AN APPRAISAL OF THE LEGAL REGIME FOR VICTIM-OFFENDER MEDIATION IN NIGERIA*

Abstract

For more than sixteen decades now, Nigeria has practiced colonial imposed system of criminal justice delivery system. The system of criminal justice delivery that placed emphasis on prosecution and punishment of crime no matter how infinitesimal it may be. The end product had been the adoption of criminal justice system where State becomes the victim and the sole beneficiary of criminal prosecution. As a result of the above, the person who actually suffered from the criminal bustles of fellow members of the society becomes a nominal complainant and further subjected to contribute resources in the prosecution of the accused person. This paper sets out to create awareness on the need to introduce a legal regime for victim-offender mediation in criminal justice delivery in Nigeria especially in minor offences. The aim of which is to ensure that the rights of parties to an offence are adequately protected in Nigeria. The paper adopts a doctrinal research method and finds that the plague to adopting victim-offender mediation in Nigeria flowed from the lacunae in the current legal regime on criminal justice delivery among others. It therefore recommends a review of the criminal justice system to accommodate victim-offender mediation in Nigeria.

Key Words: 'Victim', 'offender', 'Mediation', 'offence', 'Rights', 'Parties'

1. Introduction

Offending[1] one another has been part of human existence. In the cause of family relation, village and community setting, there are bound to be people committing wrong against each other. This may range from the misappropriation of one's resources by another or taking one's property by another without permission. In each of the above scenarios, offence is said to have been committed. In order to maintain sanity and good relationship among members of a group, resolution of conflicts became inevitable. In most appropriate, criminal matters end in prosecution before the court of law. The shortcomings associated with criminal prosecution have been the basis upon which calls for introduction of a legal regime for victim-offender mediation in our criminal justice delivery become imperative.

It must be settled at once that prior to the advent of the west type of criminal justice system, Africans especially people of the entity now called Nigeria had various methods of enforcing the agreed standard of behaviour. Onyeozili *et al* noted that in the Southern Nigeria, family unit, village or community heads were the organs used by the people to enforce discipline among the people.[2] In all the above scenarios, the purpose was to bring the offender and the victim together for the purpose of mediation aimed at achieving peaceful coexistence among the parties. The advent of colonial administration in Nigeria changed the narrative and ushered in a type of criminal justice delivery that places reliance on prosecution and punishment of offenders. This was based on the ancient ideology of the English

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[1] For the purpose of this paper, offence shall be used interchangeably with crime.

[2] E C Onyeozili & O N I Ebbe, 'Social Control in Pre-colonial Igboland of Nigeria' *AJCJS*, (2012) Vol.6, 1 &2 36.

criminal justice delivery that vested the ownership of crime on the state. In that arrangement, the victim of a crime is merely a witness to be called at the discretion of the prosecution. The end product of which is that if a criminal trial ends in favour of the state, the state reaps the benefits in form of receiving fine if payment of fine is ordered or bears the burden of taking care of the offender in a correctional centre where the offender is ordered to serve a jail term.

In all the above scenarios, the victim of crime who have lost his property or sustained permanent injury as a result of the criminal activities of the offender is left to wallow in darkness and to continue to contribute resources by way of tax payment part of which the State will use to take care of the offender in correctional centre. A close look at the above arrangement will unearth the need to overhaul same for the purpose of paving the way to introducing a legal regime that will at least allow minor offences to be resolved through victim-offender mediation. This paper sets out to discuss the extent to which the introduction of a legal regime for victim-offender mediation in Nigerian criminal justice delivery will advance the rights of parties to an offence.

2. The Meaning of Offence

Section 2 of the Nigerian Criminal Code Act[3] defines 'an offence as an act or omission which renders the person doing the act or making the omission liable to punishment under the code or under any act or law.' In the same vein, Section 4(2) of Penal Code[4] provides that 'whereby any provision of any law of the State the doing of an act, or making of any omission made an offence, then such acts or omission becomes crime.' The above statutorily definitions of the word 'offence' have not quite settled the hubbub towards reaching an end to endless journey in search of the acceptable definition of an offence. Accordingly, Mathias argued, that 'it is difficult to present a universal definition of crime, the reasons are obvious, but foremost is the fact that the acts defined as criminal vary with time and space.'[5] We quite concur to some extent with the submission of Mathias that what constitute crime varies from village to village, community to community, customs, religion and state. The difficulty in arriving at the acceptable definition of a concept in law was captured by Tobi when he postulated thus:

> Definitions by their very nature, concept and content are never accurate like mathematical solution to a problem. Definitions are definitions because they reflect the idiosyncrasies, inclinations, prejudices and emotions of the person offering them. While a definer of a word or agglomeration of words may pretend to be impartial and unbiased, the final product of his definition will be a victim of partiality and bias. The definer may not know in the course of his definition that he is working into the package, his petty sentiments and prejudices, but the end product proves it all. His embellishments show his emotions and sentiments. This is a human problem, which unfortunately has no human solution. As long as our orientations, our backgrounds, and our outlooks remain distinct and distant, the problem will be with us. There is no point pretending about it.[6]

The authors of this paper agreed with Tobi and add that every definition offered by any scholar on any concept in law is a roadmap for another scholar to search for the gap in knowledge. However, this paper will examine one or two definitions of offence offered by some scholars in the field. Most definitions

[3] Cap. C38, Laws of the Federation of Nigeria 2004.
[4] Cap. 89 Laws of Northern Nigeria 1963 (as applicable and amended).
[5] Z Mathias, *Crime is Normal* (China: Guangzhou Quick Printing Co. Ltd, 2001) p.2.
[6] N Tobi, *Sources of Nigerian Law* (Lagos: MIJ Professional Publishers Ltd, 1996) p.14.

adopted the word 'crime'. The word "crime" shall be used interchangeably with the word 'offence' in this paper. Black's Law Dictionary defines an offence as a violation of law.[7] Rross *et al* expressed the views that 'crime is a legal wrong for which the offender is punished at the instance of the State. It is an act or omission involving the breach of a duty punishable by indictment, in the public interest under the law of England.'[8] In *Rusell* v *Radley*,[9] Justice Muldoon defines an offence as a concept which involves the prohibition of some definable conduct by the State and the imposition of some definable punishment for failure to comply with the duty imposed. He further stated that offence is 'an act contrary to offending against, and punishable by law, but particularly one made to by statute rather than by common law, the latter being usually called crimes and also particularly one punishable on summary conviction.'

In all the above definitions, offender is punished at the instance of the State for violating the State norm. None of the definitions present a scenario where the victim of the crime is taken into consideration. In other words, the authors concentrated their definitions of crime on the breach of State law and punishment that follows instead of creating the enablement for victim-offender mediation. Whichever way the pendulum swings, the journey of this paper is towards advocacy for the introduction of a legal regime for victim-offender mediation in resolving at least minor offences in Nigeria.

Offences are classified for the purpose of trial and punishment. They are also classified according to their nature in order to determine the gravity of the offence. For the purpose of trial, offences are classified into indictable and non-indictable offences. In this light, Section 494 of the Administration of Criminal Justice Act 2015 provides that an indictable offence is one that is punishable by an imprisonment for more than two years or a fine exceeding forty thousand naira. It is also not punishable on summary conviction. From the above provision, it follows that a non- indictable offence is one that is punishable with imprisonment of less than two years, a fine less than forty thousand naira and is punished by summary conviction. For the purpose of punishment, the Criminal Code Act classified offences into felonies, misdemeanour and simple offences.[10] For this purpose, Section 3 of the Criminal Code Act[11] and Section 5 of the Criminal Laws of Lagos State define a felony as 'any offence which is declared by law to be a felony or is punishable without proof of previous conviction, with death or with imprisonment for three years or more.' A misdemeanour is punishable by imprisonment from 6 months up to three years. Simple offences are others types of offences outside felonies and misdemeanour and are usually punishable by a mere fine, caution and very rarely, imprisonment not exceeding 6 months. In other jurisdictions, such as the United States of America, offences are classified into felonies, misdemeanour and infractions.

3. Parties to an Offence

Korir noted that 'an offence may be planned, hatched and executed by one person against another.'[12] The planning and execution of an offence may involve a member of a group or the entire group of people either acting separately at the same time or different times in the course of one transaction that leads to unlawful act. The group may also act together in one concert with one another in committing the offence. The members of the group who performed one act or the other that leads to the commission

[7] B A Garner, *Black's Law Dictionary* Ninth Edition. (United States of America: Thomson West Publishing Co., 2009) p. 1186.
[8] R Ross and R A Jones*; An Introduction to Criminal Law* (London: Butterworth's Publication,1972) p. 35.
[9] [1984]1 F.C. 543
[10] Criminal Code Act., Section 3, *op cit*.
[11] *Op. cit.*
[12] S Korir, 'Parties to an offence'< https://www.academia.edu accessed on 20-4-2021>.

of an unlawful act are said to be parties to an offence. For the purposes of convenience, parties to an offence can be divided into: principal offender, secondary offender and accessory after the fact. Under the English Criminal Act of 1967 parties to an offence are group into principal parties known as the 'principals in the first degree' and secondary parties known as 'principals in the second degree.'

In Nigeria, Section 7 of the Criminal Code Act provides that 'when an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it….' For this purpose, a principal offender is any person who actually does the act or makes the omission which constitutes the offence.[13]Thus, a principal offender is the person whose act is the immediate cause of the physical or mental injury or economic loss suffered by the victim. He is the main actor in the bunch of the offenders. In *Bashaya* v *State* [14] the deceased, while on a journey, was attacked and killed by a group of men armed with sticks and other weapons. The person that delivered the fatal blow was considered consequential and they were all convicted for murder. Consequently, a person might not commit an offence but would by his conduct be regarded as a principal offender if his conduct depicts that he committed such offence through an 'Innocent Agent'. In the case of *R* v *Stringer,*[15]an employer who dictated a fraudulent letter to his secretary was regarded as the principal offender. The secretary who had no idea that the letter was for fraudulent purposes was regarded as an innocent agent.

In another development, a secondary offender in line with Section 7(b)(c)(d) of the Criminal Code Act is every person who does or omits to do any act for the purpose of enabling or aiding or counsels or procures another person to commit the offence. In the case of *R v Bryce*[16] the Court held that in charging secondary offenders, phrases like aid, abet and procure should be used. The mere presence of the person at the scene of the crime is not enough to prove that he aided or encouraged the commission of the crime.

The prosecution has to prove that the person intended to give encouragement or encouraged the commission of the crime. In *Akanni & Ors* v *The State* [17]the accused persons stood and watched as a woman burnt to death in a house. In absence of evidence to establish that the accused persons actually aided or committed the crime, the Court held that they were not guilty of the offence as charged. In *R* v *Clarkson*[18] two of the defendants stumbled into a room in which a girl was being raped. The defendants neither joined in the rape nor attempted to stop the rapist. The Court held that in as much as the defendants did not join in the act, they were not liable for any offence. In *Ubahar* v *State*[19] the Court held that if the law says 'aid or abet' it means to assist or facilitate in the commission of a crime. In *Amoo* v *The State*[20] the Court held that if a statute uses the term 'counsel' in relation to a secondary offence, it means to advice in the commission of the crime. In *Idika* v *The State*[21], the Court held that if the statute uses the word 'procure'; it means to invite or persuade in the commission of a crime.

[13]Criminal Code Act, Section 7(a).
[14] [1998] 5 NWLR (Pt 550).
[15] [1998] QCA 327.
[16] [2004] 2 CAC.

[17] [1971] 3 All ER 344
[18] [1971] 3 All ER 344
[19] [2003] 6 NWLR (Pt. 1000).
[20] [1954] 4 SC.
[21] (1975) Q.B.

At common law, an accessory after the fact is a party who has the knowledge that another person has committed a felony but however receives, relieves, comforts or assists the felon, or in any manner aids the felon to escape arrest or punishment. This common law doctrine is incorporated in Section 10 of the Nigerian Criminal Code Act. For this purpose, Section 10 of the Criminal Code Act provides that 'A person who receives or assists another who is, to his knowledge guilty of an offence, in order to enable him to escape punishment is said to become accessory after the fact to the offence.' For the prosecution to establish that an accused person is an accessory after the fact the prosecution must prove that the accused person has knowledge that an offence has been committed by the felon and that he actually aided the felon to escape arrest or punishment. The plea of mere presence of the accused at the scene of the crime will not preclude a conviction as an accessory after the fact, where the evidence shows that the accused became involved in the crime after its commission.

Under the Nigerian Penal Code, Section 167 provides:

> whoever knowingly or having reason to believe than an offence has been committed, causes any evidence of the commission of the offence to disappear with the intention of screening the offender from legal punishment, or with a like intention or intending to prevent his arrest gives any information respecting the offence which he knows or believes to be false or harbours or conceals a person whom he knows or has reason to believe to be the offender, shall be punished with imprisonment which may extend to five years and shall also be liable to a fine.[22]

4. Victim

It is germane to point it out that throughout the length and breadth of Nigerian criminal law; parties to an offence are only those who participated in the commission of a crime. The law did not consider the victim of a crime as one of the parties to an offence. Maybe that is why a victim of a crime in Nigerian criminal justice jurisprudence is relegated to a mere witness to be called at the discretion of the prosecution. This is further compounded by the fact that Nigerian criminal justice proceedings places premium on how to bring an offender to justice through prosecution. This paper made a departure from the existing norm by consider a victim of a crime as one of the parties in criminal justice proceedings for the purpose of his active participation in the resolution of the conflict.

Prior to 1985, efforts to ensure that victims of crime are adequately integrated in the criminal justice proceedings did not receive a United Nations blessing. However, on 29th November, 1985, the United Nations General Assembly adopted a Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. According to the United Nations, the 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 'constitutes the basis of international standards concerning the treatment of victims. It is designed to assist governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power.

Accordingly, a victim of crime is a person who 'individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment' of his fundamental rights, 'through acts or omissions that are in violation of criminal laws operative' within the jurisdiction where violation of the law took place. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power noted that 'A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended,

[22] Penal Code Act Cap. P3, LFN, 2004.

prosecuted or convicted and regardless of the familiar relationship between the perpetrator and the victim.'

It also includes 'the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.' From the United Nations definition of a victim of crime, it is safe to draw a conclusion that a victim of a crime is one of the parties to a criminal justice proceeding. Since the law provides for the rights of an accused person, it is germane that the law should also provide for the rights of a victim of crime especially if accused person is found guilty of the offence. It is the thesis of this paper that adopting victim-offender mediation in Nigerian criminal justice proceedings will straighten the criminal justice system and further advance the rights of parties to an offence. Victim-offender relationship is established once the accused person confesses to the commission of crime. It is at this stage that the option of allowing the offender to meet with the victim is advocated for the purpose of working out the modalities of resolving the dispute.

5. Offender

An offender is a person who has either confessed to a commission of a crime or convicted for a crime. Garner puts the meaning of an offender as 'a person who has committed a crime.' Traditionally, crime varies from community to community. A person may be said to have committed act forbidden by a particular custom of a community but in another community such an act may not be forbidden. It is in regard that the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Crime Code Act provide that 'a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subsection a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.[23]

From the above constitutional provision, could it be said that the constitutions of various town unions, communities, clubs, age grades among that prescribe punishments for members in default qualify as instruments under the law? This is resolved in the negative. However, by consent, members of these organizations agree to be bind by their laws. Zeroing from the above, an offender is a person who confessed to have committed an offence or convicted for committing an offence defined under the law and the penalty prescribed by an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

6. Rights of Parties to an Offence

Right has been defined to mean that which is proper under the law, morality, or ethics.[24] It is something that is due to a person by just claim, legal guarantee, or moral principle.[25]In the same vein, *Osborn's Concise Law Dictionary*[26]explains that right is 'an interest recognized and protected by the law, respect for which is a duty and disregard of which is wrong'. In another development, Curzon argues that right is 'that to which a person has just claim'.[27]It is an interest which will be recognized and protected by a rule of law, respect for which is a legal duty, violation of which is a legal wrong.[28]

[23] Constitution of the Federal Republic of Nigeria 1999, section 36(12).
[24] B A Garner, *Black's Law Dictionary* (8th Ed, United States of America: Thomson West Publishing Co., 2004) p.1347.
[25] *Ibid.*
[26] L Rutherford, *et al, Osborn's Concise Dictionary* (8th Ed, London: Sweet & Maxwell, 1993) p.293.
[27] L B Curzon, *Dictionary of Law* (5th Ed, Great Britain: Redwood Books, 1998) p.330.
[28] *Ibid.*

Okpara argues that the word 'right' is derived from the Latin word *rectus* which means, correct, straight, and not crooked.[29] It is that to which a person has a just and valid claim, whether it be land, a thing or the privilege of doing something or saying something.[30] Oputa postulated thus:

> A right in its most general sense is either the liberty (protected by law) of acting or abstaining from acting in a certain manner, or the power (enforced by law) of compelling a specific person to do or abstain from doing a particular thing. A legal right is thus the capacity residing in one man of controlling with the assent and assistance of the State, the action of others. It follows then that every right involves a person invested with the right or the person entitled; a person or persons on whom that right imposes a correlative duty or obligation, an act of forbearance which is the subject matter of the right; and in some cases an object, that is a person or thing to which the right has reference, as in the case of ownership. A right therefore is in general, a well-founded claim, and when a given claim is recognized by the civil law, it becomes an acknowledged claim or legal right enforceable by the power of the State.[31]

In the case of *Afolayan* v *Ogunride* & *Ors*[32] the court held that a right is an interest recognized and protected by the law. In *Uwaifo* v *A G Bendel State*[33] the Supreme Court of Nigeria held that a legal right is any advantage or benefit conferred upon a person by a rule of law. Therefore, right of a party to an offence is the legal claim or benefit conferred on him by the rule of law existing within the place of the offence took place. Nigerian Constitution[34]offers litany of rights to accused person. These rights include: right to fair hearing and fair trial, right to be presumed innocent until proven guilty, right to public trial, right to be informed and furnished with particulars of a case against him, rule against retrospective legislation among others. In the same vein, the Nigerian Evidence Act places the burden to establish the guilt of an accused person on the prosecution. The prosecution must discharge this burden beyond reasonable doubt. These laws appear to make an accused person to relax while the prosecution labours to link him to the crime. Under this arrangement, accused person easily plead not guilty to a charge instead of confessing to the crime for the purpose of initiating victim-offender mediation. In similar vein, upon the conviction of an accused and consequent committal to correctional centre, certain rights will accrue to him. Such rights include rights to food, clothing, bedding, medical care, environmental hygiene, recreation, vocational training among others.

As noted earlier, throughout the length and breadth of Nigerian Constitution and criminal law, the right of a victim of crime was not defined. This deficiency in Nigerian law has worked against the adoption of victim-offender mediation in Nigerian criminal justice proceedings. However, reliance will be placed on the United Nations arrangement for the purpose of the call for adoption of victim-offender mediation in Nigeria. For this purpose, paragraph 4 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides that victims of crime 'should be treated with compassion and respect for their dignity. They are entitled to access the mechanisms of

[29] O Okpara, *Human Rights Law & Practice in Nigeria Vol.1* (Enugu: Chenglo Ltd, 2005) p.36.
[30] O N Ogbu, *Human Rights Law and Practice in Nigeria Vol. 1* (2nd revised edn, Enugu: Snapp Press Nigeria Ltd, 2013) p.1.
[31] C A Oputa, 'Human Rights in the Political and Legal Culture of Nigeria', *2nd Idigbe Memorial Lectures* (Lagos: Nigerian Law Publications Ltd, 1989) pp.38-39.
[32] [1990] 1 NWLR (pt 127) 369 at 391.
[33] [1982] 7 S C 124 at 127.
[34] Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 36.

justice and to prompt redress as provided for by national legislation, for the harm that they have suffered.' Paragraph 5 of the Declaration provides that 'judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible.' For this purpose, paragraph 7 of the Declaration provides that 'informal mechanisms for the resolution of disputes including mediation, arbitration and customary justice or indigenous practices should be utilized where appropriate to facilitate conciliation and redress for victims.'

From the above United Nations Declaration, it could be deciphered that some of the rights of a victim of crime include right to be treated with compassion and dignity, the right to have access to the mechanisms of justice to resolution of his case, the right to request for the refer of his case to informal mechanism of dispute resolution such as mediation, arbitration or customary justice system. However, the above rights remain mirage in the context where there is no existing national legislation to give breath of life on them. At present, Nigeria has no legislation on the modalities or procedures for initiating of victim-offender mediation in her criminal justice proceedings. In Nigeria, it is still an aberration to settle criminal offence without the involvement of law enforcement agency no matter how infinitesimal the case may be. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power cannot apply on local issues in Nigeria until same is legislated upon by the National Assembly.

7. Mediation

Mediation appears to be the oldest form of dispute resolution. It is a form of alternative dispute resolutions designed to assist the parties in settlement of their differences. Mediation is the intervention of a consensus neutral third party for the purpose of facilitating arrangement towards amicable settlement of dispute. In mediation, the facilitating third party does not have the power to make binding decision on the disputants rather he helps them through reasoning, persuasion and suggestions to come to a consensus in their best interest of the solution to their problem. In this arrangement, parties to a dispute are the masters of the solutions to their case. The cardinal objective of mediation is not to look for faults, contest rights or wrong, winner or loser but to proffer practical solution to resolving the dispute.

Omaka defines mediation as 'a voluntary and informal process in which the disputing parties select a neutral third party (one or more individuals) to assist them in reaching a mutually acceptable settlement.'[34]Derri noted that in mediation, a neutral third party (the mediator) assists the parties in a dispute to communicate their positions on issues and to explore possible solutions or settlements.[35]Garner argues that mediation is 'a method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.'[36]Although mediation produces nonbinding and enforceable outcome, it has nevertheless been used as instrument of restorative justice that promoted harmonious relation among natives in African society before the introduction of formal modern justice system.

[34] C A Omaka, 'ADR Machinery and Resolution of Conflicts in Nigeria.' (2018) 2 No.1 *ADRLJ* 135-178.
[35] D K Derri, 'The Academic Perspective of Administration of Justice in the Multidoor Courthouse.' (2018) 2 No.1 *ADRLJ* 109-134.
[36] B A, Garner. *op cit.*, p.1070-1071.

8. Victim-Offender Mediation

Chinyere noted that 'victim offender mediation is a programme in which a criminal offender and victim of the crime meet together in the presence of a trained mediator-facilitator.[37] During the meeting, the victim is afforded the opportunity to seek answers to the questions about the crime that may have been troubling him or her. Historically, scholars appear to be consensus on the origin of victim-offender mediation. Accordingly, victim-offender mediation started in Canada in the mid-70s. Victim-offender mediation commenced as a reconciliation programme in 'Kitchener, Ontario where two boys destroyed private property in a drunken rampage.[38] In that case, the probation officer who was in charge of the boys had after considering that the boys had no previous criminal record, recommended to the Judge that rather than punishing the boys, it would be better for the boys to go to the homes of their victims, confess to the crimes, and work out a restitution agreement. The Judge agreed with the probation officer and in three months, the boys had completed their agreements and paid back all the losses. This led to the creation of the first North American victim-offender mediation/reconciliation programme.[39]

Victim-offender mediation is an arrangement where the victim and offender come together with the help of a mediator for the purpose of working out an agreement towards resolving their differences. The mediation process offers parties direct control of the outcome of their dispute. This is against the formal method of the adjudication of criminal trial where decision in the case is left in the hands of the adjudicating officer. The call for victim offender-mediation springs from the fact that leaving the decision power in the hands of a distant third party creates lots of apprehensions in the parties. Mediation relieves parties to a dispute tension, and brings them closer to each other for the purpose of finding common ground to solving the problem. Umbreit *et al* acknowledge that several studies had unearthed the benefits of victim-offender mediation and researchers agreed that 'there are extremely high levels of satisfaction from both parties.'[40]

According to Umbreit *et al*, from the findings of studies, 'a victim stated, it was important to find out what happened, to hear his story, and why he did it and how.' In this arrangement, the victim will have the opportunity of confronting the offender face to face and asking questions to actually express the extent of harm done on him by the criminal act of the offender. The offender on his part will be able to appreciate the extent of harm done on the victim by his criminal act, ask for forgiveness and contribute in the proposal for restoring the losses incurred by the victim. It creates a confidential forum where victim and offender will freely air their views and fashion out a resolution on the dispute. Victim-offender mediation saves cost and time for the parties unlike ligation that is bedeviled with delays in our jurisdiction. Edit acknowledges that the objective of restorative justice (victim-offender mediation) is to ascertain, 'what harms have been done? Who has been hurt? What are the needs of the parties

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[37] C Chinyere. 'Restorative Justice: Victim Offender Mediation' <legalpediaonline.com> accessed on Saturday, 1st May, 2021.

[38] M Price, 'Victim-Offender Mediation: The State of Art'; *VOMA Quarterly* (discussing the beginning of victim-offender mediation) . ' <http://www.vorp.com/articles/art.html>.

[39] I Weillikoff, 'Victim-Offender Mediation and Violent Crimes: on the Way to Justice.' <www.cardozojcr.com/issues/volume 5-1/note.>

[40] M S Umbreit *et al*, *The Impact of Victim-Offender Mediation: Two Decades of Research*, 65 Federal Probation 29 (Dec 2001). Where comparison groups were studied, those victims and offenders going through mediation were far more satisfied with the criminal justice system than those who went through regular court (79% to 57%). at 30-31. There have been numerous efforts to evaluate the workings of victim-offender mediation in various settings over the last 20 years. at 29. More studies have examined the impact of this mediation than any other correctional interventions that cost the US millions of dollars on each year.

affected? What does it take to repair the harm? Who has a responsibility to participate in making it right?'[41] These are the whole essence of victim-offender mediation.

In an attempt to introduce a reform to criminal justice sector, the Federal Republic of Nigeria enacted the Administration of Criminal Justice Act (ACJA), 2015. ACJA 2015 as it stands now appears to be the first indigenous enactment with local content on the administration of criminal justice in Nigeria. The Act attempted to redefine African criminal justice model. For this purpose, ACJA attempts to place less emphasis on punishment culture of Nigerian criminal justice system especially in minor offences[42] by recommending in small measure, a form of restorative justice and the need to rehabilitate an offender. For this purpose, Section 453 of the Administration of Criminal Justice Act, 2015 provides that: Where an accused is charged before a court with an offence punishable by law and the court thinks that the charge is proved but is of the opinion that having regard to:

> (a) the character, antecedents, age, health, or mental condition of the accused,
> (b) the trivial nature of the offence, or
> (c) the extenuating circumstances under which the offence was committed, it is inexpedient to inflict a punishment or any order than a nominal punishment or that it is expedient to release the accused on probation,[43] the court may, without proceeding to conviction, make an order:
> (d) dismissing the charge; or
> (e) discharging the accused conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear at any time during such period not exceeding 3 years as may be specified in the order.[44]

In the same vein, section 460 of the ACJA provides that the court may 'order for suspended sentence or community service in offence that does not involve the use of arms, offensive weapons, sexual offences or for the offence which punishment exceeds imprisonment for a term of three years.' For the purpose of exercising the powers to order for a suspended sentence or community service, the court shall have regard to the need to: (a) reduce congestion in correctional centres; (b) rehabilitate correctional centre inmates by making them to undertake productive work; and (c) prevent convicts who commit simple offences from mixing with hardened criminals.

By the provision of section 467 of the ACJA, 'a person convicted of an offence that attracts a summary trial may be ordered by the court to serve his sentence at a Rehabilitation and Correctional Centre established by the Federal Government in lieu of imprisonment.' The court in making an order of confinement at a Rehabilitation and Correctional Centre shall have regard to the age of the convict; the fact that the convict is a first offender; and any other relevant circumstance necessitating an order of confinement at a Rehabilitation and Correctional Centre. For this purpose, a child standing criminal

[41] E Torzs. 'Restorative Justice Models and their Relevance to Conflicts in Intercultural Settings within Democratic Societies.' http://www.alternativeprojects.eu accessed on Sunday, 16th May, 2021.
[42] Minor offences are used interchangeably with misdemeanor. Misdemeanor is an offence that is less serious than a felony and it is usually punished by imprisonment for not less than 6months but less than 3years. The Administration of Criminal Justice Act, 2015, Section 494.
[43] Probation is a sentencing option open to court to release a convicted person to the community under the supervision of a Probation Officer
[44] Similar provision is in the Administration of Criminal Law, Anambra State, 2010, Section 396.

trial may be ordered to be remanded at the Rehabilitation and Correctional Centre. In a similar development, Section 468 of the ACJA provides for a parole[45] system as one of the measures to address the problem of the overuse of imprisonment in Nigeria. For this purpose, the Controller-General of the Nigerian Correctional Service is empowered to make report to the court recommending that an inmate:

> (a) sentenced and serving his sentence in correctional centre is of good behaviour and
> (b) has served at least one-third of his prison term, where he is sentenced to imprisonment for a term of at least 15 years or where he is sentenced to life imprisonment, the court may, after hearing the prosecution and the prisoner or his legal representative order that the remaining term of his imprisonment be suspended with or without conditions.'[46]

ACJA, 2015 has introduced plea bargain as part of restorative justice focused on the need of the society which is the cardinal objective of African criminal justice delivery. Plea bargain is a negotiated plea. It is 'A negotiated agreement between a prosecutor and a criminal defendant who pleads guilty to a lesser offence or to one or more multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of other charges.'[47] Kehinde argues that 'Although now formalized, the concept of plea bargain has long been in existence in the traditional African society where a person who is accused of an offence would usually receive lesser punishment if they confess to the commission of the crime.'[48]

The idea to return to African system of confess and earn lesser punishment began to gather momentum when it became obvious that more resources are injected to the prosecution of some minor crimes which ordinarily would be settled without causing harm to the society. Plea bargain is often employed in money laundry matters especially when it will be more beneficial to recovery the tax payers' money and invest it in their priority than sending the culprit to correctional centre where the tax payers' money will again be spent on his upkeep. For this purpose, Section 270 of the ACJA, 2015 provides:

> (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; or
> (b) offer a plea bargain to a defendant charged with an offence.[49]

The Act requires that an agreement for a plea bargain where an offer for it is made must be concluded before the defendant opens his defence.[50] In this circumstance, the need to serve the interest of justice, the interest of the public, public policy and prevent abuse of legal process play paramount in a condition to offer or accepting a plea bargain by the prosecution.[51]

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[45] Parole system is the release of a prisoner from imprisonment before the full sentence has been served. It is usually granted for good behaviour on the condition that the parolee regularly report to a supervising officer for a specified period.
[46] ACJA, section 468
[47] *Black's Law Dictionary, op cit*, p.1270.
[48] A Kehinde 'A Discourse of the Administration of Criminal Justice Act, 2015' akehindeandco.com <accessed on Sunday 4th November, 2018>
[49] ACJA 2015, section 270
[50] of ACJA, 2015, Section 270(2).
[51] *Ibid*, Section 319(3).

In another development, the ACJA, 2015 provides for the award of costs, compensation, damages and restitution to the victim of crime. By the provisions of Section 319 of ACJA, the court may at any stage or during judgment 'order the convict to pay compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed on the defendant, where substantial compensation is in the opinion of the court recoverable by civil suit.' The court is also empowered by the ACJA to order the defendant to pay a sum of money to defray expenses incurred in the prosecution or medical treatment of the person injured by the convict as a result of the offence[52] or to pay compensation to the innocent purchaser of property in respect of which the offender has been committed who has been compelled to forfeit the same.[53]The above awards may be made against the convict in addition to or in lieu of the appropriate punishment prescribed by law.[54]

Under the Administration of Criminal Justice Law, Anambra State of Nigeria, 2010 (ACJL), cost may be awarded against the convict in favour of a private prosecutor or to the victim of the crime in addition to any penalty imposed on the convict.[55]In the same vein, cost may be awarded against a private prosecutor or complainant in favour of an accused person if the accusation against the accused person is false.[56] Under the ACJA 2015, "'private prosecutor" does not include a person prosecuting on behalf of the State, a public officer prosecuting in his official capacity and a police officer.'[57] Akinseye noted that the ACJA, 2015 has addressed the ugly trend where victims of crimes were neglected and left without any form of compensation 'even when the offender has been found guilty and sentenced.'[58]

Unfortunately, despite the provisions of ACJA aimed at restorative justice in Nigeria, victim-offender mediation has not been actually factored into the Nigerian criminal justice proceedings. For the purpose of clarity, the compensation, cost, parole, suspended sentence or community service envisaged by the ACJA is to flow from the judge who appears to be a distant third party in the case. In the vain, plea bargain is a product of negotiation between the prosecution and the accused. The question is wherein lies the place of the victim of the crime or his contribution towards arriving at any of the alternative to sentencing provided by the ACJA? It is obvious from the above that Nigeria is yet to have a legal regime that will domesticate victim-offender mediation. Therefore, a call for the introduction of a legal regime for victim-offender mediation in Nigeria became obvious. When this is done, it will define the scope, guidelines and methodology for the operation of victim-offender mediation in Nigeria.

9. Challenges to Implementation of Victim/Offender Mediation in Nigeria

The success of victim-offender mediation in Nigeria rests on the overhaul of legal structure and a change of attitudes of relevant stakeholders in the administration of criminal justice. This is not to say that the process of the introduction of a legal regime for victim-offender mediation in Nigerian criminal justice process will be welcomed with an open hand. Challenges will surely spring from various interests among groups such as the police, courts, correctional service departments, lawyers, the public, media, among others. On the part of the police, Section 4 of the Police Act, 2020[59] provides for the primary

[52] *Ibid,* Section 319(b).
[53] *Ibid,* Section 321(a).
[54] The Administration of Criminal Justice Act, 2015, Sections 319 to 328. See also Section 454 (3) (4).
[55] The Administration of Criminal Justice Law, Anambra State 2010, Sections 385 and 397.
[56] The Administration of Criminal Justice Law, Anambra State 2010, Sections 386 and 390; section 322(1) of the ACJA, 2015.
[57] ACJA, 2015, Section 322(2).
[58] Y Akinseye-George 'Summary of the Innovative Provisions of the Administration of Criminal Justice Act, 2015' www.censolegs.org/publications/6 <accessed on Sunday 4th November, 2018>.
[59] The Nigeria Police Act, 2020 was signed into by President Muhammadu Buhari on the 15th day of September, 2020.

functions of the Nigeria Police Force to among others include prevention and detection of crime, maintenance of public safety, law and order. In the discharge of the above functions, the police can arrest and in some case, detain a suspect in custody within a reasonable time.[60]Specifically, police officers who are legal practitioners are empowered to prosecute offences in courts of law.[61] By this arrangement, the police officers who are legal practitioners wield extra function of crime prosecution. This set of police officers are often adverse in promoting victim-offender mediation in matters they are prosecuting in courts. This may flow from the undefined benefits which may accrue from matters prosecuted in courts.

On the part of the courts and correctional service, there is always the fear even though it has not been empirically proven that the introduction of a legal regime for victim-offender mediation in criminal justice delivery will reduce the number of cases coming to court and number of persons committed to custody of the correctional service. This may endanger the jobs of these officers as victim-offender mediation programme if introduced in criminal justice delivery may render some officers redundant and put them at the risk of losing their jobs. Lawyers who are not grounded on arbitration as a form of dispute resolution see same as a rivalry to the traditional court litigations which the Nigerian legal system is known for.

On the part of the public, the ancient practice of crime prosecution has indoctrinated the public to believing that criminal matters cannot be resolved without involving the police. This is viewed from the background that offence can only be committed against the State and the victim of the crime is merely a witness to the prosecution. Outside the obvious, lack of trained mediators or facilitators will surely slow the pace of the introduction of victim-offender mediation in Nigeria. Again, the fear of attack on the offender once confessed to a crime could hamper the smooth sail of victim-offender mediation in Nigeria. It must not be underestimated that in Africa, people find it difficult to admit to fault except through duress. Victim-offender mediation cannot thrive very well in a society where sincerity has been relegated.

While the paper is not advocating for every offence to resolved through mediation, it is suggested that at best, minor offences should be resolved through mediation. On this premise, the paper strongly advocates for an effective sensitization of the public and relevant stakeholders in criminal justice sector on the usefulness of the introduction of a legal regime for victim-offender mediation in criminal justice delivery in Nigeria. Since same is geared towards a return to African method of settlement of dispute. It is imperative to point out that victim-offender mediation is a current global trend in criminal justice delivery. Nigeria cannot remain on the ancient track if she will continue to retain relevance in the comity of nations.

10. Conclusion and Recommendations

The paper laboured to x-ray the importance of the introduction of a legal regime for victim-offender mediation in criminal proceedings in Nigeria. The paper has navigated into various rights and benefits that will flow from the introduction of victim-offender programme in Nigeria and the challenges.

[60] Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 35 (5) provides that Any person who is arrested or detained in accordance with subsection (1) of this section shall be brought before a court of law within a reasonable time, which a period of one day if the radius of court is 40kilometres or two days as the case may be.

[61] Police Act, 2020, Section 66.

Among the challenges revealed in the paper is lack of national legislation on victim-offender programme in Nigeria. Even though there exists a United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power that clearly defines the rights and treatments of a victim of crime, however, this instrument cannot take the force of law in Nigeria until it receives a legislative blessing from the Nigeria National Assembly.

This is because by provision of section 12 (1) of the Constitution of the Federal Republic of Nigeria1999 (as amended), no international treaty, convention, declaration or any other instrument shall have the force of law in Nigeria until they are domesticated *via* the act of National Assembly. The paper revealed that certain provisions of the Administration of Criminal Justice Act 2015 that appeared to have introduced restorative justice in Nigerian criminal justice proceedings cannot in anyway qualify to take care of victim-offender mediation programme.

It is on record that Nigeria is seriously challenged by various threat to national security despite numerous efforts of stakeholders in the administration of criminal justice. These threats range from terrorism, banditry, kidnapping, agitations for Sovereign States, unknown gunmen attack of various forms among others. A close look at the scenario will unearth that the traditional method of crime prosecution has almost collapsed in Nigeria. It is visible that the option preferable in this scenario is various forms of negotiations and mediations aimed at bringing the victim and the offender on a round table for solutions. That is to say that if victim-offender mediation is legalized in Nigeria, it will help to reducing criminal tendencies revenging various part of Nigeria. This will in our humble view go along the way in advancing the rights of parties to an offence.