TOPIC:

AN OVERVIEW OF THE EVOLUTION OF CRIMINAL ARBITRATION AND PLEA BARGAINING IN NIGERIA:

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ABSTRACT:

This overview discusses and analyzes the introducing Alternative Dispute Resolution (ADR) in our criminal system, which is still trailed by disagreement and debate that Arbitration/ADR is not applicable in the Criminal Justice System. This paper challenges the status quo and argues that ADR applies to criminal matters including serious offences. The ADR System, preferably victim/offender mediation; victim offender-panels; sentencing circles; community service, restorative justice and Plea bargaining, should be developed and adopted more in our criminal Jurisprudence . This paper also examines critical issues that impact upon its adoption especially how the ADR can act a viable option for resolving disputes between the victim and the offender. This overview explores theoretical concerns underlying contemporary appeals to ADR in the Criminal Justice System.

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TABLE OF CONTENT

CHAPTER ONE

1.0 INTRODUCTION

The use of non-traditional dispute resolution processes, falling within the rubric of Alternative Dispute Resolution (ADR), is now widely accepted in a variety of dispute contexts. In recent years, similar processes have been adapted and applied in a criminal justice context as part of an overall package of criminal justice reforms. Across America and other international jurisdictions, there have been developed a range of 'alternative' methods for dealing with criminal offenders, including programs such as victim-offender mediation, family group conferencing, and circle sentencing[2]. ADR is generally classified into at least four types-negotiation, mediation, collaborative law and arbitration. Sometimes a fifth type, conciliation, is included as well, but for present purposes it can be regarded as a form of mediation. The System for resolving dispute alternatively did not evolve in a day or even in a country rather it has been developed in different times, places, and forms of the need of people. The provisions of Alternative resolution exist at 450B.C. in the Twelve Tables adopted by the Romans. According to the rules of Twelve Tables the judges applied their reasonable discretionary power with respect to the settlement of stipulations arising from the contracts and the partition of lands acquired by inheritance. However, Alternative Dispute Resolution (ADR) is a term which is frequently used in civil suits and proceedings. Like many other countries Nigeria has also introduced this process in civil litigation system. With regard to criminal litigation the adoption of the process of ADR has been advocated by some researchers.[3] Criminal justice system is a practice of governments directed at upholding social control, deterring and mitigating crime or sanctioning those who violate laws with criminal penalties and rehabilitation efforts. There are arguments

[2] Melissa Lewis* and Les McCrimmon** The Role of ADR Processes in the Criminal Justice System: A view from Australia
[3] Professor Akin Ibidapo Obe

both for and against with regard to ADR in criminal Justice system because the criminal justice system emphasizes the role of the state in resolving offences to ensure peace and to protect the life and property of its subjects. State can never compromise. In spite of its objection with regard to ADR in criminal cases, it has been playing a significant role to reduce backlog of case.

Although no country has a pure accusatorial or a pure inquisitorial system, common law countries use procedures inspired by the accusatorial tradition; and our country belongs to common law legal system, which is adversarial one, where the parties are inclined to contest each other. In general, the accusatorial system seems to be sensitive to the liberty of the citizen and a serious drawback exist in the criminal administration of justice is delay. Usually delays occur in the disposal of cases by the courts. An example of unusual delay is manifested by the fact that, according to rough figure, more than two-third of the jail inmates comprise of under trial prisoner. Such phenomenon erodes people's trust and confidence in the criminal administration of justice. Here plea bargaining concept can play an important role by reducing delay and backlog in criminal offence.

In Nigeria, the debate as to whether the law and issue of justice (Prosecution, guilt, innocence, sentencing etc) which are deemed to be integral to the criminal justice system will be present in the criminal arbitration method has generated a number of controversy. Other normative questions as to the role of the justice system, sociological questions as to the nature of criminal offending and the relationship between the individual, the community and the state, and descriptive questions as to the adequacy of particular justice practices. Such analyses must also involve an understanding of the limits of the law in context – in other words, political and economic considerations must be taken into account.

On March 16th 2006, the then Nigerian president, Olusegun Obasanjo inaugurated a presidential commission on the reform of the Administration of Justice headed by Justice Akintole Ejiwunmi, amongst others, the commission proposed the following bills: the community service bill[4], the administration of justice bill, the victims of crime remedies bill, the prison act amendment bill and the national human rights commission amendment bill. Despite, many presidential commissions and committees recommending reforms, the recommendations have not been implemented. Instead, the government has set up new committees and commissions to study review and harmonize the previous recommendations. It is against this backdrop that we assert that delay in the quick dispensation of criminal justice, arguably remains the most perturbing aspect of criminal justice administration hence the need for other innovative means of administration of Criminal justice in Nigeria. Faultless criminal rules are destined to become redundant unless adequate safeguards exist for substantial minimization of delays in the criminal justice system[5] The Nigerian Law Reform Commission is currently looking into some aspects of ADR in the criminal justice system in the context of its review of the sentencing of offenders. The Discussion Paper and final Report have yet to be released, however issues relating to deferred sentencing orders, the power to impose conditions when discharging an offender, the role of the victim in sentencing and a range of properly funded alternative sentencing options for Indigenous offenders are being considered. Further, the reform is aware of the work of African law reform bodies which have addressed aspects of the feasibility of ADR in the criminal justice system.[6]

[4] Community service as a form of non-custodial sentencing has finally found its way in the newly enacted Administration of Criminal Justice Act 2015; Section 460(2) ACJA

[5] Osipitan, Y.,1992:490

[6] See Alternative Dispute Resolution (Issues Paper 8; Project 94; 1997; Nigerian Law Reform Commission's current project on bail and sentencing laws Australian Law Reform Commission, Sentencing of Federal Offenders, IP 29, (January 2005), available on-line at www.alrc.gov.au. 2 For example, see South African Law Commission's, Report on Juvenile Justice (Project 106; July 2000); Report on Sentencing (Project 82; December 2000); and; Lesotho Law Reform Commission's, The

This thesis will provide an overview of the concept of ADR in a criminal context, with a focus on the Nigerian Criminal Justice System, Restorative Justice, Plea bargaining and other non-custodial methods of sentencing offenders.

It is therefore submitted that the introduction and application though novel, of these ADR processes would not be at a total variance with the law and issues of justice (prosecution, guilt or innocence, sentencing etc.), all integral to criminal justice but will pursue the quality of promptness currently deficient in our courts

1.01 **EVOLUTION OF ALTERNATIVE DISPUTE RESOLUTION**

Throughout the 1970s and 1980s, a range of dispute resolution processes such as mediation, conciliation, and arbitration, all of which fall within the umbrella of ADR, gained popularity as an alternative to traditional litigation. The use of ADR in a variety of dispute contexts has grown rapidly in recent years, and has been institutionalized to a large extent through the introduction of legislative schemes and through the development of professional bodies which have fostered the use of ADR processes.[7]

To trace the roots of ADR, we can turn to anthropological and sociological studies of traditional societies for a glimpse of some of the ways early humans may have resolved disputes without the use of fists, clubs, or poison arrows. Many of these ways of resolving conflicts are starkly alien to our Western way of looking at the world. Nevertheless, they have much to teach us about the utility of conflict in airing the disagreements of everyday life and how to use them as opportunities to deepen

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Child Law Reform Project (2004); Republic of Ghana Law Reform Commission's current project restorative justice and alternatives to custodial sentencing

[7] The Lagos multi-door Court House (LMDC) , Citizens Mediation Centre (CMC) The Chattered Institute of Arbitrators UK Nigerian Branch,

relationships and achieve lasting harmony.[8] Consequently it has been noted by commentators that ADR processes are not 'new' but rather have been rediscovered, as informal justice mechanisms have long been the dominant method of dispute resolution in many societies, and in Indigenous communities in particular.[9] The 'rebirth' of ADR is often associated with the development of community justice centers to resolve neighborhood disputes in the 1970s and 1980s. Subsequently, the use of ADR processes spread into other areas, such as family, environmental, commercial and industrial disputes with current effort to apply same into resolving criminal disputes using methods such as victim remedies, restorative justice, and other non-custodial methods of punishing offenders.

The term 'ADR movement' is in a sense misleading as it suggests a unity of agenda amongst ADR proponents. On the contrary, support for the development and implementation of ADR came from a variety of groups with differing agendas. Astor and Chinkin note that 'ADR enthusiasts were sometimes strange bedfellows, coming from within the legal system and from its critics, from government agencies and from opponents of bureaucracy who supported community empowerment.'[10] Part of the support for the use of ADR processes sprang from a radical critique of the traditional Western justice paradigm. Formal court processes were criticised as being expensive, inaccessible, conflict-inducing, and disempowering for those involved. On the other hand, ADR was seen as a more accessible, flexible and efficient form of justice which allowed for the active participation of all parties and assisted in the preservation of relationships.[11]

However, not all proponents of ADR were critical of formal justice processes. Some simply saw ADR as a cheaper more effective way of dealing with more minor

[8] Jerome T. Barrett Joseph Barrett : A History of Alternative Dispute Resolution; The Story of a Political, Social, and Cultural Movement

[9] H Astor and C Chinkin, Dispute Resolution in Australia (2nd ed, 2002)

[10] Ibid

[11] http://adr.findlaw.com/mediation/the-advantages-of-mediation-cases-over-traditional-lawsuits.html

disputes that did not warrant the use of court resources. It as been noted that ADR has now become so widely accepted, and even institutionalised and promoted by governments, that 'what was born of resistance and opposition to the formal justice system has been extensively integrated and co-opted into the system'[12]

What is ADR?

Despite the fact that ADR processes are now regarded as mainstream, there is not consensus as to what the acronym 'ADR' signifies, nor as to what constitutes.[13] In Australia, the National Alternative Dispute Resolution Advisory Committee (NADRAC) has defined 'ADR' broadly as 'processes, other than judicial determination, in which an impartial person (an ADR practitioner) assists those in a dispute to resolve the issues between them[14] The breadth of this definition or description constitutes a recognition of the fact that 'ADR' is an umbrella term for a variety of processes which differ in form and application. Differentials include: levels of formality, the presence of lawyers and other parties, the role of the third party (for example, the mediator) and the legal status of any agreement reached.

ADR helps parties resolve their differences without resorting to a more confrontational adjudicative process. It looks at needs, interests, and solutions, and can promote healing. It is voluntary, timely, confidential, and based on mutual agreement. Unlike the conventional courts, it is designed to yield solutions that are adapted to the particular circumstances of individual cases, as it is about solving problems rather than imposing solutions through an adjudicative process.[15] Thus,

[12] Order 25 Rule 6 of the High Court Of Lagos State Civil Procedure Rules 2004 introduced Pre-trial conference as of exploring a mediated settlement of the parties dispute

[13] See National Alternative Dispute Resolution Advisory Council, ADR Terminology: A Discussion Paper (2002)

[14] National Alternative Dispute Resolution Advisory Council, Brochure (2002)

[15] Article by Felix Adewumi, http://www.nigeriavillagesquare.com/articles/felix-adewumi/alternative-dispute-resolution-adr-anantidote-to-court-congestion. Posted on 12-04-2007

ADR and its role in the socio economic or political life of nations must be acquired by every maturing or seasoned/ veteran lawyer or practitioner in varied fields of proficiency.[16] This solely for the reality that disputes are a fact of life of which cannot be ignored in any sphere. Therefore acquiring this requisite expertise is desirable, resulting in positive and strategic rewards for the legal practitioner.

Debates regarding ADR terminology have arisen in two respects. Firstly, there has been considerable attention paid to how each individual dispute resolution process within the ADR spectrum should be defined. Astor and Chinkin note that 'there has been a great deal of angst about what is included within the term ADR and what is excluded'[17] Whilst cautioning against getting caught up unnecessarily in semantics, the authors note that: Definitions are important. They have particular utility in an actively evolving area and provide clarity and consistency …

> Definitions are also needed in that they convey crucial information about what the definer believes to be central to the process and what the user can expect from it. [18]

Second, and perhaps more pertinent to the debate as to the role of ADR processes in the criminal justice system, there has been contention as to the meaning and significance of the acronym 'ADR'. This debate is significant as it relates to deeper theoretical questions as to the relationship between such processes and more traditional legal processes. As will be discussed below, the conceptualization of this relationship affects the development, implementation and evaluation of such programs. This is no longer as relevant in non-criminal contexts, given that ADR processes have been institutionalized within courts, government departments and

[16] ADR and Multi Door Court. Paper delivered by Hon Justice Opeyemi Oke; Chairman Governing Council, The Lagos Multi Door Court House.3rd March 2011
[17] H Astor and C Chinkin, Dispute Resolution in Australia (2nd ed, 2002), 77
[18] Ibid.

private enterprise to such an extent that they must be viewed as part of the overall schema of dispute handling.[19] However, the debate remains relevant in the criminal justice context given that the application of ADR processes in this field is relatively new.

Alternative?

The term 'alternative dispute resolution' has become entrenched, despite the fact that the description of such processes as 'alternative' attracted significant criticism in earlier decades. There are two conceptual criticisms of the use of the word 'alternative'. One is that it incorrectly suggests that such processes can supplant the traditional court mechanisms. Sir Laurence Street, the former Chief Justice of New South Wales, said in this regard:

> It is not in truth 'Alternative'. It is not in competition with the established judicial system … Nothing can be alternative to the sovereign authority of the court system. We cannot tolerate any thought of an alternative to the judicial arm of the sovereign in the discharge of responsibility of resolving disputes between state and citizen or between citizen and citizen. We can, however, accommodate mechanisms which operate as Additional or subsidiary processes in the discharge of the sovereign's responsibility. These enable the court system to devote its precious time and resources to the more solemn task of administering justice in the name of the sovereign[20].

[19] Ibid

[20] L Street, 'The Language of Alternative Dispute Resolution' (1992) 66 Alternative Law Journal 194, 194

The other criticism is that it suggests a conceptually and empirically unsustainable binary distinction between ADR processes and traditional litigation. A third criticism is that the term 'alternative' is socially and historically inaccurate, bestowing an undeserved primacy on litigation where in reality the majority of 'disputes' have traditionally been resolved without the use of formal legal processes.

Other definitions have been proffered, including: additional dispute resolution; appropriate dispute resolution; assisted dispute resolution and amicable dispute resolution.[21] It is noteworthy that there has also been some contention as to the scope of the words 'dispute' and 'resolution'[22]

Debates continue as to what the acronym 'ADR' signifies, what processes it includes and the precise nature of those processes. There is insufficient scope in this thesis to explore these in more depth. It is important, however, to note that ADR has been conceptually and terminologically problematic. As will be seen below, such problems are relevant when exploring the role of ADR processes in the criminal justice context.

Why ADR in Nigerian Criminal Justice System?

There is much truth in the popular and rather over flogged/used aphorism that justice delayed is justice denied, for Justice should neither be denied nor postponed. As the Honourable Justice of the Supreme Court[23] opined, delay is a serious indictment on the efficacy of our judicial system. It seriously erodes public confidence in the adjudicatory process and in the administration of justice itself.

[21] Ibid.
[22] National Alternative Dispute Resolution Advisory Council, ADR Terminology: A Discussion Paper (2002), 9–11
[23]Hon. Justice C.A. Oputa J.S.C. (Rtd), (1999), ''The Philosophy of Justice with emphasis on Arbitration'. Nigerian Law and Practice Journal, March 1999, Vol: 3, No.1 Pg. 73-84. 13

Significant sums of people find themselves to be victims or casualties of the crawling and most times crippling expense of the machinery of justice: the law courts, and are therefore forced into resignation, or being content with the lack of justice thereof. There exist a plethora of reasons, excuses for the delays experienced in the judicial procedure, some of which are endemic in the system. Some delays are occasioned by the personnel/officials of the judicial system itself, (the court clerks, bailiffs, lawyers and even judges) while some are due to the existence of a multitude of procedural rules which are often technical and complicated, and the bureaucracy oftentimes attending its application. The lengthy deferrals and adjournments in regular courts, resulting in heavy backlogs of unheard and part heard cases have heightened the need and concern for the expeditious, and with minimal delay and cost; resolution of cases and disputes.[24] Thus, the need for speedy trials has arisen to be an issue of high priority, the only caveat being that justice rushed may lead to outright injustice. The necessary and needed ingredient therefore to reduce delay in our judicial process, is the adoption of new attitudes and approaches by all those involved especially directly, for justice and its prompt administration are but two sides of the same coin, of which its efficient, effective and prompt application and management should co-exist as complements, and all the benefits derived from prompt justice delivery will be effective and compelling, done swiftly. 14

The various Alternative dispute resolution (ADR) techniques have arisen out of the need for the prompt and quick resolution of disputes/cases. However, for its effective utilisation as an alternative properly so called, Legal Practitioners and Judges involved in these ADR practices and procedures must of a necessity undergo some essential metamorphosis, and adopt a different approach to the judicial process therein required and not follow slavishly, the age old and familiar procedures of litigation. With the 'ministers' involved in the judicial process

[24]See Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint by **Dr. AGBONIKA John**, Alewo Musa Associate Professor, Faculty of Law, Kogi State University, Anyigba, Nigeria Vol.26, 2014

ministering assiduously, with precision and alacrity each in doing his task giving his best, the constitutional guarantee for prompt adjudication would be realised and the truism; that all the benefits which flow from justice being done will only be potent, if indeed done quickly15 would be to a greater extent, a reality for our judicial system.

1.02 <u>Legal Frame work of ADR under Nigerian Laws</u>

No law prohibits mediation in Nigeria. Instead some Rules of Court permit judges to encourage the parties to resort to ADR processes. Currently, mediated agreements are just contracts. However in some states where the facility exists, court-connected mediated agreements are registered and enforced through the courts (res judicata).

Statutory provisions, rules and judgements that stipulate and encourage the use of ADR processes in dispute resolution in Nigeria are classified by:

- Constitution[25]
- Acts[26]
- Laws[27]
- Rules of Court[28]

[25] Constitution of the Federal Republic of Nigeria, 1999 Section 19(d): Foreign policy objectives: • The foreign policy objectives shall be – • (d) respect for international law and treaty objectives as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication.

[26] Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria (LFN) 2004: • Part I – Arbitration – Sections 1 to 36 • Part II – Conciliation – Sections 37 to 42 • Part III – International Commercial Arbitration and Conciliation – Sections 43 to 55 • Part IV – Miscellaneous – 56 to 58 • First Schedule – Arbitration Rules • Second Schedule – Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958 • Third Schedule – Conciliation Rules Federal High Court Act, Cap. F12, LFN 2004

[27] FEDERAL HIGH COURT ACT, CAP. F12, LFN 2004 Section 17: Reconciliation in civil and criminal cases In any proceedings in the Court, the Court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof. See also MATRIMONIAL CAUSES ACT, CAP. M7, LFN 2004 **Section 11** on Reconciliation which empowers the Court in matrimonial cause to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage ; See also Section 30 MCA

- Rules of Professional Conduct[29]
- Case laws/judgments: While there is a dearth of cases in this aspect of the law because the concept of ADR especially Criminal arbitration is still a relatively new concept that is gradually getting entrenched in our legal framework. However, plea bargaining which is an aspect of ADR in the Criminal justice system has recorded a number cases with notable pronouncements by the Supreme Courts[30].

1.03 ADR and Criminal Justice: The Synopsis of the Issues and Concerns:

Most of the literature dealing with ADR contains little or no reference to its use in the criminal justice context, and as a corollary, most criminal law texts dealing with processes such as conferencing do not utilise ADR terminology. This is because ADR is usually described as a method of resolving disputes between parties without resorting to formal court-based adjudication. Traditional theories of criminal justice, on the other hand, view criminal offending as largely a matter between the offender and the state.[31]

The use of ADR processes in criminal matters is a relatively new phenomenon in Western countries. In part, the increased interest in the application of ADR

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[28] Order 3 Rule 11 of the High Court Of Lagos State Civil Procedure Rules 2012 ; All Originating Processes shall upon acceptance for filling by the Registry be screened for suitability for ADR and referred to the Lagos Multi Door Court House or other appropriate ADR institutions or Practitioners in accordance with the Practice Directions that shall from time to time be issued by the Chief Judge of Lagos State : See also Order 25 Rule 6

[29] The Rules of Professional Conduct 2007 **Rule 15(3) (d)** states that in his representation of his Client, a lawyer shall not fail or neglect to inform his client of the option of alternative dispute resolution mechanisms before resorting to or continuing litigation on behalf of his client.

[30] BRADY VS. INITED STATES 394 US 742, 90 S.C.T. 1463, 25 L.ED, 21 747 (1970) See also Ohiaeri vs. Akabeze (1992) 2NWLR (Pt 221) Pg 1 at 7 Paras 12 as

[31] R Sarre and K Earle, 'Restorative Justice' in R Sarre and J Tomaino (eds), Key Issues in Criminal Justice (2004) 144, 145.

processes to the criminal justice system was borne from a general dissatisfaction with traditional adversarial methods of dispute resolution. However, the criminal justice system has attracted a particular set of criticisms: it is seen as unsuccessful in reducing rates of recidivism[32] (and even may increase the likelihood of reoffending for particular groups, such as juveniles and Indigenous persons); it ignores the victims of crime and fails to recognize crime as a form of social conflict.[33] For instance, it has been argued that the ADR option privatizes disputes in contexts in which public policy requires the clear intervention of the State with strict public scrutiny. In other words, ADR tends to view conflict as personal, emotional and rooted in miscommunication rather than as stemming from illegal and criminally actionable behavior. The argument is that since most mediators lack any specialized training in criminal violence issues - because the ADR process is confidential, it is largely unregulated and there can be no guarantees that due process will be maintained or that the outcomes will be favorable for the victim and consistent with public law expectations. Mediation removes domestic violence cases from public view and judicial scrutiny. The arrest, prosecution and removal of a violent person not only protect the victim; it sends a clear message to society that violence cannot be engaged in with impunity (Ver Steegh, 2003, 145). The argument further is that the ADR process as a private process disparages the need for legal representation; and does not adequately distinguish between situations in which trained advocates are necessary from those in which they are not (Rifkin, 1989, 48). Also, it has been opined that ADR methods do not ensure any balance of power between the disputants in the settlement process unlike the public courts where the judge

[32] Recidivism is one of the most fundamental concepts in criminal justice. It refers to a person's relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime. Recidivism is measured by criminal acts that resulted in rearrest, reconviction or return to prison with or without a new sentence during a three-year period following the prisoner's release. http://www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx

[33] S Kift, 'Victims and Offenders: Beyond the Mediation Paradigm?' (1996) Australian Dispute Resolution Journal 71

holds the balance in the public interest. The problem of power imbalance is one of the greatest concerns of the opponents of ADR in criminal justice[34]. Power imbalance refers to a situation where one person is in the position of control while the other is in the position of subservience so that there is no likelihood of any negotiations on the basis of equality. This, it is argued, is because the offender committed the crime on his own terms. So, there is no basis of negotiation as there is no equality in bargaining power. These critics argue that when mediation is used instead of formal court interventions, the result can be dangerous for victims, particularly women in the domestic violence situations[35].

It has been further argued that the confidential nature of ADR leads to perpetuation of violence. For instance, in domestic violence, the criminal justice system has played an important role in publicizing the seriousness of domestic violence and in penetrating the silence that allows the perpetrator to commit the violence. Mediation perpetuates this realm of secrecy and isolation from public scrutiny (Krieger, 2002, 235). Additionally, mediators are sworn to keeping the confidentiality of the process. Thus, even when mediation reveals domestic violence of high degree, mediators are under obligation of non-disclosure to the police thereby helping to perpetuate domestic violence.

Finally, there is the argument that ADR agreements are not enforceable, and engender no follow-ups; the abuser may not want to work with the victim to come to a fair agreement, and even the best mediator cannot make this happen with the result that most abusers will quickly enter into any agreement to get off the hook only to relapse as soon as possible. ADR, therefore, leads to re-victimization and perpetuation of abuse[36].

[34] Fisher, Vidmar & Ellis, 1992, 2117; Goldberg, Sander & Rogers, 1992, 328
[35] Ibid 33
[36] Ver Steegh, 2003, 145

1.1.4. Addressing the Issues & Concerns

In addressing these concerns, it is very important to bear in mind that ADR in criminal justice context is quite different from ADR in the civil context, and this is the point that is not always obvious to the opponents of ADR in the criminal justice system. The arguments about privatization of dispute resolution process, power imbalance and adequacy of procedure arise apparently from a lack of understanding of the nature of ADR in the criminal justice context. The difference in the application of ADR in civil and criminal justice systems is aptly captured below:

> It is not a matter of contention that there are crucial differences between the application of ADR processes in non- criminal and criminal matters. Conferencing and victim offender mediation draw on elements of mediation in non-criminal areas, however differ in many practical and theoretical respects. Mediation refers to conflict and compromise, and seeks to avoid 'blaming'. It seeks to achieve the best outcome for all parties through collaboration, procedural flexibility, interest accommodation, contextualization, active participation, and relationship preservation. In the criminal context, the perceived benefits of more informal methods of justice apply, but conferencing involves a particular theoretical basis (informed by criminological, psychological and sociological theory) and aims to attach stigma to the criminal act not the offender and to achieve an acceptance of responsibility[37].

> The distinguishing factors between ADR in the civil and criminal contexts may then be charted as follows:

[37] Lewis and McCrimmon, 2005, 6; O'Connell, 2000, 9

1. While the Civil context involves the parties only. The Criminal context involves not only the parties but the State or society.
2. In the civil context there is no blame to either party. While in the criminal context there is blame but the blame or stigma is attached to the act not the offender.
3. The civil context involves only private interests while the criminal involves some public interest
4. There is no initial admission of guilt in the civil context. But there is initial admission or assumption of guilt in the criminal context.

The formalities and orientation of law are hindrances to the satisfactory and efficient resolution of most individual grievances. Often, the procedural requirements of the courts make it impossible for the parties to obtain timely, less costly and satisfactory form of justice. The argument that the ADR process as a private process disparages the need for legal representation; and does not adequately distinguish between situations in which trained advocates are necessary from those in which they are not is met by the counter argument that unlike litigation where only lawyers can appear for the parties, in ADR, the parties are still entitled to not only legal representation but also reserve the right to be represented by non-lawyers.

On appropriateness of ADR in dealing with violence as a criminal conduct and a public policy matter, it is observed that even statutes encourage the settlement of ordinary assaults by amicable resolution. Such assaults under most penal statutes are misdemeanors capable of amicable settlement and not felonies restricted by the laws of compoundment. Even in the case of felonies, the statutes recognise the right of the parties to settle amicably with the consent of the court. Thus, it is not right to argue that criminal cases are inappropriate for

ADR. More importantly, most violence cases usually do not occur in vacuum. There would in most cases be an underlying relationship which makes it even more important to get to the root cause of the matter and deal adequately with the needs and concerns of the parties rather than obtaining a pyrrhic conviction in a criminal court.is observed that even statutes encourage the settlement of ordinary assaults by amicable resolution. Such assaults under most penal statutes are misdemeanors capable of amicable settlement and not felonies restricted by the laws of compoundment. Even in the case of felonies, the statutes recognize the right of the parties to settle amicably with the consent of the court. Thus, it is not right to argue that criminal cases are inappropriate for ADR. More importantly, most violence cases usually do not occur in vacuum. There would in most cases be an underlying relationship which makes it even more important to get to the root cause of the matter and deal adequately with the needs and concerns of the parties rather than obtaining a pyrrhic conviction in a criminal court.[38]

1.3.5 Abitrability of Alleged Criminal Conduct

Another concern expressed on the issue of application of ADR in the criminal justice system came up for consideration in the Court of Appeal of England and Wales Judgment; in the case of *The London Steamship Owners' Mutual Insurance Association Ltd v The Kingdom of Spain and The French State*[39] *(The Judgment)* which deals with the arbitrability of claims involving alleged criminal conduct.

The case originates from an oil spill off the coast of France and Spain. The governments of France and Spain sought legal redress against various parties

[38] See Chukwunweike A. Ogbuabor's paper on ; Mainstreaming ADR in Nigeria's Criminal Justice System; European Journal of Social Sciences – Volume 45, Number 1 (2014)
[39] [2015] EWCA Civ 333

including proceedings in Spain[40]. One such party was the insurers of the vessel that the oil spill came from. The insurers took pre-emptive action by commencing arbitral proceedings for declaratory relief: a declaration that France and Spain were bound by the arbitration clause provided in the insurers' rules and that the insurers were not liable under the underlying contract. The relief sought was granted in favour of the insurers in the form of arbitral awards[41] the seat of the arbitration was England.

The insurers attempted to enforce the arbitral awards in England before judgment was rendered in the Spanish legal proceedings[42]. France and Spain opposed this enforcement of the arbitral awards on various grounds. One such reason, which was raised on behalf of Spain, was that the matter was incapable of being resolved by arbitration since the liability under Article 117 of the Spanish Penal Code ("SPC") requires a criminal conviction and this was an essential element of the cause of action against the insurers. It was claimed that because an arbitral tribunal cannot render a criminal conviction, such a claim, in accordance with Article 117 of the SPC, cannot be dealt with in arbitral proceedings. The court of first instance in England found, however, this matter to be arbitrable[43]. France and Spain subsequently appealed.

The Court ruled that the question of arbitrability was not a barrier because although the matter appeared in the SPC, the relevant provisions are civil in nature. Furthermore, even though procedurally the public prosecutor has the right to bring the claims, it is the claimant itself who benefits from the claim, not the public prosecutor[44].

[40] The Judgment, paras. 2-3
[41] (Judgment, para. 5).
[42] (Judgment, para. 7)
[43] (Judgment, para. 8)
[44] (Judgment, paras. 77-82)

In the case at hand, the Court dealt with the issue of the interaction between criminal law and arbitration in a specific set of facts. However, examining the matter in a broader sense, the key part of the Judgment is the **Court's statement that an arbitrator has the jurisdiction to find facts that constitute a criminal offence and even find that a criminal offence has been committed**[45]. This statement raises concerns from an English criminal law perspective.

The first concern is the applicable standard under which such a criminal offence must be proved in arbitration proceedings. It is not clear whether this would be the usual criminal standard that the decision maker must be sure or whether this would be the usual civil standard on the balance of probabilities.

The second issue is related to the restriction of a decision making body to a single arbitrator or an arbitral tribunal. Considering the context of arbitration to judge commercial matters, it is most likely that the criminal accusation will be one of fraud. Within English criminal law, this is classed as an "either way offence" meaning that it may be decided upon by a jury, a bench of magistrates or a single judge. Such an outcome on the applicable decision making personnel is dependent on the seriousness of such fraud taking into account factors which include inter alia the number of fraudulent activities, financial value of said activities, the longevity of such actions and the wishes of the accused with respect to the decision making venue. It might appear restrictive if under civil law this right was restricted to just an arbitral tribunal but if the same accusation was put in a criminal context, the accused would have the right to have the matter heard before a wider range of decision makers in the form of twelve jurors.

[45] (Judgment, para. 78)

Thirdly, any decision on criminality within English criminal courts would have a wide range of evidence available for such a decision. One example in such a criminal case would be the option to examine the bad character of the accused or the party making the accusation in terms of, for example, any previous convictions that such a party may have if said previous convictions and/or other bad character evidence were found to be applicable to the current dispute. For example, if a case involved an accusation of fraud then it is possible that those involved would have their records examined to see if they had been convicted of fraud in the past.

In contrast, one of the main features of arbitration proceedings is that they are confidential, unless the parties agree otherwise. Therefore, arbitral tribunals cannot automatically examine previous arbitral awards involving any of the parties before them. Thus, if, in a previous arbitral award, a party had had a finding made against it that it had acted in a criminal manner or had committed a criminal offence, this is not something that the current arbitral tribunal could automatically enquire about. Therefore, findings of criminal liability could be made in current arbitral proceedings without the full range of evidence regarding the parties' previous conduct at the disposal of the arbitral tribunal. Such evidence would be, on the other hand, available to the equivalent decision makers if the matter was before a criminal court.

These points are highlighted because, although an arbitral tribunal does not have the ability to render a criminal conviction, it has the ability to find that a criminal offence has been committed. Equally, whilst an arbitral tribunal cannot render a custodial sentence, it can award damages. These damages may contain a punitive element based on findings of criminality. This appears to be similar to the ability of the criminal courts to recover money which is found to have been obtained from criminal conduct. It can be argued that this overlap described

above between criminal law and arbitration is a commendable step towards disabusing the stereotype Criminal justice system and empowering an arbitral tribunal to make findings that a criminal offence has been committed.

1.04 Forms of ADR in the criminal justice context

In a criminal justice context, the term ADR can encompass a number of practices which are not considered part of traditional criminal justice:

A) victim/offender mediation;
B) victim offender-panels;
C) sentencing circles;
D) community service;
E) Plea bargaining;.

These practices can occur at different stages of the criminal process: they can be a diversion from the court process or they can be in parallel with the court process. These processes are generally only applied to offenders who have admitted the offence.

As noted above, there has been considerable amount of discussions what 'ADR' signifies and what processes are considered to come within its ambit. There has also been discussion about whether ADR is a term that can be applied to criminal justice reforms. Such processes resemble mediation generally in that they bring the parties together and attempt to negotiate an agreed outcome, but challenge accepted definitions of the terms 'dispute' and 'resolution'. The role of the state in criminal matters differs from its role in civil matters, and the question arises as to whether an offence constitutes a 'dispute'.[46]

[46] National Alternative Dispute Resolution Advisory Council, ADR Terminology: A Discussion Paper (2002), 9–11

In part, this discussion is a semantic one as to whether the term ADR can be appropriately applied in a criminal context. However, such debates are relevant in that they examine the conceptual bases for the development of ADR processes and generate discussion as to whether ADR-type processes can and should be applied in a criminal context.

It is not a matter of contention that there are crucial differences between the application of ADR processes in non-criminal and criminal matters. Conferencing and victim-offender mediation draw on elements of mediation in non-criminal areas, however differ in many practical and theoretical respects. Mediation refers to conflict and compromise, and seeks to avoid 'blaming'. It seeks to achieve the best outcome for all parties through collaboration, procedural flexibility, interest accommodation, contextualization, active participation, and relationship preservation.[47] In the criminal context, the perceived benefits of more informal methods of justice apply, but conferencing also involves a particular theoretical basis (informed by criminological, psychological and sociological theory) and aims specifically to attach stigma to the criminal act (not the offender) and to achieve an acceptance of responsibility.[48] What is a matter of contention is whether and in what manner such processes should be applied in a criminal justice context.

ADR in criminal justice context as outlined above will be discussed in details as follows:

A) **Victim-Offender Mediation (VOM)**: Victim-offender mediation is not practiced in Nigeria. It is a process that provides interested victims (primarily

[47] L Boulle, Mediation: Principles, Process, Practice (1996), 35.
[48] T O'Connell, Restorative Justice for Police (2000) Real Justice Australia, 9.

those of property crimes and minor assaults) the opportunity to meet their offenders in a safe and structured setting. The goal is to hold offenders directly accountable while providing important support and assistance to victims. With the assistance of trained mediators, the victims are able to let the offenders know how the crime affected them, receive answers to their questions, and be directly involved in developing a restitution plan that holds the offenders financially accountable for the losses they caused. The offenders are directly responsible for their behavior and therefore must learn the full impact of what they did and develop a plan for making amends, to the degree possible, to the persons they violated. Offenders' failure to complete the restitution agreement results in further court-imposed consequences. Some VOM programs are called "victim-offender meetings," "victimoffender reconciliation," or "victimoffender conferences."

Victim-offender mediation is one of the clearest expressions of restorative justice, a movement that is receiving a great deal of attention throughout North America and Europe. Current juvenile and criminal justice systems are primarily offender-driven, with a retributive perspective that views crime as an offense against the State and offers little help to crime victims

Mediation is being used in an increasing number of conflict situations, such as divorce and child custody cases, community disputes, commercial disputes, and other civil court-related conflicts. In such settings, the parties are called "disputants," and the assumption made is that both are contributing to the conflict and therefore both need to compromise to reach a settlement. Often, mediation in these cases focuses heavily upon reaching a

settlement, with less emphasis upon discussing the full impact of the conflict on the disputants' lives.[49]

Is Crime a Dispute to be mediated?

In victim-offender mediation, the involved parties are not "disputants." Generally, one party has clearly committed a criminal offense and has admitted doing so, whereas the other has clearly been victimized. Therefore, the issue of guilt or innocence is not mediated. Nor is there an expectation that crime victims compromise or request less than what they need to restore their losses. Although many other types of mediation are largely "settlement-driven," victim-offender mediation is primarily "dialogue-driven," with emphasis upon victim empowerment, offender accountability, and restoration of losses. Most VOM sessions (more than 95 percent) result in a signed restitution agreement. This agreement, however, is secondary to the importance of the initial dialogue between the parties. This dialogue addresses emotional and informational needs of victims that are central to both the empowerment of the victims and the development of victim empathy in the offenders, which can help to prevent criminal behavior in the future. Research has consistently found that the restitution agreement is less important to crime victims than the opportunity to express their feelings about the offense directly to the offenders (Schneider, 1986). Restorative impact is strongly related to the creation of a safe place for dialogue between the crime victim and the offender.

Table 1 identifies key characteristics of victim-offender mediation that are likely to result in the least and the most restorative impact.

[49] https://www.ncjrs.gov/ovc_archives/reports/96517-gdlines_victims-sens/guide4.html

Table 1: Victim-Offender Mediation Continuum: From Least to Most Restorative Impact	
LEAST RESTORATIVE IMPACT **Agreement-Driven: Offender Focus**	**MOST RESTORATIVE IMPACT** **Dialogue-Driven: Victim Sensitive**
• Entire focus is upon determining the amount of financial restitution to be paid, with no opportunity to talk directly about the full impact of the crime upon the victims, the community, and the offenders. • No separate preparation meetings are conducted with the victims and offenders prior to bringing them together. • Victims are not given a choice of where they would feel the most comfortable and safe to meet or of whom they would like to have present.	• Primary points of focus are to provide an opportunity for victims and offenders to talk directly to each other; to allow victims to express the full impact of the crime upon their lives and receive answers to important questions they have; and to allow offenders to understand the real human impact of their behavior and take direct responsibility for seeking to make things right. • Restitution is important but secondary to the dialogue about the impact of the crime. • Victims are continually given choices throughout

• Victims are given only written notice to appear for a mediation session at a preset time, with no preparation. • The mediators or facilitators describe the offense and then the offenders speak, with the victims simply asking a few questions or responding to questions from the mediator. • A highly directive style of facilitation is conducted with mediators talking most of the time, continually asking both victims and offenders questions, with little if any direct dialogue between the involved parties. • The session is marked by low tolerance of moments of silence or expressions of feelings.	the process: where to meet, who should be present, etc. • Separate preparation meetings are conducted with victims and offenders prior to bringing them together, with emphasis upon listening to how the crime has affected them, identifying their needs, and preparing them for the mediation or conference session. • A nondirective style of facilitation is fostered with the parties talking most of the time. The mediation incorporates a high tolerance of silence and the use of a humanistic or transforming mediation model (). • The mediation is marked by high tolerance for expressions of feelings and

• The mediation session is voluntary for victims but required of offenders whether or not they take responsibility. • The mediation is settlement-driven and very brief (10-15 minutes).	of the full impact of crime. • Mediation is voluntary for both victims and offenders. • Trained community volunteers serve as mediators or comediators along with agency staff. • The mediation session is dialogue-driven and typically about an hour (or longer) in length.

After many years of supporting civil court mediation, with limited interest in criminal mediation, the American Bar Association now endorses the process and recommends the use of "victim-offender mediation and dialogue" in courts throughout the United States. Similarly, a recent statewide survey of victim service providers in Minnesota found that 91 percent believed that victim-offender mediation should be available in every judicial district since it represents an important service option for crime victims.[50]

[50] ibid

Table 2: International Development of Victim-Offender Mediation Programs	
Country	**Number**
Australia	5
Austria	17
Belgium	31
Canada	26
Denmark	5
England	43
Finland	130
France	73
Germany	348
Italy	4
New Zealand	Available in all jurisdictions
Norway	44
Scotland	2
South Africa	1
Nigeria	**0**
Sweden	10
United States	289

Impact of VOM on Victims of Crime

While a continuing need for more research in this field remains, far more empirical data exist on this option than one might find on many other correctional justice interventions. During the past several years, a small but growing body of empirical data has emerged from multisite assessments in Canada, England, and the United States. Studies conducted over the past 12 years throughout Europe and North America report high levels of satisfaction with the mediation process and outcome on the part of victims and offenders.[51] Some studies found higher restitution completion rates, reduced fear among victims[52], and reduced further criminal behavior[53]. Multisite studies in England[54], the United States[55], and Canada[56] have confirmed most of these findings. A large multisite study in the United States[57] found that victims of crime who meet with their offenders are far more likely to be satisfied with the criminal justice system response to their cases than victims of similar offenses who go through the conventional criminal court process.

It is becoming increasingly clear that the victim-offender mediation process can serve to humanize the criminal justice experience for both the victim and the offender. It holds offenders directly accountable to the people they have victimized, allows for more active involvement of crime victims and community members (as volunteer mediators and support persons) in the justice process,

[51] Coates and Gehm, 1989; Collins, 1984; Dignan, 1990; Fischer and Jeune, 1987; Galaway, 1988; Galaway and Hudson, 1996; Gehm, 1990; Marshall and Merry, 1990; Perry, Lajeunesse, and Woods, 1987; Umbreit, 1989, 1991, 1993a, 1993b, 1994a, 1994b, 1995a, 1995b; Umbreit and Coates, 1993; and Wright and Galaway, 1989.
[52] Umbreit, 1994a and 1994b Umbreit and Coates, 1993; and Umbreit, 1994a and 1994b
[53] Nugent and Paddock, 1995; Schneider, 1986; and Umbreit, 1994a and 1994b
[54] Marshall and Merry, 1990; and Umbreit and Roberts, 1996
[55] Coates and Gehm, 1989; and Umbreit, 1994a and 1994b
[56] Umbreit, 1995a and 1995b
[57] Ibid 40

and reduces further criminal behavior of offenders. During the early 1980s, many questioned whether crime victims would want to meet face-to-face with their offender. Today it is clear, from empirical data and experience[58], that the majority of crime victims who are presented with the opportunity for mediation and dialogue choose to engage in the process, with victim participation rates in many programs ranging from 60 to 70 percent[59].

B. Victim-Offender Panels (VOP) : This is currently in practice in the United States and can be attributed to the rise of the victims' rights movement in the last two decades[60], and in particular to the campaign against drunk driving. They were developed as a means of giving convicted drunk drivers an appreciation of the human cost of drunk driving on victims and survivors, with the intention of decreasing the likelihood of repeat offenses. It also offered victims and survivors a forum in which to express their experience and thereby restore some sense of power to the victims of crime.

One notable example of a VOP in application is the Victim Impact Panel (VIP) organized by Mothers Against Drunk Driving (MADD)[61]. This panel provides an opportunity for offenders to express remorse and for victims to express the impact that drunk driving has had on their lives.

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[58] Ibid. n 39-40

[59] Ibid

[60] The modern Crime Victims' Rights Movement began in the 1970s. It began, in part, as a response to the 1973 U.S. Supreme Court Decision in Linda R.S. v. Richard D. (410 U.S. 614). In Linda R.S., the Court ruled that the complainant did not have the legal standing to keep the prosecutors' office from discriminately applying a statute criminalizing non-payment of child support

[61] Mothers Against Drunk Driving (MADD) is a nonprofit organization in the United States and Canada that seeks to stop drunk driving, support those affected by drunk driving, prevent underage drinking, and strive for stricter impaired driving policy, whether that impairment is caused by alcohol or any other drug

Developed as a program to deter repeat drunk driving offenders, judges order offenders to attend a VIP as a condition of probation to listen to victims of drunk driving. The purpose of the panel is to provide a constructive atmosphere that allows victims to express their grief amongst others suffering from the effects of drunk driving. The expression of grief in a supportive atmosphere is thought to be conducive to the healing process[62]. Furthermore, victims may derive some satisfaction from knowing that they may help to save lives by changing offenders' attitudes about drunk driving[63]. The process of telling one's story may be therapeutic in itself.

Moreover, offenders must confront the real human consequences of their drunk driving, hopefully with the ultimate effect of changing their attitudes and behaviors[64]. The VIP, then, can allow offenders to see first-hand the pain and suffering that drunk driving causes to other victims; to help offenders acknowledge their own responsibilities instead of blaming these misfortunes on "bad luck"; to break through the denial of having a drug or alcohol problem; leave an impression in the minds of the victims of drunk driving in the minds of offenders, with the hope that it will change their drunk driving behaviors[65]

VOPs provide an opportunity for indirect encounter when either the victim or offender is unwilling or unable to meet the other. A VOP is comprised of unrelated victims and offenders linked only by a common kind of crime, not the particular crimes that involved the others. The panel may help bring closure to the victim and to expose offenders to the harms that they have caused by providing an opportunity for the parties to speak about their experiences.

[62] Mercer, Lorden and Lord, 1995 at 11-12
[63] Lord, 1990 at 10-11
[64] Mercer, Lorden and Lord, 1995 at 6
[65] Lord, 1990 at 9

C. Sentencing Circles:

A sentencing circle is a community-directed process, conducted in partnership with the criminal justice system, to develop consensus on an appropriate sentencing plan that addresses the concerns of all interested parties. Sentencing circles — sometimes called peacemaking circles — use traditional circle ritual and structure to involve the victim, victim supporters, the offender, offender supporters, judge and court personnel, prosecutor, defense counsel, police, and all interested community members. Within the circle, people can speak from the heart in a shared search for understanding of the event, and together identify the steps necessary to assist in healing all affected parties and prevent future crimes.[66]

Sentencing circles typically involve a multi-step procedure that includes:

1. Application by the offender to participate in the circle process;
2. a healing circle for the victim;
3. a healing circle for the offender;
4. a sentencing circle to develop consensus on the elements of a sentencing plan; and
5. follow-up circles to monitor the progress of the offender. [67]

The sentencing plan may incorporate commitments by the system, community, and family members, as well as by the offender. Sentencing circles are used for adult and juvenile offenders with a variety of offenses and have been used in both rural and urban settings. Specifics of the circle process vary from community to community and are designed locally to fit community needs and culture. Sentencing circles have been developed most extensively in Saskatchewan, Manitoba, and the Yukon and

[66] http://www.courts.ca.gov/documents/SentencingCircles.pdf
[67] Ibid *56*

have been used occasionally in several other communities. Their use spread to the United States in 1996 when a pilot project was initiated in Minnesota. [68]

Goals of Sentencing Circles

The goals of sentencing circles include:

- Promote healing for all affected parties.
- Provide an opportunity for the offender to make amends.
- Empower victims, community members, families, and offenders by giving them a voice and a shared responsibility in finding constructive resolutions.
- Address the underlying causes of criminal behavior.
- Build a sense of community and its capacity for resolving conflict.
- Promote and share community values.

A successful sentencing circle process depends upon a healthy partnership between the formal justice system and the community. Participants from both need training and skill building in the circle process, peacemaking, and consensus building. The community can subsequently customize the circle process to fit local resources and culture. It is critically important that the community's planning process allows sufficient time for strong relationships among justice professionals and community members to develop. Implementation procedures must be highly flexible, because the circle process will evolve over time based on the community's knowledge and experience.

[68] Ibid

In many communities, direction and leadership are provided by a community justice committee that decides which cases to accept, develops support groups for the victim and offender, and helps to conduct circles. In most communities, circles are facilitated by a trained community member, who is often called a "keeper." Sentencing circles are not appropriate for all offenders. The connection of the offender to the community, the sincerity and nature of the offender's efforts to be healed, the input of victims, and the dedication of the offender's support group are key factors in determining whether a case is appropriate for the circle process. Because communities vary in health and in their capacity to deal constructively with conflict, representatives of the formal justice system must participate in circles to ensure fair treatment of both victims and offenders. The capacity of the circle to advance solutions capable of improving the lives of participants and the overall well-being of the community depends upon the effectiveness of the participating volunteers. To ensure a cadre of capable volunteers, the program should support a paid community-based volunteer coordinator to supply logistical support, establish linkages with other agencies and community representatives, and provide appropriate training for all staff.

Impact of Sentencing Circles on the offender and the Victim

Very little research has been conducted to date on the effectiveness of sentencing circles. One study conducted by Judge Barry Stuart (1996) in Canada indicated that fewer offenders who had gone through the circle recidivated[69] than offenders who were processed by standard criminal justice practices. Those who have been involved with circles report that circles empower participants to resolve conflict in a manner that shares responsibility for outcomes; generate constructive relationships;

[69] Ibid 19

enhance respect and understanding among all involved; and foster enduring, innovative solutions[70].

C. Community Service

On the surface, the term community service suggests that such service is rendered voluntarily. This is usually the norm; however, this service also can be forced/imposed on an offender of the law as an alternative to imprisonment[71]. It is the latter case that is being advocated for here[72]. In this form of community service, people convicted of crimes are required to perform certain services that would be beneficial to the community or to work for certain public agencies that need man power for service delivery. For instance, a fine may be reduced in exchange for a prescribed number of hours of community service. Sometimes the sentencing is specifically targeted to the convict's crime, for example, a litterer may have to clean a park or roadside, or a drunk driver might appear before school groups to explain why drunk driving is a crime.

The relationship between the offence and the sentencing would encourage proper rehabilitation as offenders would understand from first hand education what behaviours are ethically and morally acceptable. This is achieved while the community service sentence is being carried out. The sole purpose of community service is to properly rehabilitate offender as well as teach a moral of statesmanship.

[70] see ***Building Community Justice Partnerships: Community Peacemaking Circles***, by Barry Stuart, available from Aboriginal Justice Section, Department of Justice of Canada, Ottawa, Ontario, K1AOH8; Fax - (613-957-4697, Attn. Learning Network)

[71] See Section 460(2) Administration of Criminal Justice Act, 2015 which provides that

[72] http://www.premiumtimesng.com/news/top-news/170155-official-advocates-community-service-punishment-to-decongest-nigerian-prisons.html

Community service has been in effect in the United States, Canada, Europe and Australia for years with great rewards. It provides an option for criminal sentences which serves as an alternative to incarceration. The Howard League for Penal Reform[73] which is the world's oldest prison reform organization is a strong advocate for the increased use of community sentencing. This would help in reducing the prison population and improve the rehabilitation of those sentenced for criminal activity.[74]

D. Plea Bargaining:.

The Black's Law Dictionary defines "plea bargaining" as a negotiated agreement, between a prosecutor and a criminal defendant whereby the defendant pleads guilty or no contest to a lesser offense or to one of multiple charges in exchange for some concession by the prosecutor. In Nigerian law, the enabling provision of the law for plea bargains can be found in Section 270 of the Administration of Criminal Justice Act, 2015[75].

The law in subsection 1 provides that –

"1) Notwithstanding anything in this Act or in any other law, the prosecutor may:

a) Receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf;

b) Offer a plea bargain to a defendant charged with an offence."

Plea bargaining is one area of criminal law practice that is yet to be explored in Nigeria and very few Nigerians know it even exists in our jurisprudence. It is

[73] The Howard League for Penal Reform is a London-based registered charity in the United Kingdom. It is the oldest penal reform organisation in the world, named after John Howard. Founded in 1866

[74] http://connectnigeria.com/articles/2012/04/community-service-as-a-form-of-punishment-in-nigeria/

[75] See also S.75&76 Administration of Criminal Justice Law of Lagos State 2011; S. 14(2) EFCC ACT

submitted that if it is used more often, it will serve as a means of reducing the cost and time to government of prosecuting an alleged offender, it will in turn ensure a smoother and faster administration of justice process and it gives an accused person an opportunity to plead to a lesser sentence[76]

[76] http://www.legalnaija.com/2016/01/you-can-plea-bargain-in-nigeria-by.html

CHAPTER TWO

2.1. CRIMINAL ARBITRATION AND RESTORATIVE JUSTICE

Predominately restorative justice is used for the victim, specifically with a kind of mediation and/or restitution from the offender. Restorative justice is based on bringing together the victim, the offender, and the community; all have equal parts in repairing the relationships destroyed by crime.[77] This chapter is a dissection of restorative justice into its many components of victim remedies, offender reintegration and community revitalization. In discussing each of these components, this chapter will consider its application under extant domestic, international-regional, international and comparative law.

The use of ADR processes in the criminal justice system is often associated with the restorative justice movement, which seeks to shift the emphasis from the ideas of violation of the state and punishment towards reparation and inculcating in the offender a sense of responsibility towards the victim and the community. Restorative justice is viewed as more 'victim-centred' – indeed, the movement grew largely from victims groups who felt that victims were excluded and disempowered by formal criminal justice processes. [78]

Some commentators have noted that there is no well-accepted definition of restorative justice - it is often defined by indicating what it is not.[79] In other words, it is defined in opposition to the dominant Anglo-American criminal justice model, known as Retributive Justice. Key features of the retributive justice model are that

[77] https://en.wikipedia.org/wiki/Restorative_justice
[78] Ibid
[79] D Schmid, 'Restorative Justice: A New Paradigm for Criminal Justice Policy' (2003) Victoria University of Wellington Law Review 4; K Daly and H Hayes, Restorative Justice and Conferencing in Australia–No 186 (2001) Australian Institute of Criminology, 1.

the crime is viewed primarily as a violation of the state, and punishment is premised on deterrence and retribution.[80] In this traditional model, crime is defined in legal terms and is removed from its moral, social and political context.[81] In contrast, restorative justice views crime as the violation of one person by another, and focuses on problem-solving, dialogue, repentance and forgiveness.[82]

In Nigeria today, the three basic legislations dealing with substantive crimes are the Criminal Code (applicable to the Southern states), the Penal Code (applicable to the Northern states, and the Traditional Law that is based on the customs and traditions of the people.[83]. Despite the robust laws that are in place to handle the justice system, the expectations that our society has for the criminal justice system is to punish and rehabilitate individuals who commit crime.[84] Punishment and rehabilitation are also two of the four acknowledged objectives of the criminal justice system, with deterrence and incapacitation being the others. In Nigeria, punishment as opposed to restorative justice has always been the primary goal of dealing with individuals who commit acts of crime. Many theorists throughout history have argued which is more effective, punishment, rehabilitation, or restorative justice[85]. The effectiveness of punishment and rehabilitation has been analyzed to see the effects on victims and offenders and also the social and fiscal impact on our society. The Classical School of Criminology has proposed that punishment is used to create deterrence while the Positive School of Criminology uses the practice of rehabilitation to reduce recidivism.

[80] R Sarre and K Earle, 'Restorative Justice' in R Sarre and J Tomaino (eds), Key Issues in Criminal Justice (2004) 144, 145.
[81] Ibid
[82] Ibid
[83] See Omale, D.J.O. (2012) RESTORATIVE JUSTICE AND VICTIMOLOGY: EURO-AFRICA PERSPECTIVES
[84] Ibid
[85] ibid

A major concern of the criminal justice system in Nigeria, as well as in other parts of the world, including the United States is overcrowding of prisons. Rather than abate, overcrowding continues to be of major concerns to both the government and the criminal justice system. Inmates spend years awaiting to be tried[86]. As of 31st March, 2014, the total inmate population in Nigeria was 56, 055 for an installed capacity of 49, 505 inmates in the 239 total prisons nation-wide. Of the total prison inmates population, 17, 404 representing 31% were convicted prisoners; a total of 38, 651 inmates representing 69% were unconvicted/awaiting trial. Additionally, the total number of male inmates was 54, 948 representing 98%, while the total number of female inmates was 1,107 representing 2%.[87] The implication of the above staggering statistics is that about 38, 651 inmates are awaiting trial because they cannot afford the services of a lawyer; corruption in the system, and other bureaucratic processes. The ultimate goal of the criminal justice system is to do justice and be fair to either the offender and the victim as its name indicates[88].

The relevance of the justice system in improving the lives of the down-trodden and the vulnerable groups in ensuring that they receive justice within the system cannot be overemphasized. Any state who fails to provide its citizens with the protection they need from crime and access to justice hinders sustainable development and economic growth.[89] Accordingly, this paper argues that the justice system in Nigeria is slow, favors some groups, expensive, and complex, which is unfavorable and detrimental to the poor, a situation that has swelled prison population in Nigeria. Therefore, the place of restorative justice as a complement and an alternative to restoring community values, as well as making courts more users friendly and

[86] Agomoh U, Adeyemi A and Ogbebor V (2001) , The Prison Service And Penal Reform in Nigeria: A Synthesis Study For the Safety, Security And Access to Justice Programme of the Department for International Development (DFID),
PRAWA: Lagos at page 13
[87] Nigerian Prisons Service Report, 2014
[88] ibid
[89] Ibid

utilizing the customary/traditional justice system in the resolution of conflicts/crimes is relevant for justice and fairness to all.

2.1.1 Importance of Restorative Justice Intervention in Criminal Justice

The importance of restorative justice intervention in justice administration cannot be an over-statement. Ordinarily traditional wisdom demand that professional in the field of criminal justice are best at determining and adjudicating on matters of justice administration. However, according to Bradshaw [90] experts in the field of justice administration cannot claim to know all the detailed knowledge required for addressing successfully the specific justice needs of the parties, i.e., victims and offenders in the criminal justice dispute. Therefore, it is only the stakeholders themselves, family members, and their communities that have the required detailed knowledge about the circumstances surrounding the matter can come up with solutions to the criminal incidents that may be acceptable to all the parties involved[91]. Although restorative justice cannot work in certain cases, especially where the offender denies having anything to do with the incident or crime or where the victim is unwilling to participate in the reconciliation process, restorative justice can play an essential role in reducing reoffending, as well as helping victims , and boosting public confidence in the justice system by engaging members of the local community, reinforcing parental responsibility, giving victims a voice as well as reducing the fear of crime and anti-social behavior, and holding young people to account so that they can take part in repairing the harm they have caused, as well as learn from the experience[92]

[90] Bradshaw, J. (1988). Healing the shame that binds you. Deerfield Beach, Florida: Heath Communications.
[91] Botchkovar, E., & Tittle, C. (2005). Crime, shame and reintegration in Russia. Theoretical Criminology, 9: 401-442.
[92] Bazemore, G., & Schiff, M. (2001). Restorative community justice: Repairing harm and transforming communities. Cincinnati, OH: Anderson Publishing **See also**; Abramson, L., & Moore, D.B. (2002).

Another reason in favor of restorative justice intervention is based on the fact that because judgments and adjudication by professionals in the criminal justice most of the times prove unhelpful, and fail to reflect the justice need of the stakeholders, the intervention of the family members of the parties involved who are knowledgeable about the incident will go a long a way in creating an avenue for the resolution of the conflict amicably to the satisfaction of the parties involved.[93] Situations where outcomes are decided and forced on them by professionals tend to result in less satisfaction of the stakeholders involved [94]

In all, restorative justice is not as lenient as people would make it seem. Most offenders find it difficult to face the impact of their crimes. Studies reveal that most victims who take part in the restorative justice process are satisfied and happy with the outcome because it helps in reducing offending, particularly when effectively combined with practice-based interventions Therefore, restorative justice helps in reassuring the public that the fear of crime and other antisocial behavior can be reduced to the barest minimum.

2.1.2 Restorative Justice and the Role of the Community

Nigeria's criminal justice system draws inspiration from the retributive school of thought that emphasizes punishments for any crime or harm done to another or to the society. This is not surprising as the philosophy of punishing criminals' dates

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The psychology of community conferencing. In J .Perry (Ed.), Restorative justice: Repairing communities through restorative justice. Lanham, MD: American Correctional Association

[93] Ibid

[94] Tangney, J. P. (1990). Assessing individual differences in proneness to shame and guilt: Development of the Self-Conscious Affect and Attribution Inventory. Journal of Personality and Social Psychology, 59(1), 102-111.

See also Tangney, J. P. (1995). Recent advances in the empirical study of shame and guilt. American Behavioral Scientist, 38(8), 1132-1145.

back to 3,500 years. For example, the Code of Hammurabi[95] provided that 'if a man destroys the eye of another man, they shall destroy his eye. If he breaks a man's bone, they shall break his bone. If a man knocks out a tooth of a man of his own rank, they shall knock out his tooth[96]. Now that we have found ourselves in this retributive process of our criminal justice system that has shut its doors to other processes that could be effective in combating crime, helping victims, rehabilitating criminals, and keeping our society safe and sound, the challenge now is whether or not our justice delivery system should continue going this route in the face of an almost deteriorating justice system[97]. It is against this background that society looked into the possibility of complementing the current justice system with restorative justice in restoring community based cultural values in Nigeria.

Restorative justice is relevant in our society today because it is emerging as a formidable alternative to imprisonment, prosecution, as well as a means of holding offenders accountable in a way that responds not only to the needs of offenders but also the victims, as well as the community[98]. In criminal matters, restorative justice is seen as a convergent point for offenders, victims, and those affected by crime, often with the help of an intermediary in the resolution of the criminal matters. It stresses and draws on the traditional and religious belief, coupled with that of the state that disputes or crimes can be repaired without recourse to the conventional criminal justice system[99]. Restorative justice does not replace the criminal justice system;

[95] The Code of Hammurabi is inscribed on this seven-foot basalt stele. The stele is now at the Louvre. The Code of Hammurabi refers to a set of rules or laws enacted by the Babylonian King Hammurabi (reign 1792-1750 B.C.) See also: Hammurabi, King; Johns, C.H.W. (Translator) (2000). The Oldest Code of Laws in the World. City: Law book Exchange Ltd

[96] Ibid

[97] Lynd, H. M. (1958). On shame and the search for identity (1st ed.). New York: Harcourt Brace

[98] Bradshaw, W. & Roseborough, D. (2005). "Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism." Federal Probation, 69 (2), 15-19.

[99] Ibid n 95

rather it complements the existing well-functioning justice system[100]. It is a process that states and comprises of the idea that because of the hurt crime cause to the victim, justice should heal relationship. Under restorative justice, those involved, i.e., the victim, offender, the community, and other stakeholders have the opportunity to discuss the hurts of a crime and how solutions can be proffered without recourse to the conventional criminal justice system.

In pre-colonial Nigeria, issues regarding crimes and deviances were resolved among the parties involved amicably by the elders and within the community. Nations with the highest imprisonment rates such as the United States, Russia, South Africa, China, and others have utilized the advantages restorative justice offers to stem the tide of retributive justice and imprisonment[101].Therefore, it is high time the Nigeria justice system embraced the opportunities and merits restorative justice brings instead of resorting to the punitive approach even at the least offenses. It is important to note that restorative justice movement is gaining waves and making grounds in all strata of societies such as in schools, community services, post-conflict societies, as well as housing and care settings around the world because of its effectiveness in conflict resolution within the framework of the justice system, especially at the pre-sentence stage[102]. One of the advantages of restorative justice is its use at the pre-sentence stage. It is useful in its ability to inform and convince the sentencing judge or magistrates of the need to take a second look at the offender/accused by learning about their state of mind, character, as well as their level of contrition, ultimately leading to a better assessment and a responsive use of criminal justice interventions[103]. Additionally, restorative justice, at this point gives

[100] Retzinger, S. M. & Scheff, T. J. (1996). Strategy for Community Conferences: Emotions and Social Bonds. In B. Galaway and J. Hudson (Eds). Restorative Justice: International Perspectives. Monsey, NY: Criminal Justice Press, 3: 315-336

[101] Abrams, L. S., Umbreit, M. & Gordon, A. (2006). "Young Offenders Speak About Meeting Their Victims: Implications for Future Programs." Contemporary Justice Review, 2: 243256

[102] Ibid

[103] Ibid

rooms for those involved in the conflict the chance to resolve the incident within and among them with little or no intervention from the conventional criminal justice system.

2.1.2.1. Benefits of Restorative Justice

Cure Conference (2010)[104] reports that in a recent study, two criminologists collected all the available research concerning restorative justice and identified those reports that had compared people going through restorative justice approaches to those who were dealt with by the conventional criminal justice system. They found 36 of such well-designed research. Their findings were that the restorative justice programs had, in at least two tests each reduced in most cases repeat offenders; doubled (or more) the offences diverted from the criminal justice system to restorative processes; diminished crime victims' post-traumatic stress symptoms and other expenses; all stakeholders were more contented with the outcome; decreased victims' desire for punitive retaliation on offenders; cut down the price of litigation; lessened recidivism more than imprisonment of both youths and adults; and bettered the contentment level of both the victims and offenders.

Governments that desire these benefits should take a hard look at integrating well-designed restorative justice programs into their justice systems. The role of restorative justice in prisons and the criminal justice, particularly in a system where access to justice is not guaranteed could also include the following as identified benefits: The decongestion of courts, police cells and those awaiting trial in prisons; enable speedy delivery of justice in nations where access to justice and formal judicial forums is difficult and expensive, and unbiased treatment of disputants is by no means guaranteed. The confidence of the citizenry and the international

[104] ibid

community in the justice system of a nation is boosted when prisons and police cells are less crowded. RJ keeps youths and first time offenders from prison where hardened criminals are bred. Restorative justice reduces the level of stigmatization of offenders. This is imperative because, focus on crime prevention means criminal opportunities must be made harder. "The more freely and easily offenders and ex-offenders are stigmatized and rejected in our communities, the more difficult it becomes for any prison reformation program and strategy to demonstrate its effectiveness because, even the best, most comprehensive programs to help offenders transform their lives will inevitably be compromised if we do not simultaneously address the powerful social forces of stigmatization that are destroying the communities to which the offenders must return (Omale, 2005).[105]

2.1.3 The Components Of Restorative Justice

> According to the United Nations Declarations of Basic Principles on the Use of Restorative Justice Programs in Criminal Matters, *1999*, the philosophy of Restorative Justice encompasses (i) the provision of adequate and accessible remedies for victims of crimes; (ii) the effective socialization or reintegration of offenders into the society and (iii) the restoration of social equilibrium which has invariably been dislocated by criminal activity[106].

Mediation, in some form, is central to Restorative Justice, This could take the form of family mediation, neighborhood dispute settlement of criminal incidents, mediation by the police or other law enforcement organs, mediation in the court-room by

[105] See Conceptualizing & contextualizing restorative justice system for Nigeria ; By MAIWA'AZI DANDAURA SAMU (2013)

[106] See also ECOSOC Resolution 2002/12 : Basic principles on the use of restorative justice programmes in criminal matters

Judicial agencies, and post-trial victim-offender mediation, all stages being geared towards achieving the three central aims of Restorative Justice.[107]

It should be noted that the three components of Restorative Justice operate cumulatively. For ease of discussion, it is intended, in this segment, to separate them, particularly in order to identify, in a practical manner, the specific laws within our criminal justice system which tend to advance each of the components.

2.1.3.1 Victim Remedies

> The first task here is to define who the victim of a crime is, and what remedies are available to victims of crimes under domestic law (i.e. Federal and State laws) international-regional law and international law. This chapter shall also examine victim remedy provisions in some other jurisdictions by way of comparison.

The "victims" of crimes are persons who individually or collectively have suffered physical and/or psychological injury or economic loss, or substantial impairment of their fundamental rights, through acts or omissions that are in violation of the criminal laws. This definition is offered under the *United Nations Declaration of basic Principles of Justice for Victims of Crimes and Abuse of Power, 1985*[108].

This definition, and the international Declaration itself, signify that victims may not have suffered only in the hands of common criminals but include victims of abuse of power by governments and authorities (both legal and illegal) particularly in the case of group victims. Take for example, the Jewish victims of the Nazi pogrom in Adolf Hitter's Germany in 1940s or the genocidal killings of Tutsis in Rwanda in

[107] http://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf
[108] http://www.un.org/documents/ga/res/40/a40r034.htm

1994, the mass-murder of 1000 Muslim men in and Bosnia – Herzegovina in 2003, or the murder of black activists in Aparthied South Africa, or the tribal killings during the Kenyan Elections of 2009, or the killing of Algerian activists by the French Colonial government in the 1950s; or the killing of African – Americans by white supremacists; in the USA, for the killing of Continental African by European and Arab "traders" during the time of slavery and colonialism inflicted over a five hundred year period, or the massacre by Nigerian Government troops of civilian agitators in odi and Zaki-Biam under the Obasanjo regime in 2000 – 2003.

A person may be considered to be a victim even though the perpetrator(s) of the crimes have not been identified, apprehended, prosecuted or convicted and regardless of the family relationship between the perpetrator and the victim.[109]

The term "victims" also include the immediate family and dependents of the direct victim and persons who may have suffered harm in the course of intervening to assist victims in distress or to prevent victimization of other persons.[110]

An important component of victim remedies is that the victim of a crime should not be obliged to initiate a fresh civil suit in order to get appropriate redress for his victimization as implied by the Common law decision in Smith V. Selwyn[111] and applied in the Nigerian case of *Ojukwu V. African Continental Bank*[112].

The principles of victim remedies, in broad strokes, are that the victim of a crime should, as much as possible, be returned to his pre-victimization status.[113]

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[109] See: Pathway To Criminal Arbitration and Restorative Justice By The Magistracy Of Lagos State : By Professor Akin Ibidapo-Obe, FCIArb
[110] Ibid *n* 104
[111] (1914) 5 K.B 98
[112] (1968) 1 ANLR. 40
[113] http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx

The remedies of Restitution, Restoration and Compensation, and in appropriate cases, Apology are the keys to assuaging the trauma of crimes. Beyond these quantitative redress, the need has been expressed for the criminal justice system to ensure that victims of crimes are treated with compassion and respect for their dignity. They are entitled to access the mechanisms of justice and to prompt *redress*, as provided for by national legislation for the harm they have suffered. The crime victim need not wait till the conclusion of the prosecution of the offender[114].

The criminal justice system should make available judicial or *administrative* mechanism for redress through formal or informal procedures which are expeditions, fair, inexpensive and accessible. A responsive victim remedy procedure must inform and educate victims of the role and scope of the applicable laws and allow the views and concerns of the victims to be presented at appropriate stages of the proceedings. It must provide proper assistance throughout the legal process and take measures to minimize inconvenience to victims. It must protect their privacy as well as that of their families and witnesses on their behalf from harm and intimidation[115].

Clearly, ACJA 2015 has made some improvement on the previous criminal procure laws regarding compensation to victims of crime[116] and the power of Court to order payment of compensation to the Victim of Crime but a lot is left to be done regarding the impute of victim in the Trial process. The victims of crimes are not allowed to have any input in the trial process. Where they have retained counsel, the counsel are restricted to a passive role of holding "watching briefs" even where prosecutors have deliberately compromised the case or are incompetent. This is an

[114] Ibid n 104

[115] See the United Nations Guidelines for Prosecutors, 1990; The United nations Declaration of Basic Principles on the Use of Restorative Justice Programs in Criminal matters, 2000 and the Rome Statute of the International Criminal Court, 1998; The United Nations Declaration on the Development and Implementation of Mediation and restorative Measures in Criminal Justice, 1999

[116] See Section 314 and Section 319 of the Administration of Criminal Justice Act 2015

area where our courts especially the Magistrate can shake off the shackles of Colonial legal heritage. They should exercise their discretion as Matters of their courts and "in the interests of justice" to allow more substantial input from victims' counsel.[117]

Thus, even as more comprehensive laws on victims remedies and Restorative Justice are being awaited from the Legislature, a window of pro-activeness has been provided by "international law precepts which can be invoked by magistrates as exemplifying acceptable "international best practices". Also in Lagos State, magistrates should pro-actively extrapolate on the provisions of the Administration of criminal Justice Law, 2011 and Administration of Criminal Justice Act 2015 to advance victim remedies.

For example Section 76(2) ACJL enjoins the Prosecutor intending to enter into a plea bargain agreement to *"afford the complainant or his representative the opportunity to make representations or restitution order.* This same principle is stipulated in the *UN Guidelines for Prosecutors*[118] with respect to ALL aspects of prosecution and not plea bargain alone.

It is our submission that, these provisions applied conjunctively, is a sufficient legal window for a dynamic or activist Magistracy, in the word of Lord Alfred Denning or Justice Kayode Eso to widen the scope of victim representation and remediation in our Magistrates Courts and effectively discard the discredited notion that prosecution of offenders is a matter for the State alone. As a matter of fact, the Nigerian Supreme Court has also authoritatively pronounced that "justice" includes justice to done to the victim of a crime in the outcome of criminal prosecution. This was in the case of Ojegbu V. The State[119] The international law angle canvassed

[117] Ibid
[118] United Nations Guidelines for Prosecutors, 1990
[119] (1974) 11 SC 1 at Pp.6.

above should not be underrated as a legal justification to willing members of the international community since the principles and practices enunciated by the United Nations are meant to guide member-countries in adapting , adopting and upgrading their domestic law, procedure and practices.

We now proceed to consider the specific remedies provided for victims of crimes under Nigerian Federal and State laws relating to compensation, Restitution, Restoration and Apology.

According to Dr. T. O. Elias in his article: *"Traditional Forms of Public Participation in Social Defence*:, and his book: *The Nature of* African Customary Law, first published in 1954, the central philosophy of the customary Criminal Justice System of traditional Africa had always been Reconciliation. Every crime amounted not only to a "civil wrong" against the victim but also the breach of social taboo which introduced a supernatural dimension. Reconciliation operated on three levels: at the personal level, (involving the offender and victim); at the communal level, (involving the *"clan vitale"* i.e. the traditional authorities, the age-grades, elders, the priesthood and members of the community at large[120].

The introduction of English Criminal Law into Nigeria in 1916, and the constitutional abolition in 1960 of African Customary Law, effectively truncated traditional criminal law which was centered on reconciliation and typified by such victim remedies as Compensation, Restitution, Restoration and Apology. The purported retention of these remedies under the imposed Criminal law by the Southern States of Nigeria under the Criminal Procedure Act (CPA) and the Penal Code and Sharia Penal Code applicable in the Northern States, is at best a charade because the remedies have been denuded of their true essence as we shall see below.

[120] https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=6460

i) **Compensation**

In the Northern States of Nigeria where the Penal code and Criminal Procedure Code (CPC) are applicable, Section 78 of the Penal Code provides that a convict may be ordered to pay compensation either "in addition to or in substitution for any other punishment to the person injured". The vagueness of the provision has raised pertinent questions: Why should compensation be paid in *addition* to any other punishment. Ideally, Compensation ought to be *substituted* entirely for some other type of punishment.

Secondly, compensation should not only be payable to the person injured directly, but where fatal, his family or successors ought to be able to obtain compensation. Thus, the "personal injury" envisaged to be compensated goes beyond what Section 78 provides. Such "injury" in an ideal legislation should extend to mental, economic or other forms of injury[121].

Thirdly, section 365 of the Criminal Procedure Code (CPC) which operates conjunctively with section 78 of the Penal code in the North in relation to Compensation has disturbing contradictions: For example, Section 365 CPC provides that compensation is payable in *addition* to a fine, thereby removing the judicial discretion to order compensation only, or in appropriate circumstances, a fine only[122].

One is left to wonder how practicable it is for a convict to pay compensation to the victim after paying a fine to the State. This is not satisfactory, since the major object of the provision ought to be to assuage the victim's hurt and not to raise funds for the state.[123]

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[121] Ibid *n*ote 104

[122] Ibid

[123] <www.restorativejustice.org/intro/tutorial/lesson3>

It can be further argued that the provisions under the Criminal Procedure Code (CPC) are unsatisfactory[124] because conviction is a precondition for the award of compensation, which need not be the case. While, there is no definite procedure for qualifying the amount of compensation to be awarded and if the quantum of damages is to be awarded by the trial court, it is often determined without hearing from the victim as to the extent of the injuries suffered and other expenses incurred by the victim. Where the victim accepts the amount awarded, he is barred from taking any civil action for other collateral claims.

Another important negative factor of compensation in the Northern States (and this relates also to compensation under the new Sharia Penal Codes) is the issue of jurisdiction and the statutory limitation on the courts in monetary awards. Since most crimes are recognizable only by the Upper Area Courts, Sharia and Magistrates Courts with limited monetary jurisdiction, the Compensation payable is hardly sufficient to meet the injury sustained by the victim except in the most minor cases such as cow theft or minor personal injuries.[125]

As for the Southern States of Nigeria, compensation is virtually unavailable, being restricted only to cases concerning *juvenile offenders,* whereby their parents are required to pay Compensation awarded against them on their behalf. Even in such limited circumstances, the value of compensation payable is pegged at *twenty naira.*[126]

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[124] S. 255 CPA provides that compensation be paid to the prosecutor and not to the victim. S. 435(2) of the Act limits the amounts of damage or compensation to a meagre twenty naira in situations where although the charge against the offender is proved, the court does not proceed to conviction. See also, s. 78 Penal Code, 357 and 356 Criminal Procedure Code. These sections contains more elaborate provisions on restitution and compensation but in their application leave much room for improvement.

[125] See:The Nature, Types and Jurisdiction of Customary Courts in The Nigeria Legal System by CHIGOZIE NWAGBARA

[126] Ibid

Furthermore, under sections 456 and 457 CPA compensation may only be paid to an accused who has been wrongly charged, presumably, a malicious prosecution, up to a limit of a paltry sum of *twenty naira.* Granted that a victim of a malicious prosecution deserves compensation, how about all other victims of sundry crimes?[127]

In Lagos State, the applicable law is the *Administration of Criminal Justice Law, 2011.* The Lagos law unfortunately has fallen far short of the high expectations of a modern law on compensation. It is poorly drafted and grossly inadequate. Sections 285 to 290 in fact appear to be a mere rehash of the outdated CPA provisions. The inelegant drafting gives the impression that Compensation is payable only by a *private prosecutor* for a frivolous or vexatious charge against an alleged offender.

No articulate provisions are made for payment of compensation for victims of crimes in cases heard before the courts whereby other types of offender are ordered to compensate their victims for any physical or economic injury they may have suffered.

The only other situation stipulated by the ACJ Law where compensation is to be paid to an offender under the provisions relating to plea bargaining in Sections 75 and 76. All said, the provision for compensation under the Penal Code Criminal Procedure Code and Criminal Procedure Act need to be reviewed. Compensation should be ordered in all circumstances where the court finds that the victim of a crime has suffered injury of any sort[128]. The trial court, be it Jurisdiction of Magistrate or High Court, should award compensation as adequate. Jurisdiction of magistrates should be expanded commensurately with existing economic indices such that the least grade of Magistrate is able to award compensation of one million naira.

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[127] Ibid

[128] See: COMPENSATION TO VICTIMS OF CRIME IN NIGERIA:
A CRITICAL ASSESSMENT OF CRIMINAL VICTIM RELATIONSHIP by Adeniyi Olatubosun

However, the proactive Magistrate should not throw up his/her hands in despair. There is still an opportunity for compensation to be ordered in the process of "Settlement of Criminal Matters" provided for omnibusly in the various Magistrates Court Law, High Court Laws of the State and the Federal High Court Act..

Worthy of note (with regards to compensation under Federal Law) is a body recently inaugurated by the Attorney-General of the Federation in 2009, called the *Board of the victims of Trafficking Fund*[129], set up to compensate victims of "international sexual trafficking". It is the authors submission that , there is the need to establish a National Board for the compensation of the victims of *all* crimes into which budgeted funds will be remitted each year, and not only the victims of international sex trafficking.

ii) ***Restitution and Restoration***[130]

Where property belonging to another person has been found in the possession of a person convicted of an offence or apprehended for a crime, such property needs to be returned to the confirmed owners of the property. Provisions for Restitution are to be found in the Penal Code, Criminal Procedure Act and CPC. According to professor Adeyemi, (who has consulted for the Nigerian Government and the United Nations on Victim Remedies) Restitution under Section 267 and 268 of the Criminal Procedure Act relates to the return of *movable* property either stolen or otherwise dishonestly acquired or taken without permission. Restoration on the other hand, relates to repair, rehabilitation or restoring the possession of immovable property to a person

[129] http://www.vanguardngr.com/2016/09/fg-creates-fund-rehabilitate-trafficking-victims/

[130] The term 'restorative justice' gained currency in the 1990s, but it has modern antecedents in the informal justice movement and the victim-offender mediation programs of the 1970s and 1980; see H Strang, Restorative Justice Programs in Australia (2001) A Report to the Criminology Research Council

disposed of it by means of force[131]. Under the ACJA 2015, elaborate provisions were made for costs, compensation damages and restitution. - These provisions are contained in Part 32, Sections 319 – 328 of the Act. An order for Restitution or Restoration may be accompanied by an order for damages (compensation). The basic principles that run through the two disposition methods are the need to prevent any unjust enrichment as a result of criminality and the need to restore the victim as much as possible to the pre-criminality *status quo.*

What is puzzling however, is that in practice once the accused has been convicted of the offence, the courts, in sentencing him often ignore other options besides imprisonment. These provisions relating to Restitution and Restoration of property are not usually invoked because the Prosecutor and the Courts are focused on punishment alone[132]. Indeed, the victim, who has not participated in the trial is expected to bring a formal application for the release or restoration of his property.

Clearly, this would not be the situation if the crime victim had been allowed to make representations and be heard as part of the criminal trial. This, it is humbly submitted, is the direction in which criminal trials should be going in pursuit of the philosophy of Restorative Justice.

In this regard, a perusal of the Administration of Criminal Justice Law of Lagos State leaves much to be desired. In the first place, sections 290 – 293 which are the governing provisions are not lucidly drafted, lumping together Restitution to the victim and seizure and forfeiture of property with respect to which an offence has been committed. The same goes with the ACJA 2015 which provides that "A court may, within the proceedings or while passing judgment, order the defendant or

[131] See section 294 of Lagos State Administration of Criminal Justice Law 2011
[132] Ibid note 125

convict to pay a sum of money: (a) as compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict, where substantial compensation is in the opinion of the court recoverable by civil suit; (b) in compensating a bona fide purchaser for value without notice of the defect of the title in any property in respect of which the offence was committed and has been compelled to give it up; and (c) in defraying expenses incurred on medical treatment of a victim injured by the convict in connection with the offence.

Part 21 of the ACJL headed "seizure, Restitution, Forfeiture and Disposition of "property" encapsulates the inherent confusion. The disposition of property/implements used by the offender in the commission of a crime (Sections 290 – 293) should bear that heading, whilst Restitution and Restoration of victims' property (Sections 294-295) should bear a separate heading. Secondly, a situation where the victim of a crime will have to wait until appellate procedures have been exhausted, as implied in Section 290(4)(b), would occasion grave injustice to the victim.

We propose that a body be established at national, state and local government levels, into whose custody property seized from an offender are kept so that representations are made by victims who own them to this body which operates outside the court system but works in collaboration with it. The collaboration would be by way of making the property available as exhibits, where absolutely necessary, and through it own administrative processes determine the true ownership and ensure its prompt handover.

An independent Compensation and Restitution Board will not be constrained by magisterial jurisdiction or processes and may conduct independent hearing on Restitution to victims.

Whilst the courts remained seized of Restitution matters, they should explore the need to liberalize the principles regulating Restitution: In *Willoughby V. Republic* [133] the Supreme Court held that by virtue of section 270 CPA a Restitution Order could not be made in respect of money alleged to have been stolen and lodged in a bank account. The accused persons had received funds by cashing forged cheques and the money was paid into their banking account. The SC held that since the funds in the account could not be identified as stolen or as the very proceeds of the forged cheques a Restitution Order could not be made in favour of the victims of the fraud. This position with respect, appears overly technical.

The decision of *Adejumo V. the State*[134] appears more reasonable. The Court of Appeal held in that case that the trial court was right not to release four allegedly stolen cars to a purported victim who presented receipts purporting that the cars had been sold to him because there were inconsistencies in his Affidavit filed in support of the Application made to the lower court.

Comparative Law of Victim Remedies

In the United Kingdom, the notion that victims of crimes ought to be compensated for their victimization gained some ground when Margery fry, a British sociologist proposed it in the 1940's. However, victim remedies only became institutionalized for the first time in the United Kingdom through the *Compensation for Victims of Violence Act 1961*. The Act established a Criminal Injuries Compensation Board in 1964 to grant compensation, initially to victims of crimes of violence but subsequently, to victims of all manner of crime. The *Criminal Injuries Compensation Authority* has since replaced the Board under further amendments introduced by the *Power of Criminal Courts (Sentencing) Act, 2000.*

[133] Suit No Sc 311/1964
[134] (2006) 9 NWLR (part 986)

In addition, the new *Power of Criminal Courts (Sentencing) Act, 2000* stipulated a standard amount of compensation for various degrees of injury which may be suffered by victims. Also, a United Kingdom court which has convicted someone of an offence may require such a person to pay compensation for any personal injury, loss or damage resulting from the offence. The ambit of the personal injury is expansive and may extend beyond physical injury to include distress and anxiety. The quantum of compensation varies according to the jurisdictional limit of the court concerned with the magistrate's Courts being able to award up to GBP 5000.00 (Five Thousand Pounds Sterling). The Act required the court to have regard to the means of the offender in deciding whether to make a Compensation Order. Thus, the source of compensation is dual, from government and from the offender. This is the kind of law and institution being proposed to be established at Federal, State and Local Government levels in Nigeria.

In as much as Compensation Restitution and Restoration may assuage individual victim's hurts to a large extent, the same procedures may be adapted to group-victims of crimes. For example Jews living in Nazi Germany had vast caches of gold seized from them. Around 2005, however, the Government of Germany returned the caches of gold to the Israeli Government. Also, several African countries whose artifacts were plundered or stolen during the colonial period notably Ethopia and the Democratic Republic of Congo, had them returned to their Museums.

iii) ***Apology***

Whilst Compensation Restitution and Restoration may be used to assuage to the losses of group victims of crimes and/or abuse of power, by far the most significant remedy for group victimization in recent years has been the practice of issuing an official apology by high officials of the offending power/group.

When President Bill Clinton led a United States delegation to Africa on a tour to promote democracy in 1997, he and his delegation took time off to visit Goree Island, in Senegal. Goree Island was a notable slave port from where African slaves were exported to America and Europe. Visibly moved by the relics of this horrible trade and with many of the African – Americans in his entourage breaking down in tears, Clinton issued an apology to Africans for the role of the United States in the obnoxious trade.[135]

This was very significant because it was the first time that the United States had officially accepted responsibility for its involvement and the Apology was widely acknowledged as an important gesture of healing.

Similarly, President Ronald Reagan's apology to African-Americans[136] for the long years of discrimination against them whilst declaring January 15 of every year as a public holiday in honour of the Civil rights Icon Martin Luther King was widely perceived as an important form of atonement by the U.S. government.

Similar apologies have also been issued at various times by President Sakhozy of France, Prime Minister Kevin Rudd of Australia and former President Frederick De Klerk of Aparthied South Africa. The healing propensities of such a gesture cannot be under-rated in terms of the psychological comfort to the victim's descendants.

2.1.3.2. ***Offender Re-integration***

The second component of Restorative Justice is the need to ensure that an offender, even where he has been found guilty on offence is treated humanely and disposed of in such a manner as not to traumatize and harden him such that his ultimate reintegration back into the society is made difficult or impossible. These objectives have been achieved in many ways, many of them

[135] https://www.britannica.com/topic/Presidential-Apology-for-the-Study-at-Tuskegee-1369625
[136] http://www.nytimes.com/2015/06/19/opinion/an-apology-for-slavery.html?_r=0

constituting part of well-known disposition methods such as Fines, Binding-over, Suspended Sentences[137], Probation, Parole and Plea Bargain.

i) *Fines*

Section 282 CPA and Section 316 of the *Administration of Criminal Justice Law of Lagos State*, 2011 provides an omnibus power to Magistrates and High Court Judges which they appear not to have been used in appropriate cases to advance the cause of offender re-integration. Those sections provide as follows that in circumstances

> *"where a Judge or Magistrate has the power to order a sentence of imprisonment and no provision for imposition of a fine is made under that particular law, then the court may invoke this section and impose a fine in lieu of imprisonment".*

This section, it is humbly submitted is a powerful tool of restorative Justice in the hands of a pro-active court. There is no limit on the term of imprisonment imposed by the law for which a fine is being substituted. If our courts recognize that the congestion of Nigeria's prisons is compounded by every custodial order made by every court everyday, then perhaps they would look favourably on this alternative disposition. The argument of some of our Judges/Magistrate has been that even

[137] The ACJ Act 2015, in pursuance of its reformative and restorative approach, provided that a court, having regard to the need to reduce congestion in prisons; rehabilitate prisoners by making them to undertake productive work; and prevent convict who commit simple offences from mixing with hardened criminals may, with or without conditions, suspend a convict's sentence in which case, the convict shall not be required to serve the sentence in accordance with the conditions of the suspension or the convict may be sentenced to specified service in his community or such community or place as the court may direct. Provided however, that the offence for which the convict was tried does not involve the use of arms or offensive weapon, or for an offence which the punishment exceeds imprisonment for a term of three years.

where they impose a Fine commensurate with the gravity of the offence, the offender might not be able to pay the fine, resulting ultimately in imprisonment for default of the offender to pay the fine. Perhaps, it is time for exploration of nominal fines or some other non-custodial alternatives such as community Service Conditional Discharges, Suspended Sentences[138], Settlement, compensation.

Nigerian prisons have proved to be places of contamination and not reform. For every prisoner who spends one or two years for an offence of Stealing, those two years are ample time for his induction into worse forms of criminality, possibly Armed Robbery or Kidnapping and these persons will be unleashed in their more virulent state into the society. Humane and non custodial punishment not only helps the offender, it is a form of social defence for the society itself. Here are some other non-custodial dispositions for consideration by the courts.

ii) *Probation*

Extant criminal procedure laws have not made it crystal clear that Probation as a disposition method is available to both juveniles and adults alike even though in practice, it has been so.

The confusion has arisen because under the CPA, CPC and the Administration of Criminal Justice law 2011, the section on Probation is headed "Juvenile Offenders". This is misleading and magistrate perusing the sections might be forgiven for opting not to invoke them under the mistaken notion that the provisions apply to juvenile offenders. Consequently, it is humbly suggested that adult and juvenile provisions ought not to be lumped together in the same substantive or procedural laws. After all, the Nigerian Constitution has directed a *separate* stream of criminal justice for adults and minors. Also, probation is a very crucial disposition and more comprehensive legislation for its use is needed.

[138] Ibid

The probation provisions as they stand are not lucid: for example: Even through section 340 of the ACJ Law deals exclusively with juvenile offenders, section 341 applies to "any person".[139]

It is noteworthy that a Probation Order under the terms of the law equates to a conditional Discharge, to the extent that the conditions of the discharge often involve supervision by a probation officer.

Rather unnecessarily, in our view, the section limits the amount of Compensation payable by a juvenile offender or other offender to N20,000. This is too small in terms of present economic value.

If the probation systems is thoroughly upgraded and revamped, the courts would find that disposition method more attractive. Presently, many Magistrates avoid Probation because they consider it as a mere slap on the wrist for some serious offenders whereas in other countries, the restrictions on the freedom of the probate even though he is not incarcerated are such as to constitute a strong deterrent. Another complaint by magistrates is the dearth of probation officers. There may be a need for the body of Magistrates to make a strong representation on this to the Attorney-General, Chief Judge and other appropriate authorities.

iii) *Binding – Over*

Binding-Over a convict or accused person to keep the peace is mainly preventive but it could also be an effective deterrent contrary to what was held by a High *Court in commissioner of Police V. Nwaongwu & 6 ors.* Where the court struck out an Order of Binding-Over on the grounds that there must be evidence of a likely future breach of the peace.

[139] Ibid

Section 247 of the administration of criminal Justice law 2011 empowers the court to bind over a party to be of good behavior without stating for what period. A leaf may need to be borrowed from section 435(1) of the CPA which allows such binding – over to stretch to a maximum of three years. In those circumstances, not only is a "preventive" purpose achieved but a powerful deterrent also.

Does a Binding – Over Order have the same effect as a Suspended Sentence? This would appear to be the case. In one case, a 17 year old girl diagnosed as HIV positive was given a Suspended Sentence of three years in addition to 300 hours of Community Service.

iv) *Parole*[140]

A person sentenced to a term of imprisonment, may, where he shows himself to be of good behavior, be paroled, i.e. released before he has exhausted his term. Designed to achieve conformity by prisoners with prison rules and regulations, a Parole Order also serves to reassure the prisoner that the society is willing to exercise mercy on him.

v) *Plea Bargain*

In Lagos State, plea – bargain is available to defendants accused of all kinds of offences. This is commendable as the trend has been to exclude plea bargaining in capital offences, rapes, defilement and offences involving the use of violence.

There are two forms of plea-bargain available under the Lagos State law, namely, Charge Bargaining and Sentence bargaining. This typology, in our view, covers all

[140] Part 45 of the ACJA is on 'Parole' Court may direct release of prisoner before completion of sentence. See Section 468 Administration of Criminal Justice Act, 2015

the various concessions often offered to a defendant by the Prosecution. Prosecution may offer to reduce the charge from the one alleged in the complaint. This ordinarily occurs in cases where the offence in question carries statutory degrees of severity such as Homicide, Assault and Sex Offences. Some accused persons may exchange guilty pleas for the concurrent prosecution of multiple charges. Generally, numerous counts of the same substantive offence or related violation such as Breaking and Entering and Stealing may be charged simply as Stealing.

In sentence Bargaining, a plea of guilty is entered by the defendant in exchange for a promise of leniency in sentencing. Most commonly in the United States, defendants seek to be placed on probation instead of Imprisonment.

In practice, the Prosecutor and defendant engage in discussions before the charge is prepared (or amended) and an agreement in writing ensues. The agreement is subsequently submitted to the Judge. The victim of the crime is allowed to make his input to the Prosecutor even though the prosecutor is not bound to obey the wishes of the victim. Representation to the prosecutor becomes critical when it comes to the issue of Compensation or Restitution.

The Prosecutor in Lagos State is also expected to exercise his powers having due regard to the nature of the offence and the character of the offender. The defence counsel on the other hand is to ensure that his client is properly advised and that he does not plead to a charge without being aware of the implications.

Only Lagos State has provisions for Plea-Bargaining even though the Economic and Financial Crimes Commission (EFCC) has purported to implement plea bargain under section 14 of the EFCC Act. Commentators have argued that the section does not permit plea bargaining. With respect, we submit that every prosecutorial authority has (or ought to have) the discretion on how the conduct of a prosecution

should proceed, so long as such discretion is exercised in the public interest. The questionable 'public interest' in the plea-bargaining done by the EFCC which appears to favour rich accused persons such as Cecelia Ibru, Lucky Igbinedion and some others has been the reason for the wide-spread opposition to plea-bargaining.

In many other countries, plea bargaining has been a useful tool deployed to cut the costs and time of prosecution and achieve conviction, albeit for lesser offences than intended on the charge.

For the purpose of restorative Justice, plea bargaining would be useful to achieve offender re-integration and victim remedies, since there are provisions in section 75 and 76(b) of the ACJ Law 2011 for the compensation of victims of crimes.

2.1.3.3. *Community Healing*

i) Settlement of Cases

The coercive atmosphere of a trial is not consistent with the philosophy of Restorative Justice even though we have noted that courts are able to implement restorative justice through the various methodologies described above.

What is often not realized even by the adjudicators "themselves is that they can actually climb down from their "high horses" to play the role of a Mediator within the criminal justice process as the law *presently* stands. The various High Court Laws of the states and the *Federal High Court* Act allow the courts to play re-conciliatory and meditative role in criminal trials. For example, the Federal High Court Act provides in section 17 entitled "Reconciliation in Civil and Criminal Cases" that:

> *"in any proceedings before the court, the court may promote reconciliation among the parties thereto and encourage and facilitate amicable settlement thereof"*

Section 37 of the *Magistrates Court Law of 2009* provides for "Reconciliation in Criminal Cases"

The Court of Appeal in interpreting section 25 of the High Court Law of Lagos State in *Adejumo V. The State* (2006)9 NWLR (Part 986) 62, held that nothing stopped the court from promoting settlement in cases where felony is not involved.

Our humble suggestion is that this caveat on exclusion of felonies from settlement and reconciliation should not be, if the true spirit of restorative justice is obeyed. *In Cadbury Nig, Ltd & Ors V. Federal Republic of Nigeria* (2005)5 NWLR (Part918) 340. The Court of Appeal held that where parties had agreed to settle a criminal matter, it was wrong for a court to insist on prosecution of the case by issuing a bench warrant for the arrest of one of the accused persons.

Under the *Child Rights Law of Lagos State*, there are various provisions in which the courts are urged to promote the settlement of Criminal cases involving juvenile offenders, such as section 390(1).

Such settlement could also occur at the pre-trial stages at the police stations, but where the police bring cases to court which are better settled amicably than prosecuted such as Affray, the courts should not hesitate to mediate.

ii) **Community Service Orders**

The essence of community Service Orders as a disposition method not only helps the offenders to reintegrate easily because he has not been sent to prison but also to facilitate community healing. Only Lagos state has put in place such a law in the whole of the federation. Section 347 of the CJA law 2011 provides that a community Service Order could be made whereby a Community Service Officer would work out

an agreement with the offender on the amount of hours to be spent on the task. The law stipulates work in environmental sanitation or the Old People's Homes.

Perhaps the purview of tasks could be extended to traffic control, teaching certain subjects in primary and secondary schools, (depending on proficiency and educational background) or even adult education.

The present restriction of community Service Orders to minor crimes is not really justified. The type of offences qualifying for community service should be expanded to include even felonies as is the practice in the United States where Mary Stewart, a billionaire entrepreneur was sentenced to several hours of community Service in addition to hefty fines totaling millions of dollars for the offence of insider dealing.

The personality and status of the offender could be used as a determining factor to qualify offenders for Community Service Orders. Imagine the amount of satisfaction that the community members would derive if a Senator, House of Representative member or former governor were to be assigned to sweep some township road as punishment for corruption. The offenders themselves would be humbled and perhaps learn the bitter lesson that their status is a God-given privilege and not a natural right.

CHAPTER THREE

4.1. CRIMINAL ARBITTRATION: A COMPARATIVE ANALYSIS OF PLEA BARGAINING IN CRIMINAL JUSTICE SYSTEM.

The concept of plea bargaining, has received divers opinions from national and international jurist and writers. The concept is widely accepted in some jurisdiction, while its acceptance is still a topic of debate in some other jurisdiction. It is traceable to the American legal process, which started by convention but has been accepted by the court; and has now been entrenched in their federal and state criminal procedure[141], for example, the State of California provided a seven page form to guide the prosecution and defense in the formulation of their agreements[142] To further balance the arguments on this concept, it is very pertinent, that we have a good understanding on the concept, and also attempt to bring out some salient issues contained in the subject matter, and how it relates to our various jurisdictions and criminal arbitration. What benefit is the concept to the masses?, is the concept indeed justice for all?, or is it engineered for the freedom and favor of the elites at the expense of the freedom of the masses?. The concept of plea bargaining is traceable to the adversarial system of adjudication. There was a need for a system that will bring about quick determination of criminal cases, hence, the adversarial method which later birthed the plea bargaining concept. In this system, the guilty plea in exchange for concession from the prosecutor became a system of adjudication in appropriate matters

It is incontrovertible, that plea bargain is an old and established law in criminal procedure and administration. In as much as it is of old origin in other jurisdiction outside Nigeria, it is of recent development in Nigeria. No doubt, numerous

[141]Rule 11 Federal Rules of Criminal Procedure (United States of America).
[142]Form CR-101, Plea Form With Explanations and Waiver of Rights-Felony, Judicial Council of California

attempts had been made, to truly bring out the true definition of the concept, with little achievement. This of course, is as a result of the differences in various jurisdictions, and what may be accepted in a particular jurisdiction, may not be fully accepted in other jurisdiction.

This chapter attempt to bring out a comparative analysis of plea bargaining in criminal justice system, in the end, to better our understanding on the concept and at the same time, to suggest possible ways through which we can either develop the concept, or leave it as it is. Thus, a comparative analysis will be carried out, on how the topic is handled and viewed at various jurisdictions[143].

PLEA BARGAINING.

The concept of plea bargaining is like a restitution. That is, restitution in the sense that somebody has taken too much, may be if you convict him, he serves a prison sentence but may thereafter, he keeps his loot. He keeps all that he has stolen, appropriates it or converts it to his own personal use. Most of the times, it is either criminal breach of trust or criminal misappropriation; these are the foundation on which it is founded on. So the idea of plea bargaining as it is practiced in the civilized world, is principally speaking, kind of restitution. Giving restitution to somebody who has being deprived of his property, property in terms of tangible or intangible, monetary value of the property. The whole idea is instead of incarcerating these fellows who have said, I don't want to go through the whole hog of trial, I want you to try me summarily, am going to say that I am guilty; I committed the offence of which I have been arraigned. So, the idea is since you have pleaded guilty and you have not cause us to go through the whole hog of trial, why don't we be lenient with you bring all you have stolen or how much of it we can get back, so that is plea bargaining. When you talk about bargaining, you talk about two parties or more having a dialogue i.e. what you can take and what I can have, that is

[143] See Justice Vero Ngozi Umeh's paper on : Criminal Arbitration:The Uses and abuses of Plea Bargaining in Nigeria

what plea bargaining entails. So in the civilized would, this thing is done with some measure of integrity, it is done in a dignified manner and there is absolute trust in what you are doing. There is undiluted and unadulterated integrity in the whole process, the whole process is full proof; so everybody goes back at the end of the day satisfied, both on the side of prosecution and that of the accused because there has been a fair bargain. Ordinarily, the person should have gone to prison, take for instance under our criminal code, criminal breach of trust attracts about 14 years imprisonment but if there is a plea bargaining, they will say you are not going to prison but let's see what we can recover back from you and we will leave you to go back to the society. If it is practiced as it was originally envisaged by those who started it and if it is not corrupted, we should not have any problem with the process. The plea bargaining that we have in some of these developing countries is not a match for match, in the developing countries, most of the times, there is a betrayal of trust in the entire process, so the process becomes polluted and the stream of justice does not flow. Most of the time, people hold low opinion of the morale of the operators. In Nigeria for instance there has been controversy over the effectiveness and transparency of the process of Plea Bargaining as it seems to favor the rich only[144].

This concept has been given various definitions by various scholars and juries, but no generally accepted definition has been given to solve the problem of general adoption and usage. Let's consider the following definitions by various scholars listed below.

Plea Bargaining is the negotiation of an agreement between a prosecutor and a defendant whereby the defendant is permitted to plead guilty to a reduced charge[145]

[144] http://thenationonlineng.net/plea-bargain-and-nigerias-criminal-justice-administration/
[145] At page 891 of Merriam – Webster's Collegiate Dictionary Tenth Edition, (1964)

Plea Bargaining is defined as arrangement in a court of law by which a person admits to being guilty of a smaller crime in the hope of receiving less severe punishment for a more serious crime[146].

Plea Bargaining as an arrangement between prosecutor and defendant whereby the defendant pleads guilty to a lesser charge in the expectation leniency[147].

Plea Bargaining" is derived from the word "plea" and "bargaining". The word "plea" had been defined in law to mean 'an accused person's formal response of "guilty", "no guilty", or "no contest", ("nolo contendere") to a criminal charge." The Word "bargaining" on the other hand literally means the act of negotiating a settlement. In the legal parlance, a bargain has been defined in the following words:-

A bargaining is an agreement of two or more persons to exchange promises or to exchange a promise for a performance.

It suffices to say here, that bargain is broader in context than contract. From the foregoing, a plea bargain is a sort of agreement reached based on promises made by the parties to themselves with respect to a criminal charge, the parties in this instance being the **prosecutor** and the **accused person**.

"The process whereby the accused and the prosecutor in a criminal case work out a **mutually satisfactory disposition of the case subject to court approval** It usually involves the defendant's pleading guilty to a lesser offence or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge"[148]

[146] Oxford Advanced Learner's Dictionary at page 890.
[147] Dr illustrated Oxford Dictionary page 627
[148] Black's Law Dictionary, Centennial 6th Edition at Page 1152

It is been observed that, the prosecutor has the total control of the bargain, and he can choose to address or not to address some serious charges. The presence of this makes us to believe that indeed, plea bargain is certainly not perfect in its operation. We can also say that the accused person can plea guilty to one out of many charges in exchange of the dismissal of other charges.

The Court when it approves a plea bargain could hand down a lesser or more lenient sentence, and that's what plea bargain seeks.

3.1.1 PLEA BARGAIN IN OTHER JURISDICTION

3.1.2.UNITED STATES

Plea bargain is widely accepted in the U.S, with most of it's criminal cases been settled by plea bargain instead of trial by a jury. Record has it that about 95% of criminal cases are settled by U.S. Plea bargain in the U.S is subject to the approval of the court, and different states and jurisdictions have different rules. In the United State, there is what is referred to as The Federal Sentencing guidelines, and they are followed in the federal cases and have been created to ensure a standard uniformity in all cases decided in the federal courts. Those who accept responsibility are usually given a two or three level offense reduction, by not holding prosecution. These Federal Rules includes advisory recommendation issued to the court in respect of the person, which is not binding on the accused. There are plethora of decided cases, that further explain this concept and its application in the United States of America. However, trials very rarely occurs[149].plea bargaining can assist criminal investigations by providing low-level gangers the choice between cooperating or suffering sentences out of proportion to any rational assessment of blame or harm[150].

[149] See Missouri v. frye, 132 S.Ct. 1399,1407 (2012) (stating that ninety-seven percent of Federal convictions and ninety-four percent of state convictions are pbtained through guilty pleas)
[150] See erik Luna & Paul Cassell, Mandatory minimalism, 32 Card. L. Rev.1, 12 (2010).

Example, an investigation into the murder of Thomas Henry Graham, a member of the Crips gang in Portland, was stalled for want of witnesses. Then Robert Edward Ford Jr. agreed to give evidence against two members of the Bloods gand. In exchange for consideration on federal narcotics and firearm charges[151]

3.1.3 GERMANY

Its on record that, plea bargain is not practiced in Germany. This means that, the German criminal procedure does not make provision for this concept; hence, it has made a very limited appearance in Germany.[152] John H. Langbein noted in his article that "The Germans do without plea bargaining because they do not need it. German criminal procedure has resisted adversary domination and exclusionary rules of evidence. Trial procedure has been kept uncomplicated and rapid. Accordingly, all the reasons of principle that would (and in former times did) incline us to try our cases of serious crime can still be felt and obeyed in Germany"

3.1.4 POLAND

This country practice under this concept, what is known as Voluntary submission to a penalty, whereby, the court is allowed to pass an agreed sentence without reviewing the evidence, which significantly shortens the trial. This country adopted just a limited form of plea bargaining, which is applicable on to minor felonies, which are usually punishable by no more than 10 years of imprisonment. Consequently, there are some conditions which must be met specifically and simultaneously:

[151] Maxine Bernstein, Retaliatory Gang Hit brings 18 years in Prison for Portland Man, Portland Oregonian.
[152] See John H. Langbein's Article on: Land without Plea Bargaining: How the Germans Do It

- The defendant pleads guilty and proposes a penalty,
- The prosecutor agrees,
- The victim agrees,
- The court agrees.

The court some time, may object to the term of proposed plea agreement, regardless of the agreement between the defendant, victim and the prosecutor. These changes are not specific, but rather general. If the defendant accepts these changes and changes his proposition, the court approves it and passes the verdict according to the plea and the victim as an auxiliary prosecutor. In this country, the victim may declare his intention to act as an auxiliary prosecutor, and can gain the rights similar to official prosecutor, i.e, right to appeal.

3.1.5 CANADA

In Canada, sentencing is at the absolute discretion of the court although plea bargaining has become an acceptable part of the criminal justice system.

Canadian judges are not bound by the Crown's sentencing recommendations. A judge can forcefully impose a far harsher sentence on a defendant than that agreed upon between such a defendant and the Crown in a plea bargain. Even where the Crown and the defense make a joint submission consequent upon a plea bargain, the court is not bound by it and can disregard it in its sentencing.

However, it is usual for the Crown and the defense to normally enter into a joint submission wherein the crown will be advocating for a higher sentence while the defense will be urging a lower one so as to enable the court to impose a sentence that

is within the range of the court submission. The Cairb courts in Canada therefore stands as a check so that the procedure is not abused.[153]

3.1.6 INDIA

Plea bargaining was introduced in India by Criminal law (Amendment) Act 2005, which amended the Code of Criminal Procedure and introduced a new chapter XXI (A) in the code, enforceable from January 11, 2006, which is applicable to cases in which the term of imprisonment do not exceed 7 years. Offences affecting the socio-economic condition of the country and offences committed against a woman or a child under 14 years are excluded from the application of the procedure.

3.1.7 PAKISTAN

Pakistan introduced plea bargain into its criminal justice system by the National Accountability Ordinance 1999[154], an anti-corruption law. A special feature of this plea bargain is that the accused applies for it, accepting guilt, and offers to return proceeds of corruption as determined by investigators/prosecutors. Once the application or request by the accused person is endorsed by the National Accountability Bureau, it is presented to Court which decides whether or not to accept the application/request. Where the court accepts the application/request for plea bargain, the accused stands convicted but will not be sentenced if on trial or, if an appeal will not undergo any sentence previously pronounced by a lower court. The accused is however disqualified from taking part in elections or holding any public office. He is also disqualified from obtaining a loan from any bank. The accused is also dismissed from public service if a public official. Formal plea bargains are available in other cases in Pakistan but are not popular. In non-

[153] See : https://en.wikibooks.org/wiki/Canadian_Criminal_Sentencing/Procedure/Plea_Bargain
[154] http://www.nab.gov.pk/Downloads/nao.asp

corruption cases the prosecutor is at liberty to drop a charge and in practice will often do so in return for the defendant pleading guilty to some lesser charges. Parties do not bargain about the sentence to be imposed upon conviction for an offence as this is exclusively left at the discretion of the Court.

Between 1999 – 2002 the National Accountability Bureau (NAB)[155] has entered into 181 cases of plea bargain and thereby recovered and amount of US $56 million. Despite this, the practice has not been without criticism on grounds of ethnics and social morality.

3.1.8 JAPAN

Plea bargaining is forbidden by law in Japan. It has been reported that, prosecutors illegally have offered defendants plea bargains in exchange for their confessions.

Plea Bargain in Civil Law Countries

Plea bargaining is extremely difficult in jurisdictions based on civil law. This is because unlike Common Law systems, civil law systems have no concept of plea if the defendant confesses, that confession is entered into evidence, but the prosecution is not absolved of the duty to present a full case.

[155] The newly enacted National Accountability Ordinance, 2002 provides that where, at any time, whether before or after the commencement of trial, a person accused of any offence under the ordinance, returns to the NAB, the assets or gains acquired through corrupt practices, the NAB Chairman may, with the approval of the court, release the accused. The amount deposited with the NAB by the defendant shall be transferred to either the Federal or Provincial Government and the defendant shall be barred from holding public office for 10 years. He will also be ineligible for any bank loan from a state-controlled financial institution.

A court may decide that a defendant is innocent even though the presented a full confession. Also, unlike the Common law systems, prosecutors in civil law countries may have limited or no power to drop or reduce charges after a case has been filed, and in some countries their power to drop or reduce charges before a case has been filed is limited, making plea bargaining impossible.

Furthermore, many civil law jurists consider the concept of plea bargaining to be abhorrent, seeing it as reducing justice to barter. (i.e. trade by barter).

3.1.9 ITALY

The form of bargaining known in this country is known as "patteggiamento", which has a technical name of application under request of the parts. In Italy, the bargaining is not about the charges, but about the penalty approach in sentence, reduced of one third. When the defendant discovered that the punishment that would be handed down to him is less than five years imprisonment or likely going to be a fine, the defendant may request to plea bargain with the prosecutor. There is a reduction of the defendants pleas on the sentence and has other advantages, such as that the defendant does not pay the fees on the proceeding. The defendant must accept the penalty for the charges, no matter how serious the charges are. Sometimes, the prosecutor agrees to reduce a charge or to drop some of multiple charges in exchange for the defendant's acceptance of the penalty. The defendant can argue against the decision of the prosecutor, but subject to acceptance by the prosecutor or refuse it. Patteggiamento allargato- wide bargaining, happens when the plea bargaining could be granted if the penalty that could be concretely applied is, after the reduction of one third, inferior to five year imprisonment. Patteggiamento ristretto also known as limited bargaining, is such that occur when the penalty applied after the reduction of one third is inferior of two ears imprisonment or is only a fine, the defendant can have advantages like suspended sentences and the effacement of the crime conditioned upon the fact that if in five

years the defendant does not commit a similar crime. According to the article 163 and following of the Italian Penal code, the defendant could subordinate the request to the grant of the suspension, when it could be applied the conditional suspension of the penalty. If the judge rejects the suspension, the bargaining is refused and vice-versa. The proposal agreed upon by the prosecutor and the defendant, can be refused or accepted. A bargain doesn't need of a guilty plea according to ltalian law. There is no plea declaration; this means that, a bargaining sentence is only an acceptance of the penalty in exchange with stop of investigation and trial and has facts at the effects of civil liability and in other criminal trials.

3.1.10 GEORGIA

This practice is still of recent development in this Country. It was introduced in 2004. It is also of similar pattern with the United States and other common law jurisdictions. It is literally known as *plea agreement* or negotiated plea used as an alternative and consensual way of settling criminal cases. In this context, a plea agreement describes when the defendant agrees to plead guilty in exchange for a lesser or for a more lenient sentence for the dismissal of certain related charges, without main hearing[156].

The free will of the defendant, advanced protection of the rights of the defendant and the equality of the parties, form the main principle of the plea bargaining. Thus;

a) In order to avoid fraud of the defendant or insufficient consideration of his/her interests, legislation foresees obligatory participation of the defense council[157]
b) The defendant has the right to reject the plea agreement on any stage of the criminal proceedings before the court renders the judgment[158].

[156] Article 209 of the criminal procedure code of Georgia
[157] Article 210 of the Criminal Procedure Code of Georgia
[158] Article 213 of the Criminal Procedure Code of Georgia

c) In case of refusal, it is prohibited to use information provided by the defendant under the plea agreement against him in the future[159]

d) The defendant has the right to appeal the judgment rendered consequent to the plea agreement if the plea agreement was concluded by deception, coercion, violence, threat, or violence[160].

On the other side, the Prosecutor has the following obligations while concluding the Plea Agreement. The prosecutor is obliged to take into consideration public interest, severity of the penalty and personal characteristics of the defendant[161], to avoid abuse of powers, legislation foresees written consent of the supervisory prosecutor as necessary precondition to conclude plea agreement and to amend its provisions[162].

Plea agreement without the approval of the court doesn't have any legal effect. The court must satisfy that the plea agreement is concluded on the basis of the free will of the defendant that the defendant fully acknowledges the essence of the plea agreement and its consequences[163].

Under this jurisdiction, guilty plea of the defendant is not enough to render guilty judgment[164]. The court is constraint to discuss two main issues:

a) Whether irrefutable evidence is presented which proves the defendant's guilt beyond reasonable doubt.

b) Whether sentence provided for in the plea agreement is legitimate. (Article 212 of the Criminal Procedure Code of Georgia) After both criteria are satisfied the court additionally checks whether formalities related to the legislative requirements are followed and only then makes decision. The court before returning the case to

[159] Article 214 of the Criminal Procedure Code of Georgia
[160] Article 215 of the Criminal Procedure Code of Georgia
[161] Article 210 of the Criminal Procedure Code of Georgia
[162] Article 210 of the Criminal Procedure Code of Georgia
[163] Article 212 of the Criminal Procedure Code of Georgia
[164] Article 212 of the Criminal Procedure Code of Georgia

the prosecutor offers the parties to change the terms of the agreement. If the changed terms do not satisfy the court, then it shall return the case to the prosecution[165].

HOWEVER, the victim has a role to play in the plea agreement negotiations. It suffice to say here that the agreement is usually reached between the prosecutor and hence, the attitude of the defendant matters a lot in relation to the plea agreement. In as much as the prosecutor is not a tool to obtain revenge against the offender, the attitude in line with the plea agreement. It is important to note that, the prosecutor is obliged to consult with the victim prior to concluding the plea agreement and inform him/her about it[166]. In addition to this, under the guidelines of the Prosecution Service of Georgia, the prosecutor is obliged to take into consideration with the interests of the victim and as a rule conclude the plea agreement after the damage is compensated.

3.1.11 ESTONIA.

This concept was introduced in the 1990s: Plea Bargaining is permitted for the crimes specifically punishable by no more than four years of imprisonment. A total of 25% reduction of the penalty. The penalty in plea bargaining here is reduced in exchange for confession and avoiding most of the court proceedings.

3.1.11 FRANCE

The introduction of this concept was highly controversial in France in 2004. The prosecutor could propose to suspects of relatively minor crimes a penalty not exceeding one year in prison. If such deal is accepted, it had to be accepted by a judge. It is often debated upon and argued by the opposition usually the lawyers and leftist political parties, that the infringement on the rights of defense, the long-

[165] Article 213 of the Criminal Procedure Code of Georgia
[166] Article 217 of the Criminal procedure Code of Georgia

standing constitutional right of presumption of innocence, the right of suspect in police custody, and the right to a fair trial, of presumption of innocence.

CENTRAL AFRICAN REPUBLIC

In this jurisdiction, witchcraft is highly prosecuted, whoever is accused of it, usually confess in exchange for a modest sentence[167].

3.2. THE EMERGENCE OF PLEA BARGAIN IN NIGERIAN LEGAL SYSTEM

This system was not known in Nigeria until 2004, upon the establishment of the **Economic and Financial Crimes Commission (EFCC)**[168]of the Act, where a form of plea bargain is recognized. The section provides that:-

> *"subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999 (which relates to the power of the attorney General of the Federation to institute, continue, takeover or discontinue criminal proceeding against any person in any court of law,) the commission may compound any offence punishable under this Act by accepting such sum of money as it thinks fit not, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence."*

This provision shows that, when an accused person agrees to give up money stolen by him, the commission may let go any offence for which such a person is charged under the Act, or even drop the charges, it's so clear here, that this provision is not applicable to all trials in Nigeria, talking about criminal trials as negotiations under are expressly limited to offences punishable under the Act. Section 14-18 of the Act

[167] http://www.wikivisually.com/wiki/Plea_bargain
[168] under section 14(2) Economic and Financial Crime Commission (Establishment)

provide for crimes for which the commission can exercise jurisdiction. Such offences are such, as are related to financial malpractices, offence in relating to financial malpractices, offences relating to terrorism. Offences relating to public officers retention of proceeds of criminal conduct and offences in relation to economic and financial crimes, however, in practice, the **EFCC engages** in plea bargain on the offences, although the practice has been criticized[169].

It is also important to note here, that, when more charges are made against a person and a conviction has been had on one or more of them, the prosecutor may, with the consent of the court, withdraw the remaining charges or of its own motion, may stay trial of such charge or charges[170].

There are other opinions that suggest to Article 37 of the United Nations Convention against Corruption (2003) which says that state parties should allow for the mitigation of punishment for accused persons who agree to give evidence of their corrupt acts in co-operation with prosecuting authorities[171]. The issue of plea bargaining in Nigeria has not been generally accepted[172]. To many, the concept is illegal and alien to the statutes of criminal justice in Nigeria. The for Chief Justice of Nigeria, Honorable Justice Dahiru Musdapher, lent his voice to the criticism of the plea bargain practice at the fifth annual general conference of the Section on Legal Practice of the Nigerian Bar Association(NBA), held in Abuja in November 2011, and said of it: "plea bargaining is a novel concept of dubious origin. It has no place in our law- substantive or procedural."[173] This statement was misunderstood by the masses, and in their opinion, they had thought that, the CJN had banned the use of plea bargain, perhaps, that might be the implied meaning of his statement. He further said, the word should never be mentioned again. However, the study of his speech

[169] http://thenationonlineng.net/plea-bargain-and-nigerias-criminal-justice-administration/
[170] Section 180 (1)Criminal Procedure Act CAP. C4 LFN 2004
[171] Article 37 United Nations Convention against Corruption 2003.
[172] ibid
[173] The Nigerian Tribune of 16th November, 2011

bring s to the understanding of the readers his intention for making such statement, notwithstanding the fact that, his statement was very direct to the point, was in real sense, complaining about the same thing as many other Nigerians to wit; the use of the concept for only the rich and powerful in the society. As reported by the Tribune he said, "it was invented to provide the following, (a)soft landing to high-profile criminals who loot the treasury entrusted to them. It is an , obstacle to our fight against corruption."[174]. It was also reported on the 5th of February 2012, that Justice Musdapher reiterated and defended his position on plea bargain at a workshop for judicial correspondents, referring to what he described as: "the sneaky motive behind its introduction into our legal system, or its evident fraudulent application"[175]. He went on to say: "you will see also that plea bargaining is not a fragrant subordination of the public's interest to the interest of 'criminal justice administration', but worst of all, the concept generally promotes a cynical view of the entire legal system."[176]

The Former Chairman of the Nigerian Bar Association (NBA) Abuja chapter, Mazi Osigwe as well as the former Chairman of the Economic and Financial Crimes Commission, Mr. Ibrahim Lamorde, lamented at the position of his Lordship, at the workshop by the Chairman of the Governing Council of the National Human Rights Commission (NHRC).[177] The gentlemen in their opinion said that the CJN was not being fair in his criticism of the practice or his declaration that it was alien to the statutes, they referred to the previously mentioned section[178] Section 180(1) CPA and section 14(2)EFCC Act and decried what they called the failed attempt of the criminal justice system of the country. They also pointed out the following cases of Tafa Balogun, Cecilia Ibru, late Diepreye Alamieyesagha, and others, which might have lingered in court for years or might have been quashed if they hadn't been

[174] *Ibid*.
[175] Vanguard Newspaper of 6th March 2012
[176] *ibid*
[177] Ibid
[178] *ibid*

settled by plea bargain. In their conclusion, they proposed a reformation and regulation of the practice in the country, and suggested a set of policy guidelines governing the operation of the practice be issued by the Chief Justice and the body of Attorney-Generals[179]

There are few of Nigerian cases, which explains the concept of plea bargaining in Nigeria. The locus classical case which introduced the concept in Nigeria, was the case of Tafa Balogun, a former inspector general of Police, went to court to challenge the power of the EFCC to prosecute him. It was however reported that, he withdrew the suit stating that the withdrawal might not be unconnected with alleged plans for a plea bargain, which eventually took place and he was sentenced to a term of six (6) months which he has already served in detention.

Another case was that of Emmanuel Nwude and Nzeribe Okoli, who were also stood trial for defrauding a Brazilian Bank of the sum of $242 million pleaded guilty and was convicted. It was reported that, the charges against the accused persons were reduced from 91 to 16 due to plea bargain entered into by the parties, with the view of reaching a quick conclusion of the case.

Late D.S.P Alamiyesieigha another useful case. It was a case wherein plea bargain was used. He was the former governor of Bayelsa State.

The case of Lucky Igbinedion, the ex-governor of Edo State explain this concept. He was another beneficiary of this concept. in 2008 December 18, a Federal High Court In Enugu had imposed a fine of N3.5m on Igbenedion, the Son of the High Chief of Benin Kingdom after he was found guilty of committing fraud while he was Governor. He was sentenced to 12years in Prison on a six-count Charge that bothered on corruption and other economic offences. He was sentenced two years on each count, but all sentences ran concurrently. The sentence ran from the day he was

[179] *supra*

arrested and detained, which is in accordance with the criminal Procedure Act. He was arrested and detained in 2005.

In order to receive a lighter sentence, the former Governor entered into a plea bargain with the EFCC, gave up his right to trial and pleaded guilty to the charges. He agreed to the EFCC's offer of guilty plea, rather than serving a prolonged prison term if convicted. He was released few days after his conviction by the court, because he has almost completed two years in jail before accepting the bargain.

Equally, on October 8, 2010, the former Chief Executive Officer of Oceanic Bank International Plc, Mrs. Cecilia Ibru was sentenced to eighteen months imprisonment by the Federal High Court, Lagos, Nigeria for committing various economic and Financial Crimes. She was charged with a 25 count criminal information bothering on financial crimes by the EFCC before the court. She entered a plea bargain with the prosecution and pleaded guilty to lesser three-count Charge. She was later convicted by the court on three count charge and ordered the forfeiture of her assets amounting to N191 billion. She was sentenced to (6) six months on each of the three count which are run con-currently. By interpretation, she spent six months in Jail.

The case of Mr. John Yakubu Yusuf, the assistant Director in the Police Pension Office, again brought to the fore the propriety or otherwise of the mechanism of plea bargain in Nigeria's Criminal Justice system. He was sentenced to two years imprisonment or N750,000 (seven hundred and fifty thousand naira) fine.

The following lines of thought should be adequately considered and put into due consideration

- The essential conception and the imperative of the discharge of the burden of proof
- The argument that the extant statutes provide for plea bargaining
- The use of the phrase 'plea bargain' in our statutes and the concept of legality.

The essential conception of plea bargain, and the imperatives of the discharge of the burden of proof

Following its definition and essence, plea bargain has to do with a trail scenario (or a modified trial scenario) and the entry of a guilty plea having negotiated with the prosecution for concessions. The judge act according to the information which the prosecution gives to him, usually based on the terms of agreement. Thus, it is important to note that the law does not say an accused person shall be punished simply because his guilt is 'apparent/obvious' to every man on the street; but rather that a person charged with a crime shall be tried before a competent court and shall be convicted; if shown beyond reasonable doubt to be guilty.[180] This implies that a person whose guilt is obvious to the man on the street, may be discharged and acquitted by a court if the prosecution lacks evidence and skills to successfully prosecute a case against him. A layman may not understand this, because it may sound too absurd and twisted, but lawyers certainly know that, this is the law and the practice. This is also enshrined in the constitution, this is to the effect that, no person shall be compelled to incriminate themselves or say things they do not want to, whether true or not. This is a fundamental right.[181]. following this provision, it suffices to say that, it is wrong to threaten or unduly persuade or unfairly induce people to admit as offence under a plea bargain agreement. The state can either prove its case as required by the law or it can't.

The argument, therefore that plea bargain agreements do not meet the legal test required by section 135 of the Evidence Act and in fact, can sometimes be employed in a manner that could breach a fundamental right, a case can be made against the legality of the practice.

[180] Section 135 Evidence Act 2011
[181] Section 36(11) Constitution of The Federal Republic of Nigeria 1999 (As Amended)

Another point to note here has to do with the argument that extant statutes provide for plea bargaining

The justification for plea bargain include section 180 (1) CPA, S.14 (2), EFCC ACT and Section 174 of the Constitution of the Federal Republic of Nigeria (as amended). However, it can be deduced from the fore-going, that the contents of these provisions are really conceived by those who invoke them, in an implied sense and by virtue of inherent power and meanings.

3.3 Plea Bargaining-role of the judge Under ACJ Act 2015

The plea bargain is a veritable caseload management tool in the hand of prosecutors. It is widely deployed in several jurisdictions around the world, including advanced societies. However, the application of plea bargaining in

this country has often generated heated arguments in this country. That notwithstanding the legislature has, and I think rightly incorporated the plea bargain into the ACJA. Many perceptive commentators have hailed this as a welcome development. The ACJA elaborates concrete guidelines which may help to stem any abuse of plea bargain. Most importantly, the judge conducting the trial has the final say whether to allow a plea bargain or not. Subsections 10, 11, 12, 13 , 15 and 16 of section 270 spell out the role of the judge

CHAPTER FOUR

4.1 THE PROSPECT OF ADR AND CRIMINAL ARBITRATION UNDER THE CURRENT LEGAL FRAMEOWRK AND ACJA 2015

The Administration of Criminal Justice System on the development of criminal arbitration and plea bargaining in Nigeria, cannot be over emphasized. The ACJ ACT 2015, has been of serious impact, and has become a National Issue of recent. The ACT is a 495-Section law, which repealed the Criminal Procedure Act and the Criminal Code as applicable in all Federal courts and courts in the Federal Capital Territory. It regulates more than just criminal procedure; majorly, the entire criminal justice system process from arrest, investigation, trial, custodial matters and sentencing guidelines. The impact of this Act, is to ensure and promote efficient management of all criminal justice institutions in Nigeria, enforcement of speedy dispensation of justice, the protection of the rights and interests of the suspects and the victims of crime. These can be achieved through the increase of our courts and law enforcement agencies; subjecting custodial and other processes to transparent and internal scrutiny; thereby, providing for non-custodial alternatives, such as community service; providing opportunity to dispense with formal trail in certain circumstances, and giving further expression to the constitutional guaranty on human rights.

There are potential entry points for ADR under the current legal framework especially under the extant Administration of Criminal Justice Act 2015. We have identified five possible entry points, namely: (i) Pre- Charge Entry; (ii) Post-Charge/Pre-Conviction Entry; (iii) Post-Conviction/Pre-Sentencing Entry (iv) Post-Sentence Entry; and (v) Prevention Stage. For purposes of clarity, we shall deal with the entry points in four stages, namely: i. Before the crime is committed, i.e., Crime

Prevention; ii Prosecutorial Discretion; iii Judicial Discretion; and iv Correctional Discretion

4.2 Crime Prevention

A good number of crimes could be prevented with a good culture of ADR. Section 50(1) ACJA provides that A police officer may intervene for the purpose of preventing, and shall, to the best of his ability, prevent the commission of an offence. This could involve the use of ADR by addressing the motive and causes that could warrant the commission of the crime. Section 52 ACJA provides that the police can carry out an arrest to prevent a crime. Where this happens, the police has a duty to examine the person arrested to determine his state of mind and possible tendencies to repeat the crime. It can be argued that if ADR is seen as a problem-solving tool or tools, then, it will be invariably concluded that ADR applies to crime; and as a problem-solving tool, it could solve the problem by preventing the crime from occurring in the first instance[182], or managing it properly if it occurs. After all, it is said that "prevention is better than cure". Research shows that about 40-50% of crimes do not occur between total strangers. Most homicide cases (61%) occur between relatives and friends (Adler, Mueller & Laufer, 1994, 30). With effective application of ADR and a good culture of dispute resolution, most relationship based crimes could be easily prevented and better managed (Nader & Todd, 1978).

4.3 Prosecutorial Discretion

Prosecutorial discretion refers to the discretion which is vested in the police, the Attorneys- General and other authorities with powers of prosecution to decide which matters go to court for decision and those that do not. With ADR, it is possible

[182] Section 50 (1) ACJA 2015

to reduce the number of cases that find their way into the courts through the exercise of prosecutorial discretion. By the dry letters of the law, a crime is a problem between the offender and the State. The State is legally and technically personified by the Attorney- General. The Constitution by sections 174 and 211 confer on the Federal and State Attorneys-General respectively powers of prosecution. These powers are the power to institute, takeover and continue any such criminal proceeding that may have been instituted by any other authority; and power to discontinue any criminal proceeding at any stage before judgment. The power to continue, take-over, and discontinue is that of the Attorney-General; and in doing this, he is not subject to anybody's control except his conscience and the constitutional injunction of public interest, interest of justice and the need to prevent the abuse of legal process. So far in Nigeria, the common law position remains the law as far as the exercise of the powers of the Attorney General is concerned. He is not subject to direction or control by any other authority (*Fawehinmi v 1GP*[183],); *State v* IIori [184]. Recently, charges were brought against **Senate President Bukola Saraki** and his Deputy, **Ike Ekweremadu** for forgery and criminal conspiracy. Thereafter, the Federal Government of Nigeria filed a motion to withdraw the charge against Saraki.[185].. It is submitted that section 36 (4) of the Constitution which enables a criminal charge to be withdrawn strengthens the case for the application of ADR to criminal matters. The section provides that: Whenever any person is charged with a criminal offence, he shall, *unless the charge is withdrawn,* be entitled to a fair hearing in public within a reasonable time by a court or tribunal. We are of the view that a charge may be withdrawn if the matter is settled amicably.

[183] 2000, 7 NWLR (pt.665) 481 CA; 2002, 7 NWLR (pt. 767) 606 SC

[184] 1983, 14 N.S.C.C. 69

[185] http://www.thisdaylive.com/index.php/2016/10/07/fg-withdraws-forgery-charges-against-saraki-ekweremadu/

4.4 Judicial Discretion

ADR can apply in the criminal justice system during the process of trial through the exercise of judicial discretion. In this regard, the process of conviction may be contrasted with the process of sentencing. Conviction is an objective standard in that once all the elements or ingredients of an offence are proved, the judge has no discretion whether to convict or not to convict. According to the court "the role of the judge in an adversary system of justice is to determine from the facts before him whether the charge against the accused has been proved (*Ugheneyove v State,* 2004, 12 NWLR (pt.888) 626; *Onagoruwa v State,* 1993, 7 NWLR (pt.303) 49 at 107). Sentencing, on the other hand, appears to be subjective. This is because, except the law provides to the contrary, the punishment provided is the maximum. The courts typically retain the discretion to impose anything less, even a fine where the law does not mention an option of fine. There are no existing sentencing guidelines in Nigeria. ADR can be applied at the stage of sentencing. The ACJA 2015 has made ample provisions for the court to exercise discretion in giving non-custodial sentencing as a way reducing prison congestion such as fines, community service and suspended sentencing as provided for in Sections 460 ACJA. This will reduce prison intake. Also, the cost (i.e. both financial and personnel) need not be borne by the government but by the people themselves. The cost of feeding and other welfare needs of inmates are clearly taken off the State Treasury. So, the cost-benefit analysis is in favour of the State. Those that eventually go to prison will be properly monitored and they can come out better.

4.5 Correctional Discretion

This is the discretion exercised post-conviction by prison authorities, and other approved correction centers. The law allows the release of prisoners before the expiration of their sentence if they are of good conduct. The ACJA Part 45, Section 468 provides for Parole which allows a prisoner to be released prior to the

completion of sentence where the Comptroller-General of Prisons makes a report to the court recommending that a prisoner: sentenced and serving his sentence in prison is of good behavior. However, the laws insist that the prisoner would have served almost all the sentence. Regulations 54 and 55 of the Prisons Regulations made under the Prisons Act, Cap. P29, Laws of the Federation of Nigeria, 2004 provide for a maximum remission of sentence to the tune of one third of the sentence[186]. There is no reason why this system could not be improved upon by reducing the minimum time to be spent in custody before release upon a recommendation for good behavior. There is also no reason why the parties involved cannot be invited intermittently to review the case of an inmate with a view to releasing him/her whether he/she has spent the minimum time or not. It is however very important to note that the provision of the ACJA in this regard is a welcome development and a laudable one.

[186] See also Section 468(b) ACJA

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

The reluctance of the Nigerian criminal law to apply ADR and arbitration to criminal matters is founded on public policy, as expressed in the country's criminal legislation, especially, earlier criminal legislation. Today, public policy is shifting in favour of applying ADR to

criminal disputes as seen by some innovative provisions of the **Administration of Criminal Justice Act 2015**. This is so, irrespective of whether the offence is one against property or against the person of an individual or wholly against the State in the sense that there is no singular identifiable individual who can be said to be directly injured, rather, the collective psyche is wounded, for example, looting of public treasuries. The incorporation of plea-bargaining into Lagos State and federal law is an expression of public policy. The policy and practice of the country's courts in encouraging settlement of felonies including homicide cases as seen in the Pfizer Case are expressions of public policy. The Attorney-General's disposition towards encouraging amicable resolution of criminal matters, even homicide cases, is also an expression of public policy. The express incorporation of ADR as the preferred means of dispute resolution, including criminal disputes, into the Child's Rights Act (2003) is an expression of policy.

One can therefore safely conclude that the jurisprudence that ADR does not apply to criminal cases especially serious offences is not a valid postulation of the law. ADR should be properly incorporated into the Nigerian criminal justice system in a holistic manner rather than the piece-meal approach currently being witnessed. ADR should be seen as authentic dispute resolution rather than alternative dispute resolution. The purpose is not to reintegrate ADR into the existing dominant legal system which is British prototype but to indigenize the Nigerian law and justice

processes. Thus, indigenization of Nigerian law and justice may and should mean the rediscovery and development of the indigenous systems and processes of justice and control[187] .

The various Ministries of Justice can be utilized. All that is needed is the Prosecutorial Guidelines. New laws are not required as such. The guidelines are to eschew abuse or
bring it to minimal level. The public can be properly sensitized so that if State counsel abuses the
power, the public can complain. The truth is that what we are postulating here is happening every day at the police stations for the wrong reason and motive. The only thing is that, in many cases, the victims are left out. So, the time is ripe to make the process open and accountable rather than to leave it secret and perpetually open to abuse.

On strengthening a vibrant restorative justice system for Nigeria, below are some recommendations:

1. A Federal Victim Remedies act which is hereby recommended, will for example, set policy, establish federal funding for victims and create institutions such as Victims Compensation and Restitution Board to administer Victim remedies.

   A similar normative modus could be adopted at state level. The methodology of the Lagos State government in its recent law is not advisable. Issues of victim remedies are dealt with haphazardly under Plea bargain, compensation and Restitution Orders.

[187] Cunneen,2002, 44; Okafo, 2013, 249

2. Aside the general law on Sentencing empowering courts to impose victim remedies, there should also be separate and comprehensive victims remedies statute setting out modalities for obtaining victim remedies and establishing institutions for its administration.

3. In order to take advantage of existing customary adjudicatory infrastructure, a separate law could be made empowering Traditional Agencies to apply Restorative Justice programs to cases coming before them to neutralize existing laws ousting the application of customary criminal law. The immediate advantage would be to standardize victim remedies and control same.

4. At the level of the Magistrates and High Courts, mediation by way of settlement of criminal cases should be strengthened. Such mediation could take the form of the pre-trial hearing format of civil cases under the new Civil procedure rules of Lagos State whereby the judge acts as a Mediator and gets the offender and victim. The envisaged proceedings may be called Criminal Pre-trial mediation. Where mediation fails and the victim and offender are unable to come to agreeable terms of Compensation, Restitution or Restoration, the criminal trial proper could then begin.

5. The proposed Crime Victims Compensation and Restitution Authority would provide a third avenue of seeking victim compensation apart from the courts and traditional authorities. The authority shall consist of trained mediators with Criminal Law bias. They become seized of a criminal compensation dispute where the offender and the victim agree to submit to its jurisdiction in preference to the Magistrate or High Court processes

6. It is proposed that a Division or section within the authority have an equally important mandate to liaise with the voluntary agencies and civil society groups with experience in Restorative Justice programmes to advance the aspect of community healing by organizing Victim-Offender Mediation (VOM) or Victim-Offender Reconciliation and other initiatives which are being done as components of Restorative Justice in United States and other countries and as directed under the United Nations Declarations earlier mentioned.[188]

There may be a lot of therapeutic value in such confrontations where they are properly managed. The long essay has considered the concept of Restorative Justice in all its ramifications. RJ embraces a positive attitude towards the defendant, the Victim and the Community. We identified victim remedies as the kernel of Restorative Justice and we reviewed the international laws relating to victim remedies and transformative justice as an indication of international best practices even as the experiences of other jurisdictions were examined for their useful lessons. Subsequently, we located Restorative Justice precepts in the Traditional law of Africa relating to criminal justice.

The question may be asked: Does Restorative Justice not amount to "cuddling' an offender who ought to be severely punished for his crimes? The answer is No, if we remember that this had been the thrust of the older penal philosophical thinking-Retribution and Deterrence, and the evidence in that they have not worked.

Regarding the concept of Plea Bargaining in Nigeria, it is my respectful and humble view that the Court should clearly define, the parameters of plea bargaining, so that

[188] Ibid

we can have a clear cut rules and benchmarks for determining deserving cases as it is increasingly obvious that plea bargain will be around for a long time considering the high level of crime in Nigeria.

First, if Nigeria desires to join the Committee of Common Law countries that practice the plea bargain procedure, it should borrow from the experience of **India** and **Pakistan** which are also considered as developing countries. There should be clear statutory provisions in Federal Laws for the practice of the procedure. It should not be left out at the whims and caprices of the **EFCC** or other prosecuting agencies.

In applying the procedure the defendant should be made to return all that he has stolen to the last kobo and the invocation of the procedure should be upon the defendant's instance. After the defendant has been convicted, he should be discharged upon the procedure after he had been disqualified from holding any public or elected service for life. Such a defendant should also be dismissed from any public or government position previously or presently occupied by him. The defendant should also be disqualified from obtaining loan from any bank.

Finally, the Defendant should be taken to a town Hall meeting in his town or village where his conduct will be publicly declared to his kithe and kin who should be informed about the reasons why the defendant was discharged. This should be done to prevent endless agitations in the minds of his townsfolk about the profitability or otherwise of stealing public funds.

For the above positions to be effective, the noose must be tightened on the prosecution of corrupt public officials. The call by the former chairman of the EFCC, Mrs. Farida Waziri for special court's and procedure for trying charges of public treasure looting should be taken into serious consideration. There is also a need to increase the prison terms prescribed in our laws for convicted public looters. This

the only way that new plea bargain procedure will become less attractive to treasury looters.

In conclusion, all hands must be on deck to continue to encourage the growth and further awareness of the importance of Criminal Arbitration and other forms of ADR in our criminal Justice system. This is because of the numerous advantages, most of which have been outlined supra.

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TABLE OF CASES

1. BRADY VS. INITED STATES 394 US 742, 90 S.C.T. 1463, 25 L.ED, 21 747 (1970)
2. OHIAERI VS. AKABEZE (1992) 2NWLR (PT 221) PG 1 AT 7 PARAS 12
3. LINDA R.S. V. RICHARD D. (410 U.S. 614)
4. MISSOURI V. FRYE, 132 S.CT. 1399,1407 (2012)
5. EUROPEAN JOURNAL OF SOCIAL SCIENCES – VOLUME 45, NUMBER 1 (2014)
6. WILLOUGHBY V. REPUBLIC SUIT NO SC 311/1964
7. ADEJUMO V. THE STATE (2006) 9 NWLR (PART 986)
8. COURT IN COMMISSIONER OF POLICE V. NWAONGWU & 6 ORS
9. CADBURY NIG, LTD & ORS V. FEDERAL REPUBLIC OF NIGERIA (2005)5 NWLR (PART918) 340
10. THE LONDON STEAMSHIP OWNERS' MUTUAL INSURANCE ASSOCIATION LTD V THE KINGDOM OF SPAIN AND THE FRENCH STATE [2015] EWCA CIV 333
11. OJUKWU V. AFRICAN CONTINENTAL BANK

TABLE OF STATUES

1. ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015;
2. LAGOS STATE CIVIL PROCEDURE RULES 2004
3. CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999
4. ARBITRATION AND CONCILIATION ACT, CAP. A18, LAWS OF THE FEDERATION OF NIGERIA (LFN) 2004
5. FEDERAL HIGH COURT ACT, CAP. F12, LFN 2004
6. MATRIMONIAL CAUSES ACT, CAP. M7, LFN 2004
7. HIGH COURT OF LAGOS STATE CIVIL PROCEDURE RULES 2012
8. THE RULES OF PROFESSIONAL CONDUCT 2007
9. ECONOMIC AND FINANCIAL CRIMES COMMISSIONS ACT
10. ADMINISTRATION OF CRIMINAL JUSTICE LAW OF LAGOS STATE 2011
11. CRIMINAL PROCEDURE ACT. CAP C41 LFN 2004
12. CRIMINAL PROCEDURE CODE ACT CHAPTER 491 L.F.N. 1990
13. EVIDENCE ACT CAP E14 LFN 2004
14. ADMINISTRATION OF CRIMINAL JUSTICE LAW (ACJL), 2010 ANAMBRA STATE, SECTION 76.
15. MAGISTRATES COURT LAW OF 2009

BIBLIOGRAPHY

- Melissa Lewis* and Les McCrimmon : The Role of ADR Processes in the Criminal Justice System: A view from Australia

- Community service as a form of non-custodial sentencing has finally found its way in the newly enacted
- Osipitan, Y.,1992:490
- Alternative Dispute Resolution (Issues Paper 8; Project 94; 1997; Nigerian Law Reform Commission's current project on bail and sentencing laws Australian Law Reform Commission, Sentencing of Federal Offenders, IP 29, (January 2005),
- The Lagos multi-door Court House (LMDC) , Citizens Mediation Centre (CMC) The Chattered Institute of Arbitrators UK Nigerian Branch,
- Jerome T. Barrett Joseph Barrett : A History of Alternative Dispute Resolution; The Story of a Political, Social, and Cultural Movement
- H Astor and C Chinkin, Dispute Resolution in Australia (2nd ed, 2002)
- See National Alternative Dispute Resolution Advisory Council, ADR Terminology: A Discussion Paper (2002)
- National Alternative Dispute Resolution Advisory Council, Brochure (2002)
- ADR and Multi Door Court. Paper delivered by Hon Justice Opeyemi Oke; Chairman Governing Council, The Lagos Multi Door Court House.3rd March 2011
- L Street, 'The Language of Alternative Dispute Resolution' (1992) 66 Alternative Law Journal 194, 194
- National Alternative Dispute Resolution Advisory Council, ADR Terminology: A Discussion Paper (2002), 9–11
- Hon. Justice C.A. Oputa J.S.C. (Rtd), (1999), ''The Philosophy of Justice with emphasis on Arbitration'. Nigerian Law and Practice Journal, March 1999, Vol: 3, No.1 Pg. 73-84. 13
- Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint by **Dr. AGBONIKA John**, Alewo Musa Associate Professor, Faculty of Law, Kogi State University, Anyigba, Nigeria Vol.26, 2014

- K Earle, 'Restorative Justice' in R Sarre and J Tomaino (eds), Key Issues in Criminal Justice (2004) 144, 145.
- S Kift, 'Victims and Offenders: Beyond the Mediation Paradigm?' (1996) Australian Dispute Resolution Journal 71\
- Fisher, Vidmar & Ellis, 1992, 2117; Goldberg, Sander & Rogers, 1992, 328
- Lewis and McCrimmon, 2005, 6; O'Connell, 2000, 9
- See Chukwunweike A. Ogbuabor's paper on ; Mainstreaming ADR in Nigeria's Criminal Justice System; European Journal of Social Sciences – Volume 45, Number 1 (2014)
- National Alternative Dispute Resolution Advisory Council, ADR Terminology: A Discussion Paper (2002), 9–11
- L Boulle, Mediation: Principles, Process, Practice (1996), 35.
- T O'Connell, Restorative Justice for Police (2000) Real Justice Australia, 9.
- Mercer, Lorden and Lord, 1995 at 11-12
- ***Building Community Justice Partnerships: Community Peacemaking Circles***, by Barry Stuart, available from Aboriginal Justice Section, Department of Justice of Canada, Ottawa, Ontario, K1AOH8; Fax - (613-957-4697, Attn. Learning Network)
- D Schmid, 'Restorative Justice: A New Paradigm for Criminal Justice Policy' (2003) Victoria University of Wellington Law Review 4; K Daly and H Hayes, Restorative Justice and Conferencing in Australia–No 186 (2001) Australian Institute of Criminology, 1.
- R Sarre and K Earle, 'Restorative Justice' in R Sarre and J Tomaino (eds), Key Issues in Criminal Justice (2004) 144, 145.
- Omale, D.J.O. (2012) RESTORATIVE JUSTICE AND VICTIMOLOGY: EURO-AFRICA PERSPECTIVES
- Agomoh U, Adeyemi A and Ogbebor V (2001) , The Prison Service And Penal Reform in Nigeria: A Synthesis Study For the Safety, Security And Access to Justice Programme of the Department for International Development (DFID),

- Nigerian Prisons Service Report, 2014
- Bradshaw, J. (1988). Healing the shame that binds you. Deerfield Beach, Florida: Heath Communications.
- Botchkovar, E., & Tittle, C. (2005). Crime, shame and reintegration in Russia. Theoretical Criminology, 9: 401-442.
- Bazemore, G., & Schiff, M. (2001). Restorative community justice: Repairing harm and transforming communities. Cincinnati, OH: Anderson Publishing
- Abramson, L., & Moore, D.B. (2002). The psychology of community conferencing. In J .Perry (Ed.), Restorative justice: Repairing communities through restorative justice. Lanham, MD: American Correctional Association
- Tangney, J. P. (1990). Assessing individual differences in proneness to shame and guilt: Development of the Self-Conscious Affect and Attribution Inventory. Journal of Personality and Social Psychology, 59(1), 102-111.
- Tangney, J. P. (1995). Recent advances in the empirical study of shame and guilt. American Behavioral Scientist, 38(8), 1132-1145.
- The Code of Hammurabi is inscribed on this seven-foot basalt stele. Babylonian King Hammurabi (reign 1792-1750 B.C.)
- Hammurabi, King; Johns, C.H.W. (Translator) (2000).
- Lynd, H. M. (1958). On shame and the search for identity (1st ed.). New York: Harcourt Brace
- Bradshaw, W. & Roseborough, D. (2005). "Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism." Federal Probation, 69 (2), 15-19.
- Retzinger, S. M. & Scheff, T. J. (1996). Strategy for Community Conferences: Emotions and Social Bonds. In B. Galaway and J. Hudson (Eds). Restorative Justice: International Perspectives. Monsey, NY: Criminal Justice Press, 3: 315-336

- Abrams, L. S., Umbreit, M. & Gordon, A. (2006). "Young Offenders Speak About Meeting Their Victims: Implications for Future Programs." Contemporary Justice Review, 2: 243256
- Conceptualizing & contextualizing restorative justice system for Nigeria ; By MAIWA'AZI DANDAURA SAMU (2013)
- ECOSOC Resolution 2002/12 : Basic principles on the use of restorative justice programmes in criminal matters
- Pathway To Criminal Arbitration and Restorative Justice By The Magistracy Of Lagos State : By Professor Akin Ibidapo-Obe, FCIArb
- United Nations Guidelines for Prosecutors, 1990;
- The United nations Declaration of Basic Principles on the Use of Restorative Justice Programs in Criminal matters, 2000
- Rome Statute of the International Criminal Court, 1998; The United Nations Declaration on the Development and Implementation of Mediation and restorative Measures in Criminal Justice, 1999
- The Nature, Types and Jurisdiction of Customary Courts in The Nigeria Legal System BY CHIGOZIE NWAGBARA
- COMPENSATION TO VICTIMS OF CRIME IN NIGERIA: A CRITICAL ASSESSMENT OF CRIMINAL VICTIM RELATIONSHIP by Adeniyi Olatubosun
- H Strang, Restorative Justice Programs in Australia (2001) A Report to the Criminology Research Council
- Justice Vero Ngozi Umeh's paper on : Criminal Arbitration:The Uses and abuses of Plea Bargaining in Nigeria
- At page 891 of Merriam – Webster's Collegiate Dictionary Tenth Edition, (1964)
- Oxford Advanced Learner's Dictionary at page 890.
- Black's Law Dictionary, Centennial 6th Edition at Page 1152

- Erik Luna & Paul Cassell, Mandatory minimalism, 32 Card. L. Rev.1, 12 (2010).
- John H. Langbein's Article on: Land without Plea Bargaining: How the Germans Do It
- H.S. Miller, et al "plea Bargaining in the United States" at 1 – 15
- S.I. Nchi, The Nigerian law Dictionary 1st ed. (Zaria: Tamaza Publishing Company Ltd, 1996) at 250.
- National Institute of Law Enforcement & Criminal Justice; Plea *Bargaining in the United States* (Washington DC U.S. Government Printing Office, 1978.
- Onyema 2010@yahoo.com Abuja, Nigeria Sunday, May 24, 2009
- "EFCC, Igbinedion and Plea Bargaining" by Erasmus Ikhide published December 23rd, 2008.
- F.G.N Vs. Alamieyeseigha The Punch Law Report, Friday July 27, 2007 Pg4.
- Punch Newspapers February 6, 2013 www.punching.com> opinion
- THE ADVOCATE: A Journal of Contemporary Legal Issues University of Jos Institutional Repository by Kodo, Iliya Ezekiel, March 2001 Vol. 6.
- "Plea Bargaining as Disaster" The Yale Law Journal (The Yale Law Journal) 101 (8): 1979 – 2009 Stephen J. Schulhofer (Jan. 1992)
- Herman, Nicholas Herman. 1997, Plea Bargaining. Charlotteville
- Kayode Oladele Law & Human Rights. December 15, 2010.
- The Times of India 6 July 2006 sourced from www.times**ofindia**. Indiatimes.com/articlesshow/1706071.cms on September 2, 2008.
- See also: S.S. Ghosh "Plea Bargaining An Analysis of the Concept"

- "Tafa Balogun withdraws Suit Against EFCC"- Punch Newspaper, November 18, 2005 at p 8
- See A. Adeshina, "EFCC Breach Pact with Bayelsa-Abayomi", Punch Newspaper, December 19, 2005 at p.5.

- N. Odebube, & F. Makinde, "Plea Bargain is Corruption-Bola Ajibola," Punch Newspapers, 5th August 2007.