

An Appraisal of Victims' Remedies Under the Administration of Criminal Justice Law in Nigeria

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ABSTRACT

This paper argues that in as much as punishment is society's customary response to crime, it neither meets the need of victims nor prevents re-offending. Victims' remedies therefore aim at encouraging offenders to take responsibility for the consequences of their actions, express repentance and repair the harm they have done. Victims' remedies also emphasize the reintegration of offenders into communities rather than their control through strategies of punishment and exclusion. This "victim-centred-approach" tries to question the underlying objective behind criminal justice system where victims get nothing out of the ongoing Court process except for the "implied satisfaction" that the persons who had inflicted pain on them are sentenced to adequate penalty in form of imprisonment. Therefore, the notion of providing remedies for the victims is an evolving response to crimes that respect the dignity and equality of each person, builds understanding, and promotes social harmony. This process provides an opportunity for victims to obtain reparation, feel safer and seek closure, allow offenders to gain insight into the cause and effects of their behaviour and take responsibility in a meaningful way, and enable communities to understand the underlying causes of crime. This is obviously a paradigm shift from punitive justice to restorative justice, which will meet to the need for restitution or reparation of harm to victims. In the light of the above, an attempt will be taken to analyse the position of the victim under the Nigerian criminal justice system and a comparative study of other jurisdictions.

Keywords: Victim, Justice, Remedies, Correctional, Punishment

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1. INTRODUCTION

Victim's remedies revolves around the ideas that crime is, in essence, a violation of a person's fundamental rights by another person (rather than a violation of legal rules); that in responding to a crime our primary concerns should be to make offenders aware of the harm they have caused, to get them to understand and meet their liability to repair such harm, and to ensure that further offences are prevented; and that efforts should be made to improve the relationship between the offender and victim and to reintegrate the offender into the community as a law abiding member. The obligation to afford remedies for victims of crimes requires in the first place the existence of remedial institutions and procedures to which victims may have access. Access to justice implies that the procedures are effective, i.e. capable of redressing the harm that was inflicted. In a seminal case of constitutional jurisprudence, citing to Blackstone's *Commentaries*, the United States Supreme Court declared that "the very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury"¹

1. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137.

In 1961, Justice Guha Roy of India wrote: 'That a wrong done to an individual must be redressed by the offender himself or by someone else against whom the sanction of the community may be directed is one of those timeless axioms of justice without which social life is unthinkable.'² Remedies aim to place an aggrieved party in the same position as he or she would have been had no injury occurred. Even rights-violating conduct that causes no compensable harm or that brings an economic benefit to the victim is cause for complaint because it creates a moral imbalance between the victim and the wrongdoer and a moral claim concerning a wrong done. The paper thus discusses the various modes of availing victims' remedies and concludes that substantive redress can have several aims, from victim-oriented *restitution in integrum* and full compensation for pecuniary and non-pecuniary losses to deterrence of violations for the benefit of all members of society. The types of victims' remedies will depend upon the nature of the case, but a growing consensus on minimum standards include restitution where possible and compensation where not.

1.1 Conceptual Definitions

The Black's Law Dictionary³ defines remedies as "the means by which a right is enforced or the violation of a right is prevented, redressed or compensated". The word 'remedies' contains two separate concepts, the first being procedural and the second substantive. In the first sense, remedies are the processes by which arguable claims of human rights violations are heard and decided, whether by courts, administrative agencies, or other competent bodies. The second notion of remedies refers to the outcome of the proceedings; the relief afforded the complainant or victim of crime. The *Oxford English Dictionary* defines 'Reparation' as 'the action of restoring something to a proper or former state' and adds that it also includes 'the action of making amends for a wrong or loss, compensation' It is intended to mend and provide the basis for ethical relationships among members of society.

Restitution relates to the return or restoration of movable property either stolen or otherwise dishonestly acquired, or taken without permission, or property innocently obtained from such successors, except negotiable instrument bona fide paid or discharged. Restoration, on the other hand, relates to restoring the possession of immovable property to a person dispossessed of it by means of force, such as, for example, in the case of forcible entry, or that of forcible detainer. The *American Heritage Dictionary* defines 'victim' as (a) someone who is put to death or subjected to torture or suffering by another; (b) execution or casting out a person to satisfy a deity or hierarchy; (c) victims of war; (d) person who is tricked, swindled or taken advantage of; and (e) a person who suffers injury, loss, or death as a result of a voluntary undertaking. A person may be considered a 'victim' regardless of whether the perpetrator is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim. Furthermore, the term 'victim' also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

Though, there is no definition of 'victims of crimes' under the Administration of Criminal Justice Act 2015 and under criminal laws of Nigeria, its legal definition can be traced to the United Nations General Assembly Declaration of *Basic Principles of Justice for Victim and Abuse of Power, 1985*. Article 1 and 2 of the 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 prescribing criminal abuse of power.

2. Justice Roy, 'Is the Law of Responsibility of States for Injuries to Aliens a Part of Universal International Law?' (1961) 55 *Am. J. Int'L.* 863.
3. 6th Edition (1990), P. 1294.

It can therefore be submitted that in strict legal terminology, 'victims' are persons who suffer a loss or injury by an act or omission of another and include all those persons who are, in the ordinary course of natural events, dependant on such person, at the time when the crime in question was so committed or omitted.

1.2 Philosophical Concept of Victim's Remedy

The primary function of corrective or remedial justice is to rectify the wrong done to a victim, that is, to correct injustice. As such remedies serve moral goals. Law and its institutions are the instruments through which fault is determined and its consequences are assessed in order to redress harm caused. Aristotle described the conceptual framework for compensatory justice on which much of the modern law of remedies is based:

What the judge aims at doing is to make the parties equal by the penalty he imposes, whereby he takes from the aggressor any gain he may have secured. The equal, then, is a mean between the more and the less. But gain and loss are each of them more or less in opposite ways, more good and less evil being gain, the more evil and the less good being loss. The equal, which we hold to be just, is now seen to be intermediate between them. Hence we conclude that corrective justice must be the mean between loss and gain. This explains why the disputants have recourse to a judge; for to go to a judge is to do justice... What the judge does is to restore equality.⁴

Thus, the essential features of compensatory justice are: 1. the parties are treated as equal. 2. there is damage inflicted by one party on another. 3. the remedy seeks to restore the victim to the condition he or she was in before the unjust activity occurred. Life's options have a very high existential value and their denial or impairment gives rise to a sense of injustice and demands for rectification or compensation, either restoring precisely what was lost or something equivalent in value. A morally adequate response addresses itself in the first instance to restoring the position of the victim. The moral adequacy of a substitute remedy, usually money, will vary considerably by may allow the victim to further his or her legitimate projects or goals.

In sum, rectification and compensation in the framework of basic rights serve to restore to individuals to the extent possible their capacity to achieve the ends that they personally value. The basic principles that run through these two disposition methods are the need to prevent any unjust enrichment as a result of criminality, and the need to restore the victim, as much as possible, to the pre-criminality status quo. As such, compensation may have an important rehabilitative effect, alleviate suffering, and provide for material needs while justice is primarily about the vindication of the victim and not about the punishment of the perpetrator, the wrongdoer is held responsible for providing a remedy in order to serve a moral need. Remedies express opprobrium to the wrongdoer. This is usually incorporated in the application of punishment, sometimes as a vindication of society's interest in retribution, or it can take the form of fines or exemplary or punitive damages.

4. Aristotle, *The Ethics*, trans. J.A.K. Thompson (1955), 148-9. Available at <http://ssrn.com/abstract=2235195>.

1.4 Historical Overview

The historical origin of restitution, in proper sense, the so called the system of compensation lies in the history of middle ages and reference about it can be found in the Germanic Common Law. Compensatory Jurisprudence is not a new subject. History reveals that compensatory jurisprudence was accepted and followed by the Hindus, the Mohammedans and the British during their rule in India. Restitution and atonement was prescribed for various offences under 'Vedic Laws'. During the Sutra period, the setting of compensation was treated as a royal right: for murder the offender was obliged by the king to compensate the relatives of the deceased or the king or both. Manu regarded compensation as penance. Thus the concept of compensation or restitution to victims of crime for the injury or loss sustained by them is not a recent innovation.

The legal codes of the ancient Babylonians, Hebrews, Greeks, Romans, Germans and English all provided indemnification for the victim⁵, starting with one of the simplest and earliest rules, the *lex talionis*, under which the wronged party was entitled to exact 'an eye for an eye, and a tooth for a tooth.'⁶ In ancient times, crime was dealt with on an interpersonal level, with restitution or even private resources, rather than official punishment, the main remedy.⁷ The state played little part. For example, the Code of Hammurabi provided that individuals who had injured or taken from others must make amends, in service or in kind.⁸

Other early systems, such as the Torah and Sumerian Code,⁹ required that offenders make their victims whole, as did Roman law.¹⁰ Then, in the eleventh century, William the Conqueror expanded the King's authority by declaring certain offenses crimes or "breaches of the King's peace", redressed only by action of the king's courts.¹¹ Accordingly, private vengeance was forbidden, fines were paid directly to the state, rather than to the victim, and punishment, rather than restitution or making amends, became the main sanction for antisocial behaviour.¹² This approach, with the state wielding monopoly power over the prosecution and punishment of crime, has reigned unchallenged until recently.

Today, the proponents of restorative justice are of the opinion that the old approach should be re-examined. They argued that the traditional criminal justice system does a disservice to victims, by forcing them to relieve their ordeal at trial.¹³ The justice system conceptualizes crime as a wrong against the state.

5. Stanley Yeo Meng Heong, 'Compensating Victims of Crime in Singapore', *Malaya Law Review*, Vol. 26, No. 2 (December 1984), pp. 219. See generally Schafer, *The Victim and His Criminal* (1986). Available at <http://jstor.org/stable/24864432>, accessed: 20-07-2017 19:35 UTC.
6. *Ibid*; Hobhouse, "Law and Justice" in Hudson and Galaway eds. *Considering the Victim* (1976), at p. 135.
7. Jean Lindsley Professor of Law, 'Prosecuting Violence: A Colloguy on Race, Community, and Justice. Cited in Richard Delgado, 'Goodbye to Hammurabi: Analyzing the Atavistic Appeal of Restorative Justice. Cited in DANIEL VAN NESS & KAREN H. STRONG, RESTORING JUSTICE FOR VICTIMS AND OFFENDERS: A RESTORATIVE RESPONSE TO CRIME (2nd ed. 1996) at 253-56. Available at <http://www.jstor.org/stable/1229429>, accessed: 20-07-2017 19:42 UTC.
8. *Ibid*.
9. *Ibid*. see also Fred Gay & Thomas J.Quinn, *Restorative Justice and Prosecution in the Twenty-First Century*, THE PROSECUTOR, Sept./Oct. 1996, at 16 (noting that Sumerian method has roots in the 600 A.D. Laws of Ethelbert). On the Torah's preference for compensation of victims, see STEVEN SCHAFFER, COMPENSATION AND RESTITUTION TO VICTIMS OF CRIME (2nd ed.1970).
10. See VAN NESS & STRONG, op.cit. at 8-9.
11. *Ibid*. at 9-11..
12. *Ibid*. at 43.
13. See NATIONAL INST. OF CORRECTIONS, DEPARTMENT OF JUSTICE, RESTORATIVE JUSTICE: WHAT WORKS 3 (1996).

It uses the victim for her testimony, while offering little, if anything, in the way of counselling services or This is because the American criminal support.¹⁴ For the same reason, district attorneys rarely consult with the victim at key times during the course of the trial, so that he experiences a lack of control as key events take place without input.

On the African scene, including Nigeria, however, prior to the introduction of the common law and civil law based legislations on criminal law and criminal procedures, the various African criminal justice systems had traditionally always employed the tripartite approach to criminal justice administration, namely focusing on the interests of the victim, the community and the offender.¹⁵ We were never committed to the dichotomous approach of only the offender and community. Even well after the entrenchment by legislations, of the common law dichotomous approach in Nigeria, our Native Courts continued to reject the approach and continued with the traditional tripartite approach, which very much took into consideration the interests of the victim.¹⁶

In the old Tangayika (now Tanzania), on the other hand, over three decades ago, a man who had completely incapacitated his victim, a father of ten children, by injuries caused to him by criminal negligence, was convicted and sent to a term of imprisonment. When the Court Registrar explained to the family that the end of the proceedings had been reached by the imprisonment of the offender, and that nothing more was to be done by the court in the case, an elderly male relative of the victim was heard to have remarked ruefully:

*'This judgment is contrary to custom and to natural justice, since only the Government will benefit from putting the man to some labour... There is no benefit to his wife and children...'*¹⁷

The historical antecedent was traced from the middle ages to the modern times. In support of this noble objective, reference should be made to International Conferences held in Stockholm in 1878, Rome in 1885, St. Petersburg in 1890, Christina in 1891. At these congresses, it was felt that modern laws were particularly weak on this point. For instance the Italian penologists, Garofalo and Pierantoni dealt with the subject impressively to the effect that laws in different countries were harder on the victim than the offender. See also, sic valuable papers presented by Corvet, Flandin,

We can therefore deduce from the above quotation that the basic interest of a complainant today in Nigeria is to obtain personal remedy in the form of restitution of his unlawfully acquired property or compensation for the injury, loss or damage, suffered by him as a result of the wrong done to him by the offender. Thus the victim is not interested in the invocation of the criminal process mainly because of the punitive character on the offender but on available remedies which the court can grant him/her after the conviction of the offender.

14. This limitation is inherent in the prosecutor's role – she prosecutes in the name of the state. Unlike a tort lawyer who sues on behalf of an assigned client and, of course, is under a professional obligation to consult with that client at critical stages, the victim of a crime is not the client of either the prosecutor or defense counsel and has no right, under conventional law or professional codes, to be consulted as to this wishes at critical states.

15. A.A. ADEYEMI, "Towards Victim Remedy in Criminal Justice Administration in Nigeria", *'public law journal'* University of Lagos, at p. 293-294.

16. Ibid.

17. Adeniyi Olatubosun, 'Compensation to victims of crime in Nigeria: A critical Assessment of Criminal – Victim Relationship', *Journal of the India Law Institute*, Vol.44, No.2 (April-June 2002), P.205: cited Dr. Stephen Sachafer, *Restitution of Victims of Crime* London Stevens & Sons Ltd. 1-7 (1960). The historical antecedent was traced from the middle ages to the modern times. In support of this noble objective, reference should be made to International Conferences held in Stockholm in 1878, Rome in 1885, St. Petersburg in 1890, Christina in 1891. At these congresses, it was felt that modern laws were particularly weak on this point. For instance the Italian penologists, Garofalo and Pierantoni dealt with the subject impressively to the effect that laws in different countries were harder on the victim than the offender. See also, sic valuable papers presented by Corvet, Flandin,

Before the advent of the British, Nigeria had its own system of criminal justice with native courts administering justice to all manner of people. Apart from punishment, there were provisions for compensation or restitution coupled with various rights for the victims of crime.¹⁸ Consequently, Adeyemi A.A.¹⁹ submitted that:

“The Nigerian law should no longer sustain the adherence to the European conception of criminal justice, which has hinged on the dichotomous approach to involving the consideration of the State and the offender as the only parties in the criminal process – a situation which has resulted largely in the denial of remedy to victims of crimes in our administration of criminal justice.”

The above position may to some extent reflect the historical development from the primitive stage when criminal proceedings were largely left to the initiative of the victim and his family or tribe to the present stage when his power is, on the whole concentrated in the hands of the State.¹⁹ The problem created by the neglect of victim remedy, resulting from the dichotomous approach of the criminal process, which recognises only the state and the offender as ‘the parties’, has become recognised universally. The resultant recognition of the need to provide for victim remedy has led to partial attempts in some jurisdictions, apparently hampered by the theory of the ‘dichotomy of the parties’, to introduce ‘Victim Impact Statements’ into criminal proceedings.²⁰

This need arises as a consequence of the lack of definite procedure for qualifying the amount of compensation to be awarded and if the quantum of damages is to be awarded by the trial court, it is often determined without hearing from the victim as to the extent of the injuries suffered and other expenses incurred by the victim. At the International arena, the current position in improving the situation of victim of crime was first considered in New Zealand which established the major comprehensive state crime victim compensation programme, granting awards to victims of violent crime in respect of medical and funeral expenses and for lost earnings and support.²¹ In Australia, the government enacted a new law to increase maximum compensation available to victims with effect from 1st of September 1990. The Government recognised the right of victims by implementing the 1985 United Nations Declaration on the Rights of the Victims.²² It is submitted that Nigeria is overdue in enacting Victim’s Bills of Rights and Enforcement mechanism so as to meet up with the United Nations Declaration of Basic Principles of Justice for victims of crime and abuse of power. Thus, victim’s remedies in form of restitution and compensation should be couched in our Administration of Criminal Justice System in all offences, thereby serving substantially as an alternative to imprisonment and consequently decongesting the prison and reintegrating offenders into the society to live a normal life. In England, the development of victims’ remedies is of modern phenomenon with the setting up of the Criminal Injuries Compensation Board in August 1964²³ Under the scheme, anyone who suffers personal injuries on or after that date as direct consequence of criminal offence or trying to arrest an offender or to prevent a crime can apply for compensation. Thus, encouraging more use of financial penalties, especially compensation to victims and fines which take account of offenders’ means.

18. See, A.A. Adeyemi, “Criminology in contemporary Africa” 1-29 *Nigerian Journal of Criminology* Vol. 2 No.1. see also, Milner, A., *The Nigerian Penal System* 22-47 (1972).

19. *Ibid.*

20. Paced, Poet, Prins and Zucker respectively. See also William Tallack, *Reparation to the injured and the Rights of Crime to Compensation* 6-7 (London, 1990).

21. Adeniyi Olatubosun, *op. cit.* p. 219. See, Archibold, *Criminal Pleading Evidence and Practice* 5-289-724 (42nd ed. Maxwell 1985).

22. See, *The Statutes Amendment (Victims of Crimes) Act, 1990 and Commonwealth Law Bulletin* 657-859 Vol. 16, No.2 April, 1990. The Declaration recommends measures to be taken at the International and Regional level to improve access to justice, and fair treatment, restitution, compensation and social assistance for victims of crime.

23. See Archibold *op. cit.*

It is further interesting to note that the United Nations has set regional and international standards regarding victims of crimes, the prevention of victimisation, access of the victim to justice and fair treatment, restitution from the offender, compensation from the state and social assistance towards recovery.²⁴ This is a clarion call to all states to adopt international best practice in sentencing options by shifting much attention from the traditional view to the material problems of the victim of crimes arising out of his misfortunes. In a lawless state like Nigeria where violations of human rights has become a norm, international best practice will ensure the protection of the right to private properties and right to life provided under chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Justice is thus available to the victims of criminal acts where the criminal offender was never caught or where the properties involved have been disposed of and not recovered or where the accused is not a man of means.

PART TWO

2.1 Legal Framework On Victims' Remedies

In both domestic and international contexts, acknowledgment of the victims' suffering after trial and sentencing could be provided by means of compensation, as envisaged by the United Nations Basic Principles.²⁵ Therefore, the United Nations, in cognizance of the problem created by the dichotomous approach of the criminal process between only state and the offender, has at its General Assembly adopted a resolution on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1986. The Declaration grants the victims of crime a plethora of rights. It also declares that informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims. These recommended models appear to be similar to our indigenous African methods of criminal justice. The Declaration provides for the remedies of restitution and compensation. Paragraph 8 provides that:

“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.”

Paragraph 9 is a call on governments to review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions. The Declaration also called on states to endeavour to provide compensation when it is not fully available from the offender. Such compensation are payable to:

- a) *Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;*
- b) *The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.*

The above signifies that the United Nations has set regional and international standards regarding victims of crimes, the prevention of victimisation, access of the victim to justice and fair treatment, restitution from the offender, compensation from the state and social assistance towards recovery.²⁶

24. Victims of Crime: survey of redress, restitution and compensation for victims of crime; UN documents A. (CONF 121/4/1985) G.A. Res 40/43/UNGA or Supp. (No. 53) at 213-15, UNDC A/40/53 (1963).

25. Basic principles 12 and 13.

26. Victims of crime: survey of redress, restitution and compensation for victims of crime; UN documents A. (CONF 121/4/1985) G. A. Res. 40/43/UNGA or Supp. (No. 53) at 213-15, UNDC A/40/53 (1963).

In Nigeria, a search of our statute books reveals that there are scanty provisions dotted in dealing with victims' remedies. This is because our sentencing policy has so far relied heavily on the machinery of punishment to the neglect of victim's remedy. For instance, conviction is a precondition for the award of compensation, which need not be the case. From arrest to sentencing, the law is concerned mainly with the offender, although the trial initiated by the victim and relies on the victim's participation for its success, offers little direct relief to the victim. The system has been more punitive than remedial and as such its operators have become insensitive to the victim's plight. The victim is thus largely left to seek redress in separate civil actions often involving costly proceedings.²⁷ The major remedies evident in our laws are: restitution, compensation, replacement and damages. Even where the legislation is in place, judicial officers make little or no use of the provisions. This is regrettable more so that the contents of these provisions are unsatisfactory and cannot be said to confront the issue of redress for the victim. The repealed provisions include the Penal Code, The Criminal Act, The Criminal Procedure Code, The Criminal Procedural Act and the Police Act. At present the legal remedies available to victims of crime has been provided in the Administration of Criminal Justice Act, 2015 and the Administration of Criminal Justice Law of Lagos State, 2015 respectively.

Sections 319-328 of the Administration of Criminal Justice Act, 2015 provides for compensation and restitution as means of providing remedies to victims of crime for which the offender was convicted. Compensation ordered to be paid under the Act may be enforced as if it was a fine.²⁸ One essential feature of the ACJA is its paradigm shift from punishment as the main goal of criminal justice to restorative justice which pays serious attention to the needs of the society, the victims, vulnerable persons and human dignity generally. The victim, the offender and affected members of the community become central to the criminal justice process, with State and legal professionals becoming facilitators of a system that aims at offender accountability, reparation to the victim and full participation by the victim, offender and community.

It is observed that the Act and our criminal justice system have failed to provide victim's remedy in the area of emotional impact. Crime is often described in terms of three primary impacts; physical, financial and emotional. Unfortunately, the criminal justice system does little to address the needs of victims. However, it is **noteworthy** that prior to the enactment of the Administration of Criminal Justice Act 2015, which repealed the Criminal Procedure Act (CPA) and Criminal Procedure Code, (CPC) some States in southern Nigeria had abolished the CPA (adopted as Criminal Procedure Law) and had enacted new legislations affording a broader coverage for criminal justice administration, far beyond the procedure and practice applicable in criminal trials in their jurisdiction. The State of Lagos blazed the trail in South---western Nigeria with the enactment of the Lagos State Administration of Criminal Justice Law in 2007 and later re---enacted in 2011 and 2015 and lately followed by Ekiti State with her Administration of Criminal Justice Law 2014. It is remarkable that the new Administration of Criminal Justice Act 2015 features several innovative and revolutionary provisions, first introduced into the criminal Justice system by the above---mentioned laws, but with some modifications and variations as deemed necessary in the light of real challenges and practical difficulties faced in the operation and implementation of these provisions, within their jurisdiction of application.

Therefore, several provisions in the Ekiti State Administration of Criminal Justice Law 2014, features by the Administration of Criminal Justice Act 2015 (ACJA) have been refined, and fine---tuned to address the challenges encountered in their implementation and fill in the gaps observed over time. However, it is believed that a comparison of some of the similar features of the Ekiti ACJL 2014 and the ACJA 2015 and the effects of the implementation of the provisions of the former on criminal justice administration in the State will greatly assist in the understanding and appreciation of the similar provisions in the new Administration of Criminal Justice Act, 2015 (ACJA), especially in the area of victim's remedy.

27. A. A. Adeyemi, *op.cit.* p. 295.

28. See Section 325 of the ACJA, 2015.

Despite the above landmark legislation both at local and international level, the role of the victim is still largely relegated to that of occasional participant or observer. They continue to have no legal standing, the absence of which relegates them to a lesser status; they are not viewed or treated as key stakeholders. Their experience in the criminal justice system often mirrors their status during the commission of the crime: that of involuntary participant. Thus, the criminal justice system does little for the victims' sense of justice. Their circumscribed roles are so confined that options and opportunities for healing are limited. Crime represents a profound expression of disrespect for the victim as a person; it signifies a denial of the victim's personhood, a failure to value him or her as an individual. When the legal system ignores victims, the cycle of disrespect is again perpetuated.

On the whole, justice is not for an accused person alone, but a tripartite concept, to wit, the accused, the society and the victim. The courts have on several occasions reiterated this cardinal principle of criminal administration. For example, Oputa, JSC (as he then was) expressed the judicial viewpoint of penal policy in the following commendable way:²⁹

Justice is not a one-way traffic. It is not justice for the appellant only. Justice is not even a two-way traffic. It is really a three way traffic – justice for the appellant accused of a heinous crime of murder; justice for the victim the murdered man, i.e. the deceased, “whole blood is crying to high heavens for vengeance” and finally, justice for the society at large – the society whose social norms and values had been desecrated and broken by the criminal complained of.

Similarly, Nnamani, JSC in the case of *Ngwu Kalu v. The State* remarked thus:³⁰

It has to be emphasised that in these cases of murder, justice must also be done to the victim whose life has been cruelly cut short. Indeed, this Court has said it on several occasions.

Moreover, Aniagolu JSC emphatically stated in *Nwafor Okegbu v. The State* that:³¹ *Where else would this be more appropriate than a tragic case like this in which a young body with a promising future was unceremoniously sent to the grave by hoodlums.* These pronouncements of the Supreme Court depicts that this aspect of the criminal law and procedure has been neglected for quite a long time to the detriment of the interest of the victim in the administration of criminal justice. Perhaps, no other observation would illustrate this position, but that of Professor Abede who has this to say:³²

The most undeveloped area of our criminal justice is that of compensation as a criminal sanction in addition to or in substitution for other forms of sanction. A criminal justice system that is addressed solely to the criminal offender with little or no regard to the plight of the victim of the crime is certainly not in accord with modern notion of justice.

29. Godwin Josiah v. The State (1985) 1 NWLR 125.

30. (1988) 4 NWLR 503 at 513.

31. (1979) 1 SC 1.

32. Sade Adetiba, “Modalities for the enforcement of financial compensation for the victims of crimes” 23 JLRS Vol. 5 (1989).

The conviction and sentence of the accused person to term of imprisonment or fine has little or no significance to the victim. In practical terms, the victim is now left to recount his loss in terms of finance, time and energy expended going around the halls of justice from the inception of the case, which in Nigeria might span between one day to three years or even more. Hon. Justice Karibi-Whyte observed the need for participation of the victim in the criminal process:³³

The participation of the victim in our criminal process is limited to his role as a witness for the state in the prosecution of the offender. This passive role has been criticised as unsatisfactory and not sufficiently demonstrative of the interest of the victim.

From the above, it is humbly submitted that committal to prison for a criminal act is not always adequate in our contemporary society and as such there should be some ways of making the offender to indemnify the victim for his violence. It is therefore recommended that a criminal injuries compensation board be set up for proper determination of criminal responsibility. Again, the absence of a real institutional scheme for enhancing victim remedy and the traditional sentiment of reconciliation in the dispute settlement procedures in our criminal justice system has led to hostility generated by the process of arrest and interrogation. This is reinforced by the adversary system of trial which we adopt for the most part of our criminal proceedings. The situation is further compounded by the emphasis of our penal system on the punishment of the offender, rather than concern for providing remedy to the victim. These matters should no longer be left to the whims and caprices of individual magistrates and judges, but should be institutionalised and streamlined. This then means that that it must be viewed from our traditional tripartite approach of justice for the victim, justice for the offender and preservation of the interests of the society. It is time for Nigeria to begin to develop milestones in bringing victimological perspective in criminal in her criminal justice system. The ACJA 2015 and ACJL of the various states is a stepping stone in this direction.

2.2 RIGHTS OF VICTIMS IN CRIMINAL JUSTICE

Jeremy Bentham believed that due to the presence of the social contract between the state and the citizen, victims of crime should be compensated when their property or person was violated. It is the role of the state to check crime and protect people and their property.³⁴ If the state is unable to prevent a crime, it falls upon the state to support the victim. This connotes that the enhancement of victim's rights and remedies will be greatly assured in the criminal justice system and will further assist in the attainment of social objectives as enshrined in Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). State compensation is further justified because it is the political, economic and social institutions of the state that generate crime by poverty, discriminations, unemployment and insecurity. Modern welfare state is looked forward for the welfare of people as the paramount interest of the state. The rationale behind this proposition is based on the fact that the parties concerned will continue to live in the same small community with the fundamental objective to preserve and enhance social harmony otherwise referred to as "Social Equilibrium"³⁵. Indeed, Radcliffe Brown summed up the position in this way:³⁶ "A judge is not regarded as having properly settled a case until all parties concerned are satisfied with the settlement". The enhancement of victim's rights and remedies should be an important concern of the criminal justice system.

33. Suwarna S. Mangrulkar, "Compensation to Crime Victims in India – A Tool of Restorative Justice". Accessed on 05/08/17 at <http://www.gerdkirchhoff.de>.

34. Karibi-Whyte, "National policy on compensation to victims of crimes: How desirable"?

35. See the sixth United Nations Congress Report on the Prevention of Crime and the Treatment of Offenders captioned *Caracas Declaration (A/CONF 87/14/Rev1)* 1980. The seventh report states that crime prevention and criminal justice be viewed within the context of the social, economic, cultural and political systems of member states.

36. See, "Primitive Law" 9 Ency Soc Sci 294 (1993).

Thus, for an effective criminal justice system, victims' rights must be respected and where neglected, it has the following consequences:

- i. Victims are made to cope not only with mental trauma, physical injury, loss or damage to property, but also with insensitive investigation and legal processes;
- ii. Mistrust in the state's capability to protect the citizens;
- iii. Reluctance of victims to invoke the criminal process against offenders which results in a growing tendency for victims and the community to take the law into their hands;
- iv. Greater emphasis on punitive and retributive rather than restitutive and compensatory sentencing;
- v. Duplication of legal process, because criminal and civil causes arising from one event or transaction are pursued separately;
- vi. Lack of faith in institutions of the criminal justice administration, particularly the police and the courts, and
- vii. General ineffectiveness of the criminal justice system.

Ever since the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, considerable progress has been made by Nigeria in field of victimology. The recent legislative policy and law reforms on victim's redressal and their assistance should be based on certain fundamental principles. Drawing upon our traditional acceptance of reconciliation as the aim of our traditional criminal justice system, it becomes imperative that the victim must become a party in the criminal process and he must be a full participant at both the pre-trial, trial and the sentencing stages of the criminal process. This system will provide remedies and disposition method which will not only be understood by the offenders, the victims and the society, but will also enhance respect for and appreciation of our criminal justice system by all the three parties. Further, it will enhance the redemptive value of our criminal process and its consequences including even, punishment. In the words of Professor Adeyemi:³⁷

Compensation is, by custom a measure known to, and accepted in virtually all African countries in the region...it therefore becomes clear that the emergence of compensation in Africa was not a result of its being designed as an alternative to imprisonment in the region. Rather, it is simply one of the measures provided for in the respective criminal justice systems.

Thus, when Court grants compensation, it does so under the Public Law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the rights of citizen. It is hereby suggested that the Court should be empowered to take full evidence on the circumstances of the offence, including its nature, extent and degree of injuriousness, and allow the victim to testify in relation to facts relating to these, just as is done in civil cases. Sanctions which the court may impose on a convicted offender shall be fine, compensation, restitution, restoration, binding over, absolute discharge, conditional discharge, apology, destruction, confiscation, forfeiture, closure of premises, banned occupation, community service, family, community or neighbourhood supervision, corporal punishment, imprisonment, deportation, and committal to special care in the stipulated order of descending priority. The Court in the exercise of its sentencing functions, shall be guided by the principle of conciliation and it shall endeavour to promote the reconciliation of the victim and the offender, and it shall encourage and facilitate settlement of the matter before it in an amicable manner, on any terms of payment of compensation or other terms which it shall deem fit, having regard to all the circumstances of the case.

37. "Personal Reparations in Africa: Nigeria and Gambia" in *Alternatives to Imprisonment in Comparative Perspective* Ed. By U. Zvekio 54 (United Nations Inter-regional Crime and Justice Institute, Nelson Hall, Chicago, 1993).

2.3 Victims' Remedies in Criminal Justice Administration in Nigeria

At the conclusion of criminal trial, and in the process of sentencing of the offender, it is pertinent for the court to consider award of quantum of remedies to the victim as well so as to restore him or her to the pre-criminal status quo. Basically, these shall involve mainly restitution of movables, restoration of immovables, compensation, costs and damages. Generally, in criminal matters where the defendant is found guilty of the alleged crime, the only 'remedy' was sentencing. Victims of crimes are often neglected and left without any form of compensation.

The ACJA has however brought succour to victims of crime by broadening the powers of the court to award commensurate compensation in deserving cases to victims of crime³⁸. Further, the Act provides that a court may, within the proceedings or when passing judgment, order the convict to pay compensation to any person injured by the offence, a bona fide purchaser for value, or for defraying expenses incurred on medical treatment of a victim injured by the convict in connection with the offence³⁹. This is a very commendable provision of the law in that it does not only seek to punish the offender, but also to ameliorate the hardship occasioned by the commission of the offence thus, serving justice in both ways. By and large, the provisions of the new Administration of Criminal Justice Act are geared towards curing most of the anomalies and lacuna in the existing criminal laws. But as we all know, in Nigeria, the problem is always not with the law but with the implementation of the law. It is hoped that this new law which is very progressive, timely and striving to be in conformity with international best practices will be well implemented to give life to the dream justice system that the legislators have in mind for Nigeria.

2.3 COMPENSATION, RESTITUTION AND RESTORATION

Section 321 of the ACJA 2015 provides that: 'A court after conviction may adjourn proceedings to consider and determine sentence appropriate for each convict:

- a) In addition to or in lieu of any other penalty authorised by law, order the convict to make restitution or pay compensation to any victim of the crime for which the offender was convicted, or to the victim's estate; or
- b) Order for the restitution or compensation for the loss or destruction of the victim's property and in so doing the court may direct the convict:
 - i. To return the property to the owner or to a person designed by the owner;
 - ii. Where the return of the property is impossible or impracticable, to pay an amount equal to the value of the property; or
 - iii. Where the property to be returned is inadequate or insufficient, to pay an amount equal to the property calculated on the basis of what is fair and just.

From the above provision, it is observed that the award of compensation and restitution is at the discretion of the court. Again, it is observed that the Act provided for compensation as an addition or a substitute for a sentence. The poser here is whether it is just for compensation to be available if the offender is fined. This will definitely subject the offender to double financial penalties. It is the writer's view that an independent body be set up for this purpose while the court should concern itself with conviction and sentencing of offenders only where necessary. This is even worse where most of our magistrates and judges fail to award compensation and restitution notwithstanding the wide powers provided by the law. Whenever actual loss or damage is caused to an individual or his property, compensation should be a possibility, either by itself or in conjunction with another punishment.

38. Section 314 Administration of Criminal Justice Act, 2015.

39. Section 319 (1) Administration of Criminal Justice Act, 2015.

In Sudan, which has been less conventional in this respect than Nigeria, the right to claim customary compensation and modify the ordinary processes of criminal prosecution has been preserved.⁴⁰ In a murder case, the willingness of the family of the deceased to accept customary compensation will justify commuting a death sentence. In other cases, the accepting of compensation may amount to complete settlement, or may be taken into consideration in mitigating the sentence passes.⁴¹ what is more, in *Sudan Government v. Kamal El Jack Ahmed*, the Court went so far as to allow a homicide case to be resolved on the basis of compensation where the parties belonged to a tribe (Dinka) which recognised a compensation system analogous to *diya* under Moslem law and where the accused and the father of the deceased agreed on terms, even though the offence took place in an urban area.

In England, the power to compensation orders is contained in Powers of Criminals Courts Act, 1973 (PCCA), Ss. 35-38. Section 35 provides that, instead of or in addition to dealing with the offender in any other way, the Crown Court, and adult magistrates' court or a youth court may require the offender to pay compensation to the victim for any 'personal injury, loss or damage resulting from the offence.' It should be clear from the explanation given here that the punishment and compensation functions of the criminal court are in principle quite separate, being designed to achieve different objectives. But in practice, they are not always so clearly distinguished.⁴² The central aim of making a compensation order was explained by Scarman LJ in *Inwood*⁴³ when he said that:

...it was to provide victims of crime with a convenient and rapid means of avoiding the expense of resorting to civil litigation, when the criminal clearly has means which would enable the compensation to be paid.

The compensation order is one of the ways in which the victim of an offence may be compensated for the crime which has been committed against them. The other main avenue is for the victim to make an application for compensation under the state scheme administered by the Criminal Injuries Compensation Board (CICB).⁴⁴ That scheme confined to cases where the victim has suffered physical injury as a result of a 'crime of violence'. This scheme is lacking in Nigeria despite the recent legislative reforms in our criminal justice system. Since the compensation order is ancillary to sentence, it should not be regarded as part of the punishment for the offence (even though the offender who is required to pay may not always appreciate the difference between compensation and a fine), and hence its imposition does not require any adjustment in the sentence per se. In particular, compensation orders should not provide an escape route by which wealthy offenders may buy their way out of the normal consequences of their crime.⁴⁵ This is to ensure that the offender does not enjoy the fruits of his crime, while it also seeks at the same time to restore the parties to the *status quo ante crimum*.

In India, The Bihar Victims Compensation Scheme 2011, Union Territory of Chandigarh Victim Assistance (Amendment) Scheme 2013, Haryana Victim Compensation Scheme (VCS) 2013 Manodhairya Policy by Maharashtra Government, Maharashtra Victim Compensation Scheme, 2014 are some of the examples of framed policies for the victims of crime. Most of the States in India have prepared their respective policies to meet the needs of crime victims. It is really a praiseworthy step taken by India by respecting the rights of a crime victim. The Indian Judiciary is also so much active towards the concept of compensation. In the case of *KHATRI vs. STATE OF BIHAR*⁴⁶ which is known as Bhagalpur Blinding Case, Bhagwati J. has observed that: "why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty."

41. ALAN MILNER, "The Nigerian Penal System", (Sweet & Maxwell Limited, 1972) p.413.

42. *Ibid.* at p. 413; see Gledhill, *penal codes of Northern Nigeria and the Sudan*, at 770-771 (1963); Cook, *Blood Money and Law of Homicide in the Sudan, A Documentary Survey* (1962) S.L.J.R. 470.

43. Christopher J. Emmins and Martin Wasik, "Emmins on Sentencing" (2nd ed. Blackstone Press Limited 1993) at p. 239.

44. *Ibid.*

45. *Ibid.* (1975) 60 Cr App R 70.

46. *Ibid.* see *Barney* (1989) 11 Cr App R (S) 448.

In the landmark case of *Ankush Shivaji Gaikwad vs. State of Maharashtra*⁴⁷, the Supreme Court emphasized that victim is not to be a forgotten party in the criminal justice system and Section 357 of Cr. P.C should be read as imposing mandatory duty on the Court to apply its mind to the question of awarding compensation in every case. Unlike Nigeria, the Indian courts are of the view to support the crime victims. The various cases have been decided by the respective courts showing court's welcome attitude towards the compensation.

It is my humble view that our fragmented legal framework providing for compensation by an offender to his victim for loss suffered or injury caused by commission of the offence be made adequate by making it mandatory instead of discretionary the power of the courts to compensate the victims. Furthermore, there should be in place enforcement machinery that will help recover the fine, out of which compensation is ordered, or the specified amount of compensation from the offender to pay it to the victims of the offence. In the words of **Martin Luther King Jr.**⁴⁸ *Injustice anywhere is a threat to justice everywhere*. If compensatory justice is denied to those needy crime victims, it would certainly amount to injustice.

On the other hand, restitution relates to the return or restoration of movable property either stolen or otherwise dishonestly acquired, or taken without permission, or property innocently obtained from such successors, except negotiable instrument bona fide paid or discharged. In determining a sentence, the court shall have Restitution as one of the objectives of compensating the victim or family of the victim of the offence⁴⁹. Restoration relates to restoring the possession of immovable property to a person dispossessed of it by means of force, such as for example, in the case of forcible entry or that of forcible detainer. From these analyses, one may look at restitution and restoration as similar in the sense that they occur where an offender is made to disgorge the benefit he has acquired through his own criminal act. Compensation as we have earlier discussed differs from restitution and restoration in the sense that it is concerned with recovering ill-gotten gains but with relieving the victim of a crime of any loss he might have suffered physically or financially. A restitution order is an order which is imposed by the court as ancillary to the sentence for the offence, and may be made in combination with any other sentence passed, including a deferment of sentence.⁵⁰ The ACJL has adequately dealt with the restoration of immovable property⁵¹. The provision of Section 321 of the ACJL is commendable in the sense that it has empowered the Court to award adequate damages for the loss occasioned to the owner by the offender's wrongful dispossession of his property, or for any deterioration cause to the property in consequence of the forceful acquisition of the property by the offender, or as a result of the user to which the property had been put by him. It thus appears that restitution orders are basically concerned with redress for the victim of property crime.

It is submitted that despite the above laudable reform on the administration of criminal justice in Nigeria by the enactment of the ACJL 2015 and ACJA of the various states, the law on victims' remedies are grossly inadequate and these should now be modernised and updated into consideration the principles and practices of the traditional criminal justice systems on compensation and restitution for victims of crimes and international best practices. Thus the neglect by our courts of compensatory provisions in criminal justice administration is out of tune with modern trends and now prevailing in several advanced countries.

47. 2013 6 SCC 770.

48. <http://www.brainyquote.com/quotes/keywords/justice.html>.

49. S. 401 (2) (g) of ACJA 2015.

50. S. 319(2) *ibid*.

51. S. 321(b)(i)-(iii).

PART 3

INTERNATIONAL INSTRUMENTS AND POSITIONS OF OTHER JURISDICTIONS ON VICTIMS' REMEDIES

3.1 International Instruments

More than ever, international attention has been directed to the needs of those who have suffered criminal violations of their rights. In both domestic and international contexts, further acknowledgment of the victims' suffering after trial and sentencing could be provided by means of compensation, as envisaged by the UN Basic Principles of Justice for Victims of Crime and Abuse of Power.⁵² Three years later, the UN started work on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ('Basic Principles')⁵³. While the Basic Principles were not approved by the General Assembly until 2005, they influenced other UN instruments and state policy during their development.⁵⁴ The Basic Principles assert that victims 'should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation...which include(s) the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.'⁵⁵

These reparative elements also were fused into UN 'hard law'. To illustrate, in its section on remedies, the International Convention for the Protection of All Person from enforced Disappearance provides for compensation, restitution, rehabilitation, satisfaction and guarantees of non- repetition.⁵⁶ The Convention on the Rights of Persons with Disabilities call for 'all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities' in the event of exploitation, violence or abuse.⁵⁷

The UN Human Rights Committee, created pursuant to the International Covenant on Civil and Political Rights, has supported these principles through the General Comments on the Covenant and various recommendations to states.⁵⁸ The UN affirmed that reparation to victims not only entails compensation, but also 'can involve restitution rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.' Better known are the UN's achievements concerning the International Criminal Court and its Rome Statute. The Rome Statute allows the Court to address the issue of reparations to victims, establishing general principles for 'restitution, compensation, and rehabilitation'⁵⁹.

52. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. G.A. Res. 60/147, U.N. Doc. A/RES/40/34/Annex (Nov. 29, 1985): Basic Principles 12 and 13.

53. Ibid.

54. M. Cherif Bassiouni, *International Recognition of Victims' Rights*. 6 HUM. RTS. L. REV. 203 (2006); Martien Schotsmans, *Victims' Expectations, Needs and Perspectives after Gross and Systematic Human Rights Violations in OUT OF THE ASHES: REPARATION FOR VICTIMS OF GROSS AND SYSTEMATIC HUMAN RIHGTs VIOLATIONS* 114-115 (K. De Feyter et al. eds. 2005) at 279-79.

55. Basic Principle, *supra note 44 at p.6-18*.

56. International Convention for the Protection of All Persons from Enforced Disappearance, G.A. Res. 61/177, U.N. Doc. A/Res/61/177, art. 24.

57. Convention on the Rights of Persons with Disabilities, G.A Res. 61/106, U.N. Doc. A/Res/61/106, art. 16(4).

58. See, e.g., U.N. Human Rights Comm., Int'l. Covenant on Civil and Political Rights, General Comment No.31 (80), The Nature of the General Legal Obligation Imposed on States Parties to the Covenant. 16 U.N. Doc. CCPR/C/21/Rev.1/Add.13.

59. Christopher Muttukumaru, 'Reparation to Victims', in Lattanzi and Schabas, *Essays on the Rome Statute*, pp.303-10.

The Court is empowered to 'determine the scope and extent of any damage, loss and injury to, or in respect of, victims', acting on its own initiative in case where there is no specific request from the victims themselves.⁶⁰ The purpose of this 'determination', it appears is to enable enforcement of the rights of victims before national courts. Two distinct institutions are contemplated by the Statute with a view to enhancing the role and the rights of victims. A Victims and Witnesses Unit is to be established by the Registrar.⁶¹ Its responsibilities include the provision of protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witness. The Unit is to include staff 'with expertise in trauma, including trauma related to crimes of sexual violence'.⁶²

This is a commendable milestone by the ICC's move towards including victims in criminal proceedings. The Rome Statute of the International Criminal Court also established a Trust Fund for Victims, a body independent from the Court which is still in its infancy. The Trust Fund is to work with local communities falling under ICC jurisdiction to help the victims rebuild their lives. In the trial proceedings of individual trials, if an accused person is convicted, victims may ask the Court to make an order of reparations for the harm they have suffered. The judges may order individual or collective reparations, which can be paid out of the Trust Fund. The type of reparations will also be decided by the judges and may include compensation, restitution, rehabilitation and symbolic measures such as public apology or a commemoration or memorial.

This is indeed an important trend in criminal justice towards what is called 'restorative justice', an approach that is victim-oriented. The idea of compensating victims of crime was greatly encouraged by the International Criminal Court. It is not sufficient enough by convicting the perpetrator alone, hence, the offender is to pay the victim of his crime to recompense for loss or injury or property, or to compensate for some deprivation like sexual offences like rape, theft, assault, murder etc. We often see that victims of sexual offences like rape had not been redressed properly. For example, right after the perpetrator being convicted, then that's that. No further actions were taken in helping the victim to compensate or at least to help them in their recovery from such traumatising. According to the case of *Public Prosecutor v HAHS*⁶³, this case was a statutory rape case whereby in this case, an Imam was accused of raping and outraging the modesty of his adopted daughter and he was convicted and was imposed with a sentence of 15 years and 10 strokes for the first charge. In this case, nothing about compensating the 15 years old girl who had been raped being point out or argued on. The only ground highlighted at the end of the case was the sentencing of the offender.

Another case that we could refer to is *PP v Muhammad Rasid bin Hashim*⁶⁴, where the accused was charged for having committed the offences of rape and murder of Siti Zawiah Sudin ('the deceased') on 9 March 2006. Later he was convicted for the offence of rape and sentenced to 18 years of imprisonment and five strokes of the rotan and in convicting the accused of the offence of murder; he was sentenced to death by hanging. Again, in this case the issue of compensating the family of the deceased was never looked into by the court.

60. Rome Statute, Art. 75(1). See also Rules of Procedure and Evidence, Rules 94-99. The idea that the Court could act on its own initiative was very controversial. Those favouring this argued that victims in underdeveloped parts of the world were unlikely to be in a position to exercise the right on their own.

61. See particularly Rules of Procedure and Evidence, Rules 16-19.

62. Rome Statute, Art. 43(6). See also *ibid.* Art. 68(4).

3.2 Position In Queensland, Australia

There are numerous victim compensation schemes out there. Different countries offer different sets of schemes. Hence, for the purpose of this paper, victim compensation scheme from Queensland which is one of the provinces of Australia will be used as a reference. Queensland had implemented a statutory scheme, called 'Criminal Compensation', to assist victims of crime. Prior to 1995, there were legal avenues for victims to seek compensation; which was considered as expensive and complex. Having just suffered serious injury and endured an often traumatic and lengthy criminal court process to see the offender convicted, victims may have little fortitude left to continue with further court proceedings to obtain compensation. Yet, such victims were forced to commence personal lawsuits against the offenders with no guarantee of success. Frequently offenders came from a low socio-economic group and had no money or assets to satisfy court-ordered payout even if the victims were successful. This rendered civil proceedings pointless.⁶⁵ In accordance with the international convention, the Queensland government implemented the Criminal Offence Victims Act 1995 (QLD) (hereinafter referred to as 'COVA'). COVA was a compensation-based scheme in which the government provided victims with a cash payout for injuries suffered, as a result of a criminal offence, when the offender was unable to personally pay. Unfortunately the State government underestimated the number of possible claimants and after a decade it became apparent that the scheme was too much of a drain on the public purse.⁶⁶

On 1 December 2009, the Queensland Government replaced COVA with the Victims of Crime Assistance Act 2009 (QLD) ('VOCA'). This is an assistance-based scheme where the State government offers different forms of assistance to victims, rather than merely a lump sum cash payout. The scheme offered via VOCA is called as the Victim Assist which focuses more on the victim's recovery. VOCA uses a Tribunal approach rather than a court-based system which requires the victims to apply for compensation. VOCA had described in details of the whole procedure and complete description as to how the scheme should be authorized and implemented.

63. (2012) 8 MLI 109.

64. (2011) 7 MLI 845.

65. Smith, C. (2011). *WhatisVictimsofCrimeCompensation*. Retrieved from:

http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1171&context=nle&seiredir=1&referer=http%3A%2F%2Fwww.google.com.my%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Dcriminal%2520offence%2520victims%2520act%25201995%26source%3Dweb%26cd%3D5%26cad%3Drja%26ved%3D0CDkQFjAE%26url%3Dhttp%253A%252F%252Fepublications.bond.edu.au%252Fcgj%252Fviewcontent.cgi%253Farticle%253D1171%2526context%253Dnle%26ei%3DujjSUPqCGMq3rAf8j4C4BA%26usg%3DAFQjCNFKjJOWM_YFxBm7ZqBVnQwOxgGgg#search=%22criminal%20offence%20victims%20act%201995%22.

66. Ibid.

3.3 Position In Malaysia

Sadly, Malaysia has not reached the level of Queensland yet. Malaysia is yet to have a specific legislation or enacted law to govern such a scheme unlike Queensland. Instead, the power of the Criminal Court to order compensation arising from a criminal offence is provided only in *section 426 of Criminal Procedural Code (Revised 1999)*⁶⁷ (hereinafter referred to as CPC):

- (1) The Court before which an accused is convicted of an offence –
 - (a) in its discretion, **may** make an order for the payment by the convicted accused of the cost of his prosecution or any part thereof as may be agreed by the Public Prosecutor; or
 - (b) where –
 - (i) the prosecution of the convicted accused involves evidence obtained pursuant to a request made under the Mutual Assistance in Criminal Matters Act 2002 [Act 612]; or
 - (ii) the accused has obtained pecuniary gain, upon the application of the Public Prosecutor, shall make an order for the payment by the convicted accused of the cost of his prosecution or any part thereof, the sum of which is to be fixed by the Court as may be agreed by the Public Prosecutor.

(1A) Without prejudice to subsection (1), the Court before which an accused is convicted of an offence shall, upon the application of the Public Prosecutor, make an order against the convicted accused for the payment by him, or where the convicted accused is a child, by his parent or guardian, of a sum to be fixed by the Court as compensation to a person who is the victim of the offence committed by the convicted accused in respect of the injury to his person or character, or loss of his income or property, as a result of the offence committed.

(1B) Where the person who is the victim of the offence is deceased, the order of compensation shall be made to a representative of the deceased person.

(1C) The Court shall, in making an order under subsection (1A), take into consideration the following factors:

- (a) the nature of the offence;
- (b) the injury sustained by the victim;
- (c) the expenses incurred by the victim;
- (d) the damage to, or loss of, property suffered by the victim;
- (e) the loss of income incurred by the victim;
- (f) the ability of the convicted accused to pay; and
- (g) any other factors which the Court deems relevant.

67. Act 593.

68. PP v Lee Meow Sim Jenny (1993) 3 SLR 885.

69. Kok Kee Kwong v PP (1972) 1 mli 124.

70. Raja Izzuddin Shah v PP (1979) 1 MLI 270.

71. Mohamed Johan Mutalib v PP (1979) 1 MLI 213.

- (1D) For the purpose of making an order under subsection (1A), the Court may hold an inquiry as it thinks fit.
- (2) The Court shall specify the person to whom any sum in respect of costs of compensation as aforesaid is to be paid, and section 432 [except paragraph (1)(d)] shall be applicable to any order made under this section.
 - (3) The Court may direct that an order for payment of costs, or an order for payment of compensation, shall have priority, and if no direction is given, an order for payment of costs shall have priority over an order for payment of compensation.
 - (4) To the extent of the amount which has been paid to a person, or to the representatives for damages sustained by reason of the offence shall be deemed to have been satisfied, but the order for payment shall not prejudice any right to a civil remedy for the recovery of any property or for the recovery of damages beyond the amount of compensation paid under the order.
 - (5) Every order made under this section by a Magistrate shall be appealable to the High Court.

Above section corresponds with section 401 of the Singapore CPC and empowers the court to order the accused to pay the prosecution's costs or compensation to any victim of the crime. The compensation order under this section is not part of the sentence.⁶⁸ Compensation may be ordered in cases involving loss of property⁶⁹, or assault⁷⁰. Besides that, the Government is not entitled to such compensation⁷¹. By looking at this section, we can clearly see that the Court has full and wide discretion as to order costs or evaluate compensation under the corresponding section. The provision also did not explain in details of what kind of victims that could ask for compensation and what type of injuries which are accepted to be recompensed.

By looking at the VOCA, it entails meticulous details regarding the scheme as a whole. The provision shows clearly as to how the scheme should be implemented. Different scenario happened in Malaysia whereby they depend solely on section 426 of CPC with regards to the issue of compensating their victims. By referring to the above section, it is fascinating to note that there is a sense of indistinctness that exists within the said proviso. The language used is neither certain nor directive, and no guidelines are given for how to best implement the stated aims into the justice process. Such vagueness does not assist victims in their applications.⁷² This lacuna is also found in our new ACJA 2015.

Hence, it can be seen that the interest of the victims are not paramount in the criminal justice in Malaysia and most developing countries in Africa. Due to the adversarial system being used these developing countries; victims of crime are only regarded as a witness for the prosecution. Malaysia's criminal justice only focuses on prosecuting the offender since the offender has ostensibly brought injury to the State. What matters the most is that the offender is convicted and sentenced and this definitely doesn't reflect the objectives of section 426 of CPC which is to help and compensate the victims.

72. *CriminalOffenceVictimsAct195(QLD):AnEvaluation*. Retrieved from <http://www.law.uq.edu.au/documents/qlsr/recent-issues/vol2/issues2/sturbinton2009v2n2.pdf>.

73. *Ibid*.

Since section 426 of CPC does not define specifically the type of injury sustained by the victim, it is hard to prove the injuries suffered by the victim especially for the victims of sexual offences. Usually, in order to compensate the victims, they have to prove the injuries that they are suffering from. Physical injuries might be proved because it can be seen but how can the court compensate based on the mental distress or traumatising of a sexual offence's victim. How can the Court assess such injury and give compensation after that. Not only that injuries presuppose that victims of crimes suffered from obvious and visible injuries, such as bruising, fractures and loss of vision that should be highlighted, but also pernicious injuries such as genital wounds and internal damage should be accounted as well.⁷³ The position in Malaysia is not quite different from Nigeria. It is the duty of the court to take into account the nature of the crime, the injury suffered, capacity of the accused to pay and other relevant circumstances while fixing the amount of fine or compensation.

Despite the wide powers given to the Court in assessing the compensation for victims, in reality, the granting of compensation order under section 426 of CPC has not become the practice of the courts in upholding criminal justice in Malaysia. The obvious flaws of the compensation order are; 1) it lacks guidelines in assessing the total sum that should be paid and, 2) lacking of cases or judicial precedent in making compensation orders. When the compensation order is not in practice, thus, the interests of the victims of crime have always been left in abeyance. In order to redress the victims of crime especially which involves victims of sexual offences, victim compensation scheme is seen as a perfect instrument to be used in recognizing that the victim has been through a terrible ordeal. By giving the victims chances to recuperate via victim compensation scheme would help in giving them back the self-power and control that they lost during the commission of sexual offences upon them. Therefore, it is suggested that Malaysia should enact specific legislation like VACO to secure the interests of the victims of crime and it is recommended that Malaysia should set up its own victim compensation scheme. It is, thus, evident that the fragmented legal framework providing for compensation by an offender to his victims for loss suffered or injury caused by commission of the offence is inadequate. It neither mandates the courts to compensate the victims nor create any legal right in their favour.

To meet up with international best practice it is pertinent that these developing countries need to urgently enact laws or introduce appropriate statutory provisions or schemes as an integral part of the criminal justice system, to provide for payment by the state and/or offender of compensation to the victim of crime.

4. RECOMMENDATIONS

The paper having discussed the remedial task of our administrative justice system to convert law into results which seeks to deter violations and restore the moral balance when wrongs are committed, recommends the following:

1. As compensation is the most common remedy, every legal system should strive for certainty in calculating damages to avoid under- or over-compensating the victim. Uncertainty and arbitrariness in awards undermines respect for the law; legal certainty represents one of the modern jurisprudence's central concerns as the law searches for order and predictability.
2. In moving towards greater recognition of the importance of the interests of the victims of crime in the criminal process, Nigeria should enact an Act separate from the ACJA 2015 in compensating victims of crime. This has been part of a wider social and legislative trend. Hence, several countries have already taken initiatives by enacting specific legislation and setting up victim compensation schemes as well. To start with, organisation and operation of the Criminal Injuries Compensation Board operating in UK may be used as a model. Recently, the Committee of Ministers, Council of Europe, has given a set of guidelines touching upon all stages of criminal justice process and appealed to the governments of member-states to review their legislation and practice in accordance with them.⁷⁴ One such guideline suggests that the 'generally realised' existing limitations, restrictions or technical impediments preventing possibility of a compensation order by criminal court be abolished. To increase practical utility of the statutory provision as a law governing compensation in Nigeria and other developing countries, it is imperative to convert discretionary power of the court into a legal mandate requiring it in all suitable cases to pass compensation order. And when it decides not to do so it be made obligatory to record reasons for this.
3. Alternatively, victim of an offence be legally allowed to intervene in the criminal proceedings against the offender to claim compensation for loss or injury. Such a provision will certainly enhance use of the statutory provisions to compensate victims of crime for it would amount almost to a presumption that compensation is to be considered in every case.
4. Keeping in view recent developments and current trends in law relating to victims' remedies at the various international conventions and recommendations, it is high time that Nigeria gives serious reconsideration to the proposals therein in order to meet up with international best practice.
5. A comprehensive scheme for payment of compensation by the offender, as well as by State, based on sound and certain legal premise like the ICC Trust Fund, would certainly 'satisfy' and 're-compensate' the victims of crime and eliminate an element of personal vengeance against the offender, which otherwise may be satisfied by the victim by illegal means.

74. See, Council of Europe, *collection of Recommendations, resolutions and Declarations of the Committee of Ministers concerning Human Rights, 1949-87*, pp. 134-35. (1989).

5. CONCLUSION

The paper has so far discussed victims' remedies and concluded that at present, the only satisfaction that a victim can get from the Nigeria criminal justice is the punishment inflicted upon the criminal. Highlights were made on the inadequacies of our criminal justice system to indemnify the victim of crime and thus the this poser: *Should we, in the interests of victims of crime and their equitable right to be compensated for loss or injury cause by commission of offence, proper and just administration of criminal justice, not look back to ancient and medieval times in which they were not that neglected⁴³ and look at the current trends and recent developments abroad showing them equal concern, to update law governing payments of compensation to them and make it more effective, equitable and comprehensive?* Emphasis should therefore be accorded on how to adequately compensate the victim of crimes in our justice system. It is hoped that if victims are adequately compensated, they will be encouraged to report offenders to the police and this would prevent such offender from repeating same.

Nigeria and other developing countries can no longer afford to run criminal justice system that has very few provisions for victim remedy and such a need to adopt international best practice has become inevitable. Although the enactment of the ACJA 2015 is a good attempt, areas recommended by the writer of this paper should be adopted by our legislature so as to adequately provide machinery to redress the criminal act of the offender against innocent victims. Thus an order of restitution or compensation should be enforced in the same manner as a judgment. Compensatory justice is the right of crime victims. It is needed by the victim to reconstitute him or herself in the position they were having before the incidence of the crime. Justice must be brought within the reach of the poor!