

Pepperdine Dispute Resolution Law Journal

Volume 19 | Issue 2

Article 4

5-15-2019

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Recommended Citation

Hannah Gray, *Can Restorative Justice Processes Help Improve Plea Bargaining In Uganda's Criminal Justice System?*, 19 Pepp. Disp. Resol. L.J. 215 (2019)

Available at: <https://digitalcommons.pepperdine.edu/drlj/vol19/iss2/4>

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Can Restorative Justice Processes Help Improve Plea Bargaining in Uganda's Criminal Justice System?

Hannah Gray*

I. INTRODUCTION

Uganda has recently made significant improvements to its criminal justice system so that the country can better preserve government resources, and give its citizens the basic human rights they deserve. Ugandan culture is collective, meaning that its people view themselves as “part of a larger social network that includes one’s family, co-workers and others whom [they] are socially connected.”¹ Ugandans generally value interpersonal relationships and place great value on family and religion.² Ugandan culture is also a “high context culture,” which means its people are relational and value community above self.³ Because Ugandans have such meaningful relationships with the people in their lives, they believe they are connected to everything and anything that happens to the people in their community.⁴ This country could improve its judicial system by utilizing alternative dispute resolution processes that promote similar shared values such as collaboration, community, and harmony.

II. BACKGROUND

A. *Context of Uganda's Criminal Justice System*

The Ugandan criminal justice system can benefit from alternative dispute resolution processes that share similar principles as the Ugandan people, so that the country may be able to improve its criminal justice system by uniting its people and strengthening relationships amongst communities. Recently, Uganda implemented plea bargaining into its judicial system,⁵ and while this

* B.A., University of San Diego, 2014; J.D. Candidate, Pepperdine University School of Law, 2019. The author would like to thank the Sudreau Global Justice Program at Pepperdine Law for the inspiration for this article, and for the incredible opportunities this program provides law students to make a difference around the world

¹ Pepperdine Law Global Justice Program, *Uganda Internship Manual*, <http://www.clearlycultural.com/geert-hofstede-cultural-dimensions/> and <http://geert-hofstede.com/dimensions.html> (last visited Jan. 28, 2018).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Derrick Kiyonga, *Plea bargain innovation helps clear 1,500 cases*, THE OBSERVER (Oct. 3, 2016), <https://observer.ug/news-headlines/46770-plea-bargain-innovation-helps-clear-1-500-cases>.

process has proved to be a successful tool for the nation, there is still great room for improvement. Plea bargaining should be used with additional alternative dispute resolution processes so that individuals can gain justice through a more efficient and personalized experience than a trial can provide.⁶ The values of acceptance and compromise are two principles that help lead to a successful plea bargain negotiation amongst parties, and falls directly in line with Ugandan values.⁷ Therefore, the skills and techniques used in plea-bargaining promote similar principles to that of the Ugandan culture, and should be further utilized throughout the country's justice system.

The concept of time in Uganda is different from that in America, and is reflected in their work patterns.⁸ "In the U.S. business culture, time is defined as a linear and precious commodity to be used, not wasted; other cultures [such as Uganda] see time as circular, repetitive, and subordinate to people and relationships."⁹ While the people of Uganda are very focused and committed to their work, they also do not have a great sense of urgency in the workplace.¹⁰ Because of this more lenient sense of time, the number of court cases has continued to increase in the country. This is currently posing a problem for the courts because they are overwhelmed with too many cases and not enough time to try them in a timely and efficient manner.

B. *Current Issues in the Ugandan Criminal Justice System*

The criminal justice system in Uganda is currently facing the problem of an excess of prisoners and a lack of time, manpower, and resources to try each prisoner in a reasonable amount of time.¹¹ Thousands of prisoners are serving time in prison awaiting trial, a period commonly referred to as "remand," and must wait years before they are even able to state their plea. Inmates who are on remand are detained in prisons throughout the country, desperately waiting anywhere from several months to two years or more to have their case heard and enter a plea.¹² Judicial officials simply do not have the time or manpower to manage the overwhelming amount of cases that continue to increase throughout the country's judicial system.¹³ In many circumstances, prisoners

⁶ James Cohen & Penelope Harley, *Fall 2013 Dispute Resolution Institute Symposium: Intentional Conversations about Restorative Justice*, *Mediation and the Practice of Law*, 25 *HAMLIN J. PUB. L. & POL'Y* 235, 245 (Spring 2004), <https://advance.lexis.com/document/?pdmfid=1000516&crd=c24f2117-2622-4fb1-a2db-81403bbc004b&pdworkfolderid=a03f4ebd-634c-4520-b373-abea2a4ee537&eomp=txptk&earg=a03f4ebd-634c-4520-b373-abea2a4ee537&prid=bdab0008-7d6f-4829-92af-e7c0a0016af6>.

⁷ Pepperdine Law Global Justice Program, *supra* note 1.

⁸ *See id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Kitara Jackson, *Gulu Prison Inmates Embrace Plea Bargaining Campaign*, *NEW VISION* (June 16, 2018), https://www.newvision.co.ug/new_vision/news/1479809/-gulu-prison-inmates-embrace-plea-bargaining-campaign.

¹² *See* Rob Allen, *Global Prison Trends*, *PENAL REFORM INTERNATIONAL* (2005), <https://www.penalreform.org/wp-content/uploads/2015/04/PRI-Prisons-global-trends-report-LR.pdf>; *see also* Evelyn Kiapi, *Uganda: Remand Prisoners Incarcerated for Years*, *GLOBAL VOICES*, <https://iwpr.net/global-voices/uganda-remand-prisoners-incarcerated-years>.

¹³ Jackson, *supra* note 11.

on remand are ready and willing to plead guilty so that they may be able to start serving their time, but are forced to wait years before they are able to do so.¹⁴

This backup in the criminal justice system in Uganda has led to a deprivation of human rights for accused persons. First, the court system's inability to try cases in a timely manner is a violation of the defendant's due process rights.¹⁵ In addition, the prisons throughout Uganda have become significantly overcrowded¹⁶ – the prisoners are living in uninhabitable conditions and are being deprived of their basic right to a clean, healthy environment while they are on remand. Because of the case backlog, “[b]y 2013, Uganda was ranked the ninth country with most congested prisons in the world,” and its prisons were ranked as the most congested in East Africa, holding three times the amount of inmates than the prisons were built to hold.¹⁷ The advancement of plea-bargaining is a real, attainable solution to solve these problems in Uganda to prevent the deprivation of basic human rights of accused persons throughout the nation's criminal justice system.

C. *Background on Plea Bargaining in Uganda*

Plea-bargaining is relatively new concept in Uganda, and was introduced with the support of Pepperdine University in 2015 in eleven High Court circuits to help improve the case backlog in the country, which has resulted in severe prison overcrowding.¹⁸ Plea bargaining can be described in many ways, but a common definition is “the negotiation process whereby a prosecutor makes certain concessions in exchange for a defendant's guilty plea.”¹⁹ The more specific kind of plea bargaining that is practiced in Uganda is sentence bargaining, which is when the prosecution can offer a defendant a lesser sentence in exchange for pleading guilty.²⁰ In Uganda, prisoners on remand are given the option to participate in the plea-bargaining process.²¹ This process is an alternative option for defendants who wish to admit their guilt and accept blame for their actions without having to go to trial.²² Once a defendant has entered a “guilty” plea for his crime, and has expressed his

¹⁴ *Id.*

¹⁵ Tina S. Ikpa, *Balancing Restorative Justice Principles and Due Process Rights in Order to Reform the Criminal Justice System*, 24 WASH. U. J. OF L. AND POL'Y, 301, 323 (Jan. 2007), http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1220&context=law_journal_law_policy. While Uganda does not have the same due process rights as the United States, no prisoner should have to wait years in jail before their trial is heard—this is a violation of human rights.

¹⁶ Kiapi, *supra* note 12.

¹⁷ *Embrace Plea Bargain to Decongest Prisons*, DAILY MONITOR (June 18, 2017), <http://www.monitor.co.ug/OpEd/Editorial/plea-bargain---prisons-western-region-Judiciary/689360-3974388-ik1g2nz/index.html>.

¹⁸ Kiyonga, *supra* note 5.

¹⁹ Kate Kovarovic, *Pleading for Justice: The Availability of Plea Bargaining as a Method of Alternative Dispute Resolution at the International Criminal Court*, 2011 J. DISP. RESOL. 283, 289 (2011).

²⁰ *Id.*

²¹ Jackson, *supra* note 11.

²² *Id.*

willingness to participate, the negotiations between the defendant and prosecution can commence.²³ Prosecutors are involved in the negotiation process and come up with the agreed sentence, “but judges have final approval of guilty pleas and sentencing terms.”²⁴

Although plea-bargaining is still a newer concept in Uganda, it has proven to be an essential asset for criminal justice systems in the United States.²⁵ In the United States, plea bargaining has proved to be essential in the criminal justice system, as over ninety percent of cases are resolved through plea bargaining in the country.²⁶ Uganda can continue to look to other countries, such as the United States, to develop a similar implementation of plea bargaining to ensure similar success.²⁷

The implementation of plea bargaining into the court system has been extremely useful, with a ninety-five percent success rate in those who chose to participate.²⁸ Additionally, it has allowed thousands of prisoners to get their cases heard, which has significantly helped to decrease the country’s case backlog.²⁹ Not only would this initiative help save government money that is currently being used to house and feed the excess number of prisoners, but it would also save the time and money spent on going to court.³⁰ “The time freed by a plea bargain can then be used to extend the Court’s reach to a greater number of perpetrators through new investigations and trials, and the conserved resources can be diverted to equally as beneficial tasks such as investigations and counsel fees.”³¹

Plea bargaining can also help extend the country’s limited government resources by utilizing the help of prisoners on remand to help solve more cases.³² If a prisoner has information about other cases that lack substantial evidence to convict all the suspects, he may be willing to assist the prosecution in exchange for a lessened sentence.³³ This allows justice to be achieved with less or limited resources because that evidence against other defendants could not be gained by any other means.³⁴

²³ *Id.*

²⁴ Kovarovic, *supra* note 19, at 306–07.

²⁵ Nancy Amoury Combs, *Copping a Plea to Genocide: The Plea Bargaining of International Crimes*, 151 U. PA. L. REV. 1, 8 (2002).

²⁶ Kovarovic, *supra* note 19, at 285.

²⁷ See Nancy Amoury Combs, *Copping a Plea to Genocide: The Plea Bargaining of International Crimes*, 151 U. PA. L. REV. 1, 8 (2002) (discussing the success of plea bargaining in the United States).

²⁸ Kiyonga, *supra* note 5.

²⁹ *Id.*

³⁰ *Embrace plea bargain to decongest prisons*, *supra* note 17.

³¹ Kovarovic, *supra* note 19, at 294.

³² *See id.*

³³ *Id.*

³⁴ *Id.*

D. *Restorative Justice*

Although restorative justice is not easily defined, one might view it as a process, or processes, that is utilized in criminal justice systems around the world to offer a more personal form of justice.³⁵ Restorative justice not only looks at the crime committed by the offender, but also the effect that crime had on the victim and his relationships with other individuals who were affected by the crime.³⁶ This process is a solution to the traditional criminal justice system which has been found to “create a never-ending cycle of anger and revenge.”³⁷ The goal behind many restorative justice processes is to both give the victims a sense of peace and to eventually be able to reintegrate their offender back into society.³⁸ By looking at those who were most affected by the crime, restorative justice processes focus on justice from the victim’s point of view so that they can heal and move on with their lives.³⁹ “[R]estorative justice could be described as restoring victims, repairing harm, and re-weaving the fabric of human relationships in a community.”⁴⁰

Many times, victims associate justice with an acknowledgement of guilt from their offender in order to come to terms with what happened to them and move forward with their lives.⁴¹ By pleading guilty and admitting to their crimes, offenders are promoting a sense of peace and justice because that truth can have a very positive effect on the victim.⁴² The victim would also be spared from enduring a trial that is both emotionally and physically taxing to relive the trauma of the incident.⁴³ Plea bargaining shares common goals to that of alternative dispute resolution to resolve conflict through a process that benefits both the victim and the defendant.⁴⁴

Restorative justice programs can help improve plea-bargaining in Uganda to ensure that each prisoner is entitled to his basic human rights.⁴⁵ In order to better implement the use of plea bargaining in Uganda’s criminal justice system, the court needs to utilize restorative justice processes “that will best

³⁵ See Cohen and Harley, *supra* note 6, at 254.

³⁶ Mary Ellen Reimund, *Criminal Justice System Symposium: The Law and Restorative Justice: Friend or Foe? A Systematic Look at the Legal Issues in Restorative Justice*, 53 DRAKE L. REV. 667, 673-80, <https://advance.lexis.com/document/?pdmfid=1000516&crd=cf7dbf65-d297-4b72-bd08-c04101e82ba8&pdworkfolderid=3c5d0cb9-8cd9-4864-8286-4e3fa232b309&eomp=pyJtk&earg=3c5d0cb9-8cd9-4864-8286-4e3fa232b309&prid=74f445fa-93f1-4039-a5d9-ba27b82d41bc> (last visited Oct. 24, 2017).

³⁷ Christopher D. Lee, *They All Laughed at Christopher Columbus When he Said the World was Round: The Not-So-Radical and Reasonable Need for a Restorative Justice Model Statute*, 30 ST. LOUIS U. PUB. L. REV. 523, 527 (2011).

³⁸ *Id.* at 530.

³⁹ Mary Ellen Reimund, *Confidentiality in Victim Offender Mediation: A False Promise?*, 2004 J. DISP. RESOL. 401, 402 (2005).

⁴⁰ Cohen and Harley, *supra* note 6, at 245.

⁴¹ Kovarovic, *supra* note 19, at 295.

⁴² *Id.*

⁴³ *Id.* at 296.

⁴⁴ *Id.* at 295-96.

⁴⁵ Tina S. Ikpa, *Balancing Restorative Justice Principles and Due Process Rights in Order to Reform the Criminal Justice System*, 24 WASH. U. J. OF L. & POL’Y, 301, 323 (Jan. 2007), http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1220&context=law_journal_law_policy.

‘provide multiple remedies and meet the goals of victims, societies and the . . . community.’”⁴⁶ The country’s judicial leaders need to be well-trained, empathetic, and efficient in their communication and possess conflict-resolving skills so that these restorative justice processes have the greatest impact on the country’s criminal justice system as a whole.

In recent years, the Office of Public Prosecutions in Kampala, Uganda has taken a victim-centered approach to crimes,⁴⁷ which falls directly in line with the overall focus of restorative justice processes.⁴⁸ Although the traditional criminal justice system attempts to achieve justice by allowing the prosecutor to “[take] into account the gravity of the crime and the interests of the victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.”⁴⁹ The traditional criminal justice system is primarily focused on punishment, and does not allow the victim to address his own personal needs and concerns.⁵⁰ Restorative justice processes, on the other hand, focus on achieving justice for all parties involved in a non-conventional way. Through restorative justice processes, Uganda will be able to “place[] special attention on the needs of the victim, guaranteeing their involvement during the restorative process.”⁵¹ Andrew Khauxha, technical advisor to the Ugandan judiciary, has said that in order to focus on the victim’s interests, the court must take into account the nature of the offense, the community interest, and the overall damage that the victim suffered.⁵²

Many attorneys who participate in restorative justice practices in countries around the world see themselves as “social healers” because rather than being concerned mainly about closing legal files, they can also advocate for “community empowerment and social harmony” amongst one another.⁵³ The restorative justice theory attempts to end the cycle of violence resulting from the retributive justice system to be able to prevent future crimes.⁵⁴ In order to be successful, a restorative justice program must have three things: an approach focused on the victim’s experience, offender accountability, and

⁴⁶ Kovarovic, *supra* note 19, at 302.

⁴⁷ See *Prosecution Policy*, DPP,

<http://www.dpp.go.ug/jdownloads/PROSECUTION%20POLICY.pdf> (last visited Oct. 25, 2017); see also Kambale Reagan, *The Director’s Remarks at the Launch of Anti-Corruption Week*, OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (Nov. 30, 2018, 00:00 AM), <http://www.dpp.go.ug/index.php/component/k2/itemlist/category/1-news-and-announcements>.

⁴⁸ Linda M. Keller, *Achieving Peace with Justice: The International Criminal Court and Ugandan Alternative Justice Mechanisms*, 23 CONN. J. INT’L L. 209, 269 (2008).

⁴⁹ Payam Akhavan, *Developments at the International Criminal Court: The Lord’s Resistance Army Case: Uganda’s Submission of the First State Referral to the International Criminal Court*, 99 A.J.I.L. 403, 415 (2005).

⁵⁰ *Centre for Justice & Reconciliation: What is Restorative Justice?*, RESTORATIVE JUSTICE, <http://restorativejustice.org/am-site/media/what-is-restorative-justice.pdf> (last visited September 27, 2017).

⁵¹ Lee, *supra* note 37, at 528.

⁵² Kiyonga, *supra* note 5. This focus is especially important in Uganda because it is a country that places great importance on community; therefore, when one member of a community is suffering, all members will try to support that individual.

⁵³ Cohen & Harley, *supra* note 6, at 250.

⁵⁴ Lee, *supra* note 37, at 534.

the “opportunity for the victim, offender, and members of the community affected by the crime to actively participate in the sanctioning process.”⁵⁵

Possibly the most well known example of a restorative justice approach is the Truth and Reconciliation Commission in South Africa (“TRC”).⁵⁶ The TRC was created after the end of apartheid in South Africa⁵⁷ in 1994 in an effort to promote healing and reconciliation throughout the country so that people could heal and coexist peacefully as a new democracy.⁵⁸ The notion behind this restorative justice approach was that everyone is human and should be able to address past transgressions in order to find peace reconciliation in the future.⁵⁹ There is an African concept called “Ubuntu” that means as humans, we all share a bond that connects all humanity; I am because we all are.⁶⁰ With this meaningful proverb in mind, the TRC was established to promote reconciliation and unity amongst South African citizens.⁶¹ It was comprised of truth-telling panels that allowed perpetrators of past violent acts to openly admit to, and apologize for, the crimes they have committed in the past.⁶² Individuals were required to tell the whole truth and to give a full account of the crimes committed.⁶³ While some participated to try and receive amnesty for their past crimes, others participated so that they may find forgiveness and peace moving forward with their lives.⁶⁴ In this way, people were able to find peace – victims and loved ones were able to experience closure, and wrongdoers were able to address their guilt and clear their conscience.⁶⁵ The TRC was successful in South Africa because it focused on forgiveness and the commonalities we all share as human beings in order to overcome past conflicts.⁶⁶

Many other restorative justice processes use similar strategies such as victim impact panels, community reparation boards, participation in community service, and the writing of apology letters.⁶⁷ However, “[t]he three most common, widely used practices are victim offender mediation, family group conferencing, and circles.”⁶⁸ These processes will be addressed and discussed in further detail later in this article. With the help of restorative justice processes such as the TRC, victims are given a voice, communities are

⁵⁵ *Id.* at 530.

⁵⁶ Cohen and Harley, *supra* note 6, at 240.

⁵⁷ ADST, *South Africa’s Truth and Reconciliation Commission*, HUFF. POST (Nov. 17, 2015, 07:59 AM), https://www.huffingtonpost.com/adst/south-africas-truth-and-r_b_8581506.html. Apartheid was a period of extreme racial segregation in South Africa wherein “black individuals [] were deprived of citizenship and virtually every aspect of life in South Africa was segregated by race including education, neighborhoods, medical care and public spaces.” *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Pius Langa, *South Africa’s Truth and Reconciliation Commission*, 34 INT’L LAW. 347, 353 (2000).

⁶¹ *Id.*

⁶² ADST, *supra* note 57.

⁶³ Langa, *supra* note 60, at 353.

⁶⁴ ADST, *supra* note 57.

⁶⁵ *Id.*

⁶⁶ Langa, *supra* note 60, at 347.

⁶⁷ Cohen and Harley, *supra* note 6, at 240.

⁶⁸ *Id.*

able to heal, and offenders are less likely to commit future crimes.⁶⁹ Restorative justice aims to reach an outcome that “is reflected in mutual acceptance of and compliance with the negotiated reparation agreement.”⁷⁰ It enables parties to look to the future and to focus on healing and strengthening relationships.⁷¹

II. RESTORATIVE JUSTICE PROCESSES TO IMPLEMENT IN THE UGANDAN CRIMINAL JUSTICE SYSTEM

A. *Victim Offender Mediation*

Victim offender mediation (“VOM”) is a restorative justice process that “focuses on the needs of the victims and allows offenders to repair harms caused to victims and communities.”⁷² It is one of the most widely used processes of restorative justice in the United States with over 300 programs.⁷³ The definition we use for victim offender mediation depends on “our personal experience, our culture[,] and worldviews”⁷⁴ A victim offender mediation allows the victim, if he or she is willing, to sit down and have a conversation with his or her offender in the presence of a trained and skilled mediator.⁷⁵ It usually is initiated by the request of the victim or suggested by members of the court who believe the parties of the case could benefit from the process.⁷⁶ Each case needs to be pre-approved to ensure each mediation “fosters a safe and controlled environment” for both the victim and offender.⁷⁷ In these supervised meetings, the victim is able to express his feelings and concerns and to have a conversation with the offender about how the crime has affected his life.⁷⁸

Victim-offender mediation is a process that allows offenders to repair their relationships with both the victim that they harmed and the communities that were negatively affected by the crime he committed.⁷⁹ “The process supports healing by providing a safe environment where ‘the victim is able to tell the offender about the crime’s physical, emotional, and financial impact and to receive answers to lingering questions about the crime and the offender.’”⁸⁰ The goal is that both parties will reach an agreement at the end

⁶⁹ Lee, *supra* note 37, at 534.

⁷⁰ Kovarovic, *supra* note 19, at 305.

⁷¹ *Id.* at 304-05.

⁷² Reimund, *supra* note 39, at 402.

⁷³ *Id.* at 404.

⁷⁴ *Id.* at 403.

⁷⁵ *Centre for Justice & Reconciliation: What is Restorative Justice?*, *supra* note 50.

⁷⁶ Ilyssa Wellikoff, *Victim-Offender Mediation and Violent Crimes: On the Way to Justice*, CARDOZO ONLINE J. OF CONFLICT RESOL. (June 2004), <http://cardozo.jcr.com/issues/volume-5-1/note-1/>.

⁷⁷ *Id.*

⁷⁸ Reimund, *supra* note 39, at 404.

⁷⁹ *Id.* at 402.

⁸⁰ *Id.* at 404.

of the meeting to decide how the offender can right his wrongs.⁸¹ However, victim offender mediation differs from other types of mediation because rather than being settlement driven, VOM is focused on “victim healing, offender accountability, and restoration of losses.”⁸² This type of mediation has proven to be successful in the past throughout North America and Europe because it allows both the victim and the offender to share with one another how the crime impacted their lives.⁸³ In this aspect, the victim and offender are working together to “construct their own approach to achieving justice in the face of their particular crime.”⁸⁴

As previously stated, victim offender mediation provides the victim with more power than he would be given in a normal criminal proceeding. The most important victim benefits that do not exist in a criminal trial are mostly psychological.⁸⁵ Victims are able to confront their offender to get answers to questions, which gives them closure.⁸⁶ VOM allows victims to overcome their insecurities and fear by meeting with their offender in a personal setting.⁸⁷ After these mediations, victims tend to be less afraid of being revictimized by their offenders.⁸⁸ It has also been stated that “being able to forgive someone who has caused harm provides a sense of healing to the victims of crimes.”⁸⁹ Victim offender mediation provides victims with a sense of closure and forgiveness that cannot be achieved through traditional criminal proceedings.⁹⁰

Offenders also experience greater benefits through victim offender mediation than they would through a traditional court trial. In VOM, offenders are given the opportunity to look their victim in the eye, apologize, and explain their side of the story.⁹¹ By doing so, their guilt becomes easier to face.⁹² “Receiving true forgiveness for a criminal act is one aspect of victim offender mediation that is absent in traditional criminal proceedings.”⁹³ This forgiveness has the power to restore the individual, so that he can have a future

⁸¹ *See id.* (stating that a goal of VOM is for the victim and offender to “work out a restitution agreement”).

⁸² *Id.* at 406.

⁸³ Centre for Justice & Reconciliation, *What is Restorative Justice?*, *supra* note 50, at 1.

⁸⁴ Centre for Justice & Reconciliation, *Victim Offender Mediation*, RESTORATIVE JUSTICE, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/victim-offender-mediation/#sthash.3DHmoZOe.dpbs> (last visited Oct. 24, 2017).

⁸⁵ Shanela Khan, *Mediation in the Criminal System: An Improved Model for Justice*, (Spring 2005) (unpublished student class paper) <http://voma.org/docs/VORP%20for%20sex%20crimes.pdf>.

⁸⁶ *Id.*

⁸⁷ Mariana Semini & Ledina Mandia, *Restorative Justice and Victim-Offender Mediation in Criminal Matters Involving Teenagers and Youngsters in Albania*, 3 HUMSEC J. at 6 (2009) http://www.humsec.eu/cms/fileadmin/user_upload/humsec/Journal/semini_mandia_final_version_2_.pdf.

⁸⁸ National Institute of Justice, *Victim-Offender Mediation*, in RESTORATIVE JUSTICE ONLINE NOTEBOOK (Dec. 5, 2007), <https://www.ncjrs.gov/pdffiles1/nij/242196.pdf>.

⁸⁹ Khan, *supra* note 85.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

when he is released back into society.⁹⁴ The process also has proven to deter the offender from committing future crimes, reducing the possibility of recidivism.⁹⁵ In a study conducted in Washington D.C., victim offender mediation reduced the possibility of juvenile offenders committing subsequent crimes, and of those who did commit subsequent crimes, the juveniles who participated in victim offender mediation committed less serious crimes than those individuals who did not participate in the VOM process.⁹⁶

In Uganda, victim offender mediation should be implemented during the plea-bargaining process for those prisoners who want to plead guilty and who are ready to admit their wrongs and serve time for their mistakes. If successful, victim offender mediation can be a mitigating factor and can potentially be used to reduce the time that the prisoner must serve.⁹⁷ Uganda is a collectivist society that places great importance on relationships and would benefit from victim offender mediation because of the relationships that can be significantly repaired through this process.⁹⁸

B. *Community or Family Group Conferencing*

A second restorative justice process that could have a significant effect on Uganda's current criminal justice system is conferencing. Community or Family Group Conferencing (FGC) is a restorative justice process that involves not only the victim and offender of the crime, but also "the community of people most affected by the crime."⁹⁹ This process was formed in New Zealand but has since been used internationally by individuals of different cultures.¹⁰⁰ FGC allows those who want to support the offender and offer them help to be involved throughout the entire process.¹⁰¹ Similar to other restorative justice processes, conferencing is completely voluntary, and any community member who wants to participate is able to if they should feel so inclined.¹⁰² While this process has traditionally been used for juvenile offenses for obvious reasons, it can also be used in a wide range of adult offenses.¹⁰³

An important goal of conferencing is to "[e]ngage the collective responsibility of the offender's support system for making amends and shaping the offender's future behavior."¹⁰⁴ This is a unique and effective

⁹⁴ Semini & Mandia, *supra* note 87, at 23.

⁹⁵ Khan, *supra* note 85.

⁹⁶ *Id.*

⁹⁷ Centre for Justice & Reconciliation, *Victim Offender Mediation*, *supra* note 84.

⁹⁸ Charles Rarick et al., *An Investigation of Ugandan Cultural Values and Implications for Managerial Behavior*, 13.9 GLOBAL J. OF MGMT. AND BUS. RES. 1, 2 (2013).

⁹⁹ *Office of Justice Programs: Restorative Justice*, NATIONAL INSTITUTE OF JUSTICE, <https://www.nij.gov/topics/courts/restorative-justice/promising-practices/pages/family-group-conferencing.aspx> (last visited Oct. 24, 2017).

¹⁰⁰ *Centre for Justice & Reconciliation: What is Restorative Justice?*, *supra* note 50.

¹⁰¹ Cohen & Harley, *supra* note 6, at 241.

¹⁰² *Office of Justice Programs: Restorative Justice*, *supra* note 99 at 77.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

process because rather than focus on the past, it allows individuals to focus on the future and “encourages exploration by all parties of how the offender can be supported with a view to [stay] out of trouble in the future.”¹⁰⁵ It has been proven that the use of restorative justice processes decreases the rate of recidivism for the offender.¹⁰⁶ For juvenile offenders, this is extremely useful and important because it can completely shape the offenders’ futures and can hopefully prevent them from committing additional crimes.¹⁰⁷

“Family group conferencing . . . builds community skills in conflict resolution and participatory decision[-]making,”¹⁰⁸ which can further strengthen the relationships amongst individuals and communities. FGC can be an effective process to use in a collective culture because community and family members can be involved in the process, and thus be able to hold the accused persons accountable for the future.¹⁰⁹ Conferencing builds trust amongst community members and would be an incredibly helpful process to use alongside plea-bargaining for many offenders in Uganda.¹¹⁰

C. *Peacemaking or Sentencing Circles*

The use of peacemaking or sentencing circles is a restorative justice process that provides a safe space for the victim, offender, and anyone else who has been affected by the crime committed to communicate openly and honestly to “bring healing and understanding to the victim and the offender.”¹¹¹ Although it is similar to family or group conferencing, this process “moves beyond that to involve the community in the decision making process.”¹¹² Peacemaking circles are beneficial to implement along with the aforementioned plea-bargaining process because the process is “designed to develop consensus among community members, victims, victim supporters, offenders, offender supporters, judges, prosecutors, defen[s]e counsel, police and court workers”¹¹³ The main objective of peacemaking circles is to bring parties together so they may decide on a fair, realistic sentence for the offender together.¹¹⁴

During the sentencing circle process, parties sit facing each other in a circle and typically place an object in the center of the circle to be used as a “talking piece” for parties to hold when they want to speak.¹¹⁵ To ensure each

¹⁰⁵ Cohen & Harley, *supra* note 6, at 241-42.

¹⁰⁶ *Office of Justice Programs: Restorative Justice*, *supra* note 99 at 77.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 78.

¹⁰⁹ *See id.*

¹¹⁰ *Id.*

¹¹¹ *Centre for Justice & Reconciliation: Circles*, RESTORATIVE JUSTICE, (last visited Oct. 24, 2017), <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/circles/#sthash.kjTZdnGg.dpbs>.

¹¹² *Id.*

¹¹³ *Centre for Justice & Reconciliation: What is Restorative Justice?*, *supra* note 50.

¹¹⁴ Nicholas A. Jones & Rob Nestor, *Sentencing Circles in Canada and the Gacaca in Rwanda: A Comparative Analysis*, 21 INT’L CRIM. JUST. REV. 39 (2011).

¹¹⁵ Janelle Smith, *Peacemaking Circles: The Original Dispute Resolution of Aboriginal People Emerges as the New Alternative Dispute Resolution Process*, 24 HAMLIN J. PUB. L. & POL’Y 329, 351-52 (2003).

person has an opportunity to be heard without interruption, the only person allowed to speak at any given time is the one who is holding the talking piece.¹¹⁶ The first phase of the process begins when the involved parties come together to introduce themselves and welcome one another.¹¹⁷ They may address issues that need to be resolved during the process, and many times parties begin to form relationships in this initial phase.¹¹⁸ Next, the prosecution and defense lawyers read the facts of the case to the parties and address any challenges or issues that are associated with the case.¹¹⁹ The parties then spend a good amount of time discussing sentencing options for the accused person.¹²⁰ The “[k]ey to this phase is the attempt to not inflict punishment but rather the goal is positive change.”¹²¹ While this phase is more difficult because parties may not always agree on what they believe a fair sentence should be, it encourages positive communication and openness from the participants.¹²² If a consensus cannot be reached at the end of this phase, a judge will step in; he will consider what has been discussed in the circle and will make a sentencing decision.¹²³ Finally, the sentencing circle ends with a summarization of the main arguments and the agreed upon solutions and is usually followed by a closing ceremony to honor the efforts made by all parties throughout the process.¹²⁴

In order for peacemaking or sentencing circles to be successful, several stipulations must be met. The offender must be willing to take full responsibility for his actions, and be ready to accept the punishment that the parties decide for him.¹²⁵ He must deeply respect his community and must be committed to “turning his or her life around with the assistance and supervision of his or her ‘community.’”¹²⁶ This is to ensure that the accused person takes the process seriously, and is participating not only for the possibility of a reduced sentence, but to make positive changes towards becoming a better person.¹²⁷ This process is an opportunity for communities to “support victims, to encourage offenders to make amends and change behavior and to determine how best to address the underlying problems associated [with] the crime.”¹²⁸

In Uganda, peacemaking circles could be beneficial for defendants who have entered a guilty plea, and are waiting for their opportunity to plea bargain. Instead of waiting for a time when prosecution has the availability to participate in the plea bargaining process, defendants and other parties could instead participate in a sentencing circle. If a consensus is reached at

¹¹⁶ *Centre for Justice & Reconciliation: Circles*, *supra* note 111.

¹¹⁷ *Id.*

¹¹⁸ Jones & Nestor, *supra* note 114.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Jones & Nestor, *supra* note 114, at 52.

¹²⁶ *Id.* at 52.

¹²⁷ *See id.*

¹²⁸ Smith, *supra* note 115, at 357.

the end of the circle process, that agreed-upon sentence could be presented to the prosecution or judge for final approval. In this aspect, the parties would alleviate prosecution of additional time and work, thus preserving the country's resources.

Peacemaking circles are unique because they allow both victims and offenders to restore their trust in, and respect for, their respective communities.¹²⁹ Although the ultimate goal of sentencing circles is healing, “the circle process builds on the values of respect, honesty, listening, truth, sharing, and others.”¹³⁰ It is a process that allows people to overcome past hardships to improve future relationships not only amongst the involved parties, but also between communities and the judicial system.¹³¹ Peacemaking circles share the collectivist value of collaboration, and enable communities to resolve conflict and promote healing for all affected parties.¹³²

III. POTENTIAL PROBLEMS WITH THE IMPLEMENTATION OF ADR PROCESSES AND THE EFFECT THEY MAY HAVE ON THE CURRENT STATUS QUO

Despite its numerous benefits, plea bargaining has its downsides and some people believe that is not an effective way to resolve criminal disputes.¹³³ These critics are under the impression that plea bargaining is a “miscarriage of justice” because it gives some prisoners a more lenient sentence than they deserve.¹³⁴ While it is true that many prisoners receive a reduced sentence by participating in plea bargaining, this does not prevent justice from being served. Plea bargaining guarantees a conviction, whereas in some cases that go to trial, there is the possibility that a guilty defendant might walk away a free man with no criminal charge.¹³⁵ In this aspect, plea bargaining is better guaranteed to bring about justice than a criminal trial. Additionally, every deal that is reached in the plea bargaining process would ultimately require approval by a judge. Any deal that a judge believes is too lenient to achieve justice would not be approved, further ensuring justice is served for the victims and their surrounding communities.

Another possible weakness of plea bargaining is that some believe the process should be limited to only certain crimes, excluding more severe

¹²⁹ *See id.* at 357–59 (describing how communities can support both victims and offenders in separate healing circles, which is a type of peacemaking circle).

¹³⁰ *Centre for Justice & Reconciliation: Circles*, *supra* note 111.

¹³¹ *See id.*

¹³² *See id.*

¹³³ *See Kiyonga*, *supra* note 5.

¹³⁴ *See id.*

¹³⁵ *See also* PENAL REFORM INTERNATIONAL, GLOBAL PRISON TRENDS 2015 3 (2015), <https://www.penalreform.org/wp-content/uploads/2015/04/PRI-Prisons-global-trends-report-LR.pdf> (noting that research suggests that more serious offenders escape imprisonment or have reduced sentences by entering into plea bargains and assisting prosecution); Kitara, *supra* note 10 (praising the high success rate of plea bargaining in Uganda, where 12,000 cases have resulted in a plea bargain and case backlogs have been greatly reduced).

crimes such as rape, sexual assault, or murder.¹³⁶ However, if the victims are too afraid to confront their offenders, or even see them face to face, the plea-bargaining process will not benefit them. Many people may also worry about the emotional protection of a victim throughout this process because of the vulnerability associated with restorative justice processes. For those victims who have gone through more traumatic experiences, re-victimization is a potential concern.¹³⁷ However, because the process is completely voluntary, any victim who participates in the process may choose not to confront his offender.¹³⁸ Therefore, those involved with plea bargaining should not encourage or pressure victims to participate in one of the restorative justice processes if they decide if it will lead to fear and anxiety.

Finally, in Uganda it may also become problematic when severely uneducated prisoners or offenders participate in the process.¹³⁹ Many of the prisoners on remand lack a formal education and it might be more difficult for these prisoners to understand not only the plea-bargaining process, but also the criminal justice system as a whole.¹⁴⁰ These prisoners are more susceptible to any misinformation they hear from other prisoners during the process. Also, many prisoners might be reluctant and relatively unwilling to compromise during a negotiation simply because they do not understand how the process works, and do not fully trust the individuals assigned to their case.¹⁴¹ Therefore, the lawyers and other individuals who are involved in the plea bargaining process must be aware of this potential setback, and be prepared to exercise patience in order to help all parties reach the justice they deserve.¹⁴²

IV. A RECOMMENDED APPROACH TO FURTHER IMPROVE PLEA BARGAINING IN UGANDA

The most effective way to improve plea bargaining in Uganda is simply to educate more prosecutors, defense attorneys, and criminal defendants, on the importance of this process.¹⁴³ If all parties involved could have a better understanding of plea-bargaining, the process will be even more effective in

¹³⁶ *Id.*; Evelyn Kiapi, *Uganda: Remand Prisoners Incarcerated for Years*, Institute for War and Peace Reporting, (Sept 21, 2010) <https://iwpr.net/global-voices/uganda-remand-prisoners-incarcerated-years>.

¹³⁷ National Institute of Justice, *supra* note 88. Re-victimization occurs when a person who has gone through a traumatic experience fears they will re-live that experience.

¹³⁸ Office of Justice Programs: Restorative Justice, *supra* note 99.

¹³⁹ PENAL REFORM INTERNATIONAL, *supra* note 135 at 14. It is extremely common in Uganda to work with prisoners who have never reached an elementary level of education. Some of these people may also have mental disabilities that have never been addressed or treated, which makes certain communication difficult.

¹⁴⁰ *Id.*

¹⁴¹ See Rebecca Hollander-Blumoff, *Getting to "Guilty": Plea Bargaining as Negotiation*, 2 HARV. NEGOT. L. REV. 115 (1997).

¹⁴² *Id.*

¹⁴³ Jackson Kitara, *Gulu Prison Inmates Embrace Plea Bargaining Campaign*, NEWVISION (June 16, 2018, 2:31 pm), https://www.newvision.co.ug/new_vision/news/1479809/-gulu-prison-inmates-embrace-plea-bargaining-campaign; *Case Backlog Reduction Program*, THE JUSTICE LAW AND ORDER SECTOR, <https://www.jlos.go.ug/index.php/about-jlos/projects/case-backlog-reduction>.

the future.¹⁴⁴ There should also be regular training programs available to both the prosecution and defense so that they are able to consistently practice and improve their negotiation skills. This training should educate individuals on how to negotiate and communicate with different kinds of people, from different cultures, and in different contexts so they have experience handling a wide variety of situations. Additionally, the judiciary should assign trained prosecution and defense attorneys to participate in plea-bargaining negotiations on a regular basis throughout the country's prisons. This would allow the plea bargaining process to be consistent, which would provide continuous relief to the judiciary in their struggle with case backlog.¹⁴⁵ Plea-bargaining will undoubtedly become more widely accepted in Uganda if prisoners and judiciary members alike are exposed to the process on a more regular basis so they are able to witness the benefits and positive outcomes associated with the process.

V. CONCLUSION

It is clear that by improving the plea-bargaining process in Uganda through restorative justice processes, the country's criminal justice system will continue to realize significant benefits such as reduced case backlog, preservation of government time and resources, and a more efficient criminal justice system entirely. Plea-bargaining has the power to achieve timely justice for criminal defendants, and can also promote reconciliation for the victim, offender, and community.¹⁴⁶ Since the implementation of plea bargaining in the country, leaders and high court officials in the Ugandan judiciary have expressed sincere dedication and commitment to this process.¹⁴⁷ Prosecutors and defense attorneys alike can utilize the aforementioned conflict resolution techniques so that they are able to "foster more effective plea negotiations and more productive plea agreements."¹⁴⁸ Plea-bargaining has an even greater potential for success in collective cultures, such as Uganda, because of the shared emphasis on collaboration and interpersonal relationships.

Restorative justice processes allow victims to experience justice in such a way that cannot be achieved through the traditional justice system. Not only can restorative justice processes and plea bargaining reduce time and emotional stress, they allow the victim and offender to experience justice on

¹⁴⁴ See JUSTICE LAW AND ORDER SECTOR ANNUAL REPORT 2017/18, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=2ahUKEwio_5Tbi9bhAhUewMQHHWs_AykQFjABegQIAhAC&url=https%3A%2F%2Fwww.jlos.go.ug%2Findex.php%2Fdocument-centre%2Fperformance-reports%2F418-annual-performance-report-2017-2018&usg=AOvVaw1TV38CdSV93NFUxsfHM2r3; see also, PENAL REFORM INTERNATIONAL, GLOBAL PRISON TRENDS 2015, <https://www.penalreform.org/wp-content/uploads/2015/04/PRI-Prisons-global-trends-report-LR.pdf>.

¹⁴⁵ PENAL REFORM INTERNATIONAL, *supra* note 135.

¹⁴⁶ Kiyonga, *supra* note 5.

¹⁴⁷ See JUSTICE LAW AND ORDER SECTOR ANNUAL REPORT, *supra* note 144; see also, PENAL REFORM INTERNATIONAL, *supra* note 135 (informing the public that the Office of the Directorate of Public Prosecution has entirely restructured to reflect these changes and to ensure that its office is practicing a victim-centered approach in every case that is handled).

¹⁴⁸ Hollander-Blumoff, *supra* note 141, at 147.

a more personal, lasting level. Studies have shown that the individuals who participate in restorative justice processes feel more satisfied than those who go through traditional criminal proceedings.¹⁴⁹ Victims are empowered through their voice, offenders are able to express their remorse and receive forgiveness, and entire communities are restored. This approach can help the present judiciary problems in Uganda, and can also provide a more promising future for the people of Uganda and its judicial system entirely. Restorative justice processes would be invaluable to implement in the criminal justice system alongside plea bargaining so that individuals can experience justice in a deeper way.

¹⁴⁹ Khan, *supra* note 85.