JIMMA UNIVERSITY
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COLLEGE OF LAW AND GOVERNANCE

THE SCHOOL OF LAW

AN APPRAISAL OF THE RIGHT TO EFFECTIVE REMEDY FOR VICTIMS OF INTERNATIONAL CRIMES IN ETHIOPIA

A THESIS SUBMITTED TO JIMMA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE LLM DEGREE IN HUMAN RIGHTS AND CRIMINAL LAW

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JANUARY, 2023

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Declaration

I hereby declare that, this thesis prepared for the partial fulfillment of the requirements for LL.M Degree in Human Rights and Criminal Law entitled '**An appraisal of the Rights to Effective Remedy for Victims of International Crimes in Ethiopia**:' is my own work and that it has not previously been submitted for assessment to another University or another qualification. I also declare that any source used in the paper has been duly acknowledged.

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Approval

The undersigned certify that they have read and hereby recommend to the Jimma University to accept the Thesis submitted by Ibrahim Abdela entitled 'An appraisal of the Rights to Effective Remedy for Victims of International Crimes in Ethiopia' in partial fulfillment for the award of the Master of degree in Human Rights and Criminal Law.

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Acknowledgments

Primarily my praise is to Super Natural God that makes me to be here in the finality of this work

Next, I would like to express my sincere and grateful gratitude to my advisor Mr. Biruk Jemal for his holistic and constructive comments throughout this work in breaking his encircled hurdles of time and energy.

My heartfelt thanks also flows to my families, and keen stuff friends for their moral as well as material support in the conduct of this work

Thank you all of you!

Abstract

In most jurisdictions including Ethiopia as crime is seen primarily as an act against the state rather than the individuals, parties to the proceeding is prosecutor and perpetrator of the crime in exclusion of victims. Justice in actual sense is not only two fold movement between the criminal and state, but justice should be also for victims of those crimes. Under criminal justice system of Ethiopia remedy of victims without clear identification as to victims of international crimes *or ordinary crime is provided. Hence the theme of this thesis is to examine whether or not right to effective remedy for victims of international crimes exist under Ethiopian criminal justice system and to analyze the legal basis of this right in Ethiopia. The approach of Ethiopian court with regard to rights to remedy of victims of* international crimes *has been also observed. To this end, the researcher used mixed research approach of doctrinal research to examine legal doctrine of the rights to effective remedy for victims of international crimes and non-doctrinal research specifically qualitative research method to examine practical applicability of laws related to remedial rights of victims of* international crimes*, and identify the practical gaps exists with regard to rights to effective remedy in using questionnaries as sampling tools of data collection. Then the data were analyzed deductively for doctrinal research while inductively for qualitative research method in examining the practical application of laws, and existing challenges on the* ground. *Based upon the research findings, the researcher found out that though Ethiopia has conventional obligation to provide remedy for victims of core crimes under international human rights and humanitarian law as well engaged in domestic prosecution of international Crimes at its domestic courts, victims of those heinous crimes are left without any remedy. This study also reveals that major challenges prevalent in Ethiopia with regard to rights to effective remedy for victims of international crimes are: absence of clear law both substantive and procedural that regulate remedial aspects of crime of this category, absence of institutional frame works indebted with mandate to regulate effective remedy for victims of international crimes ,absence of independent state fund used for remedy of victims, and scarcity of budget and prevalence of poverty are topical one . Based upon these findings sorts of recommendations are also forwarded by this research.*

Key words*: Remedy of Victims, Victims, witness, Criminal justice system, criminal justice policy, International Crimes, Ethiopia*

Table of contents

ABBREVIATIONS AND ACRONYMS

UN	United Nations
UNGA	United Nations General Assembly
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ECHR	European Convention on Human rights
ACHR	American Convention on Human rights
ACHPR	African Charter on Human and people's Rights
GC	Genocide Convention
CAT	Convention against Torture
CEARD	Convention on the Elimination of All Forms of Racial Discrimination
CPED	Convention on Protection of All persons from Enforced Disappearance
CFDRE	Constitution of Federal Democratic Republic of Ethiopia
WWII	World War Second
HR	Human Rights
HL	Humanitarian Law
ICC	International Criminal Court
ICTY	International Criminal Tribunal for Former Yugoslavia
ICTR	International Criminal Tribunal of Rwanda
SPO	Special Prosecutor's Office

CAH	Crimes against Humanity
VCLT	Vienna Convention on the Law of Treaty
ECHrt	European Court of Human rights
IACHrt	Inter American Court of Human rights
CCE	Criminal Code of Ethiopia
PCE	Penal code of Ethiopia
ECC	Ethiopian Civil Code
TGE	Transitional Government of Ethiopia
ETB	Ethiopian Birr
FDRE	Federal Democratic Republic of Ethiopia
FHC	Federal High Court
FAG	Federal Attorney General
EHRCo	Ethiopian Human Rights Commission
CDR	Customary Dispute Resolution
IMTs	International Military Tribunals
ITs	International Tribunals
CJVRB	Criminal Justice Victims' Remedies Bill
CICB	Criminal Injuries Compensation Board
CICT	Criminal Injuries Compensation Tribunals
CVCB	Crime Victims Compensation Bill
CICF	Criminal Injuries Compensation Fund

CVCF	Crime Victims Compensation fund
VWS	Victim and Witness Section
WVSS	Witness and Victim Support Section
VPRS	Victim Participation and Reparation Section
ATCA	Alien Tort Claims Act
TVPA	Torture Victims Protection Act
ADR	Alternative Dispute Resolution
ICGLR	International Conference of Great Lake Region
GLR	Great Lake Region

CHAPTER I

1. INTRODUCTION

1.1 BACKGROUND OF THE STUDY AND CONCEPTUAL FRAMEWORK OF THE RIGHTS TO EFFECTIVE REMEDY

'The protection of human rights is generally recognized to be a fundamental aim of modern international law.'[1] Recently also every international and regional organizations in adopting human rights norms ,open their doors to redress individuals whose their rights have been violated by domestic state without any remedy.[2] Barriers like lengthy procedure and, sovereignty of state, and absence of resource or budgets are used to be some factors those hinders remedial rights of the victims in domestic state before the advancement of international criminal law[3]**.**In this regard recently, there is mechanisms of providing remedy or compensation at global or regional level in consideration of the gravity and sensitivity of those international crimes**.**[4]

International Commission of Jurists define the '**right to an effective remedy** 'as 'the right an injured party or victim has to protect his own rights before an independent and impartial body so as to obtain recognition of the violation, the termination of the violation if it continues and get adequate reparation[5].With regard to violation of International Humanitarian law 'the victimized person in the context of war has also similar rights to request remedies like Compensation, request for termination of the violation and restoration of the pre-war status quo before impartial bodies [6].Here one can understand that the efficacy of rights to remedy is not based simply on its sole existence instead it requires existence of impartial body that can realize it.

Remedial right also be defined as 'a right arising on a violation of and for the protection of a substantive right'[7].At this juncture' it is possible to say that remedial rights of victims has no

[1] Dina Shelton, remedies in international Human rights law(3rd edn ,Oxford university press 2015) 1
[2] Ibid
[3] Ibid
[4] Ibid
[5] International Commission of Jurists(icj),'International Law and the Fight Against Impunity ,A practioners Guide (2015)106
[6] Liesbeth Zegveld,Remedies for Victims of violations of international humanitarian Law(2003)85 International Review of the Red Cross ,497,501
[7] Ibid

concrete definition and instead every international human rights conventions include this rights and aimed at ensuring effective remedies for persons whose human rights have been violated.

In this regard these international conventions impose obligation on state parties to each conventions[8] among other things to provide remedy for the victims in need.

'Remedy 'under English dictionary[9] represented as: something that corrects or counteracts. From the legal point of view, remedy is defined as; the legal means to recover a right or to prevent or obtain redress for a wrong. Moreover the word remedy is synonymous to 'correct' which means to make right what is wrong or taking actions to remove errors. Remedy also represents the word 'redress' which implies making compensation or reparation for unfairness, injustice or imbalance[10].Some sources also define 'remedy' as a form of court enforcement of legal right resulting from a successful civil law suit[11].Here it is clear that existence of violation of substantive rights or wrong done on the right holder that required to be corrected or, redressed is one requirement to claim remedy. So it is possible to say that human rights and humanitarian violations can be a possible ground for the holder of such rights to claim it in case his/her rights is violated.

Before the scientific study of crime victim ,peoples were being victimized by another even in state of nature based on the survival of the fittest which means the weakest is harmed with the strongest one in the competition process of economic or social aspect[12].The profile of early recorded legal systems show the existence of remedy for damage caused by private person on the victims from the perpetrator of such damage and this has been practiced in every organized society[13].On top of that no family of any legal system ever known to human kind denied victims' rights to be redressed for private wrongs[14].In the same manner, providing remedies for the crime has been also historical root in earliest societies and religious traditions but with different in

[8] What are the rights to an effective remedy? Icelandic Human Rights Center, available at https://www.humanrights.is accessed on 11 August ,2022

[9] The meaning of English words Livio(javalc6@gmail.com available at http://wikitionary.org

[10]"Remedial right."Merriam –webster.com Dictionary ,Merriam–Webster, available at https://www.Merriam accessed on 11 Aug,2022

[11] Remedy /Wex /US law Legal Information Institute ,available at LII https://www.law.cornell.edu.wex accessed on 11 Aug,2022

[12] Diane B. Paul' The selection of the survival of the fittest , (1988) 21 Journal of the History of Biology 412

[13] Cherif Bassiouni 'International recognition of victims' rights' (2006) 6 Human Rights Law Review 20,207

[14] Ibid

types of remedies, way of access to it, procedures to be followed and last decision making process[15].The application of traditional way of remedial aspect has been given recognition in some contemporary state[16].Traditional way of granting remedy for the victims has been grounded on the assumption that role of the victims in criminal justice system is simply up to being witness based on the will of the prosecutor and the victims cannot gain any significant benefit from outcome of the case since each and every monetary punishment in connection with imprisonment goes to government treasury[17].In complementing this Zehr stated: "If victims involve in their case at all, it will likely be as witnesses if and only if the state needs them as witnesses. The offender has taken power from them and now, instead of returning power for them, the criminal law system also denies them power[18].

Later on especially after second world war, victim centric approach was also adopted in conceptualizing rights of victim under notably international binding treaties that obliges state parties to the treaty to provide remedy of Victims of gross violation of human rights and serious violation of humanitarian law[19].In this regard , rights to effective remedy for Victims has been recognized under UDHR [20],ICCPR[21] ,ECHR[22],IACHR[23] and ACHPR[24].The rights to effective

[15] For example, Guma (Blood Money) system of vindicating the victims with Criminal person brought intentional or negligence death of person in Oromo Community is one aspect of remedial tradition with its respective procedural way in Collective society.

[16] CO. Zatalay and etal.' The Use of Blood Money in the establishment of non-justice :Necro domination and resistance 'a available at https://about .jstor.org/terms accessed on wed, 06 May 2020

[17] Endalew Lijalem 'a move towards restorative justice in Ethiopia: accommodating customary dispute resolution mechanisms with the criminal justice system 'Master's Thesis in Peace and Conflict transformation Faculty of Humanities, Social Sciences and Education University of Tromso ,Spring 2013

[18]Howard Zehr 'Retributive Justice, Restorative Justice, MCC US. Office of Criminal Justice MCC Canada Victim Offender Ministries, 1985,3

[19] Dinah L. Shelton, Reparations to Victims at The International Criminal Court: Recommendations for the Court Rules of Procedure and Evidence, Center On International Cooperation,' (July 13-26 August 1999) 6

[20]U.N. General Assembly Resolution 217 A (III) Universal Declarations of Human Rights, 10 December 1948, U.N. Doc. A/810/171 (1948) article 8

[21]International Covenant on Civil and Political Rights (ICCPR)adopted by the U.N. General Assembly, Res. 2200 A (XXI), 16 December 1966 published in I.L.M. 368, entered into force 1976 article 2(3),

[22]European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) Rome, 4 November 1950, as amended by Protocol No. 11, Strasbourg, 11 May1994 article 13

[23]Inter-American Convention on Human Rights (IACHR)adopted by the OAS Inter-American Specialized Conference on Human Rights, San José, 22 November 1969 article 8 and 25

[24]African Charter on Human and Peoples' Rights, adopted by the eighteenth
Ordinary Session of the OAU Assembly of the Heads of State and Government, June 1981, Nairobi, Kenya, 21 October 1986, OAU Doc. CAB/LEG/67/3 rev.5article 7(1)

remedy also recognized in human rights instruments dealing with a specific rights inter alia ,article 1 of GC[25] ,article 4 and 12-14 of CAT[26] ,article 6 of CEARD[27] and article 8 and 12 of CPED[28].

With regard to remedy for victimized persons as a result of humanitarian law violations, Hague Conventions of 1899[29] and 1907[30] were pioneer international instruments that codify the customary law of armed conflicts. However the possibility to claim remedy by injured party is not direct as it is only through state machinery that claim of compensation on behalf of its Citizen be effected. The preceding state to-state approach has been changed under later conventions[31] due to its implied recognition of remedial rights of victims through individual legal action from the violating state.

The next scenario that can be raised in relation to effective remedy for victims of international crimes is 'who can be qualified as a victim and deserve such rights? As a response the UN basic principles and guidelines on the right to victims of Crime and abuse of Power defines Victims as *"Persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power.. 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"*[32].Institutions can also be victims of international

[25]Genocide Convention on the Prevention and Punishment of the Crime of Genocide 1948,78 UNTS 277,

[26]Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the U.N. General Assembly, Res. 39/46, 10 December 1984

[27]Convention on Elimination of All forms of Racial Discrimination ,21 December 1965

[28] Convention for the protection of All persons from enforced Disappearance, 20 December 2006

[29] Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land1899

[30] Convention (IV) Respecting the Laws and Customs of War on Land 1907, (1908) 2 American Journal of International Law Supplement 90

[31] Convention Relative to the Treatment of Prisoners of War 1949 (Geneva Convention III) 75 UNTS 135; Convention Relative to the Protection of Civilian Persons in Time of War 1949 (Geneva Convention IV)75 UNTS 287; and Protocol Additional to the Geneva Conventions of 12 August1949, and relating to the Protection of Victims of International Armed Conflicts 1977,1125 UNTS 3 (Additional Protocol I).

[32] U.N. General Assembly Resolution 40/34 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985, U.N.Doc. A/RES/40/34 (1985)

crimes according to current international criminal justice approach and this can be inferred from Rules of procedure and Evidence to ICC[33]

African states like Nigeria, Kenya, Tanzania and South Africa as a response for their conventional obligation at international arena to provide remedy for victims of HR and HL violations, recently engaged in the initiation of formulating independent institution used for witness victim protection, amend their domestic criminal procedure code and others take measures that can strike balance victims of crime with criminals in criminal justice process[34].

In Ethiopia, FDRE Constitution[35] accords customary dispute resolution mechanism only for family and personal cases in the exclusion of crime though the practical aspect on the ground shows existence of CDR due to the reason that formal law is unable to reach to the local community of diversified ethnic groups and acquire legitimacy under the eyes of those community[36].In this manner under Various Ethnic community especially in peripheral areas and country side, customary dispute resolution mechanisms of providing remedy for the victims of not only petty offence but also for Serious crimes like homicide has been practiced on the ground[37].

Concerning the place of Victims' remedy under the formal criminal justice system, it is the recorded known history that heinous atrocities were committed under the auspices of Mengistu Haile Mariam during Derg regime since 1974 and as a response for its international obligations[38], the country established Special Prosecutor's Office (herein after SPO) as special

[33]See Rule 85 of Rules of Procedure and Evidence of the International Criminal Court adopted by the Assembly of States Parties 1st session in New York-10 September 2002, ICC-ASP/1/3 http://www.icc-cpi.int/NR/rdonlyres/F1E0AC1C-A3F3-4A3C- B9A7-B3E8B115E886/140164/Rules of Procedure and Evidence

[34] K.I. Vibhute, Compensating Victims Of Crime In Ethiopia: A Reflective Analysis Of Legislative Paradigm And Spirit,(2010) 17 International Review of Victimology 311,330

[35] FDRE constitution article 34(1) ,78(5)

[36] Endalew Lijalem (n 17) at 75

[37] Ibid at 76

[38] Ethiopia is party to the Genocide convention and Geneva Convention which accords duty to prosecute or extradite the perpetrators of gross violation of human rights and serious violation of humanitarian law on state parties to the treaties. Moreover the investigation and prosecution of human rights violations are part of states' obligations of redress to the victims.

prosecuting organ under proclamation 22/92[39].In this regard, SPO identified the participation of the criminals with the type of crimes committed in the process of prosecution.

According to Girmachewu and Sarkin perpetrators was prosecuted for genocide crime, Crimes Against Humanity (herein after CAH) and war crimes in categorical way[40].Domestic prosecution of international crimes also has been conducted in current[41] Ethiopian context and the central concern of my thesis would be on the assessment of victims' rights to effective remedy under some of international crimes prosecuted in Ethiopia since the post Derg regime. Under Ethiopian legal system, issue of remedy is ruled under extra contractual liability[42], under new criminal code of Ethiopia[43] and criminal procedure code of Ethiopia[44]. But yet there is no comprehensive law for effective remedy of victims of those international crimes under Ethiopian law. Hence in this study, the legal frame work of Ethiopia in relation to the issue at hand with its challenge was analyzed.

Ethiopia has clear provision for international Crimes like Genocide and war crimes and discharges its international conventional obligation by prosecuting perpetrators of those crimes but with leaving out victims' part. The legal frame work available for victims of international crimes under Ethiopian new criminal code is generic and not clearly shows available remedy for victims of this category .This existing paradox and vague provision motivate me to forward way out so that remedy for victims of international crimes comprehensively specified under the FDRE criminal code.

Moreover though Ethiopia has an experience of domestic prosecution of international crimes, there is no substantial studies that has been made in relation to remedy for victims of international crimes and used to fill a legal, institutional and practical gaps yet in our criminal

[39]Girmachewu Alemu ,Apology and trials: The case of the Red Terror trials in Ethiopia, (2006) 6, African Human Rights Law Journal 65,67
[40]Girmachewu and Sarkin ,2006 and 1999 respectively
[41]For example, Anyuwak Genocide in Ethiopia has been committed in 2003 E.C in Ethiopia. With the same taken Nuer messenger Genocide and genocide on Ogaden were some of the cases of Genocide that will be assessed under this thesis.
[42] Under 1960 civil code of Ethiopia ,article 2027,2028 .But their application depends on the existence of damage or injury of plaintiff only not injury of others for instance wide spread harm in serious crimes.
[43]Article 101 of FDRE New Criminal Code and the following deals with remedy for crime by victims.
[44] Article 154 of FDRE Criminal procedure Code of Ethiopia deals with compensation for damage by the victim of the crime.

justice system that attracts the present researcher to conduct this research and forward a sort of solution for our body of law.

Observance to Ethiopian criminal justice system indicates a sort of compensation payable for injured person that has been raised from the purse of perpetrators of the crime instead of state fund institution. Therefore absence of institutional frame works that deals and regulates remedy of victims of international crimes was also another loophole we have in our legal system that encouraged this researcher to be engaged in this work.

Given the fact that international crimes are crimes committed with high criminal intention that has an impact also on the remedy requested by the victims at the end of the day, the provision of new criminal code also not clearly show the category of crime as core or ordinary crime based on the intention of the criminals for the convenience of remedy issue. For instance, injuring someone with the intent to commit genocide and causing body injury without having genocidal intent doesn't acquire isolate treatment as it has an impact on remedy. With the same talking injury for rape in war and for normal rape cannot be distinguished for the sake of remedy.

Hence the objective of this thesis is is to analyze the existence of the rights to effective remedy for victims of international crimes under Ethiopian laws specifically to explore the existence of rights to effective remedy for victims of international crimes under Ethiopian Criminal justice system ,to investigate the prosecution approaches of Ethiopian courts with regard to victim's right to remedy and to appraise legal and practical gap with regard to right to effective remedy of victims of international crimes in Ethiopia .

It will address issues like remedies for victims of international crimes are not available under Ethiopian criminal justice system in clear manner due to the absence of clear laws,absence of institutional framework that has clear mandate of regulating the remedial rights of the victims of this category and existence of legal and practical gap in Ethiopia with regard to victims' remedy. It also responded that the Ethiopian courts have not entertained issue of remedy of victims of international crimes due to above mentioned problems.

The general approach the researcher employed in this study was doctrinal research method. To examine the existence of institutional frame work and practical applicability of the laws with

regard to the rights to effective remedy of the victims, the researcher used also non doctrinal research method specifically qualitative research approach. In general mixed research methods were employed for the purpose of this study. To put differently, doctrinal research method was employed to examine and analyze domestic and international laws, conventions, legal theories, general comments, scholarly articles and other soft laws related to rights to effective remedy of victims of international crimes. non doctrinal specifically qualitative research method was also used to examine practical applicability of laws related to remedial rights of victims of international crimes, to analyze Ethiopian court decision and prosecutional approach of international crimes in relation to remedial rights of victims of international crimes and examined practical gaps exists with regard to this rights in using questionnaries as sampling tools of data collection.

In employing the qualitative research, the researcher used questionnaries as tools of data collection in using purposive sampling method from selected population in presuming that the targeted group has specific information and know how on the remedy for victims of international crimes. In this manner 333 respondents were selected on the basis of proportional allocation from FHC, FAG and EHRCo through purposive sampling technique based on the attachment these institutions have with victims of international crimes in their work and Common character they have in that all of them constitute legal professionals or experts those have comparable or similar know how with regard to remedy for victims of international crimes .2nd all of these selected institutions have direct or indirect attachment with victims of international crimes and have a role in the maintenance of rule of law in Ethiopia. 3rd all selected institutions found at national level in that data obtained from these institutions has high probability to be taken as inclusive and representative with regard to remedy for victims of core crimes in Ethiopian context. Data were also analyzed deductively for doctrinal research while inductively for qualitative research method in examining the practical application of laws, and existing challenges on the ground.

To maintain ethicality of the work, this research was conducted based on the formal letter that qualify this researcher to Conduct it and given to him from Jimma University School of law and governance as well in clearly specifying full and free consent of the respondents of the targeted group to fill the questionnaries used for sampling technique**.** To maintain conveniences of

information an attempt is made also to translate essence of questionnaries from English to Amharic.

Regarding source of data, both primary and secondary sources were used. International, regional human rights instruments, cases, national laws, constitution and questionnaries explored as primary source of data to address the topic under discussion. The secondary data was also collected from the Text Books, Journals, Websites, Scholarly Articles, reports, fact sheet and general Comments given by human Rights Committees, Bar Reviews, Magazines, Reports and Unpublished thesis.

As to its organization, the research is comprised of five chapters. Chapter one set out the background of the research paper and in that identifies problem statement with regard to remedy for victims of core crimes in Ethiopia, reviewed literatures, discussed the limitation of the study and outlined the methodology. Chapter two set out the historical account of victims' rights to remedy. Chapter three discussed the evolution of Victims' rights to remedy in international law, examine the rise and practice of victim-centric approach internationally, regionally and at national level. Chapter four dealt with an appraisal of the rights to effective remedy for victims of international crimes under Ethiopian criminal justice system .Under chapter five, the researcher summarized the core points of the study and forwarded sort of recommendations for the fulfillment practical and legal lacuna encountered in our context.

This research will create awareness to the victims of heinous crime how to seek remedy when those rights, protected under the national and international human rights treaties have been violated in Ethiopia and examined prosecutional approach of Ethiopian courts with regard to remedy of victims of core crimes and shows loophole required to be filled in future.

The research also showed legal and practical gaps if any and recommend how the gaps would be filled. On top of that it identified the legal, institutional and practical problems related to the topic under study. This thesis at last brought a flash light to legislative, executive and other concerned organs to rethink of rights to effective remedy for victims of core crimes and searched for even amendment of existing law or for enactment of new laws that can properly accommodate victims 'rights.

Though there is an ample research done on crime- victims' rights there is no research made in modalities this researcher follow in strict sense. For instance, Fisseha M.Tekle[45] made his assessment on 'victims' reparation for Derg crimes with challenges and prospects of it' and in his critical analysis ,he raised the international and regional human rights treaties as prospects for claiming reparation for international crimes and tried to assess condition in Ethiopia in relation to avail this reparation for victims .In this regard, he raised impossibility of the reparation claim from domestic tribunal due to period of limitation of those crimes, and non-ratification of majority of binding treaties during that time on one side ,on the other part from foreign court ,the existence of state sovereignty has been raised as barrier and he reached on the conclusion that the reparation scheme of Derg crime was being impossible. But my research tried to examine the sufficiency of the legal frame work that can enable victims of such crimes to claim its remedy for heinous crimes of the globe .In this manner I tried to see availability of effective remedy for international crimes in the first glance in Ethiopian legal frame work perspective particularly under, constitution ,FDRE criminal code ,and criminal procedure code of Ethiopia which did not clearly explored by the previous writer .Moreover as international crimes were also prosecuted recently in Ethiopia, the holdings of the court in dealing with effective remedy for victims under study was examined as distinct from what is studied by Mr. Fisseha .On the other hand ,that researcher tried to substantiate impossibility of reparation for Derg Crimes by raising period of limitation as a barrier which I'm not agreed with it given the nature of those crimes ,period of limitation cannot be a barrier to claim such compensation. Moreover that writer tried to raise domestic problem of legal frame work to claim reparation but I don't also agree on this point as state cannot present its domestic legal system to shield herself from its international obligations under Vienna Convention on the law of treaty(VCLT)[46] and as per general comment number 20 of article 7 of ICCPR[47].Therefore as the scope of my thesis and ,modalities of my study was different from that writer ,my research is novel to directly deals with the rights to effective remedy for victims of international crimes in Ethiopia.

[45] Fisseha M .Tekele, 'Victims Reparation for Derg Crimes :Challenges and Prospects (Master thesis ,at the faculty of Law, Central European University, 2013) at 11

[46]Vienna Convention on the Law of Treaties of 23 May 1969, article 27

[47] General Comment No 20 :prohibition of torture or other cruel ,inhuman or degrading treatment 'available at https://www.ohchr.org accessed on 5/15/2022

Mr. Girmachewu Alemu[48] and Sarkin[49] also dealt with prosecution of international crimes in Ethiopia during post Derg regime in TGE (Transitional Government of Ethiopia).There assessment was mainly on how the crime were committed by the Derg?, how it was investigated by SPO, the trial process and lastly decision given by court and little attention was given for the rights to effective remedy for victims of those crimes as both of the writers assumed that the Economic status of Ethiopia during that time, and its level of development not enables her to deal with issue of remedy which the current researcher not agreed with it as remedy is not only monetary ,it can be a minimum of giving recognition to all the victims of those crimes in Ethiopia. More over those researchers were not examined the remedial legal frame work of Ethiopia with the holdings of the Ethiopian courts in clear manner.

Seblewongel Tamiru contributes her knowledge on Compensating Victims of Torture under terrorism crime in Ethiopia which is different from this writing in the sense that though certain elements of torture that qualify wide spread and systematic requirement can fulfill Crimes Against Humanity according to the approach of International Tribunals, no clear articulation of crimes against humanity is found in Ethiopia under FDRE criminal code. Therefore, the sole existence of torture cannot qualify international crimes in itself and she did not also dealt with effective remedy for victims of core crimes and simply addressed victims of terrorism crime that cannot be taken as international crime.

Tesfaye Tadese also addressed Compensation from torture and inhuman treatment in specifying certain selected persons in Oromia regional state .In his work he addressed one single type of remedy which is compensation but he didn't specifically point out the types of crime in which torture and inhuman treatment is undergone. He also failed to discuss compensation related to international crimes that makes my work unique from the preceding research of Tesfaye Tadese.

The other work related to my research is the thesis of Mr. Tesfaye Boressa that deals with remedy for wrongfully convicted person and he tried to address the situation in which

[48]Girmachewu Alemu, ' Apology and trials: The case of the Red Terror trials in Ethiopia(2006)6, African Human Rights Law Journal, 65,67

[49]Jeremy Sarkin, 'Transitional justice and the prosecution model: The experience of Ethiopia'(1999) available at http://www.ldd.org.za/images/stories/Ready_for publication/V3-2_Transitional_justice_prosecution_model.pdf accessed on 18/8/2018

innocent person can be convicted mainly due to the mistake of the investigative and prosecutorial organ of the government but he failed to see issues of victims' remedy of those suffered harm due to illegal acts of the right perpetrators of the crime that exist out of the wrong fully accused and convicted person. To put differently, in the wrongful conviction scenario, there is two category of Victims; firstly there is suffered person due to illegal act of the right perpetrators of crime but yet not apprehended, prosecuted and convicted.

The next victim is the alleged perpetrators of the crime wrongfully convicted person but not commit the said crime in reality. Here the target of the preceding work of Mr. Tesfaye didn't consider the former category of the victim and also not deals with victims of core crimes again in substantial manner.

Mr. Negesse Asnake dealt with basis and practices of restorative justice and reach on the conclusion that the house of federation ,peace Minister ,Court ,general Attorney and reconciliation Commission have legal recognition to apply restorative justice values and principles but he failed also to deal with remedy aspects of Victims of core crimes which makes his work distinct from my research.

In nut shell, the issue of 'effective remedy for victims of Core crimes in Ethiopia' is the point that has not been articulated yet.

The scope of this research is confined to effective remedy for victims of international crimes in Ethiopia and not dealt with remedy for other offence except for comparison purpose. However, recourse would be made to other international and national criminal tribunals as well human right treaties in analyzing the subject under study in our context.

Right to effective remedy for victims of international crime is selected among other things, since it has been ignored and marginalized but very important rights in the process of being made to end impunity through prosecution of criminals.

Concerning the limitation, the potential challenges this researcher faced was; first, as the criminal justice system of Ethiopia is grounded on the assumption that 'a crime is only viewed as an offence against the state and does not include victims of those crime as holder of rights, this in turn makes the conduct of this research without hearing victims' voice from the horse mouth

and simply based on the data gathered from the selected sample area. Second, budget and time constraint was another barrier the researcher faced. Thirdly the absence of selected target group members in scheduled time .fourthly the prevalence of new pandemic Covid -19, Delta type of Virus was created certain reluctance to timely fill the required questionnaries by the targeted group as well to make contact with the researcher. On top of that due to the current prevalence of Security problems in certain regional state of Ethiopia and work load the professionals and experts are engaged in, getting the targeted individuals was challengeable. Despite these aforementioned challenges the researcher patiently passed all those hurdles and conducts this study in maintaining its reliability.

CHAPTER II

2. THE HISTORICAL ACCOUNT OF VICTIMS' RIGHTS TO REMEDY

2.1. PRIVATE CLAIM OF VICTIMS' RIGHTS

Before the scientific study of crime Victim ,peoples were so far being victimized by another even in state of nature based on the survival of the fittest which means that the weakest is being harmed with the strongest one in the competition process of economic or social aspect[50].The profile of early recorded legal systems show the existence of remedy for damage caused by private person on the victims from the perpetrator of such damage and this has been practiced in every organized society[51].On top of that no family of any legal system ever known to human kind denied victims' rights to be redressed for private wrongs[52].This remedial aspect has a forum in collective tribe for its effective enforcement mechanisms and is also taken as fundamental principle and customary practices in the realization of justice for aggrieved parties or victims in traditional collective society.[53]This remedial aspect is ultimately targeted on creation of harmonial life among the whole community specifically between offenders and the victim group under traditional society

In the same manner providing remedies for the crime has been also historical root in earliest societies and religious traditions but different in types of remedies, the way of access to it,

[50] Diane B. Paul' The selection of the survival of the fittest , (1988) 21 Journal of the History of Biology at 412
[51] Bassiouni (n 13)207
[52] Ibid
[53] Lijalem (n 17) at 82

procedures to be followed and last decision making process[54].The application of traditional way of remedial aspect has been given recognition in some contemporary state[55].Traditional way of granting remedy for the victims has been grounded on the assumption that role of the victims in criminal justice system is simply up to being witness based on the will of the prosecutor and the victims cannot the chance to get any significant benefit from outcome of the case since each and every monetary punishment in connection with imprisonment goes to government treasury[56] .In complementing this Zehr stated: "If victims involve in their case at all, it will likely be as witnesses if and only if the state needs them as witnesses. The offender has taken power from them and now, instead of returning power for them, the criminal law system also denies them power[57]

2.2. TRADITIONAL JUSTICE SYSTEMS AND VICTIMS' PROTECTION IN AFRICA

As coated by Jetu Edossa [58] in referring to Albert Eglash ,traditional restorative justice has a moderate tendency of harmonizing victim –offender relationship than modern criminal justice system that exclusively focus on rights of offenders in counting victims as only witness. Scholars like Hans Von Hentig and Benjamin Mendelsohn analyzed deficiency of modern criminal Justice system if it denies Victims' rights in it[59].Wemmers in citing works of Maguire, Klaus and, Mulder suggested that victims needs[60] generally include;

Need for information which indicates that victims needs to know the fate of the case they reported before to the police and wants to be engaged in criminal justice system to play their

[54] For example, Guma (Blood Money) system of vindicating the victims with Criminal person brought intentional or negligence death of person in Oromo Community is one aspect of remedial tradition with its respective procedural way in Collective society.

[55] CO. zatalay and etal.' The Use of Blood Money in the establishment of non-justice :Necro domination and resistance 'a available at https://about .jstor.org/terms accessed on wed, 06 May 2020

[56] Endalew Lijalem 'a move towards restorative justice in Ethiopia: accommodating customary dispute resolution mechanisms with the criminal justice system 'Master's Thesis in Peace and Conflict transformation Faculty of Humanities, Social Sciences and Education University of Tromso ,Spring 2013

[57]Howard Zehr 'Retributive Justice, Restorative Justice, MCC US. Office of Criminal Justice MCC Canada Victim Offender Ministries, 1985,3

[58] Jetu Edosa ,Mediating Criminal Matters in Ethiopian Criminal Justice System: The prospect of Restorative Justice System (2012)1,1 Oromia Law Journal ,100,111

[59] Ibid

[60] Jo-Anne Wemmers, Restorative justice for Victims of Crime: A Victim-Oriented Approach to Restorative Justice International Review of Victimology(2002)9,43,44-46

role[61].*Need for compensation*[62] which of not only acquiring relief of financial needs but also needs for recognition of the loss they suffered as a result of the act of the criminals**.** Need of *Emotions refers to the need of victims to be from psychological thinking like fear of relapse of crime of similar nature, depression and other stressful situations*[63].*Need for participation* that victims have an ego to participate in criminal justice process as they had been out of it as formal criminal justice process that constitutes only prosecutor on behalf of the public at large or government and criminals in the exclusion of victims of such offence.

Need for protection and Practical needs which refers to needs of victims for maintenance of their security or not being vulnerable an attack and needs for practical actions like replacing the lost or stolen property, maintenance of broken doors or window respectively[64].Some countries also try to include victim protection provisions also in some other crimes like Corruption[65].

In understanding the deficiency of formal criminal justice system and to fulfill needs of victims, some African countries uses traditional way of resolving dispute bringing justice among their respective community. To mention some of them;

2.2.1 Gacaca Justice System in Rwanda

This system is an indigenous justice process adopted by Rwanda after the genocide[66].

This justice process has been used in due to first, the formal justice system was totally collapsed by heinous war occurred in the whole country and its actors were partially killed and the left were expelled from country. Secondly the involved criminals in the atrocities that took place in Rwanda were high in number than the accommodation capacity of formally established criminal justice system which necessitated the use of informal modality of criminal justice process to overcome the then protracted problems[67].In Gacaca system, victims were included in the proceedings and have acquire the opportunity of questioning the

[61] Ibid
[62] Ibid
[63] Ibid
[64] Ibid
[65] For example Ethiopia has whistle blowers protection law under special procedure and law of evidence of corruption proclamation no .434/1997 article 43 .Whistle blowers in this sense can be either direct victim of the corruption crime or witness that testify the commission of such corruption crime before the court room or on trial.
[66] Benson Chinedu Olugbuo, Enhancing the protection of the rights of victims of international crimes: A model for East Africa, African human rights law journal (2011)11,608,623
[67] Ibid

perpetrators of the crime and seek for further information on what happened to their loved ones though no issue of compensation for victims or survivors in general is dealt with in it**.** In Gacaca as accused persons are asked to confess their crimes by giving a detailed evidence of their participation and showing remorse for their actions ,it enable the victims to forgive the perpetrators for the atrocities committed against them**.** This traditional justice process seen also as part of healing process as perpetrators of the crime fully admits the commission of the crime and show sense of remorse for their acts that in turn has pivotal role in promoting reconciliation**.** Gacaca was also ingenious in ordering reparations from perpetrators in the form of the return of stolen and destroyed property to victims. Such reparations ranged from some form of monetary compensation to rebuilding and repairing of houses as well as community service[68].This traditional justice system has done important work not only in realizing grass root justice for the local community but also reduces the burden of ICTR that deals with great atrocities committed in Rwanda during the time .

2.2.2. The Great Lakes Pact

The historical record of this region has shown existence of internal conflicts that destabilize the countries[69].For instance genocide in Rwanda, the attempted coup in Burundi and connected assassination of democratically elected president Melchior Ndadaye in 1993 impacted Rwanda which in turn marked Zaire and Democratic Republic of Congo. In understanding the marginalization of victims of crime in Africa particularly in East Africa, Great Lakes Region engaged in Common agreement called Great Lake Region Pact(GLRP) in June 2008 to ensure among other things protection of Victims of International Crimes[70].Member states of the International Conference on the Great Lakes Region (ICGLR) are Angola, Burundi, Central African Republic, Congo Brazzaville, Democratic Republic of the Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia. In November 2006 these member states among other things agreed on the atrocity crime protocol on the Prevention and the Punishment of the Crime of Genocide, Crimes against Humanity and War

[68] Ibid
[69] Cherlotte Heyl,the International Conference on the Great Lakes Region –An African Conference On Security and Cooperation in Europe ,Kas International Reports (2010),88-89
[70] Ibid

Crimes[71].The issue of Victims of crime was also one of the point of the pact in comciding with the prevention of Serious human rights and humanitarian violations of the region.

2.2.3. Mato Oput in Uganda

Mato Oput is a ritual traditional criminal justice mechanism that has been practiced in Northern Uganda among Acholi ethnic group. The aim of this system is to narrow the hole created between the offender and victim due to the conflict. In the reconciliation process perpetrator of the crime shows repentance, accept the responsibility for their actions and request forgiveness from the victims and also forward a sort of compensation to the victim[72].It is a cleansing ceremony intended to restore social harmony by ending bitter relationships between warring parties[73]."During the most important part of the ritual, two clans bring together the perpetrators and the victim's family and the two parties share an acrid root drink concocted from the root of a vegetable and served in a calabash. The drink symbolizes the two sides putting aside their bitterness and differences by sharing a drink together"[74].

Such experience of regional agreement and traditional modalities of rectifying the wound created between the offender and the victims as a result of the Crime has a crucial role in the promotion of Victims' rights of remedy which in turn has also pivotal role for the integration and harmonial life of the Community.

2.2.4. Traditional Justice System and Victim Protection in Ethiopia

Like in other African context, traditional dispute resolution including restorative justice in Ethiopia has been practiced among different ethnic groups and parallel to the formal criminal justice system of Ethiopia, societies also have their own customary way of dealing with crime[75].

As coated by Mr. Lijalem in citing Julie Macfarlane, traditional way of resolving dispute among society has been taken as Communal element and has religious or customary basis in

[71] Great lakes region ,protocol for the prevention and punishment of the crime of Genocide ,War Crimes and Crimes Against Humanity, available at https://www.icglr-rtf.org accessed on 6/1/2022
[72] Benson Chinedu (n 66) at 624
[73] Ibid
[74] Ibid
[75] Endalew Lijalem (n 17) at 3

Ethiopian context[76]. This shared value has been also believed to be one instrument of alleviating sense of revenge in Society. For example it is possible to see the practice of Jarsumma in Oromo nation. Jarsumma[77] in Oromo nation is process of forming mediation council constituted from 3-8 individuals so that the dispute occurred in Society can be resolved through this informal mechanism.[78]Jarsumma as concept of mediation attained great attention due to the reason that victim, Community and offenders are more satisfied than formal criminal justice litigation.

CHAPTER III

3.1 THE EVOLUTION OF VICTIMS' RIGHTS IN INTERNATIONAL LAW

3.1.2 GENERAL BACK GROUND

The right to an effective remedy is 'the right an injured party or victim has to protect his own rights before an independent and impartial body, so as to obtain recognition of the violation, the termination of the violation if it continues and get adequate reparation[79].

In ancient time there was no distinction between private and public wrong as a result of which punishment of offenders and justice for the victim were based on the measure of that victim.[80] Concerning remedy of victims, replacement with equal property, taking similar measures or revenge like an eye for an eye in case of traditional Ethiopian criminal justice system has been also practiced by traditional codes of Hammurabi, Mosaic and Roman law[81].In this manner King Hammurabi[82] used to order reinstitution of the property of the victim wrongfully taken by wrong doers. More over this king was known as the law giver in the area of theft, murder, professional negligence and many other areas.[83]Hence the Mesopotamian state under King Hammurabi, sat their foot print in the evolution of remedy of victims and other aspects of law.

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[76] Ibid

[77] Jetu Edosa (n 58)at 118

[78] Ibid

[79] International Commission of Jurists(icj),'International Law and the Fight Against Impunity ,A practioners Guide (2015)106

[80] Dina Shelton (n 1) at 3

[81] Ibid

[82] king Hammurabi was a king of Babylon in 1972 Before Christ ,see for further Marc Van De Mieroop ,A Biography on king Hammurabi of Babylon ,Black well 2005

[83] Ibid at preface viii

Under the Middle kingdom of Egypt, restitution of property of the victims from illegally occupied by unethical officials of state.[84] though no distinction is made as to the act of the state officials against the victims were criminal or civil ,the measure made for the confiscation of victims' property owned by the unethical official of state can be taken as pioneering step in the development of remedial rights of the victims.

Under traditional Islamic law, monetary compensation for bodily injury and taking equivalent measures on perpetrators of wrong doer was practiced in addition to inculcation of remedial measures of victims in their penal law.[85] Practices of the victims remedy were also extended to Far East area like Chinese state.[86]As modern legal system developed, remedy of victims has been treated isolately for criminal action which is public in nature and civil wrong which is private in nature. In African context states like Nigeria, Kenya, Tanzania and South Africa also adopted compensatory state fund.[87]

In general, national legal systems provide compensatory justice to redress individual wrongs through judicially awarded and enforceable remedies. Many states today provide a public system of compensation to victims of crime[88].International human rights law is therefore the first area of international law where individuals may bring actions against states in international tribunals.
With regard to violation of International Humanitarian law 'the victimized person in the context of war has also similar rights to request remedies like Compensation, request for

[84] Dina Shelton (n 1)at 3
[85] Ibid
[86] For instance Chinese tang code of conduct conveys the idea of payment of compensation for wrongfully damaged person by Chinese government.
[87] K. I. Vibhute, Compensating Victims Of Crime In Ethiopia: A Reflective Analysis Of Legislative Paradigm And Spirit,(2010) 17 International Review of Victimology 311,330
[88] As cited by Shelton 'Scandinavian countries like Finland has law on compensatory scheme that can be payed from the public purse in Norway there is state compensatory fund regulated under Regulation of ;in Sweden ,there is a Law on damage caused by crime of 18 May 1978. France adopted the Law of 3 Jan 1977 providing compensation to certain victims of bodily injury resulting from criminal acts. Austria similarly has enacted the Act for payment of assistance to victims of crime of 9 July 1972. Germany also provides public indemnification for victims of violent crime through the Law on compensation of victims of crime of 11 May 1976, similar to Netherlands.

termination of the violation, restoration of the pre-war status quo.[89]

Where national ,regional and international legal norms has an express recognition and protection of the rights of the accused person of the violation of Human rights in criminal justice system, they silently escape the Victims of those violations in the process made for search of justice[90].Of course one of the centers of draw back with regard to African Charter on Human and Peoples Rights so far has been is its blurred view to give recognition and protection of Victims of human rights violations[91].

'As the demand of the international Community for the recognition of victims of human rights atrocities increased, various recent legal instruments have acknowledged the place of victims in the criminal justice system[92].Hence the place of Victims' rights under International and regional human rights and humanitarian treaties as well as under soft laws were observed in the following section .

3. 2 STATES' DUTY TO PROVIDE A REMEDY GROUNDED IN INTERNATIONAL AND REGIONAL CONVENTIONS

3.2.1 VICTIMS' RIGHTS UNDER GLOBAL BINDING TREATY OBLIGATIONS

The protection of human rights is generally recognized to be a fundamental aim of modern international law .In recent decades, almost every international organization, regional and global, has adopted human rights norms and responded to human rights violations by opening avenues of redress for individuals against oppressive action by member states[93].

International law has long insisted that a state act or omission in violation of an international obligation must cease and the wrong-doing state must repair the harm caused by the illegal act. In the 1927 Chorzow Factory case, the PCIJ declared during the jurisdictional phase of the case that "reparation is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself." Thus, when rights are created by international law and a correlative duty imposed on states to respect those rights, it is not

[89] Liesbeth Zegveld,Remedies for Victims of violations of international humanitarian Law(2003)85 International Review of the Red Cross ,497,501
[90] Benson Chinedu (n 66)at 609
[91] Ibid
[92] Ibid
[93] Dina Shelton, The right to reparations for acts of torture: what right, what remedies? (2007)17 (2), 96, 98.

necessary to specify the obligation to afford remedies for breach of the obligation, because the duty to repair emerges automatically by operation of law; indeed, the PCIJ has called the obligation of reparation part of the general conception of law itself[94].

The Report of International Commission of Jurists suggested that' it is set of principles for the protection and promotion of human rights through action to combat impunity that 'impunity arises from failure of state to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered [95]

In recent decades, almost every international organization ,regional and global, has adopted human rights norms and responded to human rights violations by opening avenues of redress for individuals against oppressive action by member states. The prohibition of torture is among the non-derogable, most fundamental norms of international human rights law, recognized as a breach of customary international law by domestic courts[96] and as a jus cogens norm by international tribunals'[97].The right to be free from torture can never be suspended or overridden, whether by claims of national security or other purported justification. Thus state is under treaty obligations to respect, ensure respect and enforce what it agreed for in the international instruments with regard to protection of rights of individuals from state actors or non-state actors threat to this rights[98].Everyone has also the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by Law[99].In this regard Article 2 (3), 9(5) and 14 (6) of international covenant on civil and political rights provides the recognition of rights to effective remedy as binding obligation of

[94] Ibid

[95] International Commission of Jurists (n 79) at 105

[96] See, e.g. Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980); Hanoch v. Tel-Oren, 726 F.2d at 781 (Edwards, J., concurring) (torture is violation of customary international law); Tel-Oren, 726 F.2d at 819–20 (Bork, J., concurring) ('the proscription of official torture [is] a principle that is embodied in numerous international conventions and declarations, that is "clear and unambiguous" . . . and about which there is universal agreement "in the modern usage and practice of nations'' '); Forti v. Suarez Mason, 672 F. Supp. 1531 at 1541 (Prohibition against official torture is 'universal, obligatory, and definable').

[97] See ICTY, Furundzija Case, Judgment of Dec. 10, 1998 IT-95-17/1; Eur.Ct.H.R. H.R. Al-Adsani v. U.K., 21 November 2001, 34 Eur Hum. Rts. Rep. 11 (2002).

[98] ICCPR (n 21)at 2

[99] Universal Declaration of human Rights (n 20)

state to grant it. This covenant also conceptualizes these rights not only compensatory to victims after conviction but privileges victims have from investigation to the last judgment[100].

Another binding international treaty deals with Victims right against torture is CAT .In this manner article 13 and 14 of this convention[101] Provides obligation of state to provide remedy for individuals who incurs tortuous injury.

International Convention on the Elimination of All Forms of Racial Discrimination as per Article 6 of this convention deals with remedial aspects of victims of gross violation of human rights and serious violation of humanitarian law in the infringement of this convention[102].

Moreover Convention on the Rights of the Child under Article 39 provides that "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."[103]

The cumulative reading of relevant instruments of international humanitarian laws: 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) shows us the underlined international norm on the protection of Victims of each respective conventions[104].So the aforementioned scattered international human rights and humanitarian convention indicates explicit or implicit recognition of victims' rights for the violation of this laws at global level.

3.2.2 REGIONAL BINDING NORMS OF VICTIMS' RIGHTS

Under European Convention for the Protection of Human Rights and Fundamental Freedoms (EHCR) victims' rights for serious violation of human rights and gross violation humanitarian

[100] ICCPR (n 21) at 2 (3) , 9(5) and 14 (6)
[101] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (n 26)
[102] Convention on the Elimination of all Forms of Racial Discrimination (n 27)
[103] Convention for the protection of All persons from enforced Disappearance, 20 December 2006 (n 28)
[104] Bassiouni final (n 66)

law is recognized.[105] In the same manner article 25(1) of the American Convention on Human Rights (also known as the Pact of San José, Costa Rica) establishes this remedy as a separate human right in providing :"Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention"[106].Article 25(2)[107] of the same convention impose an obligation on state parties to this convention to activate judicial remedy to victim in need.

As regional norms related to Effective remedy, the African Charter on Human and Peoples' Rights under article 7 of the charter give implied recognition to every person that incurs violation of fundamental rights granted under international conventions ,laws ,regulations and customs in force has a rights to made his cause heard including through appeal to national competent bodies[108].This shows us by interpretation as rights to effective remedy for gross violation of human rights and serious violation of international humanitarian law is fundamental by its nature and should be implemented by state parties to the treaty in similar way.

3.2.3. VICTIMS' RIGHTS OBLIGATION OF STATE UNDER SOFT LAWS

"The rights to remedy is not only enshrined and guaranteed under global and regional treaties but also in declarations, Resolutions and non-treaty texts adopted by UN human rights and treaty bodies"[109].These obligation guaranteed to the victims under these norms though their binding effect is loose they are authoritative guides those complement binding international treaties on the similar subject matter.

Since its inception, the United Nations has adopted two General Assembly resolutions dealing with the rights of victims. The first is Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985[110] that deals with broad remedial guarantees for those who

[105] Article 13 of the convention provide that "Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority"

[106] American Convention on Human Rights. Available at https://www.oas.org/dil/access to information pdf accessed on 9/17/19)

[107] Ibid at 25(2)

[108] African charter on human and people's Rights (n 24)artcle 2

[109] Dina Shelton (n 1)at 102

[110] Ibid

suffer pecuniary losses, physical or mental harm, and substantial impairment of their fundamental rights" through acts or omissions, including abuse of power .Hence according to this declaration victims suffered by the act of state officials or quasi officials in violation of national criminal law should be remedied all the components of remedy i.e. restitution ,compensation and other material, medical ,psychological and social support by such violating state even in situation such abuse of power cannot constitute a crime in domestic law but only remedial for the reason that it violates internationally guaranteed human rights of the victims[111].This declaration apply without discrimination to all countries, at every stage of development and in every system as well as to all victims[112].

However despite the focus of this guide line is on abuse of power committed on the victim, the governments of state parties to this guideline was reluctant to fully accept this declaration and only non- state actors were held responsible for remedial aspects of the victims in exclusion of state actors until the coming of the 2nd declaration of 2006 on 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[113].The focus of this 2nd guide line of 2006 is on victims of international crimes; more particularly, gross violations of international human rights law and serious violations of international humanitarian law. One writer Suggest that' the 2006 Principles are for all practical purposes, an international bill of rights of victims[114].

3.2.2.1 THE GOALS AND COMPONENTS OF THE BASIC PRINCIPLES AND GUIDE LINES OF 2006

The aim of this basic principle is not on creation of new international or national obligation but on how the existing human rights and humanitarian treaties can be implemented uniformly and consistently by the state parties to those conventional obligations[115].

[111] Ibid at 10

[112] UN doc. A/CONF.144/20.Annex ,Guide for practitioners, at 3 Para .1

[113] Ibid

[114]Baasiouni, International Recognition of Victims right, available at http://www.sos-attentats.org/publications/bassiouni.violations.pdf lastly accessed on 17/8/2018

[115] Preamble of UN General Assembly, 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

The member states of Council of Europe were engaged an initiation to review their legislation and practice in accordance with the guidelines with regard to special consideration of victims' rights in police investigation, prosecution, and at enforcement stage[116].This UN guide lines and principles taken as guiding principle in the observance of the remedial rights of the victims of core crimes under international arena. As far as the content of the UN guide lines and principles of 2006 is concerned, it starts with the definition of victims to forms of reparation as sorts of remedy in which the details of it would be presented in the following section.

3.2.2.1.1 DEFINING VICTIMS

Providing definition of the victim has been another concern of this guide line through consultation process and accordingly Principle 8 of the 2006 Basic Principles and Guidelines defines 'victims 'of gross violations of international human rights law and serious violations of international humanitarian law as:

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. 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.[117]This definition has been also adopted under the ICC rules of procedure and Evidence[118].

The definitional part of the above definition encompasses four types of victims. These are: (1) a person directly suffered harm for himself /herself. For example a person directly tortured or

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Humanitarian Law: Resolution adopted by the General Assembly, 21 March 2006, A/RES/60/147 (Basic Principles and Guide- lines)

[116] Chapter 15 protection and Redress for victims of crime and Human rights violations, human rights in the Administration of Justice :A manual on Human rights for judges, prosecutors and lawyers, available at https://www.un.org accessed on 5/23/2022 p.753

[117] Principle 8 of 2006 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

[118] Rule 85, ICC Rules of Procedure and Evidence ,available at https://www.icc-cpi.int accessed on 5/24/2022

illegally arrested or inhumanely treated; (2) dependents or family of a direct victim who suffer indirectly because of the primary victimization; (3) individuals injured while intervening to prevent violations; and (4) collective victims such as organizations or entities.

Hence the first group of victims includes those individuals who personally are the victims of violations such as torture and arbitrary arrest or property confiscation .The second category includes members of their house hold or dependents who suffer because of the primary violation. For example, if the primary income earner is 'disappeared' or unable to work because of injuries sustained, then the family suffers loss as well .The trauma suffered by the family members of a victim can be severe and have long-lasting implication[119].

According to Heyse, this can include: 'serious socio-economic deprivation, bereavement, the loss of a breadwinner, missed educational opportunities and family breakdown."[120]

The third category includes individuals who are injured trying to intervene on behalf of a victim. Injuries that such a person might suffer a reform physically trying to pull a victim from harm's way, loss of employment or imprisonment for challenging authorities for persecuting a targeted group[121].The collective victim is, perhaps, best illustrated by organizations or entities who suffer harm to property that is dedicated to religious, educational, humanitarian or charitable purposes. This includes those entities that are in fact the community's custodians of cultural property, such as historical monuments[122].

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[119] Bassiouni (n 13)at 257

[120] Bloomfield, Barnes and Huyse (eds), Reconciliation After Violent Conflict: A Handbook (Stockholm: International Institute for Democracy and Electoral Assistance, 2003), available online at: http://www.idea.int/publications/reconciliation/ upload/reconciliation _chap04.pdf.

[121] During consultations, several States felt that only direct victims and their immediate families could be classified as 'victims'. See comments of Germany in First Consultative Meeting Report. The author stressed the point that if we, as a society, wish to encourage victim intervention, then one who intervenes and is harmed must be given some rights and protection(idea of Bassiouni)

[122] The recognition of collective victims is found in the following international and regional treaties and instruments: Article 1, ICESCR; Article 1, ICCPR; Article 2, Indigenous and Tribal People's Convention; Article 2, Optional Protocol to CEDAW; and Article 3(2), European Framework Convention for the Protection of Minorities. For the recognition of collective victims in the jurisprudence of international and regional tribunals, see Mayagna (Sumo) AwasTingni Community, supra n. 260; and Case 11.10,' Coloto Massacre' Report No. 36/00 (2000) at paras 23 and 75(3) ('social reparations'for an indigenous community after massacre).

This fourth category also includes victims who belong to an identifiable group whose victimization, irrespective of the merits of the case by and against the causes of the conflicts that gave rise to it, was based on their belonging to a given group. According to Bassiouni, Since WWII, three non-international conflicts have produced an estimated total of five million collective victims [123].the writer of this thesis believed that this UN guide line and principles of Victim of Crime and abuse of power though non-binding, is comprehensive enough for its inclusion of not only individual direct and indirect victim but also his family ,children and collective person as well as entities used for the utmost protection and promotion of Victims' rights in uniform manner.

3.2.2 .1.2 THE SCOPE OF THE BASIC PRINCIPLES AND GUIDELINES OF 2006

This guide line in addition to give special consideration to known international human rights and humanitarian treaties preceded it, also follows similar sprit in including non-discrimination and non-derogation approach in its application under paragraph 11 and 12 of this guide line which say that ' present basic principles and guide lines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights law and international humanitarian law[124]. To put it differently, the universal application of rights to effective remedy under this guide line cannot restrict or prejudice the application of similar rights already recognized under international human rights and humanitarian treaties and instead complement with it.

3.2.2.1.3. RIGHTS OF VICTIMS

As enshrined under the guide line of 2006, victim's right to remedies for violations of international human rights constitutes three types of rights[125]. Among of this is equal and effective access to justice, the right to adequate, effective and prompt reparation for the harm suffered and the third is the right to truth.

(i) Equal and Effective Access to Justice Principle 12 of the 2006 Basic Principles and Guidelines describe the right of access to justice as follows: A victim of this category shall have

[123] This includes one million Biafrans, one million Bengalis/Bangladeshis, and three million Cambodians. See Bassiouni, 'The Protection of Collective Victims in International Law', in Bassiouni (ed.), supra n. 7 ,184.

[124] UN General Assembly, 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: Resolution adopted by the General Assembly, 21 March 2006, A/RES/60/147 (Basic Principles and Guide- lines) ,principle 25 and 26

[125] Ibid at paragraph 7 and principle 11

equal access to an effective judicial remedy as provided for under international law or other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities, and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws"[126]. To realize the underlined message of this principle States should:(a)Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law; (b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims; (c) Provide proper assistance to victims seeking access to justice; (d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to a remedy for gross violations of international human rights or serious violations of international humanitarian law[127]

It can be deduced from the wordings of above paragraph that obligation of the state to afford remedy enshrined under international human rights law and humanitarian law shall be also incorporated under domestic state law and each concerned state should made utmost measure to ensure its realization in compline with international law according to the recommendation message of the aforementioned guidelines and principles.

The other important inculcation of the guide line is Principle 13 which adds procedural way of acquiring remedy or reparation by victims and provide: 'In addition to individual access to justice, States should endeavor to develop procedures to allow groups of victims to present collective claims for reparation and to receive reparation collectively, as appropriate[128].The inclusion of Principle 13 in the 2006 Basic Principles and Guidelines indicates recognition not only individual rights' but also concept of collective rights or the rights of collectivities(ii)Reparation for harm suffered which deals with effective, adequate and prompt

[126] Ibid at paragraph 8 and principle 12
[127] Ibid at principle 12(a-d)
[128] Ibid at principle 13

reparation of the victim is taken as one modalities to promote justice in every violation of international human rights or humanitarian law norm for individuals who incurs directly or indirectly such victimization.[129] The reparation should be proportional to the gravity of the harm suffered.[130] Moreover principle 15 of the aforementioned guide line suggested that 'in accordance with its domestic and international legal obligations, a State shall provide reparation to victims for its acts or omissions that can be attributed to the State and constitute gross violations of international human rights and humanitarian law[131].It is possible here that remedy or reparation of victims of crime requires to be based on the gravity of the crime in that remedy for ordinary crime and core crimes should be distinct to each other. Remedial obligation is vested not only upon perpetrators of the crime but also on states provided that such violation is attributable to that state.

According to this Basic principles and guide lines, state should endeavor to establish national compensatory programmes so as to realize the needs of the victims of heinous international crimes[132]

It is also a message of these principles that domestic judgments given with regard to the victims required to be enforced and should open their door to actualize valid foreign legal judgments related to victims' rights.[133]

Four major forms of reparation is inculcated under the Principles and Guidelines; namely: (1) restitution[134] which implies the restoration of dignity ,or property or rights to the original position before the occurrence of victimization,(2),Compensation[135] that designed for economically assessable material damage or ,moral ,loss of earning ,unemployment opportunity ,loss of mental harm, loss of education and social benefit. (3)Rehabilitation[136] targeted to the healing of mental and psychological trauma and has a tendency of grid ridding of past pain from the victims can clean future grievances from the hearts of the future generations victims vis

[129]Ibid at paragraph 9 and principle 15
[130] Ibid
[131] Ibid
[132] Ibid
[133] Ibid
[134] Ibid at principle 19
[135] Ibid at principle 20
[136] Ibid at principle 21

-vis offenders and satisfaction and guarantees of non-repetition[137] that constitutes:(a) Effective measures aimed at the cessation of continuing violations [138] (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety and interests of the victim ,the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of Further violations.(c) The search for the where about of the disappeared ,for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims or the cultural practices of the families and communities[139]. (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim[140] (e) Public apology, including acknowledgement of the facts and acceptance of responsibility(f) Judicial and administrative sanctions against persons responsible for the violations [141] (g) Commemorations and tributes to the victims [142] (h) Inclusion of an accurate account of the violations that occurred in international human rights and international humanitarian law training and in educational material at all levels[143].

(iii)The rights to Truth:-as cited by Bloomfield, Barnes and Huyse, Desmond tutu Archbishop Emeritus of South Africa in the process establishing truth and reconciliation Commission said 'There is no handy roadmap for reconciliation. There is no short cut or simple prescription for healing the wounds and divisions of a society in the aftermath of sustained violence. Creating trust and understanding between former enemies (--) is a supremely difficult challenge. It is, however, an essential one to address in the process of building a lasting peace. Examining the painful past, acknowledging it and understanding it, and above all transcending it together, is the best way to guarantee that it does not – and cannot – happen again.'[144]

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[137] Ibid at principle 22 and 23
[138] Ibid
[139] Ibid
[140] Ibid
[141] Ibid
[142] Ibid
[143] Ibid
[144] David Bloomfield, Teresa Barnes and Luc Huyse (eds) , Reconciliation After Violent Conflict ,(A Handbook series of International Institute for Democracy and Electoral Assistance, 2003, Stockholm ,Sweden)1.

3.3 SIGNIFICANCE OF RIGHTS TO TRUTH

The measure made for the search of truth is important in general for the realization of rule of law in a given state of victims in particular in that first it alleviate the degree of suffering of the surviving victims, second it vindicates the memory of the violation third it enhance the state to erase its dark past and enables to be in the reform truck[145]

Truth also helps to get information of historical phenomena, it is a lesson for the present people, it encourages the generation for forgiveness and in that prevents future victimization. Searching of truth should not depend upon the will and convenience of the political leader, but is a mandatory requirement for the lasting peace and co-existence of the people of the given state[146].

In contemporary stage certain measures has been made to establish truth and reconciliation commission as one instrumentality of granting remedy or reparation to the victims of heinous crimes nationally and internationally[147].Similar trend has been practiced in Ethio-Erteria post conflict stage so as to grant remedy for those victimsed group of both side during the Conflict and to ensure sustainable peace in cleaning sense of enamity from the two brother countries[148].Accordingly on its final judgment on the claims of both parties from Eretria and Ethiopia ,the Commission pronounced monetary award of approximately $161 million to the Government of Eritrea and $2 million to Eritrean individuals on one part ,an award of $174 million to the Government of Ethiopia on 17 August 2009[149].

3.4 STATE PRACTICE ON VICTIMS' RIGHTS OF REMEDY

A. STATE PRACTICE GLOBALLY

Concerning evolution of rights of victims ,till 1900 from initial year of human civilization particularly after stone age the brutal mentality of retribution for instance an eye for an eye was considered to be a dominant compensation for victims of crime [150].From 12th -13th century

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[145] Bassiouni(n 13)at 276

[146] Ibid

[147] Kevin Avruch and Beatriz Vejarano, 'Truth and Reconciliation Commissions: A Review Essay and Annotated Bibliography'available at http://humiliation studies.org/documents/Avruch TRC .pdf accessed on (9/25/2019)37.

[148] Agnieszka Szpak, The Eritrea-Ethiopia Claims Commission and Customary International Humanitarian Law,(2013)4, Journal of International Humanitarian legal studies ,296,298.

[149] ibid

[150] F. Qudder ,Crime Victims' Right to compensation in Bangladesh :A comparative Approach ,European Sceintific Journal (2015)11,305,307

distinction between civil wrong and criminal offence was delineated .In this manner, if the wrong was civil duty to grant compensation was up to the wrong doer[151].But for criminal offence the state on behalf of the public simply prosecute the criminals in silently escaping the victims[152].
With the advent of Strong Monarchial system after Medieval period though the criminal law reaches far step in all its discipline in consideration of crime as public issue or state concerned ,victim concern was left as state or king is parent of his subject and crime is breach of peace of king. The marginalization of Victims of crime was continued even in advent of democracy until 1950 which in turn contributes to prison reform movement in Europe during 19th century[153].

The notion of Victim compensation was attracted the Sociologists and Jurists of the time. To this end Jeremy Bentham believed that "due to the presence of social contract between the state and citizen, victims of crime should be compensated when their property or person was violated.[154]"

A survey of contemporary State practice as evidenced in the substantive laws and a procedure functioning in domestic systems confirms the duty to provide a remedy to victims.[155]As cited by Bassiouni the profile of domestic legal frame work of various state shows internalization of customary rules of remedy of victims in their domestic laws and as well practices it[156] .He added also that 'many States have extensive human rights protections within their national constitutions and provisions that create a remedy in cases of their violations[157]

Anne Wemmers in citing Brienen and Hoegen suggested that review of practical compensation status of 22 European countries showed that major problems existed in connection with victim compensation emanated from negative attitude of prosecution and judiciary towards awarding compensation for victims in course of criminal proceedings[158].As Ashworth has indicated which cited by Doak, despite the recognition of this victims' rights, the mechanism of its

[151] Ibid
[152] Ibid
[153] Ibid
[154] Ibid
[155] Bassiouni (n 13)at 218
[156] Ibid
[157] ibid
[158] Wemmers (n 46) 48

implementation has been yet problematic[159].To sum up it is possible to suggest that remedial practices of individuals who incur suffering has been deep rooted practices of pre- Civilization and current state despite the existence of certain resistance from the side of governmental bodies.

3. 5 STATE PRACTICE IN AFRICA

Various African states have ratified international human rights and humanitarian treaties those imposed duty to provide remedy for victimsed persons in violation of those treaties. So some of African states in pioneering the practice of remedy can be seen as follows;

I) VICTIMS' RIGHTS IN NIGERIA

In Nigeria certain measure has been made to balance the rights of the victims of crime on one side and of the criminals on the other side in their criminal justice process[160].To this end two comprehensive Bills are there .The former bill ,the Criminal Justice Victim's Remedies Bill of 2006 (hereinafter CJVRB) mainly deals with formation of compensation fund that can be used for compensating victims of violent crime or his /her dependents in case of death of victims or injured and also deals with the creation of Criminal Injuries Compensation Tribunal in every state of the Federal Republic on one side, and creation of Criminal Injuries Compensation Board (hereinafter CICB) at the Federal level for effective administration of the victim compensation system at the Federal level[161].The later one is Crime Victims Compensation Bill of 2009 (hereinafter CVCB) that deals with assurances of compensation for victims of violent crime as a matter of right. Though these two bills are inter related in terms of their goal, they suggest different 'funding sources' for the Fund and exhibit different approaches to its 'management'[162].In this regard while the source of the fund for a 'Criminal Injuries Compensation Fund' (CICF) according to bill 2006 is from (i) drawing finances from the federal, state and local governments, (ii) grants from companies and organizations, and (iii) pulling money from any other sources approved by the federal or state government ,the Bill of 2009 on the other hand seeks to create a 'Crime Victims Compensation Fund' (CVCF) by pulling together: (i) a certain sum, to be approved by the National Assembly, from the federal government, (ii) donations,

[159] Doak and etal.' Victims and the Sentencing Process: Developing Participatory Rights'? ,available at http://irep.ntu.ac.uk/id/eprint/14290/1/200348_6754%20Doak%20Postprint.pdf accessed on 9/23/2019,2

[160] K. I. Vibhute, Compensating Victims Of Crime In Ethiopia: A Reflective Analysis Of Legislative Paradigm And Spirit,(2010) 17 International Review of Victimology 311,330

[161] Ibid

[162]Ibid

and/or gifts from individuals and national or foreign corporate organizations, (iii) twenty percent of the total amount of fines recovered from offenders convicted of federal crimes in a year, (iv) twenty percent of the total amount of forfeited bail bonds to all federal courts in a rear, and (v) gifts and donations that are consistent with the objects of the Bill[163].Currently also the general mandate to regulate victims of human rights violation in Nigeria is given to National Human Rights Commission of the country[164].

Generally the move made by state of Nigeria in putting foundational frame work of both legal and institutional aspect with regard to compensation of Violent crime is promising though its limitation only to violent crime make its application partial as it left remedy for victims of the rests of serious crimes like Core crimes.

II) KENYAN APPROACH

In Kenya victim compensation scheme is structured under the Witness Protection (Amendment) Bill of 2010 which made certain amendments to the Witness Protection Act, of 2006. Witness protection bill of 2010 provides for a Victim Compensation Fund for compensating a witness, who has given or agreed to give evidence on behalf of the state in criminal proceedings, and who needs protection from a threat or risk that exists on account of being a crucial witness, who is injured or dead[165].

The sources for this Compensation Fund proposed under the bill is primarily from the Consolidated Fund of the country that will, however, be boosted by funds, with the approval of the Minister responsible for witness protection, received from individuals in the form of grants, gifts or donations and the proceeds of sale of the property forfeited by, or surrendered to, the government in connection with a crime[166] .

Concerning its management, the Bill, seeks to establish the Witness Protection Agency to administer the Compensation Fund .The Agency is headed by a Director, having a legal professional back ground, high moral character and proven integrity, to be appointed by the Agency on the recommendation of the Witness Protection Advisory Board (to be established

[163] Ibid
[164] Ibid at 23
[165] K.v.Vibhute (n 160) at 333
[166] Ibid

under the Bill) and on the terms and conditions approved by the minister responsible for witness protection.

The Bill also seeks to create the Witness Protection Appeals Tribunal to carry out its objectives.

As far as the applicability of this compensatory scheme is concerned ,the witness that can fulfill criteria that enables her/him for the protection program under the bill ,family of the witness victim in case that witness dies provided that such victim is covered under protection program and that victim or Victims' family (in case victim is below age of 18) signed Memorandum of understanding ,lastly if the Director of the Agency that given the power to welcome or exclude admit it [167] .Currently also though a revised witness protection Act was adopted in 2012 ,there is no clear provisions with regard to victims' rights under this act.[168].The writer of this thesis argues that as the central emphasis of state compensatory scheme of Kenya is targeted only to witness protection, there is no even equal status quo of victims as interested party in the criminal proceeding let alone remedy of it. Hence the frame work of Kenyan compensatory scheme should encompass core- Crime Victim protection scheme and should be also effected in practice

III) THE TANZANIAN APPROACH

In Tanzania in understanding the the draw back that the country's criminal procedure act of 1985[169] has, the Law Reform Commission of Tanzania has suggested certain amendments to the Criminal Procedure Act and stressed the need to create, by amending the act or enacting a new one, a statutory compensation scheme 'funded from the public purse' to be 'appropriated by the Parliament[170]. Furthermore, the Commission suggested that the proposed scheme should be designed on the lines of the Workmen's Compensation Scheme to make it more predictable, easy to administer and to provide a fixed scale of compensation to victims of crime[171]. It seems that the Law Reform Commission, while suggesting a state-sponsored and fixed-tariff-based compensatory scheme, was not deterred by the adverse socio-economic conditions of, and escalating crime scenario in the country or the cost factor involved in the scheme. it observed that the question of operating such a compensatory system does not rest on the question whether

[167] Ibid at 331-332

[168] Redress ,Access to justice for victims of systemic crimes in Africa :challenges and opportunities ,5 April 2013 available at http://redress.org accessed on 5/25/2022

[169] The 1985 Criminal procedure Code of Tanzania ,available at https://www.fiu.go accessed on 5/27/2022

[170] K.I. Vibhute (n 160) at 332

[171] Ibid

a country opting for such scheme lies in the developed or developing part of the world, but, rather on the ability and willingness to operate such a scheme[172].However, with a view to scaling down the administrative cost of the scheme, in preference to an independent statutory Board, it recommended that the existing courts should be given the responsibility of administrating the scheme and the Chief Justice of the country should be entrusted with the overall supervisory role over the scheme[173].the payment of compensation for the victim is not strait forward instead based on certain yardsticks like ability of the offenders to pay compensation, the offender should be apprehended and convicted for the crime he /she committed for[174] .However, these proposals of the Law Reform Commission, for undisclosed reasons, have not received any response from either the Attorney-General or the Ministry of Justice, to whom the report was submitted, or parliament as yet[175].The measure made by State of Tanzania is promising in that it amend the country's criminal procedure code and empower law reform commission to discharge the duty to promote and respect of this rights ,the court to administer and chief justice institution for over all supervisory role. However nothing can be stepped to practical application.

IV) THE SOUTH AFRICAN APPROACH

Due to the drawback of south African Criminal procedure Act of 1997 has in providing Compensation to victims of crime for injuries sustained or to their dependents upon death of the victim, the South African Law Commission like the above mentioned other African states proposed compensatory scheme which their fund should be generated from (i) twenty percent of all fines imposed by courts, (ii) a surcharge imposed on an offender for every conviction, (iii) the sale proceeds of the property confiscated and money received through crime, and (iv) annual budgetary grants-in-aid in case the full compensation is not available to the victims or their dependents.[176]As administrative body the Law Commission proposed for the establishment of Criminal Injuries Compensation Board (CICB) that constituted by the Minister of Justice and will comprises of persons from the disciplines of law, medical science, penology, and the police. Moreover the board will be headed by a judge or a person having a legal background.[177]

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[172] ibid
[173] ibid
[174] Ibid
[175] Ibid
[176] K.v.Vibhute (n 160)at 332
[177] Ibid

Generally the compensatory scheme of aforementioned states of Africa is not uniform and instead has distinct funding sources, its administration bodies and its preferential approach towards fixed tariff compensation or to individualistic restitution based compensation. Hence the sate compensatory Scheme of above mentioned African state though at the infant stage can be a bench mark and good lesson for our country ,Ethiopia to put a good foundation and initiative with regard to remedy for Victims of core crimes in future.

V) ETHIOPIAN APPROACH

As regional binding authoritative source, Kampala Convention on Internally Displaced persons[178] was signed in 2009 among other things to ensure return of displaced person and granting compensation to internally Displaced persons. As the central message of this convention is upon the protection of internally displaced person which is different from the underlined title of this research that deals with remedy of victims of international crimes in Ethiopia, this researcher does not deals with this convention in detail

In Ethiopia the normal trend in criminal justice system views the crime primarily as an offence against the state and violations of its criminal laws either in form of commission or omission[179].The maximum measure taken is to bring the perpetrators of the crime under the ambit of law instead and no attention is given to victims' remedial aspect.[180]

In Ethiopian criminal policy and draft criminal procedure code as distinct from its predecessor criminal procedure certain measure has been made to ensure their recognition, participation ,and to know the truth about their case as a victim and witness in the process of investigation up to court trial and final judgment[181].However apart from their facilitation of trial process in the search made to find truth, there is no explicit remedial provision either under the draft criminal procedure or new criminal justice policy as remedy of victims. In the same manner the criminal justice system also excludes the community from participation and if the community is said to be

[178] African Union convention for the protection and assistance of internally displaced persons in Africa ,adopted by the special Summit of the Union ,Kampala, Uganda 23rd October 2009 entry into force 6th December 2012 .This convention is ratified by 55 African states including Ethiopia.
[179] Lejalam (n 17)
[180] Ibid
[181] FDRE Criminal justice Policy (Feb 23,2003 E.C)artcle 56

participating in the process, it is only in the form of providing information about the commission of the crime and appearing as witness in the criminal proceedings[182].

On other corner of the story, the customary dispute resolution mechanisms of Ethiopia are playing an important role in resolving crimes of any kind and maintaining peace and stability in the community though they are not recognized by law.[183]

When we see the punishment imposed on perpetrators of the crime in general ,apart from imprisonment ,fines can be imposed as the type and nature of the crime .However the amount of money collected in the form of fine as well as those confiscated or forfeited properties goes to the state and not to the victim of the crime, the way out for the victims of crime to seek compensation for the damage caused due to the crime is through a separate civil action save some exceptions where a claim for compensation can be made as part of the criminal proceedings[184]

As Tekle Fisseha coated in his thesis ,'Ethiopian response to the atrocities of the Derg regime face fierce critics not only for insignificant contribution to symbolic recognition of the wrongs of the Derg and compensation of the victims of the crimes, but also for lack of national reconciliation and absence of public apology'.[185] Moreover according to Tekle, the trials of Derg Officials have never fulfilled neither the procedural nor the substantive rights of the victims of the Derg regime. The assumption of state responsibility for the wrong was also nonexistent as no measure is taken to restitute and compensate the victims and perpetrators of the then horrendous crimes have made no genuine declaration of apology to the victims, their family and the Ethiopian people as a whole.[186]

Apart from certain laws like witness protection proclamation in corruption crimes and other related laws those creeps to compensate witnesses of those specific crimes in case they incurred

[182] Ibid
[183] Lijalem (n 17)
[184] See for example under article 102 of New Criminal code, or 101 of old penal code of Ethiopia that stipulate certain way of searching pecuniary compensation mechanism either upon criminal Trial in consolidating both civil and criminal suits or before separate civil courts. But on one part it is availability is based on good will of the court and on the other it requires stringent process that can even expose the victims for extra cost which can render him secondary victimization.
[185] Tekle(n 45) at 11
[186] Ibid

damage, no full-fledged legal structure is designed for compensation of victims of core crimes in our country.[187]

Bird's eye view observation of practical cases of core crimes of the court in Ethiopia is also indifferent in relation to victim compensation[188].The status of the victims of core crimes in Ethiopia, legal and institutional frame works available for it in Ethiopia would be seen in chapter four in detail.

3.6 RIGHTS TO EFFECTIVE REMEDY OF VICTIMS UNDER REGIONAL AND INTERNATIONAL COURTS' JURISPRUDENCE.

A. THE PERMANENT COURT OF INTERNATIONAL JUSTICE (PCIJ) AND INTERNATIONAL COURT OF JUSTICE (ICJ)

As I tried to rise under above discussion, the duty of state to provide remedy for victimized state has been indispensable obligation of states under international treaty law .In this regard the *Permanent Court of International Justice* affirmed this proposition in the *Chorzow Factory Case* when it stated that: *It is a principle of international law that the breach of an engagement involves an obligation to make reparations in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself*[189].So according to the decision of the court the non-observance of the international convention that accords obligation on state is suffice for German state to request reparation from Polish state based on the engagement so far exist between these two states concerning companies of Germany .Though individual remedy is not claimed and granted under this particular case due to underground assumption of state responsibility exist at the time ,the decision has been pioneer for tracing of potential individual responsibility those engaged in

[187] See article 43 of amended proclamation of anti-corruption special procedure number 434/2005 and ,article 406 of New Criminal Code of Ethiopia provides immunity from Prosecution of those witness as compensatory mechanism for they expose those master mind criminals of corruption crime and as such encourage others to disclose hidden similar acts of corruption crimes.

[188] Tadesse Sime, 'Punishing Core Crimes in Ethiopia: Analysis of the Domestic Practice in Light of and in Comparison, with Sentencing Practices at the unicts and the icc'(2019)19 International Criminal Law Review 160

[189] See Chorzow Factory (Claim for Indemnity) ,(Germany V. Poland) Jurisdiction, PCIJ Reports 1927, Series A No.9 ,July 26th ,1927

international Wrongful acts in representing their respective states not only for the Crime they committed but also to grant remedy for the injured party as a result of this acts.

The International Court of Justice also followed this principle in its jurisprudence and pronounces responsibility of state to make redress for its international wrongful acts in many subsequently created cases in referring pre -existing Chorzow Factory case as precedent in which gross violation of international Human rights law and Humanitarian law is evident and injury to individual person is reached [190].The same position has been adopted by ICJ also concerning decision of Bosnia and Herzegovina in which the court found that Yugoslavia (Serbia and Montenegro) was held liable for the Crime of Genocide committed against Bosnian and Herzegovinian and to pay a sum of compensation for victims of Such crime[191]

The International Law Commission (ILC) acknowledged these dicta in its 'Draft articles on responsibility of state for internationally wrongful act of state. Accordingly, article 1 of this draft article provides that 'every internationally wrongful act entails obligation to make restitution.[192]

Under UN level also by virtue of resolution 687 Iraq was held liable for its international wrongful acts committed against Kuwait that caused damage, loss to persons and also to foreign nationals[193].

In the same manner UN Compensation Commission (hereinafter UNCC compensated for Victims of human Rights and humanitarian law violations committed by Iraqi Military and Security Forces during the Occupation of Kuwait as individual claimants[194].

The above universal remedial decision shows us that existence of remedy for any international wrongful acts of state against the state or individuals through the state instrumentality which also currently inclined to compensation of direct individual claimants.

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[190] See case concerning the Military And Paramilitary Activities against Nicaragua (Nicaragua V. United States Of America) (Merits) judgment of June 27, 1986

[191] Claudio Grossman ,Reparation to Individuals for gross Violation of International human rights law and serious violation of International humanitarian law ,Annex N74/10 ,at 358

[192] Draft articles on responsibility of States for international wrongful acts ,text adopted by International Law Commission at its 53rd session in 2001 ,A/56/10 available at https://legal .un.org accessed on 5/11/2022

[193] David D.Caron and Brain Morries ,The UN Compensation Commission :Practical Justice ,not Retribution(2002)13 ,1 European Journal of International Law ,183,183-199

[194] Ibid

B. JURISPRUDENCE FROM INTER AMERICAN COURT OF HUMAN RIGHTS

International human rights law instruments contain a general provision that States Parties are under an obligation to respect or secure the rights embodied in the instrument.[195] The Inter American court of human Rights established the dictum in the well-known case of *Velasquez – Rodriguez v Honduras* that state considered as dangerous student of National Autonomous University of the time for national Security of Honduran state[196]. Mr. Angel Manfredo Velasquez was taken to Military camp by state military forces, police and other security personnel detained for long times and knapped there without any justifiable causes. Petition lodged to Inter American Commission of Human Rights in which the case was referred to Inter American Court of human rights. The Court after detail investigation of the case reached on the conclusion unanimously that Honduran state had violated article 4 (right to life), article 7(rights to personal liberty) and article 1(1) of the convention to the detriment of Velasquez. The court indicated that significant Moral satisfaction should be granted to the families of the Victim, More over the court ordered the state of Hondura to pay both pecuniary and non-pecuniary compensation of total of US Dollar of 375,000 to family of Velasquez among which 93750 is to Ms. Emma Guzman Urbina, who was wife of Velasquez and the left USD 250, 250, 250, was to be payed for three Children of Mr. Velasquez (i.e. Hector Recardo,Herling Lizzet and Nadia Waleska Velasquez[197].

The IACtHR by interpreting article 1 of ACHR with article 7 of the same convention suggested in its decision that state is obliged by the convention to prevent, investigate and prosecute any violation of rights recognized by the convention, restitute the violated rights if possible and provide compensation for damage suffered by the violation.[198].The Court furthermore indicated duty of state under international law to take reasonable step to prevent human rights violations and effect a serious investigation of violations committed within its jurisdiction, to identify

195 See American Convention on Human Rights: "Pact of San José, Costa Rica", Signed at San José, Costa Rica, on 22 November 1969, article 25 available at https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf accessed on 9/17/19

196 *Velasquez Rodriquez V. Honduras* ,merits ,Judgment ,Inter American Court Of Human Rights (ser.C) No 4/147(g)(i) July 29,1988)

197 Ibid

198 Ibid

those responsible ,to impose the appropriate punishment and to ensure the victim adequate compensation.[199]

The writer of this thesis can argue also that the silence of the state to prevent serious human rights and gross humanitarian violation or to conduct effective investigation and grant proportional compensation to the victim of those violation is in clear violation of those international binding instruments irrespective of the coming of new innocent government which renders such state responsible at international arena. Furthermore crime neutralization mechanisms like amnesty and pardon concerning those gross human rights violation sharply contradict with what such state is agreed with international community for utmost protection of human dignity.

C. JURISPRUDENCE OF EUROPEAN COURT OF HUMAN RIGHTS (ECTHR) AND HUMAN RIGHTS COMMITTEE (HRC)

Though different in the way of appreciation of cases present to them, the jurisprudence of the Inter-American court of human rights was confirmed by the HRC[200] and the ECtHR[201].The central message of General Comment No 20 HRC is that prohibition of torture enshrined under article 7 of ICCPR cannot be subject to neutralizing acts of amnesty or pardon and states are under duty to investigate such acts and to ensure that they do not occur in the future. Furthermore States may not deprive of individuals of the right to an effective remedy; including compensation and such full fill rehabilitation as may be possible.[202]

The committee suggested also that with regard to state obligation provided under ICCPR any neutralizing technique like amnesty cannot be applicable and such assertion of the HRC has been also communicated in subsequent cases. In *Selmouni v France,* ECtHR analyzed the impracticability of exhaustive local remedy by France state and reach on the conclusion that Ahimad Selmouni was being tortured ,inhumanly raped in clear violation of Article 3 which deals with prohibition on torture) and article 6 (rights of fair trial) of European Convention of

[199] Ibid

[200] General Comment No 20 :prohibition of torture or other cruel ,inhuman or degrading treatment 'available at https://www.ohchr.org accessed on 5/15/2022

[201] Bassiouni (n 13) at 241

[202] General Comment No 20 on article 7 of ICCPR upon prohibition of torture and prohibition of any neutralizing acts by violating states.

Human rights[203] and the ECtHR awarded compensation of pecuniary and non-pecuniary of **500,000** French Frances and **113,364** French Frances for legal costs and expenses for Ahimad Selmouni.

In the recent decision of *Al-Adsani v United Kingdom*[204], the ECtHR confirmed this approach and accepted the fact that the applicant was tortured by Kuwait state authorities and confirmed peremptory norm of the torture under international law. The court concluded that as a matter of international law, a state no longer enjoys immunity from civil suit in the courts of another state where acts of torture are alleged. More over by stressing the difference between criminal and civil liability, it might be argued that the ECtHR would have come to the conclusion that the UK was in breach of the ECHR, had it granted immunity from its criminal jurisdiction to individuals that were responsible for torturing the applicant .To put differently English court by granting immunity from suit for state of Kuwait used to violate clear provision of European Convention of Human rights that prohibits torture and in human treatment. But European Court of Human rights rejected the stand of English court and concluded that the English Court Violated the ECHR provision and plaintiff was responsible for the torture crime committed on the applicant[205].

From the above mentioned experience of UN human rights Committee and ECtHR we can deduce that international crimes like crimes against Humanity or torture entails not only international Criminal responsibility of the perpetrators but also resulted in obligation to pay damage to victims of such crimes.

D. RIGHTS TO EFFECTIVE REMEDY FOR VICTIMS OF INTERNATIONAL CRIMES UNDER INTERNATIONAL CRIMINAL TRIBUNALS OF FORMER YUGOSLAVIA (ICTY)

As the very purpose of its establishment is for the prosecution of perpetrators of international crimes bounded in its respective jurisdiction, much emphasis is given for punishment of criminals and the focus on victim and their remedies is limited. This limitation of attention is due to the reason that prosecutor is expected to represent the interests of the international community, including those of the victims and in this manner, the prosecutor's concerns do not necessarily

[203] Case of Selmouni v. France, Court of appeal No 25803/94 of (28 july ,1999)
[204] Case of Al Adsani V United kingdom ,judgment ,application No 35763/97 of (21 November 2001)
[205] Ibid

match those of the victims. Nonetheless, some measure of attention is given to victims and their remedies. In its Resolution 827 (1993) of 25 May 1993 adopting the Statute of the International Criminal Tribunal for the former Yugoslavia, the Security Council decided that "the work of the International Tribunal shall be carried out without prejudice to the right of victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law"[206].Accordingly, ICTY Statutes and its rules of procedure provide for the restitution of property or the proceeds thereof to victims except for more serious forms of harm to life or person ,where by remedy can be sought through the application to a national court or other competent body [207].In this regard approximately 4,600 witnesses have testified at the ICTY, and the ICTY has a dedicated independent unit, the Victims and Witnesses Section (VWS),which provides, "all the logistical, psychological and protective measures necessary to make their experience testifying as safe and as comfortable as possible[208].The VWS has "trained professional staff, available on a 24-hour shift basis that can help witnesses with their psycho-social and practical needs before, during and after their testimony in the Hague.[209] The Witness management System under ICTY also provides security protection and privacy measures for victims and other witnesses testifying under it[210]. Most witnesses testify in open court, but the prosecution or defense may ask the court to implement protective measures ,including: Removing the witness' name and/or identifying information from the ICTY's public record; Modifying the witness' voice and face in televised proceedings ;Assigning the witness a pseudonym ;Allowing the witness to testify in closed session; and Allowing the witness to testify remotely by video[211].For example in *prosecutor v.Dusko Tadic case* ,the prosecutor requested that the identity of four witnesses to be remained anonymous and never be revealed to the accused person due to the reason that this protective measures was necessary to allay the fear of

[206] UN security Council Resolution ,resolution No 827(1993) (adopted by the security council at its 3217th meeting ,on 25 may 1993) available at https://www.icty.org accessed on 5/16/2022

[207]Emanuela –Chara Gillard ,reparation for Violations of International humanitarian Law ,September 2003, International Review of Red Cross Vol. 85 No 851 ,546.

[208] Echoes of the Testimonies, A pilot study into the long term impact of bearing witness before the ICTY ,available at https ://www. Icty .org accessed on 5/16/2022

[209] ICTY manual on developed Practices ,prepared in conjunction with UNICRI as part of a project to preserve the legacy of the ICTY (2009),21-26 available at https://www.icty.org accessed on 5/18/2022

[210] Ibid

[211]Ibid

victim and witnesses for reason that the accused or member of their family take as reprisal including death or physical injury[212].

Another aspect of victim participation in the ICTY is the Voice of the Victims program that provides audio and video coverage of victim and witness testimony that allows the outside world to understand the crimes that were committed. Nonetheless ,the ICTY does not offer reparations to victims, nor are victims permitted to become involved in proceedings ,unless called as witnesses by a party. But if the ICTY makes a factual finding essential to the merits of a case that a witness was a victim of a particular defendant ,the victim can often use the decision as leverage in his or her home country to pursue reparations there[213]

E. VICTIMS RIGHTS UNDER INTERNATIONAL CRIMINAL TRIBUNALS OF RWANDA (ICTR)

The Nuremberg and Tokyo tribunals though they are the first international tribunals to prosecute war criminals, neither of them addressed the issue of victims of those horrendous crimes[214]. Consideration and treatment of the victims of crime and witness had been witnessed under the work of ICTY and ICTR as can be seen from artcle 20 and 22 as well as article 34 rule of procedure and evidence of both ICTs' statutes [215] .How ever concerning the magnitude and types of treatment given for victims of international crimes, under ICTR, Like the ICTY, victims can testify only as witnesses called by a party and have no right of participation, nor can they receive reparations or remedy[216]. Furthermore the ICTR also has a Witness & Victims Support Section (WVSS) that deals with assistance of witness in terms of safety, security ,logistic, medication and psychologically. Nonetheless both ICTs limited to restoration of stolen property instead of focusing on remedy for injured person or victims mentally or physically[217]

Like the practice under ICTY, remedy for the crime committed against the victim is non-existence and only for the property if harmed or stolen by the offenders. This is also seems a

[212] See prosecutor v. Dusko Tadic case No IT-94-decision on the prosecutor's motion requesting protective measures for victims and witnesses (Aug.10,1995) available at http://www. un .org/icty/tadic/trials2/decision -/100895 pm.htm. accessed on 5/18/2022

[213] Michael Bachrach ,the protection and Rights of Victims under International Criminal Law ,the international Lawyer ,Vol.34 No available at https:// core .ac.uk accessed on 5/18/2022

[214] Ibid

[215] Ibid at 13

[216] Ibid

[217] Cherif Bassiouni (n 13)) at 241-242

paradox as remedy given to victims those own property that has already stolen by the offenders and left those who didn't own the property discriminately.

F. THE INTERNATIONAL CRIMINAL COURT (ICC)

Significant position has been given for Victims of international crimes under Rome statute[218] that established international Criminal Court. Among the recognitions accorded to the victims by this statute is with regard to (1) victim participation in the proceedings ;(2) protection of victims and witnesses during Court proceedings;(3) the right to reparations or compensation; and (4) a trust fund out of which reparations to victims may be made[219].This writer also argue that promising work done at the international level required to be a lesson for the lazes fare countries of the world taking the fact that international horrendous crimes are being crimes against the whole community of the world each state parties to this statute has an obligation prosecute perpetrators of it and fulfill remedial interest of the victims of those crimes.

3.7 PROCEDURAL STANDS FOR OBTAINING REMEDY FOR VICTIMS

International standards have developed to give greater guidance as to what an effective remedy entails for victims, with recognition of the importance of the process, as well as the outcome of that process[220] .In this, four key areas have been recognized as particularly important: i) being treated with dignity and respection, ii) to have information about legal processes concerning them, iii) measures to ensure equal access to those processes and iv) protection from reprisals. It is recognized that criminal justice processes should be empowering to victims; their voices should be heard in such processes–not only as witnesses for the prosecution, but as rights holders with valid interests in the proceedings and their outcome.[221]

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[218] Rome statute ,Ac/conf.183/9 of 17 july 1998 in force on 1 july 2002 UN treaty series ,Vol.2187,No 38544,Depository:secretay- General of United Nations ,http://treaties .un.org.

[219] See article 68 of ICC statute which concerns with protection and participation of victims as well witnesses before the trial court, article 75 of the same instrument that deals with reparations to to victims and article 79 of the statute that talks about establishment of independent trust fund for the compensation of the victims of underlined crimes.

[220] Victim participation in Criminal Law proceeding , Survey of Domestic Practice for Application to International Crimes Prosecutions ,Redress ,Institute for Security Studies (September 2015) at 7

[221] Ibid

Models of Participation of Victims

There are two models[222] of participation of victims of crime under international and domestic tribunals which can be manifested in the following manner.

Individual Model

It is generally suggested that realization of effective remedy of victims can be manifested through participation of victims in trial process, as well as at the outcome stage[223].Hence any criminal justice process should include the concerned victim and their voice should be heard there. Under ICC Procedure, becoming a victim participant is a purely voluntary decision[224]. Victims who wish to participate in a specific case must seek permission from the court by filling out an application that documents personal harms suffered or registering as a victim with a court-appointed lawyer. Victim applications submitted to the court are generally reviewed by the Victims Participation and Reparations Section (VPRS) and then submitted to ICC judges, who decide whether or not the applicant has sufficiently demonstrated his or her direct link to the specific crimes articulated in the indictment[225].Here with regard to standing modalities though individual victim application is possible, it is only through lawyer representation that the trial process before not only ad hock and hybrid tribunals but also before the ICC[226].In Democratic Republic of Congo (DRC), different models were adopted in different cases, and applications evolved to a simplified one-page, individual application process in *Ntaganda*[227] .Finally, in Côte d'Ivoire, victims submitted a one-page declaration to join the case, while information on incidents suffered by groups[228]

Victims may participate under ICC either individually or collectively based on the model that the respective victim state adopted .States like Uganda, Democratic Republic of Congo followed

[222] Ibid
[223] Ibid
[224] Ibid
[225] Ibid
[226] Megan Hirst and Sandra Sahyouni ,effective legal representation for participating victims :principles ,challenges and some solutions ,Rudina Jaisini by the Gregory Townsend(edi.),A publication funded by UK Economic and Social Research Council ,30 November 2020 ,available at https://www.law.ox.ac.uk accessed on 5/21/2022 at 8-9
[227] Patricia Viseur sellers .Ntaganda :Re-alignment of a Paradigm ,available at https://iihl.org.accessed on 5/21/2022
[228] Ibid

individual approach model in which each victim submit his or her application to the court[229]. However, this approach is claimed to be lengthy process and expensive as it requires additional works and finance for each separate individual applications to sort or register it for approval or rejection by the court[230]

Collective model

This approach in contrast to individual approach is efficient and cost effective as every application is processed at a shorter time and with less cost[231].This shows us that procedural victims' rights is to some extent recognized under ICC despite the disparity of their participation either individually or collectively and existence of challengeable factors like limitation of know-how ,various expectations of victims from the court or tribunals , limitation of resources and time taking of it.

With regard to regional Court , universal jurisdiction which provides that national courts can investigate and prosecute a person suspected of committing a crime anywhere in the world regardless of the nationality of the accused or the victim or the absence of any links to the State where the court is located .Certain crimes, including, specifically, genocide, crimes against humanity, war crimes, torture, slavery and slave-like conditions, extrajudicial executions and disappearances are so serious that they amount to an offence against the whole of humanity, and therefore, all States have a responsibility to bring those responsible to justice. This view is illustrated in the Preamble to the ICC Statute[232]. In this manner Cases brought before US courts on the basis of universal civil jurisdiction show more potential. Victims of human rights and IHL violations have sought remedies before US courts under the Alien Tort Claims Act (ATCA) and the Torture Victims Protection Act (TVPA).

[229] The Victims' court, A study of 622 Victim participants at the international Criminal Court ,Uganda ,Democratic Republic of Congo ,Kenya and Cote D'Ivore ,Human Rights Center ,University of California ,Berkeley ,School Of Law (2015) available at https://www.law .berkeley .edu accessed on 5/21/2022 at 20

[230] Ibid

[231] Ibid at 26

[232] Bassiouni (n 13) at 232

In *Filartiga v. Penal Irala case*[233], relatives of a victim of State torture and murder in Paraguay sued the alleged perpetrator for damages in a federal district court in New York. The district court dismissed for lack of jurisdiction, but on appeal the Second Circuit found federal court jurisdiction under the ATCA, allowing US courts to provide foreigners with a remedy for violations of international law wherever they took place. Pursuant to the Filartiga case, several US courts have held that there is universal jurisdiction over certain international crimes, including war crimes, and that this also applies when the conduct complained of occurred outside the United States.

In *Tel-Oren v. Libyan Arab Republic*, the US Court of Appeals for the DC Circuit rejected the *Filartiga* interpretation of the ATCA. The Court found that this statute is merely jurisdictional and does not itself provide plaintiffs with a private cause of action for relief. Victims of a terrorist bombing in Israel sued the various alleged perpetrators, among others alleged agents of Libya, under the ATCA in federal district court in Washington D.C. As judge Bork stated in a concurring opinion: "as a general rule, international law does not provide a private right of action, and an exception to that rule would have to be demonstrated by clear evidence that civilized nations had generally given their assent to the exception[234]

The cases of *Kadic v. Karadzic* and *Doe I and II v. Karadzic* were a turning point in the ATCA proceedings. The plaintiffs in these cases complained that they had been victims of deportation, forced imprisonment, starvation and systematic torture, rape and forced impregnation. The accused, Radovan Karadzic, in his capacity as Bosnian Serb leader, was charged with genocide, war crimes, and torture. In these cases, on 13 October 1995, the US Second Circuit Court of Appeals found that Karadzic's acts, even though they were private, were prescribed by international law and that international law generally, and genocide and war crimes specifically, do not demand State action[235] .In 1992, the US Torture Victim Protection Act codified the holding in the *Filartiga* case. The Inter-American Court of Human Rights has repeatedly held

[233] Filartiga v.pena Irala case ,US court of Appeals, 630 F. second circuit (30 June 1980) available at https://www.lexisnexis.com accessed on 5/21/2022

[234] Gregory ,After Tel-Oren :Should Federal Courts Infer a Cause of Action under the Alien Tort Claims Act,

[235] Kadic v. Karadzic :do private individuals have enforceable rights and obligations under the Alien tort claims?, Duke journal of Comparative and International Law ,Vo 3 ,6 available at https://core .ac.uk accessed on 5/21/2022

that "based on the protection granted by Articles 8 and 25 of the Convention, States are obliged to provide effective judicial remedies to the victims of human rights violations.

The Court has also established that the right to judicial protection or to an effective remedy (Article 25 of the Convention) "is closely linked to the general obligation set forth in Article 1(1) of the same Convention, which give the States Party the obligation to respect rights under domestic law, entailing the States' responsibility to design and legally establish an effective recourse, as well as to ensure due application of said recourse by its judicial authorities.
Additionally, the Court has indicated that "article 2 of the American Convention places the States Party under the obligation to establish, in accordance with their Constitutional procedures and the provisions of this Convention, such legislative or other measures as may be necessary for effective exercise of the rights and freedoms protected by this same Convention. Therefore, it is necessary to reaffirm that the obligation to adapt domestic legislation is, by its very nature, one that must be reflected in actual results.[236]

The Inter-American Court of Human Rights has reiterated that "judicial remedies to protect non-derogable rights cannot be subject to any suspension and that "the absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking."[237] In this same vein, the IACHR has indicated that "the requirement that states respect and ensure fundamental human rights through judicial protection without discrimination is non derogable. From the above indicated cases, it is possible to say that, the rights to effective remedy for gross human rights and serious humanitarian violation has been actively practiced especially by regional human rights Tribunals of ECtHR and IACtHR apart from some universal measures of PCIJ, ICJ and ICTs .Hence an experience of these global and regional Tribunals and courts can be taken as a lesson to internalize the issue and enforce its treaty obligation in Ethiopia.

[236] A practitioners' Guide ,International Law and the fight Against Impunity ,International Commission of Jurists available at https://www.icj.org accessed on 5/21/2022 at 109
[237] Ibid

CHAPTER FOUR

4.1 AN APPRAISAL THE RIGHT TO EFFECTIVE REMEDY FOR VICTIMS OF INTERNATIONAL CRIMES IN ETHIOPIA

As in ancient European societies, in Ethiopian society before 1930 the neat modern division of legal wrongs in to' penal' (public) and 'civil'(private) ones was unknown apart from certain acts like religious sacrilege or acts injuring the emperor and his realm .wrongs now known as" penal or Criminal offences "like homicide ,rape robbery were private in the sense that they were not prosecuted by organ of government and instead can be redressed at the instance of the victim or his blood relatives who were free to sue or not to sue or compromise the issues[238].on the other corner ,the same wrongs were also considered as penal or crime that can entail redress through instrumentality of customs like vengeful punishment as retaliation principles or in exacting payments whose function was propitiatory(amount sufficient to buy off vengeance)rather than compensatory sort of compensation equal to damage[239].having the above scenario the Ethiopian ancient law of wrongs was governed by system of private penalty in the sense that the action was private ,the redress punishment and compensatory issue of the victim was based on the will of private individuals of both parties i. e offender and victim part.

The 1930 penal code of Ethiopia did not distinguish between offences punishable upon complaint that need consent of the victim and punishable upon accusation that does not need consent of the victim[240].There was no clearly established governmental structure indebted with prosecution of public offences like banditry, blasphemy and treason since the bulk of prosecution was dominated by private complainant. Here the aforementioned code is indifferent with crimes punishable upon consent of victim and Crimes against public at large that need not consent of the victim. Moreover issue of remedy of the victim was totally left for the private will of the parties through the norm of customary practices to abolish the potential revenge of the Victim and offender party. A system public prosecution was established by proclamation number 1942 and since then lead by an advocate general or attorney general under the auspice of ministry of justice with general mandate of prosecution of criminal cases those affect public security.[241]

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[238] Stanley Z. Fisher The Victims Role in Criminal Prosecutions in Ethiopia available at https://scholarship .law.bu .edu accessed on 6/2/2022 at 73.

[239] Ibid

[240] Ibid

[241] Ibid

Unlike the traditional customary rights of victims of veto power to prosecute or not to prosecute, to settle or reconcile with the offender, the above mentioned proclamation is silent as to this rights of the victims.

The 1957 penal code of Ethiopia made most of the offences punishable without need of consent from the victim of crime. Crimes punishable upon compliant is generally prosecuted based upon the will of the victims of such crimes by prosecution .The rest category of crimes punishable upon accusation are solely effected by public prosecutor with the exception of decline of prosecutor to prosecute or to take an appeal on acquittal of lower court judgment in which private victims can either effect private prosecution[242] to court or to take a copy of decision for non-prosecution or denial to appeal respectively to prosecutorial higher office of prosecutor[243].Here the limited rights of the victims mentioned under the 1957 penal code of Ethiopia is to bring private prosecution of compliant based crimes ,private prosecution of ordinary crimes at court in case public prosecutor is not volunteer to prosecute and give decision as per article 42(1)A of the criminal procedure code of Ethiopia or to take copy of decision non prosecution to higher level of administrative prosecutorial institutions .More over the penal code of 1957 and criminal code of 1996 as well criminal procedure code allows injured party or Victims to participate as joinder party in criminal proceeding under fulfillment of under lined criteria i.e. if the accused appear in person before trial and the case not tried in absentia ,if the accused is not juvenile ,if the complainant has been not started in civil action in other civil bench ,if the claim for compensation of victims can be determined with witnesses called for criminal cases without requirement of calling numerous witnesses and if the hearing of civil claim for compensation cannot likely confuse, complicate or delay the criminal proceeding[244]

4.2 SUBSTANTIVE RIGHTS OF THE VICTIMS OF INTERNATIONAL CRIMES IN ETHIOPIA

While rights of the accused is given greater attention at least in theory not only under the mother law of the land i. e Constitution[245] but also procedural[246] laws in Ethiopia, issue of the victims of such violation of human rights or Humanitarian law is over sighted and the game is simply

[242] See article 47 of criminal procedure code of Ethiopia

[243] See for instance article 44(2) ,45 and 181 of criminal procedure code of 1961 of Ethiopia

[244] See Article 101 and 102 of New Criminal Code of Ethiopia

[245] See Chapter three of the 1994 FDRE constitution that deals with rights of the suspected, accused and convicted person

[246] See rights of the suspect, accused and convicted person protected through investigation and prosecution process under criminal procedure code of 1961 of Ethiopia.

between prosecutor representing the public or government and defendant or accused. Concerning this is one writer suggest that "The Victim of a crime in general in Ethiopia is loser of two things i.e. in almost all of the crime victims has been a victim of the offence and at the same time denied a significant benefit like compensation or remedy due to the reason that Ethiopian court targeted solely on punishment of offender in death ,imprisonment ,by fine or other forms of monetary punishment which goes to public purse instead of the pocket of the victim according to gravity of crime[247]."

Ethiopia has a long recognized duty to prosecute international Crimes as can be understood from the wordings of article 269 of criminal code with regard to genocide crime and characterization of Crimes against humanity ,and article 270-282 the same code with regard to war crimes. This conventional duty of our country has been also displayed in the Transitional Charter of Ethiopia after the down fall of the Derg regime [248].As IACtHR suggested on Velasquez case, although TGE is transitional government ,it is still obligated to fulfill Ethiopia's state duties under International law which include former human rights violators[249].This adherence of Ethiopia to its international obligation can be manifested under article 9(4) and 13(2) of FDRE Constitution that says' all international agreements ratified by Ethiopia are an integral part of the law of the land and the fundamental rights and freedoms specified in this chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia[250].Here it can be argued that since prohibition of Genocide crime ,war Crime and inhuman treatment or torture is internationally agreed obligatory treaty adopted by Ethiopia and obligation to provide remedy by state party to these treaties is part and parcel of those international obligations ratified by our country, Ethiopia has international obligation to effect remedy for Victims of international Crimes.

[247] Endalew Lijalem ,The space for Restorative Justice in the Ethiopian Criminal Justice system ,Bergen Journal of Criminal Justice 2,Issue 2(2014)215(219)

[248] Report of Human Rights Watch Africa ,November 1994 ,Vol 6, No 11 page 13

[249] See Velasquez case ,Inter American Court of Human Rights case series No paragraph 184 (1988)(judgment)

[250] Article 9(4) and 13(2) of FDRE Constitution of 1995 of Ethiopia

4.3 LEGAL FRAME WORK FOR REMEDY OF VICTIMS OF CORE CRIMES UNDER ETHIOPIA

Under international human rights jurisprudence, state parties to UN charter and other relevant human rights conventions are under treaty obligation to protect the rights of its citizen, prevent human rights violation and to give appropriate remedy for the victims of gross human rights violation and serious violation of humanitarian law. Ending of impunity also requires not only prosecution of criminals, but remedial of the victim in sound able manner. In Ethiopia though the possibility of claiming remedy for the Crime is inculcated under FDRE Criminal Code[251] and criminal procedure code[252] of Ethiopia, it is not clear whether that remedy represent Core Crimes. Here in our country despite the fact that remedy for ordinary crime can be claimed by individuals to the party of proceeding either on criminal bench or from independent suit of civil bench[253],no clear articulation is found under Ethiopian law with regard to remedy for victims of core crimes. However remedy of victims of crime in general term is included under article 101 of Criminal Code of FDRE that provides certain modalities in which remedy can be granted for victims of crime .In this regard it says

If the crime committed by the offender render gross damage on the victim or victim's rights ,the victim may request for restitution or restoration of the damaged property and to pay equivalent compensation for damages[254].This process can be effected if there is joinder of civil claim and criminal cases at single bench of court .According to this provision to grant or not grant compensation to victim is based on good will of the offender and there is no Mandatory provision that push the offender to pay compensation despite the existence of gross damage in case the Victim due to absence know how cannot raise it. Moreover Ethiopia has clear provision for international Crimes like Genocide and war crimes and discharges its international conventional obligation by prosecuting perpetrators of those crimes but with leaving out victims' part. The legal frame work available for victims of core crimes under Ethiopian criminal code is generic and not clearly shows available remedy for victims of this category .This existing paradox and vague provision motivate me to forward way out so that remedy for victims of core crimes comprehensively specified under the FDRE criminal code.

[251] See artcle 101 and 102 of FDRE criminal code
[252] See article 154-159 of 1961 criminal procedure code of Ethiopia
[253] Article 101,102 of FDRE criminal code and article 154-159 of criminal procedure code of Ethiopia
[254] Article 101 and 102 of FDRE criminal code

Article 102(1) of Criminal code also suggest that 'if the Criminals or his family or guardian is not a position to afford compensation to Victims, the court may order compensation to be payed from property (exhibit of offender), bail property (money of the criminal) or from the fine money or confiscated property.' It adds also as per article 102(2) that the government may subrogate the Victim and can collect the money paid to victims in the form of compensation from the perpetrators of crime[255] .Here article 102(1) and (2) shows us that compensation paid under article 102(1) is based on discretionary power of the court and if the court does not order it, victim cannot get remedy. Moreover since compensation is not from state fund institution and instead from individual purse, the provision does not have a loophole in case criminals or his family is not in a position to afford the court compensation already paid to victims. So these Provisions should be mandatory and clearly put every way outs to compensate victims of core crimes.

Concerning Corruption Crimes certain acts has been made as a rehabilitation of victims corruption crime .For instance As per article 44 of special procedure and law of evidence of proclamation number 434/1997 in corruption case protection of whistle blowers is made case by case based on the seriousness of potential threat the person incurs for the mere fact that he is informants of the corruption crime or is witness of prosecutor[256]. Article 154-159 of criminal Procedure code of 1961 Ethiopia also deals with joinder of criminal cases with civil case but limited due to above mentioned impediments to actualize it for the victims of crime and based only on discretionary power of the court

Generally remedy of Victims crime under both criminal and procedural law lacks clarity as to whether it includes victims of core crimes or only other ordinary crime, based on discretionary power of court and simply based on individual purse instead of state fund compensatory regime.

4.4 INSTITUTIONAL FRAME WORKS OF REMEDY OF VICTIMS OF INTERNATIONAL CRIMES UNDER ETHIOPIAN LAW

Apart from category of crime under new Ethiopian criminal code ,new draft criminal procedure code also seems as it categorize crimes into three as 'minor ,medium and serious in scheduler way[257].The draft code also if adopted in future seems to handle minor and medium crimes to be entertained through ADR mechanism outside the formal litigation process so as to save time

[255] Article 102(1) (2) of FDRE criminal code of Ethiopia
[256] Proclamation number 434/1997 article 44
[257] See Draft FDRE Criminal procedure code of 2012, Article 2(1)

,for the need to re-integrate the offender with the community ,to maintain harmony of offender and the victim ,to re-establish the status quo and to enable offender to take responsibility and show repentance for the crime and to reduce recidivism[258].This line of argument is tenable being those category of crime may brought lenient damage to the public at large and instead confined to damage of individuals ,and due to policy reason so as to maintain confidentiality, protection of certain specified group like persons with disability ,minors ,females ,to maintain harmony of individuals in avoiding retribution. Concerning the types of crimes resolved through ADR, and the establishment of institutional frame work that handle those criminal cases, the new draft criminal procedure code of Ethiopia does not indicate in black and white instead simply said as this institution can be directed by public prosecutor for amicable resolution of cases.[259] This idea is also complemented by Ethiopian Criminal Justice policy as inferred from the general objective and its policy strategy that the ultimate target is to enhance public participation in criminal justice system, use alternative dispute resolution mechanisms to realize effectively of the policy.[260] Criminal Justice policy also gives an emphasis for Victims of Crime in general term though the reliability of their rights is still under illusion[261]. Though criminal justice policy give special consideration for victims of crime at theory ,it simply show future will of amending both substantive and procedural laws in such a way that can accommodate the interest of Victims and aid to be made for institutions entrusted for victims treatment and rehabilitation.[262]

Here neither of draft criminal procedure code nor Criminal justice policy clearly indicates any entrusted institutions that help victims of crime let alone for victims of international Crimes in Ethiopia. Moreover no any clear remedy that can equate with the nature and gravity of the crime is included under both new draft code and criminal justice policy .Having the above idea, it can be said mouth fully that there is no legally established institutional frame work ultimately established to help or regulate remedial aspects of Victims of Crime generally, victims of international crimes particularly.

[258] Ibid at article 223(1,2,3)
[259] Ibid at article 229 and 230
[260] Ethiopian Criminal Justice Policy of 2011 ,preamble and chapter one article 1.1,1.2 and 1.3
[261] Ibid at article 6.2,6.2.1 of criminal justice policy
[262] Ibid

4.4.1 CHALLENGES AND OPPORTUNITIES EXIST IN ETHIOPIA WITH REGARD TO VICTIMS' RIGHTS TO REMEDY

4.4.1.1. CHALLENGES TO VICTIMS' RIGHTS TO REMEDY IN ETHIOPIA

It is obvious that everything has its own cons and prone in natural phenomena in that grave violation of human rights and humanitarian law resulted in threat to life and property of Victims. But the sole prosecution of Criminals in leaving out the victim and their interest has been not only a great challenge not only for our country but also for international community in the measure made to bring lasting peace of the world .It is obvious also that harmonial real peace can be realized if we see the victims of crime with the right eye with full-fledged way in maintaining of their interest in prosecution, trial and upon judgment .Bird's eye view of Ethiopian Court judgments of core crime cases targeted solely on prosecution of criminals in imprisonment and, fines only in situation those core crimes are crimes against human fellow and not victimless crimes.[263]. This writer try to observe also certain cases of international Crimes like Genocide ,War crimes and Crimes against Humanity (in human treatment or torture according to characterization of Ethiopian criminal law and FDRE constitution)[264].In estimation there is a total of 249 genocide cases registered under Lideta High court according to the evidence gathered from there.[265] According to this registration case of *Enderge Mesfin* which started on 29/5/1989 E.C and decided after taking 3 years on 15/9/1992 E. C. was the initial case of Genocide[266] and *case of Kenasa Bedasa*[267] was the final case with the specification of this list as it decided on 24/3/2005 E. C. Moreover under Cases of Debala Dinsa[268] (61 individuals) all types of international crimes (Genocide, Characterization of Crimes against humanity or homicide crime and War crimes are included under the charge of SPO. Here the federal high court

[263] Tadesse Sime, 'Punishing Core Crimes in Ethiopia: Analysis of the Domestic Practice in Light of and in Comparison, with Sentencing Practices at the unicts and the icc'(2019)19 International Criminal Law Review 160

[264] For example article 538-540 and etc. of New criminal code and article 18 of FDRE Constitution reveals idea of Inhuman treatment or characterization of Crimes Against humanity under Ethiopian context as there is no clear provision that stipulates Crimes Against humanity with its elements either under FDRE Constitution of criminal Code .

[265] This is obtained from print out documents taken from Lideta high court on 7/7/2008 at 2:47:17PM E.C

[266] Endarge Mesfin v. SPO , file No.oo/ooo1/01887 (FDRE high court)

[267] Kenasa Bedasa v.SPO ,file No 00/0001/81360 (FDRE high court)

[268] Colonel Debala Dinsa v.SPO ,file No 912/89 (FDRE high court)

interpreted substantive provision of the then penal code of Ethiopia as per article 281 in light of Geneva Convention of 1949 as well as Genocide Convention of 1948.[269]

In this manner, the scope of domestic penal code provision and international Convention was being analyzed in detail by the high court. With the same talk, cases of *colonel Tesfaye wolde Selassie*[270] (145 individuals) was charged under article 281 of Ethiopian penal code that deals with genocide and war crimes and article 522 of the same code that deals with aggravated homicide. The court also granted judgment on case by case level under the provision provided under the charge of SPO. Here though domestic prosecution of those horrendous international crimes showed us one step forward looking of our country in adherence for its treaty obligation internationally; nothing was said by this judgment with regard to victims of such serious crimes by the Ethiopian court. This can be also a sort of another challenge victims have assumed in our country. Ethiopia as state parties to majority of international treaties has grounded duty to grant remedy for victims of core crimes in adhering to those treaty obligation as per article 9(4) and 13(2) of FDRE constitution[271] though the practical aspect is still trifling. So the inability to enforce constitutionally recognized rights of the victims of international crime is also a great challenge.

Hence, even if the inculcation of remedy for victims of crime under new criminal code of Ethiopia as per article 101 and 102 is promising ,it is not based on the nature of crime, it gives more discretionary power to the court, and offender and has stringent procedure to acquire it by the victim due to impediment criteria it proposes.

New draft criminal procedure code and criminal justice policy though tried to categorize certain minor and medium crime to be resolved through ADR, it lacks clarity as to remedy of victims and almost all of realization of rights of the Victim based on futurity upon amendment of criminal and criminal procedure code and in strengthening of victim helping institution with establishing it.This is also another challenge prevailing in our legal system.

[269] Ibid
[270] Colonel Tesfaye G/Sillasie v.SPO ,file no 206/93 (FDRE high court)
[271] FDRE Constitution of 1994, article 9(4) and 13(2)

4.4.1.2 OPPORTUNITIES AVAILABLE FOR RIGHTS TO EFFECTIVE REMEDY OF VICTIMS OF CRIME IN ETHIOPIA

Despite the above challenges the following opportunities are also there if we would use it .This include:

- The fact that international Community Currently follows paradigm shift of victim centric approach and adopts guidelines at UN level is an opportunity for our country to enforce its international human rights and humanitarian law treaty obligation being an integral part of law of Ethiopia. More over an experience of ICTs and Courts, as well as regional Court approaches to remedial aspect of victims' rights of remedy is an opportunity to use it for potential case/cases of similar character.

- An experience of certain African countries like Nigeria, Kenya, Tanzania and South Africa can be a bench mark for our country to deal with remedy of Victims of Crime in general
- Our country also admits it's gap we have in protection of victims' rights and enact criminal Justice Policy and draft Criminal procedure code that conveys the underlined idea .So if we have guided and efficiently enforce what we include particularly under Criminal justice policy with regard to victims' rights is also an opportunity to realize this rights.
- Our country has an experience of Reconciliation and Compensating Victims of Ethio-Erteria war of 1991/1992 in Ethiopian history and currently also on the way to conduct national dialogue with Tigrian National state to bring lasting peace for the pre Occurred conflict of federal government and Tigrian state. Since national dialogue among other things required dealing about victims of Crime, all the above mentioned opportunities can be a pivotal instrumentality to set a basement of legal and institutional frame work that regulate remedial aspect of victims of international crimes efficiently and effectively in Ethiopia.

4.5 PROCEDURAL RIGHTS OF THE VICTIMS OF INTERNATIONAL CRIMES IN ETHIOPIA

As I tried to discuss in above discussion the procedural rights of the victims of crime is in majority of the case as witness or informants of the commission of the crime instead of party to the suit. This is due to the reason that as crime is percepted as an offence against the state,

parties to the suits are prosecutor and offender only instead of victims save on certain special situation[272].more over Victims of compliant crimes are allowed to activate or deactivate there case through the instrumentality of the prosecutor under the procedure code[273].Here the procedural participation of the victim in our current criminal justice system has three category .i.e. as a witness for the prosecutor ,as private prosecution and as injured party in joining the criminal litigation. Concerning with models of their participation mixed model which means individual presentation of complain by the victim directly or through their representative ,and existence collective model is reflected from the spirit of criminal procedure code[274] and civil procedure code[275] of Ethiopia.

Nonetheless apart from treating indiscriminately as injured party of the crime, there is no procedural loophole that invites special treatment with regard to remedy for victims of international crimes in Ethiopia in that a sort of remedy inculcated under new criminal code is confusable as to which type of crime and to whom it required to be given 'i. e victims of core crimes or ordinary crime? This part of Scenario makes also unreliability of remedy of victim in addition to other limitation the victims face to acquire it.

4.6 CHALLENGES OF VICTIMS STAND FOR REMEDY IN ETHIOPIA

In the measure made for search of truth victims of the crime has been obviously a principal source man to set justice in motion in every type of crime. Despite having such status victims are isolated from the formal trial that has been conducted between prosecutor and criminals. Victim only participate in criminal litigation if called as witness by prosecutor, if participate as private prosecution or if get chance of joining criminal litigation by discretion of court.

In formal criminal proceeding guided by prosecutor and offender, Victims has no say not only in criminal proceedings but also on judgment stage even about his/her need and be voiceless participant of the proceeding. Nonetheless Victims of certain serious crime might be exposed to

[272] As per criminal procedure of 1961 ,article 47,44,45 as private prosecutor , as i and as per article 101,102 of New criminal Code of Ethiopia and as per article 154-159 of criminal procedure of 161 in applying to court to join party to trial

[273] Criminal procedure of 1961 at article 150-153

[274] See article article 11,12 and 117 of criminal procedure code of Ethiopia respectively shown us existence of individual and collective model of presenting claims by every person including victims respectively.

[275] Article 11,17, 35,36 , and 217 civil procedure code of Ethiopia are some provisions of the code also indicates existence of collective claims mechanism in civil cases.

double victimization by criminals or their relatives let alone entitled to their rights. In having the prevalence of double victimization, certain special laws require Confidentiality of the names of witness before trial until the day of hearing [276].In the same manner corruption special procedure affords protection to informants of corruption crime or witnesses of the crime those face potential threat from corrupter or their partner or relatives [277].

4.7. THE ANALYZATION AND INTERPRETATION OF DATA WITH REGARD TO VICTIMS OF INTERNATIONAL CRIMES IN ETHIOPIA

This researcher tried to gather relevant primary data from selected three institutions of Ethiopian Federal High court, Ethiopian Human rights commission and federal Attorney General using questionnaires as tools of sampling. The data gathered from these three institutions found out that though prevalence of international Crimes has been exist in our country, there is no even single cases that remedy is granted for victims of those crimes formally. Moreover, the study revealed that issue of remedy was not included in the prosecution process and no practical measure made by this institution due to 1st the absence of law that regulate remedial aspect of victims of core crimes ,2nd absence of state compensatory fund that deals with victims of such crimes in Ethiopia ,3rd poverty of offenders or state to compensate the victims and 4th high number of victims involved in the criminal trial cases [278].Concerning their participation, this study found out that victims of above mentioned crimes are participated either in investigation or trial process simply as a witness of prosecutor or informants of criminal acts instead of interested parties to the suit and holder of rights. Generally, the central challenge in Ethiopia with regard to remedy of victims of core crimes according to this study was absence of clear or specific law i. e both substantive and procedural law that regulate the issue of remedial rights of victims of core crimes and ,absence of institutional frame work that deals with victims' rights.

According to evidence of Federal Lideta high Court of Ethiopia, there is no holdings of the court with regard to remedy for victims of international Crimes so far because of the absence of both substantive and procedural law that regulate remedial aspect of victims of core Crimes , absence of state compensatory fund that deals with victims of such crimes in Ethiopia and

[276] See corruption proclamation number 434/1997 article 38(2)

[277] Ibid at article 44.

[278] Questionnaires are randomly distributed for 5 individual prosecutors those participated on Such type of professional activities under federal Attorney General on 12-08-2014 E. C

poverty of offenders or state to compensate the victims , high number of victims involved in the criminal trial cases and ambiguity among law enforcement organs with regard to violations committed in such situations are some of the problems associated with remedial rights of victims The evidence of this court also shows that the present institutional and legal frame work of Ethiopia concerning victims of core crimes is not sufficient enough. One of the factor has been absence of clear law that deals with the issue, there is no well- organized institution indebted with this mandate and above all practical challenges like absence of legal instruments to deal with the issue, difficulty in assessing amount of compensation ,problem exist in production of evidence ,unwillingness of government ,lack of funds or budget ,difficulty to get evidence ,procedural matters and malpractices in the enforcement agencies are provided also as additional challenge.

As a future solution, proclaiming of clear law concerning victims of core crime, establishment institutions: prosecution office as supervisory body, investigation officer and professional experts trained enough on the subject matter under study.

The other institution touched by this study was Ethiopian Human Rights Commission that has a legal mandate in the protection and promotion of human rights of the people in the country. the evidence of this institution shows that even if our country has an experience on prosecution of international Crimes ,there is no clear legal or institutional frame works deal with effective remedy of victims of those crimes in Ethiopia .How ever as an institution ,in collaboration with respective regional state governments ,certain measures have been done to provide remedy in money ,in kind or other sort of remedy like restitution to original place of victims, rehabilitation mechanisms like medical or other aid for victims of Genocide, Summary Execution , torture or inhuman treatment (which has characterization of Crimes against Humanity) in kerayu Aba Geda Cases of Oromia region , other cases of Akisho tribe death and body injury occurred in Bombasa of Somali region, injury sustained at health center in Southern region and Maikadra case of Amhara regional states in Ethiopia.[279] According to Ethiopian peace observatory weekly report from April 2,2018n -6May,2022 a total of 7,225 civilians are targeted and from April

[279] Further information can be obtained from Ethiopian human rights Commissions website of www.https://ehrc.org accessed on 2/15/2022 and from the evidence obtained from the institution through questionnaries filled by professional experts of the area under study

23-6 May of 2022 a total of 69 civilian made target of the the Violence in Ethiopia[280]. According to the evidence of this institution though promising step and plat forms has been taken by the Commission ,potential works like enacting of clear legal and institutional frame work that can entertain cases of remedy for victims international Crimes in uniform and consistent manner throughout our country with independent state fund institution is required[281]

Generally in Ethiopia, even if promising actions has been taken particularly in current political structure ,Victims of international Crimes instead of getting entitlement or their rights, even exposed for second round victimization due to not only silence of law but also non accommodation of our institutional frame work of criminal justice system.

FINDINGS OF THE RESEARCH

1. This thesis found out that in Ethiopian criminal justice system there is no both substantive and procedural laws those regulate remedial aspects of victims of core crimes
2. This research reveals that there is no institutional frame works indebted with clear mandate of regulating issue of effective remedy and used as state fund for victims of international crimes in our context
3. This research also show Scarcity of budget and prevalence of poverty in Ethiopia hinders the reliability of victims' rights to remedy.
4. This research reveals lastly that due to above mentioned factors there exist a practical gap in application of these rights in Ethiopian criminal justice system.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

International Crimes are heinous type of crime that instable the whole spectrum of international community and resulted in high destruction of life and resources. Prosecution of perpetrators of those Crimes only satisfies world community partially without comprehensive healing of the wound of the victims of those crimes. In understanding this, mushrooms of human rights and

[280] Available through relief web .int .and curated EPO data file as well export tool accessed on 5/15/2022
[281] Evidence obtained through questionnaries from EHRCo.

humanitarian treaties including UN guide lines in inculcation of remedy of the Victims of those crimes are engaged by international states. Some African states also started the initiation of legal and institutional frame work of regulating remedial aspect of Victims of Crime in general.

Our country Ethiopia has also engaged in prosecution of international crimes so far at domestic level and as these international crimes have similar legislative basis and nature, having a comprehensive legal and institutional frame work that enable to grant remedy for victims of international crime is an issue of the time. In this regard victim protection under our law is not sufficient enough to accommodate remedy for victims of core crimes not only at theoretical aspect but also practically due to absence of clear laws, institutional frameworks that independently established for this purpose and practical problems .Hence the writer tried to propose the following recommendations as a relief for crack we have with regard to the underlined titles of this research.

RECOMMENDATIONS

- In Ethiopia though the fact that remedy of crime in general can be claimed by the injured party of proceeding either on criminal bench or from independent suit of civil bench ,it is not clear whether it also includes also Victims of international crimes. So the provision shall clearly indicate remedy of victims of international crimes and its applicability.
- Moreover article 101 and 102 of FDRE criminal code provides possibility for payment of compensation for victims of crime in general based on discretionary power of the court in criminal bench from the purse of perpetrators of crime instead of state fund institution and these provisions do not have a loophole in case criminals or his family is not in a position to afford this compensation. So this Provision of the criminal code shall be amended so that it clearly accommodate remedy available for the victims of core crimes and modalities used to grant this remedy from offender's purse or from independently established state fund institutions for victims of such category.
- Prosecution of criminals in leaving out the victim and their interest has been not only a great challenge for our country but also for international community in the measure made to bring lasting peace of the world. In this regard bird's eye view of Ethiopian court judgments of core crime cases targeted solely prosecution of criminals in situation those core crimes are crimes against human fellow and not victimless crimes. Hence clear guide lines enforceable before court of law in relation to remedy of victims of core

crimes shall be enacted in addition to amendment of relevant laws in this regard so that the actualization and application of our law with regard to the rights of remedy of victims of such crimes can be supervised.

- Ethiopian draft criminal procedure code and criminal justice policy though tried to deal with issue of victims of crime in generic term, it lacks clarity as to remedy of victims of core crimes and almost all of the realization of rights of the victim has been based on futurity upon amendment of new criminal code and criminal procedure code as well in strengthening of victim helping institution and with establishing it.Hence the draft criminal procedure code shall be urgently adopted and come to picture in inculcation of clear rights of the victims of core crimes in consideration of also an experience of certain African countries like Nigeria, Kenya, Tanzania and South Africa can be a bench mark for our country to deal with remedy of Victims of Crime in general of core Crime in particular. So our country shall use experience of aforementioned African States as a lesson and enact state based Compensatory laws or acts for victims of Core crimes and too institutional frame works for its regulation.

- Given the nature and impact of International crimes on victims, independent Legal frame work that protects the interest of victims in full-fledged manner like as anti-terrorism proclamation number 1176/2012 E.C and proclamation number 699/2003 E.C that provide protection for witnesses of crime and whistle blowers has to be enacted in our context.
- Our country has an experience of reconciliation and compensating victims of Ethio-Erteria war of 1991/1992 in Ethiopian history and currently also on the way to conduct national dialogue with Tigrian National state to bring lasting peace for the pre- Occurred conflict of federal government and Tigrian state. Since national dialogue among other things requires dealing with victims of Crime, formal reconciliation commission or institution that has clear mandate of regulating the interest of victims of core crimes not only for current situations but also for potential similar acts shall be established in Ethiopia

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VIII. ANNEXES OF QUESTIONNARIES

JIMMA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE

DEPARTMENT OF LAW

MASTERS OF LAW IN HUMAN RIGHTS AND CRIMINAL LAW

APPENDIX-1: Questionnaires in English version

Dear Respondent,

I am student of Master of (LLM) at Jimma University, doing research titled as "An appraisal of the right to effective remedies for victims of international crimes in Ethiopia.

This study basically comprises the questionnaires categorized in to two sections (multiple choices and fill the blank space) is distributed to respondents from three institutions. Your data and information you gave will be kept under strict confidentiality and secured and it will not be disclosed to anybody without your consent. Now, we are inserting the consent form to be filled, if you are willing to participate kindly fill it completely. We look forward to your favorable cooperation and feedback.

Yours sincerely,

Research Consent From

It is required for research purpose only.

Title: An appraisal of the right to effective remedies for victims of international crimes in Ethiopia.

Your participation is voluntary and you can choose to decay or withdraw at any point if you want. Anything you say will be done accordingly and information you provide will be kept confidential and it won't be accessible to other individual or organization for conflict of interest. Please read each statement carefully and encircle your choice for the questions indicated in the questionnaries.

Part I: multiple Choices

Questionnaires for Human rights Commission concerning remedies for victims of international crimes (Genocide, Crimes Against Humanity or Torture, war crimes)

1. Is there any prevalence of gross violation of human rights and serious violation of humanitarian law (like torture, Genocide, and War crimes) in Ethiopia since the Era of Derg up to the present?

   A. yes B. No. C. I don't have information concerning this

2. Is there any complain that can be present to your institution so far by the victims of those above-mentioned human rights violation/core crimes in Ethiopia?

   A. yes B. No C.I do not know.

3. Is there any Measure made by your institution concerning remedy for victims of international Crimes committed in Ethiopia?

   A. Yes B. No C. other…….

Questionnaires for federal High courts concerning remedies for victims of international core crimes (Genocide, Crimes Against Humanity or Torture, war crimes)

1) Is there any cases of international core crimes decided by this court so far?

   A. yes B. No C. other_____

2) Is there any holdings of the court regarding Victims of core crimes committed in Ethiopia since the Derg regime up to now.

   A. yes B. No C. Other_____

3) If your response is No, what is the reason for not dealing such issue by the court?

   A. Due to absence of clear law that regulate remedial aspect of victims of core crimes.

   B. Due to complexity of dealing with such issue on criminal trial together of crime

   C. Due to absence of state compensatory fund that deals with victims of such crimes.

   D. Due to poverty of offenders or state to compensate the victims

E. Due to high number of victims involved in the cases

F. Other_____

4) Is there any claim of compensation or other remedy claimed by the victims of Core crimes in Ethiopia?

A. yes B. No C. No information _____

Part III: Questionnaires for Federal Attorney General (FAG) concerning remedies for victims of international crimes (Genocide, Crimes Against Humanity or Torture, war

1. Is there any complain that can be present to your institution so far by the victims of those above-mentioned crimes in Ethiopia?

A. yes B. No C.I do not know.

2. Is there any Measure made by your institution concerning remedy for victims of international Crimes committed in Ethiopia?

A. Yes B. No C. other_____

3. Is the prosecution process of your institution made include remedy for Victims of core crimes?

A. yes B .No C. Other

4. if your response under number 4 is no what is the reason for non-inclusion of remedy of those victims in the charge of prosecutor or in court judgments in Ethiopia?

A. Due to absence of clear law that regulate remedial aspect of victims of core crimes.

B. Due to complexity of dealing with such issue on criminal trial together of crime

C. Due to absence of state compensatory fund that deals with victims of such crimes.

D. Due to poverty of offenders or state to compensate the victims

E. Due to high number of victims involved in the cases

F. Other_____

5. Are victims of core crimes participating in the investigation process or in trial process in court?

A. yes B. No C. I do not know.

6. If your response for number 5 is yes, in what status they participate?
   A. As a witness for the prosecution
   B. As Victims of those Crimes and going to be granted remedy or compensation at the end of the trial
   C. As informants of the crime and Criminals only
   D. in other status_____

7. Is there any state based fund for victims of international or core crimes in Ethiopia?

   A. yes B. No C. I do not know.

   D. Other

8. Is there any institutional and legal frame work that regulates remedial aspect of victims of core crimes in Ethiopia?

   A. yes B. No C. I do not know.

   D. Other

9. Is remedial aspects of law in Ethiopia for victims of international Crimes is proportional to the nature or gravity of the crime?

   A. yes B. No C. I do not know. D. Other

10. Is there any problem or challenges under Ethiopian law and practice with regard to victims' rights?

    A. yes B. No C. I do not know.

Part II: fill in the blank space

1) Is there any state based fund for victims of international or core crimes in Ethiopia?

_____

_____

_____

_____

_____

_____

2) Is there any institutional and legal frame work that regulates remedial aspect of victims of core crimes in Ethiopia?

_____

_____

_____

_____

_____

_____

_____

3) Which law regulates remedy of victims of core crimes in Ethiopia?

_____

_____

_____

_____

_____

_____

_____

4) Is remedial aspects of law in Ethiopia for victims of international Crimes is proportional to the nature or gravity of the crime?

_____

_____

5) Is there any problem or challenges under Ethiopian law and practice with regard to victims' rights?

6) What are those challenges?

A. legal challenge

Substantive_____

_____

_____

_____

Procedural_____

_____

_____

_____

B. Institutional frame work

_____

_____

_____

_____

D. Practical challenge

5) Do you think that the present institutional and legal frame work is sufficient enough to deal with remedial aspect of victims of core crimes in Ethiopia?

Appendix II

ጅማ ዩኒቨርሲቲ

የህግ ና አስተዳደር ኮሌጅ

የህግ ትምህርት ክፍል

በሰብዓዊ መብት እና በወንጀል ሕግ የ 2ኛ(ማስተርስ) ዲግሪ

ተጨማሪ መግለጫ

የተከበራችሁ የዚህ መጥየቅ መላሾች እኔ በጅማ ዩኒቨርሲቲ የሁለተኛ ዲግሪ (ኤል ኤል ኤም) ተማሪ ሲሆን በአሁኑ ወቅትም በኢትዮጵያ የዓለም አቀፍ ወንጀል ተጎጂዎች ተገቢ የመድን መብት በምል ርዕስ የመመረቅያ ፅሁፍ በመስራት ላይ እገኛለዉ።ይህም ጥናት በሁለት ክፍሎች የተከፋፈለ ስሆን በዚህ መሰረትም የመጀመሪያዉ ከተሰጡ ጥያቄዎች ተገቢዉን በመምረጥ የሚሞላ ሲሆን ሁለተኛዉ ክፍል ግን ባዶ ቦታን በመሙላት የሚመለስ ጥያቄን የካተተነዉ።

ዉድ መላሻችን እርሶ የሚሰጡት መልስ ከርሶ ፍቃድ ዉጪ በሆነ አግባብ ለማንኛዉም ሰዉ የማይሰጥ ና በልዩ ምስጥራዊነት የሚያዝ ነዉ።በመሆኑም አሁን በመጥይቁ ዉስጥ የተካተቱትን ጥያቄዎች በጎ ፍቃዶ ከሆነ ሙሉ በሙሉ መሙላት የሚትችሉ መሆኑን በአክብሮት እንገልፃለን።

ከሰላምታ ጋር

የጥናቱ የፍቃደኝነት ቅፅ

ርዕስ፡በኢትዮጵያ የአለማቀፍ ወንጀል ተጎጂዎች ያላቸዉን የመድን መብት ስለማጥናት

የርሶዎ ተሳትፎዉ በፍቃደኝነት ላይ የተመሰረተ ከመሆኑም በላይ መጥይቁን ከፈለጉ የመተዉ ወይም የማቋረጥ መብት አለዎት።እርሶዎ የሚሰጡን እያንዳንዱ መልስ በስራችን ዉስጥ ግብዓታችን ሲሆን ከርሶዎ ያገኘነዉ ምላሽም በሚስጥራዊነት ከመያዙም በላይ ለየትኛዉም ግለሰብ ወይም ተቋም የጥቅም ግጭት አይዉልም።

እባኮዎን እያንዳንዱን ዐረፍተ ነገር በጥንቃቄ ያንብቡ ና በመጥይቁ ዉስጥ ላሉ ጥያቄዎች መልሱን ይስጡ።

ክፍል አንድ፡የምርጫ መጠየቅ

ለኢትዮጵያ የሰብዓዊ መብት ኮሚሺን የዓለም አቀፍ ወንጀል ተጎጂዎች የመድን መብትን በሚመለከት የቀረበ መጠየቅ

1. በኢትዮጵያ ዓለም ዐቀፍ የሰብዓዊ መብት ህግ እና የጦር ህጎችን በመጣስ ከደርግ ዘመነ መንግስት እስከ አሁን ድረስ የተፈፀሙ ዐለማቀፍ ወንጀሎች እንደ ዘር ማጥፋት ፤ኢሰባዊ አያያዝ እና የጦር ወንጀል አለን?

ሀ.አዎን ለ.አይደለም ሐ. ይህን በተመለከተ መረጃ የለኝም

2. ከላይ በተጠቀሱ የዓለም አቀፍ ወንጀል ተጎጂዎች ለተቋሟ የቀረበ አቤቱታ አለ ወይ?

ሀ.አዎን ለ.አይደለም ሐ .እኔ አለዉቆዉም

3. የአለማቀፍ ወንጀል ተጎጂዎችን የመድን መብትን በሚመለከት በርሶዎ ተቋም የተወሰዱ እርምጃዎች አሉን?

ሀ.አዎን ለ.አይደለም ሐ . ሌላ መልስ ካለ

ለኢትዮጵያ የፌዴራል ከፍተኛ ፍ/ቤት የቀረበ የዓለም አቀፍ ወንጀል ተጎጂዎች የመድን መብትን በሚመለከት የቀረበ መጠየቅ

1. ቀደምስል በዚህ ፍ/ቤት የቀረቡ ና ዉሳኔ ያገኙ የዓለም አቀፍ ወንጀል ጉዳዮች አሉን?

ሀ.አዎን ለ.አይደለም ሐ . ሌላ መልስ ካለ

2. በኢትዮጵያ ከደርግ ዘመነ መንግስት እስከ አሁን የተፈፀመዉን የዓለም ዐቀፍ ወንጀል ተጎጂዎችን አስመልክተዉ በፍ/ቤቱ የተሰጡ ዉሳኔዎች አሉን? .

ሀ.አዎን ለ.አይደለም ሐ . ሌላ መልስ ካለ

3. መልሰዎ አይደለም የምል ከሆነ ፍ/ቤቱ በምን ሚክንያት ከላይ የተገለፀዉን ጉዳይ ያላየ ይመስሎታል;

ሀ. የዓለም አቀፍ ወንጀል ተጎጂዎች የመድን መብትን ለማስጠበቅ የሚያስቸል ግለፅ ህግ አለመኖሩ.

ለ. በወንጀል ችሎት የወንጀል ተጎጂዎችን ጉዳይ ማየቱ የበለጠ የፍ/ቤቱን ሂደት የሚያወሳስብ ስለሆነ

ሐ. የወንጀል ተጎጂዎችን የመድን መብት ለማስጠበቅ በመንግስት የተቋቋመ የገንዘብ ምንጭ ያለመኖሩ

መ. የወንጀል ተጎጂዎችን መድን ለመስጠት የወንጀለኞች ወይም የመንግስት ድሃ መሆን

ሠ. በጉዳዩ ዉስጥ የሚሳተፉ የወንጀል ተጎጂዎች ቁጥር መብዛት

ረ. ሌለ መልስ ካለ _____

4. በዚህ ፍ/ቤት የካሳ መድንን ወይም ሌላ ዓይነት የመድን መብትን ለመጠየቅ አቤቱታ ያቀረበ የወንጀል ተጎጂ አለን?

ሀ.አዎን ለ.የለም ሐ. ይህን በተመለከተ መረጃ የለኝም

ለኢትዮጵያ የፌዴራል ጠቅላይ ዐቃቤ ህግ የቀረበ የዓለም አቀፍ ወንጀል ተጎጂዎች የመድን መብትን በሚመለከት የቀረበ መጠየቅ

1. ቀደምስል ከላይ በተገለፁት የወንጀል ተጎጂዎች ለተቋሞ የቀረቡ አቤቱታዎች አሉን?

ሀ.አዎን ለ.የለም ሐ. አላዉቀዉም

2. የአለም ዓቀፍ ወንጀል ተጎጂዎችን የመድን መብትን በሚመለከት በርሶዎ ተቋም የተወሰዱ እርምጃዎች አሉን?

ሀ.አዎን ለ.የለም ሐ. ሌላ መልስ ካለ.....

3. የተቋመዎ የክስ አቀራረብ ሂደት የዓለም ዓቀፍ ወንጀለኞችን የመድን መብት ያካተተ ነዉን?
ሀ.አዎን ለ.አይደለም ሐ. ሌላ መልስ ካለ.....

4. መልሰዎ አይደለም የምል ከሆነ ለምን ከላይ የተገለፀዉ ጉዳይ በዐቃቤ ህግ ክስ ዉስጥ አልተካተተም?

ሀ. የዓለም አቀፍ ወንጀል ተጎጂዎች የመድን መብትን ለማስጠበቅ የሚያስቸል ግለፅ ህግ አለመኖሩ.

ለ. በወንጀል ችሎት የወንጀል ተጎጂዎችን ጉዳይ ማየቱ የበለጠ የፍ/ቤቱን ሂደት የሚያወሳስብ ስለሆነ

ሐ. የወንጀል ተጎጂዎችን የመድን መብት ለማስጠበቅ በመንግስት የተቋቋመ የገንዘብ ምንጭ ያለመኖሩ

መ. የወንጀል ተጎጂዎችን መድን ለመስጠት የወንጀለኞች ወይም የመንግስት ድሃ መሆን

ሠ. በጉዳዩ ዉስጥ የሚሳተፉ የወንጀል ተጎጂዎች ቁጥር መብዛት

ረ. ሌለ መልስ ካለ _____

5. የዓለም ዓቀፍ ወንጀል ተጎጂዎች በምርመራ ወይም በክስ መሰማት ሂደት ዉስጥ ይሳተፋሉን?

ሀ.አዎን ለ.የለም ሐ. አላዉቀዉም

6. በተራ ቁጥር 10 ስር መልሰዎ ሀ ከሆነ የተሳትፎ ደረጃቸዉ በምን ሆኔታ ነዉ ?

ሀ.እንደ ዐቃቤ ህግ ምስክር በመሆን

ለ. እንደ ዓለም ዐቀፍ ወንጀል ተጎጂዎች ና በክስ መሰማት መጨረሻ ላይ የመድን ባላ መብቶች

ሐ. እንደ ወንጀል ና የወንጀል መፈፀም ተቋሚ በመሆን ብቻ

መ. በሌላ የተሳትፎ ደረጃ ካለ_____

7. የወንጀል ተጎጂዎችን የመድን መብት ለማስጠበቅ በመንግስት የተቋቋመ የገንዘብ ምንጭ አለን?

ሀ.አዎን ለ.የለም ሐ. አላዉቀዉም መ. ሌለ መልስ ካለ

8. በኢትዮጵያ የዓለም ዓቀፍ ወንጀል ተጎጂዎችን የመድን መብትን ለማስጠበቅ የሚያስችል ተቋማዊ ና ህጋዊ ማዕቀፍ አለን ?

ሀ.አዎን ለ.የለም ሐ. አላዉቀዉም መ. ሌለ መልስ ካለ

9. በኢትዮጵያ የዓለም ዓቀፍ ወንጀል ተጎጂዎች የመድን ክፍየ ወይም ካሳ ከወንጀሉ ዓይነት ና ከወንጀሉ ክብደት ጋር ተመጣጣኝነት አለዉን?

ሀ.አዎን ለ.አይደለም ሐ. አላዉቀዉም መ. ሌለ መልስ ካለ

10. ከአለም ዓቀፍ ወንጀል ጋር በተያያዘ በኢትዮጵያ ዉስጥ ችግር ወይም ተግዳሮት አለን?

ሀ.አዎን ለ.የለም ሐ. አላዉቀዉም መ. ሌለ መልስ ካለ

ክፍል ሁለት ፡ባዶ ቦታ ሙሉ

1) በኢትዮጵያ የዓለም ዓቀፍ ወንጀል ተጎጂዎችን የመድን መብትን ለማስጠበቅ የሚያስችል ተቋማዊ ና ህጋዊ ማዕቀፍ አለን?

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2) በኢትዮጵያ የዓለም አቀፍ ወንጀል ተጎጂዎችን የመድን መብት ለማስጠበቅ የሚያስችል የትኛዉ የህግ ዘርፍ ነዉ?

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3) ከአለም ዓቀፍ ወንጀል ጋር በተያያዘ በኢትዮጵያ ዉስጥ ችግር ወይም ተግዳሮት አለን?

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4) ተግዳሮች ካሉ ምን ምን ናቸዉ?

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ሀ.የህግ ተግዳሮት

. በእናት ወይም ዋና ህጎች ዉስጥ ያሉ ተግዳሮት

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በስነ-ስርዓት ህጎች ዉስጥ ያሉ ተግዳሮት

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በተቋም ሁሪያ ያሉ ተግዳሮት

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በተግባር ያሉ ተግዳሮት

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7) እርሰዎ አሁን በኢትዮጵያ ዉስጥ ያለዉ ተቋማዊ ና ህጋዊ ማዕቀፉ የአለም ዓቀፍ ወንጀል ተጎጂዎችን የመድን መብት ለማስጠበቅ በቂ ናቸዉ ብለዉ ያምናሉን?
