollars to surviving victims and families of those who died, with awards to families averaging over two million and one award reaching approximately \$8.6 million. Was the Fund a good idea? If there are terrorist attacks in the future that kill or injure hundreds or even thousands of people, should Congress provide the same kind of compensation to victims and families? Why has Congress not made provision for similar benefits for victims of the Oklahoma City bombing? Why are the payments made to families of soldiers who die in combat only a few thousand dollars?" When the Victims' Compensation Fund was established after 9/11, it set off a series of debates on the logic of compensation for victims of terrorist acts. Why do we compensate for injuries, and how do injuries and deaths caused by acts of terrorism differ from those caused by more ordinary means? What criteria should we consider when determining compensation: the financial need or deprivation or the survivors? The degree of negligence of a public or private entity? In this thought provoking study, Shapo draws on the basic concepts of injury law, including tort and compensation law, to delve into the questions and present a framework for future lawmakers faced with shaping compensation programs for terrorist victims. With its limitless contradictions, constraints, and competing demands, the terrain of compensation is at best murky. Shapo unravels the

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<sup>130</sup> Shapo, MS, *Compensation for Victims of Terrorism*, 2005, <[https://www.amazon.com/Compensation-Victims-Terrorism-Marshall-Shapo/dp/0379215462/ref=sr\\_1\\_1?crid=2V914BJMWB58&dib=eyJ2ljojMSJ9.kHEvJagyuYnQINdcsyj\\_GeMuLcOo-yzybLGvX9k-A39tVfEk5x6kUsihG78B9FQfiFgbVYEdl3rhqC03ehhW0GI\\_gfQp5Mb\\_ZlnNYFfTEZFfyNwGoVOv3iPobaP5a5V.fZ2u4srwYkXc3HYKqITZ44Cr3RwiORDZYG44Ftm0hTk&dib\\_tag=se&keywords=Compensation+for+Victims+of+Terrorism&qid=1754413842&s=books&sprefix=compensation+for+victims+of+terrorism%2Cstripbooks%2C627&sr=1-1](https://www.amazon.com/Compensation-Victims-Terrorism-Marshall-Shapo/dp/0379215462/ref=sr_1_1?crid=2V914BJMWB58&dib=eyJ2ljojMSJ9.kHEvJagyuYnQINdcsyj_GeMuLcOo-yzybLGvX9k-A39tVfEk5x6kUsihG78B9FQfiFgbVYEdl3rhqC03ehhW0GI_gfQp5Mb_ZlnNYFfTEZFfyNwGoVOv3iPobaP5a5V.fZ2u4srwYkXc3HYKqITZ44Cr3RwiORDZYG44Ftm0hTk&dib_tag=se&keywords=Compensation+for+Victims+of+Terrorism&qid=1754413842&s=books&sprefix=compensation+for+victims+of+terrorism%2Cstripbooks%2C627&sr=1-1)>.

tangled lines of reasoning, casting an impartial eye on the legal, political and social logics of the Victims' Compensation Fund and those likely to come into play for any future crises.

Schafer approaches the problem of compensation and restitution from two angles in an attempt to serve not only the ideas of the victimology, but the tasks of the penology as well.<sup>131</sup> Restitution should carry out a mission not only in helping the victim in his present neglected position but, at the same time, in refining the practical concept of punishment. The author's approach differs from current solutions which are almost confined to the sphere of the civil law; however, it also differs from the past solutions in which restitution appeared almost entirely as a criminal retribution. The author tries to offer a solution through which restitution may come nearer to the requirements of both victimology and penology. The author notes that the purpose of this book, offers just such a rough but true picture. However, the author does to draw a distinct line between victimology and penology, hence there is no clear picture of his idea of restorative justice.

Heng states that in recent years, the academic criminal law system compensate victims of crime,

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<sup>131</sup> Schafer, S, *Compensation and Restitution to Victims of Crime*, Amazon, 1970, <[https://www.amazon.com/Compensation-Restitution-Patterson-Criminology-Enforcement/dp/0875851207/ref=sr\\_1\\_1?crd=KZQ5DIAXI8J7&dib=eyJ2IjojMSJ9.BGtsUFxCTb1OYn0TrafzXg.2m4nLzDp1G0g4uilmSx3W7-1uqkYhth\\_0gAVnnn3cJ0&dib\\_tag=se&keywords=Compensation+and+Restitution+to+Victims+of+Crime&qid=1754413990&s=books&sprefix=compensation+and+restitution+to+victims+of+crime%2Cstripbooks%2C454&sr=1-1](https://www.amazon.com/Compensation-Restitution-Patterson-Criminology-Enforcement/dp/0875851207/ref=sr_1_1?crd=KZQ5DIAXI8J7&dib=eyJ2IjojMSJ9.BGtsUFxCTb1OYn0TrafzXg.2m4nLzDp1G0g4uilmSx3W7-1uqkYhth_0gAVnnn3cJ0&dib_tag=se&keywords=Compensation+and+Restitution+to+Victims+of+Crime&qid=1754413990&s=books&sprefix=compensation+and+restitution+to+victims+of+crime%2Cstripbooks%2C454&sr=1-1)>.

but many of the basic theory and specific system problems are still large doubts.<sup>132</sup> Deviation stagnation and phenomena are not thorough and theoretical research in this area is not clear about the lack of a formal legal system.

Bergseth and Bouffard, while examining the effectiveness of restorative justice program for various types of juvenile offenders, agreed that restorative justice programmes for youth offenders are a basic human rights-based approach that endorses democratic practices in international law. Crime in restorative justice has been defined as a violation of relationships and/or harm to the community rather than harm towards the state. Therefore, a reduction in recidivism and the strengthening of a relationship within the community can be established through restorative justice. They believe that restorative justice has constructive benefits for the victims and these include mediation between the victim and offender, community reparative boards, circle sentencing, community service or restoration and family circles. Restorative justice programmes are designed to meet the real needs of victims, offenders and their communities created by the criminal act.<sup>133</sup> They also state that the increased risks of re-offending can be easily categorised through the young offender's age, gender, racial group, history of prior offences and their antisocial attitudes. According to them, in a report from Canberra, Australia, it was found that property youth offenders were more likely to reoffend than violent crime youth offenders, which fortifies the theory that restorative justice

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<sup>132</sup> Heng, SH, *Legislation of the Criminal Victims Compensation Act*, Amazon, 2014, <[https://www.amazon.com/Legislation-Criminal-Victims-Compensation-Chinese/dp/7562055491/ref=sr\\_1\\_1?\\_2QS8Y0U4SGQ S6&dib=eyJ2ljojMSJ9.CkjmLDJ4gfNkDVE9s68n7w.HV3EQyVmkgntdmOVDV4AvB40YMCJ\\_GEVjz-PrFMOaSo&dib\\_tag=se&keywords=Legislation+of+the+Criminal+Victims+Compensatio+Act&qid=1754414111&s=books&prefix=legislation+of+the+criminal+victims+compensation+act%2Cstripbooks%2C424&sr=1-1](https://www.amazon.com/Legislation-Criminal-Victims-Compensation-Chinese/dp/7562055491/ref=sr_1_1?_2QS8Y0U4SGQ S6&dib=eyJ2ljojMSJ9.CkjmLDJ4gfNkDVE9s68n7w.HV3EQyVmkgntdmOVDV4AvB40YMCJ_GEVjz-PrFMOaSo&dib_tag=se&keywords=Legislation+of+the+Criminal+Victims+Compensatio+Act&qid=1754414111&s=books&prefix=legislation+of+the+criminal+victims+compensation+act%2Cstripbooks%2C424&sr=1-1)>.

<sup>133</sup> Bergseth, KJ & Bouffard, JA, *Examining the Effectiveness of a Restorative Justice Program for Various Types of Juvenile Offenders*, **International Journal of Offender Therapy and Comparative Criminology**, 2013, 59, 7 as cited in Kimbrell, CS, Wilson, DB & Olaghere, A, *Restorative Justice Programs and Practices in Juvenile Justice: An Updated Systematic Review and Meta-Analysis for Effectiveness*, **Criminology & Public Policy**, 2023, Volume 22, Issue 1, pp, 161-195, <<https://onlinelibrary.wiley.com/doi/full/10.1111/1745-9133.12613>>.

participation is an important factor in the reduction of recidivism among violent offenders. It is believed that the restorative process may grant ‘a different emotional climate and basis for legitimacy of legal interventions’ than a traditional court process would.

Woulther, Oley and Denham in their work<sup>134</sup> like Goodey, also delve extensively on restorative justice for the victims of crime. The scholars analyse restorative justice as it is amenable to the criminal justice process in the United Kingdom in the light of growing concerns for the improved treatment of victims across Europe and other countries outside Europe. The scholars unlike Goodey limit the application of restorative justice to the United Kingdom although they draw examples from other countries in Europe.

Reiner states that while Restorative Justice is praised for its informality, this simply cannot be completely so in criminal justice. Informality can cause tension with creating fairness, and both lay people and police officers tend to have a preconceived idea that offenders are ‘scum.’<sup>135</sup> This preconceived idea can cause issues if police officers are facilitating Restorative Justice sessions. The power balance is certainly complex, as the offender is still under the power of the state. Complete informality is a very dangerous goal to achieve.

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<sup>134</sup> Woulther L, Olley N. & Denham D., *Victimology: Victimisation and Victims’ Right* (1<sup>st</sup> ed) (New York, Routedledge Cavendish, 2009) as cited in Ramaj, K, *The Aftermath of Human Trafficking: Exploring The Albanian Victims’ Return, Rehabilitation, and Reintegration Challenges*, **Journal of human trafficking**, 2023, Volume 9, Issue 3, pp, 408-429, <<https://www.tandfonline.com/doi/full/10.1080/23322705.2021.1920823>>.

<sup>135</sup> Reiner, R. *Policing and the Police*, in M. Maguire, R. Morgan an R. Reiner (eds) *The Oxford Handbook of Criminology*, (2nd ed), pp. 1055, **Oxford University Press**, 1997 as cited in Unger, M, *Multisystemic Resilience: Adaptation and Transformation in Contexts of Change* **Oxford University Press**, 2021, <<https://academic.oup.com/book/41117>>.

Wormer and Bartollas present an up-to-date analysis of women as victims of crime, as individuals under justice system supervision, and as professionals in the field. The text features an empowerment approach that is unified by underlying themes of the intersection of gender, race, and class; and evidence-based research. Personal narratives supplement research and statistics to help students connect the text material with real-life situations. The book stresses contemporary topics such as recognition of lesbian, bisexual, and transgender issues in juvenile and adult facilities; the introduction of trauma-informed care in detention centres and prisons; the criminalization of Black girls and women; the effects of an increasingly militarized police culture; and the contributions of Ruth Bader Ginsburg and other influential women. With its emphasis on critical thinking, this text is ideal for undergraduate courses concerning women in the justice system. However, victims of crime are not restricted to women alone but also the children and the adults.

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Wilson in his work<sup>136</sup> considers the general framework for victim's participation in the justice system by making specific suggestions for the interaction between the victims and other stakeholders in the criminal justice process, that is the Police, the Prosecutors, Legal Counsel, and others like the judiciary and other professionals, responsible for the enforcement of sanctions. He tries to highlight and ascribe specific responsibilities to each of the stakeholders mentioned above in their interaction with the victims in the criminal justice process. The scholar observes that in many jurisdictions, the needs, concerns and rights of victims have not received the attention that they deserve and that there is an urgent need to provide more effective remedies and protective mechanisms for victims to enable them gain access to and participate effectively in the criminal justice system. This includes sensitisation of practitioners to the specific needs and concerns of victims. However, the observations raised in the paper, though altruistic, the discussions on it are of limited application to the Nigerian situation, and more importantly the proposal was not anchored under any theoretical framework.

In order to demonstrate that the proposal of restitutive justice paradigm is recommended to the Nigerian criminal justice administrators and policy makers alike was not new across the world. However, the work anchors this proposal for restitutive justice only on compensation to the victims of crime. The work is not in agreement with the view that restitutive justice for the victims cannot adequately address the participatory model of justice for the victims of crime in the Nigerian criminal justice process. Restitutive justice does not also remove the victims from the age long role of a mere witness in his own case. While discussing restorative

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<sup>136</sup> Wilsons, JK, *The Praeger Handbook of Victimology* (Janet Wilson ed): California: Greenwood Publishing Group, 2013 as cited in Fernandes, A, Goncalves, M and Matos, M, *who Are The Victims, Who Are The Traffickers? University Students' Portrayals on Human Trafficking*, **International Journal of Evidence-based Research, Policy, and Practice**, 2020, *Volume 15, Issue 2*, <<https://www.tandfonline.com/doi/abs/10.1080/15564886.2019.1711276>>.

justice *vis-à-vis* the theory of re-integrative shaming, Braithwaite principally argues that people are generally deterred from committing crimes by two informal types of social control: conscience and fear of social disapproval. Braithwaite argues that the consequences imposed by family members, friends, or other individuals important to an offender are more meaningful and therefore more effective than those imposed by the legal system. As a result, the fear of being shamed by the people most intimate with an offender is the most significant deterrent to committing crime.<sup>137</sup>

Van Ness *et al* offer a clear and convincing explanation of restorative justice, a movement within criminal justice with ongoing worldwide influence.<sup>138</sup> The book explores the broad appeal of this vision and offers a brief history of its roots and development as an alternative to an impersonal justice system focused narrowly on the conviction and punishment of those who break the law. Instead, restorative justice emphasizes repairing the harm caused or revealed by criminal behaviour, using cooperative processes that include all the stakeholders. The book presents the theory and principles of restorative justice, and discusses its four corner-post ideas: Inclusion, Encounter, Repair, and Cohesion. Multiple models for how restorative justice may be incorporated into criminal justice are explored, and the book proposes an approach to assessing the extent to which programs or systems are actually restorative in practice. The authors also suggest six strategic objectives to significantly expand the use and reach of restorative justice and recommended tactics to make progress towards the acceptance and adoption of restorative programs and systems. Incidentally, the

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<sup>137</sup> Braithwaite J. *Crime, Shame, and Reintegration*. Cambridge, England: Cambridge University Press, 1989 as cited in Van Ness, DW, Strong, KH, Derby, J & Parker, LL, in *Restoring justice: An introduction to restorative justice*, New York, Routledge, 2022, <<https://www.taylorfrancis.com/books/mono/10.4324/9781003159773/restoring-justice-daniel-van-ness-karen-heetderks-strong-jonathan-derby-lynette-parker>>.

<sup>138</sup> Daniel W. Van Ness, K, Strong, H & Derby, J, *Restoring Justice: An Introduction to Restorative Justice*, (6<sup>th</sup> edn, 2022, <

authors never mentioned anything like the rehabilitation of the offender as well as the compensation of the victims.

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McKee provides an overview of the criminal justice system of the United States.<sup>139</sup> It is intended to provide the introductory student a concise yet balanced introduction to the workings of the legal system as well as policing, courts, corrections, and juvenile justice. Six chapters, each divided into five sections, provide the reader a consistent, comfortable format as well as providing the instructor with a consistent framework for ease of instructional design. Incidentally, the book only discusses criminal justice system but not in a restorative sense.

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<sup>139</sup> Adam J McKee, *Criminal Justice: An Overview of the System*, 2016, <<https://www.amazon.com/Criminal-Justice-Overview-Adam-McKee>>.

Sered calls for a complete overhaul of the way we have been taught to think about crime, punishment, and justice. The author offers pragmatic solutions that take the place of prison, meeting the needs of survivors and creating pathways for people who have committed violence to repair harm. Critically, Sered argues that reckoning is owed not only on the part of individuals who have caused violence, but also by our nation for its overreliance on incarceration to produce safety at a great cost to communities, survivors, racial equity, and the very fabric of our democracy. Although over half the people incarcerated in America today have committed violent offences, the focus of reformers has been almost entirely on nonviolent and drug offences. Sered argues with searing force and clarity that our communities are safer the less we rely on prisons and jails as a solution for wrongdoing. Sered asks us to reconsider the purposes of incarceration and argues persuasively that the needs of survivors of violent crime are better met by asking people who commit violence to accept responsibility for their actions and make amends in ways that are meaningful to those they have hurt, none of which happens in the context of a criminal trial or a prison sentence.<sup>140</sup> However, it is important to note that under criminal justice system, incarceration is not entirely bad because there are some offenders that are better kept in correctional centres for the overall safety of the society.

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<sup>140</sup> Sered, D, *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair*, 2021, <<https://www.amazon.com/Until-We-Reckon-Violence-Incarceration>>.

Samenow explains the sources and remedies for crime in this ground breaking book and a chilling profile of today's criminal emerges.<sup>141</sup> In 1984, Samenow changed the way we think about the workings of the criminal mind, with a revolutionary approach to "habilitation." In 2014, armed with thirty years of additional knowledge and insight, The author explores the subject afresh, explaining criminals' thought patterns in the new millennium, such as those that lead to domestic violence, internet victimization, and terrorism. Since then the arenas of criminal behaviour have expanded even further, demanding this newly updated version, which includes an exploration of social media as a vehicle for criminal conduct, new pharmaceutical influences and the impact of the opioid crisis, recent genetic and biological research into whether some people are "wired" to become criminals, new findings on the effectiveness of cognitive behavioural therapy, and a fresh take on criminal justice reform. Throughout, we learn from Samenow's five decades of experience how truly vital it is to know who the criminals are and how they think. If equipped with that crucial understanding, we can reach reasonable, compassionate, and effective solutions. The book is all about crime from the perspective of the criminal mind and not about restorative justice to the victims of crime.

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<sup>141</sup> Samenow, S, *Inside the Criminal Mind*, 2014, <<https://www.amazon.com>>.

George and Gertz narrate the enduring classics in the development of criminal justice policy with the latest developments from the field and most recent debates from Congress.<sup>142</sup> Equipping learners with primary sources and the most current, cutting-edge research available, this thorough reader presents research-framed debates in our administration of justice. It promotes a more thorough understanding of the structure and function of the criminal justice system while highlighting critical cross cutting themes, such as discretion, the sources of power inside institutions, and how the public may impact the way laws are written. Covering a broad range of topics, the Tenth Edition offers expanded coverage of DNA/wrongful convictions, prison overcrowding, white-collar crime, cybercrime, ethics, technology, evidence-based practice, and much more. However, the book does not state anything about restorative justice, particularly victim's compensation.

### **2.2.12 The Practice of Restorative Justice in Scandinavia: Norway, Sweden and Finland**

Restorative justice in Scandinavia countries is about mediation which leads to bringing the victims and the offenders together towards achieving solution. The training allows the new mediators in the countries to observe mediations and test their skills with a more experienced mediators. During their training, new mediators learn and discuss the role of the mediator, communication skills and how different people perceive the same situations in different manners.

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<sup>142</sup> George, FC & Gertz, MG, *The Criminal Justice System: Politics and Policies*, 2012, <

Curtis-Fawley and Kathleen Daly research the arguments for and against restorative justice. Here, we see the reservations and concerns from victim advocates towards restorative justice on gendered violence, despite that most still see the positive elements to it. Over the years, feminist efforts have culminated towards the improvement at all levels of the justice system's responses towards gendered violence and investigation of victim-witnesses. Yet despite all these changes, victims still believe that nothing has changed as victims of family, domestic and sexual violence still do not report any of these offences to the police. Due to this, feminists have now tried to find other means of justice. It would seem that restorative justice is the answer to gendered violence. It generates hope and angst amidst victim advocates as it varies on the individual experiences and their conception of it.

It has been a great cause of concern from most feminist literature that restorative justice for domestic violence and sexual assault may be difficult for the victims involved. This however also shows the lack of knowledge that victim advocates have on restorative justice, as critics mostly focus on the disadvantages of restorative justice on domestic violence. While restorative justice advocates would argue that it can help authenticate the victim's experience as well as ensure that they realise that they are not at all to blame for the attack(s) that they suffered. It also reduces the victim's fear and anger centred towards the offender as they the opportunity to describe the aftereffects that the crime created. It was agreed in the article that caution should be exercised when approaching these cases, most importantly, gendered violence, for example, cases such as domestic abuse, sexually abused children, etc. Especially as victims, such as domestic abuse victims, may not wish to go to court due to the threat of a reprisal or some may still wish to stay in relationship.<sup>143</sup>

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<sup>143</sup> Curtis-Fawley, S & Daly, K, *Gendered Violence and Restorative Justice: The views of Victim Advocates*, 11 (5) *Violence against Women* 603, 2005 as cited in Burns CJ & Sinko, L in *Restorative justice for survivors of sexual violence experienced in adulthood: A scoping review*, **Sage Journal**, 2023, Volume 24, Issue 2, <<https://journals.sagepub.com/doi/abs/10.1177/15248380211029408>>.

Miller and Iovanni in the article; *Using Restorative Justice for Gendered Violence: Success with a Post-conviction Model* state that the programme for domestic violence under restorative justice has faced many criticisms, it is believed to cause more harm to victims as it may fail to attune to the victims' needs. However, it can be argued that the time between the crime and the restorative justice process can be crucial for the victims and the offenders. Throughout that time span, victims may be more willing to engage with their offender whilst, the offender may develop responsibility and accountability over their actions. It helps lessen the possibility of creating more harm than good towards the victims' needs.<sup>144</sup> By learning from previous examples of post-conviction restorative justice programmes, positive justice responses to crimes of gendered violence can be generated throughout. The apology from the offender that is to come and the roles of the family, friends and community as well as the critical claims of the restorative justice's informal process programmes must be noted. The informality of the process had become a cause for concern as critics claimed that offenders can easily manipulate the situation which would allow them to blame the victim and/or minimise the harm. Due to this, victims who had grown accustomed to this process may feel unable to further their interests and to find the courage to defend themselves or quickly agree to any solutions, only to find themselves regretting it later. It is important to note that apologies from the offenders may cause harm for the victims, as apologies have been well-known to be used as a controlling tactic by the abuser. The role that the community, family and friends play is also questioned. Community norms and the lack of resources play a big disadvantage for all sides of the panel. Family and friends prove unproductive for the panel as

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<sup>144</sup> Miller, SL & Iovanni, LA, *Using Restorative Justice for Gendered Violence: Success with a Post-conviction Model*, *Feminist Criminology*, **Sage Journal**, Volume 8, Issue 4, 2013, <<https://doi.org>> as cited in Hardesty JL & Ogolsky, BG, *A Socioecological Perspective on Intimate Partner Violence Research: A Decade in Review* **Journal of Marriage and Family**, 2020, Volume 82, Issue 1, pp, 454-477 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/jomf.12652>>.

loyalties come to play. Offenders may see the process as an easy way out which defeats the purpose of restorative justice, harming the victim and minimising the harm created.

The authors examine an abused victim's experience with the post-conviction restorative justice programme. Post-conviction restorative justice is found to be therapeutic for the victim, with timing proving to be the key issue that aids the victim's healing development. By the time a post-conviction dialogue takes place, the victim may be ready to face their offender, find their voice and be willing to narrate their horrific ordeal to the offender. Through this, it creates validity towards the victim's experience, be secluded from any mixed loyalties by friends and family, as well as ensuring that the offender's burden is responsibility. Despite concerns of manipulation, victim blaming and the minimisation of harm, it has become clear that the time span between the crime and the programme can severely influence the outcome of the proceedings in a positive way.<sup>145</sup>

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<sup>145</sup> Miller SL, & Iovanni, LA, *Using Restorative Justice for Gendered Violence: Success with a Post-conviction Model Feminist Criminology* 247, 2013 as cited in Cossins, A. Closing the Justice Gap for Adult and Child Sexual Assault, **Springer**, 2020, <<https://link.springer.com/book/10.1057/978-1-137-32051-3>>.

### 2.2.13 Recidivism

LaBeet states that the story has been told too many times. Make a mistake, land in jail, and end up in a corrections system that doesn't reform offenders but only develops them.<sup>146</sup> Once they have done their time, they leave prison smarter, fitter, and with more connections that increase their chances of reoffending. *The End of Recidivism* is a wisdom-packed blueprint for self-transformation inside of prison to achieve success after prison. With practical advice to prepare for the offender's release and spiritual guidance to align with the law of attraction, the offender can live a life that is so much more than simply surviving. However, the book is about what the inmates learn in prison which makes them to be more criminal in attitude and behavior, but not about restorative justice which is the focus of this research work.

Latessa offers criminologists and students an evidence-based discussion of the latest trends in corrections.<sup>147</sup> The authors translate the research and findings about what works and doesn't work in reducing recidivism into understandable concepts and terms, presenting them in a way that illustrates the value of research to practice. Over the last several decades, research has clearly shown that rehabilitation efforts can be effective in reducing recidivism among criminal offenders, but it is clear that treatment is not a one-size-fits-all approach. Offenders vary by gender, age, crime type, and/or addictions, to name but a few ways and these individual needs must be addressed by providers. Finally, issues such as leadership, quality of

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<sup>146</sup> LaBeet, GS, *The End of Recidivism: The Ultimate Guide to Transforming the Mind of the Incarcerated*, 2021, <[https://www.amazon.com/End-Recidivism-Ultimate-Transforming-Incarcerated/dp/1736549707/ref=sr\\_1\\_1?crd=1IYPROVONHBOS&dib=eyJ2ljojMSJ9.tERH5fRVF8ygieffi8Xy6w.9gvPbJi5Zf\\_Tv3Q6fTk9jqHKOTImO9OI5zJ6HpLhc64&dib\\_tag=se&keywords=The+End+of+Recidivism%3A+The+Ultimate+Guide+to+Transforming+the+Mind+of+the+Incarcerated&qid=1754415647&s=books&sprefix=the+end+of+recidivism+the+ultimate+guide+to+transforming+the+mind+of+the+incarcerated%2Cstripbooks%2C566&sr=1-1](https://www.amazon.com/End-Recidivism-Ultimate-Transforming-Incarcerated/dp/1736549707/ref=sr_1_1?crd=1IYPROVONHBOS&dib=eyJ2ljojMSJ9.tERH5fRVF8ygieffi8Xy6w.9gvPbJi5Zf_Tv3Q6fTk9jqHKOTImO9OI5zJ6HpLhc64&dib_tag=se&keywords=The+End+of+Recidivism%3A+The+Ultimate+Guide+to+Transforming+the+Mind+of+the+Incarcerated&qid=1754415647&s=books&sprefix=the+end+of+recidivism+the+ultimate+guide+to+transforming+the+mind+of+the+incarcerated%2Cstripbooks%2C566&sr=1-1)>.

<sup>147</sup> Edward J. Latessa, *What Works (and Doesn't) in Reducing Recidivism*, 2020, <<https://www.amazon.com/What-Works-Doesnt-Reducing-Recidivism>>.

staff, and evaluation efforts affect the quality and delivery of treatment services. While other similar books have addressed issues regarding treatment in corrections, this book is unique in that it not only discusses the research on "what works" but also addresses the implementation issues faced as practitioners move from theory to practice, as well as the importance of staff, leadership, and evaluation efforts. The relevance of this book to this research work is of minimal in that it concerns recidivism which is just an aspect of restorative justice.

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Hamilton states that if one is hopeless, discouraged, depressed or confused on one's Christian walk, this book is for the person.<sup>148</sup> If a person is struggling with addiction, attitudes, limitation frustrations or sin cycles, this book is for that person. If a person's kids are going down a dark path, or if the person wants to learn more to prevent them from doing so, this book is for that person. If a person is involved in prison/jail ministry or any work regarding the Department of Corrections, this book is for that person. This book is completely different from the focus of this work as it only links recidivism to Christian walk not to the concept of restorative justice under Nigeria's legal system.

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<sup>148</sup> Hamilton, R, *Recidivism: The Testimony of a Thug*, 2023, <[https://www.amazon.com/Recidivism-Testimony-Thug-RyanHamilton/dp/BOC2S6BN44/ref=sr\\_1\\_1?crid=6EDCC1ZLKLUP&dib=eyJ2IjoiMSJ9.3H6YCNIF4eRPVapJIC4q6g.IQ3s2d055arI-00JUTFDeea4076LcC58zOQUqutzhIM&dib\\_tag=se&keywords=Recidivism%3A+The+Testimony+of+a+Thug&qid=1754415864&s=books&sprefix=recidivism+the+testimony+of+a+thug%2Cstripbooks%2C455&sr=1-1](https://www.amazon.com/Recidivism-Testimony-Thug-RyanHamilton/dp/BOC2S6BN44/ref=sr_1_1?crid=6EDCC1ZLKLUP&dib=eyJ2IjoiMSJ9.3H6YCNIF4eRPVapJIC4q6g.IQ3s2d055arI-00JUTFDeea4076LcC58zOQUqutzhIM&dib_tag=se&keywords=Recidivism%3A+The+Testimony+of+a+Thug&qid=1754415864&s=books&sprefix=recidivism+the+testimony+of+a+thug%2Cstripbooks%2C455&sr=1-1)>.

The Medicine National Academies of Sciences, Engineering *et al* state that nearly 600,000 people are released from state and federal prisons annually. Whether these individuals will successfully reintegrate into their communities has been identified as a critical measure of the effectiveness of the criminal legal system.<sup>149</sup> However, evaluating the successful re-entry of individuals released from prison is a challenging process, particularly given the limitations of currently available data and the complex set of factors that shape re-entry experiences. The *Limits of Recidivism: Measuring Success after Prison*, finds that the current measures of success for individuals released from prison are inadequate. The use of recidivism rates to evaluate post-release success ignores significant research on how and why individuals cease to commit crimes, as well as the important role of structural factors in shaping post-release outcomes. The emphasis on recidivism as the primary metric to evaluate post-release success also ignores progress in other domains essential to the success of individuals returning to communities, including education, health, family, and employment.

In addition, the report highlights the unique and essential insights held by those who have experienced incarceration and proposes that the development and implementation of new measures of post-release success would significantly benefit from active engagement with individuals with this lived experience. Despite significant challenges, the report outlines numerous opportunities to improve the measurement of success among individuals released

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<sup>149</sup> Medicine National Academies of Sciences, Engineering, Division of Behavioural and Social Sciences and Education, Committee on Law and Justice, Committee on Evaluating Success Among People Released from Prison, Amanda Grigg and Richard Rosenfeld, *The Limits of Recidivism: Measuring Success after Prison*, Amazon, 2022, <[https://www.amazon.com/Limits-Recidivism-Measuring-Success-Prison/dp/0309276977/ref=sr\\_1\\_1?crd=36136LPER8BNN&dib=eyJ2IjojMSJ9.-57wiWFMwSGg73CyempLXQ.HzzgtO3pRfPy4St3vPJCROt-NZsIGmm9wNcJkbd1BhI&dib\\_tag=se&keywords=Medicine+National+Academies+of+Sciences+%2C+Engineering%2C+Division+of+Behavioural+and+Social+Sciences+and+Education%2C+Committee+on+Law+and+Justice%2C+Committee+on+Evaluating+Success+Among+People+Released+from+Prison&qid=1754416023&s=books&sprefix=medicine+national+academies+of+sciences%2C+engineering%2C+division+of+behavioural+and+social+sciences+and+education%2C+committee+on+law+and+justice%2C+committee+on+evaluating+success+among+people+released+from+prison%2Cstripbooks%2C467&sr=1-1](https://www.amazon.com/Limits-Recidivism-Measuring-Success-Prison/dp/0309276977/ref=sr_1_1?crd=36136LPER8BNN&dib=eyJ2IjojMSJ9.-57wiWFMwSGg73CyempLXQ.HzzgtO3pRfPy4St3vPJCROt-NZsIGmm9wNcJkbd1BhI&dib_tag=se&keywords=Medicine+National+Academies+of+Sciences+%2C+Engineering%2C+Division+of+Behavioural+and+Social+Sciences+and+Education%2C+Committee+on+Law+and+Justice%2C+Committee+on+Evaluating+Success+Among+People+Released+from+Prison&qid=1754416023&s=books&sprefix=medicine+national+academies+of+sciences%2C+engineering%2C+division+of+behavioural+and+social+sciences+and+education%2C+committee+on+law+and+justice%2C+committee+on+evaluating+success+among+people+released+from+prison%2Cstripbooks%2C467&sr=1-1)>.

from prison and the report's recommendations, if implemented, will contribute to policies that increase the health, safety, and security of formerly incarcerated persons and the communities to which they return. However, the book is about the use of recidivism to evaluate post-release success and not about restorative justice.

Witt states that if a person wants his city to be safer and people to thrive post-incarceration, he must break the ineffective pattern of recidivism and victimization which can be challenging.<sup>150</sup> The author states the ways to help those coming out of incarceration and making the aftermath positive change of behaviour a lasting and genuine change. The principles in this book have been tested in the crucible of real life for over thirty years. These are Godly principles for effective restorative justice but the restorative justice covered by this dissertation is much more than what this book covers.

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<sup>150</sup> Witt, J, *What Works in Transition & Re-entry: A Christian Guide to Reducing Recidivism & Victimization*, Amazon, 2022, <<https://www.amazon.com/What-Works-Transition-Reentry-Victimization>>.

Constante addresses recidivism from a biblical perspective, examining why ex-felons return to prison.<sup>151</sup> While stats and facts promote the idea that recidivism is due to education, employment, and opportunity, the author states that conformity to a vicious subculture is largely why ex-felons re-offend. In this book, the author talks candidly about the pervasive prison subculture and how it subdues millions of prisoners into a counterproductive mentality. Showing the impotency of traditional rehabilitation programs, he asserts that "institutional adjustment" produces nothing more than refurbishes criminals. The real change occurs when inmates surrender their lives to the Lordship of Jesus Christ. The book is about recidivism that produces nothing more than refurbishes criminals. The purpose of this dissertation is not only about recidivism but about restorative justice.

Camp and Wemmers examine factors surrounding victim satisfaction with restorative justice and the extent to which this satisfaction is due to the effects of restorative justice. The authors conducted interviews with victims of violent crime who had participated in restorative justice. They found that fair-minded view of restorative justice and several other factors, had contributed towards victim satisfaction. The victims of violent crime varied, they were either a relative of the deceased victim, victims involving murder and manslaughter, sexual aggression and physical assaults. Each of these victims had participated in restorative justice programmes. The victims were overall satisfied with the restorative approach as it helped them gain an insight as to the reason for the attacks. It also allowed them to take back control, rid them of any unnecessary feelings of shame and responsibility and move them to their rightful place-the offenders. Twenty-five of the thirty-four victims were happy with the

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<sup>151</sup> Constante Jr. R., *Recidivism Unravalled*, Amazon, 2020, <<https://www.amazon.com/Recidivism-Unravalled-Ruben-Constante-Jr/>>.

programme and its results. Two regarded the mediation procedure negatively, but did not dismiss the notion of the restorative procedure entirely. Three cases were disappointed by the lack of a written arrangement and six felt unsatisfied by the lack of answers that they wanted to get from the offender. It was found that the respondents reacted positively towards the restorative procedure due to the fact that they were able to talk about their own experience and be heard. As well as that, the victims did not feel at all pressured into participating in the panel, which caused those who initially refused to reconsider participating in the programme. In preparation for their face-to-face meeting, the victims met with a mediator to fully prepare them. This allowed the victims to prepare emotionally as well as to give them information on what to expect throughout the procedure. The mediators also help the victims to develop any questions they wish to ask the offender.

Camp and Wemmers provide emotional support for the victims of crime and this can help them during their time of healing. For some victims, the dialogue between their offender and themselves was considered key to restorative intervention. Moreover, it enabled victims to further cement the impact of victimization on the offender. They believed that by conveying their stories directly to the offender, they could effectively raise victim awareness. It would give them a chance to check to whether the offender understood the severity of the victimization and be affected by it. This was a clear and sure step towards healing for the victims, allowing them to get the answers they wanted. Overall, the victims were satisfied with the restorative justice procedure. It gave them the chance for some closure as they got the answers that they wanted from the offender. The flexibility and non-judgemental atmosphere of the panel where they did not feel forced to go, made them feel safe and secure throughout the procedure.<sup>152</sup> However, by providing a mediator for the victims, the victim's

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<sup>152</sup> Camp, TV & Wemmers, J, *Victim Satisfaction with Restorative Justice: More than Simply Procedural Justice*, 19 International Review of Victimology 117, 2013. As cited in Suzuki, M, *Victim Recovery in Restorative Justice: A Theoretical Framework*, Sage Journals, 2023, Volume 50, Issue 12, <<https://journals.sagepub.com/doi/full/10.1177/00938548231206828>>.

emotional needs may not be effectively captured and adequately represented by the mediator.

#### **2.2.14 Restorative Justice and Recidivism**

The effects of restorative justice on rates of recidivism vary probably due to the different locations the studies are based in. In Ireland, there are a substantial amount of studies that focus on young offenders, one to pay particular attention to is the work of Judy Tsui which makes a convincing argument about the lack of effective response mechanisms in a society where detention is the primary focus. There is a lack of studies and reports from Ireland on this subject, yet it is a more suitable place to facilitate such a process.

This article examines the benefits of introducing restorative justice into the juvenile justice system in Chicago. It focuses on the argument that detention as the primary method of dealing with juvenile crime creates a void in effective response mechanisms, which she believes, can be filled by further integrating restorative justice practices and principles into the juvenile justice system. She notes the primary criticisms of detention, one of which is its inability to address recidivism. Tsui refers to studies which conclude that restorative justice techniques result in lower levels of re-offending than their court process counterparts. She also mentions that studies have shown that low-level juvenile offenders, if they are not incarcerated and are allowed to remain within their community, have lower rates of recidivism than incarcerated offenders. Tsui also focuses on some of the problems inherent in restorative justice, such as the fact that the juveniles who come forward for restorative justice have natural qualities that make them less likely to re-offend. Also the attrition rate affects the results of studies because

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offenders fail to report back.<sup>153</sup> However, the author focuses on restorative justice as it relates to the juvenile, neglecting the other categories of people.

Bonta *et al* studies the impact of restorative justice on rates of recidivism. They take a meta-analytic review of relevant literature. The article is an update and expansion of the meta-analyses by Bonta and his co-authors. They found through their work that restorative justice does indeed have an impact on recidivism in the form of a seven percent decrease.<sup>154</sup> However, the author fails to make impact on justice to the victims in the criminal jurisprudence.

Rodrigues in her work relies on official juvenile court data to measure the influence of a restorative justice program on recidivism in Maricopa County, Arizona. In this article, the author compares juveniles in a restorative justice program with juveniles in a comparison group and finds that a multivariate analysis shows twenty four months after successfully completing a diversion programme, the juveniles in the restorative justice program had slightly lower rates of recidivism than the comparison group. She notes that there were no significant differences between offence types, race or ethnicity, but overall participants were less likely to reoffend than offenders in the comparison group. Rodriguez also finds that prior record plays an important role in offender recidivism. Studies have indicated that the majority of offenders in restorative justice programs are less serious offenders. This suggests that methods of restorative justice can be less effective for chronic offenders who have well-

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<sup>153</sup> Tsui, J, *Breaking Free of the Prison Paradigm: Integrating Restorative Justice Techniques into Chicago's Juvenile Justice System*, 104 *Journal of Criminal Law and Criminology*, 635, 2014 as cited in Gonzalez, T, *The State of Restorative Justice in American Criminal Law*, *HeinOnline*, **Wis. L. REv.**, 2020, <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/wlr2020&div=54&id=&page=>>>.

<sup>154</sup> Bonta, J, Jesseman, R, Rugge, T & Robert Cormier, *Restorative justice and recidivism Promises made, promises kept?* In Dennis Sullivan, Larry Tifft (eds) *Handbook of Restorative Justice: A Global Perspective* (Routledge), 2006. As cited in Fulham, L, *Blais, J, TRugge, T & Schultheis, EA, The Effectiveness of Restorative Justice Programs: A Meta-Analysis of Recidivism and other Relevant Outcomes* *Sage Journals*, 2023, <<https://journals.sagepub.com/doi/full/10.1177/17488958231215228>>.

developed criminal tendencies.<sup>155</sup> The author's idea of restorative justice is limited to the juveniles, it is not all-embracing.

Robinson and Shapland focus on recidivism. They acknowledge that a previous view was that reducing recidivism was not a principal objective of restorative justice. This common view is that restorative justice is more effective for rehabilitation than 'rehabilitative justice, precisely because it does not have rehabilitation as an aim. The authors note that one of the main reasons that advocates of restorative justice have tended to play down the recidivism-reduction potential of restorative justice has been that to expect reductions in recidivism as an outcome of restorative justice encounters would be unrealistic. Although they agree with this position, they also argue that there is much to recommend a subtle shift in the ways of thinking about restorative justice's potential for reducing recidivism. They argue that instead of perceiving restorative justice as a new style of intervention, it might be better to view it as a tool to facilitate a desire to desist. They note that the definition of desistance implies a reduction of recidivism and that those agencies that have recidivism prevention as their principal objective might find it useful to view restorative justice as an effective tool to aid in their goal.<sup>156</sup> The author, however, limits the discussion and the analyses to the concept of recidivism whereas, recidivism is just an aspect of restorative justice.

Maxwell and Morris state that their most important findings were the key factors of successful family group conferences helped in reducing the rate of reconvictions even when other

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<sup>155</sup> Nancy Rodriguez, *Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism*, 53 *Crime & Delinquency*) 2007, 355 as cited in Van Ness, DW, Strong, KH, Derby, J & Parker, LL, in *Restoring Justice: An Introduction to Restorative Justice*, New York, Routledge, 2022, <<https://www.taylorfrancis.com/books/mono/10.4324/9781003159773/restoring-justice-daniel-van-ness-karen-heetderks-strong-jonathan-derby-lynette-parker>>.

<sup>156</sup> Robinson, G & Shapland, J, *Reducing Recidivism: A Task for Restorative Justice?* **British Journal of Criminology** 337, 2008 as cited in Kirkwood, S, in *A Practice Framework for Restorative Justice, Aggression and Violent Behavior*, 2022, Volume 63, <<https://www.sciencedirect.com/science/article/abs/pii/S1359178921001427>>.

important factors associated with reoffending, such as early offending, were taken into account. They found that participants in two pilot adult community panel projects which had restorative features were reconvicted less frequently and when an offence was committed it was of a less serious nature than a matched control group that was processed by the courts. The authors also made comparisons of reconviction rates for those who successfully completed restorative justice schemes and those who did not and they found that those who carried out the tasks given by the panels were less likely to reoffend. Another important finding by the authors is that processes where shame was used had higher rates of reoffending than those without.<sup>157</sup> However, the article is mainly based on the application of shame as a way to prevent reoffending, neglecting the victim's compensation.

Rogan examines that criminal law is currently undergoing significant transformations as part of a wider reorienting of the role of the State in the criminal justice system. Rogan argues that such crime control strategies are part of a process highlighted by Ashworth whereby governments seek to "break free" from the traditional categorisations of civil law, criminal law, and regulatory law. In this article, the author discusses the decline of criminal law in the field of modern crime control. Rogan suggests that criminal law is no longer the primary means of preventing and responding to violations of community standards. Techniques are other than the law are now used to respond to offending behaviour.<sup>158</sup> However, the article clearly shows that the victim is not the main focus of the processes, and acknowledges the offender more than the criminal system would. The processes of restorative justice aim to

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<sup>157</sup> Maxwell, G & Morris, A, *Restorative Justice and Reconviction* 5(2) *Contemporary Justice Review* 133, 2002 as cited in in Cheurprakobkit, S & Khruakham, S, *The Conflict Resolution Practice as a Community Justice Alternative in Thailand*, **Contemporary Justice Review**, 2021, Volume 24, Issue 4, <<https://www.tandfonline.com/doi/abs/10.1080/10282580.2021.1967150>>.

<sup>158</sup> Rogan, M, *Crime Control without the Criminal Law? Perspectives on Emerging Strategies of Dealing With Crime—Part I*, (Irish Law Times, 2007), 25, 23. As cited in Sarre, R, *Preventing Crime: What We Know, and What We Need to Do*, **Palgrave Macmillan**, 2024..

prevent offender recidivism, to give a greater victim satisfaction and to act as a less costly alternative to imprisonment.

### **2.3 Summary of Existing Gaps in Literature**

The literature reviewed in this chapter proffer various perspectives to the issue of criminal justice system. Western scholars and authors arrived at their conclusions from the Western jurisprudential perspective and sociological prism. The few that focused on existing criminal justice systems of traditional African, subjugate and subsumed the African concept of restorative justice system under the western concept. This conclusion of the Western author is jaundiced and it is an attempt to put the African continent once again under the colonial masters by stating that if at all there was African concept of restorative justice, it has its origin in the Western concept. The South African Truth Commission favoured the African Concept of restorative-rehabilitative approach to crime and injustice.

Though some of these authors in their works, did actually touch on the concept of restorative justice but none sufficiently present the concept of restorative justice to the victims of crime which forms the basis of this research work. In the light of this, this work shall fill in the missing gaps yet to be covered by the exhaustive review of the available literature. Victims of crime find it difficult to come to terms with their trauma, loss, and grief. Instead of the Nigerian jurisprudence on justice system to give victims legal rights and a role at the heart of the system, the victims are reoffended not only by the offender and the system, but also by practitioners who reopens the grief, trauma, loss and pain of the victim

While individuals could sue in civil cases to recover losses resulting from wrongdoing, it was the state that ensured that punishments for wrongdoing responded to criminal harm as an

injury to the values of a stable society. Victims are expressly not made parties, interveners, or even observers in any criminal justice proceedings. No right to seek a judicial remedy, no claim for damages, and no appeal arises if victims' rights are infringed.

It is my humble view that though judges are required to assure themselves that the offender is capable of paying a fine before imposing it, there should be a mechanism put in place by the government to ensure that victims of crime are adequately compensated regardless of the ability of the offender to compensate the victim. By so doing, the hitherto quagmire being faced by the court as to the capability of the offender to make substantial amend will not prevent the court from ordering restitution. The preference for restitution orders builds a desirable incentive into the criminal justice system even if doing so would amount to importing civil justice concepts into the criminal justice system.

Restorative justice offers a new perspective to the traditional criminal justice system which focuses mainly on the offender neglecting the victim of crime. While justice is interpreted as a process of finding solutions to problems that occur in a criminal case where the involvement of victims, the community, and perpetrators become important in efforts to improve, reconcile and guarantee the sustainability of the improvement effort, some of the reviewed literature did not appraise the concept in that direction while others only scratch the surface without an in depth appraisal of restorative justice. This work shall supply this missing gap in the literature.

Restorative Justice focuses on community restoration and reparation by way of the cooperative gathering of parties involved in the wrongdoing which increases the probability of a successful transformation at both the community and individual level. However, Zehr explains that restorative justice processes involve, to the extent possible, those who have a

stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.<sup>159</sup>

This work shall by way of extension, provide the victim an opportunity for engagement and decision-making in the restitution process of which the victim is denied under the traditional criminal justice system, which will also enhance theoretically the community's well-being without necessarily requiring forgiveness or reconciliation with the offender. It is my considered opinion that retributive justice is not entirely bad and restorative justice on its own cannot sufficiently satisfy the interest of all parties inclusive of the community or State as the case may be. In this regard, this work shall suggest that there should a synergised justice system that will take care of the interest of all parties. This is considered missing in the reviewed literature and this work shall substantially introduce the opportunity for reparation of harm at the community level which would consequently provide formal and sanctioned methods for communities to actively seek and respond to voices of marginalized communities and/or groups in the presence of systemic and persistent injustices.

## 2.4 Conceptual Framework

The concepts embedded in restorative justice are very important for healing the pains of the victims of crime. This conceptual framework is an exploration of some theoretical propositions that have contributed to the emergence of restorative justice which might be of importance and relevance to the Nigeria concept of restorative justice. In other to fashion out an improved justice system, western restorative justice and the Nigerian traditional and

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<sup>159</sup> Zehr H, *The Little Book of Restorative Justice*. (Simon and Schuster, 2015), 2015 as cited in Hazrati, M & Heffron, RJ, in *Conceptualising Restorative Justice in the Energy Transition: Changing the Perspectives of Fossil Fuels*, **Energy Research & Social Science**, 2021, Volume 78, <<https://www.sciencedirect.com/science/article/abs/pii/S2214629621002085>>.

informal dispute resolution mechanisms are discussed. The conceptual framework are thematised and discussed as follows:

#### 2.4.1 Restorative Justice

Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behaviour of the offender. Practices and programs reflecting restorative purposes will identify and take steps to repair harm. Restorative justice involves all stakeholders and transforms the traditional relationship between communities and government in respect of crime. The goal of restorative justice is to bring together those most affected by the criminal act: the offender, the victim, and community members in a non-adversarial process to encourage offender accountability and meet the needs of the victims to repair the harms resulting from the crime.<sup>160</sup>

Restorative justice of any kind share common features that have to do with the parties, goals and objectives. By bringing together offenders, victims, families and other key stakeholders in a variety of settings. From a restorative justice perspective, rehabilitation cannot be achieved until the offender acknowledges the harm caused to victims and communities and makes amends.<sup>161</sup> Restorative justice programs are generally voluntary in nature and require offenders, if they are to participate, to admit responsibility for the illegal act. It helps offenders to understand the implications of their actions and provides an opportunity for them to become reconnected to the community. The most common programs typically associated

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<sup>160</sup> Bergseth, KJ. & Bouffard, JA, *The Long-Term Impact of Restorative Justice Programming for Juvenile Offenders*, **Journal of Criminal Justice**, 2007, 35(4):433-451 as cited in Breedlove, M, Choi, J & Zyromski, B, in *Mitigating the Effects of Adverse Childhood Experiences: How Restorative Practices in Schools Support Positive Childhood Experiences and Protective Factors*, **The New Educator**, 2021. Volume 17, Issue 3, <<https://www.tandfonline.com/doi/abs/10.1080/1547688X.2020.1807078>>.

<sup>161</sup> Bazemore, G & Umbreit, MS, *Balanced and Restorative Justice for Juveniles: A Framework for Juvenile Justice in the 21st Century*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 1997 as cited in Brown, MA, *We Cannot Return To "Normal": A Post-Covid Call For a Systems Approach to Implementing Restorative Justice in Education (RJE)*, **Laws**, 2021), Volume 10, Issue 3, <<https://www.mdpi.com/2075-471X/10/3/68>>.

with restorative justice are conflict-resolution programs, mediation, victim-impact panels, circle sentencing, victim-offender mediation, community reparative boards and family group conferences. It seeks to use peaceful approaches to disagreements, conflicts and violations of the social order.

Restorative justice generally refers to a paradigm that is a major alternative to retributive justice. Restorative justice theories explicitly or implicitly use crime as the primary point of reference and, in most theories, the targets for the application of restorative justice are violent offences, white-collar crime or property crime. However, communities can apply restorative justice principles to deal with minor crimes like loitering, truancy, anti-social behaviour, vandalism, etc. Unlike traditional criminal justice that is based on adversary system, restorative justice focuses on reconciliation among the parties and restores individuals and communities to their original position before the crime. It does not necessarily conform to predominant perspectives on the administration of law. If there are cultural differences within a nation or a community, or when the administration of law or the law itself is inconsistent with internationally recognized human rights, restorative justice can be a useful adjunct to other legal philosophies.

#### **2.4.2 Victimology**

A victim is a person injured, duped, harmed, or killed as a result of an accident, crime or other event or action to the extent that he feels helpless or passive in the face ill-treatment or misfortune.<sup>162</sup> A victim is any person who individually has suffered harm as a result of the offender's action or inaction that are in violation of criminal laws, such as substantial impairment of his fundamental rights, mental or physical injury, economic loss, emotional

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<sup>162</sup> Canadian Department of Justice, *Definition of a Victim*, 2008, <<https://www.justice.gc.ca>>.

suffering or economic loss. In other words, a victim is an individual who has suffers harm ranging from property damage, emotional or physical injury or economic loss as a result of a crime committed by the offender. Victim of crime also includes the dependant of the direct victim, immediate family and persons who have suffered harm while helping the direct victim out of danger or a person that acts to prevent victimisation regardless of the familiar relationship between the perpetrator and the victim, or apprehended, prosecuted or convicted. In criminal proceedings, victims of crime are not parties to criminal proceedings, but they play very important role in criminal justice process, the evidence of whom is the most important if the prosecution will succeed in his case. Victims of crime can exercise their rights while an offence is being investigated or prosecuted, even while the offender is going through the corrections process. In *Payne v. Tennessee*,<sup>163</sup> the Supreme Court of the United States first recognised the right of crime victims to make a victim impact statement during the sentencing phase of a criminal trial. The victim impact statement of the victim is sacrosanct and of great importance to criminal trial.

Restorative justice seeks to find amicable solution to victims' suffering and trauma such that will be acceptable to the persons concerned. Most practices in restorative justice seek to address victim needs and to understand victim perspectives. One problem with this is that many practitioners themselves do not accurately understand those needs of the victim and their perspectives. Victims have two primary needs after the restoration of physical safety and the alleviation of imminent threat. Most practices in restorative justice seek to address victim needs and to understand victim perspectives. One problem with this is that many practitioners themselves do not accurately understand those needs and perspectives. Victims' perspectives can only be felt and articulated by the victims.

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<sup>163</sup> U.S. 808 (1991).

The traumatic and emotional impacts of victimisation can be summarized as grief, fear, guilt, anger shame. Victims' perspectives can only be felt and articulated by them. Since every experience is different, victims are the only people who can tell their own story, the grief they experience, the pain as well as the shame and anger. They need to be able to organize these feelings and thoughts into a working narrative so that they can begin to integrate this event into their lives.<sup>164</sup> The cognitive reactions are as a result of the emotional responses that manifest through a lack of a sense of control, frustration, confusion, powerlessness and an inability to understand not only what happened but why it happened.<sup>165</sup>

The victims' need for justice is a demand by victims for social acknowledgment of their suffering and the fact that they have been violated and dehumanised. It is remarkable how victims of all kinds of crime can adapt to the consequent unfriendly situations. It is significant, however, that many succumb to hopelessness, faithlessness, despair and disbelief in the criminal justice system that eventually re-victimise.<sup>166</sup>

Restorative justice should help victims reclaim their power and influence in designing their current and future lives therefore, the empowerment of victims is a crucial factor in victim services and rights. They need a voice, a role and sometimes an advocate in whatever happens

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<sup>164</sup> Heather S, Barnes, GC, Braithwaite, J, & Sherman, SW, *Experiments in Restorative Policing: A Progress Report on the Canberra Reintegrative Shaming Experiments (RISE)*. Canberra, Australia: Australian National University, 1999 as cited in Braithwaite, J, *Macrocriminology and Freedom ANU Press*, 2022, <<https://library.oapen.org/handle/20.500.12657/53117>>.

<sup>165</sup> Umbreit, MS, *Crime Victims Confront Their Offenders: The Impact of a Minneapolis Mediation Program*, *Journal of Research on Social Work Practice*, 1994, 4(4):436–47 as cited in Jonas, J, Zebel, S, Claessen, J & Nelen, H, *The Psychological Impact of Participation in Victim-Offender Mediation on Offenders: Evidence for Increased Compunction and Victim Empathy*. In Jonas, Zebel, JS, Claessen, J & Nelen, N– **Sec. Forensic and Legal Psychology**, 2022, Volume 12, <<https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2021.812629/full>>.

<sup>166</sup> National Center for Mental Health Promotion and Youth Violence. An Introduction to Restorative Justice. Washington, DC: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, 2009. <<http://www.promoteprevent.org/publications/prevention-briefs/introduction-restorative-justice>>.

to them in the aftermath of victimization. They need to regain control over their lives and a sense of power in shaping their future. Their victimization occurred as a result of the offender taking power away from them and exerting control over their person or property.<sup>167</sup> Power is often further diminished when the criminal justice system takes control over their lives in the “processing” of justice particularly when they are rendered into mere witnesses in their own cases.<sup>168</sup>

### 2.4.3 Circle Sentencing

Circle sentencing otherwise known as peace-making circles, is a circle where parties to a crime talk about resolution that is premised on restorative justice otherwise known as talking circle. The “circle” includes offenders, crime victims, friends and family, communities, justice and social service personnel (including lawyers, judges and police) and community residents that are interested in restorative justice.

The goals of circle sentencing include promoting empowering victims; providing an opportunity for the offender to make amends; healing for all affected parties; giving the community members, families, and offenders a chance to discuss the event and share responsibility in finding constructive resolutions as well as building a sense of community by promoting and sharing community values.

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<sup>167</sup> Braithwaite, J, *Crime, Shame, and Reintegration*, Cambridge, England: Cambridge University Press, 1989 as cited in Carrabine, E, Cox, P, Crowhurst, I, Ronco, AD, Fussey, P, Sergi, A, South, N, Thiel, D & Turton, J, *Criminology: A Sociological Introduction*, London, Routledge, 2020, <<https://www.taylorfrancis.com/books/mono/10.4324/9781315123509/criminology-isabel-crowhurst-anna-di-ronco-anna-sergi-eamon-carrabine-pam-cox-isabel-crowhurst-anna-di-ronco-pete-fussey-anna-sergi-nigel-south-darren-thiel-jackie-turton>>.

<sup>168</sup> Emma, C & Cameron, A, *Writing the Circle: Judicially Convened Sentencing Circles and the Textual Organization of Criminal Justice*, *Canadian Journal of Women and the Law*, 2007, 19(1):1–35 as cited in Humer, K, *Virtual Justice?: An Analysis of Access to Court for People Experiencing Homelessness*, Thesis, 2024, <<https://scholars.wlu.ca/etd/2703/>>.

At the talking circle, discussions in the circle usually involve the use of a talking piece. Only the person talking is allowed to speak, while everyone else must be respectful as the speaker shares his or her experience of the incident. This is a healing circle for the victim as well as for the offender. A follow-up circle is set up to monitor the progress of the offender. Circles have been used in response to serious and violent crimes, but circles are often labour-intensive and require a substantial amount of time and effort from invested parties.

Effective circles depended on the use of a speaking piece, which guaranteed each participant uninterrupted speech, and on a skilled circle keeper who established and maintained ground rules.

#### **2.4.4 Shame and Remorse**

Shame is a cultural phenomenon which can be considered punitive by both offenders and those who seek to shame others. Shame that comes as a result of an external force such as judgment by others may be resented by an offender and consequently reactivate and reinforce a desire by the offender to join with communities of offenders to fight against the people that blame them in anti-social ways, rather than seek more benign methods of re-integration into society.<sup>169</sup>

Certain theories and practices of restorative justice focus on shame for an offender and this is problematic. What is critical is whether one's action is the precipitator of shame or whether a person is deemed to be shameful. How one deals with shame has two aspects. It can be positive if it motivates one to modify behaviour in conformance to positive relationships within a community and then the community and the person shamed puts the action that has been shamed in the past. The negative results of shame often outweigh positive motivations

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<sup>169</sup> Umbreit SM, Greenwood, J, Fercello, C & Umbreit, J, *National Survey of Victim–Offender Mediation Programs in the United States*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Victims of Crime, 2000 as cited in Pakes, F, *Comparative Criminal Justice*, London, Routledge, 2024. <<https://www.taylorfrancis.com/books/mono/10.4324/9781003390688/comparative-criminal-justice-francis-pakes>>.

because it can result in anger and resentment because it is stigmatizing and degrading. If shame comes from an internal feeling of conscience, usually as a consequence of feelings of guilt, then it may lead to a sincere way to finding something to show remorse.

## 2.4.5 Family Group Conferences

These are facilitated discussions that allow those most affected by a particular crime like the victim, the offender, and the family and friends of both, to discuss the impact of the crime and decide how the offender should be held accountable for the unwholesome act.<sup>170</sup> The concept was subsequently and has been implemented in several models. In New Zealand and Australia and to a lesser extent in the United States, Family Group Conferences is extensively used today as a formal juvenile sanction, including communities in Virginia, Pennsylvania, Florida, Montana, Indiana, Mexico, Maine, Minnesota and Vermont.<sup>171</sup>

According to Braithwaite, Family Group Conferencing is principally from the theory of re-integrative shaming. He argues that people are generally deterred from committing crimes by two informal types of social control: conscience and fear of social disapproval and that the consequences imposed by family members, friends, or other individuals are more important

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<sup>170</sup> Umbreit SM, *Family Group Conferencing: Implications for Crime Victims*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Victims of Crime, 2000 as cited in Maryfield, B, Przybylski, R & Myrent, M, *Research on Restorative Justice Practices*, **Justice Research and Statistics Association**, 2020, <[https://d1wqtxts1xzle7.cloudfront.net/80374294/jrsa-research-brief-restorative-justice-libre.pdf?1644195462=&response-content-disposition=inline%3B+filename%3DRestorative+Justice+Practice.pdf&Expires=1749613852&Signature=bcgrTwWr-kIt1r3tcnCtVERbSA49bWX~XE7eIWlmh4y3nNZOxJtlVmqsx7uN-4AYgvfwPx7GuCpfJBCE8KNOB8JCrTcKZq37HslEoSbQg0PorqYtzoT2ej02EMs5E0~NoYdII1m46pDfGm5xNTc5PbsXEc53Usv~FebTJBjKccBvX5m9FFDX6-9vHhH9G3NVS7zuZFMcqA0-lDVcxz~LF6vB4s1g8TWlo5OXsNlybKgRx~PsWuU9nRI1~WtY354N9jvin0OrHn04BvrG4Pvn0HdI7nbUINoVPJ6HCFvy9aJgkHI4dGFCJ2P49I1DanNRO1zHPd0~77PYP06jzD9g\\_\\_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA](https://d1wqtxts1xzle7.cloudfront.net/80374294/jrsa-research-brief-restorative-justice-libre.pdf?1644195462=&response-content-disposition=inline%3B+filename%3DRestorative+Justice+Practice.pdf&Expires=1749613852&Signature=bcgrTwWr-kIt1r3tcnCtVERbSA49bWX~XE7eIWlmh4y3nNZOxJtlVmqsx7uN-4AYgvfwPx7GuCpfJBCE8KNOB8JCrTcKZq37HslEoSbQg0PorqYtzoT2ej02EMs5E0~NoYdII1m46pDfGm5xNTc5PbsXEc53Usv~FebTJBjKccBvX5m9FFDX6-9vHhH9G3NVS7zuZFMcqA0-lDVcxz~LF6vB4s1g8TWlo5OXsNlybKgRx~PsWuU9nRI1~WtY354N9jvin0OrHn04BvrG4Pvn0HdI7nbUINoVPJ6HCFvy9aJgkHI4dGFCJ2P49I1DanNRO1zHPd0~77PYP06jzD9g__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA)>.

<sup>171</sup> Edmund, MG, Olivares, K & Kroovand, N, *Restorative Justice Conferences as an Early Response to Younger Offenders: Final Report on the Indianapolis Experiment*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2000 as cited in Wood, WR, Suzuki, M & Hayes H, in *Restorative Justice in Youth and Adult Criminal Justice*, **Oxford Research Encyclopaedias**, 2022 <<https://oxfordre.com/criminology/display/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-658>>.

effective and meaningful to an offender than those imposed by the legal system. The purpose of this process is for the offender to face the human impact of his or her crime.

Family Group Conference begins when the offender, the victim and their supporters are brought together with a trained facilitator to discuss the incident and the harm it has caused. It commences with the offender describing the incident and each participant describing the impact of the incident on his or her life. The victim is then given the opportunity to express feelings, ask questions about the offence, and identify desired outcomes from the conference. All participants may contribute to the process of determining how the offender might best repair the harm.<sup>172</sup> Some agreements require the offender to perform community service or call for other actions such as improving school attendance, completing homework, or performing chores at home or school.

In Canberra, Australia, an evaluation of the Re-integrative Shaming Experiments also reported high levels of victim satisfaction and showed positive changes in the attitudes of offenders, but the impact of group conferences on recidivism remains under investigation. Finally, the Indianapolis Restorative Justice Experiment found that group conferences produced high levels of satisfaction among participants and promising recidivism results.<sup>173</sup> In the United States, an evaluation of police-run conferences in Bethlehem, found high levels of

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<sup>172</sup> Umbreit, SM & Robert, BC, *The Impact of Mediating Victim-Offender Conflict: An Analysis of Programs in Three States*. (Juvenile and Family Court Journal, 1992) 43(1):21–28, as cited in Jonas, J, in *Opening the Black Box of Victim-Offender Mediation: Does Participation in VOM Reduce Offenders' Risk of Reoffending and, If So, How?* **Ipskamp Printing Enschede**, 2024, <[https://ris.utwente.nl/ws/portalfiles/portal/469447858/Manuscript\\_Jiska\\_Jonas-VanDijk\\_20-12\\_.pdf](https://ris.utwente.nl/ws/portalfiles/portal/469447858/Manuscript_Jiska_Jonas-VanDijk_20-12_.pdf)> (Accessed on 30th December, 2024).

<sup>173</sup> Heather, S, Barnes, GC, John Braithwaite, J, & Sherman, LW, *Experiments in Restorative Policing: A Progress Report on the Canberra Reintegrative Shaming Experiments (RISE)*, (Australian National University, 1999) as cited in Gavrielides, T, *Restorative Justice Theory and Practice: Addressing the Discrepancy*, **Amazon**, 2020, <<https://www.rj4allpublications.com/product/rj2edition/>>.

victim satisfaction and some evidence of reduced reoffending for person offences, but not property offences.<sup>174</sup>

#### 2.4.6 Compensation

It is a form of personal reparation disbursed to the victim of crime by the offender upon the order of the court after conviction of the offender with a view to preventing the unjust enrichment of the offender as well as effectively ensuring that the victim is restored as far as possible to the *status quo ante crimum*.<sup>175</sup> Compensation is typically the act of rewarding someone for his loss, damage or injury, in some cases, it is the money awarded to someone in recognition of pain, suffering, injury or loss. In most cases, compensation means money, which the victim is given to alleviate the victim's suffering, loss, injury or trauma. Victim compensation is a direct financial reimbursement to a victim for the loss or damage that resulted from a crime.<sup>176</sup> It is a pecuniary remedy that is awarded to an individual who has sustained an injury, such as workers' compensation in order to replace the loss caused by the injury. It may also be from the insurance company being the amount paid to the victim of crime to make the victim feel better after injury or loss.<sup>177</sup>

#### 2.4.7 Crime Responsibility

Responsibility refers to how all peoples behave with respect to each other in everyday life and in their actions in the public sphere. Responsibility leads to consequences which should be

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<sup>174</sup> Paul, M & Benjamin Wachtel, B, *Restorative Policing Experiment: The Bethlehem, Pennsylvania, Police Family Group Conferencing Project*. Pipersville, Pa.: Community Service Foundation, 1998.

<sup>175</sup> Section 6 of the South African Service Charter for Victims of Crime provides that 'Compensation' refers to an amount of money that a criminal court awards the victim who has suffered loss or damage to property, including money, as a result of a criminal act or omission by the person convicted of committing the crime.

<sup>176</sup> Rainn, *Crime Victim Compensation*, 2019, <<https://www.rainn.org>>.

<sup>177</sup> Pate, K, *Victim-Offender Restitution Programs in Canada*. In Gavrielides, T, *Restorative Justice Theory and Practice: Addressing the Discrepancy*, Amazon, 2020, <[https://www.amazon.com/s?k=Restorative+justice+theory+and+practice%3A+Addressing+the+discrepancy&i=digital-text&crd=3JNBWHIM7A8OR&srefix=restorative+justice+theory+and+practice+addressing+the+discrepancy%2Cdigital-text%2C455&ref=nb\\_sb\\_noss](https://www.amazon.com/s?k=Restorative+justice+theory+and+practice%3A+Addressing+the+discrepancy&i=digital-text&crd=3JNBWHIM7A8OR&srefix=restorative+justice+theory+and+practice+addressing+the+discrepancy%2Cdigital-text%2C455&ref=nb_sb_noss)>.

based on mutual respect that can motivate people to act constructively because of a need to belong and feel part of a group. All people have a desire to feel they have value and to feel they can contribute to others. They also want to know that others appreciate them. There can be two types of consequences: autocratic or relational. Autocratic consequences are perceived by offenders as dominating or demanding. Relational consequences allow offenders to seek ways to resolve their behaviours with those harmed.<sup>178</sup>

#### 2.4.8 Victim-Offender Dialogue

The purpose of victim-offender dialogue is to promote the understanding of the impact of victimization on the victim; to help pursue answers to victims' questions such as why they were attacked or what happened to them; and to allow offenders to express any remorse they may have. Victim-offender dialogue is premised on several ideals: victims are asked to make a statement of forgiveness to the offenders at some point in the discussions.<sup>179</sup> It is possible to see the use of victim impact panels in sentencing or in educational sessions with inmates as an extension of victim-offender dialogue.

Dialogue often takes place over time and can precipitate relationships between the victim and offender(s). Victims may not have particular connection to an individual offender but still may find some comfort in telling their own stories. Both victims and offenders spend time in preparatory sessions so that expectations are kept to a minimum and any safety concerns can be addressed. Victims have an opportunity to talk about the impact of the crime they suffered

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<sup>178</sup> Schneider L. Anne, *Restitution & Recidivism Rates of Juvenile Offenders: Results From Four Experimental Studies*, *Criminology* 24(3):533–52, 1986. In Petrich, DM, Pratt, TC & Jonson, CL, *Custodial Sanctions and Reoffending: A Meta-Analytic Review*, **Crime and Justice**, 2021, Volume 50, <<https://www.journals.uchicago.edu/doi/abs/10.1086/715100>>.

<sup>179</sup> Polacsek M., Rogers E, Woodall W, Delaney H., Wheeler D. & Rao N., *MADD Victim Impact Panels and Stages of Change in Drunk Driving Prevention*. **Journal of Studies on Alcohol**, 62:533– 52, 2001 as cited in Thompson, K Joyce S, *Do Victim Impact Panels Have Sustained Effects on DUI Recidivism?* **Laws**, 2022, <<https://www.mdpi.com/2075-471X/11/2/28>>.

from with offenders and to hear back from them.<sup>180</sup> Volunteers are trained as facilitators for victim-offender dialogue.

## **2.5 Theoretical Framework**

After reviewing the available literature on criminal justice system, victimisation, compensation, victim's recovery and restorative justice, it has become expedient that there is a lack of process-oriented research in the area to be covered by this research work. To fill this noticeable gap in the available literature, this theoretical review will examine the applicable theories on restorative justice so as to present a theoretical framework that can enhance our understanding of the jurisprudence of restorative justice.

### **2.5.1 Reintegrative Shaming Theory**

Reintegrative Shaming Theory Crime, Shame and Reintegration gives an account of why restorative justice processes ought to prevent crime more effectively than retributive practices. According to Braithwaite, the restorative nature of the theory has work in Asia and the West. The reintegrative shaming theory makes the offender feels more remorseful and structure them to do the right thing. The use of shaming in restoring justice is geared toward making the offenders reconcile with their victims or the community outside the traditional criminal justice system which consequently reduces the number of offenders that goes into the correctional centres. With reintegrative shaming theory, the offenders are made to regret and feel guilt of their criminal actions, nevertheless, the theory protects their self-esteem which is not in any manner damaged or battered by the restorative justice facilitators who share communal relationship with both the offender and the victim.

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<sup>180</sup> Mercer D, Lorden R. & Lord J., *Sharing Their Stories: What Are the Benefits? Who Is Helped?* Paper presented at the International Society of Traumatic Stress Studies, Chicago, Ill, 1994.

In reintegrative shaming theory, the discussion of the consequences of the crime for victims or the offender's family structures shame into the conference; the support of those who enjoy the strongest relationships of love or respect with the offender structures reintegration into the ritual. It is not the shame of police or judges or newspapers that is most able to get through to us; it is shame in the eyes of those we respect and trust.

The moral indignation that is crucial for reintegrative shaming theory is in two steps: denial of one's own shame, followed by projection of blame onto the offender. For the participants to identify with the offender, they must see themselves as like the offender rather than unlike him. The moral indignation interferes with the identification between participants that is necessary if the conference is to generate symbolic reparation. In our judgement, uncontrolled repetitive moral indignation is the most important impediment to symbolic reparation and reintegration.

Restorative justice conferences work by inviting victims and supporters (usually family supporters) of the victim to meet with the offender and the people who care most about the offender and most enjoy the offender's respect (usually including both the nuclear and extended family, but not limited to them). This group discusses the consequences of the crime, drawing out the feelings of those who have been harmed. Then they discuss how that harm might be repaired and any steps that should be taken to prevent reoffending.<sup>181</sup>

Restorative justice processes are "already heavy with shame" as a result of the simple process of victims and their supporters talking about the consequences of the crime. In effect, that is

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<sup>181</sup> Ahmed, E, *Shame Management through Reintegration* (pp. 71–207). Melbourne: Cambridge University Press, 2001 as cited in Gomez, JA & Rucinski, CL, *Promising Pathways From School Restorative Practices to Educational Equity*, Volume 50, Issue 4, **Journal of Moral Education**, 2021. <<https://www.tandfonline.com/doi/abs/10.1080/03057240.2020.1793742>>.

all one needs.<sup>182</sup> makes a similar point on victim defensiveness: For individual victims, use of such terms as 'forgiveness' and 'reconciliation' are highly judgmental, suggesting a devaluing of the legitimate anger and rage the victims may be feeling at that point. Braithwaite think that the best protection against the vices of moral lecturing and sarcasm is to do a good job of inviting a large number of caring supporters for both the victim and the offender.

According to Ahmed, the core cardinal claims of reintegrative shaming theory are: (1) tolerance of crime makes things worse; (2) stigmatization, or disrespectful, outcasting shaming of crime makes crime worse still; while (3) reintegrative shaming, disapproval of the act within a continuum of respect for the offender, disapproval terminated by rituals of forgiveness, prevents crime.

According to Sherman *et al*, offenders both report and are observed to encounter more reintegrative shaming in conferences than in court, that conference offenders experience more remorse and more forgiveness than court offenders, and are more likely to report that they have learnt from the process that there are people who care about them.

### **2.5.2 Social Control Theory**

This theory places in the hands of the communities where the crime is committed, the responsibility for dealing with crime using the State system as a last resort. In other words, social control theory states that for community acceptance and behavioural attitude to be regulated and controlled, State's intervention in criminal justice cannot replace the power of

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<sup>182</sup> Umbreit, M., Coates R.B. & Kalanj, B. *Victim Meets Offender: The Impact of Restorative Justice and Mediation*, NY: **Criminal Justice Press**, p.4, 1994 as cited in Gavrielides, T, *Restorative Justice Theory and Practice: Addressing the Discrepancy*, Amazon, 2020, <<https://www.amazon.com/Restorative-JusticeTheoryPractice-discrepancyebook>>.

community ties.<sup>183</sup> According to Williams, the philosophy of community control should be seen as “built of individuals and families” who have the power to promote positive change and “demoralise” society with appropriate attitudes. He further states that “a communitarian society would be based upon trust, respect, participation, responsibility, solidarity, and mutual support community and not upon State’s threat, coercion or fear.”<sup>184</sup>

Inherent in this social control theory is the belief that antisocial and criminal behaviours can be largely controlled or influenced simply by making use of the instrument of socialization. According to Hirschi, Socialization can potentially exert a positive impact and discourage criminal behaviour in several ways, such as through presenting a threat of punishment in return for such behaviour, providing examples of positive behaviours, or satisfying psychological needs to remove the basic motivation for criminal behaviour. Therefore, the role of retributive justice may be seen as offering the threat in order to create a deterrent through fear. However, this may not always be effective, and may not provide satisfaction to victims. The social influences may also come from more positive sources; with the social pressures and influences that are able to exert pressure to comply with social norms through restorative justice.

Restorative justice is a rapidly growing phenomena in the field of justice and peace studies as well as in criminology. Zehr who is considered to be one of the founders of restorative justice,

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<sup>183</sup> Hirschi, T, *Causes of Delinquency*, (New York, Routledge, 2017). <https://www.taylorfrancis.com/books/mono/10.4324/9781315081649/causes-delinquency-travis-hirschi> as cited in Basto-Pereira, M & Farrington, DP, Developmental Predictors of Offending and Persistence in Crime: A systematic Review of Meta-Analyses, **Aggression and Violent Behavior**, 2022, Volume 65, <<https://www.sciencedirect.com/science/article/pii/S1359178922000428>>.

<sup>184</sup> Williams, B, *Victims of Crime and Community Justice*. London, (England: Jessica Kingsley, Amazon, 2005) as cited in Charman, S, *Making Sense of Policing Identities: The 'Deserving' and the 'Undeserving' in Policing Accounts of Victimisation*, **Routledge**, 2023, <<https://www.taylorfrancis.com/chapters/edit/10.4324/9781003455318-7/making-sense-policing-identities-deserving-undeserving-policing-accounts-victimisation-sarah-charman>>.

states that in a retributive justice framework, crime is an offence against the state, whereas in a restorative justice framework, crime is viewed as a violation of people and relationships.<sup>185</sup>

### 2.5.3 Defiance Theory

Zehr claims that “Disrespect begets disrespect” and few things communicate disrespect as effectively as the criminal exploitation of another human being.<sup>186</sup> According to Sherman, defiance theory has three propositions:

- i. Sanctions produce future deterrence of law breaking to the extent that offenders experience sanctioning conduct as legitimate, that offenders have strong bonds to the sanctioning agent and community, and that offenders accept their shame and remain proud of solidarity with the community.
- ii. Sanctions become irrelevant to future law-breaking (no effect) to the extent that the factors encouraging defiance or deterrence are fairly evenly counterbalanced.
- iii. Sanctions provoke future defiance of the law (persistence, more frequent or more serious violations) to the extent that offenders experience sanctioning conduct as illegitimate, that offenders have weak bonds to the sanctioning agent and community, and that offenders deny their shame and become proud of their isolation from the sanctioning community. In other words, sanctions provoke defiance of the law to the extent that offenders experience

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<sup>185</sup> Zehr H, *Changing Lenses: Restorative Justice for Our Times*, (25<sup>th</sup> Anniversary Edition), 2015 as cited in Katic, B, Alba, LA & Johnson, AH, A Systematic Evaluation of Restorative Justice Practices: School Violence Prevention and Response **Journal of school violence**, 2020, Volume 19, Issue 4, <<https://www.tandfonline.com/doi/abs/10.1080/15388220.2020.1783670>>.

<sup>186</sup> Zehr H, *Justice as Restoration, Justice as Respect*, **Eastern Mennonite University, Harrisonburg**, 2010, VA p. 89 as cited in Denderen, MV & Wolf, MJF, *Meetings Between Victims And Offenders Suffering From A Mental Disorder in Forensic Mental Health Facilities: A Qualitative Exploration of Their Subjective Experiences*, **The International Journal of Restorative Justice**, 2023, 6(1), 13-44, <[https://research.rug.nl/en/publications/meeting s between-victims-and-mentally-disordered-offenders-in-for](https://research.rug.nl/en/publications/meeting-s-between-victims-and-mentally-disordered-offenders-in-for)>.

sanctioning conduct as illegitimate, and that offenders have weak bonds to the sanctioning agent and community.

Sherman has woven propositions from the foregoing sections about procedural justice, reintegrative shaming, and unacknowledged shame into an integrated theory of defiance and has drawn the hypothesis that restorative justice processes are more likely to meet the conditions of a proposition than traditional punitive processes.

The evidence to date supports this. We have already seen that restorative processes are accorded high legitimacy by citizens, that they are better designed to empower those with strong bonds with the offender and that they outperform the court in inducing the acknowledgment and discharging of shame for wrongdoing.

#### **2.5.4 Theory of Unacknowledged Shame**

Scholars like Ahmed have shown from theoretical perspective on why restorative justice should reduce crime based more on the nature of shame, reintegration and stigmatization as practices. Ahmed in a study of bullying among 1200 Canberra school children, shows that bullies deal with shame by transforming it into anger, for example, victims acknowledge and internalise shame so that they suffer persistent shame, while children who avoid both bullying and being victimized by bullies can acknowledge and discharge shame so that shame does not become a threat to the self. Ahmed concludes that restorative processes may reduce crime because they create spaces where there is the time and the tolerance for shame to be acknowledged, something that is not normally facilitated in the formal courtroom context.

The problem with Braithwaite's theory as propounded in his work is that it is just a theory of shaming, with the emotion of shame left without being theorised. From this perspective,

therefore, a process is needed that enables offenders to deal with the shame that almost inevitably arises at some level when a serious criminal offence has occurred.<sup>187</sup> According to Scheff and Retzinger, being “ashamed to be ashamed”, is not an adaptive response. They further state that shame is a normal emotion that healthy humans must experience because it motivates to preserve the social bonds between the offender and the victim.<sup>188</sup> The problem is “chronic self-blame and an excessive rumination over some objectionable behaviour. While taking this further, Scheff and Retzinger suggest that shame is more likely to be uncomplicated when consequences that are shameful are confronted and emotional repair work is done for those damaged. Shame will become complicated and descend into rage if it is not fully confronted.

According to Retzinger and Scheff’s work, if we want a world with less violence and less dominating abuse of others, we need to take seriously rituals that encourage approval of caring behaviour so that citizens will acquire pride in being caring and non-dominating. When hurt is communicated, shame is acknowledged by the person(s) who caused it, respect shown for the victim’s reasons for communicating the hurt and respect reciprocated by the victim, constructive conflict has occurred between victim and offender.

### 2.5.5 Procedural Justice Theory

Conferences do not have all the procedural safeguards of court cases, yet there are theoretical grounds for predicting that offenders and victims will find them fairer. Why? Conferences are structurally fairer because of who participates and who controls the discourse. According to

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<sup>187</sup> Gilbert, P, *The Evolution of Social Attractiveness and its Role in Shame, Humiliation, Guilt and therapy*. *British Journal of Medical Psychology*, 1997, 70, 113–147 as cited in Wu, X, Qi, J & Zhen, R, *Bullying Victimization and Adolescents' Social Anxiety: Roles of Shame and Self-Esteem*, *Child Indicators Research*, 2021, Volume 14, pp, 769-781, <<https://link.springer.com/article/10.1007/s12187-020-09777-x>>.

<sup>188</sup> Scheff TJ & Retzinger SM *Emotions and Violence: Shame and Rage in Destructive Conflicts*. **Lexington, MA: Lexington Books/D. C. Heath and Company**, 1991.

Paternoster and Iovanni, a key way to show respect is to be fair, listen, empower others with process control, and refrain from bias based on age, sex or race. More broadly, procedural justice communicates respect.<sup>189</sup>

While the idea of reintegrative shaming communicates the disapproval of the continuum of respect for the offender, criminal trials invite those who can inflict maximum damage on the other side; conferences invite those who can offer maximum support to their own side, be it the victim side or the offender side. In other words those present are expected to be fair and therefore tend to be fair. Citizens are empowered with process control, rather than placed under the control of lawyers. There is now quite a bit of evidence that procedural fairness predicts subsequent compliance with the law. In the circumstance, Leary states that citizens were more likely to comply with the law when they saw themselves as treated fairly by the criminal justice system.<sup>190</sup>

### 2.5.6 Communitarian Tradition Theory

This is a hybrid of communitarianism of Crawford<sup>191</sup> linked to communitarian debates and John Braithwaite's normative theory of justice.<sup>192</sup> This theory emphasises the importance of a mutual powers between the State and the community which conceives the community as the

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<sup>189</sup> Paternoster, R, & Iovanni, LE, *The Deterrent Effect of Perceived Severity: A Re-Examination*. (Social Forces, 1886) 64(3), 751–777 as cited in Apel, R, *Sanctions, Perceptions, and Crime*, **Annual Review of Criminology**, 2022, <<https://www.annualreviews.org/content/journals/10.1146/annurev-criminol-030920-112932>>.

<sup>190</sup> Leary, MR, *Affect, Cognition, and the Social Emotions: A theory of Relational Devaluation*. In J. P. Forgas (Ed.), *Feeling and Thinking: The Role of Affect in Social Cognition*. (Cambridge, UK: Cambridge University Press, 2000). In Dasborough, MT, Hannah, ST Zhu, W, *The Generation and Function of Moral Emotions in Teams: An Integrative Review*. **Journal of Applied Psychology**, 2020, 105(5), 433–452, <<https://psycnet.apa.org/record/2019-54270-001>>.

<sup>191</sup> Crawford A. *The Local Governance of Crime: Appeals to Community and Partnerships*. (Oxford: Oxford University Press, 1999) 195 as cited in Gude, AD & Papic, N, *Restorative Justice and Legal Culture* **Criminology & Criminal Justice**, 2020, Volume 20, Issue 1, <<https://journals.sagepub.com/doi/abs/10.1177/1748895818796549>>.

<sup>192</sup> Braithwaite J & Strong H, *Introduction: Restorative justice and civil society* as cited in Joyce, P & Laverick, W, *Criminal Justice: An Introduction*, **London, Routledge**, 2022, 4<sup>th</sup> Edn, <<https://www.taylorfrancis.com/books/mono/10.4324/9780429330537/criminal-justice-peter-joyce-wendy-laverick>>.

most important site of social regulation and crime control in society. The theory seeks to make the community active participant in the decision-making processes regarding crime, in order to strengthen relationships and informal social control processes. It places a special focus on problem solving and crime prevention issues. Under this theory, community participation and involvement are projected within restorative justice vision. Though, professionals are involved in decision making, but different roles to the ones they play in criminal justice systems and traditional community policing.

The emergence of communitarianism was primarily in the English-speaking countries that follow the common law system and has spread to non-English speaking countries and civil law jurisdiction. The communitarian concept of restorative justice conceives the transfer of power from the State to citizens and community. The emphasis of the communitarian tradition theory is on the community cultural elements of common law systems and socio-legal aspect of criminal justice *vis-à-vis* the verdict given by juries.<sup>193</sup> The views of this theory have been incorporated into national legislation of some English-speaking countries, and have served as diversion from prosecution with the aim of constituting a barrier to formal court proceedings or to traditional punitive sanctions.<sup>194</sup>

Though the Nigerian criminal justice system draws inspiration from the retributive school of thought that places emphasis on punishment of the offender, it is not surprising as the philosophy of punishing criminals' dates back to the Code of Hammurabi that has a 3,500 year ancient history which states that 'if a man destroys the eye of another man, they shall

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<sup>193</sup> Zinsstag, E, Teunkens M & Pali B, *Conferencing: A Way Forward for Restorative Justice*. Leuven, Belgium: **European Forum for Restorative Justice**, 2011.

<sup>194</sup> Crawford A and Newburn T, *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*. (Devon: Willan Publishing, 2003) as cited in Bateman, T, *The State of Youth Justice 2020: An Overview of Trends and Developments*, **The State of Youth Justice**, 2020, <<https://thenajj.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sep20.pdf>>.

destroy his eye. If he breaks a man's bone, they shall break his bone. If a man knocks out a tooth of a man of his own rank, they shall knock out his tooth. The challenge is whether or not the Nigerian justice delivery system should continue going this route of an almost deteriorating justice system<sup>195</sup> which is fast becoming obsolete. In view of this development, the Nigerian society needs the possibility of complementing the retributive justice system with restorative justice system.

### 2.5.7 State-Offender Compensatory Theory

Having critically examined the various existing theoretical framework on restorative justice, it is my considered view that the main essence of restorative justice is to fashion a means by which the victims would be compensated for the loss suffered so as to mitigate the pains, trauma, stress, misfortune forced on the victim not only by the act of the offender but also by the inaction or action of the State.<sup>196</sup> In criminal justice context, compensation may be understood both in the state financial payment sense in respect of a victim's loss or injury or of the offender's direct or indirect restoration of stolen or damaged property or in the sense of any offender or and in its discrete sense of a purely monetary response distinct from the non-monetary responses that characterize 'reparation' responses now widely associated with restorative justice.<sup>197</sup>

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<sup>195</sup> Lynd H. M. *On Shame and the Search for Identity*, New York: Harcourt Brace, 1958, 1<sup>st</sup> Edn as cited in Gibson, M, *The Shame and Shaming of Parents in the Child Protection Process: Findings From a Case Study of an English Child Protection Service*, Families, Relationships and Societies, 2020, <<https://bristoluniversitypressdigital.com/view/journals/frs/9/2/article-p217.xml>>.

<sup>196</sup> Hodgson D, *The Profits of Crime and their Recovery*, Cambridge Studies in Criminology. (London: Heinemann, 1984) as cited in Hughes, C, *Financial Investigation: Establishing the Principles of a Generic and Effective Philosophy*, ProQuest Dissertations & Theses, 2021, <<https://www.proquest.com/openview/3e98844886f9677109640b471f73876a/1?pqorigsite=gscholar&cbl=51922&diss=y>>.

<sup>197</sup> Elechi O, *Victims Under Restorative Justice Systems: The Afikpo (Ehugbo) Nigeria Model*. (International Review of Victimology, 1999) 6: 359375 as cited in Olsen, J & Sarver, RS, *How Restorative are You? Introducing the Restorative Index*, International Journal of Evidence-based Research, Policy, and Practice, 2022, Volume 17, Issue 6, <<https://www.tandfonline.com/doi/abs/10.1080/15564886.2021.1942358>>.

The Latin phrase, *restitutio in integrum* which means restitution to the original position, is commonly used to refer to the remedy of restoring parties to the position they would have been if the act had never existed.<sup>198</sup> The phrase has its principal resonance in private and civil law. In a case where compensation is ordered to be paid to the victim of crime, one of the debilitating factors is the offender's limited means to pay the compensation ordered. That the offender's means are limited if the offender does not have the capacity to compensate the victim as ordered. Without evidence of the value of the victims' loss, it will be difficult to reach definite conclusions about the adequacy of the appropriate compensation. In taking its decision, the court is required, as in the case where it proposes to impose a fine, to conduct an inquiry that bothers on the offender's means. Where it is found out after the inquiry into the offender's means that the offender is not in a strong financial position to pay adequate compensation, the court should make a compensatory order on the State which will benefit the victim of crime.

The compensatory order against the State which has to do with the allocation of public funds to meet the gap between the victim's theoretical civil remedy against the offender and the unreality of its enforcement, is to make the State compensate the victim of crime for the State's failure to protect the civic right of the victim which the offender acts upon to perpetrate his criminal act.<sup>199</sup> The reason for this view is implicit in the proposed justifications for crime victim compensation schemes which argues that the commission of any crime is an indication of the State's failure in civic trust. According to De Greiff, civic trust is a condition of social justice which describes the trust that citizens have of one another in a society that is

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<sup>198</sup> Bolivar D. *Conceptualizing Victims' Restoration in Restorative Justice*, **International Review of Victimology**, 2010, 17: 237265 as cited in Suzuki M & Jenkins, T, *Apology-Forgiveness Cycle in Restorative Justice, But How?* **International Review of Victimology**, 2023, Volume 29, Issue 2, <<https://journals.sagepub.com/doi/abs/10.1177/02697580221079994>>.

<sup>199</sup> Broniatowski K, *Compensation for Criminal Injury in Poland*, **International Review of Victimology**, 1993, Volume 2, Issue 3, <<https://journals.sagepub.com/doi/abs/10.1177/026975809300200306>>.

predominantly well-ordered, and in which most social interactions are successfully (non-violently) mediated between them and not by law.<sup>200</sup>

The issue is that even if the state liability argument discloses no legal failure on the criminal justice system's part, the State fails in its social justice responsibility by her systemic failure of betraying the civic trust that the citizens put in the State. Reviewing the reason for the compensatory order, it is my firm submission that in the commission of any crime, the State is seen to have failed to protect its citizens adequately.

#### **2.5.8 Suitable Theory for a Better Nigeria's Criminal Justice System**

Determining which theory is more suitable for Nigeria's criminal justice system in terms of restorative justice for crime victims depends on several factors, including the cultural context, existing legal frameworks, and the needs of both victims and offenders. In the context of Nigeria's criminal justice system, Restorative Justice Theory combined with elements of victimology, may offer the most promising framework for addressing the needs of victims while fostering community healing and involvement. Additionally, integrating aspects of Transformative Justice and Social Conflict Theory, could enhance the effectiveness of restorative practices by addressing the systemic issues contributing to crime. Ultimately, the best theory or combination of theories may depend on the specific legal, cultural, and social contexts encountered in different regions of Nigeria. Therefore a hybrid approach that values retributive and restorative elements while remaining sensitive to victims' rights and social dynamics may be the most effective. In the circumstance, I hereby propose the Integrated Justice Theory.

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<sup>200</sup> DeGreiff, P. *Justice and Reparations* as cited in Williams, R & Steil, J, *The Past We Step Into and How We Repair It" A Normative Framework for Reparative Planning*, **Journal of the American Planning Association**, 2023, Volume 89, Issue 4, pp. 580-591, <<https://www.tandfonline.com/doi/abs/10.1080/01944363.2022.2154247>>.

**2.5.8.1 Integrated Justice Theory:** This theory represents a proactive attempt to synthesise restorative and retributive justice principles to create a more holistic approach to crime and conflict resolution. By recognising the value of both perspectives, practitioners can work toward not only addressing the harm caused by crime but also promoting accountability and preventing future offences.

## 2.6 Legal Framework

The legal consequences of implementing restorative justice is not only about the protection of the offenders but also about the active involvement and the consent of the victim. Restorative justice has a narrow scope of application because it can only be used to address a selected number of general crimes under specific circumstances. The role of law enforcement officers is very dominant in the implementation of restorative justice because they are the parties who have the authority to accommodate the parties involved in the restorative justice process.<sup>201</sup>

The criminal justice system in Nigeria right from the colonial era to date, has always been prescribing punishments to the offenders of crime with the sole aim of protecting the interest of the offenders and the State alone leaving out the victims of crime to wallow in the excruciating pains caused as a result of the crime. The existing legal framework of the contemporary criminal justice system is embedded in the Nigerian Constitution and Statutes on criminal justice such as the Criminal Code Act and the Penal Code Act that focus mainly on punishing the offenders of crime. While the Criminal Procedure Act state the procedures to be adopted for the punishment of the offenders in the Southern part of Nigeria, the Criminal Procedure Code on the other hand, state the procedures to be adopted for the punishment of the offenders in the Northern part of Nigeria.

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<sup>201</sup> Orin Gusta Andini, Nilasari Nilasari & Andreas Avelino Eurian, *Restorative Justice in Indonesia Corruption Crime: A Utopia*, **Legality Journal Ilmiah Hukum**, 2023, Volume 31, No. 1, pp, 72–90, <<https://ejournal.umm.ac.id>>.

The efforts of all stakeholders including the courts, the public prosecution units of government and the law enforcement agencies are mutually complimentary towards the protection of the offender and the State's interests, while that of the victim is abandoned, neglected and treated as not important in retributive criminal justice system. In other words, it is disheartening to note that the stakes of criminal justice in Nigeria, only hold the offender while the victim is abandoned to his/her fate and re-victimised by the criminal justice apparatus when used by the State as mere tool to secure the conviction of the offender and thereby subject the offender to punishment to serve as deterrence to others.

The fact that the Economic and Financial Crime Commission (EFCC) Act provides that the proceeds of crime in financial crime cases be confiscated and forfeited to the Federal Government of Nigeria<sup>202</sup> is not an affirmation the Nigeria's justice system has embraced restorative justice. Also that the provisions of the Administration of Criminal Justice Act (ACJA), to some extent provides for restoration to the victims of crime, has not confirmed that the Nigeria's criminal justice system has in its entirety embraced restorative criminal justice. It is noteworthy that though the federating units in Nigeria have reluctantly embraced ACJA, they are still foot-dragging as regards the implementation of its restorative provisions that aim at restoring the victims of crimes to their *status quo ante*.

The legal framework of Nigeria's justice system is patterned after the British legal framework. Hence, it is divided into sub-system, with the federal law superseding every other laws of the land. There are also local legal systems. The legal system in Nigeria is divided into criminal and civil. The Act of the National Assembly as well as the House of Assembly of Lagos State

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<sup>202</sup> Section 21, EFCC ACT, 2004,

provide the provisions for restorative approaches to criminal justice system. The Administration of Criminal Justice Act<sup>203</sup> and the Administration of Criminal Justice Law of Lagos State<sup>204</sup> are the statute that pave way for restorative justice in Nigeria.

In Nigeria, the criminal justice system begins with a process and with three components such as the police, the courts, and corrections (previously known as prisons). Under the Nigerian criminal justice system, the first stage is the contact that an offender or a victim has with the criminal justice system is the police, whose responsibility is primarily for law enforcement and investigation of the suspected offender and to effect arrest in line with their primary assignment and their functions of keeping the peace. After the investigation of the police, the date of the commencement of the court proceedings will be given to the offender or the suspect who becomes the defendant. The second stage is about the constitutional duty of the court to conduct a fair and impartial trial.<sup>205</sup> Where the defendant is found not guilty as a result of the court trial, he is discharged and acquitted. In case the suspect is found guilty, he is convicted and sentenced to correctional facility where he is held until he completes his jail term.

## Chapter Three

### Methodology

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<sup>203</sup> Section 467, Administration of Criminal Justice Act 2015.

<sup>204</sup> Section 348, of the Administration of Criminal Justice Law of Lagos State

<sup>205</sup> Oputa, CA, *Crime and the Nigerian Society* as cited in Ugwuoke, CO, Ajah, BO, Akor, L & Ameh, SO, Cletus A. Lanshima: CA, Ngwu: EC, *Violent Crimes and Insecurity on Nigerian Highways: A Tale of Travelers' Trauma, Nightmares and State Slumber*, (Heliyon, 2023), Volume 3, No. 10, <[https://www.cell.com/heliyon/fulltext/S2405-8440\(23\)07697-1](https://www.cell.com/heliyon/fulltext/S2405-8440(23)07697-1)>.

### 3.1 Methodology Research Design

Methodology occupies an essential position in any research work, without which no analysis of a subject matter can be carried out.<sup>206</sup> This view is supported by Lather, but with the addition that historical perspective is essential to the study of any concept.<sup>207</sup> This chapter shall present the data collection, research design and analytical framework that will be made use of in this work in line with the cultural, socio-political, and ethical considerations and data collection in respect of restorative justice for the victim of crime. This research work shall analyse a hybrid of the civil law tradition with a mix of restorative justice elements of both the indigenous and contemporary legal systems, using qualitative data obtained through desk reviews of existing literature. It shall compare and contrast the application, success, and challenges of restorative justice practices in the three major tribes of Nigeria.

The research methods are both doctrinal and comparative. It involves the use of existing literature as well as comparative discourse on both the indigenous and contemporary justice system. Research design is the structuring of investigation aimed at identifying variables and their relationships to one another. It can be safely said that Research design is the framework or plan for a study that is used in collecting and analysing a set of data.<sup>208</sup> This research shall

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<sup>206</sup> Cook, LD & Kamalodeen, VJ, *Combining Mixed Methods and Case Study Research (Mm+Csr) to Give Mixed Methods Case Study Designs*, Journal of Mixed Methods Research, 2020, <[https://www.researchgate.net/profile/VimalaKamalodeen/publication/351102015\\_Combining\\_Mixed\\_Methods\\_and\\_Case\\_Study\\_Research\\_MMCSR\\_to\\_Give\\_Mixed\\_Methods\\_Case\\_Study\\_Designs/links/611dc47f169a1a01030f08b1/Combining-Mixed-Methods-and-Case-Study-Research-MM-CSR-to-Give-Mixed-Methods-Case-Study-Designs.pdf#page=67](https://www.researchgate.net/profile/VimalaKamalodeen/publication/351102015_Combining_Mixed_Methods_and_Case_Study_Research_MMCSR_to_Give_Mixed_Methods_Case_Study_Designs/links/611dc47f169a1a01030f08b1/Combining-Mixed-Methods-and-Case-Study-Research-MM-CSR-to-Give-Mixed-Methods-Case-Study-Designs.pdf#page=67)>.

<sup>207</sup> Lather P., *Critical Frames in Educational Research: Feminist and Post-structural Perspectives. Theory into Practice*, 1992, 31(2), pp. 87-99 as cited in Kester, K, *Global Citizenship Education and Peace Education: Toward a Postcritical Praxis*, **Educational Philosophy and Theory**, 2023, Volume 55, Issue 1, <<https://www.tandfonline.com/doi/full/10.1080/00131857.2022.2040483>>.

<sup>208</sup> Petousi, V & Sifaki, E, *Contextualising Harm in the Framework of Research Misconduct. Findings From Discourse Analysis of Scientific Publications*, International Journal of Sustainable Development, 2020, Volume 23, No. 3-4, <<https://doi.org/10.1504/IJSD.2020.115206>>.

adopt the descriptive and explanatory approach which analyse and shape the restorative justice practices of specific jurisdictions and state how legal culture influences restorative justice developments.<sup>209</sup>

This thesis will adopt amongst others, both primary and secondary data collections. While the primary source includes the statutes for the regulation of the Nigerian criminal justice system such as the Constitution,<sup>210</sup> the Administration of Criminal Justice Act,<sup>211</sup> Police Act,<sup>212</sup> Economic and Financial Commission Act,<sup>213</sup> Code of Conduct Bureau and Tribunal Act,<sup>214</sup> Independent Corrupt Practices and other related Offences Act,<sup>215</sup> Rules of Procedure of the International Criminal Court, etc. The secondary source includes law reports, textbooks, journals and other materials such as the works of other scholars in the relevant areas of restorative justice to the victims of crime, etc. The main essence of the use of primary and secondary data as well as other research methodology is to ensure that this thesis is well researched so as to move the existing knowledge on restorative justice to the victims of crime forward and give the legislative arm of government a platform upon which to build a reformed legislation that will lead to all-encompassing justice not only to the offender but also to the victims of crime as well as to the State.

### 3.2 Analytical Methods

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<sup>209</sup> Robert, C, Tamara, H, Sokhi-Bulley, B & Bohm, A, *Research Methodologies in EU and International Law*, Oxford: Hart Publishing Ltd, 3<sup>rd</sup> edn. p. 39, 2011 as cited in Rashid, FM, *Prosecutorial Discretion in the International Criminal Court: Legitimacy and the Politics of Justice* London, Routledge, 2021, <<https://doi.org/10.4324/9781003172086>>.

<sup>210</sup> 1999 Constitution (As Amended) of the Federal Republic of Nigeria

<sup>211</sup> Administration of Criminal Justice Act, 2015.

<sup>212</sup> Cap P19, Laws of the Federation of Nigeria, 2004.

<sup>213</sup> Economic and Financial Commission Act, Cap E1 LFN 2004.

<sup>214</sup> Cap C15 Laws of the Federation of Nigeria, 2004.

<sup>215</sup> CAP I31 Laws of the Federation of Nigeria, 2004.

The analytical methods to be used are secondary and tertiary data analysis using the content analysis of texts gathered on restorative justice for the victims of crime. These consist of public service reports some of which contained analysis and evaluations of the Legal Aid Department of the Judicial Division of the Ministry of Justice and Human Rights and from the mediation centres statistical reports and questionnaires. Questionnaires will be developed and sent to the Heads of Department of these units and responses will be collected. The information obtained through the questionnaire will lay bare the organisational setups, caseload materials, operating philosophies and involvement with other actors like prosecutors and the defendant.

### **3.3 Comparative Analysis**

In order to sufficiently bring out the appropriate justice system for Nigeria, it is important to compare the concept of restorative justice to the victim of crime in some other jurisdictions. This is done by specifying the conditions under which two or more variables are compared. In other words, comparative research is a research that compares and contrasts how a thing is done in one place or by one group of people or members of one society with the way the same thing is done in a different way or by a different group of people or society generally at around the same time.<sup>216</sup> The main advantage of this approach to this thesis is that it will offer a way of understanding the concept of restorative justice to the victim of crime by bringing out the progression or regression of the concept under the prevalent Nigerian legal jurisprudence. Through this method, the protection of the restorative Justice to the victim of crime during the traditional concept are compared alongside the international human rights laws and standards. This method will be adopted so as to know the degree of the victims'

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<sup>216</sup> Norman K, Denzin & Yvonna, Lincoln, S, *Collecting and Interpreting Qualitative Materials*, Thousand Oaks: Sage Publications, 2017, 5<sup>th</sup> edn, as cited in Savin-Baden, M, & Major, C, *Qualitative Research: The Essential Guide to Theory and Practice*, London, Routledge, 2023, <<https://doi.org/10.4324/9781003377986>>.

plight and the protection of both the national and international laws, without which the human society becomes a jungle of survival of the fittest.<sup>217</sup>

### **3.4 Sources of Data**

The data that will be used in this work are from primary and secondary sources and they will be sourced not only locally from Badeku village, via Ibadan, Oyo State and Itapa village in Ekiti State of Nigeria, but also internationally. In Nigeria, data will be sourced from eminent scholars and traditional rulers. In the United Kingdom, data would be collected in the Criminal Injuries Compensation Authority (CICA), a body that deals with compensation claims from people who have been physically and mentally injured because they were the victims of violent crimes in England, Wales and Scotland, particularly at its London office. Secondary sources include periodicals, workshops, journal articles, conferences and proceedings of courts/tribunals, interviews of scholars and other related published works. The research methodology for this work will be both primary and secondary based on the author's ethnographic experience, field survey and literature review from academic books, journals and internet sources form the bulk of this data.

### **3.5 Data Analysis**

Data analysis puts the data collected together for the purpose of easy handling, management, transformation and interpretation of output, the data will first be manually transcribed and thematically arranged for easy discussion. The transcriptions of the audio recorded data were expected to be huge and the process will take a long time to complete. The transcribed data will be produced as a discussion document with verbatim quotations from participants. The

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<sup>217</sup> Holland J. & Webb J., *Learning Legal Rules*, New York: Oxford University Press, 2018, 9<sup>th</sup> edn, p. 68, 2018 as cited in Kapardis, A, *Psychology and Law*, Encyclopaedia of the Philosophy of Law and Social Philosophy, 2023, pp. 2882-2889, <[https://doi.org/10.1007/978-94-007-6519-1\\_108](https://doi.org/10.1007/978-94-007-6519-1_108)>.

objective is to ensure that the transcribed data are true reflections of the issues covered during the interview sessions.

The traditional methods of data analysis vary from simple methods of data collection to data presentation, data differentiation and this analysis will be used to determine the sets of variables or those determining optimal solutions. It will also be used to generalise results from a larger sample population so as to have a more structured data collection. Through this approach, I will be able to collate data through questionnaires and interviews, trace the behaviour of particular interviewee, explore patterns of interaction and clarify sequence of the data collected.<sup>218</sup>

This research work will adopt both primary and secondary sources of data collection by using various survey methods ranging from administration of questionnaires; focus group discussions; face to face interviews, telephone interview and the internet. The interviews and the focus group discussions will be conducted on the elders of Badeku village, via Ibadan, Egbeda Local Government Area of Oyo State and Itapa, Ekiti, Oye Local Government Area of Ekiti State, Nigeria so as to elicit the subjective opinions, meanings and answers that research subjects give to research questions that are being investigated.

In the words of Krejcie & Morgan, elements can be people or group of people or even families or corporation or objects, or measurements whose properties are analysed as a result of which they are called population.<sup>219</sup> The selected techniques will help in learning from the

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<sup>218</sup> Onabajo O, *Foundations of Communication Research*, Sibon Books Ltd., Lagos, 2011, p. 141, 2011 cited in Okocha, DO, Onobe, MJ & Alike, MN *Handbook of Research on Connecting Philosophy, Media, and Development in Developing Countries*, IGI Global, 2022, <<https://books.google.com.ng/books>>.

<sup>219</sup> Krejcie, RV & Morgan, DW, *Determining Sample Size for Research Activities*, (A. & M. University, 1970), pp. 607-610 as cited in Akour, IA, Al-Marroof, RS, Alfaisal, R & Salloum, SA, *A Conceptual Framework For Determining Metaverse Adoption in Higher Institutions of Gulf Area: An Empirical Study Using Hybrid SEM-ANN Approach*, Computers and education: Artificial Intelligence, 2022, Volume 3, <<https://doi.org/10.1016/j.caeai.2022.1000522022>>.

people, in exploring and capturing the range, depth and circumstances of their actual point of view as regards restorative justice to the victims of crime. The techniques that will be adopted will be inventive, in the sense that they will allow room for modification with the progressive revelation of information, while maintaining flexibility and adaptability. The procedure engaged remained systematic, and the accuracy of the findings was facilitated through the triangulation of diverse methods and information sources.<sup>220</sup>

The good thing is that information that will be collected from the informal interaction and observations at research sites will richly reveal the general reaction of people to the research questions. Issues relating to restorative justice to the victim of crime amongst Nigerian communities, rampant cases of jungle justice, informal trial; pre-trial, trial and post-trial violations of victim's rights are expected to be examined. Responses and observations will be used to cross-check and confirm data collected through the interviews to ascertain the veracity of the data.<sup>221</sup>

The secondary source will employ the collation of relevant data from relevant text books, journals, internet publications, magazines, newspapers, and periodic reports of some of the identifiable human rights organisations. Through the interrogation of the samples, it will be discovered that historical approach will take a vital role in the cause of this research work. To execute and collate the samples, the empirical statistical sample formulae created by Krejcie & Morgan for determining sample size for a given population will be employed to come up

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<sup>220</sup> Asika N., *Research Methodology in Behavioural Sciences*, (Lagos Longman Publishing Limited, 2017), 4<sup>th</sup> ed., p.42, as cited in Ugwu, CI, Ekere, JN and Onoh, C, *Research Paradigms and Methodological Choices In The Research Process*, *Journal of Applied Information Science and Technology*, 2021, <<https://www.jaistonline.org/14vol2/12.pdf>>.

<sup>221</sup> Schmedemann D. A. & Kunz C. L., *Synthesis: Reasoning and Writing*, New York: Wolter Kluwer & Business, 2016) as cited in Taylor LJ, *An Exploration of the Cognitive and Behavioural Dimensions of Law Students' Online Legal Research Processes*, *Queen's University (Canada)*, ProQuest Dissertations & Theses, 2021, as cited in <<https://www.proquest.com/openview/9536315967e0020b78ccf933365a9327/1?pq-origsite=gscholar&cbl=18750&diss=y>>.

with an empirical and formidable material that will help immensely in the outcome of this research work.<sup>222</sup>

In order to secure the cooperation of respondents to answer the structured questionnaires and also for the purpose of clarity, the questions that will be posed to respondents will be open ended through face-to-face discussions, e-mails and phone calls. In all these, anonymity of the respondents would be promised and observed. Telephone and e-mails interviewing strategies<sup>223</sup> would be employed where access to respondents could not be secured for reason of tightness of work schedule or as a way of follow up for the clarification of the ambiguity in the responses to the questionnaires.

For the samples that will not be on ground to receive the questionnaires, I will request to allow me drop the questionnaires prepared in the respondent offices and if granted, I will follow them up through telephone calls, short message service (sms) and e-mails. In this regard, I will divided the total number of data (the responses given by the respondents) with the sample size in line with the empirical statistical sample formulae developed by Krejcie & Morgan so as to obtain the sampling fraction. The sampling fraction will then be used as the constant difference between subjects. First, I will pick randomly the first item or subject from the population and then select each ninth subject from constant interval of the entire population list. This method is called the systematic random sampling technique. Its adoption will be chosen by me for its simplicity in application and the assurance that the population will be evenly sampled. The disadvantage of this technique is that the process of selecting

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<sup>222</sup> Kvale, Stevens, *Doing Interviews*, (London: Sage Publications Ltd, 2018) p. 113 as cited in Robinson, OC, *Probing in Qualitative Research Interviews: Theory and Practice*, **Qualitative Research in Psychology**, 2023, Volume 20, Issue 3, <<https://doi.org/10.1080/14780887.2023.2238625>>.

<sup>223</sup> Emily Finch & Stefan Fafinski, *Legal Skills* Oxford: Oxford University Press, 2015, 5<sup>th</sup> edn, 67, 2015 as cited in Mante, J, *Understanding Legal Research in the Built Environment*, Secondary Research Methods in the Built Environment, 2021, <<https://www.taylorfrancis.com/chapters/edit/10.1201/9781003000532-8/understanding-legal-research-built-environment-joseph-mante>>.

elements can interact with a hidden periodic trait within the population. By elements, I mean the individual units within the chosen population sample from which information will be collected for analysis. If the sampling technique coincides with the periodic trait, the sampling technique will no longer be random and representative.<sup>224</sup>

### 3.6 Historical Analysis

This approach will be adopted so as to provide an overview of the restorative justice to the victim of crime as well as that of the Western medieval concept and also to compare the development of the concept amongst the countries. This is due to the fact that the sources and procedures of the indigenous Nigerian concept of restorative justice for the victims of crime are historically antithetical to international standards.<sup>225</sup> This analysis will afford me the opportunity to dig deep into the history of the indigenous justice system so as to discover whether the concept of restorative justice ever existed amongst the indigenous Nigerian people. Through this approach, I will expound the fact that the indigenous Nigerian justice system had its unique way of protecting the victim of crime.

### 3.7 Content Analysis

Content analysis involves the examination of materials from a comparative point of view.<sup>226</sup> In other words, content analysis is a means of trying to learn something about people by examining what they make, produce or write. This research technique will be used to measure the amount of things like violence and negative portrayals of a group of people in a representative sampling particularly in gang-criminal actions. I will make use of content

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<sup>224</sup> Barkan S. M., Barbara Bintliff & Mary Whisner, *Fundamentals of Legal Research*, 10<sup>th</sup> ed., Foundation Press, 2015 as cited in Noor, A, *Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research*, Jurnal Ilmiah Dunia Hukum, 2023, Volume 7, Issue 2, <<https://core.ac.uk/download/pdf/578694649.pdf>>.

<sup>225</sup> Hodgson Benjamin, *Comparative Analysis of Research Design* 2nd ed.. p.42, **Rick & Thomsom Publishers**, 2016

<sup>226</sup> Mike Wallace, M & Wray, A, *Critical Reading and Writing for Postgraduates*, **Thousand Oaks: Sage Publications Inc.**, 2021, 4<sup>th</sup> edn.,<<https://www.torrossa.com/en/resources/an/5017902>>.

analysis because it will make me coordinate and harmonise the different responses of the respondents toward achieving my research target. With the adoption of this approach, I will unequivocally show that the concept of restorative justice to the victim of crime is not new to Nigeria but a substantial part of the indigenous criminal justice system.

### **3.8 Data Processing**

Data processing is to uncover the emerging themes, patterns, concepts and insights for a better understanding. The data processing begin the very moment the researcher makes meaning out of the interviews and the observations of the respondents.<sup>227</sup> In this thesis, I will make use of data processing by grouping similar responses and experience together, recurring views will also be grouped together, while narratives that emerged from interviews conducted on the field will be edited to ensure that all personal opinions and views are expunged through constant comparative method i.e. the use of inductive reasoning to analyse the facts that emerge from various categories of meaning and data relationship.

### **3.9 Qualitative or Descriptive Data Analysis**

Qualitative or descriptive data analysis enables the researcher to understand the various forms of data collected and also gives the opportunity to explore and understand the meaning of respondents' worldview and their personal understanding of the concept of restorative justice and its impact on the communal relationship.<sup>228</sup> This approach will facilitate the understanding of the social structure, nature and causes of individual action or inaction. The

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<sup>227</sup> Lee Epstein & Andrew D. Martin, *An Introduction to Empirical Legal Research*, Oxford: Oxford University Press, 2019), 5<sup>th</sup> edn, p. 51, 2019 as cited in Younas, A, Fabregues, S & Creswell JW, *Generating Metainferences in Mixed Methods Research: A Worked Example in Convergent Mixed Methods Designs Methodological Innovations*, 2023, Volume 16, Issue 3, <<https://doi.org/10.1177/20597991231188>>.

<sup>228</sup> Peter Cane & Herbert M. Kritzer, *The Oxford Handbook of Empirical Legal Research*, Oxford: Oxford University Press, 2018, as cited in Creutzfeldt, N, Mason, M & McConnachie, K, *Routledge Handbook of Socio-Legal Theory and Methods*, Taylor and Francis Group, 2020, <file:///C:/Users/HP/Downloads/10.4324\_9780429952814\_previewpdf%20(1).pdf>.

qualitative analytical method will be further strengthened by the way data itself is largely collected and recorded in the form of words and numbers.

The descriptive analysis of the concept of restorative justice will take precedence over the face-to-face interviews which were quite long, with important and relevant personal information scattered in the responses. Sorting out and picking out such vital information from the long interviews will demand that I go through the transcripts several times so as to extract and analyse the relevant issues.

### **3.10 Ethical Consideration**

In interviewing ethically, the confidence of the respondents and the credibility of the research work are essential to maintain the scholastic standard of the research work.<sup>229</sup> In order to obtain the consent of the respondents, I will explain to them the objectives of the study and the expected outcome. I will promise the interviewees that I will not use the information supplied for any unanticipated purpose. I will send sample questions to the respondents who agreed to be part of the study and their responses will be treated with a high degree of confidentiality.

A substantial number of the commissions and the bodies will be contacted through a letter of request showed their willingness to be parts of this study through telephone conversation. The request of the individuals and bodies that give their consent to reveal their names and those who respond under anonymity will be respected in this research work. I know that the promise of strict confidentiality that will be made to the respondents will enhance this research work in a great measure.

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<sup>229</sup> Bohm, I & Lolagar, S, *Open Source Intelligence: Introduction, Legal, and Ethical Considerations*, International Cybersecurity Law Review, 2021, Volume 2, pp. 317–337, <<https://doi.org/10.1365/s43439-021-00042-7>>.

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## **Chapter Four**

### **Historical Development of Restorative Criminal Justice to Victims in Nigeria**

#### **4.1 Advent of Criminal Justice in Nigeria under British Colonisation**

The history of criminal justice to the victim of crime in Nigeria, records that the colonial

epoch began in Nigeria in the 15th century with the slave trade when the British determined the geographical profile of Nigeria by controlling an area now known as Nigeria through a process that was completed in five successive phases: the settlement of Lagos that became a colony in 1861; the Royal Niger Company controlled central Nigeria from 1886 to 1900; the amalgamation of its territories into the new Protectorate of Southern Nigeria in 1900; the merging of the Protectorate of Southern Nigeria with the Lagos Protectorate in 1906 and the amalgamation of Southern Protectorates with Northern Nigeria in 1914. Although a certain degree of administrative distinction between the Southern and Northern Nigeria was maintained as a consequence of the amalgamation, the three main ethno-linguistic groups comprising of Hausa-Fulani in the north, the Yoruba in the southwest, and the Igbo in the southeast emerged. Thus, over 250 ethnic groups and minorities' interests coexist in one country.<sup>230</sup>

The criminal justice system in Nigeria focuses on prohibiting criminal activities and punishing offenders who contravene the criminal law, neglecting the victims who suffer the sufferings inflicted upon them by the offender. The only way by which the victim of crime could obtain a redress is through civil litigation in court which requires additional time and resources to prosecute the offender for the losses and damages incurred by them. Unlike the victims in the United Kingdom and the United States of America who are adequately provided for through victim support and assistance programs which render different support to victims, the Nigerian criminal justice system, put victims in a worse positions than they used to be before the commission of the crime against them by the offenders.

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<sup>230</sup> Omotosho, M., *Evaluating Conflict and Conflict Management: A Conceptual Understanding in Africa*, Journal of International Affairs and Development, 2004, vol. 11 as cited in Ezekiel, AO, and Abdulraheem, I, *Traditional Methods of Conflict Management and Resolutions: The Case Study of the Old Oyo Empire*, European Journal of Management and Marketing Studies, 2022) <<https://oapub.org/soc/index.php/EJMMS/article/view/1303>>.

The contemporary criminal justice system is retributive, blame-fixing, guilt apportioning and punishment hammering. In the current criminal justice system that is retributive in nature, the victims are forgotten entities and ordinarily should have greater roles in determining the outcome of their cases. Restorative Justice therefore is a response to crime that focuses on restoring the losses suffered by victims, holding offenders accountable for the harm they have caused to the victims, building peace and promoting harmony within communities.<sup>231</sup>

Contrary to the claim of the neo-colonialists, the conclusion drawn from the questionnaires administered on elders and rulers of Badeku and Itapa villages, two typical African societies where proportions of the indigenous restorative criminal justice system are still being practised, show that the indigenous African societies were well organised into empires and municipalities with indigenous systems of control and administration. Therefore it is wrong for the colonialists and the modern day scholars to claim that restorative justice has its root in the Western conceptions, while in the actual sense, the African peoples, particularly the indigenous Nigeria communities have been practicing restorative justice to the victim of crime before the advent of colonialism.

Llewellyn and Howse state that a move towards a restorative model of justice is perhaps best understood as a return to the root of justice, and not as a new-age justice for an ailing criminal justice system.<sup>232</sup> In contemporary societies, the justice system leans heavily on the pillars of punitive measures. These punitive measures could be short-term and long-term measures.

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<sup>231</sup> Roberts S., *Tradition and Change at Mochudi: Competing Jurisdictions in Botswana*, **African Law Studies** 1979, p. 27.

<sup>232</sup> Llewellyn, J.J & Howse, R, *Restorative Justice: A conceptual framework*, (Canada: Law Commission, 1999) as cited in Ness, DWV, Strong, KH, Derby, J & Parker, LL, *Restoring Justice: An Introduction to Restorative Justice*, New York, Routledge, 2022 <<https://doi.org/10.4324/9781003159773>>.

Despite the measures, the justice system often falls short of addressing the underlying issues.<sup>233</sup> Short-term punitive measures, while sometimes effective in deterring immediate repeat offences, might not address the deeper reasons behind these behaviours, leading to prolonged adverse effects on individuals and the wider community.

The historical conception of restorative justice is not limited to Western practices but also includes some interesting history in the lasting traditions of Africans. The Western Retributive Justice System stands in stark contrast to the traditional Western restorative system, where the former seeks to reduce crime through punishment, restorative justice seeks to re-establish balance and harmony within each individual impacted by an offensive act, within the perpetrator as well as the victim and the community.

Stout is of the opinion that most of what is claimed to be traditional African justice is based upon anecdotal unsustainable claims.<sup>234</sup> The very idea of African customary law is considered an oxymoron by the Western writers and it is their belief that African law is not law *per se*, but a form of primitive practice which predates law.<sup>235</sup> In the same vein, it has been argued that to ‘describes ancient justice as necessarily restorative is to romanticise the past and to provide an excuse for re-colonising indigenous groups’.<sup>236</sup>

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<sup>233</sup> Umbreit, M. S, Vos, B, & Coates, L, *Restorative Justice in the Twenty-First Century: A Social Movement Full Of Opportunities and Pitfalls*. (Marquette Law Review, 2005) 89, 251-304 as cited in Gade CBN, [Is Restorative Justice Punishment? Conflict Resolution Quarterly, 2021, Volume 38, Issue 3, <https://doi.org/10.1002/crq.21293>](https://doi.org/10.1002/crq.21293).

<sup>234</sup> Stout B, *Restorative Justice in South Africa: Resolving Conflict* (British Journal of Community Justice, 2003) Vol.1(3) pp51-61, 2003 as cited in Prasad, PD, *The Prospect of Restorative Juvenile Justice in India: Insights From Youth Justice in England And Wales*, LSE Theses Online, 2022, <<https://etheses.lse.ac.uk/4478/>>.

<sup>235</sup> Costa A, *The Myth of Customary Law*, South African Journal of Human Rights, 1998, 14 (4):525-538 as cited in Pierterse, M, *Its a 'Black Thing': Upholding Culture and Customary Law in a Society Founded on Non-Racialism*, Ph.D Thesis, 2022, <<https://kups.ub.uni-koeln.de/61786/>>.

<sup>236</sup> Daly, K. *Restorative Justice: The Real Story*, 2017, as cited in Ralph, L, *The Torture Letters: Reckoning With Police Violence*, Chicago: Chicago University Press, 2020. <<https://www.degruyterbrill.com/document/doi/10.7208/9780226729800/html>>.

An appraisal of the modern day administration of criminal justice system in Nigeria, explicitly shows a disconnection between the culture, norms and tradition of the people and the colonially imposed British value systems. It is highly unfortunate that the indigenous society's acceptance of its subjugation to the foreign laws and values has created serious disorientation and dislocation in the indigenous value systems in modern day Nigeria and this goes to demonstrate lack of psychological harmony between the people and the societal values.

Restorative Justice is as old as man. The indigenous societies' restorative approaches to crime date back thousands of years. Restorative justice is said to be the dominant model of criminal justice throughout most of human history for all people of the world.<sup>237</sup> The origin of restorative justice can be ascribed to indigenous justice practices, a range of religious influences, the victims' rights movement, etc.

African societies had their notions of restorative justice, and its legal culture frowns at any improper behaviour that is viewed as capable of being inimical to the legal norms that disrupt the social equilibrium. The age grade associations, deities, shrines, ancestors, kinship, elders, and the chiefs are some of the indigenous mechanisms of crime control in nearly all African societies, inclusive of Nigeria. There is a unanimous credence amongst researchers that in the indigenous Nigerian communities, there is a preference for the peaceful settlement of disputes along the lines prescribed by the institutions and values of the community.

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<sup>237</sup> Braithwaite J. *Restorative Justice and Responsive Regulation*, New York: Oxford University Press, Inc., 2016, as cited in Okimoto, TG & Gollwitzer, M, *The Social Psychology of Justice Repair*, Annual Review of Psychology, 2024) Volume 76, <<https://doi.org/10.1146/annurev-psych-030124-114525>>.

The indigenous criminal justice practices preserve traditional values including those of crime and the experience of justice by the victim. The indigenous system projects and takes advantage of the dynamism of the contexts of the traditions within which it operates, the relational friendly values and common good principles of the traditional system can easily be adopted and streamlined to restorative justice principles and practices of equity and fairness. In order to know if an indigenous system is restorative in nature, it must have the following features:

- a. *Empowerment*: Justice should restore to the victim and community, power, security and safety.
- b. *Safety*: The processes and end of the search for justice should reduce stress, cost of community budgets and health needs.
- c. *Vindication and validation*: When someone willingly takes responsibility for the event, the community and victim are vindicated and validated, and they are able to restore the offender; and the community life is restored and stimulated.
- d. *Truth-telling*: The legal system takes over the offender shielding him from a relational approach which alone can make the offender say the truth i.e. why he did what he did.

#### **4.2 Meaning of Restorative Justice**

Restorative justice, as practiced in many African communities, is a conflict resolution paradigm that brings together the victims, offenders, and community members to address and resolve a crime or a dispute. It aims at restoration, reparation, reintegration, and community participation in tackling crime, disputes, and related problems that affect them.<sup>238</sup> Restorative justice is a process where the parties and the persons that are affected with the offence

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<sup>238</sup> Doolin, K, *But What Does It Mean? Seeking definitional clarity in restorative justice* (The journal of criminal Law, 2007) as cited in Murhula, PBB, & Tolla, AD, *The Effectiveness of Restorative Justice Practices on Victims of Crime: Evidence From South Africa*, Volume 10, Issue 1, International Journal for Crime, Justice and Social Democracy, 2021, <<https://search.informit.org/doi/abs/10.3316/informit.739374950657425>>.

committed by the offender come together to resolve the issue in the way that the offender is made to realise the mistake of his/her action but also to resolve in such a way that the victim of the crime is restored to *status quo ante*. Restorative justice is a problem-solving mechanism that involves the offender, victim, justice agencies, the community, etc. this mechanism is premised on the reasons that criminal behaviour does not only violates the law, but also negatively affects the victims and the community.<sup>239</sup> According to Marshall, it is a problem-solving approach to crime which involves the parties themselves and the community generally, in an active relationship with statutory agencies.<sup>240</sup> The point to note in this definition is that victims, offender and community participation is actively supervised by statutory criminal justice/governmental agencies.

It has also been defined as a process whereby victims, offenders, and communities are collectively involved in resolving how to deal with the aftermath of an offence and its implications for the future.<sup>241</sup> The difference between this definition and that of Marshall is that the definition of the Mediation UK did not recognise the active participation of statutory criminal justice or governmental bodies as evident in Marshall's definition. The difference between the two definitions poses the question as to whether the retributive justice and restorative justice models can mutually work together simultaneously.

However, Johnstone believes that restorative justice should be seen as a matter of 'humanising' criminal justice, in ways, which do not interfere with overall fairness and just

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<sup>239</sup> Manty P, *Personalizing Crime: Mediating Produces Restorative Justice and Offenders* as cited in Hussin, N, *Revisiting Islamic Punishment and Its Implementation in the Contemporary World*, Proceeding Iain Batusangkar, 2020, <<https://core.ac.uk/download/pdf/328166701.pdf>>.

<sup>240</sup> Marshall, T. F, *Restorative Justice: An Overview*, London: Home Office Research Development and Statistics Directorate, 2020 as cited in Brooks, T, *Punishment: A Critical Introduction*, London, Routledge, 2021, <<https://doi.org/10.4324/9781315527772>>.

<sup>241</sup> Mediation UK. *Restorative justice: A Brief Introduction*, 2019 as cited in Olson, J and Sarver, RS, *How restorative are you? Introducing the restorative index*, *International Journal of Evidence-based Research*, 2022, Volume 17, Issue 6, <<https://doi.org/10.1080/15564886.2021.1942358>>.

procedure, by making room for involvement, seeing crime in its social context, and taking a forward-looking or problem-solving approach to all the issues that might be involved.<sup>242</sup>

Johnstone further states that the true restorative justice model should seek to balance the concerns of the victim and the community with the need to reintegrate the offender into society and should seek to assist the recovery of the victim and enabling all parties with a stake in the justice process to participate fruitfully in it. From the viewpoint of restorative justice, Johnstone concludes that justice should not only be from the point of view of a judge but also of the victim, the offender and the community.

The whole essence of restorative justice is to improve the relationship between the victim and the offender in a way to reintegrate the offender into the community. Crime is generally known as a violation of a person's rights by another person, and this is much more significant than the breach of legal rules. Wright believes that restorative justice can create a new model of justice where "the response to crime would be, not to add to the harm caused, by imposing further harm on the offender, but to do as much as possible to restore the situation."<sup>243</sup> Wright further states that:

Crimes are not necessarily different in kind from other actions by which people harm each other... Crimes are actions by which people cause certain types of harm, prohibited by law, and for which, if a person is convicted of them in court, a sanction may be imposed.

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<sup>242</sup> Johnstone, G, *Restorative Justice: Ideas, Values, Debates*, Cullompton, Devon: Willan publishing, 2020 as cited in Hopkins, B, *The Restorative Classroom: Using Restorative Approaches to Foster Effective Learning* London, Routledge, 2023, <<https://doi.org/10.4324/9781003423935>>.

<sup>243</sup> Wright M. *Researcher Practitioner Mediator, Consultant Lambeth Mediation Service, European Forum for RJ*, UK, 1999, p. 112, 1996 as cited in Waardenburg, L, Huysman, M & Sergeeva, AV, *In the Land of the Blind, the One-eyed Man is King: Knowledge Brokerage in the Age of Learning Algorithms* Organization Science, 2022, Volume 33, Issue 1, <<https://doi.org/10.1287/orsc.2021.1544>>.

In responding to crime, true justice is not only to punish the offender as it is practised in contemporary Nigeria's criminal justice system, but a system that makes the offenders aware of the harm they have caused to the victims and to appease the victims by way of reparation and to prevent the offenders from repeating that harm. The nature of reparation and measures to prevent re-offending should be decided collectively and consensually by offenders, victims and the community.<sup>244</sup>

Under the indigenous Nigerian justice system, the objective of restorative justice is to strengthen human relations and to maintain harmony in a community. It was aimed at ensuring that parties are returned to *status quo ante* at the end of the proceedings and this made the indigenous restorative justice traditions more valuable than the contemporary retributive traditions. The formidable historical restorative justice traditions have been submerged by the hegemonic cultural forces in the contemporary world which projects the complete opposite of what the indigenous restorative justice traditions stand for.

The African restorative justice traditions are projected as barbaric and sub-standard to the Western traditions not only by the colonial masters but also by the Western scholars. It is to be noted that regardless of the opinion of the West, the Afro-historical dispute resolution should not be allowed to go into oblivion because according to Cicero, 'not to know what happened before one was born is to remain a child forever.'<sup>245</sup> An historical review of restorative justice will be good to understand what factors influenced the move away from

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<sup>244</sup> Adeyemi, AA, *Personal Reparations in Africa: Nigeria and Gambia*, 1994 as cited in Agu, AO & Ibe, P, *Rethinking School Discipline in Africa: From Punishment and Control to Restorative Justice Practices*, The Routledge Handbook of Africana Criminologies, 2020, <<https://www.taylorfrancis.com/chapters/edit/10.4324/9781003004424-17/rethinking-school-discipline-africa-augustine-obelegu-agu-patrick-ibe>>.

<sup>245</sup> Marcus Tullius Cicero, Italian philosopher (106 BC- 43 BC) as cited in Gilbert, N, Graver, M & McConnell S, *Power and Persuasion in Cicero's Philosophy*, Cambridge University Press, 2023, <<https://books.google.com.ng/books>>.

restorative justice in favour of the criminal justice model and why we might in the recent times return fully to restorative justice in Nigeria.

The 20th-century scholars of dispute resolution were of the assertion that restorative justice was a concept that developed at various times within Western States between 1970 till date. Albert Eglash, an American psychologist, is generally credited with being the first scholar to coin the term restorative justice in his Victim Offender Reconciliation Program in 1970 in Ontario, Canada.<sup>246</sup> Though the internationalisation of the concept of restorative justice has actually projected the concept to what it is today, it is a wrong assertion by the Western scholars and criminologists to have attributed the historical emergence of the concept to the West in a way to discredit and sweep the Afrocentric development of restorative criminal justice under the carpet just for the fact that the African concept lacked documentation. The parochial belief of Western authors and commentators is wantonly exhibited by their erroneous conclusion that ‘when races are classified by colour, the only one of the primary races which has not made a creative contribution to any of the 21<sup>st</sup> century civilisation is the black race.’<sup>247</sup>

As far as restorative justice is concerned, it could be argued that it has been part and parcel of African traditions and there is a word that goes some way to explaining it. It is a word from the Nguni language family, which comprises Zulu, Xhosa and other Bantu tongues. Restorative justice is summarised as ‘I am because you are’ or ‘my humanity is tied up with

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<sup>246</sup> Albert Eglash, *Beyond Restitution: Creative Restitution* (From Restitution in Criminal Justice, By Joe Hudson and Burt Galaway - NCJ-41838), NCJ-47998, 1977 as cited in Capeheart, L & Milovanovic, *Social Justice: Theories, Issues and Movements*, Revised and Expanded Edition, 2020, <<https://books.google.com.ng/books>>.

<sup>247</sup> Dalgleish D., *Pre-Colonial Criminal Justice in West Africa: Eurocentric Thought versus Africentric Evidence*, African Journal of Criminology and Justice Studies Vol. 1(1) pp. 55-69, 2005 as cited in Ahmad, J, & Wangenheim, GV, *Access To Justice: An Evaluation of the Informal Justice Systems*, Liberal Arts and Social Sciences International Journal, 2021, <<https://ideapublishers.org/index.php/lassij/article/view/243>>.

your humanity.’ Omale is of the view that restorative justice is a paradigm that was in use in Africa prior to the coming of colonialists and should be revived by African countries because it promotes healing and restores relationships between offenders, victims, and community much better than the Western adversarial system. He argues that restorative justice can work much better in the 21<sup>st</sup> century in Africa than the court proceedings. According to him, the retributive justice system and culture, unlike the restorative justice paradigm, is more likely to get people into more trouble than getting out of trouble. Therefore, a restorative justice paradigm is ideal for Africa because it would reduce dependence on external aid, promote active participation by local communities, and contribute to the development of Africa’s system of dispute or conflict resolution.<sup>248</sup>

### **4.3 Concept of Retributive and Restorative Justice**

**a. *Retributive Justice*:** Retributive justice is based upon the punishment of the offender as a means of preventing vengeance from the victim. The philosophy behind this form of justice system is to assuage the victims that naturally have the propensity if they see that the offender has been adequately punished.<sup>249</sup> In other words, the punishment of the offender gives the victim a sense of justice, relieve and satisfaction. The traditional principle of penology in Nigeria is the retributive justice system. This system has its origin from the Mosaic Law in the Bible, “an eye for an eye, a tooth for a tooth”. The important part of retributive justice is the proportionality of punishment to the crime committed. Retributive system punishes severe crimes harsher than minor crimes, and the severity of the crime is usually determined by amount of harm and the moral imbalance it creates. For instance, the Criminal Code Act

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<sup>248</sup> Omale, DJO, *Justice in History: An Examination of African Restorative Traditions and the Emerging Restorative Justice Paradigm*, *African Journal of Criminology and Justice Studies*, 2006, as cited in Martell, L. *Alternative Societies: for a Pluralist Socialism*, Amazon, 2024 <<https://books.google.com.ng/books>>.

<sup>249</sup> Uruchi, JL *Creative Approaches to Crime: The Case for Alternative Dispute Resolution (ADR) in the Magistracy in Nigeria* as cited in Egbunike-Umegbolu, C, *Speedy Dispensation of Justice: Lagos Multi-Door Court House* Athens JL, 2022 <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/atnsj8&div=26&id=&page=>>.

classifies offences into felonies, misdemeanour and simple offences.<sup>250</sup> It prescribes imprisonment for not less than six months, but less than three years for misdemeanour offences, felony on the other hand is defined as an offence which is punishable, without proof of previous conviction, with death or with imprisonment for three years or more and are considered the severest offence. From the above classification, it is obvious that the Criminal Code basically classified offences based on the degree of seriousness of the wrongdoing with proportionate punishment.

Retributive justice approach ask three questions: Who committed it; whether the elements of criminal offence exist; and which penalty should be imposed on the offender. When the offender's guilt is proved, sentencing is carried out in structured manner by state-appointed courts.<sup>251</sup> Punishment is made to be proportional to the severity of the crime. The retributive justice system is an institutionalized system of vengeance. The vengeance here is to the State because under the Nigerian law, as it is with other jurisdictions, crime is committed against the State, not against the victim who has suffered hurt or deprivation. Prosecution of the crime against the individual offender is therefore carried out by the State through the State's designated officials, the Attorney-General or the Director of Public Prosecution. According to Justice Benjamin Nathan Cardozo, a former Supreme Court justice in the United States, justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament<sup>252</sup> and if justice is to be taken out of the criminal justice system what is left is a system that serves only the criminal.<sup>253</sup>

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<sup>250</sup> Section 3, Criminal Code Act, C.38, Laws of the Federation of Nigeria, 2010.

<sup>251</sup> Andrew Ashworth, *Responsibilities, Rights and Restorative Justice*, 42 Brit. J. Criminology 578, 581–82, 201 as cited in Hodgson, J, *An Explanation of Gender, Shame and Stigma Power*, Gender, Power and Restorative Justice, 2022, pp.45-76, <[https://link.springer.com/chapter/10.1007/978-3-030-90827-0\\_3](https://link.springer.com/chapter/10.1007/978-3-030-90827-0_3)>.

<sup>252</sup> *Snyder v Massachusetts* 291 US 97 122 (1934) 166.

<sup>253</sup> *President's Task Force on Victims of Crime Final Report*, (Statement of the chairman Lois Haight Herrington), VII, 2009.

To the proponents of retributive justice, whether retributive justice deters or restores is immaterial as long as the only goal of punishing the offender to deter him/her from committing another crime is achieved.<sup>254</sup> Deterrence is considered a critical component of retributive justice system. When offenders are punished it is assumed that such punishment will serve to deter the offender and other prospective offenders from committing further crime. Deterrence is therefore aimed at preventing future crime by frightening the potential criminal or released felons. The concept of deterrence usually has two assumptions. The first is that specific punishments will deter offenders from committing further crimes, and the second is that the fear of punishment will deter others from committing such crimes. Whether the severity of punishment actually deters offenders from committing further crimes is yet to be achieved in Nigeria, hence it is debateable because most times, recidivism usually sets in as a result of the exercise of their free will by reason of drugs, alcohol and other illicit substances which they are exposed to correctional centres.

The payment of fine and/or imprisonment under retributive criminal justice system, ordinarily ought to be a way to prevent the offender from returning to crime but this has led to various challenges such as recidivism, prison congestion and high rates of juvenile crime. In all these, the victims of crime and their families as the case might be are completely neglected and where they are slightly involved in the criminal justice system, they are used as instruments of obtaining the convictions of the offenders.<sup>255</sup> In Nigeria, the major problem in the criminal justice system is the alarming long delays in the administration of criminal justice with its

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<sup>254</sup> Aloba E. *Criminal Law and Sexual Offences*. Princeton & Associate Publishing Co. Ltd, Lagos, p.97. 2016 as cited in Aidonjio, PA, Antai, GO & John, DJ, *Curtailing Male Rape in Nigeria: Legal Issues and Challenges* Journal of Sustainable Development and Regulatory Issues, 2024, Volume 2, No. 3, <<https://journal.contrariusactus.com/index.php/JSDERI/article/view/43>>.

<sup>255</sup> Ayorinde B. *Nigeria: A Reformatory Approach to the Criminal Justice System in Nigeria*, 2014 as cited in Temidayo, OJ, *Appraisal of the Role of the Police in the Criminal Justice System in Nigeria*, Academia.edu, (2022), <[https://www.academia.edu/91983581/appraisal\\_of\\_the\\_role\\_of\\_the\\_police\\_in\\_the\\_criminal\\_justice\\_system\\_in\\_nigeria](https://www.academia.edu/91983581/appraisal_of_the_role_of_the_police_in_the_criminal_justice_system_in_nigeria)>.

consequent prison congestion. The current congestion of the correctional centres can be attributed largely to the attitude that every case must go through litigation, the whole hug of criminal trial process.

### **b. Restorative Justice**

Restorative justice grew out of criticism of retributive justice. The disappointment of the criminal justice system relating to its failure to address the victims' needs as well as its ineffectiveness in reducing criminality which influenced other emerging approaches like community justice Alternative Dispute Resolution (ADR). Restorative justice is an approach to justice which focuses on reconciliation. It sees a criminal or inappropriate act as a violation of people and relationships rather than simply a violation of a rule or law. The restorative justice approach is based on the idea that punitive measures or forced submission does not result in increased likelihood that the person further abides by social norms. It suggests that such an approach can build resentment in the perpetrator and contribute to aggression. Proponents of restorative justice further believe that such approaches rarely address the damaged relationship between individuals which can lead to resentment and lingering feelings of hurt and hostility for victims. For example, if a child were to steal a piece of candy from another, and they were forced to say sorry and put in time out, would that result in the young person never stealing candy again? Is the child whose candy was taken feeling better about the situation? Restorative justice, according to some restorativists, has a republican worldview,<sup>256</sup> in which community members regulate their own behaviour. The proponents of restorative justice, believe that positive outcomes are much more likely when the focus is placed on a dialogue between the perpetrator and victim and reconciliation with

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<sup>256</sup> Braithwaite, J and Pettit, P, *Not Just Deserts: A Republican Theory of Criminal Justice*, 1992 as cited in Pereboom, D, *Wrongdoing and the Moral Emotions*, Oxford University Press, 2021, <<https://books.google.com>>.

accountability rather than punishment and forced apology. The restorative justice approach focuses on the damage done to the relationship and includes both parties, as well as trained professionals, in accountability, healing, and growth.

The concept of restorative Justice on the other hand emerged as a social movement for justice reform having realized that the retributive justice has failed to reduce the rate of crime. Scholars and practitioners are beginning to look to other modes of eradicating crime from the society.<sup>257</sup> With restorative concept of justice, the advocates believe that the ultimate aim of criminal justice system which is the attainment of justice for all parties and the eradication of crime from the society will be achieved using non-custodial methods of correction instead of the traditional pains of punishment and imprisonment.

The goal of restorative criminal justice system is to reconcile victims, offenders and their communities while repairing the harm caused by the criminal behaviour. The role of the State is diminished under restorative justice because it facilitates active participation by victims, offenders and their communities. It is based on the offender's admission, hence, its process is not adversarial because there is no need to convince anyone present of the veracity of one party at the expense of the other. Since the objective of the process is not to penalize, the offender may take off the mantle of defence and engage in a sincere dialogue toward the formulation of a reparation plan.<sup>258</sup> A reparation plan typically includes both monetary reparation and a rehabilitative program. Community work is also often agreed upon by the

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<sup>257</sup> Bazemore, G & Schiff, M, *Restorative Community Justice: Repairing Harm and Transforming Communities*. Cincinnati, OH: Anderson Publishing, 2015, as cited in Doan, BN & Seering, J, *The Design Space for Online Restorative Justice Tools: A Case Study with ApoloBot* Article No. 694, pp. 1-19, Proceedings of the 2025, <<https://doi.org/10.1145/3706598.3713598>>.

<sup>258</sup> Bazemore G, *Restorative Justice and Earned Redemption*, 41 AM. BEHAV. SCI. 768, 1998 as cited in **Burton, AL, Cullen, FT, Pickett, JT, Burton, VS, Angela J & Thielo, AJ**, *Beyond the Eternal Criminal Record: Public Support For Expungement* Volume 20, Issue 1, Criminology & Public Policy, 2021, <<https://doi.org/10.1111/1745-9133.12531>>.

participants.

Restorative justice focuses on addressing the problems caused by a criminal act than just trial and punishment of the offender. It is an all-inclusive problem-solving approach that ensures that the interests of major stakeholders in the crime are well addressed and protected. Under restorative criminal justice, the victim is compensated and the offender is effectively reintegrated into the community. It is a justice system where the victim, the offender and the community all participate in the crime disposal process and these are the values of restorative justice.

Restorative justice is the practical application of some components of Alternative Dispute Resolution where the parties and their families have conferences to discuss the way forward by fashioning out the solution to the crime committed by the offender. It is a process through which remorseful offenders accept responsibility for their misconduct to those injured and to the community that, in response allows the reintegration of the offender into the community. The emphasis is on restoration of the offender in terms of his or her self-respect, restoration of the relationship between offender and victims, as well as restoration of both offenders and victims within the community.<sup>259</sup>

Restorative justice provides a very different framework for understanding and responding to crime. Crime is understood as harm to individuals and communities, rather than simply a violation of abstract laws against the state. Under restorative justice, the restoration of the emotional and material losses resulting from crime is far more important than punishing the

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<sup>259</sup> Ibidapo-Obe A. *Restorative Justice and Plea Bargaining Practices: A Tilt toward Customary Criminal Justice*, 3<sup>rd</sup> edn, Gold Press Limited, Ibadan, p. 76, 2019 as cited in Majeed, N, Hilal, A & Rani, T, ***Alternative Dispute Resolution in Criminal Cases: Challenges and Possibilities in Pakistani Legal Framework***, Bulletin of Business and Economics, 2023, Volume 12, No. 4, <<https://doi.org/10.61506/01.00175>>.

offender alone. The restorative justice approach offers processes that differ substantially from the criminal processes.

For restorative justice process to take place, certain conditions must have been fulfilled. First, the offender must have admitted his/her crime. Second, both the offender and the victim are required to consent to a face-to-face restorative dialogue. Restorative Justice does not replace the Criminal Justice system, rather it complements the existing well-functioning justice system. It is about victims and offenders communicating within a controlled environment to talk about the harm that has been caused and finding a way to repair that harm. It refers to an approach to justice that seeks to repair harm by providing an opportunity for those harmed and those who take responsibility for the harm to communicate about and address their needs in the aftermath of a crime.<sup>260</sup> It is a process that states that because of the hurt that crime causes the victim, justice should heal relationship. In criminal matters,

Restorative Justice is seen as a convergent point for offenders, victims, and those affected by crime, often with the help of an intermediary in the resolution of the criminal matters. It stresses and draws on the traditional and religious belief, coupled with that of the State that disputes or crimes can be repaired without recourse to the conventional Criminal Justice system. It is against this backdrop that restorative justice is seen as a concept that focuses on the victims of crime rather than focussing on the offender which consequently provides a better alternative to mass incarceration and prison congestion.

The offender and victim as well as affected community members, are direct parties to the restorative process. Attorneys and other professionals are generally not invited to be part of the process, and if they are present, their role is limited to the provision of information and

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<sup>260</sup> Department of Justice, Government of Canada, <<https://www.justice.gc.ca> 2021>.

service providers rather than as decision-makers.<sup>261</sup> The conception of the victim as a partner in the decision-making process following a crime is one of the key innovations of restorative justice. Each participant's voice is heard in its authentic form, without being processed through procedural or evidentiary filters.

Under restorative justice, victims frequently need their abuser to answer their questions, reassure them of their safety, affirm their dignity and hear of their pain. It brings together those affected by an incident of wrongdoing to name the wrong that has been done, to describe the needs it has created, to identify the obligations that now exist, and resolve together how best to repair the harm and prevent recurrence. Conversely, offenders need the victim to disclose the human consequences of their actions, to hear their remorse and receive their apology, and to give them a chance to make things right again. Both parties hold important keys to the other's restoration both have roles to perform in meeting the other's justice needs and in transforming their relationship into a healthier condition. In restorative justice, accountability has a much more demanding character. Restorative justice requires three things of offenders; an acceptance of personal blame for inflicting harm, an assumption of active responsibility for doing all they can to put things right again and a willingness to witness first-hand the consequences of their actions on the lives of those they hurt.<sup>262</sup> It is best understood as a balance among a number of different tensions:

1. A balance between the need to rehabilitate offenders and the duty to protect the public,
2. A balance between the rights of offenders and the needs of the victims,

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<sup>261</sup> David Miers, *Situating and Researching Restorative Justice in Great Britain*, (Punishment & Society, 2004) 23-25, 2nd ed. 2004 as cited in Butler, S, Maglione, G, & Buchan, J, *Institutionalising Restorative Justice For Adults in Scotland: an Empirical Study of Criminal Justice Practitioners' Perspectives*, *Criminology & Criminal Justice*, 2024, <<https://journals.sagepub.com/doi/full/10.1177/17488958221104229>>.

<sup>262</sup> Zehr H. *The Little Book of Restorative Justice*, Intercourse, PA; Good books, 2015, as cited in Hazrati, M & Heffron, RJ, *Conceptualising Restorative Justice in the Energy Transition: Changing the Perspectives of Fossil Fuels*, *Energy Research & Social Science*, 2021, Volume 78, <<https://www.sciencedirect.com/science/article/abs/pii/S2214629621002085>>.

### 3. A balance between therapeutic and retributive models of justice.

In order to ensure justice for persons who suffer victimisation, it is also vital to establish and strengthen judicial and administrative mechanisms. Victims of crime should be enabled to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible and should be informed of their rights in seeking redress through such mechanisms. The primary concern of the criminal justice system is to ensure that justice has been done. It is therefore important for everybody working in the criminal justice system to always avoid further disillusionment and show respect and understanding for the concerns, needs and interests of the victims as thoughtlessness and lack of consideration might otherwise needlessly add to victims' pain and disappointment.<sup>263</sup>

#### 4.4 Restorative Justice during Nigeria's Pre-colonial Era

The different Nigerian communities had a proper set of laws that governed all aspects of their lives. These laws were in oral form and stored in various proverbs, saying of the elders and songs which were effectively communicated to community members from generation to generation.<sup>264</sup> Ademowo and Nuhu further assert that conflicts are bound to occur in any community because people differ in what they believe and have different interests and needs, but the means of conflict resolution or mediation vary from community to community.

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<sup>263</sup> Njoku N. C. & Sokefun J. *The Court System in Nigeria: Jurisdiction and Appeals* 2(3), International Journal of Business and Applied Social Science, 10, 2016 as cited in Egbunike-Umegbolu C, & Athens JL, *Speedy Dispensation of Justice: Lagos Multi-Door Court House (LMDC)*, Volume 8, Issue 3, pp, 279-308, HeinOnline, 2022, <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/atnsj8&div=26&id=&page=>>>.

<sup>264</sup> Ademowo, A & Nuhu, A, *Indigenous Knowledge and Conflict Management in Africa: A Study of Proverbs Use in Conflict Management Among Nigerian Communities*, International Journal of History and Cultural Studies, 2017) as cited in *Sustaining SMEs through Indigenous Knowledge Systems: Exploring Opportunities and Challenges*, Southern African Journal of Entrepreneurship and Small Business Management, 2024, Volume 16, No. 1, [https://www.scielo.org/za/scielo.php?pid=S2071-31852024000100020&script=sci\\_arttext](https://www.scielo.org/za/scielo.php?pid=S2071-31852024000100020&script=sci_arttext).

In the pre-colonial Nigeria, many Nigerians resolved their disputes using the traditional and informal justice system. Despite the popularity of this restorative practices among the indigenous people of Nigeria, these systems were regarded as obstacles to development during the colonial area. Keulder Argued that ‘those who have criticised the African traditional justice system as being too traditional to promote development are often too simplistic in their arguments’.<sup>265</sup> The indigenous criminal justice system is equated with ‘backward’ and ‘modern’ with ‘advanced’ initiatives. The main problem with this equation according to Keulder is that, it is based on a very static and simplistic view of tradition because it ignores the fact that traditions are often ‘invented’ and hence, very ‘modern’ in content. According to Peter d'Errico, indigenous communities exist prior to States creation and the proper meaning of "primitive" and "aboriginal" under the indigenous criminal justice is peace-making that allows each community to survive from time immemorial.<sup>266</sup>

Weitekamp reviewed the anthropological origin of restorative justice practices and claimed that restorative justice had existed in what he called ‘the acephalous societies’ (non-state) and ‘early state societies.’ Weitekamp further argued that some of the new programs of restorative justice are in fact very old practices and that they are not as new as have been presented by the contemporary progenitors of restorative justice. He further states that the ancient forms of restorative justice have been used in societies and by the indigenous people such as the Aborigines, the Inuit, and the native Indians of North and South America where family group conferences and circle hearings were the forms of dispute resolution practices of these ancient

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<sup>265</sup> Keulder, C, *Traditional Leaders and Rural Development* as cited in More, M, *The Institution of Traditional Authority in Okombahe, Erongo Region of Namibia: Can the Institution Be Reconciled With Democratic Values of Justice?* Law, Democracy and Development, 2021, Volume 25, <[https://www.scielo.org.za/scielo.php?pid=S2077-49072021000200006&script=sci\\_arttext](https://www.scielo.org.za/scielo.php?pid=S2077-49072021000200006&script=sci_arttext)>.

<sup>266</sup> D'Errico, P, *Restorative Indigenous Justice: States and Communities in Tension*, Legal Studies Department, University of Massachusetts Amherst, MA, *Contemporary Justice Review*, Vol. 2 Issue 4, p383, 12p, December,1999 as cited in Elliot, EM, *Security, With Care: Restorative Justice and Healthy Societies*, Amazon, 2020, <<https://books.google.com.ng>>.

people. It is quite far from the truth that for the contemporary scholars to attribute the origin of restorative justice to the 1970s projection of conflict resolution is best described as a return to the restorative criminal justice system that were practiced some millennia ago by our ancestors.<sup>267</sup>

Prior the arrival of the colonial masters into the shores of the Nigeria, the pre-colonial Nigerian societies had their own criminal justice systems. As there were many tribes and many communities in each tribe, also there were many criminal justice systems and these are different from one region to another. Before the advent of the British, the king and his chiefs would gather at the king's palace to resolve disputes between and among members of the community. The societies had their own restorative criminal justice systems which were not punitive oriented but aimed at purging the criminal of the evil spirit that made him to flout the rules and norms of the society. It is noted that even the penology principle of the Nigerian pre-colonialism was restorative in nature as opposed to being restitutive. The impact of colonialism on the indigenous justice system was that colonialism distorted, re-directed and subjugated, the indigenous justice system. It was generally believed that the offender ordinarily would not choose to commit criminal act. The oracle was consulted so as to make the spirit world to tell the living what was amiss whenever there was criminal infraction by an offender. The consultation of the oracle would make the gods to be appeased for the cleansing of the offender and make him whole.

#### **4.5 The Yoruba Indigenous Restorative Criminal Justice System**

Restorative justice system as we have it today has been part of the indigenous criminal justice

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<sup>267</sup> Weitekamp, E.G.M, *The History of Restorative Justice as cited in Turner, K, Inconvenient truths in suicide prevention: Why a Restorative Just Culture should be implemented Alongside a Zero Suicide Framework* Australian & New Zealand Journal of psychiatry, 2020, <<https://journals.sagepub.com/doi/full/10.1177/0004867420918659>>.

system of the peoples of Nigeria. The indigenous Nigerian societies had their criminal justice system where the king and his chiefs gather at the palace of the king to resolve disputes that emanated as a result of criminal acts amongst members of the societies.

The restorative justice system amongst the Yoruba reflected the penal system that is restorative in nature as against the punitive oriented practices.<sup>268</sup> It was largely believed amongst the indigenous community of Nigeria that such penal practices aimed at purging criminal elements in the societies of the evil mind that was responsible for making the offenders flout the rules and norms of the society. It was generally believed that a criminal minded person was under the influence of evil spirit that pushed him to indulge in criminal act which was generally referred to particularly amongst the Yoruba people of the Nigeria western extraction, as ‘*omo esu*’ and amongst the Igbo people of the Eastern part of Nigeria, such evil-minded person would be referred to as a child of *ekwesu*.

Concerning who is vested with the legal title in family property, conflict resolution and management of family property, the Supreme Court adopted the Yoruba culture and tradition in several decisions. The apex Court in *Alao & Anor v. Ajani & Ors.*<sup>269</sup> held that:

It is now firmly settled that under Yoruba customary law, the legal title in Family property is vested in the Family. All members of the Family are jointly entitled to the property and that joint interest remains undivided until the property is partitioned or until the Family, by a conscious act of its accredited representatives, has transferred that legal interest to another member or to an outsider. Whilst the Family is invested with the legal title, it may, and frequently does allot parcels of

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<sup>268</sup> Oladeji N. *Proverbs as Language Sign-Posts in Yoruba Pragmatic Ethics*. **Second Order: An African Journal of Philosophy**, No 1:(2) 45-52, 1988 as cited in Danso-Wiredu, EY, *Saving For One Another: The Informal Economy of Subsistence Among the Urban Poor in Ghana*, **GeoJournal**, 2021, Volume 86, pp. 287-1299, <<https://doi.org/10.1007/s10708-019-10123-0>>.

<sup>269</sup> (1989) LPELR-406 (SC).

the land to members of the Family. But such allotment does not import the notion of a transfer of ownership. It is no more than a right to occupy and use the land so allotted for the benefit of the allottee.

The Yoruba methods of distribution of assets under the customary law, was also given judicial recognition by the Supreme Court of Nigeria in *Akinyede & Ors v. Opere & Ors*.<sup>270</sup>

*Per Ademola, JSC* that:

It is common ground that the Yoruba customary law admits of two methods of distribution of assets-not land-when the progenitor died intestate. Distributions are usually made by what the Yorubas call "Idi Igi" which the learned judge referred to as per stirpes, or "Ori Ojori" which he referred to as per capita.

Another tools which the Yoruba custom and tradition have been used to resolve issues is the use of proverbs. Yoruba proverbs are verbal expression of the essence of folk culture. This perception of proverbs is related to definition of proverbs as “short, traditional statements used to further some social end” and it is noted that proverbs remain a very powerful and effective instrument for the transmission of culture, philosophy, social morality and values and the sensibility of the people.<sup>271</sup> In essence, the values of proverbs do not lie only in what they reveal of the thoughts of the people, they are also models of compressed or forceful language that make people behave according to norms of the land.

In the Yoruba culture and tradition, proverb is a means of conflict resolution and the appropriate proverbs based on the issue for resolution are handed out to the disputants. Few of

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<sup>270</sup> (1968) LPELR-25441 (SC) (P. 3, paras. A-B).

<sup>271</sup> Adeyemi A. and Salawudeen M. *The Place of Proverbs in Peace Education in Nigeria: Implications for Social Studies Curriculum*. International Journal of Humanities and Social Science, Vol.4. No 2, 2014 as cited in Lin, YR, Computers & Education, 2023, Volume 195, <<https://www.sciencedirect.com/science/article/abs/pii/S0360131522002810>>.

those Yoruba proverbs are discussed as follows:

- i. ***Agbe maja kan osi, a ja matan ni o da*** (No two people stay together without any fight, it is bad to fight to finish). This proverb is used to admonish two or more people to always settle their differences whenever they disagree.
- ii. ***Eyin ati ahon nan ma n ja*** (It is not possible to live together and not have disagreement; not finding solutions to the constant conflict is what is condemnable). Implication: The obvious implication of these proverbs are that every relationship comes with some degree of fracture, but such often time conflict should not deter the continuity of the relationship. Thus, we should at all time find means of settling conflicts.
- iii. ***Ibere ogun laa mo, eni kan kii mo ipari e.*** (It is the beginning of war that we know; nobody can tell how it would end).<sup>272</sup> The meaning of the proverb is “Let sleeping dogs lie.” In line with this proverb, the best way to handle conflicts and inter personal issues is to avoid them. Often time the elders employ this proverb to warn warring parties to desist from war and to bury their hatchet for the sake of peace; and that war inadvertently yields unanticipated devastating consequences.
- iv. ***Okun kii ho ruru ka waa ruru.*** (We must not sail a turbulent ocean turbulently). This proverb is used to pacify conflicting parties to be patient with regards to issues and problem when they arise.<sup>273</sup> It is used to advise people that patience is a virtue capable of helping in amicably settling a perceived and real conflict.
- v. ***Idobale kii se iwa*** (genuflecting) is not tantamount to having good behaviour. To

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<sup>272</sup> Delano, OI, *Owe L'esin Oro: Yoruba Proverbs, their Meaning and Usage*. Oxford: Oxford University Press, 1966 as cited in Ayinuola, QA. *Linguistic Representations of Postproverbial Expressions among Selected Yoruba Speakers: A Socio-Cultural Interpretation*, Matatu, 2020, <[https://brill.com/view/journals/mata/51/2/article-p311\\_7.xml](https://brill.com/view/journals/mata/51/2/article-p311_7.xml)>.

<sup>273</sup> Bewaji, JAI, *Language, Culture, Science, Technology and Philosophy*, Journal of African Philosophy. Vol. 1, No. 1, 1997 as cited in Chetty, K and Hungwe, A *Human Rights and People of Colour—A Historical View from the South*, Human Rights in a Changing World, 2023, pp. 29-64, <[https://link.springer.com/chapter/10.1007/978-3-658-39533-9\\_2](https://link.springer.com/chapter/10.1007/978-3-658-39533-9_2)>.

prostrating is an act of respect among the Yorubas, but this proverb points to the truth that it is possible to imbibe the acts of prostrating and still not have imbibe the good traits of having to behave according to the societal prescription when matters arises. It underscores the value that the Yoruba attach to morality and humility, even in the face of harassment, in the context of attempts to maintaining peaceful co-existence.

- vi. ***Maja ma sa laa mo akikanju, eyi to moo ja ti o omoo sa, iruu won nii bogun lo*** (He, who fights and run away at the point of death, lives to fight some other day). The import of this proverb is to discourage people from destructive fight.<sup>274</sup> It is to pacify the warring parties that conflict should not deteriorate to the extent of being killed or getting to the extent of killing one another.
- vii. ***Kekere laa ti n peekan iroko, tori ti o ba dagba tan ebo nii gba lowo eni.*** (An evil habit is easily subdued in the beginning but when it becomes incurable, it gains strength. This proverb is used to nip an aggression in the bud before it gets out of hand.
- viii. ***Aimokan aimokan ni ekute se npe ologbo ni ija.*** (It is out of naivety that rat calls cat to a wrestling competition. This proverb is usually used to shun or warn people from engaging in war. It tells that war is bad and destructive. That it knows no bound when it begins, and nobody can actually lay claim to whether or not he/she would survive it.
- ix. ***Aa kii ti kootu de dore*** (You don't come back from court to become friend; it is better to be loved than feared) The implication of this proverb is that we should not overstretch issues when it actually can be resolved without having to involve

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<sup>274</sup> Fasiku G. *Yoruba Proverbs, Names and National Consciousness*. Journal of Pan African Studies. Vol. 1, No 4. 48-56, 2018 as cited in **Fakuade, G, Friday-Otun, J & Adeosun, H, Yoruba Personal Naming System Sociolinguistic Studies**, 2020, Volume 13, No. 2-4, <<https://utppublishing.com/doi/abs/10.1558/sols.37825>>.

third parties

- x. ***Alagbara ma mero baba ole*** (An indiscreet man of valour is a worthless idler). This proverb means that thoughtfulness is superior to sheer use of strength which could incite conflict and bullying. It lays emphasis on the need to employ wisdom and dialogues and not physical strength in resolving issues. The proverb tries to discourage violence in conflict resolution process.
- xi. ***Oro pele a ma yo obi lapo*** (A good word takes kola nut from the pocket Soft words win hard hearts A soft answer turns away wrath).<sup>275</sup> What this implies is that words are capable of making or marring a relationship. That if good words are spoken, it is capable of restoring a supposed tension and conflicts. The import of this is that words hold the key to amicable conflict resolution. It is also a warning to the parties to be mindful of their utterances during conflicts.
- xii. ***Mafara kanmi kii lo soja lo ra nkan*** (He who does not want to relate and be touched must resist going to market-place). This proverb holds that life is more or less a market place, where existence means the possibility of inevitable conflict with one another because it is important that people relate. He who must not relate with people must not come to the market place of existence where relationship and conflict co-exist. What this means is that in every relationship, there is bound to be differences which should only be managed if harmony is to be achieved.
- xiii. ***Oko kii je ti baba t'omo koma ni aala*** (A farm does not belong to a father and son and not have demarcation). This points to the reality of the limitations of rights and privileges that everyone enjoys; it is to the effect that there are limitations to

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<sup>275</sup> Ogunsiji A. *Utilitarian Dimension of Language in Nigeria*, in *Language Attitude and Language Conflict in West Africa*. (eds.) by Herbert Igboanus, Ibadan: University Press, 2001 as cited in Filani, I, *The Linguistic Style of Nigerian Mediated Comedies in English* (Humour Theory and Stylistic Enquiry, 2023) pp. 181-203, <[https://doi.org/10.1007/978-3-031-40387-3\\_8](https://doi.org/10.1007/978-3-031-40387-3_8)>.

which we can get along with one another without quarrelling.

- xiv. ***Ohun to wu o o wumi, l'omo iya meji se n jeun lotooto.*** (All men do not admire and love the same objects, hence this makes the children of the same mother to eat with different plates.<sup>276</sup> This is used to underscore the place of diversity in human interactions and daily living no matter how closely related we may be.
- xv. ***Okeere l'omo iya dun*** (Respect is greater at a distance Implication This is used to underscore the truism that undue closeness brings with it a level of rancor which could bring friction in relationship. One is therefore expected to appreciate this rancor and manage it appropriately.
- xvi. ***A gbo ejo enikan da, agba osika ni*** (Do not pronounce sentence till you have heard the story of both parties. This is used to call a mediator in a dispute to order, that he/she must be fair; he/she must at all times give room to fair hearing which is a requisite for justice and peaceful coexistence.<sup>277</sup>
- xvii. ***Ai kowo rin ejo nii je ejo niya*** (The refusal of snakes to walk together is what makes them to suffer).<sup>278</sup> No person has the final answer but everyone has something to contribute. Implication. This is used to advocate that people should at all times be together in peace and not fight and be disintegrated. It underscores the need for collectiveness as a requirement for peace and development.

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<sup>276</sup> Ademowo AJ, *Indigenous Languages and Techno-scientific Development in Africa*, Afro-Asian Journal of Social Sciences, Volume 2, No. 2, Quarter iii. 28-36, 2012 as cited in Kago, G, & Cisse, M, ***Using African Indigenous Languages in Science Engagement to Increase Science Trust***, Frontiers in Communication, 2022, Volume 6 <<https://www.frontiersin.org/journals/communication/articles/10.3389/fcomm.2021.759069/full>>.

<sup>277</sup> Oladeji N. *Proverbs as Language Sign-Posts in Yoruba Pragmatic Ethics*. Second Order: An African Journal of Philosophy, No 1:(2) 45-52, 1988, as cited in Nimram, MD, Nimram, DN, Azi, NJ, Ifeoma, UA & Aluke, JD, *Cultural Linguistic Study of Post Proverbials of Taboo Expressions of Selected Plateau Languages and their Implications*, SunText Review of Arts & Social Sciences, 2025, Volume 6:1 <<https://suntextrreviews.org/uploads/journals/pdfs/1746702333.pdf>>.

<sup>278</sup> Olubunmi A. *An Ethno-Methodology of Selected Yoruba Proverbs*, International Journal of Arts and Science, Vol. 3, No 10, 2010 as cited in Agbenyo, EY, ***The literary significance of proverbs used in selected West African drama***, University of Education, Winneba Faculty of Foreign Languages and Communication, 2023 <<http://41.74.91.244:8080/handle/123456789/3425>>.

xviii. *Mowa fun oniwa nii je ore jore* (To know people according to their beliefs and character is the means to enhance friendship). Only the person who is willing to give up his or her monopoly on the truth can ever profit from the truths that others hold. This underscores the position that people should understand differences as the bedrock of sustained relationship. That it is better to experience conflict and manage it than not to have any misunderstanding in relationship.

The use of proverbs promotes the values of good conduct, respect for elders and the young, warning and advice, cordiality and cooperation which are vital for peaceful co-existence. In fact, in many African communities, the use of proverbs is an integral aspect of *conflict* resolution procedures. Amongst the Yorubas, particularly in the area of conflict resolution, proverb was one of the tools used for dispute resolution.

The Yoruba Indigenous Restorative Justice System reflects the values that are articulated in the justice system that is accessible, effective and responsive to the needs of all Yorubas, including the integration of traditional conflict resolution mechanisms. The Yoruba indigenous restorative criminal justice system, complements the formal legal system, providing a culturally relevant and community-focused approach to handling dispute and criminal behaviour. This system underscores the importance of community involvement in the justice process, promoting resolutions that not only address the immediate issues but also work towards the long-term restoration of peace and order within the Yoruba community.

#### **4.6 The Igbo Indigenous Restorative Criminal Justice System**

Igbo is one of the major tribal groups in Nigeria that occupies mainly the eastern part of Nigeria which includes Anambra, Abia, Enugu, Ebonyi and Imo states. Just as every culture has its varied approaches to regulating the social conduct of its populace so as to attain its preferred societal goals, maintaining civility and order, the Igbo indigenous system of justice

may be considered a fair representation of most indigenous judicial systems in Nigeria with few variations. The Igbo tribe, has a legal framework that is used to maintain peaceful coexistence of all societies which includes among other things the penal procedures that regulate the punishments to be meted out to the offenders who violate the established communal rules and regulations.

The Igbo concept of restorative criminal justice is a mixture of habits, customs, tradition of realism, beliefs, laws, regulations with extensive belief in the supreme God that has supernatural power that plays a critical role in the regulation of the day-to-date activities of the Igbo people.<sup>279</sup> The powers of the Supreme God are revealed in the names that are given to Him: *Chukwu* (The Great Spirit), *Osebuluuwa* (The Lord who upholds the world) *Chineke* (The Creator Spirit), *Ezechitoke* (The Spirit King Creator), *Okasiakasi* (The Greatest Being), etc. Apart from the belief of the Igbos in the Supreme Being, they also believe in the lesser spirits that are good and also in the bad spirits as well as their ancestors. The law or *iwu* in Igbo is generally pointed towards the maintenance of spiritual and social harmony.

The Igbo society has a well articulate unwritten penal system that are embodied in its customary laws. Despite the infiltrations of the British influences, some Igbo traditional practices are quite resilient and are being practiced in the hinterland till date. The Igbo legal rules comprise of two main sources: ordinary human law or moral law (regulating rational human conduct whose violation is against human society) and Divine laws (whose violation is not only against society but also more directly against the Supernatural).

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<sup>279</sup> Oraegbunam, I.K.E. *Crime and Punishment in Igbo Customary Law: The Challenge of Nigerian Criminal Jurisprudence*, 2010 as cited in Asika, IE, ***Resurrecting Igbo Cultural Values through Folklore: Egwu Onwa and its Commitment towards Societal Ethos***, Nigerian Journal of African Studies, 2020, Volume 2, No. 2, <<https://www.nigerianjournalonline.com/index.php/NJAS/article/view/1332>>.

While the Igbos consider the Divine laws as the natural laws that attract heavy penalties, lesser penalties are attached to breaking human laws. Furthermore, the Igbos believe that no violation of divine laws would go unpunished. The offenders must inevitably be punished either during their lifetime, or at the end of it, or even during their next life cycle. When an offender violates the social order, the penal system amongst the Igbos requires that the offender should be held in custody while consultation of the oracle is performed to inquire about the evil that led the offender to commit such an offence.

The penal system of the Igbos could be by either '*Ikwala*' or '*Nkuchi*'. While '*Nkuchi*' means 'replacement' of the items stolen or destroyed as the case may be, '*Ikwala*' means putting the offender to shame and this is referred to as 'shaming'. *Ikwala* is a form of confession to the gods or to the victim or the victim's family by the offender. This is done for the cleansing of the land as well as the victim particularly when the wrong that the offender committed against the victim is that of defilement. The main reason of practicing *Ikwala* was to put the offender to shame and that if the offender could endure the shame that is attributed to the confession of the offender's crime, it is believed that the gods will forgive, cleanse and make him whole again.

If the crime of the offender was against the property of another person, moveable or immovable, the appropriate punishment would be as provided by the *Nkuchi*. This is a form of punishment whereby the offender is made to dance round the vicinity of wrong doing, telling the on lookers what he had stolen or done and asking for forgiveness from the victim as well as the society. It is also a practice where the offender is made to replace the item

stolen or the arson committed. Sometimes, the offender might be required to work on the victim's farm land as reparation.

The Igbo indigenous criminal justice system, is geared toward maintaining the societal social equilibrium, development, restoration of societal sanity, correction of the offender as well as the restoration of the victim to his original position where possible or ameliorating the pains of the victim or that of the victim's family.<sup>280</sup> Under the Igbo indigenous criminal justice system, the victims are well supported by the community and this is exemplified in the work of Achebe where Okonkwo was sent to the Mbanda village to convey the message of the murder committed and bring back to the victims the reparations.<sup>281</sup>

Apart from the fact that the victims are given a voice in determining the consequence of the action of the offender, they are adequately compensated and restituted, they are equally well informed about the hearing and sentencing situation of the offender, the processes to be undertaken and the possible outcomes. The inclusivity given to the victims in the determination of consequences by making the victims to have their family members and friends in attendance with them throughout the trial process gives credence to the Igbo indigenous criminal justice system. In the case of murder, food will be brought to the family and the community members would stay with the victim late into the night giving them emotional support. The community members sometimes would stay with the victim's family for as long as may be necessary so as to alleviate the victim's family pain. In the area of compensation, the victim receives adequate material, spiritual, emotional and psychological support from both the family of the offender and the community. Spiritual cleansing and

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<sup>280</sup> Igwe, IO & Odoh, SC, *Rethink on Restorative Justice: A Recipe to Restoring Public Confidence in the Nigerian Judiciary*, **UNIZIK, Law Journal**, 23, (1) 2023.

<sup>281</sup> Achebe, C. *Things Fall Apart*, **Heinemann, London**, 1981.

prayers are made for both the village and the victim so as to prevent the reoccurrence of the wrong doing.

The goal of restorative indigenous justice system was to promote reparation of harm done to victims and communities by offenders. For instance, the victims of crime under the Afikpo indigenous systems of conflict resolution are the focus of justice processes. Victims, offenders, and their families, as well as the general community, are involved in defining harm and repair. All parties acknowledge the emotional and material loss of the victim. Offenders and their families are held responsible for the victim's injury and they are not only persuaded to pay restitution to the victims but also made to apologize to the victim, to his or her family and the community as well. It should be noted that under the indigenous criminal justice system, the community provides appropriate support to victims and their families. In order to purge such criminal-minded individual of his anti-social behaviour, the gods would be appeased for the cleansing of such person and the community at large. This is not to emphatically state that there was no prison system in the indigenous era, rather the prison system was not penitentiary in nature.

Proverbs are traditional sayings that convey wisdom, morals, and lessons from the cultural perspectives of various Nigerian ethnic groups. Each proverb typically reflects common values or beliefs, often using metaphor and symbolism to illustrate deeper meanings. For example, one proverb states, "When the music changes, the dance also changes," signifying that wisdom and adaptability come with age.

#### **4.7 The Use of Igbo Proverbs in Conflict Resolution**

Proverb is the wisdom of many and the wit of one; the experience and wisdom of several ages

gathered and summed up in one expression; and the edge tools of speech.<sup>282</sup> This means that proverbs are not naturally in existence but are brought to light through diverse experiences of several ages which are summed up to bring about deep thought through their expressions. Proverbs are viewed as containing the richest pool of pragmatic factor since a proverb properly contextualized, provides data that are at once linguistic, philosophical and cosmological. Proverb therefore deals with practical and realistic ideas that reveal the profound thoughts and soul of the people which constitute the true index of what a people hold important to their day-to-day life.<sup>283</sup> They constitute the form of interpretation of the principles of life and mode of conduct upheld by a people. Igbo people take proverbs as in-depth utterances whose meaning are not understood literally especially those who are not Igbo or the Igbo who are not conversant with the Igbo language.

Conflict management and resolution are very essential in determining how far the harmonious living can go in maintaining peaceful coexistence amongst the Igbo people. Conflict resolution amongst the indigenous Igbo justice system is full of the use of several proverbs. Proverbs are utterances with deep meanings which are of great value to cultures. Proverbs are very notable in Igbo culture for its impacts on the community and people especially in crisis situations. This is why there is this common saying amongst the *Igbo* 'tàà okwū ezē tupu ì kwuo meaning that we should chew very well our words before voicing them out so as to avoid conflict. Proverbs are insightful traditional assertions that express perceived truth based on experience.

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<sup>282</sup> Nwoga, D. I. *West African verse: An anthology*. London: Longman. 1967 as cited in Ogede, O, *Nigeria's Third-generation Literature: Content and Form*, <<https://library.oapen.org/handle/20.500.12657/75327>> Taylor and Francis, 2023, <<https://library.oapen.org/handle/20.500.12657/75327>>.

<sup>283</sup> Okoli, G. N. *Igbo Proverbs as a Means of Conflict Resolution*, Oja: An International Journal of Igbo, Africa and Asian Studies., 24-32, 2012 as cited in Nwakaego, OG & Agwu, SN, *Using Nigerian Languages for Conflict Resolution in Nigeria: The Igbo Example*, Nigerian Journal of Literacy and English Education, 2024, <<https://www.nijolee.net.ng/index.php/home/article/view/39>>.

Igbo people use proverbs in different contexts for various purposes such as crisis management and conflict resolution and they add to the style of discourse through their aesthetic, symbolic, figurative and cultural imports. Proverbs are based on symbolic or metaphorical language that calls for deep thinking and reflection as the words of proverb are not direct but strategic.

The Igbo people value proverbs a lot because they are full of wisdom, they portray the thought and belief system of the Igbo especially their mode of life, behaviours and human relations. Thus proverbs are rules of conduct, behaviour and veritable means of moulding character.

Most Igbo proverbs are used to direct, express, assert, and declare to persuade, inspire, console and encourage the hearer in certain issues. The following proverbs and their meaning are discussed to elucidate their impacts on conflict resolution particularly under the indigenous Igbo justice system:

- i. ***Were ehie chūwa ewu ojii, tupu o rue abali mgbe o chichiri na ewu ojii ga-abu otu*** (Look for the black goat during the day before night comes when the black goat and night would look alike). Conflicts are better resolved earlier when the impact or effects have not cause colossal damage.<sup>284</sup>
- ii. ***A kpaa akpaa, a rahụ n'ute*** (When well discussed, would sleep on the mat). When there is understanding through proper discussion or negotiation, conflict ought not to arise. This proverb instructs that those in conflict should reach a consensus through negotiation.
- iii. ***Onye gbuo nwanne ya, naani ya o ga-ebi?*** (If one kills his brother, will he live

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<sup>284</sup> Boateng, F, *African Traditional Education: A Method of Disseminating Cultural Values*. Journal of Black Studies, 13(3), pp. 321–336, 1983 as cited in Obiagu, AN, *Toward a Decolonized Moral Education for Social Justice in Africa*. Journal of Black Studies, 2023, Volume 64, Issue 3, <<https://doi.org/10.1177/00219347231157739>>.

alone?). Loneliness is the reward of him who kills his neighbour. This proverb is used in conflict resolution whereby those in conflicts are counselled on the effect of the situation.

- iv. ***N'oge okochi, okuko amabeghi onye ga-efo ya odu n'udummiri*** (During dry season, the hen does not know who will remove her feather in the rainy season). For an effective flight of a hen during the rainy season, a portion of the feather ought to be removed. When humans are likened in this situation, it predicts the fact that those in conflict do not know who would save or help the other in the future time when uncertainty befalls the individual or group.
- v. ***E gbuwe na a toro, mmadu agaghi afo*** (If killing is based on seniority, nobody will remain). There is no equality on earth. There is seniority based on age, rank, etc. In the family setting, the same is applicable; whereby bullying is not allowed irrespective of the superiority. This is obtainable because when one bullies another due to seniority, he/she would be bullied by a senior. At that, no one will be left safe.
- vi. ***Mmadu ka aha ya bu Oguadijima*** (someone's name is 'fight is not good'). Fight, war or conflict is not an ideal way of life. This is a proverb used in counselling people in conflict for peace to be restored.
- vii. ***Okọ kọwa mmadu, o gakwuru mmadu ibe ya, ma o kọwa anu ohia, ya aga n'ukwu osisi.*** (A human goes to a fellow human when wants to scratch, whereas animals go to the tree). When there is conflict, individuals involved do not help one another, yet it is needful that one should help each other in life. This proverb is an expressive one.
- viii. ***Oji onye iro n'ala jikwa onwe ya.*** (He who holds the enemy on the ground, is also holding himself). This proverb plays a vital role in conflict resolution by

educating the individuals involved that one's progress is on halt as he keeps the progress of others on halt. Nobody progresses by blocking the progress of others.

- ix. ***Nwa mmady emegbule nwa mmuṛ, ma nwa mmuṛ emegbule nwa mmady*** (Human should not maltreat spirit and spirit should not maltreat human). No one is permitted to maltreat or bully another as a result of superiority or otherwise.<sup>285</sup>
- x. **Isi ala anaghị atọ ebe a kpọrọ ya** (Head bend does not remain where it is bowed). Humility is not a sign of weakness. Accepting defeat is also not a sign of being a weakling. This proverb is used in conflict resolution whereby the individuals involved are educated that accepting defeat is not a sign of weakness but just to let peace reign.
- xi. **Mmady anaghị ekwo otu ọkọ siri kọọ ya kọhja ahụ.** (One should not as a result of the intensity of scratch, injure oneself). Actions ought not to be taken with the gravity of offence, if peace should be retained in the system.
- xii. **Egbe bere ugo bere, nke si ibe ya eberela, nku kwapụ ya.** (Eagle and hawk should perch, and anyone that resists another from petching, should suffer wing break). Selfishness is a cankerworm that destroys peace. This proverb is used in counseling those in conflict on the impact of selfishness.<sup>286</sup>
- xiii. **Onye mụtara nwa guṛ ya Akumefule, o si kwanu nke onye fuo?** (He who gives

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<sup>285</sup> Ndubuisi-Okolo PU & Anigbuogu T. *Conflict and Conflict Management*, IOSR Journal of Business and Management (IOSR-JBM) e-ISSN: 2278-487X. Volume 8, Issue 6 (Mar. - Apr. 2019), PP 07-16, 2014 as cited in Nwagbala, SC, Ifureze, PC & Okafor, IP, *Insecurity in Nigeria and Business Sustainability in Selected Hotels in Awka*, International Journal of Trend in Scientific Research and Development, 2022), Volume 6, Issue 3, <[https://www.researchgate.net/profile/Stella-Nwagbala/publication/368881551\\_Insecurity\\_in\\_Nigeria\\_and\\_Business\\_Sustainability\\_in\\_Selected\\_Hotels\\_in\\_Awka\\_of\\_the\\_Creative\\_Commons\\_Attribution\\_License\\_CC\\_BY\\_40/links/63ff2e76b1704f343f919603/Insecurity-in-Nigeria-and-Business-Sustainability-in-Selected-Hotels-in-Awka-of-the-Creative-Commons-Attribution-License-CC-BY-40.pdf](https://www.researchgate.net/profile/Stella-Nwagbala/publication/368881551_Insecurity_in_Nigeria_and_Business_Sustainability_in_Selected_Hotels_in_Awka_of_the_Creative_Commons_Attribution_License_CC_BY_40/links/63ff2e76b1704f343f919603/Insecurity-in-Nigeria-and-Business-Sustainability-in-Selected-Hotels-in-Awka-of-the-Creative-Commons-Attribution-License-CC-BY-40.pdf)>.

<sup>286</sup> Nnamdi-Eruchalu, GI, *Folk Songs and Social Realities: The Nsude Igbo Women Example*, Advances in Social Sciences Research Journal, 2022, Volume 9, No.2, <[https://www.researchgate.net/profile/Geraldine-Nnamdi-Eruchalu/publication/359036671\\_Folk\\_Songs\\_and\\_Social\\_Realities\\_The\\_Nsude\\_Igbo\\_Women\\_Example/links/623e80ad5e2f8c7a033c9e77/Folk-Songs-and-Social-Realities-The-Nsude-Igbo-Women-Example.pdf](https://www.researchgate.net/profile/Geraldine-Nnamdi-Eruchalu/publication/359036671_Folk_Songs_and_Social_Realities_The_Nsude_Igbo_Women_Example/links/623e80ad5e2f8c7a033c9e77/Folk-Songs-and-Social-Realities-The-Nsude-Igbo-Women-Example.pdf)>.

birth and named him my wealth should not be lost, is asking whose own to be lost). As everyone on earth wishes him/herself well, it will be an aberration for such individual to wish others crisis. During conflict, each opponent wishes the other evil and as well rejoices when the evil befalls the opponent.

- xiv. ***Biri, ka m biri mere na uwa na-aga nke oma*** (Live and lets live is the reason why life is going forward). When everyone lives in peace, there is progress.
- xv. ***Udo na oganiihu bu umunne*** (peace and progress are siblings). This proverb explains the impact of peace in place of conflict.
- xvi. ***Iwe nwanne anaghi eru n'okpukpu*** (Brothers anger does not get to the bone). In settling conflict, it is noteworthy to remind the individuals involved that brotherhood has strong bond.
- xvii. ***Ikwu na-amaghi, ibe ezi ya.*** (When kinsman does not know, the relatives will teach him). One can be at fault, but at the cause of conflict resolution, the proverb would be a pointer towards correction and bringing right perspective to the individuals involved.
- xviii. ***Onye na-atabeghi onugbu anaghi ama ka ihe na-adi.*** (he who has not chewed bitter leaf, does not know how things are). Experience is the best teacher. People take things for granted when they have not experienced the impact or effects of certain actions or situations. This proverb enlightens those in conflict to turn away from it.
- xix. ***Nwanne na nwanne bi n'udo, bu e leta a ghara*** (there is peace between sibling, is forbearance). This proverb teaches the importance of forbearance among people. So long as offences keep coming, one needs a heart of forbearance to stay away from conflict.
- xx. ***Onye iberiibe amaghi na nwanne ya bu obia*** (A fool does not know that his

sibling is a visitor). Igbo people entertain visitors in a pleasing manner. As such, when people in conflict perceive themselves as visitors, the conflict can easily be resolved.

Proverbs are found to possess evidence of peace and reconciliation and serve as linguistic tools for conflict management. Achebe describes the Igbo proverb as the palm oil which words eat.<sup>287</sup> The true nature of Igbo proverb invokes a direct similarity between the words used and what the words describe, therefore cannot be restated in different word. When this is done, the real meaning is lost.<sup>288</sup> It is evident that the use of proverbs in Igbo language is very effective in communication. Though proverbs are concise and condensed in words, their meanings could be expanded to cover any situation of conflict that arises between individuals, groups of people and these proverbs will go a long way in resolving such conflict. Adherence to the effective use of these proverbs in interaction can as well forestall conflict from taken place. Again, inclusive of proverbs in literary texts by different authors will drive home its importance in our everyday speech.

#### **4.8 The Hausa/Fulani Indigenous Restorative Criminal Justice System**

Among the indigenous Northern part of Nigeria, imprisonment was also in the house or mosque; it was never a solitary affair where the inmates are put in confinement at a particular centre. In the case of other offences like theft and other similar offences, the thief was punished by holding him in custody called “stocks” until the thief was redeemed by his people with the payment of reparation or the equivalent of stolen property or damages to the

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<sup>287</sup> Achebe C. *Things fall apart*, London: Heinemann, 1958, as cited in Zeman, A, *The Winds of History: Life in a Corner of Rural Africa Since the 19th Century*, Oapen Access, 2023, <<https://library.oapen.org/handle/20.500.12657/87896>>.

<sup>288</sup> Kanu, IA, *A Hermeneutic Approach to African Traditional Religion, Theology and Philosophy*. Jos: Fab Anieh, 2015 as cited in Ikechukwu, KA, *Sacred Animals and Igbo-African Ecological Knowledge System*, African Indigenous Ecological Knowledge Systems, 2021, <<https://books.google.com.ng>>.

victim. As a result of the Fulani conquest of the north, the imprisonment under the emirate system was for penal purposes as well as tool for political oppression.

The aim of the indigenous justice system was to ensure the reparation of the loss and to create sanity in the society. It was to make the offender or the offender's family to make restitution to the victim as well as to the community through cleansing and purification of desecrated norms. The indigenous Nigerian justice delivery was geared towards creating happiness amongst the people. Punishments like ostracism, excommunication, banishment among others, were employed in severe or abominable offences.<sup>289</sup> African traditional justice systems place emphasis on reconciliation as the main mechanism of dispute resolution within the community for both civil and criminal matters. Where both the offender and the victim come from the same community and live within the same region as members of that community. This serves to promote offender accountability, reparation to the victim, and full participation by all those involved (victim, offender, and affected community members). African communities still opt to resolve internal disputes, where possible, through the available traditional justice systems.

Under the indigenous criminal justice system, the needs of the victim are addressed by giving the victim a voice in the process of determining consequences of the defender's actions. The system gives the families support and reparations because such reparations are seized forcibly from the offender and his family instantly by the community justice apparatus. The indigenous justice system meets the requirement of restorative justice of public hearing organised by the community leaders, protection of the parties and restitution to the victim.

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<sup>289</sup> Igwe Onyebuchi Igwe & Sylvester Chijioko Odoh, *Rethink on Restorative Justice: A Recipe to Restoring Public Confidence in the Nigerian Judiciary*, **UNIZIK, Law Journal**, 19, (1) 2023.

Community leaders are the facilitators of the public meetings that gives rise to public hearing and the protection of the interests of the community.

#### 4.9 Hausa Proverbs and Dispute Resolution

Proverbs play a significant role in conflict resolution among the Hausa/Fulani people. They serve as a means of conveying wisdom and promoting peaceful coexistence by reflecting on cultural values and experiences. Through proverbs, important lessons about conflict management and social harmony are shared, helping communities navigate disputes and misunderstandings. This indigenous knowledge is crucial in maintaining peace within the diverse communities of Northern Nigeria. The notable Hausa/Fulani proverbs are discussed as follows:

- i. ***Maso fada wawa ne*** (A quarrelsome person is a fool) This proverb is one of the most currently used among the Hausas to discourage attitudes which encourage conflicts in society. Through this proverb, Hausa people think that whoever disturbs peace and brings instability among people is unhealthy.
- ii. ***Ba a raba harshe da haqori*** (You cannot separate the tongue from the teeth). The above proverb emphasizes on the level of closeness of individuals to each other even though they may have some conflicts. This proverb can be used to mediate between two greeting friends or relatives or neighbours in disputes.
- iii. ***Ko a tsakanin harshe da haqora a kan sava*** (Even between tongue and teeth conflict can happen). In other words, no matter the close relationship that we share, we do not have immunity against conflict.
- iv. ***Zaman lafiya ya fi zama xan sarki*** (Living in peace is better than being a prince) This proverb is used in resolving conflict. In other words, when the concept of

peace and conflict are weighed on an imaginary scale, it is better to be in peace than to be a prince of conflict, therefore peace is priceless.

- v. ***Kada a mai da qurji gyambo*** (Don't turn the boil into an ulcer). The important thing about this proverb is that it is a precautionary measures to avoid any act that can lead to conflict.<sup>290</sup>
- vi. ***Mai jin yunwa bai son ba a, kar a tave shi Ta'adi shi kai*** (A hungry man does not like any joke, don't touch him, He can cause great damage). In other words, a hungry man is an angry man, therefore do not add fuel to a flammable person that can spark at the slightest infuriation.<sup>291</sup>
- vii. ***Fitina tun tana qarama ake kasha ta*** (Trouble sameness (dispute) is resolved when it is small)<sup>292</sup>
- viii. ***Fitina barci take yi Allah ya la'ani mai tashe ta*** (Conflicts is at rest God curses he who wakes it up). This is a proverb that is closely related to the sayings of Prophet Mohammad (SAW) which also soothes friction in togetherness.<sup>293</sup>
- ix. ***Fitina barci take yi Allah ya la'ani mai tashe ta*** (Conflicts is at rest God curses he who wakes it up). This simply means that one should not be responsible for starting a conflict because once conflict is woken up, dangerous attitudes follow.

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<sup>290</sup> Gummi, MF & Sani, AU, ***Four Decades of Hausa Royal Songs: Proceedings from the International Conference on the Life and Songs of Makada Sa'idu Faru***, Tasambo Journal of Language, Literature, and Culture, 2024, Volume 3, issue 3, <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5032707](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5032707)>.

<sup>291</sup> Lawali, MT & Allagbe, AA, ***Peace Promotion through Hausa Proverbs: A Sociolinguistic Perspective*** International Journal on Studies in English Language and Literature, 2021, <<https://doi.org/10.20431/2347-3134.0908004>>.

<sup>292</sup> Tukur, A, ***Kowace Qwarya da Abokiyar Burminta***, Gidan Dabino, Publishers, Kano, 1994, as cited in Ibrahim, M, ***Kannywood and the cultural and linguistic contestations on Hausa films***, 2021, <<https://kups.ub.uni-koeln.de/53910/>>.

<sup>293</sup> Sulaiman, II, ***Hausa Folklore and Labarin Soyayya: Some Reflections from Balkisu Salisu Ahmed Funtua's Novels***, Paper Presented at International Conference on Folklore, in honour of Professor Ambassador Xandatti Abdulkadir at Bayero University Kano, from 3-4 April, 2013 as cited in Modu, IA, Buba, AS & Ribadu, HT, ***A Preliminary Survey of the State and Society in Hausa Land on the eve of the Sokoto Jihad, Nigeria*** (NIU Journal of Humanities, 2024) Volume 9, No. 3, <<https://kampalajournals.ac.ug/ojs/index.php/niuhum/article/view/1948>>.

#### 4.10 Nigerian Criminal Justice System

The Criminal Justice System in Nigeria derives its validity from the Nigerian Constitution that has its inspiration from the retributive jurisprudential school of thought that places premium on punishments for crime as the aim of the Nigerian criminal justice system. Section 36(12) of the 1999 Nigerian Constitution provides as follows:

Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provision of a law.

The above-constitutional provision focuses on the protection of the offender and it does not contemplate the interest of victims of crimes. In *Effanga v. The State*<sup>294</sup> the Supreme Court of Nigeria held that no person can be tried and convicted of an offence which did not exist at the time of its commission. Crimes are always viewed as against the State, no matter the degree of personal injuries suffered by the victim and this has made the system to be more punitive than restitutive. Better still, the Nigerian Criminal Justice System being such that views crime not from the perspective of the victim but as a means of punishing the offender if found guilty of the crime committed. The system is more of penalty to the offender than compensation to the victim of crime. Our experience as a nation however reveals that penalty alone cannot elicit the faith of the citizenry in the criminal justice system. It should be noted that the Nigerian justice system prescribed incarceration as one major form of punishment which is

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<sup>294</sup> 1969 LPELR-25417(SC) (Pp. 6-7 paras. B)

designed to remove the convicted offender from the society for a period of time or even forever so as to prevent future crime. Under the criminal justice system, the purpose of imprisonment is to confine the convict offender in the prison by taking away his fundamental liberties and subjecting him to deprivation.<sup>295</sup> Incarceration is the most common method of incapacitating offenders; however, other, more severe, forms such as capital punishment are also used. The overall aim of incapacitation is to prevent the most dangerous or prolific offenders from reoffending in the community. The implication of retributive justice is intended to achieve revengeful, retaliatory and punitive effect.

The judicial powers of both the Federation and the State are vested in the courts established for the Federation and those established for the State.<sup>296</sup> These judicial powers of both the Federal and State are exercised on both criminal and civil proceedings. The Criminal Procedure Act (CPA) and Criminal Procedure Code (CPC) were the two legislations that the colonial administration used to regulate Criminal Procedure in Nigeria and even after independence. The CPA is the principal enactment governing criminal procedure in the Southern States of Nigeria.<sup>297</sup> The CPC on the other hand was enacted for the Northern Nigeria in 1960 and applied later to the other States that were created after independence. Whether it is CPA or CPC, the main purpose of the Nigerian criminal judicial system is to reduce crimes, prosecute and punish the minds that were responsible for criminal acts. These procedural laws that punished the offenders for their criminal acts, neither abated criminal activities nor did substantial justice not only to the offender but also to the victims and the victim's family. In view of the punitive nature of the Criminal justice system of the time, the

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<sup>295</sup> James, H, *Restorative Justice; A Panacea to Crime Prevention in Nigeria*, 2018 <<https://thenigeria-lawyer.com/restorative-justice-a-panacea-to-crime-prevention-in-nigeria>>.

<sup>296</sup> Section 6 (1) and (2) of the 1999 Constitution of Nigeria (As Amended)

<sup>297</sup> It initially came into being as ordinance N0. 42 of 1945 and re-enacted as ordinances N0 43 of 1948 and was at various times amended. It was subsequently incorporated as Cap. 80 Laws of the Federation of Nigeria 1990 and later as Cap. C41 LFN 2004.

criminal justice system became veritable instruments that has turned the offenders into hardened criminals because it emphasises punishment above the restoration and integration of the criminal back to the society.<sup>298</sup>

The criminal justice system in almost all of the States of the Nigerian federation is retributive as it focuses on inflicting punishment and pain on the offender than any real attempt to reform and reintegrate the offender back into the society. The failure of the Criminal Justice System in Nigeria to satisfy the minimum goals of criminal justice is among other factors, attributed to its heavy reliance on the machinery of punishment, to the neglect of the restoration of the offender and the victim's remedy. The provisions of the CPA and CPC were substantially unsatisfactory in that their focuses were on how the offenders would be punished for their actions. Under this criminal justice system, conviction preceded the award of compensation, which ordinarily should not be the case. While, there is no definite procedure for qualifying the amount of compensation to be awarded by the trial court, it is often determined without hearing from the victim as to the extent of the injuries suffered and other expenses incurred by the victim.<sup>299</sup>

The criminal justice system envisages at least three components, viz: the law enforcement, judicial process and reformatory institutions. The criminal justice system is defined as the collective institutions through which the accused offender passes until the assessed punishment concluded.<sup>300</sup> The criminal justice system in Nigeria is responsible for the slow pace of criminal trials in the Nigerian courts and the congestion of the prisons, especially with

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<sup>298</sup> Karibi -Whyte A. *History and Sources of Nigerian Criminal Law*, Ibadan: Spectrum Books Limited, p. 26, 1993 as cited in Busari, JM, *Shari 'a as Customary Law? An Analytical Assessment from the Nigerian Constitution and Judicial Precedents*, Ahkam: Jurnal Ilmu Syariah, 2021, Volume 21, No. 1, <<https://journal.uinjkt.ac.id/index.php/ahkam/article/view/18815>>.

<sup>299</sup> Olatunbosun, AO, *Compensation to Victims of Crime in Nigeria: A Critical Assessment of Criminal – Victim Relationship*, *Journal of the Indian Law Institute*, Vol. 49, Number 2, 2002.

<sup>300</sup> Garner B. *Blacks Law Dictionary*, 9 Edition. London, **Sweet and Maxwell Ltd**, 2004.

inmates awaiting trials. The Nigerian Prison Service was created to be an institution meant to administer penal treatment to adult offenders having its importance in the bid to reduce crime in the society but has rather proved to be the complete opposite of what it stood for.<sup>301</sup> Successive governments at both the state and federal levels acknowledge the magnitude of these problems and have initiated programmes and projects aimed at improving the state of criminal justice system, delivery and access to justice generally. Unfortunately, and quite regrettably, most of these efforts have failed to yield the needed results primarily because the basis of our criminal justice system is towards retributive rather than restorative justice.

#### **4.11 Restorative Justice under the Nigerian Secularity**

Nigeria is a secular country where apart from various indigenous traditional religions across the length and breadth of the nation, religious allusions to restitution reiterate that both Christianity and Islam adhere to the principle of restitution and this would be supported by some quotations from both the Bible and the Quran thus;

**Christianity:** This is a religion that stemmed from the life, teaching and death of Jesus Christ of Nazareth. In Nigeria, Roman Catholics and Methodists are predominant in South-Eastern part of the country which comprises of the Igbo people, while Anglicans, Protestants and the white garment Christians have maintained a strong influence amongst the Yoruba people of the Western Part of Nigeria. The book of the Christians that contains their tenet of faith is the Holy Bible which comprises many restorative provisions stated as follows:

i. For all manner of trespass, whether it be ox, for ass, for sheep, for raiment, or for any manner of lost thing, which another challengeth to be his, the cause of both parties shall come

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<sup>301</sup> Abuchi U. *Prison Congestion in Nigeria: Causes and Solutions*. Published by Assistant Superintendent of Prisons Maximum Security Prisons, Jos, Plateau State, Nigeria, p.116, 2013.

before the judges; and whom the judges shall condemn, he shall pay double unto his neighbour.

ii. Then it shall be because he hath sinned, and is guilty, that he shall restore that which he took violently away, or the thing which he hath deceitfully gotten, or that which was delivered him to keep, or the lost thing which was found.<sup>302</sup>

iii. Men do not despise a thief if he steals to satisfy his soul when he is hungry. But if he is found, he shall restore sevenfold; he shall give all the substance of his house.<sup>303</sup>

**Islam:** This is the religious faith of the Muslims, based on the words and religious system founded by Prophet Muhammad and taught by the Quran, the basic principle of which is absolute submission to Allah. In Islamic criminal law, qisas crimes are most affected by restorative justice. They are crimes such as intentional wounding and homicide. The victims of qisas crimes retain a central role in the prosecution and sentencing of defendants.<sup>304</sup> The victims of Qisas crimes are given a choice as to the punishment that is to be imposed. They may choose to forgive the defendant and demand no punishment at all, or they may choose demand payment *diyya* as compensation for the crime. On the subject of restoration justice, the Holy Quran provides that:

O ye who believe the law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any forgiveness is made by the brother of the slain, then grant any reasonable demand,

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<sup>302</sup> Leviticus 6:4 (KJV)

<sup>303</sup> Proverbs 6:30-31 (KJV)

<sup>304</sup> Hascall S.C. *Restorative Justice in Islam: Should Qisa be Considered a form of Restorative Justice?* Duquesne University School of Law, Research Paper, 2011 <<http://www.evangelizationstation.com>> as cited in Sodiqin, A, *Legal, Moral, and Spiritual Dialectics in the Islamic Restorative Justice System*, Ahkam: Jurnal Ilmu Syariah, 2021, Volume 21, No. 2, <<https://journal.uinjkt.ac.id/index.php/ahkam/article/view/22675>>.

and compensate him with handsome gratitude. This is a concession and a mercy from God.<sup>305</sup>

The Islamic practices based on Diyya and Sohl preach restorative justice to the victim of crime. In Diyya, the offender agrees to monetary payment to the victim, while Sohl is a negotiated reconciliation. Both practices are to be done in the presence of a WaliAmr (appointed guardian).

#### **4.12 The Effects of the Colonial Era's Adversarial criminal justice system on the indigenous Nigerian Restorative Practices**

The positive aspects of Nigerian conflict traditions and resolution mechanisms were condemned by the colonial powers and the imposed British cultures were perpetuated by post-independence Nigerian leaders hence, people no longer care about the unique ways the indigenous Nigerians resolved conflict, especially the emphasis on truth-telling to get to the bottom of the problem and learn lessons to avoid similar mistakes in the future. The Nigerian cultures and traditions were misrepresented to the Nigerian post-colonial leaders by the colonial masters as barbaric while the British cultures, traditions and laws were presented as perfect for dispute resolution. The Nigerian oral traditions, as an alternative normative order, posed a threat to colonial rule because it was fluid and extremely adaptable to communities hence, the colonial powers embarked on sinister mechanisms targeted at destroying Nigerian justice mechanisms.

Though the retributive or adversarial justice system might bring healing to those in Western societies, but for Nigerian communities, healing cannot be found in courts of law where the police, other security agents, lawyers, and judges are over-protective of the offender, with the

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<sup>305</sup> *Al-Baqarah:178.*

victims and their families are mere spectators. Although under the adversarial practice, the interest of the State is said to be protected because the State is said to be the prosecutor but it is disappointing to note that the communities of the parties involved in a conflict are often not considered to be and in fact absent from the resolution of the case.<sup>306</sup> The loss of processes that could lead to total healing is another effect that the Western retributive and adversarial system has had on Nigerian restorative justice mechanisms. In restorative justice processes, total healing for all the parties involved, including the victim's and the offender's families<sup>307</sup> In the Nigerian restorative justice system, however, the entire community had a role in nurturing and fostering healing.

Zehr believes that truth-telling is beneficial to the stakeholders of restorative justice and fosters understanding about the offence and its resolution.<sup>308</sup> The retributive (otherwise known as adversarial) criminal justice system, places the entire burden on the prosecution to prove beyond reasonable doubt that the accused committed the offence for which he or she has been charged and the courts rely on the facts and evidence that both the prosecution and defence place before them. This practice often lead to wrongful conviction of innocent persons, especially the poor who cannot afford to defend themselves. It sometimes exacerbates the agony of victims, who as State witnesses, are subjected to brutal cross-

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<sup>306</sup> Omale, J, *Justice in History: An Examination of African Restorative Traditions and the Emerging Restorative Justice Paradigm*, African Journal of Criminology and Justice Studies, 2(2), 2006 as cited in Martell, L, *Alternative Societies: For a Pluralist Socialism* (Policy Press, 2023), <<https://books.google.com.ng>>.

<sup>307</sup> Leman, P, *African Law and the Critique of Colonial Modernity in the Trial of Jomo Kenyatta*. Law and Literature, 2011 as cited in Ngendankurio JB, *There is Still Hope: Foreign Aid's Impact on Human Security in Kenya*, Griffith University Communities and Collections, 2021, <[https://research-repository.griffith.edu .au/items/382f31f4-9d8c-41d6-9559-88cfa4497d63](https://research-repository.griffith.edu.au/items/382f31f4-9d8c-41d6-9559-88cfa4497d63)>.

<sup>308</sup> Zehr H. *Changing Lenses: A Focus for Crime and Justice*, 3rd Edition, Scotdale, Herald Press, 1990 as cited in Reynolds, V, *Trauma and Resistance: 'Hang Time' and other Innovative Responses to Oppression, Violence and Suffering*, Journal of Family Therapy, 2020, Volume 42, Issue 3, <<https://doi.org/10.1111/1467-6427.12293>>.

examination, often calculated to break them down.<sup>309</sup> While the adversarial criminal justice system excludes the victim of crime, the participatory restorative justice mechanisms in contrast, offered both the victim and the offender the opportunity to reconcile, and the truth-telling feature of restorative justice offers them some sort of relief.

The Western retributive and adversarial justice system has greatly contributed to undermining the Nigerian culture because many educated and socialized Nigerians believe in Western systems and lifestyles and they have continued to denigrate their Nigerian culture and tradition as a result of which these elites fail to achieve the restoration of the broken relations between the offender and the victim. The colonial powers saw the Nigerian legal order as a threat to their conquest and domination of the Nigerian people. That domination continues today through the legal system they enforced on Nigerian people, whose culture and tradition they made to believe that were inferior and barbaric. However, this continues to be the Nigeria's albatross that threatens not only Nigerian culture and justice system, but also the Nigerian legal order.

According to Olayode, three conclusions can be drawn from the effects of the Western adversarial criminal justice system on the Nigerian restorative and participatory model. First, it ignored the local contexts in which a conflict or crime arose. Second, it led to a loss of processes of conflict resolution that facilitated total healing for both victim and offender and

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<sup>309</sup> Mclvor, S & Town, B, Canadian Class Action Review, 2022, Volume 18, Issue 1, <[https://openurl.ebsco.com/EPDB%3Agcd%3A12%3A13588812/detailv2?sid=ebsco%3Aplink%3Ascholar&id=ebsco%3Agcd%3A164672180&crl=c&link\\_origin=scholar.google.com](https://openurl.ebsco.com/EPDB%3Agcd%3A12%3A13588812/detailv2?sid=ebsco%3Aplink%3Ascholar&id=ebsco%3Agcd%3A164672180&crl=c&link_origin=scholar.google.com)>.

third, it repressed and eroded the indigenous Nigerian legal system and order and became the dominant legal order.<sup>310</sup>

#### **4.13 Evaluation of the Retributive Justice and Restorative Justice under the Nigerian Criminal Justice System**

The contemporary Nigerian Criminal Justice System has very little or no consideration, for the victim who should be seen as the person that is considered as the most important in the Criminal Justice System but most times is used as witness for the prosecution.<sup>311</sup> This is because the contemporary Nigerian criminal justice system being adversarial, is offender-centered and not victim-centered. By being offender-centered, the system lays greater emphasis on guilt, punishment and the rights of the defendant while the needs of the victim are never considered. At the conclusion of criminal trial, the defendant if found guilty and convicted, is sentenced to imprisonment or any form of punishment or the other and the victim of the crime goes home without any form of restoration.<sup>312</sup> It can safely be said that there is no real justice under the contemporary criminal justice system but under the restorative criminal justice system where the victim of crime is the main focus.

The reparative need of the victims may outweigh their interest in retribution or punishment of the accused. Victims may favour the apprehension and prosecution of the offenders, but are more likely to appreciate a justice system which prioritises effective reparative measures

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<sup>310</sup> Olayode, A. O. *Restorative Justice and Pre-Colonial Justice Practices in Nigeria: A Comparative Analysis*, Internet Journal of Restorative Justice, 2017 as cited in Adeyemo, DO, *Restorative Justice Ideals and Victims of Crime in Nigeria: Towards a Reparative Justice Approach*, LASJURE, 2021, <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/lwadsjlerw2&div=47&id=&page=>>>.

<sup>311</sup> Price, M, *Personalizing Crime: Mediating Produces Restorative Justice and Offenders; Dispute Resolution Magazine*, American Bar Association, 2019, as cited in Umbreit, M, *Victim meets offender: The impact of restorative justice and mediation*, (Amazon, 2023), <[https://books.google.com.ng](https://books.google.com.ng>)>.

<sup>312</sup> Okwendi JS & Nwankwoala, R, *The Role of Restorative Justice in Complementing the Justice System and Restoring Community Values in Nigeria*. Asian Journal of Humanities and Social Sciences, 2 (3): 2320-9720, 2014 as cited in Edetalehn OI, Imoisi, SE & Aidonojie, PA, *The Innovative Concept and Issues Concerning the Non-Custodial Sentence in Nigerian Criminal Justice System*, NIU Journal of Humanities, 2023, Volume 8, No. 2, <[https://ijhumas.com/ojs/index.php/niuhumas/article/view/1673](https://ijhumas.com/ojs/index.php/niuhumas/article/view/1673>)>.

rather than a blind fulfilment of the law which, glosses over the interest of the victim. While it is important to involve victims in the criminal justice process, the aim is not to arrogate the criminal justice process to the victims, rather the involvement of the victims should be aimed at truth-telling and healing for the victims and the society and ultimately, restoration to the victim. Restorative justice paradigm is not extended to influential involvement of victims in sentencing stage through victims' impact statement. This may rather distort the established legal order in criminal justice system. While it may appear patronising to victims to refer to their right to information on the progress of their case; care and support and their general right to reparation as 'services', a clear distinction must be drawn between the procedural rights of a victim, and legal and reparative rights of the victim without giving place to retributive tendencies of a victim.

In criminal justice system, the idea of restorative justice seems to be pitched against retributive justice hence, restorative justice is broadly viewed by some proponents as an alternative to punishment. Restorative justice regards punitive response to the harm inflicted on victim as ineffective and unacceptable and proposes a more empathic and productive approach which aims at repairing the victim's harm, restoring relationships as well as maintaining the social equilibrium and harmony of the community.

Under the retributive justice system, justice means applying rules, establishing guilt, fixing punishments and penalties. It should be noted that the act of punishing the defendant does not in any way make the society whole again. With respect to criminal justice, restorative justice

theory takes a positivist view of the concept of crime<sup>313</sup> and redefine crime from being characterised as an offence against the State. It emphasises the role of the victim in the criminal justice process and advocates a shift from a retributive aim of criminal justice to restorative goals.<sup>314</sup>

Restorative justice seeks a remodelling of the criminal justice process and reconceptualise crime and criminal justice. The main stakeholders are the victim, the offender and the immediate community that is collectively affected by the crime and these stakeholders should own the conflict and the process of resolving the conflict without the representative role of any professional acting supposedly, in their interest. Restorative justice is better described as a process rather than a value which allows actual parties with stake in a particular offence to collectively determine the aftermath of the offence and its future implications.<sup>315</sup>

Restorative justice equally advocates a significant shift from the conventional criminal justice process which makes representatives such as legal and other professionals, the main actors of the process. This model of restorative justice is summed up as participatory justice which proposes a disposal of the formal legal process of pursuing criminal justice in formal courts and by legal professionals who, act on behalf of the victims in representative capacities. Restorative justice approach advocates direct and full participation of the main parties involved namely; the victim, the offender and the immediate community affected by the crime.

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<sup>313</sup> *Truth and Reconciliation Commission of South Africa Report. 1999, Concepts and Principles. Volume 1, Chapter 5. London: Palgrave Macmillan, paragraph 82, 1999 as cited in Rana, SSJB & Zvobgo, K, Safeguarding Truth: Supporting Children's Participation at Truth Commissions, Journal of Human Rights, 2021), Volume 20, Issue 3, <<https://www.tandfonline.com/doi/abs/10.1080/14754835.2020.1868293>>.*

<sup>314</sup> Zernova, M, *Restorative Justice: Ideals and Realities*, 2016, Ashgate ed. 50, as cited in Vago, S & Barkan, SE, *Law and Society*, New York, Routledge, 2021, <<https://doi.org/10.4324/9781003024194>>.

<sup>315</sup> Walker, MU, *Restorative Justice and Reparations*, Journal of Social Philosophy, 2006, 37:3, 377, 2006 as cited in Myers, K, Nally, D, Paulson, J & Sprakash, A, *Reparative Futures*, Futures, 2024, Volume 164, <<https://doi.org/10.1016/j.futures.2024.103474>>.

The aim of the indigenous justice system was to ensure the reparation of the loss and to create sanity in the society. It was to make the offender or the offender's family to make restitution to the victim as well as to the community through cleansing and purification of desecrated norms. The indigenous Nigerian justice delivery was geared towards creating happiness amongst the people. Punishments like ostracism, excommunication, banishment among others, were employed in severe or abominable offences.<sup>316</sup> Nigerian traditional justice systems place emphasis on reconciliation as the main mechanism of dispute resolution within the community for both civil and criminal matters. Where both the offender and the victim come from the same community and live within the same region as members of that community. This serves to promote offender accountability, reparation to the victim, and full participation by all those involved (victim, offender, and affected community members). Nigerian communities still opt to resolve internal disputes, where possible, through the available traditional justice systems.

Under the indigenous criminal justice system, the needs of the victim are addressed by giving the victim a voice in the process of determining consequences of the defender's actions. The system gives the families support and reparations because such reparations are seized forcibly from the offender and his family instantly by the community justice apparatus. The indigenous justice system meets the requirement of restorative justice of public hearing organised by the community leaders, protection of the parties and restitution to the victim. Community leaders are the facilitators of the public meetings that gives rise to public hearing and the protection of the interests of the community.

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<sup>316</sup> Igwe, IO & Odoh, SC, *Rethink on Restorative Justice: A Recipe to Restoring Public Confidence in the Nigerian Judiciary*, **UNIZIK, Law Journal**, 19, (1) 2023.

Restorative justice defines crime in terms of harm and shifts the focus which hitherto was on the offender under the retributive criminal justice system, on the victim with the aim of repairing the harm. It emphasises that that injustice will continue to exist where the harm occasioned by the crime has not been repaired. Harm in the criminal context, is not limited to material or physical harm but also includes psychological and relational injuries that impact the victim or the victim's family negatively and disrupt societal cohesion, peace and harmony. In other to have true justice, the victims need to be healed of such injury resulting from crime which reparation effectively addresses. Material reparation may suitably address material damage however some authors posit that symbolic reparations are necessary to address relational injuries in order to facilitate repair and restoration of pre-existing relationship, altered by the commission of crime.

In many domestic jurisdictions like Nigeria, it would appear ironical that victims who are at the receiving ends of the actions of the perpetrator and directly incur harm emanating from a crime are made mere objects of the criminal proceedings. The interests of the victim in relations to the harm they have suffered is subsumed in the interest of the State and their interest is secondary to that of the State. While they may pursue remedial reliefs for damages suffered through civil proceedings, such proceedings are entirely independent of the criminal proceedings.

With respect to criminal justice, restorative justice theory takes a positivist view of the concept of crime. It emphasises the role of the victim in the criminal justice process and advocates a shift from a retributive aim of criminal justice to achieving restorative goals of compensating the victims. In the conventional criminal justice system, the State represents the

interest of the public and supposedly, that of the victims. Hence, in the Nigeria's criminal justice system, victims are not parties to the legal proceedings, at best, they merely play roles as witnesses for the State and their interests seem to be subsumed in that of the State.<sup>317</sup>

The practice of reparation may have its roots in indigenous practices in ancient times, which was largely private and informal, but the significance of reparations cannot be overemphasized or detached from a formal criminal justice process. The indigenous criminal justice model cannot be dispensed with, in favour of a reconciliatory and mediative model between the parties (the defendant and the victim). The more plausible view is the position

that restorative justice should be firmly entrenched in the criminal justice system of a State.<sup>318</sup>

This is in line with the arguments of restorative justice advocates who opine that restorative justice should be firmly made an integral part of the criminal justice system so as to integrate the interest of the victims into the criminal justice system. Although many legal systems make explicit provisions for some forms of compensation and restitution to victims by the defendant upon conviction, with respect to certain crimes, the practice in common law jurisdictions may offer a slight variation to the proposition that the principle of reparation should operate outside the traditional criminal justice process.

#### **4.14 Contemporary Nigerian Laws on Restorative Justice to the Victim of Crime**

**i. The Nigerian Constitution:** The Criminal Justice System in Nigeria derives its validity from the Nigerian Constitution that has its inspiration from the retributive jurisprudential

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<sup>317</sup> In some civil law jurisdictions, victims are accorded rights such as the opportunity to make impact statements. They may even be accorded the status of '*partie civile*'.

<sup>318</sup> Gordon Bazemore & Lode Walgrave, *Restorative Juvenile Justice: In Search of Fundamentals and Outline for Systematic Reform*, in Gordon Bazemore & Lode Walgrave (eds), *Criminal Justice Press*, 45-74, 1999 as cited in Zhang, Y and Xia, Y, *Can Restorative Justice Reduce Incarceration? A Story From China*, *Justice Quarterly*, 2021) Volume 38, Issue 7, <<https://www.tandfonline.com/doi/abs/10.1080/07418825.2021.1950814>>.

school of thought that places premium on punishments for crime as the aim of the Nigerian criminal justice system. The Constitution provides as follows:

Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provision of a law.<sup>319</sup>

The above-constitutional provision focuses on the protection of the offender and it does not contemplate the interest of victims of crimes. In *Effanga v. The State*<sup>320</sup> the Supreme Court of Nigeria held that no person can be tried and convicted of an offence which did not exist at the time of its commission. Crimes are always viewed as against the State, no matter the degree of personal injuries suffered by the victim and this has made the system to be more punitive than restitutive. Better still, the Nigerian Criminal Justice System is such that views crime not from the perspective of the victim but as a means of punishing the offender if found guilty of the crime committed. The contemporary criminal justice system is more of penalty to the offender than compensation to the victim of crime.<sup>321</sup> It has been observed however, that penalty alone cannot elicit the faith of the citizenry in the criminal justice system. It should be noted that the Nigerian justice system prescribed incarceration as one major form of punishment which is designed to remove the convicted offender from the society for a period of time or even forever so as to prevent future crime. Under the criminal justice system, the

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<sup>319</sup> Section 36(12), 1999 Nigerian Constitution (As Amended).

<sup>320</sup> 1969 LPELR-25417(SC) (Pp. 6-7 paras. B).

<sup>321</sup> Nwosu, K, *Nigerian Criminal Law and Procedure in Prospective*, National Strategic Training, 2011 as cited in Ayodele, JO & Adebisoyi, JR, *One Space for Two Justice Praxes in Nigeria: The Yoruba Experience in Stakeholders' Restoration*, *Minding the Gap Between Restorative Justice, Therapeutic Jurisprudence, and Global Indigenous Wisdom*, 2023 <<https://www.igi-global.com/chapter/one-space-for-two-justice-praxes-in-nigeria/313247>>.

purpose of imprisonment is to confine the convict offender in the prison by taking away his fundamental liberties and subjecting him to deprivation. Incarceration is the most common method of incapacitating offenders; however, other, more severe, forms such as capital punishment are also used. The overall aim of incapacitation is to prevent the most dangerous or prolific offenders from reoffending in the community. The implication of retributive justice is intended to achieve revengeful, retaliatory and punitive effect.

The judicial powers of both the Federation and the State are vested in the courts established for the Federation and those established for the State.<sup>322</sup> These judicial powers of both the Federal and State are exercised on both criminal and civil proceedings.

## **ii. Criminal Procedure Act and Criminal Procedure Code**

The Criminal Procedure Act (CPA) and Criminal Procedure Code (CPC) were the two legislations that the colonial administration used to govern criminal procedure in Nigeria and both were handed over to Nigeria even after independence. The CPA is the principal enactment governing criminal procedure in the Southern States of Nigeria and it initially came into being as ordinance No. 42 of 1945 and re-enacted as ordinances No. 43 of 1948 and was at various times amended. It was subsequently incorporated as Cap. 80 Laws of the Federation of Nigeria 1990 and later as Cap. C41 LFN 2004. The CPC on the other hand was enacted for the Northern Nigeria in 1960 and applied later to the other States in the Northern part of Nigeria that were created after independence. Whether it is CPA or CPC, the main purpose of the Nigerian criminal judicial system is to reduce crimes, prosecute and punish the minds that were responsible for criminal acts. These procedural laws that punished the offenders for their criminal acts, neither abated criminal activities nor did substantial justice

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<sup>322</sup> Section 6 (1) and (2), 1999 constitution of Nigeria (As Amended)

not only to the offender but also to the victims and the victim's family. In view of the punitive nature of the Criminal justice system of the time, the criminal justice system became veritable instruments that has turned the offenders into hardened criminals because it emphasises punishment above the restoration and integration of the criminal back to the society.

The criminal justice system in almost all the States of the Nigerian federation is retributive as it focuses on inflicting punishment and pain on the offender than any real attempt to reform and reintegrate the offender into the society. The failure of the Criminal Justice System in Nigeria to satisfy the minimum goals of criminal justice is among other factors, attributed to its heavy reliance on the machinery of punishment, to the neglect of the restoration of the offender and the victim's remedy. The provisions of the CPA and CPC were substantially unsatisfactory in that their focuses were on how the offenders would be punished for their actions which were unsatisfactory. Under this criminal justice system, conviction preceded the award of compensation, which ordinarily should not be the case. While, there is no definite procedure for qualifying the amount of compensation to be awarded by the trial court, it is often determined without hearing from the victim as to the extent of the injuries suffered and other expenses incurred by the victim.<sup>323</sup>

The criminal justice system whether under the CPA or CPC, envisages at least three components, viz: the law enforcement, judicial process and reformatory institutions. The criminal justice system is defined as the collective institutions through which the accused offender passes until the assessed punishment concluded.<sup>324</sup> The criminal justice system in

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<sup>323</sup> Olatunbosun, A, *Compensation to Victims of Crime in Nigeria: A Critical Assessment of Criminal-Victim Relationship*, Journal of the Indian Law Institute, Vol. 49, Number 2, 2002 as cited in Ayinde, DJ, ***An Appraisal of the Legal Framework on Parole in Nigeria***, Potchefstroom Electronic Law Journal, 2022 Volume 25, No. 1) <<https://www.ajol.info/index.php/pej/article/view/236832>>.

<sup>324</sup> Garner B., *Blacks Law Dictionary*, 9 edn. London, **Sweet and Maxwell Ltd**, 2004.

Nigeria is responsible for the slow pace of criminal trials in the Nigerian courts and the congestion of the prisons, especially with inmates awaiting trials. The Nigerian Prison Service was created to be an institution meant to administer penal treatment to adult offenders having its importance in the bid to reduce crime in the society but has rather proved to be the complete opposite of what it stood for.<sup>325</sup> Successive governments at both the Federal and the State levels acknowledge the magnitude of these problems and have initiated programmes and projects aimed at improving the state of criminal justice system, delivery and access to justice generally. Unfortunately, and quite regrettably, most of these efforts have failed to yield the needed results primarily because the basis of our criminal justice system is towards retributive rather than restorative justice.

### **iii. Economic and Financial Crime Commissions Act**

The Economic and Financial Crime Commission (EFCC) is charged with the responsibility of **enforcing all economic and financial crimes laws** in Nigeria. The EFCC Act 2004 was enacted to replace the EFCC Act of 2002. The Act in Nigeria has several restorative provisions aimed at combating economic and financial crimes, promoting transparency, and recovering stolen assets which are returned only to the Federal Government and not to the individual victim.

The restorative provisions of the Act are discussed as follows:

- a. Compounding:** Under the Act, compounding is a variant of restorative justice which promotes victim/offender mediation. Compounding of criminal offences is the process

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<sup>325</sup> Abuchi U. *Prison Congestion in Nigeria: Causes and Solutions*, Published by Assistant Superintendent of Prisons Maximum Security Prisons, Jos, Plateau State, Nigeria, p.116, 2013, as cited in Olusegun, OO & Oyelade, OS, ***Access to Justice For Nigerian Women: A Veritable Tool to Achieving Sustainable Development*** International Journal of Discrimination and the Law, 2022, Volume 22, Issue 1, <<https://journals.sagepub.com/doi/abs/10.1177/13582291211043418>>.

that enables the victim decide whether to settle his dispute with the offender without necessarily having to go through the judicial process to obtain his remedy or not. The Act provides that:

Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999 which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any persons in any court of law), the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of that offence.<sup>326</sup>

By the above-stated provision, the Act is empowered to negotiate or bargain with suspect so as to arrive at desired goal of retrieving some of the money fraudulently converted by the offender. This is purely restorative justice in contemplation and it is only by extension that the Act can be said to contain restorative provisions to individual victim. It must be emphasised that the power conferred on the Commission under Section 14(2) of the Act is that of compounding of offences and not compounding of the crime.

Compounding under the Act is intended to apply to offences not yet before a court and that it applies during investigations however, in the case of *Gava Corp. Ltd. v. F.R.N.*,<sup>327</sup> the court held that the Commission has the power to compound an offence that is already before the court. However, the Commission merely investigates, compounds an offence or prosecutes the offender, but has no power to acquit. Compounding an offence terminates legal proceedings and leads to acquittal of the accused. It is only the court that has exclusive power to acquit. Thus, if the Commission only investigates but has the power to compound an

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<sup>326</sup> Section 14(2), Economic and Financial Crimes Commission (Establishment, Etc) Act, 2004.

<sup>327</sup> (2019) 10 N.W.L.R. (Pt. 1679) p. 139 at 149.

offence, and it is the court that can acquit an offender, then the Commission has the power to compound an offence that is already before the court. However, the Commission's power to compound is made subject to the power of the Attorney-General of the Federation to institute, continue, take over or discontinue criminal proceedings.

**b. Forfeiture:** The forfeiture of the proceeds of crime is merely a compensatory damage, hitherto peculiar to civil adjudication, which is now accommodated in criminal justice system as a means of restoring the victim of crime to his position before the crime was perpetrated. While sentencing of a convicted person is the established punitive mechanism provided by the law criminalising the conduct of the accused to punish him for his criminal conduct, and to deter prospective criminals from committing the offence, forfeiture of objects of crime and sentencing do not constitute double jeopardy. It would have been different if the court had awarded exemplary (punitive) damage against the criminal defendant in addition to sentencing. That will clearly amount to double jeopardy. In *Ajiboye v. F.R.N.*,<sup>328</sup> the court held that when a court directs a property to be forfeited to government, it is intended to debar the convict from deriving benefit from the proceeds of crime for which he was convicted. Forfeiture is geared towards deterring others who are so criminally minded to know that no benefit would properly inure to the person who wantonly acquires what belongs to the government.

The question is 'How restorative to the victims of crime are the provisions of the EFCC Act and the negotiation between the offender and the Commission?' The provision of the Act can be said to be restorative justice only to the Federal Government and not to the individual victim:

For the avoidance of doubt and without any further assurance than this Act; all the properties of a person of a person convicted of an offence under this Act and

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<sup>328</sup> (2018) 13 NWLR. (Pt. 1637) p. 430 at 437.

shown to be derived or acquired from such illegal act and already the subject of an interim order shall be forfeited to the Federal Government.<sup>329</sup>

However, the restorative provisions of the Act is a mere contemplation of restorative justice as it is difficult to conclude that it satisfies all the conditions and goals of restorative justice to the victims of crime.

#### **iv. Administration of Criminal Justice Act**

The Administration of Criminal Justice Act (ACJA)<sup>330</sup> merged the provisions of the two principal criminal procedure legislations the Criminal Procedure Act (CPA) applicable to the Southern States of Nigeria and the Criminal Procedure Code (CPC) applicable to the Northern States to become an all-encompassing legislation. The purpose of the Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.<sup>331</sup>

The ACJA has been domesticated by all the 36 (thirty-six) of the Federation of Nigeria as Administration of Criminal Justice Law (ACJL) and the ACJA has replaced both the CPA and CPC. The ACJA has copious provisions on victims remedy and restorative justice. Such provisions are discussed below.

**a. Restoration of possession of immovable property:** The Act provides that where a defendant is convicted of an offence carried out by criminal force, and it appears to the court that by that force, a victim has been dispossessed of any immovable property, the court may, if it thinks fit, order the possession of the property to be restored to the victim.<sup>332</sup> The order shall not prejudice any right or interest to or in the immovable property which a victim, including the convict, may be able to establish in a civil suit.

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<sup>329</sup> Section 21, EFCC Act, 2004

<sup>330</sup> Administration of Criminal Justice Act (ACJA), 2015.

<sup>331</sup> Section 1, ACJA

<sup>332</sup> Section 336 (1), ACJA

**b. Compensation to victim of crime:** Compensation could be by way of Consequential Order made by Court. The possibility of awarding compensation to a crime victim in the absence of material on which the court's discretion may be exercised, renders the exercise of such discretion useless. Also, where the crime victim fails to approach the court in any known mode to request compensation for the crime, the court may not grant such compensation. Nevertheless, it is clear that as a general principle, courts may make consequential and ancillary orders for purposes of carrying their decisions and determinations into execution. The courts, in exercise of jurisdiction vested on them by law, in every cause or matter, have power to grant, either absolutely or on such terms and conditions as they think just, all such remedies as any of the parties may be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any of those matters avoided.<sup>333</sup> Inherent jurisdiction to make consequential orders permits courts to ensure proper administration of justice.<sup>334</sup>

The word 'consequential' simply means 'following as a result, or inference; following or resulting indirectly'.<sup>335</sup> A consequential order is one that flows directly and naturally from the decision or order of court made on the issues in litigation and inevitably consequent upon it.<sup>336</sup> A consequential order is not merely incidental to a decision. It must be giving effect to the judgment already given. A proper consequential order need not be claimed, but it must be

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<sup>333</sup> Federal High Court Act, 1973 s.11; High Court Act, Abuja s.27; High Court Law, Lagos State s.14. [O. 4 r. 3 of Court of Appeal Rules, 2016 provides that the Court shall have power to give any judgment or make any order that ought to have been given or made and to make such further or other orders as the case may require.

<sup>334</sup> *Erisi v Idika* (1987) 4 NWLR Part 66, 503.

<sup>335</sup> *Obayagbona v Obazee* (1972) 5 SC 247 cited in *Apostolic Church v Olowoleni* [1990] 6 NWLR Part 158, 154; *Maduabu v. Ray* [2006] All FWLR Part 300, 1671; *Ray v. Maduabu* (2006) All FWLR Part 310, 1637.

<sup>336</sup> *Akapo v Hakeem-Habeeb*, (1992) 6 NWLR Part 247, 266

closely related to the substantive relief claimed.<sup>337</sup> The Court in *Idrisu v COP* held that a High Court has inherent powers to make orders even if they are not sought by parties where such orders are ‘incidental’ to prayers sought. However, a consequential order must flow directly and naturally from decision or order of court made on the issues in litigation and consequent upon it. Thus, where the court refuses primary or principal relief sought, an incidental relief cannot stand because there would be no principal order on which such incidental order can lean. Where the making of such consequential order is necessary to give effect to the judgment of the court, the court may competently make the consequential order even if it was not specifically sought as a relief from the court.<sup>338</sup>

The Act provides that:

Notwithstanding the limit of its civil or criminal jurisdiction, a court has power in delivering its judgment to award to a victim commensurate compensation by the defendant or any other person or the State.<sup>339</sup>

The Court in considering the award of compensation to the victim may call for additional evidence to enable it determine the quantum of compensation to be awarded.

Consequently, award of compensation by the court to a crime victim under its inherent powers is still subject to proof of facts by the crime victim of the specifics and particulars of loss suffered by him/her.

**c. Restitution to victim of Crime:** The court is empowered to order restitution. A court after conviction may adjourn proceedings, to consider and determine sentence appropriate for each convict:

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<sup>337</sup> *Idrisu v COP.*, [2009] All FWLR Part 450, 720; in *Oduwole v Aina*, [2001] 17 NWLR Part 741, 1

<sup>338</sup> *Garba v University of Maiduguri*, [1986] 1 NWLR Part 18, 550.

<sup>339</sup> Section 314, Administration of Criminal Justice Act, 2015.

a) In addition to or in lieu of any other penalty authorised by law, 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;

b) Order for the restitution or compensation for the loss or destruction of the Victim's property and in so doing the court may direct the convict:

(i) to return the property to the owner or to a person designated by the owner;

(ii) where the return of the property is impossible or impracticable, to pay an amount equal to the value of the property; or

(iii) where the property to be returned is inadequate or insufficient, to pay an amount equal to the property calculated on the basis of what is fair and just.<sup>340</sup>

**d. Sentencing:** While determining an appropriate sentence to be awarded the offender, the courts by the provision of the Act has to consider amongst other things the issue of restitution.<sup>341</sup> The interest of the victim, the convict and the community.<sup>342</sup> In the exercise of its power, a court may, within the proceedings or while passing judgment, order the defendant or convict to pay a sum of money in defraying expenses incurred on medical treatment of a victim injured by the convict in connection with the offence.<sup>343</sup>

**e. Community Service:** The Act provides for community service as an alternative to the traditional punishment of serving jail term.<sup>344</sup> By awarding community service to the offender, the offender feels a sense of membership of the community. By serving in his community, he is being reintegrated into the community and he is made a better a person as he still retains some self-worth. This will be different if he is condemned to prison where he will mix with other criminals who may end up teaching him how to evade the law enforcement and not get caught in the crime.

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<sup>340</sup>Section 321

<sup>341</sup> Section 401 (2) (g).

<sup>342</sup> Section 311.

<sup>343</sup> Section 319 (c).

<sup>344</sup> Sections 460-466 ACJA

**f. Plea Bargain:** The Act provides that the prosecutor and the defendant or his legal practitioner may enter into an agreement in respect of plea bargain after consultation with the police that is responsible for the investigation of the case and the victim or his representative.<sup>345</sup> The prosecutor is also mandated in determining whether it is in the public interest to enter into a plea bargain, to weigh all relevant factors, including inter alia, the defendant's willingness to make restitution or pay compensation to the victim where appropriate.<sup>346</sup>

The concept of restorative justice system encourages plea bargain, which allows the prosecutor and the defendant to reach an out of court settlement through mediation which is delivered as consent judgment by the court in compliance with the law and principles of the concept of restorative justice.

A plea bargain may take the form of a charge bargain or a sentence bargain.<sup>347</sup> In a Charge bargain, the prosecutor will agree to drop or leave out some counts of a charge for a less serious offence in exchange for a plea of guilty to the lesser charge. An instance of this is where a prosecutor decides to substitute a charge of murder which in Nigeria attracts a mandatory sentence of death for the lesser charge of manslaughter which upon conviction attracts between imprisonments for life to a term of imprisonment in return for the prosecution conceding to a milder penalty. Thus plea bargain is an offspring of restorative process validly used mostly in criminal cases.

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<sup>345</sup> Section 270 (4) (a)

<sup>346</sup> Section 270 (4) (b) (ix)

<sup>347</sup> Adebite K. *Plea Bargaining in Nigeria: Any Legal Foundation?* 2015 as cited in Akinsulorea, A, *The Nigeria Police Philosophy and Administration of Criminal Justice Post 2015: Interrogating the Dissonance*, Sriwijaya Law Review, 2020.

**v. The Criminal Law of Lagos State:** The Criminal Law of Lagos State also provides a concrete basis for the practice of restorative justice and VOM in Lagos State.<sup>348</sup> The law empowers the Court to order amongst other things, restitution, compensation, probation, curfew orders, community service orders, binding-over and correctional orders, victim offender mediation, orders, rehabilitation and other restorative justice measures. The law further states that restorative justice through victim offender mediation can be used as disposition measures in lieu of punishment for crime and any offender who is convicted of an offence under the Law, may in addition to or in lieu of any punishment which may be imposed, order any of the disposition measures stated above.<sup>349</sup>

**vi. Federal High Court Act:** The Federal High Court Act provides that in any proceedings in the Court whether civil or criminal, the Court may order reconciliation among the parties and encourage and facilitate the amicable settlement thereof.<sup>350</sup> By this provision, such amicable settlement can best be achieved when the Court directs both the victim and the offender to get involved in a Victim-Offender Mediation process.

**vii. The Magistrates' Courts Law of Lagos State:** Just like the provision of the Federal High Court Act discussed above, the Magistrates' Court of Lagos State encourages amicable settlement of cases like assault and other non-felony offences. The section provides as follows:

In criminal cases, a Magistrate may encourage the settlement in an amicable way of proceedings for common assault or for any other offence not amounting to felony and not aggravated in degree on terms of payment of compensation or other terms approved by him.<sup>351</sup>

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<sup>348</sup> Section 15(2), Criminal Law of Lagos State, 2011.

<sup>349</sup> Section 15 (3), Criminal Law of Lagos State, 2011.

<sup>350</sup> Section 17, Federal High Court Act.

<sup>351</sup> Section 37, Magistrates Courts Law of Lagos State, 2009.

Over the years, it has been learnt that the English penology system that was imposed on the indigenous Nigerian people, which was surprisingly embraced and adopted by the Nigerian leaders after independence, has not served the country any good. Penology under retributive justice system which was initially meant to serve as deterrence, has outlived its usefulness as offenders not only enter into recidivism but has also made crime rate to soar beyond contemplation. In seeking alternative response to crime and social disorder, the growing dissatisfaction and frustration with this formal criminal justice system led to vociferous calls for resuscitation of the pre-colonial criminal justice system which was victim-offender-community centered.

In the wake of this re-tracing of step, it is encouraging that in the areas of legislation, Nigeria has gradually been recognising the fact that victims of crime should not be re-victimised but should be made to return to the original position the victim was or be compensated for the loss that he suffered through the act of the offender. Despite the gradual entrenchment of restorative justice to the victim of crime, the restitution ordered by the court is seldom complied with or has a low compliance rate. Therefore, it is expedient that concerted legislations should be introduced to make all Nigerian courts have jurisdiction to order restoration to the victims of crime as a matter of priority and importance.

The hitherto practice of 'restorative criminal justice' in the nature of fine paid to the court rather than an obligation to the victim, must be revisited in a way that victim-offender mediation can be a form of psychological therapy for the victim. Apart from the conventional options of court and sanctioning, victims need to be more informed about the options that are available to that may meet their emotional and psychological needs.

#### **4.15 Crime Victims Compensation (CVC) Programmes**

Crime Victim Compensation (CVC) is a victim service program that is governed by Colorado law. Not all crime victims or crime related losses are eligible for reimbursement or payment. The CVC program provides compensation to eligible individuals and their family members who are victims of certain violent crimes. In order to attain societal objectives of every criminal justice system, there must be fusion of different theories. The Violence Against Persons Prohibition (VAPP) Act creates a system of compensation for crime victims. For victims of rape, the court shall award appropriate compensation to the victim as it may deem fit in the circumstance.<sup>352</sup> Victims of violent acts by State agents are entitled to appropriate compensation commensurate with the extent and amount of damages suffered by them.<sup>353</sup> For victims of physical injury, the court may award appropriate compensation to the victim as it may deem fit in the circumstance.<sup>354</sup> ACJA provides that a court may, within the proceedings or while passing judgment, order the defendant or convict to pay a sum of money 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 suit.<sup>355</sup>

Over the years, the funding of the compensation has been a serious problem particularly where the court ordered it. While some statutes do not state how money for compensation can be raised, others do. ACJA proposes that if a defendant is ordered to pay compensation to another person the Court making the order may issue a warrant for the levy of the amount by any means permitted by law, including seizure and sale of any movable property belonging to

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<sup>352</sup> Violence Against Persons Prohibition (VAPP) Act, 2015, s. 1(3).

<sup>353</sup> Section 24(5).

<sup>354</sup> Section 2(5).

<sup>355</sup> Section 319 (1)(a) of ACJA

the defendant or convict; attachment of any debt due to the defendant or convict; and subject to the provisions of Land Use Act, attachment and sale of any immovable property of the convict situated within the jurisdiction of the court.<sup>356</sup> In the Northern States of Nigeria, particularly in both Adamawa and Sokoto State, the State Penal codes provide that:

[A]ny Person who is convicted of an offence under this Law, may be adjudged to make compensation to any person injured by his offence and such compensation may be either in addition to or in substitution for any other punishment.<sup>357</sup>

In line with the provisions of the VAPP Act, it is not all forms of victims of crime that are entitled to compensation. Those that are entitled to benefit or participate in CVC programmes are victims of rape,<sup>358</sup> victims of physical injury,<sup>359</sup> and victims of violent acts by state agents.<sup>360</sup> There is nowhere in the VAPP Act where the statute specify the source of monies to be used in compensating crime victims. However, the setback is that where a statute provides for funding the CVC, the failure or inability of the offender to pay the compensation due to penury would make the victim to remain uncompensated. The ACJA adopts expansive victimology<sup>361</sup> which accommodates not only compensation to the crime victim but also to the immediate family or dependants of the direct victim,<sup>362</sup> and any other person who has suffered harm in intervening to assist the victims in distress.

When a wrong has been done and the law gives a remedy, compensation should be equal to the injury and the injured party should be placed, as near as may be, in the situation he would

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<sup>356</sup> ACJA, 2015, s.326.

<sup>357</sup> Section 40 of Adamawa State Penal Code and Section 40(1) of Sokoto State Penal Code

<sup>358</sup> Section 1(3), VAPP.

<sup>359</sup> Section 2(5).

<sup>360</sup> Section 24(5).

<sup>361</sup> *Caribbean Trading & Fidelity Corporation v NNPC* (1992] 7 NWLR Part 252, 161.

<sup>362</sup> *Adegoke Motors Ltd. v Adesanya*, (1989) 3 NWLR Part 109, 250.

have occupied if the wrong had not been committed.<sup>363</sup> The person that is awarded compensation may waive his entitlement to compensation.<sup>364</sup> A waiver could be express or implied from conduct.<sup>365</sup>

#### **4.16 Judicial Pronouncement on Restorative Criminal Justice System**

The historical development of restorative criminal justice in Nigeria has evolved significantly, particularly in addressing the rights and rehabilitation of victims of crime. This evolution is evident in the legislative framework, judicial decisions and institutional reforms that have increasingly emphasised victim support and restorative practices. The historical evolution of restorative criminal justice in Nigeria has been shaped by a combination of legal reforms, landmark cases, and evolving societal values towards crime and punishment. Restorative justice emphasises repairing the harm caused by criminal behaviour through inclusive processes that involve the victim, the offender and the community, aiming to achieve reconciliation and rehabilitation of the offender.

The concept of justice in criminal matters was explained in the case of *Isonguyo v. State*,<sup>366</sup> where the Supreme Court observed that:

Indeed, justice ought equally to be considered from the end of the victim that is at the receiving end of the defendant's wrongful act. As aptly postulated by this Court over four decades ago: It so often happens that in murder cases the defence usually talks of Justice only in relation to the accused person. Very often justice as it affects the victim of the murder charge is either forgotten or ignored by the defence. But just as it is essential that justice be done to the deceased who, even in

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<sup>363</sup> *Wicker v Hoppock*, 73 US 94, 18 L Ed.

<sup>364</sup> Section 324, ACJA.

<sup>365</sup> *Gikuru Bakare v Lagos State Civil Service Commission*, (1992) 8 NWLR. Part 262, 641.

<sup>366</sup> (2022) LPELR-60912(SC) (Pp. 112 paras. A)

the lonely depths of his grave, cries out loudly for the circumstances of his death, to be justly examined and justice meted to him.

The evolution of restorative justice in Nigeria reflects growing recognition of the need for a justice system that not only punishes offenders, but also addresses the needs and rights of the victims, promoting healing and societal restoration. This paradigm shift is supported by a combination of judicial decisions, legislative reforms and policy initiatives aimed at creating a more equitable and effective justice system.

The judicial recognition of the need for a justice system that not only punishes offenders but also addressed the rights and rehabilitation of victims was enunciated in the case of *Isonguyo v. State*<sup>367</sup> and *Okon v. State*.<sup>368</sup> Also in the case of *Famoroti v. FRN*<sup>369</sup> and *Ezerike v. State*,<sup>370</sup> the Courts ordered restitutions, which are crucial in restorative justice as the courts aim to restore the victims to their original state before the crime.

In *Famoroti v. FRN*, the enabling power of the Court to make an order for restitution after conviction in a criminal case is held to be derived from Section 297 of the Administration of Criminal Justice Law of Lagos State, 2011. This power is exercisable by the Court irrespective of whether the Prosecution applies for restitution to the victim of crime or not.

The essence of restitution is to compensate the victim of crime for the loss suffered and to restore him to the status before the commission of the crime.

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<sup>367</sup> (2022) LPELR-60912 (SC).

<sup>368</sup> (2014) LPELR-22446 (CA).

<sup>369</sup> (2022) LPELR-57786 (CA).

<sup>370</sup> (2022) LPELR-59158 (SC), pp. 36-37, paras. E-F.

Legislative developments have also been pivotal to the historical development of the concept of restorative justice to the victims of crime in Nigeria, particularly, the Violence Against Persons (Prohibition) Act<sup>371</sup> extends comprehensive rights to victims of crime, including medical, psychological and legal assistance. The Act provides that:

1. In addition to the rights guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, or any other international human rights instrument to which Nigeria is a party, every victim of violence, as defined in section 1 of this Act, is entitled to the following rights –

a) to receive the necessary materials, comprehensive medical, psychological, social and legal assistance through governmental agencies or non-governmental agencies providing such assistance;

b) be informed of the availability of legal, health and social services and other relevant assistance and be readily afforded access to them;

c) to the rehabilitation and re-integration programme of the State to enable victims to acquire, where applicable and necessary, pre-requisite skills in any vocation of the victim's choice and also in necessary formal education or access to micro credit facilities;

d) any rules and or regulations made by any institution or organization prohibiting or restraining the reporting of offences or compliance with the provisions of this Act, shall, to the extent of the inconsistencies, be null and void: and

e) no complainant of any offence under this Act shall be expelled, disengaged, suspended or punished in any form whatsoever by virtue of the action of compliance with the provisions of this Act.

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<sup>371</sup> Section 38(1), Violence Against Persons (Prohibition) Act

Also, the Administration of Criminal Justice Act, aims to enhance the efficiency of the Criminal Justice System and incorporates elements of restorative justice such as restitution and compensation for victims. The ACJA states that:

The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.<sup>372</sup>

Institutional reforms, such as the establishment of the Nigeria Police Central Criminal Records Registry under the Nigeria Police Act,<sup>373</sup> enhance the administration of criminal justice by maintaining a comprehensive method of criminal cases, which aids in the effective tracking and management of cases, including those involving victim restitution.

The Court of Appeal in *Atuche v. FRN & Anor*,<sup>374</sup> Per Umar JCA, states that:

It seems to me that the essence of the order for restitution is not a punishment, it is rather to ensure social justice and act as a deterrent by ensuring that a criminal is not allowed to enjoy the proceeds of his crime in total disregard to the fate of the victim. Restitution is not novel to our Criminal Justice. It has always been part of our laws. See *NWUDE V. FRN* (2015) LPELR (25858) 1 at 38-40, *OGUNLANA V. THE STATE* (1995) LPELR (2341) - SC and *EBUKA V. THE STATE* (2014) LPELR (23491) 1 at 13-15. Therefore, in the diacritical circumstances of this matter, Section 36 (8) and (12) are inapplicable as the order for restitution is not a punishment as submitted by learned senior counsel for the Appellant. Looking at the humongous sum stolen by the Appellant and the 2nd Respondent, the trial Court was on a firm standing by making the order of restitution notwithstanding

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<sup>372</sup> Section 1(1), Administration of Criminal Justice Act, 2015.

<sup>373</sup> Section 67(1), Nigeria Police Act, 2020

<sup>374</sup> (2022) LPELR-58246, pp. 104-105, para. B-B, (CA).

the fact that the Appellant had been sentenced to a jail term. The additional order of restitution made by the trial Court is in no way equivalent with the rule of double jeopardy prohibited under our criminal jurisprudence.

Subsidiary legislation like the Nigeria Police Regulations<sup>375</sup> and the Kirikiri Prison Appropriation (Female) Orders<sup>376</sup> also play a role in shaping the operational aspects of criminal justice, particularly in the training and management of personnel and facilities that directly affect the implementation of restorative justice.

These legislative and judicial advancements, supported by institutional reforms, demonstrate Nigeria's commitment to a more restorative approach in its criminal justice system, focusing on the rights and rehabilitation of victims alongside the traditional goals of punishment and deterrence. The Nigerian Constitution and various human rights provisions underpin the movement towards restorative justice by mandating the protection of human rights and the dignity of human persons involved in the criminal justice system.

The development of the restorative justice system to victim of crime in Nigeria has its challenges, particularly in the area of its implementation, which includes the traditional reliance on punitive measures, lack of widespread awareness about restorative justice benefits and insufficient training for legal practitioners and law enforcement on restorative approaches. Nigeria has no crime victims' compensation or reparation schemes that can be said as at today. Individual victim has been compensated, as there are no laws throughout the thirty-six states of the Federation placing obligations or duties on governments, states or federal to pay

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<sup>375</sup> Nigeria Police Regulation, 1968. The current police Act, 2020 is designated as "the Nigeria Police Force (Establishment) Act, 2020" was passed into law by the Senate on the 22<sup>nd</sup> of July 2020 and assented by President Muhammadu Buhari on September 16, 2020. The police regulations as part of the Act are yet to be reviewed to capture the new provisions of the Act. The regulations were last reviewed in 1968.

<sup>376</sup> Kirikiri Prison Appropriation (Female Prisoners) Order, 1961.

compensation to crime victims who suffered crimes of violent nature. The major research problems are the unavailability of state compensatory schemes for victims of crime in Nigeria. Several nations of the world have moved ahead with time in matters of crime victims' compensation; Nigeria cannot afford to lag behind in such issue of international dimensions. In this connection, this thesis dissects the need for legislation in Nigeria's jurisprudence with a view to making statutory provisions for Nigerian citizens who suffered criminal injuries as a result of murder, rape, robbery, etc as a result of crime. However, ongoing legal reforms and increasing recognition of human rights suggest a promising future for restorative justice in Nigeria. The evolution of restorative justice in Nigeria represents a progressive shift towards a more humane and effective criminal system. In these circumstances, I recommend that continued legal reforms, education, and advocacy should be considered essential to overcome challenges and facilitate the practical integration of restorative justice into Nigerian criminal justice jurisprudence.

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## Chapter Five

### Jurisprudence of Restorative Justice for Victims of Crime in Nigeria

#### 5.1 Western Conception of Restorative Justice

Restorative justice could be said to have its root not only in the Western conceptions but also in non-western traditions. Llewellyn and Howse state that a move towards a restorative model of justice is perhaps best understood as a return to the roots of justice, and not as a new-age justice for an ailing criminal justice system.<sup>377</sup> In the contemporary societies, the justice system leans heavily on the pillars of punitive measures. These punitive measures could be short term or long term measure. Despite the measures, the justice system often fall short of addressing the underlying issues.<sup>378</sup> Short-term punitive measures, while sometimes effective in deterring immediate repeat offences, might not address the deeper reasons behind these behaviours, leading to prolonged adverse effects on individuals and the wider community.

The historical conception of restorative justice is not limited to Western practices but also includes some interesting history in the lasting traditions of Africans. Stout is of the opinion that most of what is claimed to be traditional African justice is based upon anecdotal

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<sup>377</sup> Llewellyn, JJ & Howse, R, *Restorative Justice: A conceptual framework*, Canada: Law Commission, 1999 as cited in Tauri, J, *The Plastic Shamans of Restorative Justice*, **The Routledge International Handbook on Decolonizing Justice**, 2023, <<https://library.oapen.org/handle/20.500.12657/76004/restricted-resource?bitstreamId=1b2f96e3-4a70-45c9-b116-29aa1a08fd6d#page=74>>.

<sup>378</sup> Umbreit, MS, Vos, B, & Coates, L, *Restorative Justice in The Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls*. **Marquette Law Review**, 89, 251-304, 2005 as cited in Patel, S, *Embedded Healthcare Policing*, (*Embedded healthcare policing*, 2022), <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/uclahr69&div=20&id=&page=>>>.

unsustainable claims.<sup>379</sup> The very idea of African customary law is considered an oxymoron by the Western writers and it is their belief that African law is not law *per se*, but a form of primitive practice which predates law.<sup>380</sup> In the same vein, it has been argued that to ‘describes ancient justice as necessarily restorative is to romanticise the past and to provide an excuse for re-colonising indigenous groups’.<sup>381</sup>

**In Nigeria, crimes are committed daily and the Nigerian laws for a long period of time centred upon prescribing punishments for the offenders. This chapter is aimed at appraising the jurisprudence of restorative justice to victims of crime under the present criminal justice system with a view to ascertain the extent to which restorative justice can be applied to the victims. It was found that there is dearth of restorative justice aimed at restoring the victims of crime to their status pquo ante.**

**The main statutes in Nigeria that prohibit criminal acts are the Criminal Code Act and the Penal Code Act. These two statutes focus mainly on punishing the perpetrators of the crime because none of the punishments listed in the sections of these statutes could be said to have the interest of the victim as its main purpose. This chapter shall recommend that these two statutes should be reviewed and amended to make provisions for the restoration of the victims of crime to the position he was before the commission of the crime by the offenders in line with the utilitarian purpose of the law which is not only**

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<sup>379</sup> Stout, B, *Restorative Justice in South Africa: Resolving Conflict*, British Journal of Community Justice Vol.1(3) pp51-61, 2003.

<sup>380</sup> Costa, A, *The Myth of Customary Law*, **South African Journal of Human Rights** 14 (4):525-538, 1998 as cited in Olwage, E, *Under the Leadwood Tree: Disputing Land, Mobility and Belonging in Post-Colonial Southern Kaoko*, <<https://kups.ub.uni-koeln.de/61786/>>.

<sup>381</sup> Daly, K, *Restorative Justice: The Real Story*, 2017as cited in Marder, ID, *Mapping Restorative Justice and Restorative Practices in Criminal Justice in the Republic of Ireland*, **International Journal of Law, Crime and Justice**, 2022, Volume 70, <<https://www.sciencedirect.com/science/article/pii/S1756061622000222>>.

sought in the interest victim of crime but also in the general interest of the community.<sup>382</sup>

The jurisprudence of restorative justice to the victims of crime in Nigeria is supported by various legal frameworks and case law that advocate for the rights and restoration of victims. The legal framework supporting restorative justice includes the Administration of Criminal Justice Act. The jurisprudence of restorative justice is increasingly recognised as a vital component of the criminal justice system, aiming to address the needs of victims and contribute to the rehabilitation of offenders.

The jurisprudence of restorative justice in Nigeria is still developing and faces significant challenges in implementation. Currently, it is largely seen as inadequate, functioning primarily as bureaucratic paperwork rather than a robust alternative to traditional criminal justice processes. Efforts to address the slow and rigid procedures within the criminal justice system are ongoing, but many gaps remain, limiting the effective application of restorative justice principles. In other words, the practice of restorative justice in Nigeria is still in its early stages and has many challenges. It is often viewed as insufficient, mainly involving bureaucratic tasks instead of being a strong alternative to the usual criminal justice system. Attempts are being made to improve the slow and inflexible processes within the criminal justice system, but there are still many shortcomings that hinder the proper implementation of restorative justice principles.

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<sup>382</sup> Akinola, OB, *Trumped-Up Charges by Law Enforcement Agencies in Nigeria: Causes, Effects and the Way Forward*, **International Journal of Development Research**, 2020, Volume 10, Issue 5, pp. 35795-35799, <[https://www.researchgate.net/profile/OmoniyiAkinola/publication/360270936\\_up\\_charges\\_by\\_law\\_enforcement\\_agencies\\_in\\_nigeria\\_causes\\_effects\\_and\\_the\\_way\\_forward\\_omoniyi\\_bukola\\_akinola/links/64e51d66a394d6c1aed97e3/trumped-up-charges-by-law-enforcement-agencies-in-nigeria-causes-effects-and-the-way-forward-Omoniyi-Bukola-Akinola.pdf](https://www.researchgate.net/profile/OmoniyiAkinola/publication/360270936_up_charges_by_law_enforcement_agencies_in_nigeria_causes_effects_and_the_way_forward_omoniyi_bukola_akinola/links/64e51d66a394d6c1aed97e3/trumped-up-charges-by-law-enforcement-agencies-in-nigeria-causes-effects-and-the-way-forward-Omoniyi-Bukola-Akinola.pdf)>.

In Nigeria, restorative justice is supported by various domestic laws that align with international frameworks. The focus of restorative justice in Nigeria involves redressing the harm caused to victims while holding offenders accountable, aligning with broader international objectives to create a more balanced and humane criminal justice system. In other words, the Nigerian concept of restorative justice is supported by local laws that match international standards. This aims to repair the harm done to victims while also holding offenders responsible, fitting into global efforts to establish a fair and compassionate criminal justice system.

In Nigeria, the ratification and domestication of international treaties holds particular significance, reflecting the country's commitment to international cooperation and adherence to global norms. A treaty is an international consensus between states in written shape and governed by international law.<sup>383</sup> The phrase treaty is used generically to depict a combination of instruments, including Conventions, Agreements, Arrangements, Protocols, Covenants, Charters, and Acts. In the stringent sense of the term treaties, many instruments are not treaties in the actual sense of it. A treaty means any instrument by which an obligation under international law is undertaken between Nigeria and any other country.<sup>384</sup>

Many international treaties advocate for restorative justice, either directly or through principles. Regardless of whether they apply to the Federal Republic of Nigeria or not, Nigeria signed, ratified and domesticated some of these laws. The international standard shows the basis for restorative justice practice and the extent to which Nigeria's system falls below the expected threshold in theory.

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<sup>383</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (The Beijing Rules), 29 November 1985, A/RES/40/33 as cited in Valentino, CM & Madariaga, JC, [The Logic of Responsibilisation: A Critical Discourse Analysis of the Juvenile Offenders Law in Chile](https://doi.org/10.1080/19460171.2024.2423079) (Critical Policy Studies, 2024), <<https://doi.org/10.1080/19460171.2024.2423079>>.

<sup>384</sup> **S.3(3) Treaties (Making Procedure) Act, Cap.T20, LFN, 2004**

## **5.2 The International Instruments for Restorative Justice Practices**

Restorative justice practices represent a significant shift in the approach to justice, focusing on repairing the harm caused by criminal behaviour rather than solely punishing the offender. This paradigm emphasises the involvement of all stakeholders, including victims, offenders, and the community, in the justice process. Various international instruments have been developed to promote and implement restorative justice principles globally among which are:

### **i. The Tokyo Rules and the Riyadh Guidelines**

The Tokyo Rules aim to enhance ‘greater community involvement in the management of criminal justice, specifically in the treatment of offenders, and to promote among offenders a sense of responsibility towards society.’<sup>385</sup> It tends to achieve this aim by proposing reduced custodial outcomes of criminal justice systems.<sup>386</sup> Rules 5 to 9 provide for alternative disposal of cases at any level of the justice system, pre-trial, trial and sentencing stage and post-sentencing stage.<sup>387</sup>

### **ii. The United Nations Convention on Rights of a Child (UNCRC)**

UNCRC is among the international legal instruments that have imposed restorative justice measures such as rehabilitation, reconciliation, and reintegration on Nigeria. This is specifically regarding Article 3, which stresses that the best interest of the child shall always be the primary focus of every decision concerning the child.<sup>388</sup> It also emphasises the need for the young offender’s inclusivity. Nigeria falls below the UNCRC standard for failing to expressly provide for voluntary participation of the child under the CRA.

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<sup>385</sup> Rule 14.2, Rule 6.2, The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

<sup>386</sup> Rule 1.2, United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).

<sup>387</sup> Rule 1.5, United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).

<sup>388</sup> Article 3, UN Convention on the Rights of the Child.

The CRA meets some of the standards set out in the international law instruments above while falling short of other expectations. At the bare minimum, Nigeria is mandated to meet obligations spelt out in section 40 of the UNCRC for young offenders. This is because Nigeria assumed a position to observe these guidelines by way of assent and ratification of the convention. The convention does not explicitly mention the use of restorative justice but it captures some core provisions that guide a restorative process such as the need for proper involvement of the young offender's parent or legal guardian, the use of the informal mechanisms for a speedy resolution of cases and the protection of the best interest of the child. It could be rightly argued that restorative justice may share this factor with the formal justice system. However, in Nigeria, without reservation the CRA empowers the court to dispose a case even when parents do not consent to it.<sup>389</sup>

Nigeria's underperformance is further evidenced in other ways. To illustrate, when a young offender is arrested in Nigeria, the police are often the first point of contact. After the arrest, young offenders are often tried and incarcerated.<sup>390</sup> Scholars argue that the young offenders 'are remanded in prison custody indefinitely because the judicial officer is either totally ignorant of the procedure to be adopted or is confused about it'. Importantly, while all this is happening, the police often do not inform, for example, the young offender's parents, that their child is going through a criminal justice process. Moreover, when it comes to the hearing, the young offenders are tried in open courts by the same judges who adjudicate over adult

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<sup>389</sup> Section 217(2), The Child's Right Act (2003).

<sup>390</sup> Enweonwu, OA, Ugwu, IP, Onyejegbu, DC, Areh, CE & Ajah, BO, *Religious Fanaticism And Changing Patterns Of Violent Crime In Nigeria*, *International Journal of Criminology & Sociology*, 2021), <<https://doi.org/10.6000/1929-4409.2021.10.158>>.

cases. This goes against the common knowledge that young offenders are a special category of offenders that deserve specialised systems.<sup>391</sup>

In Nigeria, on 1<sup>st</sup> November, 2024, the arraignment of 76 suspects, including 32 minors, before Justice Obiora Egwuatu at the Abuja division of the Federal High Court for participating in the #EndBadGovernance protests in August, 2024 was a recent case where several minors were brought to court alongside adult co-defendants<sup>392</sup> on charges relating to treason and inciting instability in the country. This situation reflects ongoing legal and social issues surrounding the treatment of minors in the Nigerian justice system, the act which violates the core principles of restorative justice and stands to be purely punitive.<sup>393</sup>

### 5.3 Reaction of the Society to Crime

In a given society, the reaction of the people within the same society might differ from one another and same goes for the reaction of one society to another. Societies react in different manner to crime within their cultural frameworks. The diverse reactions indicate the moral and value system of the given society at the given time. The reactions are broadly categorised into three sub-divisions and they are as follows:

**5.3.1 Punitive Perception:** This set of individuals considers criminal acts as basically dangerous and that the primary objective of the criminal justice system should be to protect the society through infliction of pain and punishment on the offender. It is believed that the

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<sup>391</sup> Ogunniran I, *The Lock and Key Phenomenon: Reforming the Penal Policy For Child Offenders in Nigeria*, 10(1) **Justice and Policy Journal**, 2019 as cited in Malesa, KJ & Mashamba, ME, *Parents' Experiences of Participating in Diversion Programmes For Children in Conflict with the Law*, Stellenbosch, 2024, Volume 60 No.1, <<https://doi.org/10.15270/60-1-1257>>.

<sup>392</sup> Ajah B & Ugwuoke C, *Juvenile Justice Administration and Child Prisoners in Nigeria*, 38, 2018 as cited in Ajah, BO, Chinweze, UC, Ajah, IA & Onyejebu, DC, *Behind Bars but Not Sentenced: The Role Of Computerized Central Repository in Addressing Awaiting-trial Problems in Ebonyi State, Nigeria*, **Sage Journals**, 2022, <<https://doi.org/10.1177/21582440221079822>>.

<sup>393</sup> Abdulraheem-Mustapha M. A, *Child justice administration in Africa*, 172 and 188, 2020.

retributive criminal justice system is geared towards righting the wrongs, feuds and vendettas. If a person was hurt, the injured person or his relative was permitted to exact revenge on the person who caused the injury. In this regard, the retribution occasionally exceeded the offence. Under the Code of Hammurabi,<sup>394</sup> retribution was required to be proportionate to the crime, provided the victim and offender were social equals.<sup>395</sup> As a substitute for vengeance, Roman law advanced in the direction of monetary compensation, and fixed penalties were set for various injuries in cases of assault. Thus, from the perspective of development of law and infliction of punishment on offenders, creation of an institution charged with the responsibility of exacting retribution and vengeance on malefactors as the only societally permissible punishment was critical. That institution is the State, and that function, was one of its most basic, and till date, one of its most critical.

**5.3.2 Therapeutic Perception:** This set of people considers the offenders as not essentially bad persons, but helpless products of their societies who require treatment and help. According to Shopeju, a sample of 800 respondents, half male and half female, was drawn from educated Nigerians residing in Abeokuta. Only 42 percent of respondents felt that victims of robbery should be compensated. However, when asked if robbers should compensate their victims, a majority responded positively. About equal proportions were in support or against the idea that victims of assault should be compensated. Appreciable differences were observed between males and females on whether the government should

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<sup>394</sup> Hammurabi (c. 1810 – c. 1750 BC) was the sixth king of the First Babylonian dynasty reigning from c. 1792 BC to c. 1750 BC (according to the Middle Chronology). The Code of Hammurabi is not the earliest surviving law code. It is predated by the Code of Ur-Nammu, the Laws of Eshnunna, and the Code of Lipit-Ishtar. Earlier Sumerian law codes focused on compensating crime victims. The Code of Hammurabi instead focused on punishing the perpetrator. The code is very specific, with each offense receiving a specified punishment. Many offenses resulted in death, disfigurement, or the use of the ‘eye for eye, tooth for tooth’ philosophy.

<sup>395</sup> Miller C.E. & King M. E, *A Glossary of Terms and Concepts in Peace and Conflict Studies*, 2nd edn. **University for Peace**, pp.71-72, 2005 as cited in Gena, AM & Jarra-Heliyon, KI, *An Appraisal of the Practice of Indigenous Conflict Resolution Mechanisms in Building a Culture of Peace in Bale Zones, Oromia National Regional State, Ethiopia*, **AM Gena, KI Jarra-Heliyon**, 2023, Volume 9, Issue 4, <[https://www.cell.com/heliyon/fulltext/S2405-8440\(23\)02177-1](https://www.cell.com/heliyon/fulltext/S2405-8440(23)02177-1)>.

compensate victims of assault. The sample further revealed that offenders are the helpless products of their environment.

The rehabilitation of offenders and their successful social reintegration into society should be the basic objectives of criminal justice systems.<sup>396</sup> Legally binding international human rights conventions, as well as the United Nations standards and norms in crime prevention and criminal justice, clearly acknowledge this point and emphasize the importance of interventions to support the social reintegration of offenders as a means of preventing further crime and protecting society.<sup>397</sup>

**5.3.3 Preventive Perception:** Unlike the punitive and therapeutic perceptions which focus on the offender, preventive perception focuses on the causes of crime and seeks the elimination of the causes. Many offenders have serious skill deficits that make it difficult for them to compete and succeed in the community: poor interpersonal skills, low levels of formal education, illiteracy or innumeracy, poor cognitive or emotional functioning, or a lack of planning and financial management skills. Offenders may have a history of social isolation and marginalization, physical or emotional abuse, poor employment or unemployment, and involvement in a criminal lifestyle that began at an early age. Offenders may also be challenged by physical and mental disabilities or health issues, including problems related to substance abuse and drug addiction. Most offenders are confronted by a range of social, economic and personal challenges that tend to become obstacles to their social integration. Some of those challenges are a result of the offender's social environment, family, peer group

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<sup>396</sup> Griffiths T. Dandur Y& Murdoch D. *Prevention and Social Reintegration of Offenders of Crime*, Ottawa, Public Safety Canada, National Crime Prevention Centre, 2007, as cited in Quinn-Hogan, AN, *The Stain of a Criminal Label: Post-Release Stigmatization and its Effects on Reintegration and Recidivism among Ex-Offenders*, **Sociology Publication**, 2021, <<https://ir.lib.uwo.ca/sociologypub/52/>>.

<sup>397</sup> *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*, New York, 2020.

or low educational and skill levels.<sup>398</sup> However, these perceptions do not exist in hermetically sealed categorisations, they intersect and interwoven with one another.

#### 5.4 Functions of the Criminal Justice System

The foundation of the state is based on social contract, and it encapsulates the idea that individuals and nation-states implicitly consent to reciprocally obligatory conditions and commitments. The social contract theory is predicated on the concept that society and the State are formed by individuals yielding up of their autonomy, and government is produced from authority of the governed.<sup>399</sup> Social contract is in essence the underpinning of civil society, providing endorsement for organization of individuals as a structure of command.<sup>400</sup> The social contract theory has attained a remarkable degree of antiquity and is acknowledged in both sacred and secular history.

Therefore, the functions of every criminal justice system should include the preservation of life, protection of individual property, maintenance of public peace and tranquillity, and sanctioning of crimes, criminals and violations of law. In order to exercise the power of detecting offenders and investigating offences, adjudging offenders, imposing and implementing prescribed punishments upon them, existence of a functional and rational criminal justice system is indicated. Therefore, from the perspective of the social contract theory, the primary reason for existence of the State is maintenance of peace, order, law and

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<sup>398</sup> Farrall, S. *Rethinking What Works with Offenders: Probation, Social Context and Distance from Crime* Cullompton, Devon, Willan Publishing, p. 237, 2022.

<sup>399</sup> Eric Engle, E, *The Social Contract: A Basic Contradiction in Western Liberal Democracy*, Liberal Angle Press, 2<sup>nd</sup> ed. pp98-99, 2008.

<sup>400</sup> Miller C. E. & King M. E. *A Concepts of Peace and Conflict under Criminal Justice System*, 3<sup>rd</sup> edn. University for Peace, 37-39, 2005 as cited in Haya, H & Wapa, A, *The Influence of Reward and Punishment-based Conflict Resolution on the Performance and Loyalty of Elementary School Teachers* PrimaryEdu: Journal of Primary Education, 2024, Volume 8, No. 1, <<https://e-journal.stkipsiliwangi.ac.id/index.php/primaryedu/article/view/4584>>.

good government. Flowing from this, the authority and power to inflict punishment upon offenders is an aspect of the power of the State.

### 5.5 Jurisprudence of Restorative Justice for Victims of Crime

The word “jurisprudence” is derived from the Latin term *juris prudentia*, which means “the study, knowledge or science of law”.<sup>401</sup> The term “jurisprudence,” is also used alternatively as ‘legal theory and/or “philosophy of law”.<sup>402</sup> Jurisprudence is the study and theory of law. Scholars of the concept are also known as jurists or legal theorists and they hope to obtain a deeper understanding of the nature of law, of legal reasoning, legal systems and of legal institutions. Historically, modern jurisprudence began in the 18th century and was focused on the first principles of the natural law, civil law and the laws of nations.

The criminal justice system in Nigeria right from the colonial era to date, has always been prescribing punishments to the offenders of crime with the sole aim of protecting the interest of the offenders and the State alone leaving out the victims of crime to wallow in the excruciating pains caused as a result of the crime. The Criminal Code Act and the Penal Code Act focus mainly on punishing the offenders of crime while the Criminal Procedure Act and the Criminal Procedure Code state the procedures to be adopted for the punishment of the offenders in the Southern part of Nigeria and the Northern part of Nigeria respectively. The efforts of all stakeholders including the courts, the public prosecution unit of government and the law enforcement agencies are mutually complimentary towards the protection of the offender and the State’s interests, while that of the victim is abandoned, neglected and treated

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<sup>401</sup> Hart H. *The Concept of Law*. Oxford: Oxford University Press, 1982 as cited in Bogdandy, AV, *Principles of a Systemic Deficiencies Doctrine: How to Protect Checks and Balances in the Member States*, **Common Market Law Review**, 2020, Volume 57, Issue 3, pp. 705-740, <<https://doi.org/10.54648/cola2020690>>.

<sup>402</sup>Elegido, JM, *Jurisprudence*, **Spectrum Law Pub.**, 1994, <[https://books.google.com.ng/books/about/Jurisprudence.html?id=3z0anQAACAAJ&redir\\_esc=y](https://books.google.com.ng/books/about/Jurisprudence.html?id=3z0anQAACAAJ&redir_esc=y)>.

as not important in retributive criminal justice system. In other words, it is disheartening to note that the stakes of criminal justice in Nigeria, only hold the offender while the victim is abandoned to his/her fate and re-victimised by the criminal justice apparatus when used by the State as mere tool to secure the conviction of the offender and thereby subject the offender to punishment to serve as deterrence to others.

The fact that the Economic and Financial Crime Commission (EFCC) Act provides that the proceeds of crime in financial crime cases be confiscated and forfeited to the Federal Government of Nigeria<sup>403</sup> and also that the provisions of the Administration of Criminal Justice Act (ACJA), to some extent provides for restoration to the victims of crime, have not confirmed that the Nigeria's criminal justice system have in its entirety embraced restorative criminal justice, more so that not all the federating units in Nigeria have embraced ACJA. Even the States that embrace ACJA are still foot-dragging as regards the grant of order for restorative justice to the victims of crimes as there is dearth of restorative justice aimed at restoring the victims of crimes to their *status quo ante*.

This chapter is aimed at discussing the jurisprudence of restorative justice to victims of crime under the present criminal justice system, with a view to ascertaining the extent to which restorative justice can be applied to victims of crimes in Nigeria. This is in line with the utilitarian concept of justice system which is not only sought in the interest of the society in general but also sought in the interest of the victims of crime in particular.

**Since the vast majority of the judges, magistrates, state prosecutors, defence lawyers and other legal professionals who are role players in the administration of criminal**

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<sup>403</sup> Section 21, EFCC ACT, 2004,

**justice in Nigeria are products of an adversarial system, one should not be surprised that the quality of criminal justice emanating from the regular Nigerian courts still broadly depict the negative consequences of the utilitarian approach to criminal justice.**

Though the indigenous Nigeria's legal system was basically conciliatory in character and restorative in nature, none of the punishments mentioned in both the Criminal Code Act<sup>404</sup> and the Penal Code Act<sup>405</sup> could be said to have the interest of the victim as its main focus. In other words, the Nigeria's statutes on crime have hitherto focused on retributive justice. The fact that the major concern of a victim of crime, centres on his return to *status quo ante*, necessitates the need to examine the theories of criminal justice and restoration *vis-a-vis* their jurisprudence.<sup>406</sup>

### **5.5.1 Plea Bargain**

The ACJA also introduces the concept of plea bargain which is expressly authorised in statutes and court rules into the Nigerian criminal justice system. The first legislation that introduced and localised the concept of plea bargain agreement into Nigeria's criminal jurisprudence was the Administration of Criminal Justice Law of Lagos State, 2015. Plea bargain is the process whereby a criminal defendant and prosecutor reach a mutually satisfactory disposition of a criminal case, subject to court approval. In *Gava Corp. Ltd. v. F.R.N.*,<sup>407</sup> the court held that when plea bargaining is successful, it results in a plea agreement between the prosecutor and defendant whereby the prosecutor agrees to dismiss certain charges or make favourable sentence recommendations to the court. Accordingly, plea

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<sup>404</sup> Section 17, Criminal Code Cap. C38 Laws of the Federal Republic of Nigeria, 2004 mentions death, imprisonment, whipping, fine and forfeiture as punishments under the Criminal Code.

<sup>405</sup> Section 68, Penal Code Act, Cap. 89, Laws of Northern Nigeria, 1963 prescribed similar punishments like that of the Criminal Code.

<sup>406</sup> Edwards J. *Theories of Criminal Law*, 2018, <<https://plato.stanford.edu/entries/criminal-law/?o=600605&l=dir&qsrc=990&qo=contentPageRelatedSearch&ad=dirN>>.

<sup>407</sup> (2019) 10 N.W.L.R. (Pt. 1679) p. 139 at 143.

bargain can conclude a criminal case without a trial. It is as a negotiated agreement between a prosecutor and criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor, usually, a more lenient sentence or a dismissal of the other charges. The plea bargain agreement between the parties shall be in writing and shall be signed.<sup>408</sup>

The Court in *Gava Corp. Ltd.* case also held that by virtue of section s 75 and 76(4) of the law, notwithstanding in any contrary provision in the law, the Attorney-General of the State shall have the power to concede and accept a plea bargain from a person charged with any offence where the Attorney-General is of the view that the acceptance of such plea bargain is in the public interest, in the interest of justice (*ex debito justitia*) and the need to prevent abuse of legal process.

It is further held in *Gava Corp. Ltd.* that the essence of plea bargain is not just to conclude a trial, but to strike an agreement between prosecution and accused, whereby the accused agrees to plead guilty to a lesser offence or to one of multiple charges in exchange for some concession and that the plea bargain agreement is personal in any criminal proceeding and cannot be inherited by a successive claimant. The close relationship between the person who took the plea and the new claimant is of no consequence. Plea bargain is the process whereby a criminal defendant and prosecutor reach a mutually satisfactory disposition of a criminal case, subject to court approval.

While elucidating the meaning of the concept of plea bargain, the Court in *PML (Securities) Co. Ltd. v. F.R.N.*,<sup>409</sup> plea bargain was held to involve a negotiation between an accused and

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<sup>408</sup> Section 75(1), Administration of Criminal Justice Law of Lagos State, 2015.

<sup>409</sup> (2018) 13 N.W.L.R. (Pt. 1635) p. 157 at 161.

the prosecution, in which an accused agrees to plead guilty to some crimes in return for reduction of severity of charges, dismissal of some charges, and prosecutor's willingness to recommend a particular sentence or other benefit to him.

### **5.5.2 Compensatory Damages**

Compensatory damages provide a plaintiff with the amount necessary to replace what was lost, and nothing more. Thus, it covers the loss the innocent party incurred as a result of the breach of contract and the amount awarded is intended to make good or replace the loss caused by the breach. This is based on the principle of *restitutio in integrum*.

The ACJA provides for compensation for loss or injury and of costs.

Provides that the court may, in addition to any order under subsection (2) of this section, order the defendant to pay such damages for injury or compensation for any loss suffered by a person by reason of the conduct or omission of the defendant, and to pay such costs of the proceedings as the court thinks reasonable.<sup>410</sup>

However, where the offender has not attained the age of 18 years and it appears to the court that the parent or guardian of the defendant conduces to the commission of the offence, the parent or guardian of the defendant shall pay the damages and costs. This thus means that monetary consideration thereof would serve as compensation to the victim of crime in order to restore him to *status quo ante*.

It should be noted that the general and special damages awarded by the Court are forms of compensatory damages. They are compensatory damages for harm that results from the

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<sup>410</sup> Section 454 (3), ACJA

wrong for which a party has sued. The general damages are monetary recovery in a law suit for injuries suffered such as suffering, inability to perform certain functions, opportunity cost and or breach of contract for which there is no exact monetary value which can be calculated. Usually, the harm is reasonably expected and need not be alleged or proved.

In *Mekwunye v. Emirates Airlines*<sup>411</sup> the Court held that general damages are damages that the law presumes and they flow from the type of wrong complained about by the victim, i.e. the plaintiff. General damages are distinct from special damages which are specific cost. While general damages are pecuniary compensation for injuries that follow the initial injury for which compensation is sought, specific damages involves economic losses such as loss of earnings, property damage and medical expenses. Both special damages and general damages constitute compensatory damages. Though the law is against double jeopardy in form of compensations, the courts do award both general and special damages in deserving situations.

In the case of *Nwude v. FRN & Ors*,<sup>412</sup> the appellant argued the having been sentenced to a term of imprisonment, it would be absurd to award compensatory damages to the respondent as that will amount to subjecting him to double jeopardy. The Court of Appeal held *inter alia* that a sentencing to a term of years and/or with an order of forfeiture does not amount to double jeopardy because section 11 of the Advanced Fee Fraud Act provides that in addition to any other penalty prescribed under this Act, the High Court shall order a person convicted of an offence under this Act to make restitution to the victim of the false pretence or fraud by directing that person to pay to the victim an amount equivalent to the loss sustained by the victim. This section not only talks about forfeiture, but also talks about compensation to the victim other than the Federal Government.

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<sup>411</sup> (2019) 9 N.W.L.R. (Pt. 1677) p. 191 at 203.

<sup>412</sup> (2015) LPELR-25858 (CA)

The exemplary damages, though sometimes referred to as punitive or vindictive damages, apply only where the conduct of the defendant is wanton and merits punishment. In *Mekwunye v. Emirates Airlines*, the court held that the defendant's conduct is considered to be wanton where it discloses fraud, malice, cruelty, insolence or the like, or where the conduct is a contumelious disregard of the plaintiff's rights.

## 5.6 Theories of Criminal Justice

The theories of criminal justice constitute the branch of philosophy of law that deals with criminal justice and in particular punishment as the life of criminal law begins with criminalisation.<sup>413</sup> Every criminal offence and its punishment are defined by law which determines whether justice has been done or not. However, three theories of criminal justice shall be discussed as follows:

**5.6.1 Theory of Retributive Justice:** This theory posits that everyone who commits crime should suffer punishment as a deserving consequence of his condemnable act. The theory however, submits that punishments should cause enough pain to outweigh the pleasure derived from committing crime. This punishment shall be administered by a competent court of jurisdiction and it must be in proportion to the harm occasioned by the crime as prescribed and proscribed under relevant law. The theory involves a minimum of three tenets:

- i. a person may be punished only if he has voluntarily done something wrong;
- ii. the punishment must match, or be equivalent to, the wickedness of the offence; and
- iii. the justification for punishment is the moral justness of returning suffering for moral evil voluntarily done.

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<sup>413</sup> Edwards J. *Theories of Criminal Law*, 2018, available at <<https://plato.stanford.edu/entries/criminal-law/?o=600605&l=dir&qsrc=990&qo=contentPageRelatedSearch&ad=dirN>>.

All the retributive theory variants can be formulated through revisions and amendments to these tenets. The retributivist bases the theory of punishment on the belief that an offender deserves to receive suffering that matches the severity of the crime committed. Assuming the acceptance of this principle that the retributivist has the difficult task of matching various punishments to particular offences. For example, in the crime of rape literal retribution might demand that the offender be raped, or his wife or daughter. Although making punishment to be commensurate to the crime committed is practical humane. The use of a socially acceptable alternative to punishment like imprisonment, fines, etc., undermines retribution as a coherent theory for punishment. However, the argument of the retributivist that justice demands punishment when laws are violated is not convincing enough.

Retribution requires criminals to pay for their crimes and suffer for wrongs they inflicted on other members of the society. It does not look at reformation of the offender as a primary goal, but proceeds on the basis that a person who has broken the legal codes of the society is by that singular act entitled to suffer an approximation of the very injury he caused. In 1949, Lord Denning appearing before the Royal Commission on 'Capital Punishment' expressed the following view:

The punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizen for them. It is a mistake to consider the object of punishment as being deterrent or reformatory or preventive and nothing else ... The ultimate justification of any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime: and from this point of view, there are some murders which, in the present state of public opinion, demand the most emphatic denunciation of all namely the death penalty.<sup>414</sup>

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<sup>414</sup> Friedman, W. *Law in a Changing Society*, Delhi: Universal, 2023, 3rd ed. p. 225, <<https://www.google.com.ng>

**5.6.2 Theory of Transformative Justice:** This theory decries the perspective that crime is defined and framed by the State through the criminal justice system contrary to the position of retributive criminal justice system. This theory posits that the criminal justice system is essentially unjust as it disconnects victims from offenders by leaving the victim to suffer harm from criminal act without restitution. The theory postulates that the State control of criminal justice administration which is based on retributive justice, perpetuates injustice not only against the victims but also against the offender. In effect, transformative justice also referred to as rehabilitative justice considers the offender as an individual in need of treatment on account of the harm suffered and its attendant challenges. Thus, the theory of transformation justice submits that rather than considering victims and offenders as distinct entities, it should be reasoned that an offender may have caused harm and suffered harm all the same.

The structural approach in transformative justice strive to improve the quality of life of not only the victim but also the offender and the community by examining the root causes of crime. The theory of transformative justice overreached the offender-victim perspective emphasised and supported by restorative justice regime.

## **5.7 Theories of Penology**

The body of law dealing with offences which may result in imposition of punishment, such as fine or imprisonment is known as criminal justice. Every society, in the quest to do justice, has to define its basis for imposition of punishment upon those who violate its tenets and norms. This led to the development of different theories of punishment. In most legal systems, a combination of these theories form the basis for their penology. The theories of punishment are discussed as follows:

**5.7.1 Utilitarian Theory:** The Utilitarian effect of punishment extends to the punishment having a deterrent effect. In this regard, imposition of punishment and its painful effect on the offender deters the offender from continuing with a life of crime. It is not only the actual offender that is deterred from entering or continuing with a career of crime, other prospective offenders are also deterred as a result of pain of punishment for crimes. Crimes of passion, which are committed without pre-planning or which are predicated on a spur of the moment action or reaction, cannot be restrained by a deterrent punishment. Thus, deterrent theory of punishments is of little or no effect in preventing commission of crimes.

Utilitarian theory of punishment finds further expression in the reformatory model which focuses on the offender and not his offence and seeks to deal with the root cause of criminality by retraining and reforming the offender. Real life experience discloses that a good number of criminals make a deliberate choice about a life of crime; their decisions are driven by a cost benefit analysis. The major problem of this theory is that it shifts responsibility for the actions of the offender from the offender to the society. In this regard, the death penalty, though proceeding from a retributive basis also has utilitarian effect because the murderer is permanently denied the opportunity of committing another homicide. Imprisonment has given rise to preventive model of punishment with its attendant defect as it occasionally leads to serious injustice. In the face of an imperfect criminal justice system, police misconduct, prosecutorial overzealousness or defence counsel incompetence, acting either singly or in combination occasionally result in innocent persons being either incarcerated or executed.

**5.7.2 Social Contract Theory:** The foundation of the state is based on social contract which has the idea that the State has the obligatory right to punish the offender. The social contract theory is predicated on the concept that society and the State are formed by individuals yielding up of their autonomy, and government is produced from authority of the governed. The social contract theory has attained a remarkable degree of antiquity and is acknowledged in both sacred and secular history as providing both a theoretical and practical foundation for organization of societies and civilisations. From the perspective of the social contract theory, the primary reason for existence of the State is maintenance of peace, order, law and good government. Flowing from this, authority and power to inflict punishment upon offenders is an aspect of the power of the State. In Plato's dialogue with Crito, Plato uses the concept of social contract to justify his decision to remain in incarceration in order that the sentence of death imposed on him should be executed, instead of escaping from jail as urged by Crito.<sup>415</sup> John Locke also articulates a social contract theory in which each man gives over the power to punish transgressors to the government.<sup>416</sup>

In order to exercise the power of detecting offenders and investigating offences, adjudging offenders, imposing and implementing prescribed punishments upon them, existence of a functional and rational criminal justice system is indicated. Therefore, the functions of every criminal justice system should include the preservation of life, protection of individual property, maintenance of public peace and tranquillity, and sanctioning of crimes, criminals and violations of law.<sup>417</sup>

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<sup>415</sup> Plato & Crito, (Trans. Benjamin Jowett), *Great Books of the Western World*, Vol. 7, William Benton, 217, 1952.

<sup>416</sup> John Locke. *An Essay Concerning the True Original Extent and End of Civil Government*; Great Books of the Western World, Vol. 35, **William Benton**, 298, 1952.

<sup>417</sup> Engle, E, *The Social Contract: A Basic Contradiction in Western Liberal Democracy*, **Peace and Conflict Journal**, Vol. 4. Issue 2, University for Peace, pp. 67-68, 2008 as cited in Greenwood-Reeves, J, J, (London Routledge, 2022), 1<sup>st</sup> Edn, <<https://doi.org/10.4324/9781003273752>>.

**5.7.3 Compensatory Theory:** Under the Criminal Justice System, the defendant is the sole focus while the victim is useful only in assisting the State to obtain conviction of the offender. Out of all the theories of punishment which includes utilitarian and retributive theory which includes *inter alia*, crime victim's compensation is the only theory of penology that considers crime victims' interests. Consequently, while the preceding theories of punishment serve the needs of the society and even that of the offender, they fail to assuage the victim's needs. In 1985, the United Nations General Assembly adopted a declaration on 'Basic Principles of Justice for victims of Crime and Abuse of Power.' Article 9 of the Declaration required governments to review their regulations and laws to consider restitution as a sentencing option in criminal cases in addition to other criminal sanctions.<sup>418</sup> Compensation rests primarily on two grounds:

- i. a criminal who inflicted injury against persons or property must compensate them for the loss, and
- ii. a State that failed to protect a victim of crime, must pay compensation to him.<sup>419</sup>

The compensatory theory taken alone, like every other theory of punishment has severe shortcomings. Since the motive of criminality is not always economic, promotion of economic loss as sufficient punishment for the offender results in over-simplification of motives for crime. Compensation, as an objective of punishment finds justification in utilitarianism, so that the primary goal of criminal justice administration ceases being punishment of the offender or prevention of commission of further crimes, but rather compensation of the victim. Furthermore, the effect of the punishment depends on the economic status of the offender.

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<sup>418</sup> United Nations General Assembly Resolution no 40/34 of 1985.

<sup>419</sup> Goudappanavar S. G, *Critical Analysis of Theories of Punishment*, **Journal of Social-political Science**, Vol.5 Issue 3, 2013 as cited in Qashigah, A & Abledu, YA, *Criminalising and Punishing Non-Compliance with Petroleum Revenue Laws in Africa: Ghana's Experience with Non-Compliance*, **African Journal of International and Comparative Law**, 2023, Volume 31, No. 4, <<https://www.eupublishing.com/doi/abs/10.3366/ajicl.2023.0464>>.

Persons of means are less affected by financial loss as punishment than persons with lean resources. In this regard, persons without financial means or property which could be amerced cannot be punished. Taking away the entire economic resources of a person as punishment could leave him with no other means other than resort to crime for subsistence.

## **5.8 Theories of Restorative Justice**

In view of the impact of therapeutic jurisprudence on restorative justice, certain theories have emerged to explain why restorative justice processes might be effective in reducing crime and accomplishing other kinds of restoration that have been categorised as theories of restorative justice. This theory emphasizes the utility of repairing the harm caused by criminal conduct. In this process, all stakeholders including the public prosecution unit of government, the courts and law enforcement agencies, must cooperate in mutually complimentary activities to accomplish the purpose of restorative justice. It is believed that the acts or practices reflective of restoration will respond to crime by taking steps to repair the harm caused by the crime. The process of achieving restorative justice must involve all stakeholders, and the outcome of the process will transform the relationship between communities and the government in preventing future commissions of crime by the offenders. The efficacy of restorative justice is based on the cumulative effect of the shame brought on the offender and the restoration of the victim, which leads to the reintegration of the offender to the society has endeared restorative justice to the criminal justice administrators.<sup>420</sup> These theories are as follows: The theories of reintegrative shaming, procedural justice, unacknowledged shame and defiance.

**5.8.1 Re-integrative Shaming Theory:** This theory was developed by John Braithwaite in 1989 out of the desire for better criminal justice outcomes. It is the belief of this theory that

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<sup>420</sup> T. Gavrielides, *Restorative Justice Theory and Practice*, 2020, <<https://www.peacepalacelibrary.nl>>.

societies that participate in shaming offenders will have lower crime rates. Shaming is the action of making someone else feel ashamed. Shaming in the context of the criminal justice system is a punishment used to shame the offender in respect to crimes that have to do with morality, such as moral deviancy or minor crimes. For example, a mother who sped around a stopped school bus sped around despite the stop sign and was sentenced to stand on the corner of the bus stop holding a sign that says "I am too impatient to care about the safety of children."

Re-integrative theory of Braithwaite is about using community-based temporary shaming method to reduce crime. This theory is only applicable to crime that has a clear victim of less severe crimes. This shaming could be stigmatising shaming which is a shaming punishment that is temporarily or often permanently used with the intention of marking the offender and bringing him negative attention.

According to Braithwaite, this form of shaming is a cause of higher crime rates. For instance, if a steals a jewellery from a woman and he is caught. As his punishment, he must return the stolen item to the store owner himself and explain to him why his actions were wrong. The emphasis is on returning the jewellery to the woman personally for the woman not only to see the thief but and probably recognise him but also to return the stolen jewellery to the owner. This method of reintegrative shaming would give the victim an opportunity to see justice and help the offender reintegrate into society through community forgiveness. According to Braithwaite, reintegrative shaming is highly effective in small communities for curbing juvenile, and sexual offences and crimes that do not cause major damage. However, this theory falls short when it comes to more serious offences in urban areas.<sup>421</sup>

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<sup>421</sup> Braithwaite J, *Restorative Justice: Theories and Worries*, 2004 as cited in Zakszeski, B Rutherford, L, *Mind The Gap: A Systematic Review of Research on Restorative Practices in Schools*, **School Psychology Review**, 2021, pp, 371-387, <<https://www.tandfonline.com/doi/abs/10.1080/2372966X.2020.1852056>>.

In terms of re-integrative shaming theory, it is not the shame of police or judges or newspapers that is most able to get through to the offender, it is shame in the eyes of those the offender respect and trust. While tolerance of crime makes things worse, stigmatization, or disrespectful makes crime worse still, re-integrative shaming disapproval of the act within a continuum of respect for the offender and disapproval terminated by rituals of forgiveness, prevents crime. *Crime, Shame and Reintegration* gives an account of why restorative justice processes ought to prevent crime more effectively than retributive practices. One implication for restorative justice advocates of this theory is that the justice system will do better when it facilitates moral reasoning by families over what to do about a crime as an alternative to punishment by the state.<sup>422</sup>

Under reintegrative shaming theory, restorative justice conferences prevents crime by inviting victims and supporters of the victim to meet with the offender and the people who care most about the offender. This conference or group discusses the consequences of the crime, drawing out the feelings of those who have been harmed, then discussing how that harm might be repaired and any steps that should be taken to prevent recidivism. For the decision of the conference to be effective and prevent reoffending, the group must show respect, refrain from bias on the grounds of age, sex or race listen and empower others with process control.

**5.8.2 Procedural Justice Theory:** This theory communicates respect and procedural fairness which predicts subsequent compliance with the law through conferences. Conferences do not have all the procedural safeguards of court cases, yet there are theoretical grounds for predicting that offenders and victims will find them fairer because conferences are structurally fairer because of who participates and who controls the discourse. While criminal trials invite along those who can inflict maximum damage on the other side; conferences invite those who

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<sup>422</sup> Edwards J. *Theories of Criminal Law*, 2018, available at <<https://plato.stanford.edu/entries/criminal-law/?o=600605&l=dir&qsrc=990&qo=contentPageRelatedSearch&ad=dirN>>.

can offer maximum support to their own side, be it the victim side or the offender side. In other words those present are expected to be fair and therefore tend to want to be fair. They tend not to see their job as doing better at blackening the character of the other than the other does at blackening theirs. Citizens are empowered with process control, rather than placed under the control of lawyers.

The questions are whether citizens feel they are treated more fairly in restorative justice processes than in courts and whether they are more likely to understand what is going on. The answer seems to be yes. Procedural justice theory shows that offenders are more likely to understand what is going on in conferences than in court cases. The victims feel more empowered to express their views, have more time to do so, are more likely to feel that their rights are respected, to feel that they could correct errors of fact, to feel that they are treated with respect and are less likely to feel in conferences that they are disadvantaged due to age, income, sex, race or some other reason.<sup>423</sup>

**5.8.3 Defiance Theory:** Defiance theory suggests that fairness and legitimacy of experienced punishment are essential for the acknowledgement of shame, which conditions deterrence. If an offender feels that they are treated unfairly or that a sanction is illegitimate, they are more likely to defy the law and continue to offend. When punishment is perceived as unjust by the offender, it can lead to unacknowledged shame and defiant pride that increase the chance of engaging in future crime. Defiance theory combines re-integrative shaming, the sociology of master emotions, and compliance and procedural justice to explain how increased future offending against the sanctioning agent may result from how they reacted to the sanction.

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<sup>423</sup> Gavrielides, T, *Restorative Justice Theory and Practice: Addressing the Crime*, 2020 <<https://books.google.com.ng>>.

Criminal exploitation is woven around procedural justice, re-integrative shaming and unacknowledged shame into an integrated theory of defiance.<sup>424</sup> Defiance theory has three propositions which are:

- i. Sanctions provoke defiance of the law to the extent that offenders experience sanctioning conduct as illegitimate, that offenders have weak bonds to the sanctioning agent and community, and that offenders deny their shame and become proud of their isolation from the sanctioning community.
- ii. Sanctions produce future deterrence of law breaking to the extent that offenders experience sanctioning conduct as legitimate, that offenders have strong bonds to the sanctioning agent and community, and that offenders accept their shame and remain proud of solidarity with the community.
- iii. Sanctions become irrelevant to future law breaking (no effect) to the extent that the factors encouraging defiance or deterrence are fairly evenly counterbalanced.

According to Sherman defiance is caused by the following factors:

- i. A sanction is perceived as unfair where punishment is perceived as unfair. This can happen if the punishment is perceived as arbitrary, discriminatory or excessive, or if the offender has no respect for the punisher. The perpetrator is not integrated into or even alienated from the community and the sanction has a stigmatising effect.
- ii. When bonds to the community and in particular to the sanctioning authorities are weak, the willingness to recognise the sanctions also decreases.

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<sup>424</sup> Zehr, H, *A Restorative Lens*, Restorative Justice, 2015 - taylorfrancis.com <<https://www.taylorfrancis.com/chapters/edit/10.4324/9781315264868-3/restorative-lens-howard-zehr>>, as cited in Procter-Legg, T, Practitioner perspectives on a restorative community: An inductive evaluative study of conceptual, pedagogical, and routine practice, *Laws*, 2021,

In this regard, Sherman's theory corresponds with Braithwaite's Theory of Reintegrative Shaming. Both Reintegrative theory and defiance theory agree on the following:

- a. When weakness is perceived in the punisher or for other reasons the shame normally caused by the sanction is rejected.
- b. Shame is not recognized.
- c. When the perpetrator feels rejected as a person.
- d. The punishment has a stigmatizing effect.<sup>425</sup>

**5.8.4 Theory of Unacknowledged Shame:** Whether shame is acknowledged or not is a decisive issue. In the early 1990s shame was noted as a limitation of crime that failed to come to terms with the implications of whether shame was by-passed or acknowledged. They saw acknowledgment as a vital supplement to the theory given the way this had emerged as a recurrently central question in both conversational analyses and the clinical psychiatric literature on people with shame management problems.

The evidence now seems strong that unacknowledged shame contributes to violence and admittedly preliminary evidence suggests that in conferences, offenders may accept and discharge shame more than when they go through court cases and if both propositions are correct, conferences might do more to reduce crime than court cases.

## **5.9 Relationship between Criminal Justice and Restorative Justice**

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<sup>425</sup> Sharman, LW, *Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Sanction*, **Journal of Research in Crime and Delinquency**, Volume 30, Issue 4, pp. 77-85, 1993 as cited in Braithwaite J, *Macrocriminology and Freedom*, **Oapen**, 2022, <<https://library.oapen.org/handle/20.500.12657/53117>>.

The criminal justice system focuses largely on assessing guilt, deterrence, rehabilitation of offenders, applying the Law, administering punishment and community safety. It concentrates more on the crime itself than on the people involved and it is concerned with retribution and punishing the offender which is often not in the best interests of the victim, the offender, or society in general. Apart from giving no attention to the needs of victims, it provides limited scope for the relevant parties to engage in dialogue with the aim of restoring respect and trust in relationships. The criminal justice system which is premised solely on retributive justice system places premium on punishing the offender rather than caring for the needs of the victim. To the retributionists, punishment is very important to crime as it serves as deterrence to the offenders as well as to the criminal minded individuals that might want to go into commission of crime.

Conversely, restorative justice draws upon traditional and indigenous forms of justice which view crime as harmful to people who are entitled to participate in the resolution of their disputes. Restorative justice appraises and evinces access to justice in criminal cases through Mediation, Victim-Offender and family Conferencing, Compounding, Family Conferencing, Plea Bargain, etc.

In view of the differences that exist between the criminal justice and restorative justice, there are diverse opinions of scholars as regards how restorative justice can be achieved and these opinions have been classified into schools of thought and discussed as follows:

**5.9.1 Maximalist Theory:** Lode Walgrave, one of the advocates of the Maximalist school of thought, argues that the Integrationist's voluntary requirement effectively prevents restorative justice from having any place in the way that the criminal justice system deals with the

majority of cases. He posits that many crimes will be deemed too serious or unsafe for integration, and many offenders will either be unwilling or unsuitable for a voluntary approach. This he puts by stating that:

Restricting restorative justice to voluntary deliberations would limit its scope drastically.... The criminal justice system would probably refer only a selection of the less serious cases to deliberative restorative processes, thus excluding the victims of serious crimes who need restoration the most.<sup>426</sup>

The Maximalists are willing to jettison the voluntary requirement in their quest for the most comprehensive application of restorative justice values. This allows them to expand what counts as 'restorative justice' to include sanctions that have been entirely determined by the court, so long as they have a reparative orientation. This type of sanction might require the offender to pay restitution or compensation to allow for the possibility of compulsory detention being classified as restorative justice. Many scholars, particularly the Maximalists believe that instead of giving the offender the deserved punishments as in retributive criminal justice system, they believe that the possibility of compulsory detention to the offender should be seen as a form of restorative justice.

While Boonin suggests that the State could imprison an offender with the intent of restoring the victim (and/or the affected community) to the level of security they enjoyed prior to the offence, rather than making the offender suffer or undergo hard treatment,<sup>427</sup> Walgrave posits

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<sup>426</sup> Walgrave, L, *Integrating Criminal Justice and Restorative Justice* as cited in Wemmers JA, Parent I & Quirion, ML, *Restoring Victims' Confidence: Victim-Centred Restorative Practices*, (International Review of Victimology, 2023), **Volume 29, Issue 3** <<https://doi.org/10.1177/02697580221128830>>.

<sup>427</sup> Boonin D. *The Problem of Punishment*. **Cambridge: Cambridge University Press**, 2<sup>nd</sup> ed, 2008 as cited in Coverdale, HB & Wringe, B, *Non-paradigmatic Punishments*, **Philosophy Compass**, 2022, Volume 17, Issue 5, <<https://compass.onlinelibrary.wiley.com/doi/full/10.1111/phc3.12824>>.

that incarceration might be used to enforce compliance with the restorative sanctions.<sup>428</sup> This rationale, according to Boonin, would radically alter the conditions of incarceration: either to the victim directly or a victim's fund and where there is no identifiable victim, the community.<sup>429</sup> Dignan argues that the offender could undertake adequately paid work in prison in order to provide financial compensation for or on behalf of victim. The Maximalists' belief is that this type of sanction might require the offender to pay restitution or compensation either to the victim directly or a victim's fund and where there is no identifiable victim, the community.<sup>430</sup>

The Maximalists do not reject voluntary forms of restorative justice. Indeed, they usually concede that voluntary participation produces a higher quality of restoration and that there should therefore be a presumption in favour of diversion wherever possible. They believe that what is essential to restorative justice is that the harms that were caused are repaired and this should become the primary focus of the criminal justice system.

**5.9.2 Integrationist Theory:** The relationship between restorative justice and criminal justice is best described as 'Integrationist' model. According to the Integrationist, a process will only count as 'restorative justice' if those who participate in it do so voluntarily. The participation of the victim and any support persons must also be voluntary. The focus of this requirement is

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<sup>428</sup> Walgrave, L, *Imposing Restoration Instead of Inflicting Pain*, 2003 as cited in Greenfield, VA & Paoli, L, *Assessing the Harms of Crime: A New Framework For Criminal Policy*, **Clarendon Studies in Criminology**, 2022, <[https://www.google.com.ng/books/edition/Assessing\\_the\\_Harms\\_of\\_Crime/uDNtEAAAQBAJ?hl=en&gbpv=1&dq=Greenfield,+VA+and+Paoli,+L,+Assessing+the+harms+of+crime:+A+new+framework+for+criminal+policy&pg=PR8&printsec=frontcover](https://www.google.com.ng/books/edition/Assessing_the_Harms_of_Crime/uDNtEAAAQBAJ?hl=en&gbpv=1&dq=Greenfield,+VA+and+Paoli,+L,+Assessing+the+harms+of+crime:+A+new+framework+for+criminal+policy&pg=PR8&printsec=frontcover)>.

<sup>429</sup> Dignan, J, *Towards a Systemic Model of Restorative Justice*, 2003, as cited in O'Mahony, D & Doak, J, *Restorative justice—is more better? The Experience of Police-led Restorative Cautioning Pilots in Northern Ireland* **Routledge**, 2023, <<https://www.taylorfrancis.com/chapters/edit/10.4324/9781003424086-13/restorative-justice-better-experience-police-led-restorative-cautioning-pilots-northern-ireland-david-mahony-jonathan-doak>>.

<sup>430</sup> Duff A. *Trials and Punishments*. **Cambridge: Cambridge University Press**, 3<sup>rd</sup> ed. p.38, 1986 as cited in Joyce, P & Laverick, W, *Criminal Justice: An Introduction* (London Routledge, 2022), <<https://doi.org/10.4324/9780429330537>>.

normally directed towards the offender since their legal situation makes them more vulnerable to coercion. The voluntary requirement, according to Integrationists states that the offender must be given the following opportunities:

- i. to speak honestly and openly about what they did and how they now feel about it,  
and
- ii. to collaborate with the other participants in devising an agreement about how they can make amends for the harm they have caused.

In Nigeria, the operators of criminal justice such as police officer, prosecutor, judge or magistrate should offer the offender the integrationist approach opportunity to take part in restorative justice instead of being subject to the usual legal consequences, such as an arrest, prosecution, a traditional sentence, supervision conditions, parole release conditions and so on. If the offender agrees to take part in a restorative justice process, then the legal consequences that he would otherwise have faced are normally significantly reduced, amended or waived. The offender is not arrested or charged, he avoids prosecution and the usual sanction is replaced or modified to incorporate the restorative justice outcome agreement. Where the offender chooses not to accept this offer, he may not cooperate with the restorative justice process. For instance, he may not show up for meetings, or may fail to complete the outcome agreement as required. In such cases, the integrationist approach will normally be deemed unsuccessful by the judicial authority, and they are then very likely to impose the legal consequences that the offender would ordinarily have received.

Integrationist model takes the view that the offender should exercise the option of whether to choose criminal justice or restorative justice when his matter is about to be decided. In other words, the offender should voluntarily choose between the two justice systems and this still

count as 'voluntary' even when the state threatens to impose the legal consequences that the offender would otherwise have received should they fail to complete the restorative justice agreement even when the judicial authorities mandate that an offender take part in restorative justice and then incorporate the agreement into the offender's sentence.<sup>431</sup>

As long as the State has not asked the offender to say anything he does not want to say at the conference, or order the offender to admit responsibility or offer an apology, it is still voluntary. It is only when the offender is forced to choose the features of restorative justice that the process could no longer be legitimately classified as 'restorative justice'. Also, if the operators of criminal justice system alone, determine what the sentence will be without taking into account the interests and contributions of the participants, then this process would not count as restorative justice. While the offender may be directed to participate at the conference by the court and the terms of the conference are sanctioned by the court and made the judgment of the court, since the outcome is not determined by the court, the voluntariness of restorative criminal justice system has not been violated.

According to Paul McCold, where:

Conferences are held prior to court appearance where the offender fails to deny charges and the cases are disposed (diverted) at that time. Those who deny responsibility are adjudicated in court, and if found responsible are mandated to participate in a conference to determine sentence conditions. While offenders may

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<sup>431</sup> Allan A., De Mott J., Larkins I. M., Turnbull, L., Warwick T., Willett L. & Allan M. M. *The Impact of Voluntariness of Apologies on Victims' Responses in Restorative Justice-findings of a Quantitative Study*. Psychiatry, Psychology, and Law, 29:4, 593-609, 2022.

be directed to participate by the court and the terms of the conference are sanctioned by the court, outcomes are not determined by the court.<sup>432</sup>

**5.9.3 Substitutionist Theory:** This school views criminal justice system in an entirely negative light, and so it aims to replace the retributive criminal justice system with restorative justice over time. It is a radical position on how restorative justice should be situated in relation to criminal justice and it is not the same kind of ‘replacement’ advocated by Maximalists. For Substitutionists, restorative justice must be entirely voluntary and it cannot be extended to include reparative sanctions. Indeed, Substitutionists go a step further than Integrationists insofar as they hold that the coercive elements of a diversionary mechanism will effectively undermine the voluntariness of a restorative justice process. With substitutionism, it is unlikely ever to imagine that any modern state can elect to rid itself of the rule of law, together with the institutional apparatus by which that rule is upheld i.e. police, lawyers, courts, compulsory sanction and detention and so on. By implication, substitutionism is held as a matter of principle by many restorative justice advocates as morally superior to the typical deliverances of criminal justice.<sup>433</sup> As Robinson puts it, most of the leading advocates of restorative justice ‘conceive of restorative processes not simply as a potentially useful piece of, or complement to, the criminal justice system, but as a substitute for it.’<sup>434</sup> Substitutionism is the only model that most governments are prepared to fund, or that criminal justice agencies and other stakeholders have been willing to endorse.

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<sup>432</sup> McCold, P, *Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model*, **Contemporary Justice Review**, 3, 357-414, 2000 as cited in Elliot, EM, *Security, With Care: Restorative Justice and Healthy Societies*, **Fernwood Publishing**, 2020, <[https://www.google.com.ng/books/edition/Security\\_With\\_Care/UwF0EAAAQBAJ?hl=en&gbpv=0](https://www.google.com.ng/books/edition/Security_With_Care/UwF0EAAAQBAJ?hl=en&gbpv=0)>.

<sup>433</sup> Boyes-Watson, C, *What Happens when Restorative Justice is Encouraged, Enabled and/or Guided by Legislation?* 2004 as cited in Brookes DR, *Restorative Justice and Criminal Justice: The Case For Parallelism* **Torrossa Online Digital Bookstore**, 2023, <<https://www.torrossa.com/en/resources/an/5486634>>.

<sup>434</sup> Robinson S. & Carlson D. *A Just Alternative to Litigation: Applying Restorative Justice to Climate-related Loss and Damage*, *Third World Quarterly*, 42(6), 1384-1395, 2021.

**5.9.4 Parallelist Theory:** The foundational principle upon which Parallelism is built is that Restorative justice should be legally independent and the criminal justice system must not impose the decision to participate in restorative justice. The advantage of this school of thought, is that it is a win-win solution for both restorative justice and criminal justice and that it avoids almost all of the compromises that are intrinsic to Integrationism. Parallelism is consistent with Substitutionism insofar as both propose that, in order to preserve what is essential to restorative justice, it should operate in complete independence of the criminal justice system.

Substitutionists will, of course, continue to reject the legitimacy of criminal justice. Parallelism as an interim position that is less likely to realise their fears of restorative justice becoming co-opted or compromised by criminal justice. Havel offers a similarly parallelist suggestion by stating how best to replace totalitarian systems.<sup>435</sup> Parallelism is also able to incorporate some of the key principles that motivate both Integrationism and Maximalism, and, hence, offers a resolution to the disagreement between the two. With respect to Integrationism, Parallelism not only preserves the voluntary requirement, but does so in a more credible manner. Unlike the Integrationist approach, the parallelist allows the offender to make decisions about whether and how they participate in restorative justice without needing to weigh up the potential legal costs and benefits.

With respect to Maximalism, the Parallelist model does not entail a hands-off approach to criminal justice. Far from it, Parallelism includes principled reasons for wanting to ensure that the criminal justice system carries out its primary function of serving the public interest to the best of its ability. Since there is good reason to think that replacing the current retributive philosophy with a reparative orientation is most likely to achieve this end, as the Maximalist

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<sup>435</sup> Havel, v. *The Power of the Powerless*.1985 as cited in Gemici, B, *Authoritarian Populism and Social Discomfort in Everyday Life*, **Social Problems**, 2023, <<https://doi.org/10.1093/socpro/spad036>>.

suggests, it follows that any transition to the use of reparative sanctions will be strongly supported by the Parallelist. The key difference is that Parallelism does not thereby erode the important distinction between restorative justice and criminal justice.

Parallelism is predicated upon the assumption that criminal justice plays a legitimate role in bringing about core aspects of justice in the aftermath of a crime, but only if it does so by upholding the rule of law. Parallelism would not, therefore, support any reform which sought to remove or devalue this essential ingredient. It is likely to require significant reforms to any existing criminal justice system. However, the restorative justice aspect of parallelism is entirely independent, and so it can be implemented without needing to wait for such fundamental changes. This is not to say that setting up a Parallelist approach to restorative justice will have no impact. What is needed to ensure that victims do not feel 'trivialized, condescended to and disempowered' in a court process is not a workaround or a band-aid solution but major systemic reform.

There are well-known changes that would no doubt increase the overall compatibility between restorative justice and criminal justice. For example, victimless acts, such as traffic violations and other minor regulatory offences, could be decriminalised and transferred to a system of administrative sanctions.<sup>436</sup> Offenders could be offered the opportunity to take part in a victim awareness programme as a voluntary adjunct to every criminal justice disposal. Victims of crime could be assigned a case manager 'who would have the authority to ensure that wherever possible, victims seeking resources and services have priority access to them. Governments could deploy far more resources into addressing the underlying discriminatory

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<sup>436</sup> Blad, J, *Community Mediation, Criminal Justice and Restorative Justice: Rearranging the Institutions of Law, 2012* as cited in Ramirez, IXG, *The Transition From an Inquisitorial to an Adversarial Criminal Justice System: An Opportunity For Restorative Justice in Chile, Comparative Restorative Justice*, 2021, <[https://link.springer.com/chapter/10.1007/978-3-030-74874-6\\_8](https://link.springer.com/chapter/10.1007/978-3-030-74874-6_8)>.

and socioeconomic causes of crime, as in justice reinvestment schemes. Prisons could be eliminated entirely or transformed into something more like the Norwegian model.<sup>437</sup>

On the Parallelist's view, it is unnecessary and unhelpful to classify reparative sanctions as 'restorative justice'. State-imposed sanctions, as we shall see, serve a very different purpose, and so, even if they have a reparative orientation, they should still be categorised as 'criminal justice' disposals, with all that this entails in terms of applying the rule of law, due process, proportionality constraints and so on. Parallelists will also be strongly motivated to make sure that what might have been gained by a restorative justice process is not destroyed by the alienating and negative effects of adversarial justice.<sup>438</sup> Hence, Parallelism will be supportive of criminal justice reform or even radical transformation where necessary. The application of therapeutic jurisprudence would render the system less confrontational and relationally destructive. Offenders could be offered the opportunity to take part in a victim awareness programme as a voluntary adjunct to every criminal justice disposal.<sup>439</sup>

### 5.10 Therapeutic Jurisprudence

Therapeutic jurisprudence believes in recognising, highlighting and exploring the potential for positive and negative impacts upon the victim of crime. This is achieved by repairing the harm caused by criminal behaviour and the entronement of restorative justice that leads to

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<sup>437</sup> Herman S. *Is Restorative Justice Possible Without a Parallel System for Victims?* 2004, as cited in Speed J, *Restorative Justice: Emergence, Institutionalization, and Critiques* **Peace, Justice and Strong Institutions**, 2020, pp, 1-13, <[https://link.springer.com/rwe/10.1007/978-3-319-71066-2\\_54-1](https://link.springer.com/rwe/10.1007/978-3-319-71066-2_54-1)>.

<sup>438</sup> Marshall, T, *Restorative Justice: An Overview*, 1999 as cited in Ariefulloh, A Nugroho, H, Angkasa, A & Ardhanariswari, A, *Restorative Justice-Based Criminal Case Resolution in Salatiga, Indonesia: Islamic Law Perspective and Legal Objectives*, **Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan**, 2023, Vol. 23, No. 1, pp. 19-36.

<sup>439</sup> Paul G.D. and Borton I. M. *Creating Restorative Justice: A Communication Perspective of Justice, Restoration, and Community*. Lanham: Lexington Books 2<sup>nd</sup> ed, p.69, 2021.

transformation of the offender, healing of the victim, cohesion of the community and fostering of human relationships.<sup>440</sup>

Therapeutic jurisprudence evolved in the very late of 1980's and early 1990's through the visionary efforts of two American multi-disciplinary scholars, David Wexler and Bruce Winick.<sup>441</sup> Although therapeutic jurisprudence had its roots in the field of mental health law," the concept has lent its methods and processes to diverse interdisciplinary engagements with the law. The idea of therapeutic jurisprudence has recorded remarkable inroads into the legal dimensions of mental health and medical practice; family and matrimonial causes; personal injury; diverse aspects of criminal justice, in the municipal context, particularly as it relates to child offenders, drug offenders, sex offenders, the treatment of victims, sentencing of repeat offenders, etc.

Wexler and Winick offer a comprehensive definition which state that:

Therapeutic jurisprudence is the study of the role of the law as a therapeutic agent. It focuses on the law's impact on emotional life and on psychological well-being. These are areas that have not received very much attention in the law until now. Therapeutic jurisprudence focuses our attention on this previously underappreciated aspect, humanising the law and concerning itself

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<sup>440</sup> Balson J. *Therapeutic Jurisprudence: Facilitating Healing in Crime Victims*, Phoenix Law Review 798, 2012 as cited in Matthews, K, *Who Tells their Stories?: Examining the Role, Duties, and Ethical Constraints of the Victim's Attorney under Model Rule 3.6* *Fordham L. Rev.*, 2021, <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/flr90&div=41&id=&page=>>.

<sup>441</sup> While David Wexler is a Distinguished Research Professor of Law at the Rogers College of Law at the University of Arizona and also Professor of Law and Director, International Network on Therapeutic Jurisprudence at the University of Puerto Rico, Bruce Winick is a Professor of Law and Professor of Psychiatry and Behavioural Sciences at the University of Miami. See generally Magner Jurisprudence forum: Therapeutic jurisprudence: its potential in Australia, 67 *Rev Jur U Puerto Rico* 121, 1998; Wexler Therapeutic jurisprudence and legal education: Where do we go from here? 2002 71 *Rev Jur U Puerto Rico* 178-180; Olowu Transforming legal practices in court and beyond: The third international conference on therapeutic jurisprudence, Perth, Australia, 7-9, 10 *Journal of South Pacific Law* 8, 2018.

with the human, emotional, psychological side of law and the legal process. Basically, therapeutic jurisprudence is a perspective that regards the law as a social force that produces behaviours and consequences. Sometimes these consequences fall within the realm of what we call therapeutic; other times anti-therapeutic consequences are produced. Therapeutic jurisprudence wants us to be aware of this and wants us to see whether the law can be made or applied in a more therapeutic way so long as other values, such as justice and due process, can be fully respected.<sup>442</sup>

Crime victims differ with regard to what outcome they suffer<sup>443</sup> and in order to have a successful crime victim-centred approach, therapeutic jurisprudence needs to be considered on an individual basis.<sup>444</sup> Additionally, the perception of the crime victims is different from the criminal justice's perception of the outcome. The efficacy of restorative justice is based on the cumulative effect of the shame brought on the perpetrator of the crime and his ultimate restoration of the victim, leading to his reintegration to the society.<sup>445</sup> In other words, the acts of restoration will respond to crime by taking steps to repair the harm caused by the crime.

**Therapeutic jurisprudence involves all facets of the court system. In essence, whereas the prescriptive character of law and legal systems defines the human being as an object of law, therapeutic jurisprudence defines law as an object for the human being. For**

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<sup>442</sup> Wexler & Winick, *Therapeutic Jurisprudence*, (Principles of Addiction Medicine, 2008), as cited in Schliehe, A and Crewe, B, *Top Bunk, Bottom Bunk: Cellsharing in Prisons*, (The British journal of criminology, 2022), Volume 62, Issue 2, pp, 484-500, <<https://doi.org/10.1093/bjc/azab053>>.

<sup>443</sup> Shimoyachi, N, *Between Accountability and Reconciliation: The Making of "the Victim-Centered Approach" at the International Criminal Court*, Global Studies Quarterly, 2024 as cited in Tully, LD, *The Cultural (Re) Turn: The Case for Teaching Culturally Responsive Lawyering* (Stan. JCR & CL, 2020), <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/stjcrcl16&div=10&id=&page=>>>.

<sup>444</sup> Hartley G. and Petrucci A. *Practicing Culturally Competent Therapeutic Jurisprudence: A Collaboration Between Social Work and Law*, Washington University Journal of Law & Policy 111-113, 2004 as cited in Yamada, DC, *Therapeutic Jurisprudence: Foundations, Expansion, and Assessment* (U. Miami L. Rev., 2020), <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/umialr75&div=21&id=&page=>>>.

<sup>445</sup> Braithwaite J. *Restorative Justice: Theories and Worries*, 2004 as cited in Watts, BR & Robertson, K, *Impact of Established Restorative Practices in an Urban High-school Environment* (Conflict Resolution Quarterly, 2022), Volume 20, Issue 1, pp. 123-140, <<https://doi.org/10.1002/crq.21353>>.

instance,

rather than cast an offender in the stereotypical perceptions of "wrongdoer" leading to stigmatisation as criminal law would,<sup>446</sup> therapeutic jurisprudence seeks ways of modifying the impact of the conflict by offering deeper investigation into the behavioural causes and phenomena that gave birth to the perceived wrong.<sup>447</sup>

The effect of crime on the crime victims is that it produces anxiety, fear, depression, humiliation, anger, powerlessness, and a sense of betrayal for the person who experienced it.<sup>448</sup> In the cause of crime and its prosecution, the position in which the system puts the victim is psychologically damaging, such as the invisibility of the victims in the proceedings and the legal profession's reluctance to accept the crime victims as having *locus standi* despite the fact that it is the crime victims who have suffered the harm as a result of the crime and the same persons have been underestimated and underappreciated.<sup>449</sup>

Therapeutic jurisprudence believes that there are several reasons why crime victim is to be part

of a process through the criminal justice system: The first of such reasons is to give crime victim a voice; the second is to increase the satisfaction that the crime victim receives from the criminal justice system; the third is to minimize the stress that the crime victim goes

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<sup>446</sup> Marder, ID & Wexler DB, *Mainstreaming Restorative Justice and Therapeutic Jurisprudence through Higher Education* (U. Balt. L. Rev., 2020) <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/ubl50&div=18&id=&page=>>>.

<sup>447</sup> McGuire, M, *Nation States, Cyberconflict and the Web of Profit*, HP Development Company, 2021, <<https://www.hp.com/content/dam/sites/garage-press/press/press-releases/2021/web-of-profit/hp-bps-web-of-profit-report-april-2021.pdf>>.

<sup>448</sup> Nolan, JL. *Redefining Criminal Courts: Problem-solving and the Meaning of Justice*, (American Criminal Law Review, 2003) 17(3), *Redefining Criminal Courts: Problem-Solving and The Meaning Of Justice* as cited in Chriss, JJ, *Social Control: An introduction*, Wiley Publishers, 2022, 2<sup>nd</sup> Edn, <<https://www.amazon.com/Social-Control-Introduction-James-Chriss/dp/0745654398>>.

<sup>449</sup> Winik, B. *Restorative Justice Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice*, Melbourne University Law Review 689, 2008 as cited in Keenan, M, & Zinsstag, E, *Sexual Violence and Restorative Justice: Addressing the Justice Gap* Oapen, 2022, <<https://library.oapen.org/handle/20.500.12657/92750>>.

through during criminal proceedings; the fourth is to ensure that crime victim is treated with respect by criminal justice agencies and the fifth is to enable the interest of crime victim to be taken into consideration when making decisions.<sup>450</sup> It is submitted that, if the role players of the criminal justice system made the necessary time available to educate the crime victims on the process and listened to the crime victims' concerns and feedback, there would be a hundred percent assurance that the crime victims would achieve some level of healing. It is believed that in this way, restorative justice will begin to impact healing on the victim of crime.

The distress experienced by crime victim in the criminal justice process is due to the fact that crime victim does not understand how the process works.<sup>451</sup> But, if, on the other hand, crime victim feels that his voice, validation, and dignity have not been respected, he will lose confidence in the criminal justice process and hold on to his feelings of vengeance, anxiety and anger that prevents therapeutic jurisprudence<sup>452</sup> which is meant to reduce the psychological harm experienced by crime victims as a result of the crime and also secondary victimisation by the criminal justice system.

There are three basic elements of therapeutic jurisprudence that can lead to a successful healing of the crime victim or any other party affected by criminal behaviour of the offender.

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<sup>450</sup> Sanders, J. *Victim Impact Statements: Don't Work Can't Work*, Criminal Law Review 48-49, 200 as cited in Pemberton A & Mulder E, *Bringing Injustice Back In: Secondary Victimization as Epistemic Injustice* **Criminology & Criminal Justice**, 2023, <<https://doi.org/10.1177/17488958231181345>>.

<sup>451</sup> Fincham, D, *Forgiveness: Integral to Closer Relationships and Inimical to Justice?* **Virginia Journal of Social Policy and Law**, 231-232, 2008 as cited in Kasprzak, A, Martinez-Diaz, P & Caparros, CM and Enright, R, *Interpersonal Forgiveness: Validation of the Enright Forgiveness Inventory (Efi-30) in the Spanish Sample*, **Orcid, Connecting Research and Researcher**, 2023), Volume 39, No. 3, <<https://doi.org/10.6018/analesps.522011>>.

<sup>452</sup> Wexler, DB. *Two Decades of Therapeutic Jurisprudence*, **Touro Law Review** 37-41, 2008 as cited in Arstein-Kerslake, A & Black, J, *Right to Legal Capacity in Therapeutic Jurisprudence: Insights from Critical Disability Theory and the Convention on the Rights of Persons with Disabilities*, **International Journal of Law and Psychiatry**, 2020, Volume 68, <<https://www.sciencedirect.com/science/article/abs/pii/S0160252719301955>>.

These elements are: apology, forgiveness and reconciliation.<sup>453</sup> These elements facilitate conflict resolution between the crime victims and the offenders with a view to providing healing for all the parties affected by the crime.

**It is trite that common law courts and their presiding functionaries are conferred with a range of discretionary powers in the conduct of proceedings. Many of these powers that originally existed at common law have now become subjects of statutory provisions in Nigeria. For instance, there are elaborate provisions in the Criminal Procedure Act (CPA)<sup>454</sup> having the potential of becoming platforms of therapeutic criminal justice. While some of such provisions relate to accused persons in general, some exclusively relate to specific groups of offenders, for example, juvenile offenders.<sup>455</sup> Section 426 of that Act makes it mandatory for a court to summon the parent or guardian of a juvenile offender who is being arraigned for trial or who is to be sent to an institution, to participate in the proceedings. This provision which would have been a platform for problem-solving has been honoured more in breach than in observance. Prosecutors, magistrates and judges default on this procedure and defence lawyers, trained only to vanquish the prosecution's case through wits and argumentative delivery, also ignore the procedure.**

### **5.11 Effects of Therapeutic Jurisprudence on Nigeria's Criminal Justice System**

Therapeutic jurisprudence is an interdisciplinary approach to law that emphasises the law's impact on the psychological well-being of individuals involved in the legal system, including

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<sup>453</sup> Daicoff W. *Apology Forgiveness Reconciliation & Therapeutic Jurisprudence*, **Pepperdine Dispute Resolution Law Journal**, 138, 2013 as cited in Yamada, DC, *Therapeutic jurisprudence: Foundations, expansion, and assessment*, U. Miami L. Rev., 2020, <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/umialr75&div=21&id=&page=>>>.

<sup>454</sup> Cap C41 Laws of the Federation of Nigeria (LFN) 2004.

<sup>455</sup> Sections 413-434, Cap C41 Laws of the Federation of Nigeria (LFN) 2004, S 2(1) of the Act defines a "juvenile offender" as "an offender who has not attained the age of seventeen years".

defendants, victims, and the community at large. By focusing on the therapeutic or anti-therapeutic consequences of legal processes and decisions, this framework seeks to enhance the mental health and well-being of those affected by the law while also promoting restorative practices and outcomes. In the context of Nigeria's criminal justice system, therapeutic jurisprudence has the potential to address a myriad of challenges including over-incarceration, inadequate mental health services, and a lack of focus on rehabilitation. The Effects of Therapeutic Jurisprudence on Nigeria's Criminal Justice System can be viewed as follows:

**15.11.1 Balances the Personal Needs of Victims and Communities with the Broader Goals of Deterring Criminality:** Therapeutic approach to criminal justice system is an inclusive process, in which all parties directly affected by the behaviour of the offender are involved in discussing its causes and consequences, how to prevent its recurrence and what should happen to the offender. In view of these features, therapeutic approach to criminal justice would fit perfectly in Nigeria as forgiveness, restoration, collaboration, reconciliation and rehabilitation have always been practiced in indigenous Nigerian communities. In this regard, the role of prosecuting and defence lawyers under therapeutic jurisprudence approach in the Nigerian criminal justice system is critical.

**5.11.2 Humanises Criminal Justice:** Therapeutic approach to criminal justice system moves the justice away from retributive practices and injects therapeutic jurisprudence into the criminal justice system in Nigeria where human feeling replaces the desire to punish the offender so as to serve as deterrence to others like-minded individual. The techniques of therapeutic jurisprudence involve the convergence of diverse people who are not part of the conventional training for the operators of criminal justice system.

The therapeutic jurisprudence concept has the potential of tempering the effect of erroneous and preconceived notions about litigation being an end in itself, notions that could have been instilled through the manifest processes of adversarial justice system.

**5.11.3 Promotes Transformative Alternative:** It is observed that in a country like Nigeria where the retributive operators find it difficult to change from retributive to restorative criminal justice to victim of crime, it will be appropriate for therapeutic approach to be introduced as part of the curriculum of law students so that the law students will grow with it and as they practice law, it would be a form of continuing education for lawyers and judicial officers. The implication, therefore, is that to promote the transformative alternative that therapeutic jurisprudence offers to adversarial justice system in Nigeria, it becomes critical that the concept be integrated into the curricula of law schools as well as programmes and workshops for lawyers and judicial officers.<sup>456</sup>

**5.11.4 Reforms Retributive Criminal Justice System:** Over the years, it has been established that penology which is one of the features of retributive criminal justice system, has not in any way reduced the rate of crime in Nigeria, it has toughened the offenders and this has resorted to recidivism. It has even been shown that where penal codes were amended in African common law States, this was often done to increase penalties.<sup>457</sup> Punishment has thus remained the dominant feature in the criminal justice system of Nigeria where judges, magistrates and criminal lawyers in Nigeria would relish their steadfast commitment to the application of the tenets of the English criminal

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<sup>456</sup> Peters, D, *Alternative Dispute Resolution*, Oasis Press, 2<sup>nd</sup> ed, p.59. 2004, *Alternative Dispute Resolution (ADR) in Nigeria: Principles and Practice*, Dee-Sage Nigeria Limited, 2004, as cited in Caleb, OA, *The Nigeria Legal Framework For Arbitration and its Effectiveness in Dispute Resolution*, **Open Journal Systems**, 2024, <<https://www.nigerianjournalonline.com/index.php/FUNAILAWPROJECTS/article/view/5561>>.

<sup>457</sup> Olowu, D, *Therapeutic Jurisprudence: Humanising Criminal Justice in Africa*, 2010, 43(1) De Jure 47-54, 2010.

justice system as practised and passed down since colonial times. However, the English criminal justice system of the 21<sup>st</sup> century has undergone serious reforms in the last few decades. For instance, in 1999, Lord Irvine, the Lord Chancellor, launched a radical process of reform in England and Wales with the independent review of the criminal courts and the entire criminal justice system.<sup>458</sup>

The outcomes of Lord Irvin's reviews were remarkable as a result of which United Kingdom (UK) authorities had not only realised the need to avoid overloading the criminal justice machinery, they had also found the need for alternative models to conventional adversarial criminal trials.<sup>459</sup> Pursuant to this, they had indicated the need for the establishment of specialist courts for drug offences, domestic violence and other sundry bodies, with the mandate to apply alternative models of justice including therapeutic justice. It is noteworthy that these points and recommendations were adopted in the government's White Paper on the review and have become key policy action points in the current United Kingdom Criminal Justice System Strategic Plan.<sup>460</sup> There is plausible reason to believe that the radical reforms in the UK's criminal justice system, ongoing as they may be, have been yielding the dividend of more positive public perceptions about the system. Interestingly, apart from in the UK, the appreciation of a therapeutic jurisprudence approach as an alternative model to adversarialism has been felt in other common law States, even though with little or no significance in Africa particularly in Nigeria.

## 5.12 Argument for the Return to Restorative Justice

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<sup>458</sup> Lord Chancellor launches criminal courts review, LCD Press Notice 386/99, 14 December 1999 <<http://www.criminal-courts-review.org.uk>>.

<sup>459</sup> Auld Review of the Criminal Courts of England and Wales 367, 2001 as cited in Roberts, P and Zuckerman, A, *Roberts & Zuckerman's Criminal Evidence*, <<https://www.google.com/2022>>.

<sup>460</sup> UK Government A Strategic Plan for Criminal Justice System 2008-2011, 2007.

The proponents of restorative justice over the years have argued that the current system of correction that is built on the theory of retributive justice is unjust to the offender for its systemic failure to produce social safety and order.<sup>461</sup> It is argued that the prison overcrowding and the inhumane conditions to which prisoners are subjected, increasing number of prisoner suicides, high rates of reoffending, the rising costs of incapacitation as a policy and philosophy for crime control, the deepening racism and inequality in the secure estate, etc. are some of the reasons that reformists premised their search for restorative justice on. They argued further that a criminal justice system that is based on the concept of retribution that uses punishment inflicted through imprisonment, has failed.<sup>462</sup>

One of the negative effects of retributive justice system is that it is the primary way of motivating compliance with the law through the application of sanction. The consequence of this sanction is that it leads to prison congestion. In view of this, two important failures of retributive system are cited by proponents of restorative justice: the programmatic effect of failure to address the rights of victims to redress and the failure of the punitive approach to crime to produce effective deterrence.<sup>463</sup> The most important argument for restorative justice is the abandonment of victims' interests by the jurisprudence of retribution.

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<sup>461</sup> Theo Gavrielides, *Reconciling the Notions of Restorative Justice and Imprisonment*, 94 *The Prison Journal*, 479–480, 2014 as cited in Ross, K and Muro D, *Possibilities of Prison-based Restorative Justice: Transformation beyond Recidivism*, **Contemporary Justice Review**, 2020, Volume 23, Issue, 3, pp. 291-313, <<https://www.tandfonline.com/doi/abs/10.1080/10282580.2020.1783258>>.

<sup>462</sup> Mauer, M & Coyle, M, *The Social Cost of America's Race to Incarcerate*, in Eleanor Hannon Judah & Michal Bryant, *Criminal Justice: Retribution vs. Restoration*, (2<sup>nd</sup> ed), 21 **Haworth Press**, 2004 as cited in Morrison, M, *The Mass Incarceration Trauma Framework: A Conceptual Model For Understanding Trauma Among Individuals Who Experience Incarceration* **Social work**, 2024, Volume 69, Issue 1, pp, 8–16, <<https://doi.org/10.1093/sw/swad040>>.

<sup>463</sup> Strong, H & Sherman, L, *Repairing the Harm: Victims and Restorative Justice*, 15 *UTAH L. REV.* 15, 2003 as cited in Anderson, A, *A Pleasure to Burn: How First Amendment Jurisprudence on Book Banning Bolsters White Supremacy*, **Mitchell Hamline L. Rev.**, 2023, <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/wmitch49&div=4&id=&page=>>>.

However, it is important to note that the adoption of the system of retributive justice replaced an earlier tribal system of compensatory justice<sup>464</sup> that is being put forth as a new philosophy for modern societies which has its root in the older traditions in non-modern societies. In the contemporary period, there is a concerted call to replace the established system of retributive justice, which focuses on the state imposing punishment, with a “new” system of restorative justice.

While the old paradigm of ‘retributive justice’ focuses upon the state being the victim and places the individual victim in a passive position with little participation in the justice process, the new paradigm shift is based on compensation to the victim while the offender is actively involved in resolving the aftermath of the offence committed by him/her. While the State is an active participant under retributive justice system, the reverse is the case under the jurisprudence of restorative justice theory, which makes the State to be passive participant, or at most a party facilitating the interaction of victim and offender.

The paradigm shift from the theory of retributive justice jurisprudence to restorative justice is aptly put by Umbrett who describes this change as follows:

The new paradigm of ‘restorative justice’ defines crime as a violation of one person, by another, not a violation of the state. Dialogue and negotiations are normative, with a focus upon problem-solving for the future rather than establishing blame for past behavior. Rather than the imposition of severe punishment, restorative justice emphasizes restitution as a means of restoring both parties; reconciliation and restoration of the parties is the goal. Instead of ignoring

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<sup>464</sup> S. Garvey, *Restorative Justice, Punishment, and Atonement*, 1 UTAH L. REV. 304, 2003 as cited in Altman, M, *A Theory of Legal Punishment: Deterrence, Retribution, and the Aims of the State*, London, Routledge, 2021, <<https://doi.org/10.4324/9781003143>>.

the victims and placing offenders in a passive role, the new paradigm of restorative justice places both victim and offender in active and interpersonal problem-solving roles.<sup>465</sup>

**Though in Nigeria jurisprudence, there are** compensation, restitution and restoration that remains a clear-cut policy which should be preferred above imprisonment and other punishments, it was found that there is dearth of restorative justice aimed at restoring the victims of economic and financial crime to their *status quo ante*. The principal statutes prohibiting criminal acts in general, to wit: Criminal Code Act and the Penal Code Act focus mainly on punishing the perpetrators of the crime. There should be regular revision and review of our laws generally to take care of new situations. The two principal statutes should be reviewed and amended to make provisions for the recovery of scammed fund and return same to the victims of such fraud or criminality. The provision of section 14(2) of the Economic and Financial Crimes Commission (EFCC) Act regarding compensation and section 270 of the Administration of Criminal Justice Act regarding plea bargain are salutary as they operate to entrench and advance restorative justice to victims of crime in Nigeria.

A similar provision to section 14(2) of the EFCC Act should be introduced in both the Criminal Code Act and the Penal Code Act, which are the principal laws that define and penalise criminal conducts. Interestingly, most jurisdictions of the world are moving towards enthroning restorative justice in the administration of criminal justice system, and Nigeria should not be left behind in this laudable cause. **While restorative justice to the victim of crime is being witnessed in the United States, the Commonwealth States of Australia,**

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<sup>465</sup> Mark Umbrett, *Crime Victims Seeking Fairness, Not Revenge: Toward Restorative Justice*, 53 FED. PROBATION 52, 1989 as cited in Sardina, A, & Ackerman, AR, *Restorative Justice in Cases of Sexual Harm*, CUNY L. Rev., 2022), <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/nyclr25&div=6&id=&page=>>>.

New Zealand, Canada and Pakistan, it is yet to be given serious attention in Nigeria by making it part and parcel of the criminal justice system in Nigeria. As regards restorative justice to the victim of crime, Nigeria still has many miles to travel. If adversarial criminal justice has thus undergone so much transformation in England, such that the notions of retribution and deterrence are no longer prioritised, why should courts and lawyers in Nigeria continue to live in the past?

## **Chapter Six**

### **Synergy between Retributive and Restorative Jurisprudence: Towards a Better Justice System in Nigeria**

#### **6.1 Philosophical Foundations**

Restorative justice and retributive justice have been generally perceived as opposites to each other and conclusions have been drawn over the years that they cannot coexist in the context of the criminal justice system, as they are judged to be incompatible and antithetical to each other in their respective practices and objectives. This parallel and dichotomous view often comes from an aspect of each system. They are generally described by an aspect of what each stands for. While punishment is used to describe the retributive justice system, compensation

is used to describe the restorative justice system. Thus, restorative justice is viewed as a sort of merciful rehabilitation and retributive justice as simply an idealised system of pain infliction. Though these dichotomies could be said to describe the two, not in their totality, as they refer to just a little aspect of each, which can be said to be a one-dimensional perspective of the innate value of each system. The failure of each justice system to satisfy the entire interest of all parties to crime has necessitated the synergy between restorative and retributive justice which strikes a balance between the two approaches to justice, allowing them to complement each other rather than exist in opposition.

While restorative justice adopts utilitarian value which facilitates communications between the parties involved and provides necessary support to minimise suffering and maximise happiness, retributive justice intends to make the offender to be remorseful through the use of appropriate desert. The integration of the two systems seeks to address not just the punishment of offenders, but also the needs and healing of victims, with a community-wide perspective and by co-existing principles from both systems.<sup>466</sup>

Though retributive justice provides a clear framework for judging guilt and enforcing equitable punishments, makes offenders accountable for their deeds, follows the rules of due process and recognises legal procedures, it is not without its difficulties and problems such as mass incarceration, racial and socio-economic inequality and the possibility of false convictions. Critics of the retributive justice approach claim that sometimes it neglects to address the root causes of criminal behaviours and prioritises punishment over rehabilitation and compensation. In order to overcome the drawbacks of purely punitive measures and enhance outcomes for both criminals, victims and society at large, many countries are looking

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<sup>466</sup> Yurkhenko D, Sridhar, S & Fazel, SA, *Systematic Review of Criminal Recidivism Rates Worldwide: 3-year Update*, **Wellcome Open Res.** 2020, <<https://pmc.ncbi.nlm.nih.gov/articles/PMC6743246/>>.

into ways to strike a balance between retribution and rehabilitation.

## **6.2 Coexistence of the Retributive and Restorative Justice System in One Legal System**

Retributive justice essentially refers to the repair of justice through unilateral imposition of punishment, restorative justice on the other hand means the repair of justice through reaffirming a shared value-consensus in a bilateral process.<sup>467</sup> The very notion of justice is balancing conflicting claims of the victims and offenders, along with that of the larger community. The goals of both Restorative and Retributive justice are to prevent criminal acts by adopting different approaches. The synergy between restorative justice and retributive justice involves finding a balance between these two approaches to justice. Instead of the two systems to act in sharp contrast to each other, synergising the two allows them to complement each other so as to bring about a better justice system.

While restorative justice adopts utilitarian value which facilitates communications between the parties involved and provides necessary support to minimise suffering and maximise happiness, retributive justice intends to make the offender remorseful through appropriate desert. The integration of the two systems seeks to address not just the punishment of offenders, but also the needs and healing of victims, with a community-wide perspective and by co-existing principles from both systems.

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<sup>467</sup> Watson, MF, Turner, WL & Hines, PM, *Black Lives Matter: We Are in the Same Storm but We Are Not in the Same Boat*, Family process, 2020, - Wiley Online Library, Volume 59, Issue 4, <<https://onlinelibrary.wiley.com/doi/abs/10.1111/famp.12613>>.

The retributive and restorative forms of justice have their different objectives which appear to be two parallel lines.<sup>468</sup> While the main objectives of retributive Justice are punishment, security and control, the objectives of restorative justice on the other hand are victims' protection, moral imbalance correction, community cohesion, offenders' reintegration into the community and relationship repair.<sup>469</sup>

Restorative justice operating alone is inadequate because of the lack of participation by the State; nor does restorative justice provide adequate regard for the maintenance of the criminal code of conduct. Nor is there sufficient regard for the harm to the social order caused by criminal violations beyond the observable injury to the identified victims or the specific impact on the community. Consideration needs to be given to such secondary impacts as bad examples to others, required costs to increase protection from anticipated similar incidents of crime, and the emotional costs to neighbours who empathise with the victim. To most successfully address the needs of victims, offenders, and the state, a combination of restorative and retributive justice should be implemented. This necessary combination addresses the interests of all parties to a criminal event, including the victim (and community), the offender, and the State (social harm).<sup>470</sup> Restorative justice addresses the needs of the victim for reparation and restoration. Similarly, restorative justice addresses the needs of the offender for forgiveness and reintegration into the community. Furthermore, retributive

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<sup>468</sup> Bazemore, G & Umbreit, M. *A Comparison of Four Restorative Measures: Implications for Community Justice*, as cited in Okimoto, TG & Gollwitzer, M, *The Social Psychology of Justice Repair*, Annual Review of Psychology, 2025, Volume 76, pp 693-716 <<https://www.annualreviews.org/content/journals/10.1146/annurev-psych-030124-114525>>.

<sup>469</sup> Williams, C & Arrigo, B, *The Virtues of Justice: Toward a Moral and Jurisprudential Psychology*, International journal of offender Therapy and Comparative Criminology, 2022, Volume 66, Issue 9, <<https://journals.sagepub.com/doi/abs/10.1177/0306624X211066832>>.

<sup>470</sup> Johnstone, G, *Restorative Justice: Ideas, Values, Debates*, as cited in Hillyard, P and Tombs, S, *Beyond criminology?*, The Palgrave Handbook of Social Harm, 2021, pp. 11-36, <[https://link.springer.com/chapter/10.1007/978-3-030-72408-5\\_2](https://link.springer.com/chapter/10.1007/978-3-030-72408-5_2)>.

justice addresses the need of the State to maintain the criminal law through enforcement and punishment. In addition, retributive justice restores the offender's moral state as a result of the imposition and acceptance of prescribed punishment.

The view is that while there are apparent oppositions between restorative and retributive justice, both are needed to provide an enriched response to criminal conduct. This view has been advocated by commentators such as Daly, who argued:

I have come to see that contrary principles of retribution and reparation should be viewed as dependent on one another. Retributive censure should ideally occur before reparative gestures (or a victim's interest or movement to negotiate these) are possible in an ethical or psychological sense. Both censure and reparation may be experienced as punishment by offenders (even if not the intent of decision-makers), and both censure and reparation need to occur before a victim or community can reintegrate an offender into the community.<sup>471</sup>

One of the objectives of restorative justice is to serve a retributive purpose of making the offender have a feeling of remorse because to repair and prevent harm, the offender must be remorseful for what he has done so that he will not commit the same crime again as well as making him to be proactive in the process of reconciliation.<sup>472</sup> On the other hand, retributive justice does not serve a restorative purpose, as proportionate desert for crime committed by the offender does not lead to the greatest sum of happiness for all. In view of these differences,

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<sup>471</sup> Daly, K, *Restorative Justice*, as cited in Weber, C & Vereenoghe, L, *Reducing Conflicts in School Environments Using Restorative Practices: A Systematic Review*, International Journal of Educational Research, 2020, Volume 1, <<https://www.sciencedirect.com/science/article/pii/S2666374020300091>>.

<sup>472</sup> Deady CW, *Incarceration and Recidivism: Lessons from Abroad*, as cited in Abdel-Salam, S & Kilmer, A, *A Prison Is a Prison!: Perspectives From Incarcerated Men on the Therapeutic and Punitive Aspects of Halden Prison in Norway*, The British Journal of Criminology, 2023, Volume 63, Issue 4, pp. 929-947, <<https://academic.oup.com/bjc/article-abstract/63/4/929/6650298>>.

while discussing the co-existence or synergy between the two systems of justice, Zehr states that it is only possible when the justice system allows retributivism to choose an option that delivers proportionate desert which also happens to be the one that generates greatest social benefit for all parties.<sup>473</sup> In this view, the following options are discussed:

**Sequential Practice:** Another possibility for the integration and co-existence of the two systems of justice is for the two to be practiced sequentially. This could be applicable to a situation where two types of practices are not compatible with each other, but one of them is not permanent. In this instance, retributive justice will come first and restorative justice following it once the reasonable desert is fully delivered. Van Ness and Strong believe that the potential benefits of integrating restorative practices within a broader justice framework, illustrating how retributive measures can still be present while emphasising restoration and healing.<sup>474</sup> Some retributive demands, such as lifelong sentences, would still be incompatible with this type of model, however in less extreme examples of a desert, for instance, long-term imprisonment, this procedure could be implemented successfully. Rehabilitative social support after a long period of imprisonment allows both retributive practice and restorative practice to play a role, independent of each other. Pratt is of the view that Retributive justice is likely to intervene in the ongoing process of restorative justice if implemented once the process of restorative justice has started.<sup>475</sup> He examines how restorative justice can enhance the efficacy of retributive justice by addressing the needs of victims, offenders, and the

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<sup>473</sup> Zehr, H. *The Little Book of Restorative Justice*, as cited in Lodi, E, Oerrella, L, Lepri, GL & Scarpa, MI, *Use of Restorative Justice and Restorative Practices at School: A Systematic Literature Review*, *International Journal of Environmental Research and Public Health*, 2022, 19(1), 96, <<https://www.mdpi.com/1660-4601/19/1/96>>.

<sup>474</sup> Van Ness DW & Strong, KH, *Restoring Justice: An Introduction to Restorative Justice*, as cited in Leland, W and Stockwell, A, *Anti-Oppressive Restorative Justice: Behavior Analysis in Alternatives to Policing*, *Behaviour Analysis in Practice*, 2022, Volume 15, pp.1232-1236, <<https://link.springer.com/article/10.1007/s40617-021-00633-0>>.

<sup>475</sup> Daly, K, *Restorative Justice: The Real Story*, as Cited in Suzuki, M & Jenkins, T, *The Role of (Self-) Forgiveness in Restorative Justice: Linking Restorative Justice to Desistance*, *European Journal of Criminology*, 2022, Volume 19, Issue 2, <<https://journals.sagepub.com/doi/abs/10.1177/1477370819895959>>.

community.

**Crime Determinant:** Forging a co-existence between restorative justice and retributive justice, depends on the type of crime that is involved. While it is easy to do so for offences like fraud, simple assault, theft, etc. that cause material harm to the victims which are easily quantifiable and mendable to repair, the same cannot be said of felonious and violent crimes that cause permanent bodily harm, emotional harm and irreparable consequences. With minor offences, the offender can be made to pay back for quantified financial damage by way of social services like working for government organization, working for a non-profit organization, cleaning public places, etc. so as to meet both retributive and restorative criteria. The potential for restorative justice to work alongside punitive approaches, advocating for a more integrated system that respects both accountability and healing is achievable based on the degree of each crime.<sup>476</sup>

However, violent crimes like murder, rape, terrorism, domestic violence, etc., often take immeasurable time or very expensive cost to repair, hence for such offences, it is unlikely that the synergy of retributive and restorative justice demand vis-à-vis their incompatibility can conveniently merge social rehabilitation (restorative justice) and capital punishment or life-sentencing (retributive justice) together.

### **6.3 Benefits of the Synergy between Retributive and Restorative Justice**

The synergy between restorative and retributive justice has the tendency to create an effective and a more balanced justice system. The benefits of incorporating restorative justice into traditional criminal justice systems, includes serving victims better while still delivering justice. This integration presents the two justice philosophies with illustration of the

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<sup>476</sup> Llewellyn, JJ, *Transforming Restorative Justice*, The International Journal of Restorative Justice, 2021, <[https://brill.com/view/journals/tij/4/3/article-p374\\_3.xml](https://brill.com/view/journals/tij/4/3/article-p374_3.xml)>.

additional benefits that can arise from such a synergy.<sup>477</sup> By recognising the importance of both approaches and working to integrate their principles, it is possible and beneficial to foster a relationship between restorative and retributive justice.<sup>478</sup> This synergy is required so as to ensure that the interest of the victims, offenders, community and other incidental parties are addressed meaningfully within the justice process. The benefits are as follows:

**i. Sentencing Flexibility:** Instead of the polarity in the adoption of each of the justice systems, the courts under this synergy could adopt hybrid models that allow for restorative practices like mediation or community service as part of a retributive framework of sentencing that includes punitive measures. Robalo and Abdul Rahim provide a critical analysis of the relationships between restorative and retributive justice via sentencing and repairs of the harm inflicted on the victims, by discussing how they can complement each other in practice.<sup>479</sup> This flexibility can lead to sentences that are required and more apropos to the specific circumstances of each case, thereby promoting effectiveness and fairness.

**ii. Healing and Accountability:** Though each of the two justice systems has its distinct objective; retributive justice establishes accountability, which is important for law and order as well as the victims' sense of justice.<sup>480</sup> On the other hand, restorative justice can enhance offenders' understanding of the impact of their actions, leading to remorse and empathy. If the

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<sup>477</sup> Tudor, S, Proeve, M, Rossmanith, K & Weisman, R, *Remorse and Criminal Justice*, New Advances in Crime and Social Harm, 2021, <file:///C:/Users/HP/Downloads/10.4324\_9780429001062\_previewpdf%20(1).pdf>.

<sup>478</sup> Aertsen, I, Bolivar, D & Lauwers, N, *Restorative Justice and the Active Victim: Exploring the Concept of Empowerment*, as cited in Lawler S, Boxall, H & Dowling, C, *Restorative Justice Conferencing For Domestic and Family Violence and Sexual Violence: Evaluation of Phase Three of the Act Restorative Justice Scheme*, Australian Institute of Criminology Reports, 2025), <<https://anrows.intersearch.com.au/anrowsjspui/handle/1/22955>>.

<sup>479</sup> Robalo, TLAS & Abdul Rahim, RBB, Cyber victimisation, restorative justice and Victim-Offender panels, *Asian journal of criminology*, 2023, Volume 18, pp. 61-74 <<https://link.springer.com/article/10.1007/s11417-023-09396-9>>.

<sup>480</sup> Omowon, A & Kunlere, AS, Restorative justice practices: Bridging the gap between offenders and victims effectively, *World Journal of Advanced Research and Reviews*, 2024, <[https://www.researchgate.net/profile/Adebobola-Omowon/publication/387602052\\_Restorative\\_justice\\_practices\\_Bridging\\_the\\_gap\\_between\\_offenders\\_and\\_victims\\_effectively/links/67772d1500aa3770e0d30937/Restorative-justice-practices-Bridging-the-gap-between-offenders-and-victims-effectively.pdf](https://www.researchgate.net/profile/Adebobola-Omowon/publication/387602052_Restorative_justice_practices_Bridging_the_gap_between_offenders_and_victims_effectively/links/67772d1500aa3770e0d30937/Restorative-justice-practices-Bridging-the-gap-between-offenders-and-victims-effectively.pdf)>.

two justice systems are synergised, they can provide a pathway for offenders to make amends while ensuring that consequences are faced.

**iii. Community Satisfaction:** Justice without the satisfaction of the community is not a complete one. Restorative justice practices often include community members, which can enhance the retributive process by ensuring that the community's voice is heard<sup>481</sup> and their needs are met. Community-based solutions can offer support for both offenders and victims, promoting social re-integration and reducing recidivism.<sup>482</sup>

**iv. Rehabilitation and Education Objectives:** The synergy between the retributive and restorative justice system promotes resources aimed at education and rehabilitation, which can be crucial for offenders within the retributive framework. Such initiatives not only acknowledge the wrongdoing against the victims through conferences and circles, emphasising their importance in healing and justice, but also empower offenders to change their behaviours which consequently reduces the likelihood of future offences.

#### **6.4 Coexistence under Nigeria's Justice System**

If the Nigerian criminal justice system is to reduce crimes to the barest degree in the society, it must prosecute and punish the offenders, protect and restore the offended and the society to the positions they were before the commission of the crime. The two justice systems must be synergised in a way to make restorative and retributive practices co-exist under Nigeria's justice system which hitherto operates the two with watertight separation. If the coexistence is adopted and implemented by all the States in Nigeria, the Nigerian criminal justice jurisprudence will achieve its desired goal of providing adequate regulatory criminal conduct

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<sup>481</sup> Wood, WR, *Restorative Justice and Trauma: Responding to the Needs and Misdeeds of Young People with Trauma Histories*, *Journal of Child & Adolescent Trauma*, 2024, Volume 17, pp. 335-348, <<https://link.springer.com/article/10.1007/s40653-023-00589-z>>.

<sup>482</sup> Braithwaite, G. J. *Crime, Shame and Reintegration*, as cited in Van Ness, DW, Strong, KH, Derby J and Parker, LL, *Restoring justice: An introduction to restorative justice*, New York, Routledge, 2022 6<sup>th</sup> edn, <<https://doi.org/10.4324/9781003159773>>.

as well as the maintenance of communal social order and reinstatement of the victims to their original state before the criminal act. In order to successfully address the needs of offenders, victims and the State, a combination of restorative and retributive justice should be put in place and practically implemented,<sup>483</sup> by all the States within Nigeria's federation.

This necessary combination addresses the interests of all parties to a criminal event, including the victim, co-parties to the community, offender and the State.<sup>484</sup> The coexistence of restorative justice and retributive justice within Nigeria's justice system, is a complex issue that has been debated by various scholars and practitioners in the field of law and criminal justice. The potential coexistence of these two frameworks within Nigeria's criminal justice system can be assessed through several dimensions:

**1. Opinion of Scholars:** In Nigeria, the synergy between restorative and retributive justice systems is a topic of increasing interest among scholars, particularly in line with the Nigeria's unique socio-cultural context and challenges to the criminal justice system. They assert that merging the two approaches could lead to more effective outcomes, particularly considering the socio-economic challenges faced by Nigeria, which complicate punitive measures as against the hybrid system of both retributive and restorative elements, which could address the inherent inadequacies in Nigeria's justice system. Imenger and Oyeboade state that restorative justice can be effectively integrated into Nigeria's existing legal framework. This position helps to address the needs of victims and also considers the societal factors that

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<sup>483</sup> Lustick, H, *Culturally Responsive Restorative Discipline*, Journal of the American Educational Studies, 2020, Volume 56, Issue 6, <<https://www.tandfonline.com/doi/abs/10.1080/00131946.2020.1837830>>.

<sup>484</sup> Scholl, MB & Townsend, CB, *Restorative Justice: A Humanistic Paradigm for Addressing The Needs of Victims, Offenders, and Communities*, The Journal of Humanistic Counselling, 2024, Volume 63, Issue 3, pp. 184-200 <<https://onlinelibrary.wiley.com/doi/full/10.1002/johc.12204>>.

contribute to crime in Nigeria.<sup>485</sup>

The synergy between restorative and retributive justice under Nigeria's legal jurisprudence could lead to more effective conflict resolution and social harmony. The incorporation of restorative justice elements within Nigeria's retributive system could lead to a more humane and

effective response to crime which positively could heal the communities and reduce recidivism<sup>486</sup> and leveraging customary law can enhance community participation in justice processes, fostering reconciliation and healing.<sup>487</sup> The integration of restorative approach to crime in Nigeria, has the potential to reduce correctional centres overcrowd and provide more meaningful reparations for victims, which thereby complement the punitive aspects of the current system and provides a balance between accountability and rehabilitation, making the process more victim-centered.<sup>488</sup>

These scholars suggest that a synergistic approach that combines elements of both restorative and retributive justice could by addressing the limitations of retributive justice, especially in terms of victim needs and offender rehabilitation and integrating restorative processes, lead to

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<sup>485</sup> Imenger, ET & Oyeboode, MO, *Restorative Justice and Human Rights Issues in Adopting Alternative Dispute Resolution Platforms to Settle Criminal Matters in Nigeria*, African Journal of Social and Behavioural Sciences, 2024, Volume 14, No. 3, <<https://journals.aphriapub.com/index.php/AJSBS/article/view/2662>>.

<sup>486</sup> Ogunkah, AR, *Can Indigenous Jurisprudence be the Key to Unlocking (Solving) the Problems in the State-Controlled Nigerian Criminal Justice System?* Thesis, 2023, <[https://aru.figshare.com/articles/thesis/Can\\_indigenous\\_jurisprudence\\_be\\_the\\_key\\_to\\_unlocking\\_solving\\_the\\_problems\\_in\\_the\\_state-controlled\\_Nigerian\\_criminal\\_justice\\_system\\_/23770122?file=42210840](https://aru.figshare.com/articles/thesis/Can_indigenous_jurisprudence_be_the_key_to_unlocking_solving_the_problems_in_the_state-controlled_Nigerian_criminal_justice_system_/23770122?file=42210840)>.

<sup>487</sup> Agbonaye, OU, Agbede, IO & Taiwo, A, *Analysing Restorative Justice System as a Tool for Dispute Resolution in the Administration of Justice in Lagos State, Nigeria*, LASJURE, 2024, <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/lwadsljerw5&div=26&id=&page=>>>.

<sup>488</sup> Ekpeowoh, SO & Okon EE, *Legal Aid and Access to Justice for Inmates in Nigeria: Challenges and Solutions*, International Journal of Research and Innovation in Social Science, 2024, <<https://dx.doi.org/10.47772/IJRISS.2024.8100045>>.

significant improvements in the Nigerian justice system.

**2. Legal Framework:** The integration of restorative justice into the existing punitive justice within Nigeria's legal framework, presents a unique opportunity for harmonisation, given the country's diverse legal traditions. Though Nigeria's legal jurisprudence has made some provisions for restorative justice through some of its statutes, yet restorative practices still remains within Nigeria's traditional justice systems which is predominantly influenced by retributive principles.<sup>489</sup> In other words, despite the following statutory frameworks the overarching Nigeria's justice system remains heavily reliant on punitive measures:

**i. Constitutional Framework:** While the Nigerian Constitution does not explicitly mention restorative justice, the provisions of the Constitution can support principles inherent in restorative practices, as it emphasises justice, equity, human rights and fair trials.<sup>490</sup> Justice and equity could be interpreted to mean fairness to all parties in a criminal act.

**ii. Administration of Criminal Justice Act (ACJA) 2015:** The ACJA aims to streamline the criminal justice process, reduce congestion in prisons, and enhance the rights of defendants.<sup>491</sup> Although it primarily embodies a retributive approach, certain provisions of the Act encourage plea bargaining, which can facilitate restorative solutions. One of its important facets is the inclusion of restorative justice provisions, which focus on repairing the harm caused by criminal behaviour rather than solely punishing the offender. The restorative justice

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<sup>489</sup> Love, S, Truelove, V & Rowland, B, *Is All High-risk Behaviour Premeditated? A Qualitative Exploratory Approach to the Self-regulation of Habitual and Risky Driving Behaviours*, **Transportation Research Part F: Traffic Psychology and Behaviour**, 2022, Volume 90, pp 312-325 <<https://www.sciencedirect.com/science/article/abs/pii/S1369847822001991>>.

<sup>490</sup> Section 17(1) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended).

<sup>491</sup> Bukar, FI, & Garba, D, *The Role of Abuja Multi-Door Courthouse in Bridging Loopholes in Litigation and Promoting Access to Justice 2020-2024*, Journal of Xi'an Shiyou University, 2024, Natural Science Edn, Volume 21, Issue 4, <[https://www.researchgate.net/profile/Dimas-Garba-Phd/publication/391209314\\_The\\_Role\\_of\\_Abuja\\_Multidoor\\_Courthouse\\_in\\_Bridging\\_loopholes\\_in\\_Litigation\\_and\\_Promoting\\_Access\\_to\\_Justice\\_2020-2024\\_By/links/680e086cbd3f1930dd6507b9/The-Role-of-Abuja-Multi-door-Courthouse-in-Bridging-loopholes-in-Litigation-and-Promoting-Access-to-Justice-2020-2024-By.pdf](https://www.researchgate.net/profile/Dimas-Garba-Phd/publication/391209314_The_Role_of_Abuja_Multidoor_Courthouse_in_Bridging_loopholes_in_Litigation_and_Promoting_Access_to_Justice_2020-2024_By/links/680e086cbd3f1930dd6507b9/The-Role-of-Abuja-Multi-door-Courthouse-in-Bridging-loopholes-in-Litigation-and-Promoting-Access-to-Justice-2020-2024-By.pdf)>.

provisions in the ACJA include various measures that allow negotiation, reconciliation, and rehabilitation of offenders and victims. Some of the relevant provisions on restorative justice are:

**a. Pre-Trial Diversion:** These offenders are diverted from the traditional criminal justice process into rehabilitative avenues by encouraging alternatives to incarceration, especially for first-time offenders and those charged with minor offenses.<sup>492</sup>

**b. Victim-Offender Mediation:** The Act provides for mediation between the victim and the offender, promoting dialogue and a mutual agreement that seeks to address the harm caused to the victim and hold the offender accountable in a constructive manner.<sup>493</sup>

**c. Restorative Justice Program:** ACJA establishes a framework for restorative justice programs, emphasizing the importance of community involvement in the rehabilitation of offenders and in supporting victims.<sup>494</sup>

**d. Power of Courts to Order Restitution:** Courts have the authority to order offenders to make restitution to victims for any loss or damage suffered due to the crime, highlighting the emphasis on compensating the victim.<sup>495</sup>

**e. Community Service:** This Act allows for community service as an alternative to imprisonment for certain offences. This serves not only to punish the offender but to also involve them in community rehabilitation efforts.<sup>496</sup>

ACJA by its restorative provisions, aims to promote social harmony which can positively affect both victims and offenders and create a more restorative justice system rather than solely punitive system. The restorative objectives of the Act as mentioned in the above-stated sections, illustrate the importance of restorative justice, focusing on healing, rehabilitation, and community engagement as integral components of Nigeria's approach to criminal justice.

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<sup>492</sup> Section 29, Administration of Criminal Justice Act (ACJA), 2015

<sup>493</sup> Section 57, ACJA.

<sup>494</sup> Section 113, ACJA.

<sup>495</sup> Section 162, ACJA.

<sup>496</sup> Section 195, ACJA.

**3. Customary Law:** In many Nigerian communities, customary laws emphasize reconciliation and community healing, supporting restorative approaches. Traditional courts often handle disputes restoratively while operating parallel to formal legal mechanisms.<sup>497</sup> In other words, customary legal practices can effectively coexist with the formal justice system, providing a restorative foundation.

**4. Alternative Dispute Resolution (ADR) Mechanisms:** The Nigerian legal system encourages the use of ADR methods for resolving disputes, which may include restorative practices. The Arbitration and Conciliation Act<sup>498</sup> provides avenues for resolving conflicts outside traditional court systems.

**5. National Policy on Justice:** The National Policy on Justice emphasises victim protection, alternative methods for conflict resolution, access to justice and aligning with restorative justice principles while still recognising the need for accountability.<sup>499</sup> National policies can integrate restorative justice concepts in a way to address systemic deficiencies in the criminal justice system.

**6. Restorative Justice Pilot Programs:** Pilot programs in various states, particularly aimed at juvenile offenders, have aimed to integrate restorative practices. These initiatives illustrate a practical framework for coexistence.

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<sup>497</sup> Salihu HA & Gbolami, H, *Perceived Unfair Procedural Justice, Distrusted Legal Institutions and (Re) Emergence of Indigenous Restorative Justice Administration in Apata-Aje Community, Nigeria*, Legal Pluralism and Critical Social Analysis, 2022, Volume 54, Issue 2-3, pp. 297-316, <<https://www.tandfonline.com/doi/abs/10.1080/27706869.2022.2115196>>.

<sup>498</sup> *The Arbitration and Mediation Act*, Cap. A18, Laws of Federation of Nigeria, 2023.

<sup>499</sup> Okoye, IE, *Historical Context of Counterterrorism Measures in Nigeria: The Need for Restorative Justice Public Policy & Administration Research*, 2021, Volume 11, No. 4, <<https://core.ac.uk/download/pdf/475279942.pdf>>.

**7. Judicial Precedents:** Judicial interpretation in Nigeria occasionally reflects an understanding of restorative principles in the retributive framework which thus reflects an integration of restorative principles that promote mediation and community involvement.<sup>500</sup>

### **6.5 Challenges to the Coexistence of Restorative and Retributive Justice System in Nigeria**

The synergy between restorative and retributive justice in Nigeria's justice system is plausible, yet it requires significant reform and a shift in societal attitudes toward justice and rehabilitation. Emphasizing hybrid models that incorporate both approaches may yield better outcomes for victims, offenders, and the community at large, enhancing overall societal harmony.

Despite the necessity for synergy, several criticisms exist that might hinder its efficiency:<sup>501</sup>

**i. Lack of Awareness:** Education and awareness about restorative justice principles among legal practitioners and the general public are still lacking, which inhibits broader implementation.

**ii. Public Perception:** There is a prevailing public belief that justice equates to punishment. Restorative justice is sometimes perceived as being too 'soft' on crime, which can hinder its acceptance.

**iii. Institutional Resistance:** There is often the resistance from entrenched systems that

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<sup>500</sup> Ekpeowoh, SO & Okon EE, *Legal Aid and Access to Justice for Inmates in Nigeria: Challenges and Solutions* International Journal of Research and Innovation in Social Science, 2024, <<https://dx.doi.org/10.47772/IJRISS.2024.8100045>>

<sup>501</sup> Ogunyemi, JA & Aborisade, R, *Domestic Violence Against Men on Familial Relationships in Nigeria: Evidence From a Qualitative Study*, (African Journal for the Psychological Studies of Social Issues, 2023) Volume 26, No. 3, <<https://www.ajpssi.org/ajpssi/article/view/599>>.

prioritise punishment over rehabilitation. Law enforcement and judicial institutions may be less inclined to adopt restorative practices, viewing them too lenient to be effective in actualizing justice objectives.

## 6.6 Criticisms of Restorative and Retributive Justice Systems

There is no perfect justice system all over the world as neither of the justice systems can satisfy the needs of all the parties to a wrongful act. Each justice system has its area of strength and weaknesses which are made manifest in its criticisms. These apparent criticisms of restorative and retributive justice systems are not to disparage either system, but to provide an enriched and robust administration of justice system that can be said to be the perfect one.

To re-conceptualise the relationship between the restorative and the punitive approaches, the community has to take over most of the role traditionally allotted to the State, while the State retains the monitoring of the fulfillment of the reparation plan and decides whether or not to drop the case after a restorative process has been completed.

Retributive censure should ideally occur before reparative gestures are required in an ethical or psychological sense. Both censure and reparation may be seen as punishment by offenders even if it is not the intent of decision makers, they are both necessary before a victim or community can reintegrate an offender into the community.<sup>502</sup> Though punitive practices fail to provide opportunities for apology and repentance, the injection of the reparative approach can indeed make the justice system all-encompassing because parties and stakeholders of criminal justice system feel respected as their interests are considered before judicial decision

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<sup>502</sup> Duffy, K, *Navigating Subordination: The Potential of Restorative Justice*, **Maynooth University Research Archive Library**, 2021. <<https://mural.maynoothuniversity.ie/id/eprint/19053>>.

is made.<sup>503</sup>

Accordingly, criminal law does not imply punitive approach but constitutes a procedural and substantive platform for regulating behaviour in response to the present framework that brings about the socially desirable values. This means that both approaches may operate under the same justice jurisprudence.

**While the principal instrument of restorative justice approach is the maintenance of social equilibrium by way of reparation of harm and community empowerment through societal, therapeutic and utilitarian objectives of condemnation rehabilitation, compensation and reintegration, that of retributive approach is condemnation, deterrence and incapacitation. The integration of the two systems, will make the criminal justice administration to be a better justice system that does not only condemn, punish, incapacitate and deter the offender from committing the crime, but also compensate, rehabilitate and retribute to the victims what they have lost or suffered as a result of the action or inaction of the offender. For instance, on 31st October, 2024, Judge Terry Moorer of the District Court of Southern District, Alabama in the United States of America, sentenced one Babatunde Ayeni, an internet fraudster who pleaded guilty to fraud charge, to ten years imprisonment and ordered him to pay \$19,599,969 million as restitution to the victims of his scam i.e. all the individuals and entities he**

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<sup>503</sup> Tyler, TR, *Restorative Justice and Procedural Justice: Dealing with Rule Breaking*, as cited in Darling-Hammond, S & Fronius, T, *Restorative Practices in Schools*, Handbook of classroom Management, 2022, 3<sup>rd</sup> edn, <<https://www.taylorfrancis.com/chapters/edit/10.4324/9781003275312-6/restorative-practices-schools-sean-darling-hammond-trevor-fronius>>.

**defrauded.<sup>504</sup> This is a very good example of the synergy between retributive and restorative justice system because it was justice for all the parties to the case.**

Wenzel *et al*, support this synergy when they observe that people usually feel justice demands that the offender be punished above and beyond a possible restitution or compensation to the victim. In other words, a psychological evaluation of both retributive and restorative justice supports the fact that there is a requirement for punishment of criminal offences that is

independent of compensation to the victim or remorse by the offender. There is a sense in which the state's imposition of retributive punishment for violation of the penal law satisfies the demand for censure for the moral violation embedded in the criminal act.<sup>505</sup>

The offenders under this synergy will not be judged as severely as they are in retributive system because one of the significant features of restorative justice is its moderation of retributive punishment. Such harsh retributive punishment is unacceptable to restorative justice, hence, the synergy will reduce the contemporary harshness of criminal sentencing. Under this integrative approach, two things are synergised: the fact that the offenders have erred by their actions or inactions and the circumstances which might mitigate the offender's guilt. Under this arrangement, the condemnation of offenders will be mixed with empathy as mitigations do not excuse the offenders' actions and certainly do not remove their liabilities to make amends for the harm they have caused.

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<sup>504</sup> U.S. court sentences Tunde Ayeni to 10 years for internet fraud with \$20 million restitution to victims <<https://gazettengr.com/u-s-court-sentences-tunde-ayeni-to-10-years-for-internet-fraud-with-20-million-restitution-to-victims/>>.

<sup>505</sup> Wenzel, M, Okimoto, T, Feather, N & Platow, M, *Retributive and Restorative Justice*, as cited in Wilton, LS, Sullivan, J, Albuja, AF & Perry, SP, *Understanding the Challenges and Opportunities of Talking to Children About Race and Racism in Child-facing Institutions*, Social Issues and Policy Review, 2024, Volume 18, Issue 1, pp. 89-124, <<https://spssi.onlinelibrary.wiley.com/doi/abs/10.1111/sipr.12098>>.

The good understanding of the proper place for restorative justice is that it broadens the response to crime from a focal viewpoint of violation of rules and the consequential punishment, to a primary focus on the victim and offender. The integration of restorative philosophy as a plausible compliment to the punitive philosophy, will broaden the understanding of substantive criminal law and blend the goals of punishment with the one offered by the utilitarian and consequential goals of restorative philosophy. However, it is equally significant that such a combination of restorative

and retributive justice also meets the additional goals of compensation and provision of reparations for the victim and the possibility of forgiveness and reintegration of the offender into the community.

A line can be drawn between restorative justice and retributive justice which imposes punishment on the offender and seeks potential rehabilitation. However, restorative justice is directly concerned with the offender being restored to the community and restoration of the dignity of the offender. Restorative justice argues that the social goal that should dominate reactions to transgressions is to resolve the dispute via reintegrative shame.<sup>506</sup> Significantly, Restorative shaming combines strong disapproval of bad conduct with respect for the person who committed this wrongful act. It is the function of shame that relates his understanding of restorative justice to that of tribal expiation, which was largely focused on notions of shame. In the case of offenders, the goal is to encourage feelings of shame regarding one's wrongful act, accepting responsibility and sincerely apologising which consequently, restores the

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<sup>506</sup> Walgrave, L, *Concerns about the Meaning of 'Restorative Justice'. Reflections of a Veteran*, The International Journal of Restorative Justice, 2023, <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/ijjrestore6&div=36&id=&page=>>>.

dignity of the offender.

One specific thing that most citizens and crime victims want is for offenders should be made to be accountable for their actions through some form of punishment and this forms one of the objectives of retributive justice approach. Restorative justice on the other hand, can potentially attain the objective of punitive justice as if it is its own. Though the punitive justice that considers the

community as a passive victim, does not have community empowerment as one of its goals, it is the restorative justice that infuses empathy into the punitive justice system and not the opposite.

The integration of retributive and restorative justice seeks to recover dimensions of justice that often get lost within the institutional retributive justice process. Thus, restorative justice does not necessarily reject all punitive measures associated with the retributive process, but seeks to introduce humane treatment and counseling that can lead to the offender's rehabilitation, rather than a belief in the need for lengthy trials<sup>507</sup>

### **6.7 Reconciling Restorative Justice with Retributive Theory of Justice**

No single justice system can meet the needs of the parties; victim, offender, and State. While restorative justice best meets the needs of victim and offender, retributive justice best meets the needs of the State. Though it may be argued that punishment should precede the restorative justice process, it is necessary that when determining culpability, the sentencing authority should be able to take into account the goals of the restorative justice process just as

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<sup>507</sup> Mark Umbrett, *Crime Victims Seeking Fairness, Not Revenge: Toward Restorative Justice*, as cited in Littman, DM, Valdovinos, M & Sliva, S, *He Went from Being a Monster to a Person: Using Narrative Analysis to Explore How Victim-Offender Dialogue (VOD) Participants Transform through the VOD Process*, *Qualitative Social Work*, 2024, Volume 23, Issue 4, <<https://journals.sagepub.com/doi/abs/10.1177/14733250231202050>>.

in the American case of Babatunde Ayeni.

The confession and remorse of the offender are relevant factors in determining punishment or censure, the acceptance of responsibility, the making of amends through restitution and reparation, and the authentic petition for forgiveness are relevant to the determination of an appropriate sentence or punishment.

Restorative justice and the accountability required by retributive justice are not mutually exclusive as long as punishment is humane and rehabilitative. There is for certain a recognition among many people today, of the need for treatment programs to rehabilitate offenders. However, the need for censure should not be understood as contrary to the support for restorative justice. Umbreit argues that there is widespread support for programs of restorative justice: Without question, nearly all citizens at large and crime victims specifically want criminals to be held accountable through some form of punishment. For many, however, their need for justice and fairness is grounded more in a deep concern that violators, particularly juveniles, receive humane treatment and counseling in order to successfully address the needs of offenders, victims, and the state, a combination of restorative and retributive justice should be implemented. This necessary combination addresses the interests of all parties to a criminal event, including the victim (and community), the offender, and the state (social harm). Restorative justice addresses the needs of the victim for reparation and restoration. Similarly, restorative justice addresses the needs of the offender for forgiveness and reintegration into the community. Furthermore, retributive justice addresses the need of the state to maintain the criminal law through enforcement and punishment. On the other hand, retributive justice restores the offender's moral state as a result of the imposition and acceptance of prescribed punishment. The view that while there are apparent oppositional

concerns between restorative and retributive justice, both are needed to provide an enriched response to criminal conduct, has been advocated by Daly who argued that:

I have come to see that apparent contrary principles of retribution and reparation should be viewed as dependent on one another. Retributive censure should ideally occur before reparative gestures (or a victim's interest or movement to negotiate these) are possible in an ethical or psychological sense. Both censure and reparation may be experienced as punishment by offenders (even if not the intent of decision makers), and both censure and reparation need to occur before a victim or community can reintegrate an offender into the community.<sup>508</sup>

One of the significant features of restorative justice is its moderation of retributive punishment by reducing the unacceptable contemporary harshness of much criminal sentencing. Johnstone supported this view when he identified the impact of a restorative justice process on the impact of retributive punishment imposed on an offender:

Those deemed responsible for committing a crime will not be judged as severely as they are in [a purely] retributive system. Condemnation of their behavior as unacceptable to the community will be mixed with empathy for them as members of the community who have erred. At the same time, it will be made clear that the circumstances which might militate their guilt do not excuse their actions and certainly do not remove their liability to make amends

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<sup>508</sup> Daly, K, *Restorative Justice*, as cited in Suzuki, M, *Revisiting the Real Story of Restorative Justice in the Criminal Justice System: 20 Years on*, (Canadian Journal of Criminology and Criminal Justice, 2023, Volume 65, No. 2, <<https://utppublishing.com/doi/abs/10.3138/cjccj.2022-0061>>.

for the harm they have caused.<sup>509</sup>

### **6.8 Protection of the Interests of All Parties under the Synergy**

If the retributive criminal justice system is criticised for not protecting the interest of the victims, the Restorative justice system, on the other hand, is criticised for not protecting the public interest as it does not achieve the goal of deterrence. The deficiencies of both retributive and restorative justice systems have generated potential tension between the various social goals because synergising the restorative and retributive paradigms may achieve a different and a socially beneficial blend of criminal law objectives. In other words, integrating restorative processes into the formal punitive system may not always resolve the tension between retribution and victim healing. For instance in the *Clotworthy's case* of the Supreme Court of New Zealand, both the victim and the offender participated in a mediation process following a violent attack that left the victim with a scar that required cosmetic surgery. The parties reached an agreement and the offender took it upon himself to pay a significant amount of money to the victim in order to finance a cosmetic surgery required by the victim. The Auckland District Court accepted the agreement.<sup>510</sup> However, on appeal to the Supreme Court by the prosecutor, it was decided that the public interest for a deterring sentence overrides the victim's interest for reparation. The Supreme Court sentenced the offender to three years of incarceration and the restitution amount was significantly reduced.<sup>511</sup>

While explaining the reason behind the judgment, Justice Tipping explained:

We record that Mr. Cowan (victim) was present at the hearing. We gave him the opportunity to address us. He reiterated his previous stance, emphasising

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<sup>509</sup> Gerry Johnstone, *Restorative Justice: Ideas, Values, Debates*, as cited in Hillyard, P & Tombs, S, *Beyond criminology?*, **The Palgrave Handbook of Social Harm**, 2021) pp. 11-36, <[https://link.springer.com/chapter/10.1007/978-3-030-72408-5\\_2](https://link.springer.com/chapter/10.1007/978-3-030-72408-5_2)>.

<sup>510</sup> *R. v Clotworthy* (unreported) District Court, Auckland, T 971545, 24<sup>th</sup> April, 1998.

<sup>511</sup> *R. v Clotworthy* (1998) 15 CRNZ 651 (SC).

his wish to obtain funds for the necessary cosmetic surgery and his view that imprisonment would achieve nothing either for Mr. Clotworthy or for himself. We can understand Mr. Cowan's stance. He is to be commended for having forgiven Mr. Clotworthy and for the sympathetic way he has approached the matter. It must be said, however, that a wider dimension must come into the sentencing exercise than simply the position as between victim and offender. The public interest in consistency, integrity of the criminal justice system and deterrence of others are factors of major importance.

The victim-centeredness of restorative justice has been said to lack the capacity to satisfy the social goal which is the main objective of retributive justice system. The restorative justice interest of taking care of the offender's rehabilitation by treatment, social integration, re-education and support is a high socio-ethical principle, but it must act in conjunction with retributive principles.

In some cases where the judge gives a decision that is neither retributive nor restorative in nature, such criminal process leads to lose-lose outcomes to the offender and the victim. For instance in the high profile case of *State v. Ravi*,<sup>512</sup> Rutgers University student Dharun Ravi was convicted of fifteen counts of second degree, bias intimidation and invasion of privacy after placing a webcam that documented his dormitory roommate, Tyler Clementi during an intimate encounter with a man. Ravi later tweeted the video and also invited others to watch a planned second encounter. A few days later, Clementi (1<sup>st</sup> victim) committed suicide by jumping off the Washington Bridge. Ravi was not charged with causing Clementi's death but for hate crimes, cyber-bullying and violation of gay rights. The jury recommended 10 years imprisonment but Judge Glenn Berman sentenced him to only thirty days, a three-year

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<sup>512</sup> N.J. Super. No. 11-04-00596, 2012 N.J. Super. Unpub. LEXIS 1757 (App. Div. May 21, 2012).

probation, 300 hours of community service and a \$10,000 fine and counseling.

In *Ravi's case*, the criminal process failed to provide healing for the victims, provided no space for a sincere apology, and sent a mixed message to the public. The victim's parents stated early during the process that they did not want harsh punishment for Ravi.<sup>513</sup> The other victim, the man who visited Clementi (that remained anonymous throughout the trial), submitted a Victim Impact Statement stating that he had not wanted Ravi to go to prison, only that he had wanted him to take responsibility.<sup>514</sup> The defendant's letter of apology that was publicly released just before the sentencing hearing was accepted with distrust and anger by the victims as it did not mention either of them. The defendant, who was however, threatened by the risk of being found guilty for committing hate crimes, refused to confess, denied any form of responsibility, hence, the defendant opted to remain silent during the sentence hearing. The jury assumed the position of protecting public interest which was particularly strong in this case that most likely would be cited as precedence, as it was an opportunity to set a norm regarding gay rights, cyber-bullying and hate crimes which obviously would amount to retributive justice. The judge disregarded the decision of the jury and gave Ravi a thirty-day sentence which was considered too lenient. This lenient thirty days sentence handed by the judge mocked the jury's decision to convict Ravi as a form of norm-setting. What Clementi's parents and the other man (2<sup>nd</sup> victim) that visited him wanted was restorative justice because they were not interested in Ravi being sentenced but that he should take responsibility for his action. Judge Berman decision was in no way restorative in nature, hence, victims' healing was not achieved in this case. This case illustrates that despite the far-reaching justice reforms, which enhance victims' participation in the criminal justice process, victims' need for

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<sup>513</sup> Foderaro, LW, *Parents of Rutgers Student in Suicide Say No "Harsh" Penalty*, **N.Y. Times**, Mar. 23, 2011, at A24, <<https://www.nytimes.com/2011/03/23/nyregion/23rutgers.html>>.

<sup>514</sup> Ian Parker, *The Story of a Suicide*, **New Yorker**, Feb. 6, 2012, at 36–51, <[http://nobetty.net/lab/readings/Tyler\\_Clementi\\_TheNewYorker.pdf](http://nobetty.net/lab/readings/Tyler_Clementi_TheNewYorker.pdf)>.

symbolic reparation is not met in this case, even when victims were able to submit Victim Impact Statements.

The formal criminal process similarly did not promote retribution, nor was it considered an important goal in this case, as the sentence revealed. In fact, Ravi demonstrates that the dichotomous nature of guilty/innocent verdicts may produce exceedingly lenient sentences which in turn fail to convey a clear denunciating message to the public. Consequently, other goals of criminal law are also left behind due to the leniency of the sentence. Had restorative justice jurisprudence been used in this case, all the parties involved; the defendant, the victims, and the community, could have potentially benefitted from the outcome of the case.

It is therefore clear that retribution justice cannot and should not be pursued in its conventional form alone if an all-encompassing satisfaction of all parties goal should be achieved. Moreover, instead of compromising retributive goals, restorative justice can be used to promote these goals in addition to its own stated objectives. This does not mean that restorative justice should replace criminal justice, rather it can compliment it by synergising the two justice systems in a way to achieve a better criminal justice system. Despite this synergy, the objective of the State as regards deterrence still remain unresolved. Alternative approaches should be considered to promote the goals of victim healing, community empowerment, deterrence and prevention of recidivism.

### **6.9 Protection of All Parties' Interests Theories**

The synergy between retributive and restorative justice systems revolves around understanding how these retributive and restorative approaches can complement each other to create a more comprehensive justice framework. Here are some key theories and concepts

related to this synergy:

**i. Restorative Circles and Sentencing Alternatives Theory:** Integrating restorative circles into the sentencing process allows for community involvement in justice, where community members help determine appropriate consequences for the offender.<sup>515</sup> This approach can safeguard the interests of victims through community support and acknowledgment while still holding offenders accountable, providing them with opportunities for personal growth and restitution. This approach is rooted in restorative justice, an approach that emphasizes repairing the harm caused by criminal behavior rather than focusing solely on punishment. Below is an overview of both concepts and how they interrelate:

a. Restorative Circles and Sentencing Alternatives are interconnected in that Restorative Circles can be utilised as a method of sentencing alternative.<sup>516</sup> Instead of going through conventional court processes that may lead to imprisonment, offenders can participate in restorative practices to address their actions and impact positively.

b. Many judicial systems are increasingly incorporating restorative practices, including Restorative Circles, as part of a broader push toward reforming justice systems to focus on healing rather than punishment. The impact of this on recidivism is that it can lead to lower rates of recidivism compared to traditional punitive measures.<sup>517</sup> This is often attributed to the accountability felt by offenders and the healing process experienced by victims.

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<sup>515</sup> Bottoms AE, *Alternatives to Prison, Crime, Inequality and the State*, 2020, <<https://www.taylorfrancis.com/chapters/edit/10.4324/9781003060581-45/alternatives-prison-anthony-bottoms>>.

<sup>516</sup> Braithwaite J, & Strong H. *Restorative Justice and Civil Society*, as cited in Martinez, A, Villegas, L, Ayoub, LH, Jensen, E & Miller, M, *Restorative Justice and School-Wide Transformation: Identifying Drivers of Implementation and System Change*, *Journal of school Violence*, 2022, Volume 21, Issue 2, 2<sup>nd</sup> edn. <<https://www.tandfonline.com/doi/abs/10.1080/15388220.2022.2039682>>.

<sup>517</sup> Wong, DSW & Fung, CSY, *Juvenile Community Corrections in China: The Quest for a Restorative Approach*, *Asian Journal of Criminology*, 2023, Volume 18, pp 113-132, <<https://link.springer.com/article/10.1007/s11417-022-09381-8>>.

c. Both Restorative Circles and Sentencing Alternatives present innovative approaches to addressing crime and conflict.<sup>518</sup>

d. They emphasize understanding, accountability, and community involvement, potentially leading to more meaningful outcomes for all parties involved.

**ii. Equity Theory:** Equity theory is a psychological principle that examines the balance of inputs and outputs in relationships and social exchanges. When applied to the protection of parties' interests within the context of the synergy between restorative and retributive justice systems, equity theory can offer insightful perspectives on fairness and justice.

Equity theory suggests that fairness and equal treatment are crucial to justice. The interests of victims and offenders must be balanced to achieve a perceived sense of fairness in the outcomes. Therefore, synergising punitive measures with restorative practices can ensure equitable treatment of all parties involved, promoting a sense of fairness while satisfying the needs of victims for recognition and restitution.

Equity theory enhances the understanding of how both systems can work together to confront social inequalities. By addressing issues such as systemic injustices within the retributive system or ensuring equitable access to restorative opportunities, the synergy can foster a justice framework that is more just and equitable for marginalized communities. This theory posits that though fairness in social exchanges is paramount, ensuring that victims receive recognition and reparations for their suffering while offenders are held accountable in a

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<sup>518</sup> Packer, H, *The Limits of the Criminal Sanction*, as cited in Fielding, NG, *Joining Forces: Police Training, Socialization and Occupational Competence*, London Routledge, 2023, <<https://www.taylorfrancis.com/books/mono/10.4324/9781003362722/joining-forces-nigel-fielding>>.

manner that allows for rehabilitation is justice. Therefore, the synergy of these two systems can create a balanced framework where victims feel their pain is acknowledged and addressed, and offenders have the opportunity to rehabilitate and reintegrate into society.<sup>519</sup> The combining elements of both systems can lead to a more comprehensive approach to justice that acknowledges and addresses the needs of all parties involved; victims, offenders, and the community.

Under equity theory, the interests of victims can be protected through restorative practices that allow them to express their experiences and receive support, while also ensuring that offenders are penalized in line with retributive principles. Restorative justice can involve community members in mediating disputes and providing support to both victims and offenders, while retributive justice ensures that community norms and values are upheld through appropriate sanctions. Both systems emphasize the role of the community in the justice process. Equity theory underscores that communities should have a stake in the resolution of conflicts to promote collective interests. The combination of both systems can lead to more effective solutions that not only addresses immediate harms but also seeks to prevent future offences through education, support, and social services.<sup>520</sup> An equitable approach ensures that both victim and offender come away with a sense of closure, which can lead to long-term community healing and reduced recidivism.

Equity theory makes the offenders to benefit from restorative approaches that emphasize personal accountability and encourage them to take responsibility for their actions, as well as

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<sup>519</sup> Braithwaite J. *Restorative Justice: Assessing Optimistic and Pessimistic Accounts in Restorative Justice: An International Perspective*, as cited in Clair, M & Woog, A, *Courts and the Abolition Movement* Heinonline, 2023, <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/calr110&div=3&id=&page=>>>.

<sup>520</sup> Miller-Jones D & Rubin, MM, *Achieving Equity in Education: A Restorative Justice Approach*, **Journal of Public Management and Social Policy**, 2020, Volume 27, No. 1, <<https://digitalscholarship.tsu.edu/jpmisp/vol27/iss1/3/>>>.

from the deterrent effects of retributive justice.<sup>521</sup> It provides a valuable lens that analyses the protection of parties' interests in the interplay between restorative and retributive justice systems. By blending the punitive aspects of retributive justice with the healing principles of restorative justice, one can aim for a more holistic and fair approach to addressing crime and conflict, emphasizing the importance of balance, accountability, healing, and community involvement. This synergy can ultimately lead to a justice system that better serves all parties involved, fostering trust, safety, and sustainability.<sup>522</sup>

iii. **Victim-Offender Dialogue (VOD) Theory:** This approach creates spaces for direct communication between victims and offenders, allowing them to express their feelings, understand each other's perspectives, and work toward mutual resolution. Utilising such dialogues within a retributive framework can lead to more informed sentencing and rehabilitation strategies, benefiting both parties and supporting the interests of victims in being heard.

Victim-Offender dialogue is a restorative justice practice that allows victims and offenders to communicate directly in a structured and supportive environment. The dialogue aims to provide victims with a voice, an opportunity to express their feelings and to understand the offender's perspective. For offenders, it is a chance to take responsibility for their actions and gain insight into the impact of their behavior on the victim.

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<sup>521</sup> Sullivan, M, *Restorative Justice as a Tool to Support Men Engaging in High-Risk Behaviour With Self Authorship and Sense of Belonging*, University of Dayton ProQuest Dissertations & Theses, 2024, <<https://www.proquest.com/openview/f85420177df6f1f383bd8ca6c873e8fe/1?pqorigsite=gscholar&cbl=18750&diss=y>>.

<sup>522</sup> Sullivan, M & Witenstein, MA, *Infusing Restorative Justice Practices into College Student Conduct Practices*, *Journal of Diversity in Higher Education*, 2022, 15/6, 695-699, <<https://psycnet.apa.org/record/2023-09900-001>>.

The theory of Victim-Offender dialogue becomes particularly significant when examining the interplay between restorative and retributive justice systems. This synergy seeks to address the interests of both victims and offenders, fostering a more holistic approach to justice that promotes healing, accountability, and community restoration. While retributive justice focuses on punishment and deterrence, restorative justice emphasizes healing and restoration. VOD harmonizes these approaches by holding offenders accountable while also allowing space for victims' healing.

While Victim-Offender dialogue allows victims to express their experiences, fears, and needs, which can promote healing and makes the victims to reclaim a sense of control over their lives and their narratives, it also facilitates a restorative experience and receives reparations or an apology, which can aid in their healing process. It makes the offender to engage directly with the victim, encourages offenders to confront their actions and understand the consequences, which is a key aspect of both restorative and retributive justice.<sup>523</sup> The offenders are motivated to change their behaviour and rehabilitate, knowing that they may have the opportunity to make amends.<sup>524</sup> The theory also promotes community reintegration and smooth transition for offenders back into the community by emphasising personal accountability and social bonds which aims to repair harm not just to individuals but also to the community as a whole, fostering social cohesion.<sup>525</sup> Above all, it prevents recidivism by

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<sup>523</sup>Johnson, JG, *A Comparative Study of Victim and Offenders' Perceptions Following Criminal Trial and Participation in a Post-Conviction Victim Offender Dialogue*, California State University, Sacramento ProQuest Dissertations & Theses, 2022. <<https://www.proquest.com/openview/425e1bda0b1c23d1dc5c3292f00fb87d/1?pq-origsite=gscholar&cbl=18750&diss=y>>.

<sup>524</sup>Walklate, S, *Are Victim Stories Human Rights Stories? Towards an Ethics and Politics of Listening and Seeing for Victimology*, A research agenda for a human rights centred Criminology, 2024, pp. 175-188, <[https://link.springer.com/chapter/10.1007/978-3-031-46289-4\\_12](https://link.springer.com/chapter/10.1007/978-3-031-46289-4_12)>.

<sup>525</sup>Langford, R, *Talking as Restorative Justice: A Conversation Analysis of Victim-Offender Meetings*, University of (Salford (United Kingdom) ProQuest Dissertations & Theses, 2021, <<https://www.proquest.com/openview/5c00b686670efe60af803aaad2f05d93/1?pq-origsite=gscholar&cbl=2026366&diss=y>>.

addressing root causes of crime and thus making communities benefit from lower crime rates and enhanced community safety.

By fostering dialogue, understanding and accountability, this approach aims not only at addressing the immediate impacts of crime but also at promoting long-term restoration for individuals and communities alike. Victim-Offender dialogue Integrates principles from both justice paradigms and it leads to a more effective and humane justice system that serves as a vital intersection between restorative and retributive justice systems, protecting the interests of both victims and offenders.<sup>526</sup>

**iv. Dual Process Theory:** This theory posits that both retributive and restorative justice serve distinct but overlapping roles within the justice system. Retributive justice focuses on punishment, deterrence, and societal retribution, while restorative justice emphasises healing, accountability, and restoration of relationships. By acknowledging that both processes can meet different needs for victims, offenders and society, a dual approach can ensure that punitive measures are balanced with opportunities for rehabilitation. This theory provides a framework for understanding how both systems can coexist and complement each other in protecting the interests of all parties involved, including victims, offenders, and society at large.

The Dual Process Theory posits that a balanced and effective justice system can harness both retributive and restorative principles to safeguard the interests of all stakeholders involved in

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<sup>526</sup> Mpofu, ZF, Mkhize, SM & Akpan, JU, *Empathy, Remorse, and Restoration of Dignity Contributing to Reduced Recidivism: Assessing the Role of Restorative Justice in Promoting Offender Rehabilitation and Reintegration in Durban* Cogent Social Sciences, 2024, Volume 10, Issue 1, <<https://www.tandfonline.com/doi/full/10.1080/23311886.2024.2429018>>.

the justice process. This theory protects victims' interest by imposing punishment which offers a sense of justice. It also allows victims to voice their experiences, facilitate healing, and contribute to deciding what reparative actions are needed for restitution. As a result of its dual nature, this retributive aspect of this theory makes the threat of punishment deter future offenses, while its restorative aspect addresses the root causes of behavior, makes the offenders to admit responsibility for their actions which consequently reduces the likelihood of reoffending.

The retributive aspect of the theory also holds the offenders accountable by ensuring the offenders face the consequences of their actions which equally fulfills the societal expectations of justice and deterrence. By this theory, the offenders are encouraged to understand the impact of their actions and engage in meaningful repair, which can foster genuine accountability beyond mere punishment. The theory recognises the role of the community in upholding legal norms and standards through the imposition of consequences on offenders and it also engages the community members in restoring peace and cohesion by allowing them to be a part of the resolution.

The integration of both approaches allows for individualised responses based on the needs and circumstances of the case. While some cases may warrant a stronger emphasis on punishment, others may benefit more from restorative practices. It can also encourage the development of policies that recognise and promote the use of restorative justice as a complementary mechanism to traditional punitive measures as well as providing continuous evaluation of outcomes from integrated approaches to assess effectiveness in reducing recidivism, victim satisfaction, and community restoration.

The integration of both restorative and retributive legal frameworks (courts and legal systems) can synergise restorative practices into traditional retributive processes, allowing for options such as restorative justice conferences or Victim-Offender mediation prior to sentencing. Legal practitioners and law enforcement agencies should be educated on both approaches so as to know which is appropriate and how they can work together. The synergy between restorative and retributive justice systems through the lens of Dual Process Theory highlights the potential for a more holistic approach to justice.

**v. Procedural Justice Theory:** Procedural justice emphasises the fairness and transparency of the processes involved in administering justice.<sup>527</sup> It argues that when parties perceive the justice process as fair, they are more likely to accept its outcomes. Integrating restorative practices into retributive systems can enhance procedural justice by allowing victims to have a voice, participate in the process, and receive acknowledgment of their suffering, while also holding offenders accountable for their actions. Procedural Justice involves fair processes, transparency, neutrality, and opportunity for voice in legal proceedings which thus ensures that all parties feel respected and heard, which can influence their perceptions of the justice system and its legitimacy.

A hybrid model that incorporates elements of both restorative and retributive justice can enhance procedural justice which means that by allowing community involvement in both the punitive and restorative elements of justice, the processes can be considered to be fair and equitable. When considering the synergy between restorative and retributive justice systems, procedural justice plays a crucial role in protecting the interests of all parties involved;

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<sup>527</sup> Maximoff, N & Taylor, SS, *Restorative Justice in Education*, Restorative Justice in Education, Online, 2022, <<https://www.taylorfrancis.com/entries/10.4324/9780367198459-REPRW64-1/restorative-justice-education-natasha-maximoff-shanon-taylor>>.

victims, offenders, and the community as a whole.<sup>528</sup> Procedural justice theory emphasizes the fairness and transparency of the processes involved in resolving disputes and administering justice, rather than solely focusing on the outcomes.

This theory protects the interests of the victims by making them to benefit from restorative practices that provide platforms to express their feelings and needs, promoting healing and closure. On the other hand, the theory makes the offenders to contribute to restitution and reconciliation, fostering personal accountability and community ties. Procedural fairness ensures that both victims and offenders are treated with respect and dignity, promoting trust in the justice system. In addition, procedural theory engages the community in both punitive decisions (like sentencing) and restorative practices (like circles or mediation) which makes the Community members to serve as mediators or facilitators, thus creating shared responsibility for both enforcing norms and promoting repairs.

The theory incorporates feedback mechanisms where all parties can voice their experiences during the process can enhance the legitimacy of outcomes, whether they are punitive or restorative.<sup>529</sup> These mechanisms can help adjust procedures to better protect the interests of victims while holding offenders accountable.

By integrating restorative and retributive elements into the justice system, procedural fairness makes the justice system to effectively protect the interests of all parties involved. This synergy not only respects the rights and needs of victims and offenders but also enhances

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<sup>528</sup> Lind E. A. & Tyler, T. R. *The Social Psychology of Procedural Justice* as cited in Newman, DT, Fast, NJ & Harmon DJ, *When Eliminating Bias isn't Fair: Algorithmic Reductionism and Procedural Justice in Human Resource Decisions*, *Organizational Behavior and Human Decision Processes*, 2020, Volume 160, pp.149-167, <<https://www.sciencedirect.com/science/article/abs/pii/S0749597818303595>>.

<sup>529</sup> Barkow, RE, *The Reformation of American Criminal Law*, NYU Env't. LJ, 2021, <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/nyuev29&div=18&id=&page=>>>.

public confidence and cohesion within the community.<sup>530</sup> Consequently, this multifaceted approach can lead to a better understanding of the concept of justice, which moves justice beyond mere punishment to encompass healing, accountability, and community restoration.

**vi. Holistic Justice Theory:** *Holistic Justice Theory:* This theory advocates for a comprehensive view of justice that combines elements from both retributive and restorative paradigms to address the needs of all stakeholders involved. Holistic justice theory integrates various approaches to justice, particularly restorative and retributive justice, to create a framework that protects the interests of all parties involved in a conflict or criminal situation. This theory recognizes that both individual accountability and communal healing are essential for a just resolution.<sup>531</sup>

Holistic justice theory is an integrative framework that seeks to address the multifaceted nature of justice by considering the interests and well-being of all parties involved; victims, offenders, and the community. This framework can lead to policies that foster healing for victims while promoting rehabilitation for offenders. It emphasises the need to consider the social, emotional, and psychological well-being of victims while still recognising the necessity of accountability for offenders.

By combining elements of restorative and retributive justice, holistic justice aims to create more comprehensive and balanced responses to crime and conflict. This approach recognises that justice is not just about punishment or reparation, but about restoring relationships and

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<sup>530</sup> Farber, S, *The Changes That Took Place in the Judicial System, Theory, Causes and the Significance of Third Party Interventions*, 2024, Pp. 221-251 <[https://link.springer.com/chapter/10.1007/978-3-031-67225-5\\_8](https://link.springer.com/chapter/10.1007/978-3-031-67225-5_8)>.

<sup>531</sup> Anderson, J, Islam, MS & Li, B, *A Study of the Values and Principles-based Approach to Restorative Justice* Contemporary Justice Review, 2025, Volume 28, Issue 1, pp. 13-38 <<https://www.tandfonline.com/doi/abs/10.1080/10282580.2025.2472310>>.

fostering community well-being. Holistic justice seeks to balance retributive measures with restorative practices that promotes healing rather than mere punishment and aims to address the complexities of human behaviour by recognising the emotional and psychological needs of both victims and offenders.

Holistic justice embraces a comprehensive understanding that justice involves addressing emotional, psychological, and social aspects of conflict. It recognises the diverse needs of all stakeholders, aiming for an outcome that supports healing for victims, accountability for offenders, and restoration of community harmony. The theory protects the interests of the parties by prioritising the needs of victims via the opportunity to express their experiences and seek reparative measures.<sup>532</sup> It often involves personal engagement in the justice process through Victim-Offender dialogues or restorative circles. For the offenders, holistic justice theory encourages rehabilitation, personal growth and responsibility. Rather than solely focusing on punishment, it provides offenders the opportunities to contribute positively to the community, which can help mitigate the stigma and foster reintegration.

By synergizing restorative and retributive justice principles, holistic justice theory represents a promising paradigm for addressing crime and conflict that values the rights and needs of all parties involved. It seeks to create sustainable outcomes by transforming relationships and community dynamics rather than simply delivering retribution. It encourages education and awareness programs aimed at addressing the root causes of crime, thereby facilitating long-term solutions to social issues. It also recognises the fact that the community plays a vital role in restoring harmony and preventing future conflicts which thus enhances collective

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<sup>532</sup> Folk, C, *Music Teachers' Perceptions and Implementations of Restorative Justice Practices*, Arts Education Policy Review, 2024, Volume 125, Issue 4, pp. 369-378, <<https://www.tandfonline.com/doi/abs/10.1080/10632913.2023.2227982>>.

responsibility and support social cohesion. In the area of inclusivity, holistic justice stresses the importance of equitable processes that allow all parties to participate meaningfully. The involvement of community members in both restorative and punitive aspects of justice creates a sense of collective ownership of the process and its outcomes. This includes ensuring transparency, fairness, and opportunities for everyone to voice their views and needs.

The application of Holistic Justice Theory includes community circles and restorative dialogues which allows the victims, offenders, and community members to come together to discuss the impact of the crime, their feelings and collaboratively decide on reparative actions.<sup>533</sup> In cases where retributive justice is necessary, holistic approaches can utilize community-involved sentencing circles, allowing community input into the penalties imposed, thereby ensuring that they are viewed as fair and just. Its application also includes comprehensive rehabilitation initiatives which addresses underlying issues such as addiction, mental health, and socio-economic factors that contribute to criminal behavior, allowing offenders to reintegrate into the society.

**vii. Transformative Justice Theory:** Transformative justice theory is an innovative framework that extends beyond traditional ideas of retributive and restorative justice, aiming to address the root causes of harm while promoting transformation and healing for individuals and communities. It seeks to protect the interests of all parties; victims, offenders, and the community by fostering meaningful changes in relationships and communities, rather than merely focusing on punishment or even restoration alone. Transformative justice incorporates elements of both restorative and retributive justice but goes further by integrating community

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<sup>533</sup> Kahl, K, *The Dynamics of Crime Seriousness and Victims' Preference to Participate in Online and Offline Victim-Offender Mediation*, University of Twente, Student Thesis, 2022, <<https://essay.utwente.nl/90937/>>.

involvement and addressing systemic injustices.<sup>534</sup>

Transformative justice seeks to address the underlying social issues that contribute to crime, focusing on structural changes and community healing. By combining restorative principles with an understanding of social justice, this approach seeks to empower victims and offenders alike, fostering a sense of community resilience and support while ensuring accountability for wrongdoing. Transformative justice involves an understanding of the broader social, economic, and political contexts that contribute to criminal behavior. It seeks to address systemic issues such as inequality, discrimination, and marginalisation and empowers individuals and communities to take active roles in preventing harm and resolving conflicts.<sup>535</sup> This often involves giving a voice to those traditionally marginalised within the justice system.

Transformative justice theory protects the interests of the parties by encouraging the victims to engage in a dialogue that promotes understanding and healing. It also seeks to honor and validate the experiences of victims by allowing them to actively participate in the process of addressing the harm done, expressing their needs and seeking restitution that might go beyond financial compensation. The offenders on the other hand are viewed not just as individuals who have committed wrongdoings but as people whose lives can be transformed and be made accountable for their actions. Transformative justice promotes rehabilitation, personal growth, and the opportunity to restore their relationship with the community.<sup>536</sup> Transformative justice encourages collective action and the development of communal support systems, fostering a

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<sup>534</sup> Marcucci, O, Grant, AA & Rice, E, *Understanding the Anti-Carceral Possibility of School-Based Restorative Justice: A Methodologically Inclusive Systematic Review* as cited in Marcucci, O, Grant, AA, Rice, E, Parker, A & Cruz, RA, *Review of Educational Research*, 2025, <<https://journals.sagepub.com/doi/abs/10.3102/00346543251329595>>.

<sup>535</sup> Minow M, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence*, as cited in Schulz, P, *Male Survivors of Wartime Sexual Violence*, **University of California Press**, 2020, <<https://luminosoa.org/books/m/10.1525/luminos.95>>.

<sup>536</sup> Pennell, J, *A Restorative Approach to Family Violence: Feminist Kin-making*, New York, Routledge, 2022, <<https://www.taylorfrancis.com/books/mono/10.4324/9781003105374/restorative-approach-family-violence-joan-pennell>>.

sense of shared responsibility with the potential to play a significant role in both addressing harms and preventing future incidents.

Transformative justice often uses community-led processes, such as restorative circles or forums, to facilitate dialogue among victims, offenders, and community members, promoting understanding and co-creation of reparative actions. It emphasizes the importance of education around social issues, power dynamics, and the root causes of crime as essential tools in preventing future harm and fostering empathy within communities. Instead of traditional sentencing, transformative justice may involve creating agreements that focus on restitution, community service, and other proactive and healing-oriented actions that benefit all parties involved.

The synergy between restorative and retributive justice incorporates restorative principles by emphasising dialogue, relationship rebuilding, and community reparations. It allows victims and offenders to engage constructively, fostering empathy and understanding. While transformative justice is critical of punitive measures that do not address underlying issues, it acknowledges that certain retributive elements may be necessary in some contexts. However, these elements are contextualised within a broader framework of healing and transformation rather than mere punishment.<sup>537</sup> Transformative justice encourages a flexible approach that draws from both restorative and retributive traditions, depending on the needs of the victim, the offender, and the community.

**viii. Punitive Restoration Theory:** Restorative justice is a general term that refers to various

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<sup>537</sup> Brown, M, *The Challenge of Transformative Justice: Insurgent Knowledge and Public Criminology*, (Routledge Handbook of Public Criminologies, 2020, <<https://www.taylorfrancis.com/chapters/edit/10.4324/9781351066105-6/challenge-transformative-justice-michelle-brown>>.

restorative approaches and not any single practice. It is more of an orientation than a practice that favours the informal justice paradigm over the formal aiming at providing victims and offenders alike with a voice that they are not given under a retributive approach. Restorative justice approaches are applied in prison interventions, schools, and South Africa's Truth and Reconciliation Commission. Restorative justice approaches can be in form of alternative to traditional sentencing and this includes Victim-Offender mediation and restorative conferencing as practiced in the indigenous Nigerian communities. The umbrella that unites all of these diverse approaches to restorative justice is their focus on resolving a conflict through informal but structured deliberation between parties. No wonder, Marshall defines restorative justice as a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.<sup>538</sup> Restorative justice is not one practice, but a broad tent encompassing a wide diversity of practices. This plurality of practices extends to the forms they can take from mediation to conferencing, but also to differences in dynamics in how these practices are delivered.

Punitive restoration is partly punitive and restorative because it extends the available options for a restorative contract to achieve restoration couple with certain degree of hard treatment like suspended sentences or brief imprisonment that is used to elicit compliance.<sup>539</sup> Though restoration is aimed at involving the stakeholders through a conference setting where they are given their voices, punitive restoration is conceived as an alternative to the formal procedures of the criminal trial and sentencing guidelines that overcome an important obstacle that

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<sup>538</sup> Fennell, DA & Sheppard, V, *Tourism, Animals and the Scales of Justice*, Justice and Tourism, 2021, <<https://www.taylorfrancis.com/chapters/edit/10.4324/9781003143055-10/tourism-animals-scales-justice-david-fennell-valerie-sheppard>>.

<sup>539</sup> Brooks D, *Punitive Restoration: Giving the Public a Say on Sentencing*, as cited in Zisman, V & Rehren, P, *The Problems of Empirically-Informed Arguments for and against Retributivism*, Review of Philosophy and Psychology, 2024, <<https://link.springer.com/article/10.1007/s13164-024-00753-w>>.

borders on the diversity of restorative approaches. It can do this because punitive restoration is linked with a particular, informal use of restorative justice. We can then better compare the dynamics and outcomes from punitive restoration given the more specified content.

Another advantage of punitive restoration is that it addresses the issue of community than other alternative restorative approaches. Punitive restoration's principle endorses the principle of stakeholding where those serving on a jury or submitting a victim impact statement also have a voice on sentencing. The public having a say on penal outcomes either as a member of a jury or in another capacity, is subject to several safeguards as found in current restorative justice practices upon which punitive restoration is built. Under punitive restorative justice, a party may choose to be represented by any counsel of his choice throughout the conference proceeding. The public can contribute to penal outcomes through serving on a jury or submitting a Victim Impact Statement which affords the individual a voice on sentencing.<sup>540</sup> Flexibility is constrained by national guidelines providing necessary discretion but all outcomes must be overseen by a trained facilitator and agreed to by the offender to be confirmed.

One of the problems of punitive restoration is in the area of short term imprisonment which is one of its attributes. Short-term imprisonment is prone to turn to high rates of reoffending because most offenders are sentenced to short term imprisonment of less than 12 months without spending sufficient time in prison for rehabilitation which contributes mainly to the reason why the offender reoffend after being released from prison.

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<sup>540</sup> Brooks, T, *The Right to Trial by Jury*, as cited by Goncalves, WI, *How Much Time Am I Looking at?": Plea Bargains, Harsh Punishments, and Low Trial Rates in Southwest Border Districts*, Am. Crim. L. Rev., 2022, <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/amcrim1r59&div=13&id=&page=>>.

Crimes are sometimes committed against individual and they are generally referred to as public wrongs that affect all members of the community, including the people that depend on the victims and offenders whose voices are regularly left out. If restoration is worth achieving, then it should not be a private affair between only the victim and offender, the community that includes the supporting network of the victim and offender should be included in the resolution of the problem and they should not be silenced.<sup>541</sup> Moreover, if punitive restoration is to be effective, then its conference format requires stakeholders to come together and be part of the conference. Not all victims or offenders will want to take part because of lack of time. Community members may not wish to participate.

The challenges that the synergy between retributive and restorative justice theory face is how to achieve greater crime reduction without sacrificing victim's interest and public confidence. Punitive restoration is a justice system modelled on an important principle that states that those who have a stake in penal outcomes should have a say in victim and public satisfaction. Punitive restoration is justice that aims to achieve the restoration of rights infringed or threatened by criminal actions as well as punitive insofar as the available options for this agreement are more punitive than found in other restorative justice theories. It sheds new light on how we may meet the twin challenges of improving our efforts to reduce reoffending without sacrificing public confidence and demonstrates how restorative practices can be deeply integrated within the criminal justice system. However, the need for censure should not be understood as contrary to the support for restorative justice.

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<sup>541</sup> Shapland J, Atkinson A, Atkinson H, Chapman B, Colledge E, Dignan J, Howes M, Johnstone J, Robinson G, & Sorsby A., *Restorative Justice in Practice: The Second Report*, as cited in Maglione, G, *Restorative Justice, Crime Victims and Penal Welfarism. Mapping and Contextualising Restorative Justice Policy in Scotland*, Social & Legal Studies, 2021, Volume 30, Issue 5, <<https://journals.sagepub.com/doi/full/10.1177/0964663920965669>>.

Restorative justice meets a need ignored by the modern system of criminal justice. The victim's need for compensation and reparation and the offender's need for forgiveness and return to full membership in the community are important considerations that are the focus of restorative justice. Nevertheless, there is a complementary need to attend to the societal rupture caused by the violation of the criminal law. Moreover, there is a need to recognize the authority and compelling force of the demand for censure and expiation of the criminal offender.

### **6.10 Challenges of Retributive and Restorative Synergy**

**i. Accountability and Responsibility:** These can be viewed from two different perspectives; retributive Perspective and restorative perspective. Under retributive perspective, accountability is seen through the lens of understanding the effects of one's actions and working towards making amends.<sup>542</sup> This focus can invite offenders to take responsibility in a more meaningful way. Accountability is primarily defined through punishment and suffering in proportion to the crime. This can create an adversarial atmosphere that may not give room for genuine remorse or transformation. Under restorative perspective, accountability is seen through the lens of understanding the effects of one's actions and working towards making amends. This can make the offenders to take responsibility in a more meaningful way.

**ii. Philosophical Differences:** The philosophical differences between restorative and retributive justice frameworks manifest a fundamental divergence in how justice systems conceptualise crime, accountability, and the role of the community. The fundamental

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<sup>542</sup> Otis, JR, *Transforming Community Policing: A Restorative Approach to Police Complaints* University of Minnesota, School of Social Work, 2022, <[https://www.researchgate.net/profile/Douglas-Marlowe/publication/373992398\\_Transforming\\_Community\\_Policing\\_A\\_Restorative\\_Approach\\_to\\_Police\\_Complaints/links/6507e0d59dfd0c69dfd863bd/Transforming-Community-Policing-A-Restorative-Approach-to-Police-Complaints.pdf](https://www.researchgate.net/profile/Douglas-Marlowe/publication/373992398_Transforming_Community_Policing_A_Restorative_Approach_to_Police_Complaints/links/6507e0d59dfd0c69dfd863bd/Transforming-Community-Policing-A-Restorative-Approach-to-Police-Complaints.pdf)>.

philosophies of retribution (punishment) and restoration (healing) can clash, making it difficult to reconcile them in practice.

**iii. Methodological Differences:** Both systems ultimately seek to address wrongdoing and maintain social order, but their methodologies differ significantly.<sup>543</sup> While retributive justice focuses on punishment and deterrence, restorative justice emphasises healing and reconciliation. Finding common ground can involve integrating aspects of both approaches to create a more comprehensive justice system.

**iv. Role of Victims:** In retributive justice system, victims often feel sidelined as the state takes on the role of enforcer. Their desires for revenge or punishment can dictate the legal outcomes rather than their own narratives. Restorative justice brings victims into the process, allowing their voices to be heard and their needs to be addressed actively.<sup>544</sup> The challenge lies in reconciling victims' desires for retribution within a framework that also promotes healing.

**v. Practical Implementation:** Integrating both approaches requires cooperation and resources that may not always be available within the justice system.<sup>545</sup>

**vi. Public Perception:** Societal views on justice can influence how these approaches are

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<sup>543</sup> Brookes, DR, *Restorative Justice and Criminal Justice The Case for Parallelism*, 2023, <<https://www.torrossa.com/en/resources/an/5486634>>.

<sup>544</sup> Bonta, J & Andrew, DA, *The Psychology Of Criminal Conduct*, New York, Routledge, 2023, <<https://www.taylorfrancis.com/books/mono/10.4324/9781003292128/psychology-criminal-conduct-andrews-james-bonta>>.

<sup>545</sup> Castro, P, *Restorative Justice: A Qualitative Multiple Case Study of Program Training and Implementation*, Aurora University ProQuest Dissertations & Theses, 2023, <<https://www.proquest.com/openview/9358a393eb507cc80ede04a7bf937402/1?pq-origsite=gscholar&cbl=18750&diss=y>>.

perceived, sometimes leading to resistance against restorative practices as legitimate forms of justice.<sup>546</sup>

**vii. Public Safety and Healing:** Retributive justice emphasises safety through punishment, often resulting in longer sentences and incarceration, reflecting a belief that removing offenders from society is the primary means of ensuring public safety. Restorative justice prioritises community restoration and offender rehabilitation, raising questions about how to prevent future offences effectively.

Retributive and Restorative Justice There are societal values and cultural narratives embedded within both models.<sup>547</sup> Retributive justice is often more prevalent in societies with a strong emphasis on individualism and punishment. In contrast, restorative justice may resonate more in collectivist cultures that value community relationships and interconnectedness.

### 6.11 Recommended Theory for the Protection of All Parties' Interest

The synergy between restorative and retributive justice systems represents a nuanced approach to addressing crime and its impact on victims, offenders, and the community. While both systems have their merits, Many theorists have postulated the benefits and challenges of combining the two justice systems with a view to know which one offers a more holistic way of protecting the interests of all parties. In my own considered view, the best one is the Integrated Justice Model.

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<sup>546</sup> Hood R. & Hoyle C. *The Death Penalty: A Worldwide Perspective*, as cited in T Carter, T, Lopez, R & Songster, K, *Redeeming justice*, **Nw. UL Rev.**, 2021, Volume 116, No. 2, <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/illr116&div=14&id=&page=>>.

<sup>547</sup> Packer H. *The Limits of the Criminal Sanction* as cited in Selbst, AD, *Negligence and AI's human users* **BUL Rev.**, 2020, <[https://heinonline.org/HOL/LandingPage?handle=hein.journals/Bulr\\_100&div=40&id=&page=>](https://heinonline.org/HOL/LandingPage?handle=hein.journals/Bulr_100&div=40&id=&page=>).

**Integrated Justice Model:** The integrated justice model represents a proactive attempt to synthesize restorative and retributive justice principles to create a more holistic approach to crime and conflict resolution. By recognising the value of both perspectives, practitioners can work toward not only addressing the harm caused by crime but also promoting accountability and preventing future offences.

The integrated justice model combines elements of restorative justice and retributive justice systems, and provides a comprehensive framework that seeks to address the limitations and strengths of both approaches in dealing with crime and conflict. It seeks a balance between punishment and reparative processes and recognizes the fact that while retributive justice serves a function in deterring crime, restorative practices can contribute to healing and reducing recidivism.

Integrated Justice Model engages multiple stakeholders (victims, offenders, authorities) to create a tailored justice process that serves the needs of society while respecting the individual circumstances of the offending behavior and promotes community participation, reinforcing social bonds and collective responsibility for both crime prevention and response. The integrated model acknowledges the fact that punishment can coexist with healing processes. For instance, an offender may serve a sentence while also participating in restorative programs designed to promote understanding and accountability.

Out of all the theories discussed in this Chapter, Integrated Justice Model is the most effective and efficient in that it combines restorative and retributive elements in a way to reduce recidivism as the offenders who are given the opportunity to engage in restorative practices may be less likely to reoffend, as they are encouraged to understand the impact of their actions on victims.

Pinilla discusses the integration of restorative practices within the retributive system in her work, advocating for a model that prioritises restoration without compromising the accountability aspects which is foundational to retributive justice.<sup>548</sup> Shapland *et al.* examine how restorative justice mechanisms can address the needs of victims, offenders and the community, advocating for a collaborative approach between both justice systems. Bazemore and Umbreit explore the benefits of integrating restorative practices into the formal justice system, emphasizing the protection and restoration of victims' interests while ensuring accountability.<sup>549</sup>

## 6.12 Key Features of Integrated Justice Model

**i. Victim-Centered Approach:** This model emphasizes the needs and rights of victims, ensuring that their voices are heard and their interests are prioritised. Victims are provided opportunities to express their feelings, experiences and needs.<sup>550</sup>

**ii. Recidivism Reduction:** It effectively addresses the underlying issues such as systemic inequality, trauma, or lack of resources through both rehabilitative and restorative systems that reduce recidivism<sup>551</sup> because the offenders that receive suitable support and opportunities

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<sup>548</sup> Pinilla, CAO, *The Role of Justice in Honest Behaviors: Epistemic Privileges, Plurality of Justice and Dishonesty as a Way to Recover from Injustice*, Online, 2023, <<https://repositorio.uniandes.edu.co/entities/publication/3652523c-bb76-4971-9043-2165f3cda1b1>>.

<sup>549</sup> Gordon Bazemore G & Umbreit, M, *A Comparison of Four Restorative Conferencing Models*, as cited in Taylor, TO & Bailey, TKM, *The Restorative Justice Attitudes Scale: Development and Initial Psychometric Evaluation*, *The Counseling Psychologist*, 2022, Volume 50, Issue 1, <<https://journals.sagepub.com/doi/abs/10.1177/0011000211044485>>.

<sup>550</sup> Levers, LA, *Decolonising Restorative Justice: A Case of Policy Reform*, London Routledge, 2023, <<https://www.taylorfrancis.com/books/mono/10.4324/9781003335351/decolonising-restorative-justice-leanne-alexis-levers>>.

<sup>551</sup> Dignan J. *Understanding Victims and Restorative Justice*, as cited in Hoch, B, & Button, M, *Non-ideal Victims or Offenders? The Curious Case of Pyramid Scheme Participants*, *International Journal of Evidence-based Research, Policy and Practice*, 2023), Volume 18, Issue 7, pp. 1311-1334, <<https://www.tandfonline.com/doi/full/10.1080/15564886.2023.2186996>>.

for reintegration are less likely to offend again.

**iii. Community Involvement:** It encourages community participation in the justice process, recognizing that crime affects not just the individual victim and offender but also the wider community. The community members through this model can play a role in deciding appropriate consequences and supporting offender reintegration and victim recovery.

**iv. Accountability and Healing:** Offenders are held accountable for their actions through penalties that may include restitution, community service, or imprisonment, which are typical of retributive justice. Simultaneously, restorative practices like Victim-Offender dialogues and community involvement are encouraged to foster healing for both victims and offenders.

**v. Flexible Outcomes:** Integrated Justice Model combines punitive measures with rehabilitative and restorative outcomes tailored to the specific circumstances of the crime and the needs of those involved, which involves options such as diversion programs or mediation instead of traditional sentencing, allowing for innovative solutions that address the root causes of crime.

The Integrated Justice Model offers a preferred theory for the protection of parties' interests by blending the accountability and punitive aspects of retributive justice with the healing and reconciliation goals of restorative justice. This model recognises the complex realities of crime and emphasises a collaborative, community-oriented process that respects the needs of victims, supports offender rehabilitation, and fosters communal healing, which leads to a more just and effective response to crime.

## **Chapter Seven**

### **Conclusion**

#### **7.1 Conclusion**

Restorative justice focuses on restoring the victim to his or her pre-crime position by reparation, compensation and restoring the offender's membership in the community by a reciprocal process of remorse and forgiveness. On the other hand, retributive justice focuses on the guilt of the offender and the imposition of compensatory punishment following a conviction with a finding of guilt. At a point, the justice system focuses on the offender who, as a rational person, has chosen to violate a law and deserves to be punished for the

consequence of his wilful violation of the penal code. Rather than focus on supposed harm to the State, advocates of restorative justice maintain that the proper focus should be on compensating the victim and reforming the offender. The victim's need for compensation and reparation and the offender's need for forgiveness and return to full membership in the community are important considerations that are the focus of restorative justice. However, in order to repair and prevent harm, restorative justice must essentially serve a retributive purpose of making the offender feel remorse for what he has done, which will prevent him from committing the same crime again, thus making him proactive in the process of reconciliation.

On the other hand, retributive justice does not always serve a restorative purpose, as the appropriateness of punishment does not always lead to the greatest sum of happiness. Therefore, coexistence is only possible when retributivism is synergised with an option that delivers and generates greatest benefit not only to the State but also to both the victim and the community. It is noteworthy that this simultaneous integration of retributive and restorative justice applies only to cases of minor offences rather than violent or felonious crimes. It applies to minor offences (that merely cause materialistic harm) like theft, fraud, simple assault, etc., which tend to be more easily quantifiable and mendable in their repair rather than violent crimes like terrorism, murder, rape, etc., which often involve irreparable consequences, permanent disabilities, emotional loss, personal loss, etc.

In Nigeria, restorative justice is gaining traction but remains at the periphery of formal criminal justice structures. The Lagos State Ministry of Justice took the lead by adopting RJ principles in its Administration of Criminal Justice Law (ACJL) 2011, which allows for plea bargaining and encourages victim-offender dialogue.<sup>552</sup> Additionally, pilot RJ programs have been implemented in correctional facilities and juvenile courts, often supported by NGOs and donor agencies. However, the

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<sup>552</sup> Lagos State Administration of Criminal Justice Law 2011 (Nigeria), ss 75–77.

challenges within a plural legal system that blends common law, Sharia law, and customary justice traditions require harmonization of legal provisions, stakeholder training, and public sensitization to bridge the gap between legal theory and operational reality.

Restorative justice offers a new way of thinking about crime and punishment. Instead of focusing only on punishing the offender, it looks at how to repair the harm done to victims and bring everyone involved together. In Nigeria, this approach could be very beneficial and could help improve the justice system for victims of crime and can help victims feel more supported and understood. Victims often feel neglected in the retributive legal process, which can be long and frustrating. By using restorative justice, victims can have their voices heard and get the chance to share their experiences, which can help them heal.

This research shows that when victims participate in the justice process, they often feel a sense of closure and satisfaction, unlike the retributive system, where victims may feel ignored and side-lined. Victims under the restorative justice system appreciate when offenders take responsibility for their actions and when they engage in meaningful dialogue. Restorative justice has the potential to provide a more effective and compassionate way to deal with victims of crime in Nigeria. By focusing on healing, accountability, and community involvement, the Nigerian legal system can create a more responsive and just environment. This approach not only helps victims but also promotes better relationships within communities, making society stronger and better.

In the context of Nigeria's legal jurisprudence, Restorative justice presents a transformative approach to addressing crime, which significantly contrasts with the retributive justice system that offers a punitive avenue for the protection of the State and the offenders.

Nigerian society is characterized by its diverse cultural norms and communal values, which have the potential to integrate restorative justice practices into its legal processes. Such integration can facilitate a more victim-centered approach, where the needs and voices of victims are prioritised, ensuring they receive the support and reparative measures necessary for their healing. This clashes with the prevailing punitive paradigm that often neglects the victims and their circumstances. Moreover, restorative justice aligns with international human rights standards that advocate for the dignity and protection of victims. By promoting dialogue, understanding, and mutual agreement between victims and offenders, restorative justice processes can lead to more satisfactory outcomes for all parties involved. This is especially crucial in Nigeria, where the justice system often suffers from delays, corruption, and a lack of resources.

It is essential for the Nigerian legal framework to actively incorporate restorative justice principles into her existing legislation. This would require comprehensive training for law enforcement, judicial officials, and community stakeholders to effectively implement these practices. Furthermore, public awareness campaigns can educate citizens about the benefits of restorative justice, encouraging broader acceptance and participation. If Nigeria's legal jurisprudence, embraces restorative justice within her legal framework, this can lead to profound improvements in how victims experience justice and healing after crime. By prioritising rehabilitation over retribution, Nigeria can build a more equitable, humane, and effective justice program that not only addresses crime but also fosters community resilience and restoration. Such a paradigm shift would signify a progressive step toward a more comprehensive and compassionate response to criminal behaviour, ultimately strengthening the fabric of Nigerian society.

It is essential for Nigeria's legal framework to incorporate restorative justice into its existing laws. Restorative justice focuses on repairing the harm caused by crime, rather than just punishing the offender. This approach can help victims heal, promote accountability, and support community involvement. Restorative justice can provide victims with a platform to express their feelings and needs. Allowing victims to participate in the justice process enables them to gain closure and feel heard. This can lead to a greater sense of justice for victims compared to traditional punitive measures.

Incorporating restorative justice encourages community involvement in resolving conflicts and can play a vital role in facilitating meetings between victims and offenders. This helps to rebuild trust and relationships within the community, which is especially important in Nigeria's diverse society. When offenders engage in restorative practices, they are more likely to understand the impact of their actions, leading to personal accountability and a lower chance of reoffending. This can benefit society by reducing crime rates and enhancing public safety. For restorative justice to be effective in Nigeria, it needs to be recognised in Nigeria's legal system.

The current laws should be amended to include restorative practices. This might include legislation that outlines procedures for restorative justice meetings and the rights of victims and offenders alike. Implementing restorative justice requires proper training for law enforcement and judicial officials. Scholars urge that these professionals be educated about the principles of restorative justice and how to facilitate these processes.

Additionally, public awareness campaigns can help communities understand the benefits of restorative justice. Incorporating restorative justice into Nigeria's legal framework can lead to

a more effective and humane justice system. By focusing on healing and accountability, rather than just punishment, Nigeria can better meet the needs of victims, reduce crime, and strengthen community ties.

In Nigeria, establishing a synergy between retributive and restorative justice systems, can lead to a more balanced and effective approach to justice. A synergistic model prioritises the needs of victims while also respecting the need for accountability. By including restorative practices, such as victim-offender mediation, the system can address the emotional and psychological needs of victims, thus enhancing their sense of justice.

The combination of both justice systems encourages community participation in the justice process and this engages the communities to take an active role in resolving conflicts. This community-centered approach can help rebuild social ties and trust, which are crucial in Nigeria's culturally diverse society. Integrating restorative justice practices can help reduce recidivism rates. For instance, when offenders engage with their victims and understand the impact of their actions, they are more likely to feel remorse and take responsibility. This understanding can lead to personal transformation and a commitment to avoiding future criminal behaviour. For this synergy to be effective, legal reforms are needed to incorporate restorative principles formally.

An evaluation of both retributive and restorative justice supports that there is a requirement for the punishment of criminal offences that is independent of compensation to the victim or remorse by the offender. There is a sense in which the State's imposition of retributive punishment for violation of the penal law satisfies the demand for censure for the moral violation embedded in the criminal act. However, victims and the community may also have

expectations as to whether a certain form of justice can be realised or is likely to be effective in a particular situation, and such expectations could also affect the type of justice approach to be adopted. For instance, when an offender does not seriously engage in a restorative process and does not intend to accept responsibility for the offence, a more retributive approach might be adopted. Sometimes, where a cooperative restorative approach i.e. a combination of both restorative and retributive justice systems fails, a more retributive justice system is adopted.

Where two types of practices are not compatible with each other, the possibility for these two systems of justice to be practiced sequentially is a worthy option. In this regard, retributive justice could come first while restorative justice follows it once the reasonable desert is fully delivered. Though some retributive demands would still be incompatible with this type of model, however in less extreme examples of punishment like long-term imprisonment, this procedure could be implemented successfully. Therefore, rehabilitative social support after a long period of imprisonment allows retributive and restorative justice practices to play a role independent of each other.

Though retributive and restorative justice have fundamentally different values, they can coexist if each system is used to achieve the other's end. Pursuing these symbiotic approaches will allow substantial benefits to the parties. By this approach, the offender would be made to pay back for quantified financial damage by working for social service; meeting both retributive and restorative criteria.

Retributive and restorative justice work hand in hand, but the acknowledgment and repentance of one's deeds are necessary before restoration can begin. It becomes clear that not only at the theoretical level but also at the practical experiential level, there is a need to

combine retributive and restorative justice. Restorative justice best meets the needs of victim and offender retribution assures satisfaction of the needs of state censure. No approach, standing alone, meets all the needs of victim, offender, and state. While it may be argued that the punishment or censure phase should precede the restorative justice process, it seems necessary for the sentencing authority to be able to take account of the results of the restorative justice process when determining culpability and the nature of the censure. Just as confession and remorse are relevant factors in determining punishment or censure, the acceptance of responsibility, the making of amends through restitution and reparation, and the authentic petition for forgiveness are relevant to the determination of an appropriate sentence or punishment.

A critical challenge of integrating restorative justice into modern criminal justice administration is finding the right balance between restorative and retributive justice models. Although restorative justice offers a more compassionate and rehabilitative approach, there are instances where retributive justice is necessary to ensure public safety and uphold the rule of law. For example, it is argued that in the case of serious crime, restorative justice should not be used as a substitute for punishment particularly where the need for deterrence and retribution take precedence. Striking a balance between these two approaches requires careful consideration of the nature of the offence, the needs of the victim and the potential for the offender's rehabilitation.

Restorative justice is gaining recognition around the world, with many countries adopting restorative practices as part of their criminal justice systems. Countries like New Zealand, Canada, and Norway have been at the forefront of this movement, implementing restorative justice programs at both the juvenile and adult levels. Nigeria must go beyond restorative

justice on paper by translating the laudable restorative provisions in Nigeria's laws to action so as to address crime and promote social cohesion.

An evaluation of both retributive and restorative justice reveals that there is a requirement for the punishment of criminal offences that is independent of compensation to the victim or remorse by the offender. Under the synergy of restorative and retributive justice, punishment is permissible if it is humane and rehabilitative as there is the need for treatment programs to rehabilitate offenders. However, the need for censure or punishment should not be understood as contrary to the support for restorative justice.

No approach, standing alone, meets all the needs of victim, offender and State. While it may be argued that the punishment or censure phase should precede the restorative justice process, it seems necessary for the sentencing authority to be able to take account of the results of the restorative justice process when determining culpability and the nature of the censure. Retributive and restorative justice work hand in hand, but the acknowledgement and repentance of one's deeds is necessary before restoration can begin.

However, it becomes clear that not only at the theoretical level, but also at the practical experiential level, there is a need to combine retributive and restorative justice. While restorative justice best meets the needs of victim and offender, retributive justice assures satisfaction of the needs of the State's censure. Just as confession and remorse are relevant factors in determining censure, the acceptance of responsibility, the making of amends through restitution and reparation, and the authentic petition for forgiveness are relevant to the determination of an appropriate sentence or punishment.

Embracing the synergy between restorative and retributive justice systems has the potential to create a more holistic and humane approach to justice that addresses the needs of victims, offenders, and the community, leading to more effective outcomes and a more equitable society.

## **7.2 Recommendations**

To create a more effective justice system in Nigeria, it is essential to combine restorative and retributive justice. This synergy can enhance accountability, support victims, and involve the community. In order to have an inclusive justice system, the Nigerian government should amend the existing laws to formally recognise and support the use of restorative justice alongside traditional retributive measures. In other words, laws should be inclusive of restorative practices, enabling judges to apply them in appropriate cases.

For restorative justice to work in Nigeria, there needs to be a shift in how the legal system operates. The training and retraining of the law enforcement and judicial officials on restorative practices are crucial for implementing these changes. In other words, it is recommended that training judges, law enforcement officers, and legal practitioners in both retributive and restorative practices, would be of immense benefits to restorative practices. This training can enable them to make informed decisions about when and how to apply each approach depending on the context of the crime and the needs of the victim. Furthermore, public education on restorative justice can encourage acceptance among communities and promote its practices. The following are recommended frameworks for utilising both retributive and restorative approaches effectively:

**i. Legislative Reform:** Calls for legislative reform must be intensified, urging the National Assembly to enact a Restorative Justice Bill that would codify RJ procedures, establish

diversion programs, and provide judicial guidance. The sponsor of the Bill must identify and engage with key lawmakers to advocate for the introduction of the Restorative Justice Bill in the National Assembly, presenting them with data and success stories from other regions or countries that have implemented similar measures, encourage cross-party collaboration by emphasising common goals such as reducing crime rates, enhancing community cohesion, and alleviating pressure on the judiciary. Online campaigns through digital platforms should be used to create awareness, share information, and mobilise support for the Restorative Justice Bill.

**ii. Victim-Centered Initiatives:** This should prioritise the needs and perspectives of victims, incorporating their voices into both restorative and retributive processes. Victims should be actively involved in decisions about the outcomes of cases, and their emotional and psychological needs should be addressed.

**iii. Comprehensive Training:** There should be comprehensive training programs for legal professionals like judges, lawyers, and law enforcement personnel to educate them about both restorative and retributive justice so as to enable the legal professionals make informed decisions on the best approach for various cases, balancing punishment with opportunities for healing. The professionals should receive training on both restorative and retributive justice principles. This will enable them to recognise situations where a restorative approach might serve the interests of justice better than traditional punitive measures.

**iv. Community Involvement:** There should be an establishment of community-based restorative justice programs that encourage dialogue between victims and offenders and highlight the importance of community involvement in resolving conflicts. The justice system should engage communities in the justice process by encouraging local participation in restorative justice programs. Community-based initiatives can create a supportive environment for the healing and reintegration of offenders while promoting public safety and

social cohesion. By facilitating mediation sessions, communities can play a vital role in the justice process, promoting healing and rebuilding relationships.

**v. Establishment of Public Awareness Campaigns:** This should be established to create sustainable sensitisation on the benefits of combining restorative and retributive justice. The campaign will also educate the public about how these approaches can foster acceptance and understanding. Campaigns could include workshops, media outreach, and community events to inform citizens about how the justice system can address their needs. Creating public awareness can foster a more conducive environment for implementing these programs and can influence policy changes.

**vi. Victim Support Services:** This should be established to create and enhance support services for victims to help them navigate both the punitive and restorative aspects of the justice system. This can include counselling, legal advice, and assistance in participating in restorative programs. Such services ensure that victims are empowered and supported throughout the process.

**vii. Pilot Projects:** Pilot projects should be implemented in various Nigerian States to test the effectiveness of integrating restorative practices with retributive measures. These projects can gather data on outcomes, allowing for adjustments and improvements based on real-world experiences. The pilot programs can help understand community dynamics and the impact of restorative justice on crime rates.

**viii. Monitoring and Evaluating System:** There should be an establishment for monitoring and evaluating the impact of integrating restorative and retributive justice. This can involve collecting data on victim satisfaction, offender recidivism rates and overall community impact. Continuous assessment can help refine the processes and ensure that they meet the needs of all stakeholders

**ix. Balancing Accountability and Healing:** Strive to create a balance between holding offenders accountable for their actions while also providing opportunities for them to make amends through restorative processes. This may involve innovative sentencing options that combine punitive measures with restorative elements, such as community service or victim-offender dialogue.

**x. Policy Integration:** Policymakers should develop frameworks that promote the coexistence of restorative and retributive justice practices. This could involve establishing guidelines for when restorative justice programs can be utilized, particularly in cases where the offender shows genuine remorse and there is a willingness to engage in dialogue with the victim.

**xi. Evaluation and Research:** Conduct ongoing evaluations of programs that integrate restorative and retributive practices to assess their effectiveness and identify best practices. Sharing data and research findings can help refine approaches and encourage continuous improvement in the justice system.

By implementing these recommendations, Nigeria can create a more holistic and effective justice system that balances accountability with healing. The synergy between restorative and retributive justice can lead to improved outcomes for victims, offenders, and communities, fostering a more peaceful society.

### **7.3 Limitations of the Study**

One of the systemic and inherent limitations of the synergy between restorative and retributive justice systems is in the case of a violent crime particularly where the victim and offender knew each other before the crime took place. The victim does not want to have

further contact with the offender because of the psychological, mental and physical trauma that the victim suffered, hence to bring such victim and the offender together in a meeting might amount to opening the wound that is yet to be healed.

Also in a community where violence is a pattern, such as in a domestic abuse situation, attempts at preserving a toxic victim-offender relationship may be much more dangerous than potentially helpful. Restorative justice assumes that the offender is remorseful and willing to make amends, which may not always be true. Even if the offender is indeed remorseful, there's no guarantee that the victim will be open to receiving an apology. Bringing both the offender and the victim together may take a very different turn, and the victim may be emotional to the offender in a way that is not envisaged by restorative justice.

While restorative justice has shown promise in many areas, it faces serious limitations when applied to violent offences. Some offenders may not be suitable candidates for restorative justice, particularly if they are unwilling to accept responsibility for their actions or lack genuine remorse. In cases where power dynamics are involved, like domestic violence, the offender's participation in restorative justice could be viewed as manipulative rather than sincere.

Critics argue that certain crimes, such as murder, sexual assault and domestic violence, may not be appropriate for restorative justice processes due to the severity of the harm inflicted. In such cases, victims might not feel safe or comfortable engaging in direct dialogue with offenders, and the risk of re-traumatisation is inevitable.

In the cause of this thesis, so many problems were encountered and they are enumerated as follows:

**a. Financial Constraints:** This is one of the major limitations encountered in the cause of this thesis, since it is financially and economically challenging to make all-round visits to all the towns, communities and villages in Nigeria for the needed quantitative assessment. This thesis cannot make definite and incontrovertible description of all the indigenous restorative criminal justice system within the Nigeria space.

**b. Funding:** Restorative justice generally aims to repair the harm caused by criminal behaviour through the support and cooperation of all stakeholders. In Nigeria, the funding of restorative justice mechanisms presents serious challenges that hamper the effectiveness of restorative justice system. Many justice initiatives in Nigeria are severely underfunded, limiting the ability of organisations and governments to adopt and implement restorative practices effectively. The justice system in Nigeria requires financial assistance in form of legal aid as insufficient funding undermines access to justice for the poor and marginalized populations. The financial health of the judiciary in Nigeria is not encouraging and this underfunding leads to delays in justice delivery and reduces public trust in legal institutions.

The abysmal relationship between budget allocation and the effectiveness of the judiciary in Nigeria highlights the challenges of inadequate funding of justice initiatives in Nigeria and its broader social consequences. These budgetary constraints faced by the judiciary and law enforcement agencies prevent the practices of the rule of law and public safety. A situation where the judiciary lobbies for government support to allocate specific funds to restorative justice initiatives can be critical problem and this could only be resolved where there is a

consolidated financial allocation that creates a designated budget line under the Ministry of Justice or through state governments.

There is a desperate need for enhanced funding mechanisms for legal aid in Nigeria as well as reforms aimed at addressing these challenges. The underfunding of various justice initiatives in Nigeria contributes to a deeper understanding of the systemic challenges faced in delivering justice.

Apart from funding from the government, the following stakeholders can also help to fund restorative justice system:

**i. Public-Private Partnerships:** The Public-Private Partnership can engage the private sector through public-private partnerships so as to mobilise resources and expertise. Corporations may be willing to invest in restorative justice programs as part of their Corporate Social Responsibility initiatives.

**ii. International Grants and NGOs:** Exploring funding opportunities from international organizations and NGOs focused on justice reform and human rights can provide financial resources for restorative justice programs. Organisations like the United Nations Development Programme (UNDP) and international foundations often support innovative justice initiatives.

**iii. Training and Capacity Building Initiatives:** Implementing training programs for law enforcement, legal practitioners, and community leaders on restorative practices can help create grassroots support for restorative justice. Funding for such training could come from government grants, NGOs, or academic institutions.

**iv. Community-based Funding Models:** Establishing community-based funding models where local communities contribute to restorative justice programs can ensure sustainability.

This could involve fundraisers, community donations, or local government allocations dedicated to restorative justice initiatives.

**c. Civil Service Bureaucracy:** The excessively complicated administrative procedures that are inherent to the public service is one of the limitations encountered in the course of this research work. To obtain any information from the departments, I was made to obtain clearance from the senior officers some of which were difficult to convince. The clearance was delayed and when it was eventually cleared, it came out with conditions and promise of secrecy for the protection of the names on the materials and reports released.

**d. Demand for Financial Inducement:** People refused to participate unless offered some financial inducement, or simply refused to listen to me because they did not have the time to listen to your talk because sometimes I could not agree to their financial demands. Even when I promised to comply, they demanded on the spot substantial compliance. Hence, the pure interest was not there as it was interest coupled with financial gains. This financial demand did not only affect the responses of the respondents during the administration of questionnaires but also the responses of the elderly ones. At both Badeku village, via Ibadan, Oyo State and Itapa village in Osun State of Nigeria, particularly during the oral interview, the younger ones were always around the elderly ones and they would not allow the elderly ones to grant the interview except they see the quantum of the financial motivation that I have to offer.

**e. Fear of Revealing the Ancestral and Communal Secret:** Though most of the interviewees (between 65-85 years old) at both Badeku village and Itapa village were eager to respond to questions but were being restricted by their younger ones for the fear of revealing

the communal secret to a stranger. All attempts to make them feel safe and make them feel secure did not yield substantial results because of the presence of the younger ones around them. The respondents also claimed they were young at the time of the incidents and could not ascertain the accuracy of the period as there were no formal records of the incidents.

**f. Refusal to be Recorded on Tape:** The refusal of some of the interviewees to be recorded on tape was also a problem. They preferred the interviews to be written rather than recorded. This made it difficult to be able to get all the facts stated as it was written with a long hand.

**g. Lack of Willingness to Grant Private Interviews:** the interviewees were not willing to grant private interviews without the presence of their younger ones who were barely literate and who always made things difficult by their actions and demands hence, strict private interviews with the respondents were difficult.

**h. Failure to Respond Appropriately to Questions:** Failure of the interviewees to respond appropriately to the questions was experienced during oral interview and in the administration of questionnaires. In the case of the questionnaires, many of the people to whom it was administered did not return them despite repeated telephone calls and visits to their offices. Even those who scheduled a meeting also came up with last-minute cancellations. These difficulties delayed and stretched the period for the data collection. In view of this, I have to make do with the available ones.

**i. Research Fatigue:** The natives that were interviewed did not see the interview as serious as the outcome of the numerous interviews granted in the past was not known.

#### **7.4 Contribution to Knowledge**

While retributive justice creates an inclusiveness of the offender and the community that the conventional criminal justice system purports to protect, restorative justice creates a novel development which is an official response to justice imbalance. Generally, this work is a legal analysis of restorative justice which is aimed at restoring the victims of crime to their status quo ante. This research work opines that the government must provide the necessary infrastructures and social services that will make life meaningful for the masses in line with restorative process guidelines that are adapted to local conditions.

This thesis clarifies the fundamental differences between retributive and restorative justice. Retributive justice focuses on punishment and deterrence, while restorative justice emphasizes healing and reconciliation. By highlighting these differences, the research helps scholars, practitioners, and policymakers understand the strengths and weaknesses of each system. The thesis identifies the need for a hybrid approach and argues for the importance of integrating both justice systems. It shows that a hybrid approach can address the needs of victims and society while holding offenders accountable. Blending these systems can lead to better outcomes for all parties involved, emphasising that a one-size-fits-all method may not be effective in diverse cases.

The research contributes to knowledge by expanding victims' rights within the justice system. It explores how restorative justice can give victims a voice and enable them to participate in the justice process that restores the victims' dignity.

The thesis highlights the role of community engagement in achieving justice. By integrating restorative justice practices, communities can take an active role in resolving conflicts and

supporting victims. This can foster community bonds and make justice processes more relevant and effective.

The findings of this thesis can serve as a foundation for recommending legal and policy reforms in Nigeria. By providing evidence on the benefits of combining restorative and retributive justice, the research can guide lawmakers in crafting legislation that supports a more flexible and responsive justice system.

It explores how restorative justice can reduce repeat offences by encouraging offenders to reflect on their actions and take responsibility. Understanding this relationship expands the knowledge of rehabilitation and its crucial role in creating a safer society. It focuses the justice system on reform rather than just punishment thus leading to lower crime rates over time.

The thesis on retributive and restorative justice systems in Nigeria advances knowledge by providing a comprehensive analysis of both systems, advocating for their integration, and outlining the potential benefits for victims, offenders, and the community. This contribution is crucial for enhancing the justice landscape in Nigeria and may serve as a guide for other countries facing similar challenges.

It further states that there should be an institutional framework that will aid in enhancing restorative programs in the criminal justice system, which will enable the Judges to advocate for restorative justice mechanisms before adjudicating on the matters before the court. It states that there is a need to provide more resources and better interagency cooperation to address the issue of re-victimization.

It introduces the Procedural Justice Theory which empowers citizens with process control, rather than placed issues under the control of lawyers. The theory makes the victim feel that he is treated more fairly in restorative justice processes than in courts and makes him more empowered to express his views, treated with respect, and is less likely to feel in conferences that he is disadvantaged due to age, race, sex or any other reason.

Finally, this thesis provides a framework for future research and sets the groundwork for future studies. Identifying gaps in current research and areas where more exploration is needed, encourages scholars to continue investigating how justice is administered in Nigeria, both in theory and practice. This ongoing research is vital for developing effective strategies to improve the justice system.

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Lead City

## Bio-data

### A. Personal Data

Name: Oni Simeon Olaosebikan, Ph.D, FICMC  
(Associate Professor of Law)  
Supreme Court Number: SCN029462  
Address: 87, Salvation Army Road, Adamasingba, Ibadan  
E-mail: simeonolaoni@yahoo.co.uk  
Telephone numbers: 08074559030, 08088382527  
Date of Birth: 3<sup>rd</sup> February, 1964  
Place of Birth: Ilesa  
State of Origin: Osun  
Nationality: Nigerian  
Marital Status: Married  
No. of Children: Two  
Ages: 21 & 19  
Name of Spouse: Deborah Omobolanle Ola-Oni (Mrs.)  
Address: 4, Bolumole Street, Ring-Road, Ibadan  
boladebby2001@yahoo.co.uk  
08131177755  
Name of Next of Kin: Deborah Omobolanle Ola-Oni (Mrs.)  
4, Bolumole Street, Ring-Road, Ibadan  
08131177755

### B. Educational Background

#### i. Educational Institutions Attended with Dates and Qualifications

Primary Education:	St. Patrick's Primary School, Oke-Padre, Ibadan	1969 -1975
Secondary Education:	Cherubim & Seraphim High School, Ilesa	1977-1983
Higher Education:	Oyo (Now Osun) State College of Education	1984-1987
	Ogun State (Now Olabisi Onabanjo) University	1991-1998
	Nigerian Law School, Abuja	1998-1999
	University of Ibadan	2009-2011
	Lead City University, Ibadan	2015-2018
	Lead City University, Ibadan	2018-2020
	Lead City University, Ibadan	2022-2025

#### ii. Academic and Qualifications with Institutions Attended

Lead City University	Ph.D (Law) in view	2023
Lead City University	Ph.D (Inter. Rel.)	2020
Lead City University	M.Phil	2018
University of Ibadan	LL.M	2011
Nigerian Law School, Abuja	B.L	1999
Ogun State (Now Olabisi Onabanjo) University	LL.B	1998
Oyo (Now Osun) State College of Education	NCE	1987
Cherubim & Seraphim High School, Ilesa	O' Level	1982
St. Patrick's Primary School, Oke-Padre, Ibadan		1975

### **C. Courses Taught within the Current Academic Session**

- i. Land Law
- ii. Law of Commercial Transactions
- iii. Law of Evidence
- iv. Civil Procedure
- v. Criminal Procedure
- vi. Property Law Practice
- vii. Comparative Constitutional Law (LL.M)
- viii. Legislative Process and Drafting (LL.M)

### **D. Work Experience with Dates**

1. Work Experience Outside the University:

Legal Practice:

- i. Agbaje, Agbaje & Co. 1999-2004
- ii. S. Ola Oni & Co. (Legal Practitioners) 2005 to Date
- iii. Oyo State Environmental Protection Tribunal. 2013
- iv. Teaching Ibadan Grammar School, Ibadan. 1988-1990

2. Work Experience in Present University:

- i. Sub-Dean, Faculty of Law
- ii. Head of Department, Public & International Law
- iii. Lecturer
- iv. Legal Adviser to the Governing Council, Lead City University
- v. Head, University Legal Unit

### **E. Membership of Professional Bodies**

- i. Nigerian Bar Association (NBA)
- ii. Nigerian Association of Law Teachers (NALT)
- iii. Institute of Personality Development and Customer Relationship Management
- iv. Institute of Chartered Mediators and Conciliators

### **F. Awards**

- i. Recognition Award: Fellow Institute of Chartered Mediators and Conciliators, 2024
- ii. Recognition Award: Law Students' Association, Lead City University, Ibadan. 2024
- iii. Recognition Award: Law Students' Association, Lead City University, Ibadan 2023
- iv. Outstanding Performance Award: Law Students' Association, Lead City University, Ibadan. 2022
- iii. Certificate of Participation: International Law Conference, Lead City University, Ibadan. 2022
- iv. Recognition Award: Law Students' Association, Lead City University, Ibadan. 2021

v.	Special Award of Excellence & Recognition: Law Students' Association, Lead City University, Ibadan.	2020
vi.	Merit Award: Law Students' Association, Lead City University, Ibadan.	2019
vii.	Certificate of Participation: Centre for Human Rights, University of Pretoria, South Africa	2018
viii.	Merit Award: Law Students' Association, Lead City University, Ibadan.	2018
ix.	Merit Award: Law Students' Association, Lead City University, Ibadan.	2017
x.	Merit Award: Law Students' Association, Lead City University, Ibadan.	2016
xi.	Merit Award: Federal College of Animal Science, Ibadan.	2016
xii.	Merit Award: Law Students' Association, Lead City University, Ibadan.	2015
xiii.	Special Recognition Award: Oyo State Environmental Protection Tribunal.	2013
xiv.	Excellence Award: Oyo State Government.	2013
xv.	Merit Award: CLASFON, Nigerian Law School.	1999
xvi.	Performance Award: Redeemed Christian Fellowship, Ogun State (Now Olabisi Onabanjo) University.	1997
xvii.	Excellence Award: Ogun State University Believers' Conference (OSUBC), Ogun State (Now Olabisi Onabanjo) University.	1997
xviii.	Merit Award: Ogun State University Student Union.	1997
xix.	Excellence Award: Editor-In-Chief, Law Students' Journal (The Jurists), Ogun State (Now Olabisi Onabanjo) University.	1997

## **G. Work Experience**

### Teaching Experience

#### Community Teaching:

i.	Faculty of Law, Lead City University, Ibadan	2008 to date
ii.	Ibadan Grammar School, Ibadan, Oyo State	1990-1991
iii.	St. Teresa's College, Oke-Ado, Ibadan, Oyo State	1988-1989

#### Legal Practice:

i.	S. Ola Oni & Co. 2, Joyce B Road, Off Ring-Road, Ibadan	2005 to date
ii.	Agbaje, Agbaje & Co. (Legal Practitioners) Old Gbagi, Ibadan	2000-2004
iii.	N. O. O. Oke & Co., Oke-Ado, Ibadan, Oyo State	1999-2000

#### Consultancy:

- i. Legal Consultant to Diya, Fatimilehin & Co.
- ii. Legal Consultant to Jide Taiwo & Co.
- iii. Legal Consultant to Idea Konsult Limited
- iv. External Solicitor to First Bank Plc.

Present Employment: Lead City University, Ibadan, Nigeria

Date of Assumption of Duty:

6<sup>th</sup> May, 2008

Status on First Appointment:

Assistant Lecturer

Present Position:

Associate Professor

Date of Last Promotion:

23<sup>rd</sup> January, 2024

Faculty:

Law

Department:

Public and International Law

History of Promotion with Date:

- |       |   |                                  |
|-------|---|----------------------------------|
| i.    | Acting Dean   | 10 <sup>th</sup> January, 2025   |
| ii.   | Sub-Dean  | 23 <sup>rd</sup> January, 2024   |
| iii.  | Head of Department Public & International Law                           | 23 <sup>rd</sup> January, 2024   |
| iv.   | Associate Professor   | 27 <sup>th</sup> November, 2023  |
| v.    | Senior Lecturer   | 12 <sup>th</sup> February, 2019  |
| vi.   | Acting Head of Department of Public and International Law (2017 - 2019) | 20 <sup>th</sup> July, 2017      |
| vii.  | Sub-Dean  | 20 <sup>th</sup> September, 2016 |
| viii. | Lecturer I  | 20 <sup>th</sup> July, 2016      |
| ix.   | Lecturer II   | 30 <sup>th</sup> November, 2011  |
| x.    | Assistant Lecturer  | 6 <sup>th</sup> May, 2008        |

Current Student Project Supervision:

12 Undergraduates  
 4 Postgraduates: LL.M  
 1 Ph.D (International Relations)  
 1 M.Sc (International Relations)

Administrative / Academic Experience in the Present University:

- |       |  |              |
|-------|--|--------------|
| i.    | Head Facilitator, G-King Career Development Academy Ltd      | 2022 to date |
| ii.   | Legal Adviser to the Governing Council, Lead City University | 2017 to date |
| iii.  | Head of Legal Unit, Lead City University                     | 2017 to date |
| iv.   | Acting Head of Department, Public and International Law      | 2017-2019    |
| v.    | Member of Senate, Lead City University, Ibadan               | 2017-2019    |
| vi.   | Member, University Graduation Committee                      | 2016         |
| vii.  | Staff Adviser, Law Student Association                       | 2015-2021    |
| viii. | Sub Dean, Faculty of Law                                     | 2014-2016    |

#### **H. Courses Taught within the Current Academic Session**

- |    |                |   |
|----|----------------|---|
| i. | Postgraduate:  | Comparative Constitutional Law<br>Legislative Process and Drafting<br>Landlord and Tenant Law                       |
|    | Undergraduate: | Law of Evidence<br>Land and Property Law<br>Law of Commercial Transactions<br>Civil Procedure<br>Criminal Procedure |

#### **I. Membership of Professional Bodies**

- i. Nigerian Bar Association (NBA)
- ii. National Association of Law Teachers (NALT)
- iii. Christian Law Students' Fellowship of Nigeria (CLASFON)
- iv. Fellow of the Institute of Chartered Mediators and Conciliators (FICMC)
- v. Fellow of the Institute of Personality Development and Customer Relationship Management (FPD-CR)

## **J. List of Few Court Cases that I Handled Or Being Handled For Lead City University**

### Supreme Court:

1. SC.642/2013 Rev'd Segun Ademola Alli v. National Universities Commission, Lead City University & Ors.
2. SC/CV/496/2018 Rev'd Segun Ademola Alli v. Lead City University & Anor
3. SC/CV/ /2025 Rev'd Segun Ademola Alli v. Lead City University & 2 Ors.

### Court of Appeal:

1. CA/I/255/2011 National Universities Commission v. Rev'd Segun Ademola Alli & Anor
2. CA/IB/47/2022 Rev'd Segun Ademola Alli v. Lead City University, Ibadan & 2 Ors.
3. CA/IB/236/2023 Lead City University, Ibadan v. National Social Insurance Trust Fund.

### Locus Classicus

In suit No. CA/IB/47/2022 between Rev'd Segun Ademola Alli v. Lead City University, Ibadan & 2 Ors., I have a locus classicus to my credit. On 28<sup>th</sup> June, 2024. Contrary to the provision of Rule 8(1) and (2) of the Rules of Professional Conduct for Legal Practitioners, the Court of Appeal by unanimous decisions of the three justices gave judgment in my favour regarding my competence to represent Lead City University, Ibadan as a lawyer. The fact that this judgment is the first of its kind in Nigeria's jurisprudence makes it a locus classicus.

### Federal High Court:

1. FHC/IB/CS/50/2009 Rev'd Segun Ademola Alli v. National Universities Commission & Anor.
2. FHC/IB/CS/62/2012 Rev'd Segun Ademola Alli v. Lead City University, Ibadan & 2 Ors.

### National Industrial Court:

1. NICN/ IB/109/2013 Mr. Adebayo Adeyinka Victor v. Lead City University, Ibadan & Anor. Judgment delivered on 28<sup>th</sup> April, 2015
2. NICN/ IB/110/2013 Victor Olusegun Popoola v. Lead City University, Ibadan & Anor Judgment delivered on 28<sup>th</sup> April, 2015
3. NICN/IB/45/2016 MR. Akpan Udoh v. Lead City University, Ibadan.
4. NICN/IB/01/2022 National Social Insurance Trust Fund v. Lead City University.

### High Courts:

1. I/460/2024 Mrs. Abisola Olufunmilayo Ola v. Mr. Christopher Ola & Prof. Owoeye
2. I/265/2011 Mr. Oyeleke Oluwadamilola v. Lead City University, Ibadan
3. I/ 604/2013 Rev'd Segun Ademola Alli v. Lead City University, Ibadan & 2 Ors
4. I/1051/2018 Abel Ayodeji Ojerinde v. Lead City University, Ibadan.
5. I/488/2021 Miss. Roseline Obiota Utuk v. Lead City University, Ibadan & 2 Ors.

6. I/489/2021 Miss. Nnakwe Amarachi Grace v. Lead City University, Ibadan & 2 Ors.
7. I/959/2020 Mr. Joel Olusegun Opatola v. Lead City University, Ibadan
8. I/810/2017 Methodist Church Nigeria v. Lead City University, Ibadan
9. I/664/2016 Mr. Samuel Oloruntoba v. Lead City University MICRO-Finance Ltd.
10. I/173/2011 Afuye Victor Akinyemi & 9 Ors v. Lead City University, Ibadan & 4 Ors.
11. I/263/2011 Miss Oyeleke Oluwadamilola Tosin v. Lead City University, Ibadan.

Magistrate Court:

1. OY/CCGA/IBN/225/23 Mr. Enock Adewale Olawuyi v. Lead City University.
2. OY/CCGA/IBN/226/23 Mr. Enock Adewale Olawuyi v. Lead City University.

## K. Publications

### a. Thesis/ Dissertations/ Projects

- i. **ONI, S. O.** Restorative Justice for Victims of Crime under the Nigeria's Legal System (Ph.D Law On-going)
- ii. **ONI, S. O.** (2020) Human Rights: Comparative Analysis of Right to Fair Hearing in Nigeria and United Kingdom (Ph.D)
- iii. **ONI, S. O.** (2018) Right to a Fair Trial: A Comparative Analysis of Europe and Africa Justice Systems (MPhil)
- iv. **ONI, S. O.** (2011) Enforcement of Court Judgments. (LL.M)
- v. **ONI, S. O.** (1998) Children and the Law. (LL.B)
- vi. **ONI, S. O.** (1987) A Comparative Analysis of the Educational Development in Northern and Southern Nigeria (NCE)

### b. Peer-Reviewed Papers

#### National

- i. **ONI, S. O.** and Oyedokun G. E (2025) Nolle Prosequi: *Comparative Analysis of the Power of the Attorney-General in Nigeria and the United Kingdom*. AFAR Multidisciplinary Journal of Social Sciences (MJSS) Vol. 5 Issue 1, Pp. 168-185, ISSN 1116-4859 (Print) ISSN: 3027-8427 (Online).
- ii. **ONI, S. O.** and Oyedokun G. E. (2025) *Adopting Cryptocurrencies in Nigeria: Tax, Legal and Financial Implications*. Journal of Taxation and Fiscal Policy (JTFP), Vol. 2, Issue 1 & 2, pp. 75-87, ISSN:3115-5324 (Print) EISSN: 3115-5332 (Online), <https://www.atplng.org/jtftp.php>
- iii. **ONI, S. O.** and Akintayo J.O.A. (2025) Transforming Justice: The Jurisprudence of Restorative Justice for Victims of Crime in Nigeria, AFAR Multidisciplinary Journal of Social Sciences (MJSS) Vol. 5 Issue 1, Pp. 168-185, ISSN 1116-4859 (Print) ISSN: 3027-8427 (Online).
- iv. **ONI, S. O.** (2025) Legal Research in Transition: The Journey from Print to Digital, *Book of Readings by the Faculty of Law, Lead City University, Essays Marking the 20<sup>th</sup> Anniversary of Lead City University, Ibadan, ISBN: 978-978-776-511-9, PP. 50-64.*
- v. **ONI, S.O.** (2025) Restorative Justice: A Return to the Root of Indigenous Nigerian Jurisprudence, *Arthur Jarvis University Law Journal, (AJU Law Journal) ISSN: 2811-2814, PP. 160-177.*

- vi. **ONI, S. O.** (2025) After the Deadline: The Implications of Statute Barred Actions, *Book of Readings by the Faculty of Law, Lead City University, Essays Marking the 20<sup>th</sup> Anniversary of Lead City University, Ibadan, ISBN: 978-978-776-511-9, PP. 81-94.*
- vii. **ONI, S. O.** (2025) Retributive and Restorative Synergy: Towards a Better Nigeria's Justice System. *Book of Readings by the Faculty of Law, Lead City University, Essays Marking the 20<sup>th</sup> Anniversary of Lead City University, Ibadan, ISBN: 978-978-776-511-9, PP. 116-128.*
- viii. **ONI, S. O.** (2024) Global Trends and Paradigm Shift in Legal Research, *Lead City University Law Journal (LCULJ)*, pp. 88-99, Volume 5, ISSN2504-9747.
- ix. **ONI, S. O.** (2023) Appraisal of Legislative Process and Drafting in Nigeria. *Afar Multidisciplinary Journal of Management Sciences (MJMS)*, Pp. 26-41, Vol. 5 Issue 1, ISSN: 2786-9571 (Print), ISSN: 2786-958X (Online).
- x. **ONI, S. O.** (2023) Law on Communication Technology and Pornographic Items: Nigeria Perspectives. *Afar Multidisciplinary Journal of Management Sciences (MJMS)*, Pp. 56-74, Volume 5 Issue 1, ISSN: 2786-9571 (Print), ISSN: 2786-958X (Online).
- xi. **ONI, S. O.** (2021) Exhaustion of Domestic Remedies: Human Rights or Human Wrongs? *University of Port Harcourt Law Journal, (UNIPORT)*. Pp. 60-75, Vol. 2, ISSN 2756-5762.
- xii. **ONI S. O.** (2021) State Sovereignty and International Protection of Human Rights: The Way Forward. *Umaru Musa Yar'adua University Law Journal (UMYULJ)*, Pp. 1-15, Vol. 2 No. 2, ISSN 2437-1408
- xiii. **ONI, S. O.** and Oyewo A. T. (2019) Critical Appraisal of the Fundamental Objectives and Directive Principles of State Policy in Nigeria. *Redeemers' University Law Journal (RUNLAWJ)*, Pp. 244-257, Vol. 2, ISSN: 2636-6462.
- xiv. Oyewo A. T. and **ONI, S. O.** (2019) The Importance of Customary Law in the Administration of Justice in Nigeria. *Adeleke University Law Journal (AULJ)*, Vol. 1 No. 1, Pp. 268-278, ISSN: 2734-228X
- xv. **ONI, S. O.** (2016) The Use of Age in Determining Juvenile Culpability: How Relevant in 21<sup>st</sup> Century. *Lead City University Law Journal (LCULJ)* Pp. 30-37, Volume 2 No. 2, ISSN: 2504-9747
- xvi. Onakoya O. and **ONI, S. O.** (2016) Corporate Personality: A Shield to Company's Members? *Salomon v Salomon Revisited. Lead City University Law Journal (LCULJ)*. Pp 104-122, Volume 2 No. 2, ISSN: 2504-9747.

#### International

- xvii. **ONI S. O.** (2024) Euthanasia: The Agony of Dying Patients under the International Treaties vis-a-vis Nigeria's Stance, *International Journal of Criminal, Common and Statutory Law (IJCCSL)*, www.criminallaw.journal.org IJCCSL 2024;4(2: PP. 60-65, E-ISSN: 2789-9500, P-ISSN: 2789-9497.
- xviii. **ONI, S. O.** (2023) The Need to Check Violent Against Women in a Male-Dominated Society in Nigeria, *International Journal of Law, Policy and Social Review (IJLPSR)*, Pp. 51-56, Volume 5 Issue 3, www.lawjournals.net
- xix. **ONI, S. O.** (2023) Right to a Fair Hearing: An Appraisal of the Misconception between Nigeria and United Kingdom. *International Journal of Law (IJL)*, Pp. 126-134, Volume 9 Issue 4, ISSN: 2455-2194, www.lawjournals.org
- xx. **ONI, S. O.** (2023) Constitutional Autochthony: Nigeria and Ghana Perspectives. *International Journal of Research and Analytical Reviews (IJRAR)* Pp. 385-395, Volume 10 Issue 3, E-ISSN2348-1269, P-ISSN 2349-5138, www.ijrar.org

- xxi. **ONI, S. O.** (2023) The Indigenous African Concept of Human Rights: A Farce or a Misjudge. *International Journal of Law (IJL)*, Pp. 119-125, Volume 9 Issue 4, ISSN: 2455-2194, [www.lawjournals.org](http://www.lawjournals.org)
- xxii. **ONI, S. O.** and Hilary Nwaechefu (2023) Determining Who Rightly Owns and Should Control Natural Resources in the Nigeria Federal Structure and the Environmental Law Effects. *International Journal of Law, Policy and Social Review (IJLPSR)*, Pp. 57-62, Volume 5 Issue 3, [www.lawjournals.net](http://www.lawjournals.net)
- xxiii. **ONI, S. O.** (2023) Restorative Justice for Victim of Crime under the Nigeria's Legal System. *International Journal of Research and Analytical Reviews (IJRAR)* Pp. 669-678, Volume 10 Issue 3, E-ISSN2348-1269, P-ISSN 2349-5138, [www.ijrar.org](http://www.ijrar.org)
- xxiv. **ONI, S. O.** (2023) European Court of Human Rights: Impact on Legislative Reformation of the European States. *International Journal of Law, Policy and Social Review (IJLPSR)* [www.lawjournals.net](http://www.lawjournals.net).
- xxv. **ONI, S. O.** and Oyedokun G. E. (2023) Forensic Accounting Evidence: Preservation and Admissibility. *National Journal of Multidisciplinary Research and Development (NJMRD)*, Pp. 53-58, Volume 8 Issue 2, ISSN: 2455-9040, [www.multidisciplinaryjournal.org](http://www.multidisciplinaryjournal.org)
- xxvi. **ONI, S. O.** and Adegbite A. E. (2023) Through Laws and Arguments that Prejudice Children's Economic Ingenuity in Africa. *International Journal of Research and Innovation in Social Science (IJRISS)*, ISSN: 2454-6186
- xxvii. Adegbite A. E., **ONI, S. O.** and Noble N. (2023) Reviewing the Objectives and Goals for Sustainable Small and Medium Enterprises in Nigeria. *International Journal of Research and Innovation in Social Science (IJRISS)*, ISSN: 2454-6186
- xxviii. Iwara E. I. and **ONI, S. O.** (2016) Rights of Fair Trial and the Human Persons in Nigeria's Political System: A Legal-Politic Perspective. *International Journal of Arts Humanities and Social Sciences (IAHSS)*, Pp. 106-114, Volume 1 Issue 4 [www.ijahss.com](http://www.ijahss.com)

c. Contribution to Books

- xxix. Oyedokun G. E. and **ONI, S. O.** (2022) Prospect and Challenges of Digital Services Tax in a 21<sup>st</sup> Century. *Taxation for Economic Development (Chapter Fourteen of the Book)*, Pp. 232-242, ISBN 978-978-991-9, [www.ogecops.com](http://www.ogecops.com)
- xxx. **ONI, S. O.** (2018) *Right to Fair Trial: A Comparative Analysis of the African and European Human Rights Systems. Book of Abstracts, Lead City University Maiden Edition*, p. 33, ISSN: 2682-5627.

d. Articles Accepted for Publication

- xxxi. **ONI, S. O.** (2025) African Protection of Human Rights: Sick or Dead? *Elizade University Law Journal (EULJ)*, Volume 8,

e. Book Chapter Accepted for Publication

- xxxii. **ONI S. O.** (2024) Nigerian Customary Land Tenure System Vis-à-vis the Land Use Act, 1978: A Discourse. Chapter 9, International Interdisciplinary Security of Land Tenure Conference (IISLT), University of the Free State, Law Faculty, Private Law Department, Bloemfontein, Republic of South Africa.
- xxxiii. **ONI S. O.** (2024) Overview of Mortgage Creation for Security of Loan in Nigeria. Chapter 15, International Interdisciplinary Security of Land Tenure Conference

(IISLT), University of the Free State, Law Faculty, Private Law Department, Bloemfontein, Republic of South Africa

e. Book Publication

xxxiv. **ONI, S. O.** (2023) Nigerian Land and Property Law, *Lead City University Press*, ISBN 978-978-60464-9-5, lcupress23@gmail.com

f. Reviewer, International Journal of Research and Innovation in Social Science (IJRISS). This role helps to establish my identity as a known expert in the fields of Law and International Relations potentially leading to many invitations to conduct academic research.

g. Articles on Online Academic Search Engine

Apart from the websites of the journals that published papers mentioned in K(b) and (c), they can also be accessed in the following:

- i. ResearchGate <https://www.researchgate.net>
- ii. Academia.edu <https://www.academia.edu>
- iii. Google Scholar <https://www.scholar.google.com>

**L. Conference/Workshop Participation with Papers Presented:**

- i. ONI, S. O. (2024) Nigerian Customary Land Tenure System vis-à-vis the Land Use Act, 1978: A Discussion, International Interdisciplinary Security of Land Tenure Conference, University of the Free State, Bloemfontein, South Africa.
- ii. ONI, S. O. (2021) Beyond the Bench and the Bar. Liberty Chambers Symposium, Lead City University, Ibadan
- iii. ONI, S. O. (2019) Branding: key to becoming a Great Lawyer, Justice Chambers, Lead City University, Ibadan.
- iv. ONI, S. O. (2018) Legal Practice and Entrepreneurship in Nigeria, Justice Chambers, Olabisi Onabanjo University, Ago-Iwoye, Ogun State.
- v. ONI, S. O. (2018) Advanced Legal Research Methodology, Olabisi Onabanjo University, Ago-Iwoye, Ogun State (Ph.D Seminar Paper)
- vi. ONI, S. O. (2018) Students' Unionism and the Principle of Separation of Power, Student Government, Olabisi Onabanjo University.
- vii. ONI, S. O. (2017) Survival in the Midst of a Chaotic Legal Practice, Junior Lawyers' Assembly, NBA, Ado-Ekiti Branch.
- viii. ONI, S. O. (2017) Qualitative and Quantitative Research Methodology in Legal Studies, Olabisi Onabanjo University, Ago-Iwoye, Ogun State (Ph.D Seminar Paper).
- ix. ONI, S. O. (2016) Law and Politics: How Complimentary in Nigeria (Student Union, College of Animal Science, Ibadan)
- x. ONI, S. O. (2016) Towards a Progressive Legal System, Joseph Ayo Babalola University, Ikeji-Arakeji, Osun State Law Week Symposium,
- xi. ONI, S. O. (2015) Legal Practice: The Hope of Junior Lawyers in the 21<sup>st</sup> Century, Junior Lawyers Forum, NBA, Ilesa Branch, Osun State.
- xii. ONI, S. O. (2015) Dichotomy Between the Senior and the Junior Legal Practitioners in a Competitive Legal Market, Law Students' Society Symposium, Caleb University, Lagos

- xiii. ONI, S. O. (2018) The Future of Legal Education: Predictions Number 9 and 15 of Robert Stein. Olabisi Onabanjo University, Ago-Iwoye, Ogun State (Ph.D Seminar Paper)
- xiv. ONI, S. O. (2011) Corporate Governance and the Doctrine of Ultra Vires (University of Ibadan, LLM Seminar Paper)

#### **M. Commentaries in Journals**

- i. The Jurist, Olabisi Onabanjo University Law Journal
- ii. The Wig, Lead City University, Ibadan

#### **N. Major conferences/Workshops Attended**

- i. ADR Conference of Institute of Chartered Mediators and Conciliators (ICMC), Abuja, 2024
- ii. Nigerian Association of Law Teachers (NALT) , Ilorin, 2024
- iii. International Interdisciplinary Security of Land Tenure Conference, University of the Free State, Bloemfontein, South Africa, 2024
- iv. International Law Conference, Lead City University, Ibadan 2022
- v. Nigerian Association of Law Teachers Conference, Kano 2022
- vi. International Conference on Human Rights, Gaborone, Botswana 2019
- vii. Nigerian Association of Law Teachers Conference (NALT), Ibadan, 2019
- viii. Nigerian Bar Conference (Lagos)
- ix. Nigerian Bar Conference (Calabar)
- x. International Court of Justice Conference, The Hague, Netherlands 2013
- xi. Nigerian Association of Law Teachers Conference (NALT), Abuja.

#### **O. Appointments**

##### International

- i. Assessor at International Court of Justice Competition, The Hague, Netherlands 2013
- ii. Assessor at the 28<sup>th</sup> African Human Rights Moot Court Competition, Botswana 2019  
Paper Presenter
- iii. Reviewer, International Journal of Research and Innovation in Social Science (IJRISS).  
This role helps to establish my identity as a known expert in the fields of Law and International Relations potentially leading to many invitations to conduct academic research.

##### National

- i. Chairman, Royal Impact Empowerment Foundation 2024 to date
- ii. Head Facilitator, G-King Career Development Academy Ltd. in Collaboration and Affiliation with Lead City University, Ibadan. 2022 to date
- iii. Chairman, International Law Conference, Lead City University, Ibadan. 2022
- iv. Chairman, Oyo State Environmental Protection Tribunal. 2014-2016
- v. Solicitor & Legal Adviser to Governing Council, Lead City University. 2013 to date
- vi. Staff Adviser to the Law Students' Association of Lead City University. 2009-2022

vii. Senior Pastor, King's Touch Ministries, Ibadan.

2015 to date

### **P. Programmes Pioneered in Lead City University, Ibadan**

- |  | (Head of Unit Till Date) |
|--|--------------------------|
| i. Legal Unit  |                          |
| ii. Law Students' Association  | 2013                     |
| a. Law Students' Association Constitution,   | 2017                     |
| b. Law Students' Association Journal otherwise known as "The Wig"  | 2018                     |
| c. The 3 (Three) Organs of Students' Government: Executive, Legislative and Judicial Council   | 2019                     |
| iii. Law and Career Development Workshop for all final year students of Lead City University. The program of G-King Career Development Academy Ltd. in Collaboration with Lead City University. I am the Head Facilitator. | 2022                     |

### **Q. Radio/Television Guest Programmes**

- i. Galaxy Television, Oke-Are, Ibadan. You and the Law
- ii. Broadcasting Corporation of Oyo State (BCOS) Landlord /Tenant Matter
- iii. Space FM Ibadan 90.1 Marriage and the Law on Radio
- iv. Prince FM Ibadan 89.7

### **R. Extra Curricular Activities**

- i. Football
- ii. Table Tennis

### **S. Computer Literacy**

- i. Microsoft Word
- ii. Microsoft Excel
- iii. Power Point

### **T. Names & Addresses of Referees**

- i. Mr. N. O. O. Oke, SAN  
N. O. O. Oke SAN & CO  
Amazing Grace Chambers  
Oke-Ado, Ibadan.  
08023213885
- ii. Professor Lanre Adejo  
Olabisi Onabanjo University,  
Ago-Iwoye,  
Ogun State.  
08035029108
- iii. Dr. (Mrs.) Oyebola Ayeni  
The Registrar,

Lead City University,  
Ibadan.  
08035636901

**U. Date & Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Lead City University Ibadan DO NOT COPY

This is to certify that this thesis written by Simeon Olaosebikan ONI, with Matriculation Number LCU/PG/000500 of the Department of Public and International Law, Lead City University, Ibadan, is in full compliance with the approved University format and style.

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Signature

Date

## **Appendix**

### **Questionnaire**

This is a questionnaire designed to gather insights from indigenous peoples regarding restorative justice for victims of crime under their customary criminal justice systems. This questionnaire aims to be respectful, culturally sensitive, and incorporates qualitative questions.

### **Questionnaire on Restorative Justice for Victims of Crime**

Please tick  $\checkmark$  where necessary

### **Section 1: Demographic Information**

Age:

Under 18 \_\_\_

18 – 24 \_\_\_

25 – 34 \_\_\_

35 – 44 \_\_\_

45 – 54 \_\_\_

55 – 64 \_\_\_

65 and above \_\_\_

Gender:

Male \_\_\_

Female \_\_\_

Tribe/Community:

Yoruba \_\_\_

Igbo \_\_\_

Hausa/Fulani \_\_\_

Name of Town / Village / State

---

Location

Rural \_\_\_

Urban \_\_\_

Hausa/Fulani \_\_\_

Education Level:

No formal education \_\_\_

Primary education \_\_\_

Secondary education \_\_\_

Tertiary education \_\_\_

Other:

---

## Section 2: Understanding of Restorative Justice

How familiar are you with the indigenous concept of restorative justice?

Very familiar \_\_\_

Somewhat familiar \_\_\_

Not familiar at all \_\_\_

In your view, what are the key principles of restorative justice?

(Please Check all that apply)

Healing for victims \_\_\_

Accountability for offenders \_\_\_

Involvement of community \_\_\_

Restoration of relationships \_\_\_

Other:

---

### Section 3: Experience with Customary Justice Systems

Have you or someone you know been a victim of crime in your community?

Yes \_\_\_

No \_\_\_

If yes, what type of crime occurred?

(Open-ended):

---

How did your community address this crime?

Customary justice system

Formal legal system \_\_\_

Mediation with community leaders \_\_\_

Other:

---

How effective do you think customary justice is in addressing crime?

Very effective \_\_\_

Somewhat effective \_\_\_

Not effective \_\_\_

Don't know \_\_\_

#### **Section 4: Impact of Restorative Justice**

In your opinion, what are the benefits of restorative justice for victims of crime?

(Open-ended):

---

Are there any challenges or drawbacks to using restorative justice practices in your community?

(Open-ended):

---

How do you think the community can be involved in restorative justice practices?\*

(Open-ended):

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Do you believe that the implementation of restorative justice can lead to better healing for victims than traditional punishment?

Strongly agree \_\_\_

Agree \_\_\_

Disagree \_\_\_

Strongly disagree \_\_\_

#### **Section 5: Suggestions for Improvement**

What changes would you suggest for improving restorative justice practices in your community?

(Open-ended):

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Are there any rituals or traditional practices in your culture that you believe should be incorporated into restorative justice programs?

(Open-ended):

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What role do you believe community leaders and elders should play in restorative justice processes?

(Open-ended):

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## **Section 6: Final Thoughts**

Please provide any additional comments or insights regarding restorative justice and its relevance to victims in your community.

(Open-ended):

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Would you like to participate in follow-up discussions regarding this topic?

Yes \_\_\_

No \_\_\_

### **Thank You for Your Participation**

Your insights are invaluable in understanding the nuances of restorative justice within indigenous communities.

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