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Reparations for Victims of Armed Conflict in Northern Ethiopia: The Adequacy of the Law, Institutions and the Practical Enforcement

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REPARATIONS FOR VICTIMS OF ARMED CONFLICT IN NORTHERN ETHIOPIA: THE ADEQUACY OF THE LAW, INSTITUTIONS AND THE PRACTICAL ENFORCEMENT

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Title page

REPARATIONS FOR VICTIMS OF ARMED CONFLICT IN NORTHERN ETHIOPIA: THE ADEQUACY OF THE LAW, INSTITUTIONS AND THE PRACTICAL ENFORCEMENT

Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of Masters of laws (LLM) at the School of Law, Bahir Dar University.

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Thesis approval page

The thesis entitled "*Reparations for Victims of Armed Conflict in Northern Ethiopia: the Adequacy of the Law, Institutions and the Practical Enforcement*" by Kenaw Tesfaye Akililu is approved for the degree of masters of laws (LLM)

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Declaration Page

Declaration

I, Kenaw Tesfaye Akililu, declare that the thesis comprises my own work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact/source will constitute sufficient ground for disciplinary action by the University and can also evoke criminal sanction from the State and civil action from the sources which have not been properly cited or acknowledged.

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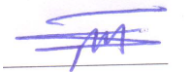

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Table of contents

Contents

List of acronyms

ACHR	American Convention on Human Rights
ASF	Amhara Security Forces
AU	African Union
CAT	Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment
CCPED	International Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
CRPC	Commission on Real Property Claims of Displaced Persons and Refugees
DDR	Disarmament Demobilization and Reintegration
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDF	Eritrean Defense Forces
EHRC	Ethiopian Human Rights Commission
ENDC	Ethiopian National Dialogue Commission
ENDF	Ethiopian National Defense Forces
EPPJC	Ethiopian Political Parties Joint Council
EPRDF	Ethiopian Peoples' Democratic Front
ERC	Ethiopian Reconciliation Commission
FDRE	Federal Democratic Republic of Ethiopia
HOF	House of Federations
HRC	United Nations Human Rights Committee
IACHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Convention on Civil and Political Rights

ICHREE	International Commission of Human Rights Experts in Ethiopia
ICJ	International Court of Justice
ICL	International law Commission
ICESCR	International Convention on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Former Yugoslavia
IDPs	Internally Displaced Persons
IHL	International Humanitarian Law
IMTF	Inter-Ministerial Task Force for Redress and Accountability
OHCHR	Office of Higher Commissioner for Human Rights
PCIJ	Permanent Court of International Justice
SGBV	Sexual and Gender-Based Violence
TPLF	Tigray People's Liberation Front
TSF	Tigray Security Forces
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCC	United Nations Compensation Commission
UNHRC	United Nations Human Rights Council

Abstract

The two- years-long armed conflict in northern Ethiopia was characterized by gross violations that could spark the issue of victims' reparations based on international law. This research thus aims to assess the adequacy of domestic law, institutions, and practical enforcement with respect to reparations for victims including restitution, compensation, rehabilitation, criminal accountability, truth, memorialization, apology, and reform. In pursuit of this aim, the research adopts both doctrinal and non-doctrinal qualitative research approaches. Documents of all types at any level were examined and key informants such as officials and experts as well as victims and victims' families were interviewed. This research finds out that both the Ethiopian legal and institutional frameworks as well as the practice are insufficient. The law fails to comprehensively recognize all forms of reparations including symbolic, collective, and preventive by nature as well as restitution in its fullest senses. The existing procedural rules fail to fit for the special conditions on the ground so lagging to provide lenient procedural and evidentiary requirements and state liability to reparation. The law also fails to felicitously criminalize crime against humanity, ethnic cleansing as well as enforced disappearance. Regarding institutions, the existing judiciary suffers from a shortage of impartiality, independence, capacity, and victims' trust and confidence. It also inherently lacks the ability to render symbolic and preventive reparations. The same works for the Inter-Ministerial Task Force (IMTF), which additionally has no institutional security. The newly established National Dialogue Commission (ENDC) could help facilitate dialogue on agendas including reparations and transitional justice had it been inclusive and mandated so. Practically, almost all forms of reparations are not yet provided for victims. A few scattered reparations initiatives are seriously flawed from their very inceptions such as one-sidedness, lack of consultations, and victim-centeredness. This research thus argues for the implementation of comprehensive transitional justice mechanisms including the creation of a special judicial structure, a separate truth and reconciliation commission, and an administrative reparation (proper) program. There is also a need for proper criminalization of gross violations including international crimes and recognition of all forms of reparations in the domestic legal system.

Keywords: Reparations, Victims, Gross Violations, Armed Conflict, Transitional Justice, Northern Ethiopia

CHAPTER ONE

1. INTRODUCTION

1.1. Background of the Research

Under classical International Law, only states had legal personality, and as such, they were the ones that could seek remedies including on behalf of their own citizens from other states.[1] The recognition of the individual as a right holder had only begun with the surge of Human rights conventions in the wake of the atrocities of the Second World War.[2] Receiving an impetus from *Chorzów Factory* case[3] on principles and ideas concerning reparations, which furthered in International Law Commission (hereinafter, ICL) articles[4] on state responsibility in inter-state relations, human rights norms recognized reparations for individuals as a secondary right of its own. Reparations, which are construed to cover wide arrays of measures ranging from redresses directly benefiting victims to criminal justice, truth-telling, and institutional and legal reforms, are firmly established in certain branches of international law including human rights law.

Most core international human rights instruments contained the right to remedies and reparations for victims of human rights violations using general terms.[5] Uniquely, the latest of all, the

[1] Ian Brownlie, *Principles of Public International Law*, Oxford University Press, (6th edition), Nov. 20, 2003, p. 182-210; Dinah Shelton, *Remedies in International Human Rights Law*, Oxford University Press, (3rd edition) 2015, p. 7, 48-49 (hereinafter, Dinah Shelton); Christine Evans, *The Right to Reparation in International Law for Victims of Armed Conflict*, Cambridge University Press, 2012, p. 17 (hereinafter, Christian Evans).

[2] M. Cheriff Bassiouni, International Recognition of Victims' Rights, Human Rights Law Review, Vol. 6, No, 2006, p. 206: Alexander Orakhelashvili, The Position of the Individual in International Law, California Western International Law Journal, Vol. 31, No. 2, 2001, p. 242-244: Christian Evans, p. 17-18; Dinah Shelton, p. 7-10.

[3] *Factory at Chorzo´w Case (Germany v. Poland)*, Permanent Court of International Justice (PCIJ), Merits, Ser. A, No. 17, 1928, Para. 29 (hereinafter, the *Chorzów Factory* case).

[4] General Assembly resolution 56/83, Responsibility of States for Internationally Wrongful Acts, A/56/49(Vol. I)/Corr. 4, 12 Dec. 2001, Article 30 &ff.

[5] UN General Assembly, Universal Declaration of Human Rights (UDHR), 10 Dec.1948, 217 A (III), Art. 8; General Assembly resolution 2200A (XXI), International Covenant on Civil and Political Rights (hereinafter, ICCPR), 16 Dec. 1966, Art. 2; General Assembly resolution 2200A (XXI), International Covenant on Economic, Social and Cultural Rights (hereinafter, CESCR), 16 Dec. 1966, Article 2; General Assembly resolution 39/46, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, CAT), 10 Dec. 1984, Art. 14; General Assembly Resolution 34/180, Convention on the Elimination of All Forms of Discrimination against Women (hereinafter, CEDAW), 18 Dec. 1979, Art. 2; General Assembly resolution 44/25, Convention on the Rights of the Child (CRC), 20 Nov. 1989, Article 38, and 39; General Assembly resolution 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter, CERD), Dec. 21, 1965, Art.6.

International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter, CCPED) goes one step forward comprehensively and specifically recognizing all the five elements of reparation (restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition).[6] While monitoring the implementation of various human rights treaties, treaty bodies have also elaborated the meaning and scope of the right to reparation and state responsibility thereto in their several general comments, views on complaints, and concluding observations.[7] The rights to reparations for victims of human rights violations and subsequent state obligations have also been cherished in the African, European, and Inter-American regional human rights systems.[8]

Even though whether they are recognized in the 1907 Hague, and 1949 Geneva Conventions and their protocols is debatable, individual reparations at least for serious violations of International Humanitarian Law are recognized in Customary International Humanitarian Law latter in 2000s.[9] In International Criminal Law, after decades of ambivalence, the 1998 International Criminal Court (hereinafter, ICC) rules have introduced groundbreaking innovations with regard to reparations for victims of International Crimes. Procedures are made available for victims to

[6] UN General Assembly Resolution 47/133, International Convention for the Protection of All Persons from Enforced Disappearance (CPPED), Dec. 18, 1992, Art. 24.

[7] See instances: UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, Para 15 and 16 (hereinafter, HRC, GC 31); UN Committee against Torture (CAT), concluding observations of the Committee against Torture: Colombia, 4 May 2010, CAT/C/COL/CO/4, Para. 25-27; UN Human Rights Committee (HRC), UN Human Rights Committee: Concluding Observations, Central African Republic, 27 July 2006, CCPR/C/CAF/CO/2, Para. 8 &12, *Rodrı´guez v. Uruguay*, Communication No. 322/1988, Human Rights Committee (hereinafter, HRC), U.N. Doc. CCPR/C/51/D/322/1988 (1994), Para. 12-14; Committee against Torture, *Kepa Urra Guridi v. Spain*, Communication No. 212/2002, U.N.Doc. A/60/44, at 147 (CAT 2005), Para. 6.8 &8.

[8] See instances: European Convention on Human Rights, Art. 13 (hereinafter, ECHR); *Akdivar and Others v. Turkey*, European Court of Human Rights (ECtHR), Para. *66*; American Convention on Human Rights, Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 Nov. 1969, Art. 25 and 63 (hereinafter, ACHR); *Castillo-Páez v. Peru,* Inter-American Court of Human Rights (hereinafter, IACtHR), Judgment of November 27, Reparations and Costs, 1998; *Malawi African Association and Others v. Mauritania*, Communications 54/91, 61/91, 98/93, 164–96/97 and 210/98, African Commission on Human and People's Rights (ACHPR), decided 27th Ordinary Session, May 2000, 13th Annual Activity Report.

[9] 1907 Hague Convention (IV) Regarding the Laws and Customs of Land Warfare, 18 October 1907, Art. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (hereinafter, Protocol I), of 8 June 1977, Art. 91; Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, International Committee of the Red Cross, Volume I, 2005, Rule 150 (hereinafter, the Customary IHL).

require reparation before the ICC, and a trust fund for victims was established to remedy whenever perpetrators are unable or unwilling to do so.[10]

With a view to guiding states by identifying mechanisms, modalities, procedures and methods in the implementation of the already recognized reparation rights, the UN General Assembly passed a landmark resolution in 2005.[11] It is a guiding principle of reparations applicable for gross violations of International Human Rights Law and serious violations of International Humanitarian Law (hereinafter, gross violations). In addition to providing a very comprehensive characterization of the notions of reparations and victims, the document provides state responsibility to establish national programs of reparations in cases when perpetrators are unable or unwilling.[12] The same year, the then Human Right Commission endorsed another document, the updated impunity principles, which provide guidance on mechanisms for effective enforcement of reparations. These are transitional justice mechanisms containing both judicial (criminal accountability), and non-judicial (including truth commissions, and reparations (proper) programs) aspects.[13] Such mechanisms have been installed in more than 35 war-torn and post-repression states across the globe, which are endorsed and promoted by the UN and AU.[14]

To highlight on contexts of the armed conflict and the resultant gross violations in northern Ethiopia, on November 3rd, 2020 armed conflict between the Ethiopian National Defense Forces (hereinafter, ENDF) and Amhara Special Force (hereinafter, ASF) in one side and Tigray Regional Forces (hereinafter, TSF) in the other broke out.[15] The Eritrean Defense Forces

[10] Rome Statute of The International Criminal court, United Nations, Treaty Series, vol. 2187, No. 38544, 17 July 1998, Art. 75 (hereinafter, the Rome statute of ICC); International Criminal Court, Rules of Procedure and Evidence, UN Doc. PCNICC/2000/1/ Add.1, (2000), Rule 85-99 (hereinafter, ICC Rules of Procedures).
[11] General Assembly Resolution 60/147, 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, A/RES/60/147, 21 Mar. 2006, preamble, Para. 7 (hereinafter, the UN Basic Principles on Reparations).
[12] Id, UN Basic Principles on Reparations, Principle IX, Para. 16, Principle V and IX, Para. 18-23.
[13] See Generally Diane Orentlicher, Report of the independent expert to updated set of principles to combat impunity, UN doc. E/CN.4/2005/102, Add.1 (hereinafter, Updated set of Principle to combat impunity).
[14]The UN Secretary General Report, the Rule of Law and Transitional Justice in Conflict and Post Conflict Societies, (2004), S/2004/616, Para. 50 (hereinafter, Secretary General Report); Prisciilla B. Hayner , *Unspeakable Truths: Transitional Justice and the Challenges of Truth Commission* (2nd edition), Rutledge, 2011, p. 27-75& 239-253 (hereinafter, Hayner, Unspeakable Truths).
[15] A video statement by Ethiopian Prime minister on armed attack against the Northern command of the army by Tigrean forces, 4 November 2020, available at: < https://youtu.be/utrwyiKP2KI> [accessed Mar. 25, 2022].

(hereinafter, EDF) also joined the hostilities shortly after in fighting against the TSF.[16] After several months of fighting in the Tigray region, the Ethiopian government declared a unilateral ceasefire on June 28th, 2021 and withdrew its forces from the region. Beginning in late July 2021, the Tigray people's Liberation Front (hereinafter, TPLF) militias had had taken control of several locations in the Afar and Amhara regions. At the time when the conflict was undergoing in the Tigray region, the Ethiopian government and TPLF signed a permanent ceasefire agreement (hereinafter, the Pretoria peace agreement) on November 2, 2022, after days-long African Union (AU)-led peace talks in Pretoria, South Africa.[17] In the course of the war, large-scale gross violations resulted in mass psychological and socio-economic calamities have been consistently reported by rights bodies.[18]

Except for the CPPED, Ethiopia is a party to many international conventions.[19] Besides, the reparation right for war victims, at least for serious violations of International Humanitarian Law (hereinafter IHL) has acquired customary international law status which any state including Ethiopia abides by.[20] Thereupon, the government of Ethiopia has the responsibility to establish mechanisms and take measures so as to give effect to the reparation rights of victims of the gross violations.

Against these backdrops, this research intends to assess the domestic legal, institutional, and practical adequacy in terms of implementation of reparations for victims of armed conflict in northern Ethiopia in light of international law and best foreign practices.

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[16] See Aljazeera News, *Eritrea confirms its troops are fighting in Ethiopia's Tigray,* 17 Apr. 2021, at <https://www.aljazeera.com/news/2021/4/17/eritrea-confirms-its-troops-are-fighting-ethiopias-tigray> [accessed Mar. 26, 2022].

[17] Agreement For Lasting Peace Through a Permanent Cessation of Hostilities, Between the Government of the Federal Democratic Republic of Ethiopia and the Tigray People's Liberation Front (TPLF), Pretoria, Nov. 2, 2022.

[18] See generally for example, Report of the Ethiopian Human Rights Commission/Office of the United Nations High Commissioner for Human Rights Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia, 3 Nov. 2021(hereinafter, the Joint investigation Report); UN Human Rights Council, Report of the International Commission of Human Rights Experts on Ethiopia, A/HRC/51/46, 9 Sep. 2022 (hereinafter, the ICHREE First Report)

[19] In <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=59&Lang=EN> [accessed Apr.19, 2022]" Ethiopia ratified and accede to 8/9 core human rights instruments. Hence, it would be bind by them according Vienna Convention on the Law of Treaties, United Nations, Treaty Series, Vol. 1155, p. 33, 1969 Art. 27 and 26; See <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/0/1d1726425f6955aec125641e0038bfd6> [accessed Apr. 19, 2022].

[20] Dinah Shelton, p. 238; Christian Evans, p. 39 and 231; the Customary IHL, Rule 50.

1.2. Statement of the Problem

Large-scale gross violations have characterized the armed conflict in northern Ethiopia that victimizes at least hundreds of thousands, if not a million plus, and deepens the already deteriorated social and civic trusts.[21] Comprehensive reparations are crucial for victims of such mass violations to return to their previous position, and dignity, and in effect able to resume their normal lives.[22] Comprehensive reparations are also vital for the public such as bringing civic and social trust; maintaining social cohesion and reconciliation.[23] The Ethiopian government thus required primarily, to establish adequate legal and institutional frameworks, and then, implement the reparations on the ground to achieve these imperatives.

Under Ethiopian law, individual victims of human rights violations may bring civil claims.[24] However, the completeness of the form of reparations recognized under the tort law in light of international law and the existence of state liability if perpetrators are unknown, unwilling, or unable to remedy, which is common in cases of gross and massive violation is dubious. Additionally, the existing judicial procedures' fitness in terms of bringing expedient results and applying lenient procedural and evidentiary requirements by taking into special nature and context of the gross violations is also questionable.[25] Furthermore, Ethiopian law appears not properly criminalizes crime against humanity, ethnic cleansing, and enforced disappearance, and thereupon attracts further investigation.[26]

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[21] Supra note 18; See generally Amhara Universities Forum, A concluding Report on attacks by TPLF against Amhara People, 2022.

[22] Christine Evans, *the Right to Reparations in International Law for Victims of Armed Conflict: Convergence of Law and Practices?*, The London School of Economics and Political Science, London, July 2010, p. 10.

[23] Pablo de Greif (ed.), *The Handbook of Reparations*, Oxford University Press (2006), p. 454, 460 (hereinafter, De Greiff, The handbook of Reparations); The Special Rapporteur Report on Promotion of truth, justice, reparation and guarantees of non-recurrence, Note by the Secretary-General, A/69/518, Oct. 2014, Para. 9 and 11, (hereinafter, Note by Secretary General); Robert Rothberg and Dennis Thompson, (eds.), *the Moral Foundation of the South African TRC, in Truth v. Justice*, (Princeton, NJ: Princeton University Press, 2001), p. 122–40.

[24] See *Civil Code of the Empire of Ethiopia*, Proclamation No. 165/1960, Negarit Gazeta, extraordinary Issue No. 2, 1960 (Art. 2035, 2090-2104, 2026(2), 2120-2122) (hereinafter, the Civil Code).

[25] Note by Secretary General, Para. 4; C, Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 147; Christian Evans, p. 135.

[26] Tadesse Simie Metekia, *Prosecuting crimes against humanity in Ethiopia: where is the law?*, Institute for Security Studies, 21 June 2022, at < https://issafrica.org/iss-today/prosecuting-crimes-against-humanity-in-ethiopia-where-is-the-law> [accessed Sep. 13, 2022].

Regarding institutions, military and civil criminal justice organs, and civil courts are available.[27] But, their capacity, independence, impartiality and victims' confidence to administer justice, and confidence from victims have been often questioned.[28] As the judiciary by nature is inherently limited to do so, it seem unsuitable for truth-seeking, reconciliation and reform, and lacks victim-centeredness that needs to be scrutinized and optional mechanisms have to be indicated.[29] As it seems not brought new institutions and procedures the sufficiency of the Inter-Ministerial Task Force (hereinafter, IMTF), established to oversee reparations by several committees underneath, is questionable.[30] The Ethiopian National Dialogue Commission (hereinafter, ENDC) would help the warring parties, stakeholders, and the public to facilitate dialogue on political differences leading up to conflict and transitional justice/reparations. However, its inclusivity of both sides of the conflict and all affected communities in its creation phase, and whether it has such mandates[31] is questionable and needs further investigation.

Hundreds of thousands, if not a million plus of victims have been left with unprecedented psychological and socio-economic calamities.[32] It howbeit is been observed that there is no meaningful reparation yet provided. A few sprinkling reparations prospects such as prosecution and reform seem problematic from their very inception. A few prosecution prospects have sparked questions of meaningfulness, as there was no report on criminal proceedings for command responsibility, and even the few initiated proceedings are being accused of selectivity.[33] Constitutional and security sector reforms which have been frequently demanded[34] were not also implemented and need to investigate the necessity or otherwise of the same. It is unlikely even the limited initiated reparations measures are victim-centered and consultative, as

[27] The Joint Investigation Report, Para. 364-370.
[28] UN Principles on Reparation, Para. 3 (b); the Joint investigation Report, Para. 364-372.
[29] UN Basic Principles on Reparation, Principle X, Para. 24; Livio Zilli, Alex Conte, Ian Seiderman (eds.), *The Right to a Remedy and to Reparation for Gross Human Rights Violations: a Practitioners' Guide 2, International Commission of Jurists*, Oct. 2018, p. 84 (hereinafter, Practitioners Guide2); Guidance Note of the Secretary General, p. 9; The UN Secretary General Report, Para. 47, 51.
[30] Statement Issued by Inter-ministerial Taskforce on Accountability and redress of violations committed in context of conflict in Northern Ethiopia, 29 Nov. 2021.
[31] The ICHREE First Report, Para. 119, 121.
[32] See Supra note 18 and 21.
[33] The Joint Investigation Report, Para. 370; Federal General Attorney, Summary of Efforts to Ensure Accountability Regarding Violations of International Humanitarian Law and other Legal Norms in the Regional State of Tigray (May 21, 2021).
[34]< https://www.ethiopia-insight.com/2021/06/30/ethnic-federalism-a-theory-threatening-to-kill-ethiopia/>; Human Rights Watch, Ethiopia's Tigray War Overshadows Ongoing Cycles of Violence in Oromia, 4 July 2022;
The joint Investigation Report, Recommendation No. C (8) & E(2).

victims' participation and stakeholders consultations were not reported, though such elements are necessary to bring legitimacy and popular support, and finally success. The other challenge worth examining is the lack of a political settlement on underlying political differences that leads up to the armed conflict[35] which is necessary for the implementation of reparations in a comprehensive and effective manner.

1.3. Objective of the Research

1.3.1. General Objective

The general objective of the research is to assess the sufficiency of Ethiopian law, institutions, and the practical enforcement with respect to the implementation of internationally recognized reparations rights for victims of gross violations in contexts of the armed conflict in northern Ethiopian.

1.3.2. Specific Objective

With the ultimate aim of achieving the general objectives, the research was conducted to meet the below specific objectives.

- To examine the nature and forms of reparations available for victims of gross violations based on international law.
- To analyze the international legal standing on reparations for victims of gross violations in contexts of armed conflict.
- To examine best foreign experiences with respect to reparations for victims of large-scale and gross violations.
- To examine Ethiopian law pertaining to reparations for victims of gross violations in contexts of the armed conflict in northern Ethiopia.
- To scrutinize institutional and legal sufficiency in the implementation of reparation rights for victims of gross violations in contexts of the armed conflict in northern Ethiopia.
- To assess the extent of implementation of reparations rights of victims of the armed conflict in northern Ethiopia.

[35] In "Supra note 17, Art. 10" the parties agreed to undertake dialogue on political differences, not already agreed in the peace agreement.

1.4. Research Questions

1.4.1. Main Question

How far Ethiopian law, institutions, and practical enforcement are sufficient with respect to the implementation of internationally recognized reparations rights for victims of gross violations in contexts of the armed conflict in northern Ethiopia?

1.4.2. Specific Questions

- What are reparations available for victims of gross violations under international law?
- How far reparations for victims of gross violations in the context of armed conflict are recognized under international law?
- How the best foreign experiences look like in the implementation of reparations for victims of large-scale and gross violations?
- How Ethiopian law addresses reparations for victims of gross violations in contexts of armed conflict?
- Are the Ethiopian laws and institutions sufficient to meet reparations for victims of gross violations in contexts of the armed conflict in its North?
- To what extent reparation rights of victims of gross violations of the Ethiopian armed conflict implemented?

1.5. Significance of the Research

This research would of great importance to NGOs, international and national human rights bodies, victims' groups, and other stakeholders as a basis for advocating, assisting, and promoting successful reparations programs in Ethiopia. Additionally, it would assist the Country's government and other stakeholders by suggesting the establishment of necessary institutions, systems, or laws to fill the gaps to be indicated in the research. It would be also invaluable for justice organs, and judicial and non-judicial bodies assigned to administer reparations for victims of the armed conflict in showing how reparations could be best provided. In the end, prospective researchers, students, and academicians who want to be in furtherance of laws and practices on remedy and reparation for victims of human rights violations in general

and gross violations, in particular, can utilize the findings of the study as a springboard and dependable literature.

1.6. Methods and Methodology of the Research

1.6.1. Research Approach

Doctrinal and non-doctrinal qualitative research approaches were applied in this research. The purpose of the research is an in-depth examination of laws and practices on reparations for victims of gross violations that neither invites generalizing the characteristics of the sample to the whole population nor quantifying the findings of the study or validating and invalidating a preexisting theory so that quantitative approach is not proper. The purpose could only be met through analyzing and interpreting legal norms, documents, and mechanisms both at international and domestic levels. To address the practical aspect of the inquiry, empirical qualitative data in which the understanding and feeling of participants on the realities of reparations for victims of gross violations will be described.

1.6.2. Data Gathering Techniques

Unstructured and semi-structured interview as well as analysis of legal documents was employed as data-gathering techniques. An unstructured interview is used to get data from victims, victims' families as well as local officials who are completely unfamiliar with the issue. A semi-structured interview was used to gather data from key informants and experts serving at the Ministry of Justice and IMTF to get their experience and understanding of the implementation of reparation rights for victims of the armed conflict. This technique is preferred by the researcher because though the officials have somehow similar understanding of the subject matter of reparation for war victims, they are expected to be from different cultural and work backgrounds that may expose them to different perceptions and understandings.

International legal documents including conventions, declarations, and other official UN documents, and Ethiopian domestic primary sources including the constitution, proclamations, and public records, were used and analyzed. As secondary sources, the researcher utilized concluding observations of international human rights bodies, court cases especially at the

international level, books, journal articles, previous research works concerned with remedies for victims of gross violations, and reports.

1.6.3. Sampling Techniques and Size

purposive, convenient, and snowball sub-categories of the non-random sampling technique were employed. The purpose of the research is best achievable through gathering qualitative data to give meaning to realities and opinions on the topic than through generalization of finding to the whole population which requires stringent and random sampling techniques. Purposive sampling was used to get data from key informants and experts who are officials at Federal justice organs, IMTF, and local officials were selected based on their knowledge and experience related to the subject matter. A convenient sampling method is preferred to gather data from victims, victims' families, and local officials from some most affected localities nearest to Bahir Dar city because the researcher can reach out to them safe and without unnecessary inconvenience. Snowball sampling is also chosen as it is crucial to trace survivors who keep their victimization secret especially victims of sexual violence.

Concerning the size of the sample, in qualitative approaches the purpose is not a generalization of findings to the whole population selecting a representative population; rather it is exploring participants' understandings and experiences. Accordingly, the number of participants in this research was determined at the time of data gathering based on the criterion of data saturation. Data saturation reaches whenever the researcher gathered data to the point of diminishing returns when nothing would be added from new participants.

1.6.4. Data Analysis Technique

Thematic analysis technique was employed to analyze empirical data collected through interviews with the aforementioned participants. It means "a method for systematically identifying, organizing, and offering insight into patterns of meaning (themes) across a dataset" which is best "to link various concepts and opinions of participants and compare them with the data that has been gathered in different situation at different times from other or the same

participants during the project."[36] Hence, it is ideal to infer participants shared and triangulated views and experiences on the topic of this research, reparations for victims, and reliably answer the research questions to be addressed through empirical data. Accordingly the researcher, first, audio-recorded the interviews and then transcribes them autographically. Secondly, the researcher familiarized himself with the dataset through repeated readings and making notes from the transcripts. Thirdly, the transcript was systematically coded and then, categorized and correlated based on content similarity. Fourthly, themes (patterns) have drawn from the coded data. Finally, inferences to answer the research questions were made from the drawn themes.

1.7. Scope of the Research

Even though the research touched up on gross violations in whatever contexts, it particularly focused on gross violations in contexts of the months-long armed conflict in northern Ethiopia. It is also delimited to address the Ethiopian domestic mechanisms, neither the international one nor any foreign states'. Coming to subject matters scope, reparations for all forms of violations of human rights were not addressed; instead, gross violations are the thematic focus. Plus to that, the procedural aspect of the right to remedy, and access to justice is not subjected to this research; rather the research focuses on the implementation of the substantive aspect of the right to remedy-reparation. The understanding of guarantees of non-repetition is wider to cover several measures including societal interventions in the form of education, art and culture. However, for the sake of space and focus only legal and institutional reforms are to be covered in this research as guarantees of non-repetition.

1.8. Limitations of the Research

Resource, financial and time constraints were main limitations the researcher is being confronting with. Plus, absence of some higher officials of the aforementioned justice organs as per the pre-scheduled appointment to gather data from was another big challenge as they are usually busy with multiples of tasks.

[36] Virginia Braun and Victoria Clarke, *Thematic Analysis*, p. 57 in H. Cooper, (ed.), APA Handbook of Research Methods in Psychology, The American Psychological Association, Vol. 2, 2012; Alhojailan, Mohammed Ibrahim, *Thematic Analysis: A Critical Review of its Process and Evaluation*, West East Journal of Social Sciences, Vol. 1, No. 1, p. 46.

1.9. Ethical Considerations

The principle of do not harm was adhered according to that the researcher should choose participants of the research after securing their full, free, and informed consent. The researcher gave prior notices about the rights of the participants such as to withdraw the participation at any time they think it appropriate. Furthermore, the researcher respected ethical principle of anonymity and confidentiality by concealing the identity of the participants and keeping the obtained information confidential. Moreover, the researcher disclosed the nature and purpose of the research project to the participants prior to starting data gathering. Regarding other academic ethical requirements, the researcher duly acknowledged ideas, information and concept taken from prior literature. Bluebook citation rules were used in acknowledging prior literature works.

1.10. Organization of the Research

The research is organized into five chapters, first; this very part, the Introduction, contains the proposal. The second chapter sub-titled "The Conceptual and International Legal Framework" covers, firstly, the notions of violations, victims, and reparations. Secondly, it addresses the international legal standing on reparations for victims of gross violations to demonstrate how reparations for victims of gross violations are recognized under international norms, mechanisms, and jurisprudence. Thirdly, an overview of general state practices will be touched upon. The Third chapter, headed "The Domestic Legal and Institutional Legal Frameworks" involves an assessment of the Ethiopian legal and institutional framework. The Fourth chapter headed "Practical Enforcement of Reparations for Victims of Armed Conflict in Northern Ethiopia" involves an assessment of how far reparation rights for the victim have been actually applied. The fifth chapter is Conclusion and Recommendation.

CHAPTER TWO

2. THE CONCEPTUAL AND INTERNATIONAL LEGAL FRAMEWORK

2.1. Introduction

Before going into the issues of Ethiopian laws and practices, it is vital to review international law and the general states' practices on the topic. Thus, this chapter first, discusses the notions of gross violation, victims, reparations, and their forms based on international law. Secondly, it thoroughly addresses international legal standing on reparation for victims of gross violations, especially in the context of armed conflict. Here, the researcher consults general international law, IHL, International Human Rights Law, International Criminal Law, and finally, the UN Principles on Reparations. In the end, a general overview of states' practices in dealing with conflict-born gross violations and the introduction of transitional justice are highlighted.

2.2. The Conceptual framework

2.2.1. The Notion of Gross Violations

Obviously, all forms of human rights violations are reparable.[37] However, gross violations, due to their scale and nature, needs special attention and different legal consequences.[38]As Dinah Shelton sets out, gross violations should be treated differently from other violations basically for three reasons.[39] Firstly, they often involve large numbers of perpetrators and victims, secondly, they would be followed by a serious lack of resources, leaving little resources to remedy victims, and thirdly, beyond easily identifiable individuals, a large part of the population would be affected by such violations. Thus, states concerned have to adjust conventional reparations in a manner to contain wide arrays of mechanisms and measures that could overcome challenges characterizing large-scale violations.[40]

[37]See Supra note 5, UN Basic Principles on Reparation, Para. 26; Theo van Boven, *Implementing Victims' Rights, A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation*, The redress trust, London, Mar. 2006, p. 11 (hereinafter, Van Boven, a handbook on Reparations).
[38] Id; see also C. Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 8.
[39] Dinah Shelton, p. 121.
[40] Id, p. 122-139; C. Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 85.

There is no formal definition of the terms under both treaty laws and other UN documents; instead, illustrative approaches have been preferred with an intention to leave room for further development of the concept.[41] As it can be understood from the illustrative lists by Theo Van Boven and De Greiff, gross violations include underlying acts of international crimes.[42] Thus, gross violation, as best explained by Diane Orentlicher, refers to "crimes under international law, and violation of Human Rights Law which international law required states to penalize such as torture, extrajudicial killing, slavery, and enforced disappearance."[43] The violations are listed and drawn by the above-named scholars from customary international law, the ICL's draft Code of Crimes against the Peace and Security of Mankind, and Common Article 3 of the Geneva Convention and International Criminal Law.[44] In addition to these violations on life and physical integrity, large-scale violations against socio-economic rights such as forced displacement, pillaging, destruction, and looting are forming part of gross violations as well.[45]

Protection from gross violations is a minimum humanitarian standard that needs to be respected in any context of peace or war. Most often, gross violations would be perpetrated in any conflict situation, in contexts of armed conflict (international and non-international) or in other conflicts. There is international armed conflict whenever two or more states resort to their armed forces.[46]

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[41] Mr. M. Cherif Bassiouni, Independent expert, report on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms in accordance with Commission resolution No. 1998/43, UN Doc. E/CN.4/1999/65, 8 Feb. 1999, Para. 9.

[42] Theo van Boven, Special Rapporteur, Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (final report), UN Doc. E/CN.4/Sub.2/1993/8, Para. 13 (hereinafter, Van Boven first Report); Guidance Note of the Secretary-General, Justice, (2010), p. 4.

[43] Updated set of Principles to combat impunity, p. 6.

[44] Restatement of the Law (Fourth), The Foreign Relations Law of the United States, 2018, Section 702; see also Draft Code of Crimes against the Peace and Security of Mankind (1996), Art. 17, 18 and 20; Para. 10; see also Common Article 3 of Geneva Convention of 1949; Rome Statute of The International Criminal court, United Nations, Treaty Series, vol. 2187, No. 38544, 17 July 1998, Art. 6, 7 and 8.

[45] Van Boven first Report, Para. 12; Theo van Boven, *Victims' Rights to a Remedy and Reparation: The New United Nations Principles and Guidelines*, in C. Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 34; see also the statement by the UN High Commissioner on Human Rights, Louise Arbour, at the New York University School of Law on Economic and Social Justice for Societies in Transition, 25 October 2006. They reads: "In crises like the one we now witness in Darfur, the systematic burning of houses and villages, the forced displacement of the population and the starvation caused by the restrictions on the delivery of humanitarian assistance and destruction of food crops are deliberately used along other gross human rights violations – such as murder or rape – as instruments of war."

[46] Common Article 2 to the Geneva Conventions of 1949; J. Pictet, *Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, ICRC, Geneva, 1952, p. 32; CTY, *The Prosecutor v. Dusko Tadic*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70; D. Schindler, *The different Types of Armed Conflicts According to the Geneva Conventions and Protocols*, RCADI, Vol. 163, 1979-II, p. 131 (hereinafter, D. Schindler); H.P. Gasser,

On the other side, non-international conflicts are protracted armed confrontations between government forces and organized armed groups or between organized armed groups.[47] Exceptionally, wars of national liberation of fighting by people against colonialism, alien occupation and a racist regime are international armed conflicts regardless of the identity of the parties to the conflict.[48] Gross violations may also be committed in contexts of other conflicts including internal disturbances and tensions, riots, or acts of banditry and tyrannical regime victimization which are out of the definition of armed conflict.[49] Nonetheless, reparations for victims are basically the same immaterial of the type of conflict that gave rise to the gross violations.

2.2.2. The Notion of Victims

Gross violations usually involve large numbers of people directly or indirectly affected.[50] However, reparation for all might surpass available resources. To mitigate the tension and to determine those who are legible to be beneficial of redress in a fair way, it is pivotal to delineate the notion of "victims". The term is defined in secondary declarative instruments and jurisprudences, other than in binding conventions. The definitions are different across bodies and documents, though all shares some core elements in commonly characterizing victims.[51]

International Humanitarian Law: an Introduction, in: Humanity for All: the International Red Cross and Red Crescent Movement, H. Haug (ed.), Paul Haupt Publishers, Berne, 1993, p. 510-511 (hereinafter, H.P. Gasser) ; D. Fleck, *The Handbook of Humanitarian Law in Armed Conflicts*, Oxford University Press, Oxford, 1995, p. 40.

[47] Common Article 3 to the Geneva Conventions of 1949; Protocol II, Art. 1; *The Prosecutor v. Dusko Tadic*, ICTY Judgment, IT-94-1-T, 7 May 1997, Para. 561-568; *The Prosecutor v. Fatmir Limaj*, ICTY, Judgment, IT-03-66-T, 30 November 2005, Para. 84; D. Schindler, p. 147; Y. Sandoz/C.Swinarski/B. Zimmermann, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, ICRC, Geneva, 1987, Para. 4461; H.P. Gasser, p. 555; Sassoli M., *Transnational Armed Groups and International Humanitarian Law, Program on Humanitarian Policy and Conflict Research*, Harvard University, Occasional Paper Series, Winter 2006, Number 6, p. 8,9.

[48] Protocol I , Art. 1 (4).

[49] Protocol II, Ar. 1(2); see also Jennifer L. Balint, *Appendix A, Conflict, Conflict Victimization, and Legal Redress, 1945-1996*, Law and Contemporary Problems, Vol. 59, No. 4, 1996, p. 233.

[50] Supra Note 58; see also C. Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 34-35.

[51] In 'UN Basic Principles on Reparation, Para. 8 and 9' victims are defined as "persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim." It is also defined as such in 'General Assembly resolution 40/34, Declaration of Basic Principles of Justice for Victims of

Based on definitions under these sources of international law, victims can be characterized as; primarily, Persons who are actually affected by the violations as an immediate targets of the violation such as those killed, raped, tortured, disappeared and wounded persons. In addition, indirect persons including those victimized while assisting the direct victim to protect and prevent harm[52] and immediate victims' family members and dependents.[53] Moreover, depending on the nature of the rights violated,[54] at least certain categories of entities dedicated to religion, education, art or science or charitable purposes and to their historic monuments, hospitals and other places and objects for humanitarian purposes are also recognized as victims of gross violations.[55] Collectivities including ethnic groups are recognized as victims of such violations as well.[56] These categories of persons should be personally affected by the harm, may it be direct or indirect as explained above. The harms sustained may not be limited to physical ones; it includes emotional and psychological, and economic damage as well.[57] One last important rule here is victimhood should not be affected by whether the violation had linked to a particular perpetrator and whosoever. Whether or not the perpetrator is identified, apprehended, prosecuted, convicted or has a familial relationship with the victim are all immaterial a one to be counted as such.[58]

Crime and Abuse of Power, A/RES/40/34, 1985, Principle 1 (hereinafter, Declaration on principles of Justice for victims of crime); also, African Commission on Human and Peoples' Rights, *General Comment No.4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)*, (2017), Para. 16 (Hereafter, ACHPR General Comment 4).

[52] Ibid; see also, *Prosecutor v. Lubanga,* International Criminal Court(ICC), Case No. ICC-01/04-01/06, (Apr. 8, 2009), Para. 51, at < https://www.legal-tools.org/doc/c1cf65/pdf/ > [accessed May 18, 2022].

[53] UN Basic principles on Reparation, Para. 8; ACHPR General Comment 4, Para. 17; CAT, General Comment No. 3, Para. 56; CPPED, Art. 24 (1); It also states in 'Case of *the Miguel Castro-Castro Prison v. Peru*, Inter-American Court of Human Rights (IACtHR), Judgment (Merits, Reparations and Costs), (Nov. 25, 2006), Para. 335' that the next of kin of the victims of certain violations of human rights may be, at the same time, victims of violating acts.

[54] African Charter on the Rights and Welfare of the Child (July 1, 1990); CPPED, Art. 24 (1).

[55] ICC Rules of Procedure, Rule 85(b), ECHR, art. 34; *Huri-Laws v. Nigeria,* App. No. 225/98, African Commission on Human and Peoples' Rights (ACHPR), Decision, (Nov. 6, 2000), Para. 1, 3, 42.

[56] UN Basic Principles, Para. 8; Declaration on principles of Justice for victims of crime, Principle 1; see also, *African Commission on Human and Peoples' Rights v. Kenya*, App. No. 006/2012, African Court on Human and Peoples' Rights (ACtHPR), Judgment, (May 26, 2017), Para. 131, 146, 169, 190, 201, 211, 217; *Saramaka People v. Suriname*, Inter-American Court of Human Rights, Judgment (Preliminary Objections, Merits, Reparations, and Costs), (Nov. 28, 2007), Para. 116, 154, 156, 158, 175, 185.

[57] UN Basic Principles, Para. 8; Declaration on principles of Justice for victims of crime, Principle 1.

[58] UN Basic principles, Para. 8, 15 and 16; Declaration on principles of Justice for victims of crime, Principle 1; C. Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 36.

2.2.3. The Concepts of Reparations

i. The Meaning of Reparations

The broader term remedy is defined as "the means by which a right is enforced or the violation of a right is prevented, redressed, or compensated" in Black's law dictionary.[59] It contains two separate dimensions, the procedural one, access to justice and the substantive aspect.[60] In the first sense, administrative and other bodies, as well as mechanisms, modalities and proceedings must be equally and unrestrictedly available for all to avail redresses.[61] The substantive aspect, the focus of this study, on the other hand, refers to the actual reliefs that mend the damage resulting from the violation. The substantive aspect is represented by the word 'reparations' most of the time and in some instances 'redress'.[62]

The term 'reparation' is understood differently in two separate contexts. The first is the juridical contexts in which the term is being understood widely to include all the five elements (restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition) as firmly established in international law.[63] As De Greiff nailed, this understanding "overlaps with the holistic notion of transitional justice that has been adopted by the United Nations system."[64] The second context in which the term is construed narrowly is 'in the designing of reparative programs with massive coverage'[65] as a part of transitional justice mechanisms. In this sense, reparations only refer to the three of the above-mentioned elements (restitution, compensation and rehabilitation) that accrued to the direct benefits of victims.[66] Here, symbolic measures of satisfaction and guarantees of repetition (including truth telling, criminal prosecution, and institutional and legal reform) are being excluded from the ambit of reparations.

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[59] Henry Campbell Black, M. A., Black's Law Dictionary, 6th ed., St. Paul Minn, West Publishing Co., 1990.
[60] Supra Note 5; the UN Basic Principles on Reparation, Principle vii and ix; Dinah Shelton, p. 16; Supra Note 47, pp. 453; C. Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 36; De Greiff, A handbook of Reparation, p. 22, 452.
[61] Id
[62] Christian Evans, p. 13.
[63] Ibid; UN Principles on Reparations, Para. Principles IX; Case of *Castillo-Páez v. Peru*, Inter-American Court of Human Rights (IACtHR), Judgment of November 27, 1998 (Reparations and Costs), Para. 48.
[64] Note by the Secretary General, Para. 20.
[65] De Grieff, the Handbook of Reparations, p. 453.
[66] Note by the Secretary General, Para. 21.

A worth asking question then must be why the term is narrowly construed as such while the international law is crystal clear that it is understood broadly. The answer is that the narrower construction not intends to exclude the symbolic elements from being counted as reparations; rather it is for the sake of convenience in designing domestic reparative programs as one component of transitional mechanisms. Owing to the nature of the symbolic measures, they could not be included in a domestic program together with the redresses directly benefiting victims. De Grieff reasserts this rational behind as "a program of reparations can hardly be designed from the beginning so as to include as parts of a single whole all the measures which international law takes to be forms of reparations."[67] Symbolic measures thus have been addressed through other mechanisms out of such a program. For instance, truth-telling has been carried out by a truth commission and criminal prosecution by judicial mechanisms.

Given all five elements are complimentary to each other and firmly recognized under international law, the term reparation(s) thus is used throughout this study to mean this broader substantive version of remedies. It does not intended however that the use term reparation(s) to mean redresses directly benefiting victims as one part of transitional justice measures is improper. However, the term 'reparation proper' is used throughout this research to mean the narrower one in which the adjective 'proper' is added to avoid confusion between the two senses and capitalize that are distinctly accrued to the direct benefit of victims.

iii. Forms of Reparations

Alternatively or cumulatively, depending on the nature of the harm suffered, reparations may take five forms. These forms of reparations discussed below may also be categorized into material and symbolic in nature.[68] The material one may constitute restitution, compensation, and rehabilitation whereas symbolic reparations are satisfaction and guarantees of non-repetition (legal and institutional reforms). Below is the discussion on each of the five forms one by one.

[67] De Grieff, the Handbook of Reparations, p. 453.
[68] Id.

a. Restitution

The UN Principles on Reparations provides about what restitution is that "should, whenever possible, restore the victim to the original situation before the gross…or serious violations,"[69] which different bodies and jurisprudences adopted.[70] So, restitution can be defined as it is a measure of returning the victims of violations, to the extent possible, to their original situations prior to the perpetration of the violations.

Restitution includes but not is restricted to the restoration of enjoyment of human rights; restoration of liberty usually by releasing victims of enforced disappearance and so on.[71] It also includes restoration to employment and reinstatement of employment, retirement rights and pensions, and return of assets.[72] As it has been ruled in several international judgments, demarcating and granting title to land, including traditional lands claimed by indigenous communities; and guaranteeing the safety and security of individuals so they can return to homes from which they were displaced including as an outcome of armed conflict are also restitution measures.[73] Likewise, restoration of family ties; recognition of citizenship; allowing persons to return to their country and place of residence; replacement of national identity documents are additional restitution measures.[74]

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[69] UN Principles on Reparations, Para. 19.

[70] UN Working Group on Enforced and Involuntary Disappearances, Forgotten victims of Enforced disappearance in Africa: The Struggle of Victims of Enforced Disappearance to obtain Justice, Truth and Reparations, Redress, 2021, p. 55; Case of *Cantoral-Benavides v. Peru*, Inter-American Court of Human Rights (IACtHR), Judgment of December 3, 2001(Reparations and Costs), Para. 41 (hereinafter, Case of Cantoral-Benavides v. Peru) ; Assanidze v. Georgia, App. No. 71503/01, the European Court of Human rights (ECtHR), Apr. 8, 2004, Para. 198.

[71] Id, Case *of Cantoral-Benavides v. Peru*, Para. 77-78; *Palamara-Iribarne v. Chile*, Inter American Court of Human Rights (IACtHR), Judgment (Merits, Reparations, and Costs), (Nov. 22, 2005), Para. 253 (hereinafter, Palamara-Iribarne v. Chile); *Herrera-Ulloa v. Costa Rica*, Inter American Court of Human Rights (IACtHR), Judgment (Preliminary Objections, Merits, Reparations and Costs), (July 2, 2004), Para. 195.

[72] Ibid, the UN Basic Principles, Para. 19; *Baena-Ricardo et al. v. Panama,* Inter-American Court of Human Rights (IACtHR), Judgment (Merits, Reparations, and Costs), (Feb. 2, 2001), Para. 203*; Malawi Africa Association et al. v. Mauritania*, Comm. Nos. 54/91-61/91-96/93-98/93-164/97_196/97-210/98, African Commission on Human and Peoples' Rights (ACHPR), p. 16, Recommendation Para. 4; *Vasilescu v. Romania*, App. No. 27053/95, European Court of Human Rights (ECtHR), Judgment, (May 22, 1998), par. 59-61; see also generally United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (The Pinheiro Principles).

[73] UN Principles on Reparations, Para. 19; *Case of the Plan de Sánchez Massacre v. Guatemala, Inter-American Court of Human Rights*, Judgment (Reparations) (Nov. 19, 2004), Para. 313 (Hereafter, *Case of the Plan de Sánchez Massacre v. Guatemala*); ACHPR, *Centre for Human Rights (University of Pretoria) and La Rencontre Africaine pour la Defense des Droits de l'Homme v. Senegal*, App. No. 003/Com/001/2012, African Committee of Experts on the Rights and Welfare of the Child, Decision, (Apr. 15, 2014), Para. 82 (a) (hereinafter, the Senegal case).

[74] UN Principles on Reparations, Para. 19; The Senegal case, Para. 82 (a);, Malawi African Association and Others v. Mauritania, Communication No. 54/91, 61/91, 98/93, 164/97, 196/97, 210/98, African Commission on Human and Peoples' Rights (ACHPR), 11 May 2000, recommendation Para. 2.

Due to its potency to undo the effect of violations; and its exact fitness with the needs and desires of victims, restitution is the most preferable form of reparations.[75] However, most often than not, it is either impossible at all or incomplete to redress the victim to the required standards. Some human rights violations such as destruction of property, torture and any other form of physical abuse, murder and sexual violence due to the irreversible nature of the harms, could not be undone in anyways so restitution is unworkable as reparation. Even though possible, sometimes, cannot fully redress victims' losses. In cases when *restitutio in integrum* becomes impossible, other forms of reparations including compensation and rehabilitation should complement or substitute restitution.[76]

b. Compensation

The UN Guidelines on Reparations provides about compensation that it "should be awarded to any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case."[77] Compensation intends to remedy sufferings that can be remedied by money whereas other payments may be made for rehabilitative, punitive, exemplary and other non-compensatory purposes.[78] Compensation by its nature is substitutive in a sense that it has no potency to undone the harm suffered.[79] In other words, compensation comes as the resort in rectifying irreversible harm, to the extent money can do, to put the victim as well off as he or she would have been if the injury had never occurred.[80]

Corresponding to the nature of the harm suffered, compensation can be awarded for both or either of two types of damage: Pecuniary and non-pecuniary.[81] The first one is a financial or material loss that can be immediately assessed in monetary terms while the second refers to non-

[75] Dinah Shelton, p. 298.
[76] *Case of Cantoral-Benavides v. Peru*, Para. 41; *Case of the Plan de Sánchez Massacre v. Guatemala*, Para. 54.
[77] UN Basic Principles on Reparation, Para. 20.
[78] Van Boven, a Hand book on Reparation, p. 35.
[79] *Institute for Human Rights and Development in Africa v. Democratic Republic of Congo*, Communication No. 393/10, African Commission on Human and Peoples' Rights (ACHPR), (June 2016), Para. 150; *Case of Velásquez-Rodríguez v. Honduras*, Inter-American Court of Human Rights (IACtHR), Judgment of August 17, 1990 (Interpretation of the Judgment of Reparations and Costs), Para. 27.
[80] Dinah Shelton, p. 315.
[81] UN Basic Principles on Reparations, Para. 20; *Goiburú v. Paraguay*, Inter-American Court of Human Rights, Judgment (Merits, Reparations and Costs), (Sept. 22, 2006), Para. 145 (hereinafter, *Case of Goiburú v. Paraguay*); *Zongo v. Burkina Faso*, App. No. 013/2011, African Court on Human and Peoples' Rights (ACtHPR), Judgment on Reparations, (June 5, 2015), Para. 25-60 (hereinafter, *Zongo v. Burkina Faso*).

material, moral sufferings that cannot be valued in terms of money.[82] Pecuniary damages, to the extent possible, need to be equivalent to the monetary damage incurred whereas in non-pecuniary harms, as they have no monetary value, the amount out to be determined based on equity or what is fair in all circumstances.[83]

c. Rehabilitation

Attempts of compensation and restoration may not be enough to remove the consequences of violations on the victims' conditions.[84] A victim of torture, for example, most of the time left with post-traumatic stress syndrome and any other physical disability, even after the torture lifted and the mental and physical harm compensated. Rehabilitation encompasses "medical and psychological care as well as legal and social services" so comes as an alternative to help victims to recover from injuries of mental, physical or social in nature. [85] Dinah Shelton also defined the term rehabilitation as "is the process of restoring the individual's health and reputation after a serious attack on physical or mental integrity."[86] Thus, it constitutes prospective actions that aim to put the victim, to the extent possible, in a state of wellbeing contrary to compensation which is payment for past damages. Jurisprudences show rehabilitation measures include, but are not limited to, psychological and medical care whenever the violation involves such ailments as fear, paranoia, depression, anxiety and physical disabilities.[87] Provision of education and other social services such as potable water, delivery of food, and installation of latrines or other sanitation systems constitutes also rehabilitative measures in the social arena.[88]

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[82] Id, the UN Basic Principles on Reparations, Para. 20, Case of *Goiburú v. Paraguay*, Para. 150 and 156, *Zongo v. Burkina Faso*, Para. 25-60.
[83] Van Boven, the Hand Books on Reparation, p. 35; Case of *Goiburú et al. v. Paraguay*, Para. 156.
[84] Dinah Shelton, p. 394.
[85] UN Basic Principles on Reparations, Para. 21; *Purohit and Moore v. The Gambia*, Comm. No. 241/01, African Commission on Human and Peoples' Rights (ACHPR), Views, (May 29, 2003), Para. 85 (c); *R.P.B. v. Philippines*, Comm. No. 34/2011, U.N. Committee on the Elimination of Discrimination Against Women, Views, (Feb. 21, 2014), Para. 9(a)(ii); *Sharmila Tripathi v. Nepal*, Comm. No. 2111/2011, U.N. Human Rights Committee, (Oct. 29, 2014), Para. 9; *Xákmok Kásek Indigenous Community v. Paraguay*, Inter-American Court of Human Rights (IACtHR), Judgment (Merits, Reparations, and Costs), (Aug. 24, 2010), Para. 176; ACHR, General Comment 4; Para. 40-43.
Case of *Cantoral-Benavides v. Peru*, Judgment of December 3, 2001(Reparations and Costs), Para. 80.
[86] Dinah Shelton, p. 394.
[87] Supra Note 85.
[88] Id.

d. Satisfaction

Sometimes basically in times of gross violations, harms directed at the victim's dignity and reputation can only be addressed through symbolic or non-monetary, satisfactory reparations in addition to the pecuniary ones.[89] According to the UN Principles on Reparations and several jurisprudences, satisfaction, as one form of reparation, refers to measures that involve official recognition of harms the victims endured and restoration of their dignity and reputation that was taken away by the violations.[90] Illustratively, satisfaction includes ensuring cessation of continued violations; public apologies[91] and acknowledgments are among widely known satisfactory measures.[92] Additionally, it includes truth-telling and criminal prosecution and administrative measures against perpetrators as appropriate.[93] The truth-telling should be including about the circumstances and causes of violation as well as the fate of the victims and the identity of perpetrators, and a system should be in place to make victims able to participate.[94] Memorialization measures such as the erection of monuments, the establishment of memorials, and the change of names of streets and other public places have also been frequently awarded as symbolic-non-pecuniary measures.[95]

[89] Dinah Shelton, p. 396.

[90] *Case of the Plan de Sánchez Massacre v. Guatemala*, Inter-American Court of Human Rights (IACtHR), Judgment of November, Para. 93:UN Basic Principles on Reparations, Para. 22, ACHPR, General Comment No. 4, Para. 44; *Chahal v. The United Kingdom*, App. No. 22414/93, European Court of Human Rights, (Nov. 15, 1996), Para. 157-58; *Neira-Alegría v. Peru*, Inter American Court of Human Rights, Judgment (Reparations and Costs), par. 69 (Sept. 19, 199.

[91] See generally Report of Special Rapporteur on Promotion of truth, justice, reparation and guarantees of non-recurrence on Apologies, Fabián Salvioli: Note by the Secretary-General, A/74/147, 12 July 2019.

[92] Ibid; Inter-American Court of Human Rights, *Case of Cantoral-Benavides v. Peru*, Judgment of December 3, 2001(Reparations and Costs), Para. 81; Impunity Principle, Principle 33.

[93] *Zongo v. Burkina Faso*, Para. 111 (x); Inter-American Court of Human Rights (IACtHR), *Bámaca Velásquez case*. IACtHR, Judgment of November 25, 2000. Series C No. 70, Para. 129; Case of the "Street Children" *(Villagrán-Morales et al.) v. Guatemala*, IACtHR, Judgment of May 26, 2001, Para. 100 (hereinafter, *case of the street children v. Guatemala*).

[94] Id.

[95] *Institute for Human Rights and Development in Africa v. Democratic Republic of Congo*, Communication No. 393/10, African Commission on Human and Peoples' Rights, (June 2016) Para. 154 (V); see generally UN Human Right Council, Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice: Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, A/HRC/45/45, 9 July 2020.

e. Guarantees of non-repetition

Guarantees of non-repetition refer to measures of avoiding structural causes of gross violations to prevent the reoccurrence of similar violations in the future.[96] Among others, actions to guarantee non-repetition of violations include change and reform of laws that contributed to violations.[97] Furthermore, institutional reforms including disarmament and demobilization of unofficial armed groups and rebels, and strengthening judicial independence and impartiality are also key actions to guarantee non-reoccurrence.[98] It also includes the provision of human rights training for law enforcement personnel and providing protection for legal, medical, media workers and human rights defenders.[99] It additionally encompasses establishing mechanisms to control inter-societal conflict and reconciliation.[100] Guarantees of non-repetition sometimes overlap with satisfaction. For instance, the prosecution is a tool of deterrence from future violations and can guarantees non-repetition.[101]

iv. Purposes and Aims of Reparations

Effective, adequate and prompt reparations would achieve aims and purposes that are vital for victims in particular, and for societies as a whole. Primarily, reparations could achieve remedial and compensatory justice, to place the victim in an economic and moral position one would have there had the violation never occurred.[102] Retribution-holding the perpetrator paying for his wrong, vindicating the violated human rights and interests, and special and general deterrence are auxiliary purposes of reparation.[103]

Besides, as Pablo De Greif and the South African Truth and Reconciliation Commission pointed out, beyond doing justice for the direct benefit of victims, comprehensive post-conflict

[96] UN Basic Principles on Reparation, Para. 23, ACHPR, General Comment 4, Para.45; Supra Note 6, HRC, General Comment 31, Para 17; UN Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greif, A/HRC/30/42, Sep. 2015, Para. 24-79.
[97] UN Principles on Reparation, Para. 23 (h), ACHPR, General Comment 4, Para. 46 (VI); *Case of Castillo Petruzzi et al. v. Peru*, Inter-American Court of Human Rights, Judgment of May 30, 1999 (Merits, Reparations and Costs), Para. 222.
[98]UN Principles on Reparation, Para. 23; ACHPR, General Comment 4, Para. 46; Updated Sets of Principles to combat impunity, Principle 35-38.
[99] Id.
[100] UN Principles on Reparation, Para. 23 (g).
[101] Dinah Shelton, p. 397; Supra Note 6, HRC, General Comment 31, Para. 18
[102] Dinah Shelton, p. 19-20; Redress, *Survivors' Perceptions of Reparation* (London, 2001), p. 26–9
[103] Id, Dinah Shelton, p. 20-22.

reparations are crucial to bring civic trust, social solidarity (and social cohesion), healing and reconciliation as well.[104] These purposes are derived from the well-anchored principle of "no right without remedy"[105] according to which human rights and remedies are reciprocal necessities to each other. The IACtHR holds about the significance of reparations in *Castillo Paez v. Peru* that "one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society."[106]

2.3. The International Legal Framework

2.3.1. General International Law

For the first time at the international level, the concept of reparations was formulated in an influential case, *Factory at Chorzo´w Case* by PCIJ, the predecessor of ICJ.[107] The court held that making reparation of wrong is "a requirement of the general principle of international law" and even under the general conception of law, and recognized restitution and compensation only.to wipe out all the consequences of the illegal act and re-establish the pre-violation situations.[108] In the further development of the concept under the general international law, the ICL Articles on Responsibility of States for Internationally Wrongful Acts recognized all the five elements of reparations in a comprehensive manner.[109] Even though reparations here were intended to be applied in inter-state relations, there is an indication in the ICL articles and a few practices such as an ICJ advisory opinion[110] that the general international law has been, sometimes, applied for the direct benefit of individuals. Immaterial of the ambivalence on

[104] Pablo De Greif, the Handbook on Reparations, p. 455-466; the Truth and Reconciliation Commission for South Africa, Final Report, Volume 5, Chapter 5, p. 170.
[105] Supra Note 3; In restating of the principle it has been said in "Lisa Tortell, *Monetary Remedies for Breach of Human Rights: A comparative Study*, Oxford and Portland, Oregon, 2006, p. 1" that "it is meaningless to confer fundamental rights without providing an effective remedy for their enforcement, if and when they are violated; a right without a remedy is a legal conundrum of a most grotesque kind. In "Antoine Buyse, *Lost and Regained? Restitution as a Remedy for Human Rights Violations in the Context of International Law*, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, Vol. 68, 2008, PP. 63" Chief Justice Holt remarked how remedy is reciprocal to human rights as "if the plaintiff has a right, he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it, and indeed it is a vain thing to imagine a right without a remedy.
[106] *Castillo Paez v. Peru*, Inter- American Court of Human Rights (IACtHR), Judgment of 3 November 1997, 19 Human Rights Law Journal (1998), p. 219–229.
[107] Supra Note 3.
[108] Id.
[109] Supra note 4.
[110] Id, Art. 33; ILC, Commentaries on the Draft Articles on Responsibility of States for Internationally Wrongful Acts, Article 33, Para. 3; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004, ICJ Report, Para. 145, 152, 153.

recognition of individuals as beneficiaries, the ICL articles served as an impetus for the below discussed *lex specialis* branches of the law and the UN Principles on Reparations which are drawn after them.[111]

The recognition of reparations for victims of gross violation, at minimum, in the below-discussed standards and practices, in turn, arguably implies their attainment of customary international law status. Of course, some scholars wrote in pre-2005 times including Mazzeschi and Provost[112] abstaining to agree on this argues that reparation for victims is yet not attained customary international law status; rather it is emerging to that. While, many other scholars such as Shelton,[113] Bassiouni, Kalshoven and Zegveld,[114] argued otherwise that reparation has is well-founded recognition in customary international law. The ICRC also in its detailed and comprehensive study finalized in 2005 concludes that reparation for serious IHL violations has gained recognition under customary international law.[115] Thus, one can derive that reparations at least for serious IHL violations mentioned in common Article 3 of the 1949 Geneva Conventions, which also recognized in human rights instruments as non-derogable, definitely, acquired recognition under customary international law.

2.3.2. International Humanitarian Law (IHL)

The right to reparations for individual victims under IHL is in its loos status because it is generally considered as an inter-state relations matter than being individual-oriented. The IHL conventions are not clear about the recognition of individual victims and are imperfect in recognizing the aforementioned forms of reparations, in addition to the non-existent of monitoring bodies to oversight domestic implementations. The 1907 Hague Convention IV respecting the Laws and Customs of War and AP I, with very similar words, provides that states should pay compensation whenever they violated IHL rules without clarifying whether

[111] Christian Evans, p. 6.
[112] Rene Provst, *International Human Rights and Humanitarian Law*, Cambridge University Press, 2004 , p. 44; Riccardo Pisillo Mazzeschi, *Reparation Claims by Individuals for State Breaches of Humanitarian Law and Human Rights: An Overview*, International Criminal Justice, Vol. 1 (2003), p. 447.
[113] Dinah Shelton, p. 238.
[114] Kalshoven and Zegveld, *Constraints on the Waging of War: An Introduction to International Humanitarian Law*, International Committee of the Red Cross, p. 147.
[115] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, International Committee of the Red Cross, VOLUME I, 2005, Rule 150.

individuals are legible to be benefited from the said compensation.[116] However, the ICRC in a commentary on the AP I holds that individuals may request compensation for IHL violations.[117] Several scholars such as Kalshoven and Zegveld argued that the purpose of the compensation clause in the 1907 Hague convention is to confer rights directly to individuals by referring to its *travaux preparatoires*.[118] Contrarily, other scholars like Tomuschat argued otherwise that "no clues whatsoever that this article [art. 3 of the Hague Convention IV] was ever understood to mean a right of individual claims."[119] As raised above, individuals' reparations at least for serious violations of IHL have achieved customary international law status.[120]

2.3.3. International Human Rights Law

Human rights law, as individual-centered by its nature, offers robust and better recognition and development of reparations for victims of gross violations in general. In UDHR, it is stated that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights…"[121] Similarly, under the ICCPR, it is provided as "any person whose rights or freedoms as herein recognized are violated shall have an effective remedy." [122] in addition, it provides the rights of victims of unlawful arrest, detention, and wrongful conviction to compensation.[123] Other core human rights instruments, on the other hand, including CAT, CERD, and CRC recognized remedies (reparations) rights in general and specific rights to compensation, satisfaction, and rehabilitation respectively.[124] Differently, the CEDAW and

[116] Supra note 9, 1907 Hague Convention (IV) Regarding the Laws and Customs of Land Warfare, 18 October 1907, Article 3; Protocol I, Art. 91.
[117] Y. Sandoz, C. Swinarski, and B. Zimmerman (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, 1987, p. 1056-1057, Para. 3656-3657.
[118] F. Kalshoven, *State responsibility for warlike acts of the armed forces: from Article 3 of the Hague Convention IV of 1907 to Article 91 of Additional Protocol I of 1977 and beyond*, International and Comparative Law Quarterly, Vol. 40, 1991, p. 827-830; Greenwood, *International Humanitarian Law*, p. 250; Liesbeth Zegveld, *Remedies for Victims of Violations of International Humanitarian Law*, International Review of the Red Cross, Vol. 85, No. 851, 2003, p. 497–526; Manuela-Chiara Gillard, *Reparation for Violations of International Humanitarian Law*, ICRC, VOL.85 No. 851, September 2003, p. 529-553; R. Pisillo Mazzeschi, *Reparation Claims by Individuals for State Breaches of Humanitarian Law and Human Rights: An Overview*, Journal of International Criminal Justice,1(2003), p. 339–47.
[119] Christian Tomuschat, *Reparation in Favor of Individual Victims of Gross Violations of Human Rights and International Humanitarian Law*, in Marcelo G. Kohen (ed.), *Promoting Justice, Human Rights and Conflict Resolution through International Law*: Liber Amicorum Lucius Caflisch, p. 569-576.
[120] Supra Note 12, The Customary IHL, Rule 150.
[121] Supra note 5, UDHR, Art. 8.
[122] Id, ICCPR, Art. 2 (3) (a).
[123] Id, ICCPR, Art. 9 (5), 14 (6).
[124] Id, CAT, Art. 14; CERD, Art. 6, CRC, Art. 39.

ICESCR do not explicitly stipulate the right to remedies, though they can be derived through interpretation.[125] The best comprehensive instrument, unlike its predecessors, is the 2010 CPPED in recognizing both categories of pecuniary and non-pecuniary reparations and all the five elements.[126]

Regarding regional instruments, the 1978 Inter-American and the 1953 European human rights conventions generally referred to the right to remedy and compensation like the aforementioned global treaties than the CPPED which is more comprehensive.[127] The African Convention on Human and Peoples Rights, contrarily, does not expressly recognize remedy rights. However, the subsequent protocol to the African charter provides for reparation or compensation rights.[128]

Jurisprudences of the abovementioned global and regional systems, including those not expressive in recognizing remedy rights; have been playing a vital role in the further delineation of each form of reparations, specific state responsibilities, and in the provision of guidance in the development of non-pecuniary reparations. The HRC, while interpreting the remedy clause of ICCPR, holds that reparation involves the aforementioned five elements, and state parties have the obligation to take legislative, judicial, or administrative measures to give effect their duty to enforce reparations rights of victims of human rights violations.[129] Though it was in a less elaborate way than the HRC,[130] the committee for ICESCR also explicitly recognized the five forms of reparations in its several general comments.[131]

In their many concluding observations, the treaty bodies further developed the scope of reparation rights and state responsibility to that end. In its observation about missed persons in contexts of the Bosnia-Herzegovinian war, the HRC recommends the state party to take satisfactory measures including truth-seeking and investigation to be undertaken to inform their

[125] Id, ICESCR, Art. 2; CEDAW, Art. 2.
[126] Id, CPPED, Art. 24.
[127] Supra Note 8, ECHR, Art. 13; ACHR, Art. 25 and 63.
[128] Id, Protocol to ACHPR, Art. 27.
[129] HRC, GC 31, Para. 7, 15-18.
[130] In "HRC,GC 31," public memorials, public apology were mentioned as part of measures of satisfaction and change of law and practice were also included in guarantees of non-repetition whereas in the committee to ICSECR general comments only the five forms of reparations were mentioned without further clarifications.
[131] See several ICESCR Committee General Comments (e.g. General Comment 3, 9, 16, and 20) at < https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11 > [accessed Mar. 25, 2022].

families about the fate of missed persons.[132] It also has recommended the Central African Republic to undertake national dialogue and establish a truth and reconciliation commission in addition to granting compensation and reparations to victims of gross violations.[133] The CAT Committee in its observation on victims of torture in contexts of armed conflict in Colombia recommended the state implementation of all the five elements of reparations. Among others, the establishment of an autonomous and independent truth commission, return of land and guarantees of title to lands for displaced persons and indigenous peoples, and provision of instructions and training for law enforcement personnel on human rights were the specific recommendations.[134] The CRC committee also follows the same path recommending reparations including the allocation of resources for the rehabilitation of demobilized child soldiers and child victims of landmines in contexts of armed conflict in Colombia.[135]

These bodies also take the same stance in considering complaints from individual victims of gross violations. The HRC, in *Rodrı´guez v. Uruguay* reparations including official investigations on the violations, was recommended.[136] Additionally, in *Jegatheeswara v. Sri Lanka* and *Sankara v. Burkina Faso* cases, with very similar language, the same things including the duty to inform the whereabouts of disappeared persons were pronounced as state responsibilities.[137] Other bodies including the CAT committee in the case of *Kepa Urra Guridi v. Spain*, and the CEDAW committee in *Vertido v. Philippines,* require the state concerned to pay compensation for victims of rape, undertake legal reform, and provide training for justice personnel.[138]

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[132] Human rights Committee (HRC), *concluding observations on Bosnia and Herzegovina*, Nov. 2006, CCPR/C/BIH/CO/1, Para. 14.
[133] Human Rights Committee (HRC), *Concluding Observations, Central African Republic*, 27 July 2006, CCPR/C/CAF/CO/2, Para. 8,12.
[134] UN Committee against Torture (CAT), *concluding observations of the Committee against Torture: Colombia*, 4 May 2010, CAT/C/COL/CO/4, Para. 25-27.
[135] Committee on the Rights of the Child (CRC), Concluding Observations, Colombia, 8 June 2006, CRC/C/COL/CO/3, Para. 81.
[136],*Rodrı´guez v. Uruguay*, Communication No. 322/1988, Human Rights Committee (HRC), U.N. Doc. CCPR/C/51/D/322/1988 (1994) Para. 12-14.
[137] *Sankara v. Burkina Faso*, No. 1159/2003, Human Rights Committee (HRC), Final Views, 28 Mar. 2006, Para. 14; *Jegatheeswara v. Sri Lanka*, No. 950/2000, Human Rights Committee (HRC), Final Views, 31 July 2003, Para. 9.5, 6.2, 11.
[138]*Vertido v. Philippines*, No. 18/2008, the CEDAW committee, Final Views, 22 Sept. 2010, Para. 8.9.

Among regional ones, the Inter-American Court of Human Rights (Hereafter, IACHR), in its landmark decisions, played creative roles regards to rights of reparation for victims of gross and serious violations amid the pre-2000s bloody armed conflicts and repressions in the Americas. Among the innovations of this court, primarily, is setting precedence in considering collectivities and communities as victims, and reparation right holder of their own. The court in several cases including in *Yakye Axa Indigenous Community v. Paraguay, Saramaka People v. Suriname* and *Plan de Sa´nchez Massacre v. Guatemala* holds that the victim indigenous could be provided any of the aforementioned five elements of reparations. [139] Plus, its judgments like in *Loayza Tamayo v. Peru* [140] are comprehensive, well-elaborated, and concrete demanding states to take spectrums of reparatory measures ranging from restoration to the previous status, ensuring accountability, public apology, legal and institutional reform and change, publication of judgments, commemoration, to implementing development and housing programs.

The European jurisprudence in regard to reparation is less advanced than that of the inter-American for the conservative understanding of reparation rights.[141] In a much narrower manner, in the case of *Aksoy v. Turkey,*[142] The European Court of Human Rights (Hereafter, ECtHR) holds that the remedy clause of the convention constitutes compensation and investigation. As a few step forward, the court recognizes states' positive obligation to prevent violations including in contexts of armed conflict in the case of *Mahmut Kaya v. Turkey.*[143] With respect to the African one, the ACHPR has adopted a comprehensive approach in delineating reparations including non-pecuniary and collective reparations.[144] Similarly, the commission recommended concrete and robust reparations for victims of massive violations in many of its views including in the *case of Malawi African Association and Others v. Mauritania.*[145]

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[139] *Saramaka People v. Suriname*, Inter-American Court of Human Rights (IACtHR), Judgment (Preliminary Objections, Merits, Reparations, and Costs), (Nov. 28, 2007), Para. 194-2002; *Yakye Axa Indigenous Community v. Paraguay*, Inter-American Court of Human Rights (IACtHR), Judgment (Merits, Reparations and Costs) , Para. 174-182; *Case of the Plan de Sánchez Massacre v. Guatemala*, Judgment of November 19, 2004 (Reparations), Para. 93-111.

[140] *Loayza Tamayo* v. Peru, Inter American Court of Human Rights (IACtHR), Judgment (Reparations), 27 November 1998, Ser. C, No. 42, Para. 125-171; *case of Case of the Plan de Sánchez Massacre v. Guatemala*, Para 93-111.

[141] Dinah Shelton p. 197.

[142] *Aksoy v. Turkey*, European Court of Human Rights (ECtHR), Judgment, 18 Dec.1996, Para. 98.

[143] *Mahmut Kaya v. Turkey*, European Court of Human Rights (ECtHR), Judgment, 28 Mar. 2000.

[144] ACHPR, General Comment 4, Para. 36-56.

[145] *Malawi African Association, et al v. Mauritania*, Communications 54/91, 61/91, 98/93, 164–96/97 and 210/98, African Commission on Human and Peoples' Rights (ACHPR), May 2000.

2.3.4. International Criminal Law

Ad hock tribunals such as the International Criminal Tribunal for Former Yugoslavia (ICTY) and The International Criminal Tribunals for Rwanda (ICTR) as well as the recent International Criminal Court (ICC) constituted for purpose of prosecution of International Crimes.[146] Regrettably, despite reparation for such abhorrent crimes are recognized under other branches of international law, the ad hock tribunals are purposefully not mandated to grant reparation for victims.[147] As an inadequate and sole exception, the statutes of the tribunals contain a provision that authorizes trial chambers to order the perpetrator to return of property and proceeds acquired while committing crime.[148]

In a very progressive manner to its predecessors, the ICC statute and other documents of the court have come up with recognition of reparations rights of victims of international crime. The Rome statute of ICC has mandated the court to award reparations including restitution, compensation and rehabilitation excluding satisfaction and guarantees of non-repetition that can only be done by states, not through individual responsibility.[149] The court also mandated to establish principles to delineate the notion of victims, and the extent and scope of damages to be remedied.[150] In addition, the statute and allied documents were innovative allowing the court to establish a trust fund as a resort whenever the perpetrator founds not able or willing to pay reparations.[151] This clause has also inspired the subsequent declaratory documents including the UN Basic Principles on Reparation in indicating how the reparations and victimhood should be detached from the victim-perpetrator linkage.[152] On the basis of the statute, the ICC rule of procedure and evidence defined who victims are that it includes all natural persons, individuals, collectivities or both, and juridical persons of certain kinds.[153] In subsequent years, the assembly

[146] See generally the Rome Statute of ICC; The Statute of ICTR; the Statute of ICTY.
[147] V. Morris and M. Scharf, *An Insider's Guide to the International Criminal Tribunal for the Former Yugoslavia* (New York: Transnational Publishers, 1995), p. 283–289.
[148] ICTR Statute, Art. 23 (3); ICTY statute, Art. 24 (3); Address by the Prosecutor of the ICTY/ICTR, Carla del Ponte, to the Security Council on 21 November 2000, ICTY Press Release issued on 24 November 2000, JL/P.I.S./542-e.
[149]Rome Statute of ICC, Art. 75 (1).
[150] Id
[151] Id, Art. 75 (2) & (3), 79.
[152] Supra note 58.
[153] ICC Rules of Procedure and Evidence, Art. 85 and 97 (1).

of state parties adopted a resolution that regulate and establish the ICC trust fund.[154] Based on this resolution, the resources of the trust fund may come from donors or from the perpetrators' assets.[155]

2.3.5. The UN Basic Principles on Reparations

Among many of its declarations, the UN General assembly adopted a milestone of all in synthesizing the aforementioned legal rules and jurisprudences on reparations for victims of gross violations, UN Basic Principles on Reparations in 2005.[156] The first draft was submitted in 1996 by the then Special Rapporteur Theo Van Boven, and then, revised and presented by independent expert Cheriff Bassiouni in 2000 before its final adoption.[157] The document is exclusively confined to gross violations including violations in contexts of armed conflicts. A key point imputed in this document, aside from a comprehensive definition of notions of remedies and victims, is that the state should endeavor to establish a national program for reparations and other assistance to victims in events that the party liable for is unable and unwilling to meet their obligations.[158] This provision has put an immense influence on the practical application of reparations programs in several countries in their attempt to address abuses during armed conflict and repression,[159] which there will be touched upon in the below section. As stated in the document itself, it entails not a new international obligation; but rather identifies mechanisms, modalities, procedures and methods for the implementation of existing legal obligations at both national as well as international levels.[160] Thus, the legal significance of the document is beyond a soft declaration, rather it is a codified form of already binding international law with the role of catalyzing a better understanding of the right to reparation and guiding practices to that end.[161]

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[154] See generally Resolution ICC-ASP/4/Res.3, Regulations of the Trust Fund for Victims, ICC-ASP/4/Res.3, Adopted at the 4th plenary meeting on 3 December 2005, by consensus.
[155] Id.
[156] UN Basic Principles on Reparations.
[157] Id.
[158] UN Basic Principles on Reparations, Para. 16.
[159] Christian Evans, p. 38.
[160] UN Basic Principles on Reparation, Preamble, Para. 7; Pablo Degreiff, The hand book of Reparation, p. 570; also, Theo Van Boven, A hand Book on Basic Principles, p. 10-11.
[161] Note by Secretary General, Para. 18.

2.4. Overview of the General States' Practices: The Introduction of Transitional Justice Mechanisms

International bodies and courts are 'best standard setters' about reparation.[162] Empiricism, however, suggests successful reparations initiatives must be nationally owned, provided un-ceased international support.[163] Usually, societies affected by conflict often are not in conducive environments to address the massive violation within the pre-existing mechanisms. Institutional breakage, the climate of inter-communal mistrust and division, lack of civic trust, and exhaustion of resource that prevents going well within the old mechanisms prevail in such contexts.[164] Besides, already existing mechanisms have inherent limitations such as the inability to provide full and comprehensive truth, deliver prompt and effective reparation, promote reconciliation, vetting perpetrators yet in office, and so forth.[165]

To overcome these inherent limitations, transitional justice mechanisms began implemented by at least 35 war-torn and post-repression states from the 1980s onwards,[166] and later in the 2000s, it began endorsed and promoted at UN level. The notion of transitional justice, as it defined by the then Secretary General of UN, Kofi A. Annan, refers to:

> "The full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include either judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof."[167]

In the 2019 African Transitional Justice Policy, it defined in a broader manner that:

> the various (formal and traditional or non-formal) policy measures and institutional mechanisms that societies, through an inclusive consultative process, adopt in order to overcome past violations, divisions and inequalities and to create conditions for both security and democratic and socio-economic transformation. Transitional justice is meant to assist societies with legacies of violent conflicts and

[162] Christian Evans, p. 132.
[163] African Transitional Justice Policy, 2019, Para. 32.
[164] United Nations Approach to Transitional Justice, (2010), Guidance Note of the Secretary-General, Introduction (hereinafter, Guidance Note of the Secretary General)
[165]Note by Secretary General, Para. 4; The UN Secretary General Report, the Rule of Law and Transitional Justice in Conflict and Post Conflict Societies, (2004), S/2004/616, para.47 (Hereafter, the UN Secretary General Report); Ralph Zacklin, The Failings of Ad Hoc International Tribunals, International Criminal Justice, Vol. 2, 2004, 541-5.
[166] Secretary General Report, Para. 50; Hayner , Unspeakable Truths, p.. 27-75& 239-253.
[167]Guidance Note of the Secretary General, Para. 8; the UN Secretary General Report, Para. 8.

> systemic or gross violations of human and peoples' rights in their effort to achieve transition to the future of justice, equality and dignity.[168]

From these definitions, at least for the purpose of this research, the below components of transitional justice mechanisms that societies in conflict and post-conflict contexts may resort to could be screened out.

2.4.1. Truth (and Reconciliation) Commissions

The first and fundamental step in coming to terms with the legacies of large-scale violations is the establishment of truth commissions.[169] They, as defined in many official documents at the UN level, "are official, temporary, non-judicial investigative bodies, which map patterns of past violence, and unearth the causes and consequences of these destructive events."[170] The primary purpose of them, obviously, is truth-seeking, unearthing the root causes and circumstances of past abuses, identifying perpetrators, and preserving evidence to realize the truth rights. However, as experiences indicate, such commissions have much broader powers such as help countering impunity by recommending prosecution, vetting, and reparation programs, and reforms; promoting and facilitating reconciliation as well as an undertaking or recommending memorialization measures.[171] To these ends, truth commissions' common activities include collecting statements from victims and witnesses, organizing public hearings, subpoenas, search and seizure, examination of national archives and other official records, and publication of reports of their findings.[172]

Among uniquely mandated truth commissions, the South African Truth and Reconciliation Commission has wider powers than the usual ones such as granting amnesty for perpetrators who fully confess one self's crime and remorse for that.[173] On the opposite, the Rwandan National Unity and Reconciliation Commission vested no investigative power that overtaken to a retributive community-based *Gacaca* courts, which held investigative and punitive power on

[168] African Union, *Transitional Justice Policy*, Feb., 2019 (hereinafter, African Transitional Justice Policy)
[169] The UN Secretary General Report, Para. 50.
[170] Id, Para. 50; Updated Sets of Principles to Combat Impunity, p. 6.
[171] Id; Hayner, Unspeakable Truth, p. 20-24, 27-75, 239-253.
[172] Id; also African Transitional Justice Policy, Para. 50-53.
[173] South Africa, *Promotion of National Unity and Reconciliation Act*, Sec 3(1) (b).

genocide suspects.[174] The commission's power, instead, is confined to the promotion of peace, the culture of tolerance and unity.[175] In Bosnia and Herzegovina, a truth commission is yet not been established. Victims' groups continued advocating for a truth commission citing limitations of the Human Rights Chamber for Bosnia Herzegovina mandated to award reparations for victims of the armed conflict in the country.[176]

The other major mandate of truth commissions next to truth-seeking is facilitating reconciliations such as by creating forums to let victims' grief and anguish be heard; and for the perpetrators to confess, apologize and remorse, in return, granted amnesty, and as a result achieving healing, trust and reconciliation. The South African Truth and Reconciliation Commission, by far, is better at achieving reconciliation and healing among perpetrators and victims of apartheid this way.[177] Achieving reconciliation depends on whether the whole transitional justices are comprehensive, victims-centered, and consultative.[178]

2.4.2. Criminal Prosecution

As another element of transitional justice, the investigation and prosecution of crimes gross violations are one of the key means of acknowledging victims' suffering. Normally, the prosecution could be handled by domestic courts, but, whenever domestic courts lack capacity or victims' trust and confidence, special, hybrid or extraordinary courts are often setup to overcome the limitations.[179] Among others, special criminal courts in the Central African Republic,[180] Hybrid courts in the East Timor and Sierra Leon and South Sudan,[181] and the extraordinary chamber in the Cambodia[182] were best instances.

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[174]Jeremy Sarkin, *The Necessity and Challenges of Establishing a Truth and Reconciliation Commission in Rwanda*, Human Rights Quarterly, Vol. 21, No. 3, (1999), P. 767–823; Mark Drumbl, *Restorative Justice and Collective Responsibility: Lessons For and From the Rwandan Genocide*, Contemporary Justice Review, Vol. 5, No1, (2002), p. 5–22.

[175] Id.

[176] Janine Natalya Clark, *the Limits of Retributive Justice*, Journal of International Criminal Justice, Vol. 7, (2009), p. 47.

[177]Note by the Secretary General, Para. 12.

[178] African Transitional Justice Policy, 2010, Para. 60-63; Guidance Note of the Secretary General, p. 9.

[179] Guidance Note of the Secretary General, p. 7, Updated Sets of Principles to Combat Impunity, Principle 19; African Transitional Justice Policy, Para. 78.

[180] UN Security Council, Resolution 2399 (2018), S/RES/2399, 30 January 2018, Preamble Para. 15.

[181]UNTAET, Regulation No. 2000/15, on the Establishment of Panels With Exclusive Jurisdiction, Over Serious Criminal Offences, UN Doc. UNTAET/REG/2000/15, 6 June 2000; UN Security Council Resolution 1315 (2000)

Prosecution would spark an old debate of "justice v. peace." Some states in transition such as Liberia[183] and South Africa,[184] for the sake of peace, granted amnesty for criminals, whereas in countries like Cambodia and Rwanda, contrarily, the climate of retribution prevailed. International law and acceptable practices, however, are in between the two.[185] On one hand, prosecuting all individual perpetrators may not bring peace, rather may escalate further conflict and violations. On the other hand, accountability and peace are mutually reinforcing imperatives. Thus, to strike a balance, atrocity crimes and gross violations should be always prosecuted while amnesty for other crimes will foster reconciliation and consolidate a sustainable peace.

2.4.3. Reparations (Proper) Programs

Reparations for direct benefits of victims of mass violations, most often, could not be addressed through ordinary judicial procedures. Instead, Reparations (proper) programs employing administrative (non-judicial) mechanisms with "simplified, speedy decision-making and disbursement procedures" are often launched.[186] This was the case in many transitional justice programs such as in South Africa, Colombia, Sierra Leon, and others.[187] In a few cases such as Bosnia and Herzegovina, a special court, the Human rights chamber-not an administrative decision-maker established to receive and decide complaints from both individuals and corporations.[188] Side by side, an administrative organ, the Commission on Real Property Claims of Displaced Persons and Refugees (CRPC) mandated to deal with real property claims was established.[189] Both mechanisms employ flexible and simplified procedures in receiving and deciding complaints. The Rwandan is also different in that restitution, apology and community service to victims by perpetrators had been ordered by the *Gacaca* courts.[190] In addition, a

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[on establishment of a Special Court for Sierra Leone], 14 Aug. 2000, S/RES/1315 (2000), at <https://www.refworld.org/docid/3b00f27814.html> [accessed June 4, 2022]; UN Security Council, Resolution 2406, 15 March 2018, S/RES/2406 (2018), Para. 28.

[182] Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006).

[183] See <www.amnesty.org/download/Documents/AFR3487352018ENGLISH.PDF> [last accessed Oct. 25, 2022].

[184] Supra note 173, Art. 4 (C), 18.

[185] Guidance Note of the Secretary General, p. 4; Christian Evans, p. 155.

[186] Note by the UN Secretary General, Para. 4.

[187] Id, Para. 12.

[188] The General Framework Agreement , for Peace in Bosnia and Herzegovina, December 1995, Annex 6, Part C

[189]Id, Annex 6, Chapter two.

[190]See generally Gacaca establishment Law; C. Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 515-540.

separate government-owned fund known as FARG was established for rehabilitation programs (education, health and housing) in favor of victims of genocide while compensation was not yet implemented.

Even though, truth and accountability are vital in clarifying the past and ensuring accountability, acknowledging harms, and returning the dignity of victims, stopping here will only be an incomplete figure of the integrated whole elements of the reparation rights of the victim.[191] In most cases such as in Sierra Leon and Guatemala, El Salvador, and Haiti recommendations of truth commissions to setup reparation (proper) programs were responded to by governments unsatisfactorily below expectations. The often-cited problem to launch reparation programs, so far, is the lack of resources to pay for the universe of victims of mass violations. Shortage of resources could be however overcome by establishing trust funds that would be funded by international and other donors.[192] The real reason thus is assumed to be a lack of political will on part of governments.[193]

Conclusion

The trend that reparation under international law could be an issue only in inter-state relations changed when the individual-centered norms, basically international human rights law that comprehensively recognizes the five elements of reparations proliferated in wake of World War II. The IHL additionally recognizes, and lately, at least for serious violations has acquired recognition under the customary IHL. Besides, several declarations and other official documents including the landmark one, the UN Principles on Reparations, which intends to clarify understandings of these already existing laws and to guide state practices were adopted. After and before the adoption of this document, at least 35 war-torn and post-repression states adopted both judicial and non-judicial transitional justice mechanisms in dealing with gross violations associated with armed conflict or repression. Such mechanisms basically include, among others, truth commissions, criminal prosecution, administrative reparation (proper) programs, and reforms.

[191] Note by the UN Secretary General, Para. 11, 20; the Truth and Reconciliation Commission for South Africa, *Final Report*, Volume 5, Chapter 5, p. 170.
[192] C. Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 515-566; Peace Agreement between the Government of Sierra Leone and the RUF (Lomé Peace Agreement), 1997, Article XXIV.
[193] Hayner, Unspeakable Truth, p. 163.

CHAPTER THREE

3. THE DOMESTIC LEGAL AND INSTITUTIONAL FRAMEWORKS

3.1. Introduction

Based on international law and best state practices spelled out in the above chapter, this chapter attempts to examine the adequacy of the Ethiopian legal and institutional frameworks in the implementation of the victims of gross violations in the context of the northern Ethiopian armed conflict. To highlight the major hotspots of the gross violations, it begins with a brief summary of gross violations in different regions affected by the armed conflict. In the second section, the legal challenges are addressed. Here, the Ethiopian constitutional, tort and criminal legal regimes are also thoroughly scrutinized. Separately, the challenges in pursuing reparations to the direct benefits of victims (compensation, restitution and rehabilitation) through the pre-existing tort procedures are analyzed. Moreover, the chapter addresses the institutional setup together with its insufficiency. Both the civilian and military judicial systems, and the thwarted reconciliation commission and IMTF are subjected to be examined. Finally, the chapter covers about the Ethiopian National Dialogue Commission.

3.2. Gross Violations in the Armed Conflict in Northern Ethiopia

To touch upon its nature, the conflict in northern Ethiopia was a clear non-international armed conflict to which the EDF, ENDF and ASF on one side and TSF (latter TPLF militias) on the other are parties.[194] To the satisfaction of requirements of IHL, it was so protracted, and intensified to the adequate level that could not be handled using ordinary law enforcement mechanisms; the non-state armed group (TSF, latter, TPLF militias) has sufficient territorial control and organizational ability to sustain military operations and to respect IHL.[195] The involvement of external forces, EDF could not affect the nature of the conflict because its armed hostilities were with the non-state armed group, TPLF militias than the armed forces of the state of Ethiopia.

[194] Supra note 15, 16.
[195] The Joint Investigation Report, Para. 37; Supra note 47.

In contexts of the armed conflict, several rights and research bodies have proved the perpetration of patterns of gross. In the Tigray Region, the OHCHR and the EHRC, in the joint investigation report, uncovered accounts of serious violations including war crime and possibly crime against humanity were committed.[196] According to the report hundreds of civilians including at least a hundred in Axum city alone were unlawfully and extra judicially killed from the early start of the war, November, 2020 up to June, 2021.[197] Directing attacks against civilian objects and populations, torture and other forms of ill treatments, enforced disappearance, rape and gang rape were also gross abuses based on the report.[198] Large-scale pillaging, destruction and looting of both public and private properties were also reported.[199] In addition, Amnesty International published two special reports, the first focuses on a massacre in Axum city between November 28 and 29, 2020, [200] and the second covers widespread SGBVs including rape and gang rape.[201] The ICHREE also claimed that it has reasonable grounds that starvation of civilian population was used as a method of warfare which amounting crime against humanity.[202]

In the Amhara region, Amnesty International, in its two reports, uncovered patterns of gang rape, rape, extrajudicial killing, extensive looting and destruction of properties including essential service providers that amounting to war crime and possibly crime against humanity.[203] The EHRC has also produced two reports focusing on similar patterns of gross violations in addition to forcible disappearance, torture and other forms of ill-treatment.[204] The Amhara universities Forum, in its thorough study, has also uncovered 6985 civilian killings, over 1782 rapes and gang rapes, 7460 disappearances, and massive property crimes worth hundreds of billions.[205] The

[196] See generally the Joint Investigation Report .
[197] Id, p. 2 and Para. 116-121.
[198] Id, p. 3-4.
[199] Id, p. 4.
[200] See generally Amnesty International, The Massacre in Axum, 16 Feb. 2021.
[201] Amnesty International, *I D*on't Know If They Realized I Was A Person': Rape and Other Sexual Violence in the Conflict in Tigray, Ethiopia, 10 Aug. 2021.
[202] The ICHREE First Report, Para. 96, 97.
[203] See generally Amnesty International, Summary killings, rape and looting by Tigrayan forces in Amhara, 16 Feb. 2022; Amnesty International, Survivors of TPLF attack in Amhara describe gang rape, looting and physical assaults, 9 Nov. 2021.
[204] See generally Ethiopian Human Rights Commission (EHRC), Investigation into Human Rights and Humanitarian Law Violations in Areas of Amhara Region affected by the Conflict, 13 November 2021; Report on Violations of Human Rights and International Humanitarian Law in Afar and Amhara Regions of Ethiopia, 11 Mar. 2021.
[205] See Amhara Universities Forum, A concluding Report on attacks by TPLF against Amhara People, 2022.

ICHREE has also unveiled that it established the reasonable ground for the perpetration of killing and rape which amounts to war crime.[206]

The EHRC as well has reported that at least 107 civilians including 27 children who took no part in the conflict were killed with one-time fired artillery shells in Galikoma Kebele of the Afar region, which is a serious violation of IHL, and so a war crime.[207] The report has also unfolded widespread looting and destruction of properties in the same region. The ICHREE has reported additional violations of such as indiscriminate attacks against civilian population in Abala and Berhale towns that resulted in death and injury.[208]

Serious patterns of violations were also reported from a Zone (hereinafter, the disputed Zone) that has been disputed by the Amhara and Tigray regions. It was administered as "Western Tigray Zone" since 1990s, and currently by Amhara region as "Welkait-Tegede Setit-Humera Zone". The EHRC in its preliminary report reveals that at least 600 civilians identified as Amhara and Wolkait were massacred in a small town of Maikadra on November 9, 2020.[209] The commission has confidently characterized the crime as war crime and crime against humanity. The joint investigation verified mass killing of at least two hundred ethnic Amharas and uncovered killing of at least five more ethnic Tigrayans in retaliation for the massacre.[210] Forced displacement of civilian populations, rape and gang rape were additionally covered in the report.[211] Another joint report of Amnesty International and Human Rights Watch reported crime against humanity and ethnic cleansing.[212] On the basis of these reports, the Ethiopian law and institutions need to be examined in terms of their adequacy in redressing victims of the reported gross violations.

[206] The ICHREE first report, Para. 35-43, 64-65, 97.
[207] Ethiopian Human Rights Commission (EHRC), Report on Violations of Human Rights and International Humanitarian Law in Afar and Amhara Regions of Ethiopia, 11 Mar. 2021.
[208] The ICHREE First Report, Para. 105.
[209]See Ethiopian Human Rights Commission (EHRC), Rapid Investigation into Grave Human Rights Violations in Maikadra: Preliminary Findings, 24 Nov. 2020.
[210] The Joint Investigation Report, p. 2.
[211] Id, p. 4.
[212] Amnesty International and Human Rights Watch, Crime against Humanity and Ethnic Cleansing in Ethiopia's Western Tigray Zone, Apr. 2022.

3.3. The Legal Framework

3.3.1. The Constitutional Law

The 1995 Federal Democratic Republic of Ethiopia (hereafter, FDRE) constitution very progressively devoted one-third of itself to all generations of human rights. But, disregarding a well-anchored principle of "no right without remedy",[213] it does not recognize reparations rights. Though, from a few provisions of the constitution one may imply reparations in incomplete senses. Article 9(1) provides nullity of any practice including violations contrary to the constitution,[214] which can be taken as one form of measures of restoration-restitution. Plus, the Ethiopian constitution provides enforced disappearance and torture are subjected to no amnesty, pardon and statute of limitation.[215] From this, it can be implied that the constitution recognizes prosecution of perpetrators of gross violations, in effect satisfaction right of victims. Unlike such ambivalence, reparation rights are expressly recognized under other countries' constitutions. For instance, the Sierra Leonean constitution provides the right to seek redress before the Supreme Court for victims' constitutionally recognized human rights.[216] Likewise, the South African constitution provides both substantive (reparation) and procedural (access to justice) dimensions of the right to seek remedies before ordinary courts distinctly.[217]

The Ethiopian constitution simply stipulates the right to access to justice to bring "justiciable matters" before a competent judicial body without clarifying what justiciable matters and whether human rights are justiciable and what reliefs are to be sought. Other jurisdictions are clear in this regard that the competent judicial body to receive constitutionally-recognized human rights in Sierra Leon[218] is the Supreme Court while in South Africa[219] it is the jurisdiction of first instance courts. Human rights thus are justiciable and victims have the right to reparations in these jurisdictions. But in Ethiopia, it is unclear whether courts have power over fundamental human rights under the constitution. On one hand, Article 13 (1)[220] of the constitution provides

[213] Supra note 3.
[214] The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, *Federal Negarit Gazeta*, 1st Year, No.1, 21st Aug., 1995, Art. 9(1), (hereinafter, the constitution).
[215] The Constitution, Art. 28.
[216] Sierra Leone's Constitution of 1991, Reinstated in 1996, with Amendments through 2008, Art. 28
[217] Constitution of the Republic of South Africa, 1996, Art. 38.
[218] Supra note 216.
[219] Supra note 217.
[220] The Constitution, Art. 13 (1).

about the duty of courts to enforce fundamental human rights which only be so through interpretation of the constitution including its fundamental human rights parts and awarding reparations for violations of the same. On the other hand, under article 83 and 84 of the constitution, interpretation of the constitution including chapter three is the power of HOF.[221]

The researcher would argue in between that the power of HOF to interpret the constitution cannot preclude courts' power to apply clearly recognized rights under the constitution. The Intervention of HOF necessitates only in times of "constitutional disputes". Put differently, courts can apply constitutional provisions unless the constitutional provision in question is disputed (unclear). If courts precluded from applying the constitution, their duty to enforce provided under cumulative article 13 (1) and 37 of the same constitution turned out to be totally meaningless. Hence, human rights under the constitution are justiciable before ordinary courts unless constitutional disputes arise which are the exclusive jurisdiction of the HOF. The federal courts establishment proclamation strengthens this line of argument by providing about courts' jurisdiction to base the constitution in their decisions.[222] Despite they have such legal way-outs; the Ethiopian courts are often inclined towards avoiding application of even clear constitutional provisions except in limited cases.[223]

3.3.2. The Tort (Extra-Contractual Liability) Law

Under the Ethiopian tort law, infringement of any law amounts to an offence bringing extra-contractual liability to the offender.[224] Human rights instruments to which Ethiopia is a party are the integral part of the law;[225] hence, violating them is an offence. In addition, the constitution which recognizes human rights itself is law of the country, and infringement on it is an offence as well. Moreover, most violations of human rights are criminalized under the criminal law of

[221] Id, Art. 83& 84.
[222] Federal Courts Establishment Proclamation, Proclamation No. 1234/2021, *Federal Negarit Gazeta*, 27th Year No.26, Apr., 2021, Art. 3(1) (a) and 6 (a) (Hereafter, Proclamation No. 1234).
[223] *Coalition for Unity and Democracy v Prime Minister Meles Zenawi Asres*, Federal First Instance Court, File 54024, decision 3 June 2005; Dr. *Negaso Gidada v the House of Peoples' Representatives and the House of Federation (Former President's case),* Federal First Instance Court, File 54654, Addis Ababa, judgment 5 Aug. 2005.
[224] Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, *Negarit Gazeta*, extraordinary Issue No. 2, 1960, Art. 2035 (hereinafter, the Civil Code).
[225] The Constitution, Art. 9 (4).

the country and thus are tort offences at the same time.[226] For instance, torture and other forms of ill-treatment against civilians, reportedly committed in contexts of the northern Ethiopian armed conflict, is a violation of human rights based on article 7 of the ICCPR and the customary international law to which Ethiopia is a party. The same violation is also prohibited under article 18 of the constitution and criminalized under article 270 of the criminal code. It is thus an offence under the tort law, and the offender will be liable to make reparations under it. The same is true for other reported gross violations as well.

The Ethiopian tort law recognizes categories of reparations: compensation, restitution and injunctions[227] Compensation should be equivalent to monetary values of the damage whenever it is a material one while in times of moral damage assessed based on equity (fairness).[228] Such recognition of both pecuniary and non-pecuniary damages, as well as the adoption of parameters of equivalence and equity for respective types of damage in the assessment of compensation, is in line with the international human rights jurisprudence and the UN basic principles on reparations.[229] However, even though it recognizes it, the Ethiopian civil code conceived restitution in much narrower senses. As it said in the second chapter restitution, under international law, constitutes measures that intend to return the victim to his/her general status such as enjoyment of human rights, restoration of liberties, employment status, impingement of criminal charges, restitution of assets and so on.[230] The Ethiopian law instead recognizes restitution of property or assets only.[231] It thus is a clear legal gap regarding restitution, the most favored form of reparations for victims of gross violations in contexts of the armed conflicts in northern Ethiopian, as it is elsewhere.[232] Injunction that could be taken as cessation of violations and forming part of satisfaction is also recognized.[233] Otherwise, rehabilitation and symbolic measures such as satisfaction and preventive, and measures guaranteeing non-repetition are not recognized at all.[234] These are by nature non-civil (tort) matters. Courts could apply international

[226] See Generally the Criminal Code of the Federal Democratic Republic Of Ethiopia, Proclamation No. 414/2004, *Federal Negarit Gazeta*, 2005-05-09, Extraordinary issue, 1995 (hereinafter, The Criminal Code).
[227] The civil Code, Art. 2090-2123; the Criminal Code, Art. 101-102.
[228] Id.
[229] The UN Principles on Reparations, Para. 20.
[230] Id, Para. 19.
[231] The Civil Code, Art. 2118-2119.
[232] Supra Note 75.
[233] The Civil Code, Art. 221-223; the UN Basic Principles on Reparation, Art. 22 (a).
[234] C, Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 11.

treaty laws acknowledging reparations and to which Ethiopia is a party, if the requested reparation by nature could be addressed under the tort law including rehabilitation and restitution.[235] The problem rather here is, firstly the judiciary, as discussed below, is ill-experienced with international law and often avoids using it, and second, the treaty laws are generally framed not in a self-executing shape so that a detailed domestic law to enforce them is necessary.

3.3.3. Procedural and Evidentiary Gaps in the Tort Approach

The existing tort-based procedural mechanisms are basically designed to address discrete violations and presuppose normal situations.[236] Among the prominent challenges in pursuing reparations proper through the tort approaches is an evidential one. In massive violation like in the armed conflict in northern Ethiopia, the victims could not prove their victimization to the required standard of proof, preponderance of evidence.[237] This would so primarily for, first, the circumstances the violations occurred, people fleeing war zones and persecution often unable to preserve and have evidence.[238] Second, armed conflict by its nature involves destruction of public records and other documents, and thirdly, the time gap between the violation and trial contributes for loss of evidence.[239] Additionally, the perpetrators are unidentified which is a barrier to bring claims before ordinary civil (tort) courts.[240]

Even though victims are able to prove their claims, it is inexpedient, unfeasible and impractical to enforce the reparations rights of victims due to large numbers of victims (claimants). As reports indicated, victims of all kinds of gross violations in the northern Ethiopia armed conflict

[235] The constitution, Art. 9(4)& 13 (2); *Miss Tsedale Demissie v Mr Kifle Demissie*, Federal Supreme Court Cassation Division, File 23632, judgment 6 Nov., 2000 (hereinafter, the Case of *Miss Tsedale Demissie v Mr Kifle Demissie)*.
[236] Dinah Shelton, p. 121.
[237] C, Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 147; Note by Secretary General, Para. 4.
[238] C, Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 149; See for instance "a statement by Amhara Regional state Disaster prevention and food security commission, 25 Nov.2021" in which a million plus were fled the war Zone of Amhara region when they returned as reported "EHRC, Amhara and Afar Regions Report, p. 5-12" their properties were left stolen, looted and destructed by whom and in a circumstance they did not have evidence.
[239] Id.
[240] Ibid; the researcher has conducted at least 12 interviews with victims and families all did not know the person who attack them and their loved ones. For example, Interview with Workie Gugsa, lost four family members, Kobo town, July 18th, 2022; but in "Civil Procedure Code of the Empire of Ethiopia, Decree No. 52 of 1965, *Negarit Gazeta*, extraordinary Issue No. 3, 1965, Art. 33 (3)" the victim should name a defendant.

surpass at least hundreds of thousands.[241] Attempting to process claims through the normal court procedure would be totally infeasible and impractical. It would unfairly prolong trials by increasing unnecessary workloads on courts, and as a result, delaying judgments up to an estimate a hundred years for each hundreds of thousands of victims.[242]

To overcome these challenges, quasi-judicial, administrative mechanisms employing 'simplified, speedy decision making disbursement procedures" were devised in many states.[243] As regards evidentiary challenges, administrative reparations programs have relaxed and liberalize evidentiary requirements of the ordinary judicial mechanisms with the following strategies. This includes sharing the burden of proof, which in normal times lay at the claimant, with the perpetrator as well.[244] Additionally, the quasi-judicial body receiving complaints, its secretariat or another inquires body is often assigned to engage in thorough findings which could not be done in victims' capacities.[245] Downing the 'preponderance of probabilities' test to more lenient standards such as 'satisfactory demonstrations' as adopted by the UN Compensation Commission (hereinafter, UNCC)[246] and allowing circumstantial and hearsay evidence are also other strategies.[247] Moreover, presuming allegations of losses, if they happened in conflict zones in the time window of the conflict, as true was also the case in some reparations (proper) programs.[248]

For the challenges posed by the large size of the victims, reparations programs employed mass claims processing techniques.[249] It involves, primarily, grouping claims which mean 'claims with the same fact patterns or otherwise similar profile are identified in the database and grouped."[250]

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[241] In "Amhara Universities Forum, A concluding Report on attacks by TPLF against Amhara People, 2022" victims' number from Amhara region alone is in hundreds of thousands.
[242] C, Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 173.
[243] Id, p.13.
[244] Id, p. 151.
[245] Id, p. 152; Truth Commissions has involved in fact findings. Also, in "Report of the United Nations Secretary-General of 2 May 1991 pursuant to paragraph 19 of Security Council Resolution 687, UN Doc. S/22559" the UNCC mandated to gather and document information that would have evidentiary value by itself.
[246] UNCC Provisional Rules for Claims Procedure, U.N. Doc. S/AC.26/1991/10 (26 June 1992, Article 35 (1)
[247] Dinah Shelton, p. 124.
[248] C, Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 160.
[249] Dinah Shelton, p. 186; se generally John Crook, *Redressing Injustices through Mass Claims Processes* (PCA 2006); Howard M. Holtzmann and Edda Kristjiansdottir (eds.), *International Mass Claims Processes: Legal and Practical Perspectives* (Oxford, 2007); C, Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 161.
[250] Id, C, Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, PP. 161.

Several claims in a group then decided expeditiously at once. For instance, the UNCC grouped the claimants into six categories (A-F). Category A represents displaced people, B, Seriously injured and dead; C, all other individual losses including property and non-material ones, pain, grief; D, losses assessable over $100,000; E, corporate claims, and F, claims of foreign governments and international organizations.[251] The next stage then is applying standardized valuation methodologies for each category of claims and then determining a standardized amount of payment on a category basis by taking factors such as the gravity of the violation and level of proof into account.[252]

The other notable problem is the absence of state liability to pay whenever violations could not be linked with a particular perpetrator or even possible if that perpetrator is unable or unwilling to remedy them. Such inability and unwillingness are the characteristics of mass violations in conflict situations. To come to dispatch this problem, international legal standards[253] and best foreign experiences suggest state responsibility of directly paying victims.[254] Countries usually established trust funds that are sourced from government budgets and others, international donors and attachable assets of accused perpetrators if the government cannot afford the costs. For instance, in South Africa, the president fund was established to fund reparation programs for apartheid victims. In Rwanda too, FARG was established to fund the rehabilitation of genocide victims.[255] In Sierra Leon, a special fund which sourced from the state budget, donors and mineral resources was established.[256] At international level, the ICC trust fund which comes from attachable assets of perpetrators and donors was set up for victims of international crime.[257]

Reparations based on the above-mentioned special procedure in Ethiopia, as it is in other countries may compromise accuracy and perfection. Court procedures could enable those who are truly victims will be benefited and not be susceptible to abuses by those who are not. However, owing to the drawbacks mentioned above, they could not function well for mass

[251]Ibid; Christian Evans, p. 141; Dinah Shelton, p. 184-185.
[252] Ibid. For instance the UNCC awards from $2,500-5,000 for category A, $2,500-10,00 for category B, up to $100,000 for category C on family basis. See also Dinah Shelton, p. 184.
[253] UN Basic Principles on Reparations, Para. 16;*Case of the La Rochela Massacre*, Inter-American Court of Human Rights (IACtHR), (Judgment on the Merits and Reparations) (11 May 2007), Para. 220.
[254] Dinah Shelton, p. 124-125.
[255] C, Ferstman, Reparations for Victims Genocide, War Crime and Crime against Humanity, p. 522.
[256] The Lome´ Agreement, Article XXIX; Sierra Leone Truth Commission Final Report, vol. 2, chapter 4, Reparations, 2004, Para. 227 (hereinafter, Sierra Leon TRC final Report, Reparation)
[257] Supra note 154.

violations. From rational standpoint that denying reparations for victims as large as at least hundreds of thousands in the guise of failure to name perpetrator, produce evidence, and strictest trials that were designed for normal times would negate the ultimate ends-reconciliation, all-inclusive peace, civic trust, social solidarity and national unity.[258] Without victims' reparations, the legacies of the mass violations could not be 'mitigated' and risk of the reoccurrence will not be reduced.[259] The state should re-assert victims' dignity and acknowledge their sufferings by providing reparations through lenient and relaxed procedures than confronting them in the guise of procedural requirements to foster the here-mentioned imperatives.[260]

Among additional reasons justifying why the governments should setup an administrative reparations (proper) program includes first, from legal point of view that states has the duty to deliver reparations for victims of gross violations regardless of who the perpetrator as discussed in the previous chapter. The second justification is from moral point of view that states in wakes of armed conflict inevitably would allocate significant resource to benefit demobilized and reintegrated ex-combatants.[261] It is however unfair to ignore victims while benefiting those who take up arms.

A possible argument that Ethiopia is a poor nation and could not afford to pay reparations does not hold water, as other countries in lesser and equal economies with Ethiopia have implemented such programs, and studies reveal the primary factor is not lack of resources rather it is political will.[262] However, it does not mean states should pay an amount courts would order, which relatively wealthy states could not afford, let alone poor nations like Ethiopia.[263] De Grieff convincingly argued it is enough if the cost of reparations proper programs meets the requirement of "satisfying conditions of justice."[264] To be so, reparations amounts need to be determined in consultation with victims and their representatives, and by taking into account other competing projects such as development, economic factors and the size of victims.[265]

[258] Id, Sierra Leon TRC final Report, Reparation, Para. 34-51; Note by Secretary Genral, Para. 7.9, 11.
[259] Id.
[260] Pablo De Greiff, the Handbook of Reparation, p. 544.
[261] Note by the Secretary General, Para. 8; In "Supra note 17, Art. 6" the warring parties agreed for disarmament, demobilization and reintegration of TPLF fighter.
[262] Note by the Secretary General, Para. 53, 54, 55.
[263] Pablo De Grief, the Hand Book of Reparations, p. 457.
[264] Id, PP. 459.
[265] Id, PP. 476.

Therefore, reparation (proper) programs, alongside other transitional justice measures, with lenient procedural and evidentiary requirements and the establishment of an administratively governed trust fund as it works well in other states is the best way-out for victims of armed conflict in northern Ethiopia.

3.3.4. The Criminal Law

Criminal investigation**,** prosecution and punishment of perpetrators of gross violations, as highlighted in the second chapter, constitute obligations of states and part of victims' reparation right to satisfaction.[266] For such violations commutation of punishment on amnesty, pardon or in any other way, and application of statutes of limitation are impermissible under the same international law.[267] Criminalization, however, is a prerequisite of prosecution due to the principle of legality, which requires violations and punishments thereof for which the perpetrator would be liable should expressly and with certainty, prescribed under the criminal law.[268] The Ethiopian criminal law is thus expected to criminalize gross violations perpetrated in contexts of the conflict in the country's north and elsewhere.

The 2004 criminal code criminalizes some gross violations perpetrated in the northern armed conflict including torture and other forms of ill-treatment,[269] extrajudicial killing as homicide,[270] Rape not separated from gang rape[271] and looting, pillaging and destruction of properties.[272] International crimes including genocide and war crime have recognized under the same law.[273] The Ethiopian constitution prohibits any form of commutation including amnesty and pardon and inapplicability of statute of limitation for gross violations it understands them all as crime against humanity[274] is in line with international law.

Quite unexpectedly, however, the Ethiopian criminal law does not recognized one of the oldest and well-known atrocity crime, crime against humanity. The mere constitutional recognition of it

[266] ICCPR, art. 2; GC 31, Para. 18; ICRC, Customary IHL, Rule 153 &, 158; CAT, Art. 5.
[267] Id.
[268] The Criminal Code, Art. 2.
[269] Id, Art. 424.
[270] Id, Art. 539-540.
[271] Id, Art. 620.
[272] Id, Art. 662-691 & 273.
[273] Id, Art. 269-280.
[274] The constitution, Art. 28.

could not be sufficient to apply crime against humanity due to the principle of legality which requires clear definition and certainty of each ingredient of the crime and punishment thereof under the criminal law.[275] Though it recognizes, the constitution wrongly characterizes crime against humanity. Normally, the crime constitutes two categories of elements. First, specific elements, certain offences, murder, enforced disappearance, torture and so forth. Second, it has general elements that the specific acts committed systematically or in widespread scale against any civilian population with the perpetrators' knowledge of the link between their acts and such natures of the attacks.[276] Howbeit, the constitution, setting aside the general element of the crime, systematic and widespread nature and knowledge of the perpetrators, presented each offence as crime against humanity independently.[277] Put otherwise, it understands each offence as crime against humanity than as specific elements of the latter. The other problem, the constitution has taken crime of genocide as part of crime against humanity than an independent crime of its own as defined under international criminal law.[278]

For crime against humanity perpetrated in contexts of the armed conflicts, the already recognize war crime which overlapped with it in most of the cases could be alternatively applied. However, this holds not always workable such as when the crime committed has no nexus with the armed conflict. Additionally, ethnic cleansing, which is not recognized as a distinct category of crime, rather prosecuted as persecution and forcible transfer of population as crime against humanity under international criminal law is not recognized under Ethiopian law as well. Even though forcible transfer of population, if it has nexus with the armed conflict, is recognized as war crime under the criminal code,[279] and then can be prosecuted as such, persecution is yet not recognized even as war crime. Moreover, enforced disappearance is criminalized neither as a standalone crime nor as war crime, and as a result, it remains non-criminalized under the currently-in-use Ethiopian criminal law.

There are basically two alternative arguments to fill the normative gap related with crime against humanity without legislative intervention. The first is focusing on prosecuting specific

[275] Supra note 268.
[276] The Rome Statute of ICC, Art. 7; ICTR statute, Art. 3; ICTY Statute, Art. 5.
[277] The Constitution, Art. 28.
[278] Id.
[279] The Criminal Code, Art. 270 (c).

(predicate) offences,[280] which is not convincing for reasons, primarily, the gravity of these predicate offences is lesser because crime against humanity is an international crime in which the international community has interests. Plus to that, if it reduced into predicate offences important rules of international crimes such as non-applicability of statutory limitations, universal jurisdiction, immunity and command responsibility will be missed. The predicate offences have no as strong message and deterrent effect as crime against humanity does. Additionally, multiple specific (predicate) offences such as apartheid, enforced disappearance, deportation, extermination, and persecution are yet to be criminalized even as standalone crimes. The second argument is the possibility of the application of international law in domestic courts.[281] This is also problematic for two reasons. First, Ethiopia is not a party to the only teary, the Rome statute of ICC that codified International Criminal Law. Furthermore, the possibility to apply the customary international law, which international crimes acquired is also challenging. No internal law allowing its application, determining its scope is difficult as the Ethiopian courts are ill-experienced in international law which will lead to arbitrariness, compromising the principle of legality, and unfair prolongation of trials.[282] Hence, the solutions for this normative gap are either of these three. First, establishing a special court comprised of experienced judges and prosecutors who could properly apply customary international law as recommended in this research. This works temporarily for gross violations perpetrated in a certain timeframe. The permanent solutions rather are either properly criminalizing the crime against humanity and the discrete offences in the domestic law or ratifying the Rome statute of ICC.

3.4. The Institutional Framework

3.4.1. The Judiciary

Ethiopia as a federal country has dual courts both at the federal and regional state levels.[283] Regarding criminal cases, federal courts have jurisdiction over crimes in violation of international law[284] which includes genocide and war crime.[285] Crimes other than these are under

[280] Supra note 26.
[281] Messay Asgedom, *the Place of Crimes against Humanity under the Ethiopian Legal System: A Reflection*, Bahir Dar University Journal of Law, Vol.3, No. 2 (2013), p. 415.
[282] Id, p. 419-422.
[283] The Constitution, Art. 79.
[284] Proclamation No. 1234, Art. 4 (3).
[285] The Criminal Code, Art. 270-280.

state courts jurisdictions except the intra-regional or regional and federal conflict of jurisdiction arises or the crimes committed by federal officials and employees in connection with their duties.[286] Regional states' higher and supreme courts vested with delegated power on crimes are federal higher first instance and higher courts matters.[287] Crimes in contexts of the armed conflict thus are under the jurisdiction of both regional and federal courts. The regional justice bureaus and the Ministry of justice are responsible to initiate criminal proceedings.[288] However, military offences are not under the jurisdiction of the civilian justice system. Offences committed by ENDF members while in active duty, any civilians and members of police forces deployed alongside the military[289] are subjected to military justice, which are composed of the military court, military police, military prosecutor and military defense counsel.[290] The Federal Supreme Court, however, is vested with cassation power on decisions of all courts including military ones' involving fundamental errors of law. [291]

Victims have two alternatives to request reparations proper. First, they may request before the criminal bench,[292] and second, they may bring a separate civil (tort) action against the accused person. Tort matters are state courts' principal jurisdictions except for some subject matters such as cases in which a federal government organ is a party.[293] In addition, regional courts have delegated jurisdictions on federal civil matters.[294] Any courts would apply the constitution's chapter three (bills of rights part), as discussed above and international treaties including human rights instruments. International treaties including bills of human rights are an integral part of the Ethiopian law that courts may apply.[295] Non-publishing of most human rights instruments in the official Gazette had become a challenge for courts to take judicial notice. However, the Federal Supreme court cassation division has set a groundbreaking precedent for the application of

[286]Proclamation No. 1234, Art. 8 and 14.
[287] The Constitution, Art. 80 (2) and (4).
[288]A Proclamation to Provide For The Establishment of the Attorney General of the Federal Democratic Republic Of Ethiopia, Proclamation No. 943/2016, *Federal Negarit Gazette*, No. 62, 2nd May, 2016, Art. 6.
[289]A Proclamation on the Defense Forces of the Federal Democratic Republic of Ethiopia, Proclamation No.1100/2019, *Federal Negarit Gazette*, No. 19, Addis Ababa, 19th Jan., 2019, Art. 38 (1) (e) and (h) (Hereafter, the Defense Proclamation); the Criminal Code, Art. 284-322.
[290] The Defense Proclamation, Art. 28.
[291] Ibid, Art. 40; The constitution, Art. 80 (3) (a).
[292] The Criminal Code, Art. 101; Criminal Procedure Code of Ethiopia, Proclamation No.185/1961, *Negarit Gazeta*, 1962 (Hereafter, the Criminal Procedure Code), Art. 154.
[293] Proclamation No. 1234/2021, Art. 5 (1) (f) (h) (i).
[294] The Constitution, Art. 80.
[295] The constitution, Art. 9(4)& 13 (2).

unpublished instruments.[296] The same position is also upheld by the EHRC citing the constitution that it does not require publication.[297]

3.4.2. The Inadequacy of the Judiciary

States in wake of armed conflicts, including Ethiopia has left with broken rule of law and institutions and other problems[298]so that courts have inherent and other limitations in addressing abuses of the conflicts.[299] The limitations include first, lack of independence and impartiality. The federal courts' judges and chief judges were respectively appointed, their appointment approved and their budget determined by the House of people's representative[300] which designates the TPLF as a terrorist group[301] and sideling in the conflict.[302] The same wise, judges in the three regional states (Tigray, Amhara and Afar) who have jurisdiction over the violations are appointed and the court's budget is determined by state councils that took clear positions in the armed conflict.[303]

The questions of impartiality and independence are much worsening regarding other justice organs, the police and ministry and bureaus of justice. The three regional states and the federal police commissions have directly participated in the armed conflict.[304] The minister of justice at the federal level and chiefs of bureaus of justice in the three regions as well are directly accountable to and appointed by the chief executive, the prime minister and state presidents who lead the war as commander in chief of the armed forces.[305] In many armed conflicts and repressions, justice institutions themselves were complicit in gross violations.[306] This could happen and be reported in Ethiopia and need to be investigated by an impartial and independent body.

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[296] The case of *Miss Tsedale Demissie v Mr Kifle Demissie*.
[297] EHRC, Ethiopian Annual Human Rights Situation Report, July 2022, PP. 88 and 89.
[298] Sierra Leon TRC final Report, Reparation, Para. 10.
[299] The UN Secretary General Report, Para. 47.
[300] The Constitution, Art. 79 and 81.
[301] The House of People's Representatives approved the decision of labeling the TPLF in its 13rd regular session on May 5, 2021.
[302] In "state of emergency proclamation enacted to avert the threat against national existence and sovereignty No 1/2021, November 2, 2021" and other acts the HPR expressly supported the removal of and war against TPLF.
[303] Supra note 300.
[304] The joint Investigation Report, p. 1; EHRC, Amhara and Afar Region Report, p. 1.
[305] The constitution Art. 74.
[306]Hayner, Unspeakable Truth, p. 105; Dinah Shelton, p. 26.

Independent and impartiality concerns have been shared by human rights bodies as well. Amnesty International and Human Rights Watch have pointed out questions of independence and impartiality that the Office of Attorney General (now Ministry of Justice) exclusively focused on violations allegedly committed by TPLF-affiliated forces alone and downplaying violations by Ethiopian state forces.[307] Similarly, OHCHR and EHRC have raised issues on the sufficiency of national justice institutions in addressing command responsibility.[308] The UNHRC has also stressed the same concerns of independence.[309] Tronvoll, an expert, also insists that the ministry of justice and the judicial system, in general, are not independent because "the chain of command goes up to the Prime Minister."[310]

The lack of objective impartiality and independence of the judiciary coupled with the deep ethnic divide and mistrust[311] would result in a deterioration of confidence and trust of victims in courts. Victims from Tigray region often accuse the Ethiopian state in general and Amhara forces and officials in particular of violations.[312] Victims from Amhara region also accused the TPLF officials and militias.[313] Hence, the trust and confidence of victims are unthinkable here. Armed conflict by itself leads to the disintegration of vertical trust in state institutions including justice ones and horizontal trust between communities.[314]

Regarding the inherent limitations, the existing justice organs inherently lack the capacity to administer massive violations of the armed conflict. The violations are so massive that involve perhaps tens of thousands of unnamed perpetrators and more than at least hundreds of thousands

[307] Supra note 212, p. 207, 212.
[308] The Joint Investigation Report, Para. 376.
[309] Resolution adopted by the UN Human Rights Council, A/HRC/RES/S-33/1, Situation of human rights in Ethiopia, 17 Dec. 2021, p. 2.
[310]Julia Crawford, War in Ethiopia: *What Chance of Justice for Serious Crimes?*, Justiceinfo.Net, 18 Nov. 2021, at <https://www.justiceinfo.net/en/84440-war-ethiopia-chance-justice-serious-crimes.html> [accessed Oct. 24, 2022].
[311] The mistrust and animosity exacerbated by The TPLF, Amhara and federal leaders and Medias, other elites often released unwarranted and inflammatory remarks. The EHRC in "EHRC, Rising tensions and aggravating rhetoric grave risk to human rights situation in Northern Ethiopia, May 15, 2022" called for restraint from such aggravating rhetoric; the HRC as well expressed its concern over rising hate speeches in "Id, p. 3". Also, the ICHREE in its first report, Para.116 noted "The Commission is deeply troubled by its findings because they reflect profound polarization and hatred along ethnic lines in Ethiopia."
[312] Supra Note 212, p. 2.
[313] See EHRC, Amhara and Afar Report, p. 15; Also, Amhara Association of America (AAA), Neglected Massacres against Amharas: Compendium of AAA's 2021 Reports on Human Rights Violations against Amharas; May 2021, p. 102-230.
[314] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, note by the Secretary General, A/HRC/39/53, 25 July 2018, Para. 18.

of victims.[315] It is impossible to produce sufficient evidence including on the identity of the perpetrators due to the hostile condition of perpetrating the crimes and the large size of the perpetrators.[316] In addition, courts would overburden with case backlogs that could probably take decades if they should handle the universe of claims and charges on an individual basis. The incapacity problem is exacerbated by the non-existence of a functioning judiciary in some parts of the country, especially in the Tigray region and the disputed zone.[317] The other big problem, as discussed above, is the low-level experience of legal professionals in international law.[318]

Lack of impartiality, independence and victims' trust are some of the reasons that made the Ethiopian judiciary unfit for truth-seeking. Further, they naturally focus on individual cases than on the wider spectrum of historical events that would create a common ground for the dividend society. They are neither mandated nor inherently sufficient to unearth the root causes and circumstances of the country's past and dig out everyone's contributions in that and touching the nation's historical contentious events. Mandating them with such a function, according to Hayner, is 'unfair and unrealistic.'[319] Dadimos Haile also raised three grounds why judicial trials are not appropriate for truth-seeking.[320] First, the facts collected for purpose of a trial are aimed at supporting the prosecutors' case so may not be impartial. Second, evidence produced in trials is subjected to restrictive rules of evidence, and thirdly, the public and adversary nature of trials may make witnesses switch facts they would reveal had they more favorable procedures.

Thirdly, courts are inadequate to do necessary restorative and redistributive justice elements. To begin with, judicial systems' focuses are specific acts of an accused person. It is not responsive to the needs and concerns of victims-not victim centered. War victims and the community, in general, should be consulted and participated in designing and implementing reparations.[321] Contrarily, the Ethiopian criminal justice system has no meaningful place for victims that they

[315] Supra note 238.
[316] Sierra Leon TRC final Report, Reparation, Para. 10.
[317] The joint Investigation Report, Para. 376.
[318] ሲሳይ ሳህሉ፣ *የዳኞች አለም ቀፍ ሀግ እውቀት ዝቅተኛ መሆን የባለስልጣናትን ተጠያቂነት ዝቅተኛ እንዳደረገው ተገለጸ፣* ሪፖርተር፣ ቅፅ 22፣ ቁጥር 2330፣ ነሐሴ 2፣ 2014, ገጽ 1፣46።
[319] Hayner, Unspeakable Truths, p. 108-109.
[320] Dadimos Haile, *Accountability for Crimes of the Past and the Challenges of Prosecution: The Case of Ethiopia*, Leuven University Press, 2000, p. 22, 23.
[321]Guidance Note of the Secretary General, p.9; United Nation Office Higher Commissioner for Human Rights, Human Rights Rule of Law Tools for Post-Conflict States: National consultations on transitional justice, 2009, p.1-3

are passive witnesses than centers of proceedings. Additionally, courts cannot order symbolic measures such as memorialization and apology which are means of acknowledging victims' suffering and marking social condemnation of the violations.[322] Further, the Ethiopian polity and society as deeply divided[323] needs to be reconciled and the nation healed to prevent the reoccurrence of violation and maintain social harmony. However, courts are neither mandated nor have the capability to handle such processes. Moreover, the courts cannot investigate institutional responsibility for abuses and order for reformation of the abusive laws and institutions.[324] They could not thus answer structural and policy questions that need to be addressed to guarantee non-repetition of abuses.

Dozens of conflict affected nations have adopted both judicial and non-judicial transitional justice mechanisms, as explained in the second chapter, to rectify the like-limitations of judicial systems.[325] The first step is the establishment of victim-centered truth commission with broader truth seeking, recommending and reconciliation and healing powers.[326] The thwarted ERC could be additional lesson for the Ethiopian case as discussed in a below section. On the prosecution element of transitional justice, states always follow the judicial approach. Some states established either hybrid courts, composed of both national and international elements or domestic specialized courts due to the insufficiency of the already existing ones.[327] Ethiopia also is not new to applying special prosecutorial mechanisms. To prosecute the red terror crimes in the pre-1991 times, the Special Prosecutors Office (SPO) that were constituted of domestic prosecutors who were advised by eight foreign experts.[328] Though the possibility of a special mechanism can be learned, the one-sidedness, selectiveness and lack of imparity drawbacks of the SPO should not be repeated.[329] In addition, it did not introduce a way out to fill the above-discussed gaps in the ordinary courts, instead confined to the prosecution office alone.

[322] Updated Set of Principles to combat impunity, Principle 3.
[323] Supra note 311.
[324] Dinah Shelton, p. 26.
[325] Report of the Secretary General, Para. 50.
[326] Hayner, Unspeakable Truth, p. 20-24, 27-75, 239-253.
[327] Supra note 180, 181, and 182.
[328] Marshet Tadesse, *Prosecution of Politicide in Ethiopia - The Red Terror Trials*, International Criminal Justice Series, Vol. 18, October 2018, p. 155 (Hereafter, Marshet, Prosecution of Politicide).
[329] Id, PP. 155, 267.

To dispose of reparations to the direct benefit of victims, states went mandating administrative bodies which followed simplified and relaxed procedures. For instance, in Sierra Leon, the National Commission for Social Action composed of several ministries was entrusted to implement reparation programs.[330] Likewise, in Guatemala, National Reparation Plan was established.[331] However, the rights of victims who could overcome legal obstacles to bring civil suits against perpetrators before ordinary courts should not be affected by the establishment of administrative reparation programs.

The transitional justice mechanisms would work well for Ethiopia as it has in many other nations. The OHCHR and EHRC, in the joint investigation report, specifically recommended victim-centered transitional justice mechanisms, reparations schemes (programs), specialized criminal judicial structure, and legal and security sector reform.[332] Special Rapporteur Fabián Salvioli has also held the same position that transitional justice processes that ensure all the "five pillars, namely, right to truth, right to justice, reparations, guarantees of non-recurrences and memorialization" must be implemented in Ethiopia.[333] The ICHREE also mandated to provide technical assistance and recommendation to the Ethiopian Government on transitional justice, including accountability, reconciliation and healing.[334] As well, the Ethiopian minister of justice, Gideon Timotiwos confirmed the insufficiency of the existing mechanisms and the necessity of installing restorative and transitional justice processes.[335] Finally, the TPLF and the government have agreed to the latter to implement transitional justice and develop a consultative transitional justice policy.[336] The necessity of establishing transitional justice mechanisms thus is over-agreed amongst human rights and government experts and the warring parties, so the researcher could not imagine other way-outs.

[330] Sierra Leon TRC final Report, Reparation, Para. 211.
[331] Report of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, A/HRC/42/45, September, 2019, Para. 76.
[332] The Joint Investigation Report, Recommendations c (3, 4, 7 and 8).
[333] Ethiopian Human Rights Commission (EHRC) Press Release, March 24, 2022.
[334] UN Human Rights Council, Resolution S-33/1, A/HRC/RES/S-33/1, 17 December 2021, Para. 9 (C).
[335] A video briefing by Gideon Timotiwos, Minister of justice on withdrawal of charge for some suspects of crime, 8 January 2022 at <https://www.youtube.com/watch?v=E2w7RsZmidQ> [accessed Apr. 9, 2022].
[336] Supra note 17, Art. 10 (3).

3.4.3. Attempts at Transitional Justice Mechanisms

i. Lessons from the Thwarted Reconciliation Commission (ERC)

The Ethiopian government established the Ethiopian Reconciliation Commission (hereinafter, ERC) in 2018 with a truth commission-like purpose.[337] Even though the ERC is already thwarted, its successes and drawbacks are worth discussing to be taken as lessons for the truth commission recommended in this research. Regarding its success, it was mandated to inquire about the root causes of disputes and repeated gross human rights violations[338] which other organs were not endowed with. Other previous truth commissions were mandated as such. The Sierra Leonean Truth and Reconciliation Commission, for instance, identified "years of bad governance, endemic corruption and the denial of basic human rights" as causes of the conflict.[339] The truth and reconciliation commission recommended in this research should thus put the conflict, gross human rights violations, and the ever deepen divide into historical, socio-economic and political roots.

With respect to drawbacks, the first is the lack of political consensus and victim-centeredness in its inception. Truth commissions' of states such as Sierra Leon, South Africa, Colombia and Guatemala that were a similar reality of Ethiopia now resulted from peace agreements between governments and armed or rebel groups.[340] Howbeit, the ERC was one-sided that simply created by the government than the outcome of a negotiation with rebels and other dissidents.[341] Further, successful truth commissions unlike ERC were participative of victims, their representatives and civil societies in their creation and operation.[342] If we look into the Sierra Leonean one, for example, projects of awareness creation and sensitization of the public on the planned commission had been carried out.[343] Then, all citizens were invited to nominate anyone to be commissioner, and the finalists out of shortlisted 65 nominees were selected by the selection

[337] Reconciliation Commission Establishment Proclamation, No.1102 /2018, *Federal Negarit Gazeta*, No. 27, 2019, preamble and Art. 5.
[338] Id, Art. 6(4).
[339] *Witness to Truth, Report of the Sierra Leon Truth and Reconciliation Commission*, 5th Oct. 2004, Vol. 1, Introduction, Para. 11.
[340] Hayner, Unspeakable Truths, p. 27-32, 58; Christina Evans, p. 209.
[341] Tamene Ena Heliso, *Critical appraisal of the Ethiopian Reconciliation Commission*: A comparative study, Journal of Law and Conflict Resolution, Vol. 11(1), 2020, p. 22.
[342] Supra Note 339, Vol. 1, Chapter 2, Para. 10.
[343] Id, Para. 10.

panel comprised of cross sections of Sierra Leonean society including the rebels, religious council and the president in a transparent selection process that was overseen by UN special representative.[344] In the early stages, a consultative conference between the government and civic societies, students and professional bodies was also held to reach at a consensus on the content of the draft peace agreement that contains a truth commission element.[345]

The credibility, independence and impartiality of commissioners of truth commissions, super essential for their success, were also missed in ERC.[346] Due to deep divides, securing faiths of all parties and segments of the society to the commissioners be would a reasonably expected challenge in Ethiopia. The Sierra Leonean overcame such challenges by allowing UN special representative oversight in the selection process and inclusion of additional independent international commissioners appointed by OHCHR.[347] Such inclusion of international commissioners and AU or UN oversight or observation of the selection process, based on prior internal agreements and consultations, would work well to secure the credibility of commissioners in the deeply divided Ethiopia. Other factors of impartiality and independence, budget autonomy, immunity and legal protection of commissioners are also lacking in ERC.[348] In addition, the ERC's accountability to a government cabinet, the Ministry of Peace flagrantly compromised its independence. [349]

The ERC, unlike previous truth commissions,[350] lacks clear and sufficient temporal and material competencies. The temporal competence of the recommended truth commission would be determined upon consultation and consensus. To forward the writer's opinion, obviously, the war and its violation starting from November 4, 2020, should be under the mandate of it. In addition, the 27 years of EPRDF's repression and resultants gross violations since 1991 which ended up in

[344] Id, Para. 16.
[345] Id, Vol 1, chapter 1, para. 15.
[346]In "Supra Note 338, Vol. 1, Chapter 1, Para. 14" the Sierra Leonean Human Right Committee remarked as "the commission should comprising personalities of unimpeachable moral probity" to press on crucially of credibility and impartiality of the commissioners for truth commissions' success.
[347] Id, Para. 29.
[348] Updated Sets of Principles to Combat Impunity, Principle 7.
[349] The Joint Investigation Report, Para. 371.
[350]See The Truth and Reconciliation Commission Act 2000, Art. 6 at <https://sabctrc.saha.org.za/reports.htm#:~:text=Is%20devoted%20to%20the%20commission,first%20democratic%20elections%20in%201994>. Truth commissions such as the Sierra Leonean were mandated to investigate the events related to the armed conflict from 1991-2000. The South African were also mandated to search truths related with apartheid from 1960-1990.

a rift within the party and caused the armed conflict needs to be within the temporal scope of the commission's mandate. With regards to material competencies, it should be given the power to find out gross human violations, their extent and nature, roles of state and non-state institutions, and identify the perpetrators and victims as successful truth commissions did have.[351] Additionally, the recommended truth commission needs to be mandated to recommend reparation proper programs, criminal accountability, and reforms.[352] It also needs to have a subpoena, search and seizure, conduct public hearings, access national archives and so forth powers necessary to meet its mandates.[353]

ii. The Inter-Ministerial Taskforce (IMTF)

With a view to oversee implementation of recommendations including transitional justice mechanisms in the joint investigation report, the Ethiopian Government has setup the IMTF on November 2021.[354] The taskforce is comprised of six high-level governmental officials including the justice, defense, peace, Women and Social affairs, finance ministers, and Commissioner General of the Federal Police Commission.[355] The Task Force has established four committees which are mandated to undertake accountability and redress measures that, in return, would be over sighted by it. The committees could be categorized into two. The first is the Investigation and prosecution Committee chaired by Ministry of justice under the membership of Ministry of Justice, Federal Police, Regional Police and Regional Justice Bureaus which mandated to investigate and persecute gross violations in contexts of the northern Ethiopian armed conflict.[356] The second groups of committees are three in numbers basically mandated to deliver redresses (reparations proper) other than criminal prosecution.[357] The first is the Refuge and IDP Committee chaired by the Ministry of Peace and membered by the National Disaster/Risk

[351] African Transitional Justice Policy, Para. 50.
[352] Id.
[352] Supra Note 336, Art. 4.
[352] Updated Sets of Principles to Combat Impunity Principles, Principle 7.
[353] African Transitional Justice Policy, Para. 50-53.
[354] Statement Issued by Inter-ministerial Taskforce on Accountability and redress of violations committed in context of conflict in Northern Ethiopia, 29 Nov. 2021.
[355] The Government of the Federal Democratic Republic of Ethiopia, Reply to the Joint Communication by the 7 UN Special rapporteurs and 1 Working Group on Alleged Violations of International Human Rights and International Humanitarian Law including Gender Based Violence in the Context of the Conflict in the Tigray, Amhara and Afar Regions, 8 Feb. 2022, Para. 25.
[356]Id, Para. 78.
[357] Id.

management Commission and regional administrations. It empowered to take measures to create conditions enabling IDPs to return home which could be taken as a restitution measure. The second is the SGBV committee chaired by the Ministry of Women and Social Affairs and membered by the Ministry of Health and regional health bureaus. It has the power to provide medical and psychological services to SGBV survivors and roll out a reparation program for them. The other is the Resource Mobilization Committee led by the Ministry of Finance with unclear member institutions empowered to design/carryout a reparation program of compensation, restitution and rehabilitation for victims. However, the IMTF committees are neither clears if mandated nor inherently suitable to handle truth-seeking activities in addition to a lack of institutional independence and impartiality. Other symbolic measures including apologies, memorialization and reform seem also overlooked from being placed under the IMTF committees' mandates.

The IMFT and its committees missed the principle of victims' centrality and consultation from their very inceptions. Victim and stakeholders' consultation and participation in the planning and implementation of accountability and redress measures following massive violations is required as a matter of international law.[358] However, the Ethiopian government announced the establishment of the IMTF and its committees as well as the adoption of strategic and action plans thereto without the participation and consultation of victims or their representatives.[359] A national consultation with victims', their representatives and stakeholders which has not happened in Ethiopia is necessary to reach a consensus on how and by whom transitional justice measures might be undertaken. Such measures could help bring legitimacy, popular support and reduction of possible implementation gaps[360] of redress and accountability mechanisms.

Furthermore, The IMTF committees are not new self-standing institutions. Each committee has no self-management and has not ever passed collective decisions.[361] The respective chair

[358] Guidance Note of the Secretary General, Para. 6; ACHPR, General Comment No.4, Para 18; Christian Evans, p. 232; Note by Secretary General, Para. 74.
[359] All The 12 Interviewed Victims informed the researcher there is no consultation of victims regarding IMTF to their best knowledge. Example, Interview with Workie Gugsa, lost four family members, Kobo town, July 18th, 2022; Interview with anonymous, victim of gang rape and sexual slavery, Chenna, Dabata, North Gondar, June 4, Interview with anonymous, victim of gang rape, Haik town, July 19, 2022.
[360]Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli A/HRC/42/45, 11 July 2019, Para. 65.
[361] Supra note 337.

ministries unilaterally carryout activities and seek collaborations from members, which already existed even before the IMTF than seeking the participation of other committee members in its decisions.[362] Practically speaking thus the taskforce doesn't bring new institutions that will mend the gaps in the previous ones. Moreover, the IMTF and its committees come into existence through the government cabinet's decisions, not by legislation.[363] According to international standards and best foreign experiences howbeit transitional justice mechanisms should be constituted 'on an authoritative legal basis.'[364] Such mechanisms according to many countries' experiences were established by law to provide them institutional security.[365] However, the IMTF and its committees' fate as well as their planned transitional justice measures are left institutionally unsecured at the establishing cabinets will. Additionally, there is no law that establishes a trust fund with defined sources. Besides, there are no special evidentiary and procedural rules the committees would apply to receive and administer reparations proper claims.[366] Absence of such rules is also another institutional insecurity problem of the IMTF mechanism.

Lack of impartiality, independence and victims' confidence discussed in the above section are not mended rather some are worse when it comes to IMTF and its committees. The task force and its committees are chaired and membered by the highest government officials and bodies who participate in leading the armed conflict from one of the sides. Ensuring meaningful accountability against officials who controlled state apparatus at IMTF's mechanism that was controlled by them would be naïve both logically and empirically speaking. Beyond its unfitness to oversight criminal accountability, the task force is also unfit to oversight reparations proper (redress) measures because such activity needs to be carried out by an independent body fairly represent victims and civil societies in addition to the government as a matter of international standards.[367]

[362] Ibid.
[363] Interview with Doctor Tadesse Kassa, Chief, IMTF Secretariat (3 Aug. 2022)
[364]Redress Trust, *Belfast Guidelines on Reparations in Post-Conflict Societies: Reparations, Responsibility & Victimhood in Transitional Societies*, p. 31.
[365] Supra note 364.
[366] Ibid.
[367] Supra note 364, p. 33.

3.4.4. The National Dialogue Commission (ENDC)

The Ethiopian parliament has eventually replaced the ERC by a new one, the ENDC which was created with a different mission of facilitating consultation between "various political and opinion leaders and also segments of society in Ethiopia on the most fundamental national issues."[368] It thus has no truth commission-like mandate, unlike its predecessor.

If it has constituted based on well-accepted principles, however, the commission would play an irreplaceable role in addressing the needs of victims of the armed conflict. Firstly, it would help the warring parties and dividend societies to reconcile and reach a consensus on their fundamental differences to avoid further conflict and violence-ultimately guarantee non-recurrence of violations. Secondly, it would lay foundations for and legitimatize transitional justice mechanisms by facilitating in-depth consultation between stakeholders, victims and affected communities to create consensus on future plans of installing the mechanisms. All-inclusive prior national consultation is a human rights legal requirement predating transitional justice processes.[369] In 2006 the HRC recommended a war-torn nation, the Central African Republic to launch a national dialogue on the establishment of a truth and reconciliation commission.[370] For Ethiopia too, human rights bodies and other states have recommended an all-inclusive dialogue on transitional justice plans as well as key national issues.[371]

The actualized dialogue commission, unfortunately, missed the most critical element of national dialogue-inclusiveness in its very start.[372] It formed and began operating in exclusion of one of the warring parties to the conflict, TPLF and one of the affected communities of the Tigray region in its initial phases of the creation of the commission.[373] It is also opposed by the Ethiopian Political Parties Joint Council (EPPJC), containing over fifty political parties.[374] Seven

[368] The Ethiopian National Dialogue Commission Establishment Proclamation No. 265/2021, *Federan Negarit Gazeta*, No 5, 2022, preamble and Art. 6.
[369] United Nations Office of Higher Commissioner for Human Rights, Rule-Of-Law Tools for Post-Conflict States, National consultations on transitional justice, 2009, p. 4-5.
[370] UN Human Rights committee, Concluding Observations on Central African Republic, 2006, July 2006, CCPR/C/CAF/CO/2, Para. 8.
[371] The Joint Investigation Report, Recommendation, Para. E (2).
[372] Dawit Yohannes and Dessu Meressa Kahsu, National dialogues in the Horn of Africa, Lessons for Ethiopia's political transition, Institute for Security Studies, June 2020, p. 8; The IHREE first Report, Para. 121.
[373] Ibid.
[374] Addis Standard, *Ethiopian Political Parties Joint Council request Parliament to temporarily halt National Dialogue commissioners' selection, resume process in inclusive, trustworthy manner*, Feb. 14, 2022 at

political parties including major oppositions, Oromo Federalist Congress have set up a Caucasus that sets conditions including cessation of all hostilities and widening of participants, among others, to accept the commission.[375] Thereupon, even the attitude and trust of non-Tigrayan elites towards the commission, essential in the national dialogue is too minimal. In addition, the commission is not mandated, either in the peace agreement or in the enabling law, to facilitate dialogue to bring a political settlement on underlying political differences that gave birth to conflict and transitional justice.[376] Lack of transparency, another critical issue for such institutions aimed to reconcile a divided polity and society is also another drawback.[377]

Conclusion

In the context of the two years plus long armed conflict in northern Ethiopia, gross violations against at least hundreds of thousands of victims were perpetrated. The existing Ethiopian legal regimes and institutional mechanisms, however, were found inadequate to implement the internationally recognized victims' right to reparations.

Even though reparations are partially recognized under the Ethiopian tort law, some categories such as restitution in its fullest sense, rehabilitation, and collective and symbolic measures are all yet to be recognized. Procedurally, Owing to the nature of war-related violations, victims' inability to produce evidence to the required standards, prolonged outcomes of trials, and unwillingness and inability of the perpetrator to pay are major challenges. The criminal law also fails to properly criminalize crime against humanity, ethnic cleansing and enforced disappearance. Institutionally, both the civilian and military justice systems are inadequate lacking independence, impartiality and victims' confidence. They are also inherently limited to do preventive, symbolic, and restorative measures. The IMTF and its committees have not also solved the preexisting institutional gaps. The ENDC could help facilitate dialogues to reach a consensus on the basics of transitional justice mechanisms, but, unfortunately, it is neither inclusive nor has the mandate to do so.

<https://addisstandard.com/news-ethiopian-political-parties-joint-council-request-parliament-to-temporarily-halt-national-dialogue-commissioners-selection-resume-process-in-inclusive-trustworthy-manner/> [l accessed 16 July 2022].

[375] Addis Standard, *Newly formed caucus sets conditions for restructuring, reforming planned national dialogue*, June 6, 2022, available at: https://addisstandard.com/news-newly-formed-caucus-sets-conditions-for-restructuring-reforming-planned-national-dialogue/ [l accessed 16 July 2022].

[376] The IHREE first Report, Para. 119.

[377] Id, Para. 121.

CHAPTER FOUR

4. PRACTICAL ENFORCEMENT OF REPARATIONS FOR VICTIMS OF ARMED CONFLICT IN NORTHERN ETHIOPIA

4.1. Introduction

This chapter assesses practices regarding the enforcement of reparation rights of victims of gross violations in the context of the northern Ethiopia armed conflict in light of international law and standards. To that end, the chapter first addresses the necessity of implementation of the ceasefire agreement and the undertaking of political dialogue to bring a political solution to the political differences leading up to the war. As well, the practical gaps of truth-seeking, prosecution prospects, reparation proper (restitution compensation, and rehabilitation), reconciliation and other symbolic measures (apology and memorialization), and legal and institutional reforms are thoroughly addressed.

4.2. Peace Processes

Peace talks and cessation of hostilities are the first phases of peace processes that would be taken place to end a conflict.[378] These peace processes have double essentiality for victims. Firstly, the processes are vital to bring about the cessation of the gross violation and help parties to the war to reconcile which are parts of the right to satisfaction of reparations for victims.[379] Secondly, effective peace processes are prerequisites for comprehensive transitional justice mechanisms recommended in this research. Peace talks would end up with a ceasefire agreement and political settlement that should contain transitional justice elements.[380] If these things are agreed upon and implemented, both judicial and administrative bodies that are recommended in this research can operate well with support and legitimacy in all affected areas.

[378] Unites States Institute of Peace, Peace Processes at <https://www.usip.org/issue-areas/peace-processes#:~:text=Peace%20processes%20involve%20a%20series,manage%20or%20facilitate%20such%20processes [accessed Oct. 3rd, 2022].
[379] The Joint Investigation Report, Para. 357.
[380] The African Transitional Justice Policy, Para. 44; Guidance Note of the Secretary General, p. 10.

The peace process regarding armed conflict in northern Ethiopia is in a critical stage. Though, the Ethiopian government and TPLF reached a ceasefire agreement that contains undetailed transitional justice elements on November 2, 2022,[381] no political settlement for differences leading up to the war are reached yet. The Parties simply agreed to undertake peaceful dialogue to solve their political differences.[382] Of course, parts of the ceasefire agreement such as cessation of hostilities, transitional justice including disarmament, demobilization and reintegration of the TPLF fighters, and removal of TPLF from the Terrorist designation, if implemented as agreed, are vital. The yet-lack of political settlement, however, would negatively affect the successfulness of transitional justice measures, and prevention of the recurrence of conflicts and resultant violations. The warring parties thus should begin a political dialogue to reach a consensus on their political differences to sustain the begun peace processes. The international community and Ethiopian state partners also must continue to support the whole peace process.

4.3. Transitional Justice Measures and Reparations for Victims

4.3.1. Truth-telling

Truth forms part of internationally recognized victims' right to satisfaction of "effective remedy."[383] Over and above, a well-established truth surrounding armed conflict could serve as a common ground for a dividend society as well as victims and perpetrators to live together with a shared understanding of their past.[384] Truth is also a basis for other forms of reparations. It possibly leads to acknowledgment by and remorse of perpetrators, and in return, forgiving by victims, in the end, reconciliation and healing.[385] It could also inform and legitimatize other forms of reparation measures by establishing the causes, the nature and extent of violations, identifying the real victims and perpetrators and clarifying what and how to repair.[386] Moreover, it is a typical tool for preventing repetitions of violations by being a lesson.[387]

[381] Supra note 17.
[382] Id, Art. 10 (2).
[383] Supra note 93.
[384] Supra note 339, Chapter three, Para. 31
[385] Id
[386] Jose Zalaquett, *Balancing Ethical Imperatives and Political constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations*, Hastings Law Journal, Vol. 43, 1992, p. 1433.
[387] Id.

In addition to perpetrators' accountability and pecuniary reparations, survivors and victims of the northern Ethiopian armed conflict demanded truth on what really happened and why so to their loved ones and themselves, and for their sufferings to be acknowledged.[388] However, little has been done on the implementation of truth-telling in particular and transitional justice processes in general. Human Rights organizations and criminal investigation teams have undertaken non-exhaustive investigations in terms of areal and incidental coverage.[389] In addition, they neither mandated to nor did actually address the root cause and the whole spectrum of circumstances; no public hearings; and the perpetrators were not identified in their works to be taken as truth-findings.[390] A truth commission endowed with broader mandates essentially truth-seeking and telling neither established nor was truth actually revealed by anybody else.

4.3.2. Criminal Prosecution

The longstanding impunity and selectivity culture[391] in Ethiopia is not changed in addressing violations related to the northern Ethiopian armed conflict. There is yet no meaningful criminal accountability, as it is satisfaction measure of reparations for victims, regarding crimes in contexts of the conflict. For violations in the first episode of the war, between November 2020, and June 2021, the Federal Attorney General and the Federal Police Commission send an investigating team comprising police investigators and prosecutors to find facts of the November 9 Maikadra massacre.[392] It finally found out extrajudicial killings of 229 civilians killed for which 202 suspects of whom 179 *in absentia* are being tried before the federal high court, Lideta division.[393] Even though it has been proved from 122 witnesses that 110 civilians

[388] The Join Investigation Report, Para. 377; Interview with Kokebe Seid, lost husband and a daughter, Haik town, July 19, 2022; Interview with Mulu Endale, Chenna, Dabat, North Gondar, lost husband, June 4, 2022 ; Interview with Zewditu Tikuye, lost husband, Kobo town, July 18, 2022.
[389] Supra note 207, 209; The ICHREE First Report, Para 18, 112.
[390] Id.
[391] As explained in "Amnesty International, Ethiopia must end culture of impunity to heal from decades of human rights violations, 2 June 2020 at<https://www.amnesty.org/en/latest/news/2020/06/oped-ethiopia-must-end-culture-of-impunity-to-heal-from-decades-of-human-rights-violations/>[accessed Sep., 2022]" and "Supra note 27, p. 151, 267" in the 1991 transition Crimes by Derg officials only prosecuted excluding atrocities committed by members of the transitional government. In the 2018 reform, only TPLF affiliated former officials were accused of torture against detainees were as other gross violations across different parts of the country and by active officials is yet not accounted for.
[392] Interview with Yosyad Abeje, Chief Prosecutor, Organized and Cross Border Crimes, Ministry of Justice, (Aug. 1st, 2022).
[393] Id.

were killed in the Axum massacre, the investigation by a joint team of the same bodies is discontinued due to the June 2021 federal government withdrawal from the Tigray region.[394]

The military police and prosecutors, on their part, investigated military crimes and the later brought criminal charges against 33 soldiers of ENDF suspected of killing civilians without military necessity.[395] 25 more soldiers were already convicted of rape and sexual violence.[396] Otherwise, there is neither investigation nor charge for violations in several other incidents of extrajudicial killing and widespread looting covered in the joint investigation report.[397] Regarding serious allegations of ethnic cleansing and crime against humanity in the disputed zone, there is no investigation,[398] let alone charges except for the Maikadra massacre. Hence, criminal investigation and persecution regards to gross violations of these areas are extremely inadequate in terms of areal and incidental coverage. In addition, only some dozens of foot soldiers were brought to justice, with no command responsibility at all.[399]

The Prosecution and Investigation Committee of the IMTF have deployed 158 prosecutors and investigators to investigate violations in Amhara and Afar regions.[400] Even though it identified 3598 extra-judicial killings, 1315 bodily injuries, 2212 rape and SGBV, and 452 tortures cases after receiving testimonies from about 11,000 witnesses, and reviewing several documents, it is yet to complete the investigation to charge individuals.[401] The committee is yet to investigate reported violations in the Tigray region and the disputed Zone.[402] In addition, it was not mandated nor actually investigated military crimes, violations committed by government fighting forces at all.[403] In effect, it is confined to violations by Tigrayan forces alone. The committee thus failed in terms of covering all regions and all parties and curving the deeply embedded selectivity and impunity culture.

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[394] Id.
[395] Press Briefing by Dr Gedion Timothewos, Attorney General, and Billene Seyoum, Press Secretary at the Prime Minister's Office, on recent developments in Tigray and the upcoming elections, 3 June 2021.
[396] Id.
[397] See generally the joint investigation report. For instance, the killing of at least 70 men in Bora, Amedwha, Bora Chemala, and Mai Liham were neither investigated nor charged.
[398] Supra note 392.
[399] The joint Investigation Report, Para. 376.
[400] Interview with Abraham Ayalew, Coordinator, Investigation team, Prosecution and Investigation Committee, IMTF, (Aug. 4th, 2022).
[401] Id.
[402] Id.
[403] Id.

Due to the one-sided and window-dressing natures of the investigations, one can conclude that previous criminal investigations are fall short of satisfying international standards of investigations, independence, impartiality and thoroughness.[404] Transparency which is vital in transitional justice measures including criminal investigation were also missed in the IMTF's criminal investigation as nothing was publicized as to its works thus far.[405] Moreover, previous criminal investigations and prosecutions lacked the basic element of victim-centeredness. Accountability and other transitional justice measures in wake of armed conflict as a matter of international law must follow deliberations and consultations with victims and their representatives.[406] The few investigations and prosecution pursued in Ethiopia, regrettable, are exclusively following the regular criminal proceeding procedures which are not victim-centered.[407] Victims, according to an official and victims themselves accounts, were neither consulted nor their views heard or considered at any stage of the proceedings.[408]

4.3.3. Reparations Proper

Ignoring the victims' needs in wake of grave violations has also been a trend in Ethiopia. Both victims of red terror in the Derg regime and the 27 years (1991-2018) of EPRDF repression have yet not received any economic reparations.[409] Comprehensive and all-sided criminal justice and truth are, obviously, key in acknowledging and healing of victims suffering and contributing to the non-reoccurrence of the same. However, they could not substitute reparations directly benefit victims, which are irreplaceable to help victims back to their dignified previous situations.[410] The victims of the northern Ethiopian armed conflict are not yet receiving any reparations.[411] As discussed in the third chapter, victims of the northern armed conflict are neither in enabling

[404] The Joint Investigation Report, Para. 395.
[405] The ICHREE First Report, Para. 115, 116.
[406] Guidance Note of the Secretary General, p. 9.
[407] Supra note 400.
[408] Supra note 396; all the 12 interviewed victims and families informed the researcher that the Investigation and Prosecution committee of the IMTF have interviewed them, but then after they neither knows the progresses on the case not proceeding in the subsequent proceedings. E.g. Interview with Adina Akele, lost husband, Kobo town, July 18, 2022; Interview with Hadiya Fentaw, lost three siblings, Habru, North Wollo, July 19, 2022; Interview with anonymous, Chenna, Dabat, North Gondar, June 4, 2022.
[409] Marshet, prosecution of Politicide in Ethiopia, p. 176.
[410] De Grieff, Handbooks of Reparation, p. 2.
[411] Supra note 363; all the local officials and 12 of victims Interviewed have also corroborated the same fact. e.g., Interview with Kelemua Birhanu, Chief, Mersa town women and children affairs office, July 19, 2022; Interview with anonymous, victim of gang rape, Mersa town, July 19, 2022; Interview with Shewaye Taye, lost husband, Kobo town, July 18, 2022.

condition to brought civil claims against their perpetrators nor did they actually bring such claims before civil courts. Even though the law allows, victims did not file civil claims before criminal benches trying the Maikadra massacre and the soldiers' cases over killing and rape.[412]

The Ministry of Finance is working with donors such as World Bank to carryout rehabilitative projects in affected areas.[413] The IMTF and Other humanitarian are providing financial benefits, medical and psycho-social support to a few victims especially victims of SGBV.[414] For these to be as reparations, they must be accompanied by acknowledging responsibility for the violations and needs to be sufficiently linked with other elements of reparations, truth, criminal justice and other symbolic measures.[415] Otherwise, mere payment of money could be disrespectful to victims and many lead to further bitterness and frustration. Both sides of the conflict, including the government, has been denying responsibilities[416] and there is no truth, and meaningful accountability measures so far. No apologies from both sides were offered to victims; no any form of memorialization was attempted either. The planned and the already provided limited financial benefits and aids thus are short of being counted as reparations, sensu stricto. In addition, other countries' experiences show that reparations programs, except interim reparations, are following the release of finding of truth commissions and based on their recommendations. Attempting to provide economic reparations without clarifying the truth about the violations and allocating responsibilities across perpetrators would be precarious and contribute little to bring reconciliation and healing.[417]

[412] Supra note 392.
[413] Supra note 363.
[414] Ibid; the IHREE First Report, Para. 113; Interview with Kelemua Birhanu, Chief, Mersa town women and children affairs office, July 19, 2022; Amsal Alamrew, Chief, Nefas Mewcha town women and children affairs, July 17, 2022; Banchi Amlak Melkamu, Head, North Gondar Zone Women and Childrens Affair Department, June 4, 2022.
[415] Note by Secretary General, Para. 11, 61, Dinah Shelton, p. 124.
[416] Ministry of Foreign Affairs, Statement Regarding the Latest Report of Amnesty International on Alleged Rape and other Sexual Violence in the Tigray Regional State of The Federal Democratic Republic Of Ethiopia, Aug. 12, 2021; CNN, *Amnesty International accuses Tigrayan rebel fighters of gang raping women in Ethiopia*, Nov. 10, 2021 at https://edition.cnn.com/2021/11/10/africa/amnesty-ethiopia-tplf-rape-intl/index.html [accessed 27 Aug., 2022] .
[417] Hayner, Unspeakable Truths, p. 178.

4.3.4. Reconciliation, Apologies and Memorialization

Reconciliation is one of the measures of the well-recognized right of victims of gross violations to satisfaction overlapping with guarantees of non-repetition.[418] It is both a process and an end of restoring the lost relationships at the national, community and individual levels.[419] Reconciliation in aftermath of repression and civil war like the northern Ethiopian one would begin with the launching of peace talks and continue for long time even after transitional justice measures.[420]

Amnesty for criminal liability is one means of fostering reconciliation and is often demanded by rebels in peace talks. In the existing Ethiopian context, considering amnesty for criminal accountability for rebels and their members would determine the effectiveness of the ongoing peace processes. As both international and internal laws[421] require, howbeit, there should not be amnesty clauses for international crimes and gross violations in whatsoever way. Conversely, amnesty for non-grave violations such as unlawful detention and other crimes such as treason, outages against the constitution and constitutional order and terrorism would be acceptable for the sake of peace and reconciliation. However, apology, remorse and cooperation for the truth-seeking efforts from the perpetrators must, in return, be preconditions.[422] In the peace agreement, the Ethiopian government and TPLF impliedly agreed the government grant amnesty for the TPLF leaders and fighters for non-serious crimes whereas whether there would be a mechanism for a public apology is not clearly agreed upon.[423]

Offering apologies and forgiving for past abuses are vital truth commissions-led processes of reconciliation. According to other countries experiences, perpetrator and leaders who 'pursued policies and acts that eventually led to violations' acknowledges harms and offer apologies to victims.[424] The victims would most likely forgive if their needs such as reparations proper, accountability, truth, and acknowledgment of their pain have been met.[425] Previous truth

[418] UN Basic Principles on Reparations, Para. 23 (g); Supra note 418.
[419] African Transitional Justice Policy, Para. 60.
[420] Supra note 339. Vol. 3B, Chapter 7, Para, 12.
[421] The constitution Art. 28
[422] Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, January 2005, Para. 619.
[423] Supra note 17, Art. 3, 6, 7(2) (c), 10 (2), (3).
[424] Supra Note 339, Vol. 3B, Para. 8.
[425] African Transitional Justice Policy, Para. 60, 62; victims interview by the researcher has also corroborate the same assertion. For instance, Interview with Worke Gugsa, lost four family members, Kobo town, July 18, 2022;

commissions organized public hearings for such processions. In Sierra Leonean, a week-long program of public hearing in which perpetrators come forward, confess their misdeeds and show remorse, and in return, the victims express their forgiving at district levels.[426] In addition, perpetrators also begged the community itself to forgive them.[427] Finally, symbolic acts of respect for the dead and victims, and moralizations were followed.[428] At the national level, parties to the war and those who contributed to the harms including representatives of rebels and the government offered apologies for victims.[429] After symbolic acts, the reconciliation has celebrated on a day decided to be designated as "reconciliation day". Furthermore, the truth commission undertook several workshops and consultations aiming at reconciliation and healing at all levels.[430]

In addition to between individuals, and individual and community as seen in East Timor and Sierra Leon, there is a need for inter-communal reconciliation (forgiveness and apology) between several political and ethnic groups in Ethiopia. The groups are antagonized and divided due to the war and previous repressions and other causes that need to be healed and reconciled. Of course, reconciliation is not a one-time game rather is a long process that continues even after the lifespan of truth commissions so successive institutions need to handle it.

The recommended truth and reconciliation commission for Ethiopia should, in addition to facilitating apologies, be mandated to take or recommend memorialization measures such as erecting monuments and establishing public memorials for victims of the war in consultation with victims. The Red Terror Memorial monument carrying a catchphrase reads as 'Never, ever, again!' and the memorial museum memorializing the pre-1991 red terror crimes could be taken as a lesson.[431] Being a lesson of commemorating victims of atrocities is the good side however

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Interview with Zewditu Tikuye, lost husband, Kobo town, July 2022; Interview with anonymous, Haik town, July 19, 2022.

[426] Supra Note 339, Vol. 3B, Para. 47.

[427] Id.

[428] Id.

[429] Id, Para. 48

[430] Id, Para. 49.

[431] Kinkino Kia Legide, *The Facets of Transitional Justice and 'Red Transitional Justice and Red Terror Mass Trials of Derg Officials in Post-1991 Ethiopia: Reassessing its Achievements and Pitfalls*, Journal of African Conflicts and Peace Studies, Vol.4, Issue 2, p. 22.

the fact that it was not based on impartial truth-seeking but on a one-sided narrative needs not to be repeated.[432]

4.3.5. Legal and Institutional Reforms

Reforming abusive laws and institutions is one of the transitional justice measures typical in preventing the reoccurrence of past atrocities.[433] Two years earlier than the breakout of the northern armed conflict, in 2018, the then new prime minister, Abiy Ahmed promised to reform repressive laws and institutions. Even though Abiy Ahmed's government comes along with a few reform measures, they were insufficient as well as not-consultative and inclusive unable to prevent the then looming northern armed conflict and consequent gross violations.

To go on with the legal reform, the government established an advisory organ called the Justice Reform Advisory Council in July 2018 with the task of revising laws that undermined freedom and democracy.[434] Finally, a working group constituted by the council proposes amendments to certain laws. The 2009 Charity and Society Proclamation, unduly restricted civil society activities on human rights, the 2009 Antiterrorism Proclamation, designed to shrink free press, opinion and due procedural rights and the 2008 media law that restricts independent media to operate are among repressive laws repealed accordingly.[435] The IMTF has also informed the ICHREE that it is working to domesticate CAT, drafting a symbolic statement of public apology and reviewing a draft transitional justice policy framework.[436]

Regarding institutions, the enabling laws of two key institutions, EHRC and the National Election Board were reformed and new leaders were appointed.[437] Even though, a new president

[432] Marshet, Prosecution of Politicide, p. 267.
[433] African Transitional Justice Policy, Para. 93-95; Guidance Note of the Secretary General, Para. 8.
[434] Human Rights Watch, Hope for Revision of Ethiopia's Draconian Laws?, 27 Aug. 2018; at <https://www.facebook.com/EBCzena/videos/515927655534242/> [accessed Ot.2, 2022].
[435] Id.
[436] The ICHREE report, Para. 113.
[437] See the Ethiopian Human Rights Commission Establishment (Amendment) Proclamation No.1224-2020, *Federal Negarit Gazette*, 26 year No. 75, 2020; African News, Ethiopia appoints top rights advocate as head of human rights body, 2 July 2019 at <https://www.africanews.com/2019/07/02/ethiopia-appoints-top-rights-advocate-as-head-of-human-rights-body//> National Electoral Board of Ethiopia Establishment Proclamation 1133/2019, 25th Year No. 71, 2019; The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation 1162/2019, 25th Year No. 97, 2019; BBC News, *Ethiopian's Birtukan Mideksa appointed election boss*, 22 Nov. 2018 at <https://www.bbc.com/news/world-africa-46301112>

was appointed for the Supreme Court and practical improvements have been seen,[438] the rest justice organs, especially the police left practically unreformed being accused of illegal, arbitrary and mass detentions even in violation of bail rights granted by courts.[439] Even the practically improved institutions lack legitimacy and confidence by all actors uniformly. For instance, in 2020, the then Tigray regional government established a regional election commission dissatisfied with the national one's decision of election postponement.[440] Likewise, the EHRC has been accused of dependency and partiality by Tigrayans.[441] All stakeholders including the Tigray people and leadership should participate, consulted and the reform needs to be consensus-based to restore the lost institutional credibility and popular confidence, and to prevent violent conflicts like the northern Ethiopia civil war.

i. Constitutional Reform

The other overlooked thing is constitutional reform. The former Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo De greiff, insisted that the removal of discriminatory and conflict-fueling provisions or changing the constitution at all will contribute to the prevention of future violations-guaranteeing non-repetition.[442] The current Ethiopian constitution introduced ethnic federalism in which the members of the federation have formed along ethnic lines and are endowed with the right to self-determination up to unconditional secession.[443] It is to ensure equality and self-administration rights of ethnic groups that, in turn, contribute to national unity and integrity.[444] Researches conversely reveal that ethnic based federalism would lead to ethnic polarization, inter-ethnic mistrust and

[438] The Washington Post, *Women's rights activist named to head Ethiopia's Supreme Court*, 1 Nov. 2018 at <https://www.washingtonpost.com/world/womens-rights-activist-named-to-head-ethiopias-supreme-court-in-new-reform/2018/11/01/9ed28fc4-ddbd-11e8-b3f0-62607289efee_story.html> .
[439] The African News, *Ethiopia rights chief slams violations by security forces, armed groups*, 9 July, 2022 at <https://www.africanews.com/2022/07/09/ethiopia-rights-chief-slams-violations-by-security-forces-armed-groups//>
[440] Addis Standard, *Tigray state council approves appointment of regional electoral commission officials*, 16 July 2020 at <https://addisstandard.com/news-tigray-state-council-approves-appointment-of-regional-electoral-commission-officials/> [accessed Sep.2, 2022].
[441] Tigray Human Rights Forum, A statement of concern on the joint investigation of OHCHR and EHRC, 3 Nov. 2021 at < https://www.ethiopia-insight.com/2021/11/03/concerns-on-the-joint-investigation-of-ohchr-and-ehrc/> [accessed Sep. 2, 2022].
[442] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo De Greiff, A/HRC/30/42, 7 September, 2015,Para. 63, 64, 74.
[443] The Constitution, Art. 39.
[444] Alemante G. Selassie, *Ethnic Federalism: Its Promise and Pitfalls for Africa*, the Yale Journal of International Law, Vol. 28, No. 51, 2003, p. 68-82. (hereinafter, Alemante)

competition for resource and power, and finally, could end up with disintegration or civil war.[445] It has been found that the Ethiopian federalism in reality brought other than what was expected. Since its implementation, inter-ethnic conflicts have dramatically skyrocketed,[446] a civil war with ethnic dimensions erupted in the north, ethnic-based discrimination, persecution and attacks against internal minorities proliferated,[447] and in the end, the unity of the Ethiopian state is at stack.[448]

The regional states structured along ethnic lines have become "ethnic homelands". Some states are exclusively owned by a single ethnic group[449] while the rest belongs to certain ethnic groups categorized as endogenous alone[450] disregarding others categorized as exogenous immaterial of their population size.[451] The exogenous groups have denied of their group-specific rights such as self-administration and are unrepresented in the respective regions' state apparatus, which could not be justified at any rate.[452] The creation of the "ethnic homelands" further resulted for the "settlers and owners" mentality which pits the endogenous population against the exogenous

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[445] Marie-Anne Valfor, *Containing ethnic conflicts through ethical voting? Evidence from Ethiopia*, Paris School of Economics, 2007, p. 5;Theodor Vastal (1ts edition), *A post-cold war African State*, Westport, Greenwood Publishing Group, 1999, p. 165; Zubair Abbasi, *Federalism, provincial autonomy and conflicts*, Islamabad, Islamabad Centre for Peace and Development Initiatives (CPDI), 2020, p. 13; The Guardian, *Vladimir Putin accuses Lenin of placing a 'time bomb' under Russia: Russian president blames revolutionary's federalism for breakup of Soviet Union and creating ethnic tension in region*, 25 Jan. 2016, at <https://www.theguardian.com/world/2016/jan/25/vladmir-putin-accuses-lenin-of-placing-a-time-bomb-under-russia> [accessed Sep.2, 2022].

[446] Legesse Tigabu, *Ethnic federalism and conflict in Ethiopia: What lessons can other jurisdictions draw?*, Africa Journal of International and Comparative Law, Vol. 23 No. 3, 2015, p. 2; Bekalu Atnafu Taye, *Ethnic Federalism and Conflict in Ethiopia*, African Journal on Conflict Resolution, Vol. 17, No. 2, 2017, p. 63-65 (hereinafter, Bekalu Atinafu).

[447] See Generally Human Rights Watch, Ethiopia's Tigray War Overshadows Ongoing Cycles of Violence in Oromia, 4 July 2022; Civilians in Western Oromia Left Unprotected, 31 Aug. 2022; Ethiopian Human Rights Commission (EHRC), "IT DID NOT FEEL LIKE WE HAD A GOVERNMENT" Violence & Human Rights Violations following Musician Hachalu Hundessa's Assassination, Investigation Report, 31 Dec. 2020.

[448] David Turton (ed.), *Ethnic Federalism: the Ethiopian experience in comparative perspective*. Oxford: James Currey, 2006, p. 16; The African Reporter, *Abiy Ahmed and the struggle to keep Ethiopia together*, 11 Oct. 2022 at < https://www.theafricareport.com/18565/abiy-ahmed-and-the-struggle-to-keep-ethiopia-together/>

[449] States including Tigray, Oromia, Afa, Sidama, and Somalia belongs to each ethnic groups the states named after. For instance, see the Revised Oromia Regional State Constitution, Proclamation No. 46/2002, Art. 8.

[450] The Revised Constitution of Benshangul/ Gumuz Regional State, 2003, Art. 46, 48 (2) see all other regional state constitutions at < https://chilot.me/2012/02/09/revised-constitutions-of-regional-states/ > [accessed Sep. 5, 2022].

[451] For instance, in Benshangul Gumuz region Amhara ethnic group is unrecognized, even though it is the second largest next to Gumuz (in the last census it outnumbered Gumuz) and long-lived since time immemorial. In Oromia too about 20% of the population are non-Oromo. See the latest census at < https://www.statsethiopia.gov.et/census-2007-2/> [accessed Sept. 5, 2022].

[452] See Generally Christophe Van der Beken, Ethiopia: *Constitutional Protection of Ethnic Minorities at the Regional Level*, Afrika Focus, Vol. 20, No. 1-2, 2007, p. 105-151.

ones and vise-versa in some cases.[453] The creation of "ethnic homelands" has also complicated simple administrative issues into an identity question. For instance, the border dispute between Amhara and Tigray regions over land could be solved by administrative means had both states not ethnically owned with the unconditional right to be an international state (secession).

Ethnic federalism with ethnicity right to unlimited self-determination is a Soviet model[454] was died with its founder-currently non-existent anywhere other than Ethiopia. USSR and Former Yugoslavia federated along ethnic (nationality) lines in wake of the First World War and Second World War respectively. The former dissolved peacefully in 1991 while the latter disintegrated after the bloody civil war between members of the federation. These federations' realities, however, are quite different from Ethiopia's. It has a thousand years long history of internal migration, mobility and cultural borrows whereas these states were not older than fifty years with lesser inter-communal fusion. These federations members' internal boundaries were relatively predefined before the federation and less contested whereas in Ethiopia territorial claims among ethnic states against each other are widespread, and thus, peaceful dissolution is unthinkable-it would be much bloodier than the Yugoslavian.[455] African practices in relatively democratic federations with multi-ethnic societies like Ethiopia are other than ethnic federalism. For instance, Nigeria and South Africa did neither constitute the federations' units along ethnic lines nor did ethnicities have the right to secession.[456] At the same time, ethnic groups' rights to internal self-administration, language and cultural rights are recognized.[457]

Obviously, the need for reconsideration of the ethnic-based system and the constitution thus is crystal clear. It is not new in other countries experiences, such as in Burundi, in the 2000 Arusha Peace and Reconciliation accord which was later integrated into the constitution, political and other associations that advocate ethnic, religious and gender discrimination were banned.[458] Within the existing ethnic and political polarization, and mistrust amongst armed ethnic regional

[453] Bekalu Atinafu, p. 63-65
[454] See Generally Constitution of the Union of Socialist Soviet Republics, 1924.
[455]Kassahun Melse, *Ethnic federalism: a theory threatening to kill Ethiopia*, Ethiopian Insight, 30 June 202 at <https://www.ethiopia-insight.com/2021/06/30/ethnic-federalism-a-theory-threatening-to-kill-ethiopia/> [accessed Sep. 2, 2022].
[456] Alemante, p. 100; Bekalu Atinafu, p. 43.
[457] Id.
[458] UNHRC, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo De Greiff, A/HRC/30/42, 7 Sep. 2015, Para. 63.

states in Ethiopia, however, attempting to dissolute the federation would lead to another conflict and tension. Inclusive national dialogue as a prerequisite to build a new social contract[459] and a new harmonious and balanced federation all group rights and individual rights, national unity and minority rights accommodated needs to be undertaken.

ii. Security Sector Reform

Human rights organizations including human rights watch, OHCHR and EHRC recommended the Ethiopian government to undertake security sector reform.[460] It includes vetting security officials who are liable for human rights violations in addition to the Disarmament, Demobilization and Reintegration (hereinafter, DDR)[461] of ex-combatants of armed groups and child soldiers both yet not implemented in Ethiopia. In Sierra Leon, for instance, a three years long DDR program supported by international donors was implemented after a peace agreement between the government and rebels.[462] The national commission on DDR set up in the agreement[463] in association with the UN has implemented and coordinated the DDR program.[464] The ex-combatants after demobilization had two choices, first, reintegration into the national army which was reformed to accommodate the rebels' interests, and the second is reintegration to civilian life.[465] For the demobilized ones, different enablers, skill training, education opportunities, and retirement benefits were made available to successfully reintegrate them back into civilian society.[466] The fact that the Ethiopian government and TPLF agreed to design and implement a DDR program for TPLF combatants is a good step forward if it will be

[459] The fortunate thing is almost all major political and armed forces expressed their commitment for dialogue peaceful resolution of conflicts, to negotiate and enter in to a new social contact. A prominent Oromo Politician, Jawar Mohammed called to end all violations and negotiate on differences to build new social contact. TPLF leadership and the Ethiopian Government repeatedly heard that profitable choice is peaceful negotiation over war. At <https://m.youtube.com/watch?v=DBSVzrfNSVs&feature=youtu.be, https://www.facebook.com/ethiopiawine/videos/1119924855588641/?app=fbl, https://www.facebook.com/100061296953997/videos/1095804121006154/?app=fbl> [all accessed Sep.2, 2022].
[460] Human Rights Watch, Ethiopia's Tigray War Overshadows Ongoing Cycles of Violence in Oromia, 4 July 2022; the joint Investigation Report, Recommendation No. C (8) & E(2).
[461] African Transitional Justice Policy, Para. 95 (III0 & (IV); Updated Sets of Principles to Combat Impunity, Principle 36(b) & 37.
[462] Christiana Solomon and Jeremy Ginifer, *Disarmament, Demobilization and Reintegration in Sierra Leone : Case Study*, Center for International Cooperation and Security, July 2018, PP. 5, 10.
[463] Lome Peace Agreement, Art. VI.
[464] Supra note 450.
[465] Id, p. 14; Lome Peace Agreement, Art. XVII.
[466] Supra note 450, p. 14.

implemented as per the agreement as well as in accordance with international standards and such well-accepted foreign experiences.[467]

Other than unofficial and rebel armed groups, an emerging individual states' army-like body, Special Police Force has been becoming a headache for Ethiopian internal peace and human rights. Set aside its constitutionality being questioned, this force has been emerging as a parallel force with the national army. Researchers indicate that it has a military nature than civilian police due to the below reasons. First, it is involved border security works and international armed clashes.[468] Second, it is larger in size closer to the national army and organized in divisions, battalions, and squads that exist only in the military, not civilian police.[469] Third, it is armed with military-grade sophisticated weaponries.[470] Fourthly, the training provided for members of these forces is primarily military including conventional and guerilla war techniques for as long as necessary for the military.[471]

Researches further revealed that such military build-up by states is to protect themselves from the federal government they deemed undue interventions and attacks from neighboring regions and due to deep-rooted both horizontal and vertical mistrust.[472] Special Police Forces have been manipulated by ethno-nationalist elites to advance their political interests they could not achieve peacefully. The Special Police forces has been utilized as instruments to pursue internal conflicts, civil war[473] and persecution, targeted killing and forced displacement of internal minors and other civilians.[474] The problem is exacerbated by the fact that it is mostly structured

[467] Supra note 17, Art. 6.
[468]The European Peace Institute, *The Special Police in Ethiopia*, Oct. 2021, PP. 10, 11 (hereinafter, the Special Police in Ethiopia); Brook Abdu, Regional Special Forces: threats or safeties?, The Reporter, 2 Jan. 2021, at <https://www.thereporterethiopia.com/10679/> [accessed Sep. 5, 2022]
[469] The Special Police in Ethiopia, p. 10-12.
[470] Id, p. 12-13.
[471] Id, p. 14.
[472] Special Police in Ethiopia, PP. 8.
[473] The Special Police in Ethiopia, p. 7; Bereket Tsegaye, *Regional Special Forces Pose Threat to Peace and Security in Ethiopia*, Global Peace Observatory, 22 February 2021, at <https://theglobalobservatory.org/2021/02/regional-special-forces-pose-threat-to-peace-and-security-ethiopia/> [Accessed Sep. 5, 2022].
[474] Human Rights Watch, Ethiopia: 'Special Police' Execute 10, 28 May 2012 at <https://www.hrw.org/news/2012/05/28/ethiopia-special-police-execute-10> [accessed Sep. 5, 2022]; Probe Years of Abuse in Somali Region, 20 August 2018; Tom Gardner, "*All Is Not Quiet on Ethiopia's Western Front"*, Foreign Policy, 6 Jan. 2021 <https://foreignpolicy.com/2021/01/06/ethiopia-benishangul-gumuz-violence-gerd-western-front/> [accessed Sep. 5, 2022].

along ethnic lines and seen as a guardian of each ethnic group. Such police structure is non-existent anywhere in the globe-only regular non-militarized police existed at state levels.

The necessity of demilitarization of these forces is obvious. As it is politicized, sensitized, and ethicized coupled with political division and the mistrustful climate, it could not be an easy task. Ethnic elites would resist and conflict may erupt if the demilitarization process begun from nothing. Before that, de-escalating ethnic tensions, bringing the lost vertical and horizontal trust, and designing mechanisms in which ethnic elites' interests are considered through political dialogue and consensus is crucial. The fate of the demilitarized soldiers would be determined by consensus, perhaps reintegration into civilian society and the national army like ex-combatants of armed groups, and others might be reduced to civilian states police forces.

Conclusion

It founds that there are neither meaningful transitional justice mechanisms and reparations for victims of the northern Ethiopian armed conflict began implemented nor its non-recurrence guaranteed as political settlement for political differences leading up to the conflict is yet to be reached. Besides, no meaningful criminal prosecution has pursued thus far; no reparation proper (restitution, compensation, rehabilitation) were yet provided nor symbolic measures such as reconciliation, apology and memorialization have yet been realized. Regarding reform, as one component of reparations, a few laws and institutions were one-sidedly revised in 2018 and could not prevent the war. Basic structural causes of the conflict, such as the constitutionalized ethnic federalism which contributed to enter-ethnic conflict and human rights abuses were left unreformed. In the security sector, no DDR program for combatants of armed groups has yet been done. The regional special police forces that threatened national unity, peace and human rights are also worth demilitarizing. Even, a few reparations initiatives such as prosecution and reform are seriously flawed from drawbacks such as one-sidedness, lack of being victim-centered, political consensus, and stakeholders' participation that would seriously compromise their success.

CHAPTER FIVE

5. CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

In the context of the northern Ethiopian armed conflict, hundreds of thousands, if not a million-plus were victims of gross violations including extrajudicial and mass killings, widespread looting and destruction, forced displacement of the civilian population, a possible crime against humanity, war crimes and so forth. The conflict and these resultant violations have deepened the already existing inter-ethnic and political divides and mistrust. To come to terms with such legacies of the abuses, international law recognized five elements of reparations. These are restitution, compensation, rehabilitation, satisfaction (includes cessation of violations, prosecution, truth-telling, memorialization, and apology), and guarantees of non-repetition (includes institutional and legal reforms). This research thus aims at assessing the adequacy of the municipal law, institutions, and practices in the enforcement of these rights for victims of gross violations in the context of the northern Ethiopian armed conflict in light of the international standards and best foreign practices.

It revealed that the Ethiopian legal framework is inadequate to enforce reparations rights. To begin with, the constitution is ambivalent in explicitly constitutionalizing remedies and reparation for victims of human rights violations leaving room for legal controversy. Reparations rights were not also fully introduced to the domestic tort law. Only compensation, property restitution, and injunction, which could be taken as a piece of satisfaction, were brought to the domestic legal system. Otherwise, restitution in its fullest sense, collective reparations, symbolic measures, satisfaction (except prosecution and injunction), and guarantees of non-repetition were not domesticated altogether. Procedural gaps are also founds owing to the nature of the violations and the context. Massive and gross violations in armed conflict contexts are naturally hard to be proved by claimants; due to the large size of victims trials would be unduly prolonged, and perpetrators often are unnamed, even identified, unwilling, or unable to remedy their wrongs. The criminal law is also inadequate failing to criminalize crime against humanity and ethnic cleansing to the requirement of the international standards and enforced disappearance altogether.

Institutional insufficiency, as investigated in this research, is a serious problem to enforce reparations. The judiciary, both the civilian and military (police, prosecutor, and courts) suffer from the lack of experience, impartiality and independence-seen and being accused of aligning with and working together with one of the warring parties. Due to the objective partialities and dependence coupled with deep communal divides, the judiciary fails to earn the confidence and trust of all affected communities and victims uniformly. Besides, the judiciary by its nature is limited to expediently administering justice for hundreds of thousands of victims and against tens of thousands of perpetrators of gross violation in the context of the armed conflict. It also could not establish the necessary truth, root causes, and the whole spectrum of circumstances of the violations and the conflict due to its nature in addition to the lack of the above-mentioned merits. In addition, the judiciary is not an avenue to promote reconciliation and reform abusive institutions and laws as means of guaranteeing non-repetition of gross violations. There are also serious gaps in a few attempted transitional justice mechanisms designed to fill the lacunas in the judiciary. The IMTF and its committees created to provide accountability and redress measures, besides institutional dependency, partiality, and insecurity, are coming to exist without consultation with whosoever. The unspecified and insufficient temporal and material competencies, in addition to a lack of independence and impartiality, are among the primary drawbacks of the thwarted ERC that should not be repeated in the truth commission recommended below. The ENDC could also be an ideal mechanism for facilitating consultations on vital political issues and future reparations plans. However, it was not mandated so and inclusive of all the warring parties and affected communities in its initial paths.

In terms of ending the conflict, it is a good move for the parties that they reached a ceasefire agreement. However, the yet-lack of a political settlement for the underlying political differences is a challenge to fully guarantee non-repetition of violations and achieve reconciliations. Besides, almost all forms of reparation are yet not meaningfully provided for victims. There is almost or at all no truth-telling effort, delivery of reparations proper (Restitution, compensation and rehabilitation) as well as symbolic measures of reconciliation, memorialization and apology. Even the initiated ones, as a tip of the iceberg, suffer from drawbacks such as selectivity, being unilateral, lack of consultation and participation of victims, their representatives, affected communities and other stakeholders including political actors. The few initiated criminal justices

are in addition selective that they do not cover all perpetrators, affected areas and incidents and lacks transparency. Reforming repressive laws and vetting officials in 2018 was so one-sided that it is undertaken solely by the ruling party excluding victims and all other actors. It was also incomplete that fail to address basic structural causes of conflicts and abuses including the constitution and security sectors encompassing regional special police forces and armed groups liable for fuelling conflicts and abuses.

The research thus generally concludes the Ethiopian law, institutions and practices are insufficient in implementing the internationally recognized reparations right of victims of gross violations in the context of the northern Ethiopian armed conflict. Reparations are necessary to restore victims' dignity, to achieve reconciliation and healing, social cohesion, civil trust and sustainable peace. This research thereupon argues for the installation of comprehensive transitional justice mechanisms constituting both judicial and administrative aspects, based on best foreign practices and international standards, in addition to enacting laws to fill the aforementioned legal gaps. Most importantly, the recommended transitional justice process needs to be victim-centered and consultative in accordance with international standards.

5.2. Recommendations

Based on the foregoing discussions and conclusions, the researcher forwards the below recommendations.

A. To Parties to the Armed Conflict and all other stakeholders:

- The Ethiopian Government and TPLF to take measures to give effect to the Pretoria peace agreement including ceasefire and transitional justice aims at truth, reparations proper, criminal accountability for serious abuses, reconciliation and healing, and reform. The parties should agree on ways of Disarmament, Demobilization, and Reintegration of the TPLF combatants based on the peace agreement.
- The warring parties to begin a political dialogue to solve their underlying political differences leading up to the war as agreed in the Pretoria peace agreement. International organizations including the UN and AU as well as Ethiopian state partners shall continue supporting warring parties to implement the peace agreement and reach a political settlement for the political differences.

- The parties to the conflict to acknowledge one's respective forces' responsibilities for gross violations, and publicly and formally ask for victims' apologies in accordance with international standards in official events organized by a truth commission recommended to be established in this research.
- International organizations including the AU and UN, and donors including the World Bank to support the Ethiopian government in designing and implementing transitional justice programs. Based on prior agreements between warring parties, oversee or observe institutional independence and credible selection of commissioners, contribute to the trust fund to be established for reparation (proper) programs, sponsor public and stakeholders' consultations on transitional justice, and fund the DDR program for TPLF combatants is expected from these bodies.

B. To the Ethiopian Government:

- Revise the criminal law to criminalize enforced disappearance, crime against humanity, and ethnic cleansing in accordance with International Criminal Law and other international standards. To fill the normative gaps related with crime against humanity the legislature may adopt the Rome statute of ICC. As a temporary solution for the lack of criminalization, the government may establish a special judicial structure composed of experienced lawyers who have the capacity to apply customary international law as recommended below.
- Design a comprehensive transitional justice roadmap in consultation with and participation of victims, affected communities, and other stakeholders in accordance with international standards.
- Reestablish a truth and reconciliation commission with mandates to promote reconciliation and healing, recommend criminal accountability, reparations proper, and reform in addition to truth-finding and telling. In addition, it should have the mandate to undertake or recommend memorialization measures. The initial stages of constituting the commission should be consultative, participatory, credible, and independent it to be accepted and supported by all victims, affected communities, and other interested stakeholders. The commission should have sufficient power such as subpoena, search and seizure, organizing public hearings, accessing national archives, and so on to be able to meet its mandates.
- Establish a specialized judicial structure composed of well-experienced (in international law), impartial and independent legal professionals to investigate and prosecute gross

violations perpetrated in contexts of the northern Ethiopian armed conflict. The establishing process should be consultative, participatory, impartial, and independent.

- Grant amnesty, as part of the transitional justice process, for crimes of non-serious character such as unlawful detention, treason, outages against the constitution and constitutional order, and terrorism on conditions the perpetrators confess their responsibility, show remorse, and ask victims' apology in official events organized by the truth commission recommended in this research.
- Allow the truth commission recommended in this research to take memorialization measures or implementing by itself in consultation with victims if the commission recommends.
- Enact legislation in which an administrative organ is to be entrusted or a new one to be structured, a trust fund sourced from specified sources such as government budget, donors, and perpetrators' attachable assets established to be used to implement a reparation proper program for victims in consultation with them. The entrusted or newly constituted organ should employ mass claim processing techniques and lenient standards of proof in considering reparation claims in line with best foreign and international practices. The enabling law should comprehensively recognize all forms of reparations proper.
- Facilitate a process, with wider public and stakeholders' participation and consultation, to revise the constitution and restructure the federation as truly multi-ethnic in accordance with principles of federalism and equality. Additionally, remedies for human rights should be incorporated in the upcoming constitution as forming part of human rights.
- Facilitate a process to reach a consensus with regional governments and stakeholders to demilitarize regional state special police forces both in terms of human resources and material capability. As much as necessary, members of the special police forces should be reduced to regional civilian police whereas exceed may be reintegrated into civilian life or the national army.
- Ensure institutional independence and impartiality as well as victim-centeredness of the whole transitional justice process.

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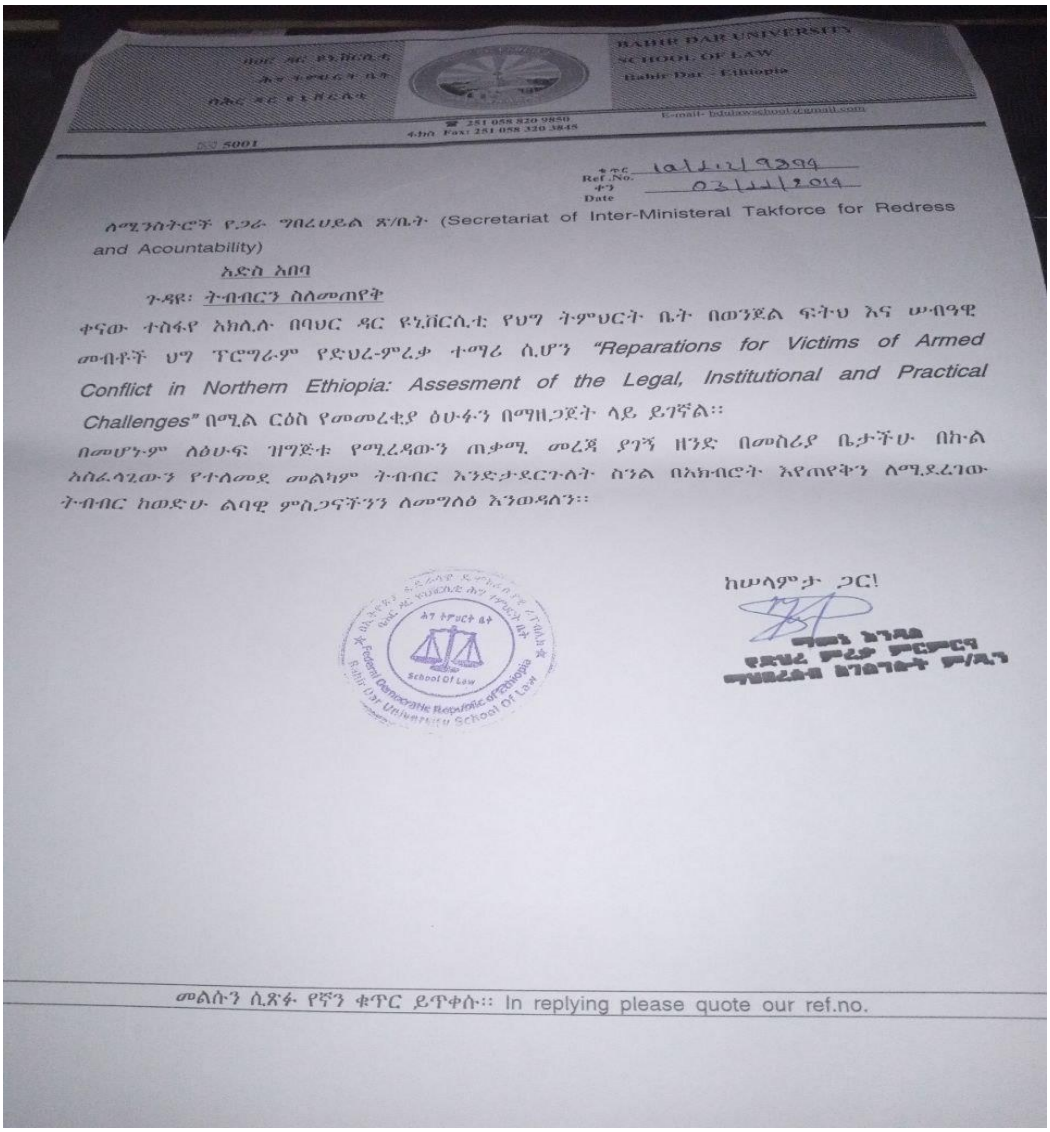
Annexes

Annex 1: One of Letters of Cooperation



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Bahir Dar - Ethiopia

5001

ለሚንስትሮች የጋራ ግበረሀይል ጽ/ቤት (Secretariat of Inter-Ministeral Takforce for Redress and Acountability)

አድስ አበባ

ጉዳዩ፡ ትብብርን ስለመጠየቅ

ቀናው ተስፋየ አክሊሉ በባህር ዳር ዩኒቨርሲቲ የህግ ትምህርት ቤት በወንጀል ፍትህ እና ሠብዓዊ መብቶች ህግ ፕሮግራም የድህረ-ምረቃ ተማሪ ሲሆን *"Reparations for Victims of Armed Conflict in Northern Ethiopia: Assesment of the Legal, Institutional and Practical Challenges"* በሚል ርዕስ የመመረቂያ ዕሁፉን በማዘጋጀት ላይ ይገኛል።

በመሆኑም ለዕሁፍ ዝግጅቱ የሚረዳውን ጠቃሚ መረጃ ያገኝ ዘንድ በመስሪያ ቤታችሁ በኩል አስፈላጊውን የተለመደ መልካም ትብብር እንድታደርጉለት ስንል በአክብሮት እየጠየቅን ለሚደረገው ትብብር ከወድሁ ልባዊ ምስጋናችንን ለመግለፅ እንወዳለን።

ከሠላምታ ጋር!

School Of Law

መልሱን ሲጽፉ የኛን ቁጥር ይጥቀሱ። In replying please quote our ref.no.

Annex 2: Participants Consent Form

<u>የቃለመጠይቅ ፈቃድ ፎርም</u>

1. **መግቢያ**፡- እኔ ቀናው ተስፋየ አክሊሉ በባህር ዳር ዩኒቨርሲቲ የህግ ትምህርት ቤት በወንጀል ፍትህ እና ሠብዓዊ መብቶች ህግ ፕሮግራም የድህረ-ምረቃ ተማሪ ስሆን **"Reparations for Victims of Armed Conflict in Northern Ethiopia: Adequacy of the Law, Institutions and Practical Enforcement"** በሚል ርዕስ የመመረቂያ ፅሁፌን በማዘጋጀት ላይ እገኛለው። በመሆኑም ለጽሁፉ አስፈላጊ የሆነ መረጃ ከእርስዎ ለማግኘት `አላማ ለቃለመጠይቅ ጋብዝዎታለው።
2. **የቃለመጠይቁ አላማ፡-** የቃለመመይቁ አላማ በሰሜን ኢትዮጵያ በነበረው ግጭት አውድ ጉዳት ለደርባችው ሰዎች ሀጋዊ መፍትሄ ከመስጠት አንጻር ያለውን የህግና አፈጻጸም ክፍተት በመለየት ለሚመለክተው አካል ምክረ ሀሳብ ለማቅረብ ነው።
3. **ሚሰጥራዊነት፡-** እርሰዎ ለቃለመጠይቁ ፈቃደኛ ከሆኑ ማንነትዎና ስምዎ በሚስጥር የሚያዝ ሲሆን በማንገኛውም መንገድ ከእርስዎ ፈቃድ ውጭ ለሶስተኛ ወገን አይተላለፍም ለህዝብም ይፋ አይሆንም።
4. **<u>የቃለመጠይቅ ፈቃድ መስጫ</u>**

- ለመሳተፍ ፈቃደኛ ነዎት? A. አዎ B. አይደለሁም
- እኔ የዚህ ጥናት ተሳታፊ የፈቃድ ፎርሙን አንብቤ የተስማማሁ መሆኔን እገልጻለሁ
  - ስም---------- ስ.ቁ.----------
  - የተሳታፊው ሃላፊነት----------
  - ተቋም----------
  - የተሳታፊው ፊርማ----------
  - የቃለመጠይቅ አድራጊው ፊርማ----------

Annex III: Guiding Questions for interviews with Key Informants and Victims

I. <u>Guiding questions for an Interview with the Chief Secretary, IMTF Secretariat</u>

1. Does the IMTF have enabling law? Proclamation? Regulation? Or directive?
2. Was there victims' and the public consulted and participated in its creation and operation? If yes how?
3. What are its mandates? Is there an actualized or planned reparation program? If yes, which forms of reparation?
4. What the IMTF has done this far? What did each four committees regarding accountability and redress?
5. Who recorded and identify violations and victims?

6. What procedures IMTF followed in the identification of victims? Is there categorization so far? Who are legible to receive reparations?
7. How many victims for what violations identified so far? Is that exhaustive?
8. Can IMTF or its committee receive reparation claims? If not who?
9. If it and the committees can receive reparation applications, are there determined evidentiary standards and procedures? If not how application are being admitted and considered?
10. What are its sources of payments for reparations? Are sources predetermined?
11. Has it adequately resourced for its activities?
12. How is the civilian (TPLF militias) criminal prosecution going? Are the criminals identified? Did command responsibility established?
13. How is the investigation and prosecution of crimes committed by ENDF, Fano, and ASF going? Who and how many were charged, convicted, or sentenced? Command responsibility?

II. Guiding Questions for an Interview with the Chief Prosecutor of Organized and Cross Border Crimes, Ministry of Justice

1. Was/are there any criminal investigations undertaken by your office?
2. If yes, what are the purposes of the investigations your office is undertaking? For criminal liability or for some other such as for the historical record, in addition?
3. Do you think the criminal trial can meet the truth rights of victims? Do you think criminal investigators may identify the root cause and the whole circumstances of the violations?
4. Is the investigation covering all the regions? If not why?
5. Do you think the pending criminal proceedings are transparent, impartial, prompt, thorough, and independent?
6. How far did victims/community consult and participated in undergoing criminal proceedings? Is there any victim filing a civil claim in the criminal bench?
7. Are the perpetrators all identified in the ongoing criminal investigations? How many identified thus far?
8. Are there evidence suggesting command or official responsibility?
9. How the trial is going? How many charges, convictions, and sentences?

10. Who was convicted and sentenced? Commanders and officials?

III. Guiding question for an interview with the coordinator of the team of investigation and Prosecution committee of IMTF undertaking Criminal Investigations

1. Is the investigation through? Does it cover all the regions and localities? If not, why?
2. What do you investigate? The root cause and the whole circumstance or individual cases?
3. How is different in this investigation regarding the participation of victims and the community?
4. Does the investigation identify all the perpetrators and victims?
5. Does your investigation have direct relevance for victims? To get compensated?
6. Do you think that you collected sufficient evidence to ensure accountability?
7. What challenges have you encountered in your activities?
8. How is your criminal proceeding going? Charge? Conviction and sentence?
9. Do you think your criminal prosecution could bring peace, reconciliation, and healing? If not what else?
10. What victims you speaking to feel? What they want as they told you? Vengeance or forgiveness?

IV. Guiding Questions for Interviews with Victims of Gross Violations

1. What crime was committed against you/your loved one? When and where?
2. How have you feeling then? If still bad what should be done to be compensated?
3. Could you forgive your victimizer? What conditions should be fulfilled for you to forgive?
4. Do you know who personally abused you/your loved one?
5. How many times it has been since you/your loved one was victimized?
6. Have you lodged a claim before a court? If not why? Have you managed to identify who the perpetrator is? Do you have evidence? How is your case progressing? Trial? Judgment? If there is judgment have you won?
7. Did you ever ask authorities to provide you a solution? If yes which authorities? How did they respond?
8. Is there anything you receive any benefit? Who provide you that? Aid agency? Government authority?

9. Is there any authority visited you on this issue? Public prosecutors? Did you testify for them? Did they contact you then after? Did you know the progress of your case? Are you participating in the proceeding, if any?