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**ASSESSING STATE RESPONSIBILITY TO PROSECUTE THE
PERPETRATORS OF THE MASSACRE IN NORTHERN ETHIOPIA MAI
KADRA'**

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**Assessing State Responsibility to Prosecute the Perpetrators of the
Massacre in Northern Ethiopia Mai Kadra'**

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**A Thesis Submitted in Partial Fulfillment of the Requirements for the Award
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Advisor: Fasil Mulatu (PhD)

May 2023

Declaration

I, Yemisrach Yalew Yitayew, hereby declare that this LL.M thesis entitled “Assessing State Responsibility to Prosecute the Perpetrators of the Massacre in Northern Ethiopia Mai Kadra” is my original work. It has not been submitted for the award of any degree or examination in any other universities. I also confirm that all sources which have been used in the thesis are duly acknowledged.

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I, _____, have read this thesis and approved it for examination.

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Declaration.....	2
Acknowledgment.....	3
Acronyms.....	7
Abstract.....	8
Chapter one.....	1
Introduction.....	1
1.1. Background of the study.....	1
1.2. Statement of the problem.....	4
1.3. Objective of the study.....	8
1.3.1 Specific objectives.....	8
1.4. Research question.....	9
1.5. Literature Review.....	9
1.6. Scope of the study.....	12
1.7. Significance of the study.....	12
1.8. Methodology.....	12
1.9. Organization of the study.....	14
Chapter Two.....	14
2. Conceptual frameworks and General background of Mai Kadra massacre.....	14
2.1. Introduction.....	14
2.2. Conceptual framework on atrocities.....	15
2.2.1. Atrocity crimes.....	15
2.2.1.1. Core crimes of atrocities.....	17
A. Genocide.....	17
B. Crime against humanity.....	19
C. War crimes.....	21
2.2. General background of Mai Kadra massacre.....	21
Conclusion.....	25
Chapter Three.....	26
3. Legal and institutional framework regarding state responsibility to prosecute and characterization of the crime.....	26
3.1. Legal and institutional framework towards prosecution of atrocity crimes.....	26
Introduction.....	26
3.1.1. Legal framework on state responsibility to prosecute atrocity crimes.....	26
I. International laws.....	27
II. African Regional laws.....	33
III. National laws.....	33
3.1.2. Role and responsibilities of institutions to redress grave human rights violations.....	36
I. The role of international institutions.....	37

II. The role of African regional human rights and criminal justice institutions.....	38
III. National institutions.....	39
3.2. Characterization of Mai Kadra massacre.....	46
• The Mai kadra massacre and the required constitutive elements of core international crimes.....	47
Chapter Four.....	50
Assessment of state responsibility to prosecute perpetrators of massacre in Mai Kadra.....	50
Introduction.....	50
4.1. Measures taken by pertinent bodies of Ethiopian government towards Mai Kadra Massacre..	52
4.1.1. FDRE Inter Ministerial Task Force on Accountability and Redress Investigation and Prosecutions Committee.....	52
A. Pre investigation preparation.....	52
B. Investigation.....	53
C. Major findings of the investigations.....	53
D. Initiation of Prosecution.....	54
E. Major challenges.....	57
4.1.2. Monitoring and Investigation of the Ethiopian Human Right Commission.....	57
A. Major findings of joint investigation team.....	58
B. Challenges.....	59
Conclusion.....	59
4.3. Major gaps and their implications.....	60
A. Legal gaps.....	60
B. Practical gap.....	61
Chapter Five.....	65
Conclusion and Recommendation.....	65
5.1. Conclusion.....	65
5.2. Recommendations.....	67
Bibliography.....	69

Acronyms

AU	African Union
ACHPR	African Court on Human and People's Rights
ACJ	African Court of Justice
EDF	Eritrean Defence Forces
EHRC	Ethiopian Human Rights Commission
ENDF	Ethiopian National Defense Forces
FDRE	Federal Democratic Republic of Ethiopia
GoE	the Government of Ethiopia
ICCPR	International Covenant on Civil and Political Rights
ICC	International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IMTF	Inter Ministerial Task Force
IPC	Investigation and Prosecution Committee
JIT	Joint Investigation Team
MoJ	Ministry of Justice
NIAC	Non International Armed Conflict
OHCHR	Office of the United Nations High Commissioner for Human Rights
TDF	Tigray Defense Force
TPLF	Tigray People Liberation Front
TJ	Transitional Justice

Abstract

This study assessed the state's responsibility to prosecute perpetrators of the Mai Kadra massacre, which occurred in Northern Ethiopia, in November 2020. It examined the legal framework for prosecuting atrocity crimes under international law and domestic law and evaluated the response of the Ethiopian government towards such crimes, particularly the Mai Kadra massacre. This study employed a qualitative approach by deploying a purposive sampling technique conducting key informant interviews. Through examination of the Mai Kadra massacre in light of international customary law and national law, this research argues that Ethiopia has a responsibility to investigate and prosecute the criminals of mass atrocities in general and Mai kadra massacre perpetrators in particular. This study found that the existing national legal frameworks, particularly the FDRE Constitution and Criminal Code do not address atrocity crimes adequately and do not satisfy international customary laws. Additionally, the Government of Ethiopia filed charges against the perpetrators of the Mai kadra massacre for crimes against the constitution or state by rising arms or civil war while the massacre is considered as crime against humanity. It is a clear non recognition of the committed grave human rights violation in Mai Kdra town.

Keywords: State responsibility, atrocity crimes, Mai Kdra massacre, prosecution of atrocity crimes

Chapter one

Introduction

1.1. Background of the study

The responsibility of States to protect, respect and fulfill human rights is deeply rooted in the recognition of human rights under the international legal system. The adoption of the United Nation Charter (1945) that contains provisions¹ particularly referring to human rights and state acceptance of the obligations as members of this organization brought human rights to the international legal system. The first international human rights document that recognized the obligations to respect, protect and fulfill human rights was the Universal Declaration of Human Right (UDHR). Under its preamble it declared that Member States enter into obligation in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.²

The building blocks of the international bill of rights UDHR, ICCPR, ICESCR provide provisions that refer to state responsibility. Accordingly, the International Covenant on Civil and Political Rights (ICCPR) clearly provides that the member state for these conventions contains both negative as well as positive duties.

Article 2 of the ICCPR provides that

"States undertake to respect and to ensure to all individuals within their territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."³

¹United Nation, Charter of the United Nation ,24 October 1945 ,preamble /paragraph 4 provides that States obligation to promote universal respect for, and observance of, human rights and fundamental freedoms

²Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) preamble

³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

The establishment of the African regional human rights system laid its basis on the Organization of African Unity. As provided under the preamble of OAU charter, it endorsed the principle of UDHR. It is the initial step towards the human rights system in Africa. After the adoption of the African Charter on Human and Peoples rights in 1981 (Banjul charter), the system contained several human rights agreements, mechanisms and operations. According to article 1 of the charter, state parties to the charter have duties to recognize the rights, duties and freedoms that are enshrined in the charter and undertake to adopt legislative or other measures to give effect to them.⁴

At the national level, the Federal Democratic Republic of Ethiopia (FDRE) Constitution and other municipal laws of Ethiopia provided a state duty to protect, respect and fulfill human rights. The FDRE constitution article 13 proclaimed that all government organs of the state (legislative, executive and judiciary) at both levels had the duty to respect and enforce the provisions that provide fundamental rights and freedoms under this constitution. Furthermore, as per sub article 2 of this provision fundamental rights and freedoms are required to be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.⁵ Accordingly, all international human rights obligations which emanated from such laws including obligation to investigate ,prosecute and redress grave human rights violations are required to be executed by the Ethiopian government.

For the last four years in Ethiopia there were committed several violence which resulted in massacres for instance in Burayu which happened from 14-16 September 2018 and killed about 58-65 people, ⁶ Hachalu Hundessa riot (30 June–2 July 2020, killed more than 239 people in Addis Ababa and the Oromia Region particularly Shashemene and Ambo),⁷ the violence in Mai Kadra which happened 9-10 November 2020, killed 600-1100 Amhara , Wolikayit and other ethnic civilians⁸ as well as extra judicial killing of more than 100 civilians in Axum (which

⁴ Banjul charter (1981)

⁵ Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995

⁶ Amnesty international, investigate police conducted after death of five people protesting ethnic clashes September 17/2018

⁷ Ethiopian Human Rights Commission, Report on the investigation of human rights violations in relation to the assassination of Hachalu Hundessa (31 December 2020).

⁸ Ethiopian Human Right Commission, Preliminary Findings on Rapid Investigation into Grave Human Rights Violation in Mai Kadra Nov 24/2020

happened on November 28)⁹ and the violence in Metekel happened 22–23 December 2020 killed 142 people).¹⁰ Some of these killings were carried out at the time of peace while the rest were committed during the war between the Ethiopian Federal Government and Tigray Liberation Front. Mai Kadra is one of the largest mass killings committed during this conflict.

Mai kadra is a place found in Northern Ethiopia, Tigray Region Mirabawi zone, Kafta humara Woreda. Its population is estimated at 40,000 to 45,000 people of Tigrayan, Amhara, Wolkait' and other ethnic origins. Additionally Amhara seasonal migrant workers are also residing there.¹¹ Following the occurrence of armed conflict between the Ethiopian government and Tigrayan People's Liberation Front in the Northern part of Ethiopia in 2020, the Mi kadra mass killing of civilians happened on November 9-10, 2020.

According to an Ethiopian Government report the TPLF is the primary perpetrator for committing mass killing of 600-1100 Amharas civilians. TPLF who alleged to have committed this mass killing of civilians, designated as terrorists on May 5 /2021 by the House of Peoples Representatives.¹² The spokesman of TPLF Ato Getachew Reda has denied such allegation that TPLF targeted Amhara civilians in Mai Kadra.¹³ Similarly, TPLF leader Dr Debretsion Geberemariam has admitted the occurrence of the massacre, simultaneously denied the participation of TPLF in such massacre and condemned the violence act.¹⁴ In March 2023 ,the house delisted the group from the terrorist list as it is a prerequisite to a peace agreement between these two parties. ¹⁵

⁹ Ethiopian Human Rights Commission, Report on investigation in to grave human rights violation in axum (preliminary findings) March 2021

¹⁰Amnesty international 'At Least 100 Dead in Latest Surge of Violence Against Ethnic Minorities' (2020)<<https://www.amnesty.org/en/latest/press-release/2020/12/ethiopia-at-least-100-dead-surge-of-violence-against-ethnic-minorities/>> accessed December 2021

¹¹<https://ehrc.org/ethiopian-human-rights-commission-rapid-investigation-into-grave-human-rights-violation-maidara-preliminary-findings/> accessed December 2021

¹²Helen Tadesse ,“TPLF", "Shene" Designated as Terrorist Groups" (walmartinfo.com May 03,2021) <<https://walmartinfo.com/tplf-shene-designated-as-terrorist-groups/>> accessed December 2021

¹³Katharine Houreld , Michael Georgy and Silvia Aloisi ,“ How ethnic killings exploded from an Ethiopian town” (*Routers* June 7, 2021) < <https://www.reuters.com/investigates/special-report/ethiopia-conflict-expulsions/>> Accessed December 2021

¹⁴Elias Amare E [@eliasamare][2021, April 21] as the horror of Mai kadra massacre become too evident to hide [tweet] <https://twitter.com/i/status/1384851237229797376>

¹⁵Bhargav Acharya, 'Ethiopia takes Tigray's TPLF party off terrorism list' *Reuters* (Addis Ababa, March 22/2023)<<https://www.reuters.com/world/africa/ethiopia-removes-terrorist-designation-dominant-tigray-party-2023-03-22/#:~:text=ADDIS%20ABABA%2C%20March%202022%20>> accessed March 2023

Due to the massacre that happened during the Northern Ethiopia conflict in November 2020, the methods that were used by the perpetrators, the place this massacre has occurred, the prior acts of perpetrators including their preparation and the victims of this massacre, various arguments, allegations and opinion has been raised over the case.

The key features in assessing state responsibility to prosecute perpetrators of Mai Kadra massacre are determination of the obligation under applicable law, characterization of crime as well as identification of duty bearer to investigate, prosecute perpetrators and assessment of measures that are taken by Government of Ethiopia in order to perform its duties in accordance with international and national law of the country.

1.2. Statement of the problem

The prosecution of atrocity crimes at the domestic level needs the existence of a clear legal framework that explicitly recognizes and defines crimes against humanity, as well as the necessary resources and political will to enforce these laws. Additionally, there should be enabling mechanisms in place for international cooperation and support in cases where domestic systems may not have the capacity or willingness to prosecute such crimes. Accordingly, in order to prosecute the Mai Kadra massacre before Ethiopian courts there should be a clear legal framework. On the other hand the core crimes of atrocities under Ethiopian legal framework are unclear and lack specific denotation of these crimes particularly crime against humanity.

Every state is required to take all necessary measures in accordance with international law obligations as well as their domestic law in order to prevent and address impunity and human rights violations in general. Such measures also imply duties to investigate and bring to justice perpetrators of violations, as well as the obligation to ensure a prompt, adequate and effective remedy to those whose rights have been violated, including the provision of reparations and guarantees of non-recurrence. This obligation emanates from international and regional treaties /conventions/charters, international customary law and domestic law of the country.

As per article 2 of ICCPR States Parties have to respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction¹⁶. Accordingly, since Ethiopia is a state party to this covenant required to undertake those obligations. The obligation of the covenant requires all branches of government of Ethiopia (executive, judiciary and legislative organs) and other government authorities at all national, regional or local level are responsible to undertake those obligations.¹⁷ In a country like Ethiopia with a federal structure of government, they are obliged to extend the obligations of all parts of Federal states without any limitations or exceptions.

At regional level according to article 1 of the Banjul Charter Ethiopia has an obligation to recognize the rights, duties and freedoms which are provided under the charter. Additionally it is required to realize these rights by taking all necessary measures such as adopting legislative measures or other measures.¹⁸

The FDRE constitution of 1995 also clearly provided the place of fundamental human rights, state responsibility and everyone's right to access justice. In accordance with article 13 of the constitution all federal as well as state organs of government are required to respect and enforce the provisions on fundamental rights and freedoms.

Human rights norms and principles as recognized under the international bill of rights and other core international human rights instruments are incorporated by either some provisions of the FDRE constitution under chapter three (3) or by interpretation in accordance with Article 13. Further, other subsidiary laws such as the criminal code and procedure code provide legal criminal remedies for rights violations. The criminal procedure code of 1961, article 40 and Federal Attorney General Establishment Proclamation 943/2008 art 6(3) (e) vested the responsibility for the FDRE General Attorney and police to investigate and precede allegations. Furthermore, article 8 of the criminal procedure code of 1961 obliges the public prosecutors to carry out these obligations. Article 10, on the other hand, required all levels of police to assist public prosecutors in preserving peace and security, discovering the commission of the crime,

¹⁶ Ibid 3

¹⁷ Human Rights Committee, *General Comment 6*, as contained in *Report of the Human Rights Committee*, UN GAOR 1961

¹⁸ African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981

apprehending offenders and prosecuting offenses when members of the police are appointed as public prosecutors.¹⁹

The Minister of Justice (The former FDRE Office of General Attorney) issued a report on the committed atrocity crimes during the Northern Ethiopia Conflict. According to this report the Inter Ministerial Task Force Investigation and Prosecution Committee deployed for Mai kadra investigation found that 229 individuals have been killed and several victims have sustained serious injuries²⁰ by conducting extensive investigation. This team identified 202 suspects and the rest of suspects are believed to have fled to Sudan. Only 23 suspects have been apprehended so far and the case is being processed for trial with the Federal high Court.²¹ Furthermore the report implicitly categorized the massacre as an atrocity crime. The determination of the character of crime as atrocious (genocide, war crime and crime against humanity) or as other crimes, clear examination of the essential elements which enshrined under international, regional and national laws is necessary.

The Ethiopian Human Right Commission (EHRC) particularly conducted a rapid preliminary investigation particularly on the Mai Kadra massacre and ‘joint investigation with the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the Northern conflict’. According to the report, ethnic-based killings of more than two hundred Amharas, mostly men, were committed in Mai kadra by the Samri accompanied by Tigrayan police and militia on 9 November 2020. The joint investigation team concluded that this mass killing amounted to serious violations of international humanitarian law, human rights law, and breach of the Constitution and laws of Ethiopia. Accordingly, the Joint Investigation Team explained that accountability should not be understood narrowly, and criminal responsibility is only one of a broader set of actions which are required.²²

The primary mandated organ with in the FDRE government for prosecution of the violation and infringement of such crimes are the former FDRE General Attorney (currently Ministry of Justice) and the Federal Police Commission jointed in established Inter Ministerial Task Force in

¹⁹ Criminal procedure code of Federal Democratic Republic of Ethiopia 2004

²⁰ Federal Republic of Ethiopia General Attorney, Summary on "effort to ensure accountability, legal Norms in Tigray, Federal Attorney General" 2020

²¹ Ibid

²² Ibid 8

order to design, coordinate and implement responses on allegation of all serious violation during conflict between federal government of Ethiopia and Tigray People Liberation Front.²³

The essential elements to constitute crime in Ethiopia are legal element, material element and mental element.²⁴ The fundamental law of the country stated the issue of crime against humanity under Article 28 .This Article prohibited granting amnesty or pardon of legislature or any organ of the state.²⁵ According to this provision the acts that can consider as crime against humanity are genocide, summary executions, forcible disappearances or torture. In addition to this, Article 44 of the FDRE criminal code also referred to acts that are enumerated under Article 269 - 274 of this code as crime against humanity.

On the other hand international legal frameworks such as Rome statute, the four Geneva Convention, Genocide Conventional and other laws particularly international customary laws define and address the core atrocity crimes separately. The criminal code of the country also separately discussed war crimes and genocide. All atrocities differ one to another. Both war crimes and genocide have their own specific laws whereas crime against doesn't have such laws. Accordingly, The FDRE government's responsibility to prosecute Mai Kadra massacre before national court is questionable in relation with the principle of legality to establish atrocity crimes criminal liability. As a result, it is difficult to prosecute the Mai Kadra massacre on the basis of the existing legal framework.

Establishment of accountability against perpetrators of such violations is a key element in providing justice to the victims. According to an IMTF report (reported 19 September 2022) the criminal prosecution is initiated against 202 suspects ,22 suspects are under custody and the rest of suspects proceed in absentia.²⁶ Additionally ,this prosecution is one of terminated prosecutions and left to transitional justice on 30 March 2023 by MoJ.

²³ FDRE Inter-ministerial Task Force, Strategic Approach and Action Plan For Implementing Recommendations of the EHRC-OHCHR Joint Investigation Team And For Addressing Subsequently Committed Serious Human Rights Violations in Ethiopia, November 2021

²⁴ Federal Democratic Republic of criminal code 2004 Article 23 (2)

²⁵ *Constitution of the Federal Democratic Republic of Ethiopia, 21 August 1995*

²⁶ The Federal Democratic Republic of Ethiopia Inter-Ministerial Taskforce on Accountability and Redress Investigation and Prosecutions Committee ,*criminal investigation on On Allegations of War crimes, Crimes Against Humanity and Other Violations of international Human Rights Law, International Humanitarian Law, and Domestic Criminal Law Committed by the Parties to the Conflict in Northern Ethiopia*, April 2022

Accordingly, MoJ is working on transitional justice that may contain the process of prosecution, truth-seeking, reconciliation, amnesty, reparation and institutional framework. To this effect MoJ established 'Transitional Justice Working Group of Experts'. This working group developed the Policy Option for TJ.²⁷ As a result, the legitimacy of leaving filed charges for crimes committed in relation to conflict to transitional justice within the Ethiopian context as well as existing legal frameworks are questionable. On the other hand, the effectiveness of adjudicating the case in regular courts is also determined by the number of perpetrators. The question here is how the government strikes balance between the quest to end impunity and transitional justice within existing legal and institutional framework.

Grave human rights violations like the Mai Kadra massacre require more attention, accelerated process and adequate investigation due to its seriousness and atrocious nature. In response the FDRE government has not yet established adequate criminal accountability that achieves the very objective of criminal punishment and accountability, fails to employ important and key mechanisms such as creating enabling conditions that allow the prosecution of perpetrators of atrocity crimes in general.

1.3. Objective of the study

Primarily this study aims at assessing state responsibility to prosecute perpetrators of the Massacre in Northern Ethiopia, Tigray Mai Kadra that occurred in November 2021.

1.3.1 Specific objectives

The following specific objectives are intended.

- ❖ Examine existing legal and institutional framework regarding state duty to prosecute the perpetrators of such violation in case of Mai Kadra.
- ❖ Examine characterization of the massacre in accordance with respective international and national laws of Ethiopia.
- ❖ Examine measures taken by pertinent bodies of the government towards prosecution of crime committed in Northern Ethiopia, Tigray, Mai kadra.

²⁷ Ministry of Justice, 'Launch of transitional justice public consultation in southern Ethiopia regions' May 2023

- ❖ Assess the existing gap in legal as well as institutional framework and practical exercise of these frameworks in case of Mai kadra massacre.

1.4. Research question

The questions that are addressed by this study are the following.

1. What are the legal and institutional frameworks regarding state duty to prosecute the perpetrators of such violation in case of mai kadra?
2. What is the characterization of crime committed in Mai Kadra under respective international and national law?
3. What kinds of measures are taken by the government body that is responsible to undertake investigation and prosecution?
4. What are the major problems or gaps and their causes that are existing in legal as well as institutional framework and practical exercise of these frameworks in case of Mai kadra massacre?

1.5. Literature Review

The concept of states' obligation to prosecute atrocities is a well-addressed issue of international human rights law, humanitarian law, and criminal law. Many scholars wrote regarding this obligation with various perspectives. On the other hand, there is limited literature, particularly regarding the state's obligation to prosecute perpetrators of the Mai Kadra massacre.

Various scholars stated in their work that many multilateral treaties required their member states to investigate grave human rights violations and take action against the responsible parties. Roht Arraza, explain it as follow;

"...Three different types of clauses in modern multilateral human rights treaties support a state's obligation to investigate grave human rights violations and take action against the responsible parties. First, criminal law treaties specify the obligation of states to prosecute and punish perpetrators of acts defined as crimes under international law. Second, the "ensure and respect" provision common to many treaties have been interpreted, by at least one court, to impose affirmative obligations on states to investigate and prosecute.

Finally, the right to a remedy included in many human rights instruments prior established three complementary bases for".²⁸

On the other hand the existence of customary international law that imposes the state obligation to investigate and prosecute is controversial. Some scholars and writers argued that the *erga omnes* and *jus cogens* nature of the prohibitions are not concrete reasons to give rise to the formation of customary international law and do not imply the recognition of a customary nature for the obligation to extradite or prosecute.²⁹ Whereas many scholars such as Rhot Aziz,³⁰ Miša Zgonec-Rožej and Joanne Foakes³¹ argued that the source of obligation to prosecute or extradite is international customary law on the ground that treaty provision and judicial decision, state practice, and the laws that provide the state's responsibility regarding an injury to aliens³², due to prohibition of core crimes of international laws are the peremptory norms (*jus cogens*)³³ and the principle of universal jurisdiction applies to the concerned crime because of its universal nature.³⁴

In addition to this controversy, numerous writers and scholars raised issues such as the right to remedy, the non-derogable nature of the obligation, the principle of extraditing or prosecuting, and amnesty with the state's obligation to prosecute atrocities. According to Naomi there are three types of provisions that recognize the obligation: criminal law treaties, "ensure and respect" provisions, and many instruments guaranteeing the right to a remedy. Finally, it examines whether the obligation is derogable that is, whether it can be overcome by contrary domestic law.³⁵

Nationally, regarding the Mai Kadra massacre there are two legal literatures. These are Prosecuting Atrocity Crimes Committed in Northern Ethiopia: "The Need for Special National Prosecution Mechanism by Wubeshet Tiruneh and Mai-Kadran Massacre and opposing

²⁸ Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law* (California Law Review Vol. 78, No. 2 (Mar., 1990), pp. 449-513 (65 pages)

²⁹ Joanne Foakes and Miša Zgonec-Rožej "International Criminals: Extradite or Prosecute?" *Chatham house* (July 2013; page 2)

³⁰ *Ibid* 26

³¹ *Ibid* 27

³² *ibid* 1

³³ *Ibid* 26

³⁴ Pulvirenti, R. (2022). Undesirable and unreturnable individuals: Rethinking the International Criminal Court's human rights obligations towards detained witnesses. *Leiden Journal of International Law*, 35(2), 433-451. doi:10.1017/S0922156522000139

³⁵ *Ibid* 26

narratives, the influence of Ethiopian Constitution, Religion and other Institutions by Yihenew Antehunegn.

Regarding Ethiopia's Obligation to Investigate and Prosecute Serious Violation, Wubshetih Tiruneh noted that the obligation to investigate and prosecute these crimes is imposed by treaty and customary international law. He also raised this obligation as a right to remedy to right holders.³⁶ For example, the ICCPR imposes a corollary state obligation to provide a remedy, including investigating and prosecuting serious violations.³⁷

This article concludes that there are normative as well as institutional gaps as the existing mechanisms lack effectiveness to prosecute and investigate serious human rights violations. On this basis, the article recommends that Ethiopia should redress the violations, victims should obtain remedies ,actualization of recognized human rights under its constitution and a special prosecution mechanism should be established to better fulfill its obligation under international law.³⁸

The research that conducted by Yihunew Antehunegn under the title ``Mai-Kadran Massacre and opposing narratives, The influence of Ethiopian Constitution, Religion and other Institutions``³⁹ addressed the case study of Kosovo Albanian Muslims, Rwandan Tutsis, Turk/ Armenian Christians, the claims that have been made regarding the Mai Kadra massacre, the reason of the massacre and detailed story of the case. He concluded that the massacre is genocide as per UN genocide criteria, international community should influence the stake holders to conduct more studies on this case and there is a need for further study on November 9 /2020 Mai Kadra Massacre.

Unlike the above two in literature, this study mainly emphasizes the FDRE government's responsibility to prosecute the Mai Kadra massacre. Wubishet's study covered all crimes committed during the Northern Ethiopia conflict. He also assesses international responses towards these crimes. In addition, Yihunew Antehunegn's study also focuses on the narration of

³⁶ Wubshet Tiruneh ``Prosecuting Atrocity Crimes Committed in Northern Ethiopia: The Need for Special National Prosecution Mechanism also available at <https://www.ejiltalk.org/prosecuting-atrocity-crimes-committed-in-northern-ethiopia-the-need-for-special-national-prosecution-mechanism/>

³⁷ Ibid 33

³⁸ Ibid 25

³⁹ Yihenew Antehunegn "Mai-Kadran Massacre and opposing narratives, The influence of Ethiopian Constitution, Religion and other Institutions" Uppsala university (2021)

the Mai Kadra massacre. On the other hand this study examines specifically investigation and prosecution procedures in accordance with the provided framework. In addition to this, Wubishet's claim is a need for better institutional mechanisms due to various institutional and normative limitations.

1.6. Scope of the study

The scope of this study is limited to investigating the responsibility of the State to prosecute the perpetrators of massacres which were committed during the war between the FDRE government and Tigray Liberation Front in the northern part of Ethiopia. The study includes analysis of the relevant international as well as national legislations regarding state responsibility to prosecute perpetrators of such violation. This study will not investigate the actual existence or otherwise of events as well as the allegation associated with the Mai Kadra Massacre.

1.7. Significance of the study

This study is significant in assessing the state responsibility to prosecute perpetrators of the Mai Kadra massacre in Northern Ethiopia. It will provide an understanding of the legal obligations of the state to investigate and prosecute atrocity crimes, existing institutional framework, and possible challenges in this regard and the need for legislative reformation. The findings of this study will show the existing practical and legal gap ,fill existing research gaps, trigger additional research and contribute to policy discussion on strengthening accountability mechanisms and improving access to justice for victims and survivors of atrocity crimes.

1.8. Methodology

This study aims to assess state responsibility to prosecute perpetrators of Mai Kadra Massacre as a result it requires examination into the legal framework towards such violation as well as institutional framework and practical implementation of those laws. In order to achieve this task, the study employed both doctrinal and non-doctrinal types of legal research.

In order to directly address Ethiopian government responsibility to prosecute atrocity crimes this study utilized primary sources of data. Accordingly necessary and appropriate international as well as domestic laws and reports of pertinent authorities will be examined. Additionally, secondary sources were utilized to supplement the collected data and shed light on the statement of the problem at hand.

On the basis of the nature of this study, a qualitative approach has been employed. Qualitative research tends to focus on a smaller number of ‘observations’ or ‘data sources’, whether people or events or documents, which are considered to be data rich and thus worthy of study, and to examine them in-depth.⁴⁰The study utilized purposive or judgmental sampling technique that basically conducts key informant interviews. Accordingly, the researcher utilized semi structured interviews with pertinent organs of government as well as other stakeholders. It allows the researcher to acquire adequate and necessary information on prosecution process, progress and results as well as their justification from a pertinent body of government such as the Ministry of Justice, Federal Police Commission, Inter Ministerial Task Force and Ethiopian Human Right commission.

The key informants are the major actors in Inter-ministerial Task Force’s investigation, prosecution and Joint investigation of UN OHCHR and EHRC investigation and follow up activities. The interview questions are designed in a way that can allow the researcher to collect data from these informants regarding investigation, prosecution and follow up of recommendation of Mai Kadra massacre .It lacks information that was supposed to be collected from the Federal Police Commission .The representative of the Federal Police Commissioner was not willing to give information due to the institution prohibited disclosure of information regarding the FDRE government and TPLF conflict for security purposes. Similarly the relevant bodies of the IMTF were not available to give the necessary information. Accordingly the author filled these gaps by collecting information from the Ministry of Justice, which has a leading role in the prosecution and investigation committee.

⁴⁰ Lisa Webley, *Legal Writing* (3rd ed., Routledge 2013).

1.9. Organization of the study

This thesis is organized into five chapters. Chapter one deals with introduction and overview of the study. Chapter two contained the conceptual framework on atrocity crimes and General overview of the incidence of Mai Kadra mass killing. The legal and institutional framework regarding state responsibility to prosecute such violation and character of alleged crime under respective international and national law discussed under chapter three , chapter four addressed findings , presented and analyzing collected data regarding the process, progress as well as major steps in investigation and prosecution that averted by government in case of Mai Kadra as well as and examine practical applicability of pertinent laws. It also emphasizes major problems or gaps, their causes that are existing in legal as well as institutional framework and practical exercise of these frameworks in case of Mai kadra massacre. The last chapter tries to provide conclusions and recommendations.

Chapter Two

2. Conceptual frameworks and General background of Mai Kadra massacre

2.1. Introduction

This chapter of the study deals with major concepts of atrocity crimes and general overview of Mai Kadra massacre. It emphasizes the core crimes of atrocity crimes; their essential elements and various discipline's perspectives on these crimes. This is necessary to determine the nature and type of offense committed in Mai Kadra. It is also important to identify the relevant laws that apply to the Mai Kadra massacre, based on the alleged facts as well as international and regional treaties or agreements.

The selection of applicable law is essential in the procedure of prosecution of atrocity crimes. Because these crimes often involve multiple jurisdictions and legal systems. In addition to this due to applicability of international laws and treaties on atrocity crimes, it is necessary to assess which legal framework is appropriate for the particular case. As the major objective of this study

is to assess state responsibility to prosecute perpetrators of Mai Kadra massacre, this chapter discussed the essential elements of core crimes of atrocity crimes.

2.2. Conceptual framework on atrocities

2.2.1. Atrocity crimes

The term atrocity crimes originated from Roman military law that refers to illegal acts performed pursuant to military orders, acts that today might also prove illegal unless justified by a modern application of the “defense of superior orders”. This term has been used highly since the early 1990s by governments, intergovernmental and non-governmental organizations, and the media.⁴¹

The following definition more expresses the degree of cruelty in the commission of these crimes.

“Atrocity crime can be defined as any extremely cruel, wicked act that involves physical injury. It can also be seen as a violation, an affront that caused untold injustice and has on both ends an aggressor and a victim. Atrocity crimes are shocking acts that disturb the conscience of humanity. Such crimes include; rape, forced displacement, slavery, genocide, war crimes, extermination, etc.”⁴²

According to Scheffer, David who is the first proposer of the expression 'atrocity crimes',⁴³ it can be defined as

“...high-impact crimes of severe gravity that are of an orchestrated character, that shock the conscience of humankind, that result in a significant number of victims, and that one would expect the international media and the international community to focus on as meriting an international response holding the lead perpetrators accountable before a competent court of law.”⁴⁴

Anna Khalfaoui also defined it as “Mass atrocities consist of extreme violence inflicted on a large scale or in a deliberate manner, particularly on civilians and noncombatants, by State or non-State actors.”⁴⁵

⁴¹ Scheffer, David (2006) "Genocide and Atrocity Crimes," *Genocide Studies and Prevention: An International Journal*: Vol. 1: Iss. 3: Article 3. Available at: <https://scholarcommons.usf.edu/gsp/vol1/iss3/3>

⁴² <http://atrocitieswatch.org/what-is-atrocity-crime/> accessed June 2022

⁴³Ibid 39

⁴⁴Ibid 39

⁴⁵ Khalfaoui, A. *Mass Atrocities: Definition and Relationship with Development*. In: Leal Filho, W., Azul, A., Brandli, L., Özuyar, P., Wall, T. (eds) *Peace, Justice and Strong Institutions* (2020)

The well-structured definition of the term is found in the UN framework analysis for atrocity crimes. Accordingly, it defined atrocity crimes as the most serious international crimes against human beings that affects the core dignity of human beings and may be committed in times of war as well as peace. On this basis a crime to be considered as atrocity crimes requires to be the most serious crimes against human kind, international crime against the dignity of human beings, and may be committed at any situation irrespective of the time of war or peace.⁴⁶

According to international law, atrocity crimes take three core forms of commission. These are genocide, war crime and crime against humanity. In addition to these crimes of ethnic cleansing also included under atrocity crimes world summit 2005 outcome.

The Scheffer, David explained that there are five criteria required cumulative definitional characteristics, all of which must exist for the term to be used accurately:

1. The crime must be of significant magnitude, meaning that its commission is widespread or systematic or occurs as part of a large-scale commission of such crimes.
2. The crime may occur in time of war, or in time of peace, or in time of violent societal upheaval of some organized character, and may be either international or non-international in character.
3. The crime must be identifiable in conventional international criminal law as core crimes of atrocities.
4. The crime must have been led, in its execution, by a ruling or otherwise powerful elite in society (including rebel or terrorist leaders) who planned the commission of the crime and were the leading perpetrators of the crime.
5. The law applicable to such crime, while it may impose state responsibility and even remedies against states, is also regarded under customary international law as holding individuals criminally liable for the commission of such crime, thus enabling the prosecution of such individuals before a court duly constituted for such purpose.⁴⁷

The major issues that are raised in the concept of atrocity crimes are core crimes that are included under atrocity crimes and state responsibilities to prosecute the perpetrators and redress the victims.

⁴⁶ United Nation Framework of Analysis for atrocity crimes A tool for prevention (2014)

⁴⁷ Ibid 38

2.2.1.1. Core crimes of atrocities

A. Genocide

Genocide acts are not newly existed threat against human kind rather its wide existence traced back to Nazis mass killing of Jewish which is genocide. The well-known genocide crimes are Cambodian who destroyed by Kher Rouge, Hutu against Tutsi of Rwanda and Ethiopian Red terror cases. Before genocide was first recognized as a crime under international law in 1946 by the United Nations General Assembly ([A/RES/96-I](#))⁴⁸ and devised by Polish lawyer Raphael Lemkin in 1944 (Axis Rule in Occupied Europe), the acts of genocide were existed but the term was unknown.

The word genocide is a combination of a Greek and Latin words that newly coined word by Raphael Lemkin (1900–59). Accordingly the Greek word “genos,” refers race or tribe and Latin word “cide,” refers killing, He also gave meaning to the term genocide as ‘the premeditated destruction of national groups on the basis of their collective identity.’⁴⁹ The questions that were raised by scholars like (genocide as social) does genos refer to a common tribal origin, to genetic characteristics transmitted from generation to generation, or simply to certain features shared by a group? and argued that the meaning existed in the Latin derivative gens denoting a family clan.⁵⁰ However, a legal definition of genocide was incorporated into the Convention on the Prevention and Punishment of the Crime of Genocide, adopted on December 9, 1948.

In case of genocide, general and specific mental elements are required. As Kai Ambos explained in his article⁵¹ It is a crime with the double mental elements, namely a general one that could be called ‘general intent’ or dolus, and an additional ‘intent to destroy’.⁵² The general intent is the

⁴⁸<https://www.un.org/en/genocideprevention/genocide.shtml#:~:text=To%20institute%20genocide%2C%20there%20must,to%20simply%20disperse%20a%20group>

⁴⁹ Federal Democratic Republic Of Ethiopia ,*Strategic Approach and Action Plan For Implementing Recommendations of the EHRC-OHCHR Joint Investigation Team And For Addressing Subsequently Committed Serious Human Rights Violations in Ethiopia* ,November 2021

⁵⁰ Feierstein, Daniel, and Douglas Andrew Town. *Genocide as Social Practice: Reorganizing Society under the Nazis and Argentina’s Military Juntas*. Rutgers University Press, 2014.

⁵¹Kai Ambos, What does ‘intent to destroy’ in genocide mean?, international review of the red cross ,Volume 91 Number 876 December 2009

⁵² ibid 50

perpetrator's will and desire for the result of her /he's acts. Aki Ambos elaborated it as “the perpetrator must, for example, know that his actions target one of the protected groups, since the group element is a factual circumstance by article 30(3) of the ICC Statute.”⁵³

The most important element that makes genocide differ from other atrocity crimes is special intent. In this case special intent denotes intent to destroy, in whole or in part, a national, ethnical, racial or religious group. It is the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged. It is also characterized by a psychological relationship between the physical result and the mental state of the perpetrator.

In addition to legal perspective other discipline's scholars also gave meaning to genocide. Accordingly, an Armenian sociologist Vahakn Dadrian, defined it as

“successful attempt by a dominant group, vested with formal authority and/or with preponderant access to the overall resources of power, to reduce by coercion or lethal violence the number of a minority group whose ultimate extermination is held desirable and useful and whose respective vulnerability is a major factor contributing to the decision for genocide.”

As per he's assertion the victim of genocide are minors and vulnerable .This is major factor that contributing to the decision of genocide. On the other hand the criminals of genocides are the proponent group of the society that has governmental or other powerful organs.

The other sociologist Irving Louis Horowitz, also supported the above definition.He claims that such destruction and annihilation is committed by a state bureaucratic apparatus and usually targeted minority.⁵⁴ According to other sociologist Helen Fein, as genocide are purposive action ,it can be also commit in way of imposing proscription or restriction of reproduction of group members, increasing infant mortality, and breaking the linkage between reproduction and socialization of children in the family or group of origin.⁵⁵ She also supports the idea that states are also perpetrator of genocide.

⁵³ Ibid

⁵⁴Horowitz, I.L. *Genocide: State Power and Mass Murder* (2nd ed.). Routledge (1976)

⁵⁵ Helen Fein, *Genocide: A Sociological Perspective*, Volume, ISSN 0011-3921,1990

According to the politicians such as Barbara Harff and Ted Gurr, genocide is the result of promotion and execution of policies. It is the death of the majority of the group that is defined primarily by their commonly shared characteristics, by state or its agent in order to promote and implement various policies.⁵⁶

On the nature and aim of genocide the historian John Cox said that special character that makes genocide is its ambition. Genocide aims to not only eliminate individual members of the targeted group but to destroy the group's ability to maintain its social and cultural cohesion and, thus, its existence as a group.⁵⁷

Regarding genocide these all scholars from various disciplines have different perspective on the reason and doer of these crimes. On the other hand all are agreed on its features such as intentional or purposiveness of the crime, massiveness of killing and the targeted victims by their commonly shared characteristics.

B. Crime against humanity

These crimes consist of acts that are part of widespread or systematic attacks which target civilian populations. According to UN framework analysis, even if non-civilians might also become victims of the attack, for an act to be considered a crime against humanity, the ultimate target of the attack must be the civilian population.⁵⁸

Crime against humanity encompasses several acts of crimes that are physical elements to constitute this crime. According to article 7 of Rome Statute of the ICC those acts are murder, extermination, enslavement, deportation or forcible transfer of population Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, persecution against any identifiable

⁵⁶ Toward Empirical Theory of Genocides and Politicides, *International Studies Quarterly*, 37:3, 1988

⁵⁷ Cox, *To Kill a People: Genocide in the 20th Century* (New York: OUP, 2021, 2nd edition), p. 17.

⁵⁸ *Ibid* 30

group or collectivity on political, racial, national, ethnic, cultural, religious, gender, enforced disappearance of persons; the crime of apartheid, and other inhumane acts.⁵⁹

The mental state (Mens rea) element of crime against humanity is that intention to cause great suffering, or serious injury to the body or to mental or physical health and committed in a way that can widespread or systematically attack civilian population. In absence of this mental element some of the acts that are listed under the above Article a - k can constitute or form other crime such as enslavement, murderer, torture and etc... Additionally the fulfillments of this element in similar acts which are not listed in the said provision also constitute crime against humanity.

According to legal scholars Richard Veron and David Luban :

“The phrase “crime against humanity” denotes the enormity of the crime in two ways. First, it puts forward for consideration that such offense’s aggrieved nature is not limited to the victims and their own communities, but also to all human beings, regardless of their community. Second, it denotes that these offenses cut deep, violating the core humanity that we all share and that distinguishes us from other natural beings”.⁶⁰

This double meaning is criticized in terms of clarity. The word humanity is used in both ways of defining the nature of crime against humanity. Due to the word having two meanings, it is ambiguous whether it denotes “quality of being human” or “aggregation of all human beings”.⁶¹

⁵⁹ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6

⁶⁰Luban, David, "*A Theory of Crimes Against Humanity*" (2004). Georgetown Law Faculty Publications and Other Work

⁶¹ Ibid 59

C. War crimes

War crimes are a criminal act that commit at the time of war against various victims, combatants, sick wounds, detained, medical and religious personnel at international as well as non-international armed conflict. Essential principles of law of war are distinction, proportionality and protection. Particularly a breach of one of these principles considered as war crime. It is also a breach of the law of armed conflict that governs conduct of warfare between states.

War crimes are stipulated under Rome statute of the ICC ,the four Geneva conventions and additional protocols and statutes for the ad hoc tribunals such as the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone and the Law Establishing the Extraordinary Chambers in the Courts of Cambodia.

According to Art 8 of Rome Statute the essential elements of war crimes is the commission of acts that are listed under sub Art A-C , as part of a plan or policy or as part of a large-scale. These crimes are associated with international and non-international armed conflict. Additionally, they encompass various victim scenarios. In both international as well as non-international armed conflict the protected peoples are medical and religious personnel, humanitarian workers and civil defense staff. On the other hand, in international conflict cases wounded and sick members of armed forces in the field and at sea, prisoners of war and civilian persons are protected. Furthermore ,the protected persons in case of NIAC are persons who have not direct participation in hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause.⁶²

2.2. General background of Mai Kadra massacre

The Mai Kadra massacre occurred in a place called Mai Kadra which is in northern Ethiopia Tigray Region. According to various reports such as Amnesty International and Human Rights

⁶² Ibid 58

Watch joint research report on “crime against humanity and ethnic cleansing in Ethiopia’s Western Tigray Zone” , the mass killing was committed continually for hours starting from 3 pm on November 9 /2020 to evening. This massacre targeted civilians that are local and migrant farm workers, their number estimated 200 to 1100 as per different reports show.⁶³

According to the Ethiopian Human Rights Commission and United Nation Higher Commissioner for Human Rights joint investigation report on the Tigray conflict, the massacre committed by Tigrayan youth men called Samri by using machetes, knives and axes against 200 to 1100 estimated Amhara civilians. The killing group was assisted by local militias and Special Forces of Tigray Region. The victims of Amhara were some local and migrant civilians. The massacre particularly targeted Ginb Sefer and Serategna sefer.⁶⁴

Different reports and researches such as Human Rights Watch and Amnesty International report on Crimes Against Humanity and Ethnic Cleansing in Ethiopia’s Western Tigray Zone that (April 2022) and EHRC and OHCHR Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia which conducted From 16 May to 30 August 2021, shown that there were preparatory works for the commission, use of weapons, contained destructive acts and resulted destructions. According to these report and prior the massacre the responsible group called Samri as well as militia forces frustrated others, they were ready to killing targeted civilians, made killing materials, searched door to door Amharas houses in order to find out who uses Sudan SIM cards, selected and registered Amharas or Tigrayans on the basis of their Ethnic and closed all exits deliberately to prevent targeted groups from escaping. The EHRC and OHCHR joint investigation reported the massacre as systematic and widespread.⁶⁵

⁶³ EHRCO Preliminary Investigation Report on Major Human Rights Violations in and around Maikadra,” December 25, 2020, <https://ehrc.org/wpcontent/uploads/2020/12/EHRCO-Preliminary-Investigation-Report-on-Major-Human-Rights-Violations-in-and-around-Maikadra>

⁶⁴ Report of the EHRC/OHCHR Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia" 2021

⁶⁵ Ibid

The weapons used by the perpetrators were knives, axes, Matches Gun, hatchets, sticks and rope. The other weapons were used as the main tool for the massacre. Additionally, the perpetrators were targeted by using language (Tigrigna as method of selection), forcefully displaced and frustrating the victims who survived the attack.⁶⁶

The time of commission of the Mai Kadra massacre shows the leading situation for the occurrence of the massacre committed during internal conflict.⁶⁷ It is between the FDRE government and TPLF. It began November 3/2020 by the attack of TPLF force against EDF of Northern Camp in Tigray Region.⁶⁸The parties to the conflict with the FDRE government are END force, Ethiopian Federal Police Force, Regional Militias and Special Forces such as Amhara and Afar and Eritrean Defense Force. The Tigray Liberation Front was fighting with these parties.⁶⁹As a result, in Mai Kadra before the massacre there were pre existing tensions between residents for several years. The raising of questions regarding Welkait as well as the “law enforcement operation” or conflict was the immediate catalyst for occurrence of the massacre.⁷⁰

The narrative on what happened in November 2020 in this town is varying from reports to reports of national as well as international human rights in terms of the cause of the commission of massacre. However, regarding the identity of the victims, used weapons and the perpetrators are the same.

As Human Right Watch and Amnesty International reported in their joint investigation report in April 20222, that after the spread of news about Ethiopian Federal Defense Force advancing on the town was imminent and strangers showed up in the town changed the atmospheric order to identify new comer Tigrayan militias presented. They ordered the community to protect themselves and their houses from the new comer thief’s. The resident reported this situation to local kebele administrators but they did not respond appropriately. The first killing was taking

⁶⁶ Ibid

⁶⁷ FDRE Prime Minister Office ,The Ongoing Law Enforcement Operations in Tigray: Causes and Objectives (November 14, 2020)

⁶⁸ Ibid 71

⁶⁹ Ibid 69

⁷⁰ Ibid 67

place at 3 pm at Ginb sefer, continued for hours and lasted until 5 pm. additional related information also reported by referring to the Ethiopian Human right commission report.⁷¹

In addition to this EHRC also issued two reports, a rapid preliminary investigation report and the joint investigation report. Accordingly regarding the Mai Kadra massacre of November 9/2020, it reported that the massacre was committed by a Tigrayan Youth group called Samri. The selection and preparation process began on the morning of November 9 with collaboration of local administration and other militias affiliated with TPLF.⁷²The killing began at around 3pm. Members of a youth group attacked Amharas selectively.⁷³

The IMTF investigation and prosecution committee conducted a criminal investigation .Accordingly, it reported that the killing group intentionally selected the targets on the basis of their Ethnic in order to identify the team and the massacre committed brutally but the report did not provide the number of the victims.⁷⁴

After a full fledged fight TDF fully withdrew its troops from Afar in order to allow humanitarian assistance services declared by Ethiopian federal government to permit the truce aid in March 2020. In addition to this both parties agreed for peace and signed agreement for end hostilities for lasting peace through permanent cessation of hostilities in (2023).

According to the FDRE MoJ statement that was released on March 30/2023 ,the ministry withdrew the charges against the civil and military leaders of Tigray Liberation Front who were accused of crimes in connection with the conflict and explained their cases have been dealt with in the framework of transitional justice. It is based on a peace agreement signed between the

⁷¹Ibid 69

⁷² Ibid 63

⁷³Ibid 62

⁷⁴ The Federal Democratic Republic of Ethiopia Inter-Ministerial Taskforce on Accountability and Redress Investigation and Prosecutions Committee ,*criminal investigation on On Allegations of War crimes, Crimes Against Humanity and Other Violations of international Human Rights Law, International Humanitarian Law, and Domestic Criminal Law Committed by the Parties to the Conflict in Northern Ethiopia*, April 2022

Federal Government of Ethiopia and the Tigray People's Liberation Force (TPLF) and consideration of international experience.⁷⁵

Accordingly ,the initiated prosecution of the Mai kadra massacre was terminated and left to transitional justice.⁷⁶It's process is at the stage of public consultation and discussion on draft policy options.It conducted its first regional consultation in Oromia region and it will commence the second one starting from March 31 in 12 towns of Sidama,South West and Southern Nation Nationalities and people regions. ⁷⁷ TJ has a pivotal role in addressing post conflict violations that are unable to be redressed by regular mechanisms. On the other hand , effectiveness of TJ is determined by the holistic approach which stands for wide national problems,the contradiction between supremacy of the FDRE constitution and components of transitional justice (amnesty) and the legitimate scope of TJ on ongoing criminal prosecution in Ethiopia context.

Conclusion

Atrocity crimes have a ruinous effect on individuals, communities and entire human dignity. These crimes are deliberately targeting individuals or groups on the basis of their identity. Minorities are also the victims of such crimes. The four layers of legal systems such as international, regional, hybrid of international and national and national legal systems seek to address these atrocities to hold the perpetrators accountable. Understanding genocide, war crimes and crime against humanity is essential in order to identify the gravity as well as impact and character of these crimes.

These crimes are internationally condemned and punishable crimes. The major distinction among the core crimes of atrocities are in terms of context, targeted or protected group (victims),intent of the perpetrators, number of these types of acts. Contextually genocide is associate with non-continuousness of targeted group whereas crime against humanity relates with indignation of humanity and war crime is also associate with international and non-international armed conflict.

⁷⁵ Ministry of Justice ,statement regarding withdrawal of charges ,March 30 /2023 also available at <https://twitter.com/MOJEthiopia/status/1641439653860610050>

⁷⁶ Ibid 75

⁷⁷ Ibid

Additionally, unlike war crimes and crime against humanity, special intent is required in case of genocide. Regarding victims, genocide targets members of protected group while crime against commit against civilian population. As opposed to these two atrocity crimes, the victims of war crimes are combatants or non-combatants.

Chapter Three

3. Legal and institutional framework regarding state responsibility to prosecute and characterization of the crime

3.1. Legal and institutional framework towards prosecution of atrocity crimes

Introduction

The legal and institutional framework regarding state responsibility to prosecute and characterization of the crime is a fundamental aspect of international criminal, human rights and humanitarian law. It involves the legal mechanisms and procedures that enable the investigation, prosecution, and punishment of perpetrators that are responsible for committing atrocity crimes.

This framework also includes the characterization of these crimes to ensure that they are properly identified and prosecuted under international, regional and domestic law of the concerned country. Overall, it plays a critical role in assessment of state responsibility to prosecute perpetrators of atrocity crimes.

This chapter discusses the legal and institutional basis of state obligation towards the prosecution of perpetrators of atrocity crimes. It includes all necessary and relevant international, regional and domestic laws as well as institutions. Additionally, it illustrates the characterization of the crimes in accordance with these laws.

3.1.1. Legal framework on state responsibility to prosecute atrocity crimes

The basics of state responsibility to prosecute perpetrators of human rights violations emanates from different international, regional as well as domestic laws. Therefore, this study is based on

all necessary and relevant international and domestic legal frameworks that fall under different categories of laws such as human rights, international humanitarian national and international criminal law and other municipal laws.

Sources of Ethiopia laws are composed of international treaties or convention, federal and regional laws. The applicable law for state responsibility to prosecute perpetrators of atrocity crimes is determined by the jurisdiction where the crime was committed, the nationality of the victim, and the nationality of the perpetrator. Additionally the choice of international and regional laws is also determined by the relevant treaties and agreements that have been ratified by the state in question. Considering the Mai Kadra Massacre's case, unique /special features such as time of occurrence of the violation, perpetrators, victims, and character of crime are facts that will be taken into account for selection of appropriate law. The massacre was committed during conflict, killed hundreds of ethnic Amhara civilians and it was committed in Ethiopia, against Ethiopian .As result, the FDRE Constitution of 1995, Criminal Code of 2004 and other relevant national laws of the country are applicable. At international level the international as well as regional agreements or treaties which Ethiopia has ratified are also applicable.

Under this subsection there are fundamental themes that are the core point of the study. These are atrocity crimes, a choice of applicable law on Mai kadra case and State duty/responsibility to prosecute perpetrator of grave human right violation particularly the case of Mai Kadra massacre in light of international, regional and national laws. Generally it intended to clearly address the applicable international, regional and national laws of Ethiopia, the grounds for selection of these laws and specific articles of these laws that are relevant for the Mai Kadra Massacre.

I. International laws

- **International customary law**

International customary law imposes a duty to prosecute perpetrators of atrocity crimes based on the principle of universal jurisdiction that enables states to exercise jurisdiction over such crimes. These laws are a major source of peremptory norm of international law. According to report of International Law Commission that adopted Peremptory Norms of General International Law (jus cogens) as an agenda for its seventy-first session (29 April–7 June and 8 July–9 August

2019), the prohibition of genocide, the prohibition of crimes against humanity and the basic rules of international humanitarian law are among the peremptory norms that has referred as having this status by the commission. Additionally these norms are not derogable.⁷⁸

Accordingly, crime against humanity consists of violent acts such as murder, extermination, enslavement; deportation or forcible transfer of population; deprivation of physical liberty, persecution against any identifiable group or collectivity, enforced disappearance of persons and the crime of apartheid. It is not an exclusive list, other inhumane acts that result in suffering, or serious injury to body or to mental or physical health are also included. To constitute crime against humanity, these all acts as well as other similar inhuman acts should be committed systematically and widespread in the way that targeted civilian population with the knowledge of attack.⁷⁹ Regarding this crime, states have an obligation to prosecute the perpetrator and in cases where the state cannot investigate as well as prosecute it is required to extradite the perpetrator.

The prohibition of genocide is other peremptory norm of international customary law. It is recognized as an atrocity crime under international customary law. Before the Nuremberg Trials the crime of genocide was not considered as international crime. These trials were covered only crimes of genocide that committed during war.⁸⁰ According to this military tribunal, crime of genocide was considered as crime against humanity.⁸¹ In case of Genocide states are primarily responsible to prosecute perpetrators as the issue is considered as domestic affairs of states before the genocide prevention and punishment convention. After the adoption of this convention this obligation was not affected rather it was excelled by the convention provisions.⁸²

Under international customary law, war crime has been widely addressed. The Four Geneva Conventions and their additional protocols are major customary international humanitarian rules

⁷⁸ United Nation General Assembly ,Report of the International Law Commission Seventy-first session (29 April–7 June and 8 July – 9 August 2019) , conclusion 23 , Advance version (20 August2019) also available at : https://legal.un.org/ilc/reports/2019/english/a_74_10_advance.pdf

⁷⁹ *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T, T Ch I (2 September 1998)

⁸⁰ Summary Records of the meetings of the Sixth Committee of the General Assembly, 21 September-10 December 1948, Official Records of the General Assembly

⁸¹ *Indictment presented to the International Military Tribunal sitting at Berlin* on 18th October 1945. London: Her Majesty's Stationery Office, November 1945. 50 p.(Cmd. 6696). p. 29 ,(count four (b))

⁸² Lori L. Bruun, Beyond the 1948 Convention - Emerging Principles of Genocide in Customary International Law, 17 Md. J. Int'l L. 193 (1993). Available at: <http://digitalcommons.law.umaryland.edu/mjil/vol17/iss2/4>

that provide details of war crimes. According to rule 156 War crimes are a grave breach of customs and laws such as the Four Geneva Conventions that govern means and methods of war during international and non-international armed conflict . Additionally ,according to rule 158 states have a duty to investigate war crimes committed by their nationals or armed forces, or on their territory, and prosecute the suspects. Statutory limitation against war crime is also prohibited.⁸³

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

General Assembly adopted (resolution 260 A (III) of 9 December 1948). It was applied for the first time by the ad hoc International Criminal Tribunals for the former Yugoslavia. States affirmed the crime of genocide as international crime and undertaken to prevent and to punish through this convention.⁸⁴Before adoption of this convention genocide was considered as domestic affairs of states.

According to article 2 of the convention, the crime of genocide consists serious acts of killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group that committed with intent to destroy, in whole or in part, a national, technical, racial or religious group. Additionally, Article 3 of the convention provides genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to genocide and complicity in genocide are punishable acts.

Accordingly ,the essential elements to constitute crime of genocide are the general intent to commit genocide acts which enumerated under article 2 of the convention ,special intent to destroy the group in whole and in part , the commission of those acts listed under article 2 and 3 and should targeting a protected group or member of protected group.

⁸³ ICRC Database, Customary IHL , Rules - Customary IHL- ICRC, <https://ihl-databases.icrc.org/en/customary-ihl/v1> (Last accessed on February 8 2023)

⁸⁴ Convention on Prevention and Punishment of Crime of Genocide ,preamble ,1948

In case of the crime of genocide, beyond the existence of general intent towards the result of the acts, special intent (*dolus specialis*) to destroy the group in a whole or in a part is strictly required. In absence of this clear intent any act of violence could not be considered as genocide. The preparatory work of convention on prevention and punishment of genocide specifically provide the necessity of this element as “In the absence of that factor, whatever the degree of atrocity of an act and however similar it might be to the acts described in the convention, that act could still not be called genocide ”⁸⁵

In genocide cases victims are targeting by their membership of specific group. The other essential element that provided under Article 2 of the convention requires the targeted group should be protected group to constitute this criminal act as genocide. Accordingly, elements that constitute genocide crimes are intent to destroy, in whole or in part, a national, ethnical, racial or religious group, and commit acts such as killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part ,imposing measures intended to prevent births within the group and forcibly transferring children of the group to another group. ⁸⁶Basically protected groups are national, ethnical, racial or religious groups. The political and economic groups are clearly excluded from this list of groups by preparatory works (travaux preparatoires) of convention on prevention and punishment of the crime of genocide convention. Accordingly, the reason for exclusion of these two groups is they lacked the necessary homogeneity and stability.⁸⁷

According to article 5 of the convention, states that are party to the convention are required to give effect to the provisions of the convention through legislative measures such as integrating it in constitution and give effective remedies for the commission of acts that are enumerated under article 2 & 3 of the convention.⁸⁸ Accordingly state has clear obligation to prosecute crime of genocide.

⁸⁵ Ibid 78 page 109

⁸⁶ Convention on prevention and punishment of crime of genocide ,1948

⁸⁷ Ibid 78

⁸⁸ Ibid 85

- **Universal Declaration of Human Rights**

“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.”⁸⁹

Universal Declaration of Human Rights is the first human right document that provides expressly as well as implied state obligations towards respect, protection and fulfillment. It has attained international customary law status, especially civil and political rights that are provided in this Covenant. It expressly provided a mandate on state parties (including Ethiopia). Ethiopia, particularly as one of the state parties, has given place to UDHR and manifests through the interpretation of fundamental human rights and freedoms in accordance with UDHR under its constitution article 13(2).

Regarding impliedly vested mandates on states, it is declared under article 8 of the declaration. It provides individual’s right to an effective remedy for violation of rights that are guaranteed and granted in international as well as national law. To entertain such cases, the pertinent national tribunals are mandated. It results in an obligation on the state to ensure justice for breach of nationally and internationally recognized human rights and achieves the aim of justice through its competent institutions. In other words, behind the right of individuals to claim remedies there is the obligation of states to give effective remedies according to relevant laws.

- **International Convention on Civil and Political Rights**

ICCPR is one of the core international human rights treaties ratified by Ethiopia. Article 2 of this covenant provides that state parties are required to respect and ensure the rights recognized in the covenant without discrimination of any kind. This means that all individuals within a state’s jurisdiction must be able to enjoy their civil and political rights without distinction based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2 (3) of ICCPR also provides state obligation to ensure accountability towards violation of rights which are provided under this covenant, ensure effective remedies and enforcement of

⁸⁹ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR))

remedies by pertinent authority of state parties.⁹⁰ According to the HRC's General Comment No. 31 [80], the nature of state obligation is not limited to specific organs of government rather on all organs of the government. A state like Ethiopia that has a federal state structure shall extend the responsibility to all organs and levels of government. It also obliges states to implement this convention by incorporating it in domestic laws and by national procedural laws.⁹¹

States cannot justify their non-performance/ failure to comply with their treaty obligations on the political, social, cultural or economic considerations and particularly their domestic laws such as constitutional and other fundamental laws. Therefore, states apply it through enabling laws such as the criminal code, or directly. If the enabling laws do not incorporate adequate provision to give life to ICCPR it can be considered as an inconsistency of domestic laws with international laws ratified by the country.

Regarding violations of recognized rights or freedoms Article 2 of the covenant provides the state's responsibility to ensure the perpetrator of such violation is brought to justice. It implies state parties to these covenants are obliged to investigate and bring perpetrators to justice. If they fail to do so, it is by itself breach of this covenant. Accordingly, these mandates of states emanate in respect of those violations recognized as criminal under either domestic or international law.

- **The Rome statute**

The Rome statute of 1998 defined and addressed atrocity crimes that are regulated under various international customary and other laws. The definition ,constitutive elements and acts of genocide, war crime and crime against humanity which provided under this statutes are similar with international customary law , convention on prevention and punishment of crime of genocide and Four Geneva Conventions of 1949 .⁹²

⁹⁰ Ibid 3

⁹¹ UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, available at: <https://www.refworld.org/docid/478b26ae2.html> [accessed 10 February 2023]

⁹² Ibid 93 preamble page 1

II. African Regional laws

The African Charter on Human and Peoples' Rights that was adopted by the Assembly of Heads of States and Governments of the OAU in 1981. It provided a number of obligations on state parties to the charter. One of these obligations as per article 25 is to ensure and promote the respect of the rights and freedoms that are provided under the charter. This duty of state supported by article 26 of the charter that provides State Parties expected allow the establishment as well as improvement of pertinent national institutions that have responsibility to promote and protect the rights and freedoms guaranteed by this Charter. It regulated the establishment of the African Court on Human and Peoples' Rights that was adopted on 9 June 1998 and entered into force on 25 January 2004.⁹³

The other African regional law on criminal justices in Africa is the Protocol to amend the protocol on the statute of the African courts of justice and human and people's rights that declared the merger of this court with the Court of Justice of the African Union. Under article 28 (b) - (d) of this protocol, the core international crimes such as genocide, war crime and crime against humanity are provided.⁹⁴ These provisions are similar with the Rome statute provisions that provide core crimes of atrocities under article 6, 7 & 8. However, there are limitations on African regional human rights as well as criminal justice regarding atrocity crimes and the state's responsibility to prosecute such crimes.

III. National laws

- **FDRE constitution**

One of the principles of fundamental and supreme law of Ethiopia which is called the FDRE constitution is respect of human and democratic rights. Regarding human rights, it provides rights, status of international laws, the interpretation of fundamental rights and freedoms and duty to respect and their enforcement in all government levels.

⁹³ <https://www.african-court.org/wpafc/basic-information/>

⁹⁴ The Protocol to amend the protocol on the statute of the African courts of justice and human and people's rights (2014)

On the basis of article 9 (4) of this constitution all the international agreements are considered as part of the law of land. It implies that ICCPR, UDHR and other international agreements ratified by Ethiopia are binding and shall be applied in territory of Ethiopia as other laws of the land. Furthermore, article 13 (2) obliged that the interpretation of fundamental rights and freedom that are specified under this constitution to be in manner according to principles of UDHR, international covenant on human rights and international instruments adopted by Ethiopia .Accordingly Ethiopia has international and national obligations regarding fundamental human rights and their violation that are provided international agreements as well as ratified by Ethiopia.

The FDRE constitution categorizes the two of core atrocity crimes as crimes against humanity. According to article 28 of the constitution genocide is one of the crimes that can be defined as crime against humanity (this provision prohibit statute of limitation; amnesty and pardon on such crimes).This provision referred that some of crime against humanity which are defined by international agreements are genocide, summary executions, forcible disappearances or torture. English version of this provision read as;

“...Criminal liability of persons who commit crimes against humanity, so defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, such as genocide, summary executions, forcible disappearances or torture shall not be barred by statute of limitation. Such offenses may not be commuted by amnesty or pardon of the legislature or any other state organ.”⁹⁵

State duty regarding human rights is provided under section of scope and application of the human right provisions in the constitution. As per article 13(1) the responsibility and duty to respect and enforce the human rights provision of the constitution is vested on all government organs at both federal and state level.

FDRE Criminal Code Proclamation No.414/2004

The FDRE Criminal Code (2004) contains various laws, principles, exceptions and miscellaneous provisions on crimes that are under the jurisdiction of Ethiopia. This law identifies

⁹⁵ *Constitution of the Federal Democratic Republic of Ethiopia* August 1995

acts that constitute crimes and their penalties against doers of such acts.⁹⁶ The major aim of this code is prevention of crimes through providing or regulating the conduct and the consequence of their violations.

Regarding atrocity crimes, this criminal code also shared the feature of the FDRE constitution article 28 that mixed or confused crime against humanity with crime against genocide. According to article 44 of this code, acts that are referred to as crimes against humanity are the crimes which are provided under article 269 - 274. Accordingly these article provided Genocide (article 269); War Crimes (article 270,271 and 272) pillage or piracy and looting (article 273) and - Provocation and Preparation (article 274).This results vagueness of issue of what is crime against humanity in Ethiopia legal system. Additionally it raises the question on separate recognition of war crime and genocide. Furthermore there is no provision that clearly provides acts, elements and penalties of crime against humanity. Dr Tadesse Sime Metekia in his article on 'Prosecuting crimes against humanity in Ethiopia,' stated that Ethiopian criminal law does not prohibit crime against humanity ,misconceptualized the crimes, genocide and war crimes and the constitutional reference under art 28 is also wrong designation of international crimes.⁹⁷

Additionally article 87 of the code requires every penalty and measures to be applicable in a way that achieves the very purpose of the code that was provided under article 1 of the code. As a result the principle of legality, particularly the prohibition of creating crime by analogy is concerning. Accordingly, assessing how the Ethiopian government strikes a balance between these two poles in general and in the case of the Mai Kadra massacre is the significant point of this study.

The prosecution of atrocity crimes and the characters of these crimes are not mere concepts rather they are legally framed and defined. In international legal system the definition of atrocity crimes (core international crimes), their essential elements and state's duty to investigate as well as to prosecute these crimes are provided under international laws that has attained international

⁹⁶ Ethiopia: Criminal Code [Ethiopia], Proclamation No. 414/2004 ,2004 ,article 2

⁹⁷ Tadesse Simie Metekia, "Prosecuting crimes against humanity in Ethiopia: where is the law?" *ISS Today* June 2022 <<https://issafrica.org/iss-today/prosecuting-crimes-against-humanity-in-ethiopia-where-is-the-law>> accessed September 2022

customary laws and Jus Cogens status such as Convention on the Prevention and Punishment of the Crime of Genocide ,Universal Declaration of Human Rights ,International Covenant on Civil and Political Rights and Rome Statute. Accordingly, the international duty of states to prosecute atrocity crimes emanated from these laws.

African regional legal frameworks towards prosecution as well as on atrocity crimes are very limited. The African Charter on Human and People’s Rights emphasized on assurance and promotion of human rights rather than prosecution of atrocity crimes. The Protocol to amend the protocol on the statute of the African courts of justice and human and people’s rights took the definition for atrocity crime from the Rome statute. Even though ACHPR as well as this protocol are widely recognizing human rights including group rights, the regional legal framework towards state’s duty to prosecution of the violation of these crimes is not provided

In the Ethiopian legal system definition and essential elements of core crimes of international laws such as genocide, war crime and crime against humanity are vague. The supreme law of the land as well as the criminal code of the country failed to distinguish the crime against humanity from the other two core crimes of atrocities. According to the above-mentioned legal framework Ethiopia has an international and national duty to prosecute perpetrators of atrocity crimes regardless of the vagueness of the definition of these crimes.

3.1.2. Role and responsibilities of institutions to redress grave human rights violations

States’ duty to redress grave human right violations requires enabling conditions such as institutions, procedures and mechanisms to effectively fulfill this duty. The appropriate institutions for prosecution of such crimes are not limited to courts; rather, various institutions that are legally responsible have also a vital role in redressing grave human right violations. These parties may be courts, prosecutors, investigators and non-governmental international and national human right institutions. This section of the study discusses the existing institutional frameworks towards prosecution of atrocity crimes, their mandates and power as well as their role.

I. The role of international institutions

A. UN based human rights protection system

The United Nation based human rights protection system contains various mechanisms with different purposes and functions. These mechanisms are based on charter and treaty bodies. Main purpose of these institutions is protection of human rights internationally. The Human Right Council is one of the charter based UN human rights systems. It has the responsibility to protect and promote human rights. In addition to this it is also mandated to address and provide recommendations towards situations of human right violations.

Accordingly, In order to address atrocity crimes the council has investigative mandates bodies that have responsibility to respond to situations of serious violations of international humanitarian law and international human rights law as well as to promote accountability and combat impunity.⁹⁸ These all employed mechanisms and procedures are main activities of the UN OHCHR.

This entity contains all of the UN human right systems with special mandate. Among the above mentioned investigative mandates bodies Independent International Fact-Finding Mission on the Islamic Republic of Iran, Independent International Commission of Inquiry on Ukraine, Independent Fact-Finding Mission on Libya and International Commission of Human Rights Experts on Ethiopia, are the recent examples.

Accordingly the roles of these mechanisms and procedures are to investigate and establish facts and circumstances on the alleged violations and provide guidance on post conflict as well as post violations, such as accountability and transitional justice and engagement with pertinent stakeholders. Furthermore the UN OHCHR also by itself investigates human rights violations in various nations such as Libya, Sri Lanka and Ethiopia with collaboration of the Ethiopian Human Right Commission.⁹⁹

⁹⁸ <https://www.ohchr.org/en/hr-bodies/hrc/other-sub-bodies>

⁹⁹ International Commission Of Human Rights Experts on Ethiopia, resolution S-33/1 /December 2021 and Independent International Commission of Inquiry on Ukraine, resolution S-34/1/ May 2022 also available at ;

The International Commission of Human Rights Experts on Ethiopia recognized the Mai Kadra massacre as a large -scale mass killing which was committed in the Tigray region. It does not adequately address and not include the massacre.¹⁰⁰

II. The role of African regional human rights and criminal justice institutions

The African human right system operates a standard setting of treaties, resolutions, general comments, concluding observations and dispute resolution through the mechanisms that monitor its compliance with human right treaties that are adopted by the African Union. It also oversees the implementation of these treaties by the African Commission on Human and People's Rights , African Committee of Experts on the Rights and Welfare of the child and African Court on Human and people's rights.

The current African regional justice system is based on the African Court of Justice and African Court on Human and People's Rights. AU tried to merge these two courts through Malabo protocol. Among 55 African countries only 15 countries signed the protocol and none of the African states including Ethiopia has ratified it. As a result, both courts remained separate and ACHPR continued its previous functions that were their mandates before the adoption of the protocol. However, the AU operates in relation to the matter of good governance and respect of human rights through Judicial, Human rights and Legal organs.

Accordingly, only the human rights system is operating in Africa. The ACHPR has no jurisdiction over atrocity crimes such as genocide, war crime and crime against humanity. On the other hand the ACJ has paralyzed and the protocol that declared merger of these two courts also became mere legislation that existed without functional implementation. In addition to these the role of the African regional human right system which is working on promotion and protection of human rights is limited to promotion and protection of the rights recognized by the African Union. As a result there is no contribution from these institutions towards the investigation and

<https://www.ohchr.org/en/hr-bodies/hrc/ichre-ethiopa/index>
<https://www.ohrc.org/en/hr-bodies/hrc/iichr-ukraine/index>

and

¹⁰⁰ Human Right council ,Fifty-first session 12 September–7 October 2022 ‘Report of the International Commission of Human Rights Experts on Ethiopia (19 september 2022)A/HRC/51/46

prosecution of the alleged atrocity crimes that committed in relation to Northern Ethiopia conflict including Mai Kdara massacre.

III. National institutions

The primary subject of the obligation to prosecute core international crimes is states. Accordingly, states are required to prosecute or establish accountability through its national institution domestically. Permanent international criminal court and ad hoc international criminal tribunals such as ICC (it is the only permanent court that has jurisdiction over atrocity crimes) ,expressed that international institutions and mechanisms are complementary and not intended to replace the existing national institutions.¹⁰¹ The prosecution of core international crimes should be brought before these institutions where states fail to prosecute nationally.

As the previous experiences of prosecution of these crimes, most of the crimes prosecuted by ad hoc international or hybrid tribunals. International Criminal Tribunal for the Former Yugoslavia, International Criminal Tribunal for Rwanda, International Military Tribunal of Nuremberg, Special Court of Sierra Leone (hybrid) and Extraordinary Chambers in the Court of Cambodia are some of supranational institutions. However, Ethiopia has prosecuted the perpetrators of grave human rights violations including genocide that committed during Derg regime by establishing Special Prosecutor's Office with the mandate to investigate and prosecute these crimes.¹⁰² Accordingly, prosecuting perpetrators of atrocity crimes nationally is not an unprecedented way of performing its duty for Ethiopia. Regardless of its imperfection it was the first experience in Africa in relation to prosecution of such crimes nationally and self-initiated. Therefore the Ethiopian national institutions role will be discussed as follows.

A. Minister of Justice

FDRE Proclamation No. 1263/2021 Definition of Powers and Duties of the Executive Organs Proclamation article 16(21) proclaims that the Minister of Justice is one of members of the

¹⁰¹<https://www.icj-cij.org/home> accessed June 2022

¹⁰² Haile-Mariam Yacob, The quest for justice and reconciliation: The international criminal tribunal for Rwanda and the Ethiopian high court *Hastings International and Comparative Law Review* vol. 22 1999

Council of Ministers as well as executive organs. Article 40 (3) provided that the MoJ become Attorney General. Accordingly, Federal Attorney General Establishment Proclamation No. 943/2016 applies to the current Minister of Justice.¹⁰³

Accordingly, the MoJ is mandated to ensure the actuality of a structure and working procedure that enable the criminal prosecution division to preserve its operational independence in carrying out its activities, especially, criminal prosecution, litigation and execution of judgments. Furthermore, the minister has power and duties that have been given to the General Attorney.

Its major objectives are respecting and enforcing the constitution and the constitutional order, ensuring rule of law, enforcing criminal law and enforcing civil interest of the Federal Government and the public. It functions as a self-administered body of government that has its own legal personality and is accountable to the Prime Minister and the Council of Ministers.¹⁰⁴

In order to achieve the aforementioned objectives it initiates the commencement of criminal investigation, follows up ongoing investigation as well as appropriate completion of investigation and orders discontinuation or restart of discontinued investigation on based on public interest or where it is proved that there could be no criminal liability, ensures that investigation is conducted in accordance with the law and gives the necessary instruction.¹⁰⁵

Regarding human rights the MoJ is designated on implementation of the treaties that ratified or adopted by Ethiopia through follow up, responding to concerns that rise in relation to the application or implementation of such treaties to prepare national reports. Additionally these all activities required to act in collaboration and consultation of relevant bodies.¹⁰⁶

Accordingly, responsibility to prosecute and investigate grave human rights violations such as the Mai Kadra massacre is vested in the MoJ. Even though the prosecution of atrocity crimes is limited by the existing legal framework of the country, it has a pivotal role in prosecution of

¹⁰³ FDRE Proclamation No. 1263/2021 Definition of Powers and Duties of the Executive Organs Proclamation Art 16(21), 2021

¹⁰⁴ Federal Attorney General Establishment Proclamation No. 943/2016 Art 6

¹⁰⁵ Ibid

¹⁰⁶ Ibid see article 6(3) and 6(8)

atrocious crimes within the provided or existing legal framework that can enable it to perform its primary obligation.

B. Inter-Ministerial Task Force

The government of Ethiopia has established an Inter-Ministerial Task Force (IMTF) to implement the recommendations of the EHRC-OHCHR Joint Investigation Team and to address serious human rights violations in Ethiopia during the conflict between the FDRE government and TPLF. It has seven members from the Council of Ministers. It is composed of the MoJ, the Minister of Defense, the Minister of Peace, the Minister of Social and Women's Affairs, the State Minister of Finance, the State Minister of Foreign Affairs, and Commissioner of General of the Federal Police Commission. Only selected commissioners or ministers can be members of this task force. It has four committees that will be chaired, respectively, by the MoJ, the MoP, the MoWS, and the MoF, according to the statement.¹⁰⁷

According to the Strategic Approach and Action Plan the task force was established in order to ensure accountability regarding all violations of human rights during the said conflict. It has responsibility for the design, coordination and implementation oversight of all response measures anticipated in the Strategic approach and action plan for implementing recommendations of the EHRC-OHCHR joint investigation team and for addressing grave human right violations in collaboration with relevant stakeholders.

The power and function of the task force are ensuring follow up investigation, prosecution and remedial measures are taken by looking into all allegations of serious violations, findings and conclusions issued by the joint investigation team of the GoE and the EHRC. It also lays institutional basis in accordance with its mandate to craft, adopt and oversee the implementation of a comprehensive strategy that would enable the GoE to investigate the allegations included in the report, bring all perpetrators of serious crimes to justice, and redress victims.

¹⁰⁷ Ibid 46

It works in accordance with the government approach. In order to guide the overall tasks and facilitate particular interagency coordination it assigned the Minister of the Ministry of Justice as contact person. The four committees are investigation and prosecution, refugees and internally displaced persons affair, sex and gender based violence and resource mobilization committees. In relation to the prosecution of grave human right violations the investigation and prosecution committee is responsible. This committee is composed of the Ministry of Justice, Ministry of Defense, Federal Police commission and regional justice bureau and it is coordinated by the Ministry of Justice.¹⁰⁸

As a result the IMTF is a special mechanism established to take measures in relation to grave human right violations that occurred in Ethiopia during the internal conflict. Due to its composition, intended purpose, power and mandates it can be considered as the main actor towards the prosecution of atrocity crimes .Therefore it organizes its organs, investigates the alleged crimes, prepares reports, builds relationships with the pertinent stakeholders and initiates prosecutions. It is designated in relation to the grave human rights violations that were committed during conflict between the FDRE government and TPLF.

C. Federal Police Commission

The federal police commission has been established with the objective to maintain and ensure peace and security of the public and the state by respecting and ensuring the observance of the Constitution, the constitutional order and other laws of the country and by preventing and investigating crime through the participation of the public.¹⁰⁹

Regarding crimes against the public, the federal police commission has power to investigate these crimes in collaboration with pertinent justice bodies. It also implements decisions of courts, prevents and investigates crimes falling under the jurisdiction of federal courts. It operates on the basis of principles of accountability and transparency, participation of the public and the principle of impartiality.

¹⁰⁸ Ibid 111

¹⁰⁹ Proclamation no. 944/2016 Federal police commission establishment 2016

Following the establishment of the Inter Ministerial Task Force, it is a specially designated body of government in two committees of the Task Force in relation to the Investigation and Prosecution Committee and Sex/Gender-Based Violations Committee. Regularly the commission is one of the stakeholders in prosecution and investigation of any crimes and breach of law at federal level. Beside this the commission has a significant role in prosecution of grave human rights violations or atrocity crimes that were committed in relation to the conflict between FDRE government and Tigray Liberation Front.

E. Federal Courts

The FDRE constitution provides that judicial powers are given to courts at state as well as federal level. According to article 78 (4) courts are the sole judicial organ of the government that exercises its judicial power solely. In addition to these, this article prohibits the establishment of ad hoc and special courts that intend to take this power away from the court and that do not follow the concerned laws. Furthermore, article 79 (1) also clearly provided that this power is given only to federal and state courts; the Amharic version of this article provided it vividly.¹¹⁰

As a result the courts function is to interpret all national and international laws that are ratified by the country except the constitution. As per article 3(1) of Federal courts establishment proclamation, the court has jurisdiction over cases that are arising from Constitution, Federal Laws and international treaties accepted and ratified by Ethiopia. Accordingly, in cases where there is breach of international human rights and international humanitarian laws as well any of federal laws, the court can entertain its jurisdiction. Additionally as per article 3(2) these courts are required to apply article 9(2) and 13(1) of the constitution when it interprets the constitution.¹¹¹ This implies that the courts should apply the constitutional provisions that provide human rights as well as humanitarian laws issues.

These courts are required to be free from any influence as an independent. The judges also shall perform their mandates in accordance with law as well as in the manner of their full

¹¹⁰ See Art 79 (1) of FDRE constitution Amharic version,1995

¹¹¹Proclamation NO.1234/2021 federal courts proclamation 2021

independence. According to the federal courts establishment proclamation article 6 the substantive laws that are applied by federal courts are the Constitution, Federal Laws and international Treaties to which Ethiopia is a party. Regarding procedural matters civil and criminal procedures are applicable. As per article 7 of these proclamation procedural laws to be applied by federal courts provided as Criminal and Civil Procedure Codes as well as other relevant laws in force. The Federal High Court has jurisdiction over atrocity crimes. Regardless of this ,the Mai Kadra massacre was brought before this court as a regular crime which can be committed against state or constitution. Accordingly the court established its jurisdiction over the case as regular crimes.

Ethiopian Human Rights Commission

Ethiopian Human Rights Commission is one of the national human rights institutions that has the mandate to promote and protect human rights. It was established as an independent federal state body that has its own juridical personality. It aims to create awareness regarding human rights through education and promote protection, respect and full enforcement of these rights and ensuring the taking of measures when these rights are violated. In order to achieve these objectives it operates through various thematic areas and departments.¹¹²

According to its establishment proclamation 210/2000 and amended proclamation 1224/2020 it has numerous mandates and functions. The duty of the commission is ensuring respect for all laws regarding human rights that are guaranteed by international and regional and national laws such as the FDRE constitution by every citizen, government (in each and every level), non-governmental organization, any associations etc....

According to Article 6 (4) the establishment proclamation the commission investigates any human right violations by its own initiation or up on complaint. It is one of the functions listed under this article. In addition to this as per article 7 of this proclamation the only exceptions that limit the power of the commission in relation to human rights violations cases are cases brought

¹¹² Ethiopian Human Rights Commission Establishment Proclamation No. 210 /2000 ,2000

before the House of people representative , the House of the Federation, Regional Council or before the courts of law, at all levels. ¹¹³

It is a non-judicial, non-legislative and non-executive state body .Accordingly, it cannot interpret, legislate and execute laws .However, regarding legislation of laws, ensures the conformity of the intended laws with the existing human rights that are guaranteed by the constitution. Furthermore it receives and investigates complaints. The remedies that are given by the commission are amicable settlement of the case and make recommendation to pertinent stakeholders regarding human rights issues that the discontinuous of the violent acts, redress of the violation or the committed injustice and taking of any appropriate measures. Therefore the role of the commission regarding grave human right violations is to investigate the committed violations as well as make recommendations on them where there are violations of such rights.

The prosecution of atrocity crimes is not the sole task or responsibility of a single governmental or non-governmental, national or international institution. It has multiple stakeholders that have specific tasks or responsibilities. All the aforementioned institutions have a vital role in prosecution of grave human right violations.

To emphasize the domestic institution's roles ,Ethiopian national institutions have a role to conduct criminal and human rights monitoring investigations ,make recommendations to relevant stakeholders, prosecutorial and judicial roles. Accordingly, the Ethiopian Human Rights Commission plays a vital role in conducting investigations and making recommendations. The other national institutions such as the MoJ and Federal Police Commissions have responsibility for investigation and initiation of prosecution. IMTF is a special ad hoc institution established for the specific purpose of redressing grave human rights violations in relation to conflict. The Federal High Court also has sole judiciary responsibility .However ,the initiated prosecution against perpetrators of Mai Kadra massacre is proceeding as a crime against the constitution or state. Accordingly ,this proceeding is not a trial of grave human right violations (atrocity crimes). This implies the jurisdiction over the Mai Kadra Massacre case is established based on alleged prosecution rather than the atrocious nature of the massacre.

¹¹³ Ibid 107

3.2. Characterization of Mai Kadra massacre

International core crimes are required to satisfy the essential elements that are provided by international customary laws, international laws, regional and national laws to establish the alleged crimes. These essential elements are legal, material and mental elements. International core crimes are genocide, war crimes, crime against humanity and crime of aggression.¹¹⁴

This section of the study discusses the character of the alleged crime which was committed in Mai Kadra during the Northern Ethiopia conflict under one of the core international crimes based on the alleged facts and the existing relevant international, regional and national laws. Beside the criminal character of the act, characterization of the crime nature is also necessary in order to choose appropriate applicable law, appropriate remedies and address all crimes in accordance with their degree of criminality.

The character of atrocity crimes defined by and their essential elements emanated from relevant legal frameworks. Additionally the factual component of the crimes that are required to satisfy the legal elements and which deduce from the commission of the alleged crimes. Accordingly, the significant component in characterization of crimes is examination of factual elements of committed crime in light of essential legal elements of the concerned crimes.

The Mai Kadra massacre has been characterized by various researchers, national and international bodies. Accordingly, EHRC and OHCHR JIT characterized it as the crimes were consciously committed as part of a widespread and systematic attack against a selected civilian population and therefore may amount to crimes against humanity.¹¹⁵ According to FDRE, the MoJ and Federal Police commission on their video format report the atrocities committed against Maikadra are extremely inhumane and characterized the crime as a crime against humanity.¹¹⁶ In

¹¹⁴ Carsten Stahn, *A critical introduction to international criminal law*, 2019

¹¹⁵ *Ibid* 13

¹¹⁶ Police, Ministry of justice : TPLF behind mass massacre in Ethiopia's Mai kadra town, 2020; video- 29,29- 31,22

addition to these Yihene Antehunegn also characterized the massacre as genocide on the basis of its evil nature and the committed massacre can satisfy the UN criteria's of genocide.¹¹⁷

The relevant national, regional and international laws that are applicable in this characterization of Mai kadra massacre are International Customary Laws, Convention on Prevention and Punishment of the Crime of Genocide, certain provisions of the four Geneva Conventions and Ethiopian criminal code. Additionally, all the facts that are used by this characterization are deduced from various governmental and non governmental institutions reports.

- **The Mai kadra massacre and the required constitutive elements of core international crimes**

The mass killing was targeted civilians were Amhara who reside in Mai Kadra town. Basically the victims were selected based on their ethnic and the language they speak. According to the IMTF report the committed massacre is ethnic based mass killing against ethnic-Amhara.¹¹⁸

Essentially crime of genocide constituted by commission of acts which provided under article 2 of convention on prevention and punishment of the crime of genocide as well as under article 269 of Ethiopian criminal code, the attack on specific protected groups of victims and general and specific mental status of perpetrators.

The conduct of the perpetrators was the killing of an estimated 229-1000 civilian people in Mai kadra town on November 9 and 10 /2020. It can be considered as one of the prohibited acts under article 2(a) of convention on prevention and punishment of the crime of genocide as well as under article 269 (a) of Ethiopian criminal code.

On the basis of the alleged facts in the general background of Mai kadra massacre section of this study¹¹⁹, Before the commission of the massacre there was systematic identification of residents' identity of Mai Kadra town by ethnic based selection and registration of Amharas/Tigrayan. Additionally, there were preparatory acts such as making killing materials, Mai kadra's town local militia closed all exits and entries of the town, destroying Sudanese SIM (Subscriber Identity Module) card that utilized by Amhara residents in order to prevent any communication

¹¹⁷ Yihene Antehunegn "Mai-Kadra Massacre and opposing narratives, The influence of Ethiopian Constitution, Religion and other Institutions" Uppsala university (2021)

¹¹⁸ Ibid 72 para 36 and 37

¹¹⁹ Ibid 63, and 69

for help, the perpetrators made children and women Tigrayan to go to another place and perpetrators collaborated with local police as well as militias. In addition to this the trigger factor to kill the first victim who killed in front of his family and burnt his corpse, was his refusal to join their militias.¹²⁰ This also blurred the intention of perpetrators of the massacre.

The significant issue is whether the perpetrator killed to cause death against the Amhara ethnic or clearly intended to cause the total or partial destruction of the Amhara ethnic. However, the trigger factors or leading situation, context and nature of the crime, the perpetration of the massacre itself do not show or imply that the perpetrators of this mass killing were intended to cause the destruction or discontinuance of the whole or part of ethnic Amhara. Based on these alleged facts, it is difficult to consider the Mai kadra massacre as a crime of genocide.

War crimes are committed where there is grave breach of international humanitarian laws during armed conflict. It's essential elements are the commission of acts that are prohibited under common article 3 (1) (a-d) and article of the four Geneva Convention 1949 and article 270-273 Ethiopian Criminal code, with the knowledge of the conduct and status of the perpetrator (in relation with armed conflict) to commit such prohibited acts .

The Mai Kadra massacre was committed during conflict between Ethiopian FDRE and TPLF. According to international humanitarian laws a conflict to be considered an armed conflict there should be protracted armed violence. It requires intensity of the hostility and organizational element .Intensity of the hostility can be determined by factors such as gravity and repeated nature of attack, collective nature of hostility, territorial scope and international reactions. Additionally organizational elements also obtain from the capacity to carry out attack such as organizational and structural capacity of non-state actors, the issuance of orders, internal regulations, political statements and communiqués, the ability to coordinate action between individual units and the use of uniforms or other insignia, the provision of training, the application of disciplinary rules and the ability to recruit new members.¹²¹

Regardless of the armed nature of the conflict, the massacre may not amount to committed by the combatant or parties to the conflict. In this case the victims are civilians and perpetrators are also

¹²⁰ Ethiopian Human Rights Commission ,Preliminary investigation report, 2020

¹²¹ Tadic Case (Judgment) ICTY-94-1 26 January 2000 paragraph 70

Tigrayan youth groups in collaboration with administration and police of the town.¹²² However the trigger factor for the massacre was associated with the conflict. The alleged facts do not show the combatant features of “Samri” group. Additionally, the Mai Kadra massacre committed against civilians is not to achieve the

Characterizing the Mai kadra massacre as a crime against humanity has different meanings on the basis of international and national laws. The international legal system provides adequate definitional elements that constitute crime against humanity. These elements are the commission of one of the acts that is prohibited under customary international laws.¹²³ These acts should be committed systematically and widely and directed against the civilian population. In case of these crimes individual circumstances such as knowledge of the context in whole in part are determinant factors.

Accordingly, the Mai kadra massacre was perpetrated in an organized manner with a plan of attack, preparation and the perpetrators had taken discriminatory measures. Additionally it is willful mass killing that was committed systematically and widely against civilian population on the basis of their ethnic grounds. Therefore in light of international customary law and modern international legal system (during and before Nuremberg trial war crimes and crime against humanity was tried as one crime) the Mai Kadra massacre satisfied the aforementioned constitutive elements of the crime and may be considered as crime against humanity. On the other hand the Ethiopian legal system does not clearly distinguish crime against humanity with crime of genocide and war crimes. Article 28 of the FDRE constitution and article 44 of FDRE criminal code clearly shows that crime against humanity is a wider crime category that contains core international crimes. The preparatory document of criminal code of Ethiopia “Hateta zemiknyat ” also considers the crime of genocide and other crimes that provided under article 270 to 274 as crime against humanity.¹²⁴ Therefore there are no separately existing constitutive elements to establish crime against humanity in Ethiopia and separate punishment.

Accordingly, The massacre should satisfy the constitutive elements of the crimes that are recognized as crime against humanity under Ethiopian laws such as genocide and war crimes

¹²² Declaration of Judge Lal Chand Vohrah ,The Relative Seriousness of Crimes Against Humanity Vis-A-Vis War Crimes

¹²³ International customary laws

¹²⁴ The preparatory document of revised criminal code of Ethiopia of 2004 “Hateta zemiknyat ”

(article 269-273 of the criminal code). However, there is not enough ground to consider the massacre as genocide or war crime.

Conclusion

The Mai Kadra massacre has different characteristics under international and national legal framework. On the basis of international customary, Convention on Prevention and Punishment of Crime Against Genocide and common article 3 of the four Geneva convention the Mai kadra massacre it is difficult to consider that there was element of special intent to destroy the victim group in whole or partially. Accordingly, it is committed widely and systematically and due to the status of the perpetrator, this massacre may amount to a crime against humanity.

On the other hand characterization of the alleged crimes on the basis of national law of Ethiopia is difficult. In light of Ethiopian criminal code article 269-273 provisions, the Mai kadra massacre does not fulfill the required constitutive elements that establish crime of genocide or war crimes. On the other hand the national law considered genocide and war crime as crime against humanity. Therefore the massacre has to satisfy whether the elements of genocide or war crimes in order to be considered as crime against humanity in light of Ethiopian laws.

Chapter Four

Assessment of state responsibility to prosecute perpetrators of massacre in Mai Kadra

Introduction

The FDRE government has a duty to prosecute perpetrators of atrocity crimes and render justice for the victims. Such duty is provided under international law as well as it is part of customary law.¹²⁵ In the Ethiopian context under various domestic laws of the country, state responsibility towards human rights obligation to protect, respect and fulfill as well as prosecute where there is violation provided. All branch governments in accordance with their mandate, power and function required to undertake those obligations under regional as well as federal level.

¹²⁵ Ibid 94

Various international institutions as well as national responsible organs and institutions have responded to the Mai Kadra massacre. Due to its commission during the conflict all measures such as investigation, preparation of reports and follow ups conducted in the general context of the Northern Ethiopia Conflict. The only separate investigations and reports are the Rapid Investigation into Grave Human Rights Violation in Maikadra with its primary findings report by EHRC and Preliminary Investigation Report on Major Human Rights Violations in and around Maikadra by Ethiopian Human Rights Council.

Atrocity crimes require more attention, accelerated process, and adequate investigation due to their nature of gravity and such crimes establish universal jurisdiction. This massacre is one of atrocious crimes that was committed during the Northern Ethiopia conflict. International customary and other laws clearly stipulate and distinguish atrocity crimes. On the other hand the national laws of Ethiopia such as FDRE constitution and criminal code of 2004 do not clearly distinguish crime against humanity with crimes of genocide and war crimes. The existing legal frameworks, the capacity of national courts to entertain the prosecution of atrocity crimes, the prohibition of the special or ad hoc courts by the FDRE constitution under article 78 are the determinant factors that affect the enabling conditions to prosecute atrocity crimes within national courts.

Under this section major findings on assessment of state responsibility to prosecute perpetrators of massacre in Northern Ethiopia Mai Kadra are presented. It presents the data collected through purposive or judgmental sampling techniques that basically conduct key informant interviews and reports of responsible governmental bodies .Additionally, it discusses and analyzes all the findings of the study . The question of the study on major legal and institutional frameworks, the characterization of crime, the pertinent body of government that is responsible to avert the crime process prosecution, investigation and take measures that should be taken and existed major gaps in the concerned process in case of Mai Kadra massacre tried to addressed by this section.

4.1. Measures taken by pertinent bodies of Ethiopian government towards Mai Kadra Massacre

On the Mai Kadra massacre two teams of various national institutions and one international institution responded to grave human rights violations in accordance with their mandates. These teams are Joint investigation team of Ethiopian Human Rights Commission and United Nation Higher Commissioner of Human Rights and FDRE IMTF on Accountability and Redress Investigation and Prosecutions Committee. Accordingly, this section discussed the measures taken by these bodies of government in relation to the massacre such as investigation, major findings of their investigation, prosecution and follow up ,newly existing developments and the major challenges that they have faced.

4.1.1. FDRE Inter Ministerial Task Force on Accountability and Redress Investigation and Prosecutions Committee

The IMTF on accountability and redress Investigation and Prosecution Committee is one of the task force's committees with the mandate of investigation and prosecution. It is composed of the Ministry of Justice, Ministry of Defense, Federal Police Commission and Regional Justice bureau sectors. This team is led by the Ministry of Justice.¹²⁶ This team conducted criminal investigations on allegations of war crimes, crimes against humanity and other violations of international human rights law, international humanitarian law, and domestic criminal law committed by the parties to the conflict in Northern Ethiopia in general.

A. Pre investigation preparation

Particularly regarding the Mai Kadra massacre there were additional stakeholders involved in the committee. According to Federal Public prosecutor ,who is member of this committee with the mandate led the team in specific case of Mai Kadra and represented from MoJ , the investigation team consists of three prosecutors that lead the investigation, more than 10 Federal Policies, forensic experts from federal police crime investigation department as well as S.t Paul Hospital

¹²⁶ Ibid 72

forensic department, technical team of federal police and other impartial personnel accompanied by the FDRE defense and Police Force.¹²⁷

Accordingly, to determine the commission of crime and identify the perpetrator as well as victims, the Committee prepared a plan of the investigation. It defines the role of the investigative and prosecution team and their objectives as what to be proved. The office gave direction on allocation of human resources and as well as approved the plan. Accordingly, the investigation team went to Mai Kadra one week after the commission of the massacre.¹²⁸

B. Investigation

It aimed at investigating who committed the crime, how and what kind of weapon was used by perpetrators, whether it was committed on the basis of ethnic or not, the role of government administration in the commission of crime and all necessary facts. IPT collected and interrogated evidence directly from survivors, witnesses and family of the victims. More than 300 witness testimonies were received. Due to various information that existed regarding the number of the victims as well as the massacre, the team dug a mass grave and other burial ground.¹²⁹

C. Major findings of the investigations

The major findings that were discovered by the investigation are committed violation, its results, targeted victims, reason behind the attack, the perpetrators of the attack, their preparation, used weapons and involvement of Tigray police force and militias. Accordingly, the preparation has begun earlier to the commission of crime by blocking all side entry of the town, making attacking weapons and by round door to door select targeting groups by language and ethnic.¹³⁰

The targeted group was Amhara civilians but the attack included non-Amhara civilians who speak Amharic language as well as who live in Serategna and Ginib sefer village. It was committed by youths who come from a village called Samri and they wore yellow clothes during

¹²⁷ Interview with Gedion Gedefaw. Public Prosecutor in department of prosecution of organized and transnational crimes, Member of the Inter Ministerial Task Force investigation and prosecution committee, April 2022

¹²⁸ Ibid 35

¹²⁹ Ibid 35

¹³⁰ Interview with Gedion Degefaw, public prosecutor in department of prosecution of organized and transnational crimes, Member of the inter-ministerial task force's investigation and prosecution committee, April 2022

the door to door round and attack. They used weapons for the attack such as the traditional ax, knife, rope and gun. Additionally, the perpetrators burned houses of civilians. The investigation team proved that the attack was based on ethnic, identity and language.¹³¹

According to the public prosecutor, the perpetrators proclaimed that civilians were agents of information for the FDRE defense force and Amhara militias that caused their defeat. As a result they attacked Amhara civilians. According to the word of victims all of the dead victims are men and the perpetrators planned to kill the women by the next day of the massacre. The perpetrators were assisted also by the town police officers in terms of weapons and they were directly involved in the attack. Tigrayan Militias took measures against Amharas who tried to defend themselves and to escape by using guns. In addition to the massacre they gang raped women, looted properties and avoid the dead body of the victims in humanly. Finally, the majority of the perpetrators escaped and went to Sudan.¹³²

Generally the investigation team found that the attack was basis ethnic, identity and language, commission of gang rape on 10 women, of 229 civilian people killed and more than 280 people physically injured. The team was also proved the primary perpetrators are administrators of the Mai Kadra town, police force of western Tigray including Humera and Samri Youth.¹³³ The destroyed properties of civilians are estimated to be 17 million Birr. The investigation finding has detailed information including number of corpus, reason of death, identity of victim, age, sex and status of perpetrators.

D. Initiation of Prosecution

Prior to the commencement of the prosecution and after the conduct of investigation, a team composed of three prosecutors from the investigation team organized and selected appropriate law for establishing criminal accountability against the perpetrator of Mai Kadra massacre. During this process there were meetings to examine the team progress by the investigation and prosecution committee representatives D.r Gedion Thimotios and Fikadu Tsega.¹³⁴

¹³¹ Ibid 122

¹³² Ibid

¹³³ Ibid

¹³⁴ Interview with Gedion Gedefaw , public prosecutor in department of prosecution of organized and transnational crimes, Member of the inter-ministerial task force's investigation and prosecution committee , April 2022

Accordingly, the prosecutor's team presented different progressive reports regarding which legal provision is appropriate to establish criminal accountability. The second progressive reports presented for the offices and Amhara region officials because they have interest in this crime. This report suggested 3 scenarios linked with criminal law provision with their reason.¹³⁵

According to the public prosecutor, the first suggested legal scenario for establishing criminal liability is based on Art 240 of FDRE criminal code of 2004. Accordingly, the committed act is considered as an armed rising crime. As per the prosecutors, perpetrators raised Tigrayan people against Amhara civilians. The team proposed this scenario on the ground that the requirements provided under this article is fulfilled, it has more serious punishment against the criminal, the prior experience of the office such as Benshangul and Asosa and other cases similarly prosecuted and punished on the basis of this article to execute its mandates uniformly. The second scenario suggested is war crime. Due to the concern situation is not conflict as the FDRE government called the situation a law enforcement operation, this alternative also cannot establish criminal liability against the perpetrator of the Mai Kadra massacre. The third and the least scenario is crime of genocide. However due to the lack of mechanism to ascertain the intention of perpetrators, the prosecutors cannot prove the element of genocide, to maintain sovereignty of country, peace and unity of its citizens and since the document may use as reference in the future the committed crime cannot considered as Genocide.¹³⁶

According to international ad hoc and special criminal tribunals jurisprudences such as international criminal tribunal for Rwanda and International Criminal Tribunal for Former Yugoslavia intent of perpetrator of genocide can be determine by the following ways

‘general context of the perpetration of other culpable acts systematically directed against that same group ,the scale of atrocities committed, the general nature of the committed atrocities ,fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the

¹³⁵ Ibid

¹³⁶ Ibid

members of other groups, general political doctrine which gave rise to the acts, repetition of destructive and discriminatory acts”¹³⁷

Additionally, the supplementary evidence that can be manifestation of the perpetrators are plan or policy and public speech made by perpetrators. Accordingly the employed process and justification on Mai kadra massacre prosecution is contradictory with existing experiences and spirit of criminal prosecution.

On the basis of the above justification as per the prosecutor explained the prosecution instituted according to Art 240 of criminal code against perpetrator of the massacre. Therefore, 19 perpetrators that are masters of the crime and Tigray police force, militia and other administrations are prosecuted. The perpetrator indicted of crime by raising civil war by inciting citizens to take up arms against one another in case of Mai Kadra by raising Tigrayan armed against Amhara civilians. The participant who engaged with this criminal act was also prosecuted under the sub article (3) by taking part of such crime by his own free will. The case has been brought to Federal High Court. The preliminary objection raised by the respondent is the material jurisdiction of the court over the case and impartiality of the prosecution.¹³⁸

The indictment against perpetrators of Mai kadra massacre raises civil war, by Tigrayan youth and people against Amhara people which is prohibited under article 240 (1) of criminal code. The prohibited acts under this article are organizing or leading a revolt, mutiny or armed rebellion, raising civil war and inciting people or citizens to take up arms against one another. The grave circumstance of this crime is where it caused serious crimes against the public security or life.¹³⁹

The nature of the crime of armed rising or civil war has clear distinction with the atrocity crimes. The initiated prosecution of perpetrator of Mai Kadra massacre presupposed that the committed crimes may not be considered as atrocity crimes. The justification that has explained by the

¹³⁷ International Criminal Tribunal for Rwanda, Kayishema and Ruzindana, (Trial Chamber), May 21, 1999, para. 93, 527 and *The Prosecutor v. Jean-Paul Akayesu (Trial Judgement)*, ICTR-96-4-T, International Criminal Tribunal for Rwanda (ICTR), 2 September 1998,

¹³⁸ Ibid

¹³⁹ Ibid 93

public prosecutor¹⁴⁰, during the interview implies that the crime against humanity was not proposed as a prosecutorial case scenario. Accordingly, the investigation and prosecution committee is not considering the Mai kadra massacre as grave human rights violations rather tried to address the massacre as a crime committed against state or constitution.

E. Major challenges

Mr. Gedion raised the legal challenges such as lack of constitutional safeguard to the investigator, prosecutor and witness. Additionally, the material jurisdiction of the courts also has a gap in terms of delegation of power. On the other hand the practical challenges were failure to arrest the master criminals of the massacre of Mai kadra some of them are escaping to Sudan and other countries .Furthermore the competencies of police and prosecutors to prosecute higher political official's also practical challenges.¹⁴¹

As a recommendation, the prosecutor recommended the federal police to request extradition of the escaped perpetrators through International Police as Ethiopia is a member of it. Additionally, through diplomatic relations such as involvement, the Prime Minister Office can influence the countries to extradite the perpetrators. Regarding the court jurisdiction all pertinent bodies should ensure the conformity of the matter with the constitution. ¹⁴²

4.1.2. Monitoring and Investigation of the Ethiopian Human Right Commission

EHRC has a mandate to ensure that necessary measures are taken where there is grave or ordinary human rights violation such as mai kadra massacre. It's mandate includes monitoring and investigation of human rights during emergencies¹⁴³.In accordance with EHRC's mandate, it conducted a joint investigation in collaboration with the United Nation OHCHR and published a report on alleged violations of international human rights, humanitarian and refugee law committed by all parties to the conflict in the Tigray Region from 16 May to 30 August 2021.

¹⁴⁰ Ibid 137

¹⁴¹ Ibid

¹⁴² Ibid

¹⁴³ Ibid 63

The investigation in general aimed to provide an accurate explanation of the human rights situation in Tigray including its gender aspect; further the accountability process and advocate for actual remedies; provide clear and actionable recommendations; and identify serious violations to ensure redress for victims and prevent recurrence.¹⁴⁴

A. Major findings of joint investigation team

The joint investigation team conducted a general investigation into all alleged violations in the Tigray conflict. According to the Director at Chief commissioner Office of EHRC Albab Tesfaye who took a major role in the joint investigation, the conducted investigation was human right investigation which emphasized on human rights aspects. Accordingly, the team directly collected the data from the place itself. Accordingly, they proved the commission of the Mai Kadra massacre¹⁴⁵

The Director stated that the investigation team found that the massacre was committed as part of a widespread and systematic attack against a selected civilian population based on their ethnicity. As a result the massacre may amount to crimes against humanity. The Ethiopian government has responsibility for the implementation of a range of accountability mechanisms, including criminal proceedings against the alleged perpetrators of massacre and administrative investigations to identify and address systemic issues. Accordingly, the Joint investigation team recommended that take urgent, effective and broadly publicized steps to ensure that such violations will not be tolerated, facilitate prompt, comprehensive, and effective investigation by independent bodies into reports of alleged act crime in Mai Kadra.¹⁴⁶

Additionally, EHRC, UN OHCHR and EARO held a consultative meeting on February 3/2022. It was intended to bring mutual consensus on the role and mandates of pertinent bodies of government. It involved various stakeholders such as key government bodies, international and non-governmental organizations, regional organizations, civil society organizations and

¹⁴⁴ Ibid 13

¹⁴⁵ Interview with Albab T. Director of Office of the Chief Commissioner ,Ethiopian Human Rights Commission March 2022

¹⁴⁶ Ibid

academicians. The Follow Up and Implementation Team were established to provide support for the government through advocacy, capacity building and technical support.¹⁴⁷

B. Challenges

The Director of Office of Chief Commissioner stated that JIT has faced various challenges during this investigation. These are intimidation of joint investigation team by members by Regional security forces, especially in Western Tigray, lack of institutional capacity in terms of qualified investigators and lack of written responses from parties to the conflict to their list of issues and questions .On the other hand Ms. Albab recommended the acknowledgement of existed gaps on the basis of the gravity and widespread nature of the massacre state and all stakeholders should, reach out different partner such as OHCHR , create coordinate efforts and share actual technical experience from other countries.¹⁴⁸

Conclusion

The FDRE government has taken measures towards grave human right violations which were committed in Northern Ethiopia conflict in general and Mai kadra massacre particularly. The major actors were EHRC and IMTF. These institutions conducted investigations into the alleged violations. Additionally EHRC and East Africa Regional Office (EARO) held consultative meetings with all necessary stakeholders on the implementation. On the other hand IMF's investigation and prosecution committee initiated prosecution against perpetrators of the massacre.

Accordingly, the EHRC has characterized the massacre as a crime against humanity. On the other hand IPC characterized the crime under its report as ethnic based massacre and initiated prosecution as armed rising or civil war which fall under crime against the constitution or state.

There are legal and practical challenges encountered in responding to grave human rights violations committed in Northern Ethiopia conflict in general and Mai Kadra Massacre in particular. Institutional capacity is the common challenge that both institutions faced in terms of

¹⁴⁷ Ibid 143

¹⁴⁸ Interview with Albab T. ,Director of Office of the Chief Commissioner ,Ethiopian Human Rights Commission March 2022

conducting investigation and prosecution. Both institutions suggested the creation of coordinated efforts with other states in order to extradite the criminals and sharing of experiences.

4.3. Major gaps and their implications

Prosecution of atrocity crimes is state responsibility under international customary laws, conventions, regional laws and national laws of Ethiopia. According to article 87 of FDRE criminal code penalties and measures required to be taken in accordance with the objectives of the criminal punishment that were provided under article 1 of this code. The measures taken by the FDRE government towards the Mai Kadra massacre are not free from certain legal and practical gaps. Therefore the key problems are discussed under this section.

A. Legal gaps

The prosecution of crimes requires the existing legal frameworks to address all the constitutive elements in the process of establishing alleged crime. One of the principles of criminal law is the principle of legality. “Nullum crimen, nulla poena sine lege” this refers to the principle no crime, no punishment without law. This principle is also incorporated under article 2 of FDRE criminal code. This article enshrined that crimes and punishment required to be defined by the criminal laws; any acts or omissions required to be prohibited by law in order to consider as a crime by courts; courts prohibited to create crimes by analogy and double jeopardy.¹⁴⁹

- **Crime against humanity and principle of legality**

The Mai Kadra massacre can be considered a crime against humanity in accordance with international customary laws. According to the alleged facts that were founded by both government bodies EHRC and UN OHCHR JIT and IMTF’s IPC, this massacre has the full character of constitutive elements that established a crime against humanity based on international law.

Ethiopian legal system considers crime of genocide and war crime as crime against humanity. As result these alleged facts similarly do not constitute crime of genocide and war crime. This

¹⁴⁹ Ibid 156

presupposes that if such facts fail to satisfy the two crime's essential elements, they cannot constitute crime against humanity and However ,the mere fact that the alleged facts satisfies the constitutive elements of crime against humanity based on international customary law, does not make the facts to be considered as genocide and war crime. Additionally ,such acts cannot be prosecuted by the Ethiopian legal system due to the absence of a law that provides crime against humanity separately and its punishment. This disabled the condition of appropriate prosecution of the Mai Kadra massacre as a crime against humanity.

This is one of the major legal gaps in executing state responsibility to prosecute mai kadra massacre. This is an impediment encountered in prosecution of Mai kadra massacre as crime against humanity and addressing grave human right violation in accordance with international laws and standards.

- **The prohibition of establishment of special and ad hoc courts**

The FDRE constitution does not establish ad hoc or special powers that take over the judicial power of the court or institution that does not function in accordance with legally prescribed procedures. The prohibition of article 78(4) of FDRE constitution limits the prosecution of grave human right violations such as Mai kadra to regular courts that entertain other crimes. The federal high court has criminal jurisdiction over 17 categories of crimes.¹⁵⁰ As a result of this there are many cases entertained by the courts daily. Additionally, due to their atrocious nature and the huge number of the perpetrators ,prosecution of atrocity crimes needs more attention and time. This condition limits the enabling condition of prosecution of atrocity crimes in federal courts.

B. Practical gap

The practical gap in executing state responsibility towards prosecution of perpetrators of Mai Kadra massacre are a result of the major difference between the existing legal framework and their implementations. Accordingly the followings are the major practical impediments encountered in prosecution of Mai kadra massacre.

¹⁵⁰Establishment proclamation of Federal Courts , proclamation number 1234/2021,2021

- **The charge against perpetrators of Mai Kadra and its justification**

Mai Kadra massacre's criminal prosecution is initiated on the basis of Art 240 of the FDRE Criminal code. It provides armed rising or civil war. Accordingly , the intentional act of organizing or leading a revolt, mutiny or armed rebellion against any official or body constituted by a constitution or raises civil war, by arming citizens or inhabitants or by inciting them to take up arms against one another is criminally responsible. Mai Kadra massacre's prosecution is based on the last phrase as inciting Tigray ethnics to take up arms against Amhara ethnic. ¹⁵¹

The intention of the perpetrators required also under this provision , the provided criminal acts implies creating the killing atmosphere and inciting for armed attack and as stated sub art (3) participation in the movement is also punishable. Sub article 4 of the provision also provided if the perpetrators caused life injury in doing acts of inciting and participated in the movement. The Amharic code art 240 also provided the clear term of the acts that fall under this article. In case of Mai Kadra massacre the committed acts are not the mere movement of inciting or participating in the movement rather there were systematic ethnic based mass killings against civilians.

The acts that provided under the selected article 240 and the mass killing, using weapon such as axe knife, rope and gun, raped women, remove dead bodies by tractor, the preparation and selection these all made by the perpetrator are not the same. This implied the violated fundamental human rights, the civilians that are ethnically minors for the region as well as the town, the preparation of the perpetrators and the way and means of killing did not take as determinant factor for the initiation of criminal liability.

The other justifications of the selected provisions are lack of mechanism to ascertain the intention of perpetrators; the prosecutors cannot prove the element of genocide in this case, to maintain sovereignty of country, peace and unity of the citizen of the country and due the characterization of the existed situation as law enforcement mechanism by FDRE government. This justification contradicts with the law of the country including the FDRE constitution and criminal law purposes.

¹⁵¹ Ibid 156

Regardless of the public prosecutor's justifications, the crime should be determined by criminal law and respective constitutive elements that can establish the alleged crime. According to international customary laws the Mai kadra massacre can be considered as crime against humanity. Additionally, due to the fact that the Mai kadra massacre is systematic and wide that targeted civilian population, committed during Northern Ethiopia conflict and its gravity, it is beyond the crime of rising armed or civil war by inciting people and citizens one to another. Rather it has atrocious nature and grave human right violation.

The major significance of appropriate investigation and prosecution of grave human rights violations including Mai kadra massacre are guaranteeing the non repetition of violations, relief for the survivors and victims, serve as a way of promoting redress of such violations, serve as precedent as well as document and mainly justice is served. According to article 87 of the criminal code every criminal penalties and measures should be in sprite of the criminal code as well as its purpose of punishment.¹⁵²In absence of this the mere prosecution of mai kadra massacre does not make the execution of government duty to prosecute such violence. The initiated prosecution is clear denial of the existence of grave human right violation.

- **Withdrawal of the charges and leaving it to transitional justice**

The ministry of justice withdrew the charges against accused of crimes which were committed in connection with the conflict and explained the cases have their cases dealt with in the framework of transitional justice. It is based on a peace agreement signed between the Federal Government of Ethiopia and the TPLF and consideration of international experience.¹⁵³

According to the above statement as well as article 10 of agreement for lasting hostilities between TPLF and FDRE government, the later has a duty to implement comprehensive policy that intended accountability, ascertaining truth, redress for victims, reconciliation and healing in accordance with FDRE constitution and African Union transitional Justice framework.¹⁵⁴

¹⁵² Ibid

¹⁵³ Ministry of Justice, statement regarding withdrawal of charges, March 2023 also available at ; <https://twitter.com/MOJEthiopia/status/1641439653860610050>

¹⁵⁴ Agreement for lasting hostility between TPLF and FDRE government, Pretoria 2023

The Federal Attorney General Establishment Proclamation 943/2016 article 6 (3)(e) granted the power to withdraw criminal charges for Federal Attorney General where it is necessary in the interest of the public. Additionally where there is national interest it has to consult with the Prime Minister.¹⁵⁵ It does not imply the permanent cancellation of the alleged criminal charges. On the other hand, the Ministry of Justice withdrew these charges in order to deal with transitional justice.

As a result, it raises significant issues such as whether the prosecution which will be initiated through transitional justice amounts to double jeopardy or not, does the scope of prosecution through transitional justice include crimes which are tried before regular courts and legitimacy of the prosecution of these charges before non-existent institutions with the draft policy option¹⁵⁶.

According to the draft policy option for transitional justice¹⁵⁷ that was prepared for stakeholders, the provided institutional framework for adjudication of the alleged crimes is domestic court with reform such as the assignment of new judges, training of judges and establishment of the new bench or courts which are specifically dedicated to this purpose. It also indicated that the existing institutions can not be the central pillar for prosecution of the alleged crimes through transitional justice without institutional reforms.¹⁵⁸ This implies the withdrawn criminal charges against TPLF for crimes committed in relation with the northern conflict will be prosecuted through transitional justice before newly established benches or courts.

The establishment of a new court is constitutionally prohibited. Additionally the directive on withdrawal of criminal charges which was required by the proclamation that granted such authority is not issued by the former Office of Attorney General (current MoJ). As a result, it lacked legal ground to withdraw the alleged charges and reserved them to be tried by institutions that existed only on the draft policy options. Furthermore, there is no clear implication on the effect of withdrawal, whether it amounted to acquittal or the allegation remained as it is.

¹⁵⁵ Federal Attorney General Establishment Proclamation No. 943/2016, 2016

¹⁵⁶ Ministry of Justice, public on the draft Transitional Justice Policy Alternative Document 7 March 2023 [Tweeter] accessed May 2023 <https://twitter.com/MOJEthiopia/status/1633058565106683907>

¹⁵⁷ It is holistic national policy option and does not limited to northern Ethiopia conflict

¹⁵⁸ Ministry of Justice, Ethiopia Policy Options for Transitional Justice, Draft for Stakeholder Consultations January 2023

Chapter Five

Conclusion and Recommendation

5.1. Conclusion

State responsibility to investigate and prosecute core international crimes such as crime of genocide, war crimes and crime against humanity is international as well as national obligation of states. Accordingly Ethiopia has a duty to investigate and prosecute the perpetrators of Mai Kadra massacre in accordance of the relevant international as well national laws. Executing this obligation through national courts is not a new phenomenon.

This obligation of state is emanated from international customary laws, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Convention on prevention and punishment of crime of genocide, FDRE constitution and Criminal code. The existing international and national mechanisms towards grave human right violations are United Nation protection mechanisms such as United Nation Office of Higher Commissioner, International Criminal Court, African Court of Justice, Ethiopian Human Rights Commission for Human Rights, Ministry of Justice, Federal police Commission and Federal High courts. Regarding Mai Kadra massacre EHRC and UN OHCHR joint investigation has conducted and Follow up meetings organized. On the other hand the FDRE government established IMTF intended to implement the recommendation of EHRC and UN OHCHR. As a result it investigated the alleged grave human right violation that were committed during the Northern Ethiopia conflict. The ICC has not taken any action due to it lacks Jurisdiction over Ethiopia. Additionally the ACJ could not respond to the massacre due to it is non functional.

According to the alleged facts which were deduced from investigations and their reports of both government bodies, the Mai kadra massacre was committed systematically and widely. The targets were civilians which were selected based on their ethnicity. Accordingly, the massacre can be considered as crime against humanity. It has characterized by the EHRC and OHCHR joint investigation team as crime against humanity. On the other hand the Inter Ministerial Task

Force's investigation and prosecution Committee initiated prosecution by characterized the massacre as armed rising or rising civil war.

There are legal and practical gaps in measures that have been taken by the FDRE government towards prosecution of the perpetrators of Mai kadra massacre. The legal impediments that are encountered in prosecution of this massacre is the lack of framework that adequately addresses the crime against humanity. The alleged facts of the Mai kadra massacre can not be prosecuted by the Ethiopian legal system due to the absence of law that provides crime against humanity separately and its punishment. The other legal gap is the prohibition of special or ad hoc courts by the FDRE constitutions. On the other hand practical gaps are the instituted charge against perpetrators of Mai Kadra and its justification and the Withdrawal of the charges and leaving it to transitional justice.

This study conducted an assessment of state responsibility to prosecute perpetrators of the massacre in Mai Karda, Tigray Northern Ethiopia. It has a significant role in determining the state's obligation to investigate and prosecute the perpetrators of Mai Kadra in Northern Ethiopia and establishment of accountability. The existing institutional framework, potential obstacles, and the state's legal responsibilities to look into and prosecute such offenses also provided. The findings of this study will be used to inform legal reform recommendations for strengthening accountability mechanisms and improving access to justice for victims and survivors of atrocity crimes.

In conducting this study there are challenges regarding accessibility of the existing information. It lacks information that was supposed to be collected from the Federal Police Commission and the inter ministerial task force. The representative of the federal police commissioner was not willing to give information due to the institution restricted disclosure of information regarding the current FDRE government and TPLF conflict for security purposes. Similarly the relevant bodies of the inter ministerial task force were not available to give the necessary information. Accordingly the author filled these gaps by collecting information from the Ministry of Justice, which has a leading role in the prosecution and investigation committee.

Generally, the FDRE government has taken significant measures towards the Mai Kadra massacre as it has a mandate to prosecute the perpetrator of the alleged crime. The establishment of the Inter Ministerial Task force, the conducted investigations and all collaborative efforts of the government are important steps towards serving justice. The perpetrators of Mai kadra massacre prosecuted in manner that does not confirm the spirit as well as the very purpose of the criminal code and it is clear denial of grave human right violations. Even though it is difficult to determine the status of government in relation to its duty by a single case study, the findings and existing major gaps implied the need for further mechanisms, non-acknowledgment of serious human right violations and the political influence in proceeding of the Mai Kadra massacre case.

5.2. Recommendations

On the basis of the existing gaps in executing the duty to prosecute the perpetrators of Mai kadra massacre, the existing legal and institutional frameworks the following recommendations are given.

- The legislature of the FDRE government should reform the existing stipulation of Crime against humanity in accordance with international customary laws. There should be the enabling legal framework to prosecute crime against humanity. Accordingly, the Ethiopian government should strengthen the implementation of international laws and make them functional within national courts on the basis of article 13 (2) of the FDRE constitution.
- The government should create enabling conditions for prosecution of atrocity crimes through strengthening the existing framework and creating separate mechanisms. Strengthening of the existing mechanism within the framework requires building the capacity or improving the competencies of the institutions including courts and police commission. In Particular, it can create a new bench for grave human right violations within existing courts .
- The Mai Kadra massacre should be appropriately redressed by the FDRE government in accordance with international customary law and other mandatory laws which bind Ethiopia. The mere fact the case was lifted to the transitional justice does not make it

successfully addressed crime. Every initiation of new mechanism ,peace agreements and any acts towards peace and security should be legal and without compromising justice. Therefore the jurisdiction which is implicitly given to transitional justice should be established in accordance with international custom ,laws and standards as well as national laws.

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