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FOUNDATION FOR COMPENSATION OF 'PROSECUTION WITNESSES' IN CRIMINAL LITIGATION: DELTA STATE OF NIGERIA IN FOCUS

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Abstract

The system of adjudication in the law courts of Nigeria is the accusatorial system which is heavily dependent on the availability of witnesses since the courts are umpires. In it, two opposing parties contest their concern or interest before a decision maker who ought to be impartial. Ordinarily, the idea of justice in criminal proceedings usually extends and subsumes three categories of actors, to wit; the state, the perpetrator of the crime (suspect) and the victim of the crime. But in practice, the idea of the state, laden with attendant state officials have inevitably and apparently dominated and overwhelmed the criminal justice and adjudicatory system. By implication, corollary-victims, who will definitely play active role in the process of arraignment and trial, even though exposed to likelihood of risk and usually subjected to suffer injuries such as loss of dignity, monetary loss, subtle threat to life and odium, especially in the course of supporting the state in adjudication, consequent to the offence and/or crime committed, are left unattended. These categories of person are merely regarded as prosecution witnesses. Consequently, it became obvious that the criminal and procedural laws have not made sufficient provisions to cater for the interests of these individuals, victims of crimes, who are used as „witnesses“ and tools for securing justice for the State, against the backdrop of the saying that justice is a tripartite phenomenon dealing with the State, the accused person and the victim of crime. In the light of the foregoing, the authors argued that the success of the case for the prosecution, whose ultimate standard of proof has always been „beyond reasonable doubt“ operated to underscore the desirability of the motivation/compensation for prosecution witnesses, especially in Delta state, with an unimaginable topography. The paper therefore maintained the need for a supportive legislation to accommodate the interest and motivation of the „prosecution witnesses.“

Key Words: Crime, Compensation, Litigation, Motivation, Prosecution, Witnesses

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1. Introduction

The accusatorial¹ system of adjudication in Nigeria which has the Anglo-Saxon origin is heavily dependent on the availability of witness or witnesses for the impartial decision-maker (court or judge) to do justice. The success or failure of a case therefore, cannot be separated from the availability of reliable witness or witnesses. This is essentially so because the court being an impartial umpire, does not manufacture evidence for the parties, rather the court acts on the pieces of evidence produced or submitted by the parties. Most of the times, evidence, be it oral, real or documentary is brought before the court through the testimony of witnesses because the testimony of a witness based on the procedure laid down in the Evidence Act² is needed, at least to introduce a documentary or real evidence.³ Witness or witnesses can therefore make or mare a case. Drawing attention from the above, it is pertinent to consider the following elementary questions, such as „what is prosecution“ and „who is a witness“? This effort will assist us to elucidate on the task at hand, being the need for motivation and/or compensation of „prosecution witnesses.“

Prosecution may be generally seen as „the commencement and carrying out of any action or scheme.“⁴ Thus, in relation to a legal action, it means the institution and pursuance of a legal action which may be civil or a criminal. It is thus, imperative at this point to re-state our concern with criminal prosecution, especially in Delta state.

¹ This is also known as the adversarial system of adjudication and it is the antithesis of the inquisitorial system. In it, opposing interests or concerns are submitted for the adjudication of an umpire or tribunal which ought to be impartial. It is, “a procedural system involving active and unhindered parties contesting with each other to put forth a case before an independent decision-maker.” See generally, Bryan A. Garner, *Black’s Law Dictionary*, 8th ed., (West Publishing Co., 2004), P. 58

² Evidence Act, 2011

³ Although it is trite law that when documents are tendered and admitted in evidence, they speak for themselves and no oral evidence is allowed to contradict, alter, add to or vary the content of such documents, for the court to act on any document or real evidence, it must have been pleaded or tendered and admitted and this must be through a person called as a witness; Section 128 (1) Evidence Act, 2011 and see specifically *Goyol v INEC* (No. 2) (2012) 11 NWLR (Pt. 1311) 218

⁴ *Black’s Law Dictionary*, 8th ed., (West Publishing Co., 2004), p. 1258

The meaning that may be ascribed to the concept of witness depends on how it is used. When used as a verb, witness means the act of being a witness to something or the process of witnessing something. However, when used as a noun, witness means, „One who sees, knows, or vouches for something.⁵ Thus, in its strict legal sense, witness means:

One who gives evidence in a cause before a court; and in its general sense includes all persons from whose lips testimony is extracted to be used in any judicial proceeding, and so includes deponents and affiants as well as persons delivering oral testimony before a court or jury.⁶

It is important to state that there are many types of witnesses, the basis of classification being the role⁷ they play in judicial proceedings and how they are perceived not only by the court but also by the parties to the case.⁸

2. Nature of Crime and Parties to a Criminal Proceeding

There is no universally accepted definition for the concept of crime and according to N. A. Inegbedion⁹ crime has as many definitions as there are scholars. The controversial nature of the concept is because the acts or omissions that are identified as criminal vary with time, space and location. For instance, in the Southern part of Nigeria where the Criminal Code¹⁰ operates, no doubt, some persons may have been prosecuted in the 1970s and 1980s for the offence of

⁵ *Ibid*, at P. 163

⁶ *Ibid*.

⁷ Through the role a witness plays on behalf of the party he testifies, we can classify him as a prosecution or defence witness; expert or skilled and non-expert witness.

⁸ By his acts in court, a witness may be perceived as a hostile or turncoat, refractory or percipient witness.

⁹ He attributed the unavailability of a universally accepted definition of crime to the variable nature and the content of crime as well as the introduction of philosophy, ideology and culture into the legal field. See his book: *Criminal Law*, (Ambik Press), p. 1.

¹⁰ Cap. “C38”, Laws of the Federation of Nigeria, 2004

“wandering or idle and disorderly person”¹¹ but it is not so at the moment because the seriousness with which the society views the act has waned down.

Besides, what one society may regard as a crime may not be a crime in another society.¹² This underscores the United Nations’ Research Institute observation that:

Crime, in the sense of the breach of a legal prohibition, is a universal concept, but what actually constitutes a crime and how seriously it should be regarded, varies enormously from one society to another. Perceptions of crime are not determined by any objective indicator of the degree of injury or damage but by cultural values and power relations.¹³

The above notwithstanding, scholars, jurists and criminal law experts are in agreement, with respect to some notable characteristics of crime which must form part of acceptable definition of the concept of crime. These characteristics include:

- (a) A conduct, act or omission which the State regards as criminal. In other words, the State must declare such conduct, act or omission as a crime;
- (b) The consequence of the act or omission makes the person involved to be liable to prosecution. In other words, a person who contravenes the declaration of the State is liable to be prosecuted; and

¹¹ *Ibid.* But see section 249 (b) which provides that „every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do, shall be deemed idle and disorderly persons, and may be arrested without warrant and shall be guilty of a simple offence, and shall be liable to imprisonment for one month.“ A strict examination of this provision reveals that a strict enforcement of it will inhibit the freedom of movement guaranteed in section 41 of the Constitution of the Federal Republic of Nigeria, 1999. Besides, sentiments will not only be attached to the enforcement of that legal provision, though it may portend serious religious and socio-cultural controversy capable of leading to disharmony and disturbance of public peace in the country, premised on the routine presence of traditional alms-beggars, locally referred to as „*Alimajaris*.’

¹² For example, same sex marriage is a crime in Nigeria whereas the USA sees nothing wrong in two consenting adults marrying themselves. Similarly, adultery is not a crime in Southern Nigeria where the Criminal Code operates but it is a crime in Northern Nigeria where the Penal Code operates. See the case of *Aoko v. Fagbemi* (1961) 1 All NLR 400.

¹³ States in Disarray: The Social Effects of Globalisation, United Nations Research Institute for Social Development, 1995

(c) Where the person is found guilty in a criminal proceeding, he is liable to be punished.¹⁴ We can therefore define a crime as, „a conduct, act or omission which the State regards as criminal and which renders the person doing the act or making the omission liable to prosecution by the State or its Agent which will lead to punishment where the person is found guilty.“

With respect to the parties to a criminal proceeding, it is important to observe that crime is a tripodal concept involving three actors, namely, (1) the State, (2) the perpetrator of crime, and (3) the victim of crime who suffers the injury of the crime committed. The State may be involved in this tripod arrangement in two ways. First, the State decides which conduct amounts to a crime through an enactment and thus, represents the interest of everybody in the society and by virtue of that representation the State is an imputed victim of every crime hence crimes are said to be committed against the State. Second, the State as an entity and legal person has the right to acquire both moveable and immovable properties such that when crimes are committed against its property, the State is readily a victim of crime.

On the other hand, while the perpetrator of the crime is the person „accused“ or „suspected“ of the commission of the crime because of the constitutional¹⁵ presumption of innocence¹⁶ and whose guilt must be proved beyond reasonable doubt,¹⁷ the victim of crime is the person who suffered the injury or harm occasioned by the commission of the crime. This victim of crime may be a natural person who may be a direct¹⁸ or an indirect¹⁹ victim; or an organisation²⁰ or the State as alluded to earlier.

¹⁴ Various types of punishment can be meted on a person convicted of a crime. It ranges from the very severe punishments such as death sentence, life imprisonment and long term imprisonments to the less severe punishments such as short term imprisonment, fines and caning.

¹⁵ [The CFRN 1999, as amended]

¹⁶ *Ibid*, at Section 36 (5)

¹⁷ Evidence Act, at Section 135 (1)

¹⁸ This is the direct sufferer of the harm for instance, the deceased in a case of murder.

It is to be noted that the above mentioned Actors in that tripod arrangement are the parties in a criminal proceeding. Furthermore, it is germane to state that though all crimes are taken to be committed against the State, victims of crime who are natural persons, and the human representatives of organisations and the State (when they are victimised) are regarded and taken as prosecution witnesses. Thus, generating prosecution witnesses in a judicial proceeding for a particular crime involves the identification of who suffered the injury that arose from the commission of that crime. The other major way of securing witnesses for the prosecution is through the identification of public spirited persons who saw, heard or felt an incident.

3. Prosecution Witnesses and Motivational Desirability in Justice Dispensation

Though the success of the plaintiff's case is based on the preponderance of evidence in civil cases, however, in criminal cases it is proof beyond reasonable doubt, which is an onerous task for the prosecution, because any doubt in the prosecution's case is resolved in favour of the accused person. It is therefore the responsibility of the prosecution to gather all material pieces of evidence especially through the production of witnesses for the proof of its case.

It must be noted that if the prosecution is not alive to its responsibility, attendance of prosecution witnesses may be frustrated in ways which include;

- i. Where there are many adjournments and the prosecution witness is bearing the cost of transportation, and etcetera;
- ii. Where there is potential threat to the life of the prosecution witness or members of his family;

¹⁹ Indirect victims are persons other than the direct victim who have some relationships with the direct victim for instance, the spouses, children and dependants of a deceased person.

²⁰ This is by virtue of the legal personality theories of corporate organisations as enunciated in the case of *Salomon v Salomon & Co. Ltd.*, (1895) 2 Ch. 323

- iii. Where the prosecution witness is stigmatised like in the case of a victim of rape; and
- iv. Where the defendant or his agents is or are allowed to respectively buy the prosecution witness over or plead with him to discontinue prosecution of the case through evasion of attendance. Besides, the prosecution must ensure the attendance in court of witnesses that are not hostile since such witnesses can cast doubt on its case, and thus, counter-productive.

The fact that the success of the prosecution's case depends on the availability and testimony of the prosecution witnesses underscores the need for their motivation. It must be remembered as stated earlier that the court is an umpire and must not descend into the arena of litigation. The implication of this is that the court must restrict its role to the analysis of the evidence adduced by the parties and the deductions that can be made therefrom.

4. Motivation of Prosecution witnesses

It is an incontrovertible fact that apart from a few public spirited individuals who are ready to stake their necks for justice, majority of prosecution witnesses in Nigeria are victims of crimes that have been investigated and submitted for judicial investigation and adjudication. Therefore, anything done to motivate the victims of crimes or to alleviate their sufferings can be taken as something done to motivate prosecution witnesses in Nigeria.

Motivation of prosecution witnesses may take various forms such as:

- i. The provision of financial assistance for sundry expenses like transportation and feeding during court's attendance;
- ii. Compensation or restitution;
- iii. The protection of prosecution witnesses and their families from physical attacks and invasion of their private lives by the defendants and their families;

- iv. Discouragement of stigma that may be attached to some victims of crimes like the victims of rape and sexual offences and thus, prosecution witnesses;
- v. Provision of some essential services such as identifying support measures to encourage, respect and recognise the victims of crimes;
- vi. Provision and promotion of some dedicated services for the support of victims of crimes;
- vii. The encouragement of the works of non-governmental organisations in assisting victims of crimes and,
- viii. The provision of necessary information concerning the case under prosecution to the prosecution witnesses.

5. Motivation of Prosecution Witnesses in Delta State-Nigeria

There has not been any formal or direct effort made specifically to motivate prosecution witnesses in Nigeria and until October, 2020 when the „ENDSARS“²¹ protests rocked Nigeria, there was no meaningful and official effort made even remotely to motivate prosecution witnesses through the concept of compensation in Nigeria. The seeming inaction and inactivity in addressing the plight of the victims of crimes and by extension the motivation of prosecution witnesses becomes relevant here:

- i. The rights of the victims of crimes and or prosecution witnesses are not defined in any enactment unlike their counterparts, the suspects whose rights are defined and contained in the Constitution and some other national and State enactments;

²¹ End-Sars protests were the protests that were organised in the major cities of Nigeria by many young Nigerians alongside many human rights activists and celebrities in October, 2020. As the “tag” of the protests suggests, they were intended to make the relevant authorities to “end” or disband the Special Anti-Robbery Squad (SARS) unit of the Nigeria Police Force across the country which was alleged of extra judicial killings, extortions, human rights violations and many other misconducts.

ii. The State has dominated the issue of crime such that the State is the “recognised” victim of crime while all others are regarded as prosecution witnesses who can only be used as “tools” in securing justice for the State without realising that justice is a tripartite legal phenomenon dealing with the State, defendant and nominal complainant;

iii. The issue of compensation has not been adequately handled in Nigeria because the fate of the victims of crime who are the prosecution witnesses is tied to the uncertain behaviour, capacity and capability of the defendant or the accused person.

6. Possible Framework for Motivating Prosecution Witnesses in Delta State Nigeria

Although some substantive and adjectival laws applicable in different parts of Nigeria such as the Penal Code,²² and the CPC²³ which are applicable in the northern part of Nigeria; the Criminal Law of Lagos State²⁴ and the Criminal Procedure Law of Lagos State²⁵ which are applicable in Lagos State; the Criminal Code²⁶ and the CPA²⁷ which are applicable in the States in Southern Nigeria that have not enacted their own criminal and adjectival laws and the ACJA,²⁸ which is applicable to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja)²⁹ made some pronouncements regarding compensation, it is our considered view that the provisions made in them are inadequate considering the plight and the need to motivate the

²² Cap. 89 Laws of Kano State, 1960

²³ Criminal Procedure Code, Cap. C.42 Laws of the Federation of Nigeria, 2004

²⁴ The Criminal Law of Lagos State, 2011

²⁵ Administration of Criminal Justice Law of Lagos State 2011. Many other states have enacted their own Administration of Criminal Justice Laws (ACJLs). They include: Bauchi State ACJL, 2022; Niger State ACJL, 2023; and Borno State ACJL, 2023; Edo State ACJL, 2016 as well as the ACJLs of Delta and Enugu States which were enacted by their respective State Houses of Assembly in 2017.

²⁶ Cap. C38, Laws of the Federation of Nigeria, 2004

²⁷ Criminal Procedure Act, Cap. C41, Laws of the Federation of Nigeria, 2004

²⁸ Administration of Criminal Justice Act, 2015

²⁹ *Ibid.*, at Section 2(1)

victims of crime in Nigeria. Some of the legal provisions contained in some of the aforementioned laws concerning compensation are hereby examined. The Penal Code provides as follows:

Any person who is convicted of an offence under this Penal Code may be adjudged to make compensation to any person injured by his offence and such compensation may be either in addition to or in substitution for any other punishment.³⁰

There is no express provision concerning compensation or motivation of prosecution witnesses in the Criminal Code. However, since compensation involves the payment of money or exchange of something for injury or a loss, the provisions of section 127 of the Criminal Code can be adjudged to be related to the issue of compensation. The section provides as follows:

Any person who asks, receives or obtains, or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person upon an agreement or understanding that he will compound or conceal a felony, or will abstain from, discontinue or delay in prosecution for a felony or will withhold any evidence thereof, is guilty of a felony.

If the felony is such that a person convicted of it is liable to be sentenced to death (such as the crime of murder) or imprisonment for life (such as the offence of rape), the offender is guilty of a felony, and he is liable to imprisonment for seven years. In other cases, the offender is liable to imprisonment for three years. The Criminal Law of Lagos State, 2011 has similar provisions in section 98.

From the above provisions, it is crystal clear that compensation is not allowed under the Criminal Code for felonious offences. However, given the rule of interpretation which states

³⁰ [Hereafter, The PC] See S. 78

that “the express mention of one person or thing is the exclusion of another,”³¹ since felony was specifically mentioned in the above provision, misdemeanour and simple offences are excluded which means that compensation may be obtained in respect of those crimes without incurring the wrath of the law. Besides the above, the aforementioned Criminal Law of Lagos State in section 15 listed compensation as one of the disposition measures which may be ordered in the following words:

(2) Other disposition measures which may be ordered under this law are compensation, restitution, community service orders, probation, curfew order, binding over orders, rehabilitation and correctional orders; victim-offender mediation and other restorative justice measures,³² (3) when any person is convicted of an offence under this law the court may, in addition to or in lieu of any punishment which may be imposed, order any of the disposition measures³³ stated in subsection (2).

The implication of the above is that the court may order compensation to be paid to a victim of crime by a defendant that is already convicted.

On the part of the ACJL³⁴ of Edo State, provision for compensation was made to the extent that if a defendant is discharged or acquitted in a trial and the court is of the opinion that the accusation against the defendant was false, frivolous or vexatious, the court may direct that compensation be paid to the defendant. This is in *pari materia* to the provisions of sections 256, 371(1) and 323(1) of the CPA, CPC and the ACJA respectively. Besides the above, where any property other than that used in the commission of the offence is found and taken from a person arrested and charged, the court may direct that the property or part thereof be

³¹ *Expressio unius personae vel rei, est exclusion alterius*

³² Criminal Law of Lagos State 2001 at P. Section 15(2)

³³ *Ibid.*, at subsection 3

³⁴ Administration of Criminal Justice Law of Edo State, 2016, at Section 323

restored to the rightful owner or be applied to pay any cost or compensation directed to be paid by the defendant.³⁵ Similarly, the CPC provides in section 365(1) thus:

Whenever under any law in force for the time being a criminal court imposes a fine, the court may, and when passing judgment, order, that in addition to a fine, a convicted person shall pay a sum – (a) in defraying the expenses properly incurred in the prosecution; (b) in compensation in whole or in part for the injury caused by the offence committed, where substantial compensation is in the opinion of the court recoverable by civil suit; (c) in compensating an innocent purchaser of any property in respect of which the offence was committed who has been compelled to give it up; (d) in defraying expenses incurred in medical treatment of any person injured by the accused in connection with the offence.³⁶

Similarly, the ACJA provides as follows:

A court may within the proceedings or while passing judgment, order the defendant or a convict to pay a sum of money: (a) as compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict, where substantial compensation is in the opinion of the court recoverable by civil suit; (b) in compensating a bona fide purchaser for value without notice of the defect of the title in any property in respect of which the offence was committed and has been compelled to give it up; and (c) in defraying expenses incurred on medical treatment of a victim injured by the convict in connection with the offence.³⁷

Still under the ACJA, where a court has convicted a person, it can adjourn proceedings so as to determine the appropriate sentence for the convict in which case the court can order any of the following in addition to or in lieu of any other penalty authorised by law:

- (a) order the convict to make restitution or pay compensation to any victim of the crime for which the offender was convicted, or to the victim's estate; or (b) order for the restitution or compensation for the loss or destruction of the victim's property and in so doing the court may direct the convict: (i) to return the property to the owner or to a person designated by the owner; (ii) where the return of the property is impossible or impracticable, to pay an amount equal to the value of the property; or (iii) where the property to be returned is

³⁵ *Ibid.*, in section 341; footnote 23 in section 361; footnote 27 in section 269; and footnote 28 in section 341.

³⁶ Similar provisions are made in the ACJL of Edo State, 2016 in section 319(1).

³⁷ Footnote 28 in section 319(1).

inadequate or insufficient, to pay an amount equal to the property calculated on the basis of what is fair and just.³⁸

Furthermore, the provisions of the ACJA with respect to plea bargain can be exploited to compensate victims of crimes. By section 270 (2) of the Act, the prosecution is empowered to enter into a plea bargain agreement with the defendant having obtained the consent of the victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence subject to some conditions one of which is that the defendant must have agreed to return the proceeds of the crime or make restitution to the victim or his representative.³⁹

Where the defendant is convicted in accordance with the plea bargain agreement, the presiding Judge or magistrate shall in considering the sentence as agreed make an order that any money, asset or property agreed to be forfeited be transferred to and vest in the victim or his representative or any other person as may be appropriate or reasonably feasible.⁴⁰ Also, the prosecutor was mandated to take reasonable steps to ensure that any money, asset or property agreed to be forfeited or returned by the offender under a plea bargain are transferred to or vested in the victim, his representative or other person lawfully entitled to it, the provisions of the Sheriffs and Civil Process Act notwithstanding.⁴¹ Where any person wilfully without just cause obstructs or impedes the vesting or transfer of any money, asset or property under this Act, he shall be liable on conviction to imprisonment for 7 years without an option of fine.⁴²

Besides the above, the pendency of criminal proceedings is not a barrier to a civil action in respect of the same subject matter. However, the court shall take into consideration any previous

³⁸ *Ibid*, at S. 321

³⁹ *Ibid*, at S. 270 (2) (a)

⁴⁰ *Ibid*, at S. 270 (11) (12)

⁴¹ *Ibid*, at S. 270 (13)

⁴² *Ibid*, at S. 270 (14)

compensation that was awarded in the criminal proceedings in determining what compensation is to be recovered in the civil action.⁴³ Any compensation that is ordered under this Act may be enforced as if it were a fine⁴⁴ and where a convict is ordered to pay compensation and he fails to do so or he defaults, the court may award imprisonment term which will not exceed the term prescribed in respect of a like sum.⁴⁵

Other very important provisions contained in the ACJA appertaining to compensation are:

- i. A person to whom compensation is awarded may refuse to accept the compensation;⁴⁶
- ii. Before making an order for compensation under this Act, the court shall explain the full effect to the person to who the compensation is payable.⁴⁷ The full effect to be explained is that (i) the person to whom the compensation is payable has the option of accepting or refusing the compensation; (ii) where he receives or accepts the compensation or the convict suffers imprisonment in default of the payment of compensation which he was ordered to pay, the receipt of the compensation or the undergoing of the imprisonment as the case may be shall act as a bar to any further action for the same inquiry.
- iii. Where a convict is ordered to pay a fine or compensation, the court making the order shall issue a warrant for the levy of the amount by any means permitted by law including: (a) the seizure and sale of any movable property belonging to the defendant or convict; (b) the attachment of any debt due to the defendant or convict; and (c) subject to the provisions of the Land Use Act,⁴⁸ the attachment and sale of any immovable property of the convict situated within the jurisdiction of the court.⁴⁹
- iv. Where a convict has been ordered to pay fine with or without sentence of imprisonment in default of payment of the fine, the court issuing the warrant for levy of the fine may exercise any of the following powers: (a) allow time for the payment of the fine; (b) direct that the fine be paid on instalments; (c) postpone the issue of warrant; (d) without postponing the issue of warrant, postpone the sale of any

⁴³ *Ibid.* See section 320.

⁴⁴ *Ibid.* See section 325.

⁴⁵ *Ibid.* See section 323(2).

⁴⁶ *Ibid.* See section 324(1).

⁴⁷ *Ibid.* See section 324(3).

⁴⁸ Cap. L5, Laws of the Federation of Nigeria 2004.

⁴⁹ Footnote 28 in section 326(1).

property seized under the warrant; or (e) postpone the execution of the sentence of imprisonment in default of payment of the fine.⁵⁰

On its part, the Shari'ah Penal Code applied in some criminal proceedings in the northern States that adopted it provide with respect to restitution and compensation thus:

Any person who is convicted of an offence under this Shari'ah Penal Code shall, in addition to the punishment for the offence, be ordered to make complete restitution of any benefits, moneys, funds or properties obtained by the crime or illegal means to the person(s), authorities, bodies or corporation concerned, and the court may, upon application by the victim, or his relatives, order compensation for any injury that had resulted from the offence, in accordance with the provisions of the relevant Act or Law.⁵¹

Furthermore, depending on the priority and importance that is attached to compensation for victims of crimes, the provisions of section 12 of the Edo State Kidnapping Law⁵² which stipulates the forfeiture of landed and personal properties as well as money and other valuable properties owned or realised in the process by any person⁵³ convicted of kidnapping to the State and the State being at liberty⁵⁴ to deal with same as it deems fit can be exploited to motivate prosecution witnesses or compensate the victims of kidnapping in Edo State.

Besides the above, the plight of the victims of crimes in Nigeria received a boost through the enactment of the Compulsory Treatment and Care for Victims of Gunshot Act, 2017 which sought to prevent some avoidable deaths at the same time making provisions through which the court can mandate a convicted person or body under the Act to make restitution to a victim. Prior to the enactment of this Act, the practice was that a victim of gunshot wound or

⁵⁰ . *Ibid.* See section 327(1)

⁵¹ Section 103, Shari'ah Penal Code

⁵² Kidnapping Prohibition (Amendment) Law 2013

⁵³ *Ibid.* See section 12(a)

⁵⁴ *Ibid.* See section 12(b)

injury was expected to report at the nearest police station where record will be taken of how the injury came about through a kind of preliminary inquiry. Where the police are satisfied that the injured person is “actually a victim of crime,” he is taken for treatment by the police or a document is issued by the police authorising the treatment of the injured person. Where the report is not made, the injured person may be refused treatment and where he is being treated under any secret arrangement, the victim as well as the person administering the treatment may be invited by the police for investigation. The process of reporting and documentation may cause delay in the treatment of the victim such that death may occur which must have informed the enactment of this Act. Although the Act is narrow being specifically for the victims of gunshot, it provides with respect to restitution thus:

In addition to any other penalty under this Act, the High Court shall order a person or corporate body convicted of an offence to make restitution to the victim by directing that person or corporate body to pay to the victim(s) an amount equivalent to the loss sustained by the victim(s).⁵⁵

7. Gaps in the Existing Legal Framework to Motivate Prosecution Witnesses in Nigeria and Delta-State

Beautiful as all the above provisions may look, they are full of defects which render the goal or end of balancing the protection of private rights and public interest very far from reach. Some of the perceived inadequacies observed in the existing laws for compensating the victims of crimes which were discussed in the preceding subsection include:

⁵⁵ The Compulsory Treatment and Care for Victims of Gunshot Act, 2017 in section 16(1).

A. At the moment, all the legal provisions concerning compensation for the victims of crimes in our criminal laws except those of the Compulsory Treatment and Care for Victims of Gunshot Act, 2017 have geographical limitations. This is because there is no other specific law dealing with compensation for the victims of crimes that is applicable throughout the length and breadth of Nigeria. While the Criminal Code and the CPA are applicable to the States in Southern Nigeria that have not domesticated their own substantive and procedural criminal laws, the Penal Code and CPC are applicable to the Northern States of Nigeria. Similarly, while the Shari'ah Penal Code is applicable to the Northern States that have adopted it, both the ACJL and the Criminal Law of Lagos State, 2011 are applicable in Lagos State. In the same vein, the ACJA is not only geographically limited being applicable to the Federal Capital Territory, Abuja, but is limited in terms of offence since it is applicable to federal offences or offences that are created by Act(s) of the National Assembly. Finally, the Edo State Kidnapping Prohibition (Amendment) Law, 2013 and the Edo State ACJL are applicable only in Edo State just the way the Borno, Anambra, Bauchi and Delta States ACJLs, are applicable within Borno, Anambra, Bauchi and Delta States respectively.

B. Limitation on source of compensation

All the separate laws in Nigeria that provided for compensation treated compensation as a punishment that is meted on the offender and thus, only recoverable from or payable by the defendant(s) or the perpetrator(s) or a person convicted of the crime(s). The problem with this kind of arrangement is where the offender or convict cannot pay as a person of "no means", he is imprisoned in default of payment of such compensation. Again, where a warrant is issued for the attachment and consequent sale of both the immovable and personal properties and nothing is realised, all that can happen to the convict is imprisonment for the like sum. The above situations will definitely extinguish

the right of the victim of crime to compensation since there is no state funded compensation scheme for victims of crimes at the moment.

C. No compensation where punishment is not a fine.

Under the CPC, compensation is awarded against and paid by the convict to the victim of crime when the punishment imposed on him is a fine, although he may go to prison where he fails to pay the fine. Where the offender is sentenced to a term of imprisonment for a crime in which there is no option of fine, the victim is not entitled to compensation.

D. No dime to the victims of crimes from fines

In the laws examined above, where the punishment that is given to a convict is a fine and there is no separate order as regarding compensation to the victim of crime, a dime will not be paid to the victim of crime. The fine is paid into the State treasury without recourse to the victim of crime. How reasonable and justifiable is it for somebody to suffer an injury and another person who is not the direct victim and or his dependant is receiving the benefit of the injury?

E. Discretionary privilege

Compensation for the victims of crimes is treated in our laws as an issue that is at the discretion of the court and not the right of the victims of crimes. This is glaring as all the provisions in the laws examined above with the exception of the Shari'ah Penal Code used the words "the court may" order compensation to be paid to the victim of crime. It is only the Shari'ah Penal Code that used the word "shall" in the place of "may" in other laws. The implication is that with respect to compensation for victims of

crimes in other laws, it is the court that exercises the discretion to either grant or deny compensation as it is neither automatic nor mandatory.

F. Non specification of the rights of the victims of crimes in the laws.

In all our laws with respect to compensation for the victims of crimes, apart from the issue of plea bargain which is expected to save resources for the State, reduce the punishment of the offender at the same time incorporating the compensation of the victim of crime, the rights of the victims of crimes are not specifically identified and recognised in our criminal laws.

G. Encouragement of civil litigation.

Since there is no adequate arrangement for compensation in our criminal laws, the option open for victims of crimes is civil redress and action. Besides, it is clearly stated in the ACJA that the pendency of a criminal proceeding is not a barrier to civil action the only clause is that where compensation has been ordered and paid in a criminal proceeding, the court trying the civil case will take that into consideration in determining the cost, damage and compensation to be awarded.

H. Compensation only where substantial compensation is recoverable by civil suit.

In the ACJA and ACJLs, it is provided that the court may within the proceedings or while passing judgment order the defendant or convict to pay a sum of money as compensation to any person injured, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict where substantial compensation is in the opinion of the court recoverable by civil suit. The question that comes to mind is what happens to victims of crimes where in the opinion of the court “substantial” compensation is not recoverable? We are of the opinion that this is not good enough because what may be substantial to a victim of crime may not be substantial to a judge. Besides, there is no yardstick for measuring what is substantial which means that it is all within the domain of arbitrariness and discretion of the court.

I. No State Funded Compensation Scheme.

The provisions relating to compensation for the victims of crimes in our laws are to the effect that compensation is recoverable from the convict or offender. This means that the accused person must be identified, investigated, prosecuted, convicted and the court must exercise its discretion in favour of the victim of crime before he can be compensated by the convict on the order of the court. The fate of the victim of crime becomes dicey where the offender is not known, investigated, prosecuted and convicted. It means that he is not entitled to anything to assuage his pains. This kind of situation which the victims of crimes can find themselves in Nigeria is regrettable and painful and needs the urgent intervention of all concerned parties especially the government. This can be in the form of the establishment of a State funded compensation scheme.

J. Delay in compensating victims of crimes.

Although justice rushed is justice crushed, justice delayed is justice denied. All the provisions in the Nigeria criminal law concerning compensation are to the effect that compensation is payable after the case must have been disposed off following the

conviction of the defendant. In Nigeria, it is no news that cases remain in courts for many years as a result of many shortcomings in the legal system such as unwarranted requests for adjournment, non-attendance of witnesses and appeals. If cases are to remain in courts for years before final determination and the fate of the victims of crime is tied to it, it means that the victim of crime will continue to languish in pains while the case lasted which can cost life or accelerate the victim's death.

K. Non accommodation of compensation for the victims of crimes in our laws.

From the beginning to the end of the Criminal Code, (521 sections) the issue of compensation did not feature. It is thus, regrettable that our criminal law particularly the Criminal Code can create offences as well as defences for the offenders without saying anything about how the victims of such crimes can be cared for or compensated.

8.Challenges to Compensation of Victims of Crimes

The consequence of all the above defects is that the victims of crimes or offences outside the purview or contemplation of the laws are excluded from whichever benefit that is provided by our criminal laws. These victims of crimes will continue to be deprived and denied any compensatory emoluments in the course of testifying as witnesses. Some of the challenges include the following:

- a. Those who are victims of crimes which the law provides punishment other than fine;
- b. Those who are victims of crimes that are not created by an Act of the National Assembly and punishable in the Federal Capital Territory, Abuja;
- c. Those who are victims of crimes where nothing is found or recovered from the convict;

- d. Those who are victims of crimes whose perpetrators are unknown;
- e. Those who are victims to crimes whose perpetrators are indigents and cannot pay whichever compensation that is ordered by the court; and
- f. Those who are victims of crimes who died in the course of litigation and who could have survived had attention and care through prompt payment of compensation been given.

A combination of the above factors succinctly reveals to wit: no compensation programme for the victims of crimes by any of the levels of government in Nigeria; the legal regime whereby the victims of crimes cannot compound felony without incurring the wrath of the law and a situation where fines are imposed on the convict(s), no dime comes to the victims of crimes renders the situation, condition or fate of the victims of crimes in Nigeria hazardous or risky and as stated earlier needs the urgent intervention of all concerned parties, especially the State. Concerned parties in this regard could be the offenders, third parties such as public spirited individuals or philanthropists, Non-Governmental Organisations and the governments at the various levels of the Federation.

In the light of the adumbrated factors, Professor Adedokun Adeyemi advocated the repeal of section 127 of the Criminal Code in the following words:

It is now time for section 127 of the Criminal Code to be repealed.... Nigerians have demonstrated over time that they are more interested in getting restitution or compensation than for the defendant to go to jail without anything coming to them in the form of compensation.⁵⁶

⁵⁶ This was contained in a paper titled “Public Prosecution and the Nigerian Criminal Process” delivered by Emeritus Professor Adedokun Adeyemi at the 12th Training Course for Public Prosecutors at the Nigerian Institute for Advanced Legal Studies (NIALS), University of Lagos, Akoka, Lagos. See, “The Nation Newspaper” accessed online on 13/05/2014 at 4.26 AM on “file:///C:/Documents and Settings/user/My Documents/“Repeal Section 127 of Criminal Code”/The Nation.”

9. Motivation of Prosecution Witnesses in other foreign Jurisdictions

The history of compensation at the international scene is shorter than that at the state level. This is because notable pioneers who championed the cause of the victims of crimes and firmly canvassed compensation as the way to go in assuaging the pains of the victims of crimes spoke with intention to influence the criminal justice system and by extension the political system and the policy thrusts of their various countries or where they were resident at the time of canvassing.⁵⁷ Secondly, the late arrival of the issue of compensation for victims of crimes at the international scene is also attributable to the delay in the evolution of awareness regarding it, which only started in the second half of the 21st century and the relative shorter history of (regional and global) international cooperation and integration when compared to the origin of the state. The shorter history notwithstanding, the United Nations and the Council of Europe established sound provisions for taking care of and motivating victims of crimes and prosecution witnesses. These are contained in the United Nations Resolution and Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power⁵⁸ and the Council of Europe Convention on Compensation for Victims of Violent Crimes.⁵⁹

⁵⁷ The pioneers who championed the cause of the victims of crime include: Margery Fry who was one of the first women to be appointed into the British Magistracy and a prison reformer who lived between 1874 and 1958; Arthur J. Goldberg who was a US Supreme Court Justice. See his “Preface: Symposium on Governmental Compensation for Victims of Violence”, *Southern California Law Review*, Volume 43, 1970; and Jeremy Bentham who was a British economist, jurist and philosopher who lived between 1748 and 1832.

⁵⁸ The United Nations General Assembly adopted and ratified the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power on the 29th of November 1985 in its 96th plenary meeting. Visit: www.un.org/documents/gc/res/40/a40r034.htm. (Accessed on 28/03/2017)

⁵⁹ Just like the United Nations, the Council of Europe⁵⁹ has been concerned about the plight of the victims of crimes since 1988. It is however of recent that the Council arrived at far reaching decisions through the adoption of Recommendation number: Rec. (2006) 8 on assistance to crime victims on 14th June 2006 by the Committee of Ministers of member States at the 967th meeting of the Ministers' Deputies thus making the recommendations their Conventions. See generally O. Okpako., *The Plight of the Victims of Crimes in Nigeria*, (Booksmith, 2023)

At the individual level, some countries have done a lot to assist their victims of crime and thus, boosting their functioning as prosecution witnesses. For example, the Great Britain (including England, Scotland and Wales) has a crime victim compensation programme to provide financial compensation for victims of violent crimes which is administered by the Criminal Injuries Compensation Authority based in Glasgow. North Ireland has a separate compensation programme. The programmes are similar but some differences exist among them. The victim's injury can be physical, including fatal injuries or mental condition that is medically recognised.⁶⁰ Similarly, while South Australia has a State Compensation Scheme operating side by side with the court system compensation scheme under the Victims of Crime Act 2001,⁶¹ the US has the Crime Victims Compensation Fund which was established following the 1984 Victims of Crimes Act, the Victim Impact Statement and the Victims' Rights Act operating simultaneously,⁶² and Hong Kong has the Criminal Injuries Compensation Board and the Law Enforcement Injuries Compensation Board.⁶³

10. Conclusion and Recommendation

It has been demonstrated that the conditions of the victims of crimes and or prosecution witnesses in Nigeria are deplorable. Urgent governmental intervention is needed to redress the numerous problems of the victims of crime in order to enhance their usage and willingness to serve as prosecution witnesses. In this regard, there is need for a legislative approach:

- i. Enactment of a new law that will address the issues raised regarding the rights and plight of the victims of crimes and their motivation to willingly serve as prosecution witnesses in the entire country; or

⁶⁰ https://en.wikipedia.org/wiki/Criminal_Injuries_Compensation_Authority which was (accessed 30/12/2018)

⁶¹ <https://www.lawhandbook.sa.gov.au/ch35s02.php> (accessed 30/12/2018)

⁶² https://en.wikipedia.org/wiki/Crime_Victims_Fund. (Accessed 30/12/2018)

⁶³ https://www.police.gov.hk/ppp_en/04_crime_matters/cvc.html. (Accessed 30/12/2018)

- ii. A review and harmonisation of the provisions concerning the victims of crimes in our extant laws and incorporating them in the form of amendments into our procedural laws especially the ACJA and ACJLs. This will improve the status and conditions of the victims of crimes in line with the fundamental rights provisions of the Constitution of the Federal Republic of Nigeria, 1999, as amended and international law.

Above all, the government should strive hard to step up the machinery and techniques of crime prevention which will ultimately reduce the rate, wave and number of crimes that are committed and which will in turn result in a reduction in the number of the victims of crimes and thus prosecution witnesses, which has ever been increasing in Nigeria and Delta state.

It was also demonstrated the advocacy of Prof Adeyemi against the retention of S.127. It is therefore maintained, that though victims of crimes in Nigeria seem to be more interested in getting restitution and compensation than the offender going to jail, the need for outright repeal of section 127 of the Criminal Code will do more harm than good. This is because the section apparently serves as a check on the corrupt tendencies of victims of crimes, prosecution witnesses, investigators and prosecutors. A way out is the review of the law to make provisions for the motivation and compensation of crime victims within Delta state and Nigeria, in general.

There is also need to create a „pool“ from which victims of crimes, especially those within the above categories can be taken care of as it is done in some other countries?⁶⁴ This approach will enable victims of crimes and witnesses, hitherto left alone to bear the pains and costs of criminal prosecution, enjoy some financial relief.

⁶⁴ Such as the US, UK and Hong Kong.