



## Procedural gaps in the application of Restorative Justice under the Delta State of Nigeria Administration of Criminal Justice Law 2022

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### Abstract

The dominance of Retributive Justice in Nigeria's Criminal Justice System has failed to substantially reduce crime particularly in Delta State, where incarceration remains the primary response to offending. The enactment of the Administration of Criminal Justice Law (ACJL) 2022 sought to modernize Criminal Procedure and Integrate Restorative Justice as a complementary approach. This paper critically examines the Procedural Gaps undermining the effective application of Restorative Justice under the ACJL 2022. Employing a doctrinal research method, the study finds that while the Law acknowledges Restorative Justice as an alternative mechanism for Repairing harm and reconciling offenders with the Victims and the Community, its provisions are insufficiently developed for practical Implementation. Key challenges include the absence of clear procedural guidelines for appointing and regulating mediators, weak enforcement mechanisms for Restorative agreements, lack of a step by step framework for Courts to the limited scope of application, particularly its exclusion in cases involving violent crimes. These shortcomings risk rendering Restorative Justice Marginal within the Criminal Justice System, thereby perpetuating reliance on Retribution. The paper concludes that meaningful integration requires legislative amendments to expand applicability, procedural rules to strengthen enforcement, and the establishment of specialized Restorative Justice Centers to build institutional capacity and ensure consistency. Such Reforms would enhance victim satisfaction, reduce recidivism and promote a more balanced humane and effective Justice System in Delta State.

**Keywords:** Restorative Justice, Retributive Justice, Criminal Justice Reform, Delta State, ACJL 2022

### Introduction

The administration of Criminal Justice in Nigeria has historically been dominated by the Retributive Justice, which emphasizes punishment through imprisonment, fines, or other state – imposed sanctions. This model is premised on the view that crime is primarily an offence against the state with the victim relegated to a secondary role <sup>[1]</sup>. Despite its long-standing application, the Retributive System has not achieved its central objective of reducing crime or deterring offenders. In Delta State crime rates remain high and the emphasis on punishment has contributed to prison congestion, recidivism and diminished public confidence in the Justice System <sup>[2]</sup>. Restorative Justice (RJ) has emerged globally as viable alternative shifting the focus from punishment to repairing harm, fostering reconciliation, and reintegrating offenders into society RJ recognizes that crimes is first and foremost a violation of individuals and communities, therefore seeks to involve, victims, offenders and stakeholders in finding mutually satisfactory resolutions. The Administration of Criminal Justice Law (ACJL) 2022 of Delta State represents an important legislative attempt to incorporate Restorative practices within the state's Criminal Justice Framework <sup>[3]</sup>. The Law provides opportunities for Pre-charge and post-charge diversion into Restorative processes and mandates the Ministry of Justice to develop supportive policies <sup>[4]</sup>. However, while the ACJL 2022 is laudable in principle, its provisions on Restorative Justice remain underdeveloped, leaving significant procedural gaps. These include inadequate guidelines on mediator selection, weak enforcement mechanisms in scope, particularly with respect to violent crimes. This paper critically examines these challenges and argues that addressing them is crucial to achieving the Law's objective of creating a more efficient

humane, and balanced Criminal Justice System in Delta State.

### Restorative Principles

Restorative Justice (RJ) is grounded in the understanding that crime is not merely a violation of State Laws but primarily an infringement on individuals and Communities <sup>[5]</sup>. Unlike Retributive Justice which prioritizes punishment, Restorative Justice emphasizes healing, accountability, and the repair of social relationships. Its central goal is to ensure that the harm caused by an offence is acknowledged and addressed through participatory processes that involves victims, offenders and where appropriate, community representatives <sup>[6]</sup>.

The core principles of Restorative Justice include voluntariness as participation by both victim and offender must be free of coercion, inclusivity <sup>[7]</sup> which ensures the involvement of all stakeholders affected by the offence, harm repair, focusing on restitution, compensation, or symbolic acts of reconciliation, accountability, requiring offenders to acknowledge responsibility for their actions and reintegration, which seeks to restore offenders to society as responsible members rather than alienating them through exclusionary punishment, Dialogue, mutual respect, and flexibility. Underpin these processes, allowing solutions to be tailored to the specific needs of parties involved.

Historically Restorative practices are not foreign to African. In many Nigerian Communities, conflict resolution was traditionally managed through family units, village councils, age grades or religious leaders, with emphasis placed on reconciliation and communal harmony rather than punitive sanctions. These mechanisms were often akin to modern alternative dispute resolution (ADR) Systems <sup>[8]</sup>. The introduction of Restorative Justice within the Delta State

ACJL 2022 thus resonates with indigenous trends towards more humane Justice models.

However, translating these principles into enforceable legal procedures requires robust institutional frameworks. Without clear procedural guidelines, Restorative Justice risks remaining aspirational rather than transformative within the Delta State Criminal Justice System.

### **Overview of the Delta State Administration of Criminal Justice Law 2022**

The Administration of Criminal Justice Law (ACJL) 2022 represents a landmark reform in the Criminal Justice System of Delta State<sup>[9]</sup>. Enacted to replace the 2016 Law the ACJL consolidates and modernizes existing procedural statutes with the dual objective of ensuring fairness and promoting efficiency in Criminal proceedings. Its overarching purposes is to create a Justice System that balances the rights of victims, offenders and the wider community, while also reducing delays and strengthening accountability<sup>[10]</sup>.

Among its innovations, the ACJL 2022 introduces streamlined pre-trial procedures, enhanced protection of the rights of Defendants, witness and victim support provisions, and integration of incentives and sanctions to promote compliance. Importantly the Law explicitly recognizes Restorative Justice as a complementary mechanism alongside traditional Retributive processes<sup>[11]</sup>. Section 14 defines Restorative Justice as a process whereby an offender, the victim, and community representatives, with the aid of facilitator, work collaboratively to repair harm caused by unlawful conduct<sup>[12]</sup>. The Law further permits the use of Restorative programmes at both pre-charge and Post-charge stages thereby creating opportunities for diversion from formal prosecution<sup>[13]</sup>. To institutionalized these provisions, the ACJL mandates the Ministry of Justice to develop policies guiding Restorative Justice programmes, including eligibility criteria, referral mechanisms, facilitator training, and monitoring frameworks<sup>[14]</sup>.

Additionally, the law establishes the Restorative Justice Advisory Council (RJAC) to advise the Attorney-General and ensure effective policy implementation<sup>[15]</sup>.

Despite these progressive features the success of the ACJL depends heavily on its operationalisation. While the law articulates the vision for Restorative Justice. Its lack of detailed procedural rules raises concerns about consistent application, Judicial discretion and enforceability. These challenges underscore the need for deeper legislative and institutional reform.

### **The Gaps in ACJL 2022**

Although the ACJL 2022 integrates Restorative Justice Principles, there are significant procedural gaps that hinder its practical application. The enactment of the Delta State Administration of Criminal Justice Law (ACJL) 2022 represents an important attempt to modernized Criminal procedure and introduce Restorative Justice mechanisms into the State Justice System. While ACJL acknowledges the principles of reconciliation, repair and victim participation, closer examination reveals significant procedural gaps that hinder effective implementation. These shortcomings not only limit the scope of Restorative Justice but also reinforce the dominance of the Retributive model.

Four major areas of concern are identified: the absence of procedural guidelines for mediator selection, lack of detailed procedural framework and Restricted application of Restorative Justice to non-serious offences.

### **Lack of Procedural Guidelines for Mediator Selection**

A fundamental weakness in the ACJL 2022 is the absence of clear provisions regarding the selection, training and accreditation of mediators,<sup>[16]</sup> while Restorative Justice depends heavily on neutral facilitators to guide dialogue between victims and offenders, the Law is salient on how mediators should be appointed – whether by the Courts, the Ministry of Justice or the parties themselves. This omission creates uncertainty and leaves the process vulnerable to inconsistent or discretionary practices. In jurisdictions where, Restorative Justice has been effectively implemented such as New Zealand and Canda<sup>[17]</sup>, detailed procedural rules outline the qualifications, either obligations and selection criteria for mediators. Without similar provisions and safeguards the Delta State model risks eroding public confidence and undermining fairness in Restorative processes.

### **Weak Enforcement Mechanisms**

Another critical gap lies in the absence of enforceable procedures for Restorative agreements. The ACJL does not specify how agreements reached through Restorative processes should be formalized, endorsed by Courts, or enforced in cases of breach<sup>[18]</sup>.

Consequently, agreements remain largely voluntary and lack binding legal authority. This weakness significantly diminishes the effectiveness of Restorative Justice, as victims may feel unprotected and offenders may lack incentives for compliance. By contrast jurisdictions that have successfully integrated Restorative Justice typically ensure that agreements are Court – recognized and enforceable<sup>[19]</sup> thereby balancing voluntariness with accountability. Without such mechanisms, the Delta State approach risks reducing Restorative Justice to a symbolic process rather than a substantive alternative to punishment.

### **Absence of a Detailed Procedural Framework**

Unlike Retributive Justice which is governed by centuries of codified Trial procedures, Restorative Justice under the ACJL lacks a structured procedural roadmap.

The Law provides broad principles but does not articulate step-by-step guidelines on referral mechanisms, intake processes, facilitators roles, victim – offender dialogues or post-agreement monitoring<sup>[20]</sup>. This absence creates procedural uncertainty for Courts and legal practitioners tasked with implementing Restorative Justice. The lack of uniformity also jeopardizes consistency across cases, leading to uneven application and potential miscarriages of Justice. For Restorative Justice to operate effectively, procedural clarity is indispensable, otherwise, the Court may default to Retributive practices undermining the intended paradigm shift of the ACJL.

### **Limited Scope of Application to Violent Crimes**

Perhaps the most significant limitation of the ACJL 2022 is its narrow scope of application. Restorative Justice provisions are primarily restricted to non-serious and compoundable offences, while violent crimes remain excluded<sup>[21]</sup>. This exclusion reflects a continued prioritisation of punishment and incapacitation over reconciliation and repair. While it is true that violent crimes raise complex ethical and legal challenges, excluding them entirely ignores the growing body of evidence that Restorative Justice can provide meaning outcomes even in cases of serious harm.

Experiences from South Africa Rwanda and other climes demonstrate that Restorative processes case foster healing, accountability and re-integration even in the aftermath of violence <sup>[22]</sup>. By excluding such offences, the ACJL perpetuates the dominance of Retributive Justice and limits the transformative potential of Restorative practices in Delta State.

The cumulative effect of these procedural gaps is to weaken the practical utility of Restorative Justice within the Delta State Criminal Justice System.

The cumulative effect of these gap is to weaken restorative Justice as a credible alternative within the Delta State Criminal Justice System. The Law's reliance on Retributive traditions, coupled with procedural inadequacies, risks rendering Restorative provisions tokenistic rather than transformative. Unless deliberate reforms are enacted, Restorative Justice in Delta State will remain a peripheral experiment, incapable of addressing system challenges such as prison overcrowding, high recidivism and Public distrust of the Justice System.

### Conclusion

The enactment of the ACJL 2022 represents a laudable attempt to recalibrate the Criminal Justice System in Delta State by integrating Restorative Justice alongside traditional Retributive measures. It acknowledges the limitations of punitive justice and signals an aspiration to promote reconciliation, repair harm and reintegrate offenders into society <sup>[23]</sup>. However, as the preceding analysis demonstrates, these aspirations remain constrained by significant procedural gaps which undermine the practical implementation of Restorative Justice and perpetuate the dominance of Retributive Justice.

Restorative Justice Signifies a Fundamental departure from Retributive principles by framing crime as a violation of individuals and communities rather than merely an offence against the state <sup>[24]</sup> its focus on dialogue, accountability and healing resonates strongly with African Traditional Justice Systems which historically prioritized reconciliation and community harmony <sup>[25]</sup>. The ACJL's recognition of Restorative Processes is therefore not only progressive but also culturally grounded. Yet requires clear procedural rules, Institutional Capacity and Cultural acceptance among Justice actors' elements that remain underdeveloped in Delta State.

Despite the ACJL Innovations the Delta State Criminal Justice System continues to be anchored in punitive sanctions primarily imprisonment and fines <sup>[26]</sup>. This entrenched reliance on retribution is evident in the exclusion of violent crimes from Restorative mechanisms, reflecting the widespread perception that Justice requires severity <sup>[27]</sup> such limitations weaken the transformational potential of Restorative Justice and reinforce the adversarial State – centered approach that has historically failed to reduce crime rates or alleviate prison congestion <sup>[28]</sup>. The absence of rules for mediator selection, weak enforcement mechanisms for Restorative agreements, lack of a detailed procedural framework and the restricted scope of application collectively from structural barriers to Restorative Justice <sup>[29]</sup>. These gaps are not mere technical oversights but fundamental weakness that undermine fairness, consistency and accountability. Without reform, Restorative Justice under the ACJL risks becoming tokenistic – more rhetorical than Real <sup>[30]</sup>.

### Recommendation

1. There is should be an Amendment of the Provision of ACJL to accommodate settlement of violent crimes be included in the provisions of the Restorative Justice under the ACJL for effective implementation of Restorative Justice.
2. There should be a procedural laws drift from the Retributive Justice to the Restorative Justice System which focus on Repairs on harms rather than Retributive Justice which focuses on Punishment.
3. There should be a specific centre establishment to regulate the practice of Restorative Justice in Delta State with mandate to coordinate and carryout stakeholders' summit and capacity building for Restorative Justice Policies making Powers of the Ministry of Justice should be given to the Courts as Procedural Laws in other words these Policies should have the force of Law under the Procedural Laws of the Courts for effective enforcement and implementation.

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