

**ADDIS ABABA UNIVERSITY SCHOOL OF GRADUATE STUDIES**



**ETHIOPIA'S OBLIGATION TO COMPENSATE FOR HUMAN RIGHTS VIOLATIONS: A LOOK AT INTERNATIONAL, REGIONAL AND NATIONAL LEGAL INSTRUMENTS**

**BY: MERON MERSHA DAMENE**

**ADVISOR: SISAY ALEMAHU**

**(ASSOCIATE PROFESSOR)**

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## **Declaration**

The thesis is my original work, has not been submitted for a degree in any other university and that all the sources I have used have been indicated and duly acknowledged.

Signature of confirmation:

Name Meron Mersha Damene

Signature

Date

Name of advisor Sisay Alemahu

Signature

Date

**Approval Sheet by the Board of Examiners**

**Ethiopia's Obligation to Compensate for Human Rights Violations: A Look at  
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of  
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By: Meron Mersha Damene

Approved by Board of Examiners

**Name Sign.**

1. Advisor	<u>Sisay Alemahu</u>	_____
2. Examiner	_____	_____
3. Examiner	_____	_____

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## **Abstract**

States has ratified and complied to various international and regional legal human rights instruments. Thus, the protection of human rights has become the international obligation of every state party to the given legal instruments.

As stated under different human rights instruments, Individual's right to compensation in case of human rights violations is international human rights obligation of state parties to the legal instruments. Meanwhile, this right requires states to adopt all the necessary legislative and institutional measures and accordingly, comply with accepted international standards .As Ethiopia is a party to a number of human rights legal instruments, It has a duty to comply with the international human rights obligations which include victim's right to compensation regarding human rights violations by adopting necessary measures for effective compliance to the human rights instruments.

## **List of Abbreviations**

UN- United Nations

IACHR-Inter America Commission on Human Rights

ECHR-European Convention on Human Rights

ICCPR-International Covenant on Civil and Political Rights

ICESCR-International Covenant on Economic, Social and Cultural Rights

UDHR-Universal Declaration of Human Rights

ICERD-International Convention on the Elimination of Racial Discrimination

CRC-Convention on the Rights of the Child

ICPPED-International Convention on the Protections of all Persons from Enforced Disappearance

ILO- International Labor Organization

CEDAW-Convention on the Elimination of All Forms Discrimination against Women

CAT- Convention against Torture

ICMW-International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

EU-European Union

ACHPR-African Chart on Human and People's Rights

FDRE-Federal Democratic Republic of Ethiopia

HPRs-House of people's Representatives

NHRIs-National Human Rights Institutions

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## Chapter One

### 1. Introduction

#### 1.1 Background of the Study

A state responsibility for the violations of human rights is not a new subject of international law. In earlier times, it arises from interstate responsibility, which- is established to protect the rights of aliens in the jurisdiction of another state. Human rights issues were seen as domestic matters that are subject to the principle of state sovereignty. However, the emergence of state responsibility for the violation of individual human rights meant states cannot treat their nationals as they like.<sup>1</sup>

International human right obligations require states to ensure effective enjoyment of human rights. Obligation of states includes: the duties to respect, protect and fulfill human rights. A duty to respect implies that the state has to refrain from acts or omission that violates human rights: The duty to protect is the obligations of the state to protect persons from acts of third parties that could impede the enjoyment their rights: The duty to fulfill implies that the state needs to facilitate the enjoyment of rights by creating conducive environment and to promote the rights through different mechanisms. Apart From this, a duty to maintain effective enjoyment of human rights requires the state to adopt all the necessary legislative and other measures to give effect to the rights enshrined in various human right instruments. Moreover, in order to comply with international human rights obligations, a state has to maintain effective exercise of human rights through its legal, political and institutional system.<sup>2</sup> The mere ratification of human rights instruments without a given state legal and institutional enforcement mechanism is meaningless. In addition to the above substantive obligations, states have also a procedural duty to provide

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<sup>1</sup> Dinah Shelton, Remedies in international human rights law (3rd edition, oxford university press 2015) 7.

<sup>2</sup> International Commission of jurists, *the right to Remedy & Reparation for Gross Human Right Violations*,(number 2, 2018) 19

adequate remedy for the violation of human rights.<sup>3</sup> The notion of state responsibility and general principles of international law also states that any wrongful act which, arises from breach of international legal obligation entails a subsequent obligation of reparation. A state Obligation for compensating human rights violations is firmly established under different international and regional instruments.<sup>4</sup> Ethiopia has ratified many universal and regional human rights instruments. However, substantively, there is no law that explicitly stipulates the state's obligation to compensate for human right violation. This creates an obstacle to the state's compliance with international obligations and further affects the protection and enjoyment of human rights.

The thesis will explore the right to substantive remedy or compensation and procedural remedy in case of human rights violation in international and regional legal instruments and the extent to which the Ethiopian legal system enshrines the precepts of the international legal regimes, In addition; the thesis will identify the legal elements of the obligation to compensate victims of human rights violations and the institutional framework that needs to be put in place, and assess the Ethiopian legal system and the related practice against those standards.

## **1.2 Statement of the Problem**

As Ethiopia is a party to various international and regional human right instruments; the country is not only obliged to ensure effective enjoyment of human rights but also to grant adequate and effective remedies, including compensation, when human right violations occur. However, there is no well-defined and explicit national law which stipulates a duty of the state for compensating human rights violations. Lack of clear cut legislation on the right of compensation can have adverse effect of the rights of those whose human rights are violated by the state or other actors. This further, raises the question of Ethiopia's compliance with the various international and regional treaties it ratified and pertinent national legal instruments on human rights.

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<sup>3</sup> Ibid, 20-21.

<sup>4</sup> Ibid.

## **1.3 Research Objectives**

### **General Objective**

The objective of the thesis is to assess Ethiopia's system of granting compensation in case of human rights violations, In light of its obligations under ratified international and regional human rights instruments.

### **Specific Objectives**

A. To elaborate International standards on the duty of states to provide remedies in terms of compensation for human rights violations.

B. To examine the legal and institutional frameworks that need to be put in place in relation to compensation of individual's for human rights violations by taking various international standards.

C. To analyze Ethiopia's laws regarding the responsibility to compensate individual's for human rights violation and to evaluate the practice of national institutions regarding standing and compensation for the victims of human rights violation.

## **1.4 Research Questions**

### **Main Question**

Does Ethiopia has a system of compensation for human rights violations and comply with ratified international and regional human rights instruments on the obligation to compensate individuals for human rights violation?

## Subsidiary Questions

A. what are the internationally accepted standards for the provision of remedy in the form of compensation for human rights violations?

B. what are the procedural and institutional mechanisms that need to be put in place to implement the duty to compensate individuals for human rights violations under international and regional human rights instruments?

C. Does Ethiopia have any laws on the duty of granting compensation in case of individual's human rights violation? Are the relevant national institutions fulfilling their duty of granting substantive and procedural compensation?

## 1.5 Literature Review

There are some literatures written on a state responsibility regarding human rights violation and the subsequent responsibility of states on reparation. A practitioner's guide on the right to remedy and reparation for gross human rights violation states about obligations of states for reparation under various international and regional instruments.<sup>5</sup>

A paper on damages for the infringement of human rights: a comparative analysis which focuses on elements of cause of action for damages in case of human rights violation and the role of constitution and tort law on the basis of damages remedy elaborates its essence by taking the experience of many states.<sup>6</sup>

An article written on the right to reparation for human right violation in Ethiopian legal framework addresses that victims of human right violation do not have a legally recognized substantive right to reparation within the current legal framework.<sup>7</sup>

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<sup>5</sup> Commission (n 2) 81

<sup>6</sup> Ewa Baginska ,Damages for the infringement of human rights ( 1<sup>st</sup> edition, Springer international press 2015)

<sup>7</sup> Kidus M.Ashine, Teketel L.Tera," The Right to Reparation for Human Right violation in Ethiopian legal framework"(2017) 31 PID 1

## **1.6 Methodology**

Both primary and secondary data's will be referred to do the research thesis. Generally, the thesis is a doctrinal legal research. However, as it will examine the practices regarding compensation of victims of human rights violations. It will collect data through interview to the Ethiopian Human Rights Commission, Ethiopian Ombudsman Institution and Lideta Federal Courts. The interview will be made on the area of current practical experience of these national bodies on the right to procedural and substantive remedy to victims of human rights violations.

Interviewees will be four individuals who are colleagues under Human Rights Commission, Ombudsman Institution and Judges of Federal Courts who will be selected based on their competence to human rights issues and remedies in case of violations. The sample will be made on the two National Institutions and Lideta Federal Courts. In practice, as both Federal First Instance Court and Federal Higher Court is expected to receive a number of individual-s claims and address human rights violations. Thus, the thesis will employ techniques of empirical legal research to some extent.

## **1.7 Scope of the Study**

The thesis will show a duty of states parties' regarding compensating any human rights violations under international and regional instruments vise a vise Ethiopian law. Moreover, it will emphasize a duty to compensate rather than taking a broad notion of reparation. Apart from examining the various laws of the country, the thesis will also focus on Ethiopia's constitution and tort law. Moreover, the thesis will address the national legal framework in light of compliance with ratified international and regional instruments. The legal element of state responsibility for compensation of human rights violation is also scrutinized by taking these human rights instruments with national laws. In addition, the institutional framework of international and regional human rights instruments vise a vise national laws will be observed. The current practice of national institutions with regard to a duty for compensating individuals of human right violation will also be examined.

The scope of the paper is only limited to the legal elements of an obligation to compensate human rights violation. Thus, it will not engage on the factual or merit of the case of individuals human rights violation. The paper is also limited only to the notion of compensation thus, will not address the whole components of Reparation. In addition, the national laws under study will be the current applicable federal laws. While elaborating the practice of national institutions, the past violations of individual-s human rights violation will also not be addressed.

### **1.8 Limitation of the Study**

The Lack of adequate literature on the area of the topic and lack of sufficient time for the completion of the work might be challenges encountered while doing the thesis.

### **1.9 Thesis Organization**

The thesis is organized accordingly: chapter one is introduction, chapter two explain the notion of remedy and compensation for human rights violations, chapter three review ratified international and regional instruments on the area of compensation for individual human rights violation, chapter four examine the extent to which the right to remedy, particularly the rights to be compensated, for human rights violations has been protected in the Ethiopian legal system against the practices of relevant institutions. And, chapter five is conclusion and recommendations.

## Chapter Two

### 2 The Notion of Remedy and Compensation under Human Rights Law

#### 2.1 The Notion of Remedy

Remedies can be understood as a means by which the violation of a right is prevented, redressed or compensated.<sup>8</sup> The main function of remedial justice is to correct the wrong done to a victim with an aim to place the victim in the same position as he or she would have been had no injury happened. In addition, it has the aim to deter violations and restore the moral balance when wrongs are committed.<sup>9</sup> Because remedies serve moral purposes, law and its institutions are the tools through which the violation is determined and its consequences are assessed to repair the harm incurred.<sup>10</sup>

##### 2.1.1 General Concepts of Substantive and Procedural Remedies

Universal and regional Human rights instruments have a substantive element of protecting individual rights and freedoms, Moreover, they have also a procedural element that generally stipulate an obligation of states to provide effective remedy for human rights violation.<sup>11</sup>

Remedy is divided into substantive remedy which is a relief afforded to a successful claimant and procedural remedy which is a right to have claims of human rights violations is heard by competent bodies.<sup>12</sup> The right to remedies guarantees a right to access to justice and be heard before an independent and impartial competent body with the view of obtaining adequate

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<sup>8</sup>Henry Campbell,(LDO 1910)<<http://black's law dictionary.com/remedy>> accessed on 2 April 2019

<sup>9</sup>Shelton ( n 1) 19

<sup>10</sup> Ibid

<sup>11</sup> Ibid, 17

<sup>12</sup> Ibid, 6

reparation.<sup>13</sup> This right for justice can be termed as a procedural remedy and, this can show the obligations of states to combat impunity and bring perpetrators to justice.<sup>14</sup> Generally, the procedural remedy should be effective, prompt, and accessible for the victims. Moreover, it must give rise to an award of reparation or compensation in case of violation. Apart from this, the remedies must also be expeditious and enforceable by competent authorities.<sup>15</sup> The right to an effective remedy entails that the substantive remedies provided must be capable of providing adequate reparations for the violation.<sup>16</sup>

The second notion of remedies refers to the outcome of the proceedings or the relief afforded to the winner in the trial. This can be termed as a substantive remedy.<sup>17</sup> The relief afforded is a redress to the damage or a loss suffered by the victim. Thus, the reparation is awarded for compensating victims of human rights violation.<sup>18</sup>

Both the right of access to justice and the substantive redress is widely recognized under various human rights instruments.

## 2.2 Reparation

Under the Oxford English dictionary, reparation is the action of restoring something to its former state and the action of amending a wrong. Thus, it's is a legal remedy which can be claimed, enforced or waived by victims of human rights violations.<sup>19</sup> Reparation can be used when there are individual's human rights violations and it includes all acts which are used to redress the harm done to a victim from human rights violations.<sup>20</sup> Thus, reparation includes the substance of the relief afforded to the damage incurred. Under international and regional human rights instruments the legal basis for the right to reparation is well established. For instance, under

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<sup>13</sup> Ibid,52

<sup>14</sup> Ibid,27

<sup>15</sup> Ibid,83

<sup>16</sup> Ibid, 106

<sup>17</sup> Ibid, 16

<sup>18</sup> Ibid,18

<sup>19</sup> Ibid

<sup>20</sup> Ibid,16

article 2(3) of ICCPR this right is implicitly stated.<sup>21</sup> The right to reparation for individual's human rights violations includes the obligation to provide restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>22</sup>

Restitution is a measure that restores victims to the original situation which is to their position before the violations of human rights. Restoration of liberty, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property are instances where restitution is possible.<sup>23</sup>

Rehabilitation refers to medical and psychological care as well as legal and social services.<sup>24</sup>

Satisfaction includes effective measures aimed at the cessation of continuing violations, verification of the facts and public disclosure of the truth to the extent that such disclosure does not cause further harm to the victims or prevent the occurrence of further violations, the search for the disappeared, the recovery and reburial of remains, an official declaration or a judicial decision restoring the dignity, reputation and rights of the victims public apologies that includes acknowledgement of the facts and acceptance of responsibility, judicial and administrative sanctions against persons liable for the violations, commemorations and tributes to the victims and inclusion of an accurate account of human rights violations under training and educational material.<sup>25</sup>

Guarantees of non-repetition is a broad category which includes strengthening judicial independence, the protection of human rights defenders, providing human rights training, the promotion of international human rights standards in public service, law enforcement, the media, and psychological and social services.<sup>26</sup>

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<sup>21</sup>International covenant on civil & political rights( adopted16 December 1966,entered into force 23 march 1976) 999 UNTS 171 ( ICCPR) art 2(3)

<sup>22</sup> United nations General Assembly, Basic principles and Guidelines on the Right to remedy & Reparation for victims of Gross Violations of International human Rights law & serious violations of International Humanitarian Law, Resolution 60/147 ( 21 March 2006 ),16<sup>th</sup> session, UN Doc( A/60/509/Add.1),principle 18

<sup>23</sup>Ibid, principle 19

<sup>24</sup> Ibid ,principle 21

<sup>25</sup>Ibid, principle 22

<sup>26</sup> Ibid, principle 23

Compensation is defined as a remuneration provided for economically assessable damage whether, material damages which, includes loss of potential and actual earnings, opportunities, physical or moral damages and costs required for legal or expert assistance, medicine and medical services and psychological and social services which, is as proportionate to the gravity of the violation and circumstances of each case resulting from gross violations of international human rights law.<sup>27</sup>

Redressing a human rights violation by way of full and effective reparation includes the above stated obligations. Thus compensation can be counted as one means of redressing human rights violation.

### **2.2.1 The Notion of Compensation**

Compensation is defined under Black's law dictionary as payment for damages, which is necessary to restore an injured party to his or her former position.<sup>28</sup> A court orders the money which should be paid by a person whose acts or omission have caused injury to another, thus the person who, incurs damages may receive equal value for his loss or injury.<sup>29</sup>

Under Oxford dictionary compensation is defined as awarded money given to an injured party for the loss, suffering or injury he/she encounters.<sup>30</sup> It also defined as something which pays back undesirable or bad situations.<sup>31</sup>

Compensation is defined under Cambridge English dictionary as money that is paid to someone in exchange for lost or damaged things.<sup>32</sup>

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<sup>27</sup> Ibid, principle 20

<sup>28</sup> Bryan A. Garner, <http://black's law dictionary.com/ compensation>, accessed 14 March 2019.

<sup>29</sup> Ibid.

<sup>30</sup> John Simpson, Edmund Weiner(OUP 1989) ,<http://oxford dictionary.com/compensation>, accessed 15 march 2019

<sup>31</sup> Ibid.

<sup>32</sup> Cambridge Dictionary( CUP 2008), <http://cambridge English dictionary.com/compensation>, accessed 15 march 2019

Under Collins English dictionary compensation is money which is claimed by a victim from the person or organization responsible, or from the state. Compensation can be understood as the act of amending damages by way of reparation or indemnification.<sup>33</sup>

Compensation is also termed as a specific form of reparation given in terms of monetary or economic awards for material or non-material damages.<sup>34</sup> The award given should have a monetarily quantifiable value for any economically assessable damage as proportionate to the gravity of the violation and circumstances of each case. However, as physical and mental sufferings cannot be economically quantifiable, their assessments have to be made on the basis of equity.<sup>35</sup>

Compensation can be considered as a corrective or remedial justice that, rectify the harm done to the victim. As this remedy is given to correct injustice, it serves moral goals. Law and its institutions are the tools through which, faults and its consequences are assessed to redress the harm.<sup>36</sup> Additionally, as the sum of money is awarded to compensate victims for the harm they have already suffered, the redress has retroactive effect.<sup>37</sup>

Compensation can also be understand as a substitute remedy as, it cannot replace the right which is already violated. As a result of this, compensation is a second best alternative when full restitution is impossible. However, damage awards provide victims the means to enjoy former life and new activities.<sup>38</sup> In addition to this, the equal sum of money awarded to the harm done is given as if that money can replaces the thing lost. To this effect, compensation is seen as a tool for restoring the previous existing thing.<sup>39</sup> Although human rights violations and money are mutually exclusive, awards of damages are still justified because; it serves to affirm public

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<sup>33</sup> Mary O'Neill, Elspeth summers (Collins 2011), <http://Collins English dictionary.com/compensation>, accessed 15 March 2019.

<sup>34</sup> Commission (n 2) 174.

<sup>35</sup> Ibid.204

<sup>36</sup> Shelton (n 1) 19

<sup>37</sup> Ibid,315

<sup>38</sup> Ibid

<sup>39</sup> Ibid,316

respect for the victim and give public recognitions of the wrongdoer's fault in failing to respect basic rights.<sup>40</sup>

Compensatory damages are generally divided into three, these are: nominal awards, which are a small sum of money awarded to ascertain rights and make the judgment a matter of record, pecuniary damages, which, encompass the closest financial equivalent of the monetary loss or harm suffered and moral damages that renders compensation for dignitary violations.<sup>41</sup>

Pecuniary losses include the value of the thing to which the victim was entitled and any consequential losses such as lost profits resulting from harm to the thing the victim is entitled. The damage is thus the substitute remuneration paid for the thing lost.<sup>42</sup>

The European Court of Human Rights states that compensatory damage is awarded for lost earnings, pensions, fines, wrongly paid interpreters costs and reduction in the value of the property. Loss of opportunities is also sometimes awarded compensation, particularly when pecuniary damages are clear but it is hard to quantify.<sup>43</sup> The European Convention on the compensation of victims of violent crimes encompasses human right violations: it states that compensation shall cover at least loss of earnings, medical, hospitalization expenses and funeral expenses and includes a dependent's loss of maintenance.<sup>44</sup>

Moral damages serve to measure non pecuniary or dignitary losses.<sup>45</sup> In assessing moral damages for physical and emotional sufferings in designing appropriate measure of redress the conduct of the parties, the moral value attached to the right violated, economic efficiency, the effect of the remedy that is afforded to third parties or the public, the difficulties of calculating loss and the practicality of enforcement should be taken into account.<sup>46</sup> The guiding principle in

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<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> Ibid,330

<sup>43</sup> Ibid

<sup>44</sup> European convention on the compensation of victims of violent crimes,23 November 1983,OJ N 116/2

<sup>45</sup> Shelton (n 1) 346

<sup>46</sup> Ibid, 347

most courts for calculating damages for non-pecuniary losses is fair compensation or equitable assessment considering the special circumstances of each case.<sup>47</sup>

Compensation granted for economic losses resulting from human rights violations can be counted as material damages.<sup>48</sup> Violations resulting in loss of actual or future earnings are compensated for human rights violations In case of loss of Employment or salary.

Damage is awarded on the basis of equity although there is no adequate evidence about actual earnings. In addition to the victim, the damage for loss of earnings is also awarded for the relatives or other dependents if they suffer economic loss from the loss of earnings of the victim.<sup>49</sup> Apart from loss of earnings, direct and indirect victims may suffer other forms of direct material damage resulting from human rights violations.<sup>50</sup> This includes: loss of movable and immovable property, costs arising from legal assistance, the pursuit of investigations or lawsuits, medical and psychological assistance, all immediate or removed consequences of the violation.<sup>51</sup> Loss of opportunities including employment, education and social benefits should also be compensated.<sup>52</sup>

In case of moral losses, as there is no restitution to the older position, the main function of granting compensation is providing redress for the harm done to the physical and emotional wellbeing of an individual.<sup>53</sup> Moral losses includes harm done to the reputation and dignity of a person and damages resulting from pain, suffering, anguish and distress. Moreover, physical sufferings and psychological trauma are also included.<sup>54</sup> When there is physical harm, the occurrence of emotional suffering does not need to be proved by evidence because: it is obvious that the physical harm has an inevitable consequence on the emotional wellbeing of an individual.<sup>55</sup>

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<sup>47</sup> Ibid,351

<sup>48</sup> Commission(n 2) 181

<sup>49</sup> Ibid ,184

<sup>50</sup> Ibid,185

<sup>51</sup> Ibid,181

<sup>52</sup> Ibid, 187

<sup>53</sup> Ibid,189

<sup>54</sup> Ibid,190

<sup>55</sup> Ibid,189

Compensation for the violations of human rights must be awarded based on the principle of equitable, prompt, adequate and effective system.<sup>56</sup>

Human rights violations occur when any state or non-state actor breaches any of the terms of the UDHR or other international human rights law .As these violations are the root causes for every instability and conflict, the victims of human rights violations needs to be effectively redressed so that good governance, equitable rule of law and social justice prevail in a given state.<sup>57</sup>

In most cases, the international human rights treaties do not specify how breach of human rights should be remedied. Thus, state parties to a human rights treaty are free to decide how to enforce the rights and freedoms concerned. However, a few human rights treaties that includes, article 14(1) of the convention against torture and other cruel, inhuman or degrading treatment specifies that state parties have a duty to ensure that victims of torture have a right to fair and adequate compensation and rehabilitation if necessary. Article 7 of the inter-American convention on the prevention, punishment and eradication of violence against women has also imposes a duty on state parties to establish the necessary procedural remedy so that victims have effective redress as of Restitution, Reparations or other Just and Effective Remedies.<sup>58</sup>

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<sup>56</sup> Shelton( n 1) 345

<sup>57</sup> OSCE ,human rights violations root causes of instability<<https://www.osce.org>> accessed on 20 march 2019

<sup>58</sup> Protection and redress for victims of crime and human rights violations<<https://www.ohchr.org>> accessed on 21 march 2019

## Chapter Three

### 3. The Normative and Institutional Frameworks under International and Regional Human Rights Instruments on the Right to Remedy For Human Rights Violations

#### 3.1 International Standards on the Right to Remedy

Granting Adequate compensation requires a direct causal link between damage or harm suffered and a right violated.<sup>59</sup> Harm is the negative effect which, is evaluated on the basis of the victim's situation with and without the causative event.<sup>60</sup> Identifying the harm caused by the human rights violation also needs assessing different factors, including the specific right violated, the gravity of the violation and whether the violation is in a way of pattern or practice.<sup>61</sup> Harm can be defined as physical or mental injury, emotional suffering, economic loss and substantial impairment of fundamental rights.<sup>62</sup> Given the fundamental nature of human rights, any violation of human rights involves the suffering of the victims, at least as the victims who suffer injustice.<sup>63</sup> This shows that persons entitled to compensation or reparation are those who suffer harm as a consequence of the human right violation.<sup>64</sup>

When human rights violations occur, remedies may be sought within the domestic legal system. And in circumstances where the state within which the violations occurred has ratified an

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<sup>59</sup> Commission ( n 2) 189

<sup>60</sup> Shelton( n 1) 14

<sup>61</sup> Ibid

<sup>62</sup> Commission (n 2) 42

<sup>63</sup> Ibid

<sup>64</sup> Ibid

international human rights treaty with human rights monitoring mechanisms, from such a human rights body.

There are established international standards relating to the provision of effective remedies or compensation to victims of human rights violations.<sup>65</sup> This includes:

### **3.1.1 Access to Justice**

Access to justice is a mechanism of ensuring the right of the victim to bring a claim before an appropriate tribunal. It is about the right to seek remedy before a tribunal which is established by law and which is independent and impartial under the law.<sup>66</sup> This is a procedural prerequisite to enforce human rights within national legal systems.<sup>67</sup> Access to justice implies a positive duty for the state to organize their institutional structure for individuals to have access to appropriate remedies. It also imposes a negative obligation of not eliminating existing mechanisms.<sup>68</sup>

Human right tribunals agree that states can limit access to justice by statutory limitations and by the requirement of legal representation to ensure the proper administration of justice. However, this restriction should not hinder the full enjoyment and the very essence of the right.<sup>69</sup> Access to justice is also limited by practical factors such as economical problem to provide legal counsel and procedural costs.<sup>70</sup> There should be physical access to remedies, which means that individuals, such as persons with disabilities and persons who live in remote areas, can seek remedies in convenient locations and facilities.

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<sup>65</sup> Shelton( n 1) 91

<sup>66</sup> Ibid, 96

<sup>67</sup> Ibid

<sup>68</sup> Ibid

<sup>69</sup> Ibid

<sup>70</sup> Ibid,98

### **3.1.2 An Independent and Impartial Tribunal**

Different human rights instruments state that an appropriate legal organ, tribunal or institution that performs judicial functions should be independent.<sup>71</sup> This independence paves the way for due process of law and fair trial in the judiciary system. The European Court of human Rights examines the independence of tribunals by examining the manner of appointment of its members and their term of office.<sup>72</sup> The Committee on Economic, Social and Cultural rights stated that as the realization of those rights requires effective enforcement mechanisms, judicial bodies responsible to providing remedies for human rights violations must be transparent and accountable.<sup>73</sup> This can be linked to competent justice system which can provide effective and fair redress for victim of human rights violations.<sup>74</sup>

### **3.1.3 Prompt and Timely Proceedings**

The time within which a remedy is obtained can determine the effectiveness of the justice system.<sup>75</sup> The European Court for Human Rights interpreted article 6 of European convention on Human rights which states about the right to a fair trial not only for hearing but also for providing prompt remedies. The reasonable time depends up on the circumstances and complexity of the case.<sup>76</sup> The ICCPR and ICESCR also state the requirement of prompt, timely and expeditious remedies. The committee on Economic, Social and Cultural rights stated that proceedings should not result in unnecessary delays while rendering decision.<sup>77</sup>

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<sup>71</sup> Ibid,100

<sup>72</sup> Ibid,101

<sup>73</sup> UNCECSR, General comment no.15:The right to water(2002) UN doc, E/C/2002/49

<sup>74</sup> Shelton( n 1) 100

<sup>75</sup> Ibid,102

<sup>76</sup> Ibid,103

<sup>77</sup> Committee on Economic ,Social and cultural rights, general comments no,17(2005)(52)

The regional human rights bodies are also adopt a system in providing timely remedies for the Victims.<sup>78</sup> Generally, the international human rights tribunals and jurisprudence are uniform on promptness and effectiveness of justice as a prerequisite to the right of remedy.<sup>79</sup>

### **3.1.4 Fair Proceedings**

A fair proceeding needs a due process of hearing or trial.<sup>80</sup> The right to hearings includes the right to have reasonable time to prepare arguments and evidences for the judicial and, administrative remedial mechanism.<sup>81</sup> The European Court of Human Rights stated that each party to a given case must have a reasonable opportunity to present their case to a court under equal conditions. Thus the right to remedy for human rights violations needs a prior fair proceedings or trial for the parties to present their issues and get reasoned judgment thereto.<sup>82</sup> Moreover, a Fair proceeding requires the requirement of non discrimination so that, victims can have access to judicial bodies and adequate, effective and prompt remedies and, reparations can be provided without distinction of any kind.<sup>83</sup>

### **3.1.5 Exhaustion of Domestic Remedies**

This is a procedural criterion for the admissibility of an international claim.<sup>84</sup> The term can be understand as a general requirement that victims first use the judicial or administrative complaint procedures available under national law before bringing a complaint to the international level. Exhaustion of local remedies aims at safeguarding state sovereignty by requiring individuals to seek redress for any harm caused by that state within its national legal system before starting

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<sup>78</sup> Shelton ( n 1) 104

<sup>79</sup> Commission (n 2) 65

<sup>80</sup> Shelton( n 78)

<sup>81</sup> Ibid,105

<sup>82</sup> Ibid

<sup>83</sup> Commission ( n 2) 58

<sup>84</sup> Shelton ( n 1) 91

international proceedings against that state.<sup>85</sup> The state should be duly informed to have an opportunity to redress human rights violations before it is taken to account before an international mechanism.

Human rights monitoring bodies apply the rule of exhaustion of local remedies in different ways.<sup>86</sup> They generally put the burden of proof on the applicant to demonstrate that remedies are either not available or they are inadequate or ineffective in a particular case.<sup>87</sup> In the European Court of Human Rights, the rule of exhaustion of local remedies is applied with flexibility by taking practical assessment of legal and political context of remedies operation and the personal circumstances of the applicant.<sup>88</sup>

The African commission on Human and People's rights considers that one of its functions is to redress complaints not remedied at the domestic level. Thus, the commission accepts the rule of exhaustion of local remedies with some exceptions. i.e., the domestic remedy must be available, effective, and sufficient and the redress must be obtainable from judicial bodies.<sup>89</sup> While the commission absolves applicants of the requirement in cases of unduly prolonged remedies, it does not establish standard criteria for its determination. However, it has individually analyzed each communication taking into account the political situation of the country, the country's judicial history and the nature of the complaint.<sup>90</sup>

The inter-American commission on Human Rights also requires that the claimant first exhaust domestic remedies before presenting a complaint to it. However, there are exceptions to this requirement which include: if the domestic system does not afford due process of law for the protection of the right that have allegedly been violated, the party alleging violation of his/her

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<sup>85</sup> International justice resource center ,' Exhaustion of domestic remedies' ([www.Ijrcenter.org/exhaustion](http://www.Ijrcenter.org/exhaustion) of domestic remedies)accessed on 21 march 2019

<sup>86</sup> Ibid

<sup>87</sup> Ibid,93

<sup>88</sup> Ibid

<sup>89</sup> Ibid.94

<sup>90</sup> International justice resource center, 'exhaustion of domestic remedies in the African human rights system'(august 2017)([www.Ijrcenter.org/exhaustion](http://www.Ijrcenter.org/exhaustion) of domestic remedies 2017)accessed on 22 march 2019

rights has been denied access to the remedies under domestic law and if there has been undue delay in rendering judgment on remedies.<sup>91</sup> It further holds that domestic remedies should be adequate (capable of addressing a violated human right when pursued) and effective (capable of producing the result for which they were designed and that can redress the alleged violated right)

Under the UN human rights system, complaints are similarly expected to exhaust domestic remedies prior to submitting a complaint alleging human rights violations to the UN treaty body.<sup>92</sup> However, the national remedies must be available and effective, i.e. the state should give access to courts and other legal procedures to bring claims of human rights violations and the remedies should be binding. A binding remedy is a legally given remedy which can be enforced by competent authorities.<sup>93</sup> Moreover, there are exceptions to the rule of exhaustion of domestic remedies and these include case where domestic remedies have no chance of success, are unreasonably prolonged, or where the claimants tried but were unable to fulfill the exhaustion of domestic remedies requirement because of his or her financial impediments.<sup>94</sup>

### **3.2 International Human Rights Instruments**

International human rights instruments oblige states to provide remedies and reparations for all Human rights violations and abuses.<sup>95</sup> These instruments include various conventions or treaties, declarations and other relevant international documents ratified or endorsed by states to protect human rights.<sup>96</sup> In addition, other sources of international human rights law, including international Customary laws, general principles of international law, judicial decisions and

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<sup>91</sup> International justice resource center ,'exhaustion of domestic remedies in the Inter American human rights system'( [www.lijrcenter.org/exhaustion](http://www.lijrcenter.org/exhaustion) of domestic remedies)accessed on 22 march 2019

<sup>92</sup> International justice resource center ,'exhaustion of domestic remedies in the united nations human rights system'( [www.lijrcenter.org/exhaustion](http://www.lijrcenter.org/exhaustion) of domestic remedies)accessed on 22 march 2019

<sup>93</sup> Ibid,8

<sup>94</sup> Ibid,10

<sup>95</sup>International covenant on civil & political rights( n 21)

<sup>96</sup>Universal declaration of human rights( adopted 10 december1948 UNGA Res 217 A(III) (UDHR)

teachings of highly qualified publicists as subsidiary means<sup>97</sup> can also be used to infer the right of reparation or compensation in case of human rights violation.<sup>98</sup> However, the main sources of human rights law are international treaties, which, can be categorized as universal or regional. International human rights law obliges states to adhere to the human rights instruments and to protecting the human rights of their citizens and residents.<sup>99</sup>

There are a number of international human rights instruments that obliges states to provide remedy or compensation in case of human rights violation<sup>100</sup> these include:

1. The universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights provides an individual with the right to an effective remedy by the competent national authorities for acts violating the fundamental rights granted by the constitution or by law.<sup>101</sup> As effective remedy is granted by the competent authorities after receiving and examining a case, the rights to both substantive and procedural remedies can be inferred from the UDHR.

2. The International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights under Article 2(3)(a) provides that State Parties have a duty to ensure that any person whose human rights recognized in the convention are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. According to article 2(3) (b), states also have obligation to establish competent judicial, administrative, legislative or other

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<sup>97</sup> Statute of international court of justice( adopted on 26 June 1945,entered into force 24 October 1945) ( ICJ Statute) article 38(1)

<sup>98</sup>Brian D.Lepard, Why customary international law matters in protecting human rights<<https://volkerrechtsblog.org>> accessed on 2 April 2019

<sup>99</sup> Frederic Megret, the nature of international human rights obligations( oxford university press 2009)98

<sup>100</sup> Shelton (n 1) 63

<sup>101</sup> Universal declaration of human rights ( n 96) art 8

competent authorities to determine the right to remedy of any person. When such remedy is granted, the authorities have to see to it that it is implemented. .<sup>102</sup>

The specific right to compensation in case of unlawful arrest or detention is also recognized under the ICCPR.<sup>103</sup> In addition to this, a person who has been falsely convicted of a criminal offence and suffered punishment as a result of such conviction has a right to compensation unless the miscarriage of justice is wholly or partly attributable to that person.<sup>104</sup>

Thus, the right to procedural and substantive remedy or the right to receive compensation in cases of violation of human rights is well recognized under the ICCPR.

### 3. The International Convention on the Elimination of All forms of Racial Discrimination

This convention provides for the obligation of State Parties to assure individuals within their jurisdiction effective protection and remedies, through the competent national tribunals and other state institutions, against any acts of racial discrimination, which, violate recognized human rights and freedoms.<sup>105</sup> Moreover, the right to seek just and adequate reparation from such tribunals for any damage suffered as a result of racial discrimination is recognized.<sup>106</sup> Thus, the ICERD recognizes the right to substantive and procedural remedy.

### 4. The International Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment

This convention explicitly states the right to access to justice and adequate compensation in case of any act of torture or inhumane treatment. In other words, State Parties have a duty to ensure

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<sup>102</sup> covenant on civil & political rights ( n 21)

<sup>103</sup> Ibid, art 9(5)

<sup>104</sup> Ibid, art 14(6)

<sup>105</sup>International convention on the elimination of racial discrimination (adopted 21 December 1965, entered into force on 4 January 1969) 195 UNTS 660(ICERD) art.6

<sup>106</sup> Ibid.

that any individual who alleges that's /he has been subjected to torture has the right to complain to and have his/her case promptly and impartially examined by competent authorities.<sup>107</sup>

State Parties also have a duty to ensure in their legal system that the victims of torture or cruel, inhuman or degrading treatment or punishment obtain redress and have an enforceable right to fair and adequate compensation.<sup>108</sup>

#### 5. The Convention of the Rights of the Child (CRC)

CRC states that states parties have an obligation to take all appropriate measures to promote physical and physiological recovery of a victim child.<sup>109</sup> The recovery can include a form of reparation or social integration.

#### 6. The International Convention on the Protections of All Persons from Enforced Disappearance (ICPPED)

This Convention also provides for the right of victims of enforced disappearance to an effective remedy in case where a state party applies a statute of limitation.<sup>110</sup> In case of deprivation of the right to information, the right to prompt and effective judicial remedy shall also be given.<sup>111</sup> The Convention further imposes States Parties the duty to ensure the right of victims of enforced disappearance to obtain reparation and prompt, fair and adequate compensation in their legal system.<sup>112</sup>

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<sup>107</sup> International convention against torture and other cruel, inhuman or degrading treatment(adopted 10 December 1984,entered into force 26 June 1987) 1465 UNTS 85(UNCAT) art.13

<sup>108</sup> Ibid ,art 14

<sup>109</sup> Convention on the rights of the child,( adopted 20 November 1989,entered into force on 2 September 1990) 1577 UNTS 3 ( UNCRC) art.39

<sup>110</sup> International convention for the protection of all enforced disappearance(adopted 20 December 2006,entered into force 23 December 2010) 2716 UNTS 3 ( ICPPED) art 8

<sup>111</sup> Ibid, art 20

<sup>112</sup> Ibid, art 24

## 7. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)

This convention has several specific provisions on remedies, including the right to fair and adequate compensation for expropriated property, an enforceable right to compensation for unlawful arrest and miscarriage of justice, equality of treatment before courts and tribunals and the right to a fair and public hearing before a competent, independent, and impartial tribunal, the right to seek compensation for an expulsion order carried out before all appeals are exhausted, and the right to diplomatic assistance to assist with remedies. It further requires each State party to ensure effective remedies to anyone whose rights or freedoms guaranteed in the Convention are violated a fair hearing on violations claimed and enforcement if remedies are granted.<sup>113</sup> Thus, in case of infringement of the stated rights, the Convention provides individuals with the right to an effective remedy and fair compensation.

In addition to the above mentioned international treaties, the right to remedy and fair, prompt and adequate compensation is also stated in other relevant international documents. These includes, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of power, the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions, the Declaration on the Protection of All Persons from Enforced Disappearance, the Vienna Declaration and program of action, the Declaration on human rights defenders, the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Statute of the International Criminal Court, The Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law commission.<sup>114</sup> Under the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law the right to an effective remedy and reparation is also well established.<sup>115</sup>

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<sup>113</sup> Shelton (n 1) 66

<sup>114</sup> Commission (n 2) 286

<sup>115</sup> United nations general assembly (n 22) art.9

Apart from these human right instruments, the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries enumerates fair compensation for damages.<sup>116</sup> The right to full compensation can also be instituted for any lose or injury.<sup>117</sup>

The institutional arrangement of each international human right instruments are established with different functions this includes: deciding complaints against states, engaging in independent monitoring through country visits and reporting and reviewing states reports on their own Compliance with human rights standards.<sup>118</sup> In addition, they have also a mandate to receive individual complaints. The Complaints procedures mostly, are contained in a separate protocol or might be included in optional clauses within the treaty itself.<sup>119</sup>

There are no international human rights conventions which make explicit reference to the competence of institutions to give remedies for human rights violations. However, human rights treaty bodies that hear complaints state their views and prepare a report on remedies as part of their authority to dispose the case at hand.<sup>120</sup>

The United Nations treaty bodies do not have explicit legal competence to order compensation or other remedies. Meanwhile, they have instituted a follow up procedure and insist that good faith compliance with treaty obligations requires that the state concerned provide the remedies the organs recommend.<sup>121</sup> The subsidiary organ that includes the working group on arbitrary detention, The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions makes different reports for human rights violations.<sup>122</sup> Under its general comment, the Committee on

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<sup>116</sup> Convention Concerning Indigenous and Tribal Peoples in Independent Countries (adopted 27 June 1989, entered into force 5 September 1991) (1989) 28 ILM 1382, art15

<sup>117</sup> Ibid ,art 16

<sup>118</sup> International justice resource center, overview of the human rights framework<<https://ijrcenter.org>> accessed on 15 April 2019

<sup>119</sup> Shelton ( n 1) 191

<sup>120</sup> Ibid

<sup>121</sup> Ibid,193

<sup>122</sup> Ibid,194

Torture and other Cruel, Inhuman or Degrading Treatment also states about its role in providing full and adequate reparations to victims.<sup>123</sup>

The United Nations treaty bodies have also addressed remedies in their observations on periodic State reports, in general comments, and in their views on communications. As a result, States should describe the effective remedies that are available to any individual through the competent national tribunals for acts violating the rights guaranteed by the constitution or by law. States also As a result of being parties to the treaties that provide for the right to a remedy should ensure effective remedies to individual-s. In addition, states should indicate procedural guarantees for enforcing human rights by an independent tribunal.<sup>124</sup>

As Ethiopia has an obligation to implement ratified treaties, the role of various national institutions and tribunals is also very vital in order to comply with treaty obligations regarding granting procedural and substantive remedy to individual-s human rights violations. Moreover, by ratifying the main international human rights instruments, Ethiopia is also monitored by a number of expert committees that have been established by particular treaties.<sup>125</sup>

### **3.3 Ratification of International Human Rights Treaties in Ethiopia**

Human rights are inherent and inalienable rights of individuals that are legally protected by human rights law, which includes treaties, customary international law, general principles of International law and other sources of international law Human rights law obliges states to respect, protect, promote and fulfill human rights.<sup>126</sup>

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<sup>123</sup> C Grossman , The role of the committee against Torture in providing full and adequate Reparation to victims<<https://www.wcl.american.edu>> accessed on 16 April 2019

<sup>124</sup> Ibid,196

<sup>125</sup> Abyssinia law, ' Ethiopia's human rights treaty reporting to the UN treaty bodies' <<https://www.abysinnialaw.com>> accessed on 15 April 2019

<sup>126</sup>UN Office of the high commissioner for human rights, "a basic human rights handbook for un staffs"(2000) OHCHR 3

A Number of international human rights treaties and other instruments have been adopted for the protection of individual's fundamental freedoms and human rights. International human rights law are consisting of treaties and customs in addition, declarations, guidelines and principles. International human rights treaties are an agreement by state parties to be bound by specific treaty obligations. A state can become a party to a treaty by ratification, accession or succession. Ratification is a state's formal expression of consent to be bound by a given treaty. On the national level, Ratification requires proceedings of approval by the parliament or head of the state.<sup>127</sup>

Monism and dualism are used to describe two different theories of the relationship between international law and national law. Monists accept that both national and international legal systems are part of the same whole that an act of ratifying an international treaty automatically incorporates it into national law. That is without further process at the national level. In a pure monist state, a national law that contradicts international law is null and void, even if it is a constitution. In Monist states, once a country accepted a specific human rights treaty, an individual can invoke the provisions of the human rights treaty before national institutions even if the national law restricts a given human right.

Under dualism a subsequent national legislative process is required for adapting ratified international treaty into national law. Thus, dualists emphasize that if a state accepts a treaty but does not adapt the national law to conform to the treaty. Then the state will have violated international law. If the international treaty provisions are not integrated into national law, individuals cannot depend on it and national institutions cannot apply it.

If a given human rights treaty is accepted for a political reason and states do not incorporated it into national law then the implementation of a human rights treaty will be in question.<sup>128</sup>

In Ethiopia, there is no strictly followed method of incorporation of international treaty provisions because the Ethiopian Constitution provides for both methods .Article 9(4) of the Ethiopian Constitution stipulates that all international agreements ratified by Ethiopia are

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<sup>127</sup> Ibid,4

<sup>128</sup> Monism and dualism in international law<<https://en.m.wikipedia.org>> accessed on April 13 2019

integral parts of the law of the land. Article 55(12) of the Ethiopian constitution also states that HPR ratifies international agreements concluded by the executive. In addition, article 2(2) and (3) of the Federal Negarit Gazette establishment proclamation requires that all laws of the federal government shall be published on the gazette and all states organs should take judicial notice of laws so published. So, all international agreements need to be ratified so that they can be integral parts of the law of the land. Thus according to these provisions, Ethiopia is classified as dualist state. However, the Ethiopian parliament merely pronounces ratification. Thus, once Ethiopia has ratified an international agreement and decided to incorporate it into domestic law that incorporation is done through a mere ratification proclamation without the transformation or actual incorporation of the treaty provisions into Ethiopian laws by separate legislation. Transformation can be understood as relevant national laws are amended or repealed to comply with the treaty. It can therefore be said that both dualistic and monistic system of implementation of human rights treaties into domestic laws are employed in Ethiopia.

Hierarchically, in Ethiopia's pyramid of law the hierarchy of ratified treaties is controversial. Article 9(1) of the Ethiopian constitution which declares the supremacy of the constitution states that any law that is inconsistent with the Constitution is null and void. While interpreting article 9(1) and 9(4) of the Constitution international agreements which are made an integral part of the laws of the land upon ratification are subordinate to the Constitution. On the other hand, article 13(2) of the constitution stipulate that the fundamental rights and freedoms should be interpreted in a manner conforming to the principles of the UDHR and international instruments ratified by Ethiopia. This provision gives international human rights instruments an equal status to the Constitution or sometimes higher to it as the Constitution should conform to the ratified human rights treaties. .Thus, from this perspective, Ethiopia follows a monist method of implementation of international human rights treaties.<sup>129</sup> This shows that any international obligations and principles which are stated by ratified international human rights treaties need to be observed and effectively complied by Ethiopia. Moreover, as a benefit of monism method, individuals whose

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<sup>129</sup>Liku worku," Legislative proposals and application of human right treaties in Ethiopia"  
<<https://www.abysinialaw.com>> accessed on, 20 April 2019

internationally accepted human rights are violated should have access to justice under the national institutions.

Ethiopia has been a member of the United Nations since 1945. It is a party to six of the seven core human rights treaties which are to the above discussed treaties. Ethiopia joined the ICERD in 1976, but did not make the Declaration under article 14 that would allow individuals to submit complaints to the Committee on the Elimination of Racial Discrimination. It ratified the CEDAW in 1981, but not the 1999 Optional Protocol. In 1991, Ethiopia Ratified the CRC, but it has not yet taken any action with respect to the 2000 Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict. In 1993, Ethiopia joined both the ICCPR and the ICESCR. It has not joined the Optional Protocols to the ICCPR on an individual complaint mechanism and on the abolition of the death penalty .It has also not joined the optional protocol to the ICESCR. Ethiopia became a party to the CAT in 1994, but did not make the declaration under article 22 that would allow individual complaints, nor did it join the 2002 Optional Protocol establishing a system of regular visits. Finally, Ethiopia has not also ratified ICMW.<sup>130</sup> The international human rights treaties create legal obligations for State Parties to promote and protect human rights at the national level. Thus, as Ethiopia has ratified these treaties, it has assumed legal obligation to comply with the treaty obligation, including the ones on the right to a remedy, and to implement the rights set out in the treaties.<sup>131</sup>

### **3.4 Regional Human Rights Instruments**

Regional human rights instruments includes Conventions, declaration and other relevant documents that help to contextualize international human rights norms and standards reflecting the particular human rights concerns of a particular region. Regional human rights systems are consist of regional instruments and monitoring mechanisms that play an important role in the promotion and protection of human rights in the region. An effective regional human rights

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<sup>130</sup> Abyssinian law ( n 125)

<sup>131</sup> Ibid

system can assist national governments with the implementation of their international human rights obligations, provide people with more accessible mechanisms for the protection of their human rights, enhance regional input to the development of international human rights standards and mechanisms, help to raise people's awareness of their human rights in a regional context and reflecting their particular human rights concerns.<sup>132</sup> Lastly, it supports national governments to better address regional human rights concerns which include migration, transnational crimes and environmental problems.<sup>133</sup> However, it should be born in mind that both international and regional human rights instruments come into play after all the national remedies are exhausted,<sup>134</sup> i.e., they are subsidiary to domestic systems of human rights protection.

There are three principal regional human rights instruments, which are the European convention on Human Rights, The American Convention on Human Rights and The African Charter on Human and Peoples' Rights.<sup>135</sup>

#### 1. The European Convention on Human Rights and the European Social Charter

The convention for the protection of Human Rights and Fundamental Freedoms (ECHR) defines and guarantees various human rights and fundamental freedoms in Europe. It incorporates several provisions on national remedies.<sup>136</sup> The right to a fair trial and access to justice are protected under the Convention. This right entitles individuals with a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.<sup>137</sup>

An individual whose rights and freedoms are violated should have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an

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<sup>132</sup> Office of the high commissioner for human rights, ' united nations human rights' <[https://bangkok.ohchr.org/regional\\_human\\_rights](https://bangkok.ohchr.org/regional_human_rights)> accessed on 13 April 2019

<sup>133</sup> Ibid

<sup>134</sup> Shelton (n 1) 67

<sup>135</sup> Regional human rights regimes <<https://en.m.wikipedia.org>> accessed on 14 April 2019

<sup>136</sup> Ibid

<sup>137</sup> Convention for the Protection of human rights and fundamental freedoms (European Convention on Human Rights, as amended) (ECHR) art 6

official capacity.<sup>138</sup> This can be linked to exhaustion of domestic remedies requirement and the supplementary nature of international law to national law. Moreover, the right to compensation is stated in connection with victims of unlawful arrest.<sup>139</sup> The European social charter also incorporates a few provisions on remedies including, the right of workers wrongfully dismissed to obtain compensation or other relief.<sup>140</sup>

The European Union Charter of Fundamental Rights enshrines certain rights for EU citizens and residents into the union law. Chapter IV of the Charter contains an explicit guarantee of the right to remedy for wrongs done to a person, including the right to a fair and public hearing by an independent and impartial tribunal previously established by law. The right to legal representation with the availability of legal aid for those who lack sufficient resources is also ensured.<sup>141</sup>

## 2. The American Convention on Human Rights

The American convention on Human Rights is a main regional human right instrument in the Inter-American system.<sup>142</sup> The Convention is adopted to develop a system of personal liberty and social justice based on respect of essential human rights.<sup>143</sup> Every person has the right to a fair trial with due hearing and reasonable time by a competent, independent and impartial tribunal previously established by law.<sup>144</sup> In cases of civil, labor, fiscal or any other nature,<sup>145</sup> the right to compensation is also provided in cases when a person has been sentenced by a final judgment through miscarriage of justice.<sup>146</sup>

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<sup>138</sup> Ibid, art 13

<sup>139</sup> Ibid, art 5

<sup>140</sup> Shelton (n 1) 69

<sup>141</sup> Ibid,70

<sup>142</sup> Ibid,224

<sup>143</sup> American convention on human rights, OAS treaty series no. 36, 1144 UNTS.123(entered into force July 18,1978),reprinted in basic documents pertaining to human rights in the inter-American system, OEA/Ser. L. V/II. 82 doc.6 rev.1 at 25 (1992)

<sup>144</sup> Ibid, art 8

<sup>145</sup> Ibid.

<sup>146</sup> Ibid,art.10

### 3. African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples Rights (ACHPR) obliges states parties to recognize, Promote and protect the rights, duties, and freedoms contained in the Charter.<sup>147</sup>

The Charter recognizes that every individual has the right to have his case heard which consists of the right to an appeal to competent national organs against any act of violations of fundamental rights as recognized by any instruments in force.<sup>148</sup> Moreover, the specific right to compensation is granted in case of unlawful interference with the possession of an individual or a group.<sup>149</sup> Thus the right to a remedy and compensation is established under the Charter.

In addition-to the above stated regional human rights instruments, there are also other pertinent regional documents that recognize the right to effective remedy and compensation. These include: The Arab Charter on Human Rights, The American Declaration of the Rights and Duties of Man and the Inter-American Convention to Prevent and Punish Torture.<sup>150</sup>

Apart from various international human right instruments, Ethiopia has acceded to the ACHPR in 1998.<sup>151</sup>

### 3.5 Institutional Frameworks of Regional Human Rights

Unlike the international treaties, the main regional human instruments allow some cases to be heard by a court that can issue binding decisions on remedies.<sup>152</sup> Several regional inter-governmental organizations have established their own institutional frameworks for the protection of human rights within their respective geographic regions. The institutions are

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<sup>147</sup> African Charter on human and people's rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter)

<sup>148</sup> Ibid, art 7

<sup>149</sup> Ibid, art 21

<sup>150</sup> Commission (n 2) 287

<sup>151</sup> Accession To The African Human Rights Charter Proclamation No.114/1998, Federal Negarit gazette, 4th Year,No.1

<sup>152</sup> Abyssinia law ( n 125)

judicial or quasi-judicial bodies established to resolve individual claims for the violation of rights guaranteed under the regional human rights instruments.<sup>153</sup>

### 1. European Human Rights System

The European Commission on Human Rights and the European Court of Human Rights used to be the two human rights organs in the European human rights system. However, a reform of the system replaced both organs with a new European court of human rights. It has jurisdiction to decide cases brought by injured parties against state parties for violating rights stated under the European convention or the protocols thereto.<sup>154</sup>

The European convention on human rights gives the court an authority to give remedies in case of violations of the rights stated under the convention or the protocols<sup>155</sup> the Convention gives the Committee of Ministers the mandate for executing the judgments of the court.<sup>156</sup> Thus the Committee has a mandate to enforce the decision given on remedies for victims of violations.

### 2. The Inter- American Human Rights System

The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are the two institutions in the inter-American human rights system.<sup>157</sup> Under the American Convention on human rights it is stated that any person can lodge a petition with the Commission for violations of the Convention by a state party.<sup>158</sup> The commission, after determining the facts by relevant procedures, it prepares a report and if it finds a violation, makes recommendation by stating the specific remedies to the state.

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<sup>153</sup>Georgetown university law library,' regional human rights system'(February 2019)<<https://guides.ll.georgetown.edu> 2019> accessed on 16 April 2019

<sup>154</sup> European convention on human rights ( n 137) art 34

<sup>155</sup> Ibid, art.41

<sup>156</sup> Ibid,art,46

<sup>157</sup> Shelton ( n 1) 224

<sup>158</sup> American convention on human rights ( n 143) art 44

After completing the procedures of the Commission, the commission or the state can submit the case to the court. The Court's decision is binding. However, unlike to the European system, the court itself takes follows up the enforcement of its judgments.<sup>159</sup>

When a commission has found that a state has violated human rights and recommends paying compensation to the victims, this state duty becomes an international legal obligation that may not be limited by national law.<sup>160</sup>

The ACHR also gives the inter-American court broad jurisdiction to decide on remedies.<sup>161</sup> It is stated that if the court finds that there has been a violation of a right or freedom protected by the convention, the court shall order a remedy for the consequences of the violation and fair compensation be paid to the injured party.<sup>162</sup>

### 3. The African Human Rights System

The African Commission on Human and People's Rights and the African Court of Human and Peoples' Rights are the two institutions in the African Human Rights System.

According to the African Charter on Human and People's rights, the Commission's functions includes, the promotion and protection of human and people's rights in Africa ,interpretation of the charter, receiving complaints from individuals who exhaust local remedies.<sup>163</sup> After examining the case at hand, the commission will recommend that the state that violated the individual's human rights has a duty to make good the damage.<sup>164</sup> Thus the Commission can acknowledge the need for adequate compensation and effective remedy.<sup>165</sup>

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<sup>159</sup> Shelton ( n 1) 226

<sup>160</sup> Ibid

<sup>161</sup> Ibid,228

<sup>162</sup> American convention on human rights ( n 143) art 63

<sup>163</sup> African charter on Human and Peoples' Rights ( n 147) art.45

<sup>164</sup> Shelton ( n 1) 234

<sup>165</sup> Ibid,235

There was a complaint received before the commission for the unlawful detention of former Derg officials. The claimants allege that their right to fair and speedy trial is violated by the Ethiopian state. An award of compensation is also requested by the victims. Consequently, the commission recommends the state to pay adequate compensation to the victims.<sup>166</sup>

For the African Court of Human and Peoples' Rights mandate on remedies, it is stated that if the Court finds that there has been a violation of a human or people's right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.<sup>167</sup> Meanwhile, the court may receive complaints directly from individuals or NGOs only if the state against which they submit the complaint has deposited a declaration recognizing the jurisdiction of the Court to accept such cases under Article 34(6) of the protocol to the African Charter on Human and Peoples' Rights.<sup>168</sup>

As Ethiopia has acceded to ACHPR, the African Commission on Human and People's Rights and the African Court on Human Rights have the competency to receive communications against it. But Ethiopia has not made the declaration under article 34(6) of the protocol.<sup>169</sup>

State parties that ratify the above stated international and regional human rights instruments and monitored by their treaty bodies have a an obligation to comply with the stated treaty obligations. An obligation to grant substantive and procedural remedy to the victim-s of human rights violations as stated under these human rights instruments have to be then strictly adhere by state parties. For instance, article 2(3) of International Covenant on Civil and Political rights requires that, in addition to effective protection of covenant rights, State Parties have a duty to ensure that individual-s also have accessible and effective remedies in the case of violation of these rights. The committee explains that effective remedies may also include bringing to justice the perpetrators of covenant rights violations. On the national level, states parties must establish appropriate judicial and administrative mechanisms for addressing claims of human rights

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<sup>166</sup>Haregewoin Gebre-Sellase and IHRDA V. Ethiopia,301/05,30,ACHR

<sup>167</sup> Ibid, 237

<sup>168</sup> African court on human and peoples right<[www.african-court.org](http://www.african-court.org)> accessed on 17 April 2019

<sup>169</sup> African commission on human and people's rights<[www.achpr.org](http://www.achpr.org)> accessed on 19 April 2019

violations.<sup>170</sup> Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly through independent and impartial bodies.<sup>171</sup> This implies, that Ethiopia as a party to the covenant should ensure that a victim of human rights violation is effectively redressed. Effective remedy requires the right to procedural remedy with prompt and fair proceedings by independent and impartial national institution-s or tribunal and the right to substantive remedy which includes the granting of effective reparation or compensation for the damage occurred to the victims by the national institutions.

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<sup>170</sup> Human Rights Committee, the nature of the general legal obligation imposed on states parties to ICCPR, General comment no.31 <[www.nuhanovicfoundation.org](http://www.nuhanovicfoundation.org)> accessed on, 20 April 2019

<sup>171</sup> Ibid

## **Chapter Four**

### **4. Ethiopia's Normative and Institutional Frameworks on Individual's Right to Compensation for Human Rights Violations**

#### **4.1 National Legislations on the Right to Compensation for Human Rights Violations**

Ethiopia is a party to various international human rights treaties. Thus, upon ratifying the treaties, it is bound by the general and specific human rights obligations. Ensuring effective enjoyment of human rights requires the state to adopt all necessary legislative and other measures to give effect to the rights enshrined in various human right instruments.<sup>172</sup> Ethiopia is accordingly expected to adopt legislations for on the protection of human rights, including the establishment of various implementation mechanisms.

As the right to compensation for human rights violation is one aspect of human rights and it is stated under various international and regional human rights instruments, this section examines the extent which national legal instruments give effect to it.

##### **4.1.1 The Ethiopian Constitution**

The FDRE Constitution which came into force on 21 august 1995 consists of 106 articles in 11 chapters, of which almost one third is devoted to human rights. Chapter three has thirty two articles that include civil and political rights and a few socio-economic rights.<sup>173</sup> In addition, Article 10 of the Constitution provides that Human rights and freedoms which emanates from the nature of mankind are inviolable and inalienable and explicitly states that the human and

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<sup>172</sup> Commission ( n 2) 19

<sup>173</sup> M. Ashine ( n 7) 3

democratic rights of citizens and peoples shall be respected.<sup>174</sup> Nevertheless, democratic rights arise only by virtue of a legal grant of that specific right. Thus, the Constitution generally states the general notion of human rights as universal, inalienable and inviolable.

Although there is recognition of human rights under the constitution, the legal recognition of individual's right to reparation for human rights violation in Ethiopia is not addressed in the constitution.<sup>175</sup> However, under article 37 the right of access to justice is recognized. It is stated that any individual has the right to bring justifiable matter to court or any other competent body with judicial power and obtain a decision thereto.<sup>176</sup>

As the right to compensation is one component of the right to reparation, individual's right to compensation in case of human rights violations is also not stated under the Ethiopia Constitution. Thus, although the right to procedural remedy is well recognized, the right for substantive remedy or reparation in case of human rights violation is not explicitly recognized under the Ethiopian constitution.

The International standard which is a basis for a procedural remedy is access to justice.<sup>177</sup> When an individual has standing in the national institutions, he/she can have a right to state the general facts and claims so that appropriate judgment is given by independent and impartial institutions or tribunals accordingly. However, the explicit right of individuals to get redress or reparation in cases of human rights violation is not stated under the Constitution.

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<sup>174</sup> The constitution of federal republic of Ethiopia ,proclamation number 1/1995,art,10

<sup>175</sup> M. Ashine ( n 7) 4

<sup>176</sup> The constitution (n 174) art, 37

<sup>177</sup> Shelton ( n 1) 96

### 4.1.2 The Civil Code of Ethiopia

The Ethiopian civil code which is highly influenced by the continental European model was promulgated on May 5, 1960.<sup>178</sup>

In the Ethiopian legal system, there is no comprehensive law that deals with the right of victims to reparation for human right violation. However, the close reading of the extra contractual liability section of the civil code reveals the existence of the right to reparation for certain types of human right violations, including bodily injury, unlawful interference with the liberty of another and other offences.<sup>179</sup> The provisions on liability of the state stipulate that any civil servant or government employee shall make good any damage he causes to another by his fault.<sup>180</sup> Where the fault is a professional fault which is committed in the course of carrying out official responsibilities, the victim may claim compensation from the state provided that the state may subsequently claim from the person at fault.<sup>181</sup>

It is stipulated that the material damage done to the victim shall be made good by awarding the victim an equivalent amount of money.<sup>182</sup> Thus, the right to compensation for offences that can be considered as human rights violations can be inferred from this provision. The right for reparation can also be inferred as it is stated that the court has the power to order in addition to compensation, any appropriate measures to make good the damage.<sup>183</sup>

For moral injury it is stated that the offender has an obligation to make good the damage incurred by whatever procedure exists for such redress.<sup>184</sup> However, moral harm cannot be made good by

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<sup>178</sup> Liku worku” Analyzing authority core feature of Ethiopian civil code<”<https://www.abbyssinialaw.com>> accessed on 21 April 2019

<sup>179</sup> M .Ashine ( n 7) 4

<sup>180</sup> Civil code of Ethiopia, proclamation number 165/1960 , art 2126(1)

<sup>181</sup> Ibid(2)

<sup>182</sup> Ibid, art 2090

<sup>183</sup> Ibid, art 2090(2)

<sup>184</sup> Ibid, art 2105(1)

way of damages or money unless the law prescribes.<sup>185</sup> Meanwhile, the obligation to pay fair compensation is stated for a number of moral harms.<sup>186</sup> The compensation awarded for moral injury may in no case exceed one thousand Ethiopian birr.<sup>187</sup>

Although there is no explicit provision in the civil code for the right to compensation in case of human rights violations, there are scattered provisions on the right to compensation for some offences that violate protected human rights. Meanwhile, as the court has the power to give decisions on the appropriate measures to be taken for particular kind of offences; both the right to substantive and procedural Remedy can be implicitly inferred from the close reading of the civil code.

### **4.1.3 Ethiopian Criminal Procedure Code**

The current Ethiopian criminal that is promulgated in 1961 provides for the procedure to be followed by appropriate organs while prosecuting or accusing a defendant. Although, unlike to the civil procedure which handles claim of compensation by the victim, criminal proceedings aim is to penalize the offence. When an individual is injured by a criminal offence, he/she can make an application to the court for an order that compensation be awarded for the injury caused.<sup>188</sup> .while a criminal offence is committed; individual's human rights can also be violated. Thus, the application made for compensation in criminal offence can also be understood as made for human rights violations. Moreover, under the repealed Penal Code of Ethiopia when an offence has caused considerable damage to the victims particularly in cases of death, injuries to the body or health, defamation, damage to property or destruction of goods, the victims are entitled to claim that the offender be ordered to make good the damage or to make restitution or to pay damages by way of compensation.<sup>189</sup> When compensation cannot be paid by the offender, the court will order proceeds for the sale of the articles distained or other relevant proceeds to be

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<sup>185</sup> Ibid (2)

<sup>186</sup> Ibid, art 2105-2115

<sup>187</sup> Ibid, art,2116(3)

<sup>188</sup> Ethiopian criminal procedure code ,proclamation number 185/1961,art 154(1)

<sup>189</sup> Penal code of Ethiopia, proclamation number 158/1957,art 100(1)

paid to the victims.<sup>190</sup> Moreover, the compensation should be proportionate to the extent of the damage suffered, to the needs of the victims and be limited as a maximum to the amount of the damage as assessed by the court or agreed by the parties.<sup>191</sup> Although the above stated criminal offences are also a violation to human rights, the right to compensation in case of human rights violations is not explicitly established under the repealed penal code, the current criminal code and the current procedural code. Moreover, under the criminal procedure code there is no any provision that grants the right to compensation for an individual who has been unlawfully arrested or detained for the criminal offence. However, this specific human right is protected under many international and regional human rights instruments. Under ICCPR, it is explicitly stated that anyone who has been a victim of unlawful arrest or detention has an enforceable right to compensation.<sup>192</sup>

Nevertheless, the close reading of criminal code of Ethiopia reveals that the existence of the right to reparation for some types of human rights violation which constitute a crime. For instance under article 101 of the criminal code when a crime has caused considerable damage to the victim or those having from them, they are entitled to get restitution or compensation.<sup>193</sup> To this end, the victims may join their civil claim with the criminal suit<sup>194</sup>

The civil procedure handles claim of compensation by the victim to the violated human rights. Thus, victims right to compensation for the material and moral damages they incur as stated under the Ethiopian civil code can be implemented by following procedures of the civil procedure code.

Therefore, as the right to make a claim and get an appropriate redress by a court is protected, both procedural and substantive right to compensation can be implicitly observed from the Ethiopia's criminal legal documents.

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<sup>190</sup> Ibid, art 101(1)

<sup>191</sup> Ibid (2)

<sup>192</sup> International covenant on civil and political rights ( n 21) art.9(5)

<sup>193</sup> Ethiopian Criminal Code, Proclamation. Number, 414 /2004, art. 101

<sup>194</sup> Ibid

#### **4.1.4 Ethiopian Labor Proclamation**

The Ethiopia labor proclamation is proclaimed to ensure worker to employer relations as governed by the basic principles of rights and obligations with a view to enabling workers and employers to maintain industrial peace and work in the spirit of harmony and cooperation towards the all-round development of Ethiopia. Moreover, its preamble states that the rights and obligations under the proclamation should be in conformity with the international conventions and other legal commitments to which Ethiopia is a party.<sup>195</sup>

The employer has an obligation to respect the worker's human dignity.<sup>196</sup> Moreover, the employer shall not discriminate workers based on their nationality, sex, religion, political stand or any other conditions.<sup>197</sup> However, there is no any single provision which stipulate a right for compensation in case of human rights violation. Thus an employer who violates a workers human reputation and the right to equality is not obliged to compensate victims under the labor proclamation.

Ethiopia civil servant proclamation is established with the purpose of maintaining a system for adopting uniform administration of civil servants and proper use of their knowledge and skill. Moreover, it has an aim of building a civil service that could guarantee diversity and the sustainability of the country's growth and the enhancement and sustainability of the achievements of the civil service reform program. Nevertheless, there is no any stipulated provision about a right to compensation for the civil servants in case of violation to their human rights.<sup>198</sup>

Thus, the right for substantive and procedural right for compensation in case of human rights violations is not explicitly referred under the Ethiopia labor and civil servant proclamation.

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<sup>195</sup> Ethiopian Labor proclamation, proclamation number 377/2003

<sup>196</sup> Ibid, art 12(3)

<sup>197</sup> Ibid, art 14(f)

<sup>198</sup> Federal civil servants proclamation ,proclamation number 1064/2017

## 4.2 National Institutional Frameworks on the Right to Compensation for Human Rights Violations

As the obligation to respect human rights requires states to refrain from acts or omission that violates human rights, a state must not curtail the enjoyment of human rights. These includes, respecting individuals procedural right for adequate remedy in case of human rights violation. Moreover, states have a duty to take positive actions to facilitate the enjoyment of basic rights by creating conducive environment and to promote the rights through different mechanisms.<sup>199</sup>

Among the means of realizing human rights are national human rights institutions. These institutions have the responsibility to broadly protect, monitor and promote human rights in a given country.

The United Nations High Commissioner for Human Rights provides advisory and support services to national human rights institutions (NHRIs) and facilitates their access to the UN treaty bodies and other organs. Accreditation at the UN is based on Compliance with the UN standards set out in the Paris principles by a subcommittee of the international coordinating committee of NHRIs. Generally, NHRIs often have specific human rights mandate in the promotion and protection of human rights and a broader mandate which include research, documentation and training.<sup>200</sup> These National human rights institutions can be grouped together in two broad categories, namely, human rights commission and ombudsmen.<sup>201</sup>

The Paris principle stipulates that NHRIs must be established by constitution or ordinary statutes. The FDRE Constitution of 1995 lays down the foundation for a NHRI to be established by the House of People's Representatives.<sup>202</sup> Accordingly, the Ethiopian national human rights Commission and the Institution of ombudsman were established five years after the adoption of

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<sup>199</sup> Commission ( n 2) 19

<sup>200</sup> National human rights Institutions<<https://en.m.wikipedia.org>> accessed on 24 April 2019

<sup>201</sup> Ibid

<sup>202</sup> Yemsrach Endale, " The roles and challenges of Ethiopian national human rights institutions in the protection of human rights in light of the Paris principles"(2010) CEU 21

the Constitution by Proclamation Nos. 210/2000 and 211/2000, respectively. These institutions are devoted to the promotion and protection of human rights.<sup>203</sup>

These institutions though expected to cover a wide range of human rights violations, in reality highly concerned to protection and implementation of civil and political rights. However, working only on civil and political rights is not adequate in their core mandate of promotion and protection of human rights.<sup>204</sup> Moreover, the Paris Principles guarantee a broad mandate to national institutions that they should also address issues concerning economic, social and cultural rights.<sup>205</sup> Broad range of legal basis of national institutions is necessary to ensure that certain rights are not left out from protection and assist to give remedy for violation that falls between gaps in the national law. Moreover, national institutions should engage in the promotion and protection of constitutionally guaranteed rights, and rights incorporated in international human rights instruments whether it is ratified or not by Ethiopia.<sup>206</sup>

As courts are not adequate for the effective protection of human rights due to various reasons such as the shortage of professionals specialized in the area of human rights, the establishment of national human rights institutions has a major role in enhancing the effective implementation of human rights norms.<sup>207</sup> NHIs have also a role in procedural remedy and granting compensating to victims of human rights violations.

#### **4.2.1 Ethiopia Human Rights Commission**

The Ethiopian human rights commission is an independent national human rights institution established in accordance with article 55/14 of the constitution of the federal democratic republic of Ethiopia and proclamation no.210/2000. The Commission has a mission of ensuring constitutional human rights and fundamental freedoms are well protected through human rights advocacy, counseling, monitoring, conducting researches into the country's human rights

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<sup>203</sup> National human rights Institutions ( n 200 ) 15

<sup>204</sup> Ibid

<sup>205</sup> Ibid,18

<sup>206</sup> Ibid,28

<sup>207</sup> Ibid,16

situations, investigating into and addressing human rights violations and paying particular attention to vulnerable groups.<sup>208</sup>

The Proclamation defines the powers and duties of the Commission which includes: ensuring that the human rights and freedoms provided under the constitution are respected by all citizens and organs of state, ensuring laws, regulations and government decisions do not contravene human rights, undertake investigation upon complaint or in its own initiation in case of human rights violations, make recommendations for the revision of existing laws, enactment of new laws and formulation of policies, provide consultancy service on matters of human rights, forward its opinion on human rights reports to be submitted to international organs as well as perform other activities as may be necessary to attain its objectives.<sup>209</sup> The organization of the commission, powers and duties of appointees, rules of procedure of the commission are stated under the proclamation.

A complaint may be lodged by a person claiming that his rights are violated or by his spouse, family member, representative or by a third party.<sup>210</sup> Anonymous complaints may also be received by considering the gravity of the human right violation committed.<sup>211</sup> However, the right to lodge complaints is not a bar to the institution of criminal or civil proceedings over the same case.<sup>212</sup> After conducting investigation on the complaints, the commission shall notify in writing the findings of its investigation and its opinion thereon to the superior head of the concerned organ and to the complainant.<sup>213</sup> Most importantly, the remedy which is proposed by the commission shall expressly state that the act that caused the grievance is stopped, the directives that have also caused the grievance be rendered inapplicable and the injustice

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<sup>208</sup> Ethiopian human rights commission <<https://humanrightsconnected.org>> accessed on 24 April 2019

<sup>209</sup> Ethiopian human rights commission establishment proclamation, proclamation number 210/2000, art.6

<sup>210</sup> Ibid, art 22(1)

<sup>211</sup> Ibid, (2)

<sup>212</sup> Ibid, (3)

<sup>213</sup> Ibid, art 26(2)

committed is redressed or that any other appropriate measure be taken.<sup>214</sup> The complaints submitted to the commission shall be accorded with due process within a short period of time.<sup>215</sup>

Accordingly, a Right to Procedural Remedy is stipulated under article 22 of the commission proclamation. A right to access to justice with prompt decision by the institution can also be inferred. Moreover, under article 26(2) of the proclamation, the commission has the power to propose a right to substantive remedy which is a redress for the injustice occurred. Thus, a victim of human rights violations may have a right to redress.

Practically, the Human Rights Commission has received a large number of individual complaints regarding human rights violations. Although the duty to make prompt decision is the Commission's obligation, it takes longer period of time for notifying its final opinion on the received complaint. Meanwhile, upon the finding of individual's human rights violation, the Commission will issue a recommendation which may include remedies that needs to be granted. The recommendation may state remedies which include restitution, the violation to be discontinued and the conviction of the violators. However, under the proclamation there is no explicit provision that orders the granting of compensation in case of human rights violations.<sup>216</sup> Moreover, as stated under article 4 of the Commission's Proclamation, when human rights are violated, the Commission has a duty to ensure that the necessary measure taken by appropriate organs. Thus the commission does not have a mandate to independently order compensation in case of human rights violation. Nevertheless, by undertaking Investigation on various human rights violations, the commission has a duty to make recommendations for the revision of existing laws, enactment of new laws and formulation of policies. However, the commission has not made any recommendation for the formulation of national law for the right to compensation incase human rights violations.<sup>217</sup> Thus, in practice, under the human rights

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<sup>214</sup> Ibid, (3)

<sup>215</sup> Ibid, (4)

<sup>216</sup> Interview with Ato Wubishet Girma, team human rights violations investigator, Ethiopian human rights commission(Addis Ababa university 1 may 2019)

<sup>217</sup> Ibid

commission although the right to procedural remedy is respected, the right to substantive compensation is not granted to victims of human rights violations.

#### **4.2.2 Ethiopian Ombudsman Institution**

The Ethiopian ombudsman institution is an independent national human rights institution established in accordance with article 55(15) of the Constitution of the federal democratic republic of Ethiopia and Proclamation no.211/2000.

The objective of the ombudsman office as stated in article 5 is ensuring the realization of an effective system of public administration rooted in the principles of rule of law and respect for the right of individuals in the administrative process. It also aims duly rectify or prevent the unjust decisions and orders of executive organs and officials by hearing complaints of violations and providing prompt redress thereof.<sup>218</sup>

The power and duties of the institution includes, supervise the administrative directives and decisions given by executive organs do not contravene the constitutional rights of citizens ,receive and investigate complaints in case of mal administration, seek remedies in case it believes maladministration has occurred, undertaking researches to stop maladministration, make recommendations for the revision of existing laws, practices or directives and enactment of new laws and formulation of policies with a view to bringing about good governance.<sup>219</sup>

A complaint is lodged by a person claiming to have suffered from maladministration or by his spouse, family member, his representative or by a third party.<sup>220</sup> Anonymous complaints may also be received.<sup>221</sup> After conducting investigation on the basis of complaints submitted to it, the institution shall notify the findings of its investigation and its opinion thereon to the superior head of the concerned organ.<sup>222</sup> Upon stating the remedy, the institution shall expressly state that

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<sup>218</sup> The ombudsman in Ethiopia<<https://chilot.me>> accessed on 2 may 2019

<sup>219</sup> Ethiopia's Ombudsman Establishment proclamation, Proclamation Number 211/200, art.21

<sup>220</sup> Ibid, art 22(1)

<sup>221</sup> Ibid (2)

<sup>222</sup> Ibid ,art 26(2)

the act that has caused the maladministration be stopped or the laws that have caused it be rendered inapplicable and the maladministration committed is rectified or any other appropriate measures be taken.<sup>223</sup>

Practically, the Ethiopian ombudsman institution has received many complaints on various human rights violations. The complainants have stated their need for redress that includes restitution, satisfaction and rehabilitation.<sup>224</sup> However, they do not lodge a complaint for the right to compensation in case of human rights violations. For that matter, the institution is not also entertaining these complaints, as there is no explicit domestic law which states about the right to compensation regarding human rights violations.

As stated under article 26(2) of the institution's proclamation, the institution should notify the finding of its investigation and its recommendations to the superior head of the concerned organ. However, the institution does not make any recommendations on the individual's right to compensation regarding human rights violations as there is no complaint thereto.<sup>225</sup> Moreover, as stipulated under article 6(5) and (6) of the proclamation, the institution has a duty of undertaking research on curbing maladministration and make recommendations for the revision of existing laws and enactment of new laws. However, so far, the institution do not make any recommendations to the legislative organ for the enactment of new laws on the individual's right to compensation regarding human rights violations.

On recommending redress other than compensation in any given case, the institution uses its establishment proclamation and other relevant national laws. However, as issues of human rights are mostly handled by the human rights commission, the institution usually infer cases of human rights violations to the commission or national courts.<sup>226</sup>

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<sup>223</sup> Ibid (3)

<sup>224</sup> Interview with Ato Mengisu Dage, directorate of investigator, Ethiopian ombudsman institution( Ethiopian ombudsman institution 3 may 2019)

<sup>225</sup> Ibid

<sup>226</sup> Ibid

The promptness of the recommendation mostly depends on the nature of a given human rights violation. However, the directives of the institution state the specific period of time for rendering decision regarding individual's human rights violations.<sup>227</sup> Therefore, the right to procedural remedy is respected in Ethiopian ombudsman institution though the right to substantive remedy or compensation is not granted for the victims of human rights violations.

### 4.2.3 Ethiopian Federal Courts

A national human rights protection system is the sum of laws, policies and institutions that protect human rights. The judiciary is part of this system. An independent judiciary has a key role in ensuring accountability, addressing impunity and ensuring remedies to the victims of human rights violations. Ethiopia has put in place normative and institutional frameworks for human rights protection. Thus, Ethiopia's judicial system is among the institutional mechanisms established to ensure the rule of law and protection of human rights.<sup>228</sup>

National Courts also play a major role in the protection of human rights. This includes, hearing claims of human rights violation, following and applying due process of law and giving decisions and judgments on the appropriate remedy which should be afforded to the victims.

A procedural remedy of Access to justice gives an individual a standing before independent and impartial tribunal. In addition, a judgment granting compensation as a form of reparation is also a substantive right to remedy. Thus, the national courts have a duty to respect individual's human rights to bring their case to appropriate tribunal and to grant substantive redress or reparation in case of human rights violation.<sup>229</sup>

In practice, the Federal First Instance court often receives claims of individual's human rights violations, in criminal trials; for example, accused or detained persons often claim that their

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<sup>227</sup> Ibid

<sup>228</sup> Abdurrahman seid Hussein ,an independent judiciary for the protection of human rights in Ethiopia<<https://www.abysinialaw.com>> accessed on 5 may 2019

<sup>229</sup> The Constitution ( n 174)

human rights have been violated by the police while they are in custody.<sup>230</sup> Consequently, the court investigates the issue by following appropriate procedures such as hearing witnesses and renders appropriate decision thereto. Nevertheless, while investigating the violation, the court may order temporary measures such as transferring the detainee to another prison with a view to protecting his or her human rights.

If human rights violations occur in the criminal investigations or proceedings, the court may order the conviction of the perpetrator under applicable provisions of the criminal code. In civil cases, courts may provide a fair compensation for material and moral damages based on the pertinent provisions of the Ethiopian Civil Code.<sup>231</sup> However, in practice, courts do not normally receive separate complaints demanding compensation to human rights violations. Consequently, decisions where courts grant compensation are hard to come by.<sup>232</sup> Moreover, the absence of clear legal basis for courts to grant compensation in cases of human rights violations poses another challenge; nevertheless, the courts have the obligation to grant compensation in cases of human rights violations by interpreting pertinent national laws such as Ethiopian civil code<sup>233</sup>

The time for rendering prompt decision depends on the nature of the case, type of the human rights violations and effectiveness of the justice system.

In federal high court, there are individuals who lodged a separate claim for redress to their human rights violations. When individuals lodge a claim for their human rights violations, the court will investigate all the issue at hand and subsequently, grant appropriate reparation or compensation.<sup>234</sup> The time for deciding on a given human rights violations may depend on the nature of a given case. Upon receiving a claim and following investigation, the court has a duty to order compensation by interpreting articles 2090-2117 and 2126 of the Ethiopian Civil Code an article 154 of the criminal procedure code.

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<sup>230</sup> Interview with Ato Gezachew Geleta, coordinator judge, federal first instance court( lideta bench 16 may 2019)

<sup>231</sup> Ibid

<sup>232</sup> Ibid

<sup>233</sup> Ibid

<sup>234</sup> Interview with Ato Bereket Seyefe, criminal judge, federal high court criminal bench( lideta federal high court 18 may 2019)

The provisions of the Ethiopian civil code on, extra-contractual liability-extensively provide for instances of awarding compensation for various offences. Article 2126 stipulates any civil servant or government employee shall make good any damage he causes to another by his fault. It is also victim's right to claim compensation from the state, provided that the state can subsequently-claim from the civil servant or employee at fault. Moreover, under the civil code, there are scattered provisions on the individual's right to compensation for certain human rights violations. Thus, by interpreting these provisions of the civil code, the court can order compensation to victims of certain human rights violations.<sup>235</sup>

Practically, the court rejects for some individuals' claims on human rights violations by reason of absence of cause of action because some international agreements, which provide for the a right to a remedy including compensation in cases of human rights violations, are not published under the Ethiopian Federal Negarit Gazette, This contributes to the courts' weak implementation of various accepted international human rights agreements. However, as stated under the Ethiopian Constitution, all international agreements which are ratified by Ethiopia are an integral part of the laws of the land. Thus, the courts should directly apply ratified international agreements even if they are not published under the federal Negarit gazette.<sup>236</sup>

In the federal courts, there are pending cases on individuals' human rights violations. However, there is no any individual who receives compensation to his/her human rights violations.

Therefore, there is individual's right to procedural remedy as access to justice with independent and impartial tribunal is observed under the federal courts. Nevertheless, the right to substantive remedy is not well observed.

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<sup>235</sup> Ibid

<sup>236</sup> African Human Right Law Journal, 'The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia'(2008)(8)(2) 286

## **Chapter Five**

### **5. Conclusion and Recommendations**

#### **5.1 Conclusion**

The study generally discussed individual's right to compensation in case of human rights violations, which is provided for under various International, Regional and National human rights legal instruments. These human rights legal instruments have various institutional frameworks for the implementation of victim's rights to compensation regarding human rights violations.

When Individual's human rights are violated, Courts and human rights institutions have the duty to respect individual's rights to substantive and procedural remedy in accordance with internationally accepted standards. The right to compensation regarding human rights violations is also part of substantive remedies or one type of reparation for redressing violations of human rights.

Thus, the individual's right to compensation in case of human rights violations as stated under various human rights documents should be strictly adhered by their respective institutions and state parties to the human rights documents.

As a party to a number of international human rights instruments, Ethiopia has the obligation to compensate individuals whose human rights are violated. This obligation includes, respecting and fulfilling individual's access to justice by guarantying fair proceedings before independent and impartial tribunals or institutions, granting prompt remedies including appropriate compensation, and ensuring due enforcement of decisions in favor of victims of human rights violations. Meanwhile, these obligations are fulfilled by taking various legislative and institutional measures to implement ratified international human rights treaties. Consequently, Ethiopia has legislated a few laws and established institutions that guaranty individual's right to compensation regarding human rights violations. However, the pertinent national legislations are

not sufficiently clear and adequate. Thus, the national tribunals and institutions do not have separate and clear laws on which they can rely when there is an individual's claim to compensation for human rights violations. As a result, the national human rights institutions and courts do not follow a uniform practice in receiving complaints of human rights violations. Victims of human rights violations also do not commonly receive compensation because there is no domestic law that stipulates their right to receive compensation in cases of violations of human rights. Thus, the right to substantive remedy or redress and procedural remedy is not strictly followed by national institutions and tribunals.

A state Failure to respect individual's right to substantive and procedural remedy indicates the non-compliance of the state with its obligations under international and regional human rights instruments it has accepted. Thus, As Ethiopia's national human rights institutions and courts do not have a uniform and strictly followed system for individual's right to procedural remedy and the right to compensation in case of human rights violations, the country is not adhering to the ratified international and regional human rights that it has ratified.

Apart from these, although there is no explicit reference to the competency of human rights treaty bodies on giving remedies, they can that hear complaints, state their views and prepare a report on remedies as part of their authority to dispose the case at hand. Thus, Ethiopia's failure to accept the individual complaint mechanism under ICCPR, IESCR and CAT gives rise to deprivation of victims of human rights violations on their right to a remedy or reparations from international human right mechanism. Thus, apart from the difficulty to get appropriate domestic remedies, individuals whose rights are violated cannot also get reparation under the international system.

## **5.2 Recommendations**

As mentioned above, Ethiopia is non-compiling with its obligations to protect the right to a remedy under International and Regional human rights instruments. As complying with these Instruments will be important for the better protection of human rights in the country, the Following recommendations need to be taken into account.

- A separate and clear national law on the right to compensation to victims of human rights violations should be adopted. as this contributes for the national human rights institutions and courts to adopt uniform practices on receiving complaints of human rights violations and accordingly, granting compensations to the victims of human rights violations.
- All ratified international and regional human rights instruments should be published on the federal Negarit Gazette so as to facilitate their usage by individuals to submit claims on human rights violations to the courts and receive compensation if the violations occur.
- The relationship between international and national law should be clearly established. As strict system of incorporation of international agreements leads to a uniform compliance system to the international and regional human rights instrument. Monism has benefits when it is seen from human rights perspective. If the national law restricts or violates the given human rights, an individual can invoke the human rights treaty under national institutions so that his/her rights are protected as stipulated under the treaty. The country should employ this, so that individual's human rights are protected and compliance to international agreements is sought.
- Ethiopia should ratify Optional protocols to ICCPR, ICESCR and CAT that establish Individual complaints procedure so that victims could take complaints of human rights violations to the international human rights bodies.
- National human rights institutions should fulfill their obligations in recommending a revision of existing laws and enactment of new laws.
- The public at large should be aware of its human rights and fundamental freedoms so that they can exercise their rights in case of infringement.
- Civil Society Organizations should submit reports to treaty bodies such as to the Human Rights committee; Universal Periodic process etc on the measures Ethiopia has taken and should take in implementing the right to a remedy, including compensation in cases of Human rights violations.
- Courts and judges should be diligent in respecting and protecting human rights. the notion of judicial activism should also be effectively controlled by appropriate organs.

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## **Annexes**

### **Annex One**

#### **Interview questions to Ethiopian Human Right Commission and Ombudsman Institution Colleagues**

1. Is there any individual claimant whose human rights are violated by the state and made a claim before the Ethiopian human right commission or Ethiopian ombudsman institution? Or is it possible to do so? If so, how much time is needed to grant justice for the given claim?
2. Is there any individual who claims a compensation for his/her human right violations?
3. If there is a claim by the individual, have the human right commission or ombudsman Institution ever given a remedy as of compensation for human rights violations?
4. Is there any other remedies given by the human right commission or ombudsman Institution to the human rights violations which, are like restitution, non-repetition..?
5. Is there any law which a commission currently rely on for granting compensation to individual's human rights violations?
6. Is there any procedures within the commission or ombudsman Institution which should be followed by claimants for accessing justice and getting a remedy of compensation?

## **Annex Two**

### **Interview question to Federal Court Judges**

1. Is there any individual claimant whose human rights are violated by the state and made a claim before the Ethiopian Federal Lideta Courts? Or is it possible to do so? If so, how much time is needed to grant justice for the given claim?
2. Is there any individual who claims a compensation for his/her human rights violations?
3. If there is a claim by the individual, have the Federal Courts ever given a remedy as of compensation for the human rights violations?
4. Is there any other remedies given by the courts to the human rights violations which, are like restitution, non-repetition..?
5. Is there any law Interpreted by the courts which stipulates a right of compensation or other remedies for the human rights violations? Or is there any law which the courts currently rely on for granting compensation for individual/s human rights violations by the state?
6. Is there any procedures within the courts which should be followed by claimants for accessing justice and getting a remedy of compensation?