

JIMMA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE
SCHOOL OF LAW

***VICTIMS' RIGHT TO PARTICIPATION IN CRIMINAL PROCEEDINGS IN ETHIOPIA:
LESSONS FROM GERMANY AND THE UNITED STATES OF AMERICA***

***A THESIS SUBMITTED TO JIMMA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE IN
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RIGHTS AND CRIMINAL LAW***

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Declaration

I hereby declare that, this paper prepared for the partial fulfillment of the requirements for LL.M Degree in Human Rights and Criminal Law entitled ‘Victims’ Right to Participation in Criminal Proceedings in Ethiopia: Lessons From Germany and the United States of America’ is my own work and that it has not previously been submitted for assessment to another University or another qualification. I also declare that any source used in the paper has been duly acknowledged.

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Abstract

The participation of victims in criminal proceedings can lead to a criminal justice system that is more just, increases the overall effectiveness of the system, helps to avoid secondary victimization, assists victims in obtaining therapeutic benefits, and increases victim satisfaction with the system. The main objective of this study is to comparatively analyze the participatory roles of victims of crimes in criminal proceedings in Ethiopia, Germany, and the United States of America to draw some best lessons and examines whether extending victims right to participation in the various stages of the criminal proceeding adhere to the present Ethiopian criminal justice system and is not prejudicial to the due process rights of the accused. To achieve the research objectives, the researcher critically analyzed the normative framework of victim participation. Based upon the research findings, though victims play a decisive role in the initiation of criminal proceedings particularly regarding crimes punishable upon complaint in Ethiopia, crime victims are placed at the margin of the present Ethiopian criminal justice system as their role is confined to merely be a witness in their case upon the discretion of the public prosecutor. Also, the new draft code of criminal procedure is yet to properly incorporate well extended and enforceable victim participation rights into the Ethiopian criminal justice system. Furthermore, the major challenges that may negatively hinder the expansion of victims' right to participate in various stages of the criminal process are: First, the fair trial rights of the accused, specifically, the presumption of innocence, equality of arms, the right to a speedy trial, and an impartial court. Second, currently in Ethiopia criminal justice seems to be generally regarded as a state-based conflict excluding victims. This indicates that allowing victims to participate in various stages of the criminal proceeding and particularly at trial as such is not seen as an underlying aim/principle of criminal justice. As a result of these findings and based on lessons drawn from the laws of selected foreign jurisdictions, the thesis recommends different measures to be taken into account by the government to widen crime victims' rights to participation in the Ethiopian criminal justice system.

Key Words: Victims of Crime, Participation, Criminal Proceeding, Traditional Understanding of Criminal Justice, Due Process Rights.

List of Acronyms and Abbreviations

CPC	Criminal Procedure Code
ECCC	Extraordinary Chambers in the Courts of Cambodia
EU	European Union
FDRE	Federal Democratic Republic of Ethiopia
ICC	International Criminal Court
PAP	Private Accessory Prosecutor
STL	the Special Tribunal for Lebanon
StPO	German criminal procedure code
SS	Sections
UNGA	United Nations General Assembly
USA/US	the United States of America
VISs	Victim impact statements
VPSs	Victim personal statements

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CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

When a crime is perpetrated, the harms are inflicted not only on the society but also to the victims of the crime.¹ In other words, every time a crime occurs, three parties will be involved: the offender, the victim, and the society/state. When a crime occurs, it violates not only the right of the society towards peace and security but also the victim's private right to his life, physical integrity, property, dignity, etc. These are two different rights that cannot be subsumed. Thus, it would be unjust to silence the right of the victim by incorporating it within the right of the society or state.²

Historically, victims were the most significant actors in both the inquisitorial and adversarial criminal justice systems.³ Without their active participation, an overwhelming majority of crimes wouldn't be reported, most suspects wouldn't be apprehended and numerous court cases would not result in convictions.⁴ Despite victims' important role in the criminal justice process, the separation of civil and criminal proceedings (the evolution of the penal system from private prosecution to state-controlled and administered justice) resulted in the criminal justice process in which victims are assigned to play a marginalized role of crime reporter or testifying witness in the criminal proceeding.⁵ In this capacity, crime victims had little chance to present their views and concerns during criminal proceedings and to participate actively at trial unless when testifying.⁶

¹ *The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985), UN General Assembly Resolution 40/34, [hereinafter UN Declaration on Victims] provides: (1) "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. Available at: <<http://www.unhchr.ch>> accessed 7 February 2020

² Hahrul Mizan Ismail et al, 'Victim Impact Statement in Criminal Sentencing: Success or Setback for the Criminal Justice Process?' (2017) 8 *Current Law Journal* < <https://www.researchgate.net/publication/322405791>> accessed 5 February 2020

³ Kerstin Braun, 'The Role of the Victim in Criminal Proceedings in Australia and Germany - a Comparison' (DPhil thesis, University of Queensland 2014) 152

⁴ Kim Polowek, 'Victim participatory rights in Parole: Their role and the dynamics of their influence as seen by Board Members' (DPhil thesis, University of Simon Fraser 2005) 9

⁵ *Ibid* 10.

⁶ Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (1st edn, Palgrave Studies in Victims and Victimology 2019) 1

As seen above, ‘behind the commission of most crimes, there are often individuals that bear the brunt of the criminal acts of perpetrators.’⁷ However, apart from the primary victimization,⁸ crime victims may suffer from secondary victimization⁹ since various criminal processes may not accommodate their views and concerns.¹⁰ Alleged offenders may be released on bail without their knowledge. Courts may punish offenders without appreciating the effects of crimes in their lives or without getting inputs as to the extent of injuries. Offenders may be released on parole or pardoned without their involvement.¹¹

While victims are the one who bears the final brunt of the criminal acts of perpetrators and prone to secondary victimizations, criminal law in various jurisdictions, however, typically views them as witnesses to a crime against the state, thus shutting them out of the criminal justice process and only allowing them in when they are needed to testify.¹² This has become the major source of dissatisfaction for victims who seek validation in the criminal justice system.¹³

In the 1970s and 1980s, scholars and policymakers have recognized the plight of the victim within the criminal justice system and started challenging the diminished role of victims in criminal proceedings.¹⁴ This contributed to the adoption of the 1985 United Nations General Assembly (UNGA) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (the Declaration) in Resolution 40/34.¹⁵ In particular, section 6(b) of the Declaration explicitly renders that:

The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by (b) Allowing the views and concerns of victims to be presented and considered at

⁷ Worku Yaze Wodage, ‘Status and Role of Victims of Crime in the Ethiopian Criminal Justice System’ (2011) BDU- JL Vol.2, No.1, 103

⁸ *Primary victimization* refers to injuries of individuals resulting directly from the criminal offense; see Spinellis, ‘Victims of Crime and the Criminal Process’ (1997) *Israel Law Review* Vol.31, 338

⁹ *Secondary victimization* refers to the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim. See Handbook on Justice for Victims on the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1999) <www.uncjin.org/Standards/9857854.pdf> accessed 5 February 2020, 9 [hereinafter Handbook on Justice].

¹⁰ Joanna Shapland and Matthew Hall, ‘What Do We Know About the Effects of Crime on Victims’ (2007) 14 *International Review of Victimology* 175, 178

¹¹ Worku Yaze, ‘Status and Role of Victims of Crime in the Ethiopian Criminal Justice System’ (n 7) 104

¹² Jo-Anne Wemmers, ‘Victims’ rights are human rights: The importance of recognizing victims as persons’ (2012) str. 71

¹³ *ibid*

¹⁴ Jonathan Doak, ‘Victims’ Rights in Criminal Trials: Prospects for Participation’ (2005) *Journal of Law and Society* 32, No. 2, 295

¹⁵ Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 2

appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.

As stated by the Seventh Congress when drafting the Declaration, the underlying reasons for providing victims with adequate justice mechanisms, including being able to present views and concerns were: first, to avoid secondary victimization and victims' disassociation with the outcome of the trial.¹⁶ And the second reason for the introduction of Section 6(b) was to assist victims in obtaining therapeutic benefits, such as closure, through the criminal trial itself.¹⁷ Victims' participation in criminal proceedings, serves as a formal acknowledgment that victims of crime have a stake in the criminal justice process that is different from the prosecution and judicial authorities.¹⁸ Although the concept of 'participation' is something of an abstract term and lacks any concrete definition; according to, Edwards, however, the term 'participation' may include "being in control, having a say, being listened to, or being treated with dignity and respect".¹⁹

In Europe, the European Union adopted a legally binding Framework Decision on the Standing of Victims in Criminal Proceedings in 2001 which, in 2012, was replaced by its successor legislation the EU Directive on Minimum Standards on the Rights, Support and Protection of Victims of Crime.²⁰ Furthermore, Victims' right to participate in the criminal process is included in the statutory documents of the International Criminal Court (ICC), and subsequently in the founding documents of the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the Special Tribunal for Lebanon (STL).²¹ Victims were also allowed to participate and obtain reparations at the Extraordinary African Chambers in the Courts of Senegal.²² More recently, the

¹⁶ Ian Edwards, 'An Ambiguous Participant: The Crime Victim and Criminal Justice Decision-Making' (2004) *The British Journal of Criminology*, Vol. 44, No. 6, 967

¹⁷ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report/prepared by the Secretariat, available at: <https://digitallibrary.un.org/record/114498?ln=en#record-files-collapse-header> accessed 6 February 2020, 142

¹⁸ Brienne McGonigle Leyh, 'Procedural Justice? Victim Participation in International Criminal Proceedings' (2011) *School of Human Rights Research* vol.42, 50

¹⁹ Ian Edwards, *An Ambiguous Participant* (n 16); Jonathan Doak, *Victims' Rights in Criminal Trials: Prospects for Participation* (n 14); Doak, J., *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (Hart Publishing, Oxford, 2008) 115

²⁰ Kerstin Braun, *Victim Participation Rights Variation Across Criminal Justice Systems* (n 6) 6

²¹ UN General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), 17 July 1998, available at: <https://www.refworld.org/docid/3ae6b3a84.html> accessed 10 February 2020, art. 68(3); Rule 23 of the Internal Rules of the ECCC; Article 17 of the STL Statute.

²² *Statute of the Extraordinary African Chambers within the Courts of Senegal*, articles 14 and 27.

law establishing the Kosovo Specialist Chambers and the Specialist Prosecutor's Office also adopted victim participation.²³

Consequently, due to the influence of emerging international standards, contemporary domestic justice institutions would be inconceivable without due regard to the rights of victims. As a result, some civil law countries (adopting the inquisitorial procedural approach) recognize the right of victims to participate in criminal proceedings as a prosecutor, allowing victims to participate with full prosecutorial rights. On the other hand, in many common law systems (adopting adversarial procedural approach), victims entitled to deliver impact statements at sentencing.

As is the case in many other jurisdictions, victims in historic Ethiopia had played significant roles throughout the various phases of the criminal process.²⁴ In traditional Ethiopia, as there was no distinction between civil and criminal cases, all prosecutions were conducted by a private victim or her kin (including the execution of sentences), 'up until the Public Prosecutors Proclamation No. 29 of 1942 establishes the public prosecutor's office and provides that crimes were to be prosecuted by the public prosecutor.'²⁵ Wondwossen who advances the same account writes: "traditional criminal procedure had a civil character, in that the victim of a criminal act was obliged to initiate and process the case himself and ultimately to execute the punishment."²⁶

According to Proclamation No. 29 of 1942, all prosecutions other than private complaints were to be conducted by a public prosecutor who could plead in any court where a criminal case was instituted. Finally, in Ethiopia, crime victims' significant role in the administration of criminal justice by actively participating as private prosecutors came to grief through the enactment of the 1961 criminal procedure code. As a result, the present Ethiopian criminal justice system typically views crime victims as witnesses to a crime against the state, thus shutting them out of the criminal justice process and often allowing them in when they are needed to testify.

²³ See article 22 of the Law on Specialist Chambers and Specialist Prosecutor's Office, Law No.05/L-053, 2015.

²⁴ Worku Yaze, 'Status and Role of Victims of Crime in the Ethiopian Criminal Justice System' (n 7) 144

²⁵ Simeneh Kiros Assefa, *Criminal Procedure Law: Principles, Rules and Practices* (1st edn, Lightning Source UK Ltd. Milton Keynes UK 2010) 34 – 37

²⁶ Wondwossen Demissie Kassa, 'Ethiopian Criminal Procedure: A textbook' (1st edn, Wondwossen Demissie Kassa and American Bar Association 2012) 9

1.2 STATEMENT OF THE PROBLEM

The present Ethiopian criminal justice system views crime primarily as a violation of the state's criminal laws and wrong done against the state/society. However, both in theory and reality, victims and crime are closely linked. In many cases, it is impossible to have one without the other. Despite this, in most criminal proceedings in Ethiopia victims of crimes are absent from substantial parts of the process.

However, in historic, Ethiopia, victims once had an active participatory right in the criminal justice process and was involved in the major steps of criminal proceeding: investigation, prosecution, trial, and appeal. Particularly, before the promulgation of public prosecutors proclamation No. 29/1942, victims were in a position to initiate and prosecute, the great bulk of offenses considered "criminal" by modern criminal laws and had played both active and decisive role in the justice system, since the traditional criminal procedure in Ethiopia had a civil character.²⁷ Following, the coming into effect of the above-cited proclamation, however, the prosecution acquired some power of prosecuting crimes which considered holding public interest, and finally, crime victims in Ethiopia explicitly marginalized from the justice system through the enactment of the 1961 criminal procedure code.

Furthermore, since too much attention is paid to the legal rights of defendants,²⁸ victims in Ethiopia are viewed as a tool which can be used in the process of reporting the crime and later on as a witness enabling the prosecutor to procure convictions.²⁹ As a result, our Constitution, Criminal procedure code, criminal code, and criminal policies are failed to hold widening participatory rights for victims of crime. Besides, though participated in the adoption of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Ethiopia, has failed to incorporate meaningful participatory rights recognized for victims of crimes into its domestic legal system. As a result, victims in Ethiopia are a "forgotten party" in criminal proceedings unlike suspected, arrested, and/or accused persons'. They are marginalized, unsatisfied with the criminal justice system, and assigned to play a relegated role in their cases. Also, cases are determined to disregard the victims' statements about the impact of the crime in

²⁷ Ibid.

²⁸ The Constitution of the Federal Democratic Republic of Ethiopia (Proclamation No. 1/1995) arts.19- 23

²⁹ This is not only because there are no provisions entitled crime victims to present their views and concerns at the appropriate stages of criminal proceedings, however, it's also due to the attitude of the justice personnel and inapplicability of existing provisions of the criminal procedure code. In particular, the procedures related to "private prosecution" and "civil parties" are often practically not enforceable, in most criminal cases, in Ethiopia.

their lives. Moreover, bail, parole, pardon, etc. are given to the offenders without the participation and even knowledge of victims who bear the final brunt of the criminal act of the offenders. Since victims' interests may be affected in all of these situations, this study will focus on the victim's right to participation at the pre-trial, trial, and post-trial stages of criminal proceedings.

While victims' are assigned to play a relegated role in the Ethiopian criminal justice system, however, widening victims' right to participation in the criminal process increases both victims as well as public confidence on the justice system and thereby, it plays a decisive role in eradicating self-help measures by the bearers of the final brunt of the crime. Besides, crime victim's participation in the criminal process can also ensure that courts have a fuller picture of the crime and consequently that they are better placed to impose an appropriate penalty against the offender.³⁰ However, it is necessary to examine, whether recognizing victims as an injured party with a broader right to participation in the criminal process is a threat to the due process rights of defendants?

Therefore, this research focuses on examining the possibilities for victims' participation at the pre-trial, trial and post-trial stages in criminal proceedings in the existing Ethiopian laws vis-à-vis the impact of broad victim participatory right on defendants' right to a fair trial and its consistency with the underlying aims of traditional criminal justice.

1.3 OBJECTIVES OF THE STUDY

1.3.1 GENERAL OBJECTIVE

The main objective of this study is to examine the possibilities for victims' participation in criminal proceedings in Ethiopia and to draw some best lessons from Germany and the United States of America to widen victims' participatory rights in the Ethiopian criminal justice system.

1.3.2 SPECIFIC OBJECTIVE

1. To examine what participatory role crime victims have been afforded in various phases of the criminal proceeding in Ethiopia.
2. To inquire about the impact of widening the scope of participatory rights for victims of crime against the due process rights of the accused.

³⁰ Valentina Spiga, *The Right to Justice for Victims of Human Rights Crimes* (Doctor of Laws thesis, European University Institute 2013) 205

3. To examine the consistency of expanding victims' right to participation with the present Ethiopian criminal justice system dominated by the traditional understanding of criminal justice.
4. To scrutinize the laws of the United States of America and Germany concerning victims' right to participate in the various phases of criminal proceedings and to import some best lessons for Ethiopia.

1.4 RESEARCH QUESTIONS

1. What are the participatory roles crime victims have been afforded in various phases of the criminal proceeding in Ethiopia?
2. Could victims' rights to participation in various stages of the criminal proceeding be extended and enhanced in a way that is beneficial to victims, adhere to the present Ethiopian criminal justice system, and is not prejudicial to the due process rights of the accused?
3. What are the lessons that Ethiopia should learn from the laws of the United States of America and Germany concerning victims' right to participate in the various phases of criminal proceedings?

1.5 LITERATURE REVIEW

There is a scarcity of research on the issue victims' right to participation in criminal proceedings under the Ethiopian criminal justice system in general and from a comparative perspective in particular. In academics, this is the most neglected one in Ethiopia. According to my knowledge and access until the writing of this proposal, there is no research conducted directly or indirectly on the issue of victims' right to participation in criminal proceedings in Ethiopia. But there are some attempts to deal with the issues directly and indirectly. For instance, Worku Yaze Wodage, have written a journal article on the title, 'Status and Role of Victims of Crime in the Ethiopian Criminal Justice System'³¹ and he tried to explore the place and role of victims of crime in the present Ethiopian criminal justice system and contemporary issues and emerging trends regarding victims in the criminal process. But he failed to discuss victims' right to participation in criminal proceedings with intent to draw the best lessons from selected foreign jurisdictions. Besides, the author has failed to inquire about the consistency of expanding victims' right to participation with the present Ethiopian criminal justice system dominated by the traditional

³¹ Worku Yaze Wodage, 'Status and Role of Victims of Crime in the Ethiopian Criminal Justice System' (2011) BDU- JL Vol.2, No.1

understanding of criminal justice. Furthermore, the author has explicitly declared that discussions concerning “the tensions that may surface between rights and interests of victims and those of the criminal defendant, and of the public” to be beyond the scope of his study.³²

Additionally, Getachew Assefa on his article titled as ‘the predicaments of child victims of crime seeking justice in Ethiopia: a double victimization by the justice process’³³, tried to indicate the plight of the child victims in the criminal justice system of Ethiopia. Since most of the child victims in Ethiopia undergo double victimization at the hands of justice personnel during their involvement in the justice process. As a result, he insists on the establishment of a child victim sensitive justice process. While discussing the source of most of the problems of the treatment of child victims by the Ethiopian justice process; he identified Ethiopia’s failure to reform its laws to bring them in line with the international treaty obligations such as UN Convention on the Rights of the Child, and the African Charter on the Rights and Welfare of the Child as a gap. Moreover, the main focus of the article was to show the suffering of Ethiopian child victims as a result of their experiences in the criminal justice system. The article limits itself to what happens to child victims in the formal justice process at the levels of crime detection and investigation, prosecution, and trial. As such, child victims’ right to participation in different phases of criminal proceedings is not considered.

Therefore, considering the lack of sufficient works of literature on this field of study, this thesis will try to contribute its share to fill this gap.

1.6 SCOPE OF THE STUDY

Crime victims’ participatory rights can be provided through the formal criminal justice process and out-of-court mechanisms. The focus of this thesis is only on the participatory rights of victims in the formal criminal proceedings. To this effect, the 1961 Criminal procedure code, draft criminal procedure code, FDRE criminal code, and the FDRE criminal justice policy was consulted. Besides, the Criminal Procedure Code and Crime Victims’ Rights Acts of the United States of America and Germany were considered to import some best models of participation to widen victims’ right to participation in Ethiopia.

³² Ibid 111.

³³ Getachew Assefa Woldemariam, ‘The Predicaments of Child Victims of Crime Seeking Justice in Ethiopia: A Double Victimization by the Justice Process’ (2011) *afrika focus*, Vol. 24, Nr. 1

1.7 RESEARCH METHODOLOGY

Comparative perspective and doctrinal methodology were employed to achieve the objective of this research. As such the assessment of victims' right to participation in criminal proceeding was informed by a comparative legal research method focusing on the similarities and differences between the selected criminal justice systems. The purpose of this exercise was to draw the best lessons to the Ethiopian criminal justice system. Besides, the doctrinal methodology was employed to in-depth analysis of laws in relation to the subject matter of the research.

For comparative study, the legal framework of German and the United States of America are considered. These two countries are selected to import models of victim participation relevant for various stages of the criminal process based on the following reasons: First, Germany and the USA are chosen as representatives of two different legal systems, the inquisitorial and the adversarial system, which inspired the 1961 Ethiopian criminal procedure code. Second, in comparative literature, Germany, is frequently used as an example of an inquisitorial country which affords victims with a wider participatory role in various stages of the criminal process. Third, the USA unlike other common law countries incorporated and committed itself to recognize the procedural rights of victims in juxtaposition to the due process rights of criminal defendants. Finally, German and the USA undertook a series of legislative reforms to expand victims' participatory rights in their criminal justice process. Because of these reasons that I opt to assess victims' right to participation in criminal proceedings recognized in the legal frameworks of Ethiopia and selected countries code of criminal procedure and Crime Victims' Rights Acts and to draw some best lessons.

However, one of the states considered in this study, the USA, is a federal jurisdiction, with both federal and state laws applicable to crimes depending on the jurisdiction of the crime falls within. Throughout this study, therefore, references to the laws of the USA are to the Federal Victims' Rights Laws, unless otherwise stated.

1.8 SOURCES OF DATA

In this study, the researcher utilizes a combination of both primary and secondary data collection. Primary data collection includes; proclamation(s), the Federal Democratic Republic of Ethiopia constitution, and also the Criminal Procedure Code and Crime Victims' Rights Acts of Germany and the United States of America.

The researcher also refers to secondary data which includes; books, academic articles, thesis paper, cases decided by courts, reports, and various internet sites.

1.9 SIGNIFICANCE OF THE STUDY

The study is important to demonstrate the way victims' right to participation best protected in the criminal justice process. It would also increase awareness of the benefits of widening crime victims' right to participate in criminal proceedings.

Moreover, the study will inform legislatures, policymakers, and all legal actors to consider the plight of crime victims' in criminal proceedings when amending legal instruments, concerning the participatory role and legal status of crime victims' in the criminal justice process.

Finally, as the study is novel in this area, it also helps as input for researchers wants to explore related issues in the future.

1.10 LIMITATION OF THE STUDY

As the subject, Victims' right to participation in criminal proceeding is a recent phenomenon in general and specifically in Ethiopia, no adequate literatures and previously conducted researches are in place under this theme, particularly in the Ethiopian context. This has hindered this study from being nurtured and supplemented by the insights from other literatures.

1.11 STRUCTURE OF THE STUDY

In order to answer the research questions, the discussion in this thesis is divided in to five chapters. Chapter One is an introduction which contains the proposal of the thesis. The second chapter discusses basic concepts, historical roles of victims in various selected jurisdictions from different legal traditions vis-à-vis contemporary issues and emerging trends regarding victims in the criminal process. Chapter three of this paper critically analyzed the Ethiopian legal frameworks relating to crime victims' participatory rights in criminal proceedings in Ethiopia in comparison with selected jurisdictions. New models of victim participation in the draft criminal procedure and evidence code are carefully examined under this part. Most importantly, lessons from selected foreign jurisdictions are identified. Under Chapter Four, the importance and challenges of extending victims' right to participation in criminal proceedings against the due process rights of the accused and traditional understanding of criminal justice in Ethiopia are critically examined. Chapter five is the final for this paper. It composes conclusion and recommendations.

CHAPTER TWO

SETTING THE SCENE: AN OVERVIEW OF BASIC CONCEPTS, LEGAL FRAMEWORK ON CRIME VICTIMS' RIGHT TO PARTICIPATION AND OF VICTIMS' HISTORICAL ROLE IN CRIMINAL PROCEEDINGS

INTRODUCTION

While Chapter 1 provided a brief introduction to this thesis, the goal of this chapter is to give a general overview of basic concepts, legal framework of crime victims' right to participation, and the historical role of victims in different legal traditions and identifying the emerging trends in the matter of victim participation in criminal proceedings. With this aim in mind, this chapter focuses on three main issues: first, it analysis the role of victims' in criminal justice theories and basic concepts such as who can be designated by the term victim, what legal concepts are used to denote the victim in criminal (procedural) law, and when a person should be recognized as a victim. Besides, the notion of participation in criminal proceedings will be conceptualized. Second, the historical role of victims in adversarial and inquisitorial criminal procedure structures will be examined synoptically. Finally, it examines universal and regional instruments, as well as the statute of the international criminal court, with the view to determining the current state of the emerging trends relating to victims' participatory rights in criminal proceedings.

2.1 THE ROLE OF CRIME VICTIMS' IN TRADITIONAL CRIMINAL JUSTICE THEORIES

From the traditional point of view, criminal offenses are transgressions of the state's criminal law provisions and, as a result, criminal justice is essentially a matter between the offender and the state.³⁴ In this respect, criminal justice does not concern crime victims as an individual rights-holder, but at best as a witness and bystander.³⁵ There is, therefore, little to be gained in implanting the victim in the traditional criminal justice system. However, as will be seen, it is precisely because the offender has violated the basic rights of the victim that the offender deserves to be convicted and punished. Importantly, it all depends on how one conceptualizes the notion of a 'crime' in any case.³⁶ More precisely, traditional criminal justice theories are often classified into non-consequentialist and consequentialist theories; they are also referred to as retributivism and utilitarianism.³⁷ The following sections, therefore, examine the two traditional

³⁴ Albin Dearing, *Justice for Victims of Crime: Human Dignity as the Foundation of Criminal Justice in Europe* (1st edn, Springer International Publishing AG 2017) ix

³⁵ Ibid

³⁶ Ibid

³⁷ Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 67

theories of retributivism and utilitarianism and how they conceptualize the role of different actors in the criminal process. This is because, these theories have significantly influenced the development of criminal justice mechanisms and structures in many systems around the world and have shaped the national understanding of matters relating to criminal justice.

2.1.1 RETRIBUTIVISM

Non-consequentialist theories, including retribution, revenge, or atonement, have in common that they are not forward-looking but focus on the criminal act which perpetrated in the past.³⁸ The theory is based on the fundamental belief that punishment is necessary simply because of a crime committed³⁹ in violation of the duties set out in criminal norms.⁴⁰ The retributive school of justice asserts the traditional justification for punishment in criminal trials which is that punishment is justified as an end in itself, emphasizing the link between punishment and moral wrongdoing.⁴¹ An individual deserves to be punished if he commits unlawful acts, encapsulating the notion of punishment for “just deserts”.⁴² McGonigle Leyh concerning retributivism and its relationship with the victims writes: ‘although the entire process begins once an individual (the perpetrator) commits a wrong against another individual (the victim), as a whole, retributive theories are not victim-centered’.⁴³

Ultimately, nothing in the theories of retribution indicates that victims ought to be given a vital, procedural role in the proceedings; rather it is quite the opposite.⁴⁴ Moore, for instance, contends that ‘retributivists require a norm violation to justify punishment and this is the point at which victims play a role’.⁴⁵ In this sense, crime victims are important to the criminal process as providers of information about the violation of the norm. However, too great a procedural role for victims could be seen as an infringement of the rights of the accused and the fairness of the

³⁸ Ibid 68.

³⁹ John Cottingham, ‘Varieties of Retribution’ (1979) *Philosophical Quarterly* 29 (116) 240; Michael S. Moore, ‘Justifying Retributivism’ (1993) *Israel Law Review*, 27(1–2), 15: Moore provides that: “Retributivism is the view that we ought to punish offenders because and only because they deserve to be punished. Punishment is justified, for a retributivist, solely by the fact that those receiving it deserve it.”

⁴⁰ Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 68

⁴¹ Brianne Leyh, *Procedural Justice?* (n 18) 37

⁴² Ibid

⁴³ Ibid 39; Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 69

⁴⁴ Ibid 40.

⁴⁵ Michael Moore, ‘Victims and Retribution: A Reply to Professor Fletcher’ (1999) 3 *Buffalo Criminal Law Review* 65, 71

proceedings either because it introduces arbitrariness into the proceedings or because it can influence the impartiality of the decision-maker.⁴⁶

2.1.2 UTILITARIANISM

Unlike retributive justice theories, which are backward-looking, utilitarian theories are forward-looking because they concentrate on the advantages of criminal justice, like the predictability of punishment as a consequence of a wrongful act.⁴⁷ Moreover, utilitarian theories are forward-looking because they seek to cut back the occurrence and gravity of crime in society.⁴⁸ Within this consequentialist theory, often referred to as instrumental theory, there are differences between pure instrumentalists and non-pure instrumentalists. The pure instrumentalists seek to explain aspects of a justified criminal justice system in pure consequentialist terms. Non-pure instrumentalists, on the other hand, take into account non-consequentialist values and argue that requirements of justice may preclude some practices, even if they effectively serve the objectives of the system.⁴⁹

However, like retributive theories, utilitarian theories do not directly allow a central role for the victim. Moreover, “the goals of deterrence, prevention, reformation, incapacitation, and education are all society-oriented and/or offender-oriented”.⁵⁰ Therefore, under classical utilitarian theories, the interests of society or of the offender will always take precedence over those of the victim.⁵¹ Importantly, utilitarian theories view society as the victim of crime in addition to the victimized individual. This classical form of criminal justice, therefore, focuses on the accused and on society in criminal proceedings, instead of on the victim’s suffering. As a result, many criminal justice systems, which incorporate utilitarian beliefs and structures, often fail to concentrate on victims in criminal proceedings.⁵²

⁴⁶ Brianne Leyh, *Procedural Justice?* (n 18) 41

⁴⁷ Aleksandar Fatic, *Punishment and Restorative Crime-Handling: A Social Theory of Trust* (1st edn, Avebury 1995) 1

⁴⁸ Brianne Leyh, *Procedural Justice?* (n 18) 41; Utilitarian theories assert that the imposition of criminal sanctions may serve a number of goals, including: (1) Specific deterrence (detering the specific defender from committing future crimes); (2) General deterrence (detering others from committing future crimes); (3) Rehabilitation (rehabilitating the specific offender from committing future crimes); and (4) Incapacitation (disabling the specific offender from committing future crimes).

⁴⁹ *Ibid* 42.

⁵⁰ *Ibid* 44.

⁵¹ *Ibid*

⁵² *Ibid*

In closing this section, what all traditional criminal justice theories have in common is that they conceptualize crime as a conflict between offender and state and not between victim and offender.⁵³ Consequently, in their classical sense, criminal theories do not focus on victims of crime and their individual interests. At this point, given that traditional theories do not focus on victims and conceptualize crime as a conflict between offender and state and not between victim and offender, it is needed to consider if contemporary criminal justice theories provide victims with opportunities for participation within the formal criminal proceedings.

2.2 THE ROLE OF CRIME VICTIMS' IN CONTEMPORARY CRIMINAL THEORIES

The two traditional criminal justice theories discussed above, have significantly dominated the dialog on criminal justice. Their focus is on crime and society, with less emphasis on the individual victim. However, since the late 1960s, the idea that crime victims, like the accused, should have greater rights within national criminal justice systems began to surface.⁵⁴ Against this background, more contemporary criminal justice theories have developed with a specific focus on victims and their role within and outside traditional criminal justice parameters.⁵⁵

2.2.1 RESTORATIVISM

In contrast to the more traditional criminal law theories, this modern theory, based on the principles restorative justice, has begun to focus attention on the role of the victim within criminal justice. The theory focuses on shared values between the offender and the victim and seeks to repair the harm suffered, through an inclusive process.⁵⁶

Restorative justice⁵⁷ views an offense primarily as a breach of social relationships between victims, offenders, and community members.⁵⁸ It complements the criminal justice system intending to heal the injuries of all parties involved in the criminal conflict: victims, offenders,

⁵³ Kerstin Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 75

⁵⁴ Brianne Leyh, Procedural Justice? (n 18) 44

⁵⁵ Kerstin Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 75

⁵⁶ Ibid

⁵⁷ At present, the precise definition of restorative justice is unclear. However, Tony Marshall formulated the most widely accepted definition to date, submits that it *"is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future."* See Marshall, T.F., Restorative Justice: An Overview, a Report by the Home Office Research and Development Statistics Directorate (1999) 5; Sam Garkawe, 'Restorative Justice from the Perspective of Crime Victims' (1999) 15QUTU, 40; Wenzel, M., et al., 'Retributive and Restorative Justice' (2008) 32 Law and Human Behavior, 375; Bazemore, G. and Walgrave, L., 'Restorative Juvenile Justice: Repairing the Harm of Youth Crime' (1999) Criminal Justice Press, 48

⁵⁸ Endalew Lijalem Enyew, 'The Space for Restorative Justice in the Ethiopian Criminal Justice System' (2014) Bergen Journal of Criminal Law and Criminal Justice, Vol. 2, Issue 2, 215; Christie, 'Conflict as Property' (1977) British Journal of Criminology, 17(1), 7

and the community.⁵⁹ Instead of merely focusing on punishment, the processes of restorative justice contribute to the re-integrative aspect of shaming.⁶⁰ Besides, restorative justice processes provide victims with a central role in the process and help meet their need for information about the reasons for the crime and the circumstances of its commission.⁶¹ Such processes also allow the victims to be heard, which may, in turn, facilitate their psychological healing process.⁶²

Most importantly, however, restorative justice generally does not focus on victims' procedural rights within the parameters of the criminal justice system itself but rather emphasizes participation possibilities for victims and offenders outside of this traditional setting.⁶³ Also, it remains heavily overshadowed by the traditional criminal justice system;⁶⁴ since the traditional criminal justice authorities, namely prosecution and judges, decide as to who is eligible to partake in restorative justice processes such as mediation.⁶⁵ Furthermore, restorative justice is unsuitable to replace existing criminal justice mechanisms, especially in case of more severe offenses, victimless crime, and where a larger group of citizens is victimized.⁶⁶

2.2.2 EXPRESSIVE OR COMMUNICATIVE CRIMINAL THEORY

Expressive or communicative theories perceive the prime objective of criminal law and punishment not to influence potential future criminal acts, but to communicate with certain individuals or society as a whole through the values expressed in punishment.⁶⁷ It also views an offense as 'expressive acts communicating to the victim that they have a lower standing than the offender'.⁶⁸ As such a person is considered to be 'morally injured when he is the target of behavior whose meaning, appropriately understood by members of the cultural community in which the behavior occurs, represents his value as less than the value he should be accorded'.⁶⁹

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Ibid

⁶² Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (3rd edn, Herald Press 2005) 191

⁶³ Brianna Leyh, *Procedural Justice?* (n 18) 46

⁶⁴ Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 80

⁶⁵ Bolivar, D. 'Deconstructing Empowerment in Restorative Justice' In I. Aertsen & B. Pali (Eds.), *Critical Restorative Justice* (Oxford: Hart Publishing 2017) 29

⁶⁶ Groenhuijsen, M. S. 'Victims' Rights and Restorative Justice: Piecemeal Reform of the Criminal Justice System or a Change of Paradigm?' In H. Kaptein & M. Malsch (Eds.), *Crime, Victims and Justice: Essays on Principles and Practice* (Aldershot, Hampshire: Ashgate 2004) 63

⁶⁷ Kenworthy Bilz, 'Testing the Expressive Theory of Punishment' (2016) *Journal of Empirical Legal Studies* Vol. 13, Issue 2, 359; Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 76

⁶⁸ Ibid

⁶⁹ Jean Hampton, 'Correcting Harms Versus Righting Wrongs: The Goal of Retribution' (1992) *UCLA Law Review*, 39, 1670

Consequently, the ‘state is required to respond to expressive wrongdoing by saying, “The victim and the wrongdoer are moral equals,” and not just by imposing non-communicative hard treatment upon the wrongdoer’.⁷⁰

Expressive theorists argue that the verdict communicates to the victim that they are not at fault as well as showing solidarity and acknowledging that they are worthy of state action on their behalf.⁷¹ Bilz elaborates further on the communicative function of punishment contending that by imposing punishment ‘we are telling the victim that she is valuable enough for us to expend resources to catch, prosecute, convict, and punish someone who has hurt her. Moreover, this message should be comprehensible to all who hear it’.⁷²

Expressive theory, in comparison with criminal theories in their classical sense, seems to focus on victims to a much greater extent.⁷³ However, the theory has been heavily criticized and does not appear as widely supported in practice as its traditional alternatives.⁷⁴ The merits of the theory have also been questioned concerning communication with victims and the underlying assumption that victims need to be told that the offender was not entitled to treat them in a certain way.⁷⁵ It has been suggested that not all victims believe the perpetrator was entitled to treat them in the way they did and that while ‘some people may be prone to believing that when others treat them poorly it is because they deserve poor treatment, (...) this psychological process is not universal’.⁷⁶

In sum, while contemporary theories take greater account of the victims and their needs, they do not seem to attract the same level of support as the case of expressive theory demonstrates. Moreover, restorative justice generally does not focus on the role of victims within the traditional justice system. Instead, it aims to provide victims with opportunities for participation outside formal criminal proceedings. Consequently, the role of victims in traditional criminal proceedings remains unchanged by this approach.

⁷⁰ Adler, M. D., ‘Expressive Theories of Law: A Skeptical Overview’ (2000) *University of Pennsylvania Law Review*, 148(5), 1424; Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 76

⁷¹ *Ibid*

⁷² Kenworthy Bilz, *Testing the Expressive Theory of Punishment* (n 67) 360

⁷³ Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 77

⁷⁴ *Ibid*

⁷⁵ Christopher Ciocchetti, ‘Wrongdoing and Relationships: An Expressive Justification of Punishment’ (2003) *Social Theory & Practice*, 29(1), 69

⁷⁶ *Ibid*

2.3 DEFINING 'VICTIMS OF CRIME'

The concept 'victim' is not as bare-faced as it may seem at first glance and thus it is very important to determine who can be designated by the term victim, what legal concepts are used to denote the victim in criminal (procedural) law, and when a person should be recognized as a victim.

As seen above, 'the task of designating an individual as a 'victim' is more complex than it might prima facie appear'.⁷⁷ Surely, there is no universally agreed-upon definition that can be applied across the legal order. However, according to Ernestine Hoegen and Marion Brienen:

To determine who is a victim within the context of criminal proceedings, it is useful to look at the common features of persons victimized by an offence who are entitled to enforce their rights or pursue their interests in court. A common feature of all jurisdictions is that private persons who want to act within criminal proceedings have to fulfill certain conditions. First of all, their legal rights or interests must be affected, or at least jeopardized, by an act punishable under criminal law. Secondly, the damage suffered should be caused by the criminal offence. This conceptualization allows for not only the recognition of the directly harmed person as a victim, but also of his immediate family or those who are directly dependent on the deceased victim. Furthermore, a distinction can be made between victims on the basis of whether they have been victimized as individuals or as part of a collective body. Collective victimization involves groups of individuals linked by special factors or circumstances that make them the target of criminal offences.⁷⁸

In the same vein, Doak writes, 'definitions that do exist today tend to imply that the victim is one who has suffered injury or loss as the result of a criminal act.'⁷⁹ Nevertheless, in this study, the term 'victim' is defined in accordance with the *Declaration*⁸⁰ as:

Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their

⁷⁷ Doak, J., *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (n 19) 20

⁷⁸ Ernestine Hoegen and Marion Brienen, *Victims of Crime in 22 European Criminal Justice Systems: The Implementation of Recommendation (85) 11 of the Council of Europe on the Position of the Victim in the Framework of Criminal Law and Procedure* (1st edn., Wolf Legal Productions (WLP)), 2000) 25-26

⁷⁹ Doak, J., *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (n 19) 20

⁸⁰ UN Declaration on Victims (n 1)

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.⁸¹

Based on this definition, we can assume that both natural and legal persons, individuals and collective groups, and the families and dependents of injured parties would also constitute ‘victims.’⁸² The wording does not limit its applicability to certain groups of victims, such as victims of serious or violent crimes. The wording, on the contrary, indicates that victims of any criminal act should be given the right to express their views and concerns. The lack of clear reference to certain groups of victims indicates that section 6(b) is addressed to all victims as defined in the Declaration and not only to victims of certain crimes.⁸³ Therefore, against this background and for the purposes of this study, a victim of crime may be defined as a person who has suffered harm directly or indirectly as a result of the commission of a crime.

2.3.1 THE CONCEPTUALIZATION AND RECOGNITION AS A VICTIM OF CRIME

After identifying individuals who can be designated as victims of crime, then it is essential to address the conceptualization of the victim in the context of criminal law and procedure. In general, the denotation 'victim' as such is not found in law. Legislatures in different national jurisdictions use more technical, legal concepts to denote a victim of a crime. Legal terminology refers to the victim in terms of the different roles that the victim can play in criminal proceedings. The victim, therefore, may act as the crime reporter or a complainant, a civil claimant, a compensation order beneficiary, a private prosecutor, an auxiliary prosecutor and/or a witness.⁸⁴

⁸¹ Ibid, Principle A.1.

⁸² Doak, J., Victims’ Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties (n 19) 23; UN Declaration on Victims, Principle A.2 also provides that: *“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. The term “victim” also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”* (Emphasis added)

⁸³ Kerstin Braun, The Role of the Victim in Criminal Proceedings in Australia and Germany - a Comparison (n 3) 55

⁸⁴ Ernestine Hoegen and Marion Brienens, Victims of Crime in 22 European Criminal Justice Systems (n 78) 26

Ultimately, concerning the issue of when a person should be recognized as a victim, there are three main prevailing opinions.⁸⁵ Accordingly, (1) a person can be recognized as a victim within criminal proceedings from the moment he reports a crime to the criminal justice authorities; (2) a person can be recognized as a victim within criminal proceedings from the moment he acquires a formal position and role within the criminal justice system.⁸⁶ Under this conceptualization, the victim's rights can be exercised only if he assumes a formally recognized position, particularly that of the civil claimant or auxiliary prosecutor.⁸⁷ And (3) one is only recognized as a victim after the accused has been found guilty by the court. Under this context, the person injured by a crime holds the status of an alleged victim during the entire criminal process before a culpable verdict is reached.⁸⁸ This line of argument is similar to the offender's presumption of innocence during the criminal proceedings. The accused is presumed innocent until the time when the court finds him guilty. This presumption of being a 'non-offender' is necessary in order to protect the rights and interests of the accused and to allow him to exercise his right of defense effectively. When the presumption of being a 'non-victim' is used, however, it does not further the victim's interests. Conversely, it prevents him from effectively exercising the defense of his rights and has a definite detrimental effect on his position at the pre-trial and trial stages.⁸⁹

As a result, the analogy with the defendant's status as a 'non-offender' should not, until proven otherwise, be followed with respect to the victim of the crime.⁹⁰ Since, first and foremost, a crime should be considered a breach of the victim's individual rights, and thus, a person who reports to the authorities and claims to be a victim should be treated as such unless proved otherwise in order to preserve his legal rights.⁹¹ In supporting the first option, Brienen and Hoegen also claim that recognizing a person as a victim from the time he reports the crime to the police not only gives him the best opportunity to be aware of his rights and to be kept informed of important developments in his case, but also the best chance to exercise his right to pursue his

⁸⁵ Ibid 30.

⁸⁶ Ibid

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ Ibid

⁹¹ Ibid

interests successfully throughout the judicial process.⁹² Of this purpose, the first choice offers the best possible protection for the victim's rights and interests.⁹³

2.4 CONCEPTUALIZING PARTICIPATION

Participation means the "act of sharing or taking part" in its simplest form.⁹⁴ However, the word "participation" is complex and encompasses a number of things.⁹⁵ Sherry Arnstein developed a conceptualization of participation for the particular context of urban planning and growth in 1971, constructing an eight-rung 'participation ladder'.⁹⁶ Building on the work of Arnstein, Edwards has proposed his own typology of victim participation specifically for the criminal process.⁹⁷

His conceptualization consists of four distinct participatory roles for victims that are either dispositive or non-dispositive.⁹⁸ The first form of participation identified by Edwards is 'control'.⁹⁹ Victims have decision-making power under this form of participation. Criminal justice institutions and authorities are required to hear from the victim and to take action based on the preference of the victim. 'Consultation' is the second form of participation.¹⁰⁰ Consultation obliges the authorities to seek information from the victims, but they would not be required to follow the preferences of the victims. He notes that the consultation takes place in a number of domestic systems and could include situations where the prosecutor seeks victims' views on the

⁹² Ibid; See also REDRESS, Victim Participation in Criminal Law Proceedings Survey of Domestic Practice for Application to International Crimes Prosecutions (report, authored in partnership with the Institute for Security Studies, 2015) 4. Available at: <<https://redress.org/publication/victim-participation-in-criminal-law-proceedings-survey-of-domestic-practice-for-application-to-international-crimes-prosecution/>> accessed 6 August 2020; Furthermore, the term "victim" will be used throughout this study, regardless of whether the crime has been proven in a criminal proceeding. This follows the practice of various jurisdictions granting certain rights to individuals who claim to be victims of crime from the time they file a complaint and throughout criminal proceedings on the ground that the "presumption of victimhood" is crucial to the recognition of the rights of victims in the same way as the presumption of innocence is crucial to the protection of the rights of victims.

⁹³ Saumya Uma, 'Integrating Victims' Rights in the Indian Legal Framework', in V Nainar and Suma (eds), Pursuing Elusive Justice: Mass crimes in India and the relevance of international standards (OUP 2013) 248; See further Committee against Torture, 'General Comment No. 3: Implementation of Article 14 by States Parties', UN Doc. CCPR/C/GC/3 (2012) ("CAT General Comment No. 3"), Para. 3.

⁹⁴ Ian Edwards, An Ambiguous Participant (n 16) 973; Jonathan Doak, Victims' Rights in Criminal Trials: Prospects for Participation (n 14) 2; Doak, J., Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties (n 19) 115

⁹⁵ Brianne Leyh, Procedural Justice? (n 18) 76

⁹⁶ Sherry Arnstein, 'A Ladder of Citizen Participation in the USA'(1971) Journal of the Royal Town Planning Institute, 57, 176

⁹⁷ Ian Edwards, An Ambiguous Participant (n 16) 974

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ Ibid 975.

plea agreement. Notably, the victim is not required to participate, but does so on his or her own discretion. Edwards' third category of participation requires participation restricted to 'information provision.'¹⁰¹ Criminal justice decision-makers would be required to seek and consider information provided by victims. In fact, under this form of participation, victims would be obliged to provide information to the authorities. Similar to the role of complainant and witness, victims act as information providers and play a key role in determining the case.¹⁰² The last form of participation is 'expression.'¹⁰³ Edwards said that expression obliges authorities to give victims an opportunity to share their emotions and feelings. Victims are not required to do so but will be able to communicate their feelings and express their views and concerns if they participate.

Ian Edwards excludes the act of receiving information from his typology as he considers it as non-participation. However, Wemmers would consider it a form of passive participation as it 'sends a message to victims that they are not forgotten and that their interest in the case is recognized by authorities'.¹⁰⁴ This conceptualization of participation is helpful as a way of looking at various models of participation available to crime victims in the criminal process.

As research shows, crime victims want to participate in the criminal justice system (or, "a voice").¹⁰⁵ They want the court to recognize their concerns when making decisions about their cases and their perpetrators. So, victims need to be present, to be heard, and to be represented at critical stages of the judicial process such as bail hearings, postponements, plea negotiations, sentencing, and parole hearings.¹⁰⁶ Victims need to defend their interests in the truth and their personal safety.¹⁰⁷ They also need to know that their concerns about reparation, restoration, and justice have been considered. They need safety in the courtroom and a sense of security when they deal with anything involving their case.¹⁰⁸ *Kim Polowek* writes:

¹⁰¹ Ibid 976.

¹⁰² Brianne Leyh, *Procedural Justice?* (n 18) 77

¹⁰³ Ian Edwards, *An Ambiguous Participant* (n 16) 976

¹⁰⁴ Jo- Anne Wemmers, 'The Meaning of Justice for Victims', in Shlomo Giora Shoham, Paul Knepper, and Martin Kett (eds), *International Handbook of Victimology* (Taylor and Francis Group, 2010) 635

¹⁰⁵ Irvin Waller, *Rights for Victims of Crime: Rebalancing Justice* (1st edn, Rowman & Littlefield Publishers, Inc. 2011) 30- 32; Ian Edwards, *An Ambiguous Participant* (n 16); Jonathan Doak, *Victims' Rights in Criminal Trials: Prospects for Participation* (n 14) 2; Doak, J., *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (n 19) 115

¹⁰⁶ Ibid

¹⁰⁷ Ibid

¹⁰⁸ Ibid

The concept of crime as an offence against the state, and its attendant administration of justice and “secondary victimization” resulted in a host of economic and psychological problems for victims and, most importantly, in victims alienation and perception of injustice. Studies of victims in several countries have suggested that victims’ grievances are more with the procedures of the criminal justice system (in particular, the lack of victim involvement in the decision making process) than with the supposed injustice of the outcome. (...) the most consistent and substantive grievance advanced by victims has been their lack of standing and voice in the primary adjudicative proceedings in the criminal justice system.¹⁰⁹

The participation of victims in criminal proceedings, serves as a formal acknowledgement that victims of crime have a different stake in the criminal justice process than the prosecution and judiciary.¹¹⁰ As the Seventh Congress said when writing the Declaration, establishing appropriate justice mechanisms for victims, including being able to express views and concerns, are very important to prevent secondary victimization and the disassociation of victims with the outcome of the trial;¹¹¹ and also to assist victims in obtaining therapeutic benefits, such as closure, through the criminal trial itself.¹¹² Furthermore, the Committee [7th congress] found that, if the position of victims remained unchanged in Member States, a situation could eventually develop where victims would not cooperate with the criminal justice system.¹¹³ The neglectful treatment of victims could lead to ‘vigilance,’ meaning that frustrated victims could take criminal justice into their own hands and seek extrajudicial revenge.¹¹⁴ Some members of the Committee suggested that for certain kinds of offences victims should be able to exercise a veto right over the initiation of proceedings by state authorities. They also suggested that victims should be heard during criminal proceedings to allow for greater involvement in the criminal justice system.¹¹⁵

2.4.1 VICTIM PARTICIPATION ACCORDING TO SECTION 6(b) OF THE DECLARATION

The wording of Section 6(b) provides that:

¹⁰⁹ Kim Polowek, Victim participatory rights in Parole (n 4) 9-11

¹¹⁰ Brianne Leyh, Procedural Justice? (n 18) 50

¹¹¹ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (n 17) 142

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid. Kerstin Braun, The Role of the Victim in Criminal Proceedings in Australia and Germany - a Comparison (n 3) 33-34

The responsiveness of the judicial and administrative processes to the needs of victims should be facilitated: by allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.¹¹⁶

Regarding this provision, the question that must be raised here is: What is the meaning of ‘allowing victims’ views to be presented and considered... where their personal interests are affected’.¹¹⁷ However, section 6(b) of the UN declaration on victims does not outline clearly what the term ‘considered’ means and thus it is important to envisage three potential interpretations.¹¹⁸ These are: (1) ‘Victims can present their views and concerns to a decision-maker while no obligation rests on the decision-maker to acknowledge their views in any way’.¹¹⁹ (2) ‘Victims can present their views and concerns to the decision-maker who is obliged to take into account their views and concerns’.¹²⁰ And (3) ‘the views of the victims, compared to the first two interpretations, determine the outcome of the decision which affects the personal interests of the victims’.¹²¹

Nevertheless, it should be noted that the ordinary meaning of the word 'considered' speaks against the suggested third interpretation in which 'considered' is seen as vesting the final decision-making power in the victim. The ordinary meaning equally speaks against the first suggested interpretation of allowing victims only to present views and concerns without obligating the decision-maker to take them into account at all.¹²² In the ordinary meaning of the interpretation, the phrase ‘allowing victims’ views to be presented and considered’ needs to be understood as giving victims the right to present views and concerns and have these weighed against other factors relevant to the decision by the decision-maker. This interpretation is consistent with the Declaration's purpose of section 6(b).

Against this background, therefore, crime victim participation is interpreted in this research as voluntary participation that allows victims to communicate their views and concerns, by comparison to witness participation which is obligatory, serves the interests of the court and

¹¹⁶ See Section 6 (b) of the UN Declaration on Victims

¹¹⁷ Kerstin Braun, *The Role of the Victim in Criminal Proceedings in Australia and Germany - a Comparison* (n 3) 51-52

¹¹⁸ *Ibid*

¹¹⁹ *Ibid*

¹²⁰ *Ibid*

¹²¹ *Ibid*

¹²² *Ibid*

consists of testifying on a particular matter in question. Besides, receiving information will be considered as a passive form of participation in this study as it ‘sends a message to victims that they are not forgotten and that their interest in the case is recognized by authorities’.¹²³

2.5 THE ROLE AND RIGHTS OF VICTIMS IN CRIMINAL PROCEEDINGS: AN OVERVIEW

2.5.1 THE HISTORICAL ROLE OF VICTIMS IN CRIMINAL PROCEEDINGS

Historically, crime victims were key participants in the criminal justice process around the globe.¹²⁴ In primitive times, victims’ were totally relied on self-help, the assistance of kin, and the practice of “outlawry,” whereby the community was considered entitled to attack and banish an offender from its midst.¹²⁵ The victims’ desire for revenge, condemnation, vindication, and validation could all be satisfied “privately.”¹²⁶ In those earlier days, in general, society had a private system of “criminal justice” in which victims of wrongs, or families of victims had decisive powers and responsibilities in the investigation, apprehension, prosecution and execution of offenders.¹²⁷ This was mainly because, in the absence of a central state authority¹²⁸ ‘in the distant early history of administration of justice, there were no such dichotomies between “criminal” and “civil” cases and there were no such established criminal justice institutions as police, public prosecution, legal counsel, penitentiary and courts as we know them today’.¹²⁹

Over the centuries, however, the importance of victims in criminal justice systems decreased in common law and civil law countries alike.¹³⁰ One reason for the change in role is the separation of civil and criminal proceedings. As such, a changed understanding of criminal law emerged according to which a criminal act is most and foremost considered an offence against the state and not against the individual victim. In this context, the interests of the victim are subsumed by the interests of the state.¹³¹ A limited exception to the diminished role of victims in criminal trials can perhaps be seen in France, where victims continued to be able to participate in criminal

¹²³ Jo- Anne Wemmers, *The Meaning of Justice for Victims* (n 104) 635

¹²⁴ Kerstin Braun, ‘Giving Victims a Voice: On the Problems of Introducing Victim Impact Statements in German Criminal Procedure’ (2013) *German Law Journal* Vol. 14 No. 09, 1889

¹²⁵ Erin A. O'Hara, ‘Victim Participation in the Criminal Process’ (2005) 13 *J.L. & Policy*, 235; Lynn N. Henderson, ‘The Wrongs of Victims’ Rights’ (1985) 37 *STAN. L. REV.* 937, 966

¹²⁶ *Ibid.* Erin A. O'Hara, ‘Victim Participation in the Criminal Process’ (2005) 13 *J.L. & Policy*, 235

¹²⁷ Worku Yaze, *Status and Role of Victims of Crime in the Ethiopian Criminal Justice System* (n 7) 108

¹²⁸ Jonathan Doak, *Victims' Rights, Human Rights, and Criminal Justice: Reconceiving the Role of Third Parties* (n 19) 2

¹²⁹ Worku Yaze, *Status and Role of Victims of Crime in the Ethiopian Criminal Justice System* (n 7) 107-108

¹³⁰ Marie Manikis, ‘Contrasting the Emergence of the Victims’ Movements in the United States and England and Wales’ (2019) *Societies* Vol. 9, No. 35, 1; Kerstin Braun, *Giving Victims a Voice* (n 124) 1889

¹³¹ Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 51

proceedings as civil claimants even after the formal separation of civil and criminal matters occurred.¹³²

Another but related reason for the diminished role of crime victim is the introduction of police and public prosecution services which took over prosecutions on behalf of the state and made active victim involvement in the prosecution process largely superfluous.¹³³ Following the separation of civil and criminal proceedings as well as the establishment of police and public prosecution institutions, specific forms of actions and inactions started to be defined by the state as crimes. The state took responsibility for the investigation of crimes, the apprehension and prosecution of suspects and the enforcement of sanctions against offenders. Punishment became the realm of the state. And arguably the victims' "golden age" became past history and victims became outsiders of their own cases.¹³⁴

During most of the twentieth century, victims of crime played a limited role in criminal proceedings in many jurisdictions. Victims were sidelined and the victim's role was reduced to that of crime reporter and a witness for the prosecution. Also, victims of crime were treated as neglected outsiders in a system that could not function without them. This has become the major source of dissatisfaction for victims who seek validation in the criminal justice system.¹³⁵ As one of the first scholars to comment on the absence of victims from the criminal justice system, William Frank McDonald referred to the victim as "the forgotten man" in criminal procedure.¹³⁶ Besides, some commentators refer to the period between mid-19th century and the 1970s (1980s) as the 'era of victim disenfranchisement'.¹³⁷

2.5.2 VICTIM PARTICIPATION IN CRIMINAL PROCEEDINGS IN COMMON LAW AND CIVIL LAW TRADITIONS

Based on the jurisdiction in question, victims' may have participatory rights to a certain degree. The role of crime victim differs significantly between national criminal justice owing largely to the legal tradition that has influenced their development.¹³⁸ Many civil law countries, for instance, permit victims to join criminal proceedings as a civil party, or subsidiary prosecutor,

¹³² Ibid 45.

¹³³ Ibid 52.

¹³⁴ Worku Yaze, Status and Role of Victims of Crime in the Ethiopian Criminal Justice System (n 7) 109

¹³⁵ Jonathan Doak, Victims' Rights in Criminal Trials: Prospects for Participation (n 14) 2

¹³⁶ Kerstin Braun, Giving Victims a Voice (n 124) 1889

¹³⁷ James Dignan, Understanding Victims and Restorative Justice (1st edn, Maidenhead: Open University Press 2005) 63

¹³⁸ Valentina Spiga, The Right to Justice for Victims of Human Rights Crimes (n 30) 198

and common law countries have progressively recognized a limited array of victim procedural rights, such as the ability to provide victim impact statements and, in certain circumstances, to challenge the decision to end an investigation or prosecution.¹³⁹ In the following section, therefore, the focus will be on the common law and the civil law traditions since these traditions have been the main influence on the domestic criminal procedural models.¹⁴⁰

2.5.3 VICTIM PARTICIPATION IN ADVERSARIAL JURISDICTIONS

The Anglo-American criminal justice system is said to be ‘adversarial’ in nature. The adversarial criminal procedure model has been characterized as the confrontation between the public prosecutor and the accused before an impartial judge. Such a contest, inherently excludes the rights and interests of victims.

During the Early Middle Ages (circa 600– 900 AD), crime victims had to assume the responsibility of pursuing the offender and bringing him or her to justice.¹⁴¹ Over time, this state of affairs changed; with the centralization of power and creation of the concept of “the King’s peace,” crime victims lost their decisive and active role in the criminal justice process. The state began to prosecute a defendant on behalf of the community, and the crime victim was relegated to the role of witness for the prosecution. Consequently, crime victims in common law jurisdictions have traditionally been unable to participate in criminal trials for a number of structural and normative reasons. They are widely perceived as ‘private parties’ whose role should be confined to that of witnesses; and participatory rights for such third parties are rejected as a threat to the objective and public nature of the criminal justice system.¹⁴²

2.5.3.1 CHANGES IN THE ROLE OF CRIME VICTIMS’ IN ADVERSARIAL SYSTEM

Prior to the 1970s, victims were considered to be “forgotten persons” of criminal justice-invisible to and neglected by the system.¹⁴³ The lack of victim standing in criminal proceedings, and the

¹³⁹ REDRESS, *The Participation of Victims in International Criminal Court Proceedings : A Review of the Practice and Consideration of Options for the Future*, October 2012, available at: <<https://www.refworld.org/docid/50a3a8682.html>> accessed 6 August 2020

¹⁴⁰ For the difference between the two criminal procedure models in the two traditions, see generally Mirjan R. Damaska, *The Faces of Justice and State Authority: A Comparative Approach to Legal Process* (2nd ed). New Haven, Yale University Press, 1991; Erin C. Blondel, ‘Victims’ Rights in an Adversary System’ (2008) *Duke Law Journal*, Vol. 58, No. 2, 241

¹⁴¹ On the historic developments see in general: Sam Garkawe, ‘The Role of the Victim during Criminal Court Proceedings’ (1994) 17(2) *The University of New South Wales Law Journal* 595; Tyrone Kirchengast, *The Victim in Criminal Law and Justice* (Palgrave Macmillan, 2006)

¹⁴² Jonathan Doak, *Victims’ Rights in Criminal Trials: Prospects for Participation* (n 14) 1

¹⁴³ ‘Victim Participation in the Criminal Justice System’ available at:

consequent insensitivity to the needs victims of crime, led to victim dissatisfaction and alienation from the criminal justice system. Surveys of crime victims in a number of countries revealed complaints related to the lack of information about the case as well as frustration due to the lack of input into the proceedings.¹⁴⁴ These findings provoked campaigns by victims' rights groups to bring about changes in the criminal justice system. In response to the victims' rights movement and recognizing that victims had little possibility to present views and concerns in adversarial criminal proceedings Victim Impact statement (VIS) schemes was introduced in most common law jurisdictions in order to provide victims with a 'voice'.¹⁴⁵ Wemmers also asserts that VIS was originally introduced in adversarial criminal justice systems as a response to the generally passive role victims had in adversarial criminal trials.¹⁴⁶

Moreover, common law countries have enacted legislation creating various victim rights and have established a wide range of services for victims of crime. Victims now have the right to receive information about the status of the case in which they are involved, and they also have the right to apply for financial compensation and psychological assistance.¹⁴⁷ For example, many states in the United States have enacted Victims Bills of Rights that vary in scope, from mandating criminal justice officials to simply show respect for victims, establishing the right of the victim to be present and heard, and allowing victims to sit at the prosecutor's table during the trial.¹⁴⁸ In addition, most states allow victims to participate in sentencing and parole hearings. States also allow for the participation of victims in the course of plea bargaining.

2.5.4 VICTIM PARTICIPATION IN INQUISITORIAL JURISDICTIONS

As was the case in common law jurisdictions, crime victims in civil law countries used to have a strong role in the criminal justice process as private prosecutors. Despite victims' important role in the criminal justice process, the evolution of the penal system from private prosecution to state-controlled and administered justice resulted in the criminal justice process in which victims are assigned to play a marginalized role of crime reporter or testifying witness in the criminal

<http://criminal-justice.iresearchnet.com/forensic-psychology/victim-participation/> accessed 4 August 2020

¹⁴⁴ Ibid

¹⁴⁵ For instance, crime victims are able to submit VIS/VPS demonstrating how the crime has affected them in the United States, Australia, England and Wales.

¹⁴⁶ Jo-Anne Wemmers, 'Victim Policy Transfer: Learning From Each Other' (2005) 11(1) *European Journal on Criminal Policy and Research* 121, 126

¹⁴⁷ Victim Participation in the Criminal Justice System (n 143)

¹⁴⁸ Ibid

proceeding.¹⁴⁹ However, from the 1970s forward, victim-related developments, based on various grounds comparable to common law jurisdictions, occurred in the inquisitorial jurisdictions.¹⁵⁰

Inquisitorial jurisdictions are regarded as non-adversarial as they place little emphasis on party control. Many make some sort of formal provision for the participation of the victim within, and indeed beyond, the trial process.¹⁵¹ For instance, many continental jurisdictions permit victims to play a much more active role in proceedings, accommodating their counsel as an independent party who plays the role of protecting the victim's interests in the course of proceedings while at the same time pursuing a reparative claim. This model is commonly referred to as the 'adhesion' or '*partie civile*' procedure. This procedure is widely utilized in France and Belgium and confers three important rights upon victims of crime.¹⁵² First, victims can use the procedure to initiate prosecution of an alleged offender. Second, victims are entitled to participate in their own right and to be heard as a party in the criminal trial. Finally, through this procedure, victims have a right to pursue a claim for civil damages in the criminal action.¹⁵³

Some inquisitorial jurisdictions also permit the victim to assist the prosecutor as a subsidiary prosecutor.¹⁵⁴ For instance, Germany, Austria, Malta, Norway, Sweden and various eastern European countries operate some form of subsidiary prosecutor scheme which allow victims an active role in both the pre-trial decision-making process and the trial itself.¹⁵⁵ The procedure generally allows victims to submit evidence, comment on representations made by the prosecution and the defense and express their opinions on key decisions taken. In this sense, the

¹⁴⁹ Kerstin Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 51- 52

¹⁵⁰ Ibid

¹⁵¹ Jonathan Doak, Victims' Rights in Criminal Trials: Prospects for Participation (n 14) 16; see further, The Role of Victims of Crime in the Criminal Trial Process: Consultation Paper (2015) Victorian Law Reform Commission, 40 "*Commentators argue that this is because trials in inquisitorial criminal justice systems are not strictly contests between two opposing parties, but rather official investigations subject to substantial judicial control. Therefore, introducing a third actor-the victim- is less of a challenge to the structure of inquisitorial criminal trials and has fewer implications for the rights of the accused.*" (Emphasis added)

¹⁵² Valentina Spiga, The Right to Justice for Victims of Human Rights Crimes (n 30) 201

¹⁵³ Ibid

¹⁵⁴ Charles P. Trumbull IV, 'the Victims of Victim Participation in International Criminal Proceedings' (2008) 29 MICH. J. INT'L L. Issue 4, 778

¹⁵⁵ Brienne Leyh, Procedural Justice? (n 18) 81-84; Christoph Safferling, 'The Role of the Victim in the Criminal Process- A Paradigm Shift in National German and International Law?' (2011) 11 International Criminal Law Review Vol. 11: Issue 2, 191-194; Ernestine Hoegen and Marion Brienen, Victims of Crime in 22 European Criminal Justice Systems (n 78) 363-364

victim's lawyer can be an important ally of the public prosecutor, who nonetheless retains the burden of arguing the prosecution's case.¹⁵⁶

2.6 COMMON MODELS OF VICTIM PARTICIPATION AT THE DOMESTIC LEVEL

This section briefly discussed the five most common models of victim participation that are prevalent at the domestic level. These models include victims participating as (1) complainants; (2) victim-witnesses; (3) civil parties; (4) private, subsidiary, or auxiliary prosecutors; and (5) impact statement providers. Since participation varies from jurisdiction to jurisdiction, these models are not intended to represent a single system. Rather, they are general categories of participation that are useful as a means of recognizing the broad variety of participation modalities in use at the domestic level.

A. THE VICTIM AS COMPLAINANT

In all judicial systems, 'a victim may report a crime by submitting a complaint to the police or other appropriate authority'.¹⁵⁷ In the common law jurisdictions, the term 'complainant' is properly used to refer to the victim for the duration of the criminal proceedings. In practice, it is mostly used in reference to victims of sexual offenses whose cases are under consideration. There are no specific rights attached to the common law position of the complainant.¹⁵⁸

In the continental legal systems, however, many offenses cannot be prosecuted without a victim first filing a complaint with that victim retaining the power to withdraw the complaint and end the prosecution.¹⁵⁹ These crimes are called 'complainant offenses' because filing a formal complaint with the authorities is the condition sine qua non to start public prosecution.¹⁶⁰ Also, the complainant can stop the criminal proceedings by withdrawing the complaint at any moment of the proceedings until the sentencing stage.¹⁶¹ However, depending on the specific jurisdiction the rights of the complainant vary considerably. The importance of the role of the complainant cannot be underscored enough because without it many crimes would go unacknowledged and unpunished.

¹⁵⁶ Valentina Spiga, *The Right to Justice for Victims of Human Rights Crimes* (n 30) 202

¹⁵⁷ Brianne Leyh, *Procedural Justice?* (n 18) 78

¹⁵⁸ Ernestine Hoegen and Marion Brienen, *Victims of Crime in 22 European Criminal Justice Systems* (n 78) 26

¹⁵⁹ *Ibid.* Brianne Leyh, *Procedural Justice?* (n 18) 79

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

B. THE VICTIM AS WITNESS

Victims who are required to testify as witnesses can present views and concerns on various aspects of the incident to the investigating authorities, the prosecutor, and the court. It is thus self-evident that one of the most important participatory roles of the victim is as a witness.¹⁶² In such a capacity, however, the victim merely responds to questions put forward by the authorities or, once the case comes to trial and depending on the jurisdiction, by the prosecutor or the defense counsel.¹⁶³ However, ‘there are some jurisdictions in which the victim-witness is not, as a rule, required to give evidence in court. In these jurisdictions, the pre-trial testimony of the victim-witness can be used as evidence in court’.¹⁶⁴ Importantly, also victims acting as witnesses are not entitled to the same rights as they have when acting as civil parties or private/subsidiary/auxiliary prosecutors.¹⁶⁵

C. THE VICTIM AS CIVIL CLAIMANT

In almost every civil law jurisdiction victims have the opportunity of joining their civil claims to the criminal prosecution or triggering criminal proceedings themselves, making the victims' civil parties in the case (*partie civile* in France, *actor civil* in Argentina, *burgerlijke partij* in the Netherlands).¹⁶⁶ This adhesion model, however, is generally unknown in common law jurisdictions.¹⁶⁷ In theory, this process recognizes the fact that a wrongdoer is answerable both to the individual he harmed as well as to the state.¹⁶⁸ Many advocates of the process argue that being a party to the proceedings “assists victims to take back control of their lives and to ensure that their voices are heard, respected, and understood.”¹⁶⁹ Victims who become civil parties are often able to initiate a prosecution, actively participate in proceedings¹⁷⁰ and claim reparations

¹⁶² UN Office on Drugs and Crime (UNODC), *Handbook on Justice for Victims* (hereinafter Handbook on Justice for Victims), 1999, available at: <<https://www.refworld.org/docid/479eeb1a2.html>> accessed 17 September 2020, 38

¹⁶³ Ibid

¹⁶⁴ Ernestine Hoegen and Marion Brienens, *Victims of Crime in 22 European Criminal Justice Systems* (n 78) 30

¹⁶⁵ Brianne Leyh, *Procedural Justice?* (n 18) 79

¹⁶⁶ Ibid. Ernestine Hoegen and Marion Brienens, *Victims of Crime in 22 European Criminal Justice Systems* (n 78) 1069; Godfrey Mukhaya Musila, ‘Restorative Justice in International Criminal Law’ (DPhil thesis, University of the Witwatersrand 2009) 112

¹⁶⁷ Ibid

¹⁶⁸ Ibid 80.

¹⁶⁹ Danieli, Y., *Victims: Essential Voices at the Court*, *Victims’ Rights Working Group Bulletin*, September 2004, p. 6.

¹⁷⁰ Jonathan Doak, *Victims’ Rights in Criminal Trials: Prospects for Participation* (n 14) 310

for harms suffered. However, the participatory rights for civil parties are generally only available insofar as they pertain to a victim's claim for damages against the accused.¹⁷¹

D. THE VICTIM AS PRIVATE, SUBSIDIARY, OR AUXILIARY PROSECUTOR

Victims can participate in some civil and common law jurisdictions by contributing to or substituting for prosecution.¹⁷² In this context, the victim is generally referred to as a private prosecutor, a subsidiary prosecutor, or an auxiliary prosecutor.

Some legal systems recognize the right of the victim to serve in effect as a "subsidiary prosecutor", in that the victim may also submit evidence, suggest questions which may be asked of the defendant or witnesses, and comment on statements and evidence submitted to the court. The term "subsidiary prosecutor" has also been used to denote a system where the victim can prosecute, with all powers of prosecution, if the public prosecutor decides not to bring charges. In the latter case, where the defendant is acquitted, the victim must often bear the costs of the proceedings.

Besides, in countries like Austria, Germany, Liechtenstein, and Portugal, the victim can play the role of auxiliary prosecutor.¹⁷³ As such the auxiliary prosecutor has the right to claim compensation, be present during the hearings, refuse a judge or an expert witness, put questions to witnesses, object to decisions of the presiding judge, contest the permissibility of questions, bring evidence into the proceedings, and make statements.¹⁷⁴ It is important to stress that, contrary to the civil claimant the auxiliary prosecutor's participatory rights are not restricted to the reach of his civil claim for compensation.¹⁷⁵ Finally, in some legal systems, the victim may prosecute for certain minor offenses (so-called "private prosecution"), where the public interest is deemed not to require public prosecution.¹⁷⁶ Thus, it allows the victim to express his or her concerns and views throughout the proceedings.

¹⁷¹ Ibid 311; at the pre-trial stage, the civil party has much the same rights as the accused, including the right to appeal all decisions of the examining magistrate (except for bail and custody). At trial, also civil parties generally have the right to attend hearings, put questions to witnesses and the accused, and lead and challenge evidence.

¹⁷² Ernestine Hoegen and Marion Brien, *Victims of Crime in 22 European Criminal Justice Systems* (n 78) 28-29; civil law jurisdictions include, for instance, France, Spain, Germany, and Portugal; common law jurisdictions include England and Wales. As a private, subsidiary or auxiliary prosecutor victims may also attach their civil claim for damages.

¹⁷³ Ernestine Hoegen and Marion Brien, *Victims of Crime in 22 European Criminal Justice Systems* (n 78) 28

¹⁷⁴ Ibid

¹⁷⁵ Ibid

¹⁷⁶ *Handbook on Justice for Victims* (n 162) 38

E. THE VICTIM AS IMPACT STATEMENT PROVIDER

In recent years many jurisdictions have made provisions for victims to make known their views to the court at the sentencing stage.¹⁷⁷ Usually, these views are known as ‘victim impact statements’ (*VIS*). The *VIS*—as the concept is referred to in the United States and Canada—or the victim personal statement (*VPS*)—its counterpart in England and Wales—is a statement in which the victim describes the impact of the crime on his or her life, including physical, social, psychological, and financial harms.¹⁷⁸ Accordingly, these statements allow the court to make a reasoned decision when deciding upon the appropriate sentence which also takes into account the suffering of the victims resulting from the crimes at issue. Victim impact statements are also an important tool from the victims’ perspective as they provide victims with the opportunity to focus the court’s attention on the human cost of the crime and to become a part of the criminal justice process.¹⁷⁹

2.7 INTERNATIONAL LEGAL FRAMEWORK ON VICTIMS’ PARTICIPATION IN CRIMINAL PROCEEDINGS

Traditionally, the participation of victims in criminal proceedings before domestic courts has been left to the discretion of States because of the substantially different approaches that these States have taken to this subject and, therefore, only a small number of international conventions explicitly refer to the right of victims to participate in criminal proceedings.

2.7.1 UNIVERSAL INSTRUMENTS ON VICTIMS RIGHTS’ IN CRIMINAL PROCEEDINGS

While there is no international convention on the rights of victims of crimes,¹⁸⁰ in 1985, the United Nations General Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the text of which had been approved by consensus by the Seventh United Nations Congress on Crime Prevention and Treatment of Offenders.¹⁸¹

¹⁷⁷ Valentina Spiga, *The Right to Justice for Victims of Human Rights Crimes* (n 30) 246; *The right to present victim impact statement at the sentencing stage of the proceeding is today recognized in a considerable number of states of common law origin including, inter alia, the US, United Kingdom, Canada, Ireland, New Zealand, and South Australia*. See also D.E. Beloof, P.G. Cassel, and S.J. Twist, *Victims in Criminal Procedure*, (4th edn, Carolina Academic Press, LLC, 2018) 567

¹⁷⁸ *Victim Participation in the Criminal Justice System* (n 143)

¹⁷⁹ Valentina Spiga, *The Right to Justice for Victims of Human Rights Crimes* (n 30) 245

¹⁸⁰ *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, Professional Training Series No. 9 (United Nations, New York and Geneva, 2003) 753-754. Available at: <<https://resourcecentre.savethechildren.net/library/human-rights-administration-justice-manual-and-facilitators-guide-human-rights-judges>> accessed 15 July 2020

¹⁸¹ *Ibid.* UN doc. A/CONF.144/20, Annex, Guide for Practitioners Regarding the Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (hereinafter referred to as UN doc.

The Declaration for Victims of Crime, also referred to as the ‘Magna Carta for Victims’, marked an important step in introducing a new awareness of the need for justice for victims.¹⁸² The Declaration defines the notion of victim and specifies victims’ rights of access to justice and fair treatment, restitution, compensation and assistance. A review of the preparatory work for the declaration shows how, although the drafters generally agreed on its contents, the scope of the document itself remained divergent. In particular, the ‘question of the extent to which the complainant should be allowed to express his views and concerns in the criminal justice process led to considerable debate in the drafting of the United Nations Declaration’ and remained very controversial until the very end.¹⁸³ After much discussion, this Declaration provides, in Article 4, that victims ‘are entitled to access to the mechanisms of justice and prompt redress, as provided for by the national legislation’. In addition, the Declaration includes a provision dealing specifically with the participation of victims, section 6(b), as set out in the heading ‘Access to justice and fair treatment,’ which reads as follows:

The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system. (Emphasis added)

As the Guide for Practitioners points out, the basic principles found in the Declaration “apply, without discrimination, to all countries, at every stage of development and in every system, as well as to all victims”.¹⁸⁴

Although the Declaration as such is not legally binding, during the negotiations of the Rome Statute of the International Criminal Court it was considered as a reference text for the issue of victim participation, by virtue of its adoption by consensus and the wide acceptance of its

A/CONF.144/20, Annex, Guide for Practitioners). The Declaration is a non-binding instrument, so-called ‘soft law’, and therefore requires translation into Member States’ national law.

¹⁸² Valentina Spiga, *The Right to Justice for Victims of Human Rights Crimes* (n 30) 209-210

¹⁸³ M. Joutsen, *The Role of the Victim of Crime in European Criminal Justice Systems: A Cross National Study of the Role of the Victim* (Helsinki: Helsinki Institute for Crime Prevention and Control 1987)179

¹⁸⁴ Section 3 of the Declaration states expressly that: “The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, color, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.”

provisions.¹⁸⁵ As will be discussed below in detail, the provisions of the ICC Statute establishing a victim's participation scheme are largely formulated along the lines of the 1985 Declaration. From this perspective, the Declaration has paved the way to the setting of international standards on victims' rights in criminal proceedings before domestic and international courts.

In addition, the International Convention for the Protection of All Persons from Enforced Disappearance, sets out the right of victims to report any instance of enforced disappearance and to be informed of 'the progress and results of the investigation'.¹⁸⁶ Article 25(3) of the *Convention against Transnational Organized Crime* establishes that 'each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings'. Using similar wording, Article 6 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons* requires that victims are 'assisted to express their views and concerns at appropriate stages of criminal proceedings in a manner not prejudicial to the rights of the defense'.¹⁸⁷

2.7.2 REGIONAL INSTRUMENTS ON VICTIMS RIGHTS' IN CRIMINAL PROCEEDINGS

In recent years, there has been a clear increase in the recognition of victims' rights at a regional level. This section does not seek to be exhaustive but presents some of the most important instruments adopted on this topic. Specifically, this section focuses on instruments adopted in Europe. This is because: (1) In Europe, unlike other regions, too much attention has been placed on victims of crime and their interest in the criminal justice system and thus detailed recommendations are issued. (2) In an unprecedented manner, the European Parliament and the Council of the European Union issued a Directive 'setting minimum standards on the rights, support, and protection of victims of crime', which is legally binding on the EU Member States.¹⁸⁸

¹⁸⁵ Valentina Spiga, *The Right to Justice for Victims of Human Rights Crimes* (n 30) 211; This happened as a response to the request contained in ECOSOC Resolution 1996/14, *Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN Doc. E/CN.15/1996/16/Add.15, 23 July 1996, at s. 6, which recommended the incorporation of the 1985 Declaration in the ICC Statute.

¹⁸⁶ UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, UN Doc. A/61/488, 20 December 2006, Articles. 12 and 24(2)

¹⁸⁷ See Article 6 of the UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000; Valentina Spiga, *The Right to Justice for Victims of Human Rights Crimes* (n 30) 208

¹⁸⁸ European Parliament and Council of the European Union, *Directive 2012/29/EU of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime*, 25 October 2012.

In Europe, by virtue of *Recommendation No. 85/11 on the Position of the Victim in the Framework of Criminal Law and Procedure*, the Council of Europe provided the need to protect victims of crime who may suffer physical, psychological, material and social harm and whose needs ‘should be taken into account to a greater degree, throughout all stages of the criminal justice process’. No right to participation in the proceedings is provided as such, but the document emphasizes the need to inform victims about the development of the case and, in particular, of the final decision concerning prosecution as well as of the final outcome of the case.¹⁸⁹ Moreover, the Recommendation establishes that victims should have the right to seek review of a decision not to prosecute or the right to institute private proceedings.¹⁹⁰

Moreover, in 2006, the Council of Europe Committee of Ministers issued a detailed recommendation ‘on assistance to victims of crime’.¹⁹¹ While there is no clear requirement for specific participatory rights for victims in the criminal proceedings, certain provisions of the recommendation suggest that victims should be able to defend their interests during the criminal trial. For example, Article 7(2) stipulates that ‘States should institute procedures for victims to claim compensation from the offender in the context of criminal proceedings’.¹⁹²

The European Union has also contributed to strengthening the role afforded to victims in European criminal justice systems. The most significant EU legislative instrument concerning victims of crime is the Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, adopted by the Council of the EU.¹⁹³ The decision, which is binding on all member states, urges states to ensure that victims ‘have a real and appropriate role’¹⁹⁴ in their criminal legal system. Despite the notable differences in the criminal procedures of the various EU states, the document calls on member states to ‘recognize the rights and legitimate interests

¹⁸⁹ See Article 2 of the Council of Europe, Committee of Ministers, *Recommendation No. R (85) 11 of the Committee of Ministers to Member States on the Position of the Victim in the Framework of Criminal Law and Procedure*, 28 June 1985

¹⁹⁰ *Ibid*

¹⁹¹ Council of Europe, Committee of Ministers, *Recommendation R. (2006) 8 of the Committee of Ministers to Member States on Assistance to Crime Victims*, 14 June 2006.

¹⁹² *Ibid*, Article 7(2).

¹⁹³ Council of the European Union, *Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings* (2001/220/JHA), 15 March 2001. In *Pupino*, the European Court of Justice (‘ECJ’) held that even though the EU Framework decisions have no direct effect (pursuant to art. 34(2) (b) sentences 2 of the Maastricht Treaty), they may indirectly influence the criminal process since national courts are under an obligation to interpret criminal procedural law in conformity with them. ECJ, *Maria Pupino* C-105/03, 16 June 2005, European Court Reports 2005, page I-05285

¹⁹⁴ Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings (2001/220/JHA), Art. 2(1)

of victims with particular reference to criminal proceedings'¹⁹⁵ and requires them to provide for the possibility of victims to be heard and to provide evidence.

The European Parliament and the Council of the European Union adopted a Directive 'setting minimum standards on the rights, support and protection of victims of crime' on 25 October 2012, replacing the Framework Decision mentioned above.¹⁹⁶ The Directive recognizes that '[c]rime is a wrong against society as well as a violation of the individual rights of victims'; and asks states to ensure that victims are treated with respect and that their needs are taken into account.¹⁹⁷ Most importantly for the purposes of the present discussion the Directive recommends that states provide victims with adequate support and information and ensure that they are involved in proceedings.¹⁹⁸

Although the Directive does not expressly mandate victims to play an active role in criminal proceedings (as parties or participants, for example), the adoption of this instrument, which is legally binding on EU Member States, is relevant, similar to other documents adopted at international and regional level, it clearly states that the prosecution of crimes is directly matters to crimes victims.¹⁹⁹ In other words, this instrument supports the view that victims have legitimate interests in the outcome of criminal proceedings and that they should be granted procedural rights in order to protect such interests.²⁰⁰

2.8 VICTIM PARTICIPATION IN PROCEEDINGS BEFORE THE INTERNATIONAL CRIMINAL COURT

One of the most unique aspects of the International Criminal Court (ICC) compared to other international criminal tribunals is its victim participation scheme, which allows crime victims' to share their views and concerns in proceedings against the persons alleged to be responsible.²⁰¹

¹⁹⁵ Ibid.

¹⁹⁶ European Parliament and Council of the European Union, *Directive 2012/29/EU of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime*, 25 October 2012.

¹⁹⁷ *Ibid.*, Art. 9.

¹⁹⁸ *Ibid.*, Art. 34. "Justice cannot be effectively achieved unless the victim can properly explain the circumstances of the crime they have suffered and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure the respectful treatment of the victim and to ensure they are able to access their rights."

¹⁹⁹ Valentina Spiga, *The Right to Justice for Victims of Human Rights Crimes* (n 30) 217-218

²⁰⁰ Ibid

²⁰¹ Fiona McKay, 'Victim Participation in Proceedings before the International Criminal Court' (2008) Human Rights Brief 15, no. 3, 1; War Crimes Research Office, *Obtaining Victim Status for Purposes of Participation in Proceedings at the International Criminal Court* (2013) American University Washington College of Law, 1; see also Rome Statute of the International Criminal Court, adopted on 17 July 1998 by the U.N. Diplomatic Conference

Victims can pose their views and concerns to the ICC from investigations to appeals where their interests are affected, potentially at any stage of the proceedings.²⁰² Besides, if the accused is convicted, the ICC may offer reparations.²⁰³

The participation of victims in criminal proceedings is not a novel concept. Many civil law countries, as seen above, allow victims to join proceedings as a civil party or a subsidiary prosecutor. However, despite this common practice in civil law countries, international criminal proceedings, largely based on the adversarial system, have not granted the same rights to victims.²⁰⁴ The ability of victims to participate in legal proceedings is thus a key feature of the Rome Statute.²⁰⁵ Moreover, scholars have applauded the new role for crime victims at the ICC, calling it a “landmark development,”²⁰⁶ a “major innovation,”²⁰⁷ a “significant step forward,”²⁰⁸ and a “major structural achievement”.²⁰⁹ The participation of victims in proceedings before the International Criminal Court will ensure that the interests of victims, which should be a priority for international criminal justice, are taken into account. In addition, participation will help to restore the dignity of victims, contribute to the reconciliation process and shed light on the facts and evidence that can be used in the trial.²¹⁰

The fundamental provision governing victims’ right to participate in proceedings before the ICC is found at Article 68(3) of the Rome Statute, which provides:

of Plenipotentiaries on the Establishment of an International Criminal Court, entered into force 1 July 2002, U.N. Doc. A/CONF.183/9, Art. 68(3)

²⁰² Ibid

²⁰³ Ibid

²⁰⁴ In particular, victims were not given such participatory roles in criminal proceedings before the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). See Charles P. Trumbull IV, ‘The Victims of Victim Participation in International Criminal Proceedings’ (n 154) 777-778; see also Gerard J. Mekjian & Mathew C. Varughese, ‘Hearing the Victim's Voice: Analysis of Victims' Advocate Participation in the Trial Proceedings of the International Criminal Court’ (2005) 17 Pace Int'l L. Rev. 1, 15

²⁰⁵ M. Cherif Bassiouni, ‘International Recognition of Victims' Rights’ (2006) 6 Hum. Rts. L. Rev. 203, 242; see also REDRESS, *The Participation of Victims in International Criminal Court Proceedings* (n 134) 10

²⁰⁶ “Roy S. Lee, *Victims and Witnesses*, in ICC Elements of Crimes and Rules of Procedure and Evidence 456, 456 (Roy S. Lee ed., 2005)”

²⁰⁷ Victims’ Rights Working Group, *Victim Participation at the International Criminal Court: Summary and Recommendation* (2003) 1. Available at: <http://www.vrwg.org/VRWG_DOC/2003_nov_VRWG_participation.pdf> accessed 1 August 2020

²⁰⁸ Adrian Di Giovanni, ‘The Prospect of ICC Reparations in the Case Concerning Northern Uganda: On a Collision Course with Incoherence?’ (2006) 2 J. INT'L L. & INT'L REL. 25, 26

²⁰⁹ Charles P. Trumbull IV, *The Victims of Victim Participation in International Criminal Proceedings* (n 154) 778

²¹⁰ Raquel Aldana-Pindell, ‘An Emerging Universality of Justiciable Victims' Rights in the Criminal Process to Curtail Impunity for State-Sponsored Crimes’ (2004) 26 Hum. Rts. Q. 607, 657-58

Where the personal interests of victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.²¹¹

Participation in the proceedings should be distinguished from being called to testify as a witness. Some victims of crime may be called as witnesses by one of the parties to provide testimony that goes to the guilt or innocence of the accused, whereas acting as a participating victim is totally voluntary.²¹² Therefore, when participating, victims pursue their own interests, independently of the parties.²¹³

It can also be understood from the above reading, while victims of crime are guaranteed the right to “express their views and concerns”, Article 68(3) does not prescribe the means by which this will take place, rather it leaves the Chambers with considerable discretion to give meaning to the right.²¹⁴ Accordingly, in order for the victim to be able to participate at a given stage of the proceedings, the Chamber shall decide whether the interests of the victim are specifically affected and whether participating in the manner sought is appropriate and compatible with the rights of the defendant and a fair and expeditious trial.²¹⁵ “The [R]ome Statute does not limit participation to any particular stage of proceedings.²¹⁶ The appropriateness of the timing of an intervention by one or more victims or by their legal representative has been determined by Chambers on a case by case basis, taking into consideration the rights of the accused, the need to ensure that the proceedings are effective and expeditious and the interests of the victims concerned”.²¹⁷ At the same time, the provision makes it clear that the Court may require victims

²¹¹ Rome Statute of the International Criminal Court, adopted on 17 July 1998 by the U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, entered into force 1 July 2002, U.N. Doc. A/CONF.183/9, Art. 68(3)

²¹² Fiona McKay, Victim Participation in Proceedings before the International Criminal Court (n 201) 1

²¹³ Ibid

²¹⁴ War Crimes Research Office, ‘Obtaining Victim Status for Purposes of Participation in Proceedings at the International Criminal Court’ (International Criminal Court Legal Analysis and Education Project report, 2013) 10

²¹⁵ REDRESS, The Participation of Victims in International Criminal Court Proceedings (n 139) 41

²¹⁶ Ibid

²¹⁷ Ibid. See in this regard, Decision on victims’ participation, Lubanga (ICC-01/04-01/06-1119), Trial Chamber I, 18 Jan. 2008, Para. 101.

to participate, as necessary and in accordance with the rules of procedure and evidence of the ICC, through legal representatives.²¹⁸

2.8.1 MODALITIES OF VICTIM PARTICIPATION IN PROCEEDINGS BEFORE THE ICC

As seen above, the ICC Statute and Rules fully acknowledge the role of victim in the criminal process, providing for victim participation at each stage of the proceedings– from pre-trial, through trial, to post-trial.²¹⁹ Other than as witnesses, victims can participate in criminal trials in two ways: victims may (1) submit a communication to the Court complaining about an offense; (2) participate in the proceedings, including for the purposes of seeking reparation following the conviction of the accused.²²⁰

I. VICTIM COMPLAINANT

Victims, like other individuals and organizations, may submit communications to the Office of the Prosecutor regarding potential cases falling within the Court’s jurisdiction.²²¹ The prosecutor is then obligated to evaluate the materials received. Based on these complaints, the prosecutor may also decide to seek authorization from the Pre-Trial Chamber for the commencement of an investigation.²²² Although the right to submit a communication is not a specific right of victims, but rather is available to all individuals, it is remarkable that the Court characterizes this possibility as the first instance in which victims can be involved in the proceedings before the Court.²²³

II. VICTIM PARTICIPANT

With regard to direct participation in the criminal proceedings, the ICC Statute provides for three explicit instances when victims may participate.²²⁴ First, pursuant to Article 15(3), victims may make representations to the Pre-Trial Chamber when the prosecutor, acting pursuant to his proprio motu powers, requests the authorization of an investigation from the Pre-Trial Chamber.²²⁵ Second, pursuant to Article 19(3), victims may submit observations to the Court

²¹⁸ Ibid. Elisabeth Baumgartner, ‘Aspects of victim participation in the proceedings of the International Criminal Court’ (2008) *Int’l Rev. of the Red cross* Vol. 90 No. 870, 423

²¹⁹ Brianne Leyh, *Procedural Justice?* (n 18) 235

²²⁰ Ibid

²²¹ See Art. 15 of the Rome Statute. Between 1 November 2018 and 31 October 2019, The Office of the Prosecutor (“OTP”) of the International Criminal Court received 795 communications pursuant to article 15 of the Rome Statute, available at: <<https://www.icc-cpi.int/itemsDocuments/191205-rep-otp-PE.pdf>> accessed 2 September 2020

²²² Valentina Spiga, *The Right to Justice for Victims of Human Rights Crimes* (n 107) 262

²²³ Ibid

²²⁴ Ibid

²²⁵ REDRESS, *The Participation of Victims in International Criminal Court Proceedings* (n 134) 10

when a challenge to the jurisdiction of the Court or the admissibility of a case arises.²²⁶ Finally, pursuant to Article 68(3), victims may express their views and concerns in other proceedings so long as their participation does not infringe upon the rights of the accused and a fair trial.²²⁷

Victims' may participate in the pre-trial stage of the proceedings: by making submissions on the issues of admissibility and to examine the probative value of the evidence which the prosecution and defense intend to rely upon during the confirmation of charges²²⁸; Examining witnesses which should take place after examination by the prosecution²²⁹; Participating by way of oral motion, responses, or submissions in all hearings where victims are allowed to attend, except when it is not allowed by the statute or rules, e.g. inter-partes disclosure²³⁰; making opening and closing statements in the confirmation of charges hearing; and victims may also participate in the pre-trial stage by making objections in the confirmation of charges hearing.²³¹

Furthermore, at trial stage, victims may be permitted to tender and examine evidence if it assists the Court in the determination of the truth.²³² Rule 91(1) of the Rules of Procedure and Evidence enables participating victims to question witnesses, including experts and defendants with leave of the Chamber whenever their personal interest is engaged. Questioning will not be limited to reparation issues. In appropriate circumstances, victims' counsel may also challenge evidence.²³³

III. VICTIM WITNESS

In addition to appearing before the Court as a victim participant an individual may also appear as a victim-witness. In this sense, a victim may be called as a witness by the prosecution, defense or the relevant Chamber (at the request of participating victims for example).²³⁴ In contrast with victim participants, victim-witnesses do not share their views and concerns but instead give evidence, usually by answering questions posed. However, unlike at the ECCC, victims

²²⁶ Ibid; Elisabeth Baumgartner, 'Aspects of victim participation in the proceedings of the International Criminal Court' (2008) Int'l Rev. of the Red cross Vol. 90 No. 870, 413

²²⁷ Ibid

²²⁸ REDRESS, *Victim Participation at the International Crimes Division in Uganda*, January 2017, 15, available at: https://redress.org/wp-content/uploads/2017/12/ICD-Victim-Participation-Round-table_Report.pdf > accessed 3 September 2020

²²⁹ Ibid

²³⁰ Ibid

²³¹ Ibid

²³² Ibid 16.

²³³ Ibid

²³⁴ Rome Statute, Articles 68 and 69

participating before the ICC may hold the dual status of both a victim participant and a victim-witness.²³⁵

2.8.2 THE RIGHT TO REPARATION

In recognition of a victim's right to redress, the ICC Statute provides for the possibility for the Court to grant victims reparations.²³⁶ Article 75 of the ICC Statute states that "the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims (...)." Therefore, at the end of a trial, the Trial Chamber may order a convicted person to pay compensation to the victims of the crimes of which the person was found guilty or the Court may order such reparations to be paid through the Trust Fund for Victims.²³⁷ Reparations may include monetary compensation, return of property, rehabilitation or symbolic measures such as apologies or memorials.²³⁸

Moreover, a specific victim participation scheme has been established with regard to the reparation procedure in Article 75 of the Statute.²³⁹ The inclusion of a possibility of obtaining reparation for victims, similar to "adhesive procedures" known in civil law systems,²⁴⁰ is considered as revolutionary in international criminal law.²⁴¹ Although integrated in the course of the regular procedure, it forms a kind of extra "civil action" procedure that is reflected in the separate procedural regime.²⁴² At the reparations stage, the restrictions on questioning witnesses are lifted and victims are granted a more impactful participatory role than in any of the other stages of the proceedings.²⁴³ The need for this is evident, since reparations are awarded almost entirely based on victims' ability to demonstrate the need for compensation and rehabilitation arising out of the criminal acts.²⁴⁴

²³⁵ *The Prosecutor v. Katanga/ Ngudjolo*, No. ICC-01/04-01/07-632, 23 June 2008, para. 18-19; *The Prosecutor v. Lubanga*, No. ICC-01/04-01/06-1119, 18 January 2008, para. 133-134; *The Prosecutor v. Katanga/ Ngudjolo*, No. ICC-01/04-01/07-1788-tENG, 22 January 2010, par. 110.

²³⁶ Brianne Leyh, *Procedural Justice?* (n 18) 239

²³⁷ See <<https://www.icc-cpi.int/Pages/ReparationCompensation.aspx>> accessed 3 September 2020

²³⁸ *Ibid*

²³⁹ Isha Jain, 'Theorizing the International Criminal Court's Model of Justice: The Victims' Court?' (2019) *Journal of Victimology and Victim Justice* 2(1), 8

²⁴⁰ Robert Cryer et al., *An Introduction to International Criminal Law and Procedure*, (1st edn, Cambridge University Press, 2007) 361

²⁴¹ Carla Ferstman, 'The reparation regime of the International Criminal Court: practical considerations' (2002) *Leiden Journal of International Law*, Vol. 3, 667

²⁴² Elisabeth Baumgartner, 'Aspects of victim participation in the proceedings of the International Criminal Court' (2008) *Int'l Rev. of the Red cross* Vol. 90 No. 870, 413-14

²⁴³ Rule 91, *Rules of Procedure and Evidence*.

²⁴⁴ Isha Jain, *Theorizing the International Criminal Court's Model of Justice: The Victims' Court?* (n 239)

CHAPTER THREE

VICTIMS' RIGHT TO PARTICIPATION IN CRIMINAL PROCEEDINGS IN ETHIOPIA: COMPARATIVE LESSONS FROM GERMANY AND THE UNITED STATES OF AMERICA

INTRODUCTION

This chapter provides a brief comparative analysis of victims' right to participate in the various phases of criminal proceedings in Germany, the United States, and Ethiopia. In so doing, the chapter commences by providing a brief introduction to the criminal procedure structures in Ethiopia and selected jurisdictions. Subsequently, comparative analysis as regards the participatory role of victims' in the pretrial, trial, and post-trial stages of proceedings in the selected jurisdictions and Ethiopia would follow. Finally, the last section addresses the issue: what are the lessons that Ethiopia should learn from the laws of the United States of America and Germany concerning victims' right to participate in the various phases of criminal proceedings?

3.1 INTRODUCTION TO THE CRIMINAL PROCEDURE STRUCTURES IN GERMANY, THE UNITED STATES OF AMERICA AND ETHIOPIA

Before proceeding to discuss what participatory role crime victims have been afforded in various phases of the criminal proceeding in Ethiopia and the selected criminal justice systems, first it is better to have a glimpse overview of the criminal procedure structures in Ethiopia and the selected jurisdictions. Accordingly, hereunder, a brief introduction to the criminal procedure structures in the *US*, Germany, and Ethiopia is provided.

To begin, the United States of America is a federal republic located in North America. British common law forms the basis of the *US* legal system.²⁴⁵ Although the principles of common law remain relevant in the *US*, much of the law has now been codified in the statutes. The *US* criminal procedure law is based on the adversarial system²⁴⁶, which grants parties broad autonomy to vindicate their rights and interests before an impartial court.²⁴⁷ As a result, the adversary system has informed the constitutional, procedural, and ethical rights and obligations of the system's three primary participants: courts, prosecutors, and defendants. But because an adversary system relies on the parties to assert their interests before the court, it necessarily

²⁴⁵ James B. Jacobs, 'Criminal Justice in the United States: A Primer' (2007) *American Studies Journal*, No. 49, <<http://www.asjournal.org/49-2007/criminal-justice-in-the-united-states/>> accessed 24 October 2020

²⁴⁶ Amalia D. Kessler, 'Our Inquisitorial Tradition: Equity Procedure, Due Process, and the Search for an Alternative to the Adversarial' (2005) 90 *Cornell L. Rev.* 1181, 1193; Judith Resnik, 'Managerial Judges' (1982) 96 *Harv. L. Rev.* 374, 382

²⁴⁷ Erin C. Blondel, 'Victims' Rights in an Adversary System' (n 140) 239

excludes outsiders like crime victims.²⁴⁸ However, as will be discussed below, since the 1970s victims had begun to be reintegrated into the *US* criminal justice system.

Coming to Germany, one of the crucial distinctions often made about the German system as a member of the family of Continental legal systems is that its procedure is inquisitorial as opposed to the common law adversarial model.²⁴⁹ The major feature that justifies calling the system in Germany an inquisitorial system, is the rule that the aim of any investigation and trial is the ascertainment of the material truth, not the truth based on facts adduced by the prosecution and defense.²⁵⁰ The court is not bound by any declarations of the parties, and investigates the facts of its own motion.²⁵¹ German procedure is not party-driven, and for this reason, trials in Germany are not a contest between two adversaries as in the *US* criminal justice system. Moreover, the principle applies to the prosecution in the form of section 160(2) of the German Criminal procedure code, which expressly states that the prosecution must investigate equally the incriminating and exculpatory facts of a case, a provision which has led some to call the German prosecution service the ‘most objective authority in the world’.²⁵² Furthermore, the German inquisitorial system is described as “vertically structured,” meaning that the judge interacts with the participants, in comparison to the adversarial system, which they classify as a “horizontal courtroom action” between prosecution and defense.²⁵³ Due to the tight judicial control over the proceedings, the risk of the prosecution and the victim participant aligning and endangering the defendants’ right to a fair trial seems less severe in Germany than in adversarial systems, such as the *US*.²⁵⁴ Due to the German trial structure it may, therefore, be easier to accommodate the victim as a participant without offsetting the balance of the trial.

²⁴⁸ *Ibid*

²⁴⁹ Michael Bohlander, *Principles of German Criminal Procedure* (1st edn, Hart Publishing 2012) 6; Joachim Hermann, ‘The Federal Republic of Germany’ in George F. Cole, Stanislaw Frankowski and Marc G Gertz (eds), *Major Criminal Justice Systems: a Comparative Survey* (Sage Publications, 2 ed, 1987) 106, 123

²⁵⁰ Michael Bohlander, *Principles of German Criminal Procedure* (n 249) 27-28

²⁵¹ See sections 155(2) and 244(2) of the German Code of Criminal Procedure (*Strafprozeßordnung – StPO*) as published on 7 April 1987 (*Federal Law Gazette I*, p. 1074, 1319), as last amended by Article 3 of the Act of 11 July 2019 (*Federal Law Gazette I*, p. 1066)

²⁵² *Ibid*. Richard S. Frase and Thomas Weigend, ‘German Criminal Justice as a Guide to American Law Reform: Similar Problems, Better Solutions?’ (1995) 18 *B.C. Int’l & Comp. L. Rev.* 317, 322; See section 160(1) of the German Code of Criminal Procedure

²⁵³ Helmut Kury & Michael Kilchling, ‘Accessory Prosecution in Germany: Legislation and Implementation’ in Edna Erez, Michael Kilchling & Jo-Anne Wemmers (eds), *Therapeutic Jurisprudence and Victim Participation in Justice: International Perspectives* (CAP 2011) 41, 48

²⁵⁴ Kerstin Braun, *Giving Victims a Voice* (n 124) 1895

In comparison to the criminal procedure structures adopted in the US and Germany, the criminal procedure structure in Ethiopia has roots in no single system. Ethiopia is a civil law country²⁵⁵ but its legal system has also common law elements, particularly its procedural laws.²⁵⁶ In Ethiopia, modern criminal justice has appeared with the enactment of the 1961, CPC. Prior to the 1961 code of procedure there was no comprehensive body of legislation in the field.

The 1961 CPC is a product of the codification campaign of the mid-20th century and is currently with the coming of a new criminal procedure and evidence code, is in its dying minutes. For lack of annotations and commentaries, however, the source of the CPC remained vague (is not known).²⁵⁷ However, “some sources revealed that the then codification commission had rejected a draft criminal procedure code modeled along inquisitorial lines and opted for an adversarial criminal procedure”.²⁵⁸ Admittedly, the Code’s sporadic relationship to Malayan, and therefore, ultimately, England law, derives from the influence of Sir Charles Mathew’s drafts. For this reason, the overall flavor of the code is adversary²⁵⁹, but the adversary system often contains fragments of —inquisitorial procedure retained from the initial drafts, prepared by the Swiss professor Jean Graven.²⁶⁰ This gives the Ethiopian system a hybrid flavor.²⁶¹ As a consequence, unlike the case in the *US* and Germany, one cannot tell the approach Ethiopia followed regarding victims without closely scrutinizing the provisions of the Criminal Procedure Code.

While the above provided a brief introduction to the Ethiopian and selected jurisdictions criminal procedure structures, the section below traces and clarifies the participatory roles of victims in criminal proceedings of these jurisdictions.

²⁵⁵ See Robert Sedler, ‘The Development of Legal Systems: The Ethiopian Experience’ (1967) *IOWA Law Review*, Vol. 53, 576; Wondwossen Demissie Kassa, *Ethiopian Criminal Procedure: A textbook* (n 26) 15-16; Alemu Meheretu, ‘Introducing Plea bargaining in Ethiopia: Concerns and Prospects’ (DPhil thesis, University of Warwick 2014) 66

²⁵⁶ *Ibid*

²⁵⁷ Simeneh Kiros Assefa, *Criminal Procedure Law: Principles, Rules and Practices* (n 25) 39

²⁵⁸ Alemu Meheretu, *Introducing Plea bargaining in Ethiopia: Concerns and Prospects* (n 255) 68

²⁵⁹ *Ibid* 68-70; As Alemu Miheretu writes in his doctoral thesis, ‘the structure of the prosecution and the trial as well as guilty pleas lends support to the adversarial feature of the code’. Additionally, the author pointed out that: ‘less strict rules of evidence which permit the admissibility of hearsay evidence and out of court testimony, a semi inquisitorial brand of investigative stage (unilateral investigation), victim participation in criminal proceedings as a civil party, broad appeal rights etc.’ are some among the inquisitorial features of the Ethiopian criminal procedure code. See Gashaw Sisay Zenebe ‘Admissibility of Hearsay Evidence in Criminal Trials: An Appraisal of the Ethiopian Legal Framework’ (2016) *Haramaya Law Review*, Vol. 5:1,127

²⁶⁰ *Ibid*

²⁶¹ *Ibid*

3.2 VICTIMS' RIGHT TO PARTICIPATION IN CRIMINAL PROCEEDINGS IN GERMANY, THE USA AND ETHIOPIA: COMPARATIVE ANALYSIS

This section is about a brief comparison of the victim's right to participation in criminal proceedings in Germany, the *US*, and Ethiopia. The participatory role of victims in the pretrial, trial, and post-trial stages of criminal proceedings represent some of the areas of marked contrasts and similarities. The reason for using the participatory role of victims in the three stages of the criminal proceeding -as comparators - emanate from different victim's interests in the decision-making processes at each phase of the criminal process.

Specifically, the pretrial stage follows the opening of an investigation and is before the beginning of the public trial of the accused. It includes the investigation, arrest, and charging of the accused, decisions on pretrial detention or bail, and pretrial proceedings concerning jurisdiction or other matters. This stage sets the scene for any later prosecution and may involve some other decisions that impact directly on victims' interests. Thus, victims have an interest in partaking in these decision-making processes.

In the same vein, crime victims' have an interest in the criminal trial (when the guilt or innocence of the accused and the appropriate sentence is determined) and may therefore be particularly affected if proceedings end before they have had the opportunity to present views and concerns. Too, in the post-trial stage of the proceeding, the victims may wish to challenge certain pre-trial or trial decisions affecting their interest and the actual verdict or sentence the offender has received. In addition, where convicted offenders are afforded the possibility to serve the remainder of their custodial sentence in the community, victims' safety interests may be significantly infringed upon. Victims may therefore wish to have an input in the release decision or the conditions imposed on the release.

As pointed out above, therefore, based on the three stages of criminal proceedings, pertinent Ethiopian laws will be analyzed, in comparison to Germany and the *US* laws concerning victim participation.

3.2.1 VICTIM PARTICIPATION IN THE PRETRIAL STAGE

A. PARTICIPATION IN CRIME REPORTING AND INVESTIGATION

In Germany, the victim takes on significance in a criminal proceeding primarily as the initiator of the criminal proceeding. According to section 158 (1) of the German criminal procedure code (hereinafter, StPO), 'any person can file a report of a criminal offence with the public

prosecution office, authorities and officials in the police force, or the local courts orally or in writing'. In most cases, criminal prosecution is initiated by the filing of a report by the victim.²⁶² The public prosecution office, which is the lead investigating office under German criminal procedure law, is then obliged to initiate an investigation proceeding and inquire into the facts to the extent there are sufficient actual indications that a prosecutable offence was committed. This principle, which is set forth in section 152 (2) and 160 (1) of the StPO and which obligates the public prosecution office to take action, is known as the principle of legality.²⁶³ In the same manner, in the *US*, pre-arrest investigation usually starts when police, based on his observations or information given by a witness or the victim, think that a crime has been committed.²⁶⁴ When a crime occurs, the police have to launch the investigation and have to gather information necessary to enlighten the crime.²⁶⁵ This pre-arrest investigation contains such as taking the suspect in custody, witness and victim interviews, etc. Thus, the victim in the *US* can participate in the initiation of crime investigation by reporting the commission of the alleged offense to the police and later during the investigation phase as a witness.

In Ethiopia, pursuant to Article 11(1) of the CPC, crime victims like any other person, have the statutory right to report to the police or public prosecutor the commissions of non-complaint crimes against them to making the justice machinery work in respect of the alleged offenses.²⁶⁶ Once the criminal justice is triggered, it is often followed by investigation to substantiate the case with evidence to prove guilt.²⁶⁷ At this point, it should be noted that in case of accusation offences, in all analyzed jurisdictions reporting by victims of crimes is a sufficient, but not a necessary, condition for the investigating officers to commence investigations. As a result, even without the reporting of crime victims, the investigating officers have the responsibility to carry

²⁶² Susanne Walther, 'Victims' Rights in the German Court System' (2006) Federal Sentencing Reporter , Vol. 19, No. 2, 113-114; Ernestine Hoegen and Marion Brienen, Victims of Crime in 22 European Criminal Justice Systems (n 78) 362

²⁶³ Markus Löffelmann, 'The Victim in Criminal Proceedings: A Systematic portrayal of Victim Protection Under German Criminal Procedure Law' (2006) 131ST Int'l Training Course Visiting Experts' Paper Resource Material Serious No.70, 33

²⁶⁴ İlyas ŞAHİN, 'A Brief Summary Of Criminal Procedure Process At The United States Judicial System' <<https://dergipark.org.tr/tr/download/article-file/155591>> accessed 24 October 2020

²⁶⁵ Ibid

²⁶⁶ However, as per Article 11(2) of the CPC, reporting the commission of an offense may become exceptionally a duty concerning certain crimes such as crime against the defense force and breach of military obligations. Article 64 of the draft code of criminal procedure affords the same right for any individual (including victims) to report the commission of the crime with a view to set in motion the machinery of justice toward criminal investigation. See also Article 16 and 17 of the CPC

²⁶⁷ See Articles 14 *cum* 23 of the CPC

out investigations where knowledge or reasonable suspicion of the commission of offences exists.²⁶⁸

However, upon complaint crimes, in the German criminal justice system can only be prosecuted following a formal request by the crime victim for the punishment of the offender.²⁶⁹ The filing of a criminal complaint is a compulsory prerequisite for criminal prosecution as to complainant offenses such as defamation, violations of privacy and common assault.²⁷⁰ Thus, victims have the final say in the commencement of investigation regarding upon complaint offenses in Germany. However, in the US, no statute provided victims of crimes with the right to determine whether criminal investigation starts as regards offenses punishable upon complaint.

In Ethiopia, some offenses are purely private or personal character, in respect of which complaint of the victim or those deriving rights from him is necessary for the initiation of the criminal proceedings. Without such complaint no investigation may commence nor may the offender be tried and convicted for such offense.²⁷¹ Accordingly, a complaint is not mere information communicated to the police or the public prosecutor.²⁷² It is an affirmative authorization and a precondition enabling the police and the prosecutor to conduct an investigation and to bring a charge against the offender and to try the offense and to pronounce judgment for the court.²⁷³

Therefore, similar to victims in Germany, when the offense is punishable upon complaint, it is clear from the discussion made above that victims are given the power of a “veto” in Ethiopia.²⁷⁴ As such, they can determine whether criminal investigation starts as regards crimes punishable upon complaint; as it is up to the victim to complain or not. Along with, if the complainant declares that he no longer wants the offender to be prosecuted, i.e. if the victim withdraws his complaint, the public prosecutor is obliged to withdraw the charge.²⁷⁵ At this time, it should be noted that the difference between complaint and non-complaint offense is only with respect to

²⁶⁸ See Art. 22 of the CPC; Worku Yaze, Status and Role of Victims of Crime in the Ethiopian Criminal Justice System (n 7) 130

²⁶⁹ See section 77b (1) of the German criminal code; section 158 (2) of the German Code of Criminal Procedure

²⁷⁰ Markus Löffelmann, The Victim in Criminal Proceedings (n 263) 33

²⁷¹ Specifically, as provided under article 212 of the FDRE Criminal Code, “*where the law (...) provides that a crime is punishable upon complaint, no charge shall be instituted against the criminal unless the injured party or his legal representative institutes a complaint*”. (Emphasis Added) Simeneh Kiros Assefa, Criminal Procedure Law: Principles, Rules and Practices (n 25) 92-95

²⁷² Ibid

²⁷³ Ibid

²⁷⁴ See Art. 13 of the CPC

²⁷⁵ See Art 68 of the draft criminal procedure code; Art 221 of the 1957 penal Code; Art 70(1) of the FDRE Criminal Code. See also Alemu Meheretu, Introducing Plea bargaining in Ethiopia: Concerns and Prospects (n 255) 135

setting justice in motion, once complaint is made, the procedure regarding the investigation, prosecution, and trial of the offence is the same in both categories of offences with the exception of private prosecution which could be invoked in complaint crimes.²⁷⁶

From the foregoing, therefore, it is obvious victims have a place to participate in relation to the initiation of the criminal proceedings. Particularly, victims in Germany and Ethiopia have the same statutory right to report and complain, not only as ordinary persons but also as victims. But, an important question worth addressing here is: what participatory role do victims have during the investigation phase? In this regard, unfortunately, in the section governing the stage of “investigation,” the StPO is silent on the topic of victims’ rights.²⁷⁷ Also, once substantial suspicion is assumed and the police and prosecutor enter into formal investigations, the rights of the victim are limited.²⁷⁸ Similar to Germany, in the *US*, crime victims are not given a formal role in shaping the investigation.

Coming to the stage of crime investigation, in Ethiopia, investigating police officers are under duty to seize the matter and to conduct investigation once they have received an accusation or complaint.²⁷⁹ The police investigation process involves the arrest and interrogation of the suspect, search-and-seizures to obtain any objects that may be used as evidence for the case, as well as the calling of witnesses.²⁸⁰ But, concerning victim participation during investigation in Ethiopia, there is no law that requires investigating officers to receive the inputs of crime victims other than the ones which the latter may provide as witnesses.²⁸¹ In short, as is the case in Germany and the *US*, victims have not been accorded the right to participate during the investigation phase, in Ethiopia.²⁸²

²⁷⁶ Simenah Kiros Assefa, *Criminal Procedure Law: Principles, Rules and Practices* (n 25) 94

²⁷⁷ Susanne Walther, *Victims' Rights in the German Court System* (n 262) 114

²⁷⁸ *Ibid*

²⁷⁹ See Article 22 and 23 of the CPC

²⁸⁰ See Articles 25-34 of the CPC

²⁸¹ *Ibid* Arts 24 and 30; Worku Yaze, *Status and Role of Victims of Crime in the Ethiopian Criminal Justice System* (n 7) 131-32

²⁸² While the Criminal Justice Policy of the Federal Democratic Republic of Ethiopia recognizes victims’ right to participate in the crime investigation, prosecution and the adjudication process as well as the right to be informed of relevant information concerning the case, however, the policy is not implemented. See section 6.2.1 of the Criminal Justice Policy of the Federal Democratic Republic of Ethiopia, 2011, Ministry of Justice, Addis Ababa, at. 50

B. VICTIM PARTICIPATION: DECISIONS NOT TO INVESTIGATE AND PROSECUTE

Criminal justice authorities in German are legally obliged to inquire if there is ample evidence to open a formal inquiry into a matter which has come to their attention.²⁸³ In other words, if a credible allegation of a crime is brought to their attention, the authorities cannot simply dismiss the case.²⁸⁴ However, after the relevant inquiries, the criminal justice authorities can refuse to open a formal investigation, for example, if there are not adequate formal grounds for initiating an investigation.²⁸⁵ The question then arises as to whether and how the individual victim can challenge said non-investigation decisions and thereby express their views and concerns regarding the decision to the concerned authorities, including judges.

In such a case, while victims in German have no direct input into this decision-making process, they can request a review of the decision by complaining to a superior prosecutor.²⁸⁶ ‘In cases where the non-investigation decision is not reversed by the prosecution authority, it seems settled case-law that victims can initiate judicial proceedings to compel investigations’.²⁸⁷ These proceedings are not explicitly enshrined in German criminal procedure. Rather, the legislation on proceedings to compel prosecutions, discussed in detail below, is applied analogously in this context.²⁸⁸ In case of a successful application, the courts will direct the prosecution to commence the investigation and carry it out until there is enough information to decide on whether the matter should be prosecuted.²⁸⁹

Although under common law, the police have no general duty to investigate all offenses which come to their attention,²⁹⁰ in the US, on the federal level, authorities are under the obligation to carry out reasonable investigations or make a reasonable decision why the investigation will not be carried out.²⁹¹ Thus, a complaint against the decision not to investigate may be directed to the Department of Justice. This process, however, is not a review of the decision as such but focuses on possible misconduct of the acting police officer arising in the context of refusing the

²⁸³ Kerstin Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 93

²⁸⁴ See ss 152(2), 170(1) of the German Code of Criminal Procedure

²⁸⁵ Ibid

²⁸⁶ Ibid; s 172 (2)

²⁸⁷ Kerstin Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 93

²⁸⁸ See s 172 the German Code of Criminal Procedure

²⁸⁹ Ibid

²⁹⁰ Kerstin Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 90-91

²⁹¹ Oxford Pro Bono Publico, Victim Participation in Criminal Procedures: A Report to Assist Redress (2015) 6 available at: <http://docplayer.net/56505227-Oxford-pro-bono-publico-victim-participation-in-criminal-procedures-a-report-to-assist-redress.html> accessed 26 October 2020

investigation.²⁹² As such, also in the US, no specific avenue designed for victims to complain against non-investigation decisions or to be heard in the process is in place.²⁹³

Closely linked to the decision not to open a formal investigation is the decision not to lay charges at the end of an investigation into an alleged offence. In Germany, charges must be laid where sufficient evidence exists that the accused is likely to be found guilty at trial. In this context, the prosecutor has no discretion.²⁹⁴ In Germany, victims are afforded certain rights to complain against the non-prosecution decision which differ depending on whether the decision was based on insufficient suspicion against the accused or on other discretionary reasons.

Accordingly, in Germany, if after the conclusion of its investigations the public prosecution office concludes that no punishable act took place, that it cannot be proven that the accused committed such an act, or that the accused is not guilty, it must inform the applicant thereof, indicating the reasons therefor, and inform the applicant, if the person is also the victim of the crime, of the possibility of contesting this decision.²⁹⁵ The victim then has the option of filing a complaint against the decision of the public prosecution office with the senior prosecutor within two weeks of the original decision.²⁹⁶ Where the chief public prosecutor dismisses the complaint because they take the same view as the original prosecutor, victims have the right to initiate judicial proceedings (before the Higher Regional Court) to compel public charges within one month of the dismissal.²⁹⁷ Exceptions are provided regarding this option; for example, where the offence is misdemeanor, the offender's guilt is considered to be of a minor nature²⁹⁸ and there is no public interest in the prosecution (the victim has the possibility of proceeding through a private lawsuit).²⁹⁹ Therefore, the above discussed right to appeal is, however, very limited: basically, it is only viable where the reason for non-prosecution was lack of so-called substantial

²⁹² Ibid 7

²⁹³ Kerstin Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 92, 97

²⁹⁴ Ibid; See s 160 of the German Code of Criminal Procedure

²⁹⁵ See s 171 of the German Code of Criminal Procedure; Markus Löffelmann, The Victim in Criminal Proceedings (n 263) 33

²⁹⁶ Ibid s 172(2)

²⁹⁷ Ibid s 172 (2) through (4); Ante Novokmet, 'The Right of a Victim to a Review of a Decision not to Prosecute as Set out in Article 11 of Directive 2012/29/EU and an Assessment of its Transposition in Germany, Italy, France and Croatia' (2016) Utrecht Law Review Vol. 12, Issue 1, 92-93

²⁹⁸ Ibid s 153 and 154

²⁹⁹ Ibid s 374, in case of specific offences including trespass, defamation, violation of the privacy of correspondence, bodily injury, stalking or threat, where the public prosecutor feels that prosecution is not in the public interest, it will advise the victim that the offence can only be pursued via means of private prosecution.

suspicion (no likelihood that the defendant will be convicted in court, either for lack of evidence or legal obstacles).³⁰⁰

The above may suggest that victims in Germany have ample internal as well as judicial avenues to specifically seek a review of the decision not to investigate and prosecute. These avenues, therefore, provide victims in Germany the opportunity to express their views and concerns, on pre-trial decisions affecting their interest, both to the senior prosecutors and the court.

In contrast to Germany, victim participation in the non-prosecution decision is much more limited in the US. In the US, on the federal level, the decision of whether or not to charge a suspect is in the prosecutorial discretion of the public prosecutor.³⁰¹ Relevant factors in the decision-making process include the seriousness of the crime, what deterring effect prosecution may have on the individual and society as well as the offender's past crimes.³⁰²

The Federal Crime Victims' Rights Act of 2004 (hereinafter, CVRA) sets out that the victim has a 'reasonable right to confer with the attorney for the Government in the case'.³⁰³ Whether this gives victims the right to be consulted before the charging decision is made, however, is unclear.³⁰⁴ However, some courts have interpreted the CVRA in the context of its obligation to treat victims with fairness and respect to include an obligation of the government to consult with the victim before dismissing charges.³⁰⁵ While this may also extend to the non-prosecution decision, victims' rights in this context appear somewhat opaque.

In Ethiopia, when the public prosecutor decides not to institute a criminal charge for any one of the reasons listed under Article 42 (1) of the CPC, he is required by Article 43 of the Code to make the decision in writing, giving clear reasons for his refusal to institute the charge.³⁰⁶ More specifically, however, if the prosecutor decides not to charge a suspect of an offence punishable upon complaint for lack of evidence, he is required by Article 44(1) of the Code to authorize

³⁰⁰ Ibid s 170 (2); See Susanne Walther, *Victims' Rights in the German Court System* (n 262) 114

³⁰¹ Ibid Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 109; Pizzi, W., 'A Perfect Storm: Prosecutorial Discretion in the United States' In E. Luna & M. Wade (Eds.), *The Prosecutor in Transnational Perspective* (Oxford University Press 2012) 189

³⁰² D Scott Broyles, *Criminal Law in the USA* (2nd edn, Wolters Kluwer Law & Business 2015) 129

³⁰³ 18 U.S. Code s 3771 (a) (5)

³⁰⁴ Charles Doyle, *Crime Victims' Rights Act* (1st edn, Nova Science Publisher, Inc. 2008) 25

³⁰⁵ Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 109-10

³⁰⁶ Similarly, when the prosecutor closes a police investigation file in accordance with Article 39(1) of the Code, he must send copy of his decision to the private complainant, the investigating police officer, and the Advocate General. See Wondwossen Demissie Kassa, *Ethiopian Criminal Procedure: A textbook* (n 26) 256-257

persons listed under Article 47 of the Code to conduct a private prosecution. As a result, the authorized person has the right to institute a private prosecution in accordance with the CPC.³⁰⁷

In contrast, if the prosecutor refuses to charge a suspect for a crime which is not punishable upon complaint, the victim can challenge the prosecutor's decision. Article 18 of the Federal Attorney General Proclamation (Proclamation No.943/2016) allows a victim not satisfied with the decision of the prosecutor to petition to the superior public prosecutor.³⁰⁸ Thus, the victim of crime who is aggrieved by the decision of the prosecutor not to institute a criminal proceeding has the right to challenge the decision before the superior prosecutor. Importantly, Article 18 (3) of the Proclamation empowers the superior prosecutor to “change, modify, revoke or approve the decision of the subordinate prosecutor”.³⁰⁹ From the foregoing, unlike Germany, it is clear that currently the only available way to challenge the prosecutor's decision is by petition to the superior public prosecutor.

C. VICTIM PARTICIPATION IN A PLEA AGREEMENT

Plea agreements are mutually beneficial to the prosecuting agency and the defendants. On the one hand, it enables the prosecutor to secure convictions without the time, cost, or risk of trial. On the other, it offers a defendant conviction but on less serious charges, and/or with the expectation of a less severe sentence than if s/he was convicted following a criminal trial, among others.³¹⁰ Similarly, as noted by Cassell, ‘the victim's interests in participating in the plea bargaining process are many. The fact, that they are consulted and listened to provide them with respect and an acknowledgment that they are the harmed individual. This in turn may contribute to the psychological healing of the victim’.³¹¹

In the *US*, victims are afforded a statutory right to provide some input into plea agreements for federal offenses under the CVRA. The Act sets out that victims have the right to be reasonably heard regarding decisions involving pleas (CRVA (US) s 3771(a)(4)) and that they have a

³⁰⁷ See Articles 150-153 of the CPC

³⁰⁸ Federal Attorney General Establishment Proclamation, Proclamation No. 943/2016, 22nd Year No. 62 Addis Ababa, 2nd May, 2016; See also Articles 157 and 161 of the Draft Code of Criminal Procedure and Evidence Law

³⁰⁹ See Article 161 of the draft Code of Criminal Procedure and Evidence Law. It embraces the same principle like Federal Attorney General Establishment Proclamation, Proclamation No. 943/2016.

³¹⁰ Charles Doyle, *Crime Victims' Rights Act: A Summary and Legal Analysis of 18 USC 3771*. Washington, DC: Congressional Research Service, (2015) 28-29, Available at: <https://fas.org/sgp/crs/misc/RL33679.pdf>. accessed 10 September 2020

³¹¹ Paul G. Cassell, ‘Crime Victims' Rights’ (2017) *Academy for Justice: A Report on Scholarship and Criminal Justice Reform*, University of Utah College of Law Research Paper No. 224, 237

reasonable right to confer with the government attorney in federal cases (CRVA (US) s 3771(a)(5)). This usually occurs through submissions to the public prosecutor before the finalization of a plea agreement and the approval of the trial judge.³¹² The prosecutor, however, is not obligated to comply with the victims' views and wishes. Also, victims may address the court before the finalization of a plea agreement.³¹³ Victims who believe their rights during plea negotiations have not been complied with by the trial court are able to file a mandamus writ in the appellate court with the possible consequence of voiding a sentence or a plea.³¹⁴ This right does not mean, however, that victims are able to veto the terms of the plea agreement.³¹⁵

It is less clear whether the CVRA affords victims the right to participate in plea negotiations between defense and prosecution which occur prior to the filing of charges, or only after charges have been laid. A memorandum issued by the US Justice Department in 2010 states that the rights enshrined in the CVRA do not apply to victims before the filing of formal charges against an accused.³¹⁶ This would mean that victims have no right to be heard in the context of plea bargaining if this takes place before the prosecution makes a charging decision. As a consequence, many victims would be unable to participate in proceedings. For this reason, scholars, as well as some US courts, have taken the view that the CVRA does afford victims' rights prior to the formal charging decision based on the Act's language and legislative history.³¹⁷ The Act has subsequently been amended and extended to the pre-trial phase but only in relation to the provision of information on certain decisions.³¹⁸

³¹² Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 117

³¹³ Pugach, D., & Tamir, M. 'Nudging the Criminal Justice System into Listening to Crime Victims in Plea Agreements' (2016) *Hastings Women's Law Journal*, 28(1), 49

³¹⁴ *Ibid* 45; See also 18 U.S.C. § 3771, (d) (1) and (3)

³¹⁵ Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 117; See also *Reed v. Becca*, 333 S.C. 676, 511 S.E.2d 396 (Ct.App.1999) (US)

³¹⁶ United States Department of Justice (2010) *The Availability of Crime Victims' Rights Under the Crime Victims' Rights Act of 2004*. Available at: <<https://www.justice.gov/sites/default/files/olc/opinions/2010/12/31/availability-crime-victims-rights.pdf>> accessed 27 August 2020, 9–10

³¹⁷ Cassell, P., Mitchell, N., & Edwards, B. 'Crime Victims' Rights during Criminal Investigations? Applying the Crime Victims' Rights Act Before Criminal Charges Are Filed' (2014) *Journal of Criminal Law & Criminology*, 104, 62; Paul G. Cassell, *Crime Victims' Rights* (n 311) 237

³¹⁸ CRVA (US) s 3771(9) now states that the victim has the 'right to be informed in a timely manner of any plea bargain or deferred prosecution agreement'. See Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 118

On the other hand, while plea bargaining had no formal basis in German criminal procedure until 2009, the practice has been frequently applied since the 1980s.³¹⁹ As many victims have not been afforded participation rights in relation to these agreements, their participation possibilities in plea negotiations overall remains very limited.³²⁰ However, under the German code of criminal procedure, victims who act as Private Accessory Prosecutors (herein after, PAP) and thus hold special legal status in proceedings, have the right to comment on a proposed bargain³²¹ if such a deal is discussed during the main trial. But, they do not exercise any control over the final decision. Victims without this special role do not have any right to be involved in this process at all.

In Ethiopia, in contrast to the *US* and Germany, neither the CPC nor any other law in force entitles victims the right to express their views and concerns and provide some input into plea agreements since there is no legal basis to conduct plea negotiation in the present Ethiopian criminal justice system. As will be discussed in detail below, however, the draft code of criminal procedure under article 179 introduces the plea bargaining system and provides an opportunity to participate during plea negotiation, for victims’.

D. VICTIM PARTICIPATION IN BAIL PROCEEDINGS

Depending on the particulars of national law, once a person is charged a judge may decide whether the person shall be committed into custody and whether the pre-trial release is possible under certain conditions.³²² In the *US*, as per the CVRA applicable to federal offenses, victims have been afforded the right to be ‘reasonably heard at any public proceeding in the district court involving release’³²³, which concerns bail proceedings. Whether victims’ have the right to be

³¹⁹ See s 257c of the German Code of Criminal Procedure; Alemu Meheretu Negash, ‘Rethinking Plea Bargaining Policy: The Case of Ethiopia’ (2017) *Mizan Law Review*, Vol. 11, No.2, 346; Weigend, T. Germany. In Katalin Ligeti (Ed.), *Towards a Prosecutor for the European Union: A Comparative Analysis* (Oxford: Hart Publishing 2013) 257-58

³²⁰ Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 115-116

³²¹ Thomas Weigend, ‘The decay of the Inquisitorial Ideal: plea bargaining evades German Criminal procedure’ in John Jackson et al (eds), *Crime, Procedure and Evidence in a Comparative and international context* (Hart publishing, 2008) 47; The German Code of Criminal Procedure, s 257c (3) reads as follow:

(3) *“The court shall announce what the content of the negotiated agreement could be. It may, on free evaluation of all the circumstances of the case and general sentencing considerations, also indicate an upper and lower sentence limit. **The parties shall be given the opportunity to make submissions.** The negotiated agreement shall come into existence if the defendant and the public prosecution office agree to the court’s proposal.”* (Emphasis added)

³²² Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 113; Oxford Pro Bono Publico, *Victim Participation in Criminal Procedures* (n 291) 32-33

³²³ 18 U.S. Code s 3771 (a) (4)

heard verbally or only via a written submission is disputed in practice. Some courts have interpreted the right to mean that victims can make a verbal statement,³²⁴ while others limit it to written submissions.³²⁵ Furthermore, the legislation is unclear on the content of the victims' communication and relatedly what victims may comment on.³²⁶ It appears that victims can provide information on whether the release should be granted and if so, what the terms of release should be.³²⁷ Most importantly, in the context of adversarial systems, it appears that only victims in the US have an enforceable right to be heard concerning early-release proceedings.³²⁸ However, unlike American victims, the victims in Ethiopia and Germany have no right to be heard in any proceedings where the release of the accused becomes a concern, including bail hearings.

3.2.2 VICTIM PARTICIPATION IN THE TRIAL AND SENTENCING STAGES

A. PARTICIPATION AS A PRIVATE ACCESSORY PROSECUTOR (PAP)

In Germany, certain victims can present views and concerns by joining the prosecution as a Private Accessory Prosecutor.³²⁹ Victims who participate as a PAP during the trial are not part of the public prosecution and can therefore exercise their rights completely independently. A victim, who is acting as PAP, or their legal representative, has a number of rights during the main trial which victims without such a formal role cannot exercise. Private Accessory Prosecutors or their legal representatives can exercise the following rights at the main trial: The right to be heard at trial whenever the prosecution is heard; to request evidence; to refuse judges in case of partiality; to question the accused, witnesses, and experts; to object to court orders and questions of the trial parties; and to make statements including a closing statement.³³⁰ The victim, as a Private Accessory Prosecutor, has thus been afforded ample opportunities to present views and concerns at trial.³³¹

³²⁴ *US v. Degenhardt*, 405 F. Supp.2d 1341 (D. Utah 2005) (US).

³²⁵ *US v. Marcello*, 370 F. Supp. 2d 745 (N.D. III. 2005) (US).

³²⁶ Charles Doyle, *Crime Victims' Rights Act: A Summary and Legal Analysis of 18 U.S.C. 3771* (n 310) 26

³²⁷ D Scott Broyles, *Criminal Law in the USA* (n 302) 131

³²⁸ 18 U.S.C. s 3771, (d) (1, 3); Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (n 6) 274

³²⁹ ss 395–402 German Code of Criminal Procedure; Kerstin Braun, *The Role of the Victim in Criminal Proceedings in Australia and Germany - a Comparison* (n 3) 64; Kerstin Braun, *Giving Victims a Voice* (n 124) 1896

³³⁰ *Ibid* ss 397 (1) cum 24, 31, 238 (2), 242, 244 (3)–(6), 257, 258

³³¹ Helmut Kury & Michael Kilchling, *Accessory Prosecution in Germany: Legislation & Implementation* (n 253) 29

Not all victims are, however, eligible to participate as PAPs. According to German law, victims of certain crimes, usually serious crimes, are eligible to participate in this role.³³² In addition, victims of other crimes not specifically provided for in the StPO may be entitled to participate where the courts find their participation indispensable to the protection of their interests—particularly in the light of the effects of the crime on the victim.³³³ Whilst the courts may find victims of other crimes eligible to participate as a PAP, this decision is at the discretion of the court and does not, in general, grant victims an explicit right to participate.³³⁴ Moreover, only those who are directly injured by the crime are entitled to join as PAPs. In the case of capital crimes, the close relatives of the deceased victim can also join as private accessory prosecutors.³³⁵ Unfortunately, however, this mode of participation at trial is not available for victims of serious offences in the *US* and Ethiopian criminal justice systems.

B. PARTICIPATION AS A PRIVATE PROSECUTOR

In Germany, the private complaint (*privatklage*) - a relic of the accusatorial system as it existed in ancient German law, and so as an exception to the principle of State monopoly over prosecutions, belongs exclusively to the victim and applies only to minor offences involving interests that are essentially private.³³⁶

A private prosecution is limited to trespassing, defamation, violation of confidentiality of mail, common assault, intimidation, vandalism, and comparable offenses listed in section 374(1) of the German criminal procedure code.³³⁷ In these cases, the public prosecutor only initiates a public

³³² Private accessory prosecutions, which are governed by ss. 395 through 402 StPO are admissible as to certain crimes that seriously affect the victim in his personal sphere. The crimes are exclusively listed in s 395 subsections (1) and (2) StPO. These include, e.g., serious sexual crimes, crimes involving bodily injury, murder, manslaughter, pimping, trafficking in human beings, as well as crimes involving libel or slander, which of course must exhibit a certain severity to justify the filing of public charges. It is noteworthy in this context that crimes under s 4 of the Act on Civil Law Protection against Violence and Stalking are also entitled to private accessory prosecution since the Victims' Rights Reform Act of 2004.

³³³ See German Code of Criminal Procedure s 395 (3); Kerstin Braun, *The Role of the Victim in Criminal Proceedings in Australia and Germany - a Comparison* (n 3) 65

³³⁴ *Ibid*; some critics express their concern saying, the discretion of the court may lead to different treatment of similar cases.

³³⁵ See German Code of Criminal Procedure s 395 (2); Markus Löffelmann, *The Victim in Criminal Proceedings*: (n 263) 35

³³⁶ Aderajew Teklu and Kedir Mohammed, *Ethiopian Criminal Procedure Teaching Material* (Justice and Legal System Research Institute, 2009) 79

³³⁷ Mujuzi, J.D. 'Victim participation in the criminal justice system in the European Union through private prosecutions: Issues emerging from the jurisprudence of the European Court of Human Rights' (2016) *European Journal of Crime, Criminal Law and Criminal Justice*, 24, 7; Jörg-Martin Jehle, *Criminal Justice in Germany: Facts and Figures* (6th edn, Federal Ministry of Justice and Consumer Protection 2015) 18

prosecution if this is in the public interest.³³⁸ In all other cases, it is up to the injured person (or his legal representative) to initiate a private prosecution. Concerning the six offenses explicitly mentioned above, a private prosecution may only be raised if an attempt to reach a settlement, i.e., to arrange compensation from the offender to the victim under the guidance of a mediator appointed by the administration of the District Court, has failed.³³⁹ In the event of private prosecution, the public prosecutor is not obliged to cooperate, but the court may submit the files to the public prosecutor if it believes that he should take over the prosecution.³⁴⁰ The public prosecutor may at any time, until the decision of the court acquires the force of law, take over the prosecution.³⁴¹ The private prosecutor may be supported or represented by a lawyer³⁴² and has the same rights to appeal that the public prosecutor normally has.³⁴³ In this capacity, therefore, victims of crimes have full standing as a private prosecuting party and thus will be treated as one of the litigating parties. In such a case he has much the same rights as the public prosecutor though not his powers of coercion, particularly with respect to the investigation.

Similar to Germany, private prosecution is an aspect of the criminal justice system in contemporary Ethiopia. Particularly, the Ethiopian Criminal Procedure Code, Article 44 (1), allows the victim or his representatives to conduct private prosecution. This article gives the right to the victim to conduct private prosecution when the public prosecutor refuses to institute charge on the reason of insufficient evidence to justify a criminal conviction for crimes which are punishable upon complaint (which are relatively minor). Along with, in cases where the public prosecutor decides not to institute a criminal charge,³⁴⁴ he is required to send the copy of his decision to the appropriate persons who are entitled to initiate a private prosecution with an authorization to conduct a private prosecution, in cases of crimes punishable upon complaint. In such cases, therefore, “the injured party or his legal representative”; or “the husband or wife on

³³⁸ See German Code of Criminal Procedure s 376

³³⁹ Ibid s 380-1

³⁴⁰ Ibid s 377-1

³⁴¹ Ibid s 377-2

³⁴² Ibid s 378

³⁴³ Ibid s 390; Ernestine Hoegen and Marion Brien, *Victims of Crime in 22 European Criminal Justice Systems* (n 78) 364

³⁴⁴ *Art. 42. - Cases where proceedings shall not be institute*

(1) No proceedings shall be instituted where: (a) the public prosecutor is of opinion that there is not sufficient evidence to justify a conviction; (b) There is no possibility of finding the accused and the case is one which may not be tried in his absence: or (c) the prosecution is barred by limitation or the offense is made the subject of a pardon or amnesty; or (d) the public prosecutor is instructed not to institute proceedings in the public interest by the Minister by order under his hand.

behalf of the spouse”; or “the legal representative of an incapable person”; or “the attorney of a body corporate” can institute a criminal charge and conduct a private prosecution.³⁴⁵

As seen above, currently private prosecution is only possible for “complaint offenses”, and even then only if the public prosecutor has declined to prosecute for the reason that the evidence is not sufficient, in his view, to support a conviction.³⁴⁶ ‘Private prosecutions are permitted, within these strict limits, probably for two reasons: to provide an outlet for the victim’s desire to see his alleged assailant punished, and to check possible abuses of discretion by the public prosecutor’.³⁴⁷

Importantly, like the public prosecutor, the private prosecutor is allowed to file his charge before the court that has jurisdiction to hear the case within fifteen days of the receipt of such authorization from the public prosecutor who refused to charge the suspect.³⁴⁸ After ascertaining that the charge conforms to the authorization, on the day the case is adjourned, the court summons both the private prosecutor and the accused to appear.³⁴⁹ On the scheduled hearing date, the court shall attempt to reconcile the parties and advise them to settle the case peacefully. The court gives priority to reconcile the parties as the crime is punishable upon complaint and is considered as a private matter rather than a public matter. If parties reconcile their dispute, the court will record the matter to have the effect of the judgment.³⁵⁰ If the parties refuse to reconcile, the court will read the charge and ask the accused to plead guilty or not guilty and the ordinary prosecution procedure stated from Articles 123-149 will be followed.³⁵¹

As seen above and similar to victims in Germany, in this capacity, victims of crimes in Ethiopia have full standing as a private prosecuting party and thus will be treated as one of the litigating parties. In such a case he has much the same rights as the public prosecutor though not his powers of coercion, particularly with respect to the investigation. Specifically, at trial, like

³⁴⁵ See Articles 42(1)(a)-(d), 43(2), 44(1) and 47(a)-(d) of the CPC

³⁴⁶ Ibid

³⁴⁷ Stanley Z. Fisher, ‘Criminal Procedure for Juvenile Offenders in Ethiopia’ *Journal of Ethiopian Law*, Vol. VII, No.1, 159

³⁴⁸ See Art. 150 of the CPC

³⁴⁹ Simeneh Kiros Assefa, *Criminal Procedure Law: Principles, Rules and Practices* (25) 335

³⁵⁰ See Art. 151 (2) of the CPC

³⁵¹ Ibid Article 153.

victims in Germany, they can argue their sides; can express their views and concerns. Besides, they can examine witnesses.³⁵²

However, as put by one writer, in Ethiopia there are no private prosecutions in practice for the following reasons. Firstly, the private prosecutor is conducting the prosecution at his own expense and peril.³⁵³ Further, the Ethiopian CPC does not require the police as well as the prosecution office to lend support for the victims of crimes who are authorized to be a private prosecutor as per article 44 (1) of the code. Therefore, there is no incentive for the victim to conduct such investigation, gathering of evidence and prosecution which is a difficult job for ordinary citizenry.³⁵⁴ Secondly, where the prosecutor, who is an experienced professional with the authority to order further investigation and with all the human and material resources at his disposal, refuses to prosecute for lack of evidence, there is slim chance of success for the private prosecutor. Consequently, private prosecution in Ethiopia is often practically unavailable.³⁵⁵

C. PARTICIPATION AS A CIVIL PARTY (AN APPLICANT TO THE ADHESION PROCEDURE)

In Germany, victims who have suffered financial loss resulting from the criminal act committed can make an application to have their civil claim assessed by the judge during the criminal trial, so called Adhesion Procedure,³⁵⁶ and be heard during the trial in regard to their civil claim.³⁵⁷ The Adhesion Procedure is described by Wemmers as ‘a bit of civil law tied onto the criminal justice process.’³⁵⁸ In an Adhesion Procedure the court determines whether the victim has a civil claim against the defendant during the criminal trial. According to literatures in German Adhesion Procedure, if the victim has lodged such an application, s/he has the following rights: to be heard during the main trial in relation to the civil claim, to ask questions and make requests for evidence to be introduced — if the requested evidence holds relevance for the outcome of the civil claim — and, arguably, to make a closing statement.³⁵⁹ Consequently, victims of crimes to

³⁵² The Draft Code of Criminal Procedure recognizes private prosecutions more or less in a similar fashion (see Articles 207-214.

³⁵³ See Article 46 cum 152 of the CPC

³⁵⁴ Simeneh Kiros Assefa, *Criminal Procedure Law: Principles, Rules and Practices* (25) 335

³⁵⁵ *Ibid* 336

³⁵⁶ See Section 403 of the German Code of Criminal Procedure

³⁵⁷ *Ibid* ss. 404-406; Kerstin Braun, *Giving Victims a Voice* (n 124) 1891

³⁵⁸ Jo-Anne Wemmers, *Victim Policy Transfer: Learning from Each Other* (n 146) 121

³⁵⁹ *Ibid* 126; Kerstin Braun, *The Role of the Victim in Criminal Proceedings in Australia and Germany - a Comparison* (n 3) 65; Marion Brienen and Ernestine Hoegen, ‘Compensation Across Europe: A Quest for Best Practice’ (2000) 7(4) *International Review of Victimology* 281

some extent can actively participate in and raise their views and concerns at trial in Germany by initiating an adhesion procedure.

Victims, however, who have not suffered a financial loss as a result of a criminal act or who do not want to "put a price tag"³⁶⁰ on the harm they have suffered, are not entitled to participate as applicants to the Adhesion Procedure. In addition, compensation may only be awarded if the accused is found guilty of the criminal offence, or is sentenced to a special measure. No appeal can be made against the decision of the court.³⁶¹

Similar to Germany, the principle of joinder of criminal and civil cases is found in the FDRE Criminal Code that where the crime allegedly committed causes "considerable damage" to the victim or those claiming under him, such person is entitled to claiming compensation along with the criminal charge.³⁶² Thus, in all criminal cases, whether instituted as public or private prosecutions, the victim or those claiming under him may "apply to the court trying the case for an order that compensation be awarded for the injury caused".³⁶³ However, if the application is dismissed,³⁶⁴ the victim may initiate a civil proceeding in a court having jurisdiction.³⁶⁵ Otherwise, the victim will not have any place and role in the proceeding once the application is dismissed, albeit he may be called as a witness to give testimony.³⁶⁶ The victim of crime is thus allowed to participate in the criminal proceedings and pursue his claim for compensation only if his application for compensation is not dismissed by the court.³⁶⁷

If the criminal court allows the two cases to be joined, however, the victim is entitled to take part in the proceedings and have, with regards to evidence, all the rights given to an ordinary party.³⁶⁸

³⁶⁰ Ibid 125

³⁶¹ See German Code of Criminal Procedure s. 404-5; Ernestine Hoegen and Marion Brienen, Victims of Crime in 22 European Criminal Justice Systems (n 78) 363

³⁶² See Article 101 of the FDRE Criminal code

³⁶³ See Art. 154 of the CPC

³⁶⁴ K I Vibhute, 'Compensating Victims of Crime in Ethiopia: A Reflective Analysis of the Legislative Paradigm and Perspective' (2009) Journal of the Indian Law Institute, Vol. 51, No. 4, 445; Article 155 of the CPC allows the prosecution and defense to participate in the court's decision as to whether to allow (or not) the victim's application for compensation but it does not allow the victims of the crime to have his say in the judicial deliberations leading to dismissal (or otherwise) of his application. Similarly, it does not accord him any opportunity to assert, contrary to the assertion of the court and of the prosecution and defense, that determination of his 'claim for compensation' can be determined 'without calling numerous witnesses' and/or that 'hearing' of his claim for compensation is not 'likely to confuse, complicate or delay the hearing of the criminal case'.

³⁶⁵ See Art 155 (3) of the CPC

³⁶⁶ Worku Yaze, Status and Role of Victims of Crime in the Ethiopian Criminal Justice System (n 7) 142

³⁶⁷ K I Vibhute, Compensating Victims of Crime in Ethiopia (n 364) 446

³⁶⁸ See Article 156 (2) of the CPC; Endalew Lijalem, The Space for Restorative Justice in the Ethiopian Criminal Justice System (n 58) 234

This means that the victim has a right to call witnesses other than those called by the prosecutor, if he wishes, and to address the court about the amount of compensation to be awarded after the end of the defense proceedings.³⁶⁹ But, the participation here is limited only to the civil case, and thus it appears that the victim is not able to participate in the criminal aspect of the proceeding.³⁷⁰ However, if the defendant is acquitted or discharged the criminal court may not adjudicate the injured party's civil claim but must refer him to the civil courts.³⁷¹

In short, the joining of civil and criminal cases so as to process a compensation claim is one of the modality for victim participation in the Ethiopian criminal justice system. However, though this is one of the exceptions by which the Ethiopian criminal justice system allows the victims or those having rights from them to be involved in the process and to claim compensation, their participation is not automatic in the sense that they cannot participate in the process as of right.³⁷² Their participation is at the discretion of the court, after the existence of considerable damage has been determined.³⁷³ Furthermore, it is not common for Ethiopian criminal courts, in practice, to entertain the issue of compensation simultaneously with criminal proceedings. This is mainly because neither are the victims well aware of this possibility of claiming compensation side by side with criminal suit, nor are the public prosecutors willing to lodge the claim for compensation as part of the criminal proceedings under the pretext of causing delay to criminal proceedings.³⁷⁴

In the United States also restitution is designed to compensate crime victims for their losses. The federal Victim and Witness Protection Act authorized restitution in addition to, or in lieu of, any other penalty imposed on convicted offenders, and further mandated that judges who fail to order restitution state on the record their reasons for not doing so.³⁷⁵ Importantly, the Mandatory Restitution Act of 1996 established procedures for determining the amount of restitution to

³⁶⁹ Ibid. 154 (2) & 156 (2)

³⁷⁰ Ibid. 156

³⁷¹ Ibid. 158

³⁷² Endalew Lijalem, *The Space for Restorative Justice in the Ethiopian Criminal Justice System* (n 58) 235

³⁷³ Ibid

³⁷⁴ Simeneh Kiros Assefa, *Criminal Procedure Law: Principles, Rules and Practices* (n 25) 399-400; Worku Yaze, *Status and Role of Victims of Crime in the Ethiopian Criminal Justice System* (n 7) 141

³⁷⁵ Robert C. Davis, 'Restitution: The Victim's Viewpoint' (1992) *the Justice System Journal*, Vol. 15, No. 3, 748

which a victim may be entitled.³⁷⁶ Restitution is included as part of a sentence in a criminal case when: the court considers it necessary for rehabilitation; it's needed to make the victim "whole," and the victim's financial losses are directly related to the defendant's crime.³⁷⁷ Therefore, victims of crimes can participate in the process by providing information about their losses to officials prior to a determination of the size of the restitution award.³⁷⁸

D. PARTICIPATION AS A WITNESS

In Germany, victims without a special role can only present views and concerns at trial in the role of a witness. When testifying as witnesses, victims in Germany have the right to testify without interruption through questions and remarks from the court, public prosecution, and defense.³⁷⁹ Yet, this does not mean that the victim can freely present views and concerns as a witness. In Germany, the victim witness is to testify on the matter in question.³⁸⁰ Where the victim witness is not questioned about a specific matter, the victim has no explicit right to address the issue and bring it to the court's attention. Further, where the victim is not required to testify as a witness, the victim has no opportunity to present views and concerns at trial at all.³⁸¹ Coming to the *US*, it becomes apparent that the adversarial system affords victims the fewest opportunities to participate during criminal trials. The victim's role at trial essentially remains that of a witness to the prosecution. In that role they can present views and concerns to a very limited degree mostly in regard to matters relating to their protection when giving testimony.³⁸² In the same vein, in Ethiopia, the victim witness cannot freely present views and concerns as a witness. Also, unlike Germany, victims in Ethiopia have no right to testify without interruption through questions and remarks from the court, public prosecution, and defense.

³⁷⁶ 18 U.S. Code § 3663A. Mandatory restitution to victims of certain crimes; The Mandatory Victims Restitution Act of 1996 was enacted as Title II of the Antiterrorism and Effective Death Penalty Act of 1996. This Act expands the scope of mandatory restitution on the federal level.

³⁷⁷ The Restitution Process for Victims of Federal Crimes, available at: <<https://www.justice.gov/usao-ndia/page/file/957476/download>> accessed 27 November 2020

³⁷⁸ Burnley, J. & Murray, M. "Restitution Reform: The Coordinated Interagency Approach," (1997) NCJ-166603. OVC Bulletin: Available at <https://www.ncjrs.gov/ovc_archives/nvaa/supp/t-ch21-10.htm#> accessed 27 November 2020

³⁷⁹ See German Code of Criminal Procedure s 69(1). Victims in Germany without a special role have certain rights bestowed upon them, such as: the right to receive information on particular events (s 406d, 406h), the right to inspect court files under certain circumstances (s 406e) and the right to be legally represented either as a witness when testifying (s 406f) or as a victim eligible to participate as a Private Accessory Prosecutor but refusing to do so (s 406g).

³⁸⁰ Ibid

³⁸¹ Kerstin Braun, Giving Victims a Voice (n 124) 1897-98

³⁸² Kerstin Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 163

E. PARTICIPATION AT SENTENCING AS IMPACT STATEMENT PROVIDERS

Victim Impact Statements were first introduced in the US in the 1970s in California and have since been implemented in all US jurisdictions.³⁸³ The Federal Rules of Criminal Procedure³⁸⁴ and the CVRA³⁸⁵ provides that federal crime victims have a right to be heard at any public proceeding including sentencing.³⁸⁶ On the federal level, there appears to be some controversy on what content and form a VIS can take.³⁸⁷ In other words, it is unclear whether VISs are limited to written submissions or whether victims have the right to make oral statements. In *United States v. Degenhardt*, for example, the crime victim's right to "be reasonably heard" at sentencing was interpreted to give victims the right to make written but also verbal submissions at sentencing and to speak directly to the judge.³⁸⁸ This interpretation of the CVRA was also confirmed by the appellate court in *Kenna v. US District Court*.³⁸⁹ When making such statements, victims have the right to be legally represented.³⁹⁰

While victims have the right to present their statement to the court, they do not have the right to have the statement form part of the pre-sentence report, a report investigating the history of the convicted person to identify any information relevant to sentencing.³⁹¹ Similar to the situation in other common law jurisdictions, it is unclear what evidential value such statements hold and to what degree courts are meant to consider them.³⁹²

F. THE RIGHT TO BE INFORMED

As discussed in the second chapter of this research, the right to receive information can be considered as a passive form of participation as it — 'sends a message to victims that they are not forgotten and that their interest in the case is recognized by authorities'.³⁹³ As such, in the US, during the investigative stage of a case, responsible officials must identify and provide victims

³⁸³ Ibid 157; The essential rationales are that VISs provide information to the judge, have therapeutic and other benefits for victims, explain the crime's harm to the defendant, and improve the perceived fairness of sentencing.

³⁸⁴ See Rule 60(a) (3) and 32(i) (4) (B) of the Federal Rules of Criminal Procedure

³⁸⁵ See 18 U.S.C. 3771(a) (4)

³⁸⁶ Kim Herd, 'History and Overview of Rights and Services for Federal Crime Victims within the United States' The 144th International Senior Seminar Visiting Experts Papers, Resource Material Serious No.81, 122 available at: <https://www.unafei.or.jp/publications/pdf/RS_No81/No81_12VE_Herd.pdf> accessed 28 August 2020

³⁸⁷ Kerstin Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 161

³⁸⁸ *United States v. Degenhardt*, 405 F. Supp. 2d 1341, 1345 (D. Utah 2005); David E. Aaronson, 'New Rights and Remedies: The Federal Crime Victims' Rights Act of 2004' (2008) Pace L. Rev. Vol. 28, Issue 4, 649

³⁸⁹ *Kenna v. United States District Court*, 435 F.3d 1011, 1014 (9th Cir. 2006) (US).

³⁹⁰ 18 U.S Code, s 3771 (2) (d)

³⁹¹ Charles Doyle, Crime Victims' Rights Act: A Summary and Legal Analysis of 18 USC 3771 (n 310)31

³⁹² Kerstin Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 161

³⁹³ Jo- Anne Wemmers, The Meaning of Justice for Victims (n 104) 635

with the information about where to receive emergency medical or social services; the availability of restitution or other relief; the right to make a statement about the pretrial release of a defendant; available protections from intimidation or harassment, etc.³⁹⁴ Importantly, also information about the status of the investigation shall be provided to the victim, “to the extent that it is appropriate and will not interfere with the investigation;”³⁹⁵ and the victim shall be notified of the suspect’s arrest.³⁹⁶

Once charges have been filed, prosecutors’ offices are responsible for notifying victims of the role of the victim in the criminal justice process, their right to attend the trial, and for providing information on services and case events, including the scheduling of public court proceedings, the filing of charges, the release or escape of the accused, the entry and acceptance of guilty pleas, trial verdicts, and sentencing proceedings.³⁹⁷ Finally, after a defendant is convicted and sentenced, a responsible official (usually a representative from the Bureau of Prisons (BOP)) must provide a victim with notice of (i) the date on which the offender will be eligible for parole, and the scheduling of any such release hearing; (ii) the escape, work release, furlough or any other form of release of the offender; and (iii) the death of the offender, if the offender dies while in custody.³⁹⁸

Similarly, victims in Germany criminal procedure code have the right to receive information on particular events (s 406d, 406h), and the right to inspect court files under certain circumstances (s 406e). However, in Ethiopia, neither the CPC nor any other law in force entitles victims the right to receive information as regards pretrial, trial and post-trial matters. In this regard, as will be discussed below in separate section, however, the draft code of criminal procedure entitled victims upon their request to be informed of the progress of the investigation and measures taken by investigating police officers if it does not affect the security of others and the investigative task.

³⁹⁴ 42 U.S.C. ss 10607(c)(1)(A, B and C)

³⁹⁵ 42 U.S.C. s 10607(c)(3)(A)

³⁹⁶ 42 U.S.C. s 10607(c) (3) (B)

³⁹⁷ 42 U.S.C. ss 10607(c)(3) (C, D, E, F and G)

³⁹⁸ 42 U.S.C. ss 10607(c)(5)(B) and (C)

3.2.3 VICTIM PARTICIPATION IN THE POST-TRIAL STAGE

A. THE VICTIMS' RIGHT TO INITIATE OR PARTICIPATE IN APPEALS

German law differentiates between interlocutory appeals and appeals against the verdict and sentence.³⁹⁹ Under German criminal procedure law victims, even victims without a special procedural role such as that of PAP are able to complain (initiate an interlocutory appeal) against certain procedural decisions and orders made before or during the trial which directly affect them.⁴⁰⁰ In contrast to victims' right to an interlocutory appeal, in Germany victims' rights to appeal the verdict against an offender in itself are generally non-existent.⁴⁰¹ However, in exceptional manner, victims who participate as PAPs have been afforded a limited right to appeal the verdict⁴⁰², but not the sentence, and only in relation to errors of law or fact relating to those offences which gave rise to their initial participation.⁴⁰³ In this context, a victim acting as PAP has the right to appeal completely independently from the public prosecution.⁴⁰⁴ In order to appeal successfully, however, a PAP must demonstrate inter alia that he has suffered a grievance through the verdict.⁴⁰⁵

As pointed out above, an appeal is only possible against the verdict and does not cover the specific sentence imposed.⁴⁰⁶ This limited form of participation has been justified in Germany with the explanation that an appeal should only be possible where an individual can demonstrate that they have suffered a grievance.⁴⁰⁷ It has been argued that victims without special legal status, however, do not experience a grievance, as they are not proper participants in the first place and therefore not aggrieved by the verdict.⁴⁰⁸ On the other hand, in Germany, in cases

³⁹⁹ Michael Bohlander, Principles of German Criminal Procedure (n 249) 275

⁴⁰⁰ See Section 304 (1 and 2) of the German Code of Criminal Procedure. According to this sections of the code, a victim witness, for example, whose request to testify via video technology or in closed court is denied by court order, may submit a complaint (interlocutory appeal). See also Kerstin Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 177-78

⁴⁰¹ Ibid 179-80

⁴⁰² See German Code of Criminal Procedure ss 395(4), 400, 401(1)

⁴⁰³ Ibid

⁴⁰⁴ Ibid

⁴⁰⁵ This is the case, where the PAP can demonstrate that the criminal offence which gave rise to their participation, for example, a sexual offence, has been assessed incorrectly during proceedings thus creating an unfair advantage for the defendant. See K. Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 180

⁴⁰⁶ See German Code of Criminal Procedure, s 400(1); See also K. Braun (n 6) 180-81 *discussed that in practice, therefore, PAPs can appeal an acquittal with the aim of obtaining a conviction for an offence which allows for private accessory prosecution. Besides, they can appeal a conviction with the aim of obtaining a further conviction for an offence which gives rise to private accessory prosecution and forms a series with the offence the defendant has already been convicted of.*

⁴⁰⁷ Ibid

⁴⁰⁸ K. Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 279

where the public prosecution or the defendant has initiated an appeal, the PAP has the right to participate in the appeal proceedings but only in the context of PAP offences.⁴⁰⁹

Furthermore, victims who act as applicants to the adhesion procedure do not have the right to appeal the criminal verdict or sentence.⁴¹⁰ The justification behind this is that German law only grants individuals the right to appeal where they are directly affected by a procedural decision. However, it is frequently argued that the criminal side of the verdict does not affect the applicant of the adhesion procedure as they only have a direct procedural interest in the civil side of proceedings.⁴¹¹ Moreover, the applicant is free to pursue their claim to the extent that the criminal court has denied it in the civil courts as additional civil law proceedings are not precluded by an adhesion verdict in Germany.⁴¹²

In contrast Germany, in adversarial systems like the *US*, victims are not provided with the right to appeal either verdict or sentence per se. This seems a logical and conceptual extension of the limited role victims have been afforded during the trial stage where they are seen as non-parties and non-participants. Non-participants are not affected by either verdict or sentence and thus do not qualify for receiving any appeal rights.⁴¹³ However, exceptionally complaints against pre-trial and trial decisions affecting victims' rights are possible in some jurisdictions but not in others. For instance, on the federal level in the *US*, victims have been afforded the right to petition the court of appeals for a writ of mandamus on the basis of an erroneous decision relating to an infringement of their rights in the district courts.⁴¹⁴

Coming to Ethiopia, though appeal is recognized as a fundamental right, constitutional right, too, of any aggrieved party to the case there are certain legal conditions and limitations to the exercise of this right.⁴¹⁵ Unlike Germany, the criminal procedure code of Ethiopia provides that there is

⁴⁰⁹ Ibid

⁴¹⁰ Ibid. 181 See German Code of Criminal Procedure, s 406a (1)

⁴¹¹ Ibid

⁴¹² Ibid. s 406 (3)

⁴¹³ K. Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 280

⁴¹⁴ Ibid; See 18 U.S.C. s 3771(d) (5)

⁴¹⁵ See Art. 20 (6), Constitution of the Federal Democratic Republic of Ethiopia, adopted on 8 December 1994 and published in the Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, 1st Year No. 1, dated 21 August 1995

no interlocutory appeal or there is no appeal on decisions on interlocutory matters.⁴¹⁶ Stated other ways appeal is possible only in respect of final decisions.⁴¹⁷

In the Ethiopian criminal justice system, the victim of crime, unless a private prosecutor, does not have *locus standi* to go to appeal against a judgment of acquittal, discharge or on the ground of inadequacy of sentence, after delivery of the judgment.⁴¹⁸ Article 149 (7) of the CPC requires the trial court, after delivery of the judgment, to inform both parties (the accused and the private prosecutor in case of private prosecution) that they have a right to appeal. In this context, a victim acting as a private prosecutor has the right to appeal completely independently from the public prosecution. Thus, appeals could provide them with an avenue to express their dissatisfaction with the outcome of proceedings or the sentence the offender has received as well as their disagreement with factual and legal aspects of the trial, if any.⁴¹⁹ Also, the victim of crime (appellant) may introduce additional evidence that was not produced before the trial court.⁴²⁰

Apart from this, in cases of joinder of civil and criminal cases, where the court granted joinder, it shall decide on the issues whether to grant compensation to the victim, if so the amount to be awarded as well. Thus, if the court decided refusing the compensation, the victim may appeal against such decision (refusal).⁴²¹ Art. 186 of the Ethiopian Criminal Procedure Code captioned ‘appeal where injured party claims compensation’ states that:

- (1) Where the court refuses to grant compensation under Art. 100 Penal Code the injured party may appeal against such decision.
- (4) An appeal under this Article shall be heard by the [c]riminal court of [a]ppeal where there is an appeal against conviction or sentence, but shall be heard by the civil court of appeal where there is no appeal against conviction or sentence or such appeal is withdrawn.

Thereupon, the victim of crime who acts as a civil party in a criminal proceeding has the right to go to appeal *only* when a court refuses to grant compensation for the ‘considerable damage’

⁴¹⁶ See Art. 184 of CPC

⁴¹⁷ Aderajew Teklu and Kedir Mohammed, Ethiopian Criminal Procedure (n 336) 285 -286

⁴¹⁸ Art 185 (2) & (3) of the CPC

⁴¹⁹ Ibid. Articles 187, 191-192

⁴²⁰ Ibid. Art. 194

⁴²¹ Ibid. Art 186 (1)

caused by the criminal⁴²² and where there is an appeal against conviction or sentence. The victims of crime are thus able to express their dissatisfaction to the criminal court of appeal concerning the refusal of compensation by the trial court. In sum, as pointed out above, victims' rights to appeal against conviction and sentence in itself are generally non-existent in the present Ethiopian criminal justice system.

B. PARTICIPATION IN OFFENDER'S EARLY RELEASE PROCEEDINGS

Early release often referred to as parole or conditional release includes the return of an incarcerated prisoner to the community to serve the remainder of their sentence under specifically imposed conditions.⁴²³ In Germany, when deciding on parole, the relevant authority can consider the likely effects of parole on victims.⁴²⁴ Yet, under German law, no victim, including victims with special procedural status, has the right to make direct representations concerning or appeal any of the above decisions.⁴²⁵ Thus, although the PAP is an additional participant in proceedings next to the prosecutor, their main procedural interests are seen to revolve around being able to participate during the trial and do not extend to the enforcement of the verdict.⁴²⁶ As a consequence, in Germany, no avenue exists for victims to participate and complain against early-release decisions they disagree with.

Unlike Germany, in the US criminal justice system, after a defendant is convicted and sentenced, a responsible official (usually a representative from the Bureau of Prisons (BOP)), must provide a victim with notice of⁴²⁷ (i) the date on which the offender will be eligible for parole, and the scheduling of any such release hearing; (ii) the escape, work release, furlough or any other form of release of the offender; and (iii) the death of the offender, if the offender dies while in

⁴²² Ibid. Art 186(1); See also Art 101 of the FDRE Criminal Code

⁴²³ In Germany, incarcerated persons are automatically considered for parole after serving one half of their sentence if they have no previous sentences and the sentence is less than two years or after serving two-thirds of their sentence in other cases not involving a life sentence. Those serving a life sentence are automatically considered for parole after serving 15 years in prison. Parole decisions are made by the court system. See Federal Ministry of Justice, "Criminal Code in the version promulgated on 13 November 1998, Federal Law Gazette [Bundesgesetzblatt] I p. 3322, last amended by Article 3 of the Law of 2 October 2009, Federal Law Gazette I p. 3214," 2010, available at: www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P57 accessed on 20 October 2020

⁴²⁴ Mutz, J., 'Germany' In A. M. van Kalmthout & I. Durnescu (Eds.), Probation in Europe (Nijmegen: Wolf Legal Publishers 2008) 310; K. Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 182

⁴²⁵ Ibid

⁴²⁶ Ibid

⁴²⁷ Kim Herd, History and Overview of Rights and Services for Federal Crime Victims within the United States (n 386) 123

custody.⁴²⁸ BOP maintains on its website, a “federal inmate locator,” which provides information about the location of every federal inmate within the BOP system.⁴²⁹

As pointed out in the previous sections, in the *US*, crime victims have the right to reasonable, accurate, and timely notice of any parole proceeding.⁴³⁰ Importantly, they have also the right to be present and reasonably heard at any parole proceeding.⁴³¹ In a recent federal case applying Michigan's version of the CVRA, the district court denied the defendant's due process claim that the parole board's reliance on victim statements violated the defendant's constitutional rights.⁴³² Because Michigan's provision protects victim privacy, the victim's statements were kept confidential, and the defendant had no knowledge of what was asserted and consequently had no opportunity to rebut the claims in front of the parole board.⁴³³ The court reasoned that because the defendant had no liberty interest in parole, the defendant's rights had not been violated.⁴³⁴ David E. Aaronson writes, if this case had been decided under the CVRA, the result likely would have been the same, since the basis of the decision was the defendant's diminished rights after conviction.⁴³⁵ Moreover, within 30 days of an inmate's release from prison, responsible officials shall provide victims with notice of the date of release, the city and state where the inmate will be released and contact information for the inmate's supervising probation officer, if applicable.⁴³⁶

As discussed above, where convicted offenders are afforded the possibility to serve the remainder of their custodial sentence in the community, victims' safety interests may be significantly infringed upon. Offenders released into the community can approach victims or their families more easily raising security concerns. Victims may therefore wish to have an input in the release decision or the conditions imposed on the release. So now the question is: what

⁴²⁸ See Art. IV.C.2 (a) (2), Attorney General Guidelines for Victim and Witness Assistance, (2005) available at: https://www.justice.gov/archive/olp/ag_guidelines.pdf accessed 26 October 2020

⁴²⁹ See www.bop.gov.

⁴³⁰ See 18 U.S.C. § 3771(a) (2)

⁴³¹ *Id.* s. 3771(a) (4)

⁴³² David E. Aaronson, *New Rights and Remedies: The Federal Crime Victims' Rights Act of 2004* (n 388) 660; *Palmer v. Granholm*, No. 1:06-cv-301, 2006 U.S. Dist. LEXIS 45333, at 29 (W.D. Mich. July 5, 2006).

⁴³³ *Ibid.* at 4

⁴³⁴ *Ibid.* at 10-13

⁴³⁵ David E. Aaronson, *New Rights and Remedies: The Federal Crime Victims' Rights Act of 2004* (n 388) 660

⁴³⁶ See Art.IV.C.2.b (4), Attorney General Guidelines for Victim and Witness Assistance, (2005) available at: https://www.justice.gov/archive/olp/ag_guidelines.pdf accessed 26 October 2020

participatory roles crime victims have been afforded in the post-trial phase of the criminal proceeding in Ethiopia?

In the Ethiopian Criminal Procedure Code there is no single provision that deals with matters of probation⁴³⁷, parole⁴³⁸, pardon⁴³⁹ and amnesty⁴⁴⁰. Such matters, however, are dealt within the Criminal Code. Unfortunately, unlike in the US, examinations of the relevant provisions of the Criminal Code reveal that victims of crimes have no right to reasonable, accurate, and timely notice of probation, parole, pardon and amnesty proceedings. Importantly, also the victims lack recognized position and participatory role in these post-trial proceedings. Consequently, there is no avenue exists for victims to complain against those post-trial measures they disagree with. Moreover, acquiring the victims' views and concerns, if any, is not provided as a precondition to grant or order any of those post-trial measures, though it can reasonably be assumed that their opinion would be taken into account by concerned authorities.⁴⁴¹

However, the Proclamation adopted in 2014 concerning the Procedure of Granting and Executing Pardon (Proclamation No. 840/2014) provides the "opinion of the victim or his family" as one of the conditions shall be taken into consideration for granting pardon.⁴⁴² Particularly, Article 20 (7) of the pardon proclamation states that the "opinion of the victim or his family on the petition for pardon, if it is possible to contact them" shall be taken into consideration for granting pardon. Although this is a milestone towards recognizing the interest of victims in the pardon and other post-trial proceedings, the proclamation has failed to incorporate detailed provisions entitling the victim the right to reasonable, accurate, and timely notice of the proceeding, the manner of their participation as well as the value of their opinion also. However, practically victims do not play a formal role and may not be able to submit their views.

⁴³⁷ Probation is the release of a convicted offender under the supervision of a probation officer subject to revocation upon breach of the conditions attached to his release. See the FDRE Criminal Code, Article 190-200

⁴³⁸ Ethiopian criminal law also recognizes parole whereby a prisoner is conditionally released before the completion of the term of imprisonment. See Criminal Code of the FDRE, Articles 201-210

⁴³⁹ "Pardon" means a decision to remit a sentence in whole or in part or to reduce it to a lesser nature or gravity. See Art. 2 (1) of a Proclamation to provide for the Procedure of Granting and Executing Pardon, Proclamation No. 840/2014, entered in to force 21 August, 2014. See the FDRE Criminal Code, Articles 229 and 231

⁴⁴⁰ See the FDRE Criminal Code, Articles 230-231

⁴⁴¹ Worku Yaze, Status and Role of Victims of Crime in the Ethiopian Criminal Justice System (n 7) 143

⁴⁴² A Proclamation to provide for the Procedure of Granting and Executing Pardon, Proclamation No. 840/2014, entered in to force 21 August, 2014.

3.3 NEW MODELS OF VICTIMS' PARTICIPATION IN THE DRAFT CODE OF CRIMINAL PROCEDURE

The administration of justice in Ethiopia has been under reform for the past two decades. As part of the reform, the system of plea bargaining and victim participation in crime investigation, prosecution, and the adjudication process, as well as the right to gain information was introduced within the first-ever criminal justice policy in 2011.⁴⁴³

As a culmination to the reform process, a new draft code of criminal procedure is submitted for ratification to the HPR a few months ago. Apart from the 1961 CPC, the draft code introduces new possibilities of victim participation like in the plea bargaining process by providing their opinion to the prosecution and at the sentencing stage through victim impact statement. It should be noted, however, that participation in the plea bargaining and as an impact statement provider could promote victims' interest only when it allows them meaningful participation, if not a veto, to influence the plea agreement and the sentencing.⁴⁴⁴ Besides, the draft code, allows information's to be given to the complainants (including the victim) concerning the status of the investigation of the crime and actions taken to the extent that it is appropriate and will not interfere with the investigation and endanger the security of others.⁴⁴⁵ However, the draft code fails to provide this right for victims of crimes throughout the stages of the criminal proceeding.

To further elaborate the modalities, the draft code under article 179 (1) mandated the public prosecutor to ask the opinion of the victim concerning the plea negotiation and allow them to be present during the time of the negotiation unless it affects the process. According to this provision, therefore, the public prosecutor has to ask victims their views and concerns and is given the discretion as to whether to allow victims to be present during the bargaining process or not. Unfortunately, the duty to ask the opinion of the victim is not sanctioned.⁴⁴⁶ As a consequence, victims' grievances cannot be heard before court and thus there is no obligation on the part of the court to consider victims' interests and needs while endorsing plea agreements.⁴⁴⁷ The upcoming criminal procedure code, therefore, does not provide victims in general with an explicit and enforceable right to be heard in relation to plea agreements. This, may deny the

⁴⁴³ See ss 4.5.4 and 6.2, Criminal Justice Policy of the Federal Democratic Republic of Ethiopia, (2011) Ministry of Justice, Addis Ababa, at 36 and 50

⁴⁴⁴ See Articles 179 (1) (plea bargaining), and 310 (Impact Statement) of the Draft Criminal Procedure and Evidence Code

⁴⁴⁵ Ibid. Art.70

⁴⁴⁶ Ibid. Art. 177

⁴⁴⁷ Ibid

victim any meaningful participation in the process, makes them lose their participation even as a witness at trial.⁴⁴⁸ Furthermore, it ‘may have frustrating effects on victims –which in turn may negatively affect reporting of crimes and trigger self-help measures’.⁴⁴⁹

Under the 1961 criminal procedure code the victim of the crime is not given a chance to address the judge about the impact of the crime on him, after the accused is convicted. However, as pointed out above, the draft code afforded victims an opportunity to provide impact statements at the sentencing stage in the form of a final remark once the court has convicted the accused for committing the crime.⁴⁵⁰ Accordingly, the victims may present their statements to the court when the sentencing body has accepted the demand to provide impact statements by private victims or the public prosecutor, or when the court in its motion allows victims to present their impact statements. Therefore, in the draft code, providing an impact statement at the sentencing stage is not a right for victims to claim; it is a chance that depends on the court's discretion whether to allow or not crime victims to speak about their victimization and the harm the crime inflicted.

The upcoming criminal procedure code, therefore, similar to the situation in plea bargaining, does not provide victims in general with an explicit and enforceable right to provide impact statements at sentencing. Accordingly, if the victim is denied an opportunity to present an impact statement at sentencing, it cannot be followed by a petition to the higher court that triggers a right to move to “reopen” the sentencing. Besides, it is unclear what evidential value such statements hold and to what degree courts are meant to consider them.

In addition to the above mentioned opportunities to participate in the criminal proceeding, the draft code of criminal procedure also provided victims with an opportunity to participate in the settlement of the criminal conflict through out-of-court mechanism (customary dispute resolution) which positions them at the center. According to Article 181 of the draft code, any case under investigation, prosecution or adjudication may be diverted to the customary dispute resolution mechanism unless it related with the violation of human rights, human dignity and of national security. Particularly, the draft code gives discretionary power to the public prosecutors

⁴⁴⁸ Alemu Meheretu Negash, ‘Rethinking Plea Bargaining Policy: The Case of Ethiopia’ (n 319) 369-370

⁴⁴⁹ Ibid

⁴⁵⁰ See Art. 310 (2) of the Draft Criminal Procedure and Evidence Code; in adversarial jurisdictions like the United States, the essential rationales are that VISs provide information to the judge, have therapeutic and other benefits for victims, explain the crime’s harm to the defendant, and improve the perceived fairness of sentencing. In Ethiopia too, in the opinion of this researcher, if victims afforded with explicit and enforceable right to be heard at sentencing in the upcoming criminal procedure code the above rationales can be achieved.

to divert criminal cases to the customary dispute resolution mechanism if the suspected/accused person is consented to the diversion and the prosecutor assured that there is enough evidence to prove the accused's guilt. Once the case is diverted, therefore, victims of crimes may become an active participant in the process of resolving the criminal conflict through customary dispute resolution mechanisms as well as ensuring sustainable peace in the community. In sum, the draft code of criminal procedure (from Articles 180-188) is an attempt to create conducive environment for the implementation of restorative justice ideals in the criminal justice system, which are lacking in the current code of criminal procedure.

Generally, despite the aforementioned limitations, the new draft code of criminal procedure is the biggest opportunity yet to properly incorporate well extended and enforceable victim participation rights into the Ethiopian criminal justice system.

3.4 LESSONS FROM GERMANY AND THE UNITED STATES OF AMERICA CONCERNING VICTIMS' RIGHT TO PARTICIPATION IN CRIMINAL PROCEEDINGS

The sections above identify what participatory roles are available to victims in criminal proceedings by undertaking a detailed comparative analysis of said rights at the pretrial, trial, and post-trial stage in the selected criminal justice systems and Ethiopia. Against this backdrop, this section identifies the lessons that Ethiopia should learn from the laws of the United States of America and Germany concerning victims' right to participate in the various phases of criminal proceedings. These are:

First, in Ethiopia, neither the CPC nor any other law in force entitles victims the right to receive information concerning the status of the investigation of the crime, whether suspects are to be arrested or not, whether they are to be released on bail or not, whether search and seizure are conducted or not, their role in the criminal justice process, services and case events, including the scheduling of public court proceedings, and if the offender is convicted, the sentence including the date on which the offender will be eligible for parole. In this regard, however, the draft code of criminal procedure entitled victims upon their request to be informed of the progress of the investigation and measures taken by investigating police officers if it does not affect the security of others and the investigative task. Unfortunately, the right in the draft code is limited to the investigation stage and it is not transcending to the trial and post-trial phases of a proceeding. Nevertheless, it should be noted that, notice allows victims to assert their rights, facilitates their participation, assures them that justice is being done, and affords them the opportunity to take

protective measures when the accused is at large. Besides, receiving information is a passive form of participation as it —sends a message to victims that they are not forgotten and that their interest in the case is recognized by authorities.

As discussed elsewhere in this chapter, the United States has better statutes affording the victims of crimes ‘the right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.’⁴⁵¹ Similarly, victims in Germany criminal procedure code have the right to receive information on particular events⁴⁵² and the right to inspect court files under certain circumstances.⁴⁵³ Therefore, Ethiopia needs to take a good lesson from the US and Germany laws with regard to victims’ right to information. This is because for victims to engage with and benefit from criminal proceedings, at a minimum they need to understand and be able to follow it.

Second, during the pretrial stage in Ethiopia, crime victim who reasonably fears that he will be attacked or threatened by the accused released on bail cannot express his fear and sense of insecurity to the court granting bail. As such, it appears that victims cannot provide information on whether the release should be granted and if so, what the terms of release should be. It is only the prosecutor and the police during the investigation that may invoke one of the grounds under Article 67 and request the court to deny the accused his right to bail. In practice, however, the police officers or public prosecutors may hear the voices of victims before they submit their opinions on the applications of arrested persons to be released on bail. Yet, this is not an obligation that police officers or public prosecutors should carry out under pain of any sanction or which victims may invoke for administrative or judicial review. However, giving victims a statutory right to express their views and concerns regarding the bail preceding that directly correlates with their security interest is necessary to increase their satisfaction with the criminal justice system and protect them from secondary victimizations. Also, introducing the right to be heard in the pretrial release proceeding might be relevant in conveying full and accurate information.

In this regard, the *US* has a better experience and thus as per section 3771(a)(4) of the CVRA applicable to federal offenses, it gives victims a specific statutory and enforceable right to be

⁴⁵¹ See 18 U.S.C. § 3771(a) (2); U.S Federal Rules of Criminal Procedure, Rule 60 (a) (1); 42 U.S.C. § 10607 (c) (3) (A) and (B)

⁴⁵² See German Code of Criminal Procedure s 406d and 406h

⁴⁵³ *Ibid* s 406e

heard during district court proceedings relating to release. Therefore, Ethiopia should take a lesson from the *US* concerning victims' right to participate during bail proceedings.

Third, while almost all analyzed jurisdictions allowed for some form of agreement regarding a defendant's confession in exchange for a lower charge or sentence, only the US give victims, in general, an explicit and enforceable right to be heard concerning plea agreements during public proceedings and arguably only after charges have been laid. In Germany, a right to comment concerning plea agreements has recently been introduced but only for victims who hold the special legal status of PAP. In the Ethiopian context, the draft code of criminal procedure under article 179 (1) order the public prosecutor to ask the opinion of the victim and invite them to be present during the time of the negotiation unless it affects the process.

According to this provision, the public prosecutor has to ask victims their views and concerns and is given the discretion as to whether to allow victims to be present during the bargaining process or not. The draft code will not provide victims in general with an explicit and enforceable right to be heard in relation to plea agreements. However, the wide discretion of prosecutors as well as the absence of procedures to seek the enforcement of the right in the draft code may result in the plea agreements, often negotiated between prosecution and defense alone without allowing victims of crimes to put their input into the process. This, may deny the victim any meaningful participation in the process, makes them lose their participation even as a witness at trial. As pointed out above, it may also have frustrating effects on victims which in turn may negatively affect reporting of crimes and trigger self-help measures. But, it should be noted that, the victim's interests in participating in the plea bargaining process are many. The fact that they are consulted and listened to provides them with respect and an acknowledgment that they are the harmed individual. This in turn may contribute to the psychological healing of the victim. Importantly, giving victims the right to have some input into the plea negotiation process can protect their interest and makes them collaborative with the justice personnel's. Thus, achieving victim participation in the plea negotiation process by affording them the right to actually be present at and express their views and concerns to the prosecutor as to any proposed guilty plea agreement is necessary to protect their interest and makes them collaborative with the criminal justice system. Therefore, like in the US, recognizing an explicit and enforceable right to be heard concerning plea agreements should be taken into consideration in Ethiopia.

Forth, in Germany, during criminal trials eligible victims have the right to participate as Private Accessory Prosecutors, alongside the public prosecutor during criminal proceedings. However, not all victims in Germany are eligible to participate as PAP. German law explicitly allows mostly victims of serious crime to participate in such a role. Yet, the selection of criminal offenses that allow participation is based on the general philosophy that only victims of very serious offenses, like sexual offenses and violent crimes, should be afforded such rights. Thus, participation as a PAP during criminal trials can be seen as a lesson for Ethiopia towards giving a voice to the victims of serious crimes since they require special protection to avoid further traumatization. Furthermore, as researchers found that the participatory status associated with being a PAP can give victims the feeling of being in control and reduce the feeling of helplessness and respectively reduce the risk of secondary victimization.⁴⁵⁴ Nonetheless, at this point, it should be noted that the trial stage in Ethiopia is mainly adversarial and thus the possibility of introducing this model of participation needs be examined. This will be done in the next chapter of this research.

Fifth, in the United States, the Federal Rules of Criminal Procedure and the CVRA provide that federal crime victims have a right to be heard at any public proceeding including sentencing. But, it should be noted that victim impact statements generally serve an expressive (that is, designed to allow victims to communicate with the court) rather than an instrumental (that is, designed to impact on sentencing decisions) function. Making a VIS, however, is currently not possible for victims in the Ethiopian criminal justice system.

As discussed elsewhere in this chapter, the draft code allowed victims to provide impact statements at the sentencing stage in the form of a final remark once the court has convicted the accused for committing the crime. Unfortunately, in the draft, providing an impact statement at the sentencing stage is not a right for victims to claim; it is an opportunity that depends on the court's discretion whether to allow or not crime victims to speak about their victimization and the harm the crime inflicted upon them. However, the discretion of the court may lead to a different treatment of similar cases and result in prohibiting some victims a chance to communicate with the court without good cause.

⁴⁵⁴ Helmut Kury and Michael Kilchling, *Accessory Prosecution in Germany: Legislation and Implementation* (253) 52; See also Kerstin Braun, *The Role of the Victim in Criminal Proceedings in Australia and Germany - a Comparison* (3) 101-102; In addition, in Germany the right to act as a PAP was inter alia introduced in order to enhance victim satisfaction and thus if introduced to the Ethiopian criminal procedure, it may yield the same fruit.

While VIS provides information to the judge, has therapeutic and other benefits for victims, explains the crime's harm to the defendant, and improves the perceived fairness of sentencing, victims are not provided with explicit and enforceable right to be heard at sentencing in the draft code.⁴⁵⁵ Thus, to achieve the essential rationales of making VIS and avoid different treatment of similar cases, the draft code should provide victims with the right to be heard at sentencing and lodge a mandamus petition if the "right to be heard" is denied, similar to the *US*.

Lastly, as discussed above, the victims' interests transcend the trial and sentencing stages of the criminal proceeding. Specifically, where convicted offenders are afforded the possibility to serve the remainder of their custodial sentence in the community, victims' safety interests may be significantly infringed upon. Offenders released into the community can approach victims or their families more easily raising security concerns. Victims may therefore wish to have an input in the release decision or the conditions imposed on the release. Regarding this, in the *US*, crime victims have the right to reasonable, accurate, and timely notice of any parole proceeding. Importantly, they have also the right to be present and reasonably heard at any parole proceeding.

However, in Ethiopia, victims of crimes have no right to reasonable, accurate, and timely notice of probation, parole, and pardon and amnesty proceedings. Importantly, also the victims lack a recognized position and participatory role in these post-trial proceedings. Particularly, no avenue exists for victims to complain against post-trial measures such as probation, parole, and amnesty they disagree with. Exceptionally, however, Art. 20 (7) of the pardon proclamation states that the "opinion of the victim or his family on the petition for pardon, if it is possible to contact them" shall be taken into consideration for granting pardon. Although this is a milestone towards recognizing the interest of victims in the pardon proceedings, the proclamation has failed to incorporate detailed provisions entitling the victim the right to reasonable, accurate, and timely notice of the proceeding, the manner of their participation as well as the value of their opinion. Therefore, Ethiopia needs to take a good lesson from the *US* concerning victims' right to reasonable, accurate, and timely notice of and to be present and reasonably heard at any parole and other post-trial proceedings.

⁴⁵⁵ Hahrul Mizan Ismail et al, Victim Impact Statement in Criminal Sentencing: Success or Setback for the Criminal Justice Process? (n 2) xviii

CHAPTER FOUR

EXAMINING THE IMPORTANCE AND CHALLENGES OF EXTENDING VICTIMS RIGHT TO PARTICIPATION IN CRIMINAL PROCEEDINGS IN ETHIOPIA

Introduction

Building upon the previous chapters, this chapter addresses the second research question of this study and examines the importance and challenges of extending victims' right to participation in criminal proceedings in Ethiopia. Therefore, in this chapter, the researcher will discuss the two main issues. First, the importance of extending victims' right to participation in criminal proceedings will be briefly analyzed. This chapter will also examine the challenges of extending victims' right to participate in various stages of the criminal proceeding in Ethiopia.

4.1 THE IMPORTANCE OF EXTENDING VICTIMS RIGHT TO PARTICIPATION IN CRIMINAL PROCEEDINGS

Emerging developments concerning victim participation in various jurisdictions suggest that victim participation is increasingly viewed as a desirable value for the administration of the criminal process.⁴⁵⁶ The positive effects of crime victim participation may not only help the victim feel less alienated but may also enhance the legitimacy of pre-trial, trial, and sentencing processes in the eyes of both victims of crimes and the public.⁴⁵⁷ This section, therefore, will portray precisely three reasons in support of extending victims' right to participation in the Ethiopian criminal justice system, including the creation of a more just legal system, an increase in the overall effectiveness of the criminal justice system, and the improvement of victim satisfaction with the system.⁴⁵⁸ These three reasons are closely interrelated and together demonstrate the importance of victim participation.

First and foremost, extending victims' right to participation in Ethiopia can lead to a criminal justice system that is more just.⁴⁵⁹ A just system equally addresses the concerns of all three parties with direct interests in the outcome of the case: the offender, the victim, and the State.⁴⁶⁰ However, the present Ethiopian criminal justice system mainly addressed the concerns of the offender and the state. Accordingly, there is widespread failure to include victims in the process

⁴⁵⁶ Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice Reconceiving the Role of Third Parties* (n 19) 117, 156

⁴⁵⁷ *Ibid*

⁴⁵⁸ *Ibid*; Sarah Jessica, *Using Procedural Justice to Explore the Relationship between Victim Satisfaction with Police and Victim Participation in Prosecution* (Thesis for the degree of Master of Arts, University of Maryland, 2010) 5

⁴⁵⁹ *Ibid*

⁴⁶⁰ *Ibid*

of criminal prosecution, and the system's stakeholders regularly treated victims as pieces of evidence, rather than as human beings with emotions.⁴⁶¹ Until this time, Victims are marginalized. Thus, to create a more just system, victims in Ethiopian should have an extended right to participate in the criminal process.

Secondly, extending victims' right to participation in Ethiopia can makes the criminal justice system work more effectively.⁴⁶² Admittedly, victims of crimes are an integral part of the Ethiopian criminal justice system; without them, cases may go unreported to the police and convictions might not be obtained. In addition to increasing convictions, victim participation can make the system more efficient in several ways.⁴⁶³ In particular, when victims participate, stakeholders form a more accurate picture of the crime, and offenders are more likely to be rehabilitated.⁴⁶⁴ As seen in the previous chapters, criminal laws in Ethiopia, however, typically views them as witnesses to a criminal offense against the state, thus shutting them out of the criminal justice process and often allowing them in once they are needed to testify. However, this may become the major source of dissatisfaction for victims who seek validation in the criminal justice system. Consequently, victims' may show their dissatisfaction by removing themselves from the system: They may fail to report crimes; they may fail to appear in court, and at times they may resort to vigilantism.⁴⁶⁵ Victim withdrawal from the criminal justice process creates a public opinion that the system is inefficient and unresponsive and thus exponentially increases the likelihood that more crime victims will be deterred from reporting offenses and testifying in a courtroom.⁴⁶⁶ Given this in Ethiopia, extending crime victims' right to participate in the various phases of criminal proceedings, including bail, sentencing, parole, etc., is vital to make the system work more effectively.

⁴⁶¹ Endalew Lijalem, *The Space for Restorative Justice in the Ethiopian Criminal Justice System* (n 58) 244

⁴⁶² Kim Polowek, *Victim participatory rights in Parole* (n 4) 9

⁴⁶³ Sarah Jessica, *Using Procedural Justice to Explore the Relationship between Victim Satisfaction with Police and Victim Participation in Prosecution* (n 458) 6

⁴⁶⁴ For instance, if crime victims, in Ethiopia, are afforded with the right to participate at the post-conviction (sentencing) stage of a criminal proceeding, as impact statement provider, they can provide information to the sentencing judge and explain the crime's harm to the defendant and thus offenders are more likely to remorse for a wrong committed and to be rehabilitated. See Davis and Smith, 'Victim impact statements and victim satisfaction: An unfulfilled promise?' (1994) *Journal of Criminal Justice*, Vol. 22, Issue 1, 10- 12; Deborah P. Kelly 'Delivering legal services to victims: An evaluation and prescription' (1984) *The Justice System Journal* Vol. 9, No. 1, 62–86.

⁴⁶⁵ Karen L. Kennard, 'The Victim's Veto: A Way to Increase Victim Impact on Criminal Case Dispositions' (1989) *California Law Review*, Vol. 77, No. 2, 417

⁴⁶⁶ *Ibid*

At this point, given the importance of victim participation to the criminal justice system generally, it is useful to examine what benefits victims of crimes could obtain through participation in criminal proceedings. All crime victims have an interest in the criminal justice system's response to the offense committed against them. Crime is inherently invasive and even minor criminal acts can have psychological, physical, financial, and other consequences for victims.⁴⁶⁷ The victim's interest in how the justice system reacts to the offense stems from the crime and its impact on the life of the victim. This inherent interest is not confined to the trial stage, but rather, it starts from the decision to report the crime and continues after the offender has completed his sentence or any post-sentence monitoring.⁴⁶⁸

Participation improves the situation for victims in the criminal justice system. Particularly, giving victims a participatory role is an important way of formally and publicly recognizing that victims have suffered wrongdoing.⁴⁶⁹ Participation, it is argued, also gives victims an opportunity to be heard, to voice views and concerns, and to request reparations'.⁴⁷⁰ Moreover, participation helps to avoid further trauma for victims.⁴⁷¹ Additional victimization could potentially be reduced if victims perceived proceedings and outcomes as fairer due to the possibility of partaking in decision-making processes.⁴⁷² The possibility for victims to present views and concerns could strengthen the victims' perception that they have an important role to play in proceedings that is different from the prosecution and judicial authorities.⁴⁷³ Furthermore, it assists victims in obtaining therapeutic benefits, such as closure, through the criminal trial itself.⁴⁷⁴ In light of these considerations, extending victims' right to participate in the Ethiopian

⁴⁶⁷ Ian Freckelton, *Criminal Injuries Compensation: Law, Practice and Policy* (1st edn, LBC Information Services, 2001) 89

⁴⁶⁸ Irvin Waller, *Rights for Victims of Crime: Rebalancing Justice* (n 105) 169; Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process Report* August 2016, 24-25, available at: <<https://www.lawreform.vic.gov.au/all-projects/victims-crime-criminal-trial-process>> accessed 10 December 2020

⁴⁶⁹ *Ibid*

⁴⁷⁰ Victims' Rights Working Group (VRWG), 'Submission to the Hague Working Group of the Assembly of States Parties: The Importance of Victim Participation' (8 July 2013) available at:

<http://www.vrwg.org/VRWG_DOC/2013_July_VRWG_HWG_ParticipationFINALrevised.pdf> accessed 8 December 2020

⁴⁷¹ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (n 17) 142

⁴⁷² Uli Orth, 'Secondary Victimization of Crime Victims by Criminal Proceedings' (2002) *Social Justice Research* Vol. 15 (4), 314

⁴⁷³ *Ibid* 321–324; see also UNODC, *Crime Prevention and Criminal Justice University Module 11, Access to Justice for Victims*, available at: <<https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-11/index.html>> accessed 20 December 2020

⁴⁷⁴ Stephanos Bibas, *The Machinery of Criminal Justice* (Oxford University Press, 2012) 151

criminal justice system could be seen as an attempt to avoid any further victimization during criminal proceedings and assist victims in obtaining therapeutic benefits.

Lastly, victim participation is intertwined with victim satisfaction in a reciprocal relationship: satisfaction not only leads to participation—participation leads to satisfaction.⁴⁷⁵ As studies suggest victim participation in the criminal justice process enhances satisfaction with the justice system by giving victims a sense of empowerment and official, albeit symbolic, acknowledgment.⁴⁷⁶ Indeed, if criminal proceedings symbolize society's acknowledgment and condemnation of what victims suffered, those who participate as complainants, private prosecutors, or impact statement providers may feel their suffering recognized in some way.⁴⁷⁷ Thus, extending victims' participatory rights in the Ethiopian criminal justice system by adopting the various models of participation, discussed under chapter three, would be helpful to increase victim satisfaction with the system, and thereby to make them cooperative with justice personnel. In sum, allowing and encouraging victims to participate in the Ethiopian criminal justice system makes a more just system, increases the overall effectiveness of the system, helps to avoid secondary victimization, assists victims in obtaining therapeutic benefits, and increases victim satisfaction with the system.⁴⁷⁸ However, there is no doubt that there are numerous areas of potential conflict between the rights of the accused and victim participation. Without being exhaustive, therefore, the subsections below will examine whether victims' right to participate in the criminal process could be extended and enhanced in a way that is beneficial to victims, adhere to the present Ethiopian criminal justice system, and is not prejudicial to the due process rights of the accused.

4.2 THE CHALLENGES IN EXTENDING VICTIMS' RIGHT TO PARTICIPATION IN CRIMINAL PROCEEDINGS IN ETHIOPIA

As the foregoing chapters indicate, the crime victim's formal role in the criminal proceeding could be expanded to give the victim a variety of rights to participate in the proceeding at various

⁴⁷⁵ Sarah Jessica, Using Procedural Justice to Explore the Relationship between Victim Satisfaction with Police and Victim Participation in Prosecution (n 458) 6

⁴⁷⁶ Valentina Spiga, The Right to Justice for Victims of Human Rights Crimes (n 30) 203

⁴⁷⁷ Erez, Edna, and Ewa Bienkowska, 'Victim participation in proceedings and satisfaction with justice in the continental systems: The case of Poland' (1993) *Journal of Criminal Justice* 21(1), 47; John Hagan, 'Victims before the law: A study of victim involvement in the criminal justice process' (1982) *The Journal of Criminal Law and Criminology* Vol. 73, Issue 1, 317-19

⁴⁷⁸ Sarah Jessica, Using Procedural Justice to Explore the Relationship between Victim Satisfaction with Police and Victim Participation in Prosecution (n 458) 5

stages. These rights could range at one end of the spectrum from some victim control over the decision-making process to simple notification of the victim of the status of the case at various stages at the other end of the spectrum. In between these two extremes, there could be varying degrees of victim input into the decision-making process at various stages. However, when victims' right to participation is expanded there are several areas in which tensions and conflicts arise: Would the victim's participation unduly prolong the proceedings? Is crime victim participation fully consistent with the presumption of innocence? Does it diminish the perception of independence and impartiality of the court? Does it affect the right to equality of arms? Is expanding victims' right to participation consistent with the present Ethiopian criminal justice system dominated by the traditional understanding of criminal justice?

4.2.1 ENHANCING THE POSSIBILITIES FOR VICTIMS' PARTICIPATION Vs. THE RIGHTS OF THE ACCUSED

1. Introducing the Right to Act as a PAP in the Ethiopian Criminal Justice System

To allow victim participation to a greater extent in Ethiopia, victims could be afforded the right to participate as a PAP during the trial stage, similar to the situation in Germany.⁴⁷⁹ While the introduction of the right to participate as a PAP may be beneficial for victims of crime in Ethiopia as will be discussed below, there may be significantly greater risks for defendants' right to a fair trial associated with this form of participation in the Ethiopian adversarial trial structure than there are in the German inquisitorial trial structure. Therefore, the benefits and risks of introducing victim participation as a PAP in the adversarial trial structure of Ethiopian criminal proceedings will be analyzed in this section.

By comparison to the obligations of private prosecutors analyzed in Chapter 3, victims acting as PAPs are not responsible for actually conducting a prosecution. In case of accessory prosecution, the public prosecutor brings the prosecution and the PAP does not have to participate where this is not desired. For example, the PAP does not have to attend court, and make any decisions or contribute to the proceedings in any way if he does not wish to.⁴⁸⁰ It is therefore entirely up to the PAP to choose the extent of participatory rights he wishes to exercise. As PAPs are free to choose their participatory role in accordance with their own needs, this form of participation could have the potential to reach the objects of allowing victim participation in criminal

⁴⁷⁹ See the discussions in sections 3.2.2 (A) and 3.4 of the third chapter of this research.

⁴⁸⁰ Helmut Kury and Michael Kilchling, *Accessory Prosecution in Germany: Legislation and Implementation* (n 253) 41, 49

proceedings. Specifically, as noted by Kury and Kilchling, the participatory status associated with being a PAP can give victims the feeling of being in control and reduce the feeling of helplessness and respectively reduce the risk of secondary victimization.⁴⁸¹ But, the most important question that needs to be addressed here is: Could introducing victims' rights to participation at the trial stage as a PAP, adhere to the present Ethiopian criminal justice system, and is not prejudicial to the due process rights of the accused?

The accused's right to a fair trial could be infringed upon where victims of crimes participate as PAPs at the trial stage of the proceeding. In the case of PAP participation, the defendant might have to defend himself against two 'accusers': the public prosecutor and the PAP. This situation might upset the balance at trial. Furthermore, the participation could infringe upon the presumption of innocence that operates during the trial stage. The participation of a 'victim' at trial might already suggest that the defendant has committed the criminal act before being found guilty.⁴⁸²

A. Equality of Arms

Introducing the participation of PAPs may offset the balance of Ethiopian adversarial criminal trials and thereby present great risks for defendants.⁴⁸³ The main concern is that the participation of PAPs, who have the right to ask questions and to examine and request evidence, could violate the defendants' right to a fair trial. Where a victim participates as a PAP the defendant might have to face two, 'accusers'. This could ultimately violate the 'equality of arms' between state and defendant.⁴⁸⁴ During criminal trials, where the prosecution has all the machinery of the state behind it, the principle of equality of arms is an essential guarantee of the accused's right to defend him or her-self. Allowing victims' to participate during the trial stage in this capacity (as a

⁴⁸¹ Ibid 52; Besides, Current research in Germany supports the presumption that participation as a PAP can be beneficial for victims and may increase their satisfaction with the criminal justice system as well as assist them in avoiding secondary victimization. See Kerstin Braun, *The Role of the Victim in Criminal Proceedings in Australia and Germany - a Comparison* (n 3) 102

⁴⁸² Ibid

⁴⁸³ In Ethiopia, the trial stage involves two adversaries. As such, it is up to the parties to call witnesses and to examine them, with the court having the power to call additional witnesses where it deems it necessary to further the interest of justice. As a result, the judges cannot exercise firm trial control including the selection and subsequent examination of evidence and the questioning of witnesses, in Ethiopia. See Alemu Meheretu, *Introducing Plea bargaining in Ethiopia: Concerns and Prospects* (n 255) 68

⁴⁸⁴ See Article 13 of the Draft Criminal Procedure and Evidence Code; See Wondwossen Demissie Kasa, 'The Preliminary Inquiry in Ethiopia and its Adverse Impact on the Rights of the Accused' (2020) *Mizan Law Review*, Vol. 14, No. 1, 155

party to the proceeding (PAP)) is thus an exacerbation of the situation of the defense that has none of the state resources and powers and remains very weak.⁴⁸⁵

The trial in the Ethiopian criminal justice system is the stage adversarial litigation between the public prosecutor, representing the state, and the accused, or his representative, is conducted.⁴⁸⁶

The horizontal trial structure based on parties' control, do not allows for victim participation in the role of a PAP in Ethiopia without necessarily upsetting the balance of the trial. The adversarial trial structures in Ethiopia unable the judge to prevent the public prosecution and PAP from allying against the defendant. Thus, introducing this form of participation in the current Ethiopian criminal justice system may result in a violation of the defendant's rights, including the right to a fair trial.

B. Presumption of Innocence

The participation of a PAP during the main trial, where the defendant has not yet been found guilty, violates the presumption of innocence.⁴⁸⁷ It has been suggested that allowing a victim to participate in a trial already indicates that the defendant has committed the offense against the victim before the court has passed a verdict. Introducing the right to act as a PAP into the Ethiopian Criminal Justice System may thus be found in contradiction to the constitutionally guaranteed right of an accused person to be presumed innocent until guilt is established by a court of law. This point will further be elaborated on below in a separate subsection.

2. Introducing the Right to Participate as Impact Statement Provider in the Ethiopian Criminal Justice System

In the present Ethiopian criminal justice system, after the prosecution and the defense have presented their evidence, the court will render judgment and pronounce a sentence weighing the evidence in light of the law.⁴⁸⁸ In such a situation, the victim of the crime is not given a chance to address the judge about the impact of the crime on him. As a result, once the defendant is found to be guilty, the court is only required to ask the public prosecutor and the accused party for their opinion on sentencing in terms of aggravation or mitigation, before the judge imposes the

⁴⁸⁵ Alemu Meheretu, 'The Proposed Plea Bargaining in Ethiopia: How it Fares with Fundamental Principles of Criminal law and Procedure' (2016) Mizan Law Review, Vol. 10, No.2, 423

⁴⁸⁶ Endalew Lijalem, The Space for Restorative Justice in the Ethiopian Criminal Justice System (n 58) 227

⁴⁸⁷ The FDRE Constitution unconditionally guarantees the right of an accused person to be presumed innocent until guilt is established by a court of law. See Article 20 (3) of the FDRE Constitution

⁴⁸⁸ See Article 149 of the Criminal Procedure Code

sentence or punishment on the offender.⁴⁸⁹ As already pointed out in the previous chapter, however, the draft code allowed victims to provide impact statements at the sentencing stage in the form of a final remark once the court has convicted the accused of committing the crime.⁴⁹⁰ The American law that provided victims with an explicit and enforceable right to make VISs is also considered as the best lesson for Ethiopia to further widen victims' role at the post-conviction stage of the criminal process. Therefore, what follows is an analysis of whether, by considering the content of VISs, sentencing judges could infringe upon the defendant's right to a proportionate sentence and thus be 'prejudicial' to the accused.

Violations of the defendant's rights could become more likely in Ethiopia if victims can provide impact statements as their emotional and subjective content may endanger objective sentencing procedures.⁴⁹¹ It may be argued that victims could exaggerate the effects the crime has had on them in order to achieve a higher sentence for the defendant.⁴⁹² Also, judges might be overly influenced by the VIS and exceed normal sentencing expectations. This could violate the principle of proportionality of sentencing — meaning that the punishment received should fit the crime — and could thereby cause a disproportionate sentence.⁴⁹³ Additionally, more eloquent victims might obtain longer sentences for defendants than less articulate victims by tendering VISs of a higher quality. Ultimately, the sentence the defendant receives should be based on his guilt and not on his 'good or bad luck as to the forgiving or vindictive nature of their victims'.⁴⁹⁴

In contrast, however, it has to be acknowledged that, when the court is fully informed about the consequences of the crime for the victim, sentences might become more proportionate and precise compared to when such information is not available to courts.⁴⁹⁵ Therefore, the introduction of VISs schemes might reduce the risk of a violation of the sentencing principle of proportionality rather than increase it. Moreover, the arguments against victim participation tend

⁴⁸⁹ Ibid

⁴⁹⁰ See Article 310 of the Draft Criminal Procedure and Evidence Code

⁴⁹¹ Hahrul Mizan Ismail et al, Victim Impact Statement in Criminal Sentencing: Success or Setback for the Criminal Justice Process? (n 2) xviii

⁴⁹² Ibid; though the evidential value of the victims' impact statement at sentencing is not clear (from the reading of Article 310 of the draft Criminal Procedure Code), sentencing judges might be overly influenced by the VIS and exceed normal sentencing expectations. Thus, the use of VIS in criminal sentencing could also cause negative implications to the justice process. It is hard not to guess that the VIS may be misused into being a mechanism that allows retaliation. There is always the risk of the victim testifying against the offender in an unwarranted 're-trial' session rather than focusing on the impact of the offense on the victim.

⁴⁹³ See Article 88 of the FDRE Criminal Code

⁴⁹⁴ Kerstin Braun, Victim Participation Rights Variation across Criminal Justice Systems (n 6) 92

⁴⁹⁵ Ibid

to exaggerate the extent to which the consequences of such participation are likely to be unforeseen.⁴⁹⁶ Judges are, after all, trained to disregard irrelevant evidence. The mitigating and aggravating circumstances are clearly stipulated in the FDRE criminal code (Articles 82- 86). Therefore, allowing victims' to participate as impact statement provider in the current Ethiopian criminal justice system could not infringe upon the defendant's right to a proportionate sentence and thus be 'prejudicial' to the accused, since the interests of the victims are but one factor that ought to be taken into account alongside a range of other factors, including the seriousness of the offense, the threat posed to the public, and any mitigating circumstances.

3. The Participation of the Victim and the Right to an Expeditious (Speedy) Trial

One of the most widespread criticisms of victim participation in criminal proceedings is that it may entail delays and thus conflict with the defendant's right to an expeditious trial. The interest in the speedy completion of a criminal proceeding is justified both by substantive and procedural grounds.⁴⁹⁷ Completion of the criminal proceeding without unnecessary delay allows the convicted defendant to be punished promptly, thereby satisfying the victims by implementing the punishment timely so that it will serve its purpose. On the other hand, if the suspect is found not guilty, he will be acquitted without delay, thereby shortening the time of his deprivation of liberty.⁴⁹⁸ Contrary to what its name (right to a speedy trial) suggests, the right is relevant not only at the stage of trial but during the whole criminal proceeding, beginning from the investigation.⁴⁹⁹ Detailed legal provisions exist to ensure the disposition of a criminal case within a reasonable time in Ethiopia.⁵⁰⁰

Apart from the practical consideration that very long proceedings have taken place before criminal courts in Ethiopia even in the absence of any right of victims to participate, it should also be said that this risk to the right of the accused should be addressed through organizational

⁴⁹⁶ Jonathan Doak, *Victims' Rights, Human Rights, and Criminal Justice: Reconceiving the Role of Third Parties* (n 19) 151-156; Valentina Spiga, *The Right to Justice for Victims of Human Rights Crimes* (n 30) 205-6

⁴⁹⁷ Wondwossen Demissie Kassa, *Ethiopian Criminal Procedure: A textbook* (26) 345; Awol Alemayehu Dana, 'Due Process Rights of Suspects During Pretrial and the Existing Challenges Under the Legal Frameworks of Ethiopia' (2018) Vol.8, No.12, 68-69

⁴⁹⁸ Ibid

⁴⁹⁹ Article 19(4) of the FDRE Constitution shows the link between the duration of an investigation and the right to a speedy trial, thereby establishing that the interest in speedy completion of a criminal proceeding applies not only to the trial stage of the proceeding. See also Articles 37 and 59 of the Criminal Procedure Code

⁵⁰⁰ Article 20(1) of the FDRE Constitution refers to the right of the accused to be tried within a reasonable time after being charged. See also Articles 94, 95, 123 of the Criminal Procedure Code

measures and the proper balancing of conflicting interests on a case-by-case basis.⁵⁰¹ Importantly, victim participation that unreasonably prolongs the proceedings, and violates the rights of the accused, should not find justification in the fact that participation is provided for in the criminal procedure code or any other law. Criminal proceedings must not be unreasonably long; otherwise, the rights of the accused are violated, even if this prolongation is due to victim participation.⁵⁰²

However, it should be noted that allowing victims' to participate in bail proceedings, plea negotiations and sentencing will not result in a prolonged proceeding since victims in this capacity (non-dispositive participant) cannot demand witnesses to be present and examined and engaging in systematic challenges to prosecutorial strategies; they are merely entitled to present their views and concerns regarding the release of the suspect or accused, the plea agreement between the defendant and the public prosecutor and to make their impact statements to the sentencing court. Thus, enhancing the possibility for victims to participate in the aforementioned stages of criminal proceedings could not affect the rights of the accused to a speedy trial.

Furthermore, as discussed under chapter 3, it is not common for Ethiopian criminal courts, in practice, to entertain the issue of compensation simultaneously with criminal proceedings. Inter alia, this is mainly because the public prosecutors are not willing to lodge the claim for compensation as part of the criminal proceedings under the pretext of causing delay to criminal proceedings.⁵⁰³ However, it should be noted that the discretion to decide whether the application should be dismissed or maintained is up to the trial court, not the prosecutors. In this regard, Article 155 of the CPC states that:

- (1) The court shall consider the application and shall of its own motion or on the request of the prosecution or the defense refuse the application where: (f) the court is of opinion that the hearing of the injured party's claim for compensation is likely to confuse, complicate or delay the hearing of the criminal case.

⁵⁰¹ For example, if there are a large number of victims, in such a case the court should arrange their participation in a manner that cannot affect the accused(s) right to speedy trial such as participation through a representative (common attorney).

⁵⁰² Salvatore Zappala, 'The Rights of Victims v. the Rights of the Accused' (2010) JICJ 8, 146

⁵⁰³ Simeneh Kiros Assefa, Criminal Procedure Law: Principles, Rules, and Practices (n 25) 399-400; Worku Yaze, Status and Role of Victims of Crime in the Ethiopian Criminal Justice System (n 7) 141

From this provision, it must be clear that the joinder of civil and criminal cases (victim participation as a civil party) do not always cause delay to criminal proceedings. However, this sort of participation should, in theory, reap benefits both for victims and for the criminal justice system more generally.⁵⁰⁴ The ability to pursue civil damages in the criminal trial should, in theory, improve speed, cost, and time involved given that both civil and criminal issues are resolved in the same forum.⁵⁰⁵ In addition to improved efficiency of both the criminal and civil justice systems, there are a number of advantages that would be specific to the complainant. Under a unitary system, the civil party can have a 'free ride' on the evidence at the criminal trial, which should guarantee victims some tangible or symbolic compensation.⁵⁰⁶ The victim would not, therefore, have to testify again under stressful adversarial conditions in order to obtain full compensation in the civil courts.⁵⁰⁷ Therefore, it is the responsibility of the court to strike the balance between the competing rights of the accused to speedy trial and victims to participate as a civil party during the trial stage of the criminal proceeding.

4. The Participation of Victim and the Presumption of Innocence

The right of the accused to be presumed innocent is recognized under the FDRE Constitution⁵⁰⁸ and in various human rights instruments.⁵⁰⁹ While victim participation does not clash per se with the presumption of innocence, there is at least one aspect of victim participation that creates a potential prejudice: the mere fact of victim participation involves the underlying presumption that the crimes are considered to have occurred in the circumstances in question and that certain persons were the victims.⁵¹⁰ Normally, one of the elements that must be proved beyond a reasonable doubt by the public prosecutor is the factual basis of the crime and it is part of the fact-finding process of a criminal trial. However, when crime victims are admitted to the criminal process on the basis of a preliminary finding that a crime was committed against them, there seems to be a presumption as to the unfolding of events.⁵¹¹ This implies the establishment (at least prima facie) of the fact that a crime occurred and that the persons claiming the status of

⁵⁰⁴ Jonathan Doak, Victims' Rights in Criminal Trials: Prospects for Participation (n 14) 20

⁵⁰⁵ Ibid

⁵⁰⁶ Ibid

⁵⁰⁷ Ibid 21

⁵⁰⁸ See Article 20 (3) of the FDRE Constitution

⁵⁰⁹ See Article 11 of the UDHR; Article 14(2) of the ICCPR; Article 7(1) of ACHPR; Article 40(2)(b)(i) of the CRC

⁵¹⁰ Salvatore Zappala, The Rights of Victims v. the Rights of the Accused (n 502) 146-147

⁵¹¹ Ibid. Joris Jacobs, participation or procedural fairness? A study into the correlation between victim participation and procedural fairness within the ICC (Master Thesis, Victimology & Criminal Justice, University of Tilburg 2019) 20;

victims were somehow affected by this crime.⁵¹² As a consequence, there is a risk that the trial will be only limited to the legal characterization of the events and the identity of their author.⁵¹³

Criminal trials in Ethiopia are based on the presumption of innocence and the defendant has no matter how serious the allegation against him to be presumed innocent and must be treated accordingly, including by requiring proof beyond reasonable doubt of the relevant facts establishing the offense.⁵¹⁴ Importantly, also the FDRE constitution explicitly clarifies that the burden of proof rests on the public Prosecution (Article 20 (3)). The fact that victims are allowed to take part in the proceedings cannot alter such rules, which are essential to a fair trial. However, it must be clear that the presumption of victimhood is crucial to the recognition of the rights of victims in the same way as the presumption of innocence is crucial to the protection of the rights of the accused. Therefore, the judges will have to be extremely careful to recognize and protect the procedural rights of victims in juxtaposition to the due process rights of criminal defendants in general and the right to be presumed innocent in particular.

5. The Participation of Victim and the Right to an Impartial Court

In the pre-conviction phase of criminal trials, victim participation is fraught with numerous difficulties on account of the myriad of competing aims of criminal justice, which include the objective adjudication of criminal guilt, truth-finding, and the need to preserve fair trial rights for the defendant. Specifically, victim participation has a potential impact on the right to an impartial court, or at least the perception thereof. Courts must not only be independent and impartial but should of course also be seen as being so.⁵¹⁵ Impartiality is described as referring to a state of mind in which the subject is balanced in a perfect equilibrium between parties - it is synonymous with 'non-partisan' or —neutral.⁵¹⁶ Impartiality of the court gives the parties confidence that the judges will decide the case exclusively on the basis of their reasonable assessment of the evidence and the application of the law.⁵¹⁷ Thus, Ethiopian courts should accord due respect to the opposing interests of the accused and the victims and comply with general standards of a fair,

⁵¹² Ibid. Jonathan Doak, Victims' Rights in Criminal Trials: Prospects for Participation (n 14); Ernestine Hoegen and Marion Brienen, Victims of Crime in 22 European Criminal Justice Systems (n 78) 30

⁵¹³ Ibid

⁵¹⁴ Simeneh Kiros Assefa, 'The Principle of the Presumption of Innocence and its Challenges in the Ethiopian Criminal Process' (2012) Vol. 6, NO. 2, 273; however, this principle is violated by various subsidiary laws, procedures and practices.

⁵¹⁵ See Articles 20(1), 78, and 79 of the FDRE Constitution. Also, this right is laid down in different human right instruments, such as: ICCPR, Art. 14 (1); UDHR, Art 10

⁵¹⁶ Wondwossen Demissie Kassa, Ethiopian Criminal Procedure: A textbook (26) 355-358

⁵¹⁷ Ibid

impartial, and expeditious trial. If this delicate balance is not attained throughout the whole trial, in such a way that the Court remains just and credible to all participants, even sentencing will become insignificant and fail to meet the purposes of punishment in FDRE criminal code.

4.2.2 ENHANCING THE POSSIBILITIES FOR VICTIMS' PARTICIPATION Vs. TRADITIONAL UNDERSTANDING OF CRIMINAL JUSTICE IN ETHIOPIA

This section questions whether Ethiopia has moved away from the traditional aims of criminal law and procedure, thus creating a changed understanding of criminal justice and the role of the victim within. In light of the analysis, the section then examines whether future legislative reforms in the area of victim participation are likely to be successful.

1. The Incompatibility between the Traditional Concept of Criminal Justice and Expanded Victims' Right to Participate in the Criminal Proceedings

Chapter 2 analyzed the role of victims in criminal theories including the classical schools of retributivism and utilitarianism. In the Ethiopian context, it appears doubtful that retributivism in the traditional sense, namely as punishment exclusively for the sake of punishment itself, has any remaining supporters. Rather, Ethiopian criminal justice appears heavily dominated by the collectivistic interests of society. The activity of the state in the criminal sphere is based on and justified in accordance with, the interests of the general community. The underlying aims of Ethiopian criminal procedure are described as punishing a breach of society's norms, on the one hand, and as granting the defendant a fair trial on the other. The Ethiopian criminal justice system, as it appears through the current formal legal framework and the criminal code, in particular, views crime primarily as a violation of the state's criminal laws, rather than as a violation of relationships between the parties and the community at large.⁵¹⁸

In Ethiopia, the state-based criminal procedure was originally introduced to replace the system of private prosecutions often associated with individual vengeance, following the introduction of the institution of Public Prosecutors by Public Prosecutors Proclamation No.29 of 1942.⁵¹⁹ As a consequence, a criminal justice system largely independent of victims' wishes evolved. This led to the 'neutralization' of the victim and a 'de-emotionalization' of criminal procedure. According to this traditional view of criminal justice, the individual violation of a victim's right is consumed by the respective violation of the state's criminal laws.⁵²⁰ Thus, the criminal justice system

⁵¹⁸ Endalew Lijalem Enyew, *The Space for Restorative Justice in the Ethiopian Criminal Justice System* (n 58) 216

⁵¹⁹ Worku Yaze, *Status, and Role of Victims of Crime in the Ethiopian Criminal Justice System* (n 7) 126-127

⁵²⁰ See Art. 1 of the FDRE Criminal Code

marginalizes victims of crime and makes them 'mere footnotes of the processes'.⁵²¹ And the individual victim's interest to participate during the trial does not seem especially relevant in Ethiopian criminal procedure because the criminal process is regarded as a matter between the suspect and the state and therefore does not accord the victim an independent active role.⁵²²

With this in mind, one may comment that reintegrating victims, including allowing them to actively participate, should be the aim of civil proceedings which deal with individual conflicts between victims and offenders, but not criminal proceedings.⁵²³ This view may be supported by the argument that criminal courts are not responsible for providing closure for the victims of crime but only for adjudicating a matter brought to their attention by the public prosecutor.⁵²⁴ However, the failure to grant victims of crime a significant role in the dispensation of criminal justice is particularly short-sighted, as the continued functioning of the criminal justice system relies on the cooperation of victims both in the reporting of crimes and in assisting in the prosecution of crimes.⁵²⁵

The above suggests that due to the de-privatization of conflict, victim participation cannot be considered an underlying value or aim of traditional criminal justice in Ethiopia. Also, the criminal procedure in Ethiopia appears to be shaped by a deliberate exclusion of the victim. Nevertheless, an introduction of new opportunities for victims to participate in the criminal process has occurred in Ethiopia, especially through the draft criminal procedure code.⁵²⁶ Importantly, also the 2011 Criminal Justice Policy of Ethiopia has recognized victims' right to participate in crime investigation, prosecution, and the adjudication process as well as the right to be informed of relevant information concerning the case for over a decade though not properly implemented.⁵²⁷ In light of this, one may question whether the ongoing improvements concerning victim participation can be seen as a victim-centered reorientation of criminal procedure and the birth of a victim-focused process model in Ethiopia.

⁵²¹ See Art. 23 of the FDRE Criminal Code; Endalew Lijalem Enyew, *The Space for Restorative Justice in the Ethiopian Criminal Justice System* (n 58) 216

⁵²² *Ibid*

⁵²³ Kerstin Braun, *The Role of the Victim in Criminal Proceedings in Australia and Germany - a Comparison* (n 3) 119

⁵²⁴ *Ibid*

⁵²⁵ Karen L. Kennard, *The Victim's Veto* (n 465) 417

⁵²⁶ See Articles 170 and 310 of the Draft Criminal Procedure and Evidence Code

⁵²⁷ See Section 6.2.1 of the Criminal Justice Policy of the Federal Democratic Republic of Ethiopia, 2011, Ministry of Justice, Addis Ababa, at. 50

However, one cannot boldly say that the introduction of opportunities for the victims to participate during the plea agreement processes between the suspected/accused individuals and the public prosecutor as well as after conviction in the form of impact statement provider in the formal criminal proceeding is a victim-centered reorientation of criminal procedure and the birth of a victim-focused process model in Ethiopia. In light of the above, therefore, extended and enhanced victim participation in criminal proceedings particularly during the trial stage appears generally inconsistent with the current Ethiopian criminal procedure and its underlying principles. More specifically, without a changed understanding of crime and justice and a corresponding shift in attitudes towards the role of victims in criminal proceedings, it appears likely that victims' procedural rights (victim participation) will continue to be modified in a piecemeal fashion through legislative reforms in the future leading to an even more disjointed legal landscape, in Ethiopia.

In sum, the legislatures attempt to introduce in the draft code of criminal procedure (from Articles 180-188) an opportunity for victims' of crimes to participate in the settlement of the criminal conflicts through out-of-court (customary dispute resolution) mechanisms which positions them at the center should be seen as a milestone since it creates a conducive environment for the implementation of restorative justice ideals in the Ethiopian criminal justice system, which is lacking in the current code of criminal procedure.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1 CONCLUSION

As is the case in Germany, the *US* and many other jurisdictions, victims in historic Ethiopia had played significant roles throughout the various phases of the criminal process. In traditional Ethiopia, as there was no distinction between civil and criminal cases, in that the victim of a criminal act was obliged to initiate and process the case himself and ultimately to execute the punishment. Following, the promulgation of public prosecutors proclamation No. 29/1942, however, the prosecution acquired some power of prosecuting crimes which considered holding public interest, and finally, crime victims in Ethiopia explicitly marginalized from the justice system through the enactment of the 1961 criminal procedure code. In the meantime, Ethiopia has paid too much attention to the legal rights of defendants and thus the FDRE Constitution, criminal code, and criminal policy are failed to hold widening participatory rights for victims of crime. Too, the present Ethiopian criminal justice system views crime primarily as a violation of the state's criminal laws and wrong done against the society. However, both in theory and reality, victims and crime are closely linked. In many cases, it is impossible to have one without the other. Despite this, in most criminal proceedings in Ethiopia victims of crimes are absent from substantial parts of the process. As a result, victims in Ethiopia are a "forgotten party" in criminal proceedings unlike suspected, arrested, and/or accused persons'. They are marginalized and assigned to play a relegated role in their cases.

This research is aimed at examining the participatory role crime victims have been afforded in various phases of the criminal proceeding in Ethiopia and to draw some best lessons to widen victims' participatory rights in the Ethiopian criminal justice system. To achieve this purpose, comparative analysis of victims' right to participate in the various phases of criminal proceedings in Germany, the United States, and Ethiopia has provided.

Based upon the research findings, though victims play a decisive role in the initiation of criminal proceedings particularly in relation to crimes punishable upon compliant in Ethiopia, crime victims are placed at the margin of the present Ethiopian criminal justice system as their role is confined to merely be a witness in their own case upon the discretion of the public prosecutor. Given this in Ethiopia, the notion of victims' right to participation is almost non-existent as it appears through the formal legal framework. Nonetheless, it does not mean that the Ethiopian

criminal justice system embraces no modalities of victim participation during the various stages of the criminal proceeding. It exhibits some modes of participation even though they are practically not available. These modalities of victim participation in the criminal process include, inter alia, participation as a private prosecutor and civil party in the criminal proceeding at trial. Furthermore, though the new draft code of criminal procedure embraces some new models, it is yet to properly incorporate well extended and enforceable victim participation rights into the Ethiopian criminal justice system. However, the failure to grant victims of crime a significant role in the dispensation of criminal justice in Ethiopia is particularly short-sighted, as the continued functioning of the criminal justice system relies on the cooperation of victims both in the reporting of crimes and in assisting in the prosecution of crimes.

In addition, the research has identified the lessons that Ethiopia should learn from the laws of the United States of America and Germany concerning victims' right to participate in the various phases of criminal proceedings. These are: victims' right to notice of the progress of the case; right to be heard during bail proceedings; right to be heard concerning plea agreements; right to participate as a PAP during trial (though it is latter found to be incompatible with the present adversarial trial structure in Ethiopia); right to be heard at sentencing and parole proceedings.

Furthermore, based upon the research findings, the major challenges that are negatively hindering the expansion of victims' right to participate in various stages of the criminal process are: First, the fair trial rights of the accused, including, the presumption of innocence, equality of arms, the right to a speedy trial, and an impartial court. Nonetheless, the expansion of victims' participatory rights would not infringe upon defendants' rights in every case depending on how such rights are tailored. Therefore, the legislatures should provide victims participatory rights in stages of the proceeding where the defendant's rights do not become a serious concern including bail, plea bargaining, sentencing, and post-trial proceedings. Besides, recognizing passive victim participatory rights such as the right to be informed of the progress of the case does not have a serious negative repercussion on the fair trial rights of the accused. Most importantly, however, the judges have to be extremely careful to recognize and protect the procedural rights of victims in juxtaposition to the due process rights of criminal defendants.

Second, currently in Ethiopia criminal justice seems to be generally regarded as a state-based conflict excluding victims. This indicates that allowing victims to participate in various stages of the criminal proceeding and particularly at trial as such is not seen as an underlying aim/principle

of criminal justice. Therefore, in pursuance of furthering victim participation in the criminal proceeding, a reconceptualization of crime, criminal justice, and the victim's role in the criminal process in Ethiopia appears essential. It requires acknowledgment that the victim, as the subject of the crime, is also subject to the criminal process and, as such, needs to be able to participate actively. The findings of this research may serve as an input to extend victims' right to participation in criminal proceedings and a stepping stone for conducting such kind of study in the future.

5.2 RECOMMENDATION

Based on the findings and conclusions made above, the author recommends the following:

1. As revealed in this research, victims in the United States and Germany entitled to access relevant information on the progress of the case in every stage of the judicial process. In this regard, the researcher recommends, the upcoming Criminal Procedure and Evidence Code, in Ethiopia, should extend victims' right to receive information throughout the stages of the criminal process starting from the pretrial through trial to the post-trial stages of the proceeding so as to enable victims to obtain relevant and updated information.
2. The upcoming Criminal Procedure and Evidence Code should provide Victims an explicit right to express their views and concerns during bail proceedings to increase their satisfaction with the criminal justice system; to protect them from secondary victimizations and encourage them conveying full and accurate information.
3. Victims should be given an explicit and enforceable right to express their views and concerns during plea negotiation in the upcoming Criminal Procedure and Evidence Code so as to enable victims to play a meaningful role in the process and avoid frustrating effects on victims which in turn may negatively affect reporting of crimes and trigger self-help measures.
4. Private prosecution might be one of the opportunities to participate in the criminal process when the public prosecutor decides not to prosecute. However, victims' should be supported in their efforts to participate as a private prosecutor in the criminal justice process. Otherwise, private prosecution will not have the potential to avoid secondary victimization and provide closure for victims. The modes of participation as a private prosecutor, which exist theoretically in the 1961 Criminal Procedure Code and incorporated in the draft Criminal Procedure and Evidence Code, should be reinforced by explicitly providing private

prosecutors the right to be represented by legal counsels and mandating the police as well as the prosecution office to lend support for the victims of crimes who are authorized to be a private prosecutor and put into practice.

5. Joinder of civil and criminal cases (the adhesion procedure) should be implemented for participatory purposes. It has a major advantage of allowing crime victim to have a voice in the criminal process and of granting him/her several important participatory rights in all stages of the criminal proceeding pertaining to his/her compensatory claim. In the upcoming Criminal Procedure and Evidence Code, like the public prosecutor and defense, it should be allowed to the crime victim to express his/her opinions in the judicial deliberations leading to dismissal (or otherwise) of his application. Judges should be made aware of how to deal with compensatory claims within the criminal process during their training in the institutes for the judiciary or during any other practical training for future judges. Also, public prosecutors and judges negative attitude toward compensation should be seriously combated and, ultimately, renounced.
6. The provision in the upcoming Criminal Procedure and Evidence Code that pertains to Victim Impact Statement need not only be retained but also further broadened to provide crime victims an explicit and enforceable right to speak about their victimization and the harm the crime inflicted upon them after conviction. The discretion of the court whether to allow or not crime victims to submit an impact statement in the draft code should be limited to minor crimes since this may lead to differential treatment of similar cases and result in prohibiting some victims a chance to communicate with the court without good cause.
7. Legislations shall be enacted that acknowledge crime victims have an interest that transcends the trial stage of the criminal proceeding and provide them an explicit right to participate in the Post-trial proceedings including, probation, parole, pardon, and amnesty.
8. The Government of Ethiopia should adopt a new criminal justice policy that considers crime as a wrong committed against both the victim and society and enables victims of crime to play a significant role in the Ethiopian criminal justice process. Such a policy should reflect an attitude that the Ethiopian criminal justice system does not exist without its victims, but rather, it exists because of its victims.
9. Victims of crimes should be treated with compassion and respect for their dignity, and should be supported in their efforts to participate in the criminal justice process.

BIBLIOGRAPHY

1. Primary Sources

A. Legal Instruments

I. International Legal Instruments

- International Covenant on Civil and Political Rights adopted by the General Assembly on 16 December 1966 and entered into force on 23 March 1976.
- Universal Declaration of Human Rights, (10 December 1948, 217 A (III))
- UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998
- UN General Assembly, United Nations Convention against Transnational Organized Crime: resolution / adopted by the General Assembly, 8 January 2001, A/RES/55/25
- UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000
- UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006
- United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly Resolution 40/34 of the General Assembly, 29 November 1985

II. Regional Instruments

- Council of Europe, Committee of Ministers, Recommendation No. R (85) 11 of the Committee of Ministers to Member States on the Position of the Victim in the Framework of Criminal Law and Procedure, 28 June 1985
- Council of the European Union, Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings (2001/220/JHA), 15 March 2001.
- Council of Europe, Committee of Ministers, Recommendation R. (2006) 8 of the Committee of Ministers to Member States on Assistance to Crime Victims, 14 June 2006.
- European Parliament and Council of the European Union, Directive 2012/29/EU of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, 25 October 2012

III. National Laws

- The Federal Democratic Republic of Ethiopia Constitution, Proclamation No. 1 of 1995.
- Criminal Code of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazzeta, Proclamation No. 414/2004.
- Criminal Procedure Code of Ethiopia, Proclamation No. 185 of 1961, 2 November 1961
- Federal Attorney General Establishment Proclamation No. 943/2016
- A Proclamation to provide for the Procedure of Granting and Executing Pardon, Proclamation No. 840/2014
- The Federal Democratic Republic of Ethiopia Draft Criminal Procedure and Evidence Code, 2020
- U.S Federal Rules of Criminal Procedure
- Crime Victims’ Rights Act 2004 (US)
- Victims’ Rights and Restitution Act 1990 (US)
- Victim and Witness Protection Act 1982 (US)
- Mandatory restitution to victims of certain crimes Act 1996 (US)
- German Code of Criminal Procedure (Strafprozeßordnung – StPO) as published on 7 April 1987 (Federal Law Gazette I, p. 1074, 1319), as last amended by Article 3 of the Act of 11 July 2019 (Federal Law Gazette I, p. 1066)
- Germany Victims’ Rights Reform Act of 2004

B. Cases

I. Foreign

- US v. Degenhardt, 405 F. Supp.2d 1341 (D. Utah 2005) (US).
- US v. Marcello, 370 F. Supp. 2d 745 (N.D. III. 2005) (US).
- Kenna v. United States District Court, 435 F.3d 1011, 1014 (9th Cir. 2006) (US).
- Palmer v. Granholm, No. 1:06-cv-301, 2006 U.S. Dist. LEXIS 45333, at 29 (W.D. Mich. July 5, 2006).

II. International Cases

- The Prosecutor v. Katanga/ Ngudjolo, No. ICC-01/04-01/07-632, 23 June 2008
- The Prosecutor v. Lubanga, No. ICC-01/04-01/06-1119, 18 January 2008
- The Prosecutor v. Katanga/ Ngudjolo, No. ICC-01/04-01/07-1788-tENG, 22 January 2010

2. Secondary Sources

A. Books

- Albin Dearing, *Justice for Victims of Crime: Human Dignity as the Foundation of Criminal Justice in Europe* (1st edn, Springer International Publishing AG 2017)
- Charles Doyle, *Crime Victims' Rights Act* (1st edn, Nova Science Publisher, Inc. 2008)
- Doak, J., *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (Hart Publishing, Oxford, 2008)
- D Scott Broyles, *Criminal Law in the USA* (2nd edn, Wolters Kluwer Law & Business 2015)
- Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (3rd edn, Herald Press 2005)
- Ernestine Hoegen and Marion Brienen, *Victims of Crime in 22 European Criminal Justice Systems: The Implementation of Recommendation (85) 11 of the Council of Europe on the Position of the Victim in the Framework of Criminal Law and Procedure* (1st edn., Wolf Legal Productions (WLP)), 2000)
- Helmut Kury and Michael Kilchling, 'Accessory Prosecution in Germany: Legislation and Implementation' in Edna Erez, Michael Kilchling and Jo-Anne Wemmers (eds), *Therapeutic Jurisprudence and Victim Participation in Justice, International Perspectives* (Carolina Academic Press, 2011)
- Ian Freckelton, *Criminal Injuries Compensation: Law, Practice and Policy* (1st edn, LBC Information Services, 2001)
- Irvin Waller, *Rights for Victims of Crime: Rebalancing Justice* (1st edn, Rowman & Littlefield Publishers, Inc. 2011)
- James Dignan, *Understanding Victims and Restorative Justice* (1st edn, Maidenhead: Open University Press 2005)
- Kerstin Braun, *Victim Participation Rights Variation across Criminal Justice Systems* (1st edn, Palgrave Studies in Victims and Victimology 2019)
- Michael Bohlander, *Principles of German Criminal Procedure* (1st edn, Hart Publishing 2012)
- Robert Cryer et al., *An Introduction to International Criminal Law and Procedure*, (1st edn, Cambridge University Press, 2007)
- Simeneh Kiros Assefa, *Criminal Procedure Law: Principles, Rules and Practices* (Lightning Source UK ltd. Milton Keynes UK, first edn. 2010)

- Tyrone Kirchengast, *The Victim in Criminal Law and Justice* (Palgrave Macmillan, 2006)
- Wondwossen Demissie Kassa, *Ethiopian Criminal Procedure: A textbook*, 2012

B. Journal Articles

- Adler, M. D., 'Expressive Theories of Law: A Skeptical Overview' (2000) *University of Pennsylvania Law Review*, 148(5)
- Adrian Di Giovanni, 'The Prospect of ICC Reparations in the Case Concerning Northern Uganda: On a Collision Course with Incoherence?' (2006) 2 *J. INT'L L. & INT'L REL.* 25
- Alemu Meheretu Negash, 'Rethinking Plea Bargaining Policy: The Case of Ethiopia' (2017) *Mizan Law Review*, Vol. 11, No.2
- Alemu Meheretu, 'The Proposed Plea Bargaining in Ethiopia: How it Fares with Fundamental Principles of Criminal law and Procedure' (2016) *Mizan Law Review*, Vol. 10, No.2
- Amalia D. Kessler, 'Our Inquisitorial Tradition: Equity Procedure, Due Process, and the Search for an Alternative to the Adversarial' (2005) 90 *Cornell L. Rev.* 1181
- Awol Alemayehu Dana, 'Due
- Process Rights of Suspects During Pretrial and the Existing Challenges Under the Legal Frameworks of Ethiopia' (2018) Vol.8, No.12
- Bazemore, G. and Walgrave, L., 'Restorative Juvenile Justice: Repairing the Harm of Youth Crime' (1999) *Criminal Justice Press*
- Carla Ferstman, 'The reparation regime of the International Criminal Court: practical considerations' (2002) *Leiden Journal of International Law*, Vol. 3
- Cassell, P., Mitchell, N., & Edwards, B. 'Crime Victims' Rights during Criminal Investigations? Applying the Crime Victims' Rights Act Before Criminal Charges Are Filed' (2014) *Journal of Criminal Law & Criminology*, 104
- Christopher Ciocchetti, 'Wrongdoing and Relationships: An Expressive Justification of Punishment' (2003) *Social Theory & Practice*, 29(1)
- Charles P. Trumbull IV, 'the Victims of Victim Participation in International Criminal Proceedings' (2008) 29 *MICH. J. INT'L L.* Issue 4
- Christoph Safferling, 'The Role of the Victim in the Criminal Process– A Paradigm Shift in National German and International Law?' (2011) 11 *Int'l Criminal Law Review* Vol. 11

- Christie, 'Conflict as Property' (1977) *British Journal of Criminology*, 17(1)
- Davis and Smith, 'Victim impact statements and victim satisfaction: An unfulfilled promise?' (1994) *Journal of Criminal Justice*, Vol. 22, Issue 1
- Deborah P. Kelly 'Delivering legal services to victims: An evaluation and prescription' (1984) *The Justice System Journal* Vol. 9, No. 1
- Elisabeth Baumgartner, 'Aspects of victim participation in the proceedings of the International Criminal Court' (2008) *Int'l Rev. of the Red cross* Vol. 90 No. 870
- Endalew Lijalem Enyew, 'The Space for Restorative Justice in the Ethiopian Criminal Justice System' (2014) *Bergen Journal of Criminal Law and Criminal Justice*, Vol. 2, Issue 2
- Erin A. O'Hara, 'Victim Participation in the Criminal Process' (2005) 13 *J.L. & Policy*
- Erin C. Blondel, 'Victims' Rights in an Adversary System' (2008) *Duke Law Journal*, Vol. 58, No. 2
- Erez, Edna, and Ewa Bienkowska, 'Victim participation in proceedings and satisfaction with justice in the continental systems: The case of Poland' (1993) *Journal of Criminal Justice* 21(1)
- Gashaw Sisay Zenebe, 'Admissibility of Hearsay Evidence in Criminal Trials: An Appraisal of the Ethiopian Legal Framework' (2016) *Haramaya Law Review*, Vol. 5:1
- Getachew Assefa Woldemariam, 'the predicaments of child victims of crime seeking justice in Ethiopia: a double victimization by the justice process' (2011) *afrika focus*, Vol. 24, Nr. 1
- Ian Edwards, 'An Ambiguous Participant: The Crime Victim and Criminal Justice Decision-Making' (2004) *The British Journal of Criminology*, Vol. 44, No. 6
- Isha Jain, 'Theorizing the International Criminal Court's Model of Justice: The Victims' Court?' (2019) *Journal of Victim ology and Victim Justice* 2(1)
- Jean Hampton, 'Correcting Harms Versus Righting Wrongs: The Goal of Retribution' (1992) *UCLA Law Review*, 39
- John Cottingham, 'Varieties of Retribution' (1979) *Philosophical Quarterly* 29 (116)
- John R. Gerber, 'Joinder of Civil and Criminal Relief--A Comparative Analysis' (1970-1971) *Syracuse L. Rev.* 22

- John Hagan, 'Victims before the law: A study of victim involvement in the criminal justice process' (1982) *The Journal of Criminal Law and Criminology* Vol. 73, Issue 1
- Jo-Anne Wemmers, 'Victims' rights are human rights: The importance of recognizing victims as persons' (2012) str.
- Jo-Anne Wemmers, 'Victim Policy Transfer: Learning From Each Other' (2005) 11(1) *European Journal on Criminal Policy and Research* 121
- Jonathan Doak, 'Victims' Rights in Criminal Trials: Prospects for Participation' (2005) *Journal of Law and Society* 32, No. 2
- Karen L. Kennard 'The Victim's Veto: A Way to Increase Victim Impact on Criminal Case Dispositions' (1989) *California Law Review*, Vol. 77, No. 2
- Kenworthy Bilz, 'Testing the Expressive Theory of Punishment' (2016) *Journal of Empirical Legal Studies* Vol. 13, Issue 2,
- Kerstin Braun, 'Giving Victims a Voice: On the Problems of Introducing Victim Impact Statements in German Criminal Procedure' (2013) *German Law Journal* Vol. 14 No. 09
- K I Vibhute, 'Compensating Victims of Crime in Ethiopia: A Reflective Analysis of the Legislative Paradigm and Perspective' (2009) *Journal of the Indian Law Institute*, Vol. 51, No. 4
- M. Cherif Bassiouni, 'International Recognition of Victims' Rights' (2006) 6 *Hum. Rts. L. Rev.* 203
- Marie Manikis, 'Contrasting the Emergence of the Victims' Movements in the United States and England and Wales' (2019) *Societies* Vol. 9, No. 35
- Markus Löffelmann, 'The Victim in Criminal Proceedings: A Systematic portrayal of Victim Protection Under German Criminal Procedure Law' (2006) 131ST Int'l Training Course Visiting Experts' Paper Resource Material Serious No.70
- Michael S. Moore, 'Justifying Retributivism' (1993) *Israel Law Review*, 27(1-2)
- Pugach, D., & Tamir, M. 'Nudging the Criminal Justice System into Listening to Crime Victims in Plea Agreements' (2016) *Hastings Women's Law Journal*, 28(1)
- Richard S. Frase and Thomas Weigend, 'German Criminal Justice as a Guide to American Law Reform: Similar Problems, Better Solutions?' (1995) 18 *B.C. Int'l & Comp. L. Rev.* 317
- Robert Sedler, 'The Development of Legal Systems: The Ethiopian Experience' (1967) *IOWA Law Review*, Vol. 53

- Robert C. Davis, 'Restitution: The Victim's Viewpoint' (1992) the Justice System Journal, Vol. 15, No. 3
- Salvatore Zappala, 'The Rights of Victims v. the Rights of the Accused' (2010) JICJ 8
- Sam Garkawe, 'Restorative Justice from the Perspective of Crime Victims' (1999) 15QUTU
- Sam Garkawe, 'The Role of the Victim during Criminal Court Proceedings' (1994) 17(2) The University of New South Wales Law Journal 595
- Sherry Arnstein, 'A Ladder of Citizen Participation in the USA' (1971) Journal of the Royal Town Planning Institute, 57
- Simeneh Kiros Assefa, 'The Principle of the Presumption of Innocence and its Challenges in the Ethiopian Criminal Process' (2012) Vol. 6, N0. 2
- Spinellis, Victims of Crime and the Criminal Process (1997) *Israel Law Review* Vol.31
- Susanne Walther, 'Victims' Rights in the German Court System' (2006) Federal Sentencing Reporter , Vol. 19, No. 2
- Wenzel, M., et al., 'Retributive and Restorative Justice' (2008) 32 Law and Human Behavior
- Wondwossen Demissie Kasa, 'The Preliminary Inquiry in Ethiopia and its Adverse Impact on the Rights of the Accused' (2020) Mizan Law Review, Vol. 14, No. 1
- Worku Yaze Wodage, 'Status and Role of Victims of Crime in the Ethiopian Criminal Justice System' (2011) BDU- JL Vol.2, No.1

C. Online publications

- Charles Doyle, Crime Victims' Rights Act: A Summary and Legal Analysis of 18 USC 3771. Washington, DC: Congressional Research Service, (2015), Available at: <<https://fas.org/sgp/crs/misc/RL33679.pdf>> accessed 10 September 2020
- Hahrul Mizan Ismail et al, 'Victim Impact Statement in Criminal Sentencing: Success or Setback for the Criminal Justice Process?' (2017) 8 Current Law Journal <<https://www.researchgate.net/publication/322405791>> accessed 5 February 2020
- İlyas ŞAHİN, 'A Brief Summary Of Criminal Procedure Process At The United States Judicial System' <<https://dergipark.org.tr/tr/download/article-file/155591>> accessed 24 October 2020

- James B. Jacobs, 'Criminal Justice in the United States: A Primer' (2007) American Studies Journal, No. 49, <<http://www.asjournal.org/49-2007/criminal-justice-in-the-united-states/>> accessed 24 October 2020
- Kim Herd, 'History and Overview of Rights and Services for Federal Crime Victims within the United States' The 144th International Senior Seminar Visiting Experts Papers, Resource Material Series No.81, 122 available at: <https://www.unafei.or.jp/publications/pdf/RS_No81/No81_12VE_Herd.pdf> accessed 28 August 2020
- UN Office on Drugs and Crime (UNODC), Handbook on Justice for Victims, 1999, available at: <<https://www.refworld.org/docid/479eeb1a2.html>> accessed 17 September 2020
- Handbook on Justice for Victims on the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1999) <www.uncjin.org/Standards/9857854.pdf> accessed 5 February 2020

D. Internet Sources

- U.S. Department of Justice, Attorney General Guidelines for Victim and Witness Assistance, effective October 1, 2011, available at: <https://www.justice.gov/sites/default/files/olp/docs/ag_guidelines2012.pdf> accessed 26 September 2020
- United States Department of Justice (2010) The Availability of Crime Victims' Rights Under the Crime Victims' Rights Act of 2004. Available at: <<https://www.justice.gov/sites/default/files/olc/opinions/2010/12/31/availabilitycrime-victims-rights.pdf>> accessed 27 August 2020
- The Restitution Process for Victims of Federal Crimes, available at: <<https://www.justice.gov/usaondia/page/file/957476/download>> accessed 27 November 2020
- Burnley, J. & Murray, M. "Restitution Reform: The Coordinated Interagency Approach," (1997) NCJ-166603. OVC Bulletin: Available at <https://www.ncjrs.gov/ovc_archives/nvaa/supp/t-ch21-10.htm#> accessed 27 November 2020.

- Victims' Rights Working Group (VRWG), 'Submission to the Hague Working Group of the Assembly of States Parties: The Importance of Victim Participation' (8 July 2013) available at: <http://www.vrwg.org/VRWG_DOC/2013_July_VRWG_HWG_ParticipationFINALrevised.pdf> accessed 8 December 2020
- UNODC, 'Crime Prevention and Criminal Justice, Access to Justice for Victims' available at: <<https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-11/index.html>> accessed 20 December 2020.
- 'Victim Participation in the Criminal Justice System' available at: <<http://criminal-justice.iresearchnet.com/forensic-psychology/victim-participation/>> accessed 4 August 2020
- <<https://www.icc-cpi.int/Pages/ReparationCompensation.aspx>> accessed 3 September 2020

E. Reports and Related Materials

- Oxford Pro Bono Publico, Victim Participation in Criminal Procedures: A Report to Assist Redress (2015) available at: <<http://docplayer.net/56505227-Oxford-pro-bono-publico-victim-participation-in-criminal-procedures-areport-to-assist-redress.html>> accessed 26 October 2020
- Victorian Law Reform Commission, The Role of Victims of Crime in the Criminal Trial Process Report August 2016, available at: <<https://www.lawreform.vic.gov.au/all-projects/victims-crime-criminal-trial-process>> accessed 10 December 2020
- War Crimes Research Office, 'Obtaining Victim Status for Purposes of Participation in Proceedings at the International Criminal Court' (International Criminal Court Legal Analysis and Education Project report, 2013)
- Victorian Law Reform Commission, The Role of Victims of Crime in the Criminal Trial Process Report August 2016 available at: <<https://www.lawreform.vic.gov.au/all-projects/victims-crime-criminal-trial-process>> accessed 10 December 2020
- REDRESS, Victim Participation in Criminal Law Proceedings Survey of Domestic Practice for Application to International Crimes Prosecutions (report, authored in partnership with the Institute for Security Studies, 2015), Available at: <<https://redress.org/publication/victim-participation-in-criminal-law-proceedings-survey-of-domestic-practice-for-application-to-international-crimes-prosecution/>> accessed 6 August 2020

- Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August- 6 September 1985: report/prepared by the Secretariat, available at: <https://digitallibrary.un.org/record/114498?ln=en#record-files-collapse-header> accessed 6 February 2020

F. Unpublished Thesis

- Alemu Meheretu, Introducing Plea bargaining in Ethiopia: Concerns and Prospects (DPhil thesis, University of Warwick 2014)
- Godfrey Mukhaya Musila, Restorative Justice in International Criminal Law (DPhil thesis, University of the Witwatersrand 2009)
- Joris Jacobs, participation, or procedural fairness? A study into the correlation between victim participation and procedural fairness within the ICC (Master Thesis, Victimology & Criminal Justice, University of Tilburg 2019)
- Kerstin Braun, The Role of the Victim in Criminal Proceedings in Australia and Germany - a Comparison (DPhil thesis, University of Queensland 2014)
- Kim Polowek, Victim participatory rights in Parole: Their role and the dynamics of their influence as seen by Board Members" (DPhil thesis, University of Simon Fraser 2005)
- Sarah Jessica, Using Procedural Justice to Explore the Relationship between Victim Satisfaction with Police and Victim Participation in Prosecution (Thesis for the degree of Master of Arts, University of Maryland, 2010)
- Valentina Spiga, The Right to Justice for Victims of Human Rights Crimes (Doctor of Laws thesis, European University Institute 2013)