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**ADDIS ABABA UNIVERSITY
CENTER FOR HUMAN RIGHTS**

MASTER OF ARTS (M.A) HUMAN RIGHTS

The Right to Reparation for Survivors of Torture During the Conflict in Tigray

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June 19, 2024

Addis Ababa

The Right to Reparation for Survivors of Torture During the Conflict in Tigray

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**A Thesis Submitted to Addis Ababa University Center for Human Rights in Partial
Fulfillment of The Requirements for The Degree of Masters of Arts in Human
Rights**


June 19, 2024

Addis Ababa

DECLARATION OF ORIGINALITY

I, Feven Haile, hereby declare that this thesis, titled "The Right to Reparation for Survivors of Torture During the Conflict in Tigray," is my own original work and has never been presented in any other institution. I also declare that where sources are used, they are duly acknowledged.

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Date: 20 June 2024

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ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
AU- MVCM	African Union Monitoring, Verification, and Compliance Mission
ACHR	The American Convention on Human Rights
ASF	Amhara Special Forces
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CERD	Convention on the Elimination of All Forms of Racial Discrimination
COHA	Cessation of Hostilities Agreement
CPPED	Convention for the Protection of All Persons from Enforced Disappearance
CRC	Convention of the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights

EDF	Eritrean Defense Forces
EHRC	Ethiopian Human Rights Commission
ENDF	Ethiopian National Defense Forces
FAF	Fano Armed Forces
FDRE	Federal Democratic Republic of Ethiopia
HRC	The Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICHREE	International Commission of Human Rights Experts on Ethiopia
ICRC	International Committee of the Red Cross
IDP	Internally displaced people
IMTF	Inter-Ministerial Taskforce.
MHPSS	Mental health and psychosocial support
NGO	Non-Government Organizations
NHRIs	National Human Rights Institutions
OHCHR	Office of High Commission for Human Rights
PTSD	Post-traumatic stress disorder

TIRA	Tigray Interim Regional Administration
THRAN	Tigray Human Rights Advocacy Network
TPLF	Tigray People's Liberation Front
TUSA	Tigray Universities Scholars Association
UDHR	Universal Declaration of Human Rights

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ABSTRACT

The Tigray conflict in Ethiopia has resulted in widespread human rights violations, including torture and ill-treatment. This thesis examines the legal framework for reparation in Ethiopia and the challenges faced in its implementation, with a specific focus on survivors of torture in the Tigray conflict. The study explores domestic and international legal provisions pertaining to reparation, analyzes practical obstacles encountered by survivors in seeking redress, and identifies potential avenues for obtaining effective remedies.

The research addresses critical issues in the ongoing Tigray conflict, such as accountability, humanitarian access, and healthcare deficiencies. Survivors face challenges accessing justice, particularly due to the involvement of Eritrean forces, insecurity, limited trust in domestic institutions, gaps in the implementation of the Pretoria agreement and the absence of a state compensation fund. The study examines the delayed investigations, survivors' calls for justice, and the impact of conflict-related torture on physical and psychosocial well-being.

The paper concludes by proposing recommendations for safeguarding survivors' rights to reparation, including full and effective rehabilitation, and emphasizes the importance of addressing the unique needs of survivors in the Tigray conflict. By shedding light on the challenges faced by survivors of torture in Tigray and advocating for their rights to reparation, this thesis contributes to the discourse on human rights, transitional justice, and conflict resolution. The findings of this study provide valuable insights for policymakers,

human rights organizations, and legal practitioners seeking to address the rights and needs of survivors of torture in conflict-affected regions.

Chapter 1

1. Introduction

1.1. Background

The Tigray conflict in Ethiopia has witnessed numerous human rights violations, including acts of torture and ill-treatment against individuals.¹ The prohibition of torture is a fundamental human rights that is a universally recognized and a customary norm of international law that cannot be derogated from under any circumstances.² Moreover, Ethiopia is a party to several international and regional treaties that explicitly condemn torture and impose legal obligations to provide reparations for victims.³

The rules of war, also known as international humanitarian law, apply to internal armed conflicts⁴ like the fighting between the Ethiopian government and the Tigray regional forces. In these conflicts, countries that break the rules of war must fully redress for any harm or

¹ Human Rights Watch and Amnesty International. 2022. "We will erase you from this land: Crimes Against Humanity and Ethnic Cleansing in Ethiopia's Western Tigray Zone." April 6. Ethiopian Human Rights Commission and Office of the United Nations High Commissioner for Human Rights. 2021. "Joint Investigation into Alleged Violations of International Human Rights, Humanitarian, and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia." Geneva: United Nations, OHCHR, November 3.

² Evans, Christine. 2012. *The Right to Reparation in International Law for Victims of Armed Conflict*. Cambridge University Press, 43.

³ UN General Assembly. 1948. "Universal Declaration of Human Rights." December 10, 217 A (III). UN. 1984. "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." United Nations, Treaty Series, vol. 1465, December 10. Organization of African Unity (OAU). 1981. "African Charter on Human and Peoples' Rights (Banjul Charter)." June 27, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58. International Committee of the Red Cross (ICRC). 1949. "Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)." August 12, 75 UNTS 287.

⁴ International Committee of the Red Cross (ICRC). 1949. "Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 3 common to the Geneva Conventions of 12 August 1949." 75 UNTS 287

injuries they cause.⁵ This rule is also considered a customary law, meaning it is a long-standing practice that has become accepted as law.⁶

The right to reparation encompasses various forms, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.⁷ The Ethiopian legal system provides avenues for victims to seek reparation from the offender through civil or criminal proceedings, the practical implementation of the right to reparation for survivors of torture in Tigray faces challenges. In light of the Tigray conflict and the documented human rights violations, including torture and ill-treatment, there is a pressing need to examine the legal framework for reparation in Ethiopia and the challenges faced in its implementation.

This thesis will examine the laws, both within Ethiopia and internationally, that relate to providing reparation to victims of torture during the conflict in Tigray. It will also analyze the practical obstacles encountered by survivors of torture in seeking redress and the potential avenues available for obtaining reparation.

1.2. Literature Review

In searching out the works of other authors and materials that are related to the title of this paper, the researcher has come across academic works that are to some extent related to the topic, which includes issues about; the right to reparation for victims of armed conflicts, freedom from torture, compensating victims of crime and remedies for human rights violations.

⁵International Committee of the Red Cross (ICRC). 2005. Customary International Humanitarian Law, Volume I: Rules. 537.

⁶ (ICRC 2005, 537)

⁷ United Nations General Assembly. 2006. "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law." Resolution adopted by the General Assembly, March 21, A/RES/60/147.

Christine Evans, in her book “The Right to Reparation in International Law for Victims of Armed Conflict”, argues that there is a need to reinforce the notion that the state carries the principal responsibility for providing redress.⁸ Although a state may not have been directly and solely responsible for all violations in question, responsibility can, as is evidenced in international law result from complicity, omission, as well as failure to prevent and demonstrate due diligence.⁹

The ICRC study on “Customary International Humanitarian Law” endorses, States’ obligation to provide reparations for violation of international humanitarian law is an established norm of customary international law.¹⁰

Monica Luci in her book titled ‘Torture, Psychoanalysis, and Human Rights’¹¹ discussed the forms of reparations (restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition), and their applicability to survivors of torture.

Stephen Michael Roe Galoob assessed the different theories of reparation including liberal theory, corrective justice, right based and legitimacy-based approaches.¹² He defended the Liberal Theory of Reparation for political injustices based on the philosophical liberalism of John Rawls. He articulates that serious injustices impair political relationships and reparation is called for as a way of valuing those relationships. The author perceives reparation as a way of valuing political relationships. The role of reparation in alleviating the suffering of victims and meeting the needs of victims is not articulated in this paper.

⁸(Evans 2012, 4)

⁹(Evans 2012, 4)

¹⁰(ICRC 2005, 537)

¹¹Luci, Monica. 2017. *Torture, Psychoanalysis, and Human Rights*.

¹² Galoob, Stephen Michael Roe. 2015. "A Liberal Theory of Reparation." PhD diss., University of California, 151.

‘Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies’ written by Sarah Joseph, Katie Mitchell, Linda Gyorki, and Carin Benninger-Budel,¹³ gives guidance on how to seek redress in respect of violations of the prohibition of torture and ill-treatment from the United Nations human rights treaty bodies. The Handbook focuses on the procedures and jurisprudence of the three UN bodies (the Human Rights Committee, the Committee against Torture, and the Committee on the Elimination of Discrimination against Women) established under three core UN human rights treaties. This book focuses on the procedures under the auspices of the United Nations, it does not provide insight on the regional jurisprudence of the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human and People’s Rights.

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; define the areas of reparations as consisting of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.¹⁴ The Basic Principles also stress the obligation of states to implement domestic reparations for victims of armed conflict.¹⁵

The Basic principles and the books on the right to reparation under international law and humanitarian law were employed to evaluate the international legal standing of the right to reparation and its practical implementation at the national level.

Fisseha M. Tekle explores challenges and prospects for claiming reparation for victims of mass atrocities that occurred in Ethiopia between 1974 and 1991 during the Derg era.¹⁶ The findings of the study indicate that there are challenges for victims to claim reparation

¹³ Joseph, Sarah. 2006. "Seeking Remedies for Torture Victims." In Boris Wijkstrom, ed., 164.

¹⁴ United Nations General Assembly. 2006. "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law." Resolution adopted by the General Assembly, March 21, A/RES/60/147.

¹⁵(United Nations General Assembly 2006)

¹⁶Tekle, Fisseha M. 2013. "Victim Reparation for Derg Crimes: Challenges and Prospects." Master's thesis, Central European University.

such as the expiry of a period of limitation, non-justiciability of constitutional provisions in domestic Courts and the principle of State immunity prevents victims from resorting to international mechanisms even if those violations pertain to peremptory rules of international law such as the prohibition of genocide, torture and grave breaches of the laws of war.¹⁷ The study mainly addresses the issue of victim's reparation for crimes committed during the Derg regime which include torture, focusing only on the challenge and prospects of reparation.¹⁸ The challenges presented in Fisseha's paper are different from the current challenges faced by survivors of torture of the conflict in the Tigray region which is the focus of this study.

K.I. Vibhute offers an analysis of and reflections on the legislative paradigm and spirit of the legal entitlement of a victim of crime to seek compensation through criminal proceedings for the injury suffered or loss incurred by the commission of a crime.¹⁹ He affirms that Ethiopia does not have a comprehensive statutory or administrative scheme for compensating victims of crime and the idea of compensation has received little judicial attention.²⁰ Unlike this paper, K.I. Vibhute particularly focuses on the legal framework of compensation rather than the concept of reparation in general.

Seblewongel Tamiru concludes that many individuals had been tortured following allegations of participating in acts of terrorism after the promulgation of the anti-terrorism proclamation in Ethiopia.²¹ This was mainly due to the reason that the proclamation contained provisions that provided legal cover for the commission of torture on those suspected of crimes related to terrorism. She also pointed out there are no adequate laws that entitle torture victims to institute compensation claims. Her paper focuses on compensating victims

¹⁷(Tekle 2013)

¹⁸ (Tekle 2013)

¹⁹Vibhute, K.I. 2010. "Compensating Victims of Crime in Ethiopia: A Reflective Analysis of Legislative Paradigm and Spirit." *International Review of Victimology* 17: 311-350.

²⁰ Vibhute 2010, 311-350

²¹ Getahu, Seblewongel Tamiru. 2019. "Compensating Victims of Torture in Ethiopia: The Case of Bodily Injury in Anti-Terrorism Prosecution." Master's thesis, Addis Ababa University College of Law and Governance Studies.

of torture in Ethiopia in the case of bodily injury in anti-terrorism prosecution without giving much emphasis on non-pecuniary forms of reparation.

Abdi Jibril Ali identified human rights are most affected during criminal proceedings, then briefly described forms of reparation in international human rights law and examine their recognition in Ethiopian laws identifying challenges faced in the implementation of the law, mainly due to the culture of impunity in the country.²² The article primarily focuses on the legal framework and its potential reforms. It may benefit from incorporating empirical data, case studies, or examples to illustrate the practical impact of the identified challenges and proposed reforms.

Kidus Meskele Ashine and Teketel Labena Tera, in their short article, explore the place of the right to reparation for victims of human right violation in the present Ethiopian Legal Framework and offered an analysis of the existing legal framework in Ethiopia.²³ But since it is a short article it does not offer a deep insight into the legal framework of reparation and does not specifically address the right of victims of torture.

The above-mentioned research focused on the domestic and international legal framework of reparation. The right to reparation for survivors of torture in the context of armed conflict is an area of research not explored by authors/researchers in Ethiopia. The researcher employed the aforementioned domestic pieces of literature as the main sources of literature but various articles, books, and internet sources related to the right to redress, and the latest human rights reports on the conflict in Tigray are also used as a source. Moreover, relevant cases of torture dealing with the right to reparation entertained by treaty bodies will also be analyzed. This paper reveals the challenges faced by survivors of torture in Tigray to realize their right to reparation, what their needs are, and how the State can safeguard

²² Ali, Abdi Jibril. 2021. "Remedies for Human Rights Violations: A Reform Proposal for Addressing Victims of Criminal Proceedings in Ethiopia." *Northwestern Journal of Human Rights* 19.

²³ (Ashine and Tera 2017)

survivor's rights to reparation including full and effective rehabilitation by taking into consideration their needs. Hence, it is a topic that has not been articulated before by any authors.

1.3. Statement of the Problem

The protracted conflict in Tigray, Ethiopia, since November 2020 has left a trail of widespread human rights violations, including torture, arbitrary executions, conflict-related sexual violence (CRSV), pillaging, civilian displacements, extrajudicial killings and bodily injury.²⁴ Despite the signing of a Cessation of Hostilities Agreement in November 2022, the region continues to grapple with a humanitarian crisis, characterized by limited provisions of food aid and health care.

Victims of torture in the current Ethiopian legal system have two avenues for seeking reparation from the perpetrator. The first option involves the victim pursuing specific civil measures through legal action, potentially in a civil court. The second option entails the victim approaching a criminal court to seek redress for the injuries sustained or damages caused by the commission of a crime. However, the involvement of Eritrean forces in the reported human rights violations presents a challenge for domestic institutions in ensuring accountability. Additionally, survivors' lack of trust in these domestic institutions poses an additional hurdle for securing justice through the existing mechanisms. The absence of a State Compensation Fund for victims of human rights violations in Ethiopia, including torture, deprives survivors of financial support crucial for recovery.

²⁴ Human Rights Watch and Amnesty International. 2022. "We will erase you from this land: Crimes Against Humanity and Ethnic Cleansing in Ethiopia's Western Tigray Zone." April 6. Ethiopian Human Rights Commission and Office of the United Nations High Commissioner for Human Rights. 2021. "Joint Investigation into Alleged Violations of International Human Rights, Humanitarian, and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia." Geneva: United Nations, OHCHR, November 3.

Ethiopia is not a signatory to the Rome Statute, which established the International Criminal Court (ICC). Thus, the ICC cannot initiate an investigation and prosecution in Ethiopia without a UN Security Council referral or self-referral as a non-state party based on Article 12(3) of the Rome Statute.²⁵ The stand of the Federal Government of Ethiopia against referring itself to the ICC hitherto, and the ‘irreconcilable policy and political stance among the UN Security Council member states’ on the way to resolving the Ethiopian internal conflict suppress the probability of ICC’s intervention in Ethiopia.²⁶ While the Ethiopian Government has set aside individual complaint procedures, there are still regional options available to address human rights concerns. The African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) are two regional bodies that can be considered since Ethiopia is a party to both institutions.²⁷ However, it is important to note certain limitations and developments regarding these institutions. The ACHPR had established a Commission of Inquiry on June 17, 2021, to investigate allegations of violations of international human rights law and international humanitarian law in Tigray region.²⁸ Unfortunately, the ACHPR decided to conclude the mandate of this Commission without releasing a detailed report containing its findings and recommendations.²⁹ While the ACERWC can be approached for cases involving child victims of torture, it is crucial to acknowledge that the majority of survivors of torture in this context are adults. As the decisions of the ACERWC are not legally binding, and considering the fact that the survivors in question are primarily adults, instituting an action to the ACERWC may not be a feasible option for seeking redress in this particular case.

²⁵ Ethiopia Insight. 2021. "Accountability for Atrocities: Why Ethiopia Should Join the ICC." Accessed February 15, 2023. <https://www.ethiopia-insight.com/2021/02/02/accountability-for-atrocities-why-ethiopia-should-join-the-icc/>

²⁶ Mohammed, Yusuf Ali. 2022. "International Criminal Court and Ethiopia: Comparative Overview and Trends of Current Development." *Journal of International Relations and Political Science Studies* 6: 2-19.

²⁷ African Charter on Human and Peoples' Rights (ACHPR) 1986, accessed January 7, 2024, <https://achpr.au.int/en/states> ; African Charter on the Rights and Welfare of the Child (ACERWC) 1999, accessed January 7, 2024, <https://www.acerwc.africa/en>.

²⁸ ACHPR. 2021. "Press Statement on the official launch of the Commission of Inquiry on the Tigray Region in the Federal Democratic Republic of Ethiopia." June 15. <https://achpr.au.int/en/news/press-releases/2021-06-15/press-statement-official-launch-commission-inquiry-tigra>. Accessed January 7, 2024.

²⁹ ACHPR. 2023. "Resolution on the Termination of the Mandate of the Commission of Inquiry on the Situation in the Tigray Region of the Federal Democratic Republic of Ethiopia - ACHPR/Res.556 (LXXV) 2023." Accessed January 7, 2024. <https://achpr.au.int/en/adopted-resolutions/556-resolution-termination-mandate-commission-inquiry> .

The UN Human Right Council (Council) decided to form an International Commission of Human Rights Experts on Ethiopia (ICHREE) and produced its report.³⁰ However, Ethiopia rejected the ICHREE establishment and its first investigation report.³¹ Consequently, the ICHREE was not allowed access by the Government to conduct a thorough investigation. Furthermore, the mandate of the ICHREE has expired as the council did not extend it.³²

The procedural aspect of reparation requires the existence of a proper legislative framework and institutional mechanisms enabling a prompt and effective investigation and eventually prosecution and punishment of the perpetrators.³³ The Ethiopian government bears the primary responsibility to provide victims with or assist them in obtaining reparation.³⁴ The Attorney General alleges that it has brought charges against soldiers suspected of killing civilians or for sexual violence and that some have been convicted but a comprehensive investigation into all human rights violations including torture has not been conducted.³⁵ The delayed and incomplete investigations into allegations of human rights violations, hinder the prosecution and punishment of perpetrators. Survivors' calls for justice, accountability, and compensation remain unmet, raising concerns about the effectiveness of domestic efforts and the need for independent international investigations.

Despite the signing of the Permanent Cessation of Hostilities Agreement (CoHA), critical issues such as the establishment of impartial investigative bodies, accountability mechanisms, and the inclusion of Eritrean forces in the peace process remain unaddressed. The

³⁰ Report of the International Commission of Human Rights Experts on Ethiopia. A/HRC/51/46. 19 September 2022.

³¹Mohammed 2022, 2-19

³² Addis Standard News. 2023. "Despite several pleas, draft deadline to extend UN rights experts' Ethiopia mandate expires." <https://addisstandard.com/news-despite-several-pleas-draft-deadline-to-extend-un-rights-experts-ethiopia-mandate-expires/>, Accessed January 7, 2024.

³³ Council of Europe, Commissioner for Human Rights. "Torture Survivors Have the Right to Redress and Rehabilitation." Accessed April 5, 2022. <https://www.coe.int/en/web/commissioner/-/torture-survivors-have-the-right-to-redress-and-rehabilitation>

³⁴Human Rights Watch and Amnesty International. 2022. "We will erase you from this land: Crimes Against Humanity and Ethnic Cleansing in Ethiopia's Western Tigray Zone." April 6, 2024.

³⁵Human Rights Watch and Amnesty International 2022, 210

potential for disruptions and human rights violations persists, threatening the overall success of the peace agreement and impeding justice for survivors.

The inadequacies in the draft Transitional Justice Policy, including its failure to incorporate the inputs of victims in Tigray and the absence of mechanisms addressing crimes committed by Eritrean forces, pose significant obstacles to the establishment of a comprehensive and inclusive transitional justice process in Tigray.

The survivors of torture in Tigray face a myriad of challenges encompassing physical and psychosocial hardships, forced displacement, family separation, restricted access to humanitarian aid, and a critical deficit in medical services. The research underscores persistent obstacles to humanitarian access, even after the signing of the Permanent Cessation of Hostilities Agreement in November 2022. Furthermore, the healthcare system in Tigray is severely compromised, with damaged or non-functional health facilities, shortages of medical supplies, and limited capacity to provide comprehensive medical services, thereby adversely affecting survivors' right to rehabilitation.³⁶ Despite the optimism following the peace agreement, there is a critical need for urgent and sustained efforts to address the complex challenges faced by survivors of torture in Tigray, ensuring access to essential services, reparations, and a pathway towards recovery. This research aims to specifically address the formidable challenges hindering the effective realization of the right to reparation for survivors of torture in Tigray. Key challenges include insecurity, gaps in the implementation of the Cessation of Hostilities Agreement, the absence of a State Compensation Fund, delayed investigations and accountability, and limitations in the draft Transitional Justice Policy developed by the Federal Government. By comprehensively analyzing these challenges, the research seeks to explore potential solutions and contribute to the development of effective strategies for the enforcement of the right to reparation for survivors of torture in Tigray.

³⁶Human Rights Watch and Amnesty International 2022; EHRC and OHCHR 2021, 77

1.4. Research Questions

1. What are the legal mechanisms available for survivors of torture during the conflict in Tigray to access reparations?
2. How effective have international and regional human rights instruments been in ensuring the right to reparation for survivors of torture in Tigray?
3. What are the challenges faced by survivors of torture in Tigray in accessing reparations, and how can these be addressed?
4. What are the implications of the denial of the right to reparation for survivors of torture in Tigray on their physical and psychological well-being?

1.5. Objectives of the Study

This research purports to:

1. To examine the concept of the right to reparation for survivors of torture and its legal framework.
2. To investigate the challenges faced by survivors of torture in accessing reparations in Tigray.
3. To evaluate the effectiveness of national and international mechanisms in ensuring the right to reparation for survivors of torture in Tigray.
4. To propose recommendations for addressing the challenges faced by survivors of torture in accessing reparations in Tigray and to provide suggestions for improving the implementation of the right to reparation.

1.6. Research Methodology

Having the objective of dealing with the legal framework of the right to reparation for victims of torture and assessing its implementation or enforcement in Ethiopia, this research paper used the following methods:

- Literature Review: available and relevant literature has been reviewed to sort out the elements of the right to reparation. The enforcement problems on this specific right in Ethiopia are also among the issues that have been extracted from various available literature. The researcher will use a combination of doctrinal and qualitative research methods as it broadens legal discourses in terms of its theoretical and conceptual framework which guides the direction of the researcher by enabling them to generate evidence to answer research problems.
- Source of Data: both primary and secondary sources have been used in this research. Primary sources such as interviews (to gather information from victims as well as stakeholders), International human rights instruments, guidelines, and domestic legislation having a link towards the right in issue have been analyzed and critically examined to evaluate the adequacy of the legal framework to protect the right. Secondary sources like; books, articles, journals report, general comments given by human rights committees, and internet links related to the concept will be reviewed to verify the data collected from the interviews and supplement the analysis on the primary sources.
- Method of Data Collection: This research will employ a qualitative research method. Accordingly, the researcher uses a qualitative method for gathering data and reference material for the study. The data collection method will primarily depend on in-depth interviews that will be administered to collect data from victims and human rights stakeholders. Among the stakeholders the researcher purposely selected; Lawyers for Human Rights, Tigray Human Rights Advocacy Network (THRAN), Ethiopian Human Rights Commission, Ayder Hospital, and the Tigray Regional Justice Bureau. These organizations and institutions are selected as it is presumed that they have knowledge of the subject matter.
- Sampling Size and Sampling Techniques: The researcher used a purposive sampling technique in selecting interviewees for in-depth interviews with the survivors and stakeholders. The survivors were linked through Humanitarian Organizations working on protection. The researcher conducted a total of 26 in-depth interviews; 20 from victims of torture and 6 with stakeholders; two from Ayder Hospital, one from lawyers for human rights, one from Ethiopian Human Rights Commission, one from Tigray

Human Rights Advocacy Network (THRAN) and one from the Tigray Regional Justice Bureau will be interviewed to identify and assess the current trends in addressing the right to reparation for survivors of torture in Tigray.

1.7. Significance of the Study

This paper will have considerable significance in promoting and protecting the right to freedom from torture and the victim's right to get reparation. It will benefit individual citizens by showing them how they can enforce their right to redress. It will also help government stakeholders to rectify their shortcomings and fulfill their international obligations. Furthermore, this research could be used as literature on the normative content of the right to reparation which is significant for both academic and practical purposes. Finally, this research paper will help other researchers who would like to research further in the area.

1.8. Scope of the Study

This research is confined to the applicability of the right to reparation specifically to survivors of torture who were subjected to torture and ill-treatment during the conflict in the Tigray region. Discussion on International, regional and domestic human rights frameworks dealing with this right and its practical applicability to survivors of torture during armed conflicts in Ethiopia is also part of the research. The geographical scope of the study is limited to Tigray, particularly Mekelle city. The temporal scope of the study will be from the beginning of the conflict in Tigray, which is November 3, 2020, up to November 2, 2022 (the signing of the cessation of hostilities agreement). Thus, domestic laws and international human rights, and humanitarian laws dealing with the right to reparation will be considered.

1.9. Limitation of the Study

In the stage of data collection, the researcher has been challenged by the absence of domestic literature related to reparation for victims of torture in a conflict context. Finding out whether there are reparation claims/ cases entertained in Ethiopian courts was the other challenge the researcher faced because of the absence of databases showing previous cases in most of our courts.

1.10. Ethical Consideration

The researcher takes important ethical considerations into account while conducting this research. Interviewees are informed of the purpose of the study for genuine feedback and in securing informed consent from them. Interviewee privacy and consent are strictly adhered to, and all information gathered through interviews is kept confidential by those interviewees who wished for their identity to remain anonymous. The researcher also provided an accurate account of information, and all conclusions were drawn based on the collected data.

1.11. Organization of the Thesis

This thesis is organized into five chapters, each of which is divided into sections and subsections. The first chapter is an introductory part. The second chapter is devoted to conceptual and theoretical frameworks on the right to reparation. The third chapter will be discussing the domestic and international framework of the right to Reparation. The Fourth chapter will examine the practical application of the right and the Challenges of Enforcement for Survivors of Torture during the Conflict in Tigray and the Fifth/last chapter forwards conclusions and recommendations that summarize the findings of the study and the proposed recommendations to concerned government institutions and stakeholders.

Chapter 2

2. Theoretical and Conceptual Framework of Reparation

2.1. Theoretical Approaches to Reparation

There are several theoretical approaches to reparation for human rights violations, each with its own perspective on how reparations should be designed and implemented. Providing the right to reparation/redress when violations occur is an essential mechanism for giving meaningful effect to rights. The following are some of the key theoretical approaches.

2.1.1. The Transitional Justice Approach

This approach revolves around recognizing the importance of confronting past human rights violations during periods of transition from conflict or authoritarian rule to democracy or peace. It emphasizes that reparations should be part of a comprehensive set of measures that include uncovering the truth, holding perpetrators accountable for their crimes, implementing institutional reforms, and ensuring that such violations are not repeated.³⁷

The transitional justice approach is grounded on the idea that addressing past human rights violations is crucial for building a more just and peaceful society. One of its main principles is the value of truth-telling. In countries like South Africa, Chile, and Guatemala, truth commissions have been established to investigate and document these violations.³⁸ These commissions provide a platform for victims to share their experiences and for society as a whole to confront the consequences of past abuses. Another important principle of the Transitional Justice Approach is that it involves prosecuting individuals responsible for human rights violations or establishing

³⁷ Roht-Arriaza, Naomi. "The Puzzling Persistence of Transitional Justice." *Human Rights Quarterly*, vol. 34, no. 3, 2012, pp. 810–837.

³⁸ Hayner, Priscilla. *Unspeakable Truths: Facing the Challenge of Truth Commissions*. Routledge, 2001.

specialized tribunals and courts to address these abuses.³⁹ The ultimate goal is to guarantee accountability for those responsible for these violations and to deter similar abuses from happening in the future. Reparations also play a critical role in the Transitional Justice Approach. They can take various forms, including monetary compensation, restitution, rehabilitation, and other actions directed towards reinstating the dignity and rights of the victims.⁴⁰ Lastly, the Transitional Justice Approach underscores the significance of ensuring that these violations do not recur. This may entail instituting institutional changes, such as reforms in the legal system or security forces, to avert future human rights abuses.⁴¹

To sum up, the Transitional Justice Approach offers a significant framework for tackling historical human rights infringements amid shifts from conflict or authoritarian rule to democracy or peace. It underscores the vital aspects of truth-telling, legal responsibility, reparations, and assurances against recurrence as fundamental elements in a larger endeavor to advance justice and reconciliation.

2.1.2. The Feminist Approach

The Feminist Approach emphasizes the importance of recognizing the gendered dimensions of human rights violations.⁴² It argues that reparations should specifically target the harms experienced by women and girls, forming part of a larger push to combat gender inequality and advance gender justice. This perspective is rooted in the understanding that achieving gender equality is crucial for upholding human rights and fostering social justice.

³⁹ De Greiff, Pablo. "The Handbook of Reparations." Oxford University Press, 2006.

⁴⁰ Teitel, Ruti. "Transitional Justice." Oxford University Press, 2000.

⁴¹ McEvoy, Kieran, and Lorna McGregor. "Transitional Justice from Below: An Agenda for Research, Policy and Practice." *International Journal of Transitional Justice*, vol. 6, no. 3, 2012, pp. 393–409.

⁴² Charlesworth, Hilary. 1999. *Feminist Methods in International Law*. Oxford University Press, p. 49.

A fundamental principle of the Feminist Approach is recognizing the unique suffering endured by women and girls in the realm of human rights violations.⁴³ They may face sexual violence, forced sterilization, and other forms of gender-based violence that traditional approaches to reparations fail to adequately address.⁴⁴ This approach asserts that gender plays a central role in human rights violations, demanding that reparations address the unique challenges faced by women and girls.

Additionally, the Feminist Approach prioritizes addressing broader gender disparities and promoting gender justice. This might involve initiatives like providing education and training opportunities for women and girls, and enhancing their participation in political and economic decision-making.⁴⁵ The overarching aim is to establish gender equality as a fundamental aspect of both human rights and social justice. Reparations within this framework may include financial compensation, but also extend to non-monetary measures such as access to healthcare, education, and various services.⁴⁶ The goal of reparations is to address the specific harms inflicted on women and girls while promoting gender equality and justice.

The Feminist Approach serves as a vital framework for tackling human rights violations and advancing gender equality and justice. It underscores the importance of recognizing the distinct experiences of women and girls, and advocates for comprehensive measures to address gender inequality.

2.1.3. Human Rights-Based Approaches

⁴³ De Greiff, Pablo. 2006. *The Handbook of Reparations*. Oxford University Press, p. 165.

⁴⁴O'Rourke, Catherine. 2007. "Gender-Based Violence and Reparations." *International Journal of Transitional Justice* 1 (2): 232.

⁴⁵Chinkin, Christine. 2007. "Gender, Reparation and International Law: A Comment on the Draft Basic Principles and Guidelines." *International Journal of Transitional Justice* 1 (1): 17.

⁴⁶De Greiff, Pablo. 2006. *The Handbook of Reparations*. Oxford University Press, p. 174.

Human Rights-Based Approaches (HRBA) to reparations are deeply rooted in the principles of international human rights law, aiming to secure just and meaningful reparations for victims of human rights abuses.⁴⁷ This framework places a strong emphasis on respecting the dignity and empowerment of victims, recognizing their right to actively engage in the planning and implementation of reparations programs.⁴⁸ Moreover, it underscores the crucial need for accountability and non-discrimination throughout the reparations process.⁴⁹

The United Nations (UN) has been instrumental in championing HRBA to reparations, developing a comprehensive set of Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles and Guidelines).⁵⁰ These principles stress the importance of involving victims and their representatives in shaping reparations programs, ensuring that reparations are tailored to address the specific needs and circumstances of individuals and communities.⁵¹ The Basic Principles and Guidelines advocate for a comprehensive approach to reparations, encompassing restitution, compensation, rehabilitation, satisfaction, and measures to prevent future violations.⁵² Furthermore, the Basic Principles and Guidelines highlight the necessity of ensuring equal access to reparations for all victims, irrespective of factors such as race, gender, or age. They also emphasize the critical role of transparency and accountability in both the design and execution of reparations programs.⁵³ The HRBA to reparations has found application across diverse contexts, including transitional justice processes, post-conflict reconstruction, and efforts to address historical injustices. It has garnered support from a

⁴⁷ (Ferstman and Goetz 2009, 35)

⁴⁸ Ferstman and Goetz 2009, 35)

⁴⁹ UN Sustainable Development Group. "Principle One: Human Rights-Based Approach." Accessed December 10, 2023. URL: <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>.

⁵⁰ United Nations. 2005. "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law."

⁵¹ (United Nations 2005, 8)

⁵² (United Nations 2005, 8)

⁵³(United Nations 2005, 9)

wide array of international organizations, including the UN and the International Criminal Court, as well as non-governmental organizations.

In essence, HRBA to reparations serves as an indispensable framework for ensuring that victims of human rights abuses receive reparations that are equitable, impactful, and firmly grounded in human rights principles. It places a premium on honoring the dignity and agency of victims, promoting their active participation in the reparations process, and underscoring the imperatives of accountability and non-discrimination.

2.2. Conceptual Framework

The Permanent Court of International Justice (PCIJ) decision in the *Chorzów Factory* case, is a landmark case in the history of international law that has significance in understanding the origins and principles of reparations. The PCIJ's decision emphasized the principle of reparation for wrongful acts in international law. It established that a state that breaches its international obligations is obliged to make reparations to the injured state.⁵⁴ The PCIJ decision in the *Chorzów Factory* case is a foundational element in the history of reparations, establishing principles and precedents that have influenced subsequent international law cases and discussions on state responsibility and reparations for wrongful acts.⁵⁵

The Universal Declaration of Human Rights under Article 8 states that: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁵⁶ In legal terms “reparation” refers to the obligation of the wrongdoer (offender/perpetrator) to redress the damage caused to the injured/victim.⁵⁷ As pointed out by Roth-

⁵⁴ (PCIJ) Permanent Court of International Justice. 1928. "Chorzów Factory Case (Germany v. Poland), Judgment of September 13, P.C.I.J. (ser. A) No. 17, 47.

⁵⁵ Shaw, Malcolm N. 2017. *International Law*. Cambridge University Press, 980.

⁵⁶ The Universal Declaration of Human Rights, adopted by the UN General Assembly on December 10, 1948, includes Article 5 and Article 8 (217 A (III)).

⁵⁷(Ashine and Tera 2017, 1)

Arriaza reparations are both backward- and forward-looking, and aim to compensate for loss and restore the good name of the victims, but also to reintegrate victims into society.⁵⁸ In human rights law, the right to reparation entails two aspects; the right to a domestic remedy and the right to adequate and effective forms of reparation.⁵⁹ There are various forms of reparations, each aiming to provide redress on different levels. These forms of reparation are briefly discussed below.

2.2.1. Individual Reparation

Individual reparations are founded on the principle of acknowledging and addressing the unique suffering of each victim.⁶⁰ This recognition is essential for validating the experiences of those who have endured harm.⁶¹ Individual reparations play a crucial role in upholding the rights and dignity of victims.⁶² This perspective is integral within the broader context of transitional justice, ensuring that the suffering of individuals is not marginalized.⁶³ Individual reparations in post-conflict settings emphasize the recognition of individual suffering and the restoration of dignity for victims. This approach often involves tailored measures to address the specific needs of individual survivors. Proponents argue that individual reparations can encompass legal mechanisms and financial compensation, ensuring that victims receive direct and tangible redress for the harms they endured.⁶⁴

Through the Civil Liberties Act of 1988, the U.S. government provided financial compensation of \$20,000 to Japanese-Americans surviving internees, who were interned during World War II, acknowledging the specific harms inflicted on individuals and families.⁶⁵

⁵⁸ Roth-Arriaza, Naomi. 2004. "Reparations Decisions and Dilemmas." *Hastings International and Comparative Law Review* 27: 160.

⁵⁹(Ashine and Tera 2017, 1).

⁶⁰ De Greiff, P. 2006. *The Handbook of Reparations*. Oxford University Press, 45.

⁶¹ (De Greiff 2006, 45)

⁶²Hayner, P. B. 2011. *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. Routledge, 112.

⁶³ (Hayner 2011, 112)

⁶⁴ Miller, K. 2016. *Reparations for Slavery and the Slave Trade: A Transnational and Comparative History*. Bloomsbury Publishing, 78; De Greiff, P. 2006. *The Handbook of Reparations*. Oxford University Press, 56.

⁶⁵ Civil Liberties Act of 1988, Public Law 100-383, 102 Stat. 903.

Despite the emphasis on individual dignity, the practical implementation of individual reparations encounters multifaceted challenges. Administrative hurdles related to the execution of individual reparations, including the identification of victims, verification processes, and the equitable distribution of resources among numerous beneficiaries, require meticulous consideration.⁶⁶ Moreover, the legal intricacies surrounding individual reparations present potential obstacles in legal proceedings, such as delays, appeals, and issues related to the enforcement of judgments.⁶⁷

2.2.2. Collective Reparation

Collective reparations extend beyond individual harms to address systemic injustices and the societal repercussions of conflict.⁶⁸ This approach acknowledges that certain violations, especially in cases of mass atrocities, have collective dimensions requiring a comprehensive response.⁶⁹ In post-conflict settings, collective reparations play a pivotal role in rebuilding social cohesion and addressing the root causes of conflict. By addressing structural issues, collective reparations contribute to long-term reconciliation.⁷⁰ The Truth and Reconciliation Commission in South Africa stands as a notable example of collective reparations, emphasizing the importance of acknowledging past wrongs and fostering societal healing. The commission facilitated a collective catharsis by providing a platform for victims to share their narratives and enabling the broader society to confront its dark past.⁷¹

Implementing collective reparations poses its own set of challenges, including defining beneficiary groups, managing potential tensions within communities, and ensuring positive outcomes for all stakeholders.⁷²

⁶⁶ McEvoy, K. 2007. "Beyond Legalism: Towards a Thicker Understanding of Transitional Justice." *Journal of Law and Society* 34 (4): 422.

⁶⁷ Roht-Arriaza, N. 2006. "The New Landscape of Transitional Justice." *Human Rights Quarterly* 28 (1): 25.

⁶⁸ McEvoy, K. 2007. "Beyond Legalism: Towards a Thicker Understanding of Transitional Justice." *Journal of Law and Society* 34 (4): 411–440.

⁶⁹ Roht-Arriaza, N. 2006. "The Place of Reparations in the Transitional Justice Debate." In *Transitional Justice Theories*, 67-86. Routledge.

⁷⁰ Paffenholz, T. 2014. "Civil Society, Civic Engagement, and Peacebuilding." *Social Science Research Council*, 162.

⁷¹ Gobodo-Madikizela, P. 2003. *A Human Being Died That Night: A South African Woman Confronts the Legacy of Apartheid*. Houghton Mifflin Harcourt.

⁷² (Paffenholz 2014, 162)

While both collective and individual reparations hold merit, navigating the challenges of implementing these approaches requires careful consideration. Collective reparations contribute to community healing and transitional justice efforts, while individual reparations prioritize the acknowledgment of unique suffering and direct redress for victims. By understanding the nuances of each approach, societies can develop comprehensive strategies that address the diverse needs of survivors and contribute to the long-term reconciliation and rebuilding of post-conflict societies. The choice between individual and collective reparations should be context-specific, considering the nature of the violations, the scale of harm, and the preferences of affected communities. The preferable form of reparation for victims of the Tigray conflict may involve a combination of both collective and individual reparations. A comprehensive strategy that addresses the collective needs of the community while recognizing and responding to the unique circumstances of individual victims could be more effective. This approach should be developed through inclusive and transparent processes that involve the affected communities in decision-making.

2.2.3. Restitution

Restitution refers to measures aimed at restoring the victim to their original situation before the violations occurred, including the reinstatement of liberty, the enjoyment of human rights, preservation of identity, family life, and citizenship, return to one's place of residence, restoration of employment, and the return of property.⁷³ The International Covenant on Civil and Political Rights (ICCPR) emphasizes the importance of restitution as an integral aspect of the right to an effective remedy.⁷⁴ Shelton argues that restitution addresses the individualized harm caused by the violation, promoting a more comprehensive form of justice.⁷⁵ In criminal proceedings, restitution may include the reopening of a defense case.⁷⁶ Theo van Boven, in discussing his encounters with relatives of the

⁷³(UN General Assembly 2006, prin. 19)

⁷⁴ (International Covenant on Civil and Political Rights 1966, art. 2(3))

⁷⁵ Shelton, Dinah. 2010. Remedies in International Human Rights Law. Oxford University Press, 473.

⁷⁶(Ali 2021, 16)

“disappeared” in Chile and Argentina, stressed that restitution is of great importance to survivors. Apart from establishing an independent record of what had happened, he found that many relatives also expressed a desire for the restoration of their legal status, so that inheritance rights could come into play, marital positions could be clarified, etc.⁷⁷

Restitution is especially important where the obligation breached is of a continuing character, such as, the case of unlawful detention or disappearance, for example, the authorities must end the situation by producing the victim.⁷⁸ “Reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”⁷⁹ The current jurisprudence in both the Inter-American and European human rights systems is that the underlying principle behind reparations is “full restitution” (*restitutio in integrum*) and the re-establishment of the status quo ante.⁸⁰

The case of *Al-Adsani v. United Kingdom* before the European Court of Human Rights highlighted the importance of restitution in cases of torture and inhuman or degrading treatment.⁸¹ The Inter-American Court of Human Rights, in the case of *Yatama v. Nicaragua*, emphasized restitution as a necessary component for indigenous communities facing displacement.⁸² Therefore, restitution is the preferred form of reparation under international law.⁸³ However, it might be impossible to restore the victims to their original condition or to the status quo ante in some instances of human rights violations. This can be further illustrated by the *Akdivar and Others v Turkey* case brought before the European Court of Human Rights (ECtHR), in which the claimants had been evicted from their homes which

⁷⁷ Cullinan, Sarah. 2001. Torture survivors' perceptions of reparation. 16.

⁷⁸ van Boven, Theo. 2006. Implementing Victims' Rights: A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation. 34.

⁷⁹ (Ashine and Tera 2017, 1)

⁸⁰ Watkins, Jared L. 2009. “The Right to Reparations in International Human Rights law and the Case of Bahrain.” *Brooklyn Journal of International Law* 34 (2): 572.

⁸¹ European Court of Human Rights. 2001. *Al-Adsani v. United Kingdom*, para. 61.

⁸² Inter-American Court of Human Rights. 2005. *Yatama v. Nicaragua*, para. 195.

⁸³ Fisseha, M. Tekle. 2013. "Victim Reparation for Derg Crimes: Challenges and Prospects." Master's thesis, Central European University, 41.

were subsequently burnt.⁸⁴ While the concept of restitution is firmly established in international law, its practical implementation encounters challenges, particularly in restoring property rights and returning land to victims, especially in post-conflict settings. The temporal and logistical complexities associated with restitution demand thoughtful consideration in the design and execution of reparation programs. Thus, if restitution is not possible, the victims should be provided with other forms of reparation including compensation.⁸⁵

2.2.4. Compensation

Compensation should be provided for any economically measurable damages which result from the act (physical or mental harm, pain, suffering, lost opportunities, loss of earnings, medical and other expenses of rehabilitation, legal fees, etc.), as appropriate and proportional to the gravity of the violation and the circumstances of each case.⁸⁶ In the event of the death of the victim the right to compensation should be transmitted by succession to their heirs, and the awards of compensation need to consider also the course that the victim's life would normally have taken and whether the violation caused a serious harm to his/her life plan.⁸⁷ Compensation is a secondary form of reparation, in the sense that a state has an obligation to compensate victims for damage 'not made good by restitution', covering any financially assessable damage including loss of profits insofar as it is established.⁸⁸

According to Cassese, compensation not only aims to alleviate financial losses but also plays a pivotal role in acknowledging the harm endured by victims.⁸⁹ The right to compensation is enshrined in various international legal instruments, affirming the entitlement of victims to an effective remedy. The Universal Declaration of Human Rights (UDHR) articulates this right in Article 8, stating that

⁸⁴Odier-Contreras Garduno, Diana. 2018. "Tensions and Dilemmas Between Collective Reparations and the Individual Right to Receive Reparations." Human Rights Research Series, Volume 84. School of Law, Utrecht University, 77.

⁸⁵ (Ali 2021, 16)

⁸⁶ (UN General Assembly 2006, prin. 20)

⁸⁷ (Boven 2006, 36)

⁸⁸ Luci, Monica. 2017. *Torture, Psychoanalysis and Human Rights*. (p. 222).

⁸⁹ Cassese, Antonio. 2005. *International Law*. Oxford University Press. 285.

everyone has the right to an effective remedy for violations of fundamental rights, including compensation for material and moral damages.⁹⁰ The International Covenant on Civil and Political Rights (ICCPR) further reinforces the importance of compensation. Article 2(3) of the ICCPR stipulates that the State must provide an effective remedy, which includes compensation, for those whose rights have been violated.⁹¹

The Compensation can be awarded for various harms, including physical and mental injuries, lost opportunities such as jobs, education, and social benefits, moral damage, and the costs of legal service, medical care, and psychological and social services.⁹² The case of Lubanga before the International Criminal Court (ICC) highlighted the importance of reparations, including compensation, for victims of war crimes and crimes against humanity.⁹³ The ICC stressed the need for a victim-centered approach and recognized compensation as a crucial element of justice.

In the case of “Equality Now and Ethiopian Women Lawyers Association v. Ethiopia, Communication 341/2007” the African Commission affirmed that “monetary compensation for non-material damage is at large and is determined as a matter of impression, taking into account all the relevant circumstances of the case as opposed to a mathematical formula.”⁹⁴

There are multiple factors that limit the provision of compensation. One of the primary challenges is accurately identifying and assessing the damages suffered by victims. This task requires a comprehensive understanding of the harm inflicted and its long-term consequences, including physical, psychological, and socioeconomic impacts.⁹⁵ The complexity of quantifying intangible losses, such as pain and

⁹⁰ Universal Declaration of Human Rights 1948. Article 8.

⁹¹ UN General Assembly. 1966. "International Covenant on Civil and Political Rights, Article 2(3)." December 16, United Nations, Treaty Series, vol. 999.

⁹²(Boven 2006, 34)

⁹³ International Criminal Court, Lubanga Case 2012. International Criminal Court, para. 249.

⁹⁴(Equality Now and Ethiopian Women Lawyers Association v. Ethiopia 2015)

⁹⁵ Bassiouni, M. Cherif. 2014. "The Concept and Present Status of Reparations under International Law for Victims of Gross and Systematic Human Rights Abuses." In *The Pursuit of International Criminal Justice: A World Study on Conflicts, Victimization, and Post-Conflict Justice*, edited by M. Cherif Bassiouni, 297-349. Intersentia.

suffering, further complicates the assessment process. Moreover, the absence of international guidelines further complicates the determination of when compensation is deemed proportionate.⁹⁶ The financial capacity of states or responsible parties to provide adequate compensation also poses a significant challenge.⁹⁷ In cases where the violator is a state, limited resources or economic instability may hinder the ability to meet the compensation demands.

In the aftermath of atrocities as grievous as torture compensation may not be adequate to redress the damage thus compensation should be accompanied by measures of satisfaction aimed at addressing emotional and moral damage.⁹⁸

2.2.5. Rehabilitation

Survivors of torture have an explicit right to rehabilitation as provided in Article 14 of the CAT.⁹⁹ Rehabilitation on the other hand includes medical and psychological care, as well as legal and social rehabilitation services aimed to restore the dignity and reputation of the victim.¹⁰⁰ These services should actually be provided in kind or the costs to have them provided may form part of a monetary award, in the latter situation, it is important to distinguish between money paid by way of compensation and money provided for rehabilitation purposes.¹⁰¹ Rehabilitation should aim to restore, as far as possible, torture victims' independence, physical, mental, social, and vocational ability, as well as their full inclusion and participation in society.¹⁰²

⁹⁶ (Odiar-Contreras Garduno 2018, 86)

⁹⁷Salomon, Marion. 2004. *Global Responsibility for Human Rights: World Poverty and the Development of International Law*. Oxford University Press, 86.

⁹⁸ (Odiar-Contreras Garduno 2018, 84)

⁹⁹ (Article 14 of the Convention against Torture)

¹⁰⁰ (UN General Assembly 2006, para. 21)

¹⁰¹ (UN General Assembly 2006, para. 21)

¹⁰²UN Committee Against Torture (CAT). 2012. "General comment no. 3: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: implementation of article 14 by States parties." December 13. Accessed February 6, 2024. para. 11.

2.2.6. Satisfaction

Satisfaction is a form of reparation usually ordered when the injury caused to the victims cannot be made good by restitution or compensation.¹⁰³ Satisfaction includes a broad range of measures/interventions: to stop ongoing violations; to verify and disclose the truth publicly; to search for and rebury that who disappeared or were abducted; to officially declare the reputation and rights of victims; to apologize publicly; to investigate and prosecute responsible parties; to commemorate and honor victims; and to include an accurate account of violations in educational materials/human rights training.¹⁰⁴ Satisfaction mechanisms contribute to the broader goals of reconciliation and social healing. By acknowledging past atrocities and promoting dialogue, truth commissions and other processes foster understanding, empathy, and social cohesion.¹⁰⁵ They create opportunities for different sectors of society to engage in critical conversations, leading to a more inclusive and just society. This active engagement fosters a sense of empowerment and facilitates the healing process. The Commission on Human Rights, in its resolution of April 25, 2001, recognized that,

For the victims of human rights violations, public knowledge of their suffering and the truth about perpetrators, including the accomplices, of these violations are essential steps towards rehabilitation and reconciliation and urges States to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations can be investigated and made public to encourage victims to participate in such a process.¹⁰⁶

Satisfaction measures also serve as preventive measures, aiming to address the root causes of human rights violations and prevent their recurrence.¹⁰⁷ By confronting the past and promoting accountability, societies can learn from historical injustices and implement reforms

¹⁰³ (Ali 2021, 17)

¹⁰⁴ Walker, Margaret Urban. 2015. "Making Reparations Possible : Theorizing Reparative Justice." *Philosophy Faculty Research and Publications* 614: 216.

¹⁰⁵ Hayner, Priscilla B. 2011. *Unspeakable Truths: Confronting State Terror and Atrocity*. Routledge

¹⁰⁶ (UN Commission on Human Rights 2001, para. 8)

¹⁰⁷ Bassiouni 2014, 317.

to ensure the protection of human rights. These initiatives contribute to building resilient institutions and promoting a culture of respect for human rights. The Inter-American Court of Human Rights, in the case of *Velásquez Rodríguez v. Honduras*, highlights the transformative potential of satisfaction in promoting reconciliation and preventing the recurrence of human rights violations.¹⁰⁸

2.2.7. Guarantees of Non-Repetition

The final category, guarantees of non-repetition, includes various preventive measures of a policy nature such as institutional reforms and legal reforms including an independent judiciary; due process guarantees; civilian control over military and security forces; monitoring; training and education of public officials.¹⁰⁹ Guarantees of non-repetition are measures that ‘look forward’, as they aim to prevent further violations both in relation to the victims who may fear retaliation or harm and in relation to society as a whole.¹¹⁰ Effective guarantees of non-repetition require holding perpetrators accountable for their actions and combating impunity. This involves conducting thorough investigations, prosecuting those responsible, and ensuring fair and impartial trials.¹¹¹ In cases of torture, for instance, states need to take measures such as the establishment of independent mechanisms of investigation, training public officials, strengthening judicial independence, reforming laws in line with human rights principles, and ensuring the fairness and impartiality of judicial proceedings.¹¹² Guarantees of non-repetition emphasize the importance of upholding the rule of law. This entails strengthening judicial systems, ensuring independence and impartiality, and promoting access to justice for all individuals.¹¹³ By establishing a robust legal framework, societies can prevent human rights violations and create an environment conducive to respect for human rights.

¹⁰⁸ Inter-American Court of Human Rights. 1988. *Velásquez Rodríguez v. Honduras*, para. 175.

¹⁰⁹(Walker 2015, 216).

¹¹⁰(Odiar-Contreras Garduno 2018, 92)

¹¹¹ Bassiouni 2014, 306.

¹¹²(Ali 2021, 17)

¹¹³ Nowak, Manfred. 2018. *The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Oxford University Press, 132.

Guarantees of non-repetition are regarded as an exceptional form of remedy and have become crucial for victims who have suffered through continuous periods of conflict.¹¹⁴

Reparations ‘should be proportional to the gravity of the violations and the harm suffered’, depending on the specific circumstances of each case.¹¹⁵ The most effective reparation for survivors of torture likely involves a customized combination of measures designed to address individual needs. When a legal system offers appropriate forms of reparation, it signals condemnation of torture and a refusal to tolerate impunity, potentially acting as a deterrent against further acts of torture. Involving victims as rights holders, with their dignity respected, aids in their progression and facilitates better integration into society. Providing reparations is primarily the states’ responsibility and closing the gap between international legal standards and their application represents a key challenge to the international legal order and to the human rights regime.¹¹⁶ Despite compensation and restitution being crucial instruments of reparations measures of satisfaction and guarantees of non-repetition empower victims and stress structural reform so that the gross human rights violation is not repeated.

Chapter 3

3. The Right to Reparation in International Human Rights Law, Humanitarian Law, and Ethiopian Law

The following chapter presents how international instruments and Ethiopian law have honored this fundamental human right through the provision of reparations. The right to an effective remedy can be found in all major international and regional human rights treaties.¹¹⁷

¹¹⁴ (Odiar-Contreras Garduno 2018, 93)

¹¹⁵(Ashine and Tera 2017, 2)

¹¹⁶ (Evans 2012, 30)

¹¹⁷ UN General Assembly. 1966. "International Covenant on Civil and Political Rights." United Nations Treaty Series, vol. 999, art. 2(3), 9(5) and 14(6). Organization of African Unity (OAU). 1981. "African Charter on Human and Peoples' Rights ("Banjul Charter")." CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), arts. 1(1), 8, 10 and 25. UN General Assembly. 1984. "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." United Nations Treaty Series, vol. 1465, art. 14.

The obligation of states to provide effective remedy consists of two dimensions: the substantive dimension, consisting primarily right to reparation for victims (restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition), and the procedural dimension, consisting of the right to access to mechanisms and processes through which human rights violations can be effectively vindicated and redressed.¹¹⁸ The procedural aspect requires the existence of a proper legislative framework and institutional mechanisms enabling a prompt and effective investigation and, eventually, prosecution and punishment of those responsible for the violations.¹¹⁹

3.1. The Right to Reparation in the UDHR and ICCPR

Article 8 of the Universal Declaration of Human Rights guarantees everyone the right to an effective remedy by competent national tribunals for acts violating fundamental human rights which are granted by the Constitution or by law.¹²⁰ Remedy is a general term and refers to access to legal remedies as well as to reparations.¹²¹ To this effect, the UDHR entitles victims right to reparation. As it is mentioned in the previous chapter, torture is among the fundamental human rights recognized in the UDHR that has attained the status of jus-cogens. The state has the obligation to protect individuals from torture and refrain from violating this right. In the event of a violation, the State shall investigate the crime of torture, punish perpetrators, and provide effective remedies to victims.

In a similar lane, the ICCPR under article 2(3)(a), set forth a right to an effective remedy accordingly, ‘any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.’¹²² The right to an effective remedy and the right to reparation are interrelated rights because without providing reparation to individuals whose rights have been violated, we cannot realize the right

¹¹⁸ Rusten, Marianne. 2008. *The Right to Truth and Reparation for Victims of Gross Human Rights Violations*, 13.

¹¹⁹ Council of Europe, Commissioner for Human Rights. "Torture Survivors Have the Right to Redress and Rehabilitation." Accessed April 5, 2022. <https://www.coe.int/en/web/commissioner/-/torture-survivors-have-the-right-to-redress-and-rehabilitation>

¹²⁰ UN General Assembly. 1948. "Universal Declaration of Human Rights." Article 8, 10 December, 217 A (III). UN.

¹²¹ Getahu 2019, p.19.

¹²² UN General Assembly. 1966. "International Covenant on Civil and Political Rights, Article 2(3)(a)." December 16, United Nations, Treaty Series, vol. 999.

to an effective remedy. In this regard, the Human Rights Committee in its General Comment No. 31, makes a link between the terms 'remedy' and 'reparation' by stating that:

Article 2, paragraph 3 requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation, and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition, and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations¹²³

In this regard, article 2(3) of the ICCPR, sets forth a right to an "effective remedy" in case of a violation of a person's individual rights/freedoms. This provision imposes an obligation on member states to ensure that the person whose right was violated has remedy notwithstanding that the violation has been committed by persons acting in an official capacity.¹²⁴ Therefore, victims of torture are entitled to reparation since freedom from torture is among the rights granted by the covenant. Furthermore, State parties are duty-bound to provide remedies for victims of torture under any circumstances and to ensure that the claim is determined by competent judicial, administrative, or legislative authorities, or by any other competent body provided for by the legal system of the State and ensure that such remedy is enforced by the competent authority.¹²⁵ In *Benaziza v. Algeria*, the Human Rights Committee underscored that "the State

¹²³UN Human Rights Committee (HRC). 2004. "General comment no. 31: The Nature of General Legal Obligation Imposed on States Parties to the Covenant." May 26. CCPR/C/21/Rev.1/Add.13, para.16.

¹²⁴ UN General Assembly. 1966. "International Covenant on Civil and Political Rights, Article 2(3)(a)." December 16, United Nations, Treaty Series, vol. 999.

¹²⁵ UN General Assembly. 1966. "International Covenant on Civil and Political Rights, Article 2(3)(b) and(c)." December 16, United Nations, Treaty Series, vol.999.

party has a duty not only to carry out thorough investigations of alleged violations of human rights but also to prosecute, try and punish anyone held to be responsible for such violations”.¹²⁶

The Human Rights Committee has called human rights obligations of the ICCPR obligations erga-omnes i.e. these obligations apply to all countries, and they are not dependent on other obligations or individual complaints.¹²⁷ Even if the victims of human rights violations choose not to receive reparations, the state is still obligated to investigate and publicly reveal the truth about the violations, and to punish those responsible.¹²⁸ This is a duty that the state has not only towards victims, but towards society as a whole.¹²⁹ Therefore, it is the responsibility of the state to guarantee that torture victims receive the proper redress. Depending on the specifics of each instance as well as the type and seriousness of the infringement, different remedies may be appropriate. According to the Human Rights Committee, a combination of non-pecuniary measures of restitution, satisfaction, and guarantees of non-repetition along with pecuniary measures of reparation, such as adequate compensation, constitutes a comprehensive victim-centered approach to reparation. The Human Rights Committee has systematically disapproved the enactment of laws that impede the pursuit of justice and reparation, such as amnesty laws.¹³⁰ Such laws protect persons from prosecution for past offenses, including, occasionally, human rights abuses. In General Comment No. 20, the Human Rights Committee stated:

Amnesties are incompatible with the duty of States to investigate such [breaches of article 7]; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive

¹²⁶ Joseph, Sarah. 2006. "Seeking Remedies for Torture Victims." In Boris Wijkstrom, ed., 201.

¹²⁷ International Commission of Jurists (ICJ). 2006. The Right to a Remedy and to Reparation for Gross Human Rights Violations- A Practitioners Guide. Practitioners Guide No. 2, 24.

¹²⁸ (International Commission of Jurists (ICJ) 2006, 24)

¹²⁹(International Commission of Jurists (ICJ) 2006, 24)

¹³⁰(International Commission of Jurists (ICJ) 2006, 203)

individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.¹³¹

The punishment given to those who violate Article 7 must also reflect the gravity of the crime.¹³² For instance, the Human Rights Committee has expressed its concern regarding the tendency for police officers in Spain to be given lenient sentences or to simply avoid punishment altogether.¹³³

3.2. The Right to Reparation under the CAT

The CAT not only prohibits but also imposes a duty on states to guarantee that victims of torture receive redress and possess a legally enforceable right to fair and adequate compensation, including access to comprehensive rehabilitation services to the fullest extent possible.

In the event of death of the victim, his or her dependents shall be entitled to compensation. In this regard the CAT Committee adopted General Comment No. 3 in November 2012 on Article 14. This General Comment sets out the five forms of reparation; restitution, compensation, rehabilitation, satisfaction (and the right to truth), and guarantees of non-repetition.¹³⁴ Moreover, General Comment No. 3 develops the content and extent of procedural obligations aimed at the full implementation of the right to redress, such as the enactment of legislation, measures to provide an effective remedy, and the removal of obstacles to the right to redress.¹³⁵

¹³¹UN Human Rights Committee (HRC). 1992. CCPR General Comment No. 20, Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), March 10, para. 15.

¹³²("Seeking Remedies for Torture Victims" n.d.: 204)

¹³³ Human Rights Committee. 1996. Concluding Observations, Spain, UN Doc. CCPR/C/79/Add. 61, para. 10.

¹³⁴ Committee against Torture (CAT). 2012. "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Implementation of Article 14 by State Parties." General Comment No. 3, December 13, para. 6.

¹³⁵(Committee against Torture (CAT) 2012, para. 19)

In *Urta Guridi vs. Spain Case*, the CAT Committee found that the light penalties and pardons conferred on civil guards, who had tortured the complainant, along with an absence of disciplinary proceedings against those guards, constituted breaches of Article 14.¹³⁶ In this case the victim had in fact received monetary compensation, but the CAT Committee found that the lack of punishment for the perpetrators was incompatible with the State's duty to guarantee "the non-repetition of the violations".¹³⁷ Thus, Article 14 provide not only civil remedies for torture victims, but, also the right to "restitution, compensation, and rehabilitation of the victim", as well as a guarantee of non-repetition of the relevant violations, and punishment of perpetrators found guilty.¹³⁸

In General Comment No. 2(para. 5), the CAT Committee rejected amnesties or other measures that obstruct the prosecution and punishment of perpetrators in the following terms:

The Committee considers that amnesties or other impediments which preclude or indicate an unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.¹³⁹

Drawing on this doctrine, in *Sahli v. Algeria*, the CAT Committee stated that "waivers of prosecution do not apply under any circumstances to crimes such as torture."¹⁴⁰ As provided under articles 12, 13, and 14 of the CAT, State parties have the obligation to conduct prompt and effective investigations, to prosecute the perpetrators, and to compensate the victims wherever there is reasonable ground to believe that an act of torture has been committed under their jurisdiction.¹⁴¹ The duty to investigate for the

¹³⁶ ("Seeking Remedies for Torture Victims" n.d.: 264)

¹³⁷ ("Seeking Remedies for Torture Victims" n.d.: 264)

¹³⁸ ("Seeking Remedies for Torture Victims" n.d.: 265)

¹³⁹UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Committee against Torture. 2008. General Comment No. 2: Implementation of Article 2 by States Parties. UN Doc. CAT/C/GC/2. January 24. Para. 5.

¹⁴⁰CAT Committee. *Sahli v. Algeria*, Comm. No. 341/2008. Para. 9.9.

¹⁴¹UN Committee Against Torture (CAT). 2008. Concluding Observations of the Committee Against Torture: Algeria. UN Doc. CAT/C/DZA/CO/3. May 26. Para. 11..

purpose of providing effective remedies to victims and preventing torture and ill-treatment was developed by the CAT Committee in the context of the examination of an individual complaint, the CAT Committee upheld that “the obligation to investigate indications of ill-treatment is an absolute duty under the Convention and falls to the State”¹⁴² The investigation of the crime of torture, prosecution, and punishment of the perpetrators and providing reparations to victims can help to overcome stigmatization and restore their dignity.

In principle, state violence could only be caused when state agents caused the violence. However, due to different circumstances under international law like the principle of attribution, states may be held responsible for the violence caused by private individuals. In this regard, article 3 of the convention stipulates that torture caused either by the state or caused due to the consent or acquiescence of the state is to be attributed to the state engaged in such activities. Furthermore, the Committee in General Comment 2 stated that States shall be responsible “for the acts and omissions of their officials and others, including agents, private contractors, and others acting in an official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under color of law.”¹⁴³ Therefore, the obligation to provide victims a 'fair and adequate compensation' provided in Article 14(1) shall be paid by a state to the victim of an act of torture for which that state is responsible because of the involvement of a public official or other person acting in an official capacity.¹⁴⁴ A State can be held responsible for providing reparation for torture or ill-treatment even if it wasn't directly involved, as long as it failed to take proper steps to prevent the act, investigate it, or punish the perpetrators.¹⁴⁵ Recognizing that certain violations stem from deficiencies within a state's legal system or underlying injustices rendering individuals or groups vulnerable, the

¹⁴²UN Doc CAT/C/47/D/368/2008 (Official Case No). IHRL 3801 (UNCAT 2011). Para. 10.6.

¹⁴³UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Committee against Torture. 2008. General Comment No. 2: Implementation of Article 2 by States Parties. UN Doc. CAT/C/GC/2. January 24. Para. 5.

¹⁴⁴ Bardo Fassbender. 2008. "Can Victims Sue State Officials for Torture." *Journal of International Criminal Justice* 6 (2): 61.

¹⁴⁵UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Committee against Torture. 2008. General Comment No. 2: Implementation of Article 2 by States Parties. UN Doc. CAT/C/GC/2. January 24. Para. 7.

process of providing reparation should transcend individual cases to address these issues, potentially through initiatives like institutional and legal reforms or broader actions targeting systemic discrimination.¹⁴⁶

Apart from the above-mentioned human rights treaties, other human rights treaty provisions such as Article 6 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 39 of the Convention on the Rights of the Child (CRC), and Article 24(4) of the International Convention for the Protection of All Persons from Enforced Disappearance (CPPED), affirm the right to reparation in different forms.¹⁴⁷

3.3. Right to Reparation for Victims of Torture during Non-International Armed Conflict

The duty to make reparation applies to violations of international humanitarian law committed in non-international armed conflicts and attributable to a State.¹⁴⁸ Theoretically speaking, national courts serve as the first opportunity for reparations in cases of gross human rights violations.¹⁴⁹ When there is an armed conflict within a country, it is assumed that victims of human rights violations can seek reparation through the courts of that country, according to the laws of that country.¹⁵⁰ Claims for reparation for international humanitarian law violations by organs of a state, brought against that state, in its domestic courts would normally have a better chance of success because it would not encounter the obstacle of state immunity.¹⁵¹ Pursuant to Article 3 common to the Geneva Conventions the hostilities between Ethiopian government forces and Tigray regional forces constitute an internal, non-international armed conflict since it is an

¹⁴⁶(Ashine and Tera 2017, 3)

¹⁴⁷(Evans 2012, 35)

¹⁴⁸(ICRC 2005, 545)

¹⁴⁹ Rusten, Marianne. 2008. *The Right to Truth and Reparation for Victims of Gross Human Rights Violations: The Case of Colombia*. University of Oslo Faculty of Law. 23..

¹⁵⁰ (ICRC 2005, 545)

¹⁵¹ Terzieva, Vessela. 2019. "Human Rights Remedies for Violations of the Law of Armed Conflict: Reflections on the Right to Reparation in Light of Recent Domestic Court Decisions in the Netherlands and Denmark." *International Crimes Database*. 7.

armed conflict between the Federal and allied forces and regional armed forces.¹⁵² Even though Eritrean forces are allegedly involved in the conflict they have fought alongside Ethiopia's army, thus it was a conflict between Federal and allied forces against Tigrayan regional forces. Therefore, the legal regime for a non-international armed conflict applies. In this regard the International Covenant on Civil and Political Rights and the three regional human rights treaties requires States to provide remedy for violation of human rights.¹⁵³

The UN Human Rights Committee and the Inter-American Court of Human Rights have stated that this obligation is non-derogable.¹⁵⁴ The right of individual victims to seek reparation from the state for violation of international humanitarian law can be inferred from Article 75(6) of the Statute of the International Criminal Court, which provides that "nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law".¹⁵⁵

The ICRC in its 2005 in-depth study of customary international humanitarian law affirmed that state responsibility for reparations has become established as a customary norm both in international and non-international armed conflicts.¹⁵⁶ There is widespread and representative practice in which States have made efforts to compensate victims of violations of international humanitarian law committed in non-international armed conflicts.¹⁵⁷ We can take for instance; the Comprehensive Agreement on Human Rights in Guatemala by which the parties "recognize that it is a humanitarian duty to compensate and assist victims of human rights violations."¹⁵⁸ In the case of *Akdivar and Others v. Turkey*, the European Court of Human Rights stated that there was a legal obligation for a violating State to put an end to the breach and to "make reparation for its consequences in such a way as to restore as far as possible the situation

¹⁵²International Committee of the Red Cross (ICRC). 1949. "Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 3 Common to the Geneva Conventions of 12 August 1949." 75 UNTS 287.

¹⁵³(ICRC 2005, 546)

¹⁵⁴(ICRC 2005, 546)

¹⁵⁵UN General Assembly. 1998. Rome Statute of the International Criminal Court (last amended 2010), Article 75(6). July 17. ISBN No. 92-9227-227-6.

¹⁵⁶(Evans 2012, 33)

¹⁵⁷ (ICRC 2005, 547)

¹⁵⁸UN Commission on Human Rights. 1997. "Assistance to Guatemala in the Field of Human Rights." E/CN.4/RES/1997/51. Article VIII. April 15.

existing before the breach (restitutio in integrum).”¹⁵⁹ The Inter-American Commission on Human Rights in its decision in the case concerning the murder of Archbishop Romero by death squads in El Salvador in 1980, stressed that “the duty to make reparations for damage is not satisfied merely by offering a sum of money to the victim’s next-of-kin.¹⁶⁰ First, the complete and public knowledge of the truth must be given.”¹⁶¹ The commission affirmed that this right to know the full, complete, and public truth “is part of the right to reparation for human rights violations, with respect to satisfaction and guarantees of non-repetition.”¹⁶² The actual realization of the right to reparation for violations of the law of armed conflict in the context of mass violations might be daunting in light of the overwhelming number of claims.¹⁶³ Nonetheless, mechanisms may be adopted to address such concerns, like for instance, joint proceedings in cases based on the same or similar circumstances or single claims submitted by legal entities representing the interests of multiple victims.¹⁶⁴

3.4. The Right to Reparation in the African Charter on Human and Peoples’ Rights

The African Charter on Human and Peoples’ Rights does not explicitly provide a specific provision on the right to reparation but, this does not mean that victims’ right to reparation is not recognized in the Charter. Article 1 of the Charter obliges State parties to ‘recognize the rights, duties, and freedoms enshrined in the Charter and to adopt legislative or other measures to give effect to them.’¹⁶⁵ Furthermore, article 7(1)(a) provides that, every individual shall have the right to have his cause heard, including the right to an appeal

¹⁵⁹ (ICRC 2005, 547)

¹⁶⁰ (ICRC 2005, 550)

¹⁶¹ Monsenor Oscar Arnulfo Romero and Galdamez v. El Salvador. Case 11.481. Report N° 37/00. OEA/Ser.L/V/II.106 Doc. 3 rev. at 671. 1999.

¹⁶² (Monsenor Oscar Arnulfo Romero and Galdamez v. El Salvador Case 11.481, 1999)

¹⁶³ Terzieva, Vessela. 2019. "Human Rights Remedies for Violations of the Law of Armed Conflict: Reflections on the Right to Reparation in Light of Recent Domestic Court Decisions in the Netherlands and Denmark." International Crimes Database. 24.

¹⁶⁴ (Terzieva 2019, 24).

¹⁶⁵ Organization of African Unity (OAU). 1981. African Charter on Human and Peoples' Rights ("Banjul Charter"), Article 1. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982). June 27.

to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations, and customs in force.¹⁶⁶

The African Commission in the “Zimbabwe Human Rights NGO Forum vs. Zimbabwe” case interpreted Article 7 (1) to include victims’ right to a remedy. In this case, the Commission held that;

The protection afforded by Article 7 is not limited to the protection of the rights of arrested and detained persons but encompasses the rights of every individual to access the relevant judicial bodies competent to have their causes heard and be granted adequate relief.¹⁶⁷

The African Commission on Human and Peoples’ Rights in its Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa, interpreted the right to an effective remedy.¹⁶⁸ It stated that ‘everyone has the right to an effective remedy by competent national tribunals for acts violating the rights granted by the constitution, by law or by the Charter, notwithstanding that the acts were committed by persons in an official capacity.’¹⁶⁹ Thus, according to the African Commission judicial remedy amounts to an effective remedy and such remedy must be capable of providing redress. The African Commission stressed that the route to obtain reparation, i.e. the remedy, must be ‘available’ (accessible without impediment), ‘effective’ (it must offer a prospect of success) and ‘sufficient’ (it must be capable of redressing the complaint).¹⁷⁰ While international human rights courts can be an option for victims of torture to seek justice, they are only available as a last resort after all legal options within the victim's own country have been pursued.¹⁷¹

¹⁶⁶ (Organization of African Unity (OAU) 1981, Art. 7(1)(a))

¹⁶⁷ African Commission. Zimbabwe Human Rights NGO Forum v Zimbabwe. Communication 245/02. Para. 213.

¹⁶⁸ African Commission on Human and Peoples’ Rights. 2003. "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa."

¹⁶⁹ African Commission on Human and Peoples’ Rights. 2003. "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa." Principle C (a).

¹⁷⁰ Redress. 2013. Reaching for Justice: The Right to Reparation in the African Human Rights System. 10. October.

¹⁷¹ Novak, Manfred. 2001. "The Right to Reparation of Victims of Gross Human Rights Violations." Human Rights in Development Online 7 (1): 280.

The African Charter obliges states to; take legislative and other measures to give effect to rights, investigate human rights violations, provide effective remedies against violations, bring perpetrators of certain violations to justice, and provide reparation to victims.¹⁷² One of the available avenues for survivors of torture in Tigray to claim reparation is through the African Commission on Human and Peoples' Rights since Ethiopia is a party to the African Charter on Human and Peoples' Rights.¹⁷³ The African Commission has the jurisdiction to entertain cases of reparation instituted by survivors of Torture during the conflict in Tigray. The African Charter allows for wide standing before the African Commission; both individuals and NGOs may submit cases on their own behalf, but also on behalf of another person, even without the victims' expressed authorization.¹⁷⁴ Therefore, the victims, anyone on behalf of the victims/NGOs with an observer status can institute an action before the African commission on human rights after exhausting domestic remedies.¹⁷⁵ However, an author or complainant is not bound to exhaust remedies that are 'neither adequate nor effective'.¹⁷⁶ 'Human rights treaty bodies and courts have developed a consistent jurisprudence that ongoing massive violation or recurring patterns of violations are indicative of ineffective domestic remedies, thereby relieving the complainant(s) of having to exhaust such remedies.'¹⁷⁷

When NGOs are involved in the submission of complaints, they must provide as much information as possible about what remedies have been exhausted domestically, or explain fully why these remedies have not been used.¹⁷⁸ Tigray Universities Scholars Association (TUSA)¹⁷⁹ and Tigray Human Rights Advocacy Network (THRAN)¹⁸⁰ submitted a complaint to African Commission on Human and

¹⁷²(International Commission of Jurists (ICJ) 2006, Practitioners Guide No. 2).

¹⁷³ African Commission on Human and Peoples' Rights (ACHPR). "<https://achpr.au.int/en/taxonomy/term/77>," accessed January 10, 2024.

¹⁷⁴Frans Viljoen and Chidi Odinkal. The Prohibition of Torture and Ill-Treatment in The African Human Rights System: A Handbook for Victims and their Advocates. 70, 112.

¹⁷⁵ Organization of African Unity (OAU). 1981. African Charter on Human and Peoples' Rights ("Banjul Charter"), Article 56(5). CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982). June 27.

¹⁷⁶(Frans Viljoen and Chidi Odinkal, Handbook, 70, 112).

¹⁷⁷Ferst-man Carla, Mariana Goetz, and Alan Stephens, eds. 2009. Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity. 225..

¹⁷⁸(Frans Viljoen and Chidi Odinkal, Handbook, 70, 112).

¹⁷⁹ TUSA is a non-governmental, non-partisan, and non-profit making organization working on the achievement of sustainable development in general and in the enhancement of human rights, diplomacy, post-war reconstruction, research, and community service in Tigray.

¹⁸⁰ Tigray Human Rights Advocacy Network (THRAN) is a non-governmental, non-partisan, and non-profit making organization working on human rights, research, education, advocacy, and investigation.

Peoples“ Rights on behalf of 104,248 employees of the Federal Government of the Federal Democratic Republic of Ethiopia in the State of Tigray.

The complainants requested the African Commission on Human and Peoples“ Rights to compel the federal government of Ethiopia to:

1. Pay the salaries of the federal employees in the State of Tigray that are due since June 2021.
2. Restore the essential public services (banking, network, electricity, internet, and transportation) in Tigray without any preconditions and without delays.
3. Compensate the damages sustained by the federal employees in the State of Tigray due to the federal government’s failure to pay monthly salaries; and
4. Resume the operation of the federal institutions in the State of Tigray by allocating the necessary budget to each entity.¹⁸¹

The case was submitted in June 2022 but the commission has not responded to the complainant yet.¹⁸² However, it lays an important precedent for Non-Governmental Organizations’ competence to submit a complaint before the African Commission on behalf of victims of human rights violations during the conflict in Tigray.

The Pan-African Lawyers Union (PALU), Debevoise & Plimpton LLP, and Legal Action Worldwide (LAW) filed "The landmark case" before the African Commission on behalf of the Tigrayan victims in February 2022. The first regional human rights authority to consider complaints resulting from the conflict and humanitarian crises in Ethiopia was the African Commission. In addition to its ruling regarding seizure, the Commission asked Ethiopia to take provisional action:

¹⁸¹Hailu Solomon. 2022. Interview by Feven Haile. November 6.

¹⁸²Hailu Solomon. 2022. Interview by Feven Haile. November 6.

1. Takes all necessary measures to ensure that all allegations of acts, including but not limited to extrajudicial killings, torture, and acts of sexual and gender-based violence, which result in human loss of life or violations of the dignity and physical integrity of the Tigrayan civilians, are put to an end; [and]
2. Makes all necessary preparations to guarantee full humanitarian access to all regions of Tigray and to safeguard the safety of all aid workers.¹⁸³

Ethiopia is required to provide a 15-day report on the application of these measures in accordance with the African Commission's Rules of Procedure. According to the African Commission, a state's failure to conduct temporary measures constitutes a Charter breach in and of itself. The complaint was submitted in February 2022. This case focuses on the crimes perpetrated by the state of Ethiopia, the party with primary responsibility for its residents, as well as the Tigrayan community, who constitute the vast majority of the conflict's victims. This covers both the need to refrain from violating civilians as well as the obligation to stop third parties from violating or abusing civilians on their territory.

In conclusion, the right to reparation is firmly entrenched in international law, reflected in numerous multilateral treaties and acknowledged as customary international law. Within the framework of human rights law, states bear the responsibility to uphold and protect fundamental human rights, obligating them to provide reparations in cases of breaches. As articulated by the Permanent Court of International Justice, any breach of an engagement entails an obligation to make reparation, which arises automatically from the unlawful act, independent of specific conventions.¹⁸⁴ While reparation, as a general legal concept, seeks to restore the situation to its pre-breach state, the nature of torture makes complete restoration impossible. Reparation, therefore, pursues a dual objective: addressing

¹⁸³ Debevoise, Legal Action Worldwide, and the Pan-African Lawyers Union. 2022. "Accessed January 25, 2023, <https://www.debevoise.com/news/2022/10/debevoise-legal-action-worldwide> " Debevoise & Plimpton LLP News. 10.

¹⁸⁴ Chorzow Factory case 1928. Permanent Court of International Justice (Merits), page 24.

the wrong done to victims as comprehensively as possible and reinforcing the prohibition of torture. Furthermore, providing reparation to victims not only redresses the consequences of wrongful acts but also serves as a deterrent against future violations.

The rapidly growing jurisprudence of international human rights law and humanitarian law affirms that states are accountable for providing compensation for human rights abuses committed by their officials or for their failure to prevent violations committed by non-state actors. However, because human rights mechanisms were not designed to deal with large-scale violations in conflict situations, the developing doctrine on reparation for individual victims of human rights violations contrasts sharply with the inadequate responses that have thus far been provided in practice to victims of serious human rights and humanitarian law violations.¹⁸⁵ In reality, victims of less serious crimes are still more likely to receive compensation than victims of serious human rights breaches, especially when there are many victims in the midst of an armed conflict.¹⁸⁶

3.5. The Right to Reparation in Ethiopian Law

Article 2 of the CAT requires States to adopt legislative measures to achieve the realization of the rights enshrined under the covenant at the domestic level.¹⁸⁷ Legally speaking, the acts of State officials in the performance of their official duties shall be attributable to the State, and the State shall be held responsible to provide reparation to victims of human rights violations who sustained injury as a result of the acts of its officials.¹⁸⁸ As discussed in the previous sections, States' responsibility to make reparations to victims who have suffered human rights abuses is an established right at the international level. There is no comprehensive law that deals with reparation in the

¹⁸⁵ Echeverria, G. (2012, June). Do victims of torture and other serious human rights violations have an independent and enforceable right to reparation? *The International Journal of Human Rights*, 16(5), 698–716. <https://doi.org/10.1080/13642987.2012.685315>

¹⁸⁶ (Echeverria, 2012)

¹⁸⁷ UN General Assembly. 1984. "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." Art 2. December 10. United Nations Treaty Series, vol. 1465.

¹⁸⁸ Fisseha M. Tekle. 2013. "Victim Reparation for Derg Crimes: Challenges and Prospects." Master's Thesis, Central European University. P.14.

Ethiopian legal framework. However, there are provisions dealing with reparation in the substantive and procedural laws of Ethiopia. The domestic framework of reparation and its practical application for survivors of torture will be discussed in the following sections.

3.5.1. FDRE Constitution

Basic human rights and freedoms are recognized in the FDRE Constitution. But when we come to the recognition of victim's right to reparation, there is no explicit provision that deals with the victim's right to reparation as a substantive right in the Constitution. However, any person or group who has suffered a human rights violation should have access to effective judicial or other appropriate remedies at both national and international levels and the right to remedy is an internationally recognized right enshrined in several international and regional human rights instruments.¹⁸⁹ The Committee on Economic, Social and Cultural Rights in its General Comment No.9 appraised, domestic remedy as the primary option for the effective protection of human rights.¹⁹⁰ As a matter of fact, there is no comprehensive law that deals with the right of victims to reparation for human right violation (including torture). However, there are provisions scattered in the civil code, criminal code, civil procedure code, and criminal procedure code that deals with the right to reparation for types of offenses or crimes.¹⁹¹ In the foregoing discussion, the possibility of claiming reparation for human rights violations has constitutional underpinning in two ways in Ethiopia.

First, since all human rights are justiciable/are amenable for judicial adjudication judges have the adjudicatory power to decide up on cases of reparation for human rights violations in domestic courts embracing the explicitly guaranteed right of access to justice provided under Article 37(1) of the FDRE constitution.¹⁹² By virtue of Article 37, "Everyone has the right to bring a justiciable matter and to

¹⁸⁹(Ashine and Tera 2017, 4)

¹⁹⁰(Ashine and Tera 2017, 4)

¹⁹¹(Ashine and Tera 2017, 4)

¹⁹² Federal Democratic Republic of Ethiopia. 1995, Art.37(1).

obtain a decision or judgment by, a court of law or any other competent body with judicial power”.¹⁹³ In this context, "justiciable matters" are those that can be decided or resolved through legal principles, often within a court of law.¹⁹⁴ This includes disputes, questions, or cases that fall within the jurisdiction of the legal system and can be addressed through legal proceedings. Accordingly, since freedom from torture is justiciable, victims of torture are entitled as of right to seek remedy before the court of law or quasi- judicial bodies. This is one of the constitutional remedies guaranteed in the Constitution for the violation of those rights provided in chapter 3 of the Constitution (fundamental rights and freedoms). Thus, Article 37(1) of the Constitution guaranteed judicial protection to human rights and freedoms.

Second, as provided in Article 9 of the constitution, since all international instruments ratified by the Parliament becomes an integral part of the law of land.¹⁹⁵ The treaties ratified by Ethiopia that prohibit torture and entitle victims of torture the right to reparation, include, UDHR, ICCPR and CAT. Though, the right to reparation is not expressly guaranteed in the Constitution, the provisions of the international instruments ratified by the Country shall be taken as part of the law of the land and shall be applied and enforced by Ethiopian courts.

Moreover, Article 13(2), provides that fundamental rights and freedoms shall be interpreted in accordance with international human rights instruments adopted by the country. This provision serves as a bridge between the Ethiopian Constitution and international human rights law. It emphasizes the importance of interpreting and applying fundamental rights in a manner consistent with globally recognized human rights principles, providing a framework for the protection and promotion of human rights within the domestic legal system.

¹⁹³ Federal Democratic Republic of Ethiopia. 1995, Art.37(1).

¹⁹⁴ "Black's Law Dictionary." 2019. 11th ed. Westlaw.

¹⁹⁵ Federal Democratic Republic of Ethiopia. 1995, Art. 9

The general rule of international law provides that a state cannot plead a rule or a gap in their own national law as a defense to a claim under international law.¹⁹⁶ For instance, during a state of emergency, the right to life cannot be violated. If the Ethiopian government were to cause the death of individuals under the state of emergency and was called upon by the international community to justify its actions, it would not be a valid defense for the government to claim that it acted within its national laws. This general principle is applicable regardless of the state's adherence to monism or dualism. This rule is incorporated under Vienna convention (Article 27) on the law of treaties. A corollary to this principle is that states must perform their obligation under international law in good faith.¹⁹⁷ They must do their level best to perform such duty.¹⁹⁸ States have also the duty to conform their national laws to their international law obligations to which they have consented.¹⁹⁹ Thus, the status of international law should not be determined by municipal law.

The Constitution establishes Ethiopia as a Federal State with parallel institutions and organs operating at both the State and Federal levels. As a result, judicial powers are distributed among Federal and State courts, each possessing exclusive jurisdiction in certain areas and sharing concurrent jurisdiction in others. Concerning violations of international human rights and humanitarian law during the conflict in Tigray, the Federal courts possess criminal jurisdiction over cases arising from international treaties ratified by Ethiopia, encompassing "crimes in violation of international law."²⁰⁰ Accordingly, Ethiopian Federal courts are empowered to adjudicate crimes related to freedom from torture based on international human rights instruments ratified by the country.

The issue of the hierarchy of laws in Ethiopia, specifically concerning the status of international agreements within the legal framework, remains a subject of contention among scholars. This debate is centered around two contrasting theories: the monist approach and the dualist approach. The monist approach views international law and national law as integral components of the same legal order.

¹⁹⁶ United Nations. 1969. "Vienna Convention on the Law of Treaties." May 23. United Nations Treaty Series, vol. 1155, Article 27.

¹⁹⁷ Abate, Tesfaye. 2020. "The Role of International Law in the Ethiopian Legal System." *Ethiopian Yearbook of International Law* 7: 1-25.

¹⁹⁸ (Abate, 2020, 1-25)

¹⁹⁹ (Abate, 2020, 1-25)

²⁰⁰ Federal Courts Proclamation. 2021. "Proclamation No. 1234/2021." *Federal Negarit Gazeta* 27th Year, No. 26, April 26, 2021, Article 4(3).

According to this perspective, both forms of law coexist and operate concurrently over the same subject matter. In essence, they are considered different manifestations of a single body of law.²⁰¹ Since domestic law and international law are considered integral parts of the same normative system, in the rare occurrence of a conflict between the two, legal interpretation and application must accord precedence to international law.²⁰² This theory posits that the foundational norms of the national legal order are derived from international law, and the validity and authority of domestic law depend on its alignment with international norms, rendering it null and void in the absence of such conformity.²⁰³

On the other hand, the dualist approach speculates that international law and municipal (national) law are distinct legal systems that exist independently.²⁰⁴ It posits that international law functions as a horizontal regime regulating inter-state relations, whereas municipal law operates as a vertical regime governing the relationship between the state and its inhabitants.²⁰⁵ In this framework, international law governs interstate relations, while municipal law addresses matter within the state.²⁰⁶ Dualism places a strong emphasis on sovereignty, often aligning with positivist legal theories. If a conflict arises between national and international law, dualism asserts that international law should prevail in matters of international concern, while national law should take precedence in domestic affairs.²⁰⁷ Hence, neither legal order has the power to create or alter rules of the other.²⁰⁸ Domestic jurisdictions may apply international law, but only as an exercise of the authority of domestic law that has adopted or transformed the rules of international law.

²⁰¹Marian, Brîndusa. 2007. "The Dualist and Monist Theories. International Law's Comprehension of these Theories." *The Juridical Current*: 3.

²⁰² Takele Soboka Bulto. 2009. "The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia." p. 135

²⁰³ (Takele Soboka Bulto, 2009, 135)

²⁰⁴ (Marian, 2007, 3).

²⁰⁵ (Takele Soboka Bulto, 2009, 135)

²⁰⁶(Marian, 2007, 3).

²⁰⁷(Marian, 2007, 3).

²⁰⁸ (Takele Soboka Bulto, 2009, 135)

The Ethiopian Constitution, particularly Article 9, stands out as a significant factor in shaping the country's approach to the hierarchy of laws. According to this provision, ratified human rights treaties are an integral part of the domestic legal system, meaning that no law or proclamation can supersede treaties that are in alignment with the Constitution's Bill of Rights. This means that international agreements, once ratified, hold a status equivalent to that of the constitution itself, emphasizing a harmonized legal framework.

The connection between the Ethiopian Constitution and international human rights law is further solidified by Article 13(2). This provision acts as a crucial link, emphasizing the interpretation and application of fundamental rights in a manner consistent with globally recognized human rights principles. By doing so, Article 13(2) provides a framework that guides the protection and promotion of human rights within the domestic legal system. Therefore, the Ethiopian Constitution acknowledges international treaties and human rights conventions as integral elements of the domestic legal framework.

In two judicial decisions, the Federal Court has established that ratified human rights treaties hold precedence over subsequently enacted inconsistent domestic laws in Ethiopia. In the case of Federal Police Criminal Investigation Department vs Naod Misale and others, the court ruled against the indefinite detention of suspects under an amendment to the Federal Anticorruption Proclamation, emphasizing that the restriction on bail violated Ethiopia's international human rights obligations, particularly those guaranteed by the International Covenant on Civil and Political Rights (ICCPR).²⁰⁹ Notably, the ICCPR, ratified by Ethiopia in 1993, was allowed to override the later 2001 Anticorruption Proclamation. This legal precedent was affirmed by the High Court in another case involving Proclamation 255/2001, which restricted outgoing presidents from participating in partisan politics. In the case of Dr. Negasso Gidada (former President of Ethiopia) vs HPR and the HOF, the court relied on the ICCPR and the Universal Declaration of Human Rights (UDHR) to reject the proclamation's attempt to limit outgoing presidents' right to run as candidates for election into the HPR.²¹⁰

²⁰⁹(Takele Soboka Bulto, 2009, 149)

²¹⁰ (Takele Soboka Bulto, 2009, 149)

3.5.2. Civil Code

The Civil Code incorporated provisions regarding compensation that are relevant for victims of human rights violations. The Ethiopian government in its initial report of 2009 submitted to the CAT committee stated that.

“The Civil Code provides that civil servant or government employee is liable for any damage he causes to another by his fault. This is applicable to a civil servant who has committed such crimes or faults as torture. Hence victims of torture have the right to institute civil suits against wrongdoers and claim compensation. Moreover, the State shall be vicariously liable to the victims of such crimes if the fault committed is a professional fault.”²¹¹

The extra- contractual provisions of the Civil Code provide that the State is liable for actions of civil servants or government employees where the fault amounts to a professional fault.²¹² A fault is regarded as professional fault if it is committed in good faith and if it falls within the scope of the authority of the person.²¹³ Accordingly, Survivors of torture in Tigray can seek compensation from the State by virtue of article 2126(2), since the alleged perpetrators are State officials/government employees acting in a professional capacity. The alleged human rights violation in Tigray including torture were committed by the Federal and allied forces while discharging the law enforcement operation.²¹⁴

Article 2126 provides that, any civil servant or government employee shall make good any damage he causes to another by his fault.²¹⁵ A person is said to commit an offense, where he acts or refrains from acting in a manner or in conditions that offend morality or public

²¹¹UN Committee Against Torture (CAT). 2010. "Consideration of reports submitted by States parties under article 19 of the Convention: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: initial reports of States parties due in 1995: Ethiopia." February 16. CAT/C/ETH/1, Para 60.

²¹²The Civil Code of the Empire of Ethiopia. 1960. "Proclamation No.165." Negarit Gazeta, Gazette Extraordinary, 19th Year No.2, May 5. Art. 2126(2).

²¹³ The Civil Code of the Empire of Ethiopia. 1960. "Proclamation No.165." Negarit Gazeta, Gazette Extraordinary, 19th Year No.2, May 5. Art. 2127 (1).

²¹⁴Survivors. 2022. "Interview with 20 Survivors of Torture in Seba-Care 4 IDP Site." Conducted by Feven Haile. Mekelle, November 15-November 17.

²¹⁵ The Civil Code of the Empire of Ethiopia. 1960. "Proclamation No.165." Negarit Gazeta, Gazette Extraordinary, 19th Year No.2, May 5. Art. 2030.

order.²¹⁶ Infringement of any specific and explicit provision of law, decree, or administrative regulation is also considered an offense under civil law.²¹⁷ Thus, infringement of any laws of the land, including provisions that guarantee freedom from torture, is considered an offense and gives rise to liability. The provisions of the Civil Code shall be applicable to civil servants or any government employee who has committed offences or crimes such as torture. Accordingly, victims of torture are entitled to claim compensation against offenders by instituting civil suits before a civil court.

Where the fault committed by a civil servant or government employee is a professional fault; the state will be vicariously liable and the victim may claim compensation from the State, then, the State may subsequently claim from the civil servant or employee at fault by virtue of Article 2126(2) of the Civil Code.²¹⁸ A fault shall be deemed to be a professional fault where the person who committed it believed in good faith that he acted within the scope of his duties and in the interest of the State.²¹⁹

The Civil Code contains forms of reparation recognized in international law, accordingly; it offers compensation for material damage and also lays down rules applicable to the determination of compensation for moral damage.²²⁰ The Code also provides restitution as a remedy for the victims of crime.²²¹ It obliges civil servants to make good the damages caused to victims and obliges the State to retribute /compensate victims where the fault committed is a professional fault.²²² Furthermore, courts have the power to make injunctions restraining the defendant from committing/continuing to commit an action threatening the right of the plaintiff, which can be considered satisfaction or guarantees of non- repetition.²²³ “An injunction shall be granted only where there are reasonable grounds to

²¹⁶ (The Civil Code of the Empire of Ethiopia, 1960, Art. 2030)

²¹⁷(The Civil Code of the Empire of Ethiopia, 1960, Art. 2035).

²¹⁸(The Civil Code of the Empire of Ethiopia, 1960, Art. 2126(2).

²¹⁹(The Civil Code of the Empire of Ethiopia, 1960, Art. 2127(1).

²²⁰(The Civil Code of the Empire of Ethiopia, 1960, Art. 2090- 2117).

²²¹ (The Civil Code of the Empire of Ethiopia, 1960, Art. 2118).

²²² (The Civil Code of the Empire of Ethiopia, 1960, Art.2126).

²²³(The Civil Code of the Empire of Ethiopia, 1960, Art. 2121(1)).

believe that the act prejudicial to the plaintiff is likely to be carried out and where the injury with which he is threatened is such that it cannot be redressed by an award of damages.”²²⁴

To conclude, victims of torture can institute a civil suit for compensation before a civil bench by exhausting the remedies of extracontractual liability incorporated under the civil code against the civil servant or government employee who is at fault or from the state if the fault amounts to a professional fault.

3.5.3. Criminal Code

The Criminal Code of the Federal Democratic Republic of Ethiopia incorporated a couple of provisions dealing with reparation to a victim of crime. Some of the provisions are governed by certain procedural norms stipulated under the Criminal Procedure Code and crystallize a set of legal norms for a victim of crime to seek reparation from the offender for the injury caused to him.²²⁵

A public servant who commits the act of torture against suspects/prisoners is punishable with a fine or imprisonment of up to 10 years.²²⁶ Where such acts are committed by the order of an official, it is punishable with up to 15 years imprisonment and fine.²²⁷ According to article 270 of the criminal code; torture committed against civilians during armed conflicts is regarded as a war crime and shall be punishable with rigorous imprisonment from 5 years up to 25 years or in serious cases with life imprisonment or death.²²⁸ From the readings of this article we can understand that the criminal code criminalizes torture committed by civil servants/government employees

²²⁴(The Civil Code of the Empire of Ethiopia, 1960, Art.2121(2)).

²²⁵ Vibhute 2010, 311-350

²²⁶ Federal Democratic Republic of Ethiopia. 2004. "The Criminal Code of the Federal Democratic Republic of Ethiopia, Article 424(1)." Proclamation No. 414/2004.

²²⁷(Federal Democratic Republic of Ethiopia 2004, Art. 424(2))

²²⁸(Federal Democratic Republic of Ethiopia 2004, Art. 270(a).

against suspects/prisoners in detention centers and it also criminalizes torture committed by combatants against civilians during armed conflicts. Thus, the criminal code offers ‘satisfaction’ to survivors of torture, since prosecution and judgment declaring violations of rights is among the measures of reparation.

The Criminal Code criminalizes acts violating human rights, including torture, cruel, inhuman, or degrading treatment or punishment.²²⁹ It is a crime for civil servants/government employees to commit or permit the commission of torture, cruel, inhuman or degrading treatment or punishment.²³⁰ Torture committed against civilians during armed conflict is regarded as a war crime by virtue of article 270 of the criminal code.

Article 101 of the criminal code entitle victim of a crime including victim of torture (since torture is among the offences incorporated in the code) to seek compensation or restitution for the damage caused to him/her through criminal proceedings from the offender. Accordingly, Article 101 of the Criminal Code entitles the injured party to seek remedy from the offender for considerable damage. Pursuant to article 101, the injured party or those having rights from him shall be entitled to institute a criminal proceeding and claim that the offender be ordered to make good the damages by the way of compensation or to make restitution where a crime has caused considerable damage.²³¹ To this end, the Criminal Code provides the procedures for claiming reparations, it stipulates that the injured party may join his/her civil claim with the criminal suit and such a claim shall be entertained by the provisions laid down in the criminal procedure code. According to this article survivors of torture are entitled to claim compensation for the damage they sustained because of commission of a crime since torture is among the crimes incorporated in the criminal code of Ethiopia.

However, the entitlement bestowed by article 101 is not a mere entitlement, it is subject to procedural requirements that is, to claim entitlement, the injured party needs to show that he/she has suffered a considerable damage because of a crime. The victim needs to

²²⁹ (Federal Democratic Republic of Ethiopia 2004, Art. 424).

²³⁰ (Federal Democratic Republic of Ethiopia 2004, Art. 424).

²³¹(Federal Democratic Republic of Ethiopia 2004, Art. 101).

prove these facts before a court of law to claim compensation/restitution. The problem here is that the term ‘considerable damage’ is vague and susceptible to varied judicial interpretations. It gives the court the discretion to employ its own parameters and decide whether the damage sustained is ‘considerable’ or not.

Article 102 (1) of the Criminal Code empowers the criminal court, at its discretion, to award compensation to the injured party where the criminal (or a person liable on their behalf) is unable to pay compensation for the loss/injury sustained by a commission of a crime due to the circumstances of the case at hand or situation. As per this provision, the court may order that the sale proceeds (or part thereof) of distrained articles, the sum guaranteed as surety, or a part of the fine or a part of the yield of the conversion of the fine into work, or confiscated property be paid to the injured party.²³² This provision gives the court a wide discretion to compensate the injured party. If the court is of opinion that the victim deserves compensation, the court is empowered to opt for either of the sources, in isolation or combination provided in article 102(1) of the Criminal Code to compensate the victim of crime and is also empowered to fix the amount of pecuniary compensation.²³³ Sub Article (2) of Article 102 dictates that, the injured party who has been compensated through either of the forms stated in Article 102 (1), is not allowed to execute the pecuniary part of the judgment.²³⁴ That is, the injured party is required to assign the claim to the state so that the state can enforce the claim on his or her behalf, against the person who has caused the damage.²³⁵ However, a compensation order passed by a court in favor of a victim of a crime becomes ineffective if the criminal is granted amnesty.²³⁶

The criminal justice system in Ethiopia entitles victim of crime to claim compensation for ‘considerable damage’ caused by the commission of a crime directly from the offender through criminal proceedings. It does not exhibit any concrete compensatory scheme

²³²(Federal Democratic Republic of Ethiopia 2004, Art.102(1)).

²³³Vibhute 2010, 311-350.

²³⁴Vibhute 2010, 311-350

²³⁵(Federal Democratic Republic of Ethiopia 2004, Art. 102(2)).

²³⁶ Vibhute 2010, 311-350

for relieving victims of crime from their sufferings resulting from the commission of crime.²³⁷ In fact, it does not address the question as to whether the state is (or should be) responsible for providing reparation to a victim of crime, as of right, for the financial loss incurred and any injury, mental or physical, sustained by the commission of a crime.²³⁸ The state bears the primary responsibility for violation of human rights violations. Torture by its very nature is committed by the state or acquiescence of the state, thus it shall provide reparations for violation of freedom from torture.

3.5.4. Criminal Procedure Code

The Ethiopian Criminal Procedure Code provides that a person who has been injured by a criminal offense, he or his representative may make an application to the court in writing for compensation.²³⁹ Where the application is accepted, the victim is allowed to take part in the proceedings with the same rights as an ordinary party.²⁴⁰ The victim of crime shall specify the amount of the claim for compensation and shall be allowed to provide additional evidence, including witnesses, without paying court fees.²⁴¹ It is also provided under the criminal procedure code that the acquittal/discharge of the accused does not extinguish the claim for compensation it rather changes the nature of the suit, from a criminal suit to a civil suit.²⁴²

The criminal code entitles the victim of a crime the right to claim compensation, and the criminal procedure code entitles such victim or his or her representative to apply to the court for compensation at the opening of the hearing. While the Criminal Procedure Code entitles the victim to claim compensation/restitution for considerable damage through a written application, it gives the court wide discretion to decide on whether to grant compensation or not, the court can even dismiss the case on its own motion or on the motion of

²³⁷Vibhute 2010, 311-350

²³⁸Vibhute 2010, 311-350.

²³⁹(The Criminal Procedure Code of Ethiopia. 1961. Negarit Gazette, Proclamation No. 185, Art. 154(1).

²⁴⁰(The Criminal Procedure Code of Ethiopia 1961, Negarit Gazette, Proclamation No. 185, Art.156 (1).

²⁴¹(The Criminal Procedure Code of Ethiopia 1961, Negarit Gazette, Proclamation No. 185, Art. 154(1)).

²⁴²(The Criminal Procedure Code of Ethiopia 1961, Negarit Gazette, Proclamation No. 185, Art. 158).

the prosecutor without hearing the victim and such ruling shall be final.²⁴³ Hence, it leaves the victim no choice but to suffer without any further judicial remedy.

The other impediment to the victim's right to claim compensation is that the victim bears the cost of summoning additional witnesses in support of the claim as if it were a civil case.²⁴⁴ Moreover, the victim bears the risk of prolonged court fees and the cost incurred if the court discharges the accused.²⁴⁵ Article 158 of the criminal procedure code reads, 'Where the accused is acquitted or discharged, the court shall not adjudicate on the question of compensation and shall inform the injured party that he may file a claim against the accused in the civil court having jurisdiction'.²⁴⁶ Since, the court is barred from adjudicating the compensatory claim of the injured party if it has ordered acquittal or discharge of the accused, a compensatory claim of a victim of crime is bound to be a mere illusion if the offender is acquitted or discharged by the court.²⁴⁷ However, the acquittal of the accused does not extinguish the claim for compensation rather, it changes the nature of the suit, from a criminal suit to a civil suit.²⁴⁸

In such case, the victim does not have any legal standing to appeal against the judgment of acquittal or discharge, it is up to the Public Prosecutor to do so by virtue of the Criminal Procedure Code.²⁴⁹ The Criminal Procedure Code provides a limited legal avenue for a victim of crime to contest the adequacy of the compensation awarded by a criminal court. It gives the court a wide discretion on the determination of compensation and makes the court's determination of compensation final, it leaves no room for the victim of violation to contest the decision of the court.

²⁴³ (The Criminal Procedure Code of Ethiopia 1961, Art. 31(1); Negarit Gazette, Proclamation No. 185, Art. 158).

²⁴⁴ (The Criminal Procedure Code of Ethiopia 1961, Art. 31(1); Negarit Gazette, Proclamation No. 185, Article. 154 (2))

²⁴⁵ Vibhute 2010, 311-350

²⁴⁶ (The Criminal Procedure Code of Ethiopia 1961, Art. 31(1); Negarit Gazette, Proclamation No. 185, Art. 158)

²⁴⁷ Vibhute 2010, 311-350

²⁴⁸ (Ali 2021, 18)

²⁴⁹ Vibhute 2010, 311-350

As it can be seen from the preceding section, victims of torture can seek compensation by instituting a civil suit in civil court separately or by approaching a criminal court based on the criminal procedure code to the court entertaining the case, because the civil court can see cases without bond by an acquittal or discharge of the perpetrators by a criminal court.²⁵⁰ As a result, if victims choose to institute the claim separately, the civil procedure code will be applied.²⁵¹

In conclusion, the Ethiopian legal framework for reparation underscores the constitutional and legislative foundations supporting the pursuit of remedies for human rights violations in the country. The FDRE Constitution ensures access to effective judicial or other appropriate remedies, the provisions in civil and criminal codes, as well as procedure codes, addresses the right to reparation. This constitutional underpinning is manifested through the adjudicatory power of judges, allowing victims of human rights violations to seek remedy in domestic courts, as guaranteed by Article 37(1) of the Constitution. Additionally, Ethiopia's adherence to international human rights instruments, including the UDHR, ICCPR, and CAT, is integrated into domestic law, empowering Ethiopian courts to apply and enforce these instruments. The constitutional equivalence of ratified human rights treaties and the emphasis on interpreting fundamental rights in line with international standards further solidify the legal framework. The two judicial cases cited, wherein the Ethiopian Federal Court ruled against indefinite detention and restrictions on the political participation of outgoing presidents,²⁵² illustrate the judiciary's pivotal role in prioritizing ratified treaties over conflicting domestic laws. In both instances, the rulings were grounded in the recognition of violations of international human rights obligations guaranteed by treaties ratified by Ethiopia.

²⁵⁰Getahu 2019, 41

²⁵¹ Getahu 2019, 41

²⁵² (Takele Soboka Bulto, 2009, 149)

Chapter Four

4. The Right to Reparation for Survivors of Torture during the Conflict in Tigray

4.1. Survivors' Experience

The protracted conflict in Tigray that started on November 2020 resulted in grave human rights violations including torture, arbitrary executions, CRSV, pillages, civilian displacements, and deprivations of the right to life and physical integrity.²⁵³ Even though the Cessation of Hostilities Agreement was signed by the warring parties in November 2022, limited humanitarian assistance reached Tigray owing to the suspension of food aid by WFP and USAID.²⁵⁴ During conflicts civilians in general suffer human rights violations disproportionately since the normal codes of social conduct are ignored. Torture survivors during the conflict in Tigray were subjected to forced displacement, family separation, and starvation in addition to the physical and psychological impacts that come with torture. Lack of access to humanitarian assistance, justice, and to adequate medical services has aggravated their suffering.

4.1.1. Conflict-related Torture

The researcher conducted twenty interviews (12 with females and 8 with males) with survivors of torture currently hosted in Sebacare 4 Center for internally displaced people (IDP center) in Mekelle. The IDP center hosts IDPs from Western Tigray. The researcher purposively selected this IDP site since it is the biggest IDP site in Mekelle hosting IDPs from Western Tigray and because torture and massive human rights violations were allegedly committed in Western Tigray as documented by prominent human rights

²⁵³ (Ethiopian Human Rights Commission and Office of the United Nations High Commissioner for Human Rights 2021)

²⁵⁴The New Humanitarian. 2023. "USAID suspends all food aid to Ethiopia over massive diversion scheme: reports." June 8.

<https://www.thenewhumanitarian.org/news/2023/06/08/usaaid-suspends-all-food-aid-ethiopia-over-massive-diversion-scheme-reports>. Accessed January 12, 2024.

organizations.²⁵⁵ A significant number of ethnic Tigrayans reportedly remain in detention in the Western Tigray zone in life-threatening conditions that could amount to the crime against humanity of extermination.²⁵⁶ And yet oversight remains minimal, with only limited humanitarian presence on the ground and no access to detainees.²⁵⁷ The survivors who participated in this research are IDPs from Western Tigray who were forcibly displaced from different parts of western Tigray and who were allegedly subjected to torture by Ethiopian National Defense Forces (ENDF), Eritrean Defense Forces (EDF), Amhara Special Forces (ASF) and Fano Armed Forces (FAF) in the aftermath of the commencement of the Tigray conflict between 4 November 2020 and 26 November 2021.²⁵⁸ The survivors were subjected to displacement, family separations, trauma associated with torture and sexual violence, impaired health, and the loss of their homes and possessions. Fourteen survivors were tortured while they were held in detention and were not formally charged before their escape or release.²⁵⁹ Whereas, 6 of them were tortured while they were fleeing to escape the conflict.²⁶⁰ The survivors were accused of being affiliated to Tigrayan forces and were constantly tortured and they all sustained major physical injuries and psychological disorders as a result.

A brief story of 20 survivors is summarized in the table below.

No.	Age/gender of the survivor	Date of incident	Place of Incident	Alleged Perpetrators	Time of detention	Alleged violation/complications	Current Condition
1	69 (M)	Oct 14, 2021	Setit Humera	ASF and FAF	18 days	Tortured, sustained bodily injury and psychological	Has not recovered yet
2	80 (F)	Oct 14, 2021	Setit Humera	ASF and FAF	18 days	Tortured, sustained bodily injury and psychological	Has not recovered yet

²⁵⁵ Human Rights Watch and Amnesty International. 2022. "We Will Erase You from This Land: Crimes Against Humanity and Ethnic Cleansing in Ethiopia's Western Tigray Zone." April 6. Accessed January 4, 2023. <https://www.hrw.org/news/2022/09/27/q-renewal-mandate-international-commission-human-rights-experts-ethiopia-ichree>.

²⁵⁶(Human Rights Watch and Amnesty International 2022, 204).

²⁵⁷ Human Rights Watch. 2022. "Q & A: Renewal of the Mandate of the International Commission of Human Rights Experts on Ethiopia (ICHREE)." Accessed January 4, 2023. <https://www.hrw.org/news/2022/09/27/q-renewal-mandate-international-commission-human-rights-experts-ethiopia-ichree>.

²⁵⁸ Survivors. 2022. "Interview with 20 Survivors of Torture in Seba-Care 4 IDP Site." Conducted by Feven Haile. Mekelle, November 15-November 17.

²⁵⁹(Survivors 2022; conducted by Feven Haile in Mekelle, November 15-November 17)

²⁶⁰(Survivors 2022; conducted by Feven Haile in Mekelle, November 15-November 17)

3	35 (F)	Jul 8, 2021	Setit Humera	ASF, EDF and FAF	2 months	Tortured, sustained bodily injury and psychological disorder	Has not recovered yet
4	40 (F)	Jan 7, 2021	Setit Humera	EDF	1 week	Tortured and raped, sustained bodily injury, psychiatric disorder, and Fistula	Has not recovered yet
5	37 (M)	Jan 19, 2022	Kafta Humera	ASF and FAF	25 days	Tortured, sustained bodily injury and psychological disorder	Has not recovered yet
6	32(F)	Dec 20, 2020	Dansha	Fano armed forces	Was not held in detention	Tortured and raped, sustained bodily injury, sexual mutilation, and post-traumatic stress disorder (PTSD)	Has not recovered yet
7	30(M)	Nov 7, 2021	Setit Humera	ASF and FAF	11 days	Tortured, sustained bodily injury and psychological disorder	Has not recovered yet
8	48(M)	Nov 7, 2021	Setit Humera	ASF and FAF	11 days	Tortured, sustained bodily injury and psychological disorder	Has not recovered yet
9	58(M)	Nov 26, 2021	Maicadra	ASF and FAF	3 months	Tortured, sustained bodily injury and psychological disorder	Has not recovered yet
10	42(M)	Dec 29, 2020	Tekeze river	EDF	3 days	Tortured, sustained bodily injury and PTSD	Has not recovered yet
11	47(F)	Dec 28, 2020	Wolkait	ASF and FAF	3 months	Tortured, sustained bodily injury and psychological disorder	Has not recovered yet
12	69(M)	Nov 4, 2021	Setit Humera	ASF and FAF	Was not held in detention	Tortured, sustained bodily injury and psychological disorder	Has not recovered yet
13	63(M)	May 15, 2021	Kafta Humera, Beaker	ASF and FAF	7 months	Tortured, sustained bodily injury and psychological disorder	Has not recovered yet
14	26(F)	Oct 18, 2021	Maicadra	ENDF	Was not held in detention	Tortured and raped, sustained bodily injury, unwanted pregnancy, PTSD, and sexually transmitted infections (STI)	Has not recovered yet
15	23(F)	Jan 16, 2021	Setit Humera	EDF	Was not held in detention	Tortured and raped, sustained bodily injury, disability, and genital injury	Has not recovered yet
16	30 (F)	Feb 12, 2021	Kafta Humera	ASF and FAF	35 days	Tortured and raped, sustained bodily injury, genital injury, and PTSD	Has not recovered yet
17	29 (F)	Nov 10, 2020	Kafta Humera, Baeker	FAF and EDF	8 months	Tortured and raped, sustained bodily injury, genital injury, unwanted pregnancy, STI, and psychological disorder	Has not recovered yet
18	31(F)	Jan 9, 2021	Setit Humera	FAF	2 days	Tortured and raped, sustained bodily injury, genital injury, and PTSD	Has not recovered yet
19	42 (F)	Nov 12, 2021	Setit Humera	FAF	Was not held in detention	Tortured and raped, sustained bodily injury, back pain and psychological disorder	Has not recovered yet

20	36 (F)	Nov 18, 2021	Setit Humera	FAF	Was not held in detention	Tortured and raped, sustained bodily injury, genital injury, abortion of fetus and emotional trauma	Has not recovered yet
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4.1.2. Physical and Psychosocial Problem

The conflict in Tigray has exposed civilians to grave human rights violations including torture and sexual violence that is tantamount to torture. There are multiple and serious even potentially life-threatening health outcomes due to torture including physical injury, death, and disability.²⁶¹ Furthermore, women who were raped and tortured have sustained genital injury, sexually transmitted infections (STI) including HIV/AIDS, unwanted pregnancies, and infertility as a consequence of sexual violence which is tantamount to torture.²⁶²

Rape takes on a profound legal significance when analyzed within the framework of torture. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) provides a comprehensive definition of torture, encompassing acts that inflict severe physical or mental pain or suffering, intentionally committed by or with the consent of a public official.²⁶³ The ICTY has played a pivotal role in shaping the legal landscape concerning the relationship between rape and torture, particularly in the context of armed conflicts. In the landmark case of *Prosecutor v. Kunarac*, the tribunal made a seminal ruling, declaring that rape committed during armed conflict could indeed amount to torture.²⁶⁴ The decision underscored the intentional infliction of severe physical and mental suffering as a critical factor in determining the torturous nature of rape. Another significant decision supporting this perspective is found in the *Akayesu* case, where the ICTY held that sexual violence, including rape, could constitute acts of torture or cruel, inhuman, or degrading treatment.²⁶⁵ Legal foundations provided by the CAT and decisions from the ICTY establish a clear link between rape and torture. 9 females among the

²⁶¹ Ayder Comprehensive Specialized Hospital. 2022. "Interview with Clinical Psychologist." Conducted by Feven Haile, 13 December.

²⁶² Ayder Comprehensive Specialized Hospital. 2022. "Interview with Clinical Psychologist." Conducted by Feven Haile, 13 December.

²⁶³ United Nations. 1984. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. December 10. Article 1.

²⁶⁴ International Criminal Tribunal for the former Yugoslavia. 2001. *Prosecutor v. Kunarac, Kovač, and Vuković*. Case No. IT-96-23-T & IT-96-23/1-T. February 22.

²⁶⁵ International Criminal Tribunal for Rwanda. 1998. *Prosecutor v. Akayesu*. Case No. ICTR-96-4-T. September 2.

interviewed survivors were subjected to torture and rape by the parties to the conflict. The assertion that rape by government military forces in armed conflict is tantamount to torture arises from the intentional infliction of severe suffering, the systemic nature of the violence, violations of international humanitarian law, legal precedents, and the severe physical and mental consequences experienced by survivors. It underscores the gravity of such acts and the urgent need for accountability and prevention.

Conflicts accrue to women and girls' vulnerability to sexual and gender-based violence because they lack the protection of their families, communities, and the law. The survivors divulged that they were not able to receive medical treatment immediately owing to active hostilities in Tigray particularly from November 4 till July 2021 and fear of reprisals. The survivors were able to access primary health care after they managed to arrive/displace to Mekelle. However, the treatment they received was not comprehensive and they could not access the prescribed medications owing to lack of medical supplies and medications in the region caused because of the conflict.

Almost all survivors who visit health centers/health centers have psychological symptoms ranging from mild distress to severe psychiatric disorders.²⁶⁶ According to a psychologist at Ayder referral hospital, the psychological/emotional state of torture survivors is highly distracted during the aftermath of the incident.²⁶⁷ The main psychological/emotional problems torture survivors face are depression, loss of self-esteem, self-hate, self-blame, feelings of shame and guilt, fear, anxiety, anger and post-traumatic stress disorder, schizophrenia spectrum, and other related disorders when treating patients who survived torture.²⁶⁸ Female survivors who were subjected to torture and sexual violence face social stigma and ostracization, loss of ability to function in the community, isolation, and rejection by their husbands and family. Torture coupled with long-term displacement, loss of social and cultural ties, loss of career, possession, and disruption of basic services has caused psychosocial problems for the survivors.

²⁶⁶ Ayder Comprehensive Specialized Hospital. 2022. "Interview with Clinical Psychologist." Conducted by Feven Haile, 13 December.

²⁶⁷ Ayder Comprehensive Specialized Hospital. 2022. "Interview with Clinical Psychologist." Conducted by Feven Haile, 13 December.

²⁶⁸ Ayder Comprehensive Specialized Hospital. 2022. "Interview with Clinical Psychologist." Conducted by Feven Haile, 13 December.

4.1.3. Forced Displacement and Family Separation

The conflict in Tigray has caused forced displacement and family separation and the survivors of torture of the Tigray conflict are also among the affected people by this. Besides being tortured the survivors were forced to leave their home/place of origin and displace to Mekelle in the aftermath of the conflict. According to the survivors, Amhara Special Forces, Fano armed forces, and Eritrean Defense Forces forcefully evicted ethnic Tigrayans from their homes in Western Tigray.²⁶⁹ The survivors were taken away from their families and were subjected to torture by the parties to the conflict and they were not able to find the whereabouts of their families after their escape or release.²⁷⁰ Survivors were not able to trace their families since they fled to different areas, particularly to Sudan and other parts of Tigray.²⁷¹ Some survivors were also forced to leave their families behind in Western Tigray and fled to Mekelle.²⁷² The survivors reported that they were separated from their families due to the conflict in 2020 however, they have yet to be integrated with their families because of access constraints related to security problems, and inaccessibility of resources.²⁷³ Now that telecommunication service has fully resumed in Tigray as of 28 December 2022, the security situation is slightly improved following the cessation of hostilities agreement, and the humanitarian corridor is opened protection partners and ICRC are expected to commence family tracing and reunification.

4.1.4. Lack of Access to Humanitarian Assistance

Obstruction of humanitarian assistance, the attacks and intimidation of aid workers, and the lack of access to basic services have been key features of the conflict since November 2020.²⁷⁴ The deep humanitarian crisis has resulted in a humanitarian blockade preventing life-

²⁶⁹(Survivors 2022; conducted by Feven Haile in Mekelle, November 15-November 17).

²⁷⁰(Survivors 2022; conducted by Feven Haile in Mekelle, November 15-November 17).

²⁷¹(Survivors 2022; conducted by Feven Haile in Mekelle, November 15-November 17).

²⁷²(Survivors 2022; conducted by Feven Haile in Mekelle, November 15-November 17).

²⁷³(Survivors 2022; conducted by Feven Haile in Mekelle, November 15-November 17).

²⁷⁴ Human Rights Watch. 2022. "Q & A: Renewal of the Mandate of the International Commission of Human Rights Experts on Ethiopia (ICHREE)." Accessed January 4, 2023. <https://www.hrw.org/news/2022/09/27/q-renewal-mandate-international-commission-human-rights-experts-ethiopia-ichree> .

saving aid including food aid, non-food items, and essential medications from reaching war-torn Tigray.²⁷⁵ Humanitarian organizations were not able to reach the people in need and deliver humanitarian aid owing to the blockade which was imposed following the regional forces' control over the majority parts of the region. Internally displaced people and conflict survivors were highly affected by the humanitarian access blockade. IDPs and survivors of torture were exposed to starvation, malnutrition, hygiene-related diseases, and life-threatening illnesses due to a lack of adequate food, medical service, potable water, sanitary supplies, and essential non-food items amongst other things.²⁷⁶

Survivors of torture have been denied access to humanitarian assistance, particularly since July 2021 following the regional forces' control over Mekelle. The peace accord signed in Pretoria on November 2, 2022, has set high expectations among the international community and Ethiopians, that the security situation would be dramatically improving, and as a result, unfettered humanitarian aid including medicine and food would reach the population in need. The promises entered by parties to the conflict under the agreement, however, could only bring about relative improvements in internal security within Tigray and the entrance of limited humanitarian aid to a much larger population in dire need. Whereas the guns that have been silenced are believed to bring about unhindered movement of people and full access to humanitarian assistance to the desired number of people in need, the security challenges that still exist in Tigray as the result of the presence non-ENDF forces, continue to worsen the humanitarian situations.²⁷⁷ Access to adequate humanitarian provisions in Tigray remains a concern even after the cessation of hostilities agreement. Lack of access to humanitarian assistance has stymied the rehabilitation of torture survivors in Tigray. Some survivors have resorted to negative coping mechanisms such as begging and survival sex due to lack of food aid which has exposed them to further protection risks.²⁷⁸

²⁷⁵(Human Rights Watch 2022; accessed January 4, 2023).

²⁷⁶(Survivors 2022; conducted by Feven Haile in Mekelle, November 15-November 17).

²⁷⁷ Hailu, Solomon. 2022. "Interview with Solomon Hailu, Board Chairman of THRAN, conducted by Feven Haile on 6 November."

²⁷⁸ (Survivors 2022; conducted by Feven Haile in Mekelle, November 15-November 17).

4.1.5. Lack of Access to Medical Services

The majority of the health facilities in Tigray are either damaged or vandalized and hence went non-functional.²⁷⁹ The health services are bitterly compromised and hence closed due to the limitations of resources and capacities.²⁸⁰ Those few in operation were functioning at a much lower capacity due to the displacement, relocation, migration, injury, and/or death of the health workforce, and the shortage of medical supplies and equipment.²⁸¹ One of the utmost deleterious impacts of the conflict was the damage to the entire health system of Tigray. Health infrastructures were systematically and deliberately damaged; medical equipment was damaged, vandalized, and/or looted; drugs and medicines were vandalized and/or looted; human resources for health were displaced and healthcare services were disrupted.²⁸² This has aggravated the pain and suffering of the survivors. Just as physical injuries as consequences that survivors endure there are high levels of psychological trauma, social consequences, and mental disorders endured by survivors.²⁸³

Psychologist working at Ayder-Hospital stated that survivors that came to the hospital reported multiple social consequences that took place after the violence. The hospitals within the region are out of essential medications and cannot provide comprehensive service due to a lack of medical supplies.²⁸⁴ Almost all survivors who come to the hospital have psychological symptoms ranging from mild distress to severe psychiatric disorders.²⁸⁵ These disorders require appropriate medications and follow up which have been difficult to do due to the limited medical supplies that have been entering the region.²⁸⁶ Hence, most medications have run out of stock, and some survivors when

²⁷⁹Interview with Foreign and Public Relations Directorate at Ayder Comprehensive Specialized Hospital conducted by Feven Haile on 5 November 2022."

²⁸⁰Interview with Foreign and Public Relations Directorate at Ayder Comprehensive Specialized Hospital conducted by Feven Haile on 5 November 2022."

²⁸¹Interview with Foreign and Public Relations Directorate at Ayder Comprehensive Specialized Hospital conducted by Feven Haile on 5 November 2022."

²⁸²Interview with Foreign and Public Relations Directorate at Ayder Comprehensive Specialized Hospital conducted by Feven Haile on 5 November 2022."

²⁸³Ayder Comprehensive Specialized Hospital. 2022. "Interview with Clinical Psychologist." Conducted by Feven Haile, 13 December.

²⁸⁴Ayder Comprehensive Specialized Hospital. 2022. "Interview with Clinical Psychologist." Conducted by Feven Haile, 13 December.

²⁸⁵Ayder Comprehensive Specialized Hospital. 2022. "Interview with Clinical Psychologist." Conducted by Feven Haile, 13 December.

²⁸⁶Ayder Comprehensive Specialized Hospital. 2022. "Interview with Clinical Psychologist." Conducted by Feven Haile, 13 December.

told to get the medications from private pharmacies cannot afford them, when they stop taking the medications these patients relapse making the treatment process that much more difficult.²⁸⁷

The service providers including Non-Governmental Organizations and hospitals in Mekelle are unable to provide comprehensive service to torture survivors due to the humanitarian crisis in Tigray.²⁸⁸ Survivors who are able to receive medical and psychosocial support from Ayder-hospital and from protection partners in the IDP centers are living in IDP sites. There is no Center that hosts survivors of torture in Tigray. There is one center called 'Center for Victims of Torture' it is a mental health organization operating in Shire IDP sites, but it provides Mental health and psychosocial support (MHPSS) to survivors it does not host the survivors. Rehabilitation is one aspect of reparation, the torture survivors in Tigray need a center like a safe house where they stay and receive all the necessary services in one place until their full rehabilitation.

Survivors of torture in the conflict in Tigray suffer re-victimization because of the lack of reparations and assistance to overcome the impact of the conflict. Some survivors face comorbidities because they could not access medical services timely leading them to need additional health care.²⁸⁹ Due to a lack of medical supplies, it was not possible to treat the comorbidities that survivors of torture suffered.²⁹⁰ Vital medications and reagents including chronic medications, psychiatric medication, and anti-pains are out of stock, and due to the severe lack of life-saving drugs, the hospital is compelled to use expired medications.²⁹¹ The disorders that come along with torture require appropriate medications and follow up which have been difficult to do during the times of the conflict.²⁹²

²⁸⁷Ayder Comprehensive Specialized Hospital. 2022. "Interview with Clinical Psychologist." Conducted by Feven Haile, 13 December.

²⁸⁸ ("Interview with Foreign and Public Relations Directorate at Ayder Comprehensive Specialized Hospital conducted by Feven Haile" 2022).

²⁸⁹Ayder Comprehensive Specialized Hospital 2022; conducted by Feven Haile.

²⁹⁰Ayder Comprehensive Specialized Hospital 2022; conducted by Feven Haile.

²⁹¹ ("Interview with Foreign and Public Relations Directorate at Ayder Comprehensive Specialized Hospital conducted by Feven Haile" 2022).

²⁹² ("Interview with Foreign and Public Relations Directorate at Ayder Comprehensive Specialized Hospital conducted by Feven Haile" 2022).

The conflict has brought a significant impact on the provision of health services. Thus, survivors are distressed and develop feelings of worthlessness as time goes by without appropriate care and social support.²⁹³ Torture survivors that were able to seek services were not able to get treatment for physical trauma and psychiatric medications as medication and lab test chemicals and facilities are no longer functional.²⁹⁴

Survivors of torture in Tigray were not able to receive comprehensive treatment including medical and psychosocial support due to the lack of medical supplies in the region which is a violation of their right to life. Survivors who suffered over 2 years ago, are still yet to get any physical and mental health support, social assistance, and humanitarian assistance. As a result, survivors are made double victims. Overall, survivors are still suffering and have been made to be double victims, as still they are to get the help they need, and they are in dire need of immediate lifesaving support.

After the signing of the Permanent Cessation of Hostilities Agreement (COHA) between the Federal Government of Ethiopia and TPLF in Pretoria, South Africa on November 2, 2022, the people in the region welcomed the agreement hoping the agreement to bring peace and stability, resumption of basic services, unhindered humanitarian access to the needy, return of IDPs to their home and loved ones, and an end to the numerous human rights violations many civilians endured throughout the conflict. Overall, access to medical services in Tigray remains a concern even after the cessation of hostilities agreement. The conflict has severely impacted the healthcare system in the region, with many medical facilities damaged or destroyed and healthcare workers displaced. This has resulted in limited access to essential medical services, including for survivors of torture. While some progress has been made in terms of restoring medical services, much more needs to be done to ensure that survivors of torture in Tigray have access to the healthcare they need. It is critical that all parties involved work

²⁹³(Survivors 2022; conducted by Feven Haile in Mekelle, November 15-November 17).

²⁹⁴(Survivors 2022; conducted by Feven Haile in Mekelle, November 15-November 17).

together to prioritize the restoration of medical services and ensure that medical facilities are adequately funded and staffed. The international community must also continue to provide support to address the healthcare crisis in Tigray.

4.2. Challenges of Enforcement of the Right to Reparation for Survivors of Torture in Tigray

The challenges of enforcement of the right to reparation for survivors of torture in Tigray are significant, given the protracted conflict and humanitarian crisis in the region. This research underscores a range of challenges, including insecurity, gaps in the implementation of the Cessation of Hostilities Agreement, the lack of a State Compensation Fund, delayed investigations and accountability, and limitations in the draft Transitional Justice Policy formulated by the Federal Government.

4.2.1. Insecurity

The participants disclosed that they cannot give open statements in the current circumstance since their homes/villages are occupied by Amhara and Eritrean Forces who are responsible for the human rights violations so it is not safe for them to give statements right now because they might put their families at risk. The survivors expressed their willingness to openly give statements and expose the violations they suffered and witnessed if the risks are averted, i.e., if they are in a safe place. Insecurity can also make it difficult for organizations to document cases of torture and gather evidence, which is essential for seeking justice and redress for victims. The areas like Western and some parts of Eastern, Central and Northwestern Zones of Tigray are inaccessible for humanitarian organizations and human rights organizations due to security problems.

The participants' disclosure that they feel unsafe providing open statements due to the occupation of their homes/villages by Amhara and Eritrean Forces underscores the direct threat to individuals seeking to expose human rights violations. The fear of retribution not only inhibits survivors from sharing their experiences but also hampers the efforts of organizations to document cases and gather crucial evidence

for legal proceedings. The expressed willingness of survivors to come forward under safe conditions highlights the urgency of establishing secure environments for truth-telling and accountability. Furthermore, the inaccessibility of certain areas in Tigray for humanitarian and human rights organizations due to security concerns poses a significant obstacle to conducting comprehensive investigations. The findings of the study suggest that without addressing the underlying insecurity issues, survivors may remain unable to access justice, hindering their recovery and the overall pursuit of accountability for the egregious human rights violations they have endured. The findings underscore the critical need for improved security measures to create an environment conducive to justice, healing, and rebuilding for torture survivors in Tigray.

4.2.2. Torture Survivors' Perception of Reparation

The culture of seeking reparation is not developed in society.²⁹⁵ Victims of human rights violations, such as detainees tortured in detention centers are usually pleased to be released and they just want to return to their life.²⁹⁶ A senior human rights officer at Ethiopian Human Rights Commission disclosed that he has investigated several allegations of torture in places of detention, but never conducted any investigation with respect to a specific claim of reparation for damage caused by torture.²⁹⁷ There is no awareness in society that the state can be held accountable for human rights violations that the legal framework is not developed on reparation.²⁹⁸ The survivors interviewed for this research are not also cognizant of the fact that they can hold the perpetrators accountable for the violations. One survivor said, “It is ridiculous to seek remedy from the very violator or perpetrator and we don’t expect for the courts to give a verdict against the State since they are the State’s machinery.”²⁹⁹

²⁹⁵Survivors 2022; conducted by Feven Haile in Mekelle, November 15-November 17).

²⁹⁶Senior Human Rights Officer. 2023. Interview with Feven Haile. Conducted on January 4. Ethiopian Human Rights Commission.

²⁹⁷Senior Human Rights Officer. 2023. Interview with Feven Haile. Conducted on January 4. Ethiopian Human Rights Commission.

²⁹⁸Senior Human Rights Officer. 2023. Interview with Feven Haile. Conducted on January 4. Ethiopian Human Rights Commission.

²⁹⁹ (Survivors 2022; conducted by Feven Haile in Mekelle, November 15-November 17).

The traumatic experiences endured by these survivors, coupled with the severe human rights violations witnessed during the conflict, have eroded confidence in local remedies. The trust deficit arises from concerns about the institutions' impartiality, effectiveness, and ability to address the gravity of the crimes committed. The survivors, having suffered immensely, are hesitant to engage with domestic mechanisms for fear of retribution and lack of confidentiality. This mistrust significantly impedes the enforcement of the right to reparation, as survivors may be reluctant to come forward, share their experiences, and seek redress through channels they view as compromised. Overcoming this challenge necessitates rebuilding trust in domestic institutions, ensuring transparency, and creating a safe environment for survivors to access and benefit from reparation mechanisms.

4.2.3. Gaps in the Implementation of the Cessation of Hostilities Agreement (Pretoria Agreement)

After the catastrophic two years of Tigray conflict, the Federal Government of Ethiopia and the Tigray People Liberation Front (TPLF) engaged in peace talks and signed of the Permanent Cessation of Hostilities (CoHA) on November 2, 2022.³⁰⁰ The CoHA is expected to end the protracted conflict in Tigray and serve the fundamental purpose of ending human rights violations, by ending the violence. All organizations including Non-Governmental organizations and religious leaders in Tigray welcomed and appreciated the CoHA and assured their commitment to contribute for the effective implementation of the agreement.³⁰¹ Furthermore, they indicated their concerns regarding justice and accountability mechanisms for the perpetrated human rights violations referring the International Commission of Human Rights Experts on Ethiopia (ICHREE).³⁰² Various human rights organizations including Amnesty international, Human Rights Watch, Office of High Commission for Human Rights (OHCHR) and Ethiopian Human Rights Commission has been advocating for the accountability of the alleged perpetrators of the human rights violations committed against civilians in Tigray and for lasting peace in order

³⁰⁰ "Agreement for Lasting Peace through a Permanent Cessation of Hostilities between the Government of the Federal Democratic Republic of Ethiopia and the Tigray People's Liberation Front, Signed on 2 November 2022 in Pretoria, South Africa." 2022.

³⁰¹ Solomon Hailu. 2022. "Interview with Solomon Hailu, Board Chairman of THРАН, conducted by Feven Haile on 6 November."

³⁰² "Interview with Solomon Hailu, Board Chairman of THРАН, conducted by Feven Haile."

to minimize the human rights violations and suffering of the people. The recovery of the collapsed government systems including the justice machineries; police, security apparatus, judiciary and other government organs play a key role in safeguarding the rights of the people and achieving durable solutions. More importantly, enhancement of accountability and justice using an independent investigation body and supporting the transitional justice mechanisms is vital, to bring justice, healing, and reconciliation.

The peace agreement though a positive step in the right direction, it failed to boldly articulate key issues including.

- ◀ The establishment of an impartial body with the task to investigate gross human rights and humanitarian law violations and bring perpetrators to justice.³⁰³
- ◀ The establishment of an impartial body to investigate the widespread loss and damage of civilian and public property during the conflict to arrange proper reparations to those affected.³⁰⁴ The peace agreement lacks clarity on key issues namely the establishment of an impartial body with the task to investigate gross human rights and humanitarian law violations perpetrated against civilians in the three regional states (Tigray, Amhara and Afar) and bring perpetrators to justice; the establishment of an impartial body to investigate the widespread loss and damage of civilian and public property during the conflict to arrange proper reparations to those affected.
- ◀ Eritrean forces were involved as one of the main conflict parties, but they were not included in the peace process. There is a concern that Eritrea may become the main spoiler since they were not part of the agreement. The Declaration of the Senior Commanders on the Modalities for the Implementation of the Agreement concluded in Nairobi states that the disarmament of Tigray forces shall concurrently happen with the withdrawal of non-ENDF forces. However, there is no mechanism put in place to there to control the Eritrean troops. Eritrean forces are still in control of some woredas in eastern, central and northwestern

³⁰³ "Interview with Solomon Hailu, Board Chairman of THРАН, conducted by Feven Haile."

³⁰⁴ "Interview with Solomon Hailu, Board Chairman of THРАН, conducted by Feven Haile."

zones of Tigray.³⁰⁵ Therefore, any action by the Eritrean forces contrary to the agreement could disrupt the agreement and have repercussions on human rights protection.

In conclusion, the peace agreement between the Federal Government of Ethiopia and the Tigray People Liberation Front (TPLF) on November 2, 2022, marks a significant stride towards terminating the prolonged violence and human rights abuses in Tigray. However, discernible gaps exist in its implementation. Notably, the peace accord lacks specificity on critical matters, such as the creation of impartial bodies tasked with investigating human rights violations against civilians in Tigray, Amhara, and Afar regions, as well as addressing the widespread loss and damage of civilian and public property during the conflict. The exclusion of Eritrean forces from the peace process raises concerns, given their ongoing presence in specific Tigray areas, posing a potential threat to the agreement's stability. The absence of a mechanism to control Eritrean troops and ensure compliance with the agreement represents a glaring oversight, risking disruptions and human rights repercussions. Ensuring heightened accountability, establishing robust justice mechanisms, and implementing a comprehensive strategy are imperative in addressing the multifaceted challenges to achieve lasting peace and safeguard human rights in the region.

4.2.4. Absence of State Compensation Fund

A State Compensation Fund is a mechanism that provides financial support to victims of human rights violations, including torture, and is often used to provide reparations to victims.³⁰⁶ In the absence of such a fund, survivors of torture may be unable to access the necessary financial support to recover from their trauma. The forms of reparations particularly compensation requires availability of funds/the need for compensation schemes. There is no State compensatory fund allocated for victims of human rights violations in Ethiopia.³⁰⁷

³⁰⁵ "Interview with Solomon Hailu, Board Chairman of THРАН, conducted by Feven Haile."

³⁰⁶ Senior Human Rights Officer. 2023. Interview with Feven Haile. Conducted on January 4. Ethiopian Human Rights Commission.

³⁰⁷ "Interview with Amha Mekonen, Executive Director of Lawyers for Human Rights, conducted by Feven Haile, 25 December, 2022"

Even if the court awards compensation for victims of torture there is no clear fund allocated for such claims in Ethiopia.³⁰⁸ The lack of a State Compensation Fund can also contribute to a culture of impunity for human rights violations, as perpetrators may not face financial consequences for their actions. This can further discourage survivors of torture from seeking redress for the harm they have suffered and can limit the ability of human rights organizations to hold perpetrators accountable for their actions.

Additionally, the absence of a State Compensation Fund can exacerbate the existing inequalities in Tigray, particularly for marginalized groups who may have limited access to resources and support. Without access to financial support, survivors of torture may be unable to access the necessary medical, legal, and psychosocial support to recover from their injury, which can have long-term consequences for their health and well-being.

The lack of a State Compensation Fund also means that survivors of torture may be unable to access compensation for lost income, property damage, and other economic losses resulting from their torture. This can have a significant impact on their ability to rebuild their lives and recover from their experiences. Efforts must be made to establish such a fund and to ensure that survivors of torture have access to the necessary financial support to recover from their experiences and rebuild their lives. This includes supporting organizations that provide medical, legal, and psychosocial support to survivors of torture, as well as ensuring that perpetrators are held accountable for their actions.

4.2.5. Delayed Investigation into the Alleged Crimes of Torture and Accountability

Following the outbreak of conflict in the northern Tigray region in November 2020, allegations of human rights violations including torture and ill-treatment of civilians committed by the parties to the conflict have been reported and documented by human rights

³⁰⁸ Senior Human Rights Officer. 2023. Interview with Feven Haile. Conducted on January 4. Ethiopian Human Rights Commission.

organizations. The Government of Ethiopia is duty-bound to conduct an effective investigation into all human rights violations and prosecute alleged perpetrators before independent courts.³⁰⁹

As an independent National Human Rights Institution, Ethiopian Human Rights Commission (EHRC) is among the most important actors in the field of torture prevention. The Ethiopian Human Rights Commission (EHRC) has the mandate to investigate human rights violations and abuses, including cases of torture, and to recommend appropriate measures to prevent such violations and provide remedies for victims. In the context of Tigray, the EHRC has conducted investigations into allegations of human rights violations and abuses, including cases of torture, and has called for accountability and justice for the victims. In its investigation the joint investigation team documented numerous allegations of torture and other cruel, inhuman or degrading treatment attributable to the Tigray People's Liberation Front (TPLF), and the Government and allied forces (the Eritrean armed forces and Amhara regional forces).³¹⁰ However, the joint OHCHR/EHRC report acknowledged that it was not a comprehensive investigation into the crisis in northern Ethiopia, owing to security, operational, and administrative challenges.³¹¹ Though the report roughly mentioned some of the gross violations committed by the Amhara regional forces and militia against ethnic Tigrayans in Western Tigray, it did not investigate the grave violations that happened within the context of mass detentions of Tigrayans in the Western Zone.³¹² The report explicitly called for ongoing, further, independent investigations.³¹³ The survivors of torture who were part of this research hailed the CoHA made between TPLF and the Ethiopian government to silence the guns and stated its appreciation to the stakeholders in the process of the peace deal. But they all mentioned that peace without justice and accountability including compensation for victims is worthless. The survivors also underscored that the Government of Ethiopia should commit itself to support the peace process and to play its role in post-war recovery and in healing the trauma of Tigrayans that resulted from conflict. An investigation must meet the standards of effectiveness, independence,

³⁰⁹ (Ministry of Justice of Ethiopia 2023).

³¹⁰ (Ethiopian Human Rights Commission and Office of the United Nations High Commissioner for Human Rights 2021, 32)

³¹¹ (Ethiopian Human Rights Commission and Office of the United Nations High Commissioner for Human Rights 2021, para. 20)

³¹² (Ethiopian Human Rights Commission and Office of the United Nations High Commissioner for Human Rights 2021, 32)

³¹³ (Ethiopian Human Rights Commission and Office of the United Nations High Commissioner for Human Rights 2021, para. 374)

impartiality, and transparency to be considered adequate.³¹⁴ The Ethiopian authorities have denied allegations of torture being committed by their armed forces and allied forces and did not announce any findings about the human rights violations including torture and ill-treatment committed against Tigrayan civilians in Western Tigray.³¹⁵

An investigation is among the legal mechanisms' states can employ to deter future violations and guarantee non-recurrence. In the event of torture, the state responsible shall ensure prompt and effective investigation and eventually prosecution and punishment of the perpetrators.³¹⁶ It's stipulated in articles 12, 13, and 14 of the CAT, that State parties have the obligation to conduct prompt and effective investigations, to prosecute the perpetrators, and to compensate the victims wherever there is reasonable ground to believe that an act of torture has been committed under their jurisdiction.³¹⁷ The duty to investigate and provide effective remedies to victims of torture is an absolute duty under the CAT Convention and falls to the State.³¹⁸ The CAT Committee on several occasions, has found a State party in breach of Article 12 of the Convention due to the lack of independence and impartiality of the investigative body.³¹⁹ The impartiality of investigators may be questionable when officers that belong to the same unit as the alleged perpetrators conduct it or when there are signs that different authorities and experts involved in an investigation have colluded to produce false information.³²⁰ The catalog of delay, incompetence, and omissions (i.e. failures to act) constituted a failure to conduct an impartial investigation in violation of Article 13.³²¹ The government has taken steps towards establishing institutions tasked with investigating serious abuses and understanding the root causes of violence in Ethiopia. In September, the government acknowledged that an investigative team established by the Ministry of Defense found 60 incidents of crimes involving extrajudicial killing and sexual violence that had been submitted to the military

³¹⁴(Ethiopian Human Rights Commission and Office of the United Nations High Commissioner for Human Rights 2021, 207)

³¹⁵Ethiopian Human Rights Commission and Office of the United Nations High Commissioner for Human Rights 2021, 208)

³¹⁶ (Ali 2021, 17)

³¹⁷UN Committee Against Torture (CAT). 2008. "Concluding observations of the Committee against Torture: Algeria, May 26." CAT/C/DZA/CO/3, para. 11.

³¹⁸UN Doc CAT/C/47/D/368/2008 (Official Case No) IHRL 3801 (UNCAT 2011). 2008. Para. 10.6.

³¹⁹Joseph, Sarah. 2006. "Seeking Remedies for Torture Victims." In Boris Wijkstrom, ed., 261.

³²⁰ (Joseph 2006, 261).

³²¹ (Joseph 2006, 261).

courts.³²² Accordingly, the military courts handed down 25 convictions and 2 acquittals as of August 2022.³²³ However, such efforts have lacked transparency, making independent scrutiny of them impossible.³²⁴ Moreover, given the large scale of violations, the actors involved, and the participation of forces from Eritrea who have allegedly committed gross human rights violations since the start of the conflict it would be difficult to believe that domestic accountability alone will provide sufficient justice and redress to the victims and guarantee non-recurrence. The Ethiopian government relayed on the military court system to try serious violations committed which lacks transparency and raises concerns about due process and justice and redress for victims and survivors of heinous crimes.³²⁵ Furthermore, it is unclear what steps the Ethiopian government has taken to secure the cooperation of the Eritrean government to investigate and hold to account violations committed by Eritrean forces.³²⁶ It is also stated in the joint OHCHR/EHRC report that it had been unable to confirm investigation efforts by the government and raised concerns about proceedings failing to meet international standards, including around transparency.³²⁷ In response to the findings of the joint OHCHR/EHRC report the government acknowledged the conviction of seven soldiers and undertook to publicly disclose the records of these trials, but has not released further information to the public to date.³²⁸ It is also worth noting that Ethiopia has established the Ethiopian Inter-Ministerial Taskforce (IMTF) on Accountability and Redress to investigate violations of international human rights law and humanitarian law in the context of the conflict in Tigray, Afar, and Amhara regions following the release of the joint OHCHR/EHRC report.³²⁹ The IMTF released its preliminary report on 21 September 2022 on the findings of the investigation conducted in the Afar and Amhara region and revealed that Tigrayan forces have carried out war crimes and crimes against humanity.³³⁰ The IMTF asserted that it plans to investigate

³²² Human Rights Watch. 2022. "Q & A: Renewal of the Mandate of the International Commission of Human Rights Experts on Ethiopia (ICHREE)." Accessed January 4, 2023. <https://www.hrw.org/news/2022/09/27/q-renewal-mandate-international-commission-human-rights-experts-ethiopia-ichree> .

³²³ (Human Rights Watch 2022)

³²⁴(Human Rights Watch 2022)

³²⁵ (Human Rights Watch 2022)

³²⁶(Human Rights Watch 2022).

³²⁷ (Human Rights Watch 2022).

³²⁸(Human Rights Watch 2022).

³²⁹ Report of the International Commission of Human Rights Experts on Ethiopia. A/HRC/51/46. 19 September 2022. P.15.

³³⁰ (Report of the International Commission of Human Rights Experts on Ethiopia A/HRC/51/46 2022, 15)

allegations of violations by Ethiopian federal and allied forces in Tigray, including Western Tigray in subsequent tracks, with investigations to be completed by the end of December 2022 but it is not clear how it plans to investigate abuses in Tigray, and how serious violations committed by Eritrean forces will be dealt with.³³¹ Moreover, a number of these violations may amount to war crimes or crimes against humanity, and deplores the inadequacy of the investigations and proceedings aimed at identifying and prosecuting perpetrators, including superior officers and officials who knew or should have known about such acts but failed to take the appropriate action to prevent them.³³²

Hence, it was critical to establish an independent and impartial investigative body to investigate the undocumented abuses since the beginning of the conflict. The ACHPR established a Commission of Inquiry on June 17, 2021, to investigate allegations of violations of international human rights law and international humanitarian law in the Tigray region.³³³ Unfortunately, the ACHPR decided to conclude the commission's mandate without releasing a detailed report containing findings and recommendations.³³⁴ This decision was based on positive developments resulting from the signing of the Permanent Cessation of Hostilities between the Government of the Federal Democratic Republic of Ethiopia and the Tigray People's Liberation Front (TPLF), as well as the measures taken by the Ethiopian government to adopt a national transitional justice policy.

Moreover, the United Nations Human Rights Council on December 2021, established an international commission of human rights experts in Ethiopia (ICHREE), comprising three human rights experts, to investigate allegations of violations and abuses of international human rights law, humanitarian law, and refugee law in Ethiopia committed since 3 November 2020 by all parties to the conflict,

³³¹ (Report of the International Commission of Human Rights Experts on Ethiopia A/HRC/51/46 2022, 15)

³³² Committee against Torture. 2023. "Concluding Observations on the Second Periodic Report of Ethiopia." Meeting 2008, May 10, p. 6.

³³³ ACHPR. 2021. "Press Statement on the official launch of the Commission of Inquiry on the Tigray Region in the Federal Democratic Republic of Ethiopia." June 15. <https://achpr.au.int/en/news/press-releases/2021-06-15/press-statement-official-launch-commission-inquiry-tigra>. Accessed January 7, 2024.

³³⁴ ACHPR. 2023. "Resolution on the Termination of the Mandate of the Commission of Inquiry on the Situation in the Tigray Region of the Federal Democratic Republic of Ethiopia - ACHPR/Res.556 (LXXV)." <https://achpr.au.int/en/adopted-resolutions/556-resolution-termination-mandate-commission-inquiry> . Accessed January 7, 2024.

including the possible gender dimensions of such violations and abuses, by building upon the report of the Office of the High Commissioner and the Ethiopian Human Rights Commission.³³⁵ However, the investigators (ICHREE team) did not get access to Tigray to investigate the alleged human rights and humanitarian law violations.³³⁶ The ICHREE released its initial findings on September 19, 2022, reflecting some of the most significant violations of international human rights and humanitarian law without access to the conflict areas.³³⁷ In its report the commission stated that ‘it has reasonable grounds to believe that the ENDF, EDF, and Fano committed widespread and egregious acts of rape and sexual violence against Tigrayans throughout the course of the conflict, thereby violating their right to be free from torture and ill-treatment’.³³⁸ In order to exhaustively document all the violations committed during the conflict in Tigray including the crime of torture the team would need full and safe access to conflict-affected areas, without restriction. However, the mandate of the International Commission of Human Rights Experts on Ethiopia (ICHREE) has expired. The deadline to submit a draft motion for extension at the 54th UN Human Rights Council session passed on October 4th.³³⁹

It is safe to conclude that a thorough investigation has not been carried out in Tigray since the beginning of the conflict owing to access restrictions in the region. This implies that various human rights violations/abuses have not been documented. In this regard, both the Commission of Inquiry and ICHREE could play an important role and fill the gaps identified in the joint investigation of OHCHR/EHRC and complement the domestic efforts/mechanisms established by the government or in the event that domestic processes fail to lead to accountability, could feed into other judicial mechanisms in the long term. Their findings could also feed into domestic processes, or in the event that domestic processes fail to lead to accountability, could feed into other judicial mechanisms in the long term. The

³³⁵ Human Rights Watch. 2022. "Q & A: Renewal of the Mandate of the International Commission of Human Rights Experts on Ethiopia (ICHREE)." Accessed January 4, 2023. <https://www.hrw.org/news/2022/09/27/q-renewal-mandate-international-commission-human-rights-experts-ethiopia-ichree> .

³³⁶ (Report of the International Commission of Human Rights Experts on Ethiopia A/HRC/51/46 2022, 2)

³³⁷ (Report of the International Commission of Human Rights Experts on Ethiopia A/HRC/51/46 2022, 2)

³³⁸ (Report of the International Commission of Human Rights Experts on Ethiopia A/HRC/51/46 2022, 11)

³³⁹ Addis Standard News. 2023. "Despite several pleas, draft deadline to extend UN rights experts' Ethiopia mandate expires." <https://addisstandard.com/news-despite-several-pleas-draft-deadline-to-extend-un-rights-experts-ethiopia-mandate-expires/> , Accessed January 7, 2024.

overall situation in Tigray calls for an inclusive and transparent approach to address the human rights violations and ensure a sustainable path towards justice.

4.2.6. Limitations in the Draft Transitional Justice Policy Developed by the Federal Government

The COHA places significant emphasis on the implementation of transitional justice as a crucial aspect. Article 10(3) of the agreement imposes an obligation on the Ethiopian Government to establish a comprehensive national transitional justice policy.³⁴⁰ This policy aims to achieve accountability, truth-seeking, redress for victims, reconciliation, and healing. Additionally, it emphasizes that the transitional justice process should align with the Ethiopian constitution and the African Union Transitional Justice Policy Framework.

A strategy paper titled "Policy Options for Transitional Justice" by the Ethiopian government outlining ideas for transitional justice in the nation was published in January 2023.³⁴¹ The ministry of justice, acting unilaterally on behalf of the Ethiopian government, developed this document for the implementation of transitional justice.³⁴² Unfortunately, the draft document disregards the input of Tigray representatives and strongly advocates for the investigation, prosecution, and adjudication of crimes through domestic channels, without considering the inclusion of hybrid or international mechanisms. This approach contradicts both the African Union Transitional Justice Policy Framework and the principles outlined in the Pretoria Agreement, which highlight the need for an inclusive, participatory, non-discriminatory, and mutually understood transitional justice process to ensure sustainable peace.

It is crucial that the development of the policy document be based on mutual understanding and discussions among all stakeholders. Additionally, any transitional justice measures implemented in Tigray should take into account the unique nature of the situation in that

³⁴⁰ "(Agreement for Lasting Peace through a Permanent Cessation of Hostilities, 2022)"

³⁴¹ (Ministry of Justice of Ethiopia 2023).

³⁴² Abreha Mengestu, 2023. "Interview with Abreha Mengestu, Tigray Interim Regional Administration, Coordinator of the Human Rights Monitoring and Supervision Team." Conducted by Feven Haile, 25 December.

region.³⁴³ Merely equating the events in Tigray with other incidents over the past two years will not bring about justice and healing for the affected community.³⁴⁴ In order to facilitate the effective implementation of transitional justice, it is necessary for the Tigray constitutional order to be established, as outlined in Article 1(2) of the agreement.³⁴⁵ This entails that the federal government should remove non-ENDF military entities from the constitutional territory of Tigray and facilitate the safe return of internally displaced persons to their homes.³⁴⁶ Unfortunately, the federal government has yet to fulfill its obligations in this regard and ensure the progress of transitional justice.³⁴⁷

Survivors of torture in Tigray have been specifically targeted during the conflict by both internal and external forces. Given these circumstances, it is understandable that these survivors may lack confidence and trust in the national courts/institutions, which are funded by the same government responsible for the attacks. Considering these factors, there is a pressing need to address the crimes committed against survivors in Tigray through mechanisms that extend beyond the national level.

According to the African Union Transitional Justice Policy, the justice and accountability component of the Transitional Justice Policy should be delivered through independent national courts, provided that they are in place and have the capacity and confidence of the affected society. In cases where the national courts lack capacity and the confidence of the affected community, the policy suggests resorting to special courts, extraordinary chambers, or hybrid courts for adjudication.³⁴⁸ Alternatively, the policy demands that if Member States are unable to facilitate the prosecution of perpetrators using such avenues due to legal, political, economic, or social challenges, they should seek to build national and regional consensus and cooperate with relevant regional or international judicial

³⁴³ (Abreha Mengestu 2023)

³⁴⁴ (Abreha Mengestu 2023)

³⁴⁵ "(Agreement for Lasting Peace through a Permanent Cessation of Hostilities, 2022)"

³⁴⁶ Abreha Mengestu 2023)

³⁴⁷ Abreha Mengestu 2023)

³⁴⁸ African Union. 2019. Transitional Justice Policy. Para. 78.

processes that have jurisdiction. Hence, considering the investigation, prosecution, and adjudication of the crimes committed by Eritrean forces, the establishment of special courts, extraordinary chambers, or hybrid courts could be a viable solution. However, the strategy paper makes no mention of who is responsible for human rights during the conflict in Tigray. Additionally, it ignores military of Eritrea's role in serious human rights violations, such as torture and inhumane treatment. Eritrean troops played a significant role in perpetrating war crimes and human rights violations against the civilian population in Tigray. Due to the involvement of these foreign perpetrators, it becomes challenging for the Ethiopian court to subject them to its domestic jurisdiction. As a result, a considerable number of perpetrators may evade prosecution due to the lack of jurisdiction. This undermines the overarching objective of transitional justice, which is to address past atrocities and human rights abuses, leading to sustainable peace, justice, and reconciliation. Without holding the perpetrators accountable before a proper adjudicating body, the healing and justice sought by the affected women cannot be achieved. The transitional justice process should adhere to the principles outlined in the African Union Transitional Justice Policy. It should be characterized by inclusivity, fairness, and the absence of discrimination. Additionally, it must prioritize the needs of the victims, recognizing the gendered nature of the atrocities committed. Crucially, the process should encompass truth-seeking, acknowledgment of the victims, appropriate compensation for their suffering, community healing, and accountability for those responsible for the crimes.

The analysis of the draft Transitional Justice Policy developed by the Ethiopian government reveals significant limitations that raise concerns about its effectiveness in addressing the complex situation in Tigray. While the Comprehensive National Transitional Justice Policy is mandated by the COHA, the drafted document, titled "Policy Options for Transitional Justice," falls short in several aspects. It neglects the input of Tigray representatives and advocates for a domestic-focused approach to investigation, prosecution, and adjudication of crimes, overlooking the inclusive and participatory principles outlined in the African Union Transitional Justice Policy Framework and the Pretoria Agreement. The failure to recognize the unique nature of the Tigray situation and the absence of fulfillment of federal government obligations, such as removing non-ENDF military entities from Tigray, hinder the policy's progress. Survivors of torture in Tigray may lack trust in national institutions funded by the government responsible for the attacks, necessitating mechanisms beyond the national level. The policy fails to address the role of Eritrean forces in human rights violations, presenting challenges for

prosecution within Ethiopia's domestic jurisdiction. The absence of provisions for special, extraordinary, or hybrid courts for accountability diminishes the likelihood of holding foreign perpetrators accountable, undermining the fundamental objectives of transitional justice. To ensure a comprehensive and effective transitional justice process, adherence to the principles of inclusivity, fairness, victim prioritization, and recognition of gendered atrocities is imperative. Without addressing these limitations, the drafted policy risks falling short of achieving the desired outcomes of justice, healing, and reconciliation in Tigray.

4.3. Survivors' Needs

The survivors mentioned guaranteed peace and security, return to the place of origin, access to humanitarian assistance and medical services, and accountability for human rights violations as priority needs to be achieved in the short term. Whereas compensation, truth, and awareness-raising programs need to be achieved in the long term;

4.3.1. Guaranteed Peace and Security

The survivors stated that they need guaranteed peace and security beyond anything else and they have faith that the cessation of hostilities agreement would bring lasting peace if the parties were committed to its implementation. Peace and security are the primarily things that should be granted in order for the survivors to return to their place of origin/home. Western Tigray is currently an area under the control of Amhara Regional Forces and the area remains inaccessible for humanitarian intervention.³⁴⁹ sixteen of the survivors out of the 20 survivors that were interviewed were reportedly tortured by Amhara Regional Forces particularly; Fano Armed Forces and Amhara Special Forces. The survivors disclosed that they cannot return to their homes while Amhara Regional Forces are in control of the area, since members of these forces are responsible for torturing and forcibly displacing them from their homes. To ensure the safe

³⁴⁹ OCHA Ethiopia, Situation Report, 18 Jan 2023.

and dignified return of survivors of torture to their places of origin, it is essential to prioritize the restoration of peace and security in the region. This requires a commitment from all parties to the conflict to respect human rights and international humanitarian law, and to refrain from acts of violence and other abuses. The United Nations has emphasized the importance of ensuring that displaced persons, including survivors of torture, are able to return to their places of origin voluntarily and with dignity. This requires the provision of accurate and timely information to displaced persons about the conditions in their places of origin, as well as the establishment of effective protection mechanisms to ensure their safety upon return.³⁵⁰ Guaranteed peace and security is an essential priority need for survivors of torture in Tigray to return to their place of origin. To ensure the safe and dignified return of survivors of torture, it is essential to prioritize the restoration of peace and security in the region, and to provide survivors with access to basic services and support.

4.3.2. Return to the Place of Origin

Return to the place of origin is another important priority need for survivors of torture in Tigray. The conflict in Tigray has resulted in widespread displacement, with many individuals forced to flee their homes due to violence and insecurity. Survivors of torture have been particularly vulnerable to displacement and have lost contact with their families and communities as a result. The survivors underscored that all IDPs must return to their place of origin before the rainy season so that they can farm and harvest. The survivors stated that they were hoping to be returned immediately after the peace deal, but they are still living in IDP camps without adequate humanitarian assistance. The parties to the COHA need to uphold their commitments and facilitate the return of IDPs in Tigray. Returning to their place of origin can provide survivors of torture with a sense of security, stability, and belonging, which can be essential for their recovery and well-being. It can also help survivors to reconnect with their families and communities, and to access essential services and support. In addition to ensuring the safe and voluntary return of displaced persons, it is also important to provide them with

³⁵⁰ United Nations. 2015. "Protecting and Assisting Internally Displaced Persons: A Guide for Humanitarian Actors." Accessed January 16, 2023. <https://www.unhcr.org/protection/idps/55f6a8d16/protecting-assisting-internally-displaced-persons-guide-humanitarian-actors.html> .

access to basic services and support, including healthcare, education, and livelihood opportunities. This can help to ensure that survivors of torture are able to rebuild their lives and communities in a sustainable and equitable manner. To ensure that survivors of torture can return to their homes safely and with dignity, it is essential to prioritize the restoration of peace and security in the region and to provide survivors with access to essential services and support.

4.3.3. Access to Adequate Humanitarian Assistance and Medical Care

The survivors revealed that they are in dire need of humanitarian support including food and essential non-food items. The survivors fled from their homes to escape the conflict and they came with nothing. They were subjected to displacement in addition to torture and they were forced to live in an IDP center in Mekelle. Restriction on access to humanitarian assistance and lack of access to adequate food and health services has been key feature of the conflict in Tigray. Therefore, the survivors were among the highly affected population in Tigray for the past 2 years since they were denied access to adequate humanitarian assistance. The survivors underscored the provision of basic needs and services like food, water and sanitation, shelter, and health services, as a priority need. As it can also be observed from the situation reports released by OCHA, the humanitarian supply that was entering Tigray is very minimal to reach the people in need.³⁵¹ Lack of adequate food is among the key factors that hindered the rehabilitation of survivors. Some survivors disclosed that they could not even take their prescribed medications due to lack of food. According to the United Nations, civilian access to humanitarian aid in Tigray was "continuing to gradually improve" as of February 2023, and public services including as telecommunications, power, and banking had partially returned in Tigray's major towns. However, aid agencies have noted that throughout parts of the region, there is still a significant level of humanitarian need and a lack of vital products such as cash and medical supplies.³⁵²

³⁵¹ReliefWeb. 2023. "Ethiopia - Situation Report, 18 Jan 2023 - Ethiopia." January 18. Accessed January 11, 2023. <https://reliefweb.int/report/ethiopia/ethiopia-situation-report-18-jan-2023> .

³⁵²(ReliefWeb 2023)

4.3.4. Accountability for all human rights violations

All preparators who committed human rights violations against the civilian population in Tigray must be held into account. The participants expressed that they do not believe justice could come through the domestic justice framework and asserted the need for an independent investigation. Majority of the survivors who were part of this research emphasized that the principal offenders or masterminds, those who gave the orders, should be held responsible for the massive human rights violations committed in Tigray during the conflict. They argued that it is not feasible to try all perpetrators involved. According to their viewpoint, the primary responsibility for the severe violations of human rights, abuses, and breaches of international humanitarian law in Tigray lies with high-ranking officials and leaders of the national military. On the other hand, some participants supported holding all perpetrators, and firmly stated that war crimes committed during the conflict shall not be forgiven and all the perpetrators responsible for human rights violations should legally be held into account. Likewise, although most participants suggested prioritizing the prosecution of the gravest human rights violations and war crimes, there were also those who advocated for holding individuals accountable for all types of crimes. The survivors also expressed their preference for the perpetrators to be tried by a new international tribunal and investigated by an impartial independent body. They lack confidence in the current judiciary and prosecution system, believing that they are not impartial and controlled by the government. These participants do not expect the government to deliver justice since its agents are responsible for war crimes and human rights violations. According to the survivors, accountability is the only option to prevent further violations and recurrence.

4.3.5. Compensation

Regarding compensation, the participants emphasized the importance of prioritizing individuals who have suffered physical injuries, including survivors of torture, SGBV and IDPs who lost their properties. Victims who have sustained bodily injuries, such as survivors of torture, should receive compensation based on the harm they have suffered both physically and psychologically. The survivors

mentioned that the Government should provide a compensation system /design a compensatory scheme for victims and their families who lost their livelihood, and property, and who sustained physical injuries and lost their families due to the conflict in Tigray. Compensation for victims of torture is a vital need for survivors of torture in Tigray, particularly given the widespread reports of human rights abuses and acts of torture that have occurred during the recent conflict. Many victims have experienced physical and psychological trauma because of these abuses, and compensation can help to provide some measure of justice and support for their recovery. However, it is important to note that compensation alone is not sufficient to address the needs of victims, and broader efforts are also needed to ensure accountability for perpetrators, promote healing and reconciliation, and address the root causes of the conflict.

4.3.6. Truth

The survivors underscored the need to establish the truth to avoid recurrence but affirmed that it can only be established after a thorough and independent investigation. Hence, only an independent body can reveal the truth. The survivors affirmed that amnesty is unacceptable at all because the crimes committed are serious and amount to genocide. They further explained that the domestic institutions are affiliated with the Ethiopian Government which is primarily responsible for human rights violations, and one cannot be expected to reveal its own wrongdoings. Hence, only an independent body can reveal the truth. In this regard, all participants unanimously agreed on the need for a newly established institution to seek and reveal the truth. They expressed their lack of trust in the existing institutions, as they have failed to do so over the past two years. Ensuring truth and accountability are crucial priorities for addressing the needs of torture victims in Tigray. These measures are essential for providing satisfaction to the victims, establishing sustainable peace, and preventing the recurrence of violence.

Regarding truth-seeking, all participants unanimously agreed on the need for a newly established institution to seek and reveal the truth. They expressed their lack of trust in the existing institutions, as they have failed to do so over the past two years. Many victims have

suffered not only physical and psychological trauma, but also the anguish of not knowing what happened to their loved ones who were detained or disappeared during the conflict. Truth-telling and accountability can help to provide a sense of closure and healing for victims and their families and can also serve as a deterrent against future human rights abuses. The survivors emphasized the importance of public apology as a crucial step towards satisfaction and progress. They viewed it as a significant acknowledgement of the harm inflicted and the suffering endured by the affected population. Though, they also highlighted the need for accountability measures, especially regarding gross human rights violations, war crimes, and torture. They emphasized that merely relying on apologies and striving for peace without addressing accountability could not prevent another cycle of conflict and turmoil; instead, it might postpone such challenges.

Efforts to establish truth and accountability can include investigations into human rights abuses, the identification of perpetrators, and the prosecution of those responsible. It is important to note that truth and accountability, along with compensation and other forms of support, are essential components of a comprehensive response to the needs of victims of torture and other human rights abuses in Tigray.

4.3.7. Institutional Reform

The participants highlighted that the gap lies in the implementation of the law, rather than the law itself. They expressed the need for reforming the institutions that are responsible for implementing the laws. Specifically, they mentioned that justice organs, including the police, judiciary, and prosecution office, need to be reformed to operate independently. Out of twenty survivors who participated in this research, 18 survivors suggested the establishment of a new institution responsible for reforming these institutions. They believe that this new institution would be better equipped to bring about the necessary changes. On the other hand, two participants mentioned that an international institution should take on the responsibility of reforming these institutions. Creating conditions conducive to preventing

future violations entails establishing favorable circumstances for upholding and safeguarding human rights. This requires the implementation of institutional and legal reforms.

4.3.8. Community Awareness Raising

It might be a challenge for torture survivors who were also subjected to rape to return to their place of origin and integrate with the society due to fear of stigma so there is a need for awareness-raising programs in the community to protect SGBV survivors from stigmatization. Many victims of torture and sexual violence may feel stigmatized or isolated and may be hesitant to seek help or speak out about their experiences. Community awareness raising can help to reduce the stigma associated with torture and other forms of human rights abuses and can also help to educate the public about the rights of victims and the importance of supporting their recovery. This can include efforts to raise awareness about the availability of support services, as well as efforts to promote understanding and empathy among community members. Community awareness raising can also help to build a more supportive environment for victims and their families and can contribute to broader efforts to promote healing and reconciliation in Tigray.

4.3.9. Family Reunification and Reintegration

The conflict has resulted in the displacement of many families, and many victims of torture have been separated from their loved ones as a result. Family reunification and reintegration efforts can help to address the trauma and distress caused by separation and can also help to promote healing and recovery for victims and their families. These efforts can include support for tracing missing family members, as well as efforts to facilitate communication and reunification. It is also important to provide support for the reintegration of families into their communities, including access to health care, education, and other social services. Family reunification and reintegration efforts can help to build a more supportive and resilient community and can contribute to broader efforts to promote healing and reconciliation in Tigray. Humanitarian partners should accelerate family reunification and reintegration for survivors to be integrated with their family.

The findings of this research underscore the critical necessity for reparations and support directed towards the survivors of torture in Tigray. It is imperative to ensure their access to comprehensive medical and psychosocial treatment, along with compensation for the harm endured, to facilitate their rehabilitation and successful reintegration into society. Urgent steps should be taken to guarantee the delivery of humanitarian aid to survivors, encompassing essential provisions such as healthcare, nutrition, and other vital resources. Moreover, concerted efforts are required to address the societal stigma and ostracization experienced by female survivors. Initiatives should be implemented to empower and include them in the community, fostering an environment that supports their recovery. Both the international community and the Ethiopian government must acknowledge the gravity of the situation and collaborate to establish justice, accountability, and redress for survivors of torture. While the signing of the Permanent Cessation of Hostilities Agreement (CoHA) in November 2022 offers hope for lasting peace, tangible actions and sustained endeavors are indispensable to address the enduring repercussions of torture and the Tigray conflict.

Chapter 5

5. Conclusion and Recommendation

5.1. Conclusion

- Ethiopian legal framework for reparation demonstrates a strong constitutional and legislative basis for seeking remedies in cases of human rights violations. The FDRE Constitution provides guarantees for accessing effective judicial or other appropriate remedies, and the civil and criminal codes, as well as procedure codes, address the right to reparation. This framework is further supported by Ethiopia's commitment to international human rights instruments, which are integrated into domestic law and empower Ethiopian courts to apply and enforce these instruments. The constitutional equivalence of ratified treaties and the emphasis on interpreting fundamental rights in line with international standards reinforce the legal framework's strength. Overall, Ethiopia's legal framework provides a solid foundation for seeking reparation and upholding human rights in the country.
- However, the Tigray conflict in Ethiopia has given rise to severe human rights violations, particularly torture and ill-treatment. Although the right to freedom from torture is universally recognized and protected under international law, the practical implementation of the right to reparation for survivors of torture in Tigray faces significant challenges, despite Ethiopia's obligations as a party to various international and regional treaties condemning torture and requiring reparations for victims.
- Survivors of torture in Tigray endure immense suffering, including forced displacement, family separation, starvation, and physical and psychological trauma. Limited access to humanitarian assistance, justice, and adequate medical services exacerbates their plight. Women and girls, in particular, were subjected to sexual and gender-based violence, including rape, constituting torture under international law.

- The enforcement of the right to reparation for survivors of torture in Tigray encounters significant challenges due to the protracted conflict and humanitarian crisis. Key obstacles include insecurity, gaps in the implementation of the Cessation of Hostilities Agreement, the absence of a State Compensation Fund, delayed investigations and accountability, and limitations in the draft Transitional Justice Policy. These challenges impede survivors' access to justice, hinder their recovery, and undermine the overall pursuit of accountability for human rights violations.
- Addressing these issues requires enhanced security measures, trust-building in domestic institutions, transparency, and the creation of a safe environment for survivors to seek redress. The findings of the research emphasize the need for impartial investigation bodies and mechanisms for proper reparations. The establishment of a State Compensation Fund is deemed crucial for providing financial support to survivors and promoting accountability for perpetrators. Overcoming these challenges will contribute to achieving lasting peace, justice, healing, and rebuilding for torture survivors in Tigray.
- Efforts must be directed toward ensuring effective remedies for survivors of torture, encompassing restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Comprehensive support and services should be provided to address the physical and psychosocial needs of survivors, including medical care, mental health support, and social reintegration programs.
- In conclusion, the research findings underscore the urgent need to address the challenges faced by survivors of torture in seeking reparation in the context of the Tigray conflict. It emphasizes the importance of upholding human rights standards, holding perpetrators accountable, and providing meaningful support to survivors to facilitate their healing and recovery.

5.2. Recommendation

- The Ethiopian government must take tangible measures to ensure the effective implementation of the legal framework for reparation. This involves providing adequate resources, training, and support to law enforcement bodies, including military personnel, on human rights to combat impunity.

- Both the Ethiopian government and the Tigray Interim Administration should exert efforts to improve security conditions in Tigray, fostering a sense of safety for survivors of torture seeking redress. This can be achieved through an increased deployment of security forces, disarmament of non-state armed groups, and the withdrawal of external forces.
- Rebuilding trust in domestic institutions, including the justice system and law enforcement agencies, is essential for survivors to come forward and seek justice. The Ethiopian government and the Tigray Interim Administration should actively engage in this effort.
- The Ethiopian government should establish a dedicated State Compensation Fund that meets international human rights standards, providing financial support to survivors of torture for a comprehensive rehabilitation and compensation program.
- The Ethiopian government should prioritize the establishment of impartial investigation bodies to ensure accountability for human rights violations during the Tigray conflict.
- The Ethiopian government must develop and implement a comprehensive transitional justice policy, encompassing provisions for reparations for victims of human rights violations, alongside truth and reconciliation measures.
- The Ethiopian government must ensure that institutions responsible for leading and implementing transitional justice components, including criminal accountability and truth-seeking, adhere to international standards, enjoy widespread public acceptance, and operate independently and impartially.
- The Ethiopian government should guarantee access to medical care, including specialized treatment and mental health support, for survivors of torture. Implementing social reintegration programs is vital to assist survivors in rebuilding their lives and reintegrating into their communities.
- Both the Ethiopian government and the Tigray Interim Administration should remove any remaining barriers to humanitarian access, ensuring assistance reaches those in need and protecting civilians.
- The Ethiopian Government should engage with international human rights bodies, regional organizations, and the global community to seek support and assistance in addressing challenges faced by survivors of torture. This includes seeking technical

expertise, financial resources, and capacity-building initiatives to strengthen the country's efforts in upholding human rights and providing reparations.

- The Ethiopian government should establish comprehensive rehabilitation centers, including medical and psychosocial services, with adequate resources to ensure effective functioning, facilitating the rehabilitation and return to normalcy for survivors of torture.
- The AU-MVCM in Tigray should persist in monitoring the implementation of the COHA and advocating for its implementation.
- Human rights organizations, including the Office of the United Nations High Commissioner for Human Rights, should continue monitoring and documenting instances of human rights violations and abuses, actively engaging in strategic advocacy to effectively address these issues.
- Non-Governmental Organizations and civil society organizations should actively support the enhancement of transitional justice mechanisms and the integration of early recovery initiatives into their activities.

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