

JIMMA UNIVERSITY



COLLEGE OF LAW AND GOVERNANCE

Remedies for Victims of torture in Ethiopia: The Law and Practice

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Dedication

This thesis is dedicated to all innocent victims of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Ethiopia!!

Declaration

I, Anwar Hassen Ebrahim, hereby declare that this thesis is original and has never been presented in any other academic or else institution. Indeed, to the best of my knowledge and belief, I also declare that any information used in my study has been duly acknowledged.

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List of Abbreviations

ACHPR	African Charter on Human and People’s Rights
ACHPR	African Commission on Human and Peoples’ Rights
AHRE	Association for Human Rights in Ethiopia
AI	Amnesty International
AU	African Union
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CRC	Convention on Rights of Child
CSO	Civil Societies Organization
DOH	Department of Health
DOJ	Department of Justice
DSWD	Department of Social Welfare and Development
EBC	Ethiopian Broadcasting Corporation
ECHR	European Covenant on Human Rights
EHRC	Ethiopian Human Rights Commission
EIO	Ethiopian Institute of Ombudsman
EPRDF	Ethiopian People’s Revolutionary Democratic Front
ESCR	Economic, Social and Cultural Rights
EWLA	Ethiopian Women Lawyers Association
FBC	Fana Broadcasting Corporation
FDRE	Federal Democratic Republic of Ethiopia
HRCO	Human Rights Council
HOF	House of Federation
HPR	House of People’s Representatives
HRD	Human Rights Defenders

HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICG	International Crisis Group
ICJ	International Commission of Jurists
NGO	Non-Governmental Organization
NHRI	National Human Rights Institution
NHRAP	National Human Rights Action Plan
OAU	Organization of African Unity
OFC	Oromo Federalist Congress
OHCHR	Office of Higher Commissioner for Human Rights
OLF	Oromo Liberation Front
ONLF	Ogaden National Liberation Front
OPCAT	Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
PDRE	People's Democratic Republic of Ethiopia
SOE	State of Emergency
SP	Special Rapporteur
TCA	Torture Compensation Act
TPLF	Tigrayan People's Liberation Front
TVRA	Torture Victims Relief Act
UDHR	Universal Declaration of Human Rights
UN	United Nations
USA	United States of America

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Abstract

In the world we are living in though many countries made significant strides in combating torture, governments around the world are still using torture to extract information, force confessions, silence dissent or simply as a cruel form of punishment. However, freedom from torture is an absolute right and it is guaranteed under the supreme law of the land, the FDRE constitution as well as international and regional human rights instruments ratified by Ethiopia. In spite of its absolute nature it is among the rights most repeatedly violated throughout the country. Indeed, it officially revealed by the new prime minister in his speech to a parliament.

The impacts of torture are not limited to victims of torture it also affects the whole life of their families and the community at large. What makes the problem worse the available legal frameworks for remedies scattered in both criminal and civil legislations are in adequate and rationally incompatible with international standards and practices concerning remedies for victims of torture.

Despite the acknowledgment of the prime minister victims of torture in Ethiopia lacks appropriate, prompt and effective remedy. Based on the collected data from interviews with key informant officials/personalities, victims of torture and their families, and careful and critical analysis of the existing domestic laws and ratified human rights instruments as well as after reviewing related literatures and reports of human rights organizations the study finds out that there is lack of practical applicability of diverse types of remedies for victims of torture in our country due to different challenges that ranges from victims fear to lack of comprehensive legal frameworks.

Chapter one

1.1 Background of the Study

At the universal level, the right to domestic remedies was first included in article 8 of the Universal Declaration of Human Rights (UDHR), which states that “everyone has 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”¹. It was also incorporated in article 2(3) of the International Covenant on Civil and Political Rights (ICCPR)² and the convention against torture under article 14 provides that, Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible³.

The right to a domestic remedy is also guaranteed by the regional human rights treaties. For instance article 7(1)(a) of the African Charter on Human and Peoples’ Rights stipulates that every individual shall have “the right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force”⁴.

The FDRE constitution provides protection from cruel, inhuman or degrading treatment or punishment and it includes safeguards for persons in custody, including in pre-trial detention. Article 19 sets out that a person taken into custody must be brought before a court within 48 hours and informed, in a language they understand, of the reasons for their arrest. Article 21(2) states that detainees are entitled to have access to family members, a lawyer and a doctor. The Federal Police Commission Establishment Proclamation No.720/2011 also prohibits the use of

¹ Universal Declaration of Human Rights (GA Res 217A (III), 10 December 1948, A/810, article 8

² International Covenant on Civil and Political Rights(ICCPR), United Nations General Assembly Resolution 2200 A (XXI) of 16 December 1966, entered in to force 23 March 1976, article 2(3), ratified by Ethiopia on 11 June 1993. See the Ethiopia’s ratification record available at <http://www.chilot.me>07-20-12-bremss> accessed 1 March 2019

³ Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (here in after the Convention against Torture), United Nations General Assembly resolution 39/46 of 10 December 1984, entered in to force 26 June 1987, article 14, ratified by Ethiopia on 14 March 1994

⁴ African (Banjul) Charter on Human and Peoples’ rights, adopted on 27 June 1981, entered in to force on 21 October 1986, ratified by Ethiopia on 15 June 1998. See the ratification table available at, www.achpr.org>instruments>ratification

“inhumane or degrading treatment or act” by federal police officials.⁵ Similarly, Federal prisons proclamation 1174/2019 under article 32(2) prohibits degrading, inhumane and cruel treatment or from treatment that endangers health of a person.⁶ More importantly, the new Federal courts proclamation 1234/2021 under article 11(3) provides that “... the Federal High Court may render decision, judgment or order in order to protect justiciable human rights specified under chapter three of the Constitution”. And under sub article 4 “any person who has vested interest or sufficient reason may institute a suit before the Federal High Court to protect the rights of his own or others.”⁷

At the same time however, Ethiopian legislation contains significant gaps that weaken protections against torture and other ill-treatment. For instance, in 2010 the Committee against Torture raised concerns that the existing definition of “improper methods”⁸ in the 2004 Criminal Code fell short of the definition of torture under the Convention against Torture, and advised revisions in the code.⁹

Ethiopia is party to international and regional treaties that impose legal obligations regarding the treatment of detainees and the conduct of law enforcement personnel. These include the International Covenant on Civil and Political Rights (ICCPR),¹⁰ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)¹¹, and the African Charter on Human and Peoples’ Rights (ACHPR)¹². These treaties prohibit arbitrary arrest and detention, and the use of torture and other ill-treatment. They uphold the right of detainees to be held in humane conditions and treated with dignity. Detainees also have the right to due process and a fair trial, including the right not to be compelled to confess to guilt or testify against themselves.

⁵ Ethiopian Federal Police Commission Establishment Proclamation, Federal Negarit Gazeta, Proclamation No. 720/2011, 28 November 2011, article 24(1)

⁶ Federal Prison Proclamation, Federal Negarit Gazzeta, Proclamation No. 1174/2019, 17 February 2020, article 32(1)

⁷ Federal courts proclamation, Federal Negarit Gazeta, Proclamation No. 1234/2021, 26 April 2021, article 11(3) and 11(4)

⁸ Criminal Code of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, Proclamation No. 414/2004, 9 May 2005, article 424

⁹ UN Committee against Torture, ‘*Consideration of reports submitted by state parties under article 19 of the Convention, Concluding Observations of the Committee against Torture: Ethiopia*’, CAT/C/ETH/CO1, 20 January 2011, paragraph 9, <https://www.atlas-of-torture.org> accessed 1 March 2019

¹⁰ ICCPR, Supra note 2

¹¹ CAT Convention, supra note 3

¹² African (Banjul) Charter, supra note 4

However, despite the prohibition of torture under these laws, the FDRE government released a documentary¹³ and acknowledges that Ethiopian security forces tortured people in a speech to the parliament.¹⁴ Even though the Government officially admits crime of torture committed by its security officials it fails to provide an effective, prompt and appropriate remedy.¹⁵ Here, the central theme of this paper is what remedies are available for victims of torture under International Legal Frameworks and Explore the Legal and Practical gaps in Ethiopia to suggest possible solutions for intervention to the concerned bodies in order to enhance the enforcement of Human Rights of Victims of torture.

1.2 Literature Review

In Ethiopia there is no adequate literature that specifically addresses the remedies for victims of torture in our country context by taking in to consideration of the special needs of the victim. To begin from Seblewongel Tamiru, she address the issue of only compensation for victims of torture in the case of bodily injury and her study entitled “*Compensating Victims of torture in Ethiopia: the case of bodily injury in Anti-Terrorism proclamation*”¹⁶, and she reach on the conclusion that lack of practical applicability of the right to claim compensation. However, unlike her paper this study further explore other types of remedies for torture victims by taking in to considerations of the special needs of the victim itself and the society. In general terms, Kidus Meskele Ashine and Teketel Labena Tera, concludes that victims of human right violation do not have adequate recognition and are without sufficient legal mechanisms which provide for their treatment and reparation in the Ethiopian justice system.¹⁷ Similarly, different Alien scholars viewed remedies for violations of human rights and victims of torture¹⁸, however, none of them

¹³Yefitih sekoka(“*Agony of Justice*”), Ethiopia Broadcasting Corporation(EBC) , available at <https://borkena.com> last visited 12 July 2019

¹⁴Ethiopian Broadcasting Corporation (EBC), *Prime Minister Abiy Parliament Un Expected Speech*, 2 April 2018, <https://m.youtube.com/watch=9OnIE2ypcdw> accessed 6 September 2019 ; Awol K Allo, ‘Torture, State Terrorism and Ethiopia’s Transformation’, *AL Jazeera*(Doha, 23 June 2018)1

¹⁵ Maggie Fick, ‘As Forgiveness Sweeps Ethiopia, Some Wonder about Justice’, *Reuters* (Nairobi, 14 August 2018) <https://af.reuters.com> accessed 1 February 2019

¹⁶ Seblewongel Tamiru, “*Compensating Victims of torture in Ethiopia: the case of bodily injury in Anti-Terrorism proclamation*”, Addis Ababa University College of Law and Governance, 2019, un published, available at www.etd.aau.edu.et Last accessed on 8 January , 20223

¹⁷ Kidus Meskele Ashine and Teketel Labena Tera, ‘the Right to Reparation for Human Right Violation in Ethiopian Legal Framework’(2017)31(2422) *Journal of Poverty, Investment and Development* 1, 5

¹⁸ M Cherif Bassiouni, 'International Recognition of Victims' Rights' (2006) 6 *Human Rights Law Review* 203; Rachael E Schwartz, 'And Tomorrow? The Torture Victim Protection Act' (1994) 11 *Arizona Journal of International and ComparativeLaw* 271; Sonja B Starr, 'Rethinking Effective Remedies: Remedial Deterrence in

clearly explore the legal and practical gaps in redressing victims of torture in the Ethiopia context by taking in to considerations of the special needs of the victim. Moreover, the issue is so neglected by Ethiopian scholars despite its importance in making legal and practical sense of human rights and the government unexpected acknowledgment of grave state officials systemic acts of torture. This research therefore fills the literature gaps by exploring the legal and practical gaps through critical and careful analysis of the special concerns, needs, interests and sufferings of victims of torture pursuant to international human rights obligations.

1.3 Statement of the Problem

The ancient adage *ubi jus, ibi remedium* (where there is a right there is a remedy) is reflected in the importance given in international human rights law to the existence of effective remedies, which are seen as necessary in order to ensure the full enjoyment of other rights.¹⁹ Our legal system is characterized by shortcomings that may undermine protection against, and accountability and justice for torture.²⁰ These shortcomings are often due to the fact that our legislations such as criminal laws, does not adequately reflect international standards and best practices. The 2004 FDRE criminal code of Ethiopia criminalizes torture under article 424 of the code. However, this provision contain a definition of the use of improper methods which is more limited in scope than that is provided in the definition of torture under international convention hence the former cover only some of the purposes provided under article 1 of the CAT and applies only to acts committed in the performance of duties by public servants charged with the arrest, custody, supervision, escort, or interrogation of a person under suspicion, arrest, detention or summoned to appear before a curator serving a sentence.²¹ As a result, such laws are ill-suited

International Courts' (2008) 83 *New York University Law Review*, 693; Dinah Shelton, 'The right to reparations for acts of torture: what right, what remedies?' (2007) 17(2) *state of the art* 96; Thomas M. Antkowiak, 'Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond'(2008) 46 *Columbia Journal of Trans National Law*, 351; Dinah Shelton, *Remedies in International Human Rights Law*, Oxford University Press, 1999 (second edition, 2005); Jeevan Raj Sharma and Tobias Kelly, 'Monetary Compensation for Survivors of Torture: Some Lessons from Nepal'(2018) 10 *Journal of Human Rights Practice* 307; Godfrey M. Musila, 'The Right to an Effective Remedy under the African Charter on Human and Peoples Rights'(2006)6 *African Human Rights Law Journal* 442; including others else referenced in this thesis doesn't addressed the legal and practical gaps in regards of issues of remedies for victims of torture in our country context.

¹⁹ Dinah Shelton, 'The right to reparations for acts of torture: what right, what remedies?' (2007) 17(2) *state of the art* 96, 116

²⁰ Seblewongel Tamiru, *supra* note 16

²¹ See, The Committee Against Torture, *Consideration of reports submitted by state parties under article 19 of the convention*, Ethiopia, UN Convention Against Torture and other cruel, Inhuman or degrading treatment or punishment, CAT/C/ETH/1,1-19, November 2010, para.9

to address torture-specific concerns. Indeed, until the preparation of this paper, there is no cassation decision on the issue of remedies for victims of torture.

The right of torture victims to an effective remedy and rehabilitation is set out in article 14 of the Convention against Torture and recognized in a number of treaties and other sources, including jurisprudence.²² However our legislations do not provide for a definition of torture in line with article 1 of the Convention against Torture. This may result in inadequate domestic remedies and inevitably to impunity, which finally challenges an appropriate, effective and prompt right to reparation.

As international treaty bodies, particularly the Committee against Torture, have emphasized, states should enact legislation clearly setting out the right to reparation for victims of torture. Such legislation should comprise recognition of the right, specify the right-holders and duty-bearers provide for a range of reparation measures and identify a procedure through which torture victims can effectively claim and obtain reparation.²³ There should be legal remedy where there is a breach of a legal right.²⁴ As a result, the commission of torture is a clear breach of a legal right. Thus, if there exist a breach of a right then there should be a remedy.

However, in Ethiopia we have no an express recognition of constitutional provision of the right to an effective remedy and lacks detailed legislation in regards of redressing victims of torture in accordance with their specific concerns and needs. Recently, Federal courts proclamation 1234/2021 under article 11 creates a room so as to bring a suit before the Federal High Court in case of violation of the protected rights. However, lack of detailed legislations that regulates the issue of remedies for torture victims in accordance with their specific concerns and needs that specify the right-holders and duty-bearers and provide for a range of reparation measures though not conclusive is often an indication of a national system falling short of international standards.

International human rights law not only recognizes the individual human rights of every human being, it also puts an obligation on states to ensure, secure or guarantee the effective enjoyment

²² United Nations Committee against Torture, *Implementation of article 14 by States parties*(General Comment No 3, 2012), paragraph 38

²³ Ibid. paragraph 20

²⁴ Daniel Friedman, *Rights and Remedies, comparative remedies for breach of contract*(Hart publishing Oxford & Portland,Oregon,2005), page 8

of human rights with its jurisdiction²⁵. Actually, the practical implementation of human rights in Ethiopia till recently subjected to strong criticisms by different authors.²⁶ Nonetheless, Ethiopia's obligations under international human rights instruments in regards of redressing victims of torture are not exhaustively analyzed and viewed in the perspective of their special concerns, needs, interests and sufferings. In general, there is no exhaustive and comprehensive research done that explores whether the remedies for victims of torture are adequately recognized under the Ethiopian legal frame works and the practice as well. Therefore, this research is an attempt to fill this gap.

1.4 Objectives of the Study

1.4.1 General Objective

The overall objective of this research is to examine and assesses the Legal and practical challenges for victims of torture in Ethiopia in enjoying the right to an effective remedy.

1.4.2 Specific objectives

In identifying problems and analyzing issues, attempts will be made to achieve the following specific objectives:

- To discuss whether victims of torture have adequately recognized substantive rights to redress and reparation with in the current Legal frame work in accordance with their specific needs.
- To discuss the practical challenges in redressing victims of torture an appropriate, prompt and effective remedy.
- To clarify and explain how the existing Ethiopian legislations lacks international standards in redressing victims of torture.

1.5 Research Questions

²⁵ Livio Zilli(ed), *the right to remedy and reparation for gross human rights violations: a practitioners' guide*(International Commission of Jurists, 2018), page 19

²⁶ Kjetil Tronvoll, 'Human Rights Violations in Federal Ethiopia: When Ethnic Identity is a Political Stigma,(2008) 15 *International Journal on Minority and Group Rights* 49; Endalchachew Bayeh, 'Human Rights in Ethiopia: An Assessment on the Law and Practice of Women's Rights', in Kidus M. Ashine(et.al), supra note 17, page 4

The central question of the research is to discuss whether victims of torture have adequately recognized different types of remedies in the current Legal frame works and whether or not it enforced in practice. The specific questions that will be addressed under this are:

- Do victims of torture in Ethiopia practically enjoy the right to an effective remedy as enshrined in international standards?
- What are the challenges that impede victims of torture in Ethiopia from exercising their rights?
- Is there any Law that specifies the right holders and duty bearers?
- Is there any procedure through which torture victims can effectively claim and obtain an effective remedy?

1.6 Research Methodology

The approach adopted to undertake this research is qualitative. Qualitative approach employs different strategies of inquiry, methods of data collection, analysis and interpretation. It emphasizes the qualities of entities, process and meanings that are not experimentally examined or measured in terms of quantity, amount, frequency or intensity.²⁷ In order to accomplish the purposes of this research, both secondary and primary sources of information would be collected. Concerning primary sources, international, regional and domestic laws that deal with my study were reviewed. As far as secondary sources are concerned, books, journal articles, newspapers, organizational and media reports, and official documents would be taken as sources. To substantiate information collected from secondary sources, interviews had been conducted with key informant officials or personnel and victims of torture.

Interviews

As far as interview is concerned the researcher purposively selects the following officials or personalities:

Ministry of Justice: this office is highly mandated and concerned with the overall justice administration system in Ethiopia and a principal advisor and representative of the federal

²⁷ Gerald F. Hess, 'Qualitative Research on Legal Education: Studying Outstanding Law Teachers' (2014) 51(4) *Alberta Law Review* 925

government regarding law. Thus, an attempt made to get primary information from this office as well as I refer the Organized and Trans-National Crimes Department Public Prosecutors criminal accusations of high government Security and Law Enforcement Officials in the Federal High Court and First Instance Court.

Officials from the Ethiopian Human Rights Commission (EHRC): this institution is believed to be a direct role in the protection and promotion of human rights in Ethiopia. Therefore, the researcher interviewed the officials from this institution to get primary information from them as well as refers the reports and documents of the Commission.

Competitive (Opposition) political parties' leaders and Politicians: these groups were known in their high criticism of the Ethiopian criminal justice system and argue that their members and supporters were suffering torture. So, an attempt made to get primary information from them too. Hence, consulting all opposition political parties are practically impossible, the researcher purposively interviewed the officials of some opposition political parties having their own stands towards the Remedies for victims of Torture in the current Ethiopian Legal Frameworks and the practice as well.

Individuals released from prisons who were Victims of Torture and some of the family members of Victims of torture were interviewed.

Legal Practitioners: play a pivotal role in the protection and promotion of Human Rights. Thus, the researcher interviewed legal practitioners to get primary information from Advocates, Judges and Public Prosecutors.

Academicians from Addis Ababa University were also interviewed to substantiate the above primary and secondary sources. Addis Ababa University was selected due to its physical accessibility to the author of this work. To this end academicians were selected from those working on the topic related to criminal justice system and human rights hence they are expertise concerning my study.

Therefore, I used Purposive sampling in order to select sampling units so as to obtain a sample that appears to be representative as much as possible. To this end, I focused on relevant informants who can represent diverse interests and opinions. Finally, I employed qualitative

methods of data analysis. In effect, I carefully analyzed the data by identifying common ideas and themes within the responses and critically analyzed them in order to achieve the research objectives.

1.7 Scope of the Study

In general, this research is mainly about the legal and practical analysis of remedies for victims of torture in Ethiopia in light of international standards and practices. In effect, more efforts and time would be devoted to explore the remedies for victims of torture in the Ethiopian existing legal frameworks so as to clarify and explain the legal vacuum. Indeed, I critically examine the practical implementation of remedies for victims of torture in Ethiopia in the aftermath of government acknowledgement of systematic torture.

1.8 Significance of the Study

As has been stated, the study primarily explores the remedies for victims of torture in the present Ethiopian Legal Frameworks. It also further evaluates the extent to which rights of victims of torture are adequately recognized in our legal frameworks and enforced in practice. In line with this, the study will have the following specific significances:-

- It may provide concerned government officials and decision & policy makers relevant and research based information regarding the remedies for victims of torture and its implementation in Ethiopia,
- It may hopefully contribute for the understanding of the law makers as well as policy makers as to how the remedies for victims of torture in the present Ethiopian Legal Frameworks lacks international standards and the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law and CAT's General Comment.
- By pinpointing gaps in law as well as in practice, and putting the ways forward to deal with problems identified in the subject area, this work will serve some significance as it adds the literature on the topic. It may contribute in clarifying and explaining how the remedies for victims of torture in the present Ethiopian Legal Frameworks lack international standards.

1.9 Limitation of the Study

The author of this work has encountered dual limitations. The first limitation in the performance of this thesis is finance and time. As a result of financial problem the researcher was unable to contact those famous victims of torture in Ethiopia as many as possible who are residents in areas far from the capital city, Addis Ababa. Since time is short in addition to financial challenges and the researcher is obliged and expected to partially perform his Job it is difficult to practically assess human rights situations specifically victims of torture throughout the whole parts of the country. The second limitation is the reluctance of some key informants to give information. For example, among the purposively selected offices, the Federal Police Commission declined to give interviews and felt a sense of apprehension.

1.10 Organization of the Paper

The paper is organized in five chapters. Accordingly, chapter one provides general introduction and background of the study. The second chapter is about conceptual and legal frameworks for remedies of victims of torture. In this chapter an attempts would be made to see the general concepts of remedies, the notion and scope of victims of torture; and discussed the legal frameworks guaranteeing and regulating remedies of human rights violations more specifically, victims of torture at the international and regional context. Comparative reviews would be conducted to discuss the laws and practices of other countries in regards of remedies for victims of torture.

Chapter three devoted to overview the human rights situations in Ethiopia since 1991. Under this chapter an attempt would be made to assess the legal frameworks and enforcement of human rights in Ethiopia since the coming to power of the Ethiopian People's Revolutionary Democratic Front (EPRDF). Chapter four discussed and explores the Ethiopian legal frame works in regards of remedies for victims of torture and explains the nexus between implementation of remedies for victims of torture and human rights institutions as well as Law enforcement and justice institutions. Most importantly it would explain and clarify how the existing Ethiopian legislations lack international standards in redressing victims of torture. It also attempts to overview the practical implementation of remedies for victims of torture. The responses from interviews would be integrated here to identify and articulate the major

challenges and problems in redressing victims of torture. Finally, chapter five provides concluding remarks and proposed recommendations.

Chapter two

2. Conceptual and Legal Frameworks for Remedies of Victims of Torture

This chapter has the objective of defining and demarcating the dividing line between Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and discussing the scope of victims of torture and an attempt will be made to see the general concepts of the notion of remedies; and the legal frameworks for remedies of human rights violations at the global and regional level in general, and remedies for victims of torture in particular; and international and Regional Supervisory Mechanisms and Compliant Procedures for the Instruments Dealing With the Prohibition from Torture and other Cruel, human or Degrading Treatment or Punishment. To this end, first, the author of this study tried to discuss conceptual and legal frameworks by focusing on international human rights law.

Then, we will try to see specific international and regional supervisory mechanisms and compliant procedures for the instruments dealing with the Prohibition from Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment. Finally, the Nexus between remedies for Victims of Torture and the role of national human rights and justice institutions for the Protection of human rights would be highlighted. For the purpose of comparative analysis reviewing the Laws of Remedies for Victims of Torture in some selected countries as an example would have been made.

2.1 Conceptual Framework for Remedies of Victims of Torture

2.1.1 Definition of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

According to Black's law dictionary; torture is defined as, the infliction of intense pain to the body or mind to punish, to extract a confession or information, or to obtain sadistic pleasure.²⁸ One of the core human rights instruments dealing with torture that provides its definition is the United Nation Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The UN convention against Torture defines it under article 1 as,

²⁸ Bryan A. Garner(ed.), Black's Law Dictionary(8th ed., 2004), page 4648

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”²⁹

Many legal systems are characterized by shortcomings that undermine protection against, and accountability and justice for torture. These shortcomings are often due to the fact that unreformed ordinary legislation, such as criminal laws, does not adequately reflect international standards and best practices.³⁰ The very absence of a definition in national laws of what constitutes torture, which is often only prohibited generically in the constitution, frequently means that officials, legal practitioners and others lack a clear understanding of what constitutes torture, and what rights and obligations flow from the prohibition of torture. This is particularly the case where there is no national jurisprudence on the issue of torture. Finally, inadequate legislative frameworks contribute to impunity.³¹

Torture is recognized to be a reprehensible instrument of power used to weaken and break the will of the individual victim and to frighten whole communities into submission by creating a climate of fear.³² As explained by the European Court of Human Rights, torture is an extreme form of cruel, inhuman or degrading treatment.³³ Indeed, according to article 2 of the Inter American Convention to Prevent and Punish Torture, it defined as, “torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be

²⁹ The Convention against Torture, supra note 3, ratified by Ethiopia on March 14, 1994, article 1. See the Ethiopia’s ratification record available at <http://www.chilot.me/07-20-12-brems>

³⁰ Lutz Oette, Justice for Torture World Wide: Law, Practice and Agendas for Change (Redress: 2013)

³¹ Ibid.

³² Office of High Commissioner for Human Rights, *The Istanbul Protocol: Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, submitted to the United Nations High Commissioner for Human Rights 9 August 1999, page 1, <https://www.ohchr.org> accessed 29 August 2019

³³ European Court of Human Rights, Selmouni Vs. France (Application No. 25803/94), Judgment 28 July 1999, paragraph 91-105, www.jus.unitn.it accessed 7 September 2019

understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.”³⁴

When we see the definition of torture in Ethiopia, the revised Criminal Code poorly define it under article 424 in the context of the use of improper method.³⁵ Even if Ethiopia adopt a criminal offence of torture so as to comply with article 1 of the Convention against Torture, the actual definition used in our criminal code often lacks the requirements of the Convention against Torture. Thus, in Ethiopia’s revised Criminal Code, the definition of torture is seemingly confined to acts done by public officials in a custodial situation, which excludes acts committed in other contexts. This may create a gap and result in torture being displaced to places other than detention facilities. Indeed, it doesn’t cover all forms of liability stipulated in article 1 of the Convention against Torture excluding in particular the element of “acquiescence”.

Unlike torture, acts of cruel, inhuman or degrading treatment or punishment are not expressly defined by the Convention against Torture or other instruments. In their literal dictionary meaning “Cruelty” means the intentional and malicious infliction of mental or physical suffering on a living creature, especially a human; abusive treatment; outrage.³⁶ “Inhuman” means not worthy of or conforming to the needs of human beings; lacking the quality of kindness; barbarous, savage.³⁷ “Degrading” means that degrades; that causes human character to become degraded (reduced for below ordinary standards of civilized life or conduct) or debased.³⁸

Degrading treatment or punishment may involve pain or suffering less severe than for torture or cruel or inhuman treatment or punishment and will usually involve humiliation and debasement of the victim. Degrading treatment or punishment is that which is said to arouse in its victims

³⁴ Inter American Convention to Prevent and Punish Torture, adopted at the 15th regular session of the General Assembly of the Organization of American States at Cartagena, Colombia, and opened for signature, ratification and accession on 9 December 1985 ,entered into force on 28 February 1987, Article 2

³⁵ Criminal Code of the Federal Democratic Republic of Ethiopia, supra note 8, article 424

³⁶ Bryan A. Garner, supra note 26, page 1140

³⁷ Philip B. Gove(ed), Webster’s Third New International Dictionary of English Language, G & c Merriam Company, Massachusetts, 1981

³⁸ Ibid.

feeling of fear, anguish and inferiority, capable of humiliating and debasing them. This has also been described as involving treatment such would to breaking down the physical or moral resistance of the victim, or as driving the victim to act against his will or conscience.³⁹

What distinguishes torture from other forms of ill-treatment, which includes other cruel, inhuman or degrading treatment or punishment and outrages upon personal dignity, is therefore, the purposive aspect. Cruel, Inhuman or degrading treatment or punishment therefore refers to ill treatment that doesn't have to be inflicted for a specific purpose. Exposing a person to conditions reasonably believed to constitute ill treatment will entail responsibility for its inflictions. Unlike torture, there is no requirement that these acts be inflicted for a specific purpose stipulated under article 1 of the Convention against Torture in cases of other cruel, inhuman or degrading treatment or punishment.⁴⁰

2.1.2 The Notion and scope of Victims of Torture

According to United Nations Committee against Torture, General Comment No. 3, Victims of torture are persons who have 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 violations of the Convention. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term "victim" also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.⁴¹

In broader scope, according to paragraph 1 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the term "victims means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions

³⁹Aisling Reidy, *The prohibition of Torture, a guide to implementation of article 3 of the European convention on human rights*, Human Rights Hand Books, No.6, page 16

⁴⁰ Polona Tepina(ed.), *The Torture Reporting Handbook: How to document and respond to allegations of torture within the international system for the protection of human rights*, Human Rights Centre(University of Essex, 2nd edition, 2015), see page 21-24; Fole Conor, *Combating Torture: A manual for Judge and Prosecutors*, Human Rights Centre(University of Essex, 2006), page 12

⁴¹ United Nations Committee against Torture, General Comment No. 3, supra note 22, Paragraph 3.

that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power”⁴². This definition covers many categories of harm sustained by people as a consequence of criminal conduct, ranging from physical and psychological injury to financial or other forms of damage to their rights, irrespective of whether the injury or damage concerned was the result of positive conduct or a failure to act and it reaches beyond those crimes specifically regulated under the Convention against Torture.

Quite similarly with United Nations Committee against Torture, General Comment No. 3, according to paragraph 2 of the Declaration a person may be considered a victim “regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim”⁴³. According to the same paragraph, the term ‘victim’ also includes, where appropriate, the immediate family or dependents of the direct victims and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.⁴⁴

Surprisingly and reasonably unexpected from its name the European Convention on the Compensation of Victims of Violent Crimes contains no explicit definition of the notion of “victim” and, as made clear by the title, its framework is somewhat limited in that it obliges the State to provide only compensation to victims of crime when “compensation is not fully available from other sources”⁴⁵. Moreover, only the following two categories of victims may qualify for compensation, “*those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence*”, and “*the dependents of persons who have died as a result of such crime*”.⁴⁶ However, a victim for the purposes of the Convention may be “*a person who has been injured or killed when trying to prevent an offence or when helping the police to prevent the offence, apprehend the culprit or help the victim*”⁴⁷.

⁴² United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly Resolution 40/34 of 29 November 1985, paragraph 1

⁴³ Ibid, paragraph 2

⁴⁴ Ibid.

⁴⁵ European Convention on the Compensation of Victims of Violent Crimes, Council of Europe, European treaty series No. 116, Strasbourg, 24 XI 1983, <http://www.coe.int> accessed 29 August 2019

⁴⁶ Ibid. article 2 (1) (a) and (b)

⁴⁷ Explanatory Report to European Convention on the Compensation of Victims of Violent Crimes, Council of Europe, European treaty series No. 116, Strasbourg, 24 XI 1983, page 5 & 6, paragraph 20, <https://rm.coe.int> accessed 29 August 2019

It is important to note that the impact on victims of crime is not necessarily limited to physical injury and loss of property, but may also include “loss of time in obtaining financial redress and replacing damaged goods”⁴⁸. Moreover, at the psychological level, victims may be afflicted by a sense of disbelief, a reaction that may be followed by a state of shock, disorientation or even fear and anger.⁴⁹ The widespread practice of torture in our country as recognized by the FDRE government has resulted in a large number of victims from diverse backgrounds. While it is difficult to generalize, and therefore correct to say that anyone may become a victim of torture, it is arguably possible to conclude that certain categories of persons are at a comparatively greater risk.

2.1.3 The Legal Landscape of Remedies

2.1.3.1 Reviewing Conceptual Understanding of Remedy, Reparation & Redress

The connection between the procedure by which reparation is sought and the ultimate award is understood as indivisible, and together the concepts of ‘effective remedy’ and ‘reparation’ have been described as redress.⁵⁰ An effective remedy is a crucial component of a right, as it provides victims with the procedure by which they can assert their rights and seek reparation for the violation. All human rights treaties and instruments require, either explicitly or implicitly, States parties to provide remedies under national law.⁵¹

The UN Basic Principles and Guidelines explain the obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as giving rise to a duty, inter alia, to provide remedies that include the right to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.⁵² The procedural remedy has been understood

⁴⁸ United Nations Norms and Guidelines in Crime Prevention and Criminal Justice: Implementation and Priorities for Further Standard-Setting, Annex, *Guide for Practitioners Regarding the Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN doc. A/CONF.144/20, page 3, paragraph 5, <https://www.unodc.org> accessed 30 August 2019

⁴⁹ Ibid. paragraph 6

⁵⁰ United Nations Committee against Torture, General Comment No 3, supra note 22, paragraph 2

⁵¹ M. Cherif Bassiouni, ‘International Recognition of Victims’ Rights’ (2006) 6 *Human Rights Law Review* 203

⁵² 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, General Assembly Resolution 60/147, A/RES/60/147, adopted on 16 December 2005, paragraph 3

to require States to afford effective access to fair processes in which arguable claims can be determined.

According to Dinah Shelton, the concept of remedy is comprised of substantive and procedural elements, and both are universally guaranteed.⁵³ The procedural component refers to a victim's access to judicial, administrative, or other appropriate authorities, so that his or her claim of a rights violation may be fairly heard and decided. The substantive aspect, on the other hand, constitutes the result of those proceedings that is, the redress or relief afforded to the successful claimant.⁵⁴ Further, Dinah Shelton elaborated that, in all legal systems, the one who wrongfully injures another is held responsible for redressing the injury caused. Thus for him, the right to a remedy comprises two aspects, on the one hand, the procedural right of access to justice and, on the other hand, the substantive right to redress for injury suffered because of an act or acts committed in violation of rights contained in national or international law.⁵⁵

For Thomas M. Antkowiak, reparative approaches that include only compensation and declarative relief are not only insufficient in extremely bad cases but they are also inadequate, inefficient, and even unwanted in many other scenarios of rights abuse. He strongly supports a remedial model that emphasizes the restorative measures of satisfaction and rehabilitation, as well as general assurances of non-repetition, in response to all human rights violations. Indeed, he proposes a participative methodology consisting in procedural reforms so as to give special considerations in deciding remedies more precisely to a victim's situation and necessities.⁵⁶

Similarly, Jeevan Raj Sharma and Tobias Kelly argues that, monetary compensation alone represents only a very limited way of providing redress to survivors, and is usually seen as standing alongside the right to rehabilitation, public apologies, collective reparations, and the improved provision of services, among other things.⁵⁷ It is a general principle of law that the

⁵³ Dinah Shelton, *supra* note 18, page , 109

⁵⁴ See generally, UN Basic Principles and Guidelines, *supra* note 52 and United Nations Committee against Torture, General Comment No. 3, *supra* note 22

⁵⁵ Dinah Shelton, *supra* note 18

⁵⁶ Thomas M. Antkowiak, 'Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond' (2008) 46 *Columbia Journal of Trans National Law*, 351, 355

⁵⁷ Jeevan Raj Sharma and Tobias Kelly, 'Monetary Compensation for Survivors of Torture: Some Lessons from Nepal' (2018) 10 *Journal of Human Rights Practice* 307, 308

breach of an obligation gives rise to an obligation to remedy the violation.⁵⁸ As a consequence, victims of torture have a corresponding right to reparation. This right comprises the right to effective procedural remedies and to substantive reparation.⁵⁹

Remedies available at the national level may include fundamental rights proceedings, in particular constitutional remedies, criminal and civil proceedings, recourse to national human rights institutions and/or ombudsman institutions as well as administrative and disciplinary proceedings. It is not sufficient that a remedy exists in theory but it must be effective in practice as well as in law. This means that it should be accessible; capable of redressing the violation and that its exercise is not unjustifiably impeded by national authorities.⁶⁰ In similar vein, according to the UN Basic Principles and Guidelines, Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to an equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; Access to relevant information concerning violations and reparation mechanisms.⁶¹

The Human Rights Committee adopted a General Comment entitled "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant," concerning Article 2.⁶² As the overarching framework of state obligations in the Covenant, Article 2 imposes both positive and negative obligations on the States Parties, including an obligation to provide redress for violations committed by private parties as well as state agents. On the procedural side, the Comment notes the importance attached "to States Parties" establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law."⁶³

Administrative mechanisms are required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial

⁵⁸ Dinah Shelton, *Remedies in International Human Rights Law*, Oxford University Press, 1999 (second edition, 2005)

⁵⁹ See for instance article 14 of the Convention against Torture and article 2 (3) in conjunction with article 7 of the ICCPR, *supra* note 8; See also, Redress, An overview of universal and national human rights instruments recognizing the right to an effective remedy, A Sourcebook for Victims of Torture and other Violations of Human Rights and International Humanitarian Law, March 2003

⁶⁰ European Court of Human Rights, *Aksoy vs. Turkey*, Application No. 21987/93, Judgment 18 December 1996, paragraph 90-98, <https://www.dipblico.org> accessed 7 September 2019

⁶¹ UN Basic Principles and Guidelines, *supra* note 52, Paragraph 11

⁶² UN Human Rights Committee, General Comment No. 31[80], *the Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, adopted on 29 March 2004

⁶³ *Ibid.* paragraph 15-20

bodies. “A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.”⁶⁴ Concerning substantive redress, the Comment affirmed that Article 2(3) requires states parties to make reparation to individuals whose rights have been violated. Otherwise, the obligation to provide an effective remedy is not discharged.⁶⁵

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power contains broad remedial guarantees for those who suffer pecuniary losses, physical or mental harm, and substantial impairment of their fundamental rights through acts or omissions, including abuse of power. Victims are entitled to redress and to be informed of their right to seek redress. Victims of public officials or other agents acting in an official or quasi-official capacity in violation of national criminal laws should receive restitution from the responsible state. Abuse of power that is not criminal under national law but that violates internationally recognized norms relating to human rights should be sanctioned and remedies provided, including restitution and/or compensation, and all necessary material, medical, psychological, and social assistance and support.⁶⁶

Therefore, it is clearly accepted that the right to a remedy comprises two aspects, on the one hand, the procedural right of access to justice and, on the other hand, the substantive right to redress for injury suffered because of an act or acts committed in violation of rights contained in national or international law. Hence, access to justice is one of the core human rights that is fundamental to ensure full protection of other rights, by invoking the right of access to justice victims may claim in domestic and international tribunals their right to reparation for the violated right. On the procedural side, the attributes of an effective remedy include the institutional independence of the remedial body from the authority responsible for the violation, the ability to invoke the guaranteed right, procedural fairness, the capability of the remedial body to afford redress, and effectiveness in fact.⁶⁷ This Article focuses on the issue of appropriate, effective and prompt remedy for victims of torture by focusing on the atrocious practices of torture by intelligent and security officials of the FDRE government. The principal international and

⁶⁴ Ibid. paragraph 18

⁶⁵ Ibid. paragraph 20

⁶⁶ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, *supra* note 42, see paragraph 4-8

⁶⁷ See generally, UN Basic Principles and Guidelines, *supra* note 52 and United Nations Committee against Torture, General Comment No. 3, *supra* note 22

regional human rights treaties all demand an effective remedy or recourse; however, they do not offer specific guidance as to how states should undertake to repair violations of any character. We will discuss the substantive side in this chapter in detail.

2.1.3.2 The Concept of Remedies in International Human Rights Law

The ancient adage *ubi jus, ibi remedium* (where there is a right there is a remedy) is reflected in the importance given in international human rights law to the existence of effective remedies, which are seen as necessary in order to ensure the full enjoyment of other rights.⁶⁸ The accountability of governments and other entities, as well as the availability of a remedy in cases of a violation, are indispensable elements of international human rights law.⁶⁹ One of the bedrock principles of contemporary international human rights law is that victims of human rights have a right to an effective remedy.⁷⁰

The right to a remedy entitles a right holder to seek remedy for a violation of his/her right. This right to seek and secure an effective remedy is covered under multilateral human rights instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and also expressed in regional mechanisms such as the European Convention on Human Rights, the Inter-American Convention on Human Rights and the Banjul Charter. We will discuss on it in detail.

The status of the victim within international law has undergone a great transformation over the past few decades.⁷¹ Whereas, it is disputed that the individual's right to a remedy for state abuses has attained the rank of customary international law⁷², this right is expressly guaranteed by global and regional human rights treaties. Therefore, state parties to these treaties that have violated human rights of individuals within their jurisdiction are required to provide such persons with an appropriate, effective and prompt remedy.

⁶⁸ Dinah Shelton, *supra* note 18, page, 116

⁶⁹ Phillip Alston and Ryan Goodman, *International Human Rights*(Oxford University Press, 1st ed., 2013)

⁷⁰ Sonja B. Starr, "Rethinking Effective remedies: Remedial Deterrence in International Courts"(2008) 83 *New York University Law Review*, University of Maryland Legal Studies Research paper, page 693
<http://ssrn.com/abstract=1270045> accessed on 17 August 2019

⁷¹ Thomas M. Antkowiak, *Supra* note 56

⁷² *Ibid.* page 356

According to Dinah Shelton (as he repeatedly wrote on it) and Godfrey M. Musila, the word “remedies” are composed of two separate concepts, the first one being procedural and the second substantive.⁷³ Remedies in the first sense are the processes by which arguable claims of human rights violations are heard and decided, whether by courts, administrative agencies, or other competent authorities while the second notion of remedies refers to the outcome of the proceedings and the relief afforded to the successful claimant.⁷⁴ And thus, remedies are the means by which a right is enforced or the violation of a right is prevented, redressed or compensated.⁷⁵

In international and national law, other terms are usually used to address the two aspects of remedies; partially “remedies” has no exact equivalent in French and other official UN languages.⁷⁶ The different terms that are selected may be interpreted in several ways by international bodies, national judges, and authors.⁷⁷ For instance, Reparation is the most commonly used term in the law of state responsibility in the context of inter-state claims. It generally refers to the different ways by which a state may repair the consequences of a breach of international law for which it is responsible and may include all of the acts which also serve to redress.⁷⁸

Reference is made in human rights instruments to the obligation of states to provide effective remedies for human rights violations and thus redress is the terminology most commonly applied in literature and national law to refer to the substantive remedies afforded to victims of violations.⁷⁹ The obligation to afford remedies for violations of human rights requires the existence of remedial institutions and procedures to which victims may have access.⁸⁰ The prevalence of access to justice does imply that the procedures are effective and capable of redressing the harm that was inflicted.⁸¹ Finally, as Dina Shelton, the author of the prominent

⁷³ Dinah Shelton, *Remedies in International Human Rights Law* (Oxford University Press, 2nd ed., 2005) page 7; Godfrey M. Musila, ‘The Right to an Effective Remedy under the African Charter on Human and Peoples Rights’ (2006) 6 *African Human Rights Law Journal* 442, page 445-447

⁷⁴ *Ibid.*

⁷⁵ Bryan A. Garner (ed.), *Black’s Law Dictionary* (8th ed. 2004), page 4041 & 4042

⁷⁶ Dinah Shelton, *supra* note 73, page 7

⁷⁷ S.L. Hassdijk, ‘The Lack of Uniformity in the Terminology of the International Law of Remedies’ (1992) 5 *Lieden Journal of International Law*, page 245 in Dinah Shelton *supra* note 73, page 7

⁷⁸ Dinah Shelton, *supra* note 73, page 8

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.* Page 9

book on remedies in human rights law repeatedly explains and the author of this paper completely agreed that, rights without remedies are ineffectual, rendering the government's duty to respect such rights to the point of illusion.⁸²The conceptual definition adopted for this research is remedies for victims of torture which ranges from equal and effective access to justice to different modalities of reparation mechanisms.

2.2 Legal Frameworks for Remedies of Victims of Torture

As discussed in detail in the earlier section, the legal duty to provide domestic remedies for the alleged victims is inherent in the general duty of the state to provide effective human rights protection. Unless, an individual has an effective right to have recourse to independent and impartial courts or administrative authorities at the national level for the purpose of remedying an alleged human rights violation, the true enjoyment of human rights will remain illusory. In this section we will discuss the legal frameworks for remedies of human rights violations in general and remedies for victims of torture in particular at the global and regional level.

2.2.1 Remedies For Human Rights Violations: Brief Overview

2.2.1.1 International Legal Frameworks

At the universal level, the right to domestic remedies was first included in article 8 of the Universal Declaration of Human Rights (UDHR), which states that “everyone has 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”. It was also incorporated in article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), pursuant to which each State party to the Covenant undertakes,

“A. To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

B. To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

⁸² Ibid. page 8

C. To ensure that the competent authorities shall enforce such remedies when granted.”⁸³

It follows from the clear terms of this provision that the remedies available must be effective and that their enforcement must be ensured by the competent authorities. Although remedies must be available for all alleged violations of the rights guaranteed by the Covenant, the need for available, effective, independent and impartial remedies is particularly urgent for people deprived of their liberty. In this regard, the Human Rights Committee has therefore emphasized the need for effective guarantees and remedies for detained persons in respect of all acts prohibited by article 7 of the Covenant, namely torture and cruel, inhuman and degrading treatment or punishment. In their periodic reports States parties should, for instance, “indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by article 7 as well as appropriate redress”.⁸⁴

Further, the Committee noted that, the right to bring complaints against ill-treatment, as prohibited by article 7, must be recognized in the domestic law and the complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective⁸⁵.

In order to “respect and ensure” the rights provided by the ICCPR, the Human Rights Committee has observed that States must prevent not only abuses of Covenant rights by agents of the State, but also violations caused by “permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”⁸⁶ Those obligations are of “immediate effect” with respect to all Covenant rights.⁸⁷ When investigations reveal violations of the Covenant, the Human Rights Committee has further stressed the importance of “guarantees of non-repetition and changes in relevant laws and practices, as well as the bringing to justice of perpetrators of human rights violations.”⁸⁸

⁸³ ICCPR, *supra* note 2, article 2(3)

⁸⁴ United Nations Human Rights Committee, General Comment No. 20, *article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, HRI/GEN/1/Rev.9 (Vol. I), adopted 10 March 1992, paragraph 14

⁸⁵ *Ibid.*

⁸⁶ Human Rights Committee, General Comment No. 31, *the nature of the general legal obligation imposed on State parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, 26 May 2004, paragraph 8

⁸⁷ *Ibid.* paragraph 5

⁸⁸ *Ibid.* paragraph 16

Failure to investigate and prosecute those responsible, whether for domestic crimes or human rights abuses, may amount to a new and separate violation of the Covenant by the State.⁸⁹

Likewise, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), obligates States in clear terms to criminalize, investigate, prosecute and provide redress (including effective remedies and reparations)⁹⁰ for torture or other cruel, inhuman or degrading treatment or punishment, whether committed by State officials or private actors.⁹¹ Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires each State party to ensure,

*“That any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”*⁹²

Finally, the convention against torture under article 14 provides that, “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.”⁹³

In similar vein, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) also imposes a duty on States parties to provide “effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate a person’s human rights and fundamental freedoms contrary to this Convention”⁹⁴.

⁸⁹ Ibid. paragraph 18

⁹⁰The Convention against Torture, supra note 3, see, article 4,12, 13 & 14

⁹¹ Committee against Torture, General Comment No. 2, *Implementation of Article 2 by States Parties*, CAT/C/GC/2, 24 January 2008, paragraph 7 and 18

⁹² The Convention against Torture, supra note 3, article 13

⁹³ Ibid. article 14

⁹⁴ International Convention on the Elimination of All Forms of Racial Discrimination(CERD), adopted by the UN General Assembly Resolution 2106 A (xx) of 21 December 1965 at New York, opened for signature, ratification and accession on 7 March 1966, entered into force on 4 January 1969, article 6

Under article 2(c) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the States parties undertake “to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination”⁹⁵.

Lastly, it is important to note in this context that the question of effective remedies for human rights violations was also dealt with in Part I, paragraph 27, of the Vienna Declaration and Programme of Action, in which the participating States agreed by consensus that,

*“Every State should provide an effective frame work of remedies to redress human rights grievances or violations. The administration of justice including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development.”*⁹⁶

2.2.1.2 Regional Legal Frameworks

The right to a domestic remedy is also guaranteed by the regional human rights treaties. Article 7(1)(a) of the African Charter on Human and Peoples’ Rights stipulates that every individual shall have “the right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force”⁹⁷.

Indeed, article 25 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa in regards of remedies provides that,

*“States Parties shall undertake to: a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognized, have been violated; b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.”*⁹⁸

⁹⁵ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the UN General Assembly Resolution 34/180 of December 1979 at New York, opened for signature, ratification and accession on 18 December 1979, entered in to force on 3 September 1981, article 2(c)

⁹⁶ Vienna Declaration and Programme of Action, adopted by 171 countries participating in the World Conference on Human Rights, held in Vienna from 14 June until 25 June 1993, UN doc. A/CONF 156 /53 , paragraph 27

⁹⁷ Banjul Charter, supra note 4, article 7/1(a)

⁹⁸ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003, article 25

The African Commission of Human and Peoples' Rights has accepted the principle of reparations. In spite of an absence of express authority in the African Charter on Human and Peoples' Rights or in its own rules of procedure, it has been developing a practice of providing remedies, including declaratory relief, compensation and restitution.⁹⁹ The Protocol establishing a Court to the Charter system, does stipulate in Article 27 that if the Court finds that there has been violation of human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation. Indeed, in cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.¹⁰⁰

In 2002, the African Commission adopted the Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines). The Robben Island Guidelines outline under three main headings the State obligations to prohibit and prevent torture, and, in part III, to provide reparation to victims of torture and ill-treatment. The obligation to provide reparation exists regardless of whether a successful criminal prosecution has been brought. The Robben Island Guidelines also urge States to ensure that all victims of torture and their dependents are offered appropriate medical care, have access to appropriate social and medical rehabilitation, and are provided with appropriate levels of compensation and support. These Guidelines specify that direct victims, as well as their family members and communities may also be considered victims for the purposes of reparation.¹⁰¹ Article 50 reads as follows,

“The obligation upon the State to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought. Thus, all States should ensure that all victims of torture and their dependents are: Offered appropriate medical care; Have access to

⁹⁹ Gino J. Naldi, 'Reparation in the Practice of the African Commission on Human and People's Rights'(2011) 14 *Leiden Journal of International Law* 682, 685

¹⁰⁰ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, adopted by the 34th Ordinary Session of the Assembly of Heads of State and Government of the AU, Ouagadougou, Burkina Faso, 10 June 1998 (OAU Doc. OAU/LEG/MIN/AFCHPR/PROT.1 rev.2) ,entered into force 25 January 2004, article 27

¹⁰¹ African Commission, Resolution on Guidelines and measures for the prohibition and prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, October 2002, <http://www.achpr.org/files/sessions/32nd/resolution/61/achpr32-roben-island-guidelines-eng.pdf> , accessed 30 August 2019

appropriate social and medical rehabilitation; Provided with appropriate levels of compensation and support; In addition there should also be recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims.”¹⁰²

Article 25 of the American Convention on Human Rights (‘Pact of San Jose’) concerning the right to judicial protection reads as follows,

1. “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, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
 - a) To ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
 - b) To develop the possibilities of judicial remedy; and
 - c) To ensure that the competent authorities shall enforce such remedies when granted.”¹⁰³

Quite importantly, article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, also spells out States parties’ duties to provide help and remedies for women subjected to violence, for instance the establishment of “fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures”¹⁰⁴. It further imposes an obligation on States parties to establish “the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies”¹⁰⁵.

Likewise, article 9 of Inter-American Convention to Prevent and Punish Torture provides that, “The States Parties undertake to incorporate into their national laws regulations guaranteeing

¹⁰² Ibid. article 50

¹⁰³ American Convention on Human Rights, adopted by the Inter-American Specialized Conference on Human Rights on 22 November 1969 at San José, entered into force on 18 July 1978, article 25

¹⁰⁴ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (‘Convention of Belem do Para’), adopted at the 24th regular session of the General Assembly of the Organization of American States at Belem do Para, Brazil, and opened for signature, ratification and accession on 9 June 1994, entered into force on 5 March 1995, article 7(f)

¹⁰⁵ Ibid. article 7(g)

suitable compensation for victims of torture. None of the provisions of this article shall affect the right to receive compensation that the victim or other persons may have by virtue of existing national legislation.”¹⁰⁶

In similar fashion, article 13 of the European Convention on Human Rights stipulates that,

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”¹⁰⁷

Lastly, Article 47 of Charter of Fundamental Rights of the European Union (Charter of Nice) in regards of the right to an effective remedy and to a fair trial provides that,

*“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.”*¹⁰⁸

To conclude, the legal duty under international and regional laws to provide effective human rights protection comprises the obligation of the state to ensure that effective domestic remedies are available for victims of human rights violations in general and victims of torture in particular. This means that, it is not sufficient for a remedy to be available under a country’s constitution or other subordinate legislations. Rather, it must exist in practice and the state should work in making practical sense of remedies for victims of human rights violations. Moreover, to be able to provide effective remedies the authorities concerned including courts must be competent, independent and impartial. In the next section we will specifically see the remedies for victims of torture from the perspective of the Victim itself and the society in general.

¹⁰⁶ Inter-American Convention to Prevent and Punish Torture, adopted at the 15th regular session of the General Assembly of the Organization of American States at Cartagena de Indias, Colombia, and opened for signature, ratification and accession on 9 December 1985, entered into force on 28 February 1987, article 9

¹⁰⁷ European Convention on the Protection of Human Rights and Fundamental Freedoms, signed by Members of the Council of Europe on 4 November 1950 at Rome, opened for signature and ratification on 4 November 1950, entered into force on 3 September 1953, article 13

¹⁰⁸ Charter of Fundamental Rights of the European Union (Charter of Nice), adopted by the European Parliament, the European Council and the European Commission in Nice on 7 December 2000, article 47

2.2.2 Remedies For Victims of Torture

2.2.2.1 Victim-centered Remedies

2.2.2.1.1 Restitution

Restitution is a form of redress designed to re-establish the victim's situation before the violation of the Convention was committed, taking into consideration the specificities of each case.¹⁰⁹ The preventive obligations under the Convention require States parties to ensure that a victim receiving such restitution is not placed in a position where he or she is at risk of repetition of torture or ill-treatment. In certain cases, the victim may consider that restitution is not possible due to the nature of the violation; however the State shall provide the victim with full access to redress. For restitution to be effective, efforts should be made to address any structural causes of the violation, including any kind of discrimination related to, for example, gender, sexual orientation, disability, political or other opinion, ethnicity, age and religion, and all other grounds of discrimination.¹¹⁰

Thus, restitution should as far as possible restore the victim to the original situation before the violation occurred. This may include, inter alia, the restoration of liberty, identity or citizenship, the return to one's place of residence or the restoration of employment or return of property.¹¹¹

2.2.2.1.2 Compensation

The Committee emphasizes that monetary compensation alone may not be sufficient redress for a victim of torture and ill-treatment. It further affirms that the provision of monetary compensation only is inadequate for a State party to comply with its obligations under article 14.¹¹² The right to prompt, fair and adequate compensation for torture or ill-treatment under article 14 is multi-layered and compensation awarded to a victim should be sufficient to compensate for any economically assessable damage resulting from torture or ill-treatment, whether pecuniary or non-pecuniary. This may include: reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; pecuniary and non-pecuniary damage resulting from the

¹⁰⁹ The United Nations Committee against Torture, General Comment No. 3, supra note 22, paragraph 8

¹¹⁰ Ibid.

¹¹¹ See also UN Basic Principles and Guidelines, supra note 52, paragraph 19

¹¹² The United Nations Committee, General Comment No. 3 supra notes 22, paragraph 9

physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the torture or ill-treatment; and lost opportunities such as employment and education. In addition, adequate compensation awarded by States parties to a victim of torture or ill-treatment should provide for legal or specialist assistance, and other costs associated with bringing a claim for redress.¹¹³ Thus, the State should take steps as much as possible to rehabilitate the victims in the available resources.

Indeed, compensation should be understood as financial compensation which should be provided for any economically assessable damage resulting from a specific violation of one's rights, such as, inter alia, physical or mental harm, material damages and loss of earnings, moral damages or lost opportunities, including employment or education.

2.2.2.1.3 Rehabilitation

The Committee affirms that the provision of means for as full rehabilitation as possible for anyone who has suffered harm as a result of a violation of the Convention should be holistic and include medical and psychological care as well as legal and social services. Rehabilitation, for the purposes of this general comment NO.3, refers to the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment.¹¹⁴

Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.¹¹⁵ The Committee emphasizes that the obligation of States parties to provide the means for "as full rehabilitation as possible" refers to the need to restore and repair the harm suffered by a victim whose life situation, including dignity, health and self-sufficiency may never be fully recovered

¹¹³ Ibid, paragraph 10

¹¹⁴ Ibid, paragraph 11

¹¹⁵ Ibid.

as a result of the pervasive effect of torture. Further, the committee affirms that the obligation does not relate to the available resources of States parties and may not be postponed.¹¹⁶

In order to fulfill its obligations to provide a victim of torture or ill-treatment with the means for as full rehabilitation as possible, each State party should adopt a long-term, integrated approach and ensure that specialist services for victims of torture or ill-treatment are available, appropriate and readily accessible. These should include: a procedure for the assessment and evaluation of individuals' therapeutic and other needs, based on, inter alia, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and may include a wide range of inter-disciplinary measures, such as medical, physical and psychological rehabilitative services; re-integrative and social services; community and family-oriented assistance and services; vocational training; education etc.¹¹⁷

A holistic approach to rehabilitation which also takes into consideration the strength and resilience of the victim is of utmost importance. Furthermore, victims may be at risk of re-traumatization and have a valid fear of acts which remind them of the torture or ill-treatment they have endured. Consequently, a high priority should be placed on the need to create a context of confidence and trust in which assistance can be provided. Confidential services should be provided as required.¹¹⁸ The requirement in the Convention to provide these forms of rehabilitative services does not extinguish the need to provide medical and psychosocial services for victims in the direct aftermath of torture, nor does such initial care represent the fulfillment of the obligation to provide the means for as full rehabilitation as possible.¹¹⁹

Thus, Measures of rehabilitation should include psychological and medical care as well as legal and social services. The right to rehabilitation that set out in CAT's General Comment 3 provides that state parties legislation should establish concrete mechanisms and programmes for providing rehabilitation to victims of torture or ill-treatment. Torture victims should be provided access to rehabilitation programmes as soon as possible following an assessment by qualified independent medical professionals.¹²⁰ Only few countries provide specialized rehabilitation services to

¹¹⁶ Ibid, paragraph 12

¹¹⁷ Ibid, paragraph 13

¹¹⁸ Ibid.

¹¹⁹ Ibid, paragraph 14

¹²⁰ Ibid, paragraph 15

victims of torture, which is in most cases offered by rehabilitation centers.¹²¹ However, General Comment No. 3 of the Committee against Torture makes it clear that the state itself should provide such services.¹²²

2.2.2.1.4 Acts of satisfaction and the right to know the truth

Satisfaction should include, by way of and in addition to the obligations of investigation and criminal prosecution under articles 12 and 13 of the Convention, any or all of the following remedies: effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further 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; the search for the whereabouts 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 victims' bodies in accordance with the expressed or presumed wish of the victims or affected families; an official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; judicial and administrative sanctions against persons liable for the violations; public apologies, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to the victims.¹²³ A State's failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a de facto denial of redress and thus constitute a violation of the State's obligations under article 14.¹²⁴

Thus, acts of satisfaction may include, inter alia, measures like the disclosure of the truth, the restoration of the dignity of the victims, public apologies including the acknowledgement of the facts and the acceptance of responsibility, or judicial sanctions against offenders and perpetrators.

2.2.2.2 Remedies Directed to Society as a Whole

2.2.2.2.1 Reform of Legislation and Official Policies

¹²¹ Lutz Oette, *supra* note 30, Page 89

¹²² The United Nations Committee, General Comment No. 3, *supra* notes 22, paragraph 12

¹²³ *Ibid*, paragraph 16

¹²⁴ *Ibid*, paragraph 17

Articles 1 to 16 of the Convention against torture constitute specific preventive measures that the States parties deemed essential to prevent torture and ill-treatment. To guarantee non- repetition of torture or ill-treatment, States parties should undertake measures to combat impunity for violations of the Convention. Such measures include issuing effective, clear instructions to public officials on the provisions of the Convention, especially the absolute prohibition of torture.¹²⁵

Other measures should include any or all of the following: civilian oversight of military and security forces; ensuring that all judicial proceedings abide by international standards of due process, fairness and impartiality; strengthening the independence of the judiciary; protecting human rights defenders(HRD) and legal, health and other professionals who assist torture victims; establishing systems for regular and independent monitoring of all places of detention; providing, on a priority and continued basis; reviewing and reforming laws contributing to or allowing torture and ill-treatment; ensuring compliance with article 3 of the Convention prohibiting refoulement.¹²⁶

The Committee notes that by taking measures such as those listed herein, States parties may also be fulfilling their obligations to prevent acts of torture under article 2 of the Convention. Additionally, guarantees of non-repetition offer important potential for the transformation of social relations that may be the underlying causes of violence and may include, but are not limited to, amending relevant laws, fighting impunity, and taking effective preventative and deterrent measures.¹²⁷ Generally, guarantees of non-repetition might comprise measures to strengthen the independence of the judiciary, to ensure an effective civilian control of the security forces or to promote mechanisms for preventing and monitoring social conflicts.

2.2.2.2.2 Training and Educational Programs for State Officials

Other national measures to prevent the repetition of violations include training and educational programs for state officials, law enforcement officials as well as military and security forces on human rights law that includes the specific needs of marginalized and vulnerable populations and promoting the observance of international standards and codes of conduct by public servants,

¹²⁵ Ibid, paragraph 18

¹²⁶ Ibid.

¹²⁷ Ibid.

including law enforcement, correctional, medical, psychological, social service and military personnel. More importantly, training law enforcement officials as well as military and security forces on the appropriate limits to the use of force play a pivotal role to ensure non repetition of further violation, other groups should also be targeted for training as well, such as prison officials, judges, prosecutors, and health professionals associated with state institutions.¹²⁸ Those programs that have at least identified relevant international legal norms to be studied would seem to have a greater chance to effect change.

2.2.3 International and Regional Supervisory Mechanisms and Compliant Procedures for the Instruments Dealing With the Prohibition from Torture and Cruel, Inhuman or Degrading Treatment or Punishment

Certain international and regional remedies allow individuals who allege a violation of their human rights, to bring a complaint before the competent body with the view to holding the State accountable and seeking redress. Such remedies come into play where domestic protection of human rights have failed, having either been exhausted or considered to be ineffective. The function of such international mechanisms is to provide victims with additional protection and to provide a measure of supervision of state conduct by international bodies.

After exhausting at the national avenue, remedies are principally available on the regional level, where individuals may have the right to bring their case before a Commission, such as the African Human Rights Commission or directly before a court, and on the international level, such as before the United Nations Human Rights Committee monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR) or the Committee against Torture monitoring the UN Convention against Torture. The human rights treaty bodies have the power to find a violation and to recommend measures to redress the violation, including provision of reparation and carrying out of effective investigations, which States are, bound to comply with under the relevant treaty.¹²⁹

¹²⁸ Ibid. See also, UN Basic Principles and Guidelines, supra note 52, paragraph 23(e)-(g)

¹²⁹The Banjul Charter, supra note 4, article 46-59; Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples Rights, adopted by the 34th Ordinary Session of the Assembly of Heads of State and Government of the AU, Ouagadougou, Burkina Faso, on 10 June 1998 (OAU Doc. OAU/LEG/MIN/AFCHPR/PROT.1 rev.2) entered into force 25 January 2004, article 3-6 & 34(6); ICCPR, Supra note 2, article 28, 40 & 41; Convention against Torture, supra note 3, article 17-24

Thus, all the above discussed binding international and regional human rights instruments dealing with the prohibition of torture, inhuman or degrading treatment or punishment, have their own monitoring organs and compliant procedures for the proper implementation of the convention. It is based on these organs that all those binding instruments have got their proper meaning. Thus, in this section we will discuss these monitoring organs and compliant procedures, at least briefly.

2.2.3.1 Human Rights Committee

The human right committee is established as a monitoring body by the International Covenant on Civil and Political Rights (ICCPR). The committee comprises 18 independent experts elected by the states parties to the covenant. It examines reports which states parties are obliged to submit periodically and issues concluding observations that draw attention to points of concern and make specific recommendations to the state. The committee can also consider communications from individuals who claim to have been the victims of violations of the covenant by a state party. For this procedure to apply to individuals, the state must also have become a party to the first optional protocol to the covenant.¹³⁰ Further, article 41(1) of the ICCPR provides that, “A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.” Indeed, the committee has also issued a series of General Comments, to elaborate on the meaning of various articles of the covenant and the requirements that these place on states parties.¹³¹

2.2.3.2 The UN Committee Against Torture

¹³⁰ ICCPR, Supra note 2, article 28-45; First Optional Protocol to the ICCPRs, article 1-6

¹³¹ Conor Foley, *Combating Torture, a manual for judge and prosecutors*, Human Rights Center, Foreign & common Wealth Office, London, 2003, page 13

The committee against torture is a body of ten independent experts established under the convention against torture.¹³² It considers reports submitted by states parties regarding their implementation of the provisions of the convention and issues concluding observations. It may examine communications from individuals, if the state concerned has agreed to this procedure by making a declaration under article 22 of the convention. Similarly, in regards of interstate compliant article 21(1) of the Convention against Torture provides that, “A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration.”

There is also a procedure, under article 20, by which the committee may initiate an investigation if it considers there to be well-founded indications that torture is being systematically practiced in the territory of a state party.¹³³

Indeed, the Optional Protocol to the CAT convention has the objective to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment¹³⁴. As Conor Foley explained well, the newly adopted optional protocol establishes complimentary dual system of regular visits to place of detention in order to prevent torture and ill-treatment. The first of these is an internal visiting mechanism, or a “sub-committee” of ten independent experts who will conduct periodic visits to place of detention. The second involves an obligation on states parties to set up, designate or maintain one or several national visiting mechanisms, which can conduct more regular visits. The international and

¹³² The Convention against Torture, Supra note 3, article 17

¹³³ Ibid. article 19-22

¹³⁴ Optional Protocol to the Convention against Torture(CAT), adopted by the UN General Assembly on 18 December 2002 at New York, opened for signature and ratification on 19 December 2002, article 1

national mechanisms will make recommendations to the authorities concerned with a view to improving the treatment of persons deprived of their liberty and the conditions of detention.¹³⁵

A number of regional human rights treaties have also been developed with unique approaches of enforcement mechanisms. These include the African Commission on Human and Peoples' Rights, and the African Court of Human and people's Rights, European Commission on Human and Peoples' Rights and Court of Human Rights, and Inter American Commission on, and Court of Human Rights. Here below we will discuss briefly the African approaches of enforcement mechanisms.

2.2.3.3 The African Commission on Human and Peoples' Rights(ACHPR)

The African Commission is established under article 30 of the African charter with the mandate to promote human and peoples' rights by collecting documents, undertaking studies and researches on African problems in the field of human and peoples' rights, organizing seminars, symposium and conferences, disseminating information, encouraging national and local institutions concerned with human and peoples' rights, and, where necessary, giving its views or making recommendations to governments. The commission also mandated to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations to cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights, to ensure the protection of human and peoples' rights under conditions laid down by the present Charter.¹³⁶

As mentioned above, one of the ways in which the African Commission is empowered to promote human and peoples' rights is by organizing seminars and conferences. If implemented properly it may lead to create awareness about the prohibition on torture, and other Cruel, inhuman or degrading treatment or punishment and also to create a room to call on governments to ratify the relevant international treaties for that matter. The Commission has also the mandate to entertain both inter-state and individual communications.¹³⁷ The Commission can only deal

¹³⁵ Conor Foley, *supra* note 131, page 14; See also, Optional Protocol to the Convention against Torture, *supra* note 134, article 3, 4 and 11

¹³⁶ The Banjul Charter, *Supra* note 4, article 30 & 45

¹³⁷ *Ibid.* For Inter-state communications see article 47-54 and for Individual communications see article 55-59

with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.¹³⁸

Finally, according to article 52 of the Banjul Charter, after having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples' Rights, the Commission prepare within a reasonable period of time from the notification a report stating the facts and its findings and this report sent to the States concerned and communicated to the Assembly of Heads of State and Government.

2.2.3.4 African Court of Human and Peoples' Rights & African Court of Justice Towards the Creation of a Single Court: From Two to One

The African Court of Human and Peoples' rights together with the African Commission on Human and Peoples' Rights, established under Article 30 of the Banjul Charter, was meant to form a comprehensive continental supervisory mechanism with the mandate to examine whether contracting parties met their human rights obligations. The court was established under the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and People's Rights.¹³⁹ In accordance with Article 3 and 4 of the protocol, the court is empowered to act both in adjudicatory and an advisory capacity. As per articles 11 and 15 of the protocol, the court is made up of eleven judges elected by the member states of the OAU (now AU) for a six-year term of office which is renewable once only. Article 6, paragraph 2, lays down that the court rules on the admissibility of cases submitted by individuals taking in to account the provisions of article 56 of the charter, which sets forth the conditions for admissibility of communications addressed to the African Commission on Human rights.

Article 5 of the Protocol provides that, "The following are entitled to submit cases to the court, the commission, the state party which has lodged a complaint to the commission, the state party

¹³⁸ Ibid. article 50 & 56

¹³⁹ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples Rights, Supra note 123, article 1

against which the complaint has been lodged at the commission, the State Party whose citizen is a victim of human rights violation and African Intergovernmental Organizations”.

The African Court on Human and Peoples’ Rights could not come in to force until 25 January 2004 because of the reluctance of states to ratify it. Resistance against the African Court is considerably influenced by a variety of factors relating to the socio-political, historical and institutional context in which it operates.¹⁴⁰ In this regard, it is also important to mention the establishment of African Court of Justice in 2003. It was established under the Protocol of the Court of Justice of the African Union, adopted on 11 July 2003 in Maputo, Mozambique.¹⁴¹ Finally, there is a recent protocol for the merger of African Court of Human Rights and African Court of Justice thereby to establish a single court (from two to one) called “the African Court of Justice and Human Rights”¹⁴². However, Ethiopia is not member to Maputo protocol and not accepting the jurisdiction of African Court of Justice and Human Rights that possibly hinder victims of torture access to justice if the domestic avenues fail in redressing them.

According to the statute of the African Court of Justice and Human Rights, the Court have jurisdiction over all cases and all legal disputes submitted to it which related to,

“a) The interpretation and application of the Constitutive Act; b) The interpretation, application or validity of other Union Treaties and all subsidiary legal instruments adopted within the framework of the Union or the Organization of African Unity; c) the interpretation and the application of the African Charter, the Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, or any other legal instrument relating to human rights, ratified by the States Parties concerned; d) Any question of international law; e) All acts, decisions, regulations and directives of the organs of the Union; f) All matters specifically provided for in any other agreements that States Parties may conclude among themselves, or with the Union and which confer jurisdiction on the Court; g) The existence of any fact which, if established, would

¹⁴⁰ Tom Gerald Daly & Micha Wiebusch, *The African Court on Human and Peoples’ Rights: Mapping Resistance Against a Young Court*(the Danish National Research Foundations Center of Excellence for International Courts, iCourts Working Paper Serious No. 119, 2018), page 7

¹⁴¹Protocol of the Court of Justice of the African Union, adopted by the 2nd Ordinary Session of the Assembly of the Union, held in Maputo, Mozambique, 11 July 2003

¹⁴² Protocol on the statute of the African Court of Justice and Human Rights, adopted by the 11th ordinary session of the Assembly, held in Sharm El- Sheikh, Egypt, 1July 2008, article 1

constitute a breach of an obligation owed to a State Party or to the Union; h) The nature or extent of the reparation to be made for the breach of an international obligation.”¹⁴³

Indeed, article 29 of the statute provides Entities Eligible to Submit Cases to the Court and it states as follows,

“1. The following entities shall be entitled to submit cases to the Court on any issue or dispute provided for in Article 28:

a) State Parties to the present Protocol; b) The Assembly, the Parliament and other organs of the Union authorized by the Assembly; c) A staff member of the African Union on appeal, in a dispute and within the limits and under the terms and conditions laid down in the Staff Rules and Regulations of the Union;

2. The Court shall not be open to States, which are not members of the Union. The Court shall also have no jurisdiction to deal with a dispute involving a Member State that has not ratified the Protocol.”¹⁴⁴

Further, article 30 provides other Entities Eligible to Submit Cases to the Court,

“The following entities shall also be entitled to submit cases to the Court on any violation of a right guaranteed by the African Charter, by the Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, or any other legal instrument relevant to human rights ratified by the States Parties concerned:

a) State Parties to the present Protocol; b) the African Commission on Human and Peoples’ Rights; c) the African Committee of Experts on the Rights and Welfare of the Child; d) African Intergovernmental Organizations accredited to the Union or its organs; e) African National Human Rights Institutions; f) Individuals or relevant Non-Governmental Organizations

¹⁴³Statute of the African Court of Justice and Human Rights, annex to Protocol on the statute of the African Court of Justice and Human Rights, adopted by the 11th ordinary session of the Assembly, held in Sharm El- Sheikh, Egypt, 1 July 2008, article 28

¹⁴⁴ Ibid. article 29

accredited to the African Union or to its organs, subject to the provisions of Article 8 of the Protocol.”¹⁴⁵

2.2.3.5 Other Monitoring Mechanisms under the International and Regional Level

A number of other mechanisms have been developed to look at specific types of human rights violations whenever they occur in the world. These are country specific and thematic mechanisms which include special rapporteurs, representatives and independent experts or working groups. They are created by resolution in response to situations that are considered to be of sufficient concern to require an in depth study. The procedures report publicly to the Commission on Human Rights each year and some also report to the UN General Assembly.¹⁴⁶

2.2.3.5.1 The UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

The United Nations Commission on Human Rights, in Resolution 1985/33, decided to appoint an expert, a special rapporteur, to examine questions relevant to torture, to seek and receive credible and reliable information on such questions and to respond effectively to the information. The Special Rapporteur submits a comprehensive report on his or her activities to the Commission each year, reviewing the occurrence and extent of the practice of torture, and making recommendations to assist Governments in stamping it out.¹⁴⁷

The mandate was extended for three years by Human Rights Council Resolution 34/19 in March 2017¹⁴⁸. The special rapporteur covers all Countries, irrespective of whether a state has ratified the convention against torture and other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁴⁹ Unlike the complaints mechanisms of the Human Rights treaty monitoring bodies, the special Rapporteur doesn't require the exhaustion of domestic remedies to act.¹⁵⁰

¹⁴⁵Ibid. article 30

¹⁴⁶*International Human Rights and International Human Rights System: A Manual for National Human Rights Institutions* (Asia Pacific Forum of National Human Rights Institutions: Australia, July 2012), page 47-54

¹⁴⁷ United Nations Commission on Human Rights, Resolution 1985/33(United Nations: Supplement No. 2, New York, 1985), page 71-72 ; Human Rights Council, Resolution 34/19(A/HRC/RES/34/19), adopted by the 34th session of the assembly, 24 March 2007

¹⁴⁸ Human Rights Council, Resolution 34/19, Supra note 144, paragraph 1

¹⁴⁹ United Nations of Human Rights Office of the High Commissioner, *Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment: Introduction*(OHCHR, 2019), <https://www.ohchr.org> accessed 28 August 2019

¹⁵⁰Ibid.

Thus, it is a non-treaty, UN charter based body the purpose of which is to examine international practice relating to torture in any state regardless of any treaty the state may be bound by.

On the basis of information received, the Special Rapporteur can communicate with governments and request their comments on cases that are raised.¹⁵¹ He or she can also make use of an urgent action procedure, requesting a government to ensure that a person, or group of persons, is treated humanely.¹⁵² The special rapporteur can also conduct visits if invited, or given permission, by a state to do so.¹⁵³

The special rapporteur reports annually and publicly to the UN commission on human rights (now to UN human rights council) and to the UN General Assembly.¹⁵⁴ The reports to the commission (the council after 2006) contain summaries of all correspondence transmitted to governments by the special rapporteur and of correspondence received from governments.¹⁵⁵ The reports may also include general observation about the problem of torture in specific countries, but do not contain conclusion on individual torture allegations and it may address specific issues that are conducive to torture in the world, offering general conclusions and recommendations.¹⁵⁶

2.2.3.5.2 The African Commission Special Rapporteur in Prisons and Prisons Condition

The African Charter does not provide for the institution of Special Rapporteurs (SR). However, because this institution has been effective under the United Nations human rights system and to facilitate implementation of its mandate, the ACHPR has established special mechanisms to focus on different thematic areas that are of special concern to the ACHPR's work. This is in line with Rules 23 and 24 of the ACHPR's Rules of Procedure.¹⁵⁷ Thus, the African Commission has

¹⁵¹Methods of Work of the Special Rapporteur on Torture, Annex to E/CN.4/1997/7, approved by the Commission in Resolution 2001/62(E/CN.4/RES/2001), paragraph 30

¹⁵² Ibid.

¹⁵³ Ibid. paragraph 12

¹⁵⁴ Ibid. paragraph 14; Human Rights Council, Resolution 34/19 supra note 147, paragraph 1(g)

¹⁵⁵ Ibid.

¹⁵⁶ Conor Foley, supra note 130, page 16

¹⁵⁷ Rules of Procedure of the African Commission on Human and Peoples' Rights Approved by the African Commission on Human and Peoples' Rights during its 47th ordinary session held in Banjul (The Gambia) from May 12 to 26, 2010. Rule 23 provides that, "The Commission may create subsidiary mechanisms such as special rapporteurs, committees, and working groups. The creation and membership of such subsidiary mechanisms may be determined by consensus, failing which, the decision shall be taken by voting. The Commission shall determine the mandate and the terms of reference of each subsidiary mechanism. Each subsidiary mechanism shall present a

established Special Rapporteur on Prisons and Places of Detention in Africa in 1996 and revised to Special Rapporteur on Prisons and Places of Detention and Policing in Africa in 2015.¹⁵⁸ The Office of the Special Rapporteur on Prisons in Africa, in comparison with other Special Rapporteur of the African Commission, has been successful in its activities of promoting and protecting the rights of prisoners in Africa. This success has been measured by, the mandate of the Special Rapporteur; analyzing the work of the Special Rapporteur in comparison with other Special Rapporteurs of the African Commission; and by the investigating the impact on the situation in countries that have been visited.¹⁵⁹

2.3 Enforcement of Remedies of Human Rights Violations

Impunity for human rights violations is one of the most serious threats to the full enjoyment of the rights and freedoms of the individual, and constitutes a violation of a State's legal duty to ensure the effective protection of these rights and freedoms.¹⁶⁰ Non-prosecution of criminal acts such as torture, abduction, disappearances and the arbitrary taking of human life have a particularly devastating impact on the victims and their next-of-kin, as well as on society as a whole.¹⁶¹

Impunity for international crimes and for systematic and widespread violations of fundamental human rights is a betrayal of our human solidarity with the victims of conflicts to whom we owe a duty of justice, remembrance, and compensation.¹⁶² In similar vein, in regards of this study the author strongly argue that, amnesties and pardons cannot in any circumstances be granted for violations of the right to life and quite importantly the right to freedom from torture and other

report on its work to the Commission at each ordinary session of the Commission.” Rule 24 also clarifies the Applicable rules for Subsidiary Mechanisms and it provides that, “The Rules of Procedure of the Commission shall apply mutatis mutandis to the proceedings of its subsidiary mechanisms.”

¹⁵⁸*The African Commission on Human and Peoples' Rights: At the Forefront of Advancing Human Rights*, page 59, <https://au.int> accessed 23 September 2019

¹⁵⁹ Jamil Damulira Mujuzi, 'The Role of Civil Society in Protecting and Promoting Prisoners Rights Before the African Commission on Human Rights'(2007)5(3) *International Journal of Civil Society Law*, page 27

¹⁶⁰ International Commission of Jurists, *Achieving Justice for Gross Human Rights Violations in Tajikistan*(ICJ: Geneva, Switzerland), Baseline Study, October 2017, page 16-19; International Commission of Jurists, *Achieving Justice for Gross Human Rights Violations in Cambodia* (ICJ: Geneva, Switzerland), *Baseline Study*, October 2017, page 23-27

¹⁶¹ Ibid.

¹⁶² M. Cherif Bassiouni, 'Searching For Peace and Achieving Justice: The Need For Accountability', (1996)59(4)*Journal of Law and Contemporary Problems*, page 27

forms of ill-treatment. Because, these are some of the rights that cannot be derogated from in any circumstances, not even in times of public emergency.¹⁶³

The International protection of fundamental rights of individuals is developing along a path that goes from initial phase of abstract proclamation towards a phase of concrete realization and enforcement. Obviously, significant differences remain between regions of the world and states of the region as to the level of compliance with human rights. Undeniably, the consolidation of a corpus of international human rights norms has little practical relevance for the millions of people around the world who continued to be deprived of their most basic rights. However, there exist a number of significant indicators that seem to signal that human rights law is slowly but steadily moving towards, and in many regions of the world has already entered the new age of enforcement.¹⁶⁴

Thus, according to Pietro Sardaro, the age of enforcement of human rights is characterized by the following four main elements;

1. “There appears to be increased attention directed at the legal consequences arising from human rights violations in addition to the specification of the content of primary norms and of the constituent elements of a breach.
2. The establishment and strengthen of international mechanisms of human rights protection and the acceptance by an increasing number of states of the competence of international supervisory bodies to adjudicate on human rights disputes.
3. The seemingly ever increasing inclination of national courts to pay due regard to international law protecting the rights of individuals, not only for the determination of the merits of the case, but also with respect to the definition of the scope and content of their adjudication including remedial jurisdiction.
4. The important one is the increased attention given to the victim on the basis of the recognition of their central role in the context of protection of human rights.”¹⁶⁵

¹⁶³ ICCPR, Supra note 2, article 4;The Convention against Torture, Supra note 3, article 2(2); Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, Proclamation No. 1/1995,21 August 1995(Here in after FDRE Constitution), article 93(4)(c) in regards of torture

¹⁶⁴ Pietro Sardaro, *Serious Human Rights Violations and Remedies in International Human Rights Adjudication* (Unpublished: Leuven, 2007), page 197

¹⁶⁵ Ibid.

After having examined the law and practice of remedies and reparation at the international level, it is necessary to have a look at national laws and practices in order to have a broad picture of the current status of the victims' right to remedy and reparation with respect to human rights violations, more specifically torture.

2.3.1 The Role of National Human Rights and Justice Institutions In The Pursuit of Redress and Accountability

While legislation reflecting international standards is an important element, it is generally acknowledged that this is insufficient on its own where not complemented by institutional responses and protections.¹⁶⁶ Routine torture and ill-treatment is facilitated by an environment marked by a lack of internal control and adequate external oversight, particularly where institutions such as the judiciary or national human rights commissions are not sufficiently strong and/or independent. The resulting impunity means that law enforcement frequently turns from a service into a force that exercises its power arbitrarily.¹⁶⁷

Institutional reforms are critical to make the prohibition of torture effective. From the perspective of victims and those who seek reparation on their behalf, institutions that are accountable, effective complaints procedures and an independent judiciary are arguably the most important building blocks for the protection of their rights.¹⁶⁸ Effective complaints procedures require that those investigating complaints are independent, professional and well-resourced and that effective victim and witness protection schemes are in place.¹⁶⁹ Besides, dealing with individual complaints, complaints procedures should be mandated to examine structural factors so as to enable bodies to undertake the necessary changes to guarantee non-repetition.¹⁷⁰

According to Doctor Anna-Elina Pohjolainen definition, National Human Rights Institution defined as “an independent body established by a national government for the specific purposes of promoting and protecting human rights at the domestic level without rendering binding

¹⁶⁶ Lutz Oette, *Supra* note 30, see, Page 81-86

¹⁶⁷ *Ibid.*

¹⁶⁸ United Nations Committee against Torture, General Comment No.3, *supra* note 22, Paragraph 18 & 23; Lutz Oette, *supra* note 30, page 50-57

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

decisions.”¹⁷¹ On the other hand, the human rights fact sheet No.19 issued by the Center for Human Rights defined these institutions as “bodies whose functions are specifically defined in terms of promotion and protection of human rights”.¹⁷² Despite the controversies towards the meaning of NHRI hence it is out of the scope of my paper, at the international level, there are a number of approaches to classify different types of NHRIs depending on the historical and political rhetoric and situations of the countries, political willingness and the regions. Today, at the international level, the very common types or models are the human rights commission and the ombudsman institutions.¹⁷³

In the past, justice institutions principally regular courts could have been considered as a fully-fledged organ to safeguard individuals’ fundamental human rights as well as democratic freedoms.¹⁷⁴ However, the practical full enforcement of human rights through the regular courts found inefficient enough in the protection (enforcement) of human rights in comprehensive manner.¹⁷⁵ In Ethiopia, despite the fact that legally speaking, courts are constitutionally obliged to respect and enforce the constitutionally guaranteed human rights and freedoms together with the other organs of the government as per article 13(1) of the FDRE Constitution, in practically speaking, they are not willing enough in providing attentions to cases that involve human rights issues under the constitutions.¹⁷⁶ Indeed, many Ethiopians have negative perceptions of the independence of the judiciary. This public perception may be construed as a historical hangover. At no point has the Ethiopian court system had a separate identity and existence.¹⁷⁷

Basically, Human Rights Commissions have dual basic functions. The promotion and protection of human rights and fundamental freedoms recognized internationally and locally. When we say human rights commission promotes human rights to mean that the inculcation of greater respect

¹⁷¹ Anna-Elina Pohjolainen, *The Evolution of National Human Rights Institutions, the Role of the United Nations* (The Danish Institute for Human Rights: 2006), page 6 <http://www.humanrights.dk> accessed 18 June 2019

¹⁷² United Nations Center for Human Rights, Fact Sheet No.19, *National Institutions for the Promotion and Protection of Human Rights*, page 7

¹⁷³ International Council on Human Rights policy, *Assessing the effects of National Human Rights Institutions*, 2005, page 5

¹⁷⁴ Anna-Elina Pohjolainen, *supra* note 171, page 3

¹⁷⁵ *Ibid.*

¹⁷⁶ See generally, Takele Soboka Bulto, ‘Judicial Referral of Constitutional Dispute in Ethiopia: From Practice to Theory’(2011) 19*African Journal of International & Comparative Law*, page 99-123

¹⁷⁷ KI Vibhute, ‘The Judicial System of Ethiopia: From Empire and Military Junta to Federal Democratic Republic’(2013)7 *Malawi Law Journal* 95, 116

for human rights among the general public, governmental and non-state actors.¹⁷⁸ Whereas, the protective function involves examining and taking of actions on complaints alleged violations of human rights, monitoring, advisory roles, researches and other similar strategies.¹⁷⁹

Equal administration of justice for all without fear or favor is essential to the ability of a State to discharge its obligations to hold perpetrators of gross human rights violations to account and to provide effective remedies and reparation to victims.¹⁸⁰ Therefore, protection of human rights requires the taking of measures and effectively discharging its legal responsibilities by different national human rights and justice institutions so as to secure the respect for human rights in general and to prevent or at least to reduce the happening of torture and other similar abuse in particular and it extends to redressing victims of torture. Indeed, national human rights and justice institutions should play a pivotal role so as to make legal and practical sense of human rights in cases of violations, and that is among others redressing the victims appropriately, effectively and promptly.

¹⁷⁸ Lindsanaes et.al(2001), National Human Rights Institutions: Articles and Working Papers, page 28

¹⁷⁹ Ibid.

¹⁸⁰ ICJ, Practitioners Guide No.7, International Law and the Fight Against Impunity(2015), See page 318-325; See also, UN Basic principles and Guidelines, supra note 50, Paragraph 12

Chapter Three

3. Overview of Human Rights Situations in Ethiopia Since 1991

The Tigrian People's Liberation Front (TPLF), later changed to EPRDF, assumed state power in May 1991 with promises, to create a nation-state of equals by ending both the ethnic domination and centuries of autocratic (authoritarian) rule. It further promised to create peace and stability which, taken together, was hoped to bring about quick economic development and prosperity for all citizens of the country.¹⁸¹ There is no doubt that human rights are generously recognized in the contemporary constitutional system of Ethiopia. In this, the FDRE Constitution of 1995 marks a clear departure from the earlier regime. Ethiopia's constitutional past suggests that the concept of human rights was not developed and that the practice of human rights was not one that is a cause of legitimate pride.¹⁸²

The main objective of this chapter is to highlight the situations of human rights in Ethiopia since 1991. To this end the chapter would discuss inter alia, three points. First the general legal and institutional framework of human rights in Ethiopia since the coming to power of the Ethiopian People's Revolutionary Democratic Front (EPRDF) and the practice of human rights in Ethiopia since 1991.

3.1 Legal and Institutional Frameworks of Human Rights in Ethiopia since 1991

Ethiopia's record in the area of human rights protection was not admirable, for several decades, even by the average standard of Africa. The previous government documents and constitution of the country did not even pretend to require human rights protection as an integral component of the national legal system, except the 1955 revised constitution and 1987 PDRE Constitution. However, the current Ethiopian Constitution including several international and African human rights instruments adopted by Ethiopia since 1990s contains explicit commitment to ensure

¹⁸¹ Merera Gudina, 'Ethnicity, Democratization and Decentralization in Ethiopia: the case of Oromia' (2007)23(1) *Eastern Africa Social Science Research Review* 81, 9

¹⁸² Tsegaye Regassa, 'Making Legal Sense of Human Rights: the Judicial Role in Protecting Human Rights in Ethiopia' (2009)3(2) *Mizan Law Review* 288, 296

protection of human rights within the new federal political structure.¹⁸³ This section explores the legal and institutional guarantees of FDRE Constitution for the protection and promotion of human rights.

As far as the supreme law of the country is concerned, the constitution devotes more than one third of its content to provisions on matters related to human rights¹⁸⁴. Moreover, there are also provisions that deal with human rights principles and standards which either establish important guarantees or have direct relevance to the interpretation of fundamental rights. The Constitution imposes a responsibility and duty to the respect and enforcement of fundamental rights and freedoms at all levels of the federal and state legislative, executive and judicial bodies.¹⁸⁵ This recognition of human rights ranges from traditional civil and political rights to socio-economic rights and group or solidarity rights.¹⁸⁶

The constitution robustly enshrines several civil and political rights, most of which are the carbon copies of the provisions of the UDHR. The list includes the right to life, which prohibits arbitrary deprivation of life except as a punishment for a serious offense determined by law¹⁸⁷; to security of a person and liberty which prohibits arbitrary arrest and deprivation of liberty and protection against cruel, inhuman treatment or degrading treatment or punishment including the banning of slavery and trafficking in human beings for whatever reason and forced or compulsory labor.¹⁸⁸ The Constitution also includes guarantees that are pertinent to the administration of the criminal justice system. The rights of arrested persons to remain silent, to be promptly informed in a language she or he understands of the reasons for their arrest, to be brought before a judge within 48 hours and to habeas corpus are entrenched. The Constitution also overrules and excludes confessions or admissions obtained through coercion and establishes the right to bail.¹⁸⁹

¹⁸³ Muhammed Habib (2011), *The Ethiopian Federal System: The Formative Stage* (Friedrich Ebert Stiftung, Addis Ababa), at 17; Tsegaye Regassa, *supra* note 187, at 288

¹⁸⁴ FDRE Constitution, See chapter three article 13-44

¹⁸⁵ *Ibid.* Article 13 & 9(1) and (2)

¹⁸⁶ Tsegaye Regassa, *supra* note 182, page 305; Adem Kassie Abebe, 'Human Rights Under the Ethiopian Constitution: A Descriptive Overview' (2011) 5(1) *Mizan Law Review* 41, 49

¹⁸⁷ FDRE Constitution, article 15

¹⁸⁸ *Ibid.* article 16, 17(1&2), 18(1-3)

¹⁸⁹ *Ibid.* article 19

In a similar vein, accused persons have the right to a public trial in an ordinary court within a reasonable time, to be informed of the particular of charge, to the privilege against self-incrimination and the presumption of innocence until proven guilty, to access and challenge evidence presented against them and to adduce evidence on their behalf, to be represented by legal counsel of their choice and if they cannot afford to pay for such counsel and if miscarriage of justice would result, to be provided with one at the expense of the state and to appeal to a competent court.¹⁹⁰

Persons in custody have the right to treatment that respects their human dignity. They also have the right to be visited by their spouses or partners, close relatives, friends, religious counsels, medical doctors or their legal counsel.¹⁹¹ The retroactive application of criminal laws is also prohibited and hence unconstitutional.¹⁹² The Constitution also prohibits double jeopardy in the form of an offense upon which a final conviction or acquittal has been entered as per criminal law and procedures.¹⁹³ The Constitution also guarantees equality and equal protection; the right to privacy which may only be limited if compelling circumstances exists in accordance with law.¹⁹⁴ It also provides, the rights of freedom of religion, belief and opinion, the right to freedom of thought and expression including, access to information of public interests; the right of assembly, demonstration, petition and association for any causes and purposes, the right to freedom of movements including, the right to reside anywhere within the national territory as well as the right to leave and return to Ethiopia.¹⁹⁵ Individuals or groups have the right to access to justice to obtain a decision or judgment over any justifiable matters in the court of law or other competent body with judicial power.¹⁹⁶ Similarly the right to vote and to be elected is guaranteed to all Ethiopians of age¹⁹⁷ and the right to property¹⁹⁸ is provided for the benefit of Ethiopians, as well.

¹⁹⁰ Ibid. article 20

¹⁹¹ Ibid. article 21

¹⁹² Ibid. article 22

¹⁹³ Ibid. article 23

¹⁹⁴ Ibid. article 25 & 26

¹⁹⁵ Ibid. article, 27,29-32

¹⁹⁶ Ibid. article 37

¹⁹⁷ Ibid. article 38

¹⁹⁸ Ibid. article 40

Although, with some variations from the UDHR and ICESCR, the FDRE Constitution guaranteed the Economic, Social and Cultural Rights (ESCR) and solidarity rights, as well. The deviation of the constitution is due to the fact that the constitution guaranteed economic, social and cultural rights and solidarity rights for Ethiopian citizens alone. The Constitution incorporates various Economic, Social and Cultural rights. Every Ethiopian has the right to choose his or her means of livelihood, occupation and profession and an equal access to publically funded services. It further requires the state to allocate ever-increasing resources to provide social services, provide funds for the rehabilitation of persons with disabilities, the aged and children without parents or guardians subject to available means and to pursue policies aimed at expanding job opportunities for the poor through undertaking programmes and public works project.¹⁹⁹

Moreover, the Constitution recognizes the third generation of rights solidarity rights. The right to development is recognized as a benefit of the peoples of Ethiopia as a whole and in the form of right to participate.²⁰⁰ The right to clean and healthy environment also recognized as the right for the benefit of all persons.²⁰¹ The other basic and controversial right is the right of nations, nationalities and peoples of Ethiopia to self-determination up to and including secession²⁰²

The FDRE Constitution classified the above mentioned fundamental rights and freedoms provisions into two; human rights (article 14-28) and democratic rights (article 29-44), without a clear demarcation in the text. However, Article 10(1) of the Constitution creates an implication that the impression that human rights are those that emanated from the nature of mankind. As Adem explain under the FDRE constitution, that human rights are those rights that a person is entitled to merely because of he or she is a human being and democratic rights are those conferred only on citizens²⁰³. Tsegaye further explained that “human rights in FDRE

¹⁹⁹ Ibid. article 41

²⁰⁰ Ibid. article 43

²⁰¹ Ibid. article 44

²⁰² The right of nations, nationalities and people of Ethiopia to self-determination up to secession (article 39) is the most controversial and ever debatable constitutional provision among politicians and scholars. For instance, See, Legesse Tigabu Mengie, ‘Federalism as an Instrument for Unity and the Protection of Minorities: A Comparative Overview’, Ethiopia, India and US’(2016) 10 Mizan Law Review 265, 284

²⁰³ Adem Kassie Abebe, supra note 186, page 57

Constitution are entitlements bestowed on us by virtue of being human, democratic rights are rights we claim only as a consequences of our being members of a political community”.²⁰⁴

The FDRE Constitution also recognizes exigent possibilities that may require the suspension of protected rights. Means, derogation clauses related to provision that permit the temporary suspension of the application and enjoyment of rights in response to emergency incidents that threaten the life of the nations. Article 93 of the FDRE Constitution prescribes the requirements for derogation from rights. The Constitution authorizes the possible suspension of most of the fundamental human rights and freedoms “to the extent necessary” with some exceptions. The only non-derogable rights are the prohibition against torture, cruel, inhuman and degrading treatment or punishment, slavery or servitude and trafficking, the right to equality and equal protection of the law and the right to self-determination including secession.

The second, promise of protection of human rights in Ethiopia in 1990s is promoting the growth of democratic institutions that ensure adequate implementation of such rights in the real life of the people. To this end, although, with some delay the Ethiopian House of Peoples Representative(HPR) has established national human rights Commission and institution of the Ombudsman in 2000, both institutions coffering on them to take various measures necessary for human rights protection and good governance in the country.²⁰⁵

The establishing proclamation of the Ethiopian Human Rights Commission (EHRC) states that the Commission is established primarily for the enforcement of human rights as are enshrined in the FDRE Constitution. It is designed to act as one of the organs in enforcing rights and freedoms of Ethiopian, with one of the primary functions being to advocate and promote respect for and an understanding of human rights and other beings to advocate the public regarding the nature and contents of such rights. The Commission is also entrusted with the task of investigating cases of violation of human rights enshrined in the Constitution, in its own initiatives or upon complaint submitted to it. The Commission can also engage in activities

²⁰⁴ Tsegaye Regassa, supra note 186, page 305

²⁰⁵ Muhammed Habib, supra note 183, page 20; Tsegaye Regassa, supra note 186, page 304

aimed at awareness creation and educating people on human rights.²⁰⁶The Ethiopian Human Rights Commission amendment proclamation 1224/2020 also amended some provisions of the earlier proclamation to strengthen the institutional and execution capacity to enable the commission to fulfill its mandate of promoting, ensuring the respect of and protection of human rights.²⁰⁷

In similar vein, Ethiopia has expanded the human rights protection regime by providing for the establishment of the Institution of Ombudsman. As it is set out in the establishing legislation of Ethiopian Institution of Ombudsman (EIO) which was passed by the parliamentary proclamation No. 211/2000; the basic function of the Ombudsman is to protect citizens against administrative injustice and bureaucratic oppression and to provide citizens with accessible avenue for complaint when such injustices and oppression occurs. The objective is to make government organs a duty bound to respect and enforce human rights as are enshrined in FDRE Constitution or any others legislations. The institution can investigate action taken by ministry or department of government or any members of such ministry or departments.²⁰⁸

However, in spite of high legal coverage of human rights and the establishment of human rights institutions, as many scholars argue and human rights organizations reports show, the practice is however, quite to the opposite. Indeed, despite the guarantees on fundamental rights and freedom as inalienable human rights, the government of Ethiopia has been criticized for compromising these rights and the practice of human rights in Ethiopia is not brought the promised changes, especially on civil and political rights. The practice of human rights situations in Ethiopia since 1991 would be seen below briefly.

3.2 Human Rights Practice in Ethiopia Since 1991

²⁰⁶ Ethiopian Human Rights Commission Establishment Proclamation, Federal Negarit Gazeta, Proclamation No. 210/2000, 4 July 2000, preamble, paragraph 1-4 & Article 5 and 6 (1-11)

²⁰⁷ Ethiopian Human Rights Commission Establishment (amendment) Proclamation, Federal Negarit Gazeta, Proclamation No. 1224/2020, 18 August 2020, preamble, paragraph 1, & Article 2 and 10

²⁰⁸ Institution of the Ombudsman Establishment Proclamation, Federal Negarit Gazeta, Proclamation No. 211/2000, 4 July 2000, preamble, paragraph 1,3 and 4 & Article 5 and 6

Political transitions of states are complex processes formed by an infinite number of factors anchored in unique past histories, influenced by peculiar current events, and motivated by ideology and future aspirations.²⁰⁹ Following its capture of state power in 1991, the EPRDF promised the country and its people multiparty democracy and respect for human rights in its transitional period charter.²¹⁰ As discussed earlier, one third of the FDRE Constitution contains provisions on human rights. Furthermore, the Constitution declares all international and regional human rights instruments adopted by Ethiopia as integral part of the Constitution. However, in practice, as we will see below, there is a huge gap between constitutional promise and the reality on the ground. Hereunder, the researcher tries to see the major allegations of human rights violations in Ethiopia from 1991 to 2018 by focusing on civil and political rights more specifically the right to be free from torture or other cruel, inhuman or degrading treatment or punishment.

The right to personal liberty and security of a person are well recognized under Article 17 of FDRE Constitution, Article 9 of ICCPR, Article 3 of UDHR and Article 6 of ACHPR. As well, article 17(2) of the Constitution provides the full protection to the Ethiopian citizens against arbitrary arrest and detention. But as the human rights organization reports show, the rules mentioned above are not applied in Ethiopia rather they disclose grave violations of human rights and high record of torture. For instance, they publicize how, when and where the various security agents, like the common police and special police force arrested and detained or take other arbitrary measures, without warrant, charge or bail, and without time limits. Indeed, political and security suspects have sometimes been taken away secretly without notice to family, friends or close relatives, without notifying of their destination or reason for their arrest.²¹¹

²⁰⁹ Kjetil Tronvoll, *The Ethiopian 2010 Federal and Regional Elections: Re-Establishing the one-party State*, *African Affairs* (Oxford University Press:2011), page 1-16, at 2

²¹⁰ Transitional Period Charter of Ethiopia, Peace and Democratic Transitional Conference of Ethiopia, *Negarit Gazeta*, 50th Year, No. 1, 22nd July 1991, article 1(a) & (b); Beza Desalegn, 'Challenges of Ethnic Representation in Ethiopia and the need for Reform'(2018)12(1)*Mizan Law Review*, page 1-28, at 2

²¹¹ Amnesty International, *Ethiopia: Submission to the 46th Ordinary Session of the African Commission on Human and Peoples' Rights*(AFR 25/011, 2009);Amnesty International, *Ethiopia: Justice Under Fire* (AFR 25/002, 2011); Amnesty International, *Ethiopia: Failure to address endemic human rights concerns*, Submission to the UN Universal Periodic Review 19th Session of the UPR Working Group (AFR 25/004, 2013); Amnesty International, *Ethiopia: 25 Years of Human Rights Violations*(AFR 25/4178, 2016);Amnesty International, *The States of the World Human Rights: Ethiopia 2017/2018 report*(ISBN: 978-0-86210-499-3, 2018); Human Rights Watch, *Ethiopia: One*

According to the reports of Human Rights Watch and Amnesty International, arbitrary arrest is considered as a powerful tool for the repression of political dissent. Most of the arrested and detained persons were released without trial. As the result of the unrest, many of opposition leaders, human rights defenders, journalists, publishers and ordinary citizens were charged with offenses such as genocide, treason and attempt to overthrow the constitutional order through the use of force.²¹²

Likewise, despite the presence of the FDRE Constitution, binding international human rights instruments and laws that prohibit the use of torture and mistreatments there are numerous credible reports of torture and inhuman treatment in the country as well. According to the report of Association for Human Rights in Ethiopia (AHRE)²¹³, Prison officials repeatedly tortured and mistreated detainees. The reports of AHRE, Human Rights Watch and Amnesty International indicates repeated cases of varying forms of torture caused by prison officials, mainly to extract confessions during interrogations and implicate the detainees in alleged crime. It is also sometimes used as a form of punishment. They reported that security officers tortured them by hanging them on a ceiling, putting them in a solitary confinement for hours; beating them with sticks, electric cables, and other hard objects; or tying water bottles to men's testicles.

In Ethiopia reports of torture and other ill-treatment of people accused of terrorism persisted for a long period of time in the regime of FDRE government. Detainees repeatedly complained to the courts that police tortured and ill-treated them during interrogations. Although, in some cases, judges ordered the Ethiopian Human Rights Commission (EHRC) to investigate the allegations, the investigations did not adhere to international human rights standards. Angaw Tegeny and Agbaw Seteny were tried under the 2009 Anti-Terrorism Proclamation along with 35 others, in connection with a fire at Qilinto prison in Addis Ababa. The two men complained

Hundred Ways of Putting Pressure(ISBN: 1-56432-610-1, 2010); Human Rights Watch, *They Want a Confession: Torture and Ill-Treatment in Ethiopia's Maekelawi Police Station*(ISBN: 978-1-62313-0657, 2013); Human Rights Watch, *Such a Brutal Crackdown: Killings and Arrests in Response to Ethiopia's Oromo Protests*(ISBN: 978-1-6231-33665, 2016);

²¹²Ibid.

²¹³Hewan Alemayehu, *Ethiopian political prisoners and their accounts of torture*(Association for Human Rights in Ethiopia (AHRE): 2018)

that the police suspended a water bottle from their scrotums and flogged them on the soles of their feet. However, EHRC report to the Federal High Court did not refer to their existed torture complaints.²¹⁴

The EHRC investigation documented several body injuries on 16 inmates. These marks included deeply scarred hands and legs, broken fingers, marks left by extended handcuffing, flogging marks on the back, mutilated nails, broken arms, and head injuries. The team cross-referenced these marks with the body marks registered in the intake files of each inmate and concluded these injuries occurred in prison.²¹⁵ Indeed, the reports of these human rights organizations are confirmed by the author of this study during interviews with key informant personnel, more specifically victims of torture who were detained in Maekelawi detention center and by a *documentary official video the so called yefitih sekoka* (may be literally translated as “agony of justice”) released in different state owned Ethiopian Broadcasting Corporation (EBC) television and affiliated media outlets.

Accordingly, interviews with key informant personnel, more specifically victims of torture, *the documentary official video the so called yefitih sekoka* and reports of different human rights bodies discloses general mistreatment of detainees, specifically torture, at official detention centers, unofficial detention centers, police stations, and in prison centers. Interrogators administered beatings and electric shocks to extract information and confessions from detainees. Police investigators used physical and psychological abuse to extract confessions.

In the previous era of EPRDF government officials often dismissed allegation of torture contrary to credible reports of human rights organizations. But in a July speech to parliament, the government admitted that they used torture and other unlawful techniques on suspects, acknowledging that such techniques amounted to terrorism by the state.²¹⁶

²¹⁴ Amnesty International, *The States of the World Human Rights: Ethiopia 2017/2018 report*, Supra note 211

²¹⁵ Ibid.

²¹⁶ Awol K Allo, ‘Torture, State Terrorism and Ethiopia’s Transformation’, *AL Jazeera* (Doha, 23 June 2018); Ethiopian Broadcasting Corporation (EBC), *Prime Minister Abiy Parliament Un Expected Speech*, supra note 14

Chapter Four

4. Remedies for Victims of torture in Ethiopia

4.1 Prohibition of Torture, Cruel, Inhuman or Degrading Treatment or punishment under the Existing Ethiopian Laws

4.1.1 The Prohibition under the FDRE Constitution

Everyone has the right to be protected from cruel, inhuman or degrading treatment and punishment in Ethiopia. Article 18 of the FDRE constitution states that, “Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment”²¹⁷. Despite the fact that the constitution prohibits cruel, inhuman or degrading treatment or punishment it does not have any explicit provision which prohibits torture particularly. However, the author of this thesis believe that, the fact that the separate term *torture* is not found clearly in the constitution doesn’t mean that it is not covered or contemplated in the FDRE constitution.

Logically speaking, if the constitution prohibits cruel, inhuman or degrading treatment or punishment for the stronger reason it also prohibit torture as well. This argument is also supported by the combined reading of article 9(4) and article 13(2) of the FDRE constitution. Because the FDRE constitution, in addition to incorporating all international agreements ratified by Ethiopia as an integral part of the law of the land under its Article 9(4) as a general rule, it also provides that all fundamental rights and freedoms specified in the chapter 3 shall be interpreted in a manner conforming to the principles of the UDHR, international covenants on human rights and international instruments adopted by Ethiopia.²¹⁸ Indeed, article 93 (4(c)) of the constitution places article 18 in its non derogable rights list. Thus, according to this provision article 18 cannot be suspended at any time even in the declaration of state of emergency.

Further, Article 19 and 21 of the constitution provides a lot of mechanisms to do with the protection of the right of arrested persons and prisoners from torture, inhuman or degrading treatment or punishment, whether directly or indirectly. Article 21 of the FDRE constitution, under the title “The rights of persons held in custody and convicted prisoners” provides that,

²¹⁷ FDRE Constitution, article 18

²¹⁸ Ibid. article 13(2)

“All persons held in custody and persons imprisoned upon conviction and sentencing have the right to treatments respecting their human dignity. All persons shall have the opportunity to communicate with, and to be visited by, their spouses or partners, close relatives, friends, religious counselors, medical doctors and their legal counsel.”²¹⁹

Article 19(5) of the constitution also puts a remedy for illegally obtained evidence by torture, it provides that,

“Persons arrested shall not be compelled to make confessions or admissions that could be used in evidence against them. Any evidence obtained under such coercion shall not be admissible.”²²⁰

Indeed, Article 28(1) of the constitution clearly criminalizes torture as one of the crimes against humanity. It provides that: “Criminal liability of persons who commit crimes against humanity, so defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, such as genocide, summary executions, forcible disappearances or torture shall not be barred by statute of limitation. Such offences may not be commuted by amnesty or pardon of the legislature or any other state organ.”²²¹

Ethiopia has acceded to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. In this Convention, it is prescribed that “Each State Party take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”²²². Similarly, article 5 of the UDHR; article 7 of the ICCPR; and article 5 of the Banjul Charter talk about the right to humane treatment and the prohibitions of torture, cruel or inhuman treatment or punishment. Thus, Ethiopia is duty bound to respect the principles of the Conventions by way of preventing acts of torture and (or) punishing the commission of such acts throughout the country by virtue of article 9(4) & 13(2) of the constitution.

4.1.2 The Prohibition under Subordinate Legislations

Article 424 of the criminal code of the federal democratic republic of Ethiopia provides the penalties when violence is inflicted by state agents by using improper methods. It states that,

²¹⁹ Ibid. article 21

²²⁰ Ibid. article 19(5)

²²¹ Ibid. article 28(1)

²²² The Convention against Torture, Supra note 3, article 2

*“Any public servant charged with the arrest, custody, supervisions, escort or interrogation of a person who is under suspicion, under arrest, summoned to appear before a court of justice detained or serving a sentence, who, in the performance of this duties, improperly induces or gives a promise threatens or treats the person concerned in an improper or brutal manner, or in a manner which is incompatible with human dignity or his office, especially by the use of blows, cruelty or physical or mental torture, be it to obtain a statement or a confession, or to any other similar end, or to makes him give a testimony in a favorable manner is punishable with [simple imprisonment **or** fine], or [in serious cases, with rigorous imprisonment not exceeding ten years and fine.] ... Where the crime is committed by the order of an official, [such official] shall be punished with rigorous imprisonment not exceeding fifteen years and fine.”²²³*

If you critically observe this provision torture can be interpreted by definition as not a very serious crime within this legislation. Hence, under this provision the perpetrator may be punished fine alone. In addition, the perpetrator of the crime of torture may be punished with simple imprisonment. Surprisingly, according to the revised criminal code, crimes for which simple imprisonment can be imposed are those of not a very serious nature committed by persons who are not a danger to society. Article 106 of the criminal code provides that,

“(1) Simple imprisonment is a sentence applicable to crimes of not a very serious nature committed by persons who are not a serious danger to society. Without prejudice to conditional release; simple imprisonment may extend for a period of from *ten days to three years*. However, simple imprisonment may extend up to five years where, owing to the gravity of the crime, it is prescribed in the Special Part of this Code, or where there are concurrent crimes punishable with simple imprisonment, or where the criminal has been punished repeatedly. The Court shall fix the period of simple imprisonment in its judgment.

(2) The sentence of simple imprisonment shall be served *in such prison or in such section thereof as is appointed for the purpose.*”²²⁴

As provided in this provision, the designated sentence may runs from ten days to three years. These punishments are in no way appropriate for torture perpetrator and not in compliance with article 4(2) of the Convention against Torture that is, “Each State Party shall make these offences

²²³ FDRE Criminal Code, supra note 8, article 424

²²⁴ Ibid. article 106

punishable by *appropriate penalties* which take into account their *grave nature*”.²²⁵ Further, it must be understood that the imposition of fine for the practice of torture is absolutely unacceptable under any circumstance.²²⁶

Comparatively however, even within different stipulation of the code, it is also obvious that the sanction for common crimes of violence is more serious than that of acts of torture. For instance, article 555 of the criminal code provides that,

“Whoever intentionally; (A) wounds a person so as to endanger his life or to permanently jeopardize his physical or mental health; or (b) maims his body or one of this essential limbs or organs, or disables them, or gravely and conspicuously disfigures him; or (c) in any other way inflicts up on another an injury or disease of a serious nature, is punishable, according to the circumstances of the case and gravity of the injury with rigorous imprisonment not exceeding fifteen years, or with simple imprisonment for not less than one year.”²²⁷

Rigorous imprisonment is a punishment, as defined under article 108 of the criminal code, for offences of a very grave nature. It provides that,

“(1) Rigorous imprisonment is a sentence *applicable only to crimes of a very grave nature* committed by criminals who are particularly dangerous to society. Besides providing for the punishment and for the rehabilitation of the criminal, this sentence is intended also to provide for a strict confinement of the criminal and for special protection to society. Without prejudice to conditional release, the sentence of rigorous imprisonment is normally for a period of one to twenty-five years but where it is expressly so laid down by law it may be for life.

(2) The sentence of rigorous imprisonment shall be *served in such prisons as are appointed for the purpose*.”²²⁸

²²⁵ UN Committee against Torture, ‘Concluding Observations of the Committee against Torture: Ethiopia’, 20 January 2011, CAT/C/ETH/CO1, <https://www.refworld.org/docid/4d6cca412.html>, accessed 1 March 2019; See also UNCAT Implementation tool, *Guide on Anti-Torture Legislation*, (CTI 2024, 2016) 20 & 21

²²⁶ Ibid.

²²⁷ FDRE Criminal Code, Supra note 8, article 555

²²⁸ Ibid. article 108

Actually, it is arguably possible to conclude that torture may result the kind of outcome defined and expressed in article 555 of the criminal code of FDRE, it is however not clear that why torture can be treated in such easy manner in the same code.

Due to the incompatibility of criminalization and punishment of torture under the revised criminal code in light of international standards, Federal Attorney General in Ethiopia prefer to accuse the suspected high government law enforcement and security officials by other provisions of the criminal code and under Corruption Crimes Proclamation No. 881/2015.²²⁹ For instance, extenuated homicide under article 541(a), which is punishable with simple imprisonment not exceeding five Years; grave willful injury under article 555, which is punishable according to the circumstances of the case and the gravity of the injury with rigorous imprisonment not exceeding fifteen years, or with simple imprisonment for not less than one year; abuse of power or responsibility pursuant to Corruption Crimes Proclamation No. 881/2015 under article 9(3), which is punishable with rigorous imprisonment from ten years to twenty five years and fine not less than Birr twenty thousand and not exceeding Birr two hundred thousand. In this regard it is quite important to see some of the criminal accusation of the Federal Attorney General brought to the Federal High Court criminal Bench under File No. 232249 in regards of those suspects of higher officials of federal prisons.

“...ተከላሾች በሌላ ሰው መብት ላይ ጉዳት ለማድረስ በማሰብ 1ኛ ተከላሽ በፌዴራል ማረሚያ ቤቶች አስተዳደር ውስጥ በቂሊንጦ የቀጠሮ ማረፊያ ቤት የጥበቃ ደህንነት ዘርፍ አስተባባሪ ሆኖ ሲሰራ፣ 2^{ተኛ} ተከላሽ በፌዴራል ማረሚያ ቤቶች የቃሊቲ ከፍተኛ ጥበቃ ማረሚያ ቤት አደጋ መከላከል ኦፊሰር ሆኖ ሲሰራ፣ 4ኛ ተከላሽ በፌዴራል ማረሚያ ቤቶች የቃሊቲ ከፍተኛ ጥበቃ ማረሚያ ቤት የጥበቃና ደህንነት ዘርፍ አስተባባሪ ሆኖ ሲሰራ 5ኛ ተከላሽ በፌዴራል ማረሚያ ቤቶች የቂሊንጦ ቀጠሮ ማረፊያ ቤት ዋና አስተዳዳሪ ሆኖ ሲሰራ 6ኛ ተከላሽ የሸዋ ሮቢት ማረሚያ ቤት አስተዳዳሪ ሆኖ ሲሰራ ነሀሴ 28 ቀን 2008 ዓ.ም ከጠዋቱ በግምት 1 ሰዓት እስከ 3 ሰዓት ባለው ጊዜ በፌዴራል ማረሚያ ቤቶች የቂሊንጦ ማረፊያ ቤት ላይ በደረሰው ቃጠሎ ምክንያት በተነሳው ረብሻ ከሌሎች ቁጥራቸው 400 በላይ የሚሆን በእስር ላይ ከነበሩ ታራሚዎች ጋር የግል ተበዳዮች አቤል

²²⁹FederalAttorney General Vs. Officer Gebremariam Woldaye Abreha(et.al), Federal High Court, File No. 232249

ከበደ፣ ካሳ መሀመድ፣ ሚስባህ ከድር፣ ጌታቸው እሹቴ፣ ሰይፈ ግርማ፣ አርጋው ሞገስ፣ ካሳ መሀመድ፣ ደረጀ መርጋ ፣ቶሎሳ በዳዳ፣ ኒሞና ኡርጌሳ፣ ፍቅር ማርያም አስማማው፣ አሸናፊ መለሰ፣ ቶሬቅ ሸኩር፣ ደህናሁን ቤዛ፣ አንጋው ተገኝ፣ አሸናፊ ዮሀንስ፣ ያሬድ ሁሴን፣ የአብስራ ብርሃኑ፣ ባየህ ባዘዘው፣ ቴዎድሮስ ዳንኤል፣ ብስራት አበራ፣ ሸሃቡዲን ነስረዲን፣ ሲሳይ አበራ፣ አብዱልጋፋር አባራያ(ቶማስ ገዳ)፣ መሀመድ አደም፣ አንሙት የኔዋስ፣ እያቸው ሲሳይ እና አሸናፊ አካሉ ወደ ሸዋ ሮቢት ተሃድሶ ልማት ማረሚያ ቤት እንዲወሰዱ በማድረግ የነበራቸውን ንብረት በመቀበል በባዶ እግራቸው በቁምጣ ብቻ በመኪና እንዲጫኑ በማድረግ፣ ሸዋሮቢት ማረሚያ ቤት ሲደርሱም በመስመር በማሰለፍና በማረሚያ ቤት ፖሊስ አባላት በዱላ እንዲደበደቡ በማድረግ ቁጥራቸው 175 የሚሆኑ ሰዎችንም ባዶ ቤት የሴሚንቶ ወለል ላይ እንዲተኙ በማድረግ፣ ለሁለት ለሁለት በካቴና በማሰር ለረዥም ጊዜ እንዲቆዩ በማድረግ፣ በካቴና እጃቸውን ለሁለት ለሁለት እንደታሰረ በባዶ እግራቸው ሸንት ቤት እንዲጠቀሙ በማድረግ፣ እጃቸውን ሳይታጠቡ ምግብ እንዲመገቡ በማድረግ፣ ህክምና በመከልከልና ከቤተሰብ ጋር እንዳይገናኙ በማድረግ፣ ምርመራ ጨርሰው ወደ ሌላ ክፍል ሲዘዋወሩ ለ42 ቀናት ከአልጋ ጋር ለ24 ሰዓት በካቴና እንዲታሰሩ በማድረግ ኢ-ሰብአዊ ድርጊት እንዲፈጸምባቸው ያደረጉ በመሆኑ በፈጸሙት ስልጣንን ያለአግባብ መጠቀም ወንጀል ተከሰዋል።”

Further, in the same file by different accusations,“...በአጠቃላይ ቁጥራቸው 37 የሆኑ ተበዳዮች ፍርድ ቤት ረበሻችሁ በማለት ከ3 እስከ 6 ወር እጃቸው በካቴና እንዲታሰሩ ማድረግ ጨለማ ቤት እንዲታሰሩ በማድረግና ለ3 ወራት ቤተሰብ እንዳያገኙ በመከልከል በፈጸሙት ስልጣንን አላግባብ መገልገል ወንጀል ተከሰዋል።” “...የጨለማ እስር ቤት ውስጥ የግል ተበዳዮች አግባው ሰጠኝ፣ ሚስባህ ከድር፣ ሰይፈ ግርማ፣ ቴዎድሮስ ዳንኤል፣ አሸናፊ መለሰ፣ አብዱልጋፋር አባራያ (ቶማስ ገዳ) እና አጠቃላይ ቁጥራቸው 20 የሆኑ ግለሰቦች የለበሱትን ልብስ በማስወለቅ በቲሸርትና በቁምጣ ብቻ እንዲሆኑ በማድረግ፣ እጃቸውን በካቴና በማሰር በዱላ እና በፌሮ ብረት እንዲደበደቡ ማድረግ ኢ-ሰብአዊ ድርጊት እንዲፈጸምባቸው ያደረጉ በመሆኑ በፈጸሙት ስልጣንን ያለአግባብ መጠቀም ወንጀል ተከሰዋል።”

In similar vein, in regards of suspects of higher investigatory officials of Federal Police Commission, the Federal Attorney General brought to the Federal First Instance Court criminal

Bench under File No. 272703 pursuant to article 424(1) and 555 of the revised criminal code.²³⁰ Lastly, in regards of suspects of higher security officials of the government the Federal Attorney General brought to the Federal High Court criminal Bench under File No. 238040 pursuant to article 9(Abuse of Power or Responsibility) under Corruption Crimes Proclamation No. 881/2015 and article 407(Under the section Corruption Crimes Committed by Public Servants in Breach of Trust and Good Faith, Abuse of Power) of the Criminal Code.²³¹

For instance, “... በወንጀል ድርጊት ተጠርጥረዋል በሚል በተለያም በወቅቱ በአሸባሪነት ከተፈረጁ የፖለቲካ ድርጅቶች ማለትም ከአነግ ከአርበኞች ግንቦት ሰባት ጋር እንዲሁም ከሃይማኖት አክራሪነት ጋር በተያያዘ እና በኢኮኖሚ ላይ ከሚፈጸሙ ወንጀሎች ጋር ግንኙነት አላቸው በሚል በሰዎች ክትትል ተደርጎባቸው እንዲያዙ ትዕዛዝ በመስጠት እና ሂደቱን በበላይነት በመምራት በርካታ ሰዎች በተቋሙ የመረጃ እና የክትትል ሰራተኞች በሃይል ታፍነው ተይዘው እና የሚታሰሩበትን ቦታ እንዳውቁ በጨርቅ አይናቸው ተሸፍኖ ጦር ሃይሎች አካባቢ በሚገኘው የክትትል መምሪያ ግቢ ውስጥ በተዘጋጀው እስር ቤት እና ከላይ በተጠቀሱት ስውር እስር ቤቶች ውስጥ እንዲሁም በተለያዩ የሀገሪቱ ከተሞች ውስጥ በሚገኙ የተቋሙ ቅርንጫፍ ቢሮዎች ለረጅም ጊዜ እንዲታሰሩ እና ምርመራ እንዲደረግባቸው.... በምርመራ ላይ በመሳተፍ ተጠርጣሪዎችን እና ታሳሪዎችን በተለያዩ መንገድ በማሰቃየት ምርመራ እያደረጉ አስገድደው መረጃ እንዲቀበሉ ሲመራ የነበረ ሲሆን በዚህ መልኩ ቁጥራቸው በውል የማይታወቅ በርካታ ሰዎች ተይዘው ታስረው በታሰሩበትም በተለያዩ መልኩ ድብደባ እየተፈጸመባቸው በማሰቃየት እና በማስገደድ ምርመራ ሲደረግባቸው የነበረ ሲሆን... ክሶች ላይ በተገለጸው መልኩ ከፍተኛ የሰብዓዊ መብት ጥሰት እንዲፈጸምባቸው ያደረገ በመሆኑ በዋና ወንጀል አድራጊነት ተካፋይ በመሆን በፈጸመው በስልጣን አላግባብ በመገልገል የሚፈጸም ከባድ የሙስና ወንጀል...”, thus, due to the incompatibility of criminalization and punishment of torture under the revised criminal code in light of international standards, Federal Attorney General prefer to accuse

²³⁰ Federal Attorney General Vs. Commander Alemayehu Hailu Babata(et.al), Federal First Instance Court, File No. 272703

²³¹ Federal Attorney General Vs. Getachew Assefa Abera(et.al), Federal High Court, File No. 238040

suspected high government security officials by other provisions of the criminal code and under Corruption Crimes Proclamation.

The Criminal Procedure Code prohibits the acts of offering or using or causing to be offered, making or using any inducement, threat, promise or any other improper method by any police officer or authority to the effect that the person examined confesses or gives information.²³² Even though this provision does not clearly put the term torture, it actually included under the scope of the definition given to *all of the improper methods* provided in this provision. The law also excluded any evidence obtained through the use of such improper methods.²³³

Apart from the existing codes there are also different very important laws related with the protection of individuals from torture and cruel, inhuman or degrading treatment in the Ethiopian legal system. For instance, the Federal prison proclamation number 1174/2019 in its preamble as one of the objectives of the proclamation, states that it is established to enforce court decisions that respect the constitution of the Federal Democratic Republic of Ethiopia and that is committed to laws enacted on the basis of the constitution.²³⁴ For that matter, the proclamation intends to establish federal prisons which protect, among other things, individuals from cruel, inhuman or degrading treatment or punishment.²³⁵ Quite importantly, the Federal Police Commission Establishment Proclamation No. 720/2011 (Amended by proclamation No. 944/2016, which only amended the accountability of the commission and it is to the Prime Minister, rather in the former it is to Ministry of Federal Affairs) also prohibits the use of “inhumane or degrading treatment or act” by federal police officials.²³⁶

Further, proclamation 1174/2019 clearly imposes an obligation on all prison police officer to perform their duty by fully respecting human and democratic rights of individuals enshrined in the constitution and other international instruments adopted by Ethiopia.²³⁷ The proclamation

²³² Criminal Procedure Code of Ethiopia, Negarit Gazeta, Proclamation No.185 of 1961, article 31

²³³ Ibid.

²³⁴ Federal Prison Proclamation, Federal Negarit Gazzeta, Proclamation No. 1174/2019, 17 February 2020, preamble, paragraph 1

²³⁵ Ibid. see also article 32(1) & 32(2)

²³⁶ Ethiopian Federal Police Commission Establishment Proclamation, Federal Negarit Gazeta, Proclamation No. 720/2011, 28 November 2011, article 24(1)

²³⁷ Federal Prison Proclamation, Supra note 234, article 19(1)

also entitles all prisoners a right to be treated in such a way that their dignity is respected.²³⁸ Similarly, under the Federal Police officer's administration council of ministers Regulation No. 268/2012 under article 54(20) and sub 26 violations of human rights or committing an act contrary to the constitution and abuse of power would entail rigorous disciplinary measures, which include demotion and dismissal.²³⁹ Finally, the most important theme of this thesis is to discuss whether victims of torture have adequately recognized substantive rights to redress and reparation within the Existing Legal frame works and asses the practice in redressing victims of torture so as to clarify and explain how the existing Ethiopian legislations lacks international standards in redressing victims of torture.

4.2 Remedies for victims of torture in Ethiopia: An Overview of the Existing Laws

The right to an effective remedy underlies all human rights the Government of Ethiopia is obligated to guarantee, including those provided by Ethiopia's constitution and national laws that implement its international commitments.²⁴⁰ Effective remedies serve as a means to repair injuries suffered by individuals whom the Government fails to protect, and then as a deterrent to prevent future violations, which are more likely to occur in conditions of impunity.²⁴¹

4.2.1 Remedies under the FDRE Constitution

As we discussed in detail in the previous chapter, the FDRE constitution gave wider recognition for human rights. The whole part of chapter 3 of the constitution is devoted to guarantee human rights. The constitution, with strict terms, stated that international instruments ratified by Ethiopia are an integral part of the law of the land. Here, it is important to recall that Ethiopia ratified the following human rights instruments, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 14 March 1994 with no declaration for article 21 (inter-state compliant mechanism) and article 22 (individual compliant

²³⁸ Ibid. article 32(1)

²³⁹ Federal Police officer's administration council of ministers Regulation, Federal Negarit Gazeta, regulation No. 268/2012, 18 August 2020, article 54(20) & 54(26)

²⁴⁰ Universal Declaration of Human Rights (GA Res 217A (III), 10 December 1948, A/810), article 8 provides that, "Everyone has 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."

²⁴¹ Livio Zilli(ed.), The Right to Remedy and Reparation for Gross Human Rights Violations, A Practitioners Guide No. 2, revised edition(ICJ, 2018), page 22 & 23

mechanism), and no ratification to its optional protocol; International Covenant on Civil and Political Rights on 11 June 1993 but no ratification for its first optional protocol.

When we critically evaluate the legal recognition of victim right to an effective remedy for human right violation in Ethiopia in general and victims of torture in particular, though the FDRE constitution devoted one third of its coverage to fundamental human rights, unfortunately, there is no single express provision which deals with the victim right to effective remedy. However, any person or group who is a victim of human right violation should have access to effective judicial or other appropriate remedies at the national, regional and international levels²⁴² and as we discussed in detail in the previous chapter the right to an effective remedy when rights are violated is itself a right expressly guaranteed by global and regional human rights instruments. As it was elaborated in detail on the General Comment No.9, domestic system is the primary option for the effective protection of human rights²⁴³.

Even in the absence of express provision guarantying substantive right to an effective remedy in the FDRE Constitution, it is possible to argue that the right has constitutional basis at least in two ways in Ethiopia. First, arguably, as long as all human rights including socio-economic rights are justiciable²⁴⁴, judges have the adjudicatory power to decide up on cases of remedy for human rights violation in general and for torture in particular in domestic courts due to the impliedly guaranteed rights based on the legal basis of article 37(1) of the FDRE constitution.²⁴⁵ This is one of the constitutional remedy for the violation of those rights provided for in the chapter of human rights and fundamental freedoms.

Therefore, article 37(1) of the constitution implicates judicial protection to human rights. However, the applicability of article 37 of the constitution to claim remedy by victims of torture is itself argumentative since it may lead to the issue of constitutional interpretation which is also

²⁴² Dianah Selton, supra note 73, Page 18

²⁴³ UN committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 9: *the domestic application of the covenant*, E/C.12/1998/24, 3 December 1998, paragraph 1 & 4

²⁴⁴ Sisay Alemahu Yeshanew, 'The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia' (2008) 8 *African Human Rights Law Journal* 273; Amare Tesfaye, *Justiciability of Socio Economic Rights in the Federal Democratic Republic of Ethiopia* (Addis Ababa University, Unpublished, 2010)

²⁴⁵ FDRE Constitution, article 37(1) provides that, "Ever yone has the right to bring a justiciable matter to and to obtain a decision or judgment by, a court of law or any other competent body with judicial power".

not the mandate of regular courts in Ethiopia under article 62(1) of the same.²⁴⁶ Second, as all the international and regional human right instruments once ratified by the government of Ethiopia become part and parcel of the law of the land²⁴⁷, it is possible to argue that Ethiopian courts are obliged to take judicial notice of those international & regional human right instruments that recognized the victims right to remedy as one of human rights so long as they do not contradict with the constitution²⁴⁸. However, in the absence of express constitutional Provision which recognizes the right to an effective remedy as a substantive human right, it is quite important to look as to whether Victims of Torture have a statutory right to claim remedy before Ethiopian courts. We will see it in detail in the next section on this issue under the Ethiopian legal system.

4.2.2 Remedies Under the Criminal laws

Under the Ethiopian legal system there is no comprehensive law which deals with the right of victims to remedy for human right violation in general and torture in particular. However, the cumulative reading of the FDRE criminal & civil code reveals the existence of the right to restitution and compensation for particular types of human right violation that constitutes an offense.²⁴⁹

Thus, the Ethiopian legal system provides two ways for victims of offenses to make a claim for restitution and compensation for damages. The claim for restitution can be raised in a criminal prosecution, or a separate civil claim may be filed against the offender. Article 101 of the criminal code concerning restitution of property, compensation for damages and costs provides that,

“Where a crime has caused considerable damage to the injured person or to those having rights from him, the injured person or the persons having rights from him shall be entitled to claim that

²⁴⁶ Actually, there is no consensus among Ethiopian Scholars in regards of the issue for which the legitimate power for constitutional interpretation in Ethiopia were given, for instance see, Assefa Fiseha, ‘Constitutional Adjudication in Ethiopia: Exploring the Experience of House of Federation’(2007)1(1)*Mizan Law Review*1; Takele Soboka Bulto, ‘Judicial Referral of Constitutional Dispute in Ethiopia: From Practice to Theory’(2011) 19*African Journal of International & Comparative Law* 99

²⁴⁷ FDRE Constitution, article 9(4)

²⁴⁸ Ibid. article 9(2) & 13(2)

²⁴⁹ Civil Code of the Empire of Ethiopia, Negarit Gazeta, Proclamation No.165 of 1960, article 2035 provides that “a person commits an offence where he infringes any specific and explicit provision of a law, decree or administrative regulation”. Thus, this provision establishes a fault.

the criminal be ordered to make good the damage or to make restitution or to pay damages by way of compensation. To this end they may join their civil claim with the criminal suit. Such claim shall be governed by the provisions laid down in the Criminal Procedure Code.”²⁵⁰

Indeed, article 102 of the criminal code provides various mechanisms so as to compensate the injured in circumstances where it appears unlikely that the offender will be able to pay on his own,

“Where it appears that compensation will not be paid by the criminal or those liable on his behalf on account of the circumstances of the case or their situation, the Court may order that the proceeds or part of the proceeds of the sale of the articles distrained, or the sum guaranteed as surety, or a part of the fine or of the yield of the conversion into work, or confiscated property be paid to the injured party. The claim of the injured party who has been compensated shall be assigned to the State which may enforce it against the person who caused the damage.”²⁵¹

Similarly, the Ethiopian Criminal Procedure Code provides that a person who has been injured by a criminal offense may make an application in writing for compensation. Article 154(1) of the Criminal Procedure Code reads as follows, “where a person has been injured by a criminal offence, he or his representative may at the opening of the hearing apply to the court trying the case for an order that compensation be awarded for the injury caused. The application shall be in writing and shall specify the nature and amount of the compensation sought. He shall not on filing his application pay the prescribed court fees as though it were a civil case.”²⁵²

However, the court may dismiss the application according to article 155, it reads as follows,

“(1) The court shall consider the application and shall of its own motion or on the request of the prosecution or the defense refuse the application where: (a) a young person is the accused; or (b) the accused is being tried in his absence; or (c) the injured party has instituted proceedings in a civil court having jurisdiction; or (d) the person making the application is not qualified for suing; or (e) the claim for compensation cannot be determined without calling numerous witnesses in addition to those to be called by the prosecution and defense; or (f) the court is of opinion that

²⁵⁰FDRE Criminal Code, Supra note 8, article 101

²⁵¹ Ibid. article 102

²⁵² Criminal Procedure code, Supra note 232, article 154(1)

the hearing of the injured party's claim for compensation is likely to confuse, complicate or delay the hearing of the criminal case.

(2) The application shall be dismissed where the amount of compensation claimed exceeds the pecuniary jurisdiction of the court.

(3) Where the court dismisses the application its decision shall be final and no appeal shall lie against it. The injured party shall be informed by the court that he may file a claim against the accused in a civil court.”²⁵³

Where the application is allowed, the victim is allowed to take part in the proceedings with the same rights as an ordinary party.

“(1) where the application is allowed the injured party shall be entitled to take part in the proceedings and shall have with regard to evidence all the rights of an ordinary party. (2) The court shall at the close of the case for the defense permit the injured party or his representative to address the court in person or by advocate on the question of the amount of compensation to be awarded. The accused or his advocate shall have the right to reply”.²⁵⁴ Indeed, “an injured party may at any time before the close of the case for the defense withdraw his application and thereupon he may file a claim against the accused in the civil court having jurisdiction”²⁵⁵.

However, “When the accused is acquitted or discharged, the court shall not adjudicate on the question of compensation and shall inform the injured party that he may file a claim against the accused in the civil court having jurisdiction”²⁵⁶. In deciding the claim article 159 provides that,

“(1) the court when awarding compensation to an injured party shall order that: (a) the amount of compensation so awarded be paid to the injured party or his representative and (b) costs as provided for civil cases be paid to the injured party or his representative; and (c) the accused pay the court fees as if it were a civil case. (2) Judgment shall be given as in an ordinary case”²⁵⁷.

4.2.3 Remedies Under The Civil Law

²⁵³ Ibid. article 155

²⁵⁴ Ibid. article 156

²⁵⁵ Ibid. article 157

²⁵⁶ Ibid. article 158

²⁵⁷ Ibid. article 159

Civil liability for harm inflicted by civil servant or government employee or servants or employees of the regional State or of a public service with legal status or officials thereof is regulated by the Civil Code of Ethiopia (Civil Code), in particular by article 2126 under the title Liability of the State, which provides that,

“(1) any civil servant or government employee shall make good any damage he causes to another by his fault. (2) Where the fault is [a professional fault], the victim may claim compensation from the State, provided that the State may subsequently claim from the servant or employee at fault. (3) The State shall not be liable where the fault is a personal fault.”²⁵⁸

Further the civil code explain Professional fault under article 2127, which states that,

“(1) A fault shall be deemed to be a professional fault where the person who [committed] it believed in good faith that he acted within the scope of his duties and in the interest of the State. (2) A fault shall be deemed to be a personal fault in other cases. (3) Unless the contrary is proved, the servant or employee shall be deemed to have acted in good faith.”²⁵⁹

Accordingly, the law does not exempt any categories of public officials from civil suit in connection with actions committed in an official capacity. However, the cumulative reading of the above two articles reveals that where the harm is resulted by omission of civil servant or government employee it lacks the threshold to establish liability of the state under this provisions. Comparatively however, the civil code of the Republic of Tajikistan includes omission and under article 16 provides that,

“where harm is inflicted upon a natural or legal person due to unlawful action or *omission* of a state body, local state body or a local self-government body, or officials thereof, including by issuance by the state body or a local self-government body of an act that does not conform to the law, the harm is subject to compensation by the Republic of Tajikistan or a relevant body of the Republic of Tajikistan.”²⁶⁰

Thus, as far as the availability of civil remedies against the state is concerned, under this provision of the Ethiopian Civil Code, the victims are entitled to civil damages against the

²⁵⁸ Civil Code, Supra note 249, article 2126

²⁵⁹ Ibid. article 2127

²⁶⁰ Civil Code of Tajikistan, article 16

government only in the event of harm caused by an act (not omission) that amounts professional fault of any civil servant or government employee. Having this said, damages are calculated as, “the damages due by the person legally declared to be liable shall be equal to the damage caused to the victim by the act giving rise to the liability”²⁶¹. Indeed, under article 2092 it includes, “a future damage which is certain to occur shall be made good without waiting for it to materialize”²⁶². Therefore, it includes losses incurred by the injured party or costs required to be incurred to vindicate the violated right, loss or damage to property (real damages) as well as any lost income that the injured party would have earned under usual circumstances had his or her right not been violated (lost earnings) and future damages.

There is also a concept of “moral damages”, which intends to compensate the injured parties in cases if the law provides so, “the author of a misdeed shall make good the moral harm resulting from his misdeed wherever adequate procedure exists for such redress. Unless otherwise expressly provided by law, moral harm may not be made good by way of damages”²⁶³. This concept may be applicable to cases related to intentional offence, physical assault, unlawful constraint, defamation, physical injuries or death, Injury to the rights of spouses, abduction of child, assault on property, indecent assault, and injury to a wife; in this situation the court may award fair compensation.²⁶⁴

Even though, the civil code in regards of moral damages fails to expressly recognize victims of torture in the above cases there may be a room to claim it. The Civil Code also provides for the right to restoration of the right, which implies the restitution of property, restoration of honor and reputation of the victim that existed prior to the act that violated the right in question.²⁶⁵ Cessation of action may likewise be ordered in cases of continuing violations.²⁶⁶

Therefore, there is no comprehensive legal framework for victims of torture in Ethiopia to claim reparation from the government just like the UN Committee against Torture General Comment No.3 and UN basic principles and guidelines as discussed in detail in chapter two (Victim-Centered remedies). What makes the matter worse, till the preparation of this thesis the FDRE

²⁶¹ Civil Code, Supra note 249, article 2091

²⁶² Ibid. article 2092

²⁶³ Ibid. article 2105

²⁶⁴ Ibid. article 2106-2115

²⁶⁵ Ibid. article 2118-2120

²⁶⁶ Ibid. article 2121

government didn't ratify individual complaint mechanisms and make a declaration under ICCPR & CAT; as a consequence, individuals are deprived of making complaint to get reparation from international human right mechanisms when the domestic and regional system fails, that ultimately hinder access to other possible avenues.

4.3 Mechanism for Enforcing Remedies for victims of torture in Ethiopia

It is known that international human rights law lays down obligations on governments to act in certain ways or to refrain from certain acts in order to promote and protect human rights and fundamental freedoms of individuals or groups. This principle is emphasized in the Universal Declaration of Human Rights and in numerous other international human rights conventions, declarations, and resolutions as we discussed earlier. It is clear that, the enforcement of a bill of rights requires the state in practice to identify and prevent possible abuses in advance of them from occurring and, where they do occur, to provide effective remedies.

In this section we will discuss the possible mechanisms for enforcing remedies of victims of torture in Ethiopia in particular, recourse to the judiciary and national human rights institutions. It is not sufficient that a remedy exists in theory but it must be effective in practice. This means that it should be accessible; capable of redressing the violation and that its exercise is not unjustifiably impeded by national authorities.²⁶⁷

4.2.4 Making Legal sense in remedying victims of Torture: The role of the Judiciary

National courts are frequently called upon to uphold the absolute nature of the prohibition of torture, provide measures of protection, rule on admissibility of evidence that may have been obtained through torture or ill-treatment, and hear habeas corpus applications. They also play a pivotal role in complaints procedures and investigations, try individuals accused of being responsible for acts of torture or ill-treatment, and rule on claims for reparation in the course of criminal, civil, administrative law or constitutional proceedings.²⁶⁸ In order to make a legal and practical sense of human rights, it is imperative that we move away from the platitudes of political rhetoric to the vagaries of legal reality and practical applicability. For this, according to

²⁶⁷See generally the UN Committee against Torture, General comment No. 3, Supra note 22

²⁶⁸ Lutz Oette, 'Implementing the Prohibition of Torture: The Contribution and Limits of National Legislation and Jurisprudence' (2012) 16(5) *International Journal of Human Rights* 717

Tsegaye Regassa, we have to identify specific measures that need to be taken at the various steps in the process of realizing a particular right. These measures may vary from those that help to legalize human rights to those that help actually make them exercisable by litigating them in judicial or in other quasi-judicial institutions.²⁶⁹

Further, Tsegaye Regassa convincingly argues that, converting moral claims into legal rights requires a process of concretization of rights so that first and foremost the rights secure a constitutional guarantee in the legal system.²⁷⁰ Assuming that the constitution is the supreme law of the land, such incorporation in the constitution helps entrench human rights so that they are granted an elevated but also a foundational position in the legal system.²⁷¹ The constitutional position helps to impose a specific obligation on the state. Once constitutional guarantee is secured, it is important that for their protection, legislative framework is designed.²⁷²

The process of concretization becomes more robust when it is backed by judicial application especially in the face of violation and it becomes complete when there is a possibility that, once a judicial pronouncement is made on the legitimacy, content, and scope of the right, there is a sanction entailed to violation through executive implementation.²⁷³ When there is a commitment and will often on the part of law enforcement officials to see to it that violators are penalized and victims are provided with the commensurate remedy, then we say the process towards making legal sense of human rights is set and on course.²⁷⁴

Thus, constitutional guarantee is about extending recognition to a particular right in the most fundamental law of a state. Legislative protection ensures that no (horizontal or even vertical) violation can occur with impunity.²⁷⁵ Judicial application gives an assurance that in cases of violations, there is a possible remedy (or redress) by taking one's cases to courts.²⁷⁶ Executive implementation relates to the certainty that all judicial injunctions and orders that vindicate one's rights are to be heeded to thereby leading to an actual redress for the victim and a real sanction

²⁶⁹ Tsegaye Regassa, *Supra* note 182, page 306 & 307

²⁷⁰ *Ibid.* page 306

²⁷¹ *Ibid.*

²⁷² *Ibid.*

²⁷³ *Ibid.*

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.* page 307 & 308

²⁷⁶ *Ibid.*

on the perpetrator of the violation or abuse. All these tasks are inter-related and interdependent one on the other.²⁷⁷

The duty to enforce imposes responsibilities much like the ones that the duty to protect entails. It involves the need to redress the victim as much as to punish the violator.²⁷⁸ This duty often requires strong administrative, judicial, and law enforcement organs that can impartially and efficiently work towards redressing the victim and penalizing the violator.²⁷⁹ Therefore, there should be an express constitutional guarantee for the right to an effective remedy in cases of violation of human rights and to enhance their protection detailed legislative framework should be designed so that victims of human rights violations, more specifically victims of torture bring their action to the court against the Government to enforce their rights in cases when the later fails in effectively, appropriately and promptly redressing victims of torture.

4.2.5 The Role of National Human Rights Institutions and Civil Society Actors in Enforcing Remedies for Victims of Torture in Ethiopia

The formal legal recognition of human rights and courts' application of its provisions are, however, not the only mechanism for its enforcement. Where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include the right of individuals to seek and receive assistance from others in defending their human rights and fundamental freedoms. Therefore, in addition to the abovementioned enforcement agents, the important components in ensuring the effectiveness of human rights protection are establishing national human rights institutions (NHRIs), in line with international standards, and promoting the involvement of other civil organizations in the process.²⁸⁰

In some countries such institutions also have the jurisdiction to make recommendations that are related both to issues of law and policy.²⁸¹ They can also identify areas where remedies do not exist and advocate legislative changes to promote and protect human rights and to provide effective remedies.²⁸² They have an advocacy role in promoting and protecting human rights

²⁷⁷ Ibid. page 308

²⁷⁸ Ibid. page 309

²⁷⁹ Ibid.

²⁸⁰ Polona Tepina(ed.), *The Torture Reporting Hand Book*(Human Rights Centre: University of Essex, Second Edition: 2015), See page 138-140; Lutz Oette, *Supra* note 30, See generally Page 85-89

²⁸¹ Ibid.

²⁸² Ibid.

through seeking to resolve violations. As part of their role in receiving, investigating and seeking to resolve complaints of human rights violations, NHRIs can form partnerships with Non-Governmental Organizations (NGOs) and play an important role in assisting victims, informing them of their rights and advocating on their behalf.²⁸³ Though the primary responsibility for offering redress for violations lies with the state, NHRIs and NGOs can also offer victims assistance in making their rights a reality, and running programs for their rehabilitation, for instance, for torture victims.²⁸⁴

Domestic human rights organizations ought to be recognized for their powerful contribution toward the advancement of human rights and the promotion of democracy.²⁸⁵ These actors, most importantly, can accompany or represent individuals or the public in instituting legal actions for violations of human rights when the latter are unable to do so by themselves.²⁸⁶ They also have lobbying effect in compelling governments to setup strategies for human rights protection. Their involvement in human rights issues may take many forms, e.g. monitoring places of detention, and working to prevent torture and providing assistance to complainants.²⁸⁷ This is possible, however, only when states let the NHRIs, NGOs and similar organizations and associations operate freely in the domestic setting.²⁸⁸

Ethiopia has expressly provided in its Constitution for the establishment of a Human Rights Commission²⁸⁹, one of the primary functions being “to advocate and promote respect for, and an understanding of, human rights,” and another being to “educate the public regarding the nature and content of such rights”.²⁹⁰ Ethiopia has even expanded the human rights regime by providing for the establishment of the Institution of the Ombudsman.²⁹¹ Among others the Commission has a power and a duty to ensure the enforcement and respect national and international of human rights law in the country.²⁹² However, the efficiency of human rights institutions in Ethiopia has

²⁸³ Ibid.

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ FDRE Constitution, article 55(14)

²⁹⁰ Ethiopian Human Rights Commission Establishment Proclamation, Supra note 206, article 5 & 6

²⁹¹ FDRE Constitution. Article 55(15)

²⁹² Ethiopian Human Rights Commission Establishment Proclamation, supra note 206, article 6

been questioned in the light of manifest human rights violations and disregard for basic human dignity in one or more forms.²⁹³

Generally, Many NHRIs have not fulfilled the high expectations.²⁹⁴ This has been due to insufficient independence, inadequate resources and lack of the requisite ability and willingness to challenge entrenched practices to secure justice and accountability.²⁹⁵ According to some informants of the interview in regards of Ethiopian Human Rights Commission, our country is not an exception to these problems.²⁹⁶ Among the positive developments to be mentioned is that the Ethiopian Human Rights Commission has financially and technically supported the Ethiopian Women Lawyers Association (EWLA), Ethiopian Human Rights Council and near to 39 Universities so as to establish centers of legal aid in different parts of the country to ensure that violations of rights are not overlooked and uncompensated based solely on a person's financial inability to seek justice in the courts and to strengthen their work in areas of human rights protection.²⁹⁷

National human rights institutions (NHRIs) can offer an important complementary mechanism, or even alternative where other avenues fail. NHRIs, such as national human rights commissions, ombudspersons or similar bodies, have played an important role in preventing and remedying torture, such as monitoring detention, particularly where they have been designated as national preventive mechanism under OPCAT; documenting torture and ill-treatment; investigating allegations of torture and ill-treatment; and recommending or awarding compensation, in addition to taking general measures aimed at prevention of torture.²⁹⁸ However, according to some informants of the interview²⁹⁹, in Ethiopia constitutionally established national human rights institutions (NHRIs) didn't discharge their mandate and exercise their power effectively and due to the previous repressive Charities and Societies Proclamation 621/2009 no tangible role played by NGOs for the promotion and protection of human rights in general.

²⁹³ Amnesty International, *Ethiopia: Skirting Human Rights Violations: Recommendation for reform of the Ethiopian Human Rights Commission*(AI, AFR/25/0123, 2019)

²⁹⁴ Lutz Oette, *Supra* note 30, See, Page 86

²⁹⁵ *Ibid.*

²⁹⁶ Interview with Ethiopian Human Rights Commission Human Rights Protection and Follow up Directorate Director, Adham Duri, Addis Ababa, 21 October 2019

²⁹⁷ *Ibid.*

²⁹⁸ Lutz Oette, *Supra* note 30, Page 85

²⁹⁹ Interview with Head of the Office of Oromo Federalist Congress Party & Executive Committee Member, Tiruneh Gamta, Addis Ababa, 22 October 2019

4.3 The Practice of Remedies For Victims of Torture in Ethiopia

Despite the presence of the laws prohibiting the use of torture and mistreatment, there were numerous very credible witnesses or victims of torture and credible reports of torture and inhuman treatment in the country.³⁰⁰ The victims include students and peaceful protestors, members of political opposition groups, people perceived to be supporters or members of insurgent groups such as Oromo Liberation Front (OLF), Ogaden National Liberation Front (ONLF) and Ginbot Sebat, and individuals alleged to be connected to terrorist activities.³⁰¹ According to the responses of victims of torture during interview as well as reports of human rights organizations, security officials tortured or mistreated detainees. Thus, police and security officials in different official and unofficial detention centers commit torture over criminal suspects in order to obtain confessions. There are also frequent reports of torture of suspected terrorists or armed insurgents.³⁰²

Over the past continued years till recently, Human Rights Watch, Amnesty International and other human rights organizations have reported the use of torture by EPRDF government against a variety of people who are considered as enemy of the government.³⁰³ Competitive (Opposition) political parties documented frequent and systematic torture and abuse of their supporters by police and regional militias that ultimately in some instances lead to death.³⁰⁴

³⁰⁰ Interview with different victims of torture, Names Confidential, Addis Ababa, 18 October 2019; Amnesty International, *Ethiopia: Submission to the 46th Ordinary Session of the African Commission on Human and Peoples' Rights*(AFR 25/011, 2009);Amnesty International, *Ethiopia: Justice Under Fire* (AFR 25/002, 2011); Amnesty International, *Ethiopia: Failure to address endemic human rights concerns*, Submission to the UN Universal Periodic Review 19th Session of the UPR Working Group (AFR 25/004, 2013); Amnesty International, *Ethiopia: 25 Years of Human Rights Violations*(AFR 25/4178, 2016);Amnesty International, *The States of the World Human Rights: Ethiopia 2017/2018 report*(ISBN: 978-0-86210-499-3, 2018); Human Rights Watch, *Ethiopia: One Hundred Ways of Putting Pressure*(ISBN: 1-56432-610-1, 2010); Human Rights Watch, *They Want a Confession: Torture and Ill-Treatment in Ethiopia's Maekelawi Police Station*(ISBN: 978-1-62313-0657, 2013); Human Rights Watch, *Such a Brutal Crackdown: Killings and Arrests in Response to Ethiopia's Oromo Protests*(ISBN: 978-1-6231-33665, 2016); Hewan Alemayehu, *Ethiopian political prisoners and their accounts of torture*(Association for Human Rights in Ethiopia (AHRE), 2018); Human Rights Watch, World Report, *We Are Like the Dead: Ethiopia*(ISBN-13: 978-1-60980-884-6, 2019)

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Interview with higher officials of Competitive (Opposition) political parties, Names Confidential, Addis Ababa, 30 October 2019

Several prisoners who were held at detention and prison centers independently claimed with credible detail that they and other detainees were tortured in police station and jails in attempts by security officials to elicit confessions before their cases went to trial.³⁰⁵ An official from EHRC in an interview told the researcher that sometimes the act of torture stems from personal antagonism between the tortured and the torturer, as the Commission has been able to prove.³⁰⁶ This truth is also shared by the victims from Muslim Arbitration Committee Members and supported by other victims of torture.³⁰⁷

Indeed, according to the report of Association for Human Rights in Ethiopia (AHRE)³⁰⁸, Prison officials repeatedly tortured and mistreated detainees. Thus, the continuous reports of AHRE, Amnesty International and Human Rights Watch indicate repeated cases of varying forms of torture caused by prison officials, mainly to extract confessions during interrogations and implicate the detainees in alleged crime. It is also sometimes used as a form of punishment. They reported that security officers tortured them by hanging them on a ceiling, putting them in a solitary confinement for hours; beating them with sticks, electric cables, and other hard objects; or tying water bottles to men's testicles. These facts of torture of the continued reports of human rights organizations are strongly supported by all victims of torture during an interview.³⁰⁹

In similar vein, these facts of the continued reports of Amnesty International, Human Rights Watch, AHRE and other human rights organizations are strongly supported by the testimonies of victims of torture in a documentary official video the so called *yefitih sekoka* (may be literally translated as "agony of justice")³¹⁰ released in different state owned Ethiopian Broadcasting Corporation (EBC) television and affiliated media outlets like Walta Information and Fana Broadcasting Corporation (FBC). It is a story of torture and abuse of citizens in the hands of intelligence officers and law enforcement officials that disclosed how, where and when Ethiopian security forces and other officials torture people in different parts of the country.

³⁰⁵ Interview with victims of torture, Teshager W/Michael, Mengesha W/Hiywot and Yohannes Mengeste, Addis Ababa, 17 October 2019

³⁰⁶ Interview with officials of EHRC, Name Confidential, Addis Ababa, 29 October 2019

³⁰⁷ Interview with victims of torture, Names Confidential, Addis Ababa, 31 October 2019

³⁰⁸ Hewan Alemayehu, Supra note 318

³⁰⁹ Interview with victims of torture, Supra note 305

³¹⁰ *Yefitih sekoka* ("Agony of Justice"), Supra note 13

Most importantly, unlike, the previous era of EPRDF in which government officials in most of the cases dismissed allegation of torture contrary to credible reports of human rights organizations, in his July speech to parliament, Abiy Ahmed admitted that the government used torture and other unlawful techniques on suspects, acknowledging that such techniques amounted to terrorism by the state.³¹¹ However, the most important point here is acknowledging torture by the government in the name of the Ethiopian regime is highly consequential especially for those victims of torture and gross human rights abuses in the hands of the very state that was supposed to protect them under the FDRE constitution, UN Convention against Torture, ICCPR and ACHPR. One of the legal significance of the admission is that it imposes a legal responsibility on the Ethiopian Government to investigate those crimes and prosecute individuals responsible for the abuses. In regards of this, the author strongly argue that accusation of some selected security and law enforcement officials doesn't relieve the responsibility of the government in regards of its obligation under the UN Convention against Torture, the obligation to prosecute.

When we revert to the obligation to provide an effective and prompt remedy to victims of torture, as we discussed in detail in chapter two, among others it also includes the restoration of employment or return of property, reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; compensation for pecuniary and non-pecuniary damage resulting from the physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the torture or ill-treatment; and lost opportunities such as employment and education, the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment.

However, interview with key informant government officials, victims of torture and other personnel discloses the fact that the government didn't effectively redress victims of torture (at least for those who are in need of medical treatment)³¹² despite its efforts to apologize the

³¹¹Ethiopian Broadcasting Corporation (EBC), *Prime Minister Abiy Parliament Un Expected Speech*, supra note 14; Awol K Allo, Supra note 14

³¹² Interview with victims of torture, Supra note 305, & 307; Interview with Federal Attorney General Organized & Transnational Crimes Department Public Prosecutors, Names Confidential, Addis Ababa, 16 October 2019; Interview with officials of EHRC, Supra note 306; Interview with higher officials of Competitive (Opposition) political parties, Supra note 304

general public in his speech to the parliament and criminally accuse some selected security and law enforcement officials. It is partly due to the fact that some high law enforcement and security officials are still in their position the victims fear to bring their suit to the court or other possible avenues.³¹³ Thus, the Government of Ethiopia fails to discharge its obligation to provide an effective, appropriate and prompt remedy to victims of torture under article 14 of the UN Convention against torture.

³¹³ Ibid.

Chapter Five

5. Conclusion and Recommendations

5.1 Concluding Remarks

As we discussed in detail, there is no comprehensive legal framework for victims of torture in Ethiopia to claim reparation from the government just like what is provided in the UN Committee against Torture General Comment No.3 and UN basic principles and guidelines. Indeed, there is no torture specific legislation just like the Philippines Anti-Torture Act, Nepal Torture Compensation Act (TCA) and United States of America Torture Victims Relief Act of 1998 that provides the mechanisms to ensure the right to an effective remedy for victims of torture. What makes the matter worse, Ethiopian government didn't ratify individual complaint mechanisms and make a declaration under ICCPR & CAT; as a consequence, individuals are deprived of making complaint to get reparation from international human right mechanisms that may hinder access to other possible avenues.

The obligation to provide an effective and prompt remedy to victims of torture among others, it also includes the restoration of employment or return of property, reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; compensation for pecuniary and non-pecuniary damage resulting from the physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the torture or ill-treatment; and lost opportunities such as employment and education, the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment. However, the Government of Ethiopia fails to discharge its obligation to provide an effective, appropriate and prompt remedy to victims of torture under article 14 of the UN Convention against torture.

In Ethiopia when there is a human rights violation for instance torture the judiciary and justice institutions, national human rights institutions, nongovernmental organizations (NGOs), as an institutions and judges, prosecutors, police officers, lawyers and related personnel as an officials thereof are expected to play the essential role in responding effectively to the problems, needs and rights of the victims concerned otherwise human rights will largely remain a dead letter. It is not enough to simply speak about human rights by romantic words and to have bulky of human

rights legislations & ratifications, but there must also be a commitment to practically ensure enforcement of such rights and there should be cooperation between government and civil society actors to safeguard, maintain, and ensure human rights throughout the country. Thus, for human rights in this country to be translated into a practical reality, there must be an increase in cooperation with different organizations that support human rights. Generally, the enforcement mechanism can be successful when domestic institutions, both governmental and non-governmental organizations work together to accomplish their mission effectively.

As discussed in detail, the remedial task is to convert the dead words of the law into results by providing an appropriate, prompt and effective redresses in cases of violations of protected rights. As we tried to demonstrate well, the element of remedies for human rights violations, specifically torture is included in the definition of the concerned legal rights, because a right entails a correlative duty to act or refrain from acting for the benefit of another person. Unless, the duty to provide an effective remedy for victims of torture is enforceable, it may be seen as only a voluntary obligation that can be fulfilled or ignored at the will of the mighty state that finally undermine the protected right and make such right illusive. Further, the author of this thesis strongly argue that, in any case the obligation of Ethiopia to provide an appropriate, effective and prompt remedy for victims of torture does not relate to the available resources of the country and should not be postponed. Thus, remedying victims of torture is one among the obligations our country enters internationally while ratifying international treaties. But we haven't seen their applicability in reality. Hence victims of torture undergo both physical and psychological hardship they should be remedied based on the principle "ubi use ibi remedy" where it is right, there is a remedy.

5.2 Suggested Recommendations

- ✚ In Ethiopia there is no comprehensive legal framework for victims of torture to claim reparation from the government and the existing dispersed laws are not practically effective to secure remedies for victims of torture. Accordingly, I suggest the enactment of clear and comprehensive Anti-Torture legislation that address remedies for victims of torture so that the special concerns, needs, interests and sufferings of the victims will be addressed.

- ✚ Since in most of the cases it is the state officials that commit torture against individuals, the state should be responsible in redressing victims of torture with payment of compensation and(or) by making eligible reparations in accordance with the special needs and sufferings of torture victims. To this effect, the government of Ethiopia should establish state reparatory scheme through which the state would offer financial compensation to victims or their dependants so that the protection to victims of torture will be compatible with international standards.

- ✚ In order to widen the chance of individuals to get an effective remedy in other possible avenues in cases when the domestic system fails the government should ratify the individual complaint mechanisms under the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) & should make a declaration so as to recognizes the competence of the Committee to receive and consider communications under article 21 (Interstate compliant) and article 22 (Individual Compliant) of the Convention against Torture (CAT).

- ✚ In regards of constitutional remedy for victims of torture article 37(1) of the FDRE constitution should be interpreted as one form in remedying victims of torture since it opens the door to render decisions or judgments of compensation or other appropriate reparation measures by either courts of law or any other competent body with judicial power.

- ✚ The existing Ethiopian legislations in regards of remedies for victims of human rights violations particularly for torture victims lacks international standards to claim an appropriate remedy from the government from the perspective of both victim centered remedies and for those remedies directed to the society as a whole. Therefore, these laws should be amended and redrafted by the law maker so that they should be compatible with international standards.

- ✚ Article 424 of the criminal code that criminalizes torture should be amended and redrafted in line with CAT definition of torture.

- ✚ The Federal Attorney General, as the Chief Legal advisor of Federal Government of Ethiopia, and the Federal Police Commission despite their efforts made to investigation and criminal accusations of some selected suspected security and law enforcement officials, should establish special independent body that investigate and identify the happening of torture and the responsible higher officials in their degree of participation and responsibility, otherwise, the author of this work strongly believe that selective prosecution contravene the principle of Non Discrimination that ultimately questioned the foundational notion of the principle of equality under the supreme law of the land, the FDRE constitution.

- ✚ Finally, the FDRE government should work together with Ethiopian Human Rights Commission and nongovernmental organizations (NGOs) so as to identify victims of torture throughout the whole parts of the country and the government should appropriately, effectively and promptly redress all victims of torture in accordance with international standards.

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Appendix 1

List of Key Informants

Profile of government & non-government officials, practitioners, academicians and victims of Torture

No	Name of interviewees	Position	Educational level	Place of Interview	Date of Interview
1	Yebekal Gizaw	Attorney General Head of the Office of National Human Rights Action Plan	-	Addis Ababa (Federal Attorney General Office)	18/10/2019
2	Abrham Ayalew	Organized & Transnational Crimes Department Attorney General Prosecutor	LL.B LL.M	Addis Ababa (Federal Attorney General Office)	16/10/2019
3	Ephrem Hailu	Organized & Transnational Crimes Department Attorney General Prosecutor	LL.B	Addis Ababa (Federal Attorney General Office)	16/10/2019

4	Adham Duri	Ethiopian Human Rights Commission Human Rights Protection and Follow up Directorate Director	LL.M in Human Rights Law	Addis Ababa Ethiopian Human Rights Commission Head Office	21/10/2019
5	Tiruneh Gamta	Head of the Office of Oromo Federalist Congress Party & Executive Committee Member	BA. In Political Science and International Relation & LLB. In Law	Addis Ababa Head Office of Oromo Federalist Congress Party	22/10/2019
6	Dr. Yonas Birmeta	Addis Ababa University Head of School of Law	PhD	Addis Ababa University School of Law Head Office	23/10/2019
7	Teshager W/Michael	Former Gondar University Guest House Manager (Victim)	MA. In Tourism & Heritage Management	Federal High Court staffs and Guest Tea Rooms	17/10/2019
8	Mengesha W/Hiywot	Trader (Victim)	10 th Grade	Federal High Court staffs and Guest Tea Rooms	17/10/2019
9	Yohannes Mengeste	Student (Victim)	8 th Grade	Federal High Court staffs and Guest Tea Rooms	17/10/2019

10	Mujib Amino	Self- Employed (Victim)	-	Addis Ababa Eliana Hotel	31/10/2019
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NB: The names of fifteen key informants involved in interviews, six among key Informant officials or personalities & nine among victims of torture and their families, are not in the list for their personal security reason.

Appendix 2

Interview guideline questions

Jimma University

College of Law and Governance

School of Law

Dear respondent, this interview guideline questions are prepared by Anwar Hassen, post graduate student of Jimma University College of Law and Governance. The purpose of this interview is to collect relevant information in regards of “Remedies for victims of torture in Ethiopia: the Law and Practice”. This interview guideline questions are designed to solicit key information from relevant informants, officials or personalities who can represent diverse interests and opinions in regards of remedies for victims of torture in Ethiopia.

The information you are asked to provide is required for research purpose only and will not be used to jeopardize your position or compromise in any way the integrity of your office, job or status. Any information that you will provide will be kept in strict confidence and used solely for the purpose of this study. Your cooperation is greatly appreciated.

Interviewee Name _____

Date of interview_____

Place _____

Time of interview _____gender _____age_____

Social status _____

Educational level_____

Other (if necessary) _____

INTERVIEW GUIDE QUESTIONS

1. In the near recent year Ethiopian government acknowledgement in speech to parliament that Ethiopian security forces tortured people may have different legal implications. What do you think about the responsibility of the government in remedying victims of torture under the existing legal frameworks?
2. How do you see the practical implementation of remedies for victims of torture since the Ethiopian government released a documentary entitled *yefitih sekoka* (“agony of justice”),which

is a story of torture and abuse of citizens in the hands of intelligence officers and law enforcement officials, and after the government admit it?

3. Do you think Ethiopian law of remedies compatible with international human rights standards in redressing victims of torture? Could you explain their relationship?

4. How do you see the relations between remedies for victims of torture and the current practical response of the government in the aftermath of acknowledgment of torture? Does the government adequately discharge its duties in remedying victims of torture?

5. How do you explain the existing Ethiopian laws of remedies in demarcating the right-holders and duty-bearers for victims of torture?

6. How do you explain the current Ethiopian government accusation of some suspected intelligent, law enforcement officials and higher Government officials from both the legal and practical point of views?

7. How do you explain the practice of providing access to justice and state rehabilitation mechanisms and programmes to victims of torture or ill-treatment (if any)?

8. How do you see the investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and procedure for the assessment and evaluation of individuals' therapeutic and other needs in Ethiopia?

9. What do you think about the major legal and practical challenges and problems that hinder inredressing victims of torture in anappropriate, effective and prompt manner in Ethiopia?

10. What do you think about the duties and roles the Ethiopian Human Rights Commission (EHRC) and the Attorney General should play for the promotion and protection of human rights of victims of torture including their right to an effective remedy?

11. What comments or suggestions do you have on the current reform of EPRDF in the perspective of human rights protection in Ethiopia in general; and implementation of remedies for victims of torture in particular?

Thank you for your cooperation!!

Jimma University
College of Law and Governance
School of Law

Dear respondent, this interview guideline questions are prepared by Anwar Hassen, post graduate student of Jimma University College of Law and Governance. The purpose of this interview is to collect relevant information in regards of “remedies for victims of torture in Ethiopia: the Law and Practice”. This interview guideline questions are designed to solicit key information from relevant informants of Victims of Torture and their family members who can represent diverse interests and opinion in regards of remedies for victims of torture in Ethiopia.

The information you are asked to provide is required for research purpose only and will not be used to jeopardize or compromise in any way your interests or status. Any information that you will provide will be kept in strict confidence and used solely for the purpose of this study. Your cooperation is greatly appreciated.

Interviewee Name _____
Date of interview _____
Place _____
Time of interview _____ gender _____ age _____
Family status _____
Social status _____
Educational level _____
Other (if necessary) _____

INTERVIEW GUIDE QUESTIONS

1. In the near recent year, Ethiopian government acknowledges in speech to parliament that Ethiopian security forces and Law enforcement officials tortured people. As a victim, how do you see the extent that whether the government discharges its duties in providing access to justice and access to state rehabilitation mechanisms and programmes?
2. How do you see the practice of investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and procedure for the assessment and evaluation of victims’ therapeutic and other needs in Ethiopia?

3. How do you explain the practical implementation of remedies for victims of torture since the Ethiopian government released a documentary entitled *yefitih sekoka* (“agony of justice”), which is a story of torture and abuse of citizens in the hands of intelligence officers and law enforcement officials, and after the government admit it? Does the government adequately discharge its duties in remedying victims of torture?
4. What remedies provided by the government to victims of torture after acknowledging it in a speech to the parliament?
5. From your experience as a victim, do you think that victims of torture in Ethiopia are willing to disclose themselves and to claim remedies from the government? If not, what do you think is the underlying reason?
6. In your opinion, what should be done by the government to identify victims of torture and to effectively redress them?
7. What do you think about the major legal and practical challenges and problems that hinder in remedying victims of torture in an appropriate, effective and prompt manner?
8. As a victim of torture, how do you explain the psychological, physical, social and economic impacts of torture to you and your family in particular and the community in general? What do you think about the responsibility of the government in averting or at least reducing such harm in the future?
9. What comments or suggestions do you have on the current reform of EPRDF in the perspective of human rights protection in Ethiopia in general; and implementation of remedies for victims of torture in particular?

Thank you for your cooperation!!