

**Developing a legal framework for state compensation of crime victims in
Nigeria**

By

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Plagiarism declaration:

I hereby, in accordance to the rules governing the award of (LLD), state that this thesis submitted for the award of Doctor Legum to the University of Pretoria is my personal research study and that the research has not been previously submitted by me or any other person for a degree at the University of Pretoria or at any other higher institution of learning.

Prince Pius Imiera

Dedication:

To God alone is the glory, the giver of life, wisdom, knowledge and understanding. God gives strength, insights; He is the greatest Teacher of all time. I dedicate this research to GOD, JESUS and the HOLY SPIRIT.

To my lovely wife: Esther Iyabode Pius, to my lovely children: Osemudiamé Busayo Pius; Eromosele Boluwatife Pius; Ivie Oluwanifemi Pius; and Odianoseme Pius. To My Parents: Mr. & Mrs. Ariohu Imiera and to all the Imiera family.

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Lists of acronyms:

ACJL	Administration of Criminal Justice Law
AU	African Union
CoE	Council of Europe
CVC	Crime Victims' Compensation
CICA	Criminal Injuries Compensation Authority
ESC	Economic and Social Council
EU	European Union
FGN	Federal Government of Nigeria
RJ	Restorative justice
SALRC	South African Law Reform Commission
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
USA	United States of America
VOCA	Victims of Crime Act USA

Key words:

Compensation

Constitution

Crime victim compensation scheme

Crime victims

Criminal

Criminal justice administration

Injury

Offenders

Rehabilitation

Reparation

Restitution

Restorative justice

Retributive justice

Thesis summary:

The 1999 Constitution of Nigeria provides expressly for the safety and protection of the rights of citizens in general terms, including other provisions which guarantee the safety of the Nigerian people; however, the Constitution places priority on the rights of criminals over and above the rights and interests of crime victims. This position and situation has engendered public dissatisfaction with the Nigerian criminal justice systems in general and the Constitution in particular.

This study has analysed the means and mechanisms available in the Nigerian legal system for crime victims' compensation and restitution for criminal acts committed against them, and it has found that those means are different to what are obtained in other jurisdictions. The study further found that state-funded compensation for crime victims is practiced to various degrees in places like New Zealand, Great Britain, the United States of America, Canada, Australia, Germany, Finland, Colombia and the Philippines to mention but a few.

The study discovered that, as it stands presently in Nigeria, there are no public compensation schemes for crime victims and that the compensation mechanisms that exist in the country which the courts award are grossly inadequate. The study also found that the Nigerian government does not see the need to establish state-funded compensation schemes for crime victims on the premise that crime victims should exercise their rights to claim compensation from the criminal offenders in delictual or tort claims. This study, therefore, argues that the extant legal frameworks in Nigeria are manifestly inadequate to provide for the needs of crime victims effectively in the aftermath of victimization and recommends the development of a system for state-funded compensation for crime victims in Nigeria building on comparative best practices and international guidelines such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Commonwealth Guidelines for the Treatment of Victims of Crime.

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Chapter One

Introduction

1. The problem

In Nigeria, there are many issues calling for governmental attention.¹ Such issues include, but are not limited to, corruption, political, economic, social, security and current recession challenges.² Additionally, the rate of insecurity in Nigeria has produced many crime victims, and the criminal justice system in Nigeria has not been able to grapple with crime and criminals with a view to finding a solution to victimization.³ This precarious and varied situation has given rise to the total neglect of crime victims in Nigeria.⁴

Owing to the neglect of victims of crime, they are confronted by a number of needs, financial, physical, emotional, economic and psychological.⁵ Many victims of crime are further confronted by the trauma of the loss of lives, or the loss of a loved one or the loss of their life time investments to mention only a few owing to crimes of a violent nature.⁶ Crime victims form part of criminal justice in any jurisdiction, but crime victim's relevance has not been given due recognition in Nigeria;⁷ in terms of compensation. However, at the international level, as discussed in the study,⁸ the rights of crime victims to state compensation have been recognized and acknowledged.⁹

¹ VE Dike, 'Corruption in Nigeria: A new paradigm for effective control' (2001) *African Economic Analysis* 1.

² S Nwanze, 'Contending issues on Nigeria's economic recession' <http://www.authorityngr.com/2016/09/Contending-issues-on-Nigeria-s-economic-recession>. (Accessed 15 July 2017).

³ UA Yusuf, & SS Yahaya 'Crime victims and criminal justice administration in Nigeria' (2014) 3 *Global Journal of Interdisciplinary Social Sciences* 48.

⁴ S Ekpa, 'Towards the evolution of right to reparation for loss of housing and property of internally displaced persons (IDPS) in Nigeria' (2015) 6 *Mediterranean Journal of Social Sciences* 380.

⁵ B Cook, F David & A Grant 'Victims' needs victims' rights policies and programs for victims of crime in Australia (1999) 19 *Australian Institute of Criminology* 49.

⁶ Ekpa (n 4 above) 380.

⁷ UA Yussuf, & SS Yahaya 'Crime victims and criminal justice administration in Nigeria' (2014) 3(5) *Global Journal of Interdisciplinary Social Sciences* 48.

⁸ See chapter six section 1.

⁹ The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by A/RES/40/34 of 29 November 1985 is based on article 18 of the Universal Declaration of Human

In addition to what has been said above, the Nigerian criminal justice system has not in its decades of operation considered the plight of crime victims.¹⁰

The Nigerian government has noted that there is a need to re-examine the country's criminal laws with a view to attaining a fairer administration of criminal justice. It, therefore, organized a National Conference at Abuja in June 1989.¹¹ It stressed that Nigeria's criminal justice framework should never again concentrate its consideration completely on the punishment or conviction of offenders; rather it ought to consider the compensation of crime victims. In addition, the government reiterated the fact that the present arrangements of the corrective laws on compensation for crime victims were completely not available and these should be modernised and reformed over and above the standards and practices of the conventional criminal justice frameworks on compensation for crime victims. To this end, it recommended that a Criminal Injuries Compensation Board ought to be established in each state of the federation and Abuja, and the Board ought to be subsidised from elected, state and government subventions, fines and that the Board continues to offer benefits to crime victims from the fines seized from criminal offenders.¹²

It is noted, however, and worrisome that, despite such laudable suggestions issued by the Abuja Conference, none of those suggestions or policies has seen the light of day in Nigeria.

Rights adopted and proclaimed by A/RES/217 A (III) of 10 December 1948. Article 8 contains the right of everyone to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law.

¹⁰ Ekpa (n 4 above) 380.

¹¹ The conference attracted the participation of eminent judges, lawyers, law teachers, professionals and a very wide range of interest groups. At the end of the Conference, participants issued a twelve point communique, which inter alia advocated the following suggestions: That Nigeria's criminal justice system should no longer focus its attention entirely on the punishment of offenders but should also consider the rights of victims of crimes. (ii) At present the provisions of the penal laws and procedure codes on compensation and restitution for victims of crime are grossly inadequate and these should now be modernised and updated taking into consideration the principles and practices of the traditional criminal justice systems on compensation and restitution for victims of crimes. (iii) A Criminal Injuries Compensation Board should be established in each of the states of federation and Abuja and the Board should be funded from federal, state and local government subventions, fines and proceeds of sale of assets seized from offenders.

¹² S Adetiba, (ed) *Compensation and remedies for victims of crime* (1990) xiii-xv.

As noted earlier, in Nigeria compensating crime victims who have suffered victimization by the criminal conduct of another person is yet to receive the attention that it deserves from the state. The Nigerian government's primary attention has continually been overwhelmed by the need to combat and confront economic recession, corruption, to rebuild infrastructure and to provide immediate succour to the security challenges facing the nation.¹³ In the light of the above assertion, compensation is not currently within the programmes of the Nigeria state. The failure of the state in this regard, and the neglect of crime victims' compensation in Nigeria and the criminal justice system, is the problem this study has examined. The claim for compensation from the state is as a result of the fact that restitution from convicted criminals is not sufficient to address crime victims' compensation situation because, more often than not, criminals are indigent and sometimes the law enforcement agents are unable to apprehend them.

In connection with the above, the study is focused on how crime victims can receive or be compensated by the Nigerian government when citizens suffer criminal victimisation.

2. Research questions

The primary question this study sought to answer is: How should the Nigerian state compensation scheme be designed with a view to benefiting the victims of crime? In an attempt to answer this broad research question, some sub-questions were addressed:

- (i) What are the theoretical foundations or bases upon which state compensation to crime victims are built?
- (ii) Is there any historical emergence and/or evolution, development and justification for state-funded compensation to crime victims?
- (iii) What are the issues and challenges confronting crime victims in the Nigerian criminal justice system?

¹³ I Opara, 'Nigerian anti-corruption initiatives' (2007) 6 *Journal of International Business and Law* 65.

- (iv) What is the importance and relevance of restorative justice in a compensation scheme for crime victims and offenders?
- (v) Are there precedents of state compensation schemes for crime victims in jurisdictions other than Nigeria from which Nigeria can draw lessons?
- (vi) What is the possibility of Nigeria establishing, instituting and implementing a national victims' compensation scheme and what are the procedures and funding availability for this option?

These questions lie within the wider discourse on crime victims' compensation in Nigeria.

3. Aims of this research

Generally, the research study has aimed to analyse the means that exist in Nigerian law under which compensation can be obtained by crime victims for the criminal victimization they have suffered. The study has, further, made a proposition about how crime victims can claim compensation from the Nigerian government owing to the fact that the compensation awarded by Nigerian courts is insufficient to ameliorate crime victims' needs.

Taken as a whole, therefore, the study has examined the domestic laws and practices in Nigeria relative to the right to compensation for crime victims. As the focus is on state responsibility, the scope of analysis was confined to victims of crime¹⁴ defined in this study. In examining relevant laws and practices, the study critically evaluated measures taken, or that should be taken, by the Nigerian government in complying with international standards and obligations with regard to crime victims' compensation.

¹⁴ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power A/RES/40/34 1985 "Victims means persons 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 are in violation of criminal laws operative within Member States including those laws proscribing criminal abuse of power. A person may be considered a victim under this Declaration regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim The term "victim" also includes where appropriate the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."

Besides, the study brought issues to light of the need to make efforts to improve or put in place domestic laws and practices on the right to compensation in Nigeria and to assist crime victims in achieving their rights to compensation where possible. This study is, therefore, part of the process of strengthening the right to compensation, in particular by serving as an enabling tool for crime victims in realizing these rights.

The study was carried out through the examination of international, regional and national legal documents on compensation, bodies and agencies, especially those working on behalf of crime victims. This did not only strengthen the network of individuals and organisations working towards the eradication of crimes and criminals in the Nigerian society,¹⁵ but will also lead to a heightened awakening of the importance of crime victims' right in receiving compensation owing to victimization.¹⁶

It is hoped that the information collected and analysed in the course of the research will not only induce or propel the Nigerian government at all levels to undertake the necessary law reforms but will also assist crime victims and lawyers working with crime victims in claiming compensation by using the comparative experience from other jurisdictions. For example, the use of jurisprudence and/or measures adopted in one country could well support situations, cases and/or proposals for law reform in another country,¹⁷ Nigeria being no exception.

4. Clarification of terminologies

Some terms are discussed or explained briefly in order to highlight the context in which they were used in this study.

4.1. Reparation

Etymologically, reparation is from the Latin word *reparatio*, which means repairing something or someone that has been damaged. Reparation is further defined as the "act or process of making amends, of offering expiation or giving satisfaction for a

¹⁵ Crime Victims' Foundation of Nigeria (CRIVIFON) <http://www.vanguardngr.com/2010/12/crime-victims-foundation-of-nigeria-crivifon-mission-statement>. (Accessed 20 June 2017).

¹⁶ Redress *seeking reparation for torture survivors: A survey of law and practice in thirty selected countries April* (2003) 8.

¹⁷ As above.

wrong or injury."¹⁸ Reparation encompasses restitution, compensation, rehabilitation, satisfactions and guarantees of non-repetition. Furthermore, compensation relates to any economically assessable damage resulting from the violations; rehabilitation includes legal, medical, psychological and other care, while satisfaction and guarantees of non-repetition relate to measures that acknowledge the violations and prevent their recurrence in the future.¹⁹ In Yoruba, one of the Nigerian local languages reparation/compensation means (atuse, gbesi si san), in Igbo reparation/compensation means (ugwo) while in Hausa reparation/compensation means (ramuwa).

4.2. Compensation

Compensation is the primary means of financial aid by the state to crime victims in the aftermath of victimization, and it is one of the pillars of victim assistance.²⁰ Apprehension or conviction of offenders is not a prerequisite before monetary compensation can be given to the victims.²¹ Compensation is the money paid to the victims of violent crimes by the state.²²

4.3. Crime

The word crime, which is interchangeably used as an offence under the Nigerian Code, is an act or omission which renders the person doing the act or making the omission liable to punishment under the Code, or under any Act, or Law. Additionally, "crime is defined as an act or omission which is unjust and is imputable to its author, and which disturbs the social order."²³ Crime "is an externally and morally imputable violation of a law."²⁴ Crime is an action or omission that constitutes an offense that

¹⁸ *Webster's college dictionary* (1991) 1141.

¹⁹ P Hayner, *Reparations for state crimes in unspeakable truths* (2001) 171.

²⁰ D Eddy, 'New Directions from the field: Victims' right and services for the 21st Century' (2015) *National Association of Crime Victim Compensation Board* 1.

²¹ 'Crime victims compensation: an overview' <http://www.nacvcb.org/index.asp?bid=14>. (Accessed 23 July 2017).

²² PR David, 'Measures to protect victims of crime and the abuse of power in the criminal justice' process 131st International training course visiting experts' papers. http://www.unafei.or.jp/english/pdf/RS_No70/No70_10VE_David1.pdf. (Accessed 17 June 2017).

²³ JJ McGrath, 'The definition of crime' (1957) 11 *Ecclesiastical Criminal Law* 11.

²⁴ *Nomine delicti iure ecclesiastico intelligitur externa et moraliter imputabilis legis violation cui addita sit sanctio canonica saltem indeterminate*. See Code of Canon Law Sec 21959(1).

may be prosecuted by the state and is punishable by law. In this research, the term 'crime' will be understood from these perspectives and will be adopted throughout the study. Crime in Igbo is (mpu), in Hausa (laifi) and in Yoruba (ilufin).

4.4. Crime victims

A person can be a victim of crime irrespective of the circumstances surrounding the commission of the crime. Determining whether a person is a victim of crime ought, therefore, not in any real sense be a difficult issue.²⁵ For instance, if a person's laptop was stolen, such a person is a victim of theft. The challenge, however, is whether the person whose laptop was stolen is a crime victim who is entitled to compensation in any given case.²⁶ The solution to this challenge to a large degree is determined by the legal definition given to crime victims as set out in the various applicable constitutions, statutes, and rules²⁷ of different jurisdictions, and this definition varies from one state to the other.²⁸ There are instances where, within a jurisdiction, regardless of whether a person is crime victim or not depends on the specific right or claim in issue.²⁹ In Igbo a crime victim is called (ndi metutara mpu), in Hausa, a crime victims is called (wanlanda aka kasha), while in Yoruba, a crime victim is called ilufin awon dufaragba).

²⁵ This research addresses crime victims only as the term is legally defined for crime victims' rights to reparation for purposes in the criminal law context the legal definition of crime victims; in other contexts, for example administrative crime victims' compensation programmes, is outside the scope of this research.

²⁶ A person who meets the elements of the legal definition of crime victim under the law of any particular jurisdiction for example in the United States has a number of constitutional and/or statutory rights which may include inter alia the rights to due process, fairness dignity and respect, right to privacy, right to notice, right to information and referrals to services, right to be present at trial and other criminal proceedings, right to be heard at sentencing and other criminal proceedings, right to receive reasonable protection and right to restitution.

²⁷ The legal definition of crime victims also depends on the courts' interpretation of the applicable constitutional laws statutes and rules of the jurisdiction in question.

²⁸ As a result the person who had her laptop stolen may be a crime victim in a state like Alaskan in the United States of America where crime victim includes any person against whom an offense has been perpetrated but she would not be a crime victim in a state like Colorado where persons harmed by simple theft crimes are excluded from the legal definition of crime victim Compare Alaska Statute sec 12.55.185(19) (A) m with Colorado revision Statute Annotated sec 24-4.1-302(1)(5).

²⁹ For example in West Virginia a victim for purposes of the right to be heard at sentencing means a person who is a victim of a felony or where a death occurs during the commission of a felony or a misdemeanor the fiduciary of a deceased victim's estate or a member of a deceased victim's immediate family if known to the prosecutor.

In this regard, therefore, any inquiry about crime victims' rights to compensation in any court proceedings relates to whether the person is seen as a crime victim for the purposes of claiming a specific right.³⁰ Accordingly, and for the purposes of this research, a crime victim is one who endured any hurt, whether physical or mental damage, financial misfortune or considerable weakness of his or her essential rights through acts or exclusions that violate any criminal law. The term 'crime victims' additionally relates, where appropriate, to the close family or dependants of the immediate crime victims. In addition, a person might be considered to be a crime victim whether or not the culprit/criminal offender is distinguished, captured, indicted or sentenced if the connection between the culprit and the crime victim is established.³¹

Additionally, "victims" means persons 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 are in violation of criminal laws."³²

4.5. Offenders

The term offender means: "any individual who is charged with, or convicted of, any criminal offence, including a youth offender or juvenile offender or an adult offender."³³ For the purpose of this research, an offender will be limited to those individuals who have committed criminal offences. It is noted that a person who has committed a criminal offence is regarded as an offender, whether or not the person is identified or arrested. The research study, therefore, covers both identified and unidentified perpetrators. In Igbo for instance, an offender known as (Onye mebiri), in Hausa an offender is called (masu laifi), while in Yoruba, an offender is called (oluse).

³⁰ In some cases even if the victims were to fall outside the scope of the legal definition of crime victim the court may have discretion to consider that person a crime victim for certain purposes See *Beck v Commonwealth* 484 S.E.2d 989 905 (Va. 1997) where the court concluded that the crime victims' rights statute did not limit the trial court's discretion to consider victim impact statements from persons who fall outside.

³¹ 'South Africa Minimum Standards on Services for Victims of Crime' (2004) *Justice and Constitutional Development* 3.

³² Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power par 1.

³³ United States of America legal institute <https://www.law.cornell.edu/cfr/text/34/400.4>. (Accessed 19 October 2016).

4.6. The state

State, ethnic groups, nation and society, are all made up of individuals but all of these are different from one other, and, to that extent, the terms cannot be used interchangeably.³⁴ Society is a group of people living together in a geographical territory and sharing similar socio-political experience.³⁵ Nation and state are different entities. The former is a group of people with a common history and a common vision of the future, and they share a common historical and cultural experience which generates a 'we' feeling among them.³⁶ On the other hand, a state is an organized political community living under a single system of government; it consists of state machinery comprised of the elected representatives, bureaucrats, judiciary, armed forces and other government apparatus used to manage state affairs.³⁷

The state and government are used in this research interchangeably to refer to an organized political group that exercises authority over a particular territory.³⁸ States may or may not be sovereign. For the purpose of this research, the term state shall be used to mean the Nigerian state as a sovereign nation as enshrined in the Nigerian Constitution, one indivisible and indissoluble sovereign state.³⁹ The research, therefore, covers all crime victims in Nigeria⁴⁰ irrespective of the state in Nigeria in which the crime was committed.

4.7. Restitution

Restitution is the instrument and/or tool used by courts to satisfy and repair the damage suffered by victims with a view to promoting an awareness of accountability in the criminal through the affirmation of the damage suffered by the crime victims

³⁴ S Haidar *Power and State (Functionalist and Marxist Perspective)* (2016) 1.

³⁵ As above.

³⁶ As above.

³⁷ As above.

³⁸ 'State' [https://www.en.wikipedia.org/wiki/State_\(polity\)](https://www.en.wikipedia.org/wiki/State_(polity)). (Accessed 9 October 2016).

³⁹ Nigeria Constitution Sec 2(1).

⁴⁰ As above. Sec 3(1) There shall be 36 states in Nigeria that is to say Abia Adamawa Akwa Ibom Anambra Bauchi Bayelsa Benue Borno Cross River Delta Ebonyi Edo Ekiti Enugu Gombe Imo Jigawa Kaduna Kano Katsina Kebbi Kogi Kwara Lagos Nasarawa Niger Ogun Ondo Osun Oyo Plateau Rivers, Sokoto Taraba Yobe and Zamfara.

and the community.⁴¹ Restitution is a form of compensation made by a person found guilty of a crime to a victim to compensate for certain financial losses the crime victims have experienced as a consequence of the crime.⁴² Additionally, a restitution order is made by a court as part of sentencing, after an offender has been found guilty of a crime. A restitution order requires the criminal offenders to pay a certain amount of money to the crime victim or victims of the criminal act. The restitution order will include a deadline date for the offenders to pay the full amount of money, or, if the court thinks it is more appropriate, a payment plan for the offenders to pay off the restitution order in instalments. Beyond the foregoing, a restitution order may be a stand-alone order that is part of the offender's sentence.⁴³ The court may include restitution as a condition of the criminal offender's probation order or conditional sentence order. In Igbo restitution is known as (nkwughachi), in Hausa it is called (sabuntawa), and in Yoruba restitution is called (atuse).

5. Methodology of the study

In order to provide an answer to the major research question of the study, a desk research⁴⁴ or library-based method was adopted.⁴⁵ What this means is that primary⁴⁶ and secondary sources of information were utilized for the purpose of the research.⁴⁷ This method included a case-study research on crime victims' right to state

⁴¹ Public legal information 'What is Restitution? Information for Victims of Crime' <http://www.publiclegalinfo.com/wp-content/.../Restitution-Information-for-Victims-of-Crime.pdf>. (Accessed 24 June 2017).

⁴² Restitution Basics for Victims of Crimes' http://www.courts.ca.gov/documents/restitution_basics_adult_web.pdf. (Accessed 24 June 2017).

⁴³ 'Restitution' The Canadian Resource Centre for Victims of Crime (2009) 2. <https://www.crcvc.ca/docs/Restitution.pdf>. (Accessed 24 June 2017).

⁴⁴ Desk research is the research technique which is mainly acquired by sitting at a desk and is basically involved in collecting data from existing resources hence it is often considered a low cost technique as compared to field research.

⁴⁵ The Library-Based Dissertation allows students to undertake literature-based research on a topic of their choice relevant to their field of study.

⁴⁶ A primary source provides direct or firsthand evidence about an event, object, person, or work of art Primary sources include historical and legal documents, eyewitness accounts results of experiments statistical data pieces of creative writing audio and video recordings speeches and art objects interviews surveys fieldwork and Internet communications via email blogs list serves and newsgroups are also primary source.

⁴⁷ Secondary sources describe discuss interpret comment upon analyze evaluate summarize and process primary sources secondary source materials can be articles in newspapers or popular magazines book or movie reviews or articles found in scholarly journals that discuss or evaluate someone else's original research.

compensation. The study relied on primary sources consisting of national laws and policies, jurisprudence of judicial and quasi-judicial bodies, Commissions' recommendations and relevant policy documents. The secondary sources consisted of state practices, academic publications, textbooks, published and unpublished thesis, journal articles, and preparatory works of legislation, conference and seminar papers.⁴⁸

The research, in addition to the above, conducted a comparative study in order to discover the legal position of crime victims in Nigeria *vis-a-vis* crime victims in Great Britain, New Zealand, USA, Canada, Denmark, Finland, the Republic of the Philippines and other jurisdictions.⁴⁹

The purpose for this comparative study relates to the truth that Nigeria lacks a state-funded programme for victim's compensation comparable to those in existence in other jurisdictions.

There are many advantages of utilising relative comparative investigation of other jurisdictions and their legal frameworks. Some of these advantages include a better comprehension for the researcher into changes required in the researcher's national legal framework. The fact that Nigerian law requires change cannot be stressed too much in respect of crime victims' compensation, and such change is vital to the examination embraced in the study. The jurisdictions listed or mentioned above certainly have more resources at their disposal than does Nigeria. It is, however, relevant to compare Nigeria with them with a view to finding out the source of their resources in terms of financing and funding the Nigerian compensation scheme.⁵⁰

Additionally, comparative investigation clears a path or takes into consideration social changes that may have occurred somewhere else. The reality is that numerous jurisdictions have crime victims' compensation plans while Nigeria has none and this

⁴⁸ The OR Tambo law library of the University of Pretoria was helpful in terms of access to several works in addition the University of South was equally helpful in material gathering because of the rich collections of materials in respect of crime victims' compensation online sources were made available and I had full access to the data base of the University of Pretoria where journal articles were mostly downloaded.

⁴⁹ See chapter six section 8.

⁵⁰ See chapter seven section 4.2.

is demonstrative of the way that a general cognizance of this need ought to emerge in Nigeria. Thirdly, comparative research cultivates an understanding into the legitimate frameworks of foreign jurisdictions that assist in sketching out an approach to developing local law. Fourthly, a similar comparative study empowers knowledge into a legitimate system by demonstrating the social capacity of the law and the capacities it performs in relation to the general public. Finally, comparative investigation helps in finding a reasonable and satisfactory answer to current legal issues. In other words, a comparative study goes beyond the conventional methods of teaching within a classroom setting.⁵¹

The study draws lessons from other countries or jurisdictions with a view to realizing a state-funded compensation scheme for crime victims in Nigeria. It is very important in this regard to have an understanding of the term “lesson-drawing” within the context of this study. Bennett noted that: “lesson-drawing is a more particular idea than learning or imitating. Lesson drawing indicates a more cognizant and conceivable arrangement over time and space, by policy-makers acting either exclusively or collectively. It is defined as the way toward determining common sense decisions about the adequacy of a programme somewhere else and about its transferability to one's own political system.”⁵²

It is noted, therefore, that the comparative lesson was drawn from foreign jurisdictions upon which Nigeria can rely in establishing a state-funded compensation programmes.

6. Literature review

Research studies on compensation to victims of crime who had suffered criminal violation in terms of a state-funded scheme in Nigeria at doctoral level are not in existence at the time of writing this research study. At regional and international levels, however, there are many scholarly works, such as articles, journals and texts on the subject of compensation.

⁵¹ C. Cantril *et al* *Teaching in the Connected Learning Classroom* (2014) 6.

⁵² CJ Bennett, ‘The formation of a Canadian privacy policy: The art and craft of lesson-drawing’ (1990) 33 *Canadian Public Administration* 553-554.

In Nigeria, Ekpa has reasoned that, because some international treaties have not been made applicable in the country after ratification, compensation for crime victims, especially those victims who had been displaced within Nigeria, is yet to be given the adequate attention it deserves.⁵³

It is noted that the right to compensation in Nigeria does exist, but the laws on compensation in Nigeria are too broad and incomprehensible for crime victims affected by violent crime, as noted by Ekpa. The work of Ekpa did not identify, within the scope of this study, the category of crime victims who qualify for state compensation either from the state, individuals or groups of persons as the offenders. The work also failed to offer solutions to the lingering problems of state compensation in Nigeria.

Cilliers⁵⁴ work on compensation noted that personal compensation has always appeared prominently in African traditional justice systems. He stressed further that compensation ensures that the offender does not enjoy the positive elements of his crime and that compensation provides a form of remedy aimed at restoring, as much as is financially possible, the crime victims to the position they were in before the commission of the crime. A general and broad approach to the category of crime victims entitled to compensation was, however, adopted by Cilliers, and the need for schemes/programmes to be put in place, as a means of providing compensation to crime victims by the state or by the criminal offender who committed the crime, was not addressed as such. Cilliers' work, however, provided a useful background on which this study has built and developed its specific focus.

In a report presented to the African Commission on Human and Peoples' Rights, emphasis was placed on what constitutes satisfactory compensation in any given case. The Commission, relying on Article 45(1) of the African Charter on Human and Peoples' Rights, could have developed a model for crime victims' advocates working with the Commission to enforce compliance with international and regional standards in the submission of compensation claims as well as compensation awards to crime

⁵³ Ekpa (n 4 above) 380.

⁵⁴ C Cilliers, '*Reparation as an alternative experiment: The African experience*' (2015) 300.

victims.⁵⁵ Again, one would have expected this report, in its recommendations to the Commission, to produce precedent guidelines or a blueprint policy to assist the Commission in effecting compliance by member states and further to specify the kinds of crimes involved, and the groups or categories of crime victims entitled to compensation. This was conspicuously absent in this report.

Although Von Bonde⁵⁶ and Makiwane⁵⁷ each devoted a section in their respective theses to some aspects of crime victims' right to state compensation, they did, however, not specifically deal with the area of concern of this study. Their study did not differentiate between types of crimes or categories of crime victims entitled to claim state compensation. The broad use of crimes and victims in Von Bonde's and Makiwane's works thus fail to create the classification or category of crime victims as reflected in the definition of crime victims above, which is the principal concern of this study.

Burns made a distinction between compensation and restitution without stressing the need for state compensation to crime victims. Burns perceived restitution to mean state enforced compensation made by the criminal offenders to crime victims which forms part of the criminal process.⁵⁸ This idea of compensation exonerated the state completely from liability to the crime victims.

Miller⁵⁹ focused primarily on using restorative approaches to reconcile crime victims and offenders, with particular attention to restorative justice replacing retributive criminal justice. Crime victims' access to compensation by the state was omitted from Miller's work. Miers⁶⁰ again noted that "although many states have enacted criminal injury schemes funded by the taxpayers or financial penalties or surcharges imposed on convicted offenders, none of the states has accepted that this provision follows

⁵⁵ Redress (n 15 above) 92.

⁵⁶ JC von Bonde, 'Redress for victims in South Africa: a comparison with selected Commonwealth jurisdictions' unpublished LLD thesis Nelson Mandela Metropolitan University (2006) 99.

⁵⁷ PN Makiwane, 'Rights and constitutionalism- a bias towards offenders' unpublished LL.D thesis University of South Africa (2008) 393.

⁵⁸ PT Burns, *Criminal injuries compensation: social remedy or political palliative for victims of crime?* 3rd ed (1992) 3-4.

⁵⁹ SL Miller, *After the crime: The power of restorative justice dialogues between victims and violent offenders* (2011) 159.

⁶⁰ D Miers, 'State compensation for victims of violent crimes' in I Vanfraechem, A Pemberton & FM Ndahinda (eds) *Justice for victims: perspectives on rights transition and reconciliation* (2014) 104.

from a legal duty upon the state to arrange for the compensation of crime victims from public funds.” But he failed to emphasize the importance of such compensation to crime victims from the state, a duty which the state has left to the offenders to perform.

The European Union Agency for Fundamental Rights concluded in its report that the rights of victims to access justice and be protected against repeat victimisation will often remain theoretical and illusory as long as the victim is not advised and supported in a professional manner.⁶¹ The report did not, however, provide a solution to the problem of how victims will access justice and avoid being victimised. The report also completely neglected the issue of state-funded compensation to crime victims.

Sebba, in her work, proposed how to meet crime victims’ needs outside the criminal justice system. Sebba also agreed that more comprehensive welfare remedies which involve state compensation are not likely to be adopted in a period of economic retrenchment in the jurisdiction she studied.⁶² Sebba’s work did not recommend how this would be done and what measures Israel would adopt in order to make state compensation a reality.

Friedsam’s work supported the fact that the Florida Act was an important step in giving recovery for crime victims;⁶³ but it argued that the Florida law makers must take the next step by eliminating the financial hardship requirement and replacing the relational exclusion with flexible standards.⁶⁴ Friedsam failed to produce a template on victim’s compensation to be adopted by the state of Florida in a victims’ compensation programme.

The works of authors and scholars reviewed above have failed to cover comprehensively some areas, such as the non-categorization of crimes and crime victims, a failure to proffer adequate solutions, a broad use of crimes and victims, the

⁶¹ M Kjaerum, ‘Victims of crime in the EU: the extent and nature of support for victims’ (2014) *European Union Agency for Fundamental Rights* 105.

⁶² L Sebba, ‘Victims’ rights and legal strategies: Israel as a case study’ (2000) *Criminal Law Forum* 94.

⁶³ LJ Friedsam, ‘Legislative assistance to victims of crime: The Florida Crimes Compensation Act’ (1984) 11(4) *Florida State University Law Review* 892.

⁶⁴ See chapter six on relational exclusion.

procedure to follow when crime victims are claiming compensation from the state, a lack of state policy on crime victim compensation and the need for law reforms on crime victims' compensation. The gaps and loop-holes identified in the works of different scholars reviewed on compensation are what this research study has filled. It is noted, however, that these works have served as a ladder for me to take the study a step higher with a different focus and perspective than my predecessors who have prepared a solid background for whatever contributions this study may have added to knowledge and existing literature

7. Arrangements of the thesis

Chapter 1: Introduction

This chapter set out and introduced the base, the title and context of the study. It provided the background of the research, an overview of the research problem, the research methodology and it further demarcated the scope of the research. It provided clarification with regard to terminology within the context of the study. Additionally, it reviewed several works of literature and offered a brief synopsis on each chapter. It finally outlined the limitations of the study.

Chapter 2: Theoretical framework and justifications for state-funded compensation to victims of crime

Chapter two discusses a series of theories relative to state compensation schemes and crime victims' compensation. In examining the bases on which crime victims' compensation by the state is premised, the chapter dissects theories such as the social contract and failure to protect theory, shared risk/insurance theory, social welfare/moral obligation theory, crime, shame and re-integrative theory, neutralization theory, restorative and restitutionary theory, equity theory, therapeutic or healing justice theory and religious justice theory and draws a conclusion at the end of the analysis of the various theories.

In addition, the chapter discusses the various justifications which stand as the foundation upon which jurisdictions examined in the study established state-funded compensation programmes.⁶⁵ Sequel to the foregoing, the chapter examines the following justifications: Society prohibits the individual from self-protection; the state denies any remedy to the victims by incarcerating the criminals; the state pays more to attention and relief of the criminal to the exclusion of the crime victims; the state's moral obligation to aid the innocent victims; in a democracy no theoretical justification of absolute rightness is necessary to adopt a compensation programme; compensation programmes/schemes will bring a huge public awareness of the costs of crime and attract general public support for law enforcement agencies to minimize these costs; compensation programmes/schemes will be advantageous and benefit the police because their attention will be drawn to the commission of crime since victims of crime will cooperate in assisting the police with useful information on crime; and; compensation programmes/schemes strengthens democracy by restoring victims of violent crime to the position they were before the crime which is an indication of the welfare state's interest in the well-being of its people.

Chapter 3: The emergence and development of state-funded crime victims' compensation

Pursuant to chapter two, chapter three traces the emergence and development of state-funded crime victims' compensation. In doing this, the chapter examines an historical evolution of state compensation schemes for victims of crime. Beyond this, the chapter looks at arguments from different angles, depending primarily on the various theories enumerated and discussed in chapter two. It further looks at the moral obligations and legal obligations of the state towards its citizens. The chapter finally moves into the African compensation methods by examining the African indigenous justice systems. Although, it is argued that cultures differ from country to country in Africa, and so the African indigenous justice systems might not be one and the same; the indigenous justice system, however, does provide both for the crime victims and the criminal offenders.

⁶⁵ See chapter six section 1.

Chapter four: Crime victims, offenders and practice of restorative justice

The foundation provided by the theoretical framework on restorative justice theory teaches that, although there is no amount of financial compensation either from the state or the criminal offenders to the crime victims that can undo the impact of victimization on the victims, there is a need to provide other means that will erase the psychological, emotional and economic impact of crime. It is also very important that the criminal offenders are restored to society to be better citizens. In other words, the crime victims need to be healed of the impact of the crime and the offenders need to be restored by the same criminal justice system, thereby providing balanced justice for both parties.

As a result of what has been said, chapter four discusses the role of restorative justice in healing the crime victims and restoring offenders for the benefit of the community. The chapter enumerates the elements and extent of restorative justice and discusses the parties thereto and the mediation processes in repairing the harm done by the offenders, which in the final analysis advances crime victims' healing. It considers the role restorative mechanisms play in the restoration of the offenders. The justification for restorative practices covering victims, offenders and the community is also examined.

Chapter 5: Compensation to crime victims under Nigeria and international laws: Issues and challenges

The fifth chapter examines compensation for crime victims under Nigerian and international laws. It further looks at the issues and challenges confronting the criminal justice system in Nigeria that serve as obstacles to the Nigerian state in providing compensation to crime victims. The chapter examines international instruments dealing with crime victims' compensation by states. It discusses the institutions in Nigeria which are saddled with the responsibility of criminal justice administration and concludes by looking at the need for state compensation, and why pay and who pays compensation to crime victims.

Chapter 6: State-funded compensation for crime victims: practices and procedures

Chapter six considers and provides an analytical comparative discussion of jurisdictions beyond Nigerian borders. The chapter examines lessons for Nigeria from New Zealand, the UK, and the USA. The foregoing jurisdictions have adopted state-funded compensation for crime victims in their criminal justice system, thereby fulfilling the state's contractual obligations towards their citizens. In addition, chapter six examines the various legal frameworks of these countries that provided the legal and moral bases upon which the crime victims' compensation schemes were founded. It looked at the administrative procedures, funding, eligibility for compensation and boards charged with the responsibility of overseeing compensation matters.

Chapter 7: Instituting and implementing a statutory crime victim compensation scheme in Nigeria

Chapter seven discusses the possibility of Nigeria establishing and implementing a compensation scheme for crime victims in the country. In an attempt to achieve this, the chapter examines the need for a national framework for a compensation scheme for crime victims in Nigeria. In addition, it looks into the mechanics of a victim compensation scheme, the possibility of starting a victim compensation programme or scheme, the funding of the victim compensation programme, the structure of a victim compensation programme using the South African Law Reform Commission's (SALRC) model, and the need to implement international instruments' provisions on compensation for crime victims.

Furthermore, the chapter relies heavily on the precedents of other jurisdictions in respect of compensation schemes for crime victims with a view to developing the same for Nigeria. The Commonwealth Guidelines for crime victims' treatment is also examined in this chapter. The structures of the guidelines are summarized to give a better insight into the recommendations and proposals made for Nigeria.

Chapter 8: Summaries, conclusions and recommendations

Chapter eight summarises and concludes the study by putting together the lessons learnt from the discussions in the various chapters. It summarises each chapter and provides the basis for an understanding of the major arguments under each chapter. The chapter makes recommendations with a view to the effective balancing of the right of crime victims to state compensation *vis-à-vis* the rights of the criminal offenders. Chapter eight identifies factors that may in the long run influence the implementation of the legal framework for crime victims' compensation in Nigeria. Finally, the chapter discusses the theoretical implications of the observations from other jurisdictions which have state-funded schemes for crime victims.

8. Limitations of the study

The lack of information and data in this area of study in Nigeria compounded and slowed the rate of work. The scarcity of data on the subject area limited the research study because I was not able to gather the needed information. In addition, it was not easy interviewing Nigerian judicial officials, like judges, who for most of the time were on vacation during the field exercise. An official of the Lagos State Law Reform Commission (LSLRC), for example, declined an interview on the issue of the state's intention to include in its Administration of Criminal Justice Law 2011 (ACJL)⁶⁶ provisions mandating the Lagos state to compensate crime victims and thereby be the first state in Nigeria to establish a public compensation scheme. With regard to statutory protection, the research is limited to the constitutional provisions on the state's responsibility and duty to provide security and protect its citizens.⁶⁷

⁶⁶ See chapter five section 6.

⁶⁷ Constitution of the Federal Republic of Nigeria 1999 14(1)(b) The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice it is hereby accordingly declared that: the security and welfare of the people shall be the primary purpose of government.

I am aware and mindful of the difficulty of attempting to establish an exact crime victim compensation scheme in Nigeria and the influence of political actors in the development of such a programme. The difficulty is premised on the fact that Nigeria, as a state, is motivated to change its laws for several reasons. It is noted, however, that the influence of the findings and recommendations in the study are offered in confidence that Nigeria will consider the need for a crime victims' compensation scheme.

Finally, the study acknowledges that the overall findings and recommendations will need a very long time before implementation, and, therefore, later legal policies and developments might alter or change the conclusions of the study.

Chapter Two:

Theoretical framework and justifications for state-funded compensation to victims of crime

1. Introduction

The propensity and the forces behind criminal conduct motivating people to take to crime are different and sometimes difficult to prove. Notwithstanding the foregoing, criminologists have differentiated between instrumental and expressive motives responsible for criminal behaviour. Accordingly, instrumental motives are an indication of future goals and ends, having money, revenge, status enhancement, control, and domination as their driving forces; while, on the other hand, expressive motives align with spontaneous and impulsive actions carried out in anger with little or no thought of the consequences.¹

Consequent upon the foregoing, it is submitted, therefore, that crime victims' consideration, rehabilitation and the restoration of the criminal offenders are goals of the criminal justice system.² Justice is about service to humanity; justice is not abstract standards of legality but ensuring that justice is done effortlessly, peacefully, and joyfully in society.³

To understand public compensation for crime victims, one must pay close attention to relationships between crime victims, the offenders and the society. Furthermore, there is the need to consider the idea of peace-making as a channel for attaining justice for crime victims who have been hurt by the criminal act of another, for the society and for the offenders. Peace-making through public

¹ TD Miethe, & KA Drass 'Exploring the social context of instrumental and expressive homicides: an application of quantitative comparative analysis' (1999) 15 *Journal of Quantitative Criminology* 21.

² EL Thompson, 'Primary goals of the criminal justice system' <http://www.legalbeagle.com/7238171-primary-goals-criminal-justice-system.html>. (Accessed 12 April 2017).

³ PM Gerkin, 'Seeking justice for victims and offenders: a needs-based approach to justice' unpublished PhD thesis Western Michigan University (2006) 17.

compensation to crime victims is the overall idea or philosophy underlying this research.

As a result of what has been said above, several theories are discussed below and applied to crime victims' compensation by the state. These theories address fundamental concepts of restoring peace both to the crime victims, the criminal offenders and the society. The chapter reviews several theories behind state compensation and shows the application of these theories thereby giving insight into public compensation practices and processes.

The following are the theories discussed: Social contract and failure to protect theory; shared risk/insurance theory; social welfare/moral obligation theory; crime, shame and re-integrative theory; theory of neutralization; restorative and restitutory justice theory; equity theory; therapeutic or healing justice theory; and religious justice theory. These theories are examined independently, with a short explanation connecting the various theories about state compensation to crime victims.

2. Social contract and failure to protect theory

The social contract theory describes a situation in which the legitimacy of the state authority is derived from the agreement of the subjects or the citizens. In the social contract agreement the subjects consent of their own volition to give up the freedom of action that they have in the state of nature with a view to obtaining the benefits provided by the formation of social structures, which by implication means the agreement through which people form nations and maintain a social order.⁴ This generally means that the subjects relinquished their rights to the state or to the sovereign authority. The sovereign in the context of the study means the state,⁵ and, by extension, the Nigerian state.⁶

⁴ 'The Social Contract Theory: Hobbes v Rousseau, an analysis' <http://www.scribd.com/doc/2910336/The-Social-Contract-Theory>. (Accessed 25 May 2017).

⁵ JJ Rousseau *The social contract* V Gourevitch (ed) 1st ed (1997) 12.

⁶ See chapter one section 4.6.

Viewed differently, the social contract theory teaches that political legitimacy, political authority, and political obligations are derived from the agreement of those who created a government and those who operated it through some form of quasi-consent.⁷ The implication of the foregoing is that legitimacy and duty will largely depend on the consent of individual action, rather than on collective individual acts.⁸ Furthermore, the social contract theory also refers to an agreement made by the members of the society and the government, and such an agreement defines and limits the responsibilities and obligations of both the members and government of such a society.

Besides the foregoing, a major element featuring in the social contract theory is that the "foundation of the true or authentic body politic is held to be a pact or agreement made by all the individuals who are to compose it."⁹ The agreement is not between individuals, who make up the civil society or state, but an agreement between the rulers and the ruled, to make the transition from the state of nature to the civil state.¹⁰ The social contract theory is postulated on the acknowledgement of the state's responsibility to protect its citizens from crime and criminal behaviour.¹¹ Furthermore, the social contract theory prevents crime victims from seeking retribution by taking the law into their own hands.¹² To this end, advocates of the social contract theory have reasoned that given the state's failure to protect its citizens, and at the same time limiting the citizens' avenues to seek redress, "the state has breached its duty and thus owes compensation to crime victims as a matter of right."¹³

⁷ P 'Riley, Will and political legitimacy: a critical exposition of social contract theory' (1982) in Hobbes Locke Rousseau Kant and Hegel *Social contract* 1.

⁸ As above.

⁹ M Forsyth, 'Hobbes's contractarianism: a comparative analysis' in D Boucher & P Kelly (eds) (1994) *The social contract* 37.

¹⁰ As above.

¹¹ WE Hoelzel, 'A survey of 27 victim compensation programs' (1980) 63 *Judicature* 487.

¹² J Brooks, 'The case for creating compensation programs to aid victims of violent crimes' (1976) 11 *TULSA Law Journal* 477-479.

¹³ LJ Friedsam, 'Legislative assistance to victims of crime: the Florida Crimes Compensation Act' (1984) 11 *Florida State University Law Review* 682.

The social contract theory may, therefore, be based on an insurance plan, upon which a crime victim's compensation programme rests. Accordingly, "citizens' taxes may be used as premiums for compensation programmes."¹⁴ As a result of what has been said, tax money contributions/premiums would mean that all citizens and the state share both in the cost and the risk of criminal victimization.¹⁵ Although, this theory may not necessarily be one of the foundations upon which the debates for state compensation are premised despite the huge sum of revenue made by the Nigerian government both from tax and foreign investments,¹⁶ the theory is still reasonably relevant for the compensation programme being proposed in this research.

The theory is premised on the acknowledged duty of the state to ensure safety for its subjects from crime.¹⁷ Several advocates of state compensation have noted the plight of crime victims.¹⁸ It is argued that there exists a public obligation¹⁹ to see to the welfare of crime victims. For this reason, compensation to crime victims is founded on the principles of the social contract theory. This is further supported by the belief that there exists a "contract between the state and the citizens or upon the law of negligence."²⁰

3. Crime, shame and reintegration theory

Braithwaite, in his work *Crime, shame and reintegration*, formulated a theoretical model for dealing with crime, crime victims and criminals at the state and/or community levels.²¹ He consolidated several traditional sociological theories of crime. Braithwaite gave extensive explanations about why one state or community experiences high levels of crime rates than another, the reasons some people are

¹⁴ PM Koning, 'Compensation for victims of crime-the Texas approach' (1980) 34 *Southwest Law Journal* 699. Another way of looking at this theory is through a loss-spreading analysis, thus Koning observed that a state's unique ability to spread these losses efficiently combined with a state's general duty to provide for the public welfare implicates a state duty to establish these programs.

¹⁵ Hoelzel (n 11 above) 487-488.

¹⁶ See chapter seven section 4.2.

¹⁷ Hoelzel (n 11 above) 487.

¹⁸ BB Das, *Victims in the Criminal Justice System* (1997) 25.

¹⁹ Law Review Editors 'Compensation for Victims of Crime' (1966) 33 *University of Chicago Law Review* 536.

²⁰ D Miers, *State compensation for criminal injuries* (1997) 4.

²¹ J Braithwaite, *Crime shame and reintegration* (1989) 15.

prone to committing crime than others, and, finally, how the state and the criminal offenders will effectively handle and deal with crime in order to avoid recidivism, control crime, prevent crime²² and possibly pay compensation to those affected by the criminal behaviour of others.

Braithwaite reasoned that high rates of heinous crime in our communities are an indication of the failure to shame those acts labelled as criminal. He argued further that the breakdown of societal relationships or ties in modern urban societies means that the criminal offenders are not made to feel ashamed of their criminal behaviour or actions, and, as a result, offenders continuously victimize citizens without feeling remorseful or without paying compensation for their criminal conduct.

It is noted from the above that the idea of shame and compensation by the offenders is the vital factor underlying Braithwaite's theory. Braithwaite premised his assumption on the opinion that those who are connected to family and community will expect an unfavourable reaction to the violation of societal rules and norms. To this end, when offenders foresee the shame they will experience, face and feel they would give up crime. The theory, however, accordingly provides that the shaming of the offenders should be carried out in such a manner that would be re-integrative.

The theory is based on the fact that, apart from the paying of compensation by the offenders, the shame must bring the offenders back into society to make them better persons and heal the crime victims, rather than disintegrate the offenders. Braithwaite opined that, according to the theory, disintegrating the offenders would push the offenders even farther out of the society. This will be detrimental to both society and the offenders. To Braithwaite, re-integrative shaming is the principal element to effective recidivism and crime prevention.

²² S Hannem-Kish 'Crime shame and reintegration' in M Bosworth ed. Encyclopedia of Prisons and Correctional Facilities (2005) 201.

Closely connected to the above theory of crime and reintegration, Braithwaite and Mugford stated that there are conditions for the successful reintegration of criminal offenders. Both scholars noted that structurally successful reintegration programmes or ceremonies should include the following:²³

1. Confrontation with the crime victims. This will eventually lead to the shaming of the offenders; and
2. Inclusion of the people or community who respect and care most about the crime victims and the offenders on the grounds that re-integrative shaming is most effective when those who are closest to the offenders and/or to the situation participate in the programme, that is, the mediation processes.

In addition, Braithwaite argued that criminal offenders should be made aware of and be able to see the consequences of their act outside of their own perspective with a view of seeing the harm their criminal conduct has caused others and thereafter be reintegrated.²⁴ Consequent upon the foregoing, the crime victim's view is extremely useful and indispensable in breaking down the criminal offender's reason or rationale for his criminal behaviour or action. The crime victims' meeting or encounter with the criminals *vide* the mediation process will produce the greatest impact on the offenders.²⁵

Shaming and reintegration are effective only when the state or community, crime victims and people who support and care for the parties participate in it. Community conferencing, victim-offender mediation, restorative justice, therapeutic jurisprudence and compensatory procedures are good examples of healing the crime victims and bringing the offenders back into the society.

²³ J Braithwaite, & S Mugford 'Conditions of successful reintegration ceremonies: dealing with juvenile offenders' (1994) 34(2) *British Journal of Criminology* 139.

²⁴ As above.

²⁵ See chapter four section 3.1.

Braithwaite's theory of shame and reintegration supports mediation between the crime victims and the criminal offenders as a way of diverting the traditional and conventional justice system from retributive justice.

4. Neutralization theory

In neutralization theory, the offenders neutralize their criminal conduct by justifying their behaviour on the grounds that the crime victims deserved what they got.²⁶ This theory is employed in restorative justice and in victim-offender mediation programmes. The use of Victim-Offender Mediation Programme (VOMP)²⁷ brings crime victims and the offenders face-to-face with one another with a view to making the offenders see the reality of the harm they have caused the crime victims.²⁸ Accordingly, the offenders see crime victims as real persons.²⁹

Barton, in support of this theory, identified four justifications or rationalization mechanisms which are employed by offenders most of the time. Firstly, there is rationalization about good consequences/moral justification, for instance an armed robber robbing a bank could morally justify his action by saying that, if I make enough money on this outing, I can later help others. But the question is must he rob to help others?

Secondly, there is the denial of the seriousness of the harmful effects on others, for instance, offenders stealing from a wealthy family might rationalise that they won't mind, they are rich, and they will be fine. After all it is only a little cash from the plenty. But does the money belong to the offenders? The question is once again; if the offenders need money from the wealthy, why not approach them for financial assistance instead?

²⁶ MM Lanier, & S Henry *Essential Criminology* (2004) 168-176.

²⁷ See chapter four section 3.

²⁸ TF Marshall, *Restorative justice: an overview* (1999) 31.

²⁹ B Hudson, 'Victims and offenders' in A von Hirsch, J Roberts, AE Bottoms, K Roach & M Schiff (eds) *Restorative Justice And Criminal Justice: Competing Or Reconcilable Paradigms?* (2003) 182.

Thirdly, there is obscuring or lessening personal responsibility for a wrongful act, for instance an offender caught by the law enforcement agent might say it wasn't my fault. I just did what I was told. I played only a small part in the robbery; others do it, why can't I.

Lastly, there is victims' blaming, for instance, a rapist might say the lady was almost half-naked or indecently dressed and she was drunk; or a thief, after stealing an item, would say the owner of the item is a foolish man and he should not have left the windows open.³⁰

It is argued, that, when crime victims meet the offenders one-on-one, the offenders see the impact of their criminal conduct, and the encounter between the victims and the criminals have important psychological benefits to both the crime victims and the offenders.³¹ The reason why mediation between victims and criminals is beneficial is that very often the offenders are not aware of the impact of their delinquent or criminal conduct; as a result, the offenders do not have an understanding of the enduring effects of their criminal acts.³²

In applying the neutralization theory in a VOMP, the crime victims are perceived as being real human beings and not just one of those unidentified people out there. Their concerns are accordingly addressed.³³ The neutralization theory makes sure that offenders answer the "why do they do it"³⁴ question because it gives the opportunity to the crime victims and the offenders to meet. The theory does not make excuses or neutralize the offenders' criminal behaviour; rather, it makes the offenders face the truth. It is, however, noted that neutralization does not allow the offenders to take or accept responsibility for their criminal actions.³⁵ The

³⁰ C Barton, 'Theories of restorative justice' (2000) 2 *Australian Journal of Professional and Applied Ethics* 41 –53.

³¹ CM Angel, 'Crime victims meet their offenders: testing the impact of restorative justice conferences on victims' post-traumatic stress symptoms' unpublished PhD Thesis University of Pennsylvania 2005 vi.

³² I Wellikoff, 'Victim-offender mediation and violent crimes: on the way to justice' (2003) 5(1) *Cardozo Journal of Conflict Resolution* 55.

³³ J Dignan 'Victims victimization and victimology' <https://www.mheducation.co.uk/openup/chapters/0335209807.pdf>. (Accessed 10 April 2017).

³⁴ S Maruna & H Copes 'What have we learned from five decades of neutralization research?' (2005) 32 *Crime and Justice* 221.

³⁵ J Li Chi-mei, 'Neutralization techniques crime decision-making and juvenile thieves' (2008) *International Journal of Adolescence and Youth* 264.

neutralization theory relates to compensation in the sense that criminal offenders more often than not do not have the financial means of compensating the victims; an apology can, therefore, be tendered in place of financial compensation by the offenders.³⁶

4. Restorative and restitutionary justice theory

The connection or relationship between restitution and restorative justice is not a misconception because restitution is an essential element of restorative justice practices. Justice demands that victims be made whole again, restored from criminal victimization and offenders must right their wrongs, make amends, and repair what they have damaged.³⁷

In criminal law, restitution is the idea which postulates that any profit, advantage, gain, and/or benefit fraudulently acquired must be returned to the person or plaintiff from whom it was taken.³⁸ In consequence of the foregoing, restitution holds that the satisfaction of justice requires the criminal offenders repay or return what they have acquired from the crime victims or the sufferer of the criminal act.³⁹

The rationale behind restitution is that the offenders, through their conduct, have enriched themselves to the disadvantage, or at the expense, of the crime victims.⁴⁰ When the offenders are stripped of their illicit benefits from their criminal actions and return that which was taken from the crime victims, the offenders right the wrongs⁴¹ they have created.

³⁶ MK Dhami, 'Effects of a victim's response to an offender's apology: When the victim becomes the bad' (2015) *European Journal of Social Psychology* 1.

³⁷ P McCold, 'Restorative justice: the role of the community' Paper to the Academy of Criminal Justice Sciences Annual Conference 1995.

³⁸ A Kult, 'Rationalizing restitution' (1995) *California Law Review* 1198.

³⁹ JJ Llewellyn, & R Howse 'Restorative justice a conceptual framework' (1998) 23.

⁴⁰ United States Catholic Conference 'Responsibility rehabilitation and restoration: a Catholic perspective on crime and criminal justice' <http://www.usccb.org> > ... > Human Life and Dignity > Criminal Justice - Restorative Justice. (Accessed 11 April 2017).

⁴¹ M Batley 'Restorative justice in the South African context' <https://www.issafrica.s3.amazonaws.com/site/uploads/111CHAP2.PDF>. (Accessed 11 April 2017).

From what has been said in the preceding paragraph, restitution construes that something has to be done and it demands the returning to the crime victims of what was taken and thereby restoring fairness to the social system so that the prevailing situations or circumstances are returned to the way they were before the offence occurred.⁴² Consequently, the criminal offenders will, as a matter of necessity, return that 'thing' which they have taken from the crime victims.

When the offenders make restitution by returning what was taken, restitution places the crime victims at the centre of any attempt to do justice. Accordingly, "restitution has its roots in justice systems which viewed crime as an injury more to the crime victims than to the state."⁴³ This situation of restitution also prevails in the African traditional justice system.⁴⁴ Restorative justice shows actual concern about the harm done by the offenders and about the crime victims who suffered the victimization. Put differently, restorative justice and restitution are result oriented; both direct their focus on the outcomes of an action and not on some inherent nature of the action itself.

In addition to the foregoing, restorative justice does not limit its attention only to the crime victims; rather, restorative justice extends a hand of fellowship to the offenders and the community with a view to responding to the harm done to the crime victims.⁴⁵ The inclusion of the offenders and the community in restorative practices is what differentiates it from criminal law restitution.⁴⁶ Consequently, within the meaning of ordinary restitution, justice demands and requires that a material transfer occur between offenders and crime victims.⁴⁷

As noted above, criminal law restitution is done only by the criminal offenders to this end; criminal law is arbitrary because it does not reflect the relative value of a loss for the crime victims who were victimized by the criminal conduct of others. Criminal

⁴² JL Bonta, & P Sonnichsen 'Restitution in correctional half-way houses: victim satisfaction attitudes and recidivism' (1983) *Canadian Journal of Criminology* 278.

⁴³ D van Ness, & KH Strong *Restoring justice* (2002) 16.

⁴⁴ See chapter three section 4.

⁴⁵ H Zehr, & A Gohar *The little book of restorative justice* (2003) 11.

⁴⁶ Van Ness & Strong (n 43 above) 16.

⁴⁷ DJO Omale, 'Restorative justice as an alternative dispute resolution model: opinions of victims of crime and criminal justice professionals in Nigeria' unpublished PhD thesis De monforth University (2009) 57.

law restitution requires the quantification and valuation of that which must exchange hands between the offenders and the crime victims, and, as a result, criminal law does not account for the non-material harm crime victims suffered.

Criminal law restitution ignores the actual harm victims of crime have experienced, the harm to their sense of security which resulted from the disequilibrium in the social relationship between crime victims and the criminal offenders as members of society. For instance, when one's car is stolen and the criminal is apprehended, according to the restorative and restitutionary theory, the criminal can make restitution by returning the car. The return of the stolen car has made up for the material loss the crime victims suffered, but the return or replacement of the car does not, however, return the feeling of insecurity the crime victims felt when they had their cars stolen even though they had been securely locked up beforehand.

The return of the car cannot return the feeling of violation of the crime victims. Additionally, the act of having the stolen car returned also fails to offer the security of knowing that the same individual will not take the car again, as the offenders do not consider or see anything wrong in their actions and the resultant effects. The issue with restitution, it is argued, is that restitution cannot serve as the ultimate aim of justice because restitution in and of itself is not enough to address the harm crime victims experienced after the crime was committed.

It is understandable that restitution intends to return things to the way they were before the crime; however, restitution is contrary to restorative justice, because restorative justice does not take the restoration of things to their former position as its primary objective. If restorative justice paid attention to restoring things to their former position before the crime took place, it would in the final analysis encourage revenge or the taking of a pound of flesh and this would contradict the forward-looking orientation of restorative justice.⁴⁸

⁴⁸ Correctional Service Canada 'Restorative justice principles and values' <http://www.csc-scc.gc.ca/restorative-justice/092/fsrjrr-3-eng.pdf>. (Accessed 11 April 2017).

In the light of the foregoing, Van Ness and Strong are of the opinion that some schools of thought have misunderstood the language of restoration.⁴⁹ The authors argued that the word 'restore' to many people in every day usage connotes a return to the way things were, as, for example, when one restores a historical building, the aim is to re-create the previous condition of the building. The misconception of the word 'restore' has led some to argue that restorative justice is better called by some other names. Such names include, but are not limited to, transformative, relational or community restorative justice.⁵⁰

It is submitted that restorative justice, as opposed to restitution, is not a slave to rectifying a wrong by restoring things to the state they were before the occurrence of a particular criminal event. Rather, restorative justice aims at restoration to an ideal, a restoration of the relationships between the parties involved to an ideal state of social equality irrespective of the criminal conduct.

Restorative justice, in contradistinction to the backward looking of restitution, addresses a wrong by transforming the relationship between the crime victims, the offenders and the community to such an extent that recidivism is avoided and would not arise again.

Consequent upon the foregoing, it is argued that listing restitution as a tool of restorative justice will address the difficulty restitution experiences when taken as an end in itself.⁵¹ Therefore, as an element of a restorative process, restitution would no longer be backward looking; instead it becomes an important and necessary step towards building a healthy and better relationship between the crime victims and the offenders.⁵²

In addition, since restitution is part of a larger process, it needs not concern itself with non-material and unquantifiable harms because these can be addressed through other non-material things like apology as discussed in chapter four of the thesis. Finally, owing to the fact that restitution is part of a restorative process,

⁴⁹ Van Ness & Strong (n 43 above) 16.

⁵⁰ R Morris, 'A practical path to transformative justice' in M Bosworth ed. Encyclopedia of prisons and correctional facilities 2006 25.

⁵¹ Omale (n 47 above) 59.

⁵² Llewellyn & Howse (n 39 above) 15.

restitution will avoid the charge of the arbitrary valuation of harm, as value would be determined through a process of mediation or negotiation between the crime victims and the offenders.

The restorative justice process does not commence until the criminal offender pleads guilty to the crime after which the court decides whether or not restorative justice should be explored. If the court decides that restorative justice be explored, trained facilitators assess the case and they then arrange a meeting between the crime victims and the offender separately; this meeting is referred to as a pre-conference meeting.⁵³

Consequent on the above, the restorative justice meeting provides an opportunity for the crime victims to discuss their emotions by asking questions.⁵⁴ Crime victims get answers to the often haunting questions that only the offenders can answer, and the answers provided to the questions by the criminal offenders go a long way to helping the crime victims heal or to recover from their emotional stress.⁵⁵

As a result of the answers provided by the criminal offenders, the crime victims could be psychologically healed from the impact the victimization caused. In the end, although the offenders may have been restored and rehabilitated, they still take up the burden of guilt, which may not heal until the criminal offenders recompense the crime victims, apologise and receive forgiveness from the crime victims.⁵⁶

5. Equity theory

"Equity theory proposes that individuals, the crime victims, who perceive themselves as either under rewarded or over rewarded, will experience distress, and that this distress leads to efforts to restore equity."⁵⁷ The equity theory draws its inspiration from the exchange, the dissonance, and social comparison theories in making

⁵³ New Zealand Ministry of Justice 'Restorative justice information on the restorative justice process for victims' <http://www.victiminfo.govt.nz/assets/Publications/restorative-justice-for-victims.pdf>. (Accessed 17 August 2017).

⁵⁴ LW Sherman, & H Strang 'Restorative justice: the evidence' (2007) 26.

⁵⁵ M Price 'Punishment-what's in it for the victim?' (1997) 5(1) *Kaleidoscope of Justice* 1.

⁵⁶ C Griswold *Forgiveness: A Philosophical Exploration* (2007) 52.

⁵⁷ RC Huseman, JD Hatfield & EW Miles 'A new perspective on equity theory: the equity sensitivity construct' (1987) 12(2) *The Academy of Management Review* 222.

predictions about how individuals manage their relationships with others, for example the relationship between the crime victims and the offenders.⁵⁸ The equity theory as a method of compensating individuals emphasizes that individuals evaluate their relationships with others by assessing the ratio of their outcomes from and inputs to the relationship against the outcome/input ratio of a comparison to others. The theory further stresses that the greater the inequity the individual perceives in the form of either over reward or under reward, the more distress the individual feels.⁵⁹

The equity theory's idea of distress prediction is premised on the grounds that individuals are equally sensitive to equity; in other words, there is a general preference that outcome/input ratios be equal to that of the comparison to others.

In equity theory, rewards are allocated according to the following equity rules:

- (a) The contribution equity rule, where others are rewarded an outcome in proportion to their inputs (where for example the offenders are not adequately punished as a result of the crime);
- (b) The needs rule, where others are rewarded based upon their legitimate needs (where for example the crime victims are not compensated based on their needs as a consequence of the crime); and;
- (c) The equality rule, where others receive equal outcomes irrespective of their individual inputs (where for example both crime victims and offenders are equally treated).⁶⁰

The distribution rules enumerated above suggest that separate norms govern the allocation of rewards.⁶¹ The simple meaning of these rules is that, in considering compensation for crime victims, the crime victims may be accused of contributory negligence. To this end, the compensation to them is reduced. This means that the

⁵⁸ JS Adams, 'Inequity in social exchange' (1965) in L Berkowitz (ed) *Advances In Experimental Social Psychology* 267-299.

⁵⁹ JS Adams, 'Toward an understanding of inequity' (1963) 67 *Journal of Abnormal and Social Psychology* 422-436.

⁶⁰ GS Leventhal, *Fairness in Social Relationships* (1976) 29.

⁶¹ RT Mowday, 'Equity theory predictions of behaviour in organizations' (1983) in RM Steers & LW Porter (eds) *Motivation And Work Behaviour* 91-113.

authorities in charge of compensating or allocating compensation to crime victims will not adhere strictly to the equity norm when distributing outcomes to the crime victims and the offenders as the case may be.⁶²

Major and Deaux observed that, in justice behaviour, that is reward allocation and reactions to injustice, the effects of individual differences will vary in relation to whether experimental subjects are allocating outcomes to offenders at the expense of the crime victims, or whether crime victims are simply reacting to inequitable treatment from state.⁶³

The equity theory suggests that individuals do not conform consistently to the norm of equity. Instead, individuals react consistently to specific, but different, preferences that they have for the balance between their outcome/input ratios and those of a comparison to others.⁶⁴ Equity theory proposes moderation in relationships between an individual's perceptions of equity.⁶⁵

It is not suggested that this ideal of equity will be achieved in the same way in all types of relationships. To this end, it is important to put into proper context the idea of giving compensation to crime victims and doing otherwise to the criminal offenders. It is important in an equitable approach that the question of what justice means in a relationship to one of equal dignity, concern and respect is asked in the context of the exact relationship between the crime victims and the offenders. The question then is what it would take to restore the broken relationship between the crime victims and the offenders equitably in the context of equity theory? It is, however, noted that relationships of equity or equality are ones in which the crime victims and the offenders who are parties to the relationship, albeit through criminal action, enjoy dignity and treat each other with equal respect and concern.

⁶² J Greenberg, 'Allocator-recipient similarity and the equitable division of rewards (1978) 41 *Social Psychology* 337-341.

⁶³ B Major, & K Deaux 'Individual differences in justice behavior' (1982) in J Greenberg & RL Cohen (eds) *Equity And Justice In Social Behavior* 43-76.

⁶⁴ Huseman, Hatfield & Miles (n 57 above) 223.

⁶⁵ Huseman, Hatfield & Miles (n 57 above) 231.

6. Therapeutic or healing justice theory

Closely connected to the theoretical propositions discussed above is the therapeutic or healing power of compensatory justice. Therapeutic justice helps individuals, families and communities heal from the trauma and harm caused by all forms of violence; in other words, therapeutic justice offers restorative justice opportunities for crime victims, offenders and the community.⁶⁶ Therapeutic justice is one significant area where the principle of, or the process of, releasing support to crime victims and thereby providing relief from strong or repressed emotions manifests its relevance in the healing from victimization and ensures safety from violence and humiliation.⁶⁷ The use and effectiveness of therapeutic justice in healing crime victims has been recorded in many cases, such as rape.⁶⁸

A further support for the therapeutic justice theory stems from the fact that an apology from an offender facilitates recovery from psychological harm caused by the crime because, as humans, we expect every member of society to treat us in accordance with our own moral values. In this light, when crime and harm take place, victims feel great indignation towards the offenders because the delinquent conduct sends a message that the victims are not valuable enough to be treated honourably. Offenders, therefore, put victims in a lower status, undermining their values and damaging their self-esteem.⁶⁹

⁶⁶ Center for Victims of Violence and Crime 'Healing trauma resolving conflict ending violence' (2008) http://www.iirp.edu/pdf/Bethlehem_2009_Conference/Bethlehem_2009_Lehman.pdf. (Accessed 12 April 2017).

⁶⁷ S Pradeep, 'Victims and victimization: process and healing' (2015) <https://www.prezi.com/n481ftfgtwya/victims-and-victimization-process-and-healing>. (Accessed April 12 2017).

⁶⁸ Justice Reparatrice 'Real people real stories: a transforming journey' <http://www.justicereparatrice.org/www.restorativejustice.org/editions/2006/.../victimstory>. (Accessed 12 April 2017).

⁶⁹ Y Takahashi, 'Toward a balancing approach: the use of apology in Japanese society' (2005) 12 *International Review of Victimology* 23-45.

There are various aspects of therapeutic justice, some of which are apology,⁷⁰ forgiveness⁷¹ and reconciliation.⁷² It is argued that apology from the offenders is therapeutic for the crime victims. Apologies from offenders are not only becoming more common; they are good as it improves the status of crime victims because forgiveness and healing are more likely to take place.⁷³

Advocates of retributive justice are of the opinion that punishment of the offenders must be commensurate to the offence committed.⁷⁴ The opinion of the retributivists seems valid because the crime victims' trauma, stigma and emotion resulting from criminal victimization⁷⁵ cannot be quantified in terms of the punishment the offenders received. But the argument on the idea of punishment is that, when the offenders accept their guilt, tender an apology to the victims and receive the victim's forgiveness, it brings about the victim's healing in the therapeutic justice process rather than retributive vengeance or the offender's punishment. It is noted, however, that an apology cannot undo what has been done, but a sincere apology with remorse increases the crime victims' empathy for offenders and opens the door to forgiveness. In the process crime victims overcome their emotional injury which serves as a form of compensation to the crime victims.⁷⁶

7. Religious justice theory

The religious justice theory holds that justice has a powerful spiritual relevance in all major world religions; the theory postulates that religion cherishes life and that the pursuit of justice is the only sure route to peace.⁷⁷ The theory notes that repentance, forgiveness, hating the sin (offence) -and not the sinner (criminal),

⁷⁰ JR Cohen, 'Advising clients to apologize' (1999) 72 *Southern California Law Review* 1009-1011.

⁷¹ FD Fincham, 'Forgiveness: integral to close relationships and inimical to justice?' (2009) 16 *Virginia Journal of Social Policy & the Law* 358-59.

⁷² M Sosnov, 'The adjudication of genocide: gacaca and the road to reconciliation in Rwanda' (2008) 36 *Denver Journal of International Law & Policy* 143.

⁷³ S Daicoff, 'Apology, forgiveness, reconciliation & therapeutic jurisprudence' (2013) 13 *Pepperdine Dispute Resolution Law Journal* 132.

⁷⁴ K Whitney, 'The seriousness of the offence: proportionality in sentencing sexual offenders in western Australia' (1996) 3 *Murdoch University Electronic Journal of Law* 1.

⁷⁵ FD Stansfeld, 'Beyond the victim: the traumatic effects of violent crime-an educational psychological perspective' Masters dissertation University of South Africa 2002 24.

⁷⁶ SG Shoham, P Knepper & M Kett (eds) *International handbook of victimology* (2010) 517.

⁷⁷ D Maguire, 'Religious influences on justice theory' (2014) *Marquette University Theology Research & Publication* 1.

doing unto others (crime victims) what you would wish others do unto yourself are all aspects of faith-based-justice advocacy. To this end, justice principles of reconciliation, restoration and healing are evident in all religions.⁷⁸

To corroborate what has been said above, the Christian faith encourages reconciliation and out of court settlement between crime victims and the criminal offenders to avoid imprisonment.⁷⁹ The Christian doctrine advises that given the possibility that your sibling or brother does something wrong, go and settle with him (a similarity of crime victims-offenders' mediation). If he listens to you, you have won back your brother or sibling. But if he doesn't listen to you, take a couple of others alongside you (similarly to Family Group Conferencing). But in the event that he declines to listen to these, report it to the congregation (a similarity of group equity), and, on the off chance that he declines to listen to the congregation, at that point treat him like a criminal.⁸⁰

On the other hand, the Islamic faith encourages dispute resolution, reconciliation, negotiation, compensation, and peace-making justice. The Quran encourages Islamic crime victims to forgive and it states that: "and those who, when an oppressive wrong is done to them (crime victims), take revenge, the recompense for an evil is evil like thereof, but whoever forgives and makes reconciliation, his reward is with Allah."⁸¹

As a result of the religious injunctions stated above, it is submitted that retributive justice, as it is practised in the criminal justice system, ought to be used as the last resort. It is noted that the influence of religion is found in the works of Consedine,⁸² Zehr,⁸³ Wright⁸⁴ and many other advocates of state-funded compensation writers.

⁷⁸ E McLaughlin, R Fergusson, G Hughes & L Westmarland (eds) (2003) *Restorative justice: critical issues* 15.

⁷⁹ The King James Bible Gospel according to Saint Mathew chapter 5:25 "Therefore if thou bring thy gift to the altar and there remember that thy brother hath aught against thee leave there thy gift before the altar and go thy way first be reconciled to thy brother and then come and offer thy gift agree with thine adversary quickly while thou art in the way with him lest at any time the adversary deliver thee to the judge and the judge deliver thee to the officer and thou be cast into prison."

⁸⁰ The King James Bible Mathew 18: 15-17.

⁸¹ The Quran 42: 40 English translation version 1413H.

⁸² J Consedine, *Restorative justice: healing the effect of crime* (1999) 150.

⁸³ H Zehr, 'Retributive, justice restorative justice' (1985) 4 *New perspectives on crime and justice* 16.

Braithwaite also believed that religious justice, be it Christianity, Islam or otherwise is therapeutic and restorative.⁸⁵

8. Justifications for state-funded compensation to victims of crime

There are many justifications underlying the rationale of crime victims' compensation. The justifications one way or another are linked or connected to the various theories examined previously.⁸⁶ It is in the light of the foregoing that the justifications for compensation are examined hereunder.

8.1. Society prohibits the individual from self-protection

In the history of the advocacy and proposal for state-funded compensation to crime victims by scholars and concerned individuals, the most common argument in support of such programme is the scope and consideration of how the state denies certain individual actions thought to be self-protection and self-preservation but then the state fails to prevent and stop crimes in society.⁸⁷ Fry noted that "the State which denies our going about furnished in self-preservation can't abandon all obligations regarding its infrequent inability to secure or protect its citizens."⁸⁸

Fry is noted for showing deep concern about modern day compensatory programmes for victims of crime and her support has gained the attention of other advocates for state compensation who have eventually aided her objectives.⁸⁹ As a result of Fry's advocacy for state compensation, Goldberg noted that, "the victims of a burglary or robbery have been denied the 'security' of the laws undeniably, and society ought to accept some accountability for making him entirely whole."⁹⁰ Other

⁸⁴ M Wright, 'Can mediation be an alternative to criminal justice?' (1996) in B Galaway & J Hudson (eds) *Restorative justice: International perspectives* 227.

⁸⁵ J Braithwaite, 'Restorative justice: assessing optimistic and pessimistic accounts crime and justice' (1999) 25 *A Review of Research* 27.

⁸⁶ See chapter two section 2-8.

⁸⁷ J Brooks, 'The case for creating compensation programs to aid victims of violent crimes' (1976) 11(4) *Tulsa Law Review* 479.

⁸⁸ M Fry, 'Justice for victims' (1959) 8 *Journal of Public Law* 191-194.

⁸⁹ See chapter three section 3.

⁹⁰ AJ Goldberg, 'Equality and governmental action' (1964) 39 *New York University Law Review* 224.

renowned supporters of compensation plans include, but are not limited to Yarborough who advocated help and support for the victims of crime⁹¹ and Mikva.⁹² The argument in the above reasoning of Fry and others is to the effect that, if the state fails to provide the necessary protection for its citizens, the individuals could protect themselves. But the argument, on the other hand, is that, if the individuals were ever able to protect themselves, why was the government established in the first place? It is submitted that whether any government could protect its citizens absolutely seems doubtful, although it is equally questionable whether qualifying as crime victims is a result of the government failing its duties and responsibilities to the citizens. It is submitted that, whether the state fails to protect its citizens or not, crime victims should be compensated in the aftermath of victimization.

8.2. The state denies any remedy to the victims by incarcerating the criminals

The second argument in support of compensatory schemes for victims of crime is inherent in several hardships caused in part by the inconsistencies in criminal and civil laws.⁹³ These branches of law have never evolved to the point of adequately ministering to the needs of crime victims. The truth is that, in almost all jurisdictions of the world, there can hardly be a case where crime victims expect comprehensive compensation and in circumstances where the state fails to provide remuneration, delictual claims or actions in tort by victims of crime for compensation claims prove insufficient.⁹⁴

Additionally, not all crimes are delicts or torts, but it is not possible to think of a crime of violence which does not qualify as such.⁹⁵ It has been reasoned that such crime victims can claim compensation in civil actions, as it is the case in Nigeria,

⁹¹ RW Yarborough, 'We should compensate the victims of crime' (1965) 11 *Student Lawyer* 6-7.

⁹² AJ Mikva, 'Hearings on compensation of victims of crime before the senate committee on the District of Columbia' (1969) *91st Congress First Session* 68.

⁹³ Brooks (n 87 above) 480.

⁹⁴ S Schafer, *Compensation and restitution to victims of crime* (1968) 26.

⁹⁵ Watson 'Law of tort: criminal injuries compensation-mens rea misapplied' (1966) 116 *New Law Journal* 684.

which may result in an award of damages, but the truth of the matter is that a civil suit affords inadequate and ineffective remedies.⁹⁶

There are several reasons why a civil suit may not afford adequate remedy to the crime victims. Firstly, there is the chance that the criminal offenders may not ever be apprehended. Citizens do not have all it takes to apprehend or arrest criminals and sometimes even identifying the criminal becomes difficult for the victims because of the traumatic effect of the crime; this is why individuals, including those victimized by criminal conduct, rely on the state for the arrest of the criminals. But in most instances arrests are not made.⁹⁷ Even if criminals are apprehended, there are other issues which make recovery from the offenders most unlikely, because "those who have the propensity for crime, all too often turn out to be people without funds."⁹⁸

The second problem that makes a civil suit inadequate as a means of remedy for the crime victims is that "not only does the state fail to help crime victims financially" but the state, in addition, makes it difficult for victims to obtain compensation by sentencing the criminal offender or incarcerating them. The imprisonment of the offenders makes it difficult for the criminals to comply with the court's decision with respect to compensation that might be given against them.⁹⁹

Another problem inherent in civil claims of compensation for the crime victims and, perhaps, for the community as well, according to Muller is that:

it has for quite some time been an inadequacy of most legal systems that the victims of tort in their proceeding against the tortfeasor much of the time is not in any case entitled to depend on the probative estimation of the tortfeasor's earlier criminal conviction for a similar conduct, so the victims of crime incur full cost of an entire civil suit, unless victims can sue in *forma pauperis*, or with

⁹⁶ Brooks (n 87 above) 480.

⁹⁷ Quizlet 'Victimology' <http://www.quizlet.com/12965083/victimology-chapter-6-flash-cards/>. (Accessed 31 July 2017).

⁹⁸ Watson (n 95 above) 685.

⁹⁹ A Linden, *The report of the Osgoode Hall study on compensation for victims of crime* (1968) 5.

legitimate guide, in which case the entire community bears a pointless and unnecessary cost.¹⁰⁰

Additionally, "the victims of crime go through the experience of nervousness of two procedures: the criminal case, where he shows up as a witness, yet the fine will go to the State, and a civil case, to which he should take his case for harms or damages if he wants to make claims."¹⁰¹

Beyond the foregoing, if the criminals had funds, the chances are that they would have exhausted all the funds in pursuit of their own defence in the proceedings with the state. The truth is that, in reality, the chances of individual victims of crime to receive compensation from the offenders are slim.¹⁰² It is submitted, therefore, that the administration or the state helps the victims of criminal conduct or the victims endure the outcomes of the crime alone because remedies in civil action are grossly inadequate,¹⁰³ making remedy in civil actions ineffective.¹⁰⁴

8.3 The state pays more attention and relief to the criminal to the exclusion of the crime victims

Many reasons have been adduced in support of compensation programmes according to the justification provided above. First of such reasons is that there is a public consciousness of the conventional criminal practices which demonstrates the idea of tax payers' funds being spent in different areas of penal programmes. This school of thought is principally seeking what it perceives to be a balancing of concern shown by society or the state to the offenders and to the crime victims as well.¹⁰⁵

¹⁰⁰ J Mueller, 'Compensation for victims of criminal violence: a round table' (1959) 8 *Journal of Public Law* 218.

¹⁰¹ M Fry, *Arms of the law* (1951) 125.

¹⁰² Brooks (n 87 above) 481.

¹⁰³ Wisconsin 'Legislative Reference Bureau Compensation for victims' (1966) 7.

¹⁰⁴ Brooks (n 87 above) 480.

¹⁰⁵ Brooks (n 87 above) 481.

As a result of what has been said, it is argued that compensation for victims of crime forms part of the rehabilitation and other services provided for the criminal offenders.¹⁰⁶ Supporting the forgoing, Mansfield provided a better understanding in paying compensation for persons injured by certain criminal acts in the following statement: "this is a period for Congress to show to the general population of America that the Congress is interested in the issues and suffering of victims of criminal victimization just as the Congress also protects rights of accused criminals."¹⁰⁷

It is interesting that support for crime victims' compensation programmes has for a long time been generated by the need to improve the state of penal reform. This is why it has been opined in relation to compensation to crime victims that the general public will not be prepared to accept that the punishment for criminals is adequate for their crimes until the point when the public is satisfied that victims of crime are receiving legitimate and proper care. In other words, there should be adequate constitutional coverage for crime victims in the same manner as there is for criminal offenders. We should jettison the idea that correctional reformers are putting victims before the offenders.¹⁰⁸

8.4 The state's moral obligation to aid the innocent victims

The question being asked with regards to this justification is: Does the state have a moral obligation to aid a person who was not a party or a person who did not contribute to the commission of the violent crime? Many people have responded in the affirmative to this question. According to this school of thought, compensation as a need comes from the fact that wrongs are done to victims of crime and that state compensation to the victims is the main therapeutic or curative right.¹⁰⁹

¹⁰⁶ Governor Rockefeller 'Committee on draft recommendation on compensation to crime victims' (1966) *New York Times* 36.

¹⁰⁷ The 117th United States of America Congress session (1971) 2633.

¹⁰⁸ L Longford, 'Justice Society Committee' (1970) *The Times London* 8.

¹⁰⁹ Brooks (n 87 above) 477.

Accordingly, Longford, in support of a compensatory programme for Britain, stated that the state should acknowledge or accept obligation regarding compensation for victims of crime. The community should give some compensation to crime victims where it is not provided by any means at all, or, at any rate, to give generous compensation to victims of crime.¹¹⁰

Those in support of this moral obligation for the most part seek to keep away from getting or receiving compensation from the state to victims of crime made a constitutional or a legal right which victims can claim.¹¹¹ It is submitted, therefore, that in as much as compensation is a moral right and obligation, the view is that it remains something that the state ought do but not something that the state has to do or should do. It is noted that the Nigerian Constitution does not confer jurisdiction on Nigerian courts to entertain matters under the Fundamental Objectives and Directive Principles of State Policy as provided in section 6(6)(c).

In consequence of the foregoing, Britain's compensation programme for victims of crime is done on a moral basis and not on a legal basis.¹¹² This is an indication that the British society or government perceives that it has a moral responsibility towards its subjects in compensating victims. It suffices to identify that the victim has a need of any form of assistance, and it is then the state's moral obligation to ensure that victims of crime are compensated. Additionally, one, therefore, concludes that a moral obligation is an adequate foundation upon which a state-financed compensation programme is built.¹¹³

8.5 In a democracy no theoretical justification of absolute rightness is necessary to adopt a compensation programme

Arguments for this justification for compensation to crime victims believe that efforts are being made to achieve something which is beneficial to the public interest.

¹¹⁰ Earl of Longford 'The 245th Parliamentary Debates' (1962) *House of Lords* 247.

¹¹¹ Nigerian Constitution sec 6(6)(c): "The judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provided by this Constitution extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution."

¹¹² Brooks (n 87 above) 484.

¹¹³ Brooks (n 87 above) 485.

Generally, the agreement is that programmes designed for the compensation of crime victims will be in the public interest. The questions being asked, however, are: Firstly, is it enough justification to institute crime victims' compensation only on the basis that it will benefit the public? Secondly, will such programmes not demand solid theoretical support to justify them as being comprehensively adequate and necessary? The supporters of compensation programmes have responded in the negative to the above questions.

They have reasoned it is enough that a need has been identified and that the state has the means to satisfy the need.¹¹⁴ The argument continued by stating that, in the state, various national and societal needs will certainly have to contend with the various societal needs in the political processes from which financial resources are derived. Obviously, not all of these needs will be satisfied or supplied. The reason for this is that there are forces compelling the state to act in a certain way and at a certain time, and what the state does finally depends on the competition and success of these competing forces. What comes out of the national or societal competition is the public interest of the open market. The test for determining the success or otherwise of the competition is procedural not substantive.¹¹⁵

Cross in support of this justification for a crime victims' compensation programme has said:

Speaking for myself I am content to do without theoretical justifications for compensation of victims of violence. After all, these are questions of public welfare and they should be determined by public opinion. Human needs account for the most of the Welfare State, and its evolution has nothing to do with tortuous lines of reasoning such as those I have mentioned. If there is a widely recognized hardship, and if that hardship can be cheaply remedied by state compensation, I should have thought that the case for such

¹¹⁴ See chapter seven 4.2-4.5.

¹¹⁵ N Powell, *Responsible public bureaucracy in the United States* (1976) 153.

a remedy was made out, provided the practical difficulties are not too great.¹¹⁶

Social welfare services, including roads, national defence, health services, water supply, education, postal services, and waste disposal are the responsibility of the public sector, and the state provides these services through its departments and agencies.¹¹⁷ In Nigeria, the local, state and federal governments are involved in the provision and regulation of these welfare services.¹¹⁸ For example, the Nigerian government spent an estimated N6 Billion on 200,000 beneficiaries of the N-Power scheme, adding that it intends to spend an additional N18 billion on 300,000 beneficiaries that will be registered in May. So it can be safely argued and submitted that Nigeria is a welfare state.¹¹⁹

As a sequel to Rupert's reasoning above, it can be said that the duty and responsibility of providing social welfare service lies with the Nigerian state¹²⁰ because the provision of social welfare services is capital intensive making it difficult for the private sectors to handle if the required national development is to be realized.¹²¹

In addition to what has been said, when it comes to crime victims' compensation, the issue is ignored or overlooked on the basis of the argument that the prosecution and conviction of the criminal offenders suffices for redress for crime victims' injury.¹²² Proponents of this position forget the fact that crime brings life-changing

¹¹⁶ R Cross, 'Compensating victims of violence' (1963) 11(477) *The Listener* 815-817.

¹¹⁷ See chapter seven section 6.

¹¹⁸ E Johnson, K Boniface & D Umoh 'Public interest in social welfare services provision in Nigeria: a critical analysis' (2013) 2(3) *Asian Journal of Social Sciences & Humanities* 19.

¹¹⁹ D Olatunji 'FG budgets additional N18bn for 300,000 unemployed youths' <http://www.vanguardngr.com> > News. (Accessed 4 August 2017).

¹²⁰ EJ Kanu, & BD Umoh 'Public interest in social welfare services provision in Nigeria: a critical analysis' (2013) 2(3) *Asian Journal of Social Sciences & Humanities* 1.

¹²¹ S Adejumobi, 'Structural adjustment privatization policy and infrastructural services in Africa with examples for Nigeria and Ghana' (1996) a research report submitted to the Council for the Development of Social Science Research in Africa (CODESRIA) Dakar Senegal on the Project Africa Perspectives on the Structural Adjustment Programme.

¹²² F Qudder, 'Crime victims' right to compensation in Bangladesh: a comparative approach' (2015) 11 *European Scientific Journal* 310.

effects on the crime victims.¹²³ Criminal victimization is a frightening experience as crime victims hardly ever overcome the suffering. The impact of victimization includes physical, emotional and psychological injuries to the crime victims.¹²⁴ Victimization also causes financial¹²⁵ and social injury to the victimized.¹²⁶

Furthermore, crime victims may suffer serious bodily harm and permanent disability owing to physical injury which may not heal entirely, resulting in crime victims leading miserable lives.¹²⁷ Sometimes, victimization also results in the death of the crime victims;¹²⁸ this is an irreparable loss which no amount of financial compensation can redeem.¹²⁹

8.6 Compensation programmes/schemes will bring a huge public awareness of the costs of crime and attract general public supports for law enforcement agencies to minimize these costs

Although some schools of thought do not particularly see the reason why the state should be obligated to consider crime victims based on the foregoing justifications, they nevertheless support compensation programmes. Accordingly, the support given by this school of thought depends upon practical outcomes anticipated to accrue from a compensation programme. Additionally, they perceive a compensation programme that will serve as a prelude to an expanded victim programme. To this end, compensation programmes which assist or aid crime victims are supported because of the need to open the door to broad-fronted attacks on the root causes of crime with a view to abolishing the anti-social attitudes that are believed to encourage criminal conduct.

¹²³ Massachusetts Office for Victim Assistance 'In the aftermath of crime: a guide to victim rights and services in Massachusetts' <http://www.mass.gov/mova/docs/aftermath-of-crime.pdf>. (Accessed 13 June 2017).

¹²⁴ Canada Resource Centre for Victims of Crime 'The impact of victimization' <https://www.crcvc.ca/docs/victimization.pdf>. (Accessed 13 June 2017).

¹²⁵ E Wasserman, & CA Ellis 'Impact of crime on victims' (2010) 1.

¹²⁶ PLU Voices of Against Violence 'Effects of victimization' <https://www.plu.edu/gender-equity/wp-content/uploads/.../effects-victimization1.pdf>. (Accessed 13 June 2017).

¹²⁷ International Criminal Court 'Elements of crimes' (2011) 2. <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD.../ElementsOfCrimesEng.pdf>. (Accessed 13 June 2017).

¹²⁸ MA Young, 'Victim assistance: frontiers and fundamentals (2012) 4.

¹²⁹ Qudder (n 122 above) 311.

In addition to what has been said above, it is believed that one of the ways to attract public support for major reforms meant to eradicate the fundamental causes of crime is to make the public aware of the costs of crime and to have the public share those costs.¹³⁰ This is against the backdrop of the erroneous belief that crime can be eradicated by emphasizing law enforcement, conviction, and punishment. It is argued therefore that the most positive approach is to emphasize the prevention of crime by attacking the social maladies that give rise to crime. It is submitted that it is in the state's interest to give its attention and its financial support to erase social blights that bear civil harm on the society.

8.7 Compensation programmes/schemes will be advantageous and benefit the police because their attention will be drawn to the commission of crime

In a country like Nigeria, there is no denying the fact that the task of the police is made more difficult by lack of public cooperation due to the attitude of the police towards the citizens and the manner in which the Nigeria police unleash terror on the masses at the slightest opportunity.¹³¹ This is the reason why members of the Nigerian public who are sensitive to the needs of the Nigerian police for cooperation from the public, have lent their voices and support to the Nigeria Victim Compensation Scheme (NVCS). The truth of the matter is that the NVCS when established will foster a better working relationship between the Nigerian public and the police because one of possible by-products of a compensation scheme is better co-operation with law enforcement agents in arresting the criminal offenders.

According to Floyd, law enforcement agents can be assisted by an early report of the crime and not only is an early report helpful, it is essential that there be a report¹³² which of course is one of the eligibility conditions for the award of compensation.¹³³ In many instances there is never a reporting of major or minor crimes in Nigeria as

¹³⁰ Francis, & Johnson *Some Theories of Penology Sociology of Crime* (1969) 257.

¹³¹ AJ Olusegun, 'Public perception of the police and crime prevention in Nigeria' (2014) 7(3) *International Journal of Criminology and Sociological Theory* 2.

¹³² GE Floyd, 'Victim compensation plans' (1969) 55 *American Bar Association Journal* 160

¹³³ See chapter seven section 4.1.

the nation is presently found in the web of crime dilemma.¹³⁴ Notably, the failure to report crimes to the police becomes serious when it becomes the rule rather than the exception. This is why it is argued that the manner in which a compensation programme will remedy this situation is that compensation of a victim will be tied closely by means of legislation to the victim's cooperation in reporting the crime as soon as it is practically possible thereby contributing to the fullest extent in arriving at a solution to criminal and delinquent behaviour in the society.¹³⁵

It is submitted that whatever position one takes, it is advantageous to the state to consider the needs of crime victims as well as the needs of the state, particularly in criminal prosecutions, if the state desires the cooperation of the victim. Therefore, for the reasons adduced above, programmes to compensate crime victims would seem to favour the development of the public cooperation with state institutions in the fight against crime.

8.8 Compensation programmes/schemes strengthen democracy by restoring victims of violent crime to the position they were before the crime

There are grievous consequences of societal neglect of its members who suffered crimes of violence. Those concerned about good governance and democracy fear that a societal indifference to the individual's pain and suffering can be damaging.¹³⁶ It may not be clearly evident as it stands now in Nigeria, but societal defaults are collectively undermining loss of public confidence in Nigeria's public institutions. It is submitted that good operational government ethics will reduce apathy to democratic participation and restore the people's confidence in government.¹³⁷ In this respect, compensation programmes to aid victims of crime will be a constructive effort of the Nigerian government to demonstrate its responsibility and political commitments to

¹³⁴ U Nwankwo, & J Okolie-Osemene *A Study Of Crime Reporting In Nigeria* (2016) 2.

¹³⁵ Brooks (n 87 above) 495.

¹³⁶ Brooks (n 87 above) 20.

¹³⁷ KC Ani, Casimir EM Izueke & IF Nzekw 'Public sector and corruption in Nigeria: an ethical and institutional framework of analysis' (2014) 4 *Open Journal of Philosophy* 219.

its citizens. As such, these programmes are a complement to other similarly motivated welfare efforts.¹³⁸

The idea of making crime victims whole again or restoring them to the position they were before the victimization is an object of public good.¹³⁹ Accordingly, the concept of public good has its advantage, in that; a crime victim compensation plan has the psychological effect on the community by the very fact that there is such a scheme in existence,¹⁴⁰ and creation of such a compensation programme stands as an expression of general interest in the well-being of the individual.¹⁴¹ The state needs to be notified of crime and to that extent, needs the support of the public, it is submitted therefore, that compensation to victims of crime will make a contribution toward the realisation of these needs. In the long run, a symbiotic or a give-and-take relationship is established between the individual and the state.¹⁴²

In support of the give-and-take relationship between the state and the citizens, Morris noted that we:

Have to recognize that crime is endemic in our society and that it is only proper for a society so organized that crime is endemic to share the burden which is by chance imposed on particular, unfortunate individuals. The analogies with workmen's compensation and with compulsory third-party motor vehicle insurance are of some relevance; perhaps a closer analogue is the extensive medical and social welfare provisions of the Veterans Administration legislation by which the community shares in the loss to the individual who has suffered for us from the external aggression of war. We should likewise share the loss to those who suffer for us from the internal aggression of crimes of personal violence.¹⁴³

¹³⁸ See chapter seven section 6.

¹³⁹ J Bentham, *Theory of Legislation* (1904) 317.

¹⁴⁰ Cameron 'Compensation for victims of crime: the New Zealand experiment' (1963) 12 *Journal of Public Law* 367.

¹⁴¹ Geis *State compensation to victims of violent crime United States Task Force on assessment: the President's Commission on law enforcement and administration of justice* (1967) 157.

¹⁴² Brooks (n 87 above) 21.

¹⁴³ Hearings on compensation of victims of crime before Senate Committee on the District of Columbia 91st Congress 1st Session (1969) 1.

Notwithstanding the causes adduced to the increase in crime, it seems plausible that the increase arises from some kind of state failure in the context of Nigerian values and expectations.¹⁴⁴ To this end, it can be argued that society's lack of interest in crime victims is an indication of an unfortunate situation which compounds society's lack of interest in the conditions that resulted to crime.¹⁴⁵ As a result of what has been said, some have reasoned that the state would be defaulting its felt obligation to establish and maintain a comprehensive system of justice should it fail to include adequate provision for the victim of crime, on this premise Carter concluded that:

no-one who is called to deal with those cases in which a blameless victim has been seriously disabled, sometimes for life, or with those cases in which the elderly and infirm have suffered injury and shock, can fail to feel deeply what a worthwhile part is played in the full administration of justice by the power to award compensation.¹⁴⁶

The above justifications therefore are the pros that are put forward in considering the concerns with the creation of criminal injury compensation programmes. It is submitted that when such scheme is established in Nigeria and positions are taken by the Nigerian government, it will in no small measure assist in alleviating the plights of crime victims in Nigeria and the proposed Bill to create criminal injury compensation schemes and provide compensation to crime victims¹⁴⁷ is considered by the government of Nigeria as practiced in other jurisdictions of the world.¹⁴⁸

It is noted that 18 years of democratic leadership has not brought a major change in the criminal justice system in Nigeria.¹⁴⁹ Except for Lagos State, no other state in Nigeria has comprehensively reformed its criminal justice laws.¹⁵⁰ Relevant to this study is the Criminal Justice (Victims' Remedies Bill) 2011. The Bill has been pending

¹⁴⁴ CJ Kinnan, DB Gordon, MD DeLong, DW Jaquish & RS McAllum 'Failed state 2030: Nigeria—a case study' (2011) *Center for Strategy and Technology* 9.

¹⁴⁵ Childres 'Compensation for criminally inflicted personal injury' (1964) 39 *New York University Law Review* 444.

¹⁴⁶ *Criminal Injuries Compensation Board First Report CMND no 2782* (1965) 7.

¹⁴⁷ Criminal Justice (Victim's Remedies) Bill 2011.

¹⁴⁸ See chapter six section 2.

¹⁴⁹ T Osasona 'Time to reform Nigeria's criminal justice system' (2015) 3(2) *Journal of Law and Criminal Justice* 75.

¹⁵⁰ Osasona 75.

before the Nigeria legislature for six years without further consideration. The proposed Bill has 74 sections. Sections 25 and 26 call for a brief examination. Section 25 is on Restitution or compensation in lieu of, or in addition to penalty while on the other hand, section 26 provides that Restitution or compensation may be ordered notwithstanding a discharge or acquittal. What however is not clear about both provisions is that, when the Bill is finally given life, whose duty is it to pay compensation to the crime victims, the state or the criminal offenders?

Restitution and compensation are alike in that they both have as an objective the reestablishment of the victim of crime to a state he enjoyed prior to becoming a victim of crime. They differ primarily in the allocation of responsibility for achieving this re-establishment of the victim.

Restitution differs in that it allocates the responsibility to the offender. The restoration or reparation of the victim's position and rights that were damaged or destroyed by the criminal attack, in effect, a part of the offender's sentence. It is a claim for restitutive action to be taken by the criminal and is, in essence, penal in character and thus represents a correctional goal in a criminal process. Finally, the procedure of compensation calls for application by the victim for payment by society; restitution calls for the decision of a criminal court and payment or action by the offender.¹⁵¹

The emphasis of restitution is thus markedly different from compensation in that it stresses correctional goals probably more than making the victim whole again. Compensation is viewed by those who favor restitution as offering fewer total societal benefits than restitution. They also realise that society's concern and sympathy lies more with the victim. This concern and sympathy for the victim, if met through a compensation programme, could well neutralise effective efforts to rehabilitate the offender. Restitution is thus viewed more as a total curative package than compensation. It seeks to make the victim whole again through state-enforced efforts on the part of the offender.

¹⁵¹ S Schafer, Compensation and restitution to victims of crime 2nd ed. (1970) X.

As might be expected, those who favor restitution and its correctional emphasis are pretty much forced to become opponents of compensation since compensation does not focus its interest upon the offender. In considering the pros of restitution and compensation, it has been noted:

A rather more subtle argument against victim-compensation is that it intervenes between the offender and the victim, and that a sound policy of criminal rehabilitation would demand that the criminal and not the state should bear the burden of restoring the victim as best as possible to the condition he was in prior to the criminal event. Persons holding this view usually demand vastly increased prison vocational programs, with inmates receiving wages equivalent to those prevailing in regular society. From these wages they would pay for their room and board, and would pay for all other services associated with their incarceration. They could also furnish support for their dependents on the outside. In addition, those expenses reasonably related to their criminal behavior would be deducted from their earnings and forwarded to the victim for his use. In this way, it is believed, the offender would come to a better and deeper understanding of the consequences of his behavior as these have been visited upon other human beings.¹⁵²

The goals of those who favor restitution are certainly laudable. There seems to be some doubt, however, whether these goals could or would be realised through a programme of restitution. The detractors suggest that the contentions made by those who favor restitution depend upon a lot of things happening that are not likely to happen and even if they should happen are not likely to produce the state of affairs that would yield the results desired.¹⁵³

The potential ability of a restitution programme to meet the needs of the offenders and the victims is in addition affected by other factors. One of these factors is the attitude of the offenders toward restitution. It has been suggested that "parolees who have served a part of their sentence in confinement are very resistant to paying restitution; they make the same mistake as the rest of society does by inferring the offense was against the collective whole and not against the individual victim.

¹⁵² J Brooks 'The case for creating compensation programs to aid victims of violent crimes' (1976) 11(4) *Tulsa Law Review* 16.

¹⁵³ Smodish, 'But what about the victim? the forsaken man in American criminal law' (1969) 1(5) *University of Florida Law Review* 22.

Convicts often speak of paying 'their debt to society.'"¹⁵⁴ Whether this attitude, which is a reflection of society and its attitudes, can be changed so that restitution might work or be changed through participating in restitution programme seems questionable. But there are other difficulties that make the likelihood of achieving a successful restitution programme doubtful. These include the realities of the work schemes available to prisoners and the obstacles that lie in the path of being able to expand these schemes so that restitution would be possible.¹⁵⁵ These difficulties and the almost insuperable problems in resolving them have caused some of those who were at first attached to restitution to abandon it to support compensation.¹⁵⁶

There are those who still champion restitution as representing a more desirable alternative than compensation, but they do not constitute the mainstream of those who now support efforts to restore the victim of crime. They also recognise the drift of former support away from restitution programmes toward compensation plans.¹⁵⁷ But the attachment to restitution has not altogether been forgotten. Restitution retains many supporters and is occasionally embraced unexpectedly. But the fact remains that most criminals who inflict injury upon their victims have no funds and reparation, or restitution by the criminal is made virtually impossible by the type of work programmes and wages afforded the criminal in the usual prison setting. Work-release programmes that would enable the prisoner to earn an income equivalent to what he could earn if he were not a prisoner are not yet a reality in many instances. The above therefore are the propositions and/or justifications that have thus far been put forward in the considerations and deliberations concerned with the creation of criminal injury compensation programmes.

¹⁵⁴ Schultz, 'The violated: a proposal to compensate victims of violent crime' (1965) 10 *Saint Louis University Law Journal* 238-244.

¹⁵⁵ As above 245.

¹⁵⁶ M Fry, 'Justice for victims' (1957) *The Observer* 8.

¹⁵⁷ Schafer (n 22) 113.

When they are presented in the future, and claims are made and positions are taken, the various contentions of the partisans considered in the study will hopefully assist in their review and appraisal. Prospectively, legislation to create criminal injury compensation programmes is being considered or will be considered by the Federal Government of Nigeria either now or in the future.

It is hoped that, the practices of other jurisdictions where the relevant laws place obligations on the states to pay compensation to those victimised by the criminal conduct of another will be provided in the Nigerian Criminal Justice (Victims Remedies) Bill 2011.

Additionally, an effective criminal justice system is fundamental to democratic governance and the rule of law. Democracy functions as a system with formal and informal institutional interrelated mechanisms serving the purpose of translating social preferences into public policies. Criminal justice, because it addresses behavioral issues, must be dynamic, proactive and culturally relevant. This is the major argument in favour of the Criminal Justice Victims Remedies Bill 2011. As a result of what has been said, it becomes very important for an active collaboration of all tiers and organs of governments in Nigeria in order to formulate a coherent and compensatory policy that countenances the input of all sectors in the criminal justice administration as it affects crime victims.

Many crime victims are unable to function as they did before the victimization, and they are always afraid when they remember the horrible memories of the crime. Crime victims bear the costs of accessing health and medical services and often spend money to secure professional counselling so as to be able to cope with the emotional impact of the crime.¹⁵⁸

¹⁵⁸ Wasserman & Ellis (n 125 above) 1.

9. Crime victims' rights movement

The idea and genesis of state compensation to crime victims as noted in the study was begun by Fry.¹⁵⁹ But the crime victim's right movement (CVRM) as a movement emerged and a modern concept as a response to World War II atrocities.¹⁶⁰ The CVRM has led several common law jurisdictions to include victim-assistance and a role for victims in their criminal justice systems.¹⁶¹ The CVRM in the United States emerged out of the 1960s with the aim of throwing more light on a victim's experiences with a view to advocating an enhancement of the role and rights of crime victims during the criminal justice process. The movement has gained momentum for over forty years, with successes at both the national and international levels.¹⁶² As a result of this development, the United Nations adopted a resolution which established principles to protect victims' rights and extended those principles to the victims of international crimes.¹⁶³

The early movement of victims' rights gave rise to the commencement of rape crisis centres and domestic violence shelters in the USA that led to the formation of national organisations.¹⁶⁴ Pilot victim assistance programmes were established in the criminal justice system, and by the 1980s the CVRM had organisations, agencies, and institutions joining it. The CVRM successfully advocated a legal framework of protections and bills of rights for victims in the criminal justice system in America. Although these positions were heavily criticised on the grounds that a greater role for victims in the justice system would interfere with prosecutorial discretion and impair defendants' rights, the CVRM has been largely successful in instituting many

¹⁵⁹ See chapter three section 3.

¹⁶⁰ M Boland, 'Crime victims' rights movement' <http://www.oxfordbibliographies.com/view/document/obo.../obo-9780195396607-0164.x...> (Accessed 4 August 2017).

¹⁶¹ 'Information for Victims of Crime in the United Kingdom' http://www.photos.state.gov/libraries/164203/cons-ac/victims_of_crime2.pdf. Accessed 4 August 2017).

¹⁶² CP Trumbull, IV 'The victims of victim participation in international criminal proceedings' (2008) 29(4) *Michigan Journal of International Law* 780-781.

¹⁶³ See chapter five section 5.

¹⁶⁴ Boland (n 151 above)

legal reforms, and thousands of laws now exist to protect victims' interests generally.¹⁶⁵

Besides the foregoing, the victims' movement was given support from the efforts of victims themselves and the movement gave rise to the neglected issues of criminal violence against women; rape survivors and assaulted victims, who were the ones who founded programmes and shelters for similar victims.¹⁶⁶

10. Conclusions

This chapter has laid the foundation for the justifications for crime victim's compensation. The theories and justifications for compensating crime victims have been made clear and explained. The consequences of victimization have emphasized the urgent need not only to prevent victimization but also to protect the victims and provide them with all kinds of assistance during and after the criminal justice process. Contrary to the traditional criminal justice approach of treating crime victims, the study has identified and recognized that protecting crime victims is one form of compensation to them.¹⁶⁷ The impact of crime on crime victims cannot be measured or healed in terms of monetary compensation but, at least, it can repair the financial loss suffered by the crime victims.

¹⁶⁵ 1974 Child Abuse Prevention and Treatment Act 1980; Parental Kidnapping Prevention Act 1982; Victim and Witness Protection Act 1982; Missing Children's Act 1984; Victims of Crime Act 1984; Justice Assistance Act 1984; Missing Children's Assistance Act 1984; Family Violence Prevention and Services Act 1985; Children's Justice Act 1988; Drunk Driving Prevention Act 1990; Hate Crime Statistics Act 1990; Victims of Child Abuse Act 1990; Victims' Rights and Restitution Act 1990; National Child Search Assistance Act 1992; Battered Women's Testimony Act 1993; Child Sexual Abuse Registry Act 1994; Violent Crime Control and Law Enforcement Act 1994; Violence against Women Act 1996; Community Notification Act ("Megan's Law") 1996; Antiterrorism and Effective Death Penalty Act 1996; Mandatory Victims' Restitution Act 1997; Victims' Rights Clarification Act 1998; Crime Victims with Disabilities Awareness Act 1998; Identity Theft and Deterrence Act 2000; Trafficking Victims Protection Act 2001; Air Transportation Safety and System Stabilization Act (established September 11 Victim Compensation Fund) 2003; PROTECT Act ("Amber Alert" law) 2003; Prison Rape Elimination Act 2003; Fair and Accurate Credit Transactions Act 2004; Justice for All Act including Title I The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act 2006; Adam Walsh Child Protection and Safety Act 2010 Tribal Law and Order Act.

¹⁶⁶ MA Young, 'A history of the victim's movement in the United State' (2006) 131st *International Training Course Visiting Experts' Papers* 72.

¹⁶⁷ See chapter five section 6.

All the theories analysed above are directed towards peace-making among the crime victims, the criminal offenders and the state. The peace-making could come in the form of compensation to crime victims either from the state or the offenders which is the underlying idea being advocated in this research. Compensatory justice is the fairness that one obtains when an agent adequately compensates a party whom he or she has injured for the losses that party has suffered.¹⁶⁸

Compensatory justice to those harmed by the criminal act of another suggests that a peaceful society can be achieved if adequate consideration is accorded to those who have suffered as result of crime. Although it is not humanly possible to eliminate crime in society, it can, to a manageable extent, be reduced to its barest minimum. In the light of the above, Quinney stated that, "to take out wrongdoing, to end the developments and propagation of a presence that makes wrongdoing conceivable, requires a change of our person. We as people must make peace in the event that we are to live in a world free of wrongdoing, in a world of peace."¹⁶⁹

It is submitted that making peace in criminal justice systems has the propensity to minimize recidivism and the breaking of the law. By criminal justice is meant a process where crime victims view or perceive the system as considerate and supportive of their plights; while, on the other hand, the offenders experience the sanctioning agent as legitimate.¹⁷⁰ In addition, the criminals will have positive and strong connections with the state as the authority that penalizes them for criminal behaviour. Besides this, the offenders will accept their shame and become proud of their solidarity within a well behaved and law-abiding society.

Sykes and Matza argued that criminal offenders in real sense experience guilt for their harmful and criminal behaviours, and that it is only by denying the harms the offenders have caused, by using the neutralization theory techniques as discussed earlier,¹⁷¹ that offenders can keep away from the sentiments of blame.¹⁷² In other

¹⁶⁸ M Velasquez, 'Compensatory justice' (2015) 2 *Wiley Encyclopedia of Management* 1.

¹⁶⁹ R Quinney 'Peace-making criminology' (2003) in FT Cullen & R Agnew (eds) *Criminological theory past to present* 11.

¹⁷⁰ LW Sherman, 'Defiance deterrence and irrelevance: a theory of the criminal sanction' (1993) 30(4) *Journal of Research in Crime and Delinquency* 445.

¹⁷¹ See chapter two section 2.3.

words, if the techniques of neutralization are employed, criminal offenders can be effectively prevented from settling on choices to bring about or cause mischief and harm to others.

Since offenders cannot deny the damage and harm caused by criminal conduct, they know, or are aware of, the crime victims' suffering occasioned by their behaviour. The guilt brought upon the offenders by the recognition of the crime victims' suffering is likely to create compassion in the offenders.

The theory of restorative and restitutionary justice is about making relationships right.¹⁷³ Braithwaite's theory of re-integrative shaming is directed towards peace-making.¹⁷⁴ The re-integrative shaming theory is a peaceful reaction to criminal behaviour or harmful conduct of the offenders. The theory has the capacity of effectively transforming the connection between crime victims and criminal offenders into a cordial relationship.

In addition, the re-integrative shaming theory creates an awareness of the harm done to another by one's actions and, therefore, it demonstrates compassion with forgiveness. In the process, the criminal offenders accept the shame with the support of others. This is an indication that the criminal offenders are aware of the harm that they have caused.

When the criminal offenders accept the shame and become aware of the harm they have caused, the result is justice. It is a type of justice that restores both crime victims and offenders, which, in the final analysis makes the relationship between the crime victims and the criminal offender's right. It is justice which results in respect, acceptance, forgiveness and compassion.

Peace results in justice. A good social life for the crime victims, the offenders, and the state, premised on equity, equality, with the elimination of criminal violence of all types results in a peaceful existence. In other words, it is argued that we need to create an equitable and just state or society founded on equal social arrangements,

¹⁷² GM Sykes, & D Matza 'Techniques of neutralization: a theory of delinquency' (1957) 22 *American Sociological Review* 1-8.

¹⁷³ See chapter two section 2.4.

¹⁷⁴ See chapter two section 2.2.

where there are opportunities for all. It is into these societies that the criminal offenders who caused harm to others are restored and rehabilitated. The truth of the matter is that, in one way or another, the various theories examined above conjunctively work to compensate and heal the crime victims, while, at the same time, re-integrating, restoring and rehabilitating the criminal offenders.

Each theory discussed reveals the underlying idea of state-funded compensation. The theories have their foundation in criminal justice compensatory demands for crime victims. Besides, all the theories, particularly the social contract and welfare theory, represent a new focus for the justice system in Nigeria, a new form of justice, a justice built on state-funded compensation to crime victims, while, at the same time, caring for the offenders. The chapter has laid the foundation for the next chapter on the emergence and development of state-funded crime victim's compensation.

Chapter Three:

The emergence and development of state-funded crime victims' compensation

1. Introduction

Preceding the modern interest in crime victims' compensation is a wealth of literature that emphasized the cross-cultural and religious origins of compensating victims of crime.¹ The payment of money or other compensation to crime victims by the criminal offenders or by the offender's family was the foundation of primitive and early Western law.² Consequent on the foregoing, the plight of victims of crime, after centuries of neglect, has started to receive some form of concern from state authorities and from the criminal justice systems.³

Public compensation to crime victims from the past is noteworthy. Using the social contract theory,⁴ this chapter analyses the historical evolution of crime victims' compensation. The chapter further considers some arguments for public compensation to persons harmed by the criminal act of another and concludes with some reflections, a short summary and insights into the following chapter. The chapter also considers the Western origin of state compensation and the Nigerian customary law on compensation. It is noted that Nigeria inherited its legal system from Britain through the common law, the received English law and the Statute of General Application.⁵ To this end, Nigeria's state compensation scheme being advocated in the thesis will, to a large extent, be influenced by the Western legal framework on state compensation.

¹ LJ Friedsam, 'Legislative assistance to victims of crime: the Florida Crimes Compensation Act' (1984) 11 *Florida State University Law Review* 860.

² S Schafer, 'Victim compensation and responsibility' (1970) 43 *Southern California Law Review* 55.

³ S Schafer, 'The victim and his criminal' (1968) in WF McDonald (ed) *Criminal Justice And The Victim* 56.

⁴ See chapter two section 2.

⁵ E Ojomo, 'Sources of law: the application of English law in Nigeria' (2014) <http://www.yararena.org> (Accessed July 16 2017).

2. Historical evolution of compensation by the state

In the early stages of human development, social control, restitution, reparation, compensation and revenge were handled by individuals who decided to be judges in their own cause,⁶ and in effect the individuals made laws and carried out punishment in the form of revenge.⁷ From the foregoing, it is submitted that one of the earliest means or forms of social control⁸ of crime was through the crime victims' family's retaliation⁹ and the restitution made in form of compensation by the criminals to the victims of crime.

In addition to what has been said above, the emergence and development of crime victims' compensation was founded on policies in time past as laid down by leaders in the early evolution of society and mankind during the Babylonian period of over four thousand years ago.¹⁰ The idea of giving compensation to victims of crime is found in the opening section of the Code of Hammurabi of ancient Babylon.¹¹

Indemnification of the victim by the offender or his family was a foundation of primitive and early western law;¹² but the onus of paying such compensation to the crime victims fell on the state or community if the criminal escaped and, therefore, was unable to pay the compensation.¹³ For this reason, crime victims sought redress through civil action if the state or society failed to provide compensation for the crime victims.¹⁴

⁶ AR Roberts, *Helping crime victims* (1990) 23.

⁷ PA Roger, 'The need for compensating victims of violent crimes' unpublished master thesis Western Michigan University (1983) 3.

⁸Crime and social control' <https://mymission.lamission.edu/userdata/.../Crime%20and%20Social%20Control.pdf>. (Accessed 23 October 2016).

⁹ S Derene, S Walker & J Stein 'History of crime victims' movement in the United States' (2007) *National victim assistance academy* 5.

¹⁰ RE Meiners, *Victim compensation* (1978) 7.

¹¹ CH Walter Johns 'Babylonian Law The Code of Hammurabi' "If a man stole either an ox a sheep or an ass or a pig or a goat if it be from a god or a palace he shall pay thirty times its value if it be from a freeman or private citizen he shall pay ten times its value if the thief have nothing wherewith to pay he shall be put to death. 11th edition of the Encyclopedia Britannica, 1910-1911.

¹² S Schafer 'Victim compensation and responsibility' (1970) 43 *Southern California Law Review* 55.

¹³ Derene, Walker & Stein (n 9 above) 45.

¹⁴ Derene, Walker & Stein (n 9 above) 5.

Indemnification of the victim by the offender or his family was a foundation of primitive and early western law

In the old Jewish law, when someone was caught or was found guilty of committing crime, the person was obliged to compensate the crime victims or any other person harmed by his crime.¹⁵ In other words, there was the possibility of paying compensation to crime victims as an alternative to the implementation of the rule of an eye for an eye. The amount or quantum of compensation depended on the severity of the crime or injury. The compensation was designed to cover pain and suffering,¹⁶ and poor people were entitled to the same indemnification as the rich.¹⁷

The old Jewish compensatory system, in addition, included primary ideas of collective responsibility. In some cases, the society was responsible for the omissions or failures of the priest, who was guilty of not preventing the crime.¹⁸ It is noted, however, that this collective responsibility in the system was not well articulated.¹⁹

Compensation was also found among the Greeks,²⁰ Romans,²¹ and the ancient Germanic²² peoples where restitution was awarded to crime victims. For example, in ancient Germanic periods,²³ homicide was atoned for by awarding a fine against the offenders, and the family of the crime victim accepted the compensation. If the

¹⁵ The King James of the Bible Exodus XXI 18-19 "And if men strive together and one smite another with a stone or with his fist and he die not but keepeth his bed, if he rise again and walk abroad upon his staff, then he that smote him be quit: only he shall pay or compensate for the loss of his time and shall cause him to be thoroughly healed."

¹⁶ MR McAdam 'Emerging issue: an analysis of victim compensation in America' (1976) 8 *Urban Lawyer* 346-347.

¹⁷ R Yaron, 'The law governing one who injures his fellow-man in ancient eastern legal Systems' (1971) 2 *Perakim* 220-221.

¹⁸ AL Miller, & L Sebba 'Crime victim compensation: an Israeli proposal' (1987) 20(1) *Comparative and International Law of Southern Africa* 50.

¹⁹ J Goldberg, 'Preface' (1970) 43 *Southern California Law Review*; 1 Z Falk 'Reciprocal liability in the Bible and in the Aggadah' (1961) 20 *Tarbiz* 16-19.

²⁰ DL Cairns, 'Representations of remorse and reparation in classical Greece' (1991) 173 in M Cox (ed) *Remorse and reparation*.

²¹ OF Robinson, *Penal Practice and Penal Policy In Ancient Rome* (2007) 3.

²² HS Maine, *Ancient Law* (1887) 378.

²³ Encyclopedia Britannica 'Wergild Germanic law' <https://www.britannica.com/topic/wergild>. (Accessed 23/10/2016).

compensation was not accepted as a form of payment, it could lead to public quarrels which eventually resulted in wars.²⁴

Also, in the early times, compensation served as a form of penalty or punishment²⁵ against criminal offenders. This was the reason why the Hammurabi Code was completely founded on revenge and cruelty because it was based on the principles of an eye for an eye.²⁶

As time progressed, the crime victims' right to compensation from the criminal offenders became a national issue based on the fact that criminal law itself became a state issue in European jurisdictions and the fine recovered from the offenders was paid into the state's treasury.²⁷ In other words, all major wrongs, or crimes and misdemeanours, as they are now called, became 'botless' i.e. the state became the sole recipient of all the monetary fines imposed upon criminal offenders.²⁸

Retributive justice or the punishment of the offenders and retribution, rather than compensation, became the principal legal concepts.²⁹ In addition, the development of the separation of criminal law from civil law further eroded the function of the victims of crime in the administration of justice.³⁰ The crime victims' role was now reduced to that of being state witnesses who testified only for the prosecution in order to convict the offenders.³¹

²⁴ The Homer and Tacitus references appear in JL Gillin *Criminology and Penology* 3rd ed Appleton-Century (1945) 338.

²⁵ BR Jacob 'Reparation or restitution by the criminal offender to his victim: applicability of an ancient concept in the modern correctional process' (1970) 61 *Journal of criminal law and criminology* 152.

²⁶ The Hammurabi Code Sec 9 "If anyone lose an article and find it in the possession of another: if the person in whose possession the thing is found say A merchant sold it to me I paid for it before witnesses and if the owner of the thing say I will bring witnesses who know my property then shall the purchaser bring the merchant who sold it to him and the witnesses before whom he bought it and the owner shall bring witnesses who can identify his property. The judge shall examine their testimony--both of the witnesses before whom the price was paid and of the witnesses who identify the lost article on oath. The merchant is then proved to be a thief and shall be put to death. The owner of the lost article receives his property and he who bought it receives the money he paid from the estate of the merchant."

²⁷ See chapter two section 9.2.

²⁸ JH Baker, *An Introduction To English Legal History* (1971) 273-89; and H Portal Potter's *Historical Introduction To English Law & Its Institutions* (1958) 353-355.

²⁹ IT Davies, 'Compensation for criminal injuries in Australia: a proposal for change in Queensland' (1991) 3 *Bond Law Review* 1.

³⁰ RJ Mawby, & ML Gill *Crime Victims: Needs, services and the voluntary sector* (1987) 26.

³¹ Davies (n 29 above) 2.

Beyond what has been said above, the pain and suffering of crime victims was completely neglected; the rights of crime victims was removed from the criminal law and taken to the civil sphere.³² Crime victims were forgotten people for several years with social and legal reformers paying more attention to the needs of the criminal offenders.³³ Consequent upon the foregoing, there was occasional support for crime victims by penologists and social philosophers for victims' compensation.³⁴

3. Modern state crime victims compensation

Following the Western emergence of victims' compensation³⁵, a work attributed to Margery Fry, in 1951, arguments and support for the state fulfilling its duty of compensating citizens for the personal injury sustained by crime victims owing to violent crimes took centre stage.³⁶ Fry was an English activist, a magistrate and social reformer, who started the modern reform of state compensation to crime victims.³⁷ Fry's major concern was that the criminal offenders should be responsible for compensation to crime victims even though "compensation cannot undo the wrong, it will often assuage the injury, and it has a real educative value for the offenders, whether adult or child."³⁸

Fry emphasized the presumed informative attributes of restitution by the offenders; this was the principal foundation upon which her proposal was built. In other words, Fry believed that payment by the offenders is the best first step towards the reformation that offenders should take. According to Fry, this is often the ideal solution.³⁹

³² AL Miller, & L Sebba 'Crime victim compensation: an Israeli proposal' (1987) 20(1) *Comparative International Law of Southern Africa* 50.

³³ LA Merrill, 'The 1981 Oklahoma Crime Victim Compensation Act' (1981) 17 *University of Tulsa law review* 260-264.

³⁴ J Hudson, & B Galaway (eds) *Considering The Victims* (1979) Both scholars note that most proposals were concerned with restitution on the part of the offender rather than state compensation, a concept essentially identified with the modern welfare state.

³⁵ See chapter three section 1.

³⁶ M Hall, *Victims and Policy Making: A Comparative Perspective* (2010) 169.

³⁷ M Fry, *Arms of The Law* (1951) 124: "We have seen that in primitive societies this idea of making up for a wrong has wide currency; let us once more look into the ways of earlier man which may still hold some wisdom for us."

³⁸ Fry (n 37 above) 126.

³⁹ As above.

With regard to public compensation to crime victims, Fry believed that the state must assume the duty of ameliorating deprivation suffered by its members as part of enlightened social policy.⁴⁰ Fry felt that the state, which prohibits its members to be in possession of arms and ammunition to protect and defend themselves, cannot disown and derogate from all responsibility for the state's continual failure to protect the citizens.⁴¹

In addition, Fry argued that state compensation would complement national insurance benefits to the crime victims. The insurance benefit would serve as a source of relief to the crime victims as damage awarded against the offenders.⁴² Such awards could supplement the meagre benefits of the compensation moneys to the crime victims. The compensation has its own advantages: Firstly, it would serve as economic relief;⁴³ and, secondly, it would work on the psychological trauma of the crime victims. Fry explained that there is natural tendency for the crime victims to be angry about the crime they had suffered, which the modern criminal justice system will only exacerbate.⁴⁴ Instead, compensation will assuage the anger of the crime victims.

Fry's work gave rise to the interest in the plight of crime victims.⁴⁵ As a result of Fry's advocacy for state compensation, the first modern law on crime victims' compensation was passed in 1963 in New Zealand.⁴⁶

The New Zealand's 1963 Act served as a source of inspiration⁴⁷ for a crime victims' scheme for other countries,⁴⁸ a proliferation which was referred to as the diffusion of victim compensation laws.⁴⁹

⁴⁰ M Fry, 'Justice for victims' (1959) 8 *Journal of Public Law* 191-194.

⁴¹ J Brooks, 'The case for creating compensation programs to aid victims of violent crimes' (1976) 11 *Tulsa Law Review* 479.

⁴² MR Heblly, JDM van Dongen & S D Lindenberg 'Crime victims' experiences with seeking compensation: a qualitative exploration' (2014) 10 *Utrecht Law Review* 35.

⁴³ Canada Resource Centre for Victims of Crime '[Financial Assistance](https://www.crcvc.ca/for-victims/financial-assistance/)'. <https://www.crcvc.ca/for-victims/financial-assistance/>. (Accessed 6 June 2017).

⁴⁴ Hall (n 36 above) 193.

⁴⁵ CP Sheoran 'Victims and the law: A social-legal study' (2012) 252.

⁴⁶ AL Miller, 'Compensation for personal injury: social insurance in comparative perspective' (1981) 4 *Comparative Law Yearbook 1980* 221-227. New Zealand adopted a Criminal Injuries Compensation Act which was subsequently incorporated into a wider scheme of accident insurance.

Britain followed New Zealand in 1964⁵⁰ when it introduced crime victims' compensation schemes; California did the same in 1965.⁵¹ Soon after, crime victims' compensation schemes had been adopted by the fifty states of the USA, as well as the Virgin Islands. In Canada, the lead was taken by the Province of Saskatchewan in 1967, followed by Ontario 1968, Alberta and New Foundland 1969, Manitoba and New Brunswick 1971, British Columbia and Quebec 1972.⁵² Denmark established its victim support and counselling centre in 1998,⁵³ and the Republic of the Philippines by Act No 7309 in 1992.⁵⁴

The first scheme in Australia was introduced in New South Wales in 1967 and, within a period of nine years, all of the Australian States and Territories had enacted compensation legislation.⁵⁵ In 1997, the Council of Europe (CoE) recommended the principle of state compensation when compensation cannot be ensured by other means to member states which had not yet adopted this principle.

The CoE's recommendation resulted in the endorsement of the state compensation concept by many countries. In addition to the CoE's recommendation, the United Nations advised and encouraged member states to ensure that: "when compensation is not fully available from the offender or other sources, States should

⁴⁷ The early laws were themselves influenced by an article by Margery Fry on 'Justice for Victims' published in The Observer newspaper in London and in a subsequent symposium in the Journal of Public Law.

⁴⁸ See chapter six section 8.

⁴⁹ WG Doerner, 'The diffusion of victim compensation laws in the United States' (1979) 4 *Victimology* 119-124.

⁵⁰ M Baber, 'Criminal injuries compensation research paper 95/64' (1995) 1. The Criminal Injuries Compensation Scheme was established in 1964 under the prerogative to provide compensation from the state for victims of crimes of violence. It is funded by central government and was administered by the Criminal Injuries Compensation Board.

⁵¹ M Young, & J Stein 'The history of the crime victims' movement in the United States' (2004) California initiated the first state victim compensation program in 1965 soon followed by New York. https://www.ncjrs.gov/ovc_archives/ncvrvw/2005/pg4c.htmlm. (Accessed 14 March 2017).

⁵² EA Fattah, 'Victim assistance in Canada' 112th Canada international training course visiting experts' papers' (2000) 49 and W Tallack in *Reparation for the injured and the rights of the victims of crime to compensation* (1900) 9.

⁵³ Denmark 'Developments on the implementation of victim assistance' https://www.apav.pt/ivor/images/ivor/PDFs/Fact_sheet_Denmark.pdf. (Accessed 17 August 2017).

⁵⁴ An Act Creating a Board of Claims Under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes.

⁵⁵ IT Davies, 'Compensation for criminal injuries in Australia: a proposal for change in Queensland' (1991) 3 *Bond Law Review* 2. In Australia compensation programs for victims of violent crime are state- or territory-based. Each of Australia's six states and one territory administers its own program in accordance with its own statutes.

endeavour to provide financial compensation to victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; the family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.”⁵⁶

It is submitted that the only African country close to adopting the CoE’s and United Nations’ recommendation is South Africa with its various crime victims’ policies and legislative framework.⁵⁷ Regrettably, the South African⁵⁸ authorities lack the will and political commitment to establish a state-funded compensation scheme for the uncountable crime victims in South Africa.⁵⁹

4. Crime victim compensation in African indigenous cultures

In Africa, traditional justice systems have been enforced in different ways, and these have for a long time served local indigenes mainly in rural communities.⁶⁰ The ways and forms of how these systems have been used, how the systems have been neglected and how the systems have eventually been reshaped are on record.⁶¹ More importantly, the norms and practices, which make up the framework of customary law in African societies, are neither the same nor static. As a result, changes in traditional ideas of justice and in the way justice is administered have over time given rise to the formation of concepts, such as the restatement of customary law and the ascertainment of living customary law.⁶²

⁵⁶ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power General Assembly resolution 40/34 of 29 November 1985 art 41 Par 12.

⁵⁷ South Africa Law Reform Commission *Compensation Fund for Victims of Crime* Project 82.

⁵⁸ See chapter eight section 5.

⁵⁹ JC von Bonde, ‘Redress for victims of crime in South Africa: a comparison with selected commonwealth jurisdictions’ unpublished Ph.D. thesis Nelson Mandela Metropolitan University (2006) iii.

⁶⁰ A Aiyedun, & A Ordor ‘Integrating the traditional with the contemporary in dispute resolution in Africa’ (2016) 20 *Law, Democracy and Development* 1.

⁶¹ TO Elias, *The nature of African customary law* (1956) 56.

⁶² TW Bennett, *Customary Law In South Africa* (2004) 44-9.

The African indigenous justice paradigm is founded on a complete or holistic philosophy. The systems of justice are protected and guided by the unwritten customary laws, traditions, and practices that are learned primarily by example and through the oral teachings of tribal elders and through reconciliation.⁶³

Derrett noted that: "at the centre of African adjudication lies the notion of reconciliation or the restoration of harmony, the work of the courts is less to find the truth, state the rules of law, and apply them to the facts than to set right a wrong in such a way as to restore harmony within the disturbed community; but the offenders must be summoned to witness how their conducts have fallen short of the standard set for their role as involved in the dispute, and they must come to the realization that the decision of the court is a fair one."⁶⁴

The African circle of justice is a philosophy that brings cohesion between and amongst everyone involved with a problem, and the centre of the circle represents the underlying issues that need to be resolved to attain peace and harmony for the individuals and the community.⁶⁵

The indigenous justice system is based on an entire process, from the disclosure of problems, to discussion and resolution, to making amends and restoring broken relationships between the crime victims and the offenders,⁶⁶ (*ndi metutara mpu*) in the Igbo tongue. The methods employed in mending broken relationships are built on concepts of restorative and reparative justice and the principles of healing and living in harmony with all beings and with nature.⁶⁷

⁶³ K Frank, 'Respect of the right to a fair trial in indigenous African Criminal Justice Systems: The case of Rwanda and South Africa' LL. M thesis University of Ghana (2004) 15.

⁶⁴ JD Derrett, *An Introduction To Legal Systems* (1968) 145.

⁶⁵ N Okafo, 'Relevance of African traditional jurisprudence on control justice and law: a critique of the Igbo experience' (2006) 2(1) *African Journal of Criminology & Justice Studies* 38.

⁶⁶ Gift of Truth 'African indigenous justice philosophy' <https://www.giftotruth.files.wordpress.com/.../2016-african-indigenous-justice-philosophy>. (Accessed 16 July 2017).

⁶⁷ T Tso, 'The process of decision making in tribal courts' (1989) 31 *Arizona Law Review* 1.

The crime victims are the principal objects in African indigenous legal system, and the major objectives are to heal and renew the crime victims' physical, emotional, mental, and spiritual well-being.⁶⁸ The process, in addition, involves intentional acts by the criminal offenders to regain dignity and trust and to return to a healthy physical, emotional, mental, and spiritual state. In the African concepts, these are necessary requirements for the criminal offenders and crime victims to save face and to restore personal and communal harmony.⁶⁹

The African indigenous equity framework utilises helpful and transformative standards in conflict determination. Victims of crime, offenders and the whole society are included and take part in the meaning of damage and look for a determination satisfactory to all parties.⁷⁰

Furthermore, to the Africans, for relationships to be repaired, it is important for the offenders to demonstrate remorse through apology, asking for forgiveness, making restitution, and engaging in acts which show sincerity to make things right. The involvement of the community allows a crime to be perceived as a natural human error that requires corrective intervention by families and elders or tribal leaders. In this connection, the criminal offenders remain an integral part of the community in the African justice system.

To many African tribes, law and justice are part of a whole that shows a way of life. To this end, restoring spirituality and cleansing one's soul are essential to the healing process for crime victims and the offenders.

The African context and objectives of peace-and justice-making is to return the victim as far as it is practicable to the position he was in prior to the crime and to reintegrate the criminal offenders into the society and can be compared to

⁶⁸ OO Elechi, 'Human rights and the African indigenous justice system https://www.researchgate.net/.../266096732_HUMAN_RIGHTS_AND_THE_AFRICAN. (Accessed 16 July 2017).

⁶⁹ OO Elechi, SVC Morris & EJ Schauer 'Restoring justice (Ubuntu): An African perspective' (2010) 20(1) *International Criminal Justice Review* 73.

⁷⁰ As above.

restitution and/or compensation.⁷¹ Additionally, the African justice-making process involves the restoration of the broken relationships and social harmony between the crime victims and criminal offenders which was occasioned by the criminal behaviour.⁷²

The effective African peace-making mechanism comes from the fact that anyone affected by the crime becomes part of the settlement of the crisis.⁷³ The voice of the crime victims, the voice of the offenders and that of the community⁷⁴ are all heard, recognized and respected, in the process, and decisions are reached through a consensus. The African peace-making process also provides the avenue to learn and, teach⁷⁵ the offenders, and to re-examine the important values and the socio-economic conditions of the African community.

Furthermore, the African communal⁷⁶ way of life of caring for one another and the spirit of mutual support encourages and promotes the process of justice-making. This fact is corroborated on the basis of the truth that the survival of the community depends on the well-being of the individual.⁷⁷ *Ubuntu* is an African concept that teaches Africa's egalitarian, humanistic, interconnectedness, communitarian and participatory democratic values.⁷⁸

5. African indigenous justice administrations

In Nigeria, especially in the Igbo conventional equity framework, the law or Iwu is, for the most part, pointed towards the upkeep of social congruity. Victims of crime get sufficient pay and compensation from the offenders; in addition, victims get satisfactory material, profound and mental support from both the community and

⁷¹ As above.

⁷² As above.

⁷³ EG Irobi, 'Ethnic conflict management in Africa: A comparative case study of Nigeria and South Africa' (2005) <http://www.beyondintractability.org/casestudy/irobi-ethnic>. (Accessed 23 October 2016).

⁷⁴ United Nations Office on Drugs and crime Handbook on restorative justice programmes (2006) 17-20.

⁷⁵ G Shaw, 'Regional conference on peace education in Eastern and Central Africa: The state of the art lessons and possibilities' (2008) *Peace Education in Central and East Africa conference report* 5.

⁷⁶ C Agulanna, 'Community and human well-being in an African culture' (2010) 14 *Tames* 288.

⁷⁷ L Ribova, 'Individual and community well-being' (2000) *Stefansson Arctic Institute* 1.

⁷⁸ J van Niekerk, 'Ubuntu and moral value' unpublished PhD thesis University of the Witwatersrand Johannesburg (2013) 1.

family of the offender. The indigenous framework has the uncommon means of reconnecting individuals and community.⁷⁹

The traditional justice system and the Western justice system are not so connected or related in terms of procedures and practices. For instance, the traditional justice system applies best to small, isolated, non-literate, and homogenous procedures, and it is a system where people feel they belong together because they are of the same kind.⁸⁰ The traditional justice system sees the community members as one and the same, and they cannot freely renounce their membership, for it involves great emotional meaning for the society and the individual because citizens are born into it or grow into it in the way the bonds of friendship grow.⁸¹ Under this kind of justice system, people remain essentially united in spite of all the separating factors such as crime. This implies that it is an association in which the natural will of the people predominates without anyone being forced to join the union.

The quality and effectiveness of justice in Africa is ascertained by the well-being of crime victims, the community, criminal offenders, and the criminal justice administration's ability⁸² to restore the social balance that was broken by the crime. Although African states are corrupt,⁸³ oppressive,⁸⁴ and ineffective,⁸⁵ and some African⁸⁶ societies have high rates of crime, but, whenever crime occurs in the African traditional setting, the restoration of the crime victims, the rehabilitation of

⁷⁹ MD Samu, 'Nigerian indigenous justice examined through the lens of the restorative justice system' (2013) http://www.academia.edu/.../NIGERIAN_INDIGENOUS_JUSTICE_EXAMINED_THROU. (Accessed 16 July 2017).

⁸⁰ TO Olukayode, 'Traditional versus modern judicial practices: a comparative analysis of dispute resolution among the Yoruba of south-west Nigeria' (1998) 23(2) *African Development* 212.

⁸¹ L Broom & P Selznick *Sociology* (1968) 25.

⁸² A Dissel, 'Restoring the harmony: piloting victim offender conferencing in South Africa' (2002) *De Montfort University* 1.

⁸³ United Nations Economic Commission for Africa 'Measuring corruption in Africa: International dimension matters' (2016) xi *African Governance Report* iv.

⁸⁴ A Hamilton, 'Political oppression in Sub-Saharan Africa' (2005) 28 *Thomas Jefferson Law Review* 42.

⁸⁵ NH Jeng, 'Why has the Westphalia state failed to function effectively in Africa' (2012) 5.

⁸⁶ B Holtmann, & C Domingo-Swartz 'Current trends and responses to crime in South Africa' (2008) in Van Niekerk, A, Suffla, S & Seedat, M (eds) *Crime, Violence and Injury Prevention in South Africa: Data to Action* (2008) 106.

the criminal offenders and peace in the community⁸⁷ are the principal objectives of the indigenous justice administration.⁸⁸

6. Crime victims in traditional African justice administration

The Igbo indigenous justice system in Nigeria can safely be viewed as being a fair representation of most indigenous judicial systems in Nigeria with few exceptions because every culture has its varied approaches to regulating the social conduct of its citizens in order to attain its preferred societal goals and maintaining civility and order which may be referred to as the society's approach to justice.⁸⁹ Additionally, a set of rules or laws is always needed for the peaceful coexistence of all societies.⁹⁰ These rules or laws include, but are not limited to, penal procedures by which those found guilty of acts prohibited by the society are punished. In this respect, the Igbo society in Nigeria possesses a rich penal system which is contained in its customary laws. Although it is submitted that these laws or rules are not recorded, this legal system has been integrated into the Igbo society and its development processes and predates the arrival of the British. The legal system is set up to deal with crime and punishment.

In the Igbo traditional justice system, if the murderer absconds, the offender's (*onye mebiriri*) property and that of his family are confiscated by the community. But, if the killer is found, he is forced to hang himself to enable the *umu okpu*, that is, the daughters of the land to perform their cleansing rites, *izachapu ntu ochu*, that is, sweeping away the ashes of murder.⁹¹

⁸⁷ G Bazemore, 'Restorative justice and earned redemption communities victims and offender reintegration' (1998) 41(6) *American Behavioural Scientist* 768-813.

⁸⁸ D Mekonnen, 'Indigenous legal tradition as a supplement to African transitional justice initiative' (2010) 10(3) *African Journal on Conflict Resolution* 101-122.

⁸⁹ MD Samu, 'Nigerian indigenous justice examined through the lens of the restorative justice system' (2013) *Justice and Human Security Initiatives* 3.

⁹⁰ As above.

⁹¹ IKE Oraegbunam, 'Crime and punishment in Igbo customary law: the challenge of Nigerian criminal jurisprudence' (2010) [http:// www.ajol.info/index.php/og/article/viewFile/57917/46285](http://www.ajol.info/index.php/og/article/viewFile/57917/46285). (Accessed 10 August 2017).

Punishment is both compensatory and expiatory, addressing the human and divine disharmony created by the crime of murder. It is enough for a fellow community member who has killed another to hang himself in order to compensate for the murder and provide retribution.⁹²

The major objective for punishing the offender is to give a fair desert, that is, restitution in the sense of giving the offender an opportunity for his reformation and deterrence for both him and would-be criminals, and compensation and restitution are made to re-establish harmony and right the wrong occasioned by the offence, or for the purpose of getting rid of the criminal from the social group.⁹³

The Igbo system of justice has very important values that create relational equilibrium after a crime has been committed, correcting and restoring communal sanity; besides, victims receive adequate compensation and restitution, and the victims seem to be satisfied with the punishment since the victim or his families are given the opportunity to prescribe the type of punishment for the criminal.⁹⁴ Victims are well informed about the hearing and sentencing event, the situation of the criminal and the procedures to be taken as well as the possible results so that they can have a voice in determining the consequences. This is a kind of restorative justice mechanism from which victims receive support from the community as a peaceful settlement.⁹⁵

In other cases the victims would have family and friends sitting with them through all the court processes. The victim also receives adequate material, spiritual, psychological, and emotional support from both the community and the criminal's family. In cases of murder, food will be brought to the family; spiritual cleansing and prayers are performed both for the village and the victim, and the community members would stay with the victim throughout the night to commiserate with him in case of death.⁹⁶

⁹² S Samu (n 89 above) 3.

⁹³ As above.

⁹⁴ As above

⁹⁵ C Achebe *Things Fall Apart* chapter two (1981) 4.

⁹⁶ Samu (n 89 above) 7.

The African indigenous justice system is victim-centred.⁹⁷ The African community provides compensation for the crime victims by caring for them.⁹⁸ The community provides care because it believes that crime victims whose needs are not satisfied are disgruntled and are likely to commit offences.⁹⁹

Besides this, in African communal settings, when a person suffers harm the entire community shares in the suffering.¹⁰⁰ This is because the African culture and principles of justice teach us to show "companionship reciprocity, dignity, harmony, and humanity in the interest of building and maintaining community with justice and mutual caring."¹⁰¹

The communal care for the crime victims is appreciated more than financial compensation.¹⁰² The compensation and the communal care of the crime victims take centre stage in the resolution of the crime victim-offender conflict.¹⁰³

Additionally, the crime victims feel justified when the criminal offenders accept responsibility¹⁰⁴ for their wrongs and that other relevant community members have suffered some harms and losses as a result of the offender's criminal act. When crime victims acknowledge that the criminal offenders have taken responsibility for their crimes, the crime victims become empowered when they lodge their complaints at the community's constituted justice centres. Through this means, crime victims

⁹⁷ OO Elechi, *Doing justice without the state: The Afikpo (Ehugbo) Nigeria model* (2006) 1.

⁹⁸ Social development Republic of South Africa 'National policy guidelines for victim empowerment' (2016) 1.

⁹⁹ Criminal justice joint inspection Meeting the needs of victims in the criminal justice system (2015) *A Consolidated Report By The Criminal Justice Inspectorates* 4.

¹⁰⁰ M Watadza, 'Critical assessment of African communitarianism for environmental well-being' Masters dissertation thesis University of South Africa (2016) 19.

¹⁰¹ JAM Cobbah, 'African values and the human rights debates: an African perspective' (1987) 9 *Human Rights Quarterly* 320.

¹⁰² B Hamber, 'Repairing the irreparable: Dealing with double-binds of making reparations for crimes of the past' (2000) 5(3) *Ethnicity and Health* 215.

¹⁰³ W Tallack, 'Reparation to the injured and the rights of the victims of crime to compensation' (1900) 6.

¹⁰⁴ I Wellikoff, 'Victim-offender mediation and violent crimes: on the way to justice' (2003) 5(1) *Cardozo Journal of Conflict Resolution* 1.

play an important part in bringing criminal offenders to justice, and, to this end, crime victims' efforts in the search for compensation are adequately rewarded.¹⁰⁵

7. Offenders in African traditional justice administration

Criminal offenders (*onye mebiri, oluse and masu laifi*) in Igbo, Yoruba and Hausa respectively, are also active participants in the African justice system administration.¹⁰⁶ The offenders' participation in the justice system is an acknowledgement of the harm¹⁰⁷ and the search for solutions acceptable to the crime victims and the community.

Furthermore, the roles the criminal offenders play in the justice processes make the offenders appreciate the harm their actions have caused¹⁰⁸ the crime victims and why other community members are concerned. There is a high level of possibility for the criminal offenders to feel remorseful, apologetic¹⁰⁹ and to empathize with crime victims when they understand the harm their actions have caused the crime victims and how the community¹¹⁰ has been affected.

The criminal offenders' realization of the harm their actions have caused is more important than the convictive¹¹¹ measures of the Western criminal justice system, thereby placing less emphasis on the laws they have broken. The reconciliation¹¹² or restoration of the broken relationships between the crime victims and the criminal offenders by the crime of the offenders is the goal of the African indigenous justice system.

¹⁰⁵ A Ngari, 'Reparative justice in Kenya' (2013) 4 *Institute For Justice and Reconciliation* 2.

¹⁰⁶ Elechi, Morris & Schauer (n 69 above) 73.

¹⁰⁷ PM Gerkin, 'Seeking justice for victims and offenders: a needs-based approach to justice' Ph.D. unpublished dissertation Western Michigan University (2006) 6.

¹⁰⁸ H Zehr, & A Gohar *The Little Book Of Restorative Justice* (2003) 15.

¹⁰⁹ S Bibas & RA Bierschbach 'Integrating remorse and apology into criminal procedure' (2004) 114 *The Yale Law Journal* 93.

¹¹⁰ RB Taylor 'The impact of crime on communities' (1995) 539 *The Annals of the American Academy of Political and Social Science* 28.

¹¹¹ J Bednarova 'The heart of the criminal justice system: a critical analysis of the position of the victim' (2011) *Internet Journal Of Criminology* 10.

¹¹² C Himonga, M Taylor & A Pope 'Reflections on judicial views of Ubuntu' (2013) 16 *Potchefstroom Electronic Law Journal* 15.

Beyond the foregoing, the African justice system encourages social harmony¹¹³ rather than the promotion of social control or other penal ideology. Consequently, the African traditional approach to conflict resolution tries as much as possible to restore the crime victims¹¹⁴ to their positions prior to their victimization. To this end, the criminal offenders' accountability¹¹⁵ constitutes compensation to the crime victims and atonement to both the crime victims and the community.

In the African traditional setting, the community from which the criminal offenders come is sometimes held accountable¹¹⁶ for the actions of the offenders. This practice is to ensure that in a communitarian setting, the family and community members also share the rewards of the accomplishments of the criminal offenders and also bear the burden of the offenders' liability.

It is strongly believed in Africa that every wrong can be made right by the subsequent actions of the criminal offenders and other community¹¹⁷ members. For instance, in Nigeria, the Igbo-speaking people from the Eastern part of the country believed that no offence is that serious that it cannot be atoned¹¹⁸ for with a commensurate sacrifice and compensation.

¹¹³ T Murithi, 'African approaches to building peace and social solidarity' (2006) 6(2) *African Journal on Conflict Resolution* 9-34.

¹¹⁴ L Huys, e & M Salter (eds) *Traditional justice and reconciliation after violent conflict: learning from African experiences* (2008) 7.

¹¹⁵ Sec 1(1) Increasing Offenders' Accountability for Victims Act 2013.

¹¹⁶ TP O'Connor, & NJ Pallone (eds) *Religion, the Community and the rehabilitation of criminal offender* (2002) 35 276.

¹¹⁷ Centre for community justice 'Victim offender reconciliation program' (2013) 1. http://www.centerforcommunityjustice.org/?page_id=50. (Accessed 26 October 2016).

¹¹⁸ NE Ukpabi, 'The concept of sin and atonement in Igbo traditional religion: a case study of Ezza community in Ebonyi state of Nigeria' Master of Arts thesis University of Nigeria Nsukka 2005 63.

8 Compensation to crime victims under traditional social norm in Nigeria

The traditional social norm of the Nigerian society places much importance or significance on the status of the crime victims.¹¹⁹ The criminals are required to pay compensation (*ugwo, sabuntawa or atuse/biinu*) in Igbo, Hausa and Yoruba respectively to the victims as noted above under the Igbo justice system.¹²⁰ The compensation money is called 'blood money'; it is paid by the offenders with the help or assistance of the offenders' extended family if the need arises.¹²¹

The blood money is a form of compensation which is paid by the offenders to the family of the crime victims and it may come in the form of payment with goats, sheep, cattle or chickens or in cash.¹²² The blood money serves two major purposes, which are, firstly, the money is used to assuage the injured feelings of the surviving relations of the crime victims and, secondly, the money is utilized to cushion and provide tentative relief as a means of sustenance for the nuclear families until other arrangements are made by the families of the crime victims.¹²³

In the Yoruba traditional community, rituals are performed to identify a criminal so that the stolen property can be recovered, and the gods are consulted to determine the kind of punishment.¹²⁴ The return of the stolen property serves as a form of compensation similar to what is obtained in the Igbo community. On the other hand, compensation in the traditional setting in the Hausa community is not well defined since Shari'a law operates in the community. Shari'a courts in the various communities in the Northern parts of Nigeria, however, have the jurisdiction over crimes and offences. In this regard, the courts can impose on the offender a fine,

¹¹⁹ AA Achu, EJ Owan & UF Abul 'Traditional methods of crime control and community security in Odukpani local government area of Cross River State –Nigeria' (2013) 14 *Journal of Humanities and Social Science* 64.

¹²⁰ See chapter three section 4.

¹²¹ O Oloruntimehin 'The victim in the criminal justice system- The Nigerian case' (1979) in HJ Schneider (ed) *Victim in international perspective* (1979) 404.

¹²² K Jaishankar, & D Halder (eds) *Therapeutic jurisprudence and overcoming violence against women* (2017) 53.

¹²³ TO Elias *The nature of African customary law* (1956) 20-22.

¹²⁴ AB Akeem 'The nature of reprimand in traditional Yoruba society' (2006) 1(4) *The Social Sciences* 247.

retaliation, blood money, restitution, reprimand, public disclosure, or compensation among others.¹²⁵

Consequent upon the criminal activities of the offenders by which the crime victims lost any of their property, the offenders are made to restore the stolen goods as soon as it is practically possible where the stolen items can still be traced and are available; where such goods are not found and restored, some payment of money is made in lieu of the goods or items stolen. It is, however, worrisome to know that there are no longer such provisions in the existing laws under traditional system¹²⁶ for the crime victims in Nigeria because criminal cases are now prosecuted by the state.

9. Conclusions

In this chapter, the emergence and development of compensation to crime victims have shown that compensation dates back to ancient times. The chapter discussed various historical backgrounds of public compensation to crime victims. The chapter examined the various justifications for state compensation in an historical context. It also looked at the African idea of compensation and it examined the methods by which the Africans handled their justice systems, although it is noted that there is no uniform method of justice systems in African indigenous culture. The chapter concluded by examining how the African cultures treated the criminal offenders and how they are restored back into the community.

The ways and methods used in handling crime victims and the offenders in the African culture are an indication of the fact that the Africans are already empowered to provide a justice system that has meaning for the people they serve and the power to perpetuate what had been preserved by the ancestors and passed on by the elders as a testimony to their commitment to the future of the tribes.

The various African societies have for many years established important features of dispute resolution processes in traditional settings. In African communities, there are shared notions of justice across diverse legal cultures.

¹²⁵ H Ibrahim, *Reflections on The New Shari'a Law in Nigeria* (2004) 2-3.

¹²⁶ Oloruntimehin (n 121 above) 404.

There are, however, certain similarities between traditional and contemporary dispute resolution methods. Firstly, the idea of having a third party contribute during a judicial dispute is common to both contemporary and traditional court systems. Secondly, decision-making processes for both traditional and contemporary justice systems need a majority agreement. Thirdly, both justice systems are directed at giving a fair hearing to all parties to the dispute. Fourthly, the notion of natural justice, particularly in the sense of a litigant not adjudicating his or her own case, is common to contemporary and traditional spheres of justice. Additionally, in some situations, where, for example, young offenders are involved, even formal court proceedings may be flexible, but traditional dispute resolution methods are usually always flexible. These elements indicate more similarity between the African traditional justice system and the modern justice system.¹²⁷

Contrary to the African indigenous legal system, Western law is applied through an adversarial system that places the crime victims and the offenders in the courtroom to determine the offenders' guilt or innocence, or to declare the winner or loser in a civil case.¹²⁸ Western law pays close attention on one aspect of the problem, the act or the crime involved, which is resolved via adversarial fact finding. The courtroom provides the ground for proving or contradicting the evidence presented from different perspectives and objectives of the parties. There is no adequate interaction between crime victims and the offenders. If there is any form of interaction at all, it is reduced or minimized and remains hostile throughout the proceedings. In addition, the Western system of criminal justice emphasizes a punitive sanction which, in the final analysis, restricts the accountability of the criminal offenders to the state, rather than to those whom the criminal action of the offenders has harmed or to the community.

In Nigeria, it has been argued that the traditional social norms and the customary law tend to be more considerate with regard to looking into the rights of the victims of crime because the system under customary practices makes provision for compensation, restitution, restoration, replacement and various other rights for the

¹²⁷ Aiyedun & Ordor (n 60 above) 1.

¹²⁸ AP Melton, 'Indigenous justice systems and tribal society' (1995) 79(3) *Judicature* 126.

victim.¹²⁹ Under customary law, concrete and reliable efforts are made to ameliorate the sufferings experienced by the crime victims and their relations for the crime against them.¹³⁰

On the other hand, the current criminal justice administration in Nigeria¹³¹ puts so much muscle and weight behind the treatment¹³² of offenders to the extent of, and at a level where it focuses on and pays more attention to the punishment of the offenders at the expense of providing justice to the crime victims and thereby ensuring that the necessary means of reducing the problems created for the crime victims as a result of the crime are put in place.

¹²⁹ A Chinyere, 'Extending the frontiers of remedies for crime victims in Nigeria?' (2009) *National Judicial Institute Law Journal* 105-128.

¹³⁰ Oloruntimehin (n 121 above) 404.

¹³¹ See chapter five section 2.

¹³² DA Adekunle, DA George & OG Olu-Kehinde 'Criminal Justice System: The Nigeria scenario' (2015) 3 *International Journal of Social Science and Humanities Research* 439.

Chapter Four:

Crime victims, offenders and the practice of restorative justice *vis-à-vis* state compensation

1. Introduction

In chapter two,¹ the relevance and importance of restorative and restitutionary justice was examined as it concerns crime victims and the criminal offenders. Owing to the inadequacies inherent in modern justice processes which are based purely on retributive and rehabilitative justice,² restorative justice (RJ) has been developed as a 'third lens' which describes crime as the infringement of individuals and relationships. It makes commitments to right the wrong done. Equity or justice includes the victims of crime, the criminals or the guilty parties, and the society in the quest for arrangements which advance repair, compromise, and consolation.³

Pursuant to the discussion on the theoretical framework in chapter two,⁴ this chapter takes a look at crime victims, offenders, and restorative justice *vis-à-vis* state compensation to victims of crime in the administration of justice. The chapter further examines crime victims' and offenders' expectations and satisfaction in RJ approaches around the world. It dissects the practical aspects of RJ and assesses its application and suitability for crime victims in Nigeria, with the aim of learning where further improvements are needed.

In addition to the above, the chapter looks at the treatment of victims of crime and the development of RJ. Nigeria, New Zealand and India were former colonies of England, and the latter's influence and approach to crime victims is reflected in the justice systems of the former. In any case, every nation's framework is likewise the consequence of its own pre-colonial history and the present prevailing situations in that country. Nigeria, New Zealand and India have different indigenous beliefs and

¹ See chapter two section 2.4.

² H Strang, *Repair or revenge: victims and restorative justice* (2002) 59.

³ H Zehr, *Changing lenses: a new focus for criminal justice* (1990) 181.

⁴ Section 2.1.

legal programmes which, of course, have contributed to the formulation of the legal dispensations of these countries.

The interest in the rights of crime victims began as far back as 1950 with work of Fry⁵ and later the development of victim compensation in the early 60s in New Zealand.⁶ This interest in crime victims' rights has been shown in the emergence and development of restorative justice which stresses that the crime victims are the focal point in the justice administration.⁷ The meaning of restorative justice and how it influences justice administration in respect of state compensation to victims of crime is examined below.

2. Defining restorative justice

RJ seeks to reframe the way we conventionally think about wrongdoing and justice: away from our preoccupation with law breaking, guilt and punishment, toward a focus on harms, needs and obligations; RJ is a new paradigm of criminal justice, a justice process that should seek to "put things right" by addressing harms and causes.⁸

Restorative justice as a system has been applied by many groups of people.⁹ RJ, as it is popularly called, is an indication of efforts in taking steps towards a peaceful determination with regard to the mischief or harm caused by the criminal behaviour of another.¹⁰ As Ashworth noted, "one of the aims of RJ is changing the focus of the term criminal justice itself, away from the assumption that it is a matter concerning

⁵ M Young, 'The role of victim compensation in rebuilding victims' lives' (2005) 2.

⁶ Criminal Injury Compensation Act 1963.

⁷ J Goodey, 'An overview of key themes' in A Crawford & J Goodey eds *Integrating A Victim Perspective In Criminal Justice* (2000) 21.

⁸ D Chankova, D Anzova M Klecherova & I Mladenova 'Restorative justice – an instrument for improved protection of crime victims' <http://www.lpajournal.com/wp-content/uploads/2016/12/D-Chankova-full-text.pdf>. (Accessed 9 August 2017).

⁹ J Braithwaite, *Restorative justice and responsive regulation* (2002) 60.

¹⁰ Department of justice and constitutional development Republic of South Africa 'Restorative justice the road to healing' (2016) 3.

only the state and the defendant/offender, and towards a conception that includes as stake holders the victims and the community too."¹¹

Victim Offender Mediation Programmes (VOMP), although not the central point advocated in this study, represent a form of restorative justice centred at making things right for the crime victims and the offenders, and, by extension, the entire society.¹² In making things right, RJ offers a solution based on justice that considers the needs of all affected by the crime.¹³

Accordingly, RJ is a procedure whereby every-one with a role in a particular offence assembles to determine or settle all things and consider how to manage the consequences or effects of the offence and its suggestions for dealing with what is to come.¹⁴ The procedure or process starts with the acknowledgment that wrongdoing or crime means damage. One objective or goal, at that point, of RJ is to repair that damage, to make the circumstance right. Victims of crime and criminals, and also all interested individuals, partake in a procedure of recuperating the damage experienced by the victims.¹⁵

In addition to the above, some scholars perceived restorative justice as being a need-based justice. According to Sullivan and Tifft, a needs-based justice "seeks to create and apply restorative values and meet needs in a harm situation."¹⁶ When the demands of stakeholders affected are met, then the circumstance or situation becomes right. In a restorative justice programme, an air or atmosphere of regard or respect is kept up for the crime victims, the criminal offenders and the community where criminal offenders take responsibility for the harm they have caused and; in the end, the crime victims and the criminal offenders work together to repair the harm.

¹¹ A Ashworth, 'Responsibility rights and restorative justice' (2002) 42(3) *British Journal of Criminology* 578.

¹² MS Umbreit, 'Mediation of victim offender conflict' (1988) *Journal of Dispute Resolution* 87.

¹³ PM Gerkin 'Seeking justice for victims and offenders: a needs-based approach to justice' unpublished Ph.D Thesis Western Michigan University (2006) 2.

¹⁴ TF Marshall Restorative justice: an overview (1999) 5.

¹⁵ TF Marshall 'The evolution of restorative justice in Britain' (1996) (4) 4 *European Journal on Criminal Policy and Research* 37.

¹⁶ D Sullivan, & L Tifft *Restorative justice: healing the foundations of our everyday lives* (2001) 101.

As a result of what has been said above, it is submitted that, in restorative justice, when we look at what is required to embrace a restorative justice approach, we see a system in which the needs of all concerned are satisfied on an individual basis. Such an approach towards justice or equity puts a premium on the participation or interest of crime victims, offenders and the community and on the declaration of the voice of each. As it were, the well-being or prosperity of all the parties required in a given social circumstance is considered, that is, all parties are heard, associated with, or reacted to on the premise of her or his present needs.¹⁷

The United Nations, in supporting the use of RJ in criminal matters, defined RJ to mean “any process in which the crime victims, the criminal offenders and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party, a process which involves mediation, conferencing and sentencing circles.”¹⁸ As a mechanism of justice RJ generally desires to attempt at resolving issues involving crime without the criminal justice system whose main objective is mostly retribution or punishment of the offence.¹⁹ Additionally, RJ brings to the forefront victims to play an active role in resolving conflict, along with their family, community, and the criminal.²⁰ It pays attention more to the restoration of justice and compensation rather than to punishment,²¹ and it promotes healthy dialogue among the victims, offenders, and the community to resolve resentment, offer apology or forgiveness, and to harness the offender’s sense of accountability and remorse.²²

¹⁷ Sullivan & Tifft (n 15 above) 112-113.

¹⁸ Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters ECOSOC Res. 2000/14 United Nation Document E/2000/INF/2/Add.2 35.

¹⁹ D Roche, ‘Dimensions of restorative justice’ (2006) 62 *Journal of Social Issues* 217-238.

²⁰ N Christie, ‘Conflicts as property’ (1977) 17 *The British Journal of Criminology* 1-15.

²¹ D Boonin, & J Braithwaite *The Problem of Punishment* (2008) 15.

²² H Zehr, & H Mika ‘Fundamental concepts of restorative justice’ (1998) 1 *Contemporary Justice Review* 47-55.

The South African Truth and Reconciliation Commission perceived RJ to be “a process that redefines crimes by shifting the primary focus towards violations against human beings rather than violations against the state.”²³ To this end, justice starts or commences when the demands, necessities or needs of everyone involved are identified with a view to addressing them accordingly.

3. Principal concepts of restorative justice

As was noted earlier, this study is not primarily or principally a study of RJ and victims-offenders mediation. It is noted, however, that it is important that the concept is considered here because none of the jurisdictions discussed in this thesis examined the plight of the criminal offender in RJ terms *vis-à-vis* victims of crime compensation.²⁴ Plight of criminal offender include but not limited to the issue of re-entry into the society after the going through the process of correctional education.²⁵ The reason for the foregoing assertion is that RJ is a transformational justice having as its main principles restoration, accountability, and engagement, and it serves as an alternative to offender-centred retributivism. It attempts to balance the needs of the crime victims, the criminal offenders and the community which ultimately results in restorative agreements and, at the same time, encourages accountability for criminal conduct and promotes victim healing from traumatic stress.²⁶

The omission or exclusion of the principles of RJ from the compensatory schemes of other jurisdictions in my submission created a gap that needs to be filled in a victim compensation programme as far as Nigeria’s compensation scheme is concerned.

Besides the foregoing, all the jurisdictions examined pay particular attention to the conviction of the offenders and their incarceration in the process of criminal justice.²⁷ It is argued that the incarceration of the offenders in a prison centre does not serve as a rehabilitation place for criminals. Rather, it makes offenders more crime prone

²³ H Among, ‘Restorative justice and the reintegration of former child soldiers into communities: a case of Uganda’ unpublished thesis University of Pretoria (2013) 246.

²⁴ See chapter six section 8.

²⁵ E Gunnison & JB Helfgott Offender reentry: beyond crime and punishment (2013) 1.

²⁶ A Duldulao, & L Escribano ‘Restorative justice’ (2014) *Sage Publications* 1142.

²⁷ See chapter six section 5.

and hardens their hearts. A theory developed to explain this unexpected outcome identifies the problem as 'the professionalization of crime'. This theory states that criminals actually leave prison with abilities that allow them to become better criminals, rather than being reformed.²⁸

The way things are at present, such justice systems are to a great degree costly, they don't restore, but in actuality make the people who experience them worse.²⁹ The offenders go back to recidivism after serving their incarceration. This is one of the principal reasons behind the consideration of RJ in the study.

Additionally, the concept of RJ is absent from or lacking in the criminal administration in all the jurisdictions discussed.³⁰ Nigeria is no exception. A closer examination of the UK scheme, for instance, shows that it caters only for the compensation of the crime victims, without providing for the rehabilitation or the re-entry of the criminal offenders into society as better persons.³¹ To this end, the inclusion of RJ in the criminal justice system in Nigeria as advocated in the study is what differentiates Nigeria's state compensation scheme from others as compared in the thesis.³²

Crime is the negation of the rights of victims of crime.³³ Crime is an act which injures the state's interests, and, when such interests are injured or violated, the state reserves the right to punish the violators.³⁴ The crime victims are not touched in the definition of crime and this has been perceived to have caused injustice to crime

²⁸ M Neminski The professionalisation of crime: how prisons create more criminals. <https://www.bu.edu/av/core/journal/xxiii/Neminski.pdf>. (Accessed on 22 October 2017).

²⁹ 'The old debate: punish prisoners or rehabilitate them?' <http://www.telegraph.co.uk> > News > UK News > Crime. (Accessed 17 July 2017).

³⁰ See the United Kingdom's Criminal Injuries Compensation Scheme 2012 the New Zealand's Accident Compensation Act 2001 and the United States Victims of Crime Act of 1984 (VOCA).

³¹ The Criminal Injuries Compensation Scheme is a government funded scheme designed to compensate blameless victims of violent crime in Great Britain we the Criminal Injuries Compensation Authority (CICA) administer the Scheme and decide all claims the rules of the Scheme and the value of the payments awarded are set by Parliament and are calculated by reference to a tariff of injuries although the size of the award varies to reflect the seriousness of the injury.

³² See chapter seven section 8.

³³ See chapter one section 4.3

³⁴ CR Snyman, *Criminal Law* (2014) 305 6th edition.

victims.³⁵ As a result, the trend is to define crime as being conduct contrary to, or dangerous to, the life and survival of individuals.³⁶

Crime should not be perceived as being an act against the state only but also against the individual crime victims. Nigeria, like South Africa, has the notion of *Ubuntu*.³⁷ *Ubuntu* is a concept that preaches "humaneness, social justice and fairness, the rehabilitation of offenders and the maintenance of law and order, and represents the opposite of victimization, grievous crimes and cruel and inhuman treatment."³⁸

Ubuntu recognizes a person's status as a human being, entitled to unconditional respect, dignity, value and acceptance from the members of the community such person happens to be part of. It also entails the converse, however. The person has a corresponding duty to give the same respect, dignity, value and acceptance to each member of that community. More importantly, it regulates the exercise of rights by the emphasis it lays on sharing and co-responsibility and the mutual enjoyment of rights by all.³⁹

The point being made here is that there is a distinct closeness between the estimations or values of RJ and the idea of *Ubuntu*. RJ and *Ubuntu* place more emphasis on the harmonization of damaged relationships in a manner that is fair to all parties.

The relationship between crime victims and criminal offenders is germane to RJ; equally important is the involvement or inclusion of the community society or state in the practice of RJ because, in RJ practice, the community functions as enforcer of the principles of RJ because the society was also affected by the crime.⁴⁰

³⁵ D Sank, & DI Caplan (eds) *To be a victim: encounters with crime and injustice* (1991) 121.

³⁶ PJ van der Walt, G Cronje, BF Smit *Criminology: An introduction* (1989) 31.

³⁷ See chapter four section 9.

³⁸ L Mbigi, & J Maree *Ubuntu: The Spirit Of African Transformation Management* (1995) 1-7.

³⁹ *S vs Makwanyane* 1995 6 BCLR 665 (CC) 130-131.

⁴⁰ L Walgrave, 'Extending the Victim Perspective Towards A Systematic Restorative Justice Alternative' in A Crawford & J Goodey (eds) *Integrating a victim perspective in criminal justice* (2000) 253.

The idea of sentencing legislation in jurisdictions like the UK and the USA required that offenders receive what they deserve; to that extent reprisal or restitution, with culpability filling in as a relieving or exasperating condition, determined the punishment offenders received.⁴¹ Advocacy for the pro-victim movement gave rise to legislation that granted victims of crime rights to receive compensation from a state-funded scheme. The crime victims' rights have been described as a movement away from individualising the offenders to individualising the victims. In other words, crime victims have the right to take part in the administration of the justice system.⁴²

The giving of rights to crime victims to contribute to the punishment the offenders received served as evidence of RJ approach. To this end, the administration of justice systems need a complete re-examination with a view to determining whether the systems have complied with the principles and values of RJ.⁴³

3.1 Values of restorative justice

3.1.1 Encounter

Van Ness and Strong, in their works, have stated that restorative justice has its own values.⁴⁴ First of these values, according to the authors, is 'encounter'. By encounter Van Ness and Strong mean the making of chances or opportunities for victims of crime, offenders and community to meet face to face in a convenient and conducive atmosphere to discuss the crime and the effects of the crime.

The RJ process puts much value on everyone affected by the crime in actually meeting with one another. Unlike the conventional court system, in which the parties may be aware that the other is there but lacks the opportunity to interact, restorative encounters are on a one-on-one basis. In the process, or in the course, of the interaction, parties have the opportunity to speak, to narrate their experience

⁴¹ E Erez, 'Integrating A Victim Perspective In Criminal Justice Through Victim Impact Statements' in A Crawford & J Goodey (eds) *Integrating a victim perspective in criminal justice* (2000) 165.

⁴² L Sebba, 'The individualization of the victim: from positivism to postmodernism' in A Crawford & J Goodey (eds) *Integrating a victim perspective in criminal justice* (2000) 63.

⁴³ A Ashworth, 'Victims' rights defendants' rights and criminal procedure' in A Crawford & J Goodey (eds) *Integrating a victim perspective in criminal justice* (2000) 192.

⁴⁴ DW van Ness & KH Strong *Restoring Justice* (2002) 69-125.

of the crime from their own point of view. During the meeting, victims of crime, the offenders and the community are able to talk about the things that concern them; but, irrespective of whatever happens in the meeting, the meeting concludes with an agreement that is both particular to this dispute and achievable by the parties. Although the harm done cannot be undone, steps are, however, taken toward redressing the harm or the effects of the crime.⁴⁵

3.1.2 Amends

Van Ness and Strong described 'amends' to mean the expectation that criminal offenders will rise to the occasion and make moves to correct the damage or harm they have created. The state's being responsible for compensation for victims of crime comes on the heels of the fact that, if the state had prevented the crime in the first place and protected innocent victims,⁴⁶ the harm or damage would not have taken place. So, in this process, restorative justice tries as much as possible to meet the needs of crime victims, their emotional, financial, material and social needs.

In addition to this, in amending what has been wronged, there is collaboration whereby all parties taking part in the process contribute to the decision-making and the outcomes of the entire process. This also includes the empowerment of the parties through non-discriminatory participation, encounter with other parties, moral education that reinforces cultures and norms, protection from physical and emotional harm, and reintegration into the society.⁴⁷

3.1.3 Reintegration

Reintegration is the possibility of seeking the restoration of both crime victims and the criminal offenders as responsible and contributing members of the community.⁴⁸ Reintegration is a methodical and proof-based process by which moves are made to work with the offenders in custody so that, on the offender's release, the community

⁴⁵ DW van Ness, '*Perspectives on achieving satisfying justice: values and principles of restorative justice*' paper presented at *Achieving satisfying justice symposium Vancouver* March 21 (1997) 3-4

⁴⁶ See the United Nations General Assembly Security Council 'Responsibility to protect: State responsibility and prevention' (2013) 1.

⁴⁷ Van Ness & Strong (n 4 above) 48-49.

⁴⁸ As above.

is better shielded or protected from crime and harm, and recidivism is essentially decreased. It encapsulates the totality of work with detainees, their families, and, importantly, others and victims of crime in association with statutory and voluntary organisations.⁴⁹

Reintegration is not a once-off process. It is a continued process of intervention in the life of the criminal offenders in which previous interventions are supported by other supporting interventions in a sustained and linked manner, which, in the final analysis, leads to a successful reintegration of offenders during incarceration and continues after release.⁵⁰ The efforts to reintegrate the offenders mean the inclusion of the chances and avenues for a third party involved in the commission of any crime to play a role in the solving and restoring of the broken relationship as a result of crime.

4. Programmes and practices of restorative justice

In Nigeria, discipline or punishment, rather than RJ,⁵¹ has dependably been the essential objective or goal of managing or dealing with criminal offenders,⁵² a practice inherited from the Western legal system.⁵³ But in the African traditional justice system, one of the goals of justice making is the reintegration of the offender into the community.⁵⁴ In Nigeria, the present criminal justice framework is excessively centred on the offenders and, hence, gives the victims of crime only a passive part in the entire procedure of justice administration or organisation. Moreover, the criminal justice framework in Nigeria makes an adversarial connection between the wrongdoer and the victims on one hand, and the society on the other, owing to its retributive and correctional nature while disregarding the way that

⁴⁹ S Maruna, & R Immarigeon (eds) *After Crime And Punishment: Pathways To Offender Reintegration* (2004) 5.

⁵⁰ L Muntingh, *Offender Rehabilitation And Reintegration: Taking The White Paper On Corrections Forward* (2005) 7.

⁵¹ Centre for Justice and Reconciliation 'Restorative justice' <http://www.restorativejustice.org/>. (Accessed 28 May 2017).

⁵² OJ Solomon, & R Nwankwoala 'The role of restorative justice in complementing the justice system and restoring community values in Nigeria' (2014) 2(3) *Asian Journal of Humanities and Social Sciences* 127.

⁵³ MC Materni 'Criminal punishment and the pursuit of justice' (2013) 2 *British Journal of Legal Studies* 246.

⁵⁴ See chapter three section 5.

criminal conduct speaks to the relational clash that must be settled by the society through RJ.⁵⁵ The way of arbitration or adjudication by the justice framework between the criminals and the victims of crime makes a road for strife and hatred among the parties.⁵⁶

As it stands today, RJ as a concept is not practised in the Nigerian criminal justice administration except, of course, in civil matters in the form of Alternative Disputes Resolutions (ADR).⁵⁷ The concepts and programmes discussed below in RJ practices are meant to be seen as parts of the Nigerian compensation scheme for crime victim's compensation in the study. The practice of RJ, it is submitted, is a better alternative and more beneficial than the Western traditional legal system that usually seeks to marginalize offenders.⁵⁸ The practice of RJ, which includes victim-offender mediation and family group conferences as we shall discuss shortly, invites the offenders back to be reintegrated into the community.⁵⁹ Criminals are given a chance to be directly accountable to their victims, and this reduces chances of recidivism.⁶⁰

Basically, there are three practices or programmes that are restorative justice in nature. They are victim-offender mediation (VOM), conferencing, and sentencing circles.⁶¹ The three practices are restorative in all ramifications, in values and processes.⁶² RJ is a programme designed to place the crime victims at the centre with a view to encouraging them to narrate their stories.

⁵⁵ Solomon & Nwankwoala (n 49 above) 134.

⁵⁶ H Zehr, *Changing lenses: A new focus for criminal justice* (1990) 40.

⁵⁷ A Rhodes-Vivour 'Arbitration and alternative dispute resolution as instruments for economic reform' <http://www.nigerianlawguru.com/articles/arbitration/ARBITRATION%20&%20A.D.R.pdf>. (Accessed 17 July 2017).

⁵⁸ LM Rea 'Restorative justice: The new way forward' <http://www.restorativejusticeinternational.com/assets/PrisonArticleRea.pdf>. (Accessed 9 August 2017).

⁵⁹ A Azman, & MT bin Mohammad 'Crime victims support system and restorative justice: possible implementation in Malaysia' (2012) 1(2) *Journal of Arts and Humanities* 22.

⁶⁰ W Bradshaw, D Roseborough & MS Umbreit 'The effect of victim offender mediation on juvenile offender recidivism: a meta-analysis' (2006) 24(1) *Conflict Resolution Quarterly* 87-98.

⁶¹ M Schiff, 'Models challenges and the promise of restorative justice conferencing strategies' in JV Von Hirsch, A Roberts & A Bottoms (eds) *Restorative justice and criminal justice: competing or reconcilable paradigms?* (2003) 315-338.

⁶² J Shapland, 'Restorative justice and criminal justice: just responses to crime?' in JV Von Hirsch A Roberts & A Bottoms (eds) *restorative justice and criminal justice: competing or reconcilable paradigms?* (2003) 195-218.

In addition to what has been said, RJ provides the crime victims with avenues to regain sufficient control over the results of the process. Furthermore, in all the processes of RJ, crime victims hear their family members and the criminal offenders' family acknowledging the crime and condemning it in its entirety.⁶³

4.1 Victim offender mediation

Victim offender mediation is an avenue for meetings between the crime victims and the criminal offenders in a sheltered and organised environment with the objective or goal of allowing the offenders to take responsibility for his or her conduct while giving essential help and remuneration or compensation to the victims of crime with the help of trained mediators.⁶⁴ VOM assists or helps victims and offenders to settle the dispute by allowing an approach that the mediators consider or regard as being suitable or proper, effective and result oriented in correcting the wrong occasioned by the crime so that the offenders become aware the full impact of what they have done.⁶⁵

4.2 Conferencing

Victim-offender conferencing comes out of an endeavour some of the ways the customary or the traditional criminal justice system neglects or where it fails to address the critical demands and needs of the victims of crime offenders.⁶⁶

Conferencing as a concept is to a great extent part of RJ that draws innovations from a variety of responses to conflict.⁶⁷ The purpose of conferencing is to bring back what has been destroyed by every means practicable and to encourage the

⁶³ T Gal, & V Shidlo-Hezroni '*Restorative justice as therapeutic jurisprudence: the case of child victims*' in E Erez M Kilchling, & Jo-Anne Wemmer (eds) *Therapeutic jurisprudence and victims participation in justice: international perspectives* (2011) 150.

⁶⁴ M Umbreit, 'Victim offender mediation and dialogue' (2008) *Center for Restorative Justice & Peacemaking* 1.

⁶⁵ As above.

⁶⁶ LS Amstutz, & H Zehr 'Victim offender conferencing' <https://www.emu.edu/cms/links/cjp/docs/rjmanual.pdf>. (Accessed 17 July 2017).

⁶⁷ G Bazemore, & M Umbreit 'Conferences circles boards and mediations: restorative justice and citizen involvement in the response to youth crime' (1999) *Office of Juvenile Justice and Delinquency Prevention* 5.

victims of a crime and the offenders to speak and bear their minds and feelings on the harm occasioned by the crime.⁶⁸

Conferencing may not substantially clean the effect of crime; it nonetheless restores the physical and emotional security of victims of crime and provides a leeway for reintegrating offenders.⁶⁹ Besides, it makes dialogue, negotiation, and problem solving possible amongst those directly affected by the crime.⁷⁰

4.3 Sentencing Circles

A sentencing circle is a group-coordinated process, led in association with the criminal justice framework to create accord on a suitable sentencing arrangement that tends to address the concerns of all individuals.⁷¹ It is called a peace-making circle and it utilizes conventional or traditional circle custom or rituals and structure to include the victims, victim's supporters, offender's supporters, judge and court officials, prosecutor, defence lawyers, and the police.⁷² Inside the circle, individuals can discuss from the heart in search of understanding of the event, and together identify the means that are important to help with mending or healing of all affected parties and avoiding future violations or crime, and they may determine a sentence specifically tailored to the offender's situation.⁷³

It is an alternative to hearing formal sentencing submissions from lawyers which requires a significant commitment from community members and it does not require or demand the finding of guilt.⁷⁴ Although concerns have been raised with respect to the crime victims' part in the use of the sentencing process, it is still perceived as a step towards embracing "aboriginal" values and traditions within the justice system.⁷⁵

⁶⁸ As above.

⁶⁹ FJ Sch-weigert, 'Moral education in victim offender conferencing' (1999) 18 *Criminal Justice Ethics* 29.

⁷⁰ As above.

⁷¹ J Fitzgerald, 'Does circle sentencing reduce Aboriginal offending?' (2008) 115 *Crime and Justice Bulletin* 1.

⁷² Bazemore & Umbreit (n 64 above) 5.

⁷³ Fitzgerald (n 68 above) 1.

⁷⁴ H Lilles, 'Circle sentencing: part of the restorative justice continuum' (2002) *International Institute for Restorative Justice Practices* 2.

⁷⁵ V Footz, 'Sentencing circles' (1999) *Online Law* 45.

4.4 Victim assistance programmes

Victim assistance programmes provide financial, medical and psychological support for crime victims recovering from crime.⁷⁶ The victim support programme addresses the harm suffered by crime victims. In addition, the programme reintegrates criminal offenders into the community by providing education for the criminals in positive dispute resolution skills that take away the delinquent criminal conduct and foster accountability.⁷⁷

4.5 Restitution and community service

By restitution is meant the monetary payments to the crime victims by the offenders and services rendered to the crime victims.⁷⁸ Restitution has the effect of correcting the financial outcome of crime; additionally, it has the capacity of turning the offender into a responsible human being. In addition to restitution, correcting the damage done to the crime victims, the offender's community service, as a form of corrective measure for the damage done to the community, helps to ameliorate any harm done to the community which is regarded as the secondary victim.⁷⁹

State-funded victim compensation is not classified separately in the above enumerations; this is because it is commonly referred to as a programme of its own within the meaning of RJ. To this end, the idea of compensating crime victims is an indication of the change within the concept of criminal justice, where the major objective of the community in reaction to crime is to address the needs of crime victims as against the traditional approach of punishing the criminal offenders.⁸⁰

⁷⁶ JC von Bonde, 'Redress for victims of crime in South Africa: a comparison with selected commonwealth jurisdictions' unpublished PH.D Thesis Nelson Mandela Metropolitan University (2006) 33.

⁷⁷ M Langa, & T Masuku 'The role of ex-offenders in implementing the community work programme as a crime and violence prevention initiative' (2015) 13(2) *African Safety Promotion Journal* 83.

⁷⁸ See summary of thesis xiii.

⁷⁹ Van Ness & Strong (n 41 above) 69-125.

⁸⁰ M Wright, 'Why should victims of crime be compensated?' in In support for crime victims in a comparative perspective E Fattah & T Peters (eds) (1998) 83-94.

5. Benefits of a restorative approach to justice

A RJ approach prevents offenders from re-offending or recidivism.⁸¹ Research has consistently showed that offenders who have participated in have lower re-offense rates and, when they do engage in criminal activity, a less serious offense is involved.⁸² Furthermore, RJ processes facilitate access to justice for crime victims and provide a more empowering experience for victims.⁸³ They are less time consuming and cost effective and it has the effectiveness of restoring, compensating and giving a voice to the crime victims.⁸⁴

The RJ process also benefits the criminal justice system because it helps to reduce case back logs and prevents unnecessary cost and delays in the criminal justice system as well as ultimately giving an explanation to the criminals about the impact of their crime on the victims.⁸⁵

Additionally, RJ mechanisms reduce overcrowding in prisons and bring to its barest minimum the cost to the taxpayer.⁸⁶ Finally, the practice of RJ improves community involvement in the dispute resolution process which strengthens and deepens the national democracy of a country.⁸⁷

⁸¹ C Davidson, 'Restorative justice and the prevention of youth reoffending' Ph.D. thesis submitted to the University of Newcastle (2014) 1.

⁸² M Umbreit, R Coates, & B Voss, 'Impact of restorative justice conferencing: a review of 63 empirical studies in 5 countries, Center for Restorative Justice and Peacemaking (2002) 12.

⁸³ M Laxminarayan, 'Accessibility and Initiation of Restorative Justice' (2011) *European Forum for Restorative Justice* 5.

⁸⁴ Y Boriboonthana, 'The effect of restorative justice practices on crime victims: a meta-analysis' a Ph.D. thesis submitted to the University of Sheffield (2006) iv.

⁸⁵ J Wright, 'Restorative justice action plan for the criminal justice system' (2012) *Ministry for Prisons and Rehabilitation* 3.

⁸⁶ K Kittayarak 'Responding to prison overcrowding: another attempt from Thailand' http://www.unafei.or.jp/english/pdf/Congress_2010/17Kittipong_Kittayarak.pdf. (Accessed 17 July 2017).

⁸⁷ 'Restorative justice: the road to healing Justice and constitutional development Republic of South Africa' <http://www.justice.gov.za/rj/2011rj-booklet-a5-eng.pdf>. (Accessed 17 June 2017).

6. Evaluating restorative justice

Notwithstanding the benefits and values attributed to RJ practices, several criticisms have been levelled against it. For instance, it has been argued that RJ does not recognize the need for the punishment of the criminal offenders.⁸⁸ In response to this criticism, Batley reasoned that RJ does not prohibit the use of retributive means and that both restorative and retributive measures can be combined in a constructive way to deal with the offenders.⁸⁹ RJ is criticized for its lack of inventiveness and modernity in addressing the issues it claims to solve. Notably, in response, facing crime victims after the commission of crime could be a difficult issue for offenders because being face-to-face with the crime victim's force accountability on the offenders. It is submitted, therefore, that, if the practical applications of RJ lacks inventiveness, this is a demerit or a disadvantage in practice and not in principle.⁹⁰

The values and benefits of RJ for all participants cannot be overemphasized. For example, the South African Truth and Reconciliation Commission have demonstrated the preparedness of crime victims to take part in restorative processes with a view to giving forgiveness to criminal offenders.⁹¹

The invaluable advantages and uses of restorative justice was reiterated by Chaskalson when he reasoned that:

We have long outgrown the literal application of the biblical injunction of 'an eye for an eye, and a tooth for a tooth'. Punishment must to some extent be commensurate with the offence, but there is no requirement that it be equivalent or identical to it. The State does not put out the eyes of a person who has blinded another in a vicious assault, nor does it punish a rapist by castrating him and submitting him to the utmost humiliation in gaol.⁹²

⁸⁸ R Peacock *Victimology in South Africa* (2013) 130.

⁸⁹ CMB Naudé 'Changing punishment and restorative justice (2001) 42(3) *Canadian Journal of Criminology* 256.

⁹⁰ Von Bonde (n 73 above) 34.

⁹¹ As above.

⁹² *S vs Makwanyane* 1995 6 BCLR 665 (CC) 129.

RJ gives the crime victims the opportunity to have the feeling that he has been heard and been given a voice.⁹³ Additionally, crime victims know that the offenders are faced with the reality of their criminal behaviour. RJ does not prohibit or disallow any measures to be taken against criminal offenders. Desmond Tutu lent credence to the use of RJ when he said that "forgiveness does not mean condoning what has been done. It means taking what has happened seriously and not minimizing it."⁹⁴

RJ procedures and practices have been employed in jurisdictions like New Zealand for serious and persistent offenders.⁹⁵ In North America, victim-offender mediation has been used in homicide and other cases.⁹⁶

The concept of RJ is not without its corresponding disadvantages. In order to address the disadvantages of restorative justice, it has been argued that a parallel justice system be established.⁹⁷ A parallel justice system is one which will combine the positive sides of RJ and the conventional retributive processes to criminal justice.⁹⁸ The point being made here is that RJ should be part and parcel of the traditional justice system.⁹⁹ When parallel justice is put in place, it amounts to justice for the crime victims and justice for criminal offenders.¹⁰⁰

As a result of what has been said, the attitude of the Nigerian criminal justice system will, to a large extent, define how successful the parallel justice will be applied with a view to harnessing the strengths of restorative justice and an aspect of criminal justice.¹⁰¹ It is argued that the response and use of RJ in Nigeria will, to a

⁹³ 'Supporting victims of crime' <https://www.restorativejustice.org.uk/.../Rebuilding%20Lives%20-%20Response%20o>. (Accessed 17 July 2017).

⁹⁴ D Tutu, *No Future without Forgiveness* (1999) 218-219.

⁹⁵ C Pollard, 'Victims and the criminal justice system: a new vision' (2000) *Criminal Law Review* 5.

⁹⁶ MS Umbreit, W Bradshaw & RB Coates 'Victims of severe violence meet the offender: restorative justice through dialogue' (1999) 6 *International Review of Victimology* 321.

⁹⁷ S Herman 'Is restorative justice possible without a parallel system for victims?' in H Zehr & B Toews (eds) 'Critical issues in restorative justice' (2004) 75.

⁹⁸ *S vs Makwanyane* 129 The court stated that retribution is one of the objects of punishment but it carries less weight than deterrence.

⁹⁹ L Walgrave, & I Aertsen 'Reintegrative shaming and restorative justice: interchangeable complementary or different?' (1996) 4(4) *European Journal on Criminal Justice Policy and Research* 67.

¹⁰⁰ Von Bonde (n 73 above) 35.

¹⁰¹ J Burchell, & J Milton *Principles of criminal law* (2016) 7-9.

reasonable degree, rest on the attitude of the operators of the criminal justice system.

Although RJ is said to be expensive in its practices and application owing to the lack of resources necessary for its success, experience has, however, shown in foreign jurisdictions that adequate financial support for RJ will save costs to the society which will bring crime to a manageable level and by extension reduce the number of court proceedings.¹⁰²

The viability and suitability of RJ in Nigeria's criminal justice system may be implied from a British Court of Appeal statement to the effect that "interestingly, a number of these examples can be found in areas where indigenous people have suffered as a result of the imposition of Western legal systems without common reference points."¹⁰³

The importance of the statement above is that the basic criticisms of RJ in principle are a lack of procedures and mechanisms in the protection of the accused, where, in particular, the crime victims have an input in determining the offenders' sentence. But the antagonists of RJ may have forgotten that blameworthiness limits the criminal offenders' liability in the criminal justice system.¹⁰⁴

7. Need to recognise restorative justice in Nigeria criminal justice administration

The UN Commission on Crime Prevention and Criminal Justice (UNCCPCJ) designed plans in respect of RJ.¹⁰⁵ In its recommendation, the UN's Commission adopted a draft resolution encouraging member states to design a plan and standards for RJ,

¹⁰² R Auld 'Review of the criminal courts of England and Wales' (2001) *The Stationery Office* 66.

¹⁰³ As above.

¹⁰⁴ A Ashworth, 'Victims' rights, defendants' rights and criminal procedure' in A Crawford & J Goodey (eds) *Integrating a victim perspective in criminal justice* (2000) 185.

¹⁰⁵ United Nations Economic and Social Council Commission on Crime Prevention and Criminal Justice' Restorative Justice: Report of the Secretary-General (2002)' <http://www.unodc.org/pdf/crime/commissions/11comm/5add1e.pdf>. (Accessed 30 May 2017).

with legal support where necessary.¹⁰⁶ Nigeria can borrow from these recommendations.

Finally, in evaluating RJ, it is important to stress that the subject of RJ is intertwined with the subject of crime victims. On the one hand, whilst restorative justice has received recognition in many parts of the world, it should be applied more rigorously by demonstrating that state-funded compensation schemes is primarily meant for crime victims, but at the same time, criminal offenders should be restored back to society through rehabilitation. RJ, as a concept, however, goes far beyond compensation for the crime victims. This is evident in the fact that in certain RJ programmes, crime victims' input through the use of a victim impact statement is considered when punishment is to be pronounced. Put differently, the crime victims take an active role compared with the passive role in RJ practices and in the criminal justice system.

8. Restorative justice is a precedent with regards to the needs of all parties

RJ meets the needs of all affected by criminal behaviour.¹⁰⁷ Sullivan and Tifft argued that the needs of all parties participating in the RJ practices should be addressed adequately. Again Sullivan and Tifft reasoned that this form of justice may be hard to imagine because our lives and the criminal justice system have operated under the guise of a rights-based system for so long, and our relationships and daily lives are predominately organised on one or the other of two different justice ideas and arrangements - rights and deserts.¹⁰⁸

¹⁰⁶ Eleventh Session – Vienna United Nations Commission on Crime Prevention and Criminal Justice Report on the eleventh session (2002) <http://www.unodc.org/pdf/crime/commissions/11comm/14e.pdf>. (Accessed 30 May 2017).

¹⁰⁷ P Redekop, 'Meeting the Needs of Victims and Offenders in the Pursuit of Justice' (2011) *Conflict Resolution Studies* 3.

¹⁰⁸ D Sullivan, & L Tifft Restorative justice: healing the foundations of our everyday lives (2001) 99.

8.1 Crime victims' needs

Zehr identified crime victims' needs to include empowerment and having the criminal offenders held accountable and responding to crime victim's questions.¹⁰⁹ This is far from the bureaucratic processes adopted under the retributive justice paradigm since the focus is to proceed to ask how the offenders should be punished.¹¹⁰

Following from the above, crime victims further need support. They need someone to listen to them; they need answers to their questions and to be assured that what happened to them was wrong. They need assurances that there will be no recidivism, they need to relate their experience of the crime, and they need to release the emotions of anger, confusion, and frustration.¹¹¹

An equally important part of the crime victims' needs is restitution, and the opportunity to receive compensation for the injury suffered either from the state or from the criminal offenders. Restitution is one form of compensation;¹¹² however, there are other forms of compensation that are less acknowledged.

These include apology, forgiveness and dialogue.¹¹³ These forms of compensation are as important to crime victims as the others.

It is submitted that the RJ process allows crime victims to enumerate their individual demands and to have the demands met. This is because, under the retributive justice system, crime victims' needs are hardly satisfied or met. In retributive procedure, the victims are neglected in place of the offender's conviction and decisions regarding the resultant punishment, and they are not granted any direct recognition or mention in national constitutions.¹¹⁴

¹⁰⁹ Zehr, (n 53 above)

¹¹⁰ MC Materni, 'Criminal punishment and the pursuit of justice' (2013) 2 *British Journal of American Legal Studies* 263.

¹¹¹ Zehr, (n 53 above)

¹¹² J Garcia-Godos, 'Land restitution in transitional justice –an overview' (2009) 1.

¹¹³ R Carranza, C Correa & E Naughton 'More than words apologies as a form of reparation' (2015) 1.

¹¹⁴ KL de Klerk, 'The role of the victim in the criminal justice system: a specific focus on victim offender mediation and victim impact statements' an LL.M thesis submitted to the faculty of law University of Pretoria (2012) 53.

8.2 Criminal offenders' needs

Although the focus of the study is the crime victims and state-funded compensation to crime victims, one must not, however, overlook or neglect the needs of the criminal offenders. The crime victims' need is the fulcrum of RJ, however criminal offenders' needs should be considered as well. Zehr noted that scripturally or biblically, justice or equity is done not on account of being merited but rather on the grounds that it is needed or required. In spite of the fact that, in a retributive process, offenders do not merit having their own particular needs addressed, societies self-intrigue manages that these requirements be a piece of a fair reaction. Recognising and tending to offender's needs are key components of RJ.¹¹⁵

The criminal offenders' harmful behaviour may have resulted as a result of a need or needs that are not satisfied or supplied in their lives. So, if the justice system wants to deter subsequent harm-producing and delinquent behaviour and bring to its barest minimum the danger of recidivism, the system must possess the requisite capacities to meet the needs of the criminal offenders.¹¹⁶

Zehr identified the needs of criminal offenders to include:

the need to have their stereotypes and rationalizations about the crime victims and the crime challenged; need to learn to be more responsible, to develop employment and interpersonal skills; the need for emotional support, for anger and frustration management; the need to develop a positive and healthy self-image; and the need for help in dealing with guilt.¹¹⁷

¹¹⁵ Zehr (n 53 above).

¹¹⁶ Gerkin, 'Seeking justice for victims and offenders: a needs-based approach to justice' unpublished Ph.D thesis Western Michigan University (2006) 65.

¹¹⁷ Zehr (n 53 above)

One of the major characteristics of a true needs-based justice is that it endeavours to work more diligently in order to identify the emotional and psychological needs of the victims, the needs of criminal offenders, and the needs of the communities where the crime occurred.¹¹⁸ A true needs-based justice strives to meet the needs that occasioned the harm or the harms caused by the criminal behaviour.

8.3 Community needs

Beyond the victims' and criminal offender's needs, the community has a role to play in meeting those needs and so the needs of community are also very important.¹¹⁹

In restorative justice practices, there are two types of communities that play important roles. Firstly there is the micro-community, also known as the community of care.¹²⁰ The members of the micro-community are the families, friends and significant others. This community makes available the personal, emotional and all other needs or care used in addressing societal issues and in times of need for support and survival.

When harm has occurred as a result of crime, the members of the micro community/ social network gather round the crime victims and the criminal offenders. The reason why the community gathers round both crime victims and offenders is that the community was affected by the harm as well.¹²¹ As such, the harm must be addressed, the needs produced by the harm must be addressed, and the possibilities for repairing the harm must be addressed.

The second type of community is the macro-community. This community is not determined by personal relationships, but by the relationship between members who live in it. The macro-community is the neighbourhood in which one resides and

¹¹⁸ PM Gerkin (n 113 above) 4-10.

¹¹⁹ P McCold, '*What is the role of community in restorative justice theory and practice?*' in H Zehr & B Toews (eds) *Critical issues in restorative justice* (2004) 172.

¹²⁰ As above.

¹²¹ P Gold, '*Restorative justice: the role of the community*' (1995) *International Institute for Restorative Practice* 25.

belongs. The macro-community does not have strong emotional link to any particular crime; it experiences what scholars refer to as aggregate harm.¹²²

The macro-community is one which "demonstrates concerned for the cumulative effect of crime on neighbourhoods or society, and the resulting loss of a sense of public safety. From a neighbourhood perspective, crime results in public fear of certain places which, in turn, reduces the public guardianship of those areas. This situation, then, further encourages crime and eventually leads to general neighbourhood decay."¹²³

The needs of both communities discussed above are, therefore, identified to include the need to prevent future harms, the needs to be reassured that steps are being taken about crime and to discourage it from happening again.¹²⁴ The need to know there will be a firm and immediate response to violent crime, that such behaviour will not be tolerated¹²⁵ and the need for the feeling of safety.¹²⁶

RJ reintegrates victims and the criminals into the different communities examined above. In reference to the theory of crime discussed earlier,¹²⁷ shaming is employed to show the criminal offenders that their delinquent actions are wrongful and have damaging effects. But, to be restorative, the process of shaming must be used in an effort to bring the criminal offenders and crime victims back into the micro and macro-communities.

Braithwaite called this process as re-integrative shaming.¹²⁸ Re-integrative shaming brings the criminal offenders into law-abiding society's forgiveness.¹²⁹ The RJ process presents the criminal offenders' conduct as being negative, but it attempts to present the criminal offender as being a good person. This is because, when no efforts are made to reconcile the criminal offenders with the community, criminal

¹²² McCold (n 116 above).

¹²³ As above.

¹²⁴ Zehr (n 53 above).

¹²⁵ R Stark, 'Deviant places: a theory of the ecology of crime' (1987) *Criminology* 893-909.

¹²⁶ V Mackey, 'Restorative justice: toward nonviolence' (1990) *Presbyterian Criminal Justice* 60.

¹²⁷ See chapter two section 3.

¹²⁸ J Braithwaite, *Crime Shame and Reintegration* (1999) 100.

¹²⁹ As above.

offenders are stigmatized.¹³⁰ When this happens, the offender becomes an outcast and recidivism is most likely to occur. Both the crime victims and criminal offenders should be given support and the services needed to recuperate from the victimization and have their demands for healing, forgiveness, and repairing the harm addressed.¹³¹

9. Restorative and justice institutions

RJ can be employed in cases involving serious criminal matters.¹³² This claim is evidenced on the views of criminal justice professionals with regard to RJ initiatives. The success of any RJ approach depends on the support of the crime victims and criminal offenders involved in the incident.¹³³ But most importantly, the role of the criminal justice officials who receive and process cases cannot be underestimated in the RJ process.

In some situations, RJ options are used at some point after the apprehension of the criminal. The possibility of this option depends on the understanding and support between the police, prosecutors, magistrates and judges. For instance, when a case is to be diverted, the prosecutors are the ones responsible for deciding which cases are to be diverted and which ones are to be prosecuted. For this reason, it is important that all the criminal justice role players understand the philosophy of RJ. The first step towards proposing any RJ programme in Nigeria, therefore, is to assess existing perceptions of RJ among criminal justice officials.

¹³⁰ As above.

¹³¹ Gerkin (n 113 above) 68.

¹³² E Elliott, & M Gordon 'Restorative justice in cases of serious crime: an evaluation' (2005) in *E Elliott & MR Gordon (eds) New directions in restorative justice: issues practice evaluation* 266.

¹³³ 'Restorative justice and its relation to the criminal justice system papers from the second conference of the European forum for victim-offender mediation and restorative justice Oostende (Belgium) 10-12 October 2002 27.
http://www.euforumrj.org/assets/upload/Conf_Oostende_Report.pdf. (Accessed 31 May 2017).

10. Restorative justice in the African context

Africans have always had a world view of RJ different from traditional Western philosophy, and African concept of RJ entertained punishment for any crime committed in the community.¹³⁴ In traditional Africa the concepts of *Ubuntu*, community, indigenous justice and restoration are interlinked and aimed at the restoration of victims and the reintegration of offenders into the community.¹³⁵ The restoration of relationships and social harmony undermined by the conflict are also of importance. The same values and principles that underpin the African philosophy of *Ubuntu* are also embodied in RJ. The relationship between the concept of RJ and the *Ubuntu* philosophy is of wider relevance as it shows how both universal and African philosophies have the potential to contribute to restoration and conflict resolution in diverse societies.

Following from what has been said above, it is noted that the imposition of colonization and the resultant changes it brought about had great effects on, and consequences for, the use of justice in colonized nations.¹³⁶ Indigenous RJ processes were abandoned in favour of the conventional justice process which reduced decision-making to a few elite.¹³⁷ Prior to the advent of colonization, communitarianism was the structure of indigenous cultures. The indigenous people stayed close to one another and the communities were noted for interpersonal closeness and dependence on one another. This social interconnectedness influenced the way the communities reacted to crime and disputes between members. Reconciliation formed the basis of this process.¹³⁸

¹³⁴ 'The African concept of Ubutun and restorative justice' [http://www.researchgate.net/.../289968407-The -Africanconceptof-Ubuntu-andrest](http://www.researchgate.net/.../289968407-The-Africanconceptof-Ubuntu-andrest). (Accessed 31 July 2017).

¹³⁵ See chapter four section 2.2 83.

¹³⁶ D Louw, & L van Wyk 'The perspectives of South African legal professionals on restorative justice: an explorative qualitative study' (2015) 51(1) *Social Work* 490.

¹³⁷ B Naude, J Prinsloo & A Ladikos 'Magistrates' and prosecutors' sentencing preferences based on crime case scenarios' (2003) 16(5) *Acta Criminologica* 72.

¹³⁸ F Mangena, 'Restorative justice's deep roots in Africa' (2015) 34(1) *South African Journal of Philosophy* 12.

Traditional justice practices and RJ include similar factors.¹³⁹ Notwithstanding the effects of colonization in Africa, the African process of settling dispute remained active in the communities.¹⁴⁰ Skelton, enumerated the factors that are common to both traditional African justice and restorative justice as follows: Both aim at reconciliation; restoration of peace; promoting social norms and individual rights; they consider dignity and respect as central values; both view crime as harmful; the law of precedent does not apply to the outcomes of either process; community participation is actively encouraged in both processes; and restitution and compensation are greatly respected in both African justice practices and RJ.¹⁴¹

11. Conclusions

Studies have been consistent by demonstrating that RJ provides great benefits for the crime victims in many ways.¹⁴² The benefits of restorative justice come in the form of fairness, accountability, satisfaction, repentance and forgiveness, emotional wellbeing, and feelings of safety for all concerned in the event of crime.¹⁴³

In the UK, for example, crime victims who took part in mediation revealed that they were satisfied with the system, and they testified that apology and negotiation of restitution were the most important elements that led to the success of the process.¹⁴⁴

¹³⁹ LW Sherman, & H Strang 'Crime and reconciliation: experimental criminology and the future of restorative justice' (2009) 22(1) *Acta Criminologica* 14.

¹⁴⁰ D Mekonnen, 'Indigenous legal tradition as a supplement to African transitional justice initiatives' (2010) 10(3) *African Journal on Conflict Resolution* 101-123.

¹⁴¹ A Skelton, 'Tapping indigenous knowledge: traditional conflict resolution restorative justice and denunciation of crime in South Africa' (2007) 28(2) *Acta Juridica* 228-246.

¹⁴² T Gal & V Shidlo-Hezroni (n 60 above) 151.

¹⁴³ B Poulson, 'A third voice: a review of empirical research on the psychological outcomes of restorative justice' (2003) *Utah Law Review* 203.

¹⁴⁴ T Gal & V Shidlo-Hezroni (n 60 above) 151.

Notwithstanding the criticisms of the ability of RJ to minimize crime, the healing aspect of RJ teaches that in as much as restorative justice does not increase crime,¹⁴⁵ its adequacy and important contributions to crime victims' wellbeing, satisfaction and rehabilitation provides strong justification for its use wisely and widely.¹⁴⁶ The positive effect of RJ on those affected by crime suggests that it can be used in crimes such as homicide or murder cases if both crimes and criminal offenders agree to the process.¹⁴⁷

RJ practices denounce crimes through the presence of the offenders' family and friends; they do not take crime lightly, they pay attention to the consequences of crime and search for viable and legitimate ways of ensuring that criminal offenders are held accountable for their actions.¹⁴⁸ Punishment of the criminal offender in the African setting is used to appease the victim, to satisfy society's desire for revenge, and to reconcile the offender to the community by paying a debt to society.¹⁴⁹ In other words, the African justice system does not only seek offenders' restoration, it also punishes the criminal offenders appropriately.

This chapter has discussed RJ as a way to promote crime victims' wellbeing through processes in which the victims who desire to do so are empowered to participate in a safe, supportive, one-on-one meeting with the criminal offenders. Beyond the demand for the expansion of RJ involving crime victims and offenders, the argument in this chapter has been to the effect that, even within the conventional justice apparatus, there is the benefit of implementing RJ rules in cases involving all kinds of crime victims.¹⁵⁰

¹⁴⁵ A systematic review of well-constructed experiments comparing restorative justice and court processes found that restorative justice did not increase recidivism in all but one study and in many cases in fact reduced recidivism rates. See LW Sherman & H Strang Restorative justice: the evidence (2007) 68.

¹⁴⁶ T Gal & V Shidlo-Hezroni (n 60 above) 151.

¹⁴⁷ As above.

¹⁴⁸ A Morris, 'Children and family violence: restorative messages from New Zealand' (2002) in H Strang & J Braithwaite (eds) Restorative Justice and Family Violence 89-107.

¹⁴⁹ AP Melton 'Indigenous justice systems and tribal society' http://www.aidainc.net/publications/ij_systems.htm. (Accessed October 27 2017)

¹⁵⁰ T Gal & V Shidlo-Hezroni (n 60 above).

Finally, the RJ approach in the justice system means enabling crime victims to take part in a process which permits them to narrate the experience and story of the crime in their own way. RJ also acknowledges the harm done to them, and it provides an avenue for the criminal offenders to tender an apology to the crime victims. RJ minimizes the criminal justice system's anti-therapeutic effects and maximizes its therapeutic impact on crime victims. When crime victims are healed and saved from the impact of victimisation, this produces more cooperative witnesses and greater reporting rates of future crimes. It is submitted, therefore, that treating crime victims restoratively is beneficial for the wellbeing of the crime victims, and, as suggested in the chapter, it might also increase the efficacy of the justice system in reducing recidivism and protecting the society from victimisation.¹⁵¹

¹⁵¹ As above.

Chapter Five:

Compensation and treatment of crime victims under Nigerian and international law

1. Introduction

There are crimes, violence and insecurity challenges in Nigeria.¹ It is a country infested with criminality² and many violent events.³ In 2012, a crime and victimization survey of Nigerians revealed that over 5% of Nigerians had personally been victims of armed violence.⁴ Many Nigerians have also been killed in inter-communal, political and sectarian violence.⁵ In Nigeria today, the most popular kind of crimes and victimization are burglary, robbery, and physical assault.⁶

All of these criminal activities in Nigeria are attributed to a lack of good governance,⁷ corruption,⁸ youth unemployment,⁹ decay in societal development and infrastructural decline.¹⁰ It is a painful truth that in Nigeria, irrespective of the level of human and natural endowment, the fear of crime and criminal victimization¹¹ still haunts every resident.

¹ A Dambazau, 'Nigeria and her security challenges' (2014) 35(4) *Harvard International Review* 1.

² Vision of humanity' Global peace index (2013) <http://www.visionofhumanity.org/#page/indexes/global-peace-index/2013/NGA/OVER>. (Accessed 1 October 2016).

³ ACLED 'Armed conflict location & event dataproject' <http://www.acleddata.com>. (Accessed 1 October 2016).

⁴ CLEEN foundation justice sector reform CLEEN foundation: summary of findings of 2012 national crime and safety survey (2012) 3.

⁵ *Human Rights Watch Nigeria: Post-Election Violence Killed 800* (2011) 1.

⁶ EEO Alemika, *Criminal victimization policing and governance in Nigeria* (2013) 68.

⁷ T Lawal, & D Owolabi 'Leadership debacle: The bane of good governance in Nigeria' (2012) 3 *Afro Asian Journal of Social Sciences* 1.

⁸ MM Ogbeidi, 'Political leadership and corruption in Nigeria since 1960: A socio-economic analysis' (2012) 1 *Journal of Nigeria Studies* 3.

⁹ PSO Uddin, & UO Osemegbe 'Causes effects and solutions to youth unemployment problems in Nigeria' (2013) 4 *Journal of Emerging Trends In Economics And Management Sciences* 399.

¹⁰ I Baba, & M Abubakar 'Decaying nature of facilities and the need for infrastructural development in North-east Nigeria' (2015) 3 *Universal Journal of Industrial And Business Management* 38.

¹¹ EEO Alemika, (ed) *Crime and public safety in Nigeria* (2014) 30.

The crime problem in Nigeria is multidimensional.¹² The crime problem¹³ is one of the factors that have undermined Nigeria's corporate existence because crime has not been brought under control.¹⁴

Human security¹⁵ is an important issue for all and society¹⁶ itself alike. Adequate security for all will not be guaranteed if the security agencies¹⁷ are greedy and corrupt. Additionally, poverty reduction and the development of democracy in any society are enhanced when the security of the citizens is guaranteed.

The urban crime rate in Nigeria is one of the social problems the country has been grappling with in recent times.¹⁸ This is against the backdrop of the fact that the dominance of crime in a developing nation like Nigeria increases the volatility of crime problems.¹⁹ In this connection, in several Nigerian states, criminal activities and violence are taking dangerous tolls as they threaten lives, property, a national sense of well-being and coherence, peace, social order and security, which ultimately reduces the citizens' quality of life.²⁰ Crimes²¹ and the volume of crime

¹² FJ Ayoola, MA Adeyemi & SO Jabaru 'On the estimation of crime rate in the Southwest of Nigeria: principal component analysis approach' (2015) 15 *Global Journal Of Science Frontier Research: F Mathematics And Decision Sciences* 1.

¹³ MA Aremu, & YA Ahmed 'An investigation of security and crime management in developing society: The implications for Nigeria democratic development set-up' (2011) 1 *International Journal Of Academic Research In Business And Social Sciences* 392.

¹⁴ IC Achumba, OS Ighomereho & MOM Akpor-Robaro 'Security challenges in Nigeria and the implications for business activities and sustainable development' (2013) 4 *Journal Of Economics And Sustainable Development* 79.

¹⁵ OA Gomez, & D Gasper 'Human security: A thematic guidance note for regional and national human development report teams' (2013) 2.

¹⁶ IBM Global Innovation Outlook 'Security and society' 4. <http://www.foresightfordevelopment.org/sobipro/download-file/46-1154/54>. (Accessed 1 November 2016).

¹⁷ C Mann, 'Corruption in justice and security' (2011) 285 U4 Expert Answer Transparency International 4.

¹⁸ MON Kunnuji, 'Population density and armed robbery in Nigeria: an analysis of variation across states' (2016) 9 *African Journal Of Criminology And Justice Studies* 64.

¹⁹ AY Alapata 'The pattern and distribution of crime incidence in an urban environment: A case study of Osun state Southwestern Nigeria' (2012) 2 *International Journal Of Humanities And Social Science* 178.

²⁰ YA Ahmed, 'Trend and pattern of urban crime in Southwestern Nigeria' unpublished Ph.D thesis University of Ilorin (2010) 1.

²¹ CO Osawe, 'Increase wave of violent crime and insecurity: A threat to socio-economic development in Nigeria' (2015) 20 *Journal of Humanities and Social Science* 126.

victims in Nigeria²² have risen over the years, and the modes of criminal operation have also advanced.²³

The introduction of vigilante groups whose specific role or primary purpose is to police or fight crime²⁴ across Nigeria has not helped to resolve crime problems. The truth of the matter is that, until Nigeria as a nation understands the basic techniques of crime prevention²⁵ and criminal activities, crime eradication and control will continuously elude it and its citizens. Crime is complex and is a social phenomenon²⁶ described as a moral threat. The traumatic impact of crime can disrupt social cohesion²⁷ which ultimately injures the society. Crime is a global issue,²⁸ and it has been experienced in different dimensions and at a high rate everywhere. Crime surveys conducted in some countries of the world show high percentages of crime victims who have been victimised once or more.²⁹

Consequent upon the foregoing, this chapter examines the present position of crime victims in Nigeria. The chapter also takes a look at compensation under Nigeria's indigenous norms; it examines international instruments and state compensation to victims. In addition, the chapter dissects the challenges in the criminal justice administration in Nigeria and concludes with the reason why the state has to be responsible for paying compensation to crime victims in the country.

²² JE Gyong, 'Criminal victimization and the reporting of crime in Kaduna state: Towards integrating the victims of crime into criminological discourse' (2010) 2(5) *Current Research Journal Of Social Sciences* 291.

²³ P Dawson, & AM Goodwill 'A review of weapon choice in violent and sexual crime' (2013) 4 *Beijing Law Review* 21.

²⁴ VOS Okeke, 'Community policing vigilante security apparatus and security challenges in Nigeria: a lesson from Britain and Igbo traditional society of Nigeria' (2013) 14 *British journal of arts and social sciences* 307.

²⁵ United Nations office on drugs and crime Handbook on the crime prevention guidelines: making them work (2010) *International Center for the Prevention of Crime* 9-10.

²⁶ H Shin, 'The relationship between education and crime: Crime as a social phenomenon that can be learned in children and adolescents' (2014) 1 *International Journal Of Social Science Research* 8.

²⁷ D Breen, & JA Nel 'The need for hate crime legislation' (2011) 38 *South Africa Crime Quarterly* 38.

²⁸ P Dobriansky 'The explosive growth of globalized crime' in 'Arresting transnational crime' (2001) 6 *Electronic Journal of United States Department of State* 6.

²⁹ J van Kesteren, J van Dijk & P Mayhew 'The international crime victims surveys: A retrospective' (2014) 20(1) *International Review of Victimology* 51.

2. An analysis of the present position of crime victims in Nigeria

Concern and care for crime victims in the criminal justice administration cannot be over-stressed because of the role the victims play as witnesses and active participants in trial processes³⁰ in the justice system. It is also important to express concern about how to reduce³¹ criminal activities. Since the concern for criminal behaviour and activities is as old as crime itself,³² the concern for crime victims as a matter of urgency must also be expressed in the legal documents of Nigeria and in its justice systems.

For a very long time, no attempts have been made to pay close attention to, and focus on, the position of victims of crime in the Nigerian justice sector.³³ The Nigerian Constitution³⁴ and the various criminal statutes³⁵ whether repealed or still in force in Nigeria are all offender centred; they have not given express provision to the issue of the relationship between the offenders and the crime victims. To some extent, however, the relationship between these two parties in the criminal justice system in Nigeria can be implied from some sections of the Criminal Code.³⁶

³⁰ R Ruddy, 'The victim's role in the justice process' (2014) *Internet Journal of Criminology* 1-2.

³¹ A Vaughn, *Running Head: Crime Rates And Concern For Crime Time Series Analysis* (2012) 1.

³² O Oloruntimehin, 'The Victim in The Criminal Justice System- The Nigerian Case' (1979) 403 in JH Schneider (ed) *Victim in international perspective*.

³³ UA Yusuf, & SS Yahaya 'Crime victims and criminal justice administration in Nigeria' (2014) 3(5) *Global Journal of Interdisciplinary Social Sciences* 51.

³⁴ See sec 36(6).

³⁵ Criminal Code Chapter C 38 Laws of the Federation of Nigeria 2004 repealed.

³⁶ Criminal Code Sec 316 (1-6) 'Except as hereinafter set forth a person who unlawfully kills another under any of the following circumstances that is to say- if the offender intends to cause the death of the person killed or that of some other person if the offender intends to do to the person killed or to some other person some grievous harm if death is caused by means of an act done in the prosecution of an unlawful purpose which act is of such a nature as to be likely to endanger human life if the offender intends to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence if death is caused by administering any stupefying or overpowering things for either of the purposes last aforesaid if death is caused by willfully stopping the breath of any person for either of such purposes is guilty of murder In the second case it is immaterial that the offender did not intend to hurt the particular person who is killed In the third case it is immaterial that the offender did not intend to hurt any person In the three last cases it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.'

2.1 Compensation under Nigerian laws

Before the arrival of the British colonialists, there were existing criminal justice systems in Nigeria.³⁷ For instance, the customary system of law applied in the South while Islamic laws of crime were applicable in the Northern parts of Nigeria.³⁸ In the customary and Islamic laws, provisions were made for criminal law and procedure.³⁹ The indigenous courts administered justice to all the people.⁴⁰ Sentences and punishments were awarded against the offenders.⁴¹

Similarly, compensation or restitution was also given to the crime victims.⁴² Restitution is basically centred on the offenders giving up something following the commission of a crime.⁴³ Compensation is a custom and measure known and accepted in virtually all Nigerian communities, and its emergence in Africa, particularly in Nigeria, to crime victims was not as a result of its being designed as an alternative to imprisonment in the country, but as measures provided for in the respective criminal justice systems.⁴⁴

When the British colonial administration came to Nigeria on the eve of the Berlin Conference in 1884,⁴⁵ English common law⁴⁶ was introduced into Nigeria. At the beginning of 1849 the British set up a consular authority for the Bights of Benin and Bonny, Biafra.⁴⁷ Gun-boat diplomacy was utilised to protect the British commercial investments against the coastal states.⁴⁸

³⁷ KS Nwankwo, 'Community service order as an alternative to imprisonment in Lagos State Nigeria' unpublished master thesis Institute of social studies 2008 28.

³⁸ AA Adeyemi, 'Criminology in contemporary Africa' (1975) 2 *Nigeria Journal Of Criminology* 1-30.

³⁹ R Peters *The reintroduction of islamic criminal law in Northern Nigeria* (2001) 11.

⁴⁰ TK Adekunle, 'Nigerian indigenous courts and their dispute resolving mechanisms in global perspective' (2010) 11.

⁴¹ LC Opara, 'The law and policy in criminal justice system and sentencing in Nigeria' (2014) 4(7) *International journal of Asian social science* 886.

⁴² See chapter three section 2.

⁴³ P Birks, *An introduction to the law of restitution* (1985) 23-24.

⁴⁴ AA Adeyemi 'Personal reparations in Africa: Nigeria and Gambia in alternatives to imprisonment in comparative perspective' (1993) 54.

⁴⁵ T Oduwobi, 'From conquest to independence: the Nigerian colonial experience' (2011) 25 *Historia Actual* 5.

⁴⁶ U Alkali, 'Nature and sources of Nigerian legal system: an exorcism of a wrong notion' (2014) 5 *International Journal of Business Economics and Law* 4.

⁴⁷ Oduwobi (n 45 above) 20.

⁴⁸ The first consul was John Beecroft a trader in the bights.

Additionally, in 1851, the British intervened in a dynastic dispute in Lagos, and in 1861 took complete control of the Lagos as a colony.⁴⁹

As Lagos became a British colony, the British began to develop the hinterland in Yoruba land, South West Nigeria.⁵⁰ Furthermore, the British used the same strategy in the Niger Delta in South-South Nigeria, where, by a series of coercive manipulations, they compelled the delta states to be loyal to them.⁵¹ From the 1850s, the Niger River became the medium for the spread of British influence until it spread throughout Nigeria with the introduction of the English legal system.⁵² Owing to the British incursion, the common law has remained a major source of Nigerian law⁵³ which has given rise to the emergence of the criminal codes, created from the English and Sudanese criminal laws respectively.⁵⁴

The truth of the matter is that, long after the period stated above, not much has been done in the area of criminal justice for crime victims' compensation in Nigeria. The reason for the neglect of this part of the criminal process in Nigeria is the fact that "The repression of anti-social conduct by means of punishment of the offenders is the paramount objective of the criminal law"⁵⁵ in Nigeria. In addition, a criminal court has limited powers to provide for compensation in criminal proceedings. It is, however, noted that: "punishment is what the criminal law is about and compensation is what the civil law is about."⁵⁶

⁴⁹ They ejected King Kosoko and replaced him with his uncle Akitoye who promised to uphold British interests.

⁵⁰ SO Biobaku, *The Egba And Their Neighbours* (1991) 45.

⁵¹ KO Dike *Trade and Politics in the Niger Delta 1830–1995* (1956) 30.

⁵² Oduwobi (n 45 above) 20.

⁵³ RN Nwabueze 'The dynamics and genius of Nigeria's indigenous legal order (2002) 1 *Indigenous Law Journal* 155.

⁵⁴ L Lugard, *Political Memorandum* (1913-1918) 2-5.

⁵⁵ AG Karibi-Whyte, *Groundwork Of Nigerian Criminal Law* (1986) 93.

⁵⁶ A Olatunbosun, 'Compensation to victims of crime in Nigeria: a critical assessment of criminal-victim relationship' (2002) 44(2) *Journal of The Indian Law Institute* 209.

It is submitted that the traditional social norms and the customary law tend to be more considerate in looking into the plight of the victims and their relations, better than the modern criminal justice system. The extent to which both the traditional justice system and the modern criminal justice system is used can be seen in the fact that the former encompasses the resolution of disputes by mediation or the help of an impartial party who is not an official of the court set up by law and/or whose mode of operation is not primarily based on statutory law.⁵⁷ The customary justice system does not operate within the conventional state structures, and it is founded upon customary law, religious or personal laws.⁵⁸

Furthermore, the traditional justice system is aimed at restoring the offenders as well as the crime victims;⁵⁹ it provides healing for the community and individual crime victims rather than retributive punishments. To actualize this objective, the customary justice system uses alternative dispute resolution mechanisms which involve reconciliation, mediation, and arbitration, and the truth must be told by all parties.⁶⁰ The traditional justice system is viewed as a form of restorative justice,⁶¹ which, in any legal tradition, has an emphasis on collectivism in the community, the mediation of truth, the acknowledgement of wrongdoing, forgiveness and reconciliation rather than retribution.⁶²

⁵⁷ 'United Nations women UNICEF UNDP informal justice systems: charting a course for human rights-Based engagement a study of informal justice systems: access to justice and human rights (2012)<http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Informal-Justice-Systems-Charting-a-Course-for-Human-Rights-Based-Engagement.pdf>. (Accessed 26 May 2017).

⁵⁸ K Tobiko 'The relationship between formal rule of law and local traditional justice mechanisms' paper presented at the 18th IAP annual conference and general meeting Moscow Russia (2013) 4.

⁵⁹ O Akeredolu, 'The indigenous African criminal justice system for the modern world' (2016) *Carolina Academic Press* xiii.

⁶⁰ AA Theresa, 'Methods of conflict resolution in African traditional society' (2014) 8(2) *An International Multidisciplinary Journal Ethiopia* 142.

⁶¹ H Among 'The application of traditional justice mechanisms to the atrocities committed by child soldiers in Uganda: a practical restorative justice approach' (2013) 13 *African Human Rights Law Journal* 454.

⁶² NR Ombija 'Restorative justice and victims of crime in Kenya: a practitioner's perspective' http://www.iap-association.org/.../Annual.../18AC_WS2B_speech_Keriato_Tobiko.aspx. (Accessed 26 May 2017).

Against the backdrop provided above, it is clear that the position of victims of crime in the Nigerian criminal justice system is not clearly spelt out in our laws. Put differently, the Nigerian law does not make adequate provision and protection for the crime victims as it does for the offenders who have Constitutional protection.⁶³ This arrangement and situation in Nigeria is in contrast to the position of victims in jurisdictions like the USA,⁶⁴ Britain, Canada,⁶⁵ New Zealand⁶⁶ and Australia⁶⁷ to mention but a few.

3. International law and state-funded compensation to crime victims

In recent decades, policy makers have shown some form of concern about the position of crime victims when they suffer crimes of a violent nature in order to protect the victims' interests.⁶⁸ Additionally, policy makers have stressed the need to assist crime victims, and are of the view that crime victims' assistance should be a major focus of crime policy *vis-à-vis* the criminal offender's treatment. The help or assistance includes, but is not limited to:

1. Measures designed to alleviate psychological distress;⁶⁹
2. Measures to provide compensation for the crime victims' physical injuries; and
3. Measures to provide compensation for the crime victims or their dependants.⁷⁰

⁶³ The Nigerian Constitution Sec 36(4,6) Whenever any person is charged with a criminal offence he shall unless the charge is withdrawn be entitled to a fair hearing in public within a reasonable time by a court or tribunal Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty: Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts Every person who is charged with a criminal offence shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence be given adequate time and facilities for the preparation of his defence defend himself in person or by legal practitioners of his own choice.

⁶⁴ S Herman & M Waul 'Repairing the harm' (2004) 19.

⁶⁵ *The Canadian resource center for victims of crime Victims' Rights in Canada* (2015) 2.

⁶⁶ 'Compensating crime victims' (2008) *New Zealand Law Commission Issue Paper* 11 10.

⁶⁷ P Nolan 'Meeting the needs of crime victims' (2011) *Australian Institute of Criminology* 26.

⁶⁸ Council of Europe 'Victims' support and assistance' (2006) 14.

⁶⁹ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power art. 41 par 14 "Victims should receive the necessary material medical psychological and social assistance through governmental voluntary community-based and indigenous means."

⁷⁰ United Nations Declaration of Basic Principles art 41 par (12) b "When compensation is not fully available from the offender or other sources states should endeavour to provide financial compensation to: The family in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization."

In principle, the criminal offenders have to pay the compensation, either through a civil court order or criminal courts or by a judicial or extrajudicial arrangement between criminal offenders and the crime victims. It is submitted, however, that, though the crime victims may receive satisfaction when offenders make compensation to them in theory, in practice full compensation is seldom made; in particular, the reason for this is that the offenders are not arrested.

Beyond the foregoing, the Commonwealth Guidelines for Victims (CGTVC) give a template for Commonwealth countries.⁷¹ The template and guidelines mandate member states to insert into their constitutions or legislation adequate measures for victim protection.⁷² Additionally, countries have the duty to develop a victims' rights charter⁷³ to include:

Treatment of crime victims with courtesy, respect, fairness and dignity; offer information and to be heard; receive information; privacy and protection; receive assistance; compensation, effective and efficient investigation of the crime; and timely processing of criminal proceedings following the arrest of the accused.⁷⁴

3.1 The United Nations

The UN General Assembly (UNGA), at its 96th plenary gathering on 29 November 1985, issued the Declaration of Basic Principles of Justice for Victims of Crime.⁷⁵ The Declaration recognised that many people the world over have suffered harm in one form or another owing to the criminal conduct of another person and such peoples' rights are not comprehensively catered for and recognised.⁷⁶ In addition, the

⁷¹ Standing Council on Law and Justice 'National framework of rights and services for victims of crime 2013-2016' http://www.victimsupport.org.au/UserFiles/File/SCLJ_Framework-2013-16.pdf. (Accessed 6 June 2017).

⁷² Commonwealth Secretariat 'Commonwealth guidelines for the treatment of victims of crime' (2003) 10.

⁷³ Commonwealth Secretariat (n 74 above) 11.

⁷⁴ As above.

⁷⁵ GA/RES/40/34.

⁷⁶ 'International perspective of compensation' http://www.shodhganga.inflibnet.ac.in/bitstream/10603/28181/11/11_chapter%204.pdf. (Accessed 26 May 2017).

Declaration also stressed the fact that family members of primary crime victims suffered loss, damage or injury and should accordingly be compensated.⁷⁷ To this end, the UNGA affirmed the importance of adopting national and international rules and/or principles with a view to securing the global recognition of respect and compensation for crime victims.⁷⁸ It was declared that the offenders should, where possible, make restitution to crime victims and also to the indirect victims.⁷⁹ The UNGA Basic Declaration for victims of crime is referred to as the Victims' Charter for the Rights of Crime Victims to State Compensation.⁸⁰ With the introduction of the Declaration within the international sphere, efforts were made to define crime victims and their rights to access to justice, fair treatment, restitution, compensation and assistance.

The Basic Declaration has been recognised and reiterated by other UN bodies, for example by the GA Commission on Human Rights (UNCHR). In connection with the Basic Declaration, the UNCHR adopted the Basic Principles and Guidelines of the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.⁸¹ The guidelines listed several rights of crime victims as enumerated in international instruments relating to victim's compensation.⁸²

⁷⁷ GA/RES/40/34 par 12(b) "when compensation is not fully available from the offender or other sources States should endeavour to provide financial compensation to the family in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization."

⁷⁸ GA/RES/40/34 par 19 states should consider incorporating into the national law norms remedies to victims in particular such remedies should include restitution and/or compensation and necessary material medical psychological and social assistance and support.

⁷⁹ GA/RES/40/34 par 8 Offenders or third parties responsible for their behaviour should where appropriate make fair restitution to victims their families or dependants such restitution should include the return of property or payment for the harm or loss suffered reimbursement of expenses incurred as a result of the victimization the provision of services and the restoration of rights.

⁸⁰ A Goyal, 'Victim right to access to justice' (2012) *Criminal Law Journal* 343.

⁸¹ Doc. E/CN.4/2005/L.10/Add.11.

⁸² CF de Casadevante Romani 'International law of victims' (2010) 14 Max Plank Yearbook of United Nations law 226-227.

Additionally, the International Covenant on Civil and Political Rights (ICCPR) provides for a fair and public hearing by a competent, independent and impartial tribunal established by law,⁸³ while at the same time guarantees the existence of effective remedies.⁸⁴ Beyond the foregoing, in ensuring effective remedies and effective justice to crime victims, the application of the principles of the rule of law is essential because, without recourse to the rule of law, justice, compensation or remedy in whatever form is of little use. The ICCPR contains a wider provision which directs member states to ensure that individuals have accessible, effective and enforceable remedies and obtain compensation or reparations where violations have occurred.⁸⁵

3.2 The Statute of ICC

The Statute of the International Criminal Court (ICC), the Rome Statute of 1998, recognized the rights of crime victims to compensation from the criminal offenders.⁸⁶ The Statute encouraged the establishment of a trust fund by member states for crime victims and their family members.⁸⁷ The ICC can order a convicted offender to make appropriate restitution or compensation in respect of the crime victims.⁸⁸ If the offender is, however, not able to make compensation available to the crime victims, the state ensures that such a crime victim is compensated from the Trust fund.⁸⁹

⁸³ International Covenant on Civil and Political Rights Art. 14 Pars 1-7.

⁸⁴ ICCPR Art. 2(a)(b) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial administrative or legislative authorities or by any other competent authority provided for by the legal system of the State and to develop the possibilities of judicial remedy.

⁸⁵ 'What is the right to an effective remedy' <http://www.humanrights.is/...rights...echr...rights/what-is-the-right-to-an-effective-remedy>. (Accessed 1 August 2017).

⁸⁶ Rome Statute of the International Criminal Court Art 75 "The Court shall establish principles relating to reparations to or in respect of victims including restitution compensation and rehabilitation on this basis in its decision the Court may either upon request or on its own motion in exceptional circumstances determine the scope and extent of any damage loss and injury to or in respect of victims and will state the principles on which it is acting."

⁸⁷ Rome Statute of the International Criminal Court Art 79 "a Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court and of the families of such victims."

⁸⁸ Rome Statute of the International Criminal Court Art. 75 Par 2.

⁸⁹ Rome Statute Art. 79 Pars 1-3.

3.3 Africa

The African Charter on Human and Peoples' Rights is an African regional human rights instrument adopted under the former Organization of African Unity (OAU), which is now known as the African Union (AU).⁹⁰ The Charter fails to provide expressly for crime victims' rights to compensation or redress.⁹¹ The Charter, under article 21, merely provides a form of compensation, but it omits to state the organ or person to be responsible for the payment of the compensation.⁹² The Charter further states that everyone has the right to have his cause heard, and the right to appeal to competent national organs against acts of violating his fundamental rights.⁹³

Notwithstanding the provision for crime victims' compensation under African regional instrument, the African Commission borrowed a leaf from the book of international law⁹⁴ and stated that the major aim of individual complaints is to redress the harm and/or injury suffered by the crime victims.⁹⁵ In addition, the Commission stated that "article one of the Charters requires, that, apart from providing for the Charter standards in its law, the state must, among other things, protect its citizens from

⁹⁰ 'African Charter on Human and Peoples' Rights' http://www.who.int/hhr/Human_and_Peoples_rights.pdf. (Accessed 26 May 2017).

⁹¹ MK N'Dri 'Critical analysis of victims' rights before international criminal justice' unpublished LL.M Thesis University of Pretoria (2006) 16.

⁹² African Union 'African Charter on Human and Peoples' Rights' art 21 (2) "In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation."

⁹³ African Charter on Human and Peoples' Rights art 7 "Every individual shall have the right to have his cause heard this comprises: the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions laws regulations and customs in force the right to be presumed innocent until proved guilty by a competent court or tribunal the right to defence including the right to be defended by counsel of his choice the right to be tried within a reasonable time by an impartial court or tribunal."

⁹⁴ African Charter on Human and Peoples' Rights art 60 "The Commission shall draw inspiration from international law on human and peoples' rights particularly from the provisions of various African instruments on human and peoples' rights the Charter of the United Nations the Charter of the Organization of African Unity the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members."

⁹⁵ Free Legal Assistance Group Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme Les Témoins de Jehovah vs Zaire Comm. No. 25/89 47/90 56/91 100/93.

encroachments upon their rights by private persons⁹⁶ and provide effective remedies in case of infringement.”⁹⁷

There are several ways through which the African Commission performs its interpretative mandate.⁹⁸ One of such ways is by adopting resolutions and making recommendations on specific human rights cases that take place on the continent of Africa.⁹⁹

It is submitted that these resolutions and recommendations are not hard law; they are, however, consequential rules from the experiences of the Commission. Besides, the interpretation of these recommendations gives practical effect to, and eliminates confusion about, the broad formulae sometimes offered by the African Charter. Additionally, the resolutions give a sense of direction in which the law is evolving in Africa and they serve as useful guidelines to give operational effect to certain Charter provisions and, consequently, the expectations that can, with the benefit of clarity, be placed on the African Commission. The resolutions are of immense importance in understanding the norms and implementation problems in the legal systems of African nations.

As a result of what has been said, the right to a fair trial is central in the African Commission’s resolutions. The Commission on several occasions invoked many of its resolutions when interpreting and applying substantive fair trial norms in the African Charter. Though these resolutions are not binding on states, they are precepts proceeding from international bodies that comply in some sense with expectations of required conduct and behaviour.¹⁰⁰

⁹⁶ The Social and Economic Rights Action Centre for Economic and Social Rights (SERAC) vs. Nigeria African Commission on Human and Peoples’ Rights Comm. No. 155/96.

⁹⁷ The Social and Economic Rights Action Centre for Economic and Social Rights par 47.

⁹⁸ Besides any other tasks which may be entrusted to it by the Assembly of the AU the African Commission performs three primary functions: It promotes and protects human and people’s rights and interprets the provisions of the African Charter. See arts 30 & 45 African Charter.

⁹⁹ NJ Udombana, ‘The African Commission on Human and Peoples’ Rights and the development of fair trial norms in Africa’ (2006) 6 *African Human Rights Law Journal* 305-306.

¹⁰⁰ SR Ratner, ‘International law: the trials of global norms’ (1998) 110 *Foreign Policy* 65-67.

In light of the above, the Commission, in its Principles and Guidelines on the Rights to Fair Trial and Legal Assistance in Africa, provided general guidelines and principles which are applicable to all legal proceedings.¹⁰¹ In addition, the Guidelines provided for crime victims' treatment and compensation, and encouraged states to establish, strengthen and expand national funds for compensation to victims.¹⁰²

Besides this, the Guidelines direct that:

States must ensure that women who are victims of crime, especially of a sexual nature, are interviewed by women police or judicial officials;¹⁰³ states shall take steps to ensure that women who are complainants, victims or witnesses are not subjected to any cruel, inhumane or degrading treatment¹⁰⁴ and that judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive, accessible and victims should be informed of their rights in seeking redress through such mechanisms.¹⁰⁵

Additionally,

States are required to investigate and punish all complaints of violence against women, including domestic violence, whether those acts are perpetrated by the state, its officials or agents or by private persons. Fair and effective procedures and mechanisms must be established and be accessible to women who have been subjected to violence to enable them to file criminal complaints and to obtain

¹⁰¹ African Commission on Human and Peoples' Rights: Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa section A Par 1-5.

¹⁰² African Commission Principles and Guidelines section P Pars (a)(d)(m) "Victims should be treated with compassion and respect for their dignity they are entitled to have access to the mechanisms of justice and to prompt redress as provided for by national legislation and international law for the harm that they have suffered States shall take steps to ensure that Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious fair inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms States must ensure that : Victims receive the necessary material medical psychological and social assistance through state voluntary non-governmental and community-based means victims are informed of the availability of health and social services and other relevant assistance and be readily afforded access to them police justice health social service and other personnel concerned receive training to sensitize them to the needs of victims and guidelines are adopted to ensure proper and prompt aid."

¹⁰³ African Commission Guideline Par b.

¹⁰⁴ As above.

¹⁰⁵ As above.

other redress for the proper investigation of the violence suffered, to obtain restitution or reparation and to prevent further violence.¹⁰⁶

Beyond the foregoing, “offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses, the provision of services and the restoration of rights;¹⁰⁷ and states should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions”¹⁰⁸ adding that when compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to: victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; and the family, in particular dependants of persons who have died or become physically or mentally incapacitated.¹⁰⁹ Finally, “States are encouraged to establish, strengthen and expand national funds for compensation to victims.”¹¹⁰

3.4 Council of Europe

The CoE’s Convention on the Compensation of Victims of Violent Crime is an initiative that will be relevant, adequate and of an international standard. Additionally, the CoE and the EU have set other standards for victim’s rights.¹¹¹ The European Convention on the Compensation of Victim of Violent Crimes adopted in 1983 established the standards for the provision of state compensation to the victims of crime,¹¹² and is widely ratified by member states.¹¹³ The Convention was

¹⁰⁶ As above.

¹⁰⁷ As above.

¹⁰⁸ As above.

¹⁰⁹ As above.

¹¹⁰ As above.

¹¹¹ A Anusree, ‘Right to compensation of victims of crime In India: need for a comprehensive legislation’ (2004) 2(1) *International Journal For Legal Developments and Allied Issues* 41. The Committee of Ministers of the Council of Europe adopted Resolution (77) 27 in September of 1977 on victim’s compensation the resolution recommended that the member states provide for state compensation of crime victims, or dependants of victims of intentional violence where compensation is not available from other sources.

¹¹² Arts 2 & 4 European Convention on the Compensation of Victim of Violent Crimes.

¹¹³ European Convention on the Compensation of Victims of Violent Crimes European Treaty Series No. 116 Preamble: “The member States of the Council of Europe signatory hereto.”

followed by Recommendation 85(11) on The Position Of Victims in the Framework of Criminal Law and Procedure adopted in 1985.¹¹⁴

These initiatives could serve as best practice for Nigeria in compensating crime victims because the Convention puts an obligation on member states to compensate victims of violence.¹¹⁵

Consequently, CoE member states started establishing compensatory schemes to compensate crime victims from public funds when compensation¹¹⁶ was not available from the crime offenders or from other means. As a result of this development, the European Committee on Crime Problems (CDPC), in 1970, added the compensation of crime victims to its work programme. The CDPC sub-committee drew up the principles to govern victim's compensation, with major attention was given to compensation from public funds.¹¹⁷

4. International instruments and state compensation

When one takes a look at compensation for victims of violent crime, the position of international legal instruments is to the effect that, when addressing crime victims' rights, compensation must first of all proceed from the offenders, and, secondly, from the state.¹¹⁸

There are five international victim-centred instruments, two of which focus attention on crime victims' developments, and two more recent instruments that are worldwide and European in scope. All four instruments as stated hereunder make provision for compensation to victims from the criminal offenders and the state.

¹¹⁴ Anusree (n 113 above) 41.

¹¹⁵ Council of Europe European Convention on the Compensation of Victims of Violent Crimes (ETS No.116) Art. 1. This Convention puts upon States that become a Party to it the obligation to compensate the victims of intentional and violent offences resulting in bodily injury or death. The obligation to compensate is limited to offences committed on the territory of the State concerned regardless of the nationality of the victim the Convention provides for a definition of compensation and sets principles and conditions of application.

¹¹⁶ See chapter three section.

¹¹⁷ The subcommittee produced a draft resolution and a report on the subject which were submitted to the CEPC and approved in 1977.

¹¹⁸ J Goodey, 'Compensating victims of violent crime in the European Union with a special focus on victims of terrorism' (2003) 2.

The first of these four international legal documents is the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime discussed earlier.¹¹⁹ Second is the 1985 Council of Europe Recommendation (85)11 On the Position of the Victim in the Framework of Criminal Law and Procedure. Third, are the 2000 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law Commission on Human Rights of the United Nations Economic and Social Council.¹²⁰ The fourth of these instruments is the EU directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, which replaced the Council Framework Decision 2001/220/JHA¹²¹ and the fifth instrument is the CoE Convention on the Compensation of Victims of Violent Crime Strasbourg 24 XI 1983.

The 2012 EU directive is the only instrument that provides that state compensation is not compulsory for states.¹²² The remaining instruments reflect status as soft law. In other words, the three other instruments are not legally binding upon member states. Owing to this fact, it becomes easy for the other three instruments to state what government should and should not do for crime victims with regard to criminal offenders and state compensation.¹²³

¹¹⁹ General Assembly Resolution No 40/34.

¹²⁰ E/CN.4/2000/62.

¹²¹ 2001/220/JHA.

¹²² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Member States should approximate their laws and regulations to the extent necessary to attain the objective of affording victims of crime a high level of protection irrespective of the Member State in which they are present victims' needs should be considered and addressed in a comprehensive coordinated manner avoiding partial or inconsistent solutions which may give rise to secondary victimization the provisions of this framework Decision are therefore not confined to attending to the victim's interests under criminal proceedings proper they also cover certain measures to assist victims before or after criminal proceedings which might mitigate the effects of the crime measures to assist victims of crime and in particular the provisions regarding compensation and mediation do not concern arrangements under civil procedure.

¹²³ Goodey (n 118 above) 3.

When the five instruments under consideration are compared, it is discovered that the 2012 EU directive instituting the standards on the rights, support and protection of victims of crime is a binding instrument because it is more cautious in its interpretation of state compensation to crime victims.¹²⁴

More often than not, states direct that criminal offenders compensate crime victims because this does not generally involve huge expenditure for the state. The only way by which the state incurs financial expenses is when the state:

1. "Pays crime victims compensation up front, and then pursues reimbursement of this payment from the criminal offenders,"¹²⁵ and
2. When the state is actively obligated to enforce compensation ordered against the offenders to the crime victims.

It is submitted that, since most EU Member States are wealthy countries, they are in the ideal position to compensate crime victims. It is noted that the CoE, in encouraging countries outside of the EU's borders, stressed the need for victim's compensation from public funds, and, in 1983, adopted the European Convention on the Compensation of Victims of Violent Crime.¹²⁶ It is advised that Nigeria could follow and adopt any of these principles and policies on crime victims' compensation.¹²⁷

¹²⁴ Directive 2012/29/EU of The European Parliament And Of The Council par 2 The Union is committed to the protection of and to the establishment of minimum standards in regard to victims of crime and the Council has adopted Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings under the Stockholm Programme an open and secure Europe serving and protecting citizens adopted by the European Council at its meeting on 10 and 11 December 2009 the Commission and the Member States were asked to examine how to improve legislation and practical support measures for the protection of victims with particular attention paid to support for and recognition of all victims including for victims of terrorism as a priority.

¹²⁵ In Austria the victim can receive compensation payments from the State and the State may then seek recovery of payments from the offender Code of Criminal Procedure amended in 1978 article 373a.

¹²⁶ Goodey (n 120 above) 3.

¹²⁷ See chapter seven section 5.

5. Issues in the Nigerian criminal justice system

Justice delivery for both the crime victims and the offenders is the main focus and attention of the criminal justice system.¹²⁸ The criminal justice system also has the duty to deliver justice to the immediate community affected by the criminal activities of the offenders, and, by extension, to the entire society.¹²⁹

To achieve this great objective, there must be sufficient and available resources coupled with coordination and collaborations among governmental agencies and institutions; and, most importantly, there must be an existing legal framework for the coordination and collaboration of available resources.¹³⁰ Furthermore, an efficient and effective criminal justice system is built and founded on strong social equity, fairness and balance in the deterrence of crime¹³¹ in the society. To actualize these laudable aims, certain institutions are indispensable to the criminal justice system in the way and manner they treat crime victims, namely the police, the judiciary or the courts, the prisons and the prosecution.

6. Victims of crime treatment in the criminal justice of Nigeria

Apart from the customary law discussed above, there were two sets of law before the enactment of the Administration of Criminal Justice Act of 2015¹³² for the administration of criminal justice in Nigeria.¹³³ Under these two sets also lie four major statutes. The first sets of statutes are The Penal Code¹³⁴ and the repealed Criminal Procedure Code¹³⁵ which were applicable in the Northern parts of Nigeria

¹²⁸ J Bednarova, 'The heart of the criminal justice system: a critical analysis of the position of the victim' (2011) *Internet Journal Of Criminology* 9.

¹²⁹ Council on Foreign Relations' Africa programme 'Nigeria security trackers' <http://www.blogs.cfr.org/campbell/category/nigeria/nigeria-security-tracker>. (Accessed 11 March 2016).

¹³⁰ O Imoedemhe, 'The Nigerian criminal justice system and the international criminal court (ICC): Imperatives for reforms' (2015) 3 *Journal of Law and Global Policy* 3.

¹³¹ A Idigbe, 'The Role of Legal Practitioners in An Efficient Criminal Justice System' (2012) in JB Daudu & A Adekunle (eds) *Reforming criminal justice in Nigeria* 111, 115-116.

¹³² Section 1 The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions speedy dispensation of justice protection of the society from crime and protection of the rights and interests of the suspect the defendant and the victim.

¹³³ Criminal Procedure Code 1898.

¹³⁴ JN Aduba, & EI Alemika 'Bail and Criminal Justice Administration In Nigeria' (2009) 85 in the theory and practice of criminal justice in Africa.

¹³⁵ Cap 30 Laws of the Federation of Nigeria 2004.

consisting of nineteen states, including the Federal Capital Territory, which is the capital and seat of power of Nigeria.

The Criminal Code¹³⁶ and the repealed Criminal Procedure Act¹³⁷ were applicable in the Southern parts of Nigeria which consists of seventeen states. This duality of the Nigeria law occurred as part of the heritage of the colonial administration, which, until the amalgamation of the North and South in 1914, administered Northern and Southern Nigeria as separate entities.¹³⁸ Those two jurisdictions have been retained and maintained ever since. The two sets of statutes enumerated above, however, contain similar provisions.

The nomenclature and seniority of courts in Nigeria are the same across the country. Each area and customary court has its law and rules governing its practice and procedure;¹³⁹ the Shari'a Court of Appeal in the North applies the Islamic Code with a mixture of customary rules.¹⁴⁰ The Customary Court of Appeal of a state¹⁴¹ and the Shari'a Court of Appeal of a state exercise both appellate and supervisory jurisdictions.¹⁴² The principal aim of establishing these courts is to do substantial justice to the parties without recourse to the rigours, harshness and technicalities of the common law.¹⁴³

¹³⁶ Cap 38 Laws of the Federation of Nigeria 2004.

¹³⁷ Cap 41 Laws of the Federation of Nigeria 2004.

¹³⁸ Aduba & Alemika (n 136 above) 86.

¹³⁹JO Olubor 'Customary Laws, Practice and Procedure in the Area/Customary Court, and the Customary Court of Appeal'<http://www.nigerianlawguru.com/.../customary%20law%20and%20procedure/CUSTOMAR...>(Accessed 31 October 2017).

¹⁴⁰ As above.

¹⁴¹ The Constitution of the Federal Republic of Nigeria 1999 sec 282(1) (2) "A Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings involve questions of Customary law for the purpose of this section a Customary Court of Appeal of a State shall exercise such jurisdiction and decide such questions as may be prescribed by the House of Assembly of the State for which it is established."

¹⁴² The Constitution of the Federal Republic of Nigeria 1999 sec 277(1) The sharia Court of Appeal of a State shall in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal Law which the court is competent to decide in accordance with the provisions of subsection (2) of this section.

¹⁴³ See *Dincey vs Ossie* 5 West Africa Court of Appeal 177 *Ajayi vs Aina* 16 Nigeria Law Report 67 *Ogunnaike vs Ojayemi* (1987) 1 Nigeria Weekly Law Report Part 53 670.

The Nigerian 1999 Constitution does not directly give criminal jurisdiction to a customary court of appeal of a state. Each state, however, has its own court rules giving jurisdiction to these courts which they may exercise either in criminal or civil cases depending, of course, on the matter that is brought before the court. For instance, the Kaduna State Customary Court of Appeal Law 2001 provides:

The Customary Court of Appeal, in the exercise of the jurisdiction vested in it by this law as regards both substantive law and practice and procedure shall administer, observes and enforces the observance of the principles and provisions of every customary law which is applicable and is not repugnant to natural justice, equity and good conscience nor incompatible either directly or by implication with any written Law for the time being in force, and nothing in this Law shall deprive any person of the benefit of any such Law.¹⁴⁴

The Sharia Court of Appeal has a supervisory role in civil cases dealing with issues of Islamic personal law,¹⁴⁵ while the Customary Court of Appeal has the function of, and exercises, a supervisory role in civil matters involving questions of customary law.¹⁴⁶

¹⁴⁴ Section 48(1).

¹⁴⁵ The Nigerian 1999 Constitution section 260: "There is a Sharia Court of Appeal for the Federal Capital Territory, Abuja which caters for the FCT and State Sharia Court of Appeal section 260 of the 1999 Constitution (As Amended) provides for a mandatory establishment of a Sharia Court of Appeal of the Federal Capital Territory Abuja while Section 275 provides for an optional establishment of a Sharia Court of Appeal for any State that requires it in Nigeria both courts are headed by a Grand Kadi and consist of such number of Kadis as may be prescribed by an Act of the National Assembly for Sharia Court of Appeal of the Federal Capital Territory Abuja and the House of Assembly of a State for a State Sharia Court of Appeal."

¹⁴⁶ Like the Sharia Court of Appeal there is a Customary Court of Appeal of the Federal Capital Territory Abuja and a Court of Appeal of a State the Customary Court of Appeal of the Federal Capital Territory is established by Section 265 of the 1999 Constitution (As Amended) and caters for the FCT while Section 280 provides for the optional establishment of a Customary Court of Appeal for any State that requires it in Nigeria both courts are headed by President of the Customary Court of Appeal and consists of such number of Judges as may be prescribed by the National Assembly for the Federal Capital Territory Abuja and the House of Assembly for any State that requires it.

The State High Courts of both the Southern and Northern parts of Nigeria have jurisdiction in criminal cases.¹⁴⁷ The Nigerian 1999 Constitution provides that:

subject to the provisions of section 251 and other provisions of this constitution, the High Court of a State shall have jurisdiction to hear any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person and that the reference to civil or criminal proceedings in this section includes reference to proceedings, which originate in the High Court of a State and those which are brought before the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction.¹⁴⁸

Pursuant to the above provisions, it is clear that the limit of the jurisdiction of the State High Court on any issue before is only to the degree of the jurisdiction of the Federal High Court under section 251 of the 1999 Nigerian Constitution. Additionally, the criminal jurisdiction of State High Courts is divided into two, the first jurisdiction over federal crime or offences and two jurisdictions to hear and determine appeals from Magistrate Courts in criminal cases.¹⁴⁹ At the federal level, there are the Federal High Courts,¹⁵⁰ the Courts of Appeal¹⁵¹ and the Supreme Court¹⁵² which is the highest of all the courts in Nigeria. The Federal High Court

¹⁴⁷ D Asada & JN Aduba 'Jurisdiction of courts in criminal proceedings' <http://www.9jalegal.com.ng/.../Criminal%20Law/28%20JURISDICTION%20OF%20COURTS%2>. (Accessed 14 August 2017).

¹⁴⁸ Section 272(1) (2).

¹⁴⁹ Section 272(2).

¹⁵⁰ Constitution of the Federal Republic of Nigeria Code Sec 249(1) "There shall be a Federal High Court. Sec 251(1) Notwithstanding anything to the contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters."

¹⁵¹ Nigerian Constitution Sec 237(1) "There shall be a Court of Appeal. Sec 239(1) Subject to the provisions of this Constitution the Court of Appeal shall to the exclusion of any other court of Law in Nigeria, have original jurisdiction to hear and determine any question."

¹⁵² Nigerian Constitution Sec 230(1) "There shall be a Supreme Court of Nigeria. Sec 232(1)(2) The Supreme Court shall to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a state or between states if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends in addition to the jurisdiction conferred upon it by subsection (1) of this section the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly: Provided

(FHC) exercises criminal jurisdiction similar to that exercised by the High Courts of a State.¹⁵³ The Economic and Financial Crimes Act of 2002, states that the FHC or the High Court of a State has jurisdiction to try offences under the Act.¹⁵⁴

The FHC has a very wide jurisdiction, accordingly, and the Nigerian Constitution provides for several areas in which the FHC may exercise its jurisdiction.¹⁵⁵

that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter.”

¹⁵³ In 1999 the Federal Government of Nigeria promulgated Decree No. 62 of 1999 on the jurisdiction of the State's High Courts under Part II of the schedule to the Decree offences created under the listed decrees were made part and parcel of the jurisdiction of the State High Court these were: (a) Robbery and Firearms (Special Provisions) Decree 1984 (b) Advance fee fraud and other related offences Decree 1995 (c) Students' Union Activities (Control and Regulation) Decree 1989 and (d) All offences falling within the ambit of the Independent Corrupt Practices and Related Offences Act 2000.

¹⁵⁴ Section 18.

¹⁵⁵ The Nigeria Constitution section 251(a)-(r) The Federal High Court has exclusive jurisdiction in civil cases and matters: (a) Relating to the revenue of the Government of the Federation in which the said Government its organs or a person suing or being sued on its behalf is a party (b) Connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation (c) Connected with or pertaining to customs and excise duties and export duties including any claim by or against the Nigeria Customs Service or any member or officer thereof arising from the performance of any duty imposed under any regulation relating to customs and excise duties and export duties (d) Connected with or pertaining to banking, banks other financial institutions, including any action between on bank and another, any action by or against the Central Bank of Nigeria arising from banking coinage legal tender bills of exchange letters of credit promissory notes and other fiscal measures; Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transaction transactions between the individual customer and the bank (e) Arising from the operation of the Companies and Allied Matters Act or any other enactment replacing the Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act (f) Any Federal enactment relating to copyright patent designs trademarks and passing-off industrial designs and merchandise marks business names, commercial and industrial monopolies combines and trusts standards of goods and commodities and industrial standards (g) Any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their effluents and on such other inland waterway as may be designated by any enactment to be an international waterway all Federal ports (including the constitution and powers of the ports authorities for Federal ports) and carriage by sea (h) Diplomatic consular and trade representation (i) Citizenship, naturalization and aliens, deportation of persons who are not citizens of Nigeria, extradition, immigration into and emigration, from Nigeria, passports and visa (j) Bankruptcy and insolvency (k) Aviation and safety of aircraft (l) Arms ammunition and explosives (m) Drugs and poisons (n) Mines and minerals (including oil fields, oil mining, geological surveys and natural gas) (o) Weights and measures (p) The administration or the management and control of the Federal Government or any of its agencies (q) Subject to the provisions of the Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies (r) Any action or proceeding for a declaration or injunction affecting the validity of any executive or any executive or administrative action or decision by the Federal Government or any of its agencies.

The Constitution, however, particularly gives criminal jurisdiction to the FHC under section 251(s).¹⁵⁶

The Court of Appeal in Nigeria does not have original jurisdiction in criminal cases; by the provision of section 241(1) of the Constitution, however, it can entertain criminal¹⁵⁷ cases coming before it on appeal from the lower courts.¹⁵⁸

The Nigerian Supreme Court is established by section 230 of the Constitution. It has original jurisdiction but not on criminal matters;¹⁵⁹ it also has appellate jurisdiction.¹⁶⁰ It is the final court in matters relating to civil and criminal issues.¹⁶¹ To this end, the Supreme Court must use the best reasoning in making its final decision in cases coming before it.¹⁶²

¹⁵⁶ The Federal High Court has exclusive jurisdiction in civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly: Provided that nothing in the provisions of paragraphs (p) (q) and (r) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in action for damages injunction or specific performance where the action is based on any enactment law or equity.

¹⁵⁷ Appeals lie as of right to the Court of Appeal from decisions of the Federal High Court or a High Court in the following cases (a) Final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance (b) Decisions in any civil or criminal proceedings where the ground of appeal involves questions of law alone (c) Decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution (d) Decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been is been or is likely to be contravened in relation to any person (e) Decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death.

¹⁵⁸ Section 240 of the 1999 Constitution provide that the Court of Appeal has exclusive jurisdiction to hear and determine appeals from the (1) Federal High Court (2) the High Court of the Federal Capital Territory Abuja (3) the High Court of a state (4) the Sharia Court of Appeal of the Federal Capital Territory Abuja (5) the Sharia Court of Appeal of a State (6) the Customary Court of Appeal of the Federal Capital Territory Abuja (7) the Customary Court of Appeal of a State and (8) a court martial or other tribunals as may be prescribed by an Act of the National Assembly.

¹⁵⁹ The Nigerian Constitution section 232 (1): "The Supreme Court shall to the exclusion of any other court have original jurisdiction in any dispute between the Federation and a state or between states if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends."

¹⁶⁰ The Nigerian Constitution section 233(1): "The Supreme Court shall have jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine appeals from the Court of Appeal."

¹⁶¹ The Nigerian Constitution section 235 "without prejudice to the powers of the President or of the Governor of a state with respect to prerogative of mercy no appeal shall lie to any other body or person from any determination of the Supreme Court."

¹⁶² NC Njoku & J Sokefun 'The court system in Nigeria: jurisdiction and appeals' (2016) 2(3) *International Journal of Business and Applied Social Science* 10.

Nigeria also operates a federal policing system with jurisdiction over all parts of the country.¹⁶³ Each state, however, has an area command headquarters, zonal and divisional offices for the effective and efficient operation of the police functions of protection and safety¹⁶⁴ across the country. As noted earlier, to achieve the set objectives of adequate and efficient criminal justice administration in any system, certain institutions are indispensable to the criminal justice process.

6.1 Treatment of crime victims and the criminal court proceedings

According to Justice Benjamin Nathan Cardozo, a former Supreme Court justice in the United States:

Justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.¹⁶⁵ If we take the justice out of the criminal justice system we leave behind a system that serves only the criminal.¹⁶⁶

To avoid taking justice out of the criminal system and not serve only the criminals, the role of the crime victims has begun to change dramatically in the criminal justice systems of nations in the past few years by giving them a significant role in the criminal justice system and affording victims a greater prospect of being made whole either through civil damages or criminal restitution and compensation.¹⁶⁷

¹⁶³ The Constitution of the Federal Republic of Nigeria 1999 section 214(1): "There shall be a police force for Nigeria which shall be known as the Nigeria Police Force and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof."

¹⁶⁴ Cap P19 Laws of the Federation of Nigeria 2004 Sec 4 General duties of the police the police shall be employed for the prevention and detection of crime the apprehension of offenders the preservation of law and order the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by or under the authority of this or any other Act.

¹⁶⁵ *Snyder vs Massachusetts* 291 US 97 122 (1934).

¹⁶⁶ *President's Task Force on victims of crime final report* vi (1982) (statement of the chairman Lois Haight Herrington).

¹⁶⁷ MM Cuomo, 'The Crime Victim in a System of Criminal Justice' (1992) 8(1) *Journal of Civil Rights and Economic Development* 1-2.

As a result what has been said, the United Nations Basic Declaration covers court actions stating that crime victims have the right to information with regard to the time and scope of the court's action or proceedings and their role during court session.¹⁶⁸ At this point, it becomes helpful to provide special assistance to crime victims. Most importantly, for crime victims, cases must be disposed of and determined as quickly as possible and delays must be avoided by the court.¹⁶⁹

The courts are one of the components in criminal¹⁷⁰ process and are always the last point of call in the dispensation of criminal justice in any system. The courts, as the temples of justice,¹⁷¹ are the hope of the offenders as well as those of the crime victims as the case may be. Against this backdrop, the courts form the bulk of organisation or institution with the constitutional¹⁷² obligations to do justice in the administration of criminal justice.

It is noted, however, that despite this legal duty placed on member states, Nigeria still lacks the capacity to investigate and prosecute certain crimes in the country. For example, the deadly militant Boko Haram in Nigeria continues to abduct,¹⁷³ kill, torture and persecute innocent Nigerians,¹⁷⁴ and only handful members of this group have been arrested and prosecuted.¹⁷⁵

¹⁶⁸ United Nation Declaration of Basic Principles par 6(a) the responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: informing victims of their role and the scope timing and progress of the proceedings and of the disposition of their cases especially where serious crimes are involved and where they have requested such information.

¹⁶⁹ United Nation Declaration of Basic Principles par 6(e) the responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

¹⁷⁰ LC Opara, 'The law and policy in criminal justice system and sentencing in Nigeria' (2014) 4(7) *International Journal Of Asian Social Science* 887.

¹⁷¹ The association of the Bar of the city of New York Temple of justice (1977) 13.

¹⁷² Nigerian Constitution Sec 6(b) The judicial powers vested in accordance with the foregoing provisions of this section-shall extend to all matters between persons or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligations of that person.

¹⁷³ E Donnelly 'Nigeria's Boko Haram crisis: abductions and responses' (2014) *All Party Parliamentary Group on Nigeria* 2. More than 230 girls were abducted from their school in Chibok in Borno State Northeastern Nigeria on 14 April 2014.

¹⁷⁴ A Osita-Njoku & C Princewill 'Consequences of Boko Haram terrorism on women in northern Nigeria' (2015) 1(3) *Applied Research Journal* 103.

¹⁷⁵ 'Spiraling violence: Boko Haram attacks and security force abuses in Nigeria' <http://www.hrw.org/.../spiraling-violence/boko-haram-attacks-and-security-force-abu..> (Accessed 1 August 2017).

The Nigerian government ratified the Rome Statute which established the ICC in 2001.¹⁷⁶ The ratification placed Nigeria and its citizens under the authority of the ICC for investigation and prosecution for international criminal offences from 1 July 2012 onwards.¹⁷⁷ Since the preliminary ICC examination of Boko Haram's involvement in war crimes and the recommendation by the Office of the Prosecutor for admissibility by the Nigerian government, prosecution processes have not begun. At present, the Nigerian government is neither prosecuting nor transferring the cases to the ICC.¹⁷⁸

The submission here is that a criminal court can issue a directive to the offenders ordering compensation to the crime victims, and legislation must, as matter of urgency, be provided to empower Nigerian courts to award substantial compensation against the criminal offenders.

6.2 Treatment of crime victims by the prosecution

Neither Nigerian law nor the Declaration of Basic Principles make express provision for how the prosecuting authorities should deal with crime victims.¹⁷⁹ The way and manner in which the prosecution should treat crime victims can, however, be implied from the general principles provided in the Declaration. The prosecution has the duty to treat crime victims with compassion and respect for their dignity. In addition, the prosecution must inform the crime victims about the outcome of its investigations and must allow crime victims to express their views and concerns through the victim impact statement.

¹⁷⁶ Nigeria signed the Rome Statute on June 1 2000 and deposited its instrument of ratification of the Rome Statute on 27 September 2001. <http://www.pgaction.org/es/campaigns/icc/africa/nigeria.html>. (Accessed 1 August 2017).

¹⁷⁷ OM Folami 'Prosecution that never began: an exploration of acceptance of international criminal justice in Nigeria' (2016) *International Nuremberg Principles Academy* 4.

¹⁷⁸ ICC 'International Criminal Courts Report on Nigeria'. <http://www.icc-cpi-int/itemsDocuments/OTP%20Preliminary%20Examinations/OTP%20-%20Policy%20Paper%20Preliminary%20Examinations%20%202013.pdf>. (Accessed 1 August 2017).

¹⁷⁹ 'Protection and redress for victims of crime and human rights violations' <http://www.ohchr.org/Documents/Publications/training9chapter15en.pdf>. (Accessed 27 May 2017).

It is noted that the Nigerian criminal justice administration neglects the crime victims for who the conviction of the criminal offender is sought.¹⁸⁰ When the conviction is finally secured, it goes with sentencing in the form of punishment or sanctions against the offenders handed over by the trial court. The punishment and/or sanction comes in any form such as imprisonment, caution, fine, caning, lashing, corporal or capital punishment, banishment, or forfeiture to mention but a few.¹⁸¹ This does not in any way serve the interest of crime victims.

In the light of the above submission, therefore, it is advisable that, in the treatment of crime victims by the prosecution in Nigeria, the primary interest and motive should not be the conviction of the offender. To this end, it is submitted that the Nigerian prosecution service should adopt the recommendations of the CoE on the position of crime victims to the effect that "a discretionary decision whether to prosecute the offenders should not be taken without due consideration of the question of compensation of the crime victims, including any serious effort made to that end by the offenders."¹⁸² In addition, "the crime victim should be informed of the final decision concerning prosecution, unless he indicates that he does not want this information."¹⁸³ And, finally, "the victims should have the right to ask for a review by a competent authority of a decision not to prosecute, or the right to institute private proceedings."¹⁸⁴

6.3 Police treatment of victims of crime

In the aftermath of crime, the crime victims' first place of call and contact in establishing a relationship with the justice system is the police force.¹⁸⁵ The police-crime victims' contact continues as long as the judicial process lasts. It is important that the police respond to the crime victims as soon as they report the crime because the police response at initial contact will have a strong impact on the crime

¹⁸⁰ LC Opara 'The law and policy in criminal justice system and sentencing in Nigeria' (2014) 4(7) *International Journal of Asian Social Science* 887.

¹⁸¹ As above.

¹⁸² Council of Europe Committee of Ministers Recommendation No. R (85) 11 part 1B par 5.

¹⁸³ As above.

¹⁸⁴ As above.

¹⁸⁵ 'Basic guidelines on approaching victims of crime' https://www.ncjrs.gov/ovc_archives/reports/firstrep/bgavoc.html. (Accessed May 26 2017).

victims' positive or negative perception of the justice system. The role of the police at this stage is crucial in the criminal process.¹⁸⁶

The UN Declaration gives directives on police conduct and claims that crime victims "should be treated with compassion and respect for their dignity." This general rule also applies to the police as they discharge their statutory function.¹⁸⁷

There are many law enforcement agencies in Nigeria, among which is the Nigerian police force. The Nigerian police force was set up and established pursuant to the provision of the Nigerian Constitution of 1999.¹⁸⁸ The police are agents of the state, established for the maintenance of order and enforcement of law.¹⁸⁹ The force is headed and led by the Inspector General of Police (IG); the IG is also in command of all the squadrons in Nigeria and, furthermore, has the responsibility of maintaining security, safety and public order.¹⁹⁰

One of the major problems of the Nigerian police, like every other law enforcement agency in Nigeria, is the lack of infrastructural facilities for the performance of their constitutional duties. This problem has resulted in poor policing and the eventual abuse of crime victims and offenders¹⁹¹ over the years. The display of the poor performance of the force has earned the police a bad reputation in the eyes of well-meaning Nigerians. The importance of the police force in the administration of criminal justice cannot be overstressed. The police force is the first point of contact in any criminal issue; for any prosecution to be filed, for any arrest or any other

¹⁸⁶ OHCHR Protection and redress for victims of crime and human rights violations' <http://www.ohchr.org/Documents/Publications/Training9chapter15en.pdf>. 758. (Accessed October 22 2017).

¹⁸⁷ United Nation Declaration of Basic Principles par 4.

¹⁸⁸ Nigeria Constitution Sec 214(1) "There shall be a police force for Nigeria which shall be known as the Nigeria Police Force and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof."

¹⁸⁹ EEO Alemika & IC Chukwuma 'Analysis of police and policing in Nigeria' <http://www.cleen.org/policing.%20driver%20of%20change.pdf>. (Accessed October 22 2017).

¹⁹⁰ Cap P19.

¹⁹¹ Open Society Justice Initiative and Network on Police Reform in Nigeria 'Criminal force torture abuse and extrajudicial killing by the Nigerian police force' (2015) 40.

relevant matter regarding the criminal activity, the police force must be informed and it will eventually arraign, charge and prosecute¹⁹² the criminal before a court.

There are other problems confronting the Nigerian police force.¹⁹³ Such problems include the lack of adequate training¹⁹⁴ and the low level of qualification requirements for entry into the Nigerian police force. The low level of qualification as the necessary desideratum or requirement for recruitment into the Nigerian Police Force (NPF) implies that police officers are not obliged to know the law regulating crimes.¹⁹⁵ Some police officers do not know the various laws controlling criminal activities in Nigeria because there is no regular training for them; "lack of resources, poor government support, poor conditions of service, lack of appropriate and adequate training and ill-equipped workforce"¹⁹⁶ has led the police force to rely on the torture of the offenders in order to be able to extort confessional statements from the criminals.¹⁹⁷

It is argued that the poor performance of the force cannot be blamed on the force itself. The reason for this is that the Nigerian government has failed to fund the force;¹⁹⁸ the government has refused to stop the force from the abuse of innocent citizens. This has negatively affected police-community relationship in the criminal justice administration; instead the police prey on the citizens they are meant to protect.¹⁹⁹

¹⁹² A Babalola 'Power of police to prosecute criminal cases: Nigeria and international perspectives' (2014) 2 *European Journal of Business and Social Sciences* 132.

¹⁹³ O Owen 'The Nigeria police force: predicaments and possibilities' (2014) *Nigeria Research Network Working Paper* no 15 3.

¹⁹⁴ CE Maduka, 'The impact of training in the Nigerian police force: a study of zone 9 Umuahia' (2014) 1(5) *The international journal of social sciences and humanities invention* 330.

¹⁹⁵ Open Society Justice Initiative (n 194 above) 40.

¹⁹⁶ N Adegoke 'The Nigeria police and the challenges of security in Nigeria' (2014) 3 *Review Of Public Administration and Management* 23.

¹⁹⁷ Open Society Justice Initiative (n 194 above) 40-45.

¹⁹⁸ FB Okeshola & PEU Mudiari 'Community policing in Nigeria: challenges and prospects' (2013) 3 *American International Journal of Contemporary Research* 138.

¹⁹⁹ Open Society Justice Initiative (n 194 above) 40.

Once again, to be effective in the treatment of crime victims, the Nigerian police should take note of the recommendation of the CoE on the need for proper and adequate training and other international recommendations on police accountability.²⁰⁰ The CoE's recommendation states, amongst other things, that:

"police officers should be trained to deal with victims in a sympathetic, constructive and reassuring manner;²⁰¹ the police should inform the victims about the possibilities of obtaining assistance, practical and legal advice, compensation from the offenders and state compensation;²⁰² the victims should be able to obtain information on the outcome of the police investigation;²⁰³ and in any report to the prosecuting authorities, the police should give as clear and complete a statement as possible of the injuries and losses suffered by the victims."²⁰⁴

There are other very important instruments relevant to policing in the treatment of crime victims.²⁰⁵ In addition, the Office of the UNHCHR in its statement of objectives

²⁰⁰ United Nations Office on Drugs and Crime 'Handbook on police accountability oversight and integrity: criminal justice handbook series (2011) 117.

²⁰¹ Council of Europe (n 185 above) part 1A par 1.

²⁰² As above.

²⁰³ As above.

²⁰⁴ As above.

²⁰⁵ Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto; Convention on the Elimination of All Forms of Discrimination against Women; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Rights of the Child; Geneva Convention Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 (Third Geneva Convention) 257; Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention) 258; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts International Convention for the Protection of All Persons from Enforced Disappearance 259 (not yet entered into force as at 6 August 2010); International Covenant on Civil and Political Rights; International Covenant on Economic Social and Cultural Rights; United Nations Convention against Corruption; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Code of Conduct for Law Enforcement Officials adopted by the General Assembly in its resolution 34/169 of 17 December 1979; Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials adopted by the Economic and Social Council in its resolution 1989/61 of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989; International Code of Conduct for Public Officials adopted by the General Assembly in its resolution 51/59 of 12 December 1996; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Declaration on the Protection of All Persons from Enforced Disappearance; Guidelines on the Role of Prosecutors 2; Milan Plan of Action Principles on the Effective Investigation and Documentation of Torture and Other Cruel Inhuman or Degrading Treatment or Punishment Principles on the Effective Prevention and Investigation of Extra-Legal Arbitrary; and Summary Executions Standard Minimum Rules for the Treatment of Prisoners Universal Declaration of Human Rights.

stressed the importance of training for the police.²⁰⁶ The Nigerian authorities and its police force cannot afford to overlook and disregard these various international instruments if the Nigerian state intends to dispense justice to all citizens, particularly the crime victims.

7. Crime victim's rights in the criminal justice system

7.1 Right to protection of private life and safety

The United Nations Declaration of Basic Principles provides that the responsiveness of judicial officials to the needs of victims should be facilitated by: "taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation."²⁰⁷

Additionally, the CoE Committee of Ministers emphasized that:

Information and public relations policies in connection with the investigation and trial of offences should give due consideration to the need to protect the victims from any publicity which will unduly affect their private life or dignity. If the type of offence or the particular status or personal situation and safety of the victims makes such special protection necessary, either the trial before the judgment should be held *in camera* or disclosure or publication of

²⁰⁶ Office of The United Nations High Commissioner for Human Rights professional training series No. 5/Add.2 Human Rights and Law Enforcement a Trainer's Guide on Human Rights for the Police' (2002) United Nations Publications 1. "This Guide, the corresponding Manual and Pocket Book the approach contained therein and the courses offered in accordance with that approach are intended: To provide information on international human rights standards relevant to the work of police to encourage the development of skills and the formulation and application of policies needed to transform that information into practical behavior to sensitize participants to their special role in protecting and promoting human rights and to their potential for affecting human rights in their daily work to reinforce law enforcement officials' respect for and faith in human dignity and fundamental human rights to encourage and reinforce an ethos of legality and of compliance with international human rights standards within law enforcement agencies to assist law enforcement agencies and individual law enforcement officials in providing effective policing through compliance with international human rights standards to equip police educators and trainers to provide human rights education and training for law enforcement officials."

²⁰⁷ Paragraph 6(d) of the Declaration of Basic Principles.

personal information should be restricted to whatever extent is appropriate.²⁰⁸

The sensitive nature of criminal victimization requires that, where crime victims are accorded all of the rights discussed, it is very important that the victims and their family are "given effective protection against intimidation and the risk of retaliation by the criminal offender."²⁰⁹

7.2 Right to restitution and assistance

The UN Declaration of Basic Principles states that adequate restitution should be made to the victims or their family members and that "such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization;"²¹⁰ in view of the foregoing, the appropriate state authorities may review their legal provisions on restitution in addition to other criminal sanctions.²¹¹

In the context of the argument above:

Restitution means that the offender restores to the victim the rights that were infringed by the criminal conduct. It is submitted that restitution to victims is only possible when money or other items stolen are still available; to this end, restitution may not be a viable solution in the case of violent crimes such as murder, where there can be no reinstatement of rights. In this case, the state must provide mechanisms to ensure that such victims who were murdered are properly compensated. Besides the payment for the harm and loss suffered, the victim may also claim reimbursement of certain expenses such as cost of relocation as a result of the crime which

²⁰⁸ Par F15 Recommendation No R (85) 11 of the committee of ministers to member states on the position of the victim in the framework of criminal law and procedure (adopted by the committee of ministers on 28 June 1985 at the 387th meeting of the ministers' deputies).

²⁰⁹ Par G16.

²¹⁰ Par 8 of the Declaration of Basic Principles Offenders or third parties responsible for their behaviour should where appropriate make fair restitution to victims their families or dependants such restitution should include the return of property or payment for the harm or loss suffered reimbursement of expenses incurred as a result of the victimization the provision of services and the restoration of rights.

²¹¹ Par 9 of the Declaration of Basic Principles Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases in addition to other criminal sanctions.

may require a clear listing of expenses that the victim has incurred as a result of victimization.²¹²

7.3 Right to compensation

Whether restitution or compensation is paid by the state or not, monetary compensation from the criminal for the physical or psychological injuries or other harm sustained as a result of the crime is very important for the victim in that such compensation is viewed as an indication or acceptance of the crime committed against the victim by the offender which, if ordered by the court, symbolizes the state's concern for the victim.²¹³

This kind of acceptance has an important therapeutic or healing effect on the victim and may also increase the victim's confidence in the criminal justice system.

7.4 Right to information and notification

Victims have rights to information from the moment complaints are lodged about the procedures, their rights and about the status of the criminal proceedings and decisions reached in respect of the case.²¹⁴ Beyond the foregoing, information and notification are of particular importance for the victims' ability to take part in the proceedings because information and notification send messages to victims that they are not forgotten and that their interests are recognised in the case. Victims who are informed of their rights and notified of developments in the matter tend to be more satisfied with the justice system and feel that they are being treated fairly.²¹⁵

²¹² Par 10 the Declaration of Basic Principles In cases of substantial harm to the environment restitution if ordered should include as far as possible restoration of the environment reconstruction of the infrastructure replacement of community facilities and reimbursement of the expenses of relocation whenever such harm results in the dislocation of a community.

²¹³ UN Doc A/CONF.144/20 Par 83 Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders: Research suggests that victims appreciate the concept of compensation by the offender through the courts regardless of whether it is also available from the state compensation is seen to be a recognition of the hurt done to the victim by the offender when such an order is made by the court it is also a symbol of the state's concern for the victim and have been found to be very concerned that they have been kept informed about decisions of awards the reason for any reduced awards and actions taken on non-payment.

²¹⁴ Institute for security studies 'Victim participation in criminal law proceedings survey of domestic practice for application to international crimes prosecutions' (2015) 78.

²¹⁵ Jo-Anne Wemmers 'Victims' rights and the International Criminal Court: perceptions within the court regarding the victims' right to participate' (2010) 23 *Leiden Journal of International Law* 641.

Additionally, the African Commission on Human and Peoples' Rights Fair Trial Principles and Guidelines states that: "States shall ensure that access to judicial services is not impeded including by the distance to the location of judicial institutions, the lack of information about the Judicial system, the imposition of unaffordable or excessive court fees and the lack of assistance to understand the procedures and to complete formalities."²¹⁶

The EU Victims' Directive places an obligation on criminal justice operators to give information to victims from the commencement of the case about their rights.²¹⁷ The Directive is regarded as a Bill of Rights for victims,²¹⁸ in that "it must be applied proactively and *ex officio* in all cases even without the request of the victim." The purpose of the Bill of Rights is to "ensure that victims are treated with respect, are able to make informed decisions about their engagement with the criminal justice process, and can access other rights to which they are entitled."²¹⁹

7.5 Right to understand and be understood

In order for victims to be able to protect their own interests, they have to understand the proceedings and be understood in the course of proceedings as well.²²⁰ To this end, victims should be permitted to lodge their complaints in the language they understand and receive translated copies of documents connected to their matter free of charge if they demand such a document.²²¹

7.6 Right to effective remedy

The Universal Declaration of Human Rights provides that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him/her by the constitution or by law."²²² In addition, all

²¹⁶ Par G (d) Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa 2003.

²¹⁷ Article 4.

²¹⁸ European Council Guidance Document 13.

²¹⁹ European Union Victims' Directive Recital 26.

²²⁰ The Criminal Justice Programme of the European Union: Victim support Europe 'Handbook for implementation of legislation and best practice for victims of crime in Europe 9. <http://www.ec.europa.eu/.../51.1.1374573250handbookforimplementationandbestpracticeforvicti...> (Accessed October 22 2017).

²²¹ European Union Victims' Directive Arts.3 5(2) P (3) & Recital 21.

²²² Adopted by the United Nations General Assembly on 10 December 1948 Article 8.

primary universal human rights documents provide for the establishment of right to effective remedy for victims of crime for any violations.²²³ Other rights under the rights to effective remedy also include the right to investigations, prosecutions and punishment of those responsible for the victimization as well as the right to reparations.²²⁴

7.7 Right to be treated with respect and dignity

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides that “victims should be treated with compassion and respect for their dignity.”²²⁵ Besides the foregoing, the Van Boven/Bassiouni Principles encourages that “crime victims be treated with humanity and respect for their dignity and human rights”²²⁶ and to keep the crime victims informed of the development of the proceedings in the matter concerning them.²²⁷

In addition to the foregoing right, information must be provided in an appropriate manner so that it can be effectively understood.²²⁸ In actualizing the language right, “the state must take an individual approach to victims, bearing in mind their linguistic abilities as well as their intellectual and emotional capacity, literacy and other characteristics.”²²⁹ In Nigeria, for instance, there are over 250 ethnic groups, the most populous and politically influential being the Hausa and Fulani 29%, Yoruba 21%, Igbo 18%, Ijaw 10%, Kanuri 4%, Ibibio 3.5%, Tiv 2.5%, and the languages

²²³ See Article 2(3) of the International Covenant on Civil and Political Rights 1966 Article 13 of the European Convention on Human Rights articles 8 and 25 of the American Convention on Human Rights and Article 7(1) of the African Charter on Human and Peoples’ Rights.

²²⁴ For example Article 13 of the European Convention on Human Rights has been interpreted by the European Court of Human Rights as requiring states to carry out criminal investigations and prosecutions in cases involving violations of the right to life and to humane treatment: see the cases of *Gulec vs Turkey* 28 European Human Right Rep 121 (1998) *Kurt vs Turkey* 27 European Human Right Rep 373 (1998) *Aksoy vs Turkey* 23 European Human Right Rep 553 (1996).

²²⁵ United Nations Declaration on Justice for Victims Principle 4.

²²⁶ Principle 10 Treatment of Victims.

²²⁷ See the United Nations Handbook on Justice for Victims and United Nations Declaration on Justice for Victims Principle 6(a).

²²⁸ European Union recital 21 provides that information should be given by means of a range of media and in a manner which can be understood by the victim such information and advice should be provided in simple and accessible language it should also be ensured that the victim can be understood during proceedings particular account should be taken of any difficulties in understanding or communicating.

²²⁹ European Union Victims’ Directive Arts 3 4(1) (f) 5(2) & 7 & recital 21 European Council Guidance Document 14 VSE (2013) Handbook for implementation 9 & 14 15.

spoken are Hausa, Yoruba, Igbo, Fulani, with over 500 additional indigenous languages²³⁰ and English as official language.²³¹ So a crime victim who is deficient in the English language or any of the languages stated above and wants to claim compensation would certainly require information in the language he/she understand with the help of an interpreter.

8. Why should the state be responsible for crime victims' compensation in Nigeria?

With reference to the social contract theory discussed in chapter two²³² of this study, one principle of this theory is the idea of the state's duty to protect its citizens from crime.²³³ In addition, the theory noted that states prevent the citizens or crime victims from seeking revenge by taking the law into their own hands.²³⁴ Accordingly, supporters of the social contract theory argue that, in failing to protect its citizens and then limiting those citizens' avenues for redress, the state has breached its duty and, thus, owes compensation to victims as a matter of right.²³⁵ In other words, the state should be held liable for criminal injuries resulting from crimes, especially in situations where the offenders are not found.²³⁶

The Nigerian Constitution, as the supreme law²³⁷ of the land and as part of the legal system, places a duty on the state to secure and protect²³⁸ its citizens and to provide effective remedies for wrongs. The non-justiciability of this duty on the part of the

²³⁰ 'Nigeria Fact Sheet United States Embassy in Nigeria' (2012) 2.

²³¹ The Constitution of the Federal Republic of Nigeria 1999 sec 5 The business of the National Assembly shall be conducted in English and in Hausa Ibo and Yoruba when adequate arrangements have been made therefor.

²³² See chapter two section 2.1.

²³³ WE Hoelzel, 'A survey of 27 victim compensation programmes' (1980) 63 *Judicature* 487.

²³⁴ J Brooks, 'The case for creating compensation programs to aid victims of violent crimes' (1976) 11 *Tulsa Law Review* 477-479.

²³⁵ H Edelhertz & VG Geis 'Public compensation of victims of crime: a survey of the New York experience' (1973) 9 *Criminal Law Bulletin* 268.

²³⁶ The Hammurabi Code Secs 23-24: "If the robber is not caught then shall he who was robbed claim under oath the amount of his loss then shall the community and . . . on whose ground and territory and in whose domain it was compensate him for the goods stolen If persons are stolen then shall the community and . . . pay one mina of silver to their relatives."

²³⁷ Nigerian Constitution n 95 above Sec 1(1): "This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria."

²³⁸ Nigerian Constitution Sec 14(2) (a): "The security and welfare of the people shall be the primary purpose of government."

government is highly debatable. When crimes, therefore, are committed, it is an indication of Nigeria's failure to protect its citizens and, subsequently, it should be held liable for the crime victims' loss. This is because, under the social contract theory,²³⁹ the state has undertaken the protection of the public against crimes.

The Administration of Criminal Justice Law (ACJL) of Lagos State provides for restitution to be made to crime victims whose property has been stolen.²⁴⁰ But the liabilities of restitution still rest upon the criminal offender to make such restitution; the law exonerates the state from paying compensation to such victims. It is submitted, therefore, that the omission of state compensation within the provisions of ACJL of Lagos state is an indication of the states's unwillingness to assume responsibility for compensation for crime victims.

In the light of the foregoing, it is expected of the state to provide compensation to crime victims, for every crime represents a failure by the state to perform its function of protection. Additionally, in a society like Nigeria, where only few are affluent and about 112 million Nigerians, that is 67.1% of the country's total population of 186,987,563 million²⁴¹ live below the poverty line,²⁴² the case for crime victims' compensation by the state may be even stronger. In other words, the gap between the have-nots and the haves is so wide that provision of public services²⁴³ on an adequate scale is neglected and abandoned by the government. The question at this juncture is how a state compensation scheme will be financed. This question is answered in chapter seven of the research.²⁴⁴

²³⁹ AD Nbeta, 'The social contract theory: a model for reconstructing a true Nigerian nation-state' (2012) 2 *International Journal Of Humanities and Social Science* 270.

²⁴⁰ Administration of Criminal Justice Law of Lagos State 2011 section 297(1): "Where any person is convicted of having stolen or having received stolen property, the Court convicting him may order that such property or a part of it be restored to the person who appears to be the owner, either on payment or without payment of any sum named in such order by the owner to the person in possession of such property or a part of it.

²⁴¹ 'Nigeria Population (2017) - Worldometers' <http://www.worldometers.info/world-population/nigeria-population/>. (Accessed 20 June 2017).

²⁴² OS Aidelunuoghene 'The paradox of poverty in Nigeria: what an irony' (2014) 5 *Research Journal of Finance And Accounting* 116.

²⁴³ JB Marshall, 'Public service in Nigeria-an overview of functions and code of conduct' (2015) 3 *European Centre for Research Training and Development* 68.

²⁴⁴ See chapter seven 4.2.

Furthermore, society owes a duty to all its members to protect²⁴⁵ them from violence. The society has also taken complete responsibility to punish criminal offenders.²⁴⁶ The society does not permit personal retribution²⁴⁷ and does not allow individuals to take laws into their hands. The question is: "with an increasing crime rate and poorly funded police departments, should we not look to the state for some compensation when injuries arise as a result of crime"?²⁴⁸ Goldberg noted that "the victim of a robbery or an assault has been denied the 'protection' of the laws in a very real sense, and society should assume some responsibility for making him whole."²⁴⁹

Goldberg's support for state liability can be substantiated by the fact that, when an offender is arrested and tried, the state usually imposes sanctions which prevent the crime victims from exercising their civil rights or remedies.²⁵⁰ In the pursuit of its interests of punishing, deterring, and rehabilitating the offenders, the state further obstructs the interests of the crime victims in obtaining compensation from the offenders for the crime victims' injury.²⁵¹

Additionally, it is observed that the state has not only failed to prevent crimes, but, even after the commission of the crime, the state's actions continue to infringe upon the crime victims' right to the compensation due to them from the offenders. The submission being made at this juncture is that the state has fallen short of its duty of protection, and it should at least have an obligation to ensure that crime victims receive compensation from the offenders or from the state itself. If the state,

²⁴⁵ SJ Heyman, 'The first duty of government: protection liberty and the fourteenth amendment' (1991) 41 *Duke Law Journal* 509.

²⁴⁶ MC Materni, 'Criminal punishment and the pursuit of justice' (2013) 2 *British Journal Of America Legal Studies* 263.

²⁴⁷ MM Gerber, & J Jackson 'Retribution as revenge and retribution as just deserts' (2014) *London Of Economics And Political Science* 62.

²⁴⁸ E Bushmann, 'Let's help the innocent victims of crimes' (1967) 23 *Journal of Missouri Bar* 18-20.

²⁴⁹ A Goldberg, 'Equality and governmental action' (1964) 39 *New York University Law Review* 205-224.

²⁵⁰ See chapter two section 9.2.

²⁵¹ A Gerald 'State Statute to provide compensation for innocent victims of violent crimes' (1966) 4 *Harvard Journal Legislation* 127-128.

however, feels that the crime victims are not entitled to compensation from the offenders, it should offer compensation as a substitute to the crime victims.²⁵²

There are numerous contentions for state compensation for crime victims as seen from the discussion so far. The position one maintains on crime victims' compensation, however, depends on one's views of state responsibility, of the duty owed by the state to its unfortunate citizens, and many other factors. Furthermore, it is submitted that there are sufficient reasons or evidence for supporting the idea that the state should be held liable for crime and injuries suffered by crime victims through criminal violence. A sufficient case has been established for the view that the state should accept the responsibility, out of a sense of fairness as well as owing both to the failure to protect the innocent crime victims and the interference with their rights to claim compensation from the offenders.

Finally, whatever the theoretical foundation one has built one's opinions on state compensation to crime victims, one truth stands out from the above submission and it is that we should bear in mind that the objective behind providing state compensation to crime victims is to find and offer enduring solutions to a greater social problem²⁵³ and also that the compensation programme being advocated here will attract considerable support from the majority of the Nigerian population if implemented by the government.²⁵⁴

9. Conclusions

In this chapter, we have analysed the position of crime victims in Nigeria and found out that, at present, the Nigerian administration of criminal justice provides no place for crime victims as it does for the offenders. The chapter examined compensation in Nigerian social norms *vis-à-vis* the international and regional law position on state-funded compensation.

²⁵² RE Scot 'Compensation for victims of crime' (1966) 33 *University Chicago Law Review* 531, 533.

²⁵³ K Keating, 'Compensation for victims of crime' (1967) 39 *New York State Bar Journal* 51-52.

²⁵⁴ Over 90% of Nigerian populace would favor state reparation for the family of an innocent person killed by a criminal.

The main attention of the chapter focused on the Nigerian criminal justice system. The administration of criminal justice in any jurisdiction comprises the police, the prisons, and the courts. We found out that in Nigeria these institutions are lagging behind in the dispensation of criminal justice in the country.

It is argued that, unless Nigeria puts her house in order, its criminal justice administration will not measure up to the trend in other parts of the world in justice administration. Nigeria cannot give what it does not have.²⁵⁵ Nigeria does not have adequate and proper machinery for the administration of justice, and, therefore, it cannot dispense justice. One cannot put something on nothing and expect it to stand.²⁵⁶

Until Nigeria overhauls its criminal justice system through policy and legal reforms by which crime victims will be as properly and adequately positioned, and legitimately so too, as it does for offenders, justice will persistently be denied to Nigerian citizens who suffer from criminal activities. The mechanisms, the procedures and means to develop policies and legal reforms for a crime victims' compensation scheme in the Nigerian criminal justice system are highlighted in chapter seven of this study.²⁵⁷

The Nigerian legal system must be reformed in order to allow the society to reflect on present trends. Substantial changes have taken place in other jurisdictions; Nigeria cannot lag behind in this area. Lord Denning has rightly said that:

What is the argument on the other side? Only this that no case has been found in which it has been done before. The argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still while the rest of the world goes on, and that will be bad for both.²⁵⁸

The implications of the above reference to Lord Denning's judgment in the *Parker's* case is that the Nigerian government must take bold steps to strengthen the criminal justice sector to meet the challenges of the modern era. Laws at their substantive

²⁵⁵ Wikipedia 'Nemo dat quod non habet' http://www.en.wikipedia.org/wiki/Nemo_dat_quod_non_habet. (Accessed 1 November 2016).

²⁵⁶ Per Lord Denning in the case of *Macfroy v UAC Ltd* (1961) 3 WLR 1405 at 1409.

²⁵⁷ See chapter seven section 3.

²⁵⁸ *Parker vs Parker* (1954) All England Report 22.

and procedural levels depend on the effectiveness of the criminal justice system; they also depend on how relevant the justice system is and whether it is acceptable to the people.²⁵⁹

In the *Parker's* case cited above, Lord Denning's message was that the law and those institutions which are used to administer it must change to suit fast-moving times.²⁶⁰ Why? Because law and the criminal justice administration must be guided by what is just. Regardless of the opinion people may hold, the fact remains that the nobility of the legal profession is preserved by the fact that it is the lawyers who stand between the crime victims and the offenders in any criminal justice system. The lawyers stand between those who are governed and those who govern; the lawyers stand between people and the state.²⁶¹

Additionally, the lawyers carry out this task with justice in mind. The purpose of this task can be achieved only in an enabling environment where all stakeholders in the administration of criminal justice are properly positioned to effect justice, fairness and equity.

It is noted that "the ordinary administration of criminal and civil justice contributes more than any other circumstance to impressing upon the minds of the people affection, esteem, and reverence towards government."²⁶²

Besides this, the areas of reform in the administration of criminal justice system in Nigeria cannot be exhausted because there are numerous problems that cannot be enumerated in this discourse. It is certain, however, that the negative effect of these problems as discussed earlier in this chapter is the non-performing nature of the criminal justice system which had led to the denial of justice for the crime victims.²⁶³

It is, therefore, very important that any discussion on the reform and modernisation of criminal justice should make sure that any suggestions must be in favour of the

²⁵⁹ Alapata (n 19 above) 137.

²⁶⁰ J Kirby, 'Denning: Bold spirit of the law' (1999) *The Australian Financial Review* 19.

²⁶¹ K Allan, 'From *Parker vs Parker* to pirate kings: The legacy of Lord Denning- A toast' (2010) *Owen Dixon Society Journal* 1.

²⁶² H Doma, 'Enhancing justice administration in Nigeria through information and communications technology' (2016) 32 *The John Marshall journal of information technology & privacy law* 89.

²⁶³ B Ayorinde, 'A reformatory approach to the criminal justice system in Nigeria' [Http://www.Ayorinde-Law.Com/?P=226](http://www.Ayorinde-Law.Com/?P=226). (Accessed 15 March 2017).

victims of crime. Given the rate of crime in Nigeria, experience has revealed and shown that the reformation of the justice sector is not a matter to be handled with levity or to be taken for granted.

Additionally, a positive and effective justice system is necessary for democratic governance and the rule of law on the premise that “democracy functions as a system with formal and informal institutional interrelated mechanisms serving the purpose of translating social preferences into public policies.”²⁶⁴

In the light of the above, criminal justice, to be effective, should be dynamic, proactive and culturally relevant. For this reason, there is need for synergy and active cooperation among all levels of government in Nigeria with a view to formulating a consistent penal policy that supports or approves the contributions of all stakeholders in the justice sector and in the criminal justice system values progress with a view to formulating laws to provide for a state-funded scheme for crime victims.

²⁶⁴ T Osasona, ‘Time to reform Nigeria’s criminal justice system’ (2015) 3 *Journal of Law and Criminal Justice* 78.

Chapter Six:

State-funded compensation programmes for victims of crime: practices and procedures in comparable jurisdictions

1. Introduction

"A civilized society denounces violence and seeks to protect the innocent against the guilty and, to the extent that it can do so, it will be more stable and confident than the one which does not."¹ Additionally, "it is usually futile for courts to award heavy damages for personal injuries; the isolated individual offender can rarely make large amends. What, then, could be done to provide the compensation which the victim ought to receive?"²

In a positive response to the question posed above, the study has paid much attention to crime victims and the need to establish or institute state-funded victim compensation scheme in Nigeria because compensation provides financial help or assistance to several victims since it serves as the major avenue of monetary support in the aftermath of victimisation.³ Notwithstanding this fact, a comprehensive discussion on state-funded compensation to victims is necessary whether or not crime victims are defined in the Nigerian Constitution. This is borne out by the fact that jurisdictions like the UK,⁴ the USA,⁵ New Zealand,⁶ and Canada⁷ have highly successful state-funded compensation schemes and protection for all types of crime victims without making a distinction

¹ J Goodey 'Compensating victims of violent crime in the European Union with a special focus on victims of terrorism' (2003) 1.

² M Fry, 'Justice for victims' (1959) *Journal of Public Law* 192.

³ D Eddy 'Crime victims compensation' (2008) 325.

⁴ J Goodey 'Compensating victims of violent crime in the European Union with special focus on victims of terrorism' (2003) 5.

⁵ DS Greer 'A transatlantic perspective on the compensation of crime victims in the United States' (1994) 85(2) *Journal of Criminal Law and Criminology* 333.

⁶ New Zealand was the first country in the world to legislate for state compensation the New Zealand Criminal Injury Compensation Act (No.134) came into force a few months after Britain scheme in 1964.

⁷ KM Turman, & CR Watkins *International crime victim compensation directory* (1999) 15.

between victims of violent crimes and other categories of injury.⁸ As a result of what has been said, it becomes important and necessary to examine the practices and procedures in which states handle a victim's issues if one is to conclude and reach a decision concerning the need and the merits or otherwise of establishing a system equivalent to those jurisdictions mentioned above in Nigeria.

New Zealand⁹ and the UK¹⁰ led the world in the establishment of a comprehensive state-funded compensation programmes/schemes for crime victims. Other nations, like India, followed New Zealand and the UK by instituting a victim's support fund under which the Tamil Nadu authorities make available financial compensation to crime victims.¹¹

The Indian central government, in 2009, directed all of its states to prepare a scheme which has to be in agreement with the Indian central government scheme for victim compensation with the principal aim of providing funds for compensating crime victims or their dependants who have suffered loss or injury as a result of the crime and who require rehabilitation.¹² Additionally, in 2015, the government formulated the Central Victim Compensation Fund (CVCF) scheme to compensate every identified victim of crime.¹³ The source of funds for the CVC scheme is the "Nirbhaya fund" meant for tackling crime/violence against women, a grant from the budget and funds received from the public.¹⁴

⁸ New Zealand's No-Fault Accident Compensation Act 2001.

⁹ The Criminal injuries Compensation Act 1963 introduced the first state-funded scheme to compensate crime victims for personal injury.

¹⁰ Compensating crime victims New Zealand Law Commission Issue Paper 11 (2008) 27 In the UK there is the state-funded Criminal injuries Compensation scheme provided by the Criminal injuries Compensation act 1995.

¹¹ The state of Tamil Nadu is home to the Indian Society of Victimology on 14 August 1992. Persons interested in cause of victims of crime met at the Department of Criminology of the University of Madras Chennai in Tamil Nadu and resolved to found the organization. J Pratt Punishment in a perfect society: the New Zealand penal system, 1840-1939.

¹² AK Pandey, 'Compensation of victim of crime in India' (2017) <https://www.blog.ipleaders.in> > General. (Accessed 2 August 2017).

¹³ As above.

¹⁴ Government of India/Bharat Sarkar Ministry of Home Affairs Central Victim Compensation (CVCF) Guidelines No. 24013/94/Misc./2015-CRS.III 1.

2. A brief overview of the schemes in the jurisdictions under consideration

The New Zealand's compensation scheme is established by legislation.¹⁵ The Criminal Injury Compensation Act 1963 introduced the first state-funded scheme to compensate crime victims, and in 1975, this scheme was subsumed within the then new accident compensation regime. The current Act provides the mechanism for compensating crime victims for personal injury suffered by the victims owing to the commission of a crime.¹⁶ Additionally, there are various other state-funded or state-administered schemes through which victims of crime may receive compensation.¹⁷

The New Zealand Accident Compensation Scheme provides statutory compensation for personal injury¹⁸ which is funded by government allocations and levies collected and administered by the Accident Compensation Corporation.¹⁹ Besides, the ACC scheme is administered on a no-fault basis; in other words, irrespective of what a person was doing when the injury occurred, regardless of the extent of their culpability, they will be covered by the ACC scheme so long as the injury falls within the parameters of the ACC Act.²⁰

¹⁵ The Accident Compensation Act 2001.

¹⁶ The Accident Compensation Act 2001 section 3 The purpose of this Act "is to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has as its overriding goals minimizing both the overall incidence of injury in the community and the impact of injury on the community."

¹⁷ Victims may receive compensation directly from an offender for harm which is not personal injury through a sentence of reparation under the Sentencing Act 2002 an offender levy charged to all persons convicted of an offence in the District or High Court is used to fund a number of compensatory initiatives for victims of serious crimes.

¹⁸ The ACC 2001 section 3(f) The purpose of this Act "is to ensure that persons who suffered personal injuries before the commencement of this Act continue to receive entitlements where appropriate."

¹⁹ 'Compensation schemes: comparative report on national state compensation schemes' <https://www.trust.org/contentAsset/raw-data/038ad26c-b7c2-4ce1-8e22.../file>. (Accessed 15 August 2017).

²⁰ EL Solender 'New Zealand's No-Fault Accident Compensation scheme has some unintended consequences: a caution to U.S. reformers' (1993) 27(1) *The International Lawyer* 98.

In the UK, state compensation for victims of crimes of violence committed in England, Scotland or Wales is contained in the Criminal Injuries Compensation Scheme 2012 (CICS).²¹ The Scheme was established by the Secretary of State under the Criminal Injuries Compensation Act 1995.²² The rules of the Scheme and the value of the payments awarded under the Scheme are determined by the Scheme as opposed to the Criminal Injuries Compensation Act 1995, and the scheme is administered by the Criminal Injuries Compensation Authority, CICA, which was set up in 1964 to compensate blameless victims of violent crime.²³ Additionally, CICA is obligated to deal with all compensation claims and applications for criminal injuries compensation under the Scheme. The CICA also decides the amounts of compensation payments to be awarded in respect of such applications.²⁴

Crime victims in the Northern Ireland receive services under the Victim Charter, a Charter for victims of crime as laid down by the country's Parliament.²⁵ Under the Charter, a person can apply for compensation if he/she becomes a victim of a violent crime.²⁶ Denmark has a system of compensation for victims of intentional violent crimes occurring within the jurisdiction of Denmark.²⁷ The compensation system assures reasonable and appropriate compensation for victims, and the Danish rules on

²¹ 'Compensation schemes: comparative report on national state compensation schemes' <https://www.trust.org/contentAsset/raw-data/038ad26c-b7c2-4ce1-8e22.../file>. (Accessed 15 August 2017).

²² The Criminal Injuries Compensation Scheme 2012 Par 1 This Scheme (The Criminal Injuries Compensation Scheme 2012) is made by the Secretary of State under the Criminal Injuries Compensation Act 1995 having been approved by each House of Parliament.

²³ Criminal Injuries Compensation Authority 'Annual report and accounts 2010–11' (2011) 5.

²⁴ The Criminal Injuries Compensation Scheme 2012 Par 62 Where a claims officer is satisfied that more than one person may be eligible for a bereavement payment in respect of the deceased the amount of the bereavement payment is £5,500 otherwise the amount of the bereavement payment is £11,000

²⁵ 'Victim Charter: a charter for victims of crime' (2015) 5. Northern Ireland Assembly by the Department of Justice under section 31(2) of the Justice (Northern Ireland) Act 2015.

²⁶ 'Victim charter summary a Charter for victims of crime' <http://www.victimsupportni.co.uk/site/wp-content/uploads/2017/01/victim-charter.pdf>. (Accessed 15 August 2017).

²⁷ 'Manual 80/2004 – Denmark: compensation to crime victims Denmark' http://www.ec.europa.eu/justice_home/.../html/pdf/manual_cv_den_en.pdf. (Accessed 15 August 2017).

compensation by the State to crime victims are contained in the relevant laws on victim compensation.²⁸

In the United States there is no federal compensation scheme for victims of crime.²⁹ Every state, however, has a crime victim compensation programme that can provide substantial financial assistance to crime victims and their families.³⁰ Crime victim compensation was the first type of organised victim assistance in the United States. The earliest compensation programme was created in 1965 in California.³¹ Although each state in the United States operates under its own law, all compensation programmes have the same basic criteria to determine eligibility for benefits. The state of Texas, which I shall use as my point of reference under the various national compensation schemes, has its own compensation scheme for Crime and Victim Services and the office of the Attorney General of Texas provides information relating to the scheme.³²

²⁸ The Law on state compensation to crime victims (the Victims Compensation Law): Order No 688 of 28 June 2005.

²⁹ 'Compensation schemes: comparative report on national state compensation schemes' <https://www.trust.org/contentAsset/raw-data/038ad26c-b7c2-4ce1-8e22.../file>. (Accessed 15 August 2017).

³⁰ Crime victim compensation: an overview <http://www.nacvcb.org/index.asp?bid=14>. (Accessed 15 August 2017).

³¹ The statutes and regulations governing the California Victim Compensation Program (CalVCP) are set forth in the following legislation and related regulations: (a) California Government Code §§ 13950 – 13969.7 (b) California Code of Regulations Chapter 1: Victim Compensation and Government Claims Board (c) California Code of Regulations Chapter 1, Article 2.5: General Hearing Procedures (d) California Code of Regulations Chapter 1 Article 5.2: Hearings for Indemnification of Citizens Benefiting the Public and Indemnification of Victims of Crime (e) California Code of Regulations Chapter 1 Article 5.6: Indemnification of Victims of Crime.

³² The scheme for compensation of victims of crime in Texas is set out in Title 1 of the Code of Criminal Procedure of the State of Texas (Acts 1965) Chapter 56 of the Code the Statute provides various means of assistance to victims of crime.

Canada runs a federal system, and the Canadian government has the exclusive jurisdiction to enact the Criminal Code and criminal law applied throughout Canada.³³ The ten provinces, however, have the obligation for the administration of criminal law and victim compensation.³⁴ Federal jurisdiction over criminal law is important to many provincial victim compensation schemes, because the Criminal Code empowers a court, when sentencing the criminal, to order that the offender pay a victim surcharge. This victim surcharge may in part fund the provincial victim compensation scheme.

As every other jurisdiction under examination, Finland has a victim compensation scheme regulated by law from which a person injured owing to criminal offence is compensated.³⁵ Additionally, the Finnish law provides protection and/or assistance to victims of crime, and, under the Finnish Act on Compensation for Crime Damage (1204/2005), compensation is payable from State Treasury funds for injury or damage caused by a criminal offence.³⁶ Besides this, for personal injury victims can receive compensation for medical costs and other necessary costs, loss of income, pain and suffering, invalidity and other permanent handicap;³⁷ under the Act, however, compensation for property damage can be paid only in exceptional cases.³⁸

³³ 'Compensation schemes: comparative report on national state compensation schemes' <https://www.trust.org/contentAsset/raw-data/038ad26c-b7c2-4ce1-8e22.../file>. (Accessed 15 August 2017).

³⁴ For instance in Alberta the Victims of Crime Act 1997 establishes the framework for compensating those injured as the direct result of a violent crime committed in Alberta.

³⁵ There are two main pieces of legislation relating to the Compensation System in Finland: Tort Liability Act (412/1974 Finnish Act on Compensation for Crime Damage (1204/2005as amended).

³⁶ Act on Compensation for Crime Damage (1204/2005) section 1 compensation shall be paid from State funds for injury or damage caused by a criminal offence as provided in this Act.

³⁷ Act on Compensation for Crime Damage (1204/2005) section 5(1) A person who has sustained personal injury shall be compensated for: (1) medical costs and other costs arising from the injury pain and suffering invalidity and other permanent handicap.

³⁸ Act on Compensation for Crime Damage (1204/2005) section 1(a) compensation for personal injury and property damage is due to the person sustaining it discretionary compensation may be paid to the same in accordance with section 8a.

In India, a crime victim's right to compensation was recognised under the Code of Criminal Procedure 1898³⁹ but this right is available only where a substantive sentence of a fine is imposed and is limited to the amount of the fine actually realized.⁴⁰ Section 357 (3) Criminal Procedure Code 1973 "permits the grant of compensation even where the accused is not sentenced to a fine."⁴¹ Unfortunately, this provision is hardly invoked by the Indian courts.

The Republic of the Philippines runs a victim compensation scheme to make available financial compensation for victims of violent or personal crime.⁴² The law establishing the Board whose responsibility it is to award compensation to crime victims of violent crimes and other categories of victims is the Republic Act No. 7309 under the Department of Justice.⁴³

At present, South Africa (SA) does not operate a system of a state-funded victim compensation programme similar to the various jurisdictions under examination.⁴⁴ SA does, however, have several legislative frameworks⁴⁵ and policies⁴⁶ proposed by the SALRC for a victim compensation scheme to deal with victim compensation and offenders on restitution.⁴⁷ These various pieces of frameworks are very insightful and call for examination.

³⁹ Section 545(1)(2) & section 546 Criminal Procedure Code 1898.

⁴⁰ S Muralidhan 'Rights of victims in the Indian criminal justice system' (2004) *National Human Rights Commission Journal* 3.

⁴¹ Section 357 (3) "When a Court imposes a sentence of which fine does not form a part the Court may when passing judgment order the accused person to pay by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced."

⁴² Directory of international crime victim compensation program 2004-2005: 'Victim compensation programs: Phillipines' https://www.ncjrs.gov/ovc_archives/reports/intdir2005/phillipines.html. (Accessed 16 August 2017).

⁴³ 'Victims compensation program: department of justice - Republic of the Phillipines'...<https://www.doj.gov.ph/victims-compensation-program.html> (Accessed 16 August 2017).

⁴⁴ JC von Bonde 'Redress for victims of crime in South Africa: a comparison with selected Commonwealth jurisdictions' unpublished LL.D thesis Nelson Mandela Metropolitan University (2006) iii.

⁴⁵ South African Law Reform Commission Project 82 Sentencing (A Compensation Fund for Victims of Crime) 2004.

⁴⁶ Minimum Standards on Services for Victims of Crime.

⁴⁷ South African Law Reform Commission Discussion Paper 97 Project 82 sentencing (A Compensation Scheme for Victims of Crime in South Africa 2001).

As a sequel to the foregoing, it is observable that several theories have formed the foundation upon which the society should assume responsibility for the injury of crime victims. One such theory is the legal liability theory. This theory enjoins the state to compensate crime victims because of the duty the state owes the subjects to protect its citizens against crime and through the failure to prevent crime the state has failed in this duty.⁴⁸

The social contract theory states that the state accepts the responsibility to compensate crime victims for losses suffered on humanitarian grounds; however, the state has no statutory or constitutional obligations resulting from the commission of crimes.

Additionally, the accountability theory sees citizens and the state in a symbiotic relationship.⁴⁹ The citizens pay premiums and the state compensates the citizens in the event that the citizens become victims of criminal behaviour. The state ensures that crimes are eradicated or at least reduced. The reason for this symbiotic relationship between the state and the citizens is that crime victims who know that the state will provide support when they are victimized will join hands with the state and even become involved in the fight against crime.⁵⁰

The study cannot enumerate one after the other, jurisdiction by jurisdiction, the crime victims' compensation schemes and programmes. The table in the annexure helps in giving an appreciation of those countries with and without state-funded crime victims' compensation schemes.

Following from the above, this chapter now examines and discusses the practices and procedures of crime compensation of New Zealand, the UK, the USA, Canada, Finland, India, Northern Ireland, Denmark, Colombia, the Republic of the Philippines and South Africa. Besides the foregoing, the chapter will also examine the laws establishing the

⁴⁸ See chapter two sections 2-8.

⁴⁹ JC Von Bonde (n 44 above) iii.

⁵⁰ South Africa Law Reform Commission (n 47 above) 47-48.

compensation schemes, the eligibility criteria, administrative procedures and sources of funds for the schemes.

3. Criminal injuries compensation scheme: rationale for the scheme

The general reasons for instituting a crime victims' compensation scheme are not the same in the various jurisdictions under consideration. The first of the reasons is that the state encourages citizens to protect their belongings and themselves from crime but prohibits the citizens from being in possession of weapons to protect themselves and their property.⁵¹ Secondly, the citizens are under a duty to help the state by giving assistance to law enforcement officers when the office is in the process apprehending a criminal or controlling violence.⁵² Citizens are, however, discouraged from assisting the law officers if they are not sure whether compensation for injury will be paid by the state.

Additionally, the state, having prevented the crime victims from enforcing the law themselves to seek remedy, must make provision for them with positive compensation for the state's being at fault.⁵³ Beyond this, offenders are often sentenced to a term of imprisonment for a very long time, and so the state denies the crime victims any chances of adequate remedy from criminal offenders.⁵⁴

⁵¹ See chapter two section 9.1.

⁵² Von Bonde (n 44 above) iii.

⁵³ South African Law Reform Commission (n 47 above) 49.

⁵⁴ See chapter two section 9.2.

4. Eligibility requirements for compensation

In the UK, to qualify for state compensation in the event of criminal injuries, the crime must have been committed in the UK, and the injury sustained must be directly attributed to the crime.⁵⁵ In addition, the crime must be one of a violent nature, attempting to arrest criminal offenders, attempting to prevent crimes, or the process of rendering help or assistance to any law enforcement agent involved in such activity.⁵⁶ Furthermore, criminal offenders should have possessed the requisite *mens rea* or intention or must have acted negligently with regard to the infliction of injury. This requirement complies with the European Convention on the Compensation of Victims of Violent Crimes which provides that victims of wilful crime or act be compensated.⁵⁷ In cases of crimes against the person, this also constitutes an offence and any Britons injured will be eligible to claim compensation⁵⁸ because it is the idea or nature of a wrongdoing or offence and not its outcomes that decides whether it is a wrongdoing of violence or brutality.⁵⁹

⁵⁵ In *R vs Ministry of Defence* (2000) 2 All ER 917 a Ministry of Defence scheme the Criminal Injuries Compensation (Overseas) Scheme to compensate military personnel for criminal injuries sustained abroad was considered the scheme excluded injuries resulting from war operations or military activity by warring factions.

⁵⁶ Including arson fire-raising or an act of poisoning.

⁵⁷ Preamble European Treaty Series - No 116 European Conventions on the Compensation of Victims of Violent Crimes Considering that the aim of the Council of Europe is to achieve a greater unity between its Members considering that for reasons of equity and social solidarity it is necessary to deal with the situation of victims of intentional crimes of violence who have suffered bodily injury or impairment of health and of dependants of persons who have died as a result of such crimes.

⁵⁸ Offences Against the Person Act 1861 sec 34 whosoever by any unlawful act or by any wilful omission or neglect shall endanger or cause to be endangered the safety of any person conveyed or being in or upon a railway or shall aid or assist therein shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

⁵⁹ P Cane *Atiyah's Accidents Compensation and The Law* (2013) 259.

When a person is injured while trying to apprehend the criminal offenders, the crime victims are eligible for compensation only if they had taken a life-threatening action which was supported or justified in that situation.⁶⁰ For example, a law enforcement officer injured in the course of his official duties is not eligible for compensation in terms of the Scheme.⁶¹

It is not necessary that a crime should be in the process of taking place or occurring, provided that, at the time of the injury, the crime victims made an attempt to prevent the crime, having received information that the crime was about to be committed. Beyond this fact, irrespective of a victims' death as a result of his/her negligence, it is still viewed as part of an attempt to stop the crime.⁶²

The conviction of the criminal offenders is not a requirement for eligibility for compensation in the UK, although it helps in proving the claim.⁶³ Furthermore, the criminal offenders need not be identified before compensation claims can be granted.⁶⁴

This is also the situation where no sentence is given because of age or insanity.⁶⁵ The only thing required is the proof of injury caused by a wrongdoing of a violent nature and not merely by accident.

Finally, compensation is payable in the UK with regards to personal injury, which includes physical and mental injury and disease. Mental damage or illness can come about because of physical damage caused by various kinds of wrongdoing.⁶⁶

⁶⁰ Guide to the 2001 Compensation Scheme.

⁶¹ This category was included in the current scheme despite criticism that law enforcement officers are entitled to industrial injury benefits its inclusions was probably due to lobbying by the police and Fire Brigades Union.

⁶² *R vs Criminal Injuries Compensation Board* (1973) 3 All ER 808.

⁶³ *R vs Criminal Injury Compensation Appeals Panel* (2001) EWHC Admin 1193 67 BMLR 21.

⁶⁴ Von Bonde (n 44 above) 213.

⁶⁵ In *R vs Criminal Injuries Compensation Board* (Unreported) Queen's Bench Division (Crown Office List) CO/3206/99 it was found that the term insanity is to be understood in its legal meaning: From (the available evidence it was quite impossible for the Board to be satisfied that at the time of committing the act Mr Gorman was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing or if he did know that he did not know what he was doing was wrong consequently their finding that he was a person with learning difficulties and therefore did not have a sound mind is not a finding that he was insane.

⁶⁶ *Millar vs Criminal Injuries Compensation Board* (1998) 44 BMLR 70.

In Northern Ireland compensation might be payable even where no vicious offence has happened. This, however, is not the case where such injury was coincidental unless a remarkable risk was taken by the crime victims when they were injured or harmed.⁶⁷ Under the German Act of 2011, the damage or injury must have caused enduring or lasting harm on the victim's well-being or health and have come about because of a deliberate and unlawful violent assault.⁶⁸

The Netherlands compensation method differs slightly in that it allows the state to compensate victims of intentional crime who have suffered serious bodily or mental injuries.⁶⁹

Similar to the eligibility requirements in the UK, each state in the US has eligibility requirements that crime victims must meet before claiming compensation.⁷⁰ Using the state of Texas as an example, before crime victims can recover under the Texas Crime Victims Compensation Act⁷¹ they must satisfy the Board by evidence that the requirements of the Act have been complied with.⁷² Additionally, the crime victims must be Texas residents⁷³ who have suffer personal injury.⁷⁴ Furthermore, with regards to victims who have been killed, the crime victims must have died because of the injurious

⁶⁷ K Bloomfield, M Gibson & D Greer 'A report of the review of criminal injuries compensation in Northern Ireland' (1999) 41.

⁶⁸ Act on compensation to victims of violent crime (Crime Victims Compensation Act) as amended 2011 sec 1(1) Any person who within the territory of validity of this Act or on board a German vessel or aircraft has sustained a personal injury as a result of wilful unlawful physical assault against himself or any other person or as a result of the lawful defence against such an assault shall be entitled upon application to compensation on account of the resulting health damage and economic damage as provided for by the Federal War Victims Compensation Act which shall be applied mutatis mutandis the application of this provision shall not be excluded on the grounds that the assailant has acted in the mistaken belief that his action was justified.

⁶⁹ J Wemmers, & P de Beer 'The Netherlands' in DF Greer (ed) *Compensating crime victims: a European survey* (1996) 412.

⁷⁰ Office of victim 'Crime victim compensation program initiative' (2016) *United States Department of Justice* 1.

⁷¹ Texas Code of Criminal Procedure Chapter 56.

⁷² PM Koning, 'Compensation for victims of crime - the Texas approach' (1980) 34 *Southwestern Law Journal* 693.

⁷³ Texas Review Civil Statute Annotated Article 8309 sec 3(9) (A).

⁷⁴ The Act requires that the victim suffer physical injury in order to recover.

conduct.⁷⁵ A person acting as a Good Samaritan in order to stop crime that was injured and died in the process can also be compensated.⁷⁶ Indirect crime victims or the dependants of the primary crime victims are also eligible to claim compensation under Texas laws,⁷⁷ and also those who, in the case of deceased crime victims, legally or voluntarily assume the medical or burial expenses of the crime victims.⁷⁸ As soon as the Board determines that persons claiming are crime victims,⁷⁹ the Board needs to be satisfied that, because of the crime, victims suffered physical injury⁸⁰ or death that resulted in pecuniary loss.⁸¹

In addition, the Board needs to be convinced that the crime victims were not able to recover pecuniary loss without suffering financial stress and that the crime victims' recovery may be denied or reduced to the extent that the victims' pecuniary loss is compensated from collateral sources.⁸² Immediately the Board grants approval of the crime victims' application, the Board compensates the crime victims for their pecuniary loss by means of a lump-sum cash payment or by a series of payments.⁸³ When an award of compensation has been approved and granted, the state prevents the crime

⁷⁵ Sec 3(9) (A) (Vernon Supp. 1980) sec 3(4) defines criminally injurious conduct Criminally injurious conduct means "conduct that occurs or is attempted in this state poses a substantial threat of personal injury or death is punishable by fine imprisonment or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state."

⁷⁶ Sec 3(8) provides intervener "means a person who goes to the aid of another and is killed or injured in the good faith effort to prevent criminally injurious conduct to apprehend a person reasonably suspected of having engaged in such conduct or to aid a police officer intervener does not include a peace officer fireman lifeguard or person whose employment includes the duty to protect the public safety acting within the course and scope of his or her employment."

⁷⁷ Sec 3(5) defines dependent with the addition of surviving spouses and posthumous children of deceased victims.

⁷⁸ Sec 3(9) (D).

⁷⁹ Sec 3(2) defines "claimant as a victim or an authorized person acting on behalf of any victim."

⁸⁰ Koning (n 72 above) 694.

⁸¹ Koning (n 72 above) 693. Pecuniary loss incurred as the result of personal injury was compensable including psychological counselling of rape victims who suffer mental but not physical injury.

⁸² Sec 3(3) Collateral source "means a source of benefits or advantages for pecuniary loss awardable other than under this Act which the victim has received or which is readily available to him or her from the offender under an order of restitution to the claimant imposed by a court as a condition of probation."

⁸³ Sec 7(c) pecuniary loss accrued to the date of the award shall be paid in a lump sum and future expenses are to be paid in instalments unless the Board finds a lump sum payment will promote the interest of the claimant.

victims from receiving or recovering benefits from collateral sources to the extent that the state has awarded compensation.⁸⁴

New Zealand is described as a “social laboratory” on the basis of the country’s long-established reputation for progressive social policy.⁸⁵ For example, New Zealand gave voting rights to women in 1893, which made it the first country to introduce universal suffrage. In addition, New Zealand was the first to introduce old-age pensions in 1898, the first to introduce workers’ compensation in 1900. It introduced its national health service in 1938 and was also the first to introduce Criminal Injuries Compensation Scheme 1963 in the common law world.⁸⁶

Eligibility in all the jurisdictions considered is almost similar. In New Zealand, first the crime must have taken place within the jurisdiction of New Zealand and reported to the proper authorities as soon as possible, although there is no restriction as to the time of reporting the crime occurrence. The compensation claims need to be filed within a reasonable time after the discovery of the occurrence of a crime. The cooperation of the crime victims with law enforcement agents is pivotal to a successful compensation claim. The crime victims need to prove that they did not connive or take part in illegal activity that caused their injuries and that an eligible crime had actually taken place. Foreign nationals are also eligible to apply.⁸⁷

⁸⁴ Sec 11 (a) provides if compensation is awarded the state is subrogated to all the claimant's rights to receive or recover benefits for pecuniary loss to the extent compensation is awarded from a source which is or if readily available to the claimant would be a collateral source.

⁸⁵ P Ramage New Zealand: a social laboratory of the world’ (2014) 1.

⁸⁶ K Oliphant, ‘Landmarks of No-fault in the Common Law in WH van Boom & M Faure (eds) Shift in Compensation Between Private and Public Systems (2007) 43.

⁸⁷New Zealand Law Commission Compensating crime victims’ <http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20IP11.pdf>. (Accessed 5 June 2017).

The New Zealand's ACC compensates all crime victims, irrespective of criminal intention; it applies the same rules to victims of crime of a violent nature and victims of non-violent crimes. No distinction is made with regards to the avenues from which the money comes for crime victims' compensation and the recipients of such compensation.

A similar compensation programme with little difference from that of the USA for crime victims of violent or personal crimes is also available in Canada.⁸⁸ Canada is a confederation of ten provinces and three territories;⁸⁹ as a result, the jurisdiction has a complex political and government system. The Canadian government consists of federal, provincial, and municipal branches.⁹⁰ The federal government in Canada exercises absolute authority in some areas, for instance, the criminal code.⁹¹ In contrast, each state in the United States that forms the union has its own criminal code, but in Canada one federal criminal code applies throughout the country.⁹² This division of jurisdiction has a great impact on victim assistance in Canada. This is because there are no truly federal guidelines or one set of rules governing victim compensation and services. As a result, these services are more developed in certain areas than in others in Canada while in some areas they are virtually non-existent. Additionally, because each province has its own Compensation Act or law the rules and amounts of compensation can show substantial variation.

⁸⁸ Turman & Watkins (n 7 above) 15.

⁸⁹ R Simeon & M Papillon 'Canada' (2014) International Association of Center for Federal Studies 2.

⁹⁰ 'Canada's System of Government' <https://www.lop.parl.ca/About/Parliament/Education/.../pdfs/booklet-Section2-e.pdf>. (Accessed 2 August 2017).

⁹¹ 'Canada's Legal System - Sharing of Legislative Powers in Canada' https://www.slmc.uottawa.ca/?q=laws_canada_legal. (Accessed 2 August 2017).

⁹² EA Fattah 'victim assistance in Canada' 112th international training course visiting experts' papers' http://www.unafei.or.jp/english/pdf/RS_No56/No56_08VE_Fattah1.pdf. (Accessed 2 August 2017).

In Canada, eligibility criteria are dependent on the province in question. For instance, in the province of Alberta there are certain conditions a crime victim must meet before the victim can qualify for financial benefit as compensation.⁹³ In Finland, the eligibility criteria are set out in the Act on Compensation for Crime Damages; one of such criteria is residency requirements for persons who may claim compensation for a criminal offence.⁹⁴ Compensation is payable to those resident in Finland at the time of application, and the crime should have been committed within Finland.⁹⁵ If the crime has been committed outside of Finland, the victim is entitled to receive compensation only for personal injury.⁹⁶

In India, the situation is quite different in respect of eligibility because no compensation can be ordered to be paid by the state;⁹⁷ an accused person only may be directed to pay compensation under section 357 of the Criminal Procedure Code. All victims of all crimes are, however, entitled to receive compensation.⁹⁸ The direct victim or the dependants of the direct victims who are successors in interest and dependent upon the deceased are eligible for compensation.⁹⁹

Colombia, as a developing country, operates state compensation schemes for different categories of crime victims as a result of President Juan Manuel Santos Calder's signing, on 10 June, 2011, of the Colombia Victims and Land Restitution Law.¹⁰⁰ The law

⁹³ A victim is eligible for a Financial Benefit Award if: (a) they were the victim of an eligible offence (as set out in the Victims of Crime Regulation) (b) the crime happened in Alberta (d) the victim reported the crime to the police within a reasonable time (e) the victim cooperated fully with the police investigation and (f) the victim's application is received within two years of the date of the crime.

⁹⁴ Section 2(a) (3) if the person sustaining the injury or damage moves his/her permanent residence to abroad after the commission of the offence referred to in paragraph (1) or (2) the compensation may be denied or its payment terminated.

⁹⁵ Compensation for Crime Damages Act section 2 Compensation shall be paid for injury or damage caused by an offence committed in Finland.

⁹⁶ Compensation for Crime Damages section 2(a)(1) If the offence has been committed outside of Finland compensation shall be paid for personal injury only.

⁹⁷ *State of Madhya Pradesh vs Mangu* (1995) *Criminal Law Journal* 3852.

⁹⁸ KI Vibhute, *Criminal Justice –A Human Rights Perspective Of The Criminal Justice Process In India* (2004) 365.

⁹⁹ 'Law relating to compensation in India'

http://www.shodhganga.inflibnet.ac.in/bitstream/10603/28181/10/10_chapter%203.pdf. (Accessed 15 August 2017).

¹⁰⁰ Law 1448.

primarily aims to facilitate truth, justice, and integral reparations for victims with a guarantee of no repetition.¹⁰¹ Additionally, the law covers both the rights of all victims, including the disappeared, murdered, or those who have suffered other serious violations of human rights.¹⁰²

All victims are granted rights to damages,¹⁰³ restitution of prior living conditions,¹⁰⁴ a range of social services,¹⁰⁵ and special protection in legal proceedings.¹⁰⁶ Displaced victims are entitled to monetary compensation.¹⁰⁷ It is noted however, this study is particularly focused on the rights of other victims under the Colombia law save the victims of murder.

Although the law recognises that all victims have a right to truth, justice, compensation and a guarantee of non-repetition, in line with international standards, it, however, seeks to downplay state responsibility for human rights crises. This has caused public concern and debates that this could result in the state's failing to acknowledge its responsibility to provide compensation to the victims of human rights violations and so limit access to compensation for some victims.¹⁰⁸

International institutions, such as the United Nations (UN) agencies, the International Organization for Migration (IOM), the Organization of American States (OAS), the United States Agency for International Development (USAID), Canada, and the United Kingdom, the Episcopal Conference, and NGOs, such as Forjando Futuros and Tierra

¹⁰¹ As above.

¹⁰² N Summers, 'Colombia's victims' law: transitional justice in a time of violent conflict?' (2012) 25 *Harvard Human Rights Journal* 225.

¹⁰³ Law 1448 (n 100 above).

¹⁰⁴ As above.

¹⁰⁵ As above.

¹⁰⁶ As above.

¹⁰⁷ As above.

¹⁰⁸ Amnesty International 'Colombia: The Victims and Land Restitution Law-An amnesty International analysis' (2012) 8.

Vida, throw their weight behind the Colombian Victim law and have emphasized the need to strengthen the state's institutional capacities to implement the law.¹⁰⁹

The Republic of the Philippines Act No. 7309 established a Claims Board under the watch of the Department of Justice.¹¹⁰ The Act provides compensation for victims of unjust imprisonment or detention and victims of violent crimes.¹¹¹ A person who is a victim of a violent crime including rape and offences committed with malice which result in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma, or committed with torture, cruelty or barbarity are eligible for compensation under the Act.¹¹²

Denmark pays compensation for personal injury resulting from serious criminal crimes rather than on the nature of the crime.¹¹³ In addition, Finland does not base its compensation eligibility on the crime being of an intentional or violent nature.¹¹⁴ In Norway, the state grants compensation for individual damage caused by a wilful act of assault or other criminal acts characterized by violence or force.¹¹⁵

¹⁰⁹ CM Londono, & MV Mejia 'Law of victims and land restitution in Colombia: public debates and "Glocal" Agendas' (2016) 7(1) *Policy Studies Organization* 88-89.

¹¹⁰ An Act Creating A Board Of Claims Under The Department Of Justice For Victims Of Unjust Imprisonment Or Detention And Victims Of Violent Crimes And For Other Purposes.

¹¹¹ Act No. 7309 Sec 3(a) states that the following person may file claims for compensation before the Board: any person who was unjustly accused convicted and imprisoned but subsequently released by virtue of a judgment of acquittal.

¹¹² Act No. 7903 Sec(d) any person who is a victim of violent crimes for purposes of this Act violent crimes shall include rape and shall likewise refer to offenses committed with malice which resulted in death or serious physical and/or psychological injuries permanent incapacity or disability insanity abortion serious trauma or committed with torture cruelly or barbarity.

¹¹³ State Compensation to Victims of Crime (Consolidation) Act No. 688 of 28 June 2004 sec 1(1) The State awards compensation and damages for personal injury inflicted by violation of the Criminal Code where any such violation is committed within Danish territory.

¹¹⁴ Act on Compensation for Criminal Damage 1984Sec 1(1) Compensation shall be paid from State funds for injury or damage caused by a criminal offence as provided in this Act.

¹¹⁵ Norway Compensation for Victims of Violent Crime Act 2001.

Eligibility for state compensation in some schemes in crime of violence requires crime victims to be blameless.¹¹⁶ Also eligible for state compensation are those who are injured in an attempt to arrest the criminal offenders.¹¹⁷

For instance, compensation is granted in Denmark in conditions in which individual damage was caused by offering help to the police in connection with a capture, keeping an offence or with a view to making a resident's arrest.¹¹⁸

In South Africa, several crime victims' documents have been produced. The South African Law Reform Commission Compensation Scheme for Victims¹¹⁹ is of particular interest and relevance to the discussion in this study.

The spirit behind the SALRC Compensation Scheme was the need to address key issues with respect to compensation for crime victims.¹²⁰ Although the scheme noted that South Africa lingers behind most countries of the world with regards to victim support and compensation to crime victims,¹²¹ the structure and the contents of the scheme is worth adopting and implementing within the Nigerian context. The framework considered the implications and prerequisites of adopting a Victim Compensation Scheme in South Africa.

¹¹⁶ The Criminal Injuries Compensation Scheme is a government funded scheme designed to compensate blameless victims of violent crime in Great Britain. <http://www.victimcareandadvice.service.uk/criminal-injuries-compensation-authority/>. (Accessed June 8 2017).

¹¹⁷ 'Compensation to victims of crime' http://www.police.gov.hk/ppp_en/04_crime_matters/cvc.html. (Accessed 8 June 2017).

¹¹⁸ D Lerche 'Denmark' *In Compensating Crime Victims: A European Survey* DF Greer (ed) (1996) 135.

¹¹⁹ The South African law reform commission discussion paper 97 project 82 sentencing (a compensation scheme for victims of crime in South Africa) 2001 and 2004 respectively.

¹²⁰ As above.

¹²¹ As above.

The structure of the scheme, similar to the Commonwealth Guidelines, is divided into several chapters in the following order reported *verbatim*:

“Chapter 1: A broad introduction to the Scheme and the issue of compensation for victims of crime;

Chapter 2: An overview of the violent crime situation in South Africa which is considered essential to help provide the data for costing and assessing any compensation model;

Chapter 3: An overview of the debates concerning compensation. This Chapter analyses the motivations for and against establishing a compensation scheme for victims of crime, drawing heavily on international comparisons and experience;

Chapter 4: An outline of the parameters usually applied in victim compensation schemes, which will need to be considered if a VCS were to be established in South Africa. This Chapter highlights the eligibility and ineligibility criteria that would need to be considered for any compensation scheme. These are based on various international approaches and best practice;¹²²

Chapter 5: The results of two case studies of selected police dockets. The purpose of these docket analyses was to provide detailed information about certain types of violent crimes, and to assess the usefulness of police information in adjudicating possible claims for victim compensation;

Chapter 6: Postulates various models and costing associated with establishing a compensation scheme in South Africa. A number of models ranging from full compensation, through to more minimal or targeted schemes were discussed and valued in terms of funding;

Chapter 7: Outlines the type of administrative structures that could be used to run and manage a victim compensation scheme;

Chapter 8: Provides various options for funding a compensation scheme and the financing systems that may be involved if a compensation scheme were to be established; and;

¹²² See chapter six section 1.

Chapter 9: Provides a list of recommendations emanating from research conducted in respect of Victim Compensation Schemes from other jurisdictions.¹²³

The SALRC's 2004 Scheme provided a comprehensive analysis of the entire compensation programme. It examined the procedures, approaches and practices of other jurisdictions. It is submitted that, even though the SA authorities have not implemented the 2001 and 2004 Victim Compensation Scheme and other victims' policies¹²⁴ and documents,¹²⁵ it is the right step in the right direction which Nigeria can rely on and draw from successfully.

5. Administrative procedures

The UK's crime victims' compensation scheme is administratively based. Compensation payments are done from a sense of moral obligation. The courts; however, need to monitor such payments to ensure compliance with the procedures.¹²⁶ The Criminal Justice Act is the enabling law which empowers compensation claims.¹²⁷ The legislative scheme was formerly implemented by the Criminal Injuries Compensation Board.¹²⁸

Compensation claims by crime victims are decided by officials of the compensation Authority (CICA).¹²⁹ Appeals against denials of crime victims' claims go to the adjudication panel.¹³⁰ Notwithstanding the fact that the scheme is under the watch of

¹²³ SALRC (n 119 above) 5-6.

¹²⁴ Service Charter for Victims of Crime.

¹²⁵ Minimum Standards on Services for Victims of Crime.

¹²⁶ MA Jones *Textbook on torts* (2003) 469.

¹²⁷ The Criminal Justice Act of 1988 sec 108-117.

¹²⁸ Now the Criminal Injuries Compensation Authority 1996.

¹²⁹ The Criminal Injuries Compensation Scheme (2001) par 2a Claims officers in the Criminal Injuries Compensation Authority ("the Authority") will determine claims for compensation in accordance with this Scheme.

¹³⁰ The Criminal Injuries Compensation Scheme (2001) par 2b Appeals against decisions taken on reviews under this Scheme will be determined by adjudicators. Persons appointed as adjudicators are appointed as members of the Criminal Injuries Compensation Appeals Panel.

the Secretary of State, the appeal does not go to the Secretary of State for consideration.¹³¹

The CICA provides compensation for direct crime victims and their dependants for actual pecuniary loss, and, specifically, for loss of earnings.¹³² The Act gives five classes of compensation. The first compensation claim is in respect of expenses actually and reasonably undertaken because of the crime victims' injury or death. Secondly, it provides pecuniary loss to crime victims if the crime victims suffered total or partial incapacity for work. The third category of compensation is pecuniary loss to dependants of the crime victims if the victims died as a result of the crime. The fourth category includes other losses from the crime victims' harm or injury and any expenses which, in the Tribunal's discretion, it is reasonable to incur as well as pain and suffering of the crime victims.¹³³

In the state of Texas, on the submission of application claims by crime victims to the Board, a clerk appointed by the Board reviews the application for compliance and completeness.¹³⁴ The application is reviewed by a Board member who determines whether a hearing is necessary.¹³⁵ The Board has the power to order that the crime victims be subjected to a mental or physical examination or to order an autopsy of deceased crime victims if the mental, physical, or emotional condition of crime victims is material to the compensation claims¹³⁶ and if the order is for good cause shown.¹³⁷

¹³¹ The Criminal Injuries Compensation Scheme (2001) par 4 the general working of this Scheme will be kept under review by the Secretary of State.

¹³² KM Weeks, 'The New Zealand criminal injuries compensation scheme' (1970) *43 California Law Review* 110.

¹³³ Criminal Injury Compensation Act 1963 sec 18(1) Compensation may be awarded by the Tribunal under this Act in respect of anyone or more of the following matters expenses actually and reasonably incurred as a result of the victim's injury or death pecuniary loss to the Victim as a result of total or partial incapacity for work pecuniary loss to dependants as a result of the victim's death other pecuniary loss resulting from the victim's injury, and any expenses which in the opinion of the Tribunal it is reasonable to incur pain and suffering of the victim.

¹³⁴ Texas Review (n 73 above) 8309-1 sec 5(a).

¹³⁵ As above.

¹³⁶ As above.

¹³⁷ As above.

When a claim for compensation is denied, the crime victims or the Board *su motu* can reconsider its decision.¹³⁸ In addition, a claimant has the right to judicial review of a final ruling.¹³⁹ Crime victims are entitled to a right of judicial review only when they file a notice of dissatisfaction with the Board within twenty days of the ruling and bring suit in the district court within twenty days of the filing of notice.¹⁴⁰ The district court hears and determines the issues and may consider the case *de novo*.¹⁴¹ The costs of awards and administration are paid from the Compensation to Victims of Crime Fund, established in the Texas state treasury.¹⁴²

In New Zealand, the crime victims' compensation programmes are administered and overseen by the Crimes Compensation Tribunal (CCT). The CCT has three members appointed by the Government, one of whom must be a legal practitioner of at least seven years standing.¹⁴³ All crime victims making compensation claims are heard before the Tribunal, no matter how small their claims. The CCT adopts an extra legal procedure of making determinations without a full hearing and asks the crime victims if they will accept the Tribunal's award irrespective of the lack of a quorum. If the crime victims decline the offer a full hearing is organised with a view to facilitating the settling of small claims and expediting payment to the crime victims.¹⁴⁴

From an administrative point of view, in Finland compensation is paid through the State Treasury by using the appropriate form and claims must be made within three years of the date of a final judgment in the compensation case or within ten years of the commission of the crime when the case has not been tried in court.¹⁴⁵ The application

¹³⁸ As above.

¹³⁹ As above.

¹⁴⁰ As above.

¹⁴¹ As above.

¹⁴² As above.

¹⁴³ Weeks (n 132 above) 109.

¹⁴⁴ As above.

¹⁴⁵ Thompson Reuter Foundation 'Compensation schemes: comparative report on national state compensation schemes' <https://www.trust.org/contentAsset/raw-data/038ad26c-b7c2-4ce1-8e22.../file>. (Accessed 15 August 2017).

for compensation must state the records of the court proceedings in the case, but, in circumstances where the case has not been heard by a court, then the records of the pre-trial investigation and other reliable accounts of the event, an account of the injury or damage, and the necessary evidence must be presented before compensation can be considered.¹⁴⁶

In Ontario, Canada, the crime victims file an application by contacting the programme office within the province in which the crime occurred. The application is forwarded directly to the programme office where decisions are reached between one to five years after an application is made. When decisions are finally reached on the merit or otherwise of the compensation claims, compensation is paid to the crime victims in approximately four weeks.¹⁴⁷

Administratively, compensation claims under the Philippines scheme are handled by the Board of Claims. A victim who wants to claim is expected to obtain an application form from the Board of Claims through the Secretariat of the Board of Claims, Department of Justice, in the Republic of the Philippines. Additionally, victims must submit medical records from the hospitals where they were treated and file a police report within six months from when the victim suffered damage or injury. The Board reaches its decision within thirty days of filing by the crime victim.¹⁴⁸

¹⁴⁶ As above.

¹⁴⁷ Turman & Watkins (n 85 above) 15.

¹⁴⁸ Directory of international crime victim compensation programme 'Victim compensation programs: Philippines' https://www.ncjrs.gov/ovc_archives/reports/intdir2005/philippines.html. (Accessed 16 August 2017).

In Denmark, the administrative procedures for compensation claims are less cumbersome in that crime victims are required to obtain application forms from the local police department where the victim reported the crime.¹⁴⁹ By Danish law, the crime victims must be informed of their rights and eligibility by the police before claiming compensation.¹⁵⁰ It is the duty of the Danish police to send or forward the application with the police report and any other documentation to the Criminal Injuries Compensation Board. Compensation cannot be paid until the offender has been found guilty of the crime; it is possible, however, to gain compensation if the police determine that the offender is unknown or is unlikely to be found.¹⁵¹ The length of time it takes for the claimant to be notified of the programme's decision depends on the case, but the earliest is four weeks and victims receive compensation within fourteen days of the Board's decision.¹⁵²

In South Africa, victims of crime have the right to compensation when they suffer loss of, or damage to, property as a result of a crime committed against them.¹⁵³ Administratively, the victims are required to make a request to the prosecutor who, on behalf of the victim, applies to the court for compensation.¹⁵⁴ Additionally, victims are meant to be assisted by the police, prosecutors, and magistrates, clerks of the court, parole officers, doctors, nurses, and social workers¹⁵⁵ headed by the South Africa Department of Justice and Constitutional Development.¹⁵⁶ In South Africa, it is regrettably noted that neither the relevant legislation nor the Victims Charter include

¹⁴⁹ State Compensation to Victims of Crime (Consolidation) Act No. 688 of 28 June 2004 section 10(1) It is a condition for payment of compensation that the offence was reported to the police without undue delay and that the victim raises a claim for compensation during any criminal proceedings against the offender.

¹⁵⁰ As above.

¹⁵¹ As above.

¹⁵² As above.

¹⁵³ 'Your right as a victim' <http://www.justice.gov.za/VC/docs/victims-rights-brochure.pdf>. (Accessed 16 August 2017).

¹⁵⁴ Criminal Procedure Act 51 Of 1977 section 300(1) "Where a person is convicted by a superior court a regional court or a magistrate's court of an offence which has caused damage to or loss of property (including money) belonging to some other person the court in question may upon the application of the injured person or of the prosecutor acting on the instructions of the injured person forthwith award the injured person compensation for such damage or loss."

¹⁵⁵ 'Your right as a victim' (n 153 above).

¹⁵⁶ P Davies, P Francis & C Greer *Victims Crime & Society: An Introduction* 2nd ed (2017) 119.

crime of violence and the associated medical costs under restitution and compensation as the case of United States and Canada schemes owing to the fact that the limited financial means of perpetrators or offenders in South Africa is inhibited by the effectiveness of restitutive measures.¹⁵⁷

With insight, victim compensation schemes considered in the various jurisdictions were established by states based on the state's moral obligation to provide financial relief to victims of crime, to enhance public safety, and to encourage citizen cooperation with the criminal justice system. Before these schemes were instituted, victims and survivors were often not able to access financial compensation for costs associated with their victimization and loss. Some offenders are never apprehended, and many who are arrested and convicted do not have the means to pay restitution.

Although differences may be noticed in the operational mechanisms of the schemes in each jurisdiction, it is submitted that the schemes are a demonstration of political will on the part of the state in assisting victims in the aftermath of criminal victimization.

6. Funding crime victims' compensation

In the UK funds for the crime victims' compensation scheme is sourced from grants given by national and private persons, institutions, parliamentary appropriation, taxes on alcohol and the purchase of ammunition. Funds also come from fines paid from restitution orders on criminal conviction and from corporate or individual offenders.¹⁵⁸

¹⁵⁷ As above.

¹⁵⁸ 'Sentencing of corporate offenders in the UK a practical guide' <https://www.wilmerhale.com/.../Shared.../wilmerhale-sentencing-guide-a4-final.pdf>. (Accessed 3 June 2017).

Similarly in the US, the major source of funds for the crime victims' compensation scheme is the Victims of Crime Act (VOCA) Crime Victims Fund (CVF).¹⁵⁹ The Victims of Crime Act of 1984 (VOCA) is a US federal government law designed to assist the victims of crime through means other than punishment of the offender.¹⁶⁰

The Victims of Crime fund was created with a special mandatory spending account dedicated solely to helping victims of all types of crimes.¹⁶¹

The CVF came into existence pursuant to VOCA in 1984.¹⁶² The VOCA is the primary source of raising money for victim services in the US.¹⁶³ Annually, several millions of dollars are paid into CVF from many sources and from a special collection by the US Attorney's Offices, United States Courts, and the Prisons Authority.

Following the creation of the CVF 1984, the US Congress put a cap on the money to be deposited into the CVF annually.¹⁶⁴ Congress eliminated the limit for deposits in 1993. In the financial year of 2000, Congress established a yearly obligation limit on CVF funds available for distribution to minimize the impact of unstable deposits and to ensure the stability of funds for crime victim's programmes and services.

In the financial year of 2015, Congress set the CVF obligation limit at \$2.361 billion, a 216.9% increase over that of 2014.¹⁶⁵ The Consolidated Appropriations Act 2016¹⁶⁶ transferred a total of \$389 million from the CVF programmes to the Office of the

¹⁵⁹ S Derene, 'Victims of Crime Act (VOCA) Crime Victims Fund: briefing background' (2017) *National Association of VOCA Assistance Administrators* 2.

¹⁶⁰ 'Victims of Crime Act of 1984' https://www.en.wikipedia.org/wiki/Victims_of_Crime_Act_of_1984 (Accessed 2 August 2017).

¹⁶¹ 'Victims of Crime Act (VOCA) Crime Victims Fund' www.navaa.org/budget/17/VOCA_Backgrounder%202017.pdf (Accessed 3 June 2017).

¹⁶² Derene (n 59 above) 2.

¹⁶³ United States Department of Justice 'Victims of Crime Act Crime Victims' https://www.ncjrs.gov/ovc_archives/factsheets/cvfvca.htm (Accessed 3 June 2017).

¹⁶⁴ 'The Crime Victims Fund: Federal Support for Victims of Crime' https://www.everycrsreport.com/.../20170601_R42672_3efe0abd44e884a38d03df34. (Accessed 2 August 2017).

¹⁶⁵ 'The Crime Victims Fund: Federal Support for Victims of Crime' https://www.everycrsreport.com/.../20170601_R42672_3efe0abd44e884a38d03df34. (Accessed 2 August 2017).

¹⁶⁶ Public Law 11-113.

Inspector General for the compensation of victims.¹⁶⁷ In 2017, however, Congress set the limit at \$2.573 billion, a 15.4% decrease compared with that of 2016. No reason was, however, given for the decrease in 2017. From the 2017 fund of \$2.573 billion, \$10 million was designated for the Department of Justice Office of the Inspector General for oversight and auditing purposes.¹⁶⁸ The Department of Justice is the body responsible for the monitoring of the Office of Victim of Crime (OVC).

The compensation scheme in New Zealand is financed from the offender levy provided for under the Sentencing Act 2002.¹⁶⁹ The levy is an automatically-imposed fee of NZ\$50 under the law, paid by anyone who is convicted of an offence by a court. The levy ensures that criminals contribute to addressing the harm caused by their criminal conduct to victims. The levy is used to fund compensation and a range of services for victims of serious crime and their families. In addition to the offender levy, the Criminal Justice Assistance Reimbursement Scheme is a state-funded scheme which compensates victims who suffered loss or damage owing to being a witness or assisting with the administration of justice. Besides this, the scheme further compensates victims in a close relationship to a witness who is victimised and suffers material loss as a result of assisting or covering for the witness.¹⁷⁰

In Canada, the central government funded all provincial financial assistance programmes for victims up till 1992.¹⁷¹ Thereafter, the Canadian government introduced a victim surcharge on Criminal Code fines to be applied to provincial victim services and programmes and thereby offsetting the provinces' loss of federal revenue.

¹⁶⁷ Derene (n 69 above) 2.

¹⁶⁸ 'The Crime Victims Fund' (n 165 above).

¹⁶⁹ Section 13 if a court is lawfully entitled under this or any other enactment to impose a fine in addition to or instead of any other sentence the court must regard a fine as the appropriate sentence for the particular offence.

¹⁷⁰ 'Compensation schemes: comparative report on national state compensation schemes' <https://www.trust.org/contentAsset/raw-data/038ad26c-b7c2-4ce1-8e22.../file>. (Accessed 15 August 2017).

¹⁷¹ RR McMurtry 'Report on financial assistance for victims of violent crime in Ontario' <http://www.lawlib.utoronto.ca/bclc/crimweb/bboard/McMurtry%20excerpt.pdf>. (Accessed 2 August 2017).

As it stands, the federal Department of Justice provides financial assistance directly to crime victims in strictly prescribed circumstances through a Victims Fund administered by its Policy Centre for Victim Issues.¹⁷²

In Finland, the crime victim compensation scheme is primarily financed from the State funds¹⁷³ granted from the State Treasury¹⁷⁴ for personal injury, property damage and other economic loss caused by a criminal offence.¹⁷⁵

If South Africa were to operate a state-funded compensation programme, its sources of funds for the scheme would have been substantially reliable. This is because the South African Law Commission Discussion Paper 97 Project 82 Sentencing (A Compensation Scheme for Victims of Crime in South Africa) 2001 clearly stated the sources for such compensation scheme. The various sources contained in the above SALRC's recommendations include, but are not limited to, "fines and surcharges levied on conviction, funds confiscated through the application of asset forfeiture legislation, fines paid, forfeited bail monies, asset forfeiture in terms of which the proceeds of crime are attached and used by the Victim Compensation Scheme to finance compensation, and improved strategies to increase the direct compensation of the victim by the offender."¹⁷⁶ Additionally, "appropriations from the budgetary authority, in which ordinary citizens might contribute to the financing of a Victim Compensation Scheme is

¹⁷² The Federal Policy Centre for Victim Issues engages in legislative reform consultation policy development research and project funding relating to how to improve the experience of crime victims in the criminal justice system how to enhance their participation therein and how to ensure that they are aware of their role and available support services the Policy Centre for Victim Issues also chairs the Federal/Provincial/Territorial Working Group on Victims of Crime which consists of all the provincial and territorial Directors of Victim Services who meet twice annually to discuss legislation and policies.

¹⁷³ Act on Compensation for Crime Damage 1973 section 1(1).

¹⁷⁴ 'Manual 80/2004 –Finland compensation to crime victims Finland' (2004) 3. http://www.ec.europa.eu/justice_home/judicialatlascivil/html/pdf/manual_cv_fin_en.pdf. (Accessed 16 August 2017).

¹⁷⁵ As above.

¹⁷⁶ SALRC (n 119 above) 184.

through dedicated taxes levied in respect of the purchase of certain goods and services such as alcohol and the purchase of firearms and ammunition."¹⁷⁷

In the Republic of the Philippines, compensation to crime victims is principally funded from the appropriation of the funds of the National Treasury.¹⁷⁸ In addition, there are other sources from which the Republic funds its compensation scheme.¹⁷⁹

7. Crime victims' exclusion from compensation claims

Although crime victims' compensation schemes are designed for the benefit of those victimized by violent crimes, almost every compensation programme in existence excludes some types of crime victims on a relational basis.¹⁸⁰ In the US, there are few states that do not have exclusion provision.¹⁸¹ The exclusion provisions in some victims' compensation schemes list categories of crime victims who, regardless of the seriousness or degree of their need, are denied compensation on the grounds that a statutorily prescribed relationship exists between the crime victims and the criminal offenders who caused the injury. In some states in the US, the relationship is measured by the degree of blood closeness.¹⁸² The exclusion from compensation is limited to

¹⁷⁷ SALRC (n 119 above) 185.

¹⁷⁸ Republic Act No. 7309 section 9 An Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for other Purposes.

¹⁷⁹ Republic Act No. 7309 section 9 The subsequent annual funding shall also partly come from one percent of the net income of the Philippine Amusement and Gaming Corporation and one percent of the proceeds and sales and other disposition and military camps in Metro Manila by the Bases Conversion and Development Authority the proceeds from any contract relating to the depiction of a crime in a movie book newspaper magazine radio or television production or live entertainment of any kind or in any other form of commercial exploitation of any convict's story recollection opinion and emotions with regard to the offense committed shall not be released to convict in a criminal case or his heirs agents assignees or successors-in-interest until full compensation for damages suffered by or awarded to the victim his heirs or successors-in-interest is paid or arranged for and the state is able to collect/assess fines and costs and any other amounts due it in case of a conviction by final judgment such damages shall include but shall not be limited to judicial awards funeral expenses medical expenses lost earning and the like to ensure the continuity of the funding requirements under this Act the amount of Five pesos shall be set aside from each filing fee in every civil case filed with the court the total proceeds of which shall constitute the Victim Compensation Fund to be administered by the Department of Justice.

¹⁸⁰ The term relational is used in this study to describe exclusions based on some relationship between the crime victims and the criminal offenders which are sometimes referred to as familial.

¹⁸¹ California and Delaware.

¹⁸² Annotated Code of Maryland 1973 art. 26 26A sec 2(d).

those crime victims residing in the same household as the criminal offenders.¹⁸³ The Texas Act uses the household exclusion.¹⁸⁴

The same principles or rules for exclusion obtain under the UK system. Crime victims may be excluded from compensation if they have already made a claim for compensation for the same injury under the 2012 scheme or from another criminal injury scheme in Great Britain.¹⁸⁵ In addition, crime victims who are adult members of the same family as the criminal offenders will not receive compensation unless they do not reside together and are unlikely to do so again.¹⁸⁶

In Canada, citizens who precipitated the incidents that led to the crime are excluded from compensation, and in Ontario, New Brunswick and the Yukon, compensation is restricted to acts of violent crime which are enumerated in the Criminal Code of Canada.¹⁸⁷

The basis for excluding crime victims from state compensation differs from jurisdictions to jurisdiction. In New Zealand, no-fault accident victims are compensated, except for property losses. The exclusion of such victims from property losses is to keep the costs manageable.¹⁸⁸

In Canada, for example, the drive for victim assistance programmes is not so much to demonstrate real concern for the plight of crime victims, but rather for administrative objectives of the police agencies.¹⁸⁹ In other words, compensation programmes are actually designed to encourage victims to report crime to the police and to improve

¹⁸³ Michigan Compiled Laws Annotated Sec 18.354(4) (2) (C) (1967-1979).

¹⁸⁴ Texas Review Civil Statute Annotated Article 8309-1 sec 6(c) (4) the board shall deny the application if the victim resided in the same household as the offender or his or her accomplice.

¹⁸⁵ 'A guide to criminal injuries compensation' <http://www.rightsofwomen.org.uk/wp-content/.../PDF-guide-to-criminal-injuries-compensation.p>. (Accessed 3 June 2017).

¹⁸⁶ 'A guide to criminal injuries compensation' As above.

¹⁸⁷ VN Rajan *Victimology In India: Perspective Beyond Frontiers* (1995) 81.

¹⁸⁸ DW Van Ness *Crime and Its Victims* (1986) 171.

¹⁸⁹ Fattah (n 92 above).

victim cooperation with the criminal justice system. The major advantage of the compensation programme is seen as enhancing victim participation and collaboration in justice dispensation which ultimately increases the efficiency and effectiveness of the system. The Calgary Victim Services Programme, one of the first of its kind in Canada, states the fact that the objective of the programme "is to develop a good working relationship with victims of crime in order to encourage their future cooperation with the police in crime prevention".¹⁹⁰

In the UK, for example, the rationale for state compensation was that the state is seen as having a responsibility on behalf of the community to help people innocently hurt through crime, that is, those who could show they had not in any way contributed to the offence of violence that they had suffered.¹⁹¹ Besides, it is recognised that the state had an interest in helping victims who could easily become disillusioned with the criminal justice system and, therefore, withdraw their co-operation with it which would result in failure to report crime, reluctance to give evidence, and pressure for the harsher treatment of offenders.¹⁹²

Young noted that victim compensation in the United States is more often than not perceived as a step-child in the world of victim services and assistance.¹⁹³ The rationale for the state compensation to victims, however, seems to address different issues and problems among which are welfare, social contract, symbolic, and instrumental issues.¹⁹⁴ While the CICS compensates crime victims and excludes many categories of victims, the British social security programme provides compensation for victims of

¹⁹⁰ M McShane, & FP Williams (eds) *Victims Of Crime And The Victimization Process* (1997) 88.

¹⁹¹ P Dunn, 'Victim support in the UK – victim support services in detail' (2004) 123rd *International Senior Seminar Visiting Experts' Papers* 104.

¹⁹² As above.

¹⁹³ MA Young, 'The role of victim compensation in rebuilding victims' lives' <http://www.iovahelp.org/About/MarleneAYoung/RoleOfVictComp.pdf>. (Accessed 2 August 2017).

¹⁹⁴ D Chappell, & LP Sutton 'Evaluating the Effectiveness of Programs to Compensate the Victims of Crime' in *Victimology: a new focus volume II society's reaction to victimology* I Drapkin & E Viano (eds) (1974) 56.

misfortune and also includes crime victims. India has no crime victims' compensation scheme meant to compensate crime victims for criminal injuries.¹⁹⁵

With regard to the limitations placed on the types of cases in some jurisdictions as discussed earlier, most plans are limited to personal injuries suffered as a result of crimes of violence.¹⁹⁶ The reasons for the limitations are based on the difficulty or possibility of establishing the validity of the claim, the fear that the criminal offenders will indirectly benefit from the compensation, the fear of fraud or collusion, and the fear of making the system too costly or too difficult to operate.

Additionally, there is also the limitation placed on the amount of the compensation to be awarded to crime victims for each type of injury. These limitations, while they will control the amount to be paid, will bring to the forefront the fact that a decision has to be made as to whether any scheme is a true compensation scheme that will make compensation provisions for all crime victims of violence or whether it is going to be merely like any other government welfare scheme or programme that is abandoned.¹⁹⁷

Finally, the limitations will serve as the foundation for establishing state-funded compensation. Beyond this, the concept of restorative justice is conspicuously omitted in the compensation schemes of various jurisdictions. In other words, all schemes considered showed concern only for the crime victims, leaving out the criminal offenders from the scheme without the possibility of restoring them back to the society.

8. Evaluating crime victims' compensation scheme

The purpose of this section is to examine or evaluate the extent to which the various jurisdictions have complied with their victim compensation schemes or the Act establishing the programmes and the degree to which innocent victims of violent crime

¹⁹⁵ Criminal Injury Compensation Act 1995 (c.53) An Act to provide for the establishment of a scheme for compensation for criminal injuries.

¹⁹⁶ GJ Bryan, 'Compensation to victims of crime' (1968) *Alberta Law Review* 209.

¹⁹⁷ G Otto, & WI Ukpere 'Rural development projects in Nigeria: the case of Rivers State' (2014) 5(3) *Mediterranean Journal of Social Sciences* 610.

or their dependents who have applied for compensation under the different schemes have been compensated. Besides, the section aims to find out whether or not crime victims understand the scheme and that, if they do, whether they have complied with the eligibility rules and requirements. The UK government complies with the criminal injury compensation scheme 2012 in compensating innocent victims.¹⁹⁸ It has been argued that, because of the outcome and success of the scheme, "the law relating to intentional torts has already been superseded in the English legal system."¹⁹⁹

In other words, crime victims are not required to prove the intention of the offenders before they can claim under the UK compensation scheme. The conclusion above depends on the sizable sums of money paid from the scheme and the monetary inability of wrongdoers or criminals to effect compensation.²⁰⁰ It is submitted, therefore, that the scheme has changed the application of English law in respect of crime victims' compensation.

In the state of Texas, the Crime Victims Compensation Act (CVCA) created a possible means of compensating victims of violent crimes.²⁰¹ The CVCA provided an alternative scheme to the erstwhile ineffective means of civil recovery, insurance, and restitution.²⁰² It can be concluded that Texas law-makers took strong action in attempting to alleviate the plight of crime victims which has the potential of bringing about substantial public benefits. The Texas scheme, for the most part, is successful in its selection process. Particularly, the lack of a minimum claim requirement of reporting the crime and being a Texas resident,²⁰³ and a high maximum award make the Texas crime victim's compensation scheme a success.²⁰⁴

¹⁹⁸ See the Criminal Injury Compensation Scheme 2012.

¹⁹⁹ Jones (n 126 above) 472.

²⁰⁰ 'New pay-outs for victims welcomed' <http://www.dailymail.co.uk/news/article-24743/New-pay-outs-victims-welcomed.html>. (Accessed 3 June 2017).

²⁰¹ Koning (n 72 above) 715.

²⁰² As above.

²⁰³ 'Texas crime victims' compensation programme application' <http://www.texasattorneygeneral.gov/cvs/cvcapplication.pdf>. (Accessed 18 July 2017).

²⁰⁴ 'Crime victim compensation recovery and revenue the crime compensation programme' <http://www.Docplayer.net/19013914-Crime-victim-compensation-recovery-and-reveneue-the-crim>. (Accessed 18 July 2017).

The New Zealand's compensation scheme for crime victims differs from other jurisdictions, and the reason for this is that crime victims are compensated in the same manner as other categories of victims.²⁰⁵ In other words, all victims, irrespective of the type, are compensated as part of the no-fault Accident Compensation Scheme. To that extent, the ACS provides compensation for personal injury whether or not the injury was caused by the negligent act of a motorist or doctor, by the victim's own fault or by an offender in an intentional assault. The only requirement for compensation is that the victim must demonstrate that he/she suffered a personal injury covered by ACC Scheme.

In Canada, there is an increase in the awareness of the needs of victims which has resulted in several victim services becoming available. These services provide assistance to victims in various ways, by providing victims with information which they would need to go through the complicated criminal justice system with a view to receiving financial compensation.²⁰⁶ As was observed earlier, each province/territory in Canada has its own laws governing the administration of how victims should be treated and the type of resources, services and information that should be provided to the victims.²⁰⁷

As a result of what has been said, there are various victim services available to Canadian crime victims that include, but are not limited to, the following: police-based services, which are victim services that are offered by municipal, provincial or federal police agencies;²⁰⁸ secondly, there are community-based services that provide services directly to victims in their community, such services including counselling, support,

²⁰⁵ J Miller 'Compensating Crime Victims within New Zealand's No Fault Accident Compensation Scheme: The Advantages and Disadvantages' http://www.aic.gov.au/media_library/publications/proceedings/27/miller.pdf. (Accessed 16 August 2017).

²⁰⁶ 'An overview of victim services in Canada' <http://www.victimsofviolence.on.ca > Victim Information Library>. (Accessed 2 August 2017).

²⁰⁷ See chapter six section 2.

²⁰⁸ 'Canadian resource centre for victims of crime' <https://www.crcvc.ca/en/for-victims/services/> (Accessed 2 August 2017).

therapy, and practical assistance such as child care, information about the Criminal Justice System, court orientation, and referrals.²⁰⁹

Furthermore, there is the system-based service. This is independent from police, courts and Crown Attorneys and is administered by the provincial and territorial governments.²¹⁰ Besides the foregoing, there is the court-based service specifically designed to assist individuals as they move through the judicial system either as a victim or as a witness.²¹¹

They provide information, support and referrals to the victims in order to make the court process less intimidating. Additionally, there is also the non-government agency (NGO) service.²¹²

The agency ensures the provision of other categories of assistance to victims, such as front line services, support, and information. They also provide advocacy work on behalf of victims with the purpose of changing laws or policies that are negatively impacting victims in some way.

In evaluating the Northern Ireland compensation scheme, one notices that the support systems for victims of crime are in two categories.²¹³ Firstly, it ensures monetary compensation to the victim of crime²¹⁴ and, secondly, it compensates victims for physical and mental damage suffered owing to crime. In addition, the scheme provides psychological, emotional and practical legal support to the victim after the crime. This is provided by the state. Other non-governmental partners join the state in co-operating

²⁰⁹ M Allen 'Victim services in Canada' 2011/2012 <http://www.statcan.gc.ca> > Home > Publications > 85-002-x > Juristat > 2014 (Accessed 2 August 2017).

²¹⁰ 'A handbook for criminal justice practitioners on trafficking in persons: overview of victim services in Canada' <http://www.justice.gc.ca/eng/rp-pr/cj-jp/tp/hcjpotp-gtpupjp/p6.html> (Accessed 2 August 2017).

²¹¹ C Munch 'Victim services in Canada 2009/2010' [Http://www.statcan.gc.ca](http://www.statcan.gc.ca) > Home > Publications > 85-002-X > Juristat > 2012 (Accessed 2 August 2017).

²¹² 'Overview of victim services across Canada' <http://www.victimsworld.gc.ca> > Home > Resources (Accessed 2 August 2017).

²¹³ I Kronberga I Dzenovska G Litvins & S Sile *Compensation Mechanisms For Victims Of Crime In Criminal Proceedings In The European Union* (2013) 6.

²¹⁴ 'Compensation for Victims of Crime NI' <http://www.nidirect.gov.uk/index/information-and-services/crime-justice-and-the-law/victims-and-witnesses-of-crime/compensation-for-victims-of-crime.htm>. (Accessed 16 August 2017).

to provide support to victims as laid down in the Code of Practice for Victims of Crime.²¹⁵

Besides the foregoing, the victim support organization Victim Support Northern Ireland also takes part in co-operating with state authorities and the Code of Practice for Victims of Crime categorizes the victims into groups to facilitate the administration of support resources according to victims' needs. The support system is organised to provide support to victims of crimes and to witnesses.²¹⁶

Evaluating the Danish compensation programme shows that compensation is provided even though the identity of the offender is unknown or he or she cannot be found.²¹⁷ Additionally, the liability of the offender to provide compensation applies *mutatis mutandis* to decisions under the Victims Compensation Law. For instance, where the crime victim had taken part in the crime that caused him or her harm, compensation may be reduced or withheld.²¹⁸

In the Philippines, the crime victim's law provides compensation for several categories of victims, including victims illegally detained or wrongfully convicted of crimes they did not commit.²¹⁹ It also includes victims of violent crime, amongst which are rape, and those people who died as a result of crime.²²⁰ This is an indication of the

²¹⁵ 'Code of Practice for Victims of Crime of Northern Ireland' http://www.dojni.gov.uk/code_of_practice_for_victims_of_crime. (Accessed 16 August 2017).

²¹⁶ 'Victim Support NI' <http://www.victimsupportni.co.uk>. (Accessed 16 August 2017).

²¹⁷ Section 6 The Victims Compensation Law: Order No 688 of 2005.

²¹⁸ As above.

²¹⁹ The Republic Act No 7309 section 3 The following may file claims for compensation before the Board:(a) any person who was unjustly accused convicted and imprisoned but subsequently released by virtue of a judgment of acquittal (b) any person who was unjustly detained and released without being charged (c) any victim of arbitrary or illegal detention by the authorities as defined in the Revised Penal Code under a final judgment of the court.

²²⁰ The Republic Act No 7309 section 3(d) any person who is a victim of violent crimes for purposes of this Act violent crimes shall include rape and shall likewise refer to offenses committed with malice which resulted in death or serious physical and/or psychological injuries permanent incapacity or disability insanity abortion serious trauma or committed with torture cruelty or barbarity.

comprehensive coverage and total compliance by the Philippines authorities with regard to crime victim's compensation.

Finland's compensation system for crime victims is unique in some ways in that victims are compensated from state funds for injury or damage caused by a criminal offence to cover medical costs, loss of income and personal property damaged in connection with the injury.²²¹ Additionally, child or adult victims are compensated from the state in cases where proceedings are delayed; however, the court takes various factors into consideration, such as the length of proceedings, the nature of the case, the behaviour of the parties and the importance of the matter to the crime victims.²²²

Before the introduction of the New Zealand state-funded compensation scheme, a common law action in tort was the main means by which crime victims recovered their losses from the criminal offenders. Now, under the ACC, compensation is available through the criminal justice process.²²³ In addition, crime victims have greater roles in criminal actions than they had in common law as their views and voices are heard in the court during sentencing through the crime victims' impact statements.²²⁴

Before 1974, the major mechanisms for receiving compensation for personal injury irrespective of wilful or careless behaviour were common law remedies in civil action.²²⁵ There were many shortcomings with regard to these methods of recovering remedies in common law, so in order to avoid bottlenecks in recovering remedies in common law, the following additional laws were introduced: A compulsory third party motor vehicle insurance in 1928;²²⁶ a workers' compensation scheme in 1954; a criminal injuries compensation scheme in 1963; and social security benefits for the sick or invalided and

²²¹ Act on Compensation for Crime Damage and the Tort Liability Act (2002).

²²² Act on Compensation for the Excessive Length of Judicial Proceedings (2009).

²²³ Compensation Crime Victims New Zealand Report 121 9.

²²⁴ Compensating Crime Victims New Zealand Report 212 11.

²²⁵ Compensation Crime Victims New Zealand (n 223 above) 9.

²²⁶ As above.

dependants in circumstance where the primary crime victim had died. The CICA was the enabling law that paved way for crime victims' compensation in New Zealand.

Owing to the need to prevent the protracted procedures that criminal law and tort law accommodated for addressing the consequences of crime, the New Zealand authorities brought about significant changes with respect to the following: "The accident compensation scheme replaced tort law as the means for compensating for personal injury; victims' ability to obtain compensation from the offenders through the criminal justice system was enhanced; and rehabilitation, comprising treatment, social rehabilitation, and vocational rehabilitation were provided under the Accident Compensation Act 2001."²²⁷

9. Compensation: similarities in the jurisdictions

It is argued that both developed and developing nations, like Nigeria, can learn one or two lessons from one another about ways to address crime victims' needs because rights and services for crime victims differ from one jurisdiction to another, and crime victims in some countries enjoy greater participatory rights in the criminal justice system than do victims in other countries. To this end, it is submitted that developed and developing nations should, therefore, help victims of incidents or crime under special situations. By special situations is meant extreme conditions that occur and that are beyond the crime victim's control. The event of the crime can affect the psyche of the victim who has been traumatized by the victimization. In these circumstances, the victims did not anticipate the event of crime and, to that extent, the state should endeavour to do its best possible to help crime victims receive the compensation for which they are eligible.

²²⁷ As above.

As a result of what has been said, the conditions under which crime victims may be assisted could be the result of the policy of the government with regard to state compensation.²²⁸ In addition, the situation or extreme nature of the condition may be dictated by the needs of the citizens at a given point in time. All in all, a nation's unique situations could lead to the type of assistance or help given to persons who have suffered criminal victimisation which was not the result of his or her doing.

In all the countries examined above, several compensatory ideas have been used in addressing the needs of the crime victims when various situations arise. It is noted that, in all the jurisdictions referred to in this study, various legislated dispensations with regard to compensation being paid by the state to victims have been strategically put in place. The payment or compensation to crime victims by the state is premised on several theories, although there is no generally acknowledged theoretical foundation for the payment of state funds to crime victims.

The main findings regarding the implementation of a victim compensation programme in the jurisdictions examined can be classified in terms of information, compensation, treatment and protection in respect of the victim's right to be compensated for his/her losses and injuries. In all the jurisdictions, the state authorities take the victim's need for compensation into account except, of course, South Africa. These jurisdictions enforce compensation on behalf of the offender or provide the victim with adequate assistance to collect the money or compensate the victims themselves. Best practice with regard to real advancement made in victim compensation are signs of development and sophistication and a discharge of state's moral and legal obligations towards its citizens.

²²⁸ I Waller, 'Crime victims: doing justice to their support and protection (2003) *European Institute for Crime Prevention and Control* 44.

The UK, New Zealand, Canada, the USA, Denmark, Finland, Colombia, the Netherlands, and the Republic of the Philippines all ensure that victims are well compensated, in some jurisdictions whether the crime occurred within their territory or not. Also worthy of note in the jurisdictions is the enactment of the enabling legislative frameworks under which the crime victims are compensated.

10. Conclusions

State compensation programmes have been well developed in the countries examined in chapter six, although for some reasons they were heavily criticized in their infancy because many people hated the idea of welfare programmes that were linked to the compensatory scheme. As a result of the foregoing, compensation was confronted by bureaucratic procedures as is currently being experienced in South Africa. Compensation was minimal and eligibility requirements were much more stringent than they are at present in the various jurisdictions.

As it stands today, states have recognized their legal and moral obligations to compensate victims. On top of the state compensation mechanisms, other forms of compensation to crime victims are also available. To this end, it is submitted that:

Existing state compensation schemes in North America, Australia and North West Europe have not prevented the development of other services for victims, which shows that fear about their negative consequences may have been unwarranted. During the eighties, state compensation schemes have actually provided for the financial needs of increasing numbers of victims with severe injury. These developments suggest that state compensation schemes perhaps deserve a more favorable judgment by the victims' movement than they presently get. The question will have to be addressed of how state compensation schemes can be made to work more effectively as part of a comprehensive victim policy.²²⁹

²²⁹ JJM van Dijk 'Towards a research-based victim policy' (1992) *International Faces of Victimology* 20.

Along the lines of the above reasoning, Nigeria as a sovereign state has been hesitant to acknowledge a legitimately-binding commitment in regard to state compensation as indicated in the table in the annexure. Relying on the social contract hypothesis with regards to which compassion is demonstrated by the state, the state gains the confidence and trust of the citizens as they see how justice is dispensed from the appropriate criminal justice institutions.²³⁰ It is submitted, therefore, that the time has come for Nigeria to adopt a state-funded compensation scheme for crime victims. This is because the best option that would ensure complete compensation for crime victims is the payment of compensation by the state. Such a compensation scheme may take either of the following forms, a state-advanced compensation scheme or a state-funded compensation scheme.

It is submitted that the compensation systems applied in New Zealand, the UK and the USA will provide possible templates for Nigeria for recovery processes for crime victims. In chapter seven, the information and precedents gathered and reflected on in chapter six and previous chapters are used to build a template for Nigeria and thereby make recommendations regarding compensation to crime victims based on above-mentioned information.

²³⁰ See chapter two section 2.1.

Chapter seven:

Instituting and implementing a statutory crime victim compensation scheme in Nigeria

1. Introduction

As previously discussed in chapter three, the UN, in 1985, adopted the Declaration of Basic Principles of Justice for Victims.¹ The Declaration was agreed upon by the UN Congress on the Prevention of Crime and the Treatment of Offenders. The United Nations General Assembly (UNGA) reiterated that: "Millions of people throughout the world suffer harm as a result of crime and that the rights of these victims have not been adequately recognized."²

The UNGA further noted that "victims of crime and also frequently their families, and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders."³ The UN Declaration presented a substantial development and advancement in the sense that, for the very first time ever, crime victims' rights were expressly recognised in an international instrument.⁴ It is submitted that the UN Declaration does not possess binding legal consequences and effects on member states; it does, however, demonstrate commitment on the part of member states to the Basic Principles.

¹ GA/Res/40/34/85.

² D Rauschning, K Wiesbrock & M Lailach (eds) *Key resolutions of the United Nations General Assembly 1946-1996* (1997) 330.

³ Commonwealth Secretariat 'Commonwealth guidelines for the treatment of victims of crime' (2003) 5.

⁴ As above

As a result of what has been said, several nations of the world have initiated advanced procedural and legal strategies designed for the safety of crime victims' rights and making adequate financial compensation and restitutions to crime victims.⁵

The effect of the above is that, thirty-two years after the Declaration, crime victims in over fifty-four Commonwealth member states have received effective statutory and administrative protection or assistance from the state.⁶ Nigeria became a member of the Commonwealth in 1960, and, yet, it has not deemed it fit to join the rest of the world in implementing these laudable guidelines for crime victims' treatment.⁷

In 2001, the senior officials of the Commonwealth Law Ministries in London concluded "that it was appropriate that the Ministers should consider the issue of how best to afford justice to victims of crime and recommended for their consideration the Commonwealth draft statement."⁸

The Guidelines suggested a template, a legal model and legislative framework which states could adopt in addressing the demands of victims in respect of compensation. The group of experts with the mandate to develop the Guidelines took a thematic approach to provide for a comprehensive structured analysis, and it produced guidelines for states' adoption.⁹

⁵ See chapter six section 3.

⁶ See chapter six section 9.

⁷ OO Dominic, 'Commonwealth integration and Nigeria's foreign policy 1999-2007' unpublished Master thesis University of Nigeria Nsukka (2010) 39.

⁸ Annex B of the draft.

⁹ Commonwealth Secretariat (n 3 above) 8.

In 1990, the Commonwealth issued *Criminal Justice and Protecting the Public*,¹⁰ a document containing a proposal for legislation in which was stated that state should “encourage more use of financial penalties, especially compensation to victims and fines which take account of offenders' means.”¹¹

The argument in the above reasoning in adopting the international instrument is that it is time to institute and establish a criminal injuries compensation body in Nigeria and, by extension, the Nigerian Victim Compensation Scheme with a view to compensating the victims of crime of a violent nature in Nigeria. The establishment of the Scheme is indispensable, and it is the constitutional duty of the Nigerian government to provide an appropriate remedy for its law abiding and innocent citizens who suffer criminal victimisation.¹² In addition, the Scheme, when set up, will make available remedies for victims of criminal acts whether or not the criminal offenders were ever caught. The Scheme, if implemented, will be effective and will possess the character of justice being seen to have been done in Nigeria.

In Nigeria, the government has not shown any commitment to the interests of crime victims, let alone providing financial compensation, by failing to prevent acts of violence;¹³ and it is argued that the absence of a statute on crime victims' compensation is no excuse for failing to protect the citizens' constitutional rights.¹⁴ The state has a duty to prevent crimes and provide the mechanisms to monitor, prevent, and take proactive steps to ensure the reduction of victimisation to its barest minimum in Nigeria.¹⁵

¹⁰ 'Commonwealth Law Bulletin' (1990) 16.

¹¹ A Olatubosun, 'Compensation to victims of crime in Nigeria: a critical assessment of criminal-victim relationship' (2002) 44(2) *Journal Of The Indian Law Institute* 220.

¹² For example a similar scheme under the Emergency Relief Committee has been set by the federal government to assist the victims of natural disasters like flood drought incidents as well as religious riots. See also Benue state in Nigeria Emergency Relief and Crisis Management Committee 2001 in S Adejumobi *State economy and society in post-military Nigeria* (2011)

¹³ See chapter five section 2.1.

¹⁴ OO Osinuga, 'In the midst of Nigeria's legal order playing catch up to social unrest and conflict recognizing the rights of victims and enforcing their fundamental human rights' (2011) 4.

¹⁵ As above.

As a result of what has been said, it becomes very important that Nigeria complies with the guidelines of the UN Declaration relating to victims to ensure that they are provided with assistance.¹⁶ In this regard, a statutory victim compensation commission needs to be established and mandated to oversee the compensatory scheme for victim's redress.¹⁷ When the Commission is established, it becomes the voice of the crime victims' rights; the Commission will further possess both administrative and judicial powers in the discharge of its duties with powers to investigate and source information with regard to its functions with a view to securing remedy or redress for crime victims.¹⁸

In this chapter, the study will provide a model for Nigeria in establishing and implementing a crime victims' compensation scheme in the country. In an attempt to achieve this, the chapter will examine the need for a national framework for a crime victims' compensation scheme in Nigeria. In addition, the chapter will look into the mechanics of a victim compensation scheme, instituting a compensation scheme, funding a victim scheme, the structure of the scheme using the SALRC's model and the need to implement international instruments' provisions on crime victims' compensation.

Furthermore, the chapter relies heavily on the precedents of other jurisdictions in respect of a crime victims' compensation scheme with a view to developing the same for Nigeria.

¹⁶ UN Declaration par 14 "Victims should receive the necessary material medical psychological and social assistance through governmental voluntary community-based and indigenous means."

¹⁷ UN Declaration par 13 "The establishment strengthening and expansion of national funds for compensation to victims should be encouraged where appropriate other funds may also be established for this purpose including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm."

¹⁸ UN Declaration par 5 "Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious fair inexpensive and accessible victims should be informed of their rights in seeking redress through such mechanisms."

2. Need for a national framework for a crime victims' compensation scheme in Nigeria

The Nigeria legal system, which was inherited from the British colonialists, does not provide for a crime victims' compensation scheme;¹⁹ this position conflicts with the traditional Nigerian social norm which insists on compensating crime victims from the community or providing restitution from the criminal offenders.²⁰ In many jurisdictions of the world,²¹ state governments have recognised the importance of delivering services and support to crime victims.²² As a result of service delivery to crime victims, crime victims take part in the criminal justice system which permits them to tender a victim impact statement to the court in addition to the state making provision in terms of financial assistance to crime victims.²³ State victim compensation funds supplement restitution from the criminal offenders and completely repair the harm done to the crime victims; in this respect state compensation funds become a means of repairing the harm left in the wake of crime. In places like France and other countries of Western Europe victims are given a promise to the right of restitution from the offender or, in some cases, state compensation.²⁴

In addition, alleviating the financial hardships resulting from victimization facilitates the healing process because compensation is important to the healing process of crime victims and meets crime victims' need for societal acknowledgment of the criminal event.²⁵

¹⁹ See chapter five section 2.

²⁰ O Oloruntimehin, 'The victim in the criminal justice system-the Nigerian case' (1982) in HJ Scheneider (ed) *Victim in international perspective* 409.

²¹ See chapter six section 1.

²² Standing Council on Law and Justice 'National framework of rights and services for victims of crime 2013-2016' 4.

²³ 'Guidelines for making a Victim Impact Statement' <http://www.victiminfo.govt.nz/.../Victim-Impact-Statements.../Final-adult-jurisdiction-Nov>. (Accessed 6 June 2017).

²⁴ GM Musila, 'Restorative justice in international criminal law: the rights of victims in the International Criminal Court' unpublished Ph.D. theses University of the Witwatersrand Johannesburg (2009) 112.

²⁵ See chapter four section 1.

The national framework being advocated here will ensure that crime victims receive information as quickly as possible on compensatory assistance schemes and support services.²⁶ Relevant protocols will be established to disseminate information about crime victims to reduce the duplication of resources in all the thirty-six states in Nigeria. All the states will ensure that they work together in providing services that address victims' needs. Additionally, the collaborative efforts will provide a model of quality service delivery and inform benchmarking standards that can be applied to training and workforce capacity to crime victims' advantage throughout Nigeria.

In the light of the foregoing, the use of a national framework in Nigeria will ensure comprehensive compliance with its provisions and its mandate.

3. Mechanisms of a victim compensation scheme

All crime victim applicants will be required to submit an application which be forwarded to the administrative²⁷ office for review.²⁸ A time limit for the submission of a claim by applicants would have to be made to avoid crime victims bringing claims several years after the crime. In Canada, for instance, the filing period is within one to two years of the incident.²⁹ Notwithstanding the foregoing, however, the scheme will allow applicants to submit late applications with adequate reasons for the delay. If an exclusionary rule applies, such as contributory behaviour or where the criminal offenders and the crime victims reside in the same neighbourhood, or there is a previous criminal record, applicants will not be eligible for compensation.³⁰

As it is the practice in Britain, when an applicant's claim is denied, the applicant has the right to appeal to the Compensation Scheme Board. The Board then reviews the case,

²⁶ Standing Council on Law and Justice 5.

²⁷ SALRC Discussion Paper 97 Project 82 Sentencing (A Compensation Scheme for Victims of Crime in South Africa) (2001) 176.

²⁸ See chapter six section 3.

²⁹ Canada resource centre for victims of crime 'Financial assistance' <https://www.crcvc.ca/en/for-victims/financial-assistance/>. (Accessed 6 June 2017).

³⁰ See chapter six section 2.

after which the applicant can make an oral appeal to the Board.³¹ If the appeal is genuine, then the Board handles it as a fresh application. The Appeal Board's decision is not able to be appealed nor is it subject to judicial review by any other authority.³²

3.1. Compensation should be accessible

The state-funded compensation scheme will be accessible to Nigerian citizens who have suffered any crime of a violent nature irrespective of the place where the crime was committed in Nigeria;³³ this is the practice in other jurisdictions with state-funded compensation.³⁴ In addition to the accessibility of the compensation, crime victims must be given enough information in respect of the availability of the crime victims' compensation fund and the location of such a scheme.³⁵ This would require the fund to be given sufficient and adequate publicity.

The scheme will, in particular, give attention to poor victims. To achieve this, the scheme will possess wide administrative offices in urban and rural areas throughout Nigeria.³⁶ Notwithstanding the network of administrative offices throughout the country, the executive functions of the Victim Compensation Scheme will be centralized; other offices will be responsible for popularizing the scheme with a view to providing help to crime victims applying for compensation.³⁷ Additionally, the offices will have the responsibility of conducting an investigation with regards to the authenticity or otherwise of any application submitted by the crime victims.³⁸

³¹ See the United Kingdom Criminal Injuries Compensation Scheme (Criminal Injuries Compensation Authority a Guide to the Criminal Injuries Compensation Scheme No 1 4/96) pars 22-27.

³² SALRC (n 27 above). 177.

³³ The Council of The European Union Council Directive 2004/80/EC of 29 April 2004 Relating to Compensation to crime victims par 7 This Directive sets up a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations which should operate on the basis of Member States' schemes on compensation to victims of violent intentional crime committed in their respective territories therefore a compensation mechanism should be in place in all Member States.

³⁴ As above.

³⁵ As above.

³⁶ As above.

³⁷ As above.

³⁸ SALRC (n 27 above) 178.

3.2. Rendering assistance during application process

The Nigerian Victim Compensation Scheme (NVCS) will render adequate help to enable crime victims complete and submit the application without depending on any assistance from a lawyer.³⁹ A standard application form will be developed, describing in the three major Nigerian languages the procedure by which the form should be completed.⁴⁰ The completed application form will serve as the basis upon which compensation will be paid. Subject to an investigation of the crime and the claims by the victims, a medical report would be required with any other useful information. Additionally, the form would contain information prohibiting a police officer from collecting a fee for giving advice on the completion of the forms.⁴¹

3.3. Reporting commission of crime by the victims

It will be the duty of crime victims to ensure that reports are made in respect of their victimization and the injuries sustained to the law enforcement agents who review the report.⁴² Most crime victims' compensation schemes in other jurisdictions depend to a large extent on a police report from the crime victims which the police use to verify the extent of the crime.⁴³ Reporting crime and victimization by the crime victims may create administrative challenges in the Nigerian context as the law enforcement agents are likely not to be able to complete such reports adequately. It is submitted, however, that an improper and unsatisfactory police report should not form the basis for abstaining from accommodating such a mechanism in Nigeria.⁴⁴ Although it is argued that the

³⁹ The Council of The European Union Council Directive (n 33 above). "Relating to Compensation to crime victims art 5 par 2 the assisting authority shall upon the request of the applicant provide him or her with general guidance and information on how the application should be completed and what supporting documentation may be required."

⁴⁰ As above.

⁴¹ SALRC (n 27 above) 178.

⁴² Missouri department of public safety 'Crime victim compensation program guidelines' <http://www.dps.mo.gov/dir/programs/cvc/guidelines.php>. (Accessed 7 June 2017).

⁴³ Ministry of Justice and Criminal Injuries Compensation Authority 'A guide to applying for compensation under the Criminal Injuries Compensation Scheme' (2016) <https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide>. (Accessed 7 June 2017).

⁴⁴ Human right watch (2005) 5(11)(a) 'Nigeria: rest in pieces attitudes towards policing and history of policing in pre-colonial and colonial Nigeria' <https://www.hrw.org/reports/2005/nigeria0705/4.htm>. (Accessed 7 June 2017).

requirement of lodging complaints with the law enforcement agents will create a substantial effect on crime reporting and its investigation, it does, however, support the removal of the requirement from the compensation scheme because police investigations will lead to an essential check against illegitimate claims by crime victims.⁴⁵

In addition to a police report by the crime victims, as is also the practice in similar compensation schemes, a medical report must be produced verifying the injuries sustained by the crime victims.⁴⁶ This means that crime victims must, as matter of necessity, inform medical officials of their injuries as soon as possible after the crime. Any failure to produce a medical report from a medical practitioner of a government hospital in Nigeria disqualifies such crime victims from a compensation award because the report will be used to verify the nature and degree of crime victims' injuries.

3.4. Review/appeal and administrative expenses

The Nigerian Compensation Scheme will provide an opportunity for crime victims to appeal the decision of the compensating authority similar to the UK.⁴⁷ An Appeal Board is needed where crime victims can make oral submissions giving reason for such appeal.⁴⁸ In addition, the Appeal Board will furnish crime victims with comprehensive reasons for rejecting the application.⁴⁹

⁴⁵ N Fifiield (2014) 'Police launch fraud probe into claim for compensation by alleged victim of Jimmy Savile' <http://www.telegraph.co.uk > News > UK News > Crime > Jimmy Savile>. (Accessed 7 June 2017).

⁴⁶ Manitoba justice department 'Compensation for victims of crime program' <https://www.gov.mb.ca/justice/victims/pubs/applicationforvictim.pdf>. (Accessed 7 June 2017).

⁴⁷ 'Criminal injuries compensation tribunal: overview' <https://www.gov.uk/criminal-injuries-compensation-tribunal/overview>. (Accessed 7 June 2017).

⁴⁸ CICA compensation service 'Criminal injury appeals process re-openings reviews and tribunals' <https://www.criminal-injuries.co.uk/criminal-injury-appeals>. (Accessed 7 June 2017).

⁴⁹ CICA 'Criminal Injuries Compensation' http://www.leedschildcare.proceduresonline.com/chapters/p_crim_inj_comp.html. (Accessed 7 June 2017).

The Board's decision is final and is not able to be appealed nor is it subject to any judicial review.⁵⁰ This will reduce avoidable court cases that come from such appeals.⁵¹

This practice in the final analysis will reduce the monetary expenses of the compensating body, which would add to its administrative and legal costs.

As a result of what has been said, determining the cost of administering a Victim Compensation Scheme in Nigeria may pose some challenges because of a lack of historical data in respect of crime victims' compensation programme in the country.⁵²

Furthermore, the vulnerabilities or uncertainties about the character and size of such plans or schemes may not be clear at this moment. What is certain and clear, however, is the fact that extensive arrangements will be required to establish and run the NVCS.

4. Instituting/establishing a victim compensation scheme in Nigeria

All successful compensation schemes in most jurisdictions were made pursuant to an enabling statute.⁵³ Precedents of such statutes establishing victim compensation schemes include the New Zealand Criminal Injury Compensation Act 1963,⁵⁴ the US Victims of Crime Act 1984,⁵⁵ the UK Compensation Act 1964⁵⁶ and Spain's Act for Victims of Violent Crimes.⁵⁷

⁵⁰ Criminal Injuries Compensation Appeals Panel for Northern Ireland (CICAPNI) 'Guide to the criminal injuries compensation appeal panel for Northern Ireland' <https://www.courtsni.gov.uk/.../Tribunals/Your%20Panel%20Hearing.pdf>. (Accessed 7 June 2017).

⁵¹ *Malcolm J & Marks v Criminal Injuries Compensation Board No. 0921* (2010) <http://www.caselaw.findlaw.com> > Caselaw > Maryland > MD Ct. Spec. App. (Accessed 7 June 2017).

⁵² G Egbuji, 'Crime victims' foundation of Nigeria (CRIVIFON): mission statement' (2010) <http://www.vanguardngr.com/2010/12/crime-victims-foundation-of-nigeria-crivifon-mission-statement>. (Accessed 7 June 2017).

⁵³ See chapter six section 1.

⁵⁴ Preamble an Act to provide for the compensation of persons injured by certain criminal acts and of dependants of persons killed by such acts.

⁵⁵ The Victims of Crime Act of 1984 (VOCA) is United States federal government legislation aimed at helping the victims of crime through means other than punishment of the criminal it established the Crime Victim's Fund a scheme to compensate victims of crime.

⁵⁶ The Criminal Injuries Compensation Scheme was established in 1964 under the prerogative to provide compensation from the state for victims of crimes of violence it is funded by central government and was administered by the Criminal Injuries Compensation Board (CICB) which dealt with and has been dealing with all applications submitted before 1st April 1994.

⁵⁷ Act 35/1995.

In South Africa, for example, there are many policy documents⁵⁸ and legislative frameworks providing for victim's rights and interests,⁵⁹ although these policies have not been passed into law by the South African Parliament.⁶⁰ In Nigeria, there has been a Bill on crime victim's remedy before the nation's Parliament since 2011, but it has not seen the light of day.⁶¹ Section 38 of the proposed Bill provides for the establishment of a Criminal Injuries Compensation Board. It is argued that, when this Bill is passed into law, it would provide the arrangements and mechanisms by which to establish a NVCS. This Bill, when passed by the Nigerian Parliament, will determine the NVCS's jurisdiction, its powers, responsibilities and the functions of its office bearers similar to the mandate of the United Kingdom compensation body.⁶²

4.1. Eligibility for state compensation in Nigeria

To be eligible for state compensation in Nigeria lessons will be drawn from foreign compensation schemes with a view to adopting the same for Nigeria.⁶³ Some jurisdictions restrict compensation payment to crimes of violent nature only; however, there is the possibility of including the injuries connected with crimes of violence.⁶⁴ It is submitted, however, that there are compensation schemes⁶⁵ that do not compensate based on the kind or type or nature of the crime, but rather pay compensation only on death or serious injuries suffered by the crime victims.⁶⁶

⁵⁸ Service Charter for Victims of Crime.

⁵⁹ Minimum Standards on Services for Victims of Crime.

⁶⁰ SALRC (n 27 above) 178.

⁶¹ Criminal Justice (Victim's Remedies) Bill 2011.

⁶² Criminal Injuries Compensation Act 1995 (c. 53) sec 11B (1) for the purposes of this Act administrative functions exercisable by an administrator of the Criminal Injuries Compensation Scheme (Scheme functions) shall be taken to be administrative functions of a government department to which this Act applies for the purposes of this section the following are administrators of the Scheme a claims officer appointed under section 3(4) (b) of the Criminal Injuries Compensation Act.

⁶³ See chapter one section 5.

⁶⁴ See chapter six New Zealand No Fault-Accident Compensation section 8.1.

⁶⁵ See Chapter six section 7.

⁶⁶ SALRC (n 27 above).

It is noted that, under the schemes examined above, the commission of wilful crime plays a major role in awarding compensation. This is a kind of limitation in those schemes because, in the Nigerian Compensation Scheme when finally established, the requirement of proving the intent of the offender will not be a factor for compensation. It would be a miscarriage of justice to reject a claim on the basis of the fact that the injury sustained was carelessly committed by the criminal offenders without the offenders' real intention to murder or injure the intended crime victims. The result of the negligent act of the offenders must have been foreseeable to make the crime victims eligible for compensation claim. It is argued, therefore, that it is not necessary for the crime victims to have been the target of the act of the criminal offenders to qualify for compensation.

Some compensatory programmes provide that the crime and injury take place within the state⁶⁷ and that citizens, permanent residents, lawful visitors and people from countries with a similar scheme can make claims.⁶⁸ Finland allows claims to be made by permanent residents or citizens of Finland even where the offence has occurred abroad.⁶⁹ The Nigerian Scheme will cover all persons, whether citizens or not, irrespective of the *locus in quo* of the crime. In some programmes, only the direct crime victims or their dependants are eligible to claim compensation. The categories of dependants are spouses, direct children and other *bona fide* dependants of the crime victims.⁷⁰ Provided a claimant is able to prove to the Compensation Board in Nigeria on the balance of probability that he/she is eligible for compensation claims.

⁶⁷ State Compensation to Victims of Crime (Consolidation) Act No. 688 of 28 June 2004 sec 1(1) The State awards compensation and damages for personal injury inflicted by violation of the Criminal Code where any such violation is committed within Danish territory.

⁶⁸ German Act on Compensation to Victims of Violent Crime (Crime Victims Compensation Act as amended 2011 sec 4 "Foreign nationals shall be entitled to compensation."

⁶⁹ A Söderholm 'Finland' in DF Greer (ed) *Compensating crime victims: A European survey* (1996) 170.

⁷⁰ In the United Kingdom and Northern Ireland, common law spouses are deemed to be a man and a woman who has lived together as man and wife for at least two years in Ireland the requirement is three years.

4.2 Compensable crimes under the Nigerian compensation scheme

Compensable crimes in jurisdictions operating a victims' compensation scheme are not uniform.⁷¹ In other words, the degree and categories of crime that qualify for state compensation benefits vary from country to country; however, the majority of the schemes include a basic core of offences. New Zealand,⁷² Great Britain,⁷³ California⁷⁴ and Saskatchewan⁷⁵ restrict compensable crimes to crimes of violence. According to research, compensable crimes⁷⁶ are defined as "criminally injurious conduct that occurs, or is attempted in a state, and poses a substantial threat of personal injury or death, and is punishable by a fine, imprisonment, or death."⁷⁷

4.3 Compensation benefits under the Nigerian victim compensation scheme

The majority of compensation programmes examined earlier cover many areas where crime victims may have suffered loss.⁷⁸ Accordingly, compensation programmes cover primary compensable costs such as medication, counselling, loss of earnings for crime victims who are incapacitated owing to a crime-related injury, support for indirect crime victims of homicide victims, and burial costs.⁷⁹ Under the NVCS, a similar procedure will be adopted.

Accordingly, the compensation payments to crime victims will be made throughout the thirty-six states of Nigeria in respect of medical fees which may consist of over half of the amount of all compensation to be awarded in all states.

⁷¹ United State Code Title 42 sec 10602 (b) (1) Crime victim compensation in the United States of America compensable crimes include but not limited to criminal violence including drunk driving and domestic violence.

⁷² Schedule to the New Zealand Criminal Injuries Compensation Act No. 134 of 1963.

⁷³ Home office compensation for victims of crimes of violence CMND No. 2323 1964.

⁷⁴ California Penal Code sec 13600-03 and California welfare & institutions code sec 11211.

⁷⁵ The Criminal Injuries Compensation Act Saskatchewan Statute 1967 c 84.

⁷⁶ See chapter eight section 5.

⁷⁷ DG Parent, B Auerbach & KE Carlson Compensating crime victims: a summary of policies and practices (1992) 30.

⁷⁸ See chapter six section 8.1

⁷⁹ D Eddy 'New directions in financial recovery Crime victim compensation' https://www.ncjrs.gov/ovc_archives/directions/pdfxt/chap14.pdf. (Accessed 10 June 2017).

5. Funding the Nigeria victim compensation scheme

In general, a substantial amount of money for compensation schemes in jurisdictions where such schemes exist come from the national budgetary allocations at national, state/provincial or local level.⁸⁰ The US created a statute by which monies realized through the payment of fines or forfeited bails are used to compensate victims and assist them.⁸¹ The funds from the above sources are utilized to compensate victims and provide other forms of victims' assistance involving counselling, create public information about the programme, and victims' compensation advocacy. Nigeria's 2017 annual budget, as presented by President Mohammadu Buhari, to the nation's Parliament is 7.298 trillion Naira.⁸² This is equivalent of \$23 billion US Dollars at the exchange rate of N318.153. It is submitted that from this amount of money, a portion can be allocated for victims' compensation on a yearly basis.⁸³

Top capital allocations from the above 2017 budget of 7.298 trillion are as follows, power, works and housing 529 billion Naira, transport 262 billion Naira, defence 140 billion Naira, universal basic education 92 billion Naira, water resources 85 billion Naira, health 51 billion Naira, and education 50 billion Naira.⁸⁴ In the light of the above, it is my humble submission that an estimated amount of money equivalent to the sum to the above key government institutions is allocated for the implementation of the NVSC, although national exigencies may dictate otherwise. For a start, a budget of about 30 billion may be allocated to test run the scheme.

⁸⁰ Directory of international crime victim compensation program 2004-2005 'Victim compensation programs: New Zealand' The program is funded from premiums paid by the government, motorists, employers and earners. https://www.ncjrs.gov/ovc_archives/reports/intdir2005/newzealand.html. (Accessed 9 June 2017).

⁸¹ The Victims of Crime Act of 1984 (VOCA) is United States federal government legislation aimed at helping the victims of crime through means other than punishment of the criminal it established the Crime Victim's Fund a scheme to compensate victims of crime.

⁸² O Onigbinde, 'A review of proposed 2017 budget' (2016) 7 On Wednesday, the 14th December 2016, the President of Nigeria, Muhammadu Buhari, presented a 7.298 trillion naira 2017 budget proposal to the joint session of the National Assembly. It is 20.4 percent higher than the 2016 budget. F Agbugal Nigeria's 2017 budget proposal explained in 6 charts <http://www.venturesafrica.com/2017-budget-proposal/>. (Accessed 9 June 2017).

⁸³ See chapter one section 1.2.

⁸⁴ Onigbinde (n 82 above) 13.

The sources of fund raising for establishing the NVCS are likely to face some difficulties in their attempts to do so. It is noted that section 70 of the proposed Criminal Justice Victims' Remedy Bill 2011 provided for the funding of the NVCS from all tiers of government in Nigeria and other sources, the Bill does not however provide the amount of money that will be made available from these various sources.

As a result of what has been said, the omission in the Criminal Justice Bill of the amount of money receivable from the federal, state and local government sources in form of funding of the programme should not really prompt the conclusion that it ought not to be set up. In an attempt to establish the NVCS, it becomes very important to examine possible sources of funding the Scheme. The research hereunder examines the sources of funding the NVCS and other options likely to be available in this respect.

5.1 Compensation from the offenders

Monies realized from a number of convicted criminals can also serve as a source of funds for the NVCS. This money could be used to pay compensation to crime victims, thereby reducing the financial burdens of the NVCS. This is the approach in jurisdictions with such schemes.⁸⁵ In the states of California and Iowa, the compensation scheme authority uses private individuals to recover compensation from offenders who are directed to pay compensation to crime victims but have not complied with such an order.⁸⁶ In addition to what has been said, California is using new social media tools, like Facebook and Twitter, to expand the scope of their outreach.⁸⁷ A similar idea could also be adopted in Nigeria with the expectation of reducing claims by the victims of crime.

⁸⁵ See chapter six section 4.

⁸⁶ SALRC (n 27 above).

⁸⁷ HG McCleskey, 'Outreach and training: foundation for victim compensation' (2012) 2 *Crime Victim Compensation Quarterly* 1.

5.2 Funds from confiscated property of convicted criminals

In addition to sections 4.3 and 4.4 above, the NVCS could draw on funds from the confiscated property of convicted offenders through the application of asset forfeiture legislation. South Africa, for example, has such a law where all monies received from confiscated criminals' property is deposited.⁸⁸ Monies realized from corrupt Nigerian leaders, like the late Abacha, should be paid into the Compensation Scheme Fund.⁸⁹

5.3 Funds from individuals/corporations and philanthropic organizations

In addition to all the sources examined above, the NVSC may raise funds from rich Nigerian individuals,⁹⁰ corporations such as banks, oil companies,⁹¹ telecommunication companies⁹² and philanthropic organizations from inside and outside Nigeria.⁹³ Although these sources may not be consistent, it is submitted that they will go a long way to assisting victims' compensation in Nigeria. The various sources of funds examined above could be harnessed for the funding of a NVCS. They are from taxpayers, donors, organisations, criminals and rich individuals. The means of funds identified are included in the financing of the majority of the compensation plans in the jurisdictions which we

⁸⁸ Prevention of Organized Crime Act No. 121 of 1998 sec 63-64 "There is hereby established in the National Revenue Fund a separate account to be known as the Criminal Assets Recovery Account the Account shall consist of all moneys derived from the fulfilment of confiscation and forfeiture orders contemplated in Chapters 5 and 6."

⁸⁹ I Jimu, 'Managing proceeds of asset recovery: the case of Nigeria Peru the Philippines and Kazakhstan' (2009) 60 *Basel Institute on Governance* 4.

⁹⁰ OS Sherif 'Nigerian Billionaires and Top 20+ Richest People (Entrepreneurs) in Nigeria 2017' Alhaji Aliko Dangote – Dangote Group (Manufacturing oil & gas) Mike Adenuga – Conoil Globacom (Oil & gas Banking Telecom) Femi Otedola – Forte Oil and Gas (Oil & gas) Orji Uzor Kalu – Slok Group (Aviation Shipping, publishing manufacturing) Cosmos Maduka – Coscharis Group (Automobile manufacturing) Jimoh Ibrahim – Nikon Insurance Jim Ovia – Zenith Bank Visafone (Banking Telecom) Pascal Dozie – MTN Nigeria, Diamond Bank (Banking Telecom) Oba Otudeko – Honeywell Group Nigeria Pivotal Engineering Airtel (Manufacturing, oil & gas telecom) Alhaji Sayyu Dantata – MRS Group (Oil & gas, construction) Umaru Abdul Mutallab – former Chairman First Bank Plc Mutallab Group Prince Samuel Adedoyin – Doyin <http://www.mytopbusinessideas.com/richest-people-in-nigeria/>. (Accessed 9 June 2017).

⁹¹ Shell Petroleum Development Company of Nigeria (SPDC) ExxonMobil Chevron Nigeria Limited.

⁹² Mtn Nigeria Global com Nigeria Airtel Nigeria Vodafone Nigeria.

⁹³ M Nsehe 'Nigerian 'philanthropist' gives away \$100 Million' <http://www.forbes.com/sites/.../2011/06/.../nigerian-philanthropist-gives-away-100-million/>. (Accessed 9 June 2017).

have examined⁹⁴ as well as in the recommendations that the study made in chapter eight.

6. Nigeria's budget for selected social welfare services (billions of Naira)⁹⁵

Years	Transportation	Health	Education
1994	56.12	18.26	10.30
1995	59.88	16.94	12.70
1996	57.20	20.50	15.35
2009	114.2	34.5	23.3

One of the determining factors of knowing how well a society is faring is by examining its social welfare programmes to see whether the citizens are happy.⁹⁶ Societal phenomena or activities, such as crime, dictate that some classes of citizens require some form of help or assistance either owing to their disposition or because of the special situation⁹⁷ they find themselves in which makes them require some form of social welfare to encourage them to cope with the problems which have arisen from the criminal activities and living conditions.⁹⁸

⁹⁴ See chapter six section 8.

⁹⁵ EJ Kanu & BD Umoh 'Public interest in social welfare services provision in Nigeria: a critical analysis' (2013) 2(3) *Asian Journal of Social Sciences & Humanities* 20.

⁹⁶ RF Dolgoff, & L Stolnik *Understanding social welfare* (1997) 464.

⁹⁷ See chapter six section 9.

⁹⁸ B Ogbonna, 'Social welfare scheme a neglected component of public health care services in Nigeria' (2017) 5(3) *MOJ Public Health* 1.

Some of the social problems in Nigeria, among others, are armed robbery,⁹⁹ murder,¹⁰⁰ individual and corporate theft,¹⁰¹ economic recession,¹⁰² insecurity¹⁰³ and corruption.¹⁰⁴ Without doubt, these issues require urgent social welfare policy and programme for their resolution.¹⁰⁵ This is because social welfare is an indication of organised activities of government and non-governmental agencies that seek to prevent, alleviate, or contribute to the solution of social challenges with a view to improving the wellbeing of individuals, groups, or communities.¹⁰⁶ Additionally, social welfare provides support and protection to disadvantaged people like crime victims.

The fact that social welfare activities in Nigeria are grossly inadequate, insufficiently funded and neglected cannot be overemphasized. The services available are grossly inadequate compared to the number of people who need the services. Unlike the jurisdictions considered in the study, Nigeria is devoid of welfare benefits for its citizens, a governmental programme regarded as a key component of the advanced systems. The table above clearly shows how the selected welfare programmes are grossly underfunded in Nigeria. It is submitted with hope that when the NVSC is implemented, it will reduce the crime victim's ordeal to its barest minimum as well as the resultant social problems posed to the Nigerian criminal justice system.

⁹⁹ JC Nwalozie, 'Armed robbery in Nigeria -a qualitative study of young male robbers' unpublished PH.D thesis University of Manchester (2011) 7.

¹⁰⁰ EO Lawrence, 'Nigeria and the incidences of homicide' (2015) 4(5) *American International Journal of Social Science* 105.

¹⁰¹ C Katsouris, & A Sayne 'Nigeria's criminal crude: international options to combat the export of stolen oil' (2013) *Chatham House* 2.

¹⁰² JO Lasisi, & SA Olayinka 'Business development and economic recession in Nigeria: lessons and the way forward' (2017) 8(4) *The Business and Management Review* 302.

¹⁰³ O Comfort, I David & UU Moses 'Addressing the insecurity challenge in Nigeria: the imperative of moral values and virtue ethics' (2013) 13(2) *Global Journal of Human Social Science Political Science* 52.

¹⁰⁴ PO Okolo, & AO Raymond 'Corruption in Nigeria: the possible way out' (2014) 14(7) *Global Journal of Human Social Science Political Science* 33.

¹⁰⁵ OMK Kazeem, *A Retrospective survey of social work practice in Nigeria* (1991) 25.

¹⁰⁶ 'National Association of Social Workers' (1971) 2 *Encyclopedia of Social Work* 1446.

7. Challenges in funding the Nigeria state compensation scheme

The funding of the NVCS will, it is presumed, face some challenges like all other government programmes especially at this period where Nigeria is faced with economic recession.¹⁰⁷ The Nigerian economy has been bedevilled by unending and hard recession caused by over importing, plunging oil revenue and sharply low investment inflows.¹⁰⁸ The recession and other factors enumerated shortly may be responsible for these challenges. Firstly there is the degree of a political sense of duty regarding subsidizing such a scheme way beyond different priorities and needs.¹⁰⁹ Secondly, there are the social advantages to be derived from subsidizing such a scheme. Thirdly, the degree to which the advantages to be gained from such financing might be received from other social projects and the cost of those services through different programmes. Fifthly, the expenses related to either diverting expenditure from one set of service to the provision of financing for the functions of NVCS and the costs of raising additional money for the funding of NVCS.

In addition to the challenges noted above, it may be asked how the NVCS will benefit Nigerians. It is submitted, in response to the foregoing, that the compensation of crime victims will play a huge role in rebuilding the lives of crime victim,¹¹⁰ especially when one notes that one in every three Nigerian has experienced criminal victimization over the years as a result of the progressive increase in crime in Nigeria.¹¹¹

¹⁰⁷ See chapter one section 1

¹⁰⁸ EM Agri, D Mailafia & RI Umejiaku 'Impact of economic recession on macroeconomic stability and sustainable development in Nigeria' (2016) *Science Journal of Economics* 1.

¹⁰⁹ C Obiagwu 'Judicial and institutional developments in Nigeria against atrocity crimes and the protection of victims' (2017) <http://www.ledapnigeria.org/judicial-and-institutional-developments-in-nigeria-against-atrocity-cr....> (Accessed 7 July 2017).

¹¹⁰ MA Young 'The role of victim compensation in rebuilding victims' lives' <http://www.iovahelp.org/About/MarleneAYoung/RoleOfVictComp.pdf>. (Accessed 10 June 2017).

¹¹¹ Cleen Foundation 'Summary of findings of 2012 National crime and safety survey' <http://www.cleenfoundation.blogspot.com/2012/07/summary-of-findings-of-2012-national.html>. (Accessed 3 August 2017).

Additionally, the financial implications of the NVCS should not be the grounds on which such a programme will be rejected if it stands to benefit the generality of Nigerians who may have suffered criminal victimization. To this end, on the chances that the case made for the establishment or foundation of the NVCS is indisputable, it should stand a better chance of being financed or funded.

At present, it may be unrealistic to expect the Nigerian government to unwind or relax its monetary or fiscal policy to raise funds from borrowings, bearing in mind the end goal of implementing the NVCS,¹¹² because it is not likely that the Nigerian authorities will favour this as an alternative and embark on establishing the NVCS at the moment. It is, however, argued that Nigeria has the potentials for future establishment.

The reason for the foregoing position is that all governmental programmes require attention on equal basis, and it is a known fact that the idea behind any government budget decision is that it tends to support existing projects over new ones.¹¹³ The case for financing a NVCS should accordingly be better than the case made for the subsidizing of any of the government's current projects because it is the government's "vision to elevate Nigeria to be among the top 20 economies in the World by the year 2020."¹¹⁴

Notwithstanding the preceding contentions for the foundation or establishment of a NVCS, the fact that the scheme needs to contend with other governmental strategies or policies and administrations for financing¹¹⁵ is an indication of the fact that the opposition to the probability of government's financing such a scheme to a substantial level as argued in this chapter is a task that must be considered. A limited scheme, however, which may seem to operate in relation to other national issues, should be

¹¹² SU Agu, IM Okwo OD Ugwunta & A Idike 'Fiscal policy and economic growth in Nigeria: emphasis on various components of public expenditure' (2015) *Sage* 1.

¹¹³ A Widavsky, 'The politics of the budgetary process' (1988) 8(3) *Cato Journal* 765.

¹¹⁴ African development bank group 'Federal Republic of Nigeria country strategy paper 2013-2017' (2013) *Orwa Department* 1.

¹¹⁵ Federal Ministry of Agriculture and Rural Development 'The Agriculture Promotion Policy (2016 –2020) Policy and Strategy Document' (2011) 3.

embarked upon by the Nigerian government although the chances are that the scheme has a lesser chance of competing or succeeding against other national priorities.¹¹⁶

Generally, victims of personal violence, rape or sexual assault or abuse will be eligible for compensation under the NVCS. Victims of property crimes, except for theft of cars at gun point, will not qualify for compensation. The rationale behind these distinctions is that it must be emphasized that compensation programmes are considered payers of last resort, meaning that the victim must exhaust all other sources of benefits that could pay for medical care, funeral benefits, counselling, before filing claims under the NVCS. This principle has been incorporated in the programme of other jurisdictions operating compensation schemes because compensation was thought to supplement the existing resources of the victim and not to serve as an automatic payment in response to victimization.¹¹⁷

Domestic violence victims will be excluded from receiving compensation under the NVCS because compensation awards to battered women would benefit the battering spouse by not holding him financially accountable for his crime and the chances are that the offender could benefit from a compensation award if the offender and victim continued to co-habit. This is one of the grounds for its exclusion in one of the jurisdictions particularly in the UK considered above.¹¹⁸ Victims of drunk driving accident will be included because drunk driving is considered a violent crime and, therefore, victims will benefit from the financial resources of state compensation programmes.

In the light of the above, compensable crimes under the NVCS will be as described in the jurisdictions mentioned above.

¹¹⁶ United Nation for Children's Fund 'Nigeria Country programme document 2014-2017' (2013) 12.

¹¹⁷ SALRC (n 27 above) 56.

¹¹⁸ See chapter six section 7.

8. Restorative Justice and the NVCS

The importance of RJ to crime victims, the offenders and the community has been examined earlier in the course of this study.¹¹⁹ Without being repetitive, however, it is essential to examine the implications of the RJ concept on the Nigeria Victim Compensation Scheme, although briefly.

Making compensation available to the crime victims is consistent with the concept of RJ procedures in the administration of criminal justice because mandatory provision for compensating crime victims by the criminal offenders does not resolve the problems of the crime victims.¹²⁰

In this regard, compensation is premised on recognizing that the victimization of people is not just a criminal delinquency prohibited by and against the state, but principally an offence against the crime victims which makes the wrongdoers conscious of the harm they have occasioned.¹²¹ The restorative justice pattern views crime as being a contravention and disequilibrium of people and relationships.¹²² When crime violates the physical self of the human person or his/her properties, it thereby creates a duty to right the wrong and, in this connection, justice involves the crime victims, the criminal offenders, and the community in the bid to find a long-lasting antidote to crime which advances repair and reconciliation and guarantees the non-repetition of the crime.¹²³ RJ is all-inclusive.

In establishing the NVCS, the principles of RJ will provide the mechanisms in the country that ensure comprehensive participation in the criminal justice system involving the crime victims and criminal offenders, as well as providing structures that will facilitate victims and offenders mediation and make it a reality. Through this process, greater information will be available to all parties and open the door for restitution.

¹¹⁹ See chapter four section 4.

¹²⁰ PD Haveripeth, 'Restorative justice and victims: right to compensation' (2013) 2(2) *International Research Journal of Social Sciences* 46.

¹²¹ As above.

¹²² SALRC (n 27 above) 8.

¹²³ H Zehr, *Changing lenses: a new focus for crime and justice* (1990) 180.

According to Barnett "justice consists of the culpable offender making good the loss he has caused. Where we once saw an offence against the State, we now see an offence against the individual."¹²⁴

As a result of what has been said, RJ will demand a consideration of procedures where compensation is offered to crime victims and, at the same time, will empower crime victims by involving or including them in the justice system in Nigeria.¹²⁵ As it stands today in Nigeria, the application of the RJ concept in criminal matters is non-existent because "there's no judicial precedent in Nigeria [for] the application of the restorative approach."¹²⁶ In the NVCS, two mechanisms will be adopted to compensate the crime victims. Firstly, there is compensation directly from the criminal offenders in form of restitution. Secondly, there is state compensation to the crime victims. The two procedures depend on who is responsible to the crime victims because of the difficulty of how to recover funds directly from the criminal offenders.

9. Conclusions

According to Cohn and Udolf, "of all the persons involved in the criminal justice system, the VICTIM is the one who most often has been overlooked."¹²⁷ This chapter has examined the institution and implementation of a statutory crime victims' compensation scheme in Nigeria. In this doing this, it has been argued that the introduction of the NVCS will give the platform to crime victims' to receive compensation from the state where adequate compensation to the crime victims for their sufferings after victimization will be made available.

¹²⁴ K Daly, 'The punishment debate in restorative justice' in J Simon & R Sparks (eds) *The handbook of punishment and society* (2011) 6.

¹²⁵ SALRC (n 27 above) 3.

¹²⁶ T Adeshina, 'Restorative justice as opposed to retributive justice in Nigeria application and its benefits can dispute resolution be employed in criminal litigation' http://www.academia.edu/.../RESTORATIVE_JUSTICE_AS_OPPOSED_TO_RETRIBUTIV. (Accessed 20 July 2017).

¹²⁷ I Kaur, 'Plight of forgotten man – victim' (2012) 59 (3) *The Indian Police Journal* 43.

The chapter further provided a model for Nigeria in establishing and implementing a crime victims' compensation scheme in the country. In an attempt to achieve this, the chapter examined the need for a national framework for a crime victims' compensation scheme in Nigeria. In addition, the chapter looked into the mechanics of a victim compensation scheme, how to establish and finance the scheme, the structure of the scheme using the SALRC's model, and the need to implement international instruments' provisions on crime victims' compensation.

Furthermore, the chapter relied heavily on the precedents of other jurisdictions in respect of crime victims' compensation schemes with a view to developing the same for Nigeria. It also examined the implications of restorative justice for a victims' compensation scheme in Nigeria. The chapter concluded by discussing the relevance of the Commonwealth Guidelines on victim's treatment and the UN's Declaration of Basic Principles to Nigeria. This was closely followed by another discussion on adopting the SALRC template for victims of crime in South Africa of 2001 and 2004 respectively in Nigeria. It was argued that there is a dire need to create a balance between the privileges of victims of crime and privileges of criminals in Nigeria. This can be achieved and realized only by establishing the NVCS. The study stressed that justice should be done for all the parties concerned in and affected by the criminal behaviour. Crime victims should not be ignored. This is why a NVCS is urgently needed to compensate crime victims for their sufferings. It was also submitted that, in Nigeria, the crime victims are the real sufferers and remain the sufferers in the entire criminal justice process.

The chapter submitted that humble and realistic efforts should be made by the Nigerian authorities towards the main objectives of providing viable legislation which could provide compensation to crime victims so that the victims are not ignored in the process of the administration of justice. This chapter, thus, advocated the establishment of Victims' Compensation Scheme in Nigeria.

Chapter Eight:

Summaries, conclusions and recommendations

1. Introduction

The findings of the study have been recorded in the various chapters while identifying the lessons and contributions that the various jurisdictions discussed hold for Nigeria. This concluding chapter seeks to substantiate the recommendations, already discernible from chapter seven, made with regard to the Nigerian policy for decision makers in relation to crime victims' compensation. But before doing that, a brief summary of each chapter is undertaken in order to iterate the points made under each chapter.

Basically, the study investigated the reason why the Nigerian government has not given due consideration to a state or public compensation scheme with a view to providing compensation to crime victims. This is a topical issue in the wake of the rate of advancement in the development and establishment of state-funded compensation schemes around the world. The study, therefore, began from certain important assumptions premised on the current literature on state-funded crime victims' compensation. The assumption is that the safety of the citizens is a constitutional and fundamental right and, in the face of any violations of such rights, the state has a duty to compensate victims for such failures to those who have suffered victimization.¹

The right to safety and protection is an individual right because it is an important part of the human personality. The constitutional rights, which are in a class of their own as noted in chapter one, have been compromised and threatened by criminal activities in Nigeria. The reason for this is that corruption and other vices have permeated the fabric of Nigeria, and the criminal justice system has been slow in responding to crime and victimization. In addition, the problem is made worse by the fact that policy and decision makers in Nigeria and the general populace do not appreciate issues

¹ See chapter two section 2.

considered in the thesis, and these issues pose challenges to human safety and fundamental freedoms in Nigeria. As a result of what has been said, the study has given enough space in chapters one and two to lay the foundation for state-funded compensation to crime victims and its significance for Nigeria.

2. Summaries

In chapter one it was pointed out that there are so many issues calling for governmental attention in Nigeria and that such issues include, but are not limited to, corruption, political, economic, and social security, and current recession challenges which have not been addressed by the government. In addition, the rate of insecurity in Nigeria has produced many crime victims, and the justice system in Nigeria has not been able to grapple with crime and criminals with a view to finding solutions to victimization. This precarious situation has given rise to the total neglect of the crime victims.

It was noted that, because of the neglect of victims, they are confronted with a number of needs, physical, emotional, economic and psychological. Crime victims are further confronted by the trauma of loss of lives, the loss of a loved one, or the loss of their life-time investments to mention a few owing to crime of violent nature. The study found that, at the international level, the rights of crime victims to state compensation have been recognized and acknowledged.

Additionally, chapter one discussed the fact that the Nigerian criminal justice system has not in its decades of operation considered the plight of crime victims and their rights to state or public compensation. The Nigerian government has noted that there is need to re-examine the nation's penal laws with a view to attaining a fairer administration of criminal justice and it organized a National Conference at Abuja in June 1989 at the end of which the Conference issued the statement stressing that "Nigeria's criminal justice system should no longer focus its attention entirely on the punishment of offenders but should also consider the rights of victims of crimes."

It went further by stating that, at present, the provisions of the penal laws and procedure codes on compensation and restitution for victims of crime are grossly inadequate and that these should now be modernized and updated taking into consideration the principles and practices of the traditional criminal justice systems with regard to the compensation of and restitution for victims of crimes. A Criminal Injuries Compensation Board should be established in each of the states of the federation and Abuja, and the Boards should be funded from federal, state and local government subventions, fines and the proceeds of sale of assets seized from offenders.”²

In addition, chapter one noted that:

One of the problems confronting Nigeria is that of insecurity. Nigeria is an insecure environment for commercial operations. Security risk arises on three levels. The first comes from rising violent crime, from simple armed robbery to carjacking and violent attacks. Second, companies can be subjected to direct attack or blackmail facilities can be vandalized and staff kidnapped. Third, incidences of inter-communal violence have risen. Nigeria’s ill-equipped security agencies have been ineffective in stemming the crime wave.³

Chapter one concluded by noting that, despite such laudable suggestions issued by the Abuja conference, none of those suggestions or policies has seen the light of day in Nigeria, and, to that extent, there is no state-funded compensation scheme in Nigeria except the Criminal Justice (Victim’s Remedies) Bill 2011 pending before the the Nigerian Parliament.

Before the study dealt with the issues of state-funded victim’s compensation, which has been the major attention of the thesis, a series of fundamental theories were examined in chapter two.⁴ There were some reasons why the examination of the various theories was necessary and important. Firstly, there is the need to lay a solid foundation in order to demonstrate how the scope and extent the arguments on state-funded compensation to crime victims are justified in Nigeria. Secondly, and this is related to the first reason,

² See chapter one section 1.

³ As above.

⁴ See chapter two sections 2-8.

was the need to show the emergence, evolution and development of state-funded compensation which is crucial to the total comprehension and understanding of what the modern compensatory advocacy for crime victims is all about.

From there, the importance of theories regarding state-funded compensation were comprehensively analysed and discussed in chapter two where it was stressed that the theories contained an inclination towards peace making between the crime victims, the criminal offenders and the state. The peace making could come in form of compensation to crime victims either from the state or the offenders which was the underlying idea advocated in the study. Compensatory justice is the fairness that obtains when a person adequately compensates a party whom he or she has injured for the losses that that party has suffered. Compensatory justice to those harmed by the criminal act of another suggests that a peaceful society can be achieved if adequate consideration is accorded those who have suffered as result of crime.

Although it is not humanly possible to eliminate crime in society, crime can, to a manageable extent, be reduced to its barest minimum. In the light of the above, Quinney stated that:

to eliminate crime, to end the constructions and perpetuation of an existence that makes crime possible requires a transformation of our human being. We as humans must make peace if we are to live in a world free of crime, in a world of peace let us begin with a fundamental realization: no amount of thinking and no amount of public policy have brought us any closer to understanding and solving the problem of crime. The more we have reacted to crime, the farther we have removed ourselves from any understanding and any reduction of the problem. In recent years, we have floundered desperately in reformulating the law, punishing the offender, and quantifying our knowledge. Yet this country remains one of the most crime-ridden nations. In spite of all its wealth,

economic development, and scientific advances, this country has one of the worst crime records in the world.⁵

It was argued in this chapter that a peaceful approach to criminal justice will reduce recidivism and violations of the law. By criminal justice is meant an equitable system where the crime victims perceive the system to be considerate and supportive of their plight, while, in addition, the offenders experience the sanctioning agent as being legitimate. In addition, the criminal offenders will have solid ties or a connection to the state and they acknowledge their shame and stay proud for their solidarity inside the law-abiding society.

The position of Sykes and Matza was that criminal offenders in a real sense experience guilt for their harmful and criminal behaviours, and that it is only by denying the harms the offenders have caused, by using neutralization theory techniques as discussed in chapter two, that offenders avoid the feelings of self-condemnation. In other words, if the techniques of neutralization are employed, offenders can be effectively prevented from harming others. Since offenders cannot deny the harm caused by their criminal conduct, they become conscious of the crime victims' wrong and bad feelings caused by their actions. The self-condemnation brought upon the offenders by the recognition of the crime victims' suffering is likely to create compassion in the offenders.

Chapter two looked at the theories of restorative and restitutionary justice and came to the conclusion that both theories are about making relationships right.⁶ Braithwaite's theory of re-integrative shaming is a theory directed towards peace making.⁷ It was opined that re-integrative shaming theory is a peaceful reaction to harmful behaviour. The theory has the potential of transforming the offender's negative conduct into positive conduct and thereby transforms the broken relationship between crime victims and criminal offenders into a right relationship.

⁵ R Quinney, *'The way of peace: on crime suffering and service'* (1991) in H Pepinsky and R Quinney (eds) (1991) 3.

⁶ Chapter two section 5.

⁷ As above.

In addition, the re-integrative shaming theory creates an awareness of the harm done to another by someone's actions and, therefore, demonstrates compassion with forgiveness. In the process, the criminal offenders accept the shame through the support of others. This is an indication that the criminal offenders are aware of the harm they have caused.

Additionally, when the criminal offenders accept the shame and become aware of the harm they have caused, the result is justice. It is a type of justice that restores both crime victims and offenders which, in the final analysis, makes the relationship between the crime victims and the criminal offenders' right. Such justice needs compassion, respect, forgiveness, and acceptance. Peace results in justice, a good social life for the crime victims, the offenders, and the state, premised on equity and equality, with the elimination of criminal violence of all types which results in a peaceful existence. In other words, it was argued that we need to create just state or society founded on equality and equity where there are opportunities for everyone. It is in these societies that the criminal offenders who bring harm to others are restored, reintegrated and rehabilitated.

The truth of the matter is that, in one way or another, the various theories examined in chapter two collectively work to compensate and heal the crime victims, while, at the same time, re-integrate, restore and rehabilitate the criminal offenders.

Chapter two emphasized that each theory discussed represents a piece of a puzzle put in place to reveal the underlying idea of state-funded compensation. Each theory has a foundation in the compensatory demands of criminal justice for crime victims. All the theories represented a fresh focus for the criminal justice system in Nigeria, a fresh form of justice, a justice founded on state-funded compensation to crime victims, while, at the same time, caring for the offenders.

The chapter concluded by discussing the various justifications for state-funded compensation to crime victims⁸ and the crime victim's rights movement.⁹ In the light of the foregoing the chapter examined the following justifications: Society prohibits the individual from self-protection; the state denies any remedy to the victims by incarcerating the criminals; the state pays more attention and relief of the criminal to the exclusion of the crime victims; the state's moral obligation to aid the innocent victims; in a democracy no theoretical justification of absolute rightness is necessary to adopt a compensation programme; compensation programmes/schemes will bring a huge public awareness of the costs of crime and attract general public supports for law enforcement agencies to minimize these costs; compensation programmes/schemes will be advantageous and benefit the police because their attention will be drawn to the commission of crime since victims of crime will cooperate in assisting the police with useful information on crime; and compensation programmes/schemes strengthens democracy by restoring victims of violent crime to the position they were before the crime which is an indication of the welfare state's interest in the well-being of its people.

Based on the foundation laid in chapters one and two, the third chapter examined the emergence and development of state-funded compensation to crime victims.¹⁰ The chapter showed that the idea of state-funded compensation is ancient. It further discussed various historical backgrounds of state compensation to victims of crime. It also looked the African concept of compensation and examined the methods by which the Africans handled their justice systems, although it was noted that there are no uniform justice systems in African indigenous culture. The chapter concluded by examining how the African cultures treated the criminal offenders and how the criminals were restored into the community.

⁸ Chapter two section 9.

⁹ As above.

¹⁰ See chapter three section 2.

The ways and methods used in handling crime victims and the offenders in the African culture is an indication of the fact that the Africans empowered themselves to provide a justice system that has meaning to the people they serve and the power to perpetuate what had been preserved by the ancestors and passed on by the elders as testimony of their commitment to the future of tribes.¹¹

The various African societies for many years have established important features of dispute resolution processes in traditional settings. In African communities, there are shared notions of social justice across diverse legal cultures.¹² There are, however, certain similarities between traditional and contemporary dispute resolution methods on how to repair broken relationships.¹³ Firstly, the idea of having a third party contribute during judicial dispute is common to both contemporary and traditional court systems. Secondly, decision making processes for both traditional and contemporary justice systems need majority agreement. Thirdly, both justice systems are directed at giving a fair hearing to all parties to the dispute.

Fourthly, the notion of natural justice, particularly in the sense of a litigant not adjudicating his or her own case, is common to contemporary and traditional spheres of justice. Additionally, in some situations, where, for example, young offenders are involved, even formal court proceedings may be flexible, but traditional dispute resolution methods are usually always more flexible. These elements indicate more commonality between African traditional justice system which provided compensation to the crime victims and the modern justice system.

¹¹ AA Achu, EJ Owan & UF Abul 'Traditional methods of crime control and community security in Odukpani Local Government Area of Cross River State –Nigeria' (2013) 14(5) *Journal of Humanities and Social Science* 61.

¹² J de Coninck, J Culp & V Taylor *African perspectives on social justice* (2013) 5.

¹³ OO Taiwo, 'Traditional versus modern judicial practices: a comparative analysis of dispute resolution among the Yoruba of south-west Nigeria' (1998) 23(2) *African Development* 214.

The fourth chapter examined crime victims, offenders and the practice of restorative justice by defining the concept of RJ.¹⁴ It is noted that financial compensation cannot undo the harm the crime victims' suffered; as a result, an alternative method of dealing with crime victims and offenders in compensatory justice is very important. This is why restorative justice has been consistent in demonstrating that it provides great benefits for the crime victims, the offenders and the community in many ways.

The chapter demonstrated that the benefits of restorative justice come in many forms, fairness, accountability, satisfaction, repentance and forgiveness, emotional wellbeing, and feelings of safety of all concerned in the event of crime. Studies in Canada,¹⁵ the USA,¹⁶ Australia¹⁷ and New Zealand¹⁸ on crime victims' satisfaction, perception of fairness, participation and completion of restoration agreements, showed that results were significantly encouraging for crime victims.

In the United Kingdom, for example, crime victims who took part in mediation revealed that they were satisfied with the system because they met one on one with the offenders; the offenders saw "the real impact of their crimes and faced their victims"¹⁹ and testified that apology, negotiation of restitution, were the most important elements that led to the success of the process.

Notwithstanding the criticisms of the ability of restorative justice to minimize crime, the healing aspect of restorative justice teaches that, in as much as restorative justice does not increase crime, its adequacy and important contributions to crime victims' wellbeing, satisfaction and rehabilitation provides strong justification for its use wisely

¹⁴ See chapter four section 2.1

¹⁵ The Canadian Resource Centre for Victims of Crime 'Restorative justice in Canada: what victims should Know' (2011). <http://www.rjlloet.ca/documents/restjust.pdf>. (Accessed 20 July 2017).

¹⁶ K Pranis, 'Restorative justice in Minnesota and the USA: implementation and outcomes' 123rd international senior seminar visiting experts' papers 124-133.

¹⁷ JJ Larsen, 'Restorative justice in the Australian criminal justice system' (2014) 127 *Research and Public Policy Series* vii.

¹⁸ DJ Schmid, 'Restorative justice in New Zealand: a Model for US criminal justice' (2001) *Public Policy* 1-60.

¹⁹ 'Restorative justice council promoting quality restorative practice for everyone' <http://www.why-me.org/wp-content/uploads/.../RJC-Restorative-Justice-Works-Paper.pdf>. (Accessed 20 July 2017).

and widely.²⁰ It is submitted that "RJ is beneficial to victims and offenders by emphasizing recovery of the victim through redress, vindication, and healing and by encouraging recompense by the offender through reparation, fair treatment, and rehabilitation."²¹

RJ practices denounce crimes through the presence of the offenders' family and friends; it does not take crime lightly, it pays attention to the consequences of crime and searches for viable and legitimate ways of ensuring that criminal offenders are held accountable for their actions. The chapter discussed restorative justice as a way to promote the wellbeing of crime victims through processes in which the victims that desire to do so are empowered to participate in safe, supportive face-to-face encounters with the criminal offenders. Beyond the demand for the expansion of restorative justice involving crime victims and offenders, the argument in this chapter were to the effect that, even within the criminal justice system, there is the benefit of implementing RJ rules in cases involving all kinds of crime victims.

Finally, it was argued that the RJ approach in the justice system means enabling crime victims to take part in a process which permits them to narrate the experience and story of the crime in their own way. Restorative justice also acknowledges the harm done to them, and it provides an avenue for the criminal offenders to tender apology to the crime victims. Restorative justice minimizes the criminal justice system's anti-therapeutic effects and maximizes its therapeutic impact on crime victims. When crime victims are healed and satisfied from the impact of victimization, this produces more cooperative witnesses and greater reporting rates of future crimes.

²⁰ Chapter two section 8.

²¹ J Latimer, C Dowden & D Muise 'The effectiveness of restorative justice practices: a meta-analysis' (2005) 85(2) *The Prison Journal* 129.

It was submitted that treating crime victims restoratively is beneficial for the wellbeing of the crime victims, and, as suggested in the chapter, it might also increase the effectiveness of the justice system in preventing recidivism and so protect the society from victimization.

The fifth chapter looked at compensation and the treatment of crime victims under Nigerian and international laws. In the chapter, the study analysed the position of crime victims in Nigeria and found out that, at present, the Nigerian criminal justice system has no place for the crime victims compared with what it has for the offenders.²² The chapter examined compensation in Nigerian social norms *vis-à-vis* the international law position on state-funded compensation.²³

The chapter also focused on the Nigerian criminal justice system.²⁴ It was submitted that the administration of criminal justice in any jurisdiction comprises of the police, the prisons, and the courts.²⁵ The chapter discovered that in Nigeria these institutions are lagging behind in the dispensation of criminal justice in the country. It was argued that, unless Nigeria puts her house in order, its criminal justice administration will not measure up to the trend in other parts of the world in justice administration. Nigeria cannot give what it does not have. Nigeria does not have adequate and proper machinery for the administration of justice, and, therefore, it cannot dispense justice. One cannot put something on nothing and expect it to stand. Until Nigeria overhauls its criminal justice system through policy and legal reforms by which means crime victims will be properly and adequately positioned, and legitimately so too, as offenders are, justice will persistently be denied to Nigerian citizens who have suffered from criminal activities. The mechanisms, the procedures and the means to develop policies and legal

²² See chapter five section 2.

²³ As above.

²⁴ As above.

²⁵ As above.

reforms for crime victims with a view to establishing a Nigerian Victim Compensation Scheme were examined in chapter seven of the study.²⁶

The fifth chapter stressed the need to reform the Nigerian legal system in order to advance with the movement of the society to reflect present trends. It was noted that substantial changes have taken place in other jurisdictions; and, to this end, Nigeria cannot lag behind in this area. Besides, the areas of reform in the administration of justice in Nigeria cannot be exhausted because there are numerous problems that could not be dealt with in this study. It is certain, however, that the negative effects of these problems as discussed earlier in chapter five are the non-performing criminal justice system which has led to the denial of justice for the crime victims.

Following from the above, it is very important that any discussion on reform and modernization of the criminal justice ensures that any suggestions must be positive with regard to the victims of crime. Looking at the rate of crime in Nigeria, the study revealed that the reformation of the justice sector is not something to be handled with levity or to be taken for granted. Additionally, a positive and effective justice system is necessary for democratic governance and the rule of law on the premise that democracy works as a system with constituted institutional interrelated mechanisms serving the objectives of converting social preferences into public policies.

The chapter noted that for criminal justice to be effective, it must be dynamic, proactive and culturally relevant. For this reason, it was submitted that there is a need for synergy and active cooperation among all levels of governments in Nigeria with a view to formulating a consistent and penal policy that supports or approves of the contributions of all stakeholders in the justice sector and in criminal justice value progress in order to design laws for a state-funded scheme for crime victims.

²⁶ See chapter seven section 4.

The sixth chapter examined state-funded compensation for crime victims and its practices and procedures. The chapter emphasized that Nigeria as a sovereign state has been dragging its feet with regards to its binding duty to institute a state-funded compensation scheme as indicated in the table in chapter six.²⁷ Relying on the social contract theory²⁸ in terms of which empathy demonstrated by the state is accepted as building trust in the criminal equity framework, the chapter submitted that it is time for Nigeria to adopt a state-funded compensation scheme for crime victims. This is because the best option that would ensure complete compensation for crime victims is the payment of compensation by the state. Such a compensation scheme may take either of the following forms, a state-advanced compensation scheme or a state-funded compensation scheme.

It was further argued that the compensation systems applied in New Zealand, the UK and the USA, Canada, Denmark, the Republic of the Philippines, and Finland will provide possible templates in Nigeria for compensatory processes for crime victims.

The chapter did a comparative analysis of the formal and actual implementation of the state compensation scheme in the individual jurisdictions. In actualizing this, the comparison was thematically structured, and the results given with reference to victim compensation and information. It is submitted, however, that the point made in the chapter is on comparison and analysis, because the process of comparison was established from the beginning of the thesis.²⁹ It would, in fact, have been impossible not to make continuous comparisons in a research study of this nature.

The comparison is not only necessary, but it also serves as an instrument to assist me to understand the problems and events I confronted in the course of the study. Additionally, the comparison was guided by the need to find the definitive measuring instrument to develop a victim compensation scheme in Nigeria.

²⁷ See chapter six section 9.

²⁸ Chapter two section 2.

²⁹ Chapter three section 3.

In the seventh chapter the study examined the need to institute and implements a statutory crime victim compensation scheme in Nigeria. In doing this, it was argued that the introduction of the NVCS would provide a platform for crime victims to receive compensation from the state where adequate compensation to the crime victims for their sufferings after victimization would be made available. The chapter further provided a model for Nigeria in establishing and implementing a crime victims' compensation scheme in the country.

In an attempt to achieve this, the chapter examined the need for a national framework for a crime victims' compensation scheme in Nigeria.³⁰ In addition, the chapter looked into the mechanics of a victim compensation scheme,³¹ establishing compensation programmes for victims,³² funding the compensation programmes,³³ the structure of the compensation programmes using the SALRC's model, and the need to implement international instrument provisions for crime victims' compensation.

Furthermore, the chapter relied heavily on the precedents of other jurisdictions in respect of crime victims' compensation schemes³⁴ with a view to developing the same for Nigeria. It also examined the implications of restorative justice for a victims' compensation scheme in Nigeria.³⁵ The chapter concluded by discussing the relevance of the Commonwealth guidelines for victim's treatment and the UN's Declaration of Basic Principles of Justice for Victims to Nigeria.³⁶ The foregoing discussion was closely followed by examining the possibility of adopting the South African Law Reform Commission's Compensation Scheme in Nigeria.³⁷

³⁰ Chapter seven section 2.

³¹ As above.

³² As above.

³³ As above.

³⁴ Chapter six sections 8-8.1.

³⁵ Chapter seven section 8.

³⁶ As above.

³⁷ As above.

It was argued that there is a dire need to create a balance between the privileges of victims and those of offenders in Nigeria and that this can be achieved and realized only by establishing the NVCS. The study stressed that justice should be done for all the parties concerned and affected by the criminal behaviour. Crime victims should not be ignored; this is why a NVCS is urgently needed to compensate crime victims for their sufferings. It was also submitted that, in Nigeria, the crime victims are the real sufferers and remain sufferers in the entire criminal justice process.

The chapter submitted that humble and realistic efforts should be made by the Nigerian authorities towards the main objectives of providing viable legislation which could provide compensation to crime victims so that the victims are not ignored in the process of the administration of justice. Chapter seven, thus, advocated the establishment of Victims' Compensation Scheme and laws relating to the payment of compensation that remained inadequate in Nigeria.

The entire thesis expanded the scope of approach on state-funded compensation to crime victims based on current literature. It was argued that victims' compensation is not all about financial rewards but also has to do with the need of restoring victims to normal life in the aftermath of victimization. In addition, the thesis argued in favour of the criminal offenders that there is need for balanced justice. The offenders should not be ignored and left to their criminal behaviour. Although the thesis primarily focused attention on crime victims and state compensation, it was argued that the criminal justice administration must cater for the offenders with a view to avoiding recidivism.

3. Conclusions

Finally, against the backdrop of the fact that crime victims in Nigeria do not receive compensation and support from the Nigerian government,³⁸ the study draws the following concrete conclusions from the preceding chapters:

1. The compensation provisions in Nigeria are far from being adequate; they are deficient not only in respect of the amount to be awarded but also on the scope and circumstances of the award.³⁹
2. The Nigerian government relies on the principles of restorative justice on the grounds that restorative justice is relevant in our society today to hold offenders accountable, meets the needs of the crime victims and those of the society.⁴⁰
3. Restorative justice is a principle based on repairing harm⁴¹ and compensation to crime victims.
4. Nigeria's idea of court compensation for crime victims does not meet the standards of restorative justice principles.⁴²
5. In other jurisdictions, the crime victim's tortious remedies against criminals have been substituted by state-subsidized victim remuneration or compensation.⁴³ The same should apply in Nigeria.

³⁸ A Olatubosun, 'Compensation to victims of crime in Nigeria: a critical assessment of the criminal-victim relationship' (2002) 44(2) *Journal of the Indian Law Institute* 201.

³⁹ MA Owoade, 'Reform of sentencing in Nigeria: a note on compensation restitution and probation' in S Adetiba (ed) *Restitution compensation and remedies for victims of crimes* (1989) 125-126.

⁴⁰ OJ Solomon, & R Nwankwoala 'The role of restorative justice in complementing the justice system and restoring community values in Nigeria' (2014) 2 *Asian Journal of Humanities And Social Sciences* 130.

⁴¹ Department of Justice Canada 'Values and principles of restorative justice in criminal matters' <http://www.iirp.edu/pdf/RJValues-DOJCan.pdf>. (Accessed 9 March 2017).

⁴² J Braithwaite, 'Setting standards for restorative justice' (2002) *The Centre for Crime and Justice Studies* 563.

⁴³ New Zealand Issue Paper 11 Compensating crime victims (2008) 10.

6. Similarly, in England, just as in New Zealand, the tortious remedy of the crime victims against the offenders has also been replaced by state-funded crime victim compensation.⁴⁴ Nigeria can do the same.
7. Nigerian laws in respect of compensation orders in the context of criminal trials are inadequate.⁴⁵
8. The absence of any legislative framework for crime victims does not exonerate the Nigerian government from its obligations to protect and guarantee crime victims' rights.⁴⁶
9. The non-availability of any law on victims' compensation in Nigeria is based on the contention that reliance is placed on the chapter four of the Fundamental Rights provisions of the 1999 Constitution⁴⁷ and international law through conventions, treaties and protocols.⁴⁸
10. Compensation alone is not a sufficient measure for providing redress for harm suffered by crime victims, but "compensation must, as far as possible, wipe out

⁴⁴ Office of the Victims of Crime 'Victim compensation programs: Great Britain and Northern Ireland' Great Britain including England Scotland and Wales has a crime victim compensation program to provide financial compensation for victims of violent crime https://www.ncjrs.gov/ovc_archives/reports/intdir2005/greatbritain.html. (Accessed on 9 March 2017).

⁴⁵ Nigeria Criminal Procedure Code sec 365.

⁴⁶ OO Osinuga, 'In the midst of Nigeria's legal order playing catch up to social unrest and conflict recognizing the rights of victims and enforcing their fundamental human rights' (2001) 4.

⁴⁷ Nigerian Constitution sec 36 (1) In the determination of his civil rights and obligations including any question or determination by or against any government or authority a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

⁴⁸ United Nations Convention on Justice and Support for Victims of Crime and Abuse of Power "PREAMBLE Recalling the resolution of the UN General Assembly (GA/RES/50/34) in 1985 which called upon Member State to take the necessary steps to give effect to the provisions contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power Recognizing that millions of people including many women and children throughout the world still suffer harm as a result of crime abuse of power and terrorism and that the rights of these victims still have not been adequately recognized and that they may in addition suffer hardship when assisting in the prosecution of perpetrators Article 11 pay Compensation (1) When restitution is not fully available from the offender or other sources State Parties shall endeavor to provide financial compensation to: (a) victims who have sustained significant bodily injury or impairment of physical or mental health as a result of intentional violent crime (b) the victims' family in particular dependants of persons who have died (or become physically or mentally incapacitated) as a result of such victimization (2) Compensation shall be provided for: (a) treatment and rehabilitation for physical and psychological injuries caused to victims."

all consequences of the illegal act and re-establish the situation which would, in all probability have existed if that act had not been committed.”⁴⁹

The need and desire for the reformation of a country’s legal framework and systems cannot be overemphasised.⁵⁰ This is because legal reformation brings development, growth and certainty into the jurisprudence of a nation.⁵¹ The reformation of a country’s law enhances the people’s confidence⁵² in the criminal justice administration. Consequent upon the foregoing, a critical examination of Nigeria’s laws will reveal that there have been few provisions in some statutes⁵³ dealing with crime victims’ compensation or remedies, and those remedies or compensations are from the individual offender or convict, not from the government. The implication of this is that very little and, indeed less than a marginal emphasis is placed on crime victims’ compensation.⁵⁴

It is submitted that there is a need for comprehensive law reform in Nigeria to accommodate crime victims’ compensation when such victims suffer from the criminal act of another. This is against the backdrop of what obtains in other jurisdictions. The Administration of Criminal Justice Act and the relevant state laws in Nigeria should be amended to reflect a total coverage of all categories of crime victims which will be commensurate to the practice in New Zealand.

⁴⁹ O Amezcua-Noriega, ‘Reparation principles under international law and their possible application by the international criminal court: some reflections’ (2011) 2.

⁵⁰ D Rutzen, & D Moore ‘The role of legal reform in supporting civil society: an introductory primer’ (2009) 23.

⁵¹ KE Davis, & MJ Trebilcock ‘Legal reforms and development’ (2001) 22 *Third World Quarterly* 33.

⁵² D Indermaur, & L Roberts ‘Confidence in the criminal justice system’ (2009) *Australian Institute Of Criminology* 1.

⁵³ Administration of Criminal Justice Act 2015 sec 319(1) “A court may within the proceedings or while passing judgment order the defendant or 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.”

⁵⁴ CC Ani, ‘Reforms in the Nigerian criminal procedure laws’ (2011) 1 *NIALS Journal on Criminal Law and Justice* 89.

Additionally, the passage into law of the Criminal Justice (Victim's Remedies) Bill is long overdue. It is noted that the Bill has been before the Nigerian National Assembly since 2011 awaiting approval. Most importantly, the relevant sections of the Nigerian Constitution of 1999 should be amended to comply with the current trends in other jurisdictions, such as Indian, where the Indian Supreme Court has held:

It is a weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature.⁵⁵

In sequel to the above, in India articles 14 and 21 of the Indian Constitution on fundamental rights could be widely interpreted to reflect the rights of the crime victims which include the right to compensation.⁵⁶

To avoid selective justice in terms of crime victims' compensation, a good and effective administrative format or scheme needs to be put in place. In this connection, it is advised that:

1. Compensation schemes dedicated principally to the compensation of crime victims with qualified personnel both from the government and private sectors would be appropriate following the point of reference of the UK'S compensation Scheme; and
2. One type of scheme should be established to provide compensation to all crime victims of victimization, following the example of New Zealand's accident compensation scheme.

⁵⁵ *Rattan Singh vs State of Punjab* (1979) 4 SCC 719.

⁵⁶ A Anusree, 'Right to compensation of victims of crime in India: need for a comprehensive legislation' (2016) 2 *International Journal for Legal Developments and Allied Issues* 43.

Consequent upon the foregoing, the crime victims' compensation scheme would pay attention to the Commonwealth Guidelines and principles strictly:

1. Faultless victims who co-operate with the criminal justice system will qualify for compensation;⁵⁷
2. Compensation is available when the victim dies or suffer serious bodily harm and in the case of theft;
3. A deliberate criminal act has taken place. This implies a successful prosecution need not be required in all cases, for instance where the criminal offender is dead;
4. No claims for property – except personal items of the crime victims stolen by the criminal - should be addressed and handled;
5. Compensation might be paid on account of a Good Samaritan harmed for arresting offenders;⁵⁸
6. The only compensable crimes which will attract compensation are those that occurred within the federation of Nigeria , that is within the thirty-six states;⁵⁹
7. Only Nigerians, legal residents, aliens and lawful visitors from other countries with similar compensation scheme will qualify for compensation in Nigeria;
8. Only direct crime victims and indirect victims will qualify for benefits within the meaning of the United Nation Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power under article 41 paragraph 2(b);
9. Retrospective claims will not be permitted or allowed;
10. Compensation must be paid to the direct crime victims or their dependants whether or not the criminal offenders are identified; and;

⁵⁷ JC von Bonde, 'Redress for victims of crime in South Africa: A comparison with selected Commonwealth jurisdictions' unpublished Ph.D. thesis Nelson Mandela Metropolitan University (2006) 279.

⁵⁸ United Nations Declaration of Basic Principles The term 'victim' also includes where appropriate "the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."

⁵⁹ The Nigeria Constitution sec 3(1) "There shall be 36 states in Nigeria that is to say Abia Adamawa Akwa Ibom Anambra Bauchi Bayelsa Benue Borno Cross River Delta Ebonyi Edo Ekiti Enugu Gombe Imo Jigawa Kaduna Kano Katsina Kebbi Kogi Kwara Lagos Nasarawa Niger Ogun Ondo Osun Oyo Plateau Rivers Sokoto Taraba Yobe and Zamfara."

11. To qualify for compensation the crime victims or their dependants must have reported the crime to the police or any other law enforcement agency.

This study has demonstrated that there is a pressing demand for the existence of measures which will be directed at creating an enabling environment for the effective enforcement of offenders' liability to crime victims in Nigeria. It is submitted that Nigerian courts' awards of compensation alone will not address the plight of the multitude of victims in Nigeria, irrespective of the efficiency of the structures created by the state.

It is noted that the principal reason for the inability of criminal offenders to pay compensation in Nigeria is the level of poverty of offenders. This is not peculiar to Nigeria, because even rich and developed nations like Britain, New Zealand and the United States of America share this problem of poverty amongst the citizens. It is not, therefore, expected that criminal offenders in Nigeria will ever be able to remedy in full the injury they have caused through their criminal behaviour.

It is on the foregoing premise that it becomes urgent and necessary that the Nigerian government, as a responsible and responsive authority, intervenes in establishing a state-funded crime victims' compensation scheme within the boundaries proposed above. It is submitted that, if the Nigerian state keeps on paying lip service by not taking the issue seriously, it does so at the risk of making the crime victims feel isolated or estranged from the voice of concern and the suffering of crime victims.

It stands to reason, therefore, that state-financed victims' compensation is the essential instrument for resolving the crime victim-offender problem. The crime victims will receive healing from the effect of victimization without any fear of recidivism, while, on the other hand, the criminal offenders will receive restoration into the community to become better citizens.

Finally, it will be recalled that, at the beginning of this study, the constitutional rights to freedom and security of the person⁶⁰ were stressed and given considerable attention. The rights further included the rights to protection against criminal violence from any source, whether public or private sources, irrespective of the country.⁶¹ Offering or giving effect to this protection is one of the obligations of the state. The Nigerian government has failed in this duty and, to make matters worse, the Nigerian courts are helpless because they lack the requisite jurisdiction to provide effective redress in the form of compensation in criminal cases for the harm done to those victimized owing to the state's failure of protection. The only minor compensatory power provided in some statutes, as noted earlier, is grossly insufficient and inadequate.

The SALRC had noted that African tradition is founded on the principles of reparation or compensation. Accordingly, the SALRC stated that:

Traditionally African principles are based on reparation and less emphasis is placed on the retributive aspect of crime. The victims of crime are therefore central in those judicial systems. The question arises whether the so-called African principles should also be accommodated in the search for a system which will give due recognition to the victims of crime. The search for restoring the role of victims of crime may also have far reaching consequences for the Government's Reconstruction and Development Programme.⁶²

⁶⁰ As above. Sec 14 (1)(2) "The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice it is hereby accordingly declared that: the security and welfare of the people shall be the primary purpose of government."

⁶¹ The Constitution of the Republic Of South Africa 1996 sec 12(1) "Everyone has the right to freedom and security of the person which includes the right not to be deprived of freedom arbitrarily or without just cause and a right not to be detained without trial and a right to be free from all forms of violence from either public or private sources."

⁶² South Africa Law Reform Commission Sentencing (A New Sentencing Framework) Project 82 Report (2000) 2 7-2 8.

In the light of the foregoing, legislative intervention is needed in Nigeria with a view to giving substance to crime victims' compensatory rights, which must be fortified by proper financial help from a state-supported compensation scheme founded on the values and principles of restorative justice owing to the fact that:

If compensation to victims is to be an overarching goal of restorative justice, compensation programmes can serve a very valuable purpose: it can supplement restitution in those cases where offenders are unable to fully repair the harm done to victim. Moreover, in those cases where it would take years for offenders to pay back their victims, compensation funds could pay the victim immediately, and offenders would then pay into the compensation fund.⁶³

4. Contributions of the study to knowledge

What the study has been able to achieve with respect to the United Nations' Commonwealth Guidelines and Africa Commission' recommendations on state compensation to victims of violent crime is to improve public knowledge by contributing original evidence to the body of literature on victim's compensation by the state in terms of Nigeria's perspective on the theories, concepts, models and application of compensatory mechanisms on victim's treatment.

Additionally, the study's findings offered possible solutions and answers to the question of whether the state compensation in Nigeria could be a better option to civil action by the victims, and they have demonstrated how state compensation could be established to benefit the crime victims in general and, to some extent, the criminal offender by incorporating the concept of RJ into the NVCS. The concept of a RJ contribution to NVCS is important for academia and practitioners who are often designated to chair dispute resolution mechanisms in Nigeria because the success or failure of their efforts of handling disputes in Nigeria could largely rest on their knowledge of world view of crime, crime victims, reintegration and reconciliation of parties affected by the criminal conduct.

⁶³ Von Bonde (n 57 above) 286.

It is of utmost importance to note that criminal law and its justice mechanisms advocate retributive justice or the punishment of the offender on the grounds that, where there is a wrong, there must be a remedy, *ubi jus ibi remedium*, but the study argued that the absence of a criminal prosecution does not always necessarily mean that redress and justice for victims cannot be achieved by other alternatives, for example through the means of compensation.

RJ benefits victims of crime, especially victims of violent crime. The study findings showed the potential benefits of RJ to victims of crime, to the justice system and to the state if the principles and concepts of RJ are implemented. To the state, RJ reduces costs compared to the conventional criminal justice system. To the victims of crime who take part in mediation processes, RJ offers the possibility of answering the "why me?" question. To this end, the study submitted that RJ is seen not only as a model of justice but also as a channel for intra-personal harmony, and inter-personal reconciliation.

The study argued that, since the state would not have sufficient resources and personnel to protect every citizen from criminal victimization, the answer to the question of why the offender targeted a particular victim might serve as a means of self-protection and, or their belonging to prevent further recidivism. Although a victim's vulnerability is not an invitation to be victimized, to some victims state assistance, in the form of compensation could serve as a knowledge base for self-safeguards or a self-policing strategy.

Compensatory mechanisms could help in the dispensation of justice in a country like Nigeria where access to justice and formal judicial forums is difficult and expensive, and where the unbiased treatment of victims will by no means be guaranteed. Besides, the less crowded the prisons, courts and police cells of any system, the better the confidence the citizenry and the international community places in the criminal justice system of such a nation as an effective criminal control agency and the more improved

the image of the country and criminal justice agents of the country in question would be.

In all, the study has demonstrated that the NVCS will generally receive positive response and acceptance when established. State compensation to victims would be an alternative means of ameliorating the effects of institutional failure and the *modus operandi* of the Nigerian criminal justice system at the time of study.

5. Recommendations

It is noted from the findings of the various chapters and the lessons learnt from the jurisdictions examined, that recommendations may consider questions such as: 'who' benefits from compensation schemes, 'how' will crime victims benefit, and 'what' will crime victims benefit as these questions relate to the design and the implementation of compensation scheme in Nigeria. In providing answers to the 'who' question, attention is directed to the crime victims as the primary beneficiaries and the source of compensation funds. In other words, compensation schemes must be focused or directed to crime victims identified by the state as is practised in other jurisdictions.⁶⁴

It is submitted that crime victims are the principal subjects of a balanced therapeutic jurisprudence mechanism. To this end therapeutic jurisprudence must be allowed to perform its reconciliatory and healing⁶⁵ process and repair some of the psychological trauma the crime victims have encountered.⁶⁶ Additionally, there should be a comprehensive definition given to crime victims in order to avoid selective justice which is tantamount to discrimination.

⁶⁴ C Correa, 'Reparations in Peru from recommendations to implementation' (2013) 1.

⁶⁵ DB Wexler, 'Two decades of therapeutic jurisprudence' (2008) 24 *Touro Law Review* 17&20.

⁶⁶ J Balson, 'Therapeutic jurisprudence: facilitating healing in crime victims' (2013) 6 *Phoenix Law Review* 1020.

In this connection, crime victims should include other victims who in one way or the other are victimized by crime.⁶⁷

Financing the compensation scheme should be the collective responsibility of the Nigerian governments, the private sector, the offenders and an international institution like the World Bank as is the case in Colombia.⁶⁸ The reason for this position is that, beyond the binding duty of the state to bear the cost of compensation, efforts should be made to confiscate and sell the assets and property of criminal offenders which are identifiable with a view to using the proceeds to increase the financial base of a crime victims' compensation fund.

The question of how to secure compensation comes next. For a successful compensation scheme to be in place, the procedure and the manner in which the scheme is designed and delivered becomes an issue. Victims' involvement in justice process and transitional justice⁶⁹ is, therefore, important for how compensation is secured for the crime victims.

Consequently, Nigeria may take a clue from the Chilean practice where crime victims and people filing law suits all have access to the files⁷⁰ thereby recognizing the crime victims' views in consultation and in participation in the criminal justice process. Additionally, there will be need for transparency from whoever is part of the

⁶⁷ United Nations Declaration of Basic Principles article 41(1)(2) Victims means persons 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 are in violation of criminal laws A person may be considered a victim under this Declaration regardless of whether the perpetrator is identified apprehended prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim the term victim also includes where appropriate the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

⁶⁸ World Bank Group 'Collective reparation in Colombia: when everyone suffers from the ravages of war' <http://www.worldbank.org/en/news/feature/2016/07/26/collective-reparation-colombia>. (Accessed 3 March 2017).

⁶⁹ D Taylor, 'Victim participation in transitional justice mechanisms: real power or empty ritual?' (2014) 24.

⁷⁰ R Blanco, R Hutt & H Rojas 'The reform to the criminal justice in Chile: evaluation and challenges' (2005) *The Loyola University Chicago International Law Review* 12-13.

compensation scheme in such a way that there will be effective involvement of all crime victims and the private sector since several classes or types of crime victims are likely to claim different kinds of compensation. The transparency process will design, implement and monitor the compensation scheme or programme that will give or ensure equal opportunities for a meaningful interaction with various crime victims.

Furthermore, the thesis recommends justice and redress for crime victims in the material sense which will be built on restitution and compensation supported by enacting legislation to improve the Nigerian Constitution and the Administration of Criminal Justice Act 2015. Compensation is to be effected only when the NVCS is established. Restitution and compensation cannot work without NVCS; the success of restitution and compensation will to a large extent depend on an effective synergy between them. Justice and redress for the crime victims in the form of compensation must be protected by the standards and rules enshrined in the Nigerian Constitution, in the nation's indigenous law, and on the idea of restorative justice.

In addition to the foregoing it is recommended that:

1. There is the need for a national forum of experts to facilitate the design of a criminal equity system and policy;
2. The enactment of a criminal code outside of the Administration of Criminal Justice Act 2015, which effectively addresses the current law and other issues plaguing different segment of the Nigerian society, is long overdue;
3. There is need for a holistic review of the management and funding of the judicial systems in Nigeria;
4. There is the need to find alternatives to imprisonment as is being done in other systems, as, for example, making the criminal offenders pay restitution to the crime victims;

5. The management and control of prisons⁷¹ should be removed from the exclusive legislative list to the concurrent legislative list in order that state governors and the Chief Judges of the states will have input in the entire criminal justice process in their various states;⁷²
6. Only compensable crimes will be compensated under the NVSC; and;
7. It is further recommended that the exchange of ideas on state-funded victims' compensation between Nigeria government officials and the officials of the jurisdictions examined in the study would be appropriate with a view to drawing first-hand lessons from the experiences, practices and procedures of those jurisdictions.

Notwithstanding the challenges to the inadequate victim's compensation in Nigeria, the study argues and makes recommendations to the Nigeria state and its criminal justice system that monetary or other compensation means have the potential to provide for the national therapy of crime victims, the reconciliation of persons affected by crime and offender reintegration into the community. Additionally, state compensation would bring justice closer to the people and the people nearer to justice. Beyond this, crime victims can make a choice between going to court or going for restoration. The study humbly submits that the choice of reconciliation be accorded the crime victims.

In addition to what has been said above, crime victims are not necessarily made better by incarcerating offenders through the institutions of the criminal justice system, by merely taking away offender's freedom, or by subjecting the offenders to degrading and inhumane treatment and making them share one cell with two equally undesirable criminals. Nigeria has a choice to make, firstly there is the soft option of simply locking offenders up and subjecting them to a brutal degrading system that will almost certainly guarantee offender's recidivism, and, secondly, the hard option of compensating crime

⁷¹ The Constitution of the Federal Republic of Nigeria 1999 (n 59 above).

⁷² T Osasona, 'Time to reform Nigeria's criminal justice system' (2015) 3(2) *Journal of Law and Criminal Justice* 78.

victims and challenging the offenders to become law-abiding citizens by the practice of restorative justice.

If Nigeria and its criminal justice practitioners desire reform in the justice sector and want to improve access to justice for the majority of Nigerians, especially those victimized, and to control crime and delinquent behaviour then the potentials of compensatory mechanisms need to be acknowledged. The NVSC is greatly needed in Nigeria, because the majority of the people have been harmed by one form of crime or another and there are unresolved pains no matter how subtle. What the Nigerian government does with unresolved and repressed victim's trauma, pains and anger will to a large extent make a difference with regard to creating national harmony or more division and hatred. To this end, it is the recommendation of this study that policy makers in Nigeria need to seek impartial knowledge and to broaden their understanding of how and where effective state compensation to crime victims operates as in the UK, the USA, New Zealand, Canada, the Philippines, Colombia, India, and Finland and pursue policies which take full account of their existence and success.

Conclusively, consolidation and the maintenance of peace in Nigeria cannot be achieved until Nigerians are confident that redress for crime victims' pains and grievances can be achieved by legitimate, legal and non-intimidating structures for the peaceful resolution of disputes between the victim and the offender and the fair administration of justice. It is submitted, therefore, that the time to give a crime victims' compensation scheme a fair chance in Nigeria is now.

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Criminal Procedure Code 1898

Decree No. 62 of 1999

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Hammurabi Code 1775 BC

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Parental Kidnapping Prevention Act 1982

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Prison Rape Elimination Act 2003

Robbery and Firearms (Special Provisions) Decree 1984

Safety Act 2010 Tribal Law and Order Act

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State Compensation to Victims of Crime (Consolidation) Act No. 688 2004

Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act 2006

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Victims' Rights and Restitution Act 1990

Victims' Rights Clarification Act 1998

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Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters
ECOSOC Res. 2000/14 United Nation Document E/2000/INF/2/Add.2 35.

Convention against Torture and Other Cruel Inhuman or Degrading Treatment or
Punishment and the Optional Protocol

Convention on the Elimination of All Forms of Discrimination against Women

Convention on the Rights of the Child

Council of Europe European Convention on the Compensation of Victims of Violent Crimes (ETS No.116)

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by GA/RES/40/34

Declaration on the Protection of All Persons from Enforced Disappearance

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European Treaty Series - No 116 European Conventions on the Compensation of Victims of Violent Crimes

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Executions Standard Minimum Rules for the Treatment of Prisoners

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International Covenant on Civil and Political Rights International Covenant on Economic Social and Cultural Rights

Milan Plan of Action Principles on the Effective Investigation and Documentation of Torture and Other Cruel Inhuman or Degrading Treatment or Punishment Principles on the Effective Prevention and Investigation of Extra-Legal Arbitrary

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Protection of Victims of International Armed Conflicts International Convention for the Protection of All Persons from Enforced Disappearance 259

Rome Statute of the International Criminal Court Art 75

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United Nations Doc/A/CONF.144/20 Par 83

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Universal Declaration of Human Rights A/RES/217 A 1948

Regional Instruments

African Charter on Human and Peoples' Rights

African Commission on Human and Peoples' Rights Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa section A Par 1-5

Annex:

International Crime Victim compensation programs Directory: Status summary

(Source: Crime Victim Compensation Program Directory Compiled by the United States Department of Justice and Office for Victims of Crime in Coordination with the US State Department's Overseas Citizens Services)
<https://www.ovc.gov/intdir/pdftxt/intdir.pdf>. (Accessed 7 July 2016).

Country	Compensation Program	No Compensation Program
Albania		∫
Angola		∫
Argentina		∫
Australia	∫	
Austria	∫	
Azerbaijan		∫
Bahamas		∫
Bangladesh		∫
Belarus		∫
Belgium	∫	
Bermuda	∫	
Bolivia		∫
Bulgaria		∫

Burma		∫
Burkina Faso		∫
Cambodia		∫
Canada	∫	
Cape Verde		
Chad		
Chile		
China		
Colombia	∫	
Comoros		∫
Costa Rica		∫
Cote D'Ivoire		∫
Croatia		∫
Cuba		∫
Cyprus	∫	
Czech Republic	∫	
Denmark	∫	
Djibouti		∫
Ecuador		∫
Eritrea		∫
Estonia		∫
Ethiopia		∫
Finland	∫	
France	∫	
Gabon		
Gambia, The		
Germany	∫	
Ghana		∫

Greece		∫
Guatemala		∫
Guinea-Bissau		∫
Guyana		∫
Haiti		∫
Honduras		∫
Hong Kong-SAR	∫	
Hungary		
India	∫	
Ireland, Republic of	∫	
Israel	∫	
Italy	∫	
Japan	∫	
Kazakhstan		∫
Korea		∫
Kuwait		∫
Kyrgyzstan		∫
Laos		∫
Latvia		∫
Lesotho		∫
Liberia		∫
Lithuania		∫
Luxembourg	∫	
Malaysia		∫
Malawi		∫
Mali		∫
Malta		∫
Marshall Islands		∫

Mauritius		∫
Mexico		∫
Micronesia		∫
Moldavian Republic		∫
Mongolia		∫
Mozambique		∫
Namibia		∫
Nauru		∫
Netherlands, The	∫	
New Zealand	∫	
Niger		∫
Nigeria		∫
Norway	∫	
Oman		∫
Pakistan		∫
Panama		∫
Philippines	∫	
Poland	∫	
Portugal	∫	
Romania		∫
Russia		∫
Rwanda		∫
San Marino		∫
Sao Tome and Principe		∫
Senegal		∫
Seychelles		∫
Singapore		∫
South Africa		∫

Spain	∫	
Swaziland		∫
Sweden	∫	
Switzerland	∫	
Tanzania		∫
Thailand		∫
Togo		∫
Trinidad and Tobago		∫
Turkey		∫
Ukraine		∫
United Arab Emirates	∫	
United Kingdom	∫	
Uruguay		
United States	∫	
Uzbekistan		∫
Venezuela		∫
Yemen		∫
Zimbabwe		∫