

ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
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The human right atrocities committed in Ethiopia during the Tigray war: a case for international judicial and quasi-judicial remedies.

Submitted in partial fulfillment of the requirements of the LLM degree(Human Rights Law)

By

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Adiss Ababa, Ethiopia

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Approved by the Board of Examiners

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Acronyms

- **AU – African Union**
- **CAT – Convention against Torture and other Cruel, Inhuman or Degrading Treatment or punishment**
- **FAA - United States Foreign Assistance Act**
- **FDRE - Federal Democratic Republic of Ethiopia**
- **ICC – International Criminal court**
- **ICCPR - International Covenant on Civil and Political Rights**
- **ICESCR- International Covenant on Economic, Social and Cultural Rights**
- **ICJ – International Court of Justice**
- **ICTY - International criminal Tribunal for Yugoslavia**
- **ICTR - International criminal Tribunal for Rwanda**
- **IMT – - International Criminal Tribunal in Nuremberg**
- **ITLOS - The International Tribunal for the law of the sea**
- **NGOs – Non-governmental Organizations**
- **OAU – Organization of African Unity**
- **UDHR – Universal Declaration on Human Rights**
- **UN – The United Nations**
- **WGAD – UN Working Group on Arbitrary Detention**

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Abstract

Ethiopia has witnessed systematic and widespread human rights violations for decades, including extrajudicial killings, arbitrary arrests, and measures that violate freedom of speech, the right to life, and other human rights. The successive governments were accused of corruption and political impunity. After the 'reform' taken place in 2018, some improvements were initially witnessed in the human rights situation of the country. Political prisoners were released; legislations that restricted freedom of speech and activities of civil society organizations were amended so that the democratic space broadened. However, such promising political and democratic improvements were short lived. Conflicts and widespread violence ruined the process. Particularly, the bloody war in the northern part of the country resulted in the commission of gross human rights atrocities, including rape and sexual abuses, mass killings, mass detention based on ethnic background, enforced displacements, ethnic cleansing, crimes against humanity and war crimes, etc. Even though the war has been stopped after the parties signed the Pretoria agreement, perpetrators are not held accountable for the human right atrocities they have committed. The domestic mechanism is not capable of apprehending the perpetrators, investigating, prosecuting and punishing those who were involved in the serious human rights violations in Ethiopia's Tigray war. That's why the international mechanisms should be allowed to address the human rights atrocities committed in the country. Hence, this study will explore the possible international remedies to the human rights atrocities committed during the Tigray war in Tigray, Amhara , and Afar regions.

Chapter one

1.1. Background of the study

Ethiopia, as officially known as the Federal Democratic Republic of Ethiopia, is an east African country with approximately 123 million populations.¹ Ethiopia is known by its long history of statehood, even though the greatest part of its history is characterized by civil war and conflict. These frequent and bloody civil wars are among the main factors that dragged the country in to the worst poverty and forced its citizens to experience dire human right violations.

After the Ethiopian Prime Minister Abiy Ahmed took power in 2018 the relationship between the federal government and Tigray regional officials began to be deteriorated. Particularly, the situation worsened after the TPLF leaders held region-wide election despite the federal government's warning to respect its decision to postpone the election citing Covid-19-related health risks. On November 4, Abiy ordered the military to take action against the ruling party in Tigray, in retaliation for what he described as an attack by Tigray regional forces on a federal military base, triggering significant clashes between regional and federal forces.² Telecommunication and internet blackouts at the early stage of the war make human right abuses less reported and unreachable to the international community. Journalists were totally denied access to places where human right atrocities have allegedly been committed.³

According to the reports of human rights groups all parties to the war have committed various serious crimes such as crimes against humanity, war crimes, summary executions, rape and other forms of sexual violence.⁴ The Joint Investigation Committee of the EHRC and UN-OHCHR⁵

¹ World Bank - Ethiopia overview: Development news, research, Data. last updated Sep 28 2023- accessed Dec,21 2023

² Human Rights Watch, Ethiopia events of 2020, available at <https://www.hrw.org/world-report/2021/country-chapters/Ethiopia>, accessed date Dec. 22, 2023

³ CPJ report on growing hostility against journalists in Ethiopia, Aug 2022

⁴ The human rights watch report, Ethiopia, 2021.

provided that all parties to the conflict committed serious human right violations including war crimes and sexual violence, despite the report admits its limitation in area coverage and depth due to security issues. Moreover, The International Commission of Human Rights Experts on Ethiopia has found reasonable grounds to believe that the Ethiopian forces, Eritrean forces and Tigrayan forces have committed war crimes. It has also found reasonable grounds to believe that the Ethiopian government with its allied regional governments and Eritrean forces have committed crimes against humanity, torture, persecution, and other inhumane acts – causing great suffering or serious injury to body or to mental or physical health based on ongoing blockade and obstruction of humanitarian assistance to Tigray.

After two years of war, the Ethiopia’s Federal government and the Tigray People Liberation Front (TPLF) have signed permanent Cessation of Hostilities Agreement on November 2, 2022 in South Africa, Pretoria. The Pretoria agreement which brought the bloody war to end is criticized for giving less attention to justice and accountability. The Pretoria cessation of hostilities agreement reiterates that the Ethiopian government shall implement a comprehensive national transitional justice policy aimed at accountability, ascertaining the truth, redress for victims, reconciliation, and healing, consistent with the Constitution of FDRE and the African Union Transitional Justice Policy Framework.⁶

However, the Ethiopian government has been criticized for its hesitation to ensure accountability and lack of commitment to investigate and prosecute those who directly or indirectly involved in human right atrocities in relation to the conflict. Although the government has established the national rehabilitation commission and national dialogue commission, no significant steps have been taken to hold perpetrators accountable.⁷ There is also a fear that the government may pretend ensuring accountability by focusing on perpetrators who are in lower military and administrative positions. Reasonably speaking, accountability cannot be genuinely ensured by

⁵ The Ethiopian human rights commission and the UN office of the high commissioner for human rights have jointly conducted investigation into alleged violations of international human rights , humanitarian and refugee law committed by all parties to the conflict in the Tigray region of Federal Republic of Ethiopia.

⁶ Permanent cessation of hostilities agreement signed between the government of federal democratic republic of Ethiopia and Tigray People Liberation Front (TPLF), article 10(3).

⁷ Wubeshet Tiruneh (PHD), Accountability for atrocity crimes; How should Ethiopia implement its commitment to the agreement on permanent cessation of hostilities, article published in OpinioJuris (opiniojuris.org/2023/05/16)

bringing infantrymen to justice while the higher commanders, who ordered the former to commit the atrocity crimes, remain in their position. So in order to ensure genuine accountability the government must show some sort of commitment.

Even after almost two years since the Pretoria agreement was signed, no action towards accountability has been made so far. Let alone ensuring accountability, the government is blamed for continued human right violations in Tigray and other parts of the country. Internally displaced persons are still living under UNHCR's plastic sheets which forced them to pursue agonized life. So, the human right atrocities are not the past experience; rather they are the current practical reality in the ground.

The Ethiopian ministry of justice has announced in January, 2023 that it has been developing "Transitional justice policy document which is expected to contribute to sustainable peace, reconciliation and justice in Ethiopia."⁸ The policy is intended to address human rights-based and victim-centered framework, including compensation for victims, drawing on the experience of other jurisdictions as well as a prosecution process that seeks to punish gross human rights violations, including war crimes, crimes against humanity, and other grave crimes. However, it remains a draft so far.

The Cessation of Hostilities Agreement made between the Ethiopian government and TPLF provides that Ethiopia must implement comprehensive national transitional policy to ensure accountability in accordance with the constitution of the AU transitional justice policy. The AU transitional justice policy to which the agreement made reference stipulates that the justice and accountability component of transitional justice policy presupposes the existence of independent national courts which have the capacity to adjudicate gross human right violations, most probably committed by higher government officials, and the confidence of the affected Member State's society should always be guaranteed.⁹ However, if 'national courts lack capacity and the confidence of affected communities, steps should be taken to use special courts, extraordinary chambers or hybrid courts that bring in the required capacity and legitimacy to ensure the

⁸ Ethiopian News Agency, Ethiopia Developing Transitional Justice Policy to Ensure Sustainable Peace, Reconciliation (https://www.ena.et/web/eng/w/en_42535) accessed date 27 December 2023

⁹ African Union Transitional Justice policy, adopted February 2019, article 78

support and confidence of affected members of society, including victims on all sides of the conflict’.

Wubeshet argued that the advisory note issued based on the consultation held between the Ethiopian human right commission and UN OHCHR, and affected communities indicates the participant’s lack of confidence in the formal judicial bodies. Hence, participants demand the establishment of an independent and impartial investigation and prosecution body, as well as an independent special court (which may also be an independent special bench in the national judicial system).¹⁰ He also argued that crimes against humanity¹¹, is not recognized under Ethiopian criminal law, which, in effect, renders regular mechanisms unable to investigate and prosecute these serious crimes.

Moreover, most of the grave human right atrocities have been (are being) committed by non-state forces which currently cannot be prosecuted under the proposed transitional justice system due to the fact that they are fighting in turn against the federal government. The war in Tigray has described the complexity of distinct form of conflicts which involves manifold of interested forces. It will become difficult to subdue impunity in cases where different actors contributed to the gross human right atrocities. At this juncture, it will be more plausible to argue that domestic transitional justice mechanisms cannot help in any effort to hold accountable those who are not under the domestic jurisdiction of the government. Hence, the Eritrean forces who committed gross human right and humanitarian violations cannot be prosecuted within the existing domestic judicial set up unless agreement is reached between the two governments to this effect.

1.2. Statement of problem

The Tigray war has caused various human right violations ranging from looting and destruction of property to crimes against humanity and ethnic cleansing. Thousands of women have been gang raped and suffered from post-traumatic problems. These victims of human right atrocity crimes need the perpetrators to face justice in independent and competent court. Peace and

¹⁰ Supra-note 7

¹¹ The US State department in its press release in march 20, 2023 acknowledged that the Ethiopian national defense forces, Eritrean defense forces and Amhara forces committed crimes against humanity, including murder, rape and other forms of sexual violence and persecution

reconciliation cannot be durable without justice and redress. Particularly, individualized criminal responsibility is important in transitional justice process. National transitional justice process should be inclusive, integrated, transparent, and expeditious. The investigation and adjudication institutions should be independent, neutral, and capable. More importantly, the victim community should have confidence over these justice institutions.

However, due to the seriousness of the crimes and lack of political commitment, it seems unlikely to ensure accountability through national transitional judicial system. There are no fully independent and politically impartial investigation and judicial institutions in Ethiopia.¹² Furthermore, many of the perpetrators are still in higher political and military positions which make accountability fictitious. In other words, we can't expect higher officials who involve in serious human rights atrocities to hold themselves accountable in the institutions they created and the system they formulated. Hence, this study probes international judicial and quasi-judicial remedies to the human right atrocities committed in Tigray region of Ethiopia.

1.3. Research Questions

This thesis explores the international judicial and quasi-judicial remedies to the human right atrocities committed in Tigray. Specifically, it examines the following questions;

1. What are the human right atrocity crimes under international law?
2. What are the possible international judicial and quasi-judicial remedies to the human right atrocities committed in Ethiopia's Tigray war?
3. Could individual perpetrators who committed gross human right atrocities such as crimes against humanity be accountable before international courts and quasi-judicial institutions?
4. Could the Ethiopian government be held accountable before international and regional quasi-judicial bodies for the former's failure to prevent and protect human rights?

¹² Hailemariam Mamo Darge, Exploring how absence of judicial freedom undermines press freedom in Ethiopia, 2023

1.4. Objective of the study

The main objective of this study is to assess and examine the international judicial and quasi-judicial remedies to the human right atrocities committed in Ethiopia's Tigray region. This research has also the following specific objectives.

1. to elucidate the meaning and the basic constitutive elements of atrocity crimes; to inquire Ethiopia's commitment and willingness to prosecute human right crimes and the impact of lack of genuine accountability in long lasting peace building process;
2. to address the jurisdiction of international courts with a view to assess the accountability of gross human rights violations committed during the Tigray war in international judicial and quasi-judicial bodies;
3. to examine the possibility of instituting legal action against Ethiopian government in international courts and quasi-judicial institutions

1.5. Significance of the study

Justice is one indispensable factor to bring long lasting sustainable peace and security. It facilitates reconciliation and helps building social trust between communities and political actors. Justice can be served in different ways; acknowledging the problem by issuing official apology and paying adequate compensation to the victims can be taken as the first step that should be done in the aftermath of the situation. Moreover, measures should be taken for truth finding and rehabilitation of victims.

However, on top of the efforts of transitional justice is the commitment of the government to ensure full-fledged accountability. The process and end result of the accountability should be non-selective; every person disregarding his/her status or contribution to the war has to be answerable for his/her acts. In Ethiopian context, the conflict has caused horrible human right atrocities for two years. The war halted after the warring parties reached permanent cessation of hostilities agreement in Pretoria, South Africa. Nevertheless, only very few steps has been taken to ensure accountability of those who committed human right atrocities. The existing domestic institutions lack the ability and willingness to bring perpetrators to justice.

Hence, this study explores the international human right and humanitarian law and the *modus operandi* of international courts with a view to find a way to ensure accountability in

international judicial and quasi-judicial organs. This study clarifies the possible international judiciary and quasi-judiciary remedies to the human right atrocities committed in Ethiopia's Tigray region.

1.6. Methodology and Methods

This research has used doctrinal legal research methodology which focuses on international and national human right instruments, decisions of national and international courts, international customary law, academic publications, various human right reports, newspapers and media reports, online sources, and unpublished materials such as MA thesis. Doctrinal legal research methodology is used to gather, organize, and describe the law; provide commentary on the sources used; then identify and describe the underlying theme or system and how each source of law is connected.¹³

Both primary and secondary data has been used as data source of information. The primary sources includes international human right conventions, decisions of international judicial and quasi-judicial bodies, FDRE Constitution, the African Union transitional justice policy, any agreement to which Ethiopia is a party, any domestic law and so on. The secondary sources, on the other hand, consists of articles, journals, reports, seminars, lectures, published or mainstream media outlets, online sources etc. the data collected from these sources has been critically and rigorously analyzed with a view to address the study questions adequately.

1.7. Scope of the study

This study is delimited to the human right atrocities committed during the war in Tigray, Afar and Amhara regions, and their international judicial and quasi-judicial remedies. In order to give comprehensive analysis on the research area, the study broadly discusses the legal and institutional framework of international judicial and quasi-judicial bodies. The term quasi-judicial refers to bodies which have the power to decide on individual complaints under UN human right system or African Union. This study doesn't cover Ethiopia's long standing history of human right violation before the war started in November 2020, nor include the human right

¹³ Indiana law library, legal dissertation: research and writing guide

(<https://law.indiana.libguides.com/dissertationguide>)

crimes being committed currently. It doesn't also include decisions of international bodies which are political or diplomatic in nature.

1.8. Limitation of the study

The researcher assumed that there can be difficulties in getting some documents due to their political nature. However, the researcher has done all possible efforts to access all the documents needed.

1.9. Organization of the paper

The study contains five chapters; the first chapter deals with the proposal of the research. The second chapter provides the substantive and conceptual framework of the study. The third chapter discusses the general overview of the jurisdiction of international human right courts and quasi-judicial bodies. The fourth chapter focuses on analyzing the issue of international accountability and the possibility of bringing human right perpetrators to justice in international courts and quasi-judicial bodies. The final chapter summarizes the conclusions and provides recommendations to interested parties as to the legal framework international judicial and quasi-judicial bodies vis-à-vis human right perpetrators in the war in Tigray, Afar, and Amhara regions.

Chapter Two

2. *Basic concepts of international accountability*

2.1. Introduction

Before proceeding to the conceptual framework of human right atrocities and the international judicial and quasi-judicial bodies entrusted with adjudicating perpetrators of these atrocities, it is quite important to find out the true sense of some terms and phrases. This helps to understand how the international human rights regime defines terms and phrases with a view to appraise the specific subject matters their drafters intended to cover. It is true that states are envious of their sovereignty and always hesitate not to involve in international commitments which can, in effect, undermine their international sovereign power.

Hence, international treaty documents always reflect the interest of the member states not to submit their sovereignty to their international commitments. The drafters of these documents are always cautious enough to strike a balance between the need to establish global framework of cooperation in the one hand, and maintaining sovereignty and interests of states, in the other hand. International human right instruments are not the exception. Since this study focuses in international accountability it is advisable to elaborate some of the concepts related to human right atrocities and its consequence.

2.2 Definitions of basic terminologies in international human rights law

Various human right instruments have used different terminologies to describe human right infringements carefully to avoid political misinterpretations. The UDHR used the term “disregard and contempt for human rights” while the optional protocol to the ICCPR simply employ the word “violations” of human rights. The convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT) has provided more elaborated and inclusive phrase; gross, flagrant or mass violations of human rights. Unlike the former two, the convention against torture indicates the magnitude, nature and scale of violations of human rights.

Recently, a growing number of literatures and case laws used terminologies such as gross violations of human rights, grave breaches, atrocity crimes, systematic violations, serious human right abuses and so on. For instance the African Commission on human and people's rights in 2003, in its ruling on DRC v. Burundi, Rwanda and Uganda case, stated that the respondent states have committed 'flagrant violations' of human rights, whereas the International Court of Justice described the acts of the same respondents as 'massive human rights violations'.¹⁴ In order to fully understand the concept of human rights and its infringement of different levels, it is of importance to clarify the lexical and contextual meaning of some of these words in the following section.

As the name indicates gross human right violations are different from non-gross or minor human right violations. Writers use two approaches to define the term gross violations of human rights; the first one is they enumerate acts that constitute gross human right violations without striving to give any definition to the term.¹⁵ We can call this approach, for the purpose of this study, definition by enumeration. Roger-Claude (2015) similarly, the United States Foreign Assistance Act (FAA) section 502B defines gross violations of internationally recognized human rights as violations that include torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing disappearances of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, security of persons.¹⁶ The UN Vienna Declaration and Program of Action, adopted in the first human right conference in 1993, provides long list of acts that constitute gross violations of human rights as follows; the gross and systematic violations that constitute serious obstacles Include torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other

¹⁴ Roger-Claude Liwanga, the meaning of gross Violation of Human rights: a focus on International tribunals' Decisions over DRC Conflicts, 44 *Denv.J.int'l& pol'y* 67 (2015)

¹⁵ Alan S. Gutterman, what are human rights, 2023 available at <https://papers.ssrn.com> accessed date Feb 1, 2024

¹⁶ Supra-note 1

denials of economic and cultural rights, discrimination against women and lack of the rule of law.¹⁷

The second approach defines the term gross violations of human rights by resorting to the magnitude, persistence or consistence of the violations.¹⁸ Accordingly, gross violations of human rights are systematic and widespread breach of fundamental rights and freedoms recognized and protected under international law. Erizka stated that the parameters ‘systematic and widespread’ are significant factors which help us to distinguish gross violations of human rights from ordinary criminal offences related to human rights.¹⁹ In other words, not all violations of human rights are gross violations. Abadir (2009), in analyzing the definition given by the US third Restatement (Third) of The Foreign Relations Law, tried to distinguish two pillars; namely importance or qualitative doctrine and magnitude or quantitative doctrine. The magnitude doctrine reflects the degree of gravity of the violation and its consistency and it should be backed by the state policy. Roger-claude (2015) argued that in order for a violation to be considered as gross violation of human rights, it should include four basic elements; the qualitative element (the type of the rights violated and the character of the violation itself; quantitative element (number of victims and number of wrongful acts); element of time (consistent and repetitive occurrence); element of planning (existence of political objective and plan).

Chernichenko²⁰ (1996), in his attempt to measure human rights, has provided the following three indicators: the scope or degree of seriousness of the violation; the intensity or frequency of their occurrence over a certain period of time; and the size of the population affected. These parameters are general and sometimes may not help to concretize the measurement of gross violations.

¹⁷ See Article 30 of the Vienna declaration and program of action, adopted 25 Jun 1993.

¹⁸ Abadir Mohamed Ibrahim, *International Mechanisms Dealing with Gross Violations of Human Rights: Opportunities and Challenges for the International Criminal Court*, Addis Ababa University, 2009.

¹⁹ Ezirka Permatasari, *what is the meaning of gross violations of human rights*, 2023. Available at hukumonline.com accessed date Feb 01, 2024

²⁰ Expanded working paper submitted by Mr. Stanilave Chernichenko in accordance with decision 1996/116 of 29 August 1996 of the sub-commission on prevention of discrimination and protection of minorities

Other writers²¹ have also provided three similar but slightly different approaches. The first approach is related to the type of the right. Not the violations of all rights considered gross and systematic. Only specifically enumerated rights are subject to massive and systematic violations. But some argue that the discussions and resolutions of the United Nations don't indicate to particular category of human rights rather it is concerned with the manner in which the violations may have been committed or to their severity.²² The other approach is the character of the violation. The International Law Commission elaborates this issue stating that the systematic and gross violation of human rights refers to violations which have to be carried out in organized and deliberate way and it must reach some level of intensity. The last view stipulates that even though a single breach may be sufficient, the violation can be regarded as being more serious if it is not simply one outstanding event but forms part of a number of similar events which might even form a pattern.²³

The above definitions are not free from criticism. All the definitions are not mutually exclusive. The definitions based on enumeration lacks clarity as to which violations of rights constitute gross violations. It is also difficult to ascertain that whether the enumeration is exhaustive or illustrative. In many literatures, the list of gross violations of human rights contains civil and political rights. The Economic, Social and cultural rights are not included in the list partly due to the assumption that governments are obliged to fulfill their obligations towards realization of socio-economic rights to the extent of the available resources. But some argue that the recent jurisprudence indicates the distinction between economic, social and cultural rights, and civil and political rights have become awkward.

2.3 The emergence of atrocity crimes and its implication on international law

In the previous section, we have discussed the concept of gross violations of human rights to assess the focus of the international community and consistency of the jurisprudence of human rights regarding human rights and states' responsibility. Gross violations of human rights have

²¹ Supra Note 14, professor Dinah Shelton, Professor Pierre-Marie Dupuy

²² Professor Cherif Bassiouni, Report of the Independent Expert on the Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms, submitted pursuant to Commission on Human Rights Resolution 1998/43'

²³ Supra-note 14

received attention in the past decades and contributed to states to refrain from involving in flagrant and massive human right contraventions. However, the dichotomy between international human rights law and international humanitarian law, which basically attributes acts committed during situation of war to the latter, caused lack of clarity as to the gross human right violations that occurred in state of war. Very recently, the concept of mass atrocity crimes has been emerged to clarify the confusion. In this section, the nature, and characteristics of atrocity crimes vis-à-vis international law will be discussed.

To begin with the lexical definitions of the words, the term ‘atrocity crimes’ contains two independent words, i.e atrocity and crime. Generally, atrocity can be defined as an act of cruelty which involves violence. The Britannica dictionary defines atrocity as ‘a very cruel or terrible act or action.’ This definition doesn’t provide any additional criteria other than cruelty. Similarly, the Cambridge Advanced Learner’s Dictionary termed atrocity as an extremely cruel, violent and shocking act. We can argue that these definitions lack clarity as to magnitude of the act or the situation in which atrocity said to be committed. There are other dictionaries which describe ‘atrocity’ in relation to acts of cruelty and violence committed during wartime.²⁴ The Collins Dictionary further indicates atrocity as acts of extreme cruelty may specifically committed against prisoners or civilians in wartime. In other words, any cruel act committed against non-civilian population may not be considered as atrocious acts. This makes atrocity different from other acts of cruelty. The other inference is an act should be committed during wartime and should have some level of magnitude. This may lead us to the conclusion that single act of cruelty committed in peacetime may not constitute ‘atrocity’.

Atrocity crimes, therefore, refers to specific category of gross human rights violations that can attract international condemnation.²⁵ The term ‘atrocity crimes’ has been firstly coined by the former US ambassador at large for war crimes issues, David J.Scheffer in 2006. The term has recently been used as shortened for the crimes which have common denominator of the subject matter jurisdiction of modern international criminal tribunals.

²⁴ See <https://www.oxfordlearnersdictionaries.com> <https://www.collinsdictionary.com>

²⁵ Congressional research service, international atrocity crimes and their domestic counterparts, last updated January31, 2024

In 2014, the UN Secretary General special advisor on the prevention of Genocide and on the responsibility to protect adopted a formal definition of atrocity crimes. Accordingly, atrocity crimes refer to gross infringement of three international crimes, namely, genocide, crimes against humanity and war crimes. In relation to the crime of ethnic cleansing the term atrocity crimes has been extended to include it as fourth crime. There are pro and against arguments with regard to the emergence of the term atrocity crimes. Some argue that the term is helpful to identify the three gross violations of human rights to alert the international community about them in advance. They further argue that it avoids legal debates in stringent terms and motivates people to feel free to discuss about these crimes and forward their academic recommendations to prevent them. However, others criticize such grouping saying that the term puts all three into one umbrella without specifying which crimes have been committed. To the opposite of the first argument, they say the term is being used by politicians, diplomats and human rights organizations to avoid legal precision.²⁶

2.3.1 Legal definitions of atrocity crimes

In this section we discuss the definitions of the three types of atrocity crimes. In doing so, we shall refer to both domestic and international legal documents, as well as decisions of international courts either permanent or ad hoc.

Genocide

The term genocide was coined for the first time by Raphael Lemkin, the polish lawyer of Jewish descent, in 1944 to oppose the Nazi's Holocaust policy against Jewish community. In his book 'Axis rule in occupied Europe', Lemkin²⁷ introduced a new term to describe an act of destruction of a nation or an ethnic group from two ancient Greek and Latin words. The term 'genocide,' therefore, came from the Greek word *genos* meaning race or tribe, and from the Latin word *cide* which literarily means killing.²⁸ Later on the Convention on the prevention and punishment of

²⁶ Dr. Gregory H. Stanton, what is genocide, published in Genocide watch.Inc, 2020

²⁷ The UNHCR official website gives credit to Raphael Lemkin for his efforts to coin, defining and denouncing genocide and his contribution in preparing the document of the convention on the prevention and punishment of the crime of Genocide

²⁸ Holocaust Encyclopedia, Coining the word and championing a cause: the story of Raphael Lemkin, available at <https://encyclopedia.ushmm.org>

the crime of Genocide has been adopted on December 9, 1948 by the United Nations General assembly. Historically, it is the first human right treaty under the UN human right treaty.

The convention makes clear that genocide, whether committed in times of war or in times of peace, is a crime under international law which the States parties undertake to prevent and punish genocide using all means necessary. From the definition of Genocide which is provided under article 2 of the UN Genocide convention, we can deduce three basic elements.²⁹

- 1) Acts of genocide
- 2) Intent to destroy, in whole or in part
- 3) A national, ethnical, racial or religious group

With regard to the first element, the provision explicitly states five acts that constitute the crime of genocide. The list of acts as provided by the provision seems exhaustive. The acts under sub (a), (d) and (e) are relatively specific and clear, whereas acts mentioned under sub (b) and (c) needs interpretation because it is difficult to quantify the seriousness of the bodily or mental harm to members of the group as well as to determine the situation to have inflicted on the group conditions of life calculated to bring about its physical destruction in whole or in part.

The second element of the definition is about the intention of the perpetrator to destroy a certain group. Intention is of paramount importance since genocide cannot be committed by accident. Intention is a purpose or a plan that one desires to achieve with determined mental readiness. Regardless of the motive (whether national security or territorial integrity), any act committed with the intention to destroy a group in whole or in part is considered as genocide. The perpetrators intent may not target the entire group but part of the population, still their action constitutes genocide.

The third element of the definition elaborates as to who are the groups which are protected by the law. Hence, the convention mentioned four groups; namely, national, ethnical, racial or religious groups. The list of the groups which are protected seems exhaustive. Some commentators argue

²⁹ Expanded working paper submitted by Mr. Stanilave Chernichenko in accordance with decision 1996/116 of 29 August 1996 of the sub-commission on prevention of discrimination and protection of minorities

that the list should be construed in a way to include other groups who can be susceptible to threat of genocide. For example people who are socially segregated and considered as evil-eyed might be subject to systemic genocide. They can be directly attacked with the intention to eliminate them from the society or indirectly pushed into inhabitable areas such as deserts in which no food or water is available for their survival. The same is true for homosexuals. These people are not targeted due to their national, ethnical, racial or religious backgrounds. They are indifferent with the rest of the society in terms of nationality, ethnicity, race or religion. But they are different by their social labeling or sexual orientation.

The basic issue that distinguishes genocide from other serious crimes such as crimes against humanity, war crimes and unlawful killings is the special intention of the criminal to destroy a certain group. This requirement has been elaborated in ICTY and ICTR as genocide's special intent or *dolus specialis*.³⁰

Crimes against humanity

Unlike genocide and war crimes, crimes against humanity has not been codified in international treaties, rather it was evolved through time under the customary international law. Basically, it was evolved after the World War II in the country specific international ad hoc tribunals.³¹ The Nuremberg Tribunal statute and judgment can be cited as the first international agreement that provides the definition of crimes against humanity. The Nuremberg Tribunal defines crimes against humanity by listing down the acts that constitute the crime; namely murder, extermination, enslavement, deportation, and other inhuman acts committed against civilian population before or during the war, or persecutions on political, racial or religious grounds.³² The definition of the crimes against humanity has also been reflected in the subsequent international tribunal.

The ICTY associates Crimes against Humanity to armed conflicts whether international or internal in character. The ICTR on the other hand, even though it doesn't require the acts to be

³⁰ Draft code of crimes against peace and security of mankind, report of the international law commission, published in 1991, pp 144

³¹ The Nuremberg Tribunal, the Tokyo Tribunal, ICTY and ICTR

³² Article 6(c) of the the statute of Nuremberg tribunal signed by UK, USA, France and USSR in March 15th 1951.

committed in armed conflict, requires the acts to be committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.³³ Hence, the attack may not necessarily involve military attack; even in time of peace if the person has committed the acts that constitute crimes against humanity, he is criminally liable under international criminal law. The ICC provides comprehensive definition of crimes against humanity without attributing it to armed conflict or grounds of discrimination.

According to the ICC, there must be an attack directed against civilian population; it implies the multiple commissions of acts against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The policy which primarily targets civilian population would be implemented by state or organizational action, or be implemented by a deliberate failure to take action. But the existence of such policy cannot be proved by inference solely to the absence of governmental or organizational action.

Civilian population can be simply refers to those persons who are not combatants. The primary target of the attack must direct against persons who are not members of armed forces or other legitimate combatants. An attack against wounded or sick combatants cannot obviously be considered as an attack directed against civilian population.³⁴ In the *Mrkšić et al* case, the perpetrators on Nov. 20 1991 killed hundreds of people who were perceived to be members of the armed forces. Hence, the court ruled that the torture, murder and inhuman treatment of wounded and sick members of the armed forces didn't amount to crimes against humanity and indicted them for violations of the laws or customs of war. The attack has to be widespread and systematic to denote its massive scale and conducted as part of state policy or plan of the organization to target the civilian population. The attack is widespread if it is large scale in

³³ International Criminal Law Services, International Criminal Law & Practice Training Materials, crimes against humanity, module 7

³⁴ Prosecutor v. Bosco Ntaganga case No ICC-01/04-02/06, decision pursuant to article 61(7) (a) and (b) of the Rome statute on the charges of the prosecutor against Bosco Ntaganga (PTC), 9 Jun 2014; Draft articles on Prevention and Punishment of Crimes Against Humanity, Adopted by the International Law Commission at its seventy-first session, in 2019, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/74/10). The report will appear in Yearbook of the International Law Commission, 2019, vol. II, Part Two.

nature that affects large number of victims. Even though there is no fixed number of victims that makes an attack widespread, may include a massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims.

War crimes

War crime is one of the serious crimes that entail individual criminal responsibility under international law. The peculiar feature of war crimes is that these crimes always committed against civilians or enemy combatants at the time of war, the war can be international or domestic armed conflict. These crimes are basically derived from the four Geneva conventions of 12 August 1949 and their Additional Protocols I and II of 1977, and the Hague Conventions of 1899 and 1907. The rules of war have been long history of existence even before the adoption of the Geneva and The Hague conventions. They were part of the customary international law. So, certain rules, even though they are not codified in the conventions, are part of international humanitarian law if they are deemed to be norms of customary international law. Majority of the acts that constitute war crimes are committed against protected persons. According to the Geneva conventions, persons who did not take part in the hostilities, i.e. civilian population, or who no longer part of the hostility are protected against any military target. Common article 3 to the Geneva conventions states that ‘persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.’ Article 8 of the Rome Statute provides comprehensive list of acts that constitute war crimes.

Many domestic laws define war crimes by referring to the four Geneva conventions and their additional protocols as well as the Hague convention.³⁵ This is different from the other two atrocity crimes because it always deals the situation during an armed conflict, international or non-international character. So we can’t imagine war crimes without war. Moreover, war crimes unlike crimes against humanity can be committed against either combatants or non-combatants.

³⁵ See US criminal code 18 USC 2441; war crimes

Chapter Three

3. *The effort to make accountability possible in Ethiopia and its challenges*

Needless to say accountability is a foundation in peace-making endeavors within societies that experienced civil wars and violence. Accountability plays a crucial role in communities coming out conflicts and atrocities. It is essentially the obligation of those persons who are in power to give an account of their actions and decisions as well as to accept responsibility for any consequences that arise as a result. As a country that has been at war for many centuries, Ethiopia may face many challenges in its efforts to build sustainable peace due to, predominantly, lack of accountability. Whenever there is regime change, the new government will engage in a campaign-like prosecution of officials of the former regime. It can be said that a justice system led by free and independent legal institutions wasn't built because of the deep rooted culture of political interference and impunity. It is rare that officials can be accountable for the crimes they have committed while they are in office. So long as they are in office they wouldn't held accountable. This political culture persists and resulted in widespread human right violations. This bad legacy doesn't seem to end in the near future. During the *Zoom* discussion³⁶ hosted by the Harvard University's Human Rights Program, Fisseha Tekle of the Amnesty international stressed that the devastating circle of impunity in Ethiopia have impacted individuals, communities and the country at large.

The political change in 2018 has cast a spark of hope that human right situation of the country would be improved. The new leadership has taken many encouraging measures including releasing of political prisoners and journalists, repealing some restrictive laws, removing from office and prosecuting few former military and intelligence officers who are believed to have committed gross human right abuses, some reforms in the prisoners treatment e.t.c. However, the political changes and legal reforms didn't go healthy for more than months. Communal violence and political instabilities were prevalent in almost all parts of the country. This and other reasons

³⁶ The Harvard Law School, Human Rights Program had prepared a zoom discussion on Sep. 22, 2023, with the title the devastating cycle of impunity in Ethiopia: causes, consequences and solutions (available at <https://hrp.law.harvard.edu/hrp-event/the-devastating-cycle-of-impunity-in-ethiopia-causes-consequences-and-solutions/>)

had contributed to the failure of political reforms that would have rather been result in long lasting solutions of the problems the country has faced with.

The war that erupted in November 2020 between Tigray forces and Ethiopian federal government has caused the worsening of the human rights situation of the country. Gross human rights violations with unprecedented magnitude were committed by all forces part to the conflict. Many heinous crimes were committed including mass killings, forced disappearances, gang-rape, using humanitarian aid as means of war, displacement, ethnic cleansing, crimes against humanity and the like.

The Ethiopian Federal government and the Tigray forces agreed to end the two years of bloody war in Tigray. Hostilities between all the parties have stopped by the Pretoria agreement. The Pretoria cessation of hostilities provides that the Ethiopian government is duty bound to ensure accountability and formulate all-encompassing transitional justice policy framework. Article 10(3) of the Pretoria CoH agreement obliged the Ethiopian government to implement a comprehensive national transitional justice policy aimed at accountability, ascertaining the truth, redress for victims, reconciliation, and healing. This transitional justice policy should be consistent with the FDRE constitution and the African Union Transitional justice policy framework; it should also use inputs from all stakeholders, and civil society groups through public consultations and formal national policy making processes.

Among the fundamental tenets of accountability, transparency is a bold element. The government must transmit relevant information to the people concerning the persons held accountable and the actions taken. In our case, the Ethiopian government didn't provide any information as to the accountability of persons who have committed gross human rights violations in the context of the Tigray war. To the extent of the researcher's knowledge, there is no higher military and political official arrested or prosecuted in relation to the atrocity crimes committed in Tigray, Afar, and Amhara regions.

Even though the Ethiopian Government promised to implement comprehensive national transitional policy framework, it only achieved very little in accountability and redress. The national reconciliation commission, which is established in 2018, was criticized for lack of broad political consensus on its political mandates; not all concerned political and ethnic groups were

represented and their voice heard in the process.³⁷ Now the national reconciliation commission is not performing its mandates as expected. It also lacks legitimacy because its formation was not participative. Similarly, the National Dialog Commission and the National Rehabilitation Commission was also established as part of the transitional justice policy framework. These institutions are also being criticized for their political partiality and lack of institutional independence.

True accountability is the most crucial element of transitional justice whereby it ascertains perpetrators will not go unpunished, and victims will not remain without redress. Transitional justice shouldn't be used for political propaganda consumption. It should be designed to promote sustainable peace-building process through accountability, reconciliation, truth finding, and providing redress to the victims.

The core idea in transitional justice is that the victim community should be consulted and heard their voices in each and every measure to ensure accountability. They must show trust and confidence in the process and the institutions which are entrusted with ensuring accountability. In our case, the victim communities weren't consulted regarding the transitional justice policy framework.

Many international and domestic human rights institutions as well as government representatives have been calling for the Ethiopian government to ensure accountability for serious crimes committed during the Tigray war. The implementation of the Pretoria CoH agreement has shown good improvements in many aspects except accountability. The government seems lacking courage to bring the perpetrators into justice due to multiple of reasons; one of the reasons could be the fact that higher military and political leaders are among the suspects of the atrocities committed in the context of the conflict. For example, the report prepared by the New Lines Institute regarding the acts of genocide committed against Tigrayans, has found out that 'there is a reasonable basis to believe that at least some members of the ENDF or Civilian officials associated with the Ethiopian federal government possessed the intent to destroy Tigrayans

³⁷ Elizka Relief Foundation, Transitional justice contribution to sustaining peace and realizing SDG 16 in Ethiopia

as ethnic group, in whole or in part.’³⁸ All most all these higher government officials are still in their offices. So, it is obvious that such military and political officials cannot bring themselves to justice.

The deep political and ethnic divisions and the continuing armed conflicts have negative impact in an effort to ensure accountability. Currently, the government forces are in active fighting in Amhara and Oromia regions with the Fano militia and self-proclaimed Oromo Liberation Army rebels. These bloody wars have great effect on the government’s effort to ensure accountability and implement successful transitional justice policy framework. Many persons, who are suspected to have committed atrocity crimes and other human right abuses during the Tigray war, are now fighting against the federal government, particularly in Amhara region. The Fano militias were accused of committing gross human right violations including ethnic cleansing and crimes against humanity in western Tigray.³⁹ So, the government is unable to prosecute those perpetrators of gross human rights violations, because they aren’t under its control.

Similarly, the Tigray war can be characterized as complicated kind of conflict due to the reason that many internal and external forces were participating. Among the parties that have been fully participating in the context of the conflict, the Eritrean forces were accused of committing gross human rights violations including crimes against humanity. The Eritrean troops had reportedly massacred thousands of innocent civilians in different places including *Axum, Mariam delglat and Bora*. They had also participated in massive gang-rape and other sexual abuses throughout Tigray. After the signing of the peace agreement in Pretoria Eritrea has pulled out its troops merely to camp around the border villages of Tigray. Eritrea is not party to the Pretoria peace agreement. Therefore, Eritrean troops who have committed atrocity crimes will definitely go unpunished, because they will not be prosecuted under the Ethiopian transitional justice policy framework. Hence, one can safely say Ethiopia cannot address the atrocities in its full-fledged manner.

The other challenging issue in relation to ensuring accountability for atrocity crimes committed during the Tigray war is that the Ethiopian federal government may not succeed to bring the

³⁸ The New Line Institute report, genocide in Tigray: serious breaches of international law in the Tigray conflict, Ethiopia and paths to accountability.

³⁹ US Department of State, report on war crimes, crimes against humanity, and ethnic cleansing, March 20, 2023

political and military leaders of TPLF. The first reason for this can be except few areas most administrative areas of Tigray region aren't under control of the federal government. The federal government is not exercising real power in Tigray. Second, any attempt to arrest or prosecute the political and military leaders of TPLF might have negative impact in the slower peace building process. People always fear that any action or statement from one or both parties can jeopardize the peace agreement. The government should always strike a balance between ensuring accountability and continuing the peace process. In addition, the Pretoria peace agreement regrettably left the issue of accountability without addressing it in detail. The agreement has only urged the government to ensure accountability by formulating inclusive transitional justice policy. Moreover, the federal government and TPLF leaders seem to sideline the issue of accountability to salvage their fate from it. Hence, the federal government, one way or another, is unwilling or unable to hold accountable those individuals who committed atrocity crimes.

The other main constraint is that Ethiopia doesn't have robust investigation and judicial institutions that can independently and impartially address such gross human rights violations. The UN and other international institutions have been calling for accountability for crimes committed during the Tigray war by all parties involved by the conflict; but no significant measure was taken so far. The independence of the judiciary is very crucial in safeguarding human rights. However, the Ethiopian judiciary has encountered legal and practical challenges the affect its independence and impartiality that awaken its mandate to safeguard human rights and rule of law.⁴⁰ Political interference and lack of institutional and personal independence are the basic characteristics of the Ethiopian judicial system.

Generally speaking, the human rights atrocities committed during the Tigray war in different places cannot effectively be addressed, both due to lack of political commitment and practical inability. The government is unable to prosecute Eritrean troops or fano militias who committed atrocity crimes because they are not within its political domain. Similarly, it may face challenges to arrest and prosecute the TPLF leaders, because, in one hand this may jeopardize the peace process, on the other hand it may have spillover effect in the government officials who have been accused of atrocity crimes.

⁴⁰ Lemlem Dejenu Mulugeta, judicial independence in Ethiopia and its challenges Vis-à-vis the United Nations basic principles on independence of judiciary.

Chapter Four

4. International judicial and quasi-judicial remedies for human rights atrocities: emphasis on the war on Ethiopia's Tigray region

4.1. Introduction

Almost all international human rights instruments have imposed legal obligation on states to protect, promote, and fulfill human rights. Governments are the primary perpetrators of human rights and the primary responsibility to protect and promote human rights rests up on them. The responsibility of the state may have multifaceted forms; the first form of state obligation is the obligation to refrain from interfering in human rights of individuals, which is also known as negative obligation; the second form of obligation is more positive type whereby states are obliged to provide a means to fulfill the human right obligations. The UN Charter underscores that all member states have obligation to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion and take joint and separate action in cooperation with the UN to achieve that end.⁴¹ The international law considered an act of any state organ as an act of that state regardless of the position it holds and its character as an organ of central government or territorial unit of the state. The organ may exercise legislative, executive, judiciary or any other function.⁴² The state responsibility for human rights violations involves two fields of international law; international human rights law, and the law of state responsibility. The body of IHRL is found in a comprehensive framework of multilateral treaties, general principles of international law and customary international law. As subjects of international law, states are under an obligation to ensure that the treaties, to which they are a party, and customary international law, are respected.⁴³ Unlike international humanitarian law, international human rights law applies at all times, including during an armed conflict, whether that armed conflict is international or non-international in character, except in so far as a state may have derogated from its obligations.

⁴¹ Art. 55 and 56, Charter of the United Nations, 1945

⁴² See responsibility of states for internationally wrongful acts, international law commission, 2001

⁴³ Tatyana Eatwell, state responsibility for human rights violations committed in the states territory by armed non-state actors, 2018

State responsibility entails legal consequences for that state, such as the duty to provide reparation to the person or entity that has suffered loss as a result of the violation.

In case the state failed to honor its international human rights obligations, there are some international judicial and quasi-judicial mechanisms whereby victims of gross human rights violations able to seek various remedies. Such remedies may have an effect of achieving justice or repairing injury for the victims of such violations. The remedy may encompass governmental efforts to adopt measures that lead to changes in law, or direct provision of reparation such as restitution, compensation, rehabilitation, satisfaction, and the guarantee of non-repetition.

This chapter deals with the remedies available at international judicial and quasi-judicial bodies to victims of human right violations committed in Ethiopia's Tigray region. Before we proceed to the specific remedies, we shall look at the international judicial and quasi-judicial bodies which are accessible to the victims concerned. Then, the study will probe if there is individual criminal responsibility in such international institutions. The next section will focus on the three human rights atrocity crimes and the capacity and independence of domestic courts to genuinely adjudicate perpetrators.

4.2. The effect of lack of legal framework to prosecute international crimes in Ethiopia; ethnic cleansing and crimes against humanity in focus

The term ethnic cleansing is highly political which sometimes used to confuse and down-grade the crime of genocide; sometimes also considered as constituent element of crimes against humanity. So far there is no legally authoritative universal definition of ethnic cleansing. The expression ethnic cleansing has been used in many resolutions of the UN security council and General Assembly, as well as in the judgments and indictments of the ICTY, without clearly defining the term nor constitute one of the counts for prosecution. Ethnic cleansing has not been recognized as an international crime under international law, rather it was considered to come from the literal translation of Serbo-Croatian expression "etnicko ciscenje" in the former Yugoslavia conflict.⁴⁴

⁴⁴ See UN's Office on Genocide prevention and the responsibility to protect website (ethnic cleansing) available at <https://www.un.org/en/genocideprevention/ethnic-cleansing.shtml> accessed date May 04 2024

The UN commission of experts⁴⁵ has provided working definition of the phrase as the forceful removal of ethnic, religious, or other groups from a certain location to create ethnic homogeneity in favor of the dominant group. It is a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas. The commission provides long list of coercive practices used to remove the civilian population including: murder, torture, arbitrary arrest and detention, extrajudicial executions, rape and sexual assaults, severe physical injury to civilians, confinement and deportation of civilian population, deliberate military attacks or threats of attacks on civilians and civilian areas, use of civilians as human shields, destruction of property, robbery of personal property, attacks on hospitals, medical personnel, and locations with the red cross/red crescent emblem, etc. the commission admits that the above mentioned acts can constitute crimes against humanity, war crimes or genocide.

The task of determining the scope of ethnic cleansing is very difficult and sometimes may confuse with genocide or crimes against humanity. That could be the reason why the ICTR and ICTY have tried constituent acts of ethnic cleansing under the brand of other crimes such as crimes against humanity and genocide; no indictment had tried for crime of ethnic cleansing separately.⁴⁶ Generally, the crime of ethnic cleansing is not universally recognized as separate international crime, nor have precise definition.

In Ethiopia, there have been many accusations of widespread ethnic cleansing atrocities,⁴⁷ particularly during the two years' war in Tigray, Afar and Amhara regions. However, there is no domestic law that criminalizes ethnic cleansing; neither the criminal code nor the constitution specifically stipulated it as punishable act. The absence of criminal provision in Ethiopian law makes it difficult for the courts to adjudicate perpetrators of ethnic cleansing. Some writers argue that ethnic cleansing committed within the requirements of the international genocide law shall

⁴⁵ Ibid, the UN Commission of experts mandated to look into violations of international humanitarian law committed in the territory of former Yugoslavia interim report S/25274

⁴⁶ Addisu Genet Ayalew, Approaching ethnic cleansing within the criminal law of Ethiopia, Beijing law review, Vol. 10 No. 4, September 2019

⁴⁷ See the Human Rights watch report 2022 on crimes against humanity and ethnic cleansing in Ethiopia's western Tigray; the press statement of the US. Secretary of state Antony J. Blinken on war crimes, crimes against humanity, and ethnic cleansing in Ethiopia, march 20, 2023

be prosecuted based on crime of genocide, whereas if it lacks the intention element it will fall under other core international crimes in particular crime against humanity as far as it was committed as part of widespread and systematic attack.⁴⁸

However, the above argument may not have any help to courts in Ethiopia which cannot able to prosecute cases of ethnic cleansing as separate crime. First, the crime of ethnic cleansing is not well defined even at the international level; there is no international agreement or court decision in this regard. Second, acts that constitute ethnic cleansing cannot be prosecuted by genocide due to legal and political stringent requirements. Moreover, crime against humanity is not recognized under Ethiopian criminal law as we discuss in the next section. Generally, legally speaking enacting a law that expressly criminalizes crimes against humanity and ethnic cleansing would help solve the problem.

4.3. The need to criminalize crimes against humanity in Ethiopia

Ethiopia has been accused of committing horrendous international crimes, including crimes against humanity and war crimes.⁴⁹ Unlike genocide and war crimes, the crimes against humanity is not recognized or criminalized under the Ethiopian law. Of course, the Ethiopian constitution has used the phrase ‘crimes against humanity’ under article 28⁵⁰, but this is simply to denote the international crimes in general. They can, of course, refer to crimes enshrined in international conventions to which Ethiopia is a party. But this doesn’t seem to work in case of crimes against humanity. Unlike the other two international crimes, crime against humanity

⁴⁸ See addisu (2019) supra note 152

⁴⁹ Report of the international commission of human rights experts on Ethiopia, human rights council, 11 September – 6 October 2023

⁵⁰ Article 28: Crimes against Humanity

1. Criminal liability of persons who commit crimes against humanity, so defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, such as genocide, summary executions, forcible disappearances or torture shall not be barred by statute of limitation. Such offences may not be commuted by amnesty or pardon of the legislature or any other state organ.

2. In the case of persons convicted of any crime stated in sub-Article 1 of this Article and sentenced with the death penalty, the Head of State may, without prejudice to the provisions hereinabove, commute the punishment to life imprisonment (Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995)

doesn't have its own international convention; moreover, Ethiopia is not a state party to the Rome statute of the international criminal court where the three international atrocity crimes are criminalized. So the reference of the constitution "... crimes against humanity, so defined by international agreements ratified by Ethiopia..." seems meaningless until Ethiopia ratifies the Rome Statute or any other forthcoming international convention that deals with crimes against humanity. All in all, the constitution doesn't seem to have any help for the Ethiopian courts in their effort to prosecute perpetrators of crimes against humanity.

The crime of genocide and summary executions do not fall under the definition of crimes against humanity. Hence, it would be illogical to argue as if the drafters of the constitution intend to incorporate the crimes against humanity, as its text shows the lack of the intention of the legislature to do that. The Amharic version of the constitution seems to have slight difference from the English version. One might notice that the former identified four crimes that considered as crimes committed against human kind by the international agreements ratified by Ethiopia. Of course, all the crimes mentioned under the constitutional provision are crimes committed against human kind, but not constituent elements of the crimes against humanity in its modern sense. If the intention of the drafters was to deal with crimes against humanity, they would have differentiated it, at least, from the crime of genocide which is well defined in the genocide convention of 1948.

Similarly, there is no provision in the 2004 Criminal Code⁵¹ that deals with crimes against humanity. The criminal code contains detail provisions which prohibit international crimes such as genocide and war crimes; but not crimes against humanity. As we know these international crimes are very different in their notion, intent and crime elements.

Crimes that the international community condemns to safeguard the international peace and security are not ordinary crimes. It has reached on unanimity that the core international crimes attained the *jus cogens*⁵² status, and imposes *erga omnes* obligation on all states to have both legal and institutional frameworks that enable to fight against impunity in relation to these core crimes. Tadesse (2022) argued that prosecuting crimes against humanity tantamount to the

⁵¹ See the Federal Democratic Republic of Ethiopia Criminal Code Proclamation No.414/2004, art 269-280

⁵² UN Convention on the prevention and punishment of the crime of Genocide, 1948

inability or unwillingness to prosecute.⁵³ He added that focusing on prosecuting ‘predicate offences’ such as murder, rape, and grave bodily injury could be seen as an attempt to shield perpetrators from justice, and doesn’t consider relevant rules on statutory limitations, immunities, superior orders and command responsibility.

Crimes against humanity and genocide are two separate crimes that have different contextual and mental elements. In addition to genocide the Criminal Code provides war crimes as crimes in violation to international law specifically laws of armed conflict. War crimes require the nexus between an act and the existence of armed conflict (warfare). However, the nexus between an act and armed conflict was not a requirement for crimes against humanity under customary international law as well as in the ICTR and Rome Statutes. Therefore, the 2004 Criminal Code does not have prohibition of crimes against humanity.

The other crucial point that is worth discussing here is the possibility of domestic courts to apply international customary rules as gap filling mechanism. Article 2(2) of the federal courts amendment proclamation⁵⁴ stated that courts may use custom as a source of law to adjudicate cases. But such stipulation has not been incorporated in the new federal courts proclamation⁵⁵ that repealed the previous proclamations including proclamation no. 321/2003. Even though, there are few attempts by the federal Supreme Court to use international instruments ratified by Ethiopia in rendering decisions, the general experience of Ethiopian courts show they are reluctant to apply international treaties ratified by Ethiopia let alone un-codified customary international law.⁵⁶

⁵³ Tadesse Simie Metekia, prosecuting crimes against humanity in Ethiopia: where is the law, published in institute for security studies, June 2022

⁵⁴ See a proclamation to amend the federal courts proclamation, proclamation No. 321/2003, this proclamation is now repealed by proclamation No 1234/2013 (federal courts proclamation No.1234/2013

⁵⁵ Federal courts proclamation No. 1234/2013

⁵⁶ Messay Asgedom, The Place of Crimes against Humanity under the Ethiopian Legal System: A Reflection, Bahir Dar University Journal of Law, Vol.3, No2 (2013), pp 418

4.4. International judicial and quasi-judicial remedies for human right atrocities

4.4.1. Finding a way for justice in international courts

Human rights protection is a crucial aspect of international law and plays a vital role in ensuring the equitable treatment and well-being of every human being across the world. International courts play a significant role in upholding human rights by providing a forum for addressing human right violations and ensuring accountability for individual perpetrators. The Universal Declaration of Human Rights set a common standard of obligation for all peoples and states to ensure respect and protection of human rights and fundamental freedoms for all individuals regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵⁷ International courts provide a mechanism for individuals to seek redress for violations of their rights, ensuring accountability for governments and other non-state actors responsible for human right abuses.

International courts operate based on international law and agreements ratified by participating states; these courts have their own specific procedures, rules of evidence and sentencing guidelines that help addressing the gross human right violations. The ICJ has established to deal with disputes between states and provides advisory opinion on legal issues, including violations of human rights. However, individuals cannot directly submit complaints to the ICJ.⁵⁸ The court has competence to see all cases which the parties refer to it, particularly, those matters provided for in the Charter of the United Nations or in treaties and conventions in force. The jurisdiction of the ICJ extends in all legal disputes including; the interpretation of a treaty, any question of international law, the existence of any fact which, if established, would constitute a breach of an international obligation, and the nature or extent of the reparation to be made for the breach of an international obligation.⁵⁹

Due to the fact that the ICJ, the principal judicial organ of the UN, did not have jurisdiction to see cases that involves individuals who involve in violations of international law, international

⁵⁷ See article 2 of the Universal Declaration of Human Rights (UDHR)

⁵⁸ See article 34 and 35 of the ICJ Statute, only states can be parties in cases before the court. However, non-member states can submit applications upon the payment of the expenses of the court.

⁵⁹ See article 36 of the ICJ Statute

criminal tribunals had to be established. The four victorious Allied powers signed the London agreement in 1945 to establish the international criminal tribunal, also known as the Nuremberg Tribunal. The Nuremberg tribunal was formed to try and punish persons who “committed Crimes against Peace, War Crimes, and Crimes against Humanity. The tribunal’s prosecutors indicted twenty-two senior German political and military leaders and found nineteen individual defendants guilty and sentenced them to punishments that ranged from death by hanging to fifteen years’ imprisonment. The jurisdiction of the Nuremberg tribunal was limited for the trial and punishment of the major war criminals of the European Axis countries. Similarly, the international military tribunal for the Far East was established in 1946 to try individuals for Crimes against Peace, War Crimes, and Crimes against Humanity.

Moreover, international criminal tribunals and special courts have been established by the United Nations Security Council to prosecute individuals responsible for war crimes, genocide, crimes against humanity and crime against peace in different countries. The primary objectives of these tribunals are ensuring justice, truth finding, deterring future crimes by punishing perpetrators, promoting reconciliation, and providing reparations to victims. One of the most well-known international criminal tribunals is the international criminal tribunal for the former Yugoslavia (ICTY)⁶⁰ was established by the United Nations Security Council in 1993. Similarly, the international criminal tribunal for Rwanda (ICTR)⁶¹ was setup by the UN Security Council in 1994. There are also special courts with international or internationalized character which have been established to address specific situations or conflicts that require immediate attention and focus. These special courts have limited temporal or special jurisdiction and created to address specific crimes in specific countries. For example, the Special Court for Sierra Leone (SCSL), the Iraqi Special Tribunal (IST), the Extraordinary Chambers for Cambodia (EC-Cambodia), the Special Panels for Serious Crimes in East Timor (SPSC) and the UNMIK court system in Kosovo were established to prosecute perpetrators of serious crimes of international law in the respective countries.

The two years bloody war in Ethiopia’s Tigray region has led to wide spread human right violations across the region. The conflict which erupted in November 2020 has resulted in a dire

⁶⁰ UN Security Council Res. 827, 25 May 1993

⁶¹ UN Security Council Res. 955, 8 Nov. 1994

humanitarian situation with wide spread reports⁶² of atrocities committed against civilians, including extrajudicial killings, sexual violence, using humanitarian aid as means of war, ethnic cleansing, crimes against humanity, and forced displacement of civilians etc. One of the most disturbing aspects of the conflict in Tigray is the widespread reports of rape and sexual violence which have been used as weapon of war to terrorize and demoralize communities, leaving lasting physical and psychological wounds on survivors and their families. The war has resulted in mass displacement of hundreds of thousands of civilians, with reports of mass killings, sexual violence, and other human right abuses by all parties involved in the conflict; inhabitants have been driven from their homes, forced to flee their communities, and subjected to an imaginable hardships as they search for safety and assistance. The displacement crisis in Tigray has had far-reaching consequences such as families have been separated, children remained without parents, and displaced persons lack access to basic necessities such as food, water, healthcare, and shelter, making them vulnerable to malnutrition, disease, and other health risks. This situation has created a climate of fear and impunity, with perpetrators largely escaping accountability for their actions.

The Ethiopian government promised to ensure criminal accountability by investigating and prosecuting those responsible for gross violations of human rights violations. The Ethiopian government has international obligation to protect and uphold human right principles and fundamental freedoms as enshrined in international instruments. Hence, it has to devise a mechanism to investigate, prosecute and punish perpetrators of human rights atrocities in Tigray and other regions. The investigations of human rights atrocities in Tigray need to be transparent, impartial, and should comply with international standards. The government should be committed to ensure the full cooperation of state authorities, security forces, and other relevant institutions in these investigations to identify and prosecute the perpetrators. In this regard, the establishment of a joint investigative committee by the Ethiopian Human rights commission and the office of the United Nations High Commissioner for Human Rights (OHCHR) can be taken as first important step taken by the Ethiopian government to address concerns regarding accountability for crimes committed in Tigray. Nevertheless, this joint investigation committee suffers from

⁶² See the report of International Commission of Human Rights Experts on Ethiopia, 22 Sep. 2022; US department of state executive summary, 2022; Amnesty International report on crimes against humanity in western Tigray zone April 6, 2022

myriad limitations including, denial of access to many areas, harassment and intimidation by regional security forces, government's failure to allow satellite phones procured for the investigation.⁶³

Another important point worth discussing is the government should provide victims and survivors of human right atrocities the mechanism to seek justice, reparations, and redress for the harm they have suffered. One way to provide mechanism for the victims is through the establishment of independent and impartial judicial organs, particularly, special courts or tribunals dedicated to examining cases of human rights violations in Tigray, Afar and Amhara regions, where victims and their families can present their testimonies, and seek accountability for the crimes committed against them. These special courts and tribunals may help expedite legal proceedings, deliver justice for victims, and hold perpetrators accountable for their crimes. The joint investigation held in collaboration between Ethiopian Human Rights Commission and the UN Office of the United Nations High Commissioner for Human Rights (OHCHR, found out that victims of the conflict do not have trust and confidence on the existing Ethiopian judicial organs.⁶⁴

Accountability is a crucial means to prevent the recurrence of gross human right violations in the future by teaching a lesson to both the perpetrators and other persons, that no criminal can evade punishment sooner or later. The government must be committed to prosecute individual perpetrators thereby ending impunity. By collaborating with international judicial and quasi-judicial human right institutions the Ethiopian government can demonstrate its commitment to uphold fundamental human rights principles, address human right atrocities in Tigray and other regions, and ensure justice for victims and survivors. In the next sub-section the right of victims for reparation will be discussed along with the available international mechanisms for victims of human right atrocities.

⁶³ See Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) 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

⁶⁴ Ibid

4.4.2. Right to remedy of victims of human right violations in international judicial (quasi) bodies

If there is reason to believe that there have been gross violations of international human rights law and serious violations of international humanitarian law in the territory of (in any place where the state exercises effective control) any state, that state is under international duty to investigate, prosecute, and punish, if found guilty, the person allegedly responsible for the violations. The state has also a duty to cooperate with other states or international judicial organs competent in the investigation and prosecution of these violations. Victims of these violations have fundamental right to seek judicial remedy in domestic or international judicial bodies without any form of discrimination.

Both the terms ‘remedy’ and ‘reparation’ are often used interchangeably in the context of trying to fix or made good a wrongdoing through different methods. But legally these words have differences. From the human rights perspective, the word ‘remedy’ may refer to actions taken to stop or address human right violations through legal or institutional means; this may include bringing legal action to court of law, or submitting grievance applications to various institutions which aimed at ensuring that human rights are respected and protected. Reparation, on the other hand, focuses on providing redress and compensation to individuals or groups who have suffered harm as a result of human rights violations. According to the UN Principles on Reparation, full and effective reparation includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁶⁵ Generally, for the purpose of this study remedy refers to the procedural remedies aimed at addressing and preventing human right violations including the judicial and quasi-judicial mechanisms at national or international level.

⁶⁵ See, also, Committee against Torture, General Comment No. 3, Implementation of article 14 by States parties, UN Doc CAT/C/GC/3 (2012), which states: “The Committee considers that the term ‘redress’ in article 14 encompasses the concepts of ‘effective remedy’ and ‘reparation’. The comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention.” See also Articles on State Responsibility for Internationally Wrongful Acts, adopted by the ILC and submitted to the General Assembly under UN Doc A/56/10 (2001), Article 34 (Forms of reparation), which provides: “Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter”

The right to remedy of victims of human rights violations is recognized in many international human rights instruments including the UDHR (article 8), ICCPR (article 2), CAT (article 14), ICERD (article 6), CRC (article 39), and ICPED.⁶⁶ In line with this, the United Nations commission on Human Rights also adopted the basic principles and guidelines on the right a remedy and reparations for victims of violations of international human rights and humanitarian law which aimed to provide victims with various remedies and reparations. This comprehensive document stipulates that victims of a gross violation of international human rights law and of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as well as other remedies such as administrative and other mechanisms and proceedings conducted in accordance with domestic law. To ensure the right of victims to access to justice, states have an obligation to⁶⁷; a) disseminate, through public and private mechanisms, information about all available remedies for both violations; b) take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims; c) provide proper assistance to victims seeking access to justice; d) make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy.

So, states have obligation to implement these rights in a non-discriminatory manner, ensuring that all individuals, including marginalized and disadvantaged groups have access to justice and reparations. The right to remedy and reparation cannot even be restricted or derogated in emergency times. In relation to this, the Human Rights Committee has indeed underlined in its General Comment No. 29 on derogations during a State of emergency that the right to a remedy constitutes “a treaty obligation inherent in the Covenant as a whole” and that even in times of emergency, “the State party must comply with the fundamental obligation, under article 2, paragraph 3, of the Covenant to provide a remedy that is effective.”⁶⁸

⁶⁶See article 24 of the International convention for the protection of all persons from enforced disappearance

⁶⁷ UN Convention on the prevention and punishment of the crime of Genocide, 1948, VIII access to justice

⁶⁸ Human Rights Committee, General Comment No. 29 on Derogations during a State of Emergency, UN Doc CCPR/C/21/Rev.1/Add.11 (2001), para 14

Despite the recognition of the right to remedy and reparation in various international and national human right instruments there are significant challenges in its implementation. States are most often unable to provide adequate and effective remedies to victims, including situations where victims are denied access to justice, face intimidation, or persecution for seeking redress, or where judicial systems are corrupt, biased, and ineffective. The other major challenge is the lack of political will, resources, and capacity within national legal systems. Almost all international human right instruments underscore the establishment and enforcement of strong domestic mechanisms to protect and uphold human rights. However, in case the state doesn't (cannot) honor its international human right obligations, it has a duty to cooperate with international institutions in their efforts to respect human rights particularly in ensuring accountability and justice. International human right institutions should be allowed to investigate any human right violations and prosecute those who are responsible for such violations without any impediment. The next section focuses on the international judicial and quasi-judicial remedies which victims of the Tigray war can use to seek remedy. Quasi-judicial human right bodies are human right institutions that have powers and functions similar to judicial bodies but they are not judicial courts.

4.5. Ethiopia's commitment to accept the competence of International human right monitoring bodies

Ethiopia is characterized by the deeply rooted culture of impunity and increasing nature of human rights violations and abuses due to the recurrent conflicts and inter-communal violence. The frequently occurring political instabilities and civil wars in the country have negative impact in its human right protection records. The national human right adjudicatory bodies are not independent, impartial and capable institutions to address the massive and widespread human right violations and provide victims of human right violations and abuses with remedies and reparation. The deteriorating human right situation and the lack of effective national human right mechanisms required greater political commitment of the government to ensure accountability through different ways. Of course, strengthening national human right legal and institutional frameworks should be the primary task. Individual victims should be given access to justice, and perpetrators must be investigated, prosecuted and punished for their acts. However, due to the inefficiency of the national human right mechanisms, Ethiopia should allow the regional and

international human right accountability mechanisms to operate. Particularly, it must accept the international individual complaint mechanism to broaden the universal rights of citizens to claim a right to a remedy for human rights violations.

The individual complaint mechanism provides the opportunity for the state to show its commitment to discharge its human rights obligations through every possible means, to present its national circumstances to the international community, and to interpret and apply the requests and recommendations of the treaty bodies based on its context.⁶⁹

As Ethiopia is the founder and birthplace of the African Union, a high level of political commitment to ensure human rights and fundamental freedoms is expected including joining regional human rights accountability mechanisms which will also contribute to the country's increased influence in the continent.⁷⁰ As part of this legacy, Ethiopia has ratified many human right treaties, but doesn't accept individual complaint mechanism of any of the treaty bodies which are mandated to observe compliance through monitoring the implementation of the rights enshrined in the treaties and rendering decisions on complaints brought against state parties.

4.6. United Nations Charter Based Mechanisms

The UN Charter was adopted in the aftermath of the catastrophic World War II with a hope to rehabilitate the human and material destructions, particularly, 'to save succeeding generations from the scourge of war, which has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.'⁷¹ Obviously, the charter was adopted as a response to the gross destruction of war on humanity. However, the drafters of the charter are criticized for their failure to adequately emphasize

⁶⁹ Rabel Desalegn, The Benefits and implications of ethiopia joining international and regional human rights adjudicatory bodies, Konrad-Adenauer-Stiftung, August 2022

⁷⁰ Ibid

⁷¹ See the first paragraph of Charter of the United Nations adopted in June 1945 in San Francisco

human right protection through strong legal and institutional means. This is partly due to the fact that the two ideological blocks have exerted greater pressure on the drafting of the charter. Some writers claimed that the drafters of the document were not all that interested in human rights as they omitted the institutions and mechanisms necessary for this end.⁷²

However, it doesn't mean that the charter has no significance in human right protection and its development in the years that follow its adoption. In addition to the preamble of the charter that reiterates 'faith in fundamental human rights, in the dignity and worth of the human person,' article 1 sub-article 3 puts encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion as one of the cardinal purposes of United Nations. Similarly, article 55 and 56 put the objectives of the UN to promote, inter alia, 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion,' and claims that all members states are obliged to cooperate with the organization for the achievement of the later. Thus, the UN Charter has given fairly enough attention to the recognition and protection of human rights and fundamental freedoms.

When we look at the UN human rights system, we may feel satisfied that there are sufficient institutions and mechanisms that successfully guarantee the compliance of human rights at international level. The daily human right briefings, global discussions and deliberations, the expressions of concern, the media headlines, and so on made us to feel comfortable in relation to the international response against human right violators. The politically motivated 'bread and stick' strategies of United States and Europeans confused us to think that there is strong international checking mechanism to suppress non-compliance of human right obligations. But in reality, there is loosed international institutional setup that can independently accept complaints on human right violations and give binding decisions. With a view to properly address all related issues, this section provides the UN Charter based bodies that plays crucial role in upholding human rights. For the purpose of this study, UN bodies which have an impact in human rights

⁷² Abadir Mohammed, *International Mechanisms Dealing with Gross Violations of Human Rights: Opportunities and Challenges for the International Criminal Court*, 2009, pp 40

such as the Security Council, Secretary General, and the General Assembly are included alongside with other judicial and quasi-judicial bodies.

4.6.1. The UN organs duty to protect human rights

Article 7 of the UN Charter provided that the United Nations has six principal organs, namely, the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the Secretariat. According to article 13 of the UN Charter, one of the functions of the UN General Assembly is to initiate studies and make recommendations for the purpose of ‘promoting international co-operation in the economic, social, cultural, educational and health fields and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion’. In line with this mandate the UN General Assembly has established the Office of the High Commissioner for Human Rights (OHCHR) and special committees important in relation to human rights. It has a power to ‘initiate studies and make recommendations’ on human rights.

The UN Charter also provides that the Security Council has authority to deal with grave human right violations. The UN Security Council, as the ultimate decision-making body of the UN, has the power to issue ceasefire directive, dispatch military observers or a peacekeeping force; or in serious cases, it can impose economic sanctions, arms embargos, financial penalties and restrictions, travel bans, the cut-off diplomatic relations, or even collective military action.⁷³

The Security Council has also a power to establish ad hoc tribunals and special courts to prosecute serious violations of international law, basically international human rights law and humanitarian law. Accordingly, the Security Council has established many international ad hoc tribunals and special courts. Unlike the ICJ, or ICC whose competence needs approval by the state concerned, the international criminal tribunals are established by the Security Council even against the overt opposition of the state over which the tribunal assumes jurisdiction. Later on, Security Council, instead of establishing an ad hoc tribunal, prefers to request the Secretary General of the United Nations to negotiate an agreement with the concerned governments to

⁷³ Available at the official website of the United Nations <https://www.un.org/en/our-work/protect-human-rights#:~:text=the%20UN%Security%20Council%2C%20at,to%20use%20his%20good%20offices>

create an independent special court that has a mandate to adjudicate serious violations of international law committed in different countries. These special courts are commonly known as mixed internationalized criminal courts or simply UN special courts.⁷⁴ The special courts on Sierra Leone, East Timor, Kosovo, Cambodia, and Iraq etc. are best examples of the special courts established by an agreement reached between UN Secretary General and the government of the country in which serious violation of international law have been committed.

Recently, the United Nations in general and the Security Council in particular have faced many geopolitical problems. It seems, the five permanent members of the Security Council have lacked consensus to pass decisions even on serious international issues. Many criticized the UN security council for its hesitation to take any measure despite there were credible information about the grave crimes committed by all parties to the Tigray war. The Security Council has met for more than 11 times in relation to the war in Tigray, but failed to pass any measure against the parties who were participating in the catastrophic war. The reason for this failure could be due to the geo-political divergence of the permanent members of the UN Security Council. Particularly China and Russia have consistently rejected all proposals. Despite such failure, many hoped the Security Council will establish special court to investigate the international crimes that were committed and to make sure those that have committed such crimes will be committed for their deeds.⁷⁵

The UN human rights system includes both charter based bodies and treaty-based human rights mechanisms. The Charter-based human rights bodies are established in accordance with the provisions of the UN Charter. Previously, the charter-based bodies were the commission on human rights and its subsidiaries, whereas currently the Human Rights Council and its subsidiaries including the Universal Periodic Review Working Group and the Advisory Committee are called Charter-Based; they are established by resolutions of the principal organs

⁷⁴ United Nations office of the high commissioner for human rights, what are international courts available at <https://seoul.ohchr.org/files> (the Office of the United Nations High Commissioner for Human Rights is a department of the United Nations Secretariat that works to promote and protect human rights that are guaranteed under international law.)

⁷⁵ Eyassu Gayim, the war in Tigray and the challenges faces by the United Nations, San Diego State University, 2021

of the UN whose authority flows from the UN Charter.⁷⁶ As per article 68 of the Charter, the ECOSOC has given the power to establish a number of important commissions in the sphere of human rights including the UN Commission on Human Rights that has set up the Sub-Commission on the Promotion and Protection of Human Rights. Non-transparency and high politicization of the Commission has led to the dissolution of the Commission on human rights, and replaced by UN Human Rights Council.

The Council was created by the UN General Assembly resolution 60/251 on 15 March 2006 with the main purpose of addressing situations of human rights violations and make recommendations on them. Unlike the Commission, which was a functional commission of ECOSOC, the Council is intergovernmental body which has been constituted as a subsidiary body under the General Assembly. One of the key functions of UN Human Rights Council is its Universal Periodic Review which involves the periodic review of the human rights performance of all UN Member States in four-year cycles. During the Universal Periodic Review process, each state is required to submit a comprehensive report detailing its human rights practices as well as any initiatives it has undertaken to address human right violations. The UNHRC can also appoint independent experts, known as special rapporteurs, to investigate human rights situation of particular countries. Moreover, the Council can adopt resolutions and establish independent commissions of inquiry in urgent and high-profile situations of human rights violations.

In line with this power, the Human Rights Council, in its resolution S-33/1 of 17 December 2021, has established the International Commission of Human Rights Experts on Ethiopia, with a mandate to investigate violations of international human rights law and humanitarian law in Ethiopia since 3 November 2020. In addition to collecting and preserving evidence, the commission must also provide guidance on transitional justice, including accountability, reconciliation and healing. The ICHREE, in its final report in 13 October 2023, found a reasonable ground that the Ethiopian National Defense Forces, Eritrean Defense forces, regional forces and affiliated militias have committed gross violations of international human rights and humanitarian laws in Tigray. These crimes may amount to war crimes and crimes against humanity. Similarly, the Tigray forces also committed severe violations and abuses against civilians in Amhara, and Afar regions including killings, widespread rape and sexual violence, destruction of property and looting, which may amount to war crimes.

⁷⁶ Dag Hammarskjöld Library, UN Human Rights Documentation

Unfortunately, the mandate of the Commission was expired on 4 October 2023, despite the loud cry of human rights bodies that kept warning the Human rights Council to extend its mandate. In its final report, the ICHREE urged the Ethiopian government to implement all inclusive national transitional justice policy. Regrettably, the failure of the Human Rights Council to renew the mandate of the expert's commission manifests the minimal attention of the international community to ensure accountability in Ethiopia.

The UN Human Rights Council has been issuing annual report about the human rights situation in Ethiopia.

4.7. The African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (herein after the African Commission) is established in accordance to the African Charter on 1987 in Addis Ababa, Ethiopia and officially inaugurated on June 12 1989.⁷⁷ The African Commission is officially charged with three major functions, as entrusted to it by the Assembly of Heads of State and Government; the Protection of Human and Peoples' Rights, the promotion of human and peoples' rights, and finally, the interpretation of the African Charter on human and peoples' rights. It is a quasi-judicial body established under article 30 of the African Charter with the aim of promoting and protecting human and peoples' rights in the African continent. The ACHPR also undertakes fact-finding missions to State Parties on its own initiative or at the request of AU Policy Organs.

The African Commission has a function to consider individual communications alleging violations of human and peoples' rights committed in Africa. Article 55 of the charter impliedly cited these communications under 'other communications' which are expected to be submitted by individuals, groups of individuals and NGOs. The charter doesn't specifically provide as to who should qualify to submit a communication before the commission; but the readings of article 55 and 56 of the charter, as well as Rule 104 of the Rules of Procedure of the Commission implies that the complainant under the 'other communications' can be an individual human

⁷⁷ See the 31520 doc, the African Union document published during the African year of human rights with a focus on the rights of women (the African Commission on human and peoples' rights: at the forefront of advancing human rights

being.⁷⁸ The practice of the Commission in considering individual communications reveals that in addition to natural persons any NGO, whether or not it has observer status before the commission may be classified as an ‘individual’ for purposes of litigating before the commission.⁷⁹ Hence, NGOs can submit complaints against a respondent state on behalf of other individuals, on behalf of other NGOs, on behalf of their own interests. In Communications 147/95, 149/96, and in the *Jawara v. Gambia* case, the commission dismissed the argument that its power to consider communications was limited only to those case revealing serious and massive violations of human rights. Generally the commission is empowered to consider any communication from anyone provided that there has been violation of human rights.

So far, the African Charter on Human and Peoples’ Rights has been ratified by the 54 African Union member states, Republic of South Sudan became the latest state party to the African Charter. Ethiopia ratified the African Charter on Human and Peoples’ Rights on June 15, 1998. In the *Gabre-salassie v. Ethiopia*, after considering the alleged human rights violations committed against members of the former Mengistu Regime who surrender to the new EPRDF government, the African Commission declares that the respondent state (Ethiopia) has violated the right of the victims to be tried within a reasonable time by an impartial court or tribunal as recognized in article 7(1)(d) of the African Charter.⁸⁰ In another communication, the Ethiopian and Eritrean Governments are accused of expulsion of thousands of persons of Ethiopian or Eritrean origin from Eritrea and Ethiopia respectively. The Eritrean Government also accused of rape, torture and cruel treatment against Ethiopian women and girls in the war affected areas by Eritrean soldiers.⁸¹ The above communications indicate individuals and NGOs (on behalf of others) can(had) submit individual complaints against Ethiopia which ratified the Charter in 1998.

⁷⁸ Article 104 of the Rules of Procedure uses the words ‘his/her communication’ to connote that individuals are allowed to bring complaints to the Commission.

⁷⁹ Sabelo Gumede, *Bringing communications before the African Commission on Human and Peoples’ Rights*, *African Human Rights Journal*, 2003, pp 121

⁸⁰ See communication No. 301/2005, African Commission on Human and Peoples’ Rights fifth ordinary session 5th November 2011, *Haregewoin Gabre-Salassie and IHRDA 9 on behalf of former Dergue Officials) v. Federal Democratic Republic of Ethiopia*

⁸¹ See communication No. 233/99-234/99, *Interights (on behalf of Pan African Movement and Citizens for Peace in Eritrea) v Ethiopia and Interights (on behalf of Pan African Movements and Inter African Group) v Eritrea*

Therefore, Victims whose human rights have been violated in Ethiopia can submit a complaint/communication to African Commission on Human and Peoples' Rights. NGOs have also an opportunity to submit complaints on behalf of the Victims of human rights violations in Ethiopia. But, they are obliged to comply with the admissibility requirements provided under article 56 of the African Charter. Submitting individual communication to the African Commission may serve as a means to seek justice, raising awareness about the violations, and setting precedents and contribute to the development of human rights norms and standards in Ethiopia and beyond. Bringing cases to the attention of the African commission can draw international attention to the human rights situation in Ethiopia, whereby exerting pressure on the government to address the issues at hand.

The problem is that the African Commission is a quasi-judicial body which can only make recommendations. Unlike the African Court, the commission cannot pass binding decisions. Moreover, individual perpetrators cannot be accountable in the overall African mechanisms. Neither the court, nor the commission have jurisdiction to investigate and prosecute individual perpetrators.

Chapter Five

5. *Conclusion and Recommendations*

5.1. Conclusion

The international human rights law comprises both the norms, rules and principles that govern the protection and promotion of human rights, as well as mechanisms for upholding human rights including international courts and quasi-judicial bodies. The first aspect of international human rights law is related to the international instruments that contain substantive rights and human right standards, whereas the second one dealt with the institutional and procedural setups constituted to uphold the implementation of human rights across the globe. The international community has able to develop sophisticated international human right regime, particularly after the World War II. States have pledged to protect and promote human rights of their citizens and everyone within their jurisdiction. Despite the existence of such international human right instruments and the states' responsibility, gross human rights abuses have been recorded in many countries.

Ethiopia is known for its history of consecutive civil wars and conflicts that resulted in systematic and widespread human right abuses in different parts of the country. These gross human rights violations have been witnessed in time of peace and in time of war. But war by itself creates anarchic situation exacerbating the nature and magnitude of such human right violations. The war erupted in November 2020 in the northern region of Ethiopia has brought the human right situation of the country into its knee. Gross human rights violations and grave breaches of international humanitarian law have been reportedly committed; among others, gang rape and other forms sexual abuses, extra-judicial killings, mass deportations based on ethnic backgrounds, using food and medicine as means of war, indiscriminate attacks, ethnic cleansing, crimes against humanity and war crimes. The New Line Institute's investigative report also indicates that at least 4 acts of genocide against Tigrayans have been committed by Ethiopian and Eritrean defense forces.

The study underscores that the domestic judicial mechanisms are not capable of addressing the human right atrocities committed in Tigray and other parts of Ethiopia due to legal and institutional impediments. The Ethiopian criminal law does not recognize crimes against humanity and ethnic cleansing, which the Ethiopian courts found it difficult to prosecute as per the international criminal law. Due to the fact that there is no convention regarding the above two international crimes, Ethiopian courts may fall short of defining the legality of their decisions on crimes against humanity and ethnic cleansing. Ethiopia is not also a state party to the Rome Statute which defines crimes against humanity.

Many people including lawyers believed that the perpetrators of human right atrocities in Ethiopia will, one day, be held accountable in international courts. They reinforce that the horrendous international crimes shouldn't go unpunished; and they usually hope the international law has remedy to address the human right atrocities committed in Ethiopia, particularly in Tigray region. The victims are also hoped that the international law will not down their suffering to the entirety. They wandered for genuine justice in the international judicial and quasi-judicial mechanisms. They don't have any hope and trust in the domestic institutions including the judiciary.

Hence, this research probes the international judicial and quasi-judicial mechanisms with a view to ascertain which international mechanism are accessible to Ethiopians who are victims of human right atrocities. Accordingly, the three atrocity crimes have been assessed under chapter two of this study. Special emphasis is given to the conceptual framework and fundamental elements of the three international crimes which also known as atrocity crimes, namely, genocide, crimes against humanity and war crimes. As newly emerging concept, the three crimes are collectively called as international atrocity crimes. This naming helps to separate them from other human right violations and received due attention from the international community.

Chapter three of this study is devoted to the international mechanisms which are entrusted to address gross human right violations and provide remedy to the victims. It basically dealt with the modes of operation of the international judicial and quasi-judicial bodies focusing in their role to address serious human rights violations. Therefore, the International Court of Justice is the principal UN judicial organ which is competent to see various legal disputes including human right issues; but the problem is that only states are allowed to bring human right cases against

other member states. Individuals cannot sue or be sued before the ICJ. This makes the ICJ almost inaccessible to individual victims of human rights. The International Criminal Court, on the other hand, assumes criminal jurisdiction of individuals at international level. The Rome Statute that established the ICC stipulated that individual perpetrators of the four crimes, namely genocide, crimes against humanity, war crimes and the crime of aggression, are prosecuted and punished in the ICC, provided that they are under the jurisdictional limit of states parties. But, regrettably the court doesn't assume international criminal jurisdiction. Despite the arguments for the establishment of permanent criminal court with universal jurisdiction, the ICC assumes only territorial and nationality jurisdictions. Notably, it will have also jurisdiction over cases referred to it by the Security Council, or if any state which is not party to the statute accepted the jurisdiction of the court only with respect to the crime in question. There are also ad hoc tribunals and special courts established by the UN Security Council to address some specific human right and humanitarian concern, and prosecute perpetrators of international crimes. Among others the ICTR and ICTY are prominent ad hoc tribunals which were established to prosecute and punish individual perpetrators of the Rwanda genocide and Yugoslavia's bloody civil war respectively. These tribunals and other special courts have played great role in the development of international criminal regime that prosecutes individuals for international crimes.

Moreover, the chapter also dealt with various quasi-judicial bodies. Quasi-judicial bodies are those bodies that exercise judicial functions such as receiving compliant from states or individuals, examination of evidence, and overseeing adversarial procedures. They can pass views or opinions which doesn't have binding effect. Even though, they cannot pass binding decisions, they play crucial role in interpreting and clarifying treaty provisions so as to create robust international human right jurisprudence and raising awareness about human rights issues at international level. Most of the time states give genuine value to the decisions of international quasi-judicial bodies and take measures to go in line with their recommendations and views.

The African Human Rights mechanisms are also of paramount importance in protection and promotion of human rights in Africa. The African human right mechanisms basically derived from the African Union constitutive act, the African Charter on Human and Peoples' Rights, and subsequent protocols and conventions made under the auspices of African Union. The African Union human rights mechanisms refer to the institutions and procedures put in place to uphold

human rights protection on the African continent. The African Charter on Human and Peoples' Rights is the primary African human right instrument responsible for promoting and protecting human rights in Africa. The African Commission on Human and Peoples' Rights is a quasi-judicial body established by the African Charter to consider cases of human right violations through different ways including by receiving individual communications. The African court of justice and human rights is a merged court of the former African court of human and peoples' rights and the African court of justice. This court has jurisdiction to see cases related to human right violations, interpretation of the African Charter, or any dispute between states parties or with the AU.

The last chapter provides the judicial and quasi-judicial remedies which are available at international level. These remedies include both the procedural remedies as well as the reparations provided to the victims at international level. International courts operate based on international law and agreements ratified by participating states. The ICJ is the principal judicial organ of the United Nations that adjudicates cases that involve disputes between states. Even though the ICJ is not accessible to individuals, states can bring cases of human right violations against other state party. Due to the fact that the ICJ is not competent to prosecute individual perpetrators of gross human right violations, the United Nations Security Council was compelled to establish ad hoc tribunals and special courts with international criminal jurisdiction. Such tribunals and special courts have played crucial role in bringing perpetrators into justice that otherwise wouldn't have been prosecuted in national courts. The chapter has also critically analyzed the commitment of Ethiopia to accept the competence of international judicial and quasi-judicial bodies. It is shown that Ethiopia did not ratify the Rome Statute which establishes the ICC; so Ethiopian perpetrators of serious violations of international crimes are not afraid of being prosecuting in that court. The UN Security Council has never been reached an agreement on establishing ad hoc tribunal or special court to prosecute perpetrators of human right atrocities committed in Tigray and other regions.

Ethiopia has ratified many international and regional human rights treaties, including 7 core UN human right conventions. Nevertheless, Ethiopia has never accepted the competence of UN treaty bodies' inter-state or individual complaint mechanism. It doesn't accept the jurisdiction of any of the committees established to consider individual complaints. This may hamper the

universal rights of citizens to claim the right to a remedy for human rights violations. Similarly, Ethiopia ratified many conventions and treaties made under African Union, but never accept the competence of any African judicial or quasi-judicial body with cases of violations of human rights, save the African Commission on Human and People's Rights. African Commission on Human and Peoples' Rights is the only international quasi-judicial body in which Ethiopian citizens and NGOs can submit complaints for the serious human right violation committed against them, or on behalf of others.

5.2. Recommendations

Based on the above conclusions, the researcher recommends the following:

- ❖ First, the Ethiopian Government must show utmost commitment and dedication to make accountability achievable through various mechanisms; accountability requires the willingness of higher government officials to bring those who committed gross human right violations and other crimes to justice without looking into their position, political fidelity or any other ground.
- ❖ Every move or measure for transitional justice and accountability in Ethiopia shall incorporate the views of victim community, and every effort should be made in consultation with all the parties concerned.
- ❖ The civil society organizations, human right institutions, and the media shall exert influence on the government to ensure accountability, particularly by lobbying and advocating the government to ratify the additional protocols that establish international individual complaint mechanisms. The issue of human right violations and accountability shall always be public concern and remain in the headlines. These institutions in collaboration with higher education institutions must prepare high ranking, inclusive, and open political and academic discussions, and dialog, with a view to raise the awareness of the public on human right issues, and solicit solutions and recommendations.
- ❖ Various human right actors and activists shall continue exerting influence on the government to ratify the Rome statute that established the International Criminal Court, as well as the protocol on the statute of the African Court of justice and human rights to

establish the new African court of justice and human rights. Moreover, the domestic human rights institutions and international community shall put pressure on the UN Security Council to refer the gross violations of international law in Ethiopia to the ICC, or establish independent international court for Ethiopia.

Bibliography

Books

- Roger-Claude Liwanga, the meaning of gross Violation of Human rights: a focus on International tribunals' Decisions over DRC Conflicts, 44 Denv.J.int'l& pol'y 67 (2015)
- Wiliam A, Schabas, Atrocity crimes (Genocide, Crimes against humanity and war crimes, Cambridge University press, 2015
- Taslim O. Elias, the international Court of Justice and some contemporary problems, Springer-science +business media publishing, 1983
- Morten Bergsmo and Philippa Webb, international criminal courts and tribunals ,complimentarity and jurisdiction, oxford University press, 2011
- Karin Oellers-Frahm, multiplication of international courts and Tribunals and conflicting jurisdiction- problems and possible solutions, Max Plank UNYB5, 2001
- Matthew Gillet, and Yutaka Karukaya et al, Reconciling the Dual-faceted Mandates of quasi-judicial human rights bodies: the working group on arbitrary detention's prima facie approach to evidence, published in Oxford University, Human Rights law review , 2024, Vol. 24
- Holscher and Mahumood, Borrowing from the Shariah: the potential uses of procedural Islamic law in the west, from international criminal justice: issues in a global perspective, Delbert Rounds, 2000

- E. Steinerte and R.M.M. Wallace, United Nations protection of human rights; Section A: Mechanisms for human rights protection by United Nations bodies, Published by the University of London Press, 2009
- THOMAS BUERGENTHAL, INTERNATIONAL HUMAN RIGHTS: IN A NUTSHELL
- Sinh Nguyen, Unpacking Treaty Practice: The Differential Informative Power of Human Rights Monitoring Mechanisms, December 15, 2015
- O. Gye Wado, a comparative analysis of the institutional framework for the enforcement of human rights in Africa and Western Europe, 1990
- Rachel Murray (PHD), The African Commission on Human and Peoples' Rights and International law, Hart Publishing Oxford-Portland Oregon, 200
- Obiora Okafor, THE AFRICAN HUMAN RIGHTS SYSTEM, ACTIVIST FORCES, AND INTERNATIONAL INSTITUTIONS, Cambridge University Press, New York, 2007
- TIM BAILEY, After World War II: The Nuremberg and Tokyo War Crimes Trials, The Gilder Lehrman Institute of American History, New York, 2019
- Ogwezzy Michael L. C (PhD)', Challenges and Prospects of the African Court of Justice and Human Rights, 2013

Journals and working papers

- Claire Callejon, Kamelia Kemileva and Felix Kirchmeier, treaty bodies individual communication procedures: providing redress and reparation to victims of human rights violations, Geneva Academy, 2019
- Alexander Skander Galand and Basak cali, Open Global Rights Report by the title 'human rights victims' complaints to UN not treated effectively', march 2020

- The Danish Institute for Human Rights, African Human Rights Complaints Handling Mechanisms A Descriptive Analysis, February 2008
- Ramcharan, Strategies for the International Protection of Human Rights in the 1990s, 13 Human Rights Quarterly 157 (May, 1991)
- Jack Donnelly, Human Rights at the United Nations 1955-85: The Question of Bias, 32 International Studies Quarterly 297 (Sep., 1988)
- Tatyana Eatwell, state responsibility for human rights violations committed in the states territory by armed non-state actors, 2018
- International Commission of Jurists - European Institutions, Redress Through International Human Rights Bodies and Mechanisms Training Materials on Access to Justice for Migrant Children, Module 5, 2018
- Addisu Genet Ayalew, Approaching ethnic cleansing within the criminal law of Ethiopia, Beijing law review, Vol. 10 No. 4, September 2019
- Tadesse Simie Metekia, prosecuting crimes against humanity in Ethiopia: where is the law, published in institute for security studies, June 2022
- Messay Asgedom, The Place of Crimes against Humanity under the Ethiopian Legal System: A Reflection, Bahir Dar University Journal of Law, Vol.3, No2 (2013)
- Rabel Desalegn, THE BENEFITS AND IMPLICATIONS OF ETHIOPIA JOINING INTERNATIONAL AND REGIONAL HUMAN RIGHTS ADJUDICATORY BODIES, Konrad-Adenauer-Stiftung, August 2022
- Oumar Ba, Exit from Nuremberg to the Hague; the Malabo Protocol and Pan –African Road to Arusha, Global studies quarterly, Volume 3, Issue 3, July 2023
- Sabelo Gumedze, Bringing communications before the African Commission on Human and Peoples' Rights, African Human Rights Journal, 2003

International agreements

- The United Nations Charter
- The Universal Declaration of Human Rights (UDHR)
- International Covenant on Civil and Political Rights (ICCPR), General Assembly resolution 2200A (XXI)
- International Covenant on Economic, Social and Cultural Rights (ICESCR), General Assembly resolution 2200A (XXI)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD), General Assembly resolution 2106 (XX)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), General Assembly resolution 34/180
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), General Assembly resolution 39/46
- Convention on the Rights of the Child (CRC), General Assembly resolution 44/25
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), Adopted by General Assembly resolution 45/158
- UN Convention on the rights of persons with disability, adopted in 2006
- Rome statute of the International Criminal Court
- African Charter on Human and Peoples' Rights, 1981 (1982)
- Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights, June 9, 1998
- Geneva Conventions 1949 (adopted 12 Aug. 1949, entered into force 21 Oct. 1950) (GC I-IV), Common Art. 3, and Additional Protocol I (adopted 8 June 1977, entered into force on 7 Dec. 1978) (AP I)

- The corporate responsibility to respect human rights, an interpretative guide, published by the United Nations office of the high commissioner on human rights, 2012.
- United Nations Framework of Analysis for Atrocity crimes, a tool for prevention, adopted by the special advisers to the UN secretary general on the prevention of genocide and on the responsibility to protect in 2014.
- World summit outcome document, principle of responsibility to protect held in 2005.
-

LL.M Thesis

- Abadir Mohammed, International Mechanisms Dealing with Gross Violations of Human Rights: Opportunities and Challenges for the International Criminal Court, 2009