

**CRIMINAL JUSTICE ADMINISTRATION, THE
NIGERIAN CORRECTIONAL SERVICE AND
THE LAW: A CASE FOR RESTORATIVE
JUSTICE**

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Abstract

In contemporary times, the positive impact of restorative justice on justice systems around the world presents it as a blueprint for justice in the 21st century. Crime, when viewed through a restorative lens, would show that not only the law is broken but there is also a violation of relationships between individuals which creates wounds to victims and disturbs societal peace. It would therefore be imperative to adopt a people-centred approach that repairs the harm caused and restores relationships. This is one important role that restorative justice plays in achieving peaceful, healthy and accountable communities. The criminal justice administration in Nigeria therefore, cannot afford to ignore the utility of Restorative Justice in dealing with the harm caused by crime and providing answers to the burning questions of 'how to hold the persons who cause harm accountable'. This paper seeks to make a case for the effective implementation of restorative justice in Nigeria to solve the twin problems of overcrowded correctional centres and overloaded court dockets while shifting the focus of justice from one that criminalises the actions of offenders alone to one that reforms them. It would also examine the current legal framework that allows for the application of restorative justice in Nigeria vis-a-vis the provisions of the Administration of Criminal Justice Act and the Nigerian Correctional Service Act, the challenges practitioners encounter in attempting to implement these provisions and recommendations for any existing lacunae.

The Role Of Restorative Justice In Criminal Justice Administration (cont.d)

The conventional criminal justice system in Nigeria has suffered several setbacks owing to the evident increase in crime rate, the deplorable and overcrowded conditions of the correctional centers and the unduly lengthy prosecution process. The justice system in Nigeria is largely retributive and this implies an over-reliance on punishments by courts in the adjudication of criminal cases which does a fairly effective job but because it limits justice to applying the law, relying on technicalities and assessing blame, redressing the harm and wrong done to victims of crime takes a secondary place in the process. Two other factors that have also posed a challenge to the continued development of the criminal justice system in Nigeria are (1) the several criminal matters that ought not to or do not need to be adjudicated in courts and (2) the fact that the present criminal justice system does not hold offenders accountable in any way. In recent times however, there has been a major shift to more restorative measures in the administration of criminal justice in Nigeria as the delay in justice delivery and the clamour for more viable solutions to justice problems have been on the rise.

The Role Of Restorative Justice In Criminal Justice Administration (contd)

The criminal justice administration in Nigeria focuses on the operations and leadership of the various aspects of the criminal justice system such as the corrections, the courts and the law enforcement agencies, which work together to help prevent and punish crime. A major component of the Criminal justice administration process is the effective management of criminal justice institutions. These institutions are put in place to foster speedy dispensation of justice, protection of the society from crimes and protection of the rights and interests of the suspect, the defendant and the victims. There is however a category of people who became victims of these institutions due to systemic oppression, bribery, inequity and corruption. These institutions therefore need to be checked because innocent people who became victims of mass arrest and unjust incarceration are the potential offenders of tomorrow and as such need to be treated as victims deserving restorative justice. The victim, the community and the offender should be viewed as clients of the justice system and should be involved meaningfully as co-participants in the holistic justice process.

The Role Of Restorative Justice In Criminal Justice Administration (cont.d)

Restorative justice (RJ) is a people-centred approach to justice that places emphasis on repairing the harm caused by criminal behaviour. It requires offenders to take responsibility for their actions and the harm they caused and prioritising the victims' needs throughout the entire process of resolving the dispute.

Unlike our mainstream retributive system where the State is treated as the victim and decisions are made for and on behalf of the victim, restorative justice takes a different approach by putting the real victims in the driver's seat. That is, in a restorative process, the parties involved directly participate and play equal roles in repairing the relationship destroyed by crime. Defining restorative justice goes beyond the understanding of crime and conflict in the society, it sees how the society thinks about crime and at the same time responds to the crime, thereby restoring balance to the society. Restorative Justice (also sometimes called "reparative justice") is an approach to justice that focuses on the needs of victims, offenders, as well as the involved community, instead of satisfying abstract legal principles or punishing the offender.

Howard Zehr, often regarded as the founding father of Restorative Justice, in his book 'The Little Book of Restorative Justice' defined Restorative Justice thus;

Restorative justice is a process to involve, to the extent possible those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible.

The concept of Restorative Justice dates back to thousands of years as seen in The Code of Hammurabi and the Pentateuch which specified restitution for property crimes, and in Rome, the twelve tables which compelled offenders to pay double the value of stolen goods. During the pre-colonial era in Nigerian, disputes were also resolved through community involvement and participation. Prior to the colonial period, the indigenous peoples of Nigeria had their criminal justice system which largely involved restitution and restoration. The theory of restoration takes a victim-oriented approach to crime that emphasises restitution (compensation) for the victims and rehabilitation for Offenders rather than focusing on punishment alone. In these pre-colonial societies, 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 imprisonment system which was not only punitive but restorative.

Restorative Justice is founded on basic principles of voluntariness, acceptance of responsibility by the offender, confidentiality and a humane view of crime. Victims of crime often require more from the system than the incarceration of the offender. Specifically, while victims of property offences may be assuaged if the offender goes to jail, the majority will rather ask for all or either of the following; restitution/restoration in form of the return of the stolen item, apology, answers to their questions, and reparation which may come in form of the performance of a certain task by the offender. Categorically, if a person whose car has been stolen gets back his car or the cost of another car, he will feel a sense of justice more than the culprit serving a jail term which has little or no direct benefit or compensation to him. Therefore restorative justice addresses victims' needs and enables offenders to understand the impacts of their crimes by asking the following questions;

- What happened?
- Who was impacted and how?
- How do we repair the harm committed?
- How do we prevent re-offending

The primary goal of approaching the courts when rights are violated is to seek justice, and oftentimes the current system does not provide them with the satisfaction that they desire. This leaves victims unsatisfied and makes people lean towards a system where they have a say in what goes on, where their opinions are valued and respected and where they believe that the decision reached would give them the justice they eagerly desire. The concept of Restorative Justice encompasses the following principles:

- i. A flexible response to the circumstances of the crime, one that allows each case to be considered individually;
- ii. A response to crime that respects the dignity and equality of each person builds understanding and promotes social harmony through the healing of victims, offenders and communities;
- iii. A viable alternative in many cases to the formal criminal justice system and its stigmatizing effects on offenders;
- iv. An approach that can be used in conjunction with traditional criminal justice processes and sanctions;
- v. An approach that incorporates problem-solving and addressing the underlying causes of conflict;

- vi. An approach that addresses the harms and needs of victims;
- vii. An approach which encourages an offender to gain insight into the causes and effects of his or her behaviour and take responsibility in a meaningful way;
- viii. A flexible and variable approach which can be adapted to the circumstances, legal tradition, principles and underlying philosophies of established national criminal justice systems;
- ix. An approach that is suitable for dealing with many different kinds of offences and offenders, including very serious offences;
- x. A response that recognizes the role of the community as a prime site of preventing and responding to crime and social disorder.

An overview of the research conducted in countries where restorative justice has been utilised has shown an aggregate of 80% victim satisfaction rate and a 14% reduction in the frequency of re-offending in those countries. In this vein, restorative justice programmes can be properly adopted across Nigeria to reduce the burden on the criminal justice system, divert cases of petty crimes out of the conventional court system and provide a range of constructive sanctions.

Restorative Justice in Some African Jurisdictions

Similar to Nigeria, Kenya has made laws to mainstream restorative justice in its justice system. In 2020, the Alternative Justice Systems policy was introduced as a means to encourage the use of alternative methods in resolving disputes. Kenyan legislation provides opportunities for the application of restorative justice mechanisms. Though some statutes explicitly provide that they be used in specific civil disputes, others leave the door open for their application in criminal disputes, including the Constitution of Kenya (2010) under Article 159(2). Worthy to note is that Kenya has utilised the use of Restorative Justice in its juvenile justice system and has achieved tremendous results so far.

Ghana's criminal justice system just like Nigeria is largely retributive and is faced with backlogs. Ghana has laws that encourage the use of alternative forms of resolving disputes such as victim-offender mediation. However just like in Nigeria, there have been challenges faced in implementing these laws.

In pre-colonial South Africa, the different ethnic groups had their own methods and system for dealing with crime and conflict. This dispute settlement method focused on reconciling the parties to the conflict and illustrated that the justice processes concentrated on restoring the broken relations between parties, not just the punishment of offenders. Even in circumstances where the offender was required to pay compensation, the restoration of broken relationships remained the goal. The payment of this compensation was a sign of accepting responsibility and not an attempt to empty the pockets of the offender.

Unlike in Nigeria, Restorative Justice has gone beyond an academic debate in South Africa and has been used and developed by courts and correctional centers across South Africa. Various non-governmental organisations in South Africa have partnered with the department of correctional service in the delivery of Restorative Justice for inmates behind bars. One of the cases which paved the way for the use of restorative justice in courts was the case of *State v Shilubane*, the accused was sentenced to jail for nine months for the theft of seven fowls despite having shown remorse. When reviewed by Judge Ronnie Bosielo with Judge Jerry Shongwe concurring, the sentence was set aside and replaced with a suspended sentence and the complainant was compensated for his loss. In *State v Maluleke*, a woman was convicted and sentenced to eight years imprisonment for murder after she and her husband who died before the end of the trial killed an intruder. The victim's mother had expressed her hurt that nobody from the offenders family had come to her house to apologise for the wrong doing and she expressed a desire for that kind of interaction. Three of the eight years were suspended on the condition the woman apologise to the victim's mother. The honourable Judge Eberhard Bertlesmann in his sentence extensively referred to restorative justice and said it was developed as a new approach to deal with crimes, victims and offenders.

Restorative justice in South Africa can be applied at any stage in the criminal justice system likewise in Nigeria. The defunct South Africa's Truth and Reconciliation Commission was a form of restorative justice as it prompted offenders to take responsibility for their actions and acknowledge the harm suffered by the victim, the victims families and communities with the aim of bringing healing and restoration to the affected parties.

Restorative justice started in South Africa without any legislation overseeing its application, but today, it has received several accolades from the judiciary. There is also a restorative justice center which has now been in existence in Pretoria for over 10 years. It is not restricted to juvenile offenders only but can also be used for serious violent crimes including murder. While both South Africa and Nigeria rely on the already established criminal justice system to implement its restorative justice approaches, South Africa's restorative justice is independent of the justice system as there exists quite a large number of restorative justice programmes outside the court rooms.

The legal framework for Restorative Justice in Nigeria

Some of the notable laws that have made provisions for restorative justice in Nigeria are the Constitution, the Administration of Criminal Justice Act 2015 (and the Administration of criminal justice laws of various states) and more recently, the Nigerian Correctional Service Act 2019. Lagos State, which has been at the vanguard of reforms generally has also provided for a Practice Direction on restorative justice by the previous Chief judge of Lagos State.

The Administration of Criminal Justice Act (ACJA)

The ACJA came into force to repeal the Criminal Procedure Act (CPA) and Criminal Procedure Code (CPC) of Southern and Northern Nigeria respectively. It was signed into law in 2015 in a bid to revolutionise the administration of criminal justice in Nigeria. The ACJA aimed to transform the criminal justice system of Nigeria from a retributive justice state into a more restorative state which considers the needs of the victims, the offender and the society at large.

The Administration of Criminal Justice Act (ACJA)

The continued delay in criminal trials has, over the years, become a major impediment to the effective and speedy dispensation of criminal justice in Nigeria. The Act was therefore enacted to address these concerns. The ACJA paved the way for using some restorative elements through;

- provision of alternatives to custodial sentencing
- restitution
- compensation
- probation
- community service and
- restoration of immovable properties.

Prior to the enactment of the Nigerian Correctional Service Act, the ACJA was the closest pronouncement that made provisions for restoration and restitution in Nigeria.

The Nigerian Correctional Service Act

The Nigerian Correctional Service Act was enacted on the 31st of July 2019 and signed into law on the 14th of August 2019. It repealed the archaic Prisons Act which had been in existence since 1972. The Act changed the nomenclature from 'Prison' to 'Correctional Centres' and 'Prisons Service' to the 'Nigerian Correctional Service'.

The Act also provided alternatives to imprisonments and made provisions for non-custodial sanctions which comply with international human rights standards. Furthermore, the Act divided the Correctional Service into two main sectors:

- a. The Custodial Service and
- b. Non-custodial Service.

While the Custodial Service will, among other things, take custody of all persons legally interned and provide safe, secure and humane custody for these inmates, the Non-custodial Service will be responsible for non-custodial measures like community service, probation, parole, and restorative justice measures.

From the provisions of the Nigerian Correctional Service Act, the four (4) stages at which restorative justice may be used are

Pre-trial stage

Trial stage

During imprisonment; and
post-imprisonment stages.

The Restorative justice measures provided for under the Act include; victim-offender mediation, family group conferencing, community mediation and other mediation activities which may involve community representatives.

Victim Offender Mediation

This involves the victim, the offender, their support persons and a trained Restorative Justice facilitator who discuss the crime, its negative effect, and the process needed to make things right. It may take a direct or indirect approach by dispensing with face-to-face meetings and may come in the form of videos or exchange of letters

Family Group Conferencing

This Restorative program involves the Victim, the Offender and family members coming together to discuss the crime, its effect and the way forward. It is usually facilitated by an independent 3rd party who acts as a facilitator

Community Mediation

The distinguishing feature of this program from others is the involvement of the community in the process. The Community plays an active role in this mediation process and by extension, they discuss the impact the crime had on the community and how the offender can be restored to society.

The Act also mandates the correctional service to liaise with the courts and other relevant agencies in the provision of Restorative Justice and to appoint supervisors to monitor the restorative justice measures.

Lagos State Practice Direction on Restorative Justice

The objective of this Practice Direction is to provide guidance for judicial officials in the resolution of Criminal cases where the parties have adopted to settle the matter through Restorative Justice, pre-charge, pre-trial, pre-conviction and in the disposition of cases post-conviction. It further provides for compensation for victims who have been harmed by the activities of the offender, generally through monetary payments and in appropriate cases through in-kind services to the victims. It also provides for Community Service Programmes that require offenders to address the indirect harm they caused.

The Nigerian Correctional Service and Practical Challenges in Implementing Restorative Justice (cont.d)

Globally, incarceration alone is now considered to be the least effective way to address criminal behaviour in the criminal justice community. The debate is that retribution is outdated and out of step with the development of the contemporary legal system as it has not reduced the commission of crime neither has it addressed the overcrowded prison population across the world. Statistics provided by the Nigerian Correctional Service alone shows that as of 1st August 2022, there were 74,277 inmates remanded in correctional centres across the country with only 21,893 of this number convicted, leaving behind a staggering 52,384 persons awaiting trial and amounting to 73% of the total correctional centre population. What the restorative justice movement seeks to achieve is to reduce the over-reliance on incarceration and bring the offender to account to the victim for the harm caused by his actions while assuaging the immediate community to which he has sent the jitters by his acts of savagery and the Nigerian Correctional Service can play a great role in executing these reforms since these offenders are lawfully held in their custody. The Nigerian Correctional Service has not recorded successful results either because the provisions of the laws are not implemented or when implemented, they are poorly done. To effectively implement these laws, the collaborative effort of all stakeholders and institutions would be needed to create an effective criminal justice administration system.

The Nigerian Correctional Service and Practical Challenges in Implementing Restorative Justice (cont.d)

Restorative Justice Practitioners in Nigeria have made efforts to implement the provisions of the Nigerian Correctional Service Act but have faced various challenges relating to;

Inadequate awareness among the populace and criminal justice institutions on the provisions of restorative justice measures

Lack of trained personnel in the various institutions

The lack of political will and proper means to implement the provisions of restorative justice, and

Poor funding.

The society is not as concerned about the prosecution and imprisonment of the offender as it is about providing alternative means of holding offenders accountable and responsible to the society, by making sure that the future is safe, harm is repaired and the offender is reintegrated back to the society.

The Rights Of Victims In Criminal Justice Processes (cont.d)

In simple terms, a 'victim' refers to the actual recipient of the offender's acts while in the wider sense, a victim extends to both the immediate and larger community that suffer the impact of the crime that was committed.

There is no general statutory definition of a 'victim' in the Nigerian criminal law, however, it is notable that the Violence Against Persons (Prohibition) Act, 2015 defines a victim as a person or group of persons who have suffered harm individually or collectively, owing to the perpetration of a crime.

A major deterrent to victims' rights in Nigeria is the implication that crime is generally viewed as an offence against the state. A cursory look at most definitions of 'Crime' streamlined it to be a violation of the law and since crime is viewed as an offence against the State, criminal cases are often prosecuted through the instruments of the state, mostly with the primary aim of incarcerating the offender. Victims of crime often feel alienated by this retributive style of justice because the state's interest drives the process of getting justice and rarely do criminal justice professionals take the time to listen to the fears, concerns and needs of victims or request their input. This has led to crime victims frequently feeling twice victimised, first by the offender(s) and secondly by the criminal justice system. This is because the system does not particularly reckon with the active identity and role of victims of crime in the criminal justice process. Also, like I mentioned earlier in this paper, there are people who became victims of the institutions that were meant to protect them like victims of mass arrest and unjustly incarcerated inmates. They are potential offenders of tomorrow if they are not properly reintegrated into the society through restorative justice.

The Rights Of Victims In Criminal Justice Processes.

The Constitution of the Federal Republic of Nigeria makes extensive provisions for the pre-trial, trial and post-trial rights of defendants such as the right to silence, the right to be deemed innocent until proven guilty and the right to fair hearing and this begs the question of what laws, provisions or enactments prescribe protection of the victim's right. Although victims of sexual and violent crimes and human trafficking have been granted certain rights by the Violence Against Persons (Prohibition) Act such as the right to protection and privacy, and some criminal statutes allude to some forms of remedies for victims of crimes, these provisions barely confer general rights on victims.

The Administration of Criminal Justice Act of 2015 provides for the rights of victims to recovery, restitution and compensation, identity protection and the right to consent to or refrain from a plea bargain. Aside from these provisions, victims of unjust incarceration in Nigeria are left with nothing. This obvious lapse shows that there is a need to give victims of the system a voice in the criminal justice process because they are the primary parties affected by the crime and or actions of these institutions and should have a voice in the deciding process of their offender's case. When victims have a deciding role in how offenders should atone for their criminal behaviour, it leads to an increasing sense of belonging and accelerates their healing process. Supporting this is the emerging studies that have shown that victims who have had a say in the dispute resolution process have recorded fewer post-traumatic stress symptoms as opposed to those who were less involved or never involved in the process

The Rights Of Victims In Criminal Justice Processes (cont.d).

Some of the benefits of including victims in the justice process include

- A strengthened criminal justice system
- Increased victim satisfaction
- Recognition of victims' rights
- Reduction of recidivism by the offender and ease of reintegration into the society.

Before giving victims a role in the justice process, criminal institutions should ensure that proper guidelines are followed, especially in ensuring that the victims are willing to voluntarily participate in the process and not pressured into participation. This is to create a safe environment and avoid the likelihood of re-victimization of victims where they are not ready to face their offenders.

Conclusion And Recommendations

The advocacy for an improved administration of justice in Nigeria would greatly be improved by adopting a system that restores the parties and ensures that victims of the system feel heard and included in the justice process. It suffices to note that these laudable provisions above that provide for restorative justice are not, on their own, sufficient to ensure comprehensive implementation of the concept to guarantee a reformed correctional service and an improved criminal justice administration in Nigeria. It is on that premise that I recommend the following:

There is a dire need to introduce practice directions on Restorative justice across various states in Nigeria that would set out the guiding values and principles for the use and application of restorative justice. Although Lagos State has taken the lead in providing a practice direction in this regard, the wording of the provisions therein appear to restrict the application of restorative justice to case settlement and non-custodial measures alone. There was little or no contemplation for applying restorative justice as a complement to the trial process since the practice direction outrightly excludes certain cases from participation in the restorative justice process. I would therefore recommend that trained restorative justice practitioners be consulted in the preparation of these instruments that would guide the courts in implementing restorative justice across Nigeria.

Conclusion And Recommendations cont.d

A system that would guarantee the promotion of restorative justice, especially strategies for raising awareness among citizens and more especially, notifying victims at the earliest opportunity of their rights to be informed about the options available to them in resolving their disputes or conflicts through restorative justice.

Restorative justice is founded on the idea that justice is best served when there is a balanced response to the interests of the community, the offender, and the victims. It is highly recommended therefore that criminal justice institutions become restorative in their processes and have at least the basic knowledge of restorative justice measures. This can happen through dedicated training, sensitization and workshops for key players of these institutions (especially for first responders like the police and also prosecutors with the ministry of justice) to help stakeholders understand, practice and be able to evaluate the progress made in implementing the concept and decide progressive next steps.

The effectiveness and accessibility of restorative justice services can influence the criminal justice space when we have procedural laws, access to funding, positive public perception, stakeholders' cooperation, and trust in the process.