

AN APPRAISAL OF THE RIGHTS OF THE VICTIMS OF CRIME IN THE ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA*

Abstract

In administration of criminal justice system in Nigeria, victims of crime are faced with the problem of inadequate compensation. No doubt, In Nigeria anybody could be a victim of crime, and the society is exposed to a high level of criminality which calls for effort to tackle the trend and alleviate the plights of the victim of such violent crime. The underlying principle in the promotion of rights of the victim of crime is to ensure that they are assisted in recovering from the trauma of criminal violations. Therefore, this paper examined the administration of criminal justice system in Nigeria whether the existing provision on compensation and restitution orders are satisfactory or adequate in our present-day society. Whether there is any legal framework in existence that ensures that a victim of crime obtains adequate compensation where such victims suffer harm, injury or damages as a result of commission of crime by another. Are there other options for these victims to alleviate their problems as monetary compensation may not be the only solution? On a daily basis, different crimes are committed and at times the offenders are neither found nor arrested. The salient question is what happened to a victim of crime who is a party in the Nigerian criminal justice system at the end of the criminal trial.

Keywords: Rights of Victim, Crime, Administration of Criminal Justice, Compensation, Justice.

1. Introduction

Crime is principally regarded as an act against the State even though the direct act or omission is committed against individuals within the State. This feature distinguishes a crime from a civil wrong, tortuous act or plain human rights violation. The abstract view of crime as an act against the State seems to underestimate the fact that victims of crime are the direct recipients of the act and are largely affected by crime in different ways. Some victims may suffer emotional and mental injury in addition to physical and financial injuries as a result of crimes perpetuated against them. The State embodies the rights and concerns of the victim and acts in the interest of the public, the victim inclusive. The aim of this paper is to appraise the existing legal protection for Victims of Crime in Nigeria. The researcher adopts doctrinal legal research method with the using of Statutes, Case Laws, test books, Journal articles and internet materials. The researcher found out that there is no adequate Legal Framework for compensation of victims of crime in Nigeria, consequently upon the above, the researchers recommend a legislative and institutional reforms to ensure that victims of crime are adequately compensated in Nigeria. The victim is subjugated to the supporting role of a witness, acting in concert with the State to ensure criminal justice.¹ By relegating victims to the position of mere witnesses in the criminal justice process, the system de-emphasizes the personal nature of the victims' experience and seems to amplify the common goal of public good and safety. The State absolutely owns the criminal justice process and absorbs all the rights of the victims in its overarching role of protecting public interest and punishing the offender. This may reinforce a discriminatory position against the victim in comparison to the offender where the victim's rights are overlooked or subservient to those of the offender, the Constitution of the Federal Republic of Nigeria makes extensive provisions for the pre-trial, trial and post-trial rights of the accused.² If the offender has such highly protected and entrenched rights by the virtue of their position, what about the victims? Do victims of crime have exercisable rights by virtue of their position? What provisions are there in the Nigerian criminal justice system for victims' rights? This paper attempts to examine the questions raised above and provide answers to them in the light of provisions of the existing Legislations on protection of victims of crime in Nigeria.

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¹ Elizabethhh Ama Oji, 'Compensation for Victims of Crime in the Nigeria Criminal Justice System: The need to follow International Trend' (2015) 18:1 Nigeria Law Journal 126

² CFRN 1999 SS.35 &36

2. Nature of Victims of Crime in the Administration of Criminal Justice in Nigeria

The most apt definition of who qualifies as a 'Victim' is that provided for by the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,³ coined the Victims Declaration. Paragraph 1 of the Victims Declaration defines victims of crime as:

Persons who individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power⁴

Additionally, paragraph 2 stipulates that:

A person may be considered a victim under this declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between the perpetrator and the victim.' The term 'Victim' also includes where appropriate, 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 victimization⁵

The four primary rights of victims of crime as provided for by the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power are namely: a) Access to justice; b) Restitution; c) Compensation; and d) Assistance. With regards to this, Paragraph 4 of the declaration provides: 'Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered'.⁶ Paragraph 8 provides:

Offenders or third parties responsible for their behaviour 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 victimization, the provision of services and the restoration of rights.⁷

Paragraph 12 provides:

When compensation is not fully available from the offender or other sources, State should endeavour to provide financial compensation to:

- a. Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; and
- b. The family who are dependant of persons who have died or become physically or mentally incapacitated as a result of such victimization⁸.

Finally, paragraph 14 provides: 'Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means'.⁹

3. Rights of Victims of Crime under the ACJA 2015

The ACJA is the legislation which has been lauded by many as being an innovative Act with provisions that have brought Nigeria more in tune with global legal trends. It has a number of provisions regarding the rights of victims which will be identified below:

Right to have their identity protected¹⁰

Victims have a right to protection of their privacy and physical safety and that of their families and witnesses in support of their cause.¹¹ Victims must be protected from intimidation and reprisal attack on them and their

⁴ the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* U.N. Department of Public Information DP 1985 – August 1986, General Assembly Resolution 40/34 of 29 November 1985 at: https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf. Accessed on 30th October, 2022.

⁵ *Ibid*

⁶ *Ibid*

⁷ the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* U.N. Department of Public Information DP 1/895 – August 1986, General Assembly Resolution 40/34 of 29 November 1985 at Para. 4. at: https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf. Accessed on 30th October, 2022.

⁸ *Ibid*

⁹ *Ibid*

¹⁰ *Ibid*

¹⁰ ACJA 2015 S. 232

¹¹ Para 6 (d) UN Declaration

families. As much as it is possible, the State must ensure that inconveniences arising from their position as victims and role in the criminal justice process must be minimised. Instances where victims are shamed or stigmatised by the society or sheer embarrassment from their position as victims should be curtailed. Without prejudice to the rights of the accused, where necessary, the identity and personal details of victims may be hidden from the defendant and the public for their safety and privacy. Victim shaming is a recurrent phenomenon especially in case involving sexual offences and often keeps victims in perpetual silence or at the risk of re-victimisation, hence, it is important that the identity of the victim be protected where necessary.

Right to give consent (or not) to a plea bargain application;¹²

Plea bargaining begins with an offer either from the prosecutor or the criminal defendant. Before the prosecutor enters into plea bargaining with the defendant, he is required to first seek and obtain the consent of the crime victim or his representative.¹³ The law provides that ‘the prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence...’¹⁴

Right to recover their property forfeited as a result of their victimization;¹⁵

Apart from holding offenders accountable for their crimes, offenders must be responsible to the victims by making fair restitution to them or their family members. Restitution could take the form of return of property or restoration of the victim’s rights.

Right to restitution from the defendant for losses;¹⁶

Victims have a right to reparation for injury or harm suffered from the offender, third parties or the State, in so far as they bear criminal liability. Apart from holding offenders accountable for their crimes, offenders must be responsible to the victims by making fair restitution to them or their family members. Restitution could take the form of return of property or restoration of the victim’s rights.

Right to compensation from the defendant injuries suffered;¹⁷

Compensation could be pecuniary in nature, where the offender reimburses the victims for the expenses incurred in respect of the harm or loss he has been inflicted or victims receive compensatory sums for their injuries. Compensation is not limited to pecuniary forms but could be material, moral or symbolic for non-financially assessable damage. A victim may be offered a job, equivalent to the one he lost by reason of the crime perpetrated.

Right to have restoration of possession of any immovable property lost as a result of victimization.¹⁸

This is same as the provision for restitution. The ACJA is set to further the interest of victims¹⁹, the Act provides for the factors to be considered when delivering judgment. In this provision, there are two particular factors namely: retribution and restitution which are directly related to the victims. The former refers to taking revenge for the victim while the latter refers to compensating the victim. From this point, it can be concluded that the ACJA is indeed concerned about the victims’ interest. From rights which are accorded to victims, it is obvious that the ACJA has not truly achieved the objective set out in its section 1. Unfortunately, the dearth of cases on this subject matter has made it difficult to access the practical performance of these provisions.

4. Legal Protection of the Rights of Victims of Crime in Nigeria

The legislature in Nigeria moved with the times and reinforced this new thinking by enacting the Administration of Criminal Justice Act.²⁰ The Act 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 victim²¹. 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

¹² ACJA 2015 S. 270

¹³ *Ibid* S. 270 (2)

¹⁴ *Ibid*

¹⁵ *Ibid* S. 232

¹⁶ *Ibid* S. 314

¹⁷ *Ibid* S. 319

¹⁸ *Ibid* S. 336

¹⁹ *Ibid* S.401

²⁰ 2015

²¹ ACJA, 2015 S.401 (2) (g)

include: the Penal Code²², the Criminal Code,²³ the Administration of Criminal Justice Act,²⁴ the Economic and Financial Crimes Act,²⁵ the Advance Fee Fraud Act.²⁶ 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.

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 I imposed on the defendant, where substantial compensation is in the opinion of the court recoverable by civil suit²⁷. However, the provision on compensation in Section 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 use 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 order that the property be applied to the payment of any costs or compensation directed to be paid by the defendant²⁸. The court may also order the convict to make restitution to the victim or the victim's estate or order for the restitution o compensation for the loss or destruction of the victim's property²⁹. This forms the basis for compensation for victims of crime which include 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 property is, the issue of ownership will have to first be resolve before restoration under sections 341 and 342 will be applied.

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. 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 option to the 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.³⁰ 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 AC, it is a glaring omission that it has no provision for compensation schemes as source of funding and guarantee for payment of compensation to victims of crime in Nigeria are not provided for in the Act

Economic and Financial Crimes Commission Act 2004

By the provisions of Section 14 (2)³¹, the Commission is empowered to recover stolen proper 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.

²² 2004

²³ 2004

²⁴ 2015

²⁵ Cap E1 LFN 2004

²⁶ 2006

²⁷ ACJA 2015 SS.319 & 328

²⁸ *Ibid* S. 341

²⁹ *Ibid* S. 342

³⁰ ACJA 2015 S. 270 (3)

³¹ EFCC Cap E1 LFN 2004 SS. 11 & 16

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 provides as follows³²:

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 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 places 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 than to pursue the option in these sections. Unlike the general provisions for Compensation under the Administration of Criminal Justice Act, 2015, that compensation may be claimed for injuries which may include physical injuries sexual and indecent assault, domestic violence, psychological 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 t alleged offence involved public funds, no restoration and no compensation will be ordered as was the case in *FRN v. Joshua Chibi Dariye*³³.

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 Federal Republic of Nigeria, 1999. 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'.³⁴ 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.³⁵ The Act provides that the Court shall award appropriate compensation to the victim as it may deem fit in the circumstance³⁶. Section 38³⁷ 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 instrument 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 nongovernment 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 individual or state actors from further abusive behaviour towards 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.

³² Advance Fee Fraud and Other Related Offences Act, 2004SS. 11 & 16

³³ (2011) LPELR-4151 (CA)

³⁴ VAPP, 2015 SS. 2,4,5,6, & 7

³⁵ Ibid S. 46

³⁶ Ibid SS.26 & 43

³⁷ VAPP 2015

5. Challenges of the Rights of the Victims in the Administration of Criminal Justice in Nigeria

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 be and grant any application brought under it. The National Assembly in its wisdom made the Act superior to all other Acts concerning violence against the person in Nigeria. 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 seven years after it came into effect since it is limited in territorial application. Secondly, Administration of Criminal Justice Act 2015 provide for compensation of Victim of crime,³⁸ but did little or nothing to assist the victim. It is provided that where the convict, having been ordered to pay compensation, suffers imprisonment for non-payment, the undergoing of the imprisonment, shall act as a bar to any further action for the same injury. Furthermore, there are various crimes that engenders penalty against the offender. However, the victim is not obligated to collect the compensation, in which case his right in an action for a civil claim will depend on the ability of the convict to pay the compensation. However there are problems which includes;

1. What becomes of a victim of crime who is impecunious and cannot pursue his civil remedies?
2. What becomes of a victim of crime where the offender cannot be identified such as cases of riots and unlawful assembly where it is particularly difficult to trace the offender, and where will victim turn to for redress?
3. What becomes of a victim, where the offender is indigent and unable to pay any form of compensation?

6. Conclusion and Recommendations

Victims are more than just precursors of criminal proceedings reduced to mere addendum to the Prosecution's case. Like other jurisdictions where victims' rights are becoming more prominent and an essential feature in the criminal justice process, Nigeria ought to decentralize the accused person as the focal point of criminal justice and incorporate a victim centered approach to criminal justice by recognizing their rights. First, Nigeria must make statutory provisions on the minimum set of rights applicable to victims, broadly, regardless of the type of crime. There should be a revisit of the abandoned bills on victims' rights and passage of the victims' right bill into law. The law must make detailed provisions on the rights available to victims following the minimum standard discussed above. Second, the important criminal justice agents/authorities such as the police, prosecutor or other competent authorities should be trained to promote and enforce the rights of victims. This will help to raise awareness of the rights among victims of crime. In order to implement victims' assistance and support services, the government will have to design and establish victim support programme which will include provisions for the involvement of trained professionals and support services providers. This could be done in conjunction with non-governmental organisations with interest in victims' support. Without prejudice to the principle of non-discrimination, it is important to take cognisance of peculiar circumstances of victims of certain offences which may require specific needs uncommon to other kinds of victims. Victims of organised crimes such as terrorism, all forms of illegal trafficking and violent crimes which have trans-border dimensions could be afforded rights which address their specific needs in relation to the violations committed against them. It is recommended as follows: There is need for legislation directing the State to pay compensation to victim of crime where the offender cannot be found or found but impecunious. The justifications for state intervention include³⁹. The state is responsible for preventing crime and therefore should be made responsible for compensating the victims of the crimes it fails to prevent. There is necessity for extension of welfare doctrine that rest on the belief that people in need, especially those in needs because they have been victimized by event they could not avoid, are entitled to public aid. The State intervention is based upon the notion of an attenuated contract between the state and its citizen, and in consideration for the citizens accepting laws regulating the possessions of firearms and other weapons, restricting the victim use of force in self defence, the State agrees to compensate him in the event of his sustaining injury as a result of criminal behaviour. Their civil remedies are not likely to be successful because of the poor financial conditions and prospects of most offenders and the Criminal Law generally, makes no effort to use its sanctions to ensure restitution to the victim. Indeed it often aggravates the victim's problems by incapacitating the offender, thus preventing him from earning money to make restitution. There is need for adherence to the principles of crime prevention theory, which holds that compensation programme will encourage more citizens to report crime, thereby resulting in more effective law enforcement programmes. Equal protection theory should also guide state action, which says that compensation

³⁸ ACJA 2015 S. 319

³⁹ Nwadialo, F 'Compensation Victims of Arson and other Offenses to Property' In *Compensation and Remedies to Victims of Crime in Nigeria*. Edited by Ajibola (Federal Ministry of Justice, 1990)p/ 209

should serve to ameliorate imbalances in society, including the huge variation in crime risk that citizens living in different parts of the Nigeria faces. There should be established Federal and State Compensation Board for victims of crime. As a matter of fact, Nigeria is long overdue for the compensation board at federal and state level as obtainable in the America and U.K. This will serve as government focal point for all issues affecting crime victims across Nigeria. The private individual or NGO should also create a platform for victim of crime and work out modality on how victims of crime could be compensated or assisted. The Christians and the Muslims may embark on this in line with their religious doctrines to assist victims of crime in Nigeria.