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COMPENSATION OF VICTIMS OF HUMAN RIGHTS VIOLATIONS IN ETHIOPIA IN LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW: WITH SPECIFIC REFERENCE TO ADDIS ABABA AND OROMIA

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ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
Art./Arts.	Article/Articles
AU	African Union
CAT	Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
ECHR	European Convention on Human Rights
EECC	Ethiopian Eritrea Claims Commission
FDRE	Federal Democratic Republic of Ethiopia

Genocide Convention:- Convention on the Prevention and Punishment of the Crime of Genocide

Hague Convention:- The Hague Convention for the Pacific Settlement of International Disputes (1907)

ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
NGO	Non-Governmental Organization
OAU	Organization of African Unity
SPO	Special Prosecutor Office
U.N	United Nations
UDHR	Universal Declaration of Human Rights
UNCC	United Nation Compensation Commission
USA	United States of America
GA	General Assembly

ABSTRACTS

This paper aims to assess the Ethiopian law and practices of compensation of victims of human rights violations in light of international human right laws. It is motivated by the questions of whether and how the Ethiopian law and practice relate to the international law and practice with regard to compensation of victims for human rights violation. It appears at the beginning that the Ethiopian civil code provisions of extra-contractual liability would cover human rights violations per se. However, questions of causation, assessment, and enforcement-among others, triggers some other questions that the civil code seems arguably fail to address. For instance, whether the questions of moral damages and immunity of public official's responsibility are properly covered by the Ethiopian law and practice in light of the international human rights law seem to be debatable. This paper attempts to provide a general understanding of the Ethiopian law and practice of compensation of human rights violation in light for the international human rights law.

CHAPTER ONE

INTRODUCTION

This paper aims to assess the Ethiopian law and practices of compensation of victims of human rights violations in light of international human rights law. It is motivated by the questions of whether and how the Ethiopia law and practice relate to the international law and practice with regard to compensation of victims of human rights violation. It appears at the beginning that the Ethiopian civil code provisions of extra-contractual liability would cover damages for human rights violations. However, the relevance and comprehensiveness of the civil code provisions to address compensation of human rights violations is questionable. Furthermore, questions of causation, assessment, and enforcement among others, triggers some other questions that the civil code seems to arguably fail to address. For instance, whether the questions of moral damages and immunity of public official's responsibility are properly covered by the Ethiopian law and practice in light of the international human rights law seems to be debatable. This paper has attempted to provide a general understanding of the Ethiopian law and practice of compensation of human rights violations in light of the international human rights law.

The first part deals with the theories of remedies in the law. It discusses the remedies of violations of legal rights and the underlying theoretical justifications with regard to various international human rights instruments and the Ethiopian laws. It tries also to draw a general progress legal development of remedies particularly in the international arena through incorporation of certain kinds of remedies in various international law instruments. This first part especially aims to set the ground to understand the theory and importance of remedies in law. The second part deals with compensation of human rights victims. It seeks to answer such questions as what are the guiding principles of compensation, what are the assessments, enforcement of award of compensation. It focuses on the international legal arena leaving the Ethiopian case to the subsequent part. It considers compensation in the international instruments such as the European human rights systems, inter-American systems, and African human rights system. This part seeks particularly to highlight the international law and practice of compensation as a remedy of human rights violations. The third part deals with the Ethiopia law of compensation. It explores the law mainly the civil code provisions dealing with extra-

contractual liability and how these provisions relate to the question of compensation of human rights violations. Finally, I shall attempt to draw the comparisons between the international human rights law context of compensation of human rights victims and the Ethiopian context. It ends by some conclusion remarks and recommendation.

Methodologically, I will depend predominantly on primary sources such as treaties, Ethiopian laws and such as other subsidiary sources as court decisions and human rights law literature. I have also conducted both structured and unstructured interview with mainly Ethiopian law practitioners on issues of assessment of compensation. Specifically, I have interviewed a number of judges, prosecutors, and lawyers from Federal courts, and Oromia, regional states. The results of my interview general attest to the assertion that the Ethiopian law and practice tends to show some disparity from the international human rights law on questions of compensation of human rights victims.

1.1. Background of the Research

Compensation is on of the basic remedies for violations of human rights. The international human rights instruments provide compensation for victims as one of the essential remedies of violations of rights. For instance, Art.8 of the Universal Declaration of Human Rights (UDHR), Art.2(3) of the International Convention on Civil and Political Rights (ICCPR), and other regional instruments like Art.7 of the African Charter on Human and Peoples' Rights, Art.13 of the European Convention on Human Rights and Art.25 of the American Convention on Human Rights provide remedies for violations of Human Rights.

Human rights may be violated either by the public authorities or private individuals. The issue of compensation arises therefore, in both contexts i.e. both against the state or public officials and private individuals. Thus the claims of compensation may be lodged both against the state and its officials as well as private individuals.

In Ethiopia too, compensation is one of the remedies for violations of rights. Generally speaking, compensations issues in Ethiopian law primarily fall in the area of extra-contractual liability, the part of the Civil Code. Accordingly it is basically governed by the civil code provisions and the regular judicial power of the courts. This part of the code, among others, bases extra-contractual

liability on violation of the law, in that violation of any law amounts to fault and therefore a good ground for liability provided other requirements are met. The Civil Code also bases extra-contractual liability on vicarious liability and even strict liability. Thus, a victim of violations of human rights is protected based on these provisions of the civil code.

From a general point of view, it seems that victims of human rights violations were protected under the Ethiopian laws as they may claim compensation based on the provision of the Civil Code extra-contractual liability rules. However, the practical application of these rules to the violations of human rights particularly and the sufficiency of these rules to properly address the compensation is questionable. This paper therefore, has tried to make such a crucial assessment of the Ethiopian laws of compensation in light of the international standards.

1.2. Statement of the Problem

The legal framework of Ethiopia seems to give some platform for victims of human rights to get compensation. However, the institutional framework and the actual practice are less hospitable for those victims to be compensated for the violation or right they sustained. The issue of compensation has not been part of the agenda and the victims did not also seem to be particularly oriented towards the remedy of compensation. Thus, even if we have taken that the Ethiopian laws are capable to address claims of compensation for human rights violations, the orientation of the persons i.e. individuals as well as the government official did not aware of the remedy of compensation. Actually, the law is even flawed in the sense that they lack comprehensiveness and consistent structures that properly guide the judges to enforce the victims' right for compensation.

1.3. The Research Questions

This research paper seeks to deal with the question whether the Ethiopian law of compensation can capably address the claims of compensation of human rights victims, and also assess the efficacy of these rules in light of the practical situations such as the awareness and attitude of the law enforcement officials, victims and lawyers and the judiciary. To be more specific, it has attempted to answer the following questions:

- Does the Ethiopian law sufficiently address issues of compensation of human rights violations?
- Do the legal and practical modalities of compensation of human rights violations conform to the international human rights standards?

Based on the findings on these two grand queries, the research has addressed other micro issues such as what actually hinders the victims of human rights violations to claim compensation? What exactly hinders judges to award compensation for human right violation? These leads to an assessment of, not only the legal issues but also the practical issues such as the attitude and awareness of the law enforcement system of Ethiopia on this matter.

1.4. Research Objective

This research has attempted to explore the potential and limitations in the Ethiopian legal framework on compensation of victims of human rights violations based on the international standards on compensation for victims of human rights violations. It has tried to answer the questions whether the existing body of rule and principles in the Ethiopian law could sufficiently address the issues of compensation of victims of human rights violations in the line with the international minimum standards, whether the existing institutional and practical realities of Ethiopia could allow an effective system of compensation for victim of human rights violation in line with the international standards, and how the incumbent legal, institutional and practical affairs should be reformed so as to create an effective system of compensation for victim of human rights violations.

1.5. Method of the Research

The research is comparative in approach. It has evaluated the international juridical standards on compensation of victims of human rights violation and then based on the findings of that assessment appraises the Ethiopian situation against the background of the international. It is also both about the legal standards and the practical facts. The assessment includes analysis and synthesis of the rules and principles as well as the practical operations of the judiciary and other institutions relevant to the matter. For example, for the international part, I have considered the practice of international human rights agencies and for the national i.e. Ethiopia, I have seen the judicial practice and the prosecution.

1.6. Scope of the Study

This research is framed for the analysis of compensation for human rights violations. The analysis covered specifically the Ethiopian legal framework on compensation for victims of human rights violations and the practical application. The concept of human rights is broad and as principle all breaches of human rights calls remedy/compensation. However, this research did not aim to evaluate all categories of human rights violations and the remedy/compensation that follows. Similarly, human rights violations have been committed by the state and individuals by their personal capacity. However, in this research emphasize was given for human rights violations committed by state machinery against fundamental rights like the right to life, the right to liberty and prohibition against in human treatment.

1.7. The Significance of the Research

The significance of this research paper lies in the fact that, this paper has intended to address an issue of topical interest to the legal practice and academics of Ethiopia at the current moment. Unlike the international reality we have observed that victims of human rights violations do not seem to be awarded fair compensation. This paper would deal with this matter based on sources and methodology that allows comprehensive treatment of the subject in a fashion that helps to clearly identify the problem and suggest the solutions. This subject is not so far studied with the depth and analysis that it requires and this paper has attempted to deal with it with the depth and analysis required by the subject. Furthermore, the results of the research has contributed to future researchers on this and related topics. It contributes also an invaluable in put to policy makers to legislate and change the current system for better.

1.8. Limitation of the Study

In the process of conducting this study the researcher came across some problems. Above all cases related to the subject matter under research were not available. Almost all victims of human rights violations were not aware of the law to seek compensation for the breach of fundamental rights. In parallel way, courts were not in position to host cases of human rights violations that have invoked under few circumstances. Thus, non existence of practice hindered the judiciary to feed me with full information and respond to questionnaires distributed to them on time. On the

other hand, as far as my knowledge is concerned the issue under research were not sufficiently researched, thus, it has an impact to get base line information used as a spring board for this research.

1.9. Sources of the Research

The research depends on both primary and secondary sources. The legal analysis depends on the primary sources, the laws and cases. The practical analysis depends on secondary sources such as interview, cases, literature and personal observations. In particular, I have conducted interview with judges, lawyers and victims of human rights violations on structured questions, and I have also distributed questionnaires to assess the practical aspect of the research problem.

CHAPTER TWO

REMEDIES FOR HUMAN RIGHTS VIOLATIONS

> If the plaintiff has a right, he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise, or enjoyment of it, and, indeed it is a vain thing to imagine a right without a remedy; for.... want of a right and want of a remedy are reciprocal.[1]

Thus, the law is in conceivable and untenable without remedies. In fact remedies are inseparable part of the law that no legal norm is complete without corresponding remedy. In this part, I will explain the main theories of remedy so as enable a deeper analysis of the subject in the remaining part of this paper. As I have mentioned in the introduction, remedy cuts across all the legal regimes. However, my discussion mainly relates to the application of remedy compensation in relation to the victims of violation of human rights.

2.1. Remedies in General

A legal remedy is a legal right.[2] It could be material compensation, declaration of right, or any other activity a person who sustained wrong under the law may be entitled to. Several types of remedies may be available to a legal wrong depending on the factual and legal circumstances. For instance, a victim of motor vehicle accident under the Ethiopian law may be entitled to material compensation that varies based on numerous facts such as the extent of the harm suffered and the loss of income sustained due to the harm. [3] Such a victim may also be entitled to moral damages based on the judicial judgment of the facts. In this context, therefore, the legal rights to a remedy focus on the right to compensation, the procedural right to compensation and the procedural right to enforce compensation. While recognizing that it is not the only right victims seek and they have broad range of needs and seek a variety of remedies, including for example restitution, rehabilitation, and satisfaction, my focus remain on the remedy of compensation.

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[1] Dinah Shelton, Remedies in International Human Rights Law, (Oxford University Press, Oxford, 1999), p. 63

[2] Id,P.38

[3] Civil Code of the Empire of Ethiopian, 1960, Pro. No. 165, Neg. Gaz., Year 19, No. 2, Article 2081

Early legal systems unified the goals of redress, deterrence, and punishment, failing to distinguish between public and private law when an individual committed a wrong; punishment of the perpetrator and justice for the victim usually were merged through victim self help encouraged or regulated by law. [4] Retaliation, a form of negative restitution by equivalence, was permitted by several ancient codes, including the code of Hammurabi, mosaic, and Roman law. [5]

It has been suggested that the law of remedies developed in legal systems to replace private revenge.[6] As legal systems developed, they came to separate the private action for redress and the public criminal prosecution on behalf of society as a whole, which claimed the right to punish wrong doers.[7] The most common principle in all legal systems is that a wrong doer has an obligation to make good the injury caused, reflecting the aim of compensatory justice. For instance, Roman law came to permit wrong doers in certain cases to pay compensation in money or in kind.[8] Today, most written constitutions explicitly secure remedial rights. For instance, China provides for remedies for governmental misconduct per Article 41 of its constitution. [9]

2.1.1. What is Remedy?

Remedies are needed because harms occur. It functions as treatment for an injury, as a means for counteracting same thing undesirable or a means for legal reparation. The right to remedy is a secondary right, deriving from a primary substantive right that has been breached. So if there is no primary right, there can be no secondary right. The right to remedy presupposes a victim whose primary rights have been violated. In most legal system, including the international legal system,[10] the philosophy of remedial justice provides the foundation for the law of remedies, the primary function of remedial justice is to rectify the wrong done to a victim, that is, to correct injustice.

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4 Dinah Shelton, Cited above at note 1, p. 58

5 Ibid

6 Ibid

7 Id, p. 59

8 Ibid

9 Id, p. 62

10 Id,P.38

2.1.2. Types of Remedies

As briefly mentioned above, there are several types of remedies the victim of legal wrong may claim. The types of available remedies may vary depending on the legal regime under consideration. Remedy may be provided through judicial, administrative, reparation, including compensation, to victims. Remedies may include an award of damage, declaratory relief, injunctions or orders, and attorney's fees and costs. The scope of application of remedies varies based on the effects of wrongs committed or omitted against victim. But, in this research emphasis is given for remedies available under human rights violations. However, I shall consider compensation and the underlying rationale in classifying types of remedies. There are generally two models remedies of compensation: the *corrective* model and the *economic* model. Unlike the corrective justice model, which primarily determines the consequences of a wrong act, economic theory is said to help to define the substance of what constitutes the wrong. [11] This approach has its own impact specifically in awarding remedies (compensation) in human rights violations. Such a commodification seems inappropriate for human rights discourse and practice because rights violations are often in commensurable.[12]

Corrective justice by and large focuses on fairness to the victim through award of restitution or compensation. On the other hand economic model focuses on incentives for damages that equal the full value of the injury to the victim. They are incapable of restoring or replacing the rights that have been violated. One who is physically or emotionally disabled as a result of torture cannot, by the payment of money, have the means restored that were there originally. [13]

2.1.3. Remedies for Human Rights Victims in Particular

As mentioned above, remedies apply to almost all legal rights. Then what makes the cases of human rights particular as such? Protection of victims of any legal wrong through remedies can be awarded for victims of human rights violations through a given state institutions just like any criminal law functions, for instance. The point of departure, however, is that conventional crimes

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[11] Id, p. 40

[12] d, p. 43

[13] Compensation victims of Human Rights Violations (WWW.tanda. Netlerin (pdf.) p. 23

are committed by people in their private capacity against national penal law, and governments are not, in principle, responsible for the illegal conducts involved. On the other hand, acts constituting human rights violations are committed by organs or persons in the name of or on be half of the state. Government may also, in specific cases, be responsible for the acts of private individuals. These acts may constitute violations of the fundamental rights and freedoms of persons under international human rights law. This implies that there is no clear boundaries rather overlap between the two concepts. Although there is no clear rule like the case of redress /remedies for victims of human rights violation victims of conventional crimes need to be protected by the general principle of redressing victims. Some efforts have been made to increase the focus on the right of victims so as to encourage governments to provide them with adequate help and support by the international community. Accordingly, the United Nations General Assembly adopted, in 1985, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which had been approved by consensus by the seventh United Nations Congress on the prevention of crime and the treatment of offenders for this purpose (for the purpose under discussion). It tries to define the notion of victim of crime and abuse of power and specifies victim's rights of access to justice and fair treatment, restitution, compensation and assistance. To Shows the applicability of this declaration with out discrimination, the declaration sates that:-

"The provisions contained here in shall be applicable to all, with out distinction of any kind, such as race, color, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability." [14]

On the other hand, the United Nation General Assembly on 15 November 2000 adopted convention against transnational organized crime, contains specific provisions in article 25 concerning assistance to and protection of victims. The protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the convention, contains even more detailed rules regarding "Assistance to and protection of victims of trafficking in persons." [15]

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[14] U.N; G.A, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, Paragraph, 3

[15] United Nations convention against Transnational Organized Crime, 2000, and protocol to Prevent, Supress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the Convention, Art. 6

With regard to the definition or connotation of the term "victim" the Declaration of Basic principle of justice of victims of crime and abuse of power defines the term "victims" as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power." [16]

This definition covers many categories of harm sustained by the people as consequences of criminal conduct, ranging from physical and psychological injury to financial or other forms of damage to their rights, irrespective of whether the injury or damage concerned was the result of positive conduct or failure to act. As cited in the declaration on principles of justice for victims of crime and abuse of power, "offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or dependants. Whenever appropriate, persons responsible for criminal offences should make fair restitution to the victims of their crimes for any harm or loss suffered through restitution, the offender restores to the victim the rights that were breached. [17]

Human rights instruments refer to the obligation of states to embrace the substance of relief as well as the procedures through which relief may be obtained. International community has adopted different human rights instruments (norms) and responded to human rights violations by states in international and regional level and domestically as well. Thus, human rights law has provided remedies for victims of human rights violations.

2.2. Remedies for Victims of Human Rights Violations in International Law

In the preceding section I have tried to forward the purpose and theoretical foundation of remedies in a holistic way. This section deals with the overall conceptual analysis of remedies in international level specifically for victims of human rights violations. The right to remedy has been guaranteed in different human rights treaties adopted globally and regionally.

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[16] Cited above at Note 14, paragraph 1

[17] Id., paragraph 8

2.2.1. General International Law

On the matter of the right to remedy and compensation, the Universal Declaration of Human Rights (UDHR) has this to say;

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." [18]

Similarly, the international covenant on civil and political Rights (ICCPR) makes it an obligation.

a. *"To ensure that any person whose rights or freedoms.....are violated shall have an effective remedy, not with standing that the violation has been committed by persons acting in an official capacity;*
b. *To ensure that any person claiming such a remedy shall have the right there to determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy;*
c. *To ensure that the competent authorities shall enforce such remedies when granted."* [19]

Articles 9(5) and 14(6) of the ICCPR provides that anyone unlawfully arrested, detained, or convicted shall have an enforceable right to compensation or to be compensated according to law. convention on the elimination of racial discrimination victims of human rights violations have been guaranteed victims with effective remedy as stated below:-

"State parties shall assure to every one with in their jurisdiction effective protection and remedies, through the competent national tribunals and other state institutions, against any act of racial discrimination which violates his human rights and fundamental freedoms contrary to this convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination".[20]

In the same way, Convention on the Elimination of All Forms of Discrimination Against Women, obliges states parties under take to establish legal protection of the rights of women on an equal

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18 Universal Declaration of Human Rights, 1948, Art. 8

19 U.N Covenant on Civil and Political –Rights, 1966, Art. 2(3)

20 International Convention on the elimination of All Forms of Racial Discrimination, 1965, Art. 6

basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.[21] Likewise, the United Nations Convention Against Torture obtains redress and has an enforceable right to fair and adequate compensation, in including the means for as full rehabilitation as possible. In the event of the death of the victims as a result of an act of torture, his dependants shall be entitled to compensation.[22] Remedy of victims of human rights violations has been addressed in a number of other Declarations, Resolutions and other non treaty instruments. For instance; the Declaration on the protection of all persons from Enforced Disappearance provides:-

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an ac t of enforced disappearance, their dependants shall also be entitled to compensation. [23]

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power contains broad guarantees for those who suffer pecuniary losses, physical or mental harm, and substantial impairment of their fundamental rights' through acts or omissions, including abuse of power victims are entitled to redress and to be informed of their right to seek redress.[24] The Declaration specifically provides that victims of public officials or other agent, who, acting in an official or quasi official capacity, violate national criminal laws, should receive restitution from the state whose officials or agents are responsible for the harm inflicted.

2.2.2. Regional Instruments

Remedies for victims of human rights violations have been recognized by regional human rights instruments as well. The European convention on Human Rights provides:

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[21] Convention on the Elimination of all forms of Discrimination against women, 1979, Art.2(c)

[22] Convention against Torture and other Cruel, In Human or Degrading Treatment or Punishment, 1984, Art. 14.

[23] International Convention for the Protection of all Persons from forced Disappearance, 2006, Art. 19.

[24] Cited above at note, 14, paragraph 5

"Everyone whose rights and freedoms as set forth in this convention are violated shall have an effective remedy before authority notwithstanding that the violation has been committed by persons acting in an official capacity." [25]

The American Convention on Human rights entitles every one to effective recourse for protection against acts that violate the fundamental rights recognized by the constitution or laws of the state or by the convention, even where the act is committed by persons acting in the course of their official duties.[26] Under the American Convention on Human Rights the states parties are to ensure that the competent authorities enforce the remedies granted and, indeed, are obliged to respect and ensure the free and full exercise of all rights guaranteed by the convention.[27] The American Convention on Human Rights also provides that every one (person) has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.[28]

Under the African Charter on Human and people's right, every individual has the right to have his case heard, including the right to appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.[29]

2.3. Remedies for Victims of Human Rights Violations in Domestic /National Level

Human rights violations occur with in a state, rather than on the high seas or in outer space out side the jurisdiction of any one state ultimately, effective protection must come from within the state. [30] Thus the most proximate and prompt remedy would naturally be that at the national level. As noted before, the founding stone of most remedies available in the international level is envisaged by international human rights and human rights treaties. With regard to domestic

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[25] European Convention on Human Rights, 1950, Art.13

26 American Convention on Human Rights, 1969, Art.25

27 Id, Art.1(1)

28 Id, Art.10

29 African Charter on Human and Peoples' Right, 1981, Art.7

30 Henry J. Steiner and Philip Alston (eds.) International Human rights in Context: Law, Politics, and Morals: Oxford University Pres, Oxford 2000) p. 987

protections of human rights, one should have to consider the interpretation of international and national systems and the status of treaties with in states.

2.3.1. International Norms in the National Structures

First, it is worth noting that the national remedy of human rights is envisioned by the international norms. The rights to domestic remedies was first included in article 8 of the universal declaration of human rights, which states that every one "has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".[31] It was also incorporated in the International Covenant on civil and Political Rights:[32]

It follows from the terms of these provisions that the remedies available must be effective and their enforcement must be ensured by the competent authorities.

The remedy must satisfy international standards and, [33] national laws should be used only if it does not inhabit the appropriate enforcement of the applicable international law.

It is true that international law determines the validity of treaties in the international legal system, i.e. when and how a treaty becomes binding upon a state as regards other state parties.

In the process of applying treaties in the domestic system of state parties, one should consider the status of treaties in national law. The status of treaties in national law is determined by two different constitutional techniques. One is legislative incorporation which requires the provisions of ratified treaties should be enacted as legislation. Thus the legislative act creating the norms as domestic law is an act entirely distinct from the act of ratification of the treaty. The legislative bodies may refuse to enact legislation implementing the treaty. In this case the provisions of the

31 Cited above at note 18,

32 Cited above at note 19

33 Dina Shelton, cited above at note 1,p.83

treaty do not become national law. This method of identifying the status of treaty instrument is true in UK and most common wealth countries and Scandinavian countries. [34]

On the other hand, there are countries in which ratified treaties become domestic law by virtue of ratification. States like France, Switzerland the Netherland, the United States and many Latin American countries and some Asian and African countries apply this technique. [35] In those states implementing legislation has been enacted for non self executing treaty provisions to make it easily enforceable /applicable by the courts.

In states with the system of legislative in corporation, ratification of treaties is frequently a purely executive act not requiring prior approbation of the legislature.[36] An individual may invoke the provisions of a treaty before national courts in automatic in corporation states in the absence of implementing legislation only when its provisions are considered to be self executing and when he has standing to do so. [37] Hence, self executing is similar to automatic incorporation. It creates rights and obligation for individuals that are enforceable in the courts without legislative implementation of the treaty. [38] For instance, Courts of in the united states are bound to give effect to international law and to international agreements of the united states, except that a 'non self executing' agreement will not be given effect as law in the absence of necessary implementation. [39] Thus, an international agreement of the United States is not self executing:-

a. "If the agreement manifests an intention that it shall not become effective as domestic law without the enactment of implementing legislation.
b. If the secrete in giving consent to a treaty, or congress by resolution, requires implementing legislation, or
c. If implementing legislation is constitutionally required."[40]

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34 Henry J. Steiner and Philip Alston, Cited above at Note 30, p. 1000

35 Ibid

36 Id, P. 1001

37 Ibid

38 Id, p. 2027

39 Id. P. 1025

40 Ibid

Certain types of treaties have traditionally been understood to be self executing and have been applied by courts without any implementing legislation. Consider bilateral treaties giving (reciprocally) rights to nationals of each party to establish residence for certain purpose in the territory of other party. [41] Under U.S. law as developed through constitutional decisions of the courts), certain types of treaties cannot be self executing by require implementing legislation to have domestic effects.[42] Generally it is not relevant from an international law perspective whether a treaty is self executing, since a state is obliged under international law to do what ever may a legislative enactment) to fulfill its treaty commitments. [43]

2.3.2. Dualist versus Monist Approaches

There are two approaches as to the incorporation of the convention in their domestic law. Monist theories imagine a unitary world legal system in which national and international law have comparable, equivalent, or identical subjects, sources, and substantive contents. [44] Monists argue for supremacy of international law in relation to national law. [45] In its classical formulation, monism asserts that all activity of states is regulated by the superior international law.

In states that follow the dualist approach to international law, a convention needs to be transformed in to domestic law for application by the national enforcement institutions and for the beneficiary individuals or groups to invoke directly in the those national forums.[46] This tradition has been practiced by countries like Germany, Italy and most states of Eastern and Central European.[47] Dualist theories distinguish between the system or public order of international law and of national law-- each as its own distinguishable subjects, distinguishable

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41 Id, p. 1026

42 Ibid

43 Ibid

44 Id. P. 2004

45 Ibid

46 Id, p. 1002

47 Ibid

structures and processes of authority, and distinguishable substantive content. [48] Thus the subjects of international law are only states, and its sources lie only in treaties and custom made by states, and its content in values only relations between states. Neither international law nor national law can per se create or invalidate the other of course a state may by its own custom or national law adopt rules of international law as the law of the land, through practices and theories of incorporation, transformation and adoption.[49] Some scholars have made a critics on such classification based on the very nature of human rights favouring the monism approach. Thus, such classification is out dated in practice and states may apply other implementation mechanism of International law in to domestic law.

As Takele stated the requirement of internalizing the substantive corpus of international human rights law is the aspiration that individuals and groups who are victims of violations of human rights avail themselves of law remedies before local tribunals through local procedures just in the some manner that they enforce the rights guaranteed under local laws. [50]

Thus, the incorporation of international human rights guarantees thus links the violations of such standards and accessibility of local remedies. [51]

In recent time there is a development to the harmonization of international and constitutional protection of fundamental rights and one dimension of such harmonization is the growing role of international human rights norms in the interpretation of domestic constitutional provisions.

Scheinin stated that the primary responsibility for implementing and monitoring international treaties on human rights lies with national operators legislatures, governments, courts of law. Accordingly, treaties incorporated in to the domestic legal system can be directly applied by courts and authorities as sources of domestic law, and international human rights may

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48 Id., p. 2004

49 Ibid

50 Takele Soboka Bulto, The Monist Dualist divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia, Journal of Ethiopian Law, Faculty of law, Addis Ababa University, Volume XXIII No. 1 (23 J. Eth. L. No. 1), p. 146.

51 Ibid

implemented through domestic legislation that transforms the treaty obligations of the state to applicable domestic law. [52]

The application of international law by municipal courts and other domestic legal operators is simply the key stone of the international law. Thus, a court is expected to implement the norms of international human rights law in their domestic affairs.

2.4. Remedies under the Law of Ethiopia

Under international human rights law, every state is obliged to provide effective remedies to victims of human rights violations.[53] This is to ensure that adequate legal or other appropriate remedies are available to any person claiming that his/her rights have been violated. That requirement includes the obligation to provide victims and their relatives with fair and adequate compensation.[54] In addition states are under an obligation to investigate, prosecute, and punish those responsible for the abuses or violations.[55] Remedies for human rights violations are available in different laws of Ethiopia including the FDRE constitution.

To start with the constitution, most lists of international human rights norms have got recognition under chapter III of the FDRE constitution.[56] Further more, Art. 9 of the FDRE constitution states that the constitution will override any decision of an organ of a state or public officials. On the other hand, Art. 13(1) of the FDRE constitution clearly stats that respect for and enforcement of fundamental human rights and freedoms of citizens are among the basic responsibilities and duties of all Federal and State legislative, executive and judicial organs.

It shows that, human rights guaranteed by the constitution shall get the, protection of all branches of government organs. Above all, courts should be equipped with the necessary power of judicial protection. As it reads from art. 79(1) of the FDRE constitution both the Federal and state courts

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[52] Martin Schenin, 'International mechanisms and Procedures for Implementation', in Raija Hanski and Markku Suksi (ed.), An Introduction to the International Protection of human Rights (2000), p. 429

[53] Cited above at note 18

[54] Cited above at note 19 Art.14(6)

[55] Cited above at note 22 Art.12

[56] Constitution of the Federal Democratic Republic of Ethiopia, Pro. 1/1995, Fed. Neg, Gaz Year 1, No.1, Articles 13 to 44

are vested with this power supplementing the above argument. Therefore, in discharging their duties to protect fundamental rights of citizens, courts should lawfully question when citizens rights are infringed /curtained/. Per Art. 83 of the FDRE constitution, the House of Federation can question /empowered to question/ the constitutionality of any law or decision of executives. The power to settle any constitutional dispute is left to the constitutional inquiry commission; i.e., the authority to interpret unclear provisions of the constitution.[57] Determining the constitutionality of administrative acts is also with in the competence of this organ for any acts of state organs that raises the issue of constitutionality, it is the constitutional inquiry commission that resolves and provides remedy to such issues.

Generally, per. Art.3(1) of proc. 251/2000 and Art.62(1) of the FDRE constitution, the House of Federation interpret the constitution where the constitutional case submitted to it pertains to the fundamental rights and freedoms enshrined in the constitution, no doubt that the interpretation is made in a manner conforming to the principles of Universal Declaration of Human Rights, International Covenants of Political and civil rights and international human rights norms adopted by Ethiopia. The domestic implementation of international human rights norms is never a matter for the judiciary only, rather the legislature, the administration and all branches of the government have their own contributions.[58] The human rights Commission and the Ombudsman serve as quasi judicial institutions do similar purpose. Like wise the House of peoples representative is empowered to establish the Human rights Commission and Ombudsman.[59] Accordingly, the House established the Human rights Commission and Ombudsman per. Proclamation 210/2000 and 211/2000 respectively.

These institutions receive petition /complaints/ in case of abuse of power by government officials and make positive obligation stemming from human rights law.[60] For instance, stop violations of human rights, although the decision has not binding force. They make recommendations on the

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[57] Id, Art. 62(2)

[58] Id, Art. 13(2)

[59] Id, Art. 55 (14 and 15)

[60] Human Rights Commission, Proc. No 210/2000, Fed, Neg. Gaz, Year 6, No. 41, Art. 5 and Institution of the Ombudsman, Proc. No. 211/ 2000, Fed. Neg., Gaz., 6th year no 41, Art. 5.

law and policy of the state, and participation in human rights education;[61] but no pecuniary remedy of damages for victims of human rights violations.

There are some private law remedies available to private individual litigation in the civil procedure code of Ethiopia. As stated under Art. 154 of this code, the court may grant temporary injunction. When the property in dispute is in danger of being wasted, damaged or alienated by a party to the suit, the property in dispute is in danger of being wrongfully sold in execution of a decree, or the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors to restrain the act or may make any other order.[62]

From this we can infer that, the whole purpose of temporary injunction is to preserve or ensure the rights of parties in civil dispute. Interlocutory orders are other remedy provided under the civil procedure code of Ethiopia. As it reads from Article 165 of the civil procedure code such an order may be given to determine the custody of a minor and the payment of alimonies. Movable property before judgment subject to speedy or natural decay may call this order to as provided under Article 160 of this code. Habeas corpus is remedy that is intended to apply on public authority not on individuals. Primarily its aim is to make the government machinery work properly rather that to enforce private rights. If the person restrained is unable to make the application himself, the application may be made by any person on his behalf.[63]

As stated under Art. 179(1) of this code the court investigates the truth of the allegation and may make such orders with regard to evidence as it thinks fit. The sole question before the court is whether the restraint is unlawful. If it concludes that the restraint is unlawful, it must order the immediate release of the person in custody, and the custodian must immediately release him notwithstanding any orders or instructions to the contrary.[64]

By this a court requires public officials to show causes why some body in custody should not be released. If the custodian fails to show cause or his reason are unacceptable, the person

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[61] Id, Art. 26

[62] Robert Allen Sedler, Ethiopian Civil Procedure, the Faculty of Law Haile Sellasie I University in Association with Oxford University Press, Addis Ababa 1968, p. 365.

[63] Id, p. 374

[64] Ibid

responsible, for the detention is get responsible, but the person imprisoned is set free and may pursue such further remedies for compensation or punishment as may be available. Therefore, habeas corpus is a court remedy provided in the civil procedure code of Ethiopia by which a person detained released from illegal custody. The Ethiopian civil code provides damage compensation for a breach of contractual obligation and tortuous act.[65] Thus, a remedy /compensation/ is specifically enshrined in the extra contractual liability of the code for wrongful conduct /act/ that amounts to injury or damage to other parties. The aim here is to make good the injury caused to the victim.

Damage caused under extra contractual liability may be moral and material one, the law hence, provides compensation mechanisms as remedy for both types of damage sustained to a victim.[66] Similar facility has been provided under the general contract of the civil code for damages caused due to breach of contractual obligation.[67] Compensation as a remedy provided under those law specifically compensation that emanates from extra contractual liability will be discussed in detail in chapter IV and the following sections of the paper.

[65] Cited above at note 3, Articles 1790 and 2027

[66] Id, Art. 2090 and 2105

[67] Id, Art. 1790

CHAPTER THREE

COMPENSATION AS REMEDY FOR HUMAN RIGHTS VIOLATIONS

As I have discussed under chapter II, compensation is one of the basic remedies for violations of human rights. In this part I shall see how compensation is awarded to victims of human rights violations under the international law regimes.

3.1. The International Legal Standards and Practice of Compensation in General

From the early discussion remedies rectify the harm done to a victim. Rectification and compensation in the framework of basic rights serve to restore individuals to the extent possible their capacity to achieve the ends that they personally value. [68]

Thus, the law award monetary compensation for victims of human rights violations. Money compensation encourages wrong doers to continue their harmful acts as long as they pay for the damage they cause; injuries are commensurable with money, a cost to the victim.[69] Compensation can only provide something equivalent in value to that which is lost; rectification or restitution restores precisely that which is taken. Money does not replace a lost loved one and most people would not exchange their lives for any thing less than an infinite sum of money if the exchange were to take place immediately.[70] Some lawyers argue that such kind of remedy commodify human rights and exchange of rights violation for money, may be seen as conflicting with the notion of "inalienable rights.[71]

Compensation as a remedy can be seen to imply that money can replace the thing lost, or at least that money is the best alternative when no restitution is possible.[72] Although, no amount of

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[68] Dinah Shelton, cited above at note 1, p. 40

[69] Id, p. 43

[70] Ibid

[71] Ibid

[72] Id, p. 215

money can satisfactorily replace what has been lost, compensation helps to recognize, acknowledge and give due respect to those whose rights have been violated.

Human rights violation occurs under different situations and the law needs to compensate these violations. In recent time serious human rights violations have been committed both in civil and armed conflicts. Under international humanitarian law (IHL) a right to redress is recognized in international treaties or international resolutions. Accordingly Art.3 of the Hague Convention (IV) of 1907 gives individuals a right to compensation in case of violations. A similar provision is found in Art.91 of the additional protocol I, which provides for compensation in cases of violations of the Geneva Conventions of 1949 or of additional protocol I. But the majority of domestic courts do not recognize an individual right to compensation under Art 3 of the Hague Convention (IV) of 1907 and Article 91 of the additional protocol I.[73]

In addition to the Hague convention (IV) of 1907 and Additional protocol I, there are also resolutions and peace treaties containing provisions for compensation for victims of an armed conflict. Examples of recent years are the UN compensation commission (UNCC) and the Ethio-Eritrea claims commission (EECC), which provided redress for individuals.[74]

It has been believed that human persons had inviolable rights even during armed conflicts. However, recognition of rights and to claim those rights are under ambiguity. States have been reluctant to entitle, explicitly and in general, victims of violations of international humanitarian law to claim reparation. As humanitarian law treaties do not expressly envisage causes of action for victims in national law or international law, they are hardly able to exercise their rights.[75] In spite of this gap in international humanitarian law, human rights treaties provide a remedy, both substantive and procedural, for individuals suffering injury from unlawful conduct by state authorities.

For instance, Article 13 of the European Convention on Human Rights stipulates that individuals whose rights as set forth in that convention are violated shall have "an effective remedy before a

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[73] Elke Schwager, the Right to Compensation for Victims of an Armed Conflict, http://chinesejil. Oxford Journals org./cgi/content/ full /4/2/417 p. 422-423.

[74] Id, p. 425

[75] Id, p. 438

national authority." And Article 50 of the European Convention of Human Rights also mandates the European court of human rights to afford just satisfaction to victims.

Human rights law, with its substantive rules and its enforcement mechanisms, is applicable in times of armed conflicts.[76] This is by foreseeing the possibility of derogation of some provisions during an armed conflict, the human rights convention clearly state that the provisions which can not be suspended are valid through out an armed conflict.[77] As international humanitarian law provides detailed stipulations for conduct in armed conflict, it influences the interpretation of human rights Law.[78]

As for the norms on compensation, they are applicable in times of armed conflict as well. In Article 27(2) of the American Convention on Human Rights, it is stated that a suspension of the judicial guarantees essential for the protection of rights is not possible in times of armed conflict. Even though not explicitly stated in the ICCPR, the human rights committee found that the obligation to provide effective remedies for a violation of human rights found in the ICCPR is inherent to the covenant as a whole and of such a fundamental nature that it has to be respected even during a state of emergency.[79] Indeed, in order to guarantee the human rights which are not derogable during an armed conflict, the norms providing for an effective remedy and for compensation in case of violations of such rights must apply.[80]

3.1.1. Regional Instruments on Compensation

At regional level the European, Inter-American and African system have played a key role in the enjoyment of human rights in their respective regions.

In case of violations of human rights these regional systems have the competence to provide compensation for victims of a violation.

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[76] Id, p. 422

[77] Ibid

[78] Ibid

[79] Ibid

[80] Ibid

The European Convention on Human Rights (ECHR) is the first regional human rights treaty created in early 1950's. The European commission on human rights and the European court of human Rights are the basic arrangements under the Convention in enforcing human rights.

As stated under. Art. 41 of the European convention on human rights, the court shall, if necessary afford just satisfaction to the injured party. [81] The convention permits both the states and individuals to bring communications against state parties to the convention. The European convention on human rights gives the court competence to afford remedies where it determines that a breach of the convention has occurred. [82]

Thus, per Article 46 of the European convention of human rights, the determination of a violation of human rights establishes the duty of state to follow the decisions, which includes the payment of compensation, if necessary.

In the European courts the conduct of the government and the applicant is taken into consideration to award compensation. As stated under Art.8 of the European convention on the compensation of victims of violent crimes has an intention to deny or reduce the amount of compensation to a victim who engage in misconduct or is involved in organized crime. In the European system, moral damages have been awarded for anxiety, distress isolation, confusion and neglect, abandonment, feeling of injustice, impaired way of life, harassment and humiliation and other sufferings. [83]

In the case mr.x.v. France reach the European court of human rights concerning French hemophilia's who constructed AIDS through contaminated blood transfusions knowingly made by the government. The applicant died at the age of 29 years and his parents continued the proceedings. The applicant, who was disabled due to hemophilia and received transfusions in late 1984 , was one of some 400 persons who were found to have contracted HIV from the blood.

The Scandal was widely reported in the French media during many months and the judges sitting in Strasbourg can hardly have been unaware of the events. The court found a violation of Article

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[81] European Convention on Human rights, 1950, Art. 41
[82] Dina Shelton, Cited above at Note 1, p. 148
[83] Id, p. 227

6(1) in the delay of proceedings regarding state responsibility for the contamination. The applicant claimed (25,000 US$) for non pecuniary damages resulting from the delay which prevented him from obtaining compensation and thus being able to live independently and in a better psychological conditions of the remaining period of his life. The court awarded the entire amount as well as the costs claimed.[84]

In the American continent effort is made which established the inter-American Commission on Human/rights in 1959.

The main objectives of the commission was not to investigate isolated violations but to document the existence of these gross, systematic violations and to exercise pressure to improve the general condition of human rights in the country concerned. [85]

The Inter American commission of Human Rights has received communications either from individuals and groups alleging a violations of human rights. For admission complaints could be handled only if domestic remedies had been exhausted, a requirement that prevented swift reactions to violations. [86]

The Inter American court of Human Rights may consider a case that is brought either by the commission or by a state party to the convention. For the commission to refer a case to the court the case must have been admitted for investigation and the commission's draft report sent to the state party. [87] The American convention on human rights does not give individuals standing to bring a case before the court or to appear separately, although. Art. 23 of the new Rules of court provide that the victims may be represented directly during the reparations phase of the proceedings.[88] The American convention on human rights gives the Inter-American courts of human rights broad remedial Jurisdiction:

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[84] X V. France, (1992), 236 Eur. Ct.H.R (ser.A)

[85] Henry J. Steiner and Philip Alston cited above at Note 30, p. 871

[86] Id, p. 872

[87] Id, p. 874

[88] Dinah Shelton, Cited above at note 1, p. 171

If the court finds that there has been a violation of a right or freedom protected by this convention the court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party. [89] Clearly, in the instant case the court can not order that the victim be guaranteed the enjoyment of the right or liberty violated. The court, how ever, can rule that just compensation be paid.

During this proceeding, the commission requested the payment of compensations, but did not offer evidence regarding the amounts of damages or the manner of payment. Nor did the parties discuss these matters. The court believes that the parties can agree on the damages, if an agreement can not be reached, the court shall a ward an amount. The case, shall there fore, remain open for that purpose, the court reserves the right to approve the agreement and, in the event no agreement is reached, to set the amount and order the manner of payment. [90]

The court is empowered to award financial compensation for injured rights and /or freedoms, as well as to order remedy of the situation that constituted the breach of such right or freedom (Art 63(1). The American convention on human rights is the only major human rights treaty that expressly authorizes the issuance (by the court) of temporary restraining orders (Art.63(2), in cases pending before it and in cases that have been lodged with the commission but not yet referred to the court. This authority is limited to cases of extreme gravity and urgency) and when necessary to avoid irreparable damage to persons. [91]

On the other hand, the Inter American system, in Suarez Rosero V. Ecuador, the Inter American Court awarded damages for the illegal detention of the petitioner, as well as for denial of his rights of access to court and to an effective remedy. From, the case the applicant had been detained in prison under suspicion of drug trafficking although there was no evidence on which to base the accusation. In addition to pecuniary damages, the applicant sought US$ 20,000 in

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[89] Id, p. 172

[90] Henry J. Steiner and Philip Alston cited above at note, 30, p. 886

[91] C. de Rover, to Serve and to Protect, Human Rights and Humanitarian Law for Police and Security Force, International committee of the Red Cross, Geneva, February 1998, p.96

moral damages for him self, and US$ 20,000 for his wife and daughters. The court awarded US$ 20,000 each to him and his wife, and 20,000 US$ to the daughter holding that it is human nature to suffer in the circumstances he had been through and that no proof was required. Further, there must be presumed repercussions on his wife and daughter.[92]

As to the enforcement of the decision, the inter- American court /commission/ have been bold enough to order states to take specific actions and have developed innovative means to structure damage awards, such as establishing trust funds .[93]

The African commission is the organ with the primary responsibility for promotion and protection of human rights as defined under the African charter on human and peoples rights. The two- main mechanisms used by the commission to monitor state compliance with their charter obligations and to address human rights issues with in Africa are the communication, or complaints system, and the state reporting procedure established in Article 62 of the charter. As one criteria of admissibility of the communication local remedies must be exhausted. The exhaustion of local remedies rule requires that the remedies with in the national legal order of a state are available, effective and sufficient. A remedy is considered available if the petitioner can pursue it with out impediment, it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint.[94] The commission has also take in to account absence of any remedies in the domestic legal order as one prerequisite for admissibility of complaint. Thus, where there is no remedy what so ever, the commission has considered the local remedies rule to be inapplicable.[95] In the case of specific individual remedies, such as compensation, when requested, the commission has, in an approach similar to the Inter-American

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[92] Suarez Roserov V. Ecaquador (Peparations), Inter. Am. ct. H.R., Judgment of January 1999

[93] Godfrey M. Musila, the Right to an Effective Remady under the African Charter on Human and Peoples' Rights, African Human Rights law Journal (6 Afr. Hum. Rts. L.J. 442 2006) p. 464

[94] Hery Onoria, the African Commission on Human and Peoples' Rights and the Exhaustion of Local Remedies under the African Charter, African Human Rights law Journal (3 Afr. Hum. Rts. L.J. 1 2003), p. 10

[95] Id, p. 21

court and commission rightly left it to the state to make the final determination as to quantum of damages in terms of domestic law after finding a violation of a charter right.[96]

It is often noted that the States parties have largely ignored or dragged their feet when it comes to giving effect to the commission's decisions.[97] Thus, the establishment of the African court on human and people's rights is a major development in the enforcement of human rights. The specific task of this court is reinforcing the role of the African commission on human and peoples rights. The decisions of the African court of human and people's rights are judicial in nature, thus, directly binding.

Per. Art.27, of the protocol to the African Charter on Human and Peoples' Rights on the establishment of an African court on Humans and Peoples Rights if the court finds a human rights violations, it shall make appropriate orders to remedy the violation. In the same way states parties to the protocol under takes to comply with judgment in any case to which they are parties and to guarantee its execution and the AU council of ministers is expected to monitor a judgment's execution pursuant to Articles 30 and 29 of this protocol respectively.

Generally, the European and Inter-American court award monetary compensation for pecuniary losses, non-pecuniary damages and costs/expenses/ may incured in relation to the violations of rights.

3.1.2. Causation and Assessment of Compensation

A mere fact of suffering injury/ damage/ would not independently warrant compensation, rather the damage should be the consequence of the act/ omission of the injury caused.

All damages directly attributed to the wrong done are compensable and causation is a crucial question. Thus, cause effect relationship should exist to claim compensation in the absence of this connection the plaintiff cannot get compensation. Damages must have been caused in fact by the wrong doer and the wrong must be the proximate cause of the damage suffered. [98]

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[96] Godfrey M. Musila, cited above at note 93, p. 455.

[97] Id, p. 458

[98] Dinah Shelton, cited above of note 1, p. 231

In the Delta V. France case, two girls who accused the applicant never appeared in court, without explanation, and the immigrant defendant was convicted solely on the basis of girls' police statements. On appeal, the defendants expressly sought to have witnesses called on his behalf but the court refused, up holding his conviction. The applicant was released after two years and five months in prison. The court, unanimously found a violation of right to fair trial. The applicant claimed (US$26,040) in pecuniary damage for lost earnings quantified on the basis of the national guaranteed minimum wage, and (US$99.7100) in non pecuniary damage for his feelings of distress and deprivation of liberty. While the court repeated that it could not speculate on the out come of the trial, it added that it does not find it un reasonable to regard Mr. Delta as having suffered a loss of real opportunities and awarded him (US$ 16,618) for both pecuniary and non pecuniary harm.[99]

Justifying the rule of causation for non-pecuniary damages is very difficult for plaintiffs' /victims/ claim compensation due to the very nature of the harm /injury/ sustained to a victim. Its stringent requirements of proof and causality have made it nearly impossible for applicants to demonstrate a connection between the damage and the violation.

One could easily infer from this that failing to show the proof of causation leads to rejection of the claim or reduction of the amount of compensation sought by the victim.

The problem of assessing (calculating) damage is as critical as establishing causation of damage and violation. Most human rights instruments, give only general, qualitative guidelines for award of damage compensation and did not provide almost no meaningful quantitative guidelines for how to compute them. [100]

In most cases, the international human right treaties do not specify how a breach of a legal obligation should be compensated. This may leads to difference in awarding compensatory damages in international tribunals.

National legal system varies in the methods used to assess the recoverable elements and the amounts awarded.

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[99] Delta V. France, (1990) 1991 A Eur. Ct. H.R (Ser. A).

[100] Dinah Shelton, cited above at note1, p. 217

In some states, a statutory scale of damages may be introduced for certain types of harm and states often specify the types of actions or injuries for which moral damages are recoverable or they define the term moral injury. [101]

The European court of human rights awards monetary compensation for pecuniary losses and non pecuniary damages, on an equitable basis because the court enjoys certain discretion in the exercise of the power conferred by article 50 of the convention. Thus, fair compensation or equitable assessment is used as standards for calculating damages for non pecuniary injury.

3.1.3. Enforcement

It is customary issue that remedy /compensation/ scheme has become part and parcel of the international, regional and Domestic legal system. Thanks to these arrangements courts in different levels may award remedy/ compensation/ for victims of violation. But the ruling of the court can only be executed /enforced/ when it has permanent legal force. In this regard international tribunals have jurisdiction to protect the award made to victims. The inter-American court has exercised extensive powers in this regard, establishing trust funds and over seeing payments, indeed, it does not close a case until there has been full compliance with all remedial orders and awards. [102] The court closed after it found that the government had complied with the reparations order.[103] In some instances, the court ordered the establishment of trust fund administered by the foundation appointed the members of the foundations, whose main duty was to obtain the best returns for the sums received in reparation and to act as trustee of the funds. [104]

In the African system states parties to the protocol of the African court of human and people's rights and council of ministers are expected to execute judgments per Art.30 and 29 of the protocol respectively.

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[101] Id, p. 71

[102] Id, p. 291

[103] Id, p. 292

[104] Henry J. Steiner and Philip Alston cited above at Note 30, p. 594

Claims for compensation under international law can be enforced either at the international or the national level. Claims based on domestic law are to be enforced before national authorities. The existence of a right to compensation under international law does not imply the existence of an appropriate enforcement mechanism for this right.

In fact, the real enforcement of remedy /compensation/ should be left to the state concerned. This is because:

> The causes of human rights violation are cultural, political, internal, close to home- an under developed commitment to constitutionalism, to the rule of law, to the idea of individuals rights, to limitations on government, political, social economic under development and instability; evil or stupid leaders, fostering a culture that tolerates brutality and repression; inefficient administration. In such circumstances, external inducements to comply with international human rights law are remote and not readily felt. [105]

This entails that, the role and positive cooperation of national state is unquestionable for the true enjoyment of human rights. In this regard, some states takes their own initiatives to have national compensation schemes to the extent promulgating laws to compensate victims of human rights violations. [106]

In order to ensure and enforce, the rights enshrined in national and international laws, systems; institutions and laws that fulfill the obligations must exist. States have to developed and adopted legislation on remedy in general and compensation in particular to enforce. The rights of victims of human rights violations. In this regard, several countries have enacted laws to compensate victims of human rights violations /abuses/ committed by prior regimes [107]

Accordingly, the 1988, Brazilian constitution contains a provision on reparation for victims of the military dictatorship, and also adoption of a law providing compensation. Argentina government compensated, for persons held in detention with out charges, forced to exile in the year 1974-1983, and adopted a series of measures to compensate victims of specific human rights

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[105] Ibid

[106] Dinah Shelton, cited above at Note 1, p. 345

[107] Ibid

violations.[108] Similarly, Chile under took a program of compensation and rehabilitation for victims of the Pinochet regime, encompassing life long pensions for the survivors of those who died in prison, compensation for prison time and for lost of income, educational benefits and the like.[109]

Hungary also adopted a separate compensation law regarding attacks on life and liberty, and deprivation of liberty for which compensation was due included political condemnations, preventive detention, forced medical treatment, internment in camps, forced labour, forced settlement, and deportation [110]

In Africa, South Africa and Uganda made efforts to remedy past human rights violation in part through compensation [111]Accordingly, the Uganda government enacted the president's war veterans, widows and orphans charity Fund Act (No. 2 of 1982) on behalf of victims and their relatives who participated in liberation efforts against the dictatorship regime of Idi Amin Dada[112] On the other hand, in South Africa, the Truth and Reconciliation commission based its recommendation on international law as well as the promotion of national unity and reconciliation Act, No. 34 of 1995. That act states that one of its objectives is to provide for the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity, of victims of violations of human rights.[113]

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[108] Id,p.346

[109] Ibid

[110] Id,p.348

[111] Id,p.349

[112] Ibid

[113] Ibid

CHAPTER FOUR

THE ETHIOPIAN LEGAL STANDARDS OF COMPENSATION

We have seen earlier those international human rights instruments and other regional instruments set out various remedy mechanisms to redress violations of human rights and that the right to compensation is indeed a basic human rights. This right is incorporated in many human rights instruments and decisions and opinions of international tribunals.

Having said this about the international modalities, let us see the legal frame work of compensation under the Ethiopian legal system.

4.1. The Ethiopian Civil Code

In the Ethiopian legal system the notion of compensation exists primarily in the civil code of 1960. Article 2090 and the following provisions of the civil code entitled "extra-contractual liability", provide that damage or harm sustained by a person may be compensated by the person responsible for causing the harm. From the reading of these provisions the award of compensation pertains to and is part of what the civil code extra contractual liability-liability that occurs in the absence of consent. On the other hand Art. 1790/2 of the civil code expressly commands and implies application of the tort provisions on compensation to damages arising from breach of contract, unless and other wise a contract law itself provides a different compensation mechanisms for breach of contracts and damage sustained there by compensation of damage emanates from a breach of duty which is either contractual or extra- contractual. It implies that damage may occur even by a breach of contractual duty or obligation or extra contractual duty in the context of the Ethiopia civil code. Unlike damage that emanates from contractual obligations, in case of damage arising out of tort the author of the damage and the one who suffered do not have prior contractual relation between them.

4.1.1. Sources of Extra-Contractual Liability

According to the Civil Code provisions, extra contractual damage exists by the act or omission of a person or by things in his possession. [114] These are generally classified as fault based liability, strict liability, and vicarious liability or liability for third party's actions/inactions. [115]

Fault based liability, as the term implies emanates due to some faults to the plaintiff. From Art 2028 of the civil code "who so ever causes damage to another by his fault, shall make it good." Thus, liability for fault is not limited to situations where the law provides, rather the liability is due to the fault of the defendant. As mentioned under Art. 2035 of the Ethiopian civil code fault based liability can be specific legal offences. Accordingly, abuse of powers, an in tent to injure, infringement of law, and interference of the liberty of another amounts to this liability as provided under the Ethiopian civil code, to which the state is liable to pay compensation when the situation allows to do so. [116]

Vicarious liability on the other hand is a liability for others when the Law provides, based on the preexisting relation ship between the defendant and person for whom the law made him accountable. In this case an employer is liable for the employee due to the early existence of employment contractual relation ship. [117] For the state to be liable for acts of its employee, the fault must be a professional one. And a fault is deemed a professional fault when the person who committed it believed in good faith that he acted in the interest of the state" and the presumption is always that the officer has acted in good faith. In all other situations the fault is deemed to be personal, and the state is not liable. [118]

Strict liability is liability caused to a person irrespective of the defendants fault, thus, plaintiff is not required by law to prove fault which is a common prerequisite to claim remedy under most circumstances. Here the plaintiff is only expected to prove damage caused to him to claim compensation for the injury he suffered. As provided by the civil code activities like a state of

[114] Cited above at note 3 Art.2027

[115] Ibid

[116] Id, Articles, 2033, 2032, 2035, 2040

[117] Id, Art. 2130

[118] Id, Art. 2126(3)

necessity, inflicting bodily harm amounts to liability. [119] Defendant is also liable in the absence of any fault for injury /damage/ caused by animals, buildings, machines and manufactured goods as clearly stated by the Ethiopian civil code of extra contractual liability section. [120]

4.1.2. Compensation

Generally, the compensation schemes in the civil code of Ethiopia envision both corrective as well as the economic approach of remedies. The amount of compensation is generally expected to be the equivalent or equal to that amount lost by the victim/plaintiff. Thus far the economic approach seems visible here. But the corrective approach is only arguably envisioned by the Civil Code. There is no clear punitive damages except some of what might be considered as tort liability can also be a cause for criminal prosecution and thereby entailing criminal liability—punitive liability.

4.1.2.1. Material Damages:

Article 1792(1) of the civil code provides the general rule of compensation to damage emanate from breach of contract. On the other hand general principles of compensation pertaining to extra contractual liability is governed under Art.2027 of the Ethiopian civil code. The basic interest treated in the civil code of Ethiopia is pecuniary interest (material) and the non- pecuniary interest (moral). [121] When there is damage both the material and moral harm need compensation as envisaged in the civil code of Ethiopia.

Material damage as its name implies has pecuniary nature which makes it capable of being pecuniarily assessed and compensable by equivalent sum of money [122]on the other hand moral damage is an injury to a person's non pecuniary interest and also affecting the emotional and physical well being of a person.

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[119] Id, Article, 2066, 2067

[120] Id, Articles, 2071, 2077, 2081, 2085

[121] Id, Art. 2090, 2005

[122] Assefa Negussie, Compensable Moral Damage under Ethiopian Law, LLB. Thesis, (AAU, IES Library, Addis Ababa, May, 1990) p. 13

There are some prerequisites envisaged under the Ethiopia law of compensation. Accordingly to be the beneficiary of compensation the author should have legitimate rights and suffered a damage in which his/her interest harmed. If the author or the plaintiff (claimant) has no legal rights and suffered no damage, he would have no legal right to claim for compensation.

One can find two sorts of compensation available in the practice and statute of the Ethiopian law, i.e. pecuniary and non pecuniary compensation. Pecuniary compensation is an award (payment) of money to make good redress the harm inflicted up on the plaintiff, where as the non pecuniary form of compensation is any other remedies excluding compensation in monetary term. [123] This second kind of compensation may include restitution in kind, publicity and declaration of judgments, injunction and declaration of infringement of right. [124] Those non-pecuniary forms of compensation mentioned above are under the authority of the court to order as a remedy if the court convinced it is appropriate. Injunction is an order of a court commanding (forcing the defendant to behave in a certain manner, or not behave in a certain manner, or not behave in a certain fashion which harms the defendant. It can be ordered even before the harm occurs so as to prohibit a conduct which causes damage. Publicity as a non- pecuniary compensation stipulates an apology or retraction, by the defendant, in a press so as to counter balance the injury he/she caused to the honor or reputation of the plaintiff. [125] Declaration of judgment is awarding or informing the public the facts or the reality of judgments by the expense of the defendants. Restitution may be forcing the defendants to return back to the plaintiff the property illegally taken and sometimes substituting in kind in the absence or where the property, has been lost. [126]

As to the extent of compensation the Ethiopian civil code per Article 2091 provides basic principle. Thus compensation is equal to the damage caused to the plaintiff.

But there are some (limitations) exceptions to this general rule. For instance statutory limitation is provided for compensation of moral damage. Based on the general rule that courts have discretionary power to mitigate compensation, there are instances in which courts exercise this

[123] Id, p. 22

[124] Ibid

[125] Id, p. 23

[126] Ibid

power and there by deviate from the general principle of compensation equal to the damage sustained. These are, where the damage is due to chain of command enforceability of the consequence, or unawareness of fault and damage arising from necessity. As provided under Art. 2104 of the Ethiopian civil code nominal compensation is one situation of limiting the general principle of compensation.

4.1.2.2. Moral Damages:

As we have mentioned earlier moral damage is an injury to a person's pecuniary interest and rather affects the emotional and physical well being of a person. Moral damage is compensable as provided under Article 2105 of the Ethiopian civil code.

As per. Article 2105/2 of the civil code pecuniary compensation is awarded for plaintiff who has sustained moral damage if and only if is specifically mentioned by the law to guarantee that compensation. This implies that there is a high possibility of non pecuniary compensation for moral damage.

Generally, pecuniary compensation for moral damage can be awarded only in cases expressly provided by law. Thus, only those cases of moral damage which are expressly provided to be pecuniarily compensable entitle one to demand monetary compensation. Where there is no such express mention by the law moral damage is not materially compensable. Pecuniarily compensable moral damage is provided under Art. 2106 through 2115 of the civil code incorporate there are also other pecuniary compensable moral damage found in different law of Ethiopia and the same rule apply i.e. compensable in money when specifically mentioned.

One basic feature of the Ethiopian law of compensation for moral damage is its imposition of limitation on the amount of compensation or extent of compensation for moral damage. As we can read from Article 2116 (3) of the Ethiopian civil code: "The compensation awarded for moral damage shall in no case exceed one thousands Ethiopian dollars." [127] This shows that pecuniary compensation for moral damage has an upper legal limit unlike material damage. In sums compensation for any moral damage cannot exceed this ceiling.

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[127] Cited above at note3, Art. 2116(3)

There are some prerequisites in civil code to award pecuniary compensation for moral damages. One criterion relate to the very conduct or intention of the defendant. Thus, moral damage caused with intent to make the victim suffer morally is regularly compensable irrespective of the source or specific type of the wrong.[128] Criminal condemnation of the defendant is the other prerequisite to obtain pecuniary compensation for the moral damage. Accordingly, moral damage caused by abduction of a child and sexual outrage or rape leads to pecuniary compensation in addition to the criminal liability. [129]

From the reading of Article 2105(2) of the Ethiopian civil code in all cases of moral damages which are supposed to be pecuniarily compensable the plaintiff cannot, as of right get the said compensation. This is because the provision is stated that pecuniary compensation may be awarded, and it does not speak in terms of shall which has an obligatory consequence. This gives courts wide discretionary power in awarding pecuniary compensation for moral damage. Here, court may or may not grant compensation to the victim of moral damage.

The only thing which obliges the courts to award compensation to the victim of moral damage is equity or sense of justice, otherwise there is no mandatory provision obliging them. There are a few limitations that contain the discretionary power of the court as provided under the civil code. They may be the local custom which is manifestly unreasonable or immoral, and fixing the amount of compensation is the common limitation on the discretionary power of the court to decide pecuniary compensation for moral damage. [130]

Injury or moral harms expressed by the law to be pecuniarily compensable are moral damage caused by battery, restraint of liberty, defamation, interference with marital relations, trespass to property, abduction of a child, sexual outrage or rape. [131] Some provisions are found in scattered way in civil code and other laws of Ethiopia that award pecuniary compensation in case of moral damage or injury caused to the victim (plaintiff).

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[128] Id, Art. 2106

[129] Id, Art.2111, 2114

[130] Id, Art. 2116

[131] Id, Art.2107, 2108, 2109, 2110, 2112, 2111, 2114

As to the mode of compensation in addition to money compensation courts can order any kinds of civil remedy if it is appropriate per. Article 2092 (2) of the Ethiopian civil code. This civil remedy may include non-pecuniary compensation like restitution, restitution in kind, injunction, publicity and declaration of judgments.[132] Nominal compensation is also provided under Art 2104 of the Civil Code. Restitution as non-pecuniary compensation provided under the Ethiopian civil code mentioned above focuses on property. However, restitution includes restoration of or to restore some thing that has been alienated under duress to its rightful owner.[133] It re-establishes to the extent possible, the situation that existed for the victim prior to the violations of human rights. Restitution requires, inter alia, restoration of liberty, citizenship or residence, employment or property. [134] The restitution under the civil code of Ethiopia does not envisage restoration of human rights violation as such.

Pecuniary- compensation for moral damage like battery provides under the civil code reflects compensation mechanisms for human rights violations in international and regional human rights system for its guarantees of the constitutional protection against bodily harm. However, the degree of body contact that amounts to compensation for battery cases provided under art 2107 of the civil code is restrictive one. Under the Ethiopian civil code, unlike other forms of injury, moral damages arising from bodily harm or death makes the defendant strictly liable. Thus, article 2113 (1) of the civil code provides that a victim of bodily harm may be compensated for the moral damage he suffered. If the immediate victim did not survive the bodily harm, his family could be compensated for the moral damage they sustained by the loss of dearer, or loved ones.[135] Since each member of the family is not going to be compensated severally, courts elect of a family representative on the basis of local custom per. Article 2116 (1) of the civil code. In the absence of any local custom persons listed down in art 2117 of the civil code will be considered, as the case may be, to be representative of the family. The legal norms that award

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[132] Krzeczunowicz, the Ethiopian Law of Compensation for Damage, (1977), p. 35

[133] Agnes Peresztegi, Reparation for Holocaust-era Human Rights Violation and, Web.ceu.hu/jewishstudies /ybo3/13peresztegi.pdz, p. 146

[134] Ibid

[135] Id, 2113

compensation for relatives of the deceased or in the absence of a direct victim in the international and regional human rights system is envisaged under the civil code of Ethiopia.[136]

Unlawful restraint of liberty Causes Moral damage that is pecuniarily compensable. It affects the reputation and honour of a person. The loss of freedom which results from the restraint can create mental suffering or anguish, fear and anxiety and humiliation as well. Where the restraint is accompanied by force it can produce also physical pain and suffering.[137] It is to redress such severe moral damage that the law allows pecuniary compensation to the victim of unlawful restraint of liberty. On the other hand Art. 2112 of the civil code of Ethiopia awards compensation to un lawful entry up on land, in to house , seizure of goods against the clearly expressed will of the owner /possessor/for moral harm caused due to that act.

As to a person eligible to bring legal action of compensation different categories of persons are allowed to seek compensation under the civil code of Ethiopia. Thus, heirs, creditors of victim and subrogated persons could claim compensation.[138] With regard to a person who is entitled to claim compensation there is a reflection of international and regional legal norms in the Ethiopia civil code.[139]

Immunity which is the exemption from liability, in law or in fact, of holding perpetrators accountable is included in the Ethiopian civil code. The Ethiopian law of extra contractual liability guarantees immunity for members of the Ethiopian government, members of the Ethiopian parliament and judges of the Ethiopian courts [140]It seems that the law exempts them from liability provided in this section of the civil code. As stated under Art.2139 of the civil code,

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[136] Art.34 of the European court of human Rights.

[137] Id, 2108

[138] Id. Article, 2144(1),2145(2) and 2161(2)

[139] Dina Shelton cited above at Note 1, p.183-184 186, 188: the human rights committee has indicated that family members may be considered victims of violations perpetrated on one of their relatives. Especially in the case of disappearance, the committee found that the mother of the disappeared was victim. The committee under stands the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and where about the European commission defines the term victim as it includes indirect victim and inter American court has held that both pecuniary and non pecuniary claims survive and automatically pass to the victims heirs or successors, and injured parties cover other groups or extension of other groups per Art. 63(1) of the inter American court of Human Rights Non- successor 3rd parties also may suffer injury, but they bear the burden of proof.

[140] Cited above at note 3, Art.2138

if any of the exempted officials are sentenced by the criminal court, the immunity shall not be applicable. Thus, those immuned categories/groups/ redress damage caused to others by their wrong doing. Under these situation victims go free without any remedy /compensation/ and contradictory to the general principle that victims of violations should be remedied /compensated/.

Thus, the Ethiopian civil code pertaining to this issues need to be revisited. To combat violations, especially breaches of fundamental human rights, limiting, if possible rejecting immunity is basic not only for dealing with past human rights violation, but also for preventing recurrences.

4.2. Other Laws

The Federal Criminal Code provides compensation for victims of crime under the heading restitution of property compensation for damages and costs as follows:-

"Where a crime has caused considerable damage to the injured person or to those having rights from him, the injured person or the persons having rights from him shall be entitled to claim that the criminal be ordered to make the damage good or to make restitution or to pay damages by way of compensation." [141]

From the notion of compensation and its consequence the groups (persons) having rights from the injured person may be the relative of the injured person mainly the heirs dependants and next of kin having legal relationship with the victim of crime. Generally the law ordered the defendants to make good any damage caused to the injured person or persons having rights from the injured. The provision further stipulates the possibility of lodging civil and criminal suits jointly and governed by provisions of criminal procedure code.

The modality of compensation is also provided under the Federal Criminal code. Accordingly,

1. "Where it appear that compensation will not be paid by the criminal or those unable on his behalf on account of the circumstances of the case or their situation the court may order that the proceeds or part of the proceeds of the sale of the articles distained, or the sum guaranteed as surety or a part of the fine or of the yield of the conversion in to work, or confiscated property be paid to the injured party.

[141] Federal Criminal Code of Ethiopia, Proc. No 414 Federal Neg. Gaz, Year 9 No, Art. 101

2. The claim of the injured party who has been compensated shall be assigned to the state which may enforce it against the person who caused the damage. This provision provides optional mechanisms of compensation to the injured when the defendants or any other person liable on behalf of the defendants failed to pay compensation or discharge his obligation."[142]

On the other hand, chapter six of the criminal procedure of Ethiopia code lays down some rules /procedures/ of compensation for injured party in the criminal proceeding. Accordingly, a person has been injured by a criminal offence apply to the court for an order of that compensation be awarded for the injury-Caused per. Article 154 of the criminal procedure code as a general principle. The application may be rejected based on the criteria or requirements mentioned under the criminal procedure code.[143]

As mentioned under Art 157 of the criminal procedure code the injured party is allowed to withdraw at any time before the close of the case for the defence and claim against the accused in the civil court having jurisdiction. The injured party take part in the proceeding and may called by the court to rule on the amount of compensation, to be awarded. [144]

A court may refuse question of compensation after the proceeding have started. [145] Thus, as clearly mentioned under Art 158 of the criminal procedure code, where the accused is acquitted or discharged, the court shall not adjudicate on the question of compensation and shall in form the injury part that he may file a claim against the accused in the civil court having jurisdiction.

Lastly, per. Art 159 of the criminal procedure code court order an award of compensation for victims /his representatives/ including costs and other court fees as have been practiced in civil cases.

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[142] Id, Art. 102

[143] Criminal Procedure Code of the Empire of Ethiopia, 1961, Pro. No 185, Neg. Gaz, year 21 No. 7, Art. 155(1)

[144] Id, Art. 156 (1 and 2)

[145] Id, Art. 158

CHAPTER FIVE

KEY FEATURES OF THE ETHIOPIAN LAW OF COMPENSATION FOR HUMAN RIGHTS VIOLATIONS AND THE PRACTICAL SCENARIO

Many people agree that protection and enforcement of human rights need the joint effort of international and domestic arrangements. How far the Ethiopian domestic legal and practical regime fares in that connection remains to be seen further below. This section is thus the main part devoted for exhaustive evaluation of the Ethiopian legal framework of compensation in the parameter of the international standards with regard to victims of human rights violations. It helps to trace the gaps/loopholes/ if any and in light readers the weakness of the Ethiopian law of compensation and its practical aspects in enforcing human rights, particularly for victims of human rights violations.

5.1. Key Features of the Ethiopian Law of Compensation

The preceding part was an attempt to offer a general view of the international legal framework on the questions of the compensation victims of human rights violations. We have seen the basic institutional structures and the approaches on such issues as assessment and causation to award compensation. We shall see the Ethiopian approach on these questions in this part. In general remedies /compensations/ of human rights victims are governed by both private and public law of Ethiopia. Below is the basic character of these pertinent laws in the areas of compensation will be addressed.

As stated under Art 9(4) of the FDRE constitution it enacted that all international agreements ratified by Ethiopia are an integral part of the law of the land. Furthermore, art 13(2) of the FDRE constitution stipulated the fundamental rights and freedoms specified in chapter III shall be interpreted in a manner confirming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia. In the FDRE constitution, no provision of the constitution provides for the rights to compensations in case of infringement of the fundamental rights. An attempt to include aright to

compensation in violation of fundamental rights failed after a hot debate during the drafting process of FDRE constitution. [146]

The rationale behind leaving out the provision dealing with the right to compensation during the draft of FDRE constitution was the existing economic situations of the country. [147] In the debate with such an economic status, we cannot afford paying compensation for every single aggrieved individual, was the main argument for the rejection. [148]

With regard to the legal frame work of compensation in the Ethiopian legal system an interview questions and questionnaires are arranged to legal professionals who are at the fore front of the enforcement of rights particularly judges to evaluate the competency of the Ethiopian law of compensation for victims of human rights violations.

Responses of the questionnaires and interviews by judges of the various Ethiopian courts including judges of Federal Supreme Court, Federal high court and Oromia Supreme Court have been organized as indicated below.

Here are the discussions and analysis of data's on the Ethiopian Law of Compensation of Human rights violations[149]

As to the types of remedies the Ethiopia law avails to victims of human rights violations respondents agreed on the existence of injunction, compensation, declaratory judgments, and reinstatements, as remedies for victims of human rights violations. Respondents further elaborate that the aforementioned remedies are available in Ethiopian substantive and procedural laws in scattered way here and there. To strengthen their arguments, those who think the Ethiopian laws command compensation of victims of human rights violations referred to the tort provisions or

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[146] Lishan Woldemedhin, Compensatory Remedy for Injustices of Criminal Proceedings in Ethiopia: The Law and the Practice, LLB. Thesis, (AAU, IES Library, Addis Ababa, May 2003), p. 48

[147] Id, p. 50

[148] Ibid

[149] Data collected and analyzed through questionnaires distributed to federal (supreme and high) courts, and Oromia Supreme Court on the Ethiopian legal system of compensation and the enforcement of international treaties ratified by Ethiopia in this regard.

the extra contractual liability of the Ethiopian civil code and international human rights ratified by Ethiopia.

As to the relevancy of the Ethiopian law of extra contractual liability for compensation some responded positively, whereas others expressed deep doubts about the competence of this law to compensate victims of human rights violations. On relevancy of the extra contractual liability respondents add an issue that there is no better law than the extra contractual liability and victims may institute compensation claims for instance, for illegal detention under. Art.2035 of the civil code. They agreed also that it is too general and not specifically deals with the case at point. i.e. compensation of victims of human right violations.

Respondents who mentioned the incompetence or irrelevance of the civil code's extra contractual liability law posed an issue that this law governs more of private parties for it is private law and compensation of state /government/ agencies should be regulated by other laws such as administrative law and the like which regulate abuse of power of government officials against human rights. From this one may safely argue that the two categories of respondents justify that the Ethiopian law of extra contractual liability is not comprehensive enough to address issues in discussion.

On the other hand, from the total judges who responded to the comprehensiveness of the Ethiopian law of extra contractual liability to compensate victims of human rights violations the majority of them responded that the Ethiopian law is not comprehensive enough, where as non-responded in the contrary. With regard to the mode of assessment of compensation in existing Ethiopian law of compensation the majority of my sources responded favoring material and moral damages, while a few punitive damages.

5.2. The Practice of Compensation for Victims of Human Rights Violations in Ethiopia

Moving on to the evaluation of the practical modalities of compensation of human rights violations under the Ethiopian public institutions, specifically the courts; the picture is a little bit unhappy. I have considered the incidents of human rights violations that occurred in Ethiopia at different times especially the red terror of the Derge regime to supply the information used as

inputs to examine the practical scenario of compensation for victims of human rights violations in this part. Data has been collected by an interview conducted with judges, prosecutors and victims, and also through questionnaires distributed to judges of federal courts and Oromia Supreme Court. Cases decided by federal high court have been used. The analysis below shows the model questions proposed and subsequent discussions with judges.[150]

The survey indicates out of the total respondents, almost all responded that they never came across cases that raises issues of compensation for victims of Human rights Violations in their professions or experience, and none responded to the existence of alleged cases or experience. Similarly, on the question whether the Ethiopian judiciary could refer to international human rights instruments for compensation of human rights violations, the majority responded affirmatively, where as some responded negatively. As to the specific international law, the judiciary could refer, respondents mentioned international laws attaining the status of customary rules, instruments ratified by parliament like ICESCR, ICCPR specifically article 2 (3) 5, 9 (5) and 50 of the ICCPR, and convention on eliminations of all forms of racial discriminations as an example. Out of the total respondents, the majority replied that there are no such cases where international instruments could be used for compensation of human rights violations and non-responded in the contrary. On the other hand, high percent responded that the Ethiopian judiciary is not currently enforcing compensation as a remedy for human rights violations. Lack of commitment from government and judges, efficiency and quality of judges, and judicial activism are some of the reasons raised by most respondents for little enforcement of human rights instruments. Uncertainties about the legal status of the international legal regime in the Ethiopian constitutional system were also mentioned by quite a few. Similarly, absence of clear legal mandates, victims or claimants reluctance to insist on compensation, feasibility of remedies—the difficulty in proof and constraint associated with public budget and other barriers that hinder enforcing compensation as remedy are also mentioned as elements of the scanty enforcement of compensation for victims of human rights violations. Specifically, big percent of the respondents take in to account public budget as perils of awarding compensation for victims of Human rights violations, while some considered difficulty of proof as aground of the problem.

[150] Analysis of data gathered from questionnaires distributed to judges of federal supreme court, federal high court and Oromia supreme court on the practical scenario of compensation for victims of human rights violation in Ethiopian judicial system.

For similar purpose an interview has been conducted with selected Federal and Oromia judges who have long experience, especially those involved in the red terror trials. As responded by the interviewee, the major compensation scheme is found in the Ethiopian civil code of extra contractual section which by and large governs private matters and only a few provisions of this code deals with issues of compensation of human rights violations. Such is not envisaged in the public law of Ethiopian, for instance the FDRE constitution has no clear provision for this purpose. Thus, they seem to have relied on no where to fill the loopholes in the Ethiopian law to enforce compensation for violations of basic and fundamental rights.[151] On the other hand, some respondents justified the possibility of enforcing compensation for human rights violations based on Article 9(4) and 13(2) of the FDRE constitution, even if there are gaps in the extra contractual liability of the Ethiopian civil code. [152] Yet, they appear to believe the importance of enacting specific laws or implementing legislation to enforce international norms ratified by Ethiopia in domestic legal system. Clearly legislation of some laws for the enforcement of compensation claims of violations of human rights appears beyond doubt for many of my sources.

Concerning the practical aspects of compensation, as far as they know so far, they have not seen a case which is submitted to the benches in which they are member. All respondents (interviewees) unanimously replied that no significant claim of compensation is sought by victims of human rights violations.[153] As elaborated by my respondents, non-existence of earlier practice to claim compensation including in serious human rights violations like the red terror has its own contribution. Respondents also raised lack of awareness from the public in general, lawyers in particular and reluctance of judges to enforce the existing legal opportunities, let alone the deficiency of the law as basic reasons for non-implementation of remedy /compensation/ in Ethiopia for breach of fundamental human rights.

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[151] Interview with Ato Brihanu Amenu who fully participated in red terror trials when he was the judge of Oromia supreme court and currently working as the judge of federal supreme court, and with Ato Girma Midhaqsa who was the judge of Oromia supreme court and take part in the red terror trials, November 2009

[152] Interview with Ato Solomon Areda vice president of federal instance court, who involved in the red- Terror trials held in federal high court when he was the judge of that bench, and Ato Alemayehu Tegne one of the judge for the red terror Trails held in Oromia Supreme Court, November 2009

[153] Interview with judges cited above at note 151 and 152

Generally, respondents /interviewees have forwarded, the legislation of a separate law or specific provisions in line with international instruments for compensation of human rights violations, which in detail addresses:-

- what are/ constitute/ human rights violations,
- specific remedies (compensation) for the violations with some guidance on the modalities of assessment,
- the status of international law in such violations and the role of Ethiopian courts
- the forum the federal courts versus state courts jurisdiction

Regarding the existing tort law the Ethiopian civil code should be amended especially on assessment of moral damage as replied by the interviewees.[154]

5.3. Claims of Compensation for Violation of Human Rights Raised in Relation to the Red-Terror Trials

It is rarely contested that Ethiopia experienced gross and wide spread human rights violations in the Derge regime during the years 1974 and 1991.[155] It was a massive human rights violation which included willful killing, inhuman treatment, causing great suffering or serious injury to body or health. [156] After the Downfall of the Derge regime, the Transitional government of Ethiopia established an office of special prosecutor (here in after- SPO) by the proclamation number 22/1992 to bring suspects or criminals of the red terror responsible for mass murder and torture to justice. [157]

The SPO had the mandate of investigation and prosecution of the Derge officials who were involved in the criminal act of the red terror. [158] The proclamation has also mandated the SPO to record the human rights violations of the Derge regime. The mandate of the SPO and the red

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[154] Ibid

[155] Frode Elgesen and Girmachew Alemu Aneme, the rights of the Accused, a human rights appraisal, in kjetil Tronvoll, Charles Schaefer and Girmachew Alemu Aneme (eds.) African issues: the Red-Terror Trials, 2009. p.33

[156] Mechari Redae, Revisting the Ethiopian Genocide, Trial problems and proposal, (the Ethiopia Law Review, volume 1, number 1, law faculty. Ethiopian Civil service college, August 2002) p.18

[157] A proclamation for the establishment of special prosecutor office proc. No.22/92, Neog.Gaz; No,18,1992

[158] Ibid

terror trial was unable to operate effectively due to scarce resources-- both material and trained man power to discharge obligation in the country. Similarly, the judiciary in the bench of the red terror trial, was young and inexperienced individuals and those few experienced judges were confined with in ordinary crimes which are less complicated than the red Terror files. [159]

Thus, the Red Terror Trials in which the Ethiopian government has intended to bring perpetrators of the red terror (Derge officials) to justice has been criticized by different scholars for it failed to fulfill the standards of procedural remedies recognized in international instruments ratified by Ethiopia which may include among other things the right to fair and speedy trial. [160] The charge that has been filed against the defendants was the other issue commented in this regard stating that, the killings of the Derge Regime do not qualify as genocide, as the Derge's actions were not aimed at destroying a specific group of people as per the definition provided under the Geneva Convention. [161]

As mentioned earlier the SPO is mandated to investigation and prosecution mostly aimed at punishing human rights violators and documenting the tragedy of violations. "States have a duty under international law to provide an effective remedy for past human rights violations and effective remedy should contain investigation and prosecution, compensation, restitution, rehabilitation satisfaction and guarantees of non repetition."[162] The right to compensation is integrated in to the substance of international human rights laws like the UDHR, ICCPR and Torture convention, which most states ratified including Ethiopian.

"Compensation, on the other hand, not only alleviates the economic burdens caused by human rights violations, but also a symbolic gesture of acknowledging responsibility for what happened to the victims and an appeal for forgiveness and reconciliation."[163] According to the result of the

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[159] Mehari Redae, cited above of note 156 ,p.11

[160] Kjetil Jronvoll, Charles Schaefer and Girmachew Alemu Aneme, the red terror trials; the context of Transitional justice in Ethiopia, Africa issues, the Ethiopian, Red Terror trials 2009, p.10-11

[161] Ibid

[162] Girmachew Alemu Aneme, beyond the red-Terror Trials: analyzing guarantees of non-repetition, African issues; the Ethiopian Red-Terror Trials, 2009, p.116.

[163] Ibid

survey conducted, for this research the victims and any other responsible organ did not seek compensation for massive human rights violations of the Red-Terror incident, except a single case indirectly addressed to the Red- Terror- Trial which I will discuss Later on.

From an interview conducted with Ato Yosef Kiros senior Prosecutor of SPO, who has taken part in the criminal proceeding of the red Terror Trials, he repeated /strengthened/ the above facts that pecuniary compensation is not awarded for Red Terror case. [164] As stated by an interviewee, the office of the special- prosecutor /SPO/ is established for investigation and prosecution, and only devoted to fulfill the prosecution aspects and failed to deal with compensation which is out of the jurisdiction of SPO mandated by establishment proclamation. He further adds that, the tragedy of human rights violation in the red Terror was committed by the full intentional sponsorship of the Derge Regime. Accordingly, the material and moral damages, especially the psychological pain and suffering caused to the victims families and survivors should be compensated from the assets of the defendants and government budget due to the general international norm of state succession, unfortunately non is compensated as far as he knows.

With regard to claim of compensation, as I have pointed out earlier only one case was brought to the Red- Terror criminal bench of the federal high court. The case was, Ato Teshome G/mariam and colonel Melaku Kaseny Vs. the defendants, instituted per. Arts 154-150 of the 1961 criminal procedure code and Art.100 of the 1954 penal code of Ethiopia jointly and severally.

Claimants justified that they were among victims of human rights violations filed to that bench by SPO in charge numbers 210 and 211 in violations of articles 416 and 414 of the 1954 penal code of Ethiopia respectively. Accordingly, the first applicant sought a lump sum of 1, 673,341 and the second 60,000 as compensation for injury caused to them per- the penal provisions mentioned above. [165]

The court held that the applicants were not entitled to seek compensation for the reason that the name of the applicants were not identified /included/ in charge numbers 210 and 210, and an

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[164] Interview with Ato Yosef Kiros, a senior persecutor have participated in the red Terror Trials' still working in the office of special prosecutor (SPO), November - 2009

[165] Special Prosecutor Office Vs Mengistu H/Mariam and other red terror defendants, Federal High Court Red-Terror Trial Criminal Bench Addis Ababa 1995; Criminal File No 1/87

application to seek compensation per Art 154-159 of the criminal code should be through the mediation of the public persecutors. The court also stated that instituting compensation claim in criminal file as a short path is an exception for victims there name have been included in the public prosecutors charge, and such massive charge did not allow requesting compensation in criminal trial and applicants should resort to civil bench. Finally the court rejected the objections /counter arguments/ of the applicants and has held that the criminal procedure does not guarantee a right to seek compensation in this case.

The counter arguments (objections) of the claimants that the applicant could seek compensation independent of the public prosecutors, with out taking as prerequisite the enumeration of victims name in the charge of the prosecutors seems sensible. In the case under consideration the very nature of the violations force to charge in massive way and the public prose cuter of SPO did the same. Rather, the case might have been better disposed on the basis of injury or evidence produced in the trials.

In the process of prosecuting suspects of the Red Terror, a group were assigned as committee from the victims families named by "victims of Red Terror" **(የቀይ ሽብር ተጐጅ ቤተሰብ ተፈራጅ).** From an interview conducted with Ato Terefe Atomsa one of the representatives who lost his beloved son in the red Terror, the basic activities of this committee were by and large assisting the SPO tracing un arrested suspects and inform to the SPO and involving in the production of evidence. By attending the red Terror trials inform the progress of the trials, they act also as a mediator to the victims' families. [166] From fund raising to the construction of the memorial monument of the red Terror victims have been constructed by the great effort of this committee.

Above all the committee have worked jointly with the government in the gathering of the remains of the red Terror victims and reburied them in the new- memorial building arranged for this purpose. As responded by the interviewee the victims families get relative satisfaction by the end result of prosecution, and not aware of the existence of legal remedies (monetary compensation) against the defendants. Rather, they will expect to get redress for material and moral damages

[166] Interview with Ato Terefe Atomsa, member of red-terror victims families, who lost his son Tesfaye Terefe, represented by resident of victims families in keftenya 16 around Kotebe still he is working as a committee in the centre of memorial foundation for red-Terror victims, November 2009.

from the income will be generated from the new memorial building. Unless effective restoration is introduced infavour of victims, the enforcement of human rights will be meaning less only by prosecution of suspects.

Thus, the red Terror trials are only a partial remedy to the massive human rights violations during the Derg Regime in Ethiopia. [167] The other case is, police officers of woreda five police station (five in number) Vs Ato Tadasse W/Gabriel and Muluken Tadasse where the applicants sought damages due to unlawful detention and seizure. [168] The applicants first /lodged/ to the Addis Ababa zonal court, demonstrating that the arrest and seizure were unlawful. They were detained for 22 and 26 days in police custody. Applicants sought a compensation claim of 2000 Ethiopian Birr for moral damage.

The lower court rejected the claim stating there is no illegal detention and ordered the seizured money should be hand overed to the applicants and acquitted the criminal file instituted against them. They applied to the federal Supreme Court. The appellate court found a breach of the fundamental rights guaranteed under the FDRE constitution and the Ethiopian criminal procedure code for accused persons. Thus, the appellate court made liable the defendants and awarded moral damages of 100 Ethiopian Birr for each, for pain and suffering to the applicants due to illegal detention.

The court rendered decision based on Art. 2108 of the Ethiopian civil code and awarded the maximum compensation ceiling provided under Art.2116 (3) of the civil code. The decision of the federal Supreme Court is encouraging, though this single case did not justify the existence of compensation at all.

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[167] Girmachew Alemu Aneme, cited above at note 162,p.117

[168] Woreda five police officers Vs Ato Taddesse W/ Gebriel and Muluken Taddesse, Federal supreme court, Addis Ababa 1993, File number 862/88 Defendants include leut. Girma Demeke, corporal Haimanot H/Mikael, corporal Mitiku Berda, and corporal Bedru Mohammad. The court only made liable the first defendant, commander of the police station and ordered him to pay compensation for moral damage. This case is not the Red Terror and I have considered it for simple reason it deals with the issue of compensation for human rights violations

5.4 Conclusion and Recommendation

5.4.1. Conclusion

I have tried to deal with in the earlier parts that international legal obligation to provide victims of human rights violations with compensation is a primary duty of every state. Under international human rights law, every state is obliged to provide effective remedies to victims of human rights violations. That requirement includes the obligation to provide victims and their relatives with fair and adequate compensation. I have also noted the victims of human rights violations are entitled to various remedies including compensations at the international level by virtue of regional or international instruments. I have mentioned the practice of African, European and inter-American Human rights systems in this regard.

Some questions remain in the Ethiopian scenario. To start with there seems to be a debilitating uncertainty on the part of the laws not only on the specific status of the international human rights regimes but also the competence and comprehensiveness of Ethiopian laws that supposedly deal with questions of compensations of victims of human rights violations. Similarly, there are tremendous practical challenges ranging from economic scarcity of public funds to the awareness and ability of the victims to assert the right to claim compensation. Practices show from the earlier discussion victims of human rights violations were not successfully awarded monetary compensation for material and moral damage caused to them. In the red terror incident, which is one of a massive human rights violation in Ethiopian history, the government established an office of special persecutor /SPO/ for persecution of Derge officials involved in the violations. As clearly, indicated the basic mandate of the SPO is prosecution and investigation of the violation. The criminal proceeding of the red terror incident is a good start for enhancement of rule of law, and given some satisfaction for Ethiopian people in general and, victims' families and survivors in particular. Thus, it has an encouraging experience for equality of law, though it encounters some problems from the perspectives of the defendants, especially detention without charges and delay (the problem of speedy trial). But the compensation and rehabilitation, basic component of remedy for human rights violations of red terror case have been missed.

Absence of compensation scheme for victims of human rights violations in red terror case has its own draw back on prosecution especially from victims families and survivors point of view.

Thus, the red terror trial is an incomplete remedy as asserted by victims families and scholars in the area.

In fact, there is no experience in Ethiopia legal system to award compensation for human rights violations. But the red terror case is unique which may include violation of the right to life, illegal expropriation of property, torture, and it was a catalog of human rights violations. On the other hand, specific provision is not found in the FDRE constitution, unlike the experience of some states mentioned above provided compensation scheme in their constitution and other legislation. Rather an attempt to include a provision to award compensation for victims of human rights violations was failed during the debate on the draft of the FDRE constitution.

5.4.2. Recommendation

Finally, by way of recommendation:

1. It seems there is clear need for clear understanding of the status of the international instruments ratified by Ethiopia particularly in relation to the courts. Whether courts can have direct recourse to such instruments in cases such as the compensation of victims of human rights is not clear for judges with whom I had discussions for this paper. Thus, it needs implementing legislations that avoids the above mentioned confusion and clearly addresses the status of ratified international instruments by Ethiopia.

2. Similarly, the civil code seems to fail on two counts, at least, in providing the normative backdrop to address questions of compensation of victims of human rights violations.

    - First, whether the civil code being a private law is relevant to address such questions of public affairs. Many of the rules, principles and the underlying policies of the civil code were made with belief that it governs private relations. But the question of compensation of human rights violation is a pure public law issue and often highly charged with political issues. Thus whether the code is fit and it is prudent to invoke it at such times is an important concern.

    - Second, even assuming the civil code is applicable; there are some troublesome questions about its comprehensiveness. Accordingly, enacting independent and relevant specific laws in the constitution or other public laws where it fits more that

clearly addresses issues like causation, assessment of damage compensation, and identify duty bearers for compensation of human rights violations, enforcement mechanism and solves problems have been observed in the research is unquestionable.

Generally, matters as delicate and intricate as violations of human rights might be better governed by a much more specific law. Legislation on this specific issue of compensation of victims of human rights violations seems important to address the questions and the country's commitment to international human rights laws.

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APPENDIX – 1

ዳኞች: ደሳለኝ ዓለሙ ክብረት ሰብሳቢ
ግርማ ጥላሁን
ተገኔ ጌታነህ

ከሳሽ: የልዩ አቃቤ ህግ

ተከሳሾች: እነ ኮ/ል መንግስቱ ኃ/ማርያም

ማስታወሻ

ከዚህ ቀጥሎ ያለው የእነ ተሾመ ገ/ማርያም ጉዳይ በነ መንግስቱ ኃ/ማርያም የክስ መዝገብ ጋር አብሮ የቀረበ ስለሆነ N.B ምልክት የተደረገበት ክፍል ትኩረት እንዲሰጥልኝ በአክብሮት እጠይቃለሁ።

እሺ ወደ ችሎቱ ጉዳይ እንመለሳለን:: አቶ ተሾሞ ገ\ማርያም ትላንት በወንጀል ሕግ ሥነ ሥርዓት 154 መሠረት በጉዳዩ ያገባኛልና ገብቼ መከራከር እንድችል የጥትሐብሔር መብቴ እንዲጠበቅ ሲሉ በ4\4\87 የጻፉት ማመልከቻ ለፍ\ቤቱ ቀርቦ ፍ\ቤቱ ተመልከቶታል:: ግን ይህንኑ ማመልከቻዎትን ለችሎቱ ማሰማት ስላለብዎት በንባብ ያሰሙ::

በችሎት በንባብ አሰምተዋል::

ፍ\ቤቱ: አቶ ተሾመ በወ\ሥ\ሥ\ሕ\ቁ 154 መሠረት አንድ የግል ተበዳይ ዐቃቤ ሕግ ካቀረበው የወንጀል ክስ ጋር የካሳው ጉዳይ በጣምራ እንዲታይለት ጥያቄ ማትረብ የሚችለው ዐቃቤ ሕግ ባቀረበው የክስ ማመልከቻ የግል ተበዳይ

የእስር ቤቱ ኃላፊ ነኝ::

የእስር ቤቱ ኃላፊ?

አዎ::

ዛሬ ሻምበል ካሳዬ አራጋውና ፪ አለቃ መላኩ ተፈራ ማስረጃዎቻችን ተነጥቀዋል ወደዚህ ልንመጣ ተነስተን በነበረ ጊዜ ከእጃችን በማረሚያ ቤት አባሉች ተነጥቀው ተወስደዋል ነው የሚሉት የምታውቀው ሁኔታ አለ?

አዎ::

እሺ::

ምክንያቱም ማንኛውም ከማረሚያ ቤቱ ወደ ፍ\ቤቱም የሚሄዱ ጽሑፎች ማረሚያ ቤቱ አይታቸው ማህተም አድርጉባቸው እንደሚወጡ ስለማውቅ ይህንን ስላልተደረገ መጀመሪያ አስቀርተነው ነበር:: ከዛ በኋላ ግን አመጣንና እንኩ ብለን ስንላቸው ሻለቃ መላኩ ተቀብለውናል:: ሻለቃ ናቸው? ካሳዬ አራጋው ማዕረጋቸውን አላውቅም አልቀበልም ብለውናል::

ማስረጃው አለ?

አለ::

ይዛችሁታል አሁን?

አዎ::

አንድ ነገር ማወቅ አለባችሁ:: በፍ\ቤት ትዕዛዝ በማረፊያ ቤት የሚገኝ ታራሚ እስረኛ ወይም በቀጠሮ ያለ እስረኛ ግንኙነቱ ከፍ\ቤት ጋር ነው:: እዚያ እስረኛ ጋር የሚደረግ መተናኮል ወይም ደግሞ ከሕግ የጣጣ አሠራር ከማን ጋር ነው የሚያገናኛችሁ ከፍ\ቤት ጋር ነው የሚያጋጫችሁ:: የፍ\ቤቱ እስረኞች ናቸው ፍ\ቤቱ እኚህን ሰዎች ደህንነታቸው: ጤንነታቸው: ነጻነታቸው በአግባቡ የተጠበቀ መሆኑ በየቀጠሮው መቆጣጠርና መቆጣጠር ማስተካከል ኃላፊነቱ ነው:: በማረሚያ ቤቱ የውስጥ ደንብ መሠረት አንደተከሳሽ ሲወጣና ሲገባ የሚይዛቸው ሰነዶች እየታዩ መተላለፍ አለባቸው የሚል ደንብ ካለ ይህ የማረሚያ ቤቱ አሰራር ነው ደንብ ነው ይህ እንኳን አይልም:: መንጠቅ ግን ከዚያ ያልፋል:: እስረኛ ከማንም በላይ ጥንቃቄ ያለው አያያዝ እንዲደረግለት ነው ሕግ የሚጠይቀው ከማንም በላይ:: ስለዚህ ፈቃደኛ ከሆኑ እሳቸው አሁን ብትሰጡዋቸውና እዚሁ የጐደለውንና ያልጐደለውን አይተው ለፍ\ቤቱ ማረጋገጫ ቢሰጡ ይፈልግ ነበር ፍ\ቤቱ:: ግን ትንሽ ሰዓት የሚወስድብን ስለሆነ ለዕረፍት በምንነሳ ጊዜ ትሰጧቸውና አይተው ፎቶግራፎችም አሉ የልጆቼ ነው የሚሉት የጐደለ ነገር ካለ ይነግሩናል እሳቸው:: የጐደለ ነገር ከሌለ ትመልሱላቸዋላችሁ:: ወደፊትም በተለይም ወደ ፍ\ቤት በሚመጡ ከዚያም ውጭ በሆነ ጊዜ ቢሆን በተቻለ መጠን በሕግ መሠረት አግባብ ያለውን አያያዝና ጥበቃ ልታደርጉላቸው ይገባል ይህንን ፍ\ቤቱ በማስጠንቀቅ ነው የሚገልጽላችሁ::

N.B

እሺ ወደ ችሎቱ ጉዳይ እንመለሳለን:: አቶ ተሾመ ገ\ማርያም ትላንት በወንጀል ሕግ ሥነ ሥርዓት 154 መሠረት በጉዳዩ ያገባኛልና ገብቼ መከራከር እንድችል የፍትሐብሔር መብቴ እንዲጠበቅ ሲሉ በ4\4\87 የጻፉት ማመልከቻ ለፍ\ቤቱ ቀርቦ ፍ\ቤቱ ተመልክቶታል:: ግን ይህንኑ ማመልከቻዎትን ለችሎቱ ማሰማት ስላለብዎት በንባብ ያሰሙ::

በችሎት በንባብ አሰምተዋል::

ፍ\ቤቱ: አቶ ተሾመ በወ\ሥ\ሥ\ሕ\ቁ 154 መሠረት አንድ የግል ተበዳይ ዐቃቤ ሕግ ካቀረበው የወንጀል ክስ ጋር የካሳው ጉዳይ በጣምራ እንዲታይለት ጥያቄ ማቅረብ የሚችለው ዐቃቤ ሕግ ባቀረበው የክስ ማመልከቻ የግል ተበዳይ

ተብሎ ተጠቅሶ እንደሆነ ነው:: በዚህ በዐቃቤ ሕግ የክስ ማመልከቻ እርስዎ በተበዳይነት ለመጠቀስዎ ያረጋገጡበት ሁኔታ አለ?

አቶ ተሾመ: በመሠረቱ ዐቃቤ ሕጉ የግል ተበዳይ መሆኔን ያውቃል ብዬ አምናለሁ:: ለልዩ ዐቃቤ ሕግም ከሁለት ዓመት በፊት በእኔ ላይ የተፈጸመውን ጉዳት ዝርዝር ሁሉ በጽሑፍ ሰጥቻለሁ:: በወንጀል ክሱ 210ኛውና 211ኛው ላይ በተጠቀሱት የወንጀል ዝርዝሮች ሁሉ ስማቸው በጠቅላላ ከሺህ በላይ የሚሆኑ ሰዎች የወ\መቅጫ ቁጥር 416ኛን በመጋፋት የታሰሩ እንደዚሁ ደግሞ በ211ኛው የወ\መ\ሕ\ቁ\414ን በመጻፈር ንብረቻውን የተዘረፉ ከሚሉት ሰዎች መካከል ስሜ እንደሚገኝ አምናለሁ:: ይሁን እንጂ ዐቃቤ ሕጉ በእነኚህ ሁለቱ ክሶቻቸው ውስጥ የተበደሉትን ሰዎች ዝርዝር ስላላስረዱ በአደባባይ የእኔ ስም ከነኛ መካከል መገኘቱን የማውቀው ነገር የለም:: ይሁን እንጂ ፍ\ቤቱን መድፈር እንዳይሆንብኝ የወ\መ\ሥ\ሥ ከ154–159 ድረስ ያለው አሁን ፍ\ቤቱ እንዳሰማኝ ሳይሆን በመሠረቱ ተበዳይ ተበድያለሁ ብሎ ማስረጃውን የሚያቀርብ ከሆነ ለፍ\ቤቱ ዐቃቤ ሕግን አማካይና መንጠላጠያ ሳይሆን በቀጥታ እንደባለመብት ሆኖ ክስ ለማቅረብ እንደሚችል አምናለሁን:: ፍ\ቤቱም የማቀርበው ማስረጃ የማቀርበው ክስ የወንጀሉን ክስ ሂደት የማይጉዳ መሆኑን ካመነበት እኔም ደግሞ ማስረጃ ማቅረቡ ሌላ ውስብስብ ጉዳይ የማያነሳ መሆኑን ካረጋገጠ በወ\መ\ሥነ ሥርዓት ውስጥ የተከለከሉት የተጠቀሱትን የሚያሟላ እስከሆነ ድረስ በወ\መ\ሕ\156 መሠረት እንዲፈቅድልኝ መብቴ ነው ብዬ አምናለሁ:: ለፍ\ቤቱ ላረጋግጠው የምወደው ነገር ደግሞ ያለው የእኔ የጠቀስኳቸው የበደል ዝርዝሮች ሁሉ ራሳቸው ተከሳሾች በሰጡኝ ማስረጃ ምን ቀን እንደታሰርኩ: ምን ቀን እንደተፈታሁ: የቀኑ ብዛት እዛው የተነገረና ከሁሉም በላይ ደግሞ ፍርድ ከተሰጠበት ከጥር 1\68 ዓ\ም በኋላ የታሰርኩ ለመሆኔ ከርከር ስለሌለ የማቀርበው ማስረጃ ሁሉ የዐቃቤ ሕግን ክስ ሆነ የዐቃቤ ሕግን የሚያዳብርና የፍ\ቤቱንም የፍትህ ሂደት የሚያሟላ እንጂ የማያደናቅፍና ጊዜ የማይወስድ ስለሆነ ሕጉ በተለይም የወ\መ\ሥ\ሥአንቀጽ 156በሚፈቅደውና እንዲሁም መደበኛው የወ\መቅጫ አንቀጽ 100በሚወስነው መሠረት እኔም በዜግነቴ በተበዳይነቴ በቀጥታ ፍትሕ አደባባይ ቀርቤ ዐቃቤ ሕጉን እንደሞገስ አድርጌ እሱ ጉን በመቆም ብቻ ሳይሆን በቀጥታ በዜጋነቴ መብት እንዳለኝ ይህ ፍ\ቤት አውቆልኝ ክሴን በሕጉ በሚፈቅደው መሠረት እንድመሰርት ይፍቀድልኝ:: እኔ በእኔ አመለካከት ዐቃቤ ሕጉ ተበዳይ ነህ ብሎ ካልጠቀሰኝ ክስ አታቀርብም ተብሎ ሊከለከል የሚችል አይመስለኝም:: ለዛውም ቅድም እንዳልኩት በዐቃቤ ሕግ ክስ ቁጥር 210 እና 211 ውስጥ ከተጠቀሱት ከተበደሉት በደለኞች መካከል እኔ እንደሆንኩ አምናለሁ:: ዐቃቤ ሕጉም ምናልባት የስሜ ዝርዝር እዛ ውስጥ ያገኛል:: ምነው ቢሉ ጽፌ ነግሬ ከዚህ በፊት ነግሬአለሁና ይህ በመሆኑ የጠየቅኩት እንዲፈቀድልኝ በፍጹም ትህትና እጠይቃለሁ::

ፍ\ቤቱ: ጥሩ ነው:: ግን እኩ አሁን ሕጉን በተመለከተ የሚያነጋግረው አንድ ሰው በወንጀል ችሎት የወንጀል ጉዳይ በሚያይ ፍ\ቤት ወይም ችሎት ከዐቃቤ ሕጉ ክስ ጋር በጣምራነት በተጓዳኝ የእሱ ጉዳይ የካሳ ጉዳይ እንዲታይለት ጥያቄ የሚያቀርበው በመሠረቱ በቀረበው ክስ ተበዳይ ነው ተብሎ በእሱ ተበዳይነት ዐቃቤ ሕግ የወንጀል ክስ እያካሄደ መሆኑ የታወቀ እንደሆነ ነው:: ይህ በሕጉ በግልጽ የተቀመጠ ስለሆነ በዚህ ከፍ\ቤቱ ጋር ብዙም የሚለያዩ አይመስለኝም:: ሌላ መድረክም አለ እኩ:: አንድ ሰው በደል የደረሰበት ከሆነ የደረሰበትን በደል በገንዘብ ተምኖ ካሳ ለማግኘት የሚችልበት ሌላ መድረክ አለ:: የፍትሐብሔር ፍ\ቤት አለ:: በፍትሐብሔር መክሰስን የሚያስቀርለት ሌሎች የፍትሐብሔር ፋይል አከፋፈት የሚጠይቋቸውን ሥነ ሥርዓቶች በአቋራጭ የሚያሳጥርለት ግን ዐቃቤ ሕግ ባቀረበው ክስ በወንጀሉ በተበዳይነት የተጠቀሰ ሰው ሆኖ ነገር ግን የፍትሐብሔር ፋይል መክፈትና በሌላ ሥነ ሣርዓት መመራት ሳያስፈልገው በዚያው በወንጀሉ ጉዳይ የወንጀሉን ክስ የሚሰማው

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ፍ\ቤት የካሳውን ጉዳይ እንዲያይለት ጥያቄ ያቀረብበት የሕግ ሥርዓት ነው ይህ ሥርዓት:: እና በዚህ ሥርዓት ውስጥ ሊያመጣዎት የሚችል ሁኔታ መኖሩን መጀመሪያ አረጋግጠዋል ወይ ነው የፍ\ቤቱ ጥያቄ::

አቶ ተሾመ: ለተፈጸሙብኝ በደል ክርክር የለኝም:: ማለት ጥርጣሬ የለኝም:: ማስረጃውም በእጄ ይገኛል:: ዐቃቤ ሕ:- ግን እኔን ከተበዳዮች ዝርዝር ውስጥ አስገብቶ እንደሆነ የዐቃቤ ሕግን ማስረጃ አላየሁምና ለፍ\ቤቱ ይህንን ማረጋገጫ አሁን ለማቅረብ አልችልም:: አሁን በፍ\ቤቱ በኩል የቀረበው አመለካከት እንደተጠበቀ ሆኖ ዐቃቤ ሕግ ታዞ ማስረጃዎቹን እንዳይ ይታዘዝልኝና ይህ ጉዳይ ከዛ በኋላ ውሳኔ ቢያገኝ እጠይቃለሁ::

ፍ\ቤቱ: ይህም አስቸጋሪ ነው:: ይህም ከዚህ ችሎት ተግባር ወጣ ያለ አካሄድ ነው የሚሆንበት ለችሎቱ:: ዐቃቤ ሕግን የአንድ በፍትሐብሔር ክስ ለማቅረብ እፈልጋለሁ ያለን ሰው የዚህ ሰው ጉዳይ እንዴት ነው? ስለእሱ ከሰህለታል ወይ? ብሎ ይህ ፍ\ቤት የሚጠይቅበት ሁኔታ የለም:: እንደ ሥነ ሥርዓቱ ይህ ፍ\ቤት በክሱ ማመልከቻ ተበዳይ ነው ተብሎ አመልካቹ ስሙ ተጠቅሷል አልተጠቀሰም? በዚህ የወንጀል ሕግ ሥነ ሥርዓት ለመስተናገድ የሚለውን ብቻ ነው የሚያየው:: እና እኛ ማድረግ የምንችለው ነገር ቢኖር እዚህ የክስ ማመልከቻ ውስጥ ስምዎ ተጠቅሶ ከሆነ እናያለን::

አቶ ተሾመ: ፍ\ቤቱ እኩ አሁን ዐቃቤ ሕጉ ክስ እኩ የመሰረተው የሞቱት እኩ ናቸው ተበዳይ እነሱማ እዚህ ፍ\ቤት ቀርበው ሊሟገቱ አይችሉም:: ታይቶ እንደሆነ እዚህ የክስ ማመልከቻ ውስጥ የተዘረዘሩት ሰዎች የተበደሉ ሰዎች የሞቱ ናቸው:: እዚህ ቀርበው ለፍ\ቤቱ ሊያሰረዱ አይችሉም:: በወንጀል ክሱ 210 እና 214 ውስጥ በደል የደረሰባቸው ብቻ ናቸው በሕይወት ሊኖሩ የሚችሉት:: እኔ እንዳጋጣሚ ሆኖ በሕይወት ያለሁ ስለሆነ ይህንን በ210 ውስጥ የተነገሩትን የተበዳዮች ዝርዝር በ211 በክስ 211 ውስጥ ያሉትን ዝርዝር እንግዲያው እንዳይና ምናልባት ነገ ዐቃቤ ሕጉ በማስረጃውን ሲያፈስ የእኔም ስም እዚያ ውስጥ የሚገኝ መሆኑን ለማረጋገጥ እንድችል አሁኑኑ ፍ\ቤቱ ባያዝም እንኳ ዐቃቤ ሕጉን ልጠይቅና እሳቸው የሚሉትን መልስ ይዤ መጥቼ ለፍ\ቤቱ እንዳፈስ ይፈቀድልኝና የተወሰነ አጭር ጊዜ ይሰጠኝ:: ዐቃቤ ሕጉን እኔ እለምናለሁ:: ይኼ ክሴ ቀርቦ እንዲሁ ውሳኔ ሳይሰጥበት ለጥቂት ቀን ለሶስት ለአራት ለአምስት ቀን በቂ ጊዜ ቢሰጠኝና ከዛ በኋላ ፍ\ቤቱ የራሱን ውሳኔ ቢወስን::

ፍ\ቤቱ: ይሁን እንግዲህ እናያለን::

ችሎቱ ለአጭር ጊዜ እረፍት ያደርጋል::

የታለ የማረሚያ ቤቱ ኃላፊ? ኃላፊው የት አለ?

ሻምበል ካሳዬ አራጋውና ፪ አለቃ መላኩ ተፈራ::

ስምህን እንደገና አብርሃም ወ\አረጋይ ተመለሰላቸው?

የወህኒቤት ኃላፊ: መልሻለሁ::

ፍ\ቤቱ: ደረሳችሁ?

ሻ\ል ካሳዬ: 63 ገጽ የያዘ የተለያየ የመከላከያ ወይም የወደፊት ጉዳዬን መፈጸሚያ ወረቀት ደርሶኛል:: ለዚህም ክቡር ፍ\ቤቱን ከልብ አመሰግናለሁ:: በርግጥ የተወሰደው በአንድ ሰዓት ነው የተመለሰው በአምስት ሰዓት ነው:: በዚህ ጊዜ ውስጥ ምናልባት ፎቶ ኮፒ ሊነሳ: ምስጢሩ ሊጋለጥ ሊችል ይሆናል:: ይህ ግምቴ ነው የሆነው ሆኖ በእውነቱ በዚህ የሚመጣውን ጉዳት እቀበላለሁ:: ነገሩ ግን ጋሻህን አስቀምጥ ጦር ልወረውር ነው ነው:: በመንግስት በኩል::

ፍ\ቤቱ: ግዴለም ጥያቄው ተመልሷል በፍ\ቤቱ በኩል:: ፪ አለቃ መላኩ ግን ቅድም ተረክቧል ብለዋል እነሱ::

፪\አለቃ መላኩ: ችግር የለውም::

ፍ\ቤቱ ከተከሳሽ ጠበቆች የቀረበውን ጥያቄና ጠበቃ ያልያዙ ተከሳሾች ፍ\ቤቱ ጠበቃ እንዲያቆምላቸው ያቀረቡትን አቤቱታ መርምሮ የሚከተለውን ትእዝዝ ሰጥቷል::

ትዕዛዝ

ከተከሳሾቹ የቀረበውን ጥያቄ በሚመለከት በተከሳሾች ላይ የቀረበው የወንጀል ክስ ከባድና ያለጠበቃ ረዳትነት ሊከራከሩ የሚያስችላቸው ስላልሆነ የቀረበውን ጥያቄ ተቀብለናል:: በመሠረቱ ፍ\ቤቱ ለአንድ ተከሳሽ አንድ ጠበቃ ብቻ ማቆም ይገባል በሚል አቋም የወሰደው በከርከሩ ሂደት የአንዱ ከሌላው የሚጋጭበት ሁኔታ ያጋጠመ እንደሆነ ተከሳሾቹ እንዳይጐዱ በማሰብ ነበር:: ነገር ግን በሂደት እንደታየው ተከሳሾቹ ጉዳያቸውን እንዲይዙላቸው የመረጧቸውን ጠበቆች እንዳያገኙ የሚያደርግ ሆኖ ተገኝቷል:: ፍ\ቤቱ ለተከሳሾቹ ጥቅም ሲል የወሰደው አስተዳደራዊ አቋም ለተከሳሾቹ በመጥቀም ፋንታ የምርጫ መብታቸውን የሚያጣብብ ሆኖ ከተገኘ ሁኔታውን አመዛዝኖ አቋሙን የማያሻሽልበት ምክንያት የለም:: ስለዚህ በሂደት የታየው ሁኔታ መሻሻል እንደሰጠት አምነንበታል:: በዚሁ መሠረት ጠበቃ ላልተመደበላቸው ተከሳሾች በሚከተለው ሁኔታ ጠበቃ ታዘላቸዋል::

1ኛ/ አቶ አበበ ወርቁ በግል ከያዙት ጉዳይ በተጨማሪ ለ፪ አለቃ ንጉሴ ፋንታ::

2ኛ/ አቶ ታደሰ ጉርሙ በግል ከያዙት ጉዳይ በተጨማሪ ለሻለቃ ውብሸት ደሴ::

3ኛ/ አቶ ዮሴፍ ገ\እግዚአብሔር በግል ከያዙት ጉዳይ በተጨማሪ ለመጋቢ ፬ አለቃ አክሊሉ በላይነህ::

4ኛ/ አቶ አያናው ዋሴ አስቀድመው ከታዘዙት በተጨማሪ ለሻለቃ ካሳሁን ታፈሰ::

5ኛ/ ኰ\ል መንግስቱ ኃ\ማርያም አርአያ አስቀድመው ከታዘዙት መተጨማሪ ለኰ\ል ተካ ቱሉ::

6ኛ/ አቶ ግዛቸው ጉያሳ አስቀድመው ከታዘዙት መተጨማሪ ለ፲ አለቃ ንጉሴ ወልዴ::

7ኛ/ አቶ ታምሩ ወ\አገኘሁ አስቀድመው ከታዘዙት በተጨማሪ ለሻ\ባሻ ማንመክቶት ወንድምተገኝ::

8ኛ/ አቶ ፈለቀ አበራ አስቀድመው ከታዘዙት መተጨማሪ ለሻ\ባሻ ጌታሁን አቦዬ::

9ኛ/ አቶ ወንዴሜነህ ዳኘው አስቀድመው ከታዘዙት በተጨማሪ ለሻለቃ ፋንታዬ ይህደጉ::

10ኛ/ አቶ አሰፋ ፍሪሳ አስቀድመው ከታዘዙት በተጨማሪ ለሻለቃ ካሳዬ አራጋው::

11ኛ/ አቶ ገመዳ ጐንፋ አስቀድመው ከታዘዙትትመተጨማሪ ለሻምበል ፍቅረስላሴ ወግደረስ::

12ኛ/ ኰማንደር ኃይሉ መኰንን ለ፪ አለቃ መላኩ ተፈራ::

በጥብቅና እንዲከራከሩላቸው ዛሬ ለታዘዙበት ጉዳይም ለእያንዳንዳቸው ብር 5,000 \አምስት ሺህ ብር\ በተጨማሪ ለዚሁ ከተመደበው ሂሳብ ላይ እንዲከፈላቸው በሁሉም ጠበቆች ስም ለማዕከላዊ ጠቅላይ ፍ\ቤት ሂሳብ ክፍል ይጻፍ:: ለማረሚያ ቤቱም ይገለጽለት::

ከተከሳሾቹ መካከል ሻለቃ ካሳዬ አራጋውና ፪ አለቃ መላኩ ተፈራ ዛሬ ጠዋት ከማረሚያ ቤት ወደ ፍ\ቤት ስንመጣ የግል ሰነዶቻችን በማረሚያ ቤቱ አባሎች በኃይል ተነጥቀናል በማለት አመልክተዋል:: በመሠረቱ ተከሳሾቹ የፍ\ቤቱ የቀጠሮ አስረኞች እንደመሆናቸው ፍ\ቤቱ በማረሚያ ቤት በኩል የሚደረግላቸውን ሕጋዊ አያያዝ የመከታተል ኃላፊነት እንደለበት ማረሚያ ቤቱ መገንዘብ ይገባዋል:: ተከሳሾቹ በማረሚያ ቤቱ አባላት የተላ ማስታወሻቸውንና ሰነዶቻቸውን መነጠቅ እንደሌለባቸውና ሁኔታው ቢደጋገም ፍ\ቤቱ እርምጃ እንደሚወስድ ማወቅም አለባቸው:: ስለሆነም ይኼው ተገልጾ ለማረሚያ ቤቱ አዛዥ ይጻፍለት ብለናል::

በመታመሙ ምክንያት ዛሬ ያልቀረበው ተከሳሽ ፲ አለቃ ፀጋዬ ጥሩነህ ለተለዋጭ ቀጠሮ እንዲቀርብ ለማረሚያ ቤቱ ይጻፍ::

N.B

አቶ ተሾመ ገ\ማርያም በወ\ሥ\ሥ\ሕ\ቁ 154 መሠረት ዐቃቤ ሕግ ባቀረበው የወንጀል ክስ በተጓዳኝ እንዲታይላቸው ያቀረቡትን የፍትሐብሔር ካሳ ጥያቄ በተመለከተ ከሳሹ በክሱ ማመልከቻ በተበዳይነት ስማቸው ተጠቅሶ እንደሆነና እንዳልሆነ ያላረጋገጡ መሆናቸውን ገልጸው አረጋግጠው ለመቅረብ ፍ\ቤቱን ቀጠሮ ስለጠየቁ ቀጠሮው ተፈቅዶላቸዋል:: ይህንኑ አጣርተው ለተለዋጩ ቀጠሮ ውጤቱን ያቅርቡ::

ከተከሳሾቹ ጠበቆች አንዳንዶቹ መቃወሚያ ለማዘጋጀት በልዩ ዐቃቤ ሕግ ጽ\ቤት የሚገኙ ሰነዶችን ማየት እንድንችል እንዲታዘዝልን በማለት ፍ\ቤቱን ጠይቀዋል:: በመሠረቱ አሁን ለፍ\ቤቱ የቀረበለት የዐቃቤ ሕግ የሰነድ ማስረጃ ሳይኖር በወ\መ\ሥ\ሥ\ሕ\ቁጥር 97 መሠረት በፍ\ቤቱ ሬጅስትራር እጅ እንደሚገኝ በመቁጠር ጥያቄ መቅረቡ ተገቢ ስላልሆነ አልተቀበልነውም:: ሌላው በሁሉም ተከሳሾች ጠበቆች የቀረበው ጥያቄ በዐቃቤ ሕግ የቀረቡት ክሶች ብዛት: ከብደትና ውስብስብነት የተነሳ ለሶስት ወር ያህል ሰፊ ጊዜና ቀጠሮ ካልተፈቀደልን በቂ ዝግጅት አድርገን መልስ ለማቅረብ አንችልም የሚል ነው:: ፍ\ቤቱም በዚህ ነጥብ ላይ ከተከሳሽ ጠበቆች የቀረበውን ጥያቄ መርምሮ አመዛዝኖታል:: ዐቃቤ ሕግ በተከሳሾቹ ላይ ያቀረበባቸው: ያቀረባቸው ክሶች ብዛታቸው 211 ከመሆናቸው በላይ ውስብስብና ያልተለመዱ ናቸው:: ስለዚህ ጥያቄው በበቂ ምክንያት የተደገፈ ሆኖ ስላገኘነው እና የተከሳሾቹ ጠበቆች በበቂ ሁኔታ ዝግጅት አድርገው መልስ ማቅረብ እንዲችሉ ለየካቲት 28\87 ቀጥረናል::

አቶ ደገፉ ምሶኔ በጥያቄዎ መሠረት ፍ\ቤቱ ፈቅዶልዎት ተሰናብተዋል::

አቶ አሰግደው የማን ጠበቃ ነበሩ?

የሻም\ባሻ ተገኘወርቅ ተስፋ::

የክሱ ቻርጅ እላቸው ጋር ነው:: ለሻም\ባሻ ተገኘወርቅ ተስፋ በጥብቅና እንዲከራከሩ ታዘው የነበሩት አቶ አሰግደው አመነሸዋ በጽሑፍ ያቀረቡትን ምክንያት ፍ\ቤቱ ተመልክቶታል:: ምክንያትዎን በማየት አሰናብቶዎታል:: ስለዚህ ለሻም\ባሻ ተነኘወርቅ ተስፋ ብርጋዴር ጄ\ል በቀለ ነዲ በተጨማሪ እንዲይዙ ጉዳዩን ፍ\ቤቱ አዟል:: ተጨማሪው አበል እንዲከፈላቸው ከአሁን ቀደም በሚታዘዘውና በሚተላለፈው መሠረት ይተላለፍላቸው::

ታህሳስ 14 ቀን 1987 ዓ\ም

ዳኞች: ደላለኝ ዓለሙ ክብረት ሰብሳቢ
ግርማ ጥላሁን
ተገኔ ጌታነህ

ከሳሽ: የልዩ ዐቃቤ ሕግ አልቀረበም::

ተከሳሾች: እነ ኩ\ል መንግስቱ ኃ\ማርያም አልቀረቡም::

ይህ መዝገብ ያለቀጠሮው የቀረበው "አገሬ" የተባለው ጋዜጣ ሕዳር 30 ቀን 1987 ዓ\ም በወጣው ጋዜጣ "የቀድሞ ባለሥልጣናትን ለመበቀል ወጥመዱ እየተጠናቀቀ ነው::" በሚል ርዕስ ሥር "የኢህአዴግ መንግሥት

ከማረሚያ ቤት የደረሰ ደብዳቤ አለ:: እሺ ሻ\ል ባሻ:

ሻ\ል ባሻ: አዎ ዛሬ ቀጠሮአችን በትክክል 47ቱ ተከሳሾች እዚህ, ሲቀርቡ 48ኛው ጸጋዬ ጥሩነህ ነበረ:: ረዥም ጊዜ ሕኪም ቤት ተኝቷል:: እሱም መጋቢት 8 ቀን ነው ያረፈው ሞቷል እዚያው:: አሁን የሕኪም ማስረጃም አቅርቤአለሁ:: ካለፈውም ደብዳቤ ጽፈናል ደርሶዎታል መሰለኝ::

ፍ\ቤቱ: ደርሷል:: የማረሚያ ቤቱ መጋቢት 1 ቀን 1987 ዓ\ም በቁጥር ማዕ\ማ\33\84\87 በተጻፈ ደብዳቤ ተከሳሹ ፲ አለቃ ጸጋዬ ጥሩነህ ባደረበት ሕመም ምክንያት በሕክምና ላይ እንዳለ በ28\6\87 ከዚህ ዓለም በሞት መለየቱን ገልጧል:: በዚሁ መሠረት እሱ ላይ የቀረበው ክስ አይቀጥልም:: የሱ ጠበቃም በዚሁ ምክንያት ተሰናብተዋል::

ሻለቃ አባተ መርሻ: ጠበቃ አቶ ወንድሜነህ ዳኘው	ቀርቧል
፪ አለቃ ኃይሉ ገበየሁ: ጠበቃ ኰ\ል መንግስቱ ኃ\ማርያም አርአያ	"
፲ አለቃ በጋሻው ጉርሜሳ: ጠበቃ ባላ\ኃይለየሱስ መንግስቱ	"
ኰ\ል በላይ ቢተው: ጠበቃ ሻለቃ ጌታሁን በቀለ	"
ኰ\ል አሸብር አማረ: ጠበቃ አቶ ጥላዬ ተገኘ	"
፪ አለቃ ጌታሁን ተ\ማርያም: ጠበቃ አቶ እስማኤል ሐጂ መሐመድ	"
፲ አለቃ ግርማ አየለ: ጠበቃ አቶ አብዱራህማን መሐመድ	"
፲ አለቃ ፍስሃ አንደቶ: ጠበቃ አቶ ተስፋዬ ኃ\ማርያም	"
ሻ\ል ባሻ ታምራት ፈዬ: ጠበቃ አቶ እስማኤል ሐጂ መሐመድ	"
ሻ\ል ደሳለኝ በላይ: ጠበቃ አቶ ግዛቸው ጉያሳ	"
ም\፪ አለቃ ተሰማ በላይ: ጠበቃ አቶ አበበ ወርቁ	
፲ አለቃ ንጉሴ ወልዴ: ጠበቃ አቶ ግዛቸው ጉያሳ	"
ሻ\ል ባሻ ማንመክቶት ወንድምተገኝ: ጠበቃ አቶ ታምሩ ወንድማገኘሁ	"
ሻ\ል ባሻ ጌታሁን አቦዬ: ጠበቃ አቶ በጊዜው አዘዘ	"
፲ አለቃ ግርማ ቡርቃ: ጠበቃ አቶ አለማየሁ እሸቱ	"

ሁሉም ተከሳሾች ከነጠበቆቻቸው ቀርበዋል:: ከዚህ በኋላ የልዩ ዐቃቤ ሕግ ዋና ሹም የሚያቀርቡትን መልስ እናዳምጣለን::

መልስ ቀርቧል? ደረሰ ለሁሉም? ዐቃቤ ሕጉ ግንቦት 15 ቀን 1987 ዓ\ም የተጻፈ 46 ገጽ የክስ መቃወሚያ መልስ አቅርበው ከመዝገቡ ተያይዟል:: ተመሳሳዩ ለተከሳሾቹ ጠበቆች ለሁሉም ተሰጥቷል:: አሁን ዐቃቤ ሕግ መልሱን በንባብ እንዲያሰሙ ተፈቅዷል:: N·B

ዐቃቤ ሕጉ ግንቦት 15 ቀን 1987 ዓ\ም የተጻፈ 46 ገጽ የክስ መቃወሚያ መልስ በንባብ አሰምቷል::

ፍ\ቤቱ: ሌላው ከዚህ ጋር በተጓዳኝ የተጀመረ የአቶ ተሾመ ገ\ማርያም የፍትሐብሔር ክስ ጉዳይ ነው:: እንዲገና ደግሞ ኰ\ል መላኩ ካሰኝ የሕግ አማካሪና ጠበቃ ያቀረቡት የፍትሐብሔር ክስ ማመልከቻ አለ:: እሱ ኰ\ል መላኩ ካሰኝ? ወደዚህ ይምጡና የክስ ማመልከቻዎትን ያሰማሉ:: ይቀጥሉ::

ኰ\ል መላኩ ካሰኝ _____ ቀን 1987 ዓ\ም የተጻፈ የክስ ማመልከቻቸውን በንባብ አሰምተዋል::

ፍ\ቤቱ: ኰ\ል መላኩ ካሰኝ ያቀረቡትን የክስ ማመልከቻ አዳምጧል ፍ\ቤቱ በተሰይም በፍትሐብሔር የክስ ማመልከቻዎ 2ኛና 3ኛ ተራ ቁጥር ላይ ባሉት ተከሳሾች ላይ የተመሠረተውን ክስ በዝርዝር አሰምተዋል:: ግን

N.B

አንድ የፍትሐብሔር ክስ በተጓዳኝ ከወንጀሉ ክስ ጋር አብሮ እንዲሄድ በወንጀል ሥነ-ሥርዓት ሕግ 154 መሠረት ክስ የሚያቀርበው ሰው በተበዳይነት ፍ\ቤቱ ጉዳዩን እያየለት የሆነ እንደሆነ ነው:: እና የህንን ልብ ብለውታል? እርስዎ ስምዎ በተበዳይነት የተጠቀሰበት ስፍራ እንዳለ በክሱ ማመልከቻ ዐቃቤ ሕግ የክስ ማመልከቻ ያዩባት ስፍራ አለ?

ኰ\ል መላኩ: ቃሌን ለልዩ ዐቃቤ ሕግ ሰጥቻለሁ:: ለመከራከርም አመልክቻለሁ:: ቃሌን ተቀብለውኛል:: ይሄ ነው እንግዲህ እኔ እሰካሁን የማውቀው በዚህ ተገኝቼ ፍ\ቤቱ ክሶችን ሲያነብ አዳምጫለሁ በዚያ ውስጥ ስሜ አልተመለከተም:: ግን ወደፊት እነዚህ ክሶች እየተጨመሩ የሚሄዱ ስለሆነ ይገባሉ ብዬ ነው እንትን የምለው::

ፍ\ቤቱ: እሺ: እንግዲህ የእርስዎ ጉዳይ ከአቶ ተሾመ ገ\ማርያም ጉዳይ ጋር ተመሳሳይ ነው:: ፍ\ቤቱ ከሕጉ ጋር የክሱ አካሄድ ምን ያህል አግባብነት አለው የሚለውን አይቶ ብይን የሚሰጥበት ነው ብይኑን ይጠብቁ::

እሺ: ፍ\ቤቱ የተከሳሾቹ ጠበቆች ላቀረቡት የክስ መቃወሚያ ከዐቃቤ ሕግ የቀረበውን መልስ አዳምጧል:: የክስ መቃወሚያውንና ለክስ መቃወሚያው የተሰጠውን መልስ መርምሮ ብይን ለመስጠት ሰፋ ያለ ጊዜ የሚያስፈልገው ነው:: አሁን ደግሞ ያለነው ግንቦት 15 ላይ በመሆኑ የማዕከላዊ መንግስት ፍ\ቤቶች ውሃ ከመሙላቱና በተከራካሪ ወገኖች እንዲሁም በምስክሮችም የውሃ ሙላት አደጋ እንዳያጋጥም በማሰብ ሁልጊዜ ከሰኔ 30 ጀምሮ ፍ\ቤቶች ይዘጋሉ:: ፍ\ቤቱ በሚቀረው አንድ ወር ከ15 ጊዜ ውስጥ ይህን ጉዳይ መርምሮ ብይን ለመስጠት ስለሚያስቸግረው ከጉዳዩ ስፋት የተነሳ በግድ ወደሚቀጥለው ዓመት መሻገር ግድ ይሆናል:: ስለዚህ የግራ ቀኙን ክርክር መርምሮ ብይን ለመስጠት ለመስከረም 29, 1988 ዓ\ም ቀጠሮ ተደርጓል:: ፍ\ቤቱ የዕለት ተግባሩን እዚህ ላይ ፈጽሟል::

N.B

በተራ ቁጥር 210 እና 211 ላይ የቀረቡትን ክሶች በሚመለከት የተበዳዮች የስም ዝርዝርና ተነጠቀ የተባለው ንብረት ዝርዝር አልቀረበም የሚል ተቃውሞ ቢሰማም በመሠረቱ ይህ ክሱን ውድቅ ሊያደርገው የሚችል ምክንያት አይደለም:: ባይሆንም ክቡር ፍርድ ቤቱ ዝርዝሩ መቅረቡ አስፈላጊ ነው ብሎ ትዕዛዝ የሚሰጥ ከሆነ ለመፈጸም ዝግጁ ነን:

በሁለተኛ ክስ በተራ ቁጥር 3 ላይ የተጠቀሰውን በሚመለከት ሐምሌ 9 ቀን የሚለው ሐረግ እንዲሰረዝ ብሏል::

የቀረቡትን መቃወሚያዎችና ለመቃወሚያዎቹ የተሰጡን መልሶች መርምረናል::

ወታደራዊ ማዕረጐች ሊሻሩ ወይም ሊገፈፉ የሚችሉት በተጨማሪ የፍርድ ውሳኔ ነው:: ይህም በወንጀለኛ መቅጫ ሕግ ቁጥር 126 ስር ተደንግጓል:: ዐቃቤ ሕጉም ይህንኑ በመገንዘብ ተከሳሾቹ በነበራቸው የማዕረግ ሽም እንዲጠሩ ሲል በመልሱ ገልጿል:: ስለሆነም ሁሉም ተከሳሾች እስከ ግንቦት 20 ቀን 1983 ዓ\ም ድረስ ሲጠሩበት በነበረው የወታደራዊ ማዕረግ መሠረት የክስ ማመልከቻው ተስተካክሉ ይመዝገብ:

በተራ ቁጥር 210 እና 211 ላይ የቀረቡት ክሶች በጠቅላላ አነጋገር ጸረ አብዮተኞች እና ተቃዋሚዎቻችን ያሏቸውን በሺዎች የሚቆጠሩ ሰላማዊ ሰዎች ሕገ ወጥ በሆነ መንገድ ምግብ: ውሃ: አየር: መኝታና ሕክምና በሌለበት ላልተወሰነ ጊዜ እንዲታሰሩ በማድረግ እንዲሁም ሰርተው ያፈሩትን ሀብት: በስልክ በቃልና በቀላጤ ትዕዛዝ ከሕግ ውጭ በመንጠቅ በሥልጣን ያላግባብ በመስራት ራሳቸውን ጠቅመው ባለሀብቶችን ለመጉዳት በብዙ ሚሊዮን ብር የሚቆጠር ንብረት እንዲነጠቁ በማድረግ በሚል የቀረቡት ክሶች ከወ\መ\ሕ\ሥ\ሥ ቁጥሮች 111 እና 112 ዝርዝር ድንጋጌዎች ጋር የማይጣጣሙ ናቸው:: እነዚህ የሥነ ሥርዓት ሕግ አንቀጾች የሚያስቀምጡትን መስፈርት አሟልቶ የተዘጋጀ ክስ ነው ሊባልም አይችልም:: የወንጀል ክስ አዘገጃጀት በተቻለ መጠን የወንጀለኛ መቅጫ ሥነ ሥርዓት ሕግ ከሚደነግጋቸውና በሞዴልነት ካስቀመጣቸው ፎርሞች ጋር የተጣጣመ ሊሆን ይገባል:: ከዚህ አንጻር በክስ ተራ ቁጥሮች 210 እና 211 ስር የተዘጋጁትን ክሶች ስንመረምራቸው የሥነ ሥርዓት ሕጉ ቁጥር 111 እና 112 እንዲሁም የዚሁ ሥነ ሥርዓት ሕግ

አካል የሆነው 2ኛው ሠንጠረዥ መሠረት በክሶቹ የተበዳይ ስም: ወንጀሉ የተፈጸመበት ጊዜና ሥፍራ እንዲሁም የተወሰደው ሀብት ዓይነትና መጠኑ ተገልጦ የቀረቡ ክሶች ሆነው አላገኘናቸውም::

ስለዚህ የተበዳዮቹ ስም: ወንጀሉ የተፈጸመበት ስፍራና ጊዜ እንዲሁም የተወሰደው ሀብት ዓይነትና መጠኑ ተገልጦ ክሱ ተሰተካክሎ እንዲቀርብ በወ\መ\ሥ\ሥ\ሕ\ቁ 119 መሠረት አዘናል::

እንዲሁም በ2ኛው ክስ ተራ ቁጥር 3 ላይ ስማቸው የተጠቀሰው ሚኾች ሐምሌ 9 ቀን 1967 ዓ\ም እንዲገደሉ ተወስኖባቸው ግንቦት 30 ቀን 1967 ዓ\ም ተገደሉ ተብሎ ከተገለጸው ውስጥ ሐምሌ 9 ቀን የሚለው እንዲሰረዝ ዐቃቤ ሕጉ ባመለከተው መሠረት ይታረም::

በክሱ ማመልከቻ ውስጥ በተራ ቁጥር 159: 181 እና 182 ውስጥ "ሁሉም ተከሳሾች በተለይ" የሚለው ሐረግ ዐቃቤ ሕጉ ባመለከተው መሠረት ይሰረዝ ብለናል::

በመጨረሻም: ከተከሳሾቹ ጠበቆች መካከል የወ\መ\ሕ\ሥ\ሥ በሚፈቅደው መሠረት የክስ ማመልከቻ መቃወሚያቸውን ያቀረቡ ቢኖሩም: አንዳንዶቹ የተከሳሾቹ ጠበቆች ግን የወ\መ\ሕ\ሥ\ሥ ከሚፈቅደው ውጭ የክስ ማመልከቻ መቃወሚያቸውን በማዘጋጀት ችሎቱን በፖለቲካ መድረክነት ሊጠቀሙበት መፈለጋቸውን ከጽሁፋቸው መረዳት ተችሏል:: ጠበቆቹ በችሎት ፊት በቃልና በጽሁፍ የሚያደርጉት ክርክር በሕግና በሕግ ሥነ-ሥርዓት ላይ ብቻ የተመሠረተ እንዲሆን ይጠበቃል:: በዚህ ጉዳይ ለተከሳሾቹ በጥብቅና ለመከራከር የቆሙት አንዳንዶቹ ጠበቆች ያዘጋጁት የክስ ማመልከቻ መቃወሚያ ጽሁፍ በከፊል የክስ መቃወሚያ ሆኖ ሊቀርብ የሚችል አይደለም::

የእነዚህን ጠበቆች ድርጊት የጉዳዩን ሁኔታ በስፋት በማመዛዘን: ችሎቱን በፖለቲካ መድረክነት ሊጠቀሙበት መፈለጋቸው ተገቢ አለመሆኑን በመግለጽ ብቻ ብናልፈውም በተለይ ጥቂት የተከሳሾቹ ጠበቆች በጻፉት የክስ ማመልከቻ መቃወሚያ በወ\መ\ሕ\ሥ\ሥ\ቁ 130 ከተደነገገውና የጥብቅና ሙያ ሥነ ምግባር ደንብ ከሚጠይቀው ውጭ በመሆን ባቀረቡት የክስ ማመልከቻ መቃወሚያ ጽሁፋቸው በከፍተኛ ደረጃ ፍርድ ቤቱን ተጋፍተውና: ዘልፈው በመገኘታቸው በመቃወሚያ መልሳቸው ያስቀመጧቸውን ሕገ ወጥ ዓረፍተ ነገሮች በሚከተለው አኳኋን አንመለከታቸዋለን::

1ኛ\ <u>አቶ ተስፋዬ ዘውዴ</u>:- ይህ ጠበቃ በጻፈው የክስ ማመልከቻ መቃወሚያ ከገጽ 2 ጀምሮ ባሉት በተራ ቁጥር 1.6: 1.7: 1.8: 1.9: 1.11: 1.12 እና 1.15 ላይ:-

ደንበኛው: "እንዲህ በልልኝ": "ይህንን ጻፍልኝ": "እገሌን ውቀስልኝ": "እንተ ማነህ በልልኝ" ወይም "ዝለፍልኝ" ብሎኛል በማለት ወይም ይህንን ክርክር እንዳቀርብለት ነው አጥብቆ የለመነኝ በማለት ተከሳሹንም ሆነ ሌሎች ለሙያው ባይተዋር የሆኑትን ሁሉ ግራ በሚያጋባ ሁኔታ ክርክር ሊያቀርብ አይገባም::

ማድረግ የሚችለው የሁኔታውን ሕገ ወጥነት ለደንበኛው በመግለጽ ሕግና ሥርዓቱን ገልጾና አሳምኖ መመለስ ነው::

በተለይ በዚህ ጉዳይ ላይ ከፍ ብሎ እንደተገለጸው የግል አስተያየትን ከስሜት ጋር ቀላቅሎ ማቅረብ ከአንድ የሕግ ባለሙያ የሚጠበቅ አይደለም:: እንዲህ ከሆነ ደግሞ ፍርድ ቤት ጉዳዮች የሚስተናገዱበትና በሕግ መሠረት ፍትሕ የሚበየንበት ሥፍራነቱ ቀርቶ የጥቂቶች ፍላጐት መግለጫ እና በስሜት መናገሪያ የትርዒት መድረክ ይሆናል ማለት ነው:: በሕግ ሥልጣን ተሰጥቶት በሥልጣኑ ሥር የሚመጡትን ጉዳዮች እንዲመለከትና ውሳኔ እንዲሰጥ የተቀመጠው ይህ ችሎትም ይህ እንዲሆን ከቶውንም አይፈቅድም: ከሥርዓት የወጣውን ተገቢውን ሥርዓት እንዲይዝ የማድረግም ግዴታና ኃላፊነት አለበት::

እነዚህ ተከሳሾች የተከሰሱት እነሱ ሥልጣን ላይ በነበሩባቸው ዓመታት በሥራ ላይ በነበረውና አሁንም ባለው የኢትዮጵያ የወንጀለኛ መቅጫ ሕግ ቁጥሮች መሠረት ነው:: ሕግ ተጠቅሶ የቀረበውን ክስ አንድ ተከሳሽ የሚመልሰው በሕጉ መሠረት ተገቢውን ሥነ ሥርዓት በመከተል ነው:: ይህ አብዛኞቹ የተከሳሾች ጠበቆች ሙያዊ ግዴታቸውን የተወጡበት ነው ለማለት ይቻላል:: ይሁን እንጂ ከእነሱ ተለይተው "ባወጣ ያውጣው": "ይህንን መናገር አለብን" በሚል የማን አለብኝነት ዓይነት አገላለጽ የፍርድ ቤቱን ክብር በመንካት የክስ መቃወሚያ ያቀረቡት የእነዚህ ጠበቆች አድራጐት ግን ከሥርዓት የወጣና የማይደገፍ ሆኖ አግኝተነዋል:: ከማንም በላይ ጠበቆች ፍርድ ቤትን በማክበር ረገድ አርአያነት ይጠበቅባቸዋል::

ምንም ይባል ምን እነዚህ ተከሳሾች በሕግ መሠረት ክስ ቀርቦባቸው እንደማንኛውም ዜጋ ጉዳያቸው በፍርድ ቤት ሊታይና ሊዳኝ ቀርቧል:: ይህ ፍርድ ቤትም በሕግ በተሰጠው ሥልጣን መሠረት የቀረበውን ክስ በማስረጃ አጣርቶ ይወስናል::

ይህ የሕግ የበላይነትን በተቀበለ በማንኛውም ሕብረተሰብ ዘንድ ተቀባይነት ያለውና እስከዛሬ ሲሰራበት የቆየ ነው:: አሁን በተከሳሾች ላይ የቀረበው ዓይነት ክስ ከዚህ ቀደም ለፍርድ ቤቶች የቀረበ ይሁን አይሁን ቁምነገሩ አገሪቱ እየተከተለችው ባለው

የሕግ ሥርዓት ላይ ተመርኩዞ: በተገቢው መንገድ ዳኝነቱ በመታየት ላይ ነው? ወይስ አይደለም? የሚለው ነው::

ይህ ፍርድ ቤት የሚያውቀውና እስከ አሁን ድረስ በመደረግ ላይ የሚገኘው ተከሳሾች ክስ የቀረበባቸው መሆኑን: የቀረበባቸውን ክስ መከላከል እንዲችሉም ጠበቃ ማቆም ላልቻሉት በሙያ ብቃታቸው የታመነባቸው ጠበቆች ተመርጠው ለተከሳሾቹ መቆማቸውን እና ችሎቱ በግልጽ መካሄዱን ነው:: ይህ መሆኑ እየታወቀ ሕግም: መንግስትም: ዳኞችም: ፍርድ ቤትም ሆነ ፍትሕ የለም: ማን ማንን ከሶ ፍርድ ቤት ያቆማል? የሚል ግንዛቤ ያለው መግለጫ በክስ መቃወሚያነት ስም መቅረቡ ይህንን ፍርድ ቤትም ሆነ ለፍትሕ መስፈን የቆመውን ሁሉ በእጅጉ ቅር የሚያሰኝ ነው::

ስለዚህ: የእነዚህ የአምስቱ ጠበቆች አድራጐት ከላይ እንደተገለጸው ሕግን በመተላለፍ ፍርድ ቤቱን መጋፋታቸውንና መድፈራቸውን የሚያረጋግጥ ስለሆነ: በወ\መ\ሕ\ቁጥር 443\1\ መሠረት ጥፋተኞች ሆነው አግኝተናቸዋል:: ይሁን እንጂ ቅጣትን በተመለከተ ጠበቆቹ ይህንን የመሰለ አድራጐት በዚህ ችሎት ሲፈጽሙ የመጀመሪያ ጊዜያቸው በመሆኑና ለወደፊቱም ሕግንና ሥርዓትን ጠበቀው ሊከራከሩ እንደሚችሉ በማመን እና ሁኔታውን በማመዛዘን በማስጠንቀቂያ አልፈናቸዋል::

<u>ከወንጀሉ ክስ ጋር በተጓዳኝ ታይቶ እንዲወሰን የቀረበውን የፍትሐ ብሔር ክስ በሚመለከት</u>

1ኛ\ አቶ ተሾመ ገብረማርያም ቦካን ታህሳስ 4 ቀን 1987 ዓ\ም በተጻፈ የፍትሐ ብሔር ክስ ማመልከቻ ቀርበው በሚከራከሩት ተከሳሾች ላይ ሁሉ በአንድነትና በነጠላ መጠኑ ብር 1,673,341 \አንድ ሚሊዮን ስድስት መቶ ሰባ ሶስት ሺህ ሶስት መቶ አርባ አንድ ብር\ በሆነ የፍትሐ ብሔር ክስ አቅርበው ክሱም በወንጀለኛ መቅጫ ሕግ ቁጥር 100 እና በወንጀለኛ መቅጫ ሕግ ሥነ ሥርዓት ቁጥር 154–159 ባለው መሠረት በተከሳሾቹ ላይ ከቀረበው የወንጀል ክስ ጋር ተጣምሮ ከርክሩ ተሰምቶ እንዲወሰንላቸው አመልክተዋል::

2ኛ\ ኩሎኔል መላኩ ካሰኝ የካቲት 28 ቀን 1987 ዓ\ም በተጻፈ የፍትሐ ብሔር የክስ ማመልከቻ በ1ኛ: በ7ኛ: በ20ኛ ተከሳሾች ላይ መጠኑ ብር 60,000 \ስድሳ ሺህ ብር\ በሆነ የፍትሐ ብሔር ክስ አቅርበው ክሱም በወ\መ\ሕ\ቁ 100 እና በወ\መ\ሕ\ሥ\ሥ\ቁ 154 መሠረት በተከሳሾቹ ላይ ከቀረበው የወንጀል ክስ ጋር ተጣምሮ ከርክሩ ተሰምቶ እንዲወሰንላቸው አመልክተዋል::

N.B

በወ\መ\ሕ\ሥ\ሥ\ቁ 154 መሠረት በተከሳሾቹ ላይ ከቀረበው የወንጀል ክስ ጋር ተጣምሮ ከርክሩ ተሰምቶ እንዲወሰንላቸው አመልክተዋል::

አመልካቾቹ በወንጀሉ ድርጊት ተበዳዮች ነን በማለት ከወንጀሉ ክስ ጋር ተጣምሮ የፍትሐ ብሔር ክስ እንዲታይላቸውና ካሳ እንዲከፈላቸው በፍርድ ለማስወሰን ያቀረቡትን የክስ አቤቱታ መርምረናል::

በወ\መ\ሕ\ሥ\ሥ\ቁ 154 መሠረት አንድ በተፈጸመው የወንጀል ድርጊት ተበዳይ የሆነ ሰው ከወንጀሉ ክስ ጋር ተጣምሮ እንዲታይለት የፍትሐ ብሔር ክስ ማቅረብ ይችላል:: ነገር ግን እንዲህ ዓይነቱን የፍትሐ ብሔር ክስ አጣምሮ ለማቅረብ በቀረበው የወንጀል ክስ ተበዳይ መሆኑ በወንጀሉ የክስ ማመልከቻ ላይ ስሙ የተገለጸ ሰው መሆን አለበት:: በዚህ በያዝነው ጉዳይ አቶ ተሾመ ገብረማርያምና ኮሎኔል መላኩ ካሰኝ የልዩ ዐቃቤ ሕግ በቁጥር ል\ዐ\ም\መ\ቁ 401\85 ጥቅምት 15 ቀን 1987 ዓ\ም ጽፎ ባቀረበው የክስ ማመልከቻ ላይ ስማቸው በተበዳይነት አልተጠቀሰም::

አቶ ተሾመ ገብረማርያም በነገሩ ያገባኛል ሲሉ ከልዩ ዐቃቤ ሕግ ጽሕፈት ቤት የካቲት 22 ቀን 1987 ዓ\ም በቁጥር ለ 34\6858\87\ልዐ የተጻፈ ደብዳቤ ለፍርድ ቤቱ አቅርበዋል::

ከላይ ቁጥሩ የተጠቀሰው ደብዳቤ "ተከሳሾች በቀረበባቸው ክስ በክስ ማመልከቻው ተራ ቁጥር 210 እና 211 ውስጥ ነጻነታቸው ተገፎ ገብረታቸው ከተዘረፈባቸው አያሌ ዜጐች መካከል አንዱ እርስዎ መሆንዎን በማረጋገጥ ይህ ደብዳቤ ተሰጥቶዎታል" የሚል ይዘት ያለው ሆኖ ተገኝቷል::

ይህንን ከልዩ ዐቃቤ ሕግ ለአቶ ተሾመ ገብረማርያም የተጻፈላቸውን ደብዳቤ መነሻ በማድረግ በደብዳቤው ላይ የተጠቀሱትን 210ኛ እና 211ኛ ክሶችን በዝርዝር መመልከት አስፈላጊ ሆኗል::

210ኛ ክስ:

> በጊዜያዊ ወታደራዊ አስተዳደር ደርግ ወይም መንግስት በቋሚ ኮሚቴና ንዑሳን ኮሚቴነት ተዋቅረውና ሥልጣን በብቸኝነት ይዘው ጸረ አብዮተኛና ተቃዋሚዎቻችን ያሏቸው በሺዎች የሚቆጠሩ ሰላማዊ ሰዎች ሕገ ወጥ በሆነ መንገድ ምግብ: ውሃና አየር: መኝታና ሕክምና በሌለበት

ላልተወሰነ ጊዜ እንዲታሰሩ በማድረግ በ1949 ዓ\ም በወጣው የወንጀለኛ መቅጫ ሕግ በቁጥር 416 የተመለከተውን በመተላለፍ ወንጀል ሰርተው በመገኘታቸው ተከሰዋል::

211ኛ ክስ:

በጊዜያዊ ወታደራዊ አስተዳደር ደርግ ወይም መንግስት በቋሚ ኮሚቴና ንዑሳን ኮሚቴነት በመዋቀርና ሥልጣን በብቸኝነት በመያዝ በሹመታቸው ማዕረግ በመመካት ጸረ አብዮተኞች ወይም ተቃዋሚዎቻችን ያሏቸው ንጹሃን ሰዎች ሰርተው ያፈሩትን ሀብት በስልክ: በቃልና በቀላጤ ትዕዛዝ ከሕግ ውጪ በመንጠቅ በሥልጣን ያለአግባብ በመሥራት እራሳቸውን ጠቅመው ባለሃብቶችን ለመጉዳት በብዙ ሚሊዮን ብር የሚቆጠር ንብረት እንዲነጠቁ በማድረግ በ1949 ዓ\ም በወጣው የወንጀለኛ መቅጫ ሕግ በቁጥር 414\ሀ\ እና \ሐ\ የተመለከተውን በመተላለፍ ወንጀል ሰርተው በመገኘታቸው ተከሰዋል በሚል ይነበባሉ::

ከዚህ በላይ ያየናቸው ሁለት የወንጀል ክሶች የተበዳዩን የግል ስም አይጠቅሱም:: አቶ ተሾመ ገብረማርያምም ስማቸው በእነዚህ ሁለት ክሶች ላይ በተበዳይነት አልተጠቀሰም:: የወንጀለኛ መቅጫ ሕግ ቁጥር 100 እና የወንጀለኛ መቅጫ ሕግ ሥነ ሥርዓት ቁጥር 154ን መሠረት አድርገው የፍትሐ ብሔር ዳኝነት ሳይከፍሉ በወንጀሉ መዝገብ የፍትሐ ብሔሩ ጉዳይ ተጣምሮ እንዲታይላቸው ጥያቄ ማቅረብ የሚችሉ በወንጀሉ የከሰ ማመልከቻ በተበዳይነት ስማቸው የተጠቀሰ መሆን አለባቸው:: በአንድ የወንጀል ክስ የግል ተበዳይ በስም ተጠቅሶ የተፈጸመበት የወንጀል ዓይነትና የደረሰበት የጉዳት መጠን በክስ ማመልከቻው ላይ ሊገለጽ ይገባዋል:: አለበሊዚያ ግን በጥቅሉ ብዙ ሰዎች በሚል ብቻ ስማቸው ሳይጠቀስ በደል ደርሶባቸዋል በሚል አገላለጽ በወንጀል ክስ ቢመሠረት በወንጀለኛ መቅጫ ሕግ ሥነ ሥርዓት ድንጋጌዎች መሠረት ተቀባይነት ያለው ሊሆን አይችልም:: የወንጀል

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አጻጻፍ ሞዴሎች የግል ተበዳይ ስም በማመልከቻው ውስጥ እንዲጠቀስ ማድረግ ተገቢ መሆኑን አስቀምጠዋል::

ስለዚህ እቶ ተሾመ ገብረማርያምና ኩሎኔል መላኩ ካሰኝ የወንጀለኛ መቅጫ ሕግ ሥነ ሥርዓት ድንጋጌዎችና 2ኛ ሠንጠረዥ በሚያመለክቱት ሁኔታ በክስ ማመልከቻው የግል ተበዳይነታቸው ሳይጠቀስ የፍትሐ ብሔር ክስ ተጣምሮ እንዲታይ ማቅረባቸው የሕግ ድጋፍ ያለው ሆኖ ስላላገኘነው ጥያቄያቸውን አልተቀበልነውም::

ተሻሽሉ የሚቀርበውን የልዩ ዐቃቤ ሕግ ክስ ለመቀበል ለህዳር 18 ቀን 1988 ዓ\ም ተቀጠረ::

APPENDIX – 2

የፍ/ብ/ይ/መ/ቁ. 862/88

ግንቦት 22 ቀን 1993 ዓ.ም

ዳኞች፡- ሐጎስ ወልዱ

ዲታ መላኩ

ጌታቸው ምህረቱ

ይግባኝ ባዮች፡- 1ኛ) አቶ ታደሰ ወልደገብርኤል ቀረቡ

2ኛ) አቶ መሉቀን ታደሰ አልቀረቡም

መልስ ሰጪዎች፡- 1ኛ) መቶ አለቃ ግርማ ደመቀ ቀረበ

2ኛ) ወ/ሮ ሃይማኖት ኃ/ሚካኤል

3ኛ) ወ/ሮ ደመና ተስፋዬ ቀረበ

4ኛ) ወ/ሮ ምትኩ በልዳ

5ኛ) ወ/ሮ በድሩ መሃመድ ቀረበ

መዝገቡን መርምረን የሚከተለውን ውሳኔ ሰጥተናል፡፡

ውሳኔ

ይግባኝ የቀረበው የቀድሞው የክልል 14 መስተዳድር ዞን ፍ/ቤት በፍ/መ/ቁ. 574/86 ታህሳስ 24 ቀን 1988 ዓ.ም በዋለው ችሎት በሰጠው ውሳኔ ላይ በከፊል ቅሬታ በማሳደር ነው፡፡

የአሁኑ ይግባኝ ባዮች ጥቅምት 24 ቀን 1986 ዓ.ም ጽፈው በወቅቱ ለነበረው ለክልል 14 መስተዳድር ዞን ፍ/ቤት ያቀረቡት የክስ አቤቱታ እንደሚያስረዳው ይግባኝ ባዮች የሰሩት ወንጀልና የፈፀሙት ወንጀል ሳይኖር ሰኔ 22 ቀን 1985 ዓ.ም የወረዳ 5 ፖሊስ ጣቢያ የፖሊስ ባልደረባ የሆኑት አምስቱ ተከሳሾች የአሁኑ መልስ ሰጪ በሥልጣናቸው በመመካትና ያለአግባብ በመጠቀም ያለ ፍርድ ትዕዛዝ መኖሪያ ቤታቸው ድረስ በመሄድ የአንድኛውን ይግባኝ ባይ ቤት በመበርበር ብር 1200 (አንድ ሺህ ሁለት መቶ ብር) ከመድሰዳቸውም በላይ አንደኛውን ይግባኝ ባይን ይዘው ወደ ፖሊስ ጣቢያ በማስገባት ለ22 ቀናት ከሕግ ውጭ ታስረው እንዲቆዩ አድርገዋል፡፡ ሁለተኛውን ይግባኝ ባይም ይዘው ፖሊስ ጣቢያው ውስጥ ወደሚገባው እስር ቤት በማስገባት ለ26 ቀናት ከሕግ ውጭ እና ያለ ፍ/ቤት

ውሳኔ ታስሮ እንዲቆዩ አድርገዋል። ሁለተኛውን ይግባኝ ባይም ይዘው ፖሊስ ጣቢያው ውስጥ ወደሚገኘው እስር ቤት በማስገባት ለ26 ቀናት ከሕግ ውጭ እና ያለ ፍ/ቤት ውሳኔ ታስሮ እንዲቆይ አድርገዋል። በዚህም ሳቢያ ከ1ኛው ይግባኝ ባይ ቤት የወሰዱትን ብር 1200 እንዲመልሱ ይግባኝ ባዮችን ከሕግ ውጭ በመያዝ በፖሊስ ጣቢያ አስረው ላቆዩበት ለእያንዳንዳቸው ብር 2000 (ሁለት ሺህ ብር) የጉዳት ካሳ እንዲከፍሏቸው ጠይቀዋል።

ለተከሳሾች ለአሁኑ መልስ ሰጪዎች ክሱ ደርሷቸው መልሳቸውን በጽሁፍ በማቅረብ መከራከራቸውን መዝገቡ ያስረዳል።

በተለይ 1ኛው መልስ ሰጪ የካቲት 28 ቀን 1986 ዓ.ም ጽፎ ለዞን ፍ/ቤት ባቀረበው መልስ፣

የክሳሾች ቤት እንዲበረበር የወረዳ 25 ፍ/ቤት ሰኔ 22 ቀን 1985 ዓ.ም በሰጠው ትዕዛዝ መሰረት ተከራክሮ በ1ኛው ክሳሽ ቤት በበርሜል ውስጥ ብር 1200 ተደብቆ የተገኘውን በመያዝ ወደ ፖሊስ ጣቢያ መውሰዳቸውን፤ ክሳሽም ተይዘው ሊታሰሩ የቻሉት የተሰረውን ገንዘብ በመሸሸግ ወንጀል ፈጽመዋል በሚል ተጠርጥረው መሆኑን፣ ክሳሾች ተጠርጥረው መሆኑን ክሳሾች ተጠርጥረው በመያዝ በምርምራ ላይ ከቆዩ በኋላ በዋስ እንዲፈቱ ተወስኖ በዋስ እንዲለቀቁ ማድረጉም ምርመራውም በክሳሾች ላይ ተጣርቶ ወደ ዓቃቤ ሕግ መተላለፉን በመግለጽ በክሳሾቹ ላይ ከህግ ውጭ የተፈጸመ መያዝም ሆነ መታሰር የለም በማለት ተከራክሯል።

ወ/ር ደመና ተስፋዬ በበኩሉ የካቲት 24 ቀን 1986 ዓ.ም ጽፎ ባቀረበው መልስ ላይ ለአንደኛ ክሳሽን ለ22 ቀናት ሁለተኛውን ክሳሽ ለ26 ቀናት ያለማሰሩንና ከ1ኛው ተከሳሽ ቤት ውስት 1200 ሲወሰድ በቦታው ያልነበረ መሆኑን ገልጾ በህግ ኃላፊ የምሆንበት ምክንያት የለም ሲል ተከራክሯል።

2ኛ እና 4ኛው ተከሳሾችም በተከሰሱበት የፍብሄር ጉዳይ በክሳሾች ላይ የፈጸሙት ድርጊት ያመኖሩን በመመልከት ኃላፊነት የለብንም ሲሉ መከራከራቸውን ያቀረቡት ጽሁፍ ያስረዳል።

ክሳሾች የአሁኑ ይግባኝ ባዮችም የመልስ ሰጥተው ተከራክረዋል።

በመጨረሻም ዞን ፍ/ቤት መርምሮ በሰጠው ውሳኔ ተከሳሾች ክሳሾችን በመያዝ እንዲታሰሩ ያደረጉት በፍ/ቤት ትዕዛዝ መሰረት ቤታቸውን ሲበረብሩ የተደበቀ ገንዘብ በቤት ውስጥ በማግኘታቸውና ይህንንም እርምጃ ለመውሰድ የመሥያ ተግባራቸው እንደሚያስገደዳቸው በማብራራት በሕጉ መሰረት ለፈጸሙት ተግባር በሕግ ኃላፊ አይሆኑም በማለት በነጻ እንዲሰናበቱ ሲወሰን ኤግዚቢት ተብሎ የተያዝው ብር 1200 ግን ለክሳሾች እንዲመለስ ብሏል።

ይግባን ባዮች ይህንኑ ውሳኔ በመቃወም የካቲት 18 ቀን 1988 ዓ.ም ጽፈው ባቀረቡት የይግባን አቤቱታ ይግባኝ ባዮች የፈቀሙት ወንጀል ሳይኖር፣ ፍ/ቤት እንደያዙና ታስረው እንዲቆ በሚል የሰጠው

በሌለበት ክፍ/ቤት የብርበራ ትዕዛዝ አግኝተናል በሚል ሽፋን መልስ ሰጪዎች ባላቸው የፖሊስ ስልጣን ለአግባብ በመጠቀም ከሕግ ውጭ በመያዝ 1ኛውን ይግባን ባይ ለ22 ቀናት፣ 2ኛውን ይግባን ባይ ደግሞ ለ26 ቀናት በፖሊስ ጣቢያ ታስረው እንዲቆ ላደረጉበት በፍትሀብሄር ህጉ መሰረት የህሊና ጉዳት ካሳ ሊከፍሏቸው የሚገባ መሆኑን በመዘርዘር ዞን ፍ/ቤት መልስ ሰጪዎች በህጉ መሰረት የፊጸሙት ድርጊት ነው በማለት የህሊና ጉዳት ካሳ አይከፈሉም ሲል የሰጠው ውሳኔ ተሽሮ ባቀረቡት ክስ መሰረት የተጠየቀውን ካሳ መልስ ሰጪዎች እንዲከፍሏቸው እንዲወሰን አመልክተዋል።

መልስ ሰጪዎች በቀረበው የይግባን ቅሬታ መልስ እንዲሰጡ ታዞ 1ኛ፣ 3ኛ እ 5ኛው መለስ ሰጪ መልሳቸውን ጽፈው በማቅረብ ሲከራከሩ 2ኛ እና 4ኛ መልስ ሰጪን በተመለከተ የይግባኝ ባዮች ከክርክሩ ወጭ ሆነው ባቀረቡት ሶስቱ መልስ ሰጪዎች ላይ ብቻ ይግባኝ ክርክር እንዲቀጥል በመጠየቃቸው ከይግባኝ ክርክር ውጭ ሆነዋል።

1ኛው መልስ ሰቺ በ20/03/93 ዓ.ም ጽፎ ባቀረበው መልስ ላይ ይግባን ባዮች ያለአግባብ ተይዘን ከህግ ውጭ ታስረን ቆይተናል በሚል ያቀረቡት ክርክር ትክክል ያለመሆኑንና የመያዝና የመሰሩ እርምጃ የተወሰደው በሕጋዊ መንገድ መሆኑን በመዘርዘር አብራርቶ ያቀረቡት ይግባኝ ውድቅ ሆኖ ዞን ፍ/ቤት የሰጠው ውሳኔ እንደጸና ጠይቋል።

3ኛው መልስ ሰጪም በተመሳሳይ ቀን ጽፎ ባቀረበው መልስ ይግባኝ ባዮችን እንዲታሰሩ ያለመደረጉንና እነርሱንም የማሰር ስልጣን እንደሌለው በመዘርዘር ይግባኝ ባዮች ያለአግባብ በፖሊስ ጣቢያ ታስረን ለቆየንበት የሞራል ካሳ ሊከፈለን ይገባል ባሉበት ጉዳይ በሕግ ኃላፊ የምሆንበት ምክንያት የለም በማለት ተከራክሯል።

ሌላው ወታደር በድሩ መሀመድ በበኩሉ ይግባኝ ባዮችን በመያዝ እዲታሰሩ ያለማድረጉን ይግባኝ ባችም ያቀረቡበት ማስረጃ ያለመኖሩን በመግለጽ ይግባኝን በመቃወም ተከራክሯል።

ይግባኝ ባዮችም የመልስ መልሱን ጽፈው በማቅረብ ክርክራቸውን አጠቃለዋል።

በእኛም በኩል በግራ ቀኙን ክርክሮች እንደመረመርነው በዚህ መዝገብ ውሳኔ ሊሰጥባቸው የሚገባ ጭብጦች፡-

1ኛ) መልስ ሰጪዎች የፖሊስነት ባላቸው ስልጣን ያለአግባብ በመጠቀም ከሕግ ውጭ ይግባኝ ባዮችን በመያዝ ወደ ፖሊስ ጣቢያ እስር ቤት በማስገባት 1ኛው ይግባን ባይ ለ22 ቀናት፣ 2ኛውን ይግባኝ ባይ ደግሞ ለ26 ቀናት ታስረው እንዲቆዩ አድርገዋል ወይንስ አላደረጉም? ይግባኝ ባዮች ፖሊስ ጣቢያ ታስረው እንዲቆዩ የተደረገው በሕጋዊ መንገድ ነው ወይንስ አይደለም?

2ኛ) ይግባኝ ባዮች በፖሊስ ጣቢያ እስር ቤት ታስረው እንዲቆዩ የተደረገው ከህግ ውጭ ነው ከተባለስ ሊከፈላቸው የሚገባ የጉዳት ካሳ አለ ወይንስ የለም? ካለስ መክፈል የሚገባው ማን ነው? ሚሉት ጥያቄዎች ናቸው።

አንደኛው ይግባኝ ባይ ለ22 ቀናት፤ ሁለተኛው ይግባኝ ባይ ደግሞ ለ26 ቀናት በወረዳ 5 ፖሊስ ጣቢያ ታስረው መቆየታቸው አልተካደም። በወቅቱ የወረዳ 5 ፖሊስ ጣቢያ አዛዥ የነበረው አንደኛው መልስ ሰጪ ሲሆን ይግባኝ ባዮች በፖሊስ ጣቢያው ታስረው መቆየታቸውን በክርክሩ ላይ አረጋግጧል። አጥብቆ የሚከራከረውም ይግባኝ ባዮች በገንዘብ ሥርቆት ወንጀል በመሸሸግ ተግባር ተጠርጥረው በሕጋዊ መንገድ ተይዘው ታስረው ከቆዩ በኃላ በዋስ እንዲፈቱ ተደርገዋል። የታሰሩት ከህግ ውጭ አይደለም በማለት ነው። ስዚህ አንደኛው መልስ ሰጪ በፖሊስ ጣቢያ አዛኝነቱ ይግባኝ ባዮች እንዲያዙ በማድረግ በፖሊስ ጣቢያው አስር ቤት ውስጥ ታስረው እንዲቆዩ ማድረጉን አምኗል።

3ኛው መልስ ሰጪ እ 5ኛው መልስ ሰጪ ግን ከስር ጀምሮ ይግባኝ ባዮችን ያለመያዛቸውንና እንዲታሰሩም ያለማድረጋቸውን በመግለጽ ይጋባኝ ባዮች ተፈጽሞብናል በሚሉት ህገ ወጥ ድርጊት እጃቸው የሌለበት መሆኑን በመግለጽ በህግ ኃላፊ የምንሆንበት ምክንያት የለም በማለት ይግባኝ ባዮች በእርሱ ላይ ቀረቡትን ክስና ክርክር አጥብቀው በመቃወም ሲከራከሩ ቆይተዋል። በእርግጥም ይግባኝ ባዮች 3ኛ እና 5ናው መልስ ሰጪ ጭምር ሰሯቸው ስለመሆኑ ለማስረዳት ያቀረቡት ወይም የቆጠሩት ማስረጃ የለም። ስለዚህ ይግባኝ ባዮች 3ኛ እና 5ኛ መልስ ሰጪም ከ1ኛው መልስ ሰጪ ጋር አባሪ ተባባሪ በመሆን በሕግ ወጥ ታስረው እንዲቆ ያደርጓቸው ስለመሆኑ እስካላስረዱ ሁለቱ መልስ ሰጪዎች በድርጊቱ እጃቸው አለበት የሞል አቋም ለመውሰድ አይችልም።

1ኛውን መልስ ሰጪ በተመለከተም የወረዳ 5 ፖሊስ ጣቢያ አዛዥ ሆኖ ሲሰራ በነበረበት ወቅት 1ኛ እና 2ኛው ይግባኝ ባይ ያለ ፍ/ቤት ትዕዛዝ እንዲያዙ በማድረግና በኃላም ከፍ/ቤት የጊዜ ቀጠሮ በመጠየቅ በእስር ላይ ሆነው ምርመራ እንዲጣራባቸው ሳያስፈቅድ በራሱ ፍላጎትና በገዛ ሰልጣኑ 1ማውን ይጋባኝ ባይ ለ22 ቀናት፣ 2ኛውን ይግባኝ ባይ ደግሞ ለ26 ቀናት ከህግ ውጭ ታስረው እንዲቆዩ አድርጓል። በዚህም ጊዝ ሊፈቱ የቻሉት ለፍ/ቤት አቤቱታ በማቅረብ በዋስ እንዲለቀቁ በማዘዙ ነው። አንደኛው መልስ ሰጪ ግን አያያዙንም አስሮ የማቆየቱን ሁኔታ ህጋዊ ለማድረግ ከፍርድ ቤት ያስፈቀደበት መንገድ የለም።

በወቅቱ በስራ ላይ የነበረው የወንጀለኛ መቅጫ ስነ ስርዓት ሕጉም ሆነ አሁን ያለው ህገ መንግስት አንድ በወንጀል ተጠርጠሮ የተያዘን ሰው ፖሊስ ክፍሉ ወይመ ህግ አስከባሪው በተቻለ ፍጥት በ48 ሰዓት ውስጥ አቅራቢያው ወዳለ ፍ/ቤት ማቅረብ ያለበት መሆኑን ደንግጓል። አንደኛ መልስ ሰጪ ግን ህጉ ለዜጎች የሚያደርገውን ጥበቃ ከምንም ባለመቁጠር ተጨባጭ ባልሆነ ወንጀልና በኋላም

ባልተረጋገጠባቸው ጉዳይ ይግባኝ ባዮችን ያለአግባብ በመያዝ ከሕግ ውጪ በፖሊስ ጣቢያ እስር ቤት ውስጥ ያለአንዳች ምክንያት ታስረው እንዲቆዩ ህጋዊና ሰብአዊ መብታቸውን ነክቷል።

የአዲስ ከተማ አውራጃ ፍ/ቤት በ22/10/1985 ዓ.ም የሰጠው ትዕዘዝ በአቶ ታደሰ ወ/ገብርኤል ቤት ውስጥ በአሜሪካን ዶላር ከተገኘ ወረዳ 5 ፖሊስ ጣቢያ በርብሮ እንዲይዝ የተፈቀደበት እንጂ ግለሰቦቹን በመያዝ በቁጥጥር ሥር እንዲያደርጋቸው ወይም የፈለገውን ጊዜ ያህል አስሮ እንዲቆያቸው የሚፈቅድ ስላልሆነ አንደኛው መልስ ሰጪ ይህንን እንደ ህጋዊ መከላከያ በማድረግ ማቅረቡ ተቀባይነት የሚሰጠው አይደለም።

በአጠቃላ ሲታይ አንደኛው መለስ ሰጪ በተሰጠው የፖሊስ አዛዥነት ስልጣን ለአግባብ በመጠቀም ይግባኝ ባዮችን ከሕግ ውጭ በማሰር ማቆየት ተረጋግጧል። ዞን ፍ/ቤት አንደኛው መልስ ሰጪ ይግባኝ ባዮችን ከህግና ስርዓት ውጭ እንዲሁም ሕጉን ጥሶ በስልጣ ያለአግባብ በመገልገል አስሮ ያቆያቸው መሆኑ ቁልጭ ብሎ እየታየ የሙያ ተግባሩን ሲፈጽም ነው ይግባኝ ባዮች ለእስር የተደረጉት በማለት ያለፈው በማይገባ ነው።

ይግባኝ ባዮች አንደኛ መልስ ሰጪ ከህግ ውጭ ታስረው እንዲቆዩ ላደረገበት የህሊና ጉዳት ካሳ እንዲከፍላቸው ጠይቀዋል።

በህጉም በኩል ያለውን ስንመለከት በፍትሀብሄር ህግ ቁጥር 2108 ያለአግባብ ሰውን መያዝና ማገድ የህሊና ጉዳት ካሳ የሚያስከፍል መሆኑን ያስረዳል። ህጉ ተከሳሹ ህግን ተቃራኒ በሆነ አካኋን የከሳሹን ነጻነት አግዶ በተገኘ ጊዜ ለከሳሹ ወይም ከሳሹ ላመለከተው የበጎ አድራጎት ድርጅት የህሊና ጉዳት ካሳ በርትዕ መወሰን ይቻላል ይላል።

ለሕሊና ጉዳት የሚወሰነው የካሳ መጠን እስከ አንድ ሺህ የኢትዮጵያ ብር የሚደርስ መሆኑን የፍትሀብሄር ህግ ቁጥር 2116(3) ያስረዳል።

አንደኛው መልስ ሰጪም የይግባኝ ባዮችን ህጋዊና ሰብአዊ መብት በመዳፈር ከህግ ውጭ በፖሊስ ጣቢያ ታስረው እንዲቆዩ ላደረገበት የህሊና ጉዳት ካሳ የመክፈል ግዴታ አለበት። ስለሆነም የቀድሞው የክልል 14 መስተዳድር ዞን ፍ/ቤት በተጠቃሹ መዝገብ ታህሳስ 24 ቀን 1988 ዓ.ም በዋለው ችሎት የሰጠውን ውሳኔ በመሻር በወቅቱ የወረዳ 5 ፖሊስ ጣቢያ አዛዥ የነበረው የአሁኑ አንደኛ መልስ ሰጪ መቶ አለቃ ግርማ ደመቀ አንደና ይግባኝ ባዩን ለ22 ቀናት፣ ሁለተኛው ይግኝ ባይ ለ26 ቀናት ከሕግ ውጭ በፖሊስ ጣቢያ እስር ቤት ውስጥ ታስረው እንዲቆ በማድረግ ለፈጸመባቸው ህገወጥ ተግባር ለእያንዳንዳቸው ብር 1000 (አንድ ሺህ ብር) በጠቅላላው ብር 2000 (ሁለት ሺህ ብር) የሞራል ካሳ እንዲከፍላቸው ወስነናል።

3ኛ እና 5ኛ መልስ ሰጪ ግን ድርጊቱን ስለፈጸማቸው ስላልተረጋገጠባቸው በነጻ እንዲሰናበቱ ወስነናል።

አንደኛ መልስ ሰጪ በተፈረደው ገንዘብ መጠን መክፈል ያለበትን የዳኝነት ገንዘብ ለይግባኝ ባዮች እዲከፍል ብለናል። ይህም በስር ክሱ ሲከፈትና በይግባኝ የተከፈለውን የሚጨምር ይሆናል።

ይግባኝ ባዮች ከዚህ ውጭ ደርሶብኛል የሚሉት ወጪ ካለ ዝርዝሩን በማቅረብ መብታቸውን ጠብቀናል።

በይግባኝ የተሰጠው ውሳኔ ብር 1200 ለይግባኝ ባዮች ይመለስ ተብሎ የተሰጠውን ውሳኔ አይነካም።

ሶስተኛውና አምስተኛ መልስ ሰጪ በክርክሩ ምክያት ደርሶብናል የሚሉት ወጪ ካለ ዝርዝሩን የማቅረብ መብታቸውን ጠብቀናል።

በስር የተሰጠው ውሳኔ የተሸረ መሆኑ እንዲታወቅና በዚህ ውሳኔ መሰረት ይፈጸም ዘንድ የዚህ ውሳኔ ትክክለኛ ግልባጭ ይተላለፍ ብን መዝገቡን ዘግተን ወደ መዝገብ ቤት መልሰናል።

ማይነበብ የሶስት ዳኖች ፊረማ አለበት።

APPENDIX – 3

Interview and Questionnaires

This interview question is designed to supplements my desk research. It is aimed to evaluate the understanding and attitude of the legal professionals who are at the forefront of the enforcement of rights. Please provide your response as exhaustively as possible and I appreciate your generous time and attention.

Name: _____

Level of Education (Law Diploma, LLB, LLM, PhD): _____

Job: _____

Gender: _____

1. Have you ever come across in your professional experience a case that raises issues of compensation for victims of human rights violations?
   A. Yes
   B. No,
   C. If your answer is Yes please mention the case number or other identification if you can or some nature of the case to identify _____
   _____
   _____
   _____
   _____
   _____
   _____

2. If you have come across such a case, how did you appraise it?
   A. The victim was awarded compensation
   B. The victim was not awarded compensation
   C. If the issues was resolved some other way, please mention _____
   _____
   _____

3. What remedies do you think the Ethiopian law avails to victims of human rights violations?

   A. injunction,

   B. Compensation

   C. Declaratory judgments

   D. Reinstatement

   Please mention some details ———————————

4. Do you think that Ethiopian laws after all require that victims of human rights violations be compensated?

   A. Yes, I do

   B. No I do not

   C. If you think they do, would you mention these laws as specifically as you can?

   D. one of the laws most people may mention is the extra-contractual liability law of the civil code. Do you agree that this is the relevant law? ———————————

E. Do you think that the law is comprehensive enough to address issues of human rights violations?

5. If you agree compensation is available, what is the assessment of the compensation?
   A. Actual Material Damages
   B. Moral damages
   C. Punitive damages

   If all or some of the above, please give some explanation ——

6. Can Ethiopian judges refer to international human rights instruments for compensation of Human-rights violations?
   A. Yes,
   B. No,
   C. If your answer is yes, to which ones and why? ——

7. Do you think that there are cases where international instruments could be used for compensation of human rights violations?
   A. Yes,
   B. No,

C. If you think there are, please mention _____

_____

_____

_____

_____

_____

8. Do you believe that the Ethiopian judges are currently enforcing compensation as a remedy for human rights violations?

   A. Yes,

   B. No,

   C. If your response is no, would you explain the reason _____

   _____

   _____

   _____

   _____

   _____

9. What are the perils of awards compensation for victims of human rights violations?

   A. public budget

   B. proof

   C. Any other _____

   _____

   _____

   _____

   _____

   _____

10. What do you recommend generally on compensation for victims of Human Rights Violations in Ethiopia?

    _____

    _____

    _____

    _____

DECLARATION

I confirm that this thesis is my original work

Name TILAHUN GEBRE

Signature

Date of submission Jan 29 /2010

This thesis has been submitted for examination by my approval as university advisor.

Name Getachew Assefa

Signature

Date of submission 29 Jan. 10