

Mediation for Restorative Justice: Repair of Historical Harms through Dialogue, Truth-Telling, Reconciliation and other Appropriate Justice Systems in Africa

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Mediation for Restorative Justice: Repair of Historical Harms through Dialogue, Truth-Telling, Reconciliation and other Appropriate Justice Systems in Africa

Kariuki Muigua*

Abstract

This paper critically examines the need for restorative justice in Africa. The paper observes that fostering restorative justice in Africa is necessary in light of historical harms and human rights violations perpetuated by slavery, colonialism and plunder of natural resources among other injustices. In particular, the paper notes that mediation and other Appropriate Justice Systems provide effective tools towards promoting restorative justice in Africa. It examines how mediation and other Appropriate Justice Systems can be harnessed to repair historical harms through dialogue, truth-telling and reconciliation towards restorative justice in Africa.

1.0 Introduction

Justice has been described as a central moral notion, associated with fair and impartial decision-making (procedural justice) and with persons and groups being treated even-handedly (formal justice, treating like cases alike) and in a morally fitting way (material or substantive justice)¹. In addition, justice has been associated with the concepts of fairness, equality, moral behavior, lawfulness, and order². It has been observed that justice can be achieved in various forms including *distributive justice* (economic justice) that involves fairness in sharing resources and opportunities³; *procedural justice* which focuses on fair and impartial decision- making procedures⁴; *restorative justice* whose aim is to repair harm to victims of crimes and rehabilitate offenders⁵; and *retributive justice* that focuses on punishing crimes in a society (Emphasis added)⁶.

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¹ Pogge. T., 'Justice: Philosophical Aspects' *International Encyclopedia of the Social & Behavioral Sciences*, 2nd Edition, 2015, pp 943-948

² What is Justice?., Available at <https://www.humanrightscareers.com/issues/what-is-justice/> (Accessed on 03/06/2026)

³ Maiese. M., & Burgess. H., 'Types of Justice' Available at https://www.beyondintractability.org/essay/types_of_justice (Accessed on 03/06/2026)

⁴ Ibid

⁵ Ibid

⁶ Ibid

Restorative justice focuses on repair of harm caused by criminal behaviour and human rights violations among other injustices as opposed to punishing the offender⁷. It has been observed that in contrast to traditional models of justice which primarily focus on punishment and retribution, restorative justice takes a different approach and centers on addressing harm, fostering dialogue and promoting accountability⁸. Restorative justice focuses on truth, healing and reconciliation towards strengthening relationships and preventing similar harms and injustices from reoccurring in future⁹.

Restorative justice is therefore a viable and appropriate form of justice. Through restorative justice, it is possible to promote tolerance and inclusiveness, uncover truth, encourage the peaceful expression and resolution of conflict, build respect for diversity and promote responsible community practices¹⁰. It has been observed that restorative justice can improve access to justice, especially for victims of crime and vulnerable and marginalized populations affected by injustices, harms and human right violations¹¹. Restorative justice practices can be used in different contexts to prevent conflict, build and strengthen relationships and repair harm by enabling people to communicate effectively and positively¹². It has been argued that restorative justice has great potential to contribute to the achievement of Sustainable Development Goal (SDG) 16 on providing access to justice for all and building effective, accountable and inclusive institutions at all levels¹³.

This paper critically examines the need for restorative justice in Africa. The paper observes that fostering restorative justice in Africa is necessary in light of historical harms and human rights violations perpetuated by slavery, colonialism and plunder of natural resources among other injustices. In particular, the paper notes that mediation and other Appropriate Justice Systems provide effective tools towards promoting restorative justice in Africa. It examines how mediation and other Appropriate Justice Systems can be

⁷ The Role of Restorative Justice in Modern Criminal Justice Administration., Available at <https://www.park.edu/blog/the-role-of-restorative-justice-in-modern-criminal-justice-administration/> (Accessed on 03/06/2026)

⁸ Ibid

⁹ Maiese. M., & Burgess. H., 'Types of Justice' Op Cit

¹⁰ United Nations Office on Drugs and Crime., 'Handbook on Restorative Justice Programmes' Available at https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf (Accessed on 03/06/2026)

¹¹ Ibid

¹² Restorative Justice Council., 'What is Restorative Justice?' Available at <https://restorativejustice.org.uk/what-restorative-justice> (Accessed on 03/06/2026)

¹³ United Nations Office on Drugs and Crime., 'Handbook on Restorative Justice Programmes' Op Cit

harnessed to repair historical harms through dialogue, truth-telling and reconciliation towards restorative justice in Africa.

2.0 The Quest for Restorative Justice in Africa

Fostering restorative justice is a pertinent agenda for Africa. In particular, it has been observed that restorative justice in Africa is necessary due to historical harms and injustices including the transatlantic slave trade, which devastated African societies, and European colonialism, which created lasting instability in the continent¹⁴. The United Nations notes that for over 400 years, more than 15 million men, women and children from Africa were the victims of the tragic transatlantic slave trade, one of the darkest chapters in human history¹⁵. The transatlantic slave trade saw enslaved Africans being transported across the Atlantic Ocean to the Americas from the 16th to the 19th century¹⁶. During the transatlantic slave trade, millions of people from Africa were kidnapped, forced onto European and American ships, and trafficked across the Atlantic Ocean to be enslaved, abused, and forever separated from their homes, families, ancestors, and cultures¹⁷. Close to 2 million Africans lost their lives during the journey across the Atlantic Ocean while those who survived the journey were sold into slavery and reduced to property in North and South America and the Caribbean Islands where they were subjected to forced labour, abuse and violence¹⁸.

The transatlantic slave trade left a deep and long-lasting impact on Africa. For example, the slave trade led to the removal of millions of people from Africa leading to depopulation while also fuelling violence as states and tribes engaged in capturing and selling others¹⁹. In addition, it has been observed that the transatlantic slave trade

¹⁴ Office of the United Nations High Commissioner for Human Rights., 'Submission to the United Nations Committee on the Elimination of Racial Discrimination (CERD) regarding reparations for the historical injustices from the chattel enslavement of Africans, and the ensuing harms and crimes to people of African Descent.' Available at <https://www.ohchr.org/sites/default/files/documents/cfi-subm/cerd-gr-reparations/subm-invitation-feedback-cso-23-perman-pfad-wcg-wcg.pdf> (Accessed on 03/06/2026)

¹⁵ United Nations., 'Slave Trade' Available at <https://www.un.org/en/observances/decade-people-african-descent/slave-trade> (Accessed on 03/06/2026)

¹⁶ Transatlantic Slave Trade., Available at <https://www.britannica.com/topic/transatlantic-slave-trade> (Accessed on 03/06/2026)

¹⁷ Equal Justice Initiative., 'The Transatlantic Slave Trade' Available at <https://eji.org/report/transatlantic-slave-trade/> (Accessed on 03/06/2026)

¹⁸ Chutel. L., 'What Reparations are owed to Africa?' Available at <https://qz.com/africa/1915182/what-reparations-are-owed-to-africa> (Accessed on 03/06/2026)

¹⁹ Office of the United Nations High Commissioner for Human Rights., 'Submission to the United Nations Committee on the Elimination of Racial Discrimination (CERD) regarding reparations for the historical injustices from the chattel enslavement of Africans, and the ensuing harms and crimes to people of African Descent.' Op Cit

devastated local economies by removing productive members of society and creating an atmosphere of lawlessness, hindering Africa's development for centuries²⁰. Due to the transatlantic slave trade, Africa was not only deprived of manpower and income, but also creativity, innovation, and relationships undermining the continent's development²¹.

European colonialism is another historical harm with profound and long-lasting impacts on Africa. During the colonial era, Africa was invaded and conquered economically, socially and politically²². The African Union observes that during the colonial era in Africa, states were created and were administered by foreign military, resources were exploited and shipped outside of the continent²³. The colonial period saw Africans and people of African descent living outside Africa being forcibly evicted from their lands and subjected to oppressive colonial laws and policies²⁴. Africans and people of African descent endured several atrocities including torture, imprisonment and death as they valiantly stood against oppressive colonial regimes²⁵. It has been correctly noted that the negative impact of colonialism on the enjoyment of human rights are still being witnessed today in Africa and the Global South, where political independence and decolonization have not been matched by Sustainable Development and the full enjoyment of human rights, including the right to development and socioeconomic rights²⁶. In particular, it has been observed that colonialism lives on today in the forms of racism, racial discrimination, xenophobia and intolerance against Africans and people of African descent²⁷.

Plunder of Africa's natural resources is another historical harm that has undermined the continent's development for many decades. Despite Africa being endowed with natural resources including vast arable land, huge deposits of extractives such as minerals, oil and gas, major forests, large rivers and lakes and wildlife, these resources have not

²⁰ Ibid

²¹ Chutel. L., 'What Reparations are owed to Africa?' Op Cit

²² African Union., 'AUHRM Project Focus Area: Colonialism' Available at <https://au.int/en/auhrm-project-focus-area-colonialism> (Accessed on 03/06/2026)

²³ Ibid

²⁴ Office of the United Nations High Commissioner for Human Rights., 'Racism, discrimination are legacies of colonialism' Available at <https://www.ohchr.org/en/get-involved/stories/racism-discrimination-are-legacies-colonialism> (Accessed on 03/06/2026)

²⁵ Wasike. A., 'Kenya's Mau Mau Demand 'Justice, Recognition and Reparations' for Britain's Colonial Atrocities' Available at <https://www.aa.com.tr/en/africa/kenya-s-mau-mau-demand-justice-recognition-and-reparations-for-britain-s-colonial-atrocities/3121678> (Accessed on 03/06/2026)

²⁶ Office of the United Nations High Commissioner for Human Rights., 'Racism, discrimination are legacies of colonialism' Op Cit

²⁷ Ibid

translated to the continent's development²⁸. It has been observed that the struggle for control over Africa's natural resources has raged since colonialism when the continent's resources were exploited and transported to the Global North²⁹. Further, it has been observed that the struggle for control over Africa's natural resources continues today since the forces that undermine the continent's resource sovereignty have shifted from the former colonizers to transnational corporations³⁰. Resource-rich African countries are losing huge amounts of revenue through exploitation by multinational corporations³¹. In particular, it has been observed that embezzlement of profits from resource extraction and tax evasion to the benefit of multinational corporations has resulted in Africa losing from proceeds of its natural capital undermining the continent's development agenda³².

The foregoing historical harms have had a deep and long-lasting impact in Africa fuelling human rights violations and undermining the continent's development agenda. Consequently, fostering restorative justice is key towards repairing historical harms through dialogue, truth-telling and reconciliation.

3.0 Harnessing Mediation and other Appropriate Justice Systems towards Restorative Justice in Africa

The pursuit of restorative justice is a key agenda for Africa in light of historical harms including slavery, colonialism and plunder of the continent's natural resource. The United Nations observes that historical crimes including the transatlantic slave trade, colonialism, apartheid, and systemic racial discrimination committed against Africans and people of African descent were monumental crimes that demand justice³³. In particular, the United Nations observes that addressing these historical crimes involve *justice for the past* through acknowledgment, truth-telling, apology, restitution, and financial compensation where appropriate³⁴. It also involves *justice for the present* through

²⁸ United Nations Environment Programme., 'Our work in Africa' Available at <https://www.unep.org/regions/africa/our-work-africa> (Accessed on 03/06/2026)

²⁹ Hormeku-Ajei. T., Goetz. C., 'A History of Resource Plunder' Available at <https://africasacountry.com/2021/04/a-history-of-resource-plunder> (Accessed on 03/06/2026)

³⁰ Ibid

³¹ Capital flight from Africa: Resource Plunder and the Poisoned Paradises in Tax Havens., Available at <https://taxjustice.net/2021/03/24/capital-flight-from-africa-resource-plunder-and-the-poisoned-paradises-in-tax-havens/#:~:text=In%20a%20world%20with%20weak,what%20to%20do%20about%20it?> (Accessed on 03/06/2026)

³² Ibid

³³ United Nations., 'Beyond compensation: Reparatory justice as a structural economic imperative for Africa' Available at <https://africarenewal.un.org/en/magazine/beyond-compensation-reparatory-justice-structural-economic-imperative-africa> (Accessed on 04/06/2026)

³⁴ Ibid

dismantling global economic structures that replicate colonial patterns of dependency and exploitation³⁵. In addition, addressing historical crimes involves *justice for the future* by securing Africa's rightful place as a co-architect of global governance, development priorities, and economic policy³⁶.(Emphasis added)

Mediation provides an effective approach towards repairing historical harms and fostering restorative justice for Africa. It has been observed that mediation in general emphasizes dialogue, mutual agreement and cooperation thus reconciling the interests of parties and contributing to a more holistic understanding of justice³⁷. Mediation has been identified as a primary tool for achieving restorative justice due to its focus on accountability, dialogue and collaborative solutions³⁸.

Harnessing the foregoing attributes can aid in the pursuit of restorative justice in Africa. For instance, mediation provides a platform for international cooperation through inter-State and cross-border dialogue towards acknowledging and repairing historical harms including slavery and colonialism³⁹. By embracing mediation, it possible to engage with affected communities in former colonies through dialogue and truth-telling towards real justice⁴⁰. In addition it has been observed that mediation and other Appropriate Justice Systems including negotiation provide a forum for dialogue in order to seek the truth for historical crimes, establish a case for reparations, pursue justice for past crimes, and contribute to non-recurrence and reconciliation⁴¹.

It is therefore imperative to harness mediation and other Appropriate Justice Systems including negotiation in order to effectively achieve restorative justice in Africa. Through mediation, it is possible to engage in dialogue, truth-telling and reconciliation towards repairing historical harms committed against Africans and people of African descent. Mediation provides a platform towards achieving adequate, effective and prompt reparations including through financial compensation, formal apologies, restitution,

³⁵ Ibid

³⁶ Ibid

³⁷ The Role of Mediation in Restorative Justice: A New Approach to Criminal Cases., Available at <https://www.ijrti.org/papers/IJRTI2504185.pdf> (Accessed on 04/06/2026)

³⁸ Ibid

³⁹ Office of the United Nations High Commissioner for Human Rights., 'Reparatory justice for Africans and people of African descent – an overview' Available at <https://www.ohchr.org/sites/default/files/documents/issues/racism/simple-layout-overview.pdf> (Accessed on 04/06/2026)

⁴⁰ Ibid

⁴¹ Ibid

truth-telling and guarantee of non-repetition in order to effectively repair historical harms and human right violations⁴². In addition, through mediation, negotiation and dialogue, it is possible to engage with stakeholders including multinational corporations towards the restitution of African sovereignty over its natural resources as a form of restorative justice⁴³. Mediation also provides a forum for African countries to actively engage at the international level towards transforming global financial, trade and governance systems that have systematically disadvantaged the continent for decades contributing to historical harms⁴⁴.

Embracing mediation is therefore vital towards achieving restorative justice in Africa.

4.0 Conclusion

Achieving restorative justice is a key agenda for Africa in light of historical harms including slavery, colonialism, apartheid, plunder of natural resources and systematic racial discrimination. Mediation and other Appropriate Justice Systems including negotiation provide a platform towards fostering reparative justice in Africa due to their focus on dialogue, truth-telling and reconciliation. It is therefore necessary to harness mediation and other Appropriate Justice Systems towards repairing historical harms towards restorative justice in Africa.

⁴² International Services for Human Rights., 'ACHPR83: Advancing justice for Africans, people of African descent through reparations' Available at <https://ishr.ch/latest-updates/achpr83-panel-on-justice-for-africans-and-people-of-african-descent-through-reparations/> (Accessed on 04/06/2026)

⁴³ United Nations., 'Beyond compensation: Reparatory justice as a structural economic imperative for Africa' Op Cit

⁴⁴ Ibid

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What is Justice?., Available at <https://www.humanrightscareers.com/issues/what-is-justice/>