WITNESSES, EXPERTS AND VICTIMS: IMPERATIVES FOR THE CRIMINAL JUSTICE SYSTEM IN NIGERIA

BY

MRS ALMA ELUWA
DIRECTOR OF PUBLIC PROSECUTIONS
IMO STATE OF NIGERIA.

WITNESSES

A fundamental principle in our criminal jurisprudence is the presumption of innocence. An offender or accused person is presumed innocent until proven guilty and the onus for proving the guilt of the accused person beyond reasonable doubt rests on the Prosecution. The Prosecution discharges this burden of proof partially through the testimonial evidence of witnesses in Court and sometimes through documentary evidence.

The nature of our criminal justice system in Nigeria dictates the use of witnesses in proof of cases. Except for the special classes of offence which require corroboration, no particular number of witnesses is required to prove a criminal charge; as it is possible to secure a conviction on the singular testimony of a credible witness.

COMPETENCE OF WITNESSES

Speaking generally, every person is a competent witness to testify in judicial proceedings unless such a person is incapacitated by reason of old age or tender years or suffers a mental or bodily infirmity.

Section 154 of the Evidence Act provides as follows:

> ***"All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those question, by reason of tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind".***

But competence and compellability do not necessarily go together. A witness can be competent yet not compellable in the sense that he is not legally obligated or compelled to testify. Though competent, he may not be compellable on grounds of privilege or constitutional or diplomatic immunity e.g. Presidents, Vice Presidents, Governors, Deputy Governors and Diplomatic and Consular agents.

On the other hand, a compellable witness must of legal necessity attend Court to testify when summoned. He is not at liberty to choose to attend or refuse. In the event of neglect or refusal, he is liable to be sanctioned by the Court for contempt.

CORROBORATION

The general rule is that no particular number of witnesses is required to prove a criminal charge. However in certain cases, the law requires that the evidence must be corroborated. This corroboration is in the form of additional confirmatory evidence proving the charge.

This confirmatory evidence must be independent of and extraneous of the evidence sought to be corroborated.

S. 92(2) of Evidence Act Provides as follows:

> **"For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Act shall not be treated as corroboration of the evidence given by the maker of the State".**

As was rightly held by the West African Court of Appeal in **R V BEKUN (1941) 7 WACA P. 10.**

> **"In most cases where the question of corroboration arises, the question is "Is there independent testimony which affects the accused by tending to connect him with the crime?" But it is also essential that there should be some evidence direct or circumstantial which confirms the evidence given by the Accomplice that the crime has been committed. It is of course not necessary that there should be confirmation by**

independent evidence of everything the accomplice says, but only some independent evidence connecting the accused with the crime.

ACCOMPLICE

Section 177(1) of the Evidence Act provides:

> ***"An Accomplice shall be a competent witness against an accused person and a Conviction is not illegal merely because it proceeds from the uncorroborated evidence of an accomplice provided that in cases tried with a Jury when the only proof against a person charged with a criminal offence is the evidence of an accomplice, uncorroborated in any material particular implicating the accused, the Judge shall warn the Jury that it is unsafe to convict any person upon such evidence, though they have a legal right to do so and in all other cases, the Court shall so direct itself".***

Even though the Evidence Act offers no definition of an accomplice, judicial interpretations of the Act unanimously suggest that an Accomplice is a person who has participated in a crime. Thus in the case of ***R V OKOYE (1950) 19 NLR 103*** the Court held that "a witness is only an accomplice if he is a person who might on the

evidence be convicted with the offence with which the accused is charged".

Adopting the definition given in ***Halsbury's Laws of England*** the Supreme Court of Nigeria held that "persons are accomplices who are participis criminis in respect of the actual crime charged whether as principals or accessories before or after the fact in the case of felonies or misdemeanours". – See

WILLIAM IDAHOSA & ORS V R (1965) NMLR 85.

It therefore follows that anybody who participates actively in the commission of a crime or aids or Counsels or procures the commission of a crime is an accomplice.

Within the ambit of the criminal process, the evidence of an Accomplice is treated with caution. There is a duty on the Court to look for Corroborative evidence confirming the testimony of the accomplice or apply the statutory warning on the dangers inherent in convicting the accused solely on the uncorroborated evidence of an accomplice.

As was stated by the Supreme Court in ***UKUT V THE STATE (1969) NMLR 18 at 24***

"It is prudent for the Trial Judge to remind the Jury or himself of the need for caution, in regard to any witness including a Defendant who has an interest to serve . . . . There is no hard and fast rule, but the Judge is expected to act in good sense and the Appellate Court may

think that his lack of caution led to a substantial miscarriage of justice in a given case".

It is generally unsafe for a Court to convict an accused person on the uncorroborated evidence of an accomplice. The reasons are obvious. He may invent an offence and accuse somebody wrongly to have committed it. He might also accuse somebody wrongly of an offence that had actually been committed. See –

ODOFIN BELLO V THE STATE (1967) NMLR 1: or (1966) 1 ANLR 223

AGENT PROVOCATEUR

There are also instances where Law Enforcement agents or Police Officers upon discreet information send spies to parties in crime. In such case, the spies pretend to be confederates and parties in crime in order to elicit information. The evidence of such spies at the trial are not treated in the same way as evidence of accomplices and as such do not require corroboration.

In the case of ***R V Gilbert Fanugbo*** (Unrep. Charge No. AB/7c/163) Berkley, J. held that:

"Where an accused person has manifested a clear intention to commit an offence and the Police facilitate the commission of the offence by the accused in order that the accused may be caught, the Police Officers and their aides cannot and should not be regarded as agents provocateurs, whose evidence requires corroboration". Undoubtedly, different consideration will be applicable in a

circumstance where such a spy incites provokes or actively participates in the commission of the crime. His evidence becomes shrouded with suspicion and it is a duty incumbent on the Court which admits such evidence to warn itself that it is unsafe to convict upon it unless it is corroborated in some material particular by independent evidence tending to show that the alleged crime was in fact committed and that the accused person participated in it. See ***R V ISREAL DAVID & ORS (1960) WNLR 170.***

INTERESTED WITNESS

Judicial Caution is equally advocated where a witness has an interest to serve. In the words of Edmund Davies J in ***R v Prater (1960) 44 C.A.R. 83***

> "In cases where a person may be regarded as having some purpose of his own to serve, the warning against uncorroborated evidence should be given".

Applying this principle, the Supreme Court was of the view that the evidence of such interested witness "ought to be regarded with considerable caution, and the trial court should have been wary in reaching a verdict of guilty on the uncorroborated evidence of such witnesses – See ***WILLIAM IDAHOSA & ORS V R (1965) NMLR 85, 88.*** It must be stated that a witness will not automatically be branded a "tainted witness" because he has a traceable relationship to the victim. There are a host of judicial authorities to the effect that mere fact of blood relationship or friendly ties do not constitute

grounds for disbelieving a witness perse. His malicious disposition must be obvious, compelling and noticeable by the Court.

THE JUVENILE/CHILD WITNESS

A child or juvenile who by reason of tender years is incapable of fully comprehending and understanding the questions put to him or from giving rational answers to those questions does not qualify as a competent witness under the law. In the absence of a stipulation of the requisite age by the Evidence Act, it then becomes a duty incumbent on the particular court before whom a child or juvenile appears to first of all conduct an independent preliminary inquiry to determine the child's capacity to comprehend the question and respond with rational answers.

If the child passes this preliminary investigative test, he is subjected to a further test whether he does understand the nature and value of an oath, against the back drop of speaking the truth. He then becomes competent to testify as an adult. However, in the event of his failure to understand the nature of an oath, his testimony will still be admissible and receivable in evidence but such evidence will not be given under oath. The Court would then require corroboration of the unsworn testimony of a child (See Section 183 (2) and (3) of the Evidence Act.

Section 182(1) of the Evidence Act provides:

"In any proceedings for any offence, the evidence of any child who is tendered as a witness and does not, in the opinion of the Court, understand the nature of an oath, may be received, though not given upon oath, if, in the opinion of the Court, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth".

Preliminary Test or Inquiry

Where the witness is a child the Court conducts a preliminary independent test or Inquiry to determine the following:

(I) Whether the child can testify at all
(II) Whether his evidence will be sworn or
(III) Whether his evidence will not be sworn.

One of such tests is to ascertain whether the child understands the nature of an oath. In the traditional and Customary sense, taking an oath is sacred and is premised on the fundamental belief of God's eternal punishment on any one who gives a false testimony.

In the case of **R V RAYS (1977) 2 AER 288 AT 291** the Court noted:

"It is unrealistic not to recognize that, in the present state of society amongst the adult population the divine sanction of

an oath is probably not generally recognized. The important consideration, we think, when a Judge has to decide whether a child should properly be sworn, is whether the child has a sufficient appreciation of the solemnity of the occasion and the added responsibility to tell the truth, which is involved in taking an oath, over and above the duty to tell the truth which is an ordinary duty of normal social conduct".

Expounding this principle in the case of OKON V THE STATE (1988) 1 NWLR Pt 69 172 at 183 Nnaemeka – Agu JSC adumbrated as follows:

"It is my view that once a witness is a child, by the combined effect of Sections 154 and 182 (1) and (2) of the Evidence Act, the first duty of the Court is to determine first of all whether the child is sufficiently intelligent to understand the question he may be asked in the course of his testimony and to be able to answer rationally. This is tested by the Court putting to him preliminary questions which may have nothing to do with the matter before the Court. If, as a result of these preliminary questions, the Court comes to the conclusion that the child is unable to understand the questions or to answer them intelligently, then that child is not a competent witness within the meaning of Section 154 (1). But if the child passes the preliminary test then the Court must proceed to the next test

as to whether, in the opinion of the Court, the child is able to understand the nature and implications of an oath. If after passing the first test, he fails this second test, then being a competent witness he will give evidence which is admissible under Section 182 (2) though not on oath. If, on the other hand, he passes the second test, so that, in the opinion of the Court, he understands the nature of an oath, he will give evidence on oath".

In the event of a failure to carry out the preliminary tests, the Supreme Court treated such failure as an irregularity, not a fundamental defect vitiating the entire evidence and rendering it a nullity. Thus in OKON V STATE (supra) the Court Stated:

"It is not disputed that the Learned Trial Judge did not comply with these preliminaries, as the child was simply sworn and he gave evidence. What then is the effect of his failure to do so? I do not agree with the counsel for the Appellant that the correct thing to do is to expunge the evidence. It is noteworthy that in this case, we are dealing with sworn evidence of a child, although the oath was administered without the necessary preliminaries referred to above . . . . it appears to one to be the law that where, as in this case, an irregularity has occurred in the taking of the evidence of a child, the correct approach to such evidence is

not to expunge it but to see whether it has been Corroborated by other evidence implicating the accused".

NON-AVAILABILITY OF WITNESSES

Witnesses play a paramount role in the criminal justice system. The evidential burden of proof which rests on the Prosecution has to be discharged mainly by evidence from credible witnesses. However, more often than not, the prosecution faces embarrassing problems when these witnesses cannot be procured. The reasons are myriad. Sometimes, during the investigation process, addresses of witnesses are not correctly stated with the resultant effect that the witness cannot be traced. In other instances, when the witness can be traced, he is unwilling to come to Court to testify owing to incessant adjournments. Some witnesses over a period of time loose interest in the continued prosecution of the case and simply refuse to turn up to testify. Worst still, in some cases, there is an overt collusion between the Witnesses and the Defence to frustrate the prosecution of the case. Witnesses are known to make depositions on oath signifying their last of interest and preparedness in the continued prosecution of the case. More importantly, in cases of organized crime, owing to fear of reprisals, witnesses are intimidated and decline to testify. There is thus a growing need for our criminal justice system to evolve a witness protection programme in these days of organized crime.

EVOLVING TRENDS IN WITNESS PROTECTION

A radically new and stimulating approach to witness protection occurred in Britain in the trial of four Gangsters Marcus Ellis, Michael Gregory, Nathan Martin and Rodrigo Simms, over the blood chilling murder of two teenage girls Charlene Ellis (18) and her Cousin Letisha Shakespeare (17) in Aston, Birmingham on New Years Day 2003. The men were tried, convicted and jailed for life. Their conviction on the 18th March 2005 marked the end of a significant period for West Midlands Police in it's fight against violent gangs. The Gangs had terrorized the city for 20 years and after each shooting, witnesses failed to come forward to testify for fear of retribution. The gangs are run by fear, intimidating members, potential witnesses and members of the public. And at the end of each sordid crime, the Police was faced with a wall of silence and there was no evidence to support prosecution. Most of the previous cases against the Gangsters were dropped because witnesses were too scared to testify. The result was that gun crimes in Birmingham rose to alarming proportions as Handguns and machine guns were used regularly with chilling non-challance. In 1999, Corey Allen (27) was shot dead outside a packed Community Centre. A former gangster, he had left the gang and became a Muslim. The Gangsters suspected him of double crossing them and straightaway murdered him. The killing set in motion a chain of revenge attacks. Ashi Walker, a member of the rival gang was shot dead. Sometime in 2000, Christopher Clarke was stabbed to death. The case against the

main suspect Yohanne Martin (24) a gangster was dropped because witnesses were too scared to give evidence. The rival gang went after Martin and in August 2002, he was shot six times in his car and he died instantly. In another development, gangsters shot Daniel Bogle three times in the head at close range whom they wrongly suspected of having links to a rival gang. The killers were caught on CC TV as they celebrated in a nearby pub 15 minutes later. Yet in another incident, the gangsters shot an Artist as he performed on stage.

In the latest incident resulting in the convictions, the gangsters had driven up in a Red Ford Mondeo, and one of the occupants opened fire with a sub-machine gun, firing at least 14 rounds in less than 10 seconds, Others in the Car began shooting with automatic pistols. The two girls (who were not intended targets) were both hit three times and died instantly. They then drove the Car to another area of Birmingham and set it on fire, destroying much of the forensic evidence.

According to one of Britain's leading Tabloids THE DAILY TELEGRAPH of 19th March 2005 "Justice Goldring allowed an unprecedented level of protection for four witnesses, saying that unless they were granted anonymity, there would be a "very real danger" to their lives as the accused sought retribution. He ordered enhanced protection for two of them, allowing them to have their identities withheld from the accused and their Barristers. One, who has since entered a witness

protection programme, was screened from everyone in court except the Judge and Prosecuting Counsel. His voice was distorted to prevent him being recognized in Court and his real name was with held. After the case, David Blundell, the head of the West Midlands Crown Prosecution Service said "This trial showed the extent to which the criminal justice system is prepared to go to ensure people are properly prosecuted". A day after the judgment, the Defence Counsel in an Interview on BBC openly criticized the Judgment for having no precedent in law and threatened to overturn the verdict on Appeal. Whatever the outcome of the appeal, it is becoming increasingly evident that the issue of witness protection in these days of organized violent crimes is an imperative for the Criminal justice system.

EXPERTS

In most criminal trials, the evidence of experts is imperative in proof of certain facts. A proper evaluation of facts is often difficult or impossible without the application of some scientific, technical or other specialized knowledge. The most common source for this knowledge is the expert witness.

An expert may give a dissertation or exposition of scientific or other principles relevant to the case, leaving the Judge to apply them to the facts. The fields of knowledge which may require the testimony of experts are not limited merely to the scientific and technical but

extend to all specialized knowledge. Similarly, the Expert is viewed, not in a narrow sense, but as a person qualified by knowledge, skill, experience, training or education. These Expert witnesses can be Pathologists, Medical Practitioners, Chemical Laboratory Scientists, Handwriting and finger Printing Analysts, Ballisticians etc. To illustrate, in a Murder trial, the evidence of the Pathologist will establish the cause of death and the kind of weapon used in inflicting the lethal wound. His clinical evidence and graphic description of the injuries will dispel any doubts in the mind of the Judge as to how the deceased met his death; and thus aid the Court to arrive at a just verdict.

Section 56(1) of the Evidence Act provides as follows:

> **"When the Court has to form an opinion upon a point of foreign law, native law or custom, or of science or art, or as to identify or handwriting or finger impressions, the opinion up on that point of persons specially skilled in such foreign law, native law or custom, or science or art or in questions as to identify of handwriting or finger impressions are relevant facts.**

Section 56(2) "Experts" –

"Such persons are called Experts"

The general rule is that a witness may not be allowed to give his opinion in evidence. It will be considered irrelevant and therefore inadmissible. There is however an exception to the general rule in opinions of Experts. An Expert has been defined as a person who is

specially skilled in the field in which he is giving evidence. In this case, the opinion of the Expert is considered relevant and therefore admissible. The opinion of an expert can equally be admissible in evidence even though he did not acquire his knowledge after a systematic tutoring in the particular field provided that it can be proved that he has had sufficient practice in the particular field of knowledge to make his opinion reliable.

In the case of

IDUDHE V ESEH (1996) 5 NWLR Pt 451, the Respondent sued the Appellant for damages for nuisance. The Appellant had installed a grinding Machine which was alleged to be causing the nuisance. The Respondent called an Expert witness who testified that the machine made excessive noise. The Appellant did not call any witness. The trial Court gave judgment for the respondent. The Appellant appealed to the Court of Appeal. Dismissing the Appeal, the Court held on the issue of admissibility and probative value of expert witness – "It is trite law that evidence of opinion of experts on scientific matters is admissible when ever the Court has to determine issues within that field. But the expert must first satisfy the court that he is specially skilled in the particular field in question".

The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of his conclusions so as to enable the Judge to form his own independent judgment by

the application of the criteria to the facts proved in evidence before him. The law does not require expert evidence in all cases for the proof of special damages. An expert witness is only necessary if by the nature of the evidence, scientific or other technical information, which is outside the experience and daily common knowledge of the trial Judge as Judge of fact is required. See **EGESIMBA V ONUZURUIKE (2002) FWLR Pt 128.**

Where there are two conflicting expert opinion, the court has a duty to resolve the conflict. The evidence of an expert is generally an aspect of the entire evidence to be evaluated by the Court. Thus where there is conflict in the opinions of experts, it is the duty of the court to come to a conclusion in the case by resolving the conflict and can do so by rejecting one or the other expert opinion.

Thus in the case of

A.G. FEDERATION V OGUNRO (2001) 10 NWLR Pt 720

The Respondents were charged with conspiracy and intent to cause miscarriage of a certain female, which resulted in her death. Upon her demise, the General Hospital Wuse, Abuja where she died issued a Report that the deceased died of congestive cardiac failure. On the other hand, the family of the deceased called a Pathologist to conduct a Post-Mortem examination on her. During the trial, the Pathologist gave evidence to the effect that the deceased died of blood loss consequent upon criminal abortion. The trial Court

rejected the evidence of the Pathologist and accepted that of the Hospital. The Appellant appealed to the Court of Appeal on the issue of the cause of death. Dismissing the appeal, the Court held that a trial Judge is entitled to reject a Medical report of a Post-Mortem examination where it is shown that the examination is not complete or where the report is shown to be unreasonable from the circumstances disclosed by the evidence before him.

On the issue of admissibility of expert report jointly prepared by a team of experts, the Court has held in the case OF OGIALE V SHELL (1997) 1 NWLR Pt 480:

that where a team of two or more experts in different but related fields of study jointly undertake a research project and jointly produce a report, that report tendered by one of them in Court proceedings is admissible. The fact that the expert tendering the report is not as qualified as the one not called as a witness in the area he is being cross examined can at best go to the question of weight to be attached to the report and not the admissibility of the report. However, this general principle of law will not be applicable where there is evidence of a clear division of labour among the team of experts particularly where a specified field of study is carried out by a particular expert or experts in not very related field of study. In such a situation, it may be necessary that at least an expert from each of the specialized fields is called to give evidence in the related field of specialization.

Expert evidence or opinion is only necessary where the expert can furnish the Court with scientific or other Information of a technical nature that is likely to be outside the experience of the Judge. – See **SHELL DEV. CO. V OTOKO (1990) 6 NWLR Pt 159**

Fola Arthur Worrey in
The Constitution, Prosecution and Criminal Justice administration raised the poser:
"Do we do finger printing routinely? Do we use luminol to search for blood traces? Do we still mark money with anthracite powder to catch corrupt public officials? Do we examine the liver and other organs of a corpse for traces of the lethal cocktail when the allegation is one of poisoning or death by injection? Do we do DNA typing? Do we examine hair and cloth fibres? Do we check the hands and clothes of suspects alleged to have used firearms for powder burns? Do we take plaster casts of tyre tracks and shoe soles? Do we still actually physically investigate the contents of witness statements to determine their veracity or otherwise? Do we still have competent handwriting and ballistic experts who prepare solid, reliable and unimpeachable reports? Do we have any database of finger prints and other relevant information about suspects and other useful data immediately available to all Police Commands?

Do we use Computers as investigation tools? Do we have a mug-shot photo record? Do we still conduct proper and rational and rule based identification parades/ Do we have reconstructive artists for identification purposes?

These issues lie in the domain of expert witnesses.

VICTIMS

INTRODUCTION

The role of the victim in the criminal justice system is increasingly gaining prominence and becoming the focus of many legal systems. Hitherto, most legal and Judicial systems centred attention principally on the offender and the protection of society and the victim of crime was left to his plight. However, some jurisdictions have generated interest on the subject and increasingly most legal systems are evolving schemes and articulating response systems to problems of victims of crime.

The Criminal process pays great attention to the offender and concentrates on speedy and effective dispensation of justice to the public but very little concern and consideration for the victim; at whose instance the State had undertaken the Prosecution of the Offenders.

As has been rightly stated by Prof Femi Odekunle

"From Statutory provisions, through procedural laws, to penal sanctions modern criminal justice systems appear to

emphasis the safe-guarding of the lights and interests of offenders but utterly neglectful of the rights and interests of their victims. Form arrest to sentencing and after, the offender has the right to be cautioned before making a statement, right to remain silent, right to bail, right to innocence until proven guilty, right to fair hearing, right to counsel, right to appeal and be heard, right to human and decent treatment in prison etc".

Criminal jurisprudence is centred on the maintenance of law and order, the preservation of the ethnical values of the society and the punishment of persons of deviant and criminal tendencies. The criminal process of maintaining law and order commences with the acts of Policing, leading to apprehension of offenders, prosecution, conviction and culminates in sentencing. More often than not, the attention is on the offender.

In the words of Hon. Justice C. A. Oputa JSC Rtd. In GODWIN JOSIAH V THE STATE (**1985**) INWLR 125.

"Justice is not a one way traffic. It is not Justice for the Appellant only. Justice is not even a two-way traffic – Justice for the Appellant accused of a heinous crime of murder; **justice for the victim, the murdered man, the deceased "whose blood is crying to heaven 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".

WHO IS A VICTIM

It is necessary to elucidate and throw more light on the word. "VICTIM" in order to lay the foundational plank for the discussions of the issues flowing there from.

Victims are persons who have been subjected through no fault of theirs to pain, torture, sometimes death, permanent disfigurement, maiming or disability or loss of property and valuables through the direct criminal acts or omissions of others.

The Victim is not a stranger to the criminal process. He is normally the complainant who lodges a Complaint signaling the commencement of the criminal process. He can also be a Witness for the Prosecution. In either capacity, he plays a principal role in the criminal process.

The typical victim would include the female victim of a sexual assault, or the citizen who has lost valuables due to robbery or been maimed or permanently disfigured owing to grievous bodily harm or other violent assault.

The victims of crime may also be subjected to secondary victimization by the criminal justice system and the laborious Court process. Often times, Judges, Prosecutors and Defence Counsel appear insensitive to the needs of the victim. Sometimes, a rape victim is subjected to

psychological trauma and abuse at the trial of her assailant. Owing to insensitive questioning often times occurring during cross examination, she is exposed to public ridicule and suffers damage psychologically. Sometimes Prosecutorial authorities and Law Enforcement agencies do not avail the victim sufficient information regarding the trial of her offender and they lose trade of the trial process. The whole setting and procedure of the Law Courts are intimidating to all but the operators of the system who are familiar with it. Especially wit victims who become key witnesses for the Prosecution, Witness allowances ought to be paid to them to defray transportation costs to the Court. Incessant adjournments should also be reduced to the barest minimum.

According to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

> **"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power".**

A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between the perpetrator and the victim. The term "Victim" also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

The Declaration establishes standards concerning the prevention of victimization, access of the victim to justice and fair treatment, restitution from the offender, compensation from the State and social assistance toward recovery.

Speaking generally, there would appear to be no difficulty in admitting the testimony of a witness who was the victim of the offence. Especially in sexual offences, the evidence of the female victim is admissible against her assailant. However, in cases of Bribery and Official Corruption, whether the complainant would be regarded as a victim or accomplice would be determined by the individual facts of each case. Particularly, where the offence contains an element of extortion, then the Complainant will be regarded as a Victim. Thus in **THOMAS CHARLES OKEKE V. COMMISSIONER OF POLICE (1948) 12 WACA 363 at 365,** the Court held that "it is quite untenable in argument that those who met the monetary demand of the Appellant were accomplices to the demand. Nor, in

meeting the demand, could they be regard otherwise than as victims of the Appellant's rapacity".

Conversely, where a person has voluntarily (without any coercion from the accused person) acceded to a request for money in order to gain an advantage and obtain a preference not otherwise open to him, he cannot be treated as a victim in offering what he must have known to be a bribe in order to effectuate that purpose.

Penal enactments in Nigeria contain provisions empowering the Court upon conviction of an offender to award compensation to victims of crime.

Section 78 of the Penal Code provides as follows:

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

Section 270(1) of the Criminal Procedure Act:

> "Where any person is convicted of having stolen or having received stolen property, the Court convicting him may order that such property or part thereof be restored to the person who appears to it to be the owner thereof

either on payment or without payment by the owner to the person in whose possession such property or a part thereof then is, or of any sum named in such order".

Section 356 of the Criminal Procedure Code

"Whenever under any law a Criminal Court imposes a fine, the court may in passing sentence order that in addition, the offender shall pay a sum .... Compensating in whole or impart for the injury caused by the offence, where in the opinion of the Court substantial compensation is recoverable by Civil suit; Compensating an innocent purchaser of property which has been the subject of an offence and whbo has been compelled to give it up; and defraying the medical expenses of any person injured by the accused in connection with the offence.

Section 261 of Criminal Procedure Act provides that

"Where in a charge of stealing or receiving stolen property, the Court is of the opinion that the evidence is insufficient to support the charge, but that it establishes a wrongful conversion or detention of property, the Court may order that such property be restored and may also award damages".

It is submitted that the above provisions address the issue merely perfunctorily. There are short comings and inadequacies inherent in them. There is need to do more in this regard to make the compensation more meaningful and readily available.

By it's very nature, compensation is conciliatory and it's significance is more readily appreciated by the victim than the traditional fine which is paid to the State. There is need for legislative reform of existing penal statutes. There is equally the need to design the supporting procedural and institutional framework to ensure that a victim who suffers harm, injury or damage as a result of a criminal act is sufficiently and adequately compensated.

Under the auspices of the Federal Ministry of Justice, a national Conference was organized with the Theme: **Compensation and Remedies for Victims of Crime in Nigeria.** That Conference brought together Judges, Lawyers, Prosecutors, Anthropologists etc.

At the end of that Conference a 12-Point Communiqué was issued (which is reproduced herein and annexed as an Appendix to this Paper). That singular noble effort represents a positive step toward reform of a system of criminal justice which hitherto had focused exclusively on the offender, without corresponding concern for the Victim of the Crime.

REFERENCES

1. The Law of Evidence in Nigeria – Dr. Akinola Aguda

2. Compensation and Remedies for Victims of Crime in Nigeria – Published by the Federal Ministry of Justice, Nigeria.