

The rights of victims of core international crimes to reparation in Nigeria

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Summary: *Generally, the rights to reparation of victims of crime is largely controverted, especially in common law jurisdictions such as Nigeria where there is no express provision conferring or denying such right. With the rising number of victims of core international crimes in Nigeria, there is an increasing need to evaluate Nigeria's disposition to the plight of victims of core international crimes within its jurisdiction in light of the provisions of the Rome Statute. The article evaluates the possibility of the recognition of the right of victims of core international crimes to reparation in Nigeria. Although there are fragmentary provisions in the existing legislation that may be explored to ground the rights to reparations of victims of domestic crimes generally, the flaws and inadequacy of those laws are apparent in the face of the gravity and demands of core international crimes. The article argues that Nigeria owes an obligation to repair the harms suffered by victims of core international crimes in line with the provisions of article 75 of the Rome Statute which unequivocally confers such rights on victims, and the principle of ubi jus ibi remedium. The article concludes by making concise recommendations with respect to legal provisions on victims' rights to reparation in Nigeria in the context of international criminal law.*

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Key words: *victims; reparation; criminal justice; rights; International Criminal Court*

1 Introduction

Nigeria is a common law jurisdiction with an adversarial criminal justice system which does not accord any precise recognition to the concept of reparation to victims. Although the criminal justice system in Nigeria makes specific provision for compensation and restitution in some cases, such may be inapplicable to core international crimes.¹ Global trends in the late twentieth century increased the focus on victims' rights and remedies in criminal law.

At the international level the subject of victims' rights started to gain more recognition following the world wars which revealed atrocious activities against persons and the emergence of international human rights.² Subsequently, the development of regional human rights systems and the increase in international and domestic armed conflicts amplified the focus on victims' rights to remedies following violations. The concept of victims' rights gained prominence in domestic jurisdictions in the 1980s, paving way for other forms of rights, such as the right of participation in the case of domestic crimes.³ States' reluctance to be accountable to individual victims for state-sponsored violations culminated in the adoption of the two legal instruments on victims' rights and remedies in 1985 and 2005.⁴ The two documents laid the foundation for the negotiations leading

1 'Core international crimes', also referred to as core crimes, as used in this article, denote the four main international crimes over which the International Criminal Court may exercise jurisdiction, namely, war crimes; crimes against humanity; genocide; and the crime of aggression. Sec 365 of the Nigerian Criminal Procedure Code provides for the award of compensation generally for criminal injury suffered by a victim. Secs 321, 341 and 342 of the Administration of Criminal Justice Act 2015 (ACJA) also provide for compensation and restitution of property by the accused to victims of crime. There are also provisions that allow victims the option of obtaining a remedy by suing the accused under separate civil proceedings post-prosecution of the accused. A Olatubosun 'Compensation to victims of crime in Nigeria: A critical assessment of criminal-victim relationship' (2002) 44 *Journal of the Indian Law Institute* 209.

2 MC Bassiouni 'International recognition of victims' right' (2006) 62 *Human Rights Law Review* 203.

3 Bassiouni (n 2) 212.

4 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power UN/GA/RES/40/34 of 29 November 1985; United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law A/RES/60/147 of 16 December 2005 respectively.

to the adoption of the specific victims' rights in the Rome Statute of the International Criminal Court (ICC) (Rome Statute).⁵

Distinctively, article 75 of the Rome Statute makes provision for reparation to victims at the Court.⁶ The Rome Statute grants the Court the power to order reparations to victims of core international crimes upon application to the Court by the victims, or *suo motu* by the Court in 'exceptional circumstances'.⁷ Such reparative order may be in form of monetary compensation, restitution of property, rehabilitation or symbolic measures such as apologies or memorials.⁸ Generally, the right to reparations itself is largely controversial and a subject of debate in international law. In contemplating a general right to reparations, some international human rights documents⁹ admit a right to reparations with respect to certain violations.¹⁰ Following the express provision of article 75 of the Rome Statute, it may be argued that while the Court has the discretionary power to grant reparations, the Rome Statute tacitly implies that victims have the right to reparations. In this regard, victims have the right to approach the Court in this respect to make representations to the Court in respect of reparations.¹¹

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- 5 PV González 'The role of victims in international criminal court proceedings' (2006) 5 *International Journal on Human Rights* 19. Sperfeldt is of the view that the negotiations on the inclusion of reparation at previous international criminal tribunals such as the ICTY was raised but did not make it to the final Statute. C Sperfeldt 'Rome's legacy: Negotiating the reparations mandate of the International Criminal Court' (2016) 17 *International Criminal Law Review* 356. McCarthy reports that the inclusion of reparation in the Rome Statute evolved at the last stage of the negotiations of the Statute, with which Sperfeldt agrees. C McCarthy *Reparations and victim support in the International Criminal Court* (2012) 36.
- 6 According to the view of the ICC Pre-Trial Chamber I in *The Prosecutor v Thomas Lubanga Dyilo* in the Decision on the Prosecutor's application for a warrant of arrest, 'the reparation scheme provided for in the Statute is not only one of the Statute's unique features. It is also a key feature. In the Chamber's opinion, the success of the Court is to some extent linked to its reparation system.' Pre-Trial Chamber I, 10 February 2006 ICC-01/04-01/06 para 136.
- 7 Art 75(1) of the ICC Statute; Rule 95 of the International Criminal Court Rules of Procedure and Evidence (ICC RPE).
- 8 Art 75(2) of the ICC Statute. Broadly, reparation at the ICC may not admit of such measures as guarantees of non-repetition and some satisfaction measures. These measures may require a high level of co-operation from the state for implementation.
- 9 Art 2(3) of the International Covenant on Civil and Political Right (ICCPR) provides for the right to an effective remedy from which several human rights bodies, such as the Inter-American Court of Human Rights, have repeatedly inferred a general right to reparations. Authors such as De Greiff argue that victims indeed have a right to reparations. P de Greiff 'Justice and reparation' in P de Greiff (ed) *Handbook of reparation* (2006) 451; Bassiouni (n 2) 203.
- 10 Arts 9(5) and 14(6) of ICCPR and art 14(1) of the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) provide specifically for the right to reparations with respect to certain violations such as the right to reparations against unlawful arrest or detention, false conviction and torture, respectively.
- 11 Art 75(3). E Barmugartner 'Aspects of victim participation in the proceedings of the International Criminal Court' (2008) 90 *International Review of the Red Cross* 409; S Garkawe 'The victim-related provisions of the Statute of the International

Nigeria is a signatory to the Rome Statute and has since 2010 been under preliminary examination by the ICC for allegations of crimes against humanity, especially in the embattled north-eastern region of the country.¹² In December 2020 the Office of the Prosecutor concluded a preliminary examination of the Nigerian situation and decided to proceed to full investigation of the situation in Nigeria.¹³ Currently, there are hundreds of thousands of displaced victims of the insurgency and armed conflicts in the country. Unfortunately, in 2020 a Bill was introduced to the federal legislative house, purportedly aimed at granting amnesty and offering foreign training to Boko Haram members who had renounced their membership, in order to reintegrate them into society.¹⁴ This was in furtherance of previous amnesty operations initiated since 2016. However, it is ironical that while the federal government has been progressively focused on alleged perpetrators, victims of the heinous crimes committed by the alleged perpetrators are at the mercy of the meagre humanitarian assistance they receive from non-governmental organisations (NGOs). Strangely, Nigeria has refused to keep up with positive global trends that recognise the rights of victims and comprehensive remedies to victims of crime. There are pieces of provisions in the criminal legislations, but none absolutely acknowledges or caters for the need for reparations of victims.¹⁵ Victims of internal armed conflict in the embattled north-eastern region of Nigeria and several other spates of violence in certain regions of the country, which possibly constitute core international crimes, may have no respite than to rely on meagre assistance measures from national and international NGOs. The lack of comprehensive provision for reparation heightens the risk of re-victimisation and the gravity of injury perpetrated against victims appear to stall any possibility of a resolute end to the grievous crimes being perpetrated daily. This raises questions relating

Criminal Court: A victimological analysis' (2001) 8 *International Review of Victimology* 269. Barmugartner and Garkwe, in line with the provisions of the Rome Statute, state that victims of crimes committed by a convicted person could apply to the Court for reparations following conviction.

- 12 ICC – 'Situation Report on Nigeria', <https://www.icc-cpi.int/nigeria> (accessed 21 March 2021). Following the insurgency by an Islamist group that has been identified as Boko Haram in the north-eastern region of Nigeria, Nigeria has since 2009 been undergoing armed conflicts.
- 13 ICC – The Office of the Prosecutor. Report on Preliminary Examination Activities 2020 – 'Nigeria' 67 para 265, <https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-eng.pdf> (accessed 21 December 2020).
- 14 'Senator introduces Bill to create agency for repentant Boko Haram members' *Premium Times Ng* Online 20 February 2020, <https://www.premiumtimesng.com/news/headlines/378212-breaking-senate-introduces-bill-to-create-agency-for-repentant-boko-haram-members.html> (accessed 21 April 2020). Although the Bill was strongly condemned and largely rejected by the public and never made it through the legislative house, it sadly depicted the disposition of the Nigerian government.
- 15 There have been several failed attempts by the National Assembly to legislate victims' remedies in the criminal justice system.

to the legal recognition of the rights of victims of core international crimes and the legal obligations of a state in respect of such victims. Consequently, it is imperative to consider the scope of the obligation of the national criminal justice system in relation to victims of crime. It is in light of the above that this article interrogates these questions by examining the rights to reparation of such victims in Nigeria.

This article employs the doctrinal approach to examine the concept of reparation to victims of core international crimes. Flowing from the provisions of the Rome Statute, the article argues for the recognition of the rights to reparation for victims of core international crimes in Nigeria. The article is divided into six parts. The first part gives an overview of the background to the need for reparation for victims of core international crimes in Nigeria. The second part examines the concept of reparation and the rights of victims to reparation. The third part analyses the provisions of the Rome Statute with respect to the rights to reparation of victims of core international crimes. The fourth part analyses the provision of the Administration of Criminal Justice Act in light of the concept of reparation to victims of crimes in Nigeria, and further examines the concept of a victim in the context of domestic and international criminal law and the concept of reparation. The fifth part evaluates the Nigerian criminal justice system and the position of victims, examining the possibility of the recognition of the rights to reparation of victims of core international crimes in Nigeria. The article finally makes concise recommendations with respect to legal provisions on victims' rights to reparation in Nigeria in the context of international criminal law.

2 The concept of reparation and rights to reparation of victims in international criminal law

2.1 Defining reparations

Literally, reparation may not be unconnected with the Latin word *reparare* which literally translates as 'to make ready again', or the Latin word *reparatio* which means 'to repair'.¹⁶ In the broad legal sense reparation has been defined as the 'act of making amends for a wrong; a compensation for an injury or wrong, especially for wartime damages or breach of international obligations'.¹⁷ This definition largely reflects an expression of reparation from the perspective of

¹⁶ *Online etymology dictionary*, <https://www.etymonline.com/word/reparation> (accessed 19 April 2020).

¹⁷ BA Garner *Black's law dictionary* (2014) 1490.

civil damages or general remedies for a civil wrong suffered by a claimant. It also establishes that the claim for reparation may arise from both domestic and international legal obligations or laws. Thus, in conceptualising reparations it is important to distinguish obligations for reparation at the domestic level from obligations for reparations created under international law.¹⁸ In international law, under the law of state responsibility, reparation refers to all measures through which a state repairs the consequences of the breach of its obligations under international law, and this usually involves obligations between states. At the domestic level, reparation is often recognised as one of the transitional justice mechanisms that aim at redressing victims personally and repairing the consequences of gross and systemic violations of human rights.¹⁹

Thus, there is general consensus that reparation includes such measures or actions that are channelled towards repairing and redressing injury suffered as a result of wrongs committed.²⁰ The words 'redress' and 'repair' are two important key words underlying the concept of reparations.²¹ These two key words are conjunctive in operation. Thus, it is not reparation if it is not redressing and repairing the harm perpetrated against the victim. This is the reason why mere criminal prosecution cannot be regarded as a reparative measure because, although it may be argued that prosecution is a form of redress for the harm perpetrated against the victim, it does nothing to repair it, except where the victim is awarded reparative measures that restore the victim.²² The two key words may be broadly

18 D Shelton *Remedies in international human rights law* (2015) 16.

19 P de Greiff 'Theorising transitional justice' (2012) 51 *American Society of Political and Legal Philosophy* 34. ICTJ 'Reparations', <https://www.ictj.org/our-work/transitional-justice-issues/reparations> (accessed 19 April 2020); Shelton (n 18) 16; Inter-American Court of Human Rights in *Loayza Tamayo v Peru* (Reparations), IACHR 27 November 1998 Series C No 42 para 85.

20 L Moffett 'Reparative complementarity: Ensuring an effective remedy for victims in the reparation regime of the International Criminal Court' (2013) 17 *International Journal of Human Rights* 369. Roht-Arriaza describes reparation as 'a society's recognition, remorse and atonement for harms inflicted'. Her definition captures the themes of reparation largely to the extent that society's attempts are focused on the victims. N Roht-Arriaza 'Reparations decisions and dilemmas' (2004) 27 *Hastings International Law and Comparative Law Review* 159.

21 The provisions of Principle 15 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law UNPR) A/RES/60/147 adopted by the United Nations General Assembly (UNGA) Resolution on 21 March 2006 expresses reparations as intended to 'promote justice by redress', <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement> (accessed 20 March 2021); Roht-Arriaza (n 20).

22 The aim to 'restore the victim' may appear wide and ambiguous if not well defined. However, whatever interpretation is ascribed to 'restoration of victim', it must translate to offering the victim an opportunity to recover from the loss, shock and damage of the violation he has suffered. The extent of the restoration offered in each case is subject to the peculiar circumstances of each case.

interpreted to embrace a wide range of actions that are aimed at restoring victims *restitutio in integrum*, that is, to the position in which they would have been had the violations not occurred.²³ This sets out the aim of reparations as ambitious and unrealistic especially in situations where it is practically impossible to restore previous circumstances, such as in cases of rape, death or permanent psychological damage.²⁴ In the same vein, reparations are no less important merely because circumstances exist that place limitations on full restoration.

A defining feature of reparation is its direct focus on victims with the end result of directly repairing victims' harm.²⁵ As De Greiff contends, reparations potentially have a direct impact on victims since it is focused on the victims more than other recognised forms of transitional justice.²⁶ In contrast with other forms of transitional justice such as prosecutions, amnesty or lustrations, reparations embody a victim-centric approach to justice by focusing on the needs of the victim. While prosecution essentially focuses on retribution, reparation is principally restorative and reparative in nature. Victims may not necessarily be interested in prosecutions or lustrations as much as they are interested in recovering their source of livelihood, the restitution of their property, the restoration of the healthcare system, and so forth.²⁷ Studies reveal that victims generally have needs that may be psychological, physical or otherwise and such needs are uniquely different owing to the scale and magnitude of the crime.²⁸ Thus, it is imperative to distinguish between measures that may have a reparative effect in terms of providing legal remedies to the victims and may not necessarily offer any benefit to the victims and measures actually aimed at repairing the damage or harm inflicted on the victims.

23 Roht-Arriaza (n 20) 160; Moffett (n 20) 369. The ICJ held that reparations are set to 'as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed'. *Germany v Poland, The Factory at Chorzow* Permanent Court of International Justice, File E. c. XIII. Docket XIV: I Judgment 13, 13 September 1928 (*Chorzow Factory* case) para 125.

24 Roht-Arriaza describes it as an 'impossible' mission. Roht-Arriaza (n 20) 158.

25 Unlike other juridical and administrative measures of redressing harm suffered by victims, reparation is victim-centric with the aim of directly restoring the victim by providing privileges that they have been denied due to the harm they have suffered. However, unlike the way in which De Greiff describes it, reparation is not a 'benefit' as though unduly obtained, but rather a restored 'right'. De Greiff (n 9) 453.

26 De Greiff (n 19) 36.

27 De Greiff (n 19) 34. C Lasco 'Repairing the irreparable: Current and future approaches to reparations' (2003) 10 *Human Rights Brief* 18.

28 L Moffett 'Elaborating justice for victims at the International Criminal Court: Beyond rhetoric and The Hague' (2015) 13 *Journal of International Criminal Justice* 5.

Reparation may be largely juridical or administrative in nature. Juridical reparation is infused in both retributive and restorative aims of criminal justice, while administrative reparation essentially follows restorative and reparative aims of criminal justice. Although widely perceived as and equated to monetary compensation, reparations take many other forms as recognised by the United Nations (UN),²⁹ such as rehabilitation; restitution; satisfaction measures which include moral reparations in the form of public apology; acknowledgment of injustice; access to information about violations; or a guarantee of non-repetition.³⁰ While not limited to juridical forms, reparations in the context of criminal justice should neither be construed as assistance programmes offered to victims of gross violations of human rights on humanitarian grounds, nor are they development programmes, as some authors may want to posit.³¹ It is difficult to conceive reparations as development programmes even though reparation efforts, especially those administered as programmes, may translate into development realities. Development programmes are not necessarily targeted at victims but at the entire community or society and, in such sense, they cannot be regarded as 'reparative' even though they may make some form of impact on the victims, but may not necessarily account for recognising and repairing the damage suffered by the victims.³² Development programmes are obligations that the state owes the entire citizens in the state. Thus, victims cannot be short-changed by such development efforts where these are disguised or represented as reparations.

2.2 Right to reparation for victims

The inclusion of reparation to victims in international criminal law by the provisions of the Rome Statute may be described as an international criminal justice measure which bears semblance to the practice of reparation to victims of gross human rights violations in domestic transitional justice efforts. Before the existence of the Rome Statute individual victims were not accorded a direct recognised

29 Basic Principles and Guidelines (n 4).

30 De Greiff (n 9) 452.

31 Authors such as Roht-Arriaza are inclined to view reparation in the same light as assistance programmes to victims. Roht-Arriaza (n 20) 187. The provision of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN Declaration of Justice) clearly highlights the difference between reparation and assistance measures to victims. While victims should enjoy rights to both, assistance measures are not obligatory and are based on voluntary disposition of non-governmental organisations and the community. Reparations, on the other hand, are an obligation of the offender or the state to which the victim is entitled as a right. Paras 8-13 of the UN Declaration of Justice, adopted by United Nations General Assembly Resolution 40/34 of 29 November 1985.

32 De Greiff (n 9) 470.

right to reparation under international law. Rather, states, which were the subject of international law, had the right and obligation of receiving and making reparation, respectively.³³ In international law, reparation is often interpreted by states in the generic sense to include all forms of redress, that is, procedural and substantive, to gross violations of human rights which may not necessarily be reparative. Thus, in situations of gross violations of human rights, the general rights to reparation of victims are highly controverted. However, the provision of the Rome Statute has laid this controversy to rest in so far as core international crimes are concerned.

The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UNPR)³⁴ provide, broadly, for the rights of victims of 'serious' or 'gross' violations of both international human rights law and international humanitarian law to an effective remedy,³⁵ and specifically the rights of victims to 'adequate, effective and prompt reparation for harm suffered'.³⁶ This suggests that the right to reparation is only afforded to victims who have suffered from 'gross' or 'serious' breaches of the international human rights law or international humanitarian law. This further infers that the right to reparation may only be applicable to such victims who have incurred harm resulting from the required threshold of seriousness or gravity of violation in the context of the provisions of the UNPR. The UNPR gives no further insight as what may be considered 'gross' or 'serious' violations.³⁷

33 Previous international criminal law statutes such as the Charter of the International Military Tribunal at Nuremberg (IMT/Nuremberg Charter) agreed upon in the London Agreement of 8 August 1945, Charter of the International Military Tribunal for the Far East (Tokyo Charter) by special proclamation of the Supreme Commander of the Allied Powers of 19 January 1946, and later international humanitarian law documents such as the four Geneva Conventions made no clear provisions relating to victims' rights other than being witnesses. At best victims could rely only on domestic legal provisions in respect of remedies for civil wrongs.

34 A/RES/60/147 of 16 December 2005.

35 Principle 3(d) UNPR (n 34).

36 Principle 11(b) UNPR. The UN Declaration of Justice, which may be regarded as a predecessor document to the UNPR, generally infers the rights of victims to reparations by providing for victims' rights to restitution and compensation in criminal cases and cases of abuse of power. Also, the United Nations Declaration on Enforced and Involuntary Disappearances establishes state obligations to investigate crimes and compensate victims and the in cases of forced disappearances. The obligation to compensate may be inferred as creating a right to receive compensation in such cases. International Convention for the Protection of All Persons from Enforced Disappearance adopted 20 December 2006 and entered into force 23 December 2010.

37 The qualification of the violation with words such as 'gross' or 'serious' suggests that there may be violations that may be considered 'unserious'. Certainly, core crimes are serious and gross violations that clearly are within the contemplation of the UNPR.

The term 'effective remedy' broadly covers a wide range of victims' rights, which have been categorised into procedural rights to justice and substantive remedies to victims for injuries inflicted owing to the violations committed against them.³⁸ The term 'effective remedy' may be interpreted as access of victims to factual information regarding the violations perpetrated against them, access to justice and reparation for harm inflicted on the victim. This interpretation is equally applicable to the use of the term in other international human rights legal documents, as discussed above.³⁹ In pursuance of this right, the victim is entitled to a certain ancillary right which arises by reason of the right of the victim to receive reparation. Victims have a right to relevant information regarding the violations perpetrated against them and the reparations mechanism available to them.⁴⁰ Victims who have suffered some form of violence or trauma must be afforded 'special consideration and care' to prevent re-traumatisation in the course of providing justice and reparation to them.⁴¹ Thus, the UNPR extends the right to reparations to victims beyond specific cases, as observed in previous human rights documents.

In respect of victims' rights to reparations, the UNPR creates legal obligations on states to provide reparation to victims for violations that may be attributed to states, whether actively as 'acts' or passively as 'omissions'.⁴² The UNPR identifies victims' rights to reparation in a broad sense to include victims' rights to justice and their rights to truth.⁴³ Although such broad construction may only point to other forms of transitional justice mechanisms that may not necessarily fall under reparations, it only points to other ideals that reparation may promote and protect. The right to truth may aptly fit the work of a truth commission, while the right to justice may generally embrace all forms of transitional justice processes which may embody prosecutions. Hence, the UNPR recognises the possibility of a concurrent operation of both reparations and other forms of transitional justice that may offer justice to the victims.

38 J Garcia-Godos 'Victim reparations in transitional justice – What is at stake and why?' (2008) 26 *Nordisk Tidsskrift for Menneskerettigheter* 115. According to the UN Human Rights Committee, the term 'effective remedy' includes reparation. UN Human Rights Committee General Comment 31 UN Doc CCPR/C/21/Rev.1/Add.13 (2004) para 15.

39 Although De Greiff argues that the term 'effective remedies' as contained in many of the human rights documents appears vague and may need further clarification through judicial interpretation, Shelton opines that most human rights documents guaranteeing the right to an effective remedy can be interpreted to include both a procedural and substantive right to a remedy. In effect, it could be deduced that reparation is essentially the substantive remedy made available to the victim. De Greiff (n 9) 455; Shelton (n 18) 58.

40 Principle 11 of the UNPR.

41 Principle 10 of the UNPR.

42 Principles 15 and 16 of the UNPR.

43 Principle 24 of the UNPR.

While various international and regional legal instruments such as conventions and treaties establish the substantive right to reparations and provide for binding obligations on states, the UNPR, on the other hand, provides useful suggestions on the means to fulfil their obligations, hence the exhortatory nature of the UNPR. The provisions on the right to reparation contemplate both substantive and procedural rights of victims. Hence, victims have a right to access effective means by which they may obtain reparation and, in the same vein, the right to actual adequate, effective and prompt reparation. Although the UNPR is soft law which creates no binding obligations, its provisions make relevant and insightful provisions that affirm provisions of binding international legal instruments and may provide reference for a prospective general right to reparation.

3 Rome Statute and victims' rights to reparation

The provisions of article 75 of the Rome Statute are sacrosanct in respect of reparation to victims in international criminal law. The Rome Statute expressly grants victims of core international crimes the right to make applications for reparations to the ICC. It confers on the Court the right to at its own volition grant reparative reliefs to victims before the Court even where victims make no initial application to the Court.⁴⁴ In furtherance of the victims' right to reparations, the Victims Trust Fund may also provide reparations to victims of international core crimes within the jurisdiction of the Court.⁴⁵ Thus, the Rome Statute recognises that reparation in the context of international criminal law incorporates both court-ordered and administrative reparations to victims. From the provisions of the Rome Statute, a sequel to the right to reparation is the right of victims to present their views and concerns before the Court.⁴⁶ The Rome Statute provisions in respect of reparations provoke questions in relation to the obligations of state parties to recognise this right in their respective jurisdictions. Would the states be obliged to recognise victims' rights to reparation in the same context as the Rome Statute?

The right to redress of a person for a wrong suffered as a result of the action of another is well established in most domestic legal

44 This is a significant shift away from the general rule in domestic jurisdictions such as that of Nigeria that the Court is not 'Father Christmas' who will grant orders that have not been expressly prayed before the Court, although this rule is not without exceptions.

45 Rule 98(5) of the ICC Rules of Procedure and Evidence.

46 Art 68 Rome Statute.

systems.⁴⁷ Apart from being deeply rooted in traditional practices of the criminal justice system which preceded the formal criminal justice system, it has a legal basis in the civil law of torts.⁴⁸ It is also a trite principle of the law of torts which is domiciled in the civil justice system. The legal principle which affords victims the right to redress is well captured by the Latin maxim *ubi jus ibi remedium* which literally means 'where there is a wrong, there is a remedy'.⁴⁹ This principle is the bedrock of remedies for wrongs in the law of tort and is further enunciated in the English case of *Ashby v White*.⁵⁰ Although it may be argued that the principle cannot be construed to mean that there is a remedy for every possible wrong, as there are limitations to the application of this principle both in common law and equitable jurisdictions, the law leaves no room for the wrongful invasion of rights. Hence, it may be argued that the concept of reparation is built on the same principle although with marked differences in operation and application.

Therefore, states' obligations to provide reparation to victims in their jurisdictions are in tandem with their obligations under the Rome Statute and the legal principle of *ubi jus ibi remedium*. From international human rights and humanitarian law perspectives, the obligation to provide reparation to victims can equally be argued. Victims of core international crimes are inextricably victims of massive violations of human rights. The crimes are against the individual victims as much as they have collective state and global concerns. The provisions of the international human rights and humanitarian law documents clearly not only create a right to reparation for victims but also a corresponding obligation on states to implement the right in line with their domestic laws and policies, hence states have this obligation to victims within their jurisdictions.

47 Bassiouni states that there is no legal system known to humankind that ever denies the right of a victim to redress for wrongs suffered. Bassiouni (n 3) 207. However, Bassiouni consistently referred to the right to redress as a right embedded in a private claim, ie, the claim does not lie against the state as the collective entity but against the perpetrator/offender.

48 TO Olukayode 'Traditional versus modern judicial practices: A comparative analysis of dispute resolution among the Yoruba of South-West Nigeria' (1998) 23 *African Development* 212; OO Elechi, SVC Morris & EJ Schauer 'Restoring justice (ubuntu): An African perspective' (2010) 20 *International Criminal Justice Review* 73.

49 The Latin expression has also been interpreted to mean 'where there is a right, there is a remedy'; per Marshall CJ in *Marbury v Madison* (1803) 5 US 1 *Cranch* 137 163-166.

50 (1703) 92 ER 126. Holt CJ's *dictum* that 'it is a vain thing to imagine a right without a remedy: for want of right and want of remedy are reciprocal' has often been quoted by Nigerian courts to reiterate the right of a victim to redress.

4 Reparation for victims of crimes in the administration of criminal justice in Nigeria

In the context of large-scale human rights abuses, there are no existing domestic provisions that recognise or conceptualise reparation as a component of the Nigerian criminal justice system. At transition to a democratic system of government in 1999, Nigeria had received a recommendation from the Human Rights Violations Investigation Commission (commonly referred to as the Oputa Panel)⁵¹ for reparations to victims of human rights abuses of repressive military regimes, which was largely ignored.

Victims of crime in Nigeria are generally neglected and relegated as an extension in the prosecution's case in the administration of criminal justice in Nigeria. Fragmentary provisions in the preceding criminal statutes, such as the Criminal Code and the Penal Code, the Criminal Procedure Act (CPA)⁵² and the Criminal Procedure Code (CPC),⁵³ provide for restitution of stolen property and compensation, which are merely 'compensatory' and not necessarily reparative. The Administration of Criminal Justice Act 2015 (ACJA) makes a more commendable attempt at victims' reparation in relation to domestic crimes, although limiting it to compensation and restitution.⁵⁴ In spite of the innovative provisions of the ACJA, the concept of

51 The inaugural speech of the President on the mandate of the Commission as referenced in the report; HVRIC Report: Synoptic Overview 9, <http://www.justiceinperspective.org.za/images/nigeria/Nigeria%20Oputa%20Recommendations.pdf> (accessed 8 May 2021). The Oputa Panel was a similitude of a truth commission established by the successive democratic government after transition from long years of military regime in Nigeria.

52 Sec 261 of the CPA provides for compensation or an award of damages to the victim where the main charge of theft or receiving stolen property cannot be sustained against the accused person but establishes a civil offence of wrongful conversion or detention of property and the amount awarded is not more than N20 Naira (almost one-thirtieth of a dollar). Apart from being obsolete and grossly irrelevant in light of modern-day realities, the provisions of the CPA in no way are altruistic to promoting the interests of victims of crime, neither are they protective of their right to reparation for the injuries suffered because of crime. Sec 267 provides for restitution of land to a victim who has been unlawfully dispossessed of it. Sec 270 provides for restitution of stolen property and, upon return, sec 268 provides for reimbursement of an innocent purchaser of stolen property. However, sec 270's provision does not seem like restitution channelled to redress the victim's loss. One of the requirements states that victim may have to pay a certain sum to the person in whose possession the stolen property was recovered, and this does not qualify as restitution, but at best it may be regarded as 'buying back'.

53 Secs 365 and 360, 367 of the CPC provide that a court may award compensation to the victim in addition to an imposition of a fine on the accused and restitution of property respectively.

54 Some states of the federation that have adopted and adapted the provisions of the ACJA have equally included the provisions regarding compensation and restitutions in their various laws. However, in reality prosecutors do not even pursue such provisions on behalf of victims. Prosecutors are often minded with obtaining a conviction against the offenders. It remains to be seen what the courts' disposition will be to the particular provision of the law.

reparation to victims of crimes generally remains largely elusive, although it may be argued that the provisions of the ACJA implicitly suggest that victims have a right to some form of reparation. A more explicit recognition of a victim's right to reparation appears in the Criminal Justice (Victim's Remedies) Bill 2011, which was never passed.⁵⁵ The ACJA empowers the court, irrespective of the limits to its civil or criminal jurisdiction, to award compensation, restitution or restoration of property to victims or victims' estates against the accused/defendant or even the state.⁵⁶ By virtue of the provisions of the ACJA, the obligation to provide reparations lies with the defendant primarily; however, the Act also contemplates an award against the state. This only suggests that the state may be equally liable to provide reparation to victims of crime although the nature and scope of state's liability is not explicit on the face of the provisions.

There are two possible interpretations to the provisions of the Act. First, the state may be liable where it is adjudged the 'offender' through its agents. The second possible interpretation contemplates a situation where the defendant is unable to discharge his liability to the victim in reparations, due to bankruptcy or such other reasons that may render him incapable. The state becomes liable to discharge the defendant's liability while the defendant remains liable to the state in a fashion similar to the ICC reparation system. Whichever interpretation is adopted, the general notion is that the state is also responsible to victims in reparation, especially with regard to the forms of reparation which are solely within the purview of the state's power, such as a guarantee of non-repetition. Sections 314 and 321 of the ACJA expressly refer to compensation or restitution in favour of the 'victim' or 'victim's estate'. In another breath, section 319 refers to compensation to 'any injured person' specifically ordered against

55 This Bill is subsequently referred to as the Bill/Victims' Bill/VBR Criminal Justice (Victim's Remedies) Bill 2006 and 2011 respectively. The 2011 Bill contained 74 sections divided into two parts. The first part dealt with victims' rights while the second part dealt with a national compensation scheme to make an *ex gratia* award to victims of violent crimes.

56 Sec 314(1) of the Administration of Criminal Justice Act includes 'the state', specifically. Apart from compensation and restitution, the ACJA makes a provision regarding restoration of property to a victim who was forcefully disposed by the defendant in sec 336. Even though secs 340 to 342 refer to restitution of property, but refer to persons 'who appear to be the owner' of the property who may not necessarily be victims of crime, hence, this may not be deemed reparation. The ACJA also makes a similar provision to the provision of sec 261 of the CPA by providing for restoration of property to the person entitled to it where a criminal charge cannot be sustained but a civil case of wrongful conversion or detention of property is established. Sec 328 of the ACJA. Where there is a conditional discharge or dismissal of the charge against the defendant, the court is empowered by secs 454(3) and (4) of the Act to order compensation or restitution instead of a conviction or refer to 'a person' who has suffered loss owing to the act or omission of the defendant.

the accused/defendant. It is unclear whether the provisions above refer to the victim and injured party as one and the same person. However, it may be safely concluded that the provisions contemplate the meaning of a victim and an injured person differently from each other as the Act offers no definition for either term. In addition to victims and injured persons, 'bona fide purchasers for value' may also be awarded compensation.⁵⁷ Compensation in the context of the ACJA seems to refer to pecuniary forms of compensation. A compensation order may be made irrespective of other court impositions on the accused persons in the form of fines or and criminal sanctions.

4.1 Defining a victim in the criminal justice system

There is no general statutory definition specifically ascribed to victims of crime. The construction of the term 'victim' in a criminal context is usually based on the statutory provisions criminalising the alleged act or omission. However, the Criminal Justice (Victim's Remedies) Bill 2011 (VBR) attempts to define a victim in line with the provision of the UNPR.⁵⁸ According to the Bill, 'victim' means a person or group of persons on whom harm has been inflicted individually or collectively, resulting from the perpetration of a crime, or their immediate family or dependants, guardian or ward. A persons on whom harm has been inflicted while intervening to assist victims in distress is also regarded as a victim. It is immaterial that the victim has any familial relationship with the offender or that the offender has not been identified, apprehended, prosecuted or convicted.⁵⁹ Specific legislations such as the Violence Against Persons (Prohibition) Act 2015 (VAPP Act) define victims along the same lines as the proposed Bill.⁶⁰ It is notable that the VRB considers a child that is born to a deceased victim after his demise an indirect victim, provided that he would have been a dependant of the deceased victim if he had not died. Although this construction of a victim

57 Sec 319(1)(b) ACJA.

58 Principle 8 of the UNPR (n 34) defines victims as '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 ... Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.' As in the case of other international legal documents, the UNPR defines victims in the context of actions/omissions that it criminalises. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 defines a victim in similar terms in Principles 1 and 2.

59 Sec 3 VBR.

60 Sec 46 of the Violence Against Persons (Prohibition) Act 2015 (VAPP Act) defines victims in similar terms and further categorises harm in terms of physical, emotional, economic injury or substantial impairment of the victim's fundamental human rights, just as the Bill also defines harm in sec 3(1).

is exclusively applicable to the provision in Part II, it is instructive that the Bill contains extensive provisions with reference to victims. Hence, it may be construed that a foetus, by extension, may be regarded as a victim. A person other than a law enforcement agent is also regarded as a victim where he suffers injury or dies in the course of arresting a suspected offender or preventing the commission of crime or further damage resulting from the crime.⁶¹

The definition of a victim in the context of international criminal law does not elicit much difference. The Rome Statute makes no express provision for the definition of a victim. The ICC has adopted the conventional definition of victims, regarding them as natural or juridical persons on whom harm has been inflicted, owing to the perpetration of any of the crimes within the jurisdiction of the Court.⁶² It may seem that this definition appears wide and general. However, it is contextualised within the jurisdictional crimes of the Court. Thus, victims of other international crimes will not be regarded as victims before the Court. Further, the definition reveals that the conceptualisation of victim in international criminal law follows the concept of harm occasioned by crimes prohibited. With respect to reparation, the ICC further narrows the concept of a victim through eligibility criteria and the conviction of the accused.⁶³ Hence, a victim is seen along the same lines in both domestic and international contexts. In both instances victims are defined in the context of the acts or omissions prohibited by law. Although the ICC recognises juridical victims, it is not clear whether the Nigerian criminal laws recognise juristic persons as victims.

5 Recognising the right to reparation for victims of core international crimes in Nigeria

Attempts to domesticate the Rome Statute have repeatedly been unsuccessful as Bills to domesticate it are usually introduced and abandoned at the national legislative house.⁶⁴ The latest Bill is

61 Sec 37(3) Victim's Bill.

62 Rule 85 of the International Criminal Court Rules of Procedure and Evidence. In the case of *The Prosecutor v Thomas Lubanga Dyilo* the Court held that victims are those whose harm and personal interest are connected with the charges against the accused before the Court.

63 *The Prosecutor v Thomas Lubanga Dyilo* ICC-01/04-01/06 Eng, <https://www.icc-cpi.int/drc/lubanga/Documents/lubangaEng.pdf>. (accessed 30 March 2021); *The Prosecutor v Germain Katanga* ICC-01/04-01/07 Eng, <https://www.icc-cpi.int/drc/katanga/Documents/katangaEng.pdf>. (accessed 30 March 2021); *The Prosecutor v Ahmad Al Faqi Al Mahdi* ICC-01/12-01/15, <https://www.icc-cpi.int/mali/al-mahdi/Documents/al-mahdiEng.pdf> (accessed 30 March 2021).

64 There have been four differently-proposed Bills aimed at domesticating the Rome Statute in 2001, 2006, 2012 and 2016, the recent being 2016 respectively.

the Crimes Against Humanity, War Crimes, Genocide and Related Offences Bill (2016).⁶⁵ The Bill neither makes any significant provision for reparation to victims, nor does it define who a victim is, although it recognises the families of victims. Ironically, the Bill makes provision for the national enforcement of a reparation order by the ICC but there is no concrete provision regarding domestic reparation to victims.⁶⁶ The Bill provides for a trust fund for victims, the funding of which is dependent on the forfeiture orders and fines ordered by the Court, but otherwise there is no provision as to the funding of the trust fund.⁶⁷ The Bill suggests that the accused forfeits his assets to the Special Trust Fund where the Court so determines. This seems to be the only express provision regarding funding of the trust fund.

The functions of the trust fund are totally unclear from the provisions of the Bill. Although the Bill states that the trust fund is to be established for the 'benefit of the victims and families of the victim' and victims are entitled to 'compensation, restitution and recovery for economic, physical and psychological damages' from the Special Trust Fund for Victims, it does not state how the trust fund may execute its functions for this purpose.⁶⁸ It may only be inferred that victims of core international crimes in Nigeria have a right to pursue some form of reparation. While the Bill presupposes a right, it is not clear what procedural steps victims may follow to access this right. Victims have the burden of instituting a civil action, presumably to claim reparations against 'appropriate parties'. The Bill provides no clarification of who such 'appropriate parties' might be but, in the same breath, it suggests that victims are entitled to receive reparation from the Special Trust Fund.⁶⁹ The Bill simply states that victims may institute a civil action against 'appropriate parties'. Assuming – but not conceding – that the term 'appropriate parties' refers to the accused, can it also be inferred that the accused alone bears the burden of reparation to victims? In the alternative, since the term 'appropriate parties' is in the plural suggesting more

65 The 2016 Bill was a Bill to provide for the enforcement and punishment of crimes against humanity, war crimes, genocide and related offences and to give effect to certain provisions of the Rome Statute of the International Criminal Court in Nigeria. The Bill titled Crimes Against Humanity, War Crimes, Genocide and Related Offences Bill (2016), however, has not moved beyond the National Assembly.

66 Sec 84 Crimes Against Humanity, War Crimes, Genocide and Related Offences Bill (2016).

67 Sec 93 of the proposed Bill makes provision for a Special Trust Fund for victims without any elaborate provisions regarding the functions of the Trust Fund. According to the provisions of sec 93(2) of the Bill, upon conviction the Court can only order forfeiture of the offender's declared assets to the Special TFV.

68 Secs 93(1) and (6) of the Bill.

69 Sec 93(6).

than one, would it be safe to conclude that the Bill contemplates parties other than the accused?

It is difficult to overlook other manifest flaws and inadequacies in the provisions of the Bill. First, victims of core international crimes may have no respite with regard to reparation. The Bill does not guarantee realistic and accessible means for victims of crimes of such magnitude to receive reparations for the harm they have suffered in the criminal justice system. Aside from the inherent trauma in standing as witnesses for the prosecution's case against the accused, victims have the additional burden of instituting a separate legal action at their cost. Given the probable financial, psychological and vulnerable position of victims of core international crimes, the inherent diversity of their claims and the attendant difficulties that trail civil actions in ordinary cases, the practical feasibility of the provision is almost non-existent.

On the other hand, the VBR aptly identified and guaranteed victims' pre-trial, trial and post-trial rights, which are in line with the provisions of UN Declaration and the Basic Principles. The pre-trial rights of victims included the rights to immediate assistance;⁷⁰ information on available pre-trial services; progress of the investigation; a decision not to prosecute and release of the offender on bail;⁷¹ immediate repossession of property;⁷² and the right to confer with the prosecutor.⁷³ Although there was no express provision for victims' participation in criminal proceedings, in the Bill, during trial victims have a right to be present at all times throughout the trial proceedings⁷⁴ and give evidence of the injury or damage suffered during trial either personally or through other witnesses.⁷⁵ A victim who is not a prosecution witness has the right to apply to the Court. Thus, the Bill granted restricted participation to victims in order to establish the nature and extent of injury, loss or damage for the purpose of restitution or compensation.

Apart from being a witness for the prosecution and making presentations on his injury or damage, the victim may not actively participate in the criminal proceedings except for his right to be present. This is similar but substantively different from the practice at the ICC where victims actively participate in the criminal proceedings

70 Sec 4 VBR.

71 Secs 5-6, 7 12 and 13 VBR respectively.

72 Sec 8 VBR. Sec 10 of the same Bill conferred on the victim the right to apply for the return of the victim's property recovered during investigation.

73 Sec 11 VBR.

74 Sec 12 VBR.

75 Secs 21-22 VBR.

besides making representations for reparation. Although the Bill made no further procedural provisions with respect to the actual modalities of such presentation by the victim, it is presumed that such presentation may be made alongside the prosecution case although independently of the case. The provision of the Bill suggests that such presentation may be made at any time before the sentencing stage.⁷⁶ Nothing in the Bill suggests that the prosecution will be involved in assisting the victim to make his presentations, except where it relates to the enforcement of a reparation award by the court.⁷⁷ However, recourse may be made to the practice at the ICC where victims have a separate legal representative who makes presentations to the Court on their behalf during the reparation proceedings. Following the experience of the ICC, allowing victims to participate in criminal proceedings would not significantly affect the proceedings, such as unduly delaying the accused's trial.

A significant provision of the Bill relates to some form of reparation award to victims during trial which, although limited to compensation and restitution, obviates the need for victims to institute a separate civil action for remedies.⁷⁸ The Bill made express provision for a similitude of juridical reparation in Part I thereof.⁷⁹ The provision for *ex gratia* payments in Part II of the Bill, via the Criminal Injuries Compensation Tribunal, cannot in any way be described as reparations to victims of crimes.⁸⁰ The title already suggests that such payments are not obligatory for the state but voluntary. The limitation on the period of application and amounts payable in light of the scope of the award clearly steer the provision off reparative content.⁸¹ Reparations are neither voluntary nor can they be limited to mere payments as suggested by the tone of the wording of Part II of the Bill. The maximum of N10 000 contrasts starkly with the provision of the first part of the Bill, which seems to accord some form of significance and dignity to victims of crimes.⁸²

76 Sec 22 VBR.

77 By virtue of the provisions of sec 31 of the VBR, the prosecutor may enforce an order for reparation to the victim on his behalf.

78 Sec 26 VBR.

79 Secs 1-36 VBR.

80 The Bill established a Criminal Injuries Compensation Board which oversees the compensation programme and the activities of the Tribunal. Sec 44 VBR.

81 Sec 53 of the VBR clearly placed a limitation of one year within which a victim may apply for *ex gratia* payments while the operation of the Act cannot be backdated to apply to crimes committed before its commencement. Sec 56 states that the Tribunal cannot make an award in excess of 10 000 Naira. However, given the interpretation ascribed to injury in sec 37(1) and the very wide categories of criteria that the Tribunal must consider in assessing a victim's claims, outlined in sec 58 of the Bill, it is ironical and inimical to victims' rights that the Bill placed such a limitation on time and amount payable.

82 Following the exchange rate as at September 2020, the value of the maximum amount is the paltry sum of US \$26. It is practically difficult to concur that such

It appears that while the provisions on reparation in the Bill might have been gleaned from the Rome Statute on reparation, the drafters seem to avoid the use of the word 'reparation' while limiting the remedies available to the victims to compensation and restitution. Following the meaning ascribed to restitution, which simply implies replacement, it possibly may not cater for the restitutive need of the victim.⁸³ Conversely, the Bill proposes a huge improvement in the position of victims in the administration of criminal justice in Nigeria. Unlike the previous position, victims would be active participants in the criminal justice process, although their participation is limited to proceedings that establish the nature and extent of the victim's injury. An important highlight of the Bill is the provision on victims' rights and remedies in the course of criminal proceedings as a guiding principle of the administration of criminal justice in Nigeria.⁸⁴ This represents a significant shift in Nigeria's perception of the criminal justice. The Bill as proposed, however, needs to be reviewed with regard to specific areas in order to extensively protect and guarantee victims' rights in the administration of criminal justice, especially with respect to victims of core international crimes in Nigeria.⁸⁵

6 Recommendations and conclusion

The rights of victims to access justice encompasses their right to reparation. The right to reparation is particularly important to victims of core international crimes, for what is justice to such victims if the harm they have suffered as a result of the crimes perpetrated against them are not repaired? Hence, with the increasing number of victims of core international crimes in Nigeria, it is becoming imperative to consider enshrining their rights to reparation and making adequate provisions to fulfil the right. Nigeria must take the first step in the right direction by recognising that victims of core international crimes are deserving of reparations not only by the magnitude of the harm they have suffered but by virtue of its obligation under the Rome Statute and the established legal principles of *ubi jus ibi remedium*. While it is important to focus on retribution and rehabilitation of repentant offenders, it is equally important to actively engage in repairing the harms perpetrated against the victims directly, in so far

amount will make any significant reparative impacts for victims of violent crimes as purported by the Bill.

83 Sec 73 VBR.

84 Secs 2(e) and (g) VBR.

85 Besides some of the obvious inadequacies of the Bill, the Bill may not have anticipated unforeseen circumstances such as where a victim dies in the course of the application for reparation but before an award is made. There is nothing to suggest that the court or tribunal may countenance the needs of the dependants of the victim in the eventual award of reparation.

as it is possible to do so. Previous attempts at domesticating the core international crimes and also incorporate some form of reparative provisions are commendable but, *prima facie*, these are grossly inadequate. The Bills have failed to comprehensively recognise and capture the essence and concept of reparation to victims of core international crimes.

Core international crimes must be properly domesticated in line with the spirit and intendments of the provisions of the Rome Statute. Nigeria must adopt a definitive legal framework on reparation to victims of core international crimes. The legal framework may include both a juridical and administrative reparation system, which operates differently from juridical reparations obtainable through the courts. In designing such a system, priority must be given to the establishment of a Victims' Trust Fund for the purpose of administering and implementing reparation to victims. The core functions of the trust fund must be clearly defined and stated. The composition and powers must also be clearly stated and be free from ambiguous interpretations.

Second, Nigeria must recognise victims' rights to reparation by making express provision for reparation to victims in its domesticating instrument and including the salient issues discussed with regard to fulfilling victims' rights to reparation. The legal provision must clearly define who a victim is and the substantive and procedural measures for realising the right to reparation. The concept of reparation must be clearly defined to incorporate all five recognised forms of reparation. The provisions of the law must be clear on the type of reparation available to victims. The law must expressly provide victims with the right to access juridical reparation in the criminal justice processes, although via civil proceedings. The model adopted by the ICC is adaptable and can be used within the Nigerian criminal justice system. The burden of pursuing reparations by the victims should not be borne solely by the victims. The cost of legal action and representation should largely be borne by the state.

In addition to legislating on victim's rights to reparation and the attendant procedural issues, the law should be devoid of ambiguities with respect to the obligation for reparation. Clearly, the accused bears the burden of reparation to the victim. However, where the accused is unable to discharge such a burden due to verified indigence, the burden shifts to the state through the trust fund. Hence, the law must be clear on the funding of the trust fund. Besides funding through forfeited assets and funds of the accused, contributory funding by the state should be expressly provided for. Contributions may be

received from the states of the federation as well as from voluntary donations by international and non-governmental organisations that so desire.