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**THE RIGHT OF ACCESS TO JUSTICE AND DIPLOMATIC
IMMUNITY IN ETHIOPIA: THE NEED FOR REVISITING
THE EXISTING REMEDIAL APPROACH**

**Thesis prepared in partial fulfilment of LL.M programme in
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Advisor: Dr. Mizannie Abate Tadesse

Submitted by: Kurabachew Tirfesa

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Addis Ababa University
School of Graduate Studies

The Right of Access to Justice and Diplomatic Immunity in Ethiopia: The Need
for Revisiting the Existing Remedial Approach

By: Kurabachew Tirfesa

Approved by Board of Examiners

Advisor: _____

Signature

Examiners:

1. _____

Signature

2. _____

Signature

DECLARATION

I, the undersigned, hereby declare that this thesis is original and the result of my own work and has never been submitted to any other institution. I also declare that any secondary sources or materials used in this thesis have been duly acknowledged.

KURABACHEW TIRFESA

Date: June, 2020

Signature: _____

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LIST OF ABBREVIATIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
BC	Before Christ
CCI	Council of the Constitutional Inquiry
CD	Corps Diplomatique (Diplomats' vehicle plates identification)
DRA	Diplomatic Relations Act
ECtHR	European Court of Human Rights
FGD	Focused Group Discussion
FMA	Foreign Missions Act
FDRE	Federal Democratic Republic of Ethiopia
ICJ	International Court of Justice
IGAD	Intergovernmental Authority on Development
HoF	House of Federation
HoPR	House of Peoples' Representatives
IOs	International Organizations
KII	Key Informant Interview
MoFA	Ministry of Foreign Affairs
NHRIs	National Human Rights Institutions
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
USA	United States of America
VAT	Value Added Tax
VCCR	Vienna Convention on Consular Relations of the 1963
VCDR	Vienna Convention on Diplomatic Relations of the 1961

ABSTRACT

The right to access to justice is recognized under Art 37 of the FDRE Constitution. It is also recognized in the plethora of international and regional human rights instruments to which Ethiopia is a party. Ethiopia is also a party to the VCDR. Sporadically persons entitled to diplomatic immunities abuse those rights.

The relationship between immunity from jurisdiction and human rights is one that has created a great deal of controversy in recent years. This discourse is arduous task as it is arguably the result of fragmentation of international rules. Thus, it has been attempted to critically analyse the apparent contradiction in the VCDR and assessed the remedies provided for victims of diplomatic abuses through case studies. The study has found out that victims' right to access to justice is highly impacted due to the undue protection of the VCDR and the domestic remedial approach which need to be revisited.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1. Background of the Study

In its modern form, diplomatic immunity dates back to the establishment of permanent diplomatic missions in the fifteenth century Europe.¹ Diplomatic protection is an exception to the principle of territorial sovereignty that denies a state to have exclusive jurisdiction within its boundary. The Vienna Convention on Diplomatic Relations (VCDR) provisions are most accepted and oldest principles as one could easily grasp from the wordings of its preamble. It recalls that peoples of all nations from ancient times have recognized the status of diplomatic agents. The preamble also underscores the purpose of the Convention's privileges and immunities are not to benefit individuals rather to ensure efficient functioning of diplomatic missions in the host state.

The VCDR provides that the person of a diplomatic agent shall be inviolable and shall not be liable to any form of arrest or detention.² A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State.³ The Convention also provides immunity from civil and administrative jurisdiction of the host state save for some exceptions.⁴ The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy such privileges and immunities as per article 37 of the Convention. Despite such immunities from host state's jurisdiction, the provision of Article 41 (1) of the same dictates that “...it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. ...”. Though the Convention expects diplomats to behave in a manner acceptable by the host country's laws and regulations, it does not provide for effective mechanism for redress whenever there is abuse.

Ethiopia is a hub for many diplomatic missions and its capital hosts a number of international and regional organizations, and representations. Almost all UN specialized agencies have their office in Ethiopia. Though not a principle, there are a lot of diplomatic abuses

¹ Grant V. Mcclanahan, Diplomatic Immunity 170-171 (1989), Tables 1-2 pp. 25-27, *cited in* Dror (n 33) 4.

² Vienna Convention on Diplomatic Relations, done at Vienna on 18 April 1961, Entered into force on 24 April 1964. United Nations, Treaty Series, Art 29.

³ *Ibid*, Art 31 (1).

⁴ *Ibid*, Art 31 (1) (a-c).

perpetrated by diplomatic communities. These include, *inter alia*, failure to observe labour rights, not paying rental dues, not honouring contractual promises, failure to provide child maintenance (usually Ethiopian mother), not respecting traffic regulations, abuse on domestic workers, and so forth. Since courts are apparently precluded from entertaining cases brought against diplomats, the Arbitration Affairs Directorate of the Ministry of Foreign Affairs (MoFA) entertains cases mainly on mediation basis. The effectiveness of the remedies provided by the Ministry is obviously impacted by diplomatic issues like political relations, economy and reciprocity.

Some cases are pending for long without final justice in sight. Some cases are brought before the attention of the Council of the Constitutional Inquiry (CCI) and House of Federation (HoF) while some others are pending before ordinary courts. The dilemma is that any alternative to the current international diplomatic relations need political consensus to accommodate emerging human rights trends.

1.2. Statement of the Problem

The provision of remedy for victims of human rights abuse is a common way of safeguarding human rights. The diplomatic immunity from domestic jurisdiction of the receiving state shield diplomats from the coercive local judicial system. The VCDR seems to be of two minds. The first and the obvious one is its object to exonerate diplomats from domestic jurisdiction. However, Art. 41 of the Convention at the same time imposes obligation on diplomats to honour the law of the soil in which they are accredited to. In the same vein, some of our laws for instance the labour proclamation clearly provides the scope of its application so as to include diplomatic communities and makes diplomats its subject⁵. This two fold position of the convention posed a legal and practical challenges on whether members of diplomatic communities could be tried in any avenue where justice could be served whenever they abuse the special rights conferred upon them.

In Ethiopia, there are a number of diplomatic missions and international organizations (IOs) having diplomatic immunity by the application of VCDR, the 1946 Convention on the Privileges and Immunities of United Nations⁶, and host country agreement⁷. Due to the

⁵ The common provision of Art 3 (3) of both Labor Proclamation 377/2003, Negarit Gazette 10th year No. 12, 26th February 2014 and Labor Proclamation 1156/2019, Negarit Gazette 25th year No. 89, 5th September 2019.

⁶ Convention on the Privileges and Immunities of United Nations, Adopted by the General Assembly of the United Nations on 13 February 1946.

presence of international and regional organizations' representations, Addis Ababa attracts many diplomatic communities having similar privileges and immunities. This will in turn contribute for increased types and magnitude of human rights violation.

Many missions recruit employees and renew their contract every three months for decades and terminate their contract without paying a penny. Some others deny the employees right to annual and sick leave, even more deduct their monthly wage while the worker is admitted to hospital for surgery. Some other missions do not pay monthly salary for several years. Diplomats driving in drunken state at night commonly run over pedestrians and kill them but remain unpunished and without compensating. The practices of enslavement of domestic workers who work for more than normal working hours a day for diplomats is also the other violations. Diplomats and missions rent residence and chancery from landlords and fail to pay rent, continue to live there but continuously refuse to pay and cannot be evicted even beyond the terms and conditions of their contract. Some others commit crimes like insult and disgrace, assault, homicide, rape, corruption and others.

There is hardly effective mechanism of redress for victims of acts of diplomats unless their immunity is lifted by sending state in case of Embassies, and authorized body in case of IOs, which happen seldom. Hence, there is almost no mechanism of coercing the actors to face justice. This is worsened by our country's level of economic and political development that makes us comparatively weaker in taking serious measures.

The research questions the paper is designed to explore are: What are the discrepancies in the VCDR in light of access to justice for victims of diplomatic abuse? How is the depth and magnitude of diplomatic abuses in Ethiopia? What mechanisms are designed by other states and jurisdictions, and what types of lessons could we learn from for effective human rights protection whenever there is abuse? What is the scope and magnitude of immunities conferred upon diplomats? What remedies are availed by Ethiopian government whenever nationals are victims by acts of diplomats? Does the government have remedies that satisfy both Ethiopian nationals as well as the well-established international law of diplomatic

⁷ Host country agreement means an agreement between the host country and incoming international organization to establish a legal framework under which that organization could conduct its affairs in the territory of the host country. Almost all host country agreements of Ethiopia have similar provisions with VCDR with regard to immunity from jurisdiction of local courts.

immunity? How could the current remedial approach be improved through human rights-based approach?

1.3. Objectives of the Study

1.3.1. General Objective

The general objective of the study is to analyse the right of access to justice for victims of diplomatic immunity abuse taking the existing remedial approach in Ethiopia and to provide possible way outs.

1.3.2. Specific Objectives

The specific objectives are:

- i. To critically analyse practical cases in light of domestic laws and the VCDR and explain the apparent contradiction therein in light of access to justice for victims of diplomatic abuse;
- ii. To show the depth and magnitude of human rights violation due to diplomatic actions;
- iii. To comparatively study countries experience in dealing with immunity on one hand and access to justice on the other;
- iv. To assess the effectiveness of the existing remedial approach;
- v. To design a way out in which the existing system could be enhanced through designing policies, enacting laws and improving the practice.

1.4. Methodology

1.4.1. Data Collection Methods

In order to assess the extent of human rights violation particularly, the right of access to justice for victims of diplomatic abuse in various missions and IOs the writer used both primary and secondary data. The researcher conducted typically seven semi-structured personal interviews for selected victims. The interview was also planned to include some selected diplomatic missions but remain unsuccessful as diplomatic missions quarantine themselves following Covid-19 outbreak. Besides, there are cases before the Arbitration Affairs Directorate of MoFA, some pending before courts and some other cases referred to CCI, HoF, HoPR and Prime Minister's Office are consulted. The VCDR, UN Convention and Host Country Agreements are also multilateral and bilateral international legal documents which are subjects of consideration.

The researcher also employed focus group discussion (FGD) as another technique of collecting primary data. This method works particularly for victims of labour rights that have a case jointly, who usually claim the vindication of their right in a group. Questionnaires were designed for other local workers at embassies and IOs. The questionnaires consist of combination of both closed and open-ended types of questions. Key Informant Interview is used for Ethiopian Ambassadors and diplomats working in MoFA who had been placed in Ethiopian missions abroad to learn how Ethiopian and other diplomats are treated in their respective country of placement. This research also draws on an extensive reading of academic literature, media reports, books and journal articles as secondary sources.

1.4.2. Sampling Method

There are a number of embassies and diplomatic missions, and IOs having host country agreement with almost similar provisions with VCDR in Addis Ababa. Moreover, almost all UN specialized agencies have representations in Addis Ababa protected by the UN Convention on the Privileges and Immunities of UN. There are a number of diplomats, employees of IOs and UN staff and officials having diplomatic ID cards residing in Addis Ababa. Besides, majority of them have family members with similar level of immunity, each having rental contractual relations with the landlords of their residence and also has domestic workers like babysitters, cooks, gardeners, drivers and guards. Diplomats also engage in other contractual acts like sales of car and other equipment usually duty free imported.

Therefore, in order to draw conclusions about those large groups, it is commended to determine a sample design. The researcher tried to make representative sampling to make accurate and replicable estimations. The representation could be regionally as a lot of cases are submitted against many African countries' missions. The type of information needed, among others, is that: first, whether VCDR has negatively affected the right of access to justice for victims; second, whether the absence of comprehensive domestic law governing diplomats has exacerbated the extent of violations; third, to identify the depth and magnitude of the problem.

There are different sources of information like victims, other employees, diplomats etc. The difference in character of these sample population may result heterogeneity of output. Hence, the list of sample population in such subset is prepared. Then after, participants are chosen from each stratum by random sampling. The respondents are selected in non-probability or convenience sampling mainly because it will be convenient for the researcher to choose clients that have closed or pending cases. One FGD is conducted on teleconference due to the

outbreak of Corona Virus (Covid-19) and having four participants selected on non-probability sampling. The KII technique is used for Ethiopian Ambassadors and diplomats who have been placed in Ethiopian mission in different states. Six key informants were planned following the territorial arrangement adhered by MoFA i.e. Asia and Oceania, Middle East, European, American, African, and Neighbouring Countries and IGAD Affairs Directorate Generals but only succeeded in four of them.

1.4.3. Method of Analysis

The research employed heavily conceptual methods of analysis. The empirical method is also used to assess the impact of VCDR on the right of access to justice for local people having various juridical relations like labour, lease, contract, child maintenance, compensation claims following car accident etc. In order to use empirical method, I have provided a section dedicated for hypothesis to predict as to the probable results. The techniques of data analysis is qualitative and quantitative as far as the cause and effect is concerned which involve conducting critical analysis and interpretation of figures and numbers of population whose rights are at stake due to the relationship, and it also involve and attempt to find rationale behind the emergence of the main findings. In addition, qualitative method is used for analysing closed and active files and information which is going to be gathered from the population out of people who cannot access justice due to the VCDR system and the stand of the government. The problem with regard to VCDR, the domestic legal system and practical impediments are analysed through identifying common patterns (qualitatively) within the responses and critically analysing them in order to achieve research objectives.

The doctrinal analysis is used mainly because the thematic area of the research requires consultation of legal documents. Even though research questions like whether the VCDR's pledge to keep diplomats away from the domestic jurisdiction and non-existence of domestic law that govern the situation (independent variable) has contributed for violation of human rights or not, may be addressed empirically, the practice of violation must be analysed based on domestic legislations which inevitably will lead to doctrinal method.

1.4.4. Ethical Considerations

The significance of the research is the basic cause to obtain the respondents and sample population informed consent. Old wounds might be opened while trying to learn intimate details of victims' problem hence sensitivity to these group of population has to be managed. Similarly, missions do not want their names to be spoiled and it may have its own diplomatic

downside. Debriefing or explaining the purpose of the research will be an important task. Confidentiality and anonymity are important.

1.5. Literature Review

The most related and relevant work⁸ consulted by the writer on VCDR and abuse arising from the Convention argues that immunity has strong reasons for its existence; however, abuse arising therefrom has often led to question its very existence. The writer further provides that due to abuse, the balance between the need for immunity and the requirement to prevent diplomatic abuse to protect the rights of victims is often tipped unfavourably against the latter. The work elucidates the possible remedies against abuses of diplomatic privileges and immunities. The author reiterates the importance of the need for amendment of the VCDR for a truly effective re-evaluation of immunity via restrictive interpretation, the adoption of a functional approach and the limitation of immunity to grave or official crimes.

The other is a journal article written by Mitchell S. Ross⁹ on rethinking diplomatic immunity laws. The article talks about how diplomatic immunity functions in United States. It also explains the effective remedies available to prosecute diplomats immune from US civil and criminal jurisdiction like *persona non grata* procedure, waiver of immunity, termination of diplomatic relations, and state department measures. The writer concludes that the international community shall rethink in revising the immunity laws.

Another journal article¹⁰ referred argues that diplomats are always heavily favoured whenever they have disputes with nationals of the receiving state. It mainly discusses issues pertaining to landlord's dilemma. The article also boldly notes that, although solutions to abuses of diplomatic immunity and their effectiveness are controversial, one matter is clear: the government sees the weaknesses of the current law, and has the ability, if not always the will, to improve the situation. Unfortunately for the landlord, in this instance, he/she is left without a remedy, and the landlord can only hope that the government will pursue his/her interests and will persuade the offender to withdraw.

⁸ Rita Bonello, *Vienna Convention on Diplomatic Relations: Abuse Arising Therefrom* (Faculty of Laws University of Malta LL.D Thesis unpublished 2014).

⁹ Mitchell S. Ross, *Rethinking Diplomatic Immunity: A Review of Remedial Approaches to Address the Abuses of Diplomatic Privileges and Immunities*, American University International Law Review, Volume 4 Issue 1 Article 14 (1989).

¹⁰ Rina Goldenberg, *Abuse of Diplomatic Immunity: Is the Government Doing Enough?* ILSA Journal of International and Comparative Law, Vol. 1 (1995).

Pierrot argues that in recent decades evidence has mounted of abuse by diplomats of their immunities. This writer also maintains that despite the duty enshrined under article 41, the VCDR contains no enforcement mechanisms whenever the diplomatic communities engage in abuse of human rights and other laws. The writer's argument is that without any possibility of enforcement action being taken against diplomat violation of the law will occur, amounting to diplomatic impunity. This essay proposes the amendment of VCDR.

The other journal article¹¹ consulted mainly focuses on compensation for victims of diplomats' motor vehicles. The article discusses the Diplomatic Relations Act of US that complement the VCDR which is intended to establish a mechanism by which private citizens could obtain financial compensation for property damage or personal injury sustained as a result of motor vehicle accident. The article concludes that the claims fund would protect the rights of US citizens without interfering with the diplomat's ability to carry out her/his duties.

The article written by William G. Morris¹² suggests for the establishment of Diplomatic International Criminal Court to try diplomatic communities engaged in criminal acts. It argues that the US government shall act unilaterally to deal with outlaw diplomats. Abuse of domestic workers is the other area of deep concern with regard to diplomatic protection. Similarly, another article¹³ on abuse of household workers talks about legal obstacles and judicial remedies for involuntary servitude. The writer suggests that Congress [United States] needs to pass more legislation requiring the government to routinely check-up on domestic workers to make sure that they are not stuck in abusive situations¹⁴. The other article published by Oxford University in 2016¹⁵ which typically discusses about the accountability of states, diplomats and IOs for human rights abuses in relation to employment is also

¹¹ R. Scot Garley, *Compensation for Victims of Diplomatic Immunity in the United States: A Claims fund Proposal*, Fordham International Law Journal, Vol. 4 Issue 1 (1980).

¹² William G. Morris, *Constitutional Solutions to the Problem of Diplomatic Crime and Immunity*, Hofstra Law Review, Vol. 36, Issue 2, Article 19, (2007).

¹³ Jennifer Hoover Kappus, *Does Immunity mean Impunity? The Legal and Political Battle of Household Workers Against Trafficking and Exploiting by Their Foreign Diplomat Employers*, Case Western Law Review, Vol. 61, Issue 1, Case Western Reserve University, (2010).

¹⁴ Ibid 306.

¹⁵ Philippa Webb, *The Immunity of States, Diplomats and International Organizations in Employment Disputes: The New Human Rights Dilemma*, The European Journal of International Law, Vol. 27, No. 3, (2016).

reviewed. In the same vein, another work that focuses on South African Labour law¹⁶ argues that vulnerable employees in abusive employment relationship should have access to compulsory private arbitration.

The most recent work¹⁷ consulted maintains that immunity is designed for smooth functioning of relations among states and their representatives. Furthermore, equating immunity with impunity in cases of fundamental human rights violations presents a major handicap against the establishment of justice and the promotion of human rights. Its aim is to demonstrate that tolerating impunity threatens the future and development of human rights¹⁸. The last paper examined notes that in the face of the growing attention given to universal human rights, how tenable is the near-blanket immunity accorded to the diplomat?¹⁹ The thesis further offers that the abuse of diplomatic immunity is as a result of weak legislation and that the lack of an enforcement mechanism in the VCDR has curtailed its implementation. Almost all the studies reveal that immunities law shields perpetrators of human rights abuses from lawsuits.

Our country Ethiopia has ratified the 1961 VCDR 22nd March 1979²⁰ and consequently, our country is obliged to adhere to the rules and principles recognized in the Convention. However, some jurisdictions like USA and EU seem to partially reject the application of the instrument as it has human rights incompatible protections accorded to diplomats and their family members. Be that as it may, I did not come across any research or report with regard to the state of diplomatic jurisdictional immunity on one hand and the right of access to justice for victims of such abuse on the other in Ethiopia to the best of my knowledge. The research will focus on domestic approaches, and practical cases analysis.

¹⁶ SB Gericke, *The Interplay Between International Law and Labour Law in South Africa: Piercing the Diplomatic Immunity Veil* (PER/PELJ Vol. 17 No. 6 2014)2626.

¹⁷ Selam Ozdan, *Immunity Vs. Impunity in International Law: A Human Rights Approach*, (Baku State University Law Review, Vol. 4 No. 1, 2018).

¹⁸ Ibid 35.

¹⁹ Charity Simuli Wanyela, *Diplomatic Privileges and Immunities: A Critical Analysis of the Vienna Convention on Diplomatic Relations* (1961 MA Thesis, Nairobi University 2014)

²⁰ United Nations Treaty Collection, Vienna Convention on Diplomatic Relations ratification status available at https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iii-3&chapter=3&lang=en accessed on March 16, 2020.

1.6. Hypothesis

The research is interdisciplinary as it involves human rights, diplomacy, international law, domestic laws and politics. The prediction is that the VCDR and the position of Ethiopian government towards diplomatic immunity from domestic jurisdiction has affected the rights of victims in accessing justice. In majority of cases between diplomats and local citizens the former is favoured. The absence of diplomatic law in Ethiopia has prejudiced the interest of nationals. Landlords are in dilemma on collecting rental fee and evicting diplomats whenever they want to take back their property. This problem is more exacerbated by absence of judicial or quasi-judicial body and procedures for redress. Therefore, the general hypothesis is that, the VCDR on immunity from jurisdiction and absence of judicial organ for redress is a major factor for the violation of human rights to access justice which need to be revisited.

1.7. Scope of the Study

The research is not only confined to embassies but also other offices having diplomatic immunity through UN Convention and host country agreement. All diplomatic missions, IOs and UN Agencies residing in Ethiopia have their head offices in Addis Ababa and their first stop is MoFA. The sending states request for *agrément*²¹ is processed by MoFA though; presentation of their credentials is before the President's Office. Hence, the geographic scope is limited to Addis Ababa. The researcher will also confine the subject matter on the most recent issues and active cases. The research also focuses mainly on the right of access to justice for victims from wide-ranging human rights.

1.8. Significance of the study

The study has its own benefits to the society and adds knowledge in the academics. Since, the research analyses the VCDR and explains the contradiction there in light of the right of access to justice; it is helpful in initiating policy makers to revisit the system of diplomatic immunity taking other countries' experience. Moreover, it will be useful for the law makers to draft laws and code of conduct for human rights friendly operation of this diplomatic field. The study also recommends way outs in tackling the existing challenge of the remedial approaches.

²¹ Agrément means approval of diplomatic representative usually ambassador by the state to which s/he is accredited.

1.9. Limitations

The first limitation pertains to the research design itself. It is obvious that tools and techniques has both pros and cons, hence beside the cons the method of analysis chosen (partially empirical research) is an emerging technique in legal research unlike the common doctrinal method. The other challenge is time limitation. The last one is statistical limitation mainly because the sample population may not give genuine information for fear of retaliatory measures from their employers. It is worth mentioning that both diplomacy and human rights are delicate issues that need to be handled in a proper care.

1.10. Organization of the Study

The research is organized in five different chapters. The first chapter highlights the background of the study, problem statement, literature review, objectives, methodology, hypothesis, scope, and significance of the study. Chapter two is designed to discuss the nature and concept of diplomatic immunity mainly from jurisdictional immunity and the right of access to justice perspective. In this chapter, concept of access to justice and its nexus with diplomatic jurisdictional immunity is discussed. Chapter three is on countries experiences in handling diplomatic abuses in which comparative analysis of the remedial approaches is conducted. Then chapter four analyses the practical cases of diplomatic abuses and the challenges on the existing remedial approach. This chapter closely analyses the underlying legal and practical impediments in the realization of access to justice to victims of human rights violations by diplomats in Ethiopia. Finally, conclusion and set of recommendations are followed in chapter five.

CHAPTER TWO

DIPLOMATIC IMMUNITY VS. THE RIGHT OF ACCESS TO JUSTICE: CONCEPTUAL UNDERPINNINGS

2.1. Introduction

The VCDR is the most successful as it has pretty much influence on the international legal order. Its stability may hinge on the principle of reciprocity which offers states to take their own acceptable measure upon non-compliance of other states. “Diplomatic immunity covers many things, but failing to pay \$400,000 rent is not one of them, a federal judge said as he ordered the Zaire mission to the United Nations to be evicted from its offices.”²² The continued need for diplomatic immunity by states and fear of reciprocal measure makes states always reluctant and negligent about the human rights abuse arising therefrom. It was also maintained that the international law of human rights, though not as old as diplomatic law, now holds an important and expanding role within the international system.²³ In this chapter, the nature and concept of both diplomatic immunity and the right of access to justice as well as the nexus between the two are discussed briefly.

2.2. Nature and Concept of Diplomatic Immunity

2.2.1. Brief Historical Background of Diplomatic Immunity

It has been said of diplomacy that mankind has never been able to live without it.²⁴ The practice of granting diplomatic immunity is thousands of years old. Ever since ancient Greek and Roman times, diplomats have been afforded special privileges while conducting their duties in foreign lands.²⁵ Acknowledged diplomatic immunity has existed since the sixteenth century when it was established in Europe as a result of the common exchange of permanent

²² Zaire's Mission to the U.N. To Be Evicted, N.Y. TIMES, Mar. 26, 1992, at A2. Cited in Goldenberg (n 10) 197.

²³ Danielko, G. M., The Relevance of Humanitarian and Diplomatic Law to the Conflict in the Gulf, DUKE J. COMP. & INT'L L.125 (1991), cited in Dror (n 33) 16.

²⁴ ABBA EBAN, *THE NEW DIPLOMACY: INTERNATIONAL AFFAIRS IN THE MODERN AGE* (1983), at 332, cited in Dror (n 33) 5.

²⁵ United States v. Enger, 472 F. Supp. 490, 504-05 (D.N.J. 1978) (detailing the history and development of diplomatic relations and immunities amongst nations), cited in Morris (n 12) 602.

ambassadors.²⁶ Modern embodiment of that practice in law began in Britain in 1708 with legislation prohibiting prosecution, arrest, and imprisonment of ambassadors and their servants.²⁷

As a matter of international law, diplomatic immunity was primarily based on custom and international practice until quite recently.²⁸ Of course, the 1946 Convention on the Privileges and Immunities of UN confers these special rights upon the organization itself in member states and also talks about the privileges and immunities of representatives of the Organization and its officials. The 1961 Convention codified existing customary diplomatic law, resolved points of conflicting state practice, introduced other rules,²⁹ and the Convention in its preamble recognized that customary international law remains to govern parts that were not covered. The 1963 Convention on Consular Relations has also similar provisions with limited sphere of immunity when compared with the VCDR. Many countries have also enacted rules governing diplomatic communities.

2.2.2. Definition and Concept of Diplomatic Immunity

As Stow put it, immunity is not personal immunity but in reality, the immunity of the sending state.³⁰ Even though the nature and concept of diplomacy has shown improvement, the diplomatic immunity of accredited person remained intact and its object is for smooth international relation. Wilson defines diplomatic immunity as a situation where members of diplomatic missions are shielded from legal processes.³¹ Diplomatic immunity, in the modern sense, can be broadly defined as the freedom from local jurisdiction accorded to the duly certified diplomatic representatives of the sending state by the receiving state under principles

²⁶ Leslie Farhangi, Note, Insuring Against Abuse of Diplomatic Immunity, 38 STAN. L. REV. 1517, 1519 (1986), cited in Goldenberg (n 10) 199.

²⁷ Statute of Queen Anne c. 12 of 1708, cited in Dror (n 33) 6.

²⁸ US Department of State Foreign Missions, *Diplomatic and Consular Immunity*, Guidance for Law enforcement and Judicial Authorities.

²⁹ See, DENZA, at 1. Denza's book provides a comprehensive discussion of the various provision of the Vienna Convention; See also, SATOW'S GUIDE TO DIPLOMATIC PRACTICE 108 (5th. ed., 1979); The Hostages case, supra note 25, pp. 3, 24, cited in Dror (n 33) 6.

³⁰ Ernest Stow, *Stow's Guide to Diplomatic Practice* 5th Edition, (London 1979), p. 131, cited in Pierrot (n 45) 3

³¹ Wilson, R., Diplomatic Immunity from Criminal Jurisdiction: Essential to Effective International Relations, 7 Loy. L.A. Int'l & Comp. L. Rev. 113 (1984). Available at: <http://digitalcommons.lmu.edu/ilr/vol7/iss1/5> cited in Wanyela (n 19).

of international law.³² Its main source is a long-standing custom embodied into a comprehensive and widely accepted international treaty.³³

The VCDR talks about multifarious issues of privileges and immunities like inviolability of diplomats' person, bag, missions' premises and documents, exemption from local taxes and other duty-free privileges. However, the central focus is on the issue of immunity from local jurisdictions. Jurisdictional immunity is a principle of public international law according to which certain foreign government officials, including diplomatic agents, are not subject to the jurisdiction of local courts and other authorities of the receiving state for both their official and, to a large extent, their personal activities.³⁴ Immunities can be divided into functional immunity (immunity *ratione materiae*) and personal immunity (immunity *ratione personae*). Immunity *ratione materiae* relate to conduct carried out on behalf of a state.³⁵ Unlike functional immunity, personal immunity is absolute as it applies to both private and public acts of the accredited person.

There were three main theories of diplomatic immunity throughout history. The first and the oldest one is the 'personal representation' theory. According to this theory, the representative should be treated as if the sovereign himself was conducting diplomacy.³⁶ Hugo Grotius expressed the theory of "sacredness of Ambassadors."³⁷ Grotius believed that ambassadors were protected by both "divine and human law".³⁸ The second theory, 'extraterritoriality',

³² W. BISHOP, INTERNATIONAL LAW 709 (3d ed. 1971), cited in Garley (n 11) 137.

³³ Dror Ben-Asher, *Human Rights Meet Diplomatic Immunities: Problems and Possible Solutions* (Harvard Law School 2000) 10.

³⁴ René Värk, *Diplomaatiline õigus [Diplomatic Law]* (Juura: Tallinn, 2004) at 141, cited in René Värk, *Diplomatic Agents, Civil Actions and Jurisdictional Immunity*, 27.

³⁵ Wanyela (n 19) 6.

³⁶ McCLANAHAN, supra note 10, at 29; See also, Chief Justice Marshall in the Schooner case supra note 24, pp. 138-13, cited in Dror (n 33) 6.

³⁷ Shapiro, supra note 3, at 282 [A New Regime of Diplomatic Immunity: The Diplomatic Relations Act of 1978, 54 TUL. L. REV. 661, 664 (1980) (citing H. Grotius, *De Jure Belli et Pacis* 201 (W. Whenwell trans. 1853) and 2 H. Grotius, *De Jure Belli Ac Pacis* 431 (F. Kelsey trans. 1925))]. See also 767 Third Ave. Assoc., 988 F.2d at 300, cited in Goldenberg (n 10) 200.

³⁸ Shapiro, supra note 3, at 282 [A New Regime of Diplomatic Immunity: The Diplomatic Relations Act of 1978, 54 TUL. L. REV. 661, 664 (1980) (citing H. Grotius, *De Jure Belli et Pacis* 201 (W. Whenwell trans. 1853) and 2 H. Grotius, *De Jure Belli Ac Pacis* 431 (F. Kelsey trans. 1925))]. See also 767 Third Ave. Assoc., 988 F.2d at 300, cited in Goldenberg, (n 10) 200.

basically stands for the proposition that diplomats' offices, homes, and persons are to be treated as if they are on the territory of the sending state.³⁹ Third, the theory of 'functional necessity', the predominant one at present, suggests that the theoretical underpinning of diplomatic immunities lies in the simple fact that they are necessary for the performance of the diplomatic functions.⁴⁰ These theories depict that the evolution of the necessity of diplomatic immunity has been significantly altered towards that of functional one. The very purpose of diplomatic immunity is to facilitate and promote smooth international relations.

There is a distinction between immunities and privileges conferred to diplomats. A privilege may exempt an agent from application of certain laws and regulations of the receiving state while immunity does not exempt her/him but instead protects him from the application of the laws of the host state. For instance, diplomats have duty-free privilege to import a car or exemption from paying VAT. Whereas, diplomatic mission have the duty to respect the labour law, for instance, but if the mission unlawfully terminates the contract of its driver, because of immunity, a court cannot summon for litigation. Immunity from jurisdiction is all about limiting the adjudicatory authority of receiving state courts. Hence, it is not immunity from legal liability rather from the suit in host state in principle.

Whenever diplomats act contrary to the law of the receiving state, there will be a forgo opportunity cost for the state in dealing with the issue. In other words, whenever diplomats have administrative, civil or criminal cases, the measure of the state has different repercussions. These ramifications can be explained from political, legal and economic aspects. For instance, rendering restraining order on the accounts of a mission found in abuse may satisfy the local people and may also increase the acceptance and legitimacy of the government at home. However, this will certainly seriously injure the diplomatic relation not only with the sending state but also its allies. Some argue that immunity is crucial and important for diplomatic relations, while some others argue that it is contrary to the present human rights development. Still, others search for middle path without compromising the positive aspects of the first two arguments.

³⁹ Francisco Orrego Vicuna, *Diplomatic and Consular Immunities and Human Rights*, 40 I.C.L.Q. 34, 35 (1991) referring to: Thomas W. Pecoraro, *Diplomatic Immunity - The Absinito Affair*, 29 HARV. INT'L. L. J. 533, 540 (1988), cited in Dror (n 33) 6.

⁴⁰ ABBA EBAN, *THE NEW DIPLOMACY: INTERNATIONAL AFFAIRS IN THE MODERN AGE* (1983), at 332, cited in Dror (n 33) 6.

2.3. The Concept of Access Justice: Diplomats Perspective

2.3.1. The Concept of the Right of Access to Justice

The availability of effective judicial remedies is a guarantee for the respect, protection and fulfilment of human rights. In default of having dependable state machinery to enforce the law and avail justice victims will resort to put in their palm what they mean to be just. Access to justice is a basic human right as well as an indispensable means to combat poverty, prevent and resolve conflicts.⁴¹ The recognition and enforcement of the right of access to justice is to empower the poor and vulnerable on the basis of human rights-based approach. The right commences from the availability of a justice system and ranges from accessing it, providing speedy and affordable justice to reliable execution of decisions. Access to justice is more than just access to lawyers or courts. It is a component of the rule of law,⁴² comprised of a number of elements that at its core means that individuals and communities with legal needs know where to go for help, obtain the help they need, and move through a system that offers procedural, substantive, and expeditious justice.⁴³

The limitations on domestic workers obtaining access to justice through the national legal systems of host countries, arising from the intersection with the law relating to diplomatic immunity, can lead to a situation of de facto impunity for rights violations, since the likelihood of domestic workers claiming their rights in the sending state against their employer is remote in most cases.⁴⁴ Victims of diplomatic abuse can bring their claim in

⁴¹ United Nations Development Program, Access to Justice Practice Note, (2004) 3.

⁴² United Nations General Assembly Resolution 67/1, Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, A/Res/67/1 (30 Nov. 2012) available at <https://www.un.org/ruleoflaw/files/A-RES-67-1.pdf>, accessed on March 16, 2020.

⁴³ Open Government Partnership Global Report, Access To Justice, Justice Policy Series, Part 1, available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwiRgcC4q6voAhUtxoUKHYNoC8oQFjAAegQIBxAB&url=https%3A%2F%2Fwww.opengovpartnership.org%2Fwp-content%2Fuploads%2F2019%2F09%2FJustice-Policy-Series-Access-to-Justice.pdf&usg=AOvVaw3lQzsQlf8xyVr17HzVTQdI> accessed on March 15, 2020.

⁴⁴ European Group of National Human Rights Institutions to the General Discussion of the Committee on Elimination of Discrimination against Women on Access to Justice (18th February 2013) available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwj-xfvHr6voAhVF3lUKHeg_DXsQFjAAegQIBhAB&url=https%3A%2F%2Fwww.ohchr.org%2Fdocuments%2FHRBodies%2FCEDAW%2FAccesstoJustice%2FEuropeanGroupOfNHRIs.pdf&usg=AOvVaw059Lq8N7Uawrwn60sU5py accessed on March 16, 2020.

sending state but this is unrealistic as it is costly, lack of knowledge of the sending state legal system, language barrier, and so on. Art. 8 of the Universal Declaration of Human Rights (UDHR) stipulates the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law. The right of access to justice has to be realized in non-discriminatory manner despite the reality that diplomats can bring their claims at multitude of forums while nationals are helpless in this regard.

2.3.2. Access to Justice from Diplomatic Immunity Perspective

The concept of diplomatic immunity has survived since antiquity. However, the purpose is often misunderstood by the diplomats, law enforcement bodies and the community at large. The practice sometimes brings about public outrage, even to police officers who are unfamiliar to such special privileges. Are there scenarios for diplomats to face justice? This is the major question this section is pledged to discuss.

Whenever diplomats are victims because of civil, administrative or criminal acts, they are availed with a lot of options in seeking and accessing justice thereby bringing actions against wrongdoers. This plethora of options can be regular courts, police departments, or other administrative bodies like customs office, transport agencies, city administrations and so on. Some others also bring their cases to MoFA, not to compromise their jurisdictional immunity. In a starkly contrast manner, the flip side i.e. whenever the wrongdoers are diplomats, victims have almost no such access save for diplomatic channel.

As far as civil cases are concerned, the VCDR has clearly defined exceptional scenarios where diplomats are not eligible to raise the defense of immunity. Article 31(1) provides that a diplomatic agent shall enjoy immunity from civil jurisdiction of the receiving State, except in the case of:

- a. A real action relating to private immovable property situated in the territory of the receiving state, unless he holds it on behalf of the sending State for the purposes of the mission;
- b. An action relating to succession in which the diplomatic agent is involved as an executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- c. An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

The rationale behind these exceptions might be owing to the very private nature of the cause of action and the outcome of action might not hinder the diplomats' official duties. It might be also because these exceptional scenarios are better if they are entertained in the receiving state than some another place. But all these possible reasons remain the same in majority of civil cases if not all. For instance, for diplomatic mission that terminates the contract of employment unlawfully without effecting termination related payment or a diplomat who fail to pay rental fee, are not embraced by the exceptions without valid and sound reason for differential treatment. The other situation in which nationals may acquire the right of access to justice is when the diplomat brings an action against them and the national is permitted to bring a counterclaim. Here again, if the national succeed in having a judgment in his/her favour, the diplomat is endowed with the second chance to object the execution owing to immunity which need separate waiver. This puts a national/citizen victim in a precarious situation to access justice in order to seek redress for the damages sustained. The non-judicial measure available for victim can be approaching foreign affairs office (other similar bodies) to arrange Alternative Dispute Resolution (ADR) options like mediation. Lastly, if the diplomats refuse to cooperate with the foreign affairs office then waiver of immunity may follow. However, the latter decision to lift the immunity is taken in rarest of rare cases due to obvious reason of maintaining good diplomatic ties.

In criminal cases there are no exceptions, and the jurisdictional immunity seems absolute at least while talking from the perspective of the receiving state. Diplomats who committed a crime are immune from domestic jurisdictions unless the sending state or the offender diplomat himself waives such immunity. Not only does the sending state or the diplomat himself waives such immunity, but the receiving state is also availed with the opportunity to declare a *persona non grata*. The latter is unilateral measure to lift the privilege and immunity of a diplomat which can be taken by receiving state at any time as provided under Art 9 of the VCDR. The other option is to transfer the case to the sending state, so that the case could be brought before the latter's court. It has to be noted that simple and petty criminal cases are left for the mission to take appropriate measure. One has to take note that personal inviolability of diplomats is separate from diplomatic jurisdictional immunity. Article 29 of the VCDR provides that diplomats shall not be liable to any form of arrest and detention which is more physical inviolability, unlike jurisdictional immunity.

2.4. The Nexus between Diplomatic Immunity and the Right of Access to Justice

Domestic jurisdiction usually follows the territorial principle. Putting it differently, in principle state courts assume power over acts committed within its territory. However, diplomatic immunity is an exception to such principle in which states are denied from trying cases against persons having diplomatic immunity. The exception is born out of the principles like state sovereignty, equality of states, and through the operation of specific international law. The VCDR provides that a diplomatic agent is immune from jurisdictions of the receiving state unless the sending state waives such immunity. Usually, states do not waive such immunity. The three exceptions with regard to civil matter are rare cases as mentioned above. In a very contrast manner, such accredited diplomat is required by the Convention to honour the local law of the obeying state, without enforcement mechanism. Likewise, the VCDR shields diplomats from domestic jurisdiction as international law, despite the need to uphold principle of equality and rule of law. Nonetheless, the VCDR and other instruments like the 1946 Convention on Privileges and Immunities of UN and host country agreement with IOs keeps their official away from the reach of the local jurisdiction. This system sometimes leads to sporadic outbreak of public resentment in receiving states undergoing abuses of diplomatic immunity.

Indeed, there are many laws, when passed, challenged timeless traditions and radically changed the way things were done, yet overtime have become widely regarded as part of the fabric of democratic society.⁴⁵ Whenever fundamental human rights and freedoms are at stake, for stronger reason, states shall commit themselves to improve the international and domestic legal order. Now the issue of the right of access to justice for victims of diplomatic acts comes. The hierarchy between immunity and human rights is the other area of contention and this is the place where human rights meet diplomatic immunity. The focus of the research is mainly on the right of access to justice among the wide range of existing human rights regime. Hence, the link between diplomatic immunity and human rights is manifested by the apparent contradiction of shielding accredited person to stay in impunity, whereas the victims sustain injury without coercive, effective and adequate redress. Hence, in order to fulfil the duty to respect, states shall provide a solution for the clash between diplomatic immunity and the right of access to justice.

⁴⁵ Eirwen-Jane Pierrot, *Escaping Diplomatic Impunity: The case for Diplomatic Law Reform* (October 2010) 1.

CHAPTER THREE

COUNTRIES' EXPERIENCES ON CURBING ABUSE OF DIPLOMATIC IMMUNITY

3.1. Introduction

Access to justice is a basic human right as well as an indispensable means to combat poverty, and prevent and resolve conflicts. The practice of states on diplomatic jurisdictional immunity has a varying degree. The practical difference emanates from the differing understanding of states on the scope and extent of diplomatic immunity. The other factor is owing to the national interest of that concerned state which is revealed on case by case basis. In other words, the narrow or liberal understanding of diplomatic immunity depends upon the nature of the interest at stake. It could also be because of the theories backing diplomatic immunity followed by that specific state. In other words, if a country sticks to functional necessity theory then there will be no such case for blanket immunity. The level of states' evaluation on the extent of diplomatic immunity yields such variation. This chapter is designed in a way to show the practice of some countries' experiences.

3.2. Countries Experience

The United Kingdom, United States of America, and some of the Commonwealth countries believe in the complete immunity of the diplomatic agent in respect of all his acts as long as he remains accredited to the government.⁴⁶ States like Italy, Soviet Russia, Czechoslovakia, and various continental countries have always sought to draw a distinction between acts which the envoy performs in his official capacity as a diplomat and his other acts which may be said to be of a private nature, such as non-payment of debts or rent of premises leased by him for his residence.⁴⁷ The following sections are some countries hosting relatively higher number of diplomatic missions and at the same time geographically representative.

i. USA

⁴⁶ B. Sen, *A Diplomat's Handbook of International Law and Practice*, (The Hague, Netherlands, 1st edition 1965) 83.

⁴⁷ *Ibid.*

In 1978, Congress passed the Diplomatic Relations Act (DRA) which codified the 1961 VCDR.⁴⁸ The DRA also included provisions complementary to the VCDR intended to establish a mechanism by which private citizens could obtain financial compensation for property damage or personal injury sustained as a result of a motor vehicle accident with a member of a foreign diplomatic mission.⁴⁹ One complementary provision of the statute requires all foreign nationals associated with a mission to procure liability insurance for "any motor vehicle, vessel, or aircraft" they operate in this country.⁵⁰ But it lacks adequate remedy for tortious or criminal acts of diplomats.

In 1983 Congress amended the Act to hold embassies responsible for full liability insurance coverage for their diplomats.⁵¹ The Act also confers power on the President of the United States to specify greater or lesser immunity protection for certain diplomats, based on reciprocity.⁵² In 1982 Congress passed the Foreign Missions Act ("FMA").⁵³ The FMA established a duty in the government to oversee the activities of all foreign missions in the United States.⁵⁴

In 1987, Republican Senator Jesse Helms has proposed amendment to US domestic legislation requiring, inter alia, the investigation and prosecution - subject to certain conditions - of diplomats for serious criminal acts, including "any crime of violence", "drug trafficking," and reckless and drunken driving, and the altering of the definitions of the family member and diplomatic bag.⁵⁵ Later, a more modified proposal was introduced

⁴⁸ Garley (n 11) 135.

⁴⁹ Garley (n 11) 136.

⁵⁰ Garley (n 11).

⁵¹ David H. Goodman, *The U.S. Needs to Play Hard Ball*, 11 *Hous. J. INT'L L.* 395, 399-400 (1989), cited in Goldenberg (n 10) 209.

⁵² Goldenberg (n 10) 209.

⁵³ Foreign Missions Act, 22 U.S.C. §§ 4301 (1993) cited in Goldenberg (n 10) 209.

⁵⁴ Lori Shapiro, *Foreign Relations Law: Modern Developments in Diplomatic Immunity*, 1989 *ANN. SURV. AM. L.* 281 (1990) 286 cited in Goldenberg (n 10) 209.

⁵⁵ See, Shapiro, *supra* note 179, pp. 303-304; See also, James E. Hickey Jr. & Annette Fisch, *The Case to Preserve Criminal Jurisdiction Immunity Accorded to Foreign Diplomatic and Consular Personnel in the United States*, 41 *HAST. L. J.* 351-352 (1990) cited in Dror (n 33).

entitled "Diplomatic Immunity Abuse Prevention Act."⁵⁶ The bill has been approved by the Senate but rejected by the House of Representatives.⁵⁷

In *Skeen v. Federative Republic of Brazil*, the United States District Court for the District of Columbia dismissed an action for lack of jurisdiction based on defendant's status as Ambassador to the United States.⁵⁸ In this case, the grandson of a Brazilian Ambassador assaulted and shot an American citizen without accountability for criminal or civil liability.⁵⁹ The court hinted that it was the function of the other two branches to provide a proper solution to such incidents.⁶⁰ Similarly, these instances amply justify the Second Circuit's reasoning in *767 Third Avenue Associates v. Permanent Mission of Zaire*,⁶¹ in which the landlord could not evict his delinquent tenant. Thereafter the courts avoided such cases without looking the merit. Again, the courts' reasoning is not mainly based on the VCDR, rather on the position that the only way to protect American diplomats abroad is via blanket recognition of immunity without exceptions.

In Washington, D.C., on February 13, 1987, a car driven by the ambassador from Papua New Guinea crashed into four parked cars and seriously injured 2 people and preliminary report showed that the ambassador was found drunken but escaped liability.⁶² Another example of blatant abuse of diplomatic immunity is the case of Manuel Ayree, the nineteen-year old son of the third attaché to the Ghanaian delegation, allegedly committed rape, sodomy, assault and an array of other crimes during his stay in New York City during 1980 and 1981 later on released from arrest owing to his status. The State Department's only remedy was to declare Ayree *persona non grata* and expel him from the United States.⁶³

Majority of UN headquarters are found in USA bi-implication there are a number of missions and diplomats in New York. In recent years, thousands of individuals from low-income

⁵⁶ S. 1394, 100th Cong., 1st Sess., 133. Rec. S13,909 (1987), cited in Dror (n 33) 34.

⁵⁷ H.R. 1777, 100th Cog., 1st Sess., 133 Cong. Rec. S 13,909 (1987), cited in Dror (n 33) 34.

⁵⁸ *Skeen v. Federative Republic of Braz.*, 566 F. Supp. 1414 (D.D.C. 1983), cited in Goldenberg (n 10) 198.

⁵⁹ Goldenberg (n 10) 198.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Ali M. Farahmand, *Diplomatic Immunity and Diplomatic Crime: A Legislative Proposal to Curtail Abuses*; Note (Journal of Legislation: Vol. 16: Iss. 1, Article 7) 89.

⁶³ *Ibid* 99 (paraphrased).

countries, especially women, have entered the US with A-3 and G-5 visas⁶⁴ to work as domestic employees in the residences of diplomats, consular officers, and officials of international organizations.⁶⁵ Reports suggest that many of these domestic employees have been subjected to abuses such as withholding of wages, underpayment of wages, ill-treatment, illegal confinement, withholding of passport, rape and other forms of physical and sexual violence.⁶⁶ Badar Al-Awadi, Third Secretary at the Kuwait Mission in New York, confiscated his live-in household servant's passport and visa, in clear violation of her contract forced her to work seventeen hours a day seven days a week, intercepted her mail and telephone, raped her on numerous occasions and threatening her if she ever told anyone.⁶⁷ Domestic workers brought various arguments to convince that the issue of domestic workers falls outside the scope of diplomatic immunity and some others argue it falls under the exception of commercial activity. Some others argue involuntary servitude and slavery as *jus cogens* exception to diplomatic immunity. To curb the menace of human trafficking, the US Congress passed the Victims of Trafficking and Violence Protection Act (TVPA) in 2000.⁶⁸ Due to the visa type they have which prohibit them to stay longer, the victims were not able to successfully litigate and complete their case. The government issued Reauthorization Act in 2008 to curb this challenge. But the defense of diplomatic immunity remains the basic challenge. Domestic workers have only been successful when they brought action under residual immunity after the diplomat's term expires. It would be within the constitutional power of the President and Congress to abrogate the United States' duty under both of these

⁶⁴ A-3, G-5 and B-1 are the types of temporary visas issued by US government for domestic employees who are accompanying an employer or diplomat who is visiting or on temporary assignment in the United States, *noted in* Subramanian (n 86) 203.

⁶⁵ Human Rights Watch, 'Abuse of Domestic Workers with Special Visas in the United States' (HRW, 2001 (13) 2 G) <<http://www.hrw.org/reports/2001/usadom/usadom0501.pdf>> accessed on 5th April 2017; American Civil Liberties Union, 'Trafficking and Exploitation of Migrant Domestic Workers by Diplomats and Staff of International Organizations in the United States' (ACLU, 17 January 2007) <<https://www.aclu.org/trafficking-and-exploitation-migrant-domestic-workers-diplomats-and-staff-international>> accessed on 5th April 2017; Also See Human Rights Watch, 'Hidden Away: Abuses Against Migrant Domestic Workers in the UK', (2014) Human Rights Watch <<https://www.hrw.org/report/2014/03/30/hidden-away/abuses-against-migrant-domestic-workers-uk>> accessed on 5th April 2017, Subramanian (n 86) 203.

⁶⁶ Subramanian (n 86) 203.

⁶⁷ Kappus (n 13) 269 – 270.

⁶⁸ US Department of State, 'US Laws on Trafficking in persons' (US Department of State: Diplomacy in Action, May 2015) <<http://www.state.gov/j/tip/laws/>> accessed on 5th April 2017, cited in Subramanian (n 86) 203.

documents (VCDR and Diplomatic Act)⁶⁹, however, it failed to exercise this power due to the nature of diplomatic customary law status.

ii. United Kingdom

The English Law was settled in 1708 when Parliament introduced the Diplomatic Privileges Act⁷⁰ after the landmark case of *Mattueof*, Russian Ambassador who failed to pay his debt. After the *Mattueof* incident the Crown enacted the Diplomatic Privileges Act, also known as the Act of Anne 1708.⁷¹ This Act was passed and stated that it was a legal offence to bring judicial proceedings against any diplomat or their servants.⁷² The current legislation confers the Queen of England the power to withdraw any immunity and privileges. There are instances in relation to abuse of diplomatic immunity in UK and some are presented hereunder.

In the United Kingdom the Foreign and Commonwealth Office in the 1985 Review of the Vienna Convention stated that most offence of the diplomats was caused due to driving under the influence of liquor or drugs.⁷³ The United Kingdom therefore announced to all the heads of mission in London that diplomats that fail to comply with local traffic rules would be reconsidered whether they were still acceptable members of the mission and the government would use its power to declare members that fail to pay the fines as a *persona non grata*.⁷⁴

The House of Lords itself in *Jones v. Saudi Arabia* delivered the latest blow to the high hopes and expectations raised by the *Pinochet*⁷⁵ precedent when it unequivocally endorsed the *Al-*

⁶⁹ Morris (n 12) 615.

⁷⁰ Buckley M, *Origins of Diplomatic Immunity in England* (1966) University of Miami Legal review 363, 339 cited in Goossens (n 72) 109.

⁷¹ Przetacznik F "The History of the Jurisdictional Immunity of the Diplomatic Agents in English Law" (1978) 7 *Anglo-American Law Review* 369, cited in Goossens (n 72) 110.

⁷² Savio Goossens, *Diplomatic Immunity: An Argument for Re-evaluation*, (University of KwaZulu-Natal thesis for Masters in Law) 110.

⁷³ Denza 70; McClanahan 118, cited in Goossens (n 72) 113.

⁷⁴ Denza 70; Ross 174, cited in Goossens (n 72) 113.

⁷⁵ General Augusto Pinochet was indicted for human rights violations committed in Chile in 1998. He was arrested in London six days later and held on house arrest for a year and a half before being released by the British government in 2000 and authorized to return to Chile, Pinochet was subsequently indicted with several crimes. He died in 2006 without having been convicted. Pinochet's attorneys argued that he was entitled to immunity from prosecution first as a former head of state.

Adsani decision and insisted that State immunity barred British courts from hearing tort claims against foreign States and their officials.⁷⁶

In January 1987, the British Prime Minister, Margaret Thatcher, told the House of Commons that diplomatic immunity had blocked the prosecution of an American a husband of a US diplomat accused of a sexual offense involving a young girl.⁷⁷

In April 1984, during a demonstration outside the Libyan People's Bureau (embassy) in London, shots were fired from the windows of the Bureau, killing a young on-duty Police Constable. Upon severance of diplomatic relations between the UK and Libya, the Libyans, including those allegedly responsible for the killing, were allowed to leave the UK.⁷⁸

In the case of *R v Governnor of Pentonville Prison, ex parte Teja*, the Republic of India issued a warrant of arrest against Teja for having committed various offences and he was apprehended at the Heathrow Airport in London. Even though he claimed for diplomatic inviolability, the court of Appeal therefore came to only one conclusion that there was no violation of Article 40 and that Teja had no valid immunity at the time of arrest.⁷⁹

A different case involved a counsellor for the Arab League affairs at the Syrian Embassy stationed in London, Mr. Ahmed Walid Rajab. Mr. Rajab had taken out a six-month lease agreement with Mr. John Chaffey that came to an end in 1982. Since the agreement came to an end Mr. Rajab was required to evacuate the premises which he refused.⁸⁰ A long dispute followed until Mr. Chaffey decided to get a court order against him to leave the premises by February 1985. At this point Mr. Rajab invoked his diplomatic immunity. Only with the assistance of the Foreign Office to pressure the Syrian Ambassador to instruct Mr. Rajab to move out of the premises did Mr. Chaffey get his premises back at the end of June 1985.⁸¹

⁷⁶ *Jones v Ministry of the Interior of Saudi Arabia* [2007] 1 AC 270 cited in *Ibid* (n 77) 5.

⁷⁷ *Balancing Human Rights and Diplomatic Immunities* pdf, 306, available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwif39jD7qPpAhUkyoUKHYtnCBAQFjAAegQIBBAB&url=http%3A%2F%2Fshodhganga.inflibnet.ac.in%2Fbitstream%2F10603%2F38483%2F10%2Fchapter%25207.pdf&usg=AOvVaw1CrrYhdSdH2A_lgq4_cxTo accessed on May 1, 2020.

⁷⁸ *Ibid* (n 76) 306.

⁷⁹ Goossens (n 72) 120.

⁸⁰ Goossens (n 72) 122.

⁸¹ Goossens (n 72) 122.

The remedies available in United Kingdom are to request a waiver from the sending state in order to be able to prosecute the offending diplomat; to declare *persona non grata*; and to sever all diplomatic ties with a country if all other remedies have been exhausted.

iii. India

India is a home to one of the oldest diplomatic traditions in the world, whose origin may be traced back to the 4th Century BC.⁸² Arthashastra, meaning ‘science of politics’, written by the great Sanskrit scholar Kautilya who lived during the Mauryan dynasty, is an important source in our understanding of early Indian diplomatic history.⁸³

In 2013, it was reported that the Consul General of Bahrain in Mumbai was accused of molestation of a 49-year-old woman working as a manager at a residential society where the diplomat also resided.⁸⁴ Although he was suspected for the crime of molestation, he was not arrested as he enjoyed diplomatic immunity.⁸⁵ Similarly, in 2014 the Indian police filed a criminal case against certain diplomats of Israel for injuring an airport immigration official, though no action was taken against them.⁸⁶

Recently, the scope of diplomatic and consular immunity and privileges was contested in two cases in which India was involved.⁸⁷ The first case is concerned with the abuse of personal immunity by an Indian Consular Officer in New York. In this case the domestic servant of

⁸² Roger Boesche, *The First Great Political Realist: Kautilya and His Arthashastra* (1st edn, Lexington 2002); Kalidas Nag and V R Ramachandra Dikshitar, ‘The Diplomatic Theories of Ancient India and the Arthashastra’, (1927) 6:1 *Journal of Indian History*, 15–35, cited in Subramanian (n 87) 186.

⁸³ J. Craig Barker (n 2) 29; Also See, Sally Marks, ‘History of Diplomacy’, *Britannica Encyclopedia Online* (2013) <http://www.britannica.com/EBchecked/topic/164602/diplomacy> accessed on 5th April 2017. Cited in Subramanian (n 87) 186.

⁸⁴ Sagar Rajput, ‘Bahrain diplomat accused of abusing woman sent home’ *Mid-Day* (Mumbai, 29 December 2013) <http://www.mid-day.com/articles/bahrain-diplomat-accused-ofabusing-woman-sent-home/246384> accessed on 5th April 2017, cited in Subramanian (n 87) 204.

⁸⁵ Subramanian (n 87) 204.

⁸⁶ ‘India lodges criminal case against Israeli diplomats’ (*Islamic Invitation Turkey*, 7 April 2014) <http://www.islamicinvitationturkey.com/2014/04/07/india-lodges-criminal-caseagainst-israeli-diplomats/> accessed on 5th April 2017, cited in Subramanian (n 87) 204.

⁸⁷ S. R. Subramanian, *Abuse of Diplomatic Privileges and the Balance between Immunities and the Duty to Respect the Local Laws and Regulations under the Vienna Conventions: The Recent Indian Experience* (*The Chinese Journal of Global Governance* 3 (2017) 182–233) 205 – 227.

the Consular Officer alleged that she was ill-treated, exploited, trafficked and under paid by her employer and submitted her complaint to the New York Police. The Police also found that the Officer has committed visa fraud by giving false statement about her servant. The US authority brought charge and the District Judge issued arrest warrant. She was arrested but later release on conditional bail. The Consular Officer then reported the matter to India and subsequently, in order to protect her under the shield of diplomatic immunity, the government of India assigned her as a Special Adviser in the Permanent Mission of India to UN. Then she left USA without facing further legal process. The Vienna Convention on Consular Relations of the 1963 (VCCR) under Art 41 provides for possibility of consular officers to be tried whenever they commit grave crimes. But, the government of India has changed her status to diplomat by giving another assignment for her undue protection.

The second case is concerning the alleged deprivation of immunity of the Ambassador of Italy by the Indian government and the Supreme Court of India. Armed operatives that protect Italian ship and seamen from piracy opened fire against Indian fishing boat at a distance of about 20.5 nautical miles of the coast of the state of Kerala, assuming it is pirates' boat, and killed two Indian fishermen. Indian government arrested two Italian marines on board. Italy contested the jurisdiction of India from the beginning but the marines remain under the control of the Italian Embassy in Delhi. Later on, the marines and the Italian Ambassador to India requested the Supreme Court for permission to visit Italy for casting their vote in the national elections. The Court granted the permission; however, later on the Italian government sent a *note verbale* to India stating that they are not going to be returned back to India. Upon the breach of the undertaking, the court ordered that the Ambassador shall not leave India without the prior permission of the court and issued alerts to all airports and the immigration outposts to bar the diplomat from leaving the country. The embassy objected the restraining order based on the VCDR. The Supreme Court argued that the presence of the Ambassador to the court as a petitioner for request of permission supported by affidavit shows that the diplomat has already voluntarily waived his immunity. The debate comes on whether this constructive waiver suffices to lift the personal immunity of the diplomat, which customarily requires it to be in express form and such scenario shall be narrowly interpreted which makes the position of India arguably without legal basis. The issuance of the order is against the provision of Art 26 and 44 of the VCDR that provides for the right to movement of diplomats in and outside the territory of the receiving state.

The above two cases depict the hard reality of the position of the Indian government in which the VCDR is selectively interpreted to suit their convenience. Putting it differently, India understood diplomatic immunity narrowly in her country with regard to the Italian Ambassador's case but, liberally in the Consular Officer's case in another jurisdiction. Both cases show the friction of local laws and institutions on one hand and the VCDR on the other.

iv. South Africa

During the colonization of South Africa under the British crown any diplomatic agent representing South Africa did not receive diplomatic status at that time.⁸⁸ South Africa has since 1989 consented to the contents of the Vienna Convention on Diplomatic Immunities and Privileges without making any reservations.⁸⁹

The South African legislation has ensured that all diplomatic staff has to be registered and is kept on a Diplomatic List to provide *prima facie* evidence that the particular person in question is entitled to Diplomatic immunity and privileges.⁹⁰ Section 13 of the South African Diplomatic Immunities and Privileges Act further requires that all registered Diplomats must be insured. Section 10 of the Act also confers the Minister with the authority to limit or withdraw so much of the immunities, privileges and exemptions so accorded.

In the case of *Portion 20 of Plot 15 Athol (Pty) Ltd v Rodrigues*⁹¹, the company brought a claim for an eviction order to the High Court against Mr. Rodrigues, Angolan Ambassador to the Republic of South Africa, upon contractual obligation default. Although the Ambassador argued based on Art 29 of the VCDR, the company argued that the ambassador is not entitled to diplomatic immunity based on the domestic act and art 31 of the VCDR which provides exception to diplomatic immunity when the claim is a real action relating to private property situated in the territory of the receiving state. The court came to the conclusion that Mr. Rodrigues did not provide evidence to rebut the exclusion of immunity contained in section 6(1) (a) of the act and section 31 (1) (a) of the Vienna Convention and was therefore liable.⁹²

⁸⁸ Ogdon *Juridical Basis of Diplomatic Immunity: A Study in the Origin, Growth and Purpose of the Law* (1936) 15 cited in Goossens (n 72) 95.

⁸⁹ Diplomatic Immunities and Privileges Act 37 of 2001 (preamble), cited in Ibid (n 72) 96.

⁹⁰ Goossens (n 72) 100.

⁹¹ Goossens (n 72) 102.

⁹² Goossens (n 72) 103.

There are also various instances⁹³ like a drunk driver that killed a young student who was released instantly upon identifying her as a wife of diplomat; senior South African diplomat was also found guilty upon committing physical assault and the mission convinced the victim not to pursue the case; a passenger who has made sexual attempt on flight attendant on the South African Airways flight was later identified as a diplomat in London.

vi. Kenya

In Kenya, the Privileges and Immunities Act came into force in April 1970 to guide diplomatic engagements with foreign governments.⁹⁴ This applies to all foreign diplomatic and consular missions, whether or not the state represented by the mission is a party to the Conventions, and IOs gazetted under the Act.⁹⁵

Numerous cases of diplomats behaving dishonourably have risen, from drunken disorderly conduct to assault to the more serious crimes of murder, rape, arms, drug and human trafficking and subversive activities.⁹⁶ These cases have been reported not just globally but also in Kenya. Such abuses may still be tolerable by the receiving state in the name of securing effective performance of diplomatic functions, if these abuses involve merely minor offences or crimes.⁹⁷

In October 2015, a Diplomat, Alphonse Kambu working at the UN was accused of battering his wife, Ruth Gakii, who stated that she had made several reports to diplomatic police on the recurrence of domestic violence on her and no action was carried against him.⁹⁸ On May 2011, the one ambassador to Kenya was alleged to have battered his wife which almost made her paralyzed. The Kenya Police Commissioner wrote to the Nigerian government through the ministry of foreign affairs to waive the immunity of the ambassador. The wife to the ambassador also sought the arrest of her husband for the assault, but no step was taken on that note.⁹⁹ On the 11 of July 2013 an American Diplomat, Joshua Walde, who was said to have

⁹³ Goossens (n 72) 105.

⁹⁴ Wanyela (n 19) 2.

⁹⁵ Wanyela (n 19) 14.

⁹⁶ Wanyela (n 19) 3.

⁹⁷ Ibid.

⁹⁸ Jemimah Nimmasoko Kolo, *Abuse of Diplomatic Immunity in Bilateral Relations: A Critique on The Vienna Convention on Diplomatic Relations, 1961*. (Dissertation 2016) 29.

⁹⁹ Ibid (n 98) 30.

been speeding collided with a Matatu (Van) which killed Haji Lukindo and left about 8 others injured.¹⁰⁰ Soon after the incidence, the American Diplomat registered a statement in the police station and started making arrangements to leave the country. The police could not take any action against him because of diplomatic immunity. The family of the deceased has been left stranded as no form of compensation was granted to any of the victims.

There have been cases of Kenyan diplomats violating the diplomatic immunities accorded to them, like Kenyan diplomat who was accused of enslavement of her domestic servant and another diplomat was also accused of rape attempts.¹⁰¹ In Kenya Dr. Wilcox Chijioke, a Nigerian diplomat was accused of having brutally attacked his wife. A US diplomat had to leave the country hurriedly after allegedly being involved in a traffic accident which led to the death of a Kenyan.¹⁰² In all these cases, the diplomats went relatively unpunished yet there were victims of their actions.

3.3. Contemporary Encouraging Trends

The duty to respect the laws of the receiving state seems more of duty of courtesy than legal obligation in majority of the state practice. The prevalence of impunity seriously affects the government's effort in the protection of human rights. Undoubtedly, the playing field of diplomacy is by and large political. The issue of human rights has also its own political conception. Sometimes institutions can also be tools for political repression and to legitimize impunity. Such quest is both legal and political struggle. Not only the sovereign but also the academics and media shall challenge such a global practice of abuse. There were initiatives to provide exceptions even by the formulation of the original draft of the Convention itself – such instance is by the International Law Commission on its proposal to admit entry to mission premises at an extreme emergency; however, they arrived at the conclusion that listing exceptions might easily lead to the erosion of the principle of inviolability.¹⁰³

Despite countless studies' recommendations for reform and amendment of the VCDR particularly from the academics, states seem to remain neutral for the quest. This does not

¹⁰⁰ Ibid.

¹⁰¹ Wanyela (n 19) 70.

¹⁰² New York Post, nypost.com/.../ny-based-kenya-diplomat-enslaved-her-maid/lawsuit-accessed on 12/08/2014, cited in Ibid.

¹⁰³ Matthias Herdegen, *The Abuse of Diplomatic Privileges and Countermeasures not Covered by the Vienna Convention on Diplomatic Relations: Some Observations in the Light of Recent British Experience*, (1986, Max-Planck-Institute) 739.

mean that there are no forward-looking efforts. Among these, the Optional Protocol to the Vienna Conventions Concerning the Compulsory Settlement of Disputes,¹⁰⁴ is one step forward as it enables parties in dispute to seek access to justice through arbitration or the ICJ, whenever there is dispute on the understanding of the convention. Establishing a dedicated arbitral system may mitigate the contemporary challenges.

Another instance is the recommendation of the Parliamentary Assembly of the Council of Europe to amend the Convention “in order to waive diplomatic immunity for all offenses committed in private life”.¹⁰⁵ However, there is an issue on how to draw a line between public and private functions. Moreover, amendment might be subject to abuse from politically motivated unwarranted accusations.

The other recent development pertains to the practice of the European Court of Human Rights (ECtHR). Three local employees of the US embassy in Montenegro claimed that they had been unfairly dismissed and brought their cases in the Montenegrin courts.¹⁰⁶ The USA then raised state immunity to block the claims in the local courts, and the employees brought their claims to the ECtHR, citing a breach of Article 6 ECtHR.¹⁰⁷ The ECtHR followed the approach in the former cases, in respect of determining the admissibility of the claims and accepted that although immunity could be granted in the case of claims where the ‘subject-matter’ was reinstatement, this [claim for compensation] did not preclude claims for damages arising from wrongful dismissal. The employees’ claims for compensation could therefore still be considered.¹⁰⁸ The restrictive approach to immunity is now the accepted legal position.¹⁰⁹

¹⁰⁴ Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes Vienna, 18 April 1961 available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-5&chapter=3&clang=en accessed on May 4, 2020.

¹⁰⁵ Parliamentary Assembly, Recommendation 1523 (2001) on Domestic slavery available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16924&lang=en> accessed on May 4, 2020.

¹⁰⁶ Lisa Rodgers, *State Immunity and Employment Relationships before the European Court of Human Rights* (University of Leicester, 2018) 543.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid 549.

In April 2008, a 22-year old Pakistani motorcyclist was killed in a tragic road accident involving an American diplomat, killing the driver and injuring a passenger in Islamabad. The court in Islamabad ruled that diplomatic immunity might not apply in the traffic crash and blocked his departure.¹¹⁰ There are rare occasions upon which diplomats are brought to the court.

¹¹⁰ International Commission of Jurists, International Commission of Jurist Examining the Scope of Diplomatic Immunity in Criminal Cases Within the Kenyan Context available at <https://www.theplatform.co.ke/examining-the-scope-of-diplomatic-immunity-in-criminal-cases-within-the-kenyan-context/> accessed on May 4, 2020.

CHAPTER FOUR

THE RIGHT OF ACCESS TO JUSTICE AND DIPLOMATIC IMMUNITY IN ETHIOPIA: THE NEED FOR REVISITING THE EXISTING REMEDIAL APPROACH

4.1. Introduction

The receiving state is obliged to protect the personal inviolability of diplomats as enshrined under Art 29 of the VCDR. Apart from such negative duty of the state not to arrest or detain, it is also obligation of the state to protect diplomats from third parties attack on his person, freedom or dignity. Hence, the government has both negative and positive obligation to protect the personal diplomatic inviolability i.e. refraining from arrest and protecting them from attack. However, the acts of diplomats themselves may bring about a situation where the host state would be reluctant to discharge its obligation. These acts of diplomats are usually violations of human rights. Such intrusions are worsened by lack of effective means of redress.

Many nations have been plagued by diplomats abusing their privileges and immunities; however, countries like USA, Ethiopia and Switzerland are more victims since these countries host many diplomatic institutions. The challenge would be more severe in Ethiopia due to lack of infrastructures and systemic protection of citizens, and low level of economic and political development. In developed countries there are efficient and effective mechanisms in providing justice for victims of diplomatic abuse. In these countries, landlords prepare rental contracts they insert a clause for waiver for jurisdictional immunity and they also confirm this from their Foreign Affairs office.¹¹¹ In criminal cases, for instance in New York, the UN Mission and UN Security jointly with New York Police Department investigate cases and refer the file for the sending states and follow-up the progress.¹¹²

The integrated system built in those countries reveal the track record of diplomats and any liability they owe is readily available. The service providers like telecom, water, customs,

¹¹¹ Hailesillasie Subba, FDRE MoFA Director at International Law Directorate General, interviewed on May 04, 2020.

¹¹² Dawit Yirga, FDRE MoFA Director General of IOs Affairs and Former Asia and Oceania Affairs DG, (interviewed on May 20, 2020).

transport, lease houses management and others have a system to check the suitability and trustworthiness. Hence, delinquent diplomats' access to these services will be limited or curtailed, which compels them to act based on the domestic law.¹¹³ Though limited in number, there are cases where Ethiopian missions abroad are compelled to execute court decision in civil matters particularly with regard to local employees.¹¹⁴

The very notion of human rights entails, in addition to a substantive claim, the availability of recourse to a national judicial or administrative authority – including courts and national human rights institutions (NHRIs) – in the event that a right is violated.¹¹⁵ Every person who claims that his or her rights has not been respected, protected or fulfilled must be able to seek an effective remedy before a competent and independent domestic body vested with the power to order reparations and to have its decisions enforced.¹¹⁶ This chapter discusses about the existing remedial approaches, followed by cases for demonstration and the need for revisiting the approach in dealing with diplomatic immunity in conformity with human rights norms.

4.2. Diplomatic Jurisdictional Immunity and the Existing Remedial Approaches

Ethiopia's capital, Addis Ababa, is a political seat of Africa, and thus, many other international organizations have established their head office or at least have representations. This is a pulling factor for other countries missions and regional organizations to be stationed here. Bi-implication, the numbers of diplomats working in both bilateral and multilateral forum will be much higher than other countries without such opportunity. All these diplomats are conferred with such a special privilege and immunity. The MoFA Protocol Affairs Directorate General issues a diplomatic ID card not only for the diplomat but also for spouse, children and other dependents with similar protection without limiting what family constitutes which has its own negative repercussion. The VCDR is not clear in this regard and it seems it is left for states' discretion.

Whenever diplomats and/or their families abuse their immunity, the victims take effort to solve the issue through negotiation. Negotiation is not effective since majority of

¹¹³ Ibid.

¹¹⁴ Ibid; Gisilla (n 119).

¹¹⁵ United Nations Human Rights Office of the High Commissioner, *Human Rights Handbook for Parliamentarians No 26*, (Inter-Parliamentary Union 2016) 35.

¹¹⁶ Ibid.

complainants are with low level of literacy; they face a language barrier to deal with each and every legal right they may have. Furthermore, the diplomats may also unwelcome them whenever the victims request for at home settlement. Some other victims opt for court resolution. In 2019 a teacher whose contract of employment is terminated from a community school administered by an embassy submitted a claim at a Federal First Instance Court and succeeded in having an *ex parte* judgement. The judgement creditor brought an execution claim and summon was issued for the judgement debtor. Unlike the summons issued during the prior bench's case, the embassy approached the Ministry after the summon for the execution is issued so that the case would be dragged out of court. Not only this, but there are also other few cases currently pending before a court like claims in relation to termination of employment contract, abuse of domestic workers, contract defaulting and so on. The courts usually issue summon for diplomats, though the diplomats usually prefer not to appear on fixed dates. The researcher has tried to dig out court cases involving diplomats but unable to find a case where diplomats cooperate in executing court judgement.

The Ministry's Arbitration Affairs Directorate is the third and viable option, next to negotiation and court settlement. Indeed, the Arbitration Directorate is established in 2019 as a separate department. Prior to this, the task of arbitration was used to be carried out by the Privileges and Immunities Directorate of the Ministry. Currently, the latter directorate is mainly mandated to facilitate the privileges of diplomats, like issuing and renewing diplomatic ID cards, permitting import of duty-free items, permitting tax free fuel, duty free shops, facilitating for CD plates issuance and return, and so on. The Arbitration Affairs Directorate handles cases involving embassies, IOs and individual diplomats. The directorate has settled around fifty cases in 2012 budget year. Apart from monetary claims, every complainant explains on how their rights are violated in their relation with diplomatic communities. Almost all local employees do not have written contract and forced to work more than legal maximum without indemnity.

The Directorate though established with its own structure quite recently, it does not have full-fledged legal environs to operate. There is a draft directive on Settlement of Dispute that may arise between Ethiopians and Diplomatic Missions prepared in 2009¹¹⁷ which is yet to be ratified. The other point of contention lies on the concept of ADR itself which needs the

¹¹⁷ በወጭጉዳይ ሚኒስቴር የፕሮቶኮል ፅ/ቤት የተዘጋጀ፤ በኢትዮጵያ ዊያንና በባለልዩ መብት መካከል ለሚካሄዱ ሁኔታዎች ላይ የአስተዳደር አቅራቢ፤ የድርድር ወሳኔ አሰጣጥና አፈፃፀም ሥነ-ምግባር መመሪያ፤ ታህሳስ 2001 (ረቂቅ መመሪያ)፡፡

consent of both parties to be abide by the outcome. Arbitration presupposes consent of the parties like other ADR methods but differ as it passes binding decision. Nonetheless, the Directorate, arguably, passes binding decision pragmatically speaking. One of the interviewees¹¹⁸, a licensed lawyer having pending case at the directorate, said that the diplomatic missions and diplomats are excessively using their immunity at the detriment of the rights of citizens and the power to entertain diplomatic abuses shall be conferred to the regular courts particularly for civil matters. The Directorate does not have a means to enforce its decision, as opposed to regular courts. Of course, the major tool for enforcement is diplomacy. The Directorate has both legal and diplomatic approach in settling issues. One of the challenges is that the diplomats or representatives of the embassies and IOs do not often show up.

Upon non-appearance gentle reminders will be sent, but it is common that majority of diplomats do not appear on those dates. This diplomatic channel is not as such effective and the following section demonstrates the depth of the violation of the right of access to justice of victims based on case studies.

4.3. Case Study

In Ethiopia there are more than 130 countries' missions (embassies, liaison offices and honorary consul) and more than 75 IOs all having diplomatic status¹¹⁹ either through VCDR or Host Country Agreement. It has to be noted that there is no universal consensus on what constitute private act on one hand and official activity on the other, as there is no watertight demarcation. Particularly, from victims of diplomatic impunity perspective, diplomats enjoy excessive and overly expansive immunity sometimes beyond what is provided in the convention.

Pragmatically speaking, in Ethiopia victims of diplomatic immunity usually bring their complaint to the Ministry. Besides, there are also some cases lodged before ordinary courts, CCI, HoPR and other administrative offices. The following are sample recent and active cases lodged before these organs which demonstrate the magnitude and depth of abuse of diplomatic immunity and how far the right of access to justice is at stake. In order to keep

¹¹⁸ Interview with Nasibu, Consultant and Attorney at Law (interviewed on May 6, 2020).

¹¹⁹ Interview with Gissila Shawel, A/Chief of State Protocol at FDRE Ministry of Foreign Affairs (interviewed on May 4, 2020).

confidentiality of either parties, full names of both victims and diplomatic institutions are not mentioned.

i. B.M.¹²⁰ V. Embassy

The son of Mr. B.M. was killed in the midnight, while a drunken diplomat was driving in speed to his home. The deceased, was a single father who has left a five years old son without a mother and his parents are pensioned elderly person with severe ailment. The parents are unable to raise the child. The insurance company paid them 35,000 ETB as per the third-party mandatory insurance scheme. The concerned police department conducted its investigation but unable to pursue prosecution owing to the obvious reason. The father of the deceased Mr. B.M. lodged his complaint to the Directorate and it was communicated to the concerned Embassy in Addis Ababa. However, the embassy argued that the insurance company has already paid the compensation and claimed not to pay any further indemnity. The Ministry elaborated the purpose and object of the Third-Party Insurance Proclamation¹²¹ and requested the Embassy to make payment based on the governing law. The father of the deceased requested compensation for maintenance of the child but the case has been pending for more than two years without solution insight. This seriously affected the best interest of the child, since his father was taken by irresponsible person that escape liability, his mother is not with him and the child is left with elderly grandparents surviving with small sum of pension.

However, those States most concerned to contain abuse of diplomatic immunity have been able to ensure mainly through insurance schemes such as those described above that aggrieved plaintiffs are seldom deprived of a remedy by immunity from civil jurisdiction in regard to motor accidents.¹²² The traffic accident cases involving diplomats investigated by Addis Ababa Police between January 2019 and April 2020 are more than 25 in which death, bodily injury and damage of property are registered. In all these cases the delinquents are

¹²⁰ Interview with B.M, father of the deceased (on phone in Addis Ababa, May 6, 2020).

¹²¹ Vehicle Insurance Against Third Party Risks Proclamation No. 799/2013, Federal Negarit Gazette, 19th year No. 53. The main object of the proclamation is to facilitate the provision of emergency medical treatments and it is not to assess the level of damage. Art 16 (3) of the proclamation provides for possibility of claiming compensation beyond what is provided in the proclamation.

¹²² Eileen Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations* (Oxford University Press, Fourth Edition 2016) 238.

shielded by diplomatic immunity. Moreover, diplomats, particularly their families involve in criminal activities and flash their ID cards to escape liability.

ii. S.S and et al¹²³ v. Embassy

The case of S.S. and et al (12 person) is one of the notorious cases in which 12 former employees of the Embassy are unable to access to justice for more than two decades. Some of the complainants have passed away and subrogated by their legal heirs. These former employees of the embassy did not receive their salaries for about 8 years and lodged a complaint before some high-level organs of government including the HoPR, though the case remain pending. The embassy continuously pleaded that their country is in a conflict for several years, consequently, unable to make the payment. The complainants on the other hand claim that the embassy is importing luxurious cars and other items, and argue that they have sufficient means to pay. They further argue that fellow local employees in other countries in the same embassy are paid their salary and hence, the embassy's position in this regard is unacceptable and if the crisis is the cause it would have been the same for the embassy of that country stationed in other countries. The outgoing employees said that they are claiming this but the government has shown reluctant position in taking appropriate measure on the protection of human rights.

iii. G.D.'s cases¹²⁴

Mr. G.D. has two cases against different regional organizations. The first case is with regard to contract of sale of used car. All IOs having Host Country Agreement with Ethiopia have almost similar privileges and immunities provided in the VCDR. These diplomatic institutions have duty free privilege. In this case, Mr. G.D. won an open bidding to purchase a vehicle and signed a sales contract. Later on, Mr. G.D. transferred the ownership of the car to third person. However, the then ERCA ceased the car owing to the fact that it is imported with duty free arrangement and upon transferring the car for another person without similar privilege before the expiry of some period (10 years in this case) the customs regulation obliges for payment of customs duty for the remaining period. The second buyer paid the remaining duty and brought a court action against Mr. G.D., while Mr. G.D. explained the fact that he has bought the car from one regional organization in the same manner he has sold

¹²³ Interview with E.A., one of the victims, (Interviewed on phone in Addis Ababa, May 07, 2020).

¹²⁴ Interview with G.D., the victim, (Interviewed on phone in Addis Ababa, May 06, 2020).

it to the current plaintiff and he requested the court for intervention of the Organization. The court issued a summon for the organization to appear before the court, though the organization has never appeared due to diplomatic jurisdictional immunity, said the interviewee. The organization has pledged itself to cover all statutory fees in relation to the car in its sales contract drafted by itself. The court finally reached on the verdict that Mr. G.D. shall pay the sum and reserved his right to collect the fund from the Organization. Hence, Mr. G.D. brought his complaint to the Ministry and the organization has rarely showed up to settle the issue and while conducting this research the judgement creditor has succeeded in execution bench to sell the property¹²⁵ of Mr. G.D. which will be a severe forfeit.

The other case submitted to the CCI involving the same person as above is with regard to termination of employment contract. Mr. G.D. was a former police officer and seconded as a security guard in another regional organization where he was terminated from his duty after 8 years of service due to alleged unjustified ground that the employment is for definite period. The organization employed the applicant for indefinite period and after 4 years of service, it arranged a contract for definite period with retroactive application so as to make it definite. Be that as it may, since the security service is indispensable so far as the office is in Addis Ababa which makes the employment relation for indefinite period as per art 9 of the Ethiopian Labour Proclamation No. 377/2003 (currently repealed) and 1156/2019. The applicant claimed for severance, compensation, unused annual leave and other benefits specific to the organization based on the rules of the institution. Like other cases, despite relentless effort by the Directorate, the organization's representative rejected the claim without any reason. The case was submitted before regular court, in which the court struck out the case due to diplomatic immunity. The applicant brought the case for CCI on the basis of the fact that his right of access to justice is hampered by the executive seeking for constitutional interpretation.

iv. B.A and et al¹²⁶ v. Embassy

The case of 10 security guards among which the contracts of four are terminated and other six still working in an Embassy is also another scenario where diplomatic impunity is revealed.

¹²⁵ Dibora Samson, Fortune Newspaper (Vol. 20 No. 1029 January 19, 2020) 12.

¹²⁶ Focus Group Discussion on teleconference, with four of the employees, (interviewed on phone in Addis Ababa, May 6,2020).

The claims of those who are terminated are severance pay, compensation, and unused annual leave; whereas, the remaining who are still working requested for the protection of their bare minimum labour rights which is enshrined in the Labour Proclamation. These rights, among others, include overtime payment, paid annual and sick leave, and safety issues. One of the employees has undergone surgery on his neck and admitted to hospital for a month, in which the embassy cut his monthly salary which is contrary to the domestic law and ILO convention¹²⁷ Another employee's five days salary was sliced off while he was on his wedding ceremony. All these employees are claiming similar issues in which their fundamental labour rights are violated. However, in the embassy's written reply, it unreasonably contended that the employees are temporary relief security guards who are kept on payroll purely on humanitarian grounds. Hence, the argument goes on to reach on the conclusion that the contract of security guards can be terminated at any time the embassy wishes and the employees are not eligible for the labour rights and standards enshrined on domestic or international labour laws. The employees are claiming for the protection of their right for more than a decade.

v. D.M.¹²⁸ v. Embassy

A criminal case in which a foreign woman was brought before Federal First Instance Court Arada criminal bench in 2020 suspected of drug trafficking after being caught at Bole International Airport while connecting flights is the most recent one. On the date she was brought to the bench, a diplomat from her country's embassy appeared in the court and attempted to enter while hearing was ongoing. However, the police in charge of controlling arrested persons and acting as a bailiff of a court advised him to stay out since the bench has commenced its task. The diplomat then kicked the police in his uniform and made him roll out down the stairs sustaining damage including bone fracture. Then the diplomat forcefully entered the bench insulting the police officers, and attendants. The judge on the bench ordered his detention for court contempt on the same file and he was detained. While in custody, the Ambassador of the Embassy come to the court who reportedly approached the duty officers in uncomfortable way and later on, he himself was arrested. Then, the diplomats

¹²⁷ Sick leave and related income replacements constitute a key component of the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102). The Ethiopian Labor Proclamation No. 1156/2019 provides for paid sick leave under Art 85 and 86.

¹²⁸ Interview with D.M, Police Officer (interviewed on phone in Addis Ababa, May 6,2020).

were released based on court order on the same night at 21:00 hours due to the diplomatic immunity. The victim police officer remained in hospital for more than a month and without indemnity, who has partially lost his ability to pursue his profession.

vi. K.S.¹²⁹ v. Embassy

The landlord's dilemma is another area of diplomatic immunity abuse in Ethiopia. There are several cases in which landlords are unable to access justice upon defaulting rental contract for residential and/or chancery buildings. In one case, Mr. K.S rented his house for embassy's chancery for five years and on the fifth year of the contract, the embassy expressed its intention to vacate the house. The landlord, Mr. K.S., accepted the three months' notice and relying on such decision, the landlord floated an advert of rent and communicated with potential lessees. Unfortunately, the embassy again requested for additional three months and the landlord accepted the offer not to spoil his and countries' relation. Upon the expiry of the second three months, the embassy remained in the building without further action. The landlord requested the embassy to vacate the building or renew its contract. The embassy remained irresponsive. Then Mr. K.S. brought his complaint to the Ministry after duly counselled by his lawyer that he cannot bring an action against the embassy before the court. The complainant was neither able to evict the delinquent tenant nor succeeded in conclusion of new rental undertaking for couple of months. Similarly, another case of Ambassador's residence was subject of contention upon default of lease contract. Both landlords learned that it is tough to access remedy upon violation of their property right, as they face difficulty in accessing justice except the moral mercy of the embassy.

There are cases submitted by landlords against delinquent person and institution having diplomatic immunity. The researcher came across only one case brought before court involving diplomat working in regional organization delegation. In other jurisdictions, courts try to use arguably the exceptional provision in which the VCDR provides in terms of civil jurisdiction i.e. real actions related to private immovable property situated in the territory of the receiving state unless it is held on behalf of the sending state for purposes of mission.

4.4. The Need for Revisiting the Existing Remedial Approach

Indeed, it is not a principle, but quite considerable number of citizens are victims of human rights abuses emanating from the acts of these communities in different spectrum of life.

¹²⁹ Interview with K.S, the victim, (Interviewed on phone on May 07, 2020).

Simply because something has always been conducted in some way does not mean that there is no likelihood of alteration. The challenge of diplomatic impunity is not peculiar to Ethiopia. Studies have revealed that the VCDR need to be revisited in a certain way so that it would be applied in conformity with other competing norms like human rights having appealing and higher moral resonance. The existing regime has its own flaws which cannot be ignored.

The right of access to justice does not necessarily require the judiciary, if it could be made by the executive quasi-judicial bodies or special courts that takes the nature of diplomatic mission and functions into account. The judiciary is ideal forum to deal with violations of human rights. Taking the present stance of Ethiopian judicial system in its present overall culture, and the nature of the diplomats' task, it seems unrealistic to drag the power to regular courts, yet it could be considered as alternative. The other issue while dealing with diplomatic abuse is not about choosing the fair forum but also considering the reciprocal measure that would be taken. For instance, one Embassy locked its gate on one of its local employees, a driver, for not receiving a diplomat from the Airport despite the fact that the driver is unaware of the date and time of his arrival. And the embassy threatens to terminate the contract of other local employees, when the driver claimed for employment contract termination related payment. The innovative and imaginative process recently introduced in Vienna, Austria, which invites domestic staff of missions and diplomatic households to attend regular interviews to ascertain whether there is any cause for concern in relation to domestic abuse, is compliant with the Vienna Convention.¹³⁰

The most common cases are issues related with domestic workers. Domestic workers are employees at household level like cooker, babysitter, private driver, gardener, guard and so on. The unique feature of this category of workers common to all is that many of them do not have a written contract. Above all, they do not know the names of their employers and the missions s/he is working for. This is typical challenge as it would be tough to reach the diplomat for amicable settlement. The other challenge is that, even though the labour proclamation outrightly exclude domestic workers from its scope of application, cognizant of this, the Ministry has disseminated for all heads of diplomatic missions and IOs a circular governing termination of contract of domestic workers (annexed). But the circular is now

¹³⁰ Pauls Behrens, *Diplomatic Law in New Millennium*, (Oxford University Press, 2017) 35.

almost 30 years old in which its application and validity is reasonably challenged. Therefore, another circular or directive shall be issued to tackle this challenge.

The other most common issue uncovered is with regard to landlord's dilemma, in which the lessor of the house is unable to get back her/his building or rental fee from defaulting lessee. For instance, one Embassy has shifted its chancery without handing over the previous premise and without paying arrears of one year and half rental fee. Similarly, there are other cases like where proper handover is not made and the landlord remained helpless. With regard to this preparing a model contract in which the lessee shall make contingency deposit as a guarantee upon default is essential.

The case of drunken driving and other traffic accidents is also another area of concern. The FDRE Ministry of Transport has issued a directive to cut road traffic accidents which compels owners of vehicle to install GPS Integrated Speed Limit Device with the object of reducing traffic accidents. Nonetheless, following its issuance many diplomatic missions and IOs, requested for privilege to be exempted and succeeded in it. Hence, the challenge still persists and, hence, other remedial mechanisms need to be devised. For instance, devising compulsory insurance mechanism beyond the third-party insurance regime could be an option. This insurance mechanism shall make defence of diplomatic immunity by the insurer as unacceptable.

The provision of Art 3 of Ethiopian Labour Proclamation No. 1156/2019 stipulates as follows:

“unless the Council of Ministers by regulation decides, or an international agreement to which Ethiopia is a signatory provides otherwise, employment relations between Ethiopian nationals and foreign diplomatic missions or international organizations operating with in the territory of Ethiopia shall be governed by this Proclamation;”

The Council has not yet issued a regulation in this regard. It might be argued that since, the law maker is cognizant enough about the VCDR and host country agreement and the inclusion of foreign diplomatic mission or IOs within the scope of the labour law is so as to protect and safeguard the local employees of diplomatic missions. The issue of local employees at embassies and IOs is worth considering. Local employees are commonly liaison officers, drivers, messengers, secretaries, security guards, cleaners, stewards, cooks and

other support staff. These employees make the largest portion in having claims against their former employers. It is a customary practice, in all embassies and IOs, to hire local employees for defined period like 6 months or a year, subject to renewal, despite the nature of their work which is permanent. In one case a cleaner was employed by one IO for 3 months and severally renewed, till her contract was terminated after more than 40 years of service, without receiving a penny. Similarly, one embassy unlawfully terminated the contract of a cooker, who served for 29 years, her contract being annually renewed with only receiving the benefit of the last year of contract. Similarly, among forty non-victim respondents who filled a questionnaire 31 of them mentioned that their contract is made to be definite in time though the nature of their employment is indefinite.

The provision of Art 10 of the labour proclamation and the cassation decision of the Federal Supreme Court¹³¹, are clear in this regard as the nature of work is decisive in determining contracts of employment for definite period and it is not the prerogative of the employer to fix the period of employment. Therefore, it is worth noting that all diplomatic missions and IOs need to be aware of this through circular and continuous briefing sessions. Moreover, the local employees shall receive regular training on the rights and obligations they have.

The system shall be revisited and reformed within the existing framework in a way that citizens right of access to justice could be realized. Some complainants may drop their case because of the ineffectiveness of the system. The VCDR has provided some mechanisms on how to tackle these challenges. First, its preamble has made it clear that immunity is bestowed not for the individual rather for the sake of that state's specific mission which could be understood as functional necessity. Second, the sending state has to be requested for waiver. Thirdly, the use of *persona non grata* can also be another option in severe issues. To severe diplomatic tie is also another mechanism though it would not be the best option. Ensuring and realizing the right of access to justice is an opportunity to show once commitment for promotion and protection of human rights. Unless it would be a sad tribute for the country particularly in the field of human rights protection. Finally, it is commended to uphold and mainstream human rights norms in doing diplomacy.

¹³¹ Memihir Tilahun Asfaw v. Addis College, FDRE Federal Supreme Court Cassation Decision, Vol. File No. 25526, (April 24, 2007).

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

Various factors have influenced the conception and application of diplomatic jurisdictional immunity in different countries. Likewise, the understanding and application of jurisdictional diplomatic immunity is full of uncertainties. The clash between domestic and international law has brought about queries of where jurisdiction lies. The concept of inviolability and jurisdictional immunity seems to be couched in absolute *sensu* as crafted in the VCDR. However, there are also rivalling international norms having an impact on the interest at stake. The VCDR shall not be the only international instrument to deal with these interests as there are also other competing international norms like human rights with highly appealing moral resonance.

The VCDR is quite clear to provide inviolability of the members of the diplomatic mission from arrest or detention (Article 29), and from criminal, civil, and administrative jurisdiction of the receiving state (Article 31) and also inviolability of mission premises (Article 22), documents (Article 24), and the diplomatic bag (Article 27). But the same Convention on its Article 41 also compels the members of the mission to respect the laws and regulations of the receiving state. Therefore, greater significance has to be attached to domestic legislation.

Diplomatic immunity is necessary, but to extend it without regard to the rights of those injured in the receiving state is unjustified. Abuses must be curtailed. Individual diplomats and families shall show their compliance to local laws. The sending states shall also be efficient in policing its own diplomats abroad. Without these two safeguards, more severe steps may be necessary to protect citizens of the receiving state. The protection of victims right of access to justice shall not be subject of compromise unlike other issues of diplomacy. The system in ensuring the protection of the right shall be studied and organized well in manner it would cope-up with the challenges presented. For diplomatic missions that violate the rights of citizens the Ministry may take diplomatic retortions – delaying or denying services requested by the delinquent diplomatic entity for instance, within the framework of the law. In other words, Ethiopia shall ensure that any of its measures including the withdrawal recognized privileges shall not violate the international obligation to provide immunity assumed either by the VCDR or the host country agreement. The government shall discharge the obligation it has pledged at international level both in human rights and

diplomacy field. The VCDR should not be understood as a curtail in an engagement with diplomatic corps, insofar as it results in remedies for abuse, the lack of which is itself a threat to the system per se.

5.2. Recommendations

Diplomats will remain to misuse their status so as to accrue undue benefits or just to undertake violent behaviour, though few in number comparatively speaking. Diplomats must be aware of the fact that s/he is not above the law and that s/he will be answerable for her/his deeds. The time has to come for the Ethiopia to take a strong moral stand in protecting and upholding human rights of its citizens and curb to this era of few but flagrant abuse of diplomatic privileges through substantially changing the law and practice of the remedial approach. As the incidents happened in the country demonstrate that diplomatic immunity is becoming as an instrument to perpetrate violations of human rights without effective mechanism of redress, the researcher recommends the following so as to mitigate, if not eliminate, the challenges:

- ✓ The government shall enact laws that govern diplomatic relations which details who deserve diplomatic immunity; what constitute official act and non-official act; and how to settle issues concerning diplomatic cases. Practical solutions need to be invented so that a vigorous mechanism for dispute resolution is in line with the framework of the Vienna Conventions.
- ✓ The federal government or the Minister of Ministry of Foreign Affairs shall be vested with the power to modify and restrict privileges and immunities on the basis of reciprocity within the framework of the VCDR.
- ✓ As far as IO are concerned the government shall revisit bilateral Host Country Agreements thereby inserting a clause on how to settle cases whenever diplomats misuse their immunity at the expense of nationals' rights and interest.
- ✓ It might be reasonable to hold that demanding a diplomat to answer to private suits at court might be unjustifiable interference with the performance of his functions. Thus, quasi-judicial body capable of dealing with both law and diplomacy should be established to entertain cases concerning diplomats;
- ✓ Providing mandatory insurance recovery mechanism so that the victims could proceed directly against a diplomat's insurer and the insurer should not have the benefit of defense of diplomatic immunity. Otherwise, the insurer will be given with undue opportunity to grab the windfall premium without a peril to insure.

- ✓ The main drawback with the VCDR is the overbroad scope of the immunity that it has created as it is stated in terms of individuals and not functions, thereby shielding unnecessary diplomatic functions from prosecution. The government shall enact laws clearly articulating the exceptions provided in the VCDR and avoid undue blanket immunity.
- ✓ The international community shall rethink in establishing a criminal court at international level to hold diplomats answerable for violent crimes like homicide, rape, child abuse and trafficking, and other crimes of non-preemptory nature.
- ✓ The African Commission on Human and Peoples Rights or the Court shall learn experiences of the ECtHR in dealing with issues concerning diplomats.

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APPENDICES

Date : 07 Aug. '90
Ref.No: P 12/76/82

The Ministry of Foreign Affairs of the People's Democratic Republic of Ethiopia presents its compliments to all Heads of Diplomatic Mission and International Organization and has the honour to bring the following to their kind attention:-

It is to be recalled that whenever a dispute arises between members of Diplomatic Missions and International Organizations and their domestic staff, the Ministry has been mediating and attempting to resolve such disputes through amicable negotiation and on the basis of Circular Note No. P 12/36/80.

Some privileged persons, however, have argued that Labour Proclamation No. 64 of 1975 specifically excludes domestic help and as a consequence refused to consider granting due compensation to their dismissed employees.

In order to clarify such ambiguity, although the referred Proclamation excludes domestic staff, in the spirit of the same Proclamation and other relevant articles of the Ethiopian Civil Code the Ministry will mediate all such disputes and continue to request due compensation in the following manner.

1. If the employee is for any reason dismissed by his employer severance pay and compensation shall be calculated as follows:-
 - a. two month's salary as severance pay;
 - b. one month's pay for service of one (1) year, and for less than one year, a proportion thereof.
 - c. for service of more than one (1) year; in addition to one month's pay referred to in para (b) a third one month's pay for each year of service.
2. If the employee terminates his employment of his own will, the employee shall not receive severance pay, but only compensation as indicated in paras. b or c above.

The Ministry of Foreign Affairs is therefore requesting Head of Diplomatic Mission and International Organization to bring the regulations to the attention of all their diplomatic or privileged personnel.

The Ministry of Foreign Affairs of the People's Democratic Republic of Ethiopia avails itself of this opportunity to renew to all Heads of Diplomatic Mission and International Organization the assurance its highest consideration.

To All Heads of Diplomatic Missions
and International Organization

ADDIS ABABA

Check list questions for KII for Ethiopian Diplomats

Section I – Identification

Respondent's name	
Place of work and Position	
Place of Interview	
Date of Interview	

Section II – Questions for specific information

1. How long have you served as a diplomat in the MoFA?
2. In which countries/states have you been placed so far?
3. How is the depth and magnitude of abuse of diplomatic immunity in general in these states?
4. What are mechanisms availed by these states whenever diplomats abuse their privileges and immunities? Courts, quasi-judicial bodies, ADR or other?
5. Are there some known cases (civil or criminal) against the Ethiopian mission or diplomats? If yes, kindly describe the facts and procedures followed to entertain the case.
6. Do you think the practice of the existing remedial approach followed by MoFA Arbitration Affairs Directorate is effective in dealing with diplomatic immunity abuses? What alternatives do you suggest for better protection of human rights of victims specifically in accessing justice?
7. What could we learn from other states in dealing with diplomatic abuses in Ethiopia?
8. Finally, what is your opinion with regard to the remedies for victims of diplomatic immunity abuse in Ethiopia in accessing justice?

I thank you!

መጠይቅ (For Victims)

ክፍል 1 - መግቢያ

ይህ መጠይቅ “THE RIGHT TO ACCESS TO JUSTICE AND DIPLOMATIC IMMUNITY IN ETHIOPIA: THE NEED FOR REVISITING THE EXISTING REMEDIAL APPROACH” ለተሠኝ ትምህርታዊ የመመረቂያ ጥናታዊ ፅሁፍ ግብዓት የሚውል መረጃዎችን ለማሰባሰብ ብቻ የሚውል ነው። በዚህ ጠቃሚ ስርጌይ ላይ ለመሳተፍ ፈቃደኛ በመሆንዎ ክልብ አመሠግናለሁ። ይህን መጠይቅ ሞልተው ለመጨረስ ከአሥር እስከ አሥራ አምስት ደቂቃ ሊወስድብዎት የሚችል ሲሆን የሚሰጡት መረጃ ሙሉ በሙሉ ሚስጥራዊነቱ በጥብቅ የሚጠበቅልዎት መሆኑን አረጋግጣለሁ።

1. ክፍል 2- ጠቅላላ መረጃ

1.1. ጾታ: ወንድ ሴት መግለፅ አልፏል

1.2. የትምህርት ደረጃ:
ዲፕሎማ እና ከዛ በታች የመጀመሪያ ዲግሪ ሁለተኛ ዲግሪ እና ከዛ በላይ

1.3. ክስ ያቀረቡበት መሥሪያ ቤት ወይም ዲፕሎማት የሚሰሩበት/የምትሰሩበት
ኤምባሲ የተባበሩት መንግሥታት ድርጅት (ተ.መ.ድ.)
ከተ.መ.ድ. ውጭ ያሉ ዓለም አቀፍ ድርጅቶች
ከነዚህ ውጭ ከሆነ ይግለፁ _____

1.4. የሚሲዮኑ/የድርጅቱ ዋና መሥሪያ ቤት የሚገኝበት አህጉር
አፍሪካ አውሮፓ ሰሜን አሜሪካ ኢሲያ
ላቲን አሜሪካ አውስትራሊያ

2. ክፍል 3 - ልዩ መረጃ

2.1. ክስ የቀረበበት የክርክር ጉዳይ
የሥራ ክርክር የቤት ኪራይ ቤተሰብ/የልጅ ቀለብ ውል
ወንጀል

ከነዚህ ውጭ ከሆነ ይግለፁ _____
ጉዳዩ የሥራ ክርክር ከሆነ ቅጥርዎ
ለድርጅቱ/ለሚሲዮኑ ለግለሰብ ዲፕሎማት

2.2. ክሱን ካቀረቡ ምን ያህል ጊዜ ሆኖታል?
ከ1 ዓመት በታች ከ1-3 ዓመት ከ3 ዓመት በላይ

2.3. ቀደም ብሎ በነበርዎት ግንኙነት ዲፕሎማቶች ያለመከሰስ ልዩ መብታቸውን

ያለአግባብ በመገልገል በእርስዎ ላይ ያደረሱት በደል መጠን/ደረጃ ምን ያህል ነው?

ከፍተኛ መካከለኛ ዝቅተኛ ምንም ዓይነት በደል የለም

2.4. በዲፕሎማቶች ወይም በሚሲዮኑ አማካኝነት የዲፕሎማቲክ አለመከሰስ መብትን ያለአግባብ

በመጠቀም በእርስዎ ላይ የደረሰ በደል በቁጥር ስንት ነው?

አንድ ጊዜ ሁለት ጊዜ ከሁለት ጊዜ በላይ

2.5. ዲፕሎማቶች/ሚሲዮኖች የሚያደርሱትን በደል በሚመለከት በውጭ ጉዳይ ሚኒስቴር

የማስማሚያ ዳይሬክቶሬት የሚሰጠው መፍትሔ አጥጋቢና በቂ ነው በሚለው ይስማማሉ?

እስማማለሁ አልስማማም ይህ ክፍል መኖሩንም አላውቅም

2.6. ዲፕሎማቶች የሚያደርሱትን በደል በሚመለከት ከውጭ ጉዳይ ሚኒስቴር ይልቅ በመደበኛ

ፍርድ ቤት ቢታይ የሚሻል ይመስሉታል?

አዎ ይመስለኛል አይመስለኝም

2.7. በመጨረሻም የዲፕሎማቶች ያለመከሰስ መብትን በሚመለከት መሻሻል አለበት የሚሉት

የእርስዎ አስተያየት፡ -

አመሠግናለሁ!

መጠይቅ (For non-victims)

1. ክፍል 1 - መግቢያ

ይህ መጠይቅ “THE RIGHT TO ACCESS TO JUSTICE AND DIPLOMATIC IMMUNITY IN ETHIOPIA: THE NEED FOR REVISITING THE EXISTING REMEDIAL APPROACH” ለተሠኝ ትምህርታዊ የመመረቂያ ጥናታዊ ፅሁፍ ግብዓት የሚውል መረጃዎችን ለማሰባሰብ ብቻ የሚውል ነው። በዚህ ጠቃሚ ሰርቪዬ ላይ ለመሳተፍ ፈቃደኛ በመሆንዎ ክልብ አመሠግናለሁ። ይህን መጠይቅ ሞልተው ለመጨረስ ከአሥር እስከ አሥራ አምስት ደቂቃ ሊወስድብዎት የሚችል ሲሆን የሚሰጡት መረጃ ሙሉ በሙሉ ሚስጥራዊነቱን በጥብቅ የምጠበቅልዎት መሆኑን አረጋግጣለሁ።

2. ክፍል 2- ጠቅላላ መረጃ

2.1. ጾታ: ወንድ ሴት መግለፅ አልፏል

2.2. የትምህርት ደረጃ:
ዲፕሎማ እና ከዛ በታች የመጀመሪያ ዲግሪ ሁለተኛ ዲግሪ እና ከዛ በላይ

2.3. የሚሰሩበት መስሪያ ቤት
ኤምባሲ የተባበሩት መንግሥታት ድርጅት (ተ.መ.ድ.)
ከተ.መ.ድ. ውጭ ያሉ ዓለም አቀፍ ድርጅቶች
ከነዚህ ውጭ ከሆነ ይግለፁ _____

2.4. በሚሰሩበት/በድርጅቱ ያልዎት የሥራ ልምድ
ከ1 ዓመት በታች ከ1 እስከ 3 ዓመት ከሦስት ዓመት በላይ

2.5. የሚሰሩበት/የድርጅቱ ዋና መስሪያ ቤት የሚገኝበት አሀገር
አፍሪካ አውሮፓ ሰሜን አሜሪካ ኢሲያ
ላቲን አሜሪካ አውስትራሊያ

3. ክፍል 3 - ልዩ መረጃ

3.1. የሥራ ቅጥር ሁኔታዎ
ቋሚ በጊዜያዊነት/ኮንተራት
ቅጥርዎ በጊዜያዊነት ከሆነ፤ ውሉ የሚታደስበት ጊዜ
6 ወር 1 አመት 2 ዓመት 3 ዓመት ከ3 ዓመት በላይ

3.2. በሚሰሩበት መስሪያ ቤት ውስጥ ያሉ ዲፕሎማቶች መብታቸውን ያለአግባብ በመገልገል በሎካል ሠራተኞች ላይ የሚያደረሱት በደል መጠን/ደረጃ ምን ያህል ነው?
ከፍተኛ መካከለኛ ዝቅተኛ ምንም ዓይነት በደል የለም

3.3. በዲፕሎማቶች ወይም በመ/ቤትዎ አማካኝነት የዲፕሎማቲክ አለመከሰስ መብትን

ያለአግባብ በመጠቀም በእርስዎ ላይ የደረሰ በደል አለ?

አዎ

የለም

መልስዎ አዎ ከሆነ ምን ያህል ጊዜ?

አንድ ጊዜ

ሁለት ጊዜ

ከሁለት ጊዜ በላይ

3.4. ከሚሰሩበት መስሪያ ቤት የዲፕሎማቲክ አለመከሰስ መብትን ያለአግባብ በመጠቀም በደል

ደርሶበት ለውጭ ጉዳይ ሚኒስቴር ክስ ያቀረበ ሠራተኛ ያውቃሉ?

አዎ

የለም

መልስዎ አዎ ከሆነ ጉዳዩ በአጥጋቢ ሁኔታ ተፈቷል?

አዎ ተፈቷል

አልተፈታም

3.5. ዲፕሎማቶች የሚያደርሱትን በደል በሚመለከት በውጭ ጉዳይ ሚኒስቴር የማስማሚያ

ዳይሬክቶሬት የሚሰጠው መፍትሔ መኖሩን ያውቃሉ?

አውቃለሁ

አላውቅም

መኖሩን የሚያውቁ ከሆነ መፍትሔ አጥጋቢና በቂ ነው በሚለው ይስማማሉ?

እስማማለሁ

አልስማማም

ይህ ክፍል መኖሩንም አላውቅም

3.6. ዲፕሎማቶች የሚያደርሱትን በደል በሚመለከት ከውጭ ጉዳይ ሚኒስቴር ይልቅ በመደበኛ

ፍርድ ቤት ቢታይ የሚሻል ይመስሎታል?

ይመስለኛል

አይመስለኝም

3.7. በመጨረሻም የዲፕሎማቶች ያለመከሰስ መብትን በሚመለከት ያልዎት አስተያየት፡ -

አመሰግናለሁ!

FGD - Issue of Discussion for 2 groups (victims)

I. Objective of the FGD

The FGD is aimed at collecting data and information to be used for academic research entitled “THE RIGHT TO ACCESS TO JUSTICE AND DIPLOMATIC IMMUNITY IN ETHIOPIA: THE NEED FOR REVISITING THE EXISTING REMEDIAL APPROACH”. Thank you for agreeing to take part in this important study. The survey will take fifteen to twenty minutes to complete and be assured that all your discussion will be kept in the strictest confidentiality.

II. Issue of Discussion

The VCDR provides for jurisdictional immunity of diplomats and at the same time expects diplomats to honour the law of the host/receiving state. The MoFA has established the Arbitration Affairs Directorate in order to solve issues of diplomatic immunity abuse in amicable way. What are the major challenges you are facing in the system and what do you suggest for its improvement? Does the current system have negative implication on the victims in accessing justice?

የሺይና ዲፕሎማሲያዊ ግንኙነት ስምምነት የዲፕሎማቶች ያለመከሰስ መብትን የሚያስቅምጥ ቢሆንም ዲፕሎማቶች የሀገሪቱን (የተቀባይ) ሕግ ማክበር እንዳለባቸው ያስቀምጣል። የውጭ ጉዳይ ሚኒስቴርም የዲፕሎማቶች ያለመከሰስ መብትን ያለአግባብ የመጠቀም ጉዳዮችን በስምምነት ለመፍታት የማስማሚያ ጉዳዮች ዳይሬክቶሬትን አቋቁሟል። በዚህ ሥርዓት ውስጥ ያጋጠማችሁ ዋና ዋና ችግሮች እና መሻሻል ያለባቸው ነገሮች ምንድናቸው? አሁን ያለው ሥርዓት ፍትህ የማግኘት መብት ላይ አሉታዊ ተፅዕኖ ፈጥሯል?