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THE EFFICACY OF RESTORATIVE APPROACH IN JUVENILE JUSTICE

(An applicable concept to the Nigerian juvenile justice system)

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INTRODUCTION

In the administration of criminal justice, the focus of most legal systems tends towards punitivism and generally the approach towards juvenile crimes has been no less so. This has proved not to be a potent force for addressing the effect of crimes especially as it concerns juveniles. Rather, with the application of the traditional approach to criminal justice, international law considerations that seeks to protect a child is constantly violated. In many countries around the world, the criminal justice system is retributive. Thus, it majors on the crime itself and prioritises punishment of the offender(s) rather than focusing on the healing of the injured or restoring the harm on the victim. This trend over time has proven not to be what's best for either society or the offender especially juveniles. When a crime occurs, the human proclivity is to circumvent punishment – and in many situations, the punishment intended to correct offenders yields the opposite result. Within the confines of the punitive system, constant interaction with other criminal minds creates opportunities not only for some offenders to get hardened but scheme more ingenious ways to better their craft and this steadily reduces the value of the punitive objective. More so, the punitive system has shown situations of human rights violation or inhumane treatment on offenders. This situation creates the need for a paradigm shift that would not only give room for holding juvenile offenders accountable but restoring the harm on victims and most importantly seeing that the protection of juveniles as encapsulated under international law is not compromised when a delinquent act has occurred.

This captures the ideas of a better approach to justice and restorative approach to justice in recent years has taken the front seat in this regard – to improve public safety and youth outcomes, and most importantly show that it's an effective approach in restoring the harm caused to a victim. Most criminal systems around the world have sparing provisions or laws that caters for situations where repentant offenders who are willing to make amends and drive significant social changes are given the chance to do so especially for juvenile offenders. The opportunity to make amend(s) for a crime committed should be as necessary as the punishment for the offence itself where one is given. This idea gives perspective to the concept of restorative approach to justice, especially with regards to juvenile offences.

Juveniles as we know are children, usually young persons who are generally categorized under the ages below which a person would ordinarily be sentenced or criminally prosecuted. Simply put, a juvenile is a child or young person who under different legal systems, will be handled

differently for an offence in a manner that may not apply an adult.¹ This international law definition means a child offender should be handled differently, in other words, protected while measures of correction are being enforced. According to the Convention on the Rights of the Child (CRC) a child means a person below the age of eighteen years unless under the law that applies to the child, the age of majority is attained earlier.² Despite how the term “child” or “juveniles” may be categorized under national law of different countries, its meaning still falls under the international legal purview of who a child is. Hence, regardless of a juvenile crime, the legal categorization does not eliminate the protection given to children under international law which almost every state in the world has ratified. With the role of punitivism in relation to juvenile crimes, it would seem states tend to forget or isolate the fact that juveniles are still children and there is a duty of care that must be held or maintained despite the commission of an offence.

The attitude of States in approaching crime with the traditional method of punishment, sadly has always failed to account for recognition of the wrongfulness of an act, reintegration of the juvenile offender, the financial cost or implication on the state, wide disparity of incarceration between coloured and white people in multi-racial systems, international legal obligations and possible human rights violation of juveniles which also occurs as a result of States failure in reviewing some of the methods or implication of the punitive approach on child offenders. One of the legal obligations on States regarding protection of children is that death sentence shall not be pronounced for crimes committed by children³ and this obligation apply to States in Africa and beyond. Whenever there’s a disregard of this provision by States, the child suffers, the community or the State loses a potential element for greatness and the core of survival and development of the child which is the base of Article 5(2) of African Charter on The Rights, and Welfare of The Child is violated. It is to the effect that States should ensure to the maximum extent possible, the survival, protection, and development of the child.⁴ The work highlights some of the injustices that juvenile offenders experience whenever the traditional approach of punitivism is set in motion. Interestingly, this approach neither solved the problem of crime

¹ 2(a) United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Adopted by General Assembly resolution 40/33 of 29 November 1985.

² Article 1, Convention on the Rights of the Child (CRC), Adopted and opened for signature, ratification, and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990.

³ Article 17 (2) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") and Article 5 (3), African Charter on The Rights and Welfare of The Child.

⁴ Article 5 (2), African Charter on The Rights and Welfare of The Child.

nor reduced recidivism for which the punitive system was set up in the first place, rather it adds to the problem of crime. In a bid to get justice for victims, this failure by States to consider the survival and development of a juvenile or child offender when a crime has been committed by the child, has projected a level of injustice on some juvenile offenders. In the case of Commonwealth of Pennsylvania V. Joseph F. Ligon, a black juvenile offender and four other black teenagers carried out a robbery, in the process some people were stabbed and two people died. They were tried together, convicted of first-degree murder, and sentenced to life in prison. This action of the state in a bid to ensure justice for the victim, brought a great deal of injustice to the juvenile offender and the community as capital punishment should never have applied to him, more so, his conviction was based largely on guilt by association. The failure of the State of Pennsylvania to review the approach of the punitive system which led the 15 years' old teenager to prison for 68 years because he was around the events of crime, defeats the wider meaning of child protection under international law.

Since Restorative justice a present a better and more favourable alternative to traditional sentencing with the potential of achieving the goals of the latter,⁵ the objective of this work seeks to analyse the applicability and effectiveness of this promising alternative as a win-win to the problem of juvenile delinquency to wit, what the main problems are in addressing juvenile crimes using traditional retributive justice approach and how restorative justice overcome these deficits. Also, it uses the Nigerian juvenile system as a case study and juxtaposes it with experiences also peculiar in systems with high juvenile crime rates like the United States to see the interoperability of international legal framework and answer the question of whether it supports the application of restorative approach to juvenile crimes. If so, what's the ramification on national laws and the accountability process on States.

This sets of discourse consequently reveal the effectiveness of restorative justice in rehabilitating juvenile delinquents, protecting juvenile offenders and preventing re-offending. In consideration of these research questions, the work tries to strike a balance between the State obligation in respect of child's right and the idea of justice. Normative practices in the administration of criminal justice substantiates justice as for only the victim and when a juvenile is involved it is no less so, whereas justice is not a one-way traffic and should not be. While the plot of the work is not a campaign that juveniles should not be held accountable for

⁵ Thom Brooks, Punitive Restoration: Rehabilitating Restorative Justice, In *Raisons politiques* Volume 59, Issue 3, 2015, pages 73 to 89

the crimes they commit or exculpated from their delinquencies, it projects a twofold solution. On one hand it ultimately argues for the universal applicability of restorative justice approach in handling all juvenile cases, to meet the needs of all parties affected by the actions of the juvenile offender and not just the victim. The reasoning is based on the effectiveness of restorative justice programs in achieving the objectives of the punitive system of justice without offenders becoming victims of crime or injustices while incarcerated or whenever punitivism is set in motion. This objective is in line with international law principles regarding protection of children and more importantly, to hold states accountable when they fail to protect juvenile offenders although they may have committed a crime.

On the other hand, juvenile offenders can get a chance at redemption. With restorative justice mechanisms, they can become better citizens, live right and be impactful to their community by way of awareness and advocacy. Some of the injustices that juvenile offenders face whenever retributive justice is applied stems from ineffective representation of counsel, sometimes it's the nature of the laws that States have created in addressing crimes, sometimes it's even the failure by the State to consider the medical condition or mental state of the juvenile offender. Also, many juveniles face human rights abuses or potential harm while incarcerated and States hasn't done much in this regard.

Prior now, researchers have mostly rationalized the concept of restorative justice approach without using the concept to address a real legal problem which are the wrongs or crimes child offender's experience, in the process of States trying to bring about justice for victims. The work lay out some of these experiences using case laws while employing qualitative methodology and secondary data analysis. To this end, it shows that restorative justice is a more effective tool that requires not only making amends for crimes committed or restoring harm but giving a second chance to juvenile offenders to become better citizens and be able to contribute based off their experiences in reducing the impact of crimes and positively affecting their community. As a result, it views incarceration as adequate, and ultimately an inefficient response to crime.

This ineffectiveness also stems from the perception that a person who has committed a crime regardless of being a child is not seen as different from any other adult offender or criminal. This social cultural inflection is highly reflected in many justice systems around the world especially those with high rates of juvenile crimes and incarceration. While, the focus of this research will be on the Nigerian juvenile justice system, namely the operability of the

Child's Right Act, how it applies to children, their treatment as offenders by the police, process of trials, the measures usually resorted to, it will also highlight the effectiveness of restorative justice approaches as a potent tool in creating a balanced response to the needs of all parties affected if applied as a means to achieving juvenile justice, especially in consideration of international legal obligations on States to protect children who by default fall under the legal meaning of the term juveniles as well as key government commitments on access to justice. In the final analysis, States not paying attention to the possible harm that can be done to a child offender when punitivism is wholly the means to an end in addressing juvenile crimes is a direct violation of their obligations under international law and treaties to protect the child.

This conceptualization gives birth to the reasoning for restorative justice approaches as the first resort in handling juvenile crimes universally, to mitigate the injustices and bleakness that can be caused to juvenile offenders when the focus is solely on punitive measures. The opening chapter of the work explores the origin and scope of restorative justice, the various restorative justice mechanisms, and the need for it as well as the Nigerian legal framework. The second chapter will reflect on the minimum age requirement for punishment, national and international legal framework vis-a-vis its operationality within the Nigerian system, and the flip side of the punitive approach, while the third chapter will look at state obligations in relation to international laws and the applicability of restorative justice to all juvenile crimes.

I. THE CONCEPT OF RESTORATIVE JUSTICE

1.1 The Nature and Scope of Restorative justice

The concept of restorative justice system is not limited in definition.⁶ Displeasure coupled with disapproval with the traditional approach of handling crimes, as well as a renewed interest in alternative approach to justice especially for child offenders, have sparked a movement for a different method in handling juvenile offences in many legal systems around the world. These alternatives allow for the parties affected by a crime and their community to be involved in handling and resolving the conflict by creating a balance whereby the needs of all impacted by the harm is met. Restorative justice essentially allows for victims to meet and communicate with their offenders to let them hear or see first-hand what the real impact of the crime had on them. It involves a face-to-face meeting with the offenders, in some cases it may involve exchange of letters or messages and the process is usually coordinated by a trained facilitator.⁷

This is what Restorative Justice entails. Restorative Justice methods is basically saying that parties to a conflict can be part of the process of solving the issues and harm that may have arisen and seek ways to mitigate the negative impact.⁸ It majors on restoring the harm caused by a crime and ensuring healing of the victim. The term restorative justice was first adopted by the American psychologist Albert Eglash in his 1959 article⁹ who later projected it as a technique of restitution.¹⁰ The idea is created to eliminate the shame and disgrace on the offender and victim, and encourage condemnation of the wrong, but more importantly given the offender a chance to remedy the wrong and reintegrate him back to society.¹¹ Cohen and Harley considered that restorative justice process can be a broader practice of strategies and procedures that acts as a pioneer approach for resolution of disputes and settlements among

⁶ Sohail Amjad, Nagina Riaz, "The concept and scope of restorative justice system: Explaining history and development of the system for the immediate need of society", *International Journal of Law*, ISSN: 2455-2194; Impact Factor: RJIF 5.12, Received: 09-06-2019; Accepted: 12-07-2019, www.lawjournals.org Vol 5; Issue 5; September 2019; Page No. 100-104

⁷ Safi Schlicht, Head of Policy, Restorative Justice Council, United Kingdom. Interview on ITV this Morning. Available at https://www.youtube.com/watch?v=VCIL0_ePEsg

⁸ UN Office on Drugs and Crime, *Handbook on Restorative justice programmes*, (2006), Criminal Justice Handbook Series, pg. 5

⁹ Albert Eglash, *Creative Restitution: Its Roots in Psychiatry, Religion and Law*, *The British Journal of Delinquency* Vol. 10, No. 2 (October, 1959), pp. 114-119 (6 pages), Published By: Oxford University Press, <https://www.jstor.org/stable/23640779>

¹⁰ Albert Eglash, *Beyond restitution: Creative restitution*. (1977). In J. Hudson & B. Galaway (Eds.), *Restitution in criminal justice: A critical assessment of sanctions*. Lexington Books: Lexington.

¹¹ Carrie Menkel-Meadow, *Restorative Justice: What is it and does it work?* Georgetown University Law Center, Washington, DC 20001, Doi: 10.1146/annurev.lawsocsci.2.081805.110005

victims and offenders¹² In modern criminal justice circles, it has been suggested that punishment is counterproductive as the only approach of addressing juvenile crimes. The idea of retribution just like the old testament eye for eye approach is now considered not only ineffective but out of place especially in consideration of the advancing the justice systems of any society and the need to achieve justice for all parties impacted by a crime.¹³ In contrast to the traditional approach which solely focuses on punishment, restorative justice is based on the principle that justice is met when there is a framework that seeks a balanced response to the needs of all parties directly or indirectly affected by the harm.¹⁴ Restorative justice requires offenders to make amends for their crimes and change their ways, as a result, it views incarceration as an incomplete and ineffective response to crime.¹⁵ It is also an opportunity for the offender to self-reflect and learn from what could have been done differently. Restorative processes create paths that can enable an offender to become a better person for themselves and society and can educate juvenile offenders thereby achieving long term goals that stem re-offending. This means that restorative justice is encompassing as its approach focuses on addressing the harm caused, creating meaningful accountability as well as meeting the needs of the people involved by means of a safe and voluntary dialogue. The underlying factor of Restorative Justice approaches is the focus on reparation of the harm through informal, meetings and gatherings with the aim of understanding both parties to the conflict and seeking healing.¹⁶ Because many victims are often marginalized by the traditional system of criminal justice, many victims desire to have a say in the process of how justice is been administered in their case and desire a face to face meeting or dialogue with their offenders mostly as means to getting closure and understanding why the crime was committed.

However, the punitive system doesn't afford victims this opportunity. Under the punitive system, offenders are encouraged by their legal representatives to plead not guilty and then argue their plea in court. For the victims, their thoughts or feelings about the crime done to them may not be conveyed or expressed in the way they want, and some don't get a legal representative of their choice as the state appoint lawyers for them in most cases as most legal

¹² Supra note 4

¹³ Austen Brauker, "Crime: The Circle Of Punishment, Treatment And Prevention" Available at: <http://ezinearticles.com/?Crime:-The-Circle-Of-Punishment,-Treatment-And-Prevention&id=5114015>. Accessed on 1/7/2021

¹⁴ Ani Comfort Chinyere (PhD), Restorative Justice: Victim Offender Mediation. Available at https://legalpediaonline.com/restorative-justice/#_ftn8 Accessed 8/8/2021.

¹⁵ Supra note 6

¹⁶ Joanna Shapland, Gwen Robinson and Angela Sorsby, Restorative Justice in Practice: evaluating what works for victim and offenders. London, Routledge, 2001, 227pp ISBN: 978-1843928454

systems in the world consider crimes against the state and not against the victim of the crime. The proper norm should be a system where affected parties are seen as seekers of the justice system and considered as stakeholders in the justice process under a broad framework.¹⁷ With the development and advancement of restorative justice policies, more attention is now given to the plight of victims, and this is geared towards ensuring greater victim protection and healing. Restorative justice provides a safe way for the victims, offenders, family, survivors, the community, basically everyone affected by a crime to discuss what happened and describe how the events of the crime affected them and rationalize their questions. In this process, answers are given to questions like the why and how of the crime, what happens to the offender, and what's best for all parties moving forward. In many instances, offenders envision what they can do to repair the harm or make things better. Restorative justice gives that opportunity and helps to understand what the victim might need from them. This solves the problem of exclusivity. The process is voluntary, inclusive, and flexible. It puts into perspective how others were affected by their actions thereby making the offender relate to the needs of the victim and then take responsibility for those actions.

Simply put, Restorative Justice entails looking past the idea retribution to seek meaningful solutions to the repair the harm that has been done.¹⁸ It employs processes of direct mediation, negotiation and conflict resolution between the offender, the victims, their families, and the community. Restorative Justice holds the offender accountable to the other parties while also providing the offender with learning experiences that offer law abiding lifestyles as realistic alternatives to criminality.¹⁹ The concept of Restorative Justice systems may be new in some societies, as it aims at applying mechanisms that do away with the regular court trial. However, as an ideology and practice, it appeals to people from all political divide with liberals advocating and pursuing criminal justice reform through individualized response, compassion and understanding for socially disadvantaged offenders, conservatives demanding accountability and restitutionary payments to victims of crime.²⁰ This idea projects restitution

¹⁷ Van Ness "New Wine in Old wineskins: Four Challenges of Restorative justice" *Criminal, Law Forum* 4 (1993): 251-76

¹⁸ *Supra* note 10

¹⁹ Debra Heath-Thornton, *Restorative Justice*, SAGE Publication's *Encyclopaedia of Crime and Punishment* (2002), Available at Britannica <https://www.britannica.com/topic/restorative-justice>

²⁰ Barnett, R. E. (1977). Restitution: A new paradigm of criminal justice. *Ethics*, 87(4), 279–301

as the new paradigm for criminal justice.²¹ With suggestions from Zehr,²² that this paradigm thinking be called restorative justice rather than restitution, it has become very relevant today in the administration of criminal justice. Contrary to some perception, restorative justice mechanisms hold the offender accountable to other parties (victim and the community), while providing the offender with learning experiences that offer upstanding behaviours as realistic alternatives to criminality.²³ These approach to resolving disputes dates back to ancient civilization and has always been available in different countries and communities in different forms till it was popularised by contemporary scholars in the 19th and late 20th centuries. For example, it was common within the communities of Southeast Asia in the form of “jarga” (panchayat), which is a system of gathering the leaders of different communities in a group to decide by consensus regarding resolution of an issue or to settle a major dispute.²⁴ Also, it was introduced in the form of “tahkim” in Islam almost fourteen centuries earlier than it was popularised as a new approach to justice by contemporary scholars.²⁵ Interestingly, this old form of restorative justice mechanism is a common traditional approach to dispute settlement in many traditional African societies, especially amongst the Igbos of eastern Nigeria. Because crime had no hiding place under most African societies, offences were addressed by the constituted authorities of the kings and rulers and the approach had the form or many guiding principles akin to restorative justice mechanisms as we now know it today. Parties affected were expected to have confidence in the tribunal that would resolve the dispute.²⁶ Handling of the conflict to bring about a better resolve was carried out by the village chiefs or community elders, who acted as the facilitators just like mediators in Victim Offender Mediation (VOM).

Using the Igbo traditional system of addressing crimes or conflict resolution as a schematic representation of restorative justice approach, one would find that the family, its council of elders including the eldest male in the line of succession known as the Okpara, the Umuada (married daughters), Umuanna (clan) and the Ohanaeze which is a meeting of the king and his subjects, were all involved in the justice or settlement process of disputes which is a pictorial

²¹ Supra

²² Zehr, H. (1985). Retributive justice, restorative justice. New perspectives on crime and justice: Occasional papers of the MCC Canada Victim Offender Ministries Program and the MCC U.S. Office of Criminal Justice, pg 4.

²³ Debra Heath-Thornton, Restorative Justice, SAGE Publication’s Encyclopedia of Crime and Punishment (2002), Available at Britannica <https://www.britannica.com/topic/restorative-justice>

²⁴ Supra

²⁵ Supra

²⁶ Ajayi, Buhari, (2014) Methods of Conflict Resolution in African Traditional Society, African Research Review, Vol. 8 (2), Serial No. 33, April 2014:138-157, ISSN 1994-9057 (Print) ISSN 2070-0083 (Online) DOI: <http://dx.doi.org/10.4314/afrrev.v8i2.9>

representation of Family Group Conferencing (FGC). This literally brings more people into the justice process, namely the wider net of those affected by the crime²⁷ and these processes are not any different from what applies in other systems. The processes generally range from mediation, reconciliation, adjudication, arbitration, and negotiation in line with the customs and traditions of the people. This mechanisms of resolving conflict were aimed at persuading those in breach of the law to change their behaviours and it was also used to show social disapproval and act as corrective measures sometimes by way of shaming to prevent reoffending.

There are two types of shaming according to Braithwaite²⁸ which are “reintegrative shaming” which is imposed on an offender to correct their behaviour, and “disintegrative shaming” which has to do with disowning and rejection of an offender where a capital crime or abominable offence was committed. In many cases within the Nigerian traditional justice system, these measures of correction were applied as offenders were required to make required sacrifices to appease the gods of the land and sometimes perform certain ritual before been accepted back into the community, having their rights and privileges fully restored. This indeed is an aspect of restorative justice.

Fast forward to modern times, the situational context of juvenile delinquency in Nigeria is not farfetched from Nigeria’s peculiar system per its socio and economic indicators. As the most populous country in Africa with over 200 million people and an annual growth rate of 2.5%²⁹, its youth population is steadily increasing, and the country has been categorized as one of the less peaceful states in the world. According to the Global Peace Index, it is the 17th on the list.³⁰ The World Bank 2020 report also indicates that 43.4% of the Nigerian population are within the ages of 0-14.³¹ This factor coupled with worsened rate of inflation, economic regression, and poverty, not only ambulates the percentage of crime, but it also evinces those issues of crime are more with juveniles or child offenders based on the population index. Within the system, there is lack of financial capacity channeled towards the protection of children’s

²⁷ Living Justice Press, A nonprofit publisher for restorative justice. Three core Restorative Justice Practices. Available at http://www.livingjusticepress.org/?Type=B_BASIC&SEC=%7BFFEB7561-1006-44AD-AEFE-1A085196F8BD%7D Accessed 8/10/2021

²⁸ Braithwaite, J. (1989). Crime, shame, and reintegration. New York: Cambridge University Press.

²⁹ World Bank Data <https://data.worldbank.org/indicator/SP.POP.GROW?locations=NG> Accessed 1/8/2021

³⁰ Global Peace Index 2021, Available at <https://www.statista.com/statistics/273160/countries-with-the-least-peace-worldwide/> Accessed 1/8/2021

³¹ World bank Report 2020, <https://data.worldbank.org/indicator/SP.POP.0014.TO.ZS?locations=NG> Accessed 1/8/2021

rights and as a result, the mechanisms for protection and promotion of children remains fragile and inadequate, and totally not in line with Nigeria's obligations under international law provisions like the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child etc. This lack of compliance with international law obligations is evident in many countries of the world based on a whole lot of reasons and in Nigeria for example, this has stirred the laws and policies in the country as repressive of human rights and personal freedoms regardless of having those laws in pen and on paper and so evidently, child incarceration within this space is not modelled towards preventive actions against future reoffending. This therefore necessitates a confluence where the needs of everyone affected by juvenile delinquencies in the country is properly assessed and given a balanced response such that while processes to restore the harm caused is being employed, the child offender does not have their life reprobated, rather the act of the crime is what should be condemned. Also, harm on a juvenile offender like police manhandling or brutality, illegal detention, human rights violation in general or even death caused by inmates or suicide within the prison system can be averted. Harm to juvenile offenders is peculiar in countries with high rate of juvenile crimes in the world and in many cases, little or no consideration is given to States obligation in respect of protecting the child regardless of the offence they may have committed.

1.1 Restorative Justice Mechanisms

In the eleventh century, the focus of crime changed from being a conflict between the victim and the offender, to a violation of the king's peace.³² The issue of crimes was no longer a matter against and/or between individuals in the community but rather one that was considered a violation against the king, thus giving the crown jurisdiction over such matters. This is the offshoot of our current criminal justice system as it evolved from that legal model with crimes viewed as violations against the state rather than against the individual victim,³³ hence, a retributive view where crime is defined by lawbreaking and guilt.³⁴ As a result, victims, offenders, and community members do not feel that the justice provided by the criminal justice system meets their needs³⁵ as their frustration is mirrored by judges, lawyers, prosecutors, and

³² Mark S. Umbreit, *Victim Meets Offender: The Impact of Restorative Justice and Mediation* 1 (1994); Daniel Van Ness, Karen Heetderks Strong, *Restoring Justice*, 135 (1997)

³³ *Ibid*

³⁴ *Ibid*

³⁵ Howard Zehr, *The Little Book of Restorative Justice* 3 (2002), Skyhorse Publishing Inc, ISBN: 978-1-56148-376-1

probation/parole officers.³⁶ The norm is that offenders are encouraged to deny their guilt for it to be proven in court, so they mostly plead not guilty to the offence and in many cases, justice can be delayed due to pending cases in the dockets of the court couple with poor judicial administration that has plagued the justice system in Many African countries, particularly Nigeria. With this state of affair, restorative justice processes appear to offer a welcome alternative to traditional sentencing practices³⁷ which has to a large extent influenced most regional judicial setup especially with regards to juveniles and should be adopted by the Nigeria justice system. A process is restorative where it involves the victim and offender voluntarily coming together with others possibly affected by the crime (the community), to be part of a conversation that can help resolve the matters arising from the offence. This meeting is usually carried out with the help of a facilitator that is experienced in getting a restorative outcome from such process. Restorative Justice mechanisms are of different characters³⁸ and the involvement of the affected parties is an essential element of the process which indicates relationship building, reconciliation and the development of agreements by the affected parties to achieve a common goal.³⁹ The restorative process itself can influence a positive transformation of the community's relationships with the State's justice system based on restorative outcomes. The restorative outcomes are the agreements reached by all parties which sometimes includes referrals to programmes like community services, reparation, restitution, or other measures. The goal is to meet the individual and collective needs of the parties and ensure processes for reintegration of the offender.⁴⁰ There are various types of restorative justice programmes. Victim-Offender Mediation (VOM), Community and Family Group Conferencing (FGC), circles, probation, community boards and panels are some of the approach. These restorative justice mechanisms have formally been incorporated into criminal proceedings necessitated by the need for justice reforms, the overall impact of which is the core of restorativeness. It aims at bridging the gap between persons who have been harmed by a crime and those responsible for the harm. These programs address both victim and offender's interests, keeping in view the satisfaction of the victims and ensuring that offenders are accountable for their crime.

³⁶ Ibid

³⁷ Thom Brooks, Punitive Restoration: Rehabilitating Restorative Justice, *Dans Raisons politiques* 2015/3 (N° 59), pages 73 à 89

³⁸ Cedric Foussard, Giulia Melotti, IJJO Paper, International Juvenile Justice Observatory; Restorative Justice for Victims in the EU. pg3

³⁹ Supra note 7

⁴⁰ Supra note 7

1.1.1 Victim-Offender Mediation (VOM)

Victim-Offender Mediation (VOM) is also known as victim offender reconciliation program (VORP). The practice is also known as victim-offender dialogue, victim-offender conferencing, or restorative justice dialogue. It was created in order to meet the needs of crime victims and see that offenders are held accountable for their actions.⁴¹ The process can be at any stage of the criminal process either at pre-trial or the post charge stages. With this approach, the police, prosecutors, probation officers or the courts may make referrals which requires both the victim and offender's willingness to participate in the process. The programmes also provide a pre-sentencing process that leads to sentencing recommendations.⁴² As one of the first restorative justice initiatives in the United States during the 1970s and 1980s,⁴³ the idea of Victim-Offender Mediation has expanded. It is one of the most widely used restorative justice practices with several programs around the world. Under the direction of a trained mediator, it gives the victim an opportunity to meet the offender and discuss how the crime has affected his/her life, during which they express concerns and how they feel about the situation and work out a restitutory agreement.⁴⁴ The meeting is characterized by an opening statement from the facilitator or mediator after which the victim and offender begins with telling their story. The next phase of the meeting involves clarification of facts and expression of feelings after which there will be a review of the victim losses and options for compensation are brought to the table. The next phase involves drafting the written restitution agreement and the climax of the meeting will see a closing Statement from the mediator.⁴⁵

The idea behind Victim Offender Reconciliation Programs is that victim and offender share a common interest to right the wrong. In some practices, the victim and the offender are joined by their family and/or community members. The process supports healing by providing an enabling space for victims to tell the offender about the crime's physical, emotional, and financial impact on them and to receive answers to lingering questions about the crime and the offender.⁴⁶ With the help of a trained facilitator, they can reach an agreement that will bring

⁴¹ Supra note 7

⁴² Supra note 7

⁴³ Leena Kurki, *Restorative and Community Justice in the United States*, 27 Crime & Justice. 235 (2000); Gordon Bazemore & Mark Umbreit, *A Comparison of Four Restorative Conferencing Models*, *Juvenile Justice Bulletin* (US Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Wash. D.C.), Feb. 2001.

⁴⁴ Mark Umbreit, *Mediating Interpersonal Conflicts: A Pathway to Peace* 143 (1995).

⁴⁵ Supra note 43

⁴⁶ US Department of Justice, *Restorative Justice Fact Sheet 1*, 11 (1997), available at <http://2ssw.che.umn.edu/rjp/Resources/Documents/USDoJ97A.pdf>

closure. Usually, the facilitator meets with the offender and victim ahead of time to help prepare them for the face-to-face meeting. This is to ensure the victim does not go through a new phase of shaming and stigmatization upon meeting with the offender and that the offender takes responsibility for their actions and honest about repairing them.⁴⁷ In cases where a face-to-face meeting is not desired by the victim or possible between the victim and the offender, indirect mediation processes can be employed by the facilitator to meet with the parties individually and still get a successful outcome. The major elements for a successful Victim Offender Mediation includes acceptance of responsibility by the offender to be accountable for their actions. Secondly, there must be willingness to participate in the mediation by all affected parties under a safe environment. In cases where Victim-Offender Mediation happens before sentencing, the conciliation agreement can be brought to court, and this may be included in the sentence or set as part of the terms in the probation order.⁴⁸ The process is designed to heal and not to blame or just punish. Usually, the victim has already acknowledged responsibility for the crime, hence, it is not a process of a fact-finding mission to determine the guilt, but a process that focuses more on developing an appropriate response to the crime already admitted.⁴⁹

1.1.2 Community and Family Group Conferencing (FGC)

This approach is based on a very old dispute resolution tradition and sanction mechanism peculiar to the Maori peoples of New Zealand.⁵⁰ Community and Family Conferencing has evolved to what can now be recognized as police-initiated diversion approach. The approach is seen in countries like Australia, Ireland, Canada, and some parts of Africa. This Restorative justice approach builds on the same basic idea of Victim-Offender Mediation, but it brings more people into the process. That is, those affected by the impact of the harm other than the victim. The goal is that they all participate in a facilitated process aimed at identifying positive outcomes for all, while the impact of the crime is been remedied and measures to prevent reoffending is put in place.⁵¹ The practice began in 1989 after the Children, Young Persons, and Their Families Act was passed in New Zealand. The Act ushered in a fresh approach to dealing with minors. Rather than having them processed through the courts with the assistance of the police and Child Protective Services, the Act empowers the family of the juvenile

⁴⁷ Supra note 7

⁴⁸ Supra note 7

⁴⁹ Anne-Marie McAlinden, Restorative Justice as a Response to Sexual Offending – Addressing the Failings of Current Punitive Approaches, [Sexual Offender Treatment, Volume 3 (2008), Issue 1], ISSN 1862

⁵⁰ Supra note 7

⁵¹ Supra note 7

offender to decide on the apt sanction for the child with the help of the victim and other community support groups. Restorative conferences afford victims and stakeholder's the opportunity to confront the offender about their actions, express how they feel, ask questions, and most importantly have a say in the outcome. The offenders on the other hand get to see first-hand how their behavior has adversely affected people and can decide to start repairing the harm they have caused, not only by tendering apologies but also agreeing to monetary reparations or community service. Ultimately, conferencing holds offenders accountable while also allowing them to personally redeem themselves from the tag of "accused or offender" and reintegrate into their community, school, or workplace.⁵² The major elements of FGC is, (1) Respect for the family and strengthening social supports; (2) Power must be given to all participants; (3) Conferences must be culturally sensitive and respectful to families; and (4) Victims must be included in the process and receive the assistance they require to repair the harm they have suffered.⁵³ Many studies have reported high levels of victim satisfaction (over 90%), offender satisfaction, and victim and offender experience of fairness with the conference process.⁵⁴ Offenders have shown more positive attitude towards policing, law and order after Restorative Justice processes compared to those who the traditional criminal justice system applied in their case⁵⁵ and Conferencing in many cases helped to strengthen the bonds between offenders and their communities.⁵⁶ The process involves the preparation phase where the mediator reaches out to both victim and offender, seeking consent, asking questions, analyzing the facts, and measuring preparedness in anticipation for the face to face meeting. The next step is the actual conference that affords the victim and offender an avenue to express their feelings about the act and the impact of the harm caused, after which discussions of adequate reparation by the offender and their family are made and the mediator sees to the execution of the agreement as binding on all.⁵⁷

⁵² Morris, A., & Maxwell, G. (1998), Restorative justice in New Zealand: Family group conferences as a case study. *Western Criminology Review* 1(1). Retrieved from <http://www.westerncriminology.org/documents/WCR/v01n1/Morris/Morris.html>

⁵³ McGarrell, E., Olivares, K., Crawford, K., & Kroovand, N. (2000). Returning justice to the community: The Indianapolis juvenile restorative justice experiment. Hudson Institute Crime Control Policy Center.

⁵⁴ McCold, P. & Wachtel, B. (1998). Restorative policing experiment: The Bethlehem Pennsylvania police family group conferencing project. Bethlehem, PA

⁵⁵ McGarrell, E. E., Olivares, K., Crawford, K., & Kroovand, N. (2000). Returning Justice to the Community: The Indianapolis Juvenile Restorative Justice Experiment. Hudson Institute.

⁵⁶ Shapland et al. (2012). Quality, probation, and desistance from crime, p39

⁵⁷ Pavlich G (2010) Towards an ethics of restorative justice. In Walgrave L (ed.), *Restorative Justice and Law*: 1–18. Cullompton: Willan Publishing.

1.1.3 Circle Sentencing

Circles is another approach in the restorative justice movement that can be used as a constructive and healing response to crime. Circle sentencing is usually available only to those offenders who have accepted responsibility for the harm they caused.⁵⁸ In this process, you have the judge, both parties and their lawyers, the police, and members of the community sitting facing each other in a circle. The conversations are aimed at reaching an agreement on the best method to resolve the issue at hand and in doing this, participants consider the expectations of the victims, the need to protect the community, and the need for rehabilitation and/or punishment of the offender. This has been referred to as a form of participatory justice. It sometimes involves members of the various criminal justice agencies within a system. The first phase of the circle process is to determine whether a specific case is suitable for it after which all the parties who will participate in the process are prepared. The next phase entails reaching an amicable agreement in the circle and taking steps to ensure that the offender fulfills his part of the agreement or comply with the outcome determined from the circle process. Unlike with the criminal courts where the sentence resolves the conflict, with the circle approach the sentence is only a part of the solution. While the criminal courts take a narrow view of the offender's behavior, community circles take a holistic approach, and the goal is that the process shapes and heals the relationships among all parties.

Through a process of reconciliation, restitution, and reparation, circle sentencing seeks to address the needs of everyone impacted by the crime. As opposed to the adversarial approach to justice, circle sentencing can relate to the needs and interests of all affected parties including the victim as it focuses on the why of the offender's behavior, i.e., the causes of such behavior and not just the problems arising therefrom. In the end, it seeks preventive measures. An infraction of the laws and approach of some criminal justice system in many ways that don't directly relate with the experiences of those impacted by the harm. They tend to focus on the offenders while overlooking the real impact on victims. They hardly address the emotional and psychology effect that arise from the crime or conflict. On the other hand, these restorative mechanisms have proved to be effective in restoring social relations between people while addressing the root cause of crimes and creating solutions to the social problems or aspect that the criminal justice approach cannot fix. Hence, the relevance of these restorative mechanisms.

⁵⁸ Supra note 7

II. PROTECTION OF JUVENILES

2.1 The Need for Restorative Justice and the Nigerian legal framework

Restorative justice mechanisms has proven to be a viable and effective alternatives to the more formal and adversarial approach of punitivism which has often plagued youth justice measures with stints of stigmatization. Many issues of juvenile delinquencies don't get to the attention of the criminal justice system⁵⁹ and even when they are brought before a judge, usually the courts purpose is mainly to determine guilt and lean towards punitive steps. This is what is largely considered as justice for the victim, without really exploiting the causes of the delinquency and how it can be mitigated. Meanwhile, juvenile crimes or crimes in generally has an impact not only on the victim but even on the offender themselves and the society. Hence, punishment of an offender alone does not solve or remedy the effects of crime neither does it meet the needs of all affected by the crime which amplifies the fact that justice is not a one-way traffic. Interestingly, restorative justice processes do not envisage justice for victims alone. There is justice for the offender and the community or those also affected by the harm as much as there is for the victim. In the Nigerian case of *Josiah vs, The State*, the court rightly observed that justice is really a three-way traffic to wit, what justice means for the accused, what justice is for the victim that is, the murdered man, the deceased, 'whose blood is crying out to heaven for vengeance' and finally justice for the society whose social norms and values had been desecrated and broken by the criminal offence.⁶⁰

Beyond retribution, restorative justice approach seeks deeper solutions to restore damaged relationships and create a balance in the justice process. The starting point of creating this balance within the Nigerian legal system was the introduction of the Children and Young Persons Act of 1943 whose purpose was seeing to the welfare of young persons, how young offenders are treated and the establishment of juvenile courts in the country. That law was amended severally and extended to the Eastern and Western Regions of Nigeria in 1946 by virtue of Order in Council (No. 22 of 1946).⁶¹ The jurisdiction to decide over any case involving Child offenders was vested on the Juvenile courts. However, with the introduction of the Child

⁵⁹ Supra note 7

⁶⁰ *Josiah v The State* (1985) 1 NWLR (Part 1) 125 at 141.

⁶¹ E.E.O Alemika, Innocent Chukwuma, Donika Lafratta, Daniel Messerli, Jarmila Souckova, Rights of the Child in Nigeria: Report on the implementation of the Convention on the Rights of the Child by Nigeria. A report prepared for the Committee on the Rights of the Child 38th Session – Geneva, January 2005, pg21

Rights Act of (2003), the exclusive jurisdiction to determine matters relating to children now vests on the Family Court. The Child Rights Act makes provision for the establishment of Family Courts by the Chief Judge of every state for the purposes of hearing and determining matters relating to Children.⁶² When juveniles err against the law, the first point of contact within the Nigerian legal system is the police. According to a study⁶³ on how they are treated by the police at the time of arrest and while been detained, about two-thirds (66.5%) of them indicated assault and verbal abuse. 64.7% were physically assaulted while 68.5% were threatened with violence.⁶⁴ Only 13.7% percent said they were well fed in police cells, and 12.9% were supplied with basic personal hygiene materials. Within facilities 45.9% reported been subjected to psychological torture with illegal detentions of 31.7%⁶⁵ exceeding the requirement of not more than 48 hours as prescribed under the law.⁶⁶ The problems of malnutrition and diseases resulting from lack of sanitation and overcrowding are very much associated with African prisons and police detention centres.⁶⁷ The table below shows how severe punishment are employed in juvenile custodial institutions which means that those institutions tends towards punishment rather than correction and rehabilitation of juvenile offenders.

Punishment type	Most often	Often	Occasionally	Never
Flogging	25.7 (115)	12.8 (57)	44.1 (197)	17.4 (78)
Kneeling	25.9 (113)	13.8 (60)	33.0 (144)	27.3 (119)
Frog jumping	26.3 (114)	9.4 (41)	33.9 (147)	30.4 (132)
Extreme physical drill	14.1 (60)	20.6 (88)	30.4 (130)	

Frequency and Types of Punishment in Custodial Institutions⁶⁸

⁶² Section 149 of the Child Rights Act of (2003)

⁶³ Rights of the Child in Nigeria, Report on the implementation of the Convention on the Rights of the Child by Nigeria. A report prepared for the Committee on the Rights of the Child 38th Session; January 2005; Geneva.

⁶⁴ T.T. Bella, O. Atilola, and O.O. Omigbodun, Children Within the Juvenile Justice System in Nigeria: Psychopathology and Psychosocial Needs. *Annals of Ibadan Postgraduate Medicine Journal*, ISSN 1597-627, 2010 Jun; 8(1): 34–39.

⁶⁵ Supra note 60

⁶⁶ Section 35 of the Constitution of the Federal Republic of Nigeria

⁶⁷ Cherubin-Doumbia, G. African Commitments to Human Rights: a review of Eight NEPAD Countries – A monograph for the African Human Security Initiative, 2004. Available at: www.africanreview.org

⁶⁸ Report on the implementation of the Convention on the Rights of the Child by Nigeria. A report prepared for the Committee on the Rights of the Child 38th Session – Geneva, January 2005

With punitive measures the courts too can err greatly and if you add this factor to the experience of juvenile offenders while in custody of the police, the child offender ends up with more harm and injustice. In the case of *Doripolo V State*⁶⁹, the accused persons spent three years in police detention awaiting trial despite being arrested soon after the crime was committed. Eventually, they were formally arraigned before the trial court on February 5, 1998, upon a one court charge of murder, which violated the provision of section 319 of the Criminal Code, Laws of Lagos State, 1994. However, in disregard to the age of the Appellant who was 16 years old at the time the offence was committed, the court convicted and sentenced him to death by hanging. It was in 2012 that judgement was reversed by the Court of Appeal. Between February 1, 1995, and November 30, 2012, a period of 17 years, the needs of the victim, the offender and the society could have been addressed with restorative approach and the injustice brought on the child offender for 17 years could have been avoided. An underlying factor from the UN report⁷⁰ prepared for the Committee on the Rights of the Child, revealed that incarcerated children showed significant mental health needs which ought to be addressed as a matter of urgency and restorative approach to justice seeks to address such needs. The punitive approach of the Nigerian State has not given real attention to other needs of juvenile offenders or even that of the society. The goal of the system largely focuses on punishment especially when the juvenile offence is a capital offence.⁷¹

The current legal provisions have accommodated restorative justice approaches but only in respect of offences of a non-serious nature. By the provision of Section 209 of the Child's Right Act 2003, The police, prosecutor, or any other person dealing with a case involving a child offender shall 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 encourage the parties involved in the case to settle the case. This means that the State recognizes the effectiveness of restorative justice approach in handling juvenile crimes. However, Subsection 2 of that provision went ahead to state that the police, prosecutor or other person referred to may exercise that power only if the offence involved is of a non-serious nature and there is need for reconciliation or the family, the school or other institution involved has reacted or is likely to react in an appropriate or constructive manner or where in any other circumstance, the police, prosecutor or other person deems it necessary or appropriate in the

⁶⁹ *Doripolo V the State*, (2012) LPELR-15415(CA)

⁷⁰ *Supra* note 58

⁷¹ See section 222 of the Child Rights Act (2003)

interest of the child offender and parties involved to exercise the power. It is not quite clear why a law that is solely in place to protect children will create provision for restorative justice mechanisms but streamline its applicability to only non-serious offences meanwhile subsection (3) of that provision is that police investigation and adjudication before the court shall be used only as measures of last resort. This implies that the State only cares about the overall interest of child offenders so long as they don't commit capital offences. The state holding dearly to the ideals of punitivism especially in relation to capital offences by juveniles as expressed under section 222 of the law is not in the best interest of the child as that provision does not give room for rehabilitation of the child offender or remedy of the harm caused. More so, the law seems to conflict with itself. For example, section 221 of the Child Rights Act provides for restriction on punishment that no child shall be imprisoned, subjected to corporal punishment, or sentenced to death. However, the same law provides in Section 222, that where the child has been found guilty of attempting to commit treason, murder, robbery, or manslaughter, or wounded another person with intent to do grievous harm, he may be detained by an order of the court for such period specified in the order.⁷² This amounts to imprisonment which goes against Article 37 of the Convention on the Rights of the Child. Replacing detention with imprisonment was just a matter of semantic convenience to empower the State to go ahead and ensure punishment of the child offender. Regardless of whether a juvenile offence is a capital crime or a simple misdemeanor, imprisonment if any kind is not an option and restorative justice measures clearly can address such harm. The law already gave room for restorative justice approach to handle non serious offences in section 209, it should also give room for such approach in cases of serious offences.

The relevance of section 222 of the Childs Right Act remains obscure by the minute and tends to portray that the state is very unwilling to give children a chance at rehabilitation once the offence is a capital crime. Because the state realizes that sentence of death cannot be pronounced on juveniles but still wants to ensure punishment for the child, that provision empowers the court to order the juvenile to be detained notwithstanding anything in the other provisions of the Act.⁷³ This approach does not give room for the values of restorativeness which is essential to juvenile justice. With any of the restorative justice approach, this situation can be fixed especially with participatory justice which can be done with collaborative efforts

⁷² Section 222 of the Child Rights Act

⁷³ Section 222(2) of the Child Rights Act

of mental health professionals, legal professionals, and other stakeholders in child welfare. Overall, there's a need to use restorative justice approach in handling juvenile cases to prevent certain factors that causes harm or injustice to child offenders while they are being detained or imprisoned. To create a balance where juveniles are not exposed to the poor living conditions, torture and degrading treatments in the police detention cells or prisons, restorative justice mechanism can be used to effectively handle juvenile crimes and achieve a win-win solution for both the victims, the juvenile offender, and the society. International law instruments which Nigeria and most states have ratified emphasizes the need for humane treatment of young offenders. Article 17 of the African Charter on the Rights and Welfare of the Child provides that every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and which reinforces the child's respect for human rights and fundamental freedom of others.⁷⁴ To ensure for this and shift the focus away from just punishment of the offence to actual solutions of the problems and restoring the harm caused, there is a need for restorative justice approaches to handling juvenile crimes within the Nigerian legal framework.

The adoption of the concept is based on the fact, that alternative methods seek a win-win solution for all affected parties, also the mental and intellectual capacity of children cannot be compared with that of adults. Children lack the ability or maturity of adults to affect their own social circumstances and make rational decisions, hence, this idea is also aimed at discouraging the State from exposing children to any formal criminal processes or subjecting them to any unwarranted ill-treatment.⁷⁵ This also is in consonance with Article 3 of the Convention on the Rights of the Child which takes an overall consideration in all actions involving children and stipulates that the best interests of the child shall be a primary consideration whether those actions are undertaken by public, or private social welfare institution, courts of law, administrative authorities, or legislative bodies. Regardless of the dynamics of customary law application in States like Nigeria and cultural beliefs in respect of punishing child offences, the values or aims of any approach must be geared towards ensuring for the juvenile a meaningful life in the community, which, during that period in life when he or she is most susceptible to deviant behaviors, will foster a process of personal development and education that is as free

⁷⁴ See also article 37 (a) to (d) of the Convention on the Rights of the Child

⁷⁵ Umejiaku, N. O, PhD and Uzoka Chisom Ngozi, LLM, *An Appraisal of Juvenile Justice Administration in Nigeria: Advocating for the Rights of Child Offenders* NAU.JCPL Vol. 6(1) 2019

from crime and delinquency as possible.⁷⁶ The example below may help depict this point more clearly.

X is a 16 year's old boy who lacks parents and social means, one day he steals, and he's caught. Under the Sharia law of the predominately Muslim Northern region, he will be subjected to amputation for theft which means he can lose his hand or leg as punishment for the offence. More so, the law is trite that Sharia Courts are not strictly bound by the provision of the Evidence Act.⁷⁷ However, if this same situation falls on the side of restorative approach to justice, restorative justice would be concerned about his story, how he journeyed to become an offender, the impact of his actions on the affected party. It will also consider how he can have a meaningful life in the community beyond accountability for the harm he may have caused thereby creating a win-win situation for both victim, offender and the society and promoting a process of redemption aimed at personal development and education that can free him from future crimes and delinquent behaviors. Restorative Justice is dynamic, it looks not only at reparation of the harm but will also consider human right issues where a child offender will be affected by such if punitive measures are taken. To this end, the need for restorative justice cannot be overemphasized. The United States remains the only member of the United Nations that has not ratified the United Nations Convention on the Rights of the Child, despite signing to it since 1995. With no federal statute regarding the minimum age of juvenile justice jurisdiction, it is common law, rules of court, judicial precedents and state legislations that determine the minimum age at which a child can be processed in the juvenile justice system in most US states. This sharp contrast to the provisions of the Beijing Rules⁷⁸ creates more injustice or harm for children in breach of the law.

The need for Restorative Justice is even the more pertinent as child offenders within this system suffer so much based on the fact that they can be tried in court where State laws allow it in respect of certain offences, a system known as statutory exclusion or prosecutorial discretion or where a juvenile court judge grants a judicial waiver based on the nature of the crime and the age of the child offender for the case to be transferred to a criminal court, in which case there's the likelihood of a stiffer punishment. This was the fate of a child offender in the case

⁷⁶ 1.2 General Principles, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985.

⁷⁷ Yole v. Tasha, (2020) LPELR-51125(CA)

⁷⁸ Article 4 of the Beijing Rules specified that the minimum age of criminal responsibility (MACR) be no younger than 12 and encouraged states not to lower their MACR to 12 if they were set higher.

of State of Tennessee V. Cyntoia Denise Brown⁷⁹ where, the defendant, a 16 year' old juvenile was tried as an adult in the State of Tennessee and if you're a juvenile convicted of first-degree murder in the State of Tennessee, the only options are either life imprisonment without parole or 51 years imprisonment at best. This sort of applicable rules to juveniles isolates every chance of rehabilitation as it means spending their most productive years behind bars and this defeats the meaning of Article 3 of the Convention on the Rights of a Child⁸⁰ because the best interests of the child has not been primarily considered. It also countervails the whole essence of juvenile justice as it tends to overlook the Minimum Age of Criminal Responsibility requirements of mental and intellectual maturity as was in the case of State of Tennessee V. Cyntoia Denise Brown. In that case, the defendant had a complicated social background that led her away from her adopted mother. She was a victim of sex trafficking. While on the run, she resulted to prostitution and one night a 43 year's old man by the name Jonny Allen picked her up and paid to have sex with her.⁸¹ However, on getting to his place, she changed her mind which resulted in a confrontation. Based on how the victim was acting towards her and in belief he was reaching for his gun and was going to kill her because she no longer wanted to have sex with him, she grabbed the gun and shot him. She was charged with criminal homicide, robbery, possession of weapon and criminal impersonation.⁸² The state announced its intent to transfer her to the adult system to be tried like an adult and did without taking into consideration the Minimum Age of Criminal Responsibility requirements like her mental state and maturity. Eventually, she was sentenced to life in imprison. The harsh punishment for the teenage victim of sex trafficking sparked outrage years later particularly after A-list celebrities via the tool of social media in 2017 drew the attention of several high-profile advocates including a US congressman to the case.⁸³ If restorative justice was applied to this case for instance, the needs of the victim's family would have been met as well as that of the offender and the community. It is not justice to satisfy only the needs of the victim. This reasoning is not in any way taking out the necessity of detention of juveniles or abolishment of prisons but's it's seeking a sense of justice for all parties affected by the harm which is something that the punitive approach to

⁷⁹ State of Tennessee V. Cyntoia Denise Brown, Appeal from the Criminal Court for Davidson County No. 2005-A-215 J. Randall Wyatt, Jr., Judge, No. M2007-00427-CCA-R3-CD - Filed April 20, 2009

⁸⁰ Article 3 CRC – “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

⁸¹ CNN online news article, “Cyntoia Brown is granted clemency after serving 15 years in prison for killing man who bought her for sex” by Mallory Gafas and Tina Burnside, Mallory Gafas and Tina Burnside. Available at <https://edition.cnn.com/2019/01/07/us/tennessee-cyntoia-brown-granted-clemency/index.html>

⁸² Ibid

⁸³ Ibid

criminal administration of justice can't provide, whereby not only the need of the victim is met but also the needs of the juvenile offender and the community as well. The state in satisfying only the need of the victim can go any length to have a fulfilment of punitivism and most juveniles who fall under the Minimum Age of Criminal Responsibility (MARC) don't even understand the legal parameters for which they are been tried. Studies show that 90% of juveniles arrested in the US do not understand their Miranda rights and speak to police without a parent or a legal representative. In the case of *State of Tennessee V. Cyntoia Denise Brown*,⁸⁴ police officers manipulated the 16 years' old juvenile into waiving her Miranda rights to get confessional statements. The Dutch Supreme Court, has reiterated that juveniles are entitled to a higher level of protection at the stage of police interrogations.⁸⁵

2.2 Minimum Age Requirement for Punishment and State accountability

There is no specific age requirement for categorizing juveniles universally but establishing a minimum age of juvenile justice jurisdiction is in consonance with the norms of international human rights. The term juvenile is generally used in reference to a young criminal offender. Juveniles are categorized as young persons who, under the legal systems that apply to them, may be prosecuted for a crime in a way which is different from how an adult would be prosecuted.⁸⁶ Part of ensuring the protection of juveniles is setting a required age for punishment.

The United Nations Convention on the Rights of the Child provides for all states to set a Minimum Age of Criminal Responsibility (MACR) below which no child would be subject to a formal prosecution.⁸⁷ In Nigeria by virtue of the Child's Right Act, that age is set at 18 years. Before the domestication of the Convention on the Rights of a Child into national law, Nigerian law categorized a child as different from a young person. Child means any person who has not attained the age of fourteen years while a young person was defined as someone who has attained the age of fourteen but not up to seventeen years.⁸⁸ Also, the minimum age requirement for punishment differed in the country due to the provisions of Sharia law. Nigeria is governed

⁸⁴ *State of Tennessee V. Cyntoia Denise Brown*, Appeal from the Criminal Court for Davidson County No. 2005-A-215 J. Randall Wyatt, Jr., Judge, No. M2007-00427-CCA-R3-CD - Filed April 20, 2009

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⁸⁶ Part 1, 2(a) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Adopted by General Assembly resolution 40/33 of 29 November 1985

⁸⁷ Article 40 of the UN Convention on the Rights of the Child

⁸⁸ Chapter 1, Section 2 of the Nigerian Criminal Procedure Act

by English law, Customary law and Sharia law which is prevalent in the Northern region and under Sharia law, the age of criminal responsibility is determined either by puberty or where the child is up to 18 years, except for crimes like adultery or fornication where the age of criminal responsibility is set at 15 years. With the Child's Right Act now categorizing a child as any person under the age of eighteen years,⁸⁹ the discrepancy of age requirement in respect of punishment for offences is now settled. However, drawing the line in respect of punishment for child offences sometimes can be challenging and this is due to vulnerability of children which is even the more reason for restorative approach to juvenile crimes or offences. Within the system, alternative methods of addressing child offences or crimes in general has always been unpopular even though national legislation creates room for it in respect of non-serious offences. Many parents no longer support corporal punishment in schools, but statistics still reveals that children in Nigeria continue to be subjected to physical abuse.

In the Northern part of the country, the penal code and Sharia law has not helped much. Despite the Child's Rights Act (2003) provides that its provisions supersede the provisions of all enactments relating to children,⁹⁰ eleven of the Sharia states in the North which have not enacted the Act, provides for corporal punishment of Muslim children under the Sharia criminal laws. This generates the problem of holding the state or individuals accountable in respect of punishment for juvenile offences. Ordinarily, by the domestication of the Convention on the Rights of a Child into national law, it becomes binding as law on every state in the country in respect of child offenders and how they are treated. However, with some of its provisions as the opposite of what is culturally, religiously, and legally obtainable under Sharia law which is also a major law that governs the northern majority in the country, the acceptance of those provisions and realization of its goals in that region is steadily evasive.

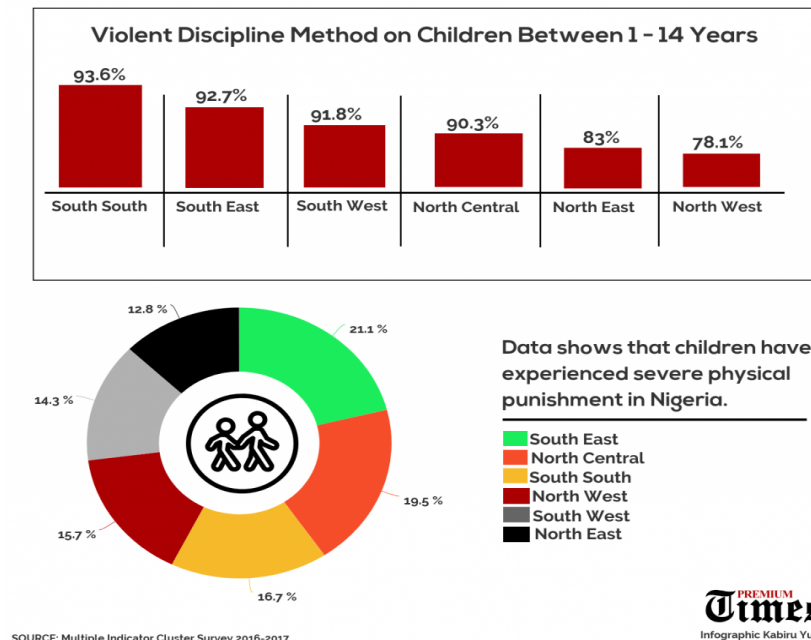
A Human Rights Watch report revealed that several male children below 18 years of age were sentenced to amputation in Sokoto in 2003, also a visit to Sokoto prison between 2002 and 2003 estimated that the majority of the ten prisoners sentenced to amputation were less than 18 years.⁹¹ According to the 2014 National Survey on Violence against Children in Nigeria, one

⁸⁹ Section 277 of the Child's Right Act 2003

⁹⁰ 274(1), (a) of the Child's Right Act

⁹¹ CRIN, Inhuman sentencing of children in Nigeria Briefing for the 17th session of the Human Rights Council Universal Periodic Review in October 2013, submitted by the Child Rights International Network, March 2013, www.crin.org

out of every three children have experienced physical violence from their parents or teachers.⁹² The data reveals that over 30% of children have an encounter of physical violence from parents or teachers. Below is a graphical illustration of the Survey on Violence against Children in Nigeria as verified by Multiple Indicator Cluster Survey (2016 – 2017).



The breakdown of the report of children experiencing severe physical punishment indicates 21.1% of children in the Southeast states, 19.5% of children in the North Central region, 16.7% of children in the South-south, 15.7% in the Northwest, 14.3% in the Southwest and 12.8% in the North-east states in the country.⁹³ Even though by domesticating international law in respect of protecting children, Nigerian law provides that no child shall be subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse, torture, inhuman or degrading treatment or punishment,⁹⁴ it is almost unthinkable that a child will grow without physical punishment, and this is largely due to cultural norms that reflects in the national laws. Section 295 of the Criminal Code in the South, 55 of the Penal Code in the North and Sharia laws applicable in the Northern states confers the right on parents to use a blow or other force to correct children for misconduct or disobedience to any lawful command. The law envisage that such blow or force would not result to a wound or grievous

⁹² Premium Times News article, By Azeezat Adedigba, “Teachers, Parents react as Nigerian schools gradually abandon corporal punishment”. February 23, 2020 <https://www.premiumtimesng.com/news/headlines/378623-teachers-parents-react-as-nigerian-schools-gradually-abandon-corporal-punishment.html>

⁹³ Ibid

⁹⁴ Section 11(a) and (b) of the Child’s Right Act 2003

harm⁹⁵ which is almost like saying walk through fire but please don't get burnt. This sort of provisions in the laws creates a delima of state accountability. Corporal punishment has been defined by the UN as physical force no matter how little with the intent to cause the child to experience bodily pain as a form of discipline in respect of child offences.⁹⁶ Even though Section 295 of the Criminal Code and the Northern equivalent of that law anticipates that blow or force should not result to a wound or grievous harm on the child, that legal provision is not rational because the intent might not be to cause harm but the act no matter how little can cause potential harm to a child. More so, these provisions conflict with the Child's Right Act which has encapsulated international laws against corporal punishment by virtue of section 221(b) which provides that no child shall be subjected to corporal punishment. The reality on ground is still different. The belief is that if you spare the rod, you'll spoil the child, however, the overall effect on children are usually negative outcomes. Article 2(2) of the Convention on the Rights of a Child stipulates that a child should be protected against all forms of punishment based on the beliefs of the child's parents. Meanwhile, research has revealed that corporal punishment has a negative impact on parent-child relationships and a correlation to mental health in childhood and adulthood.⁹⁷

According to Gershoff's meta-analysis, children subjected to corporal punishment showed higher level of aggression and antisocial behavior from childhood to adulthood and are more likely of being a victim of physical abuse and replicate the experience of their physical abuse on their own child or spouse as an adult.⁹⁸ Since international laws does not give room for corporal or capital punishment of a child, there's the need to create a balance to ensure for accountability of juvenile offenders whenever they are in breach of the law especially regarding capital crimes, hence the need for restorative justice as an alternative to punitivism while still achieving the goals of the punitive approach.

Juvenile justice is generally conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thereby

⁹⁵ Section 295 (1) of the Criminal Code Act; A blow or other force, not in any case extending to a wound or grievous harm, may be justified for the purpose of correction where a father or mother may correct his or her legitimate or illegitimate child, being under sixteen years of age, or any guardian or person acting as a guardian, his ward, being under sixteen years of age, for misconduct or disobedience to any lawful command.

⁹⁶ United Nations Committee on the Rights of the Child, (2006)

⁹⁷ Gershoff, E. T. (2002). Corporal punishment by parents and associated child behaviours and experiences: A meta-analytic and theoretical review. *Psychological Bulletin*, 128, 539– 579

⁹⁸ Section 11(a) and (b) of the Child's Right Act 2003

contributing to the protection of young persons and the maintenance of a peaceful order in society.⁹⁹ Restorative justice can apply to juveniles when harm has resulted in society or within families based on a delinquent act especially with cases like rape that are least reported to the criminal justice system for whatever reason. Research indicates that just about 5% of cases of sexual violence gets to the criminal justice system, and this often because such violence occurred within a relational context.¹⁰⁰ Cases of rape is one category of crime that is very difficult to prove within the Nigerian criminal justice system, and just a little percentage of such cases results in conviction. This might be so because one of the legal elements for proving rape for instance, is to place credible evidence beyond reasonable doubt before the court, that there was penetration by the offender and discharging this burden of proof which the law vests on the victim is always a herculean task. With capital crimes like this, the law does not allow for the legal punishment on the juvenile offender even though it allows for the Family Court to hear and determine matters relating to juveniles. This means there's still a sense of justice that the punitive system would not have achieved for the victim which can be given by restorative approach. The values of restorative justice are relevant to many of such social and cultural issues in society and creates an avenue for offenders to take responsibility or be held accountable for their actions. According to Associate Professor and Restorative justice expert Dr. Marie Keenan, it has shown to reduce post-traumatic stress and it reduces fear in victims which happen due to the negative impact of the crime. In her interview with the European Forum for Restorative Justice in 2020, she indicated that restorative justice approach empowers victims of crime when the crime has had the effect of disempowering them, irrespective of the gender of the victim or the offender.¹⁰¹

While this work is not advocating restorative justice as a replacement to criminal justice, except for victims who outrightly decide not to use the criminal justice route, it is important that for juvenile crimes where juveniles can't even be punished based on international law and obligations that seek to protect them considerably so based on a number of factors like age, social and mental capabilities, the line of restorative justice approach should be towed as a means of restoring the harm and ensuring justice for the victims. The idea of criminal justice for a victim of rape by the court is wholly defeated since the criminal court cannot even legally

⁹⁹ Rule 1.4 of The Beijing Rules. (Adopted by UN General Assembly resolution 40/33 of 29 November 1985)

¹⁰⁰ European Forum for Restorative Justice, Interview with Dr. Marie Keenan, A discussion for the International Women's Day (2020). <https://www.euforumrj.org/en/interview-dr-marie-keenana>

¹⁰¹ Supra note 84

ensure punishment or hold juveniles accountable for such offences under the law. Restorative justice approach has been used successfully in several countries in addressing different crimes like murder, sexual violence, assault, etc. In 2005, Ailbhe Griffith became a victim of a violent sexual assault in Dublin, Ireland. Nine years later, she had a face-to-face meeting with her offender. The outcome and experience of this meeting, she described as transformational. In an interview session with BBC Live Wires, she narrated how the process helped her heal from the experiences of those nine years. Despite the criminal justice system ensuring punishment for the offender, there was so much that the punishment couldn't make up for. She noted that the sadness, fear, depression, anger, rage, and trauma caused by the crime made her feel disempowered and the criminal justice system didn't take care of this. Generally, the criminal justice system focuses on punishment of offenders and not creating measures for empowering victims to face their offenders, to get answers to their questions or be part of the outcome of the criminal process. On the other hand, Restorative meetings are not about punishment per se but about the healing of the victim and righting the wrongs that have been caused. In 1974, two juveniles committed the offence of vandalism, Mark Yantzi a probation officer at the time, arranged for a face-to-face meeting with their victims where they agreed to restitution. The positive response by the victims led to the first Victim-Offender Reconciliation Program, in Kitchener, Ontario, Canada, with the support from the Mennonite Central Committee and the local probation department.¹⁰²

With these approach to justice successfully used in other climes to address crimes, same approach could be used to address juvenile crimes within the Nigerian system not just for simple offences as envisaged by the Child Rights Act in Section 209 but also for capital crimes by child offenders since the minimum age requirement for punishment does not apply to juveniles under the law. The Government support should reflect in scaling up alternatives to judicial proceedings, placing emphasis on diversion and alternatives to detention as it is not helpful to have the rules on paper without strengthening the capacity of child institutions dealing with juvenile offenders. Essentially, the State should be accountable for improving independent monitoring of child rights violations.

¹⁰² Ted Wachtel, IIRP Founder; Defining Restorative, (2016) International Institute for Restorative Practices Graduate School online publication. Accessible at https://www.iirp.edu/images/pdf/Defining-Restorative_Nov-2016.pdf

2.3 The Effectiveness of Restorative Justice.

The effectiveness of restorative justice is seen or only determined from its application to real cases of conflict or crimes. The provision to adopt such approach is encapsulated in the Child's Right Act. However, the Act does not make it a strict requirement or mandatory process in disposing of cases relating to child offences. In practice, the idea of restorative justice measures as we know it today is very new within the Nigerian space. Only few states who have adopted the Act has taken further steps in incorporating Alternative Dispute Resolution mechanisms (ADR) in handling cases of child offences. Lagos state for example, provides for it under Order 4 of the Family Court of Lagos State (Civil procedure Rules 2012). The scope of Order 4 is to the effect that the Court has powers to encourage parties to use Alternative Dispute Resolution and facilitate its use. The court can adjourn proceedings where it considers that Alternative Dispute Resolution is appropriate to enable parties obtain information and get advice about the process and if they agree, to enable the process eventually take place.¹⁰³ The core of Restorative Justice practices is indeed hinged on voluntariness and respectfulness by all parties. This is a key determinant of its effectiveness. Victims meet with the perpetrators of harm for different reasons ranging from asking questions to seeking reparations,¹⁰⁴ or to find closure and be able to heal from the effects of the harm.¹⁰⁵ Sometimes the goal is to humanize the offender, create values that can prevent reoffending and lead to a safer society. For some offenders, it is a safe space to take steps at repairing the harm and showing remorse.¹⁰⁶ Also, how the community perceive and relate to the crime can help towards reintegration of offenders and create better support for victims.¹⁰⁷ While participation from the community may trigger the offender towards taking responsibility and striving towards been better for themselves and the society.¹⁰⁸

The effectiveness of Restorative justice practices is also reflected in the satisfactory experience or sense of justice that the victims and offenders get from the process. Restorative approach to

¹⁰³ Order 4, rule (1) and (2) of the Family Court of Lagos State (Civil procedure Rules 2012)

¹⁰⁴ Shapland, J., Robinson, G., & Sorsby, A. (2011). *Restorative Justice in Practice: Evaluating what works for victims and offenders*. Abingdon, Oxon: Routledge

¹⁰⁵ Van Camp, T. (2017). Understanding victim participation in restorative practices: Looking for justice for oneself as well as for others. *European Journal of Criminology*, 14(6), 679-696.

¹⁰⁶ Vanfraechem, I., Aertsen, I., & Willemsens, J. (2010). *Restorative Justice Realities. Empirical Research in a European Context*. The Hague: Eleven International Publishing; Sherman, L. W., & Strang, H. (2007). *Restorative Justice: the Evidence*. London: The Adam Institute.

¹⁰⁷ Vanfraechem, I., Aertsen, I., & Willemsens, J. (2010). *Restorative Justice Realities. Empirical Research in a European Context*. The Hague: Eleven International Publishing.

¹⁰⁸ Ibid

justice engages the participation of offenders and victims more effectively than the traditional justice system.¹⁰⁹ With this approach, the needs of victims and offenders themselves are considered. This effective stratagem must be encouraged especially with juvenile crimes. Juveniles are the building blocks of any great society and are generally vulnerable and not as mature as adults to rationalize the potential effect of their actions. Against this backdrop, it is necessary for states to give juvenile offenders a chance at redemption when they have seriously erred against the law. A void created in addressing their vulnerabilities and giving them a chance to get things right reflects the overall impact of crimes on any society. Where the state fails in this regard, the objective of the punitive measures has no value. In Europe, Restorative processes is in use and much evolving. Each country implements Restorative programs to suit its values and culture. For example, the focus in France is on the educational and emotional needs of youths and in 1912, it passed its first juvenile court legislation to address those needs.¹¹⁰ Many children and young person's experiment with behaviors which sometimes result in them been on the wrong side of the law. However, even when they are more persistent in their delinquencies and/or commit serious crimes they should be able to learn from their mistakes and earn a second or third or fourth chance.¹¹¹

The effectiveness of Restorative justice reflects also from the achievable results of child rehabilitation. According to UNICEF, after 15 years of working to reform juvenile justice systems in Europe and Central Asia, the rate and overall number of minors in detention has decreased significantly.¹¹² Even though many countries have challenges with child offenders, commitment from governments, advocacy groups, and international institutions has aided in the advancement of the rights of these most vulnerable group of persons. According to the European Forum for Restorative Justice, reintegration is a core principle of any good child justice system, and this has been reinforced by international law provisions in respect of children.

¹⁰⁹ Laxminarayan, M. (2011). Accessibility and Initiation of Restorative Justice. Final Report of Project JUST/2011/JPEN/2968. European Forum for Restorative Justice.

¹¹⁰ Britannica, <https://www.britannica.com/topic/juvenile-justice/United-States>

¹¹¹ European Forum for Restorative Justice, <https://www.euforumj.org/en/restorative-justice-and-child-justice>

¹¹² UNICEF Europe and Central Asia Regional Office, "15 years of Juvenile Justice Reforms in Europe and Central Asia. Key results achieved for children and remaining challenges". https://www.unicef.org/eca/sites/unicef.org/eca/files/2018-11/Key%20Results%20in%20Juvenile%20Justice%20in%20Europe%20and%20Central%20Asia_0.pdf

The UN Convention on the Rights of the Child seeks for a reaction that is focused on learning and reintegration. Children should learn from their mistakes and not prevented from that learning experiences that can make them better persons and well suited for the society. Per the new UN General Comment 24 on children's rights in the child justice system (2019), special attention should be given to development, personal responsibility, and evolving capacities of children. As much as possible diversion is to be used which means avoidance of the criminal process while re-integration of the child back into society should be the main goal.¹¹³

The effectiveness of Restorative justice in dealing with child offenders, their protection and that of victims is extremely relevant and demonstrated by research. International instruments like the the UN Principles of Restorative Practices (2002), the revised Council of Europe Recommendation on restorative justice in criminal matters (2018), recommendations on child friendly procedures, and the binding EU Victims Directive (2012) all seek to achieve and promote this with regards to juvenile offenders. Meta studies reveal positive outcomes on recidivism, on feelings of justice, on less trauma disorders. An Austrian study that looked at the rate of recidivism in 361 VOM cases and 7,952 court cases revealed that among offenders with no prior convictions, the VOM cases had a recidivism rate of 14% and the cases that ended in a fine had a recidivism rate of 33%.¹¹⁴ Also, offenders and victims are satisfied with restorative justice processes and very often they would recommend it to others.¹¹⁵ The reasoning for this is not farfetched from the fact that RJ processes allows for listening to the victims in order to understand how they feel about the harm done to them and what they think.

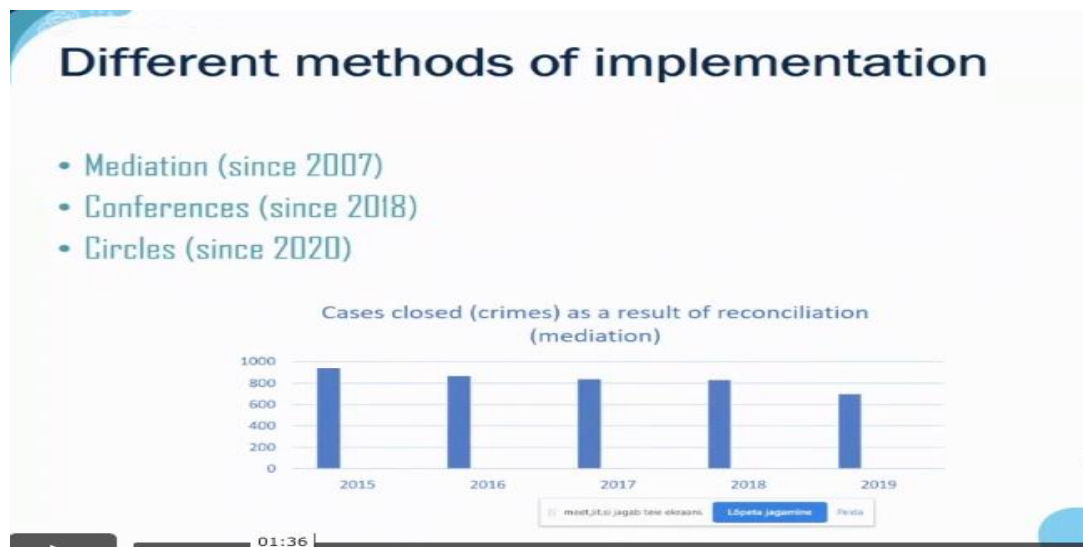
Having a voice in the outcome of the justice process under a safe environment for discourse and restitution empowers the victim. It is pertinent to note that restorative justice approach should be delivered in a child-friendly manner by trained mediators or conciliators when juveniles are involved. The effectiveness of Restorative justice has also been reflected in the number of cases that the process has helped to solve, as opposed to criminal prosecution that can take years to get resolved especially in developing countries. In Estonia for example, over 600 cases were resolved in 2019.

¹¹³ United Nations, General Comment 24 on children's rights in the child justice system (2019)

¹¹⁴ Schütz, H. (1999). Die Rückfallshäufigkeit nach einem Außergerichtlichen Tatausgleich bei Erwachsenen. Österreichische Richterzeitung, 77, 166-169.

¹¹⁵ Supra note 104

Below is a graphical representation of data between 2015 and 2019 showing closed cases and the specific RJ implementation method.



Source: European Forum for Restorative Justice¹¹⁶

The approach of turning to restorative measures especially in respect of juvenile offences within the Nigerian system will go away a long way in effectively handling juvenile crimes and reducing the time it takes for cases to be resolved by the court. An offender has the right to be tried timeously so that he knows his fate in respect of the charge brought against him.¹¹⁷

The Guiding principles in adjudication of child offences as stipulated in the Child Rights Act is for the Court to handle each case brought before it expeditiously without unnecessary delay,¹¹⁸ time and time again, there have been cases taking a very long time to get resolved either due to the backlog of cases in the dockets of the court or for some other reason. In the case of *Doripolo V the State*,¹¹⁹ it took 9 years for the juvenile offender to get a sense of justice from the Court of Appeal since December 5, 2003, in Suit No. ID/28C/96 when the initial judgement by the lower court was given against him. Undoubtedly, a juvenile offender or any person undergoing a criminal trial is expected to be tried promptly so that they know their fate in relation to the charge(s) made against him. Because he cannot be completely free in the exercise of his fundamental right to freedom of movement if the charge hangs over his head.

¹¹⁶ Annegrete Johanson, presentation for the RJWorld 2020 eConference. Restorative Justice Developments in Estonia and the Covid-19 Crisis <https://vimeo.com/445369107>, Accessed 1/9/2021

¹¹⁷ *Uzochukwu v. The State* (2018) LPELR-44643(CA)

¹¹⁸ Section 215 (3) of the Child Rights Act

¹¹⁹ *Supra* note 66

These sort of delays that can lead to injustice of the offender can be avoided with Restorative justice processes.

When developing a Restorative Justice programme for juveniles it is important to consider the following per its effectiveness:

1. How to access the relevant RJ groups since in practice the models will vary from country to country.¹²⁰
2. How to guarantee a safe encounter in a case.
3. How to integrate restorative justice within other existing systems like criminal justice system and considering the rights of children.
4. How to raise awareness and better inform about the effectiveness of restorative justice for children.
5. How to encourage cooperation with other services or institutions like schools
6. the power imbalances between adults and youngsters as well as the focus on young persons who may require specific child friendly restorative justice processes.¹²¹

The outcome of Restorative Justice process has proved effective in terms of cost. Restorative Justice results in lower cost of re-conviction thereby making it more cost-effective than the traditional criminal justice system.¹²² Restorative Justice methods, such as family conferences, victim conferences, and mediation, also allow for non-financial restitution like community service, and this has shown to minimize recidivism and improve youth and victim satisfaction with the juvenile justice system. Juvenile justice agencies can therefore employ restorative approach along with referrals to other service systems, as a far more cost-effective public safety strategy than court involvement.¹²³ According to an estimate by the Vera Institute of Justice, it cost the state of Pennsylvania in the case of Commonwealth of Pennsylvania v. Joseph F. Ligon nearly three million dollars to incarcerate the 15 years' old teenager for 68 years, and that

¹²⁰ European Forum for Restorative Justice, Restorative justice, and Child Justice. Available at <https://www.euforumrj.org/en/restorative-justice-and-child-justice>

¹²¹ In practice restorative justice adopts models such as youth victim offender mediations (e.g., in Belgium, the Netherlands), family group conferences (e.g., in New Zealand) and youth conferences (e.g., in Northern Ireland).

¹²² Shapland, J., Atkinson, A., Atkinson, H., Dignan, J., Edwards, L., Hibbert, J., Howes, M., Johnstone, J., Robinson, G., & Sorsby, A. (2008). Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes. Ministry of Justice Research Series 10/08, p. 69; Umbreit, M. S., Coates, R. B., & Vos, B. (2001). The impact of victim-offender mediation: Two decades of research. Federal Probation, 65(3), 29-35.

¹²³ CJJR, "Transforming Juvenile Justice Systems to Improve Public Safety and Youth Outcomes" May 2018, <https://csgjusticecenter.org/wp-content/uploads/2020/02/Transforming-Juvenile-Justice-Systems.pdf>

excluded medical costs.¹²⁴ This gives a mental picture of how taxpayers money could be channelled to more functional use while still achieving the goals of correction and juvenile accountability. Restorative Justice mechanisms may provide therapeutic advantages to family members of murder victims, and such long-term health benefits can reduce health costs paid by taxpayers.¹²⁵ The case of Ligon happens to be one that sadly led him having the tragic distinction of being the oldest and longest-serving juvenile in the history of United States. In that case, the defendant in 1953 and four other black teenagers were involved in a couple of robberies and stabbings in Philadelphia in which two people died in the process. They were tried for first-degree murder and the punishment of life imprisonment was given.

It would have cost the State way less to rehabilitate the child offender and seek reparation for the harm he caused while ensuring healing for the victim as well. Approaching the case this way would have also been justice for the teenager who got no chance at living a productive life. By the time he was released he was 83 years of age, after serving nearly seven decades for crimes he committed as a child. This totally negates The UN Convention on the Rights of the Child and other human rights instruments plea for a reaction that is focused on learning and reintegration. For a juvenile offender spending 68 years of his life for a crime committed when he was only 15, this speaks to the issues around over sentencing and highlights the need for restorative measures to be applied as the starting point in respect of juvenile cases. When compared to more typical criminal justice approach of addressing crimes, restorative justice was shown to be more effective in boosting victim and offender satisfaction, lowering offender recidivism, and increasing offender compliance with reparations.¹²⁶ More studies reveal restorative methods yield at least 85 percent satisfaction among victims¹²⁷ and minimize the victim's fear of subsequent harm.¹²⁸

The effectiveness of Restorative Justice approach to juvenile crimes is also indicated from studies which show that the approach helps offenders to desist from subsequent violation of

¹²⁴ CBS NEWS, Online news Article, "After 68 years in prison, "juvenile lifer" Joe Ligon is free and hopes for a "better future" March 16, 2021, 10:31 AM, Available at <https://www.cbsnews.com/news/joe-ligon-longest-serving-juvenile-lifer/>

¹²⁵ Sherman, L. W., & Strang, H. (2007). *Restorative Justice: The Evidence*. London: The Adam Institute.

¹²⁶ Latimer, J., Dowden, C., & Muise, D. (2005). The Effectiveness of Restorative Justice Practices: A Meta-Analysis. *Prison Journal*, 85(2), 127-144.

¹²⁷ Inkpen, N. (2006). Victim evaluations of face-to-face restorative justice experiences: A quasiexperimental analysis. *Journal of Social Issues*, 62, 281-306; Umbreit, M. S., Coates, R. B., & Vos, B. (2001). The impact of victim-offender mediation: Two decades of research. *Federal Probation*, 65(3), 29-35.

¹²⁸ Morris, A., & Maxwell, G. (2001). *Restorative Justice for Juveniles*. Oxford: Hart Publishing.

legal norms and moral codes.¹²⁹ The major guiding principles for effective results and a positive outcome is when communication between the parties is direct and authentic,¹³⁰ when the program is designed and facilitated to fit the needs, capabilities and most importantly the culture of the participants, were the offender and victim's needs, capabilities, views, and emotions are equally recognised and valued.¹³¹ Also, all parties should be intimated of how the process will be and what is expected of them so that they can prepare what they wish to say and on how they want to approach issues.

Restorative Justice mechanisms isolate the problem of ineffective assistance of counsel which most juveniles suffer. In the case of *Nortier v. the Netherlands*,¹³² the applicant was a 15 year's old juvenile arrested on suspicion of attempted rape. The court ordered that he be remanded following with preliminary investigation with a view to having a psychiatric evaluation done and the child's lawyer didn't object. With no objection from the applicant, the child offender was held to be proven in the light of the evidence and was committed to an institution for the psychiatric treatment of juvenile offenders pursuant to Article 77(k) of the Criminal Code. Even though the juvenile judge reminded of the right to appeal, still his lawyer did not file an appeal. This is an example of how ineffective representation of counsels can create more injustice to juvenile offenders whenever the traditional approach.

2.4 International Legal Framework for Restorative Justice

The legal and regulatory framework governing Restorative Justice, Victim Offender Mediation (VOM) and Diversion from prosecution can be seen in International Conventions, recommendations and principles. Many times, the question is raised as to whether international law supports the application of Restorative Approach to Juvenile Justice. The answer is in the affirmative and it can also be found in regional legal instruments that various nations including Nigeria has ratified. Many guidelines are in effect in respect of children in conflict with the law who generally are vulnerable and requires protection, alternative care, fair trial, and not to subjected to inhuman and degrading treatment, etc. This part of the discourse observes some

¹²⁹ Supra note 120

¹³⁰ European Forum for Restorative Justice, Practice Guide on Values and Standards for restorative justice practices, "Connecting People to Restore Just Relations" Editors: Tim Chapman & Edit Törzs Chair & Director of the EFRJ <https://www.euforumrj.org/sites/default/files/2019-11/efrj-values-and-standards-manual-to-print-24pp.pdf>

¹³¹ Supra note 122

¹³² ECHR Case (Application no. 13924/88), 24 August 1993

of the guiding principles of child involvement in justice systems and the legal framework that States all over the world have decided should bind them in support of alternative approach to handling juvenile delinquents.

2.4.1 The Beijing Rules (1985)

It is the first international legal instrument that paid attention to the circumstances of juvenile offenders. It is known as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985), popularly referred to as The Beijing Rules. It largely established a framework for an essential system or parameters for dealing with juvenile offenders. 1.3 of the rules sums it all to wit; “sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.”¹³³ The emphasis here will be on the first and last paragraph of this fundamental perspective of what States agreed to in the rules. By the rules Diversion is encouraged and where not feasible, the children who are not diverted must be dealt with by a competent authority, in an atmosphere of understanding as the purport of juvenile justice is to major on the wellbeing of the child offender and see that legal measures or responses are commensurate to the harm. The Beijing Rules are purposefully drafted to be applicable within various legal systems while also establishing certain minimum requirements for the treatment of juvenile offenders despite how they may have been categorized or defined under the laws of any state.

2.4.2 The United Nations Convention on the Rights of the Child (1989)

The United Nations Convention on the Rights of the Child (1989) adopted on November 20, 1989, offers a wide range of actions to be taken in matters concerning child offenders and children and in general. It was the first legally binding instrument to incorporate the full range of human rights (Civil, Cultural, Economic, Political and Social rights). It recognized the human rights of all children, who are generally considered as a vulnerable group and are people

¹³³ The African Child Policy forum (ACPF) “Achieving Child Friendly Justice in Africa” 2012, Available at https://resourcecentre.savethechildren.net/pdf/achieving_child_friendly_justice_in_africa.pdf/

who needs special care and protection regardless of the offences they may have committed. The international legal obligation on States to ensure their protection stems from recognition of their rights and vulnerability and measures thereof was set in 54 articles and two optional protocols. It provides that children everywhere have the right to survival, the right to develop to the fullest which is one right that is largely ignored when child offenders are in breach of the law especially when they commit capital crimes. The Convention on the Rights of the Child also ensures for their right to be protected from harmful influences, abuse, and exploitation. It requires that children can participate fully in family, cultural and social life. Article 3 of the Convention prioritizes the best interest of the child in all actions regarding them whether those actions are to be taken by public or private social welfare institutions, administrative authorities, or legislative bodies, or even by a court of law and this is one of the four core principles of the Convention.¹³⁴ Article 9 of the Convention shows the agreement of States not to separate children from their parents except when competent authorities subject to judicial review considers such act to be necessary for the best interests of the child. The convention provides for methods for reporting, referral to inquiry, and court intervention where such move is unavoidable.¹³⁵ Other provisions that encapsulate the provisions for restorative measures for children includes Article 12, 27, 40. This worldwide legal framework recognizes a great number of the needs of children in any justice system and requires state obligation to that effect.

2.4.3 United Nations Rules for the Protection of Juveniles Deprived of their liberty (the JDIs) (1990)

For the purposes of this Rules a juvenile is every person under the age of 18. The scope and application of the Rules majors on deprivation of liberty in respect of children. It focuses on conditions of detention. Deprivation of liberty should be carried out under conditions and circumstances that ensure the human rights of juveniles are respected.¹³⁶ The Rules are based on the notion that detention should be avoided as much as possible, and can only apply when it is necessary, and even in such circumstances, the child must be treated humanely, having his or her needs met. This legal framework provides for reintegration of the child offender into society. Article 79 requires that all juveniles benefit from arrangements designed to assist them in returning to society, family life, education, or employment after release. This provision is in

¹³⁴ Article 3 Convention on the Rights of the Child

¹³⁵ Article 19 Convention on the Rights of the Child

¹³⁶ Article 12, UN Rules for the Protection of Juveniles Deprived of their liberty

conformity with the provisions of Article 29 of the UN Convention on the Rights of the Child. Education is a sine qua non which every legal system must provide for its children be it a child offender or not. In *State of Tennessee V. Cyntoia Denise Brown*,¹³⁷ the child offender was able to get a GDE and an associate degree from Lipscomb University in the process of fighting for a second chance. Working toward getting a bachelor's degree while in prison, educational excellence arising thereof and efforts to making amends for the wrong culminated in a grant of clemency which spurred the offender towards collaboration with the Tennessee's Juvenile Justice System to help counsel young people at risk of the harms from their delinquent actions. This experience is catered for under Article 38 which requires that every juvenile of compulsory school age has the right to education suited to his or her needs and abilities with the goal of preparing him or her for reintegration into society.¹³⁸ Part of the fundamental objectives of this Rule is to establish the basic standards for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and most importantly, the goal is to mitigate the negative impacts of all forms of incarceration and promoting social integration.¹³⁹

2.4.4 The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005)

The objective of the above mentioned International legal guidelines on justice for child victims and witnesses of crime, is to assist countries in enhancing the protection of child victims and witnesses within the criminal justice system. It recognizes that children who are victims and witnesses are particularly vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs.¹⁴⁰ This is aimed at preventing more hardship and trauma that may arise from their participation in the criminal justice process.

This legal framework seeks to ensure measures are in place to avoid child victimization, which can allow for better responses to child victims and witnesses of crime. To this end, children and their families may be more ready to report incidents of victimization and be more supportive of the justice process. Part of the objectives of the guidelines is to use child-sensitive

¹³⁷ Supra note 79

¹³⁸ Article 38 UN Rules for the Protection of Juveniles Deprived of their liberty

¹³⁹ Article 3, UN Rules for the Protection of Juveniles Deprived of their liberty

¹⁴⁰ ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

strategies such as interview rooms designed for children, modified court settings that take child witnesses into consideration, recesses during testimony of the juvenile offender, scheduled hearings at specific times of the day appropriate to the child's age and maturity, as well as an appropriate notification system to ensure the child goes to court only when necessary.¹⁴¹ It reiterates the right to effective assistance of professionals who have received relevant training as set out in paragraphs 40 to 42 of the Guidelines. Evidence on appeal, in the case of *State of Tennessee V. Cyntoia Denise Brown*,¹⁴² revealed that the teenager suffered from Fetal Alcohol Syndrome and was a victim of sex trafficking. The alcohol abuse of the defendant's mother while she was pregnant, up till when she was born affected her mental maturity. This set of facts necessitated a post-conviction relief, and this were facts that were isolated from the court due to ineffective assistance of counsel. It took effective representation by a new set of legal counsel for the defendant to show that the child offender herself was a victim of crime, which means if she was tried today, she would not have been tried in the same way.¹⁴³

2.4.5 The United Nations Guidelines for the Alternative Care for Children (2009)

The purpose of this framework is to cater for children who are deprived of parental care or who are at risk of being deprived. A lot of child offenders in Nigeria today are a product of lack of parental care. In recent times this problem has exacerbated due to displacement arising from terrorism in the Northeast of the country. Left with no means of survival a lot of these juveniles employ their delinquencies to use and this result in conflict with neighboring communities. According to the UN Office for the Coordination of Humanitarian Affairs CPSS Report,¹⁴⁴ the increased armed conflict attacks particularly in some Local Government Areas in Borno State revealed the dangers to children, and other members of the community. This underscores the need for alternative care. The report indicated that a total number of 109 boys who were released from administrative custody for their alleged offences with nonstate armed groups have been united with their families and will receive community-based reintegration support.¹⁴⁵

¹⁴¹ Article 30, ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

¹⁴² Supra note 79

¹⁴³ CNN online news article, "Cyntoia Brown is granted clemency after serving 15 years in prison for killing man who bought her for sex" by Mallory Gafas and Tina Burnside, Mallory Gafas and Tina Burnside. Available at <https://edition.cnn.com/2019/01/07/us/tennessee-cyntoia-brown-granted-clemency/index.html>

¹⁴⁴ Nigeria Child Protection Sub-Sector: Quarterly Report, April - June 2020, Accessed 1/8/2021, Available at <https://reliefweb.int/report/nigeria/nigeria-child-protection-sub-sector-quarterly-report-april-june-2020>

¹⁴⁵ Ibid

Bearing in mind that States are encouraged to set measures that can effectively implement their responsibilities and obligations under international law in respect of child protection, the Nigerian Government can use Restorative Justice approach to bridge the gap between persons affected by the actions of such juveniles in this instance and ensure rehabilitation of such offenders. A policy on community-based reparation of harm, re-integration process and support can be used to enhance the implementation of the Convention on the Rights of the Child and other relevant international instruments regarding the protection of juvenile offenders. According to Guideline 53, decisions for alternative care should be made through a judicial, administrative, or other appropriate procedures which should include legal safeguards. An underlying principle of this guideline is that children must benefit from effective protection from abuse, neglect, and all forms of exploitation, whether on the part of care providers, peers or third parties, in whatever care setting they may find themselves. This means that during arrest, or detention or under any circumstances they must be treated with dignity and respect and care.

One of the frameworks for care provision under the Guideline is that to meet specific needs of children without parental care such as psychological, emotional, and social needs, the state should take all necessary measures to ensure that the legislative, policy and financial conditions exist to provide for adequate alternative care options, with priority to family- and community-based solutions.¹⁴⁶ Other international legal framework for juvenile justice includes the following:

- The United Nations Guidelines for Action on Children in the Criminal Justice System (1997).
- The Hague Convention
- The African Charter on the Rights and Welfare of the Child (1990)
- Principles and Guidelines on the Right to a fair Trial and legal Assistance in Africa (1999)
- Guidelines and measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines) (2002)

¹⁴⁶ Art 53, United Nations Guidelines for the Alternative Care of Children

- The Declaration and Plan of Action for an Africa fit for Children (2001) and the Call for Accelerated Action (2007)
- The Kampala Declaration on Prison Conditions in Africa of 1996
- The United Nations Convention on the Rights of Persons with Disabilities and the optional Protocol on the Convention on the Rights of Persons with Disabilities (2006)
- The United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000).

III. APPLICABILITY OF RESTORATIVE JUSTICE TO ALL JUVENILE CRIMES

3.1 Argument for the Universal Applicability of Restorative Justice to juvenile crimes

The argument for the Universal Applicability of Restorative Justice to all juvenile offence, is based not just on the effectiveness of restorative measures but the need to ensure justice for all parties affected by the harm while ensuring protection of the child. The idea of protection is all encompassing and if state parties to international laws and treaties are to achieve their obligations arising therefrom, as indicated in the Declaration of the Rights of the Child, there's the need for a fixed uniform rule or measures ensuring that the child, by reason of his physical and mental immaturity, at every point in time gets special safeguards and care, including appropriate legal protection that would apply to them not only before birth but after birth.¹⁴⁷

Sadly, in a State like the United States of America, which has the highest rate of juvenile crimes in the world,¹⁴⁸ it could be argued that its stance of signing but not ratifying the UN Convention on the Rights of the Child is an evasive action that allows for injustice(s) on child offenders. Such act been hinged on the idea that a tough and unsentimental response like incarceration would prevent reoffending and ultimately preserve public safety.¹⁴⁹

However, over time, the commission of more crimes has debunked that idea alongside the spiral effect of recidivism. A 2015 report from the CSG Justice Centre compiled data from 39 states and the results from that study revealed that juveniles were far more likely than adults to reoffend after been released.¹⁵⁰ If anything is truer, its that children will be children and as juveniles they may act in some ways that are inconsistent with the law. Hence, why various states and international organisations like the UN seek to protect this vulnerable group of persons by agreeing that no child shall be subjected to torture, inhuman, degrading treatment or punishment.¹⁵¹ Most essentially is that either capital punishment or life imprisonment

¹⁴⁷ The Preamble, Convention on the Rights of the Child, Adopted and opened for signature, ratification, and accession by General Assembly resolution 44/25 of 20 November 1989.

¹⁴⁸ Elizabeth S. Barnert, et al, "Setting a minimum age for juvenile justice jurisdiction in California", International Journal of Prisoner Health, ISSN: 1744-9200, 13 March 2017.

¹⁴⁹ Laurence Steinberg, He Len Chung, and Michelle Little, "Re-entry of Young Offenders from the Justice System: A Developmental Perspective" Youth Violence Juv Justice. Author manuscript; available in PMC 2010 Jan 29. Published in final edited form as: Youth Violence Juv Justice. 2004 Jan 1; 2(1): 21. doi: 10.1177/1541204003260045 PMCID: PMC2813457

¹⁵⁰ MST Services, online article "Do We Know the Full Extent of Juvenile Recidivism?" Nov 1, 2018, Available at <https://info.mstservices.com/blog/juvenile-recidivism-rates> Accessed 11/11/2021

¹⁵¹ Article 37 UN Convention on the Rights of the Child

without the possibility of being released will not apply to juveniles.¹⁵² Where an arrest, detention or imprisonment of a child is done, it ought to be in accordance with the law, such step can only be used as a measure of last resort and must be for the shortest appropriate period of time.¹⁵³ With such step as arrest and imprisonment of a child been provided as only a measure of last result, it shows that the mindset of international law is not intending for children to go through a rigid criminal process but that child offenders be held accountable and the process of achieving such must be pragmatic, calculative, and ultimately aimed at rehabilitation and reintegration.

In contrast to this state obligation under international law, many states err in trying to achieve the objectives of those legal provisions concerning juveniles when using national laws as a wholistic approach and this often result in injustice been experienced by the child offender. If state parties to international law agree to use restorative justice as the singular approach in handling juvenile offences without influences from national laws or there's a new set of international law guidelines that allows for only restorative justice processes to be universally applied to all child offences, this will allow for the effective achievement of child justice, it will also take care of the harm that child offenders grapple with in detention or prison and make realisation of the goals of international law in respect of protecting children much easier.

Even though, the notion of state sovereignty is a strict and underlying core of any legal system, the idea of an international community is also an implied part of that concept, which means that states can evolve from a negative practice in the name of culture or sovereignty to an acceptance of a social structure of international law. The arguments that may arise against a uniform approach to handling juvenile offences in the name of state sovereignty and cultural norms can be easily debunked because both sovereignty and international community are not static concepts and protection of children goes beyond national input or preference. On a national level, as far back as the 19th century, the killing of twins was a cultural norm amongst the Ibibio tribe in Nigeria as it was considered a taboo to bear twin children. By the year 1987, a Scottish missionary by the name Mary Slessor, helped to stop the killing of twins through constant sensitization, education, and the introduction to Christianity.¹⁵⁴ On a global level,

¹⁵² Ibid

¹⁵³ Ibid

¹⁵⁴ Yewande Adeleke, The Lady Who Stopped the Killing of Twins: Defeating the demonic superstition that claimed so many young lives. Available at <https://historyofyesterday.com/the-lady-who-stopped-the-killing-of-twins-13e3d8fe0ee1>. See also Journal Article by Misty L. Bastian, "The Demon Superstition": Abominable

uniform approach could be observed in the impacts of globalization, notably the activities of transnational corporations, as well as actions by non-governmental organisations, having effects on international legal system.¹⁵⁵ Hence acceptance of a uniform international standard devoid of national law to approach juvenile crimes is realistic as international law is a core of social relations which is not static. A sturdy approach includes diversion which is basically channelling children away from the formal court system into reintegrative programmes which comes into play with acknowledging responsibility for the wrong done. This can help prevent stigmatization and the vicious effect of the criminal justice system¹⁵⁶ that can allow for child offenders to languish in prison for extensive periods. In February of 2012, T.W a 16 years' old juvenile was incarcerated in a jail cell in Polk County of Florida, during which he was assaulted by three cellmates. He was strangled and stripped naked, they urinated on him, and hanged him by the neck to the window of the prison cell till he lost consciousness. The federal magistrate judge found that this happened over the course of several hours without the jail guards on duty even noticing. This is an example of the harm that child offenders face in a bid for states to ensure justice for victims by way of punishment or imprisonment.

In many cases, the harsh experiences of juveniles in prison have leads to an increasing number of juvenile suicides. This shows that society needs more than merely punitive measures for juvenile offences. In effect, punishment alone does not solve the problem of crime neither does it assist law enforcement in creating community confidence. According to a new study co-authored by MIT economist Joseph Doyle, those imprisoned as minors are 23% more likely to end up in prison as adults than juvenile criminals who escaped imprisonment, courtesy of a lenient judge.¹⁵⁷ Simply put, 40% of child offenders who went into juvenile detention ended up in prison by the age of 25 and unsurprisingly, it was found that juvenile incarceration is tied to a steep drop in high school completion rates.¹⁵⁸ With a universal approach or standard to handling child offences devoid of national laws, many injustices meted on child offenders or

Twinsand Mission Culture in Onitsha History. *Ethnology* Vol. 40, No. 1, Special Issue: Reviewing Twinship in Africa (Winter, 2001), pp. 13-27 (15 pages) Published By: University of Pittsburgh- Of the Commonwealth System of Higher Education.

¹⁵⁵ Robert Mccorquodale, *Beyond State Sovereignty: The International legal System and Non-State Participants*, University of Nottingham, pg. 107, ISSN:1692-8156. See also P. Sands, 'Turtles and Torturers': The Transformation of International Law' 33 *NYUJILP* 527 (2001)

¹⁵⁶ Dr. Anne Skelton, "Reforming the Juvenile Justice System in South Africa: Policy, Law Reform and Parallel Developments"

¹⁵⁷ Boston Magazine online Article, "Juvenile Detention Drives Up Adult Incarceration Rates, MIT Study Finds; Turns out that locking up kids is a great way to groom future criminals." by Chris Sweeney, 6/11/2015 Available at <https://www.bostonmagazine.com/news/2015/06/11/juvenile-detention-mit-study/>

¹⁵⁸ Ibid

experienced by them in the process of states trying to ensure justice for victims would be drastically reduced. Resulting effects like juvenile offenders' suicide will also be averted. The National Center on Institutions and Alternatives (NCIA) in collaboration with the U.S. Justice Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP) carried out a national survey on juvenile suicide that happens when juveniles are incarcerated or imprisoned, and the results were revealing. Based on a total number of 79 cases from 1995 to 1999, suicide rate happening in secured facilities/training schools was at 41.8%, in detention centres it was 36.7%, in Residential Treatment Centres it was at 15.2% and 6.3% in Reception/Diagnostic Centres. At the time of these deaths, 67.1% of all victims were on commitment status, 32.9% were on detained status, and the great majority (88.5%) of victims of juvenile suicide were those held in Detention Centres.¹⁵⁹ This indicates the negative impact of child detention and imprisonment on juveniles. The report revealed that all suicides at Detention Centres happened within the first four months of detention, with more than 40% happening within the first 72 hours.¹⁶⁰ According to the Bureau of Justice Statistics, most jail suicide victims are young White males arrested for non-violent offenses.¹⁶¹ The emphasis here is on young and because there's usually a nexus between prison suicide and mental illness,¹⁶² there's need for an approach that will also look at the underlying course of the crimes.

In places where the minimum age of criminal responsibility can differ depending on the location of the victim or where the offence was committed, a lot of juvenile offenders don't have an equitable experience. This means that one practice in state A might be in favour of a child offender who commits a crime but another child in state B might be at disadvantage for same offence. In the case of *Kenneth Foster Jnr V Texas*,¹⁶³ the appellant was convicted for murder despite not killing the victim. He was charged and tried simultaneously with the person who committed the crime under the Texas State Law of Parties, a law which eliminates the distinction between the perpetrator of a crime and an accomplice, allowing for the death penalty even though he did not personally commit the crime. In that case, he was even 70 feet away from the crime scene of where Michael LaHood Jnr (the victim) was killed and did not in fact pull

¹⁵⁹ Lindsay M. Hayes, Project Director, National Center on Institutions and Alternatives, *Juvenile Suicide in Confinement: A National Survey* (2004)

¹⁶⁰ *Ibid*

¹⁶¹ *Ibid*

¹⁶² Bonner, R. (1992), "Isolation, Seclusion, and Psychological Vulnerability as Risk Factors for Suicide Behind Bars," in R. Maris, et. al. (Editors) *Assessment and Prediction of Suicide*, New York, NY: Guilford Press, 398-419.

¹⁶³ *Foster v. Texas*, 529 U.S. 1057, 120 S.Ct. 1563, 146 L.Ed.2d 466 (2000).

the trigger, yet the court sentenced him to death by holding him accountable for the actions of Mauriceo Brown who committed the act. The effect of this law under the criminal justice approach is that where a juvenile commits same offence in a different state where the law of parties' statute is not applicable, that child offender will get a lesser punishment. To my mind, creating distinctions of punishment for a class of persons for same offence committed in different locations is no justice at all. To buttress the narrative, under the Nigerian criminal justice system, a juvenile offender in the South who commits the offence of stealing will not be imprisoned or given any form of corporal punishment. The case will be handled by the Family court based on the rules enshrined in the Child Rights Act. However, under Sharia law in the North, a juvenile who commits that same offence may be subject to amputation, or flogging (corporal punishment). This flows from the adopted legislation on 'hadd' offences and the Islamic law on homicide and bodily harm by 12 Northern states in the country.¹⁶⁴

This distinction of punishment of child offenders for same offence constitutes a great deal of injustice and it neglects the idea of child protection under international law. Hence, the need for a uniform global standard practice provided by state parties obligated under international and under their own national laws to protect children. The option provided by restorative justice is the intentionality behind restorative justice mechanisms as an adequate system to manage juvenile delinquencies, vices and criminality and still restore the harm caused. A description of the process is explained below:

Where X is a 16 years' old juvenile who lacked parents, his parents died when he was just 10 years, and he had to survive on his own. He was homeless till he met and engaged with some radical elements, who would not only fend for him but later teach him the hacking trade/internet fraud. Before the age of twelve, the young X is proficient at exploring methods for breaching defenses and exploiting vulnerability in computer systems — using cyber tools to penetrate fire walls or the cyber space of firms, to view and steal secrets, and really carry out nefarious activities for his bosses and for himself. By the time he is 15, one of his associates kills a lady and the whole group is caught as he faces a stringent sentence for his juvenile crimes, following the dictates and tenets of retributive justice.

¹⁶⁴ Gunnar J. Weimann, *Judicial Practice in Islamic Criminal Law in Nigeria—A Tentative Overview*, *Islamic Law and Society* Vol. 14, No. 2 (2007), pp. 240-286 Published By: Brill

In the case above, retributive justice would look at the dictates of the law and with the combination of the offences, as captured in the criminal code or under criminal law, we can anticipate years imprisonment or life in prison. With this situation, depending on the law of the country X is from, he may be considered and tried not only as an adult but for the murder or an accessory to the murder even though the murder wasn't committed by him. This is mostly based on the law of parties,¹⁶⁵ a law which has now been reviewed in the State of Texas following the injustice that some offenders have experienced. Using the traditional approach of criminal justice, the sentence of X would see that by the time he spends those decades in prison and comes out, he would have aged significantly outliving and his most youthful, energetic, and resourceful years by been in incarceration which means that a sense of justice in this case has been denied him. It also violates the provisions of Article 37 (a) and (b) of the UN Convention on the Rights of Child as punishment if at all used for a child ought to be only as a measure of last resort and must be for the shortest appropriate period.

On the other hand, Restorative Justice approach will be concerned about his story, how he journeyed to become an offender, and consider the impact of those activities on the affected parties and use any of the applicable Restorative Justice methods in seeking ways to restore the harm. This whole experience will help the arbiters and other authorities involved in the case to meticulously and judiciously seek a solution that will not only bring about the healing of the victims but also help to secure a better future for the offender by way of rehabilitation and reintegration.

This approach to handling juvenile offences is very relevant within the Nigerian system especially in consideration of several social problems affecting children daily. In Nigeria, juvenile cases are meant to be handled by the Family courts but a considerable number of states especially the Sharia states are yet to adopt the Child's Right Act speak more about creating a Family court, so offences generally are treated by the Sharia courts in the Sharia states and the High court or Magistrate courts in other states that are yet to establish a Family court. Sometimes these issues can take a protracted period before they are eventually resolved, which means the juvenile offenders are mostly in detention for a long period. In Ekiti state, southwest of Nigeria, the Family court was introduced in 2013¹⁶⁶ even though the requirement to have it

¹⁶⁵ Supra note 157

¹⁶⁶ Ekiti State Government, official website, June 21, 2012, Publication, "Fayemi's Wife Lauds Ekiti First Family Court" Available at <https://www.ekitistate.gov.ng/fayemis-wife-lauds-ekiti-first-family-court/>

as the only means for handling child offences has been in the Child Rights Act since 2003. The act was domesticated in Oyo State in 2006, but the court where the law was to be enforced was not created until July of 2020.¹⁶⁷ Furthermore the core of child protection goes beyond taking responsibility for a crime or repairing the harm caused by the juvenile. It entails education for the child offender as provided under international law.

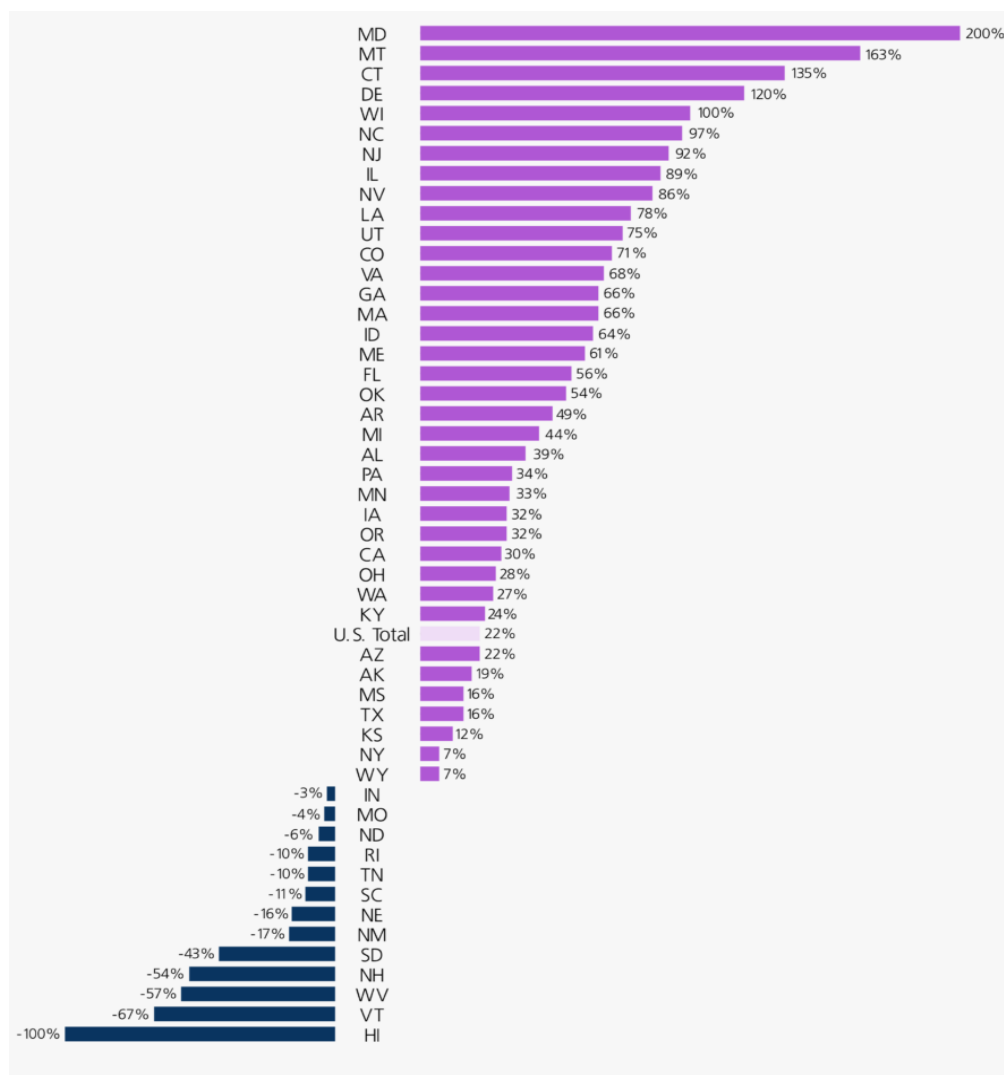
The UN Convention on the Rights of the Child provides that whenever appropriate and desirable, measures for dealing with juveniles without resorting to judicial proceedings should be applied and a variety of dispositions, such as care, guidance and supervision orders; counselling, probation, foster care, education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.¹⁶⁸ The emphasis here is on education. A method of holding juveniles reasonable for a delinquent act without education, counseling, supervisory orders, or probation does not help much in achieving the goals of correction, rehabilitation, and reintegration. Within the Nigerian justice system, there's no formal framework for community supervision whereby juvenile offenders can be reporting to a supervisory government department or officer and failure to so do or follow the set-out conditions will result in a probation violation that can attract sanctions aimed at correcting delinquent behaviors. The need for this cannot be overemphasized as this programme can lead to behavioral change and further the course of victim restitution and reduce juvenile crimes.

A universal approach of using restorative processes in handling juvenile crimes will also solve the problem of racial disparity in terms of punishment and over sentencing in multi-racial systems like the United States. The problems of over sentencing are mostly born because of racial discrimination. Racial and ethnic inequalities have long troubled criminal justice systems especially in societies that are highly culturally diverse, and recent data indicate that the problem is getting worse. In the United States, despite long-term declines in youth incarceration, the disparity at which black and white youths are held in juvenile facilities has

¹⁶⁷ See also Oyo State Government, official website, July 9, 2020, Publication "Oyo commissions Family Court, Promotes Child Rights" Available at <https://oyostate.gov.ng/oyo-commissions-family-court-promotes-child-rights/>

¹⁶⁸ Article 40, subsection 3(b) and (4) of the UN Convention on the Rights of the Child

grown.¹⁶⁹ In 2001, black juvenile offenders were four times more likely than white juvenile offenders to be incarcerated.¹⁷⁰ Juvenile facilities, including 1,800 residential treatment centers, detention centers, training schools, and juvenile jails and prisons held 48,043 youth as of October 2015 and 40% of these youth were African Americans.¹⁷¹ Since 2001, the racial gap between black and white youth in detention has risen by 22%. Below is a graphical statistic of the change in black and white disparity of juvenile incarceration between 2001 and 2015.



Change in Black/White Racial Disparity in Youth Incarceration, 2001 vs. 2015¹⁷²

¹⁶⁹ The Sentencing Project, “Black Disparities in Youth Incarceration” September 12, 2017, Available at <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>

¹⁷⁰ Ibid

¹⁷¹ Puzzanchera, C., Sladky, A. and Kang, W. (2016). “Easy Access to Juvenile Populations: 1990-2015.” Youth is defined as those between the ages of 10 and 17, inclusive.

¹⁷² Ibid

The punitive system of criminal justice when applied in multi-racial systems tends to overlook the protections for minority children as guaranteed by international treaties which most states have signed and ratified. By caring less about those protections, injustice is done to the child offender even though for the victims a sense of justice may have been achieved. This brings the concept of justice into question.

3.2 Recommendations and conclusion

Crimes everywhere in the world must be accounted for be it an act of a juvenile delinquent or one by a mature adult. However, the process of holding the former for their delinquent acts whether it is a simple offence, or a capital offence must take certain factors into consideration which the traditional punitive method of addressing crime fails to consider, largely because its focus is to punish the offence and the national laws that apply are peculiar to every state so the way they are applied by various states are inherently different. As a result, the protection of many child offenders is dispensed with against the requirements of international law obligations. This research tried to look the harm that many child offenders are exposed to and see how those can be averted using Restorative Justice which is a more potent alternative to handling conflict and addressing the harms caused to victims of crime while giving room for rehabilitation of the child offender and reintegrating them back to society.

This work approached the idea of handling juvenile offences with restorative approach not because juveniles are above the law or should not be accountable for their actions but because even though they might meet the age requirement as prescribed by the state under various legislations, they mostly lack the elements of the minimum age for criminal responsibility (emotional, mental, and intellectual maturity) and more importantly, Restorative Justice can serve as win-win situation for all parties affected by a juvenile offence including the juvenile.

When a juvenile act or omission is committed, the effects of that act can have as much effect on the juvenile offender as much as it has on the victim and society. Meeting the criminal age requirement alone under the various laws of different states is not enough good legal and fair grounds to prosecute juveniles in courts or as adults if we are bearing in mind the emotional, mental, and intellectual maturity as required by the Beijing Rules. Rule 2.2 of the Beijing Rules allows for different number of ages coming under the meaning of the term ‘juvenile’ as it is inevitable due to difference in national legal systems of various countries. While this position

can be understood from the perspective of international law in fully respecting the economic, social, political, cultural, and legal systems of Member States. It must be said that where a country sets different minimum age requirements within their system, injustice on some juveniles is inevitable. For example, if you have two juveniles of the same age (15) and A commits an offence punishable in state A where the minimum age of criminal responsibility is 15, he will get punishment that will not apply to B if B commits that same offence in a different state that has a different minimum age of criminal responsibility of 16 years. Hence, it is recommended that states have a uniform age requirement. This has now been unified in Nigeria with the domestication of the UN Convention on the Rights of a Child which has reflected the minimum age of criminal responsibility in the Child's Right Act as 18 years. Furthermore, the UN needs to be more precise, undeviating, and inflexible with its rules and meaning as it concerns juveniles or children since their protection at every point in time is a priority.

To be clear a juvenile is a child, the only thing is that in respect of offences some children may be dealt with differently depending on the laws of their country.¹⁷³ The UN Convention on the Rights of a Child provides that, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.¹⁷⁴ This provision means that if a state sets 14 as the definition of an adult, majority has been attained. So, any person less than 18 but up to 14 cannot be considered a child under the law of that state. However, the UN Convention on the Rights of the Child does not indicate the criteria of the attaining majority. The Beijing Rules on the other hand states that a juvenile offender is a child who is alleged to have committed or who has been found to have committed an offence.¹⁷⁵ It also provides that age limits will depend on and are explicitly made dependent on the laws of different countries which makes for a wide variety of ages coming under the definition of 'juvenile' ranging from 7 years to 18 years or above.¹⁷⁶

So, the real question should be under what conditions will a person under any legal system be said to have attained majority. The UN tries to answer this question under the Beijing Rules by stating that the approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of his

¹⁷³ Rule 2.2 (a), Beijing Rules

¹⁷⁴ Article 1 UN Convention on the Rights of the Child

¹⁷⁵ 2.2 (c) Beijing Rules

¹⁷⁶ Commentary, Rule 2.2 Beijing Rules, Scope of the Rules, and definitions used.

or her individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If this should be the standard for determining who a child is then the essence of defining a child to be any person under 18 years is vague. It means a juvenile is not a child as defined by the Beijing rules. A better position would be any of the following:

1. Not to give an age requirement under the meaning a child and counter same with a clause in the same sentence but simply allow for all states to determine if a person by virtue of his or her individual discernment and understanding, can be held responsible for essentially any antisocial behaviour or a crime or;
2. Simply make 18 as the requirement for accountability universally because in many cases most persons at that age can be held proven to discern and understand their actions and the consequences that may arise therefrom except proven otherwise, which means anyone below that age is a juvenile and since juveniles are children, the idea of protection can be easily achieved.

The starting point really, for the protection of children in respect of the harm they may face due to their delinquent actions stems from the definition of the term “child” and “juvenile”. Under the Convention on the Rights of the Child which requires State Parties to establish a minimum age below which children shall be presumed to not have infringed the penal law, the aim is to ensure for the protection and best interest of the child. Children are criminalized in some countries for juvenile offences. Some are imprisoned or subjected to corporal punishment or punishment under sharia law and this act potentially limit their future opportunities, some don’t get the chance to become rehabilitated and be reintegrated. These experiences reinforce the need to ensure proper development for children.

The Committee on the Rights of the Child has argued that the use of deprivation of liberty has very negative consequences for the child’s harmonious development and seriously impedes the reintegration of the child back in society. In its General Comment No. 10 (2007), it underscored the requirement of the Convention on the Rights of the Child that from the outset, it has always been for State Parties to develop and implement a comprehensive juvenile justice policy and such comprehensive approach must not be limited to the implementation of the specific provisions contained in articles 37 and 40 of Convention on the Rights of the Child, but should also take into account the general principles enshrined in articles 2, 3, 6 and 12, and in all other

relevant articles of the Convention on the Rights of the Child, such as articles 4 and 39.¹⁷⁷ A juvenile justice policy without a set of measures aimed at preventing juvenile delinquency will definitely fail. Hence, the need for a comprehensive one is relevant under the Nigerian legal system to accommodate for the implementation of specific provisions of the Convention on the Rights of the Child. The Nigerian government in recent years has stepped up to its responsibility in this regard. Recently, the Federal Ministry of Justice in partnership with the Presidential Committee on Correctional Reform and Decongestion has set measures in place to reposition Borstal Institutions and Remand Homes in the country, with the goal of rehabilitating and reintegrating inmates, most especially juveniles back into the society.¹⁷⁸

In a preceding step the Federal Ministry of Justice in collaboration with the Presidential Committee and UNICEF held the first phase of the Juvenile Decongestion programme in September of 2020 in a Virtual Interactive session with the HAGF and Attorney General, Head of Courts and Commissioners of Women Affairs of all the 36 States in the country.¹⁷⁹ The UN mostly make references to State parties, which means the rules, guidelines or recommendations apply to states who signed and ratify them. This position needs to change as it is evident that significant harm is experienced by juvenile offenders in the US. The UN can take steps that can force the hand of a country to observe international law provisions such as one that is vital as protection of children. It is not enough to give these rules and provide guidelines when the people to benefit from that protection are not getting the protection. According to the office of Juvenile Justice and delinquency Prevention, about 3,400 persons youth under age 18 were imprisoned daily between 1993 and 2018.¹⁸⁰ That's enough harm to children for the UN to impose sanctions. UN sanctions can take a variety of forms to achieve different goals. In the past, the UN Security Council has taken sanctions towards supporting peaceful transitions of governments, non-proliferation and protecting human rights, it can do same where states are consistently failing to ensure the protection of child offenders.

As earlier mentioned in the beginning of this work the idea of protection in child justice is all encompassing, the current reality in Nigeria, is that some juveniles are recruited by Boko haram

¹⁷⁷ UN General Comment No.10 (2007), 44th session UN Committee on the Rights of the Child, CRC/C/GC/10 25 April 2007 Available at <https://www.refworld.org/docid/4670fca12.html>

¹⁷⁸ Federal Ministry of Information and Culture, FRN. Article by Samuel Lamai, FG Set to Reposition Borstal Institutions, Remand Homes. July 9, 2021, <https://fmic.gov.ng/fg-set-to-reposition-borstal-institutions-remand-homes/>

¹⁷⁹ Ibid

¹⁸⁰ OJJDP, Statistical Briefing Book, <https://www.ojjdp.gov/ojstatbb/corrections/qa08700.asp>

(a terrorist group) and under their cover, offences against people and the government are committed. In achieving justice in the cases of such child offenders, the relevance and effectiveness of Restorative Justice comes in handy as it will help to understand the circumstances by which they became offenders, help rehabilitate and reintegrate them back to society. Restorative justice having proved to achieve the goals of the traditional criminal justice system can be effectively used to address all child offences within the Nigerian system. A proper framework for diversion and disposition measures like probation, compensation, restitution, or community service orders should be implemented alongside subsisting legislations. The use of education and individualised social programmes designed to meet specific needs of juvenile offenders should be adopted. One of the most important goals of the Convention on the Rights of the Child is to promote the full and harmonious development of the child's personality, talents, mental and physical abilities. If this is to be achieved, detention of juveniles must only be resorted to as a last means of correction or ensuring deterrence.

Within the Nigerian system, there is the need for more collaborative effort from international organizations and civil society organizations in achieving the goals of restorative justice. The goals include bringing national laws and policies in line with international and European standards with emphasis on using deprivation of liberty only as a last resort. It is necessary to scale up alternatives to judicial proceedings and detention, as well as strengthening the ability of various institutions and professionals working with children that conflict with the law.

The Basic Principles of Restorative Justice approach in handling criminal cases can be applied at right from the moment the crime has been reported to the police and during arrest. To this end there must be voluntariness as restorative processes should be used only upon consent of the parties involved, this is also aimed at achieving better results. It is important to note that parties can withdraw such consent at any time during the process and should be allowed to do so. Under the Nigerian Child Rights Act, it allows for them to report back to the Family court judge about outcomes of the process. Also, the agreements reached by the parties either by way of making restitutions or ensuring compensations must be voluntarily and should lay down only rational and proportionate obligations.¹⁸¹ Such obligations are binding on them till they discharge those burden. It is important at the beginning process the offender acknowledge the

¹⁸¹ Part II, Art 7, ECOSOC Resolution 2002/12 Basic principles on the use of restorative justice programmes in criminal matters

facts or wrongs but more importantly participation in restorative processes in criminal matters must not be used as evidence of admission of guilt in subsequent legal proceedings.¹⁸² In a multi-cultural society like Nigeria that uses the criminal code in the south and operates sharia system with use of the penal code in the North, it is important that the use of Restorative programmes is carried out in a way that the approach does not lead to inconsistency or discrepancy thereby creating imbalance or inequality in the justice system. This is in line with the UN Resolution 2002/12 Basic principles on the use of Restorative Justice programmes in criminal matters which provides that Disparities leading to power imbalances, as well as cultural differences among the parties, should be taken into consideration in referring a case to, and in conducting, a restorative process.¹⁸³ An effective and successful Restorative Justice process to repair the harm caused by a juvenile crime requires confidentiality and the events or outcomes should not be disclosed subsequently, except where parties agree to disclose or as required by national law.¹⁸⁴ This is part of guaranteeing the protection of the offender and shaming of victims.

To achieve the desirable outcomes of Restorative Justice as an effective tool in handling juvenile crimes in Nigeria, there is the need for increased awareness and demand for legal aid services. A large amount of the injustice that a juvenile delinquent would encounter with the police within the Nigerian system is associated with interaction with the police. Hence, in introducing national strategies and policies aimed at the development of restorative justice, there should be sensitization for the promotion of a culture favourable to the use of restorative justice among law enforcement agencies.¹⁸⁵

Many juvenile crimes or arrest made in the Nigeria are largely made because someone reported another person and, in many cases, arrests are made before investigations rather investigations before arrest. Most times the reasoning of the police and even the courts in deciding whether to grant bail or not is the idea that the offender might jump bail and may never be found. As a result, many offenders rights as provided under international are steadily violated. To change

¹⁸² Part II, Art 8, ECOSOC Resolution 2002/12 Basic principles on the use of restorative justice programmes in criminal matters

¹⁸³ Part II, Art 9, ECOSOC Resolution 2002/12 Basic principles on the use of restorative justice programmes in criminal matters

¹⁸⁴ Part III, Art 14, ECOSOC Resolution 2002/12 Basic principles on the use of restorative justice programmes in criminal matters

¹⁸⁵ Part IV, Art 20. ECOSOC Resolution 2002/12 Basic principles on the use of restorative justice programmes in criminal matters

these dynamics, it is important to create an effective national database, reinforce data collection and management in the country to ensure evidence-based policy making, police accountability and justice. There is also the need to raise awareness on the benefits of alternatives to detention that respect child rights and are more conducive to public safety and less expensive than detention and the cost of prosecution.¹⁸⁶ It is expected that facilitators of Restorative Justice processes should act as an impartial third party and ensure that there's respect of dignity of the parties who has voluntarily agreed to the process. Within a proper framework that should be developed to allow Restorative Justice process to handle juvenile offences, it is essential to make the requirement for facilitators meet the peculiar needs of the individual cultures and communities of affected parties. Nigeria is home to over 200 million people with over 250 ethnic groups, so it is relevant for Restorative Justice facilitators to have good understanding of the cultures and communities of the affected parties as well as the local language especially in cases where the parties have little or no understanding of English language. It is necessary that they receive trainings and have the required experience of facilitating a restorative justice process.¹⁸⁷

In conclusion, the concept of Restorative Justice as an alternative to the harsh approach of traditional criminal justice should be introduced into educational curriculums. Furthermore, there is the need to build a shared understanding and cooperation aimed at improving the efficacy of the process. This can be achieved by way of dialogue and consultation between criminal justice authorities and administrators of restorative justice programmes.¹⁸⁸ Where detention and trial cannot be avoided, the Family Court must adhere to the strict rules of effective participation. Article 47 of the EU Charter of Fundamental Rights and Article 6 of the ECHR, provides for procedural safeguards for criminally suspected or accused children which includes the right to effective participation, and legal representation.

Effective participation considers the child's age, level of maturity and emotional capacities of the juvenile offender.¹⁸⁹ the elements of one is the child's presence during the hearings, holding the trial of camera, limited publicity, ensuring that the child understands what is at stake and

¹⁸⁶ See UNICEF Report "15 years of Juvenile Justice Reforms in Europe and Central Asia; Key results achieved for children and remaining challenges"

¹⁸⁷ Part III, Art 19, ECOSOC Resolution 2002/12 Basic principles on the use of restorative justice programmes in criminal matters

¹⁸⁸ Part IV, Art 21, ECOSOC Resolution 2002/12 Basic principles on the use of restorative justice programmes in criminal matters

¹⁸⁹ ECtHR, *T. v. the United Kingdom* [GC], No. 24724/94, 16 December 1999, para. 61

limited formality of court sessions. In the case of *T. v., the United Kingdom*,¹⁹⁰ two juveniles who at the time were 10 years of age, murdered a two years' old boy. The court procedure was the subject of a huge media attention, and the child offenders were tried in an adult court. Even though, the court process met other criteria of "effective participation", the ECtHR held that the applicant had not been able to participate effectively in the proceedings due to the publicity of the case, media attention and limited capacity to instruct their lawyers and provide adequate testimonies. The rights under Article 6 of the ECHR were therefore violated. This shows the importance of meeting the requirements of effective participation in any child trial. Ultimately, the benefits of alternative approach to juvenile justice outweighs the methods of the traditional punitive system for addressing crimes where it concerns children and that can be an applicable concept to the Nigerian juvenile justice system.

¹⁹⁰ ECtHR, *T. v. the United Kingdom* [GC], No. 24724/94, 16 December 1999

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Abbreviations of terms, legal acts, and judgements

CA – Court of Appeal

CFRN – Constitution of the Federal Republic of Nigeria

CPA – Criminal Procedure Act

CRA – Child’s Right Act

CRC – Convention on the Rights of the Child

CNN – Cable Network News

ECHR – European Court of Human Rights

ECOSOC - The Economic and Social Council

FGC - Family Group Conferencing

LPELR – Law Pavilion Electronic Law Report

NCIA - National Center on Institutions and Alternatives

OJJDP - Office of Juvenile Justice and Delinquency Prevention

MACR - Minimum Age of Criminal Responsibility

NWLR – Nigerian Weekly Law Report

VOM – Victim Offender Mediation

UN – United Nations

UNICEF - United Nations Children's Fund

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