AN ANALYSIS OF THE CONCEPT OF THE RESTORATIVE JUSTICE UNDER THE NIGERIAN CRIMINAL JUSTICE SYSTEM*

Abstract

Like every other society in the history of human race, the Nigerian society is evolving. Nigeria has been testing out her penology principles starting from the pre-colonial period through the colonial and post-colonial era. With the delays in the dispensation of criminal justice and prison congestion, there have been several efforts at reform. These efforts have culminated in the Administration of Criminal Justice Act 2015. One major reform in the Act is the provisions entrenching the restorative system of justice against the retributive justice. This article shows the historical evolution of the Nigerian Penal System and reveals that Nigeria is a student of history. Nigeria has learnt that the English penology system she embraced on the eve of her colonization by the British Government, namely, the retributive justice system, has not served her well. The most veritable tool under this system of retributive justice, imprisonment, has outlived its usefulness. It was initially meant to serve as deterrence; today, this effect is no longer evident. What we see instead is recidivisms despite the harshness of this punitive system of retributive justice. Crime rate has continued to soar. In seeking alternative response to crime and social disorder, the growing dissatisfaction and frustration with this formal criminal justice system led to calls for lessons from the Nation's pre-colonial penal system. This article reveals that the country's pre-colonial penal system was victim-perpetrator-community centered. The article further shows that crime under this pre-mordial system was effectively minimized. However, the article has left for further research whether other factors contributed to the effectiveness of the pre-colonial system or whether the near crime free society Nigeria enjoyed at the time was strictly attributable to the restorative penal system.

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1. Introduction

Ancient forms of restorative justice have been used in societies and by early forms of humankind. Indigenous people such as the Aboriginals, the Inuit, and the native Indians of North and South America have used family group conferences and circle hearings. Restorative justice programmes can be used to reduce the burden on the criminal justice system, to divert cases out of the system and to provide the system with a range of constructive sanctions.

One of the greatest challenges to economic development and democratic stability in the country presently is the deteriorating state of the criminal justice system leading to high state of insecurity and poor investor confidence. That Nigerian courts and prisons are congested and in highly deplorable condition is a fact that both the government and its critics seem to be in agreement. Realizing the magnitude of this problem, successive governments at various levels (local, state and federal) have initiated programmes and projects aimed at improving the state of criminal justice delivery and access to justice generally. Regrettably, most of these efforts have failed to yield the needed results either because they were poorly conceived / implemented or as a result of the fact they largely ignore the need for innovative reforms that combines the current retributive justice system with a restorative / reparative approach[1]. The current situation no doubt calls for closer scrutiny of other options and measures for criminal justice administration.

The traditional system of punishment has failed to bring down crime rate in Nigeria. Rather, what we have is recidivism, delay in dispensation of criminal justice, prison congestion etc. One of the issues this paper seeks to address is how to solve the reoccurring problem of prison congestion. Currently, Nigeria has made moves to embrace the restorative system of justice.

[1] NK, Nwosu (of blessed memory), Criminal Justice Reforms In Nigeria: The Imperative Of Fast Track Trials; Plea Bargains; Non-Custodial Options and Restorative Justice.

Is this really new? Isn't the so-called restorative system of justice similar to what we have before the state was super imposed on tribal Nigerian societies? We intend to show in this paper that the restorative system of justice that Nigeria has recently introduced in the Administration of Justice Act, 2015, is a 'return to the root of justice, not a new-age justice for an ailing criminal justice system[2]'.

2. History of Nigerian Penology Principle: Pre-Colonial To Post Colonial

It is not in doubt that what we have today as restorative justice system has been the pre-colonial practice of the indigenous peoples of Nigeria. Before the arrival of the white man into the shores of the present day Nigeria, the pre-colonial Nigerian societies had their own criminal justice system. In these societies, the king and his chiefs would gather at the king's palace to resolve disputes between and among members of the community. The Societies had their own imprisonment system which were not punitive oriented but restorative, aimed at purging the criminal of the evil spirit that led him or to flout the rules and norms of the society. It was believed that one ordinarily would not choose to commit criminal act. If one was involved in criminal infraction, then he must have been under some unknown influence which would take the consulting of an oracle in the spirit world to tell the living what was amiss and it would take the appeasing of the gods to clean the criminal and make him whole. So, even the penology principle was restorative.

3. Punishment/Imprisonment in Pre-colonial Nigerian Society:

Here, we want to look at how crime was punished under pre-colonial traditional Nigeria. We are going to examine whether punishment was by imprisonment or fine or some other methods. We are not contending here that there was no prison system in pre-colonial Nigeria. Rather, we argue that the Nigerian prison system was not penitentiary. A few examples will illustrate this point.

[2] JJ, Liewellyn, & Howse, Restorative Justice: A Conceptual Framework, (Canada Law Commission 2002)

North-Central Nigeria: In the pre-colonial northern part of Nigeria, the offence of theft was punished by holding the thieve in custody called "stocks" of the victim until the thief was redeemed by his people with the payment of reparation or the equivalent of stolen property or damages to the victim. Also in northern Nigeria, imprisonment was also in the house or mosque; it was never a solitary affair. In the Muslim emirate in northern Nigeria, as a result of the Fulani conquest of the north, imprisonment was for penal purposes as well as tool for political oppression.

South-Eastern Nigeria: For the Igbos in the south east, the thief is held in custody and oracle is consulted to inquire the evil that led him to such a bad conduct. Another practice adopted in the Eastern part of Nigeria mostly by the Igbos is 'Nkuchi' and 'Ikwala. Among the Igbos in Nigeria, this was a form of sanction, 'Nkuchi' means 'replacement' and 'Ikwala' meant 'shaming'. Ikwala is a form of confession to the gods by the offender or his family to cleanse the land and the victim, in cases of rape, for defiling her. If the offender could stand the inherent shame in the confession, then the gods will forgive him his sins, cleanse and make him whole again. If property crime, nkuchi was more appropriate, a process whereby the offender is made to replace the item stolen. In some other places, the thief might be made to dance round the vicinity of theft telling the on lookers that he had stolen and ask for forgiveness. He may also be required to work on the victim's farm land as reparation.

Generally, however, pre-colonial Nigeria prisons were temporary places of custody until investigations were conducted. Prisons were never used for punishment.

4. Nature of Crimes under the Nigerian Laws

Section 36(12) of the Constitution of Federal Republic of Nigeria 1999 provides that:

> *"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"*

Section 2 of the Criminal Code which is the primary law on crimes in Southern Nigeria defines an offence as follows:"An act or omission which renders the person doing the act or making the omission liable to punishment under this code, or under any statute is called an offence"

The Penal Code which applies in the Northern states also defines *offence* and *illegal conducts* in Sections 28 and 29.Essentially, an act or omission is only a crime if a law made or deemed to be made by the appropriate legislative authority so prescribes. The consequence of any criminal conduct in Nigeria is whatever the law prescribes in any given case. Although imprisonment and other forms of punishment (pain) are generally prescribed under our retributive justice system, it is possible for the law creating an offence to prescribe some non-custodial measures for crimes[3].

Another important character of crimes in Nigeria is the fact that only offences defined in written laws are recognized by the constitution. For this purpose, written law refers to an Act of the National Assembly; or a Law made by a state House of Assembly; or any other regulation made under powers given directly by a law[4]. The legal effect is that customary criminal laws are now unconstitutional in Nigeria, except to the extent that any of such customs is now specifically repeated in a written law. A person in Nigeria cannot therefore be tried and punished for crimes under native laws and customs.

5. Nigerian Criminal Law and Procedure in Perspective

Nigeria operates a federal constitutional democracy, with a dual criminal justice system[5].

[3] Fine, compensation and forfeiture are other forms of punishments under Nigerian Criminal laws.
[4] Section 36(12) of the constitution cited above
[5] Constitution of the Federal Republic of Nigeria 1999 (as amended)

Regrettably, the primary laws on crime at both federal and states levels in the country are outdated, imprecise and largely incompatible with the culture and environment of the people, leading to overall inadequacy of the laws to enthrone law and order[6]. In criminal trials, the Nigerian legal system provides for right of appeal from the lowest courts – Magistrates – to the highest courts of the land – the Supreme Court. Presently, it takes average minimum of between 3 – 10 years for a case to be tried and disposed of in the courts[7]. Usually, the time frame increases where the parties exhaust their right of appeal up to the Supreme Court.

Another major feature of the Nigerian criminal justice system is the fact that most criminal defendants whether on bail or in pre-trial detention are poor citizens who are hardly able to afford the resources necessary for mobilizing effective defence to the criminal charge. The socio economic conditions in the country not only creates a situation where the poor is more likely to breach the penal laws, but also limits their capacity to escape the law either legitimately by marshalling effective defence or illegitimately through bribe.

6 The Concept of Retributive and Restorative Justice

a. Retributive Justice:

The traditional principle of penology in Nigeria is the retributive justice system. This system has its origin from the Mosaic Law in the Bible, "an eye for an eye, a tooth for a tooth". The retributive justice system is an institutionalized system of vengeance. The vengeance here is to the state because under the Nigerian law, as it is with other jurisdictions, crime is committed against the state, not against the victim who has suffered hurt or deprivation. Prosecution of the crime against the individual offender is therefore carried out by the state through the state's designated official, the Attorney-General or the Director of Public Prosecution.

[6] The substantive laws on crime at the federal level and states of the southern region date back to a Colonial Ordinance of 1915 while the while the northern states operate penal codes whose origin dates back to 1945. Only Lagos state is known to have embarked on a reasonable reform and update of its substantive and procedural criminal laws with the enactment of the Administration of Criminal Justice Law of Lagos State 2011 and more recently the Administration of Criminal Justice Act, 2015.

[7] Accurate official data on this issue is hard to find. However, estimates from works done by others in this area support the position. See Anthony Nwapa "Building and Sustaining Change: Pretrial Detention in Nigeria" in Justice Initiatives; Pretrial Detention (New York: Open Society Institute, 2008) 86; The Socioeconomic Impact of Pretrial Detention – A Global Campaign for Pretrial Justice Report (New York: Open Society Foundations: 2011) 15.

The state becomes the complainant represented by the state counsel, not the victim of the crime who suffered economic, physical and emotional injury[8]

The Nigerian Criminal Justice System has very little consideration, if at all, for the victim who could be seen as a problem for a seamless prosecution but most times is used as witness for the prosecution[9]. This is because the Nigerian criminal justice system being adversarial is offender-centered and not victim-centered. Being offender centered the system lays greater emphasis on guilt, punishment and the rights of the defendant. The question as to the needs of the victim is never asked. At the conclusion of criminal trial, the defendant if convicted is sentenced to one form of punishment or the other. This brings to an end the said pursuit of justice.

To the traditional criminal justice system, 'justice meant applying rules, establishing guilt, and fixing penalties[10]'. Justice is said to have been done to whom, if I may ask? To the State or the Community? Was the harm perpetuated by the act of crime done directly to the state? How does the individual victim sufferer of the crime restored? How is he or she compensated for his or her loss? How is he or she assuaged? What becomes of her psychological trauma, the economic loss, and the physical pains that he/she incurred and endured? How does the punishment to the defendant restored or benefit the individual victim? Does punishing the defendant even restore to the society that which has been taken away from it? Does it repair the wound to the social fabric of the society that has been injured by the criminal conduct of the defendant? How does punishing the defendant makes the society whole again?

[8] (Declaration of Basic Principles, United Nations publication Sales No. E.06.V.15).pg. 20
[9] P. Manty, Personalizing Crime: Mediating Produces Restorative Justice and Offenders; (Dispute Resolution Magazine, American Bar Association 2001) available at http://www.vorp.com
[10] H. Zehr, Changing Lenses: A New Focus for Crime and Justice, Scottsdale PA, (Herald Press 1990)

Rather than repair the damaged society, what we have in return is recidivism as we shall see later in this paper. The victim is left with nothing; he or she is abandoned to his or her fate. The victim often times feel empty and dissatisfied[11]. This unfortunately has remained the position in Nigeria till this day. As Christie explained 'victims have little or no power with respect to their case[12]'. This even explains the reluctance on some victims of crime to report crimes as no substantial benefit accrues to them, they are often made to appear in endless trials to give evidence.

b. Restorative Justice:

Restorative Justice is the practical application of some components of ADR to criminal cases[13]. The concept of restorative justice emerged as a social movement for justice reform having realized that the retributive justice has failed to bring down crime. Scholars and practitioners are beginning to look to other modes of eradicating crime from the society. With restorative concept of justice, the advocates believe that the ultimate aim of criminal justice system which is the attainment of justice for all parties and the eradication of crime from the society will be achieved using non-custodial methods of correction instead of the traditional pains of punishment and imprisonment.

7. **What is Restorative Justice**? Put simply, it is a "process whereby parties with a stake in the particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future". Restorative justice is an approach to problem solving that, in its various forms, involves the victim, the offender, their social networks, justice agencies and the community. Restorative justice programmes are based on the fundamental principle that criminal behaviour not only violates the law, but also injures victims and the community.

[11] J.J Llewellyn, & R. Howse *ibid*

[12] N. Christie, Conflicts as Property, (British Journal of Criminology 1977) pg. 15

[13] NK, Nwosu (of blessed memory), Criminal Justice Reforms in Nigeria: The Imperative of Fast Track Trials; Plea Bargains; Non-Custodial Options and Restorative Justice.

Any efforts to address the consequences of criminal behaviour should, where possible, involve the offender as well as the injured parties, while also providing help and support that the victim and offender require[14].

Restorative justice refers to a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict. Participation of the parties is an essential part of the process that emphasizes relationship building, reconciliation and the development of agreements around a desired outcome between victims and offender.

Restorative Justice is said to be a process for repairing damaged personal and communal relationships, relationships injured by the act of criminal conduct foisted by the offender on the individual or the community.

Unlike the Retributive Justice whose focus is on the offender, the focus of the Restorative Justice is the victim and its goal is how to repair wounds or injuries caused and make the victim whole or restore to position ante. The Restorative Justice also aims to restore the offender to a position of dignity and respect in the society and allow him make meaningful contribution to the society departing fully from his old unaccepted ways. Restorative justice is based on three principles that become operationalized under the guidance of a specific court system and its personnel. First, justice requires that society and its institutions work to restore those who have been injured. Second, those directly affected by crime (primarily victims and family members) should have the opportunity, if they wish, to participate in the response to crime. Third, the role of government is to preserve a just public order, and the role of the local community is to maintain a peace that might be just[15].

[14] United Nations Declaration of Basic Principles, United Nations publication Sales No. E.06.V.15).pg. 14
[15]K. Van Wormer, (2002). Social Work Today; Available at www.restorativejustice.org/rj3/Full-text/vanwormer/restorative

The concept of Restorative Justice encompasses the following principles:

i. A flexible response to the circumstances of the crime, the offender and the victim, one that allows each case to be considered individually;

ii. A response to crime that respects the dignity and equality of each person, builds understanding and promotes social harmony through the healing of victims, offenders and communities;

iii. A viable alternative in many cases to the formal criminal justice system and its stigmatizing effects on offenders;

iv. An approach that can be used in conjunction with traditional criminal justice processes and sanctions;

v. An approach that incorporates problem solving and addressing the underlying causes of conflict;

vi. An approach that addresses the harms and needs of victims;

vii. An approach which encourages an offender to gain insight into the causes and effects of his or her behaviour and take responsibility in a meaningful way;

viii. A flexible and variable approach which can be adapted to the circumstances, legal tradition, principles and underlying philosophies of established national criminal justice systems;

ix. An approach that is suitable for dealing with many different kinds of offences and offenders, including many very serious offences;

x. A response to crime which is particularly suitable for situations where juvenile offenders are involved and in which an important objective of the intervention is to teach the offenders some new values and skills;

xi. A response that recognizes the role of the community as a prime site of preventing and responding to crime and social disorder[16].

[16] UN Basic Principle supra pg. 14-15

Here we will evaluate the two principles of penology, highlighting their differences and advantages over the other.

8. Restorative Justice in the United States and Europe

At the beginning of the 21st century, crime in America was viewed by the State as an abstraction: Crime is a violation of the interests of society. To deal with this, vast bureaucratic machinery has evolved to apprehend, prosecute, and punish criminal behavior. This approach, as Stinch comb and Fox[17] pointed out, "does little to reinforce any sense of either personal responsibility on the part of the offender or personal involvement in the justice process on the part of the victim"

In an effort to deal with these issues, the concept of restorative justice has emerged in the field of criminal justice. In the United States and more prominently in Europe in the 1990s, a movement devoted to the articulation and practice of this type of restorative justice emerged. This concept emphasizes the elements of restoration and restitution and stresses maximum involvement in the justice process on the part of offenders, the victims, and the community. Van Wormer, a sociologist and social work scholar, who has written extensively in the area of restorative justice, pointed out that restorative justice has its roots in indigenous rituals of New Zealand in which shaming of the offender was used; a practice that advocates of restorative justice.

In the United States the most common type of restorative justice program involves offenders in restitution and community service[18]. Currently, there are 650 victim-offender-mediation programs in the United States. One aspect of restorative justice programs is the training of professionals in the use of mediation and conflict resolution in the criminal justice system as well as in communities and the workplace. In the United States, such training is conducted at the National Restorative Justice Training Institute in the School of Social Work at the University of Minnesota.

[17] JB, Stinchcomb, & V.B Fox, Introduction to Corrections (5th ed.1999). Upper Saddle River, NJ: Prentice Hall, pg.. 652

[18] K.Van Wormer, (2002). Social work today. Available at www.restorativejustice.org/rj3/Full-text/vanwormer/restorative

At the federal level, the U.S. Department of Justice operates the Office of Victims of Crime that provides funding to state victim-assistance compensation programs that includes coverage of medical expenses, counseling services, lost wages, homemaker expenses, and funeral and burial expenses. The National Organization for Victim Assistance, a non-profit organization, also provides assistance to victims of crime.

Another tool that was useful in restorative justice work involves the "Pre-sentence Investigation" (PSI) that has long been used in the United States and the United Kingdom. The PSI is a report prepared by a probation officer (frequently a social worker) who, after interviewing the offender, assesses his or her strengths and weaknesses and makes recommendations to the judge for a program of treatment or remediation[19]. In the United States, with the movement toward sentencing guidelines and mandatory minimum sentences, the use of the PSI has declined in importance.

9. Restorative Justice and Nigerian Pre-Colonial Justice System

As we have shown above, the Nigerian traditional justice system is restorative in nature. In this section, we are going to show what the Nigerian pre-colonial justice system shares in common with the Restorative Justice system as we know it today.

The Objective or Goal: The objective of the two systems is the same. The Nigerian traditional justice system of settlement has as its main purpose in the restoration of social equilibrium and the reconciliation of the parties[20].

The Penalties: The penalties of the two systems are equally similar; they focus on compensation or restitution so as to restore the victim to status ante. Under the two systems, the focus of penalties is never punishment.

[19] JB, Stinchcomb, & V.B Fox, (1999). Introduction to corrections (5th ed.). Upper Saddle River, NJ: Prentice Hall.

[20] S. Merry, The Social Organization of Mediation in Non-industrialized Societies: Implications for Informal Community Justice in America; in Abel (ed.): the Politics of Informal Justice. Pg. 20

According to Adeyemi, traditional justice is about restitution and because the people are governed by council of elders, their governance is transparent democracy[21]. Such restitution is not only done, it must be seen to have been done. Restitution is not done in secrecy. Tradition requires that the offender goes with his kinsmen or family members to fulfill the sanction meted to him by paying his fine or providing the items of restitution to the offended and those accompanying are to attest to that fact. Otherwise, the offender is not allowed to commune with his people until he conforms with the decision of the 'umunna' as the case may be[22].

While imprisonment is never a penalty under the traditional Nigerian Society, corporal punishment is administered on juvenile offenders[23]. This is for a good reason. At the formative stage of life, children young adults are still amenable to being deterred by corporal punishment, such as beating. Once the child remembers he will be beaten if he misbehaves, the child is deterred from committing the infraction as the beating was enough deterrent. Again, a child may not understand that he has committed an infraction if he is beaten. Spare the rod and spoil the child, it is said. A growing child needs firm direction so he will not get mixed messages and be easily blown by a wind of convenient lifestyle.

Adjudication- For serious crimes like murder, rape or witchcraft, the Nigerian traditional justice is adjudicatory, just like in the modern court system. At the end of the adjudication, guilt is determined and the victim's family will be put to its election, either to accept a penalty of compensation or banishment of the murderer from the community.

Enforcement: Enforcement of the laws and sanctions in pre-colonial Nigeria criminal justice system was achieved mainly by social pressure.

[21] AA, Adeyemi, Personal Reparation in Africa, 1994. Pg. 12
[22] S. Roberts, Tradition and Change at Mochudi: Competing Jurisdictions in Botswana, (African Law Studies 1979), pg. 27
[23] Adeyemi, *supra*

For example, because the case was decided by the people themselves, any attempt not to comply would be deemed a disobedience to the entire community which itself would attract social ostracism[24]. Ostracism amounts to a 'social death' in that the rest of the community would withdraw relationships with the ostracized and the members of the community are forbidden from relating with him or her. In other words, he is left to be alone in the society. Whatever befalls him, he is to mourn and celebrate alone. Given that Nigeria is communal in nature, there is inter dependence of one another, ostracism is very significant; it carries with it threat to the person's survival[25].

In addition to social pressure using ostracism in enforcement of sanctions under Nigerian traditional justice system, compliance is achieved by the fear of the wrath of the ancestral spirits or gods if the decision by the community is not complied with[26]. In traditional Nigerian society, it is believed that one does not actually die, rather, he transcends to the great beyond to continue to be part of and look after the family on earth. Any wrong done to the living is also wrong against the dead members of the family. Because the dead is now in the spirit world, it is believed that they have super natural powers and can see anything done in secrecy and away from the human eye. Therefore, the fear of these spirits visiting one who disobeys the community or the family is enough to compel the wrong doer to conform to the community's or family's injunctions or sanctions[27].

Restoration of social relations: After adjudication of a case between warring parties, the Council of Elders in Igbo land Nigeria would require both parties to embrace each other and eat and drink from the same bowl and cup. This marks and ensures lasting peace between the parties. It is a traditional belief in Nigeria that people who wine and dine with one another cannot harm his fellow kinsmen or neighbor.

[24] VC Igbokwe, Socio-Cultural Dimensions of Dispute Resolution: Informed Justice Processes Among Ibo-speaking peoples of the Eastern Nigeria and its implications for community/neighbouring Justice System in North America (published in: African Journal of International and Comparative Law, 1998) pg. 467

[25] S Roberts, *supra*

[26] *Ibid* at page 47

[27] P. Bohannan, Justice and Judgment among Tiv, (London Blackburn 1957) pg. 25

Wining and dining is like an oath of everlasting friendship and brother hood, such that one cannot think evil against the other. Those who participated in the peace making also partake in the eating and drinking. Usually, the guilty person provides the food and drinks for everybody. The significance of the social dining and wining is to reintegrate the offender into the fold. Thus, the traditional Nigerian justice system emphasizes reintegration of the offender, reconciliation and the maintenance of social harmony and the abolishment of ill-feelings.

In summary, the above remedies and sanctions under the traditional Nigeria justice system is in tandem with the Restorative Justice System being canvassed now by modern scholars. We have seen from the above expositions that the Nigerian traditional criminal justice aims less at punishing the offenders and concentrates more at repairing relationships and appeasing the victim. In other words, pre-colonial Nigerian criminal justice sanctions were compensatory rather than punitive and were restorative restoring the victims to status abinitio.

10. New Direction for Criminal Justice in Nigeria- Administration of Justice Act 2015

The Administration of Justice Act, 2015 (ACJA) was signed into law in May 2015. Section 1 of the ACJA contains the purpose of the Act as follows:

> The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria 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.

The Act introduced new innovations to ensure speedy dispensation of criminal justice and the protection of rights of the defendant and the victim. The Act contains certain provisions to ensure that the Act achieves its goal.

a. Establishment of the Administration of Criminal Justice Monitoring Committee- The committee is to ensure the effective and efficient application of the Act by the agencies concerned. The committee ensures that criminal matters are dealt with expeditiously, that the congestion of criminal cases in courts is drastically reduced, that prison congestion is reduced to the barest minimum and that persons awaiting trial are not detained in prison custody. There are other innovations in the Act that all together show that the objective of the Act is the speedy dispensation of criminal justice. The most important of these provisions as they relate to our discourse in this paper is what we are going to consider next.

b. The ACJA, Retributive Justice and Restorative Justice- In this section, we are going to analyze some of the provisions of ACJA to see which of the above principles the ACT promotes. As we have recorded above, Retributive Justice is a principle requiring that the offender be punished for the crime he has committed. Retributive justice is the traditional principle of justice in most criminal justice system, including Nigeria. Despite the severity of punishment and the maximum prison term, crime rate is seen to be on the rise. It does show that the intended deterrence of the punishment is elusive. Instead, in place of deterrence is recidivism. Currently, there is a shift from the Retributive Justice to an emerging global trend in the criminal justice system. This new and emerging trend is the Restorative principle of justice. Restorative justice is non-custodial measures of achieving positive result in which the rehabilitation and reintegration of the offender into the community is as important as finding a remedy to the victim and the community who have suffered the direct consequences of the crime. The use of punishment and imprisonment is jettisoned, instead alternative to imprisonment like probation, plea bargain, restitution, compensation, restoration and rehabilitation are embraced.

There are various provisions in ACJA that are driven by the concept of restorative justice above. There are some that demand special mention here in other to show clearly that the Act is driven by the Restorative justice paradigm.

a. Section 319(1) (a) ACJA- This section provides as follows:

A court may, within the proceedings or while passing judgment,

order the defendant or convict to pay a sum of money as compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict, where substantial compensation is in the opinion of the court recoverable by civil suit. Compensation to the victim is restorative. It is humane, it is recognizing that the victim is the real party, not the state as the traditional belief portrays.

b. Section 321 ACJA – Power to order restitution. The court under this section is empowered to order restitution, including returning the property to the owner or to his representative or an amount equal to the value of the property.

c. Plea Bargain- The Act also made provision for plea bargain. This provision is also restorative since it is aimed at reconciling the victim and the offender, while compensating the victim for the loss incurred as a result of the offence.

d. Sections 460-466 ACJA on Community Service- These sections provide for community service as an alternative to the traditional punishment of serving jail term. By awarding community service to the offender, the offender feels a sense of membership of the community. By serving in his community, he is being reintegrated into the community and he is made a better a person as he still retains some self-worth. This will be different if he is condemned to prison where he will be mixed with other criminals who may end up teaching him how to evade the law enforcement and not get caught in the crime.

11. The Journey So Far

How has the new legislation affected the criminal justice system in Nigeria? It may be argued that the Act is still young for its impact to be felt already. This might be the case since from the available data below, there is no significant difference between the situation now and the situation before the Act came into effect less than two years ago.

As at June 3, 2017, there are 68,259 populations of prison inmates throughout Nigeria. The pre-trial detainees constitute 67.9% of the prison population (Nigeria Prison Services, Official Statistics, 2017). So,

basically, there hasn't been much improvement as far as prison congestion with awaiting trial persons. Over the years, the prison congestion is caused by the awaiting trial persons housed in the prisons, not the convicts themselves. The reason is not difficult to see. While delay in dispensation of criminal justice explains the reason for the constant low population of convicts in prisons, police unprofessionalism and unethical practices are largely responsible for the huge number of awaiting trial and remand persons in the prisons.

The delay occasioned by the adversarial system of justice in Nigeria as well as lack of modern facilities in the courts; are responsible for the delay in treatment of cases in the courts' dockets. As a result, a very low number of cases have been concluded and sentence passed. In response to this problem of prison congestion, the federal government in 1999 passed the Criminal Justice Release from Custody (Special Provisions) Act Cap 40 Laws of the Federation 1999. There is presently a bill for the Amendment of Prisons Act which is now before the Senate of the National Assembly. The Administration of Criminal Justice Act 2015 has some laudable provisions aimed at eradicating prison congestion if strictly adhered to (ACJA, 2015).

The awaiting trial persons are on the increase because of indiscriminate arrest by the police and the wrong charges the police frame against the suspect. Right now lawyers and other stake holders are canvassing for solutions to the problem. Among the recommended solutions are:

Release of inmates by chief judges and governors- The Chief Judge of the State or the State Governor is empowered under the law to visit prisons within their jurisdiction to release the awaiting trial persons who have stayed in prison awaiting trial longer than the maximum jail term the offence for which he was arrested would attract if he was trial and convicted. The chief judge or the governors does this every quarter. This will keep the population of those in pre-trial detainees drastically reduced.

Community Service instead of prison term- Upon conviction, the convicted person may be sent to perform community service as sanction depending on the kind of infraction he/she had committed.

Plea Bargain- Here, the prosecutor and the defendant enters an

understanding for a less punishment if the defendant elects to do something in return for the prosecution. It could be to drop the charges if the defendant returns all that he has stolen from the victim. Plea bargain is a veritable tool in ensuring restoration of the victim and reintegration of the defendant.

Non Nigerian convicts to be deported to their countries to serve the prison term there. This makes sense. If the foreigner is deported to his home country, that will amount to the prison freed up by the number of such foreigners in this situation.

Administration of Criminal Justice Act 2015- The innovations in this Act are capable of tackling the problem of prison congestion if faithfully applied. Prior to the Act, the criminal procedure was controlled by the Criminal Procedure Act or the Criminal Procedure Code. These provisions were applied by the states and no significant improvement has been made to the law for so many years. While the CPA was applied in the Southern Nigeria, the CPS was applied in the Northern Nigeria. Thus the criminal justice system was polarized along these regional lines. The ACJA was therefore timely and warmly received by Nigerians as the Act has unified the hitherto divided criminal justice system

12. Conclusion and Recommendation

With the alarming congestion of prisons with Awaiting Trial Prisoners (ATPs), there is an urgent need to adopt the restorative method of adjudication to free case load and reduce ATPs and decongest the prisons. This study has evaluated the provisions of the ACJA to see that there are robust provisions that are clearing enthroning the Restorative system of justice. A host of the provisions however are still clearly retributive. The strides recorded in the ACJA are steps in the right direction. We have also shown that the Nigerian pre-colonial traditional criminal justice system is restorative in principle. When the legislators finally adopt the restorative system as the preferred principle of justice in the Nigeria criminal justice system, Nigeria will only be making a come-back to the country's original root of justice. It is strongly recommended that Nigeria adopt fully the restorative principle of justice as this system has been proven to keep crime down.