



## Realizing the rights of victims of crime under the Nigerian criminal justice system

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### Abstract

Victims of crime laws in Nigeria, generally speaking, have not adequately met the yearnings of victims of crime. This article examines the lapses of some victims of crime laws in Nigeria with the aim of remedying the lapses in the laws. The research methodology adopted is mainly doctrinal analysis of relevant primary and secondary sources. It is the view of the authors that governmental efforts to remedy the problems of victims of crime rights have not yielded the desired results, as there is apparent inability of the Nigerian government to guarantee adequate protection and compensation of victims of crime when criminal offenders are not found. The authors suggest, among other recommendations, that the Nigerian Government should develop guidelines for the award of compensation to a victim of crime on tariff or scale of awards for injuries of comparable severity; including the amendment of TIPLEA and other laws on crime to provide for beneficiaries of Victims of Crime fund established by law to be extended to other victims of crime which are not human trafficking.

**Keywords:** Victims of crime, Scale of awards, injuries of comparable severity

### Introduction

In Nigeria, the rights of a victim of crime to claim compensation, restitution, restoration of properties for crimes and exercise procedural rights in criminal trials are limited. Even so, the procedural rights of a suspect and a defendant, during investigation and criminal proceedings are guaranteed by the Constitution of the Federal Republic of Nigeria 1999, as amended (Constitution) <sup>[1]</sup>. The Constitution, however, fails to provide for a victim of crime right of appeal in matters involving him where the State fails to appeal. Also, the Constitution fails to adequately provide for procedural rights for victims of crime in criminal trials.

It is, therefore, not a surprise that the Administration of Criminal Justice Act 2015 (ACJA), the Violence Against Persons Prohibition Act 2015 (VAPP) and other victims of crime laws now recognise the need to award compensation to victims of crimes in appropriate cases. Despite that, the prohibition of acts of violence and provision to compensate victims of crime in the Federal laws like the VAPP Act <sup>[2]</sup>, and the ACJA <sup>[3]</sup> have limited jurisdiction. These legislations only apply in the Federal Capital Territory. Therefore, these statutes do not apply generally across Nigeria. Unfortunately, in States where these Federal Acts above have been enacted with similar provisions, there appears to be a lack of enforcement and implementation of these laws <sup>[4]</sup>.

This article examines the problems and lapses of victims of crime laws in Nigeria. It analyses some applicable laws, including the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015 (TIPLEA). It, also, identifies the lapses in the laws, in the realisation of the rights of victims of crime in Nigeria. It offers lessons Nigeria may imbibe from the analyses of some of the victims of crime laws, including conclusions if they are implemented.

This article is divided into four parts. The first part is the introduction. The second part discusses the history of victims of crime rights in Nigeria. The third part examines victims of crime rights in selected laws. The fourth part states the findings of the study, and lastly, the conclusion.

### Brief History of Victims' of Crime Rights in Nigeria

In Nigeria, crime was seen as an offence committed against the community or society <sup>[5]</sup>. In pre-colonial era, it was the duty of a victim of crime to inform family relations, neighbours and members of the society of crime committed against him for redress <sup>[6]</sup>. From colonial era till present day Nigeria, the Police or law enforcement agencies established by the Nigerian Government became saddled with the duty to protect life, liberty and property of the citizens <sup>[7]</sup>.

In Northern Nigeria, the statutes which provide for compensation of victims of crime before the enactment of the ACJA and the VAPP Act 2015, include: (i) the Penal Code <sup>[8]</sup>; and (ii) the Criminal Procedure Code <sup>[9]</sup>. guilt of the offender was a condition precedent for the award of compensation to a victim of crime by the court under the Penal Code and the Criminal Procedure Code <sup>[10]</sup>. In Northern Nigeria, there are State enactments that empower the court to award compensation to victims of crime. For instance, the Penal Code of Adamawa State 2018 and the Sokoto State Penal Code 2019 contain provisions which incorporate the principle of compensation as an aspect of penology <sup>[11]</sup>.

Nevertheless, in Southern Nigeria, the Criminal Procedure Act 2004 <sup>[12]</sup> gives the court powers to award damages and grant restitution of the property of a victim of crime. The amount of damages awarded shall not exceed twenty naira <sup>[13]</sup>. More so, the court may order any person convicted of stealing or receiving stolen property, to restore the stolen property to the owner, either on payment or without payment of money to the person who was in possession of

the property <sup>[14]</sup>. In this connection, Obiora asserts that the foregoing provisions of the Criminal Procedure Act, 2004 is absurd and smacks of legislative amnesia <sup>[15]</sup>. The above was the state of the legal framework of crime victims' right in Nigeria to compensation or reparation before the enactment of the VAPP Act 2015 and the ACJA 2015 <sup>[16]</sup>.

### **The Penal Code (Northern States) Laws of the Federation of Nigeria 2004**

The Penal Code (Northern States) Federal Provisions Act 2004 <sup>[17]</sup>, applies to the 'Northern States' of Nigeria formerly known as Northern Region of Nigeria <sup>[18]</sup>. The Penal Code of Northern States of Nigeria was enacted in 1959 <sup>[19]</sup>. The Penal Code of Sudan of 1899 was used to develop the Penal Code of Northern States of Nigeria 1959; while the Penal Code of Sudan 1899 was based on the Indian Penal Code drafted by Lord Macaulay in 1837, and came into force in 1860 <sup>[20]</sup>.

The Penal Code (Northern States) Federal Provisions Act 2004 applies in respect of the Northern States and forms part of the Penal Code Law, 1959 of the Northern States (Penal Code of the Northern States) <sup>[21]</sup>. Section 78 of the Penal Code of the Northern States provides for compensation of victim of crime. A person who is convicted of an offence under the Penal Code may be adjudged to make compensation to any person injured by the offender <sup>[22]</sup>. The compensation in this regard may be either in addition to or in substitution for any other punishment adjudged by the Judge or Magistrate <sup>[23]</sup>.

The Penal Code of the Northern States does not make provision to compensate victims of crime from public trust fund managed by a governmental body. The source of compensation under the Penal Code of the Northern States 1959 is the convict or the offender. It is argued that if the convict or offender cannot be found, any compensation awarded by the court may not be enforced by a victim of crime. In addition, where the convict or offender is a destitute or chooses to serve a term of imprisonment, it will be difficult for a victim of crime to enforce any order of monetary compensation. Notwithstanding, it will be helpful if the Penal Code is amended to provide for public trust fund from which compensation could be paid to victims of crime.

### **The Violence Against Persons (Prohibition) Act 2015**

The VAPP Act 2015 empowers the court to award appropriate compensation to a victim of rape as the court deems necessary <sup>[24]</sup>. The award of compensation to a: (i) victim of rape, (ii) victim of physical injury, and (iii) victim of violence by agents of the State is in addition to whatever punishment or sentence the court would pass on the convict. The courts award of compensation to a victim is discretionary in nature. Therefore, an applicant seeking an award of compensation should specifically apply and state the facts for the grant of his application <sup>[25]</sup>. Nonetheless, the VAPP Act 2015 does not specify any procedure to be followed in a bid to apply for compensation in a criminal trial. In this regard, Okosa correctly argues that applications of genuinely-aggrieved victims of crime who are able to establish their rights to a claim should be granted <sup>[26]</sup>.

The compensation for victims of crime against State actors or agents of the State should be in exemplary damages to check impunity of law enforcement agents. The VAPP Act 2015 limits the compensation of victim of crime by a person who commits political violence to be a fine not exceeding

N1,000,000.00 (One million naira) <sup>[27]</sup>. The VAPP Act 2015 does not provide for other types of violence committed by State actors against victims of crime. In this regard, the courts should not be restricted in awards of compensation to only political violence. The nature of violence and harm caused to victims of crime should dictate the damages the court should award against law enforcement agents or the State <sup>[28]</sup>.

It is argued that an order of compensation by the court is a fine on the defendant to pay the cost or compensation. Thus, the source or funding of any order of compensation is the convicted person. The question of whether the convicted person has the ability to pay such fine is another thing which the law should look at.

Nonetheless, the Public Trust Fund established under the NAPTIP could be applied to compensate victims of crime under the VAPP Act 2015 and the various States Violence Against Persons Prohibition Law (VAPPL) in view of the fact that section 44 of the VAPP Act 2015 empowers NAPTIP to administer the VAPP Act 2015. However, it will be helpful if the VAPP Laws in Nigeria are amended to provide for a public trust fund from which compensation could be paid to victims of crime under the VAPP Laws.

Besides, the Court may award appropriate compensation to any victim of violence as it deems necessary <sup>[29]</sup>. The discretion the Law grants in this regard appears wide. It is argued that the court may make an order for the victim to be paid compensation from any other source other than the convict in the wordings of section 49 of the VAPPL of Delta State 2020.

### **The Administration of Criminal Justice Act 2015**

The ACJA provides for the powers of the court to make an order of compensation <sup>[30]</sup>, in favour of a victim of crime. The court may order the defendant or convicted person to pay a sum of money to the victim of crime during the proceedings or while passing judgment in a criminal trial <sup>[31]</sup>. Similarly, the court may order payment of money to an innocent person if it is proved that the person bought a stolen property from the defendant or convict without knowing or having reason to believe that the property was stolen <sup>[32]</sup>. Thus, on the application of the purchaser, the court may make an order of restitution of the stolen property to the person entitled to the possession <sup>[33]</sup>.

The ACJA provides for cost and compensation to prevent and deter people from initiating unsustainable private prosecution <sup>[34]</sup>. Consequently, the court may order a private prosecutor or person to pay to the defendant such reasonable cost as the court may deem fit on the acquittal of the defendant. The ACJA, nevertheless fails to make similar provision against the State for public prosecutors who fail to prove their cases against the Defendant.

### **The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015**

The TIPLEA 2015 was originally passed by the National Assembly of Nigeria in 2003. This Act was amended in 2005, and later in 2015. TIPLEA criminalises human trafficking in Nigeria <sup>[35]</sup>. This Act provides a legal and institutional framework for the prohibition, prevention, detection, prosecution and punishment of human trafficking and related offences in Nigeria <sup>[36]</sup>.

Moreover, section 68 establishes for the fund, the Victims of Trafficking Trust Fund Committee <sup>[37]</sup>. The Trust Fund

Committee has powers to administer the Victim of Trafficking Trust Fund<sup>[38]</sup>. The members of the Trust Fund Committee shall meet at least twice in a year or such other occasion as it may consider necessary<sup>[39]</sup>. The Trust Fund Committee is responsible for: (a) managing all monies, aids, grants, gifts, bequests, endowments, donations or assistance accruing to the Fund; (b) soliciting for funds for the Trust Fund; and (c) approving monies from the Trust Fund to such victims of trafficking on criteria approved by the Committee<sup>[40]</sup>.

It is obvious from the provisions of the Act that the Trust Fund Committee is only empowered to disburse the funds in the Trust Fund to victims of human trafficking, but not to any other victim of crime in Nigeria. However, it is worrisome if a victim of crime that is not related to human trafficking may be able to access funds from the Victim of Trafficking Trust Fund in Nigeria. Moreover, any attempt to use the funds in the Trust Fund to pay compensation for a victim of crime that is not related to human trafficking, may be cited as misappropriation of funds. In addition, the law will appear discriminatory if victims of crime funds are not provided for other crimes which are not human trafficking or related to human trafficking.

Besides, the Delta State Human Trafficking (Prohibition) Law 2024 (HTPL of Delta State 2024), like the TIPLEA, establishes the Victims of Trafficking Trust Fund<sup>[41]</sup> and the Victims of Trafficking Trust Fund Committee<sup>[42]</sup>. Similarly, TIPLEA and the HTPL of Delta State 2024 restrict the beneficiaries of the Victims Trust Fund established under the Act and the Law respectively for victims of trafficking<sup>[43]</sup>. It means that only victims of human trafficking can benefit from the Trust Fund in Delta State.

### Findings

The participation of victims of crime in criminal trial proceedings is in accord with international law<sup>[44]</sup>. The VPA of Kenya<sup>[45]</sup> has incorporated the victims' procedural rights, including the right of a victim to participate at all stages of a criminal proceeding as part of the laws of Kenya<sup>[46]</sup>. The Supreme Court of Kenya has, also, confirmed the procedural right of a victim of crime to participate at all stages of a criminal trial<sup>[47]</sup>.

The laws establishing crime victims' rights are good developments in the criminal justice system of Nigeria. Crime victims' participatory rights in criminal proceedings appear to be elusive in statutes and case-law in Nigeria. More so, convicts or offenders of crime are responsible for payment of compensation awarded to crime victims in Nigeria. The establishment of NAPTIP<sup>[48]</sup> to administer the provisions of VAPP and collaborate with other stakeholders for the administration of the VAPP will not cure the above lapses in the law.

The Australian government established 'State funded compensation Scheme' for the pecuniary and non-pecuniary effects of crime, particularly for violent crime<sup>[49]</sup>. In addition, the Criminal Justice Act 1998 of the United Kingdom makes provision for payment of compensation to victims of crime on ex-gratia basis from public fund<sup>[50]</sup>. In the Countries above, victims of crime are paid on a tariff or scale of awards of compensation for injuries of comparable severity. The tariff system or scale of award appears easier, straight-forward and easy to comprehend by victims of crime. In contrast, victims of crime laws and the courts are still applying the Common Law approach and subjective

assessment of courts as compensation to be paid to a victim of crime in Nigeria.

### Conclusion

The problem of crime victims' rights laws in Nigeria is inadequate provisions in the statutes to protect the victims of crime rights; and inadequate statutory means to assist crime victims to realise their rights in the criminal justice system in Nigeria. It is therefore necessary to incorporate crime victims' procedural rights as part of section 36 of the Constitution to strengthen and make crime victims' right enforceable like the fair trial rights of an accused in criminal trials in the event of such rights violation. The common law approaches for the assessment and award of compensation to a victim of crime appears old fashioned, uncertain and unrealistic in modern times. The tariff or scale of awards for injuries of comparable severity which makes award of compensation to a victim of crime certain, non-subjective, consistent and promotes speedy decision-making in tune with the practice in the United Kingdom and Australia is preferred.

### References

1. The Constitution, s 36.
2. The VAPP Act 2015, s 47. The VAPP Act 2015 is only applicable in the Federal Capital Territory, Abuja.
3. The ACJA. The Preamble to the ACJA states that this Act provides for the administration of criminal justice in the Courts of the Federal Capital Territory, Abuja and other Federal Courts in Nigeria only.
4. O. Ojigbo, 'Nigeria: Failure to tackle rape crises emboldens perpetrators and silences survivors' <<https://www.amnesty.org>> accessed 29 November 2023.
5. O.J. Jejelola and Others, 'An Appraisal of the Theories of Criminal Punishment: Towards Peace and Security in Africa' (2018) 3 African Journal of Criminal Law and Jurisprudence 105.
6. A. Olatubosun, 'Compensation to Victims of Crime in Nigeria: A Critical Assessment of Criminal-Victim Relationship' <<https://www.jstor.org>> accessed 1 September 2023.
7. NI Obiora, 'Re-Victimization of Victims of Crimes Under the Nigerian Criminal Justice System' University of Nigeria Law Studies Journal, 2015:11:54-66.
8. The Penal Code Law, Cap 89 Laws of Northern Nigeria 1963, 78.
9. The Criminal Procedure Code Cap 30 Laws of Northern Nigeria 1963, s 365(1). This provision empowers a court to impose fine on a convicted person and in addition order a convicted person to pay a sum to the victim of crime to defray expenses the victim properly incurred in the prosecution of the case in court. The court may use its discretion in awarding compensation of the amount that a court may award in a civil suit.
10. Yusuf Wakinlin Yaki Da Jahikis & Anor v Zaria N. A. [1963] Nigerian Weekly Law Reports 82.
11. CB Okosa. 'A Jurisprudence for Operation of Crime Victims Compensation in Nigeria's Criminal Justice System' Nnamdi Azikiwe University Journal of International Law and Jurisprudence, 2002:13(2):158-159.
12. The Criminal Procedure Act 2004 (CPA), s 261.

13. Ibid., s 261.
14. Ibid., s 270(1).
15. Obiora (n 7).
16. The ACJA, s 493 repeals the Criminal Procedure Act Cap C41 Laws of the Federation of Nigeria (LFN) 2004. The Federal House of Representatives passed the ACJA on 22 April 2015. The ACJA 2015 was passed by the Senate on 23 April 2015. Dr. Goodluck Ebele Jonathan, the then President of Nigeria assented to the Act on 13 May 2015 as its commencement date.
17. Penal Code (Northern States) Federal Provisions Act Cap. P3 LFN 2004.
18. Ibid., ss 2&3.
19. A. Dimas, 'A Comparative Analysis of the Legal Frameworks for the Offence of Rape in Nigeria and India: Addressing the Pitfalls in Nigeria' (2024) 9 African Journal of Criminal Law and Jurisprudence 65-71.
20. Ibid.
21. Penal Code (Northern States) Federal Provisions Act Cap. P3 LFN 2004, s 3(1).
22. Penal Code of the Northern States, s 78.
23. Ibid.
24. Adeleke v Iyanda [1994] 9 NWLR (Pt.366)113.
25. Okosa (n 11) 167.
26. The VAPP Act 2015, s. 24(1).
27. Uzoma Okeke and Anor v Real Admiral Harry Arogundade and 5 Others, (Unreported) Suit No M/615/08, judgment of Opeyemi Oke J. of the High Court of Lagos State delivered in January 2010. In this case, the High Court of Lagos State awarded N100,000,000.00 (One Hundred Million Naira) exemplary damages in favour of the Plaintiffs for acts of assault meted out on the Plaintiffs by the Defendants.
28. In Odogu v Attorney-General of the Federation & Others (1996) 6 NWLR (pt. 456) 508, Ayoola, Justice of the Court of Appeal of Nigeria, held that "Whenever compensation is awarded on such cases as this should truly reflect not only the actual pecuniary loss of the victim but also the abhorrence of society and the law for such gross violation of human rights, particularly the right to personal liberty, as in this case. An unwitting trivialization of a serious matter by an inordinately low award should not be awarded".
29. Ibid., s 49.
30. The ACJA, ss 321, 341, 342.
31. Ibid., s 319 (i) (a).
32. Ibid., s 340(a) & (b).
33. Ibid., s 340(b).
34. Ibid., s 323(1).
35. TIPLEA, ss 82, 13(1)(4) & (6), 15(a), 16(1) & (2), 17(1)(a), 18, 19, 20(1), 21,22, 23(1)(a), 24&25.
36. Ibid., s 1(a).
37. Ibid., s 68(1).
38. Ibid., s 68(2); See, also, Onu and Kolawole (n 101).
39. Ibid., s 68(7)(a).
40. Ibid., s 68(4) (a-c).
41. HTPL of Delta State 2024, s 42.
42. Ibid., s 43.
43. Ibid., s 42(5).
44. Ibid., s 28 (1) (d).
45. Ibid., s 28 (1) (e).
46. Ibid., s 28 (2) (a).
47. The ICC Statute, art 68(3).
48. The VAPP, s 44.
49. M. O'Connell, 'The Evolution of Victims' Rights and Services in Australia'. <<https://www.researchgate.net/publication>> accessed 13 September 2023.
50. 'Compensating Victims of Violent Crime: Changes to the Criminal Injuries Compensation Scheme' presented to Parliament by the Secretary of State for the Home Department and the Secretary of State for Scotland by command of her Majesty December, 1993. <<https://www.2434.pdf>> accessed 17 September 2023.