

Crime Victims' Rights under the Ethiopian Legal Framework: The Need for Constitutional Protection

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Abstract

The article argues that in the criminal justice process the key players are the offender¹ and the State, but crime victims are merely passive spectators. Their participation is mainly dependent on the will of the public prosecutor; especially, in case of crimes that are not punishable upon complaint. In contrast, the Federal Democratic Republic of Ethiopia (FDRE) Constitution has recognized different types of rights for suspects, accused, or, convicted persons. However, it does not have a single express provision defining rights of crime victims. Although it remains on paper, the Criminal Justice Policy of Ethiopia has some important protections for crime victims. These facts attest that the crime victims are not getting enough attention under the Ethiopian legal framework. In the Constitution and other relevant laws, emphasize is accorded to the one who caused harm on the legally protected interest of others than the one whose interest is directly affected. Therefore, to effectively protect the right of the crime victims and have practical implication, the rights of crime victims should be granted a constitutional status.

Key words: victims, rights, constitution protection, criminal justice, Ethiopia

1. Introduction

The crime victims have critical interest in the criminal justice process, as they play indispensable role in the criminal justice administration. Victims often provide eyewitness account to the police, prosecutors and judges that could be used as evidence at different

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¹ In this article, the jargon offender intended to connote the suspects, accused, and convicted person.

stages of the process.² Although there are others who are indirect victims, the criminal justice process is set in motion directly from the direct physical, emotional, monetary injury inflicted on crime victims. As they directly bear pain of the crime, disregarding the victims' interest and wishes constitutes violation of their human rights.³ Stated differently, crime victims are persons whose rights and privileges are violated by an illegal act of another person (suspect, accused, convicted).⁴ Therefore, naturally, in the criminal justice process, their voice should be heard; participate in the handling of their case; being treated with respect and fairness in the process; obtaining information on the progress and outcome of the case; and obtaining economic and emotional redress.⁵ This calls for exploration of possible rights and interests of crime victim. One way of doing so is by recognizing their rights in the fountain head of laws.

As things stands today, in most systems including Ethiopia, crime victims are arguably only seen as witnesses to a crime committed against the State.⁶ Simply put, while the offender and the State (via the public prosecutor) are the main players, the crime victims are merely passive spectators.⁷ Arguably, owing to the operation of the principle of the presumption of innocence, and a tendency of seeing the interest of the victim and the general public as one and the same, and can effectively represented by the Public Prosecutor, the focus in the criminal justice process has been on the protection of the right of those who have been suspected of committing or have committed a crime.

Since recent times, in some foreign jurisdictions, 'victims' rights movements' have been emerged.⁸ For instance, in the US, all 50 States have passed some form of a statutory crime victims' bill of rights, and 29 of them have amended their constitutions to include rights for crime victims.⁹ Similarly, at the Federal level, the Victim's Rights and Protection Act of 1990, and several subsequent statutes, gave victims of Federal crime many of the rights

² Wodage W "Status and Role of Victims of Crime in the Ethiopian Criminal Justice System" 2 *Bahir Dar University Journal of Law*, (2011) p. 105.

³ Jo-Anne Wemmers, "Victims' rights are human rights: The importance of recognizing victims as persons" (2012) p. 80.

⁴ *Id* at 71.

⁵ Heather S, *Repair and Revenge: Victims and Restorative Justice*, (2002) p. 123.

⁶ Wemmers, J. *supra* note 3 p.71.

⁷ Gegan S and Nicholas Rodriguez N "Victims' Roles in the Criminal Justice System: A Fallacy of Victim Empowerment?" *Journal of Civil Rights and Economic Development* vol 8 (1192) p. 228.

⁸ *Id* p. 226.

⁹ Kilpatrick D, Beatty D, and Howley S "The Rights of Crime Victims—Does Legal Protection Make a Difference?" *National Institute of Justice*, (1998) p. 1.

accorded at the State level.¹⁰ Moreover, in Belgium and Canada, there is even an extreme form of “victim statements of opinion” which allows victims to have influence on the carrying out of the sentence (decision regarding release on parole).¹¹ The same progressive development has been also witnessed at international law. Furthermore, the United Nations, the Council of Europe, and the European Union, are just a few examples of organizations that have adopted victims’ rights instruments.¹² One should also mention the fact that the Rome Statute has provisions on rights of crime victims.¹³

In the lens of crime victims, the Ethiopian legal framework has not been studied well. There are only few academic works on the area. Hence, there is a need to make a closer study of the crime victims’ rights and its status under the Ethiopian legal framework. Moreover, although arguable, as Ethiopia is currently in transition/reform process and hence in the process of updating some of its laws, this is the most appropriate time to make the necessary change in the scattered governing laws on crime victims and reassess their current status.

This article aims at examining the Ethiopia’s legal framework focusing on crime victims’ rights and urge an apt recommendation. Accordingly, the first part of the paper explores who crime victims are and their rights in a generic manner. The second part briefly discusses the status of crime victims under international criminal law. The third part, which is the main part of the paper, discusses the issue of crime victims in the Ethiopian law context.

1. Crime Victims: A Conceptual Underpinning

Alike many legal jargons, there is no unanimously agreed definition for the expression, “crime victims.” As characterization of crime victim is mainly made by domestic laws of each country, connotation of a crime victim various from jurisdiction to jurisdiction. However, there is a tendency of limiting the definition of crime victim only to persons who are harmed by certain types of offenses.¹⁴ So, as it is hard to write a single comprehensive

¹⁰ *Id.*

¹¹ Mina R and Damien S “Victims and international criminal justice: a vexed question?” 2008, 90 *International Review of the Red Cross* (2008) p. 470. See also, Wemmers J. *supra* note 3 p. 71.

¹² Wemmers J. *supra* note 3 p. 71.

¹³ *Id.*

¹⁴ National Crime Victim Law Institute, “Fundamentals of Victims’ Rights: An Overview of the Legal Definition of Crime ‘Victim’ in the United States” 2011, *Victim Law Review*, (2011) p. 1.

definition for crime victim, herein under, crime victim is defined in light of some of its common defining elements:

- a. **The type of crime and injury:** this is about the specific crime that is committed against the person in question and the injury sustained by the later. In the determination of who is a crime victim, depending on the jurisdiction, all persons against whom a criminal offense has been committed may not be a crime victim. For example, in the US, while some states restrict the definition to some persons who are harmed only by certain types of offenses, other jurisdictions define “victim” to include persons harmed by any misdemeanor or felony.¹⁵ Hence, in the determination of crime victim, it is necessary to look the nature of the crime committed. In the Ethiopian case, the nature of the crime has no effect as long as the act committed by the suspect constitutes a crime.
- b. **Causation:** Many jurisdictions’ definition of “victim” has an element of an express causation requirement.¹⁶ This means it requires that the person in question need to be someone who is directly and proximately harmed by the commission of the crime. There must be a causal link between the conduct of the person in question, and the harm caused against another person. In the Ethiopian law, there is no a separate causation requirement than the general rule provided under Article 24 of the FDRE Criminal Code.
- c. **Relationship to the victim who is a minor, or is deceased, incompetent or incapacitated:** When the victim is a minor, or is incapacitated, incompetent, or deceased, crime victims’ rights laws generally allow courts to recognize other persons who can exercise their rights either in addition to or on behalf of that direct victim. In a number of jurisdictions, the family members or other representatives of such victims are included within the legal definition of “victim,” which arguably allows those individuals to assert all victims’ rights on their own behalf as well as on behalf of the direct victim.¹⁷ The same approach is recognized under the draft Criminal Procedure Code of Ethiopia especially when the crime victim is dead or incapable.

¹⁵ *Id.*

¹⁶ *Id.*, p. 2.

¹⁷ *Id.*, p. 4.

d. Status as an accused, an offender, or an incarcerated person: Many jurisdictions' crime victims' rights laws limit the definition of "victim" or victim "representative" to exclude persons who fit within one or more of the following classes:

- (i) a person who is accountable for the crime or another crime arising from the same conduct, criminal episode or plan;
- (ii) a person alleged to have committed the crime at issue or another crime arising from the same conduct, criminal episode or plan; and
- (iii) a person who is in custody (either as a pretrial detainee or a prisoner) for any offense.¹⁸

Be the above elements as they may, the 1985 the UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines victims as "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power."¹⁹ The declaration also states "[a] person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."²⁰

The other international instrument that defines a crime victim is the International Criminal Court jurisprudence. The criteria for defining crime victim are stated in the Rome Statute and in the Court's Rules of Procedure and Evidence. Most specifically, Rule 85 of the Rules of Procedure and Evidence provides the definition of victims. Accordingly, victim under the jurisprudence of the ICC refers to either "natural persons who have suffered harm resulting from crimes committed within the jurisdiction of the Court; or, institutions and organizations

¹⁸ *Id.*

¹⁹ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power Adopted by General Assembly resolution 40/34 of 29 November 1985, available at https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.29_declaration%20victims%20crime%20and%20abuse%20of%20power.pdf (accessed on 20 April 2021).

²⁰ *Id.*

that have had property harmed that has been used for religious, educational, arts or science or charitable purposes, or any historic monuments, hospitals, or places or objects used for humanitarian purposes.”²¹

Hitherto, as indicated above, there is no a binding international instrument on the right of victims. This being the case at international arena, different countries have recognized some rights for crime victims in their domestic legislation. Therefore, it is safe to say there is no a single all-encompassing international instrument with list of rights for crime victims. However, the following illustrate some of the rights that may be exercised by victims of crime:

- a. **Right to Due Process, Fairness, Dignity, Respect, and Privacy:** The rights to fairness, dignity, respect, and privacy is the right to have one’s rights considered within the criminal justice system.²² In this regard, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that victims have the right to access justice and fair treatment.²³
- b. **Right to Notice:** The right to notice is the right to advisement of the existence of crime victims’ rights and the right to advisement of specific events during the criminal justice process.²⁴ The right to notice is distinct from the right to information, which refers to a crime victim’s right to be generally informed about criminal proceedings and about available resources.²⁵
- c. **Restitution and compensation:** the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, for example, states that “Offenders or third parties responsible for their behavior should, where appropriate, 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.”²⁶ Moreover, the Declaration also writes “When compensation is not fully available from the offender or other sources, States should endeavor to provide

²¹ The International Criminal Court, Rules of Procedure and Evidence Rule 85(a) and Rule 85(b) (2013).

²² National Crime Victim Law Institute *supra* note 14.

²³ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power *supra* note 19.

²⁴ National Crime Victim Law Institute *supra* note 14 p. 2.

²⁵ *Id.*

²⁶ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power *supra* note 19.

financial compensation to victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; and, the family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.”²⁷

- d. Assistance:** Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.²⁸

2. The Place of Crime Victims under International Criminal Law Jurisprudence

The 1985 United Nations Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power is the first international instrument in giving recognition for victimhood by the international community.²⁹ Next to this declaration, a number of decisions and recommendations were drawn up at international level.³⁰ However, until the coming into force of the Statute of the International Criminal Court, adopted on 17 July 1998, victims were recognized only in their capacity as witnesses.³¹ The only redress possible was acknowledgement that an international crime had been committed which was therefore punishable.³²

The Statute of the International Criminal Court changed the above trend. The Statute in its preamble, to show the emphasis given for the crime victims, intentionally used the expression “during this century millions of children, women and men have been victims of

²⁷ *Id.*

²⁸ *Id.*

²⁹ Mina R and Damien S *supra* note 11 p. 443.

³⁰ For example, the UN Office on Drugs and Crime published the Guide for Policy Makers on the Implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1999) in order to promote and guide the implementation of victims' rights in national criminal justice systems. See also the Handbook on Justice for Victims on the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1999). The Commission on Crime Prevention and Criminal Justice was set up to implement the 1985 UN declaration. Resolution 2003/30 of 22 July 2003 of the Economic and Social Council set up an Intergovernmental Expert Group to develop an information-gathering instrument on UN standards and norms related primarily to victimhood issues. The results of their work may be seen in document E/CN.15/2007/3, cited in Mina R and Damien S *supra* note 11 p. 443.

³¹ Mina R and Damien S *supra* note 11 p. 444.

³² *Id.*

unimaginable atrocities that deeply shock the conscience of humanity.³³ In addition to the introductory statement, the Statute affords victims' different rights that can be grouped into three different components: participation, protection³⁴ and reparation.³⁴ Specifically, Article 68 of the ICC Statute lays down the basic rule on victim participation in the proceedings in its paragraph 3, which reads: “[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court.” Such participation should, however, not be “prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.” The structure of the Statute and Rules, mainly outlined in Rule 92(1), suggests that the drafters created various victim participation schemes. At least two are easy to identify: the submission of “representations” and “observations”, and participation *stricto sensu*.³⁵

Needless to state that before the ICC can allow an individual to participate as a victim in a trial; the individual must be certified as a victim. The decision as to whether the applicant does qualifies as a victim status or not will be made by the Pre-trial chamber.³⁶ Generally, though the adequacy of the protection accorded may be contested, the International Criminal Court has started a good practice of allowing crime victims of international core crimes to participate at different stages of the criminal proceeding.

Finally, it should bear in mind that Ethiopia is not a member of the Rome Statute and any charge related to the core crimes (Genocide, Crimes against humanity, War crimes, and aggression) is within the exclusive jurisdiction of its domestic courts.

³³ Charles P. Trumbull IV, “The Victims of Victim Participation in International Criminal Proceedings” *Michigan Journal of International Law* vol. 29, (2008) p. 777.

³⁴ For detail discussion of these three rights; see, Michael K, “The Status of Victims Under the Rome Statute of the International Criminal Court” in Thorsten B and Christoph S (eds), *Victims of International Crimes: An Interdisciplinary Discourse*, (t.m.c. Asser press, 2013), p.49.

³⁵ Rome Statute of the International Criminal Court, 1998, Art. 68(3) and the International Criminal Court, Rules of Procedure and Evidence (2013) Rule 89. For detail discussion on these various participation regimes; see, Elisabeth B “Aspects of victim participation in the proceedings of the International Criminal Court” 2008, 90 *International Review of the Red Cross* vol. 90, (2008) p. 412 – 413. For detail discussion on the status of victim under the international criminal court; see, Michael K. *supra* note 34.

³⁶ Michael K. *supra* note 34.

3. Crime Victims' Rights under the Ethiopian Legal Framework

3.1. The Ethiopian Criminal Justice System: Historical Backdrop

Before the formal justice system developed, the direct crime victims used to use private justice to get justice. During this era, the victims have had an active participation in the process of rendering justice.³⁷ Put differently, rendering justice had been the exclusive domain of the crime victims or their clan. By then, almost all wrongdoings were considered as a private injury to individual victims as opposed to injury to the public.³⁸ Concisely, criminal punishment as we know it today was unknown.³⁹ However, gradually, with the development of the State as a political entity, private vengeance had been ceased and the process has started to be regulated by the State through its formal criminal justice process.⁴⁰

Modern criminal procedure was new to Ethiopia.⁴¹ Many of the modern Ethiopian laws were introduced following the second Italian invasion. Therefore, up until then, dispute had been settled based on customary and religious dispute resolution mechanisms.⁴² This, however, does not mean that there were no other relatively more formal rules for dispute resolution mechanisms. For example, there was *Fetha Negest*.⁴³ Nevertheless, it was inaccessible to some section of the country's population; and hence there was an awareness problem even about its existence.⁴⁴ It must be also noted that after the promulgation of the 1930 Penal Code, the application of the substantive customary laws was restricted to civil matters.⁴⁵

Before the adoption of the formal criminal procedure law, in Ethiopia, there had been traditional criminal investigation mechanisms such as *Awchachign (afersata)* and *lebashai*.⁴⁶ The procedure followed in these traditional mechanisms was different from the contemporary adjudication process. For example, unlike the current system, all cases - both civil and

³⁷ Sebba L, "The Victim's Role in the Penal Process: A Theoretical Orientation" 1982, *The American Journal of Comparative Law* (1982) p. 202. See also, Wodage *supra* note 2 p. 107 - 108.

³⁸ Wodage W. *supra* note 2 p. 107 -108.

³⁹ *Id* p.108.

⁴⁰ *Id*.

⁴¹ Assefa S, *Criminal Procedure Law: Principles, Rules and Practices*, (2009) p. 33.

⁴² *Id*.

⁴³ Aberra Jembere, An Introduction to the Legal History of Ethiopia (1434-1974) cited in Assefa S. *supra* note 41 at 33.

⁴⁴ *Id*.

⁴⁵ *Id*, p.34.

⁴⁶ Fisher S "Traditional Criminal Procedure in Ethiopia" 1971, 19 *The American Journal of Comparative Law* vol. 19:43 (1971) p.721-723.

criminal- were prosecuted by the victim, including execution of sentences.⁴⁷ In a nutshell, during this time, the crime victims had a paramount role in the whole process - investigation to sentencing.

Later, the *Afersata* Proclamation was issued in 1933, a part of which was repealed by the Administration of Justice Proclamation of 1942, which in turn was also repealed by the 1961 Criminal Procedure Code.⁴⁸

Until the introduction of the modern criminal procedure law, traditionally, private victims or their kin conducted all prosecutions. In brief, crime victims had central position and played decisive roles in the prosecution process until the 1940s.⁴⁹ This private prosecution ceased when the public prosecutor's office was established and the law provides that crimes were to be prosecuted by the public prosecutor.⁵⁰ By virtue of this Proclamation, public prosecutor's office was authorized to take over and institute criminal cases, which were previously handled, by crime victims or their advocates.⁵¹ Where, however, public prosecutors instituted charges against accused persons, victims continued to play substantial roles. Criminal charge could be interrupted or dropped at any stage if crime victims inform courts that they have settled the dispute through compromise or reconciliation.⁵² In addition, victims could take appeal to next court(s) if they were aggrieved with decisions of lower courts, which public prosecutors did not contest.⁵³ The Proclamation, further, recognized the need to have:

... rules regulating the administration of the Court, institution, conduct and hearing of proceedings therein, the admission, conduct and discipline of legal practitioners, the selection and duties of assessor, the committal of criminal cases from lower courts to higher courts, the imposition and recovery of fines, the award of imprisonment in default of payment and the procedure relating to execution and attachment, fixing fees and the general administration of justice, among others.⁵⁴

⁴⁷ *Id.* p.742.

⁴⁸ Assefa S. *supra* note 41 p. 35; See also, the Code of Criminal Procedure of the Empire of Ethiopia, *Neg. Gaz.* (Extraordinary Issue No. 1 (1961) Art. 1(2).

⁴⁹ Wodage W. *supra* note 2 p. 127.

⁵⁰ Aberra Jembere, *supra* note 41 p. 37. See also, the Public Prosecutors Proclamation No. 29 of 1942.

⁵¹ Wodage W. *supra* note 2 p. 127.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Assefa S. *supra* note 41 p. 38.

Accordingly, the Courts Procedure Rules was enacted to be applied in the High Courts and Provincial Courts.⁵⁵ The period between 1955 and 1965 was the zeniths of codification process in the Ethiopian legal system. It was during this time that the country had its first modern codified criminal procedure law. To be specific, the preparation for the initial drafts of the Code was started in 1955. The task of drafting this law was bestowed to Jean Graven, who was also the drafter of the 1957 Penal Code.⁵⁶ After the draft of Jean Graven was rejected by the Codification Commission, Sir Charles Mathew of England was assigned for the drafting of the Code.⁵⁷ Finally, despite all the controversy regarding its true source,⁵⁸ Ethiopia enacted its first ever modern and still applicable criminal procedure code in 1961.⁵⁹ In fact, currently, Ethiopia is in the process of revising the 1961 Criminal Procedure Code. Moreover, in 2011, it also enacted a new criminal justice policy.⁶⁰

3.2. The Place of Crime Victims' Rights under the Ethiopian Criminal Justice Process: A Holistic Analysis

To embark on with the fountainhead of laws, the FDRE Constitution, it has no express provision on the right of crime victims. Although it has specific and relatively detailed provisions on the suspected, accused, and convicted persons, it says nothing about the rights of crime victims. There is no special provision devoted for crime victims. The only provision that is arguably applicable to crime victims is the general provision that deals with access to justice. The Constitution provides that “[e]veryone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.”⁶¹ This is a generic provision which is available to everyone who has a justiciable matter; civil or criminal.

⁵⁵ For a detail discussion on the rules; see, Assefa S. *supra* note 41 p. 38-39.

⁵⁶ *Id*, p. 39.

⁵⁷ Wodage W. *supra* note 2 p. 128.

⁵⁸ For detail discussion on the source for the Ethiopian criminal procedure code; see, Assefa S. *supra* note 41 p. 40-42. See also, Wodage W. *supra* note 2 p. 128.

⁵⁹ The Criminal Procedure Code of the Empire of Ethiopia, 1961, *Neg. Gaz.* extra ordinary Issue; herein after the Ethiopian Criminal Procedure code.

⁶⁰ The Ethiopian Criminal Justice Policy, 2011. The details of the policy in view of crime victims is discussed at the latter stage.

⁶¹ FDRE Constitution Proc. No.1/1995, Federal *Neg. Gaz.*, Year 1, No 1, Addis Ababa, 21 August 1995, Art. 37(1).

The other important document that needs an examination is the criminal justice policy of Ethiopia. The policy has some important points about crime victims. To begin with, the policy contemplates that if measures are taken to increase the criminal justice system's effectiveness and establish a system that treat suspects of criminal conducts and crime victims in a balanced way, it would boost the public trust in the system.⁶² This is indicative of the policy decision taken to balance the interest of suspects of committing a criminal act and crime victims in Ethiopia. The Ethiopian criminal justice policy also states that when the crime is an upon complaint crime, the Prosecutor is authorized the mandate the crime victim to bring a private prosecution.⁶³ Moreover, the Policy guarantee the crime victims the protections provided for witnesses.⁶⁴ Most importantly, in addition to the above points that are mentioned in its different part, the policy devotes a section that specifically deals with crime victims.⁶⁵ In this specific section, the policy focuses on the need for establishing a system that takes the interest of the crime victims into account. It specifically mentions that there is a need for establishing a favorable environment whereby the crime victims can able to get the necessary compensation in short time either by using regular courts or other alternative means. Moreover, the policy indicates that there should be a system that provides assistance and advice to the crime victims so that they able to recover from the psychological harm and other problems. The policy, furthermore, recognizes the crime victims' right to participate in the investigation, charge, court proceeding and their right to get information. In nutshell, the crime victims have the right to participate in the investigation of the crime, instituting a charge, court proceeding and know the status of the case and get information about decisions made about the case. Moreover, the policy states that the crime victim has the right to be treated with honour and dignity in light of his/her damage sustained, age, skill and social status. Most specifically, the policy requires the following measures to be taken to respect the rights and interest of crime victims:

- A. The criminal law and the criminal procedure law should be amended in a manner that respect the rights of crime victims;
- B. A law should be enacted to protect the rights and interest of infants who are crime victim;

⁶² The FDRE Criminal Justice Policy *supra* note 60 p. 8.

⁶³ *Id*, p. 13.

⁶⁴ *Id*, p. 24.

⁶⁵ *Id*, p. 49-51.

- C. Express laws should be enacted to protect the rights and interest of women who are crime victims and persons who are victim of sexual harassment;
- D. The necessary support should be provided for those institutions and organizations that provide various support to crime victims;
- E. Necessary training as to their responsibility and the measure they should take should be given for those in the executive and judiciary sector who work on infants who are crime victims; and,
- F. When they appear and gives their testimony, the crime victims should be provided similar protections with witnesses including about their security, personal secrets, and identity.

The FDRE Criminal Code is the third Criminal Code of Ethiopia, next to the 1930 and 1957 Penal Codes. The FDRE Criminal Code provides that its purpose is to ‘ensure order, peace and the security of the State, its' peoples, and inhabitants for the public good’.⁶⁶ To this end, the Code aims at the ‘prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others, or by providing for their reform and measures to prevent the' commission of further crimes’.⁶⁷ Therefore, it is not hard to comprehend that the Ethiopian Criminal Code gives priority for prevention of crimes. It does so by explicitly stating which acts constitute a crime and the punishment that would be imposed if they were committed. If prevention is not successful and a crime is committed, the Code provides punishment. The purpose behind the punishment is deterrence, rehabilitation and incapacitation of the offender. The Code, depending on the seriousness of the crime, also provides measures to be taken against the offender. Generally, the purpose of the FDRE Criminal Code is primarily designed in the way that gives emphasis on the offender and the general public interest. Therefore, it is possible to argue that for the Ethiopian criminal justice, crime is a violation of the state's criminal laws.⁶⁸ It considers crime as an act against the interest of the public, State. Nonetheless, some efforts have recently been made to improve the criminal justice system.

⁶⁶ Criminal Code of the Federal Democratic Republic of Ethiopia, Proc. No. 414 *Fed. Neg. Gaz.* 9th Year, Extra Ordinary (2005), (herein after the FDRE Criminal Code), Art. 1, 1st Para.

⁶⁷ *Id.* Art. 1, 2nd Para.

⁶⁸ *Id.* Art. 23; See also, Enyew E., “The Space for Restorative Justice in the Ethiopian Criminal Justice System” *Bergen Journal of Criminal Law and Criminal Justice* Vol. 2 No 2, (2014) p. 223.

Saying the above as introduction, the ensuing discussion is specifically on the Ethiopian criminal justice process; its different stages, in light of the various interests of the crime victims.

3.2.1. The Pretrial Stage

A. The Initiation Stage

Whenever a criminal conduct is committed, information reaches to the formal criminal justice system via different means. One amongst the common sources of information is the member of the community including the crime victims. To be specific, the most common mechanisms are: a complaint made by the crime victims, when any member of the community made an accusation; or, the police officers on their own motion set the criminal justice system in motion.⁶⁹

The important point for this paper is the responsibility imposed on the crime victim: Is it mandatory or optional for the crime victims to report the commission of the crime in Ethiopia? How much is the discretion of the crime victims regarding reporting or disregarding the commission of a crime? Do they have the right to control the initiation of the criminal proceeding? Would they be criminally responsible if they failed to make a report? Is there a legal protection accorded for them? This issue is explained next.

The FDRE Criminal Code clearly regulates the legal effect of failure to report the preparation, attempt, or commission of a crime or of the person who committed the crime. These persons, in principle, would not be criminally responsible and punishable as an accessory after the fact or an accomplice.⁷⁰ However, the law provides exceptional circumstances where those persons can be criminally responsible.⁷¹ Stated differently, under the Ethiopian criminal justice system, informing the commission of a crime is not only a civic duty or right given to any person, failure to inform is; in exceptional circumstances, a

⁶⁹ See, the Ethiopian Criminal Procedure *supra* note 59, Arts. 11 - 21.

⁷⁰ Criminal Code of the Federal Democratic Republic of Ethiopia *supra* note 66, Art. 39(1).

⁷¹ For the exceptional circumstances, see the Criminal Code of the Federal Democratic Republic of Ethiopia *supra* note 66, Art. 254, 335. Note that these provisions do not talk about individual crimes victims; while the first provision talks about crimes mentioned under the provisions are ‘Crimes against the external security and defensive power of the state’; the second provisions is about ‘Failure to report Crimes Against the Defence Forces and Breaches of Military Obligations’.

punishable offence.⁷² Specifically, from the perspective of crime victims, Article 443(1)(a) of the FDRE Criminal Code is worthy of a thorough discussion. The provision states:

Whoever, without good cause: knowing the commission of, or the identity of the perpetrator of, a crime punishable with death or rigorous imprisonment for life, fails to report such things to the competent authorities; is punishable with fine not exceeding one thousand Birr, or simple imprisonment not exceeding six months.

Based on this provision, for the person in question to be criminally responsible, the following essential elements need to be fulfilled: absence of good cause; knowledge about the commission of the crime or identity of the person who committed the crime; the crime committed must be either punishable with death or rigorous imprisonment; and failure to report to the competent authority. However, the provision has one more, but unclear element, which is the person who can be criminally responsible for not reporting commission of the crime. Put differently, does Article 443(1)(a) of the FDRE Code includes the individual victims of a crime? For example, one can take the scenario provided under Article 620(3) of the FDRE Criminal Code. Would the victim of the crime of Rape who sustain a grave physical injury be criminally responsible for failure to report a crime under Article 443(1)(a) of the FDRE Criminal Code?

One should note that this kind of question is only important in cases of offences that are punishable without complaint. Regarding those offences that are punishable upon complaint, there will be no criminal investigation without securing a complaint from the crime victims.⁷³ In this specific circumstance, the crime victims control the investigation and prosecution; at least, to set the criminal justice process in motion or not. However, in the first circumstance, where the crime is not upon complaint crime, the crime victims have no control in the process. Because, the act is considered as a crime against the general community/state; though, it is directly inflicted on the crime victims. Therefore, it can be argued that the crime victims' failure to report the commission of a crime can be a ground for criminal prosecution under Article 443(1)(a) of the FDRE Criminal Code. After all, regarding the identity of the person, the provision uses an inclusive word 'whoever', which encompasses the crime

⁷² Criminal Code of the Federal Democratic Republic of Ethiopia *supra* note 66, Art. 39(2) (3) and 443.

⁷³ *Id.* Art. 212.

victims. Hence, under the Ethiopian criminal justice system second victimization of the crime victims starts from its outset, at the initiation stage of the criminal justice system.

B. Citizen's arrest power

In a circumstance where citizens have reasonable grounds to believe that the other person is committing an offence, there may be a need to take a private measure to apprehend the suspect/offender temporarily. Stated otherwise, a person who is not a police officer that includes the crime victims may go beyond informing the competent authorities about the commission of or their suspicion of the commission of a crime. There may be a circumstance where they should interfere into the liberty of the suspect - detain the person in question. Under the Ethiopian criminal justice system, private individuals are allowed to effect arrest but only in exceptional circumstances. The law provides:

[a]ny private person or member of the police may arrest without warrant a person who has committed a flagrant offence as defined in Art. 19 and 20 of this Code [the Criminal Procedure] where the offence is punishable with simple imprisonment for not less than three months.⁷⁴

Therefore, under the Ethiopian criminal justice system, the crime victims and potential victims (as well as the bystander), if they can, are accorded a right to play an active role in exercising citizen's arrest power. However, it is worthy to state that the law is not promoting vengeance but aims at fighting impunity and prevalence of justice.

C. Police arrest and investigation

After receiving a report as to the commission of a crime, the next stage is to start investigation. The main purpose of the investigation is to gather evidence in order to ascertain whether the alleged crime has indeed been committed or not, and whether the suspected person has committed it or not.⁷⁵

In Ethiopia, notwithstanding that police officers are of opinion that the accusation, complaint or information they may have received is open to doubt, the police are under duty to start

⁷⁴ The Ethiopian Criminal Procedure Code *supra* note 59, Art. 50.

⁷⁵ Enyew *supra* note 68 p. 225. See also, the Ethiopian Criminal Procedure Code *supra* note 59, Art. 22.

investigation.⁷⁶ The police investigation process encompasses the arrest and interrogation of the suspect, search-and-seizures for obtaining any objects that may be used as an evidence for the case, as well as the calling of witnesses.⁷⁷ During these processes, it is not uncommon for the police to call the victim as a witness. Therefore, the role of the crime victims is not limited to reporting of the commission of the crime. Rather, they are the main source of evidence for the investigation and framing charging and the judges in finding the truth. However, under the Ethiopian criminal justice system, there is no explicit legal provision that imposes duty on the police officer to accept the crime victims' testimony in the process and make them part of the whole process. It is up to the decision of the police officers and the public prosecutors to call them or not. For example, the Criminal Procedure Code gives the discretion for the investigating police officer.⁷⁸

D. Prosecution

Following collecting all the necessary evidence, the investigating police officer submits a report to the public prosecutor.⁷⁹ Then after, the public prosecutor decides on the case; put differently, the prosecutor may decide to prosecute; order a preliminary inquiry; order further investigations; or, decide to or not to institute charge.⁸⁰ The law provides the grounds for the public prosecutor's decision to close or refuse to prosecute the case. Accordingly, the public prosecutor may close the file if the accused has died; or, is under nine years of age; or, cannot be prosecuted under any special law or under public international law (diplomatic immunity).⁸¹ If the case is closed on these grounds, the public prosecutor is required to send a copy of the decision to the Attorney General, the private complainant, if any, and the investigating police officer.⁸² The issue here is, the meaning, nature and contours of the expression 'private complainant.' Is it limited to upon complaint cases or refers to all crimes regarding which accusation is made by members of the community? This author believes that the notion of 'private complaint' to be broadly interpreted in a way it includes anyone who brought the commission of a crime to the attention of police officer.

⁷⁶ The Ethiopian Criminal Procedure Code *supra* note 59, Art. 23.

⁷⁷ *Id*, Art. 24-34.

⁷⁸ *Id*, Art. 30(1).

⁷⁹ *Id*, Art. 37(2).

⁸⁰ *Id*, Art. 38.

⁸¹ *Id*, Art. 39(1).

⁸² *Id*, Art. 39(3).

Moving to the other point, if ‘the public prosecutor is of opinion that there is [no] sufficient evidence to justify conviction; or, there is no possibility of finding the accused and the case is one which may not be tried in his absence; or, the prosecution is barred by limitation or the offence is made the subject of a pardon or amnesty; or, the public prosecutor is instructed not to institute proceedings in the public interest by the [Attorney General] by order under his hand,’ the case can be closed.⁸³ The issue here is to what extent the interest of the crime victim is considered when the public prosecutor refuses to institute a charge? In particular, is there a mechanism whereby the crime victims can challenge the decision of the public prosecutor? For example, what if the assessment of the crime victims is different from the public prosecutor’s evaluation of the sufficiency of the evidence? What if the crime victims have objection to the order of the Attorney General? In the Ethiopian law, as explained below, there is no adequate answer for these questions.

If the decision of the public prosecutor is based on insufficiency of evidence, the effect of the refusal varies based on the nature of the crime. If the crime is punishable upon complaint, the public prosecutor shall authorize, in writing, the appropriate person (the injured party or his legal representative; or, the husband or wife on behalf of the spouse; or, the legal representative of an incapable person; or, the attorney or a body corporate) to conduct a private prosecution.⁸⁴ A copy of such authorization shall be also sent to the court having jurisdiction.⁸⁵ If the crime is among those that do not require complaint from the victim, the appropriate person (the injured party or his legal representative; or, the husband or wife on behalf of the spouse; or, the legal representative of an incapable person; or, the attorney or a body corporate) may within thirty days from having received the decision of the public prosecutor apply for an order that the public prosecutor institute proceedings.⁸⁶ The Criminal Procedure Code does not illuminate who these people are. In this regard, the Federal Attorney General Establishment Proclamation states that any person who has grievance against the decision of public prosecutor has the right to lodge complaint to superior public prosecutor at different levels. The superior public prosecutor who received the complaint shall expeditiously investigate and give decision including by forming a committee composed of relevant professionals to investigate the case. After conducting the investigation, the superior may decide to suspend, change, modify, revoke or approve the decision of the subordinate

⁸³ *Id.* Art. 42(1).

⁸⁴ *Id.* Art. 44 (1) and 47.

⁸⁵ *Id.* Art. 44 (1).

⁸⁶ *Id.* Arts. 44 (2) and 47.

prosecutor or remand the case to the section that saw the case previously by stating his legal and factual reasons.⁸⁷ However, the right of the crime victims does not seem to go to the extent of conducting a private prosecution. Since such crimes are considered as against the interest of the public/state primarily; unlike upon complaint crimes, the direct crime victims do not have the standing for prosecution. The power they have is limited to apply for an order. However, the law is not clear to which organ the complaint about the decision of the public prosecutor can be lodged. Should it be lodged to the same public prosecutor who made the decision or to the Attorney General? Would the complaint against the decision of the public prosecutor warrant automatic prosecution? These questions remain unanswered under the Ethiopian law.

Generally, besides these unaddressed issues, crime victims; under the Ethiopian criminal justice process, have no control over the process; specifically, crimes that are not punishable upon complaint. The crime victims' rights and interest is usually a secondary consideration. Especially, in the case of non-complaint crimes, victims are pushed out of the process of the criminal justice.

E. Pre-trial detention

The provisions regulating pre-trial detention of suspects and defendants and the procedures applied for release on bail vary from jurisdiction to jurisdiction.⁸⁸ In most jurisdictions, the decision is influenced by the possible danger in 'tampering with the evidence', including, of course, exerting pressure on the victim.⁸⁹

Under the Ethiopian legal framework, the principle on bail is provided under the FDRE Constitution. It provides that “[p]ersons arrested have the right to be released on bail. In exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person.”⁹⁰ Specifically, the criminal procedure law provides that bail can be denied if the “court is of the opinion that the suspect is unlikely to comply with the conditions laid down in the bail bond; likely to commit other

⁸⁷ Federal Attorney General Establishment Proc. No. 943/2016, *Fed. Neg. Gaz.* 22nd Year No. 62, May 2016, A.A, Art. 18.

⁸⁸ Sebba L. *supra* note 37, p. 197.

⁸⁹ *Id.* p. 198.

⁹⁰ The FDRE Constitution *supra* note 61, Art. 19(6).

offences, and/or, likely to interfere with witnesses or tamper with the evidence.”⁹¹ Sometimes, the legislature may also deny bail based on the seriousness of the crime such as corruption.⁹² Moreover, as rightly explained by Leslie, not in Ethiopian context though, the primary focus on bail is the threat to the “case against the defendant.”⁹³ However, the threat of the well-being of the crime victims, and how is this to be measured against the infringement of the suspect's liberty inherent in his/her continued incarceration is not often attracting attention.⁹⁴ To the author's mind, similar analysis works for the Ethiopian case too.

3.2.2. The Trial Stage

A. Joinder of Civil Litigation

Often, the damage sustained by the crime victims is not unidirectional. The conduct of the suspect/offender exposes him/her to multifaceted problems. One of such problems is financial costs. The financial costs may be those, which are already materialized, and those will certainly happen. Therefore, every legal system devised a mechanism whereby such damage of the crime victims makes good. Put differently, all civil law legal systems allow the victim to bring a civil action following the criminal process.⁹⁵ However, under the common law rules of evidence, the criminal conviction would not even be admissible as evidence in the civil proceedings.⁹⁶ It is thus an irony that the European approach, which notionally places the victim in a more subservient role in the criminal prosecution, by comparison with the common law, in practice places him/her in a superior position by means of the joinder device.⁹⁷

Under the Ethiopian legal system, crime victims have a better protection in bringing civil litigation alongside with the criminal prosecution. Chapter Six of the Ethiopian Criminal Procedure Code is devoted to principles on “Injured Party in Criminal Proceedings.” The Criminal Procedure Law provides that the crime victims or his/her representative may, at the opening of the hearing, apply to the court trying the case for an order that compensation be

⁹¹ The Ethiopian Criminal Procedure Code *supra* note 59, Art. 67.

⁹² Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation, Proclamation No. 434/2005, *Neg. Gaz.*, 21st Year No. 37 (April. 2015) A.A, Art. 4(1).

⁹³ Sebba L. *supra* note 37, p. 198.

⁹⁴ *Id.*

⁹⁵ *Id.*, p. 200.

⁹⁶ *Id.*

⁹⁷ *Id.*

awarded for the injury caused.⁹⁸ In this case, the crime victim is not required to pay for a court fee as though it were a civil case.⁹⁹ However, she/he must specify the nature and amount of the compensation sought in writing.¹⁰⁰ The Court, in its motion or application of the defence counsel or the prosecutor, can reject the application of the crime victim or his/her representative; if, “a young person is the accused; or, the accused is being tried in his absence; or, the injured party has instituted proceedings in a civil court having jurisdiction; or, the person making the application is not qualified for suing; or, the claim for compensation cannot be determined without calling numerous witnesses in addition to those to be called by the prosecution and defence; or, the court is of opinion that the hearing of the injured party's claim for compensation is likely to confuse, complicate or delay the hearing of the criminal case”¹⁰¹ or where the amount of compensation claimed exceeds the pecuniary jurisdiction of the court.¹⁰² However, the dismissal of the application does not prevent the crime victims from instituting a separate civil suit in a civil court.

Once the case is accepted, the crime victims have all the rights and play a key role in the process. However, if the accused is acquitted, the court shall not adjudicate on the question of compensation and shall inform the injured party that she/he may file a claim against the accused in the civil court having jurisdiction.¹⁰³ The Ethiopian law also provides that the acquittal of the accused in the criminal prosecution cannot be a bar for civil litigation.¹⁰⁴ However, if the accused convicted in the criminal prosecution; for the stronger reason, it will be a conclusive evidence for the civil litigation in determining whether the accused was at fault or not.

The other point in relation to compensation is: Should or must the state offer financial compensation to the victims of crime? Here the question is not about the harm sustained by victims owing to the decision of the State rather it is where other citizens cause the harm (which in general is the subject of civil lawsuits). To refer the practice of other countries; for example Germany, there is a trend of paying compensation for crime victims, not only as a

⁹⁸ The Ethiopian Criminal Procedure Code *supra* note, Art. 154(1).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* Art. 155(1).

¹⁰² *Id.* Art. 155(2).

¹⁰³ *Id.* Art. 158.

¹⁰⁴ Civ. Code of the Empire of Ethiopia Proc. No. 165, *Neg. Gaz.* Extraordinary, 19th Year No. 2 (May 1960), Art. 2149.

symbol of an extended welfare state; more importantly, it signifies a growing trend in German society to sympathize and identify with victims.¹⁰⁵ However, for understandable reason of Ethiopia's development level, nowhere such right is recognized.

B. The court hearing

When someone appears as a witness to the prosecutor or the defence, each side of the trial will have a chance for confrontation: at the examination in chief, cross-examination and re-examination. Of these stages, specifically, there is grueling at the cross examination with the aim of discrediting the testimony of the witness (that may include the crime victims) given at the examination in chief stage. The issue at this point is the protection given to the crime victims. Is it necessary to protect the crime victims from cross-examination that may mainly base on their character? For example, think of a victim of rape and incest. If there is a certain level of protection for the crime victims, they may be discouraged to bring the charge in fear of the merciless cross-examination at the trial stage. What about in case of child crime victims? For example, take child crime victims, especially in sexual abuse cases. The question is whether they have a right to appear as a witness during the trial with or without the consent of the public prosecutor. If they do have a right, are there special protection mechanisms for crime victims at the trial stage? Are children capable of being witness under the Ethiopian legal system? Are they free from cross-examination? Is hearsay evidence acceptable? These questions are not easy to answer; because at this stage, there are two competing interests: the defendant's right to confront witnesses against him/her and the need to provide protection for the crime victims including child victim within the criminal justice system.

In the Ethiopian law, the crime victims' right to appear as a witness is not legally recognized. It is being practiced at the discretion of the public prosecutor to either include or exclude the private victim from the proceedings.¹⁰⁶ Moreover, there is no protection accorded to the crime victims during examinations in the trial. The FDRE Constitution, however, provides that “[t]he court may hear cases in a closed session only with a view to protecting the right to

¹⁰⁵ “Symposium: Victims and the Criminal Law: American and German Perspectives,” Buffalo Criminal Law Review, Vol. 3 (1999) P. 1, noted (foot note 1) in Dubber M and Hörnle T, *Criminal Law: A Comparative Approach* (Oxford U. Press 2014), p. 30.

¹⁰⁶ Enyew E. (n 68) at 233.

privacy of the parties concerned, public morals and national security.”¹⁰⁷ This protection is not directly and solely related to the crime victims. On the other hand, when the crime victim is called as a witness, she/he does not have a chance to properly encounter the accused, as her/his communication with the accused is limited to responses in cross-examination.¹⁰⁸ The victim is also not allowed to remain in the courtroom to hear the other testimonies in the case and to attend the rest of the trial so as to avoid influence testimonies of other witnesses.¹⁰⁹ As Worku rightly pinpointed, “victim-witnesses often experience mental anguish, humiliation and anxiety during cross-examination by, in particular, the accused or the defense counsel.”¹¹⁰

C. The Sentencing Stage

If, based on the evidence adduced by the public prosecutor and then the accused was not able to challenge it, a court convicts the accused. Accordingly, the next stage is the determination of the punishment to be imposed on the convicted person. At this stage, the court will seek the opinion of the public prosecutor and the offender; therefore, both would explain the available mitigating and aggravating circumstances. However, the crime victims are not given chance to give input during the sentencing stage.

In Ethiopian law, too, the determination of punishment mainly focuses on in achieving the purpose of criminal law; which is “to ensure order, peace and the security of the State, its peoples, and inhabitants for the public good.”¹¹¹ What is clear is that the recognized objectives of punishment in modern times have not directly been concerned with the crime victims, but have primarily been concerned with society as a whole, on the one hand, and the offender on the other.¹¹² Thus, retribution and general deterrence lay stress mainly on the needs of society; reform and rehabilitation are concerned with those of the offender, while individual deterrence and social defence may be regarded as taking into account the mutuality of the interaction between offender and society.¹¹³

¹⁰⁷ The FDRE Constitution *supra* note 61, Art. 20(1).

¹⁰⁸ Enyew E. *supra* note 68.

¹⁰⁹ *Id.*

¹¹⁰ Wodage W. *supra* note 2 p. 140.

¹¹¹ Criminal Code of the Federal Democratic Republic of Ethiopia *supra* note 66, Art. 87.

¹¹² Sebba L. *supra* note 37 p. 205.

¹¹³ *Id.*

The question of whether the victims are able to express their suffering and needs in criminal trials through victim impact statements or not answer depends on the evolution of state punishment. If the state punishment is seen as a crucial step in civilizing and restricting vindictive reactions, there might be reluctance to provide extensive victims' rights and specifically victim impact statements.¹¹⁴ In Canada, crime victims are allowed to make an impact statement. The Victim Impact Statement allows victims to make a written statement about the impact that the crime had on them and submit it to the court at the sentencing hearing after the accused has been found guilty.¹¹⁵

However, under German law, for example, victims in general are not entitled to participate actively in criminal trials and there are no victim impact statements.¹¹⁶ However, there are important exceptions to this rule of the “passive victim.” The German Code of Criminal Procedure allows certain types of victims to appear as “accessory prosecutor” (Nebenkläger).¹¹⁷ This right is mainly available to victims of sexual offenses, assault and attempted murder, as well as to relatives of murder and homicide victims. The position of an “accessory prosecutor” includes a right to make statements. It does not, however, oblige the judge to put particular emphasis on the victim’s suffering in his or her sentencing decision.¹¹⁸ As rightly pinpointed by Endalew, under the Ethiopian criminal justice system, the crime victim is not given a chance to address the judge in the determination of the appropriate punishment rendered onto the offender.¹¹⁹

3.2.3. Post-sentencing Stage

The fact that the offender is sent to correctional institutions such as prison does not signify the end of the criminal justice process. There are some decisions that would be made while the offender is in the correctional institutions. For example, there may be a decision to grant parole or amnesty. Therefore, the question is: Do the crime victims have standing to preventing/allowing such grants?

¹¹⁴ Dubber M and Hörnle T *supra* note 105, p. 31.

¹¹⁵ Wemmers J. *supra* note 3, p. 76.

¹¹⁶ Dubber M and Hörnle T *supra* note 105, p. 31

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Enyew E. *supra* note 68, p. 229. See also, the Ethiopian Criminal Procedure Code *supra* note 59, Art. 148.

Under the Ethiopian criminal justice process, decisions such as probation (suspension of conviction and sentence) and parole are made in the interest of the justice system and for the benefit of the convict. The crime victims are neither consulted nor informed in the determination of whether the offender should be granted parole or release upon probation. This is in total disregard of the potential secondary victimization of the victim that could result from knowledge about or their possible future interactions in the community. Likewise, in the decision whether granting pardon or amnesty to the offender, the crime victims have no standing. However, the provisions on parole and probation still have a paramount role from the perspective of protecting the interest of the crime victims. Besides decreasing the negative consequences of incarceration and reduce the prison population, they also protect the interests of crime victims as they put repairing the damage caused by the crime or to pay compensation to the injured person as a precondition to be placed under probation or granted parole.¹²⁰

4. The Need for Constitutional Protection for Crime Victims' Rights in Ethiopia

A written constitutional law, in Ethiopia, kicked off in 1931 when Emperor *Haile Selassie I* granted¹²¹ the first ever constitution to his subjects. This Constitution, although not primarily intended to limit the power of the Emperor, it had some interesting provisions. To be specific, among the very limited number of fundamental rights that had a constitutional status,¹²² the due process right was a prominent one. Note that, however, the constitutional provisions were not related to crime victims. The constitution provides protection for Ethiopian subjects not only not to be arrested, sentenced, or imprisoned except in pursuance of law, but also guaranteed Ethiopian subjects the right to be tried by a legally established court and no one can deny this right without their consent.¹²³ The monarchial constitution also provided domiciliary searches to be only based on law.¹²⁴ However, in nowhere the constitution dealt with specific rights of crime victims; unlike the case of the suspects/accused. The subsequent constitution, the 1955 Revised Constitution, granted by the same Emperor, did introduce

¹²⁰ Enyew E. *supra* note 68, p. 237 and 238.

¹²¹ See, the 1955 Revised Constitution of Ethiopia, 1955, Paragraph 1 of the preamble.

¹²² See, the Ethiopian Constitution (1931), Arts. 22 – 28.

¹²³ *Id*, Arts. 23 and 24.

¹²⁴ *Id*, Art. 25.

nothing new concerning crime victims' rights. Compared to its predecessor, however, the 1955 Revised Constitution had a wide-ranging list of fundamental rights and freedoms.¹²⁵

The Derg Regime, after suspending the 1955 Revised Constitution for 13 years,¹²⁶ enacted another constitution in 1987.¹²⁷ This short-lived constitution, akin to the 1955 Revised Constitution, had a long list of fundamental rights and freedoms.¹²⁸ The 1987 Constitution, specifically declared provision that gave protection to persons suspected of committing crime.¹²⁹ It should be noted that the Derg regime made no significant change in the criminal justice process. The 1957 Penal Code and the 1961 Criminal Procedure Code were not suspended or repealed. The regime rather introduced some new laws, which introduced new forms of crimes and increased punishment concerning some crimes; besides establishing military courts.¹³⁰ Therefore, it is submitted that from the crime victims' point of view, there was no new introduction even under the 1987 PDRE Constitution.

Finally, following the transitional period charter that crossed refer to the major human rights instruments such as UDHR¹³¹ and provide the procedure for the future constitution,¹³² Ethiopia enacted the current, FDRE, Constitution. Alike its predecessors, the FDRE Constitution mainly deals with the rights of arrested persons;¹³³ accused persons;¹³⁴ and, the rights of persons held in custody and convicted prisoners.¹³⁵ It also explicitly provides non-retroactivity of criminal law¹³⁶ and the prohibition of double jeopardy.¹³⁷ The only generic provision, at least indirectly, protects the interest of crime victims is the provision that guarantees access to justice. The Constitution guarantees everyone "the right to

¹²⁵ See, the Ethiopian Revised Constitution *supra* note 121, Art. 37 to 65.

¹²⁶ Provisional Military Government Establishment Proclamation, *Negarit Gazeta*, Proc. 1/1974, Article 5(a).

¹²⁷ The Constitution of Peoples' Democratic Republic of Ethiopia, PDRE Constitution, (1987).

¹²⁸ *Id.* Arts. 35 - 58.

¹²⁹ The constitution guaranteed presumption of innocence, non-retroactive application of criminal law, protection against self-incrimination, etc. See, the PDRE Constitution, Arts. 44 and 45.

¹³⁰ See, Special Courts- Martial Establishment Proclamation, Proclamation No. 7/1974, Special Penal Code Proclamation, Proclamation No. 8/1974, Special Criminal Procedure Code Proclamation, Proclamation No. 9/1974, the Special Courts-Martial Establishment, Special Penal Code, Special Penal Code Proclamation Amendment Proclamation, Amendment Proclamation 21/1975, and the Revised Special Penal Code Proclamation, Proclamation No. 214/1975.

¹³¹ The Ethiopian Transitional Period Charter (1991), Art. 1.

¹³² *Id.* Arts. 9(g), 10, 11, and 12.

¹³³ For the specific rights; see, The Constitution of Peoples' Democratic Republic of Ethiopia, PDRE Constitution, *supra* note 6, Art. 19.

¹³⁴ *Id.* Art. 20.

¹³⁵ *Id.* Art. 21.

¹³⁶ *Id.* Art. 22.

¹³⁷ *Id.* Art. 23.

bring a justiciable matter to and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.”¹³⁸ The FDRE Constitution also allows “adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute.”¹³⁹ Consonant with this, the constitution also provides: “Special or *ad hoc* courts which take judicial powers away from the regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established.”¹⁴⁰ Generally, the FDRE Constitution accords different protections for those who participate in the criminal justice as a suspect, accused and offender. However, it does not have even a single provision on the crime victims’ rights save the right to bring a case before the concerned organ; which is highly controlled by the State via the public prosecutor.

In Ethiopia, the crime victims are neglected. They have not been bestowed the place they deserved. Unquestionably, the criminal justice system would hardly be successful and the criminal law objective hardly achieved without having an active role of the crime victims. Accordingly, currently, there is “a world-wide consensus and conviction to treat victims with compassion and respect for their dignity, to ensure that they are kept informed of the progresses of their cases, and to allow them to play meaningful roles in the criminal process.”¹⁴¹ Accordingly, many jurisdictions have been trying to give broader space for the needs of the crime victims in their legal tradition in general, criminal justice system in particular. Moreover, there are international initiative such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power that tries to recognizes the rights of crime victims so that achieve the laudable aim of criminal law.¹⁴² Similarly, the 1998 Rome Statute of the International Criminal Court unequivocally recognizes the rights of the crime victims in various stages of the proceeding. Generally, it is clear that the trend at international and at various domestic jurisdictions level is giving a better protection for the rights of the crime victims in a way that is compatible with the rights of the suspects/accused/offenders.

¹³⁸ *Id.* Art. 37.

¹³⁹ *Id.* Art. 34(5)

¹⁴⁰ *Id.* Art. 78(4).

¹⁴¹ Wodage E. *supra* note 2 at 123.

¹⁴² *Id.*

In Ethiopia, the Constitution has been applauded for having a long list of fundamental rights. Specifically, the Constitution has recognized different types of rights for those who are suspected, accused, or, found guilty of committing a crime. However, it does not have even a single express provision for the rights of crime victims. As discussed before, albeit the Criminal Justice Policy has some important protections and promises, almost all of it remains on paper. The new draft criminal procedure code has not made any significant change when it comes to the rights of crime victims. This is not compatible with the growing trend in protection of the rights of crime victims. One should also bear in mind that, currently, many, for various reasons are demanding for the amendment of the FDRE Constitution but various other reasons. Moreover, the country is in transition, which, among others, needs reform of institutions. Therefore, it is wise to use this opportunity to make a progressive decision concerning the rights of crime victims and bestow them a constitutional status. Transliterated, the Constitution should have a guarantee for crime victims' and meaningfully participate in the criminal justice process as key parties.

5. Conclusion

The criminal justice process starts mainly from the damage sustained by the direct crime victims. However, the offender and the public prosecutor on behalf of the State dominate the process. This is so, because the punishable act of the offender is considered as an act against the interest of the public. This is a narrow understanding of crime in a utilitarian approach. However, to achieve the main objective of criminal law, 'ensuring order, peace and the security of the State, its peoples, and inhabitants for the public good', besides rehabilitating the offender, it is necessary to repair the broken relationship between the offender and the crime victims; the offender and the community; and, the crime victims and the community. This can be done besides others by allowing the crime victims to play an active role in resolving the problem.

In the Ethiopian criminal justice process, the crime victims remain as spectators in their own case. Their participation in the process is dependent upon the willingness of the public prosecutor, especially in case of crimes that are not punishable upon complaint. Indeed, some progresses have been introduced by the criminal justice policy. However, it is not enough. Therefore, much has to be done to bring the crime victims into the center of the process via

constitutionalizing their rights in a way compatible with the rights of the defendant. The right of the crime victims must be treated in a balanced way with the defendants including the suspect. This would save the rights of the crime victims from being subordinate to the defendant.