

BEYOND PUNISHING AN OFFENDER: ADVANCING RESTORATIVE JUSTICE FOR CRIME VICTIMS IN NIGERIA*

Abstract

Nigeria's criminal justice system has historically been dominated and inundated by retributive justice practices, often neglecting the needs and welfare of crime victims, which has almost become a deficiency in the Nigerian criminal justice system. This paper introduces restorative justice as a promising alternative to address this deficiency by emphasizing restoration, restitution and community healing of victims of crimes. It critically evaluates the limitations of Nigeria's current punitive framework in her criminal justice system and proposes a structured integration of restorative justice mechanisms that prioritizes victim's welfare in addition to the statutory punishment that may be imposed on the offender as prescribed by law. Utilizing an analytical and doctrinal methodology, the study incorporates a comparative legal analysis, an extensive literature review, and relevant case study references. This analytical approach facilitates a comprehensive examination of Nigerian statutes alongside international best practices on restorative justice, thereby identifying critical gaps and opportunities for legal reforms. Key findings indicate that existing restorative justice provisions in Nigeria are more discretionary and optional in nature which undermines consistent support for victims' restoration, restitution and healing. Furthermore, the findings reveal that the heavy reliance on retributive justice measures compromises victims' compensation and hampers overall crime reduction in Nigeria. The paper recommends significant legislative amendments to codify restorative justice practices in light of these findings. Suggested reforms include establishing specialized restorative justice centers, constitutional and legislative amendment, judicial and legislative activism, establishment of restorative justice funds, implementing structured training programs for judicial and law enforcement personnel, ensuring standardized application of restorative justice principles and encouraging active victim participation in the entire gamut of the criminal justice system in Nigeria. The implications of these recommendations are substantial to the effect that there will be: an integration of restorative justice practices into Nigeria's legal framework, enhanced and effective policy framework for restitution, improved victims' welfare, reduce recidivism, and ultimately foster a more, just and egalitarian society for all Nigerians.

Keywords: Criminal Justice System, Nigeria, Restorative Justice, Victims' Welfare

1. Introduction

It is no longer news that the Nigeria's criminal justice system has long been characterized by a predominantly retributive approach, prioritizing punishment of an offender over the healing and restoration of the injured victims and community of the crimes. This emphasis on punitive measures only on the offender often results in the marginalization of crime victims, who are left to grapple with the consequences of the offences without adequate support, or meaningful avenues for restitution and restoration. It has been observed that for many victims of crimes, justice transcends merely seeing an offender go to prison, or punished by sentencing to community service, or by payment of fines to the government, because for them, justice is fundamentally about acknowledgement of guilt, accountability, and whenever feasible, restoration. It must be reiterated that restorative justice is based on the principle that true justice should go beyond mere punishment of an offender, and aim instead, at how to restore the balance disrupted by the criminal behaviour, hence it seeks to address both the emotional, mental, psychological, financial and material losses that may have been experienced by the victims of the crimes. This is why in countries with well-established restorative justice practices and programs, offenders often engage directly with their victims, expressing remorse, offering reparations, and participating in structured reintegration initiatives¹. Researches have shown that criminal justice scholars have discovered that despite this so much emphasis on the traditional criminal justice system in Nigeria which emphasizes punishment of an offender only as a deterrent measure², crime rates have continued to soar very high in Nigeria. It is this inability to reduce crime rates with this traditional method of criminal justice that is therefore the whole essence of canvassing that restorative justice practices be introduced in addition into the current criminal justice system in Nigeria.

The primary objective of this paper therefore, is to critically examine and evaluate the limitations inherent in Nigeria's current criminal justice system that is more punitive in nature and to explore the potential advantages of integrating restorative justice principles into the said criminal justice system. by shifting the focus from retributive to restorative justice. This paper therefore aims to demonstrate how structured restorative justice practices can enhance victims' welfare, promote community healing, reduce recidivism and crime rate in Nigeria. To achieve this goal, the article conducts a doctrinal analysis that includes a comparative review of the Nigerian criminal justice laws, statutes, and practices alongside international best practices of restorative justice, supported by an examination of relevant case studies. Researches so far conducted reveal that there are not much literary works done on the subject of discuss in Nigeria at present, but a cursory look at other jurisdictions, like Ghana, Australia, New Zealand, etcetera, reveal that much ink and time has been spent on the topic of restorative justice and in fact compensation for victims of crimes. Kim³ and Gallo⁴ in their work, while

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¹A Olatubosun, (2002) 'Compensation to Victims of Crimes in Nigeria: A Critical Assessment of Criminal-Victim Relationship,' *Journal of the Indian Law Institute* 44(2) 205-224. Retrieved from:<<https://www.jstor.org>> 10 March 2024.

² Ibid

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borrowing a leaf from Elias⁵, are in agreement that the concept and practice of pecuniary, or other forms of payment for harms committed against a person (i.e. victims of crimes) in America dates back to much earlier times, but that the contemporary version of victim compensation or restitution has its birth in the post-war development of the welfare state.⁶ These two brilliant authors maintained therefore that victim of crimes compensation policies in the United States since then and till the time of research were motivated more by social welfare concerns than their punitive merits.⁷

Additionally, in some of the works reviewed both in Nigeria and several other jurisdictions, there were proposals from several scholars and proponents of restorative justice for the use of restorative justice as a tool for re-engineering the criminal justice system, while some were of the opinion that restorative justice can bring about a more peaceful and better way of handling both the offender and the victim of crimes. In the Nigerian context, it must be reiterated at this juncture that restorative justice practices are not entirely new in Nigeria, as there are provisions relating to restitution, compensation and plea bargain in some of her statute books.⁸ It was also observed that restorative justice practices had featured prominently in local communities in Nigerian and other African societies even before the advent of colonialism.⁹ This is because ‘Law should not sit limply, while those who defy it go free and those who seek its protection lose hope’¹⁰ It is this deep philosophical view as espoused above that has warranted this research, as victims of crimes are now losing hope daily in the criminal justice system in Nigeria and no one is thinking of how to salvage the situation.

A critical look at the pre-colonial administration of the traditional home-based leadership structures of the indigenous people of Africa reveals that each individual society in Africa was fully abreast of the factors that affect the behaviours of their people, hence they therefore made laws, though unwritten, that were intended to checkmate, reduce and curtail any unruly, or criminal behaviour. This fact was fully appreciated and acknowledged by K Richards, an Analytical Researcher in the Australian Institute of Criminology which made him to posit that; ‘It is widely accepted in the literature on restorative justice that restorative practices emerged from a variety of indigenous methods for dealing with deviant behaviours.’¹¹ This position of Richards as seen above is *in-tandem* with the thinking and position of Carey (2000)¹² who had posited unequivocally that: ‘Restorative justice is not a new concept. In fact, it is centuries old, as principles such as requiring restitution for property offenses can be found in the Code of Lipit-Ishtar in 1875 BC, the Code of Hammurabi in 1700 BC, and in the Old Testament and Hebrew Scriptures....’¹³ In fairness to Carey, a majority of scholars who are either proponents, or supporters of Restorative Justice are in agreement that restorative justice practices have featured in most of our communal approaches to criminal justice dispensation right from time immemorial. Thus, there is a direct link to the fact that all through the existence of man on earth and in pursuit of a just and egalitarian society where he will live a peaceful life, there has been great attempts at Restorative Justice Approaches to criminal justice.¹⁴ It is even on record that the United Nations Economic and Social Council (UNESCO) is in agreement and support of the fact that Restorative Justice has come of age and drawn out of traditions, as it declared in its Basic Principles on the Use of Restorative Justice programs in Criminal Matters which was adopted at its 37th plenary meeting that: Restorative Justice Practices ‘often draw upon traditional and indigenous forms of justice.’¹⁵

2. Evolution/International Perspectives on Restorative Justice

From the records available during the time of this research, it was discovered that the United Nations had recognized the problems created by the so much emphasis placed on the traditional approach of the criminal process which recognizes only the state and the offender as the parties in a criminal proceeding. And in furtherance of this recognition of the problems created by the dichotomous approach to criminal justice in several nations of the world, the United Nations General Assembly had to adopt a resolution on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1986.¹⁶ A cursory look at the provisions of the principles in the Declarations, reveals that victims of crimes have a plethora of rights and this may be the reason why the Resolution defined a victim of crime to mean: ‘persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative

⁵ R Elias (1986) *The Politics of Victimization: Victims, Victimology And Human Rights* (New York, Oxford University Press) p.4

⁶ M Kim and C Gallo (2019) ‘Victim Compensation: A Child of Penal Welfarism or Carceral Policies’ (NSFK) 1 (55). Available at <<https://www.nsfk.org/publications-and-activities/nordisk-tidsskrift-for-kriminalvidenskab/>> June 15, 2022.

⁷ Ibid

⁸ See generally section 11 of the Advanced Fee Fraud and Other Related Offences Act (2006); section 24(5) of Violence against Persons (Prohibition) Act, 2015 and sections 270, 314, 319, 323, 324 and 325 of the Administration of Criminal Justice Act, 2015.

⁹ K S Carlston, (1968) *Social Theory and African Tribal Organization* (Urbana, Illinois Press) p 10.

¹⁰ See *Jennison v Baker* (1972) 1 All ER 997.

¹¹ K Richards, (2009) ‘Returning to the Practices of Our Ancestors? Reconsidering Indigenous Justice and the Emergence of Restorative Practices’ In M Segrave (ed), (2009) *Australian & New Zealand Critical Criminology Conference Proceedings* (Australia, Monash University).

¹² Mark Carey was a Deputy Commissioner in the Minnesota Department of Corrections at St Paul.

¹³ M Carey, (2000) ‘Restorative Justice - A New Approach with Historical Roots: Corrections Retrospective 1959-1999’ (Minnesota, Minnesota Department of Corrections St Paul). Retrieved from: <https://mn.gov/doc/search/?query=Carey>. 5 April, 2024.

¹⁴ Ibid

¹⁵ Resolution (2002/12) (24 July, 2002) *Basic Principles on the Use of Restorative Justice programs in Criminal Matters*, United Nations Economic and Social Council (UNESCO).

¹⁶ See Resolution 40/34 (1985).

within Member States, including those laws proscribing criminal abuse of power'.¹⁷ The principles further declared that the provisions contained in the principles of the Declaration 'shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability'.¹⁸ The Declaration in order to achieve and guaranty the desired access to justice by victims of crimes as provided for in the Principles thereafter, mandated that all nations and member states must ensure that Judicial and administrative mechanisms are established and strengthened where necessary, to enable victims of crimes to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible.¹⁹

Still in the search for restorative justice principles to be enshrined in our criminal justice approaches, in July 1999, the Economic and Social Council (ECOSOC) of the United Nations passed a resolution on penal reforms upon the recommendation of the 8th Session of the Commission on Crime Prevention and Criminal Justice, wherein it urged Member States to take specific actions and to establish targets to address the serious problem of prison overcrowding. It recommended that Member States make increased use of alternatives to imprisonment such as pre-trial release, release on own recognizance, conditional release, restitution (i.e. restoration and compensation for victims of crimes), community service, or labour, the use of fines, or payment by instalments and the introduction of conditional and suspended sentences.²⁰

3. The Practice of Restorative Justice in Nigeria

From researches so far carried out, it has been discovered that in almost all African communities, including Nigerian communities and traditional societies, there was in place a set of complex and advanced legal institution(s) and laws that best meet their needs before the advent of their colonial masters. And in some cases, these institutions and laws survived in the colonial period, so much so that it was asserted that 'there is no process in Western society closely comparable to the dispute settlement procedures utilized,'²¹ by the Arushas of Tanzania. To this extent, traditional African legal systems set up institutions, laws and procedures that were based around the resolution of disputes in such a way that community cohesion was restored, while individual needs were met for both the offender(s) and the victim(s) of the crime.²² Accordingly, such institutions, laws and procedures were set out by Africans because they placed a great emphasis on peaceful resolution of disputes which was always aimed at restoring social harmony and at the same time, upholding the principles of fairness, equity and justice as engraved in their customs and traditions.²³ Emphasis therefore in these established African institutions, laws and processes was not on punishment of the offender and the massage of the ego of the ruling class only as envisaged by the colonial laws and system, but on reconciliation and restoration of social harmony among the parties in the conflict²⁴ i.e. offender(s) and the victim(s) of the crime.

The criminal justice processes therefore, especially adjudication in a traditional African society, hitherto were structured to allocate the punishments, or corrections deserved by the offender to him which was seen as a 'Just Dessert', the restitution due to the victim was given to him and whatever was due to the community was also given, or done for it.²⁵ Which is why there has been several and divergent opinions, plus suggestions that any criminal justice system that is out to reduce crimes in the society must aim at, or at least, be able to suggest deliberate interventions that will reduce future crimes and to offer warnings in respect of every action(s) that may increase crimes.²⁶ Granted that the rights that human beings enjoy all over the world are either derived from nature, or conferred on them by their laws, whether in traditional or civilized societies,²⁷ which is why it is now settled law that the rights of a person starts or stops at where the rights of another starts, or stops, because these rights are to ensure fairness, justice and equity in all human dealings.²⁸ For the records, the Penal Code²⁹ is one of the Nigerian legislations that have made provisions for restorative justice and compensation for victims of crimes and one of its sections provides as follows: 'Any person who is convicted of an offence under this Penal Code MAY,³⁰ 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'³¹ The Nigerian Criminal Code had also prescribed novel and several punishments that can be meted out on offenders for any crime that is committed, ranging from death sentence, imprisonment, caning, fine

¹⁷ See Paragraph 1 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power hereinafter referred to as (UNDBPJVCAAP).

¹⁸ Paragraph 3, (UNDBPJVCAAP).

¹⁹ Paragraph 5, (UNDBPJVCAAP).

²⁰ M E Hanan (2016) 'Decriminalizing Violence: A Critique of Restorative Justice and Proposal for Diversionary Mediation' *New Mexico Law Review* (NMLR) 46, 123.

²¹ K S Carlston, (1968) *Social Theory and African Tribal Organisation*, (Urbana, Illinois Press) 5

²² *ibid*

²³ O B C Nwolise (2004) 'Traditional Approaches to Conflict Resolution among the Igbo People of Nigeria: Reinforcing the need for Africa to rediscover its Roots. *AMANI Journal of African Peace* 1(1) 59.

²⁴ *Ibid*

²⁵ R Bowd, (2009) 'Status quo or Traditional Resurgence: What is best for Africa's Criminal Justice Systems? *In Monograph 161, The Theory and Practice of Criminal Justice in Africa*. An African Human Security Initiative 47.

²⁶ D A Andrews, D Arthur and J Bonta, (2010) (5th edn), *The Psychology of Criminal Conduct*, (London, Anderson Publishers/LexisNexis) 3

²⁷ J Shestak (2000) "The Philosophical Foundations of Human Rights" *In J Symonides (2003) Human Rights Concepts and Standards*. (London, Ashgate) 33-35

²⁸ *Ibid*

²⁹ See generally section 78 of the Penal Code.

³⁰ Emphasis added.

³¹ (n 32)

and forfeiture, but only made few provisions for what will happen to the victim(s) of the offences that may be committed. And on the kinds of punishment for crimes, the Court of Appeal, Lagos Division had held that: ‘Section 17 of the Criminal Code provides that subject to the provisions of any other written law, the punishments which may be inflicted under the Code are death, imprisonment, whipping, fine and forfeiture.’³²

Furthermore, several sections of the Criminal Procedure Act (CPC)³³ empowers the courts to award costs against an accused person, to order and award damages for wrongful conversion, and to order confiscation and forfeiture. Accordingly, both the Criminal Code and the Criminal Procedure Act provide for restitution and forfeiture. Consequently, restitution and forfeiture are not strange to criminal procedure in Nigeria. As it were, the CPA on its own part contains provisions on compensation, restitution and related issues³⁴, which is why it provides and empowers the courts of trial to order restoration and award of damages where in a charge of stealing, or receiving stolen property, the evidence in the opinion of the court is insufficient to support the charge, but establishes wrongful conversion, or detention of property.³⁵ The author submits that this provisions of the CPA on compensation for victims of crimes are grossly inadequate, because according to the law, this remedy is only available where the original charge cannot be sustained, and in the stead, a lesser offence is sustained.³⁶

The Advance Fee Fraud and other Related Offences Act³⁷ has made salient provisions for restitution and restoration of stolen properties or goods. In Section 11 of the Advanced Fee Fraud and Other Related Offences Act, it has been provided that in addition to any other penalty prescribed under the Act, the High Court shall order a person convicted of an offence under the Act to make restitution to the victim of the false pretence or fraud by directing that person, where the property involved is money, to pay to the victim an amount equivalent to the loss sustained by the victim; and in any other case: to return the property to the victim or to a (i) person designated by him;...³⁸ Forfeiture is thus an additional punishment imposed on the accused person, over and above a fine or imprisonment. Additionally, on relationship between forfeiture and restitution to victim of crime, the learned justices of the Court of Appeal, Lagos Division did not mince their words as they further held in the case of *Chief Emmanuel Nwude v. Federal Republic of Nigeria & Ors* that: ‘The order of forfeiture made in this case, as restitution, fits into the provision of section 11 of the Advance Fee Fraud and Other Related Offence Act. And the trial court had no discretionary power to exercise as the operative word in the section is “shall” which denotes a command that must be obeyed by the court...’³⁹ The courts have stressed that the basic essence for the award of forfeiture is not to allow the criminal to enjoy the proceeds of crimes and this is one of the major ambits of restorative justice and compensation for victims of crimes. Hence on the duty on court not to allow criminals enjoy proceeds of crime, the courts have held that: ‘An appellatant cannot be allowed to enjoy the proceeds of his crime...’⁴⁰ The Economic and financial crimes Commission Act⁴¹ has equally made some provisions for restitution to victims of financial crimes. According to the Act, the purpose of establishing the Commission through the Economic and Financial Crimes Commission Act that was promulgated is, to stem the scourge of advance fee fraud in Nigeria. And on the scope of power of Economic and Financial Crimes Commission to investigate and prosecute economic and financial crimes, Section 7(1) and (2) of the Economic and Financial Crimes Commission Act empowers the Commission to investigate and prosecute economic and financial crimes under the existing legislations in Nigeria such as the Criminal Code, especially section 419 thereof and the Advance Fee Fraud and Other Related Offences Act, 1995. The section empowers the Commission to enforce other existing penal statutes including forfeiture.⁴²

The Violence against Persons (Prohibition) Act⁴³ appears to be one of the legislative instruments in Nigeria that has made some good and discernable provisions for the rights of a victim of a crime, as there is an express provision for compensation to be awarded by a court trying any matter regarding accessory after the fact to violence by state actors. Accordingly, the Act provided that: ‘The state shall be liable for the offence committed by its agent and the court shall award appropriate compensation (to a victim of the offence)⁴⁴ commensurate with the extent and quantum of damages.’⁴⁵ Graciously too, the Act has provided that in addition to the rights provided for and guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria 1999, as amended, or any other international human rights instruments to which Nigeria is a party, that a victim of violence as defined in Section 1 of the Act, is entitled to the following rights: Right to assistance i.e. necessary materials and information on social, legal, medical, psychological, rehabilitation, re-integration, rules and regulations made thereto and financial assistance that are available from government/non-governmental agencies providing such assistance.⁴⁶ It is imperative at this juncture that we pause to commend the framers of the Act for painstakingly and

³² Per Ndukwe-Anyanwu, J.C.A. in *Chief Emmanuel Nwude v. Federal Republic of Nigeria & Ors* at page 515, paras. A-B:

³³ See sections 255, 261 and 263-275 of the Criminal Procedure Act.

³⁴ See section 261 Criminal Procedure Act

³⁵ Ibid

³⁶ Ibid

³⁷ 2006

³⁸ See *Chief Emmanuel Nwude v. Federal Republic of Nigeria & Ors* (2016) 5 NWLR (pt. 1506) 471 at 479.

³⁹ Ibid (Pp. 512 - 513, paras. A-B).

⁴⁰ Per Ndukwe-Anyanwu, J.C.A. in *Chief Emmanuel Nwude v. Federal Republic of Nigeria & Ors* (Supra) at page 515, paras. A

⁴¹ Cap, E1, Laws of the Federation of Nigeria (LFN) 2004.

⁴² See also *Chief Emmanuel Nwude v. Federal Republic of Nigeria & Ors* (Supra)

⁴³ Hereinafter referred to as VAPP Act, 2015.

⁴⁴ Emphasis added

⁴⁵ See section 24(5) of VAPP, 2015.

⁴⁶ See section 32(1) (a-c).

consciously providing these rights for a victim of a crime and we urge the legislatures to extend that same gesture and zeal to other laws regulating criminal proceedings in Nigeria, by including provisions for the regulation of restorative justice for victims of crimes in Nigeria.

This work will not be complete without mentioning the provisions of the Police Act⁴⁷ regarding restorative justice and compensation for victims of crimes. The Act has provided for the restoration of unclaimed property in the possession of the police to a person appearing to the court to be the owner.⁴⁸ It must be noted that the Constitution of the Federal republic of Nigeria (1999)⁴⁹ as amended, has made copious provisions for the enforcement of the fundamental rights of Nigerians including accused persons in the eyes of the law, plus constitutional safeguards for their trial.⁵⁰ Surprisingly there are no provisions for the restoration, or compensation for victims of the crimes. Thus, what we have in the Constitution under reference is a situation which is *in tandem* with the traditional criminal justice system of punishment that favours prosecution of the offender only so that the majesty will be at peace, without a consideration for the harm suffered by the injured victim(s) of the crimes. In fact, an offender (who is an accused person) has several rights ranging from right to life, respect and dignity of his person, fair hearing, choice of counsel, presumption of innocence, right to be informed on time of his offence, right to speedy and open trial in court of competent jurisdiction, right to remain silent upon arrest, limited period of detention, etcetera⁵¹. The result of the above provisions of the constitution is that the Nigerian criminal justice system has remained prosecutory in nature at the detriment of restorative justice for the victims of crimes in the country. Which underscores why despite the provisions for compensation for victims of crimes recently introduced by the Administration of Criminal Justice Act in 2015, the criminal justice system in Nigeria has remained very checkered up until recently, regarding restoration and compensation for victims of crimes. It must be noted very importantly that there have been several constitutional amendments, and more are ongoing, but it does appear that none has been directed towards the inclusion of restoration and compensation for victims of crimes. The only reasonable thing to do therefore is to agitate for a constitutional amendment in the interest of victims of crimes in the country, or clamour for a very specific legislation for the interest of victims of crimes as have been done in several countries of the world.

The Administration of Criminal Justice Act (ACJA),⁵² is now the formal legislation for the administration of criminal justice in Nigeria. It must be emphasized here that when the ACJA finally came into force, its intendments and provisions were geared towards prison de-congestion. It therefore in its sections 453, 460 and 468 addressed the problem of extreme use of imprisonment as a disposal method in the criminal justice system in Nigeria, hence it introduced some substitutes to imprisonment. Another remarkable restorative justice innovation that the ACJA introduced is that it made provisions for the payment of compensation to a victim of crime, hence it provided that: 'A court may, within the proceedings or while passing judgment, order the defendant or convict to pay a sum of money: (a) as compensation...'⁵³ Furthermore, the courts have been empowered by the Act that in delivering judgment, notwithstanding the limit of its civil or criminal jurisdiction, 'Award to a victim of crime 'Commensurate Compensation,'⁵⁴ by the defendant or any other person or the state ...and may call for additional evidence to enable it determine the quantum of compensation to award in sub-section 1.'⁵⁵ From the ACJA, the court can also order restitution in addition to, or in lieu of any other punishment to an offender, to the extent of returning the property to the owner, or to the owner's representative, or to pay an amount equal to the value of the property.⁵⁶ The court has powers to equally order who caused the arrest and charge of a defendant to pay him cost for frivolous, malicious and vexatious accusation if there was no sufficient ground, or reason for instigating the arrest and charge in the first place.⁵⁷ There is also a further provision that 'any compensation ordered to be paid under the Act, may be enforced as if it were a fine.'⁵⁸ There is also the provision for both restoration of wrongfully converted or detained property, plus 'award of reasonable damages to the person entitled to the property and the damages awarded may be recoverable in like manner as in section 325.'⁵⁹ Another important provision of the ACJA is on plea bargain that aims at reconciling the victim and the offender, and compensating the victim for his losses arising from the offence.⁶⁰ It is therefore, submitted that the ACJA is a hybrid of both retributive justice and restorative justice piece of legislation that fuses the values of the two principles together.

4. Advantages of Restorative Justice and Compensation for Victims of Crimes

Several scholars of restorative justice and its proponents have argued and maintained that out-of-court settlement of cases whether involving violent crimes or not, can be resorted to through diversionary programs. According to them, data available on the potential intrinsic value of out-of-court dispute resolution, suggest that defendants and complainants are usually

⁴⁷ The Police Act 2020

⁴⁸ See section 31 Police Act (2020).

⁴⁹ Hereinafter referred to as CFRN (1999).

⁵⁰ See sections 35, and 36 of CFRN (1999) as amended.

⁵¹ See sections 33, 34, 35, 36, 37, and 38 of CFRN 1999 (as amended).

⁵² 2015

⁵³ See section 319(1) (a) of ACJA, 2015.

⁵⁴ See section 314, ACJA

⁵⁵ Ibid sub-section 1 & 2.

⁵⁶ See section 321, ACJA 2015.

⁵⁷ Section 323 ACJA, 2015.

⁵⁸ Section 325, ACJA 2015.

⁵⁹ Section 328, ACJA 2015.

⁶⁰ See section 270, ACJA, 2015.

satisfied with restorative justice and mediation programs⁶¹ Furthermore, it does appear that restorative justice is the primary form of out-of-court dispute resolution in criminal and juvenile cases, thus, most of the available data regarding out of court settlements are derived from restorative justice effectiveness studies. Also, meta-analysis of studies of restorative justice demonstrates significantly higher satisfaction levels for victims who participated in restorative justice programs when compared with those who participated in criminal court proceedings.⁶² Other studies have found high levels of satisfaction for defendants who participate in restorative justice, as well as the perception that the process is fairer than criminal court proceedings⁶³. Perhaps, the most obvious benefit to both the defendant and the complaining witness in the restorative justice process and system, might be to avoid the psychological and temporal costs of criminal court as both the defendant and the complainant may be relieved to avoid a protracted litigation process that involves numerous court appearances and for the defendant, invasive pre-trial conditions of release. The complaining witness may also be relieved to avoid testifying as a witness in open court and being subjected to cross examination, more so, when it is obvious that the privacy of out-of-court dispute resolution avoids the publicity, or potential publicity of all the events that took place during the crime.⁶⁴

Another great advantage of out of court dispute resolution as canvassed by restorative justice practitioners is what is termed as 'informality'. Accordingly, several persons especially wealthy ones avoid becoming defendants in criminal and juvenile cases whenever possible in order not to be noticed in court, or to be convicted in court. Thus, they hire attorneys to negotiate private resolutions as any incident that leads to criminal charges is likely to tax pre-existing relationships, which may be repaired through a mediation-like process. In essence, defendants and complainants often are able to resolve criminal cases out of court to their mutual satisfaction. This was the position taken by the majority of the Supreme Court of the United States of America in *Gregg v. Georgia*.⁶⁵ The gravamen of the generality of opinions on the advantages, or disadvantages of restorative justice is that whether the benefits of out-of-court dispute resolution outweighs its risks or disadvantages, largely depends on the specifics of the dispute resolution program employed. Thus, restorative justice experts have argued and encouraged all parties in the process to select a workable program that can resolve all their issues amicably.

5. Restorative Justice as Practiced in a few Selected Countries

From the records available during the time of this research, it was discovered that the United Nations had recognized the problem created by the so much emphasis placed on the traditional custodial punishment approach of the criminal justice system/process which recognizes only the state and the offender as the parties in a criminal transaction and proceeding in court. And in furtherance of this afore said recognition, the United Nations equally identified the fact that there is a serious problem created by this dichotomous approach to criminal justice in several nations of the world, hence the United Nations General assembly had to adopt a resolution on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.⁶⁶ The provisions of the principles in the Declaration, reveals that victims of crimes have a plethora of rights and this may be the reason why the Resolution defined a victim of crime to mean: 'Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power'.⁶⁷

The Principles in the Declaration defined the term Restitution and provides that offenders (those who commit criminal offences) should be held responsible for their behaviour, and should, where appropriate, make fair restitution to the victims of their crimes, or to their families, or to their dependants, where the victim of the crime is no more. And that such restitution/restoration may include: the return of property, or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the offence/crime, provision of services and the restoration of rights that may have been lost in the process of the offence or crime.⁶⁸ There is a very important paragraph of the Principles in the Declaration which is a call on governments of nation states of the world to review their practices, regulations and laws so as to consider restitution as an available sentencing option in criminal cases and trials, in addition to the other known and traditional criminal sanctions/punishments for an offender. National Governments were therefore urged to review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions⁶⁹. The Declaration equally made serious provisions for victims of crimes which is our concern in this research, to the extent that, when compensation is not fully available from the offender as the case may be, or from other sources, then states should endeavour to provide financial compensation to: Victims who have sustained significant bodily injury, or impairment of physical or mental health as a result of serious crimes, or the family, in particular dependants of persons who have died or

⁶¹ J Okwendi, (2014) 'The Role of Restorative Justice in Complementing the Justice System and Restoring Community Values in Nigeria' *Asian Journal of Humanities and Social Sciences (AJHSS)* 2.

⁶² J Latimer, C Dowden and D Muise (2005) 'The Effectiveness of Restorative Justice Practices: A Meta-Analysis' *The Prison Journal* 85(127) 136. See also B Poulson (2003) 'A Third Voice: A Review of Empirical Research on the Psychological Outcomes of Restorative Justice'

⁶³ L Walgrave (2011) 'Investigating the Potentials of Restorative Justice Practice' *Walsh University Journal of Law* 36(91) 103.

⁶⁴ M S Umbreit and M P Amour (2011) 'Restorative Justice and Dialogue: Impact, Opportunities and Challenges in the Global Community', *Walsh University Journal of Law & POL'Y* 36(65) p 71.

⁶⁵ (1976) 428 U.S 153, 183.

⁶⁶ UNDBPJCAAP Resolution 40/34, adopted on November 29, 1985.

⁶⁷ See Paragraph 1 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power hereinafter referred to as (UNDBPJCAAP).

⁶⁸ Paragraph 8, (UNDBPJCAAP).

⁶⁹ Paragraph 9 (UNDBPJCAAP)

become physically or mentally incapacitated as a result of such victimization.⁷⁰ Furthermore, the Declaration emphasized the establishment, strengthening and expansion of national funds to be used for the compensation of victims of crimes, which should be encouraged by all member nations/states, and that where appropriate, other funds may also be established for this purpose, including in those cases where the state of which the victim is a national is not in a position to compensate the victim for the harm.⁷¹

6. Restorative Justice in India

It has been observed that right from the inception of the judicial system in India, the main purposes underlying the existence of the courts of justice is the 'discovery, vindication and establishment of truth.'⁷² But does the State's obligation end with the mere registration of a case, investigation, commencement of prosecution, conviction, and sentencing of the perpetrator(s)/accused, or is there still an obligation owed to the victim(s) of the crime by the state after taking these measures as well? The answer to this question was the reason why restorative justice practitioners started agitating for the operative principle in criminal justice dispensation to be fair trial and justice not only to the accused, but also to the victim of the crime, a rule which involves subtle judicial balancing of competing interests.⁷³ Consequently, the government of the day proactively reacted which later led to the setting up by the Indian Government of The Malimath Committee for the Reform of Criminal Justice System.⁷⁴ Accordingly, The Malimath Committee in its report in 2003 addressed the subject of victim compensation and recommended that the victim should be given a right to adequate compensation. The Committee equally recommended further in the report that, in case of compensation being inadequate for a victim, he shall have the right to prefer an appeal.⁷⁵ And that the obligation of the Indian government to recompense/compensate a victim of crime is therefore recognized legally irrespective of the status of the offender, or whether the offender was apprehended or not, convicted or acquitted⁷⁶.

Researches have revealed that sometimes again in 2008, after the Malimath Committee Report, significant changes were made in the Criminal Procedure Code of India to the extent that there was a specific focus on the rights of victims in criminal trials, particularly those involving sexual offences. A new provision of Section 357A was thereafter introduced even though section 357 remained unchanged. This new provision of section 357A grants the courts the power to direct the State to provide compensation to the victim of a crime if the amount awarded under Section 357 is not sufficient for their rehabilitation, or in cases where the accused is acquitted or discharged and the victim requires rehabilitation.⁷⁷ It is observed that the main emphasis of this provision is on rehabilitating the victim even if the accused is not tried, and in such situations, the victim needs to apply to the State, or District Legal Service Authorities, as applicable, to seek his compensation. The said section 357A of the Criminal Procedure Code also makes it the duty of the State Government to establish a compensation scheme for victims of crime, their dependents, and those who have suffered loss or injury as a result of crime and require rehabilitation.

8. Restorative Justice in Australia

Australia as far back as early 1990s had started the introduction and establishment of 'Specialty Courts'⁷⁸ which were cut out to cater for special needs of persons who commit certain crimes because of their state of mind and health. These Specialty Courts were specifically canvassed for in recognition of the fact that, 'social problems which have contributed to a defendant's behaviour may require social solutions.'⁷⁹ According to the proponents of the 'Specialty Courts' in Australia, problem-oriented courts act as a 'hub' in a wheel which connects all the various spokes in the wheel. Several examples of such spokes in terms of criminal acts include; alcoholism, drug issues and treatment, and several other crimes committed by youths in a community. They further posited that, the key features of problem-oriented justice, whether in specialty courts, or the mainstream criminal justice system, are: 'focus on case outcomes; system change; judicial monitoring; collaboration and non-traditional roles'⁸⁰ From researches available, it does appear that it is the government of New South Wales in Australia that was the first to take a foremost step in the gravitation into restorative justice and compensation for victims of crimes. This is evidenced in the signing into law of the Victims Rights and Support Act⁸¹. The New South Wales Victims' Rights Support Act contains a Charter that has provided eighteen (18) rights to a victim of crime, which ranges from right to be treated with respect and compassion as a victim of crime, right to information about services and remedies available, right to access to services, right to information about investigation of the crime, etcetera.⁸² It is imperative at this juncture to point out here that even though this Victims' Rights and Support Act is a product of the government

⁷⁰ Paragraph 12 (UNDBPJVCAAP).

⁷¹ Paragraph 13 (UNDBPJVCAAP).

⁷² R Mahajan (2024) 'Victim Compensation Laws in India' Retrieved from: <<https://www.lexology.com>> August 4, 2024.

⁷³ Ibid

⁷⁴ The Malimath Committee (2003) *Report of the Committee for the Reform of Criminal Justice System of India* (India, Indian ministry of home affairs) 3

⁷⁵ Ibid

⁷⁶ R Mahajan (2024) 'Victim Compensation Laws in India' Retrieved from: <<https://www.lexology.com>> August 4, 2024.

⁷⁷ See section 357A of the amended Indian Criminal Procedure Code (2008).

⁷⁸ Specialty Courts are problem-solving courts/sessions that provide court-supervised probation and required treatment and its use has increased tremendously of recent. It has been suggested that problem-oriented courts 'challenge the nature of our regular courts and represent something of a revolution in the way in which the regular courts might operate in modern democratic societies' Criminal justice specialty courts were first introduced in Australia in the late 1990s.

⁷⁹ L Bartels (2009) 'Mainstreaming Problem-Oriented Justice: Issues and Challenges' In M Segrave (ed), Conference Proceedings of Australian & New Zealand Critical Criminology Conference, Monash, Australia, Criminology School of Political & Social Inquiry Faculty of Arts Monash University December, 2009). Retrieved from: <<http://www.arts.monash.edu.au/criminology>> 31-32. January 23, 2023.

⁸⁰ G Berman and J Feinblatt (2001) 'Problem-Solving Courts: A Brief Primer' *Law and Policy Journal* (LPJ) 23, 125.

⁸¹ Victims' Rights and Support Act (VRASA) New South Wales, Australia (2013).

⁸² See generally section 6 of Victims' Rights and Support Act 2013 of New South Wales, Australia, which contains the Charter of Victims' rights.

of New South Wales, its application has spread even to all nooks and crannies of Australia as all parties in almost all criminal proceedings, have been seen complying voluntarily and without compulsion with the provisions of the Charter to the Act⁸³.

9. Restorative Justice in Ghana

Researches available have revealed that there is no specific, nor comprehensive legislation for restorative justice, or compensation for victims of crimes in Ghana, except for the provisions of the Criminal Procedure Code.⁸⁴ Thus, the Ghanaian legal framework does not have any comprehensive, or specifically designed system of restoration for victims of crimes. The effect of this lack of any specific legislation for victims of crimes, is that victims of crimes have to grapple with the problem of seeking redress in court for any criminal acts against them, although, there is the practice of court-ordered-restitution⁸⁵ like the Nigeria Plea Bargain outcome during sentencing. This was the practice until The Amendment 2002,⁸⁶ which provided in its section 4, that an offender who admits the offence, or pleads guilty to the offence can inform the prosecutor if he is ready to make reparations or pay compensation to his victim. However, the Ghanaian Domestic Violence Act⁸⁷ makes domestic violence an offence punishable either by a term of imprisonment, or by fine, or both.⁸⁸ A section of the Act has further provided for the establishment of a fund for the support of victims of domestic violence.⁸⁹ And that the money in the fund is to be applied to, amongst other things, the basic material support for the victims of the crime.⁹⁰ The sources for the funds shall come from voluntary donations and contributions from both public and private sectors, plus the sum appropriated for it by parliament. Accordingly, the essence of the fund is primarily intended to restore the victim to their original position before the crime was committed against them.⁹¹

Granted that the ACJA had made very salient and lofty provisions on restoration, restitution and compensation for victims of crimes in Nigeria, it is submitted that they are not very insufficient when compared with what is obtainable in other climes of the world as shown above. This we say because most of the provisions are more of powers exercisable only by the discretion of the trial court. Most importantly, how to determine the quantum, or amount to be awarded as compensation, or for restitution and restoration purposes is not provided in the Act. A majority of the provisions therefore appear vague, ambiguous, or as a matter of speculation. But in other climes of the world, provisions for restoration, restitution, or compensation for victims of crimes are very explicit, clear and unambiguous. For instance, the provision for the establishment of a fund by the government for the payment of compensation to victims of crime in India,⁹² Australia,⁹³ New Zealand, etcetera are all explicit and without any room for the exercise of discretion. And this is viewed as a guarantee that an awarded compensation must be paid either by the defendant, his estate, or government. Thus, a *sin qua nun* for the reduction of crime rate in any country of the world including Nigeria.

From the foregoing therefore, it does appear that, there must be a constitutional amendment or amendment of criminal justice legislations in Nigeria to provide expressly for victims of crimes. There must equally be judicial activism by everybody in the criminal justice system so as to actualize a restorative justice regime for victims of crimes. There is the need too, to establish a compensation fund at all levels of governance in Nigeria which will be used to cater for victims of crimes as applicable in India and Ghana. There is equally an urgent call on the government of the day in Nigeria to completely overhaul the criminal justice system with a view to avoid the incessant delays in trial proceedings in obedience to the UN directives to nation states to implement the provisions in the 1985 Declaration. Ultimately, there is therefore an urgent call to action, not only for policy makers and legal practitioners in Nigeria, but for the Nigerian Nation as a whole society, because it is now obvious that restorative justice practice is not just an abstract legal theory, but a practical approach, capable of changing lives. Community leaders, victims' rights advocates, and legal stakeholders must collaborate to ensure that Nigeria's justice system evolves to embody principles of restorative justice which include: fairness, healing, and meaningful accountability in the criminal justice system. It is finally submitted that now is the time to advocate for a criminal justice system that prioritizes restoration over custodial punishment.

In conclusion, it must be reiterated that what is being done in this article is an x-ray on the restorative justice approaches and practices regimes of a few selected countries of the world so as to compare with what is obtainable here in Nigeria. And from all that have been stated above, there is no gain saying it that this work has revealed that an increased emphasis on restorative justice practices in criminal proceedings have led drastically to the reduction of crimes rates and a great assurance of hope for victims of crimes in all the countries herein under review, hence Nigeria is urged to look beyond punishing an offender and institutionalize restorative justice practices for victims of crimes.

⁸³ See generally the decision in *Kingi and McEwen v. New Zealand Police* CRI-2007-483-4

⁸⁴ No: 30 1960

⁸⁵ See sections 145 and 146 of Act No: 30 (1960).

⁸⁶ See generally Courts (Amendment) Act, 2002 (Ghana) (Act 620).

⁸⁷ No: (732), 2007.

⁸⁸ See section 24 of the Act, (732) 2007

⁸⁹ See section 29 of the Act.

⁹⁰ *Ibid*

⁹¹ 'Let's have crime victims' compensation fund in Ghana' *Modern Ghana Newspaper publications*, Ghana, July 14, 2007), Retrieved from: <<https://www.modernghana.com>> September 1, 2024.

⁹² See the report of the Malimath Committee (2003) *Report of the Committee for the Reform of Criminal Justice System of India* (India, Indian ministry of home affairs) 3. See also See section 357A of the amended Indian Criminal Procedure Code (2008).

⁹³ See the Victims' Rights and Support Act (VRASA) New South Wales, Australia (2013).