

IMPROVING THE CRIMINAL JUSTICE SYSTEM IN NIGERIA THROUGH
RESTORATIVE JUSTICE: LESSONS FROM CANADA AND NEW ZEALAND

By

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Dedication

This thesis is dedicated to:

- Almighty God for His grace and faithfulness
- My Parents, my immediate family and all my teachers for their unwavering support and prayers
- Schulich School of Law, Dalhousie University for creating an environment conducive for learning and intellectual growth

Table of Contents

Abstract.....	vii
List of Abbreviation Used.....	ix
Acknowledgements.....	x
CHAPTER 1: INTRODUCTION.....	1
1.1. General Introduction.....	1
1.2. The Potential of Legal Transplants and Comparative Legal Research.....	4
1.3. Other Research Methodologies.....	6
1.3.1. History.....	7
1.3.2. Doctrine.....	7
1.3.3. Inter-disciplinary Methodology.....	8
1.3.4. Legal Theory.....	9
1.3.5. Policy.....	10
CHAPTER 2: UNDERSTANDING RESTORATIVE JUSTICE: AN ANALYSIS....	11
2.1. Introduction.....	11
2.2. Ideas of Justice.....	12
2:2.1. Retributive Justice and the formal criminal justice system.....	13
2.3 An Introductory Note on the History of Criminal Law in Nigeria.....	17
2.4. The Current Administration of Criminal Law in Nigeria.....	19
2.5. The Restorative Justice Concept: Introduction.....	21
2.6. What is Restorative Justice.....	23
2.7. Understanding Restorative Justice through Theoretical Conception.....	26
2.7.1. Relational Theory.....	26
2.7.2. Restitution, Reparation and Restoration.....	28

2.8. The Concept of Restorative Justice in African Traditions.....	29
2.8.1 The Post-Independence Criminal Justice System in Nigeria and Restorative Justice Practice.....	32
2.9. Conclusion.....	37
CHAPTER 3: RESTORATIVE JUSTICE AND THE CRIMINAL JUSTICE SYSTEM IN NEW ZEALAND.....	38
3.1. Introduction.....	38
3.2. New Zealand Criminal Justice and Restorative Justice Practice.....	40
3.3 Youth Justice Reform and Restorative Justice in New Zealand.....	43
3.3.1. The Significance of the Family Group Conference.....	46
3.3.2. Restorative Justice Practice and Adult Justice System.....	50
3.3.3 Restorative Justice Conferencing	51
3.4. Expansion of Restorative Justice Practice through Statutory Criminal Justice Reform.....	53
3.5. Conclusion.....	58
CHAPTER 4: INSTITUTIONALIZING RESTORATIVE JUSTICE IN CANADA...	60
4.1. Background.....	60
4.2. A Brief History of the Youth Justice System in Canada.....	63
4.2.1 The Juvenile Delinquents Act	64

4.2.2. The Young Offenders Act	66
4.2.3. The Youth Criminal Justice Act	67
4.3. Provincial Autonomy and Youth Justice Reform	69
4.4. Restorative Justice and Juvenile Justice Reform- the Nova Scotia Case Study.....	72
4.5. Brief Explanation of Restorative Justice, Community Justice and Aboriginal Justice.....	78
4.6. Conclusion.....	85
 CHAPTER 5: THE PROSPECT OF RESTORATIVE JUSTICE PRACTICE UNDER THE NIGERIAN LEGAL SYSTEM.....	
5.1. Introduction.....	87
5.2. Federalism as a Conduit to Restorative Justice Practice in Nigeria.....	89
5.3. Restorative Justice Approaches to Juvenile Justice Reform in Nigeria.....	97
5.4. The Nigerian Juvenile Justice System.....	99
5.5 Potentials of Restorative Justice Approaches to the Implementation of the Child Rights Act.....	103
5.6. Criminal Justice Agencies and Administration of Criminal Justice System.....	107
5.6.1. The Police.....	108
5.6.2. Judges and Institutionalization of Restorative Justice Practice.....	114
5.6.3. Community Agencies and Administration of Criminal Justice.....	120
5.7. Conclusion.....	121

CHAPTER 6: CONCLUSION..... 125

6.1. Conclusion..... 125

6.2. Political Structure and the Legislature..... 125

6.3. Limitation of Legislative Control/Fear of Over-standardization..... 127

**6.4. Restorative Justice and the Implementation of Juvenile Justice
Policies..... 130**

Bibliography..... 134

Abstract

This thesis argues the need for Nigeria to incorporate restorative justice within its criminal justice system. Its prevailing adversarial system is bedevilled with various challenges such as over-incarceration, recidivism, high rates of juvenile crime and prison congestion. The work draws lessons from Canada and New Zealand, two jurisdictions that have made improvements to similar systems like Nigeria via the adoption and practice of restorative justice. The advantages that a restorative justice alternative bring to criminal justice administration in Nigeria include less use of incarceration, improvement in social relationships, rehabilitation and the reintegration of young offenders. The thesis recommends that this reform can be achieved through legislation and coordination between various criminal justice practitioners and community agencies. The challenges of lack of political will by the government and over-centralization of power must be addressed through devolution and empowerment of relevant state institutions for this purpose.

List of Abbreviations Used

ACJLS	Administration of Criminal Justice of Lagos State
AJCJS	African Journal of Criminology and Justice Studies
AGF	Attorney-General of the Federation
APC	All Progressive Congress
CPA	Criminal Procedure Act
CPC	Criminal Procedure Code
CRA	Child Rights Act
Crim. Jus & Pol Rev	Criminal Justice and Political Review
CYPO	Children and Young Person Ordinance
CYPTFA	Children, Young Persons and their Family Act
DPP	Directorate of Public Prosecution
FGC	Family Group Conferencing
FHC	Federal High Court
ICPR	Institute for Criminal Policy Research
Int'l J.L.	International Journal
J Crim L & Crim	Journal of Criminal Law and Criminology
J. Int'l & Comp. L	Journal of International Law and Comparative Law
JLPUL	Journal of Legal Pluralism and Unofficial Law
LFN	Laws of Federation of Nigeria
Maastricht J. Eur. & Comp	Maastricht Journal of European and Comparative Law
MLSN	Mi'kmaq Legal Support Network
NPS	Nigerian Prisons Service
NSRJ	Nova Scotia Restorative Justice Programme
PFI	Prison Fellowship International

PFN	Prison Fellowship of Nigeria
SAN	Senior Advocate of Nigeria
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNICEF	United Nations International Children's Fund
YCJA	Youth Criminal Justice Act
YOA	Young Offenders Act
WUJLP	Washington University Journal of Law & Policy
WPB	World Prison Brief

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It is fulfilling to have done this research because of what it represents to the people of my country regarding the need for an improved criminal justice system. I believe my discussion as contained in the research shall strengthen national conversation on the state of the Nigerian criminal justice system.

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CHAPTER 1: INTRODUCTION

1.1. General Introduction

This thesis adds to the national conversation on the need for an overhaul of the criminal justice system in Nigeria. Over the years many ideas have been suggested for tackling the challenges confronting the country's criminal justice system. The problems are multifaceted, requiring various approaches to think about and deal with them. So far, however, attention has been largely focused on improving the Nigerian criminal justice system by merely addressing problems affecting its administration. These problems include prison congestion, delay in court proceedings, corruption, lack of training of police personnel, over-incarceration, and lack of unified juvenile system.¹

This thesis extends the conversation on the subject of criminal justice administration through restorative approach by offering a different way to think about justice.² The idea of a justice model that not only punishes offenders but also preserves social connections have, arguably, existed in some of Nigerian's tribal justice systems, including those of the Igbo and Yoruba societies before British colonial rule.³ Indeed, one aspect of the challenges of the current Nigerian criminal justice system may be traced to the overbearing influence of the English legal traditions on traditional Nigerian legal systems.

The English legal tradition is rooted in retributive justice which depends on an adversarial approach to addressing crime and its effects on society.⁴ This is the criminal justice system

¹ Maiwa'azi Dandaura Samu, *Conceptualizing & Contextualizing Restorative Justice System for Nigeria*, (2013), online:http://www.academia.edu/6779066/CONCEPTUALIZING_and_CONTEXTUALIZING_RESTORATIVE_JUSTICE_SYSTEM_FOR_NIGERIA.

² Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Waterloo: Herald Press, (1990) at 106

³ Don Jon Omale, "Justice in History: An Examination of 'African Restorative Traditions' and the Emerging 'Restorative Justice' Paradigm" (2006) 2:2, AJCJS, p.46.

⁴ Emmanuel C. Onyeozili, *Obstacles to Effective Policing in Nigeria*, (2005) 1:1, AJCJS, p.37.

bequeathed to post-colonial Nigeria, one that has not been significantly improved upon. For this reason, the urgent need for its reform goes beyond only addressing its one consequence of not offering a comprehensive understanding of the nature of justice. The thesis examines various conceptions of justice, including retributive justice, corrective justice, social justice and restorative justice. Chapter two discusses these theories of justice, especially in terms of how the principles and nature of each conception of justice shape society. Above all, restorative justice is presented as an indispensable and integral part of a society that aims to develop and live by fairness and equality in social relationships.

In the context of Nigeria, this work essentially advocates a criminal justice system that is focused on reforms to significantly integrate a restorative justice model into its mainstream justice system. In doing this, the thesis deals with the inadequacies of formal criminal justice system, the issues of over-incarceration, poor prison conditions, lack of victim protection, police brutality, poor training of criminal justice personnel. My approach seeks to treat the disease, not only its symptoms. For this reason, the origin, principles, development and theoretical underpinnings of restorative justice are analysed to offer a comprehensive understanding of the concept as an alternative model of justice. The thesis is largely based on the examples of Canada and New Zealand, as case studies, to explore the potentials of the concept of restorative justice for the Nigerian criminal justice system.

Chapter Three deals with New Zealand's enactment of restorative justice as a mainstream model of justice. This country's unique restorative justice model is entrenched in its legal system, with the objective of making restorative justice practice a mandatory process, only where it involves young offenders. The significance of the New Zealand restorative justice model is its demonstration of how flexible the concept is and, thus, how adaptable it is for any society to mould

it to suit its social-political circumstances and the regime of its mainstream system of justice administration.

The New Zealand example is instructive also because it explores restorative justice in a diverse society. In the same vein, the research considers the examples and steps taken in Canada to establish an improved justice system in the context of cultural diversity. Chapter Five highlights the political system in Canada, being a federal state in order to juxtapose the possibility or potential of instituting restorative justice for Nigeria. Canada and Nigeria operate a federal system of government and the history of restorative justice development in Canada may help prepare and steer prospective restorative justice movement in Nigeria. On the other hand, the socio-cultural circumstances of New Zealand speak to Nigeria in terms of cultural diversity where fear of domination constantly exists. The nature of diversity in New Zealand and Nigeria reflects the challenges of the people based on their different ethnic groups in the respective countries. Hence, the need for an all-inclusive justice system that reflects these realities among the people both in New Zealand and Nigeria.

Chapter Four discusses the impacts of restorative justice under the Canadian criminal justice system, specifically, the Nova Scotia Restorative Justice programme (NSRJ) which has been in existence for more than a decade and has evolved into a comprehensive model of this approach to justice. The Nova Scotia model is attractive because it operates within the formal criminal justice system as an alternative means of dealing with both youth and adult crime. Chapter Four traces the history and development of the Canadian criminal justice system, especially the juvenile criminal system, and the legal bases for restorative justice in the province of Nova Scotia. The discussion establishes that, overall, the Nova Scotia restorative justice programme “affords a

unique opportunity to explore issues that arise in the sustained operation of a comprehensive restorative justice program.”⁵

The focus on punishment and the obsession of the administrators of the traditional criminal justice system with establishing guilt against an offender overshadows other important concerns in dealing with crime. For example, victims’ rights and other real impacts of crime (i.e. disruption of social interactions among members of the society) are ignored during criminal proceedings. Common to the three countries Nigeria, Canada and New Zealand, is their history of being former British colonies and current members of the British Commonwealth of Nations. Thus, they all share formal criminal justice systems originating from the English legal tradition rooted in the adversarial approach to criminal justice where the government represents the state and crime is treated as a violation of the dominion of the state. Under this system crime is committed against the state leading to punishment as the ultimate consequence because of the notion that punishment deters people from committing a crime. However, the focus of justice is centred on establishing guilt against the offender without addressing the impact of wrongdoings on the victim, the offender and the society which is otherwise the legitimate concern under restorative justice model.

1.2. The Potential of Legal Transplants and Comparative Legal Research

One pertinent concern to note is that, despite the connections between Canada, New Zealand and Nigeria, there are major cultural differences which characterize each country’s legal system. This means, among other things, that the distinct socio-cultural and political circumstances of each country must dictate the body of rules that reflect the differences in their criminal justice systems. In this regard, Pierre Legrand observes that:

⁵ Jennifer Llewelyn and Robert Howse, “Restorative Justice- A Conceptual Framework,” (October 1998), The Law Commission of Canada.

A comparative study should not aim at finding 'analogies' and 'parallels', as is done by those engrossed in the currently fashionable enterprise of constructing general schemes of development. The aim should, rather, be precisely the opposite: to identify and define the individuality of each development, the characteristics which made the one concludes in a manner so different from that of the other. This done, one can then determine the causes which led to these differences.⁶

Hence, it is necessary to avoid what William Twining calls intellectual naivety. In other words, one may not necessarily classify legal systems into only the common and civil law categories.⁷ In the case of Nigeria, its traditional societies had various legal systems before the imposition of English rule and its laws. Similarly, the indigenous peoples of Canada and the Maori of New Zealand both had their socio- legal systems before the British adversarial criminal justice system rooted in retributive justice became dominant over them.⁸ These countries are now embracing justice systems that reflect their history, culture and political circumstances.

The complexities of legal transplants are relevant in a comparative study like this because, in Alan Watson's view, "the proper task of comparative law as an academic discipline is to explore the relationship between legal systems."⁹ He explains that the idea of a legal transplant is important because "borrowing is easier than thinking" and "it saves time and efforts."¹⁰ However, as William Twining recognizes the diffusion of law from a global perspective must be done in a way that recognizes the significance of each legal system. He writes:

"In law, it is especially important to distinguish between different geographical levels of human relations and of legal ordering of these relations from outer space to the very local, including intermediate levels, such as regions, empires, diasporas, alliances, and other multinational entities and groupings. These levels are not neatly nested in concentric circles nor in hierarchies, nor are they static nor clearly defined.

⁶ Pierre Legrand, *The Impossibility of Legal Transplants*, (1997) 4:4, Maastricht J. Eur. & Comp. L. p. 111.

⁷ William Twining, *General Jurisprudence: Understanding Law from a Global Perspective*, UK; New York: Cambridge University Press (2009) at 3.

⁸ Evelyn Zellerer & Chris Cunneen, *Restorative Justice, Indigenous Justice, and Human Rights* ed by Gordon Bazemore & Mara Schiff in *Restorative Community Justice: Repairing Harm and Transforming Communities* (Cincinnati, OH: Anderson Publishing Co. 2001) at 248-249.

⁹ Pierre, note 6.

¹⁰ Alan Watson, *The Birth of Legal Transplants*, (2013) 41 Ga. J. Int'l & Comp. L. p. 607.

A reasonably inclusive cosmopolitan discipline of law needs to encompass all levels of legal ordering, relations between these levels, and all-important forms of law including supra-state (e.g. international, regional) and non-state law (e.g. religious law, transnational law, chthonic law i.e. tradition/custom) and various forms of ‘soft law.’¹¹

In considering the prospect of institutionalizing restorative justice under the Nigerian criminal justice system, the point of departure is to compare the features of the body of rules regulating the administration of criminal justice in New Zealand and Canada, with the domestic criminal law of Nigeria. This allows for understanding and appreciating the differences in the context of these nations and, to draw proper lessons for Nigeria. The comparison focuses on the legislative purpose of the laws of Canada and New Zealand in terms of how well, or not, their rules of law may serve the same purposes in Nigeria. One may hold that the idea of passing a set of rules that reflect the unique nature of the people creates a society where more people conform to the norms while deviants are dealt with through different restorative justice mechanisms.

In view of the foregoing, chapters three and four examine how restorative justice as a model of criminal justice has impacted the administration of criminal justice under the New Zealand and Canadian legal systems. From this, in Chapter Five, lessons are drawn for application to Nigeria, particularly with a focus on criminal law and justice reform.

1.3. Other Research Methodologies

The subject of restorative justice reflects an approach to justice that impels understanding the impacts of crime on human interaction and society, with the aim to repair the damages inflicted by crime. This imperative requires examining relevant material from various methodological points of view. Those employed in this thesis are subsequently explained.

¹¹ William Twining, *Diffusion of Law: A Global Perspective* (2004) 36:49 JLPUL, 1-45.

1.3.1. History

The historical account, based on primary and secondary sources, looks at the pre-colonial history of Nigeria through the colonial period and to the country's independence in 1960. This is done to highlight the structure of Nigerian politics, sociology and law. A historical account is also offered to explain that, what is now restorative justice, had been part of the culture of the indigenous peoples of Canada and New Zealand before British rule. The Aboriginal societies in Canada and the Maori people of New Zealand, historically, had organised their societies on the practice of what can now be called restorative justice. Restorative justice is a cultural practice in these societies, especially for administering criminal justice.

The incorporation of these traditional societies' restorative justice best practices into the respective criminal justice systems in New Zealand and Canada is the focus of chapters 3 and 4, and lessons are drawn from them for the possibility of such institutionalization in Nigeria in chapter 5.

1.3.2. Doctrine

Doctrine in this thesis considers case law from criminal adjudication in Canada, New Zealand and Nigeria in relation to restorative justice. This discussion is facilitated by the fact that the legal systems of the three countries are related via British colonialism and its accompanying English legal tradition. The points of doctrinal consideration centre on the principles and theories that shape the criminal justice systems and their responses to such challenges as over-incarceration, systemic discrimination and recidivism. As well, the constitutional and legislative bases for the implementation of restorative justice principles under the criminal laws of the three countries are examined.

Of importance in this discussion is how provincial autonomy in criminal justice administration played a key role in the successful implementation of restorative justice in Nova Scotia, through

the province's Attorney-General's authorization to establish an "alternative measure" to administer criminal justice. This key policy document governing restorative processes allows for a degree of autonomy in the provincial administration of criminal justice. The virtue of this autonomy, in this context, is a major lesson for the purpose of a proposal to incorporate restorative justice into the Nigerian legal system.

1.3.3. Inter-disciplinary Methodology

This thesis cuts across the disciplines of law and criminology. As highlighted by the works of scholars like John Braithwaite and Howard J. Zehr, this is the essence of delving into restorative justice, an undertaking that can also be related to theology which explains the influence of religion on how crime is supposedly treated with mercy or redemption. Given that most of the literature in restorative justice has come from Canada, Australia, New Zealand, the United States of America and Europe, a contribution like mine from Nigeria shall add to Africa's limited input, thus far, with a culturally diverse and multi-ethnic framework perspective.

Inter-disciplinary research is important in dealing with the challenges facing criminal justice systems because research in law alone cannot offer effective solutions to many of these challenges. That inter-disciplinary research "integrates information, data, techniques, tools, perspectives, concepts and theories"¹² commends it to this scholarly and problem-solving challenge. Discussing Nigeria's need for criminal justice reform in its social potpourri of multi-ethnicity, multiculturalism and a pluralistic legal regime certainly benefits from an interdisciplinary approach. The inter-disciplinary analysis adopted in this work reflects, in chapters three and four respectively, centres on the cultural underpinnings of the Maori people which influenced the New

¹² National Academy of Sciences, *Facilitating Interdisciplinary Research (2005)* National Academy of Engineering, and Institute of Medicine, National Academies Press Washington, DC; online: <https://doi.org/10.17226/11153>.

Zealand youth justice system. Also, the roles of the police and community agencies in the administration of youth justice under Canadian criminal law through the use of restorative justice initiatives further affirm the importance of an inter-disciplinary approach.

1.3.4. Legal Theory

Legal theory is at the core of this thesis because restorative justice engages theories of justice, crime, punishment and social organization. Eagleton tells us that "...just as all social life is theoretical, so all theory is a real social practice."¹³ Legal theory represents the nature and function of law in conceptual terms. Legal theory facilitates the discussion of the concepts/theories of justice that are germane to this project. Chapter two discusses theories of justice, specifically, retributive justice, corrective justice, distributive justice and social justice. One may argue that restorative justice will better serve the purpose of justice more than the traditional criminal justice system that is primarily founded on punishment as deterrence for crime.

Restorative justice requires building social relationships which seek peace and harmony in society, this clearly involves a relational theory of restorative justice applied to the antagonistic social disruption of criminality.¹⁴ To put it differently, prevailing adversarialism denounces violation of laid down rules for their own sake. Its response is to appease the State which is considered as the victim of crime and whose responsibility or authority it is to enforce its prohibitory rules. In contrast, the sociological reality is that people also commit crime for reasons such as poverty or economic pressure. The contextual circumstances are part of the realities that restorative justice adds to its purview. Its prescription for addressing crime, therefore, considers theories which encompass restorative justice principles which include: accountability, restitution and relationality.

¹³ Terry Eagleton & Michael Payne, *The Significance of Theory*, (Oxford, UK, Willy-Blackwell, 1991) at 25.

¹⁴Pierre, note 6.

1.3.5. Policy

The transformative orientation of this thesis, that Nigeria's criminal justice status quo needs reform for humane and socially uplifting outcomes, addresses policy choices with implications for legislative development and logistical provisions to carry out new legislative mandates. Policy makers in New Zealand and Canada have had to make such choices to improve justice delivery in crime control and reduction. Nigeria urgently needs this orientation. This work considers and recommends policy steps taken in Canada, particularly in Nova Scotia, for improving the Nigerian criminal justice system.

CHAPTER 2: UNDERSTANDING RESTORATIVE JUSTICE: AN ANALYSIS

2.1. Introduction

This chapter focuses on the conceptual and theoretical underpinnings of justice. Every society evolves based on the different ideas or conceptions of justice by which it regulates the various relationships that constitute the functioning of its life. The legal systems of different jurisdictions are rooted in the notions of justice which impact members of society individually, institutionally and systemically. For the purpose of this work, the focus of the discourse on justice centres on the traditional criminal justice systems and their overarching impacts on how legal systems function in Canada, New Zealand, and Nigeria.

The main focus is the concept of restorative justice and its relevance as a model of justice within the formal criminal justice system. The chapter explains the goals of different concepts of justice, including the nature of restorative justice and its potency to improve the administration of criminal justice. Both Canada and New Zealand have institutionalized and incorporated restorative justice under their legal systems as a mechanism for tackling many of the challenges of the formal criminal justice systems in dealing with crime.

The examination of these ideas of justice is based on their objectives in the contexts of the different societies, especially in terms of how societies are shaped by their ideas of justice considering their social -cultural realities and political circumstances. The definitions, theories and principles of restorative justice as a model of justice can modify or radically reform the formal criminal justice system. The objective of this work is to examine how the introduction of restorative justice approach may lead to improvement of the Nigerian criminal justice system beginning from administration of youth justice and the adult justice system subsequently. In sum, the discussion

shows that though restorative justice may not always have all the answers for all criminal cases, it may represent a viable alternative process by which to restore positive social relationships.¹

An important aspect of restorative justice is founded in relational theory. This theory captures the connection between crime and the impact of crime on social relationships beyond the parties directly involved. Also important is the principle of accountability which focuses on what constitutes accountability under a restorative justice process, and to determine whether restorative justice necessarily has the same meaning or significance as it does under the formal criminal justice system. A third aspect of restorative justice is restitution. The point made is that restitution does not always proffer an appropriate answer where harm cannot be measured, especially where the victim suffers emotional loss. Restitution may be relevant to the broad understanding of restorative justice, but it may not always be the appropriate response to crime or wrongdoing because unlike restitution, restorative outcomes may not always be predictable because it is largely up to the people affected by an incident to determine how they wish to resolve the conflict.²

2.2. Ideas of Justice

Part of the aspirational goals of most societies is the creation of a justice system that is based on social equality.³ The notion of social equality rests on the nature of social relationships that exist in each society i.e. such “relationship in which each person’s right to equal dignity, concern and respect are satisfied.”⁴ The motivation to evolve as a just society is primarily determined by the understanding of the world as interpreted by each society. This explains why the problems with

¹ Howard Zehr, *Little Book of Restorative Justice* (Intercourse, Pennsylvania: Good Books, 2002) at 3.

² Daniel Van Ness, “Restorative Justice” in Burt Galaway and Joe Hudson eds., *Criminal Justice, Restitution and Reconciliation* (Monsey, New York: Criminal Justice Press, 1990) at 7.

³ Howard Zehr, “*Retributive Justice, Restorative Justice*” *New Perspectives on Crime and Justice* (1985) 2 Mennonite Central Committee, Canada Victim Offender Ministries at 12.

⁴ Jennifer J. Llewellyn & Robert Howse, *Restorative- A Conceptual Framework* (1998) Law Commission of Canada at 1.

the administration of justice are rooted in the way societies understand justice.⁵ Christopher Arnold raises the issue of questioning a society's motivation for subscribing to or being led by certain theories of justice. In other words, at what point does a society begin to trust its ideas or understanding of justice? Therefore, a society should constantly reflect on its justice system in a way that invokes change or a new direction in its administration of justice. Christopher Arnold says:

All theories of justice need to confront, at some stage, the general issue of the justification for their proposals and the general question of the scope of their theories before they develop their substantive recommendations.⁶

Generally, different conceptions of justice may achieve distinct sets of objectives based on the nature of justice which is required to address identified problems, or to fulfil an aspiration of the people. The analysis of justice here focuses on their nature, scope and weaknesses through appraisal of the retributive and restorative justice theories within their individual contexts. The objective is to highlight the open-ended nature of restorative justice in dealing with different circumstances on account of its principles of flexibility, contextuality, comprehensiveness and relationality.

2:2.1. Retributive Justice and the formal criminal justice system

Retributive justice is based on the idea that the offender deserves punishment for committing a crime. The punishment serves as deterrence and correction on behalf of the State.⁷ As a model of justice, the retributive approach treats punishment as a means of attaining justice.⁸ Many of the

⁵ Howard Zehr, *Changing Lenses, A New Focus for Crime and Justice*, (Waterloo, Ontario: Herald Press, Scottdale, 1990) at 83.

⁶ Christopher Arnold, *Corrective Justice* (1980) 90:2 *Ethics-The University of Chicago Press* at 180.

⁷ Roche Declan, *Retribution and Restorative Justice*, in Gerry Johnstone et al, eds., *Handbook of Restorative Justice* (Oregon, Willan Publishing 2007) at 75.

⁸ Howard Zehr, *supra* note 5.

criticisms levelled against the retributive approach are concerned with its fixation on punishing offenders without attending to the broader needs of the victim and the impact of harm on society at large. The notion is that punishment under retributive justice is held as an appropriate response to wrongdoing or crime. This assumption is based on the premise that in western law and value systems, every individual is a free moral agent.⁹ But the idea that offenders are motivated to commit crime because of their bad choices appears too simplistic. The argument ignores other valid extraneous and legitimate pressures to commit crime, such as bad peers, lack of parental care and other systemic and related socio-cultural forces constantly causing people to deviate from appropriate norms. But in accordance with a punitive approach, to maintain law and order in society, individuals are held accountable for their offences, and deviants are punished.

The key aspect of a retributive approach is to establish guilt. Therefore, the justice process becomes adversarial, leading to a situation which may be characterized as ‘winner wins it all.’ In this sense, either the offender is exculpated or punished based on what the legal representatives present as facts before a sitting judge who may be convinced by the arguments of defence lawyers and prosecutors. It may be argued that retributive justice can also restore both the victim and the offender to positions of relative equality and this may involve taking back what has been taken from the victim.¹⁰

The formal criminal justice systems are similar in the three jurisdictions of Nigeria, Canada and New Zealand in terms of their adversarial settings and largely retributive goals. These three countries share the common political history of being former British colonies and recipients of English legal traditions. The Nigerian judicial system is tripartite. The common law is applicable

⁹ Roche Declan, *supra* note 7.

¹⁰ Michelle Maiese, *Retributive Justice*, “online: <http://www.beyondintractability.org/essay/retributive.justice> (June 2013) at “update.”

only in the English courts where the criminal code applies. There are also the Islamic courts and customary courts where the common law or criminal code does not apply. The criminal code which is still applicable in the Southern part of Nigeria, was initially introduced by the English colonial government in 1914 upon the amalgamation of the Northern and Southern regions.¹¹ The criminal code, which was modelled after the Queensland Code of Australia of 1899 introduced by Britain, failed in Northern Nigeria largely due to the popularity of Islamic culture among the people.¹²

New Zealand and Canada have created legal frameworks which incorporate restorative justice as a mechanism to deal with the limitations of retributive justice. The latter punishes offenders via a two-way relationship (offender and state).¹³ Nigeria, unlike these two countries (New Zealand and Canada), is yet to create a mechanism to deal with the weaknesses in its adversarial criminal justice system. Nigerian criminal procedure is solely based on an adversarial approach which completely depends on proving the guilt of the accused person in a formal trial where the burden of proof is placed on the State.

The point is that this approach, focusing on proof of offence elements and individual sentencing creates a narrow means to seeking justice. It does not necessarily deal with the cause(s) of the incident leading to the harm, nor does it address other issues connected to the incident. There is also concern about the accountability of offenders to their victims, especially as to the harm suffered. Generally, crime leads to different kinds of harm which may require certain remedies appropriate to them.¹⁴ Retributive justice can only lead to a certain outcome, basically, the

¹¹ N.I. Ebbe, *Factbook on the Criminal Justice System in Nigeria*; online: <https://www.bjs.gov/content/pub/pdf/wfbcjsnig.pdf>.

¹² Federal Government of Nigeria, National Study Group on Death Penalty, October 2004 (Chair: Karibe Whyte) at 16.

¹³ United Nations Children's Fund (UNICEF), Toolkit on Diversion and Alternatives to Detention, online: https://www.unicef.org/tdad/index_56040.html.

¹⁴ Anthony Duff, "Restoration and Retribution", in Andrew Von Hirsch et al, eds. *Restorative Justice and Criminal Justice* (Oxford and Portland, Oregon, Hart Publishing, 2003) at 43.

enforcement of rules that stipulate offence and prescribe punishment. In this sense, where the harm caused may require a special type of remedy for irreparable loss suffered by the victim and/or the community, the retributive approach may not be appropriate to the justice required in the circumstance.

Nigeria's criminal justice process reflects many retributive ideas, punishment being the main goal of criminal justice administration. The effects of the retributive approach continue to adversely deepen the institutional, systemic and individual crises confronting the criminal justice system in Nigeria. These crises have far-reaching effects on the administration of justice. The court systems are overwhelmed by the massive population of prisoners awaiting trial largely due to over-incarceration. According to the data published by the World Prison Brief (WPB)¹⁵ in conjunction with the Institute for Criminal Policy Research (ICPR), the Nigerian prison population has continuously risen since 2006 with the total population of inmates in 2016 stood at 62,142 growing beyond its official capacity of 50,153.¹⁶ The population of inmates remanded in Nigerian prisons as at April 16, 2018 is 72, 277 with over 47,000 awaiting trial. This means over 68.2% pre-trial detainees.¹⁷ For, among other factors, the judicial process is slow and inefficient.¹⁸

One may argue that the monolithic nature of the Nigerian criminal justice system where all criminal allegations are processed through the formal criminal justice system makes an alternative justice process desirable to address many of the unintended consequences highlighted above. Some of the means for tackling the various problems facing administration of criminal justice in Nigeria

¹⁵ The World Prison Brief is an online database providing free access to information on prison systems around the world. It is a unique resource, which supports evidence-based development of prison policy and practice globally.

¹⁶ World Prison Brief Data, The Nigerian Prison System Information, online: <http://www.prisonstudies.org/country/nigeria> (visited 2018.04.22).

¹⁷ Nigerian Prisons Service, *Summary of Inmate Population by Convict and Awaiting Trial persons as at 16th April 2018*, online: <http://www.prisons.gov.ng/statistics>

¹⁸ Peter Duru, *47,817 Inmates Await Trial in Nigeria Prisons*, Nigerian Vanguard Newspaper publication, (14 January, 2017) "online: <http://www.vanguardngr.com/2017/01/47817-inmates-await-trial-nigeria-prisons/>

include the creation of an additional criminal justice framework, i.e., a restorative justice model, to offer justice sector personnel an option for dealing with crime through an alternative mechanism recognized under the law. Brenda Waugh highlights the potency of restorative justice in terms of its values and principles: she says it goes beyond formal legal structures to produce a legal system that responds to crime and criminal liability with a focus on the needs of the victim, examines why the offender had caused the harm, and how the harm may impact society going forward.¹⁹

2.3. An Introductory Note on the History of Criminal Law in Nigeria

Criminal law in Nigeria has a long history, though this has been obscured through the country's contact with the West. In 1861, the Colony of Lagos was appropriated by the United Kingdom, but no formal Criminal Code was introduced until 1915.²⁰ In 1863, the English common law of crime was introduced into the Colony of Lagos, while other parts of the country continued to operate under their customary criminal laws.²¹ With a centralized system of government for the English rule in all of Nigeria, it became imperative to have a unified, codified criminal law and system. The English Common Law of crime, already introduced into the Colony of Lagos, was considered inappropriate because it was confusing, complicated and found not suitable for the "natives."²² In 1904, the Lord Lugard administration in Nigeria introduced a criminal code in Northern Nigeria by proclamation to consolidate and amend the criminal law.²³ The choice of this

¹⁹ Brenda Waugh, *Who Will Choose the End Words? Structuring Justice Amid Tragedy*, (2011), 36:141 WUJLP at 142.

²⁰ The Treaty of Cession, online: https://en.wikipedia.org/wiki/Lagos_Treaty_of_Cession#References

²¹ Akintunde Olusegun Obilade, *The Nigerian Legal System*, London, Sweet and Maxwell, 1979, at 18.

²² C O Okonkwo, Okonkwo and Naish on Criminal Law in Nigeria, London. Sweet and Maxwell, 1980 at 3.

²³ Akintunde Olusegun Obilade, *supra* note 21 at 4.

Criminal Code, which was based on the Queensland Code of Australia, was accepted because of its simplicity.²⁴

In 1914, Southern and Northern Nigeria became amalgamated. In 1916, despite arguments that the Criminal Code already introduced into Northern Nigeria was unsuitable, the same was introduced into the whole of Nigeria.²⁵ At the same time, a parallel system of criminal administration existed: the customary laws of crime were still in operation. However, those local laws and customs were subjected to the 'repugnancy' test, i.e., the process of abolition or rejection of perceived absurd or inhuman Customary Law considered obnoxious.²⁶ This created a lot of problems for the British administration as the local populations preferred their own laws to the newly introduced Criminal Code which was deemed incompatible with the socio-religious beliefs of the people.

Several amendments to the Criminal Code ordinance did not solve the problem of incompatibility leading to a Commission of Inquiry set up in 1957 to look for a suitable Code for Northern Nigeria. In 1959, a Penal Code emerged. The Code was based on that of the Sudan, a country with similar religious beliefs and customs, and it reflects Sharia Law. The Criminal Code in Southern Nigeria was based on Australia's Queensland code. Customary criminal law was totally abolished by the 1999 Nigerian Constitution.²⁷ The implication is that any local customary law not contained in the Criminal or Penal Code, or in any written law does not constitute a law pursuant to the provisions of section 36(12) of the 1999 Constitution of the Federal Republic of Nigeria. That article provides as follows:

²⁴ Obi N.I. Ebbe, *The Judiciary and Criminal Procedure in Nigeria*, in Obi Ebbe et al, 3rd ed, *Comparative and International Criminal Justice Systems: Policing, Judiciary and Corrections*, Florida, Taylor & Francis Group, 2003, p. 202.

²⁵ C O Okwonkwo, *supra* note 22.

²⁶ Onyeka Igwe, *Repugnancy Test and Customary Criminal Law in Nigeria: A Time for Re-Assessing Content and Relevance*, (November 2014).

²⁷ Constitution of the Federal Republic of Nigeria, 1999 (as amended) s 36(12).

Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined, and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

2.4. The Current Administration of Criminal Law in Nigeria

Presently, three major penal laws co-exist in Nigeria. They are the Criminal Code, and the accompanying Criminal Procedure Act (CPA), the Penal Code and the accompanying Criminal Procedure Code (CPC), and the Sharia Penal Codes. The three systems create offences, punishments and procedures, depending on the state in which the law is applied and the religion of the accused. The Quran largely influences the Sharia Penal Codes which are formally operational in the Northern states. These states have adopted the Sharia Penal Codes and either partly or fully replaced the Penal Code as applicable to Muslims.²⁸

The following offences attract capital punishment under the provisions of the Criminal and Penal Codes of Nigeria: armed robbery,²⁹ murder,³⁰ treason,³¹ conspiracy to commit treason,³² instigating invasion of Nigeria,³³ treachery,³⁴ fabricating false evidence leading to the conviction to death of an innocent person.³⁵ Under the various Sharia Penal Codes applicable in 12 states in Northern Nigeria, these offences carry the death penalty; zina (adultery); rape; sodomy, incest; and witchcraft and juju offences.³⁶ The identified offences can be found in the various Sharia penal codes applicable in the various states. The Constitution of the Federal Republic of Nigeria creates a Shariah Court for the Federal Capital Territory, Abuja, and enables any other state or individual

²⁸ Government of Nigeria, Country Report on Death Penalty Application in Nigeria, May 2004, African Conference on Death Penalty Application in Commonwealth Africa, Uganda, HURILAWS at 10.

²⁹ The Nigerian Criminal Code, Ss 402 (2) (a) (b) Criminal Code Act Cap 77 Laws of Federation of Nigeria 1990.

³⁰ The Nigerian Criminal Code, S 319(1), CCS221/ The Nigerian Penal Code, CAP 345 LFN.

³¹ The Nigerian Criminal Code, Ss 37(1) and 38/ The Nigerian Penal Code, Ss 410 and 411.

³² The Nigeria Criminal Code s 37 (2).

³³ The Nigerian Criminal Code s 38.

³⁴ The Nigerian Criminal Code (Applicable in Southern Nigeria) s 49A (1)

³⁵ The Penal Code (applicable in Northern Nigeria) s 515 (2).

³⁶ Government of Nigeria, *supra* note 28.

to adopt sharia law with laid down guidelines under section 277 of the 1999 Constitution of the Federal Republic of Nigeria.

However, this work does not include extensive discussion on sharia law and its jurisprudence under the Nigerian criminal justice system. Rather, the body of this work is intended to explain the influence of Nigerian federalism on the component states of the federation including the twelve states that currently operate sharia law in Nigeria.³⁷

The principal criminal laws at the federal level are: The Criminal Procedure Act (CPA) applied in the seventeen states of Southern Nigeria (55% of the population); Criminal Procedural Code (CPC) applied in the nineteen Northern States of Nigeria (33% of the population).³⁸ State governments may pass laws to improve administration of criminal justice within their respective states. State courts are created by the Nigerian Constitution to administer substantive criminal law made by each State House of Assembly. For instance, the Administration of Criminal Justice of Lagos State (ACJLS), 2007³⁹ “promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant and the victim.”⁴⁰

The federal government followed the lead of the Lagos State government and adopted the Administration of Criminal Justice Act, 2015 (“ACJA”). The promulgation of the ACJA by the federal government repealed the principal criminal justice federal legislation, namely, the Criminal Procedure Act (CPA), the Criminal Procedure Code and the Administration of Justice Commission

³⁷ Carina Tertsakian, “*Political Shari’a*”? *Human Rights and Islamic Law in Northern Nigeria* (September 21, 2004), online: Human Rights Watch, <https://www.hrw.org/report/2004/09/21/political-sharia/human-rights-and-islamic-law-northern-nigeria>

³⁸ Online: Wikipedia, https://en.wikipedia.org/wiki/Demographics_of_Nigeria

³⁹ The Administration of Criminal Justice in Lagos State, 2007 was re-enacted in 2011.

⁴⁰ Administration of Criminal Justice of Lagos State, 2011, s 1.

Act.⁴¹ Thus, the enactment of the ACJA has unified all federal legislation applicable to “criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja.”⁴² The Administration of the Criminal Justice Act is applicable in all criminal matters before the Federal High Court (“FHC”) sitting in different states of the federation and the federal capital territory, Abuja.

The purpose of this legislative history is to suggest that the institutionalization of restorative justice can be two-tier, built at state and federal levels. Like Lagos State did with its Administration of Criminal Justice Act, 2007, state governments may initiate individual restorative regimes to improve administration of criminal justice in each state. As well, the federal government may enact a unified restorative justice practice law to promote measures that would realize the goals of its criminal justice legislations, including the Administration of Criminal Justice Act and the Child Rights Act. These issues are extensively discussed and analyzed in chapter 5 of this work.

2.5. The Restorative Justice Concept: Introduction

To explain any concept requires considering its principles and theoretical underpinnings which yield the mechanisms for its practical observance.⁴³ The nature of restorative justice is captured as follows:

Restorative justice is relationship-centered or relational in nature, which means it is concerned with relationships affected whenever there is an incident of crime or wrong as

⁴¹ Law Pavilion Law Report online: <https://lawpavilion.com/blog/the-administration-of-criminal-justice-act-2015-acja/>

⁴² Administration of Criminal Justice Act, 2015, s 2(1).

⁴³ Christopher Arnold, *supra* note 6.

it does not only consider the incident from the perspective of the individual who suffered the harm.⁴⁴

A restorative approach to crime appears distinct in comparison to the nature of mainstream criminal justice system which operates on the notion that offences are committed against the State. In view of its relational focus and emphasis, restorative justice is concerned with how the harm done affects the victim, including the impact on his or her life going forward as well as the broader community. A restorative approach also investigates the reason why the incident occurred, as well as its implication for social relationships in society. Restorative justice as a model of justice evokes the idea that crime and wrongdoing should be seen through a different lens,⁴⁵ that is, a focus on the harm caused to individuals, communities, and relationships.⁴⁶

The relationships which may be affected by wrongdoing have been said to exist within the triangle comprising the victim, offender, and community. The triangular conception can be challenged on the reasoning that the pendulum of justice does not necessarily swing from any of its side or angles. The schematic representation of restorative justice model as a triangle, stems from the tendency to evoke the concept at the instance of any of the parties affected or connected to any restorative process. The thesis shares the view that a restorative justice model should not be victim-centred, nor should it solely serve the interest of the community in dealing with incidents of crime, because the concept should not be utilized in the same way an adversarial system operates. A better analogy to describe the nature of a restorative justice process may be to liken it to a circle which revolves around all concerned persons connected or affected by crime.

⁴⁴ Jennifer Llewelyn, Bruce Archibald, Don Clairmont and Diane Crocker, *Imagining Success for a Restorative Approach*, Dalhousie Law Journal, (2013)36:2, at 282-316.

⁴⁵ Howard Zehr, *supra* note 5.

⁴⁶ Gordon Bazemore and Mara Schiff, *Introduction*, in *Gordon Bazemore et al Restorative Community Justice: Repairing Harm and Transforming Communities* (Ohio: Anderson publishing co. 2001) at 21.

2.6. What is Restorative Justice?

There are notable practice descriptions propounded by different scholars who have written on the subject. Restorative justice has been succinctly described as follows:

Restorative justice is an approach to accountability for crime based on the restoration of balanced social relations and reparations of criminal harm [which] is rooted in values of equality, mutual respect and concern, and [which] uses deliberative processes involving crime victims, offenders, their respective supporters and representatives of the broader community under the guidance of authorized and skilled facilitators.⁴⁷

Restorative justice may be understood from different perspectives based on certain notions or conceptions of justice. Some scholars have described the concept by focusing on relationships and how they are structured in society. In this context restorative justice is said to be:

fundamentally concerned with restoring social relationships, with establishing or re-establishing social equality in relationships. That is, relationship in which each person's right to equal dignity, concern and respect are satisfied.⁴⁸

From the above definition, the goal of justice in any given circumstance is ultimately to establish mechanisms that can promote and strengthen respectful and egalitarian relationships between or among the parties involved.⁴⁹ The dilemma that confronted the Truth Commission in South Africa under the Chairmanship of Archbishop Desmond Tutu can be characterized as making a difficult choice between punishing the suspects of the apartheid regime for their atrocities and human rights violations, or to reconcile the victims with their abusers in the spirit of forgiveness and national unity. The Commission settled for truth seeking and reparation in exchange for amnesty for those who were willing to share platforms with their victims to tell the truth of what took place and their

⁴⁷ Bruce Archibald, *Let My People Go: Human Capital Investment and Community Capacity Building Via Meta/Regulation in a Deliberative Democracy - A Modest Contribution for Criminal Law and Restorative Justice*, (2008) 16:1 *Cardozo J. Int'l & Comp. L.* p.29.

⁴⁸ Jennifer J. Llewellyn & Robert Howse, *Restorative Justice-A Conceptual Framework*, (1998), Law Commission of Canada, at 15.

⁴⁹ Llewellyn Jennifer J. & Downie Jocelyn, *Being Relational: Reflection on Relational Theory and Health Law*, (Vancouver, UBC Press 2011) at 92.

role in the events of the apartheid era. The Commission's choice of a restorative justice approach as the appropriate response to accusations of violent crime committed during the apartheid era in South Africa may be understood in terms of the nature of a justice process required at the time to heal old wounds and repair social relationships.⁵⁰

The concept of restorative justice has also been explained as a movement within the criminal justice system concerned with the impact of harm suffered by victims and communities, and less on punishing the offender.⁵¹ Similarly, from the broad perspective of a conception of justice that focuses on the multiple implications of any wrong or harm done, Van Ness describes the concept as follows:

Restorative justice is a systemic response to wrongdoing that emphasizes healing the wounds of victims, offender, and communities caused or revealed by crime. Practices and programs reflecting restorative purposes will respond to crime by: (1) identifying and taking steps to repair harm, (2) involving all stakeholders, and (3) transforming the traditional relationship between communities and their governments in responding to crime.⁵²

Restorative justice also recognizes the significance of accountability in dealing with injustice. It ensures that all parties affected reach a consensus based on the harm suffered, needs of the victim and the obligations to be fulfilled in dealing with conflicts in the best way possible.⁵³ The point to note is that justice would naturally mean a different thing to the victim, offender and the community during a criminal process. Therefore, a restorative justice process focuses intrinsically on meeting the unique needs of all parties based on the peculiar circumstances at hand.

⁵⁰ Jennifer J. Llewellyn and Robert Howse, "Institutions for Restorative Justice: The South African Truth and Reconciliation Commission," (1999), 49:3, *The University of Toronto Law Journal*, at 355-388.

⁵¹ Daniel W. Van Ness, *Justice that Restores*, (2004), 23:1-2, *Journal of Religion and Spirituality in Social Work, Social Thought*, at 93-109.

⁵² Eleanor Hannah Judah & Rev. Michael Bryant, *Rethinking Criminal Justice: Retribution vs. Restoration* in Eleanor et al eds. *Criminal Justice: Retribution vs. Restoration* (New-York, the Haworth Press, 2004) p. 96.

⁵³ John Braithwaite, "Accountability and Responsibility through Restorative Justice." (2006) In Michael W. Dowdle, ed., *Public Accountability, Designs, Dilemmas and Experiences*. Cambridge, UK: Cambridge University Press at 33-51.

A restorative process presents the opportunity for the victim and offender to determine how they would want to deal with the aftermath of crime or wrong-doing. Therefore, a restorative model of criminal justice offers a flexible response to crime. This allows the case of the victim and the offender to be considered individually.⁵⁴ In Tony Marshall's view:

Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence for the future.⁵⁵

Tony Marshall's definition is recognized under the United Nations System as a measure for achieving crime prevention and a model for the criminal justice systems in many countries.⁵⁶ He also describes it as criminal justice embedded in its social context which, unlike other models, stresses social relationship, especially to the other components, rather than a closed system operating in isolation.⁵⁷

There are many descriptions of restorative justice in various programmes employing different restorative practices, many of which are based on the different objectives and needs they serve. It could be narrowly understood as a tool or technique, as it is often used to solve specific problems. Restorative justice has been institutionalized in New Zealand, Australia, and Canada as a legal framework christened to respond to some inadequacies of the formal criminal justice system. As a conception of justice, it is also being utilized in so many ways, especially in dealing with multifaceted issues which fall within the purview of the administration of justice.

⁵⁴ Daniel W. Van Ness & Crocker C. E., "*Restorative Justice: Definition, Principles, Values and Goals*, (2003), 28:1, John Marshall Law Review at 1-25.

⁵⁵ Tony Marshal, *Restorative Justice: An Overview*, (1999), Great Britain. Home Office. Research, Development and Statistics Directorate, 1999, at 5.

⁵⁶ *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, Economic and Social Council Resolution, (E/2002/30) 24 July 2002 at 1.

⁵⁷ Tony Marshal, *supra* note 55.

2.7. Understanding Restorative Justice through Theoretical Conceptions

Theories are important to help explain how restorative justice works especially because the concept has not fully evolved. The task before restorative justice practitioners and other stakeholders is to ensure that the concept is not twisted nor significantly influenced by some aberrant practices of the formal criminal justice system. Hence the need for adequate understanding of relevant restorative justice theories. In this section, the following theoretical conceptions shall be briefly considered: relational theory, and restitution or reparation.

2.7.1. Relational Theory

The relational theory of justice is essentially rooted in the way people are connected and affected by the nature of human relationships, whether it involves two individuals, groups, communities or may be nations.⁵⁸ In the context of this discourse, a relational theory of justice is focused on the nature of “relationships where each person’s right to equal dignity, concern and respect are satisfied.”⁵⁹ Relational theory is fundamental to the understanding of restorative justice. It focuses on the state of social relationships as the basis for restorative practice. In other words, the question about justice is rooted in the idea that, the harm done to the victim by the action of the offender affects or damages relationships. Hence, the goal of justice in this context is to restore relationships- not in the personal sense, that is, “relationships in which each person’s rights to equal dignity, concern and respect are satisfied.”⁶⁰

⁵⁸ Jennifer J. Llewellyn, “Thinking Relationally about Justice” in Jocelyn Downie et al, *Being Relational: Reflection on Relational Theory and Health Law*, (UBC Press, Vancouver, 2012, at 98-105.

⁵⁹ Howard Zehr, *supra* note 5.

⁶⁰ Jennifer J. Llewellyn & Robert Howse, *supra* note 48.

Another unique attribute of the relational theory of justice in its response to crime is the requirement that the restorative process must be broad to accommodate any member of the society, including the persons or family members of the people impacted. The relational theory of justice encourages wider participation by people who may be considered relevant to the restoration process. There are no rigid rules to limit the participation of the victim, the offender and the community. Basically, a restorative process does not over-centralize the needs of the direct and indirect victims. It recognizes such needs as part of the process. Their views count, and they have access to information and participation in their cases and are accorded respect and material and emotional reparation.⁶¹

Overall, neither the offender, the victim nor the community is pushed to the centre in a restorative process as it is done in a formal adversarial criminal process. Under the latter, the State dominates the proceedings and concentrates on discharging its burden to prove the guilt of the person accused of committing a crime. In the process, the pain of the victim is often ignored or sometimes belittled. Restorative justice is delivered not when something negative is done to an offender, but when something positive is done in response to the needs of the people who suffered harm due to crime.⁶²

In the formal criminal process, the representative of the state is saddled with proving beyond reasonable doubt the guilt of the person standing trial and a consequent individual punishment. This approach to attaining justice for crime and criminal liability does not rise to the demands of equality and social justice. In contrast, the need for the offender to take responsibility under a restorative process creates a platform for decisions to be reached not only based on formally admitted facts, but also based on honest information shared during the process. When the offenders

⁶¹ Gerry Johnstone, “*How, and in What Terms, Should Restorative Justice Be Conceived*” in Howard Zehr et al eds. *Critical Issues in Restorative Justice* (New York, Criminal Justice Press, 2004) at 9.

⁶² Jennifer J. Llewellyn & Robert Howse, *supra* note 48.

take responsibility, it reduces tension, and creates open and honest conversations which address the causes of the incidents leading to conflict and harm and can lead to a broader social solution.

2.7.2. Restitution, Reparation and Restoration

The concept of restitution has often been confused or simplistically identified with restorative justice based on the notion that the latter involves an alternative mechanism for holding the offender accountable for his actions through simply focusing on repairing the damage done.⁶³ Generally, restorative justice is a broad concept of justice which seeks to respond to crime as a violation against human beings and focuses on reparation, healing and restoration of the people and relationships affected by the harm.⁶⁴ However, reparation is a notion of punishment deemed under the criminal justice system as follows:

... act of restoring; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury; and indemnification.⁶⁵

Furthermore, the concept of restitution does not only mean compensation, especially under the criminal justice system. The concept of restitution constitutes additional awards in favour of the victim during sentencing of the offender. The considerations are usually deemed appropriate where the victim may have suffered quantifiable losses as a result of the harm suffered. In the Nigerian context, judges are empowered to exercise their discretion in special circumstances, provided the discretion is judicially and judiciously considered in the circumstance.

Similarly, the concept of restitution is recognized under the Canadian Criminal Code s.738 as a sentence made by a court of law after finding the offender guilty⁶⁶. The order will only be made in

⁶³ Roche Declan, *supra* note 7.

⁶⁴ Charles Villa- Vicencio, *Transitional Justice, Restoration and Prosecution*, in Dennis Sullivan et al *Handbook of Restorative Justice*, New York, Routledge, 2006, at 387.

⁶⁵ Centre for Justice Reconciliation, Restitution, online”: <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/restitution/#sthash.oAizMpYd.dpbs>

⁶⁶ Criminal Code, R.S.C. 1985 c. C-46, s. 738.

appropriate circumstances, especially where the loss of the victim can be mathematically calculated. Given the flexible nature of a restorative process, there are circumstances where restitution, in the narrow sense, may be appropriate and just, but subject to the decision of the participants who are involved in the restorative process. However, restorative justice may broaden the range of restitution beneficiaries to related members of the relevant community.

2.8. The Concept of Restorative Justice in African Traditions

This section describes African traditional justice systems by looking at restorative practices before the continent's contact with the Europeans in the 18th Century. It must be noted that the history of the development of restorative justice is murky in relation to traditional justice systems around the world. The practice of restorative justice as a model of criminal justice is claimed to have existed throughout human history, shaping human relationships in unique ways.⁶⁷ However, the historical development of the concept as a social movement is recent and evidence of its existence before Africa's contact with western civilization will be discussed later in this work.⁶⁸

Traditional justice systems in Africa recognized retributive notions of punishment in responding to crime or wrong, particularly where it involved serious crimes which may lead to imprisonment or even banishment.⁶⁹ For example, most palaces used to have prisons known as "tubu" in Yoruba language where offenders were kept for violation of various norms. But importantly, the two models of criminal justice, i.e. retributive and restorative justice conceptions existed simultaneously; there was no domination of one model of justice over the other because there was

⁶⁷ John Braithwaite, *Restorative Justice: Assessing an Immodest Theory and a Pessimistic Theory*, [Canberra: The Author], 1997.

⁶⁸ Don John O. Omale, *Justice in History: An Examination of 'African Restorative Traditions' and The Emerging 'Restorative Justice' Paradigm*, (2006) 2:2, *African Journal of Criminology & Justice Studies* at 33.

⁶⁹ Egunoluwa Olufemi Oduwole, *Punishment as a Form of Legal Order in an African Society*, (2011) 2:5 *Educational Research* (ISSN: 2141-5161) at 1124.

an integrative approach with focus on ensuring that conflicts are restoratively resolved through dialogue, inclusiveness and restoration of social relationships.

The disruption in the African traditional restorative justice system began with colonialism when European legal traditions were imposed on the territories they controlled. The example of South Africa is relevant to the theme of this work, especially because the Truth and Reconciliation Commission embraced a restorative justice approach in dealing with post-apartheid transition in South Africa. Truth commissions have had enormous potential as restorative institutions, based on accounts of the nature of the challenges of dealing with incidents of human rights violations and other violent crimes.⁷⁰ The decision to adopt restorative justice by the Commission was largely influenced by the ubuntu tradition in South Africa. The concept of Ubuntu and its restorative significance has been described as follows:

Restorative justice is reflective of the African notion of ‘ubuntu’ or interconnectedness. Ubuntu is the idea that no one can be healthy when the community is sick. ‘Ubuntu says I am human only because you are human. If I undermine your humanity, I dehumanize myself.’⁷¹

African traditional societies’ approach to conflict resolution reflects the relational root in the ubuntu notion of justice. African traditional societies were structures in a community sense where every household looked out for the other. This interconnectedness brought about a justice system that was based on restoration of social relationships. There were mechanisms for conflict management, peace-making, mediation, conflict or crime prevention before the advent of the imperialist legal tradition.⁷² For example, under the Yoruba traditional justice system, institutions

⁷⁰ Jennifer Llewellyn, *Truth Commissions and Restorative Justice* in, Gerry Johnstone et al eds. *Handbook of Restorative Justice* (Cullompton, Devon: Willan Publishing, 2007) at 352.

⁷¹ Fainos Mangena, *Restorative Justice’s Deep Roots in Africa*, (2005) 34:1 South African Journal of Philosophy at 1-12.

⁷² Adeyemi J. Ademowo, ‘*Conflict management in Traditional African Society*’ In Ademowo, A.J et al (Eds.) *Engaging the Future in the Present: Issues in Culture and Philosophy*. (Ibadan: Hope Publications, 2015) at 1-5.

and methods were effective and highly revered in justice delivery.⁷³ The system was less adversarial, and resources were devoted to restoration through mediation and reconciliation. The settings were not intimidating, but inclusive, with more participants than conflict parties involved in the justice process.⁷⁴

Thus, restorative practices were part of the customary justice system in Yoruba traditional society. Elders were held as custodians of societal customs and tradition which are passed down from one generation to another. One of the sources of guidance and mechanisms for preserving the heritage of the Yoruba people is the use of proverbs. Many of the restorative practices and principles under the Yoruba traditional justice system have been preserved through the constant use of these proverbs from one generation to another. Olatunji Olatunde describes proverbs as follows:

The proverbs more than any other poetic type, outline a rule of conduct. They state what should or should not be done and lay conditions for certain actions and attitudes. They serve as social charters condemning some practices while recommending others. These statements can be negative, positive or conditional. The negative statements usually assert what things are not or should not be done.⁷⁵

The Nigerian Evidence Act 2011, under section 70, recognizes as evidence the opinion of traditional rulers on customs. The law regards them admissible evidence:

In deciding questions of customary law and custom the opinions of traditional rulers or chiefs or other persons having special knowledge of the customary law and custom and any book or manuscript recognized as legal authority by people indigenous to the locality in which such law or custom applies, are admissible.⁷⁶

⁷³ The Yoruba ethnic group is one of the major ethnic groups of Nigeria, located in the Western region of Nigeria.

⁷⁴ Don John O Omale, *supra* note 68.

⁷⁵ Olatunji O. Olatunde, *Features of Yoruba Oral Poetry* (Nigeria: University Press Ltd, 1985) at 2.

⁷⁶ Nigerian Evidence Act, 2011 Cap 112, LFN 1990 s.70.

2.8.1. The Post-Independence Criminal Justice System in Nigeria and Restorative Justice Practice

The amalgamation of the Northern and the Southern regions of Nigeria in 1914 by the British colonial government changed the administration of justice in what is known as Nigeria today. British colonial rule ended on 1st October 1960, but the Nigerian legal system is still dominated by the English legal tradition. The task, therefore, is basically to explore the opportunity of rethinking justice restoratively in relation to crime and administration of justice in its entirety. A subsequent Chapter will describe the nature of transformative influence that restorative justice would have in the modern criminal justice system if this reconsideration involves an incorporation of restorative practices into the Nigerian criminal justice process.

This section centres on the criminal justice process and the need for an integrative approach to confronting the many shortcomings of the formal criminal justice systems of Nigeria. The question, therefore, is whether the concept of restorative justice could ultimately create its own paradigm for the administration of criminal justice in Nigeria, perhaps as a conception of justice within the criminal justice system, but not entirely subsumed to its dictates. Criminal cases may be diverted into a restorative process at various stages, whether at the entry point by the police, or by a sitting judge, or may be by a correctional officer with the aim of achieving restorative outcomes.⁷⁷

Restorative justice programmes as justice sector reform initiatives may be successful where they are accommodated under an existing legal framework. The success of restorative justice as a social movement and a change agent will also depend largely on “political will” at the time because of the need to have a legal framework and apparatus to implement restorative justice initiatives. The

⁷⁷ Jerry Johnstone, *Restorative Justice: Ideas, Values, Debates*, (New -York, Routledge, 2011) 2ed. at 236.

experiences in Canada, and Nova Scotia specifically, highlight the importance of the role of the government in taking a bold step to create the legal framework and environment for the implementation of a restorative justice programme.⁷⁸

The implementation of restorative justice programmes within the existing legal order is usually a voluntary process where parties in a restorative process are willing to take responsibility for their misconduct. The concept of responsibility is differently conceived under the formal criminal justice system compared to what it represents in a restorative process.⁷⁹ The notion of responsibility may be examined under two theoretical conceptions, namely, active responsibility and passive responsibility. Both explain how offenders are made accountable for wrong doing under restorative justice practices or within a formal criminal justice system. Restorative justice practice is rooted in active responsibility which is also based on truth seeking. Participants voluntarily take responsibility for their actions by narrating what happened and why it happened, leading to the harm suffered by the victim. The idea is to create a platform for offenders to be accountable about their past deeds and to look toward the future whilst recognizing the needs of the victim who suffered the harm.⁸⁰

Under the formal criminal justice system, passive responsibility is enunciated because any offender does not have any obligation to take responsibility for his actions leading to the incidents which caused harm to the victim. Instead, an offender is held accountable through an adversarial system

⁷⁸ Bruce Archibald & Jennifer Llewellyn, *The Challenges of Institutionalizing Comprehensive Restorative Justice: Theory and Practice in Nova Scotia*, (2006) 29:2 Dalhousie Law Journal, at 297-343.

⁷⁹ John Braithwaite and Declan Roche, *Responsibility and Restorative Justice*, in Gordon Bazemore et al *Restorative Community Justice: Repairing Harm and Transforming Communities* (Ohio: Anderson publishing co. 2001) at 63-78.

⁸⁰ John Braithwaite, *Accountability and Responsibility*, online: http://johnbraithwaite.com/wp-content/uploads/2016/05/2006_Accountability-and-Responsibility-.pdf

where truth is supposedly established based on the “facts” presented before the court of law. This dichotomy has been described by John Braithwaite as follows:

The restorative justice ideal of responsibility is active responsibility as a virtue, the virtue of taking responsibility, as opposed to the passive responsibility we are held to. The restorative justice method for engendering active responsibility is to widen circles of accountability.⁸¹

The impact of a restorative understanding of the concept may not only benefit the victim. It may also satisfy the needs of the offender and the community. The process goes beyond the incident and the goal is not to deter offenders, but to encourage looking forward to better ways to improve relationships in the future.

The attraction of restorative justice as a model of criminal justice includes how the process recognizes the needs of the offender, the victim and the society in a way that brings about a different sense of satisfaction from what is possible under the formal criminal justice system.⁸² The needs of the victim are central and duly recognized in a restorative process, unlike under the formal criminal justice system. The difference is basically about the goal...the goal in the latter is to entrench social control by upholding the law as the end game of the criminal process. Under the former, the process is designed for a dialogue under a healthy atmosphere for participants to listen to one another and decide how they would like to deal with how they have been impacted by the incident.⁸³

The long history of the existence of formal criminal justice system has fundamentally entrenched its intrinsic values in the fabric of societies, making retribution the perceived appropriate response

⁸¹ *Ibid.*

⁸² Daniel W. Van Ness, *supra* note 54.

⁸³ Nova Scotia Government, *The Nova Scotia Home for Colored Children* (Nova Scotia: 2015 Report, *The Nova Scotia Home for Colored Children Restorative Inquiry* (RI) at 8.

to crime. This understanding of justice is often exemplified whenever heavy punishment is handed down to an offender, and the victim or family of the victims often express their satisfaction with the outcome of the criminal process. However, for a better understanding of criminal justice, Adler, Mueller, and Laufer observe that:

Criminal justice is the sum total of society's activities to defend itself against the action it defines as criminal. Criminal justice as science is concerned with achieving the goal of criminal justice systems in a human, effective and cost-beneficial manner. It also entails scientific studies of decision-making processes, operations and such justice related concerns as the efficiency of the police, court, and corrections, the fair treatment of offenders; and the needs of victim.⁸⁴

The nature of criminal justice in many jurisdictions may be described as complex based on the ways the agencies of governmental functions are connected or interrelated to the administration of justice. Under the Nigerian criminal justice system, the Nigerian Police is recognized by the Nigerian Constitution 1999⁸⁵ as having the authority to prosecute offenders. However, the Nigerian Police Force has several challenges in the exercise of its duties, among others, because of inadequate material resources and moribund police training programmes.⁸⁶ These inadequacies are reflected in the handling of investigations and actual prosecution of offenders, leading to miscarriage of justice on so many occasions. A prominent senior advocate of Nigeria (SAN), Femi Falana describes the nature of miscarriage of justice that is present in the criminal justice system thus:

The prison has become a dumping ground for criminal suspects whose cases are not going to come up in court for hearing, for years," he noted. "Criminal suspects who have no business in court and also criminal suspects who have found themselves in prison as a result of corrupt practices on the part of the police [are in jail]. And I am talking about a situation whereby somebody is arrested, you take him to court. The court is not ready to go on with

⁸⁴ Chukwunweike A. Ogbuabor, *Inquisitorial and Adversarial Process in Nigeria's Criminal Justice System: The Dilemma of a Colonized State*, (2015) 38:2, University of Western Australia Law Review, p.175-199.

⁸⁵ Constitution of Federal Republic of Nigeria, (1999) s. 214 (1); *Willie v Ibiok* (2012) 52 WRN where the court elaborates on the establishment and powers of the Nigerian Police.

⁸⁶ Abegunde Babalola, *Power of Police to Prosecute Criminal Cases: Nigeria And International Perspectives*, (February 2014), 2:11, European Journal of Business and Social Sciences, p.134.

the case, either because investigations have not been completed or witnesses have not been found and, so they keep on adjourning and quite a number of these guys spend more years in prison than they would have earned if they had been tried and convicted.⁸⁷

Based on many of the shortcomings of the mainstream criminal justice system, the concept of restorative justice has been suggested to represent a viable alternative necessary to improve administration of criminal justice.⁸⁸ This view has been shared as follows:

Restorative justice began as a way to rethink the needs and roles implicit in crimes. It was concerned about needs that were not being met by the usual western justice process.⁸⁹

John Braithwaite shares a similar view for a complete change in the criminal justice framework.

He holds thus:

Restorative Justice is not simply a way of reforming the criminal justice system, it is a way of transforming the entire legal system, our family lives, our conduct in the work place, our practice in politics.⁹⁰

Basically, the failure of the criminal justice system as the consensus for the need for its improvement or a recourse to a different model is justified. But in every jurisdiction, what is required to invoke change in the legal system may depend on the unique circumstances in that particular country or jurisdiction. Notably, the emergence of restorative justice as a viable alternative to the formal criminal justice system has been gradual and integrative without causing a total upset of existing legal systems.

In chapters 3 and 4, many of the measures and mechanisms for institutionalizing the restorative justice concept in New Zealand and Canada are examined. The discussion partly explores the

⁸⁷ United States Department of State, U.S. Department of State Country Report on Human Rights Practices 2006 - Nigeria, 6 March 2007, online: <http://www.refworld.org/docid/45f0567b2f.html> [accessed 11 April 2018].

⁸⁸ International Institute for *Restorative practice In Pursuit of Paradigm: A Theory of Restorative Justice* “online: <http://www.iirp.edu/eforum-archive/4277-in-pursuit-of-paradigm-a-theory-of-restorative-justice> visited on 6/6/17.

⁸⁹ Howard Zehr, *The Little Book of Restorative Justice*, Pennsylvania, Intercourse, Good Books, 2002.

⁹⁰ John Braithwaite, *Principles of Restorative Justice*, in Andrew Von Hirsch et al eds., *Restorative Justice and Criminal Justice* (Oregon: Hart Publishing, 2003) at 1.

circumstances or situations in which some of the strategies and mechanisms adopted in both jurisdictions can be cautiously followed in the Nigerian context.

2.9. Conclusion

This chapter has examined the concept of justice through the different theories of justice which have influenced the way relationships have been structured in many societies for many centuries. The discussion suggests that retributive justice has more influence on the formal criminal justice systems under the three legal systems (New-Zealand, Canada and Nigeria) considered. Its central goal is to punish offenders as a form of deterrence to members of society, though societies have been dealing with incidents of crime from time immemorial. The point of the chapter (and the rest of the work) suggests an integrative approach to dealing with crime and its impacts on social relationships.

The example of traditional African societies and the practice of restorative justice is recounted based on oral tradition and the use of parables to preserve many of these practices. Restorative justice as a paradigm in criminal justice is compared to the formal criminal justice system in terms of the two models being complementary to each other within a legal system. This work does not advocate a total disruption of the present order to establish restorative practices. The criminal justice process should be seen through restorative lens in order to have a broader understanding of the implication of crime or wrongdoing to the offender, the victim and society as a whole. This theme is explored through the analyses in the chapters that follow.

CHAPTER 3: RESTORATIVE JUSTICE AND THE CRIMINAL JUSTICE SYSTEM IN NEW ZEALAND

3.1. Introduction

The challenges that may confront the criminal justice system in any country are peculiar to its socio-cultural and political situations. Thus, in dealing with its problems, each state must develop a system that responds to these peculiarities. New Zealand restorative justice focuses on the role of families in ensuring that their youth conduct themselves within the confines of the law.¹ This philosophy informed how its youth justice was handled. In particular, the objective was to reduce re-offending, increase public confidence, victim's satisfaction rate and crime prevention.² Restorative justice has been effective in the implementation of community policing and problem-solving initiatives leading to reduction in crime rate. For example, it has been reported that:

In Wellington, New Zealand, police and the Wellington City youth justice co-ordinator have used information gathered from FGCs (Family Group Conferences) to target certain gang activity and truancy problems. The net effect has been an impressive two-thirds reduction in crime by youth offenders in Wellington City since 1996.³

It appears that the cultural duality in New Zealand necessitates the choice of its integrative approach. The family as an important social institution; particularly, the extended Maori family structure plays a central role in dealing with youth crime and its aftermath.

This chapter examines the impacts of the restorative justice approach, especially its role in improving the criminal justice system in New Zealand. The focus is on both youth justice reform and the adult justice system leading to the legislative interventions in 1989 and beyond. The

¹ FWM McElrea, *The Youth Court in New Zealand: A New Model of Justice*, Legal Research Foundation (New Zealand, 1993) at 5.

² Donald J. Schmid, *Restorative Justice in New Zealand: A Model for US Criminal Justice*, (August 2001); online: <http://www.fulbright.org.nz/publications/2001-schmid/>

³ Donald J Schmid, *Restorative Justice: A New Paradigm for Criminal Justice Policy* (2003) 34:1 Victoria University of Wellington LR at 91. [Clarification of FGC's added, see discussion infra at heading 3.3.1.].

discussion demonstrates that New Zealand's youth justice reform through the restorative justice approach has become a model for structuring youth justice in many other countries. Beyond youth justice reform, New Zealand has established criminal justice policies dedicated to the overall improvement of its criminal justice system. Prominent among these transformative measures are family group conferences, police diversion programmes, and restorative conferencing. This work demonstrates the viable approach New Zealand has taken to institutionalize a restorative justice practice through comprehensive legal and regulatory frameworks. My emphasis is that New Zealand, as a unitary legal jurisdiction, has made restorative justice an essential part of its legal system. In this sense, it offers valuable lessons for jurisdictions like Canada and Nigeria to integrate into their efforts to develop viable restorative justice practices.

The prospect of a New Zealand model of restorative justice is visible in Nigeria due to the nature of the political system in Nigeria. Nigeria operates a unique federal system of government where the central government wields enormous executive power and legislative authority granted it by the Nigerian Constitution. The lesson to draw from New Zealand experience centres on the role played by the legislative arm of the government by recognizing and inculcating important cultural values of the people in the criminal justice process. The central government in Nigeria through the Office of the President or the National Assembly may overhaul the Nigerian criminal justice system to integrative restorative justice mechanisms. The legal ramification will set the stage for all thirty-five states (excluding the Federal Capital Territory) of the federation to embrace integrative approach to administration of criminal justice system in their various states where restorative processes may constitute viable alternative mechanisms in certain cases.

3.2. New Zealand Criminal Justice and Restorative Justice Practice

Historically, New Zealand society was founded on bi-culturalism. It began with the execution of the Treaty of Waitangi on 6 February 1840 between the representative of the British Crown and the Maori people through their chiefs from the North Island of New Zealand.⁴ The signing of the treaty has been described as the beginning of the New Zealand State.⁵ The Treaty is believed to have established a British Governor of New Zealand, while the Maori people remained owners of the land, forests and other properties.

There were two versions of the treaty: the English version and the Maori version. While the Europeans have mostly referred to the English version, the Maori version was the one originally executed by the Maori chiefs because it was difficult translating some of the wordings of the English version into Maori. Neither of the two versions of the treaty is a translation of the other. However, the English version bestows sovereignty on the Crown, while the Maori version confers governance on the Crown and chieftainship on the Maori.⁶

The intention of the Maori chiefs representing the Maori people to sign the pact with Britain was to protect their people against potential aggression from other Europeans, especially France.⁷

However, there is an account which holds that:

The treaty was presented in a manner calculated to secure Maori agreement. The transfer of power to the Crown was thus played down. Maori suspicions were lulled by official recognition of Maori independence, by the confirmation of a degree of that independence under British sovereignty, and by the extension of Crown protection and other rights. Maori were told the Crown needed their agreement in order to establish effective law and order- primarily for controlling Europeans, or

⁴ Wikipedia, *Treaty of Waitangi*, online: https://en.wikipedia.org/wiki/Treaty_of_Waitangi.

⁵ Jessica Orsman, *The Treaty of Waitangi as an Exercise of Maori Constituent Power*, (2012) 43:28, University of Victoria Wellington Law Review at 345- 372.

⁶ The Government of New Zealand, *Treaty of Waitangi Settlement Process: New Relationship or New Mask?* (February 1999) University of Waikato, 26 August 2006 “update.”

⁷ Calman Ross, *The Treaty of Waitangi*. (Auckland, N.Z: Oratia Media, 2012) at 4.

Pakeha as they were called. Finally, the benefits to be gained were stressed, rather than the restrictions that would inevitably follow.⁸

There was a symbiotic relationship between the Maori people and the early European settlers through an exchange of commodities like European clothing, hardware and even guns for flax, potatoes and animals like pigs, from the Maori people.⁹ One must recognize the diverse cultural entities which make up the population of New Zealand despite the domination of western culture over the traditional cultures of the Maori ethnic group. The socio-political reality of colonization is evident in the transformation of the criminal justice system from the European adversarial system to a community-based justice system. New Zealand was bequeathed the English legal tradition based on an adversarial system where crime is believed to be committed against the State and punishment is meant to serve as a form of deterrence to deviants who violate the law.

There are different elements of crime under Maori customary law that contradict the ideas of crime under the dominant criminal justice system. These notions include terms like “pono” and “tika” which mean “true” and “right” respectively and relate to the standard of behavior.¹⁰ Moreover, the Maori concept of “tikanga” refers to a way of social control especially through social interactions and interpersonal relationships.¹¹ Maori people are guided by values which are not codified in a written document like in western societies. And this point is re-emphasized as follows:

The question might aptly be whether there were values to which the community generally subscribed. Whether those values were regularly upheld is not the point but whether they had regular influence. Maori operated not by finite rules alone, or even mainly, but as in Christian law by reference to principles, goals, and values

⁸ Claudia Orange, *The Treaty of Waitangi*, Wellington: Bridget Williams Books Ltd., Historical Publications Branch, Dept. of Internal Affairs, Wellington, 1997 at 33.

⁹ *Ibid.*

¹⁰ Mead Hirini. *Tikanga Maori* (Revised Edition): *Living by Maori Values*, (2016, Huia (NZ) Ltd) at 30.

¹¹ Marianne Lammers, *Toward Cultural Safety: Experiences of a Non-Māori Therapist Working with Māori Clients: Part 2*, (2012) 4:1, *Psychology Aotearoa* published by The New Zealand Psychological Society, at 19-23.

that were not necessarily achievable. They were largely idealized standards attributed to famous ancestors.¹²

One may argue that the Maori did not live as a lawless people nor in a lawless society. There were values by which they lived, and which covered all aspects of life.¹³ The Maori traditional justice system is based on the people and their values which help evolve a community. The role of restorative justice through its principles and values includes helping to nurture the strong connections that exist within the families, both nuclear and extended, as a major social institution. However, restorative justice offers the framework for family influence to play a big role in the justice process, even in modern day New Zealand.¹⁴

In understanding the ways in which restorative justice has impacted the New Zealand criminal justice system, one may look at the determination of the country to respond to crime not only from a legal context but also as a social phenomenon.¹⁵ Restorative justice practice is being institutionalized in the justice system under the current legal framework in New Zealand.¹⁶ For instance, a diversion programme is utilized at the pre-trial stage for adult offenders facing criminal allegations. They are diverted by the police from the formal criminal proceedings and dealt with through alternative justice processes. As well, the rights of victims are now being recognized and considered. This is an important restorative practice and a departure from the traditional formal criminal justice system where attention is centred only on the offender without recognition of the

¹² Mead Hirini, supra note 10.

¹³ Gabriel Maxwell and Allison Morris, *Rethinking Youth Justice: A Comment on Proposals by New Zealand and young person service to amalgamate youth justice and care and protection services* (1994), Wellington, Victoria University, at 1-17.

¹⁴ Gabrielle Maxwell And Allison Morris, *Youth justice in New Zealand: A restorative model* (2005/08/26) "update" online: <http://restorativejustice.org/10fulltext/maxwellandmorris.html>.

¹⁵ The Criminal Justice Course, *Crime and Criminal Justice as Social Phenomena*, online: <http://www.thecriminaljusticecourse.site/introduction/criminal-justice-as-a-social-phenomenon>.

¹⁶ David Carruthers, *Restorative Justice: Lessons from the Past, Pointers for the Future*, (2012) 20:1 Waikato L. Rev. p. 29.

harm suffered by the victim.¹⁷ Historically, restorative justice practice had been utilized during pre-sentencing conferences through referrals from the district court level in New Zealand.¹⁸ The sentencing conference mechanism creates a platform for insights to be shared by relations of the parties connected to the criminal incident, thereby giving judges opportunity to reach decisions from well-informed positions. Many of the measures of restorative approaches to the resolution of many social crises like recidivism, systemic discrimination, incarceration and juvenile delinquency will be highlighted subsequently.

3.3. Youth Justice Reform and Restorative Justice in New Zealand

The New Zealand restorative justice movement started as a result of dissatisfaction with the pervasive inequality suffered by the Maori people from the social agencies through the youth criminal justice system.¹⁹ The Maori families (extended whanau) and wider tribal groups (hapu and iwi) were alienated and treated with disdain under the court processes. Their young offenders were discriminately sent into punitive institutions, and this adversely impacted their social relationships with their whanau.²⁰ The significance of whanau (family) to Maori identity became the focus, especially, in the rehabilitation and reintegration of young offenders.²¹ The role of whanau is crucial in shaping the behavior of young people because the community plays parental roles in nurturing young persons. In this sense, members of the community are in an important position in relation to their youth. Indeed, the use of incarceration under the penal system prior to

¹⁷ The Victims' Rights Act 2002.

¹⁸ Ministry of Justice, "online: <https://www.justice.govt.nz/assets/Documents/Publications/RJ-Best-practice.pdf>.

¹⁹ Stephanie Vieille, *Māori Customary Law: A Relational Approach to Justice*, (March 2012), 3:1, *The International Indigenous Policy Journal* at 1-11.

²⁰ Jim Boyack, Helen Bowen and Chris Marshall, *How does Restorative Justice Ensure Good Practice?* In Howard Zehr et al eds. *Critical Issues in Restorative Justice* (New York, Criminal Justice Press 2004) at 265.

²¹ *Ibid.*

1989 undermined the role of the minority communities in the youth justice process. The role of whanau (extended family) was described by Morris and Maxwell as follows:

The role of whanau is important in both Maori (and Polynesian) child-rearing and decision-making. It is not unusual, for example, for Maori children to live from time to time with different relatives within their whanau. This occurs in part because the child is considered not simply the child of the birth parents but also of the whanau, hapu and iwi. Bringing up children, therefore, and hence dealing with their delinquencies, is a communal responsibility.²²

However, owing to the discontent mentioned earlier, a constructive consultation process was put in motion, culminating in the 1986 Puaote-Ata-tu Report (New Zealand Department of Social Welfare, 1986).²³ The report led the way to the enactment of the *Children, Young Persons and Their Families Act, 1989* (hereinafter as the 1989 Act) which revolutionized youth justice in New Zealand through the Family Group Conference.²⁴

Before the enactment of the *Children, Young Persons, and Their Families Act, 1989*, the views of the society about the status of young offenders changed from time to time due to the roles the public wanted the government to play in the life of the youth. The point to be made is that society plays an important role in determining the direction of criminal justice system in any country. For New Zealand, Lammers explains that before the passage of the 1989 Act:

Social forces act to adjust the rights and obligations of childhood to be congruent with the times. Thus, he suggested that, from 1840 to 1899 in New Zealand, children were seen as chattels; from 1900 to 1944, children were seen as social capital; from 1945 to 1969, they were seen as psychological beings; and, from 1970, as citizens.²⁵

²² Allison Morris & Gabrielle M. Maxwell, *Juvenile Justice in New Zealand: A New Paradigm*, (1993), 26:1, Australian & New Zealand Journal of Criminology at 72-90.

²³ Jim Boyack, Helen Bowen and Chris Marshall, *supra* note 20.

²⁴ Gabriel Maxwell and Allison Morris, *supra* note 13.

²⁵ Mead Hirini, *supra* note 10.

Furthermore, the recognition of cultural diversity in New Zealand by the government motivated the need to create a criminal justice system that reflects this unique cultural duality. *The Children, Young Persons, and Their Families Act, 1989* was created to respond specifically to “young people which turns away from previous systems that failed to touch the hearts and the minds of those who were involved with it.”²⁶

The influence of cultural duality on the legal system in New Zealand must be explained in the context of the existing dichotomy between European cultural values and traditional Maori values. The coming into effect of *The Children, Young Persons and their Family Act of 1989* represents an alternative justice model integrated within the formal criminal justice system. Therefore, the use of restorative justice practice is more than just a legal option based on administrative discretion. It is an important part of due process within the youth justice system in New Zealand. Consequently, the notion of responsibility in the context of Maori culture is that, responsibility for wrongdoing is openly shared in the presence of family members, as against just leaving an individual offender to shoulder the burden.²⁷ The significant changes brought into the youth justice system in New Zealand have been identified as follows:

“The Act introduced a number of core principles governing youth justice processes, which focus on:

- (a) alternatives to criminal proceedings;
- (b) measures which are designed to strengthen families and foster their ability to develop their own means of dealing with offending by their children and young people;
- (c) keeping child or youth offenders in the community, so far as that is practicable and consonant with the need to ensure public safety;
- (d) the relevance of age as a mitigating factor in determining whether to impose sanctions and the nature of those sanctions;

²⁶ Gabriel Maxwell and Allison Morris, *supra* note 13.

²⁷ Mead Hirini, *supra* note 10.

- (e) the need for sanctions to take the form most likely to maintain and promote the development of the individual within his or her family and take the least restrictive outcome appropriate in the circumstances;
- (f) the need for measures to address, so far as practicable, the causes underlying an individual's offending;
- (g) the need to consider, when determining the appropriate measure(s), the interests and views of any victims of offending and the need for measures to have proper regard for the interests of victims and the impact of the offending on them; and, finally:
- (h) the fact that the vulnerability of children and young persons entitle them to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person.²⁸

The application of restorative justice principles and practice in New Zealand in response to challenges confronting the criminal justice system began with the introduction of the Family Group Conference procedure for young offenders under the Act.²⁹ Technically, the introduction of the family group conference under a statutory law created a youth justice system that moved away from relying only on government institutions in dealing with youth crime to a traditional justice process that is built around the family and accommodating community-based approach.³⁰

3.3.1. The Significance of the Family Group Conference (FGC)

The statutory introduction of the Family Group Conferences under *the Children, Young Persons and their Family Act of 1989*, technically devolves decision-making power based on the recognition that where the court deems it acceptable, a comprehensive support plan could be created through a restorative justice process.³¹ Under the provisions of section 5(a) of the Act,³² the restorative justice approach is recognized through the Family Group Conference to deal with youth crime. Family group conferencing is a form of dialogue among significant family (whanau)

²⁸ Claudia Orange, *supra* note 8.

²⁹ Children, Young Persons, and Their Families Act 1989.

³⁰ Gabriel Maxwell and Allison Morris, *supra* note 13.

³¹ Guy Masters, *What Happens When Restorative Justice Is Encouraged, Enabled And/or Guided by Legislation?* In Howard Zehr et al eds. *Critical Issues in Restorative Justice* (New York, Criminal Justice Press 2004) at 228.

³² Children, Young Persons, and Their Families Act 1989, s 5(a).

members and other persons who may bring important insights into the conversation. In some instances, scripts are designed by restorative justice experts and made available to the facilitators as a form of direction which may help the facilitator structure the conversations towards achieving restorative outcomes.³³

The 1989 Act completely changed the principles governing youth justice. It established a new set of procedures for dealing with juvenile matters with focus on the care and protection of youths. The 1989 Act redefines and conceptualizes what would constitute the best interest of the child within the context of the youth justice system in New Zealand. Consequently, the role and power of professional youth workers were reduced significantly, while the role and influence of family members of a youth offender became vital and central to the administration of youth justice in New Zealand.³⁴

The introduction of the Family Group Conference reflects the importance of the family and the need to encourage their participation in the youth justice process, whether as members of the nuclear family in the Pakeha (western) culture or the extended family-oriented citizen under Maori culture. David Swain highlights the significance of the introduction of the family group conference thus:

The main change of principle was that the importance of the best interests of the child as previously conceptualized,' and the power of social workers (and other professionals), were reduced, and the role and authority of the child's extended family were increased,' whether it was a pakeha family (supposed to be rather focused on the neolocal nuclear family form) or a Maori or Pacific Island family (generally regarded as more extended in everyday character). The main (and of course related) change of practice was to move most decision-

³³ Jerry Johnstone, *Mediation, Participation and the Role of Community*, In *Restorative Justice: Ideas, Values, Debates* (New-York, USA, Routledge, 2002) at 235.

³⁴ Children, Young Persons, and Their Families Act 1989, *supra* note 29.

making about children in need of care and protection and young offenders from the courtroom and professional office to the 'family group conference'³⁵

Young offenders under the age of fourteen may not face criminal prosecution except where the charges against them involve murder or manslaughter.³⁶ Nevertheless, offenders from fourteen to seventeen years of age must be referred to a family group conference before the offender is formally charged or before sentencing.³⁷ The purpose of introducing the family group conference initiative is to divert youth offenders from the formal criminal proceedings, essentially, to protect and care for them by focusing on the best possible solutions to the incident at hand. The provisions of section 5(c), 5(d) and 5(e) of the Act of 1989 define the principles guiding the exercise of the authority conferred on a family member who participates in the conference, and other stakeholders involved in the administration of youth justice system as follows:

- (c) the principle that consideration must always be given to how a decision affecting a child or young person will affect— (i) the welfare of that child or young person; and (ii) the stability of that child's or young person's family, whanau, hapu, iwi, and family group;
- (d) the principle that consideration should be given to the wishes of the child or young person, so far as those wishes can reasonably be ascertained, and that those wishes should be given such weight as is appropriate in the circumstances, having regard to the age, maturity, and culture of the child or young person;
- (e) the principle that endeavours should be made to obtain the support of— (i) the parents or guardians or other persons having the care of a child or young person; and (ii) the child or young person himself or herself.³⁸

From the preceding provisions, the introduction of the Act of 1989 also represents a deliberate change in the philosophy behind youth justice in New Zealand. It has moved from a retributive response to youth crime, to both rehabilitative and restorative mechanisms. Section 4 provides that

³⁵ David Swain, *Family Group Conferences in Child Care and Protection and in Youth Justice* (1995) 9:155 Aotearoa/New-Zealand, Int'l J.L. & Fam. at 207.

³⁶ *Ibid.*

³⁷ Mead Hirini, *supra* note 10 at 243.

³⁸ Children, Young Persons, and Their Families Act 1989, *supra* note 28, s (5) 5.

the Act shall seek to “promote the well-being of children, young persons, and their families and family groups”³⁹ by recognizing the cultural contexts and engaging family members of young offenders. The Act also discourages an adversarial or combative approach to youth justice. Instead, it enjoins stakeholders who are involved in any youth justice process to encourage young offenders to take responsibility for their wrongdoing and to do so in the presence of their family members.

The youth justice system in New Zealand is unique. It is designed to respond to the fact that young persons are vulnerable, and in need of care and protection. The youth justice system is equally compatible with the cultural diversity of the country and espouses relationality which is enshrined in restorative justice as discussed in chapter two of this thesis. The introduction of the family group conference puts premium on seeking solutions within family circles with the hope to positively impact the young persons. It is also aimed to reduce or unburden the regular courts from delinquent matters to be resolved or handled during the family group conferences, leaving allegations of serious and violent crimes involving manslaughter or murder to the regular courts.⁴⁰

The Family Group Conference is adjudged by a notable writer, Guy Masters as: “the first mainstreamed restorative justice process in the world.”⁴¹ The introduction of the Family Group Conference makes restorative justice practice an integral part of the criminal justice system. New Zealand is the only jurisdiction where restorative justice practice is established under law to function as an integral part of the justice process. Indeed, the law makes restorative process a condition precedent as against the practice of making it an option prior the enactment of the *Children, Young Persons and Their Family Act* of 1989.

³⁹ *Ibid.*

⁴⁰ Gabriel Maxwell and Allison Morris, *supra* note 13.

⁴¹ Guy Masters, *supra* note 31.

3.3.2. Restorative Justice Practice and the Adult Justice System

For most countries, the journey to seek a fair and viable criminal justice system often begins with the need to evoke ideas of justice that are alternative to the formal criminal justice system for dealing with crime and its aftermath. Countries like Canada and New Zealand have made appreciable efforts to create legal frameworks through which restorative practices now thrive, particularly regarding youth justice. In the case of New Zealand, despite the rapid growth of the restorative justice movement, can one argue that the concept has been fully integrated or incorporated into the justice system? This section examines the development of restorative justice principles and practices in the adult justice system in New Zealand. I begin from the roles of those scholars and reformers who felt convinced that a restorative model of justice should also govern the criminal justice system involving adult offenders.

The extension of restorative practices to the adult justice system may have been motivated by the successes recorded in the youth justice system through the implementation of the family group conferences.⁴² The family group conferences had demonstrated the comprehensive nature of restorative justice practices given the participation of family members in deciding the fate of young offenders. So too the adult justice system subsequently underwent significant legal reforms to institutionalize restorative justice practices within the criminal justice system. A restorative justice approach to dealing with adult offenders began as a justice intervention initiative taken by some judges regarding mediation and reconciliation.⁴³

One of the main purposes of the legal reform was to create a comprehensive approach to the criminal justice process where the rights of the victim are recognized in the justice process through

⁴² David Swain, *supra* note 35.

⁴³ David Carruthers, *supra* note 16.

conferencing. The reform reflects some of the restorative principles mentioned in chapter one of this work. However, these reforms were not entirely based on restorative principles. Instead, they were modelled after the piloting of Family Group Conferencing inspired largely by Maori peoples' disposition to resolve conflicts by involving family members in the process.⁴⁴

It has been shown that conferencing presents the opportunity for victims and relevant community participants to be fully involved during the justice process as the court shall consider how its decisions may impact the victim.⁴⁵ Restorative conferencing also involves all persons affected by the incident of crime. The objective is to determine the best way to repair the harm suffered, and in the process, maybe restore impaired relationships.⁴⁶

3.3.3. Restorative Justice Conferencing

One of the leading advocates in the use of restorative approach in adult cases was Judge F. McElrea who, in 1994 at a conference of District Court judges, presented a paper proposing the use of the restorative aspects of the family group conference model in the adult setting.⁴⁷ Based on his experience and involvement in the youth justice system, the judge believes:

That restorative justice is not a single technique, but rather an approach to conflict resolution which seeks win-win outcomes (some call it "healing justice") and locates the recipe for successful outcomes primarily in the community rather than in the apparatus of the State.⁴⁸

The campaign to extend restorative justice practices to the adult justice system became a success when the New Zealand government announced NZ\$4.8 million dollars in May 2000 to fund the

⁴⁴ Guy Masters, *supra* note 31 at page 231.

⁴⁵ Gabrielle Maxwell, Allison Morris & Hennessey Hayes, *Conferencing and Restorative Justice*, in Dennis Sullivan et al ed. in *Handbook of Restorative Justice: A Global Perspective* (London, Routledge Inc., 2008) at 95.

⁴⁶ Paul McCold, *The recent history of restorative justice: Mediation, circles, and conferencing*, in Dennis Sullivan et al ed., in *Handbook of Restorative Justice*, (London, Routledge, 2008) at 30.

⁴⁷ Mead Hirini, *supra* note 10.

⁴⁸ Marianne Lammers, *supra* note 11.

introduction of restorative justice conferencing for adult offenders beginning in four District Courts located in Auckland, Waitakere, Hamilton and Dunedin. This commenced in September 2000 as a government pilot restorative initiative.⁴⁹ In this way, restorative justice practice became a criminal justice policy in New Zealand through adult justice conferencing. This has been described as:

A range of strategies for bringing together victims, offenders, and community members in non-adversarial community-based processes aimed at responding to crime by holding offenders accountable and repairing the harm caused to victims and communities.⁵⁰

Restorative justice practices began to be applied during three phases of the criminal justice process; the pre-trial stage which is essentially for diversion, the pre-sentence stage and the post-sentence phase.⁵¹ The restorative approach applied under the adult justice system operates differently from the youth justice system. Under the adult system, it is an alternative mechanism existing alongside the formal criminal justice system, whereas under the youth justice system, a family group conference operates as a mandatory process in dealing with youth offenders.⁵² This is why one of the modalities for the implementation of restorative justice practice under the adult justice system was diversion at the pre-trial stage, usually after a plea is entered and other requirements, i.e., seriousness and nature of the crime, are considered.

During the pre-trial stage of a criminal proceeding, the judge may make referral order to a restorative process after the offender may have pleaded guilty to the charges brought against him or her and the victim is open to a restorative process. At the end of the restorative conference, the

⁴⁹ Donald J. Schmid, *Restorative Justice: A New Paradigm for Criminal Justice Policy* (2003), 34: 91, Victoria U. Wellington L. Rev., p. 105.

⁵⁰ Gordon Bazemore and Mark Umbreit, *A Comparison of Four Restorative Conferencing Models*, (2001) Juvenile Justice Bulletin US Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

⁵¹ *Supra* note 15.

⁵² Children, Young Persons, and Their Families Act 1989, *supra* note 29.

judge considers the report from the conference with the obligation to take the outcome of the conference into account during sentencing.⁵³

It is evident that government and other stakeholders in the justice sector played pivotal roles in the development of restorative justice practice under the criminal adult justice system. In the case of *R v Clotworthy*,⁵⁴ the court recognized the need to balance traditional sentencing policy with restorative justice policy regarding sentencing.⁵⁵ In the light of this, the significance of the comprehensive sentencing reforms that were later introduced through the Sentencing Act, 2002, the Victims' Rights, 2002 and Parole Act, 2002 cannot be minimized. The legal ramifications of these statutes are examined in the subsequent section in light of their pros and cons for advancing restorative justice practice through legislation.

3.4. Expansion of Restorative Justice Practice through Statutory Criminal Justice Reform

The *Sentencing Act*⁵⁶ and the *Victim Rights Act*⁵⁷ were both enacted in May and October of 2002 respectively to create the legal bases for the implementation of restorative justice principles and practice. Similarly, the *Parole Act* was enacted in 2002 to complement the operation of the Sentencing Act. These Acts give legitimacy and recognition to restorative justice processes and establish the concept as an integral part of the justice system.⁵⁸ The Sentencing Act 2002 introduced

⁵³ Helen Bowen, *Centre for Justice and Reconciliation*, (2002) Recent Restorative Justice Developments in New Zealand/Aotearoa, online: <http://restorativejustice.org/rj-library/recent-restorative-justice-developments-in-new-zealandaotearoa/3222/#sthash.uFzAFwcc.dpbs>.

⁵⁴ *R v. Clotworthy* (1998) 15 CRNZ 651 (CA).

⁵⁵ Helen Bowen, *supra* note 53.

⁵⁶ New Zealand Legislation, "online: <http://www.legislation.govt.nz/act/public/2002/0009/latest/DLM135342.html>

⁵⁷ *Ibid*.

⁵⁸ Ministry of Justice, "online: <http://restorativejustice.org/am-site/media/restorative-justice-best-practice-in-new-zealand.pdf>.

the need to view crime through the restorative lens by focusing on rehabilitation, deterrence and restoration as consequences for harm.⁵⁹

The Act also creates an alternative mechanism for accountability for a crime or criminal liability by allowing offenders to decide how to atone for their wrongdoings, provided the victims give their consent. The notion that parties in dispute can best decide how they wish to move forward in a restorative process indicates a significant shift from the domination of the formal criminal justice system. The application of the Sentencing Act within the formal criminal justice system brings about integration of two justice models making the justice process comprehensive thereby strengthening the synergy in the enforcement of the *Sentencing Act*, *Victims' Act* and the *Parole Act*.⁶⁰

The *Sentencing Act* and the *Parole Act* also made significant changes to the *Criminal Justice Act* of 1985, especially with the introduction of core restorative principles and practices. The change may be attributed to public concern over the crime rate which rose steadily during the period 1970–1992, from 55 incidents per 1000 population to 132 in 1992, an increase of 140%. Between 1962 and 1995 the crime rate tripled, a subject at the heart of political debate in New Zealand.⁶¹ The debate led to the criminal justice referendum held in 1999 with the question: “Should there be a reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious offenders?”⁶² Consequently, the new statutes reflect, to an extent, the views of the people demanding more recognition for the victim in criminal proceedings. Clearly, the government used

⁵⁹ Julian V. Roberts, *Sentencing Reform in New Zealand: An Analysis of the Sentencing Act 2002*, (2003) 36:3 Australian & New Zealand journal of criminology at 249-271.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Julian V. Roberts, *supra* note 59 at page 251.

the enactment of the new statutes to reflect and acknowledge the widespread public concern about crime.

Specifically, the promulgation of the *Sentencing Act* consolidates and institutionalizes restorative justice practices within the criminal justice system. The use of restorative conferencing had become a prominent mechanism under the adult justice system utilized at the pre-trial stage. The coming into effect of the Sentencing Act, along with the *Parole Act* and *Victims' Rights Act*, formally entrenched restorative justice practice as a viable mechanism in the administration of criminal justice in New Zealand. These three statutes represent the validation of the concept of restorative justice. Section 7 of the Sentencing Act 2002 sets out the purpose for which a court may sentence or entertain a case against an alleged offender. The section provides as follows:

- (1) The purposes for which a court may sentence or otherwise deal with an offender are—
 - (a) to hold the offender accountable for harm done to the victim and the community by the offending; or
 - (b) to promote in the offender a sense of responsibility for, and an acknowledgement of, that harm; or
 - (c) to provide for the interests of the victim of the offence; or
 - (d) to provide reparation for harm done by the offending; or
 - (e) to denounce the conduct in which the offender was involved; or
 - (f) to deter the offender or other persons from committing the same or a similar offence; or
 - (g) to protect the community from the offender; or
 - (h) to assist in the offender's rehabilitation and reintegration; or
 - (i) a combination of 2 or more of the purposes in paragraphs (a) to (h)”⁶³

The preceding provisions encapsulate the purpose for which the court would exercise its jurisdiction during the pre-sentencing stage of judicial proceedings. From the foregoing provisions, the Act recognizes the use of restorative conferencing as a form of alternative justice process. For instance, where during pre-trial, a criminal proceeding is diverted for the purpose of restorative

⁶³ The Sentencing Act, 2002, S,7 (1).

conferencing, it is consistent with sentencing to be based on restorative principles of flexibility, inclusiveness and dialogue. Under the *Sentencing Act*, a judicial process is directed to achieve restorative outcomes, as against deterrence through punishment under the formal criminal justice system.

The cultural and ideological context of New Zealand is reflected in the procedural mechanisms enunciated under section 10 of the *Sentencing Act*. Furthermore, section 7 of the *Sentencing Act* does not mention a restorative process, nor is there a definition of restorative justice in the legislation. However, the silence on the express use of the term “restorative justice” under section 7 allows for flexibility, which enables each restorative process to be structured or constituted on its unique facts and circumstances, especially in a culturally diverse society such as New Zealand.⁶⁴

Section 7 of the *Sentencing Act* embodies the principles of a restorative approach to justice. The restorative principles it enunciates include accountability for harm done to the victim and community.⁶⁵ The principle of accountability under a restorative process must be based on truth-telling about what happened, why it happened, and how to prevent future occurrence. Second, the section also provides that offenders may assume responsibility by acknowledging the harm they caused to the victim.⁶⁶ Taking responsibility is the cornerstone of the restorative process especially because the process is not to apportion blame for the harm caused, but to utilize the process to decide on how parties can address their roles and experience from the criminal incident. The role of the victim in a restorative process is central to the process, along with how the incident may have impacted the community especially in a society where whānau has a big influence in the lives

⁶⁴ *R v. Clotworthy*, *supra* note 54.

⁶⁵ The *Sentencing Act* *supra* note 63.

⁶⁶ *Ibid.*

and level of self-esteem of individuals. Hence, restoration of social relationships is the goal of a restorative process.

Section 10 of the Sentencing Act is the main restorative justice dispositional provision. It encapsulates the guidelines courts must follow in adherence to restorative justice practice. It states the following principles, values and restorative justice measures for dealing with crime and conflicts:

Courts must take into account offer, agreement, response, or measure to make amends
(1) In sentencing or otherwise dealing with an offender the court must take into account—
(a) any offer of amends, whether financial or by means of the performance of any work or service, made by or on behalf of the offender to the victim:(b) any agreement between the offender and the victim as to how the offender may remedy the wrong, loss, or damage caused by the offender or ensure that the offending will not continue or recur: (c) the response of the offender or the offender’s family, whanau, or family group to the offending: (d) any measures taken or proposed to be taken by the offender or the family, whanau, or family group of the offender to— (i) make compensation to any victim of the offending or family, whanau, or family group of the victim; or (ii) apologize to any victim of the offending or family, whanau, or family group of the victim; or (iii) otherwise make good the harm that has occurred: (e) any remedial action taken or proposed to be taken by the offender in relation to the circumstances of the offending.⁶⁷

The provisions of section 10(1) of the Act lays the framework for reparation as a remedy for wrongdoing. Consequently, there is a shift from over-relying on incarceration or custody to other forms of remedy based on the concepts of restitution and reparation.⁶⁸ Section 10 of the Act allows parties in a dispute to determine how best they are willing to resolve the incident among themselves, in contrast to having to have punishment imposed under the formal criminal justice system. Section 10 of the Act emphasizes the restorative principle of inclusiveness and enjoins courts to consider the views and roles of the whanau or members of the extended family of either the victim or the offender. The fact that the provisions of sections 7, 8 and 9 of the Sentencing Act

⁶⁷ *Ibid.*

⁶⁸ These concepts are discussed in chapter 2 of this research.

legally establish restorative justice practice as an integral mechanism within New Zealand's justice system obliges the courts to be guided by the report of restorative conferencing during sentencing even where parties fail to agree. Based on the unified and centralized legislative framework, restorative justice practice in New Zealand does not require restorative "alternative measures" as it is done in Nova Scotia, Canada (as discussed in chapter four below).

3.5. Conclusion

The criminal justice system in New Zealand is structured to accommodate different culturally sensitive restorative initiatives focused on achieving different restorative outcomes. Since the introduction of the Family Group Conferences and the promulgation of the tripartite legislative frameworks under the Sentencing Act 2002, the Victims' Rights Act 2002, and the Parole Act 2002, there have emerged various mechanisms for diverting certain offenders from the formal criminal justice system in order to reduce the rate of incarceration or the use of custody, especially where young offenders face minor charges. In reality, it has been shown that 80% of young people are not processed through the formal criminal justice system but informally by the Police Aid Division through informal forms of sanction, such as apologies, reprimand, compensation and other reparative work.⁶⁹ Of the remaining 20%, only 10% of the young offenders end up in the Family Group Conference leading to non-prosecution, while the remaining 10% eventually enter the formal criminal justice system for prosecution.⁷⁰ There are thus different mechanisms through which restorative justice approaches can be exercised in response to crime and criminal liability.

The New Zealand example of criminal justice reform shows that justice sector reform may drive legal change in order to impact administration of justice system to benefit society. The criminal

⁶⁹ Guy Masters, *supra* note 31 at 231.

⁷⁰ Allison Morris & Gabrielle M. Maxwell, *supra* note 22.

justice system is important to how any society deals with crime prevention and public safety. The criminal justice reform in New Zealand evidently demonstrates the potency of restorative justice to deliver landmark criminal justice reform. Restorative justice has been flexibly implemented in different formats: conferencing, diversionary measures, victim-offender mediation, etc. The changes to the youth and adult criminal justice regimes in New Zealand have been led by the legislative arm of the state resulting in institutionalizing an alternative justice process under statutory law.

The promulgation of the *Children, Young Persons and Their Families Act of 1989* represents the government's commitment to equity, fairness and justice to ensure that the law governing the conduct of the people is compatible with the cultural values and tradition of the different ethnic groups in the country. The enactment of other statutes namely, the Sentencing Act, Parole Act and Victims' Rights Act, have enabled the use of restorative approaches to address incidents of crime. In the process, national unity has been enhanced because the changes have fostered inclusion which comes with a sense of belonging for every segment of New Zealand's population. The question for this thesis is to determine the extent to which these New Zealand theories and principles can find a healthy basis for transplantation to the Nigerian criminal justice system.

The extent to which New Zealand model of restorative justice lays the foundation for national approach to the use of an alternative justice system in Nigeria is explored in chapter 5. However, it can be noted here that the unilateral and parliamentary approach to overhauling the criminal justice system in New Zealand was achieved under a unitary government rooted in a top-down system. However, under the Nigerian federal system, a similar top-down approach is limited and only attainable at the national level or under federal jurisdiction.

CHAPTER 4: INSTITUTIONALIZING RESTORATIVE JUSTICE IN CANADA

4.1. Background

This chapter examines the nature of the challenges confronting the formal criminal justice system in Canada. It evaluates the impacts of the introduction of a restorative justice model to address these problems. Restorative justice began as an intervention to many inadequacies and limitations of the mainstream Canadian criminal justice system which have led to serious crises including disproportionate incarceration of Aboriginal peoples, African Canadians and high rates of recidivism. The province of Nova Scotia in Canada responded to the needed change to the formal criminal justice system, particularly in youth justice, by considering the restorative justice developments in New Zealand. Based on the findings carried out by the Nova Scotia Ministry of Justice, the youth diversion program based on “accountability sessions” was found not to be effective. As such, the move was made toward a model “based on community/victim-offender reconciliation and other restorative justice principles.”¹

This chapter examines the extent to which the emergent concepts, policies and approaches adopted by the national and provincial governments may have improved administration of the criminal justice system in Canada by institutionalizing the concept of restorative justice. The recognition of restorative justice in Canada over the last two decades is based on the country’s extensive political and legal deployment of the concept for the purposes of reforming and transforming its criminal justice system.²

¹ Bruce Archibald & Jennifer Llewellyn, “The Challenges of Institutionalizing Comprehensive Restorative Justice: Theory and Practice in Nova Scotia” (2006) 29 Dalhousie Law Journal 297.

² Kent Roach, *Due Process and Victims' Rights: The New Law and Politics of Criminal Justice* (Toronto: University of Toronto Press, 1999) at 11.

In Canada, the term restorative justice is often broadly linked to various dispute resolution practices which are rooted in the Aboriginal peoples' culture. These sets of practices have been integrated into the formal criminal justice system in various ways.³ The commitment of Canadian governments at many levels to reflect restorative practice in dealing particularly with youth justice continues to develop the Canadian legal system and consolidate its restorative jurisprudence through legislation and case law.⁴ In the course of this chapter, the significant role of political will shall be discussed to expound upon the roles of the national government and the provincial counterparts, through different initiatives and policies, to advance restorative justice practices. The rapid development of the restorative justice movement continues to demonstrate the political will of Canadian governments to explore a new way of thinking about justice. Indeed, there are restorative programmes and initiatives across different provinces in Canada.⁵ For example, in Nova Scotia, restorative practice had been embraced in dealing with human rights conflict by the Nova Scotia Human Rights Commission.⁶ As well, it began to represent the fundamental basis for youth justice in the province.

Another territory in Canada with significant use of an alternative justice process, including restorative justice practice, is Yukon. The use of what is known as a sentencing circle has been adopted by judges in different circumstances to gain insight into the implications of their decisions by holding dialogue sessions with people connected to the case.⁷ At the federal level, the

³ Gordon Bazemore and Lode Walgrave, "Introduction: Restorative Justice and the International Juvenile Justice Crises" in Gordon Bazemore et al, eds, *Restorative Juvenile Justice: Repairing the Harm of Youth Crime* (New York: Willow Tree Press, 1999) at 1.

⁴ John Braithwaite, "Principles of Restorative Justice" in A Von Hirsch et al, eds, *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Oxford: Hart Publishing, 2003) at 1-20.

⁵ Gerald Hashey, Jennifer Llewellyn, & Grant Sinclair, "Northwest Territories Human Rights Act Comprehensive Review" (April 2015), online: <<http://nwthumanrights.ca/review/comprehensive-review-materials/>>.

⁶ Government of Nova Scotia, Nova Scotia Human Rights Commission, online: <https://humanrights.novascotia.ca/resolving-disputes/about-process/restorative-approaches>.

⁷ Barry Stuart, "Circle Sentencing in Canada: A Partnership of the Community and the Criminal Justice System" (1996) 20: 2 *International Journal of Comparative and Applied Criminal Justice* 291.

Correctional Services of Canada operates a Restorative Opportunities programme which is a way to bring victims who are prepared and willing to meet with the offender and share how the crime impacted them.⁸

The Canadian criminal justice system is largely based on retributive ideas, but accommodates a restorative justice process which is based on restoration of social relationships in dealing with crime.⁹ Despite opposing opinions regarding the mission of the restorative justice movement, the debate remains whether it is intended to completely displace the formal criminal justice system, or whether restorative justice should complement the latter in a way that improves administration of justice. Michael Tonry, through citing instances of how both models of justice are integrated and could serve the same purposes, observes thus:

Community penalties are also sometimes conceptualized as ‘alternatives to incarceration’ or ‘intermediate punishments’ between prison and probation, and restorative justice programmes are meant often to displace or augment conventional criminal justice system interventions, experience with community penalties may be of some relevance.¹⁰

The Canadian legal system focuses on delivering efficient justice through a collaborative approach based on fairness.¹¹ Over the years, justice sector practitioners and other stakeholders have continuously integrated traditional criminal justice processes and the restorative justice approach into the administration of criminal justice.¹² One may observe that here is no clear-cut framework for deciding when it is appropriate to evoke a restorative justice approach in response to crime.

⁸ The Correctional Service Canada, online: <<http://www.csc-scc.gc.ca/restorative-justice/003005-1000-eng.shtml>>.

⁹ Bruce Archibald & Jennifer Llewellyn *supra* note 1.

¹⁰ Michael Tonry, “The Prospects for Institutionalization of Restorative Justice Initiatives in Western Countries” *in Ivo et al, eds, Institutionalizing Restorative Justice* (Oregon: Willan Publishing, 2006) at 18.

¹¹ Bruce Archibald, “Let My People Go: Human Capital Investment and Community Capacity Building Via Meta/Regulation in a Deliberative Democracy - A Modest Contribution for Criminal Law and Restorative Justice” (2008) 16:1 *Cardozo J Int'l & Comp L* 4.

¹² Bruce Archibald, “Restorative Justice and the Rule of Law: Rethinking Due Process through a Relational Theory of Rights” (February 2014) Social Science Research Network, online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2395224>.

The commitment to ensure that justice is done in all criminal cases has mainly driven the motivation to create a just and fair society. There are legal frameworks enabling the implementation of restorative justice practice in Canada guaranteed through the Youth Criminal Justice Act (YCJA) and Criminal Code dealing with alternative measures.¹³ However, one may hold that there is no uniform or national approach to the utilization of restorative justice.

Many of the challenges encountered during the different periods of legal reform shall also be examined, especially the impacts of youth justice reform on the society. The Nova Scotia Restorative Justice programme (NSRJ) is arguably the most comprehensive alternative model of justice in Canada.¹⁴ Many examples of youth justice reforms which are based on restorative practices shall be drawn from the NSRJ programmes.

4.2. A Brief History of the Youth Justice System in Canada

The Canadian youth justice system has a long history and over the course of its evolution, it has been confronted by a myriad of challenges as reflected in the reform efforts in 1908, 1984 and 2003. These efforts evidenced legislative commitments to address the challenges of youth crime and delinquency in Canada. The Canadian *Juvenile Delinquent Act* of 1908 began this reform effort to achieve fair punishment for youth offenders, rehabilitate them and improve their social skills in the process.¹⁵ One of the main legal implications of the promulgation of the Juvenile Delinquent Act, 1908 was the decriminalization of the conduct of youth offenders which contravene the law. The Act redefined the concept of crime by recognizing that “every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child.”¹⁶ In

¹³ *Youth Criminal Justice Act*, SC 2002 c. 1, s 10; Criminal Code, R.S.C. 1985, c. C-46, s.717.

¹⁴ Nova Scotia Restorative Justice Programme, online: <<http://www.nsrj-cura.ca/home/the-nova-scotia-restorative-justice-program>>.

¹⁵ The Department of Justice Canada, “The Evolution of Juvenile Justice in Canada” (2004), online: <<http://www.publications.gc.ca/site/eng/307860/publication.html>>.

¹⁶ *Ibid* at 30.

addition to the departure from what had been the norm, a special juvenile court was created with jurisdiction to adjudicate on matters involving young offenders from a perspective of rehabilitation rather than punishment.¹⁷ This development was in response to an upsurge in jettisoning cruel and inhumane forms of punishment globally in relation to youth.¹⁸ Therefore, the government was confronted with the challenge to enforce law and order, whilst preserving the dignity and rehabilitative prospects of young offenders, or “juvenile delinquents,” as they were then known.

Historically, the development of youth justice reform under the Canadian legal system has always been divided based on the two objectives highlighted above. The three criminal justice reform statutes under review are: *Juvenile Delinquent Act* of 1908, *Young Offenders Act* of 1984 and the *Youth Criminal Justice Act* of 2003 which have all evolved through different socio-political experiences in Canada. However, it is relevant to this work to examine the influence of restorative justice as a concept of justice in attaining public safety and protecting the dignity of young offenders, and this shall be discussed subsequently.

4.2.1. The Juvenile Delinquents Act 1908

The Canadian legal system, like many other common law jurisdictions including Nigeria, had long recognized the protection of a child from being criminally liable as an adult. The passage of the *Juvenile Delinquents Act* of 1908 (“JDA”) in Canada established that to prove capacity, the criminal liability of any young offender depends on the age of such an offender at the time of committing the crime.¹⁹ The common law and Canadian Criminal Code prior to the *1908 Juvenile Delinquents Act* had provided that a child under the age of 7 could not commit a crime and could, therefore, not be criminally liable under any circumstance. However, the said legislation also

¹⁷ *Ibid* at 21.

¹⁸ *Ibid*.

¹⁹ The Department of Justice Canada, *supra* note 15.

granted any child between the ages of 7 and 13 years presumptive immunity from criminal liability unless and until such presumptions were rebutted on the established facts that the youth offender has sufficient knowledge and experience to appreciate the nature and consequences of his/her wrongful conduct.²⁰

The relevance of the age of a youth offender has continued to be partly based on capacity and the guilty knowledge of the youth offender in the commission of crime which was also found in the common law principle known as the “doli incapax” defence.²¹ However, a rebuttal to the presumption that a young offender was not protected under the principle of doli incapax was sufficient ground to subject young offenders to the same penalties as adult offenders, including capital punishment in some circumstances.²²

The thinking of Cessare Beccaria influenced and sparked serious conversations on how the world began to look critically at many of the cruel practices and injustices institutionalized in the penal systems all over the world.²³ Therefore, the 19th Century ushered in a world where civilization was measured in terms of respect for humanity, compassion and dignity.²⁴ The significant contribution of the awakening to the protection of human dignity was reflected in the criminal legal systems of many countries including Canada.²⁵ The emergence of reformist ideologies began to influence education, politics and ultimately created a new order in the structure of society and its conception of justice. There was the desire to overhaul the criminal justice systems which ultimately led to the youth justice reform in Canada and the promulgation of the Juvenile Delinquent Act of 1908.

²⁰ *Ibid.*

²¹ *Ibid* at 1.

²² *Ibid.*

²³ Marc Alain & Julie Desrosiers, “A Fairly Short History of Youth Criminal Justice in Canada” in Marc Alain et al, eds., *Implementing and Working with the Youth Criminal Justice Act Across Canada* (Toronto: University of Toronto Press, 2016) at 24.

²⁴ The Department of Justice Canada, *supra* note 15 at 8.

²⁵ *Ibid.*

The enactment of the Juvenile Delinquents Act of 1908²⁶ changed the way Canadian society thought about youth offenders.

4.2.2. The Young Offenders Act of 1984

The *Juvenile Delinquent Act* of 1908 was believed to be ineffective in addressing the problem of recidivism. This position was contained in the 1965 Report on the *Juvenile Delinquent Act*²⁷ and the report was very critical of the significant variability in how juvenile delinquents were processed across Canada, but the report canvassed for the long-held legal principle that federal statutes, particularly criminal law should be applied uniformly in all provinces.²⁸ Additionally, in the wake of the introduction of the *Canadian Charter of Rights and Freedoms* (“the Charter”),²⁹ there were legitimate concerns that some of the core principles of the *Juvenile Delinquent Act* could be declared unconstitutional because they contravened certain provisions of the Charter especially in relation to fundamental human rights principles.³⁰ The obvious response was juvenile justice reform, which was later enacted in the *Young Offenders Act* (“YOA”) of 1984.³¹

The juvenile reforms introduced under the *Young Offenders Act* of 1984 brought significant institutional changes to the juvenile justice system in Canada. The YOA, by nature, is procedural rather than substantive legislation because it does not prescribe a *Criminal Code* of offences for young persons.³² Under the *Young Offenders Act*, youth courts were specially created, and rehabilitation policies were also introduced to protect young persons since the law applied to all “young persons” between 12 and 18 years of age.³³ Similarly, young persons had protection from

²⁶ *The Juvenile Delinquents Act*, RSC 1970, c J-3, s 38.

²⁷ Online: <<http://www.justice.gc.ca/eng/rp-pr/csj-sjc/ilp-pji/jj2-jm2/sec02.html>>.

²⁸ Marc Alain & Julie Desrosiers, supra note 23.

²⁹ *The Constitution Act* 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11.

³⁰ Marc Alain & Julie Desrosiers, supra note 23 at 30.

³¹ *Young Offenders Act*, RSC 1985, c Y-1.

³² Parliament of Canada, *The Young Offenders Act*, online: <<https://lop.parl.ca/content/lop/researchpublications/8613-e.htm>>.

³³ *Ibid.*

criminal prosecution under the same conditions except where they were facing criminal allegations involving a serious or violent crime, i.e., murder.³⁴

The enactment of the YOA led to a departure from the doctrine of *parens patriae*³⁵ which had put government agencies in parental roles by virtue of the *Juvenile Delinquents Act*. The JDA provided that a child becomes a deviant due to the failure of parents to nurture such a child properly to be of good behaviour.³⁶ There was also discontent among the public that parents were unfairly criticized or blamed for the misconduct or wrongful acts of their children.³⁷ However, under the YOA, there was an expansion from government assuming the role of a parent to creating institutional and legal frameworks to guarantee the welfare of young offenders. Consequently, the Canadian youth justice system became flexible and focused on the welfare of young offenders through criminal proceedings which were determined by the unique circumstances of each case and the special needs of the young offender.³⁸ The Act gave each province in Canada the power to establish local programmes on juvenile justice by domesticating the federal YOA to suit its socio-political and cultural circumstances.³⁹

4.2.3. The Youth Criminal Justice Act 2003

The central government responded to the demand for reform of the criminal justice system, especially the youth justice system. In April 2003, the *Youth Criminal Justice Act*⁴⁰ replaced the *Young Offenders Act*. By this, the focus of youth justice in Canada became, essentially, re-socializing the youth and ensuring safety and protection for the public.

³⁴ *Young Offenders Act*, SA 1984, c Y-1, s 36 [Repealed].

³⁵ Online: <<http://www.duhaime.org/LegalDictionary/P/ParensPatriae.aspx>>. “Latin: literally, father of the country. Refers to the inherent jurisdiction of the courts to make decisions concerning people who are not able to take care of themselves.”

³⁶ The Department of Justice Canada, *supra* note 15 at 25.

³⁷ *Ibid.*

³⁸ Marc Alain & Julie Desrosiers, *supra* note 23.

³⁹ *Young Offenders Act*, RSC 1985, c Y-1, s 4(1) a.

⁴⁰ *Youth Criminal Justice Act*, SC 2002, c 1.

The Act introduced new sentencing options for judges, including reprimanding young offenders, supervision orders and intensive social supports for the young offenders. They not only focused on punishment, they were also intended to rehabilitate young offenders.⁴¹ The one goal of the YCJA was to use the new sentencing provisions to address the problem of incarceration of young offenders.⁴² Hence, the *Youth Criminal Justice Act* created a framework through which young offenders could be sanctioned outside the formal criminal justice apparatus. Young offenders were being brought to justice under various alternative extra-judicial measures, based on different ideas without resort to the use of judicial sentencing unless other alternative sanctions had been exhausted.⁴³

Nonetheless, under the YCJA, severe punishment is recognised for young offenders in certain circumstances. Initially under the Act, young offenders could no longer be brought before any regular adult courts even in cases where young offenders may be qualified for adult sentences. Their offences could only be dealt with by the youth courts. Nonetheless, the motivation appears never to be soft on youth crime. Rather, it was to ensure that there are adequate measures and mechanisms for rehabilitation without necessarily keeping the youth away from their immediate society. The legal ramification of the YCJA according to Julian V. Roberts and Nichola Bala, has been re-echoed and analysed in explaining the difference in adult and youth sentencing regarding the notion of proportionality as a justification for imposing adult sentences on young offenders under both the Criminal Code and the Youth Criminal Justice Act, thus:

The complex structure of those YCJA provisions that contain the purpose and principles of sentencing necessitates the consideration of a potential conflict between the rehabilitation of a young person and the need to impose a sentence that is proportionate to both the seriousness of the offence and the degree of responsibility that the young person bears for the offence. At the adult level, although rehabilitation is identified as one of the

⁴¹ The Department of Justice Canada, *supra* note 15.

⁴² *Youth Criminal Justice Act*, *supra* note 40, s 5(A).

⁴³ *Youth Criminal Justice Act*, *supra* note 40, s 10.

codified sentencing objectives in s. 718 (d) of the Criminal Code, the list of objectives in s. 718 is followed by what is referred to as the more general "fundamental principle" of adult sentencing, namely, proportionality.⁴⁴

In sum, the government through its institutions strives to maintain a balance between protecting society from harm from juvenile crime and rehabilitating young offenders to accommodate their vulnerability whenever they run foul of the law. The sentencing provisions embodied under section 4 of the Youth Criminal Justice Act marked the beginning of a legal development in Canada that seeks to systematically limit and structure the discretion of the court system concerning sentencing of youth.⁴⁵ This development creates conditions under which young offenders may be diverted from the formal criminal justice system, thereby laying as conditions, extra-judicial sanctions in dealing with youth crime, including restorative justice.⁴⁶

4.3. Provincial Autonomy and Youth Justice Reform

Under the Canadian legal system, the federal and provincial governments share jurisdiction on the juvenile justice in different capacities. The federal government is responsible for legislative direction by making laws that reflect the aspirations of the Canadian people. The provincial governments are empowered to create regulatory frameworks which fall within the purview of section 4 of the YCJA of 2002, prescribing extra-judicial measures in certain cases.⁴⁷ Therefore, provincial autonomy allows for implementation of legislation considering the unique cultural and political circumstances of people in that region.⁴⁸ The example of the youth criminal justice in

⁴⁴ Julian V Roberts & Nicholas Bala, "Understanding Sentencing under the Youth Criminal Justice Act" (2003) 41:2 *Alta L Rev* 395 at 407.

⁴⁵ Nicholas Bala, "What's wrong with YOA bashing? What's wrong with the YOA? Recognizing the limits of the law" (1994) 36:3 *Canadian Journal of Criminology* 247–270.

⁴⁶ *Youth Criminal Justice Act*, *supra* note 40, s 4.

⁴⁷ *Ibid.*

⁴⁸ Sandra Bell, "Commission of Inquiry and Judicial Reform in Nova Scotia" in Marc Alain et al, eds, *Implementing and Working with the Youth Criminal Justice Act across Canada*, (Toronto: University of Toronto Press, 2016) at 199-228.

Nova Scotia is important to understand the utilization of restorative justice process in dealing with youth crime. A restorative process represents a mechanism for fulfilling the provisions of the YCJA in limiting the use of custody dealing with youth crime. The focus shall be on the implementation of the YCJA through the different initiatives and policies including Nova Scotia Restorative Justice (NSRJ) programmes which are being institutionalized within the ambit of the formal criminal and youth justice system.

The role of each tier of government is clearly defined and the devolution of powers from the central to the provinces helps each provincial government to operate within its peculiar socio-political circumstances. The *Youth Criminal Justice Act* of 2003 (“YCJA”) was later amended in the *Youth Criminal Justice Act* of 2012 to address some of the lacuna in the law. For example, Theresa McEvoy was unfortunately killed by a troubled youth on 14th October 2004 in Halifax, Nova Scotia. The young offender was arrested, but had a warrant issued against him when he refused to appear in court in Halifax. He was arrested in Windsor but was later released by another court in Windsor for a crime of car theft and joyriding. Two days after his release, he was involved in a car theft incident leading to the death of the victim in a deadly auto-crash. The province set up the Nunn Commission of Inquiry⁴⁹ which recommended a review of certain provisions of the YCJA, particularly the pre-trial detention provision and a clear definition of what may constitute violent action under the Act.

Consequently, the *Youth Criminal Justice Act* was formally amended with effect from October 23, 2012. Some of the recommendations of the Nunn Commission were considered in making the amendments. Notably, section 39 of the YCJA which stipulates the conditions upon which a young offender may be held in custody was expanded. Originally, it had provided as follows:

⁴⁹ Nova Scotia Government, online: <https://novascotia.ca/just/nunn_commission.asp>.

“39(1) A youth justice court shall not commit a young person to custody under section 42 (youth sentences) unless:

- (a) The young person has committed a violent offence;
- (b) The young person has failed to comply with non-custodial sentences;
- (c) The young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of findings of guilt under this Act or the Young Offenders Act Y-1 of the Revised Statutes of Canada, 1985.⁵⁰

Based on the amendments, section 39(c) addressed the lacuna in the original provisions of the YCJA to accommodate additional information about the history of misconduct of the young offender and encounter with law enforcement officers leading to sanctions outside of the court system. Hence, section 39 (1) (c) under the reviewed YCJA provides thus:

The young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of either extrajudicial sanctions or of findings of guilt or of both under this Act or the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985.⁵¹

Similarly, the reviewed YCJA also redirected the purpose of youth justice in Canada considering the changes made to the original Declaration of Principles in the YCJA under section 3(1) which strongly reworded the provisions to reflect the stern position against youth crime in Canada. There was also a stronger emphasis on the purpose of the Act to fulfil the overarching goal of protecting the public by placing public safety as a top priority which is the typical adversarial nature of the formal criminal justice system.⁵² The Declaration of Principles provides the underlying goals of the Act which provinces across Canada aspire toward to fulfill the purpose of the law as embodied in the provisions of the Act. This departed from the former position which focused on rehabilitation and reintegration of young offenders. The section provides under the amended YCJA:

⁵⁰ *Youth Criminal Justice Act*, supra note 40, s 39.

⁵¹ *Youth Criminal Justice Act*, supra note 40, s 39.

⁵² Marc Alain & Julie Desrosiers, supra note 23.

Section 3(1)(c):

- (a) The Youth Criminal Justice Act is intended to protect the public by
 - (i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person,
 - (ii) promoting the rehabilitation and reintegration of young persons who have committed offences, and
 - (iii) supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour.

The foregoing explanation is a significant shift in policy direction relating to youth crime from focusing on criminal prosecution of young offenders and the use of custody to a juvenile system centred on rehabilitation and re-integration. One must note that restorative principles create viable alternatives to the adversarial approach to dealing with crime. Therefore, the latter provisions of section 3(1)(c) creates the legal framework for alternative justice process which may accommodate restorative justice initiatives.

4.4. Restorative Justice and Juvenile Justice Reform- the Nova Scotia Case Study

As discussed in chapter 2, the concept of restorative justice is broad and often encompasses different initiatives or measures for achieving restorative outcomes. The outcomes may not necessarily be determined during a restorative process or under a restorative procedure. Nonetheless, such resolve may be appropriate in the interest of justice, depending on the circumstances of each case. Many of these measures include: compensation orders, community service orders, warnings, and cautions, which are also common in formal youth justice.

In expounding on the different dimensions through which restorative justice process may be institutionalized within the criminal justice system, James Dignan holds that:

One important dimension relates to the ‘scope’ of a given restorative justice procedure, which encompasses the range and type of cases to which it applies: whether they are restricted to juvenile offenders and minor offences, for example, or also take in adult offenders and more serious offences. A second dimension-

which also has an important bearing on the scope of restorative processes-relates to their 'legal standing', which could be described as 'formal' if it is merely tolerated and not prohibited by law. A third dimension relates to the degree of 'prescriptiveness' to which the procedure is subject: whether in other words, it is mandatory or merely permissive. Finally, the remaining dimension has to do with the relative 'status' of the restorative justice process vis a vis conventional criminal justice response: whether it is subordinate, of equivalent standing or enjoys pre-eminent status.⁵³

The Nova Scotia Restorative Justice ("NSRJ") programme represents an important initiative in institutionalizing the concept of restorative justice under a legal framework and as an alternative mechanism to the formal criminal justice system for youth justice reform on the dimensions described by Dignan. *The NSRJ* began in 1999 as a pilot programme under the *Youth Offenders Act*. It is an alternative measure under section 4 of the Act and centres on youth justice operating through referrals from four entry points: the police, prosecutors, correctional officials and judges to different community organizations with personnel trained in facilitating restorative conferences and other restorative justice-based processes.⁵⁴

It is important not to misjudge the concept of restorative justice as merely a standardized practice or type of program. It should rather be understood as incorporating a philosophy, or a set of principles as well as authoritative rules.⁵⁵ The *NSRJ* programme has constituted an important social tool being used by the provincial and municipal police forces in dealing with youth justice. The first contact with a restorative justice process is at the pre-prosecution stage involving the police.

⁵³ James Dignan, *Juvenile Justice*, "Criminal Courts and Restorative Justice" in Gerry Johnstone et al, eds, *Handbook of Restorative Justice* (Devon: Willan Publishing 2006) at 269-291.

⁵⁴ Bruce Archibald & Jennifer Llewellyn, "The Challenges of Institutionalizing Comprehensive Restorative Justice: theory and Practice in Nova Scotia" (2006) 29:2 Dalhousie Law Journal 297-343. These entry points are contained in the RJ Protocol created by the Nova Scotia Attorney- General pursuant to the *Youth Offenders Act*.

⁵⁵ Janet Briggs, "An Introduction to the Nova Scotia Restorative Justice Program" (2011) International Institute for Restorative Justice, online: <<https://www.iirp.edu/eforum-archive/4453-an-introduction-to-the-nova-scotia-restorative-justice-program-nsrjp>>.

This makes the police an important stakeholder in realizing an effective criminal justice administration via a restorative approach.

An important issue is the legal basis upon which the concept of restorative justice is validated via the example of the Nova Scotia Restorative Justice initiative. The Nova Scotia Restorative Justice model and its relationship with the mainstream criminal justice system has been described as follows:

Both the formal inclusionary and restorative models have advantages and limitations which need to be assessed prior to the exercise of official discretion to bring either into play. However, the basic legislative frameworks for these models found in the Criminal Code and Youth Criminal Justice Act are of necessity supplemented by ministerial authorizations, programme protocols, and flexible guidelines to assist offenders, victims, police, prosecutors, defense counsel, judges, correctional officials, various professionals and community organizations, in choosing appropriate options for the circumstances of any particular case.⁵⁶

The Criminal Code is an additional statutory law which sanctions the practice of restorative justice in Canada particularly in dealing with federal offences involving (adult) offenders. Sections 716 and 717 of the *Criminal Code*⁵⁷ create legal authority for the utilization of restorative justice practices through the use of “alternative measures” in dealing with crime outside the court system, at the discretion of the Attorney -General. The term “alternative measures” has been defined in the Criminal Code as:

Measures other than judicial proceedings...used to deal with a person who is eighteen years of age or over and alleged to have committed an offence.

Furthermore, the law recognizes certain conditions under which alternative measures as prescribed by section 717 of the Criminal Code may apply. Based on the guidelines published by the relevant public prosecution service, the use of alternative measures under section 717(1) a of the Criminal

⁵⁶ Bruce Archibald, “Coordinating Canada’s Restorative and Inclusionary Models of Justice: The Legal Profession and the Exercise of Discretion under a Reflexive Rule of Law” (2005) 9 Canadian Criminal Law Review at 215-260.

⁵⁷ *Criminal Code, RSC 1985, C-46.*

Code may be sanctioned by the relevant Attorney-General depending on the facts and circumstances of allegation brought against any adult offender. The principles and guidelines of restorative justice are in tandem with the conditions under which section 717 of the Criminal Code operates. Section 717(1) provides as follows:

Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:

- (a) the measures are part of a program of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the Lieutenant Governor in Council of a province;
- (b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;
- (c) the person, having been informed of the alternative measures, fully and freely consents to participate therein;
- (d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel;
- (e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;
- (f) there is, in the opinion of the Attorney General or the Attorney General's agent, sufficient evidence to proceed with the prosecution of the offence; and
- (g) the prosecution of the offence is not in any way barred at law.⁵⁸

Similarly, in relation to young offenders, the provisions of section 4 of the Youth Criminal Justice Act of 2002 enunciates the legal basis for provincial authority to seek extra-judicial sanctions within the applicable law in dealing with youth crime.⁵⁹ The idea behind extrajudicial measures under section 5(a) the Youth Criminal Justice Act is to fulfil one of the overarching goals of the YCJA which is to reduce incarceration or the use of custody where young offenders are faced with criminal liability.⁶⁰ Such young offenders are held accountable under the Act while benefitting

⁵⁸ *Criminal Code*, *supra* note 57.

⁵⁹ *Youth Criminal Justice Act*, *supra* note 40.

⁶⁰ Marc Alain & Julie Desrosiers, *supra* note 23.

from extra-judicial measures which may include police taking no further action, giving formal caution, issuing warnings, making referrals, crown caution and extra-judicial sanctions.⁶¹

Various circumstances would lead to the use of any of these measures, which are intended to keep youth offenders out of judicial proceedings, especially for non-violent offences. The meaning of “violent offence” under the YCJA was declared vague by the Alberta Court of Appeal in *R. v. C. D.*⁶² The court argued that violence could have a “spectrum of meanings” which may involve property or crimes against the person. The Court reasoned that the young offenders “did not cause, attempt to cause or threaten to cause bodily harm,” so, their actions are not violent offences.⁶³ The Court held that “a narrow definition of violence is preferred” since a violent offence is grounds for a custody sentence and it would contradict the spirit of the law if custody is being used indiscriminately because of the way the letter of the law is written.⁶⁴

Consequently, the meaning of violent offence was reviewed and accommodated in the amendments to the YCJA which came into effect on October 23, 2012. However, section 10 of the YCJA recognizes the use of extra-judicial sanctions as a means “for effective and timely interventions that encourage young offenders to acknowledge and make efforts to repair the harm caused to the victim and the community.”⁶⁵ Under the provincial Youth Justice Act, extrajudicial sanctions may be authorized for provincial, municipal or federal offences which also reduce the use of custody or over-incarceration.⁶⁶ These alternative measures, including restorative justice

⁶¹ *Youth Criminal Justice Act*, *supra* note 40 at s 6; s 7.

⁶² *R v C D* 2004 ABCA 77 [2004] Carswell, Alta 235.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Canadian Department of Justice, online: <<http://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/sheets-feuillets/measu-mesur.html>>.

⁶⁶ Bruce Archibald & Jennifer Llewellyn, “The Challenges of Institutionalizing Comprehensive Restorative Justice: Theory and Practice in Nova Scotia” (2006) 29 *Dalhousie Law Journal* at 297.

processes are deemed as valid justice processes and should not be misjudged as ploys to circumvent criminal proceedings or responsibilities for wrongdoing.

The provisions of section 10(3) of YCJA, imply that any restorative justice intervention to fulfil extrajudicial sanction can be terminated at any stage of the restorative process. Therefore, either the victim or the offender may withdraw from the process but, subsequently the offender may be held accountable in a formal, adversarial criminal proceeding. In case there was an acceptance of responsibility, confession and admission during the discontinued restorative process, such evidence is deemed inadmissible in any civil and criminal proceedings.⁶⁷ For example, on December 16, 2014 four female fourth-year students in the Faculty of Dentistry at Dalhousie University filed complaints under the University's Sexual Harassment Policy. Their complaint related to offensive materials about them posted on a private Facebook group site (the "Gentleman's Club" Facebook group) by male members of their class. A restorative justice approach was selected to address the issues and harm suffered due to the incident with no mandate to determine punishment.⁶⁸

The point to emphasize is that being in a restorative process does not vitiate the option of pursuing legal action under the formal criminal justice system. Therefore, not all the people affected by that incident agreed to participate in the restorative process as they had the option to file a formal complaint before the police. The final report of the Academic Standards Class Committee (ASCC) on the Restorative Justice Process emphasized in its mandate that admission of guilt is not required, but participants may take responsibility for their action without any self-incrimination. However,

⁶⁷ *Ibid.*

⁶⁸ Dalhousie University School of Dentistry, *Report from the Restorative Justice Process at the Dalhousie University Faculty of Dentistry* (May 2015) at 33.

where an offender and a victim had participated in a restorative process to an extent before withdrawing therefrom, this scenario has been explained thus:

That if there is only a partial fulfilment of a restorative justice agreement by reason of which formal charges are laid in court, the sentencing judge may take this into account, and the court must dismiss a charge if there has been full compliance with a restorative justice agreement.⁶⁹

In sum, the central goal of these restrictions under section 10(3) of the YCJA is to re-affirm that the law gives precedence to judicial proceedings under the formal criminal justice system whereby the fundamental rights guaranteed under section 11 of the *Canadian Charter of Rights and Freedoms*, which confers constitutional protection on any persons facing criminal proceedings. Therefore, there is no gainsaying the fact that restorative justice as a model of justice, exists within the formal criminal justice system as an alternative and not a replacement of the formal criminal justice process.

4.5. Brief Explanation of Restorative Justice, Community Justice and Aboriginal Justice

The example of the Nova Scotia Restorative Justice (NSRJ) programme is relevant to this discussion because the programme has progressed from being legal experimentation to a comprehensive justice process and a viable alternative to the formal criminal justice system. The legal structure and the modus operandi of the NSRJ have been examined with the observation that the programme is based on discretionary power being exercised administratively through the following four entry points:

Police Entry Point (pre-charge) - referral by police officers, Crown Entry Point (post-charge/pre-conviction) - referral by Crown Attorneys, Court Entry Point (post-conviction/pre-sentence) - referral by Judges, Corrections Entry Point (post-sentence) - referral by Correctional Services or Victims' Services staff.⁷⁰

⁶⁹ Bruce Archibald & Jennifer Llewellyn, *supra* note 66.

⁷⁰ Nova Scotia Provincial Government, online: <<https://novascotia.ca/just/rj/documents/execsumml.pdf>>.

Notably, in Canada, the implementation of restorative justice practice largely depends on “statutory fiat”⁷¹ which is rooted in the legal interpretation of the enabling laws as discussed in the body of this chapter. In sum, there is no comprehensive statutory law giving effect to the implementation of restorative practice. By implication, the absence of a uniform and mandatory framework for the implementation of restorative justice practice in Canada undermines its significance as a viable alternative process. Hence, the continued domination of the formal criminal justice system despite its flaws. Consequently, the survival of restorative justice as a model of justice may depend on the political will of the government in power. Where the government of the day does not see any need to continue to fund nor develop the programme, the progress made may be slowed down, thereby creating an uncertain future for restorative justice.

This last section of the conversation focuses on other conceptions of justice. These are described as circle-based alternatives,⁷² and they deal with administration of criminal justice. In Nova Scotia, these alternatives include community justice and Aboriginal justice which are similar in nature and function as non-adversarial restorative justice mechanisms for dealing with crime. Nova Scotia restorative justice practice creates a connection between restorative justice and both community justice and Aboriginal justice. These two share a common role as alternative to the adversarial system of criminal adjudication. The example of Nova Scotia may be instructive to explain the different circumstances in which both Aboriginal justice and community justice have been utilized in response to crime and criminal liability, especially where there are socio-cultural dimensions to such incidents differentiating it from the traditional criminal justice system.

⁷¹ Bruce Archibald, “*Restorative Justice and the Rule of Law: Rethinking Due Process through a Relational Theory of Rights*” (14 February 2014), online: <<http://dx.doi.org/10.2139/ssrn.2395224>>.

⁷² John Braithwaite & Stephen Mugford, “Conditions of Successful Reintegration Ceremonies: Dealing with Juvenile Offenders” (1994) 34 BRIT J Criminology at 139.

These models dealing with crime and other conflicts focus on ways to preserve connection or to reconnect damaged social relationships. They are alternative justice initiatives, though, operating within the existing legal framework, but are being managed by criminal justice agencies in Nova Scotia. The Mi'kmaq Legal Support Network (MLSN) is a body concerned with rendering justice support to Aboriginal peoples who are participating in criminal proceedings in Nova Scotia.⁷³ The MLSN coordinates several community justice initiatives, including the Mi'kmaq Customary Law Programme which is designed specifically to serve as diversion from the formal criminal justice system, whether at pre-charge or post-charge stage. The goal of the programme, among others, is to offer community justice services that hold offenders accountable and offer reparations to victims.⁷⁴ One of the community-based initiatives is Ceasefire Halifax.⁷⁵ "Ceasefire tries to eliminate violence, in particular gun violence, within their communities by working directly with those who run a high risk of becoming or are currently involved in violent activity. The primary focus of the program is on African Nova Scotian males between the ages of 16 and 24 years old. Ceasefire works primarily in the communities of North and Central Halifax, North Dartmouth, and North and East Preston."⁷⁶

However, there are other restorative community justice initiatives in other Canadian provinces, particularly in the territory of Yukon known as the Restorative Community Conference Programme which is a platform for "a young person who has been charged with an offence, or who has been directed under the Youth Criminal Justice Act (YCJA), to meet with the people

⁷³ Mi'kmaq Legal Support Network in Nova Scotia, online: <<http://www.eskasoni.ca/departments/12/>>.

⁷⁴ Department of Justice, online: <<http://www.justice.gc.ca/eng/fund-fina/acf-fca/ajs-sja/cf-pc/location-emplac/ns.html>>

⁷⁵ Ceasefire Halifax is a non-profit, community-based project partially funded by Public Safety Canada, Nova Scotia Department of Justice and implemented by Community Justice Society.

⁷⁶ Community Justice Society, Community Programming, online: <<http://communityjusticesociety.org/Programs/category/ceasefire-halifax>>

affected by his or her behaviour in a facilitated process that addresses: what is the harm, how can the harm be repaired, who is responsible for repairing the harm.”⁷⁷

Also, there is another programme developed in the territory of Yukon that utilizes sentencing circles during judicial proceedings before delivery of judgement. The central idea is to create justice processes diverted (whether at pre-trial or sentencing stage) from the adversarial system where crimes are dealt with in ways that result in reparation of harm to people and relationships, healing of victims, and reintegration of offenders.⁷⁸ Nonetheless, the challenges of institutionalizing alternative justice models may not necessarily depend on any blueprint on how an ideal restorative justice system should work. Rather, it should focus on certain restorative values which include accountability, equality and mutual respect.⁷⁹

The term community justice generally has been described as follows:

A neighborhood level practice that operates on nearly identical values and principles as restorative justice. However, instead of the reparation of harms to people and relationships, it focuses on reparation of quality of life through community-based problem solving which is supported and facilitated by local social service and justice institutions.⁸⁰

Similarly, community justice represents any crime prevention effort or initiative that involves the community in its process to realize certain goals that may impact or improve the community.⁸¹

The term “community justice” in the Canadian context may be intertwined with a restorative justice practice in dealing with people facing certain social issues or conflicts. More so, the term

⁷⁷ Yukon Health and Social Services, “Restorative Community Conference Program”, online: <<http://www.hss.gov.yk.ca/rccp.php>>

⁷⁸ Johnstone Gerry & Mylene Jaccoud. “Restorative Justice: Ideas, Values and Debates” (2002) 17:1 Canadian Journal of Law and Society at 168-170.

⁷⁹ John Braithwaite, “Principles of Restorative Justice, Restorative Justice & Criminal Justice: Competing or Reconcilable Paradigms?” ed by Andrew Von Hirsch et al (Oregon: Hart Publishing, 2003) at 8.

⁸⁰ Gordon Bazemore and Mark Umbreit, “A Comparison of Four Restorative Conferencing Models, Office of Juvenile Justice and Delinquency Prevention (February 2001)US Department of Justice, Juvenile Justice Bulletin, online: <https://www.nacj.org/index.php?Itemid=151&option=com_content&view=article&id=17>.

⁸¹ David R Karp & Todd R Clear, “Community Justice: A Conceptual Framework, Boundary Changes in Criminal Justice Organizations”, online: <https://www.ncjrs.gov/criminal_justice2000/vol_2/02i2.pdf>.

is basically part of the community-based justice approach embraced through various programmes like victim services, community policing and community corrections.⁸²

Procedurally, restorative justice focuses on the participation of the persons who may have been impacted by crime by giving voices to the offenders, the victim and anyone considered instrumental to achieving restoration of social relationships.⁸³ The way these ideas are connected also underpins the multifaceted and integrative nature of the Canadian criminal justice system. It is often argued that restorative justice is usually the best way to promote community justice.⁸⁴ One may observe that community based programmes have been institutionalized in Canada starting in 1996 with the amendment of the Criminal Code authorizing community-based sentencing alternatives for adults under section 717(1). The provisions of the section are to the effect that referrals can be made to any alternative measures or programmes if, as noted earlier, the conditions therein have been met.

Similarly, the use of peacemaking circles during sentencing is another form of community justice with the main goal of achieving restorative outcomes like re-integration into the community and crime prevention and reduction in recidivism. These circles had begun in the territory of Yukon and represent an innovative approach to involving all interested parties in the making of key decisions during sentencing.⁸⁵ Justice Barry Stuart has been an advocate of utilizing community alternatives, particularly during sentencing, by encouraging community participation for collective

⁸² Babrara Tomporowski, "Restorative Justice and Community Justice in Canada" (2014) 2:2 Restorative Justice Journal at 218-224.

⁸³ Crawford Adam & Clear Todd R, "Community Justice: Transforming Communities Through Restorative Justice?" in Gordon Bazemore & Mara Schiff, eds, *Restorative community justice: Repairing Harm and Transforming Communities* (Cincinnati: Anderson Publishing Co 2011) 127-149.

⁸⁴ Bruce Archibald & Jennifer Llewellyn, *supra* note 66.

⁸⁵ Barry Stuart and Kay Pranis, "Reflections on Principal Feature and Primary Outcomes" in Dennis Sullivan et al, eds, *Handbook of Restorative Justice- Global Perspective* (London: Routledge Taylor and Francis, 2008) at 121.

solution to the problems of mass incarceration and recidivism. He captures the benefits of community sentencing in *Rv. Moses*⁸⁶ as follows:

Currently the search for improving sentencing champions a greater role for victims of crime, reconciliation, restraint in the use of incarceration, and a broadening of sentencing alternatives that calls upon less government expenditure and more community participation. As many studies expose the imprudence of excessive reliance upon punishment as the central objective in sentencing, rehabilitation and reconciliation are properly accorded greater emphasis. All these changes call upon communities to become more actively involved and to assume more responsibility for resolving conflicts. To engage meaningful community participation, the sentence decision-making process must be altered to share power with the community, and where appropriate, communities must be empowered to resolve many conflicts now processed through criminal courts.⁸⁷

The international law and constitutional status of the Aboriginal peoples is fundamental to understanding how Aboriginal justice ought to function as a distinct model of justice governing their affairs. The General Assembly during its 107th plenary meeting on the 13th September 2007 had adopted the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”). However, the Canadian government only recently, in May of 2016, expressed its full support to UNDRIP.⁸⁸ This landmark Declaration signified the beginning of the actualization of the rights of the Indigenous peoples as nations with distinct cultures, values, languages, and customs. By implication it also means the Indigenous peoples have right to self-determination under the principles of international law. Indeed, it is argued that since the Aboriginal people are independent, no policy nor programme shall be imposed on them unless with their consent:

All justice reform, whether in the dominant justice system or through new restorative initiatives must be contextualized within the broader recognition of the special political and legal rights of indigenous peoples. Once recognition is given to the inherent right to self-determination, then it follows that recognition must also

⁸⁶ *R v Moses* [1992] 3 CNLR 116.

⁸⁷ *Ibid.*

⁸⁸ “Canada officially adopts UN declaration on rights of Indigenous Peoples CBC News Network”, (2 August 2016), online: <<http://www.cbc.ca/news/indigenous/canada-adopting-implementing-un-rights-declaration-1.3575272>>.

be given to one of the most important components of that right jurisdiction over justice where this is desired.⁸⁹

Having multiple models of justice is central to the need to create various approaches to dealing with crime or wrong-doing in a diverse society. Kent Roach also agrees that:

Multiple models are helpful because multiple versions of what is going on existing side by side, may legitimately account in different ways for various aspects of the system's operation.⁹⁰

Generally, the availability of alternative justice mechanisms creates an opportunity for a just and fair justice process where incidents of crime are determined based on the different circumstances and which may be worthy of consideration in determining a justice process. It is common place in a multicultural society like Canada, to experience criminal incidents that may be multifaceted and complex due to cultural, economic and religious factors present in some cases. For example, the notion of guilt and responsibility from the point of view of Aboriginal offender is a complex criminal justice issue which must be recognised.⁹¹

However, alternative models of justice which are recognised under the Canadian legal system may address these dimensions in a way that focuses on the need to meet the demand of justice. In the circumstance, restorative justice or Aboriginal justice could represent a viable alternative to the traditional criminal justice system.

The Supreme Court of Canada has deemed “a crisis in the criminal justice system.”⁹² Aboriginal justice programmes have been described by Jonathan Rudin as:

⁸⁹ See Evelyn Zellerer & Chris Cunnen, “Restorative Justice, Indigenous Justice and Human Rights” in Gordon Bazemore et al, eds, *Restorative Justice-Repairing Harm and Transforming Communities* (Ohio: Anderson Publishing Co 2001) at 245 for an Australian take on these issues.

⁹⁰ Kent Roach, “Four Models of the Criminal Process” (1999) 89: 2 J Crim L & Crim 671.

⁹¹ Jonathan Rudin, “Aboriginal Justice and Restorative Justice” in Elizabeth Elliott & Robert M Gordon, eds, *New Directions in Restorative Justice: Issues, Practice, Evaluation* (Cullompton: Willan Publishing 2005) at 89-114.

⁹² *R v Gladue* [1999] Carswell BC 778; *R v Ipeelee* [2012] 1 SCR 433 at 13.

Where Aboriginal people in a community are given some options and opportunity to develop processes that respond to the needs of that community.”⁹³

Restorative justice, as a concept, is based on certain principles which may accommodate the integration of Aboriginal justice programmes as a way of achieving restorative outcomes. The focus is to create a pathway for a better justice system where parties or participants through the justice process decide freely how to deal the impacts of crime in certain cases. The point of encouraging participation is to create a mechanism for dialogue between the parties or concerned persons. With extensive participation certain members of the society may be willing to bring some contexts or perspectives into the dialogue which may give insights to the issues and ultimately lead to positive outcomes. However, the ultimate focus should not be about ownership of a justice initiative programme. Rather, it should be about creating a justice-serving mechanism as a viable alternative to the formal criminal justice system in dealing with crime and its aftermaths.

4.6. Conclusion

The chapter has sought to discuss the development of restorative practice in Canada. It is evident that youth justice reform birthed the process of institutionalization of restorative justice. Youth justice reform in Canada was motivated by the need to divert young offenders from criminal proceedings which are rooted in retributive justice. Since then, it has expanded to the adult justice system. This chapter explored the evolution of youth justice over a long period by examining how that development transformed or modified the country’s criminal justice system.

Consequently, there are legal frameworks which recognise alternative justice processes which are less punitive and non-adversarial in nature. It is observed that the direction of the country in relation to youth justice has largely been determined between criminal policies focused on being tough on crime for public safety and the need to protect young offenders by rehabilitating them.

⁹³ Yukon Health and Social Services, *supra* note 77.

In sum, the law allows incarceration for young offenders only when it is necessary except against young offenders accused of violent offences.

However, in the cases of adult offenders, there are also alternative measures recognised under the law which divert offenders from the formal criminal justice system, provided the offences committed are categorized as misdemeanour or simple offence. The police, as a law enforcement agency, plays a significant role in making sure that suspects are fully aware of an alternative process including restorative process with the full knowledge and requirements of the concept.

Finally, the goal of institutionalizing restorative justice practice should be rooted in a comprehensive approach where the cultural diversity of the country is recognised in its implementation. There should be a system where alternative justice processes are given equal recognition in a way that puts the interests of the parties and communities first, especially in selecting what justice process is appropriate under a given circumstance.

CHAPTER 5: THE PROSPECT OF RESTORATIVE JUSTICE PRACTICE UNDER THE NIGERIAN LEGAL SYSTEM

5.1. Introduction

This chapter examines different situations where a restorative justice approach might be utilized as an alternative justice process in Nigeria. The main idea is to adopt restorative justice practices that reflect the Nigerian socio-cultural and political system. The argument explores the political, religious and cultural environments of Nigeria in seeking a path for a restorative process based on the existing society and justice systems. The chapter re-emphasizes the roles and significance of traditional institutions on governance before British colonial rule began in 1914.¹ In addition, the juvenile justice system in Nigeria will be considered with the objective of exploring *the Child Rights Act* of 2003 (“CRA”). The goal is to examine the potential of restorative justice practice as a mechanism to implement the CRA which is the most comprehensive legislation on juvenile justice in Nigeria.²

This work is primarily intended to help understand the challenges and the values of restorative justice practice under the criminal justice systems in Nigeria. But it is also intended to consider the ethnic diversity and multi-religious nature of the population of Nigeria vis-à-vis the suitability of different restorative justice approaches. The potency of restorative justice ideas in the Nigerian context is implied in “its commitment to understanding the fact of relationship and connection as central to the work of justice.”³ A large proportion of the people living in the Northern region of

¹ C O Okonkwo, Okonkwo and Naish on Criminal Law (London: Sweet & Maxwell, 1980) at 5.

² Olayinka Atilola, “*Different Points of a Continuum? Cross Sectional Comparison of the Current and Pre-Contact Psychosocial Problems among the Different Categories of Adolescents in Institutional Care in Nigeria.*” (2012) 12 BMC Public Health 554.

³ Jennifer J Llewellyn, “Restorative Justice: Thinking Relationally about Justice” in Jennifer J Llewellyn et al eds, *Being Relational Reflections on Relational Theory and Health Law* (Vancouver, BC: UBC Press, 2012) at 92.

Nigeria are Muslim. Twelve Northern States out of the thirty-six States (including the state - capital) in Nigeria operate Sharia law along with the secular laws of the country.⁴ It must, however, be noted that this thesis does not explicitly cover the sharia law in Nigeria. However, this work looks to the potential of restorative justice practices in Nigeria through the component states of the federation including the sharia states and at federal level of government.

The legal ramifications of institutionalizing restorative justice through a national framework could be entrenched by the federal government to improve the criminal justice system in Nigeria. On the other hand, at state levels, I explore the structure of political and socio-cultural circumstances in various states of the federation which could be used to aid such a project. In Nigeria, an individual state may be legally authorized to create a legislative framework for the implementation of restorative justice.

As highlighted in chapter four, the political system of Canada plays a role in its administration of criminal justice. Regarding its use of restorative justice practices, the Nigerian government may draw important lessons from that federal example. Canada's provinces have regional autonomy, which allows provincial governments to "domesticate" federal statutes to create legal frameworks to implement restorative justice. Consequently, each province is placed in a position to utilize variations on the concept of restorative justice to address peculiar challenges in relation to the crime in the province. Such could be the case in Nigeria.

The chapter thus evaluates the nature of the Nigerian legal system, especially its current federal structure, in relation to administration of justice. The 1999 Constitution of the Federal Republic of Nigeria concentrates power in the centre, causing adverse effects on justice delivery. Despite the

⁴ Vincent O Nmeielle, "*Sharia Law in the Northern States of Nigeria: To Implement or Not to Implement, the Constitutionality is the Question*" (2004) 26:3 Human Rights Quarterly 730-759.

challenges that may confront the implementation of restorative justice practices in Nigeria, there seem to be various lessons from different jurisdictions that may be helpful to developing a suitably viable restorative justice practice regime in Nigeria. But, the experience with restorative justice in New Zealand can assist in Nigerian efforts to adapt restorative justice approaches to its social-cultural and religious circumstances, even though, New Zealand is a unitary state rather than a federal one.

5.2. Federalism as a Conduit to Restorative Justice Practice in Nigeria

Political events after the independence of Nigeria in 1960 led to various constitutional developments. There were major amendments to the Constitution, and these laid the groundwork for the emergence of the current Nigerian Constitution. The Richard Constitution of 1946 and the MacPherson Constitution of 1951 introduced quasi-federal structures creating a Northern region, an Eastern region, and a Western region.⁵ Subsequently, the Lyttleton Constitution in 1954 enshrined regional autonomy as an important cornerstone of the multicultural country.⁶

The sharing of legislative powers between the central government and the component units of the Nigerian state, i.e., the federal government and state governments, is achieved through these constitutional arrangements. Historically, Nigeria had adopted a parliamentary system of government and, under both the 1960 and 1963 Constitutions, the regional governments had extensive autonomy to legislate on such matters as fiscal policy and resource control.⁷ However, in 1966, there was the first military coup in Nigeria, and a civil war in the following year, leading

⁵ Dele Adesina, "Nigeria: A Case for True Federalism", Thisday Newspaper, (9 January 2017), online: <<https://www.thisdaylive.com/index.php/2017/01/09/nigeria-a-case-for-true-federalism/>>.

⁶ Ben Nwabueze, *Federalism in Nigeria under the Presidential Constitution* (London: Sweet & Maxwell, 1983) at 1-22.

⁷ Itse Sagay, "NIGERIA: *Federalism, the Constitution and Resource Control*", Nigerian Niger-delta Newspaper, (January 2014), online: <<http://waado.org/NigerDelta/Essays/ResourceControl/Sagay.html>>.

to disruption of civilian rule. Nigeria returned to civilian rule in 1979. The 1979 Constitution of the Federal Republic of Nigeria was introduced with more powers allocated to the central government.

Another military coup was carried out in 1983 leading to abrogation of civilian rule, suspension of the 1979 Constitution, and the military regime ruling the country through decrees. However, in 1999 Nigeria returned to a democratic government and the current 1999 Constitution was introduced. The Second Schedule to the 1999 Constitution recognizes the power to make laws in respect of certain items listed therein, which are divided into the “Exclusive Legislative List” and the “Concurrent Legislative List.” According to the Nigerian Constitution, items on the Exclusive Legislative List shall only be legislated upon by the Federal Legislature, while the Concurrent List comprises items upon which both the Federal and the State Legislatures may exercise legislative authority. Since the introduction of the 1999 Constitution, the Federal government continues to exercise what might be termed excess powers, thereby undermining the country’s federalism. As a result, this situation has limited the scope of the authority of state governments to deal with critical issues, such as security, policing and resource control.

The effects of the power sharing arrangement and its ramifications for the inherent autonomy of each state has been described by Dele Adeshina (SAN)⁸ as follows:

Regional autonomy enabled regions to prioritize government and develop at their own pace-especially unlike what we have under the 1999 Constitution where some of the Legislative items have now been moved to the Exclusive List.

Explanation is necessary to juxtapose the situation in Canada where devolution of power has continued to effectively enhance legal development across all the provinces. In Canada, the

⁸ Senior Advocate of Nigeria (SAN), is the highest honour conferred on legal practitioners for excellent legal practice or scholarship.

Constitution Act of 1867 defines the exclusive jurisdictions and the scope of legislative powers that the federal and provincial governments may exercise under sections 91 and 92 respectively.⁹ In the same vein, while the federal government is authorized to legislate on criminal law and procedure, the provincial governments administer the law.¹⁰ Therefore, adherence to the principles of federalism continues to repose certain responsibilities in the provincial governments to address differing challenges confronting the people in each province. One typical example is restorative justice under the Nova Scotia Restorative Justice (“NSRJ”) programme as an alternative model of justice to reform youth justice in the province.

Generally, the enabling framework upon which restorative justice is being implemented in Canada is derived from the federal statutes authorizing the provincial attorney-general to explore “alternative measures” to address juvenile justice in each province, including Nova Scotia. Similarly, a leading Nigerian constitutional lawyer, Professor Ben Nwabueze (SAN) describes the underlying objective of federalism as it relates to Nigeria as follows:

Federalism is predicated upon the existence of a society composed of various geographically segregated groups divided by wide fundamental differences of race, religion, language, culture, or economics. Its purpose is to enable each group free from interference or control by the others to govern itself in matters of local concern leaving matters of common interest to be managed centrally, and those which are of both local and national concern to be administered concurrently.¹¹

Nonetheless, the question centers on how state governments can operate an alternative justice process, given the scope of their authorities under the present legal circumstances in Nigeria. The need for a viable alternative justice process within the formal criminal justice system is urgent due to the extent of miscarriage of justice. For example, 66 percent of inmates in the Nigerian prisons

⁹ Constitution Act, 1867, RSC 1985, s 91 and 92.

¹⁰ Constitution Act, 1867, RSC 1985, s 91.

¹¹ Dele Adesina, *supra* note 5.

are awaiting trial. Many of them may have been incarcerated for minor offences as is often the case under the formal criminal justice system.¹² According to the official statement from the Nigerian Prisons Service (NPS) which was published in the news media on 16 April 2018, the Chief Administrator said:

As of today December 15, 2017, the current population of prisoners in Nigeria is put at 72,384 with 48,527 of the figure are awaiting trial inmates. The awaiting trial inmates therefore constitute about 66 percent of the prison population.¹³

However, the Lagos state government located in the South West region, has continued to assert its autonomy by devising measures to tackle some of the crises which led to the current ineffective criminal justice administration. For example, the Lagos State Ministry of Justice, in 2007, introduced the Citizens Mediation Centre which is a way “to decongest court rooms in the State” by setting up justice processes to encourage amicable settlement of conflicts between parties.¹⁴ The aim of the programme is to foster social relationships by diverting conflicts between employer and employee, tenant and landlord, husband and wife over child custody, etc., from the regular court and adversarial system to a solution-driven justice process. The legal validity of these programmes is derived from the inherent powers of the Office of the Attorney-General as the chief law officer of the state. Also, the Attorney-General of a State (or the Attorney-General of the Federation) enjoys broad constitutional authority in carrying out administration of criminal justice and, the nature of the power shall be subsequently discussed.

¹² Nigerian Prisons Service, “Summary of Inmate Population by Convict and Awaiting Trial persons as at 16th April 2018”, online: <<http://www.prisons.gov.ng/statistics>>.

¹³ “66% of Nigerian Prisons Inmates are Awaiting Trial – NPS”, Premium Times Newspaper, (17 December 2017), online: <<https://www.premiumtimesng.com/news/top-news/252715-66-nigerian-prisons-inmates-awaiting-trial-nps.html>>.

¹⁴ Government of Lagos State, Ministry of Justice, “online: <<http://justice.lagosstate.gov.ng/2017/07/12/lagos-opens-more-mediation-offices-across-the-state/>>.

The powers of the Attorney-General of the State in relation to criminal prosecution under section 211 of the 1999 Constitution of the Federal Republic of Nigeria are as follows:

211. (1) The Attorney General of a state shall have power
- (a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court-martial in respect of any offence created by or under any law of the House of Assembly;
 - (b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and
 - (c) to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.
- (2) The powers conferred upon the Attorney-General of a state under subsection 1 of this section may be exercised by him in person or through officers of his department.
- (3) In exercising his powers under this section, the Attorney-General of a state shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process.

One may argue that the above provisions of section 211 (1) of the Nigerian Constitution presents the opportunity for diversion programmes and reduces the use of the formal criminal justice process which is based on adversarial approach. Hence, the need for a viable alternative justice process which is rooted in restorative justice practices. The role of the Attorney-General in each state of the federation is crucial to the restorative justice movement in Nigeria. The constitutional authority granted the office of the Attorney-General to institute or discontinue any criminal proceedings may be fully utilized to improve the current criminal justice system in Nigeria to move away from a monolithic adversarial criminal justice system.

Similarly, the Lagos State Ministry of Justice, through the Office of the Directorate of Public Prosecution (“DPP”), may evoke constitutional powers granted to the Attorney-General of a State by issuing a legal advisory on each criminal case file sent by the police for prosecution.¹⁵ The sitting judge would usually proceed to trial after the DPP legal advisory is received in respect of

¹⁵ 1999 Constitution of the Federal Republic of Nigeria, s 211(1) (3).

the case file.¹⁶This measure of prosecutorial discretion allows cases to be tried on merit as frivolous trials are avoided and demonstrably innocent people are not allowed to languish in jails awaiting such trials.

Nevertheless, where there is no express allocation of powers under the extant laws of Nigeria, State governments or the component units in the federation may rely on the doctrine of mutual non-interference to create a legal framework to institutionalize legal reforms (including restorative justice) in the interest of justice. This legal doctrine has been explained as follows:

From the separate and autonomous existence of each government, and the plenary character of its powers within the sphere assigned to it by the constitution, flows the doctrine that exercise of those powers is not to be impeded, obstructed, or otherwise interfered with by the other government while acting within its powers.¹⁷

In accordance with this precept, the Lagos State government through its Ministry of Justice, has embarked on restorative justice advocacy by collaborating with a religious based organization called the Prison Fellowship of Nigeria.¹⁸ The objectives of the initiative include decongestion of the prisons through accelerated adjudication, reduction of the use of custody in respect of minor offences and increasing the sentencing options for judges which include alternatives to imprisonment.¹⁹ Similarly, the goals of the religious body remain to canvass for restorative justice initiatives in addressing the challenges of inmates and improvement of the deplorable conditions in the Nigerian prisons. The organization also focuses on ways of reducing recidivism and

¹⁶ Lagos State Office of Directorate of Public Prosecution, “online: <<http://lagosministryofjustice.org/directorates/directorate-of-advisory-services-and-judicial-liason/>>

¹⁷ Ben Nwabueze, supra note 6.

¹⁸ The Prison Fellowship of Nigeria is affiliated to Prison Fellowship International (PFI), a global movement, was founded in 1976 by Charles Colson, a special counsel to President Nixon, who was convicted in the Water Gate scandal of the Nixon administration in the United States of America., online: <<http://prisonfellowshipnigeria.org/about-us/>>.

¹⁹ Government of Lagos State, Ministry of Justice, “online”: <<http://lagosministryofjustice.org/2017/04/19/2017-achievement-and-activities-of-ministry-of-justice-presented-by-agcj-adeniji-kazeem/>>.

encouraging less use of incarceration by judges in order to improve congestion in Nigerian prisons.²⁰

It is noteworthy to observe that the Prison Fellowship of Nigeria has been helping to bring the message about the potential of restorative justice initiatives to the government (or governments) in Nigeria. As an advocate group for restorative justice initiatives, this body has taken its advocacy about restorative justice practice to the Speaker of the Federal House of Representatives of Nigeria, Mr. Yakubu Dogara.²¹ The Speaker expressed his support for the use of restorative justice to address the challenges confronting the criminal justice system in Nigeria.²² However, rhetoric alone is not enough to implement legal reforms. Rather, words must be matched with political will.

The role of such advocacy groups and other important partnerships in promoting the concept of restorative justice among the public is key to raising public support. Public support for the concept of restorative justice, especially as a viable alternative to the formal criminal justice system, must begin with public education.²³ Despite the difficulties associated with the political structure in Nigeria where true federalism appears elusive, public education through different awareness campaigns may nonetheless get the attention of elected officials to develop a national approach to the utilization of restorative justice. The significance of public awareness through public education has been described thus:

Engagement of the community requires mechanisms to raise awareness of crime and justice issues in a restorative context. Because every community involves many groups clustered around neighborhoods, religious, professional or recreational affiliations, advocacy interests, and so on, there are a wide variety of opportunities to educate and engage people. Credible leadership from those who can speak from

²⁰ Nigerian Religious Organization, “online: <<http://prisonfellowshipnigeria.org/programmes/>>.

²¹ Government of Lagos State, *supra* note 19.

²² Lekan Paul, “Dogara Advocates Restorative Justice in Nigeria”, (20 December 20 2017) online: <<https://www.abusidiqu.com/dogara-advocates-restorative-justice-nigeria/>>

²³ Daniel Van Ness & Karen Heetderks Strong, *Restoring Justice* (Ohio: Anderson Publishing, 1997) at 156.

experience helps to create an open climate for consideration of new ways to view crime and justice. The approaches are key whether the objective is to gain support in a neighborhood or to gain momentum in policymaking. Policymakers need and want the “cover” of citizen support to advocate change.²⁴

Based on the provisions of section 4(7) of the 1999 Constitution, each state of the federation has the inherent powers to pass laws for the development and progress of the state, especially in relation to public safety and public order. The provisions are as follows:

- 4(7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say: -
- (a) any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.
 - (b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
 - (c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

Restorative justice practices may be implemented whether at state or federal level of government because criminal law is not contained in the Exclusive List nor Concurrent List which legally confers jurisdiction on any of the levels of government to legislate on the subject. Each state can move at its own pace in developing a restorative justice process to improve the lives of the people and promote equality, justice and respect for all its citizens.

The criminal justice system in Nigeria demands comprehensive reform, especially in the areas of youth justice, sentencing and its prison system which are subsequently discussed. There are important experiences that may be drawn from the Nova Scotia model of developing and institutionalizing the concept of restorative justice based on the grassroots or bottom-up approach and through the provincial/ federal arrangements.

²⁴ *Ibid* at 157

On the other hand, the New Zealand experience represents a unitary, national legislative approach to institutionalizing restorative justice practice; starting with youth justice, as explained earlier in chapter 3. Later, New Zealand passed other sweeping statutes to include restorative justice approach to sentencing within the adult justice system. It should be noted from these that given the federal structure of Nigeria, the National Assembly composed of the Nigerian Senate and the Federal House of Representatives, may play important roles in attaining meaningful law reform capable of bringing improvement across the whole criminal justice system in Nigeria.

5.3. Restorative Justice Approaches to Juvenile Justice Reform in Nigeria

The concept of restorative justice approaches in the context of this chapter means more than just a set of practices.²⁵ It could also serve as a way through which processes can reflect restorative principles as viable alternatives to adversarial ways of dealing with youth crime and other delinquency matters.²⁶ As it relates to the juvenile justice system in Nigeria, I examine how restorative justice approaches could form part of the bedrock of youth justice reform in Nigeria. There are challenges confronting the juvenile justice system, ranging from young offenders being tried in adult courts, dilapidated condition of young offender residential facilities, lack of rehabilitation strategies, absence of national institutional framework to manage juvenile delinquencies and inadequate funding of the juvenile justice system from both state and federal levels.²⁷ Van Ness and Strong share the view that a restorative justice approach can stimulate a conversation that may go to the root of the challenges of juvenile justice and, may provoke practical reforms to deal with such challenges. They opine as follows:

²⁵ Jennifer Llewellyn, *Nova Scotia Home for Coloured Children Restorative Inquiry: Understanding A Restorative Approach* (2015) Nova Scotia Restorative Justice Community University Research Alliance.

²⁶ *Ibid.*

²⁷ Yemi Akinseye-George, *Juvenile Justice in Nigeria: A Study of the Laws and Practices Relating to Juvenile Justice in Nigeria with Special Focus on the Federal Capital Territory, Abuja; Kano, Lagos, Plateau and Rivers States, (Abuja: Centre For Socio-Legal Studies, 2009) at 1-122.*

The appeal of restorative justice lies in its potential to change both the nature of juvenile justice intervention and the role of government and community in such intervention.²⁸

By and large, institutionalizing the concept of restorative justice would bring the juvenile justice system in Nigeria under a holistic framework which could embrace the cultural diversity and multi-religious nature of Nigerian society. The goal is to reposition the juvenile justice system to integrate with the criminal justice system in Nigeria at national and local levels of government.

Most state governments and the federal government, for many years, have designated juvenile justice matters under ministries of social welfare where there is no comprehensive approach to tackling the challenges confronting such agencies. Professor Akinseye-George further describes the situation as follows:

We found that the Juvenile Justice System is the most neglected aspect of the justice system in Nigeria. This neglect is prevalent at both the federal and state levels. A study of the budget of the various Ministries of Justice shows that they made no provision for the implementation of any project in the area of juvenile justice. However, at the state levels, juvenile justice is grouped with social welfare and received only marginal attention. By classifying juvenile justice as social welfare, the system does not enjoy the same attention as the other aspects of the justice system. Social Welfare appears to be low on the list of government priorities. This practice of classifying child justice issues as social welfare creates an erroneous impression that there is no obligation on the part of the government to really fund it. Consequently, many facilities for child welfare depended mainly on gifts and handouts from charitable organizations²⁹

A restorative justice approach can help to seek a relational connection of those juvenile justice issues, namely: religion, culture, tradition etc., under a unified mechanism in improving administration of juvenile justice in Nigeria. The commitment of the federal government of Nigeria to the rights of the Nigerian child may be implied by its adoption of the Child Rights Act

²⁸ Paul McCold, "Restorative Justice: The Role of the Community", (31 March 1995), online: <<https://www.iirp.edu/eforum-archive/4197-restorative-justice-the-role-of-the-community>>.

²⁹ Yemi Akinseye-George, *supra* note 27

in 2003.³⁰ The law requires state legislatures to pass the federal Act into a version suitable for the people of the respective states. However, out of the thirty-six states of the federation, only twenty-four have passed the Act into law in their jurisdictions.³¹ The enactment of the *Child Rights Act* is a crucial step forward. Nonetheless, adoption of the United Nations Convention on the Rights of the Child³² by the federal government of Nigeria is not sufficient to realize the aspirational goals of the treaty without creating measures for its implementation at state and federal levels of government. The need is to develop various restorative initiatives to achieve the required effective administration of criminal and juvenile justice systems. On the other hand, at the national level, the federal legislature may statutorily create a framework to unify the juvenile justice system in Nigeria. A similar strategy in New Zealand led to a national framework for dealing with youth justice across the country which led to a complete transformation of the criminal justice system. Nigeria can find inspiration there.

5.4. The Nigerian Juvenile Justice System

Early in Nigeria's development, juvenile delinquency was considered a social problem rather than a matter of criminal law and policy.³³ Various social arrangements were put in place to deal with the challenges through institutions, such as the family and school systems, with the goal of protecting children through rehabilitation instead of retribution. The Prison Ordinance of 1917³⁴ provided that juvenile offenders under 14 years of age were to be separated from adult offenders.³⁵

³⁰ *The Child's Rights Act*, LFN 2003.

³¹ Martins Ifijeh, "UNICEF Calls for Adoption of Child Rights Acts in All States", (1 June 2017) online: <<https://www.thisdaylive.com/index.php/2017/06/01/unicef-calls-for-adoption-of-child-rights-acts-in-all-states/>>

³² *Convention on the Rights of the Child, United Nations Treaty*, 7 November 1995, No. 27531, RES 44/25.

³³ Iyabode Ogunniran, "A Centurial Legal History of Child Justice Reforms in Nigeria 1914-2014" (2015) 5:2 SOLON Law, Crime and History at 44-68.

³⁴ The Prison Ordinance was first published by the British colonial regime introduced by Lord F D Lugard as Governor-General.

³⁵ Laurent Fourchard, "Lagos and the Intervention of Juvenile Delinquency (1920-1960)" (2006) 47 Journal of African History 127.

Reformatory schools were founded by various organizations with government authorization or support namely, the Salvation Army in 1925, the Kano Native Authority Juvenile Reformatory in 1931, and the Industrial School in Enugu for rehabilitation in 1932.³⁶ However, there was a more formalized “criminal” measure to deal with juvenile justice with the enactment of the *Children and Young Person Ordinance* (hereinafter referred to as “CYPO”) in 1943 for the colony of Lagos which also created the first Juvenile Court.³⁷ These courts were basically utilized as welfare agencies for children by dealing with juvenile delinquency issues of reformation and reintegration into society.

Currently, juvenile justice in Nigeria is a tripartite system composed of the customary juvenile justice system, Islamic based juvenile justice and the Southern Nigeria Juvenile Justice system.³⁸

The concept of criminal responsibility and/or capacity is essential to the status of a juvenile under the criminal justice system in Nigeria. Under the Criminal Code Act³⁹ of Nigeria, applicable in the Southern region, section 1 of the Code generally describes criminal responsibility as “liability to punishment as for an offence.” However, criminal responsibility in relation to young persons is defined under section 30 of the Criminal Code as follows:

A person under the age of seven years is not criminally responsible for any act or omission.

A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

³⁶ Iyabode Ogunniran, *supra* note 33 at 46.

³⁷ *Ibid.*

³⁸ Obi N I Ebbe, “The Juvenile Justice System in Nigeria” in Paul C Friday et al, eds, *Delinquency and Juvenile Justice Systems in the Non- Western World in the Non- Western World* (UK: Lynne Rienner Publishers, 2010) at 49.

³⁹ *Criminal Code Act*, CAP 77, LFN 1990, s 30.

Under the above provision, a child, where applicable, may be held liable for any criminal offence where there is proof of guilty knowledge, or all other elements of the crime are present, such as the intention to commit the crime (*mens rea*) and the outward action leading to the commission of the offence (*actus reus*).⁴⁰ Alan Milner, speaking of the implications of section 30 of the Criminal Code with respect to young offenders in the Southern region, and those in the Northern region where the Penal Code is applicable, observes that:

In principle, juveniles can be charged with and found guilty of any offence for which an adult could be similarly dealt with. The only exception is in the States applying the Criminal Code which, following the pattern though not the detail of English law, conclusively presumes that a child under twelve is incapable of sexual intercourse and he therefore cannot be convicted of any offence of which it is an element. The Penal Code has no such limitation and the Juvenile's physical capacity will be treated as a matter of fact and not one of presumption.⁴¹

Furthermore, the juvenile justice system in Nigeria is yet to have a unified implementation framework in Nigeria due to the differences in religion and cultural values among the population. Restorative justice is arguably compatible with the nature of the Nigerian society despite its ethno-religious diversity. Although, broadly speaking, the Constitution of the Federal Republic of Nigeria is the grundnorm and, any law inconsistent with its provisions shall be null and void to the extent of the inconsistency.

The Constitution guarantees the religious rights of every citizen, including the right of Muslims in the Northern region to surrender to Shariah court jurisdiction. Nevertheless, where a young offender who is not a Muslim is brought before a Juvenile Court in Northern Nigeria, the court is constituted by a single Magistrate and the applicable law shall be the English Common Law.

⁴⁰ Okonkwo and Naish, *Criminal Law in Nigeria*, (London: Sweet & Maxwell, 1980) at 92.

⁴¹ Alan Milner, *The Nigerian Penal System* (London: Sweet & Maxwell, 1972) at 345.

Juvenile Courts are specially constituted where any young offender is a Muslim. In that case, an Alkhali Judge shall assume jurisdiction in an Alkhali Court where Shari'a law is applied.⁴²

The operation of the religion-based shariah law juvenile system is rigid because it is rooted in the strict tenets of the Islamic religion as currently understood in Northern Nigeria. But the English common law-based Juvenile system in the Southern Nigeria is dynamic and open to a degree of flexibility. The Juvenile Court in the Southern region is gender-sensitive and specially constituted by three judges comprising a Magistrate (a lawyer) and two lay citizens one of who must be a married woman.⁴³

The Juvenile Court is not a regular court of law and there is no prosecution counsel, nor a defense attorney except where the case is transferred to a Magistrate Court or the High Court. Akinseye George describes the nature and goal of the Juvenile Courts in the Southern jurisdiction as follows:

It proceeds on the premise that the rights and needs of children are different from those of adults and that this should be reflected in the way they are treated. Juvenile justice therefore emphasizes rehabilitation instead of punishment, prevention rather than retribution, as the principal goals of the justice system. Further, it advocates special procedures, distinct correctional facilities for children in conflict with the law and deinstitutionalization for minor offences.⁴⁴

The approach of the Juvenile Court is fact-finding or truth-seeking with the objective to understand why the young offender is involved in the deviant behaviour. Usually, the idea is to find the reasons for the conduct, especially whether there are parental issues or other extraneous factors affecting the child to behave the way they have. However, accountability is not sacrificed in order to rehabilitate a young offender because, in certain cases, young offenders may face criminal prosecution under a youth court system.⁴⁵ This may not reflect the principle of the Child Rights

⁴² Obi N I Ebbe, *supra* 38 at 59.

⁴³ *Ibid.*

⁴⁴ Yemi Akinseye-George, *supra* note 27.

⁴⁵ The *Child Rights Act*, Laws of Federation Nigeria 2003.

Act which is largely dedicated to the protection of young persons in ways that focus on rehabilitation and reintegration of young offenders. The foregoing sets out the formal criminal law context within which youth restorative justice must be introduced in Nigeria, but the Child Rights Act adds another dimension to this process of adopting restorative justice.

5.5. Potentials of Restorative Justice Approaches to the Implementation of the Child Rights Act

The *Child Rights Act* of 2003 recognizes sweeping protection for young persons under any criminal law in Nigeria, even where there is no such protective framework in the relevant law.

Section 40 of the Child Rights Act provides as follows:

Any person in any other law securing the protection of the child, whether born or unborn, shall continue to apply and is hereby adopted for the protection of the child by this Act, notwithstanding that the provision has not otherwise been specifically provided for by this Act.

The above provision demonstrates the intent to extensively protect young offenders under the law, except there are no uniform implementation frameworks to realize the objective. The problem is that the Child Rights Act is the principal legislation in the administration of juvenile justice in Nigeria, but its implementation is limited only to federal courts and the Federal Capital Territory, Abuja. Therefore, unless all other states of the federation domesticate the *Child Rights Act*, there will not be a comprehensive reform of the juvenile justice system in Nigeria, and this may deepen inequality among Nigerian children.

Under the current situation, a court is allowed to provide for the protection of a young offender, especially where there is any reasonable ground to believe that the child's welfare may be under any threat.⁴⁶ In that case, the court would make a supervision order asking the appropriate authority

⁴⁶ *The Child's Rights Act*, supra note 30 at s 59.

to investigate the situation with the child and report back to the court. Nonetheless, under section 204 of the Child Rights Act, a child can be held criminally responsible for any serious or violent offence. In this case, however, the statute creates a legal mechanism known as “child justice administration” which strikes a balance between protection of a child and accountability for crimes committed. The section reads as follows:

Child to be subjected to only child justice system and processes
No child shall be subjected to the criminal justice process or to criminal sanctions, but a child alleged to have committed an act which would constitute a criminal offence if he were an adult shall be subjected only to the child justice system and processes set out in this Act

The above provision enunciates the principles of accountability and proportionality in relation to young offenders. The age of a young offender does not guarantee the child absolute immunity, depending on the nature and seriousness of the offence committed. The proviso is that a child shall be accountable for such act under the jurisdiction of a juvenile justice system. Therefore, a child shall never be made to appear under an adult justice system regardless of the nature of the offence committed.⁴⁷

The Child Rights Act 2003 recognizes an alternative justice process by enabling the use of diversionary measures as forms of response to criminal wrongdoing by any young offender. The law potentially allows for a justice process that focuses on a restorative justice approach where dialogue instead of adversarial process is utilized to prevent a criminal proceeding except only where serious offences are committed.⁴⁸ This comes under section 209 which says:

(1) The police, prosecutor or any other person dealing with a case involving a child offender shall-

⁴⁷ Iguh, O Nosike, “An Examination of the Child Rights Protection and Corporal Punishment in Nigeria” (2011) 2.:7 Nnamdi Azikiwe University Journal of International Law and Jurisprudence 102.

⁴⁸ The *Child Rights Act* supra note 30 at s 209.

- (a) have the power to dispose of the case without resorting to formal trial by using other means of settlement, including supervision, guidance, restitution and compensation of victims; and
- (b) encourage the parties involved in the case to settle the case, as provided in paragraph (a) of this section.
- (2) The police, prosecutor or other person referred to in subsection (1) of this section may exercise the power conferred under that Subsection if the offence involved is of a non-serious nature and-
 - (a) there is need for reconciliation; or - (b) the family, the school or oilier institution involved has reacted or is likely to react in an appropriate or constructive manner; or
 - (c) where, in any other circumstance, the police, prosecutor or oilier person deems it necessary or appropriate in the interest of the child offender and parties involved to exercise the power.
- (3) Police investigation and adjudication before the court shall be used only as measures of last resort.”

One may argue that the above provisions share almost the same language as the provisions of section 4 of the *Youth Criminal Justice Act* of 2002 which regulates juvenile justice in Canada.

That section provides as follows:

The following principles apply in this Part in addition to the principles set out in section 3:

- (a) extrajudicial measures are often the most appropriate and effective way to address youth crime;
- (b) extrajudicial measures allow for effective and timely interventions focused on correcting offending behaviour;
- (c) extrajudicial measures are presumed to be adequate to hold a young person accountable for his or her offending behaviour if the young person has committed a non-violent offence and has not previously been found guilty of an offence; and
- (d) extrajudicial measures should be used if they are adequate to hold a young person accountable for his or her offending behaviour and, if the use of extrajudicial measures is consistent with the principles set out in this section, nothing in this Act precludes their use in respect of a young person who
 - (i) has previously been dealt with by the use of extrajudicial measures, or
 - (ii) has previously been found guilty of an offence.”

The Child Rights Act of 2003 reflects largely the customary dictates and acceptable norms of the distinct cultural groups whenever each state passes the Act into state laws. Before the Child Rights Act was enacted by the federal legislature, there were some concerns related to the right age of a child for the purpose of the Act. The age was initially declared to be 18. Law makers representing

the shariah states from the North of Nigeria rejected this age, arguing that the acceptable age under shariah law was twelve. The debate also highlights the significance of cultural and religious sensibility in this matter as to the facts that must be considered in any proposal for an alternative justice process.⁴⁹ This is why the framework for the administration of juvenile justice system in Nigeria must be flexible and sensitive to these peculiarities across the country. The idea of a unified juvenile justice system for Nigeria may not be ideal in view of the country's multiculturalism.

The Child Rights Act enables the Family Court, throughout the thirty-six states of the federation, to assume general and extensive jurisdiction in any matter involving a child.⁵⁰ The Child Rights Act also created Family Court divisions at both levels of the High Court and the Magistrate Court, granting unlimited jurisdiction in both criminal and civil matters.⁵¹ Section 151 (1) provides as follows:

Subject to the provisions of this Act and in addition to such other jurisdiction as may be conferred on it by any other law, the Court shall have unlimited jurisdiction to hear and determine-

- (a) any civil proceeding in which the existence or extent of a legal right, power duty, liability privilege interest, obligation or claim in respect of a child is in issue; and
- (b) any criminal proceeding involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of a Child.

The provisions cover several aspects of the law to protect the rights of a child during any justice process. Essentially, the jurisdictions in view exceed the scope of those of any other court in Nigeria. The foregoing analyses demonstrate the presence human and infrastructural resources for the implementation and institutionalization of restorative justice in Nigeria. Therefore, it is

⁴⁹ Olayinka Silas Akinwumi, "Legal Impediments on the Practical Implementation of the Child Right Act 2003" (2009) 37: 3 International Journal of Legal Information the Official Journal of the International Association of Law Libraries 387.

⁵⁰The *Child Rights Act*, supra note 30 at s 149.

⁵¹ Ibid at s 150.

important for the relevant authorities and stakeholders to develop a legal framework for the implementation of restorative justice in all levels of government.

It may, of course, be some time before a restorative model of justice gains ground and is recognized by the Nigerian government. But once adopted in some parts of the system restorative justice practices may lead to modification and improvement of other parts of the justice system. In a situation where the federal government is eager and ready to create a legal framework for national implementation of restorative justice in Nigeria, governments at state level may be motivated or encouraged to participate. There is no doubt that where all the states of the federation and the federal government agree to implement restorative justice practices, the change could transform the criminal justice system in Nigeria. For example, the outcome would affect the roles of the police which are under the exclusive control of the federal government, because there will necessarily be coordination between all levels of government to achieve successful implementation of the programme.

On the other hand, each state government may implement restorative justice initiatives to address the challenges confronting administration of justice system within its jurisdiction. In this instance, such introduction of restorative justice initiatives at state levels will have (limited) impact in a federal State where each state is autonomous. However, administration of restorative justice at state level is manageable and each state can exercise its freedom to create a restorative justice system that is based on the peculiar needs and circumstances of the people in that state. Although, in this scenario, the impact may modify the criminal justice administration within each state which is also a form of success.

5.6. Criminal Justice Agencies and Administration of Criminal Justice System

The machinery of criminal justice depends in large part on the efficiency of its personnel, especially in the exercise of discretion and discharge of their duties. The criminal justice agencies in every society need a clear understanding of government policy in relation to crime prevention and public safety. To this end, this section examines how the roles of each criminal justice agency is crucial and central to the overall administration of the criminal justice system. The discussion centres on the functions, duties and contributions of the Police and the court/judges in institutionalizing restorative justice.

Restorative justice would serve as a viable alternative to the traditional criminal justice system, though “its range of applications and its procedural standards and safeguards continue to be unresolved issues.”⁵² The necessity for training and widening the scope of the responsibilities of personnel across all criminal justice agencies tasked with the administration of a criminal justice system is clear if restorative justice approaches are successfully adopted.

The roles and functions of the relevant criminal justice agencies could improve administration of criminal justice by virtue of its relational approach to dealing with crime and its aftermath. How can the police, the courts/judges, prosecution counsel, and community agencies function in such a system infused with restorative justice practices?

5.6.1. The Police

The Police represent one of the gateways to the restorative justice process, as we saw under the Nova Scotia Restorative Justice (“NSRJ”) programme and should be in Nigeria. The role of the police is crucial in maintaining law and order in most societies. The police constitute the first point

⁵² Barbara A Hudson, *Understanding Justice: An Introduction to Ideas, Perspectives, and Controversies in Modern Penal Theory* (Buckingham: Open University Press, 2003) at 75.

of contact whenever crime is reported or detected. The traditional discretionary role of the police as a law enforcement agency of government places police officers in the position to enhance administration of criminal justice. However, in the common law jurisdictions, policing has historically been founded on the standards of an adversarial criminal justice system whose ultimate goal is to ensure the law is upheld and offenders are punished. However, they traditionally have exercised discretion on whether to charge or issue warnings. The police derive their authority from legislation to exercise their duties and powers to control crime and ensure public safety.⁵³ Further, the advent of restorative justice means that the role of the police must evolve.

Section 4 of the Canadian YCJA provides that young offenders who commit non-violent offences may be subjected to extra-judicial measures. As explained in chapter 4, this section provides the legal basis for the implementation of the NSRJ programme. The police are obliged under the restorative justice initiative to exercise discretionary authority to sanction young offenders without necessarily instituting any criminal proceedings against them. This means making referrals in cases involving any youth whenever there is a prima facie case to engage a restorative process within the purview of section 4 of YCJA via diversion from the formal criminal justice system.

Nevertheless, the provisions of section 4 of the YCJA present no clear guidelines for the implementation of the extra-judicial measures including restorative justice.⁵⁴ However, based on regional autonomy, police chiefs and police officers enjoy wider discretionary powers under section 4 of the Youth Criminal Justice Act, particularly to make referrals to the NSRJ programme.⁵⁵ Another mechanism for structuring the discretionary powers of the police is found in section 7 of the Youth Criminal Justice Act which provides thus:

⁵³ Kent Roach, *Due Process and Victims' Rights: The New Law and Politics of Criminal Justice* (Toronto: University of Toronto Press, 1999) at 1-5.

⁵⁴ Government of Nova Scotia, online: <https://novascotia.ca/pps/crown_manual.asp>.

⁵⁵ Peter Carrington & Jennifer *Schulenberg* "Structuring Police Discretion: The Effect on Referrals

The Attorney General, or any other minister designated by the lieutenant governor of a province, may establish a program authorizing the police to administer cautions to young persons instead of starting judicial proceedings under this Act⁵⁶

Most importantly, section 10(2) of the Youth Criminal Justice Act lays down the conditions upon which the police may exercise any discretion in relation to extra-judicial measures where a young offender is involved in a non-violent crime. They are condition precedent toward engaging implementation of an alternative justice process relating to youths. These conditions are as follows:

An extrajudicial sanction may be used only if

- (a) it is part of a program of sanctions that may be authorized by the Attorney General or authorized by a person, or a member of a class of persons, designated by the lieutenant governor in council of the province;
- (b) the person who is considering whether to use the extrajudicial sanction is satisfied that it would be appropriate, having regard to the needs of the young person and the interests of society;
- (c) the young person, having been informed of the extrajudicial sanction, fully and freely consents to be subject to it;
- (d) the young person has, before consenting to be subject to the extrajudicial sanction, been advised of his or her right to be represented by counsel and been given a reasonable opportunity to consult with counsel;
- (e) the young person accepts responsibility for the act or omission that forms the basis of the offence that he or she is alleged to have committed;
- (f) there is, in the opinion of the Attorney General, sufficient evidence to proceed with the prosecution of the offence; and
- (g) the prosecution of the offence is not in any way barred at law.

Generally, the above conditions and key provisions of YCJA are incorporated into the mandatory “Restorative Justice Checklist” for referrals under the NSRJ issued pursuant to the Nova Scotia Attorney-General Protocol implementing the system under the relevant legislation. They are: “Police Entry Point (pre-charge) - referral by police officers, Crown Entry Point (post-charge/pre-conviction) - referral by Crown Attorneys, Court Entry Point (post-conviction/pre-sentence) -

to Youth Court” (2008) 19 Crim Justice & Pol Rev 349 at 350.

⁵⁶ *Youth Criminal Justice Act* S C 2002, c 1, s 7.

referral by Judges, Corrections Entry Point (post-sentence) - referral by Correctional Services or Victims' Services staff.⁵⁷

Police involvement and participation in the NSRJ programme has helped to improve awareness and support for the initiative as an alternative justice process, especially for youth who offend. For example, the Municipal Police Force in Halifax has a youth court office bureau dedicated to reviewing case files involving young offenders and making referrals to the Nova Scotia Restorative Justice Programme.⁵⁸

In the Nigerian context, the roles of the police are different and less dynamic in accommodating extra-judicial functions relating to administration of criminal justice. The function of the Nigerian Police is typically centred around its traditional roles as statutorily provided for under section 4 of the Nigeria Police Act. The section provides:

The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.

There are fundamental constitutional limitations on community policing in Nigeria because the body is over-centralized, and the political structure of Nigeria is arguably based on a porous federal system of government which, in practice, allows for the accumulation of power in the central government at the expense of the states. The provisions of section 215 (4) of the 1999 Constitution of the Federal Republic of Nigeria limits the functions and impact of the Nigerian Police by the following provisions:

Subject to the provisions of this section, the Governor of a state or such Commissioner of the Government state as he may authorise in that behalf, may give to the Commissioner of Police of that state such lawful directions with respect to

⁵⁷ Nova Scotia Provincial Government, “online: <<https://novascotia.ca/just/rj/documents/execsumml.pdf>>.

⁵⁸ Diane Crocker, “The Effects of Regulated Discretion on Police Referrals to Restorative Justice” (2013) 36 Dalhousie L J (2013) 393.

the maintenance and securing of public safety and public order within the state as he may consider necessary, and the Commissioner of Police shall comply with those directions or cause them to be complied with:

Provided that before carrying out any such directions under the foregoing provisions of this subsection the Commissioner of Police may request that the matter be referred to the President or such minister of the Government of the Federation as may be authorised in that behalf by the President for his directions.

Nigerian federalism is believed to concentrate excessive powers in the central government, making the federal government too big and too complex to function effectively. The component states of the federation have limited powers to legislate on certain important matters because, constitutionally, the federal government holds exclusive authority on such matters. This constitutional anomaly affects the structure and modus operandi of the Nigerian Police Force, being an institution under the exclusive authority of the federal government.

Sections 215(4) and (5) of the 1999 Constitution of the Federal Republic of Nigeria provide that the Governor of a State and other state executive members of the cabinet shall have no direct authority over the head of the police, (i.e., the Commissioner of Police) who is appointed by the federal government unless the President of the Federal Republic of Nigeria approves of any direction given to the police by the Governor. Thus, the absence of regional autonomy may be a hinderance to the significant role of the police and its cordial relationship with members of the community. The structure of the police as constituted presently in Nigeria, may not allow for the police to be proactive and supportive of community-oriented initiatives, since the police experience heavy federal scrutiny. As a result, state governments lack the implementation framework to enforce any criminal justice initiative unless the federal government sanctions it.

The police retain their traditional roles and their discretionary powers to resolve conflicts between a complainant/petitioner and the accused respondent. They also have statutory authority to prosecute offenders in a court of law under section 23 of the Police Act which provides as follows:

Subject to the provisions of Section 174 and Section 211 of the Constitution of the Federal Republic of Nigeria (which relates to the power of the Attorney General of the Federation and of the State to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria) any police officer may conduct in person all prosecutions before any court whether or not the information or complaint is laid in his name.

The above provisions demonstrate the extensive role of the police in the administration of the formal criminal justice system. One may argue that the police are inclined to follow formal due process whenever crime is reported or detected, because the primary goal of the police has historically been to prosecute offenders under a criminal process to uphold the law which may lead to the punishment of the offender. Under the circumstance, justice is arguably served whenever an offender is convicted. But the role of the police in an alternative justice process is currently very limited because of the absence of a statutory framework upon which alternative measures, including restorative justice, may operate.

At the moment, a solution may be in sight for the Nigerian Police, as its administration is to be decentralized in the wake of communal clashes in Nigeria. The Vice President of the Federal Republic of Nigeria has been reported to acknowledge the urgent need for state police as an important avenue to maintain peace, law and order in communities.⁵⁹ The decentralized role of the police in institutionalizing restorative justice is pivotal because the police represent the first contact between the community and the criminal justice system. A state police system in Nigeria may change the dynamics of societal reaction to communal conflicts since each community should have its members as officers in the police, instead of imposing “an outsider” on a community he or she know little or nothing about. Generally, the idea to improve the structure and roles of the Nigerian

⁵⁹ Seun Opejobi, “Herdsman killing: VP Osinbajo advocates state police”, Daily Post Newspaper in Nigeria, (08 February 2018), online: <<http://dailypost.ng/2018/02/08/herdsmen-killing-vp-osinbajo-advocates-state-police/>>.

police should be geared towards “citizen participation and community partnerships in crime resolution and prevention.”⁶⁰

5.6.2. Judges and Institutionalization of Restorative Justice Practice

It is important to note that how a judge exercises discretion during criminal proceedings may also strengthen restorative justice practice. Judges possess discretionary power under relevant legislation which define the scope of such discretion. But there are instances where the scope of judges’ discretionary power is not defined. In such cases, there are legal mechanisms for determining the legality of the exercise of discretion. In relation to the implementation of restorative justice practice, judges may invoke restorative justice approaches, particularly in relation to sentencing, but there should be a framework upon which judicial discretion may stand. Based on the lessons drawn from both New Zealand and Canada’s experiences discussed in Chapters 3 and 4 respectively, restorative justice cannot exist nor function in a vacuum. Restorative justice, as an integral element of the criminal justice system in New Zealand, operates as a mainstream justice model. Its practice procedure deals, among others, with youth crimes. Restorative justice in Canada forms part of the formal criminal justice system designed to respond to certain crime involving both young offenders and adults. Restorative justice may thus offer practices within a criminal process to ensure justice is served. In instances where restorative justice practice may be relevant, judges have promoted it through judicious use of their sentencing authority.

⁶⁰ Gordon Bazemore & Curt Griffiths, “Police reform, restorative justice and restorative policing” (2003) 4:4 Police Practice and Research at 335 (This was written in the American context but the sentiment should be appreciated in Nigeria).

For instance, under the Nova Scotia Restorative Justice programme, judges are empowered to make referrals to the programme as one of the designated entry points. Referrals made by courts are generally carried out after conviction of the offender or at the pre-sentence stage of the criminal proceedings.⁶¹ The protocol authorizing the Nova Scotia Restorative Justice programme lays down the following twelve discretionary requirements for referrals made by judges (and from three other entry points) as follows:

6.1 Prior to an offender being referred to the Restorative Justice Program at any of the referral

entry points, the following discretionary factors must be considered:

6.1.1. the cooperation of the offender;

6.1.3. the desire and need on the part of the community to achieve a restorative result;

6.1.4. the motive behind the commission of the offence;

6.1.5. the seriousness of the offence and the level of participation of the offender in the offence, including the level of planning and deliberation prior to the offence;

6.1.6. the relationship of the victim and offender prior to the incident, and the possible continued relationship between them in the future;

6.1.7. the offender's apparent ability to learn from a restorative experience and follow through with an agreement;

6.1.8. the potential for an agreement that would be meaningful to the victim;

6.1.9. the harm done to the victim;

6.1.10. whether the offender has been referred to a similar program in recent years;

6.1.11. whether any government or prosecutorial policy conflicts with the restorative justice referral;

6.1.12. such other reasonable factors about the offence, offender, victim and community which may be deemed to be exceptional and worthy of consideration.⁶²

However, there seems to be a level apathy toward restorative process unlike some judges in other jurisdictions, some Nova Scotia judges are not sufficiently disposed to making referrals under the Nova Scotia Restorative Justice programme. The report of a survey carried out in 2003/2004 shows that judges made very minimal referrals to the NSRJ programme. In fact, only 6.5% of the total referrals were made within the period under review, compared to 57.5% made by the Police during

⁶¹ Nova Scotia Government, online: <<https://novascotia.ca/just/rj/program.asp>>.

⁶² Nova Scotia Government, online: <<https://novascotia.ca/just/rj/documents/Authorization.NSRJP.Final%20Jan.03.pdf>>

the same period.⁶³ The reluctance may not be attributed to any deliberate animosity toward the restorative concept, but rather because lawyers and judges received a different type of training on justice, one rooted in the adversarial model of justice. In explaining the importance of the training of legal practitioners, including judges, on the concept of restorative justice, Clairmont holds the view that:

the reluctance of Crown attorneys and judges to make use of restorative process as the program hitting a wall, like a marathon runner who must train to overcome inherent limitations. There was some suggestion that adversarial legal training might be the source of the “limiting wall” for NSRJ, or simply a lack of familiarity with the process and awareness of its capabilities. If, as many believe, restorative justice can make a useful contribution at sentencing and at the correctional level, these statistics would indicate that NSRJ is far from reaching its full potential.⁶⁴

Furthermore, the growth and popularity of restorative justice practice is impressive particularly with the support given to its implementation by the police. Therefore, different legal education is necessary for lawyers and judges to embrace the concept as a model of justice which may serve the interest of members of the society in certain circumstances. For the full potential of the concept to be realized, all criminal justice agencies must first understand the concept through its underlining theories, principles and limitations. Restorative justice should not only be utilized as an alternative process. Rather, it is instrumental to address the challenges of the formal criminal justice system, namely: recidivism, over-representation in prisons, financial burden, increase re-offending, increase in the rate of youth crime. The ultimate goal is to institutionalize restorative justice practices as an integral part of the mainstream criminal justice system. In terms of implementation, a distinct set of rules and practice direction may be established whether at state or federal levels of government. In the case of Nigeria, the chief judge of a state is the chief

⁶³ Jennifer Llewelyn et al, “*Imagining Success for a Restorative Approach to Justice: Implications for Measurement and Evaluation*” (2013) 36:2 Dalhousie Law Journal at 282-316.

⁶⁴ *Ibid.*

administrative officer and constitutionally authorized to make “make rules for regulating the practice and procedure of the High Court of the State.”⁶⁵ The chief judge of a state and the chief justice of the supreme court at the federal level by constitutional authority and under the applicable statutory provisions on youth criminal justice system are strategically positioned to be innovative in the administration of justice system under their respective jurisdictions. Therefore, they may utilize alternative justice mechanisms including restorative justice approach to tackle many of the problems confronting criminal justice system in Nigeria, namely recidivism, over-incarceration, overcrowding of prisons and delay in judicial process.

One must note that some judges in other jurisdictions have played significant roles in propagating restorative justice whether as a practice or a new paradigm in the administration of criminal justice. As discussed in Chapter 3, judges played important judicial roles during the pilot stage of restorative justice practices in New Zealand. They were actively involved in the restorative justice movement and their campaign for adoption of restorative practices cannot be ignored. For instance, Judge FWM McElrea was an early proponent of the idea that restorative justice practice should be extended to the adult justice system, at a Judges Conference in 1994.⁶⁶ Similarly, another District Judge in New Zealand, David Carruthers, also advocated for restorative justice practice to be institutionalized as an alternative way to think about justice as different from the traditional criminal justice system. Judge Carruthers expresses optimism about the future of restorative justice and advocated for a proactive approach in terms of justice sector reform. In his words:

First, in terms of existing frameworks, restorative justice should be viewed as not simply complementing the "traditional" criminal justice system but forming an integral and mutually reinforcing part of it. In this respect, restorative justice should be enabled to move away from the periphery and take its place with other central and valued processes in our criminal justice system. It should not be left to

⁶⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended) s. 274.

⁶⁶ David Carruthers, “Restorative Justice: Lessons from the Past, Pointers for the Future” (2012) 20:1 Waikato L Rev at 29.

individual enthusiasm and ad hoc decision making. To realise its full potential, it needs to be centrally positioned, adequately resourced and professionally managed.⁶⁷

Similarly, in Canada, judges like Barry Stuart and Heino Lillies introduced a restorative justice approach through peacemaking circles (also referred to as “sentencing circles” or “circle sentencing”) during criminal proceedings as “an innovative way to involve all interested parties in key decisions regarding sentencing in criminal cases.”⁶⁸ The sentencing circle was first introduced by Judge Barry Stuart in the Yukon Territorial Court during sentencing in the *locus classicus* case of *R v. Moses*.⁶⁹ The choice of a Circle sentencing reflects the cultural circumstances of Yukon’s Aboriginal people as a close society committed to dealing with the cause(s) of crime in order to prevent re-occurrence in their community. Circle sentencing became an alternative to evidence at sentencing and the closing addresses by both defense and prosecution counsels where the judge receives sentencing submissions in cases involving serious offences or in scenarios where special circumstances necessitate intervention.⁷⁰

Heino Lilles explains the goal and the setting of the circle sentencing which specifically caters to the needs of the people affected by the commission of a crime. His view reflects the restorative principle which contextualizes incidents of crime beyond the need to uphold the law on behalf of the state. The objective and settings of circle conferencing has been described by the retired judge as follows:

The goal of the circle is to develop consensus. As a result, the participants do not direct their remarks to the judge. Everyone speaks to the circle. The legal jargon and pro forma submissions which are much too common in courts are replaced with

⁶⁷ *Ibid.*

⁶⁸ Barry Stuart and Kay Pranis, “Peacemaking Circles: Reflections on Principal Features and Primary Outcomes” in Dennis Sullivan et al, *Handbook of Restorative Justice: A Global Perspective* (New York: Routledge, 2008) at 121.

⁶⁹ *R V Moses* (1992), 71 CCC (3D) 347 (Yukon Territorial Court) (See the discussion on recent Restorative Justice programmes in Yukon Territory in chapter 4).

⁷⁰ Barry Stuart and Kay Pranis, *supra* note 68.

questions and information about the offender, victim, about the resources available in the community. Much more information is forthcoming about offenders- their personal circumstances, their social history and the factors contributing to their criminal behavior.”⁷¹

Finally, in the Nigerian context, judges exercise inherent discretionary powers by virtue of the office. In some circumstances, there are powers statutorily assigned to judges intervene in the course of justice and make decisions with binding effect. For example, the Chief Justice of the Federation and the Chief Judge of a State are statutorily empowered to make orders of release to inmates (awaiting trials) under detention in circumstances deemed unlawful. Section 1 of the Criminal Justice (Release from Custody) (Special Provisions) Act of 1977 provides as follows:

Power of Chief Justice and Chief Judges to order release of persons detained in certain cases:

(1) Where, in respect of any person detained in any prison in Nigeria, not being a person detained in execution of a sentence of a court or tribunal duly constituted by law, the Chief Justice of Nigeria or the Chief Judge of a State is satisfied that the-

(a) detention of that person is manifestly unlawful; or

(b) person detained has been in custody, whether on remand or otherwise, for a period longer than the maximum period of imprisonment which the person detained could have served had he been convicted of the offence in respect of which he was detained, the Chief Justice or the Chief Judge may issue an order of release to the officer in charge of the prison and such officer shall on receipt of the order release the person named therein.⁷²

Based on the above provisions, some judges have been able to grant pardon to many detainees awaiting trial upon review of their case files.⁷³ However, an Appellate Court in Nigeria has determined the legal basis upon which judicial discretion may generally be exercised by judges.

⁷¹ Heino Lillies “Circle Sentencing: Part of the Restorative Justice Continuum” in Allison Morris and Gabrielle Maxwell, eds, *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Oxford: Hart, 2000) at 167.

⁷² Criminal Justice (Release from Custody) (special provisions) Act (Formal Decree No. 19 OF 1977; now C40, vol. LFN 2004).

⁷³ *Ibid.*

The court explained the rationale for the expression that all judicial discretion shall be “judicial” and “judicious” in all circumstances, thus:

the exercise of the Court’s discretion is said to be judicial if the judge invokes the power in his capacity as judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling Statutes. On the other hand, an exercise of discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity of the judge as judex. The exercise must be based on a sound and sensible judgement with a view to doing justice to the parties⁷⁴

In exploring the roles of Nigeria judges in embracing a non- adversarial justice approach to address crime, one may apply the argument made previously in this work about the constitutional roles of the chief judge of a state and the chief justice of Nigeria under both state and federal jurisdictions respectively. With the constitutional authority to determine the direction of judicial activities, the chief judge of a state or the chief justice of Nigeria may organize training sessions, seminars and conferences to equip judges with the requisite skills on the nature and importance of restorative justice to encourage the use of restorative justice practices in the course of their duties.

5.6.3. Community Agencies and Administration of Criminal Justice

There is the need for synergy between the criminal justice agencies and other stakeholders, including community-based agencies and relevant professional bodies. The Nova Scotia Restorative Justice programme recognizes the importance of such cooperation in delivering criminal justice process. An important goal is to evoke public confidence in the restorative process. Community agencies understand the challenges of the people, being close to them and in unique positions to help them deal with problems via their professional competencies. These community agencies facilitate restorative processes under the NSRJ programme, except circle sentencing which is exclusive to judges. “The community agencies sign service contracts with the Department

⁷⁴ *African Continental Bank v Nnamani*, CA/B/158/90. 3PLR/1991/17 (CA).

of Justice to facilitate restorative justice processes for their areas in accordance with agreed-upon standards and requirements.”⁷⁵ Community agencies should be allowed to bring their professionalism and experience to bear on administration of restorative justice. They are, thus, particularly positioned to foster a holistic approach to addressing crime and its consequences on the offender, the victim and society.

This is a good example of how coordination among relevant criminal justice and community agencies can be arranged and serves well for Nigeria. The Nigerian police and judges and magistrates who are adept in criminal law, are also well positioned to improve the nation’s criminal justice system through restorative approaches. The Attorney-General of each state of the federation and the chief judges of each state high court may develop restorative interventions to address various challenges confronting the Nigerian criminal justice system. As noted earlier, these challenges include unduly delayed trials, over-incarceration and prison congestion, and recidivism. As argued, resort to restorative justice practices, like the diversion programmes and alternative sentencing mechanisms, can be utilized by justice officials to this end.

5.7. Conclusion

This chapter contextualizes prospects for restorative justice in the face of the criminal justice system in Nigeria, especially the juvenile justice system. The influence of the English legal tradition received through colonization is highlighted to explain the structure of the adversarial justice system, especially in the Southern region of Nigeria. The discussion identified the importance of the political structure of Nigeria, that is, its division into tiers of government, at federal and state levels. It was pointed out that the domination of the component units by the central government is a challenge to institutionalizing restorative justice in Nigeria. This problem is

⁷⁵ Government of Nova Scotia, online: <<https://novascotia.ca/just/rj/documents/Restorative%20Justice%20Protocol%20Eng%20Web.pdf>>

connected to the role of the Nigerian police and the lack of opportunity for a communal based approach to crime prevention and criminal resolution. However, there seem to be an ongoing national debate over the decentralization of the Nigerian police and the possibility of restructuring and devolution of powers.⁷⁶ The current political environment in Nigeria with the ruling party currently considering constitutional and criminal justice reform agenda offers a possible opening for a restorative justice practice in Nigeria.

Legal reform must empower each state government to implement changes, including as to policing, to reorient administration of criminal justice to reflect restorative options. For example, the Nigerian Police Force as presently constituted and structured may be reformed to enable state governments implement community justice initiatives without interference from the federal government. To this end, it is necessary to repeal section 215 (4) of the 1999 Constitution of the Federal Republic of Nigeria which essentially limits the relationship between state governments and the Nigerian Police because the Commissioner of Police is required by law to seek approval from the President (who may be a member of a different political party) in order to participate in any state governments' initiatives.

As to the history and current state of juvenile justice in Nigeria, it was established that youth crime was deemed a matter of welfare necessitating rehabilitation of young offenders in certain circumstance. Drawing from New Zealand and the province of Nova Scotia in Canada where restorative justice practice arguably began with youth justice reform, it was argued that juvenile justice is a convenient point from which to introduce restorative justice practices into criminal justice administration in Nigeria. As noted the enactment of the Nigerian Child Rights Act, 2003

⁷⁶ Yinka Odumakin, "Ten Reasons to Restructure Nigeria", Vanguard Newspaper (19 September 19 2017), online: <<http://www.vanguardngr.com/2017/09/ten-reasons-restructure-nigeria/>>.

as a legal framework for delivering restorative justice under the Nigerian legal system opens the door to this reform process.

All said and done, the chapter sets out the challenges confronting the Nigerian criminal justice system, especially its political and constitutional impediments to restorative justice practice. The examples of Canada and New Zealand suggest that Nigeria could possibly work out similar recommendations in the context of its peculiar socio-political realities. The federal government of Nigeria can lead the idea of a restorative approach to dealing with crime generally and to start by introducing restorative justice approaches to implementing the Child Rights Act. The Act lays a foundation for not automatically hauling young offenders indiscriminately into the criminal justice system, because it advocates or promotes different court and practice directions for addressing youth crime. The federal government, unlike state government authorities, has significant resources to fund federal government restorative justice initiatives.⁷⁷ In addition, state governments, may also receive financial support from the federal government to address many of the problems affecting juvenile justice. This would engender a unified national implementation framework for restorative justice practices.

There is no doubt that strong political will to overhaul the criminal justice system is a necessity. The Attorney-General of the Federation (AGF) and the state Attorneys-General must push for legal reform including police, prison and constitutional reforms. Alongside, federal and state lawmakers must pass legislation to improve the Nigerian criminal justice experience. The Attorney-General's efforts in Nova Scotia, and the efforts of lawmakers in New Zealand led the way in this direction for criminal justice reform in both countries.

⁷⁷ Yemi Akinseye-George, *supra* note 27.

Finally, there are traditional institutions in Nigeria's communities, namely: family, religious bodies, traditional rulers, etc., that may be called upon to help in the promotion of restorative social relationships through amicable settlement mechanisms. These institutions played great roles in peacebuilding and conflict resolutions during the pre-colonial societies to prevent crime and mass incarceration which is common under the formal criminal justice system today.

CHAPTER 6: CONCLUSION

6.1. Conclusion

This work has been shaped by the goal of seeking reform in the Nigerian criminal justice system. By presenting and analysing ideas and alternative processes within the adversarial justice system, especially restorative justice, the goal is to offer a Nigerian audience the opportunity to consider different ways to think about justice in general, and criminal justice and its administration. A major problem with the formal criminal justice system is its rigid embodiment of the retributive justice concept upon which it is based.

Restorative justice practices present viable alternatives to the adversarial justice system, because restorative justice offers a more comprehensive approach to considering, applying and administering more responsive and effective principles and rules of criminal justice. The adoption of this approach in Nigeria would create a momentum for legal reform leading to an improved criminal justice system. This conclusion reflects on what such steps would mean for various relevant agencies of the Nigerian state.

6.2. Political Structure and the Legislature

The political structures in Canada and New Zealand facilitated the entrenchment of restorative justice practices within their justice systems. In Canada, for example, the Constitution grants autonomy to the provincial legislatures to make laws regarding items under section 92 of the Constitution Act, 1867.¹ Also, the federal and provincial legislatures coordinate action in relation to criminal law by virtue of sections 91(27) and 92(14) Constitution Act, 1867. Thus, Canadian law confers authority on a provincial government to administer the criminal law made by the

¹ Constitution Act, 1867, R.S.C. 1985, App. II, No. 5, s. 92.

federal Parliament. It is in pursuit of this authorization that the Nova Scotia provincial government utilizes relevant sections of the Canadian Youth Criminal Justice Act (and lately the Criminal Code) dealing with extra-judicial measures to institute, among others, restorative justice initiatives.

Thus, there is an important coordination between the federal and provincial legislative arms of government in relation to criminal law, and this is enshrined in section 91(27) through section 92(14) of Constitution Act, 1867. The law confers legal authority on the provincial government to administer criminal laws made by the federal Parliament. This arrangement benefits the people directly as the provincial government focuses on applying the federal laws to meet their criminal justice needs. The Nova Scotia provincial government has applied relevant sections of the *Youth Criminal Justice Act* dealing with extra-judicial measures, such as restorative justice initiatives, in a manner similar to the Canadian *Criminal Code*.

By contrast, the Nigerian federal and state legislatures do not have much of a working relationship and coordination on pertinent issues, including criminal justice and its administration. Indeed, Section 4(5) of the 1999 Constitution of the Federal Republic of Nigeria limits coordination between the two levels of government. The section provides:

4(5) If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall, to the extent of the inconsistency, be void.

The legal implication of the above provisions is arguably the impediments it may present in a scenario where state governments may have a completely different programme from what the agenda of the federal government may be on certain issues, including the roles and functions of

the police.² Section 4(5) of the 1999 Constitution of the Federal Republic of Nigeria does not contemplate true autonomy in favour of state authorities in any circumstance. As a result, state governments are subordinate to the federal government in all matters. Despite, the recognition of a possible concurrent legislative list for both levels of government under the 1999 Nigerian Constitution, the federal government is deemed superior in all matters of legislative importance in the federation. This deviates from the principle of collaborative federalism.

6.3. Limitation of Legislative Control/Fear of Over-standardization

In New Zealand, the legislature was instrumental in institutionalizing restorative justice practice as a mainstream model of justice. However, the growing concern among restorative justice practitioners and other stakeholders is that since government controls the implementation of the law, it may exercise inordinate control of the practice and, thus, adversely affect and influence how restorative justice law is carried out. The idea is that restorative justice practitioners should be at the centre of the administration of restorative justice practice. Over time, this is key to both progress and improvement of the practice. For instance, it takes those who are very conversant with the restorative justice concept to identify what constitutes success in its implementation. Restorative justice practitioners, and government officials who would want to justify the funding given to the implementation of restorative justice practice, differ on measuring outcomes. In this instance, the implication is that the non-restorative justice professionals of government are likely to measure the success of restorative justice practice on the same terms as the formal criminal justice system.³

² Police and other government security services established by law is listed under the Exclusive Legislative List granted in favour of the Federal Government under the 1999 Constitution of the Federal Republic of Nigeria.

³ Jennifer J. Llewellyn et al, Jennifer Llewellyn et al, *Imagining Success for a Restorative Approach to Justice: Implications for Measurement and Evaluation* (2013) 36:2 Dalhousie Law Journal, at 282-316.

The government idea of success may depend largely on whether restorative practice can be directly linked to reduction of recidivism, or whether crime rate is down as a result of the implementation of restorative justice practices. Scholars and practitioners also have diverse views about how to measure success in restorative justice practice because of differences in perceptions of the theoretical underpinnings of the concept. McCold and Wachtell, analyzing data on recidivism, conclude that a lower rate of recidivism alone is not the goal of restorative justice, even though recidivism may result from a restorative process.⁴ Their view is that the real yardstick for scoring restorative justice practice success should be the goal of restorative justice, which is to “balance the need of victim, offender and communities rather than being solely offender–focussed.”⁵ Nevertheless, appropriately framed legislation is necessary to ensure an effective regime of restorative practices within a formal criminal justice system.⁶ Gordon Bazemore argues, however, that relying on legislation to advance the use of restorative practice may lead to “a re-branding of existing practice, ‘restorative’ in name only to attract funding, thereby taking away the creativity and flexibility associated with restorative practice.”⁷ This is why he thinks that to mitigate the effects of over-standardization through legislation and over-domination by government, the law may be used to make restorative process mandatory under the justice system while allowing practitioners to manage the delivery of restorative processes using the appropriate restorative technique and approach.⁸

⁴ Paul McCold & Benjamin Wachtell, *Restorative Policing Experiment: The Bethlehem Pennsylvania Police Family Group Conferencing Project* (Pipersville, PA: International Institute of Restorative Practices, 1998); Joanna Shapland et al, *Restorative Justice: The Views of Victims and Offenders* (New Zealand: Ministry of Justice, 2007)

⁵ Jennifer J. Llewellyn, *supra* note 3.

⁶ Gordon Bazemore, “Why we Need Restorative Justice Conferencing: A Discussion Paper,” (2000), online: <http://www.justiciarestaurativa.org/www.restorativejustice.org/articlesdb/articles/5359>

⁷ Jennifer J. Llewellyn, *supra* note 3.

⁸ Guy Masters, *What Happens When Restorative Justice Is Encouraged, Enabled And/or Guided by Legislation?* In Howard Zehr et al eds. *Critical Issues in Restorative Justice* (New York, Criminal Justice Press 2004) at 228.

Conversely, Guy Masters holds that the impacts of legislation on the implementation of restorative justice can be positive. He argues:

My own view is that it is highly appropriate that RJ be formally supported by legislation for two linked reasons. First, it is unrealistic for the RJ movement to expect any government to fully devolve criminal justice decision making to the community in any but the simplest of cases. Careful legislation is required to ensure effective practice that has the backing of courts. Second, if restorative processes are to be mainstreamed throughout a criminal justice system, which must surely aim for RJ advocates, then legislation will be required to that effect. This will be a significant success in any country, indicating that the value of RJ, and the inclusion of the community throughout the system, has been recognised. The challenge for reformers is to lobby for the wholesale reorganisation of criminal justice systems around RJ principles, rather than accept the introduction of restorative encounters at a single stage of a system as the ultimate aim for restorative justice.⁹

In sum, the paramount goal is to ensure that restorative justice practice does not lose its potency to transform criminal justice systems by ensuring that in dealing with crime or wrongdoing, accountability, community safety and restoration of social relationships are not overlooked or minimized. All this can only be realized where there is political will on the part of the government to support restorative justice initiatives and give well-trained practitioners sufficient flexibility to run such programmes. The best mechanism to realize this objective are public private partnership (PPP) where the government provides funding and the enabling environment for practitioners to provide expertise to the benefit of society at large. This collaborative approach is working in Canada, especially in Nova Scotia, where community agencies have been instrumental in the delivery of justice sector reform. For example, the Community Justice Society in Halifax introduced the *Restorative Options for Youth in Care* (among other numerous restorative programmes) which is “an intervention model that allows for a more timely and relevant provision

⁹ *Ibid.*

of Restorative Justice services to youth in residential care facilities who come into conflict with the law and are referred to the Nova Scotia Restorative Justice (NSRJ) program.”¹⁰

Bringing restorative justice practice into mainstream criminal justice system is important for the legitimacy and validation of the principles that validate and impel the pursuit of restorative justice.

This means that the control of restorative initiatives, processes, policies and practice should involve restorative justice practitioners. Clearly, there must be synergy between restorative justice practitioners and other personnel of the criminal justice agencies who work in the administration of justice. Understandably, legal officers, crown counsel or defence attorneys do not necessarily need to oversee a restorative process, which is why trained restorative justice personnel are required to work with police officers, prosecution counsel, defence attorney and judges at various stages of criminal proceedings. This point also highlights the importance of periodic training across the board on the subject as an important element of the criminal justice system.

6.4. Restorative Justice and the Implementation of Juvenile Justice Policies

This work focused especially on how restorative justice practice can be utilized to deliver juvenile justice reform policies enshrined in the *Nigerian Child Rights Act, 2003* and other child rights laws across the states of the federation. Both New Zealand and Canada, as discussed in chapters 3 and 4, show that adequate legislative rules are required for the delivery of restorative justice initiatives for youth criminals. The inclusion of restorative justice policy initiatives to help administer youth criminal justice would help to improve this aspect of the juvenile justice system in Nigeria as well. The *Nigerian Child Rights Act, 2003* is arguably being under-utilized in the protection and rehabilitation of young offenders. For instance, Section 212(1)b of the Act allows for the partial

¹⁰ Community Justice Society, Restorative Options for Youth in Care, online: <http://communityjusticesociety.org/Programs/category/restorative-options-for-youth-in-care-program>

use of detention pending trial but this can “be replaced by alternative measures” which may include restorative initiatives as provided under the Act.¹¹ The situation of young persons in Nigerian prisons has been decried by United Nations International Children’s Fund (UNICEF) through the agency’s envoy who visited Nigeria recently.¹² It was reported that there are currently many children languishing in the prisons across Nigeria. However, it is difficult to ensure protection of Nigerian children in a situation where all prisons in the country are under the exclusive control of the federal government and there are still states that are yet to domesticate the Child Rights Act. Hence, there is the need for a uniform national framework to guarantee protection of children and administration of the juvenile justice system in Nigeria.

Similarly, the Young Persons and Their Family Act, 1989 in New Zealand, introduced the Family Group Conferencing (“FGC”) which embodies principles and procedures for dealing with youth crime. The FGC constitutes a viable restorative measure “designed to eliminate the blurring of principles and processes between care and protection and youth justice, which characterized the previous approach.”¹³ Restorative justice practice is popular with judges as a form of diversion away from the formal criminal justice system for young offenders. For example, twelve judges in Toronto, Canada, half of whom had experience in exercising youth court jurisdictions cautiously expressed their support for the use of restorative justice measures for young offenders and Indigenous people.¹⁴ In Nigeria, there is no such commitment from the judiciary thus far.

This work is intended to spark an important conversation about the direction that the Nigerian criminal justice system can take drawing on the experiences and lessons learned from New Zealand

¹¹ The Child Rights Act, s.212(1)b.

¹² *Many Nigerian Children languishing in Prisons — UNICEF*, The News, Newspaper, (August 3, 2017), online: <http://thenewsigeria.com.ng/2017/08/many-nigerian-children-languishing-in-prisons-unicef-2/>

¹³ M. P. Doolan, *Youth Justice- Legislation & Practice*, in B.J. Brown, et al, eds. *The Youth Court in New Zealand: A New Model of Justice*, New Zealand, Legal Research Foundation, 1993, at 17.

¹⁴ Kelly Richards, Lorana Bartels, and Jane Bolitho. "Children's Court Magistrates' Views of Restorative Justice and Therapeutic Jurisprudence Measures for Young Offenders." (2017) 17.1: Youth Justice 22-40.

and Canada. The information considered in the research may help the Nigerian government and other actors in the criminal justice system to be aware of important developments and positive changes occurring in other common law jurisdictions. This effort further reflects the argument that legal borrowing is undeniably a process of legal development.¹⁵ However, consideration must be given to culture and the nature of society in the process of helpful legal acculturation.¹⁶ Cultural awareness is demonstrated in the way New Zealand institutionalized its restorative justice practices and other criminal justice reform initiatives with socio-cultural effects.

In the final analysis, lack of fund and absence of political will on the part of the federal government of Nigeria may slow down the potential to integrate restorative justice with the current system of criminal justice administration in the country. The current regime of fiscal federalism in practice in Nigeria substantially favours the federal government over the states. The federal government of Nigeria commands 53 percent of the country's monthly revenue allocation, compared to 30 percent available for the states.¹⁷ The Attorney-General of the Federation and the states' Attorneys-General must come together to find some viable solutions to improve the administration of criminal justice in Nigeria. There is no better time than now for Nigeria to overhaul its criminal justice system. The incumbent government seems willing to follow through on its campaign promise to deliver criminal justice sector reform.¹⁸ The ruling party in Nigeria, the All Progressive Congress (APC), recently released its ad hoc Committee report on legal restructuring. Some of the recommendations in the Committee's report with respect to police reform and devolution of powers are germane to

¹⁵ Alan Watson, *Legal Transplants and European Private Law*, (December 2000) 4:4 Electronic Journal of Comparative Law, online: <https://www.ejcl.org/44/art44-2.html>

¹⁶ Pierre Legrand, *The Impossibility of 'Legal Transplants'* (1997) 4:2, Maastricht Journal of European and Comparative Law, at 111 – 124.

¹⁷ Chibuike U. Uche & Ogbonnaya C. Uche, *Oil and the Politics of Revenue Allocation in Nigeria* (2004), African Studies Centre Leiden, The Netherlands, online: <http://www.ascleiden.nl/pdf/workingpaper54.pdf>

¹⁸ Olawale Fapohunda, *2017: Administration of Justice Reform, Policy Options for Buhari Government* (January 3, 2017), online: <https://www.thisdaylive.com/index.php/2017/01/03/2017-administration-of-justice-reform-policy-options-for-buhari-government/>

the administration of criminal justice.¹⁹ One may hope that the government of Nigeria and other relevant bodies and organizations would consider some of the ideas and lessons in this work on how to bring a regime of effective restorative justice practices into their criminal justice reform agenda and to pursue them for Nigeria's benefit.

¹⁹ *APC panel report on restructuring*, Editorial, Punch Newspaper, (February 14, 2018), online: <http://punchng.com/apc-panel-report-on-restructuring/>

BIBLIOGRAPHY

International Materials

UN Documents

Economic and Social Council Resolution on Basic principles on the use of restorative justice programmes in criminal matters 24 July 2002, E/2002/30 and Corr.1

International Covenant on Civil and Political Rights, 19th December 1966, 999UNTS171, arts 9-14

Convention on the Rights of the Child, United Nations Treaty, 7 November 1989, No. 27531, RES 44/25

Other International Documents

Amnesty International, Prisoners' Rights Systematically Flouted, AI Index: AFR/44/001/2008

Legislation

Canada

The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982

Constitution Act, 1867, R.S.C. 1985

Criminal Code, R.S.C. 1985

The Juvenile Delinquents Act, R.S.C. 1970

Young Offenders Act, RSC 1985

Youth Criminal Justice Act, S.C. 2002

New Zealand

Children, Young Persons, and Their Families Act 1989 (NZ) 1989/24

The Parole Act 2002(NZ) 2002/10

The Sentencing Act, 2002(NZ) 2002/09

The Victims' Rights Act 2002(NZ) 2002/39

Nigeria

Administration of Criminal Justice Laws of Lagos State, 2011

Administration of Criminal Justice Act, 2015

Constitution of the Federal Republic of Nigeria, 1999 Cap 23 LFN 2004

Criminal Code Act- CAP. C38 L.F.N. 2004

Criminal Justice (Release from Custody) (special provisions) Act (Formal Decree No. 19 of 1977; now C40, LFN 2004)

Evidence Act, No. 18., 2011

Penal Code (Northern States) Federal Provisions Act - CAP. P3 L.F.N. 2004

Jurisprudence

African Continental Bank v. Nnamani, CA/B/158/90. 3PLR/1991/17 (CA).

Ahmed v The State (1999) 7 NWLR (Part 612) 641 at 673

R. v. C. D 2004 ABCA 77, 2004 Carswell, Alta 235

R v. Clotworthy (1998) 15 CRNZ 651 (CA).

R. v. Ipeelee, 2012 SCC 13, [2012] 1 S.C.R. 433

Rv. Gladue, 1999 CarswellBC 778

R. v. Moses (1992), 71 CCC (3D) 347 (Yukon Territorial Court)

Willie v Ibiok (2012) 52 WRN

Secondary Material: Articles

Adam, Crawford and Todd, R. Clear, *Community justice: Transforming communities through restorative justice? In Restorative community justice: Repairing harm and transforming communities*, ed. Gordon Bazemore and Mara Schiff, (2001 Cincinnati, OH: Anderson Publishing Co.). 127-149

Ademowo, J. Adeyemi 'Conflict management in Traditional African Society' In Ademowo, A.J et al (Eds.) *Engaging the Future in the Present: Issues in Culture and Philosophy*. (Ibadan: Hope Publications, 2015). Pp 1-5

Akinwumi, Silas Olayinka, *Legal Impediments on the Practical Implementation of the Child Right Act 2003*, International Journal of Legal Information the Official Journal of the International Association of Law Libraries

Alain, Marc and Desrosiers, Julie, *A fairly Short History of Youth Criminal Justice in Canada*, in Marc Alain et al ed., *Implementing and Working with Youth Criminal Justice Act, Across Canada* (Toronto, University of Toronto Press, 2016) p.24

Archibald, P. Bruce, *Let My People Go: Human Capital Investment and Community Capacity Building Via Meta/Regulation in a Deliberative Democracy - a Modest Contribution for Criminal Law and Restorative Justice* (2008), 16 *Cardozo Journal of International and Comparative Law*, Pp.1-85

Archibald, P. Bruce, *Crime and Punishment: The Constitutional Requirements for Sentencing Reform in Canada*, *la revue juridique thémis*, (1988) vol.22, no.3, p. 307-345

Archibald Bruce & Llewellyn, Jennifer, *The Challenges of Institutionalizing Comprehensive Restorative Justice: theory and Practice in Nova Scotia*, *Dalhousie Law Journal*, Fall 2006, Vol.29(2), pp.297-343

Archibald, P. Bruce, *Coordinating Canada's Restorative and Inclusionary Models of Justice: The Legal Profession and the Exercise of Discretion under a Reflexive Rule of Law* (2005) *Canadian Criminal Law Review*, vol. 9. 215-260

Arnold, Christopher, *Corrective Justice, Ethics*-The University of Chicago Press, Vol. 90, No. 2 (Jan. 1980), pp. 180-190

Atilola, Olayinka, "Different Points of a Continuum? Cross Sectional Comparison of the Current and Pre-Contact Psychosocial Problems among the Different Categories of Adolescents in Institutional Care in Nigeria." *BMC Public Health* 12 (2012): 554. PMC. Web. 7 Mar. 2018

Bazemore, Gordon and Walgrave, Lode, *Introduction: Restorative Justice and the International Juvenile Justice Crises*, in Gordon Bazemore et al eds. *Restorative Juvenile Justice: Repairing the Harm of Youth Crime* (New-York, 1999, Willow Tree Press. Inc.) pg. 1

Bell, Sandra, *Commission of Inquiry and Judicial Reform in Nova Scotia*, in Marc Alain et al ed., *Implementing and Working with the Youth Criminal Justice Act across Canada*, (Toronto, University of Toronto Press, 2016) 199-228

Boyack, Jim, Bowen, Helen and Marshall, Chris, *How does Restorative Justice Ensure Good Practice? In Howard Zehr et al eds. Critical Issues in Restorative Justice* (New York, Criminal Justice Press 2004) p. 265

Braithwaite, John "Accountability and Responsibility through restorative justice." (2006) In Michael W. Dowdle, Ed., *Public Accountability, Designs, Dilemma and Experiences*. Cambridge, UK: Cambridge University Press. Pp. 33-51.

Braithwaite, John, 'Principles of Restorative Justice,' in A. Von Hirsch, J. Roberts, A.E. Bottoms, K. Roach and M. Schiff (eds), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* 2003, Oxford: Hart Publishing. P.1-20

Braithwaite, John and Roche, Declan, *Responsibility and Restorative Justice*, in Gordon Bazemore et al *Restorative Community Justice: Repairing Harm and Transforming Communities* (Ohio: Anderson publishing co. 2001) pp. 63-78

- Braithwaite, John, *Principles of Restorative Justice, Restorative Justice & Criminal Justice: Competing or Reconcilable Paradigms?* Ed. In Andrew Von Hirsch et al. (North America (Oregon, US, Hart Publishing, 2003) p.8
- Carruthers, David, *Restorative Justice: Lessons from the Past, Pointers for the Future*, (2012) 20 Waikato L. Rev. 1, 29.
- Cunnen, Chris, *Reparations and Restorative Justice: Responding to the Gross Violation of Human Rights*, in James Braithwaite et al, ed. *Restorative Justice and Civil Society*, (2001 Cambridge, UK) pp 83-85
- Daniel W. Van Ness & C. E., Crocker, *Restorative Justice: Definition, Principles, Values and Goals*, John Marshal Law Review, Vol.28. Issue 1, (2003) p. 1-25
- Dignan, James, *Juvenile Justice, Criminal Courts and Restorative Justice*, in Gerry Johnstone et al eds., *Handbook of Restorative Justice*. Cullompton, Devon: Willan Publishing. pp. 269-291
- Duff, Anthony, *Restoration and Retribution*, in Andrew Von Hirsch et al, eds. *Restorative Justice and Criminal Justice* (Oxford and Portland, Oregon, Hart Publishing, 2003) pp. 43-59
- Ebbe, N.I. Obi, *The Judiciary and Criminal Procedure in Nigeria*, in Obi Ebbe et al, 3rd ed, *Comparative and International Criminal Justice Systems: Policing, Judiciary and Corrections*, Florida, Taylor & Francis Group, 2003, p. 202
- Ebbe, N. I. Obi, *The Juvenile Justice System in Nigeria*, in Paul C. Friday et al eds., *Delinquency and Juvenile Justice Systems in the Non- Western World in the Non- Western World*, (UK, Lynne Rienner Publishers, Inc. 2010) p.49
- Fourchard, Laurent, '*Lagos and the Intervention of Juvenile Delinquency (1920-1960)*', *Journal of African History*, 47 (2006) 127
- Hudson, Barbara *Understanding Justice: an introduction to ideas, perspectives, and controversies in modern penal theory*, Buckingham, Philadelphia, Open University Press, 2003, p. 75.
- Iyabode Ogunniran, '*A Centurial Legal History of Child Justice Reforms in Nigeria 1914-2014*', (2015), *SOLON Law, Crime and History*, University of Plymouth Press, Vol.5, Issue 2, pp. 44-68
- Jasso, Guillermina *A new Theory of Distributive Justice*, *American Sociological Review*, vol. 45, issue 1, (February 1980) pp. 3-33
- Johnstone, Gerry, *How, And in What Terms, Should Restorative Justice Be Conceived* in Howard Zehr et al eds. *Critical Issue in Restorative Justice* (New York, Criminal Justice Press, 2004) P. 9
- Jonathan, Rudin, *Aboriginal Justice and Restorative Justice*. In Elizabeth Elliott and Robert M. Gordon, eds., *New Directions in Restorative Justice: Issues, Practice, Evaluation*. Cullompton, (2005 UK: Willan Publishing). Pp. 89-114.

Lammers, Marianne, *Toward cultural safety: experiences of a Non-Māori therapist working with Māori clients: part 2*, Psychology Aotearoa published by The New Zealand Psychological Society (2012) Vol. 4, issue 1, p. 19-23

Lilles, Heino "*Circle Sentencing: Part of the Restorative Justice Continuum*" in Allison Morris and Gabrielle Maxwell (eds) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Hart, Oxford, 2000) p. 167

Llewellyn, Jennifer et al, *Imagining Success for a Restorative Approach to Justice: Implications for Measurement and Evaluation* (2013) 36:2 Dalhousie Law Journal, 282-316.

Llewellyn, Jennifer and Howse, Robert, *Institutions for Restorative Justice: The South African Truth and Reconciliation Commission*, The University of Toronto Law Journal Vol. 49, No. 3, (Summer, 1999), pp. 355-388

Llewellyn, Jennifer, *Truth Commissions and Restorative Justice* in, Gerry Johnstone et al eds. *Handbook of Restorative Justice* (Cullompton, Devon: Willan Publishing, 2007). P.352

Mangena, Fainos, *Restorative Justice's deep roots in Africa*, South African Journal of Philosophy, vol.34, issue 1 (2005) p. 1-12

Masters, Guy, *What Happens When Restorative Justice Is Encouraged, Enabled And/or Guided by Legislation?* In Howard Zehr et al eds. *Critical Issues in Restorative Justice* (New York, Criminal Justice Press 2004) p.228

Maxwell Gabriel and Morris, Allison, *Rethinking Youth Justice: A Comment on Proposals by New Zealand and young person service to amalgamate youth justice and care and protection services* (1994), Wellington, Victoria University. P.1-17

McCold, Paul, *The recent history of restorative justice: Mediation, circles, and conferencing*, in Dennis Sullivan et al ed., in *Handbook of Restorative Justice*, (London, Routledge, 2008), p. 30

McCold, Paul & Wachtell, Benjamin, *Restorative Policing Experiment: The Bethlehem Pennsylvania Police Family Group Conferencing Project* (Pipersville, PA: International Institute of Restorative Practices.

Morris, Allison & Maxwell, M. Gabrielle, *Juvenile Justice in New Zealand: A New Paradigm*, Australian & New Zealand Journal of Criminology, (1993), Vol.26, Issue 1, p. 72-90

Nmehielle, O. Vincent, *Sharia Law in the Northern States of Nigeria: To Implement or Not to Implement, the Constitutionality Is the Question*, Human Rights Quarterly, The Johns Hopkins University Press, Vol. 26, No. 3 (Aug. 2004), pp. 730-759

Nosike, O. Iguh, *An Examination of the Child Rights Protection and Corporal Punishment in Nigeria*, Nnamdi Azikiwe University Journal of International Law and Jurisprudence (2011) Vol.2. Issue 7, p.102

- Oduwole, Olufemi Ebunoluwa, *Punishment as a form of legal order in an African society*, Educational Research (ISSN: 2141-5161) Vol. 2(5), 2011 pp. 1124-1129
- Ogbuabor, A. Chukwunweike, *Inquisitorial and Adversarial process in Nigeria's criminal justice system: the dilemma of a colonized state*, University of Western Australia Law Review, Vol.38, issue 2), p.175-199
- Omale, O. Don John, *Justice in History: An Examination Of 'African Restorative Traditions' and The Emerging 'Restorative Justice' Paradigm*, African Journal of Criminology & Justice Studies, Volume 2, No. 2, (2006) pp.33
- Onyeozili Emmanuel C., *Obstacles to Effective Policing in Nigeria*, (April 2005) 1:1, African Journal of Criminology and Justice Studies, p.37
- Orsman, Jessica, *The Treaty of Waitangi as an Exercise of Maori Constituent Power*, University of Victoria Wellington Law Review, (2012) Vol.43, Issue 28, Pp.345- 372
- Perry, Ronen, *The Third Form of Justice, Critical Notice: Corrective and Distributive Justice: From Aristotle to Modern Times* by Izhak England, Canadian Journal of Law and Jurisprudence, 2010, Vol.23 (1), p.233-247
- Ribeiro, João Sérgio, *Distributive Justice Through Taxation: European Perspective*, Minho University School of Law, (2006) Jurisprudencija, Vol. 2, Issue (80); p. 80–89
- Roberts, V. Julian and Bala, Nicholas, *'Understanding Sentencing under the Youth Criminal Justice Act.'* (2003) 41(2) Alta L Rev 395 at p. 407
- Roche, Declan, *Retribution and Restorative Justice*, in Gerry Johnstone, et al eds. (Cullompton, Devon, UK, Willan Publishing, 2007) pp. 75-89
- Roberts, V. Julian, *Sentencing Reform in New Zealand: An Analysis of the Sentencing Act 2002*, (2003), 36:3Australian & New Zealand Journal of Criminology p. 249-271
- Roach, Kent, *The institutionalization of Restorative Justice in Canada: effective reform or limited and limiting add-on*, in Ivo Aertsen et al eds. *Institutionalizing Restorative Justice* (UK, 2006, Willan Publishing) p. 167
- Roach, Kent, *Four Models of the Criminal Process*, (1999), vol. 89, Issue 2, J. Crim. L. & Criminology 671
- Schmid, J. Donald, *Restorative Justice: A New Paradigm for Criminal Justice Policy*, Victoria U. Wellington L. Rev. (2003), Vol.34, Issue 91, p. 105
- Stuart, Barry, *"Circle Sentencing in Canada: A Partnership of the Community and the Criminal Justice System"*, (1996) vol. 20, Issue 2, International Journal of Comparative and Applied Criminal Justice, p. 291

- Stuart, Barry and Pranis, Kay, *Reflections on Principal feature and Primary Outcomes*, in Dennis Sullivan et al. in *Handbook of Restorative Justice- Global Perspective* (London & New-York, Routledge Taylor and Francis Group, 2008) p.121
- Sugin, Linda, *Theories of Distributive Justice and Limitations on Taxation: What Rawls Demands from Tax Systems*. Fordham Law Review, Vol. 72, 2004.
- Swain, David, *Family Group Conferences in Child Care and Protection and in Youth Justice in Aotearoa/New-Zealand*, (1995) 9 Int'l J.L. & Fam. 155, 207
- Tompsonski, Babrara, *Restorative Justice and Community Justice in Canada*, *Restorative Justice Journal* Vol2(2) (Regina, Routledge Taylor and Francis group, Regina 2014) pp.218-224
- Tonry, Michael, *The Prospects for institutionalization of restorative justice initiatives in western countries*, in Ivo et al. eds. *Institutionalizing Restorative Justice* (Portland, Oregon Willan Publishing, 2006) p. 1-25
- Twinning, William, *"Diffusion of Law: A Global Perspective: "* The Journal of Legal Pluralism and Unofficial Law 36.49 (2004), 1-45
- Urban, Walker Margaret, *"Restorative justice and reparations."* Journal of Social Philosophy 37.3 (2006): 377-395
- Villa- Vicencio, Charles, *Transitional Justice, restoration and prosecution, in Dennis Sullivan et al Handbook of Restorative Justice*, New York, Routledge, 2006, p. 387
- Van Ness, W. Daniel, *Justice that Restores*, Journal of Religion and Spirituality in Social Work, Social thought, Vol. 23, Issue, 1-2, 2004
- Van Ness, W. Daniel & Crocker C. E., *Restorative Justice: Definition, Principles, Values and Goals*, John Marshal Law Review, Vol.28. Issue 1, (2003) p. 1-25
- Watson, Alan, *The Birth of Legal Transplants*, 41 Ga. J. Int'l & Comp. L. (2012-2013) p. 607
- Waugh, Brenda, *Who Will Choose the End Words? Structuring Justice Amid Tragedy*, Washington University Journal of Law & Policy, (2011), Vol. 36 Issue 141, p. 142
- Zellerer, Evelyn and Cunnen, Chris, *Restorative Justice, Indigenous Justice and Human Rights*, in ed. Gordon Bazemore et al, *Restorative Justice-Repairing Harm and Transforming Communities* (Ohio, USA, Anderson Publishing Co. 2001) p.245
- Zehr, Howard, *Changing Lenses, A New Focus for Crime and Justice*, (Pennsylvania Waterloo, Ontario, Canada: Herald Press, Scottdale, 1990), pp.83-94
- Zehr, Howard, *"Retributive Justice, Restorative Justice"* *New Perspectives on Crime and Justice-* Occasional Paper Series (Kitchener: Mennonite Central Committee, Canada Victim Offender Ministries 1985) at p.12

Secondary Material: Monographs

Atilola, Olayinka, "Different Points of a Continuum? Cross Sectional Comparison of the Current and Pre-Contact Psychosocial Problems among the Different Categories of Adolescents in Institutional Care in Nigeria." *BMC Public Health* 12 (2012): 554. PMC. Web. 7 Mar. 2018

Bazemore, Gordon and Schiff, Mara, *Introduction*, in Gordon Bazemore et al *Restorative Community Justice: Repairing Harm and Transforming Communities* (Ohio: Anderson publishing co. 2001) p.375

Bazemore, Gordon & Griffiths, Curt, *Police reform, restorative justice and restorative policing*, *Police Practice and Research* Vol. 4, Issue 4, 2003, p. 335

Braithwaite, John, "Accountability and Responsibility through restorative justice." (2006) In Michael W. Dowdle, Ed., *Public Accountability, Designs, Dilemmas and Experiences*. Cambridge, UK: Cambridge University Press. Pp. 33-51.

Crocker, Diane, *The Effects of Regulated Discretion on Police Referrals to Restorative Justice*, 36 *Dalhousie L.J.* (2013) at p. 393

Declan, Roche, *Retribution and Restorative justice*, in Gerry Johnstone et al, eds., *Handbook of Restorative Justice* (Oregon, Willan Publishing 2007) 75-85

Declan, Peter & Schulenberg, Jennifer, "Structuring Police Discretion: The Effect on Referrals to Youth Court" (2008) 19 *Crim Jus & Pol Rev* 349 at 350

Doolan, P. Michael, *Youth Justice- Legislation & Practice*, in B.J. Brown, et al, ed. *The Youth Court in New Zealand: A New Model of Justice*, New Zealand, Legal Research Foundation, 1993, p.17

Duff Anthony, "Restoration and Retribution", in Andrew Von Hirsch et al, eds. *Restorative Justice and Criminal Justice* (Oxford and Portland, Oregon, Hart Publishing, 2003) pp. 43-59

Eagleton, Terry & Payne, Michael *The Significance of Theory*, (Oxford, UK, Willy-Blackwell, 1991) P.25

F.W.M. McElrea, *The Youth Court in New Zealand: A New Model of Justice*, Legal Research Foundation (New Zealand,1993) p.5

Hayes, Hennessey and Maxwell, Gabrielle and Morris, Allison, *Conferencing and Restorative Justice* In, Dennis Sullivan and Larry Tifft editors, "Handbook of Restorative Justice" *A Global Perspective*. London and New York: Routledge. Taylor & Francis Group, (2006). pp.91-104

Hirini, Mead Tikanga Maori (Revised Edition): *Living by Maori Values*, (2016, Huia (NZ) Ltd, p.30

Hoshschild, Jennifer L., *What's fair? American Beliefs about Distributive Justice*, (Cambridge, Massachusetts, and London, England, Harvard University Press, 1981) p.46-47

Jessica Orsman, *The Treaty of Waitangi as an Exercise of Maori Constituent Power*, (2012) 43:28, University of Victoria Wellington Law Review, Pp.345- 372

Judah, Eleanor Hannah & Bryant, Rev. Michael, *Rethinking Criminal Justice: Retribution vs. Restoration* in Eleanor et al eds. *Criminal Justice: Retribution vs. Restoration* (New-York, the Haworth Press, 2004) p. 96

Johnstone, Gerry, *Mediation, participation and the Role of community*, In *Restorative Justice: Ideas, Values, Debates* (New-York, USA, Routledge, 2002) p. 235

Johnstone, Gerry, *Restorative Justice: Ideas, Values, Debates*, (New -York, Routledge, 2011) 2ed. p. 236 Claudia Orange, *The Treaty of Waitangi*, Wellington: Bridget Williams Books Ltd., with assistance from the Historical Publications Branch, Dept. of Internal Affairs, Wellington, 1997, p.33

Johnstone, Gerry and Jaccoud, Mylene "Restorative Justice: Ideas, Values and Debates." *Canadian Journal of Law and Society* 17.1 (2002): 168-70

Kelly, Erin, "John Rawls," *Justice as Fairness-A Restatement*, (Cambridge, Massachusetts, London England, 2001) p. 5

Legrand, Pierre, *The Impossibility of Legal Transplants*, 4 Maastricht J. Eur. & Comp. L. (1997) p. 111

Llewellyn J. Jennifer & Jocelyn, Downie, "Being Relational: Reflection on Relational Theory and Health Law" (Vancouver, UBC Press 2011) p. 92

Llewellyn, J. Jennifer, *Thinking Relationally about Justice* in Jocelyn Downie et al, *Being Relational: reflection on relational theory and health law*, (UBC Press, Vancouver, 2012, pp. 98-105

Mapel, David, *Social Justice Reconsidered: The Problem of Appropriate Precision in Theory of Justice*, (Urbana vs. Chicago, University of Illinois Press) p.99

Miller, David, *Principles of Social Justice*, (Cambridge, Massachusetts, London England, Harvard University Press, 1999) p. 20

Milner, Alan, *The Nigerian Penal System*, (London, Sweet & Maxwell, 1972), p. 345

Morse, Wayne, *Constitutional Liberalism and Social Justice* in Ralph M. Aderman et al, ed. *The Quest for Social Justice* (London, The University of Wisconsin Press Ltd, 1983) pp. 5-18

Nwabueze, Ben, *Federalism in Nigeria under the Presidential Constitution*, London, Sweet & Maxwell, 1983, p.1-22

Nwabueze, Ben, *Military Rule and Social Justice in Nigeria*, (Ibadan, Spectrum Law Publishing, 1993) p. 5

Obilade, Akintunde Olusegun, *The Nigerian Legal System*, London, Sweet and Maxwell, 1979, p. 18

Olatunde, O. Olatunji, *Features of Yoruba Oral Poetry* (Nigeria: University Press Ltd, 1985) p.2

Okonkwo and Naish, *Criminal Law in Nigeria*, (London, Sweet & Maxwell, 1980) P. 92

Okonkwo, C.O., *Okonkwo and Naish on Criminal Law in Nigeria*, London. Sweet and Maxwell, 1980, p. 3.

Rawls, John, *A Theory of Justice* (Massachusetts, Belknap Press of Harvard University Press) 1971, Pp 214-224

Richards, Kelly, Bartels, Lorana and Bolitho, Jane, "Children's Court Magistrates' Views of Restorative Justice and Therapeutic Jurisprudence Measures for Young Offenders." *Youth Justice* 17.1 (2017): 22-40.

Roach, Kent, *Due Process and Victims' Rights: The New Law and Politics of Criminal Justice*, Toronto: University of Toronto Press (1999) p. 11

Roche, Declan, *Accountability in Restorative Justice* (Oxford UK, University Press, 2003) P.25

Ross, Calman, *The Treaty of Waitangi*. Auckland, N.Z., Oratia Media, 2012, p. 4

Sullivan, Dennis, *Handbook of Restorative Justice: A Global Perspective* (London, Routledge Inc., 2008) p.95

Twining, William, *General Jurisprudence: Understanding Law from a Global Perspective*. Cambridge, UK; New York: Cambridge UP, 2009

Van Ness, Daniel and Strong, Karen Heetderks, *Restoring Justice*, Anderson Publishing co. Cincinnati, Ohio, 1997, p. 156

Zehr Howard, *Changing Lenses: A New Focus for Crime and Justice*. Scottsdale, Pa.: Herald, 1990

Reports and Papers

Akinseye-George, Yemi, *Juvenile Justice in Nigeria: A Study of the Laws and Practices Relating to Juvenile Justice in Nigeria with Special Focus on the Federal Capital Territory, Abuja; Kano, Lagos, Plateau and Rivers States*, published by the Centre for Socio-Legal Studies, Abuja, Nigeria, (2009) p.1-122

Country Report on Death Penalty Application in Nigeria, presented on the 10th 12th of May 2004 at the first African Conference on Death Penalty Application in Commonwealth Africa at Uganda, page 10., published in July 2004 by HURILAWS

Emily Watt “*A History of Youth Justice in New Zealand*” (Research paper, Department for Courts, (Legal Research Foundation, Auckland), January 2003, p.5

Nicholl, C., *National Victim Center, & United States.* (2000). *Community policing, community justice, and restorative justice: Exploring the links for the delivery of a balanced approach to public safety.* U.S. Dept. of Justice, Office of Community Oriented Policing Services

Nova Scotia, Nova Scotia Government, The Nova Scotia Home for Colored Children (Nova Scotia: 2015 Report, The Nova Scotia Home for Colored Children Restorative Inquiry (RI) at P. 8

Marshal, Tony, *Restorative Justice: An Overview*, Great Britain. Home Office. Research, Development and Statistics Directorate, 1999, p.5

Van Ness, Daniel, “Restorative Justice” in Burt Galaway and Joe Hudson eds., *Criminal Justice, Restitution and Reconciliation* (Monsey, New York: Criminal Justice Press,1990) at 7

Whyte, Karibe, *The Report of the National Study Group on Death – Penalty*, instituted by the Federal Government of Nigeria, Page 16, October 2004

Electronic Sources: Internet Sites

Watson, Alan, *Legal Transplants and European Private Law*, vol 4.4 (December 2000), online: Electronic Journal of Comparative Law, <https://www.ejcl.org/44/art44-2.html>

International Institute for Restorative Justice, online: <https://www.iirp.edu/eforum-archive/4453-an-introduction-to-the-nova-scotia-restorative-justice-program-nsrjp>

Jennifer Llewelyn and Robert Howse, “Restorative Justice- A Conceptual Framework,” online: Nova Scotia Restorative Justice Community University Research Alliance, <http://www.nsrj-cura.ca/home/the-nova-scotia-restorative-justice-program>

The American National Academy of Sciences, online: <https://www.nap.edu/read/11153/chapter/2#2>

The Treaty of Cession online: https://en.wikipedia.org/wiki/Lagos_Treaty_of_Cession#References

UNICEF, online: <https://www.unicef.org/tdad/littlebookrjpakaf.pdf>

Beyond Intractability, “online: <http://www.beyondintractability.org/essay/retributive.justice>

UNICEF, online: https://www.unicef.org/tdad/index_56040.html

Nigeria Newspaper publication, “online: <http://www.vanguardngr.com/2017/01/47817-inmates-await-trial-nigeria-prisons/>

Thisday Newspaper, online: <https://www.thisdaylive.com/index.php/2017/01/09/nigeria-a-case-for-true-federalism/>

Economics and Social Affairs, “online: <http://www.un.org/esa/socdev/documents/ifsd/SocialJustice.pdf>

Centre for Justice Reconciliation, online”: <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/restitution/#sthash.oAizMpYd.dpbs>

US Department of Justice, Office of Juvenile Justice and Delinquency Prevention, “Online: <https://www.ncjrs.gov/pdffiles1/ojjdp/184738.pdf>

Daily Post Newspaper in Nigeria, online: <http://dailypost.ng/2018/02/08/herdsmen-killing-vp-osinbajo-advocates-state-police/>

African Study Centre, Leiden, Oil and the Politics of Revenue Allocation in Nigeria, online: <http://www.ascleiden.nl/pdf/workingpaper54.pdf>

This Day Newspaper, Nigeria, online: <https://www.thisdaylive.com/index.php/2017/01/03/2017-administration-of-justice-reform-policy-options-for-buhari-government/>

The Punch Newspaper, Nigeria, online: <http://punchng.com/apc-panel-report-on-restructuring/>
International Institute for Restorative practice “online: <http://www.iirp.edu/eforum-archive/4277-in-pursuit-of-paradigm-a-theory-of-restorative-justice> visited on 6/6/17

UNICEF, “ONLINE: <https://www.unicef.org/tdad/littlebookrjpakaf.pdf>

The United Nations Office on Drugs and Crime,” online: <https://www.unodc.org/unodc/en/justice-and-prison-reform/index.html?ref=menuside>

John Braithwaite, Restorative Justice: Assessing an Immodest Theory and a Pessimistic Theory, [Canberra: The Author], 1997, online: <http://trove.nla.gov.au/version/39786990>

Nova Scotia Government, online: <https://novascotia.ca/just/rj/program.asp>

Nova Scotia Government, online: <https://novascotia.ca/just/rj/documents/Authorization.NSRJP.Final%20Jan.03.pdf>

United Nations Office on Drugs and Crime, “Online: <https://www.unodc.org/unodc/en/justice-and-prison-reform/criminaljusticereform.html#restorative>

[Yukon Territorial Court, online: http://www.usask.ca/nativelaw/factums/view.php?id=124](http://www.usask.ca/nativelaw/factums/view.php?id=124)

The Correctional Service Canada “online: <http://www.csc-scc.gc.ca/restorative-justice/003005-1000-eng.shtml>

[Government of Lagos State, Ministry of Justice, “online”:](http://lagosministryofjustice.org/2017/04/19/2017-achievement-and-activities-of-ministry-of-justice-presented-by-agcj-adeniji-kazeem/)
<http://lagosministryofjustice.org/2017/04/19/2017-achievement-and-activities-of-ministry-of-justice-presented-by-agcj-adeniji-kazeem/>

[Nigerian Religious Organization, “online: http://prisonfellowshipnigeria.org/programmes/](http://prisonfellowshipnigeria.org/programmes/)
United States Department of State, *U.S. Department of State Country Report on Human Rights Practices 2006 - Nigeria*, online: <http://www.refworld.org/docid/45f0567b2f.html> [accessed 11 April 2018]

SSRN, online: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2395224

Nova Scotia Government, “online: <https://novascotia.ca/just/rj/documents/execsumm1.pdf>

The Department of Justice Canada, *The Evolution of Juvenile Justice in Canada* “online: <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/ilp-pji/jj2-jm2/jj2-jm2.pdf>

Mi’kmaq Legal Support Network in Nova Scotia, online: http://www.eskasoni.ca/departments/12/Department_of_Justice “online: <http://www.justice.gc.ca/eng/fund-fina/acf-fca/ajs-sja/cf-pc/location-emplace/ns.html>

Gordon Bazemore and Mark Umbreit, *A Comparison of Four Restorative Conferencing Models*, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, *Juvenile Justice Bulletin* (February 2001), online: https://www.nacj.org/index.php?Itemid=151&option=com_content&view=article&id=17

Karp R. David & Clear, R. Todd *Community Justice: A Conceptual Framework*, *Boundary Changes in Criminal Justice Organizations* online : https://www.ncjrs.gov/criminal_justice2000/vol_2/02i2.pdf

[CBC News Network, online: http://www.cbc.ca/news/indigenous/canada-adopting-implementing-un-rights-declaration-1.3575272](http://www.cbc.ca/news/indigenous/canada-adopting-implementing-un-rights-declaration-1.3575272)

[Donald J. Schmid, *Restorative Justice in New Zealand: A Model for US Criminal Justice*, online: http://www.fulbright.org.nz/publications/2001-schmid/](http://www.fulbright.org.nz/publications/2001-schmid/)

Wikipedia, online: https://en.wikipedia.org/wiki/Treaty_of_Waitangi

University of Waikato, Treaty of Waitangi Settlement Process: New Relationship or New Mask?
Online: <http://lianz.waikato.ac.nz/PAPERS/wayne/wayne1.pdf>

Maxwell Gabrielle And Morris Allison, Youth justice in New Zealand: A restorative model,
online: <http://restorativejustice.org/10fulltext/maxwellandmorris.html>

Thisday Newspaper, online: <https://www.thisdaylive.com/index.php/2017/01/09/nigeria-a-case-for-true-federalism/>

Premium Times Newspaper, <https://www.premiumtimesng.com/news/top-news/252715-66-nigerian-prisons-inmates-awaiting-trial-nps.html>

Government of Lagos State, “online: <http://justice.lagosstate.gov.ng/2017/07/12/lagos-opens-more-mediation-offices-across-the-state/>

Office of Directorate of Public Prosecution, “online:
<http://lagosministryofjustice.org/directorates/directorate-of-advisory-services-and-judicial-liason/>

Centre for Justice and Reconciliation, Recent Restorative Justice Developments in New Zealand/Aotearoa, online: <http://restorativejustice.org/rj-library/recent-restorative-justice-developments-in-new-zealandaotearoa/3222/#sthash.uFzAFwcc.dpbs>

Ministry of Justice, “online: <https://www.justice.govt.nz/assets/Documents/Publications/RJ-Best-practice.pdf>

New Zealand Legislation, “online:
<http://www.legislation.govt.nz/act/public/2002/0009/latest/DLM135342.html>

New Zealand Legislation, “online:
<http://www.legislation.govt.nz/act/public/2002/0039/46.0/DLM157813.html>

Ministry of Justice, “online: <http://restorativejustice.org/am-site/media/restorative-justice-best-practice-in-new-zealand.pdf>

Thisday Newspaper, online: <https://www.thisdaylive.com/index.php/2017/01/09/nigeria-a-case-for-true-federalism/>

Nigerian Niger-delta Newspaper, online:
<http://waado.org/NigerDelta/Essays/ResourceControl/Sagay.html>

Maiwa'azi Dandaura Samu, Conceptualizing & Contextualizing Restorative Justice System for Nigeria,(2013),online:

http://www.academia.edu/6779066/CONCEPTUALIZING_and_CONTEXTUALIZING_RESTORATIVE_JUSTICE_SYSTEM_FOR_NIGERIA

World Prison Brief Data, The Nigerian Prison System Information, online:
<http://www.prisonstudies.org/country/nigeria>

Nigerian Prisons Service, Summary of Inmate Population by Convict and Awaiting Trial persons as at 16th April 2018, online: <http://www.prisons.gov.ng/statistics>

Peter Duru, 47,817 Inmates Await Trial in Nigeria Prisons, Nigerian Vanguard Newspaper publication, (14 January 2017) “online: <http://www.vanguardngr.com/2017/01/47817-inmates-await-trial-nigeria-prisons/>

The Treaty of Cession, online:

https://en.wikipedia.org/wiki/Lagos_Treaty_of_Cession#References

Onyeka Igwe, Repugnancy Test and Customary Criminal Law in Nigeria: A Time for Re-Assessing Content and Relevance, (November 2014), online: Social Science Research Network (SSRN) <http://dx.doi.org/10.2139/ssrn.2528497>

Carina Tertsakian, “Political Shari’a”? Human Rights and Islamic Law in Northern Nigeria (September 21, 2004), online:

Human Rights Watch, <https://www.hrw.org/report/2004/09/21/political-sharia/human-rights-and-islamic-law-northern-nigeria>

Donald J. Schmid, Restorative Justice in New Zealand: A Model for US Criminal Justice, (August 2001) online: <http://www.fulbright.org.nz/publications/2001-schmid/>

Wikipedia, Treaty of Waitangi, online: https://en.wikipedia.org/wiki/Treaty_of_Waitangi

University of Waikato, Treaty of Waitangi Settlement Process: New Relationship or New Mask? (February 1999) Online: <http://lianz.waikato.ac.nz/PAPERS/wayne/wayne1.pdf>

Itse Sagay, *NIGERIA: Federalism, the Constitution and Resource Control*, (January 2014) Nigerian Niger-delta Newspaper, online: <http://waado.org/NigerDelta/Essays/ResourceControl/Sagay.html>