

**AN APPRAISAL OF THE PROTECTION OF VICTIMS OF
CRIME UNDER THE ADMINISTRATION OF CRIMINAL
JUSTICE ACT, 2015**

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Abstract

This paper appraises the Protection of Victims of Crime under the Administration of Criminal Justice Act of Nigeria, 2015. Victims of crime in Nigeria from the colonial time to this present day, have been seen to be relevant in our Criminal Justice System only for the purpose of successful prosecution; with their needs, interests and rights accorded little or no consideration by the operators of the law. The objective of this paper is to appraise the various provisions of ACJA, 2015 in relation to the extent of the protections granted victims of crimes in Nigeria. In trying to achieve the objective of this paper, the paper adopted the doctrinal research methodology where existing legal materials, such as textbooks, journals, newspapers, seminars papers, internet materials including statutes on universal and regional human rights instruments amongst others, were consulted. This paper has identified some loopholes in the Act which poses serious threat to the realization of the victims needs to be adequately compensated and to be restored back to the state where he was before the alleged crime was committed against him. Finally, this study recommended for the amendment of the Administration of Criminal Justice Act of Nigeria, 2015, in order to make provisions and recommendations for the formulation and promulgation of a National Policy on Compensation, Restitution and Remedies for Victims

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of Crime through the establishment of Victim Compensation Commission or Board at the Federal and state level.

Keywords: Justice, Protection, Crime, Criminal Justice System, Victims of Crime

1.0 Introduction

The history of the protection of the interest of victims of crime differs from community to community. This variation reflects the origin of development of legal frameworks as well as various methods use in the interpretations of ideas as regards the liability of a criminal defendant in a particular place. At a point in time the interest of victim of crime is made the focal point in the Criminal Justice Administration. But over the years, influence of victims of crime in the Criminal Justice Administration has whittle down to the point where they were view to be relevant or required in the criminal proceedings only as a tool enabling the prosecution to secure conviction. This has been the case right from the time of colonial administration till this present time¹.

Prior to the enactment of the ACJA 2015, the philosophy of our criminal justice system is that individuals who have committed the acts which harm others are protected and financed by the state,² while the crime victims who have clearly been wrong or injured by the wrongful act of the accused person receive no attention from the state. The enactment of the ACJA 2015 which replace the defunct Criminal Procedures Act (CPA)³ and Criminal Procedure Code⁴ was to speedily apprehend criminals and to bring them to justice and to protect victims of crime.

¹ A. Pino., 'Offenders have rights... but do their victims?' <http://www.unodc.org/pdf/newsletter-2000-03-31-page_007pdf>accessed: 27th August, 2024.

² s 36 of the Constitution Federal Republic of Nigeria 1999 (as amended).

³ The Act comes in to being as Ordinance N0. 42 of 1945 and was re-enacted as Ordinances No. 43 of 1948

⁴ The Criminal Procedure Code was enacted by the Northern Nigeria in 1960 and applied only to the Northern Region and later when states were created, to all Northern states of Nigeria.

This study therefore appraised and analysed some of the victim-friendly provisions of the ACJA, 2015 with a view of ascertaining its impact on the right and interest of victims of crime in Nigeria. This study further provides recommendations on how the right and interest of victims of crime can be adequately taken care of under our laws.

2.0 Meaning of Victims of Crime

Paragraph 1 of the Declaration of the Basic Principle of Justice for Victims of Crime and Abuse of Power⁵ define 'victim' of crime as someone;

who individually or collectively have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights through acts or omissions that violate criminal laws operative within member states including those laws proscribing criminal abuse of power⁶.

The United Nations in her Handbook on Justice for Victims, defined a victim as *an individual who has been subjected to physical harm, injury physical or mental, including emotional abuse or economic loss as a result of a direct act or omission of the accused person in contravention of criminal law of the society*.⁶ Even though the ACJA 2015 did not define who a 'Victim of Crime' is, the Act in awarding compensation appears to have adopted the meaning of 'Victim of Crime' as stipulated in the VAPP Act.⁷ The VAPP Act, 2015 define victims of crime to include *the immediate family of the victim, the dependants of the direct victim, and any other person who has suffered harm in intervening to assist the victims in distress*⁸ Also, the Black's Law Dictionary define 'victim of crime' as 'someone who is harmed by the crime, tort or other wrong'.⁹ Karibi Whyte on the other hand, define victim of crime as 'any person, dependent or any establishment who has experience hurt,

⁵ United Nations General Assembly Resolution 40/34 of 29 November, 1985.

⁶ See United Nations *Handbook on Justice for Victims* 1885.

⁷ Violence Against Person Prohibition Act 2015

⁸ Ibid. s.46

⁹ B.A. Garner & H.C. Black., 'Black's Law Dictionary (8 Ed.) (St. Paul. MN, Thomson/West Publishing Co., 2004) 1425.

harm or injury as a result of the criminal act of the culprit or suspect who has been found wanting of such act.’¹⁰ However, for the purpose of this research, “A victim of crime is someone who is injured, wrong, sacrificed, cheated, traumatized, defrauded and even killed as a consequence of the unlawful or wrongful act or omission of some individual of person(s).

3.0 Classification of Victims

According to victimology, victim of crime can be classified in to three categories; primary, secondary and tertiary.

1. Primary Victim of Crime: Primary crime victims constitute those who suffered the direct impact of the harm or injury complaint of.
2. Secondary Victim of Crime: Secondary victims are those who suffers the injury or harm indirectly or second hand, such as the family, relatives and friends of the main victim. This is mostly applicable in offence of rape or sexual assault or family of a battered woman amongst others.
3. Tertiary Victims: Tertiary victims are those who experience the harm/injury vicariously such as through media account or from watching television¹¹. As such, the imports of this categorization are to show that at any point in time anyone can be a victim.

4.0 Historical Evolution of the Laws Protecting Victims of Crime in Nigeria

Prior to the coming of the colonial administration, crime in many localities is seen as an offence against the entire community and not the individual victim. Therefore, when crime is committed, all the victim needed to do was to communicate the neighbourhood, particularly those at the helm of affairs and they will take charge and apprehend the suspect(s) who will be subjected to trial by the council of elders and if

¹⁰. Whyte., (n.52).

¹¹ U.A. Yusuf & S.S. Yahaya., ‘Crime Victims and Criminal Justice Administration in Nigeria’ *Global Journal of Interdisciplinary Social Science*. Published by Global Institute of Research & Education. Page 2.

found wanting, would be promptly punished in the public,¹² with much emphasis placed on the compensation and restoration of the victims who have suffered harm or injury as a result of the unlawful act of the accused person. However, the arrival of the British colonial masters ushered a new legal system in Nigeria which emphasised the desire for the dictation, prevention and the punishment of criminal as its main target as against compensation and restitution of the victims of crime which were the major philosophy of the customary legal system.¹³

The quest and desire to provide succour and protection to victims of crime in Nigeria has led to several attempts by successive government in Nigeria to make a law specifically for the protection of victims of crime in Nigeria. The 2011 bill titled ‘Criminal Justice (Victim’s Remedies) Bill 2011’, has 74 proposed sections divided into two parts. The proposed Victim’s Remedies Bill made notable provisions with respect to rights of victims in our Criminal Justice Administration covering areas highlighted by the UN Declaration of Basic Principles Right and Abuse of Power 1985.

The passing in to law of the ACJA 2015 is a reaction to the Nigeria’s urgent desire of a new law that will transform the Criminal Justice Administration to reflect the real intents of the Constitution and the requirements of a modern democratic community. Interestingly, the main objective of the Act itself is captured in section 1.¹⁴ Which indicates a deliberate shift from punishment as the main goal of the Criminal Justice Administration to restorative justice system which pays greater attention to the needs of the victims, the vulnerable person and human dignity.

¹² C.O. Ndifon, *Between Criminality and Sanctions: An Overview of Nigerian Penal Policy in Contemporary Times* in Essien E., (Ed) *Law: All-Round Excellence. Essays in Honour of Professor Peter Umoh* (Top Law Publishers Ltd., 2012) 153-169.

¹³ A. Pino., ‘Offenders have rights... but do their victims?’ http://www.unodc.org/pdf/newsletter-2000-03-31-page_007pdf accessed: 27 August, 2022.

¹⁴ ACJA, 2015

5.0 Compensation for Victims of Crime and ACJA 2015

The Administration of Criminal Justice Act 2015, in Section 493 and in its preamble, repealed the Criminal Procedure Act (CPA) and the Criminal Procedure Code (CPC) which were the principal enactments regulating the criminal justice sector in Nigeria. Its further states that the Act provides for the system of administration of criminal justice in the courts of the Federal Capital Territory and other Federal Courts in Nigeria.¹⁵ With this, the ACJA 2015 replaced the two Acts with itself, thereby making it the sole Federal Legislation to uniformly apply in all the courts created by the Act of National Assembly. The Supreme Court of Nigeria also throw its weight to the abolishment of these 2 Acts when it held in the case of *Saraki v FRN*.¹⁶ That; with the replacement of the two major criminal laws in Nigeria, i.e. the CPC and the CPA by section 493 of the ACJA 2015, the Administration of Criminal Justice Act of Nigeria 2015 has properly supplanted them.

It should be noted that, several factors necessitate the moving away from the old Criminal Procedure Laws (i.e. CPA & CPC) to the ACJA 2015. Some of these reasons included the unnecessary delay in the dispensation of justice in criminal cases, over congested of cases in the dockets of the courts, indiscriminate abuse of arrest powers by the police, excessive use of Awaiting Trial Persons, absent of witness protection, and of major concern is the complicated procedures during trial.¹⁷ In fact, the most common feature of the old criminal procedure system was that it was extremely vulnerable to abuse and manoeuvre by the use of interlocutory applications, interlocutory appeals and stay of proceedings/execution pending appeals.¹⁸ This seriously undermined the ability of the courts to conclude trials on time, especially the trial of high profile cases.¹⁹ For instance, the case *FRN v Wabara*,²⁰ lasted for

¹² S. 2(1) of ACJA 2015

¹⁶ (2016) 3 NWLR (Pt. 1500) at 578.

¹⁷ Y. Akinseye-George., 'Summary of some innovative provisions of the Administration of Criminal Justice Act of Nigeria 2015'. (2018)

¹⁸ Ibid

¹⁹ Most pre-ACJA 2015 high profile criminal case last between 7-15 years in courts before their conclusion.

²⁰ SC/237/2013

15 years before conclusion. Within the period in view, many of these high-profile cases suffered the same or similar fate,²¹ due to the aforementioned factors.

5.1 The Impact of the ACJA 2015 in the Protection of Victims of Crime in Nigeria 2015

The enactment of the ACJA 2015 provide a veritable avenue for the inclusion of the much-sought after laws that will secure the right and interest of victims of crime, being a major stakeholder in our Criminal Justice Administration. As such, the Act made numerous provisions for safeguarding the rights of victims of crime. Some of this victims' friendly provisions of the ACJA 2015 include:

5.1.1 Compensation of Victims of Crime under the Administration of Criminal Justice Act of Nigeria 2015

The main section which appears to address the plight of the victims of crime is section 319 of the Act²², it states that “a Court may, within the proceedings or while passing judgment, order the convict to deposit certain amount of money as compensation to any individual who sustain injury as a result of the act of the convict.” The act further states that this provision²³ will apply regardless of any other punishment or fine that the court may imposed on the accused/convict in order to protect the rights of victims of crime. Also, the Act also give the court the power to order a convict to pay compensation to bona fide purchaser for value without notice of any defect in the title in the property in respect of which an offence has been committed, and he has been compelled to give it up.²⁴ The Act also empowered the court to order a convict/defendant to settled the medical expenses incurred in treating the victim of the injury he/she sustain as a result of the act of the

²¹ See the case of *FRN v Dariye* (2011) LPELR-4151 CA., *FRN v Borishade*: SC/230/2012[2015] NGSC 6 (30th January, 2015), *FRN v Kalu* (2012) LPELR-9287 (CA), *Nyame v FRN* (2010) 7NWLR (Pt. 1193) 344 amongst others. All these cases lasted between the period of 7 years to 15 years in court due the above mentions factors.

²² ACJA, 2015

²³ *Ibid*, s.319(1)(a)

²⁴ *Ibid*, s. 319(1)(b).

convict/defendant.²⁵ This compensatory orders can be made by the court while the proceedings is ongoing or after judgment is delivered.²⁶ These provisions are applauded as spare a deep thought for the victim of a crime and ensures too that they get compensated or restoration in our Criminal Justice Administration.

However, the challenge with granting compensation order during the course of the proceedings is that, unless judgment is given and the accused person is guilty, compensatory order cannot be granted against him, as he is constitutionally immune from such punishment. As such, the court can only grant such a forfeiture order(s) after conviction is made but before sentencing. Unless and until conviction is achieve, any of such criminal forfeiture order made while proceedings are ongoing will run contrary to the provision of the constitution as regards presumption of innocence.²⁷ Also, another shortcoming of the Act²⁸ which affect the victims right to compensation is the inability of the Act to ensure the victim get compensated regardless of the financial condition of the convict/defendant whom the law has place the burden of payment of compensation on after conviction. This unfortunate scenario has made the Court of Appeal in the cases of *FRN v Olunloyo*,²⁹ *FRN v Raymond Dokpesi*,³⁰ and *FRN v Ayodele Fayose*³¹ amongst others. to expresses its frustration and seemingly helplessness over the inability of the defendants to comply with the compensation orders made by the court. This has indeed highlighted the need for an amendment of the provision on compensation to make it possible for victims to received compensation regardless of the financial status of the convict or defendant.

²⁵ Ibid, s.319(1)(c)

²⁶ Ibid.

²⁷ See s. 36(5) CFRN 1999 (as amended).

²⁸ ACJA, 2015

²⁹ (2019) LPELR-46952 (CA)

³⁰ (2020) ABJ/CR/159/2019

³¹ (2019) LPELR-47266 (CA). see also the cases of *FRN v Olisa Metuh* (2018) LPELR-44058 and *FRN v Sen Ademola Adeleke* (2018) LPELR-44062 (CA)

5.1.2 Power to recommend for or to accept Plea Bargain

The power to recommend for or accept plea-bargaining in criminal proceedings is provided for by section 270 of the ACJA, 2015. The said section provided for plea bargaining in a criminal proceeding where the parties and the subject matter of the proceeding agree with each other. Under the Act,³² plea-bargaining agreement may negotiate whether the matter involve is a misdemeanour or a capital offence. The inclusion of plea bargaining in ACJA 2015 has projected the interest of victims of crime in that it has the effect of expeditiously resolving the issues or disputes between the parties as the normal legal processes involve in court proceedings which often take a long time with attendant loss of economic resources before a judgment is given is avoided. The provision of section 270 of the Act has received judicial impetus in the case of *FRN v. Kalu*³³ Where the Court of Appeal upheld the as proper the acceptance of plea-bargain by the trial court.

5.1.3 Avoidance of Stay of Proceeding:

Section 306 of ACJA³⁴ is to the effect that ‘an application for a stay of proceedings in criminal cases before the court shall not be entertained’. Over the years, stay of proceedings has been used by the defendant(s) as a tactics delay proceeding especially when they discovered that the case is not in their favor. As such, stay of proceedings is view by many as an instrument use to clog to the wheel of justice. This provision of the Act has received judicial blessings in the matter of *Destra Investment v FRN*³⁵ and *Chief Olisa Metuh v FRN & Anor.*³⁶ where the apex Court held that “ruling on preliminary objection to trial even if based on jurisdiction may be deferred until the time of judgment on the matter. Even though prior to the judgment of the Supreme Court in *Olisa Metus* case (supra), the same supreme court refuse to uphold the provision of section 306 of ACJA 2015 in the case of *CCB v Saraki*,³⁷ on the ground that section 306 run against the constitutional provisions

³² s.270 ACJA, 2015

³³ (2020) LPELR-49651 9CA). See Also *FRN v Ogunloyo* (2019) LPELR-46952 (CA)

³⁴ ACJA 2015

³⁵ (2008) 8 NWLR (pt. 1621) 335

³⁶ Appeal No: SC/457/2016

³⁷ Suit No. CCB/ABJ/01/15

as regards fair hearing and that Court of Conduct Trial being a quasi-judicial body is not bound by the provision of the ACJA 2015. However, in what appears to be a victory to the victims of crime, the same apex later overrule itself when it held in favour of section 306 of ACJA 2015 in the above cited case of *FRN v Olisa Metuh & Anor*. This is indeed a plus to the interest of victims of crime.

However, it is not in all cases that provisions of section 306 will apply. There is an exception which includes a situation where a defendant or accused raises a defence of *autrefois convict* or *autrefois acquit*. This means that the accused or criminal defendant raises objection that he had earlier been tried on the same subject- matter and was acquitted or convicted by a court of competent jurisdiction. This is the position of the Court of Appeal in the case of *Shema v. FRN*.³⁸

5.1.4 Provision of Restorative Justice System.

Restitution can be define as ‘An act of returning anything to its original or rightful owner, Making well, or replacing anything or an amount that was lost, damage or making it up for any loss or injury suffered’.³⁹ It is further contended that restitution has the capacity to repair the battered image of the victim by requiring the suspect or the accused to be a more hardworking person’.⁴⁰ Thus, restitution, unlike incarceration, attracts far less stigmatisation, and is ultimately a better facilitator of reintegration.⁴¹ The Administration of Criminal Justice Act of Nigeria 2015 has now provided for a restorative justice by insisting that the criminal defendant or a convict pays for the injury, harm and offence committed against his victim. Elements of restorative justice in ACJA 2015 can be seen in sections 270(2)(b), (5)(ix), (6)(b);

³⁸ Appeal No: CA/K/432/C/2018. In that case the supreme court held that, ‘where a Preliminary objection on this ground is successfully raised, the court is the circumstances is bound to listed to it and deliver its ruling on same immediately in order to avoid subjecting the accuse person to the rigors of double trial’. As this will offend the constitutional provision against double jeopardy.

³⁹ B. A. Garner (ed.) *Black’s Law Dictionary* (8thedn. Thompson West, United States 2004) 1338.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

321 341, 342, 401(g), 454(3)(a) amongst other sections, which provide for restitution. The import of these sections is that the victims of crime should as far as possible be restored to the position were, he/she was before the unlawful act complaint of, was committed against him.⁹⁵

5.1.5 Provision for the Protection of Children Victims of Crime and the Identity of their witness(s)

Another important victim friendly provision of the ACJA 2015, is provision of section 232(1) & (2) of the Act which protect a child who is a victim of crime during his trial in court and also provide for the protection of the witness(s) who are going to testify in certain criminal proceedings.⁴² This is indeed an ingenious provision as it provides protection for the identity of children who are victims of rape, defilement, unnatural of indecent offences by family members, friends and relatives⁴³. This is to further protect them from being stigmatize and discriminated against in the society for becoming victim of these unfortunate circumstances.⁴⁴ The sub-section (2) further provides for wide range of instances where witness(s) to certain offences should be protected when given evidence in court. Also, subsection (3) of the above section donate to the courts the discretion to adopts methods or measures that it deemed fit in order to provide protection to a witness(s) who will give evidence in court by allowing for the use of a protective kits or other measures as the court may deem fit to make in the appropriate case.⁴⁵ This is to provide protection to the witness(s) against future victimization by the alleged offender(s) whom they testified against in court. The provision of section 232(2) & (3) has already received judicial blessings in the cases of *FRN v Nnamdi Kanu*.⁴⁶ *FRN v Ayodele Fayose*⁴⁷ & *FRN v Raymond Omatseye*⁴⁸ amongst others. where the court grant the request of the prosecution to shield their witnesses. The implementation of this provision has boasted the

⁴² S.232(2)(3) of ACJA 2015 ⁹⁹ See. S.232(3) Ibid.

⁴³ S. 221 of ACJA, 2015

⁴⁴ S. 231 & 232 of ACJA, 2015

⁴⁵ Ibid. s.232(4)(a)-(e)

⁴⁶ (2017) LPELR-42412 (SC0, (2017) NWLR (Part 1568) 336

⁴⁷ (2019) LPELR-46915 (CA)

⁴⁸ (2018) LPELR-42555 (CA)

confidence of witness(s) to criminal offence(s) to present themselves in court to give their testimonies, an opportunity that they usually decline to explore prior to the enactment of ACJA due to the fear of being attacked, victimized, molested and/or stigmatized, which led to many victims abandoning their desire to seek justice in court.

6.0 Conclusion and Recommendations

The study discovered that the enactment of the Administration of Criminal Justice Act of Nigeria, 2015 has brought some succour and ease to victims of crime, the society and the general public in Nigeria by making provisions that provide for speedy dispensation of justice and ensuring avoidance of delay in criminal proceedings. The Act has also expanded the powers of the court to award appropriate compensation to victims of crime in deserving cases. However, as has been captured by this study, these victim-friendly provisions are grossly inadequate to totally ameliorate the suffering of victims of crime in our Criminal Justice Administration, especially when compared to certain International Instruments on this subject. Hence the study makes the following recommendations:

- i. If the aim intended to be achieved by the insertion of these victim's friendly provisions of the ACJA 2015 is to be fully attain, then, the ACJA, 2015 needs to be amended in order to bring these victims friendly provisions of the ACJA 2015 in conformity with the provision of the Constitution so that victims of crime can seamlessly enjoy the benefits accrued to them by these provisions of the ACJA, 2015.
- ii. Also, the Administration of Criminal Justice Act of Nigeria, 2015 should be amended to make provision and recommendation for the formulation of a National Policy and programme on Compensation, Restitution and Remedies for Victims of Crime at the Federal level and state level, which should lead to the establishment of Victims of Crime Compensation's Commissions or Boards, to be saddled with the responsibility of compensation and restitution of victims of crime, whose issue has been genuinely inquired in to by the court and found to be deserving of such compensation or restitution. This will ensure that every victim of crime get compensated or

to be restored regardless of the financial condition of the convict or the defendant.

- iii. Furthermore, this study recommends for an improve in budgetary allocation to the judiciary and the police to enable them procure the necessary technological devices/gadgets, so that the provisions of the Act requiring technological applications to be operational can be given effect to.

Finally, if the above recommendations are achieved, it will go a long way in boosting the confidence of the victims of crime in our Criminal Justice Administration and by extension prevent a lot of victims of crime from venturing in to criminality as a result of the failure of the system to address their grievances. As where there is no justice, the result is that victims are led to take the laws into their own hands, both to exact retribution and to draw attention of the state to the obvious injustice done to them.