

# The Right to Reparation for Human Right Violation in Ethiopian Legal Framework

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## 1. Abstract

This term paper explores the place of the right to reparation of victims of human right violation in the present Ethiopian Legal Framework. It inquires whether victims of human right violation have a legally recognized substantive right to reparation within the current Legal framework. It examines if there are sufficient legal mechanisms that provide for their treatment and reparation when they bring cases before our courts. A detour to survey of emerging trends is also made with a view to bring the issues under consideration in broader perspectives. After a thorough analysis of the existing legal framework in Ethiopia, the article finally concludes that victims of human right violation currently (1) do not have adequate recognition, and (2) are without sufficient legal mechanisms which provide for their treatment and reparation in the justice system. Hence, the writer recommends for the formulation of a comprehensive law & the inclusion of state reparatory scheme so that the special concerns, needs, interests and sufferings of victims will be addressed as to the international standard.

**Keywords:** reparation, victims of human rights violation, Ethiopia

## 2. Introduction

The right of victims of human rights violations to reparation is a 'well-established and basic human right that today is enshrined in universal and regional human rights treaties and instruments.'<sup>1</sup> Yet, its recognition in practice is far from satisfactory, and the majority of States fail to provide victims with an effective remedy, and only rarely do victims obtain full and adequate reparation.<sup>2</sup> The FDRE Constitution has entrenched Bill of Rights as fundamental rights and freedoms in the Chapter three. Besides the government has ratified six of the seven core international human right instruments & the African Charter on peoples and human right. However, the practical implementation of human rights is still subject to strong criticisms by different bodies.<sup>3</sup> As a result, the writer tries to explore whether or not the right to reparation for human right violation is adequately recognized under the Ethiopian legal framework in this term paper. To this effect a careful analysis of the existing domestic laws & ratified human right instruments made & related literatures have been reviewed.

## 3. The Concept of Reparation

Reparation is a principle of law that has existed for centuries<sup>4</sup>. It is not an exclusively legal principle; it is also a concept used in ethical and political discourses, and forms part of a religious vocabulary.<sup>5</sup> In purely legal terms, reparation refers to the obligation of the wrongdoing party to redress the damage caused to the injured party<sup>6</sup>.

Under international law, "reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed"<sup>7</sup>.

There are common misconceptions as to what the word 'reparation' actually means. The terms 'compensation,' 'damages,' 'restitution,' 'indemnity,' 'injury,' and others are often used interchangeably at the domestic level<sup>8</sup>. It is therefore not always clear if reparation is a matter of right or simply a matter of policies or political priorities.<sup>9</sup>

<sup>1</sup> Un Human Rights Committee, General Comment 31, Nature Of The Legal Obligation On States Parties To The Covenant, Un Doc. Ccpr/C/21/Rev.1/Add.13 (2004)

<sup>2</sup> Access To Justice For Victims Of Systemic Crimes In Africa: Challenges And Opportunities, Summary Of Conference Proceedings' ('Systemic Crimes In Africa Report'),

<sup>3</sup> Endalcatchew Bayeh: Human Rights In Ethiopia: An Assessment On The Law And Practice Of Women's Rights

<sup>4</sup> Reparation, A Sourcebook For Victims Of Torture And Other Violations Of Human Rights And International Humanitarian Law, The Redress Trust, 2003 Available At ( [www.Redress.Org](http://www.Redress.Org)),P 7

<sup>5</sup> Redress. Torture Survivors Perceptions Of Reparation: A Preliminary Survey, 2001

<sup>6</sup> Supra Note 1, P 7

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Ibid

However, in human rights law, the right to reparation has been understood to entail two aspects: the right to a domestic remedy and the right to adequate and effective forms of reparation.<sup>1</sup>

Accordingly, the UN Basic Principles and Guidelines<sup>2</sup> recalling the provisions providing a right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular article 8 of the Universal Declaration of Human Rights,<sup>3</sup> article 2 of the International Covenant on Civil and Political Rights,<sup>4</sup> article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>5</sup> article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>6</sup> and article 39 of the Convention on the Rights of the Child,<sup>7</sup> identify five forms of reparation, recognizing that these are not exhaustive. These are (i) restitution; (ii) compensation; (iii) rehabilitation; (iv) satisfaction and (v) guarantees of non-repetition. The writer will outline precisely what these forms of reparation consist of. 'Restitution' should, as far as possible, 'restore the victim to the original situation before the (...) [violation] (...) occurred'.<sup>8</sup> This may include, *inter alia*, the restoration of liberty, identity or citizenship, the return to one's place of residence or the restoration of employment or return of property.<sup>9</sup>

'Compensation' is to be understood as 'financial compensation' which 'should be provided for any economically assessable damage'<sup>10</sup> resulting from a specific violation of one's rights, such as, *inter alia*, physical or mental harm, material damages and loss of earnings, moral damages or lost opportunities, including employment or education.

Measures of 'rehabilitation' should include psychological and medical care as well as legal and social services.<sup>11</sup>

Acts of 'satisfaction' may include, *inter alia*, measures like the disclosure of the truth, the restoration of the dignity of the victims, public apologies including the acknowledgement of the facts and the acceptance of responsibility, or judicial sanctions against offenders and perpetrators.<sup>12</sup>

'Guarantees of non-repetition' finally might comprise measures to strengthen the independence of the judiciary, to ensure an effective civilian control of the security forces or to promote mechanisms for preventing and monitoring social conflicts.<sup>13</sup>

It should be stressed that *any* of these measures constitute reparations in the sense of the UN Basic Principles and Guidelines. However, since reparations 'should be proportional to the gravity of the violations and the harm suffered', it depends on the specific circumstances of each case, which form of reparation.

In view of the availability of the above forms of reparation in the UN basic principles and guide lines, it can be said that the concept of reparation is broadly recognized there in. A holistic approach to reparation puts the victim's needs and interests at the centre of the process and aims at restoring the dignity of the victim.<sup>14</sup>

#### 4. Why Reparation for Human Right Violation is Important

The State's obligation to investigate the facts and punish those responsible does not erase the consequences of the unlawful act in the affected person<sup>15</sup>. Instead, the purpose of that obligation is that every State party ensure, within its legal system, the rights and freedoms recognized in the Convention.<sup>16</sup>

Aside from the legal requirement to afford reparation which in and itself makes reparation an important component of the underlying need to respect victims' rights to justice and to underscore the role of law in society, reparation serves a number of additional purposes. Reparation can play a vital part in victims' recovery from past violations.

<sup>1</sup> Reaching For Justice The Right To Reparation In The African Human Rights System ,October 2013,P8

<sup>2</sup> Un Basic Principles And Guidelines On The Right To A Remedy And Reparation For Victims Of Gross Violations Of International Human Rights Law And Serious Violations Of International Humanitarian Law ('Un Basic Principles And Guidelines'), Adopted By General Assembly Resolution 60/147, 16 December 2005, At [Http://Www.Ohchr.Org/En/ProfessionalInterest/Pages/RemedyandReparation.aspx](http://www.ohchr.org/En/ProfessionalInterest/Pages/RemedyandReparation.aspx)

<sup>3</sup> Resolution 217 A (Iii).

<sup>4</sup> Resolution 2200 A (Xxi)

<sup>5</sup> Resolution 2106 A (Xx),

<sup>6</sup> United Nations, *Treaty Series*, Vol. 1465, No. 24841.

<sup>7</sup> *Ibid.*, Vol. 1577, No. 2753

<sup>8</sup> *Supra* Note, Principle 19

<sup>9</sup> *Ibid.*, Principle 20

<sup>10</sup> *Ibid.*,

<sup>11</sup> *Ibid.*, Principle 21

<sup>12</sup> *Ibid.*, Principle 22

<sup>13</sup> *Ibid.*, Principle 23

<sup>14</sup> *Supra* Note 7, P 8

<sup>15</sup> Matthew F. Putorti, The International Legal Right To Individual Compensation In Nepal And The Transitional Justice Context, *Fordham International Law Journal* [Vol. 34:1159]

<sup>16</sup> *Ibid.*,

By helping to restore the rupture between themselves and society which typically underpins human rights violations – the essential component being that a State causes harm to the individuals it is mandated to protect – reparation can help victims to regain their dignity and a sense of control.

The public acknowledgement of wrong-doing by the State through the investigation of the circumstances of the violation(s), the identification, prosecution and punishment of those responsible, affording victims with compensation for the losses they suffered as a result of the violation, assisting in their rehabilitation and taking measures to prevent recurrence can all help to overcome stigmatization and restore confidence in and the legitimacy of the justice system and the affirmation of the rule of law<sup>1</sup>.

Where it is understood that a particular violation stems from structural shortcomings of a State's legal system or underlying injustices that make particular individuals or groups vulnerable to abuses, it has also been recognized that reparation should go beyond the individual case and address such shortcomings, for instance through institutional and law reform or broader measures aimed at overcoming structural discrimination.

## 5. Human Rights in the Current Legal System of Ethiopia: Brief Overview

In this section the paper tries to briefly state the general recognition and implementation of human rights in Ethiopia. The writer will not discuss human rights in Ethiopia in detail as it is not the central objective of the study. Having this in mind, let's begin with, the FDRE constitution, it lists an exhaustive array of human rights. Almost one third of the Articles of the FDRE Constitution are devoted to elaborating all categories of human rights<sup>2</sup> in Chapter three has thirty two articles<sup>3</sup> embracing, civil and political rights extensively and very scant socio-economic rights. Further, Article 10, entitled "Human and Democratic Rights" declares that "Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable," and explicitly states that the "[h]uman and democratic rights of citizens and peoples shall be respected."<sup>4</sup> As a consequence, the Constitution goes on to endorse the general notion of human rights as universal, inalienable and inviolable, and stipulates that "[t]he fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia."<sup>5</sup> To this effect, the Ethiopian ratification record of the core human rights documents in accordance to Eva Brems statement<sup>6</sup>:

*Ethiopia has been a member of the United Nations since 1945. It is a party to six of the seven core human rights treaties. Ethiopia joined the ICERD in 1976, but did not make the declaration under article 14 that would allow individuals to submit complaints to the CERD. It ratified the CEDAW in 1981, but not the 1999 Optional Protocol. In 1991, Ethiopia joined the CRC, but it has not yet taken any action with respect to the 2000 Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict. In 1993, Ethiopia joined both the ICCPR and the ICESCR. It has not joined the Optional Protocols to the ICCPR on an individual complaint mechanism (1996) and on the abolition of the death penalty (1989). Ethiopia became a party to the CAT in 1994, but did not make the declaration under article 22 that would allow individual complaints, nor did it join the 2002 Optional Protocol establishing a system of regular visits. Finally, Ethiopia has not taken any action with respect to the ICMW.*

Besides the above international human right instruments, Ethiopia acceded to the ACHPR and accepted the accession in 1998<sup>7</sup>.

The double-edged recognition of human rights in Ethiopia under the constitution both as part and parcel of the law of the land and as tools of interpretation of the fundamental rights and freedoms in the Bill of Rights is inevitably an impetus to human rights protection in the country.<sup>8</sup> In addition to this, the constitution as well as subsequently enacted laws of the country provided human rights with an utmost significance. On top of that, the establishment of the Ethiopian Human Rights Commission is a major progress for the protection and promotion of human rights in Ethiopia which is the core mission of the Commission.<sup>9</sup> The Ethiopian Human Rights

<sup>1</sup> Supra Note 21, P 10

<sup>2</sup> Minase Haile, 'The New Ethiopian Constitution: Its Impact Up On Unity, Human Rights And Development', *Suffolk Transnational Law Review*, Vol.20, No.1 (1996), P.53.

<sup>3</sup> Fasil Nahum, *Constitution For A Nation Of Nations, The Ethiopian Prospect*, The Red Sea Press (1997), P.10

<sup>4</sup> The Constitution Of Federal Democratic Republic Of Ethiopia, Proclamation No. 1/1995

<sup>5</sup> Fdre Constitution, Article 13

<sup>6</sup> Brems Eva (2007) Ethiopia Before The United Nations Treaty Monitoring Bodies, *Afrika Focus*, 20(1-2): 49-74.

<sup>7</sup> Accession To The African Human Rights Charter Proclamation No.114/1998, Federal Negarit Gazeta, 4th Year, No.1

<sup>8</sup> Taken From 'Editorial Introduction', In *Ethiopian Human Rights Law Series*, Faculty Of Law, Vol.2 (2008), P.Vi And See Also Art 9(4) And 13(2) Of The Fdre Constitution.

<sup>9</sup> Proclamation No. 210/2000, Ethiopian Human Rights Commission Establishment Proclamation, Negarit Gazette 6th Year, No 40, Addis Ababa 4th July, 2000.

Commission (EHRC) is an independent organ established to ensure that the freedoms and rights guaranteed under the Constitution and other international human rights instruments are enforced.<sup>1</sup>

As a consequence, it is true that human rights are at the centre of the current Ethiopian laws, policies, and programs. International human rights law not only recognizes the individual human rights of every human being, it also puts an obligation on states to ensure, secure or guarantee the effective enjoyment of human rights with its jurisdiction.<sup>2</sup> However, the practical implementation of human rights is still subject to strong criticisms by different bodies.<sup>3</sup> As a result, the writer tries to explore whether or not the right to reparation for human right violation is available under the Ethiopian legal framework in the following subsection.

## 6. Right to Reparation for Human Right Violation in Ethiopian Legal Framework

When we come to the legal recognition of victim right to reparation for human right violation in Ethiopia, though the FDRE constitution devoted one-third of its coverage to the prescription of different sorts of fundamental human rights, unfortunately, there is no single express provision which deals with the victim right to reparation. However, any person or group who is a victim of human right violation should have access to effective judicial or other appropriate remedies at both national and international levels.<sup>4</sup> And the right to remedy when rights are violated is itself a right expressly guaranteed by global and regional human rights instruments.<sup>5</sup> The remedy could be judicial, administrative or legislative remedy. As it was discussed in detail on the General Comment No.9, domestic system is the primary option for the effective protection of human rights.<sup>6</sup> In view of the writer in absence of express constitutional Provision which recognizes right to reparation as a substantive human right, it is worth to look as to whether Victims of human right violation have a statutory right to claim reparation before Ethiopian courts. On this issue, under the Ethiopian legal system, there is no comprehensive law which deals with the right of victims to reparation for human right violation, however, the close reading of FDRE criminal & civil code reveals the existence of the right to reparation for particular types of human right violation which constitutes an offense.<sup>7</sup>

The Ethiopian legal system provides two ways for victims of offenses to make a claim for restitution. The claim for restitution can be raised in a criminal prosecution, or a separate civil claim may be filed against the offender.

Under Article 100, a person may make a civil claim for compensation to be ordered for damage caused by an offense, "to the injured person or to those having rights from him, particularly in cases of death, injuries to the body or health, defamation, damage to property or destruction of goods."<sup>8</sup> This right to sue and obtain restitution is governed by civil law provisions. However, for the purpose of establishing a claim, the injured party may also become a party to the criminal proceedings.<sup>9</sup>

The Ethiopian Criminal Procedure Code provides that a person who has been injured by a criminal offense may make an application in writing for compensation.<sup>10</sup> Where the application is allowed,<sup>11</sup> the victim is allowed to take part in the proceedings with the same rights as an ordinary party.<sup>12</sup>

In circumstances where it appears unlikely that the offender will be able to pay on his own, "the court may order that the proceeds or part of the proceeds of the sale of the articles distrained, or the sum guaranteed as surety, or a part of the fine or of the yield of the conversion into work, or confiscated family property be paid to the injured party."<sup>13</sup>

Restitution is a valuable remedy for victims because it forces the human rights abusers to pay for some of their abuses directly to the victims. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides:

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<sup>1</sup> Abraham Ayalew, Ethiopia's First National Human Rights Action Plan: An Overview; Ethiopian Journal Of Human Rights [Vol-1:2013]P238

<sup>2</sup> Cordula Droegge, The Right To Remedy And Reparation For Gross Human Rights Violations A Practitioners' Guide, International Commission Of Jurists, 2006, P

<sup>3</sup> Endalcachew Bayeh: Human Rights In Ethiopia: An Assessment On The Law And Practice Of Women's Rights

<sup>4</sup> Dianah Selton, *Remedies In International Human Rights Law*, A Text Book, Second Edn., Oxford University, P18

<sup>5</sup> See Art 8 Of The Udhr, Art 2(3), 9(5), 14(6) Of The Iccpr,

<sup>6</sup> Amsalu Darge Mayessathe Integrated Approach: A Quest For Enhancing Justiciability Of Socio-Economic Rights Under The Ethiopian Constitution, Addis Ababa University, School Of Law, P80

<sup>7</sup> For Instance, Bodily Injury, Homicide, Defamation, Unlawful Detention, Etc Can Be Taken As Human Right Violation If Conducted By Government Official & At The Same Time Constitute An Offence.

<sup>8</sup> Penal Code, Art. 100 (1)

<sup>9</sup> Ibid

<sup>10</sup> Criminal Procedure Code, Art. 154 (1)

<sup>11</sup> The Application May Be Dismissed By The Court For Reasons Specified In Article 155 Of The Criminal Procedure Code

<sup>12</sup> Ibid., At Art. 156

<sup>13</sup> Supra Note 40, Art.102

Offenders or third parties should make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.<sup>1</sup>

Here, the problem with our law is that it doesn't recognize the governments obligation to either to compensate or retribute the victims of human right violation unlike UN basic principles & guidelines<sup>2</sup>. Besides this, States are also obligated to victims for compensation or reparations from injuries inflicted by government or public officials, whether or not still in office.<sup>3</sup> In addition, the Declaration provides that "[w]hen compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation."<sup>4</sup>

Thus, states have a responsibility to pay compensation or make reparations to victims who have suffered human rights abuses is an established right at international level. On the fore going discussion , the possibility of claiming reparation for human right violation that constitutes particular offence has been shown, the next important question is what will be the fate of other human right violations claims brought by an individual or group of individuals which don't constitute an offence?

Regarding this question, it seems to me that even in the absence of express provision guarantying substantive right to reparation ,it can be argued that the. right to reparation has constitutional underpinning in two ways in Ethiopia. First, as long as all human rights including socio-economic rights are justiciable<sup>5</sup>, judges have the adjudicatory power to decide up on cases of reparation for human rights violation in domestic courts embracing the impliedly guaranteed rights based on the legal basis of Art 37(1) of the FDRE constitution. This is one of the constitutional remedy for the violation of those rights provided for in the chapter of human rights and fundamental freedoms. Therefore, Art 37(1) affords the heightened judicial protection to human rights . Second, as all the international and regional human right instruments once ratified by the government of Ethiopia become part and parcel of the law of land<sup>6</sup>, it is possible for Ethiopian courts to take judicial notice of those international & regional human right instruments which have recognized the victims right to reparation as one of human rights so long as they do not contradict the constitution<sup>7</sup>. In this case, however, the courts will face challenge if the issue presented before them involve interpretation of the constitution since it is out of the scope of the power entrusted to them<sup>8</sup>. The last but not the least problem which narrows the possibility of getting reparation from regional and international human right mechanisms is that the government of Ethiopian has set aside individual complaint procedures from its treaty obligations.<sup>9</sup> Hence, an individual who alleges the violation of his human right by the government cannot make a complaint before them. At this juncture, it will be unfair not to mention that, the government of Ethiopia has taken an initiative to recognize at least by law the establishment of State Compensatory Fund in the case of Terrorism<sup>10</sup>.

## 7. Conclusion

As demonstrated in the adoption of the 1985 UN Declaration of Basic Principles for Victims of gross human right violation and humanitarian law and related international instruments, there is now a world-wide consensus and conviction to treat victims with compassion and respect for their dignity, to ensure that they are adequately compensated and to allow them effective remedy. On the other hand, the foregoing analysis of the legal framework in Ethiopia reveals victims of human right violation are not adequately recognized as injured party. They do not have meaningful substantive right to reparation .The existing provisions in the FDRE criminal code, that in the main grant particular types of victims do not be put in practice. The applicability of article 37 of FDRE constitution to claim reparation for human right violation is itself argumentative since it will arise the issue of constitutional interpretation which is also not the mandate of regular courts in our country. Further, there is no legal framework for victims to claim reparation from the government unlike the UN basic principles and guidelines. To make the matter worse, Ethiopian government didn't ratify individual complaint mechanisms under ICCPR & CAT, as a consequence, individuals are deprived of making complaint to get reparation from international human right mechanisms. The writer *concludes that victims of human right violation currently (1) do not have adequate recognition, and (2) are without sufficient legal mechanisms which provide for their*

<sup>1</sup> U.N.G.A. Res. 40/34 (Nov. 29, 1985), Article 8.

<sup>2</sup> Supra Note 10, Principle 3(D)

<sup>3</sup> Supra Note 46,Article 11.

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Art. 9(4) Of Fdre Constitution

<sup>7</sup> Ibid,9(2) Cum 13(2)

<sup>8</sup> Ibid, Art. 61 States That The Power To Interpret The Constitution Is Under The House Of Federation.

<sup>9</sup> Supra Note 32

<sup>10</sup> Article 34 Of Proclamation No. 652/2009,Anti-Terrorism Proclamation .....Page 4827 15th Year No. 57,Addis Ababa 28th August, 2009

*treatment and reparation in the justice system. Hence, the writer recommends;*

## 8. Recommendation

1. *Formulation of a comprehensive law so that the special concerns, needs, interests and sufferings of victims will be addressed as to the international standard & citizens will have more than paper guarantee to their human rights.*
2. *Since most of times it is the state that violate the human right of individuals, it has to be responsible to pay compensation or make reparations to victims who have suffered human rights abuses. To this effect, the government of Ethiopia should operationalize the already established Terrorism Victim Fund & establish state reparatory scheme through which the state would offer financial compensation to victims or their dependants so that the protection will be compatible to the international standard.*
3. *In order to widen the chance of individuals to get reparation, the government should ratify the individual complaint mechanisms under ICCPR & CAT*
4. *As regards article 37 of the FDRE constitution, it should be interpreted as one form of reparation for victims of human right violation since it opens the door to actual compensation*

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