

Received: 15-09-2024  
Accepted: 05-12-2024

**ISSN: 2814-1695**

<https://doi.org/10.61867/pcub.v2i2a.198>

CTHLR 2(2): 92-103 (December, 2024)

## **THE EMERGING TREND IN CRIMINAL JUSTICE REMEDIES FOR CRIME VICTIMS IN NIGERIA: THE ECONOMIC AND FINANCIAL CRIME COMMISSION'S APPROACH**

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## **The Emerging Trend in Criminal Justice Remedies for Crime Victims in Nigeria: The Economic and Financial Crime Commission's Approach**

### **Abstract**

Criminal justice remedies are benefits ordered by a court to uphold a legal claim or impose restitution for harm an offender caused to the state or to victim(s). In Nigeria, reliefs provided to crime victims rely on how the criminal justice system is administered, which in turn depends on why the current government decided to put it in place. Contemporary criminal justice in Nigeria had its roots in the British imperialist system which was retributive in character because they needed to use harsh punishments to deter their subject from committing crime that would harm their political control. However, it was not until the Economic and Financial Crime Commission (EFCC) was established at the start of the fourth republic, because Nigeria urgently needed to stop economic crimes and corruption that had damaged the nation's international reputation by defrauding numerous overseas and local victims that the criminal justice system evolved to the one with restitutional or compensatory measures.

Content analysis of the doctrinal research methodology was used by this study to analyse the primary sourced Data which includes: the Constitution of the Federal Republic of Nigeria, 1999, (As Amended), Administration of Criminal Justice Act, (ACJA). 2015, EFCC Act, 2004 and case laws decided by the courts while the secondary Data consists of academic journals and news publications materials.

The study's major finding is that although the restitutionary criminal justice ushered in by EFCC Act and ACJA 2015, goes a long way to grant sufficient relief to victims of crime, it may not be adequate since settlement and awards do not necessarily involve the victims. There is still a gap in the administration of criminal justice where all stakeholders (the state, victims and offenders) would be involved in the outcome arrived at by the Court.

The Study thus, strongly recommended the full introduction of restorative criminal justices remedies by the State whereby crime victim and offender with the state together will conference to arrive at agreeable resolution to all to ensure the victim of crime is completely assuaged.

**Key words:** Crime victim, Retributive justice, Restitutive justice, Restorative justice, Economic and financial crime

## 1.0 Introduction

The contextual definition this paper assigns to the term ‘crime’ is that it is an offence or contravention against any enactment in force in Nigeria. The country’s crimes are cataloged in the criminal code and penal code which operates at the southern part and northern part of Nigeria respectively; whereas, both codes contain many similar offences albeit with different appellations. It should however be noted that, a single adjectival Law of Evidence applies to all judicial proceedings in the whole country.

It is trite to note that offences committed against persons, and one’s properties usually have casualties whom personally suffered the effect(s) of such criminal activities aside of the State and they are called ‘crime victims.’ The focus of this paper is to legally appraise the effect of crime on victim(s) and how they are assuaged as provided by law via criminal proceeding when the matter is investigated and eventually charged to court or compounded with a view to suggest recommend remedies that would benefit the crime victims better. The period covered by this study would be from departing days of colonialism till date. It is pertinent to look at how Nigeria administration of criminal justices evolved in the period in question.

## 2.0 History of Modern Era Criminal Justice System in Nigeria from Colonial Times to First Republic, 1963

The British colonial system gave rise to the country's current criminal justice system. The English Common Criminal rule was first introduced as an unwritten rule to the Lagos Colony in 1861<sup>1</sup>. Custodial sentences and the development of a regulated jail system distinct from at the pleasure of the traditional ruler's detention facilities were brought about by the arrival of English law.

It would seems that the English Common Criminal Law was designed to protect colonialists, and that the European judicial system was put into place without taking into account or adjusting to the local customs of doing justice.<sup>2</sup> This claim is supported by the fact that most crimes were designed to be punished severely in order to deter future offenders against the colonial government. Ironically, the colonialists were separately governed by their own home government laws rather than those they enacted for Africans they ruled.

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<sup>1</sup> Obi N. I. Ebbe, ‘World Factbook of Criminal Justice System in Nigeria,’ (undated) Bureau of Justice Statistics (.gov) <https://bjs/ojp.gov> fbcjsnig

<sup>2</sup> Noel Out, ‘Colonialism and the Criminal Justice System in Nigeria,’ (1999) international Journal of Compative and Applied Criminal Justice, Vol 23 Iss 2, Pp293-306 <https://bjs/ojp.gov> abstract

Meanwhile because of the British operated indirect rule system of governance, a way of using the peoples' natural rulers to govern them at grassroots. Native laws also called Customary law in the South and Sharia law in the North and their court system thereto were recognised and allowed to operate *pari passu* with the received English law, so far it does not conflict with the English criminal law and its administration.

Nigeria became one country by the 1914 amalgamation of British Southern and Northern Protectorates into one administrative territory by Lord Fredrick Lugard which *a fortiori also* brought about the unification of the various criminal laws in the hitherto sequestered territories. However, the traditional rulers were still permitted to operate the native laws alongside the unified criminal law and were strengthened with the enactment of Native Law Ordinance in 1933<sup>3</sup>.

It is interesting to note that whereas, the Native laws provided for some form of compensation for victims of crimes such as assault, stealing and fraudulent business transactions<sup>4</sup>, while the English common criminal law was just retributive. The victim without expectation of any relief is expected to report the occurrence of crime to the State and thereafter duty bound to come to court as crown or prosecution witness for the State.

The difference between the administration of British overlord criminal justice system and that of Native laws led to intractable conflict of law that was brewing a religious disquiet in the North (where Islam is regarded as both religion and a way of life). The matter became a subject of judicial adjudication pronouncement in the English system of court in the case of **Tsofo Gubba v Gwandu Native Authority**<sup>5</sup> where pronounced, that Native laws could be applied on offences with native law but if also the offence was provided for in by the English common criminal law, then the English law will apply. Thus, the profound effect of this decision was that the Native laws became inferior as it lost its peer status to the English law<sup>6</sup>. This led to serious controversy which was later resolved by a Committee set up to look into it and on its advice, the government allowed the Native Courts to try criminal offence, and

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<sup>3</sup> Adedeji Akeen. Okemuyiwa, 'Native Law and Customs in a Democratic Setting (10 July2012) SSRN <http://papers.ssrn.com>

<sup>4</sup> Luc Huyse & Mark Salter (Editors), "Traditional Justice and Reconciliation after Violent Crime: Learning from African Experiences.' (IDEA)(updated 2020), International Institutte for Democratic and Electoral Assistance, [www.idea.int](http://www.idea.int) publications Pp 5-200

<sup>5</sup> (1947) 12 WACA reported in djetLawyer <https://djetlawyer.com>

<sup>6</sup> Op.cit footnote S/No 3

where such offence is also in the English law, the punishment the Native Court must award should not be more than that prescribed in the English law<sup>7</sup>.

### **3.0 Evolution of Criminal Justice System and Treatment of Crime Victims from the 1<sup>st</sup> Republic to Present Times**

In order to avoid the conflict of law as explained above, a decision was reached at the 1955 Constitutional Conference to eliminate all unwritten criminal laws. Thus native criminal laws were abrogated because they were majorly unwritten. This development led to the introduction of Penal Code in the Northern Region of Nigeria as a way to codify some of their native laws which aligns with Islamic law, while the rest of the country stuck with the Criminal Code.

As a result of this important development in Nigerian Criminal Justice administration, it became sacrosanct that before an accused person could be answerable to criminal allegation; such offence must be provided for in a written law in existence at the time of the commission of the offence. Thus, starting from the 1963 Republican Constitution<sup>8</sup>, all through to the extant Nigerian Constitution<sup>9</sup>, the rule that no one can be charged for any offence that was not written in law as at the commission of the offence became entrenched as a fundamental right of any person accused charged with criminal offence. However, both the criminal law and the constitution were silent on the remedies available to crime victims while it set out to protecting person accused of crime from arbitrariness.

### **3.1 The Objectives of Criminal Justice in Early Post-Independence Nigeria.**

As Nigeria was approaching independence, the nature of crime that challenged the government was political violence, murder, stealing, assault, chieftain dispute, protecting citizen from harmful and injurious act. Laws were curb unrest and agitations. Thus, it was apposite that her criminal justice system would be strengthened to preserve public order, human decency, and protection of law abiding citizens from offensive and injurious act of political activist<sup>10</sup> and to safeguards the vulnerable in the society. Victims of exploitative crimes like fraud, stealing, malicious damage, assault, had no

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<sup>7</sup> Abdulwahab Danladi Shittu, ;Towards locating the Nigerian *Shari'ah* Penal Codes'Provisions for wilful homicide within the *Shariah*, *Ilorin Journal of Religious studies (IJOELS)* Vol5 No 1 2015 pp 103-118 <https://www.ajol.info> assessed 29 May 2023

<sup>8</sup> Section 22(10) Republican Constitution of the Federal Republic of Nigeria

<sup>9</sup> Section 36(12) Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

<sup>10</sup> Leslie Sheba, 'The ceation and evolution of criminal law in colonialand post-colonial societies Crime,History & Societies Vol3 No 1, 1999 journalsopenedition.org

recompense in the criminal justice system and were merely treated as obligated prosecution witness. It was believed that justice was served if the State was able to secure conviction of the offender while victim is left to grieve his/her loss or seek relief through civil litigation if he or she can afford the cost.

The effectiveness of retributive system of criminal justice earlier practiced as described above was that it curbed violent boundary disputes and political unrests. The force of law and its enforcement, commands for the government, authority and respect. The argument in support of this position appears to be, criminal trials are conducted at public expenses and so it ought not to benefit individual but the society at large<sup>11</sup>.

Since crime is regarded as a legal wrong against the State, the remedy is the punishment awarded at the instance of the State. Notable goal of the State during this period is drastic punishment attached to the offence of robbery which became rampant. This was the position of crime victims until the establishment of anti-graft institutions to combat the emerging crime of economic and financial crime<sup>12</sup>

### **3.2 Rise of Economic/Financial Crimes and the Compensation of Crime Victims**

Nigeria democracy was truncated by military interregnums which hallmark was malignant corruption and festering economic and financial crimes which thrived because military administrations usually lack financial accountability<sup>13</sup>. By the commencement of the Fourth Republic which started with the regime of President Olusegun Obasanjo, the country had become notorious for advanced fee frauds, unethical business email compromise, obtaining of monies under false pretense, defrauding and swindling victims of assets from both within and without the country's shores<sup>14</sup>.

The unfortunate effect of the increased trend in the commission of economic and financial crimes is that it sets the victim financially backwards and this reduces his/her state of economic and mental well-being. It became obvious that the retributive justice hitherto in operation did not take care of the victims' interest which means that they were no longer

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<sup>11</sup> Mathew Philbrook, 'What is the role of the Federal Government in Criminal Law?' Pilbrook Law (25 August 2016), [www.philbrook.law.com](http://www.philbrook.law.com) assessed 31 May 2023

<sup>12</sup> Jona F. Meyers, 'Retributive Justice-penology', (updated 22 May 2023 [www.britannica.com](http://www.britannica.com) assessed 31 May 2023

<sup>13</sup> Nweke O, Joshua, 'Bureaucratic Corruption in the Administration of Military Pension in Nigeria,' African Journal Online <http://www.ajol.info> assessed 28 May 2023

<sup>14</sup> EFCC Media & Publicity, 'How and when EFCC was established?' EFCC (undated) [www.efcc.gov.ng](http://www.efcc.gov.ng) assessed 29 May 2023

assuaged by merely discharging their civic responsibility of assisting the State to convict the offender that caused them financial injuries in court while they are left to lick the wounds of their financial loss from the crime committed thereto<sup>15</sup> without recompense from any quarters.

As the economic and financial crimes festered and victims both locally and abroad increases, Nigeria image dimmed to a ridiculous level in the comity of nations making the western developed countries to apply strong pressure on Nigerian government to tackle the issue of corruption aggressively. In response to the pressures coming from the economically developed countries, whose citizens were rapidly falling victims and targets of the fraudsters based in Nigeria, the Economic and Financial Crime Commission (EFCC) was established in 2003 alongside other anti-graft institutions to combat the situation.

Thus, with the formation of the anti-graft commission, the transition of the retributive administrative system of criminal justice in Nigeria became inevitable. Thus, the corpus of criminal jurisprudence benefited directly from this development in that the developed countries availed Nigeria's criminal justice system, technical legal support in addition to generous financial aids provided to strengthen the newly formed EFCC to be able to tackle corruption with a workable criminal justices system that provides for restitution to crime victims by the offender.

The benefits for Nigeria adopting the then contemporary trend in administration of criminal justice for tackling corruption and economic crime can be viewed two folds: firstly, it was a tacit approval of the way the nation was going about to redeemed its <sup>16</sup>tainted international image which then has Nigeria being looked at as haven of economic and financial crimes and criminals, a factor which drastically affected the flow of foreign investments to the Country. In no time Nigerian justified the trust reposed by the comity of nations by proving its sincerity in the anti-graft wars by disgorging the ill gotten wealth from the fraudulent criminals based in the country and returning them to their respective victims whether at home or abroad.<sup>17</sup>

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<sup>15</sup> FAC, 'Impact of Fraud' Financial Fraud Academy, (undated) [www.financialcrimeacademy.org](http://www.financialcrimeacademy.org) assessed 39 May 2023

<sup>16</sup> Idris Ahned Jamo, 'Economic and Financial Crime Commission (EFCC) and Anti-Corruption Crusade in Nigeria: Success and Challenges,' GIJMSS (undated) <https://gijmss.com.ng> article

<sup>17</sup> HRW, 'Corruption on trial? =The Record of Nigeria's Economic and Financial Crimes Commission Human right Watch (23 August 2011) [www.hr.org](http://www.hr.org) assessed 29 May 2023

Secondly, there was paradigm shift in the administration of criminal justice from the now outdated and obnoxious retributive justice system with the noticeable remarkable difference in the way crime victims is now being compensated in the nascent restitutive criminal justice system being adopted.

Thus, it can be safely stated that the enactment of the Economic and Financial Crime Commission (Establishment) Act, 2004, brought about Nigeria's transitional move from retributive to restitutive criminal justice system. The complete evolution manifested later with the enactment of Section 319(1)(a) Administration of Criminal Justice Act, 2015 which expressly provided that a court may within proceeding or while passing judgment order the defendant or convict to pay a sum of money as compensation to any person injured by the offence while it balanced it by providing for restitution to defendant of criminal charge that is a victim of malicious prosecution during criminal trial<sup>18</sup>.

It should be noted that the major difference between retributive system of criminal justice and restitutive justice is that the former implies awarding punishment to someone who has committed a criminal act as way to purge him of the act and to serve as deterrence for whoever wants to err that way; while, restitutive justice is an interactive system of dealing with criminal that emphasize his taking responsibility for the effect of the crime he committed on the victim with a view to assuage the victim by making his position better from the injury he suffered from the commission of the crime. The unique advantage of restitution in administration of criminal justice is that it is all encompassing interactive justice for the stakeholders.

### **.3.3 Benefits of Restitutive Justices applied to Economic and Financial Crimes by EFCC**

The restitutive justice approach to administration of criminal justices is multi-faceted. It has a benefit or the other for all stakeholders<sup>19</sup> which shall be considered below:

#### **3.3.1 for the State:**

Admission to pay compensation by offender makes the work of prosecution lighter because by the very fact of the offender willing to compensate victim, shows that the offender has tacitly admitted the wrong doing and this will prevent wastage of tax payers' money.

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<sup>18</sup> Section 323(1-3) & 322 read in together complement each other and give Court to award cost or compensation in favour of the defendant if the charge is false, vexatious and frivolous

<sup>19</sup> Abel C.F & Marsg A.H., 'Punishment and Restitution- A Restitutionary Approach to Crime and the Criminal'(1964) Office of Justice Programs(1984) [www.ojp.gov](http://www.ojp.gov) assessed May 29, 2023



### **3.3.2 for the Victim:**

The victim of crime would have been pacified with an adequate compensation without the arduous task and expenses of asking for reliefs through a separate civil litigation which may take a while to end.<sup>20</sup> The victim will also have increased confidence in the government as capable of protecting citizens' interest.

### **3.3.3 for the Offender:**

The offender by being made to compensate the victim in addition to serving punishment for the commission of the crime will realize the sense in the truism that 'crime does not pay.' The double tragedies as it seem is far more deterring factor than the mere punishment of the retributive system which may allow him to enjoy his hidden loot thereafter<sup>21</sup>.

## **4.0 Criticism of the Restitutive system of Criminal Justice Administration**

There have been arguments that not all crime can be adequately compensated. For instance, what amount of compensation can be considered as adequate for sexual offences that will be more satisfactory to the victim to see the offender jailed? This is particularly so because the victim is not directly involved in arriving at the compensation or restitution sum.<sup>22</sup>

Another, important point raised is that recovering the amount involved in crime after long time lag may not suffice as restitution especially if it was money that was disposed during the crime. Take for instance, where One million Naira was defrauded by the offender five years ago and the same amount was recovered and returned, it would have lost appreciable value to the time when it was obtained from the victim.

Where there are members of the criminal syndicate at large, they may target again the victim whom the State assisted to get restitution as a form of vindictiveness, since the offender may not have voluntarily agreed to the terms of restitution.

## **5.0 Findings on the Administration of Restitutive Criminal Justice in Nigeria**

The findings from the above analysis of Nigerian Criminal Justice system from retributive to restitutive justice shows that the administration of the adopted justice system is too legalistic. For instance the retributive justices' philosophy finds what the law say about the offence, the

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<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Courlander M., 'Restition Programs: Problems and Solutions' Office of Justice Programs (1988) [www.ojp.gov](http://www.ojp.gov)

guilt or otherwise is assessed and the punishment is administered as expressly stated in the law<sup>23</sup>. There was no room for judicial or judicious discretion.

The restitutive justice on its own part does not really allow the victim to be part of decision making on award suitable for the offender, whereas, he was the main victim. Although, victims are compensated in restitutive justice, the assessment of the injury is at the discretion of the investigating agency and if it goes to court, the cost will be determined solely by the discretion of the presiding judge, because crime is first and foremost considered to be an injury against the state and injury of victim is taken as secondary and becomes a criminal neglect by the State<sup>24</sup>.

Also, the law does not address situation where compensation is awarded and victim was not able to pay because it was not negotiation driven. The victim would end up feeling justice has not been served. Even in cases where the victim receives compensation and it appears to be unsatisfactory to assuage the victim emotionally, there is no way to redress the issue.

It is in light of the above findings and circumstances, the Study proffers the adoption of Restorative Criminal Justice Administration as a system that can take care of all the parties and stakes in the administration of criminal justice and the comprehensive treatment of the crime victim accordingly.

## **6.0 Recommendation: Restorative Justices as a way forward.**

To effectively ensure justice is served, the restorative justice approach is recommended to be enacted by the legislative arm of the Federal and States government respectively. The reason why restorative justice appears suitable<sup>25</sup> is that it is not solely legalistic like retributive and restitutive conventional administration of justices system, it allows for engagement of parties in a way that can restore relationship in the society.

### **6.1 Concept of restorative justice**

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<sup>23</sup> Williamson M. Evers 'Victim's Rights, Resolution and Retribution Independent Institute \_I (January,1996) [www.independent.org](http://www.independent.org) assessed 29 May 2023

<sup>24</sup> Nwora Ike Obiora, 'Re-Victimisation of victim of crimes under the Nigerian criminal justice system,; University of Nigeria Law Journal (NLSJ) Vol II(2015) pp 54-66

<sup>25</sup> Bailey mary field, Roger M.S, Przybylski M. S. an Mark Myrent 'Research on Restorative Justice Practicdes (December 2020) Justice Resaerchand Satatistic Association(JSRA)

Restorative justice is an approach to justice that focuses on repairing harm by giving victims of crime the chance to connect with those who bear responsibility for the harm in order to address their needs after the incident<sup>26</sup>.

The essential features of restorative justice<sup>27</sup> among others are that it provides a convivial communication opportunity between victim, offender and community to talk about the causes, circumstances and effect of the crime with a view to address their related needs. This based on the philosophy that though crime may be an infringement of State laws, it is also violation of people and relationship which should be respected in any attempt at settlement as a mark of respect and inclusivity.<sup>28</sup>

It features more of alternative dispute resolution facilitators rather than litigation experts and the process is flexible and not as rigid as laid down litigation or prosecution procedures. T can be adapted for adults and minor without losing the sensitivity to their confidentiality where it should be protected/

In other words, Restorative Justice System of Criminal Administration is accessible to complainant, compassionate on crime victims and fair to the offender and safety and peace in the community.

## **6.2 Requisites for successful implementation of restorative Justice in Nigeria**

The *sine qua non* for Nigeria to successfully upgrade her current justice system to restorative criminal justice system is a proper legal framework to outline the basic tenets and principle to drive the engagement. Legal instrument on its own however does not suffice to ensure full implementation of the system.

There is need by the Judiciary to be separately funded for the implementation. This must be complemented with public orientation and sensitization of the restorative justice system. The system should be built by neutral in such a way that it is not hijacked for other purpose by State

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<sup>26</sup> Canada Justice Department, 'What is Restorative Justice?' Government of Canada (modified 10 December 2021) [www.justice.gc.ca](http://www.justice.gc.ca) assessed 29 May 2023

<sup>27</sup> UNODC, 'Handbook on Restorative Justice Program,' <https://www.ununodc.org> assessed May 29 2023

<sup>28</sup> Walden University, 'The Role of Restorative Justice in a CriminalJustice System', (undated) [www.waldenu.edu](http://www.waldenu.edu) assessed 31 May 2023

Since most traditional justice system are party driven and have elements of restoration, the native community heads could represent community interest during the restorative justice process.

Finally, the legislators should create a meeting point between restitutive justice obtainable by prosecution or negotiation with law enforcement agencies and restorative justice which should be made the first option as an alternative justice dispensation to the adversarial system of criminal justice.

## **Conclusion**

This study was a brief historical excursion into Nigeria criminal justice system and how each system treated victim of crime. It was stated why the British as the colonial overlord introduced the retributive system which was only truncated with the establishment of EFCC whose establishment Act introduced the restitutive justice system which major feature was compensation of crime victim. However because the restitution does not actively involve the crime victim the system was faulted and instead the full restorative justice system was proposed for crime victim. As a step towards this direction, the EFCC's Act which was the harbinger of restitutive justice that was fully adopted into Nigeria legal system with ACJA, 2015 could equally be used to usher in restorative justice practices through legislative amendments to the extant law to the effect that it should prioritize the interest of crime victims over and above fines generated as penance for government purse when operatives are exercising the special powers conferred on the Commission in Sections 14(2) to compound offence and initiate plea bargain under the EFCC Act by making the crime victim be engaged in the compounding criminal act especially where there are victims of the act or omission that constitute crime.