



Addis Ababa University
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School of Law
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Masters of Laws (LL.M) in Human Rights Law

The Protection against Enforced Disappearance in Ethiopia

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The Protection against Enforced Disappearance in Ethiopia

*A thesis submitted in partial fulfillment of the requirements for the Award of
Master of Laws (LL. M) in Human Rights Law at School of Law, College of Law
and Governance Studies, Addis Ababa University*

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Declaration

I, Getu Saketa, hereby declare that the thesis titled, “*The Protection against Enforced Disappearance in Ethiopia*” is my original work and that it has not been submitted for any degree or examination in any other university. I also pledge that all sources used in any form are duly acknowledged.

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Approval Sheet

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Thesis Approval Sheet

The undersigned members of the examining board approved Getu Saketa's thesis,
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Dedication

To victims of enforced disappearance whose whereabouts and fate remain unknown to date, and to their families who have been expending their life in a constant anguish and longing!

*

“I live this little precious piece of life, like Abraham without dwelling in a house, and like Moses nobody knowing the site of my grave.”

-*Bealu Girma* speaking through a character *Sirak* in his novel titled in Amharic *Derasiwu* on page 209.

Quoted by Taddesse Adera, ‘From Apologist to Critic: The Dilemma of Bealu Girma’ pp. 143-144.

*

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Acronyms

ACHPR	African Commission for Human and Peoples' Rights
AI	Amnesty International
Art.	Article
ATP	Anti-Terrorism Proclamation
BBC	British Broadcasting Corporation
CAH	Crimes against Humanity
CAT	Committee against Torture
CED	Committee on Enforced Disappearance
CPED	Convention for the Protection of all Persons from Enforced Disappearance
Cr. P. C	Criminal Procedure Code
CSOs	Civil Society Organizations
Cv. C.	Civil Code
Cv. P. C.	Civil Procedure Code
EBC	Ethiopian Broadcasting Corporation
ECOSOC	Economic and Social Council
ECtHR	European Court of Human Rights
ED	Enforced Disappearance(s)
EHRC	Ethiopian Human Rights Commission
EPRDF	Ethiopian People's Revolutionary Democratic Front
ERTDRC	Ethiopian Red Terror Documentation and Research Center
FAG	Federal Attorney General
FCID	Federal Criminal Investigation Department
FDRE	Federal Democratic Republic of Ethiopia
FPC	Federal Police Commission
FHC	Federal High Court
GoE	Government of Ethiopia
HoPR	House of Peoples Representatives
HRC	Human Rights Committee
HRCO	Ethiopian Human Rights Council

HRLHA	Human Rights League of the Horn of Africa
HRW	Human Rights Watch
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICG	International Crises Group
ICL	International Criminal Law
IDPs	Internally Displaced Persons
IHL	International Humanitarian Law
IHRL	International Human Rights Law
JLAC	Justice and Legal Affairs Advisory Council
MFA	Ministry of Foreign Affairs
NHRAP	National Human Rights Action Plan
OAS	Organization of American States
OHCHR	Office of the Higher Commission for Human Rights
OLF	Oromo Liberation Front
ONLF	Ogden National Liberation Front
Proc.	Proclamation
Res.	Resolution
TGE	Transitional Government of Ethiopia
UDHR	Universal Declaration of Human Rights
UNCHR	United Nations Commission for Human Rights
UNGA	United Nations General Assembly
UNPO	Unrepresented Nations and Peoples Organization
UPR	Universal Periodic Review
USDOS	United States Department of State
WGEDA	Working Group on Death Penalty, Extra-Judicial, Summary or Arbitrary Killings and ED Enforced Disappearances in Africa
WGEID	Working Group on Enforced or Involuntary Disappearance

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Abstract

Enforced disappearance (ED) is a longstanding but neglected problem in Ethiopia. There are outstanding cases of disappearance that remain unresolved to date. This research analyzes the protection against ED under the current legal regime of Ethiopia. The research employed a hybrid of both doctrinal (desk review) and non-doctrinal (fieldwork) legal research approach. The findings of the research include gaps and challenges such as lack of criminalization of ED and failure to resolve outstanding cases of past disappearances and continuing trends of disappearance. Besides, there is no adequate legal protection against ED in Ethiopia notwithstanding some promising developments such as Ethiopia's expression of interest to ratify CPED and establishment of the Reconciliation Commission. Last, the research submits that the GoE should take necessary policy, legal and institutional measures towards the protection of all persons from ED.

Key terms: *Ethiopia, enforced disappearance, secret detention, the right to know the truth*

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The term ‘enforced disappearance’ (herein after “ED”), which is also called “forced disappearance” or “involuntary disappearance”, is for the first time addressed in the human rights context to describe the widespread disappearances perpetrated by Latin American authoritarian regimes in the 1960s and 70s.¹ The term is a direct translation of the Spanish expression “*desaparicion forzada*”, which means, "to have disappeared."² The official practice of ED has its roots in the *Nacht und Nebel* (Night and Fog) decree issued on December 7, 1941 by the German *Fuhrer*, Adolph Hitler, as an effective tool of intimidation and deterrence against an accused, which keeps its relatives and the general population in mystery as to his or her fate and whereabouts.³

In 1979, the United Nations General Assembly (UNGA) in a resolution entitled "Disappeared Persons" expressed its concern over reports from various parts of the world relating to disappearances of persons and requested the United Nations Commission for Human Rights (UNCHR) to make appropriate recommendations.⁴ Consequently, on February 29, 1980, the UNCHR established a special mechanism designated as “Working Group on Enforced or Involuntary Disappearance” (WGEID) by resolution 20 (XXXVI) for a period of one year.⁵ This

¹United Nations Commission for Human Rights (UNCHR) ‘Report by the Independent Expert, Mr. Manfred Nowak’ (8 January 2002) UN Doc. E/CN.4/2002/71, para 8.

²Matthew Lippman, ‘Disappearances: Towards a Declaration on the Prevention and Punishment of the Crime of Enforced or Involuntary Disappearances’ (1988) 4 CONN. J. INT’L L. 121, 1.

³‘Trials of War Criminals before the Nuremberg Military Tribunal under Control Council Law No 10: Nuremberg, October 1946-April 1949’ (1951)75-76 <https://www.loc.gov/frd/Military_Law/pdf/NT_war-criminals_Vol-III.pdf> accessed 06 March 2019.

⁴UNGA Res. 33/173 (20 December 1978) A/33/509.

⁵UNCHR, ‘Disappeared Persons’ Res. 20 (XXXVI) (29 February 1980) E/CN.4/1408.

Working Group is the first thematic mechanism created within the auspices of the UN Human Rights System and operating to date.⁶

An effort to develop a binding legal instrument for protection against ED was first achieved regionally by an Inter-American Human rights System. This was realized in 1994 through the adoption of the ‘Inter-American Convention on Forced Disappearance of Persons’ (the 1994 Inter-American Convention).⁷ Globally, the UN recorded milestone achievements in setting up a normative standard to combat ED apart from devising the aforementioned thematic mechanism. In this regard, the remarkable successes include the adoption of the UN Declaration on the Protection of All Persons from ED (the 1992 UN Declaration)⁸ and the International Convention for the Protection of All Persons from Enforced Disappearance (CPED).⁹ The Rome Statute of International Criminal Court (the Rome Statute of ICC) is also noteworthy for it recognizes ED as an international crime, which constitutes a Crime against Humanity (CAH).¹⁰

The definition of ED provided by the CPED is the most widely cited one, which goes as:

ED is considered to be the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate and whereabouts of the disappeared person, which places such a person outside the protection of the law.¹¹

⁶An Vranckx, ‘Long Road towards Universal Protection against ED’ (2007) IPIS 7.

⁷Inter-American Convention on the Forced Disappearance of Persons, (adopted 9 June 1994 and entered into force 28 March 1996) OAS Treaty Series No. 68, 33 ILM.

⁸Declaration on the Protection from ED, UNGA/Res./47/133 (18 December 1992) UNTS Vol. 500, No. 7310 (adopted by consensus).

⁹International Convention for the Protection of All Persons from Enforced Disappearance (adopted on 20 December 2006 and entered into force on 23 December 2010) GA. Res. 61/177, U.N. Doc. A/RES/61/177.

¹⁰Rome Statute of International Criminal Court (adopted 17 July 1998 and entered into force on 1 July 2002) UNTS, Vol. 2187, No. 38544, Article 7(1.i) & (2.i).

¹¹CPED (n 9) Article 2.

The pioneer achievements of the CPED comprise the creation of an absolute ‘right not to be subjected to ED’;¹² ‘the right not to be held in a secret detention’;¹³ and ‘the right to know the truth’¹⁴ in addition to adoption of globally binding definition of ED.¹⁵ Today, CPED is from among the core international human rights treaties.¹⁶ It now counts 98 signatories and 63 parties.¹⁷

Coming to Ethiopia, the phenomenon of disappearance has a long history, dating back to the imperial period.¹⁸ During the reign of Emperor *Haile Silassie I*, there is a claim that hundreds of men were kidnapped and taken away every year, of which girls were taken to palace for a sacrifice on the Emperor’s birthday.¹⁹ However, there is no systematic record of the disappearances before 1974.

Widespread practice of ED against public figures, opponents and insurgents has been reported in the 17 years period of *Derg* (1974-1991).²⁰ There are some known figures claimed to have been disappeared during this period. These include *Abuna* (Archbishop) *Tewoflos* - former Patriarch of the Ethiopian Orthodox Church; Reverend *Gudina Tumsa*, General Secretary of the Ethiopian Evangelical Mekane Yesus Church (EEMYC); and *Bealu Girma*, a well-known writer and

¹²Ibid Article 1.

¹³Ibid Article 17(1).

¹⁴Ibid Article 24(2).

¹⁵Ioanna Pervou, ‘The Convention for the Protection of All Persons from Enforced Disappearance: Moving Human Rights Protection Ahead’ (Spring/Summer 2012) 5EJLS Issue1, 129.

¹⁶Nicolas Kyriakou, ‘An Affront to the Conscience of Humanity: Enforced Disappearance in International Human Rights Law’ (Doctoral Thesis, European University Institute, Florence, June 2012)16.

¹⁷Ratification Record of the CPED <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-16.en.pdf>> accessed 29 September 2020.

¹⁸Derawork Zewude, ‘The Protection from Enforced Disappearance under the Ethiopian Law’ (Unpublished Senior Essay, AAU Law Library, 2009) 33.

¹⁹Raul Valdez Vivo, *Ethiopia: The Unknown Revolution*, (Social Sciences Publishers, La Habana, Cuba, 1978)16-19.

²⁰UN Economic and Social Council (ECOSOC), ‘The Report of the WGEID’ (26 January 1981) UN Doc. E/CN.4/1435, para 102-106.

journalist were “disappeared” since 1976, 1979 and 1984 respectively.²¹ The first two were eventually identified victims of extrajudicial killing, after disappearance for more than a decade.²² The fate of the latter remains unresolved to date.²³ During the ‘Red Terror’ that lasted from 1977 until 1980, “thousands more disappeared and still missing.”²⁴

In 1992 a ‘Special Prosecutor’s Office (SPO)’ was established by the Transitional Government of Ethiopia (TGE) with a mandate to investigate and prosecute perpetrators of human rights abuses and atrocious offences committed during *Derg*.²⁵ In the case of *SPO v. Colonel Mengistu Hailemariam et al*, the SPO has filed 134 counts for the disappearance of 179 individuals by the *Derg* regime.²⁶ Nevertheless, the *Derg trial* (also called the *Red Terror trial*) has been criticized for its failure to adequately redress victims of crimes, including ED, committed by the regime.²⁷ The SPO’s ineffectiveness to discharge its truth-finding mandate is another area of contention.²⁸ The truth surrounding the disappearance of some of the aforementioned figures and hundreds of other disappeared persons remains unknown.²⁹ No redress awarded to relatives or families of the

²¹Amnesty International (AI), ‘Ethiopia: End of an Era of Brutal Repression- A New Chance for Human Rights’ (1991) 31-34 <<https://www.amnesty.org/download/Documents/196000/afr250051991en.pdf>> accessed 11 January 2019

²²Marshet Tadesse Tessema, *Prosecution of Politicide in Ethiopia: The Red Terror Trials* (Gerhard Werle and Moritz Vormbaum (eds) Asser Press, The Hague, The Netherlands, (2018)18 INTERNATIONAL CRIMINAL JUSTICE SERIES, 182.

²³Ibid 265.

²⁴Yacob Haile-Mariam, ‘The Quest for Justice and Reconciliation: The International Criminal Tribunal for Rwanda and the Ethiopian High Court’ (1999) 22 HASTINGS INT’L & COMP.L. REV. 667 p. 678.

²⁵Proclamation to Provide for the Establishment of the Special Public Prosecutor’s Office No. 22/1992 (Addis Ababa, August 08, 1992).

²⁶Girmachew Alemu Aneme, ‘The Anatomy of Special Prosecutor v. Colonel Mengistu Hailemariam et al. (1994-2008)’ 4 INTERNATIONAL JOURNAL OF ETHIOPIAN STUDIES 1/2 (Tsehai Publishers, Spring/Fall 2009) p. 5-6.

²⁷Girmachew Alemu Aneme, ‘Apology and Trials: The Case of the Red Terror Trials in Ethiopia’ (2006) 6 AFR. HUM. RTS. L.J. 64, 77-81.

²⁸Marshet Tadesse Tessema (n22)265.

²⁹Ibid 48-49.

disappeared persons.³⁰ Neither measures of satisfaction taken nor non-repetition of disappearances guaranteed.

1.2 Statement of the Problem

The 1995 Constitution of the Federal Democratic Government of Ethiopia (the FDRE Constitution or the Constitution) stipulated “forcible disappearance” under the category of CAH, and made it neither subject to statute of limitation nor commuted by amnesty.³¹ However, the FDRE Criminal Code neither expressly criminalizes the CAH in general,³² nor penalizes ED as an autonomous crime in particular. Ethiopia has not yet ratified the CPED³³ and repeatedly rejected recommendations to ratify the Rome Statue of the ICC,³⁴ which criminalizes ED as one of the category of CAH.

The Ethiopian People’s Revolutionary Democratic Front (EPRDF) continued the *Derg*’s legacy of ED soon it took power in 1991. It has been reported that an alarming pattern of disappearance of political dissents have emerged since 1992.³⁵ Today, when one talks of ED in Ethiopia, the “disappearance” of two known individuals inevitably comes forefront. These are *Nadhi Gamada*, one of the top leadership of the Oromo Liberation Front (OLF) during the transitional period, and *Merigeta Indesirachew Admassie (aka Amha)* a renowned priest and educator of the Ethiopian Orthodox Church who were disappeared in 1994 and whose whereabouts is yet unknown.³⁶

³⁰Ibid 176.

³¹The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No.1/1995, Fed. Neg. Gaz., year 1, no.1 (Addis Ababa, 21 August 1995) Article 28 (1).

³²Marshet Tadesse Tessema (n 22) 9 and 105.

³³Ratification Record of the CPED (n 17).

³⁴UNGA, ‘Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review, Addendum: Ethiopia’ (5 July 2019) A/HRC/42/14/Add.1, Para 163.11-14.

³⁵AI, ‘Ethiopia: Accountability Past and Present- Human Rights in Transition’ (April 1995) AFR 25/06/95, 30<<https://www.amnesty.org/download/Documents/176000/afr250061995en.pdf>> accessed 10 March 2019.

³⁶Muluken Tesfaw, ‘24 Years of Enforced Disappearance and Unlawful Detention’<<https://www.printfriendly.com/p/g/HfVG3g>> accessed 24 March 2019, and HRLHA, ‘Does the Ethiopian

In 1994 alone, the WGEID transmitted 70 newly reported cases of disappearance to the then TGE apart from 66 cases of disappearance reported from 1991 to 1993.³⁷ The WGEID, in its latest report indicated Ethiopia as one of the countries with more than 100 cases of disappearance between 1980 and 7th of August 2020.³⁸ In their Concluding Observation on Ethiopia, some UN human rights monitoring bodies have also shown their concern about the problem of ED in the country.³⁹ Even recently, reports are coming out indicating the persistence of ED in the post 2015 public protests.⁴⁰

Even so, since the coming into power of PM Dr. Abiy Ahmed Ali on April 02, 2018, Ethiopia has been conducting a series of legal, justice and political reforms.⁴¹ The PM himself publicly admitted human rights abuses such as torture and “terrorist acts” committed against citizens by the EPRDF security apparatus in the yester years.⁴² On November 2018, the Federal Attorney General (FAG) reported that seven secret prisons (unofficial prisons) are discovered in the Addis Ababa City alone.⁴³ No doubt that these secret detentions have been instrumental in the alleged practice of

Government Mean to Release Political Prisoners and Close Down the Notorious *Ma'ikelawi* Prison, the Ethiopian Guantanamo?’ (January 4, 2018) <<https://www.humanrightsleague.org/?p=16062>> accessed 13 November 2020.

³⁷ECOSOC, ‘Report of the WGEID’ (30 December 1994) UN Doc. E/CN.4/1995/36, para 168-170 and Annex IV p. 104.

³⁸UNGA, ‘Report of the WGEID’ (7 August 2020) A/HRC/45/13, Annex III p. 39.

³⁹UN Committee against Torture (CAT), ‘Consideration of Reports Submitted by States parties under Article 19 of the Convention Concluding Observations of the Committee against Torture’ (20 January 2011) CAT/C/ETH/CO/1, para 15.

⁴⁰HRCO, ‘Human Rights Abuses Committed at Different Zones of Somali and Oromia Regional States’ 144th Special Report’ (Addis Ababa, Ethiopia, July 31, 2018)23.

⁴¹International Crisis Group (ICG), ‘Managing Ethiopia’s Unsettled Transition’ (21 February 2019) Africa Report No. 269, p. i and 7 <<https://d2071andvip0wj.cloudfront.net/269%20Managing%20Ethiopia%20-%20Print.pdf>> accessed 13 March 2019.

⁴²Ethiopian Broadcasting Corporation (EBC), Amharic Special News (19 June 2018).

⁴³Ethiopian Press Agency (EPA), ‘Attorney General: 63 Former Senior Officials are Arrested for Various Crimes- Seven Secret Prisons Discovered in Addis Ababa’ (13 November 2018) <<http://www.facebook.com/484414308376589/posts/1176306445854035/?app=fbl>> accessed 16 March 2019.

disappearance in the country. Overall, it is undisputable that ED continued to be outstanding and a potential threat in Ethiopia.

1.3 Scope of the Study

This study focused on the analysis of the protection against ED under the current legal regime of Ethiopia. It explored legal gaps and practical challenges in the protection of persons from ED in Ethiopia. It further draws practical insights from investigations and prosecutions conducted by the Federal Attorney General (FAG) on the crime of ED. It illustrated disappearances occurred in the past including during the *Derg* regime and that remains outstanding to date.

In short, the research approached ED from the standpoint of IHRL. It does not elaborate those situations where the relevant rules of International Humanitarian Law (IHL) apply, which include cases of missing of combatants, persons displaced and separated from their family etc. In addition, little emphasis is given to situations of ED whereby relevant rules of International Criminal Law (ICL) apply to establish individual criminal responsibility.

1.4 Research Objectives

1.4.1 General Research Objectives

- To analyze whether the protection against ED under the current legal regime of Ethiopia is adequate or not.

1.4.2 Specific Research Objectives

- To analyze the normative content of the right not to be subjected to ED and highlight the experience of other countries from which Ethiopia can draw a lesson.
- To unpack Ethiopia's responsibility to uphold the right not to be subjected to ED under domestic laws and International Human Rights Law (IHRL).
- To explore practical challenges as well as new developments in the protection of the right not to be subjected to ED in Ethiopia.
- To demonstrate the extent to which ED remains a threat in Ethiopia to date.

1.5 Research Questions

1.5.1 General Research Questions

- Does the current legal regime of Ethiopia provide adequate protection against ED?

1.5.2 Specific Research Questions

- What is the responsibility of Ethiopia to uphold the protection of persons from ED under both domestic laws and IHRL?
- What lessons Ethiopia can learn from the experience of other countries and international standards in the protection against ED?
- What are the practical challenges as well as new developments in the protection of the right not to be subjected to ED in Ethiopia?
- Does ED remains a threat in Ethiopia to date?

1.6 Research Methodology

The research employed mixed legal research approach. It has carried out a critical legal analysis of the protection against ED under the current legal regime of Ethiopia in light of relevant international standards and jurisprudences. It also employed an empirical approach to examine the practice, among others, the legal and institutional measures taken with respect to the protection of persons from ED in Ethiopia. As such, the research has adopted a hybrid of both doctrinal (desk review) and non-doctrinal (fieldwork) legal research approach.

The primary sources include relevant domestic legislation, court cases, policies, plans and international legal instruments as well as decisions and concluding observation of international human rights monitoring bodies. Besides, an in-depth interview has been made to gather primary practical sources that would help draw firsthand insights on the matter at hand and substantiate the legal analysis. The interview covered concerned officials or experts at selected Federal Government bodies such as the Federal Attorney General (FAG), the Federal Police Commission (FPC) and the Ethiopian Human Right Commission (EHRC) and Reconciliation Commission (RC). The interview was also made with experts at two local human rights NGOs namely the Human Rights Council (HRCO) and the Human Rights League of Horn of Africa (HRLHA).

Interviewees were selected based on purposive sampling technique by giving due attention to their knowledge or expertise and firsthand experience on the topic under consideration. Among others, their official capacity to answer the interview questions was taken into account. The relevance of the selected institutions was considered consciously. The interview questions are semi-structured and non-leading.

The research has also conducted analysis of relevant secondary data, which include scholarly books, journal articles, reports, resolutions, fact sheets, news analysis, commentaries and online resources. Besides, General Comments and Reports of the UN special mechanisms such as the WGEID were invoked as a secondary source.

1.7 Literature Review

The protection against ED is the least explored area of research in the Ethiopian legal discourse. However, there are two literatures specific to ED worth mentioning. The first is an LLB thesis, which briefly focuses on the discussion of the concept of ED and human rights violations posed by the act of disappearance.⁴⁴ The thesis is limited in terms of both content and literatures. It gives less emphasis to the jurisprudences and experiences of other jurisdiction as well as international standards on the protection against ED. The author's legal analysis of the problem of ED in Ethiopia is not substantiated by practical court cases on the one hand and data and reports of sources such as the WGEID on the other. The thesis did not adequately demonstrate that ED continues to be threat in Ethiopia.

The second is, a commentary written in Amharic literally translated as "Lack of Law Criminalizing Enforced Disappearance in Ethiopia."⁴⁵ The commentary underscores that Ethiopia failed to criminalize CAH in general and ED in particular. Both literatures made a little effort to complement their analysis by relevant jurisprudences, recommendations, concluding observations and general comments of human rights treaty bodies as well as special mechanisms of international human rights treaties signed by Ethiopia.

On the other hand, there are literatures written on the 'Derg trial' that stated 'ED' as one of the massive human rights violations that characterizes the entire 17 years of *Derg* period.⁴⁶ Nonetheless, most of them have not emphasized on the crime ED as a multiple and continuing

⁴⁴Derawork Zewude (n 18).

⁴⁵ውብሽግ፡ ሙላት፡- 'የሌለው፡ የአስገዳጅ፡ መሰወር፡ ወንጀል፡ ሕግ፡ በኢትዮጵያ- አንባቢ' ሪፖርተር [The Reporter] (5 August 2018) <<https://www.ethiopianreporter.com/index.php/article/12323>> accessed 24 March 2019.

⁴⁶Yalemfiker Girma Moges, 'Collective Criminal Responsibility of the Derg Members in the Case of Special Prosecutor V. Colonel Mengistu Hailemariam *et al*' (AAU LLM Thesis, March 2010)2&117, and Yacob Haile-Mariam (24) 671, 676, 677 and 708.

violation of human rights. Besides, most of the literatures do not provide practical insights on how to address the loopholes of the current FDRE Criminal Code⁴⁷ with respect to the crime of ED.

Internationally, there are several literatures dealing with ED within the broader spectrum of IHRL. Among others, the most comprehensive work is a book titled “The Struggle against ED and the 2007 United Nations Convention”, co-authored by Tullio Scovazzi and Gabriella Citroni.⁴⁸ The book makes a thorough discussion of the historical background of the practice of ED and its conceptual underpinnings. In addition, Nikolas Kyriakou,⁴⁹ in his Doctoral thesis, made an in-depth analysis of ‘the right not to be subject to ED’ and compared the application or interpretation of the right by the Human Rights Committee (HRC), the Inter-American Court of Human Rights (IACtHR) and the European Court of Human Rights (ECtHR).

Unique to these literatures, this research emphasized on drawing practical insights from legal and institutional measures as well as decisions and plans put in place or proposed by the GoE to regulate ED. The study also explored and analyzed the extent to which legal and justice reforms underway contribute to rectify disappearances committed in the yesteryears. It made an endeavor to bring ED and its multidimensional aspects into the attention of Ethiopian legal discourse by drawing inspiration from the aforementioned and other foreign literatures, jurisprudences and experiences.

1.8 Significance of the Study

ED is one of the least researched topics in the legal discourse of Ethiopia. This is unfortunate given the longstanding problem of disappearance in the country. This research would help to bring the concept of ED and its multidimensional aspects into the attention of Ethiopian legal scholarship.

⁴⁷The Criminal Code of the Federal Democratic Republic of Ethiopia, 2004, Proc. No.414/2004 Fed. Neg. Gaz. (Addis Ababa, 9 May 2005)

⁴⁸T. Scovazzi & G. Citroni, *The Struggle against Enforced Disappearances and the 2007 United Nations Convention* (Leiden: Martinus Nijhoff Publishers 2007).

⁴⁹Nicolas Kyriakou, ‘An Affront to the Conscience of Humanity’ (n 16). See also, Marthe Lot Vermeulen, ‘ED: Determining State Responsibility under the International Convention for the Protection of All Persons from ED’ (Doctoral Thesis, Utrecht University School of Law February 2012) 51 SCHOOL OF HUMAN RIGHTS RESEARCH SERIES.

The findings of this study undoubtedly shed light on the legal gaps and practical challenges hindering the protection against ED in the Ethiopia. This research might also serve as a source of inspiration for future researchers to conduct further research on the topic. Further, it will be a vital input for policy makers to take necessary legal and institutional measures helpful for the better protection of all persons from ED.

1.9 Limitations

The researcher would like to remark notable challenges faced in course of conducting the study. Firstly, almost all officials or experts consulted by the researcher were with a suspicious first impression about the topic. As some informants claim, this is plausibly due to the sensitivity or uniqueness of the subject matter. Secondly, an access to some necessary documents such as letters, petitions and investigation or prosecution files at some offices is restrictive allegedly due to confidentiality or pendency issues. It was quite cumbersome for the researcher to access prosecution charges relevant to the study.

Lastly, financial constraints and COVID-19 obliged the researcher to limit the sample size taken for the interview. The lockdown followed by the outbreak of COVID-19 has interrupted the data collection process of the research thereby affecting effective completion of the overall study. It hindered the researcher from visiting potential institutions and consulting potential informants with a firsthand experience and knowledge relevant to the topic of the research. Nonetheless, despite these limitations, the findings identified, concerns raised and recommendations forwarded in this research would essentially contribute in bridging the gap of knowledge, and in resolving practical and legal challenges in the protection of all persons from ED in Ethiopia.

1.10 Ethical Considerations

The researcher gave due attention to the following ethical considerations during the interviews and overall research process:

- **Informed consent:** the interviewees are requested to give their full consent to participate in an interview after being informed of the content and goals of the research;
- **Privacy and Confidentiality:** the research participants are informed that their privacy and confidential information are protected.

1.11 Organization of the Study

This research is organized into five chapters including this introductory chapter that comprises background of the study, statement of the problem, research objectives, research questions, methodology, and literature review. Chapter 2 emphasized on the discussion of the emergence and development of normative and institutional framework for the protection of persons from ED within the framework of IHRL. Chapter 3 deals with analysis of relevant laws in the protection against ED in Ethiopia. It comprises distinct sections respectively dealing with the FDRE Constitution of 1995, the Criminal Code of 2005, the Criminal Procedure Code of 1961, the Civil Code of 1960 and the Civil Procedure Code of 1961.

Chapter 4 appraises challenges and new developments introduced in the protection against ED in Ethiopia. It comprises of two main sections dealing with overview of practical challenges and new developments recently introduced or those on progress. The first section discusses major practical challenges, which include failure to address past cases of EDs, continuing past trends of ED, lack of criminalization of ED as an autonomous crime, and others identified by the research. The second section focuses on new developments introduced or on progress that are helpful in the protection against ED. Finally, chapter 5 closes the discussion by providing a conclusion and recommendations based on the major lessons, gaps and challenges identified in the research.

CHAPTER TWO

THE PROTECTION AGAINST ENFORCED DISAPPEARANCE UNDER INTERNATIONAL HUMAN RIGHTS LAW

Introduction

The international community has responded to the phenomenon of EDs through relevant norm-setting activities in the fields of human rights law. Significant case laws have been developed by human rights treaty bodies and human rights courts to address the question of disappearance. This chapter focuses on the emergence and development of normative and institutional framework for the prohibition of ED within the context of IHRL that would serve as a benchmark in the protection against ED in Ethiopia, to be dealt with under subsequent chapters.

2.1 Development of Specific Instruments Regarding Enforced Disappearance

2.1.1 The 1992 UN Declaration on the Protection of All Persons from Enforced Disappearance

It was in 1992 that the UNGA adopted Declaration, which for the first time prescribed ED as a violation of multiple human rights.⁵⁰ It introduced fundamental values that include a commonly agreed definition of ED;⁵¹ absolute prohibition of ED (*non-derogable* even in the state of public emergency);⁵² criminalization of ED as an autonomous offence;⁵³ and non-commutability of ED by amnesty or pardon.⁵⁴ In addition, the Declaration declared, “no state shall practice, permit or tolerate EDs.”⁵⁵ However, the Declaration is criticized for its failure to explicitly recognize ‘the right not to be subject to ED’.⁵⁶ It was also ineffective in sufficiently addressing some key issues

⁵⁰The 1992 UN Declaration (n8) Article 1(2).

⁵¹Ibid Preamble, para 3.

⁵²Ibid Article 7.

⁵³Ibid Article 4(1).

⁵⁴Ibid Article 18(1).

⁵⁵Ibid Article 2.

⁵⁶Susan McCrory, ‘The International Convention for the Protection of all Persons from Enforced Disappearance’ (2007) 7 HRLR 3, 545-566, 549.

relating to ED such as the minimum of information that should be provided to relatives of the victims and relating to measures of reparation.⁵⁷

2.1.2 The 1994 Inter-American Convention on the Forced Disappearance of Persons

Though regional in its scope, the 1994 Inter-American Convention, for the first time, introduced a binding definition of ‘ED’⁵⁸ and qualified the systematic practice of disappearance as a CAH.⁵⁹ It recognized golden rules such as prohibition of defense of statutory limitations;⁶⁰ exclusion of defense of superior order;⁶¹ exclusion of the competence of military or special tribunals and amnesty laws or similar measures;⁶² and that ED shall be an extraditable offence.⁶³ The continuing nature of ED is expressed as, “this offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.”⁶⁴

The Convention also stipulates absolute prohibition of ED even during state of war and other emergencies.⁶⁵ It further allows State parties to make reservations.⁶⁶ It entrusted the Inter-American Commission on Human Rights (IACHR) and the IACtHR with the monitoring mandate.⁶⁷ It expressly stated its non-applicability on the international armed conflicts.⁶⁸

⁵⁷G. Citroni, D. Hardy and P. Rice, ‘Art. 1.1: No one shall be subjected to Enforced Disappearance. A Guide to the CPED’ (Utrecht, the Netherlands, Aim for Human Rights 2009) 12.

⁵⁸The 1994 Inter-American Convention (n7) Article II.

⁵⁹Ibid Preamble, Para 6.

⁶⁰Ibid Article VII.

⁶¹Ibid Article VIII.

⁶²Ibid Article XI.

⁶³Ibid Article V.

⁶⁴Ibid Article III.

⁶⁵Ibid Article X.

⁶⁶Ibid Article XIX.

⁶⁷Ibid Article XII and XIV.

⁶⁸Ibid Article XV.

Regardless of its significant achievements, the 1994 Inter-American Convention is criticized for some normative loopholes. Scovazzi and Citroni have identified three main normative gaps of the Convention as:

First, failure to elaborate on the preventive mechanisms; second, lack of judicial guarantee for the victims; and third, failure to oblige States Parties to adopt all necessary measures to protect against ill-treatment, intimidation and reprisals of all persons involved in the investigation of a case of disappearance.⁶⁹

These and other gaps of the Convention in addition to the limitations to then existing national and international legal frameworks on ED pushed the international community further to come up with an internationally binding legal standard for the protection of all persons from ED.

2.1.3 The 2006 International Convention for the Protection of All Persons from Enforced Disappearance

In 2001, the UNCHR appointed Mr. Manfred Nowak, as an independent expert to examine the existing international criminal and human rights framework for the protection of persons from ED and to identify gaps in order to ensure full protection.⁷⁰ In 2002, Mr. Nowak came up with his report and concluded that ‘the right not to be subjected to ED’ was not established in any universal treaty and that there were many gaps regarding measures of prevention and effective remedies and reparation for victims.⁷¹ He stressed on the urgency to come up with a legally binding normative instrument for the protection of all persons from ED.⁷² After a long process of drafting and deliberations, the CPED was adopted by Resolution 1/1 of the then newly established UNHRC (Human Rights Council) on 29 June 2006. The UNGA finally adopted the Convention at its 61st session on 20 December 2006.⁷³

⁶⁹T. Scovazzi & G. Citroni, *The Struggle against EDs* (n48) 252-53.

⁷⁰UNCHR Res. 2001/46 (23 April 2001) E/CN.4/2002/71.

⁷¹Report by the Independent Expert, Mr. Manfred Nowak (n1) para. 96.

⁷²Ibid para 97.

⁷³CPED (n9).

The Convention is the first universal human rights instrument to assert that there is “a right not to be subject to ED.”⁷⁴ The Convention’s incorporation of a monitoring body is one of its departure from the Declaration.⁷⁵ Though the Convention draws extensively on the provisions of the 1992 UN Declaration and the 1994 Inter-American Convention, it came up with unique standards and principles in the protection against ED that were new in the context of IHRL.⁷⁶

2.2 New Developments Introduced by the CPED

The CPED came up with new development and standards in the protection against ED that are unique to the hitherto regime of IHRL. The following are major developments introduced by CPED.

2.2.1 The Right not to be subjected to Enforced Disappearance

The CPED is the first universal human rights instrument to assert that there is a right not to be subject to ED.⁷⁷ Article 1 of the Convention provides that the ‘right not to be subjected to ED’ is attributed to everyone, everywhere and no exceptional circumstance such as war and national security. Nor governments can invoke public emergency to justify its suspension or limitation in any way.⁷⁸ As a result, it is being argued, “the prohibition of ED and the corresponding obligation to investigate and punish those responsible has attained the status of *jus cogens*.”⁷⁹ That is, it imposes obligations *erga omnes*, a non-derogable duty owed to all humankind irrespective of being a State party to the Convention or not.⁸⁰

⁷⁴Susan McCrory (n56) 549.

⁷⁵Office of the High Commissioner of Human Rights (OHCHR), ‘Enforced or Involuntary Disappearances’ (July 2009) Fact Sheet N°.6 (Rev.3) 7-8.

⁷⁶Ibid.

⁷⁷Susan McCrory (n56) 549

⁷⁸G. Citroni, D. Hardy and P. Rice (n57) 17.

⁷⁹Jeremy Sarkin, ‘Why the Prohibition of Enforced Disappearance has Attained *Jus Cogens* Status in International Law?’ (2012) NORDIC JOURNAL OF INTERNATIONAL LAW 81, 582.

⁸⁰Ibid 552.

2.2.2 Definition of Enforced Disappearance

The Convention introduced a universally binding and authoritative definition of ED for the first time.⁸¹ Scholars draw three basic elements from Article 2 of the Convention, which constitutes ED and should be fulfilled cumulatively.⁸² These are:

First, deprivation of the liberty against the will of a person by arrest, detention, abduction or any other form. Second, involvement of State agents or persons and groups that act with the support of, or tolerance or acquiescence by the State. Last, refusal to acknowledge the detention of the victim and his/her whereabouts or fate or placement of the disappeared person outside the protection of the law.

2.2.3 Extradition of Enforced Disappearance

The Convention made ED an extraditable offence whereby the offence should not be considered as “a political offence or as an offence connected with a political offence or as an offence inspired by political motives.”⁸³ It further provides that State parties shall include ED as an ‘extraditable’ offence in any extradition treaty they sign before the entry into force of the Convention or subsequently.⁸⁴

2.2.4 Enforced Disappearance as a Continuing Crime

The CPED referred to the continuing nature of disappearance in relation to the statute of limitations under Article 8 (1) (b). The Convention requires State parties to consider the continuous nature of the crime in addition to its long duration and seriousness while applying statute of limitation on the crime of ED under domestic jurisdiction (if any).⁸⁵ The WGEID in its General Comment used

⁸¹CPED (n 9) Article 2.

⁸²Philip Stevens, ‘The International Convention for the Protection of All Persons from Enforced Disappearance – A Welcoming Response to a Worldwide Phenomenon with Limited Relief’ (2010) 73 THHR 368, 377; see also, Susan McCrory (n 57) 549-553 and T. Scovazzi & G. Citroni, *The Struggle against EDs* (n 49) 267.

⁸³CPED (n 12) Article 12 (1).

⁸⁴CPED (n 9) Article 12 (1).

⁸⁵Ibid Article 8 (1) (b).

an expression that “EDs are prototypical continuous acts.”⁸⁶ Lack of any information about fate and whereabouts of the disappeared person who is left outside the protection of law makes the fact of disappearance continuing.⁸⁷ According to Petra Dijkstra et al, “disappearances are violations that occur and continue over time, until it ceases, that is, until the time the disappeared person is no longer disappeared.”⁸⁸

2.2.5 Prohibition of Secret Detention

The prohibition of secret detention is among the preventive measures adopted by the CPED.⁸⁹ Secret detention refers to the situation where “the location of the detention is neither formally designed as an official detention facility nor it is known to the relatives of the detainee.”⁹⁰ It is the first time that such prohibition is recognized in an express terms in a binding international treaty.⁹¹ The Convention calls upon State Parties to guarantee persons deprived of liberty to be held solely in officially recognized and supervised places⁹² and to communicate with and be visited by his/her family, counsel or any other person of his/her choice.⁹³ The State Parties are also required to maintain up-to-date and promptly available (accessible) official records of persons deprived of liberty.⁹⁴

⁸⁶WGEID, ‘Compilation of General Comments on the Declaration on the Protection of All Persons from ED’ 17-18, para 6 <https://www.ohchr.org/Documents/Issues/Disappearances/GeneralCommentsDisappearances_en.pdf> accessed on 28 February 2019.

⁸⁷Tatjana Milić, ‘International Convention for the Protection of All Persons from ED’ (2010) LXII MP 1, 50.

⁸⁸P.Dijkstra, H. Klann, R. Ruimschotel and M.Wijnkoop, ‘EDs as Continuing Violations’ (Amsterdam International Law Clinic, 7 May 2002) 5&6 <<http://www1.jur.uva.nl/aile/Enforced%20disappearances%20as%20continuing%20violations.pdf>> accessed on 28 February 2019.

⁸⁹CPED (n 9) Article 17(1).

⁹⁰Nicolas Kyriakou, ‘An Affront to the Conscience of Humanity’ (n 16) 239.

⁹¹Ibid 238.

⁹²Ibid Article 17(2/c).

⁹³Ibid Article 17(2/d).

⁹⁴Ibid Article 17(3).

2.2.6 Broad Definition of ‘Victim’

The CPED has adopted an extended understanding of “victim” which goes beyond the material victim or the disappeared person and comprises “any individual who has suffered harm as the direct result of an ED.”⁹⁵ Relatives of the disappeared person are considered victims because they undergo suffering, anguish and stress for not knowing whereabouts their loved one is.⁹⁶ Similarly, institutions or groups affected by the disappearance of one of their members can be a victim.⁹⁷

2.2.7 Right to the Truth

The CPED is the first international human rights treaty to recognize ‘the right to truth’ for the victims of ED.⁹⁸ The recognition of such right is considered one of the most significant developments of IHRL promoted by the CPED.⁹⁹ Article 24(2) of the Convention expressly provides that, “Each victim has the right to know the truth regarding the circumstances of the ED, the progress and results of the investigation and the fate of the disappeared person.” According to WGEID, the right to know the truth also includes “the right to know about the identity of the perpetrator(s).”¹⁰⁰ The UNHRC recognized that respecting and ensuring the right to the truth would contribute to end impunity and to promote and protect human rights.¹⁰¹

2.2 Enforced Disappearance under the 1998 Rome Statute of the ICC

The 1998 Rome Statute of the ICC is the first international treaty in criminalizing ED as an international crime entailing individual criminal responsibility. Similar to three of the specific instruments discussed in the preceding sections, it recognizes ED as a CAH “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge

⁹⁵Article 24(1).

⁹⁶G. Citroni, D. Hardy and P. Rice (n 57) 22.

⁹⁷Ibid.

⁹⁸OHCHR, Fact Sheet No. 6 Rev. 3 (n75) 9.

⁹⁹G. Citroni and T. Scovazzi, ‘Recent Developments in International Law to Combat EDs’ (2009) *REVISTA INTERNACIONAL DE DIREITO E CIDADANIA* 3, 89-111, 102.

¹⁰⁰WGEID, ‘Compilation of General Comments’ (n 86) 28 para 1.

¹⁰¹UNHRC, Res. 9/11, ‘Right to the Truth’ A/HRC/9/L.12, 3, para 1.

of the attack.”¹⁰² However, Article 7(2.i) of the Statute introduced different elements in the definition of ED. These elements are mentioned as “a specific purpose (the act must be committed with the intention of removing the person from the protection of the law), a temporal element (disappearance for a prolonged period of time), and a new actor (political organization).”¹⁰³

Recognizing political organizations (in addition to States or State actors) as perpetrators of ED envisages the very jurisdictional difference of the ICL and the IHRL. All of the instruments discussed above rests within the sphere of IHRL and qualify disappearance as a human rights violation committed by a State or its agents, whereas; the ICC Statute rests under the sphere of the ICL that penalizes ED as a CAH committed by individuals apart from States or State agents.¹⁰⁴ Though not yet entered into force, ‘the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (the Malabo Protocol)’ has also incorporated ED as a CAH in a similar fashion with the definition introduced by the ICC Statute.¹⁰⁵

2.3 The Institutional Schemes of Protection against Enforced Disappearance under IHRL

2.4.1 Institutions Specific to the Protection of all Persons from Enforced Disappearance

The WGEID and the CED are the two international bodies with a specific mandate to examine questions relevant to ED. These two bodies exclusively deal with the ‘right not to disappear’ as autonomous human rights.¹⁰⁶ The WGEID was established by the UNCHR on 29 February 1980 as a special mechanism for a period of one year.¹⁰⁷ Since then, the mandate and terms of reference

¹⁰²The 1998 Rome Statute of ICC (n 10) Article 7(1).

¹⁰³C. K. Hall and L. van den Herik, ‘Enforced Disappearance of Persons’, in Kai Ambos, (ed.), *Commentary on the Rome Statute of the International Criminal Court* (3rdEdn. Go’ttingen, Nomos, October 2015) para.150.

¹⁰⁴Ibid Par. 152.

¹⁰⁵The Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (The Malabo Protocol) (adopted on June 2014) Article 28C (1i) & (2i).

¹⁰⁶Vladyslava Tsviki, ‘ED in International Human Rights Law’ (2016) 3 EUROPEAN POLITICAL AND LAW DISCOURSE 6, 56 <<http://eppd13.cz/wp-content/uploads/2016/2016-3-6/09.pdf>> accessed on 28 February 2019.

¹⁰⁷UNCHR Res. 20 (XXXVI) (29 February 1980) E/CN.4/1408. The WGEID consists five members who serve as experts in their individual capacities and responsible to examine questions relevant to EDs of persons.

of the WGEID have been renewed by the UNCHR each year.¹⁰⁸ Since 1986, this has been done twice yearly and, since 1992, on a three-yearly basis.¹⁰⁹ Its mandate was extended recently by the UNHRC in its resolution 36/6.¹¹⁰

The CED is an independent body established under CPED with a mandate to monitor compliance of State parties with the Convention.¹¹¹ This Committee comprises of ten independent and impartial experts of high moral character and of recognized competence in the field of human rights, elected by the States Parties to the CPED.¹¹² It is entrusted with a mandate to review individual and inter-state communications under Articles 31 and 32 of the CPED respectively provided that concerned State party makes a declaration recognizing its competence. The Committee is also empowered to conduct country visit upon consultation with the State Party concerned.¹¹³ As to its relationship with WGEID, while the CED shall have competence solely in respect of EDs perpetrated in a State party after the entry into force of the CPED; the former is able to act on all reported cases of disappearance that occurred in all countries even before the entry into force of the CPED.¹¹⁴

Regionally, the African Commission on Human Peoples Rights (ACHPR or the African Commission) has recently extended the mandate of the ‘Working Group on Death Penalty, and Extra-Judicial, Summary or Arbitrary Killings in Africa’ to include ‘EDs’.¹¹⁵ Today, this body is designated as ‘Working Group on Death Penalty, Extra-Judicial, Summary or Arbitrary Killings

¹⁰⁸OHCHR, ‘Enforced or Involuntary Disappearances’ Fact Sheet No. 6 Rev. 2, <<https://www.ohchr.org/Documents/Publications/FactSheet6rev.2en.pdf>> accessed on 27 February 2019.

¹⁰⁹Ibid.

¹¹⁰UNHRC Res 36/6 (28 September 2017) A/HRC/RES/36/6.

¹¹¹CPED (n 9) Articles 26-36.

¹¹²Ibid Article 26(1).

¹¹³Ibid Article 33(1).

¹¹⁴Ibid 21.

¹¹⁵ACHPR, Resolution on the Expansion of the Mandate and Composition of the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa, ACHPR/Res. 408 (LXIII) (Banjul, Republic of The Gambia, November 13, 2018) <<https://www.achpr.org/sessions/resolutions?id=428>>accessed 11 December 2019.

and EDs in Africa (WGEDA)’. On October 22, 2019, during the 65th Ordinary Session of the African Commission, held in Banjul, the WGEDA in collaboration with other stakeholders organized a panel discussion titled ‘EDs in Africa: Understanding the Problem and Identifying Solutions’.¹¹⁶ Apart from this, there is no visible task conducted by Working Group so far, for it has been presumably undergoing preparatory works in order to function fully.

2.4.2 Other International Human Rights Treaty Bodies

Even though none of the core international human rights treaties expressly refers to ED, their monitoring bodies have developed significant case law on EDs.¹¹⁷ According to Tsviki, international human rights treaty bodies employ “multiple-rights approach” towards EDs.¹¹⁸ That is, they refer to the specific rights guaranteed in their respective treaties or conventions thereby assess the individual facts in a case of ED and decide which particular human rights enshrined in the different instruments is violated.¹¹⁹ Especially, the UN Human Rights Committee (HRC), Inter-American Court of Human Rights (IACtHR), European Court of Human Rights (ECtHR) and ACHPR have developed important jurisprudences over a long period.

The HRC addressed ED as tool of arbitrary deprivation of life in its General Comment No. 6/16.¹²⁰ It also entertained a number of cases relating to disappearance in communications brought before it. For instance, in the case of *Yurich v Chile*, it has pointed out acts of arrest, detention or abduction and the refusal to give information about the deprivation of freedom are the two major elements that characterize ED both as a crime and as a serious human rights violation.¹²¹

The IACtHR is a pioneer for its robust jurisprudence on matters of ED and as such serving as a source of inspiration especially for the ACHPR and the ECtHR relating to disappearance cases. It

¹¹⁶ACHPR, Press Release on the Panel on ‘EDs in Africa: Understanding the Problem and Identifying Solutions’ (Banjul, The Gambia, 23 October 2019) <<https://www.achpr.org/pressrelease/detail?id=445>> accessed 03 February 2020.

¹¹⁷G. Citroni, D. Hardy and P. Rice (n 57) 12.

¹¹⁸Vladyslava Tsviki (n 106) 55.

¹¹⁹Ibid 55-56.

¹²⁰HRC, ‘General Comment No. 6: Article 6 (Right to life)’ (1982) para 4.

¹²¹*Yurich v. Chile*, Comm. 1078/2002 (HRC, 2005) U.N. Doc.A/61/40, Vol. II, at 489, [6.3].

made vital contribution in the development of substantive and procedural rules on ED.¹²²In its landmark decision in the case of *Velasquez Rodriguez v. Honduras*, the court has reiterated that ED amounts to multiple and continuous violation of many rights under the American Convention on Human Rights such as right to life (Articles 4), right to humane treatment (Article 5) and right to personal liberty (Article 7).¹²³ It is argued that the IACtHR is the first contemporary international tribunal to duly acknowledge absolute prohibitions or *jus cogens* against grave violations of human rights such as EDs of persons.¹²⁴

When it comes to Europe, the ECtHR, in the case of *Imakayeva v. Russia*, developed a reasoning that that detention by unidentified service men without subsequent acknowledgement of the detention is regarded as life threatening, which in turn amounts to presumption of death of the disappeared person.¹²⁵

The African Commission has also come up with some case law relating to ED though not as such robust as three of the preceding treaty bodies. The most remarkable case adjudicated by the African Commission is the case of *J.E. Zitha & P.J.L. Zitha v Mozambique*, in which the Commission has underscored that ED amounts to multiple violations of human rights and it is continuous in its nature.¹²⁶ The Commission has also entertained the case of *Anuak Justice Council v. Ethiopia*, in which the author of the communication has claimed the disappearance of over eighty-five (85) civilians in the *Gambella* region.¹²⁷ Yet, the case was found inadmissible for non-exhaustion of local remedies.

¹²²T. Scovazzi & G. Citroni, *The Struggle against EDs* (n 48) 132.

¹²³*Velasquez Rodriguez v. Honduras*, Judgment (IACtHR, 29 July 1988) [15 & 155].

¹²⁴A.A. Cançado Trindade, 'EDs of Persons as a Violation of Jus Cogens: The Contribution of the Jurisprudence of the IACtHR' (2012) *NORDIC JOURNAL OF INTERNATIONAL LAW* 81, 507–536, 507-508.

¹²⁵*Imakayeva v. Russia*, Judgment (ECtHR, 9 November 2006) [141-143].

¹²⁶*Zitha v. Mozambique*, Decision, Comm. No. 361/2008 (ACHPR, Mar. 2011) [80 and 81].

¹²⁷*Anuak Justice Council v. Eth.*, Comm. 299/05, (20th ACHPR AAR Annex IV, 2006-2007) [2]. See also *Commission Nationale Des Droits De l'Homme Et Des Liberté v. Chad*, Comm. 74/92, (9th ACHPR AAR Annex VIII, 1995-1996) [21].

Conclusion

Specific international human rights treaties developed so far regarding ED include the 1992 UN Declaration; the 1994 Inter-American Convention; and the 2006 UN CPED. It is the latter treaty, that is, the CPED which for the first time internationally recognized ‘the right not to be subjected to ED’ as an autonomous and *non-derogable* human right. The 1998 Rome Statute of ICC has also recognized ED as a CAH. It, for the first time, ensured individual criminal responsibility for the crime of ED unlike three of the above treaties, which focus on State responsibility alone. The WGEID and the CED are the two international special mechanisms exclusively dealing with ‘the right not to be subjected to ED’ as autonomous human rights. The African Commission recently extended the mandate of ‘Working Group on Death Penalty, and Extra-Judicial, Summary or Arbitrary Killings in Africa’ to include EDs.

CHAPTER THREE

ANALYSIS OF LAWS RELEVANT TO THE PROTECTION AGAINST ENFORCED DISAPPEARANCE IN ETHIOPIA

Introduction

The purpose of this chapter is to make a critical scrutiny of the protection against ED in Ethiopia under relevant laws. An emphasis is given to laws that include the FDRE Constitution of 1995, the Criminal Code of 2005, the Criminal Procedure Code of 1961, the Civil Code of 1960 and the Civil Procedure Code of 1961. These laws are believed to have implications on the multifaceted aspects of ED. In doing so, the chapter analyzes whether these laws provide adequate schemes for the protection of all persons from EDs or not. The analysis is substantiated by relevant international standards and practical insights as well as experiences from other jurisdictions.

3.1 The FDRE Constitution

The FDRE Constitution guarantees protection against deprivation of liberty without lawful ground in general and arbitrary arrest as well as unlawful detention without charge or conviction in particular.¹²⁸ Deprivation of liberty is one of the primary manifestations of ED. This means; the right to liberty guaranteed by the Constitution has a paramount importance in the protection against ED. Article 28(1) of the Constitution made an explicit reference to “forcible disappearances” as one of the CAH that should be neither subject to statute of limitation nor commuted by amnesty or pardon.

An expansive interpretation of this provision connotes that victims of CAH including forcible [enforced] disappearance are entitled not to be barred by period of limitation to claim for harms they sustained by disappearance. This is compatible with a standard relating to ‘statute of limitation’ provided under Article 18 of the UN Declaration. Even the Constitution is better in that it provides an absolute prohibition compared to the UN Declaration¹²⁹ and CPED¹³⁰, which only stipulate standards to be adopted by State Parties while applying period of limitation.

¹²⁸The FDRE Constitution (n31) Article 17(1&2).

¹²⁹The 1992 UN Declaration (n8) Article 17.

¹³⁰CPED (n9) Article 8.

The Constitution further guarantees some fundamental human rights and freedoms whose protection is instrumental to prevent forced disappearance. Instances of such rights include right to life¹³¹ (if the disappeared person is killed); right to the security of person;¹³² the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment;¹³³ the right to respect for human dignity, reputation and honor¹³⁴ etc. Besides, it guaranteed the right of arrested persons to be brought before a court within 48 hours of their arrest and the right to petition the court to order their physical release (to claim remedy of *habeas corpus*) as per Article 19(3) and (4) respectively.

However, the Constitution provides neither ‘effective remedy clause’ for unlawful arrest or detention nor ‘compensation clause’ in explicit terms. This gap of the Constitution has a significant implication in the protection against disappearance. It is contrary to the ICCPR that guarantees ‘the right to compensation for victims of unlawful arrest or detention.’¹³⁵ The Constitutions of some jurisdictions adopted an explicit ‘remedy clause.’ For instance, the Ugandan Constitution expressly provides that ‘persons unlawfully arrested, restricted or detained by any person or authority (a State or None-State) are entitled to compensation.’¹³⁶

Even so, lack of an explicit provision recognizing ‘the right not to disappear’ within the Constitution cannot serve as an excuse for Ethiopia to practice disappearances or remain immune for so doing. Article 13(2) of the Constitution provides that chapter three dealing with human rights needs to be interpreted in a manner compatible with international human rights instruments adopted by Ethiopia. This provision would serve as ‘a stepping stone’ towards international

¹³¹The FDRE Constitution (n31) Article 15.

¹³²Ibid Article 16.

¹³³Ibid Article 18.

¹³⁴Ibid Article 24 (1&3).

¹³⁵International Covenant on Civil and Political Rights (ICCPR) (Adopted on 16 December 1966 and entered into force 23 March 1976) 999 U.N.T.S. 171, Article 9(5).

¹³⁶The Constitution of the Republic of Uganda (Kampala, 8 October 1995) [Amended by the Constitution Amendment Act No.13 of 2000; Amendment Act No. 11/2005; and Amendment No.2, Act 21 of 2005 (Published as of 15 February 2006)] Articles 23(7) and 50(1) <<https://www.wipo.int/edocs/lexdocs/laws/en/ug/ug002en.pdf>> accessed 22 May 2019.

standards and jurisprudences to fill gaps of the Constitution in the protection of the right not to be subjected to ED in Ethiopia.

The indivisibility, interdependence and interrelatedness of human rights on the one hand and the *jus cogens* status achieved by the ‘prohibition of ED’ on the other hand would help to establish Ethiopia’s responsibility under IHRL through ‘multiple-rights approach’ before treaty bodies such as HRC to which the country is a State Party. However, it remains a challenge to hold Ethiopia responsible under IHRL since she has not yet accepted any of the individual complaint mechanisms established to supervise the compliance with international human rights treaties. In this regard, the ACHPR and African Committee of Experts on the Rights and Welfare of Child are the only available avenues for now.

3.2 The Criminal Code

Article 4 of the UN Declaration obliges States to criminalize ED as an autonomous offence. In its comment on this provision, the WGIED provides that States should “ensure that the act of ED is defined in a way which clearly distinguishes it from related offences such as enforced deprivation of liberty, abduction, kidnapping, incommunicado detention, etc.”¹³⁷ The CPED adopted similar clause that states, “Each State Party shall take the necessary measures to ensure that ED constitutes an offence under its criminal law.”¹³⁸

The FDRE Criminal code neither criminalizes CAH in general nor penalizes ED in particular. Articles 269 to 280 of the Code that deal with international crimes do not penalize both CAH and ED as an autonomous crime. There are contentions among scholars in this regard. Some argue that the Criminal Code like the repealed Penal Code does not criminalize the CAH.¹³⁹ Whereas, others such as *Derawork* argue that the Criminal Code has penalized CAH within the context of Genocide and War Crimes.¹⁴⁰ *Derawork* is even with a view that not only CAH but also ED is penalized under the Criminal Code.¹⁴¹ According to *Yibekal Gizaw*, some provisions of the Criminal Code

¹³⁷WGIED, ‘Compilation of General Comments’ (n86)3 par 55.

¹³⁸CPED (n9) Article 4.

¹³⁹Marshet Tadesse Tessema (n 22) 105.

¹⁴⁰Derawork Zewude (n18) 48.

¹⁴¹Ibid.

“in pieces and bits” refer to ‘forced disappearance’ as a forming element or as a tool for the completion or commission of other international offences such as Genocide and War Crimes.¹⁴² He argues that the Criminal Code addressed contexts within which forced disappearance potentially arises and it should not matter whether forced disappearance criminalized, in itself, or not.

The Code provides ‘causing persons or group of persons to disappear’, in time of war or peace, might amount to a crime of ‘Genocide’ and ‘War Crimes against the Civilian Population’ under Article 269(a) and 270(l) respectively given other specific conditions are fulfilled. This envisages that the Code does not criminalize ‘disappearance’ as an autonomous crime rather as one of the attributes of or consequent harms caused by Genocide and War Crime. It seems this approach is similar to the one adopted by the repealed Penal Code of the 1957 which under Article 281 (c) provides that placing people or children under living conditions calculated to result in their disappearance amounts to “Genocide; Crimes against Humanity”.

Another important provision of the Criminal Code is Article 423 that criminalizes ‘Unlawful Arrest or Detention’ as, “any public servant who, contrary to law or in disregard of the forms and safeguards prescribed by law, arrests, detains or otherwise deprives another of his freedom, is punishable with rigorous imprisonment not exceeding ten years and fine.” Strictly speaking, unlawful arrest or detention alone does not amount to ED. The arrest or detention should be followed by placement of the detained person outside the protection of the law and refusal to acknowledge or disclose her/his whereabouts or fate.

Put differently, the legality or otherwise of an arrest alone is not adequate to establish ED for there are situations whereby even sentenced persons become victims of disappearance in prison. The case in point is, the disappearance of six prisoners from *Jimma Zone Prison* found in *Jimma* town. According to an anonymous senior human rights investigator at EHRC, “the prisoners alleged to have been disappeared from the prison were recorded in the official register of the *Jimma Zone Prison Administration*.”¹⁴³ He added that there is a sufficient proof that the said prisoners have not

¹⁴²Interview with Yibekal Gizaw Agonafer, Head of the National Human Rights Action Plan Office, FAG, (Addis Ababa, 29/04/19).

¹⁴³Interview with (Anonymous), Senior Human Rights Investigator, EHRC (Addis Ababa, 08/05/19).

escaped the prison. The families of the victims plead to EHRC that the prisoners were forcibly disappeared due to their political position and their fate remains unknown.¹⁴⁴

In its general comment on the definition of ED, the WGEID stated, “the protection of a victim from ED must be effective upon the act of deprivation of liberty, whatever form such deprivation of liberty takes, and not be limited to cases of illegitimate deprivations of liberty.”¹⁴⁵ This shows that the initial form of deprivation of liberty, lawful or not, is not a necessary requirement to constitute ED as long as other defining elements are unfulfilled.

Some States have adopted a separate legislation governing the protection of persons from ED. For instance, in 2012, Philippines issued an ‘Anti-Enforced or Involuntary Disappearance Act’¹⁴⁶ making it the first country in Asia to criminalize ED.¹⁴⁷ The Act adopted the CPED’s definition of enforced or involuntary disappearance in verbatim. It further employed an expansive definition of perpetrators of an act of ED, namely “agents of the State” as:

Persons who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the government, or shall perform in the government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class.¹⁴⁸

In 2005, Colombia enacted a law entitled “The Law on Urgent Tracing Mechanism” which provides a separate chapter titled “The Urgent Tracing Mechanism for the Prevention of the Crime

¹⁴⁴Ibid.

¹⁴⁵WGEID, ‘Compilation of General Comments’ (n86) 18 Par 7.

¹⁴⁶Anti-Enforced or Involuntary Disappearance Act of the Republic of Philippines, Republic Act No. 10353 (Metro Manila, 23 July 2012) <<http://pro13.pnp.gov.ph/wp-content/uploads/2016/03/IRR-Anti-EDs.pdf>> accessed 17 June 2019.

¹⁴⁷OHCHR, OHCHR, ‘Philippines Passed landmark law criminalizing EDs’ (24 January 2013). <<https://www.ohchr.org/EN/NewsEvents/Pages/Philippinespassescriminalizingenforceddisappearances.aspx>> accessed 02 May 2019.

¹⁴⁸Anti-Enforced or Involuntary Disappearance Act of Philippines (n146) Section 3(a).

of ED.”¹⁴⁹ This mechanism was meant to protect the freedom, personal integrity and other rights and safeguards of persons who are presumed to have disappeared.¹⁵⁰ Peru has a ‘Law on the National Information Register of Disappeared Person’.¹⁵¹ The primary objective of this law is stated as “to centralize and organize information from across the country in a database containing consolidated information on disappeared persons.”¹⁵²

As far as Ethiopia is concerned, this research underscores that the FDRE Criminal Code does not penalize an act of disappearance as a crime in itself in a strict sense of the meaning of ‘ED’ defined under international law. Nor does Ethiopia have a special law that sanctions ED as a separate crime. *Marshet* suggests two possible alternatives to fill the gap of the Criminal Code regarding CAH.¹⁵³ The first is an ‘ordinary crimes approach’, that is, investigation and prosecution of perpetrators of individual acts of a CAH using ordinary crimes penalized under the Code.¹⁵⁴ The second is an ‘international criminal law approach’, which means resorting to customary international law as CAH has attained a *jus cogens* status.¹⁵⁵ These approaches would also be applicable to plug the Code’s loophole with respect to ED.

3.3 The Criminal Procedure Code

The Ethiopian Criminal Procedure Code (Cr. P. C) has some provisions with a relevance in the protection against ED. For the purpose of this paper, ‘Arrest’ and the procedures that follow such as ‘the 48-hour rule’ are some of the realms of the Code to be emphasized. Arrest is one of the primary scenes of ED like kidnapping and other forms of deprivation of liberty. Even though

¹⁴⁹‘The Colombian Law on the Urgent Tracing Mechanism (2005)’ in ICRC, *Customary IHL- Practice Relating to Rule 98. ED* <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule98_sectionc> accessed 05 April 2020.

¹⁵⁰*Ibid.*

¹⁵¹‘Peruvian Law on the National Information Register on Disappeared Persons (2003)’ in ICRC, *Customary IHL Rule 98 ED* <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cou_pe_rule98> accessed 17 June 2019.

¹⁵²*Ibid* Article 2.

¹⁵³Marshet Tadesse Tessema (n 22) 106.

¹⁵⁴*Ibid.*

¹⁵⁵*Ibid.*

lawfulness of an arrest alone does not guarantee an arrested person from facing disappearance, arbitrariness of arrest has a lion's share in posing a danger of disappearance.

An investigating police officer conducts arrest of a suspect only where the latter fails appear upon summon or where the offence said to have been committed is such as to justify arrest.¹⁵⁶ The Code provides "Save as is otherwise expressly provided, no person may be arrested unless a warrant is issued and no person may be detained in custody except on an order by the court."¹⁵⁷ This is one of the cardinal rules helpful to ensure the right of persons against arbitrary arrest, with a further implication of prohibition of ED. The Code enumerated exceptional conditions by which 'arrest without warrant' is made.¹⁵⁸

Arrest is followed by handing over of an arrested person to the 'custody', which is literally expressed as 'police station' under Article 58(1) of the Code. This provision implies that an arrested person has to be detained in an official and acknowledged detention center. The provision also requires the task of handing over of the arrested person need to be made "without unnecessary delay."¹⁵⁹ The Code requires the police bring the arrested person before the court within forty-eight hours of his/her arrest or so soon thereafter.¹⁶⁰ The prohibition of unnecessary delay of the task of handing over helps to ensure 'the 48-hour rule' of the FDRE Constitution.¹⁶¹

The Cr. P. C provides, "The court before which the arrested person is brought shall decide whether such person shall be kept in custody or be released on bail."¹⁶² If police investigation is not completed and the investigating police officer requests additional time, the court may grant a

¹⁵⁶The Criminal Procedure Code of the Empire of Ethiopia (Cr. P. C.), 1961, Proc. No.185/1961, Neg. Gaz., Extraordinary Issue No. 1 of 1961 (Addis Ababa, Ethiopia, 02 November 1961) Article 26(1).

¹⁵⁷Ibid Article 49.

¹⁵⁸Ibid Article 51.

¹⁵⁹Ibid Article 58(1).

¹⁶⁰Ibid Article 29(1).

¹⁶¹The FDRE Constitution (n31) Article 19(3).

¹⁶²Cr. P. C. (n156) Article 59(1).

remand for a sufficient time helpful for completion of the investigation.¹⁶³ Article 59(3) states “No remand shall be granted for more than fourteen days on each occasion”. This provision is unclear as to the number of occasions the court is authorized to grant remand. According to an expert at EHRC:

Unlimited occasion of remand often paves a room for the investigating police officers abuse their power, and expose arrested persons to a risk of short-term ED whereby they were kept in a solitary confinement or their whereabouts is made unknown to a family or relatives for a day or more. Especially, persons suspected of political crimes are often victimized in such a situation.¹⁶⁴

The Code guarantees detained persons’ right to consult their advocates.¹⁶⁵ This might help relatives or family closely monitor the potential risk of disappearance faced by arrested persons. The Code further guarantees conditions whereby arrested or detained persons can be released upon bond or/and bail, with or without surety as the case may be.¹⁶⁶ This is also advantageous in safeguarding the liberty of arrested persons, which has an implication in the prohibition of ED.

3.4 The Civil Code

The 1960 Civil Code of Ethiopia, under Article 1 states, “The human person is the subject of rights from its birth to its death.” This envisages ‘the right to recognition as a person before the law’, which is widely recognized under international and regional human rights treaties. Article 24 (3) of the FDRE Constitution provides “Everyone has the right to recognition everywhere as a person.” ED entails denial of the disappeared person’s legal existence and, consequently, prevents him/her from enjoying all other human rights and freedoms.¹⁶⁷ Deprivation of the disappeared person’s legal existence gives rise to a number of civil matters such as on the status of marriage,

¹⁶³Ibid Article 59(2).

¹⁶⁴Interview with Adham Duri, Human Rights Protection and Monitoring Director, EHRC (Addis Ababa, 08/05/19).

¹⁶⁵Cr. P. C (n156) Article 61(2).

¹⁶⁶Ibid Articles 63ff.

¹⁶⁷WGEID, ‘General Comment on the Right to Recognition as a Person before the Law in the Context of EDs’ par 2. A/HRC/7/2 (para. 26) <https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Rev1_en.pdf> accessed 23 August 2020.

guardianship of under age children, right to social allowances of members of the families, inheritance and management of property of the disappeared person.¹⁶⁸

In the Ethiopian context, the section of the Civil Code dealing with ‘Absence’¹⁶⁹ is relevant in order to determine the legal effects of disappearance on the rights and obligations of the victim as well as persons dependent upon him/her. Article 154 of the Civil Code provides that “Where a person has disappeared and has given no news of himself for two years, any interested party may apply to the court to declare his absence.” Ethiopia’s approach of authorization of “any interested person” to initiate the proceeding of declaration of absence is similar with the approach of Chile, Uruguay, Morocco, Guatemala and Peru.¹⁷⁰ However, the WGIED provides that declaration of the absence due to ED should be made upon the consent of the family of the disappeared person.¹⁷¹

The court to whom an application for declaration of absence is made “declares the absence a year after the date of the application where the absentee has disappeared for five year prior to the date of such application.”¹⁷² The court may also deliver a judgment declaring the death of absentee if the evidence collected establishes in a manner that may be considered certain that the absentee is dead.¹⁷³ Therefore, the court renders either ‘declaration of absence’ or ‘declaration of death’ of disappeared persons based on circumstances of the case. That is, there is no provision in the Civil Code that orders court to issue a ‘certificate’ apart from ‘judgement of declaration of absence’. Most Latin American countries for instance, Argentina and Chile issue a certificate recognizing “state of absence through ED” or “absence through ED.”¹⁷⁴ The WGEID advises that the

¹⁶⁸Ibid Par. 5.

¹⁶⁹The Civil Code of the Empire of Ethiopia, 1960, Proc. No. 165/1960, Neg. Gaz., Extraordinary Issue No.2 of 1960 (Addis Ababa, Ethiopia, 05 May 1960) Articles 154-173.

¹⁷⁰ECOSOC, ‘The Report of WGEID’ (12 January 1998) E/CN.4/1998/43, Par. 37.

¹⁷¹WGEID, ‘General Comment on the Right to Recognition as a Person’ (n167) par. 8.

¹⁷²The Civil Code (n169) Article 159.

¹⁷³Ibid Article 161.

¹⁷⁴WGEID’s Report of 1998 (n170) Pars 43&44.

acknowledgement of absence of a disappeared person must take a form of a “declaration of absence by reason of ED.”¹⁷⁵

The effects of declaration absence, among others, would lead to an end of marriage of the absentee, opening of succession devolving on absentee and opening of the will of the absentee.¹⁷⁶ The Civil Code further provides grounds of termination of absence such as where; “the absentee reappears...”¹⁷⁷ Therefore, once it is proved that the absentee reappears or returns, he or she will regain one’s status quo that existed before last news of his or her absence. In practice, this works true relating to property ownership or possession status of the absentee based on Article 171 of the Civil Code as well interpreted by the Federal Supreme Court Cassation Bench.¹⁷⁸ However, the Cassation Division has decided that it is unrealistic for the absentee to regain his/her marriage status that has been dissolved already due to declaration of his/her absence.¹⁷⁹

3.5 The Civil Procedure Code

One of the rights susceptible to violation by ED is the right to appear before court of law promptly. Article 17(2) of the FDRE Constitution clearly stipulates, “No person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him.” Article 19(3) of the Constitution further guaranteed the right of arrested persons to be brought before a court within 48 hours of their arrest. It entitles arrested persons an inalienable ‘right to petition’ the court to order their physical release if not brought before the court within 48 hours.¹⁸⁰ The phrase ‘right to petition’ in the Constitution is mean to refer to the writ of *habeas corpus*, a remedy invoked against unlawful detention of persons for more than 48 hours of their arrest.¹⁸¹

¹⁷⁵WGEID, ‘General Comment on the Right to Recognition as a Person’ (n167) par. 8.

¹⁷⁶The Civil Code (n169) Articles 163-169.

¹⁷⁷Ibid Article 170.

¹⁷⁸*Gudeta Assefa v Wodere Gudeta* (FSC Cassation Bench, November 2018) Cass. File No. 153418.

¹⁷⁹*Wubit Hiruy v Awasa Town Finance and Economic Development Bureau* (FSC Cassation Bench, January 2012) Cass. File No. 74791.

¹⁸⁰The FDRE Constitution (n31) Article 19(3).

¹⁸¹Simeneh Kiros Assefa, *Criminal Procedure Law: Principles, Rules and Practices* (USA, 2009)199.

Habeas Corpus is categorized as one of the civil matters that belong to the jurisdiction of the Federal Courts as per Article 5(10) of the Federal Courts Establishment Proclamation No. 25/1996. It specifically lies within the civil jurisdiction of Federal First Instance Court as it is of the nature of civil cases the value of which cannot be expressed in money by virtue of Article 14 of the proclamation. The Civil Procedure Code (Cv. P. C.) governs its procedural aspects.¹⁸² Article 177(2) of the Cv. P. C. states,

The application for *habeas corpus* shall be accompanied by an affidavit by the applicant stating the name of the person under whose custody he is, the nature and place of the restraint and the names of the persons, if any, who can testify to the facts alleged in the application.

Article 178(1) of the code further requires the person under whose custody (respondent) the restrained person is to appear before the High Court together with the latter person (restrained person). According to *Simeneh Kiros*, this provision envisages, “the case is heard only in the presence of the arrestee and her captor.”¹⁸³ However, some jurisdictions do not allow courts to outrightly dismiss the writ of *habeas corpus* due to physical absence of the detainee. For instance, the Kenyan law requires the courts to order the respondent conduct investigation, and to suspend the writ of *habeas corpus* until a time when it would be established that the respondent(s) had custody or regained custody of the subject (detainee).¹⁸⁴

In 1979, the UN General Assembly passed a resolution that underscores the importance of *habeas corpus*, inter alia, “for protecting persons against arbitrary arrest and unlawful detention; effecting the release of persons who are detained by reason of their political opinions or convictions; and clarifying the whereabouts and fate of missing or disappeared persons.”¹⁸⁵ Besides, the WGIED

¹⁸²The Civil Procedure Code of the Empire of Ethiopia (Cv, P. C.), 1965, Decree No. 52/1965, Neg. Gaz., Extraordinary Issue No.3 of 1965 (Addis Ababa, Ethiopia, 08 October 1965) Articles 177-179.

¹⁸³Simeneh Kiros Assefa (n181)200.

¹⁸⁴Wakio Cindy Yvette, ‘*Habeas Corpus* as an Effective Remedy to ED with Respect to the Mariam & Hemed Cases’ (Strathmore University, LLB Thesis, Law School, 28 March 2018)2 <<https://su-plus.strathmore.edu/handle/11071/6146>> accessed 19 September 2020.

¹⁸⁵UNGA, ‘The Right of *Amparo*, *Habeas Corpus* or other Legal Remedies to the Same Effect’ Res. No. 34/178, 34th Session, 106th Plenary Meeting (17 December 1979).

describes *habeas corpus* as a *non-derogable* right and central tool to prevent the occurrence of EDs.¹⁸⁶

Overall, in Ethiopia, *habeas corpus* is guaranteed constitutionally to protect arrested persons against unlawful detention. The application for the writ of *habeas corpus* requires the place, nature of detention and the name of the restraining person (respondent) to be mentioned expressly. This would be difficult to establish in the case of ED. Similarly, the proceeding of *habeas corpus* requires the physical presence of both the restraining police officer (law officer) and the restrained person (detainee), which is unlikely to happen in the case of ED. Therefore, the writ of *habeas corpus* less likely benefits victims of ED in Ethiopia.

Conclusion

The FDRE Constitution does not recognize ‘the right not to be subjected to ED’ as an autonomous right. Nor an act of ED expressly prohibited by the Constitution. The Criminal Code does not also criminalize ED both as an autonomous crime. Though not adequate, the provisions of the Cr. P. C. relating to arrest and its procedures do have certain relevance in the prohibition of ED. The procedures of declaration of absence under the Civil Code are also relevant to ED. Yet, the writ of *habeas corpus* provided under the Civil Procedure Code less likely benefits victims of ED. In general, Article 13(2) of the Constitution would serve as ‘a stepping stone’ towards international standards and jurisprudences to fill gaps the Ethiopian legal system in the protection of the right not to be subjected to ED.

¹⁸⁶WGEID. ‘Compilation of General Comments’ (n86) 28 Par 2.

CHAPTER FOUR

PRACTICAL CHALLENGES AND NEW DEVELOPMENTS IN THE PROTECTION AGAINST ENFORCED DISAPPEARANCE IN ETHIOPIA

Introduction

This research identified major practical challenges in the protection against ED in Ethiopia beside the shortcomings of legislative frameworks discussed in the preceding chapter. This chapter comprises of two main sections respectively dealing with challenges, and new developments recently introduced (on progress) and relevant in the protection against ED. The first section emphasizes that ED is not only the problem of the past in Ethiopia but also a threat to date. The past and present trends of ED are discussed to examine the extent to which the problem remains a threat. The second section focuses on new developments introduced or on progress that are helpful in the protection against ED. An emphasis is given to the main developments identified from the perspective of the overall legal and justice reform underway in the country since recent years.

4.1 Practical Challenges

4.1.1 Failure to Address Past Cases of Enforced Disappearances

The WGEID recorded disappearances in Ethiopia since 1974.¹⁸⁷ According to its recent report, Ethiopia is from among countries with more than 100 cases of disappearances.¹⁸⁸ Currently, the country is with 113 outstanding cases under review (not yet clarified by the government nor discontinued).¹⁸⁹ The WGEID transmitted these cases to Ethiopia requesting information for clarification for instance in 2006, 2009 and 2016.

In 2006, the WGEID transmitted 118 cases to the GoE requesting for information. Only three cases were clarified based on the information from the government; the rest four cases were clarified based on information from other sources; and the rest 111 cases remained outstanding. Concerning the 111 outstanding cases, the WGEID provided its observation as “The Working Group wishes to remind the Government of Ethiopia of its responsibility to conduct thorough and impartial

¹⁸⁷WGEID’s Report of 2020 (n38) Annex III, 39.

¹⁸⁸Ibid 30.

¹⁸⁹Ibid.

investigations “for as long as the fate of the victim of ED remains unclarified”, in accordance with Article 13, paragraph 6, of the Declaration.”¹⁹⁰

Besides, in its annual report of 2009, the WGEID referred back to its aforementioned observation of 2006 and added, “All outstanding cases were retransmitted and regrettably no response was received from the Government.”¹⁹¹ Moreover, in 2016, the WGEID stated that it has transmitted a case to Ethiopia on June 22, 2016 concerning *Dabassa Guyyo Safarro*, “allegedly kidnapped on 27 September 2015 by Ethiopian and Kenyan security forces in Nairobi, and allegedly last seen at a place called *Tewodros Adababay, Tor Hailochi Center*, in Addis Ababa, on 3 June 2016.”¹⁹²

Mr. *Yusuf Jima*, an official at FAG, maintained that the WGIED requested the GoE on the above three occasions to give information on the alleged outstanding cases though an endeavor made by Ethiopia to this end was not successful.¹⁹³ He believe that most of the alleged disappearances occurred during transitional period especially amid security crisis in some parts of the country, which made the investigation process challenging.

The *Derg* Trial, which lasted from 1994 to 2008, is praised as “the first of its kind in Africa and elsewhere, as it took place in Ethiopia, through local impetus and without the involvement of the international community as in Rwanda or the former Yugoslavia.”¹⁹⁴ However, it is highly criticized for its failure to redress adequately victims of atrocities including disappearances committed during *Derg*.¹⁹⁵ For instance, regarding the whereabouts of the famous novelist and journalist, *Bealu Girma* and other disappeared persons, *Marshet* asserted, “Many years after the demise of the *Derg* regime and the ED of individuals, the next of kin continue to agonize about

¹⁹⁰ECOSOC, ‘Report of the WGEID’ (27 December 2005) E/CN.4/2006/56, Pars 228-234.

¹⁹¹UNGA, ‘Report of the WGEID’ (21 December 2009) A/HRC/13/31, Par 204.

¹⁹²UNGA, ‘Report of the WGEID’ (1 December 2016) A/HRC/WGEID/110/1, Par 46.

¹⁹³Interview with Yusuf Jima, Director of International Cooperation on Legal Affairs at FAG (Addis Ababa, 29/04/2019).

¹⁹⁴Girmachew Alemu Aneme (n 27) 67.

¹⁹⁵Ibid 77-81.

the uncertainty of what has happened to their relatives, and remain mystified as to their eventual fate.”¹⁹⁶ Besides, the works of the SPO are not made easily accessible to the public.¹⁹⁷

Regrettably, the government took no adequate measures of satisfaction helpful in restoring victims’ dignity. Nor the government built a national monument or memorization center dedicated to the victims.¹⁹⁸ Rather, in 2008 the Red Terror Victims, Families and Friends Association has established “Red Terror” Martyrs Memorial Museum’ in Addis Ababa with a view to exhibit atrocities committed by the *Derg* regime.¹⁹⁹ The Ethiopian Red Terror Documentation and Research Center (ERTDRC), which was established in 2007, is also another private initiative undertaken in an effort to preserve public memory.²⁰⁰ In short, this research upholds that Ethiopia took no adequate measures to redress victims and ensure accountability of the perpetrators for past disappearances especially those occurred during the *Derg* Military Junta.

4.1.2 Continuing Trends of Enforced Disappearance

ED continued to be a threat over the past two decades of EFRDF’s period. The Ethiopian Human Rights Council (HRCO), the oldest local human rights NGO, reported hundreds of cases of ED starting from its first regular Report issued on December 01, 1991 up to its recent 144th Special Report issued on July 31, 2018. HRCO reported about 240 disappearance cases in both its Regular and Special reports, from 1991 up to 2006, compiled in three volumes. The most remarkable report made by HRCO exclusively on ED is the 61st Special Report released on March 21, 2003.²⁰¹

In this report, 37 disappearance cases are described with details about each victims comprising full name of victims and their brief profile, date, place and overall situation of the disappearances. The report is unique in that it emphasized on high profile community leaders, politicians and activists

¹⁹⁶Marshet Tadesse Tessema (n22)265.

¹⁹⁷Ibid 282.

¹⁹⁸Ibid.

¹⁹⁹Ibid 175.

²⁰⁰Edward Kissi, ‘Remembering Ethiopia’s ‘Red Terror’: History of a Private Effort to Preserve a Public Memory’ in ERTDRC, *Documenting the Red Terror: Bearing Witness to the Ethiopia’s Lost Generation* (ERTDRC North America Inc., Ottawa, Ontario, 2012).

²⁰¹HRCO, ‘An Urgent Call for the Immediate Disclosure of the Whereabouts People Who Have Been Abducted and Disappeared!’ Sixty-first [61st] Special Report (Addis Ababa, March 21, 2003).

alleged to have been disappeared since 1991 from different parts of the country. From among the alleged victims revealed by the report, include *Merigeta Endesirachew Admassie* a resident of Gondar town, a public servant and religious educator, whose disappearance case is widely known and never seen since 1994.²⁰²

According to Mr. *Yeshewas*, an expert at HRCO, the organization have been constantly receiving dozens of complaints of disappearances to date.²⁰³ ED has been one of the thematic area of the organization's monitoring, investigation and reporting activities since its establishment.²⁰⁴ It is claimed that factors that have been contributing to prevalence of ED in Ethiopia include unlawful detention, weak oversight or monitoring of prisons (by both relevant government bodies and human rights NGOs) and weak prison administration.²⁰⁵ Recently, HRCO reported the disappearance of nine persons from different places of *West Hararge* and *Negele Borana* Zones of Oromia from September to November 2017.²⁰⁶

The Human Rights League of the Horn of Africa (HRLHA), a Canada based human rights organization, also operating in Ethiopia since July 2019, reported hundreds of disappearance cases in Ethiopia especially since 1991.²⁰⁷ According to Mr. *Garoma Bekele*, Director General of HRLHA, the organization recorded more than 200 persons disappeared from 1991 up to early 2017.²⁰⁸ The record comprises of full name and occupation of the alleged disappeared persons; and date and place of disappearance. It also included photograph of and short stories about some of the alleged disappeared persons. In its report published on June 04, 2018, HRLHA underscored

²⁰²Ibid 10.

²⁰³Interview with Yeshwas Eshete, Program Coordinator at HRCO (Addis Ababa, 10/05/19).

²⁰⁴Ibid.

²⁰⁵Ibid.

²⁰⁶HRCO, 144th Special Report (n40)23.

²⁰⁷HRLHA, 'Partial List of Oromos Forcefully Disappeared by TPLF/EPRDF Government Since 1991' (June 4, 2018) <<https://www.facebook.com/humanrightsleague/posts/partial-list-of-oromos-forcefully-disappeared-by-tplfeprdf-government-since-1991/1310038049099418/>> accessed 25 September 2020.

²⁰⁸Interview with Garoma B. Wakessa, Director General of the HRLHA (Addis Ababa, 10/09/19).

the disappearance of the renowned political activists such as *Nadhi Gemedo, Bekele Dawano, and Lamesa Boru*, who were disappeared since 1990s and whose whereabouts is not yet known.²⁰⁹

The disappearances of political dissents have also been reported during the public protest that lasted from late 2015 up to early 2018. The Human Rights Watch (HRW) in its report published on June 2016 reported prevalence of disappearances during the protests.²¹⁰ The most recent case worth mentioning is the disappearance of *Dembi Dollo* University students on December 04 and 05, 2019 and whose whereabouts remains unknown to date. Furthermore, it was reported that *Abdi Ragassa*, member of OLF Executive Committee was arrested on February 29, 2020 in Addis Ababa and his whereabouts has been unknown for over a week.²¹¹

In General, the effort made by the government is less significant, among others, to search for the alleged victims despite frequent claims from victims' family. For instance, on September 25, 2018, AFP published a news analysis that narrates grievance of family members of some persons disappeared in Ethiopia in 1990's and who were not heard since then.²¹² Recently, in an interview made with BBC, a person named *Waqqari Kaba Nagawo* claims that *Agazi* (National Defense Force) arrested him on June 19, 2000 in West *Wellega* and detained him in an underground cell at a place called "*Adenebrit*" in *Shire* town located in Tigray Region for the past 19 years outside the protection of law.²¹³

²⁰⁹HRLHA, 'Partial List of Oromos Forcefully Disappeared' (n207).

²¹⁰HRW, "'Such a Brutal Crackdown': Killings and Arrests in Response to Ethiopia's Oromo Protest' (USA, June 2016) 35-36 <https://www.hrw.org/sites/default/files/report_pdf/ethiopia0616web.pdf> accessed 12 February 2019.

²¹¹AI, "Ethiopia: Police Must Account for Missing Oromo Opposition Leader" (March 03, 2020) <<https://www.amnesty.org/en/latest/news/2020/03/ethiopia-police-must-account-for-missing-oromo-opposition-leader/>> accessed 28 June 2020.

²¹²AFP, 'No Respite for Relatives of Ethiopia's Disappeared' (September 25, 2018) <https://www.news24.com/Africa/News/no-respite-for-relatives-of-ethiopias-disappeared-20180925_04/03/19> accessed 04 March 2019.

²¹³BBC News Afaan Oromoo, 'Waqqaarii Kabaa: Dararaa Kanarraa Du'uu Naaf Wayyan Jedheen Gaafadhe' literally translated as, "I Asked them that I Prefer to Die than such Suffering!" (24 February 2020) <<https://www.bbc.com/afaanoromoo/oduu-51575605>> accessed 28 June 2020.

4.1.3 Weakness of the Ethiopian Human Rights Commission

The EHRC is entrusted with powers and duties, among others, to undertake investigation, upon complaint or its own initiation, in respect of human rights violations.²¹⁴ However, there is no record that the EHRC has made an investigation by its own initiation nor received complaints of disappearance cases or published reports relating to ED in the past.²¹⁵ Recently, the Commission has been receiving several complaints in the past few years. Most of the complaints are on disappearance cases occurred in the past, during the 27 years of EPRDF's regime. For instance, three weeks before an interview was made at the Commission for this study, 20 complaints of disappearance cases have been transmitted to the Federal Police Commission for further investigation.²¹⁶ Recently, the Commission is undergoing a reform, which likely elevates its institutional autonomy and capacity to engage actively in the investigation of grave human rights abuses including EDs.

4.1.4 Gaps with the Federal Attorney General and Federal Criminal Investigation Department

The FAG has been conducting series of legal and justice reforms since recent years. Yet, there is no special scheme and/or unit instituted within FAG to deal with issue of ED except the overall legal and justice reform initiatives.²¹⁷ The two National Human Rights Action Plans (NHRAP) undergone so far comprise no strategies and goals set to address gross human rights abuses including disappearances. The Plans were full of rhetoric and aspirations for the improvement of the protection and respect of fundamental human rights.

The experience of Federal Criminal Investigation Department's (FCID) engagement in the protection against ED is also weak. Commander *Ketema* admits that the Federal Police has been aware of some reports of disappearances in the past but made no significant effort in the investigation of the cases due to mainly lack of clear policy direction from the government on the

²¹⁴EHRC Establishment Proclamation No. 210/2000, Fed. Neg. Gaz., 6th Year No. 40 (Addis Ababa, 04 July 2000).

²¹⁵Interview with (Anonymous), Senior Human Rights Investigator at EHRC (n143).

²¹⁶Ibid.

²¹⁷Interview with Yibekal Gizaw Agonafer (n142).

area.²¹⁸ As a result, there is no data documented so far by the Federal Police relating to ED, according to Commander *Ketema*. The involvement of the agents of NISS and National Defense Force in some of the alleged disappearance incidents have also made difficult some initiatives of police investigation in the past.²¹⁹ Most suspects of terrorism and those arrested suspected of membership in once banned political organizations were victims of forcible disappearance as they went through several secret detention centers for several weeks and months before they were taken to the FCID or what has been known as *Maekelawi*.²²⁰

4.1.5 Lack of Criminalization of Enforced Disappearance

As the practice stands today, there is no standard approach employed to prosecute perpetrators of ED due to lack of criminalization of the act of disappearance. In most cases, ED is treated vis-à-vis other offenses criminalized under the Criminal Code. This study is interested in two major approaches employed in the prosecution of ED in some relevant cases pending before the Federal High Court *Lideta* Division. The first approach is, treating disappearance as an auxiliary act or forming element of other crimes penalized under the Criminal Code.²²¹ According to *Abraham*, this approach is employed in the case of *Ato Getachew Assefa et al*,²²² one of the prosecutions of former senior government officials for gross human rights abuses of the past.

The defendants were charged for the crime of ‘Abuse of Power’ under Article 407 of the Criminal Code and Article 9 of the Corruption Crimes Proclamation No. 881/2015. The public prosecutor did not make an explicit expression of the crime of ED. However, some facts of the case that constitutes forcible disappearance were made a forming element of the main crime with which the defendants were accused. *Getachew Assefa*, the former director of National Intelligence and

²¹⁸Interview with Commander Ketema Debalike, Organized and Miscellaneous Crimes Directorate Director at Federal Criminal Investigation Chamber (Addis Ababa, 06/05/19).

²¹⁹*Ibid*.

²²⁰*Ibid*.

²²¹Interview with Abraham Ayalew, Public prosecutor at FAG (Addis Ababa, 13/05/19).

²²²*Federal Attorney General v Ato Getachew Assefa et al*, (Federal High Court (FHC)) Crim. File No. 238040 [Pending].

Security Services (NISS) was charged in his absence along with twenty-five other intelligence personnel.

He was accused for planning and ordering arrest without authorization of law; facilitating solitary confinement of arrested persons; organizing secret detentions; and risking the life of the detainees by throwing them far away from the detention facilities covering their eyes with cloth. The public prosecutor has mentioned the name of some victims of the alleged abuses. Seven secret detention centers located at different areas in Addis Ababa city were mentioned in the charge.²²³ It is also stated that the accused persons had been running similar secret prisons in different towns throughout the country.

These facts mentioned in the charge are some of the manifestations of ED that are prohibited explicitly in the UN Declaration²²⁴ and CPED.²²⁵ Both instruments provide that any person deprived of liberty shall be held only in officially recognized and supervised places of deprivation of liberty. The UN ‘Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment’ also provides “Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.”²²⁶

The same approach is applied in the case of *Khalifa Abdurrahman et al*²²⁷ (17 defendants), who were accused of a crime of terrorism under Article 3(1) (b & c) of the former Anti-Terrorism Proclamation No. 621/2001 for kidnapping and endangering the lives 15 students of *Dembi Dollo* University. The students were kidnapped while on journey back to their family on December 04 and 05, 2019. All of the students were females and mentioned by name. It is stated that the

²²³The detailed address of the secret prisons is mentioned on p.5 of FAG’s prosecution charge, F/A/G/Crim. File No. 198/2011.

²²⁴ The 1992 UN Declaration (n8) Article 17 (1) and (2) (a, b & c).

²²⁵ CPED (n9) Articles 10 (1) and 12 (1).

²²⁶UNGA, Res. No. 43/173 ‘Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment’ (9 December 1988) Principle 2.

²²⁷*Federal Attorney General v Khalifa Abdurrahman et al*, (FHC) Crim. File No. 255390 [Pending].

defendants kidnapped the students with a motive to advance the political ideology of a rebel group named “*Oneg-Shene*” by coercing the government and the public.

This particular case shows the involvement of non-state actor, that is, *Oneg-Shene*, in the perpetration of the act of disappearance, which falls within the ambit of the definition of ED under the Rome Statute of ICC meant to establish individual criminal responsibility. The public prosecutor did not mention direct or indirect involvement of the government in the perpetration of the crime. Nor the charge says anything about the fate or whereabouts of the alleged disappeared students. Such ambiguities warrant the need for an independent investigation further into the case especially in order to hold the government (the State of Ethiopia) accountable under IHRL at least for its failure to discharge its responsibility to protect (R2P).²²⁸

The second approach is, prosecuting the suspects of the act of ED by ‘Aggravated Homicide’ if the act of disappearance is followed by murder of the alleged victims. This approach was applied in the case of Commissioner *Bekri Mohammad et al*,²²⁹ whereby the suspects were indicted by aggravated homicide for perpetrating the disappearance of four persons whose murder was discovered nine years later. Originally, the petition of this disappearance case was brought to EHRC three years ago.²³⁰ The latter has started an investigation into the incident though not able to come up with a complete and concrete finding due to impeding political environment at that time.²³¹ As a result, it transferred the case with its findings to the Federal Police Commission for further investigation and prosecution.

Mollalegn Habte, a Public Prosecutor in the case, is of a position that a thorough investigation made for several months proved that the alleged victims have been forcibly disappeared and murdered by the accused and buried *en masse*.²³² He added that an exhumation was conducted and

²²⁸The 1992 UN Declaration (n8) Article 3 and CPED (n9) Article 3; see also UNGA, Res. 60 (1), ‘2005 World Summit Outcome’, (24 October 2005) A/RES/60/1, Paras 138 & 139.

²²⁹*Federal Attorney General v Commissioner Bekri Mohammad et al*, (FHC) Crim. File No. 245164 [Pending].

²³⁰Interview with (Anonymous) (n143).

²³¹*Ibid*.

²³²Interview with Mollalegn Habte, Public Prosecutor at FAG (Addis Ababa, 13/05/19).

the victims' identity was confirmed effectively through a DNA test.²³³ It is undoubtable that facts of the aforementioned cases constitute ED. Nevertheless, lack of explicit provision in the Criminal Code that criminalizes ED has become a challenge in the task of prosecution of the act as an autonomous crime.

In sum, it is imperative to note that lack of criminalization of ED under the repealed Penal Code has also influenced the outcome of the '*Derg trial*' relating to disappearance cases. For instance, the trial acquitted *Derg* officials accused of the alleged disappearance of *Bealu Girma* arguing that the SPO could not produce an evidence establishing the killing of the victim following his disappearance as envisaged by Article 281(c) of the Penal Code.²³⁴

4.1.6 Weak Cooperation with the UN Special Procedure Mandate Holders

Back in 2016, the WGEID made joint urgent appeal together with seven other special procedure mechanisms urging Ethiopia, *inter alia*, to disclose immediately the whereabouts of those disappeared and emphasized, "All allegations of EDs must be thoroughly and independently investigated and perpetrators held accountable".²³⁵ Nevertheless, Ethiopia has not ever taken an initiative to conduct independent investigation of allegations of past EDs. Some Special Procedure Mandate Holders such as Working Group on Arbitrary Detention and Special Rapporteur on Torture have also requested to visit Ethiopia and the visit was proposed to take place in 2018 and 2019 respectively.²³⁶ However, the proposed periods of visit were already expired without response from Ethiopia irrespective of frequent reminder sent by the Mandate Holders.

²³³Ibid.

²³⁴'The Ethiopian Derg Trials: The SPP vs Col/Mengistu Hailemariam and et al Ruling Given by the Federal High Court on the 21st of January 2003 (Addis Ababa, Ethiopia) Vol. 11 pp. 541-543' as cited in 'አንዳለጌታ ከበደ: በዓሉ ግርማ-አይወት እና ሥራዎቹ' literally translated as 'Endalegeta Kebede, *Bealu Girma: His Life and Works*' (Addis Ababa, February 2017)364-367.

²³⁵OHCHR, 'Ethiopia: UN Experts Call for International Commission to Help Investigate Systematic Violence against Protesters' (Geneva, October 10, 2016) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20663&LangID=E>> accessed 04 March 2019.

²³⁶OHCHR, 'Country Visits of Special Procedures of the Human Rights Council Since 1998' <<https://spinternet.ohchr.org/ViewCountryvisits.aspx?visitType=pending&lang=En>> accessed 25 September 2020.

4.2 New Developments Relevant in the Protection against Enforced Disappearance

4.2.1 Expression of Consent to Ratify the UN Convention for the Protection of all Persons from Enforced Disappearances (CPED)

Ethiopia expressed her consent to ratify CPED in the ‘National Report’ submitted to the Human Rights Council on May 2019 for the 3rd cycle UPR.²³⁷ However, no details about the stage of the ratification process were mentioned except expressing in general terms, “Work is underway to accede to...” Besides, an attempt made by this researcher to pinpoint concrete works underway or policy considerations behind the initiative taken towards expression of consent to accede to the convention was not successful. As far as this research is concerned, Ethiopia’s expression of willingness to accede to CPED is the most significant step forward in the protection against ED.

4.2.2 Ratification of the Kampala Convention of the 2009

The AU Convention for the Protection and Assistance of IDPs in Africa (the Kampala Convention) is the only instrument in Africa that expressly provides for the prohibition of ‘EDs’²³⁸ though its scope of application is limited to IDPs. Ethiopia has ratified the Convention on March 13, 2020.²³⁹ Internal displacement has been becoming a recurrent problem in Ethiopia since recent years. This equally raises a concern for the potential risk of forced disappearance of IDPs. An information from the FCID shows that there are reports of disappearances a year before from some IDP camps located in the Eastern part of the country.²⁴⁰ Therefore, Ethiopia’s accession to the Kampala Convention is quite important in the protection of the IDPs from the risk of disappearance.

4.2.3 Some Considerable Legal Reforms

This research identified some legislative reforms that are vital in the protection against ED in Ethiopia. These include the newly issued laws: first, the Organizations of Civil Societies

²³⁷National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Ethiopia’ (25 February 2019) A/HRC/WG.6/33/ETH/1, 4.

²³⁸The African Union Convention for the Protection and Assistance of IDPs in Africa’ /AU/PA/Draft/Decl. (I) Rev.123, (Kampala, October 2009) Article 9(1/c).

²³⁹A Proclamation to Ratify African Union Convention for the Protection and Assistance of IDPs in Africa Ratification Proc. No. 1187/2020, Fed. Neg. Gaz., Year 26, No. 24 (Addis Ababa, 13 March 2020).

²⁴⁰Interview with Commander Ketema Debalike (n218).

Proclamation No. 1133/2019; second, a Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020; and third, the Federal Prison Proclamation No. 1174/2019. These laws are human rights friendly in general and instrumental in the protection of all persons from ED in particular.

The first one would promote active engagement of Civil Society Organizations (CSOs) in the human rights advocacy including the protection against ED. It fully liberalized CSOs' operational freedom²⁴¹ and funding sources²⁴² as opposed to the repealed proclamation no. 621/2009, which in this regard had been curtailing CSOs' role especially in activism and human rights advocacy. The second proclamation has introduced a clause that prohibits the NISS and its officers from detaining a person suspected of terrorism crime.²⁴³ This would potentially curb the risk of forcible disappearance of persons in the hand of the NISS's officers or agents, the practice that had been rampant in the past under the repealed Anti-Terrorism Proclamation 652/2009.

The third law, that is, the Federal Prison Proclamation No.1174/2019 is quite helpful in the prohibition of the potential risk of disappearances of prisoners (inmates). The proclamation empowers the Federal Prisons Commission to “collect, analyze and interpret data and statistics of prisoners at nationally.”²⁴⁴ This would help the government to introduce a ‘National Register of Prisoners’ which is useful to discourage unofficial practice of detention and to easily trace the whereabouts of prisoners. It also requires the Prisons to maintain an “up-to-date and modern record keeping system” of prisoners.²⁴⁵ Article 26 sub 2 and 3 define the particulars or personal details about prisoners in a manner compatible with international standards set as per Article 17(3) of the CPED.

²⁴¹Organizations of Civil Societies Proclamation No. 1133/2019, Fed. Neg. Gaz., Year 25, No. 33 (Addis Ababa, 12 March 2029) Article 62(2).

²⁴²Ibid Article 63(1/c).

²⁴³Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020, Fed. Neg. Gaz., Year 26, No. 20 (Addis Ababa, 25 March 2020) Article 37(3).

²⁴⁴Federal Prison Proclamation No. 1174/2019, Fed. Neg. Gaz., Year 26, No. 14 (Addis Ababa, 17 February 2020) Article 7(14).

²⁴⁵Ibid Article 26(1). This provision is compatible with Article of 10(3) of the 1992 UN Declaration (n8) which requires “an official up to date register of all persons deprived of their liberty shall be kept in every place of detention.”

4.2.4 An Amendment Underway to the 1961 Criminal Procedure Code (Cr. C. P.)

The Draft Cr. P. C. (Draft Code) has come up with some new developments relevant to the protection against EDs. First, the draft Code defines three categories of detention places (prisons) stated in Amharic as “ማቆያ ቤት”, “ማረፊያ ቤት” and “ማረማያ ቤት”.²⁴⁶ These can be expressed respectively as: place where detainees stay for the period of investigation (regular police or military police custody); place where detainees stay after completion of investigation until the time a charge is instituted or until she/he is convicted; and place where sentenced persons are detained. These detention places are expected to be ‘known to the public’ “ለሕዝብ በግልፅ የሚታወቅ”.²⁴⁷ An expansive interpretation of this phrase would serve as a standard in the prohibition of ‘secret detentions’ or ‘unacknowledged detentions’ that in turn is helpful in the protection of ‘arrested persons’ or ‘detainees’ from the risk of facing ED.

Second, a time limit is fixed for ‘remand’ whereby it should not exceed a maximum of four months.²⁴⁸ This is significant in curbing a potential risk of arbitrary detention and short-term disappearance faced by detainees while under investigation. Third, unlike the 1961 Cr. P. currently in force, the Draft Code has redefined and elaborated the constitutional rights of detained persons such as right to visitation.²⁴⁹

Fourth, the Draft Code bestows a ‘Universal Jurisdiction’ upon the Ethiopian Courts to try offences committed in violation of international treaties signed or ratified by Ethiopia.²⁵⁰ Article 9(2) of the CPED obliges States to exercise jurisdiction over the offence of ED when the alleged offender is present in any territory under its jurisdiction. Therefore, once Ethiopia accedes to CPED, Ethiopian courts will be obliged to exercise jurisdiction over the crime of ED no matter how the crime is committed outside the territory of Ethiopia and the victim or the suspect is not an Ethiopian

²⁴⁶The FDRE Draft Criminal Procedure Code [Draft Cr. P. C.] Article 2 (11-13).

²⁴⁷Ibid.

²⁴⁸Ibid Article 119(3).

²⁴⁹Ibid Article 121(2).

²⁵⁰Ibid Article 24(5).

national.²⁵¹ Last, the incorporation of detailed procedures relating to formation and implementation of an ‘International Cooperation on Criminal Proceedings’ and ‘Extradition’ are also new developments introduced by the Draft Code.²⁵² Such schemes would help ensure international judicial cooperation in order to facilitate the effective investigation of transnational cases of ED.

4.2.5 The Establishment of Reconciliation Commission

The establishment of Reconciliation Commission is an important step forward in addressing past gross human rights violations as clearly enunciated in the preamble of the establishment proclamation of the Commission.²⁵³ The Commission’s establishment is with a belief to provide victims of gross human rights abuse with a platform to be heard and perpetrators to disclose and confess their actions.²⁵⁴ Independent investigation and disclosure of the truth about past atrocities is also an aspiration of the Commission.²⁵⁵ These aspirations of the Commission do have a significant purpose to serve in the protection against ED in general and redress outstanding cases of disappearance in particular.

The ‘truth finding’ objective of the Commission will have much importance to shed light on the fate of disappeared persons for years and whose whereabouts is not yet known. The initiative taken by Ethiopia in this regard is in line with resolutions passed by both the UN General Assembly and Human Rights Council, which encourage States to establish specific judicial mechanisms such as truth and reconciliation commissions to investigate and address gross violations of human rights

²⁵¹Interview with Mr. Simeneh Kiros Assefa, Associate Prof of Law at AAU, Criminal Law Sub Working Group Chairman and Member of the Revision Committee of the Cr. P. C. at Legal and Justice Advisory Council of FAG (Addis Ababa, 9/05/19).

²⁵²Draft Cr. P. C. (n246) Book Nine- Articles 394-415; and Articles 416- 437.

²⁵³Reconciliation Commission (RC) Establishment Proclamation, Proc. No. 1102/2018, Fed. Neg. Gaz., Year 25, No. 27 (Addis Ababa, 05 February 2019) Preamble Par 2.

²⁵⁴Ibid Preamble Par 3.

²⁵⁵Ibid Preamble Par 4.

among others.²⁵⁶ It also upholds the ‘right to know the truth’ guaranteed for the victims of ED under the CPED.

However, the establishment proclamation of the Commission does not clearly define what constitutes gross violations of human rights and the temporal scope of the Commission. The Regulation on a drafting stage is expected to address these and other prevailing issues relating to the mandate of the Commission. The Deputy Chairperson of the Commission Laureate *Yetnebersh Nigussie* is of a position that ‘ED’ will undoubtedly be one of the gross violations of human rights to be addressed by the Commission.²⁵⁷ Mr. *Tamiru Kidane Mariam*,²⁵⁸ one of the members of the Commission, espouses same position. He added that a study is underway to design an indigenous approach to reconciliation based on Ethiopia’s diverse traditions of dispute resolution. According to Mr. *Tamiru*, such approach opted by the Commission makes it unique compared to the experience of other countries such as South Africa, Uganda, Kenya and most Latin American countries who went through bloody civil war or armed conflict, which is not the case in Ethiopia.²⁵⁹

Four major objectives are proposed relating to investigation of gross violations of human rights that include facilitating justice, finding truth, recognizing victims and preventing recurrence.²⁶⁰ Laureate *Yetnebersh* added, “Different ‘Inquiry Units’ will be instituted under the Commission with a mandate of investigation of complex gross violations of human rights committed in the past that hopefully include ED.”²⁶¹ Last, the power vested upon the Commission ‘to visit premises of

²⁵⁶UNGA, ‘Right to the Truth’ Res. No. 68/165, (21 January 2014) A/RES/68/165, 3 par 4; and UNHRC, Resolution 9/11 (n101) p3 par 4.

²⁵⁷Interview with Yetnebersh Nigussie, Deputy Chairperson of the Reconciliation Commission (Addis Ababa 20/10/19).

²⁵⁸Interview with Tamiru Kidane Mariam, Member of the Reconciliation Commission and Attorney at Law (Addis Ababa, 17/05/19).

²⁵⁹*Ibid.*

²⁶⁰Interview with Yetnebersh Nigussie (n257).

²⁶¹*Ibid.*

any institutions and access to information and documents'²⁶² would help its effort to search for information and evidences about the fate of alleged disappeared persons.

Conclusion

There are several outstanding cases of disappearance in Ethiopia. The continuing nature of ED makes such outstanding cases remain a threat to date. An anguish of families of the victims in particular and the society in general continues until fate of the alleged disappeared person(s) is resolved. On the one hand, lack of criminalization of ED and the prevalence of short-term disappearances makes the danger of ED more clear and present. On the other hand, some of the unfolding new developments such as Ethiopia's expression of willingness to ratify the CPED and ratification of the Kampala Convention, establishment of the Reconciliation Commission, and reforms underway to the EHRC are quite helpful measures in addressing ED.

²⁶²RC Establishment Proclamation (n253) Article 6(6).

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The practice of ED has a long history in Ethiopia. The WGEID has recorded disappearances that have been occurring in Ethiopia since 1974. According to its recent report, Ethiopia is from among countries with more than 100 cases of disappearances. Currently, the country is under review with 113 outstanding cases. Both local and international human rights organizations have recorded hundreds of disappearance cases that are neither clarified nor discontinued.

Ethiopia does not recognize ‘right not to be subjected to ED’ as an autonomous right. Nor does ED criminalized as an autonomous crime in itself. This research analyzed relevant laws that have an implication on the multifaceted aspects of ED. An emphasis is made on the FDRE Constitution of 1995, the Criminal Code of 2005, the Criminal Procedure Code of 1961, the Civil Code of 1960 and the Civil Procedure Code of 1961. The research has identified the following legal gaps and practical challenges hindering the protection against ED:

- Failure to adequately address past cases of EDs;
- Continuing past trends of ED;
- Lack of initiative taken by EHRC to conduct a thorough investigation into alleged outstanding disappearance cases in the country.
- No separate unit or department instituted within FAG and FPC with a mandate for the investigation and prosecution of the crime of ED;
- Lack of criminalization of ED as an autonomous crime;
- Weak cooperation with the UN special procedure mandate holders;
- Failure to accept any of the individual complaint mechanisms established by the UN human rights system; and
- Weak civic engagement towards an advocacy for the protection against ED.

These challenges and some of the recent disappearance cases illustrated in this research show that ED remains a threat in Ethiopia to date. There is no doubt that an anguish of families of the victims in particular and the society in general continues until fate of the alleged disappeared person(s) is resolved. That is, the continuing nature of ED makes past cases of disappearance remain a threat as long as not adequately resolved.

On the other hand, this research has found out some new developments that are helpful in the protection against ED in Ethiopia. This includes but not limited to Ethiopia's expression of willingness to ratify the CPED and ratification of the Kampala Convention. The initiative taken recently by the ACHPR in adopting ED as one thematic area of human rights in the continent is a significant step forward with obvious ramification on Ethiopia. Institutionally, establishment of the Reconciliation Commission and reforms underway to the EHRC are quite helpful measures. The latter is noteworthy especially in strengthening the Commission's capacity to carry out thorough and credible investigation into gross violations of human rights including ED.

The repeal of former laws such as the CSOs Proclamation No. 621/2009; Anti-Terrorism Proclamation No. 652/2009; and Federal Prison Commission Establishment Proclamation No.365/2003 (as amended) is a positive step forward. The first two laws had been disapproved for not being human rights friendly. All the same, the amendment underway to Cr. P. C. is noteworthy. The draft code has come up with vital provisions helpful in the protection of all persons from ED. Last, though inadequate, the prosecution of former senior government officials is a positive step forward taken to ensure accountability for gross violations of human rights in the past. The same is true of the prosecution recently instituted against alleged perpetrators of disappearances of *Dambi Dollo* University students though; the most crucial issue as to the whereabouts of the students remains unresolved.

5.2 Recommendations

The researcher strongly submits the following recommendations that are important in ensuring the protection against ED in Ethiopia.

- The FAG have to take an initiative to revise the Criminal Code with a view to criminalizing ED in particular and CAH in general in unambiguous terms.
- The FAG should also consider putting in place a special mechanism or instituting a separate unit responsible for the investigation and prosecution of the crimes of ED.
- The HPR should consider incorporating in the draft Cr. P. C. an express prohibition of secret and/or unacknowledged detention and a clause obliging the FAG to regularly compile and maintain up-to-date 'Official Records and/or Registers of Persons Deprived of Liberty'.

- The Office of the NHRAP need to come up with a clear roadmap/plan to address past cases of ED and prohibition of future disappearances in the upcoming third NHRAP.
- The Council of Minister should clearly incorporate ED into the upcoming Regulation defining the mandates of the Reconciliation Commission.
- The Reconciliation Commission should establish an ‘Inquiry Unit or Committee’ with a mandate of investigation and/or search of hundreds of outstanding cases of disappearances alleged to have occurred in Ethiopia since the *Derg* regime.
- The CSOs need to actively engage in the task of mobilizing survivors of ED and victims’ family to fight against ED; putting pressure on the government to investigate and disclose the fate and whereabouts of the hitherto disappeared persons; and lobbying for the immediate ratification of the CPED.
- At the time of ratifying the CPED, the GoE have to recognize the competence of the CED to receive individual communications.
- The FAG should launch a study to draw an inspiration from international standards, jurisprudences and experiences of other jurisdictions helpful for effective domestication of the CPED.
- The GoE should extend a standing invitation to the WGEID and the Working Group on Arbitrary Detention.
- The government have to ratify the 1998 Rome Statute of ICC in order to ensure individual criminal responsibility for the offence of ED and other international crimes.
- Finally yet importantly, the government should also accept all Individual Complaint Mechanisms established by both the UN and AU to monitor compliance with human rights treaties to which Ethiopia is a State Party.

BIBLIOGRAPHY

BOOKS AND JOURNAL ARTICLES

Citroni, G., Hardy, D. and Rice, P., 'Art. 1. 1: No one shall be subjected to ED. A Guide to the CPED' (Utrecht, the Netherlands, Aim for Human Rights 2009).

Dijkstra, P., Klann, H., Ruimschotel, R. and Wijnkoop, M., 'EDs as Continuing Violations' (Amsterdam International Law Clinic, 7 May 2002) G. Citroni and T. Scovazzi, T., 'Recent Developments in International Law to Combat EDs' (2009) REVISTA INTERNACIONAL DE DIREITO E CIDADANIA 3.

Firew Kebede Tiba, 'Mengistu Genocide Trial in Ethiopia' (2007) 5 J. INT'L CRIM. JUST. 513.

Girmachew Alemu Aneme, 'Apology and Trials: The Case of the Red Terror Trials in Ethiopia' (2006) 6 AFR. HUM. RTS. L.J. 64.

_____ 'The Anatomy of Special Prosecutor v. Colonel Mengistu Hailemariam et al. (1994-2008)' 4 INTERNATIONAL JOURNAL OF ETHIOPIAN STUDIES 1/2 (Tsehai Publishers, Spring/Fall 2009).

Hall, C. K. and Herik, L. van den, 'ED of Persons', in Kai Ambos, (ed.), *Commentary on the Rome Statute of the International Criminal Court* (3rdEdn. Go'ttingen, Nomos, October 2015).

Kissi, Edward, 'Remembering Ethiopia's 'Red Terror': History of a Private Effort to Preserve a Public Memory' in ERTDRC, *Documenting the Red Terror: Bearing Witness to the Ethiopia's Lost Generation* (ERTDRC North America Inc., Ottawa, Ontario, 2012).

Lippman, Matthew, 'Disappearances: Towards a Declaration on the Prevention and Punishment of the Crime of Enforced or Involuntary Disappearances' (1988) 4 CONN. J. INT'L L. 121.

Marshet Tadesse Tessema, *Prosecution of Politicide in Ethiopia: The Red Terror Trials* (Gerhard Werle and Moritz Vormbaum (eds) Asser Press, The Hague, The Netherlands, (2018)18 INTERNATIONAL CRIMINAL JUSTICE SERIES, 36.

McCrary, Susan, 'The International Convention for the Protection of all Persons from ED' (2007) 7 HRLR 3.

Milić, Tatjana, 'International Convention for the Protection of All Persons from ED' (2010) LXII MP 1.

Pervou, Ioanna, 'The Convention for the Protection of All Persons from ED: Moving Human Rights Protection Ahead' (Spring/Summer 2012) 5EJLS Issue1.

Sarkin, Jeremy, 'Why the Prohibition of ED has Attained *Jus Cogens* Status in International Law?' (2012) NORDIC JOURNAL OF INTERNATIONAL LAW 81.

Scovazzi, T. & Citroni, G., *The Struggle against EDs and the 2007 United Nations Convention* (Leiden: Martinus Nijhoff Publishers 2007).

Simeneh Kiros Assefa, *Criminal Procedure Law: Principles, Rules and Practices* (USA, 2009).

Stevens, Philip, 'The International Convention for the Protection of All Persons from ED – A Welcoming Response to a Worldwide Phenomenon with Limited Relief' (2010) 73 THRHR 368.

'The Ethiopian Derg Trials: The SPP vs Col/Mengistu Hailemariam and et al Ruling Given by the Federal High Court on the 21st of January 2003 (Addis Ababa, Ethiopia) Vol. 11 pp. 541-543' as cited in Endalegeta Kebede, *Bealu Girma: His Life and Works* (Addis Ababa, February 2017).

Trindade, A.A. Cançado, 'EDs of Persons as a Violation of Jus Cogens: The Contribution of the Jurisprudence of the IACtHR' (2012) NORDIC JOURNAL OF INTERNATIONAL LAW 8.

Tsviki, Vladyslava, 'ED in International Human Rights Law' (2016) 3 EUROPEAN POLITICAL AND LAW DISCOURSE 6.

Vivo, Raul Valdez, *Ethiopia: The Unknown Revolution*, (Social Sciences Publishers, La Habana, Cuba, 1978).

Vranckx, An, 'Long Road towards Universal Protection against ED' (2007) IPIS 7.

Yacob Haile-Mariam, 'The Quest for Justice and Reconciliation: The International Criminal Tribunal for Rwanda and the Ethiopian High Court' (1999) 22 HASTINGS INT'L & COMP.L. REV. 667.

THESIS AND DISSERTATIONS

Derawork Zewude, 'The Protection from ED under the Ethiopian Law' (Unpublished Senior Thesis, AAU Law Library, 2009).

Fekade Alemayhu, 'Prosecution of Crimes against Humanity and Genocide in Africa: A Comparative Analysis' (AAU LLM Thesis, December, 2010).

Kyriakou, N., ‘An Affront to the Conscience of Humanity: ED in International Human Rights Law’ (Doctoral Thesis, European University Institute, Florence, June 2012).

Raimondo, G. C., ‘Redress for Victims of EDs: A Comparative Perspective’ (LLM Thesis, McGill University, December 2014).

Vermeulen, Marthe Lot, ‘ED: Determining State Responsibility under the International Convention for the Protection of All Persons from ED’ (Doctoral Thesis, Utrecht University School of Law February 2012) 51 SCHOOL OF HUMAN RIGHTS RESEARCH SERIES.

Yalemfiker Girma Moges, ‘Collective Criminal Responsibility of the Derg Members in the Case of Special Prosecutor V. Colonel Mengistu Hailemariam *et al*’ (AAU LLM Thesis, March 2010).

Yvette, Wakio Cindy, ‘*Habeas Corpus* as an Effective Remedy to ED with Respect to the Mariam & Hemed Cases’ (Strathmore University, LLB Thesis, Law School, 28 March 2018).

LAWS

National Laws

EHRC Establishment Proclamation No. 210/2000, Fed. Neg. Gaz., Year 6, No. 40 (Addis Ababa, 04 July 2000).

Federal Prison Proclamation No. 1174/2019, Fed. Neg. Gaz., Year 26, No. 14 (Addis Ababa, 17 February 2020).

Organizations of Civil Societies Proclamation No. 1133/2019, Fed. Neg. Gaz., Year 25, No. 33 (Addis Ababa, 12 March 2020).

Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020, Fed. Neg. Gaz., Year 26, No. 20 (Addis Ababa, 25 March 2020).

Proclamation to Provide for the Establishment of the Special Public Prosecutor’s Office No. 22/1992 (Addis Ababa, August 08, 1992).

Proclamation to Ratify African Union Convention for the Protection and Assistance of IDPs in Africa Ratification Proc. No. 1187/2020, Fed. Neg. Gaz., Year 26, No. 24 (Addis Ababa, 13 March 2020).

Reconciliation Commission Establishment Proclamation, Proc. No. 1102/2018, Fed. Neg. Gaz., Year 25, No. 27 (Addis Ababa, 05 February 2020).

The Civil Code of the Empire of Ethiopia, 1960, Proc. No. 165/1960, Neg. Gaz., Extraordinary Issue No.2 of 1960 (Addis Ababa, Ethiopia, 05 May 1960).

The Civil Procedure Code of the Empire of Ethiopia (Cv, P. C.), 1965, Decree No. 52/1965, Neg. Gaz., Extraordinary Issue No.3 of 1965 (Addis Ababa, 08 October 1965).

The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No.1/1995, Fed. Neg. Gaz., Year 1, No.1 (Addis Ababa, 21 August 1995).

The Criminal Code of the Federal Democratic Republic of Ethiopia, 2004, Proc. No.414/2004, Fed. Neg. Gaz. (Addis Ababa, 9 May 2005).

The Criminal Procedure Code of the Empire of Ethiopia (Cr. P. C.), 1961, Proc. No.185/1961, Neg. Gaz., Extraordinary Issue No. 1 of 1961 (Addis Ababa, Ethiopia, 02 November 1961).

The FDRE Draft Criminal Procedure Code [Draft Cr. P. C.].

International Instruments

Declaration on the Protection of All Persons from ED, UNGA/Res./47/133 (18 December 1992) UNTS Vol. 500, No. 7310 (adopted without vote).

Inter-American Convention on the Forced Disappearance of Persons, (adopted 9 June 1994 and entered into force 28 March 1996) OAS Treaty Series No. 68, 33 ILM.

International Convention for the Protection of All Persons from ED (adopted on 20 December 2006 and entered into force on 23 December 2010) GA. Res. 61/177, U.N. Doc. A/RES/61/177.

International Covenant on Civil and Political Rights (ICCPR) (Adopted on 16 December 1966 and entered into force 23 March 1976) 999 U.N.T.S. 171.

Rome Statute of International Criminal Court (adopted 17 July 1998 and entered into force on 1 July 2002) UNTS, Vol. 2187, No. 38544.

The African Union Convention for the Protection and Assistance of IDPs in Africa /AU/PA/Draft/Decl. (I) Rev.123, (Kampala, October 2009).

The Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (The Malabo Protocol) (adopted on June 2014).

Foreign Laws

‘The Colombian Law on the Urgent Tracing Mechanism (2005)’ in ICRC, *Customary IHL-Practice Relating to Rule 98. ED.*

Anti-Enforced or Involuntary Disappearance Act of the Republic of Philippines, Republic Act No. 10353 (Metro Manila, 23 July 2012).

Peruvian Law on the National Information Register on Disappeared Persons (2003)’ in ICRC, *Customary IHL Rule 98 ED.*

The Constitution of the Republic of Uganda (Kampala, 8 October 1995) [Amended by the Constitution Amendment Act No.13 of 2000; Amendment Act No. 11/2005; and Amendment No.2, Act 21 of 2005 (Published as at 15 February 2006)].

RESOLUTIONS

UNGA, ‘Questions of Enforced or Involuntary Disappearance’ Res. 33/173 (20 December 1978) A/33/509.

ACHPR, Resolution on the Expansion of the Mandate and Composition of the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa, ACHPR/Res. 408 (LXIII) (Banjul, Republic of the Gambia, November 13, 2018).

ACHPR ‘Res 258 on Summary Execution and ED in Mali’ (2013).

UNGA, ‘The Right of *Amparo*, *Habeas Corpus* or other Legal Remedies to the Same Effect’ Res. No. 34/178, 34th Session, 106th Plenary Meeting (17 December 1979).

UNGA, ‘Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment’ Res. No. 43/173 (9 December 1988).

UNCHR, Res. 20 (XXXVI) (29 February 1980) E/CN.4/1408.

UNCHR, Res. 2001/46 (23 April 2001) E/CN.4/2002/.

UNGA, ‘Right to the Truth’ Res. No. 68/165, (21 January 2014) A/RES/68/165.

UNHRC, Res 36/6 (28 September 2017) A/HRC/RES/36/.

UNHRC, Res. 9/11, ‘Right to the Truth’ A/HRC/9/L.12.

UNHRC, ‘Right to the Truth’ Resolution 9/11(18 September 2008) A/HRC/RES/9/11.

GENERAL COMMENTS AND CONCLUDING OBSERVATIONS

CAT, 'Consideration of Reports Submitted by States parties under Article 19 of the Convention Concluding Observations of the Committee against Torture' (20 January 2011) CAT/C/ETH/CO/1.

HRC, 'Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of HRC on Ethiopia' (19 August 2011) CCPR/C/ETH/CO/1.

HRC, 'General Comment No. 6: Article 6 (Right to life)'.

OHCHR, 'Enforced or Involuntary Disappearances' Fact Sheet No. 6 Rev. 2.

WGEID, 'Compilation of General Comments on the Declaration on the Protection of All Persons from ED'

WGEID, 'General Comment on the Right to Recognition as a Person before the Law in the Context of EDs' par 2. A/HRC/7/.

JURISPRUDENCES

International

Anuak Justice Council v. Eth., Comm. 299/05, (20th ACHPR AAR Annex IV, 2006-2007).

Blake v. Guatemala, Judgment (IACtHR, 24 January 1998).

Bleier Lewenhoff v. Uruguay, Comm. 30/1978 (HRC 1982) U.N. Doc.A/37/40, at 130.

Cakici v. Turkey, Judgment (ECtHR, 8 July 1999).

Commission Nationale Des Droits De l'Homme Et Des Liberté v. Chad, Comm. 74/92, (9th ACHPR AAR Annex VIII, 1995-1996).

Goiburu v. Paraguay, Judgement (IACtHR, 22 Sep. 2006).

HRC, *Yurich v. Chile*, Comm. 1078/2002 (2005) U.N. Doc.A/61/40, Vol. II, at 489.

Imakayeva v. Russia, Judgment (ECtHR, 9 November 2006).

Kurt v. Turkey, Judgment (ECtHR, 25 May 1998).

La Cantuta v. Peru, Judgement (IACtHR, 29 Nov. 2006).

Quinteros v. Uruguay, Comm. 107/1981 (HRC 1983) U.N. Doc.A/38/40, at 216.

Sarma v. Sri Lanka, Comm. 950/2000, (HRC 2003) U.N. Doc.A/58/40, Vol. II, at 248.

Velasquez Rodriguez v. Honduras, Judgment (IACtHR, 29 July 1988).

Zitha v. Mozambique, Decision, Comm. No. 361/2008 (ACHPR, Mar. 2011).

Domestic Cases

Federal Attorney General v Ato Getachew Assefa et al, (Federal High Court) Crim. File No. 238040 [Pending].

Federal Attorney General v Commissioner Bekri Mohammad et al, (FHC) Crim. File No. 245164 [Pending].

Federal Attorney General v Khalifa Abdurrahman et al, (FHC) Crim. File No. 255390 [Pending].

Gudeta Assefa v Wodere Gudeta (FSC Cassation Bench, November 2018) Cass. File No. 153418.

Wubit Hiruy v Awasa Town Finance and Economic Development Bureau (FSC Cassation Bench, January 2012) Cass. File No. 74791.

REPORTS

AI, ‘Ethiopia: Accountability Past and Present- Human Rights in Transition’ (April 1995) AFR 25/06/95.

AI, ‘Ethiopia: End of an Era of Brutal Repression- A New Chance for Human Rights’ (1991).

AI, ‘Ethiopia: Parents Fear for Missing Amhara Students as Universities Close Over Covid-19’ (March 25, 2020).

AI, ‘Ethiopia: Police Must Account for Missing Oromo Opposition Leader’ (March 03, 2020).

Bertelsmann Stiftung’s Transformation Index, ‘Ethiopia Country Report’ (2018).

ECOSOC, ‘Report of the Intersessional Open-ended Working Group to Elaborate a Draft Legally Binding Normative Instrument for the Protection of All Persons from EDs’, (2 February 2006) E/CN.4/2006/57.

ECOSOC, ‘Report of the WGEID’ (27 December 2005) E/CN.4/2006/56.

ECOSOC, ‘Report of the WGEID’ (30 December 1994) UN Doc. E/CN.4/1995/36.

ECOSOC, ‘The Report of the WGEID’ (26 January 1981) UN Doc. E/CN.4/1435.

ECOSOC, ‘The Report of WGEID’ (12 January 1998) E/CN.4/1998/43.

HRCO, ‘An Urgent Call for the Immediate Disclosure of the Whereabouts People Who Have Been Abducted and Disappeared!’ Sixty-first [61st] Special Report (Addis Ababa, March 21, 2003).

HRCO, ‘Human Rights Abuses Committed at Different Zones of Somali and Oromia Regional States’ 144th Special Report’ (Addis Ababa, Ethiopia, July 31, 2018).

HRW, ‘“Such a Brutal Crackdown”: Killings and Arrests in Response to Ethiopia’s Oromo Protest’ (USA, June 2016).

HRW, ‘Ethiopia: Opposition Figures Held without Charge’ (Nairobi, August 15, 2020).

ICG, ‘Managing Ethiopia’s Unsettled Transition’ (21 February 2019) Africa Report No. 269.

UNCHR, ‘Report by the Independent Expert, Mr. Manfred Nowak’ (8 January 2002) UN Doc. E/CN.4/2002/71.

UNGA, ‘National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Ethiopia’ (25 February 2019) A/HRC/WG.6/33/ETH/1.

UNGA, ‘Report of the WGEID’ (7 August 2020) A/HRC/45/13.

UNGA, ‘Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review, Addendum: Ethiopia’ (5 July 2019) A/HRC/42/14/Add.1.

UNGA, ‘Written Statement Submitted by the Human Rights League of the Horn of Africa (HRLHA), a Non-Governmental Organization in Special Consultative Status’ (01 March 2018) UN Docs. A/HRC/37/NGO/187.

UNPO, ‘Oromo: ED of Prominent Community Leader’ (14 October 2015).

NEWS ANALYSIS AND PRESS RELEASES

ACHPR, Press Release on the Panel on ‘EDs in Africa: Understanding the Problem and Identifying Solutions’ (Banjul, The Gambia, 23 October 2019).

BBC News Afaan Oromoo, ‘Waqqaarii Kabaa: Dararaa Kanarraa Du'uu Naaf Wayyan Jedheen Gaafadhe’ literally translated to mean, “I asked them that I prefer to die than such a suffering!” (24 February 2020).

BBC News Amharic, ‘Ethiopia's Missing Students: Families' Pain and the Unsolved Mystery’ (March 16, 2020).

BBC, ‘Ethiopia Police Find Mass Grave of 200 People’ (8 November 2018).

EHRC, ‘Ethiopia: Continued Detentions despite Bail Orders’ (Addis Ababa, September 24, 2020).

Ethiopian Broadcasting Corporation (EBC), Amharic Special News (19 June 2018)

Ethiopian Press Agency (EPA), ‘Attorney General: 63 Former Senior Officials are Arrested for Various Crimes- Seven Secret Prisons Discovered in Addis Ababa’ (13 November 2018).

OHCHR, ‘Ethiopia: UN experts call for international commission to help investigate systematic violence against protesters’ (Geneva, October 10, 2016).

OHCHR, ‘Philippines Passed landmark law criminalizing EDs’ (24 January 2013).

Reuters, ‘Mass Arrests in Ethiopia Raise Specter of Repressive Past’ (Addis Ababa, August 13, 2020).

Rupert Coville, Spokesperson for the UN High Commissioner for Human Rights in *Press Briefing Note on Ethiopia* (Geneva, 3 July 2020).

ውብሽት፡ ሙላት፡- ‘የሌለው፡ የአስገዳጅ፡ መሰወር፡ ወንጀል፡ ሕግ፡ በኢትዮጵያ- አንባቢ’ ሪፖርትር [The Reporter].

ONLINE SOURCES

‘Trials of War Criminals before the Nuremberg Military Tribunal under Control Council Law No 10: Nuremberg, October 1946-April 1949’ (1951).
<https://www.loc.gov/rr/frd/Military_Law/pdf/NT_war-criminals_Vol-III.pdf>.

HRLHA, ‘Partial List of Oromos Forcefully Disappeared by TPLF/EPRDF Government Since 1991’ (June 4, 2018) <<https://www.facebook.com/humanrightsleague/posts/partial-list-of-romos-forcefully-disappeared-by-tpfepddf-government-since-1991/1310038049099418/>>.

Muluken Tesfaw, ‘24 Years of ED and Unlawful Detention’ <<https://www.printfriendly.com/p/g/HfVG3g>> accessed 24 March 2019.

OHCHR, ‘Country visits of Special Procedures of the Human Rights Council since 1998’ <<https://spinternet.ohchr.org/ViewCountryvisits.aspx?visitType=pending&lang=En>>.

OHCHR, ‘Enforced or Involuntary Disappearances’ (July 2009) Fact Sheet N°.6 (Rev.3) 7-8 <<https://reliefweb.int/sites/reliefweb.int/files/resources/FactSheet6Rev3.pdf>>.

Priya Pillai, ‘EDs: A Global Scourge, Increasingly under the Radar’ (May 31, 2019) <<https://opiniojuris.org/2019/05/31/>>.

Ratification Record of the CPED

<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-16.en.pdf>>.

Tanja Florath., 'Effective Remedies for EDs: The Suitability of *Habeas Corpus*' P. 6, https://www.academia.edu/3804249/Effective_Remedies_for_Enforced_Disappearances_The_Suitability_of_Habeas_Corpus>.

The International Coalition against EDs (ICAFD), 'CPED: A Primer for NGOs' p. ii, https://www.icaed.org/uploads/media/Primer_on_the_Convention_NGOs.pdf>

INTERVIEWS

Interview with Mollalegn Habte, Public Prosecutor at FAG (Addis Ababa, 13/05/19).

Interview with Mr. Simeneh Kiros Assefa, Associate Prof of Law at AAU, Criminal Law Sub Working Group Chairman and Member of the Revision Committee of the Cr. P. C. at Legal and Justice Advisory Council of FAG (Addis Ababa, 9/05/19).

Interview with Yetnebersh Nigussie, Deputy Chairperson of the Reconciliation Commission (Addis Ababa 20/10/19).

Interview with Tamiru Kidane Mariam, Member of the Reconciliation Commission and Attorney at Law (Addis Ababa, 17/05/19).

Interview with Garoma B. Wakessa, Director General of the HRLHA (Addis Ababa, 10/09/19).

Interview with Commander Ketema Debalike, Organized and Miscellaneous Crimes Directorate Director at Federal Criminal Investigation Chamber (Addis Ababa, 06/05/19).

Interview with Abraham Ayalew, Public prosecutor at FAG (Addis Ababa, 13/05/19).

Interview with Yibekal Gizaw Agonafer, Head of the National Human Rights Action Plan Office, FAG, (Addis Ababa, 29/04/19).

Interview with Adham Duri, Human Rights Protection and Monitoring Director, EHRC (Addis Ababa, 08/05/19).

Interview with Yusuf Jima, Director of International Cooperation on Legal Affairs at FAG (Addis Ababa, 29/04/2019).

Interview with Yeshwas Eshete, Program Coordinator at HRCO (Addis Ababa, 10/05/19).

ANNEX

Preliminary Questions for all Interviewees:

Name of the interviewee:- _____

Position in the institution:- _____

Date and time of interview:- _____

I. Interview Guides for the Federal Attorney General

Objective of the Interview Guide:

The aim of this interview guide is generally to explore the practical insights on legal and institutional framework for the protection against ED under the current legal regime of Ethiopia. In particular, it is meant to investigate policy, decision or plan put in place (available on the table) or proposed at the Federal Attorney General to ensure the protection of all persons from ED in Ethiopia.

Questions:

1. Do you think there is adequate legislative and institutional guarantee for the protection of persons from ED in Ethiopia? If 'Yes', how? If 'No', why?
2. The FDRE Constitution under 28(1) included "forcible disappearance" within the category of Crimes against Humanity (CAH) and, made it neither subject to statute of limitation nor commuted by amnesty or pardon. Yet, the FDRE Criminal Code neither expressly criminalizes the CAH in general, nor defines "ED" or criminalizes it in particular. Do you see such gap between the two bodies of law as a challenge in the area of the protection against ED in the real case scenario? If 'Yes', how? If 'No', why?
3. Ethiopia has not yet ratified both the International Convention on the Protection of All Persons from ED (CPED) and the Rome Statute of ICC, which denounces ED as a CAH. How do you reflect on the implication of Ethiopia's failure to become a party to these instruments on the protection of persons from ED?
4. Is there any specific national policy or plan developed or proposed by the Office of Attorney General in the protection of persons against ED in Ethiopia?
5. Is there an independent mechanism laid down at your office for receiving complaints and conducting an impartial investigation into allegations of ED?

6. Is there a centralized, systematic and up-to-date official registers of persons deprived of liberty (both arrested and convicted persons)?
7. According to the 2018 annual report of the WGEID, there are about 113 outstanding cases of disappearances that are no yet clarified. What do you know about these cases?
8. The WGEIG blames the government for its indifference or silence to clarify the above-mentioned cases in the past years. Is the government's position remains the same even today? If 'Yes', why? If 'No', what tasks/activities are underway towards clarification of such alleged 113 Outstanding Cases of Disappearances pending before the Working Group?
9. Is ED included in the pending prosecution of human rights violations for which suspected top government officials were arrested months ago? If 'Yes', do you mind to reflect on the progress of the prosecution?

Thank you for your precious time and kind cooperation!

II. Interview Guides for the Federal Police Commission- Crime Investigation Department

Objective of the Interview Guide:

The purpose of this interview guide is to inquire practical insights relating to preventive as well as investigative activities accomplished so far and/or proposed for the future by the Federal Police Commission (hereinafter "the Commission") to address the human rights violations of forced disappearance in Ethiopia.

Questions:

1. Does the Commission have a centralized, systematic and up-to-date official registers/or records of persons deprived of liberty?
2. It has been widely reported that hundreds of disappearances were occurred in Ethiopia since the coming into power of the EPRDF and most of them are not yet resolved. The notorious ones are the disappearance of *Nadhi Gamada* and *Mergeta Endesirachew (aka Amha)* since 1994. Did you so far conduct an investigation into these disappearances or other similar cases? If 'Yes', what are your findings? If 'No', why?
3. Is there any a national policy or strategy developed by the Commission to fill such gap of the law in the prevention and/or investigation of ED in the country?

4. It was the recently reported that seven secret detention centers were found in the Addis Ababa City. What is the implication of such unofficial detentions on the disappearance alleged to have been occurred in the country in the past years?
5. Do you mind to reflect on the progress of investigation of the alleged secret detention centers found?
6. Does the investigation of recently arrested top government officials suspected of human rights violations covers cases of disappearances alleged to have been occurred in Ethiopia in the past years?

Thank you for your precious time and kind cooperation!

III. Interview Guides for the Reconciliation Commission

Objective of the Interview Guide:

The aim of this interview guide is to examine tasks underway or proposed by the Peace and Reconciliation Commission (hereinafter “the Commission”) to address past cases of EDs in Ethiopia.

Questions:

1. Is ED included as one theme of investigation, if any, proposed to be conducted by the Commission regarding past human rights violations?
2. What lessons could be drawn from the *Derg* trial for the reconciliation endeavors expected of the Commission specifically with respect to the offence of ED alleged to have been committed in Ethiopia in the past years?
3. Do you think the Commission will be effective and successful in its future task of investigation of past atrocities and massive human rights violations including ED in Ethiopia? What challenges would you expect in this regard?
4. What would you say about the fate of persons disappeared in Ethiopia in the past years and whose whereabouts remains unknown to date?
5. Does the Commission have a plan to draw lessons from the experience of other countries to address past cases of ED? What countries are taken as a model in this regard?
6. What mechanisms are proposed by the Commission to redress victims of ED?

Thank you for your precious time and kind cooperation!

IV. Interview Guides for the Ethiopian Human Rights Commission

Objective of the Interview Guide:

This interview guide is prepared with a view to inquire ‘roles played so far’ and ‘actions in progress’ as well as ‘proposed’, if any, by the Ethiopian Human Rights Commission (hereinafter “EHRC” or “the Commission”) in the protection of persons from ED in Ethiopia.

Questions:

1. The right ‘not to be subjected to ED’ is guaranteed internationally under the International Convention on the Protection of All Persons from ED (CPED) as an autonomous and *non-derogable* right. How do you see the relevance of having this right?
2. Do you think the protection against ED is guaranteed sufficiently under the current legal regime of Ethiopia? If ‘Yes’, how? If ‘No’, why?
3. Have you ever conducted an investigation up on complaint or by your own initiation relating to forced disappearance of persons? If ‘No’ is there any ‘action’ in progress or proposed for the future?
4. Is there any mechanisms developed by the Commission for monitoring persons deprived of liberty in Ethiopia? Do you have a systematic and an updated data of persons deprived of liberty?
5. The UN Working Group on Enforced or Involuntary Disappearance (WGEID) as well as different international and local human rights NGOs have persistently reported that ED has been widely committed by the GoE back from 1990s. Would you please mention any specific and outstanding cases of disappearances you might have documented relating to such allegations?
6. According to the 2018 annual report of the WGEID, there are 113 outstanding cases of disappearances that are yet to be clarified. What do you know about these cases?
7. The Commission has so far made various reports of human rights violations on different occasions in the country. Do you often include or address ED in your report? If ‘Yes’, would you mind if you mention some of such reports?
8. What would you suggest for the better protection of persons against ED in Ethiopia?

Thank you for your precious time and kind cooperation!

V. Interview Guides for Civil Society Organizations (CSOs)

Objective of the Interview Guide:

The main objective of this interview guide is to explore into activities carried out, if any, by CSOs in the protection and promotion of the right of all persons not to be subjected to enforced disappearance in Ethiopia. This interview question is addressed to the two CSOs mentioned under the methodology of the study namely, HRCO and HRLHA.

Questions:

1. Do you think there is adequate legislative and institutional guarantee for the protection of persons from enforced disappearance in Ethiopia? If 'Yes', how? If 'No', why?
2. Have you ever received a complaint or petition relating to enforced disappearance of persons?
3. Is there any mechanism developed by your organization for monitoring persons deprived of liberty in Ethiopia? If 'Yes', would you please explain it?
4. Would you please mention any specific or outstanding cases of disappearances you might have documented on different occasions?
5. Do you have a statistical summary or data of disappearances in Ethiopia?
6. Do you often include or address enforced disappearance in your reports? If 'Yes', would you mind if you mention some of such reports?
7. Did you include enforced disappearance in your submissions to regional or international human rights treaty bodies or special mechanisms such as UPR?
8. What do you think are the driving factors behind disappearance cases in Ethiopia?
9. What challenges did you face in conducting your activities such as investigation of human rights violations (including disappearances)? What progresses or improvements are there today in this regard?
10. Last, what would you suggest for the better protection of persons from enforced disappearance in Ethiopia?

Thank you for your precious time and kind cooperation!
