

RECOGNISING THE RIGHTS OF VICTIMS IN THE NIGERIAN CRIMINAL JUSTICE SYSTEM*

Abstract

Nigeria operates an adversarial criminal justice system which does not particularly reckon with the active identity and role of victims of crime in the criminal justice process. The victim is rather an object of criminal prosecution and a means to an end in achieving the aims of the Prosecution. Aside being a witness or the principal witness for the Prosecution, the victim is no more than an ordinary bystander and spectator of the outcome of the 'legal battle' between the Prosecution and the Defence. Conversely, the accused person is not only an active participant in the criminal justice process but also accorded constitutionally entrenched rights which must be protected, otherwise, the criminal justice process may be vitiated. The need to recognise the rights of victims in the criminal justice process is no less important, given the nature of criminal justice. The subject of victims' right and the victims' rights movement received global attention post World War II and saw many civil law countries taking a victim-centric approach to criminal justice. The movement however, gained greater momentum with the adoption of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985. This doctrinal study adopts a desktop approach to examine the concept of victims' rights in the Nigerian criminal justice system, the existence or non-existence of such rights and the need to review Nigeria's current position on victims' rights.

Keywords: crime, prosecution, harm, trial, state

1. Introduction

Crime is principally regarded as an act against the State even though the direct act or omission is committed against individuals within the State. This feature distinguishes a crime from a civil wrong, tortious act or plain human rights violation. The abstract view of crime as an act against the State seems to underestimate the fact that victims of crime are the direct recipients of the act and are largely, affected by crime in different ways. Some victims may suffer emotional and mental injury in addition to physical and financial injuries as a result of crimes perpetrated against them. The conventional criminal justice system recognises criminal justice as exclusively between the State and the accused person. The State embodies the rights and concerns of the victim and acts in the interest of the public, the victim inclusive. Hence, in common law jurisdictions like Nigeria's, the victim is accorded no active legal status in criminal proceedings.¹ The victim is subjugated to the supporting role of a witness, acting in concert with the State to ensure criminal justice.² By relegating victims to the position of mere witnesses in the criminal justice process, the system deemphasizes the personal nature of the victims' experience and seems to amplify the common goal of public good and safety. While it is important to focus on the common good, it may seem prejudicial to do so at the expense of the victim on whose account the protection of the common good is further entrenched. Whereas, the State ownership of criminal justice remains sacrosanct and incontrovertible, it is difficult to see how the State may effectively administer criminal justice with an uneven scale which recognises the rights of the offender/accused and shrouds those of the victim in the cloak of social contract. The State absolutely owns the criminal justice process and absorbs all the rights of the victims in its overarching role of protecting public interest and punishing the offender. This may reinforce a discriminatory position against the victim in comparison to the offender where the victim's rights are overlooked or subservient to those of the offender. The Constitution of the Federal Republic of Nigeria makes extensive provisions for the pre-trial, trial and post-trial rights of the accused.³ If the offender has such highly protected and entrenched rights by the virtue of their position, what about the victims? Do victims of crime have exercisable rights by virtue of their position? What provisions are there in the Nigerian criminal justice system for victims' rights? are they exercisable? This paper attempts to examine the questions raised above and provide answers to them in the light of international legal provisions and practices from other jurisdictions. The paper is divided into five sections. The first section gives brief background to the context of the discourse on the rights in the Nigerian criminal justice system. The second part examines the concept of a victim in the criminal justice system in line with international legal provisions. The third section analyses the subject of victims' rights and the victims' rights movement and the Nigerian statutory position on victims' rights. The fourth section evaluates the Nigerian the subject of victims' rights, gleaning from the provisions international legal documents and making reference to the United Kingdom, United States of America and Canada. The fifth and final section concludes the discourse and makes recommendations with respect to the Nigerian legal position on crime victims' rights.

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¹ Jo-Anne Wemmers 'Victims' Rights are Human Rights: The Importance of Recognising Victims as Persons' (2012) *TEMIDA* 71-84, 72.

² Elizabeth Ama Oji 'Compensation for Victims of Crime in the Nigerian Criminal Justice System: The Need to Follow International Trends' (2015) 18:1 *Nigerian Law Journal* 126.

³ Secs. 35-36 of the Constitution of the Federal Republic of Nigerian 1999 (As Amended).

2. The Concept of Victim in the Criminal Justice System

Victims in the Criminal Justice System

In criminal law, the term 'victim' may be conceptualised in the concrete and narrower sense to refer to the actual recipient of the perpetrator's acts/omissions while in the abstract and wider sense, the concept of a victim extends to both the immediate and larger community where such crime is committed. Generally, the definition of a victim is largely determined by several factors such as the context in which the concept is being applied and the legal provision on the crime or prohibited violation. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN Declaration of Justice)⁴ identifies victims in two different senses. In the first instance, it distinguishes 'victims of crimes' from 'victims of abuse of powers' within domestic laws.⁵ In criminal law context, the Declaration conceptualises a victim in terms of an individual or a group of persons i.e. a collective, who have suffered some form of harm occasioned by violation of criminal laws applicable in member States.⁶ This is in contrast with 'victims of abuse of powers' who are victims because they have incurred harm occasioned by violations of 'internationally recognised norm relating to human rights' which do not constitute a violation of the domestic criminal law of a State.⁷ Thus, a victim in the criminal law context, could be described in the direct or indirect sense. In the direct sense, a victim is a person or a group of persons who have suffered physical, mental, emotional, economic harm or impairment of their fundamental legal rights. In the indirect sense, a victim is a dependent or member of the immediate family or household of the direct victim. An indirect victim also includes a person who has suffered physical, mental or economic harm in the course of intervening to assist a victim or prevent the occurrence of further violations to a direct victim.⁸

First, this definition extends the conception of a victim as a natural person who may be an individual or a group.⁹ The law recognises natural persons as victims; however, it is not clear whether juridical persons are also accorded the same status so as to confer them with victims' rights.¹⁰ Further, the Declaration does not expressly state whether there is a limit to what would constitute a group. However, it is clear from the provisions of the Declaration that a victim may be perceived as an individual or as a group which may run into hundreds or even thousands. Broadly, a community, sect, tribe, etc. targeted as a group and ravaged by violations or armed conflict may be so described as a victim(s) in this context.¹¹ In this sense, a victim is conceptualised in the direct or concrete sense. The Declaration further states that it is immaterial that there is an identified perpetrator or whether such perpetrator has been apprehended, prosecuted or convicted neither does the Declaration countenance any familiar relationship that might exist between the perpetrator and the victim.¹² Thus, the existence of a victim is not dependent on a judicial process which identifies a perpetrator responsible for the harm/injury such victim has suffered whether as a suspect, accused/defendant or even a convict. A victim may also be categorised in the indirect sense, where immediate family or dependants of a direct victim or victims owing to the assistance rendered to direct victims of a violation.¹³ The Declaration provides no further insight as to the exact description of immediate family or independent, whether this will be considered in the literal sense or contextually as each circumstances demand.¹⁴ A strict construction of the provision will imply that victims must have suffered some form of harm, hence the conception of a victim in criminal law is centred around the harm they have suffered. Although this interpretation may be rebuttable with respect to inchoate offences where it may be argued that no harm has been inflicted on the victim, yet victims are identified within such contexts. By implication, a victim may not necessarily be the complainant of a crime neither is a 'survivor' of a crime synonymous with the term 'victim'. There are possibilities that persons who are not victims may make complaint or report a crime. In the

⁴Adopted by United Nations General Assembly resolution 40/34 of 29 November 1985. Subsequently referred to as the Declaration in this Study

⁵ Part A and Part B of the Declaration.

⁶ Principle 8 of the Basic Principles.

⁷ Paragraph 18 of the Declaration of Justice.

⁸ Paragraphs 1 and 2 of the Declaration.

⁹There is no end to the list of individual victims in terms of age, vulnerability or gender. As an individual, a victim could be an adult, a child, a member of the vulnerable group etc.

¹⁰The Rome Statute of the International Criminal Court, for instance, recognises juristic persons such as organisations and institutions who have suffered harms directly as victims within the context of the Rome Statute. Rule 85 (b) of the International Criminal Court Rules of Procedure and Evidence. Some countries provide a wider interpretation for the meaning of victim. In countries like Austria, The Netherlands, Poland, juristic person could be a victim or injured party as the case may be while Croatia and Austria, Poland and Czech Republic recognise juristic persons as victims. Emanuela Biffi, Eva Mulder, Antony Pemberton, Manuela Santos, Mafalda Valério, Inge Vanfraechem, Benny van der Vorm *IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union* (APAV 2016) 111.

¹¹ It is not clear by the provision of the Declaration whether the State itself may be regarded as a victim where, crimes have been clearly perpetrated against State institutions or structures.

¹² Paragraph 2 of the Declaration. The UN Basic Principles also make similar provisions in the Principle 9.

¹³Persons assisting victims could include, health care givers, legal practitioners or civil organisation personnel rendering assistance to direct victims.

¹⁴There are different interpretations from European countries which admit spouses, siblings, (Finland, Lithuania) 'people living under the same household' (Finland, Austria, Bulgaria, Sweden etc.) Emanuela Biffi, *et al* (2016) *op. cit.* (n. 9) 111.

same light, survivors of crime such as persons who witnessed the commission of crime, may have no significant connection with the crime whether as direct or indirect victims, hence they may not be necessarily regarded as victims. The wordings of the Declaration suggest that there is such terminology as ‘direct victim’ and ‘indirect victim’. The UN 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* (UN Basic Principles)¹⁵ also defines a victim along the same lines as the provisions of the Declaration but within the context of victims of gross violations of international human rights law or international humanitarian law.¹⁶ The Declaration further subjects the interpretation of a victim to the criminal law provisions of member States which clearly shows that States have the liberty of determining who a victim is, in line with their domestic criminal law provisions.

A Victim in the Nigerian Criminal Law

There is no general statutory definition or description of a victim in the Nigerian criminal law. The meaning ascribed to victims of crime is usually subject to the context of individual criminal offence and the statutory provisions in relation to that offence. This would imply that although there is no description or recognition of victims in the generic sense, by inference any person against whom a criminal act/omission is committed is often, regarded as the victim. It is however notable that the Violence Against Persons (Prohibition) Act 2015 (VAPP Act) defines victims as a person or group of persons who have suffered harm individually or collectively, owing to the perpetration of a crime. The definition by VAPP also extends the concept of a victim to the immediate family or dependants, guardian or ward of such persons. Additionally, VAPP recognises persons who suffered harm in intervening to assist victims in distress as victims.¹⁷ Victims are similarly defined in line with the provisions of the UN Declaration in terms of the harm they have suffered. Gleaning from the provisions of VAPP, there are two important principles which mark the definition of a victim. The concept of harm and the nexus of the harm suffered by the victim with the crime perpetuated against them. Thus, the victim’s connection with the criminal justice system is underlined by the harm they have suffered which in itself is arguably, a violation of their rights. It is notable that VAPP’s definition of a victim is also reflected in the proposed Criminal Justice (Victim’s Remedies) Bill 2011, as it makes extensive provisions with regards to the construction of a victim within the criminal justice system.¹⁸ The Victim’s Remedies Bill attempts to define a victim in line with the provisions of the UN Basic Principles by emphasising the independence of the concept of a victim from the identification, apprehension, prosecution or conviction of the offender or any familial relationship the victim has with the offender.¹⁹ Further, it is notable that the Bill considers a child, who, is born to a decedent victim after his demise, an indirect victim, provided that he would have been a dependant of the deceased victim if he had not died.²⁰ Hence, it can be construed that a foetus, by extension may be regarded as a victim. In addition, a person, other than a law enforcement agent is also regarded as a victim where he suffers injury or dies in the course of arresting a suspected offender or preventing the commission of crime or further damage resulting from the crime.²¹ There are peculiar cases such as crimes referred to as victimless crimes where it appears difficult to identify victims of such crimes or victims appear to be non-existent. In such cases, it may seem that victims of such crimes are remotely connected with the crime or they are non-existent in the real sense. For instance, grand corruption crimes such as embezzlement, misappropriation of public funds and money laundering are crimes which are largely considered against the entire public, it is difficult to identify the direct victims of such crime. In the case of ‘moral crimes’ such as possession of narcotic drugs and harmful substances or prostitution etc., where no specific victims have been identified, it might appear difficult to identify holders of rights accruable to victims in such cases. The concept of victims within the criminal justice system may not have taken care of nuances which significantly affect a one-way approach to the concept of victim in criminal law. In the first instance, it is possible to conceive situations where a victim may also be tagged with the double identity of victim and an offender. In such situations a victim may bear some form of criminal liability not necessarily as a principal offender but with lower levels of criminal liability as an aider or abettor. In another light, the concept of contributory fault may also impact the conception of victim, thus, impinging on the rights of the victim within the criminal justice system

¹⁵UN General Assembly A/RES/60/147 (2005) Retrieved March 20, 2019, from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement>.

¹⁶ Principle 8 UN Basic Principles. The European Union Directives on Victims gives similar definition in Article 2.

¹⁷Sec. 46 of the Violence Against Persons (Prohibition) Act 2015 (VAPP Act) defines victims in similar terms and further categorises harm in terms of physical, emotional, economic injury or substantial impairment of the victim’s fundamental human rights just as the Bill also defines harm in sec. 3 (1).

¹⁸ [SB.44]. This bill is subsequently referred to as the bill/Victims’ bill.

¹⁹ Sec. 3 of the VBR.

²⁰Although, this construction of a victim is exclusively applicable to the provision in Part II of the Bill, it makes for wide provisions as far as victims of crimes are concerned.

²¹ Sec. 37 (3) of the Victim’s Bill.

The Role of Victims in the Criminal Justice System in Nigeria

In Nigeria, the victim occupies neither specific position nor legal status in criminal proceedings. In the administration of criminal justice, it would seem that the victim is irrelevant in so far as the processes are concerned except, to serve the purposes of the Prosecution.²² Ironically, the defendant/offender is made the central focus of the criminal justice process; hence they are accorded relevance through entrenched rights. At the pre-trial stage, the victim may also be the complainant but not necessarily and during trial the victim is principally a witness for the prosecution's case. The victim plays no active role in the prosecution of crime neither is he entitled to any claim from the criminal justice process or any post-trial rights. From the moment of the report of the incidence of crime and filing of complaint of an alleged crime with the Police, the role of the victim in the criminal justice process remains passive. The apprehension of the alleged perpetrator and subsequent prosecution is at the discretion of the State and designated State agents acting on behalf of the State. Although the victim is supposedly represented by the State, he has no say in the conduct of the case by the Prosecutor and his interests or views do not matter at the criminal proceedings. It is assumed that the victim's interest is subsumed in those of the State. There are constitutional provisions which, may even preclude prosecution of the alleged offender on the grounds of public policy or public interest at the decision of the Attorney General²³ In the end, the victim's role is hardly ever recognised in the final outcome of the criminal proceedings at the court. Active participation of victims in the criminal justice process is not known to the Nigerian criminal justice process except as witnesses for the prosecution. Unlike the practice in some jurisdictions, which admits of the doctrine of '*partie civile*', the Nigerian criminal justice system does not have such provision neither does it accord victims any *locus standi* as a party in the criminal justice process. Although, the victim is not actively recognised in the criminal justice process, the victim has inherent enforceable rights which ought to be recognised in the administration of criminal justice.

3. The Rights of Victims in the Administration of Criminal Justice

Conventionally, since the victim is not accorded any active role, it is common to find that they have little or no rights in the whole process. On the other hand, the accused/offender is accorded so many rights in criminal proceedings,²⁴ while the victim usually, has few, if any, specific rights. This is usually because victims are not recognised parties to criminal proceedings especially, in common law jurisdictions. Victim's rights refer to the total bundle of rights which are conferred on the victim by virtue of their position within the criminal justice system. Hence, outside the criminal justice system, the victim cannot enforce such rights neither are they transferrable. The recognition of these rights may, however play out differently. Victims' rights are the highly controverted form of rights and even described as merely illusory.²⁵ The argument to recognise victim's rights is not a clamour for equality as it may be contended rather it relates more with recognising their needs and their status not as mere objects in the criminal justice process and their needs to receive some form of remedy for their injury.

Brief Overview of Victim's Rights Movement

The development of the rights of crime victims follows different patterns across different jurisdictions. Globally, there is no single narrative on the historical development of victim's rights. It is however, accurate to state that victim's right was borne out of the need for inclusiveness of victims in the criminal justice process to the extent that their needs and interest are not undermined or subsumed in the common public interest. While some narrative trace the beginning of victim's right to post World War II, the advent of human rights and the subsequent establishment of international criminal tribunals,²⁶ other narrative consider the rise in victim's rights movement as attributable to the civil rights movement following the rise in crimes in the 1960s and movements on violence against women and victim compensation programmes.²⁷ The differences in narratives notwithstanding, the movement in victim's rights may have culminated in the adoption of the United Nations Declaration of Justice in 1985.²⁸ The UN Declaration categorises the rights of victims broadly into four under the headings access to justice and fairness, restitution, compensation and assistance. In spite of the broad provisions of the UN Declaration of Justice, victims' rights are largely contextualised with varied applications across several jurisdictions. At the regional level, there is no single legal document on victims' rights within the African Union (AU), although, such rights can be gleaned from human rights documents of the AU. However, the European Union adopted the

²²Uwakwe Fidelis C. 'Deconstructing the barriers to Access to Justice by Crime Victims in Nigerian Criminal Justice System' (2019) 2:1 *COUJCLP* 1-7, 2.

²³ Sec. 174 (3) of the CFRN.

²⁴ Sec. 36 of the CFRN.

²⁵Beloof, D. E. 'Third Wave of Crime Victims' Rights: Standing, Remedy and Review' (2005) 2:2 *The Brigham Young University Law Review* 255-370.

²⁶Robyn Holder Tyrone Kirchengast and Paul Cassell 'Transforming Crime Victim' Rights: From Myth to Reality' (2021) 45:1 *International Journal of Comparative and Applied Criminal Law*. 1-13, 5.

²⁷ Robyn Holder et al, *ibid*. David E. Aaronson. 'New Rights and Remedies: The Federal Crime Victims' Rights Act 2004' (2008) 24:4 *Pace Law Review* 626.

²⁸ Marc Groenhuijsen, 'The Development of International Policy in Relation to Victims of Crimes' (2014) 20:1 *International Review of Victimology* 31-48, 31.

Victims' Rights Directives 2012 in replacement of the earlier Framework Decision of 2001 on victims' rights.²⁹ The Directives established the minimum standard of rights to be afforded to victims of crime in member States. Even though it is a binding legal instrument unlike UN soft law provisions on victim's rights, its provisions are instructive in that they do not foist a particular system on the criminal justice regime of member States. The Directives take into cognisance of the domestic provisions of the respective States such that, States are to inculcate the provisions on victim's rights in accordance with their national criminal justice framework.³⁰ Thus, States which do not afford any legal status to victims of crime in their criminal proceedings do not have to alter their legal system or adopt victim participation like States which do.³¹ In jurisdictions where victims' rights are expressly guaranteed, such rights could also be categorised into pre-trial, trial and post-trial rights. In some jurisdictions, victims are accorded procedural rights such as the right to be consulted on the decisions: whether to prosecute or not; to grant bail/custody of the accused and plea bargain and the right to make victim impact statement, etc. In the United Kingdom, apart for the provisions on victims' right, victims of crime from have a right to some services within the criminal justice system. The Code of Practice for Victims of Crime provides a wide range of services for victims of crime from the moment of report to arraignment of offender and hearing in court.³² The Code applies to all criminal justice agencies from the police to correctional facilities. In addition, there is a provision for the Victim's Personal Statement (VPS) which is the victims statement of the impact of the crime on him/her and everything connected to the victim. The VPS is to be countenanced by all criminal justice agents and is particularly important at the sentencing stage in the court proceedings. The VPS is different from a witness statement and is not mandatory unlike the witness statement. Although the VPS may form part of the prosecution's case, it is not relevant to the court proceedings until a guilty verdict is returned for the accused. This is the same as victim impact statement provided for by many civil law countries.³³ In the United States of America, the Crimes Victims' Rights Act 2004 make broad provisions for victims' rights.³⁴ Earlier, the Victims of Crimes Act 1984³⁵ had made provision for victims; compensation and assistance.³⁶ In the US, the victim impact statement is usually made in writing in a prescribed format and read out during trial. At the sentencing stage,³⁷ the Canadian Victims' Bill of Rights also makes broad provisions for the rights of victims of crime.³⁸

Rights of Victims of Crime in Nigeria

In Nigeria, although some attempts were made to amplify victims' rights in the late 80s' following the Nigerian Ministry of Justice Conference on victims' remedies in 1989, there has not been so much of activities with regards to victims since then. Victims of specific crimes such as sexual and violent crimes, human trafficking etc. have however received attention through legislation prohibiting such acts and granting certain rights to victims of such crimes, such as the right to protection and privacy. Also, some criminal statutes allude to some forms of remedies to victims of crimes but such provisions do not confer any general right on the victims in that respect.³⁹ The Criminal Procedure Act and Criminal Procedure Code make no explicit provision for the rights of victims although they refer to the rights of victims to receive compensation and restitution in limited cases from which provision,

²⁹ The European Union Directives 2012/29/EU of the European Parliament and Council was adopted on 25 October 2012.

³⁰ Albin Dearing & Holly Huxtable 'Doing justice for victims of violent crime in the European Union - Reflections on findings from a research project conducted by the European Union Agency for Fundamental Rights' 2020 *International Journal of Comparative and Applied Criminal Justice* 1-28.

³¹ Article 20 of the European Directives.

³² The Code of Practice for Victims of Crime in England and Wales was established by the Domestic Violence, Crimes and Victims' Act 2004 and came into force in 2006. Since 2006 when it came into force it has been revised thrice in 2015, following the adoption of the European Union Victims' Directives.

³³ Civil law country such as France make provision for victim impact statement within their criminal justice system.

³⁴ 18 USC § 3771. The Act provides for the right of victims to: be informed of proceedings and events; attend proceedings and be heard; proceedings free from unreasonable delay; privacy and protection from intimidation and harassment; restitution from the offender and to apply for crime victim compensation and; enforcement of these rights and access to other available remedies. Pre-trial rights include the right to notice of proceedings and events. Trial rights relates to right to participate in the proceedings, victim's protection, reparation to victim, and privacy of the victim.

³⁵ Code Chapter 112.

³⁶ The Victim Witness Protection Act 1982 had preceded the Victims of Crimes Act and provided protection of the privacy of witnesses and victims of crimes. Subsequently, the Child Victims' of Crimes Bill of Rights 1990 was passed to afford protection to child victims and the Crime Control Act and the Victims' Rights and Restitution Act 1990. These Acts are besides subsequent legislation which protect the rights of victims of specific crimes.

³⁷ The Victims' Rights Clarification Act of 1997 provides the right for victims to make impact statement during the sentencing stage of criminal proceedings.

³⁸ Under the Act, victims have the right to: information; protection; participation; seek restitution and; make complaint about infringement of denial of any of their rights.

³⁹Sec. 11 of the Advance Fee Fraud Act 2006 provides for restitution to victims of fraud under the Act by the offender. Sec. 1 and 2 of the Violence Against persons (Prohibition) Act 2015 confer the court with powers to award compensation to victims under the Act. The Penal Code also makes general reference to compensation of victims of crime in Sec. 78 without conferring any rights on the victims.

it is implicitly inferred that victims have the right to remedies in form of compensation and restitution.⁴⁰ Apart from the right to remedies which may be inferred from the various provisions, there is no reference to any right accruing to the victims save a few provisions in the Administration of Criminal Justice Act 2015. Victims have a right to protection of their identity,⁴¹ the right to consent to or refrain from plea bargain,⁴² the right to recovery,⁴³ restitution⁴⁴ and compensation.⁴⁵ Besides these provisions, victims have no general rights in Nigeria. Attempts to legislate on victims' rights seem to have been consistently balked. The first attempt to legislate on victim's right was made in 2006 and the second in 2011.⁴⁶ The 2011 bill titled Criminal Justice (Victim's Remedies) Bill 2011 has 74 proposed sections divided into two parts.⁴⁷ The first part makes extensive provisions for victims' rights at all stages of criminal proceedings.⁴⁸ With two abandoned bills on victims' rights and the increasing number of victims of crimes in Nigeria, it is apposite to evaluate the concept of victim's rights in Nigeria. The proposed Victim's Remedies Bill made remarkable provisions with respect to victims' rights in the criminal justice process covering areas highlighted by the UN Declaration and Basic Principles. It seems difficult to apprehend the underlying factors militating against the codification of victims' rights.

4. Rights of Victims in the Administration of Criminal Justice

Gleaning from legal provisions on victims' rights from selected international documents, this section examines the rights of victims of crime in the administration of criminal justice. These rights can be categorised in two different senses. In the first instance, victim's rights can be conceptualised in terms of substantive and procedural rights. Procedurally, victim's rights may be categorised in line with the three stages of criminal proceedings namely; pre-trial, trial and post-trial rights. Some of the basic rights are highlighted below:

The Right to Dignity

The right to human dignity is a human right applicable to all human persons, generally. With respect to victims of crime, there is an additional need to recognise their human dignity owing to the violation they have suffered. The crime committed against victims already undermines their human dignity. Hence, victims of crime have a right to be treated with compassion and accorded deserving human dignity especially in the face of egregious crimes which seem to strip them of such dignity.⁴⁹ They have a right to respect and recognition at all stages of the criminal proceedings. Recognition in this sense points to the fact that the criminal justice system should recognise the harm inflicted on victims of crime, hence, the need to empathise with them and accord them the human dignity they deserve.

Right to Access full and effective justice

Victims have the right to equal and effective access to justice irrespective of their gender, age, status or any form of criteria for discrimination. Victims have a right to access the mechanisms of justice and the right to full, effective and prompt remedies, for the harm that they have suffered, as provided for by national legislation.⁵⁰ Victims must be able to access justice via the judicial and administrative mechanisms provided by national legislations in order to obtain redress.⁵¹ To facilitate access to justice, victims have a right to factual information with regards to the crime perpetrated against them, available mechanisms for seeking justice, their role in the criminal proceedings, the scope, timing, progress and disposition of the proceedings.⁵² In pursuance of this right, victims may request and receive information regarding the criminal process or proceedings.

Right to Information

Victims have the right to a wide range of information concerning the rights and services available to them with respect to their case. The right to information runs through the pre-trial and post-trial stages of criminal justice

⁴⁰ Secs. 261, 267, 268 and 270 of the CPA and Secs. 365 and 360, 367 of the CPC provide for compensation and restitution to victims respectively.

⁴¹ Sec. 232 of the ACJA.

⁴² Sec. 270, *Ibid.*

⁴³ Sec. 336, *Ibid.*

⁴⁴ Sec. 314, *Ibid.*

⁴⁵ Sec. 319, *Ibid.*

⁴⁶ Bill 2006 and 2011 respectively.

⁴⁷ [SB.44] In 2011, the Bill was re-introduced by Senator Victor Ndoma-Egba under the same title as the 2006 Bill.

⁴⁸ Sections 4-13 make extensive provisions for victim's pre-trial rights. Sections 14- 34 make provisions for trial rights of the victims and sections 36-37 provide for post-trial rights of the victims. The Bill provides for victims right to: immediate assistance; information on available pre-trial services, progress of the investigation, decision not to prosecute and release of the offender on bail; right to immediate repossession of property; and the right to confer with the prosecutor. Victims have a right to be present at all times throughout the trial proceedings and give evidence of the injury or damage suffered during trial either personally or through other witness(es).

⁴⁹ Para. 4 of the UN Declaration.

⁵⁰ Para. 5 of the UN Declaration.

⁵¹ Paragraphs 4 and 5.

⁵² Paragraph 6.

Victims have a right to be informed of the available options to receive redress through the available mechanisms provided by the State. This wide range of information must be provided by appropriate and competent criminal justice authority on first contact without any delay. Such information must include the decision on prosecution of the offender/accused, the role and the scope of the victims' involvement in trial and disposition of the case against the accused.⁵³ Where there are such provisions for support and assistance to victims relating to health, social and other relevant services, they should be informed of these services and afforded easy access to them.⁵⁴ Such information relating to protection and reparation should be made available to the victim. Where the case proceeds to trial, the victim has a right to receive information about the progress of the case.⁵⁵ Where the Prosecution takes a decision not to prosecute, victims should be informed of such decision with reasons where possible, without prejudice to the prosecutorial discretion and powers as guaranteed by the constitution. Given the nature of criminal law and terms which victims may be unfamiliar with, the victim has a right to understand and be understood. Information provided to victim must be in a simple and accessible language.⁵⁶ The information provided to the victim must be communicated in such a way that it is adapted to the specific needs of every victim and their linguistic capacity. The means and mode of communication must be suitable for victims' age, language or any disability.

Right of Participation

In line with domestic legal provision, victims have a right to participate in the proceedings by allowing them to present their views, concerns and personal interests without prejudice to the accused and his rights within the criminal justice system.⁵⁷ In order to make their views and concerns known, victims do not necessarily need to become an active party where such is undesirable for cogent procedural reasons. In presenting their views and concern, victims have the right to make impact statements and have them considered for the purpose of sentencing and reparations at appropriate stages of criminal proceedings.⁵⁸ The level of victim participation may be determined by the domestic criminal justice administration policy in so far as it does not hamper the victims in presenting their interest and needs during the proceedings. Victims should have a right to participate in criminal proceedings even where they are accorded no active legal status as it operates in civil law country which operates a *partie civile* system. The provision on victims' right to participate in criminal law proceedings may be puzzling, particularly, to common law jurisdictions which hold the principle that criminal proceedings are strictly the business of the State and accused. However, with the evolving form of criminal justice and victims' rights, common law countries may have to reconsider their stance on victims' participation. As far as common law countries are concerned, the right of participation granted to victims in the course of criminal proceedings essentially apply to the rights to make impact statement on how the crime perpetuated against them affected them or their family and does not grant any active legal status to victims of crime within their jurisdiction. While not disrupting the criminal justice system of a State, victims should get more actively recognised in criminal proceedings in such a way that trials are expedited and not delayed.⁵⁹ They must also be updated with regards to the timing and progress of the proceedings and of the disposition of their cases. Victims equally have a right to request for these information. An ancillary right to the right to participate is illustrated where there is decision not to prosecute, victims should be given opportunity to have such decision reviewed to foster their right to participate.

Right to Protection and Privacy

Victims have a right to protection of their privacy and physical safety and that of their families and witnesses in support of their cause.⁶⁰ Victims must be protected from intimidation and reprisal attack on them and their families. As much as it is possible, the State must ensure that inconveniences arising from their position as victims and role in the criminal justice process must be minimised. Instances where victims are shamed or stigmatised by the society or sheer embarrassment from their position as victims should be curtailed. Without prejudice to the rights of the accused, where necessary, the identity and personal details of victims may be hidden from the defendant and the public for their safety and privacy. Victim shaming is a recurrent phenomenon especially in cases involving sexual offences and often keeps victims in perpetual silence or at the risk of re-victimisation, hence, it is important that the identity of the victim be protected where necessary.

⁵³ Para. 6 (a) of the UN Declaration.

⁵⁴ Para. 15 of the UN Declaration.

⁵⁵The European Directive makes the right to be informed about the progress of the case and the possibility of notifying the victim about the release or escape of their offender conditioned upon the victim's request.

⁵⁶The European Directives make provisions for additional rights in this respect such as the right to interpretation and translation. Victims who do not understand the language of the criminal proceedings must be offered free interpretation and translation upon request.

⁵⁷ Para. 6 (b) of the UN Declaration.

⁵⁸ Paragraph 6 (b).

⁵⁹ In any case, in a country like Nigeria, the Court accords legal recognition to third parties in criminal proceedings as an *amicus curiae* and may even be heard as friend of the court. Such legal standing could be further explored to provide victims with an opportunity to participate in criminal proceedings.

⁶⁰ Para. 6 (d) UN Declaration.

Right to Access Speedy and effective trial

Victims must also enjoy the right to speedy and fair trial just as the accused. The process of victim's interview and investigation should be conducted without unjustified delay after the complaint. A corollary to this right is the right to prompt execution of court orders and direction on victim's reparation.⁶¹ Without prejudice to the defendant's right to appeal, there should be no unnecessary delay in the execution of awards of the court. Orders made by the Court for the benefit of the victims can only be enjoyed where there is a prompt and effective execution of such orders, otherwise delay may be tantamount to subtle denial.

Right to Assistance and Support

Victims have a right to receive proper assistance throughout the criminal justice process.⁶² Victims have a right to proper assistance with respect to accessing justice and remedial measures in relation to the harm they have suffered.⁶³ Victims may receive material medical, psychological and social assistance from the State. Victims should be informed of available services and assistance measures accessible to them. Proper assistance begins from the complaint or information stage. As such, through the process of filing complaints and subsequent processes, victims deserve support services which will help them confront the immediate effect and shock of the harm inflicted on them. Victims also have a right to support services. Such support services may range from general or specific support services such as psychological support in form of counselling physiotherapy, trauma support service to health services to social services etc. Such support must be free of charge and accessible to victims. Support services may be facilitated with collaborations from non-governmental organisations or by the government alone.

Right to reparation

Victims have a right to reparation for injury or harm suffered from the offender, third parties or the State, in so far as they bear criminal liability.⁶⁴ This is the major contention of the UN Basic Principles.⁶⁵ In this sense reparation includes but is not limited to compensation. Reparation could also take the form of restitution, rehabilitation or satisfaction measures to the victims depending on the form of harm perpetrated against the victims. Apart from holding offenders accountable for their crimes, offenders must be responsible to the victims by making fair restitution to them or their family members.⁶⁶ Restitution could take the form of return of property or restoration of the victim's rights. Compensation could be pecuniary in nature, where the offender reimburses the victims for the expenses incurred in respect of the harm or loss he has been inflicted or victims receive compensatory sums for their injuries. Compensation is not limited to pecuniary forms but could be material, moral or symbolic for non-financially assessable damage. A victim may be offered a job, equivalent to the one he lost by reason of the crime perpetrated. Reparation could also take the form of rehabilitation which may involve rendering services to victims for the purpose of assisting them to recover from the effects of crime. Rehabilitation may involve medical and psychological services which assist victims to deal with traumatic disorder resulting from crime. Satisfaction measures and guarantee of non-repetition are usually non-material forms of reparation which require state obligation towards the victims beyond the direct responsibility of offenders to their victims. Where crime involves substantial damage to a community, reparation could involve reconstruction or replacement of infrastructural facilities, relocation of community. In providing reparation to victims, it is important that special attention should be given to victims who have special needs, without prejudice to relevant provisions on non-discrimination. While they are accorded rights available to victims generally, this category of victims may receive peculiar considerations based on the nature of the harm inflicted on them or peculiar factors such as age, disability or gender which render them more vulnerable. Victims' right to reparation does not foreclose them from receiving voluntary assistance from other sources such as non-governmental or charity organisations. Conversely, such voluntary assistance will not discharge the lawful obligation to provide victims with reparation. Additionally, the right to reparation should be not be consequent upon prosecution and conviction alone but should also include cases where there is no prosecution but evidence of harm suffered by the victim as a result of crime.

Right of Vulnerable Victim Groups

Victims may run into different categories with peculiar needs. As such, certain categories of victims which are regarded as vulnerable must be afforded unique protection. Such protection is not provided on the basis of discrimination or bias against other categories of victims, but for the purpose of acknowledging their peculiar needs and circumstances of such victim groups. Child victims as well as victims of violence and sexual offences may require additional forms of protection over those accorded to victims generally. For instance, victims of sexual offences may require emergency medical or psychological attention much differently from any other

⁶¹ Para. 6 (e) of the UN Declaration of Basic Principles of Justice.

⁶² Para. 6 (c) of the UN Declaration.

⁶³ Paragraphs 6 (c), 14 and 15.

⁶⁴ Paragraphs 8 and 12.

⁶⁵ *op. cit.* (n. 14).

⁶⁶The UN Declaration 1985 makes reference to fair restitution realising that it may be impossible to restore to former position as it existed before the crime.

victim. The rights of victims in criminal justice administration are not limited to those highlighted above. However, the foregoing rights are the basic provisions which should provide the minimum standard in determining the scope of victims' rights. These rights should also be contextualised to cater for victims of transnational and international crimes which are systematic and large scale in nature. In such circumstance, victims are usually large and the dimensions of rights may be different from those of the victims of domestic crimes. The officers of the State involved the different stages of criminal justice must be trained and fully involved enforcing the rights of the victims at different stages. These officers include the police, the state counsel and other officers of the ministry of justice and ultimately, the court.

5. Conclusion and Recommendations

Victims are more than just precursors of criminal proceedings reduced to mere addendum to the Prosecution's case. Like other jurisdictions where victims' rights are becoming more prominent and an essential feature in the criminal justice process, Nigeria ought to decentralise the accused person as the focal point of criminal justice and incorporate a victim-centred approach to criminal justice by recognising their rights. First, Nigeria must make statutory provisions on the minimum set of rights applicable to victims, broadly, regardless of the type of crime. There should be a revisit of the abandoned bills on victims' rights and passage of the victims' right bill into law. The law must make detailed provisions on the rights available to victims following the minimum standard discussed above. Second, the important criminal justice agents/authorities such as the police, prosecutor or other competent authorities should be trained to promote and enforce the rights of victims. This will help to raise awareness of the rights among victims of crime. In order to implement victims' assistance and support services, the government will have to design and establish victim support programme which will include provisions for the involvement of trained professionals and support services providers. This could be done in conjunction with non-governmental organisations with interest in victims' support. Without prejudice to the principle of non-discrimination, it is important to take cognisance of peculiar circumstances of victims of certain offences which may require specific needs uncommon to other kinds of victims. Victims of organised crimes such as terrorism, all forms of illegal trafficking and violent crimes which have trans-border dimensions could be afforded rights which address their specific needs in relation to the violations committed against them.