
RESTORATIVE JUSTICE IN NIGERIA

BY
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Abstract

The purpose of this paper is to consider theoretical and practical issues in relation to the notion of Restorative Justice with particular reference to the Nigerian context. The paper will begin with an analysis of the "Restorative Justice"; it will then go on to discuss the nature and principles of Restorative Justice; application of Restorative Justice; and Restorative Justice measures. The International scenario in relation to Restorative Justice will then be considered followed by a focus on the Nigerian context. The paper will raise issues on the implementation of Restorative Justice in Nigeria. The paper will conclude with recommendations regarding possible ways forward for Restorative Justice in Nigeria."

INTRODUCTION

Restorative Justice seeks to establish a proper balance in the maintenance of the tripartite interests of the State, the victim and the offender. The mood and temper of the public in regard to the treatment of crime and criminals is one of the unfailing tests of the civilization of any country¹

Restorative Justice emphasizes an equal concern for crime victims and offenders, while de-emphasizing those of coercion. It also seeks to focus on the harm done to persons and relationships rather than on the violation. Beyond its philosophical framework, the restorative justice model includes a number of programs for adequate needs of crime victims, the community, and offenders.²

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1 Workshop on Criminal Justice Reform held by Committee 1 of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice on 22nd April 2005. Press Release. SOC/CP/331 http://www.un.org/News/Press/docs/2005/SOCCP_331.doc.htm. Alejandro Salinas Rivera is Chile representative.

2 *ibid.*

THE NATURE AND PRINCIPLES OF RESTORATIVE JUSTICE.

A key attribute of restorative justice was the significant involvement of the community in the response to persons whose behaviour has been deemed harmful to the victim and the community. Restorative Justice held considerable promise as a cost-effective alternative to traditional responses to criminal offenders. Roach K¹ described restorative justice as:

"An important alternative to prosecutions and imprisonment, as a means of holding offenders accountable in a manner that responded to the needs of offenders, victims and the community. Restorative process, as defined in the 2000 Basic Principles on the Use of Restorative Justice in Criminal Matters, were those in which offenders, victims and other affected by crime participated in the resolution of the matters arising from crime"²

Restoring harmony involves determining sentences that respond to the need of the victim, the community, and the offender. In *Gladue v Queen*³ the court endorsed the concept of restorative justice and the use of community-based alternative to imprisonment. The court also rejected the view that a restorative approach is a more lenient approach to crime, or that a sentence focusing on restorative justice is necessarily a lighter sentence.

APPLICATION OF RESTORATIVE JUSTICE

Some of the points at which restorative justice can be applied include;

- (a) Restorative justice programs may prevent crime through public education, crime prevention, and encouraging community members to use mediation to resolve conflicts before they become serious.
- (b) Police officers may refer matters to alternative measurers or other diversion programs before they lay charges. Alternative measures are programs that offer offenders a way to take responsibility for their behaviour and to address the harm that they have committed. Diversion programs typically involves sending an offender to programs that may help with the underlying causes of the offending behaviour, such as substance abuse or anger management.
- (c) After the accused has been charged, matters may be referred to alternative measures programs or community justice committees. If the matter is successfully resolved at this stage, the charges may be

1 *ibid.*

2 *ibid.*

3 Supreme Court of Canada Judgment.

suspended.

- (d) At the sentencing stage, sentencing circles may assist a judge in determining a fit sentence. Judges may be able to order more restitution to victims, and circles may involve the community in helping the offender.
- (e) After the offender has been sentenced, Victim-Offender Reconciliation Panels, circles of support, and reintegration circles can help to meet the emotional needs of victims and offenders. Restorative measures may also include efforts to create safer prison environments and rehabilitate offenders¹

RESTORATIVE JUSTICE MEASURES

The different aspects of Restorative Justice include the role of mediator, the right of victims and community-based efforts, family group conferencing.

(i). Mediation

Mediation as a measure offers the victims of a crime and the offender the opportunity to meet and reach quick and viable agreement at low cost, the offenders could also offer compensation to the victim to compensate for damages, the rights of victims are also protected. Kinnunen, A² described the role of a mediator as,

“Mediator in Finland had strong ties to social and youth work. Mediation offered the victims of crime an opportunity to meet offenders and explain the outcome of offences, while at the same time, giving offenders an opportunity to make amends for the damage caused”³

Mediation offered the victims of crime an opportunity to meet the offender and explain the outcome of the offence. At the same time, the offender had an opportunity to learn to take responsibility for his or her actions, to apologize and to seek to make amends for the damage caused. Mediation had been viewed as most rewarding among young offenders in view of its contribution to preventing re-offending. The objective of the victim-offender mediation process was a written agreement in which the offender acknowledged the offence and agreed to make a material amends or work

1 Restorative Justice in Canada. A Consultation Paper May 2004 p.3 <http://canada.justice.gc.ca/en/ps/voc/rjpap.html>.

2 Workshop on Criminal Justice Reform, op. cit P.9 Aarne Kinnunen is Finland representative.

3 *ibid.*

service. According to Kinnunen,

"Mediation had been harnessed as a continuation or by-product of the criminal justice system. ...The issue of participating in the mediation process and of withdrawal from it at any time remained matters to be decided by the parties concerned. Consideration of the interests of both the offender and the victim in the mediation process was important as the outcome of mediation might have a substantial impact on the legal status of the parties. Research showed that both victims and offenders were satisfied with mediation processes in criminal matters. Research also indicated a high rate of adherence to agreements concluded as the outcome of mediation process"¹

There were many advantages to mediation. Viable agreements were reached quickly and at low cost. The offenders had been motivated to compensate for damages, and the rights of victims promoted.

Mediation brings victims and accused person together with a mediator to discuss the crime and to develop an agreement that resolves the incident. This process allows victims to express their feelings to the accused and to have offenders explain their actions and express remorse. This is intended to help victims gain a sense of closure, while offenders learn to take responsibility for their actions.²

(ii). Family group conferencing

Family group conferencing (FGC) has a much wider circle of participants than mediation. In addition to the victim and offender, participants may include people connected to the victim, the offender's family members and people connected to the offender. Family group conference is often the most appropriate system in Juvenile cases.

(iii). Sentencing circles, healing circles and community assisted hearing.

The model is based on the practice of having communities, families, elders, and people in conflict discuss and resolve an issue flowing from an offence. Participants sit in a circle and may pass a "talking stick" or "talking feather"

1 *ibid.*

2 *ibid.*

from one speaker to another.

In sentencing circles, the victim, offender, family, and community members meet with a judge, lawyers, police, and others to recommend to the judge, what type of sentence an offender should receive. The victim and the community have the opportunity to express themselves to the offenders, and may also take part in developing and implementing a plan relating to the offender sentence.

Healing circles are ceremonies intended to bring conflict to a close, allow the participants to express their feelings, and indicate that the offender and victim have undergone personal healing.

Community-assisted hearings, which are sometimes called releasing circles. These hearings are an opportunity for the justice system, the community, and the offender to be responsible for the successful reintegration of an offender back into community¹

GLOBAL PERSPECTIVES ON RESTORATIVE JUSTICE

Restorative Justice is an important alternative to prosecution and imprisonment. It is a means of holding offenders accountable in a manner that responded to the needs of offenders, victims and the community. Restorative Justice held considerable promise as a cost-effective alternative to traditional responses to criminal offenders. It created a "pro-reform environment" that is grounded not in collective fears but in respect for democratic values and human rights.²

Alejandro Salinas Rivera³ described Restorative Justice in Chile as a multiplicity of actors on an equal footing. He said:

" The reform of Chile's criminal justice system, which began in 2000, included legal assistance services to all accused of offences. In the old criminal justice system, characterized by inquisition, secrecy and written procedures, the prosecutors and judging authorities had been one and the same"⁴

1 Restorative Justice in Canada, op. cit p.5

2 *ibid.*

3 Workshop on Criminal Justice Reform, op.cit p.6.

4 *ibid.*

Restorative justice offers a complete legal system, namely criminal prosecution, the courts and access to justice and the right to defence.

Restorative justice can be used to protect and safeguard the rights of children in the society. Addressing restorative justice mechanisms in the new juvenile criminal legislation in Latin America and Spain, Carrenza, E¹ said;

"The convention on the Rights of the Child, which had been ratified by all countries of Latin America, established a mechanism for restorative justice for minors. Many countries in the region now had legislation in place that was in line with the Convention on the Rights of the Child, and Argentina, Chile, Colombia and Mexico had pending draft codes"²

Carrenza explained further that restorative justice mechanism was adopted in the regions because 65 percent of the population was under 35 years old, and 42 percent was under 18 years old. He said, it was important to use the alternative mechanisms as a true alternative to prison sentencing, as crime and imprisonment had been on the rise. He said further that the purpose of the mechanism of restorative justice had to do with an early end of a case or non-prosecution of a case and that most countries in the region had chosen remission and conciliation.

Asiedu, W.K.³ opined that restorative justice in Ghana minimize crime. According to him;

"Alternative to imprisonment should be imposed in order to mitigate the impact on them. The effects of imprisonment vulnerable groups include: the provision of special facilities and care which was costly; the contamination of juvenile by adult prisoners; and the stigmatization of Children born in prison. Alternatives to imprisonment, such as probation, parole, community service and so forth were found to be effective. Juvenile offenders must be kept out of prison as much as possible."⁴

1 *ibid.* Elias Carranza. He is the Director, Institute Latino Americano de naciones Unidas Para La Prerencio del Delitey Tratamiento Del Delicuyente (ILANUD). He is Chile representative.

2 *ibid.*

3 *ibid.* William Kwadwo Asiedu is Ghana representative

4 *ibid.*

Restorative justice is an emerging alternative to imprisonment, which compensated the victim with the aim of restoring him or her to a previous standing. It involved a meeting between the victim and offender. If the offender was to be punished, it would be non-custodial punishment beneficial to both society and the victim. As Asiedu put it,

“It was part of the culture in Ghana to resolve issues at the community level and, as much as possible, cases were taken out of the police station and courts. Elders and opinion leaders tried to resolve cases with the victim and offenders coming to a mutual understanding. The courts normally accepted the settlements reached. Restorative justice enabled the victim to forgive the offender and the offender to show remorse”¹

One specific aspect of restorative justice is the reform in the subsystem of the criminal justice systems-police. While no police system was perfect, some were more perfect than others. A system that did not reflect the vision and aspirations of the citizens and failed to deliver according to their needs and demands was in urgent need of reform. Reform efforts had to establish a police system that was politically neutral, non-authoritarian, accountable and responsive to the community. It must also be professionally efficient and an instrument of the rule of law.²

Commenting on restorative justice as a form of criminal system reforms, Mohamed Amara³ of Algeria said:

“The reform of justice must take into account the social and political reality of the country. There was no one model for justice, nor one model for justice reform. However, any justice system must guarantee the independence of the judiciary, ensure equal access for all citizens to the system and be compatible with human rights. The verdicts must be of the best possible quality. Any justice reform must seek to apply legislation for the good of the country and its citizens and make sure that human resources were well used and trained. There was also a need to reform the penitentiary system, taking into account international standards. Since 1999, a reform process had been under way in this country”⁴

1 *ibid.*

2 *ibid.*, at p 10 Muhammad Shoaib Suddle is Pakistanian representative

3 *ibid.*, Mohammad Amara is Algeria representative

4 *ibid.*

Mohamed Amara said that restorative justice system is not new in Algeria, and that it has been applied by the "Djamaa" or "Council of Wise Man" system. He wondered whether restorative justice was the one and only means whereby problems faced by justice would be solved, or whether it was one means amongst other.¹

Senegal has a law on non-custodial sentencing, which stressed public service works. Senegal also had a law on mediation, as well as a law that allowed public prosecutors to propose mediation to the perpetrator and the victim. If the parties agreed, mediation was under the direction of the prosecutor. If there were no agreement, the case continued and might go to court. Most offences were not of a serious nature, and conciliation was often reached in those cases²

Morocco is undergoing a reform of its criminal justice system since 2003 which was based on the principles of the Universal Declaration of Human Rights. The time limits for legal proceedings had been well-defined, especially cases involving arrests. Prisoners' rights were closely monitored, including through periodic visits by judges, investigators and law enforcement officials. Prisons were also closely monitored, and the legislature paid attention to the rights of arrested persons. A new law had been established regarding juvenile offenders. Another part of the reform process was its emphasis on the need to guarantee access to lawyers and the elaboration of measures to respect the dignity of persons. Morocco's criminal justice system took into account the provisions of the various human rights instruments and the need to maintain the public interest.³

In Turkey, the fundamental principles such as equality without any discrimination before the law and the use of judicial power by independent courts are the basic essentials of Turkish criminal justice system. An accused person had the right to access defence counsel as soon as he was taken into custody. If the accused was under 18 years old, the interrogation was not to be carried out by the law enforcement officers, but rather by the public prosecutor in the presence of defense counsel. Pre-trial detention was not to exceed six months during preliminary investigation and not to exceed two years during the trial stage. If the committed crime required an application by

1 *ibid.*

2 *ibid.*

3 *ibid.* Mustapha Halmi is Morocco representative

the victim for prosecution, law enforcement officials, public prosecutors or the judge might set in motion mediation between the parties and, if the victim waived prosecution, the case could be dismissed. There were a number of alternative sanctions and restorative justice in the Turkish Penal Code, and there was a range of non-custodial sentences, including community work, enforcement at home, enforcement on weekend, compulsory residence, compulsory education, reparation of damages, compensation of victims and reconciliation.¹

RESTORATIVE JUSTICE IN NIGERIA.

Nigeria is a docile society in which so many people do not know their rights. A rather pathetic dimension is that only a negligible percentage of those who know are prepared to stand up for such rights. This is why people spend years behind bars awaiting trial for offences that would have attracted imprisonment for a few months at the most. The victims of this societal injustices are always the under-privileged. The privileged ones are in position to buy justice and choose the law they want to obey or ignore. Examples are:

- a. In March 2007, a 27-year-old man, Abiodun Ismaila, was sentenced to six years imprisonment with hard labour by an Osogbo Magistrates' Court. The alternative offered him was the payment of ₦100, 00.00 (One Hundred Thousand Naira) fine. According to the prosecution, Ismaila broke into the residence of one Aloba Oluwasheun at Dada Estate in Osogbo and from there stole a bag containing sundry items. The contents of the bag were listed as two parts of shoes, a wristwatch, one foot of canvas shoes and some documents. All the items were valued at ₦21, 000.00 (Twenty One Thousand Naira). The prosecution further told the court that Ismaila thought the bag contained money.²
- b. In Benue State a man who stole some tubers of yam was sentenced to seven years imprisonment.³
- c. In Akure, Ondo State, Nigeria a man who stole a pot of soup bagged a length jail term for his desperation to assuage his hunger.⁴
- d. The immediate past Inspector General of Police, Mr. Tafa Balogun, to

1 *ibid.* Necat Nursal is Turkey representative

2 Nigerian Tribune of 29th March, 2007 © 2004-2006 African Newspapers of Nigeria Plc. Publishers of Saturday and Sunday Tribune. [Ttp://www.trinube.com.ng/29032007/edit.html](http://www.trinube.com.ng/29032007/edit.html).

3 *ibid.*

4 *ibid.*

whom billions of naira in ill-gotten wealth was traced, received just a slap on the wrist. He spent only a few months in prison.¹

The apparent contradictions of the nation of justice mentioned above leave the ordinary man baffled and bewildered. It creates the impression that the rich and the poor are governed by different versions of the same law.

The courts exist to dispense justice. Inherent in the principle of justice is the quality of fairness and reasonableness, the impartial adjustment of conflicting claims and the assignment of merited rewards or punishments. The question that logically arises is: What manner of justice is being dispensed in a situation in which petty thieves receive life-shattering sentences while the big rogues are treated with kid gloves?²

The prison yard is, indeed, a penal institution but its ultimate objective is to reform and not to ruin the prisoner. In Nigeria, however, the jailhouse has become a veritable breeding ground for ruthless gangsters. There are many people who have found themselves in prison as a result of proven or unproved cases of theft involving property of little monetary value. During their usually long periods of incarceration, they come in contact with and get polluted by the hardened criminals. On their discharge from prison, they walk into the warm embrace of chieftains of the underworld, filled with rage and swearing vengeance on society because they see themselves as victims of societal injustice.³

The law normally prescribes a range of punishments- from the heaviest to the lightest for each offence. This leaves the judge with the responsibility of using his discretion to determine the appropriate punishment to be meted out to a convicted person. In the exercise of this discretion, the judge takes due cognizance of the circumstances surrounding the commission of the crime. When an accused person is convicted of a grievous crime, the defence counsel pleads for the mitigation of the severity of punishment. He wants the judge to exercise this discretion in favour of his client. When, on the other hand, an accused is found guilty of a petty crime, what are those aggravating circumstances that could warrant the imposition of a disproportionate punishment that is capable of undermining the very essence of justice?⁴

1 *ibid.*

2 *ibid.*

3 *ibid.*

4 *ibid.*

The gale of impeachments in the Nigerian politic that swept across the country in 2005 and 2006 has been quite instructive. Honour and integrity have always been taken for granted as qualities that are inherent in anybody that is involved in the dispensation of justice. The brazen manner in which some judicial officers ignored the provisions of the constitution and played along with politicians showed clearly that not all judges care a hoot about these attributes.¹

But for the restorative decisions at the highest levels of the judiciary, the image of the bench would have been completely battered in Nigeria, today. If judges on the higher bench could serve as facilitators of unconstitutional impeachments, the pronouncement of outlandish judgments by their junior colleagues on the lower bench should not be a surprise.²

IMPLEMENTATION OF RESTORATIVE JUSTICE IN NIGERIA

Nigeria system of criminal justice had suffered considerably during decades of military rule. Following a return to democracy in Nigeria in 1999, the government introduced a 19-point programme to modernize the country's justice sector. The reform programme included improving access to justice by reducing the cost of litigation and promoting legal aid. It also included internal reform to justice by reducing prison congestion, including through alternative means to administer justice.³

On the rights of victims of crime, the country's Justice Minister, Chief Bayo Ojo⁴ said:

" The challenge of protecting the rights of vulnerable persons is closely related to that protecting the victims of crimes. There is considerable room for improving the way our criminal justice system treats victims of crime, especially when they are women and children. The justice system must ensure that the pains of victims are alleviated rather than concentrating on the offenders only. The soothing effect that victims' compensation can have on

1 *ibid.*

2 *ibid.*

3 Workshop on Criminal Justice Reform, *op.cit.* Yemi Akinseye George, Special Assistance to Nigeria's Justice Minister. He is Nigeria representative.

4 Justice sector: Challenge of Change and Consolidating the Reform. National Ministerial Press Briefing on 18th December, 2006, Abuja, Nigeria. Chief Bayo Ojo SAN, is the Honourable Attorney-General and Minister of Justice, Federal Republic of Nigeria.

*the society is amply illustrated by the payment of compensation by the Federal Government to the relatives of the victims of the notorious Apo six killing. However, in addition to victim compensation, we would also endeavour to create a framework for the empowerment of victims"*¹

The Federal Government of Nigeria is currently proposing for passage into law a Victim Rights Bill² which seek to interalia,

- a. Improve the access of the disempowered groups to the criminal system, including women, children and victims in general;
- b. Redesign the criminal justice system to empower victims;
- c. Provide a greater and more meaningful role for victims in the criminal justice system;
- d. Improve the service delivered by the criminal justice process victims of crime; and
- e. Deal with the damage caused by criminal acts by providing remedial interventions for victims.³

CONCLUSION

Administration of criminal justice in any country is a serious matter, indeed it could be said that the existence or otherwise of a nation depends on the way it administer justice. It must be appreciated that nothing can be gained by self help, efforts at disintegration, chaos and anarchy, retaliation in a crude, disproportionate and disorderly manner, law was found to be a viable and orderly manner of regulating inter-personal relationship and for bringing about peace and order in the society.⁴ For any nation to successfully embark on restorative justice a number of strategies should be developed, they included; establishing the legitimacy of the proposed reform; finding champions or figureheads committee to reform; providing incentives for change and establishing realistic benchmarks and reform objectives.⁵

Restorative justice as a form of criminal reforms should include all relevant parts of the domestic criminal justice system and be as integrated and

1 *ibid.*

2 *ibid.*

3 *ibid.*

4 Yakubu, J.A. (ed) *Administration of Justice in Nigeria. Essays in Honour of Hon. Justice Mohammed Lawal Uwais.* Malthouse Press 1998. P. 67 Ltd. Ikeja, Nigeria.

5 Workshop on Criminal Justice Reform, *op.cit.*p3

comprehensive as possible. International cooperation should be recognized as essential to the success of criminal reform initiatives and technical assistance should be offered whenever possible. Reforms should be based on the active involvement of civil society, community groups and institutions not traditionally associated with criminal justice. Other recommendations include the development of mechanisms to ensure accountability and respect for the rule of law, emphasis on crime victims and vulnerable group such as children consistent with international guidelines and standards, and the increased use of restorative justice process and principles where consistent with international guidelines and standard.¹

Restorative justice was a way of making a major contribution to enhanced cooperation in the justice system. Research indicated that from a victims' perspective, the restorative justice approach had real benefits. Therefore there is need to be realistic in the way in which restorative justice processes could be used. It is important to ensure that developments are based on research- based evidence.²

Both government and community have roles to play in restorative justice, but achieving a balance between the two may be one of the most challenging tasks in developing restorative justice programs. Restorative justice requires community members to be involved as active participants, as early as possible in the resolution of the conflict victims are involved so that their needs for answers, healing, acknowledgement, safety, and emotional reparation are met. Offenders are involved in accepting responsibility for the harms they have caused, making compensation to their victims and communities, and making positive changes in their own lives. The community is involved in providing programs for these processes to occur, opportunities for offenders to make restitution, and safe environments where rights are respected.³

For all this activity to occur, criminal justice officials must be willing to accept communities as partners in making decisions. Governments can play an important role in developing legislation, policies and guideline; forming partnerships between groups; and providing information, research, and technical support to communities. Governments will also have to consider the amount of funding

1 *ibid.*

2 *ibid.*

3 *Restorative Justice in Canada. A Consultation Paper, op.cit. p.8*

that is necessary to develop and sustain these programs.¹

It is important to involve victims right from the beginning in developing restorative policies or program by the government. Victims services programs that provide victims with support, referrals to other programs, information about the criminal justice process, and other service must be encouraged.²

The government is formulating laws on restorative justice must take the views of all stakeholders-non-profit organizations, citizen advisory groups, community organizations, justice system officials, and advocacy groups for victims and offenders – should be taken into consideration.³

The government should introduce restorative justice programs which should involve skillful training by the participants. Volunteers, justice workers, probation workers, police, government officials, and mediator should be trained in the area of criminal justice system, professional practice with clients, sensitivity of victims, conflict resolution skills and administrative skills.⁴

Given the widespread adoption of restorative principles by the government, it seems likely that the trend will continue and that the philosophy of restorative justice will have a major impact upon the practice of criminal justice in the future.⁵

So much has been said but very little has so far been done about the reform of the country's laws. And commendable as the cleansing of the judiciary is, the fact remains that it has been an ad hoc affair. A thoroughgoing reform of Nigerian laws is long over due. One of the objectives of the exercise should be the review of laws that offer the latitude for outrageous sentencing. And to ensure that the courts dispense justice rather than favour and unmerited punishment, the cleansing of the judiciary should be carried to a logical conclusion.⁶

1 *ibid.*

2 *ibid.*, at p. 8

3 *ibid.*, at p. 10

4 *ibid.*

5 *ibid.*

6 Nigerian Tribune, *op.cit.* at p.2