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**ADDIS ABABA UNIVERSITY  
COLLEGE OF LAW AND GOVERNANCE STUDIES  
SCHOOL OF LAW GRADGUATE PROGRAM**

**MASTER OF LAW (LL, M) IN HUMAN RIGHT LAW**

**COMPENSATING VICTIMS OF TORTURE IN ETHIOPIA: THE CASE  
OF BODILY INJURY IN ANTI-TERRORISM PROSECUTION**

**By**

**SEBLEWONGEL TAMIRU GETAHUN**

**A THESIS SUBMITTED TO THE COLLEGE OF GRADUATE STUDIES OF ADDIS  
ABABA UNIVERSITY IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR  
THE DEGREE OF MASTERS OF LAWS /LL.M/ IN HUMAN RIGHTS LAW STREAM**

December, 2019

Addis Ababa Ethiopia

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Advisor: Mizanie Abate (PhD, Associate Professor of Law)

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## DECLARATION OF ORIGINALITY

I, Seblewongel Tamiru Getahun, hereby declare that this thesis 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.

Seblewongel Tamiru Getahun

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**Dedicated to:**

All torture victims in Ethiopia

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## ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AP	Additional Protocol
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights
EHRC	Ethiopian Human Rights Commission
EHRP	Ethiopian Human Right Project
ENISSA	Ethiopian National Intelligence and Security Service Authority
FDRE	Federal Democratic Republic of Ethiopia
FAG	Federal Attorney General
GC	Geneva Convention
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTY	International Tribunal for the former Yugoslavia
ICTR	International Tribunal for the former Rwanda
HRCo	Human Right Council
HRW	Human Right Watch
NGO	Non-Government Organization
NHRAP	National Human Right Action Plan
OAU	Organization of African Union
OAS	Organization of American States
OHCHR	Office of High Commissioner for Human Right
OLF	Oromo Liberation Front
ONLF	Ogaden National Liberation Front
UDHR	Universal Declaration of Human Rights
UN	United Nations
US/USA	United States/United States of America
UPR	Universal Periodic Review
WWII	World War Second

## Table of content

List of contents	Page
ACKNOWLEDGEMENT .....	i
ACRONYMS .....	ii
TABLE OF CONTENTS .....	III
ABSTRACT.....	viii
CHAPTER ONE .....	1
1. INTRODUCTION .....	1
1.1. BACKGROUND.....	1
1.2. LITERATURE REVIEW.....	2
1.3. STATEMENT OF THE PROBLEM .....	3
1.4. RESEARCH QUESTIONS.....	4
1.5. THE RESEARCH OBJECTIVE.....	5
1.6. RESEARCH METHODOLOGY.....	5
1.6.1. SOURCE OF DATA.....	5
1.6.2. METHOD OF DATA COLLECTION .....	6
1.6.3. SAMPLE SIZES AND SAMPLING TECHNIQUES.....	6
1.7. SIGNIFICANCE OF THE STUDY .....	7
1.8. THE SCOPE OF THE STUDY .....	7
1.9. LIMITATION OF THE STUDY .....	7

1.10.	ETHICAL CONSIDERATION.....	7
1.11.	ORGANIZATION OF THE THESIS .....	8
CHAPTER TWO .....		9
INTERNATIONAL LEGAL FRAMEWORK ON FREEDOM FROM TORTURE .....		9
2.1.	INTRODUCTION.....	9
2.2.	THE NOTION OF TORTURE .....	9
2.2.1.	ELEMENT OF TORTURE .....	10
2.2.1.1.	NATURE OF THE ACT .....	10
2.2.1.2.	THE INTENTION OF THE PERPETRATOR.....	11
2.2.1.3.	THE PURPOSE.....	11
2.2.1.4.	THE INVOLVEMENT OF PUBLIC OFFICIALS.....	12
2.2.2.	ACTS WHICH FALL OUTSIDE THE AMBIT OF TORTURE .....	13
2.3.	INTERNATIONAL LEGAL FRAMEWORK ON FREEDOM FROM TORTURE....	13
2.3.1.	THE UNIVERSAL DECLARATION OF HUMAN RIGHTS .....	13
2.3.2.	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS .....	14
2.3.3.	THE UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER FORMS OF CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT . .....	15
2.3.4.	AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS (THE BANJUL CHARTER) .....	16
2.3.5.	THE EUROPEAN CONVENTION ON HUMAN RIGHTS.....	16

2.3.6.	THE AMERICAN CONVENTION ON HUMAN RIGHTS .....	17
2.3.7.	INTERNATIONAL HUMANITARIAN TREATIES .....	18
2.3.7.1.	GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL I and II.....	18
2.3.7.2.	STATUTES OF INTERNATIONAL TRIBUNALS .....	18
2.4.	INTERNATIONAL LEGAL FRAMEWORK ON ENTITLEMENT TO COMPENSATION TO VICTIMS OF TORTURE .....	19
2.4.1.	THE UNIVERSAL DECLARATION OF HUMAN RIGHTS .....	20
2.4.2.	INTERNATIONAL COVENANT ON THE CIVIL AND POLITICAL RIGHTS	20
2.4.3.	THE UNITED NATION CONVENTION AGAINST TORTURE AND OTHER FORMS OF CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT . .....	21
2.4.4.	AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS .....	22
2.4.5.	THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS .....	23
2.4.6.	THE AMERICAN CONVENTION ON HUMAN RIGHTS .....	24
CHAPTER THREE .....		25
FREEDOM FROM TORTURE IN ETHIOPIA: POLICIES, LAWS AND THE PRACTICES .		25
3.1.	FREEDOM FROM TORTURE UNDER ETHIOPIAN POLICY FRAMEWORK .....	25
3.1.1.	ETHIOPIA NATIONAL HUMAN RIGHT ACTION PLAN .....	25
3.1.2.	ETHIOPIA CRIMINAL JUSTICE POLICY .....	26
3.2.	FREEDOM FROM TORTURE UNDER ETHIOPIAN LEGAL FRAMEWORK.....	26

3.2.1.	THE 1995 CONSTITUTION .....	27
3.2.2.	THE 2004 CRIMINAL CODE .....	29
3.2.3.	CRIMINAL PROCEDURE CODE .....	30
3.3.	THE ANTI -TERRORISM LAW .....	30
3.4.	THE STATUS OF THE IMPLEMENTATION OF FREEDOM FROM TORTURE IN ETHIOPIA: A FOCUS ON TERRORISM SUSPECTS .....	32
CHAPTER FOUR.....		36
COMPENSATION TO BODILY INJURED VICTIMS OF TORTURE IN ETHIOPIA: THE LAW AND THE PRACTICE.....		36
4.1.	INTRODUCTION.....	36
4.2.	ETHIOPIAN LEGAL FRAMEWORK OF COMPENSATION FOR BREACH OF FREEDOM FROM TORTURE .....	36
4.2.1.	TORT LAW .....	37
4.2.2.	THE FDRE CONSTITUTION .....	39
4.2.3.	FDRE CRIMINAL CODE.....	40
4.2.4.	CRIMINAL PROCEDURE CODE .....	41
4.3.	THE PRACTICE OF THE RIGHT TO COMPENSATION FOR BODILY INJURED VICTIMS OF TORTURE IN ETHIOPIA: FOCUS ON TERRORISM SUSPECTS .....	41
4.3.1.	INTRODUCTION .....	41
4.3.2.	PRACTICE OF TORTURE VICTIMS COMPENSATION CLAIM: THE CASE OF BODILY INJURED TERRORISM SUSPECTS .....	43

4.3.3. CHALLENGES THAT IMPEDE COMPENSATION CLAIM FROM BEING INSTITUTED IN OUR COURTS: THE CASE OF BODILY INJURED TERRORISM SUSPECTS .....	47
4.3.3.1. INADEQUACY OF DOMESTIC LEGAL FRAMEWORK ON THE CONTENT OF RIGHT TO COMPENSATION .....	47
4.3.3.2. PERCEPTION OF VICTIMS TOWARDS THE JUDICIARY .....	48
4.3.3.3. RESTRICTIVE LOCUS STANDI REQUIREMENTS AND LACK OF INTEREST ON THE SIDE OF VICTIMS .....	49
4.3.3.4. LACK OF EVIDENCE .....	51
4.3.3.5. LACK OF AWARENESS .....	51
4.3.3.6. BUDGETARY CONSTRAINT .....	52
CHAPTER FIVE .....	53
CONCLUSION AND RECOMMENDATIONS .....	53
5.1. CONCLUSION .....	53
5.2. RECOMMENDATION .....	56
Bibliography .....	58
A. Domestic Legislation .....	58
ANNEX I .....	65
ANNEX II .....	66
ANNEX III: .....	67
ANNEX IV .....	68
ANNEX V .....	69

## **ABSTRACT**

*Freedom from torture is an absolute right and is guaranteed under the FDRE constitution as well as international human rights instruments ratified by Ethiopia. Despite its absolute nature, it is one among the rights repeatedly violated throughout the country and the coming of the anti-terrorism law of Ethiopia increases the magnitude.*

*One of the impacts of torture is it can bring bodily injury to victims. And such an injury can mess up their life. This makes it necessary to have an avenue for a legal remedy.*

*Despite the extent of the problem, the practice of compensation claims in our country doesn't offer much prospect. Based on the collected data, the study finds out that there is a lack of practical applicability of this right in our court as a result of different challenges starting from lack of financial capacity of victims up to the weakness of the judiciary.*

*Keywords: Torture, remedy, terrorism, compensation, human right, constitution, victim*

# CHAPTER ONE

## 1. INTRODUCTION

### 1.1. BACKGROUND

The coming of the Universal Declaration of Human Rights followed from WWII is a very important step in the history of human rights that completely changes the circumstance internationally. It's an important document that is taken as the foundation of international human's rights law and it opens door for the coming of other international and regional human rights instruments. And these instruments guarantee a list of rights that change in number and scope from time to time. One among the rights guaranteed under most of these instruments is freedom from torture.

Torture is one of the few rights given absolute recognition under different legal instruments which no exceptional circumstances be justified by any circumstances whatsoever, whether state of war or a threat of war, internal political instability or any other public emergency.<sup>1</sup> Despite its absolute nature, countries still carry it out in what the UN High Commissioner for Human Rights described as "Some of the darkest corners of our planet".<sup>2</sup> And the case most often made for torture is that particularly in the fight against terrorism.

In 2001 the UN Security Council approved resolution no. 1373 (2001)<sup>3</sup>, which calls upon member states to implement several measures intended to enhance their legal and institutional ability for effective measures against terrorism.<sup>4</sup> This resolution came after the 9/11 attack on the USA. After this resolution, many states including Ethiopia adopted domestic legislation to

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<sup>1</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984 UNGA Res 39/46, enter in to force 26 June 1987), 1465 UNTS 85 (CAT) art 2(2)

<sup>2</sup> '30 Article on the 30 articles: the universal declaration of human right at 70: still working to ensure freedom, equality, and dignity for all', p.1

<sup>3</sup> UN Security Council, Security Council resolution 1373 (2001) on threats to international peace and security caused by terrorist acts], 28 September 2001, S/RES/1373 (2001)

<sup>4</sup> Shimelis Hailu, 'Ethiopian anti-terrorism law and human rights nexus: An Appraisal' (Master's Thesis, Addis Ababa university 2014)

counter-terrorism. But most of these laws in effect, circumvent and undermine the absolute prohibition of torture.<sup>5</sup>

“Payment of compensation for victims of human rights violations is a notion that is gaining prominence especially in contemporary human rights activism.”<sup>6</sup> Almost all international human right instruments have a clause for remedy when rights guaranteed under them is violated and obliged member states to enact such legislation. As a result, some states put a remedy clause in their constitutions and some others enact independent legislation. Coming to torture specifically, different international human rights instruments including CAT which our country Ethiopia is member state impose duties on signatory states to compensate victims.<sup>7</sup>

## **1.2. LITERATURE REVIEW**

In finding out works of other authors and materials domestically that are related to the title of this paper, the writer has not come across literature that addresses the issue even though the researcher made all possible efforts. But some papers indirectly have some link with the issue which includes: about freedom from torture, the issue of compensation for human rights violations and about the impact of the anti-terrorism law on the protection of the human right.

To begin with, Tesfaye Tadesse address the issue of freedom from torture and inhuman treatment specifically in some selected prisons in Oromia and reach on the finding that there exists a grave violation of this right in most of the prisons he studied but unlike this paper compensation wasn't his concern and also not specifically deal on torture with anti-terrorism prosecution rather address torture and inhuman treatment in general and is limited to Oromia prisons.<sup>8</sup> Teferi Firissa and Tesfaye Boreasa addressed the issue of remedy for breach of physical liberty and

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<sup>5</sup>Office of the United Nations High Commissioner for Human Rights, Human Rights, Terrorism and Counter-terrorism: Fact Sheet No. 32', p.32

available at <<https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>> 16 September 2019

<sup>6</sup>Hiruy Wubie, 'Some Points on the Ethiopian Anti-Terrorism Law from Human Rights Perspective' (2012) 25 Journal of Ethiopian Law 24,35

<sup>7</sup> CAT (n 1), art 14

<sup>8</sup>Tesfaye Tadesse, 'Freedom from Torture, inhuman or degrading treatment or punishment: the case of some selected prisons of Oromia National Regional state' (Master's Thesis, Addis Ababa university 2011)

compensation for wrongful conviction respectively.<sup>9</sup> Both of them reach on the conclusion that the legal system does not offer much prospect because of different impediments mainly the inadequacy of remedies provision in the domestic laws of Ethiopia. Even though both Teferi and Tesfaye's work is about compensation for the human rights violation, their work is different from this paper on the type of right they address.

Fisseha address the issue of victim's reparation for Derg crimes which includes torture but unlike this paper; it focuses only on the challenge and prospects of the reparation.<sup>10</sup> Shimelis address the issue of nexus between Ethiopian anti-terrorism law and human right and the author reach on the conclusion that it does have an impact on the protection of human rights including on freedom from torture.<sup>11</sup> His work has similarity with this paper because raise the issue of torture due to ant- terrorism prosecution but is different because compensation for victims wasn't its concern.

In nutshell, the issue of compensation for victims of torture is a point that hasn't been articulated yet. Thus this paper enthusiastically seeks to bridge the literature gap in this specific area.

### **1.3. STATEMENT OF THE PROBLEM**

The doctrine of human rights is based on the belief that every human being is entitled to enjoy his/her right without discrimination.<sup>12</sup> And freedom from Torture is one of the plethora's of human rights entitled to everyone and has been accorded under different international and regional instruments which our country Ethiopia is a state party. Although this right is guaranteed under different legal frameworks, it is not being enjoyed properly in practice. Reports released by different bodies including Amnesty international and human rights watch disclosed that one of the human rights being frequently violated in Ethiopia is freedom from torture.

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<sup>9</sup>Teferi Firissa, 'Compensatory remedy for breach of the right to physical liberty in Ethiopia: An Appraisal of the Legal and Institutional Framework', (Master's Thesis, Addis Ababa university 2014); and, Tesfaye Boresa, 'Wrongful conviction and the Quest for Remedies under the Ethiopian Criminal justice system' (Master's Thesis, Addis Ababa university 2015)

<sup>10</sup>FissehaM.Tekle, 'Victims reparation for Derg crimes: Challenges and Prospects' (Master's Thesis, Central European University 2013)

<sup>11</sup> Hailu (n 4)

<sup>12</sup> Charles R. Beitz, *The Idea of human right*(oxford university press 2009) 1

The coming of the Ethiopian anti-terrorism proclamation in 2009 put fuel on the fire by giving legal cover for the commission of torture in the name of investigation even though torture can't justify by any grounds including terrorism.<sup>13</sup>

International treaties that prohibit torture like CAT also provide compensation to be awarded for victims. The FDRE Constitution recognizes the absolute nature of inhuman treatment and makes it non derogable even though not use the very language of torture. But it contains no provision about the right to compensation for victims. And we have no clear compensatory legal regime for torture victims. Thus it's essential to investigate what remedies are available for victims of torture? As well as the practical applicability of this right in our country.

#### **1.4. RESEARCH QUESTIONS**

The central question that this paper intends to address is:

'Is there a means of awarding compensation for victims of torture in line with international human rights standards specifically to those who bodily injured concerning anti-terrorism prosecution?'

To answer the central research question the following sub-questions will be addressed:

- What is the meaning of torture?
- What are international and regional legal frameworks that guarantee freedom from torture?
- Does it address under our domestic legal frameworks?
- What is the practice of torture in our country?
- What is the impact of the coming of Ethiopian anti-terrorism law on freedom of torture?
- What is the meaning of the right to compensation with victims of torture?
- Who are victims of torture?
- What are the international, regional and domestic laws containing the right compensation for torture victims?
- Does this right address under our domestic laws?

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<sup>13</sup> CAT (n 1), art 2(2)

- What is the practical applicability of this right in our country specifically in the Anti-Terrorism prosecution?
- Are there any barriers/challenges that impede victims from instituting claims of compensation? If so what are these barriers?

## **1.5. THE RESEARCH OBJECTIVE**

This research has the major objectives of finding out whether there exists a system of awarding compensation for victims of torture in Ethiopia specifically in Anti-Terrorism prosecution. Besides, it has the following specific objectives:

- Examine and analyze the existence of a legal framework that entitles the right to compensation for victims of torture under international human right law;
- To explore the level of recognition of the right under our laws;
- To investigate the practical applicability of freedom from torture in Anti-Terrorism prosecution; and
- To study challenges on the institution of a compensation claim if exist and then forward the possible solution for the challenge.

## **1.6. RESEARCH METHODOLOGY**

### **1.6.1. SOURCE OF DATA**

Concerning the source of data, both primary and secondary sources have been used. Regarding primary sources, international, regional and domestic laws that deal with the title were reviewed to find out the extent of coverage it is given.

Besides, interview has been conducted to gather information from victims of torture as well as stakeholders. Among the stakeholders, the researcher purposively selects three institutions. These are FAG, HRC, and HRCo based on the duty they have given.

- Officials from FAG: this institution is duty-bound to pay a visit to persons under custody at police stations and correction facilities, to ensure their handling and stay is carried out following the law. Also, check the level of enforcement of international human rights treaties ratified by the country. Thus, Interview has been made on the existence of torture

in these centers on those persons prosecuted under terrorism and about the level of enforcement of human rights treaties that prohibit torture and allow compensation.

- Officials from HRCo: as an NGO working on human rights, an interview has been conducted to get information about challenges that can barriers victims of torture from instituting compensation claims as well as the impact of the anti-terrorism proclamation on freedom from torture.
- Officials from HRC: this institute has a direct role in the protection and promotion of human rights in Ethiopia. The interview has been conducted on issues of the impact of the anti-terrorism law on the enjoyment of freedom from torture as well as regarding challenges that impede compensation claim from being instituted in our courts specifically by bodily injured victims of torture.

To elaborate more on the issue secondary sources like books, articles, journals and internet links related to the concept have been reviewed. And documents analysis: including concluding observation, reports, fact sheets and general comments given by human rights committees have been examined.

### **1.6.2. METHOD OF DATA COLLECTION**

This research is qualitative in nature. Thus the researcher uses a qualitative method for gathering information, data and reference material for the study. Regarding the data collection method, the interview has been administered to collect data from victims as well as from human rights stakeholders selected by the researcher. And the necessary documents have also been reviewed.

### **1.6.3. SAMPLE SIZES AND SAMPLING TECHNIQUES**

Concerning the interview of victims of torture, the researcher used a snowball sampling technique because it was difficult to reach into victims easily. And all the victims are bodily injured due to terrorism prosecution. And concerning stakeholders, the researcher used a purposive sampling technique to select interviewees because the targeted group is presumed to have specific information on the area.

Concerning sampling size, among the selected stakeholders, from FAG, three officials from Legal Study, Drafting and Dissemination Directorate interviewed; from and HRCo, three

officials were selected and interviewed. And concerning EHRC, two officials were interviewed from investigation and monitoring directorates. And regarding victims, ten victims were interviewed until the level of information reach by the researcher to analyze the data.

### **1.7. SIGNIFICANCE OF THE STUDY**

This paper will have significance in promoting and protecting the right to freedom from torture and the victim's right to get compensation. It will also have benefits for victims showing the way how to enforce their right to get compensation. It can also serve as a wakeup call for the concerned bodies. Besides, it will have academic benefits by giving some hint for those who would like to research further in the area.

### **1.8. THE SCOPE OF THE STUDY**

This research was confined to the applicability of the right to compensation specifically to bodily injured victims of torture who were prosecuted under terrorism law in Ethiopia. It included discussion on international, regional and national legal frameworks dealing with this right and its practical applicability in Ethiopia.

### **1.9. LIMITATION OF THE STUDY**

Accessibility of potential interviewees especially getting reach into torture victims was the potential problem the writer has been challenged with. Also finding information on whether compensation cases been filed or not in our courts was the other problem because of the absence of an organized system of the database showing previous cases in our courts.

### **1.10. ETHICAL CONSIDERATION**

The researcher takes strict ethical considerations to ensure the quality and reliability of the research. Interviewee privacy and consent were strictly respected and all information gets through interview kept confidential on those persons they want it to be. And all the time the writer informs the interviewee of the purpose of the study for genuine feedback. All the conversation was in respect and with the comfort of the interviewee. The researcher gave big emphasis while taking samples to avoid bias as much as possible. And lastly, all conclusions were made based on the collected data.

## **1.11. ORGANIZATION OF THE THESIS**

This thesis comprises five chapters each of which divided into sections and sub-sections. The first chapter is the introduction part. The second is about international and regional frameworks on freedom from torture and entitlement to compensation. The third chapter contains a discussion on the law, policies and the practice of freedom from torture in Ethiopia. The fourth chapter devoted to discussing compensation to victims of torture: the law and the practice domestically. And the fifth and the last chapter is the conclusion and recommendation.

## CHAPTER TWO

# INTERNATIONAL LEGAL FRAMEWORK ON FREEDOM FROM TORTURE

## 2.1. INTRODUCTION

In the language of customary international law, the ban on torture is a jus cogens, a peremptory norm from which no derogation is permitted.<sup>14</sup> And if breached, an obligation to pay for reparation arises under customary international law irrespective of treaty obligations.<sup>15</sup> Torture is forbidden by international humanitarian law, different international and regional human rights instruments. And different instruments in addition to outlawing torture also provide a remedy when it is infringed. This part is thus intended to address some of these international and regional legal frameworks guaranteeing freedom from torture as well as those that secure compensation when this right is violated.

## 2.2. THE NOTION OF TORTURE

Torture is not an act in itself or a specific type of acts, but it is the legal qualification of an event or behavior, based on the comprehensive assessment of the event or behavior.<sup>16</sup> There is no single internationally agreed definition for the word torture. Different definitions have been derived by different scholars and under different instruments so far.

The more comprehensive definition is formulated by CAT. Even though UDHR and ICCPR outlaw torture before CAT, they didn't provide any definition of torture. The CAT convention under art 1 provides that:

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<sup>14</sup> John T. party, *Understanding Torture: Law, Violence, and Political Identity* (University of Michigan Press 2010)15

<sup>15</sup> Gabriela Echeverria 'Terrorism, counter-terrorism, and torture; international law in the fight against terrorism' (2004) <<https://redress.org/wp-content/uploads/2018/01/July-TerrorismReport.pdf>> last accessed 9 April 2019

<sup>16</sup>UNVFVT 'Interpretation of torture in the light of the practice and jurisprudence of international bodies'(2011) 2 available at <[https://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation\\_torture\\_2011\\_EN.pdf](https://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf)> accessed 2 November 2019

*“... 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent or incidental to lawful sanctions.”*

According to this definition, there are four elements needs to be taken into account for qualifying an act as torture.<sup>17</sup> These are the nature of the act, the intention of the perpetrator, purpose, and involvement of public officials.

## **2.2.1. ELEMENT OF TORTURE**

### **2.2.1.1. NATURE OF THE ACT**

For the existence of torture, there must be an act that inflicts pain and suffering on a person. And this may be either physical or mental in nature and caused by either a single isolated act or several such acts.<sup>18</sup> The provision, however, doesn't mention whether omission amounts to elements of torture because it says only act. But Interpreting act only as the commission will be a narrow interpretation. The definition of torture looks encompasses both acts and omissions that inflict severe pain or suffering.<sup>19</sup> The CAT Committee has made it clear under its general comment stating that a state party to the convention bears responsibility for acts and omissions of their officials, and others acting in the official capacity or on behalf of the state.<sup>20</sup> So, it's better if

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<sup>17</sup> Ibid,3

<sup>18</sup> Lene Wendland, *A Hand-Book on state obligations under the UN convention against torture* (Association for the Prevention of Torture 2002) 24

<sup>19</sup> UNVFVT (n 16) 3

<sup>20</sup> UN Committee Against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008, CAT/C/GC/2, Para 15

the nature of the act is understood as the infliction of mental or physical pain and suffering on a person through commission or omission.

### **2.2.1.2. THE INTENTION OF THE PERPETRATOR**

Pain and suffering must intentionally be inflicted on the victim to qualify as torture. Even though a person experience suffering and pain and if the public official did not intend to cause pain, the act would not amount to torture. According to the convention, it looks negligence does not qualify an act as torture. Some argue that recklessness might suffice.<sup>21</sup> But the convention under art 1 put intention amounts to elements of torture.

### **2.2.1.3. THE PURPOSE**

According to the convention, an act to amount to torture must conduct "for such purpose" as:

- Extracting a confession; or
- Obtaining from the victim or third person information; or
- Punishment; or
- Intimidation and coercion; or
- Discrimination

Different authors argue these lists stated under the convention might not be exhaustive. They are indicative rather than all-inclusive. Looking at the use of the word “for such purposes” in the provision indicates that the various listed purposes do not constitute an exhaustive list, and should be regarded as merely illustrative.<sup>22</sup> Also, the legislative history of the convention shows that the list of purposes is meant to be illustrative than all-inclusive.<sup>23</sup> Thus other purposes might be included.

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<sup>21</sup> UNVFVT (n 16) 4

<sup>22</sup> Wendland (n 18) 28

<sup>23</sup> Ahcene Boulesbaa, *the UN convention on torture and the prospects for enforcement*(Martinus Nijhoff publishers, 1999) p.21

#### 2.2.1.4. THE INVOLVEMENT OF PUBLIC OFFICIALS

The definition of torture under art 1 of the convention is very closely tied to the idea of torture being a purposive official act.<sup>24</sup> It doesn't apply to private acts of cruelty according to the convention and the rationale seems that private conduct is normally sanctioned under national law.<sup>25</sup>

The convention does not provide meaning for the phrase "public officials". Rather it states that an act amounts to torture when it inflicted by or at the instigation of or with the consent or acquiesces of a public official or other person acting in an official capacity.

By instigation, it means incitement, inducement or solicitation and as such it requires the direct or indirect involvement and participation of public officials in the act of torture, to give rise to state responsibility and the application of art 1.<sup>26</sup>

The notion of consent or acquiesce on the other hand show public officials responsible for acts not involve them directly rather for an act executed with their active or passive agreement. The element of public officials is stated in very broad terms and extends to officials who take a passive attitude or who turn a blind eye to the commission of torture.<sup>27</sup>

The CAT committee further clarified the notion of "consent" or "acquiescence" under its' General Comment 2. It appears that consent or acquiescence is equated with failure of due diligence to prevent, investigate or punish acts of torture or ill-treatment committed by non-state actors or private actors.<sup>28</sup>

The convention also recognizes de facto authorities under the convention and their act amounts to torture. The Committee against Torture also recognizes them as "person acting in an official capacity" de facto authorities whose authority is comparable to governmental authority.<sup>29</sup>

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<sup>24</sup>Wendland (n 18) 28

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> Nigel S. Rodley, *The Treatment of prisoners under international law* (2<sup>nd</sup> ed. Oxford university press, 1999)100

<sup>28</sup> (n 20) Parg 18

<sup>29</sup> UNVFVT (n 16) 5

However, it should be highlighted that such recognition is made a case by case, based on the circumstances in a given country and at a given time.<sup>30</sup>

### **2.2.2. ACTS WHICH FALL OUTSIDE THE AMBIT OF TORTURE**

There are acts even though might fulfill the above requirements, which are not considered as torture. These are Pain and suffering arising from, inherent in and incidental to a lawful sanction falls outside the ambit of torture. Given UN Special Reporters on torture, the exclusion must necessarily refer to those sanctions that constitute practices widely accepted as legitimate by the international community, such as deprivation of liberty through imprisonment which is common to almost to all penal systems.<sup>31</sup>

### **2.3. INTERNATIONAL LEGAL FRAMEWORK ON FREEDOM FROM TORTURE**

The freedom from torture has been given absolute protection under different international and regional frameworks. These instruments include but not limited to:

#### **2.3.1. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS**

The Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948, is the fundamental document of international human rights law. It sets forth a common standard of achievement for all peoples and all nations, and the thrust of this standard is that every human being should be defined as a bearer of equal and inalienable rights.<sup>32</sup> This document was adopted just as a declaration with no binding power because it wasn't intended to be but some authors argue that later on it acquires the status of international customary law and becomes binding. But the document as it is a non-binding instrument.

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<sup>30</sup> Ibid

<sup>31</sup>Wendland (n 18) 29

<sup>32</sup> Party (n 14) 29

This instrument guarantees freedom from torture. It states, “Everyone has the right to life, liberty, and security of person.”<sup>33</sup> To that end, “[n]o one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment”<sup>34</sup>. As this instrument accepted by a lot of states, it manifest that the international community condemned torture. Most of all this declaration set a cornerstone for the safeguard of freedom from torture which leads to the coming of ICCPR, CAT, and other instruments to ban torture.

### **2.3.2. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

The International Covenant on Civil and Political Rights was adopted in 1966 and came in to force ten years later in 1976. Unlike UDHR it was adopted with full binding authority. It's the other international legal instrument that furnishes safeguard for freedom from torture. Looking at the content, Article 7 of the ICCPR echoes the language of the UDHR: "No one shall be subject to torture or cruel, inhuman or degrading treatment or punishment"<sup>35</sup> except for the provision unlike UDHR, adds the second sentence that outlaws medical or scientific experimentation without consent.

This covenant gives absolute protection for freedom from torture which can't be taken away even at the time of emergency. However, it does not define the word torture. The committee has resisted developing its definition and refused to narrow meaning of those terms under the provision in drawing up lists of prohibited acts or by establishing sharp distinctions between the different kinds of punishment or treatment rather the committee states that the distinctions depend on the nature, purpose, and severity of the treatment applied.<sup>36</sup>

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<sup>33</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) Art 3

<sup>34</sup> Ibid, Art 5

<sup>35</sup> Party (n 14) 30

<sup>36</sup> Ibid 32

### **2.3.3. THE UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER FORMS OF CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT**

The Convention against Torture adopted by the General Assembly in 1984 aimed at the elimination of torture by establishing an effective international regime for the criminal prosecution of torturers and is the most significant international law document on torture.<sup>37</sup> It is the first international legal framework that specifically addresses protection for freedom from torture. Unlike the UDHR and ICCPR, it provides a definition for the word torture.

Under the convention, torture is banned no exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency may be invoked as a justification of torture.<sup>38</sup> Comparing it with that of ICCPR, this convention's non-derogation clause, which applies to "war" as well as "public emergencies," is clearer than the ICCPR's version and makes the absolute nature of torture crystal clear.<sup>39</sup>

It excludes evidence obtained by torture: "Any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."<sup>40</sup> The convention also insists, "No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."<sup>41</sup> They must ensure, on the other hand, that an alleged perpetrator of torture present in any territory under their jurisdiction is prosecuted or extradited to another State for prosecution.

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<sup>37</sup> Ibid, 34

<sup>38</sup> Ibid, 35

<sup>39</sup> Ibid

<sup>40</sup> CAT (n 1), Art 15

<sup>41</sup> Ibid, Art 3

#### **2.3.4. AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (THE BANJUL CHARTER)**

The African Charter on Human and Peoples' Rights is a regional human rights document that comes after the adoption of the European and the American Convention on Human Rights. It is one of the regional human rights instruments that ban torture. The Convention states:

*“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment, and treatment shall be prohibited”.*<sup>42</sup>

The charter, unlike the previous instruments, combines it with freedom from slavery and the slave trade.

In the African regional human right system, there are also other instruments of the region that forbid torture such as Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa and the African Charter on Children's Rights and Security, which was adopted by OAU in 1990. Especially, the African Children's Rights Charter, under Article 17, provides that a child shall not be subjected to torture.

Besides, the African Commission has decided many cases in which torture has been alleged and makes efforts in making this provision mentioned under the charter got its well lucid figure.<sup>43</sup>

#### **2.3.5. THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

The European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted on 4 November 1950 by the Council of Europe and entered in to force on 3 May 1953. It is the first regional human right framework. Every state in Europe is a party to this Convention. Among the protections provided by the convention is freedom from torture. Article 3 of the

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<sup>42</sup>African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986), Art 5

<sup>43</sup>Bronwen Manby, 'Civil and Political Rights in the African Charter on Human and Peoples' Rights: Articles 1–7' in Malcolm Evans and Rachel Murray(eds), *The African charter on human and people's rights* (Cambridge University Press, 2008)

convention declares, "No one shall be subjected to torture or inhuman or degrading treatment or punishment". But it does not define the term torture.

The convention makes the prohibition absolute. It provides for the non -derogable nature of the right; even in time of war or other public emergency threatening the life of the nation.<sup>44</sup>

In addition to this convention, the Council of Europe also adopted the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which every European state has ratified. This convention strengthens enforcement of freedom from torture creating the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1987 which was set up under the council of Europeans.<sup>45</sup>

The existence of different enforceable organs contributes a lot to the safeguard of human rights in the region because having an instrument guaranteeing dozens of rights is not enough rather needs to have an enforcement organ.

### **2.3.6. THE AMERICAN CONVENTION ON HUMAN RIGHTS**

The American convention is the other regional human right instruments that guarantee freedom from torture. The Convention state that:

*Art 5(1): "Every person has the right to have his physical, mental, and moral integrity respected."*

*Art 5(2): "No one shall be subjected to torture or cruel inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the integrity of the human person."<sup>46</sup>*

This convention likes that of the above two regional human right instruments give absolute protection for freedom from torture under art 27(2). It provides that it can't be violated in times

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<sup>44</sup>Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Art 15(2)

<sup>45</sup> Party (n 14) 45

<sup>46</sup> (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, art 5

of war, public danger or other emergency threatening the independence or security of the state party.<sup>47</sup>

## **2.3.7. INTERNATIONAL HUMANITARIAN TREATIES**

### **2.3.7.1. GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL I AND II**

The four Geneva Conventions of 1949 under common article 3 provides that each Party to the conflict shall be bound to apply as a minimum requirement that at any time and in any place whatsoever prohibited to commit acts of torture on people protected under the convention. And all of the four conventions also prohibit torture in separate provisions.<sup>48</sup>

Additional protocols to the four Geneva Conventions (of 1977) also outlaw torture specifically art 25 of AP I and art 4 of AP II forbid commission of torture on those protected under the protocols.

### **2.3.7.2. STATUTES OF INTERNATIONAL TRIBUNALS**

Article 2 and 5 of the Statute of the ICTY; Art 3 and 4 of the Statute of the ICTR provide prohibition of torture.

The Rome Statute or the ICC statute is the other instrument furnishes protection for freedom from torture. Art 7(1) (f) of the statute refers to torture as a crime against humanity. Again art 8 of the same statute put torture under the list of a war crime.

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<sup>47</sup> Ibid 27(2)

<sup>48</sup>First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31, Art 12 and 50; Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85, Art 51; Third Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135, Art 87 and 130 and Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287, Art 32

## **2.4. INTERNATIONAL LEGAL FRAMEWORK ON ENTITLEMENT TO COMPENSATION TO VICTIMS OF TORTURE**

### **A. THE NOTION OF COMPENSATION**

“It is a general rule of both the civil and the common law that every invasion of private rights imports an injury and that for every injury the law gives a remedy.”<sup>49</sup> The English word the right to remedy has given different meanings which sometimes confuses.<sup>50</sup> And also there is a common misconception that reparations are synonymous with monetary compensation.<sup>51</sup> Even though these words have their relationship, they are different. Reparation "is the act of making amends for a wrong"<sup>52</sup>. It consists of five key elements, namely: restitution, compensation, rehabilitation, satisfaction (disclosure of the truth) and guarantees of non-repetition. So compensation is one form of reparation. And Remedy is a general term and refers to access to legal remedies as well as to reparations.<sup>53</sup> The researcher follows this understanding of this paper. And of these forms of reparation, this research draws on compensation.

### **B. THE NOTION OF VICTIMS**

Victims are persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention.<sup>54</sup> It also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.<sup>55</sup>

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<sup>49</sup> An international commission of jurist, *The right to a remedy and reparation for gross human rights violation a practitioner guideline* (2nd ed, 2018) 52

<sup>50</sup> Ibid

<sup>51</sup> Christine Evans, *The Right to Reparation in International Law for Victims of Armed Conflict* (Cambridge University press 2012)13

<sup>52</sup> Bryan A. Garner(ed), *Blacks law* ( 8<sup>th</sup>ed, 2004) 4055

<sup>53</sup> Evan (n 51) 13

<sup>54</sup> UN Committee Against Torture (CAT), General comment no. 3, 2012: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: implementation of article 14 by States parties, 13 December 2012,

<sup>55</sup> Ibid

Thus torture victims are a person who directly suffers the harm as well as affected immediate family or dependants.

Numerous and widely ratified international and regional human rights treaties guarantee the right to compensation for victims of torture as a redress for the harm they suffered. These include:

#### **2.4.1. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS**

This instrument provides a remedy when rights provided under are violated. The Declaration under art 8 stipulates;

“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”<sup>56</sup>

Even though the word torture is not explicitly mentioned, its violation also guaranteed remedy as freedom from torture is among the list of rights safeguarded under this instrument. The declaration, however, does not make mention of the possible compensatory remedy in the event of a violation of the freedom from torture or any other rights. Besides, it does not mention the type or the amount of compensation. It is open to interpretation depending on the circumstance of the case.

#### **2.4.2. INTERNATIONAL COVENANT ON THE CIVIL AND POLITICAL RIGHTS**

ICCPR guarantees a remedy for those people whose rights guaranteed under the covenant are violated. Art2 (3) declare that:

Each State Party to the present Covenant undertakes:

*(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*

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<sup>56</sup>UDHR (n 33), art 8

*(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*

*(c) To ensure that the competent authorities shall enforce such remedies when granted.*

Accordingly, the covenant imposes an obligation on member states to ensure that the person whose right violated has got remedy notwithstanding that the violation has been committed by persons acting in an official capacity.<sup>57</sup> Hence, victims of torture have an enforceable right to claim remedy or compensation as freedom from torture is among those rights that have given due protection under the covenant. And states parties obliged to provide a remedy for victims of torture at all time and under any circumstance and to ensure that the claim 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 the claim enforced by the competent authority.<sup>58</sup>

### **2.4.3. THE UNITED NATION CONVENTION AGAINST TORTURE AND OTHER FORMS OF CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT**

CAT is not only banned torture but also imposes an obligation on member states to ensure that victims of torture obtains redress and has an enforceable right to fair and adequate compensation.<sup>59</sup>

The CAT committee also gave elaboration on member states' obligation regarding victims' right to redress and compensation under General Comment 3. To begin with, the Committee considers that the term “redress” in article 14 encompasses the concepts of “effective remedy” and

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<sup>57</sup>International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 2(3)(a)

<sup>58</sup> Ibid, art 2(2)

<sup>59</sup> CAT (n 1), Art 14

“reparation”.<sup>60</sup> The comprehensive reparative concept entails restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention. Accordingly, compensation is one form of redress that is imposed on member states to ensure victims be remunerated. And the compensation should be fair, adequate and sufficient to compensate for any economically assessable damage resulting from torture or ill-treatment, whether pecuniary or non-pecuniary.<sup>61</sup> This may include reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; pecuniary and non-pecuniary damage resulting from the physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the torture or ill-treatment; and lost opportunities such as employment and education.<sup>62</sup>

To give effect to article 14, States parties are obliged to enact legislation specifically providing a victim of torture with an effective remedy.<sup>63</sup>

#### **2.4.4. AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS**

The African Charter is one of the most important regional human rights instruments concerning compensation for victims of torture.

Under the Charter, the provisions providing a right to a remedy for victims of violations are found under art 7. It states that; every individual shall have the right to have his cause heard.<sup>64</sup> “This comprises the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations, and customs in force.”<sup>65</sup> This means that victims have a right to an effective remedy, which is interlinked with their right to access to justice. This provision, however, does not explicitly state that victims of torture guaranteed under the charter shall get a remedy or compensation rather it looks touches the point indirectly.

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<sup>60</sup>CAT Committee (n 54), Para, 13

<sup>61</sup> Ibid

<sup>62</sup> Ibid

<sup>63</sup> Ibid

<sup>64</sup> African Charter (n 42), Art 7(1)

<sup>65</sup> Ibid, art 7(1)(a)

But most importantly the African Commission on Human and Peoples' Rights established by the charter has recently launched "General Comment No. 4 on the right to redress for victims of torture and other cruel, inhuman, or degrading punishment or treatment"<sup>66</sup>. The Commission provides an authoritative interpretation of the scope of the right to redress, and States party's obligations concerning victims of torture.

The Commission under this general comment stated that victims need to get reparation irrespective of where the torture was committed to restoring the dignity, humanity, and trust violated by torture.<sup>67</sup> The Commission lists compensation as one form of reparation that victims of torture need to be awarded.<sup>68</sup> Accordingly, compensation shall be fair, adequate and proportionate and sufficient to compensate for any economically assessable damage resulting from torture.<sup>69</sup> Compensation shall cover reimbursement of medical expenses; material and non-material damage resulting from the physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the torture or other ill-treatment; and lost opportunities such as employment and education.<sup>70</sup> Compensation shall also cover damage caused to a victim's anticipated personal and professional development as a result of the torture.

#### **2.4.5. THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

The convention under Art 13 states:

*"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity".<sup>71</sup>*

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<sup>66</sup> The ACHPR, General comment no.4, 2017: African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment art 5, Adopted at the 21st Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, held from 23 February to 4 March 2017 in Banjul, The Gambia

<sup>67</sup> Ibid, Para 27

<sup>68</sup> Ibid, Para 10

<sup>69</sup> Ibid, Para 37

<sup>70</sup> Ibid, Para 38

<sup>71</sup> European Convention (n 44), art 13

The convention explicitly provides a remedy for human rights violations safeguarded under the convention. It requires member states to provide effective remedies for violations of its provisions before a national authority. The convention assures that the remedy should be awarded although the violation has been committed by a person acting in an official capacity. This convention created the European Commission of Human Rights and the European Court of Human Rights to buttress this remedial structure. In 1998, the Commission was abolished and maintains the court which allowed individuals to present their claim to the court.<sup>72</sup>

#### **2.4.6. THE AMERICAN CONVENTION ON HUMAN RIGHTS**

It's the other regional human rights instrument that guarantees freedom of torture as well as a remedy for victims. Art 25 of the convention states that:

*“Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”<sup>73</sup>*

According to this provision, everyone can claim a remedy for violation of his fundamental rights as long as that right is guaranteed under the constitution or laws of the state concerned or this convention.<sup>74</sup> And freedom from torture is one among the fundamental rights guaranteed under this convention as a result, a victim can claim remedy. Besides, the Convention under same provision imposes an obligation on the member to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state as well as to develop the possibilities of judicial remedy and to ensure that the competent authorities shall enforce such remedies when granted.<sup>75</sup>

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<sup>72</sup> Party (n 14) 44

<sup>73</sup>OAS (n 46), art 25

<sup>74</sup> Ibid

<sup>75</sup> Ibid

## **CHAPTER THREE**

### **FREEDOM FROM TORTURE IN ETHIOPIA: POLICIES, LAWS AND THE PRACTICES**

#### **3.1.FREEDOM FROM TORTURE UNDER ETHIOPIAN POLICY FRAMEWORK**

There are policies adopted by the government that implies human right like policies that give place for human rights in achieving their objectives as well as policies that target realizing of human rights. Some of these policies are like that of NHRAP and the criminal justice policy.

##### **3.1.1. ETHIOPIA NATIONAL HUMAN RIGHT ACTION PLAN**

Ethiopia adopted two national human rights action plans in 2013 and 2016 planned to be implemented between 2013-2015 and 2016- 2020 respectively. In both documents prohibition of inhuman treatment was incorporated under the title of civil and political rights.<sup>76</sup> Both documents stipulate different institutional and administrative measures to make sure the protection of this right. The first action plan set different plan and implementing institution including Preparation of legal provisions regarding the use of force to the police and Records of names of police officers present, the exact place of interview/interrogation and time.<sup>77</sup> And the second action plan also sets different measures like awareness creation to law enforcing bodies; giving continuous technical and tactical training on a collection of evidence; prepare crime investigation manual based on studies and to make investigation areas free from materials used to commit inhuman treatment.<sup>78</sup>

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<sup>76</sup> The Federal Democratic Republic of Ethiopia NHRAP I 2013-2015, (2013) 24 and the following and The Federal Democratic Republic of Ethiopia NHRAP II 2016-2020, (2016) p.25 and the following

<sup>77</sup> The Federal Democratic Republic of Ethiopia NHRAP I 2013-2015, (2013) 30

<sup>78</sup> The Federal Democratic Republic of Ethiopia NHRAP II 2016-2020, (2016) 26

### **3.1.2. ETHIOPIA CRIMINAL JUSTICE POLICY**

One of the principles and strategies of this policy is every activity in the criminal justice system to be performed in conformity with international laws and treaties that became part of the Ethiopian law.<sup>79</sup> And these instruments include international human rights treaties that prohibit torture.

On the other hand, the policy states that in a criminal investigation, the evidence must be collected based on the law. If not it will be inadmissible in the court.<sup>80</sup> And it states this should be stipulated under an appropriate law.<sup>81</sup> Accordingly, evidence collected through using of torture should be inadmissible as it's not based on the law. This conforms to the constitutional principle and rules of the Criminal Procedure Code.<sup>82</sup>

### **3.2.FREEDOM FROM TORTURE UNDER ETHIOPIAN LEGAL FRAMEWORK**

Taking the dominant conception, the law began to be conceived as the will of one God with the coming of Christianity to the kingdom of Axum.<sup>83</sup> And then continue by the coming of Islam with its holy book –the Koran. In both cases, a law was given a sacred character and the concept also spreading into the people the idea that law was the divine revelation of the will of one God.<sup>84</sup>

The codification process started in the middle of the 15th century. The first known code of law in our country was called Fewese Menfesawi prepared by church scholars, under the order of

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<sup>79</sup> The Federal Democratic Republic of Ethiopia Criminal Justice Policy, (2011) 2

<sup>80</sup> Ibid, 17

<sup>81</sup> Ibid

<sup>82</sup> See The Constitution of the Federal Democratic Republic of Ethiopia, proclamation no. 1/1995, Negarit Gazetta, year 1, No. 1, art 19(5); and Criminal procedure code (n 80) art 31(1)

<sup>83</sup>Melaku Geboye, 'The Law as An Instrument of Social Change with Particular Reference to the Condition of Mariage under the Civil Code of Ethiopia: Failure and Successes of the Code', (Addis Ababa University, Faculty of Law, Law Library, Unpublished) (1993)

<sup>84</sup> Ibid

Emperor Zerayacobe.<sup>85</sup> Then the Fetha Nagast (Justice of the Kings) came.<sup>86</sup> But both documents say nothing about freedom from torture.

The codification process culminated in the codification process of the 1950s and 1960s. Consisting of six codes covering most fields of current legal activity in the country were enacted at the reign of emperor H/Selase. Among the six, four of them; civil procedure, Maritime, civil and commercial codes are of course govern civil matters and say nothing about torture. But two of the codes the penal and criminal procedure code provides important provisions regarding the ban of torture. The 1957 penal code criminalizes torture and other inhuman treatments as war crimes under article 282(a). And the criminal procedure code prohibits improper methods of investigation in general.<sup>87</sup>

### **3.2.1. THE 1995 CONSTITUTION**

Before the current constitution, Ethiopia enacts three. Two of them, the 1931 and 1987, did say nothing about freedom from torture. The 1955 constitution, unlike the above two, outlawed cruel and inhuman treatment.<sup>88</sup> But it didn't clearly prohibit torture like that of the current Constitution which might raise different sides of arguments whether the prohibition of torture is/isn't covered under the prohibition of cruel and inhuman treatment.

The current Constitution comparatively gives broader space for human rights. It devoted more than one-third of its content for human rights incorporated from different international human rights instruments including UDHR. Looking protection from torture under this Constitution, one among the rights safeguarded under the Constitution is inhuman and degrading treatment.<sup>89</sup> But it's not explicitly banned torture or didn't use the very language of torture. However, the Constitution stipulates significant provisions that have importance to guarantee freedom from

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<sup>85</sup>Muradu Abdo, *Legal History and Traditions: Teaching Material*(2009) 279

<sup>86</sup> Ibid

<sup>87</sup>The Criminal Procedure Code Proclamation 1961, Imperial Ethiopian Government Proclamation No. 185 of 1961, Negarit Gazeta, Art 31(1)

<sup>88</sup> The Revised Constitution of Ethiopia, proclamation No.144/1955, Negarit Gazetta, Year 15, No. 2, Art 57

<sup>89</sup> FDRE (n 82), Art 18

torture. These provisions include; art 9(4) art 13(2), art 18, art 19 and art 28(1) of the constitution.

To begin with, the constitution stipulates that the arrested person shall not be compelled to make confessions or admissions which could be used in evidence against them and any evidence obtained under coercion declared to be inadmissible.<sup>90</sup> And one way of compelling might be through torture. So, the constitution guarantees those persons from being tortured.

Ethiopia as a state is a member of different international human rights instruments that guarantee freedom from torture.<sup>91</sup> On the other hand, the Constitution states that all international agreements ratified by Ethiopia, are an integral part of the law of the land.<sup>92</sup> One of these international instruments is that of international human rights instruments. Thus those international human rights instruments that guarantee freedom from torture in which our country Ethiopia ratified are part and parcel of the law of the country. As a result, even though the constitution fails to give explicit guarantee for freedom of torture, it can be argued that it indirectly safeguards this right by making those international human rights instruments part of the domestic law of the country.

Besides, Art 28(1) of the constitution states the criminal liability of persons who committed crime against humanity so defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, of which one among these crimes is torture, shall not be barred by statute of limitation and not commute by amnesty or pardon of the legislature or any other state organ.

To sum up, albeit the FDRE constitution didn't give explicit protection for freedom from torture, it indirectly gives safeguard.

Currently, in addition to the FDRE Constitution, other laws give protection for freedom from torture. These include:

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<sup>90</sup> Ibid, Art 19(5)

<sup>91</sup> These include UDHR, ICCPR, CAT, and ACHPR

<sup>92</sup>FDRE constitution (n 82), Art 9(4)

### 3.2.2. THE 2004 CRIMINAL CODE

One of the obligations imposed on member states under international human rights law is to criminalize the act of torture under their domestic legal framework.<sup>93</sup> It looks like with this spirit that the 2004 FDRE criminal code of Ethiopia criminalizes torture. Art 424 of this code states:

*“Any public servant charged with the arrest, custody, supervisions, escort or interrogation of a person who is under suspicion, under arrest, summoned to appear before a court of justice detained or serving a sentence, who, in the performance of 92 this duties, improperly induces or gives a promise threatens or treats the person concerned improperly or brutally, or in a manner which is incompatible with human dignity or his office, especially by the use of blows, cruelty or physical or mental torture, be it to obtain a statement or a confession, or to any other similar end, or to makes him give a testimony in a favorable manner is punishable with simple imprisonment or fine, or in serious cases, with rigorous imprisonment not exceeding ten years and fine.”<sup>94</sup>*

This provision contains a definition of the use of improper methods. It is blamed for more limited in scope than the definition of torture under international Convention, as it covers only some of the purposes envisaged in article 1 of the CAT and applies only to acts committed in the performance of duties by public servants charged with the arrest, custody, supervision, escort or interrogation of a person under suspicion, arrest, detention or summoned to appear before a curator serving a sentence.<sup>95</sup> The CAT committee noted that acts of torture falling outside the definition in article 424 of the revised Criminal Code are punishable only under the offense of “abuse of power”, although the Convention forms part of the domestic law in Ethiopia.<sup>96</sup>

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<sup>93</sup> CAT (n 1) Art 4

<sup>94</sup>The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414 of 2004, Negarit Gazeta

<sup>95</sup> Committee Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Ethiopia, United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/ETH/1, 1–19 November 2010, Para. 9

<sup>96</sup> Ibid

Also, the code uses the term torture without identifying what kind of pain and suffering constitutes torture.<sup>97</sup> Besides, the CAT convention stipulates that the state Party should make torture offenses punishable by appropriate penalties that take into account their grave nature.<sup>98</sup> The FDRE criminal code, however, put a punishment of simple imprisonment or fine, or in serious cases, with rigorous imprisonment not exceeding ten years and fine.<sup>99</sup> Comparing the punishment put by the code with that of the spirit of the convention, it's so hard to take fine and simple imprisonments as appropriate punishment for the act of torture.

### **3.2.3. CRIMINAL PROCEDURE CODE**

The code states no police officer or person in authority shall be made or used any inducement, threat, promise or any other improper method to any person examined by the police.<sup>100</sup> One way of the improper method could be torture. So, the code prohibits the act of torture in the name of an investigation by the police.

### **3.3. THE ANTI -TERRORISM LAW**

Containing thirty-eight provisions, Ethiopia enacts anti-terrorism law in 2009 and joins the battlefield of war on terror declared by the USA. This proclamation was enacted to combat the spread of domestic terrorism. Although the enactment of laws to smash terrorism is orthodoxy thinking, this proclamation had been subject to so many critics by different stockholders from its enactments on due to different reasons including the fact that among other things it usurped citizens' constitutional rights.<sup>101</sup> It contains provisions that directly or indirectly severely curtail the enjoyment of different rights including freedom from torture of those persons suspected or charged with terrorism.<sup>102</sup>

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<sup>97</sup> Criminal Code (n 94)

<sup>98</sup> CAT (n 1), Art 4(2)

<sup>99</sup> Criminal code (n 94)

<sup>100</sup> Criminal procedure code (n 87), Art 31(1)

<sup>101</sup> The Oakland Institute (OI) 'Ethiopia's Anti-Terrorism Law: A Tool to Stifle Dissent' (The Oakland Institute and Environmental Defender Law Center 2015) 5.

<sup>102</sup> CAT committee (n 95), Para. 14

To begin with, the Proclamation makes admissible terrorism-related intelligence report that does not disclose its source or the methods used as well as make confession of a suspect of terrorism in writing, voice recording, and video cassette or recorded in any mechanical or electronic device admissible.<sup>103</sup> This shows that it effectively allows evidence or confessions obtained under torture to be used as it doesn't care about the method of the extracted evidence.<sup>104</sup> This is contrary to the constitutional principle that excludes pieces of evidence obtained under coercion,<sup>105</sup> as well as in violation of the principle of non-admissibility of evidence extracted through torture contained inter alia in article 15 of the Convention against torture.<sup>106</sup>

On the other hand, the proclamation gives broader powers to the police to arrest suspects without a court warrant and this situation criticized as it can increase the degree of the commission of torture.<sup>107</sup> Because mostly when the security forces arrest people suspected of being members of a proscribed organization or suspected of committing terrorism act, the detainees are not remanded as an ordinary suspect rather they interrogated and classified depending on what the security forces think is the level of threat that they pose to the country.<sup>108</sup> Thus the situation can tempt the police to resort to torture.

Besides art 21 of the proclamation states that;

*The police may order a person suspected of acts of terrorism to give samples of his body fluid, blood..... If the suspect is not willing for the test, the police may use necessary and reasonable force to take samples.*<sup>109</sup>

This provision allows the police to use necessary and reasonable forces. But what is the extent of reasonable and necessary force? Is that torturing? It's unclear and open to interpretation. Melaku,

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<sup>103</sup> Anti-Terrorism Proclamation, Proc. No. 652/2009, Federal Negarit Gazeta, 15th Year No. 57, art 23(1) and art 23(5)

<sup>104</sup> Wubie (n 6) 66

<sup>105</sup> FDRE (n 82), art 19(5)

<sup>106</sup> The Oakland Institute (n 101) 14

<sup>107</sup> CAT (n 95) Para 14

<sup>108</sup> Kennedy Monchere Nyaundi, 'How does the implementation of counter-terrorism measures impact on human rights in Kenya and Uganda?' (DPH thesis, University of Cape Town 2014)

<sup>109</sup> Anti-terrorism proclamation (n 103), Art 21

ex-prisoner, and victim of torture said, all the police forces look terrorism suspects in the different eye as an enemy of the country and they think torturing these suspects is lawful and allowed to do so.<sup>110</sup> Thus giving such kind of power to the police could have open ways for the commission of torture on suspects.

### **3.4.THE STATUS OF THE IMPLEMENTATION OF FREEDOM FROM TORTURE IN ETHIOPIA: A FOCUS ON TERRORISM SUSPECTS**

Arbitrary detention in our country is often incommunicado and accompanied by torture and other ill-treatment and dire detention conditions.<sup>111</sup> So many stockholders including HRC, HRCO, and FAG in charge of visiting detention centers and police custody to make sure the handling and stay of individuals under these centers are carried out under the law, express the commission of torture especially on those who are suspected of committing terrorist act after the coming of the proclamation.<sup>112</sup>

It's been more than ten years since the coming of the Ethiopian anti-terrorism proclamation. As many reports show, so many people have been tortured with terrorism prosecution. At different times, different stakeholders including international and local human rights organizations express their deepest worries on the commission of torture in different prisons and detention centers throughout the country in their reports. These Human rights bodies include groups such as Human Rights Watch, Amnesty International, UN treaty bodies, Human Rights Council and Ethiopian Human Rights Project (EHRP).

Human Rights Watch continuously expresses disclose about the occurrence of torture throughout the country in its annual reports including those released from 2010 up to 2019. The organization has documented torture and other ill-treatment regularly used in federal prisons, police stations, and military training camps where civilians have been incarcerated in the course of military

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<sup>110</sup> Interview with Melaku, torture victim, (22 November 2019, Addis Ababa )

<sup>111</sup> EHRP, 'Ethiopian political prisoners and their account of torture', (AHRE , 2018), 15`

<sup>112</sup> Interview with Awel Sultan, Senior Federal Prosecutor and Coordinator of Training and Awareness Raising Team, (October 30, 2019), Addis Ababa and Interview with Dan Yirga, HRCO senior human rights officer, (October 27, 2019), Addis Ababa and interview with Ato Adham Duri, Human Right protection and monitoring Director Directorate in Ethiopian HRC, (October 25, 2019, Addis Ababa)

operations and law enforcement activities.<sup>113</sup> One of the places where torture was committed on detainees is the famous torture chamber called Makelawi.<sup>114</sup> Although Maekelawi is a well-known one, Qilinto, Shewa Robit, and Zeway are also other centers where torture was highly committed.<sup>115</sup> Most of the detainees held under the Anti-Terrorism Proclamation's remand detention provisions.<sup>116</sup>

The torture act committed in as a result of the proclamation target a lot of groups including activist students, political opposition members, alleged supporters or members of insurgent groups such as the Oromo Liberation Front (OLF) and the Ogaden National Liberation Front (ONLF), protesters and prominent members of the Muslim community linked to the Muslim protests.<sup>117</sup>

Amnesty International also expresses in its reports continuous government imprisonment of numerous people on accusations of supporting the OLF and other parties that proclaimed terrorist group by HPR including an accusation of many human rights defenders and subjecting them to torture.<sup>118</sup> One of its reports disclosed that a significant number of the 107 opposition members and journalists complained of torture during interrogation in Makelawi detention center.<sup>119</sup>

Methods of physical torture committed on these centers vary and include beatings with sticks, electric cables, rifle butts, iron bars, or other hard instruments; immersing individuals' heads in water; beating and kicking people while they hang upside down; tying bottles of water to men's testicles, and forcing detainees to run or crawl over sharp gravel for several hours at a time.<sup>120</sup>

In these centers, torture used both to extract information and force confessions also as a form of punishment for failure to comply with the investigator's demand.<sup>121</sup> They sometimes force

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<sup>113</sup> Human Right Watch, World Report 2011 events of 2010, (2011) p. 121

<sup>114</sup> Ibid, World Report 2013, (2013) p. 114

<sup>115</sup> EHRP (n 111) 15

<sup>116</sup> Ibid

<sup>117</sup> HRW (n 113)

<sup>118</sup> Amnesty international report 2011 The State of the World's human rights, (2011) p.10

<sup>119</sup> Ibid, 2012 report

<sup>120</sup> HRW (n 113), 2013report

<sup>121</sup> Ibid

detainees to sign on blank papers and the next morning it will be prepared by the police as if it was a confession given by the suspects and present as evidence to the court.<sup>122</sup> For instance in 2011 in Federal Prosecutor vs. Teshale Bekashi and other cases, the confession obtained through torture used as evidence.<sup>123</sup> Nobody listened to the victims. Dan Yirga, a senior human rights officer in HRCo, said that they observe some victims even show their bodies to the court but the court gave them a deaf ear.<sup>124</sup>

The CAT Committee under its 2011 concluding observation to Ethiopia stated that it observes consistent reports on the commission of torture.<sup>125</sup> The committee was deeply concerned about numerous, ongoing, and consistent allegations concerning the routine use of torture by police, prison officers, and other members of the security forces, as well as the military of which the 2009 Ethiopian Anti-Terrorism Law further give a legal shadow to do so.<sup>126</sup>

An NGO called Association for Human rights in Ethiopia that based in Geneva release that, in these centers, many political detainees, as well as several high profile political prisoners who have been detained for violating ATP reported suffering various forms and degrees of ill-treatment that amount to torture.<sup>127</sup>

The Human Rights Council formerly called Ethiopian Human Rights Council also discloses the commission of torture by the security forces consecutively in its regular as well as special reports. Among the report's release so far Ato Berhanu Abebe and Ato Tesfae Kassa, 15 years old kid is the other torture victim included under the council reports.<sup>128</sup> Dan said although not separately documents, so many torture victims related to terrorism prosecution identified by the council ad it's one of the rights repeatedly violated in our country.<sup>129</sup>

In addition to reports release by different independent bodies, the government itself currently admitted different violations including torture been committed by the government. Prime

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<sup>122</sup> Interview with torture victim, name confidential, (23 November 2019, Addis Ababa)

<sup>123</sup> HRW (n 113)

<sup>124</sup> Interview with Dan Yirga (n 112)

<sup>125</sup> CAT (n 95) Para.10

<sup>126</sup> Ibid

<sup>127</sup> EHRP (n 111)

<sup>128</sup> Ethiopian Human Right Council, Human right situation in Ethiopia, 12<sup>th</sup> report, (November 1997), p. 17

<sup>129</sup> Interview with Dan Yirga, (n 112)

Minister Dr' Abiy in his 22 June 2018 speech to the parliament admitted that the government used to torture and did other unlawful techniques on suspects and acknowledging that such techniques amounted to terrorism by the state government itself.<sup>130</sup>

Besides, in December 2018, Ethiopia's state broadcaster aired a documentary focusing on human rights violations committed by security services over the years.<sup>131</sup> Although it was criticized by the right group as "trial by media" and underlined defendants' right to a fair trial, it shows on live TV to the public and the international community commission of torture by the government. Ten victims were involved in the documentary and almost all of them became under the control of the security forces concerning the anti-terrorism prosecution. A lot of human rights violations were committed on them including torture.

Stated under the documentary, there was an act of beating, electric shock, sleeping deprivations, sitting in the dark, hang upside down... etc committed on them by members of Ethiopian national intelligence and security service authority (ENISSA) to obtain information and confession and on some of the others for intimidation and coercion.<sup>132</sup> And these acts lead most of them highly physically injured and become disabled and some of them lose parts of their bodies like that of their legs, teeth, and nail and fracture of a bone.<sup>133</sup>

Currently, we heard some changes and reforms. Maekelawi for the first time unlocks to the public. But although Maekelawi is closed and lots of changes were done, according to Human Rights Watch still many other detention centers run by regional administrations, some well-known for ill-treatment and torture.<sup>134</sup> And the anti-terrorism law is still functional.

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<sup>130</sup> Awel K Allow, 'Torture, state terrorism and Ethiopia's transformation', available at <https://www.aljazeera.com/indepth/opinion/abiy-ahmed-transforming-ethiopia-face-adversity-180622112645741.html> last accessed 23 September 2019

<sup>131</sup> A documentary Aired 11 December 2018, Tuesday 2:00 pm local time on ETV which currently change into EBC Also available on YouTube <<https://www.youtube.com/watch?v=kgnLTwoOpmw>> accessed 3 November 2019

<sup>132</sup> Ibid

<sup>133</sup> Ibid

<sup>134</sup> HRW(n 113), 2019 report

## CHAPTER FOUR

### COMPENSATION TO BODILY INJURED VICTIMS OF TORTURE IN ETHIOPIA: THE LAW AND THE PRACTICE

#### 4.1. INTRODUCTION

Principally, there is no legal remedy where there is no breach of a legal right.<sup>135</sup> Thus there should be a breach of a legal right. And freedom from torture as already noted under chapter three of this paper is one among rights given protection under different domestic laws as well as international human rights instruments which our country Ethiopia is a state party. As a result, the commission of torture is a clear breach of a legal right. On the other hand, there is ancient maxim Ubi jus, ibi remedium (where there is a right there is a remedy) by suit or action at law whenever that right is infringed.<sup>136</sup> Thus if there exists a breach then there should be a remedy. And as already noted under chapter two of this paper, one form of remedy is compensation.

So, this chapter is dedicated to discussing the law and practice of entitlement of compensation for torture victims in Ethiopia.

#### 4.2. ETHIOPIAN LEGAL FRAMEWORK OF COMPENSATION FOR BREACH OF FREEDOM FROM TORTURE

We have no comprehensive independent law that regulates the issue of compensation claim for violation of human rights so does for the violation of freedom from torture. But we have some domestic laws as well as regional and international instruments that the country had ratified and that prohibited torture and entitled compensation as part of redress to victims.

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<sup>135</sup> Daniel Friedman, *Rights and Remedies, Comparative Remedies for Breach of Contract* (Hart Publishing Oxford & Portland, Oregon, 2005)8

<sup>136</sup> Oxford reference, available at <http://www.oxfordreference.com/view/10.1093/oi/authority.20110803110448446>, accessed 5 October 2019

#### 4.2.1. TORT LAW

Tort law is not principally designed to resolve claims for damages involving breaches of human rights. But it could be applied when there is breach of human rights because the two areas of law share common underlying functions and protect similar fundamental interests.<sup>137</sup> However, remedies in human rights law are distinguished from that of tort law. While tort law safeguards people against injustices that may be inflicted by anyone, human rights law is specifically concerned with the state and its constituent public authorities.<sup>138</sup> But it provides for a remedy by awarding, inter alia, compensation to the victim when his or her rights and interests protected by the Constitution and other laws are violated.

Our tort law is incorporated under title thirteen of the civil code.<sup>139</sup> It included different provisions which are important concerning the claim of compensation for victims of human rights violation.

The Ethiopian government while sending its initial report in 2009 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.”<sup>140</sup>*

Accordingly, torture victims can institute civil suit for claiming compensatory remedy directly from the perpetrators for any damage he causes to another by his fault and also from the state in

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<sup>137</sup> Jason N. E. Varuhas, ‘Tort-Based Approach to Damages under the Human Rights Act 1998’, (2009) The Modern Law Review, Vol. 72, No. 5, 750, 751

<sup>138</sup> Du Bois, Francois, ‘Human Rights and the Tort Liability of Public Authorities’, (University of Nottingham, 2011), Law Quarterly Review, Vol. 127, 588, 594

<sup>139</sup> The Civil Code of the Empire of Ethiopia, Proclamation No. 165 of 1960, Negarit Gazeta, art 2027 and the following

<sup>140</sup> UN Committee Against Torture (CAT), 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, 16 February 2010, CAT/C/ETH/1, Para 60

vicarious liability if it's a professional fault.<sup>141</sup> To begin with, the code stated that any civil servant or government employee shall make good any damage he causes to another by his fault.<sup>142</sup> And a person commits a fault where he acts or refrains from acting in a manner or in conditions that offend morality or public order.<sup>143</sup> The Infringement of law is also a fault.<sup>144</sup> Accordingly, a person commits an offense or fault where he infringes any specific and explicit provision of a law, decree or administrative regulation.<sup>145</sup> And for infringement of any laws, be it federal or state, as the case may be, is deemed to be a fault and gives rise to liability. This includes breach of law that guarantees freedom from torture. So, this applies to a civil servant or government employee like a police officer 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.

On the other hand, where the fault committed on the victim by a civil servant is a professional fault; the state will be vicariously liable. Hence, the victim may claim compensation from the State.<sup>146</sup> Then the State may subsequently claim from the servant or employee at fault. 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.<sup>147</sup>

Generally, using the tort law incorporated under the civil code, victims of torture can institute compensation either directly from the civil servants or government employee who is in fault or from the state if the servant or employee commits the act in a way that amounts to a professional fault.

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<sup>141</sup> Ibid

<sup>142</sup> Civil Code (n 139) Art 2126(1)

<sup>143</sup> Ibid, Art 2030(1)

<sup>144</sup> Ibid, Art 2035

<sup>145</sup> Ibid

<sup>146</sup> Ibid, Art 2126(2)

<sup>147</sup> Ibid, Art 2127(1)

#### 4.2.2. THE FDRE CONSTITUTION

In countries where the right to compensation for breach of freedom of torture is recognized in the constitution, victims have the opportunity to invoke the constitution in their claims for compensation, and courts grant the remedies accordingly. For instance, the Yemen constitution in addition to declaring the act of torture punishable, it indicates compensation to be provided to any person who suffers harm as a result of the violation.<sup>148</sup> But in our case, the right to compensation is not incorporated under our constitution. No clear and independent provision under the constitution guarantees a remedy for a human rights violation. These leave a big hole in the enforcement of human rights incorporated under the constitution. But the absence can't justify, need to find out other possible ways.

The constitution stipulated that “Everyone has the right to bring a justiciable matter and to obtain a decision or judgment by, a court of law or any other competent body with judicial power”,<sup>149</sup>. Thus Torture victim’s compensation claim needs to be justiciable to bring to judicial and quasi-judicial bodies and get enforcement.

Article 13(1) of the Ethiopian Constitution establishes the duty of all federal and state legislative, executive and judicial organs to respect and enforce fundamental rights and freedoms.<sup>150</sup> The duty of the judiciary to enforce rights is an expression of the justiciability of the fundamental rights and freedoms provided by the Constitution.<sup>151</sup> Thus freedom from torture as a bill of right under the constitution is justiciable. The problem is the right to compensation is not stipulated under the constitution. Thus needs another mechanism.

The constitution proposed the opportunity for enforcement of rights guaranteed under international human right instrument under which the country is a state party by making international human rights treaties ratified by Ethiopia as part of the domestic law of the country. This helps to guarantee enforcement of human rights which are not expressly guaranteed under

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<sup>148</sup>Yemen: Constitution [Yemen], 10 February 2001, art 48(b) and art 48(e)

<sup>149</sup>FDRE (n 82), art 37

<sup>150</sup> Ibid, Art 13(1)

<sup>151</sup>Yeshanew Sisay, ‘The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia’ Vol. 8, No. 2 (2008). *African Human Rights Law Journal* 273,277

the constitution. It states; "All international agreements ratified by Ethiopia are an integral part of the law of the land."<sup>152</sup> Among these treaties ratified by the country so far are treaties that prohibit torture and entitle torture victims the right to raise compensation claims. These include ICCPR and CAT.<sup>153</sup> Thus concerning rights that are not expressly guaranteed in the Bill of Rights like that of the right to compensation, the provisions of the treaties shall be taken as Ethiopian law and can be directly applied based on this provision. Besides, Article 3(1) of the Federal Courts Proclamation specifically provides that federal courts shall have jurisdiction over international treaties and article 6(1) of the same proclamation states that federal courts shall settle cases or disputes submitted to them based on, among others, international treaties.<sup>154</sup> This shows that our court has jurisdiction to entertain claims emanate from international human rights treaties ratified by the country.

So the other mechanism that victims of torture can raise to institute cause of action for claim of compensation in addition to tort law is by raising international human rights instruments ratified by the country that entitle compensation for victims of torture.

#### **4.2.3. FDRE CRIMINAL CODE**

The Criminal Code of Ethiopia envisages a possibility whereby victims of crimes may be entitled to compensation for damages. The code stated that:

*Where a crime has caused considerable damage to the injured person or those having rights from him, the injured person or the persons having rights from him shall be entitled to claim that the criminal be ordered to make good the damage or to make restitution or to pay damages by way of compensation<sup>155</sup>.*

It put entitlement for injured parties to claim compensation for the damage they suffer because of the offense committed on them without putting any distinction on the type of

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<sup>152</sup> FDRE (n 82) Art 9(4)

<sup>153</sup> The country became a party to ICCPR in 11 June 1993 and to CAT in 14 March 1994

<sup>154</sup> Federal Courts Proclamation, Proc. No. 25/1996, Federal Negarit Gazeta 2nd Year No 13, art 3(1) and art 6(1)

<sup>155</sup> Criminal Code (n 94), art 101

crime committed which includes torture victims for the damage they suffer due to the act committed on them as torture is one type of crime incorporated under the code.<sup>156</sup>

#### **4.2.4. CRIMINAL PROCEDURE CODE**

The code states that:

*Where a person has been injured by a criminal offense, he or his representative may at the opening of the hearing apply to the court trying the case for an order that compensation is awarded for the injury caused.*<sup>157</sup>

As stated above the criminal code entitle injured person due to the criminal offenses committed on them the right to claim compensation. And the criminal procedure code stated that the injured parties or his or her representative may at the opening of the hearing apply this claim to the court trying the case.

Victims of torture can bring compensation claims in civil court separately if not institute the claim based on the criminal procedure code to the court trying the criminal case because the civil court can see cases without bond by an acquittal or discharge of the perpetrators by a criminal court.<sup>158</sup> As a result, if victims choose to institute the claim separately, the civil procedure code will be applied.

### **4.3. THE PRACTICE OF THE RIGHT TO COMPENSATION FOR BODILY INJURED VICTIMS OF TORTURE IN ETHIOPIA: FOCUS ON TERRORISM SUSPECTS**

#### **4.3.1. INTRODUCTION**

It's uncommon to hear enforcement of human rights using the constitution as well as international human rights instruments in our courts even though they are mandated under the constitution and other domestic laws.<sup>159</sup>“Judges at federal and regional level think that they have

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<sup>156</sup> Ibid, art 424

<sup>157</sup> Criminal procedure code (n 87) Art 154

<sup>158</sup> See Civil code (n 139), art 2149

<sup>159</sup> See FDRE (n 82), art 13(1); and Federal Court Proclamation (n 154) art 3(1) and art 6(1)

little or no role in interpreting the provisions of human rights enshrined in the Constitution”<sup>160</sup>. Litigants, as well as courts, avoid referring to international human rights instruments ratified by Ethiopia even in cases where they are directly relevant.<sup>161</sup> This is among other things due to the fact that the full texts of the treaties have not been published in the official gazette of the state.<sup>162</sup> And ICCPR and CAT which are among international human rights treaties ratified by Ethiopia that can be applied to bridge the constitution hole regarding compensation claim for torture victims are one among treaties not published under the Federal Negarit Gazeta. There has been extensive contest whether ratification alone suffices for domestication or publication in the Federal Negarit Gazeta is required for the incorporation of ratified international human rights treaties. With this point, Idris argue that courts may only take judicial notice of international instruments upon publication of the full body of the instrument in the Negarit Gazetta.<sup>163</sup> This argument is based on the constitutional duty of the president to proclaim in the Negarit Gazetta all laws and the international instruments ratified by Ethiopia.<sup>164</sup> On the other side, yeshanew argue that a specific proclamation with the title of the treaty is usually issued upon the ratification of a certain international treaty by the HPR.<sup>165</sup> They never reproduce the full text of the treaty in question and translate them into the official languages of the country.<sup>166</sup> Again article 2(2) and Article 2(3) of the Federal Negarit Gazette Establishment Proclamation says all laws of the federal government shall be published in the Federal Negarit Gazette so then all federal or regional legislative, executive and judicial organs, as well as any natural or juridical person, shall take judicial notice of laws published in the Gazette.<sup>167</sup> Accordingly, he argued that the provisions apply to federal laws, while the provisions of the Federal Courts Proclamation,

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<sup>160</sup> Assefa Fiseha (2010) “The Concept of Separation of Powers and Its Impact on the Role of the Judiciary in Ethiopia”. Ethiopian Constitutional Law Series, Vol. 3, AAU Press.p.25

<sup>161</sup> Sisay (n 151) 286

<sup>162</sup> Ibid 287

<sup>163</sup> Ibrahim Idris, ‘the place of international human rights conventions in the 1994 Federal Democratic Republic of Ethiopia constitutions’, (2002) 20 Journal of Ethiopian Law 113,125

<sup>164</sup> FDRE (n 82) art 71(2)

<sup>165</sup> Sisay (n 151), 287

<sup>166</sup> Ibid, 288

<sup>167</sup> Proclamation to Provide for the Establishment of the Federal Negarit Gazeta, Proclamation 3/1995, Negarit Gazeta, art 2(2) and 2(3)

defining the jurisdiction of federal courts and the substantive laws they apply, refer to international treaties as a different set of laws than federal laws.<sup>168</sup> This means that ratified treaties are not part of the federal laws that must be published in the Negarit Gazette in accordance with article 2(2) of the Establishment Proclamation.<sup>169</sup> Thus international treaties ratified by Ethiopia may be applied by federal courts irrespective of their publication in the official gazette.<sup>170</sup>

Practically, there are very limited cases in which provisions of international instruments are applied by our courts.<sup>171</sup> On 6 November 2007, the Cassation Division of the Federal Supreme Court passed a landmark decision mentioning CRC that has set a precedent for the future application of international human rights treaties by courts of law in Ethiopia.<sup>172</sup> But generally, the application of international human rights treaties in our courts is still at the infant stage.

#### **4.3.2. PRACTICE OF TORTURE VICTIMS COMPENSATION CLAIM: THE CASE OF BODILY INJURED TERRORISM SUSPECTS**

Looking torture victim's compensation claim specifically, it is unusual to see torture victims seeking compensation before our courts just like other kind of human rights claims. In the initial report sends by the Ethiopia government to the CAT committee in 2009, the report didn't include any information about whether compensation claim instituted and awarded throughout the country for torture victims. As a result, the committee expressed its concern under the concluding observation.<sup>173</sup> But the government kept quiet.

Currently, after the coming of Prime Minister Abiy government, we heard that so many torture perpetrators including Abdi Iley, former president of the Somali region and so many others

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<sup>168</sup> Sisay (n 151)287

<sup>169</sup> (n 167), Art 3(1) and 6(1)

<sup>170</sup> Sisay (n 151) 287

<sup>171</sup> Like in *Dr. Negaso Gidada v the House of Peoples' Representatives and the House of Federation*; Federal High Court, and first decision in the trial of officials of the previous regime for genocide, namely, *Special Prosecutor v Col Mengistu Hailemariam & 173 Others*, Federal High Court, Criminal File 1/87, decision 9 October 1995

<sup>172</sup> *Miss Tsedale Demissie vs Mr' Kifle Demissie*, Federal Supreme Court Cassation Division, File number 23632

<sup>173</sup> CAT committee (n 95), Para. 30

brought to justice and their cases are still pending. But we never heard about compensation claims instituted by torture victims in a court of law and awarded compensation.

A group of experts gathered from a different sector of the government headed by the Federal Attorney General prepared the draft of the 2<sup>nd</sup> and the 3<sup>rd</sup> Ethiopian periodic report to the CAT committee a couple of months ago and make it open for discussion. As stipulated under the draft, there is no mentionable case where compensation was paid for torture victims in our courts.<sup>174</sup> Based on the exploration conducted by the group, there are no any compensation claims that have been filed in our courts by torture victims so far.<sup>175</sup>

However, there are some kinds of progress. After the coming of the new Prime Minister following the arrest and prosecution of senior members of the security and law enforcement agencies and the subsequent dropping of charges against several accused persons, federal and regional governments have taken a series of measures to provide compensation and rehabilitation to victims of torture.<sup>176</sup> These measures consisted primarily of the provision of free public housing or land, creation of job opportunities and in some cases monetary support.<sup>177</sup> Although looking such kind of move is appreciable, it's not enough to say it amounts to compensation in the legal sense of the term. Because compensation awarded to a victim should be sufficient to compensate for any economically assessable damage resulting from torture.<sup>178</sup> This may include:

*reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; pecuniary and non-pecuniary damage resulting from the physical and mental harm caused; loss of earnings and earning potential due*

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<sup>174</sup> Draft CAT/C/ETH/2<sup>nd</sup> and 3<sup>rd</sup> periodic report, Para 137

<sup>175</sup> Interview with Awel Sultan, Senior Federal Prosecutor and Coordinator of Training and Awareness Raising Team as well as a member of a group of expert in charge of preparing the 2<sup>nd</sup> and 3<sup>rd</sup> CAT periodic report, (October 30, 2019, Addis Ababa)

<sup>176</sup> (n 174) Para 73

<sup>177</sup> Ibid

<sup>178</sup> (n 54), Para 10

*to disabilities caused by the torture or ill-treatment; and lost opportunities such as employment and education.*<sup>179</sup>

Thus, it can be taken as good as an initial move but it's hard to call it sufficient compensation.

In addition to the above initiation by both the federal and regional governments, other initiatives started concerning compensation for torture victims. We heard that "Hundreds of torture victims are about to suit the state for compensation after suffering at the hand of security forces".<sup>180</sup> And a group of lawyers is gathered to study the problem and as Amaha Mekonen, one among the lawyers, said they are about to institute civil suit against the government.<sup>181</sup> Besides, taking advantage of the reform, different prisoners associations have been established here and there with the aim of supporting ex-prisoners of which most of them are released by amnesty given by the government. One among these associations is called Addis Ababa political prisoners association (የአዲስ አበባ የፖለቲካ እስረኞች ማህበር). This association was established in the 2010 Ethiopian calendar by former prisoners who have been prosecuted and jailed by the anti-terrorism law and most of them are victims of torture so does bodily injured one.<sup>182</sup> The association was established to support ex-prisoners whose life and health ruined because of their imprisonment and torture they suffer.<sup>183</sup> And one of the ways they planned is to find ways that victims can get compensation from the government for all the suffering they been through. They tried to claim compensation from the government specifically from the city administrators but wasn't through a court of law rather they claimed informally.<sup>184</sup> Although the association still didn't get the formal legal recognition, it has got de facto recognition by the current Addis Ababa mayor Takele Uma because he arranged meeting with the members as an association in capital hotel to discuss the question the association raise and make a promise to pay the necessary

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<sup>179</sup> Ibid

<sup>180</sup> BBC, available in YouTube < <https://www.youtube.com/watch?v=puIOvKJFyGY>> last accessed Dec 19, 2018

<sup>181</sup> Interview with Amaha Mekonnen, Human Right Lawyer and board member of HRCO, (3 November 2019, Addis Ababa)

<sup>182</sup> Interview with H/Maryam, leader of the Addis Ababa political prisoners association, (November 27, 2019, Addis Ababa)

<sup>183</sup> Ibid

<sup>184</sup> Ibid

compensation claimed by the members.<sup>185</sup> But still, they got nothing. As a result, as H/Maryam, head of the association, said they currently planned to institute suit against the government to claim compensation for torture victims as well as for others who abused while they were in jail through a court of law.<sup>186</sup>

In addition to the Addis Ababa political prisoners association, other associations like that of Amhara prisoners association (ትብብር ለአካል ጉዳተኞች ማህበር) and Oromo prisoners associations were also established in 2010 and 2011 respectively.<sup>187</sup> Similar to the Addis Ababa political prisoners association, these two associations are also established to keep the right and safety of the ex-prisoners and among other things to find out ways to claim compensation for all the abuses they suffer including torture while they were in prison.<sup>188</sup> Members are not only the combination of torture victims or a terrorism suspect rather prisoners who are victims of other human rights abuses are also members of the associations.<sup>189</sup> Currently, both the associations are on the way to institute compensation claims through the court of law against the government.<sup>190</sup>

Although it's appreciable to see such kind of stir, compensation claim in a real sense of the term by torture victims, in general, hasn't been submitted to our courts despite the magnitude of the problem committed throughout the country.

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<sup>185</sup> Interview with one of the members of Addis Ababa political prisoners association, name confidential, (27 November, 2019, Addis Ababa)

<sup>186</sup> (n 82)

<sup>187</sup> Interview with kefyalew, member of the Oromo prisoners association, (November 29, 2019, Addis Ababa); and interview with kendu, member of Amhara prisoners association, (November 25, 2019, Addis Ababa)

<sup>188</sup> Interview with Debebe Moges, member of the Amhara prisoners association, (November 29, 2019, Addis Ababa)

<sup>189</sup> (n 183)

<sup>190</sup> Ibid

### **4.3.3. CHALLENGES THAT IMPEDE COMPENSATION CLAIM FROM BEING INSTITUTED IN OUR COURTS: THE CASE OF BODILY INJURED TERRORISM SUSPECTS**

#### **4.3.3.1. INADEQUACY OF DOMESTIC LEGAL FRAMEWORK ON THE CONTENT OF RIGHT TO COMPENSATION**

Having legislation is the key instrument to the enforcement of rights domestically. This is in the sense that the justifiability of right largely depends on the existence of legislation that relates to the implementation of a particular right.<sup>191</sup> It plays a crucial role in coordinating and organizing state organs and non-state actors while enforcing sets of rights. Thus, by making the content and scope of rights more specific through legislation, it is possible to make it easier for courts and other institutions in enforcing and protecting rights.<sup>192</sup>

Regarding the issue in hand, to bring a claim, the first requirement is having a law that entitles victims a right to claim compensation. Art 2 of the CAT gives direct emphasis to the adoption of legislative measures to achieve the realization of the rights enshrined under the covenant to the domestic level and the same emphasize given by the committee on CAT.<sup>193</sup>

As discuss above we have tort law and ratified human rights treaties that victims may be seeking compensation claim. The writer believes that using these laws victims can institute claims and at list, our courts should be tested using these laws. But they are not effective practically and this could be evidenced by the absence of cases in our courts. Concerning tort law as stated above torture victims may institute compensation claim using art 2035 of the code saying that there exists infringement of laws. But there are laws like the anti-terrorism law which is repressive and as stated in chapter three of this paper allows action that invites torture. So these laws don't consider such kind of issues. Besides it's not human right specific and put rights in detail manner. And regarding ratified treaties, they are not effective because as already stated, most of them are not publish into federal Negarit Gazeta and translate into the local language.

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<sup>191</sup>Sisay Bogale Kibret, 'Compensation and Legitimacy of Ethiopian courts on the Adjudication of socio- economic rights: Appraisals on challenges and prospects' (Master's Thesis, Addis Ababa university 2010) 90

<sup>192</sup> Ibid

<sup>193</sup>(n 54), Para. 20

All the interviewees from the stakeholders believe that there are no adequate laws that entitle torture victims' a right to claim compensation. In our country and they stated that the existing laws are not sufficient to apply this right in our court of law. Amaha said, what kind of civil remedy and administrative remedy victims have, what is the responsibility of the government? How the compensation will be assessed? These kinds of issues should be clearly defined in detail fashion under the law in line with international human rights frameworks.<sup>194</sup> But we have no such a law. The existing laws make a loss of confidence to bring cases to our courts.

An interviewee from the victims also stated in the same tone that there is no adequate law that victims can rely onto institute compensation claims.

Thus based on the collected data, the inadequacy of the legal framework is one of the challenges impede compensation claims from being instituted in our courts.

#### **4.3.3.2. PERCEPTION OF VICTIMS TOWARDS THE JUDICIARY**

A well-functioning judicial system is essential if people are to have access to justice.<sup>195</sup> Courts are one of the weakest institutions in our country. Their independency is always in question. This assertion is supported by the research conducted by the Ministry of Capacity Building which concluded that the general public does not believe that the judiciary is free from the influence of the executive organ of the government.<sup>196</sup> As a result, society, in general, has a bad image on them and this led them being not trustable by society. This has a strong effect on the negative perception of the public at large towards the judiciary especially on human rights-based litigation for the fact that the respondent here is the government, directly or indirectly through its branches or administrative agencies. It is further asserted by the Human Rights Watch report that the Ethiopian judiciary is weak and backward which is not in a position to stop human rights violations.<sup>197</sup>

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<sup>194</sup> Interview with Amaha Mekonen (n 181)

<sup>195</sup> OHCHR, realizing human right through government budgets, (2017) 11

<sup>196</sup> (n 191) 85; and Ministry of Capacity Building Justice Research Program Research Office, FDRE General Justice Research Program Research Report, (2005) 170

<sup>197</sup> Human rights watch, (n 113) 2003 Country Report

Regarding the issue of compensation, an interviewee from the stakeholders as well as from the victims stated that the perception of victims on the judiciary is the other challenge that makes loss confidence to institute a claim in a court of law. Amaha said, we never had confidence in our courts.<sup>198</sup> And Awel added that looking their past performance, it's hard to expect such a verdict from our courts.<sup>199</sup>

And Interviewee from the victims also states that the judiciary is not trustable because it is not independent of the executive. Melaku, one of the torture victims said that "Courts been served as the right hand of the executive. It is courts that send us to jail based on evidence collected through torture. This implies that courts accept the government wrong act of using torture to collect evidence as if it's right. So how can anybody institute compensation claim saying that wrong was committed to an institute believe that the wrong is right?"<sup>200</sup> Thus instituting compensation claims is taken wastage of time and energy. The perception makes victims hopeless to bring such a claim.<sup>201</sup>

#### **4.3.3.3. RESTRICTIVE LOCUS STANDI REQUIREMENTDS AND LACK OF INTEREST ON THE SIDE OF VICTIMS**

There is a narrow possibility of bringing justiciable matters to judicial as well as quasi-judicial bodies in our courts. The Civil Procedure Code provides, "no person may be a plaintiff unless he has a vested interest in the subject-matter of the suit."<sup>202</sup> Only someone with legal title to the right affected by the defendant's conduct could sue at law or a case on behalf of others too.<sup>203</sup> The constitution also put limited standing requirement under art 37 states, three categories of persons have the right (standing) to bring a justiciable matter to; an individual on behalf of her/himself or representing a group with whom s/he shares similar interest; an association representing the collective or individual interest of its members; and a group of persons with similar interests. Our laws do not allow action populares except by some laws like the Federal

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<sup>198</sup> Interview with Amaha Mekonen (n 181)

<sup>199</sup> Interview with Awel Sultan, (n 112)

<sup>200</sup> Interview with Melaku, (n 110)

<sup>201</sup> Interview with Awel Sultan, (n 112)

<sup>202</sup>The Civil Procedure Code of the Empire of Ethiopia, Decree No.52 of 1965, Negarit Gazeta, Art 33(2)

<sup>203</sup>Ibid, Art 38

Courts Advocates Licensing and Registration Proclamation also the HRC and Ombudsman proclamation.<sup>204</sup> Generally, the standing requirement in our case is very restrictive.

Thus coming to the issue at hand, if victims have no interest, then it is difficult for the institution of compensation claims like by human rights NGOs on behalf of them.

Based on the collected data, lack of interest on the side of victims is the other challenge impedes compensation claim form being instituted in our courts. Most of the interviewees stated that victims lack the interest to institute compensation claims for different reasons mainly because of a lack of financial capacity and fear.

Instituting claims starting from court fee up to pay for a lawyer if want any, cost money. Ermiyas, one of a torture victim, says most of the prisoners who are prosecuted under the terrorism law, their property were taken away when they are taken under the control of the police.<sup>205</sup> Then when they release from jail, let alone institute claim, fulfilling their basic needs is also difficult for them.<sup>206</sup> Thus lack of financial capacity is one reason. The other reason is the fear of victims that instituting claims may bring another problem. All the victims covered under this study are prosecuted by the anti-terrorism proclamation after the coming of the proclamation which is very near and their wounds are still fresh. And Legese said, most perpetrators are still in power as a result, victims think that instituting claims may bring payback.<sup>207</sup>

Dan said victims fear to disclose what happened to them especially those who sexually abused one.<sup>208</sup> They prefer to keep it secret. And Amaha said, if they don't support by NGOs or other concerned bodies, it's difficult for them to institute such kinds of claims.

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<sup>204</sup> The Federal Courts Advocates Licensing and Registration Proclamation also the HRC and Ombudsman proclamation

<sup>205</sup> Interview with Ermiyas, torture victim, (22 November 2019 Addis Ababa)

<sup>206</sup> Ibid

<sup>207</sup> Interview with Legese W/Hana, torture victim, (22 November 2019 Addis Ababa)

<sup>208</sup> Interview with Dan Yirga, (n 112)

#### **4.3.3.4. LACK OF EVIDENCE**

If cruelty is the worst thing that humans do to each other, torture is the most extreme expression of human cruelty. It causes misery on the victim's life and ends up them with physical and psychological hardship.

Talking about torture victims' bodily injury, which is the focus of this paper, based on data collected by the writer, in instituting compensation claims presence of evidence in the court of law to prove the commission of injury is difficult. This is because, Amaha said, mostly injured victims not taken to the hospital early because they purposely hide by the perpetrators. So their injury may cure by itself. Then at the end of the day when the claim of compensation tried to institute, it will be difficult to get medical evidence and present it to the court of law to prove the existence of injury especially in case of minor injuries.<sup>209</sup> Thus, the nature of the violation by itself impedes victims from initiating claims.

#### **4.3.3.5. LACK OF AWARENESS**

An interviewee from the stakeholders' stated that there is a lack of awareness about the compensation right entitled to torture victims. This is one of the rights that haven't worked so much in our country. Adham, director of human rights commission monitoring directorate, said that there is a lack of awareness about this right and such kind of claim has never come to the commission although it investigates a lot of torture cases.<sup>210</sup> The level of understanding of this right is very low and taking such kind of claim by the victims might be taken as craziness.<sup>211</sup> There is a huge gap in awareness of this right.<sup>212</sup>

Among interviewees from victims of torture stated that there is a lack of awareness on the side of victims about the entitlement of this right. Thus this could be taken as one reason why compensation claims absence in our courts.

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<sup>209</sup> Interview with Amaha Mekonen (n 181)

<sup>210</sup> Interview with Adham Duri, (n 112)

<sup>211</sup> Interview with Amaha Mekonen (n 181)

<sup>212</sup> Ibid

#### 4.3.3.6. BUDGETARY CONSTRAINT

States have obligations under international human rights law to respect, protect and fulfill human rights and to make available the necessary resources to do so. Government obligation to fulfill contributes among other things through a human right based budget.<sup>213</sup> The government's budget is an essential means for the realization of human rights.<sup>214</sup>

In the issue at hand, in the compensation claim instituted by torture victims, the defendant is the government. Thus if victims win the case, then there should be some source of money that can be taken to award victims. And the government budget is one of the important sources.

Coming to our situation, the government never set a budget for an issue like human rights that can serve as a reward when victims awarded through a court of law. Solomon, Senior Federal Prosecutor and Drafter of the legislation said even though cases instituted in courts and the courts decide the compensation to be awarded for victims, there are no clear budget sources from which victims could be awarded.<sup>215</sup> As a result, the feasibility of enforcement of such a claim falls under question. This situation could make claimants disparate to institute compensation claims through a court of law.

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<sup>213</sup>OHCHR (n 195)7

<sup>214</sup> Ibid

<sup>215</sup> Interview with Solomon Getachew, Senior Federal Prosecutor and Drafter of Legislation, (3 November 2019 Addis Ababa)

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.1. CONCLUSION**

Freedom from torture is one among rights given absolute protection internationally and acquires the status of peremptory norm; as a result, it cannot justify by any reason. But this absolute nature is subjected to question because of the act of state commission of torture for different reason including in the fight against terrorism. Different states including Ethiopia following the war on terror declare by USA, enact anti-terrorism laws. But these laws have been criticized for being repressive on the enjoyment of human rights including have an impact on the enjoyment of freedom from torture.

Containing five chapters, this study examines the right to compensation for torture victims specifically on bodily injured terrorism suspects in Ethiopia. It specifically addresses the law and the practice domestically.

Starting from the international arena, different international and regional legal frameworks prohibit torture as well as gives entitlement of compensation for torture victims. These frameworks mainly include ICCPR, UDHR, CAT, ACHPR, ECHR, and ACHR.

Speaking of the protection of freedom from torture domestically, different domestic legal and policy frameworks forbid torture. Regarding the law, we have the FDRE constitution and the FDRE criminal code. But both have their own drawbacks. To begin with, the constitution prohibits inhuman treatment under article 18 but does not use the very language of torture. As a result, it raises controversy about whether freedom from torture is included under this provision. But the constitution also contains other important provisions regarding the protection of freedom from torture like states that commission of torture shall not be barred by the statute of limitation and prohibition from commute by amnesty or pardon. On other hand, the criminal code gives protection by criminalizing torture but it's limited in scope than the definition of torture under international Conventions like CAT, as it covers only some of the purposes envisaged in article 1 of the CAT and applies only to acts committed in the performance of duties by public servants.

There are some policies also prohibit torture like that of the NHRAP and the criminal justice policy. But both of these instruments also use the term inhuman treatment; not torture like that of the FDRE constitution. But most importantly we have art 9(4) of the FDRE constitution that makes ratified human rights treaties part of the domestic law. And these instruments include treaties that give absolute protection for freedom from torture.

Despite these prohibitions made by the existing legal framework, according to different local and international human rights organizations report, there is a high level of torture in our country including on individuals suspected of terrorism. According to these reports and based on the current government admission, after the coming of the anti-terrorism proclamation of Ethiopia, so many individuals had been tortured connecting to terrorism prosecution. This is mainly due to the reason that the proclamation contains provisions that give legal cover for the commission of torture on those suspected of terrorism. These provisions include the provision that allows admissibility terrorism-related intelligence report that does not disclose its source or the methods. This shows that evidence collected through torture is also admissible as it doesn't give a place for the method of collection of evidence.

Torture is a violation of the human right and it can cause victims to undergo both physical and psychological hardship. Accordingly, victims of the violation need to be compensated based on the principle 'Ubi use ibi remedy', where it is right, there is a remedy.

Having this in mind, the researcher tried to find out the existence of the legal and institutional frameworks that allow torture victims to institute compensation claims and enforce their rights in our country. Based on the finding, there are no adequate laws that clearly entitle torture victims to institute compensation claims. But the tort law, the Federal criminal code and ratified international human rights treaties by the country, may help victims for seeking a compensatory remedy.

Practically speaking, based on the limited research conducted by the writer, in spite of the existence of a high level of torture throughout the country, compensation claim has never been instituted in our courts and no torture victims have been awarded compensation so far let alone for bodily injured terrorism suspect torture victims but also torture victims in general.

Based on the finding of this study, different challenges can be mention as a barrier that impedes compensation claims from being instituted by these victims.

First the fact that most of the ratified treaties like ICCPR and CAT that recognize compensation right for torture victims are not published in Negarit Gazeta is one challenge for the non-applicability of these treaties. These is because Proclamation No.3/1995 (Article 2(3)) requires a law including international human rights treaties to be published in the official law gazette before it comes to have legal force. As a result, it's difficult to institute claims using these human rights treaties.

The other challenge is the Inadequacy of domestic legal frameworks that entitle torture victims the right to compensation. As already stated, the existing laws are not enough and this can be evidenced from the absence of cases in our courts. Perception of victims towards the judiciary, as weak, not dependent from the executive is the other challenge identified in this paper.

Lack of awareness on victims about the entitlement of this right and the nature of the violation being difficult to prove in a court of law is the other challenge.

Although courts award compensation for victims, then the enforcement will be difficult because the government never set a budget for issues like compensation. Thus this might make victims hopeless to institute claims; and lastly, lack of interest on the side of victims due to lack of financial capacity to institute compensation claim and fear that instituting claims might be bringing another problem. Because based on the finding, all the victims are prosecuted by the anti-terrorism proclamation and tortured after 2009 and their wounds are still fresh and they think that most perpetrators are still in power. Thus victims fear that instituting claim may bring payback;

Although compensation claims are absence in our courts, currently there are some moves on the issue of the establishment of different prisoners associations with the objective of among other things claiming compensation. And after the current reform, federal and regional governments have taken a series of measures to provide compensation and rehabilitation to victims of torture consisted primarily of the provision of free public housing or land, creation of job opportunities and in some cases monetary support. But this does not amount to compensation in the legal sense of the term. Because according to CAT, compensation awarded to a victim should be sufficient

to compensate for any economically assessable damage resulting from torture. Although having something is better than nothing, it's not enough to say compensation claim is exercising in our country.

Awarding compensation for torture victims is one among obligations Ethiopia enters internationally while ratifying treaties. But we haven't seen their applicability in reality and thus they should be tested in our courts.

## **5.2. RECOMMENDATION**

Based on the above findings of the study, the researcher forwards the following recommendations

### **1. To the government**

- ❖ Amendment of the anti-terrorism proclamation

Based on the finding, this proclamation is one of the repressive laws and contains provisions that indirectly allow commission of torture. As a result, the government should revise this law. Currently, the proclamation is under reform; as a result, the writer suggests that those provisions like art 21, art 23(1) and (5) that give a legal cover for the commission of torture need to be amended.

- ❖ Establishment of a parliamentary human right screening committee

The writer suggests the establishment of parliamentary committees in charge of screening the compatibility of draft bills with requirements of human rights.

- ❖ Education of Security Officers about Human Right and modernize police investigation methods;
- ❖ Legal aid services should be provided for those victims who can't afford to get legal service. And voluntary fund for victims of torture should be established to support torture victims financially including to give support to those victims who can't afford to institute compensation claims.
- ❖ Publication of international human right treaties in the Federal Negarit Gazeta;

- ❖ The government must set a clear budget used for issues like compensation that can be used to cover when compensation award is given to victims through the court of law.
- ❖ The writer suggests art 424 of the criminal code that criminalizes torture shall be amended to be in line with the CAT definition of torture.
- ❖ It's better if art 18 of the FDRE constitution amended and include the language of torture instead of only inhuman treatment to assure clear constitutional guarantee for freedom from torture.

## 2. **To the judiciary**

- ❖ Courts must play an active role and apply the ratified treaties, tort law and other laws to enforce compensation claims instituted by torture victims.

## 3. **To the EHRC and HRCo**

- ❖ As already stated, the existing dispersed laws are not practically effective to secure the implementation of the torture victim's compensation claims. Accordingly, these institutions should Lobby for the enactment of clear and independent law for the Prohibition of Torture Act and entitlement of compensation for torture victims in line with international human right treaties
- ❖ These institutions should make awareness creation for victims about the right to claim compensation.

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Interview with Befikad Wackjera, senior human right investigator in human right council, (October 27, 2019, Addis Ababa)

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## ANNEX I

### Annex I: Interview Questions for victims of torture

#### Interview Questions for bodily injured Victims of Torture in anti-terrorism prosecution

I am Seblewongel Tamiru and a graduating student at Addis Ababa University School of Law, LL.M in Human Rights. I am working my LL.M thesis on the title “Compensating Victims of Torture in Ethiopia: The Case of Bodily Injury in Anti-Terrorism Prosecution”. The very purpose of this interview is for an academic qualification. I assure you that every profile and the contents of your interview will be kept confidential.

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Sex: \_\_\_\_\_

1. How, when, why and by whom was the act of torture happen on you?
2. When was the act end?
3. Have you ever think of bringing your perpetrator to justice? If not, what is your reason?
4. Do you believe that victims of torture like you need to be compensated? If so, who should be responsible for the payment?
5. Have you ever think of instituting prosecution in relation to claiming compensation for all the pain you been through? If not, what is your reason?
6. What kind of problems you think hinders torture victims like you from instituting prosecutions for clamming compensation?
7. What solution do you suggest on how can the practice of awarding compensation for torture victims can be strengthened/improved?

## ANNEX II

### Interview questions for officials of human right commission

#### Interview Questions for members of the Ethiopian Human Rights Commission investigation Directorate

I am Seblewongel Tamiru and a graduating student at Addis Ababa University School of Law, LL.M in Human Rights. I am working my LL.M thesis on the title “Compensating Victims of Torture in Ethiopia: The Case of Bodily Injury in Anti-Terrorism Prosecution”. The very purpose of this interview is for an academic qualification. I assure you that every profile and the contents of your interview will be kept confidential.

Date: \_\_\_\_\_ Name: \_\_\_\_\_ Sex: \_\_\_\_\_

Position: \_\_\_\_\_ Duration of service: \_\_\_\_\_

1. The commission is empowered to ensure that laws, regulations, and directives, as well as government decisions and orders, do not contravene the human rights of citizens guaranteed by the Constitution. From your practical experience, does the commission makes any move to challenge provisions of the Ethiopian anti-terrorism law that contravenes the human right guaranteed by the constitution?
2. Does the commission have a record of people who have been tortured in connection with the anti-terrorism prosecution after the coming in to force of the anti-terrorism law of Ethiopia? If so, how many people have been tortured so far in your record?
3. Are there challenges that hindered the Commission's performance in the area of torture? If so, what are these problems?
4. Do you believe that victims of torture need to be compensated? If so, who should be responsible for the payment?
5. The commission undertakes an investigation, upon complaint or by its own initiation, in respect of human rights violations. Have you ever done any investigation by your on initiation or complaint brought by victims of torture with the intention of compensation claim so far?

6. What are the current practices of providing remedies for torture victims in connection with the anti-terrorism prosecution in the commission?
7. How do you see the effectiveness/feasibility of exercising compensation claims by torture victims in our country?
8. What do you suggest in the ways how can the practice of compensation for torture victims be strengthened /improved in our country?

### **ANNEX III:**

#### **Interview questions for member's of human right council**

#### **Interview Questions for members of the Human Right council, Monitoring, Legal aid and Reporting department**

I am Seblewongel Tamiru and a graduating student at Addis Ababa University School of Law, LL.M in Human Rights. I am working my LL.M thesis on the title “Compensating Victims of Torture in Ethiopia: The Case of Bodily Injury in Anti-Terrorism Prosecution”. The very purpose of this interview is for an academic qualification. I assure you that every profile and the contents of your interview will be kept confidential.

Date: \_\_\_\_\_ Name: \_\_\_\_\_ Sex: \_\_\_\_\_

Position: \_\_\_\_\_ Duration of service: \_\_\_\_\_

1. From your practical experience, does the council makes any move to challenge provisions of the Ethiopian anti-terrorism law that contravenes the human right guaranteed by the constitution??
2. Does your office have a record of people who were been tortured in connection with the anti-terrorism prosecution after the coming of the anti-terrorism law of Ethiopia? If so, how many people have been tortured so far in your record?
3. Are there challenges that hindered the Council's performance in the area of torture? If so, what are these problems?

4. Do you believe that victims of torture need to be compensated? If so, who should be responsible for the payment?
5. How do you see the effectiveness/feasibility of exercising compensation claims by torture victims in our country?
6. Is there any problem that you think affect torture victims compensation claim?
7. What do you suggest on how can the practice of awarding compensation for torture victims can be strengthened/improved in our country?

## **ANNEX IV**

### **Interview questions for members of Attorney General**

Two type of question prepared for members of Federal Attorney General. The first one was for Legal Study, Drafting and Dissemination Directorate and the second one was for the Directorate of international relation to legal affair coordinates.

### **Interview Questions for members of the Federal Attorney General, Legal Study, Drafting and Dissemination Directorate**

I am Seblewongel Tamiru and a graduating student at Addis Ababa University School of Law, LL.M in Human Rights. I am working my LL.M thesis on the title “Compensating Victims of Torture in Ethiopia: The Case of Bodily Injury in Anti-Terrorism Prosecution”. The very purpose of this interview is for an academic qualification. I assure you that every profile and the contents of your interview will be kept confidential.

Date: \_\_\_\_\_ Name: \_\_\_\_\_ Sex: \_\_\_\_\_

Position: \_\_\_\_\_ Duration of service: \_\_\_\_\_

1. The general attorney undertakes legal reform studies and works as principal advisor and representative of the federal government regarding law. From your practical experience, does your office makes any move to challenge provisions of the Ethiopian anti-terrorism law that contravenes the human right guaranteed by the constitution?

2. Your office is empowered of pay visits to persons under custody at police stations and correction facilities to ensure their handling and stay is carried out in accordance with the law, cause unlawful acts to be corrected; take or cause measures to be taken based on the law against people who are found to have transgressed the law. From your practical experience, have you seen individuals who were been tortured in connection with the anti-terrorism prosecution in your visit? Did your office ever bring those perpetrators to justice?
3. Does your office have the record of people who were been tortured in connection with the anti-terrorism prosecution that you identified in your visits to police stations and correction facilities? If so, how many people have been tortured so far in your record?
4. Do you believe that victims of torture need to be compensated? If so, who should be responsible for the payment?
5. How do you see the effectiveness/feasibility of exercising compensation claims by torture victims in our country?
6. Do you think there might be a barrier that affects victims from instituting claims of compensation? If so what are these barriers?
7. What do you suggest on how can the practice of awarding compensation for torture victims can be strengthened/improved in our country?

## **ANNEX V**

### **Interview Questions for members of The Federal Attorney General, Directorate of international relation to legal affair coordinates**

I am Seblewongel Tamiru and a graduating student at Addis Ababa University School of Law, LL.M in Human Rights. I am working my LL.M thesis on the title “Compensating Victims of Torture in Ethiopia: The Case of Bodily Injury in Anti-Terrorism Prosecution”. The very purpose of this interview is for an academic qualification. I assure you that every profile and the contents of your interview will be kept confidential.

Date: \_\_\_\_\_ Name: \_\_\_\_\_ Sex: \_\_\_\_\_

Position: \_\_\_\_\_ Duration of service: \_\_\_\_\_

1. The general attorney undertakes legal reform studies and works as principal advisor and representative of the federal government regarding law. From your practical experience, does your office makes any move to challenge provisions of the Ethiopian anti-terrorism law that contravenes the human right guaranteed by the constitution??
2. Does your office have the record of people who were been tortured in connection with the anti-terrorism prosecution that you identified in your visits to police stations and correction facilities? If so, how many people have been tortured so far in your record?
3. Do you believe that victims of torture need to be compensated? If so, who should be responsible for the payment?
4. How do you see the effectiveness/feasibility of exercising compensation claims by torture victims in our country?
5. The federal attorney general is empowered to follow up on the implementation of international and regional human rights treaties ratified or adopted by Ethiopia. Accordingly, did your office ever tried to follow the implementation of treaties that prohibit torture and recognize awarding of compensation for torture victims? If so, how do you rate the implementation?
6. Do you think there might be a barrier that affects victims from instituting claims of compensation? If so what are these barriers?
7. What do you suggest on how can the practice of awarding compensation for torture victims can be strengthened/improved in our country?