

## DECONSTRUCTING THE BARRIERS TO ACCESS TO JUSTICE BY CRIME VICTIMS IN THE NIGERIAN CRIMINAL JUSTICE SYSTEM.

DR. UWAKWE, FIDELIS C.\*

### Abstract

Nigeria today more than ever is replete with high profile cases of criminalities. These include but are not limited to: murder, robbery, kidnapping, rape, child-trafficking, insurgency, banditry, theft, youth's restiveness, fraud, electoral malpractices/irregularities, corruption etc. Crimes such as these have the capacity of consuming any given society where they are found. Victims of these crimes are usually helpless and hopeless as the Judiciary which they look up to as the last hope of the common man appears also to be helpless as it is not tackling the situation head on. Victims of crime in their efforts to get justice also face other challenges such as finance as they bear the cost of coming to court to give evidence, lack of protection from the State during the prosecution of their case, undue delay in justice dispensation (as justice delayed they say, is justice denied) . This paper seeks to unearth the multifarious challenges facing victims of crimes in Nigeria. The approach adopted in this paper is doctrinal. It concludes that unless the Nigerian criminal justice system is retooled, re-jigged, overhauled and reinforced, Nigeria might be overwhelmed by these vices and thereby rendering her lawless where survival would be for the fittest.

### Introduction

It has been argued that crimes are inevitable in human society and that they have become issues of life which we must expect, face squarely and devise a means to keep them at check as much as we can. Nowadays, there is a rising trend of serious and violent crimes going on in our world in such a way that our society is sadly no longer safe for human habitation. In Nigeria, for instance, the level of criminality, to say the obvious, has reached a very worrisome proportion. Anybody, no matter how highly or lowly placed, can be a victim of crime any time in Nigeria as has shown by events. Insurgency, assassination, banditry, theft, armed robbery; kidnapping and sundry crimes are now the order of the day. We now live in an era of intense criminality where no one, including government officials, is free to move around in the Country without fear of being a victim of crime. Recently, a judge of the Court of Appeal, Benin Division, Justice Chioma Nwosu-Iheme, was kidnapped by reckless dare-devil gunmen in the early hours of Wednesday 30<sup>th</sup> October, 2019 in Benin City, the capital of Edo State<sup>1</sup>. The police orderly, Inspector A.I .Momoh, was also killed by the gunmen before whisking the Judge away to an unknown destination. The case of the Court of Appeal Judge is just one out of the many cases of heinous crimes going on in the Country. The old criminal justice jurisprudence or system<sup>2</sup> in Nigeria as

---

\*Dr. Uwakwe, Fidelis C. Lecturer, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam Campus, [uwakwefidelis@yahoo.com](mailto:uwakwefidelis@yahoo.com), 08033921593, Theophilus Williams Nwoke, LL.B, LL.M, Ph.D in view, Legal Practitioner, Sammy Sparkle Complex Obunagu Rd. Awka. 08195251994

<sup>1</sup> <https://m.guardian.ng/news/gumen-kidnap-appeal-judge-kill-police-orderly-in-edp>. Accessed 1/11/2019.

<sup>2</sup> Criminal Procedure Act Cap 43 Laws of the Federation of Nigeria 1958, now cap C41 Laws of the Federation of Nigeria 2004, had general application throughout Nigeria until after Independence. It governed criminal proceedings in Southern Nigeria. The criminal procedure code Cap 30 Laws of Northern Nigeria, 1963, was enacted by the Northern government of Nigeria in 1963 to govern and regulated criminal proceedings in the

has been observed, tend to focus and emphasis more on the offender or accused person while the victim of crime is completely neglected or abandoned to his or her fate.

According to the United States President's Commission on Law Enforcement and Administration of Justice, one of the neglected subjects in the study of crime is its victim<sup>3</sup>. From the moment of arrest to the period of sentencing, the Laws and even government interests are concerned mainly with the offender or accused person. Although the trial is initiated by the victim and relies solely on the victim's participation for its success, it offers little direct relief to the victim<sup>4</sup>.

The old criminal justice system is structured in such a way that it is mostly punitive than restrictive and at such, its operators are unaffected and insensitive to the plights of victims of crime. In the Nigerian criminal justice system, the victims of crime are left to seek remedy or redress in Separate Civil Suits which often involve costly proceedings. While still in severe pains, the crime victim as a matter of law, is bound to appear in court sittings and proceedings at his or her own cost.

The Administration of Criminal Justice Act<sup>5</sup> which was passed into law recently, came into being to radically overhaul the Nigeria criminal justice system and correct the many shortcomings of the old justice system. However, it has been unfortunately observed from the provisions of the Act that great attention is devoted to the welfare of offenders/accused persons than the victims of crime just like the old Criminal Justice System. Although the Administration of Criminal Justice Act, 2015 provides for compensation<sup>6</sup> as a way of ameliorating the sufferings of victims of crime, such provisions are discretionary and are subject to the order of the court.

Developed countries like the United Kingdom, the United States of America, Australia and Canada have evolved the progressive view that positive steps should be taken to give adequate and prompt compensation to victims of violent crimes<sup>7</sup>. It is perturbing that the Nigerian Criminal Justice System has not yet paid enough attention to this positive view as obtain in other climes to the discomfort of the crime victims.

---

Northern Region. The Criminal Procedure Code Act Cap 491 Laws of the Federation of Nigeria 1990 governs criminal proceedings in the Federal Capital Territory, Abuja. The enactments focused on the offenders than the victims of crime.

<sup>3</sup> Marek, A.E. (1984) "Crime Victim and Criminal Justice Administration" in the World Society of Victimology Newsletter (1983/84)G.J.I.S.S. vol.3.(5)48-52(September-October,2014)

<sup>4</sup> Opara, L.C., (2014). The Law and Policy in Criminal Justice System and Sentencing in Nigeria. International Journal of Asian Social Science, Asian Economic and Social Science, Vol 4(7): 886-897,July

<sup>5</sup> Administration of Criminal Justice Act, 2015 was signed into law in May, 2015. The law repealed the erstwhile Criminal Procedure Act as applied in the South and the Criminal Procedure Code which applied in Northern Nigeria.

<sup>6</sup> Section 319 of the Administration of Criminal Justice Act, 2015.

<sup>7</sup> Siegel, L.R. (2005) Criminology: The Core. U.S.A: Belmont, CA: Thomson Wadsworth, @ 2005.

## Conceptual Explanations

### Crime

There is no uniformity or generally accepted definition of crime. This lack of uniformity in the definition of crime can be observed from the remarks made by Nathalie Des Rosiers and Steven Bittle:

To ask “what is a crime?” is certainly not a novel endeavour. For decades, academics from numerous disciplines (such as law, sociology, and criminology) have struggled to understand various aspects of this question. From studies that examine the factors contributing to the enactment of certain prohibitions or the impact of law and its enforcement, to studies that focus on the events that precede the decriminalization of certain behaviour, there are countless examples of scholarly work dedicated to exploring the nature of crime and its control. In the last half of the twentieth century, various scholars noted that crime is not an objective phenomenon and that the way in which certain behaviour is understood and responded to, is more a reflection of how society is structured than an indication of any inherent problems with those individuals regarded as criminals<sup>8</sup>.

The transient nature of crime is what that makes it difficult to achieve a precise and satisfactory definition despite many attempts by jurists<sup>9</sup>. This is so because what counts as crime at one place and time, culture, or location may not be considered criminal at another time, in another culture, or even across the street<sup>10</sup> The word: “crime” is synonymous with offence”<sup>11</sup>.

The Black’s Law Dictionary defines crime as “an act that the law makes punishable, the breach of a legal duty treated as the subject matter of a criminal proceeding”<sup>12</sup>. In his book, C.O. Okonkwo<sup>13</sup> stated that it is not easy to define a crime so as to indicate from the nature of the Act precisely what is crime and what is not a crime. Any definition of a crime based on the intrinsic quality of an act is bound to fail<sup>14</sup>. Writing further on this, C.O. Okonkwo<sup>15</sup> equally maintains that in both criminal and penal code, the word “offence” rather than “crime” is used, and would

---

<sup>8</sup> Law commission of Canada (ed.), what is Crime? Defining criminal conduct in contemporary society, UBS Press, Vancouver-Toronto, 2004, P. viii, in [www.rdo-olr.uottawa.ca/index2.php?option=com-sobiz](http://www.rdo-olr.uottawa.ca/index2.php?option=com-sobiz). Accessed 10/11/2019.

<sup>9</sup> Glory Nirmala, K. & Serkaddis Zegeye I, “The concept of crime” in [www.abyssinianlaw.com/index.php/study-online](http://www.abyssinianlaw.com/index.php/study-online); Accessed 10/11/2019.

<sup>10</sup> Henry, S., & Lanier, M. What is crime? Controversies over the Nature of crime and what to do about it. Rowman and Littlefield Publishers, New York, p.7.

<sup>11</sup> Doherty, O. (1990) Criminal procedure in Nigeria (London: Blackstone Publishers) p.1.

<sup>12</sup> Garner, B.A(ed), (2004) Black’s Law Dictionary, 8<sup>th</sup> ed., West Publishing Company, U.S.A, p. 399.

<sup>13</sup> Introduction to Nigerian Law

<sup>14</sup> Okonkwo, C.O, (1980) Introduction to Nigerian Law, Sweet & Maxwell, London: p.212.

<sup>15</sup> Okonkwo and Naish on Criminal Law in Nigeria

appear to be used interchangeably, and that even the courts use both terms interchangeably.<sup>16</sup> The Nigerian constitution while referring to what should be regarded as a crime provides that:

“Subject as otherwise provided by this constitution a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a Law of a state, and subsidiary legislation or instrument under the provisions of a law<sup>17</sup>.”

The principle that whatever will amount to a crime must be founded or rooted in the Nigerian Law, came to limelight in the celebrated case of *F.R.N v Ifehgwu*<sup>18</sup> where the Respondent was one of the accused persons arraigned and tried before the Failed Banks Tribunal, Lagos for fraudulently granting credit facilities.

The court of Appeal which the case was referred to held that there is no crime known to Nigerian Law as “fraudulently granting credit facilities” and that conviction on a crime which is unknown to law is unconstitutional and must not be allowed to stand. The Supreme Court also affirmed this decision when it held that neither the constitution nor the Failed Bank Decree No 25 of 1994 was meant to be retroactive. In summary, therefore, a crime is whatever the Nigerian law says is a crime. A crime must be founded and rooted in Nigerian Law before it can be properly so called. In other words, a crime becomes a crime when it is so called or regarded by a written law as a crime.

### **Victim of Crime**

A victim of crime refers to a person who suffers a threatened or actual physical, emotional, or financial harm as direct consequences of delinquent act or crime. The Black’s Law Dictionary<sup>19</sup> defines a victim of crime as a person harmed by crime, tort or other wrong. Writing on the topic, Fattah<sup>20</sup> stated that “any person or category of individuals-when hit by crime – most readily are given the complete and legitimate status of being a victim”.

For Justice Karibi Whyte, victim of crime refers to any person, dependent or institution who has suffered injury from the criminal act of the offender who has been found guilty in such acts<sup>21</sup>. In the United States of America, there exists an Act<sup>22</sup> that provides for the rights of the victims of crime. The Act enumerates the rights afforded to victims of crime in federal criminal cases as follows:

---

<sup>16</sup> Okonkwo, C.O. (2005) *Okonkwo and Naish on criminal law in Nigeria*, 2<sup>nd</sup> ed., spectrum Books Ltd, Ibadan: pp.18-19.

<sup>17</sup> Section 36(12) constitution of the Federal Republic of Nigeria 1999 (as Amended)

<sup>18</sup> *F.R.N V Ifegwu* (2003) 15 NWLR (pt 842) 113.

<sup>19</sup> Garner, B. *Blacks Law Dictionary*, 8<sup>th</sup> Ed, St. Paul MMN West Publishing Co. (2004), p. 1425

<sup>20</sup> Fattah, E.A. (1986) *From Crime Policy to Victim Policy: Reorienting the Justice System*. London: Macmillan Press Ltd.

<sup>21</sup> Whyte, K. (1990) “National Policy on Compensation to victim of crime. How Desirable”. Federal Ministry of Justice, Lagos.

<sup>22</sup> The Crime Victims’ Rights Act, 18 U.S.C. s 377 1, is part of the United States Justice for All Act of 2004, Pub. L. No. 108-405, 118 stat.2260 (effective Oct. 30, 2004).

1. The right to be reasonably protected from the accused.
2. The right to reasonably, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
3. The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
4. The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
5. The reasonable right to confer with the attorney for the Government in the case.
6. The right to full and timely restitution as provided in law.
7. The right to proceedings free from unreasonable delay.
8. The right to be treated with fairness and with respect for the victim's dignity and privacy.

From the foregoing, it can be observed that the rights of victims of crime are provided for and protected under the American Criminal Justice System. The law does not only provide for the protection of the victim of crime during trial but also provides appropriate and timely restitution.

In South Australia, the rights of victims of crime are recognized under the law. Family members or witnesses can also be victims of crime if they suffer emotional distress under the Australian Law. The victims of crime Act, 2001<sup>23</sup> establishes the principles that govern how victims of crime are treated, including the requirement that victims are to be treated with respect and compassion and afforded the right to recover their property.

These principles which are commonly referred to as victims' rights, require compliance from all persons including Government officials and agencies. There is also in Australia a Commissioner for Victims' Rights who assists victims dealing with the criminal justice system and government agencies. The Commissioner helps to provide information, support and advice to people who are victims of crime and their families and friends to deal with the emotional, physical and financial impact of crime.

### **Victims of Crime in the Nigerian Criminal Justice System and barriers to access to Justice**

In Nigeria, when a crime is reported by a victim of crime to the authorities, investigation is always commenced and the suspect will be charged to court afterwards. Although it is an individual that a crime is committed against, the State always takes it up as a crime committed against the State. Criminal proceedings are commenced by the State usually by or on behalf of the Attorney-General, the police, or any other person or authority recognized by law as having the authority for enforcement of public rights to commence criminal proceedings<sup>24</sup>. When trial commences, the victim of crime plays seemingly passive role of a witness by coming to give his or her testimony in the court. Writing about the role played by victim of crime and the challenges he faces.

---

<sup>23</sup> The victims of Crime Act, 2001 repealed the Criminal Injuries Compensation Act, 1978 in Southern Australia.

<sup>24</sup> See sections 174 & 211 of the 1999 constitution of Nigeria (as amended); section 23 of the Police Act, section 59 of the Criminal Procedure Act as well as section 143 of the Criminal Procedure Code.

Dambazzau<sup>25</sup> stated that:

“The crime victim is an observer or a passive participant in the criminal justice process. He is always represented by the state, and as such acts as a prosecution witness. He is rarely consulted in any decision-making during the process. However, emphasis is so much laid on the rights of the accused, who enjoys some fundamental protection in order to ensure fair trial. The victim of crime does not enjoy such legal protection, and in fact, he is made vulnerable to the other victimization whenever he stands as a prosecution witness”.

In the Nigeria Criminal Justice System, victims of crime suffer the effect of personal injuries, damage or loss of property etc. They are made to cope not only with emotional trauma but also with intensive investigation and legal processes. They are bound to attend court proceedings at their own cost or expense. Sad still is the fact that there is no protection for them during trial in which they stand as witnesses. Cases abound where victims of crime got killed while trial is ongoing. While victims of crime in Nigeria face all these barriers/challenges, the offenders or accused persons enjoy avalanche of constitutional safeguards<sup>26</sup> geared towards ensuring fair trial for them. Victims of crime are hardly consulted in making a decision in the case which they are victims. The prosecution, most times abandonee the case or take other shocking decisions about the matter without even seeking the opinion of the crime victim. This has resulted in lack of faith by victims of crime in the administration of criminal justice in Nigeria, particularly the police and the courts. The general ineffectiveness of the Nigeria Criminal Justice Administration coupled with trial delays, have given birth to a growing tendency for victims of crime to take laws into their hands.

In the Nigerian Criminal Justice System, there is unfortunately no adequate machinery or framework for providing any compensation for the emotional/psychological transmit, or harm suffered by victims of crime as obtains in other clime. Even where the Administration of Criminal Justice Act 2015 provides for award of compensation<sup>27</sup>, it is left at the discretion of the court, and where court awards such, it serves as a bar to any civil claim for compensation by the said victim.

Quoting Prince Bola Ajibola on this issue, Adetibas<sup>28</sup> wrote that there has always been a serious dearth of provision within our legal system to guarantee the rights of the victims and there is need to design procedures and institutional framework needed to ensure that a victim can obtain adequate compensation where he suffers harm, injury or damages as a result of commission of crime. The United Kingdom which Nigeria copiously copied from her legal system, has long recognized the need for improved treatment of victims of crime and provided a means of supporting them to ameliorate their condition. This the country has done by creating and hugely

---

<sup>25</sup> Dambazzau, A.B. (1999) *Criminology and Criminal Justice*. Kaduna: Nigeria Defence Academy Press p. 129-130.

<sup>26</sup> See sections 34, 35, and 36 of the 1999 constitution of the Federal Republic of Nigeria (as amended)

<sup>27</sup> See section 319 of the Administration of Criminal Justice Act, 2015.

<sup>28</sup> Adetibas, S. (1990) *Compensation and Remedies for Victims of Crime in Nigeria*, Lagos: Federal Ministry of Justice Publication.



funding<sup>29</sup> support groups which render services such as counselling, applying and obtaining compensations for victims of crime, crisis intervention, emergency care, etc. Aside provisions made by foreign jurisdictions such as the United Kingdom, New Zealand, America etc to address the problems of victims of crime, the United Nations through the United Nations Declaration of Basic principles of Justice for Victims of Crime and Abuse of Power<sup>30</sup> has made provisions for the advancement of the cause of victims of crime by member states.

Article 13 of the declaration provides that:

“Where compensation is not fully available from the offender, states should endeavour to provide financial compensation to:

- a. Victims who have sustained significant bodily injury or impairment or physical or mental health as a result of serious crime,
- b. The family, particularly dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization”.

### **Observation and Conclusion**

It is crystal clear, from the forgoing, that there are alot of challenges militating against access to justice by victims of crime in Nigeria, some of which if not all are occasioned or caused by the nature of our criminal Justice system. It is observed that the law does not appropriately provide for the welfare, protection and compensation of victims of crime and even where it does, it is grossly inadequate and a far cry from reality. There is therefore a need now more than ever for an overhaul in the Nigerian Criminal Justice system so as to protect the interest and welfare of victims of crime.

### **Recommendation**

From the observations made above, the paper recommends the following:

1. The constitution should be amended so as to make provisions for the protection and safety of the victim of crime during trials just the same way it provides for the rights of Accused persons standing trial in court.
2. A commission to be known as Victims of Crime Commission headed by a commissioner should be created and funded by the Federal and State Government to render support and services to victims of crime. This will take care of the welfare of victims of crime in Nigeria.
3. An Act to be called Victims of Crime Rights Act should be enacted to provide for the rights and obligations of victims of crime in Nigeria. It will avail the victims of crime the opportunity to know more of what are their rights and obligations under the law.

---

<sup>29</sup> Maguire, M., and Shapland, J., (1990) “The Victim Movement in Europe”, in victims of crime; problems, policies and programs (Lurigio, A., Skogan, W., Davis, R., eds).

<sup>30</sup> G.R. Res. 40/43 UNGA or Supp (No 53)