

## THE FIGHT AGAINST CORRUPTION IN NIGERIA: A FOCUS ON VICTIMS AND THEIR RESTITUTIONARY RIGHTS\*

### **Abstract**

*One of the campaign promises of the Buhari regime is to fight corruption in all facet of the country. So far, all the anti-corruption agencies have been working hard to accomplish this aim. Chief among them is the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC). This article tries to x-ray briefly some of the requirements of the Acts establishing these agencies. The Acts provide for forfeiture and recovery of stolen resources but no mention of the restitution of the victims of corruption. In all, the pattern of fighting corruption in Nigeria is focused on the offenders, and recovered loots are turned over to the federal government. Not much is provided on the restitution of victims who own the stolen or recovered money or whose money was used to purchase recovered properties. And this is coming in an era when there are calls for a shift from criminal justice to victim justice. The deepest desire of any victim, no doubt, is to be returned back to what he used to be or would have been if that wrong was not done him. This paper tries to glance into the possibility of restitution for victims of corruption in Nigeria. It concluded that justice is not done where the offender is punished but the victim is not restituted or restored. In this light, it recommended amongst other things that where the Acts establishing the anti-corruption agencies in Nigeria did not specifically consider restitution of victims, the courts, through judicial activism should insist on the restitutive rights of the victims of corruption in Nigeria.*

**Keywords:** Corruption, restitution, reparation, anti-corruption agencies, criminal justice, victim justice

### **1. Introduction**

Nigeria was rated the third most corrupt nation of the world in 2004 by the Transparency International (T.I) in its survey of 146 countries of the world.<sup>1</sup> This came four years after Nigeria was reported to be the most corrupt nation in the world in 2000. Although this report has been greatly criticized because it was focussed only on the oil sector and later generalized, but the fact still remains that Nigeria is a very corrupt nation. Corruption has grown to be of an international concern as many nations of the world are fighting corruption in one way or the other. Corruption as is the case with many concepts generally, is hard to give a holistic definition, however, the International Monetary Fund (IMF) attempted an acceptable definition that corruption is an abuse of power or position of trust for private gains. It involves both public officers and all those who are in a position of trust in private establishments or other non-profitable institutions.<sup>2</sup> The United Nations Convention Against Corruption (UNCAC). However, felt that attempting a definition of corruption was to specifically mention specific acts which constitute corruption. This is the idea which the ICPC Act adopted when it states that 'corruption includes fraud, bribery, and other related offences'. As the ICPC Chairman Justice Emmanuel Olayinka once put it, bribery used to be the common appearance of corruption in Nigeria but this has been replaced by embezzlement, stealing of public funds, abuse of discretion, favouritism, nepotism, conflict of interest, extortion, illegal political financing, etc.<sup>3</sup>

In recent times, especially in the present political regime, there has been a renewed energy turned into the fight against corruption in Nigeria. This has necessitated in the enactment of the Corrupt Practices and Other Related Offences Act of 2002 and the Economic and Financial Crimes Commission (Establishment) Act of 2002. But of all the battle against corruption, so far, the fight seems to have been focused on the offender, the offence and the state. In all, the victims of corruption are neither protected nor offered some restitution. This article aims at discussing the restitutive rights of the victims of corruption. These are people whose common wealth has been stolen by the corrupt few who use the people's joint inheritance for their personal gains. The paper discussed briefly<sup>2q</sup> the focus of the fight against corruption. It is divided into five parts, thus, Part I gave a brief introduction of the topic, Part II discussed corruption in Nigeria and its impacts on the people; Part III was on why restitution is necessary for victims; Part IV discussed on restitution and the criminal justice in Nigeria and Part V concluded that punished alone without restitution is injustice.

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<sup>1</sup>Comments on T.I. Report on the Corruption Perception Index, 2004.

<sup>2</sup>ibid.

<sup>3</sup>EA Owolabi, 'Corruption and Financial Crime in Nigeria: Genesis, Trend and Consequence' Retired Deputy Director, International Economic Relations Department, Central Bank of Nigeria and Senior Lecturer CETEP City University, Lagos.

## **2. Corruption in Nigeria**

Corruption is a serious plague facing many countries of the world. It is a social phenomenon which consists of abuse of public offices for personal gains. It is an international challenge inherent in all countries irrespective of the height of economic development and political structure. Much depends on how individual countries tackle the menace. It may be in the extreme in some countries and minimal in others but it is present in one form or the other. The concern is on the significant damage it causes to the economy and injustice it brings to any affected nation.<sup>4</sup> Corruption undermines the people's poise in their government. It diminishes the moral authority of the government. It encourages misallocation of resources. And because government officials are gaining from corruption, they may not be forthcoming or very serious to fight the menace, thereby encouraging further injustice against the people.<sup>5</sup> Corruption heightens poverty and inequality among the citizenry. The corrupt, of course are the rich class while the victims are the poor class.

Corruption affects economic growth; it raises cost and reduces incentives which in turn affect investments. Through corruption, prices are inflated and quality of projects done is reduced. It creates heavy burden on small and medium enterprises. It shifts government spending from desired social needs like developing the educational, health and other infrastructures to wasted and unnecessary projects; and poor standard of infrastructure.<sup>6</sup> Corruption weakens internal banking systems, thereby lowering the people's standard of living generally. All these and more are some of the effects of corruption in Nigeria. It is an endemic challenge in Nigeria with its roots stemming from colonial times. The colonial authorities employed a divide and rule strategy to subdue any form of resistance from the people.<sup>7</sup> This pattern of leadership encouraged corruption so early even before the entity called Nigeria existed and this has trailed every stage of the country's development. Presently, corruption has a taproot and has become a cankerworm eating into every facet of the country's existence. The pre-colonial Africa as a whole and Nigeria in particular had and cherished certain moral and ethical values founded on the peoples culture and fear of the supernatural. The people greatly believed in honesty and chastity and there were ready sanctions against evil such as public disapproval, family shame and disgrace and possible ostracism.<sup>8</sup> It becomes worrisome to accept the belief that African countries are very corrupt without mention to how corruption crept into the continent in the first place. An average African is pure, chaste and sincere. It will be fair to say that the colonial masters taught the people to be corrupt but at the moment, Africans have grown to become more corrupt than those who taught them.

Corruption followed the people into independence and progressed steadily thereafter to what it is today. The first republic failed on allegations of corruption. This no doubt was one of the causes of the Nigerian civil war of 1967 to 1970. Even after the civil war, corruption continued and was massive all through the military era into the second and third republic as seen in the present democracy. An estimated US\$170 billion was stolen from the Nigerian treasury into private bank accounts of government officials over the years. These looted monies were carted away to the same western countries who preach corruption and who tagged Nigeria a very corrupt nation.<sup>9</sup> In expressing concern on the widespread prowl of the public treasury by succeeding Nigeria leaders, a past President of the World Bank, Wolfowitz, rightly observed that an estimated 75% of Nigerians live on less than a dollar daily, when for over 40 years now, about US\$300 billion of oil revenue has been looted away from the country. He went on to say Nigeria is a classic example of how a resource rich nation could flounder in abject poverty.<sup>10</sup> The reason for the poverty Nigerians are suffering presently is due to the corruption of the ruling class, which has infiltrated all sectors and has infected the social fabric of the nation. Corruption has slipped into social-political, religious, cultural and economic climate of the society.<sup>11</sup>

A situation where officials enrich themselves at the expense of the masses thereby bereft the people of their natural rights of survival is unfair and against natural justice. This makes the roles of anti-corruption agencies very crucial

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<sup>4</sup> Z Agu, 'Anti-corruption agencies in Nigeria and their roles' at <[www.legit.ng](http://www.legit.ng)> accessed 09/11/19.

<sup>5</sup> Owolabi, supra, note 3.

<sup>6</sup> ibid.

<sup>7</sup> Yakinseye-George, *Legal System: Corruption and Governance in Nigeria*, Ibadan, New Century Publishers, 2000, 4-12..

<sup>8</sup> OO. Odion, 'Evolving Restitutionary Rights for Victims of Crime in Nigeria: A Focus on Corruption and Fraudulent Practices', Nigerian Law Guru, available at <<https://www.nigerianlawguru.com>> accessed 9/11/2019.pdf.

<sup>9</sup> MB Owolabi, *Looting by the Ruling Elites, Multinational Corporations and the Accountants: The Genesis of Indebtedness, Poverty and Underdevelopment of Nigeria*, available at <http://visar.csustan.edu/aaba/Bakre2008.pdf>.

<sup>10</sup> ibid.

<sup>11</sup> ibid.

to development of any country. The anti-corruption agencies are legally empowered to fight corruption.<sup>12</sup> For instance, Nigeria has different anti-corruption agencies all working at various levels to achieve same purpose. These agencies include; Centre for Organizational and Professional Ethics (Cope-Africa) located at Bodija in Ibadan, Oyo State of Nigeria with its main aim being to encourage ethical values in the business sector of Nigeria. There is also the Independent Corrupt Practices and Other Related Offences Commission (ICPC) which also aims at uprooting corruption in both the private and public sectors in the country, thereby developing transparency, diligence and good governance. It particularly targets corruption in the public sector, like bribery, abuse of office, gratification etc. There is the Economic and Financial Crimes Commission (EFCC), with focus on financial crimes and advance fee fraud in all sectors, particularly on those who appear to be living above their means and there is the Code of Conduct Bureau (CCB), which fights corruption primarily in the public sector.<sup>13</sup> One of the campaign promises of the Buhari regime is to fight corruption, which many Nigerians in voting massively for him, knew would revive the lost glory of the country if he succeeds. Government so far has developed various strategies to curb the menace at all levels.<sup>14</sup> There are also others which include, the Standard Organization on Nigeria (SON), National Food and Drug Administration (NAFDAC), the Budget Monitoring and Price Intelligence Unit (known as the 'Due Process') etc. The fight against corruption first started with the promulgation of the Criminal Justice (Miscellaneous Provisions) Decree of 1966 with the intention to supplement the provisions of the Criminal and Penal Codes against corruption especially among government officials.<sup>15</sup> A special tribunal was set up by this Decree to try top civil servants and politicians suspected to have embezzled public funds. However, imprisonment and forfeiture were the most punishment imposed on the guilty by the tribunal. As is always the case with the Nigerian criminal justice system, focus is on the offender and no recourse to the victims which in this case are the poor Nigerians whom the corrupt offenders bereft of their common wealth. Restitution was not the focus as nothing was ever said on how to recompense the Nigerians of their misappropriated funds.

The issue of corruption in Nigeria has become so complex to effectively tackle. Successive governments have put measures in place to fight the menace over the years but not much has been realized so far. It all started with the promulgation of the Criminal Justice (Miscellaneous Provisions) Decree of 1966, which was meant to assist the Criminal and Penal Codes in fighting corruption among government and political officers.<sup>16</sup> With this in place, offenders were punished with prison terms if tried and found guilty. Restitution was not in the plan to fight corruption. Forfeiture was allowed but not to be utilized for the betterment of the victims but this was subject to further corruption as no tangible thing is done with it for advancement and development of the country. The 1966 Decree was followed by the re-enactment of the Corrupt Practices (Miscellaneous Provisions) Decree of 1975 which was also aimed at curbing corruption in public offices. This Decree established the Corrupt Practices Investigations Bureau and Ad hoc tribunals for the trial of offences under the Decree. Unfortunately, this decree lacked the powers to prosecute offenders.<sup>17</sup> By the second republic in 1979, both the first and second decrees became invalid and irrelevant in the fight against corruption. There was the need to address the issue of corruption constitutionally. This resulted in the establishment of the Code of Conduct Bureau pursuant to the provision of the Constitution.<sup>18</sup> Again, this enactment is geared towards preventing corruption rather than forfeiture and restitution of the victims of corruption. For instance, by that enactment, a public officer is expected to declare his assets prior to his assumption of office and after leaving office. The focus was to prevent him from stealing public funds within his tenure in office. The provisions of this enactment also forbid any form of gratification, gifts, bribes or personal aggrandizement inconsistent with his office.<sup>19</sup> The implication of this is that at the end of his tenure in office, any unfair acquisition of property that is reasonably beyond his lawful earnings while in office will be deemed stolen or acquired through corrupt practices and this will lead to forfeiture of such property or wealth.<sup>20</sup> Again, the enactment is silent on whether, the forfeited money or property will be given back to any known victim(s), for example, wherever it is known that the money or property came from either an individual or a corporation or what recovered

<sup>12</sup>Zain, *supra*, note 1.

<sup>13</sup>Ibid.

<sup>14</sup>ibid.

<sup>15</sup>ibid.

<sup>16</sup>Odion, *supra*, note 8.

<sup>17</sup>ibid.

<sup>18</sup>Part 2 of the 5th Schedule to the 1979 Constitution of the Federal Republic of Nigeria, which has been retained in the 1999 Constitution.

<sup>19</sup>The Bureau was able to indict the former Governor for running a private firm during his tenure in office. See, *Tell Magazine* of 16 February, 2004.

<sup>20</sup>Section 18 (2) of the 5th Schedule, Part II of the 1999 Constitution of Nigeria.

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funds or property could be recycled into the system for the betterment of the people. So far, all the local and foreign investments from corrupt politicians recovered by the Bureau or by the EFCC since the fight against corruption have not quite been made known to the public what they have been used for. All the loots of past and present politicians have not actually been accounted for by the government. Recently, President Buhari in response to the confusion which trailed the recovered loots as to what they are used for said that these monies were being paid into designated accounts of the Central Bank of Nigeria (CBN).<sup>21</sup> For instance, as at February 2017 alone, the EFCC recovered N500 billion and about N739 billion in November 2017. This was within two years of Buhari's assumption of office.<sup>22</sup> In a letter written to the chairman of the EFCC, Magu on the 9th of February, 2017 by the Ministry of Finance, it was said that the ministry had recovered about N91.3 billion of looted funds and since then, the Federal Government has assumed the silent mode.<sup>23</sup>

This lack of accountability of looted funds has questioned the integrity of both the Federal Government and the agencies fighting corruption in Nigeria. No wonder, from the report team of some continental assessors, who were on a month-long assessment mission to Nigeria in 2008, the African Union (AU) revealed that despite all the activities of the anti-corruption agencies in Nigeria, corruption is still endemic in the country.<sup>24</sup> It was noted that some members of the Senate and House of Representatives were conniving with the presidency, ministers and multinational corporations to convert the public treasury into their private accounts in banks abroad.<sup>25</sup> Another continental report by some African Peer Review Mechanism (APRM) experts same year, in their report concluded that 'corruption has ruined Nigeria'.<sup>26</sup> The report also stated that if the US\$300 billion, which Wolfowitz, a former President of the World Bank claimed was looted from Nigeria in four decades had been utilized for the good of Nigerians, the country would have been an excellent part of Africa.<sup>27</sup> In its conclusion, the report stated that it was disheartening for a country who is the sixth largest world producer of oil to house the third global concentration of poor people.<sup>28</sup> It is a gross injustice on the Nigerians if the monies and properties recovered from looters are not utilized for the betterment of the people. This could be by using the recovered loots to build for the people good roads, housing, health facilities, improved educational sector, a better economy generally, besides any other punishment to be imposed on looters of public funds. There is need for victim justice through the recognition of the restitutory rights of the victims of massive looting in the country.

### **3. Need for Restitution for Victims of Corruption**

Restitution is to restore what is stolen or illegally taken to its rightful owner.<sup>29</sup> The aim is to return the victim as far back as to what he would have been had his money or property not been stolen from him. Restitution and reparation are stems of the same root.<sup>30</sup> While restitution is the restoring to the rightful owner what has been stolen, reparation is the restoring to the original as much as possible what has been damaged.<sup>31</sup> Both emphasises restoration but in different ways.<sup>32</sup> Restitution is concerned with the possibility of compensating a victim for the loss suffered.<sup>33</sup> It may not necessarily according to what the victim loss but according to the benefit gained by the defendant. This is a relief established by equity based on the principle that the guilty should not be allowed to enrich himself at the expense of his victim, but should be mandated to make restitution for what he stole to the rightful owner.<sup>34</sup> According to Smith, restitution is a permissible response to unfair enrichment.<sup>35</sup> It is unfair for one to

<sup>21</sup>The Guardian, 'How we are spending recovered loots-Buhari' by Timileyin Omatana, 7th October, 2018.

<sup>22</sup>ibid.

<sup>23</sup>ibid.

<sup>24</sup>UD Enweremadu, 'Nigeria's Quest to Recover Looted Assets: The Abacha Affair', 48(2) *African Spectrum* 51-70 (2013).

<sup>25</sup>BA Oni, *Unjust Enrichment and Restitution as Mechanism for Curbing Corruption in Nigeria*, 30 JPL, 69.

<sup>26</sup>MB Owolabi, *Looting by the Ruling Elites, Multinational Corporations and the Accountants: The Genesis of Indebtedness, Poverty and Underdevelopment of Nigeria*, available at <<http://visar.csustan.edu/aaba/Bakre2008.pdf>>. accessed 11 November, 2019.

<sup>27</sup>ibid.

<sup>28</sup>APRM Report, 2008.

<sup>29</sup>Babatunde Adetunji Oni, 'Restitution and Reparation of Stolen Funds in Nigeria: An Examination of International Legal Impediments', *US-China Law Review* Vol. 14 at 549.

<sup>30</sup>MW Larry & Alton Jones, *Repatriations, Restitution, and Transitional Justice*, available at [https://fsi-media.stanford.edu/evnts/6421/85\\_reparations,\\_Restitution,\\_and\\_Transitional\\_Justice.pdf](https://fsi-media.stanford.edu/evnts/6421/85_reparations,_Restitution,_and_Transitional_Justice.pdf).

<sup>31</sup>ibid.

<sup>32</sup>Larry, *supra*, note 17.

<sup>33</sup>Chitty on Contract, London Sweet and Maxwell, 1632 (2004).

<sup>34</sup>The Conceptual Structure of Restitution for Wrongs, *The Cambridge Law Journal* 172-199 (2007).

<sup>35</sup>Smith, L.D., *The Province of the Law of Restitution* 672, 71 CAN. BAR REVIEW (1992).

benefit from another's efforts without compensation. Justice Andrekson, in *Smith v. Versanyi*,<sup>36</sup> emphasized to the effect that the principle of unfair enrichment is an unbiased notion created to cure injustices, which occur where someone contributes to the property of another without any form of compensation. The Supreme Court of North Dakota in the United States of America has come up with five rudiments to prove unjust enrichment, thus; there must be an enrichment; a resultant impoverishment; a connection between the enrichment and impoverishment; both the enrichment and impoverishment must be unjustified; and there is no lawful remedy for the victim.<sup>37</sup> In that same light, the Supreme Court of Canada recently reviewed its law in the case of *Garland v. Consumers Gas Co.*<sup>38</sup> where Justice Lacobucci confirmed that the test for an unjust enrichment must involve an enrichment of the defendant; a resultant deprivation or denial of the plaintiff; and without any lawful motive for the enrichment. It was held that the funds were a benefit to Consumer Gas because the company received the money as a delayed disbursement penalty, which it used to continue its business. The Courts went on to state that the plaintiff must prove that such enrichment was detrimental to him. Likewise, in *Foskett v. McKeown*,<sup>39</sup> it was held that the purchasers were at liberty to collect more than the premium paid because they had a proprietary right to the profits as reflected in their contribution. Also, in *Kelly v. Solari*<sup>40</sup> it was held that there must be some benefit which may be in form of some express accumulation to the recipient's assets. It could be money received, saved or converted.<sup>41</sup> In all, restitution is maintaining the status quo ante or re-establishing the situation as it existed before the wrong was committed. International law has recognised restitution as a primary remedy. The International Law Commission (ILC) Draft Articles which is still under review took a firm view on the pre-eminence of restitution.<sup>42</sup> Its Chapter II provides for the 'Rights of the Injured State and Obligations of the State which has committed an International Wrongful Act'. It specifically provides for reparation, restitution and compensation of some sort.<sup>43</sup> By those provisions, it stated that an injured State is entitled to reparation or restitution or compensation, as the case may be, from the State which has committed an international wrong. International law has made it clear that restitution is a primary remedy for all breaches. The only problem to this lies on its practice,<sup>44</sup> as was the case in *Chorzow Factory*<sup>45</sup> case where the court said that the vital rule is that restitution must, as far as possible, wipe out all the result of the unlawful act and bring back the position which would have existed if that act had not been committed. Restitution could be a monetary sum corresponding to the value possible or in kind, whichever is possible or as the case maybe.<sup>46</sup> However, in the instant case, restitution was not awarded. This is because the award of restitution was not common in World jurisprudence in previous times.<sup>47</sup> Not until the recent Draft Articles established a general rule for the application of restitution as a primary remedy for both local and international tribunals generally.<sup>48</sup> In time past, restitution was attributed to contracts and torts only.<sup>49</sup> However, this view has been expanded and it is currently believed that restitution can be made in every area of law.<sup>50</sup> In the words of Brice, no one should be unjustly enriched at another's expenses.<sup>51</sup> Therefore, justice demands that a victim should not be denied his restitutive right especially when the stolen money or property has been found and recovered. Restitution is a common law claim to ameliorate the hardship caused the victim in the first place. In the case of *Bell v. Lever Brothers*,<sup>52</sup> it was held that restitutive claims arise mainly from the disinclination of the common law to accept that a mistake of law could be a basis upon which a contract could be avoided. However, in order to cushion the hardship this could bring upon such a victim who has lost money, property or services rendered based on such contract, equity allowed the revocation of such a contract

<sup>36</sup>26 Alberta L.R. 3(d) 381.

<sup>37</sup>BA Oni, 'Unjust Enrichment and Restitution as Mechanism for Curbing Corruption in Nigeria', 30 JPPL, 69.

<sup>38</sup>(2004) 1S.C.R. 629, 2004 SCC 25.

<sup>39</sup>[2000] 3 A.E.R. 97.

<sup>40</sup>[1841] 9 M & W 54.

<sup>41</sup>*Garland v. Consumer*, supra, note 28.

<sup>42</sup>Christine Gray, 'The Choice between Restitution and Compensation', *EJIL* 1999 Vol 10 No. 2, 413-423.

<sup>43</sup>Articles 42, 43 and 44, respectively.

<sup>44</sup>Christine, supra, note 32 at 416.

<sup>45</sup>PCIL Series A. No. 17, at 47.

<sup>46</sup>ibid.

<sup>47</sup>C Gray, *Judicial Remedies in International Law* (1987).

<sup>48</sup>Gray, 'Is there an International Law of Remedies?', 56 *BYbIL* (1985).

<sup>49</sup>Robert Goff and Gareth Jones, *the Law of Restitution*, 3rd ed, 1986; also, Gutteridge and David, 'The Doctrine of Unjust Enrichment', (1934) 5 *Cambridge Law Journal*, 204.

<sup>50</sup>Klippert, 'The Judicial Nature of Unjust Enrichment,' (1960) *University of Toronto Law Journal* 356.

<sup>51</sup>Brice Dickson, 'The Law of Restitution in Germany: A Comparison with English Law,' (1987) 36 *International & Comparative Law Quarterly*, 757.

<sup>52</sup>(1932) AC 161.

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through the *restitutio in integrum* remedy in the case of *Sole v. Butcher*.<sup>53</sup> This later developed into restitutionary remedy for a mistake of law. However, it is a commonplace fact that equity follows the law. The fact remains that a mistake of law is non actionable in law. It was this point that was further established in the case of *Bilbie v. Lumley*<sup>54</sup> where the court, in refusing such claim, held that every person was presumed to know the law. Nevertheless, in *Kiriri Cotton Ltd v. Dewan*,<sup>55</sup> Lord Denning laid a new principle when he said, in effect, that it is not true that people must know the law because it would be against the profession if everyone knew the law, but that, a man cannot plead ignorant of the law in criminal cases, because the rule of policy forbids such a plea as having no relevance in restitutionary claims.<sup>56</sup> Based on this dictum of Lord Denning, the scope of restitutionary claims was sort to be delimited by pleading the defence of 'voluntary payment' to estop the payer of such money from reclaiming it. Robert Goff, tried to trim down this notion when he said that in the circumstance, voluntary payment does not include a gift but payment made with the intention to seal a contract.<sup>57</sup> This is not far from Lord Dennings take in *Kiriri Cotton Co.*<sup>58</sup> where he made it clear that a genuine mistake of law could be enforced in a situation where the defendant's behaviour shows that he was chiefly to blame for the mistake or that he misled the plaintiff. This view was re-emphasized in *Ward v. Wallis*.<sup>59</sup> In all, even though the courts may be cautious in supporting the 'less guilty party' in an unlawful contract to recover, it may nevertheless help him to recover on the opinion that the 'more guilty' party may be enriched from his unlawful act.<sup>60</sup>

### **4. Restitution in the Nigerian Criminal Justice**

Recently, there have been calls for a shift from criminal justice to victim justice in the Nigerian.<sup>61</sup> This calls for more focus on restitution than on punishment alone. The quest for restitution could be traced to the African culture itself where victims and their families get the peoples sympathy and everyone is more interested in helping the victim(s) to as much as possible get back as far as he or she would have been if that crime was not done against him or her.<sup>62</sup> In Nigeria, many have proposed the inclusion of restitution and compensation as part of our criminal justice system as far back as the 80s.<sup>63</sup> The practice of retributive justice rather than restorative and restitution has for so long characterised the Nigerian criminal justice. Penal sanctions alone in our criminal justice cannot solve the financial lose, psychological trauma and resultant set back and general lack of development of the people as a result of corruption.<sup>64</sup> To this effect, punishment must go with compensation.<sup>65</sup> This is not far from Oputa's statement in *Godwin Josiah v. The State*,<sup>66</sup> where the learned jurist stated that a good law is one which guarantees justice to the victims, justice to the offender and justice to the society. It is true that an aggrieved could institute a civil action against an offender but in the case of corruption there should be included some form of financial reparation which the offender must be made to pay to the victim to assuage his lose and also to ensure that the offender does not gain from his illegal act.<sup>67</sup> According to Odion, such financial benefits are different from the physical or emotional benefits due the victim, for example, in rape cases, assault, torture, murder, false imprisonment etc.<sup>68</sup> In these cases, the injury may not readily be quantified in monetary terms. All of these may require restitution and reparation but where money is involved, compensation is necessary.<sup>69</sup> This makes restitution suitable in corruption matters.<sup>70</sup> Koroye summed this up in his guidelines for the bases of compensation to the effect that, the decision of

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<sup>53</sup>[1950] 1 KB 671, 692.

<sup>54</sup>[1802] 2 East 469.

<sup>55</sup>[1960] AC 192.

<sup>56</sup>ibid at 204.

<sup>57</sup>Robert Goff, 'Reform of the Law of Restitution,' (1961) 24 *Modern Law Review*, 87-88.

<sup>58</sup>Supra, note 55.

<sup>59</sup>[1900] 1 QB 675.

<sup>60</sup>This rule was better expressed in the case of *Scott v. Brown* [1892] 2 QB 724.

<sup>61</sup>LW Ibibia & G Ozuru, 'The Nigerian Criminal Justice System: A Paradigm Shift to Victim Justice', *Nigerian Law Journal*, Vol. 21, No. 1 (2018).

<sup>62</sup>Ibid.

<sup>63</sup>Odion, supra, note 8.

<sup>64</sup>AG Karibi-Whyte, 'National Policy on Compensation to Victims of Crime: How Desirable?' in *Compensation for victims of Crime in Nigeria*, Lagos, Federal Ministry of Justice, 1990.

<sup>65</sup>ibid.

<sup>66</sup>(1985) 1 NWLR 125.

<sup>67</sup>O Agbeola, 'Modalities for the Enforcement of Financial Compensation for Victims of Crime,' in *Compensation and Remedies for Victims of crime in Nigeria*, Lagos, Federal Ministry of Justice, 1990.s

<sup>68</sup>Odion, supra, note 8.

<sup>69</sup>ibid.

<sup>70</sup>ibid.

the court in corruption matters should distinguish between the civil and criminal aspects in the proceeding, compensation should form the purpose for criminal law, compensation orders should be both restorative and retributive.<sup>71</sup> Both should complement the other. Koroye went on to aver that both under customary law and common law, crimes were mainly civil while sentences were made to correct a wrong. This makes both restitution and compensation important to the criminal justice.<sup>72</sup> As important as these may be however, none of the statutes under which the fight against corruption is based specifically provided for restitution as observed below:

### **Restitution and the Criminal Code**

As important as the Criminal Code is in the Nigerian criminal justice system, it was not specific on restitutionary claims for victims of financial crimes, although, it contains some laconic provisions towards the restoration of such victims. It directed some emphasis on official corruption in the public sector. For instance, in defining a public officer,<sup>73</sup> it recognized persons occupying civil positions or persons listed as public servants under the Constitution.<sup>74</sup> The Code provides for corruption and fraud among public officers in about nine sections.<sup>75</sup> Section 98(1) went on to provide punishment for such offender, thus; Any person who corruptly gives, confers or procures any property or benefit ...to himself...or attempts to receive...any property...is guilty of the felony of official corruption and is liable to imprisonment for seven years. Also, anybody who corruptly gives...to a public officer; Or corruptly ...offers ... to a public officer...is guilty of a felony of official corruption and is liable to imprisonment for seven years.<sup>76</sup> By this, it is clear that the provisions of the Criminal Code are merely focused on the offenders. Nothing is mentioned on the restitution of their victims. It outlined the scope of the acts or omissions that could necessitate such offence as well as, the punishment which must flow from its consequences. The Code went on to provide for forfeiture on the event of conviction.<sup>77</sup> But from all reality, such forfeiture, confiscation and seizure goes to government and faces further corruption as not much is done with it as seen from all the recovered loots by the EFCC in recent times. It is very obvious that none of the monies recovered is used for the advantage of the victims of financial crime either in cash or in kind through developmental projects. The Criminal Code by this, did not provide for restitution for financial crimes. This calls for a definite empowerment of the judiciary through judicial activism to insist on reimbursing victims of financial crimes notwithstanding their culpability or otherwise.<sup>78</sup> In other words, the courts in applying the *in pari delicto* rule<sup>79</sup> should assist the victim who is also an established offender in the matter, not to lose out in entirety but to be able to recover, albeit little of the forfeited sum in corruption matters.<sup>80</sup> The *in pari delicto* rule according to Odion, should be strictly applied in cases of armed robbery, stealing, theft, etc. where the court can use its powers to convert some of the recovered stolen money to compensate the victim.<sup>81</sup> The CPA provides for cost, damages and compensation.<sup>82</sup> But this is geared toward awarding cost in favour of the defendant for vexatious charges against the Prosecutor. The costs, on the event of a refusal, can be recovered as fines and prison terms and can be appealed. It is good to mention here that under the CPC,<sup>83</sup> the provisions are more victim friendly than in the CPA. The CPC makes provision for compensation of the victim in part or whole, compensation to an innocent purchaser for his loses and compensation for to an accused tried on vexatious claims.<sup>84</sup>

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<sup>71</sup>E. Koroye, 'Compensation of Victims of crime as a Sanction of criminal Courts,' in E. Chianu, *Legal Essays in Honour of Professor Sagay*, Benin City, Department of Public Law, University of Benin, 1996, 123-133.

<sup>72</sup>ibid,

<sup>73</sup>Section 98(1) of the 1999 Constitution of the Federal Republic of Nigeria.

<sup>74</sup>Section 318.

<sup>75</sup>Sections 98, 99, 100, 112, 113, 114, 117, 126 and 128.

<sup>76</sup>Section 98 (1)(a-d).

<sup>77</sup>Section 19 of the Criminal Code, cap 77 Laws of the Federation of Nigeria, 1990.

<sup>78</sup>Odion, supra, note 8.

<sup>79</sup>This is a Latin term meaning 'in equal faults'. It is a legal principle which buttresses the fact that where two parties in a dispute are equally guilty, the party in possession of the contested item or property should retain it, the courts will not interfere or alter the status quo. It is an equitable defense that whatever is in dispute may continue to dwell with the one in possession where it is established that both party are guilty of the offence.

<sup>80</sup>Odion, supra, note 28

<sup>81</sup>ibid.

<sup>82</sup>Part 2, sections 255-260 of the CPA.

<sup>83</sup> Part 9, sections 365-367; 371 of the CPC.

<sup>84</sup> 'Costs, Compensation, damages and Restitution Under the ACJA 2015' by Enosa Omoghibo Chairman's Special Unit ICPC HQs, Abuja.

**Restitution and the Economic and Financial Crimes Commission (EFCC) Act**

The EFCC Act was enacted for the management of Economic and Financial crimes in Nigeria. It has powers and functions<sup>85</sup> to enforce and administer the provisions of the EFCC Act as it relates to particular issues as listed in the Act.<sup>86</sup> It covers offences relating to financial, economic and monetary issues.<sup>87</sup> While section 13 focuses on offences relating to corruption and financial malpractices, section 14 deals with offences connected to acts of terrorism; section 15 deals on financial crimes involving public officials. Section 16 penalises the retention of the proceeds of crime by the criminal code laws and recently the anti-corruption Act. But as beautiful as these provisions are, the issue still remains that beyond the civil remedies available to victims, the Act has not put any measure in place for the direct compensation of the victims.<sup>88</sup> It is true that the Act made reference to forfeiture of the loots of crime,<sup>89</sup> where it provides that a convict under the Act shall forfeit to the Federal Government (a) all assets and properties which may be ‘...subject of an interim order...as specified in section 25 of this Act, (b) Any assets...confiscated...from any proceeds, obtained ...as a result of such offence not already disclosed in the Assets Declaration form specified in Form A of this Act...’ By the provisions of the Act, where the assets of the convict is in a foreign account, the Federal Government, in accordance to the provisions of the Act can lawfully extradite and seize the assets.<sup>90</sup> Such extradited property belongs to the Federal Government of Nigeria.<sup>91</sup> Nonetheless, no provision of the Act explicitly indicates the fate of the forfeited properties thereafter. Does such forfeiture order extinguish the restitutory rights of the original owners of the monies used in the purchase of the forfeited properties? Does it mean that these owners can no longer trace their stolen monies to the forfeited properties? This is a limitation of the Act as to its non-recognition of the restitutory rights of victims. This deficiency of the Act was more glaring where it further provides that ‘upon receipt of a final order..., the secretary of the Commission shall take steps to dispose of the property by sale..., the proceeds thereof shall be paid into consolidated revenue fund of the federation.<sup>92</sup> Also, where ...the property ...is money in a bank account or in possession of any person, the Commission shall cause a copy of the order to be produced and served on the manager or any person in control of the head office or branch of the bank concerned and the manager shall forthwith pay over the money to the Commission without further assurance under this Act and the Commission shall pay the money ....into a consolidated revenue fund of the federation’.<sup>93</sup> From the tune of these provisions, it becomes clear that the Act has no intention towards restituting the recovered funds to the victims, probably, perhaps because like in all criminal matters that the federal government is the chief complainant who deserves to be restored, thereby undermining the rights of the victims who could be individuals or corporations of their financial compensation and restitutory rights. The EFCC Act provides exceptions in the case where the instrumentality of crime is used in the conveyance, like aircraft, vessels or vehicles.<sup>94</sup> This Act did not specifically provide for restitution but forfeiture. Such forfeiture will only apply in cases where the offence is created under the EFCC Act or under any law which empowers the EFCC Act to prosecute like the Advanced Fee Fraud, Act (AFFA). Unlike the provision of the Administration of the Criminal Justice Act which act on offences under Federal legislation.<sup>95</sup> Any other offences outside the EFCC may not apply.<sup>96</sup>

**Restitution and the Corrupt Practices and Other Related Offences Act**

The fight against corruption took a more serious dimension following the enactment of the Corrupt Practices and Other Related Offences Act in 2002.<sup>97</sup> Before this time, the provisions of the Criminal and Penal Codes to fight corruption proved inadequate. So this Act was all embracing in the fight against corruption. For instance, it lists the offences punishable under the Act.<sup>98</sup> These include corrupt offers and gifts made to public officers.<sup>99</sup> Perhaps the

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<sup>85</sup>Section 5 of the EFCC Act, 2002.

<sup>86</sup>Paragraphs (b) to (o).

<sup>87</sup>Sections 13 to 17 of the EFCC Act, 2002.

<sup>88</sup>For example, in the case of the people who duped a Brazilian bank, Banco Noroetes of \$242m in 2004, while the EFCC was busy seizing the properties of the accused persons, reference was not made of the interest of the victims (the bank) of their crime.

<sup>89</sup>Section 19(1)

<sup>90</sup>Section 21.

<sup>91</sup>Section 23.

<sup>92</sup>Section 34(2) .

<sup>93</sup>Section 34(3).

<sup>94</sup>Section 25, EFCC, Act.

<sup>95</sup>Section 2 of the ACJA, 2015.

<sup>96</sup>Section 25 of the EFCC, Act.

<sup>97</sup>Odion, *supra*, note 8.

<sup>98</sup>Sections 8 to 25 of the ICPC Act, 2002.

<sup>99</sup>Section 9 of the ICPC Act.

only provision with regard to restitutary rights of victims is where the Act states that ‘without prejudice to any sentence of imprisonment imposed under the Act, a public officer or other person found guilty...shall forfeit ...and pay fine of not less than five times the sum or value of the gratification, ..’.<sup>100</sup> Also, it mentioned the seizure of movable or immovable property of any convict of those stipulated offences in the Act.<sup>101</sup> The court has the power to make such an order of seizure. Where the Chairman of the Commission reasonably believes that a public officer who has been served the notices referred to in Section 44(1) of the Act possess, controls, owns or holds the interest in any property which exceeds his past or present emoluments, he may be required to furnish a statement on oath or by affirmation explain how he came about such property. It is within the powers of the Chairman to give notice or order the seizure of the property of the offender(s).<sup>102</sup> On conviction, an order of forfeiture of any property which has been proved to be the subject matter of the offence or which has been employed in the commission of the offence.<sup>103</sup> Beyond these provisions is the fact that no specific provision is made by the ICPC Act for the restitutary rights of the victims of the stipulated offences. It provides for forfeiture of the proceeds of corruption but nothing is said of restituting the money or property recovered on the conviction of the offender. Forfeiture alone without restitution cannot assuage the loss of the victims of corruption especially in the era where many are calling for a shift from criminal justice to victim justice.

### **Restitution and the administration of Criminal Justice (ACJ) Act 2015**

Although, the Administration of Criminal Justice Act (ACJA) is not one of the anti-corruption Acts but it plays a prominent part in the criminal justice of Nigeria. It was passed into law in 2015 as an omnibus and unifying act which has affected the Nigerian criminal justice as a whole since its enactment. Its objectives include the promotion of 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 defendant and the victim.<sup>104</sup> This is a welcome shift from punishment as the object of the criminal justice to restorative justice, which will definitely favour the society, victims, the vulnerable while respecting the dignity of the human person for all.<sup>105</sup> The paradigm shift to restorative justice makes the ACJA unique and responsive to the needs of the criminal justice system.<sup>106</sup> The Act provides to the effect that on the arrest of a defendant, the court may order that the recovered property or part of it be restored to the person who appears to the court to be entitled to it. The court may also order that such property be used to pay as compensation.<sup>107</sup> This all important Act made commendable innovations in the area of compensation, cost, damages and restitution.<sup>108</sup> The Act provides that the prosecution, with the consent of the victim, may enter into plea bargain with the defendant during or at the end of the presentation of evidence but not before the evidence of the defence.<sup>109</sup> Also, the court may order for the property to be restored to the person who appears to be the lawful owner.<sup>110</sup> It may order the convict to make restitution to the victim or compensate loss.<sup>111</sup> However, the provisions of sections 341 and 342 of the Act can only apply in a situation where the owner of the assets is identifiable. But where there is an argument as to who owns the property, the issue of right to property must be first resolved before restoration could be possible. This may be hard on a lawful owner. It is detrimental to a bona fide owner who may not have given his consent in the first place.<sup>112</sup> Also, the provision of section 341 may create hardship on the real owner of the property since it is not obligatory. A court may within the proceedings or while passing judgement, order the defendant or convict to pay a sum to the victim.<sup>113</sup> The Act provides for the prosecution, with the consent of the victim or his representative, during or after the evidence of the prosecution, may enter into plea-bargaining with the defendant. The EFCC has been using this provision in its proceedings, which many have agreed is not to

<sup>100</sup>Section 21.

<sup>101</sup>Sections 37 and 38.

<sup>102</sup>Section 45.

<sup>103</sup>Section 47.

<sup>104</sup>Section 1 of the ACJA, 2015.

<sup>105</sup>Y Akinseye-George, 'An Overview of the Changes and Application of the Administration of Criminal Justice Act, 2015 in Adedeji Adekunle, et al, Issues on Criminal Justice Administration in Nigeria (NIALS Publication, 2016) 3-4.

<sup>106</sup>As provided in sections 321, 341 and 342 of the ACJA.

<sup>107</sup>Section 341, ACJA.

<sup>108</sup>Part 32, sections 319-328 of the ACJA 2015.

<sup>109</sup>Section 270(2)(a)-(c) ACJC.

<sup>110</sup>Section 342(1), ACJA.

<sup>111</sup>Section 321.

<sup>112</sup>CC Nwabuzor, 'A Review of the ACJA'S Provisions on Restoration of Property' (Research Fellow, NIALS) at <nials.edu.ng> accessed 09/11/19.

<sup>113</sup>Section 319(1) ACJA.

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the best interest of the victims of corruption or offenders caught in minor theft who are sentenced to prisons.<sup>114</sup> But generally, the ACJA seems to be the only detailed Act that included the rights of victims to be restituted. In a situation where there is a dispute as to who owns the asset, the issue of ownership will have to be established first before restoration is made.<sup>115</sup> The ACJA does not permit the restoration of an ill gotten property.<sup>116</sup>

### **5. Conclusion**

This paper tries to shift focus from criminal justice to victim justice for victims of corruption in Nigeria. According to Omoghibo,<sup>117</sup> justice is not fully discharged if the victim is not compensated even where the offender is punished and the money forfeited. So the idea of punishing offenders and claiming forfeiture for federal government purse which may not be heard of it thereafter is great injustice to the people affected directly or indirectly by corruption in Nigeria. This paper was more focused on victims of corruption as against victims generally. Thus, it directed its attention mainly on some of the Acts establishing the various anti-corruption agencies. From the provisions of these Acts, it is evident that not much is provided for victims of corruption in Nigeria. It is true that the right for restitution as previously noted was mainly for civil and contractual claims but restitution has been found very useful in all areas of law under international law and quite appropriate for victims of corruption in particular. In this light, the paper came to the conclusion that the principle of restitution is against any form of unjust enrichment. Such enrichment must be recovered and used to restitute the victims not shared through further corruption. Justice is placing the victim as much as possible on the same pedestrian with the corrupt offender.<sup>118</sup> Even where the victim institute civil actions for recovery, against the defendant, it is hardly instituted.<sup>119</sup> According to Zedner,<sup>120</sup> the shift to restitution is to recognize the fact that crime is not just a wrong to the society as previously believed but is a great injury to the victim who has been injured physically, psychologically, emotionally, financially bereft of his earnings and right of survival by the corrupt offender. This understanding if applied in the Nigerian criminal justice system and in financial crimes in particular, could meet up international standards which is encouraging restitution, reparation and compensation among states all over the world. The paper further recommends among other things that our criminal justice could go a little further to secure the rights of victims generally and victims of financial crimes in particular. Where restitution is not categorically provided in the Acts of the anti-corruption agencies in Nigeria, it calls for judicial activism to insist on restitutionary rights of victims of corruption. There is need to carry the campaign for a shift from criminal justice to victim justice into corruption matters by recognizing the restitutionary right of victims of corruption in Nigeria.

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<sup>114</sup>G Ozuru, 'Justifiability of Plea Bargain in the Fight Against Corruption in the Nigerian Criminal Justice', *Uniport Law Review*, Vol. 1 (2017) available at <[www.uniportlawjournals.com](http://www.uniportlawjournals.com)>

<sup>115</sup>Sections 341 and 342, ACJA.

<sup>116</sup>Section 341, ACJA.

<sup>117</sup>Omoghibo *supra*, note

<sup>118</sup>Odion, *supra*, note 8.

<sup>119</sup>Koroye, *supra*, note...

<sup>120</sup>L. Zedner, 'Victims' in Mayniore M. Morgan and R Reiner (eds) *The Oxford handbook on Criminology*, Oxford, Clarendon Press, 1994.