

## COMPARATIVE REVIEW OF COMPENSATION FOR THE VICTIMS OF CRIME UNDER NIGERIAN AND UNITED STATES CRIMINAL JUSTICE SYSTEM\*

### Abstract

*The criminal justice system in Nigeria and United States begins with arrest, arraignment, trials, conviction and punishment. In addition, there is an idea of rehabilitation and socialization as part of the systems. The focus is about the accused, the crime, the state, or society and indeed punishment for the offenders with little or no adequate attention on the victims of crime let alone how the victims of crime can be compensated, rehabilitated and protected as person whose human right guaranteed by the constitution and social contract have been violated especially under the Nigeria Criminal Justice System. These victims of crime suffer psychological, emotional and physical harm due to the criminal conduct of the defendant or criminal negligent on the part of the state. It is against this backdrop that this paper seeks to determine whether there is victims' compensation law in Nigeria and if there is, is it adequate enough compared to other countries like the United State. This paper adopted doctrinal research method and recommends that there should a comprehensive and realizable law on how to compensate all manners of victims of crime in Nigeria just like in United States.*

**Keywords:** Victims of Crime, Compensation, Criminal Justice System, Nigeria, United States

### 1. Introduction

Crime has been prevalent even from the olden days. Crime is a social problem, which no country is particularly free from whether developed or developing. Crimes threaten the wellbeing of many societies. It is social problems caused by the society and which no doubt boomerangs on society. The aggrieved launches their anger and other frustrating condition of theirs through some anti-social behaviours. In Nigeria and United States, for today, the rate of crimes is alarming and it is a social menace as no one whether rich or poor, male or female, old or young can easily escape the wrath of criminals. In both jurisdictions, there are so many crimes which range from armed robbery, cultism, domestic violence, gross abuse of powers, terrorism, crude oil theft and ritual killings and cybercrime among others.

In the present day society, a government is rated by its ability to check crimes and provides adequate opportunity for their vulnerability to crime. It featured prominently that the criminal justice in Nigeria, United States and other jurisdictions around the world are interested in the defendant, the society and the punishment. The victims of crime are hardly put into considerations. Every criminal justice system is complete and comprehensive too when it guarantees justice for both the offender and the victim of crime. Both the accused and the victim are entitled to human rights. There is need to use the law to protect the interest of both parties without injury to others. The Nigerian criminal justice system for examples has been most obsessed with crime, the criminal and the punishment for too long. Also in the case of crime in Nigeria, the victim of crime can be likened to the case of traveler, who having been caught up by night falls, tied his horse to a tree in front of inn, in good faith while passing the night in the inn. He woke up in the morning only to discover that his horse has been stolen. While the victim is lamenting over his loss, his fellow lodger showed no sympathy rather turned out to blame him for being foolish and indolent and without any condemning words for the thief who stole his horse.<sup>1</sup> The wicked way in which citizen quickly blames the victims of crime proves that the conditions of the victim of

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<sup>1</sup>K.Gibran, *The Forerunner* available at <https://books.google.com/books7./sbed=1465574239.kahlilGibran1931>.

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crime appears worse than comforting them for the pains they suffered and required to be comforted for the pains he has suffered.

The fundamental right of the accused has wittingly and unwittingly been paramount with no corresponding attention on the rights and wellbeing of victims of crime and abuse of power run against the grain of progressive thinking aptly encapsulated in the golden words of Oputa JSC in the case of *Josiah v. State*.<sup>2</sup> According to the Law lord, justice is not a one way traffic. It is for the accused, the society and the victim. It is important to point out that punishment of the accused is not sufficient justice for the victim. Justice to the victim involves giving some comfort, compensation, rehabilitation and reparation to the victim in order to assuage his sufferings, reintegrate him back to the society and boost up his confidence on the state to the extent that the state is capable of fulfilling her part of the obligation on the social contract which include protecting the citizens from any forms of attack.<sup>3</sup> A situation where justice goes only to the accused, the state but neglecting the victim of the crime who actually suffered the pains of the crime amounts to gross injustice. Courts have stressed the need to give justice to the victim of crime.<sup>4</sup> Also, the Constitution of the Federal Republic of Nigeria provides for the human rights of citizen.<sup>5</sup> To be candid, the repealed Criminal Procedure Act<sup>6</sup> and the Criminal Procedure Code<sup>7</sup> provides for the compensation for the victims of crime but it is insufficient. Both made convictions precedent to the award of compensation and only the court can determine the quantum of damages to the exclusion of the victim, who ordinarily should be in the better position to show the extent of damages suffered and the expenses he incurred because of the criminal act of the accused. The victim may not secure adequate compensation where he engages in civil action against the defendant thereafter, as in some cases it will amount to doubt jeopardy against the accused who is assumed to have paid the compensation by way of imprisonment.<sup>8</sup>

Nigeria and United States inherited much from the English common law practices. For example, any civil claim due to an injured party in a criminal matter can only be considered after the prosecution of the case or accused, or a cogent reason is given where his prosecution is not possible.<sup>9</sup> This is because it is believed that the wrong against the society should be redressed first before that of the individual who was wronged and for the reason and fact that damages should naturally flow from convictions. The victim of crime or injured person gets nothing other than the punishment of the offender. Due to the inability of both the CPA and CPC to ensure the rights of the victims, the society looks unto the police especially in Nigeria to assist them recover their loss or force the accused to some extent to take care of some minor expenses incurred. This ends at the police station and the accused person is set free thereafter. The police appeared to be the only source of succor the victim of crime in Nigeria has due to the inadequate provisions of the statutes. The other remedy in sight for the victim is to institute civil suit for civil claim accruing from criminal acts. As Odion rightly put, it is very unfair to ask victim of crime to engage in civil litigation with the attendant, expenses and time involve in order enable him secure compensation.<sup>10</sup> These result to victims being discouraged to aid the prosecution by coming out to testify and more so, the law did not make and protection for them as they may be easily attacked

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<sup>2</sup> *Josiah v. State* (1985) 1 NWLR (Pt. 125) p. 601.

<sup>3</sup> G Ozuru, 'The Nigerian Criminal Justice System: A Paradigm Shift to Victims Justice', [2018] (21) (1) *NLJ*, 38.

<sup>4</sup> *Kalu v. State* (1998) 4 NWLR (Pt. 1212) p. 503, *Okegbu v. State* (1979) 1 SC. 1.

<sup>5</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), Sections 33 – 36.

<sup>6</sup> Criminal Procedure Act, Sections 255 – 262 and 435 (2).

<sup>7</sup> Criminal Procedure Code, Sections 78, 355 and 357.

<sup>8</sup> See Reports of the National Committees on Remedies for Victims of Crime 3/8/1991.

<sup>9</sup> For example is where immunity is involved.

<sup>10</sup> JO Odion, *Evolving Restitutionary Rights for Victims of Crime in Nigeria: A Focus on Corruption and Fraudulent Practices* <https://www.NigerianLawguru.com/articless/Criminalandprocedure>.

thereafter by those who are not comfortable with their evidence. Crime no doubt is a threat and fear to the wellbeing of the society but it is the victim of that crime that suffers more physical, emotional, psychological and financial hardship.<sup>11</sup>

Administration of Criminal Justice Act, 2015 moved higher than the CPA and CPC in the realm of compensating the victim of crime. The new law makes provision by enlarging the powers of the court to compensate the victims of crime.<sup>12</sup> It provides that court has right to order the convicts to pay compensation to all classes of person or victims during the proceedings or as part of the judgment.<sup>13</sup> The advantage of this law is that it makes provisions for the punishment of the accused person if found guilty under the law and also tried to provide succor or assuage the hardship occasioned by the victim. It further provided that the identity of the victim be protected<sup>14</sup> especially in the high profile cases like financial crimes, sexual offences, terrorisms and any other offences permitted by the Act of the National Assembly.<sup>15</sup> Administration of Criminal Justice Act provides for plea bargaining as a kind of victim oriented punishment on the accused especially in the high profile corruption cases where the state cannot easily provide evidence for actual conviction and this is due to the smart way the Nigerian politician carry out acts of corruption and embezzlement. Rather than leaving the poor masses<sup>16</sup> without justice although little, the state can ensure justice through plea bargaining. Before the advent of ACJA, 2015, the concept of victim of crime compensation is virtually not in existent under Nigeria law. It is only the police and the court that tends to draw the attention to the plight of the victim through its pronouncement as the Supreme Court<sup>17</sup> in granting the reliefs sought, frown seriously at the unlawful killing of the bread winner of the appellant by the state. This work shall focus on victims of crime, compensation of crime victims and criminal justice system.

## 2. Conceptual Framework

### 2.1 Victims of Crime

Victims of Crime in this paper means any person and or persons who either lonely or in addition to other persons suffered any injury (ies) which include but not limited to physical injury, mental injury, economic loss, emotional suffering and such other infraction of their fundamental rights as enshrined in the constitution through the actions or inactions that are no doubt a breach of the provisions of the criminal laws of both the United State and Nigeria. Victims of crime may also include those who depended on him such as family members and any other person who might have sustained injury while trying to assist the victims.<sup>18</sup> According to United Nation Declaration<sup>19</sup>, victims of crimes may either be an injured person, person or persons who witnessed the crime and persons who is directly related to the main victims.

<sup>11</sup>E Koroye, *Compensation of Victim of Crime as a Sation of Criminal Court* (Benin City: DPPL, University of Benin, 1996) P. 131 – 132.

<sup>12</sup>ACJA, 2015, Section 314.

<sup>13</sup>Ibid, Section 319 (1).

<sup>14</sup>Ibid, Section 234 (3).

<sup>15</sup>Ibid, Section 234 (4).

<sup>16</sup>Corruption is a big and serious crime in any society and the poor masses are the direct victim of the acts of criminality. They are the one that suffer physical, emotionally and psychologically.

<sup>17</sup>*Bello v. A.G. Oyo State* (1986) 5 NWLR (Pt. 45) 60.

<sup>18</sup> VAPP Act, 2015, Section 46, CB Okosa, 'A Legal Analyses of the Problems and Prospects of the Victims of Crimes in Nigeria,' [2021] (1) *Achievers University Law Journal* 75.

<sup>19</sup>United Nation General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted in November, 1985, Articles 1 and 2.

## **2.2 Compensation**

Compensation as used here is different from compensation as widely known in civil claims. It is used in this paper to denote money to be paid to the victims of crime by the state who failed to protect the victims pursuant to the social contract between them as result of the a breach of criminal laws. Whenever a criminal activities takes place which no doubt is a violation of the states' criminal laws, individual usually suffer as a result of that activities. It is the failure of the state to adequately protect the citizen that such illegal activities occurred and then the resultant injury on the part of the victims. When an innocent citizen suffered as a result of the criminal breach, it not expected that such injured person will be compensated by merely punishing the criminal *via* imprisonment. There should be monetary compensation for the loss suffered. Such injury or loss may be in the form of loss of dear one, loss of property, personal injury both physical and mental, medical expenses, counseling cost, funeral expenses and loss of incomes and out of pocket expenses.<sup>20</sup>

## **2.3 Criminal Justice System**

It is set of inter related elements. The major operating characteristics of a system is that what affect the functions of one part invariably affects the other part and if not possible the entire system.<sup>21</sup> The CJS is a lawful entity, the interrelationships of criminal elements composed of the police, courts and the correctional centres or what the United States would also refer to correction facilities and Nigeria refers to it as correction services or centres. In facts, it takes the ironical or personified name or concept of federated institutions; each receiving fund independently, each drawing its man power separately; and each a profession unto itself.<sup>22</sup>

In another development, it has been argued that criminal justice system is not a system in the sense that all its agencies are directed towards a particular objectives with the help of a centralized authority, but that it is a limited system to the extent that the different agencies are linked through a process in which one agency's outputs becomes the next agency's inputs.<sup>23</sup>The output of the police for instance is the arrest of the offenders, which in turn, and based on the outcome of police investigation, becomes inputs into the courts. The cases when developed as the output of the prosecution and defence, invariably becomes the output of the courts after conviction and sentencing thereafter, they become inputs for the prisons, and so on and on. Hence, it is through the criminal justice system that due process is achieved, with offenders processed right from the arrest until they are finally released from the prison after serving sentence or until execution, for those persons sentenced to death.<sup>24</sup>

In addition, Iwarenu-Jaja explained the concept of Criminal Justice System as a process that enjoys three components: the police, the courts and correction services who are responsible for law enforcement. According to him, the concepts of criminal justice system means or refers to a process when the different components co-ordinates their independent functions by processing the criminal suspect from one stage to another. It involves the arrest, booking, trial or prosecution and conferment. He maintained that once a crime is lodged before the arresting agency, inquiry takes off; persons are interrogated. Enough intelligent gathering is achieved in ideal circumstances and conditions leading to the taking into custody of persons including granting bail, where the arrest does not present threat.

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<sup>20</sup> Olarewaju Aladeitan, 'Victim Compensation in Nigeria Criminal Justice System: Modeling the Islamic Law Provision of Diyya,' [2019] (1) (2) *Nile University Law Journal*, 194.

<sup>21</sup> PP Schoderbek, *Management Systems* (New York, 1968) 113.

<sup>22</sup> DJ Newman, *Introduction to Criminal Justice* (New York Time Press, 1978) p. 3.

<sup>23</sup>HH, Moore "The Legitimation of Criminal Justice Policies and Practices: Perspective of Crime and Justice, National Institute of Justice, Research Report 1996 – 97, Lecture Series Vol. 1 Nov. 1997.

<sup>24</sup> AB Dambazau, *Criminology and Criminal Justice* (Nigeria Defence Academy Press, 2011).

Police resort and use of discretion are experienced much at this time as he decide let the suspect go or put him in the justice system as raw material.<sup>25</sup>

There are three components of criminal justice system in Nigeria. Although this work is not intended to cover them but we shall no doubt mention them here, and they are the police or any other law enforcement agencies that arrests, investigate and gather credible evidence against the suspects. After the arresting officials have concluded their work, the second stage will hope in and that is the court. Since the defendant is adjudged to be innocent until proven otherwise, he is subjected to trial in open court where the evidence gathered are presented and the judge weigh the them and determine whether the offence allegedly committed has been proved beyond reasonable doubt. Where the court found that the offence has been proved against the defendant as required by law, such defendant shall be convicted and consequently sentenced to term of imprisonment. This stage brings us to Correctional Centre(s). Thereafter, the criminal convict is kept in custody for the purpose of correction, deterrence and punishment. In all these stages, the criminal defendant is the centre piece and his rights as enshrined in the constitution are respected,<sup>26</sup> whereas the right and welfare of the victims of the illegal activities of the criminal defendants are ignored.<sup>27</sup>

### 3. Victim of Crime in Nigeria

Victim compensation as we have pointed out earlier is not alien to Nigeria as same existed from the primitive African culture.<sup>28</sup> The traditional court before the inception of the white have been administering justice amicably even before the present criminal justice system. Even different jurisdictions and culture believed in the efficacy of punishment to sanitize the society and equally recognizes the need to give justice to the victims of crime.<sup>29</sup> The inheritance of the British common law is evidence by the provision of the CPA and CPC which were a mixture of a British common law and the Sudanese Laws.<sup>30</sup> Apart from the incoming of ACJA, these two laws have been static without much development since independence. In fact, they are more or less pattern of punishment and deterrence under the common law. The Criminal Procedure Act provide compensation to the victim of crime to the tune of Twenty Naira while the Criminal Procedure Code is Fifty Naira only<sup>31</sup> and thereby making the victim of crime to be dying in silence. This was a gross injustice because victims suffer from the inability of the state to protect them and it is obvious that the CPA and CPC were not able to protect and guarantee victim Justice. Under the Nigeria criminal justice system, the victims' claim for compensation against the accused depends on his being able to institute a civil action. For example, in the charge of battery, he can maintain civil suit to claim for the money he spent treating himself. In a charge of stealing, the victim can maintain action claiming for the recovery of his money from the accused. It is purely unjust for the victim of crime to commence a journey entirely by way of civil action to recover his stolen property or money considering the time and cost involved.<sup>32</sup> Many victims are entirely discouraged from assisting the police in their investigation of the case since they are not expecting any compensation from the proceedings and at times endanger their life in the course of giving evidence.<sup>33</sup> Moreso, this may and usually push the victim of crime under Nigeria Criminal Justice

<sup>25</sup> KB Iwarenu-Jaja, *Criminal Justice System in Nigeria* (Ethiope Publishing, 2015).

<sup>26</sup> [https://en.wikipedia.org/wiki/criminal\\_justice](https://en.wikipedia.org/wiki/criminal_justice). accessed 2/8/2024.

<sup>27</sup> IL. Aiobomhan, 'Appraisal of the Legal Framework on the Compensation of Victims of Violent Crimes in Nigeria,' <https://keffi.nsuk.edu.ng/handle/20.500.14448/5154>. Accessed 2/8/2024.

<sup>28</sup> Compensating Crime Victim p. 21.

<sup>29</sup> AA Adeyemi, 'Criminology in Contemporary Africa page' [2011](2)(2) *NLJ* 1 – 29.

<sup>30</sup> *Ibid.*

<sup>31</sup> L. Lugard, *Political Memoranda* 1913 – 1918. Memo 2, 3 and 5.

<sup>32</sup> CPA has Twenty Naira and CPC has fifty naira as compensation.

<sup>33</sup> *Ibid.*

System to resign his fate or God. The poor masses that are the direct recipient or better still, the victim of corruption do not pay attention to the provisions of the law. Even the Economic and Financial Crime Commission Act provides for the seizure and forfeiture of looted property,<sup>34</sup> but this property and money thereto are to be forfeited to the federal government.

### **3.1 Administration of Criminal Justice Act, 2015**

The coming of this new law appeared to be a compound relief under the Nigerian system. This is because the victim of crime can now receive compensation along with conviction in the same proceedings.<sup>35</sup> The court in order to deliver justice to the victim has the power to call for evidence to determine the quantum of compensation due to the victim.<sup>36</sup> It is also within the power of the court to order the crime perpetrator or defendant to pay the victim some money to defray the expenses incurred in the prosecution<sup>37</sup> or in the treatment of his injury<sup>38</sup> under this law, offences against a person such as rape, assault occasioning body harm, robbery, arson, stealing, burglary and etc can be compensated to an extent.

#### **3.1.2 Problems Associated with the ACJA**

As much good as ACJA appeared to be in addressing the victim of crime compensation, much is still left undone hence they require reformation so as to be at par with the international best practices. For example it may be difficult for the accused/defendant to make restitution to the victim of crime since the law only place it on the defendant upon conviction to make payment to the victim and not the state nor any special statutory agency to that effect. The reason is that the socio-economic status of the crime committer may make it impossible for him to make restitution to the victim of crime. In majority of cases, he or she is poor and unlikely to earn the money necessary to make full restitution. Additionally, Juvenile offenders are incapable of obtaining or holding on to jobs that may provide them money to pay the court ordered compensation or restitution.

Further to the above, the ACJA in order to ensure victim justice has given detail provisions to plea-bargaining. This remedy is available to the prosecution. It is not the mind of the victim or his representative. It is in the opinion of the prosecution<sup>39</sup> where the evidence of the prosecution is not sufficient to secure the conviction of the accused.<sup>40</sup> On the other hand, where the accused accept his guilt and he is willing to surrender the proceed of his criminal acts to the victim or his representative<sup>41</sup> or where the accused or co-accused is willing to cooperate with the prosecution by giving useful information to the prosecution for the success of the trial.<sup>42</sup> Though these may be helpful but with some challenges. For example, it would be very rare to see a defense lawyer who would advice his client to agree on criminal liability and attendant punishment without full trial especially where he is sure that the prosecution has no evidence to succeed against him. The defence will rather opt out for no case submission in that condition. This is why Section 270 (17) (a) of ACJA is purely unrealistic.

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<sup>34</sup> E. Koroye, *Compensation of Victims of Crime as Sanitation of Criminal Courts* (n23).

<sup>35</sup> EFCC Act, Section 19 (1).

<sup>36</sup> ACJA, 2015, Section 314 (1).

<sup>37</sup> ACJA, 2015, Section 314 (2).

<sup>38</sup> Section 319 (b).

<sup>39</sup> Section (c).

<sup>40</sup> ACJA, Section 270.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid, Section 270 (b).

Another problem associated with ACJA is where the accused defendant is too poor to pay the compensation. It is possible for the court to award both a prison term and compensation simultaneously against the accused<sup>43</sup> and where imprisonment is awarded by the court, a warrant of committal will be issued.<sup>44</sup> According to Umukoro, the court can only issue warrant of committal where imprisonment is involved but not where compensation or monetary award is given.<sup>45</sup> He went further to pose the question, what will happen when the defendant is unable to pay the compensation imposed? Will he be kept in prison for failing to pay the compensation? If warrant or arrest issued in cases of imprisonment none payment of monetary compensation, if put in prison, how can the convict defray the monetary compensation imposed on him. Will he be required to pay the compensation first before the warrant of committal or after the committal? What then happened to the victim? By this, it is clear that the interest of the victim of crime as contained in the ACJA is evasive as much is needed to be done. Another example is in the case of abuse of power by the Nigerian Police which no doubt a social problem this time around. Compensation against them may not work because even if they get judgment against the police, or SARS for the human rights violations, the judgment may not be enforced and the victims' life is endangered if he insists on enforcing his rights. It is same in case of any judgment gotten against the state.<sup>46</sup>

#### 4. Victim of Crime in United State

In United States, just like Nigeria, victims of crime often suffer physical injury, emotional and mental trauma and financial loss as a result of a crime. The financial loss to victim can cause additional stress as they worry about paying Doctors' and hospital bills, physical recovery from their injury and their ability to return to work. Again in United States, Crime victim compensation program exist to provide financial assistance to victims and to reduce these forms of stressors. This type of programme exists in all the fifty states, as well as the District of Columbia, and many will pay for medical care, mental health counseling, lost wages, and in the case of homicides, funeral cost and loss of supports.<sup>47</sup> Although no amount of money can replace the use of arm or the loss of a loved one, it can help victims preserve their financial stability and dignity and thereby assist in the recovery process.

In order to ensure that the victim of crime is adequately compensated in the United States, there is law which was established for that purpose and that law is solely responsible for the compensation of the victims of crime without going through the hurdles of civil litigation for civil claim nor making it conditional that the accused must have been convicted. The said law is known and called Victim of Crime Act of 1984.<sup>48</sup> The Office for Victim Crime (OVC) was created in the Department of justice to implements the Task force's recommendations. OVC also provides grants to states programs to provide money to local victims' assistance programs and states' victim compensation program. They receive money from federal criminal fines, penalties and bond forfeitures. As at the time the VOCA was enacted, the fund ceiling or the amount that could be allocated to the fund was \$100,000,000. However, there are several amendments to the VOCA in 1986, 1988, 1990 and 1992 when the United State congress removed the ceiling. From then up to 2004, the fund deposited in the fund for the compensation of the victims of crime is about \$3.1 billion.<sup>49</sup>

<sup>43</sup>Ibid, Section 270 (17) (c).

<sup>44</sup> ACJA, Section 314 (1).

<sup>45</sup> ACJA, Section 316.

<sup>46</sup>H Gwandu "*Police Restatement to Reform SARS* available at <https://punchng.com/police-restate-commitment-to-reform-sars> accessed 28/2/2020. i S. 314 (1) of ACJA, 2015.

<sup>47</sup>Crime Victim Compensation Act, 1984.

<sup>48</sup>Ibid.

<sup>49</sup> "Victim of Crime Act Crime Victim Fund" OVC (Office for Victim of Crime Washington DC, 2005).

Some of this money is made available to the Administrative Officer of the United States courts which established and administers a centralized National fine Centre. These centres receive all the fines, assessment and penalties and collect money from those who failed to pay on time. Other monies are used to improve the investigation and prosecution of child abuse cases. Also, the money in the fund is equally used to support state victims compensation and victims' assistance service programmes. Victim compensation is a direct payment to, or on behalf of a crime victim for crime-related expenses such as unpaid medical bills, mental health counseling, funeral cost and lost wages.<sup>50</sup> While victim assistance includes services such as crises intervention, counseling, emergency transport service to court, temporary housing advocacy and criminal justice support.<sup>51</sup>

#### **4.1 Assistance Programmes or Operation**

California for example was the first to establish the compensation programmes in 1965 and within three years, five other states created similar programmes. In fact California remain the largest programme in the nation, it pays out about a third of the total benefit paid by all programmes combined.<sup>52</sup> The median annual payout per state is approximately \$ 2 million. Every state administers a crime victim compensation programme through a central agency. These agencies are organized and funded state wide and the maximum of the state award generally ranges from \$10,000 to \$25,000.<sup>53</sup>

Victims applying for compensation must comply with certain requirements, including reporting the crime and filing of claims within a deadline. In most states, the victim initiates the process by calling the compensation agency. The programmes staff will then mail the application form to the victim who fills it out and return same to the compensating agency. Once the claim form is received, it is processed by an investigator or claims specialist. This agency uses letter, phone calls and other techniques to obtain data and the investigator must verify a wide range of information, including the fact that the crime was reported to the proper law enforcement agencies and the existence of appropriate documentation of medical expenses. They must obtain data regarding funds paid by insurance companies and determine the amount if any and loss of wages too. It is on the basis of this information gathered by the victim compensation agency that the commensurate amount of loss incurred by the victim of crime is paid.<sup>54</sup>

#### **4.2 Eligibility**

The general rule regarding compensation to the crime victim is report to the police and it is usually within 24 hours except the delay is due to good reason. The period of filing the claim is usually one year unless good cause for the delay is made. But in respect of victim of terrorist acts, compensation is payable through the Federal Anti-Terrorism Emergency Reserve for United State of American resident and non- resident who are injured or killed in the act of terrorism within the United States or for United States nationals, officers and or employees of the United State of American government who are injured or killed in act of terrorism outside the United States. In addition, some state provides compensation for the victim of terrorism.

It is important to point out that not victim of every crime are eligible for state compensation. In general, the majority of states including the Federal Government of the United States limits compensation to

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<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Compensating of Crime Victim P. 2.

<sup>53</sup> Ibid.

<sup>54</sup> GB Sturkey, *Procedures in the Justice System* (Prentice Hall, 2007).



victims who suffered injury as a result of the criminal conduct of another and to survivors of homicides (relatives and friends). Additionally, there are some disparity among the eligibility requirement in these programmes with some states mandating that the victim must suffer some sort of physical injury and others allowing for physical or mental injuries. Most of the states, allows for the parents of the deceased victims to collect compensation. Majority of states disallows some classes of person form eligibility. Most states for example exclude fire fighters, and police officers from receiving victim compensation awards. The rational for this exclusion is that if their injury is job related, they are eligible for other state programmes, such as workers compensation. VOCA requires states to provide compensation to non-resident victimized within a state as well as to persons who are subject to federal jurisdictions, such as native of America. Additionally, residents of one state who are victimized in another state are eligible in their home state if the states where the crime occurred do not allow that victim compensation.

In the past, domestic violence victims were summarily denied compensation. The reason for this according to some states is that the victim contributed to his or her own injuries by staying in the relationship or that any award would benefit the wrong doer if he or she is still living with the victims. But presently, most states have included the victim of domestic violence to the category of person eligible for claim.

## **5. Comparative Review of Eligible for Victims of Crime Compensation in United State and Nigeria**

Under this subhead, we shall be comparing the categories of victims of crime that can lay claim to compensation, the procedures to be followed, the period under which claims can be made, benefits and award limits, compensation cost and funding sources under the United States' and Nigerian laws.

### **5.1 Categories of victims of Crime entitled to Compensation**

With respect to United States, the following claimants are entitled to or eligible for compensation. They are: victim of crime, dependants of homicides victims, relatives of victims of crime, citizens of foreign countries. In Nigeria, person's eligible for compensation under the law is just the victim of crime simpliciter to the exclusion of any other person.

### **5.2 Procedures**

Under the United States, the claimant that is the victim of crime must file an application with the compensation agency in the state where the crime occurred. Based on the information supplied by the victim, the agency determines if the claimant is eligible after their own independent investigation so as to determine whether he has suffered any loss both financially and or injury in most case where the agency under paid or compensated the victim, the victim may complain to higher agency by way of appeal for the purpose of either increasing the compensation or otherwise;<sup>55</sup> whereas in the case of Nigeria, there is no such agency or body responsible for the payment of compensation to the victim of crime. There is no money budgeted to that effect. The claimant or victim of crime solely depend on the court's direction and decision to the defendant to pay compensation to them which a closer examination shows that those provisions are not realizable due to the problems we identified before now.<sup>56</sup>

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<sup>55</sup> M umukoro, 'Emerging Trends in Criminal Proceedings' being a paper he delivered in the 2016 Refreshers course for Judicial Officer at the NJI Abuja on 16/3/2016 p. 22.

<sup>56</sup> Office for Victims of Crime (OVC), United States Department of Justice Directory of International Crime Victim Compensation Programme 2004 – 2005 (Government PrintingOffice, 2005) 81.

### **5.3 Period**

In United States once the person is attacked or affected by activities of criminals, he has the period of 72 hours or as the case may be to report the injury to the police or the activities of the criminals to the police. He must file his complaint for compensation to the agency set up for that purpose within one year or more as the case may be.<sup>57</sup> This is not the case in Nigeria, as the victim of crime has to wait until the end of the criminal trial before court may award compensation to him.

### **5.4 Benefits and Award Limits**

Under the United States regime, the maximum benefit available to victims of crime from the state programme average about \$25,000 though this sum a number of states have higher or lower maximums depending on the level and the degree of injury or loss suffered by the victim.<sup>58</sup> In Nigerian setting, there exists no amount at all to be paid as compensation to the victims of crime. In fact, the fate of the victims of crime is in the hand of the court that makes pronouncement as to what the accused will pay to the victim though in some extreme cases, the court can take evidence from the victim in order to determine the quantum of compensation payable to the victim by the accused/defendant.<sup>59</sup> There is no any law that makes provision for any amount nor have any agency in place for the purpose of compensation. In another development, the United State provides emergency awards or expedites processing for victims faced with extra-ordinary financial needs. This is unlike Nigeria.<sup>60</sup>

### **5.5 Compensable Costs**

In United States compensations cover: medical expenses, mental health counseling, loss of wages for disabled victim of crime, lost supports for dependents for homicides victims, funeral and burial expenses, travel for medical treatment, services to replace works previously performed by the victims, crime scene cleanup, moving expenses, essential medical personal property (Such as glass, prosthetic device), rehabilitation and attorney fees.<sup>61</sup>

In Nigeria, the only compensable cost the victims of crime is entitled to is the restitution of his property and other monetary lost, medical bills or compensation as ordered by the court. Apart from these there are no other forms of compensation as provided under the Administration of criminal justice act. The worst is that the provision of the ACJA is only applicable to the states that have domesticated same. So, where the victims of crime domicile in the state that have not domesticated the ACJA or that he hails from the states that have not done so, there is even no hope of victims of crime compensation in the first place. Hence the comprehensive provisions of law relating to victims of crime compensation in United States are more preferable to that of Nigeria. The Nigeria law admits payment of medical treatment by the accused person.<sup>62</sup>

### **5.6 Funding Sources**

In United States, all the states obtain their funding fees or charges assessed against the offenders through well established means. For example, all the states in United States receive monetary appropriation or allocation from general revenue. The office of victim of crime OVC provides supplemental funds from federal criminal fines and penalties and allocation into the office for the purpose of compensating the

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<sup>57</sup> See Section 319 of ACJA, 2015.

<sup>58</sup> United States Attorney General's Guideline for Crime Victim and Witness Assistance of 1995 (U.S. Dept. of Justice, Washington DC) 1995.

<sup>59</sup> See Victim of Crime Act VOCA of 1984, Section 42 U.S. Code of 1984.

<sup>60</sup> Section 314 (2) of ACJA, 2015.

<sup>61</sup> Victim of Crime Act VOCA of 1984, Section 42 U.S. Code of 1984

<sup>62</sup> H Wallace Procedure in the Justice System (Donnelly & Sons, 2007).

victims of crime.<sup>63</sup> In Nigeria, there is no such source of funding as the fate of the victim is tactically handed over to the same crime committer who is by law entitled to compensation whether he has means or not.

The only law as it is today in Nigeria that provides for compensation for the crime victims is the Violence against Persons Prohibition Act of 2015. It provides that where the offender is convicted under this Act, the court may order the offender to pay compensation to the victim in addition to any other punishment as may be ordered by the court.<sup>64</sup> The Act further provides for source of fund known as Victim of Trafficking Trust Fund, where all proceeds from the sale of assets and properties of human trafficker are paid into.<sup>65</sup> However, this statute only makes provisions for compensation with only the offences provided under it, that violence against person such as trafficking and women abuse, no any other law that provides for realizable compensation in Nigeria.

### **6. Necessity for Compensation for Victims of Crime**

We are going to use Nigeria under this subhead to discuss the reason for making a case for the proper compensation of the victims of crime. This is because the United States counterpart had made adequate provisions for compensating the victims of crimes. Be that as it may, the judiciary in Nigeria has lends its voice on commiserating with the plights of the victims of crime even though there is no suitable laws to that effects. The court has held that there is no other suitable condition where compensation of the victim of crime is most appropriate than in the case of a young man with promising future whose life the criminals without conscience cut short.<sup>66</sup> In another development, the court maintained that justice must be done to the victim who was cruelly murdered.<sup>67</sup> Across the globe, the European Court on Human Right had held that the woman whose son's human rights have been cruelly violated, needed justice or compensation because she has been subjected to too much torture and her rights not to be subjected to inhuman and degrading treatment had been violated. It is based on the above erudite decisions of the court that we submit that there be a balance of criminal justice and victim justice. It is human to assist victims to cope with the physical, emotional and psychological trauma which they have been subjected to by the criminals. This also stems from the facts that the victims of crime are the direct sufferers of crime. It will equally be double jeopardy if the criminal justice system in Nigeria and the society neglect them despite what they passed through in the hands of the accused and expect them to engage in tedious and unwarranted civil litigation to claim civil damages when the system would have made their suffering less. It will help to restore the faith and confidence in the victim and check duplicity of litigation and save time since the civil and criminal aspects of a case are considered once. Ignoring the victim or leaving him in the hand of the accused is injustice.<sup>68</sup> It is based on the suffering of the victim of crime as a result of the criminal activities of the criminals that we advocate for the adequate compensation by providing and establishing separate agency where money will be allocated to for the purpose of paying compensation with specific amount and the procedure for assessing the fund without going through civil litigation.

### **7. Conclusion and Recommendations**

There is no gain saying that some countries for example Nigeria, the victims of crime have no rights. Even where there is a statutory provisions to that effect, that is for victims compensation, it becomes

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<sup>63</sup> 319 (1) (c) and 321 (b) (i) ACJA, 2015.

<sup>64</sup> Act, section 65(2).

<sup>65</sup> Ibid, Section 67.

<sup>66</sup> Victim of Crime Act VOCA of 1984, Section 42 U.S. Code of 1984

<sup>67</sup> *Okegbu v. State* (1979) 1 SC. P. 1.

<sup>68</sup> *Kalu v. State* (1988) 4 NWLR (pt. 503) p. 513.

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extremely difficult to realize the fruits from it. The reason is that majority of the countries of the world tilts towards punishment. Victims of crime in Nigeria are open to various types of injustice, which most often than not give rise to a situation where some victims have resorted to taking laws into their hands. For example, there are circumstances where in Nigeria angry mobs have set ablaze the police station, for unwarranted torture and maltreatments and killings by the police. Cases abound where offenders have been tortured and killed without recourse to the police and this brazen exercise is because the victims knew that they are not going to get justice with the police and the Nigerian Criminal Justice System.<sup>69</sup> The host communities most a times launch attack on the oil facilities of the company for environmental damage done to their communities.<sup>70</sup> Hence, the danger in the jungle justice is that it may lead to anarchy and creates more trouble and confusion and death in the societies.

It is noteworthy to point out that the implication where this ugly trends prevail is that the state is weak and incapable of protecting the citizen as contracted under the social contract. It also portrays the state as being weak in leadership and in compliance with enforcement of the rule of law.<sup>71</sup> It is this picture painted that might give insight to the promulgation of Jungle Justice Bill.<sup>72</sup> The courts have opined in many decided cases that the justice system frown at redressing an unlawful act with unlawful acts and for people to resort to self- help.<sup>73</sup> The fact remains that there would have been no need for jungle justice bill nor pronouncement of courts on jungle justice if the victims of crime are adequately compensated under Nigerian Criminal Justice System. The facts that the victims of justice suffered harm and injury is an indisputable pointer that the state is unable to fulfill its primary duty of securing lives and property and ensuring peaceful co-existence among her citizens. As a result, the state should compensate the victims of crime. If Criminal Justice focuses on rehabilitating the accused, the victims should equally be rehabilitated as many widows, orphans and other victims of crime suffer untold hardship due to the activities of the criminal acts of others. Nigeria as it stands, lacked any good law providing compensation to victims of crime under their criminal justice system whether the accused is a private person or the state.

No doubt the beginning of justice should be the prevention of crime. However, where the state failed in her traditional duty to protect the citizens, it should be duty bound to compensate victims of crimes. Nigeria should adopt the new trends from more advanced countries like the United States of America. Although it is not as if those other countries do not have short falls regarding the victims' compensation but, the truth is that they have better option for Nigeria to emulate. It is recommended that there should be a State Compensation Act or laws in the country and in every state to focus on how much money or amount that should be awarded as compensation in each case of victims. There should also be established criminal compensation scheme, or Trust Fund for mental victims of crime in Nigeria. Nigeria should have it established victims of crime compensation scheme in Nigeria. Nigeria should have it established victims of crime compensation Trust Fund, funded by fines and allocations. Government should incorporate the insurance sectors in victims of crime compensation. There should equally be a detailed national victims compensation code for victim justice that make it compulsory for both federal and state to compensate the victims of crime without resorting to civil litigation. There should be an established simple procedure for assessing compensation benefit or awards by the victims.

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<sup>69</sup> Ibid.

<sup>70</sup> "Ikorodu Lynching: A Decent into Babarism" – Punch Newspaper of 12<sup>th</sup> June, 2017 available at [punch.com/ikorodu-a-decent](http://punch.com/ikorodu-a-decent) where three person were lynched by the community for alleged cultism which left many in sorrow in the area.

<sup>71</sup> Security still a challenge in Niger Delta shell. Vanguard Newspaper of 22/11/2017.

<sup>72</sup> Jungle Justice in Nigeria: Speaking out for the victims. Ending the scourge – crime. <https://web.facebook.com/jideobi.johnmary/posts>.

<sup>73</sup> Anti-jungle justice Bill October, 2016 titled "*Prohibition and protection of persons from lynching, mob Action and Extra-Judicial Bill 2016* (SB.109).