

TOPIC:

Victims and Witnesses Protection in Terrorism
Cases:
The Role of Judicial Officers.

By

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Protocols:

Let me start by expressing gratitude to Almighty God for making it possible to stand before my colleagues' today to present this paper. In addition, I want to thank the Institute's Administrator, Hon. Justice Salisu Garba Rtd. for finding me worthy to deliver this paper.

It is my hope that my modest effort in highlighting the role of Judicial Officers in the protection of victims and witnesses of crime will go a long way in assisting the participants in the discharge of their duties.

1.1 Introduction:

In administration of criminal justice system in Nigeria, victims and witnesses of crime are faced with the problem of inadequate protection and compensation. No doubt, in Nigeria anybody can be a victim of crime, and the society is exposed to many forms of criminality which calls for effort to alleviate the plights of the victims and witnesses of such violent crime. The underlying principle in the promotion of victims and witnesses right is to ensure that they are assisted in recovering from the trauma of criminal violations. Therefore, this paper intends to examine the Terrorism Act, 2022 and the Administration of Criminal Justice Act, 2015 whether the existing provisions on protection, compensation and restitution orders are satisfactory or adequate in

our present-day society. Is there any legal framework for procedure in existence that ensure that a victim or witness of crime obtain adequate compensation where they suffer harm, injury or damages as a result of commission of crime by another.

Again, what is the plight of victims and witnesses in relation to these offences where the victims or witnesses suffer loss of life, loss of dignity, loss of means of livelihood and impairment to health? Are there other options for these victims and other witnesses to alleviate their problems as monetary compensation may not be the only solution? It is obvious that different crimes are committed and at times the offenders are neither found nor arrested. The question is what happens to a victim and/or witness of terrorist crime who is a party or witness who is presumed a third party in the Terrorism Act. A close look at the statutory provisions, through procedural laws, to penal sanctions appears to emphasize the safeguarding of rights and interest of offenders while that of the victim and witness of crime has little or is utterly neglected under the Nigerian criminal justice system.

The Administration of Criminal Justice Act, 2015 intended to revolutionize our criminal justice system with a view of checkmating the imbalance inherent in

the old justice system appeared to pay great attention to the welfare of the offender or the accused person(defendant) and give little regard to the victim of crime. This has placed the victim of crime in disadvantageous position that appears to have been forgotten in our criminal justice system.

It is a trite law in Nigeria that justice is a three-way traffic; justice for the accused person, justice for the victim of crime and justice for the society.

The pertinent question is, to what extent has justice for the victim of crime actually touched the life of the victim to reposition him to his previous state? It is against this background, the underlying principle in the promotion of crime victims' right is to ensure that they are assisted in recovering from the trauma of the criminal violations suffered as a result of the criminal behaviour of another person, as obtainable in America, Britain, etc. or in line with international best practices.

The Administration of Criminal Justice Act, 2015 as well as the Terrorism Act, 2022 provide for cost, compensation and restitution to be made to the victim of crime as a way of solving problems created by criminal activities. It is the victim and sometime witnesses that feel humiliated and oppressed. This paper intends to examine the current Terrorism

(Prevention) (Amendment) Act, 2022 and the Administration of Criminal Justice Act, 2015 in Nigeria, whether the plight of victim and witness of crime are adequately compensated or the restitution orders are satisfactory.

Terrorism as a concept despite being considered a global problem has no single acceptable definition because one man's terror is another man's freedom fighter. The Court of Appeal in ***Karumi v. FRN***¹ made the following comment on the gravity of the offence of terrorism:

"The gravity of the offence of terrorism which involves the use of violence or force to achieve something, be it political or religious, is a grave affront to the peace of society with attendant unsalutary psychological effect on innocent and peaceful members of the society who may be forced to live in perpetual fear. It is an offence that may even threaten the stability of the state. The sophisticated planning and execution of the acts of terrorism show it is an offence that requires premeditated cold-blooded organization, the circumstances under which such a crime is organised calls for appropriate measures.

¹ (2016) LPELR-40473(CA), Per Ikyegh, J.C.A P25, paras. A-D)

In Nigerian context, the rise in the group popularly known as Boko Haram in 2009 brought to fore the concept of Terrorism in Nigeria. This reality necessitated the Federal Government of Nigeria to enact the Terrorism (Prevention) Act, 2011 which was amended in 2013 and now 2022 respectively. The Act principally takes care of instances in investigation and prosecution of terrorism. It also deals with reactive and proactive investigation in pre-trial and trial of terrorism offences. The global index of terrorism in 2019 reported that in 2018, 71 countries experienced at least one death arising from Terrorism activities, 69 countries in 2017. Afghanistan was ranked first (1), Iraq second (2) and Nigeria third (3).² The deadliest terrorist groups globally in 2022 were Islamic State (IS) followed by Al-Shabab, Balochistan Liberation Army (BLA) and Jamaat Nusrat Al-Islam Wal Muslimeen (JNIM)³.

Law enforcement agencies who can statutorily investigate cases of terrorism in Nigeria under the Terrorism Prevention Act, 2022 are Nigeria Police; Department of State Services; Economic and Financial Crimes Commission; National Agency for the Prohibition of Traffic in Persons; National Drug

² Global Terrorism Index 2019: available at <https://goggle>.

³ Global Terrorism Index 2023; Institute for Economic and Peace available at <https://goggle>.

Law Enforcement Agency; National Intelligent Agency; Nigeria Custom Service; Nigeria Immigration Service; Defence Intelligent Agency; Nigeria Security and Civil Defence Corps; Nigerian Armed Forces; Nigeria Prisons Service⁴ and any other agency empowered by an Act of the National Assembly.

1.2 Definition of the term “victims”

In paragraph 1 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, **“victims”** is defined as 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 proscribing criminal abuse of power.” That definition essentially captures all situations where people are victimized as a result of the crimes committed by terrorist organizations when the victimization is the result of violations of human rights law or international humanitarian law or refugee law.⁵

⁴ See Section 5 of the Terrorism Prevention Act, 2022.

⁵ The definition provided in paragraph 8 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law.

“Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term **“victim”** also includes 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.

Victims of terrorist crimes must be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation for the harm that they have suffered. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. ***The Black Law Dictionary define victim of crime as a person harmed by crime, tort or other wrong. It connotes someone who has been harmed***

through the kind of activity prohibited by the criminal law.⁶

Justice Karibi Whyte⁷ also defined victim of crime **as any person, defendant or institution who has suffered injury from the criminal act of the offender who has been found guilty in such acts.**

A person whether human or inanimate object, is one that is recognized by law to have rights and duties.

In addition, such a person must be someone who can sue and be sued. In other word a juristic personality.⁸ It therefore follows that even a human being may not be a person under the law, if that human being is not also recognized by the law as one that can sue and be sued.⁹ This depends on the conditions, circumstances and according to the dictates of the law. Thus, a human being may not be a victim if the law does not ascribe the status to him, and similarly an inanimate object can be victim if the law so wishes. The legal definition of the victim could depend on the legislative policy framework. For instance, the **British**

⁶ Black Law Dictionary (8th Ed.) St. Paul. MMN West Publishing Co. (2004), p1425.

⁷ Karibi Whyte, "National Policy on Compensation to Victim of Crime. How Desirable". Federal Ministry of Justice, Lagos 1990.

⁸ *Gani Fawihinmi v NBA* (1989) NWLR (PT 105) p 558.

⁹ Famous, Izobo Esq, Challenges Of Victims of Crime In Administration of Criminal Justice In Nigeria. Senior Lecturer, Department of Arts and Humanities, School of General Studies, Delta State Polytechnic, Ozoro, Delta State, Nigeria

Compensation Act has defined the victim from a conservative angle bearing in mind the common law attitude to compensation of victims of crime without a criminal trial.

The victim is therefore defined as one who has “undeservedly suffered” by the criminal conduct of others.¹⁰

An extreme approach has been adopted in the United States to the effect that a person only becomes a victim when a verdict of guilt is returned against an alleged offender. Consequently, in a criminal trial, where the prosecution fails to be diligent in handling its matters and does not secure a conviction against the offender, the law will not recognize the existence of a victim. In other words, if there was any victimizing event, it is taken that such an event failed to produce a victim. Thus, any injury or loss sustained as a result of the offender is not sustainable and cannot be a ground for an award of compensation.

Where however, the alleged offender is only discharged and not acquitted, and it is a case where the prosecution is allowed by the law to have a second bite at a further prosecution, then it is only a saving grace for the victim and the prosecution to prove their

¹⁰ 4 Miers, D. Response to Victimisation (Abingon, Milton Trading Estate, 1978) p.5

case, otherwise an award of compensation eludes the alleged victim.

The victim in such a case cannot be considered as one unless the prosecution proves that he is. One of the proponents of these views is Lamborn¹¹ and he argues unequivocally when defining the effects of victimization thus: *“The mental state in the case of insanity and infancy approximates criminality; mental state in the case of self defence, necessary official action, consent and mistake differs from criminal mens rea. When the later defences are successful there is no crime, no right to civil interaction, even a lack of moral wrong. Therefore, it appears that persons injured through conduct made non-criminal by these doctrines should be treated as victim.”*

Examining the position of the law, Lamborn made a valid proposition by drawing inferences from his analysis which if accepted will necessitate hardship by virtue of its rigidity. He stated that mentally defective children are absolved by the law from criminal liability proceeding from their conduct by reason of their mental capacity at the time of the commission of the crime. Similarly, any crime that is

¹¹ . Lamborn L. L, “Victims in the Criminal Justice Process: An American Perspective in Compensation and Remedies for Victims of Crime in Nigeria (ed Bola Ajibola) Federal Ministry of Justice Law Review Series, Vol. 5, p 90. (1990) Famous.....
..Int. J. Business & Law Research 7(2):78-87, 2019 81

committed out of self defence, necessary authority action, consent and mistake are not only absolved from criminal liability, but excused from civil wrong, the victim or an injured person will depend on the construction of the court based on the evidence adduced.

In ***Mustapha Ogiri & Anor. v The State***¹² where the Court of Appeal reasoned thus; ***“the question now is, who is the person injured by these offences for which the appellant where convicted? In respect of the first appellant who stole a cheque leaf valued at 2 kobo in possession of Audu Adamu, the person injured is Audu Adama and not the bank of the North. The cheque leaf is the property of the customer and not that of a bank.....”***

The criminal justice system recognizes the salient third party and the purpose of the ACJA is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interest of the suspects, the defendant and the victim”¹³

¹² (1978) 8, FCA 158

¹³ Josiah vs. The State (1985) 1 NWLR (Pt. 1) 125

In spite of this provision of the law, the interest of the victim is still always submerged in the interest of the society whose norms and values are part of the commission of a crime. Provisions for remedies to victims and witnesses in our laws are not adequate as obtainable in other foreign jurisdictions.

This situation of victim of crime in Nigeria has long been recognized by Prince Bola Ajibola when he said; ***“There has always been a serious dearth of provision within our legal system to guarantee the rights of the victims and to design procedures and institutional framework needed to ensure that a victim can obtain compensation where he suffers harm, injury or damages as a result of commission of crime”***¹⁴

It is really sad that even the recent ACJA, 2015 could not make adequate or provide institutional framework needed to ensure that the victim of crime can obtain adequate compensation in line with international standard and best practices. Instances of indecent assault and terrorism offences where the provision of the law does not make room for the victim to be psychologically redressed. The courts have the discretion to award compensation or not. This

¹⁴ Adetiba, S. (ed)- “Compensation and Remedies for Victim of Crime in Nigeria” Lagos, Federal Ministry of Justice Publication 1990. p 2 Famous..... ..Int. J. Business & Law Research 7(2):78-87, 2019 82

discretion is left to the presiding judicial officer worse still, the recent Administration of Criminal Justice Act, 2015 provides for compensation to victims of crime, but did little or nothing to assist the victim of the terror act.

The state assumes a responsibility to protect its citizens and consequently proceeds with prosecuting those responsible for breach of the peace but without compensating the victims who sustain injury as a result of the criminal behaviour of the offenders. Where the state fails or neglects its responsibility by ensuring adequate security, then it should not relent to compensate the victims of such crime because they are also parties to the criminal justice system. It is my humble submission that the victim of crime should be assisted by the state where the offender cannot be found or the offender is to serve jail term or is poor.

1.2.1 Power of Prosecuting Terrorism Offences.

With respect to terrorism cases, it is only the Attorney General of the Federation who has the legal authority to prosecute. (Section 3 (c) of the Terrorism Act, 2022) it gives the Attorney General of the Federation the right of prosecution of terrorism and terrorism financing offences, proliferation and financing the proliferation of weapons of mass destruction, and

other offences under this Act. He also has powers to strengthen and enhance the existing framework to ensure the effective prosecution of terrorism matters. ***Courts have held that nothing stops the Attorney General from delegating his powers to his officers; State’s Attorney Generals or even private legal practitioners.***¹⁵

1.2.3 Special Victims Trust Fund

Section 91 of the Terrorism (Prevention) (Amendment) Act, provides as follows:

There is established in the Office of the Attorney-General a Victims Trust Fund (in this Act referred to as “the Trust Fund”), into which shall be paid—

- (a) any take-off grant and special intervention funds, as may be provided by the Federal Government;
- (b) such money as may be appropriated to meet the objectives of the Trust Fund;
- (c) aids, grants, gifts, bequests, endowments, donations or assistance from bilateral and multi-lateral international agencies, non-governmental organizations, other donor agencies, partners and the private sector or from any other source;

¹⁵ *Serah Ekandayo Eziekel vs. Attorney General of the Federation* (2017) LPELR-41908 SC; *David Amadi vs. Attorney General of the Federation* (2017) LPELR-42013 and *Olusola Abubakar Saraki vs. Federal Republic of Nigeria* (2016) LPELR-43723 SC.

(d) money derived from investments made by the Trust Fund; Exchange of information relating to acts of terrorism, terrorists and terrorist entities, etc. The Attorney-General shall, on the recommendation of a committee to be set up for the Trust Fund Committee under Section 92 of this Act, ***make regulations and issue guidelines for the management of the Trust Fund established under subsection (1)*** and related matters.

(4) The Trust Fund shall be utilized to—

(a) pay compensation, restitution and damages to victims of acts of terrorism;

(b) fund terrorism prevention programs and such other purposes incidental to or connected with the attainment of the objectives of this Act.

It is further provided as follows:

Section 92 (1) There is established, for the purpose of administering the Trust Fund, ***the Special Victims Trust Fund Committee (in this Act referred to as ‘the Trust Fund Committee’) which shall, subject to the provisions of this Act, have general control over the management of the Trust Fund.***

The Trust Fund Committee shall be responsible for:

(a) receiving all money, aids, grants, gifts, bequests, endowments, donations or assistance accruing to the Trust Fund;

(b) determining victims of acts of terrorism, who are entitled to benefit from the Trust Fund; and

(c) approving the disbursements of money from the Trust Fund to victims of acts of terrorism.

1. 3. Witness

A witness can be defined as a person who sees an event, typically a crime or accident, take place.¹⁶ A witness can also be defined as a person who saw or heard the crime take place or may have important information about the crime or the defendant. Both the defence and the prosecution can call witnesses to testify or tell what they know about the situation.

A witness is someone who has relevant information about a crime both the lawyer for the government and the defendant can require witnesses to come to court to tell this information to the judge, and sometimes to a jury.¹⁷

Witnesses must take an oath or affirmation to state that they will tell the truth in court. In special cases, witnesses who are under the age of 14 or have an intellectual disability can simply promise to tell the truth.¹⁸

1.3.1 The Role of Witnesses

¹⁶ Black Law Dictionary 8th Edition at p. 56

¹⁷ Section 175 of the Evidence Act, 2011.

¹⁸ Ibid, Section 13.

Witnesses play a very important role in criminal cases. They help to clarify what happened by telling the judge or jury everything they know about an event

1.3.1.1. Type of Witnesses:

There are two types of witnesses in a criminal case: ordinary witnesses and expert witnesses.

1. An ordinary witness is someone who personally saw or heard something about the crime.

An ordinary witness can be the police officer who made the arrest or a person who was at the scene of the crime.

2. An expert witness is someone who has special expertise about an element of the crime. An expert witness can be a doctor, psychologist, accountant, etc.

Ordinary witnesses must answer the lawyers' questions and tell the judge what they saw or heard.

They do not give their opinions about what happened. Expert witnesses on the other hand, interpret the facts of the case and give their opinions (e.g., an opinion on the mental state of the accused when the crime was committed).

The information provided by witnesses becomes part of the evidence. The evidence determines whether the accused actually committed the crime. The judge or

jury considers all the evidence, including what the witnesses said, when deciding whether the accused is guilty or innocent.

1.3.2. Witness protection measures and programmes.

Section 31 of the Terrorism Act provides,

In any case of terrorism under this Act, a person who tampers with:

(a) a witness by intimidation, threats, blackmail or similar acts, or;

(b) an evidence or exhibit, by falsification, conversion, destruction or forgery, commits an offence, and is liable on conviction to imprisonment for a term of at least seven years

Section 72 of the Terrorism Act provides for the protection of informants and information, it states:

Where a person voluntarily provides to a relevant agency, information that may be useful in the investigation or prosecution of an offence under this Act, the relevant agency shall take all reasonable measures to protect the identity and life of that person and the information so provided shall be treated as confidential.

On protection of persons and witnesses, Section 73 further provides;

The Court may on its own, or by ex-parte application by the Attorney-General or the relevant agency, apply to the court to protect a witness or any person in any proceeding before it, where it is satisfied that the life of the person or witness is in danger and take such measures as it considers fit to keep the identity and address of the witness or person secret.

The role of judicial officers at play.

In contrast to the situation of victims of other types of serious crimes, victims of terrorism may have little or any relevant evidence to provide and other physical or material evidence are often very limited. In that context, the testimonies of some witnesses, ***by virtue of their personal proximity to the planning or commission of the crime, can greatly assist*** the authorities in investigation or prosecution. The protection of such individuals therefore takes on a great significance, even as it raises a number of practical, ethical and legal issues. The capacity of police agencies to offer effective protection must therefore be developed in two areas: the capacity to offer basic protection to witnesses and the availability

of a formal witness relocation and protection programme for basic witness protection measures.¹⁹

Witness intimidation means that a range of measures is required to tackle the problem. The risk of intimidation can be reduced by minimizing the risk of witnesses being identified when they report a crime or a conspiracy or offer a statement by protecting their anonymity and privacy. Protection programmes and measures are often in place for witnesses who are exposed to serious danger, but far less attention is given to addressing low-level threats or community-wide forms of intimidation.²⁰ ***A second aspect of protection includes practical measures such as offering witnesses the use of alarms, calling devices and other crime prevention devices; offering quick access to police assistance and other services; conducting a security audit of an individual's home.***²¹

Giving witnesses the option of visiting the police station instead of being interviewed where they live or work and other means of reducing the likelihood of contact between them and offenders; transporting

¹⁹ N. R. Fyfe, *Protecting Intimidated Witnesses*, p. 47.

²⁰ Australia, Victoria, Office of Policy Integrity, *Review of the Victoria Police Witness Protection Program; Report of the Director, Police Integrity* (Melbourne, Victorian Government Printer, 2005), p. 8.

²¹ Council of Europe, *Combating Organized Crime*, p. 20.

them to and from work, school or the court; keeping witnesses separate from offenders whenever they must be at the police station or in the courthouse; offering them emergency or short-term relocation as required; or seeking “no-contact” court orders on their behalf. In any given case, a combination of several of these measures is usually required. As the witness’s situation evolves, the risk may change and must be reassessed, and a different set of measures may become necessary. The effective protection of witnesses and collaborators of justice requires a police capacity to assess the risk faced by those individuals and to respond quickly to direct threats.

Witness protection programmes can also offer a way to safeguard the investigation and the criminal trial and ensure the security of the witnesses. Their main objective is to safeguard the lives and personal security of witnesses and collaborators of justice and people close to them. The programmes include procedures for the physical protection of witnesses and collaborators of justice such as, to the extent necessary and feasible, relocating them, providing them with new identity documents and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the new identity and whereabouts of such persons. Even if it

is not uncommon for a witness to be rewarded for cooperation with law enforcement authorities (financially, by charge reduction as a result of plea bargaining or by leniency at the time of sentencing).

1.3.3. Gathering of Financial Information.

The gathering of financial information to detect financial networks linked to terrorist groups and their investments, including exchanges of information between law enforcement and regulatory bodies, is a part of all strategic approaches to combating terrorism. Establishing national financial intelligence units is part of the capacity-building initiative that must be encouraged and strengthened.²²

1.3.4. Witness Intimidation.

Although it is not hard to understand how it may be necessary for the authorities to provide an incentive for cooperation, this must be done cautiously. The presence of certain incentives can in fact compromise the value of the testimony or its credibility.

1.3.5. Measures to protect the Needs of Victims and Witness of Terrorist Crimes:

1. Inform victims and witnesses of their role in the criminal justice process; the nature of the cooperation

²² Section 83 of Terrorism (Prevention) (Amendment) Act, 2022

that is expected from them; and the scope, timing and progress of the criminal proceedings, as well as the outcome of the proceedings.

2. Allow the views and concerns of victims and witnesses to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant procedures of the national criminal justice system.

3. Provide proper assistance to victims and witness throughout the judicial proceedings.

4. Minimize inconvenience to victims and witnesses, protect their privacy when necessary, and ensure their safety and that of their families.

5. Protect victims and witnesses from potential intimidation and retaliation; avoid unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims;

6. Offer victims and witnesses where necessary the necessary material, medical, psychological and social assistance through governmental, voluntary and community-based means.

7. Offer victims and witnesses access to restitution and compensation.

8. Providing training for law enforcement and justice officials in human rights and the rights of victims and witnesses.

9. Providing training in the use of testimonial assistance techniques to protect the safety, privacy and identity of victims who testify as witnesses in court.

10. Providing training for and support assistance workers and professionals working with victims and witnesses.

11. Developing court-based and police-based assistance services for victims and witnesses.

In many countries, experience has shown that an effective way to address the many needs of crime victims is to establish programmes that provide social, psychological, emotional and financial support and effectively help victims within criminal justice and social institutions. In addition to provisions allowing victims to bring civil claims against perpetrators, some countries have enacted national legislation recognizing victims' rights to compensation²³ and to participation in criminal proceedings. Those possibilities enhance recognition

²³ Section 91 Part XV of The Terrorism (Prevention) (Amendment) Act, 2022.

of the suffering of victims. Allowing victim participation in criminal proceedings and recognizing the right of victims to be informed of progress in the case. This serves to rebalance a criminal justice system that would otherwise heavily favour perpetrators and offenders.²⁴ At a practical level, the right of victims to be informed of their rights and of the existence of procedures from which they can benefit is perhaps the most important concern. Those who come into contact with victims in the course of justice such as police, social workers, defence attorneys, prosecutors and judges should be required to brief victims of their rights and direct them to where they can obtain help when they need it.

1.4. The Role of Judicial Officers

The courts play a vital role in promoting the rule of law. Thus, it is necessary to protect the independence of the judiciary. The right to a competent, independent and impartial tribunal/court is articulated in various National and International Human Rights instruments.²⁵ An independent, impartial, honest and competent judiciary is integral to upholding the rule of law and engendering public

²⁴ *FRN vs. Vijay Lawal* (2013) LPELR-20376(CA).

²⁵ Section 6 of the CFRN, 1999 (as amended); Article 10 of the Universal Declaration of Human Rights; Article 14 of the International Covenant on Civil and Political Rights; Article 7 of the African Charter on Human and Peoples' Rights.

confidence. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) and The Universal Declaration of Human Rights contains the right to a fair and public hearing by an independent and impartial tribunal²⁶ and the right of the accused(defendant) to be presumed innocent until proved guilty according to law in a public trial at which he had all the guarantees necessary for his defence.

In addition, the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, envisage judges with full authority to act, free from pressures and threats, adequately equipped to carry out their duties, the rights of the victims to a fair trial. It also touches on the procedural guarantees that must be upheld by courts, as well as the question of the security of the courts.

It is important to note that the Federal High Court by *Section 76 of the Terrorism Act, 2022 has the exclusive jurisdiction to try offences under the Terrorism Act whether or not the offence was commenced in Nigeria and completed outside Nigeria.*

²⁶ Sections 36 and 36(5) of the CFRN, 1999 (as amended).

Judicial Officers can play a role in making an order restraining travelling of a terrorist suspect under:

Section 47 of the Act

(1) An individual placed on the Consolidated List shall not be allowed entry into or transit through the territory of Nigeria, unless the individual is a citizen of Nigeria.

(2) A person, who allows an individual placed on the Consolidated List entry into or transit through the territory of Nigeria, commits an offence provided for in subsection (1), and is liable on conviction to imprisonment for a term of at least 10 years.

The Court can also play order the protection any person who may be a victim or witness in the course of discharging the disclosure of information. The Federal High Court in the case of **FRN vs. DCP Abba Kyari & Ors**, the court ordered all journalist and lawyers not connected to the defendant out of the Courtroom. The judge made the order following application by counsel to the National Drugs Law Enforcement Agency, (NDLEA).²⁷

The above is a case study of where Judicial Officers plays a role in the protection of Victims and Witnesses.

²⁷ This Day Online Newspaper Tuesday, 16th May, 2023.

The Court may also proscribe an entity as a Terrorist organization, the Terrorism Act provides,

Section 48:

(1) Where an entity, or two or more persons associate for the purpose of;

(a) participating or collaborating in an act of terrorism or terrorism financing;

(b) promoting, encouraging or exhorting others to commit an act of terrorism; or

(c) setting up or pursuing acts of terrorism, the Attorney-General shall, with the approval of the President, apply ex-parte to the Court to proscribe the person, association or the entity, and the notice of the Proscription Order shall be published in the Federal Government Gazette and in two national daily newspapers, and at such other places as the Court may determine.

(2) A publication made under subsection (1) shall contain such relevant particulars as the Court may specify.

(3) Without prejudice to the provisions of section 57 of this Act, the Attorney-General may, on the approval of

the President, apply to the Court for the revocation of the Proscription Order, where:

(a) the proscribed entity affected by the order makes an application to the Attorney - General to that effect; and

(b) there is evidence to prove that the proscribed entity does not engage in any of the acts specified in subsection (1).

(4) The revocation of the Proscription Order shall be published in the Federal Government Gazette. Travel ban. Proscription of an entity. A 518 2022 No. 15 Terrorism (Prevention and Prohibition) Act, 2022

49(1) Where the Sanctions Committee has reasonable grounds to suspect that a person, group or entity:

(a) has committed, attempted to commit, participated in committing, instigated the commission, or facilitated the commission of an act of terrorism or terrorism financing,

(b) is owned or controlled, directly or indirectly, by any person, group, or entity designated under this subsection, or

(c) is acting on behalf of, or at the direction of, any person or entity designated under this subsection, it

may recommend to the Attorney-General to designate such person, entity, or group, as a terrorist, terrorist group, terrorist entity or terrorist financier.

In **FHC/ABJ/CS/871/2017**, The Federal High Court in Abuja made an Order proscribing Indigenous People of Biafra as a Terrorist Organization in accordance with Section 2(1) of the Terrorism Act of 2013 on 18th January, 2018.²⁸

Furthermore, A Federal High Court in Abuja has declared the activities of **Yan Bindiga and Yan Ta'adda** bandit groups as acts of terrorism.

The court proscribed the activities of the group as well as other similar groups in any part of Nigeria, “either in groups or as individuals by whatever names they are called”.

The Courts by making such orders should also extend them to the victims and witnesses who may provide useful information's in convincing the Court to make such orders.

1.4.1. Payment of Expenses of Witnesses

The ACJA in Sections 251 and 252 provide that, when a person attends court as a state witness or defence witness, he shall be entitled to payment of reasonable expenses by the Registrar. However, state does not

²⁸ Appeal No. CA/AB/CV/214/2018 Indigenous Peoples of Biafra vs. Attorney-General of The Federation.

pay money either to the defence witnesses or the prosecution's witnesses citing paucity of funds. The Court need to make rulings compelling states to pay the expenses incurred in line with ***Victims Trust Fund in Sections 91 and 92 of the Act.***

1.4.2. Witness Protection

Section 232 of the ACJA permits witnesses to some offences to give evidence in camera. These include: (a) sexual related offences, (b) Terrorism offences, (c) offences relating to Economic and Financial Crimes, (d) Trafficking in Persons and related offences, and (e) any other offence in respect of which an Act of the National Assembly which permit the use of such protective measures. Under this provision, ***the name and identity of the victims of such offences or witnesses shall not be disclosed in any record or report of the proceedings and it shall be sufficient to designate the names of the victims or witnesses with a combination of alphabets.*** It further provides that where in any proceedings the court determines it is necessary to protect the identity of the victim or a witness the court may take any or all of the following measures: (a) receive evidence by video link. (b) Permit the witness to be screened or masked. (c) receive written deposition of expert

evidence. (d) any other measure that the court considers appropriate in the circumstance. The Act also stipulates that anyone who contravenes the provisions of section 232 shall be sentenced to a minimum term of one year imprisonment.

1.4.3. Witness Expenses.

The ACJA in Part 26 deals with the issue of witness expenses. It provides in Section 251 that where a person attends court as a state witness, the witness shall be entitled to payment of such reasonable expenses as may be prescribed. Accordingly, where a person attends court as a witness to give evidence for the defence, the court may in its discretion on application, order payment by the Registrar to such witness of court such sums of money, as it may deem reasonable and sufficient to compensate the witness for the expenses, he reasonably incurred in attending the court. Section 252 further, the court may permit on application of a party for an adjournment of the proceedings and in so doing, may order the party seeking the adjournment to pay ***to a witness present in court and whose evidence it has not been possible to take owing to the adjournment, such sum in the amount payable to a witness in accordance with Sections 251 and 252 of this***

Act, or such sum as the court may fix. Section 253. The amount of the expenses payable to a witness pursuant to Sections 251 and 252 of this Act shall be processed and paid by the Registrar of the Court to the witness out of the relevant vote as appropriated by the Judiciary.

1.4.4. Compensation to victims of crime

Victims of crimes are often neglected and left without any form of compensation even when the offender has been found guilty and sentenced. The ACJA has addressed this ugly trend by broadening the powers of the court to award costs, compensation and damages in deserving cases, especially to victims of crime. The Act adopted and improved on the provisions of the Criminal Procedure Act and the Criminal Procedure Code. By the provisions of Section 319 of the ACJA, court may within the proceedings or when passing judgment, order the convict to pay compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant, where substantial compensation is in the opinion of the court recoverable by civil suit.

1. The court may order the defendant to pay a sum of money to defray expenses incurred in the prosecution.

2. The court may also order the convict to pay compensation to an innocent purchaser of any property in respect of which the offence has been committed who has been compelled to give it up.

3. The court may also order the convicted person to pay some money in defraying expenses incurred in medical treatment of any person injured by the convict in connection with the offence.

1. 5. Recommendations: -

1. Designation of Judges or Courts with special jurisdictions.

It is sometimes argued that it is necessary to establish courts with special jurisdictions, especially to hear terrorist cases, in many countries, regular courts have sometimes been given a special jurisdiction or mandate greatly shaped by the nature of the crimes to be prosecuted. For example, it is possible to allow for the centralization of certain cases by identifying a pool of courts that will be funded to hear certain types of cases and therefore may develop a particular

competence, including cases involving terrorist offences.

Prosecutions of certain types of cases involving terrorist groups can be centralized in a certain part of the country, allowing a group of judges (as well as prosecutors and Defence counsel) to specialize in those cases. The centralization of cases and the specialization of certain judges can also make it easier to prevent various attempts at obstructing justice and to protect those involved against possible intimidation or retaliation. ***Example is the proceedings in kainji, Niger State where the court moved there and terrorist cases were tried and determined summarily.***

2. Security of the Courts

There have been numerous cases in which terrorists have sought to obstruct justice by threatening prosecutors, judges and other officers of the court or by intimidating or attacking jurors and witnesses. Without proper protection for judges and court personnel, courts are often unable to function effectively or fairly when they are the object of threats or potential threats by terrorist groups or their supporters. Similarly, the criminal justice process can be paralyzed by the system's inability to protect

all participants against intimidation and retaliation. Part of the core capacity of the criminal justice system to deal with acts of terrorism is capacity to effectively ensure the security of judges, prosecutors and other court personnel, as well as the capacity of jurors, witnesses and all others who participate in court proceeding

3.A legislation directing the State to pay compensation to victim of crime where the offender cannot be found or found but incapable of paying. For instance, **Compulsory Treatment and Care for Victims of Gunshot Act 2017** which was recently signed into law by the President Muhammadu Buhari.

4. The private individual or NGOs should also create a platform for victims or witnesses of crime and work out modality on how victims or witnesses could be compensated or assisted.

5. Specialized victims and witnesses' protection units to be established with adequate administrative, operational, budgetary and informational technology autonomy.

1.6. Conclusion.

As Judicial Officers expects some legal backing through constitutional and statutory amendments to enable them protect victims and witnesses of terrorist crimes, the judges most utilize the provisions of the Terrorism Prevention Amendment Act, 2022 and the Administration of Criminal Justice Act, 2015 and apply them mutatis mutandis in the protection of victims and witnesses in the criminal justice system in the country because to my mind, the biggest role of a Judge is to honour the oath of office and defend the constitution:

In **Ogboru V. President, Court Of Appeal**²⁹ the following was said on this duty and or role of a judicial Officer:

“This court is a creation of the Constitution. It will not give its aid under any guise, to be a violation of any of the provisions of the Constitution, which gave it life. Therefore Judges must at all times and under all circumstances strive to honour their oath of office and to defend and protect the Constitution.”

²⁹ (No. 2) (2005) NWLR (Pt. 956) 80 at p. 94, paras. G – A.