

# Examining the Challenges for the Compensation of Victims of Crimes: The Cameroonian Experience

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## Abstract

In every society, when a crime is committed, it affects the victim and the community as a whole thus, promoting criminality and insecurity in the society. This calls for efforts to address the worrisome situations in order to heal the plight of the victim who suffers injuries as a result of crime waves. It should be noted that from investigation to trial, victims of crime are faced with numerous challenges. These challenges range from participating in the investigation and trial and more importantly adequate compensation for damage suffered following the commission of an offence. The key guiding principle in criminal justice for victims of crimes is to ensure that the person who suffers injuries or losses is compensated or restituted. Injuries or damage suffered by victims' results from the commission of offences by either physical or juristic persons. Some of these offences include: murder, assaults, sexual offences, theft, destruction, human rights violations, environmental hazards, etc. Most at times the victims never have their compensations paid by the perpetrators of these heinous crimes. The preeminent query is whether there are options available for victims to ensure their compensations when real offenders cannot repair the harm. This paper through a content analysis, seeks to examine the challenges of victims' rights to compensation in the administration of criminal justice in Cameroon. It seeks also to examine whether there are existing legal and institutional framework adequate and efficient in addressing the plight of victims of crime with regard to compensation.

**Key words:** Criminal justice system, victim, crime, challenges, compensation, Cameroon.

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## INTRODUCTION

In our day to day life we are either victimized or witnesses of crimes being committed in our communities by individuals or legal entities. These crimes range from crimes against individuals, the State or the environment where we live in. The causes of these crimes cannot be ignored given the socio-economic, political, psychological, geographical, and technological factors. It is a fundamental principle in criminal law that those who infringe the law must be punished. The aim of punishment is for deterrence, rehabilitation, incapacitation, retribution, reparation or restitution. Punishment for this reason is thus meant to ensure generally that morality, good cohesion and public order is restored. Victims of crime have rights that ought to be protected throughout the entire judicial process. Amongst these rights<sup>[1]</sup>, the compensation of

victims of crime is of vital importance. The purpose of compensation is to reinstate the injured persons to the original position they formerly enjoyed before the harmful event. Ensuring the respect of the rights of victims to compensation has thus provoked interest at the level of international, regional and national legislations.

The criminal law systems of different countries have varying approach in ensuring the respect of victims' rights to compensation. In the Cameroon criminal law system, ensuring the respect of rights of victims of crime can be explained in reference to different textual provisions. The commission of an offence may lead to the institution of criminal proceedings and as the case may be to a civil action<sup>[2]</sup>. Section 59(3) of the Criminal Procedure Code of Cameroon (CPC) provides that: "a civil action is

<sup>1</sup> Victims' rights include: the right to protection, right to fair trial, dignity, compensation and reparation, assistance and information. Etc.

<sup>2</sup> Section 59(1) of the Criminal Procedure Code of Cameroon.

intended to provide compensation for damages resulting from an offence". A civil claim may thus be made alongside a criminal action before the same court when those actions arise from the same offence<sup>[3]</sup>. A close study of statutory provisions from the time criminal proceedings are instituted, through investigations and trial, reveals that the victim plays a very important role. He is according to the Cameroon criminal law considered as a witness and at the same time the civil party (*partie civil*).

Unfortunately, from the pre-trial stage to the trial stage, more emphases is laid on the protection of the rights of the offender while the victim of crime has little or is utterly neglected. Notwithstanding that the law enables the trial judge to pronounce a civil award; much is not done by the same court to ensure the immediate execution of this order like is the case with fines and costs<sup>[4 5]</sup>. Today, there is a plethora of international and national legislations that recommend States to make as a priority the protection of the rights of victims of crime through compensations. The recently revised Cameroon Penal Code: Law No.2016/007 of 12 July 2016 has included in its arsenal of penal sanctions reparatory sentence <sup>[6]</sup> intended to draw attention to the welfare of victims of crime.<sup>[7]</sup> It was logically stated by Oputa J.S.C in *Josiah v. the State* that:

"Justice is not one way traffic, it is not justice for the appellant only; Justice is not even two way traffic, it is really a three way traffic-justice for the appellant accused for the heinous crime of murder, justice for the victim, the murdered man, the deceased, whose blood is crying".

Even though it is necessary to punish the criminal offender, attention should also be given to

injured victims of crimes (the third person) to ensure that they are restored to their original positions.

It is the duty of the State to protect its citizens from crime. And when people are victimized because the State failed in her duty, the responsibility of the State will be to ensure that they are adequately compensated.

However, the salient questions we attempted to answer in this paper are:

-Who can be considered a victim of crime in the context of criminal law?

-What are the rights and challenges of a victim of crime to compensation?

-What is the basis of victims' compensation in Cameroon and how is the State involved?

### THE BASES FOR DETERMINATION OF A VICTIM

The Black's Law Dictionary defines a victim as a person harmed by crime, tort or other wrong <sup>[8]</sup>. It connotes someone who has been harmed through a kind of activity prohibited by the criminal law. Justice Karibi Whyte also defined victim as any person, dependent or institution who has suffered injury from the criminal act of the offender who has been found guilty in such acts <sup>[9]</sup>. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by General Assembly Resolution 40/34 of 29 November 1985 herein referred to as the UN 1985 Declaration in its Section 1 provides as follows:

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

The UN 1985 Declaration also include individuals who suffered indirectly, such as the immediate family or dependents of the direct victim and any other person who have suffered harm as a result of intervening to assist direct victims

There is no unifying definition for a victim and thus victim may also be regarded differently from varying angles depending on the description given to the term 'victim' by the law. For instance some have argued that instead of regarding the victim as one who has undeservedly suffered he should rather be seen and

<sup>3</sup> Section 61 of the CPC.

<sup>4</sup> Section 393(1) (a) *ibid* "with the exception of civil awards, fines and costs shall be paid immediately by depositing the said sums of money at the court registry". (b) "the convict shall, if he fails to pay immediately, serve a term of imprisonment in default of payment in accordance with the provisions of sections 564 and following..."

<sup>5</sup> Section 389(4) *ibid*, "the part of the judgment known as the verdict shall indicate the nature of the judgment, the level of the court, and whether the accused is guilty or not, if guilty, it shall state the offence for which he has been found guilty, the relevant sections of the law applied, the sentence pronounced and where necessary, the civil award. See also section 391 of the CPC

<sup>6</sup> It entails the obligation for the offender to indemnify the victim within the period and under the conditions laid down by court. Section 26-1 of the Penal Code.

<sup>7</sup> But this is only limited to offences punishable with imprisonment for not more than two years or with fine only. This means victims of serious offences that warrant an imprisonment of more than two years cannot benefit from the privileges of this provision.

<sup>8</sup> Black Law Dictionary (8<sup>th</sup> Ed.) St. Paul. MMN West Publishing Co.(2004), p1425.

<sup>9</sup> Karibi Whyte, «National policy on compensation to victim of crime. How Desirable». Federal Ministry of Justice, Lagos, 1990, quoted by FAMOUS, Izobo Esq, "challenges Of Victims Of Crime In Administration Of Criminal Justice In Nigeria", in International Journal of Business & Law Research 7(2), p78-87.

defined as one who is innocent of the misconduct of the offender [10].

From the British perspective, the British 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. A victim in this regard is therefore one who has “undeservedly suffered” by the criminal conduct of others [11]. The Compensation Board in Britain uses this barometer to determine who a victim is for purpose of compensatory awards. The fact that the Compensation Act has limited victims to those who “undeservedly suffer” means that the principle of blameworthiness of a victim to crime is taken into consideration. This implies that if a victim is found to have contributed to his own injuries, the responsibility of the Board to assist the victim will be diminished. According to the American approach, a person only becomes a victim when a verdict of guilt is returned against an alleged offender.

In the Cameroonian Criminal Law a victim refers to any person who has suffered injury resulting from the commission of a crime. A victim in this perspective has a right to file a civil claim before a trial court for compensation or reparation. However such a victim can be awarded civil claim only when an offender is found guilty after a trial by a criminal court. A civil claim maybe made alongside a criminal action before the same court so long as they arise from the same offence. For instance, if a person alleges that he suffered injury as a result of an assault perpetuated on him or loss resulting from a crime of theft or destruction, he can file a claim for general and specific damages before the court hearing the matter. In a situation therefore where the prosecution of the offender ends with no conviction, the existence of a victim will not be recognized.

Legal capacity is also a determining factor in the definition of who a victim of an offence is and the right for such a victim to file for a claim before the courts [12]. The trial court is required to award a civil claim at the close of the hearing if the accused is found guilty. The determination of the award of a civil claim in this respect therefore lies on the outcome of the criminal matter. If the criminal matter fails, it is obvious that the victim will not be awarded any damages. This manner of determination can be likened to the American consideration where a person only becomes a victim when a verdict of guilt is reached at the end of the trial. In other words if there is any victimizing events following the offence, it is taken that such an

event failed to produce a victim per se and cannot attract a civil award. It is therefore incumbent on the prosecution and the civil party to prove their case in order to secure a conviction and a civil award. The prosecution depending on the nature of the offence has the task of proving the elements of mens rea and actus reus as justification for criminal responsibility which may thus sustain a civil claim. These elements are determinant in proving the guilt of the offender. The victim on his part has to prove the damage allegedly suffered. It may need that the victim of assault provides receipts and hospital documents to attest that he undertook medical treatments or a victim of an alleged destruction of crops to provide a technical agricultural report for a proper appreciation of the destruction. Proof of damage is important to help the court in assessing the damages to be awarded to the victim.

From the above definitions it can be deduced that a victim of crime is any person (individual or corporate) who has suffered physical, psychological or emotional injury or economic or financial loss because of a crime committed. It goes without saying that a ‘person’ whether human or a juristic personality [13] is one that is recognized by law and has rights and duties. Such a ‘person’ must have legal rights to own property, enter contracts, sue and be sued.

Responsibility for the payment of damages or restitution shall lie in the person who is criminally responsible for the omission or the act that caused harm to the victim. The Cameroon Penal Code in section 74(2) provides that: Criminal responsibility shall lie on him who intentionally commits each of the ingredient acts or omissions of an offence with the intention of causing the result which complete it. However there are exceptions with strict liability or for simple offences[14]. As for corporate bodies, criminal responsibility shall result from the offences committed on their behalf by their organs or representatives [15]. However the law provides that for offences resulting from accident or from irresistible compulsion[16] insanity[17], intoxication[18], infancy[19] submission to threats[20] obedience to lawful authority[21], lawful defense[22] state of necessity[23] there shall not be criminal responsibility on the alleged offender. Based on these provisions therefore, it is clear that a victim in

<sup>13</sup>Gani Fawihinmi v. NBA (1989), NWLR, (PT105),p. 558.

<sup>14</sup> See Section 74 (4) of the CPC.

<sup>15</sup> See section 74-1 of the Cameroon Penal Code (PC).

<sup>16</sup> Section 77 of the PC.

<sup>17</sup> Section 78 of the PC.

<sup>18</sup> Section 79 of the PC.

<sup>19</sup> Section 20(1) of the PC.

<sup>20</sup> Section 81 of the PC.

<sup>21</sup> Section 83 of the PC.

<sup>22</sup> Section 84 of the PC.

<sup>23</sup> Section 86 of the PC.

<sup>10</sup> Loc.cit, P.6.

<sup>11</sup>Miers, D. (1978), Response to Victimization, Abingo, Milton Trading Estate,p.5.

<sup>12</sup> Section 71-74 of the Criminal Procedure Code of Cameroon.

such circumstances will be left uncompensated by the alleged offender.

One of the supporters of this view is Lamborn<sup>24</sup> who argued unequivocally when defining the effects of victimization that:

The mental state in the case of insanity and infancy approximates criminality; mental state in the case of self defense, necessary official action, consent and mistake differs markedly from criminal mens rea. When the later defenses 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

From the provisions in the Cameroon Penal Code and the views expressed by Lamborn, it is clear that acts and omissions can produce victimizing events but such events may not produce victims since the alleged offenders are not criminally responsible. This is a very rigid reflection and entails continues hardship on the innocent victim of an offence in Cameroon. The persons that became victims resulting from the acts and omissions of such offenders who lack criminal responsibility will not be compensated by these perpetrators.

However, going by the provision of Section 2 of the United Nations (UN) 1985 Declaration, a person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. Section 3 further provides that: the provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

It therefore goes without saying that the intention of the UN 1985 declaration was to make a wide range of those who can be considered victims and their right to compensation. In as much as it is important in this paper to identify who a victim of crime is, the fundamental issue here is that the victim of crime has a right of respect and recognition, support and assistance, protection, right to information, access to justice and fair treatment and most importantly the right to compensation and restitution which is our focus of discussion.

<sup>24</sup> Lamborn L.L, (1990), "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, p90.

### **Victims Right to Compensation and Restitution**

Victims of crime usually encounter a variety of losses and will obviously need to be compensated or restituted. Because of the hardship faced by victims of crime, many legal instruments have been enacted to address this appalling issue. Recognition of the right to compensation has justifiably been at the center of international and regional reflections urging States for improved status within the justice systems. These include: the Universal Declaration of Human Rights, UN 1985 Declaration, the EU Convention on the Compensation of Victims of Violent Crime, 1983, the Council of Europe, Assistance to Victims and the Prevention of Victimization, 1988 etc. Also in 2004 and subsequently in 2012, the European Union adopted two legally binding directives on compensation, including the rights to obtain a decision on compensation by the offender [<sup>25</sup>]. All these are declarations meant to advance the course of victims of crime by member States. Member States are enjoined to review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases in addition to other criminal sanctions. Article 8 of the Universal Declaration of

human Rights provides that:

Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law.

The UN 1985 Declaration [<sup>26</sup>] also encourages the establishment of strengthening and expanding national funds for compensation to victims of crime and more especially to vulnerable groups.

Article 8 of the UN 1985 Declaration provides that:

Offenders or third parties responsible for their behaviors should, where appropriate, make fair restitution to victims, their families or dependents. Such restriction should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred due to the victimization, the provision of services and restoration of rights.

In some countries, victims can ask the offender to make restitution for the loss as part of the criminal trial, while elsewhere such restitution is awarded separately from the trial, for instance as part of civil proceedings [<sup>27</sup>].

The power to order for compensation or restitution depends on the claim made by the victim before the court and is inherently the unfettered discretion of the trial judge. Apart from the power to

<sup>25</sup> [www.unodc.org/key-issues](http://www.unodc.org/key-issues), retrieved on the 3/01/2021.

<sup>26</sup> Ibid.

<sup>27</sup> Wemmers, 2017.

award damages as compensation for the injuries suffered by the victim, the court also has the powers to order for an imprisonment, fine or the payment of costs of proceedings incurred by the State. The award of cost is different from a civil claim or damages in that it does not require an application by the claimant to give the court jurisdiction. The court has to, at the time of delivery of its judgment, order for costs which shall be enforced immediately.

Art 12 of the UN 1985 Declaration specifies that:

When compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation to: (a) victims who have sustained significant bodily injury or impairment of physical or mental health and as a result of serious crime; (b) the family, in particular dependents persons who have died or become physically or mentally incapacitated as a result of such victimization.

The UN 1985 Declaration thus encourages the establishment, strengthening and expanding national funds for compensation to victims. This is intended to solve the problem that acts or omissions of persons that result to victimization should be recognized and compensated.

In response to this recommendation, compensation schemes have been set up by several States some of which include: USA, Great Britain, Canada, New Zealand, Australia etc. There is "Victims Support in Britain" and the "Victim of Crime Act" in America which provide immediate and long term assistance to victims. In Britain, this group is highly funded by the government [28]. Such schemes as indicated above should ensure that victims are provided with the necessary funds in a prompt and unbureaucratic way because what destroys such projects is when they are overtaken by corruption and favoritism. The Cameroonian response to this is only reflected the legislations [29] enforced whose application is not adequately solving the plight of victims of crime.

### **The Bases of Victim Compensation and Impediments**

As earlier developed, it is the right of every victim of crime to be compensated after haven suffered injury, loss or damage. The purpose for compensation is to restore injured persons to the same state that they

formerly enjoyed before the harmful event [30]. The basis for this compensation is enshrined in a series of international, regional and national legal frameworks notably: the Universal Declaration of Human Rights, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, the EU Convention on the Compensation of Victims of Violent Crime, 1983, the Council of Europe, Assistance to Victims and the Prevention of Victimization, 1988 etc. At the national level we have the Cameroon Penal Code and the Cameroon Criminal Procedure Code and other related pieces of legislation.

In fact, contemporary 'victimology' recognizes that victims require effective responses concerning reparation or restitution, having a say in their case and that they are in need of dedicated victim support services and legal aid [31]. "Victimology" required international criminological interest and became the subject of solid scientific inquiry [32]. This notion was further accentuated by the contemporaneous rise of cognate professional fields such as psychology and social work that have contributed to an increased awareness that victims require timely, supportive and non-stigmatizing support services. The rise of victims' rights movement in the 1960s and 1970s influenced by rising crime rates in the USA, the feminist movement's attention to the issue of violence against women and political activism by victims of crime was intended to raise awareness to the marginalized populations and questioning the unjust policies of the government on compensation programmes for victims.

Popular sentiments have thus grown drastically given the plight of victims of crime for the hardship they undergo throughout the criminal justice process. Most criminal justice systems in the world have been paying more attention to alternative measures of punishment away from the traditional forms of punishment. The welfare of the offender and the consideration of the rights of the victim of crime has been taking priority over imprisonment and fine. Despite this important development in understanding the needs and rights of victims, there is still considerable disparity across many jurisdictions with regard to recognition and respect of victims' right to compensation.

The Cameroon criminal justice system no doubt recognizes the rights of the victim of crime to compensation or reparation. In the Cameroon criminal

<sup>28</sup> Maguire, M and Shapland J,(1990), "the victim movement in Europe" in victims crime; Problems Policies and program, Cited by Famous Izobo in "Challenges of Victims of Crime in the Administration of Criminal Justice in Nigeria", (2019), Journal of Business and Law Research, 7 (2): 78-87.

<sup>29</sup> For example: The Penal Code and the Criminal Procedure Code.

<sup>30</sup> David Miers, (2013), "Offenders and State Compensation for Victims of Crime: Two decades of development and Change", International Review of Victimology, 20(1):145-168.

<sup>31</sup> Kirchhoff, 2010, Wemmers, 2012, 2017.

<sup>32</sup> Gerhard O. W. Mueller, (1965), " compensation for Victims of Crime: Thoughts before Action", Minnesota Law Review 1385, <https://scholarship.law.umn.edu/mlr/1385>, p.214.

law, there are essentially three parties in a criminal trial, viz: the Legal Department who is a principal party, the Civil Party ('partie civile') i.e. the victim, whose action depends on the prosecution and the offender (accused). Section 59 (3) of the CPC provides that: "a civil action is intended to provide compensation for damages resulting from an offence". Anyone who alleges that he suffered injury as a result of the commission of an offence may make an oral or written application for damages in Court<sup>[33]</sup>. The civil party seeking for damages shall indicate the damages which he is claiming before the trial court. The discretion to order for damages lies with the trial judge depending on the outcome of the matter. If at the close of the matter the offender is found guilty of the offence, it shall sentence the convicted offender to the penalties provided by law and where applicable decide on the civil claim<sup>[34]</sup>. Section 393 (1) of the Criminal Procedure Code (CPC) makes it mandatory for fines and cost to be paid immediately by the convict or in default to serve an imprisonment term. Unfortunately by ensuring immediate payment of fines and cost, the court at this level uses its muscles to ensure that its interest is protected above that of the individual victim who has been directly injured by the acts or omissions of the offender.

However, section 365 and 366 of the Penal Code is an opened window for the victim to be assisted to ensure that compensation or restitution ordered by the judge is complied with. This section provides that the convict will remain in prison until full payment to the victim has been made. The unanswered question here is...how frequent are these provisions applied? What if the convict does not have the financial means? Will he remain in prison in his entire life if he lacks the means? What becomes of the compensatory award meant for the victim if he remains in prison? Are they legal alternatives to salvage this situation for the benefit of the victim?

Additionally, Section 571 of the CPC provides that: (1) (a) A convict who has been subjected to imprisonment in default shall not be absolved from payment of fines, costs and damages; or from making restitution for which imprisonment in default has been executed. (b) The Legal Department or the civil party may at any time attach movable or immovable property of the convict up to the amount of the debt in accordance with the Procedure for the enforcement of civil judgments. (2) The time limit for taking of the action provided for under subsection (1)(b) above shall be thirty(30)years, to run from the day after the imprisonment in default has ended. This provision seems to bring a relief to victims of crime but there is still a challenge here based on two factors: What happens if the convict has no property at all to be

attached? Who will bear the cost of the procedure for enforcement, given that the victim maybe financially hard up? From the words of Famous, Izobo Esq:<sup>[35]</sup> "what becomes of the victim of crime who is impecunious and cannot pursue his civil remedies? Or what becomes of a victim, where the offender is indigent and unable to pay any form of compensation?"

Interestingly, Law No. 2009/004 of the 14<sup>th</sup> of April 2009 on Legal Aid<sup>[36]</sup> in Cameroon allows individuals who have already obtained a writ or judgment in their favour but are unable to follow through to the enforcement stage due to lack of resources to make an application for legal aid at the level of the legal aid commission<sup>[37]</sup>. It is important to also note here that although its scope has been extended by this law, legal aid is limited to a certain category of persons. These include: indigenes, i.e. the very poor and needy, persons subject to the discharge tax, natural or juristic persons whose resources are inadequate to have their rights enforced by the courts or to follow up enforcement of court processes, unemployed wife with minor children in proceedings of divorce with her husband etc<sup>[38]</sup>. However, the procedure for applying for legal aid is cumbersome<sup>[39]</sup> and unbearable. It is also only aimed at assisting the victim to pursue his claim free of charge against the offender rather than making compensation. In the Cameroon context, it may not be granted in a situation where it would be to initiate a court action against a State personality or the State itself. Again since the creation of legal aid centers, most of them are not functional and many people are not even aware of the existence of this law. Lack of information about legal aid is thus an impediment to victims who are unable to execute their judgments because of insufficient means.

Reparatory sentence on the other hand is only limited to offences punishable with imprisonment of not more than two years or with fines only. The disturbing issue here arises in a scenario where an offender is convicted to an imprisonment term of more than two

<sup>35</sup> Famous, Izobo Esq.op.cit.

<sup>36</sup> Legal aid is a system or a mechanism that allows the underprivileged to benefit from total or partial procedural fees like registration fees, bailiff, notary or expert fees. It enables persons with insufficient resources to obtain either court judgments or the enforcement of same with no prior payment of all or part of the costs which he ought to have paid. It concerns all expenses by the courts, procedures or acts for which it is granted.

<sup>37</sup> The Law stipulates that legal aid commissions shall be set up at Courts of First Instance, High Courts, Military Tribunals, Courts of Appeal and the Supreme Court.

<sup>38</sup> See Section 5 and 6 of Law No. 2009/004 of 14<sup>th</sup> April 2009 to Organize Legal Aid in Cameroon.

<sup>39</sup> See Section 20(1) of the Law supra.

<sup>33</sup> Section 385 of the Penal Code.

<sup>34</sup> See Section 391 of the CPC.

years. In respect to these crimes, we hold the opinion that the criminal justice system would certainly be more humane if it takes into consideration not only the need of punishing the offender but also focusing on the victim of atrocious crime by ensuring that he gets compensation. It is sad that even with the recently amended Penal Code (Law No.2006/007 of 12 July 2006) while instituting reparatory sentence<sup>[40]</sup> as an alternative penalty meant to address the plight of victims of crime to expeditious compensation in line with international standard and best practices still begs for applicable modalities.

Furthermore, in inter-personal relationships victims of sexual offences, gender-based violence, hate speech, and discrimination are not legally provided with psychological reliefs. The psychological traumas that underline in the event of the commission of these offences have no barometer in determining the damage caused to the victim. The discretion of assessing the quantum of damages is in the unfettered hands of the judge. We humbly opine that this gives an opening for arbitrary use of this discretion to the detriment of the victim given that the judge may be faced with difficulties assessing specifically the general damages or influenced by overzealous or powerful offenders.

It is off course true that many victims end up not being compensated even after being awarded damages by the court either because the offender is financially incapable or because they are too powerful to be intimidated to do so. Corruption at times certainly enables agencies charged with the execution of these orders to throw a blind eye on the poor victim. In these circumstances, the writer humbly opines that it is better the State steps in to assist the victim financially in order to restore the victim's plight. By doing so, the State can then use its powers within the legal time to pursue the perpetrator to ensure the execution of the judgment<sup>[41]</sup>. The logic behind this argument is that the person who breached the standards laid down by the State has been convicted and being a citizen of the State, the State is responsible for his upkeep and rehabilitation. The State should be seen to be fair to all parties by extending the same gesture to the victim who is a third party in the administration of criminal justice.

In matters where offenders cannot be identified, for instance during riots or manifestations, fire incidents, innocent people suffer injuries. It is the place of the State to ensure that such victims are properly taken care of since the offenders cannot be traced at the moment. The State can thereafter engage in judicial proceedings in a bit to trace and punish those responsible for such odious acts. It is the responsibility of the State to protect its citizens by ensuring adequate security; where the State fails in such responsibility it

should not forgo the duty to compensate the victims of such crimes. The measures put in place as a solidarity fund is not extended to all victims of crime but rather for those who are victims of natural disasters.

In the words of Scarman L.J in *R. v Wood* (RI)<sup>[42]</sup>;

“Compensation orders were not introduced into our laws to enable the convicted buy themselves out of the penalties of crime. They were introduced as a convenient and rapid means to avoiding the expense of resorting to civil litigation when the criminal clearly has the means which would enable the compensation to be paid”

The above argument is true but it left out recognizing the fact that in certain poor communities, offenders would not possess the means to pay for compensations. The offender might equally not compensate the victim because he believes he did not commit any crime and that the victim has subjected him to undergo pains or that the victim led him into crime. There are therefore sufficient reasons for the States intervention in ensuring victims compensation in Cameroon. As posited by Fedelis Nwadiolo<sup>43</sup> the justification of State intervention includes:

- That the State is responsible for preventing crime and therefore should be made responsible for compensating the victims of the crimes it fails to prevent.
- The second is an extension of welfare doctrine that rest on the belief that people in need, especially those in needs because they have been victimized by event they could not avoid, are entitled to public aid.
- That the State intervention is based upon the notion of an attenuated contract between the State and its citizen, that in consideration for the citizens accepting laws regulating the possessions of firearms and other weapons, restricting the victim use of force in self defense, the State agrees to compensate him in the event of his sustaining injury as a result of criminal behavior.
- Their civil remedies are not likely to be successful because of the poor financial conditions and prospects of most offenders and the Criminal law generally, makes no effort to use its sanctions to ensure restitution to the victim. Indeed it often aggravates the victim's problems by incapacitating the offender, thus preventing him from earning money to make restitution.
- Crime prevention theory, which holds that compensation program will encourage more

<sup>42</sup> (1995) CR APP.R70 , quoted by Famous, Izoso, (2019), p.83.

<sup>43</sup>Fedelis Nwadiolo,(1990), “Compensation Victims of Arson and other Offences to Property” in Compensation and remedies for Victims of Crime in Nigeria ,edited by Ajibola ( Federal Ministry of Justice), p.209, cited by Famous, Izoso Esq.

<sup>40</sup> Section 26-1 and 26-2 of the Penal Code.

<sup>41</sup> See Section 571 of the Criminal Procedure Code.

citizens to report crime, thereby resulting in more effective law enforcement programmes.

‘Victims’ compensation programmes have been introduced in the United States of America, Canada, Britain, France, New Zealand, Australia and other western nations of the World in line with international standards and best practices.

New Zealand adopted in 1963 a Criminal Injuries Compensation Act<sup>44</sup> under the royal prerogative to provide an avenue for claims to be filed by victims. This act was intended to alleviate the hardship which many offenders were inflicting upon innocent people. The Board is charged by the crown with the duty of distributing the bounty of the crown to those who sustain injury directly attributable to a crime of violence or to assisting in apprehending an offender or preventing an offence.

In 1964, Margaret Fry [<sup>45</sup>] a social reformer brought into focus the disadvantaged position of the crime victims with the system and their need to be recognized and treated with respect to compensation. This led to a Criminal Injuries Compensation Scheme for Britain. Despite Fry’s urgent and sincere pleas, a majority of the contributors to the symposium responded with statements which were to put mildly, extremely cautious. Two years later, Dr Stephen Schafer published in England the first hand-cover book in point to appear anywhere, a scholarly work entitled *Restitution to victims of crime*. It was a multi-nation comparative study of compensation methods and systems for victims of crime, with a concise analysis of the restitutive concepts of punishment and the punitive concept of restitution...’ According to Gerhard M, it was a book which ‘made it easier’...to come to an intelligent solution<sup>46</sup>. In English and Scottish law the schemes include personal injury and shock directly attributable to crime of violence including arson. The payments of compensation made under the scheme are ex-gratia [<sup>47</sup>]. In Northern Ireland, the Criminal Injuries to Persons Compensation Act of 1968 also contains express statement for the role of the State in compensating those who have been injured as a result of a criminal offence [<sup>48</sup>].

The French Law of July 6, 1990 created an independent compensation process for victims of crime

which may be carried out independently of any criminal proceedings and regardless of whether the perpetrator of the criminal act has been found. The law has instituted the commission for the compensation of victims of crime (known in its French acronym as CIVI), a special tribunal that exist at every High Court (Tribunal de Grande Instance). Victims of serious crimes of trespass to person such as (rape, sexual assault, murder or involuntary homicide, voluntary or involuntary violence that causes a total absence from work of more than a month), etc. receive full compensation for damages. Victims for less or other offences have the right to a limited maximum compensation based on the conditions of their financial resources [<sup>49</sup>]. Financing the compensation is engaged through the Guarantee Fund for Acts of Terrorism and other Crimes (FGTI) specifically for victims of acts of terrorism and other crimes. The Compensation awarded by the CIVI is paid by the fund. The fund pursues its recourse actions against those responsible for damages incurred or their insurers in order to recover the sum paid to the victim. It is subjected to a financial control by the Ministry of the Economy, Finance and Industry [<sup>50</sup>].

In Kenya, there is the Victim Protection Act of 2014 which is intended to give effect to Art. 50 (9) of the Constitution which provide for protection of victims of crime and abuse of power, and to provide them with better information and support services to provide for reparation and compensation to victims; to provide special protection to vulnerable victims and for connoted purposes. Article 19 establishes the Board charged with the victim protection schemes.

Beside the legal frameworks as outlined above are equally voluntary groups which are charged with the responsibility of providing aid and assistance to victims of crime. In Britain and America, voluntary groups such as “Victims Support in Britain” which is highly funded by government [<sup>51</sup>] and the “Victim of Crime Act” (VOCA) in America, provide immediate and long term assistance to victims. These voluntary groups target victims of crime in the areas of crisis intervention, counseling, assistance through court system, help with applying for and obtaining compensation, setting up refuges for battered women (victims of domestic violence) and rape crisis centers. They also sometimes set up mediation programmes between offenders and

<sup>44</sup> Compensation for Criminal Injuries, Criminal Law Review 1969, p.18.

<sup>45</sup> Fry, M, (1969), Arms of Law, Gollanez: London, cited by Famous, Izobo, (2019), p. 84.

<sup>46</sup> Gerhard O.W. Mueller, (1965), “ Compensation for Victims of crime: Thoughts before Action; University of Minnesota Law School, Minnesota Law Review 1385, p.215.

<sup>47</sup> Famous, Izobo, (2019), Ibid.

<sup>48</sup> Ibid, p85.

<sup>49</sup> Compensation of Victims of criminal acts in France, the French Ministry of Justice, service of European and International Affairs(SAEI), www.justice.gov.fr, retrieved on the 3/01/2021.

<sup>50</sup> Ibid.

<sup>51</sup> Margurire, M., and Shapland, J., (1990),”the victim movement in Europe”, in victim of crime; Problems policies and Program. Quoted by Koroye, E.p.136 and Famous,Izobo, p.85.



victims thus diverting them from the formal justice system [<sup>52</sup>].

It is thus my humble opinion that there is a paucity of provisions in Cameroon Criminal statutes that dwells on addressing the interests of victims of crime. The statutes are defective, inadequately addressing the financial, emotional and psychological problems of the victim in Cameroon and therefore cannot provide the victims with necessary, sufficient and adequate remedies as obtained in foreign jurisdictions. These provisions I humbly submit appears to have compromised the rights of the victim to adequate compensation. The State of Cameroon needs to come to the aid of victims of crime by developing legal and strong institutional frameworks for the compensation of victims as obtained in other jurisdictions in line with the recommendations of the UN 1985 Declaration.

## CONCLUSION

Anyone can be a victim of crime and the consequences of victimization cannot be over emphasized. A victim remains a very important actor in the criminal justice system. He is not just a victim but a witness as well. His rights to adequate compensation should thus be recognized and protected just like the fundamental rights of the offender throughout the entire criminal proceedings. At the end of the criminal proceedings justice should be seen to have been done in reflection to the satisfaction of the victim. As rightly said by Mr Justice Carozza in *Znyder v. Massachusetts* [1934], justice though due to the accused, is due to the accuser also. The concept of fairness must not be strained until it is narrowed to a filament. We are to keep the balance true [<sup>53</sup>]. From the above analysis therefore, it is clear that in recent times, the problems of victims of crime with regard to their compensation has received attention at international, regional and national level. The implementation of standards of the UN 1985 Declaration and other regional legislations and best practices is therefore very vital in solving the plight of victims of crime in Cameroon. Lessons from jurisdictions like America, Britain, New Zealand and other countries, in their legislative and institutional standards are very recommendable for Cameroon.

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<sup>52</sup> Wright, M., (1991), *Justice for Victims and Offenders*, Open university Press: Milton Keynes.

<sup>53</sup> David J. Bentel, "Selected problems of Public Compensation to Victims of Crime" *Issues in Criminology*, Vol.3, No.2, *JSTOR*, (1968),pp 217-231, [www.jstor.org/stable/42909588](http://www.jstor.org/stable/42909588), accessed 4 Jan.2021.

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