

EVOLVING RESTITUTIONARY RIGHTS FOR VICTIMS OF CRIME IN NIGERIA: A FOCUS ON CORRUPT AND FRAUDULENT PRACTICES.

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Introduction

There has in recent times been a renewed fight against corrupt and fraudulent practices in the country. These efforts have been largely concretized with the recently enacted Corrupt Practices and Other Related Offences Act 2002 and the Economic and Financial Crimes Commission (Establishment) Act 2002.

However, one aspect of these renewed efforts that appears to have been overlooked is the institution of adequate measures for protecting the restitutionary rights of the perceived victims of these fraudulent and corruption practices. Restitutionary rights usually flow from incidences of unjust enrichment and it is supposed to be available to persons who are victims of such unjust enrichment. This essay examines the basic principles of the law of restitution and proposes to show that the principles entrenched therein could be channeled towards this fight against corruption and fraud.

Basis of Restitutionary Claims

Long ago, it was thought that the notions of restitutionary rights could only flow from existing contractual and/or tortious rights.¹ Gradually, restitutionary rights have expanded in scope and have now permeated all spheres of the law. However there are four major sub-heads that may subsume restitutionary rights. These are (a) recovery of money paid under a mistake of law, (b) problems of apportionment of contractual rights, (c) the rule on entire contracts, and (d) the rule against benefits conferred under illegal contracts.

Although, there has been a consistent struggle to divorce restitutionary claims from contract, it is clear that the basis of restitution is still founded sufficiently on contract. Attempts to evolve a distilled and distinct head of restitutionary claims have often resulted in a distortion of the very essence of the claims. In the words of a learned commentator:

In view of the revival of interest in restitution on the part of academics" It is little wonder that the thought is being given to, as to how best to organise the law if and when a general underlying principle is officially recognized by the House of Lords.... The principle which is now most favoured by academics to tie together the occasions giving rise to restitution in the principle of unjust enrichment, that is, no one should be unjustly enriched at another's expenses.²

Certainly, the aforementioned four heads suggested by Goff best summarises the principle of unjust enrichment. It is now proposed to examine how closely they subsume the principle.

With regards to mistake of law as a basis for restitutionary claims, it needs observing that the claims hereunder arise largely from the reluctance at common law

¹ Robert Goff and Gareth Jones, *The Law of Restitution*, 3rd ed, 1986; see also C Birks, *An Introduction to the Law of Restitution*, 1985. Important articles include Gutteridge and David, "The Doctrine of Unjust Enrichment", (1934) 5 *Cambridge Law Journal*, 204, Klippert, "The Juridical Nature of Unjust Enrichment," (1960) *University of Toronto Law Journal* 356.

² Brice Dickson, "The Law of Restitution in Germany: A Comparison with English Law," (1987) 36 *International & Comparative Law Quarterly*, 757.

that a mistake of law could be a basis for avoiding a contract.³ However to ameliorate the hardship that is caused to a man who has passed on money, services or property on the basis of such an un-enforceable contract, equity permitted the rescission of such a contract and decree the remedy of *restitutio in integrum*.⁴ This is what has been fully developed into a restitutionary claim for mistake of law. However it is trite that equity follows the law, so much that the fundamental rule remains that mistake of law is not actionable. This was further confirmed in *Bilbie v Lumley*⁵ where the court refused to permit such a claim on the basis that everybody was presumed to know the law. However in *Kiriri Cotton Ltd v Dewan*⁶ Lord Denning laid down the principles governing such claims as follows.

It is certainly not true that people actually know the law as Lord Mansfield pointed out.... It would be very hard upon the profession, if the was so certain that everybody knew it and while a man cannot generally plead ignorance of the law in excuse of a criminal offence, the rule of policy which forbids such a plea appears to have no relevance in actions of restitution....⁷

While this dictum sets down the basis for an avalanche of restitutionary claims there under, there was however a subtle move to delimit its scope by praying in aid the defence of 'voluntary payment.' By the tenor of this defence the payer of such money or the transferor of such property is estopped from reclaiming same. Robert Goff rationalised such a notion in the following manner:

In this context, voluntary payment does not mean a payment made by way of a gift. It means payment made with the intent that a transaction is closed, if A demands money from B, B must decide whether, he will comply with the demand or dispute the claim. If he gives way and pays, he cannot be complaining or disputing the claim later at a time of his own choosing.⁸

This defence was actually pre-empted by Lord Denning in *Kiriri Cotton Co v Dewani (supra)*, wherein he had clearly set out the circumstances in which a genuine mistake of law could be enforceable; these include a situation (as we shall soon see) where the defendant's conduct shows that as between himself and the plaintiff, he was the one primarily responsible for the mistake or where the defendant has misled the plaintiff when he ought to know better".⁹

The next head of claims is with regards to apportionment, the problems of apportionment of contractual benefits as a basis of restitutionary claims is set against the background of the failure of consideration. Long ago, at common law, the courts refused to divide a contract into two to enable the failed "portion" of the contract to be a basis of restitutionary claims. Common law evolved two principles: (a) failure of consideration must be total, and (b) the rule of entire contracts to deny restitutionary claims for incidence of breach of contract.

With regards to the requirement that failure of consideration must be total, it was the agreement that once the payer enjoys any benefit under the contract, no matter how small, he cannot be heard to complain, he may complain only where the payer has completely failed to perform. In the words of Robert Goff.

³ See the celebrated case of *Bell v Lever Brothers* [1932] AC 161.

⁴ *Sole v Butcher* [1950] 1 KB 671, 692.

⁵ (1802) 2 East 469.

⁶ [1960] AC 192.

⁷ *Ibid* at 204.

⁸ See Robert Goff, "Reform of the Law of Restitution," (1961) 24 *Modern Law Review*, 87-88.

⁹ See also *Ward v Wallis* [1900] 1 QB 675.

The test whether the consideration has wholly failed appears to be not whether the payer has expended money for work done in performance of his contractual obligations but whether the payer has actually received a benefit in pursuance of the contract. The common law rule is that, if he received any such benefit, however small, he cannot recover any part of the money he has paid on grounds of failure of consideration.¹⁰

This agreement is further supported by the rule on entire contracts. The rule does not admit of the severance of contract. It does not admit of any notion of Quantum meruit which was purely equity's response to the otherwise harsh rule of entire contracts.

However, with the acceptance of the notions of quasi-contract at equity, its corollary of quantum meruit has enabled a payer under this head to be entitled to some restitutionary claims. Although, it has been argued that a claim for quantum meruit is still based on the notion of the pre-existence of a contract, and it is therefore not a purely restitutionary claim.¹¹

However, it is interesting to note that, statutory modifications of this rule can be seen in local statutes that attempt the reform of the law across the federation.¹² These laws are fashioned in line with the English Law Reform (Contracts) Act of 1944 which in essence has provided a solid base for restitutionary claims under this head.

Our focus in this essay is on restitutionary claims for unjust enrichment arising from fraudulent and corrupt practices. In this regard, the rule of *ex turpi causa non oritur actio* will be an interesting sub-head of restitutionary claims to be considered. Although at common law, it was the rule that no person could benefit from an illegal contract as premised on the *ex turpi causa* rule,¹³ the latter principle of *in pari delicto potior est conditio defedentis* (i.e the less guilty party can benefit) laid the basis for restitutionary claims albeit on the basis of an otherwise illegal contract.

The *in pari delicto* rule presupposes the innocence of the party who has parted with money or conferred benefit on another in pursuance of an otherwise illegal contract. He is treated as a less guilty party and thus could recover whatever expenses he may have invested in the illegal contract. He is succeeding not on the basis of a failure of consideration, but on the basis of the rule against unjust enrichment. In the words of Goff:

In such circumstances, the plaintiff must seek to rely, if he can on some head of consideration. He may for example be able to recover money, if it has been paid under a mistake of fact, fraud or even a mistake of law, provided that the mistake or fraud has concealed the illegality from him.¹⁴

The practical import of this exception is that while the courts may ordinarily be wary of assisting a "less guilty party" in an illegal contract to recover. It is nevertheless compelled to assist him to recover on the basis that the 'more guilty' party may become doubly enriched.¹⁵

Corruption and Fraud in Nigeria: A Historical Synthesis

The issue of fraud and corruption is so complicated that it may not be sufficiently addressed in this paper. It has become an endemic problem, yet it did not start yesterday. It dates back to the very existence of man and here in Nigeria it even started with the advent of colonial rule. It may be suggested that the divide and rule tactics

¹⁰ Goff, *op cit* 88.

¹¹ See *Ekwunife v Wayne (West Africa) Ltd* [1989] 5 NWLR (Part 122) 422.

¹² see the Law Reform (Contracts) Law, Lagos State; Contract Law cap 43 Laws of Bendel State, 1976 now applicable in Edo and Delta States; s.10 provides for the severance of contracts.

¹³ This principle was well articulated by Lindley LJ in *Scott v Brown* [1892] 2 QB 724

¹⁴ above n 8.

¹⁵ Above n 8.

employed by the early colonialists in disseminating collective resistance may have encouraged corruption at the earliest stages of the country's development.¹⁶

Although in recent times we are made to believe that corruption and fraud are endemic in Africa, yet it must be asserted that Pre-colonial societies had ethical and moral values founded largely on their cultural beliefs. These beliefs emphasized chastity and honesty, with the imposition of sanctions in the mould of public outcry and ostracism.

While the rate of corruption and fraudulent practices progressed steadily in the years that followed particularly after independence, it was clear that the 1st Republic which was terminated on the 15th of January 1966, was thought to have failed on the grounds of large scale corruption. In fact, leaders of that putsh had harped on the level of corruption associated with the regime.

In the face of this, it became necessary for government to evolve some measures towards the reduction of the level of corruption. This started with the promulgation in 1966 of the Criminal Justice (Miscellaneous Provisions) Decree 1966 which was intended to supplement the Criminal and Penal Codes provisions against official corruption and fraud. With this, notable politicians and civil servants who were thought to have amassed wealth illegally were tried by a special tribunal set up pursuant to the Decree. Incidentally, apart from the varying degrees of prison terms imposed on those found guilty, there was nothing close to restitutionary remedies for the individual victims save for the order of forfeiture which was made to deprive the offenders of further use of their wealth, but which must be observed did not serve to recompense the state fully for the economic loss nor the citizenry whose collective resources have been embezzled or misappropriated.

In 1975, there was a re-enactment of the 1966 decree in the mould of the corrupt practices (miscellaneous provisions) decree. The Decree was equally aimed at reducing the growing trend of corruption amongst public officers. It provided for a more apt definition of the concept of corruption. The decree also established a body known as the corrupt practices investigations bureau with far reaching powers and the establishment of Ad hoc tribunals for the trial of offences under the Decree. There was however little or no prosecutions under the Decree.

With the return into civil rule in 1979, these decree ceased to be valid and relevant in the fight against corruption; there was therefore the need for a constitutional response to the problem. Consequently, the code of conduct bureau was established pursuant to part 2 of the 5th Schedule to the 1979 Constitution (this has been retained in the 1999 Constitution). The essential import of the provisions relating thereto is that they are mainly preventive in nature. A public officer is expected to declare his/her assets before assuming office and so soon thereafter upon leaving office. The aim is to determine if within his/her period in office he had amassed inexplicable volume of wealth. By the tenor of the provisions, a public officer is not expected to receive gratification, bribes, or even gifts while in office nor is he allowed to engage in any private enterprise that will conflict with his office.¹⁷

It is further provided that any property or assets acquired by a public officer which is not fairly and reasonable traceable to the sources of income declared before assumption of office shall be deemed to have been acquired illegally while in office and in breach of the code and is liable to forfeiture.¹⁸ It is however not so clear if individuals

¹⁶ See Yemi Akinseye-George, *Legal System: Corruption and Governance in Nigeria*, Ibadan, New Century Publishers, 2000, 4-12.

¹⁷ The recent indictment of a Governor in the South-South region of Nigeria by the Bureau for running a private architectural firm while in office is a good example of the efforts of the Bureau in this regard: *Tell Magazine*, February 16, 2004.

¹⁸ See s.18(2)(c) of the 5th Schedule, Part II of the 1999 Constitution.

be it corporate who have transferred money or property to a public officer could recover the money or property so transferred at least by a recourse to the *in pari delicto* rule.

Recent Arguments for Restitution in Criminal Justice

The arguments for the extension of restitutionary rights to criminal justice started a long time ago. Here in Nigeria, the proposals for the inclusion of compensatory measures in our criminal justice system date back to the early eighties. However, the drive gathered more momentum with the initiative of the Federal Government in the organisation of a nation wide seminar. At the end of the deliberations, it was resolved that the penal sanctions in our criminal laws were not adequate to solve the financial, economic and psychological problems of victims of crime.¹⁹

Although the resolutions reached at this conference did not specifically speak of restitutionary remedies properly so called, it did address the problems of compensation of victims of crimes with particular emphasis on restoration rather than retribution. It was discovered that the age-long notion of retributive justice was inadequate to address the financial losses often experienced by the victim. These proposals were made with the understanding that such compensation orders should be purely palliative and not penal in nature, although there exists a thin line of divided between the concepts of punishment and compensation.²⁰

However, in order to appreciate the relevance of restitutionary claims in relation to the issues at stake, it must be conceded that although there exist a wide spectrum of civil actions that can be commenced by a victim of crime against an offender, we are here more concerned with the act of “financial atonement” extracted from an offender for the benefit of the victim and denying the offender the benefit of his crime.²¹ The benefit herein should be seen mainly as financial benefit as distinct from physical, emotional, or even spiritual benefit, otherwise it will be difficult to conceive of restitution within this context in such offences as rape, assault, murder etc, where the injury done is usually not quantifiable economically. Compensation may therefore be a more universal concept than restitution. Apparently restitutionary claims may be limited to financial crimes.

In order to fully appreciate the basis of compensation the following guidelines have been evolved:²²

- a. Does the sanction of the court readily make a crucial distinction between civil and criminal law process?
- b. Is the element of punishment a necessary part of the criminal law if so can compensation not serve the purpose as well as any other form of remedy?
- c. Does the public element in crime completely obliterate the interests, rights, and needs of the victim from the criminal justice system?
- d. Are compensation orders restorative or retributive or a combination of both?

As a follow up, the learned commentator observed that although penal sanctions and compensation may differ in terms of origin, they do compliment one another, and this should be borne in mind in analyzing the relevance of these claims in criminal law. In his words;

Historically, both under our customary law and under English law, crime prosecution was essentially a civil matter sentences were passed to correct the evil done. Thus such issues as restitution and

¹⁹ It is not too clear if Saigem Corporation allegedly fingered in the national identity card scam could be permitted to sue the affected public officers for the recovery of the monies allegedly distributed by its agent: *Tell Magazine*, February 16, 2004.

²⁰ See Karibi-Whyte, A G, “National Policy on Compensation to Victims of Crime: How Desirable?” in *Compensation for Victims of Crime in Nigeria*, Lagos, Federal Ministry of Justice, 1990.

²¹ See Agbeole, O, “Modalities for the Enforcement of Financial Compensation for Victims of Crime,” in *Compensation and Remedies for Victims of Crime in Nigeria*, Lagos, Federal Ministry of Justice, 1990.

²² See Koroye, E “Compensation of Victims of Crime as a Sanction of Criminal Courts,” in Chianu, E, *Legal Essays in Honour of Professor Sagay*, Benin City, Dept of Public Law, University of Benin, 1996, 123-133.

compensation were an essential part of our criminal justice system.²³

Thus, it can be asserted that the idea of restitutionary claims in contemporary criminal justice system is not a new phenomenon. What is left is to see how such claims could evolve from purely economic and financial offences.

Criminal Code and Restitution

The Criminal Code law applicable in the southern states of Nigeria did not make specific provisions on restitutionary claims. However, it does contain succinct provisions at the 'restoration' of victims of financial crimes. Specifically, the code emphasizes official corruption in the public service of the federation. Section 98(1) defines a public officer as follows:

Any person holding the following offices or performing the duties thereof, whether as a deputy or otherwise;

- a. Any civil office, the power of appointing a person to which is vested in the public service commission or any board
- b. Any office to which a person is appointed by or under the Constitution of the federation or any enactment etc.

The constitution has explicitly listed out the categories of persons deemed to be in the public service.²⁴ The provisions that touch on corruption and fraud amongst public officers in the criminal code include sections 98, 99, 100, 112, 113, 114, 117, 126 and 128 respectively. Specifically, section 98(1)(a) and (b) properly embody the common features of official corruption. Sub-section one provides inter alia:

Any public officer who corruptly asks for, receives, or obtains property or benefit of any kind for himself or any other person or corruptly agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person ... is guilty of the felony of official corruption and is liable to imprisonment for seven years.

Sub-paragraph A provides:

- (i) Any person who corruptly gives, confers or procures any property or benefit of any kind to, on, or for a public (as defined in section 98(d)) or to, on or for any other person;
- (ii) Or corruptly promises or offer to give or confer or to procure or attempt to procure any property or benefit of any kind to on or for a public officer or to or for any other person on account of any such omission, act, favor, disfavor on the part of the public officer as is mentioned in section 98(1) or (ii) is guilty of the felony of official corruption and is liable to imprisonment for seven years

While, it is not proposed here to go into the details of the aforementioned provisions, it suffices to observe that the provisions only outline the scope of acts and omission that could lead to official corruption and the punishment therefor. The emphasis is on the omnibus provision with regards to the forfeiture of the proceeds of crimes involving fraud; it provides inter alia;

When a person is convicted of an offence under section 98... the court may in addition to or in lieu of any penalty which may be imposed, order

²³ Koroye, op cit, 126; see also Montclair, Patterson, Smith, *Compensation and Restitution to Victims of Crime*, 1970 noted by Koroye, op cit.

²⁴ See s.318 of the 1999 Constitution.

the forfeiture to the state of any property which has passed in connection with the commission of the offence...²⁵

From the foregoing, it is implicit that the criminal code makes no specific provisions for the financial restitution of the victims of crime. The provisions on forfeiture, seizure and confiscation of the convict's assets are not made for the benefit of the complainant, but for the benefit of the state. What we are advocating for is a specific provision therein that will empower the court to make direct orders for the financial reimbursement of the victim, even if it is alleged as in offences of official corruption that he is equally "guilty". The *in pari delicto* rule should be advocated in appropriate circumstances to enable such victim/offenders, forfeit only a portion of the alleged "bribe sum" while for the other cases of outright stealing, robbery etc, the courts should be empowered, in addition to their inherent powers of releasing the property which is the object of the crime to the owner, to also convert whatever quantum of fine is imposed on the convict, into a monetary compensation for the victim.

c. Corrupt Practices and Other Related Offences Act and Restitutionary Measure

The Corrupt Practices and other Related Offences Act 2002 is the first principal legislation in the country aimed at fighting corruption. While the existing provisions in the Criminal and Penal Codes made attempt at concretizing the offences relating to corruption, this Act as the title suggests is an all-embracing legislation on corruption and related offences.

Specifically, sections 8 to 25 contain the list of offences punishable under the Act. Section 9 deals with corrupt offers to public officers and it makes the said offence punishable. The only provisions that may have direct bearing with restitutionary claims is section 21 of the Act, which provides that; without prejudice to any sentence of imprisonment imposed under the Act, a public officer or other person found guilty of soliciting, offering or receiving gratification shall forfeit the gratification and pay fine of not less than five times the sum or value of the gratification, which is the value of the offence where such gratification is capable of being valued or is of a preliminary nature of per N1,000, whichever is the higher.

Similarly, sections 37 and 38 deal with seizure of movable or immovable property of a person convicted of the offences listed out in sections 1 to 25 of the Act. Power is conferred on a Judge to make this order upon a proper Application. To further strengthen the resolve to fight corruption and expand scope of offences, there is a presumption of corrupt enrichment under the Act. Specifically, it is provided that where the chairman of the commission has reasonable ground to believe that any public officer who has been served with the information notices referred to in section 44(1) owns, possess, controls or holds any interest in any property which is excessive, having regard to his present or past emoluments and all other relevant circumstances, he may by written direction require him to furnish a statement on oath or a affirmation explaining how he has able to own, possess, control or hold such excesses.

Section 45 thereof makes adequate provision for the powers of the chairman of the commission to give notice of seizure or order the seizure of movable property in the bank or financial institution nothing standing any other written law or rule of law to the contrary.

²⁵ See s.19 of the Criminal Code, cap 77 Laws of the Federation of Nigeria 1990 which encapsulates the punitive measures under the Code.

Section 47 makes provisions for an order of forfeiture of any property which is proved to be the subject matter of the offence or to have been used in the commission of the offence where:

- a. The offence is proved against the accused
- b. The offence is not proved against the accused but the court is satisfied
 - (i) that the accused is not the true and lawful owner of such property and
 - (ii) that no other person is entitled to the property as a purchaser in good faith for valuable consideration.

It is further provided thereunder, that where the offence is proved against the accused but the property referred to in sub-section (1) has been disposed of or cannot be traced, the court shall order the accused to pay as a penalty a sum which is equivalent to the amount of gratification or is in the opinion of the court, the value of the gratification received by the accused any and property so received as a fine.

The sum total of these provisions is that there is indeed no direct provision in the Anti-corruption Act, Impacting the common law principle of restitution, there has been subtle provisions for the forfeiture or property/monies being proceeds of a fraudulent or corrupt practice. However, our position is that these are not enough to, fully recompense on otherwise “innocent party” whose money or properties may have been unjustly acquired as a result of such crimes.

Economic and Financial Commission Act 2002 And Restitutionary Claims.

This Act was enacted with the aim of establishing a commission to be responsible for the management of Economic and Financial crimes in the country. Section 5 thereof encapsulates the powers and functions of the commission and makes it clear that the commission shall be responsible for the enforcement and the due administration of the provisions of the Act in relation to specific matters listed out in paragraphs (b) to (o). While this may not be an appropriate juncture to list out all these matters, it is safe to surmise that the common thread that runs through the entire list is that they relate to economic, financial and monetary matters.

Sections 13 to 17 of the Act list out the offences cognized by the Act. And section 13 specifies offences relating to financial malpractices and corruption. Section 14 relates to offences connected with acts of terrorism; section 15 relates to financial offences connected with public officers. On the other hand section 16 makes it an offence to retain the proceeds of a crime. The offences listed are not in any way radically different from those already provided for by the Criminal Code laws and more recently the Anti-corrupt Act.

What may be of interest now is how the Act has addressed the issue of restitution of victims of these financial and economic crimes, particularly, where the victims are not connected with the Government in any way. The question is: beyond the usual civil remedies available to the victims, what measures have been put in place by the Act to directly recompense such victims?²⁶

Incidentally, the Act does make some cursory references to the concepts of forfeiture and seizure of properties that are allegedly acquired with such monies. Specifically section 19(1) provides *inter alia*:

A person convicted of an offence under this Act shall forfeit to the Federal Government.

- (a) All assets and properties which may be or are the subject of an interim order of the court after an attachment by the commission as specified in Section 25 of this Act.
- (b) Any assets or property confiscated or derived from any proceeds, that person obtained directly or indirectly as a result of such offence not already disclosed in the Assets Declaration form specified in Form A of this Act...

Section 21 makes it clear, that even where the assets of the convicted person is in a foreign jurisdiction, that the Federal Government in reliance of its existing extradition treaties can lawfully extradict the assets and seize same.

Furthermore, section 23 of the Act makes more useful provision on the status of such forfeited properties. It provides that such properties shall belong to the Federal Government. This is further amplified by section 24 which lists out the nature of such properties that are liable to forfeiture. Incidentally, these provisions do not indicate what becomes of the properties after forfeiture; it does not state whether a forfeiture order extinguishes the proprietary rights of the original individual owners of the monies with which the properties were purchased. It does not indicate if these owners are barred from tracing their monies to the properties so forfeited. Herein lays our dissatisfaction with the Act in its flagrant non-recognition of the victim's restitutionary rights. This lacuna is further confirmed by section 34(2)(3) of the Act, which provide:

(2) Upon receipt of a final order pursuant to this section, the Secretary of the commission shall take steps to dispose of the property concerned by sale or

²⁶ The February 16, 2004 edition of *Tell Magazine* relates the story of the arraignment of persons before a Federal High Court on the charges of duping a Brazilian Bank, Banco Noroetes to the tune of \$242m. The Economic and Financial Crimes Commission is already seizing the properties of the accused persons without reference to the interest of the principal complainant/victim – the bank.

otherwise and where the property is sold, the proceeds thereof shall be paid into the consolidated revenue fund of the federation.

(3) Where any part of the property included in a final order is money in a bank account or in the possession of any person, the commission shall cause a copy of the order to be produced and served on the manager or any person in control of the head office or branch of the bank concerned and the manager shall forthwith pay over the money to the commission without further assurance under this Act and the commission shall pay the money received into the consolidated revenue fund of the federation.

From the foregoing it is clear that no arrangement for the payment or refund of money so recovered to the victim is made by the Act. This section amongst others discussed earlier, proceed on the assumption that in all cases prosecuted under this Act, the Federal Government is the principal complainant that deserves economic restoration. Thus the rights of the direct individual or corporate victims of the financial crime to compensation are denied.

Conclusion

Our focus in this essay has been on a campaign for a recognition of the right to restitution of victims of crime. We have been more direct in our agitation in respect of financial crimes, especially those articulated under the Anti-corruption Act and lately the Economic and Financial Crimes Act.

Our studies reveal that although the right of restitution is essentially civil in origin and specifically contractual, its usefulness can be of benefit in other spheres of law, even public law. Our stand herein is made strong, by the fact that restitution frowns against “unjust enrichment” and thus it aims to deny the “unjustly enriched” of the benefit of his civil wrong and/or crime and to put the victim at the same economic pedestal before his unfortunate encounter with the “guilty party”. It is our candid and modest view that if the law of restitution is understood in this “simplistic” essence, it could be applied in our criminal jurisprudence to recompense victims of crimes, especially financial crimes. While we concede that the victims do have their rights to enforce their civil rights, we do believe that the state that takes it upon itself to arrest, prosecute and punish these accused persons, should go a step further to extract these financial compensation from the convicts on behalf of the victims. The state should not subrogate itself to the rights of the individual victims without recourse to their peculiar financial predicament. Asking the victims to proceed on another journey of civil litigation with the attendant cost and time, before he can be financially rehabilitated is not fair enough in the circumstance. Happily, we find immeasurable support in the opinion of the learned commentator, Koroye thus:

Studies on the effect of crime have shown that, though the public may suffer the indirect effect of crime such as fear of crime and its attendant restrictions, the individual victims suffer a lot more ‘both psychologically, physically and financially, depending on the type of offence. Though the victim could institute civil proceedings against the offender, it is known that this remedy for various reasons (such as cost and time) is rarely used.²⁷

And conclusively in the words of Zedner,²⁸

²⁷ Koroye, E, op cit, 131-132.

²⁸ Zedner, L, “Victims” in Mayniore M Morgan and R Reiner (eds) *The Oxford Handbook on Criminology*, Oxford, Clarendon Press, 1994 as quoted in Koroye, op cit.

The paradigm of restitution rests on the recognition that crime is not only wrong against society but often presents a private wrong by the offender to a specific victim.

We may not find a better support for the campaign for the evolution of restitutionary claims in our criminal jurisprudence. The time to start is now.