

Abstract

One of the ways the plight of victim could be cushioned is through award of compensation. However, experience shows that there are numerous challenges posing a threat to compensation for victims of crime. These challenges range from abuse of plea bargain, corruption, inability of the victim to request a compensable item and the uncertainty as to whether there is hope of compensation for damage suffered at the end of the trial. In discussing these challenges, we adopted doctrinal research method whereof the Constitution, statutes, case law, were utilized as our primary source of data, while textbooks, journal/articles and reliable internet materials were used as secondary sources of data. Findings revealed that under the extant laws in Nigeria, because compensation is merely at the discretion of the court, victims most times, never get a pronouncement as to compensations for many reasons ranging from decline of discretion by the court, technicality of the law, etc. Hence, it is recommended that the court should be bold enough to spring up in every opportunity it has and act when every voice is silent in the fight for justice regarding compensation for victims of crime in Nigeria. It is only through this way that Nigerian criminal justice system will revamp and to great extent measure up with other jurisdictions in victim compensation regime.

Keywords: Criminal Justice, Crime Victim, Challenges, Compensation, Nigeria

1. Introduction

The Nigerian criminal justice system is one-sided such that the offender enjoys better treatment than the victims. In *Josiah v the State*,¹ Oputa stated clearly that justice is tripartite, justice for the offender, justice for the victim and justice for the society whose norms and social values have been desecrated by the wrongful act complained of. By this understanding, victims of crime have rights that ought to be protected throughout the entire judicial process. Amongst these rights², the compensation of victims of crime is of great importance. One of the purposes of compensation is to reinstate the injured persons to the original position they formerly enjoyed before the harmful event. Ensuring the respect of the rights of victims to compensation has thus provoked interest at the level of international, regional and national legislations. The criminal law systems of different countries have varying approaches in ensuring the respect of victims' rights to compensation. In the Nigeria criminal law system, ensuring the respect of rights of victims of crime can be explained in reference to different textual provisions, including the 1999 Constitution (as amended) and the Administration of Criminal Justice Act, 2015, among others. However, it remains to be stated that there are several challenges militating against the crime victim compensation regime in Nigeria. These stem from Nigeria's defects in the provisions of the law. The purpose of this work therefore, is to do an appraisal of these challenges with a view to making recommendations that may help in reshaping our criminal justice system to be more sensitive to the plight of the victim.

2. Conceptual Clarification**Crime Victim**

Garner defines a victim as a person harmed by crime, tort or other wrong.³ Karibi Whyte also defines victim as any person, dependent or institution who has suffered injury from the criminal act of the offender who has been found guilty in such acts.⁴ Section 1 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by General Assembly Resolution 40/34 of 29 November 1985 herein referred to as the UN 1985 Declaration provides as follows: '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. The UN 1985 Declaration also includes individuals who suffered indirectly, such as the immediate family or dependents of the direct victim and any other person who have suffered harm as a result of intervening to assist the direct victims. Victim may also be regarded differently from varying angles depending on the description given to the term by the law. For instance, some have argued that instead of regarding the victim as one who has undeservedly suffered as a result of an act of another, he should rather be seen as one who is innocent of the misconduct of the offender.⁵ The British Compensation Act defines victim from a conservative angle bearing in mind the common law attitude to compensation of victims of crime without a criminal trial. A victim, in this regard, is therefore one who has 'undeservedly suffered' by the criminal conduct of others.⁶ The Compensation Board in Britain

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¹ [1985] 1 NWLR (Pt. 11), 125, 141.

² Victims' rights include: the right to protection, right to fair trial, dignity, compensation and reparation, assistance and information, Etc.

³ A B Garner, *Black Law Dictionary* (8th Ed., USA, St. Paul. MMN West Publishing Co., 2004), 1425.

⁴ Karibi Whyte, 'National Policy on Compensation to Victim of Crime: How Desirable', Federal Ministry of Justice, Lagos, 1990, in F Izobo, 'Challenges of Victims of Crime in Administration of Criminal Justice in Nigeria', *International Journal of Business & Law Research*, [2019], 7(2), 78-87.

⁵ F Izobo, 'Challenges of Victims of Crime in Administration of Criminal Justice in Nigeria', *International Journal of Business & Law Research*, [2019], 7(2), 78-87.

⁶ D Miers, *Response to Victimization*, (Abingo: Milton Trading Estate, 1978), 5.

uses this barometer to determine who a victim is for purpose of compensatory awards. The fact that the Compensation Act has limited victims to those who 'undeservedly suffer' means that the principle of blameworthiness of a victim to crime is taken into consideration. This implies that if a victim is found to have contributed to his own injuries, the responsibility of the Board to assist the victim will be diminished. According to the American approach, a person only becomes a victim when a verdict of guilt is returned against an alleged offender.

In Nigeria, section 46 of Violence Against Persons (Prohibition) Act 2015 (VAPP Act) defines victims in similar terms with UN 1985 Declaration and further categorised harm in terms of physical, emotional, economic injury or substantial impairment of the victim's fundamental human rights, just as the Bill also defines harm in section 3(1). A person other than a law enforcement agent is also regarded as a victim where he suffers injury or dies in the course of arresting a suspected offender or preventing the commission of crime or further damage resulting from the crime.⁷ A combined reading of sections 2, 4, 5, 6 and 7 of Violence against Persons (Prohibition) Act, 2015, will reveal that a person subjected to an offence with an element of force or deprivation, such as sexual assault, kidnapping or domestic violence, is also a victim.

Offender

According to Igwe and Nwafor, 'an offender is a person who has either confessed to a commission of a crime or convicted for a crime'.⁸ They further emphasized that an offender is a person who confessed to have committed an offence or convicted for committing an offence defined under the law and the penalty prescribed by an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.⁹ In legal parlance, 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'.¹⁰ Offender is a legal term used in the context of criminal law to refer to a person convicted of committing a crime.¹¹ Section 46 of the Administration of Criminal Justice Act, 2015 provides that a 'defendant is any person against whom a complaint, charge or information is made'. Offenders constitute a specific social category, within which a wide array of behaviours can be observed, and each offender represents a distinct case, characterised by a number of features that are not identical in all offenders.¹² According to Maguire and others, offender is one who violates any law, divine or human; a wrongdoer.¹³ For the purpose of this study therefore, an offender will be limited to those individuals who have committed criminal offences.

Compensation

Taken in its broadest sense, to compensate victims for the unlawful harm or loss that they have suffered implies the application of a remedy that restores them, so far as it is possible to do so after the event, to the condition they formerly enjoyed.¹⁴ Section 319 of the Administration of Criminal Justice Act, 2015 provides that the court may, at any stage or during judgment, 'order the convict to pay compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed on the defendant, where substantial compensation is in the opinion of the court recoverable by civil suit.' Ali and others defined compensation in terms of public reparation to victims of crime on behalf of the offender. According to them, compensation is defined 'as recompense paid by the State since the perpetrator and his or her family are unable to provide the full compensation'.¹⁵ The State on its own, is ideally obliged to pay compensation to the victim of crime since the State assumed the responsibility to protect the individuals who more commonly, victims of crime, in lieu of the individuals giving up their rights to protect themselves from such offensive act. Compensation for victims of crime is, therefore, important as it enables the victims to secure medical treatment and care, especially in cases of rape or bodily injury.¹⁶ It helps victims of crime to fulfill basic survival needs in cases where a bread winner was murdered or where property or items of value on which the victim's survival depended were destroyed.¹⁷

3. Legal Framework for Compensation of Victims of Crime in Nigeria

Penal Code

Section 78 of the Penal Code provides that 'a person who is convicted of an offence under this Penal Code may be adjudged to make compensation to a person injured by his offence and the compensation may be either in addition to or

⁷Section 37(3) Victim's Bill.

⁸O Igwe and N Nwafor, 'An Appraisal of the Legal Regime for Victim-Offender Mediation in Nigeria', *NnamdiAzikiwe University Journal of International Law and Jurisprudence*, [2021], 12(2), 97.

⁹Section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

¹⁰ United States of America Legal Institute, <https://www.law.cornell.edu/cfr/text/34/400.4>, Accessed 16th August 2023.

¹¹ Legal Information Institute, 'Offender', <https://www.law.cornell.edu>, accessed on 16th August, 2023.

¹²M C Dobrila, 'Deception Offences: Psycho-Behavioural Profiling of Offenders', *Procedia - Social and Behavioral Sciences*, [2013], 92, 270.

¹³ M Maguire, R Morgan and R Reiner Eds., *The Oxford Handbook of Criminology*, (4th Edn., London: Oxford University Press, 2007), 1271.

¹⁴D. Miers, 'Offender and State Compensation for Victims of Crime: Two Decades of Development and Change', *International Review of Victimology*, [2014] 20(1), 147.

¹⁵M Ali, M Andi, S Wawanand W Ari, 'Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution', *Cogent Social Sciences*, [2022], 8(1), 49.

¹⁶A J Goldberg, 'Preface: Symposium on Governmental Compensation for Victims of Violence', *Southern California Law Review* [1970], 43, 17.

¹⁷T Abubakar and G Tor, 'Revisiting the Legal Considerations for Victims of Crime in the Criminal Justice Process in Nigeria', *Benue State University Law Journal*, [2019/2020], 264.

in substitution for any other punishment.¹⁸ The most distinctive feature of this provision is that a fine need not be imposed before compensation may be awarded in favour of a victim. However, for any award of compensation to be based on section 78 Penal Code, the defendant must have been tried and convicted of an offence under the Penal Code and not under any other laws. The fact that the compensation may either be in addition to, or in substitution for, any other punishment means that it is discretionary on the court to award compensation in given cases. However, it is submitted that compensation cannot be awarded in substitution for a mandatory punishment prescribed by law but may only be in addition. Finally, compensation pursuant to section 78 Penal Code may be awarded only in favour of the person injured.

Administration of Criminal Justice Act 2015

Sections 319 and 328 of the Act empowers the Court to, in the course of the proceedings or when passing judgment, order the defendant/convict to pay 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, where substantial compensation is in the opinion of the court recoverable by civil suit.¹⁹ The court may also order the convict to pay compensation to an innocent purchaser of any property in respect of which the offence has been committed, who has been compelled to give it up. The court may also order the convicted person to pay some money in defraying expenses incurred in medical treatment of any person injured by the convict in connection with the offence.²⁰ Even though the prosecutor may not be able to prove its case as required by the legal and evidential burden under the Evidence Act²¹ in cases of criminal acquisition of property, the Court can apply the provisions of the ACJA to order restoration of the property so criminally acquired in addition to payment of damages to the victim who may, in any case, be the State.²² Under section 341 of the Act, the court may also order that the property be applied to the payment of any costs or compensation directed to be paid by the defendant.²³ The court may also order the convict to make restitution to the victim or the victim's estate or order for the restitution or compensation for the loss or destruction of the victim's property.²⁴ The provisions of sections 341 and 342 of the ACJA are to be applied where an owner of the seized property is identifiable and there is no reason to determine the property as abandoned or unclaimed property. Where, however, there is a dispute as to who the owner of a property is, the issue of ownership will have to first be resolved before restoration under sections 341 and 342 will be effected. Critiques have posited that the provision of section 341 of the Act is problematic.²⁵ This is because, it does not allow for the restoration of instruments used in the commission of the crime or proceeds of crime. Apparently, this poses hardship to a bona fide owner, where, for example an owner of property used commission of, committing, conveying or moving proceeds of crime, especially where it was stolen, forcefully taken away or used without the consent of the owner. This is different from the provision section 25 of the EFCC Act which provides for a remedy in that regard in cases where the means of conveyance including aircraft, vehicles or vessels are used. Section 324 (1) of the Act permits a person to whom compensation is awarded to refuse to accept the compensation. Section 324 (2) provides that where the person receives the compensation or where the convict, having been ordered to pay compensation, suffers imprisonment for non-payment, the receipt of the compensation, or the undergoing of the imprisonment, as the case may be, shall act as a bar to any further action for the same injury. Section 324(3) mandates the court to explain the full effect of this section to the person to whom compensation is payable before making an order for compensation under this Act.

Violence against Persons (Prohibition) Act 2015

Section 38 of the Act provides that in addition to the rights guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 or any other international human rights instruments to which Nigeria is a party, every victim of violence as defined in this Act, is entitled to certain rights, including right to receive the necessary materials, comprehensive medical, psychological, social and legal assistance through governmental agencies and/or non-governmental agencies providing such assistance. Anyogu and Okpalaobi posited that by these provisions, the Act grants complete rehabilitation to victims and even makes it the responsibility of state and non-state agencies. The Act provides that the Court shall award appropriate compensation to the victim as it may deem fit in the circumstance.²⁶ The Act covers most of the forms of violence that have become prevalent in Nigeria over time. These ranges from rape and

¹⁸*Edun v FRN* [2019] 13 NWLR (PT. 1689) 326, 360 (SC).

¹⁹Section 314 (1) of the Act provides that 'Notwithstanding the limit of its civil or criminal jurisdiction, a court has power, in delivering its judgment, to award to a victim commensurate compensation by the defendant or any other person or the State'. Subsection (2) states that 'The Court in considering the award of compensation to the victim may call for additional evidence to enable it determine the quantum of compensation to award in subsection (1) of this section'.

²⁰G Y Akinseye, 'An Overview of the Changes and Application of the Administration of Criminal Justice Act, 2015', in A Adekunle, *Issues in Criminal Justice Administration in Nigeria*, (Lagos: NIALS Press, 2016), 3-4.

²¹*Sections 131 and 133 Evidence Act, 2011*.

²²G Y Akinseye., *Administration of Criminal Justice Act (ACJA) 2015 with Explanatory Notes and Cases*, (Abuja: Centre For Socio-Legal Studies, Mike Press, 2017), 405.

²³*Section 341, ACJA*.

²⁴*Section 342 ACJA*.

²⁵T Abubakar and G Tor, 'Revisiting the Legal Considerations for Victims of Crime in the Criminal Justice Process in Nigeria', *Benue State University Law Journal*, [2019/2020], 273.

²⁶Sections 26 and 43.

other sexual violence,²⁷ psychological violence; harmful traditional practices²⁸ and socio-economic violence.²⁹ The identities of victims of offences under the Act are also to be protected.³⁰

Trafficking in Persons (Prohibition) Administration and Enforcement Act 2015

Under section 126 of the Act, a trafficked person shall be entitled to compensation, restitution, and recovery for psychological, emotional, and economic damages which shall be assessed and paid from the assets forfeited by the convicted trafficker.³¹ The Court may in addition to other punishments meted out to a person convicted for an offence under Act, order the convict to pay compensation to the victim.³² A victim may institute a civil action against his/her traffickers for compensation, damages, and restitution.³³ However, the Court in making an award to the victim in the civil suit shall take into account the award made by the court in the criminal trial. The Act established a victim of Trafficking Trust Fund³⁴ to pay compensation and restitution to victims of trafficking and for the establishment and maintenance of victims' support services.³⁵ The sources of funds for the Trust fund include appropriation from the Federal Government, forfeited assets of traffickers, and donations.³⁶ A Trust Fund Committee was also established to administer the fund.³⁷

Penal Code Law of Adamawa State 2018

Section 40 of this law provides that any person who is convicted of an offence under this Law, may be adjudged to make compensation to any person injured by his offence and such compensation may be either in addition to or in substitution for any other punishment.

Penal Code Law of Sokoto State 2019

Section 40(1) of Law provides that 'any person who is convicted of an offence under this Law, may be adjudged to make compensation to any person injured by his offence and such compensation may be either in addition to or in substitution for any other punishment.' Under section 318 of ACJL 2019, the court may within, the proceedings or when passing judgment, order the convict to pay compensation to any person injured by the said offence(s) irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant and where substantial compensation is in the opinion of the court recoverable by civil suit.³⁸ The court may order the defendant to pay a sum of money to defray expenses incurred in the prosecution of the criminal case.³⁹ This equally extends to ordering the convict to pay compensation to an innocent purchaser of any property in respect of which the offence has been committed and who has been compelled to give it up.⁴⁰ The powers of the Court equally extend to making orders to defray expenses incurred in medical treatment of any person injured by the convict in connection with the offence.⁴¹ But where the judgment of a court is on appeal, no payments are to be made.⁴²

4. Challenges to Compensation of Victims of Crime in Nigeria

Delay in the Administration of Criminal Justice System in Nigeria

Because claim of compensation is dependent on the conviction of the offender, any delay that may leads to quashing of the charges will definitely inhibit the chances of compensation for victim. Delay in this regard has been defined as a period of time when somebody/something has to await because of a problem that makes something slow or late or a situation in which something does not happen when it should: the act of delaying.⁴³ In Justice *Akpor & Ors v Ighoriso*,⁴⁴ the Supreme Court set aside the judgement because there was a delay for two years and nine months between conclusion of trial and judgement. In *Ekiri v Kemiside & Ors*,⁴⁵ the Supreme Court set aside a judgement which was about 16 months late. In *Joseph Ozoma & Ors v M. Osanwuta*,⁴⁶ the judgement was given 17 years after the institution of the case. The Supreme Court ordered a retrial. In *Agiende Ayambi v The State*,⁴⁷ the court held that a criminal trial which lasted for over two years could not be said to have been conducted within a reasonable time. In each of these cases and the likes, the victim lost the chances of compensation by the offender. The unfortunate menace of delay in dispensation of justice in Nigeria has been decried and condemned by many commentators at different fora. Justice Niki Tobi had

²⁷Section 3, 4, 18 and 19.

²⁸Section 7.

²⁹Section 6.

³⁰Section 30.

³¹126 Section 65(1).

³²127 Section 65(2).

³³128 Section 65(3).

³⁴129 Section 67(1).

³⁵130 Section 67(4).

³⁶131 Section 67(2).

³⁷132 Section 68.

³⁸Section 318(1) (a).

³⁹Section 318(1) (3).

⁴⁰Section 318(1) (b).

⁴¹Section 318(1) (c).

⁴²Section 318(2).

⁴³ A S Hornby, *Oxford Advanced Learners Dictionary*, (16th edn., London: Oxford University Press Ltd., 2001), 307.

⁴⁴ [1972] 2SC, 115.

⁴⁵ [1976] NWLR, 145.

⁴⁶ [1969] UHC/30/679.

⁴⁷ [1985] 6 NCLR 141

observed that one perennial problem in the administration of justice in any legal system is the question of delay. There is so much delay in the administration of justice in Nigeria that one wonders whether the parties get value justice at the end. A situation for instance where prosecution at times takes some six years or more to be completed in the High Court is not good enough. Cases of delay must be addressed if the rule of law is to have any meaning.⁴⁸ This usually frustrates the entire trial and prematurely throws the accused persons back into the society to commit more havoc.⁴⁹ Since compensation is a consequence of conviction, any delay that jeopardizes the case will definitely ruin the chances of the victim getting compensation.

Corruption

Corruption in the justice administration system in Nigeria takes many forms. These include payment unofficial payments to judges, lawyers, court staff and police with the purpose of obtaining favourable judgments;⁵⁰ the acceptance of gratification or other considerations by the judges or magistrates to influence the decision in the case in favour of one of the parties; collusion between litigants and the court bailiffs, faking actual service of court process and forged endorsements of service in the court records, with the aim of ensuring the non-appearance of the other party, such that the party doing it can obtain default judgment against the other party, who has no knowledge of the suit.⁵¹ Also, corrupt practices may characterize every stage of filing and processing new suits before they are assigned for hearing. Litigants may have to pay bribes to court officials for speedy processing of their matters, to get the suit officially recorded in the Registry, to get a writ issued, signed and endorsed, to get bailiffs to effect service of court processes and file necessary affidavits of service, to obtain assignment of cases to the favour judge.⁵² The various stages of filing and actual assignment of cases for hearing may be subject to corrupt practices by litigants and their lawyers who offer gratification to court officials and in some cases to the judicial officers themselves, for the purpose of facilitating speedy processing of a procedure or to obstruct or delay its processing. The choice of judge or magistrate who is to hear the matter may be influenced, with the aim of perverting the course of justice. Court bailiffs, who are central to service of court processes and the execution of judgments in Nigeria have been particularly identified as the most mischievous and corrupt personnel of the judiciary, who act as barriers to speedy trials and dispensation of justice.⁵³ In fact, widespread corruption subverts the entire formal legal system,⁵⁴ and whittles down chances of victims exercising their right to compensation.

Abuse of Plea Bargain

A simple understanding of plea bargain is that it is an agreement between the prosecutor on the one hand, and the accused person on the other hand. Conventionally, such arrangement cannot be concluded without the prior involvement of the court before judgment is given. The focal point of debate is whether the plea bargaining is now a blessing or a curse to the administration of criminal justice and indeed to the entire Nigerian Legal System. Plea bargain was not part of the Nigerian legal system until the Economic and Financial Crimes Commission (EFCC) (Establishment) Act No. 1 of 2004 was enacted. Section 14(2) of the Act provides for compounding offence. It is on this authority that the Commission anchors its power to enter into plea bargain. One major shortcoming of the Act is that it does not provide any definite guideline as the basis for adopting the procedure under section 14(2) of the EFCC Act. It is left at the discretion of the Commission. It is submitted that the discretion is too wide and could be open to abuse. Another argument against plea bargain is that victims often decry the lighter sentences that plea bargaining produces thereby raising issues about the supposedly deterrent value of the criminal process. This situation is particularly true in Nigeria where the citizens have always genuinely felt short-changed anytime a plea bargain arrangement has been entered into. It is the usual practice of the EFCC to exclude the victim in the process of plea bargaining. Hence, where the arrangement is conclusively entered into by the prosecution and the accused person without the knowledge and input of the victim, the victim will do no further thing than to go home devastated. This is a challenge to the compensation regime for victim of crime in Nigeria.

Abuse of Nolle Prosequi

According to Igwenyi, '*Nolle Prosequi* ... means I do not want to prosecute or I do not want to continue the prosecution and it is used by the prosecuting authority before judgment is entered in the matter.'⁵⁵ The practice has Common Law origin. Continuing, the learned author stated that 'this concept is the basis of the power of an Attorney-General in Common Law Countries to discontinue criminal trials before judgment and probably end the matter or re-prosecute same as the case may be.

Section 174(1)(c) (same as section 211(1)(c)) of the 1999 Constitution empowers the Attorney General 'to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or

⁴⁸N Tobi, 'Law, Judiciary and Nigerian Democracy', in I AAyua, ed., *Law Justice and the Nigerian Society – Essays in Honour of Hon Justice Mohammed Bellow*, (Lagos: Nigerian Institute of Advance Legal Studies, 1995), 135.

⁴⁹J Agbonika and M Alewo, 'Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint', *Journal of Law, Policy and Globalization*, [2014], (26), 36.

⁵⁰United Nations Office on Drugs and Crime, Assessment of the Integrity and Capacity of the Justice System in Three Nigerian States, Technical Assessment Report, 2006, United Nations, New York, 2006 p. 29.

⁵¹A AAdeyemi, 'The Impact of Corruption on the Administration of Justice in Nigeria', in I AAyua and D A Guobadia (eds), 'Political Reform and Economic Recovery in Nigeria', *Nigerian Institute of Advanced Legal Studies*, Lagos, [2001], 681.

⁵²*Ibid*, 682.

⁵³I AAyua, and D A Guobadia (Eds.), *Op. Cit.*, 40.

⁵⁴FonsCoomans (Ed.), *Justiciability of Economic and Social Rights: Experiences from Domestic Systems*, (Intersentia: Antwerpen-Oxford, 2006), 262.

⁵⁵B O Igwenyi, 'Jurisprudential Appraisal of *NolleProsequi* in Nigeria', *Global Journal of Politics and Law Research*, [2016] 4(4), 10.

person. 'Subsection (3) limits this power and stated that the Attorney-General shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process. This is the only limit to this power, which is watery and has never yielded any result. The purport of the provisions of the above reproduced section of the constitution is that *Nolle prosequi* is exclusive power vested in the Attorney-General of the Federation (AGF), or a State to refuse to press charges or withdraw them when a criminal case has already been instituted. Under the Common Law, the simple implication of this, is that, the Attorney General is not under the control of anybody, including the court, while exercising this power. And in Nigeria, public opinion does not deter the executive. The interest of justice is taken as defined by the Attorney General also. This is tantamount to abuse. It gives the person exercising such power unrestricted latitude of freedom to do and undo so long as criminal proceedings are concerned. This is exacerbated by the fact that he can discontinue even matters instituted by private persons through his fiat. Deductively, since the chances of the victim lies on the conviction of the accused person, where a matter is discontinued, it jeopardizes the chances of the victim getting compensated. However, our contention is that since Nigeria is now operating presidential democracy, not strictly adherent to the common law doctrines, to court should, as a matter of condition precedent to entering *nolle* by the authority concerned, always insist that section 174(3) or 211(3) of the Constitution be enforced by making it compulsory for the Attorney-General to give cogent and compelling reasons why a matter should be discontinued, in line with American practice.

Judicial Passivism

In one of his most celebrated dissents on the Court of Appeals of England,⁵⁶ the legendary Common Law jurist, Lord Denning suggested a binary classification of judges thus: 'On the one side there were timorous souls who were fearful of allowing a new cause of action. On the other side there were bold spirits who were ready to allow it if justice so required.'

The progressive development of the law, according to Denning, is to be credited to the judicial creativity and courage of bold spirits; timorous souls showed blind allegiance to existing rules and precedent – the dead hand of the past – and, in so doing, served a sterile, not a constructive role in the law.⁵⁷ He maintained that if the powerful still abuse their powers without restraint, it is thanks to the dominant influence of timorous souls; bold spirits will not let that stand. Any rule of law which impairs the doing of justice, they will do all they legitimately can, to avoid that rule, or even to change it, so as to do justice in the instant case before them.⁵⁸ Denning saw law, and for that matter, judicial office, as an instrument for doing instant justice. The timorous judges are those who would be so afraid to give a judgment or make orders against the public officers and award compensation against them, even in clear violation of the law, where justice of the matter demands. They are very timorous to take active and progressive decisions that may be against the public officers even if such decisions may be in general interest of the public. They would not mind if the decision will better the legal system. This is more pathetic since compensation for victims of crime in Nigeria is within the discretion of the court. Hence, where an interest of the highly placed person are involved, the court will definitely not work against such interest. This weakens the administration of criminal justice in any legal system, and certainly denies the victim the opportunity to be compensated.

Inability of the Victim to Present a Compensable Items

Since compensation for victims of crime in Nigeria is left at the discretion of the court, exercise of such discretion is challenged where a crime victim's request for compensation is not supported by particularised heads of loss, injury and compensable items. In this regard, it must be borne in mind that a judge is a judge of law and facts. He is not a metaphysician or a soothsayer, and is not allowed by law to speculate on possible facts. His only jurisdiction is to use facts presented by parties in open court to reach resolution of the case before him.⁵⁹ A court of law cannot go on a voyage of discovery to assemble facts and use them in the trial process.⁶⁰ Consequently, however much the Judge is moved by a desire to do justice, and however much the Judge is clear in his mind as to what he believes should be compensable heads of injury and loss, an application by a crime victim for compensation which is not supported by itemised heads of loss, injury and compensable items is a request the court is incompetent to grant. It would amount to the court exercising discretion without materials to grant such an application.

5. Conclusion and Recommendation

In all these challenges, a pragmatic and viable judiciary will have a way of resuscitating and revamping the compensation regime in any judicial system. India does not have a clear law providing for victim compensation but by judicial activism, the India victim compensation regime has been made functional and active. Thus, the Indian Supreme Court in the *Hari Krishna & State of Haryana v Sukhbir Singh*⁶¹, directed all courts to interpret section 357 of Criminal Procedure Code of India, 1973, liberally and award adequate compensation, particularly in cases where the accused is released on admonition, probation or when the parties enter into a compromise. At the same time, the court cautioned that the compensation must be reasonable, fair and just; taking into account the facts and circumstances of each case, nature of the crime, veracity of the claim and ability of the accused to pay. The court went on to recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way. This is worthy of emulation by Nigeria. It is also recommended that the court should be bold enough to spring up in every opportunity it has and act when every voice is silent in the fight for justice regarding compensation for victims of crime in Nigeria. Through this way, the Nigerian criminal justice system will be revamped and will measure up with other jurisdiction like India, in victim compensation regime.

⁵⁶*Candler v Crane, Christmas & Co*, [1951] 2 KB, 164, 178.

⁵⁷ M. D. Kirby, 'Lord Denning: An Antipodean Appreciation', *Denning Law Journal* [1986], (1), 103-116.

⁵⁸*Ibid*.

⁵⁹*Adisa v State* [1991] 1 NWLR (Pt. 198), 490.

⁶⁰*Odua'a Investment Company Ltd. v Talabi* [1991] 1 NWLR (Pt. 170), 761.

⁶¹ [1988] 4 SCC, 551.