

Revisiting the Legal Considerations for Victims of Crime in the Criminal Justice Process in Nigeria

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Abstract

The importance of compensation for victims of crime in the administration of criminal justice cannot be overemphasized. It serves a variety of benefits including helping the victims to manage the material aspect of their loss and find psychological healing in the fact that society has not abandoned them. This article examined the entitlements of victims of crimes generally, but with specific reference to the Administration of Criminal Justice Act 2015, the Economic and Financial Crime Commission Act, the Violence against Person (Prohibition) Act, 2015 and other related Statutes. The article was motivated by the desire to answer the question: what are the benefits of the criminal justice system to victims of crime? The article adopted the doctrinal methodology of research which involves an examination of primary and secondary sources of data to interrogate the question. The article found that irrespective of the crime, there are more of problems than benefits for victims of crime and the problems ranged from victims bearing the direct physical, material, financial and psychological brunt of crime and eventual neglect by the justice process and system and left to the mercies of charity as soon as they give their complainant or witnesses testimonies. It becomes easy to understand why so many criminal cases cannot be successfully prosecuted or tried, hence heightened break down of law and order. This article also found that the current legal provisions on compensation of victims of crime are weak and most often, not enforced. It recommended amongst other things for the effective application of the provisions on restorative justice and compensation for victims of crime under the Administration of Criminal Justice Act and other related statutes as it is the case in other jurisdictions.

Key words and Phrases: evidential burden. Closure, law and order, restorative justice, psychological brunt, victims participation.

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Introduction

Compensation for victims of crime is as important as the criminal justice process itself. In fact, one is persuaded to argue that it is the most important aspect of criminal justice administration because, without a victim there is no offender, or crime, except in cases of victimless crimes¹. Except also in cases of cogent circumstantial evidence, criminal cases are provable only by evidence or testimony of the victim who most times is also the complainant. Furthermore, dissatisfaction by victims of crime with the end result of a criminal trial is likely to breed further criminal behaviour, retaliation, revenge or lead victims to take laws into their hands, especially where the offender is discharged or acquitted of the offence charged either for want of diligent prosecution or any form of technicality and the victim is not compensated for his loss or injury.

Compensation for victims of crime is, therefore, important as it enables the victims to secure medical treatment and care, especially in cases of rape or bodily injury. It helps victims of crime to fulfill basic survival needs in cases where a bread winner was murdered or where property or items of value on which the victim's survival depended were destroyed. On the part of the larger society, compensation provides some form of deterrence to would-be offenders, as it imposes financial cost against present offenders for their acts.²

Until recently, that is, until the enactment of the Administration of Criminal Justice Act, (ACJA) 2015, the Violence Against Persons (Prohibition), (VAPP) Act, 2015, the Prohibition of Discrimination Against Persons with Disabilities, Act, 2018 and the Correctional Service Act (CSA) 2019 which made specific provisions on compensation for victims of crime, the hitherto existing provisions on compensation under the Criminal Code and

¹ Although there are numerous arguments by scholars on the concept of victimless crimes, reference to the concept in this article is only analogous to the discussions as they are more difficult to detect and prosecute. For more practical purposes, this article takes the view that every crime, irrespective of its nature has a victim.

² T Boven., *Seminar on the Rights to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Fundamental Freedoms*: in: NJ Kritz, (Herndon, Va: United States Institute of Peace Press. 1995) 502

the Penal Code³ were mere prescriptions that were at best a distraction to the criminal justice process. Emphasis was placed more on prosecuting and sentencing the offender to terms of imprisonment. Victims of crime are still under obligation to attend court at their expense and where the offender is convicted and sentenced to terms of incarceration, or fined, the victim end up losing twice, once from the offender, and also to the State which reaps the fruits of the victim's complaints in the form of fines and time spent in prison.

Victims of crime are often confused or embarrassed to even report because, officials consider the cases of victims as too trivial or that the matter is only a waste of time.⁴ Matters of compensation are also not taken the by court for consideration in the sentence hearing procedure, notwithstanding the current provisions on compensation under the ACJA and other enactments. The only options left for victims is the Hobson's choice of either living it to God or proceeding with the further tedious task of seeking remedies or damages in civil actions at considerable expense in time and cost without assurances of success at the end of the day⁵.

This article persuasively argues that, the journey is still very far, as five years have gone by since the Administration of Criminal Justice Act was enacted with no measureable level of change, criminal justice actors in Nigeria are still enamoured with custodial measures of incapacitation, retribution or 'just desert' or to use the aphorism, '*paying the offender in his own coin*'.⁶ Much attention is yet to be given to matters of compensation to victims of crime because, the government faces other economic and political problems and because compensation programs are likely to pose a

³ Sections 270 (1), 435 (1), 378 Penal Code and Section 357 (1) Criminal Procedure Code Theophilus Onuoha v. State (1987) 4 NWLR, 331

⁴ ML Ozoya. ."*Fraud Victims Reactions & Crime Prevention in Nigeria: The Role of a Knowledge Economy*". (3rd International Conference on African Development Issues. Covenant University Press. 2016) pp 519-20

⁵ AO Agbede., *Modalities for the Enforcement of Financial Compensation for Victims of Crimes* in: BP Ajibola., and S Adetiba., (eds) *Compensation and Remedies for Victims of Crime in Nigeria*. Federal Ministry of Justice. Lagos: 1990) .Also, MDO Alao., *Sentencing Law and Practice in Nigeria*. (Chembus Communication, Enugu: 2014) p199

⁶ Victims of crime were not even aware of the existing provisions in the Criminal Code and Criminal Procedure Code on compensation for offences committed against them. Magistrates and Judges also were not known to have widely applied them.

financial burden, a government faced with severe economic problems may not regard compensation programs as a high priority.⁷ However, there have been a growing awareness and demand for acknowledgement and recompense for victims of crime, especially crimes such as kidnapping, rape, advanced fee fraud, cybercrimes and money laundering.⁸

The impact of these growing awareness is of importance to the discussions in this article, because, the difficulty faced by victims in these cases is almost the same as in all other crimes. Legal reasoning behind this argument is that if on the one hand, the law forbids offenders from benefiting from their wrongful acts, it also stands to equity and justice would demand, that the offenders and in appropriate cases, the State should compensate victims of crime, for material, psychological and physical injuries sustained either directly or indirectly from the offender's actions.

To these ends, the Administration of Criminal Justice Act, 2015, the Economic and Financial Crimes Act and other recent enactments⁹ on compensation of victims of crime will have far reaching effects when they are applied. However, there are noticeable gaps that ought to be closed in applying these provisions for the benefit of the victims by criminal justice actors.

These prevailing gaps create a lot of difficulties and dissatisfaction especially for those who are victims of crimes and makes matters more confusing considering that some of these provisions on compensation had been present in the Criminal Procedure Act and the Criminal Procedure Code¹⁰. The thrust of this article therefore is to examine to what extent the Nigerian criminal justice system has provided for victims of crimes. In doing this, the article is segmented into five parts, namely: the introduction, and contextual clarification of victims of crime with the different

⁷ M Maiese, *Compensation and Reparations.* "Beyond Intractability, In G Burgess, H. Burgess, H, (eds). *Conflict Information Consortium*, (University of Colorado, Boulder:2003). accessed at <http://www.beyondintractability.org/essay/compensation>>6.56 am 6 June,2020

⁸ D Montague., "Essentials of Online Payment, Security, Fraud Prevention" (New Jersey: John Wiley & Sons. 2011) p15

⁹ Section 319 (1) (a)- (c) (2) and (3)

¹⁰ (n, 3) These sections were aptly considered in the case of *Theophilus Onuoha v. State* (1987) 4 NWLR, 331

categories, the statutory framework for victims of crimes, the experience from other jurisdictions and recommendations for reform.

Who is a Victim of Crime?

The concept of a victim of crime defies specific definition as each definition depends on the context and the circumstance. For example, where a person is killed or wounded during the commission of a criminal offence, he is considered a victim so long as he did not participate in the unlawful act or conducts that led to his death in the first place. Also a person subjected to an offence with an element of force or deprivation, such as sexual assault, kidnapping or domestic violence, is also a victim¹¹. This rigid concept of ‘victims of crime’ makes it difficult to categorise persons who are witnesses to crime, family members of deceased victims, police officers on duty, and people who experience fraud and damage to their property as victims merely because they manifest purely psychological symptoms and not bodily injury. This is why the United Nations Declaration of Basic principles of Justice for Victims of Crime and Abuse of Power and the Victims Compensation Act of New South Wales are preferable. The former defines ‘victims of crime as persons who individually or collectively have suffered harm including, mental injury, emotional and economic loss or substantial impairment of their fundamental rights through acts or omissions that are in violation of criminal law operative within members States’. The Victims Compensation Act of New South Wales¹² defines Victims of crime as: a person who suffers harm as a direct result of an act committed or apparently committed by another person in the course of an alleged violent crime; or the parent, grandparent or guardian of a child who suffers such harm, if the child is under 18 years at the time victims leave is taken or; a member of the immediate family of a person who dies as a direct result of an act committed or apparently committed by another person in the course of an alleged violent crime¹³.

¹¹ Sections 2, 4, 5, 6 and 7 Violence Against persons (Prohibition) Act, 2015

¹² No 115 of 1996

¹³ R. Johns. *Victims of Crime: Plea Bargains, Compensation, Victim Impact Statements and Support Services*. (New South Wales Parliamentary Library Research Service, 2002) p6

This article takes the position that a victim of crime should be considered from the ideal point of view and that is any person or a category of individuals-when hit by crime-are given the complete and legitimate status of being a victim.¹⁴ Despite, the non specific definition of victims of crime in any criminal statute in Nigeria, it is apposite for the purpose of this article to state that a victim of crime is that person who suffers, directly or indirectly physical harm, psychological pain or loss of property as a result of the crime committed by another person. This article does not support arguments for the concept of victimless crimes. The basis for this dissension is that, depending on the critical facts of the crime and the nature of the punishment available, victimless crimes do not really exist. To hold otherwise, will be to widen the gaps already existing in the Nigerian criminal justice processes and system which has enabled a near denial of compensation for victims of crime especially in cases of economic crimes committed by public officials or politically exposed persons.

Categorisation of Victims

There is no provision in any criminal legislation or Statute in Nigeria that categorizes or creates a distinction as to nature of victims. Victims of crime are, however, generally categorized or classified into three, namely: primary, secondary and tertiary victims of crime¹⁵. Primary victims of crime are those persons who have suffered direct or threatened harm or injury and the harm or injury could be loss or injury to limb, loss of property, or things of monetary value.

Secondary victims are those who do not experience harm directly but in relation to their proximity to those directly impacted by the crime, such as parents or relatives of victims of rape, murder, assault and children in domestic violence cases. On the other hand, tertiary victims are those who vicariously suffer the effects of crime. Tertiary victims may also be primary and secondary victims through

¹⁴ AY Usman & YS Sarkinnoma. *Crime Victims and Criminal Justice Administration in Nigeria*. [3] (5) (Global Journal of Interdisciplinary Social Sciences. Global institute for Research and Education 2014) 49

¹⁵ R Johns (n.12)

criminal acts that lead to denial of social amenities and infrastructure such as, hospitals, schools, roads, and improved conditions or standard of living, denial of salaries and ultimately, impunity as is the case in corruption and economic crimes.

Reparations

Although the term ‘Reparations’ bear affinity with our discussions on compensation, its use is subsumed in the overall meaning of the word ‘compensation’ because discussions about ‘reparations’ include demands for compensation¹⁶. The right to a remedy and reparation is a fundamental principle of international human rights law recognized in numerous treaty texts¹⁷ and affirmed by a range of national and international courts¹⁸. The concept also has strong implications for the application of domestic law under the principles of ‘*proportionality*’, ‘*restitutio integrum*’ and ‘*satisfaction*’ as they set out the status and the rights of victims of crime to a remedy. The principle of *restitutio integrum*, suggests that as far as possible, reparations must wipe out all consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed¹⁹.

The term ‘reparations’ became prominent with demands for compensation and in some cases restitution in favour of African victims of slavery who were trafficked to the Americas during the Trans-Atlantic Slave Trade. The term also relates more to the demand and actual payments made out by the Countries of the Axis in Western Europe to Allied Powers at the end of the 2nd World war

¹⁶ OA Noriega., *Reparation Principles under International Law and their possible Application by the International Court: Some Reflections*. In C. Sandoval (ed) *Transitional Justice Network Briefing Paper [1]*, University of Essex: Colchester. England: 2011) pp3-17

¹⁷ The Rome Statute states that the application and interpretation of law pursuant to Article 21 must be consistent with internationally recognized human rights as most of the time the crimes that the ICC deals with also constitute a breach of international human rights law. Article 75 of Rome Statute of the International Criminal Court also states that the ICC shall establish principles relating to reparations to, or in respect of victims of the crimes that the ICC deals with in accordance with its jurisdiction

¹⁸ The basic principles on reparation under international law were formulated by the Permanent Court of Justice (PCIJ) in the *Case concerning the Factory at Chorzow*, PCIJ, Series A. NO 17 1928p.47

¹⁹ case Concerning the Factory at Chorzow, PCIJ, Series A. NO 17 1928p.47

in 1948 to survivors of the Holocaust. In a nutshell, the near relationship between reparations and compensation is that, reparations are not primarily about money rather they are about repairs to individual's psyche, and to social and political institutions²⁰.

The concept of reparations may be summarized in its five forms as consisting of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In the context of criminal justice for victims, it serves the function of removing or redressing the consequences of criminal offences and preventing or deterring future violations²¹. For the purposes of brevity, this article will only explain the concept of restitution.

Restitution

Restitution refers to measures that try to restore the victim to the original situation before the offence was committed or in international human rights law, when the human rights and serious violations of international humanitarian law occurred". Examples of restitution include: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of property. Offenders or third parties should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the crime.

Statutory Framework on Compensation for Victims of Crime in Nigeria

The current tendency and drive toward reformations in sentences and punishments and protections of human rights, modern criminal justice administration have began to change by calling for reduced emphasis on the offender and retribution, and to pay inclusive attention to restorative justice to the victims of crime and

²⁰ R Brooks, *"The Age of Apology" When Sorry Isn't Enough. The Controversy over Apologies and Reparations for Human Injustices.* (New York: University Press,1999)P 4.

²¹ Ibid

others whose interest may be affected by criminal behavior²². The legislature in Nigeria moved with the times and reinforced this new thinking by enacting the Administration of Criminal Justice Act.²³ It provided the objective or purpose in Section 1 as follows:

The purpose of this Act is to ensure that the system of Administration of Criminal Justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant and the victim²⁴.

Having generally identified the lack of effective remedies or nonuse of the provisions on compensation for victims of crimes as an existing problem with criminal justice administration in Nigeria, the task now is to explore some of the available provisions in line with the objective of this article. It is interesting to note that several legislations have provided for the compensation of victims of crime albeit in a limited degree. These include: the Penal Code, the Criminal Code, the Administration of Criminal Justice Act, 2015, the Economic and Financial Crimes Act,²⁵ the Advance Fee Fraud Act.

For brevity, this article will only examine the most recent four of these legislations: The ACJA, The Economic and Financial Crimes Act, the Violence against Persons Prohibition Act and the Advance Fee Fraud Act.

The Administration of Criminal Justice Act, 2015,

In the course of the proceedings or when passing judgment, the ACJA empowers the Court to order the convict to pay compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant, where substantial compensation is in the opinion of the court recoverable by civil suit²⁶. The court may also

²² M Maiese.(n, 5)

²³ 2015

²⁴ Section 401 (2) (g) ACJA

²⁵ Cap E1. Laws of the Federation of Nigeria 2004

²⁶ Sections 319 and 328

order the convict to pay compensation to an innocent purchaser of any property in respect of which the offence has been committed who has been compelled to give it up. The court may also order the convicted person to pay some money in defraying expenses incurred in medical treatment of any person injured by the convict in connection with the offence²⁷. Even though the prosecutor may not be able to prove its case as required by the legal and evidential burden of the Evidence Act²⁸ in cases of criminal acquisition of property, the Court can apply the provisions of the ACJA to Order restoration of the property so criminally acquired in addition to payment of damages to the victim who may in any case be the State²⁹. With due respect, the provision on compensation in Sections 319 and 328 of the ACJA as explained above leaves the victim of crime to the vagaries of civil litigation. Where, on the arrest of a defendant charged with an offence, any property, other than that used in the commission of the offence, is taken from the defendant, the court may order that the property or any part of it be restored to the person who appears to the court to be entitled to it, be it the defendant or any other person the defendant may direct.

The court may also order that the property be applied to the payment of any costs or compensation directed to be paid by the defendant³⁰. The court may also order the convict to make restitution to the victim or the victim's estate or order for the restitution or compensation for the loss or destruction of the victim's property³¹. This forms the basis for compensation for victims of crime including victims of corruption and other economic and financial crimes. The provisions of sections 341 and 342 of the ACJA are to be applied where an owner of the seized property is identifiable and there is no reason to determine the property as abandoned or unclaimed property. Where however there is a dispute as to who the owner of a

²⁷ GY Akinseye, "An Overview of the Changes and Application of the Administration of Criminal Justice Act, 2015". in A Adekunle, *Issues in Criminal Justice Administration in Nigeria*, (NIALS Press, 2016)p 3-4.

²⁸ Sections 131 and 133 Evidence Act, 2011

²⁹ GY Akinseye., *Administration of Criminal Justice Act (ACJA) 2015 With Explanatory Notes and Cases*. (Centre For Socio-Legal Studies, Mike Press, Abuja: 2017) p405

³⁰ Section 341, ACJA

³¹ Section 342 ACJA.

property is, the issue of ownership will have to first be resolved before restoration under sections 341 and 342 will be effected.

This article takes the view that Section 341 of the ACJA is problematic, as it does not allow for the restoration of instruments or proceeds of crime. This may pose hardship to a bona fide owner for example of an owner of property used as a means of committing, conveying or moving proceeds of crime especially where means it was stolen, forcefully taken away or used without the consent of the owner. Reference may however be made to the Economic and Financial Crimes Commission Act as it contains a remedy in that regard as it provide exceptions in cases where the means of conveyance including aircraft, vehicles or vessels are used³².

By virtue of Section 270 of the Administration of Criminal Justice Act, the Prosecutor may also receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf, or offer a plea bargain to a defendant charged with an offence. The Prosecutor has the responsibility to accept such plea bargain only if it is in the interest of justice, the public interest and the need to prevent abuse of court processes.³³

It is submitted that as part of the interest of justice considerations in a plea bargain, a prosecutor should include details of compensation that is available in favour of the victim of the crime for which a plea bargain is negotiated. Despite the innovative provisions on compensation contained in the ACJA it is a glaring omission that it has no provision for compensation schemes as a source of funding and guarantee for payment of compensation to victims of crime in Nigeria.

³² Section 25 EFCC Act (Cap. E1) LFN , 2004

³³ Section 270(3)

The Economic and Financial Crimes Commission and Other Related Offences Act, 2004

By the provisions of Section 14 (2) of the Economic and Financial Crimes Commission and Other Related Offences Act, 2004, the Commission is empowered to recover stolen property including funds. As earlier explained, the EFCC Act provides exceptions to the forfeiture of a vehicle used to convey or used as an instrument of crime where the owner or person in charge of ‘a common carrier’ was not a consenting party or privy to the commission of a crime and where the means of conveyance was unlawfully obtained from the owner by another person and used in the commission of a crime. It is important to point out that the forfeiture provisions under the EFCC Act is only applicable to offences created under the EFCC Act and offences under any other law for which the EFCC may investigate or prosecute. Such other Offences created under Statutes like the Advanced Fee Fraud Act. Caution must also be exercised to understand that by Section 25 (a)(iii) of the EFCC Act, forfeiture of a means of conveyance will not be effected where it is proved that the unlawful act was committed without the knowledge, consent or willful connivance of the owner .

The Advance Fee Fraud and Other related Offences Act

The Advance Fee Fraud and Other related Offences Act has provided for compensation and prevention of dissipation of assets or property obtained from victims of fraud at Sections 11 and 16: Section 11 provides as follows:

- (1) in addition to any other penalty prescribed under this Act, the High Court shall order a person convicted of an offence under this Act to make restitution to the victim of the false pretence or fraud by directing that person-
 - (a) where the property involved is money, to pay to the victim an amount equivalent to the loss sustained by the victim; in any other case –
 - (i) to return the property to the victim or to a person designated by him; or

- (ii) to pay an amount equal to the value of the property, where the return of the property is impossible or impracticable.
- (2) An order of restitution may be enforced by the victim or by the prosecutor on behalf of the victim in the same manner as a judgment in a civil action.

Section 11 place enforcement of the order of restitution on the victim or the prosecutor, it is clear enough that the Order can only be made by the court before it can be enforced. Even though the provisions of Sections 11 and 16 outlined above are very instructive, the procedure for enforcing them in the same way as a judgment of court in a civil action still leaves the victim of crime to the vagaries of litigation in terms of cost, time and the lack of assurances that the defendant is not a man of straw and will be able to pay. Despite this, it is better for the victim of crime to forge ahead with reference to these sections.

Unlike the general provisions for Compensation under the Administration of Criminal Justice Act, 2015, that compensations may be claimed for injuries which may include physical injuries, sexual and indecent assault, domestic violence, psychological or psychiatric disorders, and diseases causing disability, compensation for fraud under the Advance Fee Fraud Act and the EFFC Act may be awarded for financial loss, loss of property including money, money's worth or valuables. The loss for which compensation may be awarded to the victims may also include harm, or loss caused to primary and secondary victims. The methodology of the compensation may also depend on the nature of victims as where the alleged offence involved public funds, restoration and not compensation will be ordered as was the case in *FRN v. Joshua Chibi Dariye*³⁴.

The Violence against Persons (Prohibition) Act, 2015

The Act lays-emphasis on the guarantees of fundamental rights provided for and protected under the Constitution of the

³⁴ Unreported Suit No. SC. 252/2013

Federal Republic of Nigeria, 1999.³⁵ Violence is described under the Act as “any act or attempted act, which causes or may possibly cause any person physical, sexual, psychological, verbal, emotional or economic harm’ and such acts are prohibited under the act whether they occur in the private or public sphere”.³⁶ The Act distinguishes between ‘private and public harm’. Under the Act, ‘private violence’ means an act or attempted act perpetrated by a member of the family, relative, neighbour or member of a community, which causes or may cause any person physical, sexual, psychological, verbal, emotional or economic harm, while violence in the public sphere refers to an act or attempted act perpetrated by state or non-state actors before, during and after elections, in conflict or war situations, which threatens peace, security and well-being of any person or the nation as a whole.³⁷ The Act provides that the Court shall award appropriate compensation to the victim as it may deem fit in the circumstance³⁸.

The Act covers most of the forms of violence that have become prevalent in Nigeria over time. These ranges from rape and other sexual violence³⁹, psychological violence; harmful traditional practices⁴⁰ and socio-economic violence⁴¹. The identities of victims of offences under the Act are also to be protected.⁴² The Act provides extensively for protection order. A protection order according to the Act is an official legal document, signed by a Judge that restrains an

³⁵ (as amended) Section 38 of Violence Against persons (Prohibition) Act provides that: In addition to the rights guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 or any other international human rights instruments to which Nigeria is a party, every victim of violence as defined in this Act, is entitled to the following rights; (a) to receive the necessary materials, comprehensive medical, psychological, social and legal assistance through governmental agencies and/or non-governmental agencies providing such assistance. (b) Victims are entitled to be informed of the availability of legal, health and social services and other relevant assistance and be readily given access to them.

³⁶ Sections 2, 4 5, 6 & 7. These provisions are similar to those of Sections 1-5 of the Anti Torture Act, 2017

³⁷ Section 46 Violence Against Persons Prohibition Act, 2015. Also in L. Ogunde, (2015) Law, Societal Practice and Rights Protection In Nigeria: The Violence Against Persons Act (Vapp) 2015 In Context accessed at <https://www.academia.edu/37653280> on Saturday 6 June, 2020 7am

³⁸ Sections 26 and 43

³⁹ Section 3, 4, 18 and 19

⁴⁰ Section 7

⁴¹ Section 6

⁴² Section 30

individual or state actors from further abusive behaviour towards a victim⁴³. It is submitted that the Act is a very laudable one as it curtails and mitigates the abuse of persons both in public and private spaces; it also shows that the Act is both protective and preventive in its measures. Despite the fact that the Act is a piece of legislation that addresses the concerns of civilized conduct and protection of the person from violence, it has an obvious inadequacy and drawback. The drawback is to be found in the limits of its application to the Federal Capital Territory, (FCT) Abuja and thereby making the High Court of the FCT, Abuja as the only court with jurisdiction to hear and grant any application brought under it.⁴⁴ The National Assembly in its wisdom made the Act superior to all other Acts concerning violence against the person in Nigeria.⁴⁵ Unfortunately it failed to observe that acts of violence occur daily and everywhere in Nigeria, and not only in the FCT, Abuja. This also may have been reason for the low level of implementation of the fine provisions of the Act five years after it came into effect since it is limited in territorial application.

It is further submitted that it is better that the defect be cured by the various State legislature enacting similar provisions in their laws. This will ensure wider application and implementation and check growing violence in Nigeria as a whole. It is also heartwarming that the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) which is mandated to provide protection and rehabilitation for victims of human trafficking under the Trafficking in Persons (Prohibition) Enforcement Act 2003⁴⁶ is also saddled with the responsibility of regulating the implementation of the exhaustive provisions of the Act⁴⁷.

⁴³ Sections 32 and 33

⁴⁴ Sections 27 and 47

⁴⁵ Section 45 These sections have the effect of a consequential amendments to the Criminal Code and the Penal Code Acts

⁴⁶ Re-enacted as the Trafficking in Persons (Prohibition) Administration and Enforcement Act 2015

⁴⁷ Section 44

Experience from Other Jurisdictions

Several jurisdictions have, along with the United Nations, enacted legislations or created programmes for victims of crime to ensure a balance of treatment between the offender and the victim⁴⁸.

The legal practice concerning compensation of victims adopted by several countries such as Australia, the United Kingdom, India, and the United States of America tilts towards establishment of a State victim's compensation or victim protection fund and the lessons that each had learned from the experience of other countries.

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

The United Nations through its General Assembly⁴⁹ recognized that people all over the world often suffer harm as a result of crime and the abuse of power. It recognised that the rights of victims have not been adequately recognised and that frequently their families, witnesses and others who aid them are unjustly subjected to loss, damage or injury. The Declaration proposes establishment of a National fund for providing compensation to victims and for payment of monetary compensation to the victims in two ways, namely, from within the amount collected from the offender in the form of fine or alternatively from the State fund to be created for this purpose. It is submitted that the declaration is indeed a far-reaching document as it effectively fills the gap found in the relevant sections of the Administration of Criminal Justice Act 2015 on interpretation of who a victim of crime is. It defined a victim of crime to be regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation⁵⁰. The Declaration should therefore serve as an effective guide to criminal justice actors in Nigeria and should create

⁴⁸ The United Nations Convention on Justice and Support for Victims of Crime and abuse of Power, 14 November, 2006

⁴⁹ 29 November, 1985 by Resolution GA/RES/40/34)

⁵⁰ Principle 19

the basis for inclusion of the definition in subsequent amendments to the ACJA, and the Violence Against persons Prohibition Act.

The Rome Statute of the International Criminal Court (ICC)

The Rome Statute of the International Criminal Court (ICC) considers matters of compensation or reparations for victims of crime as a human right concern. It mandates State parties to treat the application and interpretation of law pursuant to Article 21 to be consistent with internationally recognized human rights. The basis for this is that most of the crimes that the ICC deals with also constitute a breach of international human rights law. It offers a universal model on how a criminal justice system can protect legitimate rights of victims of crime without prejudicing fair and impartial trial of the defendant⁵¹.

Australia

The Australian position on compensation for victims of crime is by implementing the United Nations Declarations on the Right of Victims of Crime and Abuse of Power⁵². This was done through the Criminal Injuries Compensation Act 1990 and the Victims of Crime Service which provides hospital based care, sexual assault referrals to hospitals and child protection care and support services. Victims of crime can apply for compensation to reimburse their out of pocket expenses, such as medical or funeral costs, and/or for a lump sum payment that can be used for any purpose.

The amount of compensation that a victim of crime might receive in Australia however varies between the respective states, to the extent that a victim of a similar crime may receive different amounts of compensation, depending on where the compensation application is considered⁵³. The New South Wales Guidelines on Victims Compensations made under the Victim's Rights and Support

⁵¹ SA Khan., *Rights of the Victims-Reparation by International Criminal Court*, (1 A.P.H. Publishing Corporation, (2007)

⁵² Charter of Victim's Rights, Commonwealth Law Bulletin [657-859] [16] 199

⁵³ John. R. *Victims of Crime, Plea Bargain, Compensation, Victims Impact Statement and Support Services*, (Briefing Paper No 10.02, New South Wales Parliamentary Library Research Services 2002)

Act provides one such example⁵⁴. In New South Wales, the law allows victims of crime to be compensated with public funds,⁵⁵ and it is not necessary that a conviction for the offence must have been entered before compensation may be claimed⁵⁶. This is because under Victim's Rights and Support Act, compensation can be claimed in relation to an act of violence and the definition of an "act of violence" extends to conduct of a person that would constitute an offence were it not for the fact that the person cannot, or might not, be held to be criminally responsible for the conduct because of the person's age or mental illness or impairment⁵⁷.

The United Kingdom (UK)

The United Kingdom's provision for victims of crime is in general terms welfare-based and provides opportunities for support rather than enforceable rights⁵⁸. The UK is renowned to have introduced the concept of statutory compensations for criminal injuries and the rights of victims of crime in 1964. It subsequently included these rights in the Criminal Justice Act 1988 and the Victims Charter of 1990⁵⁹. The Victims charter addresses the needs of victims of crime in two different ways. First, the needs are addressed through the criminal justice system by virtue of the Criminal Justice Act and, the Criminal Injuries Compensation Scheme and also through a system of voluntary network of support schemes, the most visible of which is the Victim Support Schemes (VSS). Far reaching reforms have also taken place in England through enactments like the Powers of the Criminal Court Sentencing Act, 2000 which modified earlier laws and gave the criminal courts power to make compensation orders. In 2008, the UK also enacted the Criminal Injuries Compensation Scheme (2008).

⁵⁴ Victim's Rights and Support Act 2013

⁵⁵ Victims Support and Rehabilitation Act, 1996

⁵⁶ This is in line with the definition of victim of crime under United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

⁵⁷ Section 5

⁵⁸ (n, 65)

⁵⁹ Great Britain Ministry of Justice ('GBMJ') (2012) The Criminal Injuries Compensation Scheme 2012 London: Stationery Office, 2012.

This Scheme was made by the Secretary of State under the Criminal Injuries Compensation Act (CICA) 1995⁶⁰.

Under the CICA, applications are received for the payment of compensation in respect of, persons who have sustained criminal injury⁶¹. The intention of these financial awards is threefold. Primarily, they are intended to give recognition to the fact that physical or mental injuries have been caused by a crime. Secondly, they are intended to compensate for lost earnings or any extraordinary expenses incurred as a result of that crime, and finally they are also intended, in certain circumstances, to compensate, a close relative of a Victim of violent crime for their own lost earnings⁶².

India

The Constitution of India as well as the Code of Criminal procedure,⁶³ provides safeguards for victims of crime⁶⁴. Compensation can be sought by the victim of a crime by referring to these provisions and an Order for compensation would be made by the Court. The award of Compensation for victims of crime in India is made for material as well as non-material damages. Material damages include medical expenses, loss of livelihood. Non-material damages include pain, suffering and mental trauma.⁶⁵ When an accused person is convicted of the offence charged and the court passes its sentence, and order which contains a fine, the court can order that such fine or any part of it be paid to the victim of crime.

Where the compensation sought is beyond the jurisdiction of the court, the court can on its own order the appropriate court to look into the matter. When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the

⁶⁰ "Criminal Injuries Compensation Scheme" available at: <http://www.comepnsationculture.co.uk.criminalinjuries-compensation-scheme.html> 46 accessed Thursday 4 June 2020

⁶¹ Sections. 26-29 of the Criminal Injuries Compensation Act, 2008

⁶² [http://www.justice.gov.uk/downloads/guidance/compensation-schemes/cica/am-i-eligible/Criminal %20Injuries%20Compensation%20Scheme%202008.pdf](http://www.justice.gov.uk/downloads/guidance/compensation-schemes/cica/am-i-eligible/Criminal%20Injuries%20Compensation%20Scheme%202008.pdf) 48

⁶³ Sections 357, 357(1), 357 (2), 357 (3), 357A, 358, 359 and 250 of the Code of Civil Procedure 1973.

⁶⁴ Article 14 and 21

⁶⁵ Report of Committee on Reforms of Criminal Justice System. (Ministry of Home Affairs, Government of India.[1] (2003)

accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. India also has a Victim Compensation Scheme which was established in 2009. The scheme has the primary objective of making funds available for the purpose of making compensations to victims of crime or their dependents who have suffered loss or injury as a result of the crime and who require rehabilitation⁶⁶. Either the lawyer representing the victim or the victim can directly apply for the compensation.

The United States of America (USA)

The protection of the rights of victims of crime in the United States is covered both under Federal Statutes and State Laws. Examples of the Federal Statutes include, the Victims and Witness protection Act⁶⁷; the Victims of Crime Act, 1984, Crime Control Act⁶⁸ and the, Victims Right and Restitution Act⁶⁹; Violent Crime Control (Law Enforcement) Act⁷⁰ and the Mandatory Victims Restitution Act⁷¹. Different States in the USA have also enacted laws that provide for compensation and restitution to victims of crime.

The State of California, for example, enacted a law on victim's compensation and restitution which provided for costs relating to physical injuries, mental health, counseling, lost wages, loss or damage to property⁷². The substantive provisions of both the Federal Statutes and the State laws focus on fair treatment of victims and witnesses in the criminal justice process including the use of victim impact statements in investigative and presentencing reports and the consideration of the interest of victims in making decisions for bail..

⁶⁶ A Anusree <<http://ijldai.thelawbrigade.com/wp-content/uploads/2016/01/AnusreeA.pdf> Right To Compensation f Victims of Crime In India: Need For A Comprehensive Legislation.> Accessed at <https://blog.ipleaders.in/compensation-victim-crime-india/> 3:57 pm Thursday, 4 May, 2020.

⁶⁷ 1982

⁶⁸ 1990

⁶⁹ 1990

⁷⁰ 1994

⁷¹ 1996

⁷² *People v. Moser* (1996). 50 Cal.App.4th 130,135

Conclusion

A discussion on crime and punishment is likely to be fragmentary without reference to those affected by the crime in question. It is significant that the most basic link in a crime, that is, the victims of crime are mostly relegated to the background in the criminal justice processes and suffer both physical harm and economic losses as a result of the neglect. This article found that despite provisions on compensation, restitution and restoration for victims of crime in the ACJA, 2015, the EFCC Act and Violence Against Persons (Prohibition) Act, 2015, these provisions are often ignored or insufficiently applied by criminal justice operators to address the rights of victims of crime in Nigeria. This article further found that government finds no need to establish state funded compensation schemes because the law already provides redress in civil claims for damages. This, therefore, calls for reconsideration of the current implementation of the provisions on compensation for victims of crime in Nigeria. This article draws the attention of all actors in the criminal justice system to make more positive responses by keeping victims better informed, improving social service for them and awarding compensations or making restitution more frequently and appropriately.

This article also calls for more participation of the victims of crime in the criminal trial process, including applications for bail, plea bargains and for the courts to take matters concerning compensation for victims more seriously during the sentencing processes especially now that the ACJA has clearly demarcated the sentencing process from trial proceedings. Towards these ends, the article recommends legislation along the lines of what is contained in the Rome Statute of the ICC. More examples of the good practices can also be taken from what operates in the New South Wales Guidelines on Victims Compensations for adoption by Nigeria for its her best practices on compensation of victims of crime in order to facilitate fair and effective compensation for victims of crime.