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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.


2 Id.

3 Id.

4 Id.

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. 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. 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. 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. 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. 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. 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. 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. In many circumstances, prisoners

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7 Pepperdine Law Global Justice Program, supra note 1.

8 See id.

9 Id.

10 Id.


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.\textsuperscript{14}

This backlog 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.\textsuperscript{15} In addition, the prisons throughout Uganda have become significantly overcrowded\textsuperscript{16} – 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.\textsuperscript{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 over-crowding.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{20} In Uganda, prisoners on remand are given the option to participate in the plea-bargaining process.\textsuperscript{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.\textsuperscript{22} Once a defendant has entered a “guilty” plea for his crime, and has expressed his

\textsuperscript{14} Id.

\textsuperscript{15} Tina S. Ikpa, \textit{Balancing Restorative Justice Principles and Due Process Rights in Order to Reform the Criminal Justice System}, \textit{24 WASH. U. J. OF L. AND POL’Y}, 301, 323 (Jan. 2007), http://open.scholarship.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.

\textsuperscript{16} Kiarap, \textit{supra} note 12.


\textsuperscript{18} Kiyonga, \textit{supra} note 5.


\textsuperscript{20} Id.

\textsuperscript{21} Jackson, \textit{supra} note 11.

\textsuperscript{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.\(^{34}\)

\(^{20}\) Id.

\(^{21}\) Kovarovic, supra note 19, at 306–07.


\(^{23}\) Kovarovic, supra note 19, at 285.


\(^{25}\) Kiyounga, supra note 5.

\(^{26}\) Id.

\(^{27}\) Embrace plea bargain to decongest prisons, supra note 17.

\(^{28}\) Kovarovic, supra note 19, at 294.

\(^{29}\) See id.

\(^{30}\) Id.

\(^{31}\) 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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{39} “[R]estorative justice could be described as restoring victims, repairing harm, and reweaving the fabric of human relationships in a community.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{44}

Restorative justice programs can help improve plea-bargaining in Uganda to ensure that each prisoner is entitled to his basic human rights.\textsuperscript{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

\textsuperscript{35} See Cohen and Harley, supra note 6, at 254.


\textsuperscript{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).

\textsuperscript{38} Id. at 530.


\textsuperscript{40} Cohen and Harley, supra note 6, at 245.

\textsuperscript{41} Kovarovic, supra note 19, at 295.

\textsuperscript{42} Id.

\textsuperscript{43} Id. at 296.

\textsuperscript{44} Id. at 295-96.

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 “[t]ake 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 Khaokha, 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.
51 Lee, supra note 37, at 528.
52 Kyoonga, 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.”

Possibly the most well known example of a restorative justice approach is the Truth and Reconciliation Commission in South Africa (“TRC”). The TRC was created after the end of apartheid in South Africa 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. 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. There is an African concept called “Ubuntu” that means humans, we all share a bond that connects all humanity, I am because we all are. With this meaningful proverb in mind, the TRC was established to promote reconciliation and unity amongst South African citizens. 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. Individuals were required to tell the whole truth and to give a full account of the crimes committed. 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. 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. 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.

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. However, “[t]he three most common, widely used practices are victim offender mediation, family group conferencing, and circles.” 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-reconciliation-commission_n_8581566.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.
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. Restorative justice aims to reach an outcome that “is reflected in mutual acceptance of and compliance with the negotiated reparation agreement.” It enables parties to look to the future and to focus on healing and strengthening relationships.

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.” It is one of the most widely used processes of restorative justice in the United States with over 300 programs. The definition we use for victim offender mediation depends on “our personal experience, our culture[,] and worldviews . . .” 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. 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. Each case needs to be pre-approved to ensure each mediation “fosters a safe and controlled environment” for both the victim and offender. 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.

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. “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.’” The goal is that both parties will reach an agreement at the end

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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.
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.


\(^{86}\) Id.


\(^{89}\) Khan, supra note 85.

\(^{90}\) Id.

\(^{91}\) Id.

\(^{92}\) Id.

\(^{93}\) Id.
when he is released back into society.\textsuperscript{94} The process also has proven to deter
the offender from committing future crimes, reducing the possibility of recidivism.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{99} This process was formed
in New Zealand but has since been used internationally by individuals of
different cultures.\textsuperscript{100} FGC allows those who want to support the offender and
offer them help to be involved throughout the entire process.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{104} This is a unique and effective

\textsuperscript{94} Semini & Mandia, supra note 87, at 23.
\textsuperscript{95} Khan, supra note 85.
\textsuperscript{96} Id.
\textsuperscript{97} Centre for Justice & Reconciliation, Victim Offender Mediation, supra note 84.
\textsuperscript{98} Charles Ratier et al., An Investigation of Ugandan Cultural Values and Implications for
Managerial Behavior, 139 GLOBAL J. OF MGMT. AND BUS. RES. 1, 2 (2013).
\textsuperscript{99} Office of Justice Programs: Restorative Justice, NATINAL INSTITUTE OF JUSTICE,
https://www.nij.gov/topics/courts/restorative-justice/promising-practices/pages/family-group-
\textsuperscript{100} Centre for Justice & Reconciliation: What is Restorative Justice?, supra note 50.
\textsuperscript{101} Cohen & Harley, supra note 6, at 241.
\textsuperscript{102} Office of Justice Programs: Restorative Justice, supra note 99 at 77.
\textsuperscript{103} Id.
\textsuperscript{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."\textsuperscript{105} It has been proven that the use of restorative justice processes decreases the rate of recidivism for the offender.\textsuperscript{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.\textsuperscript{107} “Family group conferencing . . . builds community skills in conflict resolution and participatory decision-, making,” \textsuperscript{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.\textsuperscript{109} Conferencing builds trust amongst community members and would be an incredibly helpful process to use alongside plea-bargaining for many offenders in Uganda.\textsuperscript{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.”\textsuperscript{111} Although it is similar to family or group conferencing, this process “moves beyond that to involve the community in the decision making process.”\textsuperscript{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, defense counsel, police and court workers . . .”\textsuperscript{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.\textsuperscript{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.\textsuperscript{115} To ensure each

\textsuperscript{105} Cohen & Harley, supra note 6, at 241-42.

\textsuperscript{106} Office of Justice Programs: Restorative Justice, supra note 99 at 77.

\textsuperscript{107} Id.

\textsuperscript{108} Id. at 78.

\textsuperscript{109} See id.

\textsuperscript{110} Id.


\textsuperscript{112} Id.

\textsuperscript{113} Centre for Justice & Reconciliation: What is Restorative Justice?, supra note 50.


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. The first phase of the process begins when the involved parties come
together to introduce themselves and welcome one another. They may
address issues that need to be resolved during the process, and many times
parties begin to form relationships in this initial phase. 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. The
parties then spend a good amount of time discussing sentencing options for
the accused person. The “[k]ey to this phase is the attempt to not inflict
punishment but rather the goal is positive change.” 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. 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. 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.

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. 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.’” 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. 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.”

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. Although the ultimate goal of sentencing circles is healing, “the circle process builds on the values of respect, honesty, listening, truth, sharing, and others.” 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. Peacemaking circles share the collectivist value of collaboration, and enable communities to resolve conflict and promote healing for all affected parties.

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. 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. 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. 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

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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).
129 Centre for Justice & Reconciliation: Circles, supra note 111.
130 See id.
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 each backlogs have been greatly reduced).
crimes such as rape, sexual assault, or murder. 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. However, because the process is completely voluntary, any victim who participates in the process may choose not to confront his offender. 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. 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. 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. 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.

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. If all parties involved could have a better understanding of plea-bargaining, the process will be even more effective in

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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.


142 Id.

the future. 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. 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. 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. 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.”
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

164 See JUSTICE LAW AND ORDER SECTOR ANNUAL REPORT 2017/18,
2018&usg=AOvVaw1TV38CdSV93NFUxxHIMz2; see also, PENAL REFORM INTERNATIONAL,

165 PENAL REFORM INTERNATIONAL, supra note 135.

166 Kiyonga, supra note 5.

167 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.

168 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. 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.

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149 Khan, supra note 85.