



**Towards a Restorative Justice Paradigm for The Criminal Justice System of Nigeria:
Comparing the Approach of Canada and the United States.**

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LL.M. LONG THESIS

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DEDICATION

This thesis is dedicated to God almighty for his unending grace which saw to the completion of this work. I also dedicate this thesis to Mr. and Mrs. Fisse who encouraged and supported me through my sojourn as a master's student. I further dedicate this research to Mrs. Okeoma Ibe and Mr. Stanley Ibe for their moral and financial support during this past year. To Mr. Joseph Amenaghawon for being a true friend and a pillar of support. Finally, to my family, friends and colleagues for all the support and encouragement.

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EXECUTIVE SUMMARY

Victim neglect and delayed justice has become the norm of the criminal justice system of Nigeria. The primary focus of the current justice regime is prosecution and punishment. As a result, we have the victims of crimes sidelined, the offender's justice delayed, increased community mistrust in the criminal process, frustrated prosecutors, and an unrealistic workload for the judiciary. The government on its part is unable to reconcile the justice system and the public order it seeks to preserve.

Resolving the problem of victim neglect and delayed justice is very key to the protection of human rights, law, and order in the Nigerian society.¹ As a viable solution, this research proffers the incorporation of restorative justice principles and programs into the criminal justice system of Nigeria through a comparative study of the adopted models in Canada and the United States.

“Restorative justice is a way of responding to criminal behavior by balancing the needs of the community, victim and offender”². Incorporating restorative programs in Nigeria's criminal justice system will not only balance the needs of all the stakeholders³ but also “divert cases out of the system and provide the system with a range of constructive sanctions”.⁴

¹ B. Ayorinde & Co, *Nigeria: A Reformatory Approach to the Criminal Justice System in Nigeria*, February 18, 2014 Mondaq, <http://www.mondaq.com/Nigeria/x/293894/Public+Order/A+Reformatory+Approach+To+The+Criminal+Justice+System+In+Nigeria> last accessed November 2, 2016.

² United Nations Office on Drugs and Crimes (UNODC), *Handbook on Restorative Justice Programmes*, Criminal Justice, Handbook Series (2016) p. 6 https://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf last accessed November 2, 2016.

³ Victim, Offender, family members and the community at large.

⁴ UNODC, *Handbook on Restorative Justice*, supra, p. 2.

INTRODUCTION

i. Background to The Study

In 2008, Amnesty International declared that the Nigerian criminal justice system has failed the people.⁵ The organization termed this failure a “conveyor belt of injustice from the beginning to end.”⁶ Delay in the dispensation of justice and victim neglect has become the norm in Nigeria⁷ – leading to the heightened mistrust in the justice system. The retributive focus of the current criminal justice regime can be identified as a major cause of the disintegration of the criminal justice system. Although records point to other contributing factors like corruption within the judiciary and other sectors of the justice system,⁸ it would be foolhardy to attribute the current state of the criminal justice system to the vices of the greedy alone.

Rather, an analysis of the breakdown in criminal justice system stresses the need for change in the overall policy framework underlining crime and crime prevention in Nigeria. It is on this policy framework that this research will focus: This thesis proffers that the bedrock of the criminal justice system of Nigeria should move towards a restorative and collaborative model.

⁵ Amnesty International, *Nigeria: Criminal Justice System Utterly Failing Nigerian people; Majority Inmates Not Convicted of Any Crime*, Press Release, (February 28, 2008). <https://www.amnesty.org/en/press-releases/2008/02/nigeria-criminal-justice-system-utterly-failing-nigerian-people-majority/> last accessed December 21, 2017.

⁶ Ibid.

⁷ B. Ayorinde & CO, *Nigeria: A Reformatory Approach to the Criminal Justice System in Nigeria*, Mondaq (online), 18 February, 2014, <http://www.mondaq.com/Nigeria/x/293894/Public+Order/A+Reformatory+Approach+To+The+Criminal+Justice+System+In+Nigeria> last accessed December 21, 2017.

⁸ UNODC, *Assessment of Justice System Integrity and Capacity in Three Nigerian States*, The United Nations, 2004. http://www.unodc.org/pdf/crime/corruption/corruption_nigeria_justice_sector_assessment_2004-05.pdf last accessed December 21, 2017.

An effective and efficient criminal justice system is necessary for the rule of law,⁹ and for human rights protection. An effective system is not merely one that seeks to promote public order, but a system that guarantees effective justice for all stakeholders (i.e. the victim, offender, society and state actors).¹⁰ The current criminal justice regime in Nigeria has been unable to achieve this fit. In addition, statistics have established the need to address prolonged pretrial detention¹¹ and overcrowding in the Nigerian prisons.¹² Reports confirm that the average pretrial detention in Nigeria last for 3-7 years.¹³

One may take solace from the experience of countries like the United States, Canada, New Zealand, and many others. These Nations faced similar challenges, and have made significant reforms. Indeed, these reforms are still ongoing, for no country can lay claim to a perfect justice system.

Nigeria operates an adversarial system derived from the common-law tradition introduced by the British colonial masters. The common law, the received English law, Islamic law, and customary law form the bedrock of the current legal system. These components have rarely been revised. The features are archaic. Great store is placed on punishment rather than reformation.

⁹ Dr. Agbonika John & Alewo Musa, *Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint*, Journal of Law, Policy, and Globalization, 130 – 138 (2014).

¹⁰ Yvon Dandurand, Alison Macphail, *Using Indicators to Help Improve the Criminal Justice System*, International Center for Criminal Law Reform and Criminal Justice Policy, Canada (Reinventing Justice – 2015, Seventh National Criminal Justice Symposium – Montreal) January 24, 2015. http://icclr.law.ubc.ca/sites/icclr.law.ubc.ca/files/publications/pdfs/Using%20Indicators%20to%20Help%20Improve%20the%20Justice%20System_Dandurand_Macphail.pdf last accessed December 21, 2017.

¹¹ Open Society Justice Initiative, *Presumption of Guilt: The Global Overuse of Pretrial Justice*, Open Society Foundations, 2014. <https://www.opensocietyfoundations.org/publications/presumption-guilt-global-overuse-pretrial-detention> last accessed December 21, 2017.

¹² Tosin Osasona, *Time to Reform Nigeria's Criminal Justice System*, Journal of Law and Criminal Justice Vol 3 No 2 December 2015 <http://jlcjnet.com/vol-3-no-2-december-2015-abstract-7-jlcj> last accessed, December 21, 2017.

¹³ The Global Overuse of Pretrial Justice *supra*. p. 26

Although criminal justice reform projects like the “support to the Justice sector in Nigeria” project¹⁴ were introduced in Nigeria, very little has changed. Substantive progress can only be achieved with the introduction of a new paradigm like restorative justice. An overhaul of the system is necessary to reflect the growing trend and to restore public confidence in the judicial system.¹⁵ Countries that faced similar problems in the past adopted the restorative justice approach, so it is not unprecedented. Against the above backdrop, Nigeria can apply this approach – by learning from the experiences and experiments of other Countries such as Canada and the United States.

Canada is considered the “birth place” of restorative justice.¹⁶ The first program was introduced in Kirchnera, Ontario in 1974.¹⁷ In 1996 the Canadian Parliament enacted a Bill changing the sentencing regime and incorporating restorative justice into the Criminal Code of Canada.¹⁸ Today, Canada has a well-established restorative justice framework. Although the United States is not as advanced as Canada, it has recorded some improvements in restorative justice. The Federal Bureau of Investigation in October 2016 recorded a significant reduction in recidivism through restorative practices in various states.¹⁹ The United States also have different youth restorative oriented correctional programs.²⁰

¹⁴ United Nations Office on Drugs and Crimes (UNODC) Brussel, The European Union 10th EDF Programme In Nigeria: *Support to The Justice Sector in Nigeria*, (Report of the UNODC) 2013, <http://www.unodc.org/brussels/en/justice-nigeria.html> last accessed December 21, 2017.

¹⁵ Tosin Osasona, *Time to Reform Nigeria's Criminal Justice System* Journal of Law and Criminal Justice Vol 3 No 2 December 2015 <http://jlcjnet.com/vol-3-no-2-december-2015-abstract-7-jlcj> last accessed December 21, 2017.

¹⁶ Joanne Katz; Gene Jr. Bonham, *Restorative Justice in Canada, and the United States: A Comparative Analysis*, 6 JIJIS 187, 196 (2006) p. 187.

¹⁷ Ibid.

¹⁸ Megan Stephens, *Lessons from the Front Lines in Canada's Restorative Justice Experiment: The Experience of Sentencing Judges*, 33 Queen's L.J. 19, 78 (2007) p. 26

¹⁹ David Newton M. S, *Restorative Justice and Youthful Offenders*, The Federal Bureau of Investigation(FBI) Law Enforcement Bulletin, October 6, 2016. <https://leb.fbi.gov/2016/october/restorative-justice-and-youthful-offenders> last accessed December 12, 2017.

²⁰ Ibid.

This research will use the experience in Canada and the United States to conduct a comparative analysis with the Nigerian context, and to develop suggestions for a viable policy framework and restorative justice models for Nigeria. These three jurisdictions are apt for a comparative analysis because they all practice the adversarial criminal procedure, and share similar features of the common-law system. There also exist significant differences in the structures and policies of the criminal justice system. For example, Shariah law is part of the Nigerian legal system and it is applicable in the Northern states. However, the unique features of these jurisdictions will also inform my policy analysis and conclusion. In addition, my study will evaluate pre-existing practices in Nigeria, which can be utilized to enhance the criminal justice system.²¹

ii. Statement of Research Problem.

The primary aim of this research is to address the issue of victim neglect and delayed justice in the criminal justice system of Nigeria and how a restorative justice framework can be incorporated to resolve these problems. The research also proffers a justice system whose core value is to restore and reform - promote the rule of law, access to an effective justice system and human rights protection. In addition, this research will provide material and informed recommendations that will help strengthen the Nigerian criminal justice system while advancing reforms in line with international standard and treaties.

iii. Hypotheses and Research Questions.

It is the assertion of this thesis that the problem of delayed justice and victim neglect in the criminal justice system of Nigeria can only be resolved by the adoption of a restorative justice approach.

²¹ Elechi, Ogbonnaya O. "Victims under restorative justice systems: The Afikpo (Ehugbo) Nigeria model." *International Review of Victimology* 6, no. 4 (1999): 359-375. *PsycINFO*, EBSCOhost (accessed November 2, 2016)

While restorative justice cannot replace the entire criminal justice system, it can serve as a complementary mechanism through the introduction of measures and programs with restorative values. However, the underlining principles of criminal justice policies should be anchored on restorative values not retributive.

This thesis will address the following questions; how can restorative justice models as a viable solution to victim neglect and delayed justice be incorporated into the criminal justice system in Nigeria? What are the limitations of restorative justice models? What is the model for Nigeria, considering existing standards, success, and failures?

iv. Methodology and Scope

This research will adopt empirical and theoretical means to gather, analyze, and apply data to the research questions: evaluating the existing models of restorative justice in Canada and the United States alongside Nigeria. This research will use primary and secondary data—such as statutes, United Nations (hereinafter referred to as UN) Reports, case law, and academic texts—to present theories, standards, practices, and models for restorative justice. Conclusions will be drawn and applied through a comparative analysis. Arguments against restorative justice as a paradigm of criminal justice will also be properly engaged in this research.

This research will cover in short detail, the defects of the Nigerian criminal justice system and root cause; the concept of restorative justice, origin, and practices. The underlining theories in support and against the principles of restorative justice. A brief reference will be made to the legal structure of Canada and the United States. Models of restorative justice will be identified and conclusion on the viability of incorporating the same in Nigeria will be drawn.

The theoretical framework to this research and current restorative justice models will be presented in chapter one, including a brief Insight on the principles, theories, and models of restorative justice – the arguments in support and against restorative justice.

International standards and framework for restorative justice are considered in chapter two. In chapter three, the current restorative justice frameworks and models in United States and Canada will be analyzed at different levels.

In Chapter four, a restorative framework for Nigeria will be proffered based on the conclusions drawn from analyzing the paradigm in the three jurisdictions- in Canada, United States, and Nigeria. Recommendations for adopting viable restorative justice models and inherent challenges of finding an ideal framework for Nigeria will be outlined.

v. Limitation of Research.

This research is largely based on secondary sources. Direct survey was not carried out and very little primary sources like statutes were consulted.

vi. Definition of Key Concepts.

“Restorative justice”: refers to a process of addressing crime by engaging all stakeholders with the aim of redressing the harm caused, transforming the offender, and restoring relationships.

Restorative justice “models”: refers to programs structured based on restorative principles with the aim of achieving a restorative outcome.

“Restorative outcome”: any conclusion reached through a restorative process.

“Restorative justice framework”: As used in this research refers to the policies and structures upon which restorative programs are implemented and restorative is incorporated into a justice system.

CHAPTER ONE: THEORETICAL FRAMEWORK AND MODELS OF RESTORATIVE JUSTICE.

1.1. “Why Restorative justice”?

Conceptually, “restorative justice is a way of responding to criminal behavior by balancing the needs of the community, victims, and offenders.”²² Emphasis is placed on victim satisfaction, while also addressing the needs of the offender and community at large. The underlining effect of balancing these needs is transformation of all stakeholders, including the judicial system. In 2005, panelists at the eleventh UN Congress on crime prevention and criminal justice identified restorative justice as an important alternative to the conventional criminal justice practices.²³ Panelists also expressed challenges in reforming the Nigerian criminal justice system amongst others.²⁴

Restorative justice (hereinafter referred to as “RJ”) and alternatives to imprisonment are both part of the 2016 United Nations standards and norms in crime prevention and criminal justice.²⁵ Member States are enjoined to formulate national strategies and policies aimed at developing restorative justice.²⁶ The contemporary restorative justice movement gained significance as a way of correcting the failures of the traditional retributive criminal justice system.²⁷ UNODC noted that, “restorative justice programs can be used to reduce the burden on the criminal justice

²² United Nations Office on Drugs and Crimes (UNODC), *Handbook on Restorative Justice Programmes*, Criminal Justice Handbook Series (2006) p. 6, http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf last accessed December 21, 2017.

²³ United Nations, Eleventh UN Congress on Crime Prevention, and Criminal Justice: *Workshop on Criminal Justice Reform Highlights Need for Restorative Justice as Alternative to Prison*, 18 - 25 April 2005, Bangkok, Thailand. <http://www.un.org/events/11thcongress/docs/bkkcp18e.pdf> last accessed December 21, 2017.

²⁴ Ibid.

²⁵ UNODC, *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*, United Nations, 2016 pp. 79 -95.

²⁶ Ibid. p 95

²⁷ Jennifer J. Llewellyn, Robert Howse, *Restorative Justice - A Conceptual Framework*, Prepared for the Law Commission of Canada 1999 p. 13, <https://ssrn.com/abstract=2114291> last accessed December 21, 2017.

system.”²⁸ Crimes such as theft, rape, arson, drug abuse and others can be diverted to other restorative forum through which the offender can be held accountable and victim need addressed.

Restorative justice principles can be adopted through the incorporation of restorative programs. These programs are geared towards solving crime by securing the participation of all affected parties.²⁹ They are based on ensuring reparation for harm suffered by the victim and helping the offender accept responsibility for the wrong done.³⁰ By participating in the resolution process, the offender can be made to fully understand the effect of his action and need to accept responsibility. Through dialogue, the root cause of the offender’s actions can be identified, and measures taken to avoid reoccurrence.

More so, focus is not solely on the crime committed, but rather on repairing the damage done to the victim, offender, and society at large. Recognizing the harm done and collectively finding a solution ensures that relationships are mended, trust in the public order and security restored and crime prevention strategies are identified.³¹ A restorative process presents an offender the room to assume genuine responsibility for his/her behavior.³² It presents the conducive environment for mental transformation of the offender and healing for all affected parties. The restorative justice paradigm emphasizes the equal importance of, and respect for all parties.

Arguments on the viability of restorative justice as a possible framework paradigm and opposing viewpoints including theories in this field will be presented in detail subsequently. It is imperative

²⁸ UNODC, Handbook on Restorative Justice Programmes *supra*. p. 2.

²⁹ *Ibid.* 5

³⁰ *Ibid.* 8

³¹ *Ibid* p. 10

³² *Ibid.* p. 11

that a justice system is effective, accessible, accountable, transparent, and fair. Restorative justice can help the criminal justice system in Nigeria to achieve all the above.

1.2. Retributivism and Restorative Justice.

The traditional criminal justice system is built on the retributive ideology. Retributivism as a theory of crime and punishment is anchored on the principle of “just desert”³³ and proportionality. The proponents of this theory are of the view that an offender be punished in proportion to the crime committed.³⁴ Punishment in this sense must be meted out based on “just desert (merit)”.³⁵ In the words of Thom Brooks,

*“a hardworking student may be thought to deserve good marks, or a person deserves punishment because she committed a crime.”*³⁶

This principle however fails to consider other factors, like remedies for the victim of a crime or causation of the crime – what led the offender to act that way.

Another problem with the retributive theory is that it is vengeful. It underscores punishment as the fundamental response to injury incurred.³⁷ However, authors like Wesley Cragg have differentiated vengeance from retribution in terms of proportionality.³⁸ He surmised that while vengeance is focused on the hurt caused and the anger it generates leading to excessive punishment, retribution demands that punishment is proportionate to the crime committed. Such

³³ Thom Brooks, *Punishment*, Routledge New York, NY, 2013 pp. 15 -16.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Wesley Cragg, *The Practice of Punishment; Towards a Theory of Restorative Justice*, Routledge, 1992 p. 16.

³⁸ Ibid.

illustration explains why the society have decided to leave the nitty gritty of crime responsibility to the formal institutions of justice.

Assuming Wesley's argument is validated, what about other negative inherent characters of retributivism?³⁹ Take for example the principle of eye for an eye. By this principle, punishment should fit the crime, thus reinforcing proportionality of punishment. This however, raises the question of what should be regarded as an appropriate punishment?⁴⁰ The vague concept of proportionality has led to sanctions like the death penalty.

In addition to the above, retributivism does not consider the relational factors such as human emotions and how the abstract nature of retributivism may affect this. These factors are considered and addressed under the restorative justice paradigm.

Restorative justice emerged as an alternative to other theories of response to crime and punishment. The core idea is repairing the harm and broken relationships caused by the offender's actions. It has evolved in many contemporary criminal jurisdictions as a solution to what has been termed the "penal crises."⁴¹

Restorative justice seeks to make paramount the interests and needs of all parties. It translates the concept of "criminality" into a restorative process.⁴² The aim is to restore the offenders, victims, and the State community at large.⁴³ It offers an alternative to the traditional criminal justice

³⁹ Ibid.

⁴⁰ Ibid. p. 18

⁴¹ Eric Claes, Rene Foque, Tony Peter, *Punishment Restorative Justice, and the Morality of Law*, Intersentia, Antwerp – Oxford, 2005 p. 17,

⁴² Ibid.

⁴³ Thom Brooks, *Punishment*, Routledge New York, NY, 2013 p. 64.

framework. Restorative justice is more progressive because it proactively addresses the harm caused and seeks to proffer constructive ways to avoid reoccurrence.

Advocates of this theory reject the trial process which is adversarial and characterized with “the attempt to defeat the other.”⁴⁴ In its place, trial should be complimented or replaced by dialogue and mutual understanding through a restorative conference. Proponents of restorative justice have also insisted on the abolition of prisons. For this reason, they are called the abolitionists.⁴⁵

Restorative justice has been criticized as a non-conformer theory of punishment due to its rejection of prisons for offenders.⁴⁶ In this sense, it is regarded as an alternative to the theories of punishment rather than a theory in that regard. This argument however holds no weight. Imprisonment is not the sole definition of punishment. Theories like retributivism also proffer alternatives to imprisonment in form of fines for minor crimes based on the proportionality principle.⁴⁷

A plausible criticism would be that restorative justice does not proffer a holistic theory of punishment. This is drawn from the fact that it is not applicable to grave crimes. Initially, advocates had promoted restorative justice as an alternative for juvenile offenders and subsequently, for all offenders of relatively minor crimes. There is still uncertainty as to the possibility of applying this theory to grave crimes.

It is safe to say that while retributive justice has its justifications – it has failed to address core values such as compassion, forgiveness and reformation which are necessary for an effective

⁴⁴ Ibid. p. 65

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid. 67

justice system. The operation of the law in a retributive system is “uneven” and easily manipulated by those in position of power for their end interests.⁴⁸

Irrespective of the limitations of restorative justice, it remains a viable alternative to traditional criminal justice system today. For an offender to participate in a restorative conference, he must consent and confess his guilt genuinely. The process helps in ensuring true accountability in this sense. In addition, the process helps restore the offender, victim, and the affected family cum community. Reparation which is an end goal is achieved in this sense. The victim’s participation is also by choice and voluntary. Moreover, parties have the option of the formal system where the restorative conference fails – which rarely happens.

In addition, the overuse of pre-trial detention and prison congestion is a huge problem that has been largely addressed by the restorative theory. The restorative process offers a range of programs which include therapeutic treatments, payment of compensation, community service and a lot more. Reduction of recidivism as a fundamental concern of crime control is a core aim of restorative justice.

1.3. Models of Restorative Justice

Since the evolution of restorative justice, several models embodying the core values of restorative justice have emerged. They can be classified into four categories which include, the victim-offender mediation, community reparative boards, family group conferencing.⁴⁹

⁴⁸ Wesley Cragg, *The Practice of Punishment; Towards a Theory of Restorative Justice*, Routledge, 1992, p. 28.

⁴⁹ Gordon Bazemore, Mark Umbreit, *A Comparison of Four Restorative Conferencing Models*, Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention, U.S Department of Justice, February 2001, p. 1. <https://www.ncjrs.gov/pdffiles1/ojjdp/184738.pdf> last accessed December 21, 2017.

1.3.1. *The Victim-Offender Mediation*

This model of restorative justice is also called the “victim-offender reconciliation programs” or “victim-offender dialogue programs.”⁵⁰ As at 2001 the United States Department of justice recorded over 320 victim-offender mediation (hereinafter called “VOM”) programs in the United States and Canada.⁵¹ Over 700 VOM programs had been successfully established in Europe.⁵²

The VOM program presented a venue for the victim to share with the offender the overall impact of the crime on him or her. This is done in a secured and informal setting with a trained mediator. The victim is also able to participate in the decision of the best restitution plan for the offender.⁵³ In contrast with the mediation process in civil matters, the role of the victim and the offender in the crime is not in dispute.

Cases are referred to the VOM either “by judges, probation officers, victim advocates, prosecutors, defense attorneys, and law enforcement officers.”⁵⁴ Such cases are referred in two ways. A case may be referred for mediation before trial or after a guilty plea is entered for the defendant. The terms agreed upon by the offender and victim after the mediation process are reduced to a written agreement sent to the formal court.

Naturally, the primary aim of the victim-offender mediation is to aid the healing process for the victims. This is achieved through the creation of an informal and secure setting where victim and offender can mediate voluntarily. Secondly, it is to ensure that the offender understands the harm

⁵⁰ Ibid. p. 2

⁵¹ Ibid.

⁵² Most especially in the United Kingdom and in Austria.

⁵³ Gordon Bazemore, Mark Umbreit, *A Comparison of Four Restorative Conferencing Models*, supra.

⁵⁴ Ibid.

caused to the victim and willingly takes responsibility for his/her actions. This process is also geared at promoting mutual acceptance of the final decision.⁵⁵

Participation of the victim and offender in the mediation process should be voluntary. “Although, offenders almost never have absolute choice, for example, the option of no juvenile justice intervention.”⁵⁶

However, VOM has many advantages for both parties. Victims are less traumatized or scared of “being revictimized.” They are more satisfied compared to victims that go through the formal criminal justice system. In addition, recidivism rate based on comparative reports are lower “among offenders” that participated in VOM than those who went through formal criminal justice system.⁵⁷

1.3.2. Community Reparative Boards

This is a modern version of the sanctioning system used in small communities. According to Bazemore and Umbreit,⁵⁸ Community Reparative Boards (Herein after called “CRB”) are

*“generally known by such terms as youth panels, neighborhood boards, or community diversion boards. These panels or boards have been in use in the United States since the 1920’s, and their contemporary counterparts, reparative boards, have been in use since the mid1990’s, principally in Vermont”.*⁵⁹

⁵⁵ Gordon Bazemore, Mark Umbreit, supra. p. 3

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid p. 3

CRB is mostly used for less serious and juvenile crimes. However, the modern CRB is made up of citizens who undergo training in order to preside over crimes that have been referred by a court of law. The board members conduct a “face to face meeting”⁶⁰ with the offender in public, after which they come to an agreement on the best sanction to be meted out.⁶¹ Afterwards, the CRB “monitor compliance and submit compliance report to the court.”⁶² At the end of every CRB Case, the board members reduce the terms of proposed sanction into an agreement which must be agreed to and signed by the offender.⁶³

While the victim is less involved in this process, the offender is more involved and is given a great deal of room to decide on the sanction he is given to make reparation for the crime committed. The offender is made to take responsibility personally for his/her action and held accountable by both the victim and the community. This process “promotes the citizens ownership of criminal and juvenile justice system by involving them directly in the justice process.”⁶⁴

1.3.3. Community & Family Group Conferencing

Community group conferencing as a restorative process, is geared towards bringing together the families and friends of the victim and offender to discuss the harm done by the offence committed and possible remedies that is satisfactory to all parties concerned with the help of an expert facilitator. This model of restorative justice has been in operation since 1989 in New Zealand and

⁶⁰ Ibid.

⁶¹ Ibid. 4

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

1991 in Australia.⁶⁵ It is also called the Wagga Wagga model and has wide spread acclaim in North America.⁶⁶

However, in the words of Carolyn Hoyle, “communities were presumed to be supportive” in the praise for restorative justice.⁶⁷ This is often not the case, some communities might be more prone to jungle justice – taking the law into their hands by making a public spectacle of the offender and in some cases the victims.⁶⁸ Hence one must in addition to making a “case for restorative justice”⁶⁹ acknowledge the contributions of contemporary criminal justice system in the above regard.

Nevertheless, states like New Zealand and Canada⁷⁰ have made community & family group conferencing part and parcel of the formal criminal justice system. This process is quite useful in view of the role played by family members in ensuring the offender is brought to book for his actions and on the other hand give the victim the requisite emotional support to come to terms with it. In addition, it is easier for the community members to accept the offender back into their fold. The offender can also re-integrate into the society easily.

Cases can be diverted to this process from the point when it is reported to the police or after it has been taken before a law court.⁷¹

⁶⁵ Gordon Bazemore, Mark Umbreit, “*Conferences, Circles, Boards and Mediations: Restorative Justice and Citizen Involvement in the Response to Youth Crime*,” Balanced and Restorative Justice Project, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, September 1, 1999, p. 6.

⁶⁶ Gordon Bazemore, Mark Umbreit, *A Comparison of Four Restorative Conferencing Models*, Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention, U.S Department of Justice, February 2001, p. 6.

⁶⁷ Chris Cunneen, Carolyn Hoyle, *Debating Restorative Justice “The Case for Restorative Justice”* Hart Publishing, Oxford 2010 p. 4.

⁶⁸ In rape cases, before the introduction of reparative measures in the criminal justice system to protect victims from such incidents.

⁶⁹ Chris Cunneen, Carolyn Hoyle *supra*.

⁷⁰ Specifically, in Ontario.

⁷¹ Adler School Institute on Public Safety and Social Justice; Illinois Coalition for Immigrant and Refugee Rights, *White Paper on Restorative Justice: A Primer and Exploration of Practice across Two North American Cities*, 2012.

1.3.4. Circle Sentencing

Circle Sentencing (Hereinafter called the CS) has a close similarity to VOM unlike the other models of restorative justice. The victim's participation and interest are very instrumental to the outcome of the process,

*“Proponents of the Circle Sentencing process are concerned with protecting the victim, providing support and hearing the victim's story. Circle organizers seek to avoid an imbalanced focus on the offender's issues which may cause the victim to withdraw or react by challenging offenders...The telling of the victim's story is viewed as important not only for the victims, the offender, and their supporters, but also for the community as a whole. CS Advocates may encourage a friend or relative to speak on behalf of the victim when he or she is not willing, but they emphasize the value of resident's hearing the victims story first hand whenever possible...”*⁷²

Nevertheless, the “Community Justice Committee”⁷³ – a body that is charged with overseeing this process – ensures that balance is maintained between the needs of all the parties involved including that of the offender.⁷⁴ It CS evolved from the traditional reconciliatory practices of the aboriginal community in Canada and Indians in the United States.⁷⁵ The CS was,

“resurrected in 1991 by judges and community justice committees in the Yukon Territory and other northern Canadian communities. Circle sentencing has

⁷² Gordon Bazemore, Mark Umbreit, “Conferences, Circles, Boards and Mediations: Restorative Justice and Citizen Involvement in the Response to Youth Crime,” Balanced and Restorative Justice Project, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, September 1, 1999, p.13.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Gordon Bazemore, Mark Umbreit, *A Comparison of Four Restorative Conferencing Models*, Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention, U.S Department of Justice, February 2001, p.6.

been developed most extensively in Saskatchewan, Manitoba, and the Yukon and has been used occasionally in several other communities. Its use spread to the United States in 1996, when a pilot project was initiated in Minnesota. Circle sentencing has been used for adult and juvenile offenders, for a variety of offenses, and in both rural and urban settings.”⁷⁶

CS process has been recognized as a the most encompassing process of all the RJ models. The interest of all stakeholders – the victim, offender, family of both, members from the immediate community and representatives from the justice and social services institutions are given due consideration. The process is initiated by the offender who applies to participate in a CS. Two separate healing circles are initially set up for the victim and the offender. Thereafter, a sentencing circle is set up for stakeholders to agree on a “sentencing plan.”⁷⁷ Subsequent circles may be convened to monitor and ensure that the sentence is being carried out according the agreed plan.

CS could be applied to effectively to address specific category of crimes that may only be considered under the customary law or religious in some states. For example, the issue of applying the Shari’ah law (Hereinafter referred to as the Islamic law) strictly could readily be curtailed by the CS in the Northern part of Nigeria. Since the religious element and community will be featured in the process.

1.4. Limitations and the Place of Repetitive Offenders in Restorative Justice.

A prominent issue with restorative justice is that it requires both parties to consent to participation in the restorative process. Where the victim or offender refuses to partake in the RJ process they cannot be coerced to do otherwise even by the law court. However, family members or members

⁷⁶ Ibid.

⁷⁷ Ibid.

of a community in RJ process such as the FGC can persuade the offender and victim into participating. The immediate community of both or either parties can also serve as representatives in the RJ process where the victim or offender refuses to participate. This is quite acceptable in crimes like robbery that affects a community or other crimes committed against an individual (or group) as a member of a specific religious or ethnic community.⁷⁸

It will of course become rather impossible to carry on an RJ process where a victim of a crime such as rape refuses to participate. In such instances, the victim may need the help of family or a professional to work him or her through the trauma of being a rape victim. Subsequently, the victim's representatives should advise the victim on the advantages of choosing the RJ process over a formal criminal trial.

Voluntary participation is quite important to the success of an RJ process because the aim is restoring the relationship as far as possible. To achieve this, the parties must be genuinely involved. The offender must show genuine remorse while accepting his/her punishment for restitution towards the victim these elements and values cannot be forced but rather inspired. Victims must also find satisfaction with the process.

Secondly, RJ process is yet to be acknowledged as a sole response to crime. This is because of the underlining values. The RJ process is by nature non-coercive and rather mediatory. The traditional formal criminal system on the other hand has that element of deterrence and rigidity that may be required to maintain crime control in a diverse and large society such as Nigeria. In addition, the requirement of voluntary participation of offenders and victims in RJ processes makes it impossible for RJ to meet the demand for order and crime control in a state. No hardened criminal

⁷⁸ Jennifer J. Llewellyn, Robert Howse, Restorative Justice - A Conceptual Framework, Prepared for the Law Commission of Canada 1999 p. 84, <https://ssrn.com/abstract=2114291> last accessed December 21, 2017

will submit himself voluntarily to be held accountable for crimes he committed. Hence, a dual system paradigm may well be the best until restorative justice is accepted as a primary paradigm of crime control and not merely as an alternative to the traditional criminal justice mechanisms.

The Place of Repetitive Offenders

Although, the RJ process aims at restoring harm caused to stakeholders, it also has the secondary goal of securing social protection and reducing recidivism. Repetitive offenders are a problem in this regard. Where the offender refuses to change from his/her criminal ways, recourse may be had to the traditional criminal institutions. The offender should be allowed to go through the formal criminal process. However, where imprisonment is unavoidable, it should be rehabilitative.⁷⁹

1.5. Conclusion.

Restorative justice is a rapidly growing paradigm of criminal justice systems in many countries and more importantly, the UN Economic and Social Council adopted a guideline principle for restorative justice programs in 2002.⁸⁰ Although the scope of its application to crimes is still subject to debate, the advantages cannot be denied.

A metanalysis carried out on the VOM and FGC programs showed that FGC has twice the effect of reducing recidivism than the traditional criminal justice mechanisms, “and the VOM had an

⁷⁹ Jennifer J. Llewellyn, Robert Howse, *Restorative Justice - A Conceptual Framework*, Prepared for the Law Commission of Canada 1999 p. 92, <https://ssrn.com/abstract=2114291> last accessed December 21, 2017.

⁸⁰ The United Nations Economic and Social Council, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, Resolutions and Decisions Adopted by the Economic and Social Council at its Substantive Session of 2002, (Resolution no. 2002/12) 37th Plenary Meeting, July 24, 2002, [E/2002/INF/2/Add.2] p.54. <http://www.un.org/esa/ffd/wp-content/uploads/2002/07/E2002INF2Add2.pdf> last accessed December 21, 2017.

even larger effect on recidivism.”⁸¹ In addition, studies have shown greater victim satisfaction and compliance with restitution plan under RJ processes.⁸²

⁸¹ White Paper on Restorative Justice, *supra*, p. 11.

⁸² *Ibid.* p. 12.

CHAPTER TWO: INTERNATIONAL AND REGIONAL REQUIREMENTS FOR RESTORATIVE JUSTICE.

The clamor for restorative justice at the International front has grown with time. At first it was in response to the cry for the protection of the rights of victims and then it became a question of fairness of the justice process to both offenders and victims.⁸³ In 1999, the UN Economic and Social Council acknowledged that the traditional criminal justice paradigm fell short of providing “an appropriate and timely response to ... the significant number of crimes”⁸⁴ in some states. Thereafter, the UN Economic and Social Council also emphasized the fact that alternative mechanisms like the restorative justice can secure the interests of victims maximally and at the same time offer effective alternatives to imprisonment.⁸⁵ Guidelines and Principles for setting up Programs with Restorative Justice values have emerged in recent years both at United Nations and the Africa Union.

2.1. The Framework under “The United Nations Office on Drugs and Crimes Handbook on Restorative Justice Programs.”

The UNODC Handbook on Restorative justice is a toolkit put together as a guideline for countries considering “the implementation of participatory responses to crime based on a restorative justice approach.”⁸⁶ Restorative justice as envisioned by the handbook is geared towards addressing the short comings of an existing formal criminal justice system and not to replace it.

⁸³ The United Nations Secretariat, *The 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, Vienna, 10-17 April 2000: Report (United Nations publication, Sales No. E.00.IV.8), chap. V, sect. E.

⁸⁴ The United Nations Economic and Social Council, *Development and Implementation of Mediation and Restorative Justice Measures in Criminal Justice*, (Resolution 1999/26) Adopted at its 43rd Plenary Meeting, July 28, 1999.

⁸⁵ Ibid. para. 3.

⁸⁶ United Nations Office on Drugs and Crimes (UNODC), *Handbook on Restorative Justice Programmes*, Criminal Justice Handbook Series (2006) p. 1, http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf last accessed December 21, 2017.

The handbook provides *inter alia*, that cases may be referred to RJ Programs at any point of the formal criminal justice process – before or after trial. It may be referred by the police, prosecution, court or prison officials. RJ referrals may be used by correctional/custodial bodies as alternative to incarceration for less serious offences subject to the applicable rule in place at the time.

The police may also use their discretion subject to the applicable rules in place for RJ Programs to refer minor crimes which may occur on the streets or in schools. With guidelines in place, referrals can be made for appropriate cases at different stages of the criminal justice system. Five models of RJ Programs are recognized under the UNODC Handbook;

“(a) victim offender mediation; (b) community and family group conferencing; (c) circle sentencing; (d) peacemaking circles; and, (e) reparative probation and community boards and panels.”⁸⁷

The victim offender mediation (VOM) can be referred at any stage of the criminal justice process (pre-trial, trial, post-trial or rehabilitation). the offender must either have accepted and not denied the charges against him. In addition, the victim and offender must be willing to participate and should deem it safe to participate in the process. Community and Family Group Conferencing is mostly referred by the police and is convened by a facilitator who brings together the victim, offender and other stakeholders like their family and friends.

Peacemaking Circles are a bit different because the entire process is informal. The Pilot projects were first set up in Zwelethembe, South Africa with the intention of gathering local knowledge but slowly grew into peace making and peace building initiatives usually convened by a group of

⁸⁷ UNODC, Handbook on Restorative Justice *supra*, p. 15.

community leaders called the “Peace making Committee.”⁸⁸ Although the process has its own set of rules, formal officers of the criminal justice system such as the police have made connection with the Committee as time went by.

The Circle Sentencing (CS) is usually referred for cases where the offender has made a guilty plea. it usually takes place within the confines of the criminal justice system. As an RJ Program it;

*“Is perhaps the best example of participatory justice in that members of the community can become directly involved in responding to incidents of crime and social disorder. This is done through the formation of a Community Justice Committee (CJC) that may also include representatives from justice agencies. The common objective of the members of the CJC is to find more constructive ways to respond to conflict in their community. The CJC plays an integral role in the overall circle process, including liaising with criminal justice agencies, community organizations as well as with the various stakeholder groups in the community. Cases are referred to the CJC, generally from the police, prosecutors and judges, although cases may also come from the schools, victim services Programs and families”.*⁸⁹

CS unlike the traditional adversarial criminal justice processes, provide an opportunity for rebuilding relationships between stakeholders within and outside the justice system. Members of the community take part in the judicial making process, increasing the public trust in the criminal justice process. This model of RJ ensures transparency and accountability of all the stakeholders involved. In addition, the stakeholders such as the family members of the offender and victim

⁸⁸ Ibid. p. 22.

⁸⁹ Ibid. p. 23.

develop good problem-solving skills which may be applied judiciously in mediating disputes within smaller groups.⁹⁰

A key advantage of the CS is that it is set up with due consideration to the cultural and religious orientation of parties involved. It is also quite progressive, since it encourages constructive dialogue between different stakeholders in the community and justice system. Local resources are applied where appropriate to “generate preventive measures.”⁹¹ It also fosters social awareness of restorative response to crime and encourage citizens to adopt restorative values in mediating disagreements within their community.

2.1.1. “The Basic Principles on the Use of Restorative Justice Program in Criminal Matters.”

At its 37th plenary meeting in 2002, The UN Economic and Social Council adopted a resolution setting up “The Basic Principles on the Use of Restorative Programs in Criminal Matters (hereinafter referred to as the “Basic Principle”).”⁹² While it does not have a binding force, the Basic Principle present key guidelines upon which member states can develop standard restorative justice Programs within the framework of their criminal justice system. These body of principles form the basis upon which the UNODC handbook on restorative justice was developed.

Applicability of Restorative Justice Programs under the “Basic Principle.”

Under the Basic Principle, any RJ Program can be used subject to the law applicable in each state at any stage of the criminal justice process and only where there is sufficient evidence to charge the offender. Consent of both the offender to initiate and participate at every step of the process is

⁹⁰ UNODC, Handbook on Restorative Justice, *Supra*, p. 24

⁹¹ Ibid. p. 25.

⁹² The United Nations Economic and Social Council, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, Resolutions and Decisions Adopted by the Economic and Social Council at its Substantive Session of 2002, (Resolution no. 2002/12) 37th Plenary Meeting, July 24, 2002, [E/2002/INF/2/Add.2] p. 54. <http://www.un.org/esa/ffd/wp-content/uploads/2002/07/E2002INF2Add2.pdf> last accessed December 21, 2017.

a paramount. Both parties should be able to withdraw their consent at any point of the RJ process. In addition, the participation of the offender cannot be used against him/her as evidence in a subsequent trial or proceedings.⁹³

Cultural orientation and any disparities that may exist between the parties involved may be taken into consideration before a referral is made or in determining the best RJ process to adopt for a case.⁹⁴ Under the Basic Principle para. 9, criminal justice actors are enjoined to encourage victim and offender participation in RJ processes, - “supporting reintegration of both parties into the community where necessary” – and where RJ process is impossible decision on an alternative cause of action should be reached timeously.

In addition to the above, member states are enjoined to establish guidelines to govern the use of restorative justice Programs⁹⁵ and;

*“(e) The conditions for the referral of cases to restorative justice Programs;
(b) The handling of cases following a restorative process; (c) The qualifications, training and assessment of facilitators; (d) The administration of restorative justice Programs; (e) Standards of competence and rules of conduct governing the operation of restorative justice Programs.”⁹⁶*

Safeguards Under the Basic Principle.

The Basic Principle provides for standard safeguards which are required to ensure that the rights of both the offender and victim are protected in line with international law. All the rights under

⁹³ Ibid. Basic Principle Para. 8 p.57.

⁹⁴ Ibid. Basic Principle Para. 9, p. 57.

⁹⁵ Ibid. Basic Principle Part III, Para. 12.

⁹⁶ Ibid.

Article 7 – 11 & 19 of the Universal Declaration of Human Rights (UDHR),⁹⁷ Article 2,9,10, & 14 of the International Covenant on Civil and Political Rights (ICCPR),⁹⁸ and Article 2,3, & 7 of the African (Banjul) Charter on Human and People’s Rights,⁹⁹ are applicable to all restorative justice programs.¹⁰⁰

The victim and offender must be able to exercise their right to consult a legal counsel or to confer with a guardian - in the case of a minor- and to access an interpreter when necessary throughout the RJ process.¹⁰¹ The parties to an RJ process must at no time before or during the process be coerced to either participate or accept an outcome. In addition, any agreement arising from the process “should where appropriate be judicially supervised or incorporated into judicial judgments”¹⁰² – thereby becoming a binding decision subject of cause to the laws applicable in the state.

Best Implementation Strategies

The Basic principle enjoins member states to promote cultures that are favorable to the use RJ Programs and values amongst stakeholders. In addition, regular conferences and meetings should be held between the criminal justice officials and RJ administrators to develop and ensure synergy between the formal criminal justice processes and RJ Programs.¹⁰³ States are to ensure cooperation

⁹⁷ United Nations General Assembly, *The Universal Declaration on Human Rights*, (Resolution no. 217), December 10, 1948.

⁹⁸ United Nations General Assembly, *The International Covenant on Civil and Political Rights*, (Resolution no. 2200A (XXI) December 19, 1966.

⁹⁹ African Commission on Human and People’s Rights, *African(Banjul) Charter on Human and People’s Rights*, Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

¹⁰⁰ Basic Principle *Supra*, Para. 13, p. 58.

¹⁰¹ Basic Principle *supra*, Para. 13a, p. 58.

¹⁰² *Ibid.* para. 15

¹⁰³ Basic Principles, Part IV.

with the civil society sector in developing indicators for assessing the impact of RJ Programs periodically – which will in turn inform policy frameworks in the justice system.

In any case, there are several factors states must consider to successfully incorporate a restorative justice paradigm. Establishing RJ as part of the national law is a first step, followed by the creation of a body authorized to oversee RJ policies in the state. This could either be a department within the Ministry of Justice or an independent agency of the state. Designing a plan to synergize the RJ paradigm into the existing criminal justice system and society comes next. In addition, there must be in place a coherent plan for funds and human resources to ensure effective implementation.¹⁰⁴

2.2. Restorative Justice framework under the African Commission on Human and People’s Rights’ (ACHPR) Adopted “Guidelines on the Conditions of Arrest, Police Custody, and Pretrial Detention in Africa.”¹⁰⁵

While Restorative Justice paradigm is not directly mentioned under the ACHPR adopted Guidelines on the Conditions of Arrest, Police Custody, and Pre-trial Detention in Africa (hereinafter referred to as “the Luanda Guidelines”), member states are encouraged as a general principle to use alternative means outside the criminal justice system to address crimes;

Where appropriate, particularly for minor crimes, efforts should be made to divert cases away from the criminal justice system and utilize recognized and effective alternatives that respect applicable international law and standards. Alternatives to arrest and detention should be

¹⁰⁴ UNODC, Handbook on Restorative Justice, *supra*, p. 39.

¹⁰⁵ The African Commission on Human and People’s Rights, *Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention in Africa* (The Luanda Guidelines), adopted at the 55th Ordinary Session in Luanda, Angola, from 28 April to 12 May 2014. http://www.achpr.org/files/special-mechanisms/prisons-and-conditions-of-detention/guidelines_arrest_police_custody_detention.pdf last accessed December 21, 2017.

*promoted under a framework that includes reasonable accommodation for persons with disabilities, and a framework that promotes the best interests of children in conflict with the law.*¹⁰⁶

The Luanda Guidelines is a bold step towards establishing the rights -based approach in the criminal justice system across Africa. The interests of juveniles were also taken into consideration under the Luanda Guidelines. Member states are to adopt frameworks that promotes the best interests of juveniles. Hence, at every point in the criminal justice process, reforming a juvenile offender should take precedence over punishment proportional to the crime committed. States need to enact laws and make policies that “prioritize non-custodial alternatives and diversion Programs”¹⁰⁷ for juvenile offenders.

States are also enjoined to consider alternatives of therapeutic nature like mental health institutions to ensure periodical health assessment for offenders with mental problems, detoxification and hospitalization for drug abusers in place of police custody or pre-trial detention.¹⁰⁸ In addition, rehabilitative facilities and vocational Programs should be made accessible to persons in detention or police custody.¹⁰⁹

2.3. Conclusion

While it is not a mandatory requirement for member states of the UN or African Union to have restorative justice integrated or implemented as part of traditional criminal justice system, – It is however, strongly recommended by the UN that member states implement restorative justice measures in criminal matters at the domestic level.

¹⁰⁶ Ibid. Part 1, section 1(c).

¹⁰⁷ Ibid. Part 7, section 31 (b)(i).

¹⁰⁸ Ibid. Part 6, section 25 (h).

¹⁰⁹ Ibid. section 28.

CHAPTER THREE: COMPARATIVE STUDY OF RESTORATIVE JUSTICE MODELS IN CANADA AND THE UNITED STATES.

3.1. National Implementation of Restorative Justice Framework in Canada and The United States.

Historically, restorative justice practices in North American countries of Canada and United States emerged through the influence of traditional practices of the Indigenous people in Canada and USA,¹¹⁰ faith based teachings of the Christian religion, the victim movement, prison abolition movement and the alternative dispute resolution movement.¹¹¹

Contemporary Initiatives of RJ evolved “as an experiment in alternatives to criminal prosecution and conventional sentencing.”¹¹² By 1996, Canada had incorporated restorative justice principles in its Criminal Code¹¹³ and established RJ programs in many prisons across the country. It initially started from the consultation of the indigenous community in giving out sentences with due consideration to indigenous values and subsequently evolved into the sentencing circle, peacemaking courts, family group conferencing, reparative boards and the victim offender reconciliation/mediation programs.

Unlike Canada, the implementation of restorative programs in United States are largely informal and not driven by a uniform statutory policy. The earliest Initiatives of RJ programs at national level was geared towards improving juvenile justice. To this end, the United States’ Office of

¹¹⁰ The Aboriginal group in Canada and Native Americans.

¹¹¹ Lueng May, *The Origins of Restorative Justice*, Alberta, Canada: Canadian Forum on Civil Justice, Article no. 362, 1999, p. 6.

¹¹² Lueng May, *supra*, p. 1.

¹¹³ Criminal Code, R.S.C. 1985, c.C-46.

Juvenile Justice and Delinquency Prevention initiated the Balanced and Restorative Justice Project in 1993.¹¹⁴

“Office of Juvenile Justice and Delinquency Prevention (OJJDP) was established by the President and the Congress through the Juvenile Justice and Delinquency Prevention Act of 1974, Public Law 93-415, as amended. Located within the office of the Justice Programs of the U.S. Department of Justice, OJJDP’s goal is to provide national leadership in addressing the issues of juvenile delinquency and improving juvenile justice.”¹¹⁵

OJJDP funds the Balanced and restorative justice (BARJ) project as a national initiative through grant made to the Florida Atlantic University to provide technical training and written materials to *inter alia* inform policies on restorative justice in the United States.¹¹⁶ The balanced and restorative justice project has since been implemented in partnership with the Center for Restorative Justice and Mediation at the University of Minnesota. The mission of the BARJ is to take the “balanced approach”¹¹⁷

“which requires juvenile justice professionals to devote attention to:

Enabling offenders to make amends to their victims and community.

Increasing offender competencies.

¹¹⁴ Gordon Bazemore, Mark Umbreit, “*Conferences, Circles, Boards and Mediations: Restorative Justice and Citizen Involvement in the Response to Youth Crime*,” Balanced and Restorative Justice Project, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, September 1, 1999, p. i.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid. p. ii.

Protecting the public through processes in which individual victims, the community, and offenders are all active participants.”¹¹⁸

3.1.1. Incorporation of Restorative Justice under the National and State criminal laws

Both Canada and the United States have a Federal Criminal law and practice the adversarial legal system,¹¹⁹ but when it comes to application they defer in structure. The administration of the Canadian criminal law is provincial while that of the United States apply to relatively small list of crimes committed for example on Federal lands.¹²⁰ Hence, the federal criminal law in the United States only apply to crimes that fall under federal jurisdiction. The centralized structure of the Canadian legal system, makes policy changes uniformly applicable “on national basis.”¹²¹ However, in the United States the predominant criminal laws applicable at state level are the state criminal laws.

Canada

Three major national legislative changes effected a positive “growth of restorative justice in Canada.”¹²² The first was the sentencing law introduced under section 718 of the Criminal Code of Canada in 1996.¹²³ It requires that court sentencing should incorporate *inter alia*, the following objectives;

¹¹⁸ Office of Juvenile Justice and Delinquent Prevention, *Guide for implementing The Balanced and Restorative Justice Model*, The Balanced and Restorative Justice Project, Report: NCJ 167887 (1999). <https://www.ojjdp.gov/pubs/implementing/about.html> last accessed December 21, 2017.

¹¹⁹ Except in Quebec, Canada where the civil law prevails.

¹²⁰ Joanne Katz; Gene Jr. Bonham, *Restorative Justice in Canada, and the United States: A Comparative Analysis*, 6 *JIJS* 187, 196 (2006) p. 188.

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ Criminal Code, R.S.C. 1985, c.C-46.

*“rehabilitation of the offenders, provide reparation for harms occasioned to the victims or community, promote a sense of responsibility in offenders and acknowledgement of harm done to victims and the community.”*¹²⁴

The law provided a “framework for restorative justice in adult sentencing”¹²⁵ In addition, alternative sanctions to imprisonment are to be considered within reason for all offenders.¹²⁶ These legislative provisions have played an instrumental role in the application of restorative justice principles in Canadian courts today. In addition, frameworks for restorative justice has been adopted for criminal matters across the country. For instance, the Ministry of Attorney General of the Province of British Columbia adopted a restorative justice framework in 1998 for both criminal and civil matters.¹²⁷

The second legislative change that influenced the growth of restorative justice in Canada greatly, was the adoption of a policy by the Royal Canadian Mounted Police (RCMP) Which gave the Canadian police the discretionary power to initiate restorative conferencing processes. Applicable guidelines for the restorative justice processes initiated by the police was also developed by the RCMP.

The RJ conference convened by the police is tailored after the Family Group Conferencing Model. The trained facilitator is usually a police officer who brings all the stakeholders (victim, offender, family members and supporters) together to discuss the harm caused and decide on an appropriate restitution plan. A peculiar aspect of this RJ initiative is that, the police make the referrals to the RJ process themselves. They make the ultimate decision on whether to refer the case to court or

¹²⁴ Ibid. s. 718.

¹²⁵ Joanne Kats, *supra*, p. 189.

¹²⁶ S. 718 (2), Criminal Code, R.S.C. 1985, c.C-46.

¹²⁷ Leung May, *supra*, p. 1

the RJ process. In addition, the RCMP train individuals who facilitates other community justice programs.¹²⁸

The Youth Criminal Justice Act (YCJA) of 2002 is the third legislative change that informed the growth of restorative justice in Canada. It was enacted to give a framework upon which minors who commit serious crimes are treated differently from adult offenders. In addition, it was geared at reducing the incarceration of juvenile delinquent offenders.¹²⁹ The YCJA preamble provides in effect that:

“WHEREAS Canadian society should have a youth criminal justice system that commands respect, takes into account the interests of victims, fosters responsibility and ensures accountability through meaningful consequences and effective rehabilitation and reintegration, and that reserves its most serious intervention for the most serious crimes and reduces the over-reliance on incarceration for non-violent young persons...”¹³⁰

The YCJA provides for the use of restorative justice interventions as a measure to bring the offender to account. All young offenders must be afforded the alternative of an RJ process such as the Family Group Conferencing also called the Wagga-Wagga model.¹³¹ However, the decisions taken in such RJ processes remain advisory at best. The courts still retain the judicial authority to decide whether to adopt it as a court decision or not.

¹²⁸ Katz & Bonham, *supra*, p. 190.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Supra.*

United States.

The legal framework of the United States as earlier mentioned is quite different from that of Canada in terms of applicability by jurisdiction. It is much more like that of Nigeria, where because of the Federal structure, federal laws are only applicable to crimes under the federal jurisdiction. Most crimes committed at the state level are regulated by state criminal laws.

There are few Federal laws in the United States that refer to restorative justice and “they all relate to the work of school resource officers and list restorative justice as a possible intervention.”¹³² At the state level, restorative justice framework has been implemented based on statutory laws in many states. However, the major focus of these laws are juvenile cases. Some States like Vermont also provide for statutory funding for restorative justice programs.

In 2001, about twenty-nine states in the United states were reported to have established and implemented a statutory framework for restorative justice.¹³³ Out of the twenty-nine states, seven states established a framework for adult offenders while the other twenty-two states provide for juvenile offenders alone.¹³⁴

Compared to Canada, majority of the restorative programs operating in the United States were established outside a statutory framework. The lack of a comprehensive statutory framework for RJ in United States has contributed largely to the low impact on the overall criminal justice system.

¹³² Katz & Bonham, *supra*, p. 191.

¹³³ *Ibid.* p.191.

¹³⁴ *Ibid.*

3.2. Application of Community Based Restorative Justice Models in Canada and The United States.

Community based restorative justice programs as alternative approach to justice have been implemented and applied both within the framework of an existing criminal justice system and at the community level in Canada and United States. “In Canada, the idea of alternative approaches to justice in aboriginal communities began in Northern British Columbia, Alberta, Ontario, the Yukon and North-west Territories and in Manitoba.”¹³⁵

Such community based restorative justice programs like the Circle Sentencing (CR) in Canada were initially implemented at the judicial level at sentencing stage. One of the first sentences given by Justice Cunliff Barnett of the British Columbia Provincial Court arising from Circle Sentencing program in 1978 changed the life of a fourteen-year-old teenager who later became a community leader.¹³⁶

Another instrumental decision was made in 1992 through Circle Sentencing by Justice Barry Stuart at the Yukon Territorial Court. He organized a circle consisting of the family members and friends of a twenty-six-year-old who “pleaded guilty to carrying a baseball bat with the intention of assaulting a Royal Canadian Mounted Police Officer.”¹³⁷ He was a repeat offender and the aim was to consult the family and friends on the best sanction to impose on the offender. In the end, Justice Barry issued a two years’ probation order on the condition that the offender move in with his family and accept treatment for his drinking problem.

¹³⁵ Lueng May, *supra*, p. 8.

¹³⁶ Cayley David, *The Expanding Prison: The Crisis in Crime and Punishment and the Search for Alternatives*, Toronto, House of Anansi Press, 1999, p. 182.

¹³⁷ *Ibid.*

In the United States, RJ forums like the Peacemakers court was initiated by the judicial authority in Navajo Nation through which community leaders could preside over “traditional trials”¹³⁸ arising from the community. Also, the State of Vermont has taken the lead in establishing and promoting community based RJ programs like the community reparation boards in the United States.¹³⁹

With the establishment of programs like the Kwanlin Dun Community Justice Project in Yukon, the Hollow Water Community Holistic Healing Program in Manitoba, Canada¹⁴⁰ and the Peacemakers Court¹⁴¹ in the Navajo Nation of the United States, - community based restorative justice programs developed into independent processes outside the formal criminal justice system.

3.2.1. The Kwanlin Dun Community Justice Project in Yukon, Canada.

The Kwanlin Dun Community Justice Project (Hereinafter referred to as Kwanlin Dun Project), was established with the mandate of easing victims and offenders through Healing Circles, Circle Sentencing (CS) and other community based restorative processes.¹⁴²

Referrals are made to the Kwanlin Dun Project by the police or peace makers and the community justice committee decide on whether to accept or reject the application. Stakeholders like “an elder, the victim coordinator, probation officer, community members etc.,”¹⁴³ are all involved in the application process.

¹³⁸ Lueng May, supra. p. 10.

¹³⁹ Katz & Bonham supra, p. 192.

¹⁴⁰ Lueng May, supra, p. 9.

¹⁴¹ Ibid. p. 11.

¹⁴² Ibid. p. 9

¹⁴³ Ibid.

Where a case is accepted, the committee decide on the location, date, time and who to involve in the CS process.¹⁴⁴ Subsequently, the offender and victim support groups prepare for the CS process while respective representatives of the parties involved may meet separately if the situation demands it before the main circle sentencing takes place. After the circle sentencing hearing, the sentence is made, and offender pardoned.

The Kwanlin Dun Project is reported to have successfully handled both minor and serious offences “with the exception of manslaughter and Murder.”¹⁴⁵

3.2.2. The Navajo Nation Peacemakers Court in the United States.

The Peacemakers Court was established in 1982 by the Navajo Nation Judicial Conference as “a court-annexed system of popular justice, whereby respected community leaders organize and preside over the traditional Navajo trial, 'ahwinit' (where they talk about you), in the community in which the dispute arises”.¹⁴⁶ The Navajo Nation is a Native American territory that spans across “the states of Arizona, New Mexico, and Utah.”¹⁴⁷

The Navajo Peacemakers Court was tailored after the established traditional practices of the Navajo Nation. It is the Navajo tradition to ask for restitution from another who has committed a wrong. Where the victim of such wrong is unable to demand for restitution personally, he or she could approach relatives or “a respected community leader (called *naat'aanii* -the peacemaker)”¹⁴⁸ to do same.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Yazzie, R. and Zion, J. W., *Navajo restorative justice: The law of equality and justice*, in Galaway, B. and Hudson, J. (Eds.), *Restorative justice: International perspectives*, Monsey, NY: Criminal Justice Press, pp. 157–173.

¹⁴⁷ Ibid.

¹⁴⁸ May Lueng, *supra*, p. 11.

As at 1999, there were over 250 trained Peacemakers within the Navajo Nation.¹⁴⁹ The Peacemakers include well recognized and respected community leaders (male and female), people from the medicine sector, traders, legal practitioners, and religious leaders. In addition, the Peacemakers are “selected based on their demonstrated character, wisdom and the ability to make good plans for community action,”¹⁵⁰

Cases are brought before the Peacemakers by the disputants themselves or referred by law enforcement and other competent agencies in Navajo Nation. Both civil and criminal matters are mediated by the Peacemakers Court. Just like the Kwanlin Dun Community Justice Committee, the Peacemakers invite the parties involved including key family and community members to the peacemaking process. the Peacemakers also decide on the location and time of the peacemaking process.

The process usually commences with a prayer after which affected parties lay down their individual grievances and make one form of demand or the other for restitution.¹⁵¹ The Peacemakers ease the parties through any disagreements – “counselling or lecturing the parties based on Navajo spiritual narratives, helping the parties arrive at a solution to the problem, and assisting them to achieve consensus and harmony.”¹⁵²

The Canadian Community Justice Committee and the Navajo Peacemakers have only persuasive authorities in the various restorative justice processes. Although, decisions taken in the processes

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

cannot be imposed on the parties they may be enforced by a court of law especially in respect of cases referred to the process by the court.

The Peacemakers are not neutral mediators – in most cases they are people known to the disputing parties whose opinion are respected in the community. They apply traditionally accepted values to arrive at a restorative outcome. Emphasizes is placed on “the need to establish consensus among participants; the need to re-establish and maintain solidarity (and obligations) in clan and other relationships; and the need to restore community, family, and individual well-being and harmony.”¹⁵³

3.3. The Victim-Offender Reconciliation Programs in Ontario and Indiana.

The first victim offender-mediation program called the Victim Offender Reconciliation Program (VORP) was established in Kirchina, Ontario, Canada in 1974.¹⁵⁴ It was sponsored by the Mennonite Church in a bid to foster “understanding and reconciliation between ...”¹⁵⁵ victims and offenders. The program has since then, enjoyed wide spread implementation across the Provinces and Territories of Canada.

As a national initiative, the Correctional Service of Canada established the victim offender mediation program for “violent offenders”¹⁵⁶ like in cases of manslaughter or murder. The program began in early 1990’s in Pacific Canada and became available nationwide in 2004 under “the restorative opportunities program.”¹⁵⁷ Through this program, a remorseful offender can meet the victim’s family who in turn can express their grievances and have their questions answered by the

¹⁵³ Ibid. p. 12.

¹⁵⁴ Katz & Bonham, p. 187.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid. p. 189.

¹⁵⁷ Restorative Justice Services at Correctional Service Canada; <http://www.csc-scc.gc.ca/restorative-justice/003005-0001-eng.shtml> last accessed December 21, 2017.

offender. The Victim offender mediation also enjoys the support of the Canadian Ministry of Justice.¹⁵⁸

The development of VORP programs in the United States started 1978 in Indiana as a joint initiative “of the Mennonite Central Committee and PACT (Prisoner and Community Together).”¹⁵⁹ the VORP in Indiana was modeled after the Kirचना program. The Victim Offender Mediation program has been established in other states in United States. “Texas has one of the largest programs in the country ... established to provide for the needs of the victim to meet the person who harmed them or a loved one.”¹⁶⁰ The Victim Offender Mediation program is applied to cases in schools, at work place, community level and high-profile cases. About 300 victim-offender mediation programs exist in the United States. “The average victim-offender program for juveniles receives 136 referrals per year, and average program dealing with adults receives 74 referrals.”¹⁶¹

3.4. Alternatives to Detention and Imprisonment.

Restorative alternatives to imprisonment usually includes, conditional sentence (e.g. house arrest, curfew, drug and alcohol treatment programs, non-association conditions),¹⁶² direct compensation by offender to the victim or victim’s family, community services and work for the victim.

¹⁵⁸ Katz & Bonham, *supra*, p. 190.

¹⁵⁹ *Ibid.* p. 187.

¹⁶⁰ *Ibid.* p. 192.

¹⁶¹ Sara Sun Beale, *Still Tough on Crime? Prospects for Restorative Justice in the United States*, Utah Law Review Art. No. 2323 (2003), pp. 413 – 437, at p. 421.

¹⁶² Megan Stephens, *Lessons from the Front Lines in Canada's Restorative Justice Experiment: The Experience of Sentencing Judges*, 33 Queen's L.J. 19 2007-2008, p. 32,

3.5. Reported Outcomes and Limitations.

The success or failure of RJ programs in a state can be evaluated on the basis of “victim and offender satisfaction, restitution compliance rates, and the recidivism rate.”¹⁶³ Most participants in RJ processes express satisfaction with the process “while also displaying lower recidivism rates and adhering to restitution agreements.”¹⁶⁴ In an interview with Canadian judges on their view on sentencing reforms under the Canadian Criminal Code,¹⁶⁵ some of the judges surmised “that the sentencing reform had made a legitimate room for restorative justice in criminal courts.”¹⁶⁶ However, most of the Judges agreed that the “adversarial nature of the court system”¹⁶⁷ remains a strong obstacle to the successfully incorporating RJ.

3.5.1. *Victim & Offender Satisfaction*

In 1998, about 1,700 individuals had become facilitators of RJ community justice programs across Canada under the RCMP training scheme.¹⁶⁸ “These facilitators handled over 30 different types of offenses. Data collected from 487 participants found them overwhelmingly a fair and satisfying way to handle the issue.”¹⁶⁹

Generally, eight out of 10 participants convey their satisfaction with RJ processes and resultant restitution agreements.¹⁷⁰

¹⁶³ Katz & Bonham, *supra*

¹⁶⁴ Mark S. Umbreit & Marilyn Peterson Armour, *Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community*, Washington University Journal of Law & Policy, Vol. 36, pp. 64 – 89, at p. 80.

¹⁶⁵ *Supra*.

¹⁶⁶ Megan Stephens, *supra*, p. 42.

¹⁶⁷ *Ibid*.

¹⁶⁸ Katz & Bonham, *supra*, p. 190.

¹⁶⁹ *Ibid*, p. 189.

¹⁷⁰ Umbreit & Armour, *Restorative Justice and Dialogue*, *supra*, p. 80.

3.5.2. Recidivism Rate

Restorative Justice alternative plays a great role in reducing recidivism as opposed to incarceration of offenders. About 200,000 individuals in the United States were in one form of “correctional supervision”¹⁷¹ in 1980. By 2012, this number increased disproportionately to approximately seven million with roughly 50% recidivism rate. In the same year,

*“743 adults per 10,000 of the national population were incarcerated, which is by far the highest rate in the world. Canada, by contrast, currently has an incarceration rate of 117 adults per 10,000 people, which has increased only slightly from approximately 100 per 10,000 in 1980.”*¹⁷²

The disproportionate increase in incarceration and recidivism rate in the United States is because of the highly punitive justice regimes applied to crimes including non-violent crimes.¹⁷³

A recent report by Maryland juvenile justice showed that “60 percent of young offenders who participated in community conference are less likely to re-offend.”¹⁷⁴ It was also discovered in a study carried out in Canada that, offenders who were in the Circle of Support and Accountability (COSA) program – an RJ process for high risk sexual offenders released after sentence – showed 83 percent recidivism reduction in sexual crime and 73 percent reduction in violent crimes compared to offenders who did not go through the COSA.¹⁷⁵

¹⁷¹ Adler School Institute on Public Safety and Social Justice; Illinois Coalition for Immigrant and Refugee Rights, *White Paper on Restorative Justice: A Primer and Exploration of Practice across Two North American Cities*, 2012, p. 3.

¹⁷² Ibid. p. 9.

¹⁷³ Ibid.

¹⁷⁴ Impact of Community Conferencing, <http://www.communityconferencing.org/impact-of-community-conferencing/> last accessed December 12, 2017.

¹⁷⁵ Mark S. Umbreit & Marilyn Peterson Armour, *Restorative Justice and Dialogue*, *supra.* at p. 72.

In addition, community based RJ programs have also shown a great impact on recidivism. An impact study of The Hollow Water Community Holistic Healing Program in Manitoba, on the Hollow Water community in Manitoba, Canada recorded 2 percent recidivism only within 10 years.¹⁷⁶

Incarceration does not have the same effect on offenders as the restorative mechanisms. Instead it hosts the offender in an environment entrenched with more violence. Thus, constructive alternatives to incarceration for minor crimes should be a priority and where it is a serious crime that cannot not be addressed through an RJ alternative, incarceration should be restorative, with correctional programs designed to transform the offender.

Certain limitations have been identified in the implementation of restorative justice programs and initiatives. These limitations include, lack of adequate funds to run the programs and human resources to monitor compliance to sanctions such as the conditional sentence (house arrest or curfew).¹⁷⁷ Increase in Court dockets caseloads hinders the court response to the demands of restorative justice processes or initiatives such as the conditional sentencing or sentencing circles within the judicial process of the traditional criminal justice system. Thus, cases might not be dealt with timeously where the courts for example are required to adopt large numbers of decisions made in restorative processes as formal judgments. In addition, it is hard to involve the community in urban cities in community conferences or other RJ processes.

There exists also the fear that if the formal criminal process remains the dominant paradigm to addressing criminal behavior, RJ will remain at periphery of the criminal justice process.

¹⁷⁶ Ibid.

¹⁷⁷ Megan Stephens, *supra*, 34.

3.6. Conclusion.

While restorative justice programs and legislations in the United States focus more on youths and juvenile offenders, RJ programs in Canada is more holistic and apply mostly to both adults and youths.¹⁷⁸ Majority of the programs and collaboration with the justice system in Canada is policy driven, whereas it is more informal in the United States. It is however, evident that restorative justice has played a great role in recidivism, victim satisfaction and reduction of caseloads in Both countries, more so in Canada than in the United State.

¹⁷⁸ Adler School Institute on Public Safety and Social Justice; Illinois Coalition for Immigrant and Refugee Rights, *White Paper on Restorative Justice: A Primer and Exploration of Practice across Two North American Cities*, 2012, p. 16.

CHAPTER FOUR: A RESTORATIVE JUSTICE FRAMEWORK FOR NIGERIA.

4.1. The Legal System and the Administration of Criminal Justice in Nigeria

Nigeria operates the common law system which is adversarial, retained from the British colonists. The primary sources of applicable laws other than the Constitution include, the Common Law, the Received English Law, Customary Law and Shariah Law. Other sources include case law and international law.

The Criminal justice system is administered at two levels, the federal and state. This of course is due to the federal character of Nigeria. Federal criminal law is applicable only to crimes committed within the federal jurisdiction while state criminal laws apply to crimes committed within the jurisdiction or territory of a state.

The applicable criminal and procedural law in the northern states of Nigeria is the Penal Code¹⁷⁹ and Criminal Procedure (Northern States) Act.¹⁸⁰ While the Criminal Code Act¹⁸¹ and the Administration of Criminal Justice Act 2015 of Nigeria¹⁸² applies to crimes committed under Federal Jurisdiction. Most of the states in southern Nigeria have since enacted their own state substantive and procedural criminal laws.

The major components of the criminal justice system in Nigeria includes the law enforcement, Courts and Corrections. The law enforcement in Nigeria includes the police, sheriffs and

¹⁷⁹ Penal Code (Northern Nigeria) Federal Provision Act (1960 No. 25) Laws of the Federation of Nigeria, (1990 revised edition), Vol. 19, pp. 12576-12592.

¹⁸⁰ Criminal Procedure (Northern State) Act 1960 (as amended), Laws of the Federation of Nigeria CAP. C42. (1960 No. 20).

¹⁸¹ Criminal Code Act, Laws of the Federation of Nigeria 1990, Chapter 77.

¹⁸² The Administration of Criminal Justice Act, 2015. <http://www.lawyard.ng/legislations/> Last accessed December 21, 2017.

marshals.¹⁸³ The court system consists of the prosecutors (State Counsels) who proffer Charges against an offender, the defense counsels who represent and support the offenders and the judges who preside over criminal matters in court. Correction agents include the prison, probation, and parole officers.¹⁸⁴

4.1.1. The Problem of Delayed Justice and Victim Neglect in Nigeria.

Delay in the dispensation of justice is one of the challenges in the administration of criminal justice in Nigeria owing to the adverse effect it has on other aspects of the criminal justice process. The delay in dispensation ultimately means increase in the number of incarcerated offenders and no remedy for the victims. The reality is that, both minor and serious offenders in Nigeria are kept behind bars for the duration of their trial period which in most cases last for years. Osasona surmised that,

*“The Prisons are nothing but overwhelmed human warehouses, the actual capacity of the Nigerian prisons is about 50,153 but the prison currently holds 57,121 inmates. 39,577 (69%) of the total prison inmates are awaiting trial inmates”*¹⁸⁵

Overreliance on the traditional criminal justice measures such as trials and imprisonment has rendered the criminal justice system ineffective. Young and adult offenders are further stigmatized and alienated from the society because of prolonged incarceration – therefore making re-

¹⁸³ B. Ayorinde & CO, Nigeria: *A Reformatory Approach to the Criminal Justice System in Nigeria*, Mondaq (online), 18 February, 2014, <http://www.mondaq.com/Nigeria/x/293894/Public+Order/A+Reformatory+Approach+To+The+Criminal+Justice+System+In+Nigeria> last accessed December 21, 2017.

¹⁸⁴ Ibid.

¹⁸⁵ Tosin Osasona, *Time to Reform Nigeria's Criminal Justice System*, Journal of Law and Criminal Justice Vol 3 No 2 December 2015 <http://jlcjnet.com/vol-3-no-2-december-2015-abstract-7-jlcj> last accessed, December 21, 2017.

integration impossible and increasing the risk of recidivism. Report show that the current recidivism rate in Nigeria is 60 percent.¹⁸⁶

As the underlining principle of the traditional criminal justice system is punishment, – to ensure deterrence and public order, – the interest of the victims takes little or no precedence. In addition, the rigid and complex procedural laws are misused by defense counsels whose clients are rich enough to pay to frustrate trials by any means possible. The state counsels on the other hand, are discouraged due to the unending case files from criminal complaints and low number of concluded cases. Crimes are committed every day and it becomes daunting when the number of judgments given per year is less than 20 percent of cases in the court’s docket.

There have been several amendments to the criminal procedure laws towards ensuring speedy trials and placing restrictions on the number and interval of adjournments in criminal trials. These amendments have made little difference in the *status quo*. The current criminal dispensation has been unable to meet the demands for restitution, victim satisfaction, speedy dispensation of justice, and constructive sentencing regime that benefits the society.

The UN Economic and Social Council emphasized “that the traditional criminal justice system does not always provide the appropriate and timely response ... to significant number offences”¹⁸⁷ that threaten the security in the society. It recognized and encouraged states to adopt restorative measures viable alternative that will ensure victim satisfaction and lead to the prevention of recidivism in offenders.

¹⁸⁶ The National Policy on Justice of Nigeria, 2017, <http://www.justice.gov.ng/index.php/component/edocman/downloads/justice-reforms> last accessed December 21, 2017.

¹⁸⁷ The United Nations Economic and Social Council, *Development and Implementation of Mediation and Restorative Justice Measures in Criminal Justice*, (Resolution 1999/26) Adopted at its 43rd Plenary Meeting, July 28, 1999,

It is high time a comprehensive alternative such as restorative justice is adopted as a paradigm of addressing crime in Nigeria. To achieve this, it is necessary to develop a uniform restorative justice policy framework and implementation strategy. We can start by building on existing restorative justice measures available under national law and policy.

4.1.2. Existing Restorative Justice Measures

While Nigeria has no uniform legal framework on the application of restorative justice, the recent National Policy of Justice¹⁸⁸ provides for the adoption and implementation of non-custodial and restorative justice measures under the Administration of Criminal Justice Act (ACJA), 2015 of Nigeria.

However, the Administration of Criminal Justice Act of Nigeria, does not provide specifically for restorative justice dialogue processes or acknowledge same. It provides for commensurate compensation to victims of crime.¹⁸⁹ Non-custodial¹⁹⁰ sentences like community services and Plea-bargaining.¹⁹¹ These measures have been applied loosely by Judges previously in some states like Lagos, and yet the delay in dispensation of cases remains an issue till date.

Moreover, measures like plea-bargaining does not satisfy the relational elements of a purely restorative dialogue process like circle conferencing or victim-offender mediation. It can and will become a tool manipulated by the rich and powerful for their own interests. So, while it might afford monetary compensation to victims it does not address the emotional aspect of victim satisfaction.

¹⁸⁸ Supra.

¹⁸⁹ Section 314 of the Administration of Criminal Justice Act, 2015.

¹⁹⁰ Ibid. Section 460.

¹⁹¹ Ibid. Section 270.

Nigeria also have the customary courts which like the peacemaker's court of the Navajo Nation¹⁹², apply customary norms and traditional practices to address matters but most of the cases that go before these courts are civil matters bordering on property disputes, succession, matrimonial causes and child custody. It however, fails to apply the restorative

The Customary Courts in Nigeria apply some semblance of restorative justice values in adjudicating over matters with the customary law applicable to the people. approach that the traditional communal practices do incorporate values of restoring relationships there is still some element of detachment especially in the way offenders are treated. Although, victim satisfaction at the customary courts is paramount, the Area Courts in the Northern parts of Nigeria which has the same status as customary courts in the south practice the adversarial procedure which undermines the victim's interest.

While the ACJA and the National Policy of Justice represent a bold step towards the restorative approach, it does not provide a holistic legal framework upon which restorative justice programs can thrive outside the traditional criminal justice process. Nevertheless, the ACJA and the National Policy of Justice¹⁹³ has paved the way for the adoption and implementation of restorative justice paradigm in Nigeria which should be lauded and developed.

4.2. Recommendations

There is obviously a general agreement on the need for change in the overall policy framework underlining crime and crime prevention in Nigeria. The National Policy of Justice, 2017 of Nigeria is a good place to start, but the policy cannot resolve the failures of system without establishing a

¹⁹² Supra.

¹⁹³ Supra.

holistic legal framework for restorative justice in Nigeria. It is paramount that restorative justice become a fundamental policy for crime response and prevention. To this end, restorative models like the circle sentencing, family group conference, reparative boards and victim-mediation must become primary forums used in redressing criminal matters.

In addition, restorative justice should be incorporated into both the federal and state laws and administered with a common basic principle at both levels but flexible enough to accommodate the different peculiarities in each state and community. The Restorative Justice processes need to exist independent of the traditional criminal justice mechanisms on one hand and within the context of the criminal justice system. Hence a dual system paradigm is highly recommended where restorative justice mechanisms operate independently within the context of the formal criminal justice system, and as an alternative to the formal criminal justice process or mechanisms.¹⁹⁴ This gives the parties to any criminal action the choice to either remain in the formal criminal justice process or to initiate the restorative justice process.

An independent body made up of professionals from the justice sector, and the civil society sector should be set up and put in charge of developing and implementing restorative justice interventions. “The development and implementation of restorative justice programs requires effective leadership and a strong management team.”¹⁹⁵ Having an independent body specifically created to manage the implementation of restorative justice will ensure the sustainability of restorative programs in Nigeria. This organization can also be charged with developing a uniform guideline on the use of restorative justice in Nigeria.

¹⁹⁴ Jennifer J. Llewellyn, Robert Howse, *supra*, p. 13.

¹⁹⁵ The UN Handbook on Restorative Justice, *supra*, p.5 3.

The Federal and State government must also pursue and establish partnership with Educational Institutions and Non-Governmental Organizations including the donor organizations, to help in the establishment and operation of restorative programs in Nigeria.

Ideal Models of Restorative Justice for Nigeria.

Community based restorative justice models like the Community Reparative Boards (CRB), Family Group Circle Conferencing will be ideal and very useful in a country like Nigeria with strong ethnic and cultural practices. The availability of customary law and traditional institutions in Nigeria makes it easy adopt and implement the community based restorative justice processes like the circle sentencing in Kwanlin Dun Community in Yukon, Canada¹⁹⁶ and the Community Reparative Board in Vermont, United States.¹⁹⁷

However, it is pertinent to take into consideration the opinion of the citizens and key stakeholders in the communities where these programs are to be established. For instance, the Vermont Department of Corrections implemented CRB program in 1995 after the public opinion survey carried out in the preceding year showed an overwhelming support from citizens for “active community involvement”¹⁹⁸ in the justice process. This will help garner needed support for these programs.

The victim-offender mediation model is appropriate in the urban and rural areas and it is a much-needed forum for traumatic cases such as rape and assault. Studies have shown that majority of

¹⁹⁶ Supra.

¹⁹⁷ Supra.

¹⁹⁸ Gordon Bazemore, Mark Umbreit, *A Comparison of Four Restorative Conferencing Models*, Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention, U.S Department of Justice, February 2001, p. 4.

rape victims who go through the victim-offender mediation process find closure and relief as opposed to those who go through the traditional criminal justice process.

Nature of Crimes to be Diverted to Restorative Justice Processes.

The nature or type crimes that should be diverted to restorative justice is another hurdle that must be crossed in the process of implementing restorative justice. In most jurisdictions, restorative processes are used for juvenile matters and minor crimes. However, there is no reason why restorative justice should not be used to address serious crimes in Nigeria. Not when it can change the criminal behavior of the offender.

One cannot however, overlook the importance of addressing serious crimes like armed robbery, manslaughter or murder. Where especially in cases of manslaughter it is proven that the offender is a first-time offender (who has no criminal record), it is better to put such offender through a restorative process first and later give the necessary sanctions. Putting that offender in jail will likely make him a hardened criminal with greater possibility of committing another crime after release.

In the context of Nigeria, it will be more beneficial advocate for the use of restorative justice process for minor crimes now and subsequently for serious crimes. The cases can be referred by the various officials of the criminal justice system; the police, state counsels, legal aid lawyers, defense attorneys and the courts.

4.3. Challenges

From the foregoing, certain underlining issues may impede the successful implementation of restorative justice in Nigeria. These include resources to train officials of the justice sector,

individual citizens, community leaders and other professionals who will become mediators and facilitators in restorative justice programs.

Another issue is identifying the category of cases that will be diverted to this process. This can be addressed strategically, starting with recommending restorative justice for minor crimes and juvenile offenders.

The criminal justice system might also prove resistant to the application of restorative justice measures due to the strict procedures and adversarial structure of the existing criminal justice system. The key players¹⁹⁹ in the justice system might not be too keen to share the prestigious role they play in the justice system. The operation of the Victim Offender Reconciliation Program (VORP) in Kirchnera Ontario represents an example of how resistant an existing criminal justice system could be. A conflict arose in 1982 due to a restitution order arising from VORP Program. The Ontario Court of Appeal held *inter alia* in *R v. Hudson*²⁰⁰ that the imposition of a “restitution order through a VORP program was an improper delegation of the judge’s sentencing authority.”²⁰¹ The court’s decision in the above case resulted in a high regression rate in the number of cases referred to the VORP.

Thus, support and partnership of the key stakeholders like the judiciary must secured in the plan for a comprehensive restorative justice system in Nigeria. This is a key reason why restorative justice programs should,

*“operate within the context of or alongside the larger criminal justice system
... and ...must negotiate a substantive role in, or as an alternative to, the*

¹⁹⁹ Such as the Judges, prosecutors, defense attorneys and law enforcement.

²⁰⁰ *R. v. Hudson*, O.C.A. Oral Judgment, January 7, 1982.

²⁰¹ Jennifer J. Llewellyn, Robert Howse, *supra*, p. 103.

formal justice system or otherwise risk being marginalized and underutilized."²⁰²

There is also the risk that processes like the Victim Offender Mediation (VOM) might become too commercialized. This is because VOM is a model that requires great deal of funds to operate and where it is run by private organizations it might run counter to the objectives of the process.

Finally, the comprehensive implementation of a legislative framework on restorative justice in Nigeria will be difficult due to the federal character of Nigeria. Where a federal legislative framework is adopted, having it implemented at the state level will require the states to adopt the framework under the state law. For instance, the non-custodial and restorative measures under the Administration of Criminal Justice Act of Nigeria²⁰³ are not available under the criminal laws in majority of the states in Nigeria. For the state courts to be bound by those measures, each state must adopt them under the state criminal law and this might take some years.

²⁰² The UNODC Handbook on Restorative Justice, *supra*, p. 74.

²⁰³ *Supra*.

CONCLUSION

“Justice delayed is justice denied” says William E. Gladstone a British Stateman of the Liberal Party.²⁰⁴ Victims and offenders cannot wait forever. The problem of victim neglect and delayed justice has long been a problem of the criminal justice system of Nigeria. Many are the policies and initiative that were established to help with quick dispensation of cases within the framework of the traditional criminal justice process. Yet, no significant changes recorded. This largely to the focus on punishment and lack of a comprehensive alternative response to crime such as restorative justice.

Victim satisfaction and fair equal justice can be assured through the adoption of a restorative justice paradigm for the criminal justice system of Nigeria. Incorporating the principles of restorative justice into the statutory laws and implementing this principles within the existing criminal justice framework towards a holistic criminal justice system may well be the best temporary cause of action especially in a country with dual penal law system like Nigeria.

The task of developing and implementation will certainly not be easy but necessary. Using available tools like the “Basic Principles on the Use of restorative justice Program in Criminal Matters”²⁰⁵ as a guiding principle the development of restorative programs in Nigeria can be maximally achieved. This will foster promote public trust while at the same time rebuild the equal authority of the law over all persons irrespective of position and gender.

²⁰⁴ William Ewart Gladstone, https://en.wikipedia.org/wiki/William_Ewart_Gladstone last accessed December 21, 2017.

²⁰⁵ Supra.

BIBLIOGRAPHY

Statutes, Regulations, International Treaties.

- Criminal Code Act, Laws of the Federation of Nigeria 1990, Chapter 77.
- Criminal Procedure (Northern State) Act 1960 (as amended), Laws of the Federation of Nigeria CAP. C42. (1960 No. 20).
- Penal Code (Northern Nigeria) Federal Provision Act (1960 No. 25) Laws of the Federation of Nigeria, (1990 revised edition), Vol. 19, pp. 12576-12592.
- The Administration of Criminal Justice Act, 2015.
- The Canadian Criminal Code, R.S.C. 1985, c.C-46.
- The African (Banjul) Charter on Human and People's Rights, Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.
- The National Policy on Justice of Nigeria, 2017
- The Universal Declaration on Human Rights, Adopted by United Nations General Assembly (Resolution no. 217), in December 10, 1948.
- The International Covenant on Civil and Political Rights, Adopted by the United Nations General Assembly (Resolution no. 2200A (XXI), December 19, 1966.

Books

- B. Gallaway & J. Hudson, *Restorative Justice: International Perspectives*, (Criminal Justice Press) 1996.
- Cayley David, *The Expanding Prison: The Crisis in Crime and Punishment and the Search for Alternatives*, Toronto, House of Anansi Press, 1999.
- Elizabeth Elliott, Robert Gordon, *New Directions In Restorative Justice*, Routledge, 2013.

- Eric Claes, Rene Foque, Tony Peter, *Punishment Restorative Justice, and the Morality of Law*, Intersentia, Antwerp – Oxford, 2005.
- Gerry Johnstone, Daniel Van Ness, *Handbook of Restorative Justice*, Routledge, 2013.
- H. Messmer & H. U. Otto, *Restorative Justice on Trials: Pitfalls and Potentials of Victim - Offender Mediation, International Research Perspective*, (NATO ASI Series) 2013.
- Howard Zehr, Ali Gohar, *The Little Book of Restorative Justice*, 2003 Good Books, Intercourse, Pennsylvania, USA
- Michelle G. Grossman, Julian V. Roberts, *Criminal Justice in Canada: A Reader*, Cengage Learning, 2011.
- Open Society Justice Initiative, *Presumption of Guilt: The Global Overuse of Pretrial Justice*, Open Society Foundations, 2014.
- The United Nations Office on Drugs and Crimes (UNODC), *Handbook on Restorative Justice Programs*, Criminal Justice Handbook Series (2006) p. 2.
- Thom Brooks, *Punishment*, Routledge New York, NY, 2012.
- Tony Foley, *Developing Restorative Justice Jurisprudence: Rethinking Responses to Criminal Wrongdoing*, Routledge, 2016
- Wesley Cragg, *The Practice of Punishment; Towards a Theory of Restorative Justice*, Routledge, 1992.

Journals, Dissertations, Monographs, Periodicals, Reports, Resolutions

- Braithwaite John, *The Fundamentals of Restorative Justice*, in “A Kind of Mending: Restorative Justice in the Pacific Islands,” edited by Dinnen Sinclair, by Jowitt Anita and Newton Tess, 35-44. ANU Press, 2010.

- Braithwaite John, *Building Legitimacy Through Restorative Justice*, in “Legitimacy and Criminal Justice: An International Perspective,” edited by Tyler Tom R., 146-62. Russell Sage Foundation, 2007.
- Cochran, Robert F., *The Criminal Defense Attorney: Roadblock or Bridge to Restorative Justice*, *Journal of Law and Religion* 14, no. 1 (1999): 211-28.
- Dhami, Mandeep K, *Apology in Victim-Offender Mediation*, *Contemporary Justice Review* 19, no. 1 (2016): 31-42.
- Dr. Agbonika John & Alewo Musa, *Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint*, *Journal of Law, Policy, and Globalization*, (2014) 130 – 138.
- Elechi, Ogonnaya O., *Victims under restorative justice systems: The Afikpo (Ehugbo) Nigeria model*, *International Review of Victimology* 6, no. 4 (1999): 359-375.
- Gordon Bazemore, Mark Umbreit, *Conferences, Circles, Boards and Mediations: Restorative Justice and Citizen Involvement in the Response to Youth Crime*, Balanced and Restorative Justice Project, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, September 1, 1999.
- Joanne Katz; Gene Jr. Bonham, *Restorative Justice in Canada, and the United States: A Comparative Analysis*, 6 *JIJIS* 187, 196 (2006) p. 187.
- Langdon, Jennifer J, *Talk It Out: Toward A Narrative Theory of Community Conferencing*, *Contemporary Justice Review* 19, no. 1 (2016): 19-30
- Lueng May, *The Origins of Restorative Justice*, Alberta, Canada: Canadian Forum on Civil Justice, Article no. 362, 1999.

- Mark S. Umbreit, *Crime Victims Seeking Fairness, Not Revenge: Toward Restorative Justice*, 53 Fed. Probation 52, 57 (1989).
- Mark S. Umbreit & Marilyn Peterson Armour, *Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community*, Washington University Journal of Law & Policy, Vol. 36, pp. 64 – 89.
- Megan Stephens, *Lessons from the Front Lines in Canada's Restorative Justice Experiment: The Experience of Sentencing Judges*, 33 Queen's L.J. 19, 78 (2007).
- Sara Sun Beale, *Still Tough on Crime? Prospects for Restorative Justice in the United States*, Utah Law Review Art. No. 2323 (2003), pp. 413 – 437, at p. 421.
- The United Nations Economic and Social Council, *Development and Implementation of Mediation and Restorative Justice Measures in Criminal Justice*, (Resolution 1999/26) Adopted at its 43rd Plenary Meeting, July 28, 1999.
- The United Nations Secretariat, *The 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, Vienna, 10-17 April 2000, Report (United Nations publication, Sales No. E.00.IV.8), chap. V, sect. E.
- The United Nations Office on Drugs and Crime, *Assessment of Justice System Integrity and Capacity in Three Nigerian States*, The United Nations, 2004.
- Tosin Osasona, *Time to Reform Nigeria's Criminal Justice System* Journal of Law and Criminal Justice Vol 3 No 2 December 2015.
- Ushi, V. I., *Restorative justice alternative to the traditional criminal justice system in Nigeria* (Order No. 3724948). Available from ProQuest Dissertations & Theses Full Text: The Humanities and Social Sciences Collection. (1732168390), 2015.

- Yazzie, R. and Zion, J. W., *Navajo restorative justice: The law of equality and justice*, in Galaway, B. and Hudson, J. (Eds.), *Restorative justice: International perspectives*, Monsey, NY: Criminal Justice Press, pp. 157–173.

Online Materials

- Adler School Institute on Public Safety and Social Justice; Illinois Coalition for Immigrant and Refugee Rights, *White Paper on Restorative Justice: A Primer and Exploration of Practice across Two North American Cities*, 2017.
https://www.adler.edu/resources/content/4/1/documents/RJ_WhitePaper_Final_13_04_29.pdf last accessed December 21, 2017.
- Amnesty International, *Nigeria: Criminal Justice System Utterly Failing Nigerian people; Majority Inmates Not Convicted of Any Crime*, Press Release, (February 28, 2008).
<https://www.amnesty.org/en/press-releases/2008/02/nigeria-criminal-justice-system-utterly-failing-nigerian-people-majority/> last accessed December 21, 2017.
- B. Ayorinde & CO, *Nigeria: A Reformatory Approach to the Criminal Justice System in Nigeria*, Mondaq (online), February 18, 2014,
<http://www.mondaq.com/Nigeria/x/293894/Public+Order/A+Reformatory+Approach+To+The+Criminal+Justice+System+In+Nigeria> last accessed December 21, 2017.
- David Newton M. S, *Restorative Justice and Youthful Offenders*, The Federal Bureau of Investigation(FBI) Law Enforcement Bulletin, October 6, 2016.
<https://leb.fbi.gov/2016/october/restorative-justice-and-youthful-offenders> last accessed December 21, 2017.

- Garrett, Brandon L. "*Reforming the Criminal Justice System.*" In *Convicting the Innocent*, Cambridge, Massachusetts; London, England: Harvard University Press, 2011. <http://www.jstor.org/stable/j.ctt2jbt8f.11> last accessed December 21, 2017.
- Gordon Bazemore, Mark Umbreit, "A *Comparison of Four Restorative Conferencing Models*," Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention, U.S Department of Justice, February 2001. <https://www.ncjrs.gov/pdffiles1/ojjdp/184738.pdf> last accessed December 21, 2017.
- Impact of Community Conferencing, <http://www.communityconferencing.org/impact-of-community-conferencing/> last accessed December 12, 2017.
- Jennifer J. Llewellyn, Robert Howse, *Restorative Justice - A Conceptual Framework*, Prepared for the Law Commission of Canada 1999, <https://ssrn.com/abstract=2114291> last accessed December 21, 2017.
- Office of Juvenile Justice and Delinquent Prevention, *Guide for implementing The Balanced and Restorative Justice Model*, The Balanced and Restorative Justice Project, Report: NCJ 167887 (1999). <https://www.ojjdp.gov/pubs/implementing/about.html> last accessed December 21, 2017.
- Restorative Justice Services at Correctional Service Canada; <http://www.csc-scc.gc.ca/restorative-justice/003005-0001-eng.shtml> last accessed December 21, 2017.
- The African Commission on Human and People's Rights, *Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (The Luanda Guidelines)*, adopted at the 55th Ordinary Session in Luanda, Angola, from 28 April to 12 May 2014. <http://www.achpr.org/files/special-mechanisms/prisons-and-conditions-of->

[detention/guidelines_arrest_police_custody_detention.pdf](#) last accessed December 21, 2017.

- The Canadian Resource Center for Victims of Crime, “*Restorative Justice in Canada; What Victims should know*,” 2011 <https://crevc.ca/docs/restjust.pdf> last accessed September 30, 2017.
- The United Nations Economic and Social Council, *Basic Principles on the Use of Restorative Justice Programs in Criminal Matters*, Resolutions and Decisions Adopted by the Economic and Social Council at its Substantive Session of 2002, (Resolution no. 2002/12) 37th Plenary Meeting, July 24, 2002, [E/2002/INF/2/Add.2] p. 54. <http://www.un.org/esa/ffd/wp-content/uploads/2002/07/E2002INF2Add2.pdf> last accessed December 21, 2017.
- The United Nations Office on Drugs and Crimes (UNODC) Brussel, The European Union 10th EDF Program in Nigeria: *Support to The Justice Sector in Nigeria* (Report of the UNODC) 2013, <http://www.unodc.org/brussels/en/justice-nigeria.html> last accessed December 21, 2017.
- The United Nations, Eleventh UN Congress on Crime Prevention, and Criminal Justice: *Workshop on Criminal Justice Reform Highlights Need for Restorative Justice as Alternative to Prison*, 18 - 25 April 2005, Bangkok, Thailand. <http://www.un.org/events/11thcongress/docs/bkkcp18e.pdf> last accessed December 21, 2017.
- The United Nations Office on Drugs and Crimes, *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*, United Nations, 2016 pp. 79-95.

https://www.unodc.org/pdf/criminal_justice/Compendium_UN_Standards_and_Norms_CP_and_CJ_English.pdf last accessed December 21, 2017.

- William Ewart Gladstone, https://en.wikipedia.org/wiki/William_Ewart_Gladstone last accessed December 21, 2017.
- Yvon Dandurand, Alison Macphail, *Using Indicators to Help Improve the Criminal Justice System*, International Center for Criminal Law Reform and Criminal Justice Policy, Canada (Reinventing Justice – 2015, Seventh National Criminal Justice Symposium – Montreal) January 24, 2015.
http://icclr.law.ubc.ca/sites/icclr.law.ubc.ca/files/publications/pdfs/Using%20Indicators%20to%20Help%20Improve%20the%20Justice%20System_Dandurand_Macphail.pdf last accessed December 21, 2017.

Websites

- U.S. Department of Justice Programs: www.ojp.gov
- United Nations Office on Drugs and Crimes: www.unodc.org
- Open Society Foundations: <https://www.opensocietyfoundations.org/>
- International Center for Criminal Law Reform and Criminal Justice Policy, Vancouver: <http://icclr.law.ubc.ca/icclr>
- Journal of Law and Criminal Justice: <http://jlcjnet.com/>
- Institute for Security Studies: <https://issafrica.org/>
- Correctional Service Canada: <http://www.csc-scc.gc.ca/>
- National Criminal Justice Reference Service: <https://www.ncjrs.gov/>