



JIMMA UNIVERSITY

***APPROACHING REPARATION TO VICTIMS OF GROSS HUMAN
RIGHTS VIOLATION AS A TRANSITIONAL JUSTICE MEASURE:
THE CASE OF ETHIOPIA***

***A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENT
OF LL.M. DEGREE IN HUMAN RIGHTS AND CRIMINAL LAW***

BY: - ROBEL GETU

ADVISOR: DR. TADESSE SIMIE M. (ASST. PROFESSOR)

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Declaration

I, ROBEL GETU BELAMO, hereby declare that this thesis titled “Approaching Reparation to Victims of Gross Human Rights Violation as a Transitional Justice Measure: The Case of Ethiopia” is my own original work and it has never been submitted to any other institutions. I also declare that any secondary sources or materials used in this thesis have been duly acknowledged and cited.

Signature _____

ROBEL GETU BELAMO

Advisor: DR. TADESSE SIMIE M. (ASST. PROFESSOR)

Signature _____

APPROVAL

The undersigned certify that they have read and hereby recommend to the Jimma University to accept the thesis submitted by Robel Getu entitled “Approaching Reparation To Victims Of Gross Human Rights Violation As A Transitional Justice Measure: The Case Of Ethiopia” in partial fulfillment for the award of the degree of Masters in Human Rights and Criminal Law.

By: Robel Getu Belamo

Approved by Board of Examiners

Principal advisor: TADESSE SIMIE M. (PhD)

Signature: _____ Date: _____

Co-advisor: Kassaya Muluneh (LL.B, LL.M)

Signature: _____ Date: _____

Internal Examiner	External Examiner	Chairperson
Name: _____	Name: _____	Name: _____
Signature: _____	Signature: _____	Signature: _____
Date: _____	Date: _____	Date: _____

Head of College: _____ Signature: _____
Date: _____

Head of Department: _____ Signature: _____
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Abstract

Ethiopia under the EPRDF 27 years of dictatorial regime has faced massive and systematic human rights violations including extrajudicial executions, arbitrary detention, and torture, and cruel inhuman or degrading treatments or punishments in different parts of the country in a different time frame. The coming to power of Prime Ministry Dr. Abiy Ahmed on April 2, 2018, signifies a start of a new area in Ethiopia's political sphere by removing EPRDF to clear the road for the establishment of the Prosperity party. To this end, countries emerging from a legacy of massive human right violation commonly deal with their abusive past through transitional justice initiatives. However, there is no-one-size fits transitional justice approach to every nation around the globe. In Ethiopia, there were some efforts to come to terms with the past through transitional justice initiatives. Despite efforts to deal with past human rights abuse through different transitional justice initiatives Ethiopia including criminal prosecution and Ethiopian reconciliation commission, has never addressed the need and priorities of victims of human rights violations through a holistic and comprehensive reparative approach. Thus this thesis is formulated with the objective of charting, evaluating, and addressing the need and priorities of victims in the Ethiopian context by proposing context-specific transitional justice reparative programs to victims of gross human rights violations. With this underpinning, the thesis discloses transitional justice reparative measures through the analysis of the primary and secondary sources. The study aims at providing a means to come to terms to the last 27 years of EPRDF rule abuses through transitional justice reparative program. Therefore responding to the atrocities committed under EPRDF through transitional justice reparative program that can envisage a broader legal perspective; retrospective and prospective legal lens will ensure a simultaneous response to the past injustice by providing a material and symbolic relief measure to victims of gross human rights violation and in parallel, it will have the means to curb a future reoccurrence of the abusive pattern especially by drawing institutional reform to institutions that are source and cause of the abusive practice in Ethiopia.

Keyword: - Reparation, transitional justice, legal framework, institutional mechanism

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Acronyms

ACHPR	African charter on human and people's right
ACHR	American Convention on Human Rights
ARM	African Rights Monitor
ARRA	Administration for Refugee and Returnee Affairs
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CUD	Coalition for Unity and Democracy
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ENDF	Ethiopian national Defense Force
ERC	Ethiopian Reconciliation Commission
EPDM	Ethiopian People's Democratic Movement
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
FGA	Federal General Attorney
FPCFD	Federal Police Crime Investigation and Forensic Department
HIPC	Heavily-Indebted Poor Country
HPR	Ethiopian House of Peoples Representatives
IACHR	Inter-American Court of Human Right
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICRMW	The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
NISS	National Intelligence and Security Service

ONLF	Ogaden National liberation Front
OPDO	Oromo People's Democratic Organization
PCIJ	Permanent court of international justice
SEPDF	the Southern Ethiopia Peoples Democratic Front
TPLF	Tigray People's Liberation Front
TJ	Transitional justice
TRC	Truth and Reconciliation Commission
UDHR	Universal Declaration of Human Rights
UNCAT	United Nations Convection against Torture 1984
UN	United Nation
USSD	United States Department of State

CHAPTER ONE: INTRODUCTION

1. Background of the study

“The past is not dead. It’s not even past” William Faulkner¹

In countries coming out of a protracted civil war or dictatorial regime, gross human rights violations are awkwardly a common future in the history of mankind. In the wake of horrifying mass atrocities states used to adopt mechanisms to deal with their troublesome past.² One of the mechanisms by which states can be deployed to repair gross human rights violation of prior regime is transitional justice.³ It is well known trend to deal with troublesome past as the experience of international, regional, or domestic notably the inter-American court of human rights and some constitutional courts.⁴ It is with this underpinning that the concept of transitional justice (TJ) emerged.

According to the United Nations, transitional justice is;

The full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, to ensure accountability, serve justice and achieve reconciliation. These mechanisms may include both judicial and non-judicial processes and mechanisms, including prosecution initiatives, truth-seeking, reparations programs, institutional reform, or an appropriate combination thereof.⁵

In particular, from these four tenets of transitional justice measures framed by international human rights law a reparation measure is selected for this work.

¹ Kora Andrieu, ‘Transitional Justice: A New Discipline in Human Rights’,(2010) Online Encyclopedia of Mass Violence, available at < PDF version: http://www.massviolence.org/PdfVersion?id_article=359> last accessed: November 24, 2020.

²NEIL J. KRITZ, ‘Coming To Terms With Atrocities: A Review Of Accountability Mechanisms For Mass Violations Of Human Rights’ (1996) Law & Contemp. Probs. 59, 127.

³ Laurel E. Fletcher and Harvey M. Weinstein, ‘Violence and social repair: Rethinking the contribution of justice to reconciliation’³ (2002) Human Rights Quarterly 24, 639.

⁴ United Nations Human Right office of the Higher Commissioner, ‘Transitional Justice and Economic, Social And Cultural Rights’, HR/PUB/13/5, New York and Geneva, 2014.

⁵UN Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice, March 2010, available at< https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf> accessed at May 25, 2021.

In a contemporary state of affairs, the normative framework for the right to redress and reparation has a solid foundation under the corpus of international human rights instruments⁶ and the case-law of international (quasi) judicial bodies, including the European and inter-American courts of human rights.⁷ In addition to the international instruments regional human rights treaties are given due consideration to ensuring that those whose rights are violated have access to justice and reparations.⁸ Furthermore, the United Nations Commission on Human Rights gave recognition to the interests of victims of human rights violations by adopting the "Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law."⁹ As indicated in this document, the content of the right to a remedy for a human rights violation includes access to justice,¹⁰ reparation for the harm suffered (Adequate, effective and prompt reparation)¹¹, and Access to relevant information concerning violations and reparation mechanisms.¹² The instrument also distinguishes the different kinds of reparation: restitution,¹³ rehabilitation,¹⁴ compensation,¹⁵

⁶ See e.g., Article 8 Universal Declaration of Human Rights, Article 2 International Covenant on Civil and Political Rights, Article 6 International Convention on the Elimination of All Forms of Racial Discrimination, Article 6, Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, Article 24 International Convention for the Protection of All Persons from Enforced Disappearance, Article 39 the Convention on the Rights of the Child, See also A/RES/60/147.

⁷ Theo van Boven, 'Victims Rights to a Remedy and Reparation: The New United Nations Principles and Guidelines', in Carla Ferstman Mariana Goetz Alan Stephens (ed), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity Systems in Place and Systems in the Making*, Koninklijke Brill NV, Leiden, The Netherlands, Martinus Nijhoff Publishers (VSP, 2009).

⁸ See the African Charter on Human and Peoples' Rights (article 7) and as well as the Maputo Protocol thereto, the American Convention on Human Rights (article 25), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 13). Also relevant are instruments of international humanitarian law: the Hague Convention of 1907 concerning the Laws and Customs of War on Land (article 3), the Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I, article 91) and the Rome Statute of the International Criminal Court (article 68 and 75).

⁹Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, GA Res. 147, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005 (hereinafter UN basic principles and guidelines')

¹⁰Ibid at principle VIII

¹¹ Ibid at IX

¹²Ibid at X

¹³ Ibid at para 19

¹⁴ Ibid at para 21

¹⁵ Ibid at para 20

satisfaction,¹⁶ and guarantees of non-repetition.¹⁷ It is also reflected in other standard-setting texts, such as the African Fair Trial Standards¹⁸ and the Robben Island guidelines.¹⁹

Although international norms and standards set the foundation to acknowledge the right to effective reparation measures states are the primary vehicles to deliver reparation programs for all victims.²⁰ In effect, the domestic forum is the most effective tool for victims of gross human rights violations if not the only place where redress and reparation for breach of the right can be hoped for. Accordingly, state parties' in securing the effective enjoyment of human rights must provide legal and institutional frameworks enabling victims to access and obtain redress, including reparation for gross violation of human rights within their jurisdiction.

At a domestic level, the constitution of the Federal Democratic Republic of Ethiopia (FDRE) enlists an extensive list of fundamental rights and freedoms. Apart from constitutional recognition of human rights and fundamental freedoms Ethiopia has joined almost all major international human rights treaties.²¹ Ethiopia is a party to six of the seven core human rights treaties except for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).²² The massive incorporation of human rights to the constitution and other legal frameworks of the country do not bring the full picture in the country as the issue of implementation of human rights is the biggest criticism forward against the government. This is mainly due to the prevalence of massive and systematic violations of human rights over the past two decades. Overall the government of Ethiopia is condemned for its poor human rights record.²³

¹⁶ Ibid at para 22

¹⁷ Ibid at para 23

¹⁸ African Commission, 'Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, available at <http://www.achpr.org/instruments/fair-trial/> last accessed December 22, 2020

¹⁹ African Commission on Human and Peoples' Rights, Resolution On Guidelines And Measures For The Prohibition And Prevention Of Torture, Cruel, Inhuman Or Degrading Treatment Or Punishment In Africa, Geneva, May 2003(the Robben Island guidelines).

²⁰ M. Cherif Bassiouni, 'International-l Recognition of Victims' Rights', (2006) Volume 6 Issue 2 Human Rights Law Review 203.

²¹ Endalcachew Bayeh, 'Human Rights in Ethiopia: An Assessment on the Law and Practice of Women's Rights', [2015] Vol. 3 No. 2 Humanities and Social Sciences 83.

²² Eva Brems, 'Ethiopia Before The United Nations Treaty Monitoring Bodies' [2007] Vol. 20 Nr. 1-2 Afrika Focus 49.

²³ Endalcachew Bayeh, 'Incorporation of Human Rights into Legal Frameworks of the three Successive Regimes of Ethiopia and their Treatment: A Comparative Analysis' (2014) Vol. 32 No.1 European Journal of Humanities and Social Sciences 1738.

2. Statement of the problem

The appointment of Prime minister Dr. Abiy Ahmed on April 2, 2018, marked internal political reforms in Ethiopia after a prolonged wave of Oromo protests and other resistance in different parts of the country. In the Pre-Abiy era of EPRDF rule, there were several accusations against the government from government and non-governmental organizations for gross human right violation. Markedly, there were numerous reports that the government and its representatives committed massive human right violations on the right to life and physical integrity had been committed in several parts of the country²⁴ including arbitrary detention, enforced disappearance, extrajudicial executions, and torture, and cruel inhuman or degrading treatments or punishments.²⁵ Further, there were massive abuses and ill-treatment in Ethiopian prisons especially, in Qilinto, Maekelawi, Shewa Robit, and Zeway prisons including torture; harassment on grounds of ethnicity; prolonged legal process; and denial of medical access.²⁶

Quite interestingly, after coming to power Prime minister Dr. Abiy Ahmed before the parliament admitted the gross human right violation by the government apparatuses during an investigation and apologized for the government terror act.²⁷ More to these the general attorney indicted some higher officials for massive human right violations and corruption. In a welcoming development towards healing the country from past massive and gross human right violations and to bring reconciliation to the country, the Ethiopian House of Peoples Representatives established the Ethiopian Reconciliation Commission in December 2018.²⁸ The commissions establishing act in terms of remedy mainly focus only on the establishment of truth that is serving justice to victims by providing platform to be heard, and the public acknowledgment of the suffering of victims.²⁹

²⁴ UN General Assembly, 'Summary of Stakeholders' submissions on Ethiopia, Report of the Office of the United Nations High Commissioner for Human Rights', Human Rights Council Working Group on the Universal Periodic Review Thirty-third session, A/HRC/WG.6/33/ETH/3, 6-17 May 2019.

²⁵ Amnesty International, 'BECAUSE I AM OROMO' Sweeping Repression In the Oromia Region of Ethiopia, (2014), available at < <https://www.amnesty.org/download/Documents/4000/afr250062014en.pdf>> last accessed: January 28, 2020

²⁶ Association for Human Rights in Ethiopia (AHRE), *Report on Ethiopian political prisoners and their accounts of torture*, (2018).

²⁷ Wondwossen Demissie, 'opted: the government's approach to past human rights violations needs to be transparent' *Adiss standard* (January 25, 2019) < <http://addisstandard.com/oped-the-governments-approach-to-past-human-rights-violations-needs-to-be-transparent/>> accessed at March 7, 2020.

²⁸ Reconciliation Commission Establishment Proclamation No. 1102 /2018, 25th Year No. 27 Addis Ababa 5th, February 2019.

²⁹ Ibid

The approach assigned to the reconciliation commission derivate from the mainstream dogmatic approach to transitional justice as it missies the fundamental components of transitional justice measures, such as prosecution, truth, reparation, and non-recurrence.³⁰ To base ones nation's transitional justice response to past abusive regime through truth is not at all erroneous rather the question remains does the selection of intervention mechanism contextually address the root cause of the abuse in due consideration to the context of the nation. In state like Ethiopia (which has a composition of different nation nationalities) where every nation nationality has its own narratives, it is hardly possible to come up with a truth acceptable to all nation nationalities. So the establishing act of Ethiopian reconciliation commission falls short to contextually address the root cause in Ethiopia by ignoring the need and priorities of victims of gross human rights violations. Further, in contrast to other transitional justice measures reparation to victims of human rights violation has a paramount importance to directly address the need and priorities of victims.³¹ Additionally, it is worth emphasizing those efforts to "repair victims" is an essential element of a holistic transitional justice package.³² Thus, there is a growing belief that unaddressed past legacies actually fuel conflicts in countries where mass atrocities materialized.³³ As a consequence of serious human right violation in Ethiopia, the basic norms of humanity require the building of effective domestic justice capacities.³⁴

Due to the ongoing reform of the government, it is better not to lavish the opportunity to restore the trust of the society by crafting comprehensive and holistic responses to transitional justice needs of victims of gross human right violation. So, it requires solutions to protect the rights of the victims of gross human rights violations through reparation programs at a domestic level. For the reason mentioned above, the enforcement and implementation of reparation for victim's gross human right violations in Ethiopia are one of the major loopholes of the legal system. To this end, the quest for a solution for the issue under consideration makes it so crucial to conduct

³⁰ Ibid

³¹Office Of The United Nations High Commissioner For Human Rights, Rule-Of-Law Tools For Post-Conflict States, Reparations programs, HR/PUB/08/1, New York and Geneva, 2008

³²Yasmin Sooka, 'Dealing with the past and transitional justice: building peace through accountability '(June 2006) Volume 88 Number 862 international review of Red cross 311.

³³Kora Andrieu (n 1)

³⁴ Theo van Boven, 'Victim-Oriented Perspectives: Rights and Realities', in Thorsten Bonacker and Christoph Safferling (ed), *Victims of International Crimes: An Interdisciplinary Discourse*, Published by t.m.c. Asser press, The Hague, The Netherlands www.asserpress.nl Produced and distributed for t.m.c. Asser press by Springer-Verlag Berlin Heidelberg (2013).

research into the legal framework and institutional mechanism for reparation to victims of gross human rights violations under the domestic level.

3. Literature review

The researcher has made all the possible efforts to find works of literature and reviews on the subject matter of the study. As far as the researcher's knowledge and finding are concerned there are only a few literatures specifically addressing particularly the issue of reparation to victims of human rights violations in Ethiopia. Yet, there are journals and researches that discuss some related issues first; a term paper on the right to reparation for human right violation in Ethiopian legal framework by Kidus Meskele Ashine and Teketel Labena Tera. The paper addressed the reparation aspect with a generic human right violation under the Ethiopian context and addressed the legal framework loophole concerning reparation under the domestic level. The second work-related with on compensatory remedy for breach of the physical liberty in Ethiopia which only assesses the existing right-remedy gap in the domestic law of Ethiopia as well as the domestic application of the relevant provisions of the ICCPR for particular breaches of the right to liberty in Ethiopia.³⁵

The third paper related to the right to constitutional remedy for human rights violation in Ethiopia with a comparative analysis with the experience of South Africa, India, and Kenya.³⁶ The focuses of the research were on the introduction of the right to effective remedies into the FDRE Constitution. Finally, under the research of Fisseh M.tekel³⁷ which is related to the victim's reparation during the Derg regime. The analysis of the paper confined to challenges and prospects for claiming reparation for victims of mass atrocities that occurred in Ethiopia between 1974 and 1991 under the Derg era.

The aforementioned works of literature and journals with the only exception of the term paper on the right to reparation for human right violation in Ethiopian legal framework none of them address the legal and institutional framework on reparation for victims of human right within the

³⁵ Teferi Firissa, 'compensatory remedy for breach of the physical liberty in Ethiopia:- an appraisal of the legal and institutional framework' (LL.M thesis, Addis Ababa university school of law May 2014)

³⁶Dires Gashaneh, 'the right to constitutional remedies: comparative lessons for Ethiopia' (LL.M Thesis Addis Ababa University, June 2019)

³⁷Fisseh M.tekela, 'victims reparation for Derg crimes: challenges and prospects', (LLM thesis Central European University legal 2013)

context of transitional justice. Further, any of the works of literature mentioned above did not directly address the issue of reparation for victims of gross human rights in the Ethiopian context with the viewpoint of the legal and institutional framework in transitional justice perspectives. Therefore this research will specifically address legal and institutional frameworks on a particular the right to reparation of victims of gross human right violation within transitional justice framework. Though, reparation for victims of gross human rights violations through navigating the experience of international and regional tribunal's jurisprudence and countries directly related with reparation for victims of gross human rights violations have the prospects for improving the domestic legislative framework and institutional mechanism in addressing the injustice of the past regime. For this reason, in this research project, a best possible attempt will be made to examine the need to priorities the designing and implementation of context-specific transitional justice reparation program for victims of gross human rights violations in Ethiopia.

4. Objectives of the Study

4.1 General objective

The general objective of this thesis is to critically assess all the relevant legislation and the jurisprudence of international and regional tribunals to reveal a contextual, comprehensive, and holistic approach to a transitional justice reparative regime for victims of gross human right violation in Ethiopia.

4.2 Specific objective

The specific objectives of this thesis are:

- ✓ To examine the FDRE Constitution and other appropriate laws on the right to reparation for victims gross human right violation and the institutional mechanism of addressing the matter from the standpoint of international and regional tribunals jurisprudence thereof, and pinpointing where the real problems lie.
- ✓ To explore a reparation measure that can respond to past injustice and provide a means to halt the future re-occurrences of massive or systematic human rights violations in Ethiopia simultaneously.

- ✓ The paper proposes legislative and institutional measures to address past injustice through a victims-centered perspective, and
- ✓ To critically analyze the necessary steps to enable Ethiopia to come to terms with the past injustice by ensuring the designing and, ultimately, implementation of contextualized, comprehensive, and holistic reparative legislative and institutional mechanism in line with international and regional standards.

5. Research Questions

The research questions that are going to be addressed in this thesis are:

1. Does the Ethiopian legal and institutional framework guarantee for the right reparation for victims of gross human right violation in light of international and regional standards? If there is remedy, to what extent?
2. How is the right to reparation to victims of gross human right violation protected under international and regional human right instruments and evolved under the jurisprudence of international and regional human right courts?
3. How could Ethiopia realize context specific comprehensive and holistic victim-centered legislative and institutional reparative measures as transitional justice measure?

6. The Research Methodology

6.1 Type of the Study

The formulation of the thesis; approaching reparation to victims of gross human rights violation as a transitional justice measure: the case of Ethiopia is with the main objective of charting and evaluating developments in comprehensive reparation regime for the past injustice and massive human rights violations. To this end, the research will be doctrinal legal research based on both the primary and secondary sources. There are, however, very few literatures and legislation on the topic at the domestic level. Due to this reason pertinent and related International and regional human rights instruments and jurisprudence also will be used in constructing the argument in the Ethiopian context. There are extensive pieces of literature and jurisprudence on the issue of

reparation for victims of gross human rights violations on which the study use to conceptualize reparation under international and regional human right instruments. This is to substantiate arguments in favor victim's rights to reparations for serious violations of human rights and the corresponding responsibility of states. Due to the doctrinal nature of the study, I will critically analyze all the relevant legislation and case law to reveal a better and workable statement to reparation for victims of gross human rights violations at the domestic level.

6.2 Sources of Data

Due to the doctrinal nature of the research, both primary and secondary data sources are used. As primary sources different legal and standard-setting texts at global, regional, and national levels that have a direct relation to the issue will be used. Besides, relevant literature like books, journals and research papers are used as secondary sources.

7. Scope of the Study

The scope of the research is confined to an analysis of the issue of reparation to victims of gross human rights violations in Ethiopia over past 27 years of EPRDF rule. It has included a legal and institutional framework of Ethiopia concerning the right in consideration. The discussion also includes the International and regional human rights system approaches to reparation for victims of gross human rights during transition. Further, the paper also encompasses the experiences of the international and regional human rights courts about reparation to victim's gross human right violation as a transitional justice measure. Therefore, under the thesis, the analysis is limited to legal and institutional framework reparation for victim's gross human rights abuse.

8. Significance of the Study

The thesis focuses on reparation to victims of gross human right violation. Hence, the paper will come up on its completion with the following significance:-

- The paper at the end depicts the design and implementation of context-specific reparative programs to victim's gross human right violation in the domestic context during transition.

- The study has paramount importance to give an impetus to future studies on reparation to particular rights.
- The study also contributes to the academic literature.
- It may also serve as a reference for law students and law teachers, and
- Finally, based on the findings of the research, recommendations will be addressed to appropriate authorities.

9. Organization of the study

The thesis is organized into five chapters. Accordingly, chapter one covers the introductory notes it consists of the background of the study, literature review, statements of the problem, research questions, objectives of the study, research methodology, significance of the study, the scope of the study, and organization of the study.

The second chapter is devoted to the analysis of the legal framework and institutional mechanism for reparation for victims of gross human rights violations in human rights instruments, both global and regional, and the jurisprudence of international and regional tribunals in the context of transition justice measure. The third chapter devoted to analysis of reparation in the context of transitional justice. Chapter Four then discusses the enforcement of reparation at the domestic level and themed discussion and challenges in the delivery of reparative programs for victims of gross human right violation. Finally, the last chapter makes an analysis of the work and concluding remarks; and forwards recommendations based on the findings of the study

CHAPTER TWO

THE LEGAL FRAMEWORK AND INSTITUTIONAL MECHANISM FOR REPARATION FOR VICTIMS OF GROSS HUMAN RIGHT VIOLATION

2.1 Introduction

According to a Latin legal maxim “*Ubi Jus Ibi Remedium*” which means "where there is a right there is a remedy".³⁸ This maxim were ever-present from the early organized society in history of mankind.³⁹ However, there were differences in terms of accessibility, procedure, remedies, and decision-making process in all legal systems in applying reparation to victims of crimes.⁴⁰ In the contemporary human rights discourse concerning victims' rights to effective remedy and reparation forms a major part and parcel of international human rights instruments nevertheless the enforcement aspect heavily relied as a primary vehicle on national legal systems.⁴¹ The general conception of human rights as exclusive jurisdiction of domestic jurisdiction comes to change after World War II. Consequently, for victims of human right violation, the platform is wildly opened to pursue their claim for redress and reparation in national justice mechanisms or before international flora.⁴² Under this chapter, I will try to expose the legal framework and institutional mechanism for reparation for victims of human rights violation in human rights instruments, both global and regional, and the jurisprudence of international and regional tribunals and assess the issue of reparation for victims of gross human right violation under the current Ethiopian context.

³⁸USlegal legal definitions, “*Ubi jus ibi remedium*”, at<<https://definitions.uslegal.com/u/ubi-jus-ibi-remedium/>> accessed on February 11, 2020.

³⁹ M. Cherif Bassiouni (n 20)

⁴⁰ Ibid

⁴¹ Ibid

⁴² Theo van Boven (n 7)

2.2 Rights to Reparation under International and Regional Human Right Instruments

Reparation for crime victims forms a basic principle of justice. The concept were known and used by the ancient tribal custom and making its way to the most of the world's legal systems as a way of repairing the harm resulted from criminal offense.⁴³ At the brink of the 21st century, the normative framework for the right to reparation has a solid foundation under the corpus of international and regional human right instruments⁴⁴ and the case-law of international (quasi) judicial bodies, including the European and inter-American courts of human rights.⁴⁵

This has been demonstrated by core international human rights instruments. The recognition of the right under these international human rights instruments is that an effective remedy for a human rights violation in general. Also, the instruments provide the human right of every human being with a concurrent obligation on states to ensure, secure, or guarantee the effective enjoyment of the human right to all within their jurisdiction⁴⁶ and these international instruments have been widely accepted by States; UDHR (article 8)⁴⁷, ICCPR (article 2)⁴⁸, ICERD (article 6)⁴⁹, CAT (article 14)⁵⁰, CRC (article 39)⁵¹, ICPPED.⁵² In addition to these international instruments regional human rights treaties are equally concerned with ensuring that those whose rights are violated have access to justice and reparations: ACHPR (article 7)⁵³ and as well as the

⁴³ Haria Bottigliero, *Redress for victims of crimes under international law*, (1st edition, published by Kninklijke Brill NV Leiden the Netherlands in 2004).

⁴⁴ In particular article 8 of the universal declaration of human rights, article 2 of the international covenant on civil and political rights, article 6 of the international convention on the elimination of all forms of racial discrimination, article 14 of the convention against torture, and other cruel, inhuman or degrading treatment or punishment, and article 39 of the convention on the rights of the child, and of international humanitarian law as found in article 3 of the Hague Convention respecting the laws and customs of war on land of 18 October 1907 (convention iv), article 91 of the protocol additional to the Geneva conventions of 12 august 1949, and relating to the protection of victims of international armed conflicts (protocol i) of 8 June 1977, and articles 68 and 75 of the Rome statute of the international criminal court

⁴⁵ Theo van Boven (n 7)

⁴⁶ International commission of jurists, 'The right to a remedy and reparation for gross human rights violations a practitioners guide', revised edition, Geneva Switzerland, 2018.

⁴⁷ Article 10 of the UDHR stipulates the right to an effective remedy for a human rights violation in the following words: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

⁴⁸ Article 2(3)(a)-(c) of the ICCPR

⁴⁹ Article 6 of the CERD

⁵⁰ The CAT provides for the right to an effective remedy for victims of torture in a 14(1).

⁵¹ Article 39 of CRC

⁵² Article 24 of ICPPED

⁵³ The right to an effective remedy is stipulated in a 7(1) (a) of the Banjul Charter.

Maputo Protocol thereto⁵⁴, ACHR (article 25)⁵⁵, and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 13)⁵⁶. International humanitarian instruments also give due credit such as; the Hague Convention of 1907 concerning the Laws and Customs of War on Land (article 3), the Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I, article 91) and the Rome Statute of the International Criminal Court (article 68 and 75).⁵⁷

Furthermore, the United Nations Commission on Human Rights gave a direct emphasis to the interest of victims by adopting the basic principles and guidelines on the right to a remedy and reparations for victims of violations of international human rights and humanitarian law.⁵⁸ This instrument aims to provide victims of violations (of both human rights and international humanitarian law) with a right to a remedy.⁵⁹ Concerning reparation, the basic principles emphasize that:

"...in accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law..."⁶⁰

The document enlists the following as a remedy for a human rights violation; reparation for the harm suffered,⁶¹ access to justice,⁶² and access to factual information concerning the violations.⁶³ The document distinguishes the different kinds of reparation: restitution,⁶⁴ rehabilitation,⁶⁵ compensation,⁶⁶ satisfaction,⁶⁷ and guarantees of non-repetition.⁶⁸ More to this other regional

⁵⁴ Article 25 of the Maputo protocol provides for the right to an effective remedy for any violation of a human right.

⁵⁵ Article 25 of the American convention

⁵⁶ Article 13 of the European Convention

⁵⁷ Theo Van Boven (n 7)

⁵⁸ UN basic principles and guidelines (n 9)

⁵⁹ Ibid see generally the preamble

⁶⁰ Ibid at para. 15

⁶¹ Ibid at IX

⁶² Ibid at VIII

⁶³ Ibid at X

⁶⁴ Ibid at para 19

⁶⁵ Ibid at para 21

⁶⁶ Ibid at para 20

⁶⁷ Ibid at para 22

⁶⁸ Ibid at para 23

standard-setting texts also reflect on the right at hand.⁶⁹ Recently, the UN Committee against Torture raised the right to redress on General comment no. 3 in connection to Article 14 of the Convention.⁷⁰ To this end, under the general comment redress to a victim of torture has two parts, this are; first the substantive in the form of reparation (restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition) and procedural, in the form of an effective remedy.⁷¹

2.3 The Meaning and Nature of Effective Remedy

The term 'effective remedy' appears in numerous major international and regional human rights treaties mentioned above and, therefore it involves two elements: the first element of effective remedy linked with the process where claims of human rights violations are brought to the attention of competent organ, such as; courts, administrative agencies, or other competent bodies and be decided. And the second element refers to the relief afforded or outcome of the proceeding.⁷² The latter part of the effective remedy is which embraces the substantive aspect, in the form of reparation (restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition) and procedural, in the form of an effective remedy.⁷³

Major Human rights instruments do not contain a general reparation clause rather contain references to reparations; for instance, Article 2(3) of the ICCPR set a duty on states to provide an effective remedy for individuals whose covenant right has been violated.⁷⁴ Furthermore, Article 2(1) of the Covenant obliges the states parties "to respect and ensure to all individuals (...) the rights recognized (...) without distinction of any kind, such as race, color, sex, language, religion political or other opinions, national or social origin, property, birth or other status." However, compensation inserted under articles 9(5) and 14(6) of ICCPR in the contexts of unlawful arrest, detention, and convictions are the only direct reference to reparation under the

⁶⁹ See: - the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance and the Robben Island guidelines.

⁷⁰ UN Committee Against Torture (CAT), General comment no. 3, 2012: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: implementation of article 14 by States parties, 13 December 2012, available at <https://www.refworld.org/docid/5437cc274.html> last accessed: 19 January 2021.

⁷¹ Ibid at para 5

⁷² Dinah Shelton, *Remedies in International Human Rights Law*, (Third Edition published by Oxford University Press 198 Madison Avenue, 2015).

⁷³ Ibid

⁷⁴ Articles 2(1) and 2(3) of the ICCPR

convention.⁷⁵ Nevertheless, according to the UN Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child the right to effective remedy encompasses an obligation to provide appropriate reparation to victims among other measures.⁷⁶ The Human Rights Committee has elaborated upon the basic notion of 'remedy' as enshrined in article 2(3) of the ICCPR and reflected in most human rights instruments;

Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3 is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that where appropriate, reparation can involve restitution, rehabilitation, and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition, and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.⁷⁷

The Human Rights Committee reliant on Article 2(3) (a) of ICCPR put it expressively that the state party has an obligation to provide individuals whose Covenant rights have been violated with an effective remedy where the Committee emphasizes the need to provide full reparations.⁷⁸ Furthermore, recommendations based on Article 2(3) (a) of the ICCPR on awarding compensation as forms of reparations are also found in several concluding observations of the Committee.⁷⁹

⁷⁵Articles 9(5) and 14(6) of the ICCPR

⁷⁶Australian government attorney-General department, Right to an effective remedy, available at <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-effective-remedy>> last accessed: November 10, 2020

⁷⁷ UN human rights committee (HRC), general comment no. 31 [80], the nature of the general legal obligation imposed on states parties to the covenant, 26 May 2004, CCPR/c/21/rev.1/add.13, Para 16, available at <<https://www.refworld.org/docid/478b26ae2.html> [accessed 6 march 2020]

⁷⁸ Andrei Strizhak v Belarus, CCPR/C/124/D/2260/2013, para. 8

⁷⁹ Concluding Observations of the Committee on the Elimination of discrimination against women: Libyan Arab Jamahiriya, para 7. See also Concluding Observations of the Human Rights Committee: on Mexico, UN para 6. and Guatemala, para 12.

The committee on the elimination of discrimination against women also provides the linkage between the right to a remedy with reparation by elaborating the notion of effective remedy; that States parties:

“Ensure that women have access to all available judicial and non-judicial remedies”, and that they should “[e]nsure that remedies are adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered. Remedies should include, as appropriate, restitution (reinstatement); compensation (whether provided in the form of money, goods, or services); and rehabilitation (medical and psychological care and other social services). Remedies for civil damages and criminal sanctions should not be mutually exclusive.”⁸⁰

Furthermore the committee on the rights of the child in its general comment No. 5 (2003) on general measures of implementation of the convention on the rights of the child has also underscored that “[f]or rights to have meaning, effective remedies must be available to redress violations”, and that “[w]here rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration”.⁸¹

Coming to the regional human rights instrument Article 7(1) (a) of the African Charter does not clearly deal with reparation like the ICCPR article 2(3).⁸² However, the African Commission has interpreted the protection awarded by Article 7(1) as wider than the explicit wording, pointing towards reparations, by stating that: “The protection afforded by Article 7 is not limited to the protection of the rights of arrested and detained persons but encompasses the rights of every individual to access the relevant judicial bodies competent to have their causes heard and be granted *adequate relief* (italic added).....”⁸³ Further, within the African human right framework, there are particular instruments which deal explicitly with the issue of reparation, these are

⁸⁰ CEDAW Committee, General recommendation on women’s access to justice, UN Doc CEDAW/C/GC/33 (2015), para 19(a) and (b).

⁸¹ Committee on the Rights of the Child, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child, UN Doc CRC/GC/2003/5 (2003), para 24.

⁸² Only article 21 (2) stipulates expressly that, in cases of spoliation of property, ‘the disposed people shall have the right to the lawful recovery of its property as well as to adequate compensation.’

⁸³ African Commission, Zimbabwe Human Rights NGO Forum v Zimbabwe, Communication 245/02, (2008) ACHPR 8; (2 May 2012) para.213.

gender-specific reparations; the protocol to the African Charter on human and peoples' rights on the rights of women in Africa ('women's protocol')⁸⁴ and resolution on the right to a remedy and reparation for women and girls victims of sexual violence.⁸⁵ The women's protocol set a duty on state parties to establish mechanisms and accessible services for effective information, rehabilitation, and reparation for victims of violence against women.⁸⁶ On the other hand, the resolution serves as complementary to the women's protocol by setting up reparation programs and mechanisms.⁸⁷ The other regional instrument is guidelines and measures for the prohibition and prevention of torture, cruel, inhuman or degrading treatment or punishment in Africa (the Robben Island Guidelines).⁸⁸ The guideline provides state obligation to prohibit and prevent torture including providing reparation to victims of torture and ill-treatment. The guideline also sets an obligation on the state to provide reparation regardless of whether a successful criminal prosecution has been brought.⁸⁹

The UN basic principles and guidelines offer some explicit principles on the right to reparation in the fields of international human rights law and international humanitarian law. But as can be inferred from the preamble, in its seventh paragraph "the Basic Principles and Guidelines [...] do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures, and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms."⁹⁰ Thus the UN basic principle and guidelines encapsulate that: "The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided under the respective bodies of law, includes, inter alia, the duty to (d) Provide effective remedies to victims, including reparation".⁹¹ Furthermore, Principle 13 of the same instrument, inter alia, states ".....States should endeavor to develop procedures to allow

⁸⁴ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003 (hereinafter women's protocol)

⁸⁵ African Commission, Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence, November 2011, at <http://www.achpr.org/sessions/42nd/resolutions/111/>; last accessed: December 28, 2020

⁸⁶ Article 4(f) of women's protocol

⁸⁷ Reaching for Justice, 'The Right to Reparation in the African Human Rights System', October 2013, available at < <https://www.refworld.org/pdfid/528343bf4.pdf>> accessed at June 21, 2020.

⁸⁸ African Commission (n 19)

⁸⁹ Ibid at part III subsection 50

⁹⁰ UN basic principles and guidelines (n 9)

⁹¹ UN basic principles and guidelines (n 9) at 3(d)

groups of victims to present claims for reparation and to receive reparation, as appropriate."⁹² Therefore, according to international and regional human rights instruments states have a duty to provide effective remedy including ensuring that victims have "accessible and effective remedies" through appropriate judicial and administrative mechanisms. Among others providing reparation to victims, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition forms the major element of effective remedy.⁹³

2.4 State responsibility

In general terms, states are responsible to ensure the enjoyment of human rights and ensure the prevalence of justice; including reparation for a human right violation occurring within their borders.⁹⁴ To trigger the State responsibility the act or omission must be attributable to a State and that act or omission must constitute a breach of an international obligation of the State.⁹⁵ Under international law, the state's duty to provide a domestic remedy to violation is well-founded⁹⁶ and backed by international jurisprudence.⁹⁷ Currently, all human rights treaties and instruments require, either explicitly or implicitly, States parties to provide remedies under national law.⁹⁸ As can be inferred from the international jurisprudence of the Inter-American Court of Human Rights, the Human Rights Committee, the European Court of Human Rights, and the African Commission on Human and Peoples' Rights, that states have to: take legislative and other measures to give effect to rights, investigate human rights violations, provide effective remedies against violations, and make available reparation to victims.⁹⁹ For instance, states duty to provide full reparation has been recognized by the Permanent Court of international justice (PCIJ) in the *Chorzow factory case*.¹⁰⁰ The court formulated a definition that is still used today that "reparation must, so far as possible, wipe out all the consequences of the illegal act and re-

⁹² Ibid at para 13

⁹³ Reaching for Justice (n 87)

⁹⁴ Lisa Margarrell, 'reparations in theory and practice' (International center for transitional justice, 9/01/2007) available at < <https://www.ictj.org/publication/reparations-theory-and-practice>> last accessed: January 18, 2021

⁹⁵ Dinah Shelton, 'Remedies and reparation', (2013) *Global justice state duties—The extraterritorial scope of economic social and cultural rights in international law* Cambridge University Press 367.

⁹⁶ m. Cherif Bassiouni (n 20)

⁹⁷ International commission of jurists (n 46)

⁹⁸ m. Cherif Bassiouni (n 20)

⁹⁹ International commission of jurists (n 46)

¹⁰⁰ Permanent court of international justice (PCIJ), *Chorzów factory (jurisdiction)* (Germany v. Poland), 26 July 1927, series a, no. 9, 21

establish the situation which would, in all probability, have existed if that act had not been committed”.¹⁰¹

The International Court of Justice (ICJ) which succeeded the Permanent court of international justice (PCIJ) also confirmed that the state responsible for the wrongful act is obliged to provide full reparation for material or moral injury or damage caused by that act in the *LaGrand* case.¹⁰² Furthermore, the Human Rights Committee in its General Comment 31 interpreting the meaning and significance of article 2 of ICCPR in doing so the committee elaborated the notion of effective remedy particularly states duty to afford reparation. According to the Committee, states are considered effectively discharging their obligation under article 2(3) of the convention where there is reparation to individuals whose Covenant rights have been violated otherwise without reparation the obligation is not effectively discharged.¹⁰³ Besides, the African Commission's Committee for the Prevention of Torture in Africa has developed a general comment on the right to redress for victims of torture. According to the commission, State Parties are required to ensure that victims of torture and other ill-treatment are able in law and practice to claim redress by providing victims with access to effective remedies.¹⁰⁴ Those the above components stand out as the pillars of the right to redress for victims of gross human right violations under international law and jurisprudence. Hence, in line with this duty states must take positive measures to adopt all necessary legislative and other measures to give effect to the rights guaranteed in international law.¹⁰⁵

2.5 Forms of Reparation for the Harm Suffered

In general terms, the form of reparation can be categorized as material (pecuniary) including concrete benefits, such as cash payments, social welfare entitlements, or guaranteed access to education and employment or non-material (non-pecuniary) which can encompass apologies,

¹⁰¹ *ibid* series a, no. 17, 47

¹⁰² The International Court of Justice (ICJ), *LaGrand (Merits) (Germany v. United States of America)*, 27 June 2001, para. 48.

¹⁰³ UN human rights committee (n 77)

¹⁰⁴ African commission on human and peoples' rights, general comment no. 4 on the African charter on human and peoples' rights: the right to redress for victims of torture and other cruel, inhuman or degrading punishment or treatment (article 5), adopted at the 21st extra-ordinary session of the African Commission on human and peoples' rights, held from 23 February to 4 March 2017 in Banjul, the Gambia

¹⁰⁵ *ibid*

memorials, and efforts to achieve social, cultural, and institutional reform.¹⁰⁶ The clearest statement on states to provide an effective remedy for violation of their protective obligation under the international human right and humanitarian law towards individual found under UN basic principles and guidelines.

The various forms of reparation and their scope and content, covering both monetary and non-monetary reparations include restitution, compensation, rehabilitation, satisfaction, and guaranty of non-repetition. However, there was a tendency or approach to ideally favor one form of reparative measure. The jurisprudence of PCIJ shows that the court favors '[r]estitution in kind'¹⁰⁷ as the first step in reparation measure. When restitution is impossible, then compensation for losses and damages is the next appropriate reparation.¹⁰⁸ However, in a contemporary post-conflict or transitional justice setting ideally applying one form of reparative measure may not yield productive or effective outcome in the overall processes. This can be inferred from the UN Secretary-General:

No single form of reparation is likely to be satisfactory to victims. Instead, appropriately conceived combinations of reparation measures will usually be required, as a complement to the proceedings of criminal tribunals and truth commissions. Whatever mode of transitional justice is adopted and however reparations programs are conceived to accompany them, both the demands of justice and the dictates of peace require that something be done to compensate victims.¹⁰⁹

The approach followed by the UN basic principle and guideline seems to suggest that a non-prioritized list of the five principal forms of reparations (restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition). Further concerning the reparation to be accorded victims of violation the basic principle and guideline recommend that, "taking account of individual circumstances, victims ... should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation."¹¹⁰

¹⁰⁶ David C. Gray, 'A no-excuse approach to transitional justice: Reparations as tools of extraordinary justice', (2009-2010) WASH. U. L. REV. 1043.

¹⁰⁷ ILC Articles, Commentary to Art 35, p. 96, Para. 1

¹⁰⁸ Ibid

¹⁰⁹ United Nations Security Council, Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies, U.N. Doc. S/2004/616, para 55.

¹¹⁰ UN basic principles and guidelines (n 9) at para 18

2.5.1 Restitution

Restitution refers to measures that intend to restore victims to the situation before the violation. It includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life, and citizenship, return to one's place of residence, restoration of employment and return of property.¹¹¹ Thus it intends to re-establish the status quo ante, i.e. the situation that existed before the occurrence of the wrongful act. Restitution presents the most wide-ranging reparations options from the other available reparation forms mainly as a result of its adaptable nature to different circumstances, for instance, it can serve to facilitate the return of real and personal property to previous individual owners.¹¹²

The ICJ has applied the principles of restitution to individual victims of a human right violation, concerning the return of property as well as to the restoration of fundamental rights. In-wall advisory opinion the court pointed out that Israel is under the obligation to return the land, orchards, olive grove and other immovable property seized from any natural or legal person' during the construction of the wall.¹¹³ On the other hand, the inter-American Court of human right in dealing with reparation has embraced the concept of *restitutio in integrum* (in principle it seeks to restore the *status quo ante*, that is, to re-establish the situation to what existed before the commission of the international unlawful act or omission, or were not possible, compensate the victim through the payment for damages) as its guiding principle in deciding reparations¹¹⁴ in the *Velasquez Rodriguez Case*.¹¹⁵ Overall the main purpose of restitution is the "return" of the victim of human rights violation to the state before the abuse, whether it is a matter of recovering social or political rights or material goods.¹¹⁶

¹¹¹ UN basic principles and guidelines (n 9) at para 19

¹¹² Carlton Waterhouse, 'The Good, the Bad, and the Ugly: Moral Agency and the Role of Victims in Reparations Programs', (2009) Vol. 31:1 U. Pa. J. Int'l L257.

¹¹³ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, (Advisory Opinion), ICJ Reports 2004, pp. 198, Paras.152-153

¹¹⁴ Lisa J. Laplante, 'Bringing Effective Remedies Home: The Inter-American Human Rights System, Reparations, And The Duty Of Prevention', (2004) Vol. 22, No. 3 Netherlands Quarterly of Human Rights 347.

¹¹⁵ Velasquez Rodriguez Case, compensatory damages, Judgment of 21 July 1989, Inter-American Court of Human Rights (Series C), No. 7, at para. 26.

¹¹⁶ Bianca Elena RADU, 'Property Restitution—A Type of Reparations Measure in Romania', (2019) Challenges of the Knowledge Society, 737.

2.5.2 Compensation

Under international law, the obligation to provide compensation to victims of gross violations of human rights is an integral part of all conventions that contains sufficiently specified either implicitly and explicitly the obligation.¹¹⁷ According to Dinah Shelton's assertion compensation is considered the second–best response next to restitution mainly as a result of that damage awards give victims of gross human rights violation second chance to enjoy life after their suffering or loss due to the violation.¹¹⁸

Under international and regional human right instruments the right to compensation for human right violations spelled clearly on the following documents ACHR article 1, 25 and 63, CAT Article 14(1), CRC article 39, Article 83 of ICRMW, and Article 9 of optional protocol to the convention on the right of the child on the sale of children, child prostitution and child pornography. Thus interfering or curtailing the enjoyment of the human right set down on those instruments trigger state parties to the convention's duty to provide a compensatory remedy to victims through domestic measures and legislation. The basic principle and guidelines provide the guidelines for states to follow in awarding compensatory remedies for victims of gross violations of international human rights law and serious violations of international humanitarian law.¹¹⁹

The payment of compensation can be conceived as covering all the damages which the victim has suffered which can be asessed in monetary terms.¹²⁰ In due regard to the type of human right violation the relevant type of compensation may vary accordingly.¹²¹ The compensatory remedies usually courts award falls under the following three categories, such as nominal awards, pecuniary damages, and moral damages.¹²²

¹¹⁷Zlatan Meskic, 'Effective Enforcement Of Compensation For Victims Of War Crimes Within The Criminal Procedure In Bosnia And Herzegovina', (Trial international, 2017)https://trialinternational.org/wpcontent/uploads/2017/04/Publication_BiH_Compensation-enforcements_Executive-summary_201704_EN.pdf> accessed at June 20, 2020

¹¹⁸ Dinah Shelton (n 72)

¹¹⁹ UN basic principles and guidelines (n 9) at para 20

¹²⁰ Redress, 'Implementing Victims' Rights, a Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation', March 2006.

¹²¹ Ibid at page 35

¹²² Dinah Shelton (n 72) at Page 316

2.5.3 Rehabilitation

International human rights instruments do not entail a working definition for rehabilitation as a form of reparation rather establishes some important indicators as regard to the notion of reparation. Most of these instruments do not mention or use similar terminologies in the context of reparation; such as - UDHR, ICESCR and CEDAW. On the other hand, ICCPR used the term rehabilitation in the context of social rehabilitation of prisoners but not in the context of reparation.¹²³In the context of reparation, rehabilitation gained a prominent place under article 14 of CAT. The other human right instrument used the meaning of rehabilitation: such as; CRC¹²⁴and CRPD.¹²⁵ Also, ICRMW discusses the notion of rehabilitation in the context of social rehabilitation.¹²⁶ Indeed, ICPPED clarified the concept of rehabilitation in the context of reparation.¹²⁷The other major UN human rights instrument dealing with the notion of rehabilitation is the basic principle and Guidelines. According to the basic principle and Guidelines rehabilitation is one of the five forms of reparative measures for gross human right violation and the reparative measure of rehabilitation for gross human right violation should be carried out depending on the particular circumstances of each case if it is "appropriate" and "proportional" to the gravity of the situation.¹²⁸ Further, the basic principle and guidelines established the composition of rehabilitation measures that include medical and psychological care, as well as legal and social services.¹²⁹

International and regional tribunals have also introduced a variety of rehabilitative measures to redress gross human rights violations. One of the regional human rights tribunals is the Inter-American Court which has a great depth of jurisprudential wealth concerning reparation awards.

¹²³ Article 14 (4) of ICCPR

¹²⁴ General Assembly, Convention on the Rights of the Child, RES 44/25, 20 November 1989 and See article 23 and 24 of the convention

¹²⁵ General Assembly, Convention on the Rights of Persons with Disabilities, Doc.A/61/611, 13 December 2006 and see article 22, 25, and 26 of the convention.

¹²⁶ General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and their Families, RES 45/158, 18 December 1990 and See article 17 and 18 of the convention.

¹²⁷ Under Article 24 (4 and 5) of ICPPED indicates: 4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair, and adequate compensation.

5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as (a) Restitution; (b) Rehabilitation; (c) Satisfaction, including restoration of dignity and reputation; (d) Guarantees of non-repetition

¹²⁸ UN basic principles and guidelines (n 9) at para 18

¹²⁹ Ibid at para 21

The court in the *Loayza Tamayo Case*,¹³⁰ ordered a lump sum payment which specifically included the cost of the applicant's future medical treatment and for her two children, who were also affected.¹³¹

2.5.4 Satisfaction

According to the basic principle and guideline acts of 'satisfaction' includes a broad range of measures, from those aiming at the cessation of violations to truth-seeking, the search for the disappeared, the recovery and the reburial of remains, public apologies, judicial and administrative sanctions, commemoration, and human rights training.¹³² Thus, satisfaction is a form of reparation which intends to remedy victims on a non-financial form of reparation for their moral damage or damage to the dignity or reputation of victims of gross human right violation. Measures of satisfaction have been recognized by regional and international tribunals. To mention a few ICJ and IACHR dealt with the issue. The ICJ in the Corfu Channel case held that its declaration (condemnatory judgment) constituted in itself just satisfaction.¹³³ Further ICJ position regarding such reparative measure has a profound foundation in the Genocide Convention Case;¹³⁴ the court ruled that reparation in the form of satisfaction (but not compensation) to the applicant state of Bosnia. However, the inter-American courts of human rights pointed out that in case of gross human rights violation declaration or a judgment does not suffice to constitute adequate in the context of gross human right violation.¹³⁵

2.5.5 Guarantees of Non-Repetition

Guarantees of non-repetition unlike restitution, compensation, rehabilitation, and satisfaction are intended to address to the society with the purpose of not repeating violation, eliminating the

¹³⁰ IACtHR, Case of *Loayza-Tamayo v. Peru* Judgment of November 27, 1998 (Reparations and Costs) Series C No. 33, Para.129(D)

¹³¹ Dinah Shelton (n 72) at Page 395,

¹³² UN basic principles and guidelines (n 9) at para 22

¹³³ International Court of Justice (ICJ), *Corfu Channel Case* (United Kingdom v. Albania); Merits Reports 1949, p 1, at 35.

¹³⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v Serbia and Montenegro*), ICJ Judgment of 26 February 2007, paras 463, 465, and 471(9). The Court made a separate order of reparation concerning the violation of failing to punish genocide at para 471(8).

¹³⁵ See IACtHR, Case *Castillo Páez v Peru* (Reparations), Judgment of 27 November 1998, Series C No 43, para 84; Case *Blake v Guatemala* (Reparations), Judgment of 22 January 1999, para 55; see also Case of Panel Blanca v Guatemala (Reparations), Judgment of 25 May 2001, Series C No 76, para 105

structural causes for the violation.¹³⁶ The basic principle and guideline also explicitly pointed out what kinds of measure constitute guarantees of non-repetition.¹³⁷ In general terms the guaranty of non-repetition measures can be seen from two-dimensional positions, this are; a preventive which arise from states international obligation to prevent human right violation (has greater significance in transitional processes) and the other is the restorative dimension which has an objective of alleviating the inflicted violation of human right on victims.¹³⁸ Thus the measures associated with a guaranty of non-reputation have a deeper impact on institutional, political, economic, and social actions that has a virtue for the whole society.¹³⁹

According to well-established reparation jurisprudence of the IACHR about guarantees of non-repetition with the main objective of broader social impact and prevent a repetition of the same type of violations. According to the court's opinion, the guaranty of non-repetition emanates from states obligation as enshrined under Article 1(1) of the American convention that set duty on states party to the convention to respect, protect and fulfill. The court in many of its decision holds that guaranty of non-reputation as a form of reparation take the form of legislative measure with the main intention of identifying and attempting to remedy structural wrongs.¹⁴⁰

2.6 The Right to Reparation for Gross Human Right Violation in Ethiopian Legal Framework

2.6.1 Reparations under the FDRE Constitution

The obligation to provide remedy and reparation for human right violation forms major and fundamental components of international human rights instruments but the primary vehicle for the enforcement of the remedies and reparation falls on the national legal system.¹⁴¹ In contrast, the domestic forum is the most effective tool for victims of human rights violations from the

¹³⁶ Unit for the Attention and Comprehensive Reparation of Victims, 'Non- repetition Guarantees', available at <https://www.unidadvictimas.gov.co/en/ruta-in-integral-individual/non-repetition-guarantees41065> last accessed: November 18, 2020.

¹³⁷ UN basic principles and guidelines at para 23:-"comprise broad structural measures of a policy nature such as institutional reforms aiming at civilian control over military and security forces, strengthening judicial independence, the protection of human rights defenders, the promotion of human rights standards in public service, law enforcement, the media, industry, and psychological and social services"

¹³⁸ Unit for the Attention and Comprehensive Reparation of Victims (n 136)

¹³⁹ Ibid

¹⁴⁰ H. Sofía Galván Puente, 'Legislative measures as guarantees of non-repetition: a reality in the Inter-American Court, and a possible solution for the European Court', (2009) Vol. 49 Revista IIDH 69.

¹⁴¹ M.Cherif Bassiouni (n 20)

international one. Accordingly, state parties' in securing the effective enjoyment of human rights must provide legal and institutional frameworks enabling victims to access and obtain redress, including reparation for gross violation of human rights within their jurisdiction.

At a domestic level, despite the constitution's comprehensive and clearest description of human rights and freedoms in terms of content and scope as can be inferred from the reading of the constitution under Chapter three. Nevertheless, the constitution does not assign a single express provision for remedy or relief that can be sought by victims of human rights abuse. In the clearest term of reparation for victims of gross human right violation, the constitution lacks constitutional remedy. Despite assigning some forms of procedural remedy for everyone to access courts or other competent bodies to obtain a decision or judgment concerning any 'justiciable matter'.¹⁴² Whereas substantive component of the rights to constitutional remedies: reparation has not been incorporated under the constitution. Thus one can conclude that victims of gross human right violation cannot bring their reparative claim sole by basing constitutional provisions under the current Ethiopian legal framework.

2.6.2 Reparation under Ordinary Legislation

The pursuit of a remedy for a gross human right violation under ordinary legislation; such as tort, criminal and administrative law under the current Ethiopian legal framework is not crafted comprehensively to address victims of human right in general and victims of gross human right violation in particular and lacks to address comprehensively and holistically in light to international and regional standards. Furthermore, human rights claims based on tort laws are not a well-established trend in Ethiopia.¹⁴³ Henceforth it can be argued that the substantive components of the right to effective remedy are barely articulated under ordinary legislation in Ethiopia.

Due to the absence of comprehensive and holistic reparative regime victims of human rights abuse are not sufficiently recognized as an injured party in Ethiopia saves for few exceptions: under the new anti-terrorism law which provides civil, criminal liability and quantifies the

¹⁴² Article 37(1) of the FDRE constitution

¹⁴³ Mizanie Abate Tadesse, 'Transnational Corporate Liability for Human Rights Abuses: A Cursory Review of the Ethiopian Legal Framework', (2016) Mekelle U. L.J. 34.

reparation in terms of maximum compensation of 50,000 Ethiopian birr.¹⁴⁴ Further, there is an avenue for victims of human right violation to claim remedy by submitting compliance to the Ethiopian Human Rights Commission.¹⁴⁵ The sorts of remedy the commission propose include the Cessation and guarantees of non-repetition or to recommend to the concerned body to end to the acts of human right violation against victims and ensure that similar violations will not occur in the future. The other possible remedy will be humanitarian assistance to victims, including food, shelter, and the likes. However, the remedy provided does not satisfy the requirement of reparation under international law as its only power is to recommend the aforementioned specific remedies. Further, the opinions and recommendations of the commission are not legally binding.¹⁴⁶ Largely the Ethiopian Human Rights Commission does not have the institutional competence to respond to reparation claims for victims of gross human rights. The other institution is the institution of the Ombudsman which can play a paramount role in the promotion and protection of the human rights of peoples guaranteed in the constitution. However, the institution has no power other than proposing a remedy according to article 26 of proclamation no. 211 /2000.¹⁴⁷ According to establishing proclamation the Institution does not on its own motion have the power to provide a remedy for injustice. Therefore one can conclude that in Ethiopia apart from these few remedies victims of gross human right abuse are without fair, adequate, and prompt reparation for their suffering under the domestic arena. So, it requires solutions to protect the rights of the victim's gross human rights violation. Even though the situation is protected under international human rights explicitly as an independent right, the Ethiopian legal framework failed to respond to the problem with sufficient precision.

¹⁴⁴ Prevention and Suppression of Terrorism Crimes Proclamation No.1176-2020, 26th Year No. 20 ADDIS ABABA 25th , March 2020, Article 41.

¹⁴⁵ Ethiopian Human Rights Commission Establishment Proclamation No. 210/2000, Federal Negarit Gzeta.6th Year, No. 40, Article 26(3).

¹⁴⁶ Mohammed Abdo, 'The Ethiopian Human Rights commission and its contribution to the protection of Human Rights and building of good governance: challenges and prospects.' (2013) Ethiopian-African Perspectives on Human Rights and Good Governance.

¹⁴⁷ Proclamation No. 211 /2000 Establishment of The Institution Of The Ombudsman,6th year No. 41 ADDIS ABABA 4th July 2000.

Conclusion

States under transition from autocratic regime to a democratic form of government has a duty to provide reparation to victims of human rights violation. The right to reparation has been recognized under international and regional human rights treaties under the common umbrella of effective remedy. This core instruments inserted the effective remedy as a core international obligation of states for acts or commission of human right violation. Accordingly the term effective remedy has two versions: the first include the right to be heard and decided human right claims and the second related to with the relief afforded. The latter part is a composition of substantive and procedural aspect. In addition to binding treaties other soft laws have incorporated the reparation duty of states for human rights violation including the Basic principle and Guideline, the African fair trial standards and the Robben Island guideline. The above solid foundation of the right is starts to gain momentum after the Second World War. The war brought a conception change from human right as exclusive domestic jurisdiction to incorporate universal jurisdiction for gross human right violation.

However the domestic flora is the most effective tool for victims to pursue effective remedy. In line with this clear cut demarcation Ethiopia have a duty to set up a legal and institutional mechanism for victims of human rights violation to pursue redress and reparation at the domestic level. These obligations include in particular providing reparation for human rights violation. The reparation aspect is a composition restitution, compensation, rehabilitation, satisfaction and guaranty of non- reputation.

CHAPTER THREE

REPARATION IN THE CONTEXT OF TRANSITIONAL JUSTICE

Introduction

The concept of transitional justice is a recent development dating back to the early 1980s in response to political dilemmas faced by countries with a legacy of gross human rights violations in their transition from authoritarian rule towards representative democracy.¹⁴⁸ The concept first appeared during the «third wave» of democratization in Latin America (South America, Argentina in the 1980s and Chile in the 1990s tried to deal with legacies of severe repression) and in Eastern Europe as a movement to the transition from a dictatorial or authoritarian regime towards a liberal market democracy.¹⁴⁹ Its emergency was associated with the ultimatum objective of serving justice and providing some forms of repair in the wake of atrocities.¹⁵⁰ Further, the concept was not only associated with political transition rather contemplate the departure from the trends of the past that must be considered when assessing the implications and challenges of transitional justice processes.

Reparation in the context of transitional justice is a response mostly considered in the wake of massive or systematic atrocities. In countries under transition from an authoritarian regime to a democratic government with a manifest legacy of a massive and systematic violation, there is a real urgency to deal with the abusive past through the commonly designated transitional justice initiatives. In transitional justice, reparation is a means by which states coming out of dictatorial or authoritarian regimes or post-conflict states deliver to redress victims of gross human rights in the transitional justice process. Under this section of the thesis reparation in the context of transitional justice will be dealt in depth.

¹⁴⁸SIDA, Transitional Justice and Reconciliation, Thematic Overview, available at < <https://sidase-wp-files-prod.s3.eu-north-1.amazonaws.com/app/uploads/2020/12/01125338/transitional-justice-and-reconciliation.pdf>> last accessed: December 19, 2020

¹⁴⁹ Kora Andrieu (n 1)

¹⁵⁰ Ibid

3.1 Transitional justice

Transitional justice has not gained a single and precise definition as some define it narrowly and others broadly. However, a comprehensive definition and theoretical foundation of transitional justice can be grasped from the UN general security report in 2004. The report defines transitional justice as "...the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, to ensure accountability, serve justice and achieve reconciliation."¹⁵¹ Further, the report depicts the main components of transitional justice measures which include both judicial and non-judicial processes and mechanisms, including prosecution initiatives, truth-seeking, reparations programs, institutional reform, or an appropriate combination thereof.¹⁵² From this point forward the notion of transitional justice initiatives become a very significant and critical figure of the UN framework for the strengthening of rule of law during transition phases and in post-conflict countries.¹⁵³ The distinctive feature of transitional justice initiatives from other forms of human right violation response lies on two central points: transitional justice measures are arguably in response to the massive and systematic violation, and the context in which it occurs is one of transition, including but not only through a change of government.¹⁵⁴

According to Pablo De Greiff, the UN Special Rapporteur for truth, justice, reparation, and guarantees of non-recurrence, each transitional justice measure can be said to pursue goals of its own and may serve more than one immediate aim.¹⁵⁵ He further delivered the overall mediate and final goal of the transitional justice measures in the following manner:

Transitional justice refers to the set of measures that can be implemented to redress the legacies of massive human rights abuses, where "redressing the legacies" means, primarily, giving force to human rights norms that were systematically violated. A non-exhaustive list of these measures includes criminal prosecutions, truth-telling, reparations, and institutional reform. Far from being elements of a random list, these

¹⁵¹ United Nations Security Council, Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies, U.N. Doc. S/2004/616.

¹⁵² UN Guidance Note Of The Secretary-General (n 5)

¹⁵³ SIDA (n 148)

¹⁵⁴ Roger Duthie and Seils Paul, Research report on Justice Mosaics: How context shapes transitional justice in fractured societies, New York: International Center for Transitional Justice (May 17 2017).

¹⁵⁵ Pablo De Greiff, 'Theorizing transitional justice,' (2012) NOMOS: Am. Soc'y Pol. Legal Phil. 51 31.

measures are a part of transitional justice in virtue of sharing two mediate goals (providing recognition to victim's and fostering civic trust) and two final goals (contributing to reconciliation and to democratization.¹⁵⁶

In earlier periods the emphasis was implementing the four complementary pillars of transitional justice: the victims' rights to truth, justice, reparation, and guarantees for non-recurrence of violations in an integrated manner. However, this "template approach" started to make a way to the new and contextual approach to transitional justice initiatives. This revision of approach has been demonstrated on reports by the UN Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, Pablo de Greiff.¹⁵⁷

In forging transitional justice processes with clear and identifiable objectives, challenges and opportunities demand to be context-specific more attuned and aligned to the national and local context.¹⁵⁸ Research conducted by International Center for Transitional Justice on how context shapes Transitional Justice in 2017 identifies four main categories of contextual factors; such as the nature of the conflict, the nature of institutions, the nature of political settlements (including actors such as civil society and political parties), and the nature of economic and social structures and the implications of these for transitional justice.¹⁵⁹ Thus, the designing and implementation of transitional justice initiatives should adhere to the context of the country for the overall success of the measures to be taken to address the past atrocities.¹⁶⁰ Largely there is no one-size-fits approach to transitional justice initiative around the globe. As experience shows nations are inclined to different kinds of transitional justice initiatives in due consideration of their institutional context, the nature of conflict and violence, the political context and the underlying socio-economic and structural problems are factors.

Of the aforementioned forms of transitional justice initiatives, this research draws on reparation to victims of gross human right violation. In contrast to other transitional justice initiatives, the reparation to victims of gross human right violation represents more victim-centered transitional justice measures. In fact, each transitional justice measure pursues goals of its own and may

¹⁵⁶ Ibid at page 40

¹⁵⁷ SIDA (n 148)

¹⁵⁸ Roger Duthie and Seils Paul (n 154)

¹⁵⁹ ibid

¹⁶⁰ International justice for transitional justice, 'what is transitional justice?', available at <<https://www.ictj.org/about/transitional-justice>> accessed at march 8,2020

serve more than one direct objective. As Pablo De Greiff stresses there is a widespread consensus regarding the desirability and importance of victim reparation programs, as an effective way to address the needs of victims in the context of transitional justice.¹⁶¹ It can be asserted that in the context of transition, victims' of gross human right violation rights to an effective remedy; in particular the substantive should remain a priority, but their amount of reparation has to be limited, given resource constraints, requiring victims' expectations to manage on what reparations can deliver in times of transition.

3.2 Normative Consideration for Reparation in Times of Transition

The need and importance of transitional justice measures in particular reparation to victims of gross human rights violations can be fully understood only when one takes into account the values, rationales, and justifications that lie at the heart of theoretical and practical argument associated with transitional justice initiatives as a whole during transition and reparation efforts in particular. Under this subsection, the thesis explores reparations in times of transition in terms of its political value and legal justification; by discussing from this point of view I will try to get the most out of the concepts to construct an argument for the reparation in the Ethiopian context.

3.2.1 Reparation as a Political Project

The international and regional human rights treaties and norm seating principles have determined the nature and characteristics of reparative measures for victims of human rights violations. Yet, the primary vehicle for the realization of a reparative measure rests on states. Nevertheless, the concept is not free from a misconception that is associated with perceiving reparations within the normal judicial setting than in terms of a political project. However, reparation, in reality, addresses a wide range of issues starting from the selection or identification of victims either as a collective or individual to the exclusion and inclusion of harms that can warrant recognition and remedy. And the critical issue of reparation implementation is that it is more dependent on the context of the country than the pre-determined set of rules. The other major issue related to the mass claim in a transitional setting. In the context of transition, mass reparation claims can be addressed through massive reparative programs. The ordinary justice procedure lacks to response

¹⁶¹Pablo De Greiff: “Repairing the Past: Compensation for Victims of Human Rights Violations”, in Pablo De Greiff (ed.): *The Handbook of Reparations*, Oxford: Oxford University Press 2006.

to a mass reparative claim. This is not the only problem of domestic justice setting as most international human rights treaties are not designed or articulated to respond to collective claims.¹⁶²

In due regard to the above points, most scholars advocate reparation as a political project. Reparation as a political project has an extensive capacity to materialize a wide range of issues that cannot be achieved through ordinary justice most importantly the following points come on top; this is: there will be an avenue to remedy past human right abuses, the process can acknowledge victimization, can address the malice of the perpetrators of the violation, address the historical injustice, have the capacity to incorporate different interest¹⁶³ and reparation programs can be designed to respond to a violation that is massive and systematic and it will open up the possibility of perusing various ends involving recognition, civic trust, and social solidarity through reparation programs.¹⁶⁴ Additionally, in the transitional justice context reparation must be perceived as a political project as it seeks reconstruction of the social fabric and institutional reform.¹⁶⁵ Therefore in transitional justice setting, it is better to consider reparation as a political project than in terms of a narrowly conceived juridical approach.

3.2.2 Reparation as Corrective Justice

The corrective justice approach views reparation in likewise the civil remedy of tort and quasi-tort remedies of remedying wrong through the only backward-looking approach. Perceiving reparation as a central to corrective justice will face difficulties from the perspective of international law and the remedy presupposed by corrective justice. The difficulty posed by the international law is that the international legal standard set the legal right/duty in authoritative and context-free whereas reparation is a context-driven concept.¹⁶⁶ Due to the context-dependent nature of reparation, the international legal order only serves for setting the legal duty or rights in general terms leaving the implementation to the state concerned. This will create a possibility for

¹⁶² Pablo de Greiff, 'Justice and Reparations', in Pablo de Greiff (ed.), *Handbook of Reparations*, Oxford University Press 2006.

¹⁶³ Luke Moffett, 'Reparations in Transitional Justice: Justice or Political Compromise?', (2017) Human Rights and International Legal Discourse 17(1) Queen's University Belfast Law Research Paper No. 2019-07.

¹⁶⁴ Pablo De Greiff (n 162)

¹⁶⁵ Ibid

¹⁶⁶ Richard Falk, 'Reparations, International Law and Global Justice: A New Frontier', In Pablo De Greiff (Ed.), *The Handbook of Reparations*, Oxford University Press 2006.

rejection reparation relief by states. For instance, Israel repudiated the ICJ's reparation decision on the 2004 Advisory Opinion on the legal status of the Israeli security wall. So the international law will have a minimum guiding role not beyond setting obligation leaving the implementation of reparation claim to the state concerned.¹⁶⁷

Regarding the remedy presupposed by the corrective justice model of reparation, perspective has a shortcoming that arises from the focus of the corrective justice primary purpose which is restitution or compensation. The concept has been drawn from the private law in domestic legal systems of '*restitutio in integrum*'.¹⁶⁸ It has the objective of ensuring an individual's right to a remedy for the harm caused. Here the difficulty arises that corrective justice does not tend to be flexible to comprehend a context-driven reparative measure during the transition. One of these drawbacks is manifestly being exposed when there is a massive reparative claim during the transition from an abusive regime to a democratic one.¹⁶⁹ In a transitional justice setting, a reparative measure must pursue to bring balance between the individual and collective reparative claim. Hence the basic tenant of reparation; material and symbolic measures tend to secure the balance by departing from the basic idea of a "give back" that has dominated corrective justice thinking since Aristotle.¹⁷⁰

3.3 Understanding the Contextual Dynamics of Transitional Justice

According to the International Center for Transitional Justice definition of transitional justice context in such a way that transitions are a period that grants opportunities to address past repression or massive human rights violations. Nonetheless in the endeavor to grasp a clear understanding of the concept one must not completely attached transitional justice around formal peace agreements or regime changes, as change can occur despite these occasions.¹⁷¹ This definition implicates that a change of government or a peace agreement is not the only

¹⁶⁷ Ibid

¹⁶⁸ The related concept of '*restitutio in integrum*' typical of the civil law is defined as Restoration or restitution to the previous condition. This was effected by the praetor on equitable grounds, at the prayer of an injured party, by rescinding or annulling a contract or transaction valid by the strict law, or annulling a change in the legal condition produced by an omission, and restoring the parties to their previous situation or legal relations. The restoration of a cause to its first state, on a petition of the party who was cast, to have a second hearing.

¹⁶⁹ Margaret Urban Walker, 'Restorative Justice And Reparations', (2006) Vol. 37 No. 3 Journal Of Social Philosophy 377.

¹⁷⁰ Ibid

¹⁷¹ Roger Duthie and Seils Paul (n 154)

demarcating line to initiate transitional justice initiatives. As there were instances where countries with no political transition have applied the transitional justice mechanism to deal with past injustice; such as in Uganda¹⁷² and in established democracies such as Canada¹⁷³ and Australia.¹⁷⁴

A lot of factors influence the nature of transitional justice measures in response to past repression or mass violence. To understand these factors and contextualize the transitional justice measure one must have a clear understanding of the context starting from the historical antecedent to the present situation to the specific nation. The historical formation of the legal system, the human rights culture, the democratic tradition, the social and political institution in conjunction with the current political landscape may have an impact to determine the type and structure of transitional justice measure.¹⁷⁵

The need to take context into greater consideration arise mainly as a result of the nature of the transitional justice process; which is a context-driven approach this makes it difficult to follow for template or "toolkit" that is, approaching massive or systematic human rights violation through a fixed approach.¹⁷⁶ The experience of numerous nations reveals that there is no one size fit approach to transitional justice initiatives. For instance, in the 1970s through the 1990s some attempt trial at the earlier stage of their transition the likes of Argentina and Guatemala but it did not last long as Argentina withdraw the trial whereas Guatemala opted for truth commissions rather than trials. Others state selected structural measures or a restorative justice approach such as Northern Ireland and South Africa.¹⁷⁷

¹⁷² An Agreement in 2008 between the [Lord's Resistance Army](#) (LRA) and the government of Uganda on Accountability and Reconciliation (AAR), which instituted a truth-seeking process, reparations, and formal criminal and civil measures against perpetrators of serious crimes or human rights violations.

¹⁷³ Truth and Reconciliation Commission of Canada (TRC) was officially launched in 2008 as part of the Indian Residential Schools Settlement Agreement (IRSSA). Which are intended to be a process that would guide Canadians through the difficult discovery of the facts behind the residential school system, the TRC was also meant to lay the foundation for lasting reconciliation across Canada.

¹⁷⁴ In 1995 the Federal Attorney-General launched the National Inquiry into the separation of Aboriginal and Torres Strait Islander Children from Their Families. It intended to trace and report on past laws, practices, and policies that resulted in the separation of Aboriginal and Torres Strait Islander Children from Their Families and the effect of those laws, practices, and policies.

¹⁷⁵ Laurel E. Fletcher Berkeley Law Harvey M. Weinstein Jamie Rowen, 'Context, timing and the dynamics of transitional justice: A historical perspective', (2009) 3 Hum. Rts. Q 163.

¹⁷⁶ Roger Duthie and Seils Paul (n 154)

¹⁷⁷ Laurel E. Fletcher Berkeley Law Harvey M. Weinstein Jamie Rowen (n 175)

Often the experience of countries that have passed through the transitional justice process reveals that the interest of victims is the forgotten piece of the puzzle at the earlier period of the transition. But governments are inclined to the adoption of new policies that adhere to the needs and interest of victims at the latter stage (after a modest (six to eight-year) period of "settling").¹⁷⁸ Therefore, in due consideration to the different contextual dynamics, a state may face as a result of influencing factors the response to past repression or mass violence remain dynamic than the fixed approach.

3.4 Justification for Reparation in Times of Transition

In practice, the concept has gained global legitimacy as means of addressing human right violation committed by the previous government to facilitate the transition from a dictatorial regime to a more democratic government through different initiatives ranging from criminal prosecution, truth commission, accountability measures; truth-seeking measures; reparations to victims; memorialization processes; national reconciliation programs; institutional and legal reforms and realization of socio-economic rights and gender justice.¹⁷⁹

Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter stressed that "Latin America has become the undisputed global leader in transitional justice and a model for efforts around the world."¹⁸⁰ This is due to well-developed practice in developing mechanisms to deal with past authoritarian state atrocities.¹⁸¹ The concept spread to the rest of the globe in the early 1990s especially South Africa (the aftermath of the collapse of apartheid), Rwanda, Yugoslavia, Cambodia, and Sierra Leone.¹⁸² Further, the human rights courts have been responding to reparation claims since its inception. In the landmark case of the Factory at Chorzów case, the ICJ pinpointed that reparation is a way of settling a breach of international law.¹⁸³ Afterward, the principle is a well-established legal norm under international jurisprudence. Since its first judgment in the early 1980s, the IACHR has constantly addressed the issue of reparation. In particular, the African

¹⁷⁸ *ibid*

¹⁷⁹ New Tactics in Human rights, 'Transitional justice in practice', May 12, 2014, available at <<https://www.newtactics.org/conversation/transitional-justice-practice> last accessed: December 3, 2020.

¹⁸⁰ Tricia D. Olsen, Leigh A. Payne and Andrew G. Reiter, 'Transitional Justice: The Quest for Theory to Inform Policy', (September 2011) *International Studies Review* Vol. 13, No. 3 pp. 554-578

¹⁸¹ *Ibid* at page 558

¹⁸² Jens David Ohlin, 'On the very idea of transitional justice', (2007) 8 *Whitehead J. Dipl. & Int'l Rel.* 51.

¹⁸³ *Germany v Poland, The Factory at Chorzów (Claim for Indemnity) (The Merits)*, Permanent Court of International Justice, File E. c. XIII. Docket XIV: I Judgment No. 13, 13 September 1928, para.125.

Commission has underscored that the obligation to provide reparation for human right violation is inherited by successor governments for the atrocities committed by the previous government.¹⁸⁴

Despite its well-entrained practice, there is a fundamental and existential problem with transitional justice notion as to what it really means in precise terms.¹⁸⁵ One of the main problems associated with transitional justice is the question of whether transitional justice is some form of justice apart from the ordinary justice or part and parcel of ordinary justice. There is no consensus on the need for transitional justice apart from the ordinary justice setting. Here Eric A. Posner & Adrian Vermeule echoed their concern that transitional justice may overtake and disrupt the ordinary corrective justice principles. To this end, they emphasize that "compensating victims of the old regime and serve political reform by taking resources away from people who threaten the new regime, but they might also unsettle property rights and interfere with economic reform by creating new claims against existing property holders."¹⁸⁶ However, the observation made somewhat lacks to maintain the broader objective of reparation beyond compensation. The contemporary approach for reparation for gross human rights violation under international law includes restitution; compensation; rehabilitation; measures of satisfaction; and guarantees of non-repetition. So this position doesn't hold water in the eyes of the material and symbolic nature of reparative measures to downturn the financial insufficiency arguments in poor societies in repairing mass atrocities under transition.

Juan Corradi made a good distinction between ordinary justice and transitional justices by explaining the issues from two different points of view that:

Transitional justice is both more and less than ordinary justice. It is more because it aims beyond the simple ordering of human relations: it seeks to achieve moral and political regeneration. It is less than ordinary justice because it is subject to serious irregularities, it is a political formula for the formal elimination of a scapegoat, it is imbued with

¹⁸⁴ See African Commission, Krishna Achuthan (on behalf of Aleke Banda), Amnesty International (on behalf of Orton and Vera Chirwa), Amnesty International (on behalf of Orton and Vera Chirwa) v Malawi, Communications 64/92-68/92- 78/92_8AR, para.12.

¹⁸⁵ Paul Gready and Simon Robins, 'Transitional justice and theories of change: Towards evaluation as understanding', (2020) 14 (2) International Journal of Transitional Justice 280.

¹⁸⁶ Eric A Posner and Adrian Vermeule, 'Transitional justice as ordinary justice', (2004) 117(3) Harvard Law Review 761.

problematic judgments by the power holders of the moment on the qualities and policies of their predecessors, and it is a constitutive act of a new regime.¹⁸⁷

This brings to the need to deal with the theoretical justification for transitional justice measures during the transition to connect the dots in describing the concept in one piece. Most transitional justice scholars reflect on, the notions of central aim, those institutions and processes and the contexts in which they are implemented, and the confusion surrounding the concept. There is a profound theoretical justification why transitional justice initiatives are actually in the interest of transition from authoritarian to democracy. The first justification bases its foundation on the idea that transitional justice initiatives entail processes that can remedy past violations. Whereas the second reason depends on the idea that the transitional justice process has a significant role to play in the process of transition from authoritarian to democracy.¹⁸⁸ Often, the stated justification for reparation programs under transitional justice settings rests on the moral, ethical, and legal ground especially the mass number of victims and the development of international law in particular the basic principle and guideline contributed for its development.¹⁸⁹

Therefore, transitional justice to guaranty the theoretical and practical justification must detach itself from “ordinary justice”¹⁹⁰(Simply that the usual goals and rules of justice apply: to hold violators responsible for their actions and punish them accordingly, after a rigorous process of determining their guilt before a neutral decision-maker) and align itself with the context of the country especially in relation "justice gap" (the discrepancy between justice needs and resources available) and the underlying cause of that gap (institutional regimes, official policies, institutional practices, social norms, cultural ideology, and historical teleology, etc.).¹⁹¹

3.5 Institutional Mechanisms for the Administration of Reparation Program during Transition.

The designing and implementation of reparation to victims of gross human right violation in the domestic arena can be seen as effective tools to victims in their pursuit of an effective remedy for

¹⁸⁷Vasuki Nesiah, ‘Theories of Transitional Justice: cashing in the blue chips’, (2016) 321 Human Rights Quarterly 67.

¹⁸⁸ *ibid*

¹⁸⁹ Lisa J. Laplante, ‘The plural justice aims of reparations,’ (2014) Transitional justice theories 66.

¹⁹⁰ Simply that the usual goals and rules of justice apply: to hold violators responsible for their actions and punish them accordingly, after a rigorous process of determining their guilt before neutral decision-makers

¹⁹¹ David C. Gray (n 106)

their suffering. Under the domestic level reparation for gross human right violation usually can be designed and implemented through administrative programs or enforced as the outcome of litigation in general or a mixer of them¹⁹² In particular, reparations can be ordered, recommended, or delivered through several different channels. However, the four main types that come out on top of this are court order; truth commission's recommendation; reparation programs; and inter-state procedures.

In transitional justice settings, reparation programs often institute following a truth commission's recommendations. On the other hand, the experience of other nations under transition suggests that there is no single approach to the question of reparations mechanism. Countries have developed and implemented reparation programs through different institutions. For instance; Brazil, Malawi, Morocco, and Guatemala established self-standing reparations commissions or procedures and Argentina established their reparations efforts as a result of ordinary legislative initiatives with no particular institution being in charge of their overarching supervision.¹⁹³ Hence countries in due regard to their specific institutional context, the nature of conflict and violence, the political context, and the underlying socio-economic and structural condition can adopt a reparative program through a separate and independent legislative initiative.

In the endeavor to provide reparations to victims of gross human right violation under the domestic level the institution most qualified to distribute reparation is very significant in the overall success of the program. In the selection of the most qualified institution for distribution of reparation award, one must take into consideration the number of the victim, the capacity of the ordinary judicial setting to respond to mass claims, and the need and priorities of transitional justice reparation efforts.

One of the critical issues is related to the number of victims during the transition where there could be massive reparation claims. In such scenarios responding through the ordinary judicial setting may prove impractical or unfeasible, where claims are initiated within a short time

¹⁹²International justice for transitional justice, 'Reparation', available at < <https://www.ictj.org/our-work/transitional-justice-issues/reparations> > accessed at November 29, 2020

¹⁹³ Office Of The United Nations High Commissioner For Human Rights (n 31)

framework following a triggering event.¹⁹⁴ Thus the expediency aspect may lack from ordinary justice setting but frequently witnessed under administrative reparation programs during the transition.¹⁹⁵ On the other hand, administrative reparative programs display unique and favorable characteristics by allowing states to provide adequate reparation awards to a wider number of victims.¹⁹⁶ Also in the expedition to provide a comprehensive and holistic reparation program the administrative mechanism brings to the fore a much border and flexible perspective by encompassing context and both individual and collective harms.¹⁹⁷ Therefore due to the limited capacity of the case by case approach to deal with the past in a more contextual and flexible manner the designing and implementation of transitional justice reparation programs should adhere to much border policy measure that is administrative reparation program.

¹⁹⁴ Jaime E. Malamud-Got I and Lucas Sebastian Grosman, 'Reparation and civil litigation; Compensation for human right violation in transitional democracy', in Pablo De Greiff (ed), *The handbook for Reparations*, Oxford University Press 2006.

¹⁹⁵ Ibid

¹⁹⁶ Cristián Correa, Julie Guillerot and Lisa Magarrell, 'Reparations and Victim Participation: A Look at the Truth Commission Experience', in Carla Ferstman Mariana Goetz Alan Stephens (ed), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity Systems in Place and Systems in the Making*, Brill Nijhoff, 2009.

¹⁹⁷ Ibid

CHAPTER FOUR
THEMED DISCUSSION AND PROPOSALS ON REPARATIONS TO VICTIMS OF
GROSS HUMAN RIGHT VIOLATION UNDER ETHIOPIAN CONTEXT

4.1 Introduction

In societies emerging from a deeply preoccupied human right violation in the past, the need and importance to come to terms through reparative efforts is a widely accepted practice in many parts of the globe. However, the implementation of the reparative regime of the international legal domain may not as such easily translate to the domestic one. It must be underscored that this due to the context-driven nature of transitional justice initiatives. Consequently, transitional justice measures in particular reparation to victims of gross human right violation can be fully understood only when one takes the historical, socio-economic, political, and legal factors into account.

In the endeavor to provide a comprehensive and holistic reparation program in Ethiopia must take into account the historical, socio-economic, political, and legal factors to contextualize the selection of intervention mechanism. Accordingly, the designing and implementing reparation program must uncover these factors to address the legal and institutional aspects. In this chapter, I will discuss the enforcement of reparation at the domestic level and themed discussion in the delivery of reparative programs for victims of gross human right violation in the Ethiopian transitional justice context.

4.4 Transitional Justice in Ethiopia

Nations transforming from an oppressive regime to a democratic government after a deep-rooted historical injustice, hot political turmoil, and persistent gross or systematic human rights violations have one common demand but a different answer to the question; how to deal with abusive past? In parallel to preserve a peaceful and stable feature states may incline to choose the transitional justice initiative that fits their context from the various models of dealing with a past human right violation.¹⁹⁸ Before making any selection of the transitional justice measures that best suit the nation one must develop a profound understanding of the national context for the efficacy of the process. Under the subsequent subsections, I will depict the historical and current factors specific to the Ethiopian context to underpin the need and importance of reparation efforts for victims of gross human right violation in Ethiopia as a transitional justice initiative.

4.4.1 Decisive Factors Specific to the Ethiopian Context

The endeavor of uncovering the historical patterns of atrocities committed throughout the modern history of Ethiopia starts by considering how the historical injustice, political, and human rights violations unveil under the previous three successive regimes from Emperor Haile Selassie to EPRDF rule. This section will briefly outline the pattern of human right violation in Ethiopia's modern history and the response taken by states to remedy the human rights violation including the current ruling government.

4.4.2 Historical Patterns of Atrocities

The imperial regime of Emperor Haile Selassie lasts from the year 1913 to 1974, with spills of the Italian occupation (1936-1941). During this period the Emperor established the modern administrative state but without completely abolishing the feudal system. In a dramatic turn of events, the emperor was overthrown by a military junta (Derg) in 1974. Before the emperor was removed from power to minimize the dissatisfaction the Emperor introduced a lot of reforms; a fair tax system, new laws including the 1955 constitution, and other codified laws.¹⁹⁹ Further, in 1973, there were attempts to adopt a most comprehensive constitution but it did not result in any

¹⁹⁸Jeremy Sarkin, 'Transitional justice and the prosecution model: The experience of Ethiopia', (1999) 3(20) Journal of Law, Democracy and Development 253.

¹⁹⁹ Ibid

fruit mainly the absence of parallel development of institutional machinery.²⁰⁰ Despite the reforms taken to rectify human rights, political and social injustice the regime was characterized by widespread human rights abuse.²⁰¹ Under the imperial regime, there was a demand for a change and also frustration about the prevailing politics and the landowning oligarchs. This created the popular movement "land to the tiller" this student movement sought to limit property size and rights and by fostering debate on the issue of ethnicity, they confronted a problem marginalized by Emperor Haile Selassie.²⁰² The faces of the movement were students, peasants, and workers. Finally, the regime collapsed due to the growing dissatisfaction over the emperor's tyrannical rule.

Derg,²⁰³ led by Mengistu Haile Mariam after overthrowing Emperor Haile Selassie installed a socialist military government. The derg was known for its massive human rights violation in particular from 1977-1979. In what is known as "Red Terror"²⁰⁴ derg committed the most outrageous crimes against thousands of suspected enemies. According to Girmachew Alemu, "the Red Terror in Ethiopia was the largest and best-known campaign of official violations of human rights perpetrated by the Derg."²⁰⁵ According to amnesty international estimation, almost 150,000 to 200,000 people lost their lives because of the red terror campaign.²⁰⁶ During this period countless human rights violations were recorded including mass extrajudicial executions, political imprisonment, enforced disappearance, and torture.²⁰⁷ Overall, under the derg's 17 years of tyrannical rule Ethiopia witnessed the worst forms of human rights violations.

Finally, the Ethiopian People's Revolutionary Democratic Front (EPRDF) had overthrown Derg On May 8, 1991. With the legacy of the derg remains in the past, EPRDF introduces a new constitution and made a political and administrative restructuring to fit the newly designed ethnic

²⁰⁰ Endalcachew Bayeh (n 23)

²⁰¹ ibid

²⁰² Ibid

²⁰³ Derg means 'committee' or 'council' in Geez language, a language that had been used by ancient Ethiopia mainly in the northern part of the country.

²⁰⁴ A term borrowed from the Russian revolutionary lexicon meaning the liquidation of counter-revolutionaries'

²⁰⁵ Girmachew Alemu Aneme, 'Apology and trials: the case of the Red Terror trials in Ethiopia', (2006) 6(1) African human rights law journal 64.

²⁰⁶ Ibid

²⁰⁷ Haben Fecadu, 'op-ed: Ethiopia must end culture of impunity to heal from decades of human rights violations'[June 2, 2020] <https://www.amnesty.org/en/latest/news/2020/06/oped-Ethiopia-must-end-culture-of-impunity-to-heal-from-decades-of-human-rights-violations> last accessed: December 14, 2020.

federalism. The EPRDF rule were not different than its predecessors as human rights conditions have not shown any sign of improvement rather deteriorated in the face of a wealth of comprehensive human rights incorporation into the legal framework. The new government continued the culture of impunity by carrying out serious violations such as arbitrary detentions, torture, rape, and enforced disappearances.²⁰⁸ As some observers pinpointed that in Ethiopia history has repeated itself under the EPRDF rule that angered the youth to protest the systematic human right repression and economic and political marginalization.²⁰⁹

Generally, Ethiopia under the three successive political regimes experienced repressions with different magnitude and size. The pre-1974 period was slightly a different form of human rights violation that is more associated with acute economic poverty and political marginalization. The human rights condition in Ethiopia become in the worst form during the derg socialist rule. Derg committed the most heinous crimes against humanity in 17 years long rule of Ethiopia. In the meantime, the human rights violation has not shown any sign of progress under its predecessor, the EPRDF. Under the EPRDF 27 years of rule, a serious violation of human rights continued at an alarming rate. Due to this reason the country is known for its abusive nature against fundamental human rights and freedoms.²¹⁰ Here one thing remains constant when our history uncovered that in the face of massive and systematic human rights abuse from the state Ethiopia has never experienced any efforts to comprehensively narrow the impunity gap besides have not assured victims of human rights violation an effective guaranty to truth, justice, and reparation.²¹¹ Finally, one can conclude that history did not teach us anything but ignoring the need and importance of victims' reparation as a part of the remedial process in the transition from abusive past to future peace and stability.

²⁰⁸ Ibid

²⁰⁹ ibid

²¹⁰ Alene Agegnehu and Worku Dibu, 'Ethiopian Human Rights System: an overview' (2015) Vol.-5, No.-2 Global Journal for Legal Studies 62.

²¹¹ Haben Fecadu (n 207)

4.4.4 Pervious Transitional Justice Measures in Ethiopia and Its Implication

There were efforts to implement transitional justice measures in Ethiopia. In 1992, the transitional government of Ethiopia (TGE)²¹² undertakes transitional justice measures to bring those responsible for human rights violations during the derg regime.²¹³ The transitional government of Ethiopia established the office of the special prosecutor office (SPO) with the specific mandate of establishing public knowledge and for posterity a historical record of the crimes committed and to bring the perpetrators to justice.²¹⁴ The SPO under the common designation of “Red Terror Trial” charged a total of 5,198 public and military officials of the former government.²¹⁵

There is nothing wrong to deal with an abusive past regime through criminal prosecution under transition. At this juncture, the critical question remain does the SPO prosecution model as a way of dealing with the past serve the very purpose of transitional justice? In search of an answer, one must understand the advantage and shortcomings of a criminal trial in transitional justice setting. To start with the pros of criminal prosecution some argue that criminal prosecution has an advantage in particular in dealing with a massive and systematic human rights violation. The prosecution model is not only preferable for the proponent of the retributive justice it is also the responsibility of the state to prosecute such crimes.²¹⁶ However, under transitional justice setting initiating prosecution as the only way to deal with the past abusive paradigm may not attain its intended objective of healing the nation. One of the disadvantages of the prosecution model is that it may reveal only a single version of events happened in the past. The other major drawback of the prosecution model within transitional justice context is the strict standard of proof for conviction which is difficult to provide in transition due to many determining factors. Consequently, guilty verdicts are far from certain which may have a demoralizing impact on the transition.²¹⁷ Additionally, as the some empirical facts gathered implicate those criminal

²¹²Transitional Government of Ethiopia (TGE) rule Ethiopia from 1991-1993, In July 1991, the EPRDF and other political and ethnic groups called a conference that adopted the Transitional Period Charter of Ethiopia, which served as an interim Constitution of the country.

²¹³ Sarkin Jeremy (n 198)

²¹⁴ Ibid

²¹⁵ Girmachew Alemu (n 205)

²¹⁶ ibid

²¹⁷ Jima Dilbo Denbel, ‘Transitional Justice in the Context of Ethiopia’, (2013) Vol. 10 International Letters of Social and Humanistic Sciences 73.

prosecutions are the exception rather than the norm as a transitional justice response in most countries which apt to transitional justice measure.²¹⁸

The approach followed by TGE entirely ignored the interest of victims by only inclining to the prosecution model as the only means of addressing the past injustice. Apart from the prosecution while their case were on pending 33 top former Derg officials wrote a letter to the then Prime Minister of the country seeking a forum where they can “beg the Ethiopian public for their pardon for the mistakes they have done knowingly or unknowingly.”²¹⁹ Nevertheless, the demand was turned down by the then government. The denial of the request by the TGE, whatever the driving reason for the request may be the request must be sustained to give the perpetrators the chance to make known their side of the story and their apology. If were the apology approved it will have a significant impact on the side of victims as a form of remedial process. Largely, the transitional justice measure selected or identified by TGE sidelined the victim's interest in policy and practice. If the selection of transitional justice intervention mechanism to have an enduring impact of preserving a lasting peace in the societal reconstruction it must give due consideration to the needs and priorities of victims.

4.4.5 Present-Day Transitional Justice Initiatives in Ethiopia

After serious upheaval for four consecutive years in many parts of Ethiopia especially in Oromia and Amhara regions leads to the resignation of the then seating Prime minister of FDRE Hailemariam Desalegn and the coming to power of Dr. Abiy Ahmed as the Prime minister of FDRE on 2 April 2018. It is maybe debatable that the Ethiopian context perfectly fit into the commonly distinguished form of a transitional government that comes out from the authoritarian regime to democratic government. However, the deep overview of how the transition unfolded helps us understand the context of the transition. This can be seized from clearly seeing from the formation of the EPRDF and the major role played by the TPLF, one of the four constituent parts of the ruling front. TPLF effectively controlled the EPRDF under a one-party rule for 27 years. To this end, TPLF structured the counties' politics, economy, military, and security in a way that serves TPLFs objective. One of the turning points of the transition was the banishment of the old guard refers mainly to sidelined elements of the Tigray People's Liberation Front (TPLF) and the

²¹⁸ Laurel E. Fletcher Berkeley Law Harvey M. Weinstein Jamie Rowen (n 175)

²¹⁹ Girmachew Alemu (n 205)

coming to the forefront of the newly established prosperity party as a major ruling party in the country.

Following the change of leadership at the top government, the new administration takes many political and legal reforms since April 2018 in turnover of events in the country. Since coming to power the new administration has been working to adhere to its international and regional obligation by taking reforms. The reform agenda included lifting the state of emergency, releasing 13,000 political prisoners, and the closer of jails where the most heinous crimes were committed, and announcing plans to revise repressive laws.²²⁰ Furthermore, the new administration take measures to decriminalize rebellious armed groups in exile, and a major breakthrough peace deal with Eritrea is the major noticeable approach of the new transitional government. Also, one welcoming development was observed after coming to power Prime minister Dr. Abiy Ahmed before the parliament in 2018 admitted the atrocities committed by government officials and security personnel and apologized for the government terror act.²²¹ In particular, there were some forms of attempts to address gross human rights violations of the previous administration by the new administration of FDRE. Here below are the major noticeable measures:

4.4.5.1 Prosecution

The new government under the new prosperity party takes a measure of establishing accountability for former higher officials and security personals. The Federal general attorney after investigation charged some higher officials for human rights violations and massive corruption. The noticeable charges drawn are the following:

The Federal general attorney brought charges against the former intelligence chief and other 25 higher officials of the former National Intelligence and Security Service (NISS) in FGA v. Getachew Assefa Abera et al.²²² The charge brought against them has a total of 46 counts for the atrocities they committed around the country before the transition. The other major charge was against the former Somalia regional state president Abdi Muhamud Omar, a.k.a, Abdi illey for

²²⁰ Yoseph Badwaza and Jon Temin, 'Reform in Ethiopia: Turning Promise into Progress, freedom house', available at <<https://freedomhouse.org/report/policy-brief/2018/reform-ethiopia-turning-promise-progress>> last accessed: November 28, 2020

²²¹ Wondwossen Demissie (n 27)

²²² FGA v. Getachew Assefa et al. (indictment of 7 May 2019) FGA file No. 198/2011.

inter-communal violence and attempt to violently overthrow the constitutional order.²²³ In other case there were prosecutions against higher officials of prison administration (kilinto and kality), Ziway, and Shewa Robit rehabilitation center.²²⁴ Besides the federal general attorney drawn criminal charges against investigators and team leaders of investigation in the federal police investigation and Shewa robit rehabilitation center for the crimes committed during interrogations from 2010 to 2019.²²⁵

4.4.5.2 Ethiopian Reconciliation Commission

The other transitional justice initiative underwent was part of the political reform process was the legislative act carried out by the Ethiopian House of Peoples Representatives. The HPR introduced Proclamation No. 1102/2018 which establishes the Ethiopian Reconciliation Commission on February 5, 2019.²²⁶ The introduction of the bill implies that the choice taken by the new administration as a transitional justice framework. With all its drawbacks of detailed explanation, the establishing act expressed the transitional justice objectives, roles, and mechanisms of the commission.²²⁷ To this end, in terms of remedy, the commission establishing act gives due emphasis to the establishment of truth by providing victims the opportunity to be heard and the public acknowledgment of the suffering of victims.²²⁸ The establishment of truth as only narrative justice for victims of gross human rights faced much criticism. One of the criticisms was forward from amnesty international the exact words were that “the law lacks clear material or temporal scope for grave human rights violations and reparations for individual victims of past human rights violations. It also evades accountability for human rights violations under the pretext of reconciliation. Efforts to guarantee victims’ rights to truth, justice and reparation should be central in plans to prevent future atrocities and conflict in Ethiopia.”²²⁹ Thus, in due regard to the context of political transition, the nation passing through the need and urgency of establishing of Ethiopian Reconciliation Commission is acceptable. However, its

²²³ Mahlet fasil, Ex-Somali Region President Dismisses Criminal Charges Against Him as "coordinated lies", *Addis standard* (February 6, 2019), available at <https://addisstandard.com/news-ex-somali-region-president-dismisses-criminal-charges-against-him-as-coordinated-lies/> last updated: November 29, 2020

²²⁴ FGA v. Officer Geberemariam Weliday Abirha et al. (Indictment of 19 March 2019) FGA file No. 175/11,

²²⁵ FGA V. Officer Geberemariam Weliday Abirha et al. (Indictment of 19 March 2019) FGA file No. 175/11.

²²⁶ Proclamation No.1102 /2018 (n 28)

²²⁷ Dialogue forum of Justice Sector Joint Forum (n 29)

²²⁸ Ibid

²²⁹ Haben Fecadu (n 207)

establishment should not be considered an end per se.²³⁰ Accordingly, the government should seize the opportunity to ensure justice and reparations for victims of gross human right violation for the past 27 years of the EPRDF rule.²³¹ To this end, addressing abusive past needs to uphold a whole process beyond prosecution to encompass the need and interest of victims, ending impunity and providing a preventive mechanism to halt future human right violation.²³² Therefore, the historical, social, and economic factors unfolded in Ethiopia's historical context demands a careful choice of transitional justice intervention methods and the best institutional mechanism for the implementation of intervention mechanisms following local needs.

4.4.6 Why the 'Reparation Model' For Ethiopia?

It is needless to emphasize the need and urgency of addressing past human right violation through reparation efforts in Ethiopia, it is useful to show that an effective remedy demands more than prosecution and investigation. To respond against massive and systematic violations through reparations efforts, norms in international law are authoritative, but their implementation needs to be context-dependent and responsive to local needs.²³³ In the transitional justice setting, various ranges of transitional justice initiatives demand us for careful selection of interventions in line with the domestic context. Thus the effectiveness of any transitional justice efforts including reparation rests on the conditions they are implemented in. The subsequent section of this thesis discusses the reparative initiatives and concludes with policy recommendations that outline concrete sets of action to increase the effectiveness of the proposed reparative measures for gross human rights violations in the present Ethiopian context.

Beyond the moral and legal exhortations in the current Ethiopian setting, the need for reparation in the transitional justice framework arises from three different reasons aligning to the historical and contextual factors. These are; first as history uncover there were attempts to deal with the past through the transitional justice process of criminal prosecution and the current new

²³⁰ Tamene Ena Heliso, 'Critical appraisal of the Ethiopian Reconciliation Commission: A comparative study', (January-June 2020) Vol. 11(1) Journal of Law and Conflict Resolution 15.

²³¹ Fisseha Tekle, 'Ethiopia: Lack of accountability for past violations haunts the present', at <https://www.amnesty.org/en/latest/news/2019/05/ethiopia-lack-of-accountability-for-past-violations-haunts-the-present/> accessed at March 8, 2020

²³² Nega Gerbaba Toles, op:ed: 'Dealing with past human rights abuses in Ethiopia: building the bridge between justice and peace', *Addis standard* (December 10, 2018) at <http://addisstandard.com/oped-dealing-with-past-human-rights-abuses-in-ethiopia-building-the-bridge-between-justice-and-peace/> accessed at March 8, 2020

²³³ Richard Falk (n 166)

administration also installed some form of transitional justice measures from establishing reconciliation commission to the criminal prosecution of some selected higher officials of the EPRDF regime. In the face of some form of an effort to address the past violence, there have never been efforts to include victims in the process rather victims of gross human rights violations almost has been put aside. Thus the time is now to act for victim inclusive transitional justice effort in the wake of mass atrocities and to move forward in peace and stability.

The second major reason was the historical abusive paradigm through the successive regimes. The root cause for the abusive paradigm in the history of Ethiopia was associated with socioeconomic and political marginalization. In Ethiopia, there is an unresolved abusive pattern of massive or systematic human rights violations under successive regimes. A careful investigation of Ethiopia's history will convey the same kinds of abusive patterns with seemingly like causes and source of abusive patterns in the modern history of Ethiopia. One of the major sources of the abusive pattern is mainly associated with state violence and repression which is common in Ethiopian history. Serious human rights violations did not quench with the autocratic Derg regime.²³⁴ Under the TPLF dominated EPRDF rule of the nation like its predecessors committed decades of abuse including unlawful or arbitrary killings, arbitrary arrest and detention by security forces, rape in prisons, unexplained disappearances and torture and other inhuman acts. In particular in Gambella region in 2003-2004, violations in the Ogaden area of Somali region in 2007-2008, violation in prisons and detention centers conditions,(Ethiopia's Somali region prison (a.k.a jail Ogaden), maikelawi [maekelawi/ma'ekelawi] prison, the repression during 2005 Ethiopian national election and 2015-2017 Oromo and Amhara protest.

In the sequence of events, the 2015-17 protest was the cause that brought Dr. Abiy to power. The initial source of the protest was the proposed expansion of Addis Ababa into the Oromia region to accommodate the government's economic development plans. The Oromo youth protested the lack of community consultation and perceived economic marginalization and dispossession.²³⁵ Letter on the protest morphed into a wider protest against decades-long repression. In like

²³⁴ Laetita Bader, 'To Heal, Ethiopia needs to confront its violent past', *Addis standard* (May 28, 2020) at <<https://www.hrw.org/news/2020/05/28/heal-ethiopia-needs-confront-its-violent-past>>last accessed: December 18, 2020

²³⁵ Lauren Ploch Blanchard, Hearing on "The Unfolding Conflict in Ethiopia", Before Committee on Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations U.S. House of Representatives, December 1, 2020.

manner with previous regimes, the security apparatus under the pre-text of dispersing the protest used disproportionate force to record a fatality of 1000 deaths in particular. The frustrations displayed by the protester were in the same manner as the 1960s and 70s which demand equality for the marginalized groups.²³⁶ Generally one of the main sources of the abusive paradigm ascends from the longstanding failure to effectively reform the security sector and address its culture of impunity.²³⁷ Ethiopians have called for both meaningful justice and a chance to tell their stories. Left unaddressed and without means for additional redress, competing narratives of historical injustice may afflict society in various ways.²³⁸ And last but not the least related to the need to reform institutions that are the source and cause of abusive patterns. The third reason more stems from the second reason that there is a real urgency to reform institutions especially the security sector; including the police, the military, and intelligence agency. The security apparatus under the successive regime were the main source of human right abuse.

There is a deep historical and present contextually profound abusive paradigm in Ethiopia through the state's apparatus. Therefore the time is now to turn the page on the past human rights abusive pattern and build a nation found on rule of law, democracy, and justice. Hence the reparative program must address the past injustice and provide an avenue for the structural reform institutions such as the security apparatus and the judiciary in particular.

4.4.7 Policy Consideration for Reparations Initiative

The aforementioned reasons urge us to develop a transitional justice process in particular that addresses the need of victims that has a significant impact to foster the peace-building process and reconstruction of the social fabric. In due course, the reparation in the Ethiopian transitional context must be designed and implemented to have a broader perspective to endorse a retrospective and prospective legal lens. The view has greater significance to repair the past abusive paradigm and future peace and stability of the nation in transition.²³⁹ To achieve a reparation program that contemplates a retrospective and prospective view must be conceived through the following views; these are: reparation efforts must be conceived as a political project

²³⁶ Laetita Bader, (n 234)

²³⁷ *ibid*

²³⁸ *ibid*

²³⁹ David C. Gray (n 106)

rather than an ordinary justice and reparation in transitional justice context must be conceived a period between abusive past and future peace and stability.

Regarding the first point of consideration in the transitional justice context, reparation effort must be conceived in a separate realm from the ordinary justice setting and in alignment as a political project. Considering reparation programs in a juridical context; which only takes into consideration case by case approach for the satisfaction of individual claim may not contemplate the nature and purpose of reparation in transitional justice context. According to Pablo de Greiff “the juridical approach to reparations is problematic; it is so not because of its juridical nature per se, but because it is an understanding that has been developed, for good reasons, with an eye to the resolution of relatively isolated cases.”²⁴⁰ He further pointed out that the case-by-case approach to reparation claim by victims has two fundamental problems; first disaggregating victims, by the mere fact that it will create unequal access and unequal outcomes and the second related to disaggregating reparations, case-by-case awards may, in the end, brought inconsistency between like cases and this will be an obstacle in achieving comprehensive redress to victims.²⁴¹ In general terms despite the limits of achieving full remedy for victims of mass atrocities, justice as recognition, by building civic trust and social solidarity, should guide large administrative programs rather than case-by-case awards.²⁴² Mostly in transitional justice settings, reparation can respond to a wider and complex universe of victims with a context-driven approach. Unlike a narrowly conceived juridical approach which deals with case by case following legal formula.²⁴³ Hence in due regard to the above points reparation must be conceived as a political project in designing and implementing under the Ethiopian legal framework.

The second point of discussion; conceiving reparation in transitional justice context as a period between an abusive past and a future period founded on democracy, rule of law, and stability. According to David C. Gray reparation efforts in the transitional justice context must be perceived as "a uniquely liminal moments for society "betwixt and between" an abusive past and a future peace guarded and preserved by the commitment to democracy, human rights, and the

²⁴⁰ Pablo de Greiff, (n 162) at page 451

²⁴¹ Ibid at page 458

²⁴² Ibid

²⁴³ Ibid

value of rule of law."²⁴⁴ One of the major common misconceptions regarding transitional reparation is labeling it as rectifying the wrong done to a victim in the past or only correcting injustice. The corrective justice model of reparations (designated under a different name "legalistic," "compensatory," "juridical," or "reparatory")²⁴⁵ has only a back-ward looking justification. Off course the issue of reparation only comes to discussion after the violation of the legal right. But this could not refute reparation efforts under transitional justice context to pursue both a backward and forward-looking justification to correct injustice in the past.²⁴⁶ Approaching reparation through a retrospective lens may only remedy the past injustice but if reparation is anticipated to have both retrospective and prospective legal lens then the approach will have a simultaneous response to the past abuse and provide the means to curb a future abusive paradigm by providing structural reform. Comprehending reparation in between abusive past and future peace and stability has major significance to give a response at the same time to the past massive and systematic human right violations and the future by reforming and reshaping the underlying cause of pre-transitional abusive paradigm.

Largely reparation efforts in transitional justice context must adhere to repair the pre-transitional abusive paradigm by clearly demarcating the line between the source and nature of the past abusive acts and must attempt to create a conducive environment to reform an institution that is the source and cause of the abusive practice of the former regime. This newer and more context-sensitive view is reflected in the latest reports by the UN Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, Pablo de Greiff. v.²⁴⁷ Under this approach, the reparation effort not only has an eye for remedying the past abusive paradigm but also visualizes building a nation through transformative reform of institutions that are the source and cause of the injustice. To this end, the approach exposes the core of the pre-transitional abuse.

Thus the reparative program must be sketched to have a broader perspective of addressing the past injustice through material and symbolic gesture and it also must contemplate having an eye for preventive agenda through institutional reform of the security sector; including the police, the

²⁴⁴ David C. Gray, (n 106)

²⁴⁵ Margaret Urban Walker (n 169)

²⁴⁶ David C. Gray (n 106)

²⁴⁷ SIDA (n 148), See also for example report from SP Pablo de Greiff to the Human Rights Council 7 August 2017, A/HRC/36/50/Add.1.

military, and the intelligence service. This institutional reform is an important part of the non-recurrence policy, but only one part.²⁴⁸ According to the special reporter on the promotion of truth, justice, reparation, and guarantees of non-recurrence in the context of effective prevention the following measures has higher significance in the transitional justice processes; this is vetting the members of security institutions, initiatives aimed at defining the role of the police, the military, and the intelligence services; the strengthening of civilian oversight and control over security institutions; the rationalization of those institutions to bring them more into line with publically scrutinized risk assessments; narrowing military jurisdiction to disciplinary offenses only; and the elimination of military prerogatives.²⁴⁹ Thus in Ethiopians considering the role of the security apparatus including the police, military, and the intelligence agency played in the abusive paradigm setting up a series of institutional reforms have the potential to forge a preventive mechanism to halt the re-occurrence of grave human rights violations in big size and magnitude. Accordingly, Ethiopia should adopt a broader framework approach by encompassing comprehensive preventive strategies most directly associated with institutional reform of the security apparatus in consideration to each and specific sectors context with a particular emphasis of halting a future re-occurrence of gross human rights violation in Ethiopia. Finally, the Ethiopian transitional justice setting reparation policy must be forged to have both retrospective and prospective legal lenses with the objective of responding to the past massive human right violation through material and symbolic gesture and structural reform to move forward in building a nation with a sense of profound peace, stability, and justice.

4.4.7.1 Institution Most Qualified To Administrate Reparation in Ethiopian Context

In the Ethiopian transitional justice setting, a transitional justice measure was established through the Ethiopian reconciliation commission. According to paragraph two of the preamble of the commission establishing act, one of the main reason for the establishment of the commissions is to provide "...victims of gross human rights abuses in different time and historical event with a forum to be heard and perpetrators to disclose and confess their actions as a way of reconciliation

²⁴⁸ General Assembly, Promotion of truth, justice, reparation, and guarantees of non-recurrence, Seventieth session Agenda item 72 (b), Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, A/70/438, 21 October 2015

²⁴⁹ Ibid

and to achieve lasting peace."²⁵⁰ Thus, the commission provides truth as a transitional justice measure to address past gross human rights abuses only within the context of attempts to achieve reconciliation rather than other transitional justice initiatives.

The commission is considered a tool to foster nation-building and the formation of popular consensus as to the political transition that began when Dr. Abiy Ahmed became prime minister in April 2018 continues.²⁵¹ However, given the historical, political, and socio-economic pattern of a repetitive pattern of gross human right abuse, the commission was expected to place the interest of victims beyond truth by incorporating the reparation along with other transitional justice measures. In a deeply divided nation, where every ethnic group has its own narratives, it is hardly possible to come up with a truth acceptable to all.²⁵² Under the academic universe, there is intense debate about the value of truth.²⁵³ The value of truth in transitional societies as Pablo De Graif clearly puts it that "truth-telling in the absence of reparations can be seen by victims as an empty gesture, as cheap talk."²⁵⁴

Despite the reconciliation commission-only apprehend truth as a transitional justice measure it would be better suited to deliver a reparation program through the reconciliation commission by amending the mandate of the reconciliation commission. The justification arises from the feasibility aspect in terms of time and resource factors. The time aspect matters in the delivery of transitional justice initiatives in the context of the current Ethiopian context. On the other hand, the resource factor plays a very significant role to align the reparation program with the reconciliation commission in the current setting. Thus, in the endeavor to break the cycle of gross human right violation in Ethiopia the Ethiopian reconciliation commission must be restructured to contemplate a reparative program with the main objective of satisfying the needs and priorities of victims of gross human right violation. The alteration of the initial response as a transitional justice measure has been experienced by different nations for instance; Argentina, Guatemala, and South Africa; altered their initial response after a moderate time in the interest of

²⁵⁰ Reconciliation Commission Establishment Proclamation (n 28) at paragraph two the preamble

²⁵¹ Solomon Ayele Dersso, 'Ethiopia's Experiment in Reconciliation as a new commission is formed, questions abound as to whether its mandate can be achieved', September 23, 2019, available at <<https://www.usip.org/publications/2019/09/ethiopias-experiment-reconciliation>> accessed at December 20, 2020.

²⁵² Moges zewdu Teshome, 'Ethiopia must give Transitional justice a chance. The Challenge Of Reconciliation In A Divided Nation', September 2020, available at <https://www.vidc.org/regionen/afrika/ethiopia-must-give-transitional-justice-a-chance-the-challenge-of-reconciliation-in-a-divided-nation> accessed at December 20, 2020

²⁵³ Ibid

²⁵⁴ De Graif (n 162) at page 461

victims to address the past injustice.²⁵⁵ In general, in terms of the feasibility of time and resource the designing and implementation of Ethiopians transitional justice reparation measure must be delivered by amending the reconciliation commission to accommodate the interest of victims in parallel with other transitional justice initiatives by assigning it more power in the quest to heal the nation from its abusive pattern. Therefore, the current ERC establishment proclamation should be amended to rectify major defects identified above and anticipate victims' need and interest as a way of dealing with abusive past.

4.4.8 Which Violations Should Be The Object Of Reparation Benefits?

The next major question comes here in terms of violation that deserves benefits under the transitional justice setting of Ethiopia. It is a fundamental question that all reparation programs face about the selection and exclusion of human right violation that deserves reparation benefits. In principle, all victims of human right violation deserve the right to some form of relief. However, reparation programs in times of transition where there is a massive human right violation to make it more feasible there should be a selection and categorization violation that can be eligible for reparation under the current Ethiopian transitional justice setting. To this end, there must be pre-consideration in justifying the determination of the eligibility test that is more related in the initial step of designing and implementing a reparation program on condition that the selection of beneficiaries of the reparation program, given the financial scarcity in Ethiopia the selection and categorization must be made according to the seriousness of the violation. Unless an exhaustive list of rights will literally lead to unacceptable dilution of benefits.²⁵⁶

This approach has been expressed under the basic principles and guidelines in which it limited itself to victims of serious violations of international humanitarian law and gross violations of human rights by a very grave nature.²⁵⁷ The terminology gross generally used to qualifies the term violations and it is also used to designate the seriousness of the human rights violations.²⁵⁸ Additionally, the truth commissions in Sierra Leone and Timor Leste recommended that reparations should concentrate on those who suffered the most and as a result were made

²⁵⁵Laurel E. Fletcher Berkeley Law Harvey M. Weinstein Jamie Rowen (n 175)

²⁵⁶ Office Of The United Nations High Commissioner For Human Rights (n 31)

²⁵⁷ UN Basic principles and guidelines (n 9)

²⁵⁸ Theo van Boven, 'The United Nations basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law', (2010) United Nations Audiovisual Library of International Law 5.

vulnerable, such as amputees, orphans, widows, victims of sexual violence, and victims of torture.²⁵⁹ Nevertheless, the notion of gross human rights violation has no unanimous definition, nor has its content been properly determined.²⁶⁰ At this juncture, one of the drawbacks of the Ethiopian reconciliation commission, among others, is it lacks to precisely define what constitutes gross human rights violation. This needs to be addressed by providing a clarified detailed meaning and content of the term gross human right violation.

So as a transitional justice measure Ethiopia must abide by the need and importance of selecting and categorizing victims of gross human right violation for reparation program. In particular the most serious violations of individuals and groups' civil and political rights, such as extra-judicial killings, disappearances, torture, and sexual violence. In due consideration to the financial consideration, Ethiopia must determine the eligibility test for the reparation program in connection to gross human right violations only.

4.4.9 Who Is Entitled To Reparation?

The entitlement of reparation award presupposes the existence of a victim whose rights were violated. Thus, ascertaining who the victim is a crucial issue in the determination of who is entitled to reparation award.²⁶¹ Nevertheless, the term 'victim' has been used in numerous senses.²⁶² As a consequence determining the eligible victim becomes challenging. Also taking into consideration the persistent nature of human right violation for 27 years in Ethiopia makes it too difficult the face massive reparation claims. So, the determination of victims must follow the objective test provided by the UN basic principle and guideline. According to Basic Principles and Guidelines victims are:

Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law.

²⁵⁹Luke Moffett, 'Transitional justice and reparations: Remediating the past?'(2017) Research handbook on transitional justice.

²⁶⁰ Roger-Claude Liwanga, 'The Meaning of Gross Violation of Human Rights: A Focus on International Tribunals' Decisions over the DRC Conflicts', (2015) 44 Denv. J. Int'l L. & Pol'y 67.

²⁶¹ Diana Contreras-Garduño, 'Defining beneficiaries of collective reparations: The experience of the IACtHR', (2012) Vol 4:3 Amsterdam Law Forum 41.

²⁶² Haria Bottiglierio (n 43) at page 6

Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.²⁶³

Therefore, under the above guidance direct and indirect victims of gross human right violation under the Ethiopian context should be selected and categorized for the benefit under the reparation program.

4.4.10 Collective or Community Reparation

Collective or community reparation is recognized under international human rights law, international criminal law, and transitional justice. However, any of them has not explained the precise definition, its content, and scope of the measure. Despite it, collective reparation has been in use by the international judicial bodies and quasi-judicial bodies including Truth and Reconciliation Commissions (TRCs) in response to gross and systematic human rights violations.²⁶⁴ On the other hand, it is understandable that the collective reparations objective is addressing collective harm.²⁶⁵ Collective harm is an expression used to identify harm inflicted on collective targets who share certain bonds, such as common cultural, religious, tribal, or ethnic roots which are different from harm inflicted against the same number of individuals.²⁶⁶ The subject has been clearly explained by Friedrich Rosenfeld that collective reparation is a benefit awarded on a collective basis with the main objective of undoing the collective harm.²⁶⁷ As a consequence of massive claims, collective reparation tends more to focus on symbolic aspects including rehabilitation, measure of satisfaction, and guaranty of non-repetition.²⁶⁸ As the

²⁶³UN Basic principles and guidelines (n 9) at para 8 and 9

²⁶⁴ Diana Contreras-Garduñ (n 261) p. 47

²⁶⁵ A basic understanding of Collective harm and collective reparation assume that when the “harm is defined in terms of attempt to destroy a group. so that reparation should be similarly defined”

²⁶⁶ Friedrich Rosenfeld, ‘Collective reparation for victims of armed conflict’, (2010) Int'l Rev. Red Cross vol. 92 No 879, 731.

²⁶⁷ Ibid at page 732

²⁶⁸ Aaron Murchan, ‘individual and collective reparations in remedying international crime’, July 9, 2016, available at <https://blogs.qub.ac.uk/studentslawjournal/2016/07/09/individual-and-collective-reparations-in-remedying-international-crime> accessed at December 25, 2020.

experience of different Truth and Reconciliation Commissions shows their final recommendations concerning collective reparation include reparations in the form of development programs as well as symbolic measures.²⁶⁹

In transitional justice setting to approach collective reparation in parallel with individual reparation is crucial in the reconstruction of the broken relationship in the society. But the undertaking must be carried out with the precaution that the collective reparation award may be taken by the beneficiaries as only development aid or not more than providing economic and social fulfillment from the side of the government than reparation for their collective harm. To avoid this stumbling block the collective reparation must be designed to anticipate symbolic redresses such as a monument or a genuine apology.²⁷⁰

In Ethiopia, the existence of collective harm is evident in cases such as the violations in the Gambella region in 2003-2004 and violations in the Ogaden area of the Somali region in 2007-2008. These incidents are influencing factors to consider collective reparation. Accordingly, the Ethiopian reparation program should be designed to award reparation measures for both individual and collective harm with *mutatis mutandis*.

4.4.11 Guiding Principles of the Reparation Awards

There are no censuses regarding the guiding principle for reparation award as the majority of the international human rights instruments silent on the issue.²⁷¹ This is why human rights instruments used different terminologies such as fair, adequate, or effective, used either singly or grouped together,²⁷² appropriate,²⁷³ proportionate to the harm,²⁷⁴ and equitable.²⁷⁵ These

²⁶⁹ Diana Contreras-Garduñ (n 261) p. 47

²⁷⁰ Ibid at p. 48

²⁷¹ Octavio Amezcua-Noriega, 'Reparation Principles under International Law and their Possible Application by the International Criminal Court: Some Reflections', (2011) Briefing Paper 1.

²⁷² The Convention on the Elimination of All Forms of Racial Discrimination (CERD, art 6; UNCAT Art 14; Convention for the Protection of All Persons from Enforced Disappearance (CPPED, Art 24(4)); Committee on Economic, Social and Cultural Rights, General Comment No 9, UN Doc E/C.12/1998/24, 3 December 1998 Para. 9; Basic Principles and Guidelines 15, Protocol on the Statute of the African Court of Justice and Human Rights, African Union (adopted 1 July 2008, not yet in force) Art 45; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Victims' Declaration, adopted 29 November 1985 by GA resolution 40/34).

²⁷³ Committee on the Rights of the Child (CRC), General Comment No. 5, General Measures of Implementation of the Convention on the Rights of the Child, UN Doc CRC/GC/2003/5, 3 October 2003, para. 24

²⁷⁴ Basic Principles and Guidelines (n 9) 15 and 18

²⁷⁵ The principle of Equity applied by IACtHR on Velásquez Rodríguez Case (Compensatory Damages) IACtHR, Ser C No 7, 21 July 1989 Para. 27.

terminologies don't suggest lesser standards in providing effective remedies to victims.²⁷⁶ In due consideration to the impossibility of re-establishing the *status quo ante* and quantify the harm suffer precisely the different connotation of the concept has paramount importance to clarify what is required to satisfy the harm in terms of an effective remedy.²⁷⁷ Thus, despite the difference in terminology, there is some form of consistency in what is understood to be required.²⁷⁸

In case of massive reparation programs the basic guiding principle in reparation award, “that reparation must, as far as possible, wipe out all the consequences of the illegal act, and re-establish the situation which would, in all probability, have existed if the act had not been committed” is replaced by the “fair and adequate reparation” Criterion.²⁷⁹ In connection to this, the basic principles and guidelines integrate a “margin of appreciation”²⁸⁰ by departing from the full compensation principle²⁸¹ by stating that: “...as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation...”²⁸² Accordingly, keeping in mind the above position the Ethiopian reparation program must contemplate the following principles as guiding principles in reparation award; including restitution, compensation, rehabilitation, satisfaction, and non-reoccurrence to victims of gross human right violation.

4.4.11.1 The Principle of Proportionality

Dealing with human right violation the IACtHR applied the principle of proportionality concerning gross human rights violations.²⁸³ Besides the basic principle and guideline guide states to act in accordance with their domestic laws and international legal obligations to provide proportional to the gravity of the violations and the harm suffered.²⁸⁴ Thus, based on the principle of proportionality reparation measures should neither enrich nor impoverish the victim of a

²⁷⁶ Reaching for Justice (n 87) at page 39

²⁷⁷ Ibid

²⁷⁸ Ibid

²⁷⁹ Office Of The United Nations High Commissioner (n 31) at page 28

²⁸⁰ The concept of Margin of appreciation a term commonly used in the European human right system to denote a judicial doctrine whereby international courts allow states to have a measure of diversity in their interpretation of human rights treaty obligations.

²⁸¹ Office Of The United Nations High Commissioner (n 31) at page 28

²⁸² UN Basic Principles and Guidelines (n 9) at para 18

²⁸³ Velásquez Rodríguez v. Honduras, Merits, Judgment of July 29, 1988, Series C No. 4, para.38

²⁸⁴ UN Basic Principles and Guidelines (n 9) at para 15

human rights violation, as they are intended to eliminate the effects of the violations that were committed.²⁸⁵ Therefore under the Ethiopian reparation program, the reparation should be proportional to the gravity of the violations and the harm suffered.

4.4.11.2 The Principle of Causality

According to IACtHR's well-enriched jurisprudence, the obligation to provide adequate and effective reparation requires the existence of a "causal link with the facts of the case, the alleged violations, the proven damages, as well as with the measures requested to repair the resulting damages."²⁸⁶ Thus the Ethiopian reparation claim must entail the existence of a causal link between the violation and the reparations pursued.

4.4.11.3 Victim Sensitive Approach

The endeavor for a comprehensive and holistic reparation program usually required to be farsighted to contemplate a victim-centered approach and responsive to victims' needs. There must be an overemphasis on reparation programs to fully understand the particular perspective of victims of human rights violations and to include his or her gender, culture, and background as these issues have an impact on in the discovery of the harm suffer.²⁸⁷

The UN basic principles and guidelines pin down that “victims should be treated with humanity and respect for their dignity and human rights, and calls for the adoption of appropriate measures to ensure their safety, physical and psychological well-being, and privacy, as well as those of their families”.²⁸⁸ Further, the African Commission's Fair Trial and Legal Assistance guidelines provide that victims should be treated with compassion and respect for their dignity and have access to prompt redress.²⁸⁹ Accordingly, the Ethiopian reparation program must ensure a 'victim sensitive approach' when affording reparation by taking due account of the victim's situation in any given case.

²⁸⁵ IACtHR “Street Children” (Villagrán-Morales et al.) v. Guatemala, Reparations, and Costs, Judgment of May 26, 2001, Series C No. 77, para. 63.

²⁸⁶ IACtHR, Ticona Estrada and others v. Bolivia, Merits, reparations and costs, Judgment of November 27, 2008, Series C No. 191, Para. 110.

²⁸⁷ Reaching for Justice (n 87)

²⁸⁸ UN Basic Principles and Guidelines (n 9) at para10

²⁸⁹ African Commission (n 18) at Section N (a)

4.4.11.4 The Principle of Non-Discrimination

The principle underpins that in the endeavor for reparation for victims of human rights violations, states must implement reparation measures without discrimination on any of the grounds recognized by international law.²⁹⁰ Thus in the quest to provide reparation for human rights violations, States must implement reparation measures without discrimination on any of the grounds recognized by international law.

Accordingly, the Ethiopia reparation program must ensure the right to reparation of victims of gross human rights without any discrimination on the basis of sex, gender identity, ethnicity, race, age, political affiliation, class, marital status, sexual orientation, nationality, religion, and disability, or any other status.

4.4.12 Cross-Cutting Issues

One of the critical issues in the discourse of the transitional justice field is the need to emphasize the inclusion of marginalized, discriminated, or oppressed groups of victims, such as women, children, and ethnic minorities in TJ processes.²⁹¹ In due consideration to the need and urgency of contemplating a comprehensive and holistic reparation program the Ethiopian reparation program must include the issue of women and children in the following manner:

4.4.12.1 Gender-Sensitive Approach

The need and interest of women's are typically ignored from most reparation programs.²⁹² At the outset engaging with designing and implanting reparation program, gender-sensitive strategies must be set in place to gather gender-specific information that will be relevant for the program downstream and to secure the participation of women in debates about the design of the program.²⁹³

²⁹⁰ Octavio Amezcua-Noriega (n 271)

²⁹¹ Elena Butti and Brianne McGonigle, 'Intersectionality and Transformative Reparations: The Case of Colombian Marginal Youths', (2019) 19(5) international criminal law review 753.

²⁹² Katie Zoglin, 'What Happened to the Women? Gender and Reparations for Human Rights Violations' (2007) ed. Ruth Rubio-Marín, Advancing Transitional Justice Series, social science research council 454.

²⁹³ Office Of The United Nations High Commissioner (n 31)

The Nairobi Declaration²⁹⁴ which expanded and redefined reparation from a gender perspective demands states and other relevant bodies to ensure that women and girls are involved in the decision-making process, including the design of administrative schemes and that they can determine what forms of reparation are best suited to their particular situations.²⁹⁵ The declaration makes clear that to achieve reparation measures sensitive to gender, age, cultural diversity, and human rights, decision-making about reparation must include victims as full participants, in every stage of the reparation process, i.e. design, implementation, evaluation, and decision-making.²⁹⁶ Further, the declaration makes it clear in the assessment of just, effective and prompt reparation measures in the case of victims of sexual violence and other gender-based crimes, governments should take into account the multi-dimensional and long-term consequences of these crimes to women and girls, their families and their communities, requiring specialized, integrated, and multidisciplinary approaches.²⁹⁷ Therefore taking into consideration the discriminatory interpretations of culture and religion that harm women and girls the Ethiopian reparative program must be designed and implemented in a gender-sensitive manner.

4.4.12.2 Child Sensitive Approach

Regarding children's the primary legislation that deals with inclusion in transitional justice is the Convention on the Rights of the Child (CRC). It clearly set fundamental key principles; non-discrimination; the best interests of the child; the right to life, survival, and development; and respect for the views of the child.²⁹⁸ In connection with this children have got paramount recognition around the world as vulnerable victims in the transitional justice process.²⁹⁹ The recognition has paramount importance to attribute child victims as important contributors, right holders, and citizens.³⁰⁰ Consequently, children's in the identification of their needs and priorities on equal footing with other victims there should be a platform for them to engage actively during

²⁹⁴ Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation [hereinafter Nairobi Declaration, held in Nairobi from 19 to 21 March 2007.

²⁹⁵ Sheri Labenski, Report on the Right To Reparations For Sexual And Gender-Based Violence, LSE Centre for Women, Peace, and Security (2020).

²⁹⁶ Nairobi Declaration (n 294) Para 2 (A and B)

²⁹⁷ Ibid at Para 3 E

²⁹⁸ Elena Butti and Brianne McGonigle (n 291)

²⁹⁹ Ibid

³⁰⁰ Mazurana Dyan and Carlson Khristopher (2010), "Children and Reparation: Past Lessons and New Directions", Innocenti Working Paper No. 2010-08. Florence, UNICEF Innocenti Research Centre.

planning and implementation of reparation programs.³⁰¹Therefore in due regard to the aforementioned justification the Ethiopian reparation program must ensure the active participation of child victims of gross human rights violations to capitalize on their needs and priorities.

4.4.13 Challenges

Keeping in mind that the domestic reparations programs are the most effective mechanism to secure redress relief to victims of gross human rights violations. Nevertheless, the designing and implementation of reparation programs often face huge challenges; mainly due to political, evidentiary, and financial challenges. In many instances, reparation programs are under-funded or do not possess the necessary legal and institutional security to function properly. On the other hand, identifying the challenges will have a great implication to anticipate the necessary measure to eradicate the challenge the Ethiopian reparative effort may face in designing and implementation the program. Here below are the main challenges:

4.4.13.1 Scarcity of Financial Resources

One of the main challenges would be a scarcity of financial resources to fund the reparation program in the Ethiopian transitional justice setting. Ethiopia was found in the lowest bracket of the UN Development Programme's 2019 Human Development Index. According to the report Ethiopia ranked 173/189 countries with 0.485 human rights development index in 2019.³⁰² Thus, Ethiopia as developing countries how can it provides reparations for victims of gross human rights violations. So to mitigate the financial scarcity in the designing of the reparation program there must be creative work to address the challenge.

Under this thesis three mitigating creative methods suggested; these are: first to the reparative program must contemplate a wide variety of benefits ranging from the material benefit to the symbolic gesture for victims of gross human rights violation. The second mechanism in due regards to the economic marginalization under the EPRDF rule to raise funds the proposed reparation program can be crafted to recover assets and wealth's from corrupt ex-higher officials

³⁰¹ Ibid

³⁰²United Nations Development Programme, 'Human Development Reports', available at <http://hdr.undp.org/en/countries/profiles/ETH#> accessed on February 3, 2021

and high level of perpetrators. For instance, Peru and the Philippines applied this approach to raise funds for reparations.³⁰³ Last but not least Ethiopia as a post-transitional nation should propose debt-for-reparations schemes. One of the prominent examples here is Ghana where the World Bank and International Monetary Fund recognize Ghana as a Heavily-Indebted Poor Country (HIPC); it used its HIPC status to shift certain portion of its foreign debt repayments to a compensation program for victims.³⁰⁴

Despite the argument that developing nations may face financial scarcity to better fund reparation programs may not be as suggested rather, it could arise due to misplaced priorities. For instance, South Africa acquired submarines for its navy while refusing to implement the TRC's reparations scheme.³⁰⁵ In general Ethiopia should priorities reparation program for victims of gross human right violation as a transitional justice measure and for any financial scarcity must adopt the above points as mitigating the challenge and expect better funding for the reparation program. Overall, the source funding the reparation program must be based on State budgets, the international community, and donors, international financial institutions, and assets recovered from perpetrators.

4.4.13.2 Political Will

Political will and support have paramount importance in the implementation of reparation in the domestic arena and it is also essential for its success. However, often the competing political narratives and goals in transitional societies demand the reparative efforts to be context-driven than the implementation of an international norm on reparation programs. Here one of the major stumbling blocks is the political will to finance reparation programs. However, according to UN Special Rapporteur Pablo de Greiff “the state cannot simply ignore the claims of victims with the argument that there are no resources to cover the corresponding costs, or alleging that there is simply no way to overcome the problems described.”³⁰⁶ Further, as experience suggested that the lack of political will have a possibility to change over the pass of time to focus on prioritizing

³⁰³Rubén Carranza, ‘The right to reparations in situations of poverty’, (ICTJ briefing), presentado a la conferencia Fighting Impunity in Peace Building Contexts, La Haya. 2009.

³⁰⁴ Ibid

³⁰⁵ Ibid

³⁰⁶ De Greiff, (n 162) at page 459

victim-centered reparation program.³⁰⁷ In the future initial reluctance or resistance to address the past abusive pattern from the Ethiopian government must change and must act to address the need and interest of victims in the face of financial alternatives suggested above and changing the misplaced priorities to give due to emphasis to reparation programs under the domestic arena.

4.4.13.3 Evidentiary Challenge

Often reparation programs at their best are administrative procedures. Due to this reparative programs may deviate from the stringent procedures under the ordinary judicial settings.³⁰⁸ Consequentially the evidentiary challenge the administrative reparative programs including problems with evidence verification: incomplete evidence; a vast amount of information received; time-period for submissions; different languages; illiteracy amongst claimants; and fraudulent claims.³⁰⁹

In designing and implementation, a reparation program applying the standard of strict fairness has the potential to lead to unfairness. The main challenge is it will pose a difficulty in presenting evidence of the harm suffered especially the hurdle will be on the elderly, children, or women.³¹⁰ This will be an obstacle to the overall success of the program and against the objective of establishing administrative programs of reparations; that is: strengthening accessibility, lowering the burden of evidence, implementing outreach initiatives, and covering broad categories of victims. Hence the Ethiopian reparative program must design with relaxed standards of evidence but must also anticipate the need to close scrutinize applications to filter fraudulent claims.

³⁰⁷ Laurel E. Fletcher Berkeley Law Harvey M. Weinstein Jamie Rowen (n 175)

³⁰⁸ De Greiff (n 162) at page 459

³⁰⁹ Luke Moffett (n 163) at page 38

³¹⁰ Cristian Correa, 'Integrating development and reparations for victims of massive crimes', (2014) The Center for Human Rights. Notre Dame: University of Notre Dame.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1 Conclusion

This thesis titled as approaching reparation to victims of gross human rights violation as a transitional justice measure: the case of Ethiopia is articulated to address the justice gap in Ethiopia by proposing a context-specific transitional justice program to victims of gross human rights violations during the 27 years long EPRDF rule. The thesis will have a profound impact beyond some specific time framework to endure for a very long time by rectifying the past injustice by providing relief to victims and guaranty a moderate human rights protection in the future.

April 2, 2018, marked a historic date in the history of Ethiopia by witnessing a peaceful power transition. The political power was transferred within one party line; in the EPRDF. Later on, the new administration under the leadership of Prime Minister Dr. Abiy Ahemd formed the prosperity party on December 1, 2019, as a successor of the EPRDF. The establishment of the prosperity party has sidelined the old guards of TPLF to make a way to the other five formerly affiliate parties (commonly known as Agar parties). The removal of TPLF from Federal affairs has a significant implication in consideration to the role and power of TPLF within the EPRDF party. Despite the complicated nature of the political power transition in Ethiopia responding to past abusive paradigm through transitional justice initiatives is still possible. To capitalize transitional justice it would be important not to align transitional justice only with a formal peace agreement or regime changes as change or reforms may come before these events and persists long after formal political power transition. The distinctive nature of transitional justice from other forms of human rights violation rests mainly that it is a response to massive or systemic human rights violations and in the context of transition but it can go wider than a formal change of government.

The selection and implementation of transitional justice initiatives demand us to be thoughtful about the contextual dynamics of transitional justice due to the context-driven nature of the notion. The effort to contextualize the selection of an intervention mechanism that best fits to the Ethiopian context must align with uncovering decisive factors specific to the Ethiopian context.

Consequently an extensive assessment into the Ethiopian history starting from the imperial regime to the EPRDF reveals some forms of human rights abusive paradigm. Regardless of the difference in terms of magnitude and size repression, the nation witnessed a vicious circle of a human rights abusive pattern under the successive regimes. There were attempts to deal with the abusive past under transitional justice initiatives; such as criminal prosecution in the year 1992 of higher Derg officials by the then transitional government of Ethiopia and the current administration also put in some forms of transitional justice initiatives including criminal prosecution of higher officials and established Ethiopian reconciliation commission. Yet the measures taken are not enough to end the impunity gap and provide the platform for victims the right to truth, justice, and reparation. Further the attempt to install some form of transitional justice fall short to fully comprehend the contextual factors associated with Ethiopia. The main assertions for this conclusion are heavily linked with three main reasons first, there were never efforts to address the need and interest of victims of human rights violations in Ethiopia. Secondly, there remains an unaddressed human rights abusive paradigm under the successive regimes with seemingly like causes of socioeconomic and political marginalization and state violence and repression as the main source of the human rights abusive pattern. The third reason emanates from the second that to halt the common pattern of human rights abusive the need to priorities reforming the source of the abusive paradigm in Ethiopia; that is the security force including the police, military and intelligence agency.

On the other hand, installing reparation as a transitional justice measure to victims of gross human rights violations in Ethiopia can contextually address the profound human rights abusive pattern in Ethiopia. This can be realized by designing and implementing reparation measures to have a broader perspective by endorsing retrospective and prospective legal lens. This approach has the capacity to respond simultaneously to abusive past by providing relief to victims of human right violation and halting the future reoccurrence of such kinds of an abusive pattern by providing institutional reform of the security apparatus. This approach can be achieved by conceiving reparation as a political project than the narrowly conceived ordinary judicial setting and by perceiving this period of the new administration of the prosperity party as a period between abusive past and a future peace guarded by rule of law, justice, and democracy. However, the designing and implementation of reparation programs will not be an easy raid due to the challenges mainly from the political will to fund reparation programs, the evidentiary

challenge, and scarcity of the financial resource. Nevertheless, the challenges can be manageable through setting up creative means such as alleviating the financial scarcity by providing a wider variety of benefits ranging from the material to symbolic measures or recovering assets from the former ex-higher officials and perpetrators or by proposing debt-for-reparations schemes to the international monetary organization. Concerning the evidentiary challenge, the Ethiopian reparation program must provide a procedural safeguard by setting a relaxed standard of evidence.

Therefore, Ethiopia must adhere to its international and regional human rights obligation by providing victims of gross human rights violations an effective remedy that entails reparation. The nation in its move towards a sense of peace and stability in the future must start particularly by providing adequate, appropriate and proportional relief to victims of gross human rights violations and by taking institutional reforms against institutions that are the source and causes of mass atrocities unless history will repeat itself and the nation may face other massive and systematic gross human rights violations. So let us not be wasteful of this unique opportunity to heal the unhealed wounds of victims of the past atrocities committed under the 27-year long EPRDF rule through the transitional justice reparation mechanism. Now more than ever, let us give chance to victims of gross human rights violation some form of justice through reparation as a way of dealing with abusive past and guaranty a better protection of human rights by outsourcing the source and cause of the abusive trend in Ethiopia.

5.2 Recommendation

In general, to deal with the abusive past and to avoid the reoccurrence of impunity, and to enable Ethiopia to comply with its international duty by providing a domestic remedy for gross human right violation, based on the above findings and conclusion the researcher recommends the following solutions to the competent authority.

- The Ethiopian government must seize the unique opportunity to come to terms and heal the nation from an abusive past by designing and implementation reparation to victims of gross human rights violations in Ethiopia as a transitional justice measure.
- Under the Ethiopian transitional justice setting the reparation policy must be forged to have both retrospective and prospective legal lenses with the objective of responding simultaneously to the past massive human rights violations through material and symbolic measures and provide an institutional reform to the security force including the police, military, and the intelligence service as part and parcel of non-recurrence policy of the transitional justice reparative program.
- To endorse a wider legal lens the reparation program must be considered as a political project than the narrowly conceived ordinary judicial setting and the period of the new administration under prosperity party must be considered in between abusive past and a future peace guarded and preserved by the commitment to democracy, human right, and rule of law.
- The institutional mechanism for the administration of reparation to victims of gross human right violations should be managed through the Ethiopian reconciliation commission.
- The current Ethiopian reconciliation commission proclamation must be amended to encompass reparation to victims of gross human right violation as a transitional justice measure in Ethiopia. And the commission establishing act must also be amended to provide a clarified detailed meaning and content of the term gross human right violation.
- The determination of violation that is eligible to benefit for any reparation award must be based on the seriousness of the violation.
- To achieve comprehensiveness and to be holistic the Ethiopian transitional justice reparation program at the outset must be designed and implemented to be far-seeing by

envisaging a victim-centered approach and responsive to victims need, and Gender-sensitive strategies must be set in place to gather gender-specific information and must ensure the active participation of child victims of gross human right violation to capitalize their need and priorities in the overall success of the program.

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