VICTIM PARTICIPATION IN THE CRIMINAL JUSTICESYSTEM IN NIGERIA

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ABSTRACT

Criminal and Procedure laws in Nigeria have not accorded much recognition to the victims of crime as they have focused more on crime and offenders.Consequently, the criminal justice system places greater emphasis on the wrong that has been committed rather than ameliorating the physical, mental and financial injury to the victim. Previous studies have focused largely on the punitive aspect of the criminal justice at the expense of restorative justice that allows for the active participation of the victim in the criminal process. This study, therefore, was carried out to make a case for the active involvement of victims of crime in the Nigerian criminal justice process.

Restorative and Procedural Justice theories were adopted along with theInternational Criminal Court (ICC) Victims Participation model design. Primary sources of law included the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Criminal Procedure Code, the Criminal Procedure Law, the Administration of Criminal Justice Act 2015, the Rome Statute and Rules of Procedure and Evidence of the ICC. Secondary sources included books, journal articles and internet materials. Data were subjected to analytical discussion and comparative discourse.

Victim participation in the criminal justice system in Nigeria is not consistent with international best practices, provided under the Rome Statute and Rules of Procedure and Evidence of the ICC. The Nigerian Constitution did not provide for the active participation of victims in criminal trial, but merely stipulate that the court should adhere to fair hearing and principles of natural justice. The extant criminal and procedure laws ignore any special role for the victims except treated as competent and compellable witnesses at the trial. The Administration of Criminal Justice Act, 2015, albeit mentioned victims participation but did not specify the nature, scope and extent of such participation. The rule and practice whereby the victim of crime is at liberty to institute civil action independently of the criminal process was found to be duplicity of efforts, cost and time. The reliefs being sought through the civil action could also be achieved in a criminal trial. The restorative justice met the compensatory aspirations of victim as regard putting him back to his position before the crime. In the same vein, the procedural theory satisfied the active involvement of the victim from the investigation, prosecution and trial stage in a mandatory manner as provided for at the ICC.

Though, the Nigerian criminal justice system allows for restricted victims, participation as witnesses, however, this could be harmonised to allow for full participation of victims in the criminal process. Therefore, there is the need for a holistic review of the Nigerian criminal and procedure laws. This will ensure that perpetrators of crime are duly and appropriately punished such that the system delivers justice to the victim of crime in compliance with the tripartite notion of justice to the accused, to the society and to the victim.

Keywords: Criminal law and procedure, Criminal justice system in Nigeria, International Criminal Court, Procedural justice, Victim participation.

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DEDICATION

To

The Almighty God, my Creator.

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I give all the glory, honour, adoration and praises to my creator, the Almighty God.To him alone belong all the glory, honour, adoration and praises. He is the one who has been providing for my sustenance since the beginning of my creation till date and to eternity; He has provided me with all the enablement to be able to surmount the challenges faced during the course of this programme. He is the one who has also led me to crush all obstacles on my way during my journey of life to my present achievement. I confess and say again, to HIM alone belongs all glory, honour, adoration and praises.

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CERTIFICATION

I certify that this work was carried out by Mr. Kazeem Olajide Olaniyan in the Department of Jurisprudence and International Law, University of Ibadan, Ibadan.

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The Administration of the Criminal Justice Act 2015.

ABBREVIATIONS

ALL E.R – ALL England Report.

ALL N.R – ALL Nigeria Report.

A.C. – Appeal Cases.

CFRN – Constitution of the Federal Republic of Nigeria.

CAP – Chapter.

C.L.R – Commonwealth Law Report.

CPA – Criminal Procedure Act.

CPC – Criminal Procedure Code.

FHCLR – Federal High Court Law Report.

ICC – International Criminal Court.

K.B – Kings Bench.

L.L.R – Lagos Law Report.

L. P. – Law Pavilion.

L.T.R – Law Times Report.

LFN – Law of the Federation of Nigeria.

NIALS- Nigerian Institute of Advanced Legal Studies.

LMLR – Nigeria Monthly Law Report.

NWLR – Nigeria Weekly Law Report.

RPE – Rules of Procedure and Evidence.

RS – Rome Statute.

UNO – United Nations Organisation.

USA – United State of America.

UDHR – Universal Declaration of Human Rights.

WRNLR – Western Region of Nigeria Law Report.

WRN – Weekly Report of Nigeria.

CHAPTER ONE

GENERALINTRODUCTION

1.0 Background to the Study

Before the advent of the British, Nigeria had its own system of criminal justice. The customary criminal law and procedure in Nigeria was largely unwritten and derives its force on the general acceptability of the community[1]. Therefore, in the South there were numerous systems of customary laws, while in the North, the Islamic Law of Crime, applied[2]. In both systems, there were provisions for criminal law and procedure, with the native court administering justice to all manners of people. Apart from punishment for the offender, there were provisions for compensation or restitutions coupled with various rights for the victims of crime[3]. Again, across the world, the history of compensation to victims of crime is an ancient institution which has had an established position in the realm of penology, and for a long period, was almost inseparably attached to the institution of punishment.

This position may, to some extent, reflect the historical development from the primitive stage when criminal proceedings were largely left to the initiative of the victim and his family or tribe to the present stage when his power is, on the whole, concentrated in the hands of the state[4]. The need to provide compensation for the victims was statutorily acknowledged in England through the following Acts, the Forfeiture Act 1870, the Probation Act 1907, the Criminal Justice Act 1948, the Criminal Damage Act 1971, the Criminal Justice Act 1972, and the Criminal Court Act 1973. This seems to be the total extent to which restitution is dealt with in England within the scope of criminal procedure.

On the arrival of the British colonial administration, the common law of England was imposed on the people, and consequently, there was the emergence of the criminal and penal codes which were fashioned out of the English and Sudanese Criminal and Penal Laws

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[1]Karibi-whyte,A.G. (2005) History and sources of Nigerian CriminalLaw Spectrum books limited, Ibadan, Nigeria p. 97.
[2]See Adeyemi, A. A. (1972) Criminality in Contemporary Africa in Nigerian Journal of Criminology Vol. 2 No. 1, p. 19. See also Milner A. (1972), the Nigerian Penal System p. 22.
[3]Adeyemi, A. A. (1972) Criminality in Contemporary Africa in Nigerian Journal of Criminology Vol. 2 No. 1, p. 21.
[4]Stephen Schafer (1960) Restitution of Victims of Crime. London Stephen & Sons Ltd p. 1.

respectively[5]. All these codes focus more attention on the punishment of offenders, although it provides for some forms of restitution or compensation, it is noted that the Nigerian criminal law has not done much in the field of social or welfare development of the administration of criminal justice system as it affects the victims of crime because the development in this area has been almost static. As Karibi-Whyte JSC states, the repression of anti-social conduct by means of punishment is the paramount objective of the criminal law[6].

In Nigeria, the sentencing policy has so far relied on the machinery of punishment, to the neglect of the victim. For instance, under the criminal law, even where compensation for the victim is provided for, the conviction of the accused is a precondition for the award of the compensation, which need not be the case. While there is no definite procedure for quantifying the amount of compensation to be awarded and if the question of damage is to be awarded by the trial court, it is often determined without hearing from the victims as to the extent of the injuries suffered and other expenses incurred by the victim.

It is obvious even from the provision of the law on the administration of the criminal justice[7] that the emphasis of the Nigerian criminal justice system is on the offender. Crime, even those against the person are viewed as offences against the state. From the arrest of the offender to sentencing, the law is concerned mainly with the offender, although the trial may be initiated by the victims and may rely on the victims' participation for its success; thus, in practice offers no or little direct relief to the victims. The criminal justice system in Nigeria has been more punitive that restorative and as such its operators have become insensitive to the victims plight. The victim is largely left to seek redress in separate civil actions often involving costly proceedings[8].

[5]See Lord Lugard (1913 – 1918) Political Memoranda – Memo 2, 3 and 5, cited in Adeniyi Olatunbosun,(2007) Compensation to Victims of Crime in Nigeria: A Critical Assessment of Criminal Victim Relationship, in Journal of the Indian Law Institute Vol.13. p. 213.

[6]Karibi Whyte.(Rtd JSC) made this opinion in a paper delivered "National Policy on Compensation to Victims of Crime, How Desirable. p. 262.cited in Adeniyi Olatunbosun,(2007) Compensation to Victims of Crime in Nigeria: A Critical Assessment of Criminal Victim Relationship, in Journal of the Indian Law Institute Vol.13. p. 205.

[7]The Administration of the Criminal Justice Act was passed into Law in May, 2015.

[8] Olatunbosun I. A., (2007) Compensation to Victims of Crime in Nigeria: A Critical Assessment of Criminal Victim Relationship in *Journal of the Indian Law Institute Vol 13 p.200.*

However, it is noted that the world has moved away from the position painted above, The world now lives in an age of serious criminality, where brutal crimes, armed robberies, terrorism, assassination, gruesome murder among others are committed on a daily basis. For example, many advanced countries like United Kingdom, United States of America, Canada and Australia have evolved the progressive view that positive steps towards increased and more active participation of the victim of crime, be taken to give prompt and adequate direct relief to the victims of crimes. Thus, it is rather a matter of great disappointment that the Nigerian courts have not paid enough attention in criminal cases to the plight of the victims in terms of its participatory role in trial or prosecution of his case against the accused, an accused convicted and sentenced as of routine while the victims and his dependents are left uncatered for.

Research has shown from the available interaction in this area of criminal justice system that the aspects of criminal law and procedure, that is, the participatory role of victims of crime in the prosecution of his case, has been neglected for a long time to the detriment of the interest of the victims in the administration of criminal justice. Perhaps this unsatisfactory situation made the erudite scholar opine that "A criminal justice system that addressed solely on to the criminal offender with little or no regard to the plight of the victims of the crime is certainly not in accord with modern notion of justice"[9]. Another judge, while acknowledging the fact that the paradigm of the criminal jurisprudence must definitely shift and it must shift toward increasing the participatory role of the victim of crime if the Nigerian administration of criminal justice must be meaningful and be responsive to the plight of the victims, opines that…

> The participation of the victims in our criminal process is limited to his role as a witness for the state in the prosecution of the offender, the passive role has been criticized as unsatisfactory and not sufficiently demonstrative of the interest of the victim[10].

[9] Olatunbosun. A.I, (2007) Compensation to Victims of Crime in Nigerian: A Critical Assessment of Criminal Victim Relationship, in Journal of the Indian Law Institute vol.13. p. 205.

[10] Karibi Whyte (Rtd JSC) made this opinion in a paper delivered "National Policy on Compensation to Victims of Crime, How Desirable. p. 262.cited in Adeniyi Olatunbosun,(2007) Compensation to Victims of Crime in Nigeria: A Critical Assessment of Criminal Victim Relationship, in Journal of the Indian Law Institute Vol.13. p. 205.

The picture painted above by this researcher is also true under the international criminal law; for example, the situation prior to the establishment of the ICC, the victims' participation has been so limited and sometimes neglected. However, as a result of the new thinking on the need for increased roles for the victims of crime, especially the most serious crime of international concern, the International Criminal Court (ICC), being the first international criminal court to be established on the permanent basis, has elaborate provisions in the statute establishing the court, the Rome Statutes as well as the Rules of Evidence and Procedure which provides for the rights of the victims of international crime to participation and reparations[11].

Under the international criminal court, it is very obvious from the provisions of the Rome Statute, and as it is discussed in chapters that follow, that participation is not limited to the sentencing stage of the trial, rather it covers a wide range of "roles" by the victims in the proceedings, that is, from the start of the investigation to the end, by which the victims' visibility and centrality to the process is enhanced. This, obviously include the right to be appropriately consulted and to be informed at various stages in the trial process. Indeed the Rome Statute expands the ambit of issues related to the participation by victims in the proceeding of the court, from investigation phase to the determination of reparation (assuming that this is done after the trial).

For the purpose of this study, the basic principle that governs participation of the victims in the international criminal process which is established under Article 68 of the Rome Statute, as complemented by various other substantive provisions in the statute and the Rules of Procedure and Evidence (RPE) also set out the modalities of participation at all stages of the ICC proceeding. This shall all be considered in line with the objectives of this research.

1.1 Statement of the problem

Looking through the legal system of different countries of the world, it may be very difficult to see a country where a victim of crime enjoys a certain expectation of full remedies for his injury. In Nigeria however, the punishment of crime is regarded as a concern of the state while the injurious result of the crime suffered by the victim of that crime is regarded almost

[11] See Article 68 of the Rome Statute and Rules 87 & 88 of the Rules of Procedure and Evidence of the International Criminal Court.

as a private matter[12]. Although the Nigerian Criminal Law accepted and recognized remedies such as restitution, compensation and damages for victims of crime, this is done in an unsatisfactory manner as emphasis is placed on punishment of the offender for various crimes committed against the victim as the most appropriate relief. Thus, restitution is made possible by the court if the property stolen is recovered and tendered as exhibit during the trial; however, where such property is not recovered, restitution becomes almost impossible for the court to make, and the "unfortunate victim" who losses his property for some criminal acts has no other remedy but to be satisfied if the offender is brought to justice with no other satisfaction, for his lost item can be afforded by the punishment of the offender by the state as one guilty of public wrong, and not required to make restitution for the private loss which his action has caused. Alternatively, however, where such property is not recovered but the prosecution is able to prove beyond reasonable doubt against the accused upon which he is found guilty and convicted, in the eye of the criminal procedural law, justice has been done. But to the victim this is far from justice as he is left to recount his loss[13]. The conviction and sentence of the accused person to the terms of imprisonment or fine has little or no significance to him. In Nigeria, the sentencing policy had to rely heavily on the machinery of punishment to the neglect of the victim's remedy[14]. Thus, when the new administration of criminal justice act was signed into law in 2015, replacing the two criminal law and procedure, the criminal procedure code and the criminal procedure law, thereby making the Administration of criminal justice Act 2015 the only law on the criminal law and procedure for the entire country, section 319 provides that:

> A court may, when the proceeding or while passing judgement, 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 recoverable by civil suit[15] . . .

[12] Olatunbosun A. I., (2010) Restitutive Justice for Victims of Crime in Nigerian Court in *Legal Issues for Contemporary Justice in Nigeria* (Essays in honour of Hon. Justice M. O. Onalaja (Rtd) p. 385.
[13]Ibid p. 386.
[14] Olatunbosun A. I., (2007) Compensation to Victims of Crime in Nigerian: A Critical Assessment of Criminal Victim Relationship, in Journal of the Indian Law Institute vol.13. p. 205.
[15]Section 319(1), (a) of the Administration of Criminal Justice Act 2015.

The above provision represents one of the few provisions in the new law which provides some form of restitution for the victim. The above provision and other provisions like it in the Administration of Criminal Justice Act, have been observed as grossly inadequate; this is apart from the fact that the compensation is not even payable unless the defendant (the accused) is found guilty. Yet, this new Act is expected to have taken into consideration the review of previous laws and act before it on criminal law and procedure. It is therefore not surprising that some scholars think that the emphasis of the Nigerian criminal justice system is on the offender. To one of such scholars, offenses that are even against the person are rather viewed as offences against the state. From arrest to sentencing, this law is mainly concerned with the offender[16]. However, the world has moved away from this position. It is therefore the main focus of this study to formulate a template for the improvement in the plights, role and treatment of victims of crime, in the administration of criminal justice in Nigeria. This study aims at exposing and discussing the inherent deficiencies contained in the Nigerian criminal justice system with regard to the interest and concerns of the victims of crime, which basically, is to the effect that the Nigerian criminal justice system has been more punitive than restorative and as such its operators have become insensitive to the victim's plights.

The neglect of victim's rights to participate in the criminal trial of his case over time has been reported by a scholar to have the following consequences:

(a) Victims are made to cope with the mental trauma physical injury, loss or damage to property with insensitive investigation and legal process.
(b) Mistrust in the state's incapability to protect the citizens.
(c) Reluctance of victims to invoke criminal process against offenders which result in a growing tendency for victims and the community to take the law into their hands.
(d) Greater emphasis on punitive and retributive rather than restitutive and compensatory sentencing.
(e) Duplication of legal process, because criminal and civil cases arising from one event or transaction are pursued separately.

[16]Op cit Note 3 p. 206.

(f) Lack of faith in institution of criminal justice administration, particularly, the Police and the courts.

(g) General ineffectiveness of the criminal justice system[17].

From the foregoing, it is evident that the enhancement of victim's rights and remedies through active participation in the criminal process should be an important concern of the criminal justice system. This assertion was one of the high points of discussion at the Federal Ministry of Justice in one of its Law Review Conference series almost two decades ago, precisely in June 1989. The committee came up with a 12-points communiqué which contains inter-alia…

> That the Nigerian criminal justice system should no longer only focus its attention entirely on the punishment of the offenders but should also consider the rights of the victims of crimes.[18]

This study is therefore focusing on formulating an appropriate theoretical framework for the Procedural Justice theory, using the victim's participation model of the International Criminal Court, under Article 68(3) of the Rome Statute to make a case for the active participation of the victims of crime under the criminal justice process in Nigeria.

1.2 Aim and objectives

The broad aim of this study is to make a case for the participation of victims of crime in the Nigeria criminal justice process. This position is borne out of the realisation that in the administration of the criminal justice in Nigeria, the laws on the administration of criminal justice, even the new Administration of Criminal Justice Act of 2015, did not concretely address the issue of victim participation in the criminal justice process. The specific objectives of the study are to:

a. examine the adequacy or otherwise of the Nigerian Laws on the Administration of Criminal Justice in addressing fundamentals and the basics for the victims' participation in the Nigerian Criminal Process;

[17]Op cit No. 3 p. 208.

[18]Cited in Olatunbosun I. A., (2007) Compensation to Victims of Crime in Nigeria: A Critical Assessment of Criminal Victim Relationship in Journal of the Indian Law Institute. p. 211

b. determine whether the provision of the act addresses the issue of the victim participation in the Nigeria criminal jurisprudence and recommend a review of the Administration of Criminal Justice Act of 2015;

c. consider the extent to which the victim's participation model would serve as a panacea to addressing the plights, interests and welfare of victims of crime; and

d. discuss the victim participation of the Rome Statute and the Rules of Procedure and Evidence (RPE) under the international criminal court to be adopted for implementation in the administration of criminal justice in Nigeria.

1.3 Research questions

In order to achieve the set objectives stated above, the following research questions are addressed:

a. How adequate is the current legal framework on the administration of criminal justice in Nigeria in addressing the participatory interest of the victims of crime?

b. What are the fundamentals for the participation of the victim of crime in the Nigerian criminal process?

c. What model of the theory of justice could be adopted in order to make the Nigerian criminal justice process conform adequately and strictly to the popular notion of justice as a three-way affair?

d. How can the victim-participation model of the international criminal court be amenable for the use of the Nigeria stakeholders in the criminal justice process to address the lopsided treatment of victims as compared to the treatment of the offenders?

e. How can the participatory right and role granted the victims by the Rome Statute and the Rule of Procedure and Evidence of the International Criminal Court be adopted in the administration of criminal justice in Nigeria?

f. What are the areas of improvements in our laws as the way forward in addressing and resting positively on a permanent basis the victims concerns in the Nigeria criminal jurisprudence?

1.4 Research methodology

This research work adopts the comparative study methodological framework and relies on the procedural justice theory, in order to drive every point, on most of the legal issues raised. The research adopts both primary and secondary sources of data. The primary source includes all statutory text for the regulation of criminal justice administration in Nigeria. These include the constitution of the Federal Republic of Nigeria, as well as other legislations like The Administration of Criminal Justice Act of 2015, Police Act Cap P19 Laws of the Federation of Nigeria (LFN), Children and Young Persons Act, Armed Forces Act of no 105 of 2004, Economic and Financial Commission Act (EFCC) Cap E1 LFN 2004, Independence Corrupt Practice and other related Offences Act (ICPC) CAP I 31 LFN 2004, Code of Conduct Bureau and Tribunal Act Cap C15 LFN 2004, Money Laundering Act of 1995 Cap M18 LFN 2004, Investment and Security Tribunal Act, National Drug Law Enforcement Agency (NDLEA) Act, National Agency for the Administration for Food Drink Administration and Control (NAFDAC) Act, Federal Road Safety Commission Act, Custom and Excise Act, Coroner's Laws of States, Supreme Court Act, Court of Appeal Act, Federal High Court Act, High Court of States Laws, Magistrate Court Laws as well as Factory Act, as well as the Rome Statutes and the Rules of Procedure and Evidence (RPE) of the International Criminal Court (ICC), just to mention but a few within Nigeria.

Materials are also generated from secondary data which include textbooks, law report. These textbooks which are very relevant to the research are both foreign and local. The secondary materials which are used in the course of this research include materials like existing literature on the subject (both textbooks and journal articles), as well as law reports of cases within Nigeria and international criminal tribunals and court. The basic reason for the use of these materials is to have a coherent research source in order to produce a workable reform material for future legislative reform.

1.5 Justification of the study

This study has a very significant and landmark effect on the general administration of the criminal justice delivery in Nigeria because of the involvement and the participation of the victims of crime before and during the trial of their case. This will go a long way in ensuring that procedurally the Nigerian criminal process is at par with many advanced

criminal justice jurisdictions in the world. This will also improve criminal justice delivery in such a way and to such an extent that the three-way traffic notion of criminal justice delivery that is, justice to the accused, to the society and the victim, anywhere in the world will be achieved and attained also in Nigeria.

1.6 Scope of the study

This research work dealt with the analysis of concepts like victim victimology and victimisation as they relate to the criminal justice system. It also contains the theoretical framework for an improved victim's participation in the administration of criminal justice in Nigeria using the victim participation model of the International Criminal Court (ICC).

The research also analysed the workings of the provision of the Article 68(1 – 3) of Rome Statute of the ICC, which is the main article on the victim's right to participation, from the investigation to the reparation in the trial of international crimes.

The significance of comparative law is the review of the situation of the victim of crime in the administration of criminal justice in Nigeria, with the aim of demonstrating the justification for the proposal being made by this study, such that the right of the victim of crime to participate in the trial of his case from the investigation to the end of the trial, would be adopted by the administration of criminal justice in Nigeria for an improved criminal justice delivery.

1.7. Limitation of the study

The major challenge to the study is the lack of records of victims suffering and the injuries recorded by the victims in the course of criminal trial of their cases both at the level of the law enforcement agencies and the Courts. The Police do not have records of the analysis of the injuries suffered by the victims in the hands of the offenders as well as how such situations were addressed. Again, there are no court records where situation of victim's agony through trial are recorded and kept. This has contributed to the non-availability of the much needed literature on the procedural law on this study. Moreover, the local statistics from relevant government agencies that were needed for an informed and adequate appraisal of the relative impact of the few Nigeria laws were not readily helpful. Nevertheless, the study made judicious use of the few available local literatures and relied heavily on the

personal experience of the researcher as a practitioner in the field and area of criminal law and procedure compared with the foreign literatures available in presenting an informed proposal for an increased victim participation in the administration of the criminal justice in Nigeria.

1.8. Expected outcome of the study

It is anticipated that the proposal for reforms and various recommendations as contained in this study would readily serve as guide-post to the stakeholders in the Criminal Justice Administration in Nigeria. It would also be a ready resource and reference material for the Nigeria policy makers in the areas of victim participation in criminal trial. This, no doubt, will significantly improve the criminal justice delivery system in Nigeria.

CHAPTER TWO

LITERATURE REVIEW AND THE CONCEPTUAL FRAMEWORK FOR VICTIM PARTICIPATION

2.1 Literature review

Andrew Karman[19], being aware that the plight of the victims is an old one, and that in most nations, rightly or wrongly, victims of crime were largely invisible in the criminal justice process, points out the fact that criminal cases are being referred to the accused as an individual against the state. He also makes it clear that criminal justice was basically concerned with dispute between the defendant and the state which does not include the victim of the crime. He posits that even if victims were considered at all, it is as a potential witness in that controversy. However, the learned author fails to make any proposal for paradigm shift in the criminal jurisprudence.

Fattah[20], in trying to ascertain an ideal victim for the purpose of determining criminal responsibility in some cases, observes that there are different categories of victims. In his opinion, not all victims were weak, defenseless, unsuspecting 'lambs' who through tragic or ironic circumstances and badluck, were pounced upon by cunning 'wolves'. This clarification becomes evident and necessary where there may be reasonable doubt and honest disagreement over which party in a conflict should be labeled the victim (victim of crime) and which should be stigmatised as the villain (accused). The learned author, in trying to explain the intricacies of the plights of the victim of crime alludes to the example of the father of an attempted rape victim, who in the process of defending his daughter caused the death of the attempted rapist; hence, becomes a murderer and consequently, got arrested and prosecuted by the criminal justice system. The relevance of this scholastic work to this research is in the area of understanding the victim-offender relationship even if the work falls short of proffering ways of addressing the inadequacies inherent in the neglect of the victims in the criminal justice system.

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[19] Andrew Karman (2000) Crime victims: An introduction to Victimology 7th ed. USA, Wadsworth
[20] Fatah E. A., (1991) Understanding criminal Victimisation (1st ed.) Canada, Prentice Hall.

Adeyemi in his work[21], contends that the concerns about victims of crime was relegated to the background at a time when the rights of criminal suspect were such a prominent issue in our statutes books, court sittings as well as public debates on policy issues. It is the contention of the learned author that the accused enjoys numerous provisions enshrined in the constitution of Nigeria, especially chapter IV and section 36 of the 1999 constitution, to the extent that even when the said suspect turned-accused is found guilty and sentenced, there are still numerous provisions in the constitution for the protection of the right of a convict as prisoner while the victim enjoys almost nothing in the criminal justice process. Although, the paper falls short of suggesting ways of enhancing the status, role and experience of the victims of crime in the Nigerian criminal process, it provides insights into the ways by which the plights of victim of crime could be addressed.

The book of Larry Siegal[22], in one of the chapters on victimology and criminal justice administration, emphatically states that assistance to victims of crime in the criminal justice process is of great significance. According to him, this is because victims mostly suffered irreparable damages, and harm as a result of crime committed against them. He therefore calls on the agencies of the criminal justice system to be receptive of the compensatory needs of the victims and address other concerns sincerely and concretely. The author, however, limits the discussion and the analyses to the compensatory rights of the victim of crime.

Yusuf and Yahaya's work[23] covers the areas of how victims are treated by the Police and public prosecution and how they evaluate their experiences. The learned authors are of the opinion that, perceived fairness of the treatment of the victims by the authority, has been on for several years and the situation has caused a lot of imbalances in the Nigerian criminal justice administration. The work generally exposes the fact that a victim may be a direct victim who has received injury or an indirect victim who are dependants of the direct victim. The work, however, fails to examine the rights and concerns of the victim vis-à-vis the Nigerian criminal process and how to improve on these concerns.

[21] Adeyemi A. A., (2010) Criminology in Contemporary African. Nigerian Journal of Criminology Vol. 2.
[22] Siegal L. J., (2005) Criminology: The Core (2nd ed) USA Thomson Wadsworth.
[23] Yusuf U. A. & Yahaya S. S., (2014) Crime Victims and Criminal Justice Administration of Nigeria" Global Journal of International Disciplinary Social Sciences 3.5.

Larry Siegel and John Worrall[24] in their joint publication define crime from three different perspectives: the consensus, the conflict and the interactionist. This definition was linked to their opinion about the victim of crime. The book in one of the chapters devoted to the issue of victim and victimisation is basically an exposition of the victim patterns. According to the authors the victim patterns could be explained from eight different angles which they listed as Gender, Age, Income, Marital status, Race, Ecological factors, Victim-offender relationships and Repeat victimisation. The work also delves extensively into the various theories of victimisation and how these theories affect the treatment of victim in the criminal justice system. However, the book is mainly based on research conducted in and for the benefit of the American society.

Dambazau[25] in his book on criminology is of the opinion that the state being the guardian of all citizens of a country, has the duty to protect its citizen and if any offence is committed, it is the liability of the state to protect the victim and make them fare better that their previous condition in the society, in his opinion such victims are entitled to share the promises of social justice contained in the constitution of the Federal Republic of Nigeria 1999. The author also rightly contends that the purpose of criminal justice appears at present to be confined to the simple object of ascertaining guilt or innocence of the accused and the use of the victim only as witness. The author, however, fails to anchor his proposal for improvement on this unsatisfactory treatment of the victims on any theoretical framework.

In the same vein, Dambazau, Owoade[26] in his work points out the need for a national criminal justice policy for Nigeria. This, according to him, will cater for all parties involved in the criminal justice administration. The author addresses the concerns of the victim and his dependant just as the interest of the accused as well as that of the society. However, the work fails to anchor the recommendations and the proposal on the establishment of the criminal justice policy on any theoretical framework. The learned scholar was strongly concerned about the need for a change of attitude of the stakeholders in the project of

[24] Larry J, Siegel & John L, Worrall, (2013) Essentials of Criminal Justice, (international edition) 8th edition Wadsworth. USA
[25]Dambazau A. B. (2007) Criminology and Criminal Justice, Ibadan Spectrum Book Limited.
[26]Owoade M. A. R. (1989) Reform of Sentencing in Nigeria: A Note on Compensation restitution and Probation in Federal Ministry of Justice Law Review Series.

improved criminal justice delivery in Nigeria and condemned the present situation of the victims. He was of the opinion that our laws are obsolete and out of date and need proper review in order to be amenable with the social reality in the administration of criminal justice anywhere in the world.

Bamgbose's work[27] analyses the pre-colonial and contemporary sentences, sentencing process and the principles of sentencing as it affects Nigeria comparatively with some other criminal jurisdictions. In her analysis, she identifies the purpose of sentencing in Nigeria to include the protection of the society from the dangerous action of an offender, to assist as much as possible the victims of a crime, to reform the offender and to prevent other people from criminal activities. The scholar also tries to analyse the aims of sentencing as being the same with the principles of sentencing which according to her include, but not limited to retribution, desert theory, deterrence, incapacitation, and rehabilitation. However the work fails to deal extensively with the analysis of how the sentencing principles affect the victim of crime. The work also avoids proposing any theoretical framework for the increased participation of victims of crime in a way as to lead to the improved justice delivery in Nigeria.

The work of Zehr[28] is basically devoted to restorative justice for the victims of crime. The scholar is of the opinion that the criminal justice is historically an offshoot of retributive, punitive philosophy and advocates for an improved treatment approach for the victims which according to him, the policy makers on criminal justice have failed to adopt over time. It is the contention of the scholar that restorative justice also incorporates the African perspective of criminal justice. He provided empirical evidence to show and demonstrate the value of restorative approach to the criminal justice which he recommended to policy makers and practitioners alike.

[27] Bamgbose O.A. (2010). The sentence, the sentence, and the sentenced: Toward Prison Reform in Nigeria (Inaugural Lecture) University of Ibadan Press.
[28] Zehr. H. (2002) the Little Book of Restorative Justice Intercourse: Good Book.

The work only advocates the need for greater emphasis and research in the field of restorative justice and victimology in the African continent; it however, did not demonstrate any kind of procedure to be adopted for the realisation of the improved treatment of the victim of crime which he advocated.

Goodey's work[29] is useful to this research in explaining some of the reasons for the neglect of the victims concerned in the criminal justice process, as well as the recent upsurge and increased interest and attention in victim-centered criminal justice. In his work, he examined how justice can be balanced for victims of crime, the defendant and the society. He offers a critique of restorative justice as an alternative to the traditional justice and its claims of balancing the needs, concerns and rights of victims with that of the offenders. The work extensively discussed the promises and the invitation offered by the restorative justice, as a possible paradigm shift in criminal justice should be modified in a way as to meet the victim's need, as a central player in the resolution of their own conflicts. The work, however, failed to recommend an alternative kind of justice paradigm in place of the heavily criticised restorative justice even when he contends that restorative justice may not offer much in the quest for a better deal for the victims of crime in the criminal justice administration.

Olatunbosun[30], in his journal article examines extensively the current status of victims in the criminal justice process in Nigeria as well as the legal positions of the victims of crime. The learned scholar conducted a survey of the existing laws on the Nigeria criminal justice process as it affects the victims of crime by bringing into focus the plight of victims of crime. The work is basically devoted to the issue of creating an avenue for the restorative justice for the victims. He is of the opinion that only restorative justice can completely assuage the injuries suffered by the victims of crime in his case. He therefore paints the picture of paradigm shift in the treatment of the victims of crime in the Nigerian courts. The scholar drawing examples from some countries like Germany, France, United Kingdom, Australia and the USA, in order to demonstrate that the proposal of restitutive justice

[29]Gooday J. (2005) Victims and Victimology: Research Policy and Practice, Newburn, England. Pearson Education Limited.
[30]Olatunbosun A. I. (2010) Restitutive Justice for Victims of Crime in Nigerian Court in Legal Issues for Contemporary Justice in Nigeria (Essays in honour of Hon. Justice M. O. Onalaja Rtd JCA).

paradigm is recommended to the Nigerian criminal justice administrators and policy makers alike was not new across the world. However, the work anchors this proposal for restitutive justice only on compensation to the victims of crime. The work is not in agreement with the view that restitutive justice for the victims cannot adequately address the participatory model of justice for the victims of crime in the Nigerian criminal justice process. Restitutive justice does not also remove the victims from the age long role of a mere witness in his own case.

Woulther, Oley and Denham[31] like Goodey, also delve extensively on restorative justice for the victims of crime. The scholars analyse restorative justice as it is amenable to the criminal justice process in the United Kingdom in the light of growing concerns for the improved treatment of victims across Europe and other countries outside Europe. The scholars unlike Goodey limit the application of the restorative justice to the United Kingdom although they draw examples from other countries in Europe.

Rudy[32] in her work addresses the role of the victims in the criminal justice process. The paper exposes the historical approaches to victims' involvement in the criminal justice process, to contemporary issues as it relates to victims' crime. The paper also discusses the changes that should be made for the smooth running of the justice system which leave the victims more satisfied in their involvement in the criminal justice process. The paper equally addresses the challenges which may be involved in the implementation of full restorative justice as proposed.

Paranjape[33] an Indian scholar in his book extensively exposes the theories of criminal victimisation. He is of the view that many victims contribute to their own victimisation either by provoking or inciting the criminal or by creating or fostering a situation likely to lead to the commission of the crime. He was of the opinion that a victim may consciously or unconsciously play a casual role in the commission of crime against himself. The learned

[31] Woulther L. Olley N. & Denham D. (2009) Victimology and Victims' Right (1st ed) New Your, Route-Ledge Cavendish.
[32]Rudly R. (2014) The Victim's Role in the Justice Process Retrieve 30th July 2016 from http://wwwinternetjournalofcriminology.com.
[33]Paranjape N. V. (2011) Criminology & Penology with Victimology (15th ed) Allahabad: Central Law. Publication.

author buttresses the fact by creating different scenarios and examples of situations where victims of crime may become victims out of their own involvement in the crime committed either by being careless, negligent or reckless. However, the expositions in the book are limited to the Indian community as a nation.

The work of Doerner & Lab[34] also exposes and expands the scope of the coast of victimology as well as bringing to the fore certain matters on the effects of criminal victimisation and historical analysis of the role of crime victims in the criminal justice process. The work is discussed extensively on the issue of restorative justice which was anchored on the need for adequate compensation for the victims of crime. However, the work in its entirety is based on the data and fact in the United States of America as it relates to the victims of crime.

Wilson[35] in his work considers the general framework for victim's participation in the justice system by making specific suggestion for the interaction between the victims and other stakeholders in the criminal justice process, i.e. the Police, the Prosecutors, Legal Counsel, and others like the judiciary and other professionals, responsible for the enforcement of sanctions. He tries to highlight and ascribe specific responsibilities to each of the stakeholders mentioned above in their interaction with the victims in the criminal justice process. The scholar observes that in many jurisdictions, the needs, concerns and rights of victims have not received the attention that they deserve and that there is an urgent need to provide more effective remedies and protective mechanisms for victims to enable them gain access to and participate effectively in the criminal justice system. This includes sensitisation of practitioners to the specific needs and concerns of victims. However, the observations raised in the paper, though altruistic, the discussions on it are of limited application to the Nigerian situation, and more importantly the proposal was not anchored under any theoretical framework.

[34]Doerner W. G. & Lab S. P. (2012) Victimology (6th ed), New York: Anderson Publishing.
[35]Wilsons J. K. (2013). The Praeger Handbook of Victimology: (Janet Wilson ed): California: Greenwood Publishing Group.

Olatunbosun[36], like Wilson, examines the limited involvement of victims during the trial of his case in court as well as the effects of the outcome of such case on him at the end of the cases. He discusses these effects from both perspectives of when the offender has been found guilty and when the offender was not found guilty. He observes that the difference in the plight of the victims in both situations is almost the same. He opines that the emphasis of the Nigerian criminal justice system is on the offender and "even those against the person are viewed as offences against the state". It is the scholar's contention that from the arrest of the offenders to sentencing, the law is concerned mainly with the offenders in the Nigerian criminal justice process. He holds the view that even the situation of the victims in cases which are initiated by him and which rely on his participation for success, still offer little direct relief to the victims. He further states that the criminal justice system is more punitive than restitutive, which was the reason why the operators in the criminal justice system have become so insensitive to the yearnings of the victims. He also contends that, punishment for the offender alone is the paramount objective of the criminal law, neglecting other welfare of the victims like rehabilitation and restoration to reduce the chances of re-offending and also increase the victim's satisfactions. He therefore recommends that in order for the victim to feel a sense of belonging in the criminal justice process, he should be well and adequately compensated. However, the scholar while recommending adequate compensation for the victims, which flows from the restorative justice which he advocates as a means of an improved criminal-victims relationship in the Nigeria criminal justice system, fails to draw any inference from the experience of international criminal law and indeed what operates under the Rome Statute of the international criminal court.

The United Nations Handbook[37] on justice for victims is also a very useful literature in this field. The handbook outlines the basic steps in developing comprehensive assistance services for victims of crime. The handbook contains several assistance services which could be provided to the victims of crime. This is what the handbook refers to as the victim support services. The handbook laid more emphasis on the fact that since there are several categories and levels of victims ranging from one case to the other and moving from one

[36]Olatunbosun A. (2007) Compensation to Victims of Crime: A Critical Assessment of Criminal Victim's Relationship Journals of the Indian Law Institute 44.2.

[37]Handbook on Justice for Victims (1999) New York Center for International Crime Prevention. retrieved 30th October 2016 from http://www.Victimology.org.

jurisdiction to the other and from one legal system to the other. The handbook observation is not prescriptive but rather it is to serve as a set of examples for jurisdictions to examine, test and adopt within their jurisdiction for their own use.

Ann and Albert[38] in their works expressed the importance and the urgency to be prepared to assist those who are victimised considering the widespread and high rate of crimes that are violent in nature which cut across boundaries. The work extensively discusses the extent to which a criminal may go in order to render his victim permanently incapable of surviving whatever restorative palliative he is given. The work however is not of a great applicability to the Nigeria situation in the criminal justice process.

The work of Igbo and Nnorom[39] also helps in giving certain hints on the fact that restorative justice and restitutive initiatives offer victims a better deal than the retributive conventional criminal justice system as we have in Nigeria. This is because, according to them, the success of any restorative justice initiative hinges on the willingness of the victims to cooperate in the tripartite criminal justice delivery to the victims, offenders and the community. They also stressed the need for African countries and Nigeria in particular to the example of some other countries like Britain, the U.S.A, Canada, Australia, New Zealand and other European countries which have commissioned programmes.

Schabas[40], in his work traces the development of international criminal court and how the court came into existence. He equally traces the antecedent events which eventually led to the establishment of the international criminal court to try those who have committed what is mostly described as the most serious crime on a permanent basis. To him, the establishment of the International Criminal Court will definitely put an end to the regime of impunity in the commission of the most serious crime of international dimension. The work, while there is no gainsaying the fact that it discusses the international crime and as well as the offenders in a great detail, not much is discussed about the way to improve the treatment of victims of international crime by the International Criminal Court.

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[38]Ann. W. B. & Albert R. R. (2000) Crime and Victimology (1st Edition) New York: Jones and Bartlen Publishers.

[39]Igbo E. U. & Nnorom C. P. (2005) Criminal Victimisation, Safety and Policy in Nigeria: Monograph Series No. 3 Lagos CLEEN Foundation.

[40]Scabas W. (2007) An Introduction to the International Criminal Court (3rd ed) London Cambridge Press. C.

Werle[41] in his work focuses mainly on the principles of international law. He discusses some salient points in the activities of the International Criminal Court. He delves extensively on the sources, principles and the operational framework of the international Law. Werle is of the opinion that the international criminal law is part of international law. He discusses to a limited extent the antecedent events which subsequently led to the establishment of the International Criminal Court. However, the work shows only a passive concern to the plight of victims of international crime.

Heller's[42] book is a book basically on international criminal law and international criminal court. Heller provides a comprehensive analysis of the twelve trials of the Nuremberg military tribunal. The book contains a detailed analysis of the Nuremberg trial in a very historical manner. He contends that there was little legal content on the trial; rather, it is highly political. However, the book is basically on the Nuremberg trial and tribunal. The only mention of the International Criminal Court throughout the discussion is that Nuremberg tribunal serves as a precursor for the International Criminal Court.

Brownlie's[43] work is devoted to the discussion on the principle of public international law under which international criminal law falls. He is of the opinion that crimes under the international law are generally regarded as international crime, that is, war crimes, crime against humanity, genocide and the crime of aggression. However, the book fails to address the plight of victims of international crime under the International Criminal Court.

Funk[44], in his book provided an in-depth analysis of the role of victims at the International Criminal Court. He centers his discussion on the restorative aspect of the treatment of the victims. Funk contends that for the first time, the International Criminal Court has given a voice to the victims to speak out against their abusers. He presents the analysis of the role of the victims under the International Criminal Court. He also presents an analysis of the problems in advocacy for the victims of international crime. The book, therefore, provides a

[41]Werle G. (2000) Principles of International Criminal Law (2nd ed) Cambridge.
[42] Kevin Jon Heller (2011) The Nuremberg Military Tribunal and the Original of International Criminal Law USAA OUP Oxford University Press.
[43]Brownlie I (2008) Principle of Public of Public International Law (7th ed) London. Cambridge.
[44]T. Marks Funk (2015) Victims Rights and Advocacy at the International Criminal Court (2nd ed) USA. OUP.

veritable ground and overview of the International Criminal Court trial procedure within its rules. However, the book fails to anchor his submission on the discussion of the plights of victims on any theoretical underpinning in order to drive his idea home.

Roach's[45] edited work on International Criminal Court is a compendium of scholastic writings on the subject matter. The Book is devoted to the exposure of the political under-current in the work of the International Criminal Court. It is the observation in the book that International Criminal Court, has emerged as the most intriguing model of global governance. In the writings of most of the contributors, the book investigates the challenges facing the International Criminal Court, in which the book termed as the dynamics of politicised justice. The writings in the book delve extensively on the apparent conflict between international peace and international justice and the concept of cosmopolitan nature of law. However, apart from the failure of the contributors to the book to have any discussion on the plight of the victims of crime, the issues presented in most of the writings are discussed from the perspective of the international political affairs and policies rather than international criminal law as it affects the International Criminal Court.

Olatunbosun's[46] work on the international criminal law is another literature useful in this research. The paper traces the establishment of the ICC from the reprehensible acts of the past. He equally traces the antecedent event which culminated into the establishment of the ICC. He analysed the need for expeditious treatment of criminal case by the International Criminal Court which is the necessities of the international criminal law; it is the opinion of the scholar that the establishment of the International Criminal Court gave a lot of hope that has hitherto thought to be a mirage in the international criminal jurisprudence. However, the treatment of the victims of international crime under the International Criminal Court does not seem to be the concern of the learned scholar in the paper.

[45]Steven C. Roach (ed.) (2009) Governance Order and the International Criminal Court Between Realpolitic and a Cosmopolitan Court USA. OUP.
[46]Olatunbosun A. I. (2001) The Reprehension of the International Crimes and the Challenges Ahead, Olabisi Onabanjo University Law Journal. Vol.3.

Solum's[47] work is mainly devoted to the analysis of the usefulness of the procedural justice theory in relation to the settlement of different kinds of conflicts whether civil or criminal. The paper discusses extensively the various theories of procedural justice and its variants. He anchors the discussion on the participation model under the procedural justice which he eventually likened to legitimacy. He discusses some variants of procedural justice such as procedural fairness, procedural participation and procedural legitimacy. He also discusses the theory from the perspective of political debate during legislative activities, the courts' settlement of cases and the obedience to law by the citizens of the country. It is the contention of the scholar that if citizens in a political state, who are the recipient of any law passed by the political authorities, are allowed to participate in the debate and the procedure adopted in the said debate, prior to the passing of the said law is adjudged fair, then the law eventually passed will be adjudged good law, and the political authorities are therefore said to enjoy political legitimacy, because of the procedural fairness of passing the law to be obeyed by the citizens. It therefore follows, according to the scholar, that the law is adjudged good and the political authority which passed the said law will enjoy legitimacy, simply because the citizens who are expected to obey the law are carried along right from the stage of drafting the said law till the passing of the law. The paper is purely on the theoretical framework on the international criminal court, it is not written to suit any domestic criminal justice process especially Nigeria.

Another compendium of scholarly contribution consulted during this research is the oxford handbook of International Law in armed Conflict[48]. The book which provides an overview of the salient issues related to the applications of international criminal law in armed conflicts. The book elucidates some emerging problems relating to terrorism, new type of weapons of war and most importantly the international criminal court, as well as the interaction between the humanitarian law and human right law as it concerns the victims of war. However, all issues discussed in the book by most of the contributors are examined and analysed mainly from the perspective of the International Humanitarian Law and International Human Right Law. This is not the main objective of this research.

[47]Lawrence B. Solum (2004) Journal of the Georgetown University Law Center Retrieve 3rd November 2016.
[48]Andrew Clephon and Paola Gacts (eds) (2014) The Oxford Hand book of International Law in Armed Conflict.

The book does not focus on the plight of victims under the criminal justice process either within the domestic or realm of international law.

The work on the hidden histories of war crimes trials[49] is an historical analysis and examination of war crimes trial that have taken place not only in European but also in African and the Australian enclaves. The book focuses on the historical perspective of most of these wars. It brought to the fore some of the instances of the war crimes trials which are not so familiar with scholars of international criminal law. However, the book does not explore the plight of the victims within these wars.

Adekunle[50] in his paper traces the historical development of war crimes and tribunal to 6th century B. C. The paper examines the world's first attempt at formulating certain basic policy and strategy of war, which is the Chinese General Sun Tzu, titled the "The Art of War", the paper in trying to address the concerns of the victims, examined the genocide commission, the actions of the International Law Commission (ILC) which forms part of series of activities that led to the establishment of the International Criminal Court. The paper examines the Nuremberg tribunals and its influence on the international criminal court viz-a-vis other military tribunal and other war crimes' trials. The paper however does not attempt discussion on the participatory role of the victims under the international criminal court.

Ladan[51] writes on the overview of the Rome Statute of the ICC where he traces the development of the International Criminal Law from the failed attempt at prosecuting the war criminals in the past. The paper analyses the ICC in the history of International Criminal law. It also provides an insight into the procedural rules of operation as well as the structure of the ICC. Ladan therefore submits by looking and projecting into the future of the ICC and predicted a very bright and promising future for the permanent international

[49]Kevin Hellter and Grey Simpson (ed) (2013) the Hidden Histories of War Crimes Trials USA. OUP.
[50]Deji Adekunle (2005) Historical Development of War Crime Tribunals Nigerian Institute of Advance Legal Studies. Publication. Lagos.
[51]Ladan.M T. (2005) An Overview of the Rome Statute of the International Criminal Court, Nigerian Institute of Advanced Legal Studies Publication. Lagos.

criminal court. However, the paper does not discuss anything on the concerns of victims under the ICC.

Akper[52], in his paper attempts an analytical examination of the crime of genocide under the ICC. The scholar traced the origin, meaning as well as a working and common definitions of genocide which has been variously described as "massacre", "mass murder", "put to the sword", "act of barbarism", or "inhumanity" by most scholars in the international criminal law. He adopts different definitions of the crime i.e. the statutory, the judicial and jurisprudential definitions of genocide. In his conclusion, he submits in his paper by examining the type of punishment fixed for the offenders who have been found guilty of genocide. The paper does not attempt any discussion on the plight or the concerns of the victims of genocide which is discussed as one of the most serious international crimes. Throughout the paper the emphasis has been the offender and no discussion on the victims of the international crime.

Popoola's[53] paper is an analytical and jurisprudential survey of war crimes and the ICC. The paper traces the historical development of what is described as the "African's cocktails of humanitarian crises" through Rwanda, the Liberia, Sierra-Leone, Democratic Republic of Congo, and Darfur region of Sudan. Popoola, thereafter, links these crises as forming part of those crises which have impacted negatively on the African countries and submits that the birth of ICC is expected to take a holistic view and steps at solving the problems on a permanent basis. However, the paper concentrates much on the examination and analysis on the humanitarian crises and the ICC's duties at investigating them with a view to discouraging such unpleasant situations and inhuman treatment to man. The paper fails to address the concerns of the victims involved in these crises; the paper does not also proffer solution to solving the problems of these victims of the humanitarian crises.

[52] Akper. P T. (2005) The Crime of Genocide Under the International Criminal Court Statute. Lagos (NIALS) Publication.
[53]Popoola A. (2005). The International Criminal Court Regime and the Crime against Humanitarian. Lagos. NIALS.

Ebere Osieke's[54]piece is on the analysis of war crimes within the statute of the ICC. The scholar attempts an analysis of the crime within the jurisdiction of the ICC that is, genocide, crime against humanity, war crimes and international armed conflict. The paper delves into the examination of these crimes but failed to address the victim's concerns on these crimes.

Ade Omofade's[55] paper traces the development of the ICC as the first international court to try international crimes on the permanent basis. It analysed the war crimes within the purview of the Rome Statute of the ICC. According to him, the Rome Statute of the ICC was adopted at a conference in Rome on 17, July 1998 by 160 states as the first treaty-based permanent criminal court. He notes that about 123 countries are state parties out of which 34 countries are from Africa, 19 are from Asia-Pacific, 18 from Eastern Europe, 26 from Latin-America and the Caribbean while the remaining 25 are from Western Europe and North America. The paper concentrates mainly on the Article 8 of the Rome Statute which contains the question of war crimes to the neglect of the plight of the victims under the Rome statute of the ICC.

Akem's[56]paper focuses on the superior orders and the responsibilities of the army commanders during the war. The scholar contends that as military commander, it is their responsibility to strictly observe the rule of war and make sure that none of these rules are breached by their subordinate officers under the command even under a very serious provocation. He observes in his paper that there is nothing which may prevent the war commander from following, strictly, the rule of war in order to safeguard the vulnerable. He also focuses on the sanctions for military commanders whenever any rule of war, as approved internationally, is breached. The paper, however, is limited to the examination of the responsibility of the military commanders during the war which must be observed strictly for them not to be guilty of war crime under the ICC.

[54]Ebere Osieke, (2005) War Crimes Under the Statute of ICC Lagos. NIALS Publication.
[55]Omofade A. (2015) War Crimes and the Crime of Aggression. Paper Presented during the Training Course in International Criminal Justice and its Administration, August 3 – 5, 2015 Lagos. NIALS Publications.
[56]Pat Akem (2015) Superior Order and Command Responsibility. A paper presented during the Training Course in International Criminal Justice and Its Administration between August 3 – 5, 2015. Lagos NIALS Publications.

Oluwagbami's[57] paper focuses on the historical antecedent of the establishment of the ICC from the first international tribunal at Naples in 1628 when the Conradin Von Hohenstafen, who was the Duke of Suasia was tried for initiating an unjust law, through the trial of the two Englishmen by the United States military tribunal in 1818 and down to the Nuremberg trial which, according to the learned scholar, was truly the first international war tribunal and a precursor to ICC. The paper examined the activities of the Nuremberg tribunal as well as other tribunal of Tokyo, Rwanda and Yugoslavia. It also examined the other special courts which came later. However, the paper focuses mainly on the international criminal tribunals which made the paper to be of limited use for this research.

In his paper, Okon[58] was of the opinion that the term 'sources of international' law means that rule must come from somewhere. The paper examines the relationship between the International Criminal Law and the International Humanitarian Law. The scholar noted that the International Criminal Law is a body of rules which imposes responsibilities directly on individuals and punishes violators through international mechanism. To him, there is a synergestic relationship between the International Humanitarian Law and the International Criminal Law in that most area of International Humanitarian Law is now criminalised as war crimes. This makes the International Humanitarian Law serve as a point of reference in understanding and interpreting the corresponding war crimes provisions. The paper however does not address any of the concerns of the victims of the war or armed conflict whether under the International Criminal Court or the International Humanitarian Law.

Praveena's[59] work on procedural justice traced the ambit of procedural justice from the substantive justice to distributive, restorative as well as retributive and came with the submission that the procedural justice is actually the thread that weaves the various aspects of justice together. The author tries to analyse the report of the John Rawls' proposition of the procedural justice theory. The author contends that in any outcome, the process used is

[57]Oluwagbami. D. (2015) Introduction to the Ad-hoc Tribunals Paper presented at the International Criminal Justice and its Administration. August 3 – 5, 2015. Lagos NIALS Publications.
[58]Okon. E. E. (2015) Sources of International Law and International Humanitarian Law. A paper presented during a Training Course on International Criminal Justice and its Administration August 3 – 5, 2015. Lagos NIALs Publication.
[59]Praveena Sukhraj-ELY (2010) Procedural Justice: the Thread that Weaves the Fabric of Justice in Society. Durban University of Kwazulu Natal.

usually and always pivotal to success. He therefore contends that what makes process fair involves numerous factors including consistency, transparency, legitimacy, impartial and neutral decision making. She submits that procedural justice is concerned with making and implementing decisions according to fair processes. However, the paper only deals extensively with the theory of procedural justice with no attempt to link the theory with the plight of the victims of crime under the criminal process.

Thibaut and Walker[60], in their joint paper provide a comparative empirical analysis of third party procedures used in conflict resolution such as adjudication, arbitration and mediation. The research paper is concerned with a number of aspects of procedure, including fact-finding efficacy. These aspects of procedures may be said to be subjective reactions to procedures which are involved in conflict resolution. To them, disputants as well as uninvolved parties were often as concerned with fairness of the process as with the outcome itself. It is their contention that if disputants do not see procedures as fair, they will not accord them legitimacy; they will avoid them if possible, and if forced to use them, will not readily accept the outcomes. The paper although delves extensively on procedural justice theory, it is limited to civil dispute procedure and its legitimacy rather than the criminal justice delivery.

Lind and Tyler[61] collaborate to review and integrate the substantial body of literature that has accumulated for years. Their effort advances the theoretical understanding of subjective reactions of procedure. Their work also documents the importance of procedural fairness in conflict resolution situations in the assessment of political legitimacy and in organisational behaviour of citizens. The research, however, did not anchor this theoretical framework to the plight of victims in the criminal process.

[60]John Thibaut and Laurens Walker (1975) Procedural Justice: A Psychological Analysis. Hillsdale N. J. Lawrence Eribaum Associations.
[61]E. Allan Lind and Tom. R. Tyler (1988) the Social Psychology of Procedural Justice. New York. Plenum.

Vidmar's[62] paper is devoted to discussion on procedural justice in legal and quasi-legal-settings. In his paper he notes that the adversarial procedure mostly resulted in greater feelings of procedural fairness and satisfaction of all concerned (the accused as well as the victim) with the verdict. He is of the opinion that when the verdict was unfavourable, disputant in adversary condition rated the procedure as fairer than the disputant in inquisitorial hearing condition. The paper demonstrates that procedural fairness was an independent contributor to disputant acceptance of outcomes. The paper also shows that process control contributes significantly to perceptions of procedural fairness. In turn, the perception of procedural fairness was positively related to satisfaction with outcomes. However, the research is limited to issues of procedural fairness as it relates to civil suit in court and not to the criminal process. Again, the research does not address the concept of procedural fairness as it affects the victims' participation whether under the international criminal justice process or under any domestic criminal justice process.

Lamparello's[63] paper captures the essence of the procedural justice models and its applications to the legal system of the United States. Lamparello devotes substantial part of his work to the issues of reform of the sentencing law of the United States. The paper basically proposes a solution to the problem facing the federal sentencing jurisprudence in the light of the Supreme Court's judgement in the case ofUnited States V Bookerwhere the Supreme Court of the United States of America held that, the sentencing guidelines suffered from a fatal constitutional infirmity and therefore declares the guidelines effectively advisory. He therefore proposes a process-oriented model to sentence criminal defendants who were guilty. The research is basically predicted upon the empirical data developed by the social psychologist in the area of procedural justice. However, the scholar's major proposal is for the improved guideline for the sentencing of the criminal defendant and not to the victims. Therefore, the procedural justice model used does not relate to the increased and improved participation of the victims of crime in the criminal justice system. The paper is criminal-defendants centered and not crimes-victims centered.

[62]Neil Vidmar (1991) the Origin and Consequences of Procedural Fairness New York. American Bar Foundation.
[63]Adam Lamparello (2010) Incorporating the Procedural Justice Model into Federal Sentencing Jurisprudence in the aftermath of United States V Booker: Establishing United States Sentencing Courts.

Mike Hough et al[64] are of the opinion that procedural justice approaches to policy makes a lot of improvement to the system of policing in the United Kingdom. The paper summarises procedural justice approaches to policing, contrasting these to the more politically dominant discourse about policing like crime control, and so forth. The paper argues that public trust in policing is needed partly because this may result in public cooperation with justice but more importantly because public trust in justice builds institutional legitimacy and this public compliance with the law and commitment to the rule of law. The paper is devoted to demonstrating the importance of procedural justice to issues of crime control as well as the issue of political trust of those working for the state in the area of crime control. The paper's scope is hinged only to the style of policing in the United Kingdom and no other jurisdiction. It is also limited to using procedural justice theory to measure the level of public trust and police legitimacy.

Tyler and Mentovich's[65] paper is devoted to the exposition of the relationship between the legitimacy and procedural fairness. In the paper procedural fairness is defined as the study of people's subjective evaluation of the procedure involve in the justice delivery. The paper also defines it in terms of whether it is fair or unfair, whether it is ethical or unethical in accordance with the people's standard of fair processes for social interaction and decision-making. To the scholars, there are two key dimensions of procedural fairness judgement which are fairness of decision making, that is, voice neutrality, and fairness of interpersonal treatment, that is, trust and respect. The research notes that legitimacy is a quality that is possessed by an authority, a law or an institution that leads others few obligated to accept its directives. They were of the opinion that law is a prominent tool of intervention through which government can seek to achieve public health goals. Therefore, the paper proposed the use of fairness in the procedure of making laws, for regulating public health, as the only means of conferring legitimacy on the public health authorities. However, the paper's exposition and discussion of procedural justice is not anchored on the criminal justice

[64]Mike Hough, Jonathan Jackson, Ben Breadford, Andy Mythill and Paul Quintum (2011) Procedural Justice, Trust and Institutional Legitimacy in Journal of Policity and Practice New York. Russel Sage Foundation.
[65]Tom. R. Tyler & Avital Mentovich (2011) Mechanism of Legal Effects: Theories of Procedural Justice. A method Monograph for Public Health Law Research Programme (PHLR). New York Robert Wood Johnson Foundation.

jurisprudence but rather heavily and largely rested on the government's attempt at achieving effective and efficient public health delivery.

Kaiser, Kury and Albrecht's jointly edited research publication[66] is a collection of articles which is based on the 7th international symposium on victimology in Rio de Janeiro in Brazil in 1991. The publication is in three volumes with volume one dealing extensively on the immense variation of questions with which victimological research is concerned currently. This volume is basically concerned with questions relating to the assessment of crime, recording the effects of the crime to the victim and the ways of improving the victim's position within the criminal law and procedure. The volume two essentially contains articles relating to the questions of compensation and offenders-victims settlement vis-à-vis victim protection. It also contains studies in relation to the field of legal protection, restitution and victim support. The third volume contains articles which are directly related to the issues of business as it concerns the position of victims of crime. The central issue which runs through the three volumes of this publication is that "victims play a central role in determining the input to the justice system"[67] and indeed the victims are expected to be rightly "labeled as the gate-keeper of the criminal justice system"[68]. However the three-volume publication does not relate the extensive research on victims to the status of victims under the Nigeria criminal jurisprudence because it was not written based on the Nigeria criminal justice situation. The volumes of articles compiled in the three volumes are mainly on the criminological researches as it relates to victims in particular European countries such as Federal Republic of Germany, Spain, Switzerland, Austria, Greece as well as Russia, Israel and Japan.

The review of the earlier literature as attempted above in this chapter on the subject matter of the research revealed that in general there has not been any literature which fully explores the central thesis of this research. This is evident in the arrays of the rich literature consulted which cover both local and foreign literature. In general, it is observed that considerable research has been carried out on the plights and concerns of the victims of crime in the

[66] G. Kaiser, H. Kury andH.J.Albrecht (eds.) (1991). Victims and Criminal Justice (Vols 1, 2 & 3) Eigenverlag max-plnck-institut.
[67] Ibid Vol.2 p.28.
[68] Ibid Vol.2 p.28.

criminal justice process. However, none of the literature encapsulated and demonstrated the exposition of the concerns of the victims of crime under any criminal justice process using procedural justice theory. Some of the literature on procedural justice theory did not relate their theoretical framework of procedural justice to the concerns of the victims of crime in the administration of the criminal justice as this research seeks to do.

The literature under review may therefore be categorised under three kinds, in terms of how they relate to the thesis of this research. The first categories are those works that are devoted to the plight and concerns of the victims of crime under the Nigeria criminal justice system but without discussing their study through any theoretical framework whatsoever. The second category of works on the subject matter under review are those literature that discussed the theoretical framework of the procedural justice as this research but were either not linked with the concerns of the victims or were not linked with the criminal justice process of Nigeria or any other jurisdiction either because such works are not undertaken with the Nigerian situation in mind or without the plight of victim of crime in Nigeria in mind. The third category are those literature which discuss the concerns of the victims of crime under criminal justice system of foreign countries and did not anchor their discussion on the procedural justice theory as it affects the Nigerian criminal justice process as this research seeks to do.

As stated earlier, this study has as its main goal, to evaluate all the discussions in the three categories of literature under review and come up with a proposal which is believed will address effectively and efficiently the various concerns of the victims of crime under the administration of criminal justice specifically in Nigeria and firmly anchored on the theoretical framework of the victims' participation model of the procedural justice and basically using the international criminal court example. It is therefore submitted in this part of this chapter that having consulted these literature as espoused above in the course of this study, the coast is now clear to explore the second part of this chapter which is the analysis of concepts and terms as they will be used in the study in order to succinctly capture its focus of examining the concerns as well as the position of victims of crime, under the administration of criminal justice process in Nigeria, using the theoretical

framework of procedural justice of the victims' participation model under the International Criminal Court (ICC) as it is currently practiced.

2.2 Conceptual framework for victimparticipation

This part of the chapter introduces the concept of victim, its relationship with victimisation as well as the theories of victimology, in relation to the criminal justice system. It also discusses the conceptual definition of victim, victimisation and victimology, in all ramifications. The chapter also discusses the responsibilities of various stakeholders involved in the criminal justice system, the functions performed, the roles played and the challenges encountered by the stakeholders in their relations to the victims of crime. The chapter also examines the various victims support and assistance programmes which exist and have been in operation in other jurisdictions with the aim of bringing to the fore the superior advantages of, and the need for, the victims' participation in the Nigeria criminal jurisprudence. The chapter examines the various impacts and the effects of crime on victims – the physical, the financial and the psychological as well as the victims/offenders relationships. Finally, the chapter examines the United Nation Declaration on Basic Principles of Justice for victim of Crime and Abuse of Power as well as some of the efforts of other international governmental and non-governmental organisations in addressing the plights of the victims of crime.

2.2.1 Clarification of terms

Victims of crime and victimology

Victimology emerged in the middle of the twentieth century and it focused on the victims of crime[69]. The concept of victimology has since been defined within a framework of a social science to study cause and effects of being a victim and to suggest remedy[70]. However, victimological research has led to the growing or increasing awareness that redress and reparation for the victims of crime is an imperative demand of justice[71].

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[69] Karmen A. 1990. Crime Victims, An Introduction to Victimology, 4th edition. London, Wards Worth Publishers, page 112.

[70]Goodey J. 2005, Victims and Victimology. Research, Policy and Practice 2nd ed. England Person Education Limited p. 225.

[71]Dambazau A. B. 1999, Criminology and Criminal Justice Kaduna, Nigeria Defense Academy Press. (See generally.

Despite the emergence of the concept of victimology, the rights of the victims have remained sidelined in some countries of the world. Till date, the concept of victimology in Nigeria, has proved to be largely ineffective and in most cases has left the victims betrayed and disappointed[72].

Victimology therefore emphasises the urgent need for making the role of crime victims more meaningful and to obtain the needed cooperation from them[73]. Victimological research and victim movement also seeks to ensure that victims have access to and participation in criminal proceedings, as well as the necessity to restore balance in the criminal justice system integrating the concerns of crime victims for a better and improved criminal justice delivery. The state is therefore responsible to restore such balance by providing due respect to the rights and concerns of the victims, including accreditations to their role in criminal justice process[74].

Victimology becomes more relevant to the justice system in spite of the fact that the victim could aptly be termed the forgotten person in the administration of justice[75]. Considerable attention had quite justifiably been paid to ensuring due process for the defendant, who is after all, threatened with state imposed punishment, and should therefore be afforded every possibility of establishing his or her innocence and/or presenting other considerations in his or her defense. This degree of attention had not, however, been paid to the victim. The state is assumed to be representing the interest of the victim and, accordingly, no need was perceived for direct victim involvement and participation in the proceeding[76].

The various jurisdictions have tried to respond to these challenges and to strengthen the position of the victim, as well as ensure access to appropriate services. One of the earliest calls for reform came from Margery Fry in the United Kingdom of Great Britain and

[72] Karmen A. 1990. Crime Victims, An Introduction to Victimology, 4th edition. London, Wards Worth Publishers, page 115.
[73]Siegel L. J. 2003, Criminology, The Core, 2nd edition London, Thomson Wards worth Publishers p. 237.
[74]Yusuf U. A. & Yahaya S. S. 2003, Crime Victims and Criminal Justice Administration in Nigeria. Global Journal of Interdisciplinary Social Sciences, 3.5, pp. 48 – 52.
[75]Paranjape N. V. 2011, Criminology and Penology with Victimology 15th ed, Allahabad. Central Law Publication, p.232.
[76]Dambazau, A. B. 1999, Criminology and Criminal Justice, Kaduna, Nigerian Defense Academy Press. See generally.

Northern Ireland who, during the early 1950s, argued for Shelters for battered women, for state compensation schemes for victims of crime and for reconciling the victim and the offender[77]. The first state compensation scheme for victims of violent crime was adopted in New Zealand in 1963[78].

It is also pertinent to note that the work of individual organisations, governments and international bodies to restore victims to their rightful place in legal system of various jurisdictions such as the United States and the United Kingdom and to increase the quantity and quality of assistance available to victims has not been easy[79]. The themes of victimology in the justice system includes a need for greater attention to the victims, a delineation of the rights of victims, and the need for victims to participate in legal proceedings and have greater access to reparation[80]. The question which one may then ask is who then is a victim of crime?

(a). Who is a victim?

The concept of a "victim" can be traced back to ancient societies and the early religious notions of suffering, sacrifice and death[81]. It was connected to the notion of sacrifice meaning a person or an animal put to death during a religious ceremony in order to appease some supernatural power or deity[82]. This concept of "victim" was well known in the ancient civilisations especially in Babylonia, Palestine, Greece and Rome. Over the centuries, the word has picked up additional meaning, now it commonly refers to individuals who suffer injuries, losses or hardships for any reason. This is to say that people can become victims of accidents, natural disaster, diseases or social problems such as war fare, discrimination, political witch-hunts and other injustices[83]. We also have the victims of circumstance; in

[77] Ibid.
[78]Other examples of early reforms include the 1955 Child Protection Legislation in Israel and the establishment of shelters for victims of domestic violence and crisis centers for victims of sexual assault.
[79]Legal systems have evolved gradually over the centuries, and proposals for reforms to benefit victims have raised concerns that they may detract from the legitimate rights of others, such as suspects and defendants.
[80]Karmen A. 1990. Crime Victims, an introduction of Victimology, 4th edition, London: Wards worth Publishers, page 119.
[81]Adler F. M. & Laufer W. S. 1994. Criminal Justice 1st ed, New York McGraw Hill Inc. p. 222.
[82]Paranjape N. V. 2011. Criminology and Penology with Victims of Crime and Abuse of Power.
[83]Karmen A. 1990. Crime Victims, an introduction of Victimology, 4th edition, London: Wards Worth Publishers, page 222.

each of these civilisations, the victim should be recognised as a person who deserves to be made whole again after being short changed by the offender.

(b). Victims of crime

Crime is not simply an incident but it is first of all, an encounter between a victim and offender. It refers to a specific act committed in violation of the law. An act or omission must be stated by the law to be a crime, the violation of which attracts sanctions. An offender or perpetrator of a criminal act on the other hand is one who commits an offence or crime against the law.

The 1985 United Nations Declaration of Basic Principles of Justice for victims of crime and abuse of power[84] provides a broad definition of crime victim as:-

> Person who individually or collectively, have suffered harm, including mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal law operatives within the members states….[85]

This definition encompasses anyone who is victimised as a result of a violation of the criminal law, and captures a range of abuses relating to criminal abuse of power. In turn, both direct and indirect victims are brought under the wing of the Declaration. In this regard, the Declaration surpasses the criminal law in many countries, particularly in its identification of "abuse or power" as victimisation[86]. In addition, the 1985 Declaration states that a person may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between the perpetrator/offender and the victim.

[84]1985 United Nations Declaration of Basic Principles of Justice for Victims and Abuse of Power.
[85]Yussuf U. A. & Yahaya S. S., 2014, Crime Victims and Criminal Justice Administration in Nigeria. Global Journal of Interdisciplinary Social Sciences. 3.5; pp. 48 – 52.
[86]Goodey J. 2005. Victims and Victimology: Research, Policy and Practice Ed. T. Newburn England: Pearson Education Limited p. 15.

In the legal context, crime victim is defined in the following ways[87]:-

1. A person who suffered direct or threatened physical, emotional or primary harm as a result of commission of crime.
2. An institution or entity that had suffered any of the same harm by an individual or authorised representative of another entity.

It can be deduced from the foregoing that crime victims or victims of crime are harmed by illegal acts, directly or indirectly. They are persons who have been physically, financially or emotionally injured and/or had their property taken or damaged by someone committing a crime[88]. Furthermore, we should note that an injury could come or be inflicted in different forms[89]. A scholar in his work[90] is of the opinion that perhaps the term "survivors" is preferable to "victims" because it is more upbeat and empowering, emphasising the prospect of overcoming adversity. The alternative term, 'survivor' is sometimes preferred, as it implies the seriousness of the experience with crime and promotes images of strength[91]. However, the established usage of the term 'survivors' refers to the close relatives of the people killed by murderer[92].

Another scholar described a victim of crime thus:-

> Every victim of personal crime is confronted with a brutal reality, the deliberate violation of one human being to another. The crime may be a murder or a rape, a robbery or burglary, the theft of an automobile ...but the essential internal injury is the same. Victims have been assaulted ... emotionally and sometimes physically ... by a predator who has shaken the world to its foundation[93].

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[87]Karmen A. 2013. Crime Victims, an introduction of Victimology, 4th edition, London: Wards worth Publishers, page 165.
[88]Rothe D. L. & Kauzlarich D. 2014. Towards a Victimology of State Crime. London & New York: Routledge, Tailor & French Group p. 118.
[89]Victims of Crime Assistance Act, 2009: The Act defines injury as, bodily harm, mental illness or disorder, intellectual impairment or a combination of the above.
[90]Op cit. Note 144 at p. 17.
[91]Karmen A. 2013. Crime Victims, an introduction of Victimology, 4th edition, London: Wards worth Publishers, page 225.
[92]Goodey J. 2005, Victims and Victimology: Research Policy and Practice Tim Newburn ed. England Pearson Education Limited pp. 15 – 26.
[93]Goldstein J. 1984. Crime Victims and Criminal Justice Administration. The World Society of Victimology Newsletter of 1983. Vol. 3 Retrieved 2nd August from http://www.bookzz.org/victimdefinition: See also O'Connel M. 1992. Who may be called a Victim? Journal of the Australian Society of Victimology 3.2: p. 22.

In view of the foregoing definitions of a crime victim, it could be deduced evidently that a victim of crime is 'a person who has suffered direct, or threatened, physical, emotional or pecuniary harm as a result of a commission of a crime'. Being a victim of a crime can be a frightening experience with many short and long term consequences[94]. Also the victim's perception of the world may change because he begins to see everyone around him in a different light.

There are basically three types of victims of crime, that is, primary, secondary and tertiary victims of crime[95]. The implication of this classification is that at any point in time, everyone is a victim of one crime or the other, Odekunle[96] asserts that the population of victims is remote and diffuse, but refers to the generality of Nigerians.

The primary victims of crime are persons who are injured as a direct result of an act of violence or crime being committed against them[97]. They constitute those who suffer or experience the direct criminal act and its consequences or threatened harm/injury first. The primary victims are people who are injured, suffer significant adverse effects or die, as a direct result of:

(i). an act of violence against them;
(ii). trying to arrest someone they reasonably believed to have committed a crime;
(iii). trying to prevent a crime from occurring; and
(iv). aiding or rescuing a victim of crime.

The secondary victims of crime are those who experience the harm or injury second-hand or indirectly as a result of an act of crime or violence committed directly against another such

[94]Quinney R. 1992. Who is the Victim? Eds. J. Hudson & Gallway, Illinois Charles C. Thomas Publishers pp. 189 – 197.
[95]Odekunle F. 1979. The Victims of Crime in Developing Countries: A Nigerian Study A Paper presented at the 2nd International Symposium of Victimology Massachusetts Retrieved 15th July, 2016, from http://www.gifre.org/html: See also Siegel L. R., 2005 Criminology. The Core U. S. A. Thomson Wadsworth p. 321.
[96]Odekunle F. 1979. The Victims of Crime in Developing Countries: A Nigerian Study A Paper presented at the 2nd International Symposium of Victimology Massachusetts Retrieved 15th July, 2016, from http://www.gifre.org/html.
[97]Section 26 of the Victims of Crime Assistance Act, 2009.

as family members, intimate partners or significant other of a rape victim or children of a battered woman[98].

It can be deduced from the foregoing that survivors or indirect or secondary victims (such as family members and lovers) are not immediately involved or physically injured in confrontation but they might be burdened, even devastated[99]. For example, a situation whereby a man, the head of a family, was robbed of a particular amount of money which is intended for the school fees and upkeep of the family or a circumstance where such a man was murdered by another, it is evident that even though the crime is directly committed against the man, his family members i.e. those that need to pay school fees and upkeep will definitely be affected and devastated. Also, the immediate family members or parents of a rape victim will definitely be burdened and devastated about the crime committed against their daughter, thus they become secondary victims.

At times, a victim is not necessarily an individual; it may also be a collective entity, a firm or a whole race or nations. Also, groups may become victims, this would typically involve hate crime, for instance, and the case of genocide victims is not only those individual members of the national, racial or religious groups whose destruction has been the object of the crime but also the group as a whole[100].

The corporate victims of crime are those who experience the harm vicariously, by virtue of belonging to a group (religious or tribal), or through media accounts or from watching the television[101]. For example, denial of a job opportunity due to membership of a religious or

[98]Karmen A. 2013, Crime Victims; an introduction to Victimology 4th edition. London Wards Worth Publishers, page 225: See also Section 26 of the Victims of Crime Assistance Act, 2009 retrieved 2nd August, 2016 from http//www.justice.gov.au/justiceservices/victimsofcrime/victimofcrime-explained.

[99]Paranjape N. V. 2011. Criminology and Penology with Victimology. 15th ed. Allahabad; Central Law Publication p. 234.

[100]For example the incessant classes between the Ogonis and the authority in River State of Nigeria which consequently led to the execution of Ken Saro Wiwa and 8 others MASOP leaders on their alledged roles in the murder of four Ogoni leaders. See also p. 220 of the German Penal Code, 1954 enacted in conformity with the Genocide Convention of 1984, which purportedly classified German as the best race in the World. Similar sections led to war in Bosnia Somalia, Burundi and Liberia to mention a few.

[101] 1996 National Victim Assistance Academy Retrieved 2nd August 2016 from http//www.ojp.usdoj.ovc/assist/nvaa/ch03.html.

tribal group or the society's perception to marry ladies belonging to the Osu clan in Eastern Nigerian makes all the members of the clan tertiary victims.

(a) Characteristics of victim

By a victim of crime, it is meant 'a person who has suffered direct, or threatened, physical, emotional or pecuniary harm as a result of a commission of a crime'[102]. The term is often associated with negative meanings of weakness, passivity, and some victims could even be perceived as underdogs[103].

Nevertheless, some stereotypical views about victims are embedded in our society. One helpful starting point in exploring 'what we know' about the identity and attributes of victims is Nills Christie's[104] celebrated stereotype of 'the ideal victim'. The ideal victims are perceived as innocent, vulnerable and deserving of help, sympathy and attention[105]. Fattah[106] further identifies some attributes which are similar to that of Christie[107] of an ideal victim by making reference to one simple example of a little old lady on her way home in the middle of the day after taking care of her sick sister. She is hit on the head by a big man who thereafter grabs her bag and uses the money for liquor or drugs – in that case we come close to the ideal victim.

According to Fattah[108], it is so by the following attributes:-

(i). The victim is weak in relation to the offender – the 'ideal victim' is likely to be either female, sick, very old or very young (or a combination of these).
(ii). The victim was carrying out a respectable project – caring for her sister.
(iii). She was where she could not possible be blamed for being in the street during the day time.
(iv). The offender was big, bad and vicious.

[102]Bednarova J. 2011. The Heart of the Criminal Justice System: A Critical Analysis of the Position of the Victim. Internet Journal of Criminology. Retrieved 15th July, 2016 from http:www.internetjournalof criminology.com.
[103]Zedner L. 2004. Criminal Justice System: 4th Ed. Oxford: Oxford University Press p. 223.
[104]Christie N. 1986. The Idea Victim. Ed. Fattah E. A. Basingstoke: Palgrave Macmillan. p. 122.
[105]Ibid at p. 123.
[106]Fattah E., 2000. The Vital Role of Victimology in Rehabilitation of Offenders and their Re-integration into Society. In UNAFEI 112th International Training Course Participation of the public and victims for more fair and effective criminal justice UNFEI: Fuchu, Tokyo, Japan. Retrieved 15th July, 2016 from http://www.unafei.or.jp/english/pdf/PDFrms/no56/56-7.pdf.
[107]Op.cit not 35.
[108]Ibid (see generally).

(v). The offender was unknown and in no personal relationship to her.

Generally, some of the features attributable to certain persons who are at a high risk of being targeted include the following:

Gender: Men are almost twice more likely than females to be the victims of violent crime and robbery. Women however, are more than six times more likely than men to be victims of rape or sexual assault. For all crimes, males are more likely to be victims of crime than females. However, the gender difference in the victimisation rates appears to be narrowing. Females were most often victimised by someone they knew, whereas males were more likely to be victimised by a stranger. Of those offenders victimising females, about two-thirds were described as someone the victim knew or was related to. In contrast, only about half of the male victims were attacked by a friend, relative or acquaintance[109].

Age: This means that people who are older in age are less likely to be the target of crimes or attacks than younger people.

Social Status: Under this consideration poor people are more likely to be victims of violent and property crime as opposed to their rich counterparts irrespective of their age, gender or race. Although the poor are more likely to suffer violent crimes, the wealthy are more likely targets of personal theft such as pocket picking, purse snatching and car theft.[110]This is partly so because it is assumed that the rich people are likely able to afford means of security and safety than their poor counterparts.

Marital status: This also influences victimisation risk, males and females who are never married are victimised more that married people for example, sexual harassment and sexual assault in the work place or community at large[111] is more rampant among single males and females than their married counterparts.

From the mentioned attributes of an ideal victim, it means then to say that whenever an individual or group of individual is carrying out a respectable project where the chance of being victimised is not provided, and when hit by a crime from an unrelated offender, the

[109] Siegel L. J. 2005. *Criminology.* The Core, 2nd ed, U. S. A.: Thomson Wardsworth p. 56.
[110]Ibid p. 57.
[111] Ibid.

individual(s) become ideal victim(s). This implies that whenever one engages in an activity that exposes him to chances of victimisation, he will not be regarded as an ideal victim when becoming a victim of crime. Most importantly, an ideal victim is said to be weak compared to the unrelated offender, in terms of having to put up a reasonable energy and precaution into protecting himself or herself against becoming a victim. In other words, an ideal victim will not be in the position to protect himself or herself whenever there is an attack against him simply because he or she would have assumed that the environment is safe of criminals.

(b) Victimisation

Victimisation refers to an act that victimises or exploits someone adversely as a result of being a victim. The victimisation takes on many forms[112]. The sources of victimisation can be divided into either natural or human victimisation. The natural victimisation includes disasters, health hazards and predatory agents. The human victimisation, on the other hand, includes self infliction, criminal and civil acts or omissions[113].

The term 'victimisation' simply means the suffering or physical, financial and emotional injury done to the victim or anything that aggravates the suffering, harm or injury that is being done to the victim. To this end, victimisation is broadly divided into two categories namely: primary and secondary victimisation. It is also important to note that victimisation encompasses a number of possible elements[114]. The first element which if often referred to as 'primary victimisation' comprises whatever interaction may have taken place between the offender and the 'victim' during the commission of the offence, plus any after-effects arising from this interaction or from the offence itself. The second element encompasses 'the victim's' reaction to the offence, including any change in self-perception that may result from it, plus any formal response that he/she may choose to make to it. The third element consists of any further interactions that may take place between 'the victim' and

[112] Victimisation defined. Retrieved 10th August, 2016 from http://www.realisticsafetysolutions.come/article/victimisationdefined.html.

[113] Bednarova J. 2011. The Heart of the Criminal Justice System: A Critical Analysis of the Position of the Victim. Internet Journal of criminology: Retrieve 15th July, 2016 from http://www.internetjournalof criminology.com.

[114] Fattah E. A. Ed. 2000. From Crime Policy to Victim Policy: Reorienting the Justice System. London: Macmillan Press Ltd. p. 213.

others, including the various criminal justice agencies with whom he/she may come in contact as a result of this response. Where this interaction has a further negative impact on the victim, it is often referred to as 'secondary victimisation'.

Primary victimisation is referred to as the actual harm experienced by the crime victim that is, victim's experiences of the crimes committed against them. With regard to the 'primary victimisation' phase of the process, it may be helpful to begin by distinguishing between the 'effects' or consequences that are known to result from crimes of different kinds and their 'impact' on the victims themselves. Certain crimes entail physical effects, which are likely to involve some degree of pain and suffering, and may also entail loss of dexterity, some degree of incapacity and/or possible temporary or permanent disfigurement. Many crimes also have financial effects, which may be either direct – where they are attributable to the theft of or damages to properties or indirect.

Secondary victimisation refers to the victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim[115]. This refers to any consequential experience that aggravates the suffering or primary victimisation of the victim. It includes the treatment of victims by the society and criminal justice agencies, such as the Police and the courts[116]. It may result from intrusive or inappropriate conduct by the Police or other criminal justice personnel[117]. For example, when a victim reports a crime at the police station and he/she is asked to bring money so as to mobilise the Police into action, victims may find that the Police interrogation is handled carelessly or callously, with insinuations that they were somehow at fault[118]. Also, when the society

[115]Paranjape N. V. 2011. Criminology and Penology with Victimology. 15th ed. Allahabad; Central Law Publication p. 502.
[116]Paranjape N. V. 2011. Criminology and Penology with Victimology. 15th ed. Allahabad; Central Law Publication p. 500.
[117]Davies P., 2003. Crime Victims and Public Policy. Victimisation. Theory, Research and Policy. Eds. P. Davies, P. Francis and & V. Jupp, Basingstoke: Palgrave Macmillan. P. 23: The whole process of criminal investigation and trial may cause secondary victimisation from investigation to the trial itself and sentencing of the offender, to his or her eventual release.
[118]Shapland J. 2000, Victims Assistance and the Criminal Justice System: The Victim's Perspective From Crime Policy to Victim Policy: Reorienting the Justice System. Ed. Fattah, E. A. London: Macmillan Press. p. 50, Rape Victims report that the Treatment they receive from medical and health facilities is so destructive that they can't help feeling "re-raped".

passes negative comments and blames the victim most especially rape victims (due to their provocative wears) for the crime, this is secondary victimisation from the society.

Very often, crime can result in additional costs that might be incurred, for example, in seeking medical treatment or legal advice, or loss of income as a result of attending to the crime and its aftermath, or possible loss of future earning potential. For another example, a victim who suffers primary injury resulting in medical attention, the fees will not be catered for by the government; such medical expenses are referred to as secondary victimisation. In addition, agencies set up to help the victims of crime such as victim services, victim compensation systems, refugee services and mental health institutions may have some policies and procedures that lead to secondary victimisation[119].

(c) Victimology

Victimology can be defined as the 'scientific study of victimisation, including the relationship between victims and offenders, the interaction between victims and the structures of the criminal justice system that is the Police, courts and correction officials, and the connection between victims and other societal groups and institutions such as the media, business and social movements[120].

Victimology can also be defined as the study of crime from the perspective of the victim. To this end, it can be deduced that victimology consists of:

(1). Victimisation
(2). Victim/offender relationship.
(3). Victim/criminal justice system relationship.
(4). Victim and the media.
(5). Victim and the cost of crime.
(6). Victim and the social movement[121].

[119]The hurried schedule of the emergency room may intrude on the privacy of a sexual assault victim or offend his or her sense of dignity. Intrusive or inappropriate investigation and filming, photography and reporting by the media are also factors.
[120] Karmen A. 2013, Crime Victims: and Introduction to Victimology. 4th edition, London, Wards Worth Publishers pp. 322 – 324.
[121]Ibid at page 325.

Theoretical victimology is the study of crime victims, their characteristics, their relationships to and their interactions with their victimisers, their role and their actual contribution to the genesis of the crime[122].

Applied victimology is the application of knowledge acquired from the study and research on victims and victimisation in practice to help and assist those victimised by the crime and prevents crime victimisation[123].

2.2.2 Brief historical perspectives of victimology

It is important to acknowledge where the field of victimology originated and how it has developed. Jerin and Moriarty[124] contend that there are three distinct historical eras defining the victims' role within justice system, the golden age, the dark age and the re-emergence of the victim.

(a) The golden age

The golden age, according to Jerin and Moriarty[125] existed prior to written laws and established governments, and the tribal law prevailed. During this period, victims are said to have played a direct role in determining punishments for the unlawful actions that others committed against them or their properties. It was reportedly a time when personal retribution was the only resolution from criminal matters. As such, victims actively sought revenge or demanded compensation for their losses directly from those who wronged them[126].

Doerner and Lab[127] describe this as a victim justice system as opposed to a criminal justice system, explaining that it was up to victims or their survivors to decide what action to take against the offender. Victims who wished to respond to offenses could not turn to judges for

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[122] It is also a study of the impact of crimes on victims in particular traumatic effect of Victimisation and the coping mechanisms they use for healing and recovery.
[123]Fattha E. A. 1999, Understanding Criminal Victimisation Canada: Prentice Hall p. 43.
[124]Jerin. A. & Moriarty L. 1998. Victims of Crime. Chicago: Nelson Hall Publishers pp. 6 – 15.
[125] Ibid p. 12.
[126]Shichor D. & Tibbetts S., 2002. Victims and Victimisation: Essential Readings. Illinois: Waveland Press. p. 32.
[127]Doerner W., & Lab S., 2002. Victimology 4th ed. Cincinnati, Ohio: Andersen Publishing p. 12.

assistance or to jails for punishment. These institutions did not exist yet; instead victims had to take matters into their own hands. Ostensibly, this could occur without any pre-established burden of proof, with the victim's world set against that of the accused, and judged in an ad hoc fashion within a given community, group, or tribe[128].

Victim-driven approaches to justice became somewhat problematic as populations grew, and as families and groups expanded. This was partly because, in many instances, crimes were not suffered or inflicted against just one person. Depending on the nature of an offense, it might be harmful to an entire family, tribe or culture. And if the actual offender was not available to get punished, his or her kinsman might bear the responsibility for the harm that had been caused. Worse still, in some instances, successive generations would inherit any insult and injustice committed against the last wrongfully victimised or wrongfully prosecuted alike. So, the commission of a single crime had the potential to draw in many people leading to longstanding blood feuds between families or tribes[129].

The notion that a crime against one is a crime against many did not serve to alleviate the hardship endured by the individual victims; neither did holding one kinsman responsible for the crimes of another. Rather, this scheme of justice expanded the harm of the original crime to people that were not directly involved. It also resulted in cycles of re-victimisation as groups sought their share of vengeance back and forth[130] rather than serving the victim, victim-driven justice actually made matters much worse.

(b) The Dark Age

It has been argued that the so-called dark ages of victimology were result of the emergence of structured local governments and the development of formal legal statutes. These were a by-product of more stable economic systems, which came about through urbanisation and the industrial revolution as well as the rise in power of the Roman Catholic Church[131]. In these emerging criminal-oriented justice systems, offenses were increasingly viewed as

[128] Fattah E. A., 1991. Understanding Criminal Victimisation Canada: Prentice Hall p. 43.
[129]Hall M. 2010. The Relationship Between Victims and Prosecutors: Defending Victims' Rights? Criminal Law Review. pp. 31 – 45 Retrieved 2nd August 2016 from http://www/gifre.com/html.
[130] Op. cit. note 58. pp. 145 – 149.
[131]Paranjape N. V. 2011. Criminology and Penology with Victimology. 15th ed. Allahabad; Central Law Publication p. 339.

perpetrated against the laws of the king or state, not just against a victim or the victim's family.

Eventually, focus shifted towards offender punishments and rights, as opposed to victim rights and restoration. Subsequently, as formal systems of criminal justice rose and spread, victim involvement eroded to little more than that of witness for the Police and prosecution[132].

As Doerner and Lab[133] explain the development of formal law enforcement, courts and correctional systems in the past few centuries have reflected an interest in protecting the state rather than the victim. For the most part of this period, the criminal justice system simply does not take into cognizance the victims and their best interests. A result of this ongoing evolution is that modern criminal justice systems seek to separate criminals from society, to deter others from acting criminally via ever-harsher punishments, and ultimately to prevent future victimisations. The individual victims are often left by failed law enforcement efforts to seek remedy for harms they suffer in civil court. Then, there came a period of re-emergence of the victim.

(c) Re-emergence of the victim

The re-emergence of the victim occurred during the 1950s and 1960s, when a small number of people began to recognise that those who were most affected by criminal acts were rarely involved in the process. Unsettled with the fact that victim's rights and needs had gone by the wayside, this group of people agitated to bring this disparity noticeable in the treatment of the victims and the offenders to the public's attention. It soon became the consensus amongst various groups, including journalists, social scientist, and those involved directly with the criminal justice system, that 'victims were forgotten figures in the criminal justice process whose needs and wants had been systematically overlooked and therefore merited attentions'[134].

[132]Doerner W., & Lab S., 2002. Victimology 4th ed. Cincinnati, Ohio: Andersen Publishing p. 312 – 316.
[133]Ibid at p. 314.
[134]Ibid at p. 315.

During the same times, a collection of sociologists, criminologists and legal scholars came to the same realisation that victims were being overlooked as a source of information about crime and criminals. Their interest in studying victims is what ultimately led to the birth of traditional victimology as a discrete scientific endeavour. While victims' rights were gaining attention, victimology, in its early years, did not seek to address the needs of victims and alleviate their suffering. Rather, it came from a desire to better understand the victim's role in the criminal act, relationship to the offender, and culpability[135].

The scientific study of victimology could be traced back to the 1940s and 1950s. Two criminologists, Mendelssohn and Von Hentig began to study the other half of the offender/victim dilemma[136]. Von Hentig insisted that many crime victims contribute to their own victimisation, either by inciting or provoking the criminal or by creating or fostering a situation likely to lead to the commission of the crime[137]. Other pioneers in victimology who firmly believed that victims may consciously or unconsciously play a causal role outlined many of the forms these contributions can take which may include, although not limited to, negligence, carelessness, recklessness e. t. c. They pointed out that the victim's role could be a motivational one (attracting, arousing, inducing, inciting, enticing) or a functional one (provoking, precipitating, triggering, facilitating, participatory)[138]. This was followed by a number of theoretical studies that dealt with victim types, victim offender relationships and the role victims play in certain kinds of crime[139].

Developments in Victimology began in the 1970s, individual studies of the victims of specific crimes, popular in the early stages of victimology were overshadowed by large scale victimisation surveys which transformed from the micro approach into the macro approach. The primary purpose of these surveys is to determine the volume of victimisation, to identify the victim population and to establish the socio demographic characteristics of

[135]Ibid p. 316.
[136] Hentig H. V. 1940, Journal of Criminal Law and Criminology 5.1: p. 41. Retrieved http://www.civtimology.com.
[137]Rock P. C. 1994 Victimology Aldershot: Darthmouth p. 254.
[138]Fattah E. A., 2000. From Crime Policy to Victim Policy: Reorienting the Justice System. London Macmillan Press Ltd. p. 224.
[139]Wolhuter L., Olley N. & Denham D. 2009. Victimology: Victimisation and Victim's Rights. London Routledge Cavendish p. 234.

crime victims[140]. While this approach proved to be quite useful to the study of trends and patterns in victimisation and to the analysis of the social and personal settings in which these crimes took place[141], it focused mainly on victim characteristics, their relationships and interactions with their victimisers and the analysis of victim behaviour as a situational variable as a triggering, actualising or precipitating factor[142].

The rediscovery of crime victims spearheaded by feminist movement, a movement that championed the cause of victims of rape, sexual assault and domestic violence, generated a great deal of empathy and sympathy for a largely disenfranchised group[143]. A new focus for victimology was taking shape, helping and assisting crime victims, alleviating their plight and affirming their rights. A political movement was born and victimology became increasingly defined and recognised through its applied components. Victimology meetings mirrored the transformation of victimology from an academic discipline into humanistic movement, the shift from scholarly research to political activism[144]. Concern for the plight of victims of crime could be found primarily in the modest state compensation programmes to victims of crime that were set up in some countries such as New Zealand, England, Canada and the U.S.

Victimology today is very different from victimology in the 1950s or the 1960s, as it has undergone not only a rapid but also a rather fundamental evolution in the time last two decades. The decades of the 1980s and 1990s could easily be described as a period of consolidation, data gathering and theorisation with new legislation, victim compensation, redress and mediation, help assistance and support to enable victims to recover from the negative effects of victimisation[145].

[140]Fattah E. A., 2000. From Crime Policy to Victim Policy: Reorienting the Justice System. London Macmillan Press Ltd. p. 226.
[141] In the last twenty five years, victimology has undergone a major transformation. Early victimology was mainly theoretical, concerned almost exclusively with casual explanations of crime and the victims, role in those explanations.
[142] This theoretical framework proposed by Von Hentig guided the pioneering research of others.
[143]Fattah E. A., 1991. Understanding Criminal Victimisation Canada: Prentice Hall p. 48.
[144] These meetings were often turned into platforms for advocacy on behalf of victims.
[145]Fattah E. A., 2000. From Crime Policy to Victim Policy: Reorienting the Justice System. London Macmillan Press Ltd. p. 228.

2.2.3 Theories of victimology

This section of this chapter examines the various theories of victimology which are considered necessary to explain the meaning, nature, and scope of victimiology.

Victim Precipitation Theory:This theory simply means a situation when some people actually initiate the confrontation that eventually leads to their injury or death. The victim precipitation can either be active or passive.

(a) Active precipitation occurs when victims act provocatively, use threats or fighting words, or even attack first[146]. In 1971, Menachem Amir[147] suggested that rape victims often contribute to their attack by dressing provocatively or pursuing a relationship with the rapist. Although Amir's findings are controversial, courts have continued to return not guilty verdicts in rape cases if a victim's action can be construed as consenting to sexual intimacy[148].

(b) Passive precipitation occurs when the victim exhibits some personal characteristic that unknowingly either threatens or encourages the attacker. The crime can occur because of personal conflict, such as when two persons compete over a job promotion, love interest or some other scarce and coveted commodity[149].

Lifestyle theorists believe that people may become crime victims because their lifestyle increases their exposure to criminal offenders. Victimisation risk is increased by such behaviours as associating with young men, going out in public places at night, and living in an urban area. Conversely, one's chances of victimisation can be reduced by staying out of public places, earning more money and getting married[150]. The basis of such lifestyle theories is that crime is not a random occurrence; rather, it is a function of the victim's lifestyle.

(a) High risk lifestyles: People who have high risk lifestyles such as drinking, taking drugs, getting involved with crime, have a much greater chance of victimisation.

[146] Wolfgang M. 1958. Patterns of Criminal Homicide. Philadelphia. University of Pennsylvania Press. p. 54.
[147] Amir M. 1971. Patterns in Forcible Rape, Chicago: University of Chicago Press p. 14.
[148] Estrich S. 2004. Real Rape. Cambridge Mass: Harvard University Press. p. 88.
[149] Wolfgang M. 1958. Patterns of Criminal Homicide. Philadelphia. University of Pennsylvania Press. p. 255.
[150] Fattah E. A., 1991. Understanding Criminal Victimisation Canada: Prentice Hall p. 43.

(b) Criminal lifestyles: One element of lifestyle that may place some people at risk for victimisation is an ongoing involvement in a criminal career. Both convicted and self-reported criminals are much more likely to suffer victimisation than non-criminals.

The Deviant Place Theory considers victims do not encourage crime but are victims prone because they reside in socially disorganised high crime areas where they have the greatest risk of coming into contact with criminal offenders, irrespective of their own behaviour or lifestyle. For example, people who reside in places like Ajegunle are at a higher risk of being victims of violent crime than people who live on Banana Island.

The Routine Activities Theory was first articulated by Lawrence Cohen and Marcus Felson[151], who assumed that both the activities to motivate or commit crime and activities for the supply of offenders are constant. Every society will always have some people who are willing to break the law for revenge, greed, or some other motive[152].

The Environmental Theory posits that the location and context of the crime bring the victim of the crime and its perpetrator together[153]. Studies in the early 2010s showed that crimes are negatively correlated to trees in urban environments: more trees in an area are congruent with lower victimisation rates or violent crime rates[154].

This relationship was established by studies in 2010 in Portland, Oregon and in 2012 in Baltimore, Maryland. One researcher, Geoffrey Donovan of the United States Forest Service (USFS), said, "tree, which provide a range of other benefits, could improve quality of life in Portland and reducing crime…" because "we believe that large street trees can reduce crime by signaling to a potential criminal that a neighbourhood is better cared for

[151]Cohen L. & Felson M. 1979. Social Change and Crime Rate Trends: A Routine Activities Approach. American Sociological Review. p. 44 Retrieved 15th July, 2016 from http:www.bookzz.org/html.
[152]Ibid at p. 54.
[153]Ross L. 1977. The Initiative Psychologist and its Shortcomings: Distortions in the Attribution Process. New York: Academic Press pp. 173 – 220.
[154] Ibid p. 175.

and therefore, a criminal is more likely to be caught"[155]. This however does not mean that the presence of large street trees, especially indicated a reduction in crime, as opposed to newer, smaller trees. In the 2012 Baltimore study, led by scientists from the University of Vermont and the United States Department of Agriculture (USDA) a "conservative spatially adjusted model indicated that a 10% increase in tree canopy was associated with a roughly 12% decrease in crime.…[156]

Fundamental Attribution Error theory, also known in social psychology as correspondence bias or attribution effect, describes the tendency to over-value dispositional or personality-based explanations for the observed behaviours of others while under-valuing situational explanations for those behaviours[157]. The term was coined by Lee Ross[158] some years after a new-classic experiment by Edward E. Jones and Victor Harris (1967). The fundamental attribution error is most visible when people explain the behaviour of others. It does not explain interpretations of one's own behaviour – where situational factors are often taken into consideration[159]. This discrepancy is called the actor-observer bias. For example, if Alice saw Bob trips over a rock and fall, Alice might consider Bob to be clumsy or careless (dispositional). If Alice later tripped over the same rock herself, she would be more likely to blame the placement of the rock (situational). Victim proneness or victim blaming can be a form of fundamental attribution error, and more specifically, the just-world phenomenon. Unfortunately, the just-world hypothesis also results in a tendency for people to blame and disparage victims of a tragedy or an accident, such as victims of rape and domestic abuse to reassure themselves of their insusceptibility to such events.

The Victim Facilitation: The choice to use victim facilitation as opposed to "victim proneness" or some other term is that victim facilitation is not blaming the victim, but rather the interactions of the victim that make him/her vulnerable to a crime[160]. The Victim

[155]Hambali Y. D. U. October 2015. Finding Voice for Victims of Crime in Adversarial Criminal Justice System Journal of Law and Social Sciences (JLSS) 4.2 : p. 171.
[156]Ibid at p. 200.
[157] Karmen A. 1990. *Crime* Victims" An Introduction to Victimology 4th edition. London Wards Worth Publishers, page 2232.
[158]Ibid at 233.
[159]Op.cit, note 88 p. 174.
[160]Wolhuter L., Olley N. & Denham D. 2009. Victimology: Victimisation and Victim's Rights. London: Routledge Cavendish. p. 256.

facilitation is a model that ultimately describes only the misinterpretation by the offender of victim behaviour[161]. It is based upon the theory of a symbolic interaction and does not alleviate the offender of his/her exclusive responsibility.

The categorisation of victims as high, low or mixed was based upon lifestyle risk (for example, the amount of time spent interacting with strangers), type of employment, and their location at the time of the crime (example, bar, home or place of business). It was found that among serial killer victims after 1975, one in five victims were at greater risk from hitchhiking, working as a prostitute, or involving themselves in situations in which they often came into contact with strangers[162].

One of the ultimate purposes of this type of knowledge is to inform and enlightening the public in a way to increase awareness so that fewer people become victims. Another goal of studying victim facilitation, as stated by Maurice Godwin, is to aid in investigations[163]. Godwin discusses the theory of victim social networks as a concept in which one looks at the areas of highest risk for victimisation from a serial killer. This can be connected to victim facilitation because the victim social networks are the locations in which the victim is most vulnerable to serial killer. Using this process, investigators can create a profile of places where the serial killer and victim both frequent.

Increased risk of Victimisation or Repeat victimisation is due to the victim living or being associated with the offender. Wife battering tends to happen more than once to the same victim who continues to live with the same man. This is also true of sexual incidents[164]. Some of the repeat victimisation in properties offences is due to the location of the victim or their residence. Those who live close to a concentration of potential offenders in residences that are unprotected are particularly at risk of repeat victimisation[165].

[161]Siegel L. J. 2003. Criminology: The Core 2nd edition. London. Thomson Wadsworth Publishers pp. 114 – 126.
[162]Ibid p. 124.
[163]Ibid p. 125.
[164]Waller I. 2003. Crime Victims; Doing justice to their support and protection. European Institute for Crime Prevention and Control, affiliated with the United Nations at p. 15 Retrieved 12th July, 2016 from http://www.gifre.org/html.
[165]Ibid at p. 12.

Victimisation is a good predictor of later victimisation because situations continue such as:-

(i) A residence being attractive to burglar.

(ii) A location is near potential offenders.

(iii) Persons engage in routine activities that increase risk.

(iv) Violence and some other crimes occur within relationships[166].

Research shows that involvement with delinquent or deviant peers increases the risk of victimisation[167], and that substance use also increases risk of victimisation[168]. Where an individual lives can also influence one's increased risk of becoming a violent crime victim[169].

No violent assault can occur unless an assailant has access to a potential victim. A prominent theory attempting to predict risk of criminal victimisation is the routine activities theory[170]. If a person's lifestyle or his or her routine activities places him or her in frequent contact with potential assailants, then they are more likely to be assaulted than if their routine activities and lifestyle do not bring them into a frequent contact with predatory individuals[171]. For instance researchers have found out that young men have higher rates of assaultive behaviour than any other age – gender group. Thus, those whose routine activities or lifestyles involve a considerable contact with young men have higher rates of victimisation[172].

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[166]Ibid at p. 13.

[167]Ageton S. S. 1983. Sexual Assault Among Adolescents 1st ed. Lexington M. A. Lexington Books p. 33.

[168]Cottler L. B. Compton W. M. & Mager D. 1992. Post Traumatic Stress Disorder Among Substance Users from General popular Retrieved 1st August 2016, from http://www.victimsupport.org.uk/about%20us/who%20we%20are/ key%20event%.

[169]Reiss A. J. & Roth J. A. 1993. Understanding and Preventing Violence. Washington D. C.: National Academy Press pp. 67.

[170]Laub J. H. 1990: Patterns of Criminal Victimization in the United States. Victims of Crime: Problems, Policies and Programs. Eds. A. J. Lurgio, W. G. Skogan & R. C. Davis. Sage Publication pp. 23 – 49. The risk of victimization is related to a person's lifestyle, behaviour and routine activities. In turn, lifestyles and routine activities are generally related to demographic characteristics (e. g. age and marital status) and other personal characteristics.

[171]Shapland J., Willmore J. & Duff P., 1985. Victims in the Criminal Justice System. Aldershot: Gower Publishing Company Limited. P. 55.

[172]Rosenberg M. L. & Mercy J. A. 1990: *Assaultive Violence, in Violence in Africa.* New York: Oxford University Press pp. 12 – 50; Reiss A. J. & Roth J. A. 1993. *Understanding and Preventing Violence.* Washington D. C. National Academy Press p. 28.

Likewise, people who are married, who never leave their house after dark, and who never take public transportation should have limited contact with young men and therefore have reduced risk of assault[173].

2.2.3.1 Effects of crime on the victim

Getting back to normal can be a difficult process after a personal victimisation experience and it can be very painful for victims of violent crimes and families of murder victims. Life is forever changed for some victims and families of victims; the victims feel empty and hollow[174]. In general, victimisation often affects people on an emotional, physical, financial, psychological and social level. It is impossible to predict how an individual will respond to crime. Psychological injuries created by crime are often the most difficult to cope with and have long lasting effects. However, crime is usually experienced as more serious than an accident or a misfortune and it is difficult to come to terms with the fact that loss and injury are caused by the deliberate act of another human being[175].

(a) Physical effect

After the crime, victims may suffer a range of physical effects including insomnia, appetite disturbance, lethargy, headaches, muscle tension, nausea and decreased libido. Such reactions may persist for some time after the crime has occurred. It is common for people to lose control over their bowel movements. Some of these physical reactions may not occur until after the danger has passed. They may recur at a later stage when the memories of the crime return[176].

Physical injuries resulting from victimisation may not be apparent. This may be particularly true in case of domestic violence where the injuries occurred on parts of the body that are

[173]Siegel L. J. 2003. *Criminology*: The Core 2nd edition, London: Thomson Wadsworth Publishers p. 33.
[174] These victims see life in a different light. What seemed important before may not be important again as a result of their experience. Physical example of trauma includes, Nausea, tremors, chills or sweating, lack of coordination, sleep disturbances, stomach upset, loss of appetite etc. Emotional traumas include fear, guilt, grief, depression, sadness, feeling lost, abandoned and isolated e.t.c, Mental traumas include confusion, disorientation, memory problems, nightmares, inability to concentrate, intrusive memories or flashback e.t.c.
[175]Lacey N. 2007: *Legal Construction of Crime*. Eds. M. Maguire, R. Morgan & Reiner R., the Oxford Handbook of Criminology. 4th d. Oxford. Oxford University Press. pp. 55 – 57.
[176]Handbook on Justice for Victims 1999. United Nations Office for Drug Control and Crime Prevention. New York Center for International Crime Prevention. 30.

normally clothed[177], physical injuries may be a permanent effect of crime and there is evidence that this has a negative effect on long term psychological recovery, since the physical scars serve as a constant reminder of the crime. The cultural, gender and occupational factors may affect the individual's reaction to permanent scarring or disability as well as the reaction of others[178]. Facial injuries are by far the most frequent in other forms of assault; victims may suffer a range of physical damage, including abrasions and bruises, broken nose, cheekbone, or jawbone and damage to or loss of teeth.

(b) The financial impact of crime

In some cases, victims may feel a need to move a process likely to entail financial cost. In the long term, crime can adversely impact the victim's employment. The victim may find it impossible to return to work or their work performance may be adversely affected, resulting in the victim being dismissed from his or her job and loss of pay. This is particularly likely where the crime occurred at work, as it may be difficult for the victim to avoid people or situations that led to the initial victimisation[179]. The effects of victimisation are particularly hard on the poor, the powerless, the disabled and the socially isolated[180]. Financial cost of crime such as properties, damage, and replacement of stolen or damaged items, medical bills, lost days at work and therapy expenses are easy to identify. However, emotional pain, suffering, fear and damage to interpersonal relationships, community wide fear and loss and other intangible costs can be difficult to measure. They may also incur costs in the following ways: repairing properties or replacing possessions, installing security measures, accessing health services, even participating in the criminal justice process, for example attending trial, and obtaining professional counselling to come to terms with emotional impact, taking time off work or from other income-generating activities, funeral or burial expenses.

[177] Ibid p. 36.
[178]Ibid p. 37.
[179] Handbook on Justice for Victims. 1999. united Nations Office for Drug Control and Crime Prevention. New York: Center for International Crime Prevention.
[180]Macquire M. & Cohert C. 1987. The effects of crime and the work of victims support schemes. *Cambridge Studies in Criminology.* 10.6 Great Britain; Gower Publishing Company Ltd.

Psychological effects of crime on victim are usually experienced as more serious than an accident or similar misfortune[181]. It is difficult to come to terms with fact that loss and injury have been caused by the deliberate act of another human being. At the same time, it is evident from research and experience that it is impossible to predict how an individual will respond to a particular crime[182].

This initial reaction may be followed by a period of dis-organisation which may manifest in psychological effects such as distressing thoughts about the event, nightmares, depression, guilt, fear and a loss of confidence and self esteem. Life can seem to slow down and lose its meaning. Previously held beliefs and faith may no longer provide comfort. The behavioural responses might include increased alcohol or substance abuse, fragmentation of social relationships, avoidance of people and situations associated with crime and social withdrawal[183].

Terror Trauma is one of the psychological effects of crime on the victim, which stems from the fear that can be empowering in normal circumstances and so overwhelming after a violent crime that, instead of being a positive reaction, may incapacitate and disorient victims of severe crime. When victims are assaulted with enormous fears of every kind of fear of death, fear of the perpetrator, fear of abandonment, fear of their own emotions, 'fear of fear' itself, the intensity of the gear will show itself in the several physical, mental and emotional trauma[184].

Mental crisis is the state of mind which a victim of crime found himself or herself after encountering violence. This often leaves a victim feeling insecure about his or her spiritual beliefs[185] and understating of a high power. Violent crime often forces victim of crime to re-evaluate their spiritual value system; they are forced to ask the questions like "why me?"

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[181]Karmen A. 1990. *Crime Victims: An Introduction to Victimology* 4th edition. London: Wards Worth Publishers. page 118.

[182]Such reactions are well documented in the immediate aftermath of a crime. Some of these reactions may recur at a later stage as well, for example, when attending a trial or going to hospital for medical treatment. Anger is a reaction that some may direct to other victims helper, bystanders, organisations and also at oneself. The initial reaction may include shock, fear, anger, helplessness, disbelief and guilt.

[183]Karmen A. 1990. *Crime Victims: An Introduction to Victimology* 4th edition. London: Wards Worth Publishers. page 119.

[184]Paranjape N. V. 2011. *Criminology and Penology with Victimology.* 15th ed. Allahabad: Central Law Publication. p. 235.

[185] Op.cit note 182 page 174.

"What was the purpose of this? What do I need to learn? What did I do wrong?" These questions often result in guilty feelings or feeling of disloyalty. During this time, victims might talk about their inner spirituality and describe feelings disconnected, empty and purposeless, dried up, exhausted internally, old and thirsty[186].

Identity Devastation[187] is the experience which a victim passed through after having an encounter with violence. This is capable of re-ordering the "self" of the victim. The values, interests, lifestyles, attitude and habits are so drastically altered that a victim can become unrecognisable after a violent crime. The stigmatisation resulting from the tendency of society to want to "blame the victim" can also cause the victim to question his or her identity, status and worth[188].

Blame/guilt confusion[189]stems from the fact that the first instinct of a victim is to identify the primary cause of the harm. It is the nature of this blaming process, if unchecked, that can lead to the misappropriated blame. This can result in illegitimate self-blame or unwarranted blame projected on to another person, system, place or thing[190].

Paralysing despair[191]connotes that victims can become stuck in any of the elements – stuck in fear, stuck in anger, stuck in grief. This state is characterised by lack of hope. Being stuck arouses feelings of hopelessness that can put the victim at risk of choosing destructive means, such as suicide or escapism to deal with the resulting despair[192].

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[186]Ibid p.181.
[187] Ibid p.178.
[188]Crime causes a radical change in the status, values and habits of the crime victims and victims might feel alienated and different. They might appear hypertensive to the criticism or disapproval of others, there might be insecurities, loss of confidence and lack of self esteem. Some victims will show a reckless behaviour that reflects lack of regard for themselves or others.
[189]Op. cit note 118 p. 176.
[190] When this confusion force of emotion, which is not always rational, is directed at the police, the media, the entire justice system, the prison system, or their close friend or partner or themselves, it can be extremely destructive. Victims will often set out on a war path against the person or system they feel is the cause of the violation. This unwarranted blaming can effectively destroy channels that the victim still needs.
[191]Siegel L. J. 2003. *Criminology*: the Core 2nd edition. London Thomson Wadsworth Publishers p. 321.
[192] Paralyzing despair is likened to depression. Feelings of being powerless and stuck and repeated failure can lead to intense discouragement and fatigue.

Research suggests that victims have a more negative view of the world than those who have never been severely traumatic. Crime victims know that "bad things can happen to good people" and nothing can take away this knowledge. Those who have come to terms with what life is all about – the good and the bad – will emerge as butterflies with a deeper appreciation of what is good, feel somewhat sadder about the bad and be considerably wise because of the knowledge of both.

Uncontrollable rage is the natural feelings of anger in response to an injustice. This can take on unusual proportions after experiencing violence or murder. An insensitive and depowering justice system and the public's general lack of understanding of the victims' need can exasperate the victims until his or her anger escalates into an uncontrollable revenge emotions[193].

The victims'common reactions to crime can be split into three stages and these are:

Stage One: The initial reaction may include shock, fear, anger, helplessness, disbelief and guilt. Some of these reactions may occur at a later stage as well[194].

Stage Two: A period of disorganisation may follow the initial reactions. Life may seem slow down and become meaningless. Previously held beliefs and faiths may no longer provide comfort[195].

Stage Three: Reconstruction and acceptance of being normal. Victims often try to come to terms with crime by longing for everything to be as it was before and to turn back the clock[196].

Below are some of the after effects of victims' experience after the commission of a crime.

[193] Op. cit note 123 p. 324: Rage means being out of control, without warning and exploding into fits of rage and acting in ways that is not characteristic of that person.

[194]The victim can start reliving the experiences of the victimisation. For example, when the victim attends trial or going to the hospital for medical treatment.

[195]Retrieved 10th August, 2016, from http://www.victimisation.ca.

[196] In this crucial stage of recovery, victims begin to fully accept the reality of what has happened. It is at that stage that victims may try to report their experience and possibly find an explanation for what has happened or to decide that the crime has led to personal growth.

These include immediate and short term trauma reactions, long term, post traumatic stress disorder.

The immediate and short term trauma reactions on victims, which as a result of the trauma of victimisation can have a profound and devastating impact on victims and their loved ones, can also alter the victims' view of the world as a just place and leave victims with different feelings and reactions that they may not understand[197]. Medically, trauma refers to different meaning and refers to an experience that is emotionally painful, distressful or shocking which often results in lasting mental and physical effects[198].Trauma is defined as an event that threatens life or bodily integrity. One may be traumatised directly, through a relationship with someone who has been traumatised or through witnessing such an event[199].

According to Kilpatrick, Ruggiero & Best[200], short term trauma occurs during or immediately after the crime and lasts for three (3) months. This time frame for short term versus long term trauma is based on studies conducted and reported by them, showing that most crime victims achieve considerable recovery sometime between one (1) and three (3) months after the crime[201]. Such psychological and emotional reactions are normal "flight or fight" responses that occur in dangerous situations. In the days, weeks and first two (2) to three (3) months after the crime, most victims of violent crime continue to have high levels of fear, anxiety and generalised distress[202]. Many victims also experience negative changes in their belief systems and no longer think that the world is a safe place where they can trust other people. For victims of some crimes, such as child abuse or domestic violence, the trauma occurs many times over a period of weeks, months or even years. The victims in such cases often experience the compounded traumatic effects of having to always worry about when the next attack will occur[203].

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[197]Maguire M., 1991. The needs and Rights of Victims of Crime. *Crime and Justice: A Review of Research.* 14.2. pp. 363 – 433 ed. M. Tony. Chicago: The Chicago University Press.
[198]Siegel L. J. 2005 *Criminology: The Core* 2nd ed. Wadsworth Publishing. p. 206.
[199] Despite the fact that a person survives a trauma physically intact does not mean that they are not injured.
[200]Kilpatrick D. G., Ruggiero K. J. & Best C. L., 2003, Violence and Risk of PTSD Major Depression, Substance Abuse/Dependence, And Co. Morbidity: Results from the National Survey of Adolescents. *Journal of Consulting and Clinical Psychology*, 71.4: pp. 692 – 700.
[201] Ibid.
[202]Wertham F., 1949. *The Show of Violence.* New York; Doubleday and Company Inc. p. 240.
[203]Morgan J., & Zedner L, 1992. *Child Victims: Crime, Impact and Criminal Justice.* Oxford University Press p. 114.

Long Term Trauma Reactions occurs when most victims of crime are able to cope with the trauma of victimisation. This is especially true of those who receive counselling, other supportive services and/or information about the justice process and their relevant rights[204]. Different challenges face the victim, the shock of being a victim, dealing with the police/court, reactions of others, returning to normal, feeling unsafe, self blame, and so forth. Some researchers have noted that victims, with passage of time, may return to a normal life[205]. However, if victim trauma is neither identified nor addressed with mental assistance, the initial and short term trauma reactions can exacerbate and turn into long term trauma reactions including:

Major depression is a kind of serious mental disorder where people start thinking of all sorts of negative aspects and thereby ruin their lives. It tends to destroy the individual's ability to function well; and it disallows them from living a normal functional life[206]. Thought of suicide and suicide attempts are the kind of disorder where people attempt to block unbearable emotional pain, which is caused by a variety of problems. It is often a cry for help. A person attempting suicide is often so distressed that he or she is unable to see that they have other options. Suicidal people often feel terribly isolated, because of their distress, they may not think of anyone they can turn to furthering this isolation. The use and abuse of alcohol and other drugs also play significant roles in trauma. Victims try to forget their emotional pain by taking excessive alcohol and drug. Ongoing problems with relationships, if generated out of fear, the victim might not be able to have intimate relationships, especially in cases of crime of rape and other violent sexual assault or abuse. A changing view of the world as a safe place occurs when the victim does not see the world as a safe

[204]Ibid at p. 115.
[205]Gilboa-Schechtman E. & Foa E. B., 2001, Patterns of Recovery From Trauma: The Use of In Train Individual Analysis. *Journal of Abnormal Psychology* 110.3: pp. 392 – 400.
[206]See generally Kriti A. 2000: Depression is an invisible disease. Retrieved 10th August, 2016, from http://www.ezinearticles.com/html: Depression is often termed as invisible disease and its symptoms includes, Feeling of dejection, frustration and disgust: an increasing feeling of irritation, loss of confidence; excessive or too little sleep, change in appetite or weight, difficulty in executing things, lack of concentration, sense of guilt and feeling of worthlessness, recurrent thoughts of committing suicide. These symptoms can be found in every human being, but as a result of victimisation they can become chronic and if not treated, can lead to death of the victim.

place any more. The victim can have withdrawal symptoms, become a hermit or even become depressed permanently or for a long time[207].

Post Traumatic Stress Disorder is a kind of victims' reaction to crime which has been described as the crisis reaction. Victim will react differently depending upon the level of personal violation, type of crime, experiences and support systems and their state of equilibrium at their victimisation[208]. When a person survives a crisis such as a violent crime, there may be residual trauma and stress reactions. Those who are unable to function within a normal range, or have difficulties may be suffering from post traumatic stress disorder (PTSD)[209]. PTSD is described as occurring when a person has been exposed to an extreme traumatic stress, situation or in which both of the following were present:

The first is if the person directly experienced an event or events that involved actual or threatened death or serious injury, or either threat to one's physical integrity, or the person witnessed an event or events that involved death, injury, or threat to the physical integrity of another person, or the person learned about unexpected or violent death, serious harm, or threat of death or injury experienced by a family member or other close associates. The second is the person's response to the event or events must involve fear, helplessness or horror[210]. Traumatic events that are experienced directly may include violent personal assault (such as sexual assault, physical attack, robbery, kidnap, hostage taking, terrorist attack and torture, natural or manmade disasters)[211].

For a diagnosis of PTSD, the traumatic event is then persistently re-experienced in at least one of the following ways:-

(1). Recurrent and intrusive, distressing and recollections of the event, including images, thoughts or perception.

(2). Recurrent distressing dreams of the event during which the event is replayed.

[207]Ibid see generally.
[208] Bard M. & Sangary D. 1986. *The Crime Victims Book* 2nd edition Secaucus NJ, Citadel Press.
[209] National Center for PTSD retrieved 10th August 2016 from http://www/ncptsd.org.
[210]American Psychiatrist Association 2002. *Diagnostic and Statistical manual of Mental Disorders* IV – R. C4th edition Washington D. C., see generally.
[211]Ibid see generally.

(3). Acting or feeling as if the traumatic event were recurring, including a sense of reliving the experience, illusions, hallucinations and dissociate flashbacks episodes that occur upon awakening or when intoxicated.

(4). Intense psychological distress at exposure to internal or external cues (triggers) that symbolise or resemble an aspect of the traumatic event, including anniversaries of the trauma, sensing (touch, scent, sound), hearings, trial, appeals and other criminal justice proceeding[212].

(5). Physiological reactivity upon explosive internal or external cues (triggers) that symbolise or resemble an aspect of the traumatic event (for example, a woman who was raped in an elevator break out may never enter any elevator[213].

People with post traumatic stress disorder will avoid things or situations that trigger memories or flash backs of the traumatic event. If unrelated, the victims' life may become dominated by attempts to avoid situations that remind them of the traumatic events[214].

2.3 Victims of crime in the Nigerian criminal justice system

Victims that come across any law enforcement agencies are usually not treated well. This is a lapse in the Nigerian criminal justice system as the victim is crucial and the participation of the victim is important in the criminal trial which often follows the commission of most crimes. Many victims face insensitive treatment by the law enforcement agencies. The first contact of the victim in the criminal justice system which is the Police, the victim should be taken with care as the victim could be re-victimised. The victim could be termed, the forgotten persons in the administration of criminal justice.

Till date, the concept of victimology in Nigeria in relation to the victims, especially of sexual assault has proved to be largely ineffective and in most cases has left the victims betrayed and in most cases re-victimised; this is sometimes referred to as secondary victimisation[215]. Victims have been the silent partners in the legal process with little role other than as witnesses. Since there is little or no protection from the state, the victims and

[212]Post Traumatic Stress Disorder retrieved 10th August, 2016, from http://www.gifre.com.
[213]Ibid see generally.
[214]Ibid see generally.
[215] Yussuf U. A. & Yahaya S. S. 2014, Crime and Criminal Justice Administration in Nigeria Global Journal of Interdisciplinary Social Sciences. 3.4:48 52.

or witnesses often do not feel part of the criminal justice process; yet, they fulfill a valuable and important role[216].

This is because the state has gradually assumed a dominant role in the justice process. Offences are defined and seen more as crimes against the state than violations of the victims' rights[217]. Although it was often the victim who reported the offence to the law enforcement authorities, subsequent decisions came to be made more with the interests of the state and the community in mind than those of the victim[218].

Therefore, in the Nigerian justice system, a lot needs to be done. Nigeria should introduce more initiatives to enhance the position of victims in the justice system. If the experience of victims of crime in the criminal justice process is to be improved, there must be better understanding of the impact of victimisation and the need to treat victims of crime with courtesy, compassion, dignity and sensitivity[219]. To ensure victims' access to and participation in criminal proceedings, it is necessary to restore balance in the criminal justice system by better integration of the concerns of crime victims. The state is therefore responsible to restore such a balance by providing due respect to the rights of the victims, including accreditations to their role in criminal justice process[220].

From the foregoing, it is evident that crime victims are not fully given adequate consideration, despite the fact that they are one of the important elements and integral part of any crime and criminality. The crime victims are most found to be relegated to the background with reference to the criminal justice processes, all in the name of being represented by the state. While the state does not in any way, in practice, as a true representative of the crime victims during the criminal trial, the victims of crime suffer both

[216]Ibid p. 52.
[217]*Handbook on Justice for Victims* 1991. New York: Center for International Crime Prevention.
[218]Ibid p. 38.
[219]Shapland J., 1986: *Victims Assistance and the Criminal Justice System: The Victim's Perspective* Ed. Fattah E. A., London Macmillan Press. 240.
[220]Odekunle F., 1979: The Victims of Crime in Developing Countries: A Nigerian Study. *A Paper presented at the 2nd International Symposium of Victimology Massachusetts* Retrieved 15th July, 2016 from Http://www.gifre.org/html.

physical harm and economic looses, but nothing is provided for them in terms of compensation.

Based on the above, this part of the chapter, in line with the objective of this study, therefore intends to draw the attention of all the stakeholders in the criminal justice system as well as the government to the fact that the participation of the victim of crime is very significant as far as criminal justice administration is concerned. The criminal justice system should be made in such a way that crime victims participate actively, not passively in the adjudication of their cases. For this will give them sense of belonging and reduce their level of frustration. Moreover, the criminal justice administration should endeavour to introduce some practical service programmes to the crime victims to ensure balance of treatment between the offender and the victims by the criminal justice system.

2.3.1 Criminal justice administration in Nigeria

The criminal justice system is a legal entity which explains the inter relationships of criminal justice elements comprising of the Police, courts and the prisons which is referred to as correctional facilities in most jurisdictions like the United States of America[221]. It is a loose federation of agencies "each separately budgeted, each drawing its manpower from separate wells and each a profession unto itself"[222]. Through the process of criminal justice, due process of law is achieved, right from the arrest of criminals, the arraignment and the sentence which may be imprisonment or execution for those sentenced to death. Based on this systemic idea or reality, criminal justice, as a system, is defined as "a machinery" which a criminal, or someone suspected to have committed a crime, is processed and subsequently disposed[223]. The criminal justice system is responsible for the regulation and control of criminal behaviour.

[221]Dambazau A. B. 2007, *Criminology and Criminal Justice* 2nd ed. Spectrum Books Limited p. 173.
[222]Newman J. J. 1978: *Introduction to Criminal Justice* 1sted. New York: Lippincott p. 3.
[223]Dambazau A. B. 1999, *Criminology and Criminal Justice* Kaduna: Nigerian Defense Academy Press p. 58.

According to Dambazau, criminal justice system is valuable in two ways:-

(1) The system is an instrument of practical purposes, accountable for the efficient and the effective reduction of crime largely through three distinct mechanism – deterrence, incapacitation and rehabilitation.

(2) The system is also an instrument of justice as a means of holding criminals accountable for their crimes, and simultaneously protecting their constitutional rights, which means that it is designed to produce justice[224].

The need to produce justice through criminal justice administration has been emphasised by a maxim of English law that it is better for ten guilty men to escape justice rather than one innocent man to suffer unjustly[225]. Nonetheless, the objectives of criminal justice include[226]:

(1). convicting the guilty,
(2). protecting the innocent from wrongful conviction,
(3). protecting the victims,
(4). maintaining human rights,
(5). maintaining order,
(6). securing public confidence and cooperation with policing and prosecution, and
(7). pursuing these goals effectively without disproportionate costs and consequent harm to other public services.

The system comprises of individual agencies with specific interest and practices, and different stages beginning with crime prevention, police investigation, criminal process, sentencing and ending with punishment[227]. The Nigeria criminal justice system is in dire need of reform and the Police, the courts and the prison institution all have their various shares of the blame. The Nigerian criminal justice agencies include the Police, criminal courts, and prison service.

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[224]Dambazau A. B. 2007, *Criminology and Criminal Justice* 2nd ed. Spectrum Books Limited p. 173.
[225]Hoyle C. & Zedner L. 2007: Victims, Victimisation and Criminal Justice. *The Oxford Handbook of Criminology* eds. R. Morgan & R. Reiner 4th ed. Oxford: Oxford University Press. Chapter 15.
[226]Jackson J. 2003: Justice for All: Putting Victims at the Hearth of Criminal Justice. *Journal of Law and Society*. 30. 2: 309 326.
[227]Yussuf U. A. & Yahaya S. S. 2003: *Crime and Criminal Justice Administration in Nigeria. Global Journal of Interdisciplinary Social Sciences*. 3.5: pp. 48 – 52. Retrieved 15th July, 2016, from http://www.gifre.com.

2.3.2 Components of criminal justice system in Nigeria

To understand how the Nigerian criminal justice system works, it is necessary to grasp the working relationship of all its agencies, the Police, the court and the prison system, since they are the main actors in the administration of criminal justice.

(A) The Nigerian police force

The Police are the first institution that a crime suspect comes in contact with. The Police provide the entry point into the criminal justice system either through crime reports from the public or its own discovery[228]. The policeman could be referred to as the "gatekeeper" of the criminal justice system, and decides who goes into the system, and its decision has wider implications for the other system components[229]. Whether or not the suspect will obtain justice depends on how the Police go about its duty. One area where the Nigerian Police have been bitterly criticised is the area of criminal justice. The policeman or police officer exercises basic powers and performs basic duties[230]. These powers and duties flow from the status a police officer has under the constitution and not because of his rank[231] in the force. For the Police to be able to carry out its functions effectively, members of the society must be ready and willing to lend support to its efforts. However, it is sad to note that certain elements, like corruption, influence the discharge of these duties, leading to some negative consequences such as charging of innocent people, which in the humble opinion of this researcher could be referred to as victims of circumstance, to court on trumped-up and fictional charges among others. These made the Police to be detested by the majority of the Nigerian public.

In Nigeria, law enforcement agencies like the Federal Road Safety Corp (FRSC), Economic and Financial Crime Commission (EFCC), Independent Corrupt Practices Commission (ICPC), Nigerian Security and Civil Defence Corps (NSCDC), also have powers to prosecute specific offences. It is important to note at this juncture that before the enactment of the Police Act in 1943 by the British Colonial Government to make the Nigeria Police have a statutory flavor, the birth of modern police in Nigeria could be traced to the

[228]Dambazau A. B. 2007, *Criminology and Criminal Justice* 2nd ed. Spectrum Books Limited p. 178.
[229]Ibid p. 178.
[230]Section 4 of Police Act Cap 359, Laws of Federation of Nigeria, 2004.
[231]See Regulation 273 of the Nigerian Police Regulation Cap 359 Laws of Federation of Nigeria, 2004.

development and role of British traders at the inception of the colonial rule[232] . The present structure of the Nigeria police is a creation of the Nigerian constitution. Thus, Section 214 of CFRN provides:

> "There shall be a Police force for Nigeria which shall be styled "the Nigerian Police Force", subject to the provision of this section, no other Police Force shall be established for the federation of any part thereof, the members of the Nigeria Police Force shall have such power and duties as may be conferred upon them by law"

Pursuant to the above law, however, there is the Police Act Cap P 19 Laws of the Federation of Nigeria 2004, section 4 of the extant law which confers on the Police the power to prevent commission of crime, apprehend offenders and conduct prosecution of criminals. The same section 214 of the CFRN 1999 (as amended) explicitly prohibited any form of policing aside the constitutionally provided Federal Police. Hence, it shall be unconstitutional for any state to conceive the creation of a state police without amending the provision of section 214 CRFN 1999 (as amended).

(a) Functions of the Nigerian police force

The duties and roles of the Nigeria Police are statutorily spelt out in section 4 of the Police Act as follows:-

> 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 directly charged, and shall perform such military duties within or without Nigeria as may be required by them, or under the authority of this or any other act[233].

Apart from these general duties for maintenance of law and order, there are other adjunct duties under the Act and other laws and regulations operating in the country. By section 23 of the Police Act, the Police are empowered to conduct prosecution of crimes, though subject to the power of the Attorney General of the State or Federation as the case may be. The Police are also empowered under the Administration of Criminal Justice Act 2015 to arrest without an order of a court or warrant, whom he suspects on reasonable ground of

[232] Kunle Aina (2014) The Nigerian Police Law Princeton, Lagos P.3
[233] Section 4 Police Act cap P19 LFN 2004.

having committed an offence against a law in Nigeria or against the law of any other country unless the law creating the offence provides that the suspect could not be arrested without warrant[234] to arrest to prevent the commission of crimes[235] and to interpose to prevent offences[236]. Section 24 of the same Act[237] provides:-

> Subject to the provisions of section 174 and section 211 of the Constitution of the Federal Republic of Nigeria (which relates to the power of Attorney General of the Federal and of the State to institute and undertake, takeover and continue or discontinue criminal proceedings against any person before any court of law in Nigeria) any Police officer may conduct in person all prosecution before any court whether or not the information or complaint is laid in his name.

The duties shall be taken seriatim:

(1) Prevention and detection of crime

The two concepts of crime prevention and detection, though so close and interwoven are not the same. It is possible to prevent the commission of an offence or crime if its anticipatory steps could be detected early enough before the commission of the crime. However, prevention as used under the Police Act refers to a situation where crime is discovered and thus prevented before commission. On the other hand, crime detection refers to the investigatory power of the Police to discover the commission of crime at any point in time and to be able to identify the person behind the crime or who is involved in the commission of the crime. Thus, prevention of a crime can and is usually preceeded by detection of acts to commit a crime.

The Police generally abuse this aspect of their role to prevent commission of a crime; it is though permissible to prevent crime but to what extent can the Police in Nigeria prevent crime. Many citizens have been police victims in carrying their purported roles of crime prevention. For example, a police may hide under the guise of prevention of crime to assume jurisdiction in land matters or any other civil action. If, for example, Mr. A and Mrs. B are fighting over a piece of land and Mr. A approaches the Police over the dispute alleging that Mrs. B plans to attack him anytime he comes to the land, at this point, it is the

[234] Section 18 (a)of Administration of Criminal Justice Act 2015
[235] Section 18 (b) of Administration of Criminal Justice Act, 2015
[236] Section 18 (k) of Administration of Criminal Justice Act, 2015.
[237] Police Act Cap p 19 LFN 2004

duty of the Police to wade into the matter and prevent a possible crime of malicious damage, grievous bodily harm or even criminal assault against the complainant and the suspect. It is enough for the Police to prevent this and stop. The Police begin to act ultra vires the moment they start giving ownership of the land to a party over the other which is what happens in most cases with the Nigerian Police. The Police are expected to draw a line between what amounts to crime prevention and unlawful usurpation of the powers arrogated only to the court.

Detection of crime, on the other hand, is an area where our policing system seriously lags behind. In the era of terrorism, intelligence gathering should be a major role of the Police. There cannot be detection of crime when intelligence policing is poor. For example how does a policeman detect that a would-be terrorist plans to detonate bomb/IED? He knows through intelligence gathering and as a result prevents the commission of a crime. Sadly, the Nigeria Police, most times, cannot be said to have lived up to its expectations in this regard. This is bad for the image of the Police Force.

(2) Apprehension of offenders

The Nigeria Police performs the role of apprehending offenders when it is unable to prevent and detect the commission of an offence. The Nigeria Police sometimes rise to this challenge. We have had a situation where armed robbers were apprehended by the Police after a successful operation. Of a particular reference are certain squads being formed for the purpose of carrying out roles like this, such as SARS (Special Anti-Robbery Squad). Many times, gallant police officers lose their lives in the process of apprehending offenders. It is however pertinent to note that there are instances where police apprehend innocent citizens when they are unable to apprehend the real culprits. These innocent victims can be referred to as victims of circumstance.

(3) Maintenance of law and order

The Police also maintain law and order and make sure that there is peace in the country to the best of their ability. In such a situation where there is breach of law and order, the culprit is arrested by the Police since their major role is to maintain peace in the land. In fact, this is an omnibus role that is capable of accommodating all the roles of the Police.

(4) Due enforcement of all laws and regulations with which they are directly charged

While it is true that the Police enforce the law as it is in order to bring sanctity into the land, it is not true that the Police should constitute itself into an institution capable of interpreting laws as the Nigerian Police are fond of doing. The Police are expected to know the limit of their constitutional power and that the court is the sole agency or institution that interprets the law and the Police will merely enforce an interpreted law. Overzealousness of the Police should be discouraged.

(5) Performance of military duties in and outside Nigeria

The Police perform military duties in the cause of carrying out their role where there is need for such. The military duties may include – maintain peace in time of riot and crisis, maintain peace when there is electoral violence or civil disorder. Therefore, it will not be right to draft military men when there is civil unrest like election violence or riot as is mostly obtainable in Nigeria, it is worthy of notice that there is specially trained police for this purpose, that is the Mobile Police (MOPOL).

(b) Powers of the Nigerian Police

Prosecution of Offenders:- This is one of the most controversial powers given to the Police. A police can, subject to power of the Attorney General, prosecute in any court throughout the federation. On whether it is compulsory for prosecuting police officer at superior court to be legal practitioner, the issue has been exhaustively dealt with and finally laid to rest by the Supreme Court of Nigeria in the locus classicus case of FRN V. Osahon[238] where the court held:

> From colonial period up to date, officers of various ranks have taken up prosecution of criminal cases in Magistrate and other courts of inferior jurisdiction. They derived their powers under section 23 of Police Act. But when it comes to Superior Court of record, it is desirable though not compulsory that the prosecuting police officer out to be legally qualified. This is not deleting from the provisions of section 174(i) of the Constitution, rather it maintains the age long practice of Superior Court hearing Counsel rather than non-lawyers prosecuting matters…. For

[238] Osahon V. Federal Republic of Nigeria, 2006. 5 NWLR. Pt 937 at 361.

> the foregoing reasons I hold that a Police Officer can prosecute by virtue of section 56(ii) of the Federal High Court Act, and section 174(i) of the constitution of the Federal Republic of Nigeria, Per Belgore JSC (pp. 50 – 51)[239].

Therefore, the position of the law still remains that a police officer, whether trained as a legal practitioner or not, can prosecute offenders from the Magistrate up to the Supreme Court. However, whether such is efficient or not is another matter entirely. Without prejudice to the above power of the Police, the Police also have the power to arrest without warrant power to execute summons lawfully issued by a court, power to grant bail at the police level, power to search person, house, shop, warehouse or other premises, power to detain or power to take fingerprint. All these powers are for the purpose of aiding the effective discharge of their general duties.

From the discussion above it is very obvious that the powers and functions of the Police are directly linked with the victim in the administration of criminal justice. While victims are a key source of evidence, the Police may question them closely and in an unfriendly manner to find out if they are telling the truth[240]. The Police lack basic training and expertise to prevent and respond effectively to violence against women who may be victims of rape or other violent crimes. Instead of trying to control the woman that has been raped, she is questioned and blamed for her indecent mode of dressing and thereby, displaying discriminatory and dismissive attitude towards the victim. Such attitudes of the agencies, coupled with the social stigma attached to rape, dissuade women from reporting the crime[241].

The reluctance of victims to report cases to the Police is still an issue that needs to be properly addressed. However, there are certain reasons for the refusal to make reports to the Police, people's attitude of indifference, the effect of crime being insignificant or petty, identity of offender being unknown, apprehension of threat or harassment from the culprit, social and public indignation, particularly in cases of rape, illegal abortion and sexual

[239] Osahon V. Federal Republic of Nigeria, 2006. 5 NWLR. Pt 937 at 361.
[240] Cole G. F. & Smith C. E. 1998. American System of Criminal Justice, 8th ed. Ward worth Publishing Company pp.23 – 30: Victims may have suffered physical, psychological and economic losses, yet the criminal justice system focuses on findings and prosecuting the offenders.
[241] Siegel L. J. 2005. Criminology: The core 2nd ed. University of Massachusetts: Thomson Wadson. 112.

offences, considerable loss of time, money in prolonged criminal litigation, reluctance of witness to testify or possibility of their turning hostile, lack of faith and confidence in police action which most time constitute secondary victimisation[242].

When eventually a victim decides to bypass all hurdles and make reports to the police station about the offence committed in which they (as victims) suffered loss or injury, the burden on the victim to cope and fund the police investigations is highly questionable as it is against the right of the victim having already suffered a wrong, to bear the cost of going to the police station will be another form of victimising the victim who is nursing physical damages and monetary damages incurred from the actions of the offender. Usually, the prosecution is not concerned with the plight of the victim as much as it is with nailing the offender, and as such, regards certain cases as irrelevant to prosecute without conferring with the victims. This often is the case when the Police face the inability to apprehend the perpetrator of the criminal act. That notwithstanding, the Police ought to inform the victim of the status of any matter, when it is due to be taken to court and where the victim comes in.

Also, there are certain rights expected to be enjoyed by the victim especially where the police as an arm of the criminal justice system owes to the victim. The victims, their families or their representative have a right to be informed of their rights with respect to a decision after the completion of the investigation whether to prosecute and of their role during prosecution. Unfortunately, there are no Nigerian laws stating the rights accrued to the victims at the investigative stage, but from practice and international legislations on the rights of victims, the following can be inferred:

(1). The victim has a right to be treated with respect and has his or her dignity protected by law officers.

(2). Having suffered trauma from the effect of being a criminal victim, the victim ought not be subjected to another form of victimisation regarded as secondary victimisation in the hands of the Police based on the manner of questioning the victim.

[242] Gaur K. D. 1993. Poor Victims of Uses & Abuses of Criminal Law and Process in India, Journal of Indian Law Institute 3.5 pp. 123 125.

(3). Apart from their duties, the Police are expected to carry out investigations in order to protect the right of the victim who already has borne financial loss from the criminal act being investigated.

(4). When a suspect has been approached, the victim ought to be informed as of right and as such, not to be used as a mere witness to aid the Police in putting away the offender.

(5). The Police as of the right of the victim, is meant to consult with the victim at the plea bargain stage if the matter will not be going to court, rather than dismiss the offender on their terms, the victim has a right to be consulted first, having been the one who directly suffered the wrong.

(B) The criminal court

In the triangular relationship, the second most prominent component in the administration of criminal justice is the criminal court. A court has been defined as "an agency set up by the government to define and apply the law, to order its enforcement, and to settle dispute points on which individuals or group do not agree"[243]. The criminal courts play a pivotal role in the criminal justice system, the adjudication of cases in which there is reasonable cause to believe that an accused person has violated a specific law or laws is a basic role of criminal courts[244]. It is only the court that determines the guilt or innocence of the accused person, and the decisions of the courts have important consequences for the other components of the criminal justice system. The administration of justice revolves around the court system. A person who violates the criminal law is brought before the court and provided with opportunity to defend himself through trial in the court, and it is followed through with the pronouncement or judgement made by the court accordingly[245].

The criminal courts have a very symbolic role, as the symbols of justice, depicted by the justice scale (lady justicia), the courts is seen as the platform for fairness and impartiality. The Courts are impartial to the extent that they allow each side the opportunity to present its case. The Courts provide the forum for resolving disputes through the application of the law,

[243] Cole G. F. & Smith C. E. 1998. American System of Criminal Justice, 8th ed. Ward worth Publishing Company pp.234.

[244] Jackson J., 2003: Justice for all Putting Victims at the heart of Criminal Justice? Journal of Law and Society. 30.2: pp. 309 – 326.

[245] Abonika J. & Alewo M. 2014. Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint. Journal of Law, Police and Globalisation 26: 112.

although not all disputes are brought before them. In resolving disputes, the criminal courts must enjoy judicial independence, free from outside pressure, and judging their cases dispassionately, most especially because citizens perceive them as guarantors of their fundamental rights. A very important characteristic of the courts is the fact that they have asserted the right to be the arbitrative interpreters of the constitution. Section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides for the establishments of courts. The courts recognised as constituting the judiciary are the Supreme Court, the Court of Appeal, the Federal High Court, the National Industrial Court, the High Court of the Federal Capital Territory Abuja, the Customary Court of Appeal, Abuja and the States High Courts, the Sharia Court of Appeal of the States and the Customary Court of Appeal of the States[246].

(a) Powers and jurisdiction of courts

No court acts solely because it is a court; they act based on guiding principles of the constitution which is referred to as jurisdiction. No court has jurisdiction (right) to go outside the jurisdiction vested in them. In a criminal proceeding, the question of jurisdiction can arise in three (3) instances, territorial jurisdiction, substantive jurisdiction (subject matter) and jurisdiction over person.

Due to the existence of a multi-penal system, there sometimes arise issues of jurisdiction, as regards the state in which a particular offence can be tried. It is settled law that where the initial elements of an offence occur in one state and other elements of the offence occur in another state, both states would have jurisdiction over the matter[247]. The jurisdiction does not rest within the two states alone as the Federal High Court seems to have a nationwide jurisdiction where the matter is a federal offence. This is clearly pointed out in the case of Ibori V. Federal Republic of Nigeria[248].

[246] Section 6 of the Federal Republic of Nigeria (as amended).
[247] Section 12(a) Criminal Code. Also by section 4(2) of Penal Code, where an offence is committed in one state outside the Northern Region but the person enters into the Northern Region, a court in the Northern Region can try him/her, see also Osoba V Queen 1961 1 NWLR: Okor V. A. G. of Western Nigeria. 1966 NMLR 13.
[248] 2009 ALL FWLR pt. 487 at 159.

(b) Victims and the Nigerian criminal courts

The actual victim of crime is simply classified as a prosecution witness. The victim is not regarded as the complainant at the trial. The official complainant is the state or an agent of the state such as the Attorney General, the Director of Public Prosecution or the Commissioner of Police. This type of arrangement appears to put the victim of the crime in an obscure position at the trial; this is quite a disadvantaged position[249]. The victim may be expected to miss work and loose pay in order to appear at judicial proceedings. He may be summoned to court several times, only to learn that the arraignment or trial has been adjourned or postponed. Any recovered property may be held by the court for months as the case winds its way through the system. The victim may feel that they have been re-victimised, once by the offender and once again by the criminal justice system after cases have been completed[250].

In court, victims could be intimidated when they find themselves confronted by the offender's friends and relatives in the court room. Giving evidence might involve reliving the offence and cross examination could be particularly traumatic as one obvious feature of the adversarial system is that the defense may attempt to discredit the victims' story[251]. However, it is quite important to note that the victims during trial are protected by the Evidence Act which prohibits indecent and scandalous questions[252]. Section 227 of the Evidence Act 2011 provides that the court may forbid any question or inquiry which it regards as indecent, scandalous although such questions or inquiries may have some bearing on the questions before the court unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed.

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[249] Ruddy R. 2014. The Victims's Role in the Justice Process. Internet Journal of Criminology Retrieved 15th July, 2016 from http://www.internetjournalofcriminology.com

[250] See Cole G. F. 7 Smith C. E. 1998. The American System of Criminal Justice, 8th ed. Wardsworth Publishing House p. 12, often times, the victim never ears the outcome of a case. The victim can even come face to face with the assailant, who is out on bail or on probation. This can be a shock, especially if the victim has assumed that the offender is in prison.

[251] Walkate S. 1989. Victimology: The Victim and the Criminal Justice Process 1st ed. London: Unwin Hyman 125. This can be particularly acute for female victims of rape or sexual assault, whose own history and character can be called into question.

[252] Olatunbosun A. 2007. Compensation to Victims of Crime: A Critical Assessment of Criminal- victim relationship. Journal of the Indian Law Institute 44.2: p. 204 retrieved 15th July, 2016 from http:/www.ili.ac.in/criminal-victim-rel.

Furthermore section 228 of the Act stipulates that the court shall forbid any question which appears to it to be intended to insult or annoy or which though proper in itself, appears to the court to be needless and offensive in form. In essence, the court owes the victim of crime the duty to protect from the trauma of answering questions which are aimed at further humiliating and denigrating the person[253]. It is also pertinent to state that the victim bear the cost of coming to court to testify even when the victim sometimes might have changed location to a different state, hence the need for adequate compensation of the victim. Even now, when the investigating police officer "IPO" is mobilised and encouraged to testify, the victims are never put in contemplation. The award of compensation by the courts in the exercise of their criminal jurisdiction is governed by the statute. Thus, in the case of Tsofoli V. COP[254], Ademola CJN as he then was stated that "…in every case, the matter of compensation is governed by statute and there is no inherent power in any court to award compensation". The need for compensation for the victims of crime is now incorporated in the new Administration of Criminal Justice Act[255]. This provision is more in tune with the opinion and pronouncement of Ademola CJN as he then was in the case cited above.

The provisions in the earlier statute in respect of compensation in criminal trial are quite obsolete. For example section 365(1) of the repealed Criminal Procedure Act provides thus… "a court may order any person convicted before it of any offence to pay to the prosecutor in addition to any penalty imposed such reasonable costs as the court may deem fit"[256]. This provision seems to give the court some discretion to award some form of compensation to the prosecutor and possibly the crime victims. The provision, however, appears to be dormant throughout the live of the Act. This is because there is no corresponding provision which may encourage the prosecutor to move the court to invoke its discretionary power in that regards. However, the newly enacted Administration of

[253] This duty of court is mostly essential in issues of rape.

[254] Tsofoli v COP (1971), 1 NLR 338 at 341. Similar to provision in Sec. 79 of the Penal Code.

[255] This is contained in section 314 of the Administration of Criminal Justice Act of 2015. Thus section 314 of the Act states that "Notwithstanding the limit of its civil or criminal jurisdiction, a court has power in delivering its judgement to award to a victim commensurate compensation by the defendant or any other person or a state". Again in sub-section (2) of the same section, the Act further state 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.

[256] This provision is contained in section 319 of the new Administration of Criminal Justice Act, 2015. Although the provision is now enlarged and couched in a way that is more detailed and more encompassing it has not however changed the attitude of our courts to the plight of the crime victims.

Criminal Justice Act which also contains the provision and in more elaborate way has not really changed anything in the attitude of our judges towards the crime victims.

(C) Victims and the prison

The prison is obviously the last port of all the components of the criminal justice. There is not much to be said as of the right and involvement of a victim within the correctional institution other than the fact that a victim ought to be informed when a criminal is to be released from the correctional facility to avoid friction from the previous relation of the offender – victim. And as of right to remuneration/restitution by the offender to the victim, the offender is expected to make restitution to a degree to satisfy the victim; this is in a situation where incarceration must have prevented the offender from the fulfilment of his full duty to restitute.

2.4 Victims and criminal justice administration in Nigeria

In a simplistic way, one might consider the system, and all the jobs and workings of the professionals within it as being built upon the actions of two people – the offender and the victim[257]. The victims suffer painful and often permanent injuries in the hands of their assailants and it often feels that the system has always functioned to convict, punish and rehabilitate criminals and not to assist victims. Also, victims were often dissatisfied by aspect of their treatment by criminal justice agencies.

Basically, there are two contradictory facets of the role of the victim. It is this paradox which is fundamental to our understanding of the victim's attitudes to the system[258].

First and foremost, it is argued that victims of crime are significant to the criminal justice system in the area of crime detection and reporting. Indeed, the importance of victims to report events of crime has been shown to be obvious[259]. The English Royal Commission on

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[257] Shapland. J., 2000.Victims and Criminal Justice: Creating Responsible Criminal Justice Agencies. Integrating a Victim Perspective within Criminal Justice: International Debates. Eds. A. Crawford & J. Goodey. Alder shot: Asb gate Publishing Ltd. Ltd. Chapter 7.

[258] Karibi-Whyte. 1990. *Groundwork of Nigerian Criminal Law 2nd ed. Lagos: Malthouse Press 102.*

[259] Goffredson M. R. & Gottredson D. M. 1988. Decision Making in Criminal Justice, 2nd ed. New York: Plenum Press pp. 21 – 22; Some studies also revealed that the victims are important not only in crime but also in detention of criminal and offenders. In the study of burglary victims and violent crime victims respectively it is discovered that over 60% of cases were detected as a result of define information (name or address) supplied by the victim. Another 8% to 13% were detected as a result of definite information supplied witness, while only 14% to 25% of detection were the result of police actions.

Criminal Procedure in the study carried out in 1981 reported the finding which is overwhelmingly in favour of the important role of the victim in reporting incidences of crime has stated:

> "…the overwhelming majority of (offences) are not discovered by the police, but by the victim and the public (such as passerby, neighbours, friends or those in charge of places where the offences happened) in cases of inability of the injured or unconscious victim to report the offence himself"[260].

However, this is not to deny a role for the police, because without quick response by the police where the victims have themselves apprehended the offender or fast action when a named address has been supplied, offenders would not be caught. The Police may not be a major detection agency of these offences, but they are responsible for gathering evidence such that the offender, once caught, can be prosecuted.

According to Igbo, the role play by the victims of crime in criminal justice administration are three folds – to report the crime to the Police, to assist the Police in carrying out their investigations by providing vital information about the crime and the offender, and to assist the court in prosecuting offender by giving testimony against accused persons[261]. These contributions are fundamental inputs into the criminal justice process, and they go a long way to determining the degree of success achieved by the criminal justice system in its crime prevention and control task.

On the other hand, in spite of the highlighted roles as played by the victims of crime in the criminal justice system, the victim is said to be neglected or ignored in the Nigerian Criminal Justice process. The victims are not recognised by the criminal justice system, like their counterpart – the offender/victimiser.

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[260] Fattah E., 2000, the vital role of victimology in rehabilitation of offenders and their reintegration into society. UNAFEI 112th International Training Court Participation of the Public Victims for more fair and effective criminal justice. Fuchu, Tokyo, Japan. Retrieved 15th July, 2016 from http://www.unafei.or.jp/english/pdf/PDF_rms/no56-07.pdf. it was found that between 31% and 41% of cases were found to be reported by the victims himself, while another 50% were reported by other civilians, such as passersby, neighbours, friends or those in charge of places where the offences happened. This high percentage of the involvement of others is probably due to the violent nature of the offences and the consequent inability of the injured or unconscious victims to report the offence himself. Only 3% and 4% of cases were found discovered by the police themselves.

[261] Igbo E. M. 2006. Criminology: A Basic Introduction, 4th ed. Enugu: Jock-Ken Publishers. p. 24.

Dambazau[262] is right, and this researcher agrees with him that the victim of crime is an observer or a passive participant in the criminal justice process. He is rarely consulted in any decision making during the process. However, emphasis is so much laid on the rights of the accused, who enjoys some fundamental protection contained in chapter IV of the Constitution of the Federal Republic of Nigeria[263] in order to ensure fair trial. The victim of crime does not enjoy such legal protection, and in fact, he is made vulnerable to other victimisation whenever he stands as a prosecution witness[264]. Considerable attention had quite justifiably been paid to ensuring due process for the defendant, who in spite of being threatened with state imposed punishment, is still entitled to the protection by the criminal justice system in his or her defence. This same degree of attention had not, however been paid to the victims. The state was assumed to be representing the interest of the victim and accordingly no need was perceived for direct victim involvement in the proceeding[265]. This clearly reveals the fact that the legal process does not consider interest, rights, welfare and all other needs of a crime victim which are usually informed by the impact of their victimisation, but rather concentrates substantially on the needs and interest to the crime suspect or offender. Evidently, all these treatments given to victims of crime have certain significant impact in the relationship between the victim and the criminal justice system. In a study of victims of rape, it was found that the Police were described by victims as being less efficient, less over-worked, more offensive, less fair, less bureaucratic, more crooked, and less helpful[266]. The criminal justice system in Nigeria can make more positive response to victims by keeping victims better informed, improving social service for victims, requiring restitution more frequently, and treating offender appropriately.

From the foregoing, it is evident that victims of crime are not fully given adequate consideration, despite the fact that they are one of the important elements and integral parts of any criminal justice process. However, it is these significant elements, that is, the victims,

[262] Dambazau A. B. 2007, Criminology and Criminal Justice 2nd ed. Spectrum Books Limited p. 131
[263] Section 36 of Constitution of the Federal Republic of Nigeria. 1999 (as amended).
[264] Yusuf U. A. & Yahaya S. S. 2014. Crime Victims and Criminal Justice Administration in Nigeria: Global Journal of Interdisciplinary Social Sciences. 3.5: 48 – 52.
[265] Olatunbosun A. 2007, Compensation of Victims of Crime: A Critical Assessment of Criminal-Victim relationship. Journal of the Indian Law Institute 44.2: 105 Retrieved 15th July, 2016 from http://www.ili.ac.in/criminal-victim-rel.
[266] Fattah E. A. ed. 1986. From Crime Policy to Victim Policy: Reorienting the Justice System. London: Macmillan Press Ltd. p. 240.

who are mostly found to suffer wanton neglect in the hands of the agencies of the criminal justice system, instead of being taken care of. The victims of crime are mostly found to be relegated to the background with reference to the criminal justice processes, all in the name of being represented by the state. While the state does not in any way, act as a true representative of the crime victims, the victims of crime suffer both physical harm and economic loses, but very little provision is made for them at the end of the day.

The criminal justice system should be structured in such a way that victims of crime participate actively, not passively, in the adjudication of their cases. For only this, as this study is out to show, will give them a sense of belonging and reduce their level of frustration. Moreover, the criminal justice administration should endeavour to introduce some practical service programmes to the victims of crime to ensure balance of treatment between the offender and the victim, by the criminal justice system. Since offenders receive reformation and rehabilitation training, the victims should be provided with certain compensatory rehabilitative programmes. As a result of what they have gone through in the hand of the offender, and in addition to various financial needs, victims of violent crime, for example, may also require immediate or even long term medical consideration as well as other forms of assistance.

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in its paragraph 14 recognised the need for some rehabilitative programmes as well as some forms of assistance for the victim of crime as stated above. The declaration states that “victims should receive the necessary material, medical, psychological and social assistance through government, voluntary organisations, community based and indigenous means”. Paragraph 17 of the same declaration further emphasised that “in providing services and assistant to victims, attention should be given to those who have special needs because of the nature of the harm inflicted”. In addition, considering the fact that crime rate is on the increase, therefore government should efficiently allocate adequate resources to the criminal justice agencies (especially the Police and the court), to ensure effective crime prevention and control as well as effective and reliable administration of criminal justice in this area. The National Assembly should also see it as a matter of urgency the need to enact a law protecting the rights of crime victims in Nigeria. The founder and executive director of

Crime Victim Foundation (CRIVIFON), a Non-Governmental Organisation that tries to keep up with victims and how they should be treated in the society[267] was of the opinion that the Police are mostly not people-friendly[268]. In the opinion of another scholar, our law ignores the victim who is going through emotional pain, and the action of some government agencies involved in the criminal justice process often increases the pain by their efforts to catch and punish the wrong doer. In this way, they do not recognise the inconveniences and fears caused to the witnesses and or the victims[269]. There is no state compensation for the victims of crime in Nigeria. Where then do these victims run to when in distress? It should be noted that victim assistance programmes that help victims to have a shoulder to cry on and thereafter be able to rebuild or reshape their lives. The victim assistance programmes do not exist in Nigeria as there is no law yet protecting victims of the crime. The major plight of the victim is not the fact that they are being ignored by criminal justice system but the fact that they are being used by the criminal justice system with the victim benefiting in no way other than to have the criminal justice succeed in its duty of putting out the criminal. There are some NGOs such a CRIVIFON, CLEEN, MIRABEL Center that assist victims[270]. What these organisations do is to assist victims by stabilising them socially and psychologically. The question is how many people can benefit from the little assistance coming from such organisations. Again, how much of assistance can be rendered by these few centers. It is now very obvious, therefore, that the neglect for victims' rights has the following negative consequences on the criminal justice system:

(1). victims are made to cope not only with mental trauma, physical injury, loss or damage to property, but also with insensitive investigation and legal processes;

(2). mistrust in the state's capability to protect the citizens;

(3). reluctance of victims to invoke the criminal process against offenders which results in a growing tendency for victims and the community to take the laws into their hands;

(4). greater emphasis on punitive and retributive rather than restitutive and compensatory sentencing;

[267]This NGO has a magazine called "Crime Victim Watch".

[268] Chioma Igbokwe: If a man Has Sex Without Her Consent Its Rape Daily Sun *Voice of the Nation*. Tuesday April 06, 2009, 12.

[269] Yusuf U. A. & Yahaya S. S. 2014: Crime Victims and Criminal Justice Administration in Nigeria, *Global Journal of Interdisciplinary Social Sciences.* 3.5. 48 – 52.

[270] CLEEN is a justice sector non-governmental organisation which helps victims

(5). duplication of legal process, because criminal and civil cases arising from one event or transaction are pursued separately;

(6). lack of faith in the institutions of the criminal justice administration, particularly the Police and the courts; and

(7). general ineffectiveness of the criminal justice system.

From the foregoing, it is evident that the enhancement of victim's right and remedies should be an important concern of the criminal justice system. Such a change in attitude will restore the citizen's confidence in the criminal justice system.

The Administration of Criminal Justice Act, 2015, contains a number of provisions for the victims of crime, for example in section 314[271].

1. Notwithstanding the limit of its civil or criminal jurisdiction, a court has power in delivering its judgement to award a victim commensurate compensation by the defendant or any other person or the state.
2. 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[272].

In addition to the above section of the 2015 Administration of Criminal Justice Act, part 32 of the Act which comprises of section 319 – 328 also made provisions for compensation and restitution to victims of crime. Section 319(1) of the Act[273] provides thus:

(1). A court may within the proceedings or while passing judgement order the defendant or convict to pay a sum of money.

(i). 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 recoverably by civil suit.

[271] Section 314 (1) of the Administration of Criminal Justice Act, 2015.
[272] Section 314 (2) of the Administration of Criminal Justice Act, 2015
[273] Section 319 of the Administration of Criminal Justice Act, 2015.

And section 321[274] further provides:-

(1) A court after conviction may adjourn proceedings to consider and determine sentence appropriate for each convict.

(a) in addition to or in lieu of any other penalty authorised by law, order the convict to make restitution or pay compensation to any victim of the crime for which the offender was convicted, or to the victim's estate: or

(b) order for the restitution or compensation for the loss or destruction of the victims' property and in so doing the court may direct the convict:-

` (i) to return the property to the owner or to a person designated by the owner.

(ii) where the return of the property is impossible or impracticable, to pay any amount equal to the value of the property; or

(iii) where the property to be returned is inadequate or insufficient, to pay an amount equal to the property calculated on the basis of what is fair and just.

The import of the above sections of the 2015 of the Administration of Criminal Justice Act is to lay down the framework for the practice of restitution or compensation theory to victims of crime in Nigeria. It is also pertinent to note that the court may order that the compensation be paid by the accused to a victim in addition to the prescribed punishment for the offence and this obligation to pay is subject to the discretion of the court considering the circumstance of a particular case. Thus, the victim is not left empty-handed and forgotten after what he/she has suffered in the hands of the offender. It can also be inferred from sub-paragraph (b) of sub-section (1) that the provision is very well applicable to property offences. It is humbly opined however that there are so many other offences that will require an addition of compensation or restitution to make punishment adequate. It is therefore suggested that there should be a comprehensive list of offences to be covered under this section and to be expressly made and not left to the total discretion of the judges. Section 329 of the Act[275] also makes provision for the restoration of a property which an offence has been committed.

[274] Section 321 of the Administration of Criminal Justice Act, 2015.
[275] Section 329 of the Administration of Criminal Justice Act, 2015.

Provisions of other statutes in Nigeria on the rights of victims

There are some enactments like the trafficking in persons (Prohibition) enforcement and Administration Act, 2015, which contains some provisions protecting the trafficked victim whether the offender is caught or not. The Act provides that[276] irrespective of age, colour, gender, opinion, sex, age, nationality, cultural beliefs or practices, a trafficked person has access to adequate health and other social services, such persons can be returned home safely at his wish, a temporary residence will be provided for, his privacy is protected and as such, the person's history cannot be used[277].

Furthermore, the following provision is made open to the victim, information on relevant court and administrative proceeding, victims' views and concerns is considered at every stage of the proceeding, the victim will equally be told of his right. A victim can equally institute a civil suit in order to be awarded compensation provided the amount by the criminal court shall be taken into consideration. To crown it, there is a provision of a trust fund from which the victim will be compensated and funded. Most NGO's and religious organisations have taken to the responsibility of catering for victims individually, leaving a need for collaborative efforts to draw all resource together and provide useful information to meet the adequate need of all victims all over the nation.

A perusal of the sections of the Criminal Procedure Act (the applicable law of criminal procedure in Southern Nigerian States) and the Criminal Code (the equivalent in the Northern States)[278] provides no reference to victims and injured parties of crime. As seen above, a number of new legislations in Nigeria have been influenced by the developing trends in International Criminal Law, namely Trafficking in Persons Prohibition Act 2015, Administration of Criminal Justice Act, 2015. These provisions however do not have far reaching effects. The status of victims should be harmonised in our criminal procedure legislation by allowing the full participation of the victim in the criminal justice process and only by so doing could their rights be protected in the statute.

[276] Trafficking In Persons (Prohibition) Enforcement and Administration Act, 2015, Part IX Treatment of Trafficked Persons.
[277] Section 61 Trafficking In Persons (Prohibition) Enforcement and Administration Act, 2015.
[278]The two mentioned Act - CPC and CPA were repealed following the enactment of the Administration of Criminal Justice Act in 2015

CHAPTER THREE

3.0 THEORETICALFRAMEWORKFOR THE VICTIM PARTICIPATIONIN THE NIGERIAN CRIMINAL PROCESS

The Nigerian criminal jurisprudence like some other countries of the world has, until the passing of the Administration of Criminal Justice Act ACJA on 15th day of February 2015, focused on the liability of perpetrators of crimes and relegated the interest of victims to a secondary and peripheral position. This reflects the view that criminal conduct should be considered, first as a wrong against the entire society and that remedial measures focus on disrupted societal order. At the international level however, measures taken by the United Nations Security Council (UNSC) to punish those responsible for international crimes such as war crimes, crimes against humanity and genocide as well as the crime of aggression have been conceived primarily and perhaps solely – as a means of restoring international peace and security[279].

As argued in this thesis the creation of the International Military Tribunal, (Nuremberg Tribunal) and the International Military Tribunal for the Far East at Tokyo (Tokyo Tribunal),[280] the first of their kind in 1945, was similarly justified[281]. It is argued that justifying these steps in terms of "International Peace and Security" considerations is not problematic in itself. However in any case, the United Nations (UN) Charter, which vests the core function of maintaining International Peace and Maintaining Security in the UNSC demands such justification.[282] The problem, it is argued, that the assumption that such actions seem implied to take – that punishment of the perpetrators alone will restore peace and embattled societies - is flawed and arises from a normal conception of what constitutes international peace and security. This explained the fringe and peripheral position allocated

[279] When deciding to establish these tribunals the UN has consistently justified the action on the basis that the commission of these crimes threatens international peace and security. United Nations Charter Chapter VII; Resolutions establishing ICTR, ICTY, IMT Charters; see also Tadic V Prosecutor IT-94-I-T; Akayesu V Prosecutor IT-94-6-T Jurisdictions decisions on these cases support this view.

[280] Charter of the International Military Tribunal for the Far East (Tokyo Tribunal) approved by the Supreme Commander of the Allied Powers, General Mac Arthur on 19th January 1946 as amended by order of Supreme Commander General Headquarters, APO 500, 26th April 1946.

[281] International Military Tribunal (Nuremberg Charter) annexed to the London Agreement of 8th August 1945 between the United States, France, United Kingdom (and Northern Ireland) and the Soviet Union.

[282] Art 39 – 42 Chapter VII of the UN Charter, See also Tadic V Prosecutor IT-94-I-T (ICTY) Appeals Chamber decision on the defence motion for interlocutory appeal on jurisdiction paras 14 – 42.

to victims of international crimes in the United Nations tribunals. However, the concerns of the victims including the recognition of their suffering and restitution to them have been an incidental issue under the Nigerian Criminal Law and Procedure as well as on the international scene.

This chapter establishes the theoretical framework for the study. It introduces the concept of procedural justice generally and discusses the basis for the introduction of such framework into the Nigerian Criminal Justice System. It introduces the argument that the inclusion of victims' rights to participation in the criminal justice in Nigeria, by looking at the victims' participation model as it is currently practiced under the ICC, presupposes different paradigms of justice from the retributive, restorative, restitutive as well as rehabilitative justice in the Nigerian Criminal Jurisprudence as it is under the newly enacted Administration of Criminal Justice Act of 2015, and under the previous international tribunals which are the precursors to the creations of International Criminal Court.

3:1 Procedural justice theoretical underpinnings for victim participation

As earlier stated, this thesis departs from the position that the Nigerian Criminal Justice System like the International Criminal Law, has been founded on a paradigm of justice that focuses on the perpetrator, as a target of criminal sanctions with little or no benefit for the victim of crime. In doing this, this research adopts the procedural justice theoretical framework to justify the fact that the victim participation is sine-qua-non, to addressing the victims neglect in the Nigerian Criminal Justice System using the provisions of the Rome Statute of the International Criminal Court (ICC). In order to appreciate the procedural justice theory as a theoretical framework for the justification for the call for the victim's participatory role in the Nigerian Criminal Justice System, the various other theories of justice which have been adopted overtime and still in use shall be discussed in this part. This part of the chapter also traces and discusses some of the positions of scholars in the field of victims' rights and concerns from the retributive, utilitarian, restorative, as well as restitutive theoretical framework.

It is very important, for us to really understand how the International Criminal Court came up with the victim's rights to participate at all stages of the courts proceedings and to reparations, to attempt an overview of the previous situations in the International Criminal Law and practice of the Rome Statute of the International Criminal Court. It is noted that emphasis placed on the main functions of criminal sanction in the restoration of societal order (in the case of the domestic criminal justice system), and the protection of broad communal interest (International Peace and Security in the case of International Criminal Law), has led to the relegation of the victims of crime to a peripheral role in proceedings before International Criminal Tribunals as well as domestic criminal justice system.

A study of the Nigerian criminal Justice System and the International Criminal Law, especially the International Criminal Tribunals reveals that the contents and processes are influenced largely by retribution and utilitarian theories of justice[283]. In general, these two theories of justice not only justify certain responses to crime but also explain the functions of ensuing responses. Despite minor variations and some doubts as to their exact content, retributive justice theories are in general characterised by their emphasis on the link between punishment and moral wrongdoing[284]. Under these theories, punishment is seen as just desert for wrong doing. In these theories, therefore, the focus seems entirely directed at the morally reprehensible conduct of the accused. The Retributive justice system strives for proportion at punishment and consistent treatment of offenders[285]. The pursuit of these goals has a consequent that these systems "Often adhere to the ideas of state punishment and fair procedures for the accused"[286].

This study also noted that retributive justice is largely unaccommodating to victims of crime. However, some scholars have argued that the punishment of an offender not only constitutes an expression of "solidarity with the victims" but also annuls the appearance of

[283] See Heikkila, M (2004) International Criminal Tribunals and Victims of Crime: A study of the status of victims before international criminal tribunals and factors affecting this status, p. 21 – 33, see also Strang, H (2002) Revenge or Repair: Victims and Restorative Justice p. 4 – 6.
[284]Heikkila M (1987), Ten Crime Guild and Punishment: A Philosophical Introduction, p 38; see also Kuhner, T (2004) 'The status of victims in the enforcement of International Criminal Law' p. 6 Oregon Rev IL 9.
[285]Dignana J & Cavadino M (1996) 'Towards a framework for Conceptualizing and Evaluating Models of Criminal Justice from a victim's perspective' 4 International Review of Victimology pp. 153 – 182.
[286]Op cit note 67 p. 26.

an offender's superiority, thereby affirming the victim's real value"[287]. For these reasons, it is also argued by scholars that restorative justice is not actually incompatible with punishment in the main feature of retributive justice[288]. It should be noted that the concept of restorative justice as it is being practised under the Nigerian criminal justice does not seek to replace prosecution with restitution[289]. However, it is understood that the idea of trying perpetrators of crime has its limits and that 'affirmation of victims' 'real value' is just as far as retributive justice discourse. The reference to victims seems to be restricted to the assessment of wrongfulness for the purpose of apportioning punishment. Apart from the mental state of the offender, wrongfulness of conduct also depends on the impact of the wrong on the victims. In this regard, the seriousness of the crime informs the punishment meted out[290]. Since the principal aims of retributive justice is to establish whether an accused person has committed a crime-and if so, mete out the punishment that is proportional to the crime committed on the accused person, once the punishment is assessed-the debate ends there[291]. It is the offender's guilt and not the victims suffering, that is the issue. The view that victim's experiences of having to be subjected to the background should not therefore affect the outcome of the trial requires that the prosecutor – rather than the victims – takes charge of the prosecution and that the prosecution should be 'depersonalized'[292].

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[287] Fletcher G P (1995) With Justice for some: Victim's Right in Criminal Trials p. 203; See also Hampton J(1991) A New Theory of Retribution in RG Frey & CW Morris (eds) Liability and Responsibility. Essay in Law and Morals p. 402.

[288]Zedner L (1994) Reparation and Retribution: Are they Reconcilable? Modern LR p. 57 suggests that restorative justice is compatible with retributive justice and that it contains some retributive content, but it offers something more. See also Wilson S (2001) The Myth of Restorative Justice: Truth, Reconciliation and the Ethics of Amnesty 17 SAJHR 531.

[289]See for example Randy Barnett, perhaps the earliest exponent of restorative justice in the 1970s conceived restorative justice as substitution of criminal court proceedings with restitution. See also Barnett, R E (1977) Restitution a new Paradigm of Restorative Justice Vol 86 Issue 4 Ethics p. 279 -301. Barnett's theory of restorative Justice has been criticized for not distinguishing clearly crimes and torts; and not acknowledging that crime has broader societal implications. See for example Heikkila note 67 p. 37; Pilon R (1987) Criminal Remedies, Restitution, Punishment or both? Vol 88 Issue 4 Ethics p. 348 – 357.

[290]Ibid p. 284, notes rightly that there is never a simple rational connection between a term of imprisonment and harm caused to the victim. This is even more accurate in the case of international crimes, which infer numerous victims. See also Heikkila note 67 p. 16- 26 who argues that for 'Crimes of International Concerns'. It appears that the perpetrator's mental state has been accorded greater significance in determination of wrongfulness since it is impossible to fashion punishment that would fit the suffering of victims.

[291]Op cit note 67 p. 27.

[292]Cragg W, (1992) The Practice of Punishment : Towards a Theory of Restorative Justice p. 19 has however argued that the emphasis on impartiality is one of the strengths of retributive justice, depersonalisation of the Criminal Justice Process…'Blinds Justice to the Crime's Victim as well as to the Personal Characteristics of the offender'. See also Heikkila note 67. P 28.

This explains the relegation of victims to a passive witness role in the criminal process.
The utilitarian justice theories however, emphasise the good consequences that punishment produces and not the wrongfulness of impugned conduct[293]. Under this theory, criminal prosecution and punishment are seen as serving societal interest. The reduction of crime appears as a central goal of utilitarian theories of justice and is pursued through deterrence, reform and incapacitation[294]. The problem with utilitarian theories, from the point of view of victims, is that it focuses on societal interest and the offenders tend to overlook the interests and concerns of victims, especially when their interests are at odds with the former[295]. There are many examples in the context of mass atrocities (under the International Criminal Law). The opting by some countries for total or qualified impunity for international crimes characterised by amnesty laws has in the past been explained by the need to establish peace and stability after violent conflict. This study finds that in some of these cases, factors not necessarily linked to victims' concern have been deployed to determine outcomes of relevant processes at the expenses of victims.

This study argues that just as in the International Criminal law realm, the emphasis under the Nigeria criminal justice system is on the offender. Thus, Crime even those committed against the person is viewed as offences against the State. From arrest to sentencing, the law is concerned with the offender, although the trial is mostly initiated by the victims and relies on the victim cooperation for the success, offers little direct relief to the victims[296]. The system had been more punitive and as such the operator has become more insensitive to the victims' plight[297] as such punishment seems to be the common and the main feature of most criminal justice system, especially in Nigeria, as this is one of the main focus of this thesis. It is for this reason that the tendency of some scholars, as highlighted above, to regard criminal justice system in Nigeria as invariably retributive is high. However, in this study therefore, the above assertion may not be totally true on the account of the fact that it seems to hold that a particular justice system cannot be explained by one single theory of justice as

[293]Op cit note 67 p. 29.
[294]Op cit note 76 p. 30 – 31.
[295]Fletcher, (1995) With Justice for Some: Victims' Right in Criminal trials p. 192 – 3.
[296] Bamgbose O.A. (2010) The sentence, the sentence and the sentenced: towards prison reform in Nigeria. Inaugural Lecture of the University of Ibadan
[297]Olatunbosun, I A (2010) Restitutive Justice for Victims of Crime in Nigerian Courts in legal issues for contemporary justice in Nigeria, Essays in honour of Hon. Justice M. O. Onalaja. P 387.

the above opinion tends to suggest. As another scholar rightly observed that no one system is based on a unitary set of coherent values and purpose,[298] it is therefore argued that irrespective of the rationale for punishment in either case - retributive and utilitarian theories-both theories are understood to have as the main focus, either society interest and/or the offender, to the exclusion of the victims of crime.

The restitutive theory of justice on the other hand relates to the return or restoration of movable property either stolen or otherwise dishonestly acquired or taken without permission, or property innocently obtained from such succession. This remedy, according to the scholar relates to property offences, whenever any property, or proceeds of its sale or property bought with stolen money is recovered, it should be restored to its original owner[299]. This study notes that, restitution is different from cases of compensation or damages, but slightly similar to restoration. Restitution occurs where an offender is made to disgorge the benefit he had acquired through his own criminal act. While compensation is concerned with relieving the victim of a crime of any loss which he might have suffered physically or financially. On the other hand, restoration relates to restoring the possession of immovable property to a person dispossessed of it by means of criminal act like forcible entry[300]. Closely related to it is the reparation which covers both compensation and damages. It ensures that the offender does not enjoy the fruit of his crime and also provides a form of remedy which tries to restore the party to the status quo ante crimine.

Some scholars have argued that restorative justice as a theory of justice does not lend itself to easy definition. Most often than not, particular definitions adopted reflect the disparate

[298]Duff, R A(1986) Trials and Punishment at p. 5; where he notes that even the Use of 'Retributive' has been criticized by commentators who emphasize that modern criminal justice systems are underpinned by a hybrid of philosophies of justice. See also Barton C (2000) 'Empowerment and Retribution in Criminal Justice' in Strang H & Braithwaite J (eds.) Restorative Justice Philosophy of Practice pp. 55 – 57;Van Ness D W & Strang,H (2002) Restoring Justice (2nd eds) p. 44.

[299] Cassese A.(2003) International Criminal Law p15. See also Bassiouni M C & Nanda.V P (1973) A Treatise on International Criminal Law; Bantekas I & Nash, S (2003) International Criminal Law; Schwarenberger G 'The Problem of an International Criminal Law' in Dugard J & Van Den Wyageart,C (eds) (1996) International Criminal Law and Procedure PP 3 – 37, on the six meanings of ICL.

[300]See Sunga, L S (1972) The Emerging System of International criminal law Developments in Codification and Implementation pp 2 – 8 who traces the development of ICL since Nuremberg; see also Cassese (n 82 above) pp 16 – 19.

disciplines and group of people in that field[301] commenting on the lack of precise definition of restorative theory of justice. Coben and Harley observe that restorative justice may be considered an umbrella term for a spectrum of practices used in association with the criminal justice system, but more generally, to describe approaches to dispute resolution in disparate settings such as neighbourhoods, schools and workplaces[302]. Kurki notes that restorative justice is based on values that promote repairing harm, healing and rebuilding relations among victims, the offenders and the communities. It has participation and empowerment as its goals[303]. Sometimes, restorative justice is used interchangeable with transformational or transitional justice, akin to example, as Kurki observed, to what could be used to describe the work of the truth and reconciliation commission[304]. In this context, it appears that the use of restorative justice reflects the desire to deploy mechanism and resources which also include the victims towards the satisfaction of all concerns. In general therefore, these mechanisms seem to depart from the structures and narrow focus of 'traditional' or formal criminal justice system that in general limit itself to a retributive approach to crime[305].

In the African context however, the term restorative justice has been used to describe the African legal tradition consisting of a set of values and practices that emphasis not only the mediation of truth, but also the acknowledgement of wrongdoing, the forgiveness and reconciliation of all the parties involved rather than simply retribution[306]. Olatunbosun, in agreeing with the above assertion, notes that restorative justice as it relates to victims of crime in the African traditional context has two basic principles which run through the

[301] Kurki L (2000) Restorative and Community Justice in the United State. 27 Crime & Just pp235 – 302, 237 where he tries to Compare Restorative Justice to Community Justice.
[302]Coben J & Harley P (2004) International conversation about Restorative Justice, Mediation and the Practice of Law 25 Hamline J. Pub L & Policy pp235 – 234, 239.
[303] Op cit. note 84 p235. Where he notes that engagement is one of the foundational principles of restorative justice. He notes that in Restorative Justice, the primary parties affected by crime –victims, offenders and community – are treated as key stakeholders and are thus offered significant roles in the justice process".
[304]Op cit. note 85 p 240. Even more loosely, and perhaps in a manner not particularly relevant to this study, restorative justice has been employed in association with 'community justice'. See for instance Lanni A (2005)The Future of Community Justice 40 Harvard LR p359. Others draw a sharp distinction, for instance. Kurki (2000) Restorative and Community Justice in the United States 27 Crime & Just .p 235.
[305] Op cit note 85 p138 noting that restorative justice Constitutes a bold response to the conventional and punitive justice reflexes of contemporary societies.
[306] See generally D. W. Nabudere, "Comprehensive Research Report on Restorative Justice and International Humanitarian Law" The Marcus-Garvey Pan-African Institute (June 2008) discussing restorative justice in different African contexts (on file with author).

philosophy of criminal jurisprudence, namely, the need to prevent any unjust enrichment as a result of criminality and that to restore the victim as much as possible to the pre-criminality status quo[307]. This view is also shared by Milner who submits that, "Nigerian customary attitude were emphatically in favour of settling criminal disputes by restoring the status quo as far as possible"[308].

Thus far, in this part of chapter three, we have examined the different theories of justice that are commonly in use or employed in most of the criminal justice proceedings and mostly acknowledged and examined by scholars both at the domestic as well as the international plane. As earlier mentioned, this is to attempt a workable and achievable theory of justice which takes care of the right, interest and concerns of the victims of crimes better, by allowing the victims' participation in the criminal justice process.

This attempt leads us to the examination of the principles of procedural justice theory for the use in the Nigerian criminal justice system which at the end of this exercise aims at embellishing the victim participation provisions of the Rome Statute of the International Criminal Court and hoped to lead to significant improvements in the criminal justice delivery in Nigeria.

3.2 Principles of procedural justice theory and the Nigeria criminal jurisprudence

As earlier stated, this study is primarily on the need for paradigm shift in the criminal justice delivery as it relates to the rights and the concerns of the victims of crime in the Nigeria criminal justice system. The choice of the victim participation model of the principle of procedural justice as the theoretical framework for this study, is borne out of the experience of this researcher in the practice of law, especially the criminal trial (prosecution and defence) for about fifteen years which, in a way, assisted the researcher to garner needed tools in the Nigeria criminal law and procedure necessary for this research.

[307]Op cit note 296

[308]Miller (1969) African Penal System, London, Rouleledge & Keegan Paul cited in Adeniyi Olatunbosun, Justice for Victims of Crime in Nigerian Courts, page 407 in legal issues for contemporary justice in Nigeria (Essays in honour of Hon. Justice M. O. Onalaja Rtd JCA).

It is the observation of this researcher, therefore, that the Nigerian criminal justice system is in need of further reform, especially in the area of victim participation in the trial of offenders. It is also observed in this research that most, if not all, the reforms initiative embarked upon by the government and stakeholders alike, are all in the areas of the interest, the need, the well being and the accurate justice for the defendant i.e. the accused, and later, the convicted. Most these reform initiatives are to the neglect of the victims of the crime under trial, at the court, at the police level and at the level of the state department of public prosecutions. Yet, we all have it at the back of our mind the belief in the popular notion, that in criminal cases, justice is not a two-way traffic but a three way action, that is, for the accused, for the victim and for the society. This popular believe was accentuated by the pronouncement of a justice of the Supreme Court (now retired) in one of the cases before him while still at the bench that:

> …Justice is not a one way traffic, it is not justice for the appellant only. Justice is not even a two-way traffic, it is really a three way traffic, justice for the appellant accusedof a heinous crime of murder, justice for the victim-the murdered man, i.e. the deceased whose blood is crying to high heavens for vengeance and finally, justice for the society at large-the society whose social norms and values had been desecrated and broken by the criminal act complained of[309].

This work attempts a theoretical framework of the procedural justice with emphasis on the victim participation before and during the criminal trial of the offender. This is an attempt which is hoped to enable, a paradigm shift in the Nigeria criminal jurisprudence in the treatment of the victim of crime whose participation and cooperation is sin-qua-non to the successful trial of the accused and the well being of the entire stakeholders in the criminal justice system. This is hoped to lead to a significant improvement in the Nigeria criminal justice delivery.

Proceeding from the above premise which aimed at allowing a shift of attention and focus from the theories of justice earlier or previously discussed, and toward appreciating the suggested theoretical framework and its proposed model in this study, the victim's

[309]Chukwundifu Oputa (JSC Rtd) in the case of Godwin Josiah V the State (1985) 1 NWLR 125.

participation in the criminal trial for the purpose of this study shall be referred to as the participation model of the procedural justice theory. The choice of the victim participation model is borne out of the notion that a right to participate in decision making process is justifiably valuable because it respects the dignity and autonomy of those who are affected by the outcome of those processes[310].

The framing of the chosen theoretical framework starts with the notion that the unending practice of humanity is to flag off a society which is not bereft of peace and tranquility. Lawyers are advised to seek for justice just as the scientists set for the truth[311]. It is also a truism that a peaceful society is a society where justice prevails, simply because where there is injustice there can be no peace; injustice carries in its womb a foetus of conflict and violence. Therefore, injustice and peace can only make an uneasy bed fellow.

It is our contention in this study, that criminal justice system, like many other systems has as its foundation a system of fairness and satisfaction which should culminate into justice for all players in the said system. But the question may be put - what is justice or what kind of justice is there when 'one unit' out of 'three units,' which is supposed to demonstrate the essence of justice or on whose head and body the pot of justice stand, is dissatisfied with the decision to bind him as a result of being sidelined and feeling abandoned.

It is to be noted that the victim's right to participate in the criminal proceeding should necessarily include the right to observe, the right to make claims, the right to make argument, the right to present objections whenever necessary, the right to present evidence and to be informed of the reasons for any decision taken or arrived at in the criminal process in which the victim is involved, that is, the decision by the police to visit the scene of the crime, to release the suspect on bail, the decision to prefer and draft charge or charges, the decision to select would-be witness, and so on. Without these participatory rights, according to Aristotle, a victim of crime may not be assured that the proceeding considered his views of the law and facts while he or she tries to comprehend the outcomes[312].

[310] Lawrence B. Solum (2004) Procedural Justice. Georgestoun University Law Center – Open access article-http://scholarship.lawgeorgestoun.edu/facpub.
[311] Lawrence B. Solum (2004) Open Access article at http://scholarship .law.georgetown.edu//facpub. Pg. 280
[312] Aristotle – Nichomachia Ethics. Britanica great Books vol. 1 p. 380.

Flowing from the assertion above, another question which may also arise is that what kind of justice do we mean, whenever we opine that in criminal trials, justice is three-way traffic? A Jurisprudential theory of justice, according to Plato, attempts to answer the question thus…. "Since the lawless man was seen to be unjust and the law-abiding man just, evidently all lawful acts are in a sense just acts"[313]. For Plato, the microcosm of a just man is a reflection of the pattern of the just society, which was mentioned and defined in terms of the system which pervades the said society[314]. On justice, the postulation of Aristotle was superior to most of his contemporaries and his analysis still serves up till today, as a crucible into which even the modern theoretical craftsman continues to pour the problems of the earlier century in the hope that an acceptable theoretical brew will emerge.

The essence of this discussion about the Aristotle's philosophical exposition about justice is to provide a starting point in dealing with this very elusive concept of justice. To Aristotle 'particular justice' is distinct from' universal justice'[315]; it distinguishes between distributive justice and 'corrective justice'[316]. Distributive justice is based on the principle that there has to be equal distribution among equals. While corrective justice seeks to restore equality when this has been disturbed, for instance, by wrong doing – which assumes that the situation that has been upset was distributively just. From the above, one can see that the ambit of justice extends from substantive justice to question of distributive, restorative and retributive justice. The thread, however, that holds the various aspects of justice together as we try to show in this chapter is in fact the procedural justice[317]. The concept of procedural justice is expressed in various forms and applicable to numerous contents but for the purpose of clarity, the aspect of procedural justice which is relevant to this enquiry and which is the main focus of the research is that which is concerned with the rights and interest of the victims of crime to active participation and in being carried along in the criminal justice process within the administration of justice in Nigeria.

[313] htt[://ebooks.adelaide.edu.au//p//plato//.retrieved 3rd jan.2017.
[314]Ibid.
[315]Aristotle – Nichomarchean Ethics (Translation) Britanica.Great Britain. Vol 2.
[316] Ibid – Vol 3.
[317] Praveena Sukhra - Ely. (2010) Procedural Justice: the Thread that weaves the fabric of Justice in Society.

3.3 The procedural justice theory of John Rawls

Procedural justice as expounded by John Rawls encompasses three distinct concepts[318]. The first is perfect procedural justice, the second is imperfect procedural justice, and the third is pure procedural justice. While imperfect procedural justice establishes procedures for outcome fairness, it does not guarantee that a particular result will be achieved[319]. The perfect procedural justice strives to ensure that certain outcomes are reliably and consistently produced. The pure procedural justice (which is akin to the preferred procedural justice model - participation model – adopted model for this research), does not insist about any independent criterion for the right result; rather it requires a correct and fair procedure resulting in a belief that outcome, whatever it is, – is likewise correct and fair, provided that the set down procedure has been properly followed[320].

In his explanation about the John Rawls' three distinct kinds of procedural justice, Adam Lamparello[321] was of the opinion that individuals place significant value on the fairness of procedures when considering the legitimacy of outcomes. Lamparello in his research discovered contrary to the belief of some scholars, that it is critical to ascertain the factors that constitute a 'fair' process. For him, it seems that only a procedure that is fair can bring about legitimacy fairness of the people concerned to the legal and or judicial authority. This assertion from Lamparello follows closely the Tyler and Blader's model of procedural justice, in their opinion, borne out of their research into how litigants feel towards the "fair process" and the "fair outcomes" or decision whenever their (the litigants) cases are involved using John Rawls' assertion.[322].

For Tyler and Blander, their research revealed that:

> Importantly, it is the fairness of court processes, not the fairness of court outcomes or decisions that are most important. Literature in the procedural justice field indicates that both litigants and the general public…distinguish between the fairness of the process and the fairness or even favourability of the outcomes. In evaluating

[318] See John Rawls (1999) A Theory of Justice (revised edition) page 73 – 75.
[319] Wohciech Sadurski (2006) Law's Legitimacy and Democracy Plus. 26, Oxford Journal of Legal Studies pp 377- 397; 299.
[320] Ibid at 397.
[321] Adam Lamparello. Incorporating the Procedural Justice Model into Federal Sentencing Jurisprudence in the aftermath of United State V Booker: Establishing United state Sentencing Courts. New York University Journal of Law and Liberty. p. 117.
[322] See Stephen L. Blader and Tom R. Tyler. (2003), A fair Component Model of Procedural Justice. Defining the meaning of a fair process (29) Personality and Social Psychology Bulletin p. 747 cited in Adam Lamparello Note 61 at p. 118.

> judicial performance and in determining the level of trust in judicial authority the fairness of the dispute resolution process is more important than even a favourable outcome. In the mind of litigants, the importance of a favourable outcome is consistently outweighed by the impact of an unfair process[323].

The above quotes summarises the position of Professor Tom Tyler in his proposal, recommending 'fair' process model of the procedural justice for the United States, and indeed all sentencing courts wherever they may be prior to the above position. Tyler in his research identifies four factors of particular relevance to procedural fairness in any legal system thus:

> First (individual) value opportunity to participate and give input when decisions are being made (the "voice" factor). Second they want procedure to be…unbiased, based upon factual criteria and made via the consistent application of rules. Third they want to be treated with dignity and respect and to have their rights acknowledged. Fourth, they want to feel that the authorities have considered their needs and concerns and have been honest in their communication with them[324].

He noted that each of these concerns is typically more important in decisions than assessment of fairness or favourability of the decision itself.

King, in an attempt to offer an explanation to Tyler' postulation was of the opinion that inherent in Tyler's factors are 'voice' which stems from providing an environment where a person can present his case to an attentive tribunal[325]. 'Validation' which stems from an acknowledgment by the tribunal that the case has been heard and the voice has been taken into consideration[326] and 'respect' which stems from whether the judicial officer takes time to listen to the party, the tone of voice, and the language of the judicial officer in interacting with the participant[327].

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[323] Ibid.
[324] Stephen L. Blader &Tyler R. (2003). A four Component Model of Procedural Justice: Defining the meaning of a "Fair" process (29) Personality and Psychology Bulletin at p 749 cited in Adam Lamparello Incorporating the Procedural Justice Model into Federal Sentencing Jurisprudence in the Aftermath of the United States V Booker. Establishing the United State Sentencing Court. New York University Journal of Law & Liberty p. 121.
[325]Ibid p. 119.
[326] Micheal S. King (2006) The Therapeutic Dimension of Judging the example of Sentencing. Journal of Judicial Administration p. 92.
[327] Ibid p. 93.

In line with the above, some scholars and researchers,[328] interestingly, also follow the same conclusion as Lamparello, Tyler, Blader and King, that not only do litigants and the public feel that fair processes are more important than favourable outcomes, but they also feel that the courts do somewhat better job in complying with and using fair procedures than in arriving at fair outcomes. The above findings are critical and very important to this thesis because as the findings reveal, most judges in criminal trials tend to focus on outcomes, not process, that is, the legal correctness of their rulings and decisions rather than on the fairness of their decision-making processes[329].

As can be seen, procedural justice indicates that it is often the fairness of these decision-making processes, rather than the judicial decision themselves that are important to litigant and the general public; and it is this sense of fairness that forms the basis of the judicial performance evaluation and determines the level of trust in judicial authority.

Accordingly, as Tyler also noted that a participant who was a judge in his study during his research reflected that…." as judges, we should pay more attention to the fairness of our decision making process". The conclusion by various researchers mentioned above form the basis for this researcher's choice of the procedural justice theory of the victim participation as the theoretical framework for this study. Consequently, the main idea which this research is trying to put across is that in the administration of criminal justice system, the active participation of the victims of crime is sine-qua-non to the proclamation that justice, is expected to be a three way traffic, which is, to the accused, to the victims and ultimately to the society.

The contention in this study is that the victims and the accused are both products of the same society, so if the law protects the accused in facing his trial, then the same law should adequately protect the victims and therefore it is in the ultimate interest of the society and indeed all stakeholders in the administration of criminal justice to also look in the direction of allowing the victims of crime to be heard in his own way by participating actively in the trial of the offence committed against him, that is, where he is a victim. In doing this, as we

[328] Ibid p. 94.
[329] Roger K. Warren (2000) Public Trust and Procedural Justice, Criminal Law Review p.12. Available at http://aja.ncsc.dni.us/country/cr37-31/warren.pdf.

shall see later in this research, the provision of our laws dealing with criminal process has to be looked into. This is because it is part of the findings of this research, that the laws, dealing with the procedure of the criminal justice in Nigeria is not adequate to reflect the thinking above as regards the right to participate in the criminal proceedings by the victims of crime.

Using participatory legitimacy model for its own theoretical framework of procedural justice, Lawrence B. Solum defines procedural justice as "the right to treatment as an equal"[330] that is, the right, not only to an equal distribution of some good, or opportunity, but more importantly to equal concern, respect and treatment in the political decisions about how these goods and opportunities are to be distributed[331]. However, using our proposed model-victim participation model to define our chosen theoretical framework of procedural justice, one may therefore define the victim participation of the procedural justice theory within the context of this thesis, as the justice theory which focuses on the right of the victim to be allowed to participate as actively as the accused, in the criminal proceeding where at the end of the day decision would be taken on any case involving the victim of the crime and the accused of the crime with respect to the crime committed.

The formulation of this definition is informed by the focus of this research work which is on the attempt to redefine the role of victims in the Nigeria criminal jurisprudence which has suffered neglect for a long time. This situation made a legal icon express the opinion that "the law in Nigeria has been silent for too long on the adequate redress for victims, who may not only have lost their properties but may also have been maimed or killed in the process;[332] and since the rationale behind the administration of criminal justice is to preserve and enhance "social harmony" [333] otherwise referred to as "social equilibrium"[334], a judge is

[330]Ibid.
[331] Op cit note 47 p. 287.
[332]Jeffrey Rachilinski (1998) Perception of Fairness in Environmental Regulations in Strategies for Environmental Enforcement. (Burton H. Thompson ed.) cited in Lawrence B. Solum Note 94.
[333] See the address of Prince Bola Ajibola the former Attorney General and Minister for Justice to the National Committee on Law Review series, stating the position of government on the Administration of Criminal Justice in Nigeria –cited in Olatunbosun I. A. (2010) Restitutive Justice for Victims of Crime in Nigerian Courts in Legal issues for Contemporary Justice in Nigeria – essays in honour of Hon Justice M. O. Onalaja Rtd JCA p. 413.

not regarded as having properly "settled" a case until all parties concerned are "satisfied" with the settlement[335],which invariably and paramountly includes the victim.

As opined one scholar, it is rather disappointing that our courts have not paid enough attention in criminal cases to the distress of the victims. Thus, an accused convicted is sentenced as of routine, while the victims and his dependants get nothing. A situation where the victim becomes the Cinderella of the criminal trial no longer accords with the tripartite notion of social justice, that is, justice to the accused, the society and the victim[336].

The main objective of this study therefore is to review the current situation in the administration of criminal justice process in Nigeria which has hitherto focused mainly on the principle of deterrence but which is in its entirety has not been able to accomplish its target of preventing and controlling the rate of criminal acts in the society, thereby necessitating an appraisal of the most under-developed area of the Nigeria criminal jurisprudence, that is, the active participation of the victims of crime in the administration of criminal justice in Nigeria.

It is also the thesis of this study that a victim who is allowed to be actively involved at the inception of the investigation into the complaint of an offence against him at the level of police station, who is also involved in the preferring or the framing of the charge of his case against the accused or who was very actively involved in the decision to either release the suspect on police bail or to refuse such bail, would hardly blame the police of shoddy handling of his case whenever the case gets to the court or even if the case did not eventually get to court.

Again, if and when the case gets to court, a victim whose interest has been taken into consideration by actively involving in the trial against the accused was allowed to be actively involved at every stage mentioned above that is, a victim who was allowed to have

[334]Olatunbosun. A. I. (2000) The Plight of Awaiting Trial Persons under the Criminal Justice System in Nigeria in Tropical issues in Nigerian Law (Essays in honour of Hon Justice N. O. Adekola (eds.). Laoye & Akintayo. Zenith Publishers.

[335] See the sixth United Nations Conference Report on the Preventions of Crimes and the Treatment of Offenders Captioned "Caracas Declaration" 1980 – cited in Olatunbosun I. A. Note 117. p. 413.

[336]Olatunbosun A. I. (2010) Restitutive Justice for Victims of Crime in Nigerian Court in Legal issues for Contemporary Justice in Nigeria (Essays in honour of Hon Justice M. O. Onalaja Rtd JCA. p. 413.

his say or allowed to proffer argument whenever the issue of whether to release or not to release an accused on bail, can hardly complain of being neglected on the outcome of such situation.

Again, in a situation where a victim of burglary or stealing was allowed to get back his stolen property in addition to some monetary compensation for the loss suffered, even when the accused has again been sentenced to a prison term, such a victim can hardly complain that the administration of the criminal justice has been unfair to him or he has been unfairly treated in the criminal justice process of his complaint.

The idea in this study is to formulate a procedural justice model of victim participation to make a case for the right of victims of crime to participate in the criminal justice system which has hitherto been abandoned. This is likened to what presently operates at the ICC through the use of restorative justice paradigm where the rights and the interest of the victims of international crimes are not only protected but also taken care of, and more importantly clothed with the right to participate in the trial of his case and allowed to present his claims before the court. This situation at the international criminal court is novel and unprecedented in the annals of international criminal court[337].

[337]See Articles 68(3) and 75 of the Rome Statute of the International Criminal Court.

CHAPTER FOUR

4.0 ANALYSIS OF THE VICTIM PARTICIPATION UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

The Rome Statute (RS) of the International Criminal Court (ICC) as well as the rules of Procedure and Evidence (RPE) contains provisions, both general and specific covering and relating to the general principles for the application and the protection of the right of victims of international crimes to participate in the proceedings of the court. Some of these provisions are however subject to certain consideration and requirements.

One of the main provisions which ensure the participation of the victims under the ICC is encapsulated in Article 68(3) of the RS under which section 111 of the ICC Rules of Procedures and Evidence set out the detailed provisions under which the victim's participation is applicable. Under the rules, the victim's participation of various stages of the ICC proceedings, that is, pre-trial, trial and post trial (review and appeals) is assured and guaranteed. Thus, the Rome Statute states that…

> Where the personal interest of the victims are affected the court shall permit their views and concerns to be presented and considered at stages of the proceedings, determined to be appropriate by the court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victim where the court considers it appropriated in accordance with the Rules of Procedure and Evidence[338]

From the provisions cited above, a critical look reveals that the provisions is not only a general provision for the victims' participation at all stages of the proceedings but also seeks to ensure the balancing of the pot of the tripartite interest of justice, that is, interest of justice as it relates to the prosecutor, the victim and the defendant[339].

Again, article 68(3) cited above also specify certain circumstances under which the victims may participate, more particularly the Rule of Procedure and Evidence provides that victims

[338]Article 68(3) of the Rome Statute of the International Criminal Court henceforth to be known as RS ICC.
[339]The Balancing of the Tripartite Interest of Justice as it concerns the Nigerian Criminal Justice System in the justice interest of the accused (defence) the Society (State) and that of the victim. This is what is popularly known in Nigeria as three way traffic of justice.

have an absolute right to attend trial proceedings of the court[340] while the rule gives a discretionary right to participate in some specific circumstances[341] here. Under this rule, the victim may put questions to the accused, to the witness and or to the experts during the trial. Specifically, rule 91(3)(a) of the Rule of Procedure and Evidence of the ICC provides that….

> When a legal representative attends and participates in accordance with these rules, and wishes to questions a witness, including questioning under the Rules 67 and 68, an expert or the accused, the legal representative must make application to the chamber. The chamber may require the legal representative to provide a written note of the questions and in that case the questions shall be communicated to the prosecutor and if appropriate, the defence who shall be allowed to make observations within a time limit set by the chamber[342].

4.1 The victim participation at the pre-trial stage

The statute further provides for an opportunity for the victim to also make representation before the court at any stage of the court's proceedings even at the pre-trial stage[343]. The Rome Statute does not stop at the trial and trial stage of the proceedings of the court it also provides that the victim has absolute rights to be heard before the court makes or pronounce any decisions on the reparation[344]. Furthermore, the statute makes provision for the victim's right to intervene during any appeal where the interest of the victim is involved, especially concerning reparation order by the court[345].

The above provisions of the Rome Statutes of the International Criminal Court as well as its Rules of Procedure and Evidence, which is the main rule for the practice direction of the court give the victim a blanket and unparalleled opportunities to be part and parcel of any proceedings of the court like the accused. It could also be observed that under the International Criminal Court, victims are given the opportunity to have legal representation which is separate and separated from the prosecution[346]. The observatory here is that under the ICC the prosecutor is endowed with the mandate of the enforcement of the law functions

[340]Rule 91(2) International Criminal Court Rules of Procedure and Evidence hence forth to be known as ICC RPE.
[341]Rule 91(3)(a) ICC RPE.
[342]Ibid.
[343]Article 15(3) Rome Statute.
[344]Article 75(3) Rome Statute.
[345]Article 82(4) Rome Statute.
[346]Rule 90(1) ICC RPE which provides that victims have the right to be legally represented in the ICC proceedings.

of the court while the victim's interest and concerns are left for the victim's legal representative to ensure as his sole mandate and functions[347]. It is not surprising therefore, to see most times where there are objections against the participation of the victim's at some stages of the court proceedings by the prosecutor. The obvious implication of this is that under the ICC, the observation that most times the interest of the prosecutor and that of the victim do not align at all, in fact, under the ICC it became very obvious that most often than not, the interest of the prosecutor may be directly opposite to that of the victims[348].

It is hereby submitted that these observations which are becoming glaring under the Nigeria criminal justice process need to be addressed in line with what operates under the ICC. As a matter of law and practice, the ICC ensures the 'distinct interest' of the relevant victims as provided for under Article 68(1) of the Rome Statute. Whenever the victim's right to legal representative is to be implemented and enforced. Thus the statute provides:

"The court shall take appropriate measures to protect the safety, physical and psychological well being, dignity and privacy of victims and witnesses. In so doing, the court shall have regard to all relevant factors, including age, gender as defined in Article 7, paragraph 3, and herewith the nature of the crime, in particular, but not limited to where the crime involves several or gender violence or violence against children. The prosecutor shall take such measures particularly during the investigation and prosecution of such crime. These measures shall not be prejudicial to or inconsistent with the right of the accused and a fair and impartial trial[349].

The Rule of Procedure and Evidence further provides the opportunity and access to legal representative by the victim who may not be able to afford the legal representative provided for him by the court. The office of the registrar of the court is saddled with this responsibility and therefore enjoined by the rule to take all "reasonable steps" to ensure that victims are provided with assistance, including financial assistance to a victim or group of

[347]Rule 90(6) ICC RPE also provides for the right of a victim to choose an appropriately qualified legal representative. See also Rule 22(1) ICC RPE.

[348]The situation in the Democratic Republic of the Congo aptly demonstrates this among several others. Where in the case of the Prosecutor V. Thomas Lubanga Dyilo, the prosecution's objected to the application by the victims to participate at the pre-trial stage of the proceeding of the court. See (DRC: situation participation decision-9/0001/06 to 9/0003/06. of June 6, 2006. Doc No; ICC-01/04-01/06.)

[349]Article 68(1) Rome Statute.

victims who lack the necessary means to pay for a common legal representative chosen by the court[350].

The functions above are performed by the Legal Aid Council of Nigeria for the accused who may not be financially capable to get a legal representative for his defence. Such assistance as we have it under the ICC for the victim is not available under the Nigerian Criminal Justice System. Again under the ICC, Statute and the RPE the victims are no longer treated merely as witnesses as it is the situation under the Nigerian criminal justice system. The statute which specifically provides for victim to participate in the proceeding of the court either directly or indirectly through legal representative is basically to serve a number of purposes. Firstly, the victims' participation model of the ICC is entrenched in the operation of the court in order to ensure that the interest of the victims within the criminal process is adequately and satisfactorily protected. Secondly, the entrenchment of the victim's participation model in the ICC also ensures that accountability and transparency is attained in the function of the court and ensures that the prosecutor's action is generally openly transparent. Thirdly, true participation in all stages of the proceedings ensures that victims' right to justice before the court is attained satisfactorily[351].

Under the criminal justice system in Nigeria none of the three basic tenets of open and transparent criminal justice delivery is present, and this has serious negative impact on the criminal justice delivery of the courts in Nigeria. It is hereby, therefore, submitted that, for there to be a change of directions in the criminal justice delivery positively towards the victims in Nigeria, the three tenets of criminal justice delivery, should be implemented through review of our relevant statute.

The prosecutor, under the ICC whose mandate it is to ensure the enforcement of the laws and principles of the court, is under obligation to take into consideration the overall interest of the victims in the exercise of this mandate and function with respect to investigation under the pre-trial stage of the court proceedings.

[350]See Rule 90(4) and (5) ICC RPE. This mandate is akin to the mandate exercise by the Legal Aid Council Under the Nigerian Criminal Justice System. However Legal Aid Council is only for the accused.

[351]Donat-Cattin, D (1999) Article 68 in Trifferer. O. (Ed) Commentaries on the Rome Statute of the International Criminal Court: Observers Notes, article by article 873.

Thus, Article 54(1) provides that the prosecutor should:

> Take appropriate measures to ensure the effective investigation and prosecution of crime within the jurisdiction of the court, and in doing so, respect the interest and personal circumstances of the victims and witnesses, including age, gender as defined in Article 7 paragraph (3) and health and take into account the nature of crime, in particular where it involves sexual violence, gender violence or violence against children[352].

4.2 The victims' participation at the trial stage

Under the ICC, whenever the case is expected to go into full trial, victims of crime are afforded the opportunities to participate fully throughout the trial through their legal representative who are permitted to make and present oral or and written submission. By this opportunity, the implication is that throughout the trial proper, under the ICC victims are not expected to be or act merely as witness. Thus, Rule of Procedure and Evidence provides:

> Subject to the provisions of sub-Rule 2 (of this rule) the chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements[353].

In line with the above rule, the Pre-Trial Chambers (PTC) has ruled in some of the cases before the court on the full interpretation of the rule. The ruling of the PTC is to the effect that the drafter of the Rule 89(1) ICC, RPE intended the broad and wide participation of the victims in the proceedings of the court. It is also noteworthy that the PTC in the case of Thomas Lubanga Dylo, the decision which goes a long way in affirming the right for the victims also ensures that the right is guaranteed[354].

Furthermore, Rule 89, as well as Rule 91 provide for the mode of participation of the victims and regulate the manner of the victims' legal representatives' participations in the trial before the court. Thus, Rule 91(2) ICC RPE stipulates that….

[352]Article 54(1) Rome Statute.
[353]Rule 89(1) ICC RPE.
[354]This is contained in the Situation in the Democratic Republic of Congo (Prosecutor V Thomas Lubanga Dylo). Decision arrangements for participation of victims at the Confirmation Hearing of 22, September, 2006 at 6 in which PTC confirmed that victims have a right to make opening and closing statements at proceedings in which they are allowed to participate.

> A legal representative of the victim shall be entitled to attend and participate in the proceedings in accordance with the terms of the ruling of the chamber and any modification thereof given under Rules 89 and 90. This shall include participation in hearing unless in the circumstances of the case, the chamber concerned is of the view that the representative's intervention should be confined to written observation or submissions. The prosecutor and the defence shall be allowed to reply to any oral or written observations by the legal representations for the victims[355].

From the Rule 91 cited above, it could be observed that the right of the victim's legal representative is discretional. However, a careful reading of the rule will reveal that from the couching of the Rule, there is a presumption that there will always be room for the participation of the legal representative of the victims at the hearings of the case that concerns the particular victims except and unless the chamber decides otherwise. What is however very clear under the ICC during any trial before it is that victims' legal representatives are entitled to participate in the hearing and when they participate, they may put question to the witness, the expert or even the accused[356]. It is also very obvious from the letters and spirit of the provision that the trial chamber is mandated to regulate the mode of intervention during the hearing by the victims' legal representative. For example, the trial chamber is mandated in regulating the mode the victims' legal representatives' takes into consideration, the stage of the proceedings, the right of the accused, the interests of the witnesses, the need for a fair, impartial and expeditious trial[357]. This consideration is in consonance with the purport of the Article 68(3) of the statute which provides generally for the victims' participation at any stage of the proceedings.

At the trial stage, another way by which the legal representation can participate in the proceedings before the court as provided for under Rule 91(2) ICC RPE is through observations or submission, a critical interpretation of the rule reveals that Counsel to the victim, is allowed to comment although in writing, on the presentation and submissions of the defence and the prosecutor before the court. This may mean that at every presentation by the defence and the prosecutor on any area touching the general or specific interest of the victims, the victims' legal representative is allowed to intervene and make observations and submission.

[355]Rule 91(2) ICC RPE.
[356]Rule 91(3)(a) ICC RPE.
[357]Rule 91(1)(b) ICC RPE.

The above scenario is not so under the Nigeria criminal justice system, where during the hearing of a criminal case a victim, who is not empowered to have any legal representative, is not allowed any participation beyond merely being a witness for the prosecutor.

4.3 The victims' participation at the post trial stage

Another area of victims' participations under the ICC is the entrenchment of the provision for ensuring the victims' right to reparation. Reparation, from how it is framed in the statute, generally means the repair of some past damages or the act of putting the victim back to where he would have been had the wrong done to him not occurred. For the victims of international crime, the main focus for ensuring reparation as put in place by the Rome Statute are the court itself and the Victims Trust Fund (VTF). For the court's mandate on reparation, Article 75, establishes the victim's right to reparation providing in part that….

> The court shall establish principles relating to reparation to, or in respect of victims, including restitution, compensation and rehabilitations[358]

The implication of the provision is that the right to the victims' reparation is statutorily entrenched under the ICC.

The provision for the Victims Trust Fund (VTF) is contained under Article 79 to the effect that, it creates the Victims Trust Fund for the benefit of the victims of international crime within the jurisdiction of the court[359] as well as for the families of such victims[360]. Under this provision, the court is required to …

> 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[361].

When the court does this and the principle is so determined, the court is then empowered to make an order directly against a convicted person specifying appropriate reparations for the victims concerned[362].

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[358]Article 75 Rome Statute.
[359]Article 79(1) Rome Statute.
[360]Article 75(2) Rome Statute.
[361]Article 75(2) Rome Statute.
[362]Here it is often possible for the Court to grant reparation either as a result of the request by the victims or by the Court's own motion.

Reparation as it is provided for under the ICC is not only novel but it is all encompassing in the sense that it does not involve the victims' needs alone but also the victims' families. Under the ICC, it is elaborate to the extent that the reparation for the victims also includes restitution, compensation and rehabilitation. It is therefore safe to submit that reparation as it is used in the Rome Statute is a genuine term representing all or many types of redress, whether material or non-material. In this way one may say that, restitution, compensation as well as rehabilitation, each, covers some particular aspects of the generic term, reparation. Under the Nigeria criminal justice system, the mention of compensation in section 314 of ACJA is merely for the court to award compensation to the victim and nothing more. This provision does not represent a positive step towards reparation for the victims of crime, since the victims are not allowed to make claims whether on their own or through their legal representatives during the trial as it is under the ICC.

4.4 Victims' rights under the United Nations declaration on basic principles of justice for victims of crime and abuse of power

In 1985, the United Nations General Assembly adopted the declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. This "Magna Carta" for victims is the cornerstone of UN efforts to recognise the needs and interest of victims[363]. The declaration defines who the victims of crime are and it recognises that a crime is not just against the state but also inflicts loss, injury and psychological trauma on its immediate individual victims and their families[364]. The resolution to adopt the declaration was agreed by all governments globally of the need to reduce victimisation and implement the principles but little action followed either nationally or internationally[365]. However, in 1999, the United Nations adopted a guide for policy makers on the implementation of the declaration[366]. This was designed for policy makers from government agencies responsible for justice, policing, social welfare, health and local government. It sets out standards against which jurisdictions

[363] Waller I. 2003. Crime Victims, Doing Justice to Their Support and Protection. European Institute for Crime Prevention and Control, affiliated with the United Nations. Helsinki. Publication Series. 39 Retrieved 31st July, 2016 from http://www.gifre.org.
[364] Ibid at p. 22.
[365] Wilson J. K. 2013. The Praeger Handbook of Victimology, Ed. Janet Wilson, California: Greenwood Publishing Group 32.
[366] Handbook on Justice for Victims. 1999, United Nations Office for Drug Control and Crime Prevention, New York; Center for International Crime Prevention. p.25.

can assess their own practices and evaluate what changes are needed. It proposes innovative ways through which services and programmes can be financed[367].

The victims that suffer directly or indirectly from violations of criminal laws and abuse of power, are recognised mainly by the UN Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power which in a nutshell says the rights of victims includes the need to be treated with respect and recognition, the right to be referred to adequate support services, the right to receive information about the progress of the case, the right to be present and give input to the decision making, the right to counsel, the right to protection of physical safety and privacy, and the right to compensation from both the offender and the state. Other rights of the crime victims include but not limited to the following:

(a) To be notified of proceedings and the status of the defendant.
(b) To be present during the criminal justice proceedings.
(c) To make a statement, that is, claims at sentencing and to receive restitution from a convicted offender.
(d) To be consulted before a case is dismissed or plea agreement entered.
(e) To a speedy trial.
(f) To keep the victims' contact information confidential.[368]

Since the adoption of the declaration, the United Nations has taken a number of steps to foster its implementation worldwide. These efforts have largely been spearheaded by the UN Commission on crime prevention and criminal justice, which meets once a year in Vienna, Austria. It was in one of the meetings that the commission adopted a resolution calling for the development of an international victim assistance training manual to help countries worldwide develop programmes for victims of Crime[369]. Other United Nations efforts to address victims' issues include:

[367] Ibid at p. 22.
[368] Paragraphs 17,18, 19 etc of the United Nations Basic Principles of Justice for Victims of Crime and Abuse of Power.
[369] International Issues in Victim Assistance 2002. Victim Assistance Academy retrieved 15h August, 2016 from http://www.victimassistanceprogrammes.org/html.

(1). Fourth United Nations Conference on Women. In 1995, the fourth United Nations Conference on Women in Beijing, China was a significant step forward in the International arena for victims of domestic violence. Former America first lady, Hilary Clinton's message was heard around the globe when she said, "it is a violation of human rights when individual women are raped in their communities and when thousands of women are subjected to rape as tactics or price of war. It is a violation of human right when a leading cause of death worldwide among women ages fourteen to forty four is the violence they are subjected to in their own homes. If there is one message that echoes forth from this conference, it is that human rights are women's rights…and women's rights are human rights[370].

(2). Crime prevention and Human rights, the work of United Nations in preventing abuse of power and violations of human rights long standing and among the results have been the universal declaration of human rights, the international covenant on civil and political rights, the convention on the prevention and punishment of the crime genocide, the convention on the protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment, the convention on the rights of the child, and the convention on elimination of all forms of discrimination against women. The United Nations has also developed international guidelines to reduce abuses against the elderly, the handicapped and the mentally ill and has drafted basic principles and guidelines on the reparation of victims of gross violation of human rights and humanitarian law[371].

It is noteworthy here that the 1985 Declaration of Basic Principles of Justice for victims of crime and abuse of power has become the land mark document and has served as the basis for victim services reform at national and local levels[372]. One of the projects that resulted from this declaration is the International Victimology Website (IVW). The IVW is to

[370] Ibid. The conference final document, the Platform for Action is a powerful and Progressive Statement about the Empowerment of Women and the Imperative to Eliminate Violence Against Women in all forms.
[371] International issues in Victim Assistance 2002. Victim Assistance Academy Retrieve 15th August, 2016 from http://www.victimassistanceprogrammes.org/html.
[372] Ibid p. 20.

facilitate the implementation of the UN Declaration of basic principles of justice for victims of crime and abuse of power[373].

Another international organisation that specifically addresses victims' issues is the World Society of Victimology, a nonprofit, nongovernmental organisation with members from around the world brought together by their mutual concern for victims. The purposes of the World Society of Victimology are to promote research on victims and victim assistance, to advocate their interests though out the world to encourage interdisciplinary and comparative research in victimology and to advance the cooperation of international, regional, and local agencies, groups and individuals concerned with the problems of victims[374].

4.5 Programmes for victims of crime in other jurisdictions

The last twenty years has witnessed an unprecedented development in the field of victim services. The expansion of service programmes for victims of crime in the United States, Canada, the United Kingdom and many other countries has been nothing short of phenomenal[375]. In 1990, Davis and Henley[376] estimated the number of victim service programmes in the United States to be in excess of 5000, whereas 20 years earlier, there had been none.

Most assistance programmes, particularly those housed in police departments refer victims according to their needs to existing services within the community. Some also provide victims with urgently needed help, replacing a broken window, damaged lock fixing a vandalised car, driving, cleaning, shopping helping with children and so forth. There are programmes that provide special assistance to certain categories of victims, for example, victims of rape, child victims of sexual assault, victims of family violence and so on. Rape crisis centers and shelters for battered women are currently operating in many places. Overall, however, most of the services provided to crime victims by victims assistance

[373] Karmen A, 2010 Crime Victims: An introduction to Victimology 7th Edition. U. S. A. Wardsworth Cengage Learning. 112.

[374]Canada, the United Kingdom, Goodey J. 2005, Victims and Victimology: research, Practice and Policy 1st ed., England: Pearson Education Limited p. 22.

[375]Fattah E. 2000, the Vital Role of Victimology in Rehabilitation of Offenders and their Reintegration into Society. 112th International training Course Participation of the Public and Victims for more fair and effective Criminal Justice. UNFE: Fuchu, Tokyo, Japan. Retrieved 10th August, 2015 from http://www.unafei.or. jp/english/pdf/PDF_rms/no56/56-07.pdf

[376] Davies P., 2003: Crime Victims and Public Policy. Victimisation: Theory, Research and Policy. Eds. Davies P., Francis P. & Jupp V. Basingstoke: Palgrave Macmillan, Chapter 6.

programmes are information and moral support. The essence of these programmes is to help various categories of victims deal with their situation and ease the burden they may be carrying.

(a) Victim compensations

One of the primary goals of victim advocates has been to lobby for legislation creating crime victim compensation programmes. As a result of such legislation, the victim ordinarily receives compensation from the state to pay for damages associated with the crime. Rarely are two compensation schemes alike, however, many states programme suffer from a lack of both adequate funding and proper organisation with the criminal justice system. Compensation may be provided for medical bills, loss of wages, loss of future earnings and counselling. In the case of death, the victims' survivors may receive burial expenses and aid for loss of support[377] .

The British experience with state compensation for persons injured in violent crime is important because it has existed for nearly forty years, using criteria similar to the civil courts. However, it has been the subject of evaluation[378]. As far back as 1964 the Government established a non departmental public body - the Criminal Injuries Compensation Board (CICB) to award compensation from the government to victims of crime of violence based on the damages that they would have been awarded in a civil claim. The programme was introduced to provide an acknowledgement of society's sympathy for blameless victims of violence who cooperated with the Police and the courts. The awards are made to people who have been victims of a violent crime or those injured trying to catch offenders or prevent crime. In 1996, the scheme was re-organised into the criminal injuries compensation authority (CICA). For victims to be eligible for compensation, the Police must be involved and must have provided some assistance in contacting the authority[379].

[377]Siegel L. J. 2005. Criminology: The Core, 2nd ed. Thomson Wadson: University of Massachusetts. p. 179.
[378] Shapland J. Willmore J. & Duff p. 1985 Victims in the Criminal Justice System Aldershot: Gower Publishing Company Limited. p.144.
[379]Criminal Injuries Compensation Authority retrieved 15th, 2016, from http://www.cica.gov.uk.

Several governments all over the globe for instance, in Europe, Australia, Canada and New Zealand have launched national crime prevention strategies in an effort to reduce risk of victimisation. One of the most comprehensive schemes is contained in the Crime and Disorder Act adopted in 1988 in England[380]. This act established a Youth Justice Board to manage the efforts to prevent and rehabilitate young offenders, but also requires every local government and police service to establish a local crime prevention plan. The new strategy recognises that crime has multiple causes and so can only be reduced by mobilising schools, police, family and other agencies to tackle those causes in a systematic manner[381].

The British and American networks for victim support and assistance, according to a study carried out by scholars, have been extra ordinarily successful, because of the professional and dynamic leadership of their executive directors. In essence, the initial victim support schemes in the United Kingdom were evaluated to assess the extent to which they meet the needs of victims[382].

(b) Victim /offender reconciliation program

The victim/offender reconciliation programme is aimed at promoting direct communication with victim and offender. The victim is given opportunity to ask questions to address the emotional trauma caused by the commission of the crime and its aftermath and seek reparations. Victim /offender mediation programmes have become increasingly popular in the United States, where they began primarily in the mid-west with a handful of programmes in the late seventies and early eighties. By 1898, such programmes were reported operating in at least 42 different jurisdictions across the United States, many are now operating in Canada, West Germany, England and New Zealand[383].

Based on a foundation of restorative justice values, the individual offender and his or her victim(s) are brought together to talk; they are joined by various representations of the community who have a stake in the resolution. In modern version, such representatives may

[380]Handbook on Justice for Victims. 1999. United Nations Office for Drug Control and Crime Prevention. New York: Center for International Crime Prevention. p. 215.

[381]Paranjape N. V. 2011. Criminology and Penology with Victimology. 15th ed. Allahabad: Central Law Publications pp. 132.

[382]Maguire M. & Umbeit C. 1987. The Effects of Crime and the Work of Victim Support Schemes Aldershot: Gower Publishing Limited. p. 125.

[383]Gehm J. R. 2010. Vitim Offender Mediation Programmes: An Exploration of Practice and Theoretical Frameworks; Western Criminology review. 15.1: 111. Retrieved 10th August, 2016 from http://wer.sonoma.edu/vlnl/gehm.html.

include the police, teachers, parents and peers. The native Americans, traditional Lakota and Dakota people employ a similar model[384]. Today, there are victim/offender mediation programmes in more than 300 communities in the United States, involving thousands of cases each year[385]. Victim offender mediation is a process that provides interested victims (primarily those of property crimes and minor assaults) the opportunity to meet their offender in a safe and structured setting. The goal is to hold offenders directly accountable for their behaviour while providing important support and assistance to victims[386].

It can be deduced from the foregoing that the chance to confront the offender psychologically affords the victims two important experiences:-

(1). Release of anger, fear and painful infliction by the offender.

(2). Perhaps an apology from the offender to the victim.

These two experiences have been shown to have important and physical effects for both the victims and the perpetrator of crimes but it is pertinent to note that, no single one is appropriate for all crimes. In all cases, it must be presented as a voluntary choice to the victim. Although the process is one that involves a trained mediator, it is quite different from mediation as practised in civil or commercial disputes. The parties involved are not disputants nor of similar status. Also, the process is not primarily focused on reaching a settlement although most sessions do and might result in a signed restitution agreement. It is because of these fundamental differences with standard mediation practices that some programmes call the process a Victim Offender "Dialogue", "Meeting" or "Conference"[387].

Currently, there are more than 290 victim offender mediation programmes in the United States and more than 500 in Europe, with majority of mediation sessions involving juvenile offenders. However, the programme is also occasionally used with adults and even in very serious violent cases[388].

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[384]Marty P. 2000. Crime and Punishment: Can Mediation Produce Restorative Justice for Victims and Offenders? Retrieved 10th August, 2016 from http://www.vorp.com/articles/crime.hml.

[385]Maguire M. 1991. The needs and rights of Victims of Crime. Crime and Justice; A review of research 14.2: pp. 363 – 433 Chicago: the Chicago University Press.

[386]Coates R. B. & Gehm J. 1989. An Empirical Assessment: Mediation and Criminal Justice eds. M. Wright & B. Galaway. London. England: Sage Publications 251 – 163.

[387]Sustac Z. D. Mediation in the Criminal Law, Retrieved 10th August, 2016 from http://www/mediate.com/articles/sustacZ3.cfm.

[388]Ibid (see generally).

There is no such programme in Nigeria and it is anxiously anticipated to start in Nigeria. It is the belief of this researcher that such programmes can bring about a reduction in crime rates that are mainly perpetrated by youths who after being incarcerated by the formal criminal justice system come out worse that they went in. Thus, a programme like this will not only give offenders opportunity to make amend to their victims, it also helps the offenders to overcome their guilt which in turn will impact their emotional well being and lessen the chance of such offenders returning to a life of crime upon rejoining the society.

(c) Victim assistance programmes

This programme establishes crime victim fund supported by all fines collected from persons who have been convicted of offense against the United States (except for fines that have been specifically designed for certain accounts such as Postal Services Fund) to provide information and aid to persons who have suffered direct physical, emotional or pecuniary harm as a result of commission of a crime. All 50 states have government funded entities that provide services to crime victims[389].

(d) Victim impact panels

This programme was first introduced by Mothers Against Drunk Driving (MADD), a non-governmental, charitable organisation founded in 1980 by Canady Lightner after her daughter, Cari was killed by a repeat drunk driving offender[390]. This programme was first initiated in 1982. MADD felt that it was critical to change the generally accepted attitude that incidents and death involving drunk driving were "accidents" rather than crimes. They believed that a key component of changing attitudes was to confront drunk driving with first hand testimony from the victims of drunken driving crashes[391].

[389]Grace M. T. 2000. Criminal Alternative Dispute resolution, Restoring Justice, Respecting Responsibility and Renewing Public Norms retrieved 10th August, 2016 from http://digitalcommons.law.umaryland.edu/cgi/viewcontent.egi?article=1017&context=student.

[390]Mawby R. 2007. Public Sector Services and the Victim of Crime. Handbook of Victims and Victimology Ed. S. Walklate. Cullompton: Willan Publishing. Chapter 8.

[391]Restorative Justice Online: Victim Offender Panels Retrieved 10th July, 2016 from http://www.restorativejustice.org/universityclassroom/01/introduction/tutorial-introduction-to-restorative-justice/processes/panels.

The panel provides a forum for crime victims to tell a group of offenders about the impact of the crime on their lives and on the lives of their families, friends and neighbours. The panel typically involves three or four victim speakers, each of who, spends about 15 minutes telling their story in non-judgemental, non-blaming manner with the aim of making offenders understand the impact of their crime on victims, educate them and making them acknowledge their responsibility[392].

It is obvious that the purpose of the panel is for the victim to speak, rather than for the victims and offenders to engage in a dialogue. As a result of positive feedback from both the victims and the offenders who have participated in drunk driving panels, this strategy has been used with other crimes such as property crimes, physical assault, domestic violence, child abuse, elder abuse and homicide (the survivors serve as panelists) in the United States[393]. Attendance by offenders is often court ordered.

From the above, it can be deduced that the victim impact panel aims at:

(i). helping the offenders understand the impact of their crimes on victims and countries;

(ii). providing victims with a structured positive outlet to share the personal experiences and to educate offenders, justice professionals and others about the physical, emotional and financial consequences of crime; and

(iii). building attendance by offenders is often court orders doing a partnership among victim service providers and justice agencies that can raise the individual and country awareness of the short and long term impacts of crime.

A research study of victims who spoke on the victim impact panels to drivers found that 82 percent of victims who told their stories to offenders said that speaking aided them in their recovery. Ten percent felt they were neither helped nor harmed by the experience and 8 percent felt the experience had been harmful to them[394]. On the other hand, most offenders who complete evaluations after listening to a victim impact panel indicate their experience

[392]Shapland J. 1986. Victims Assistance and the Criminal Justice System: The Victim's Perspective. From Crime Policy to Victim Policy: Reorienting the Justice System Ed. Fattah E. A. London: Macmillan Press p. 240.

[393]Wilson J. K. 2013. The Praeger Handbook of Victimology. California: Greenwood Publishing Group p. 30.

[394]Restorative Justice Online: Victim Offender Panels Retrieved 10th August, 2016 from http://www.restorative justice.org/university.org/university/01/introduction/tutorial-introduction-to-restorative-justice/processes/panels.

were positive and educational and contributed to a change in their attitudes and perceptions about their crimes[395].

(e) Victim impact statement

Most jurisdictions allow victims to make an impact statement before the sentencing judge. This gives the victim an opportunity to tell his or her experiences and describe the ordeal. In the case of a murder trial, the surviving family can recount the effect the crime has had on their lives and well-being[396]. The effect of victim/witness statements on sentencing has been the topic of some debate. Some research works have found that victim statement results in a higher rate of incarceration, but others find that victim/witness statements are insignificant[397]. According to the research, those who favour the use of the impact statement argue that because the victim is harmed by the crime, the victim has a right to influence the outcome of the case[398].

(f) Court services

A common victim programme helps victims deal with the criminal justice system. One approach is to prepare victims and witnesses by explaining court procedures, to those to be a witness, how bail works and what to do if the defendant makes a threat. Lack of such knowledge can cause confusion and fear, making some victims reluctant to testify in such procedures. Many victim programmes also provide transportation to and from court and counsellors who remain in the courtroom during hearings to explain procedures and provide support. Court escorts are particularly important for elderly and disabled victims, victims of child abuse and assault, victims who have been intimidated by friends or relatives of the defendant[399].

(g) Public education

More than half of all victim programmes include public education to help familiarise the general public with their services and with other agencies that help crime victims. In some

[395]Ibid. (see generally).
[396]Payne V. Tennessee. 1991. 111 S. Ct 2597. 115 L. Ed. 2d 720.
[397]Davies R. & Smith B. 1994, The Effects of Victim Impact Statements on Sentencing Decisions: A test in an Urban Setting. Justice Quarterly 11.3: p. 22.
[398] Ibid.
[399]Siegel L. J. 2005, Criminology: The Core, 2nd ed London: Thomson Wardsworth Publishers p.66.

instances, there are primary prevention programmes which teach methods of dealing with conflict without resorting to violence[400].

(h) Crisis intervention

Most victims' programmes refer victims to specific services to help them recover from their ordeal. Clients are commonly referred to as the local network of public and private social service agencies that can provide emergency and long-term assistance with transportation, medical care, shelter, food and clothing.

[400]Ibid p. 66

CHAPTER FIVE

THE OVERVIEW OF THE NIGERIAN CRIMINAL JURISPRUDENCE

This chapter is divided into three parts. The first part is devoted to the detailed analysis of the current criminal law and procedure in Nigeria, that is, the criminal law and procedure under the new Administration of Criminal Justice Act of 2015, the second part is dedicated to the analysis of the application of the victim participation in the Nigeria criminal justice system, while the third part is devoted to the analysis of the victim participation under the Rome Statute of the ICC in consonance with the victim participation model proposed by this study.

5.1 Analysis of the Nigerian criminal law and procedure

The Nigeria Criminal Law and Procedure may be divided into principal enactment and secondary enactment. These enactments governed the entire criminal law and procedure in Nigeria.

5.1.1 Principal enactment

By principal enactment, it means that the entire statute is devoted to the criminal justice administration in Nigeria. It also means that the enactment is mainly devoted to the criminal justice law and procedure in Nigeria.

The principal enactment for the criminal justice law and procedure in Nigeria is the newly enacted Administrationof Criminal Justice Act of 2015, otherwise known as ACJA 2015[401]. The Act was signed into law on the 15th day of February 2015, the coming into force of the Act repealed the earlier Criminal Procedure Code (CPC) and the Criminal Procedure Act

[401] The process to review the criminal procedure laws in Nigerian gained prominence in 2005 when the Attorney General of the Federation Chief Akin Olujimi SAN constituted the National Working Group on the Reform of Criminal Justice in the court before then the Criminal Justice Procedure Law in Nigeria is controlled by two different enactment. (1). The Criminal Procedure Code which is operational for the entire states in the Old Northern Region and (2) The Criminal Procedure Act which is operational in the states which make up the old Southern Region. The new Administration of Justice Act 2015 which was signed into law by the then President Goodluck Jonathan on February 15th 2015, became, since that time the only principal enactment operating in the entire country for the Administration of Criminal Justice Procedure.

(CPA). The act brought to an end the era of dual application of two different criminal law and procedure laws in Nigeria.

The Administration of the Criminal Justice Act of 2015 stipulates the motive behind the passing of the Act into Law as follows[402]:

(a) to promote efficient management of criminal justice institutions and speedy dispensation of justice;

(b) to protect the society from crime; and

(c) to protect the right and the interest of the defendant and the victims.

5.1.2 Secondary enactment

Secondary enactment means some mention of the criminal law and procedure issues in the content of the enactment. That is, statutes only contain some aspects of the laws governing criminal law and procedure in Nigeria. These enactments are as follows:-

(i) The constitution of the Federal Republic of Nigeria[403]

This enactment was signed into law in May 1999 by the then Military President as part of the hand over documents to the civilian regime in May 29, 1999. The constitution has been amended at least four times by the National Assembly through the 1st, 2nd, 3rd and 4th alterations, the exercise for the 5th alteration is currently going on at the National Assembly. Some sections[404] of the constitution deal with the criminal procedure issues and these sections shall be referred to in this study.

(ii) The magistrate courts laws

The magistrate courts in Nigeria have both criminal and civil jurisdictions to try both criminal and civil matters. The Magistrate Court Law regulates each state magistrate court jurisdiction. The criminal jurisdiction of the magistrate courts are regulated by the Magistrate Courts Laws on criminal procedure as it relates to that particular state of the country where the magistrate court is located[405].

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[402]Section 1 of the Administration of Criminal Justice Act of 2015.

[403]The enactment is known as the Constitution of the Federal Republic of Nigeria 1999 Cap C 23 Laws of Federation of Nigeria 2004, hereinafter known as CFRN 1999

[404]For example S. 36 of the constitution contain the guidelines on right to fair hearing for any citizen standing trial for criminal offence .

[405]For example there is Magistrate Court Law of Oyo State; Magistrate Court Law of Kano State; and Magistrate Court Law Court of Lagos State and so on.

(iii) The High Court Laws

High courts are provided at every state of the federation of Nigeria. All the state high courts exercise both criminal and civil jurisdictions. The high court jurisdictions are regulated by High Court Law of each state[406]. Some aspects of the High Court Law of the state regulates the criminal procedure of the court's criminal jurisdiction for that state. High Court Laws of most states are similar in contents.

(iv) The Federal High Court Act 2004

The Federal High Court exercises criminal jurisdiction which is conferred on the court by section 251 of the 1999 constitution is regulated by the Federal High Court Act. This Act also regulates the procedure of the civil case before the court.

(v) Court of Appeal Act of 2004

The Court of Appeal exercises criminal jurisdiction over all criminal appeals which are brought before it from all other courts below. These criminal jurisdictions as well as the civil jurisdiction of the court are regulated by the Court of Appeal Act.

(vi) Supreme Court Act 1985

The Supreme Court is the apex court in Nigeria. It is also the court of last resort for both civil and criminal cases and matters. The jurisdiction of the court on criminal matters which is conferred by the constitution is regulated by the Supreme Court Act.

(vii) Children and Young Persons Act 1994

This law has general applications throughout the federation of Nigeria. However, some states of the federation have also enacted their own children and young persons' law. The law establishes juvenile courts across each state with jurisdiction to hear and determine all offences against young persons[407].

(viii) Coroner's Law of States

The Coroner's law of a state regulates the activities of the Coroner's Court in that state.

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[406]For example Section 11(1)(a) of High Court Law of Lagos State 2003 as amended provides that "the jurisdiction vested in the High Court shall include all her majesty's criminal jurisdiction which immediately before the coming into operation of this Act was or at anytime afterwards may be exercised in such territory.

[407]For example Children and Young Persons Law of Lagos State Cap 25 of 1994. All young offenders are subject to trial by the Juvenile Court. Except where (a). under S.6(2) the juvenile is charged jointly with adult, the trial shall take place in the regular court and (b). under S.8(2) the charge is one of homicide.

(ix) Police Act Cap P19 LFN 2004

This acts specified the powers, authorities, functions and objectives of the police as well as the limitation of same[408]. In Nigeria, Police is the first visible point of call after the commission of crime lodge complaint either through the victims or through arrest and detention of the suspect before such offenders are charged to court.

(x) Armed Forces Act of No. 105 of 2004

This Act consolidated the Nigerian Army Act, Nigerian Navy Act and the Nigerian Air Force Act. The Act regulates the criminal jurisdiction, and creates criminal offences which may be committed by members of the Armed Forces. It directly regulates the criminal aspects of the activities of the members of the Armed Forces[409].

(xi) Economic and Financial Crime Commission Act (EFCC) Cap E1 LFN 2004

This Act was passed into law in 2000. It was passed into law to create an enabling body (commission) to fight corruption and financial crimes in Nigeria. The Act therefore regulates the anti-corruption fight of the federal and state government.

(xii) Independence Corrupt Practices and Other Related Offences Act (ICPC) 2000 Cap 31 LFN 2004

This act was also passed into law in 2000 to fight corruption among public officials in Nigeria. Specifically, the act also creates a body to fight corrupt practices among the government officials and regulate the activities of the body so created.

(xiii) Code of Conduct Bureau and Tribunal Act No 1991 Cap C15 LFN 2004

This act was passed into law in order to provide for the establishment of the code of conduct bureau and tribunal for the purpose of dealing with complaint of corruption by public servants for the breach of its provisions.

(xiv) Money Laundering Act 1995 Cap M18 LFN 2004

This is the act which provides for the prevention and punishment of money laundering and to regulate over-the-counter exchange transactions and empower the National Drug Law Enforcement Agency to place surveillance on bank accounts.

[408]For example Section 4 of Police Act which detailed the major function of the Police in Nigeria.
[409]For example Section 129 of the Act created two types of court martial (1). the general court martial and (2). the special court martial.

(xv) Investment and Security Tribunal Act

The act regulates the investment and securities activities of all financial companies as well as banks and other financial institutions in Nigeria. The act creates the offence, the mode and method of instituting criminal proceedings in any criminal court in Nigeria.

(xvi) Factory Act

This Act provides for the registration and other requirements of factories and also to make adequate provisions regarding the safety of workers. This Act also regulates all factories employers and employees which involve some of the activities which have been criminalised by the Act[410].

(xvii) National Drug Law and Enforcement Agency Act

This act regulates the activities of the agency saddled with the responsibilities of controlling and checkmating the misuse or abuse of drug and its related offences.

(xviii) National Food Drug Abuse and Control Act

This act regulates the use and misuse of food, water, drug and any other thing which is capable of being injected into the body. It also creates offences therein.

(xix) Federal Road Safety Commission Act

This act regulates the Federal Road Safety Commission's activities of preventing misuse and abuse of the federal roads. It prevents the effect of driver's recklessness on other road users. It also defines the treatment of those who offends against the act especially those acts that have been criminalised.

(xx) Customs and Excise Laws

The law regulates the activities of custom and exercise in a way that defines what constitutes an offence under it and how such an offence should be treated and instituted[411].

[410]For example Section 51 of the Factory Act which criminalizes factory owner's or occupier's failure to make timeous report of any accident of which leads to fatal injury or death of an employee in the factory or under his employment.

[411]For example under Section 52 the proceedings for offence under the Custom and Excise Law should be instituted within seven days of the commission of the offences or detention of the offender.

5.2 Courts of general criminal jurisdiction

(i) Area Courts

Area Courts[412] are predominantly located at the old Northern region of Nigeria[413]. They are mostly in different grades e. g. Area Court Grade A and Area Court Grade B. Area courts are basically courts created by the state. So, Area courts exist only in states which desire it. Other states in the country where there is no area court created magistrate courts because area courts and magistrate courts are courts of coordinate jurisdictions. Most of the criminal cases are begun at the area court although native courts also have some very limited criminal jurisdiction. Area courts have no jurisdiction over homicide case or capital offences.

(ii) Magistrate courts

Thesecourts are predominantly located at the old Southern region of Nigeria[414]. They are mostly in different grades e. g. Magistrate Grade I and Magistrate Grade II**.** Although the highest being Chief Magistrate Courts are created by the states. The magistrate courts in the Southern Nigeria are of coordinate jurisdiction with area courts in the northern part of Nigeria. Both courts perform virtually the same function. The magistrate courts do not have any jurisdictions over murder cases or capital offences that are punishable with death.

(iii) High court of state

The high courts of states are superior court of record by being mentioned in the constitution[415]. The 1999 constitution expressly provides for the establishment of high court for each state of the federation. The courts operate under the various high

[412]See the following cases on the jurisdiction of Area Court and the Upper Area Courts. Alabi V COP (1971) NNLR 104, Akiga V Tiv Native Authority (1965) 2 ALL NLR P.146, Jos Native Authority V. Allah Na Gani (1968) NMLR 8 and Uzodinma V COP (1985)1 NCR 27.

[413]There are some Statutes in the Northern Nigeria which also establish Magistrate Court e. g. Kano State. Kano State has Magistrate Court. This is because Kano State Magistrate Court Edict of 1986 provides for the creation and jurisdiction of the Magistrate in criminal and civil matters.

[414]See the following cases on the powers and jurisdictions of Magistrate Court especially on criminal matters Odia V COP (1962) NNLR 9; Aba V COP (1962) NNLR 37; Lamidi Oluokun V COP (1974) NNLR 111; Board of Custom & Excise V Alhaji Yusuf (1964) NNLR 38; Gboruku V COP (1962) NNLR 17, Boniface Abah & Paul Oche V COP (1972) NNLR 37; Adamu bako V COP (1971) NNLR 150; AKile V Gbila V COP (1965) NMLR 99; Bakare V IGP (1968) NMLR 99; Okafor V IGP (1966)NNLR 180.

[415]Section 270 of the 1999 Constitution provides for the establishment of High Courts in all the states of the Federation.

court laws. The criminal jurisdiction of all high courts of states include all indictable offences contained in all information[416], and any non-indictable offence brought by complaint[417]. Appeals from the Upper Area Court in criminal matters are entertained by the high court of that state, especially in the north. Appeals from the magistrate courts in criminal matters are entertained by the high court in that state in the southern state of Nigeria. The criminal jurisdiction of the High Court of State is defined by the 1999 Constitution[418] thus:

> Subject to the provision of Section 251 and other provisions of this constitutions, the High Court of a state shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty forfeiture, punishment or other ability in respect of an offence committed by any person. In the exercise of its original criminal jurisdiction, State High Court can try criminal matters which may be instituted by way of complaint, information and charge preferred by the Attorney General having obtained the consent of the judge. The High Court of State is not limited in its jurisdiction to impose punishment.

(iv) National Industrial Court of Nigeria

The National Industrial Court of Nigeria[419] was first established in 1976 by the trade Disputes Decree No 7 of 1976 which later became Trade Dispute Act of 1976[420] upon the coming into force of the 1979 Constitution. The court, by the third alteration of the 1999 Constitution became a Superior Court of record and with coordinate jurisdiction with Federal High Court and other State High Courts[421].
The Court's criminal jurisdiction was conferred on it by the constitution[422] thus….

> The National Industrial Court shall have and exercise jurisdiction and power in criminal causes and matters arising from any case or matter of

[416]See RV Waziri(1953) NRNLR, also RV Owubaka WRNLR 328.
[417]See Aluko V the DPP (1963)1ALL NLR 398.
[418]Section 272(1) of the 1999 Constitution of the Federal Republic of Nigeria.
[419]The National Industrial Court was established as a Superior Court of Records for the first time under S. 254 A of the 1999 CFRN.
[420]Section 20 of Trade Dispute Act (TDA) 1976 states that there shall be a National Industrial Court for Nigeria in this part of the Act referred to as the Court…
[421]Section 254 (C)(1) of the 1999 Constitution of Nigeria as amended.
[422]Section 254(c)(5) of the 1999 Constitution of Nigeria as amended.

> which jurisdiction is conferred on the National Industrial Court by this section or any other act of the National Assembly or by any other law.

The Constitution also empowers the court to make use of the Criminal Code, Penal Code, Criminal Procedure Act, Criminal Procedure Code and Evidence Act, in the exercise of its criminal jurisdiction[423].

(v) Federal High Court

The Court was first designated as Revenue Court and later renamed Federal High Court by the 1979 Constitution of Nigeria. The general jurisdiction of the court is provided for by the constitution[424] as a result of which the court is designated as a superior court of record in Nigeria. The court has coordinate jurisdiction with the National Industrial Court and other State High Courts. The criminal jurisdiction of the court was defined in the constitution thus….

> The Federal High Court shall have and exercise jurisdiction and powers in respect of treasonable felony and allied offences[425]
> The Federal High Court shall have and exercise jurisdiction and powers in respect of which jurisdiction is conferred by sub section (1) of this section[426].

(vi) Court of Appeal

The Court was established in 1976 for the purpose of hearing appeal from the High Courts and other Inferior Tribunals before such appeal will get to the Supreme Court[427]. The court does not have original criminal jurisdictions, the criminal jurisdictions of the Court of Appeal lies in entertaining criminal appeal from all lower courts and tribunals as well as the court martial[428].

[423]Section 254(F)(2) of the 1999 Constitution of Nigeria.
[424]Section 251(1) of the 1999 Constitution of Nigeria.
[425]Section 251(2) of the 1999 Constitution of Nigeria.
[426]Section 251(3) of the 1999 Constitution of Nigeria.
[427]Section 240 of the 1999 Constitution of Nigeria.
[428]Section 241(1) of the 1999 Constitution of Nigeria. See also section 240 and 243(1) of the 1999 Constitution of Nigeria.

(vii) Supreme Court

This is the apex court in Nigeria[429] and it is a court of last resort for criminal causes and matters. It has no original criminal jurisdiction and hears appeals only from the decisions of the Court of Appeal. The jurisdiction of the Court both original and appellate is conferred by the constitution. The criminal jurisdiction is conferred on it through the appeals from the court below i.e. the Court of Appeal alone[430].

(viii) Special Criminal Courts

There are specially created courts to deal with some special offenses in Nigeria, these are:

(a) Juvenile courts

The courts are established under the Children and Young Persons Acts and Law of the various states with special jurisdiction to try all offences against or by "young person". Under the law which creates the court, "young person" means, a person who has attained the age of fourteen years and is under the age of eighteen years"[431]. All young offenders are subject to trial by the court, except where the juvenile is charged jointly with an adult, the trial shall then take place in the regular courts[432]. Again where the charge against the young person is one of homicide then such a young offender shall not be tried by the court but in the regular court[433]. In case of homicide, the juvenile court can conduct preliminary inquiry but cannot undertake a full trial of the offence immediately a 'prima facie' case of homicide is established. Before a young person or a child could be tried by the court, it should determine whether the young offender is actually a young person.

[429]Section 230 of the 1999 Constitution of Nigeria established the court.
[430]The criminal jurisdiction of the court is defined in S. 233 of the 1999 Constitution of Nigeria.
[431]See section 6 of the Children and Young Persons Law Cap 25 Laws of Lagos State for example.
[432]The exception is contained under section 6(2) of the Children and Young Persons Law Cap 25 Laws of Lagos State.
[433]This exception is also contained under section 8(2) of the Children and Young Persons Law Cap 35 Laws of Lagos State.

However, some states defined a young person as a person who has attained the age of fourteen years but who is under the age of 17 years[434] as against the provision of Lagos Law. Under the Children and Young Persons Act, a juvenile cannot be 'sentenced' or convicted if found guilty, instead a finding of guilt shall be recorded. A juvenile cannot be ordered to be imprisoned if they cannot be suitably dealt with in any other authorised manner e. g. probation, fine, corporal punishment, recognisance to be of good behaviour or committal to an approved institution or remand home. Even where a juvenile is imprisoned he would not be allowed to mix with adult inmate[435].

(b) Court martial

This court is a special court established by virtue of the Armed Forces Act 2004 made pursuant to the 1999 Constitution of Nigeria. The act created two types of court martial: (1) the General Court Martial and (2) the Special Court Martial[436]. The act gives the court jurisdiction over persons subject to service law[437]. The act also lists offences triable by courts to include drunkenness, conduct unbecoming of an officer, sodomy, malingering, insubordination and so forth.[438]

(c) Coroners court

This court conducts investigation into the causes of death, place and time of death as well as the identity of the deceased, whenever death occurs in a public place, e. g. prison, police station and such other places. The court is a special court which does not conduct trials; the court only conducts an inquest which at times, may involve the calling of witnesses and admission of evidence.

[434]See for example section 2 of the Children and Young Persons Act Cap C22, Laws of the Federation of Nigeria defines a child as a person under the age of fourteen years and a young person as a person who has attained the age of fourteen years and is under the age of seventeen years. See also other laws where a child or young person has been defined e. g. Section 91(1) of the Labour Act cap L1 LFN 2004 define a child as a young person under the age of twelve years while a young person is a person under the age of eighteen.

[435]See Modupe Johnson V. State (1988) NWLR Pt. 87 @ 130 also see section 465 of the Administration of Criminal Justice Act of 2015.

[436]By virtue of Section 129 of the Act, there is created of two types of court martial (1). The General Court Martial made up of the President of the Court, not less than four members, a waiting member, a Liaison Officer and a judge advocate. And (2). The Special Court martial made up of the President of the court; not less than two members; a waiting member, a Liaison member and a judge advocate.

[437] See section 130 of the Armed Forces Act 1994.

[438]Section 45 – 103 of the Armed Forces Act 1994.

5.3 Institutions for criminal justice process in Nigeria

(1) The Nigeria Police Force

The Nigerian Police Force is created by the 1999 constitution, [439] and pursuant to the constitution, Police Act[440] was enacted to regulate all the activities of the Nigerian Police Force. The Police Act makes provision, for the organisation, discipline, powers and duties of the Police, the special constabulary and the traffic wardens[441]. The act provides for the general duty of the Police. Thus, the Police shall be employed for the prevention and detention of criminals, the apprehension of offenders, the preservations of law and order, the protection of life and properties and the due enforcement of all laws and regulation with which they are directly charged, and shall perform such military duties within and outside Nigeria as may be required of them or under the authority of this or any act[442].

The act also provides for the power to prosecute criminal cases in every court of Nigeria thus:

> Subject to the provision of Section 174 and 211 of the Constitution of Federal Republic of Nigerian 1999 (which relates to the powers of the Attorney – General of the Federation and of a state to institute, and undertakes takeover and continue or discontinue criminal proceeding, against person before any court of law in Nigeria) any Police officer may conduct in person all prosecution before any court whether or not the information or complaint is laid in his name[443].

Most of the criminal cases in the court of summary jurisdiction in Nigeria are initiated by the Police in the case of Olusegun Olusemo V COP[444] the Court of Appeal affirmed the position above that police can represent the state to prosecute criminal cases in a higher court in Nigeria.

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[439]Section 214 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)
[440]Police Act Cap P.19 LFN 2004.
[441]See the long title of the Police Act P.19 LFN 2004.
[442]Section 4 of the Police Act Cap P.19 LFN 2004.
[443]Section 23 of the Police Act cap P.19 LFN 2004, see also the case of Osahon V FRN (2006) 5 NWLR Pt.937 at 361 and Olusemo V COP (1998) 11 NWLR Pt. 575 at 547.
[444]Olusegun Olusemo V COP (1998) 11 NWLR Pt.575 at 547. see also Osahon 11 FRN (2006) 5 NWLR Pt. 937 at 361.

(2) Office of the Attorney General

The 1999 Constitution of Nigeria as amended made the Attorney General of the Federation the Chief Law Officer for the Federation as well as a Minister of the government of the Federation[445].The powers of the Attorney General of the Federation are set out in details by the Constitution[446], these powers are mostly exercisable in relation to criminal matters. Thus, the Constitution provides that….

(a). to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court martial, in respect of any offence created by or under any act of the National Assembly,
(b). to take over and continue any such criminal proceeding that may have been instituted by any other authority or person; and
(c). to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person[447].

The constitution provides further that the power stated above may be exercised by him in person or through officers of his department[448]. The Administration of Criminal Justice Act also empowers the Attorney General of the Federation or a law officer in his ministry or department to prosecute all offences in any court in Nigeria[449]. It is however observed that when the office of the Attorney General is vacant, no other officer can act for him or on his behalf, not even the Solicitor General can validly exercise his powers[450].

(3) Private prosecutions

In the Administration of Criminal Justice Act 2015, the power of a private prosecution to prosecute criminal case in any court in Nigeria is conferred.[451] The act however laid out the conditions to be fulfilled before this is done. The act also made the condition mandatory. Thus, the act provides as:-

[445]Section 150 (1) of the 1999 Constitution of Nigeria.
[446]Section 174(1) of the 1999 Constitution of Nigeria.
[447]Ibid.
[448]Section 174(2) of the 1999 Constitution of Nigeria.
[449]Section 106 of the Administration of Criminal Justice Act (ACJA) 2015.
[450]See AG Kaduna State V. Hassan (1983) 2 NWLR 41 – 83.
[451]Section 106(b) and (c) of the Administration of Criminal Justice Act 2015.

The registrar shall receive information from private person if…

(a) It has endorsed thereon a certificate by a law officer to the effect that he has seen such information and declines to prosecute at the public instance the offence therein set forth; and

(b) Such private person has entered into a recognisance in the sum of One Hundred Naira (N100.00) together with one surety to be approved by the registrar in the like sum, to prosecute the said information to conclusion at the time at which the accused shall be required to appear and to pay such costs as may be ordered by the court, or in lieu of entering into such recognisance shall have to deposit One Hundred Naira (N100.00) in court to abide by the same conditions[452].

As seen in the case of Gani Fawehinmi V. Akilu, the Supreme Court affirms that the AG has a discretion to prosecute or not, but he does not have the discretion not to endorse a private prosecution. That mandamus will lie to compel him to carry out this public duty if he refuses to do so[453].

(4) Special prosecution

These are persons specially trained for the prosecution of certain offences. Section 106 (c) of the Administration of Criminal Justice Act empowers certain person (a legal practitioner) to prosecute offences in a way which is allowable by the law establishing such body or any other act by the National Assembly. The act provides thus….

> Subject to the provision of the Constitution, relating to the powers of the prosecution by the Attorney General of the Federation, prosecution of all offences in any court shall be undertaken by…
> (c).a legal practitioner authorised to prosecute by this act or any other act of the National Assembly[454].

[452]Section 348 of the Administration of Criminal Justice Act 2015.
[453]Gani Fawehinmi V. Akilu (1986) 11 – 12 SCNJ 151 See AG Anambra State V. Nwobodo (1992) 7 NWLR Pt. 256, 711
[454]Section 106 (c) of the Administration of Criminal Justice Act, 2015

The importance of this statutory provision is that the AG cannot initiate any proceeding in matters outside his legal limits[455].

The prosecutions of criminal cases that are often undertaken by special prosecutors who are legal practitioners involve Customs offences, Economic and Financial Frauds, Investment and Securities cases, cases under ICPC, cases under NAFDAC and NDLEA e. t. c[456].

5.4 Modes of instituting criminal proceedings

The Administration of Criminal Justice Act provides that criminal proceedings may be instituted:-

(a). In a Magistrate Courts by a charge or a complaint whether or not an oath or upon receiving a First Information Report;
(b). In the High Court by information of the Attorney general of the Federation subject to section 104 of this Act.
(c). By information or charge filed in the Court after the Defendant has been summarily committed for perjury by a court under the provision of this Act.
(d). By information or charge filed in the court by any other prosecuting authority; and
(e). By information or charge file by a private prosecutor subject to the provision of this Act[457].

The Act in the above provision has laid the foundation upon which all criminal processes are built in Nigeria. The institution and the process are discussed here under.

5.4.1 Magistrate court level

At the Magistrate Court criminal proceedings are instituted:

(a) by bringing a suspect arrested without warrant before the court on a charge contained in a charge sheet specifying the name, address, age, sex and occupation of the suspect charged, the charge against and the time and place where the offence is alleged to have been committed; and the charge sheet shall be signed by any of the person mentioned in section 106 of this Act[458] or

[455]See Anyebe V. State (1986) 1 SC 87; Emelogu V the State (1988) 2 NWLR 528; Queen V. Owoh (1962) 1 ALL NLR 699
[456]See the following cases: Customs and Excise v Senator Barau (1982) 2 NCR. EFCC V. Bode George, Suit No ID/7/C/2008 (2005); EFCC V. Orji Kalu (2014) 1 NWLR P. 479.
[457]Section 109 (a) – (e) of Administration of Criminal Justice Act 2015.
[458]Section 110(1)(b) of Administration of Criminal Justice Act 2015.

(b) Upon receiving a First Information Report for the commission of an offence for which the Police are authorised to arrest without warrant and which may be tried by the court within the jurisdiction where the Police Station is situate, the particulars in the report shall disclose the offence for which the offence which the complaint is brought and shall be signed by the Police officer in charge of the case[459],
or

(c) Subject to the provision of section 89 of this Act by complaint to the court, whether or not on oath that an offence has been committed by a suspect whose presence the Magistrate has power to compel, and an application to the Magistrate, in the manner set out in this section for the issue of either a summons directed to, or a warrant to arrest, the suspect[460].

The purport of section 89 of the Act as referred to above is to the effect that the complaint may or may not be in writing unless such complaint filed before the court is required to be in writing by the law in which such an offence is founded[461]. By the provision of the Administration of Criminal Justice Act 2015, it is clear that the magistrate courts are at the center stage of criminal proceedings in Nigeria except for the capital offences.

5.4.2 High court level

In most cases, criminal proceedings in Nigeria are commenced in the high court. At the level of the high court, there must be at least one indictable offence in the information before such information can be filed. It is important to file an application for consent to file a piece of information; such application is usually directed to the High Court Judge or the Chief Judge. The procedure is as follows:

(i) The application shall be in writing, signed by the applicant or his Counsel.
(ii) The application shall be accompanied by a bill or proposed bill of indictment and an affidavit unless the application is made by or on behalf of the Attorney General.
(iii) The application shall state whether or not previous applications have been made and the result thereof.
(iv) Where there have been no committal proceedings, the application shall state the reason for the desire to prefer a bill of indictment without such committal proceedings.
(v) The application shall be accompanied by proofs of the evidence of the witness proposed to be called and that such witnesses shall be available at

[459]Section 110(1)(b) of Administration of Criminal Justice Act 2015.
[460]Section 110(1)(c) of Administration of Criminal Justice Act 2015.
[461]Section 89(1) of Administration of Criminal Justice Act 2015.

the trial and that the case be disclosed by the evidence is to the best of the applicant's knowledge, information and belief are true.

(vi) The applicant shall also be accompanied by unedited statement of the accused person.

However, where the proof of evidence does not constitute the offence charge, the accused can bring a motion to quash the information and the court is obliged to grant such prayer[462]. A defective information can also be quashed by a motion[463]. It is very important to note that the failure to obtain consent of the judge before filing information is fatal. Such information will be quashed at the trial or on appeal depending on when the error is discovered[464].

5.4.3 Bail

In the Criminal Justice System bail occurs at three different levels: Firstly, suspect may be granted bail by the police that is, at the police station. This type of bail is also known as police bail during the investigation or pending arraignment[465]. Second, the accused may be granted bail by the court. This is the type of bail which may be granted after the arraignment of the defendant and during the trial. This is after the accused (defendant) have been arraigned and his plea had been taken in court. Third, a convict may be granted bail while waiting for his appeal. This is the type of bail which an already convicted person may apply for when the person intends to appeal or has appealed against his/her conviction.

(a) Police bail (Bail for the suspect)

This is granted pursuant to the provision of the Administration of Criminal Justice Act (ACJA) 2015, if the offence is not punishable with death[466]. However, in a situation where the offence is a serious offence in which case, fairly long time is needed for investigation by the Police, such a suspect may still be admitted to bail[467]. Whenever a suspect is taken into custody by any police officer in respect of a non –

[462]For the procedure listed above see the following cases Egbe V the State (1980) 1 NCR 341; Ikomi V the State (1986) 5 SC 313.
[463]See the case of Okoli V the State (1992) 6 NWLR Pt 247 at 381.
[464]See the case of A. G. Federation V. D C. Clement Isong (1986) 1 QLRN 75; Okafor V the State (1976) 5 SC 13.
[465]Section 30 of Administration of Criminal Justice Act, 2015.
[466]Ibid see also section 30(2).
[467]Section 30(3) of ACJA 2015. See also S.35(3) & (4) of the 1999 Constitution as amended. See also the following cases. Eda V Cop (1982) 3 NCLR 219; Olugbesi V COP (1970) ALL NLR 104. Emezue V Okolo & Ors (1979) 1 LRN 236.

capital offence and such a person is not released on bail after twenty-four (24) hours, a court having jurisdiction with respect to the offence may be notified by application on behalf of the suspect[468]. An application for bail in this regard may be made orally or in writing[469]. A police officer also has the power to grant bail before the charge is accepted[470].

(b) Bail pending trial (Bail for the accused)

This is the type of bail granted by the court which also depends on the fact that the offence is simply serious or capital. In certain jurisdictions, especially in Nigeria, a magistrate court cannot grant bail in respect of a capital offence[471]. Only the high court can grant bail in capital offences[472]. In most of the bails granted by the court, the following conditions always apply:

(a). whether the accused will appear to stand his trial, that is, whether or not the accused will jump bail[473];

(b). if there is likelihood that accused will repeat the offence[474];

(c). where there is a previous criminal record, bail may be refused[475];

(d). the nature of the offence, the character of evidence to sustain the proof of the offence and the possibility of suppressing such evidence if granted bail[476];

(e). the prevalence of the offence[477];

(f). available and the quality of sureties that can fulfill the requirements of the bail[478].

Other conditions within the provisions of Administration of Criminal Justice Act 2015[479] are:

[468]Seection32(1) ACJA 2015.
[469]Section 32(3) ACJA 2015.
[470]Section 31(1) & (2) ACJA 2015.
[471]See Olugesi V COP (1970) 2 ALL NLR 1.
[472]Op cit note 186. See also the cases of Ulanku V COP (1986) 1 LRN 146 Tark V DPP (1961) NRNLR 63; Oladele V State (1993) NWLR (Pt 259 at 308.
[473]Section 163 (b) of ACJA 2015.
[474]See also section 163 (b) of ACJA 2015.
[475]See the cases of Dantata V the Police (1958) NRNLR 3.
[476]Ibid. Also see Eyu V State (1988) 2 NWLR (Pt.98) 602 at 610.
[477]See Felix V the State (1978) 2 LRN 308.
[478]Dogo V Cop (1980) 1 NCR 14.
[479]Section 162 of ACJA 2015.

(i). Where it is clear that the accused will attempt to influence, or interfere with, or intimidate witnesses and or interfere in the investigation of the case.

(ii). Where it is clear that the accused may attempt to conceal or destroy evidence.

(iii). Where it is clear that the proper investigation will be prejudiced.

(iv). If it is observed that the accused will attempt to undermine, or jeopardize the purposes or the functioning of the criminal justice administration, including the bail system.

It should be noted that, in an application for bail before any court, the courts are enjoined to take into consideration certain factors in determining whether to grant or refuse bail to the applicant pending trial. These factors are highlighted below:

(a). the nature of the offence;
(b). the severity of the punishment;
(c). the character of the evidence;
(d). the criminal record of the applicant; and
(e). the likelihood of the repetition of the offence[480].

(c) Bail pending appeal (Bail for the convict)

Where an accused is convicted he is no longer presumed innocent. He may however apply for his bail where he has appealed the ruling of the court pending the hearing of the appeal. The conditions which may be considered by the court before hearing such bail pending appeal are as follows:

(a). Where the applicant will be of assistance for the preparation of the real case for appeal[481].

(b). If the refusal of the bail application will put the applicant's health in serious jeopardy[482].

[480]See the following cases: Atiku V State (2003) FWLR (Pr 139) 1466 at 1477. Paragraph B – D. Ani V State (2002) I NWLR (Pt 747) at 232 – 2333, Eyu V State (1988) 2 NWLR (Pt 78 602 at 607 Aminu Amusa V COP (2003) 11 FR 158.
[481]See R. V. Starkie 24 CAR 1 at 2.

(c). Where the sentence is manifestly contestable.

(d). Where the court considers the length of time which must elapse before the appeal can be heard and the length of sentence appealed against[483].

However, bail pending appeal should be by Originating Motion[484]. Originating Motion is a situation where the bail pending appeal is commenced by motion.

5.5 Charges or information

A charge is defined as the statement of offence with which an accused is charged in a trial whether by way of summary trial or trial by way of information before a court[485]. In the High court it is referred to as information. It therefore means that charge is used at the magistrate court while information is used in the high court for the same purpose. A charge may be as in the form set out in the third Schedule of Administration of Criminal Justice Act 2015 which may be modified in any way necessary in the circumstances of each case[486]. The Administration of Criminal Justice Act provides that it is very important for a charge to state the offence with which the defendant is charged[487]. It further provides that….

Where the law creating the offence:

(a) gives it a specific name, the offence shall be described in the charge by that name;

(b) does not give it a specific name, so much of the definition of the offence shall be stated as to give the defendant notice of the facts of the offence with which he is charged[488].

Again, the law, the section of the law, the punishment section of the law, against which the offence is said to have been committed shall be set out in the charge[489]. The charge shall also contain such particulars as to the time and place of the alleged offences and the defendant, if any against whom or the thing, if any, in respect of which it was committed as

[482]See the cases of Gani Fawehunmi V the State (1990). 1 NWLR 486 Chukwunuere V COP (1975) 5 ECSLR 44.
[483]See the cases of R. V. Tunwase (1935) 2 WACA 236; Okoroju V. the State (1960) 6 NELR (Pt. 157).
[484]Kunnia V A. G. Anambra (1997) 7 SC 161.
[485]Section 494 of ACJA 2005.
[486]Section 193 of ACJA 2015.
[487]Section 194(1) ACJA 2015.
[488]Section 194(2) (a) & (b) ACJA 2015.
[489]Section 194(3) ACJA 2015.

are reasonably sufficient to give the defendant notice of the offence with which he is charged[490].

4.6 Commencement

It is a constitutional provision that all criminal trials or proceedings must be held in open court[491]. However, the provisions set out some exceptions which include the following:

(i). the public may be excluded on the ground of public policy decency and expediency;
(ii). if the case of a person below the age of 17 years is to be heard[492];
(iii). where the statute expressly requires it[493];
(iv). in the interest of public safety, defence, public order, public morality and welfare of an infant[494].

The accused persons must be present in court throughout the trial. It is also very important for the complainant to always be in court after due notice of both the time and place of hearing. Failure to do so may result in the case being struck out unless there is a reasonable excuse for the absence.

(a) Arraignment

After the clerk of the court calls the case the accused is called and appearances are announced by counsel on both sides, the trial is set to begin. The accused is called and docked while the charges are read to him to the satisfaction of the court. The arraignment has been described as a very strict procedure to begin a criminal trial, thus arraignment has been said to be a stage of criminal trial where the person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court and such a person

[490]Section 196(1) ACJA 2015.
[491]Section 260 ACJA 2015. See also Section 36(3) of the 1999 Constitution of the Federal Republic of Nigeria.
[492]Ibid. See also S.259 – 260 ACJA.
[493]Section 259 ACJA 2015.
[494]Section 232 (4) ACJA 2015.

shall be called upon to plead instantly thereto unless the person who is entitled to the service of a copy of the information object to the want of such service, and the court finds that he has not been duly served therewith[495].

In *Kajubo V State*[496] however, the above provision was broken down to four stages thus, that:

(i). the accused person to be tried shall be placed before court unfettered;

(ii). the charge shall be read and explained to him in the language he understands to the satisfactions of the trial court, by the register if the court or other officer of the court;

(iii). the accused person shall then be called upon to plead instantly to the charge and;

(iv). the plea of the accused shall be instantly recorded.

(b) Interpreter

As a variant of the right of the accused to fair hearing as guaranteed by the Constitution, the accused is entitled to the assistance of an interpreter without payment, if he cannot understand the language at the trial right from the commencement of the trial and the arraignment stage[497]. It is not compulsory for an interpreter to swear before commencing his job[498] but it is important to record that an interpreter is used. It is the primary responsibility of the accused or his counsel to bring to the notice of the court that the accused does not understand the language of the court[499].

(c) Procurement of witnesses

[495]Section 215 of the Repealed Criminal Procedure Act. The reason why the Repealed Law was cited is because "Arraignment" was nowhere defined or described in the new Administration of Criminal Justice Act 2015 even in the Interpretation Section of the Act.
[496]Kajubo V the State (1988) 1 NWLR (Pt. 73) 721.
[497]Section 36(6)(e) of the 1999 Constitution.
[498] See the following cases: State V Boka (1982) INLR 85: Shemfida V COP (1970) NRNLR 13.
[499] Section 17(3) of the Administration of the Criminal Justice Act. See also the case of State V Saliu Gwonto & Ors (1983) SCNLR 142.

The witnesses are procured by the prosecution through the issuance of witness summons[500]. This is issued against any person to be called as a witness and served by the process server assigned to the court where the criminal trial is expected to take place[501].

It is the same process server who will be responsible to serve the production warrant on the accused (if not on bail) to attend court during the trial[502]. It amounts to an offence if a witness who has been summoned to attend court to give evidence does not attend court without any reasonable excuse. Where such happens, the court may issue a warrant for such witness to be arrested and brought to the court[503].

(d) Duty of prosecution

It is the duty of the prosecution to bring all necessary witnesses to prove his case[504]. It is not, however, compulsory to call all the witnesses[505]. It is also part of the duty of the prosecution to ensure that the accused or the defendant is produced in court if not already admitted to bail by the court. If admitted to bail it is then the duty of the defense counsel to make sure that the accused or the defendant is in court all the time of hearing. The prosecution has a legal burden to prove his case against the accused beyond reasonable doubts. This is because there is a presumption of innocence in favour of the accused, and this inures throughout the trial[506]. The proof beyond reasonable doubts means that it does not admit of plausible and fanciful possibilities but it does admit of a high degree of cogency consistency with equally high degree of probability. It does not mean beyond shadows of doubt[507].

(e) Order of witness

Order of witness in criminal trial is regulated by law, practice and the discretion of the court where there are no regulations[508].

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[500] Section 241 of the ACJA 2015. See also the case of Aduje V State (1979) 6 – 9 SC 18.
[501] Section 242(1) of ACJA 2015.
[502]Section 242(1) of ACJA 2015.
[503]Section 243 (a) and (b) ACJA 2015.
[504]The duty of the prosecution to make sure that all witnesses which he intends to call during the trial through the process servers and other means is covered in section 241 – 250 of the Administration of Criminal Justice Act 2015.
[505]See the case of State V Iyabo Albert (1982) 5 SC 6.
[506]See Igago V the State (1999) 10 – 12 SC 84 at 99. See also section 36(4) of the 1999 Constitution of Nigeria.
[507]See Bakare Vs the State (1987) 1 NWLR pt 52 579.
[508]Op.cit note 221.

The prosecution is required to call sufficient witness which is material to his case and the same thing applies to the defence. The sufficiency of witness does not mean the number of witness but the materiality and the quality of such a witness. This means that the prosecution or the defendant needs not call all the witnesses[509].

(f) Submission of No case to Answer

This means that there is no evidence adduced by the prosecution on which the court can convict the accused. What is important is the quality of evidence exhibited by the prosecution and not whether the court believed the prosecution evidence.

Submission of no case to answer is provided for under section 303 of the Administration of the Criminal Justice Act and predicated on the following grounds[510]:

(1) if there has been no evidence to prove the essential and vital elements in the alledged offence; and

(2) if the evidence adduced by the prosecution has been so discredited as a result of intensive cross examination or that the evidence is so manifestly unreliable that no tribunal could safely convict upon it.

No case submission can also be at the instance of the court[511]. In considering the application of the defendant of no case submission, the court shall in the exercise of his jurisdiction have regard to the following:

(a) Whether an essential element of the offence has been proved.
(b) Whether there is evidence linking the defendant with the commission of the offence with which he is charged.
(c) Whether the evidence so far led is such that no reasonable court or tribunal would convict on it; and

[509]Section 179(1) of the Evidence Act 2011. See also the following cases – Oguonzee V the State (1998) 4 SC 110 at 128, and pt 155 – 156; Opeyemi V the State (1985) 2 NWLR (pt 5) 1010 – 103; Effiong V the state (1998) 5 SC 136.
[510]Section 303 of ACJA 2015.
[511]Section 302 of ACJA 2015; see also section 303 ACJA 2015.

(d) Any other ground on which the court may find that a prima facie case has not been made out against the defendant for him to be called upon to answer to his charge[512].

When submission of a no case to answer is to be rejected, such a ruling should be brief. The judge should confine his observations to the ruling without touching on the fact of the case. The effect of the submission of no case to answer which is upheld is a discharge and/or an acquittal. However, where subsequent evidence led in court shows the accused acquitted is implicated in another offence he can be re-arrested and charged with another offence[513].

(g) Defence

This comes after the close of the prosecution's case subject to any intervening circumstances. At this stage, the judge shall call on the accused person to open his defence. If the accused has a counsel, his counsel will open the case for the defence[514]. Where the accused has no counsel, the judge will give the accused the option open to him, that is – (a) He can testify from the dock, that is, give unsworn evidence in which case he will not be liable to cross-examination. (b) He can give his evidence from the witness box on oath, in which case he will be liable to cross examination. (c) He may decide to say nothing by resting his case on the prosecution's case. On this, the Supreme Court per Nnaemeka Agu[515] said:

> Where prudence dictates that the accused person should not assist the prosecution which has failed to prove every material ingredients in the case against him by giving them the opportunity of extracting it in the witness box under the fire of cross examination; it is needless to insist on the exercise of that right when the prosecution has not made out prima facie case which calls for the accused person's explanation.

The number of witnesses which the defence can call is at the discretion of the defence Counsel[516].

[512]Section 303(3)(a) – (d).
[513]See the following cases – Okoro V the state (1988) 5 NWLR 255; Mumuni V State (1975) 6 SC 78; Godwin Daboh V State (1977) 5 SC 197.
[514]See Adio V the State (1986) 6 SC 119; see also Edet Akpan V State (1989) NWLR (pt 27) at 225.
[515]Babalola V the State (1989) 4 NWLR (pt 115) at 264.
[516]See section 200 Evidence Act 2011.

(h) Further evidence

This is the additional evidence that is sought after closing the evidence of parties in this case, the court may call or recall any person if the evidence is essential to the just determination of the case. It should, however, be noted that in doing this, judges should be careful in the use of this discretion. It is also allowed in any case where new matters or issues arise or raised by either party[517].

(i) Final address

This is the stage of the articulation of facts with law drawing inference there from and making a submission to the court. It is the parties' individual views. Final address is expected to be delivered by both the prosecutor and the defence before both submit their cases to the court for judgement.

(j) Judgement

This is the final decision of the court resolving the dispute and determining the rights and obligations of the parties. After the final address, the judge must, deliver judgement. The court may deliver the judgement immediately or it may reserve the delivery of judgement until a fixed date[518]. Every judgement must contain the essentials, that is, (a) the fact of the case, (b) issues involved, (c) laws applicable, (d) drawing the right conclusions and (e) finding of the court based on a credible evidence before the court[519].

The judge or magistrate shall record his judgement in writing and every judgement shall contain the point or point for determination, the decision and the reason for the decision shall be dated and signed by the judge or magistrate at the time of pronouncing it[520]. Sometimes, the magistrate, instead of writing the judgement, may

[517]See the cases of George & Ors V the State (1971) 1 ALL NLR 205; Dealoye V Medical V Dental Practitioners Disciplinary Committee (1968) 1 ALL NLR 306.
[518]Section 307 (1) of ACJA 2015.
[519]Section 307 (2) of ACJA 2015.
[520]See section 308 (1) of ACJA 2015.

record briefly in the book his decisions or findings and the reasons for the decisions or findings, and then deliver an oral judgement[521].

On each count of the charges, there are ingredients which must be determined one after the other. If the judgement is for convictions, it shall specify the offence for which and the section under which, the accused is convicted and sentenced. On every point there must be a decision made if there is any doubt it must be resolved in favour of the accused. No issue should be left hanging[522].

(k) Conviction

In all criminal trials, the verdict will either be guilty or not guilty. If found guilty, then there is a conviction. Conviction is an act of adjudging a person to be guilty of a punishable offence[523]. Conviction must come before sentencing. Where there are more than one accused, a separate verdict must be returned in respect of each accused person.

(l) Sentence

This is the post conviction stage of the criminal process in which the accused is brought before the court for imposition of sentence. Section 311 of the Administration of Criminal Justice Act of 2015 stipulates that:

(1). Where the provision of section 310 of this Act has been complied with, the court may pass sentence on the convict or adjourn to consider and determine the sentence and shall then announce the sentence in the open court[524].

(2). The court shall, in pronouncing sentence, consider the following factors in addition to section 239 and 240 of this act:

(a). the objective of sentencing, including the principle of reformation and deterrence;

(b). the interest of the victim, the convict and the community;

[521]See section 308(2) of ACJA 2015. See also the case of Napoleon Osayande V COP (1985) SC 154: State V Lopez (1962) 1 ALL NLR 356.
[522]See Nwaefulu & Anor V State (1981) 1 NCR 356.
[523]See the case of Iyalekhue V Omoregbe (1991) 3 NWLR pt 177 at 94.
[524] Section 311(1) of ACJA 2015.

(c). appropriateness of non-custodial sentence of treatment in lieu of imprisonment.

(d). previous conviction of the convict[525].

(3). A court after conviction, shall take all necessary aggravating and mitigation evidence or information in respect of each convict that may guide it in deciding the nature and extent of sentence to pass on the convict in each particular case even though the convicts were charged and tried together[526].

The Act further provides:

"The court may, in any case in recording sentence, make a recommendation for mercy and shall give the reasons, for the recommendation"[527].

There is also mandatory sentence e.g. murder convict must be sentenced to death, in sentencing for maximum the judge can give less. The prosecution cannot appeal on the ground that the punishment is too small. If there is a minimum sentence recommended, no discretion is allowed below it. An accused can appeal against the sentence, the appeal court can reduce or increase the sentence, if the accused appeals against the sentence he opens himself to either increase or decrease the sentence[528]. The court may postpone sentence and release the accused on bail.

A court may in passing sentence on an accused take into consideration any other charge that is pending against the accused[529]. However, the court must ensure that proper steps are taken before taking the other pending charges against the accused into consideration[530]. The Act further provides that;

> Where the charge pending against the defendant is considered in accordance with sub sections (1) and (2) of this section and sentence passed on the defendant with consideration or in respect of the other pending charge, the defendant shall not subject to the provisions of sections 236 to 237 of this act or unless the conviction has been set

[525] Section 311(2) of ACJA 2015.
[526] Section 311(3) of ACJA 2015.
[527] Section 312 of ACJA 2015.
[528] See Nafiu Rabiu V.State (1980)2 NLR 117.
[529] Section 313(1) of ACJA 2015.
[530] Section 313(2)(a) & (b) of ACJA 2015.

aside be liable to be charged or tried in respect of any such offence so taken into consideration[531].

(m) Punishment

After the accused person is convicted for an offence, the magistrate or judge must pass a sentence on him. Every sentence comes in form of punishment. The main sentences provided for under the law are death, imprisonment, fine, caning, hard lashing and forfeiture[532].

(n)Death sentence

Death is mandatory for capital offence. The judge has no discretion in the matter, after an accused has been found guilty of a capital offence. Thus, the Administration of Criminal Justice Act provides that the recommended language in the pronouncement of the sentence is.

> The sentence of this court upon you is that you be hanged by the neck until you are dead or by lethal injection[533].

The Supreme Court has held that the judge is not bound to comply strictly with the form although it is desirable as such failure may raise apprehension in the mind of the accused person that it could be carried out in another way[534]. In the case of Gano V. State, for example, the court said "sentence of death passed" it was held not to affect the sentence[535].

Again, the Robbery and Firearms (special provisions) Act provides that the sentence may be executed by hanging or by firing squad "as the Governor may direct"[536].

In pronouncing the death sentence:

[531] Section 313(3) of ACJA 2015.
[532] Section 401(1) of ACJA 2015.
[533] Section 402(1) and (2) of ACJA 2015.
[534] See Olowofoyeku V State (1984) 5 SC 192; Gano V State (1968) 1 ALL NLR 353.
[535] Gano V State (1968) 1 ALL NLR 353 at 365.
[536] Section 1(3) of the Robbery and Firearms (Special Provision) Act.

> The Judge who pronounces a sentence of death shall issue, under his hand and the seal of the court, a certificate to the effect that sentence of death has been pronounced upon the convict named in the certificate and the certificate shall be sufficient and full authority in the bid for the detention of the convict in safe custody until the sentence of death pronounced on his can be carried into effect and for carrying the sentence of death into effect in accordance with and subject to the provisions of this part[537]

However there are exceptions to the above provisions. The first exception is, where a convict who in the opinion of the court has not attained the age of eighteen years at the time the offence was committed is found guilty of a capital offence, sentence of death shall not be pronounced or recorded but in lieu of it. The court shall sentence the child to life imprisonment or to such other term as the court may deem appropriate in consideration of the principles in section 401 of this Act[538].

This exception is in line with the features of the criminal trials involving juveniles[539].

The second exception is when a pregnant woman is involved and found guilty of capital offence, the Act provides…

> Where woman found guilty of a capital offence is pregnant, the sentence of death shall be passed on her but its execution shall be suspended until the baby is delivered and weaned[540].

(o) Imprisonment

Imprisonment as a punishment for an offence may be with or without hard labour, as the court may order, subject to the express provision of any written law providing imprisonment as a punishment for an offence[541]. The prison term may be ordered to commence at the expiration of a current sentence, sentence can be concurrent or consecutive. A concurrent sentence imposed is to be served at the same time as another sentence imposed earlier or at the same proceeding consecutive sentence are sentences (each additional to the others) imposed upon an accused who has been convicted upon an indictment containing several counts, each of such counts charging a distinct offence. This can also happen to an accused person who is under

[537] Section 407 ACJA 2015.
[538] Section 405 ACJA 2015.
[539] See also Modupe Johnson V State (1988) 4 NWLR pt 87 at 130.
[540] Section 404 ACJA 2015.
[541] Section 416(1) of ACJA 2015.

conviction at the same time for several distinct offences, one of such sentences being made to begin at the expiration of another[542]. However, where the court is silent on whether the sentence should be concurrent or consecutive, the sentence so passed shall be concurrent. However, the act provides that….

> A sentence of imprisonment takes effect from and includes the whole of the day of the date on which it was pronounced[543].

(p) Fine

This is pecuniary punishment or penalty imposed by lawful tribunal or court upon a person convicted of crime or misdemeanor. It may be in lieu of imprisonment or it may be in addition to imprisonment. Imposition of fine is subject to the jurisdiction of the court or tribunal where only imprisonment is the punishment and is silent on fine, a fine in lieu can be given whether or not fine is stipulated. But where it is without an option of fine, a fine cannot be given[544].

(q) Deportation

This applies only to non-Nigerian[545]. Thus the act provides:

> Where a defendant is convicted of an offence punishable by imprisonment without the option of a fine,the court may, in addition to or instead of any other punishment make a recommendation to the Minister of Interior that the convict be deported where it appears to the court to be in the interest of peace, order and good governance[546].

The sentence of deportation may also be passed on a non-Nigerian in default of security for peace. The Act states that….

> Where on sworn information, it appears to a court that there is reason to believe that a person in Nigeria who is not a citizen of Nigeria is about to commit a breach of the peace, or that his conduct is likely to produce or excite a breach of the peace, the court, after due inquiry at which the defendant concerned shall be present, may order him to give security two or more sureties for

[542]Section 418(1) of ACJA 2015.
[543]Section 419 of ACJA 2015.
[544]See the case of State V Okechukwu (1994) 12 SC 62; Apamadari V State (1997) 3 NWLR pt 493 at 289.
[545]Section 439 of ACJA 2015 for definition of "Deportation".
[546]Section 440 of ACJA 2015.

peace and good behaviour, and in defiant, may recommended to the Minister of Interior that the defendant be deported[547].

(r) Binding over for good behaviour

This type of punishment does not necessarily need to be a conviction. It is often used to keep a defendant from committing an offence. In such a way, it is a pre-emptive punishment[548].

(s) Restitution and compensation

This is contained under section 321 of the Administration of Criminal Justice Act that in addition to whatever the pronouncement of sentence on the convicted person, the court may order the convict to pay compensation or make restitution to any victim of the crime for which the offender was convicted or to the victim's estate[549]. The above provision is a novel provision in the Nigerian Criminal Law and Procedure[550]. A fuller discussion on this is contained under chapter four of this study.

(t) Haddi Lashing

This type of punishment is only available in the Northern region of Nigeria; it may be imposed only on those who are found guilty of adultery, injurious falsehood imbibing alcohol, defamation and so on, most especially on those who are subject to the Islamic faith[551]

5.7 Analysis of the victims' participation in the Nigeria criminal justice system

In the preceding chapters of this study, it has been shown that under the Nigerian criminal justice process the victims' participation is limited to a mere witness for the prosecution and

[547]Section 441 of ACJA 2015. See also S.41 of the 1999 Constitution of Nigeria. Also see the case of Alhaji Shugaba Abdul-Rahman V Minister of Internal Affairs & others (1981) 1 NCLR 25.
[548]See the case of Ngwu V State (1998) 7 NWLR pt. 558 at 597.
[549]Section 321 of ACJA 2015.
[550]See the case of Ogunlana V State (1995) 5 NWLR pt. 295 at 399.
[551]See Section 387, 388, 393 of Penal Code. As a matter of fact there is no provision for this type of punishment under the Administration of Criminal Justice Act of 2015.

therefore, he is only accorded the recognition and respects through the prosecuting officer as his witness and nothing more. It has also been shown that as a result of this scenario, the victims of crime, especially under the Nigerian criminal justice system feel very neglected and abandoned and are not allowed to participate in the criminal justice process in their own case. This, as it has been shown, is because, under the Nigerian criminal law and procedure, all criminal cases are handled by the state, be it at the level of the Police, the office of the Public Prosecutor or even at the Court. At the police level, although it is the victim who is expected to lodge the complaint, through a written statement duly endorsed by him or her, the investigation or further investigations is done purely by the Police or any other law enforcement officer in charge of the case after which such case 'may be taken to court, if the law enforcement officer in charge feels strongly to so do. If the case is finally taken to court the charge is preferred against the accused in the name of the Police. At the beginning of the case, the victim is no longer needed until the case gets to the court if he is called as a witness, during the trial.

Again, if and when the accused is found guilty, the victims of the crimes are not also needed to have a say on the type or mode of sentencing the accused. We have also seen in the preceding chapters that under our laws in Nigeria on criminal law and procedure, there is a comprehensive and adequate protection for the rights of the accused throughout the criminal process, whereas the victims of the crime are left with almost nothing. This chapter addresses all the issues raised above in order to bring to the fore the main objective of this study. This chapter demonstrates the relevance of the application of the researcher's proposed victims' participation model of the procedural justice theory, in the Nigerian criminal justice system with a view to actualising the active participation of victims of crime in all the stages of the criminal proceedings.

5.7.1 Instituting criminal proceedings under the Nigerian criminal law and procedure

5.5.1(a) Police

Police is the first contact of note in the criminal process after the commission of a crime. In almost all societies in the world today, there is one form or the other ways of ensuring that the sacred societal rules and regulations are not only obeyed but also, sanctions are

enforced, especially in order to keep the sanctity of the society intact. The group of people who are therefore engaged or assigned with this function and responsibility of this activity on behalf of the society are generally known as the Police[552]. The Nigerian Police force was established by the 1999 Constitution of the Federal Republic of Nigeria (as amended) thus:

> There shall be a Police force for Nigeria, which shall be known as the Nigerian Police Force and subject to the provisions of this section, no other Police force shall be established for the federation or any part thereof[553].

These constitutional provisions for the establishment of the Nigerian Police Force was accentuated by the Police Act thus:

> There shall be established for Nigeria a Police Force to be known as the Nigeria Police force (in this Act referred to as "The Force"[554].

Generally, the Police are charged with the responsibility of maintenance and securing of public order as contained in the Police Act thus:

> The Police shall be employed for the prevention and detection of crimes, the apprehension of offenders, preservation of law and order, the protection of life and property and the due enforcement of the laws and regulations with which they are directly charged and shall perform such military duties within and outside Nigeria as may be required of them by or under the authority of this or any other Act[555].

In Nigeria, Police are also statutorily empowered to investigate crimes, apprehend offenders, interrogate suspect, arrest[556] and detain offenders[557], grant bail to suspects pending completion of investigation or prior to court arraignment[558]. Police are also statutorily empowered to serve summons when the need arises[559], to regulate or disperse unlawful assemblies or possessions, to search and seize properties suspected to be stolen or associated with crime[560] and to take record for purposes of identification, the measurement, photographs and fingerprints impressions of all persons in custody. Police also administer

[552]Aina, A. A. (2014) The Nigerian Police Law. Lagos, Princeton p1.
[553]See Section 214(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Cap C23 LFN 2004.
[554]See Section 3 of the Police Act, Cap p. 19, LFN, 2004.
[555]See Section 4 of the Police Act, Cap p.19 LFN 2004.
[556]See Section 4, 7, 20, 21, 22 ACJA 2015.
[557]See Section 5 ACJA 2015.
[558]See Section 30 & 31 ACJA 2015.
[559]See Section 59 ACJA 2015.
[560]See Section 21 of Administration of Criminal Justice Act (ACJA) 2015.

and execute warrants, conduct search of property or building or person[561]. The Nigerian Police are also statutorily empowered to "prosecute offenders in any court in Nigeria"[562]. These general duties of the Nigerian Police Force shall now be examined to show, how and where the involvement and participation of victims of crime is highly necessary and important for the successful carrying out of these duties.

(i) Police's power to receive complaint or crime report

As seen earlier, police by virtue of their position act as the gatekeepers of the criminal justice system with great impact on the functioning of the other components of the system.

Whenever any crime is committed at any part of Nigeria, the victims (either primary victim or the secondary victim is expected to make and lodge complaint to the Police officer at any of the nearest police stations. The complaints are mostly, firstly made orally and later in writing. The maker of such complaints is called the complainant. A complainant, most times, is the victim (primary or secondary). The victim, by being the complainant is the initiator of the criminal justice process, firstly because he or she may decide not to report and if not reported, then no action may be taken, and secondly because if the case eventually gets to court, he/she is expected to be a witness to give testimony on how the crime was committed, any testimony of the police in this regard amount to hearsay evidence[563]. For the initiator of the criminal process to be neglected and abandoned after the lodge of criminal report (complaint) is always fatal to the success of the criminal justice process.

Police are expected, at the period of making a report to treat the victim with utmost dignity and respect. Most times, the safety and the security of the victim qua complainant which is needed are not provided by the Police at the Police station. This is not provided for by the Nigerian Criminal Procedure Laws, whereas the law provides for the humane treatment of the suspect and later the defendant, thus a suspect shall:

[561]See Section 143 – 154 ACJA 2015.
[562]See Section 23 of the Police Act Cap p. 19 LFN 2004.
[563]See the case of Ijioffor V The State (2001) 4SC (Pt. 11) 1.

A suspect shall**:**

> be accorded human treatment, having regard to his right to the dignity of his person[564].

Such provision for the protection of the right of the suspect, who is presumed innocent until otherwise is proven, is absent for the victim qua complainant, who most times have been violently victimised and yet not accorded any statutory protection of already victimised rights.

It is therefore advocated that the administration of criminal justice act, which is the main law for the administration of the criminal justice in Nigeria be amended to reflect the thinking that there should be a corresponding provision to the section 8(1) (a) cited above, which will also take care of situations where the police deny the victim-qua-complainant the needed "humane" treatment whenever and wherever necessary.

(ii). Police duty to conduct investigation

Part of the general duties of the police statutorily, is to conduct investigation into reports of crime brought before them. It has been argued that this duty to conduct investigation to reports of crime made to the Police though statutory but it is within their discretionary powers to comply. Thus, in the case of *Fawehinmi V. IGP*[565], the Supreme Court of Nigeria declared that:

> The Police have discretion whether or not to conduct investigation into any allegation of crime made to them and the court will not interfere if on the facts of a particular case the discretion is properly exercised. There is therefore nothing in section 4 of the Police Act which denies the Police of any discretion whether or not to investigate any particular allegation or when they decide to investigate to do so, to its logical conclusion. Thus the Police have the discretion in appropriate circumstances, in the way they carry out their duty. The need to exercise discretion in such a matter may arise from a variety of reasons or circumstances, particularly having regard to the nature of the offence, the resources available, the time and the trouble involved and the ultimate end result. It may well be balancing options as well as weighting what is really in the public interest. The discretion is not limited to the method of enforcement of Police powers.

[564]See Section 8(1)(a) ACJA (2015).
[565]Fawehinmi V. IGP (2002) 7 NWLR (pt 767) 606.

> Thus it is unconscionable that such wide powers and duties of the Police must be exercised and performed without any discretion left to responsible Police operations. Therefore when so exercised it is only in very obvious and exceptional circumstances that the court may interfere with the discretion[566].

The learned justice of the Supreme Court and his other justice in the panel[567] relied heavily on the judgement of Lord Denning M. R. in the case of R. V. Commissioner of Police of the Metropolis Exparte Blackbum[568]. The point which became very clear as a result of the Supreme Court decision cited above on the issue is that the Police cannot be compelled to investigate all reports of crime made to them.

For the purpose of this research, the fact is that whenever the Police "discretionarily" decide to investigate any report made to them by the victim-qua-complainant, the maker of this report is still expected to do all he or she can do to assist the Police to conduct a thorough investigation in the report or allegation before the decision to charge the case to court is made.

Upon the receipt of a complaint and assignment to the investigating police officer popularly known as "IPO", the IPO will thereafter commence investigation into the allegation. The investigation may involve taking down the statement of the victim-qua-complainant, witnesses and others. Those whose statements are expected to be taken down must also include the arrested suspect. It is the responsibility of the Police to carry out detailed and thorough investigation before the case is charged to court. This is very important in order to ascertain the truth or the veracity of the allegation or complaint, which must be proved with credible evidence "beyond reasonable doubt" that is, strong enough to get a conviction. Thus, in the case of *Akilu V State the Court of Appeal* (per Garba JCA)[569] was of the opinion that:

> The respondent through its agency, the Nigerian Police is charged by the law with the duty to investigate all allegations of commission of crimes reported to it by members of the Nigeria public. Investigations of crime particularly serious capital offences such as the one with which the appellants were charged, which are to be

[566]Fawehinmi V. IGP (2002) 7 NWLR (Pt 767) 606. Per Uwafor JSC at P. 673.
[567]Wali JSC (Presided) Ogundare JSC, Muhammed JSC, Onu JSC, Kastina-Alu JSC and Kalgo JSC.
[568]RV Commissioner of Police of Metropolis Exparte Blackbum (1968) 2 QB. 118.
[569]Atiku V. State (2010) 9 NWLR (pt 1199) 241 at 281.

> presented in the law courts are required to be professional, thorough and diligent[570]. Though the power and duty to investigate is discretionary, once the Police exercise the discretion in favour of conducting an investigation into the allegation of crime made before them, they must ensure that they conduct a thorough and diligent investigation into the allegation before them.

As Aina[571] puts it, there is no substitute for a thorough and diligent investigation into the allegations before them if the guilty are not to be freed for lack of evidence. Most times when the investigations by the Police are not thorough and diligently handled, it leaves the prosecutor (public or private) helpless and prevents the court from reaching a proper decision in the case before them. This researcher has witnessed occasions in court when Judges have lashed out to at the Police for shoddy investigations of cases in court. Thus, in the case of Jammal V. State, the court of Appeal per Chuwuma-Eneh JCA declared that:…

> But before making the final order in this case I will say that it is glaringly obvious from the totality of the evidence before the court that the investigation of this case leaves much to be desired. The tragedy of it all is that a case so straight forward as this case, could be so badly bungled up in the course of investigation. In practically every department of the case the strain of shabby investigation is seriously felt, there is so much of factual gaps and unresolved flows that call for little effort if not just shear presence of mind on the part of the Police to be closed up or tied up to make the prosecution's case stand on a fairly even ground[572].

A legal scholar[573] was of the opinion that a good investigation must seek to establish and seek to answer the obvious questions like the fact that an offence was actually committed; when, where and the offence was committed, the person or persons who are linked with the commission of the offence as well as every available evidence that links the suspect to the offence.

In agreeing with the legal scholar, it is our opinion, for the purpose of this study, that in all ramifications and steps taken in the conduct of the investigation by the Police on any allegation before them, the victim-qua-complainant's active participation is highly important and necessary, for a diligent prosecution of such cases. In Nigeria, the perception of the public on the effectiveness and efficiency of Police in the conduct of investigations of

[570]See also Jammal v State (1999) 12 NWLR (pt 632) 582, Aigbadion V State (2000) 7 NWLR (pt 66) 686.
[571]Aina A. A. (2014) The Nigerian Police Law. Lagos, Princeton . p 48.
[572]Jammal V. State (1999) 12 NWLR (pt 632) 582 at 599.
[573]Op cit Note 570

allegations placed before them is very poor, corroborating the above facts, Aina was of the opinion that:

> Generally, in Nigeria today, the general public has lost faith in the investigative competence of the Police because most obvious cases have been destroyed which have consequently allowed the guilty to escape as a result of the careless way the Police embarked on the investigation[574].

One of the major reasons why the public image of the Police has been on the lowest ebb is the treatment of victims–qua-complainants allegations or reports made to them. As noted in some of the literature[575] on Police, the confidence reposed in the Police by the victims and complainants alike on their ability to conduct diligent, thorough investigation are being eroded. Again, the treatment of the victims of crime by the Police during investigation received the judicial attention in the case of *Offorlette V. State*[576] where the Supreme Court per Ayoola JSC felt so disgusted and described as appalling the treatment of the victim – complianant in the case.

Ayoola JSC declared thus:

> The truth of the matter is that the whole case was improperly investigated and poorly prosecuted. The proper investigation should have revealed some degree of continuity between the blow to the deceased's head resulting in a swelling on the head and eventually result to medical treatment three months later.[577]

The above case and the pronouncement of the Supreme Court revealed the habitual neglect and abandonment of victim-qua–complainant by the Police during the investigation of cases reported to them. The opinion of the learned justice of the Supreme Court was to the effect that the death of the deceased could have been avoided or at best averted but for his abandonment and neglect of the victim in the course of the investigation by the Police in charge of the case. It is therefore advocated that a diligent and thorough investigation of crime by the Police, which is one of the greatest demands of an efficient and effective criminal justice administration, is strongly linked with an active victim's participation in the criminal justice process kick started by the said victim's report or complaint.

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[574]Op cit Note 292 p. 49.
[575]See generally for example Aremu A. O. (2009) Understanding Nigerian Police Lessons from Psychological Research, Ibadan Spectrum Books Limited. See generally also – Nwolise O. B. C. (2004) The Nigerian Police in Peace Keeping under the United Nations. Ibadan. Spectrum Books.
[576]Offorletter V. State (2000) FWLR (pt. 12) 2081.
[577]Ibid at p. 2102.

During the investigation of a reported crime, it is within the prerogative of the Police to invite for questioning or interrogating any witness or suspect in order to obtain useful information. Thus, in the case of *Joshua V State*, the Court of Appeal[578] observed that whenever a Police officer who is assigned to investigate a crime that has been reported to him such Police officer is empowered to invite for questioning any person whether such person is a suspect or not. So, such person is in the opinion of such Police officer may be connected with the crime. It does also matter whether the person so interrogated is already in Police custody or not. The above observation by the Court of Appeal goes to a great extent to accentuate the plight of the victims of crime during most of Police investigation. The victims of crime are mostly abandoned and neglected by the Police during the investigation into a crime reported to them. It is an obvious fact that on most commissions of crime the victims-qua–complainants have answers to most questions which may lead the Police into proper conduct of a diligent and unbiased investigation which should be their priority whenever a case is reported to them.

(iii). Police power to release on bail

Bail is simply a term used when a person charged or arrested for a criminal offence is released from Police custody until his next appearance in court or at the police station[579]. The Police is allowed to release a suspect on bail where investigation cannot be completed within the time prescribed by law for bringing a suspect before the court.[580] The release may be with or without surety or depending on the circumstances of the case, the suspect may be released on self recognizance.

Any person arrested by the Police whether with or without a warrant of arrest, should be taken to a police station within a reasonable time, or as soon as possible or with all reasonable dispatch. As Aina opined that the suspect arrested by the Police must not be taken to a private home, hotel or any other place except Police station, in fact, the suspect must not be diverted to any other building even within the premises of the Police station. In some cases even if the suspect is taken into police station the arrest is not formally recorded in the diary of the police station. This practice is

[578]Joshua V. State (2009) FWLR (pt 242) 450; see also Nwachukwu V. State (2002) 2 NWLR (pt 751) 366.
[579]Op cit Note 292 p. 62.
[580]See Section 27, Police Act, Cap p 19 LFN 2004.

unlawful and illegal[581]. It is a constitutional requirement for any suspect arrested and or detained as a result of allegations of committing an offence, to be released on bail because a suspect is presumed innocent. Thus, the 1999 constitution provides that:

> Every person shall be entitled to his personal liberty and no person may be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law.For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence[582].

A critical appreciation of the above constitutional provision reveals that the constitution allows a person to be denied of his right to personal liberty if it was to bring him before a court in execution of the court order or his is suspected of having committed an offence, what the constitution forbids is that a suspect must not be detained endlessly. The detained person or suspect must be charged before a court of law within 24 hours or 48 hours where the court is not within reach[583]. Thus, the 1999 constitution provides that:

> Any person who is arrested or detained in accordance with subsection (1)(c) of this section shall be brought before a court of law within a reasonable time…[584]

A critical interpretation of the constitutional provision above is that if in any case the Police, during their investigation, found out that it may not be in the best interest of the victim-qua–complainant and or the society, to release on bail the suspect arrested and detain within 24 or 48 hours, the Police should approach the court and charge such suspect. It goes to establish the fact that the Police are not under any compulsion to release on bail any suspect or all suspects especially when, in the opinion of the Police in charge of the station, it is better to approach a court to press a charge.

[581]Aina A. A., (2014) the Nigerian Police Law, Lagos Princeton p 59.
[582]See section 35(1) of the Constitution of the Federal Republic of Nigeria 1999 CFRN.
[583]See section 35(5)(a) & (b) of the CFRN 1999 (as amended).
[584]See section 35(4) of the CFRN 1999 (as amended)

With respect to the victims' participation model in the Nigerian criminal justice process, the law should provide that victim's opinion should be taken into consideration in the event, the Police either decides or has any reason to release a suspect on bail or to be charged to court. The point this research is making here is that, most times when a crime is reported to have been committed, and the Police apprehend the suspect and possibly detain, the moment there is any 'big man' soliciting for the release of such suspect, the suspect are mostly released even before investigation or when the investigation has commenced before the conclusion of such investigation, on the pretence that they cannot keep such a suspect more than 24 hours without releasing him on bail. This is mostly done without recourse to the interest or the plight of the victims of the crime committed. This is not too good.

It is hereby advocated that the victims should be allowed to participate in the decision to release on bail or charge to court whenever such a decision is likely to be embarked upon by the Police at the police station. This suggestion is borne out of the findings of this researcher that most times, the feelings of the victims of the crime are not taken into consideration before any suspect is released on bail in fulfillment or otherwise, of the constitutional provisions. Most times, the suspects are released by the police just few hours of the commission of the offence and the arrest of the suspect only for the released suspect to be reported to have committed another higher or bigger offence, when he has neither been tried for the first offence, nor been found guilty and punished. The fact still remains that the victims of crime and suspects belong to the same society and the Police owes a duty to protect them all and to do justice to all.

The suggestion above is intended to fill the gap in the law with the intention and objective to make applicable the victims' participation model in the administration of justice of Nigeria, so that victims of crime will have a say and participate fully in the criminal justice process of the crime against him/her.

(iv) Police power to prosecute cases in court

It is a known fact that the police power to prosecute cases in any court of law in Nigeria has been laid to rest in many cases which include Oluseemo V. COP[585], Ajakaye V. FRN[586] and Osahon V FRN[587]. This is by virtue of the interpretation of the provision of the constitution and of the Police Act by the Supreme Court on the issue. However, what is relevant to this research under this topic is the fact that, whenever the Police are made to prosecute cases, especially at the magistrate court victim participation is limited to mere witness and as most police prosecution often says if he/she decides to make himself/herself available he/she will be called as witness and that it is not compulsory for the victim to be involved in his case after all 'it is his case'.

The issue of the Police power to prosecute cases in court shall therefore be examined within the template of the examination of the application of the victim participation model to the prosecution by the Police in courts. By virtue of the provisions of the law, the power of the Police to prosecute criminal cases in any court in Nigeria is provided for. Section 193 Administration of Criminal Justice provides:

> Subject to the provision of Section 174 and 211 of the constitution of the Federal Republic of Nigeria 1999 (which relates to the power of the Attorney General of the federation and of a State to institute and undertake, takeover and continue or discontinue criminal proceedings against any person before any court of law in Nigeria) any officer may conduct in person all prosecutions before any court, whether or not the information or complaint is laid in his name[588].

After the conclusion of Police investigation on any matter, and the Police is satisfied that a suspect has a prima facie case established against him, or that there is enough evidence against the person based on the investigation they have conducted, they will proceed to prepare a charge against such suspects. A charge is a document filed in court containing the

[585]Olusemo V. COP (1998) 11 NWLR (pt 525) 547.
[586]Ajakaye V FRN.
[587]FRN V. Osahon (2006) 2 SCM 157.
[588]Section 23, Police Act Cap p. 19, LFN 2004.

offence(s) committed by the accused person[589]. A charge sheet may be divided into several counts[590]. The charge should contain such particulars as to the crime and place of the commission of the crime or the offence and the person so charged as well as the person, if any, against whom or thing, if any, in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged[591].

The charge filed at the Magistrate court is mostly drafted by the Police in such cases, the charge is signed by a Senior Police office. The general principle of criminal procedure is that in drafting a count, the prosecution should follow the words used in the section under which the count is laid. But a count which does not contain the exact words used in the charging section is not necessarily bad; so far the accused person is not misled in the circumstance[592].

A defective charge could in appropriate cases be cured, as defect in a charge which does not render it bad in law cannot nullify a conviction, so long as an offence known to law is disclosed in the charge. Thus, the fact that a charge did not disclose all the particulars of an offence will not lead to reversal of judgement on appeal if it is shown that the accused was not misled[593].

After the charge has been prepared, the charge sheet with the case file as compiled by the Police, shall then be taken to the court with the accused person at a named date if the accused is still in the custody of the Police he shall be taken to the court with the Police but when the accused has been released on police bail he may be asked to come to the court from his/her house with the sureties. At the magistrate court, the charge is thereafter registered and the charge shall be numbered accordingly by the court official in charge of registering charges. The charge is thereafter handed over to the court as assigned in the registered charge and the copies shall be deposited with the police prosecution in charge of the court for filing. In most of the states of the federation, there is always a designated chief magistrate with the responsibility of assigning cases to magistrate court. It is also important to note that police prosecution are assigned to every magistrate court, each expected to

[589]Section 194(1) of the ACJA 2015.
[590]Section 193 ACJA 2015.
[591]Section 196(1) ACJA 2015.
[592]See Asuquo V The State (1967) 1 All NLR 123.
[593]See Ijeoma V. Queen (1962) 2 SCNLR 157, Obumesbiu V COP (1968) SCNLR464; COP V Okoyen (1964) 1 All NLR 305; see also section 195 ACJA 2015.

handle all criminal cases assigned to that magistrate court except those cases that have been initiated or taken over by the Attorney General of the state in accordance with the provision of the constitution on the powers of the Attorney General of a state[594] or the Attorney General of the Federation[595].

The police prosecution assigned to each Magistrate Court will then serve a copy of the charge sheet on the accused person or his counsel and the matter will be dealt with by the court accordingly[596]. As stated above, the copies of the duly registered charge sheet are distributed by the police officer(s) in whose company the accused person came to court to answer to his charges. There is no law, which forbids that a copy of the charge should not be given to the victim-complainant for proper examination or to be given to the victim-complainant immediately after the drafting of such charge and before it is filed and registered in court. The situation in practice is that the victim-complainants are not consulted during the drafting of the charge; they are not even allowed to see the charge sheet whether at the police station or after being registered in court. Many a times when the charges prepared by the Police against the accused are totally different from the report laid before the Police and the outcome of the Police investigation. Many times, in practice the victim-complainant disagree with the Police prosecution on the charge preferred against the accused even in court before the presiding magistrate.

For the situation above happened in the case of COP V Kayode Faoye[597], the victim-complainant reported a case of attempted murder and armed robbery to the Police and the Police after the investigation decided to charge the accused with malicious wounding so that the accused person can be released on court bail and escape being found guilty. The accused was later released on bail by the magistrate court even when the victim-complainant was still unconscious at the hospital. During the trial of the case by the magistrate court, the victim-complainant was able to secure the service of a lawyer to watch the brief for the complainant-victim. The complainant-victim's lawyer was able to establish that the Police

[594]Section 211 of the 1999 Constitution of Federal Republic of Nigeria Cap C28 LFN 2004.
[595]Section 174 of the 1999 Constitution of Federal Republic of Nigeria Cap C28 LFN 2004.
[596]Op cit Note 1 p. 73.
[597]COP V. Kayode Faoye (unreported) Charge NO MI/259C/14. The case is just one of the cases handled by this researcher probono. This researcher is the legal practitioner representing the victim-qua-complainant in the case.

indeed manipulated the investigation in order to assist the accused. The magistrate thereafter ordered that the proper charge be preferred against the accused.

It is hereby submitted from the standpoint of the victim's participation model that the victim-complainant should be consulted during the drafting of the charge and the registration of such a charge before the arraignment of the accused in court. In instituting a criminal proceeding in court, the Administration of Criminal Justice Act[598] provides….

(a). in a magistrate court by a charge or a complaint whether or not an oath or upon receiving a first information report;

(b). in the High Court, by information of the Attorney-General of the Federation subject to section 104 of this Act;

(c). by information or charge filed in the court after the defendant has been summarily committed for perjury by a court under the provision of this Act;

(d). by information or charge filed in the court by any other prosecuting authority; and

(e). by information or charge filed by a private prosecutor subject to the provision of this Act.

The Act further provides that criminal proceedings instituted in a magistrate court may be by bringing a suspect arrested without warrant before the court on a charge contained in a charge sheet specifying the names, address, age, sex and occupation of the suspect charged, the charge against him and the time and place where the offence is alleged to have been committed, and the charge sheets shall be signed by any of the persons mentioned in Section 106 of this Act[599].

The provision of the Administration of Criminal Justice Act which made the server of the charge sheet on the defendant or his Counsel within seven days of the filing, of such charge sheet, does not contain a corresponding section for the service of the charge sheet on the complainant-victim or his/her counsel[600].

It is hereby advocated that this lacuna in the law should be adequately addressed.

[598]Section 109 (a) – (e), ACJA 2015.
[599]Section 110(1) ACJA 2015.
[600]Section 110(2) ACJA 2015.

5.8 Arraignment and plea taking by the accused in court

The arraignment of the accused thereafter follows after the suspects has been brought to court through any of the five methods as provided for in section 109(a) – (e) of the Administration of Criminal Justice Act. Arraignment of the person to be tried has been defined as the bringing before a court a person or any person to be tried upon any charge or information[601]. The person shall be placed before the court unfettered unless the court shall see cause otherwise to order and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court and such person shall be called upon to plead instantly thereto unless where the person is entitled to service of a copy of the information he object to the want of such service and the court finds that he has not been duly served therewith[602].

During this arraignment, the accused is expected to take his plea. The Administration of Criminal Justice Act 2015 made elaborate provision regarding plea generally. This is contained in its part 28 comprising of section 270 – 277 of the Act[603]. This section contains a very elaborate provisions on the defendant's right to plea bargaining as well as the procedure for such; it also contains elaborate provision on the right and interest of the victim in the exercise of the right to plea bargaining by the defendant. These provisions are very novel in the new Administration of Criminal Justice Act. This is because the provisions are not contained in the repealed Acts[604] which has been in use before the passing of the new Act in 2015. The purport of this provision shall be discussed to bring out the salient and novel point in it to the effect of demonstrating the objective of this study – the participation of the victim in the administration of criminal justice in Nigeria. Under the provisions of the Administration of Criminal Justice Act of 2015, the defendant (accused) who has been brought to court upon a charge (if he is brought to the Magistrate Court) and information (if he brought to the High Court), are afforded the opportunity to plea bargain upon such charge on information with which he has been brought to court. Thus it provides:

[601]Kajubo V. The State (1988) 1 NWLR (pt. 73) 721 see also, Ewe V. the State (1992) 6 NWLR (pt. 246) 147; Erekanure V the State (1993) 5 NWLR (pt 294) 385.
[602]Section 271(1)(2) and (3) of ACJA 2015.
[603]Part 28 of ACJA is titled, plea bargain and plea generally comprising section 270 – 277 are new provisions.
[604]The repealed Criminal Procedure Act (CPA) and the Criminal Procedure Code (CPC).

> Notwithstanding anything in this Act or any other law, the prosecutor may receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf; offer a plea bargain to a defendant charged with an offence[605].

The provision gives ample opportunity to any defendant to plead guilty to an offence as it relates to the appropriate sentence or a range of punishment; thus the defendant or his legal practitioner may, before the plea to the charge, enter into an agreement in respect of:

> The term of the plea bargain which may include the sentence recommended within the appropriate range of punishment stipulated for the offence or a plea of guilty by the defendant to the offence(s) charged or a lesser offence of which he may be convicted on the charge; and an appropriate sentence to be imposed by the court where the defendant is convicted of the offence to which he intends to plead guilty[606].

The provisions above are to the effect that, taking a pleas and opportunity to plea bargain is exclusive to the defendant and his legal practitioner. It is an agreement which the Act affords the defendant who is facing a criminal charge in court to enter with the prosecution of the case on behalf of the state. The act thereafter makes provisions that such an agreement may only be entered into after the consultation with all other stakeholders in the criminal justice process. Thus, the Act provides:-

> "The prosecutor may only enter into an agreement contemplated in subsection (3) of this section":
>
> (a). after consultation with the Police responsible for the investigation of the case and the victim or his representative; and
>
> (b). with due regard to the nature of any circumstances relating to the offence, the defendant and the public interest[607].

[605]Section 270(1)(a) & (b) ACJA 2015.
[606]Section 272(4)(a) and (b) ACJA 2015.
[607]Section 270(5)(a) and (b) ACJA 2015.

The Act did not stop at providing that public interest angle should also be considered before entering into such agreements with the defendant it further provides that in determining whether the agreement of plea bargain to be entered into is actually in the interest of the public, the prosecution shall weigh all relevant factors which must include[608].

i. the defendant's willingness to cooperate in the investigation and prosecution of others;
ii. the defendant's history with respect to criminal activity;
iii. the defendant's remorse or contribution and his willingness to assume responsibility for his conduct;
iv. the desirability of prompt and certain disposition of his case;
v. the likelihood of obtaining a conviction at trial and the probable effect on the witness;
vi. the probable sentence or other consequences if the defendant is convicted;
vii. the need to avoid delay in the disposition of other pending cases;
viii. the expense of trial and appeal; and
ix. the defendant's willingness to make restitution or pay compensation to the victims where appropriate[609].

The provision of the Act as cited above made it mandatory for the prosecution, before entering into the agreement of plea bargain with the defendant's and his legal practitioner, as well as the Police to weigh the public interest in terms of the interest of the victim to the effect that, before entering into such an agreement, the defendant's willingness to make restitution or pay compensation to the victim of the crime under trial where appropriate, is made compulsory.

This provision has made a lot of improvement on the previous position where plea bargaining agreement is only between the prosecution and the defendant where the victim of crime is made a second class onlooker in his case or neglected and relegated to the background. The exercise of plea bargain as a right or choice of the defendant to explore in

[608]See the proviso to section 270(5)(a) and (b) ACJA 2015.
[609]Section 270(5)(a) and (b)(i – ix) ACJA 2015.

the criminal justice process is one of the very important aspect where the victim participation should always be held sacrosanct and respected for the efficient and effective criminal justice delivery.

It is also novel that, the Act provides from the beginning that the prosecution may enter into plea bargaining with the defendant only with the prior consent of the victim or his representative. Thus, the Act provides….

> The prosecution may enter into plea bargaining with the defendant, with the consent of the victim on his representative[610] …

It is therefore not out of place and as a matter of fact a very laudable improvement of the role and involvement of the victim of crime in the criminal justice process that at least on the aspect of entering into an agreement of plea bargaining the victim's interest and plight is adequately taken care of. The resultant effect of the active participation is that the outcomes of the criminal justice process is adequately desirable to the victim of the crime as it is to both the defendant and the society thereby completing the cycle of criminal justice process tripod – justice to the defendant, to the society and to the victim of crime.

In line with the above, the new Administration of Criminal Justice Act makes further provision for reparation and compensation of the victim of crime by the defendant at the end of the trial. The act mandated the presiding judge or magistrate to do the needful in the restoration of the victims of crime. Thus,

> The presiding Judge or Magistrate shall make an order that any money, asset or property agreed to be forfeited under the plea bargaining shall be transferred to and vest in the victim or his representative or any other person as may be appropriate or reasonably feasible[611].

The above provision made it mandatory for the presiding judge or the magistrate to so order any property or asset as agreed to be forfeited and as contained in the plea bargain

[610]Section 270(2) ACJA 2015.
[611]Section 270(12) ACJA 2015.

agreement entered into between the prosecutor and the defendant with the active participation and consent of the victims.

Again, the Act makes provision to mandating the prosecutor to take all steps reasonable to implement the order of the court regarding the forfeited property of the defendant. The Act provides…..

> Notwithstanding the provision of the sheriff and civil process act, the prosecutor shall take reasonable steps to ensure that any money, asset or property agreed to be forfeited or returned by the offender under a plea bargain are transferred to or vested in the victim, his representative or other person lawfully entitled to it[612].

In the above provision the use of SHALL makes it mandatory of the prosecutor to implement and execute the order of court on the money, asset and property of the defendant so forfeited. In the same tone, the act further provides that any person who obstructs or attempts to obstruct the vesting or transfer of money or asset or property as provided by this Act is guilty of an offence and liable to imprisonment. The Act provides that:

> Any person who willfully or without just cause obstructs or impedes the vesting or transfer of any money asset or property under this act shall be guilty of an offence and liable to imprisonment for 7 years without an option of fine[613].

The provision above is very laudable because it criminalises any attempt to obstruct and or manipulate or cut corner in the restoration and reparation process of the crime victim in the criminal justice process.

5.9 Bail application by the defendant

After the defendant has been properly arraigned and his plea successfully taken, the next stage of the criminal process is the application for bail by the defendant by his counsel even if such defendant has been admitted to bail by the Police while in Police custody. This means that a defendant may be allowed to come to court for arraignment from home if he is already enjoying Police bail; this is within the powers of the Police under the Nigeria Criminal Administration. Thus, the Police Act states that….

[612]Section 270(13) ACJA 2015.
[613]Section 270(14) ACJA 2015.

> "When a person is arrested without a warrant, he shall be taken before a Magistrate who has jurisdiction with respect to the offence with which he is charged or is empowered to deal with him under section 484 of the Criminal Procedure Act as soon as practicable after he is taken into custody:..

Provided that any Police office for the time being in charge of a Police station may inquire into the case and except when the case appears to such officer to be of serious nature, may release such a person upon his entering into a recognisance with or without sureties for a reasonable conduct to appear before a Magistrate at the day time and place mentioned in the recognisance or –

> If it appears to such officers that such inquiry cannot be completed forthwith, may release such a person on his entering into a recognisance with or without sureties for a reasonable amount to appear at such a police station and at such times as are named in the recognisance unless he previously receives notice in writing from the superior police officer in charge of that police station that his attendance is not required and any such bond may be enforced as it were a recognisance conditional for the appearance of the said person before a Magistrate[614].

The Administration of Criminal Justice Act also provides for a situation when it is impracticable to bring the suspect arrested before a court within reasonable time, that is, twenty-four (24) hours after the arrest mainly to non-availability of a magistrate court within the jurisdiction of the police station where such arrest is effected[615]. The Act also makes provision for situation where the offence for which the suspect was arrested is non-indictable offence either than an offence punishable with death in the two situations above the police or the office in charge of the police station is empowered to release such suspect on bail[616].

On the application of the victim's participation to the issue of police bail to the suspect; it is hereby submitted that such bail should not be granted without due consultation with the

[614]Section 27(a) and (b) Police Act Cap p19 LFN 2004.
[615]Section 30(1) ACJA 2015.
[616]Section 30(2) ACJA 2015.

victim of the crime, as well as the complainant. What is being said here is that the grant or otherwise of such bail to the suspect by the Police should not be a unilateral decision of the officer in charge of the police station, as the Act contemplates.

The point being raised here is that since the power to release a suspect on police bail is a statutory one, the act itself gave two conditions for the exercise of such power by the Police that is- (1) when it appears to the Police that the offence committed by the suspect is not an offence punishable with death and (2) where it will not be practicable to bring the suspect before a court having jurisdiction with respect to the offence alleged within twenty-four (24) hours after the arrest. It is hereby submitted that it is not out of place to impose a third condition to the conditions above with respect to the involvement of the victims/complainants of such offence to the effect that, wherever the two conditions are satisfied and before the eventual release of such suspect, the police officer in charge of police station should bring the victims of the crime into consultation before such a release is perfected.

The advantage of the additional condition being proposed is that, most times Police are accused of involving in hanky-panky dealings whenever it has to do with the issue of the release of suspects arrested for non-indictable offence on bail. However, most of those allegations against the powers of the Police to release on bail any suspect based on the conditions above is bound to disappear once the victims are involved in the decision to grant or not to grant suspect bail based on the two statutory conditions. It is hereby the humble submission of this researcher that the Police Act as well as the Administration of Criminal Justice Act be reviewed to include the proposed third condition in order to ensure that in the exercise of the Police power to grant bail to any suspect is with the victim participation and not unilaterally exercised by the Police. The discussion can now be centered on the grant or refusal of bail to the defendant of crime who have been brought before a court having jurisdiction over the crime committed and after the arraignment and plea taking. The Administration of Criminal Justice Act provides:

> When a person who is suspected to have committed an offence or is accused of an offence is arrested or detained, or appears or is brought before a court, he shall, subject to the provision of this act be entitled to bail[617].

The purport of the above provision is that there is no offence committed for which there is no consideration for and grant of bail. In effect, there is no one who has committed an offence, and has been brought before a court for trial to answer to the charges brought against him that may not be entitled to bail only in accordance with provision of the Act.
The Act provides that the magistrate court has jurisdiction to grant bail to any person brought before it on the charges of non-indictable offences and other serious offences for which the magistrate court has jurisdiction to hear and determine. But the magistrate court does not have jurisdiction to hear and determine a capital offence punishable with death[618].
Thus, the Administration of Criminal Justice Act provides:

> A suspect arrested, detained or charged with an offence punishable with death shall only be admitted to bail by a judge of the High Court, under exceptional circumstances[619].

The Act went further to define the exceptional circumstances for the purpose of a court in the exercise of its discretion in admitting bail to offenders of capital offence punishable with death. The Act states:-

> For the purpose of exercise of discretion in sub section (1) of this section "exceptional circumstances" includes:
>
> (a). the health of the applicant which shall be confirmed by a qualified medical practitioner employed in a government hospital, provided, that the suspect is able to prove that there are no medical facilities to take care of his illness by the authority detaining him;
> (b). extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year; or

[617]Section 158 ACJA 2015.
[618]Section 161(1) ACJA 2015.
[619]Section 161(1) ACJA 2015.

(c). any other circumstances that the judge may in the particular facts of the case consider exceptional[620].

The Act also provides for a defendant who is charged with an offence punishable with imprisonment for a term exceeding three years shall on application to the court be released on bail except….

where there are reasonable grounds to belief that the defendant will where released on bail commit another offence[621];

attempt to evade his trial[622], or attempt to influence, interfere with intermediate witnesses, and or interfere in the investigation of the case[623];

attempt to conceal or destroy evidence[624], or prejudice the proper investigation of the offence[625] ; or

undermine or jeopardize the objectives of the purpose or the functioning of the criminal justice administrations, including the bail system[626].

The above provisions of the act is to the effect that the court faced with the grant or refusal of bail to the defendant or the suspect has a lot of discretion to exercise in favour or against the application for bail as espoused in the above provisions. The Act has however placed some conditions before any offender applying for bail or the circumstance upon which the judge may be influenced to exercise his discretionary power to grant or not to grant bail.

The proposed victim's participation model can therefore be applied at this point. The victim's participation can be applied as one of the conditions to be fulfilled before a court can exercise his discretion in favour of the grant of bail. The administration of criminal justice act does not have any provision which made the interest and involvement of the victim of crime a prior condition before the exercise of discretion of the judge to grant the bail application, especially when the Act provides that….

[620]Section 161(2) (a) – (c) ACJA 2015.
[621]Section 162(a) ACJA 2015.
[622]Section 162(b) ACJA 2015.
[623]Section 162(c) ACJA 2015.
[624]Section 162(d) ACJA 2015.
[625]Section 162(c) ACJA 2015.
[626]Section 162(f) ACJA 2015.

> The condition for bail in any case shall be at the discretion of the court with due regards to the circumstances of the case and shall not be excessive[627].

Here, the condition above which the Act stipulates not to be excessive should include a condition which should address the interest of the victims of the crime committed for which, bail may be granted the offender.

Again, under the act, the court may require the deposit of a sum of money or other security as the court may specify from the defendant or his surety before the bail is approved[628]. This money is only for the security of the trial that is to secure the attendance of the defendant to be in attendance as every court sitting for his trial. The said money did not include the money to restore or at best assuage the injuries of the victims of the crime, especially when the act also provides that…

> The money or security deposited shall be returned to the defendant or his surety or sureties as the case may be, at the conclusion of the trial or on an application by the surety to the court to discharge his recognisance[629].

This is grossly unfair to the victim of the crime who has suffered several injuries and thereafter being neglected. If any money collected from or paid by the defendant may be returned to him at the conclusion of the case against him,[630] especially when the Act does not state whether such money should be retained if he was not found guilty or only when he is discharged and acquitted, this means even if the offender is found guilty, at the end of the case so far as his attendance at every court hearing is assured the money paid to the court for being released on bail will be returned. It is hereby suggested that the act should contain a provision which shall state that in the event of the court exercising his discretion in favour of the grant of bail to the accused, the interest and the injuries sustained by the victim should be properly addressed before such bail application is granted and approved. This will go a

[627]Section 165(1) ACJA 2015.
[628]Section 165(2) ACJA 2015.
[629]Section 165(2) ACJA 2015.
[630]Section 165(3) ACJA 2015.

long way in assuaging the suffering of the victim caused by the offenders whenever the offender is seen in the community when he is out of the custody.

The example of a victim of rape case readily comes to mind as a good example of the kind of feeling and psychological torture being suffered by the victim of a rape case whenever the rape offender is released on bail for the victim and the offender being a member of the same community even neighbours.
Again, the Act provides that…

> Where a defendant is brought before a court on any process in respect of any matter not included within sections 158 to 163 of this act, the person may at the discretion of the court be released on his entering into recognisance, in the manner provided in this act, for his appearance before the court or any other court at the time and place mentioned in the recognisance[631].

Again here, the provision above should also contain a clause which will address the victim participation in the exercise of the discretion of the court in that circumstance.

5.10 The participation of the victims during trial

The involvement of the victim during the trial is not so clearly stated in the Administration of the Criminal Justice Act. What is obvious in the Nigerian criminal justice process is that victim(s) may be called as witness(es). This is because in Nigeria the prosecutor represents the complainant-qua-victim. This means that the complainant-qua-victim has no right to be separately represented by a counsel unlike the right which is available to the defendant under the Constitution of the Federal Republic of Nigeria, an accused has the right to represent himself at his trial or by his legal representation[632]. This is a constitutional right which is open or available only to the accused or the defendant.

The constitution further provides that a defendant or the accused has the right to examine the prosecution witness either in person or by his legal representation. Thus, in subsection (d) of the subsection (6) of section 36, the constitution states that every person who is charged with a criminal offence shall be entitled to:

[631]Section 164 ACJA 2015.
[632]Section 36(6) of the CFRN 1999. See also Section 267(1) ACJA 2015.

> Examine in person or by his legal practitioner the witness called by the prosecution before any court or tribunal…[633]

There is no corresponding provision in favour of the complainant-qua-victim anywhere in the constitution. One may therefore say that the provision of the Administration of Criminal Justice Act that….

> The complainant and defendant shall be entitled to conduct their cases by a legal practitioner or in person except in trial for capital offence or an offence punishable with life imprisonment[634].

This provision only accentuates the lopsided situation of the complainant-qua-victim in the Nigerian criminal justice administration. Under the administration of the criminal justice in Nigeria, prosecutor is adjudged as the legal representative for the complainant-qua-victim and therefore the prosecution is there to protect the interest of the victim. It should be noted that the other two parties to a criminal justice process that is, the accused and the society are also represented by a separate legal representative. Thus, the accused or the defendant is constitutionally represented by a legal representative, while the prosecutor represents the interest and the value of the society that is, the state. It is therefore abnormal not to allow the complainant-qua-victim to be represented by a legal representative as the other two parties.
The situation above is an age-long misconception where the belief is that the interest of the prosecution, and by extension, the society will always align with that of the complainant-qua-victim. This is not always so, the prosecutor has a duty to do that is, the law enforcement duties of the office of the Attorney General through the office of the Public Prosecution (DPP). This situation also goes a long way to demonstrate the reason for the neglect of the complainant-qua-victim in the Nigeria criminal justice system process.

It is hereby submitted that it is a misnormal for the complainant-qua-victim not to be accorded the same constitutional guarantee for the protection of his right like the defendant and the society (state).

[633]Section 36(6)(d) of CFRN 1999.
[634]Section 267(1) ACJA 2015.

The situation above would be examined further in this study during the discussion on the application of the victim's participation under the International Criminal Court (ICC).
Again, since the complainant-qua-victim does not have the right to be represented by a legal practitioner during the trial, such a victim may be prejudiced during the prosecution witness and the cross examination of the defendant witnesses. This is because a complainant-qua-victim is only a witness himself, and as such he is not entitled to have his own witness or to cross examine the defendant's witness. This opportunity for the complainant-qua-victim is taken for granted in the Nigerian Criminal Law and Procedure.

The main legal framework for the criminal procedure law in Nigeria, the Administration of Criminal Justice Act of 2015 made obvious the fact that the main duty of a prosecution in any criminal trial is to prove the guilt of the accused thus:

> After the plea of not guilty has been taken or no plea has been made, the prosecutor may open the case against the defendant stating shortly by what evidence he expects to prove the guilt of the defendant[635].
> The prosecutor shall then examine the witnesses for the prosecution who may be cross-examined by the defendant or his legal practitioner and therefore re-examined by the prosecutor, where necessary[636].
> After the case of the prosecution is concluded the defendant or the legal practitioner representing him if any is entitled to address the court to present his case and to adduce evidence where so required[637].

In all the three situation sited above, the complainant-qua-victim was never mentioned at all and this is informed by the fact that, the belief, though erroneous, is that the interest and the concerns of the complainant-qua-victim could adequately be protected by the prosecutor whose main function in any criminal trial is first and foremost to proffer evidence to prove the guilt of the defendant. The question which readily comes to mind is that even if at a time the interest of the prosecutor tallies with that of the prosecutor and where the prosecutor has

[635]Section 300(1) ACJA 2015.
[636]Section 300(2) ACJA 2015.
[637]Section 301 ACJA 2015.

been relied on to protect this interest, and also to prove the guilt of the defendant, one may therefore ask, who then ensures whether in doing this the prosecutor satisfies the complainant-qua-victims' yearnings in the same way as trying to ensure the enforcement of law function of his officer. It is hereby submitted that the criminal justice process in Nigeria fails to ensure that effectiveness and the efficiency of the prosecution protecting the interest of the complainant-qua-victim and balancing this function with the enforcement of the law function which is his primary and main function in the Nigeria criminal law and procedure.
Furthermore, the Administration of Criminal Justice Act provides the opportunity for the defendant to present a no case to answer after the case of the prosecution and before the defendant's case begins. The Act provides:

> The court may, on its own motion or on the application by the defendant, after hearing the evidence of the prosecution, where it considers that the evidence against the defendant or any of several defendants is not sufficient to justify the continuation of the trial, record a finding of not guilty in respect of the defendant without calling on him or them to enter his or their defense and to defendant shall accordingly be discharged and the court shall then call on the remaining defendant, if any to enter his defence[638].

At this point, the court will serve the interest of justice to fall back on the victim participation by calling on the victims to make presentation in terms of objecting to the no case to answer by the defendant or to present his claim for the possible compensation by the defendant. But the criminal justice process in Nigeria does not recognise this as it is under the International Criminal Court (ICC). The situation shall be explored further under the ICC in the next phase of this chapter.

5.11 Conviction of the defendant

At the conclusion of every criminal trial, the verdict will either be guilty or not guilty. Conviction of the defendant therefore means that the defendant is guilty of the offence. Under the Administration of Criminal Justice Act, conviction is an act of adjudging a person who has been standing trial for offence to be guilty of a punishable offence[639]. It is statutory that conviction must come before sentencing although some judges however do not follow the rule; thus, in the case of Oyediran V the Republic, the Judge did not convict the accused

[638]Section 302 ACJA 2015.
[639]See Iyalekhue V. Omoregbe (1991) 3 NWLR pt. 177 at 194.

on some of the counts before passing the sentence, the Apeal court declared the sentence null and void. It was also held in that case that where there are more than one accused, a separate verdict must be returned in respect of each accused person[640].

Once there is conviction, the Judges gives audience to the accused or his legal representatives or any person interested to speak on behalf of the accused. He may plead especially as to his character or where he is a first offender or the age of the accused. This is what is known as allocutus. The number and the age of dependant on the accused can also form part of the allocutus.

The Act provides:

> Where the finding is guilty the convict shall, where he has not previously called any witnesses to character, be asked whether he wishes to call any witnesses and after the witnesses, if any, have been heard he shall be asked whether he desire to make any statement or produce any necessary evidence or information in mitigation of punishment in accordance with section 311(3) of this Act[641].

This provision under this Act does not also take into consideration the interest of the complainant-qua-victim. The provision above is one of the lopsided situations against the interest of the victims. There is no reason why the Act cannot also provide for the protection of the victim's concerns and interest at that stage of the proceedings. The Act only later at the sentencing stage, remembers that where there is an accused there also should be a victim (whether direct primary, indirect or secondary victim). Thus the Act states that…

> Where the provisions of section 310 of this act have been complied with, the court may pass sentence on the convict or adjourn to consider and determine the sentence and shall this announce the sentence in open court[642].

[640]Ibid. See also the case of Bankole V State (1980) 1 NCR 334; Police V Yesufu (1960) LLR 140.
[641]Section 310(1) of ACJA 2015.
[642]Section 311(1) of ACJA 2015.

The Act, in remembering that there is also the victim whose interest has to be taken care of provides further that:

(a). The court shall, in pronouncing sentence, consider the following factors in addition to section 239 and 240 of this Act,
(b). The interest of the victim, the convicts and the community[643].

Although the inclusions of the sub section (b) of the section 311(2) is very novel but the subsection should have been included also at the conviction stage of the criminal process. This is because the 'interest of the victim to be considered by the court is only possible if the accused is already pronounced guilty that is, after he has been convicted and not before. So the situation is that whatever claim or interest of the victim presented to the court at the sentencing stage would amount to nothing if the accused has been found not to be guilty and therefore discharged and acquitted.

Again, the Act provides that a court has power to award compensation to a victim thus:-

> Notwithstanding the limit of its civil or criminal jurisdiction, a court has power in delivering its judgement to award to a victim commensurate compensation by the defendant or any other person or the state[644].

The question which readily comes to mind is that the compensation provided for by section 314(1) would be a compensation based on no claims from the victim who have not been allowed any participation to present any claim or any special interest worthy of being protected by the court. It is hereby suggested that such a compensation would be a compensation assessed from a unilateral opinion of the judge which is not based on any finding from the presentation of the victim himself but assessed outside him, because he was never allowed to present any claim during the trial. This is unlike what operates at the International Criminal Court where the victim is allowed to participate from the beginning

[643]Section 311(2)(b) of ACJA 2015.
[644]Section 314(1) of ACJA 2015.

of the criminal process that is, investigation stage to the end of the process through trial stage to the reparation stage which is the post-trial stage of the criminal process.

CHAPTER SIX

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

6.1 Introduction

This chapter discusses the findings of the study in view of the discussion in chapter one which is the general introduction of the study through chapters two, three and four. Out of the findings of this research as encapsulated summarily in this chapter, some far reaching recommendations, which are aimed at bringing the main objectives of this study to fulfillment, are also discussed and the thesis finally concludes by bringing into fore the main contribution to knowledge.

6.2 The report of the research

This research kicked off with the general introduction as chapter one. Under chapter one, the research examines the historical background of the Nigerian criminal administration from the period before the British Colonial masters up to the present modern period. Under the general introduction the observation of the provision of the criminal law and practice in Nigeria is discussed, where at the end of the discussion, it is made clear that the emphasis of the administration of the criminal justice in Nigeria is mainly more on the offender and that crime which are against an individual person are viewed as offense against the state. The State is represented by the prosecution while the accused is represented in the criminal justice process by the defence but no one represents the victims, and thereby the victim is neglected and aptly abandoned.

Chapter one also contains the statement of the problem where the problem under investigation was ex-rayed. Under this, we discuss the issue of some forms of remedies for the victim of crime under investigation. Remedies like restitution, restoration, compensation and damages which are adjudged as inadequate to address the interests and the concerns of the victims of the crime under the Nigerian criminal justice system even as the new Administration of Criminal Justice Act 2015 contains provision on compensation and reparation for the victims under section 319(1) of the Act. The neglect of the victims of crime in the Nigeria Criminal Jurisprudence informs the need for this research, which also

forms the main problem under investigation in this research, and which was critically analysed, examined and discussed in the chapters which follow. To this end, the major effects of such neglect of the victims' rights to participate in the criminal proceeding were highlighted. These effects on the general administration of criminal justice forms the basic problems in the Nigerian criminal jurisprudence which this research undertook to investigate.

The chapter also highlights the broad aim of the study which is basically to make a case for the adoption of the victims' active participation in the Nigerian criminal jurisprudence by using the mode of victims' participation as it is currently operationalised under the International Criminal Court ICC. Other specific objectives were equally highlighted thus:

1. examine the adequacy or otherwise of the Nigerian Laws on the Administration of Criminal Justice in addressing fundamentals and the rudiments for the victims' participation as a way of addressing the plights, the roles, the interests and the rights of the victims of crime in the Nigerian Criminal Process;

2. demonstrate that the victim's participation model of the Rome Statue and the Rules of Procedure and Evidence (RPE) under the International Criminal Court should be adopted by the Nigerian Policy makers on the administration of criminal justice, being the best example on the active participation of the victims of crime in the criminal justice process;

3. make a proposal for the adoption of the victim's participation model of the theory of procedural justice as a panacea to addressing concretely and adequately the plights, interests and welfare of victims of crime in order to bring to the fore the truism in the three-way traffic notion of justice to the accused, to the society and indeed to the victims by the Administrators of the Criminal Justice system in Nigeria; and

4. propose a review of the main legislation for the administration of criminal justice in Nigeria - the Administration of Criminal Justice Act of 2015 to the extent of

adequately addressing and positively resting the issue of the victims' participation in the Nigerian criminal jurisprudence.

The chapter also formulated some questions to be answered in the course of investigation. The research questions were carefully couched from the specific objectives as follows:

1. How adequate is the current legal framework on the administration of criminal justice in Nigeria in addressing the participatory interest of the victims of crime?

2. What are the fundamentals for the participation of the victim of crime in the Nigerian criminal process?

3. What model of the theory of justice could be adopted in order to make the Nigerian criminal justice process conform adequately and strictly with the popular notion of justice as a three-way affair?

4. How can the victim participation model of the international criminal court be amenable for the use of the Nigeria stakeholders in the criminal justice process to address the lopsided treatment of victims as compared to the treatment of the offenders?

5. How can the participatory right and role granted the victims by the Rome Statute and the Rule of Procedure and Evidence of the International Criminal Court be adopted in the administration of criminal justice in Nigeria?

6. What are the areas of improvements in our laws as the way forward in addressing and resting positively on the permanent basis the victims' concern in the Nigeria criminal jurisprudence?

The chapter also discussed the methodology employed for the research which is basically comparative and analytical. It used comparative because the focus of the research covers the entire criminal justice system of our country Nigeria, the victims' participation model.

However, this model has already been introduced, adopted and implemented at the International Criminal Court. Therefore, the research made use of the experience of the ICC both in Law and in practice to formulate a proposal for needed paradigm shift and adoption in the Nigerian criminal jurisprudence.

The methodology is also analytical because the proposed model of victim participation which has been adopted and put into use at the International Criminal Court has to be critically analysed and examined in order to bring out the best options available for the proposal to be introduced to the Nigeria criminal jurisprudence.

In being comparative and analytical, it is therefore doctrinal with the primary and secondary sources of material being consulted. The main primary materials are the constitution of the Federal Republic of Nigeria, the Nigeria Police Act and the Administration of Criminal Justice Act, on the Nigeria side, while the Rome Statute and the Rules of Procedure and Evidence are used on the ICC side. The secondary materials are also used in the course of this research; materials like existing literature on the subject (both the textbooks and journal articles), as well as law reports of cases within Nigeria and international criminal tribunals and court. The chapter also includes the significance of the study, the scope of the study as well as the justification for the study.

The chapter two of this research is divided into two parts. The first part is devoted to the examination of the past literature on this research topic, while the second part is devoted to the conceptual analysis of the key terms used in the course of the research. Because this research is mainly library-based, various literatures were consulted and examined. The essence of the examination is to analyse the situation of things before now, justify this with the current position of things, reconcile it with what ought to be and thereby proffer a way forward in the development of literature on the area of the research. It is the observation of this research at the end of the review of some of the literature in the area of this research that none of the literature examined and analysed captured the essence of the focus of the study adequately as it is being explored in this research.

The observation on the literature consulted and reviewed is that while some literature delved into the issue of victims of crime, such literature did not address the participatory right of the victims: some literature discusses the issue of the criminal justice system in Nigeria but failed to propose a model of victim participation. Again, some literature addressed some issues under the ICC but failed to address the victim participation right under the court. Again some literature discussed the issue of victims neglect under the criminal justice system in Nigeria but failed to address the problem from the participatory rights angle and also to compare the plight of these victims under any domestic or national criminal jurisprudence with that of the international criminal jurisprudence.

Chapter three is divided into two parts, part one contains the theoretical framework for the research. In this chapter the chosen theory of justice is the procedural justice theory as propounded by John Rawls and expounded by so many other theorists. The chapter analysed the reasons for the choice of the theoretical framework – Procedural Justice Theory, which is that the focus of the study and is hinged on the participatory role of the victims of crime, that participatory rights of the victim of crime in the Nigerian criminal jurisprudence can be best approached from the stand point of procedure. It is also argued in this research that only a fair procedure can produce or bring about a fair outcome or result. The chapter begins with the examination of some theories of justice as it affects the administration of criminal justice, right from Socrates through the era of Aristotle to the era of modern legal and political philosophers of John Rawls. This examination is used to analyse the theoretical underpinnings of the Nigeria criminal justice vis-à-vis that of the International Criminal Court. This is in an attempt to justify the choice of procedural justice theory as the core theoretical framework for the study.

Chapter four is devoted to the examination and the application of the victims' participation under the International Criminal Law with particular reference to the victim participation model of the ICC from the stand point of the Rome Statute and the Rule of Procedure and Evidence. The chapter examines the operation of the victim participation right at the pre-trial stage, the trial stage and the post trial stage of the International Criminal Court. This analysis is then used to juxtapose the situation of the victims under the Nigeria criminal justice system.

Chapter five contains the analysis of the criminal justice process in Nigeria. Under this chapter, the current Nigeria criminal process is examined and discussed with the aim of bringing to the fore the entire process of the Nigeria criminal justice system from the sources of the law regulating the process, through the institutions, that is, courts, which operate these laws in their criminal law day to day adjudications of cases before them. This also includes the analysis of all activities and functions of other stakeholders in the administration of the criminal justice in Nigeria. This chapter also discusses the procedure of criminal justice trial in general at all levels. This is discussed from the police reporting level by the complainant, through investigation, police bail, arraignment, and up to the final stage of court judgement of conviction and sentencing. The essence of this chapter is to serve as precursor to the chapter that followed.

This part of the study is devoted to the application of the victims' participation model to the Nigeria Criminal jurisprudence from the stage of police investigation of the complainant-qua-victim. Under this chapter, the stages of the criminal justice process was discussed which began with the Police as the first contact in the criminal justice process in Nigeria; under this, the powers, function and the mandate of the Nigeria Police Force in the criminal process is examined and analysed. This is done through a comprehensive examination and analysis of the Police functions and powers to receive complaint, arrest and detain suspect, release of suspect on bail, preferring charges against the suspects and the prosecution of the accused in court.

This is followed by the analysis of other stakeholders, especially the court through the arraignment of the suspects the grant or refusal of suspect/accused sought to be admitted to bail, the trial proper, the judgement, conviction and finally the sentence as pronounced by the court on the accused. The discussion on this part of the chapter five is done in a way to bring to the fore the gaps (lacuna) in the Nigeria criminal jurisprudence as it relates to the victims of crime with the sole motive of justifying the need for the paradigm shift in the Nigeria criminal jurisprudence on the treatment of the victim of crime, in order to demonstrate the significance of the adoption of the proposed victims' participation model.

6.3 Summary of findings

1. Victim's participation at the investigation stages

It is observed under the administration of criminal justice in Nigeria, that after the report of commission of any offence has been laid before the Police by the complainant who, most often, is also the victim, the Police who is the first contact on the Nigeria criminal justice process takes down the report in the official statement book or sheet which is called the crime report book or in some places crime diary. This procedure is known in the Police parlance as 'incidenting' the complaint. The Police therefore have a written report from the victims to work with. This report is expected to be used for the purpose of investigation as part of the mandate of the Police whenever there is a report of commission on offence[645].

In the start of the investigation into the crime that has been committed, there is always the need to involve the complainant-qua-victim for many reasons:

(a). The Police as part of the investigation need to visit the scene of the crime, that is the place where the crime was committed and see things for themselves in order to be able to cross check the report by the complainant-qua-victim either to confirm his story or not[646]. The Police may not be able to do this without the assistance of the complainant-qua-victim who actually made the report and on whose presence the offence was committed.

(b). The Police also need to make some arrest of the reported offender or some other people who may be connected with the commission of the offence. At this stage, the Police may decide to arrest and interrogate some people who are either implicated in the commission of the offence by the report of the complainant-qua-victims or are eye-witnesses to the commission of the offence[647].

[645]See section 4 of the Police Act Cap p. 19 LFN for The General Duties of the Nigerian Police.
[646]This is what is known as the Visit to the "Locus in quo".
[647]See also section 4 of the Police Act Cap p. 19 LFN.

(c). If the Police need to detain all or some of the people arrested and interrogated, it is at this stage the Police have to consider various options provided by the statute and regulations guiding their work[648].

(d). The Police need to decide to put any person suspected to have committed an offence in their custody, but must first take and record the statement of such arrested suspect before putting him or her in custody. The Police may also decide not to detain some person who has been alleged to have committed an offence as reported after such a person has been arrested and interrogated. The Police will therefore hold on to their recorded statement already volunteered by such people who may be used as prosecution witness later in the trial.[649].

(e). The Police at this stage has to decide those, who among the arrested and interrogated persons, are the suspects and those who are just eye-witnesses who should be treated like potential witnesses during the hearing of the case at the court.

(f). Whenever the (e) above has been taken, then the statement of those who have been adjudged as suspect will have to be taken down and recorded with special caution before deciding whether to release him on bail or to put him in custody until he is charged to court.

The involvement of the victim of crime in all these processes above during the investigation stage of the criminal justice process is very obvious. Our finding at the stage is that most times, victims are not allowed to participate at all. This is possible because the Nigeria Criminal law and Procedure does not provide for any involvement of the victim. It is hereby submitted that the participation of the victim at the investigation stage even before the suspect is charged to court is highly necessary and beneficial to the smooth administration of the criminal justice in Nigeria.

[648]These options are contained in section 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of ACJA 2015.
[649]This part of Police functions is covered by sections 15 – 17 ACJA 2015.

2. Victim's participation during the consideration of bail at the police station

The Police after the decision of who is a suspect to be charged and prosecuted in court and those who are likely to be used as witnesses for the prosecution, the Police thereafter need to make another decision to release the suspect on bail or not to release on bail. The Administration of Criminal Justice Act gave the Police the exclusive authority to decide who and when to release on bail whenever any arrest and detention is made[650]. The Police have the power to release the suspect on bail if it appears to the Police in charge of the station that the offence is a non-indictable offence. And if the police in charge of police station fail to release the suspect of a non-capital offence within twenty-four hours, the court which has jurisdiction on such matter may release such suspect on bail[651].

In all these instances, the Police, in exercising their powers and authority, are not answerable to any other authority except when the offence is a capital one – only then will the Police be under obligation to send the duplicate file to the Attorney General's office for further instructions and directives. It is very obvious that the Nigeria Criminal Law does not have any provision which tries to put the interest and the plight of the victims into consideration whenever any decision to release on bail any suspect who has committed an offence is to be made.

The Rome Statute and the Rule of Procedure and Evidence of the International Criminal Court contain copious provision for the protection of the victims of the international crime at the pre-trial stage of the court proceeding[652].

3. Victims' participation when the suspect is charged to court

This is the stage when the police and the Attorney General decide to prefer a charge against the suspect before the court. At this stage, whether at the police station in case of non-capital offences, which the magistrate court has jurisdiction, or at the Attorney General office on serious offences and capital offence, which only the High Court has the jurisdiction, the charge is preferred against the suspect cataloging the offence committed by him, without the

[650]See section 30 ACJA 2015.
[651]See section 31 & 32 ACJA 2015.
[652]Rule 90(4)(5) ICC RPE. See also Article 68(1) and (3) of Rome Statute.

involvement of the victims. What we found out is that charges are preferred against the suspects without adequately taking into consideration the sensitivity of the injury which the offender might have caused the victim. In short, the victims do not play any role and as a matter of fact, the victim is not considered when charging the suspects, his interest is not taken care off when preferring a charge. In fact, his opinion is not heard or respected at this stage. It was also observed that the Nigerian Criminal Law does not make any provision for this at all. Therefore, the preparation or drafting of the charge is left to the discretion of those in charge only, that is, the Police and the office of the Attorney General. However, the Rome Statute and the Rule of Procedure and Evidence of the International Criminal Court adequately involve the victims of international crime at this stage. In fact, the Rome statutes and the Rule provide that the safety, physical and psychological well being, dignity and privacy of victims shall be adequately protected[653]. The statute also provides that the prosecution should take all measures, particularly during investigation and prosecution of crime[654].

4. Victims' participation during trial

Under the Nigeria Administration of Criminal Justice Act, the only role assigned and provided for the victim is merely that of a witness who only assists the prosecution to attain the successful and effective law enforcement function and nothing more. Under the International Criminal Court, however, the participation of the victims in the proceedings throughout are not only provided for but also adequately guaranteed. The Rome Statute and the Rule of Procedure and Evidence provide that the victim can even put questions to the prosecution's witness either on his own or through his legal representatives.

Again, under the ICC the victims are allowed to have access to legal representative separate and separated from the prosecution and the defence. This is in line with the strict objective of the ICC to the effect that the court strives to achieve and attain tripartite justice, that is, justice for the victims, defence and the international society. Thus, victims are not just witnesses, but more importantly their claims and interest are adequately represented, protected and guaranteed. This is absent in the Nigerian Criminal Justice System.

[653]Article 68(1) Rome Statute.
[654]Ibid.

5. Victim participation at the judgement and sentencing stage

The Nigeria criminal law and procedure does not afford the victim any opportunity to be involved during the judgement stage as well as sentencing stage. Under the International Criminal Court, however, the victim is given the opportunity to intervene in the proceedings during the judgement and sentencing for the purpose of presenting claims for reparation. This may be part of the judgement of the ICC or a pronouncement of the court after the trial. In the Nigeria criminal justice process the victim may be awarded compensation within the proceedings or while passing judgement, to be paid by the defendant[655]. However, the compensation does not have the input of the victims in it at all. This is unlike the case under the ICC where the victims are allowed to make presentation relating to his claim for the purpose of the reparation[656].

6. Treatment of victims by the agent's of criminal justice administration in Nigeria

During the period on the field, it became very obvious that the victims are treated as second class elements in their own case, when the treatment is compared with that of the accused or the suspect. This became very obvious in that the Nigeria criminal law and procedure contains many provision for the protection of the right of the accused to the neglect of rights of the victims of the crime for which the accused is standing trial. However, under the ICC, victims are treated as equals if not more important than the accused. This could be gleaned from the speech of the Secretary General of the United Nation Organisation after the adoption of the treaty establishing the ICC in Rome in July 1988.

Our hope is that, by punishing the guilty the ICC will bring some comfort to the surviving victims and to the communities that have been targeted[657].

This is possible under the ICC because these victims are part and parcel of the entire proceedings. From the beginning to the end, the victims are as involved as the accused.

[655]See section 319 – 321 ACJA 2015.

[656]See Article 75(1) & (2) Rome Statutes. See also the Dylo Appeal Chambers decision on Rule 91(2) ICC RPE.

[657]The part of speech by Mr. Koffi Anan the former Secretary General of UNO during the establishment of the ICC Rome Statute in 1988.

7. Separate legal representative for the victim of crime

Part of the findings in the course of this research is that under the Nigeria criminal justice system, the proceedings is handled by only two legal representatives, that is, the legal representatives for the accused called the defence and the prosecutor. In Nigeria, the prosecutor represents the State, that is, the society, and is also expected to represent the victims. However, under the ICC, there is the provision for a separate legal representative for the victims even if the victims do not have the financial capacity to get a legal representative of his choice; the Rome Statute provides that the Court through the Registry should get a legal representative for him. Therefore, under the ICC there are three different legal representatives participating in the proceedings of the court, that is, the prosecution – representing the international community; the defence – representing the accused, who has been alleged to have committed international crime, while the legal representative also represents the interest of the victims through the pre-trial, the trial and the post-trial stages.

Under the ICC, there is the realisation that the interest of the international community may not always be the same with that of the victims either individually or in group. Therefore, in order to be fair to all and to deliver the tripartite justice equally, fairly and expeditiously, there is the need for a separate legal representative for each of the three gladiators in the criminal justice administration[658]. It is however disheartening that all these considerations for the victims of international crime under ICC, do not exist under the Nigerian criminal justice system. The offence committed even against an individual are said to have been committed against the State and thereafter prosecuted on behalf of the State to the neglect of the victims against whom the offence was committed and who as a result of the commission of the offence must have suffered so much physically psychologically financially and emotionally.

[658]See Article 42, Rome Statute as well as Article 54 and generally Article 68 and 64 of the Rome Statute.

6.4 Conclusion.

The conclusion from the findings and recommendation in this study is that the main statute book on the Administration of Criminal Justice Act which was signed into law on the 15th day of February 2015, introduced some new ideas and provisions on the administration of criminal justice in Nigeria well in tune with the modern criminal justice administration in the world in the area of law enforcement function of the prosecutor, the protection of the rights of the accused, the suspect and the defendant. However the Act did not adequately address the right of the victim to actively participate in the criminal trial of the offender accused of causing injuries on the victim. Thus, there is scanty provision for the protection and respect for the rights of the victims of crime to actively participate in the criminal trial.

The study made an in-depth critical analysis of the major areas of the four hundred and ninety five sections of about three hundred pages with four schedules divided into forty nine parts as it affects the concerns, interests and rights of the victims of the crime in order to bring out the areas which we feel the review is critical and highly necessary.

The study has been able to show some areas of the law which need to be revisited by the authority concerned, that is, the executive through the office of the Attorney General of the Federation, the Legislature as represented by the National Assembly and the Judiciary as represented by the Court. The research realises that law and policy reforms have to be as dynamic as it is challenging. The challenges which confront the Administration of Criminal Justice Act are therefore understood. However, it is our hope that if the recommendations highlighted in this study are carefully explored and implemented, they are capable of setting a new pace in the annals of the Nigeria Criminal Jurisprudence and therefore affect the much touted and much awaited paradigm shift in the treatment of the victims of crime in the Nigerian criminal justice system. This will also greatly improve the criminal justice delivery in Nigeria

6.5 Recommendations.

The thrust of this research, basically is to effect necessary and desired change both in the law and in the focus of the treatment of and role played by the victims in the criminal justice administration in Nigeria, which is hoped to effect the necessary desire and needed paradigm shift in the Nigerian criminal jurisprudence in line with the global standard as represented by the ICC. In doing this, therefore, the thesis has been able to analyse and examine the area of deficiencies in the Nigerian criminal law and practice as well as the areas where the standards or the operations of the ICC could be adopted by the Nigeria stakeholders in the criminal law and practice in the criminal jurisprudence. To this end, the following recommendations are put forward…

1. Humane treatment for the victim-qua-complainant by the law enforcement agents.

   The realisation that victim-qua-complainant is a very important partner in the administration of criminal justice in Nigeria is not dawn on the criminal justice administrator in Nigeria yet. This is very obvious as a result of the fact that there is no mention of the victim or complainant as a key stakeholder in the initiation of the criminal justice process in the main statute for criminal justice administration, that is, in the Administration of Criminal Justice Act of 2015. It is therefore hereby recommended that in consonance with the purpose of the Act[659] as contained in section 1(1) and (2)[660], section 8 of the Act[661] which provides for humane treatment of the arrested suspect only, should be amended to include the victim.

[659]The Administration of Criminal Justice Act ACJA 2015.

[660]Section 1(1) states "The Purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria provides efficient management of criminal justice institutions speedy dispensations of justice, protection of the society of crime and protection of the rights and interest of the suspect the defendant and the victims". Section 1(2) states that the court, law enforcement agencies and other authorities or persons involved in criminal justice administrations shall ensure compliant with the provision of this act for the realisation of is purposes".

[661]Section 8(1) states "A suspect shall – (a). be accorded humane treatment, having regard to his right to the dignity of his person; and (b). not be subjected to any form of torture, crime inhuman or degrading treatment…"

2. Consultation with the victims during the consideration of bail for the suspect by the Police.

   The Administration of Criminal Justice Act provides that the Police or whoever is in charge of a police station has the authority to release on bail any suspect arrested or put in their custody, who in his opinion has committed a less serious or non-indictable offence as contained under section 30 and 31 of ACJA 2015[662].

   However, the act does not contain any provision that the victim's rights and interest should be respected or that consideration be given to the victim's injury or suffering, or claims before such suspect is considered to be released on bail. It is hereby recommended that sections 30, 31 and 32 should be amended to reflect the above thinking, so that situations where most suspects are released at the time when their victims are still nursing injuries which is a popular occurrence in most serious and less serious crimes would be eradicated.

3. Victims to be involved during the preparation of charge against the suspect. The Administration of Criminal Justice Act provides that after the arrest and interrogation of the suspects, and the suspect, in the opinion of the Police or the law enforcement agency, should be charged for the offence committed; the suspect should be so charged. The Act does not provide for any consideration for the involvement of the victims who must have suffered a lot in the commission of the offence. In the Act, throughout the sections 194 -237, which contains the provisions on the preparation of charge, the filing of charge to court and the content of a charge against a suspect, no mention was made on the interest claim plights and the protection of the victims. It is hereby submitted that the Act should contain provisions which shall address the participation of either the victims directly or his legal representative in the preparation of the charge against the suspect, since the content of the charge is expected to contain facts supplied by the victims of the crime.

[662]These sections provide for example that a Police "should inquire into the case and release the suspect on bail subject to the suspect's entering into a recognisance with or without sureties for a reasonable amount of money…"

4. Plea and plea bargaining procedure for the suspect.

Indeed this is one of the novel provisions of the Act; however, a careful reading of the provisions of the Act on the issue will reveal that the objective of the novel provision is to prepare or afford a soft landing for suspect of crime and not the victims. In the first instance, under section 270(1) the Act provides that a plea bargain may be received by the prosecutor from a defendant or his representative and section 270(2) and that a prosecution may also offer a plea bargain to a defendant who is charged with an offence. Section 270(2) further provides that the prosecutor may enter into plea bargaining with the defendant with the consent of the victims or his representative. The consideration under this provision for the victim is that the prosecutor may enter into plea bargaining where the consent of the victim is seriously flawed[663]. It is hereby recommended that section 270(1) and (2) should be amended to include the provision that in the consideration of the plea bargain for the defendant, full consideration and the involvement of the victim or his legal representative is compulsory without which the said plea bargain should not be considered or negotiated.

The amendment to section 270(1) & (2) being suggested here will therefore accentuate and also make stronger the provision of section 270(5) and (6)[664].

5. Consideration of bail for the accused by the court.

The Act provides that the court may admit the accused to bail on conditions made at the discretions of the court only. This provision is a total denial of the rights of the victim. The Act gives the condition for such bail in the discretion of the court and that the bail should not be excessive[665]. This means even on the discretion of the concerns and the claim of the victims is to be taken into consideration which may

[663]Under S. 270(2) sub section (a) provides that the consent of the victim be sought for the plea bargaining with the defendant if the "evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt" or sub section (b) "where the defendant has agreed to return the proceeds of the crime or make restitution to the victims" or sub section (c) "where the defendant has agreed to cooperate fully with investigation and prosecutions of the crime…"

[664]Section 270(5) provides for example nine proviso for the consideration of the plea bargaining for the defendant by the prosecutor to only the last i. e. (ix) concerns the victim which is if the defendant is willing to make restitution or pay compensations to the victims.

[665]Section 160(1) of Act provides that "The condition for bail in any case shall be at the discretion of the court with due regards to the circumstances of the case and shall not be excessive".

make the bail condition excessive; the court, according to the provision of this section, should not allow such excess.

It is hereby recommended that the act should be amended to remove the last part of the section 165(1) "and shall not be excessive". It is also suggested that the discretion of the court as the Act provides in that section 165(1) should be qualified by adding a provision which shall contain some conditions to be taken into consideration in the exercise of the discretion by the court. This condition should contain that such discretion shall be exercised with ultimate consideration of the nature of the offence and the interest of the victims.

Again, the Act should also contain provision that the victim should be allowed to participate in the proceeding of the consideration for bail, through his legal representative. By this, the victims will be afforded the opportunity to present his claim and present argument on the issue of the bail for the accused before such a bail is granted or refused.

Another recommendation on the issue of bail for the accused at this stage is the amendment to other sections of the Act on the issue of bail for the accused by the court. For example, section 158 should be amended to include provision that will allow the victims to participate in the bail proceedings[666].

6. Victim participation during the trial of the offence against him.

During the trial of the offence against the accused, the Act does not make any provision to the victim a visible stakeholder in the criminal justice of Nigeria at all. Throughout the provisions of the Administration of Criminal Justice Act on the trial of the offender, there is no mention of the victim's interest at all, let alone having a legal representative of his own to represent his interest and to present his claims as it is under the ICC.

It is hereby recommended that the Act should be amended to include provisions on the provision of a legal representative for the victims of crime and also that this opportunity to have a legal representative of his own separated from the prosecutor

[666]Section 158 is a general provision on bail which states that "when a person who is suspected to have committed an offence or is accused of an offence is arrested or detained or appears or is brought before a court, he shall be subject to the provisions of this part be entitled to bail".

is a right which must be protected and respected throughout the trial proceedings. This provision will go a long way in giving the victim the much awaited recognition which will make the victim of the crimes in the proceeding of their case and the society which is represented by the prosecutor in the performance and the exercise of his law enforcement functions as we have it under the ICC.

7. Victims to participate during the examination of witnesses.

Throughout the trial stage of the proceeding in court, victims are not allowed to examine the witnesses of the accused or that of the prosecutor. This lacuna is serious in the sense that during the trial of his case, the victim is only accorded the role of a witness to be examined by the prosecutor and cross examined by the defendant. This is not too good as the situation only makes the victim feel abandoned, uncared for and neglected in their suffering. It is hereby recommended that the Act should be amended in a way as to include provision which will afford the opportunity for the victims to cross-examine both the witnesses of both the defence and that of the prosecution either by him directly or through his legal representative. This recommendation is capable of changing a lot of the victims' perception towards criminal justice delivery in the criminal justice process in Nigeria.

8. Victim's participation during the judgement and sentencing.

During the delivery of the judgement after the trial, victims are not known again as a key stakeholder in the criminal justice process in Nigeria. This brings to the victim the feeling of being a second class citizen in his own project. It is hereby recommended that, as it is under the ICC, the victim should have the opportunity of presenting their interest in form of claims during this stage. This will go a long way in ensuring that the court in arriving at a particular judgement on the trial of the offence allegedly committed, the interest, concerns and the claims of the victims of such crime has been adequately taken care off. It is hereby suggested that the Act should include the fact that the victim has the right to present claims during the delivery of judgement on his case in the Act, and also a provision that the right is protected and respected.

9. Victims' participation during the sentencing of the accused.

The Act does not take cognizance of the fact that a victim of crime should be fully involved during the pronouncement of sentence on the offender of a crime against him. Under the ICC, the victim is allowed to make provisions at this stage for the purpose of reparation for the victims. It is hereby recommended that the Act should be amended to include a provision which will afford the victims the right to make presentation either directly or through his legal representative at the stage of sentencing on the case by the court. This provision will definitely ensure that victim's interests and concerns are uppermost in the mind of the criminal justice administration in Nigeria.

10. Right of the victim to be serviced by the legal aid council.

Under the Nigeria criminal law and procedure, especially the Administration of Criminal Justice Act, as well as the Legal Aid Council Act, only the accused and defendant in criminal case are entitled to legal service as provided for by the Legal Aid Council Act. Victims of crime are not.

However, under the ICC, victims of crime are allowed free legal service if desired and requested for. This is because of the realisation that a victim of crime is entitled to a legal representative separate and separated from the prosecutor, whose function is unique and distinct from that of the victims. It is hereby recommended that our relevant law, especially the Administration of Criminal Justice Act should be amended in line with this suggestion that legal aid councils should extend their free legal services to the victims and the victims should also be provided with the right to free legal services of the Legal Aid Council or be provided by the court whenever the need arises during any criminal proceedings. If this Act includes provisions in this regard, it will go a long way in putting the victims in the same level or position in the administration of criminal justice in Nigeria.

REFERENCES

BOOKS

Adekunle, D. 2005. *Historical Development of War Crime Tribunals.*Lagos: Nigerian Institute of Advances Legal Studies Publication.

Adesiyan, D. O., 1996. An Accussed Person's Rights in Nigerian Criminal Law. Ibadan: Heinemann.

Aina, A. A. 2014.*The Nigerian Police Law.* Lagos : Princeton.

Ann W. B. and Albert R. R. 2000.*Crime and Victimology.*1st ed. New York: Jones and Bartlen.

Akem.P. 2015.*Superior Order and Command Responsibility*. Lagos: NIALS Publications.

Akper, P. T. 2005. *The Crime of Genocide under the International Criminal Court Statute.* Lagos: NIALS Publication.

Aremu, A. O. 2009.*Understanding Nigerian Police: Lessons from Psychological Research*. Ibadan: spectrum Books.

Bantekas I. & Nash, S. 2003.*International Criminal Law.*1st ed. Brunes: Hart Publication

Bassiouni, M. C.& Nanda, V. P. 1973.*A treatise on international criminal law.* London: Cambridge.

Braithwaite, J. 1989. *Restorative Justice and Responsive Regulation*. New York: OUP.

……1997. *Crime, Shame and Reintergration*. New York: Cambridge University Press.

Browlie, I. 2008. *Principle of Public International Law.* 7thed. London: Cambridge.

Cassese, A. 2013.*International Criminal Law.*3rd ed London: Oxford University Press

Cragg, W. 2003. *The Practice of Punishment: Towards a Theory of Restorative Justice*. London & New York: Routledge.

Dambazau, A. B. 2007.*Criminology and Criminal Justice,* Ibadan: Spectrum Book Limited.

Doerner, W. G. & Lab S. P. 2012. *Victimology.* 6th ed. New York: Anderson Publishing.

Dugard J. & Van Den Wyageart,C. Eds. 1996. International Criminal Law and Procedure.

Fatah, E. A. 1991.*Understanding Criminal Victimization.* 1st ed. Canada: Prentice Hall.

Gooday, J. 2005. Victims and Victimology: Research Policy and Practice. England: Pearson Education Limited.

Karibi-Whyte, A.G. 2005. *History and sources of Nigerian criminal law.* Ibadan: Spectrum Books Ltd.

Kerman, A. 2000. *Crime Victims: An introduction to victimology*. 7th ed. Wadsworth: Cangape Leaning.

Ladan, M. T. 2005.*An overview of the Rome Statute of the International Criminal Court*.Lagos: Nigerian Institute of Advanced Legal Studies publication.

Lind, E.A.& Tyler, T.R. 1988. *The social psychology of procedural justice*. New York: Plenum.

Marks Funk. 2015. *Victims Rights and advocacy at the International Criminal Court.* 2nd ed. England: Oxford University Press.

Miller 1969.*African Penal System.* London: Routledge & Keegan Paul.

Nwolise, O. B. C. 2004.*The Nigerian police in peace keeping under the United Nations*. Ibadan: Spectrum Books.

Olatunbosun, A. I. 2012 *Criminal Justice in Nigeria Ibadan:* Solerad publishers.

Osieke, E. 2005. *War Crimes under the Statute of ICC*. Lagos: NIALS Publication.

Okon, E. E. 2015.*Sources of International Law and International Humanitarian Law*. Lagos: NIALS Publication.

Oluwagbami. D. 2015. *Introduction to the Ad-hoc Tribunals.*Lagos: NIALS Publications.

Omofade. A. 2015 *War Crimes and the Crime of Aggression*. Lagos: NIALS Publications.

Paranjape N. V. 2011.*Criminology & Penology with Victimology* 15th ed. Allahabad: Central Law Publication.

Popoola. A. 2005.*The International Criminal Court Regime and the Crime against Humanity*. Lagos: NIALS Publications.

Sukhraj-Ely. P. 2010. *Procedural Justice: the Thread that Weaves the Fabric of Justice in Society*.Natal: Durban University of Kwazulu.

Schabas W. 2007.*An Introduction to the International Criminal Court*. 3rd ed. London: Cambridge Press.

Siegal L. J. 2005.*Criminology: The Core.*2nd ed.USA: Thomson Wadsworth.

Schafer S. 1960. *Restitution of Victims of Crime.* London: Stephen & Sons Ltd.

Steven C. Roach 2009 *Governance Order and the International Criminal Court Between Realpolitic and a Cosmopolitan Court.* London: Oxford University Press.

Strang, H., 2002. *Revenge or Repair: Victims and Restorative Justice*. London: Oxford UniversityPress.

Vidmar. N. 1991. *The Origin and Consequences of Procedural Fairness.*New York: American Bar Foundation publication.

Werle G., 2000. *Principles of International Criminal Law* 2nd ed.England: Cambridge.

Wilsons J. K., 2013.*The Praeger Handbook of Victimology*. California: Greenwood Publishing Group.

Woulther L. Olley N. & Denham D., 2009.*Victimology and Victims' Right*. 1st ed. New York: Routledge& Cavendish.

Zehr. H., 2002.*The Little Book of Restorative Justice Intercourse.*London: Good Book Publications.

CHAPTERS IN BOOKS

Barton, C., 2000. "Empowerment and Retribution in Criminal Justice" in*Restorative Justice Philosophy and Practice.*H. Strang &J. Braithwaite.Eds. New York: Ashgate 55 – 76.

Braithwaite, J., 2003. "Principles of Restorative Justice" in *Restorative Justice in Criminal Justice,Competing or Reconciliable Paradigm?* Vov Hirsch, A, and Roberts, J. V. eds. Brunes: Hart Publication. Chapter 1 : 1 – 20.

Deutsch. M., 2000. "Justice and Conflict" in *The Handbook of conflict Resolution: Theory and Practice*. Deutsch, M. & Coleman, P. T. eds. San Francisco: Jossey Bass Inc. Publishers, pp 45.

Hampton, J., 1991. "A New Theory of Retribution, Liability and Responsibility".In*Essay in Law and Morals.*R. G. Frey & C. W. Morris eds. Cambridge: Cambridge University Press. Chapter 4 : 390 – 492.

Olatunbosun,A. I. 2000:"The Plight of Awaiting Trial Persons under the Criminal Justice System in Nigeria". in *Topical Issues in Nigerian Law*. L. Laoye & J. A. Akintayo. Eds. Ibadan: Zenith Publishers. pp 50 – 68.

……. 2010."Restitutive Justice for Victims of Crime in Nigerian Court"*Legal Issues for Contemporary Justice in Nigeria.*

ARTICLES

Adeyemi, A. A., 1975. Criminality in Contemporary Africa.*NigerianJournal of Criminology* 2.1 pp 1 – 30.

Barnett, R. E. 1977. Restitution:A new paradigm of criminal justice. *Ethics* 86.4 pp 279 – 301.

Blader, S. L. and Tyler. R. T., 2003. A four Component Model of Procedural Justice: Defining the meaning of a fair process, *Personality and Social Psychology Bulletin*. 29 (6) pp 747 – 758.

Braithwaite, J., 1993. Restorative justice and a better future Dalhouse Law Review, 76.1: 9 – 31.

Brown, C.N. 2005. Casting lots: The illusion of justice and accountability in property allocation. *BUFF Law Review*53 : 65 – 129.

Coben, J. and Harley, P. 2004. Intentional conversation about Restorative Justice, Mediation and the Practice of Law, *Hamline J. Pub L & Policy*25.4 : 235 – 335.

Dignana, J. and Cavadino M. 1996. Towards a framework for conceptualizing and evaluating models of criminal justice from a victim's perspective.*Journal of International Review of Victimology*4.3: 153 – 182.

Donat-Cattin, D. 2015. Article 68. Commentaries on the Rome Statute of the International Criminal Court. Observers Notes, Article by Article.Trifferer. O. Ed. Michigan *Journal of International Law* 29. 4 : 306 – 360.

Hough. M., Jackson. J., Breadford. B., Mythill. A. and Quintum. P., 2011. Procedural Justice, Trust and Institutional Legitimacy *Journal of Policy and Practice. 1.2 :144 – 165.*

Kelner, T. 2004. The Status of Victims in the Enforcement of International Criminal Law. *Oregon Rev IL* 9.

King M. S. 2006. The Therapeutic Dimension of Judging the example of Sentencing. *Journal of Judicial Administration. 20 : 284 – 296.*

Nelson, W., July, 1980. The Very Idea of Procedural Justice. *Ethics* 90. 8 : 506

Olatunbosun, A. I., 2001. The Reprehension of the International Crimes and the Challenges Ahead, *Olabisi Onabanjo University Law Journal*.3: 46 – 60.

…… 2007: Compensation to Victims of Crime in Nigeria: A Critical Assessment of Criminal Victim Relationship in *Journal of the Indian Law Institute, 14 : 90 – 120.*

Oloruntimilehin, O., 1984. Unequal Opportunity, Crime and Social Policy, *Ife Social Sciences Review Journal of the Faculty of the Social Science 7, 1 & 2 : 81 – 100.*

Osinbajo, Y. and Kalu, A. U., 1990 Law Development and Administration in Nigeria, Journal of the Federal Ministry of Justice Law Review Series. 1.4 : 230 – 290.

Owoade, M. A. R. 1989. Reform of Sentencing in Nigeria: A Note on Compensation restitution and Probation *Federal Ministry of Justice Law Review Series*. 1.2 : 71 – 105.

Ozekhome, M. A. A., 1983. Criminal Law: Problem of definition and interaction with morality, *The Advocate. International Journal of the Law Students Society University of Ife, Nigeria*. 8 : 60 – 82.

Pilon R., 1987. Criminal Remedies, Restitution, Punishment or both? *Ethics* 88. 4

Wilson S., 2001. The Myth of Restorative Justice: Truth, Reconciliation and the Ethics of Amnesty.*South African Journal of Human Right. 17.4: 531 – 562.*

Wohciech S., 2006. Law's Legitimacy and Democracy. *Oxford Journal of Legal Studies*. 26.

Yusuf U. A. & Yahaya S. S., 2014. Crime Victims and Criminal Justice Administration of Nigeria*Global Journal of International Disciplinary Social Sciences* 3 (5): 48 – 82.

Zedner L. 1994. Reparation and Retribution: Are they Reconcilable? *Modern Criminology Law Journal.*

WEB PAGE

Adam, L., 2010. Incorporating the Procedural Justice model into Federal Sentencing Jurisprudence in the aftermath of United States V Booker: Establishing United States sentencing courts. Retrieved July 10, 2016, from http://www.law.nyu.edu/sites/defaultfiles_ECM_PRO.061929/pdf

Aristotle. 1893.Ross, W.D (trans.)*Nichomachian Ethics.* Britanica Great Books.1. Retrieved July 20, 2016, from *http://www.Amazon.com/NichomatheanEthics*.

Aristotle. 1893.Ross, W.D (trans.)*Nichomarchian Ethics.*Britanica Great Books.2.Retrieved July 20, 2016, from *http://www.Amazon.com/NichomatheanEthics*.

Aristotle. 1893.Ross, W.D (trans.)*Nichomarchian Ethics.* Britanica Great Books.9. Retrieved July 20, 2016 from*http://www.Amazon.com/NichomatheanEthics*.

Aristotle. 1893Ross, W.D (trans.)*Nichomarchian Ethics*Britanica Great Books.13.Retrieved July 20, 2016 from *http://www.Amazon.com/NichomatheanEthics.*

Clephon, A. and Gacts,P (eds.)2014:*The Oxford Hand book of International Law inArmed Conflict*. Retrieved July 20, 2017, from *http://oxfordhandbooks.com/view.oxford_handbook_international_conflicts.handbooks.Amazon.com*.

Charles, P. T., 2008. The victims of victim participation in international criminal proceedings. *Michigan Journal of International Law 29.4 Retrieved Oct, 23, 2017, from http://repository.law.umich.edu/vol29*.

Duff, R. A. 1986. *Trials and punishment size that modern criminal justice systems areunderpinned by a hybrid of philosophies of justice.* Retrieve July 16 2017, from *http://global.oup.com/academic/product*

Duggard. J. and Wyageart. Eds. 1996. international criminal law and procedure Retrieved on July 10, 2017, fromhttp://www.Amazon.com/international_criminal_law_ procedure/pdf.

……2013. Palestine and the international criminal court. *Journal of international criminal justice* 11. Retrieved Oct. 23, 2017, from http://repository.up.Ac.Za.bitsteam/handle/226339680 /Duggard.palestine.2013.

Fletcher, G. P. 1995.*With Justice for some: Victim's right in criminal trials.* Retrieved July *20, 2017,from www.Amazon.com/justice_some_victims_rights*.0201622548.

Handbook on Justice for Victims. 1999. *New York Center for International Crime Prevention*. Retrieved 30th October 2016, from http://www.Victimology.org.

Hampton. J. 1991. A new theory of retribution in Frey. R. G. and Morris C.W. eds. *Liability and Responsibility. Essays in law and morals*. Retrieved on July 20, 2017, From http://www.willey.com/bw/journal/oo47-2786.

Heikkila, M. 1987.*Ten crime guild and punishment: A philosophical introduction*Retrieved on May 25, 2017, from *http:/www.drapersguild.com/crime-and-crime/httm.*

……. 2004.International criminal tribunals and victims of crime: A study of the status of victims before international criminal tribunals and factors affecting this status. *Institute of Human Right, Abo Akademi University.* Retrieved on December 14, 2016, from http://books.google.com/book*s*

Heller, K.J. 2011. *The Nuremberg military tribunal and the origin of international criminal law.* UK: Oxford University Press. Retrieved on February 10, 2015, from *http:/www/global.oup.com*

…….. & Simpson, G.Ed. 2013. The hidden histories of war crimes trials. UK: Oxford University Press.Retrieved on February 10, 2015, from *http:/www/global.oup.com*

Kurki, L. 2000. Restorative and Community Justice in the United States. *Crime & Justice*. 27. 2 Retrieved on July 13, 2015. From *http://www.journal.uchicago.edu/dol/abs/10.1085/652*2001

Lanni, A. 2005. The Future of Community Justice. *Harvard LR* 40: Retrieved on March12, 2016, from*www.law.harvard.edu/students/orgs/crcl/vol40_2/lanni.pdf*.

Plato 1990. *Apology*. Costance Malnwald "Trans".Retrieved 3rdJanuary, 2017, from *http://ebooks.adelaide.edu.au//plato*

Rachilinski, J., 1998. Perception of fairness in environmental regulations in strategies for environmental enforcements. Thompson. H.B. ed. *International Law Review* 15: Retrieved on December 15, 2016. From*http://works.bepress.com/jeffreyrachilinski*.

Rawls, J. 1999. *A Theory of Justice* (revised edition). Harvard University press. Retrieved on January 14 2015, from *http://www.Amazon.com/theory-of-justice-john-Rawls/dp/0674000781*

Roger K. Warren 2000: Public Trust and Procedural Justice, *Criminal Law Review. Retrieved July 10 2010,. From htttp://aja.ncsc.dni.us/country/cr37-31/warren.pdf.*

Rudly R. 2014: The Victim's Role in the Justice Process*BritishJournal of criminology*Retrieved 30th July 2016, from *http://www.internetjournalofcriminology.com*.

Solum, L. B. 2004. Procedural justice. *Georgetown University Law Center Journal – Open access article.* Retrieved November 3, 2016, from *http://scholarship.lawgeorgestoun.edu/facpub*

Sunga, L.S. 1972.*The Emerging System of International criminal law Developments in Codification and Implementation*. Retrieved June 20, 2015, from https://www.amazon*.com/Emerging-System-International-Criminal-Implementation.*

Thibaut, J&Walker, L. 1975. Procedural justice: A psychological analysis. *Duke Law Journal,* 26, 6: Retrieved on May 24, 2017, from *http://www/scholaship.law.duke.edu*.

Thumpbull. C. P. 2008. The victims of victim participation in international criminal proceedings. *Michigan journal of international law 29, 4.* Retrieved July 18, 2017, from *http://repositorylaw.umich.edu./mail/vol29/issue/4*

Van Ness D. W.& Strang,H. 2002. *Restoring Justice*2nd eds. Retrieved on September 10, 2015. from *http://www.edu.com.ac.uk/research/projects/restorative/approach/pdf*

WORKSHOP AND CONFERENCE PAPERS

Bamgbose, O. A., 2010. The Sentence, the Sentence and the Sentenced: *Toward Prison Reform in Nigeria*University of Ibadan Inaugural Lecture Series. University of Ibadan Press.

TECHNICAL REPORTS

Igbo E. U. and Nnorom C. P. 2005. Criminal Victimization, Safety and Policy in Nigeria. *Monograph Series No. 3*. Lagos: CLEEN Foundation.

Nabudere, D. W., 2008. Comprehensive Research Report on Restorative Justice and International Humanitarian Law. *A Monograph of The Marcus-Garvey Pan-African Institute*.

Tyler T. R. and Avital Mentovich. A., 2011 Mechanism of Legal Effects: Theories of Procedural Justice. *A method Monograph for Public Health Law Research Program (PHLR).* New York , Robert Wood Johnson Foundation.

DICTIONARIES

Garner, B.A. 2009. Blacks Law Dictionary. U.S.A.: West Publishing Co.

Jowitt, E. and Walsh, C. 1977. Jowitt Dictionary of English Law. 2nd ed. London Sweet and Maxwell Ltd.

Encyclopedia Britanical, Academic Edition.