

Status and Role of Victims of Crime in the Ethiopian Criminal Justice System

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Abstract

This article explores the place and role of victims of crime in the present Ethiopian criminal justice system. It inquires whether victims, as distinct from mere informants/witnesses, have a legally recognized position and can play significant roles within the criminal process. It examines if there are sufficient legal mechanisms that provide for their treatment and protections. A detour to survey global contemporary issues and 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 currently (1) do not have adequate recognition, (2) have marginal roles, and (3) are without sufficient legal mechanisms which provide for their treatment and protection in the criminal process. Hence, the author recommends for the inclusion into the forthcoming criminal procedure law of provisions that address the special concerns, needs, interests and rights of victims.

“The provisions of the Rome Statute permit victims at the International Criminal Court to choose their legal representatives, who have a right to present their views and make submissions when their interests are likely to be affected. Such views and submissions may be made at all stages of the court proceedings with only the limitation that it would not be prejudicial or inconsistent with the rights of the accused. In an era where globalization and harmonization of criminal procedure seem set to continue indefinitely, it is inevitable that domestic processes and policymakers and criminal justice agencies will be increasingly influenced by such international developments.” (Jonathan Doak)

Introduction

Behind the commission of most crimes there are often individuals that bear the brunt of the criminal acts of perpetrators. On numerous occasions,

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individuals suffer physical, emotional or psychological injuries, incur financial or economic losses and other kinds of harm. In worst instances such as homicide, people miss their dear ones. For a good number of individuals – particularly children, women and other vulnerable – the unfortunate experience may be just a beginning of more serious consequent plights.

Apart from the injury, loss or trauma that individuals often sustain during primary victimization¹ and further exacerbation thereof due to lack of support and assistance, many subsequently encounter a lot other forms of injuries and losses. They may further be stunned by insensitive, indifferent, unsympathetic or humiliating reception and treatment by officials. When testifying before police stations or courts as witnesses, such individuals may experience further confusion, trauma, embarrassment or humiliation.² The various criminal processes may not accommodate their concerns and related interests such as compensation for the harms they sustained. Suspected offenders may be released on bail without their knowledge. Courts may impose punishment on offenders without appreciating the after-effects of crimes or without getting inputs as to the extent of injuries. Offenders may be pardoned or released on parole without their involvement.

In following up “their” cases, individuals may further suffer additional costs, ups and downs and protracted absence from their normal businesses. Some may even encounter harassment, intimidation or revenge/retaliation from suspects, offenders, relatives or friends of suspects/offenders in the course of criminal proceedings. Such individuals that suffer, directly or indirectly, from primary victimization, experience or undergo subsequent

¹ *Primary victimization* refers to injuries of individuals resulting directly from criminal offence; see Spinellis, D., ‘Victims of Crime and the Criminal Process,’ *Israel Law Review* Vol.31, 1997, pp.338-339.

² This and related injuries which arise from institutional response are commonly referred to as *secondary victimization*. It relates to, for example, degrading or offending questions during investigations and trials, aggressive cross-examination, showing lack of interest in cases, failure to communicate about what is happening to cases, delays, unexplained decisions, etc. See *Id*; Doak, J., *Victims’ Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties*, Hart Publishing, Oxford, 2008, pp.38, 51-52 [hereinafter Doak]; *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) available at: www.uncjin.org/Standards/9857854.pdf, p.9 (Last accessed 20 March, 2011) [hereinafter Handbook on Justice].

injuries in the aftermath of criminal commission (secondary victimization) are referred to as *victims* of crime.³

Apart from traditional and attitudinal factors that may make the criminal process somehow stressful for victims, certain forms of secondary victimization are partly attributable to the very structuring of criminal procedure systems and the functioning of traditional retributive criminal process. On the other hand, it is a truism that any criminal justice system cannot function successfully without the involvement of victims. To be operational, any criminal justice system requires that victims/witnesses complain or report commissions of crimes or offenders and testify before investigative authorities and courts.

As is the case in many other jurisdictions,⁴ victims in Ethiopia face a lot of sufferings in the aftermath of criminal acts committed against them. Some

³ The term *victim* has various denotations. It may refer to a person to whom harm is done or who suffers physical or emotional injury or incur financial/economic loss as a result of the commission of an offence, and where such person is dead, sick or otherwise incapable, it may include the spouse or relatives of that person. Designating an individual a *victim* may be contentious. See Crawford, A., 'Salient Themes Towards a Victim Perspective and the Limitations of Restorative Justice: Concluding Comments', in Crawford, A., & Goody, J. (eds.), *Integrating A Victim Perspective Within Criminal Justice*, Ashgate, Dartmouth, 2000, p.285; Brienen, M. & Hoegen, E., 'Victims Of Crime' *European Criminal Justice Systems*, Vol. 22, 2000, pp.25-26[hereinafter Brienen & Hoegen]; Doak, *supra* note 2, pp.20-24; *The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985), UN General Assembly Resolution 40/34, [hereinafter UN Declaration on Victims] provides:

- (1) "*Victims*" means 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.
- (2) [...] The term *victim* also includes, where appropriate, the immediate family or the dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

(Available at: <http://www.unhchr.ch>) [Last accessed on 24 January 2011].

In the Declaration, the term *victims* is used literally to refer to *natural persons who allege sustaining criminal injury*, and, in cases of homicide and physical or mental incapacitation, or in cases of minors and incapable persons, to refer to *the injured person's spouse, close relatives or lawful representatives*. But it must be noted that *juridical persons* that suffer from criminal acts are included. Also, no distinction is made here between *ordinary victims of crime* and *victims of abuse*, i.e., victims of the state or state officials.

⁴ See Handbook on Justice, *supra* note 2, p.1 and Chapter I (pp.4-9) as regards the impact of victimization in general.

research and media reports reveal that victims, particularly women and children, suffer immensely in connection with the processing of their cases. Considering the myriad shortcomings and limitations of the justice institutions in the country⁵ one may imagine many other forms of secondary victimization that victims experience.

Since the beginning of 1990s, there have been series of endeavors to improve the legal and justice system of the country. A new constitution,⁶ entrenching extensive bill of rights⁷ – including principles and rules that protect criminal suspects, accused persons and convicted offenders⁸ – is adopted. A new Criminal Code, enacted in 2004 and entered into force as of 9 May, 2005,⁹ contains some provisions pertaining to victims of crimes. Further, works are still being done to enhance the working conditions of justice institutions and related activities.¹⁰ Given as well the revision of the existing Criminal Procedure Code is underway, it is timely, if not late, to inquire the place and role of victims in the Ethiopian criminal justice system and to question what is being accomplished currently vis-à-vis victims amidst ongoing efforts to improve the criminal justice system and contemporary global developments and emerging trends.¹¹

The purpose of this Article is to explore the status and role of victims in the Ethiopian criminal justice system and to investigate whether there exists sufficient legal mechanism that provide better treatment and protections for

⁵ There are severe problems that relate to accessibility, predictability, competence and efficiency, etc. See መንበረፀኃይ ታዲሳ፣የኢትዮጵያ ህግና ፍትህ ገፅታዎች፣ 1999 ዓ.ም. pp.81-111.

⁶ Constitution of the Federal Democratic Republic of Ethiopia Proclamation, 1995, *Federal Negarit Gazeta*, Proclamation No.1/1995, 1st Year No.1 [hereinafter FDRE Constitution]. It entered into force as of 21 August 1995. There are training centers that work towards the improvement of the justice sectors. Efforts are underway to improve institutional competence including infrastructures.

⁷ See Chapter 3, FDRE Constitution.

⁸ *Ibid*, Articles 17- 23. At this juncture one may pause and question whether victims too get some attention in the Constitution and other endeavors of the Ethiopian government.

⁹ The 2005 Criminal Code of the Federal Democratic Republic of Ethiopia, 2004, Proclamation No. 414/2004, *Federal Negarit Gazeta*, Year 10, No. 59 [hereinafter Criminal Code]. This Code is applicable throughout the Ethiopian federation.

¹⁰ Implementation of the recently adopted Criminal Justice Policy of the country is also to be mentioned.

¹¹ The extent to which human rights are respected and protected in Ethiopia within the criminal process is in part to be measured by looking into the accessibility of the criminal justice system to victims, by examining how victims are being treated in the process and by assessing protection mechanisms afforded to them.

victims. What is the position of victims within the context of the current Ethiopian criminal justice system? Does the existing Criminal Procedure Code or any other law in force recognize victims as “parties” to the criminal process or are they merely treated as mere informants and/or witnesses? Is there any law in force that provides norms on how victims should be treated by all concerned during pre-trial, trial and post-trial criminal proceedings? What legally recognized roles do crime victims as *victims* have at the various stages of the criminal process? Does the existing legal framework in Ethiopia grant victims some control or influence on the investigation and/or prosecutorial decision-making of “their” cases or sentencing of offenders? Can victims impart their concerns and bring in inputs to the police, prosecution, courts and prison administration? If so, to what extent can one’s voice be heard? This Article attempts to provide answers for these and related issues.

Accordingly, the Article begins, in Section 1, with some glimpse of the literature regarding the historical position and role of victims. This is followed by a brief overview of the common law and civil law approaches to victims in criminal process. Section 2 proceeds to examine the place and role of victims in the Ethiopian criminal justice system; it also investigates if sufficient legal mechanism that aims at providing better treatment and protection for victims exists. Section 3 surveys global contemporary issues and emerging trends regarding victims. Finally, conclusions along with recommendations which Ethiopia need to incorporate into its upcoming criminal procedure law are provided.¹²

1. The Position and Role of Victims in Criminal Process: An Overview

1.1. Historical Position and Role of Victims: A Synopsis

One wonders to learn one evident historical truth in the history of systems of criminal justice: victims of crimes were not only at the very *center* of ancient and medieval criminal justice systems but also they were the sole persons to determine on the fate of their cases and assailants. In the distant early history of administration of justice, there were no such dichotomies between “criminal” and “civil” cases and there were no such established

¹² Due to space limitations, detailed examination of specific issues related to treatment, protection, reparation and rights of victims within the context of the criminal process are postponed for future studies and discussions.

criminal justice institutions as police, public prosecution, legal counsel, penitentiary and courts as we know them today. Cuomo writes:

“In primitive times, when the struggle for survival regularly pitted one individual against another, there was little to distinguish ‘crime’ from the continuous struggle for existence. The law was the law of the strongest or the most clever [sic]; and the ‘crime victim’ was not just an important player – if he survived, he was probably one of only two players, performing the role of victim, prosecutor, judge, and sometimes executioner. The concepts of punishment, deterrence, and compensation were probably inextricably intertwined and personal. Justice, if any, belonged to the strongest or the most clever[sic].”¹³

In those earlier days, society had a private system of “criminal justice” in which victims of wrongs, or families of victims had decisive powers and responsibilities in the investigation, apprehension, prosecution and execution of offenders.¹⁴ Almost all wrongdoing was perceived as private injury to individual victims as opposed to injury to society. Criminal punishment as we know it today was unknown. The idea of vengeance or retribution was at the center of administration of justice. As Emmanuel Gross notes in relation to historic England, there was privity between victims and offenders and the wrongs committed against such victims could be settled by paying either monetary or other equitable “damages” or, alternatively, victims or their families could take measures of retribution or vengeance.¹⁵ The early state was not regarded as having interest in such private wrongs.¹⁶

Through time, however, things began to take different shapes. State power began to expand and make substantial inroads into the hitherto private domains. With growing expansion of state power from time to time and the advent of adversarial mode of criminal process (a bipartisan contest between the state and the accused) and the evolution of institutions of the police, prison

¹³ Cuomo, M., ‘The Crime Victim in a System of Criminal Justice’, *St. John’s Journal of Legal Comment*, 1992-1993, p.2.

¹⁴ See Doak, *supra* note 2, p.2-4; Kirchengast, T., *The Victim in Criminal Law and Justice*, Palgrave Macmillan, Basingstoke, 2006, p.4-6; McDonald, W., ‘Toward a Bicentennial Revolution in Criminal Justice: The Return of the Victim,’ *American Law Review*, Vol.13, 1975-1976, pp. 649-650[hereinafter McDonald].

¹⁵ Gross, E., ‘Shifting the Balance between the Rights of Victims and the Rights of Defendants in Criminal Proceedings: A Comparative Study of Israeli and American Law’, *Tel Aviv Universities Studies in Law*, Vol.15, 2000, pp.201-202.

¹⁶ Doak, *supra* note 2, p.2.

and public prosecution systems, victims began to lose their historic position and roles.¹⁷

From the mid-eighteenth century until the nineteenth century – when the social contract theory of government and Cesare Beccaria’s theory of crime and punishment gained prominence in the socio-political life of western societies, a major shift occurred in the conception of crime and in the approach to hitherto private wrongs and victims thereto.¹⁸ Private wrongs against individuals began to be treated as wrongs against the state and society. Specific forms of behaviors started to be defined by the state as crimes. The state took responsibility for investigating crimes, apprehending and prosecuting suspected/accused persons and enforcing sanctions against offenders.¹⁹ Punishment became the realm of the state. Public prosecutors gradually replaced private prosecutors; arguably the “golden age” of victims became past history and victims became *third parties* to their own cases.²⁰ Acknowledging the changes, Edna Erez and Julian Roberts note:

“The role of victims in a criminal prosecution has changed drastically over the centuries in common law countries – from an eye-for-an eye system in which victims were expected to deal with their offenders directly, through a system in which the monarch assumed the duty of imposing punishment, to the present system in which the state prosecutes a defendant on behalf of the surrogate victim who is relegated to a role of (at best) lead witness.”²¹

¹⁷ *Id.*, pp.2-4.

¹⁸ *Id.*, p.5; Gross, *supra* note 15, p.203.

¹⁹ See *Handbook on Justice*, *supra* note 2, p. 1.

²⁰ Doak, *supra* note 2, p.3; Young, A., ‘*The Role of the Victim in the Criminal Process: A Literature Review-1989 to 1999*’, (August 2001), p.5, available at: www.justice.gc.ca/eng/pi/rs/rep-rap/2000/rr00_vic20.pdf [accessed 22 February 2011]. Read also Tobolowsky, P., ‘Victim Participation in the Criminal Justice Process: Fifteen Years after the President’s Task force on Victims of Crime’, *New England Journal on Crime & Civil Confinement*, Vol.25, 1999, pp. 21-24; Sanders, A., ‘Victim Participation in an Exclusionary Criminal Justice System’, in Hoyle, C. & Young, R.(eds.), *New Visions of Crime Victims*, Hart Publishing, Portland, 2002, p.199 (expressing that it might not be taken as the ‘golden age’ of the victim as the victim now bears all the burdens and costs of bringing the offender to justice).

²¹ Erez, E., & Roberts, J., ‘Victim Participation in the Criminal Justice System’, in Davis, R., Lurigio, A. & Herman, S., (eds.), *Victims of Crime*, Sage Publications, Inc., Los Angeles, 3rd ed., 2007, p.279 [hereinafter Erez & Roberts].

With the passage of time, victims were forced to be *outsiders* to criminal processes and permitted to play only minimal roles; hence, they were further relegated and marginalized. Yet it should be borne in mind that all criminal justice systems did not follow an identical path of development. The position and role of victims varied, and still varies, as between the civil and common jurisdictions. Even there were, and still are, some variations among jurisdictions that share similar traditions. Yet, the experience of victims in many jurisdictions, particularly in common law adversarial systems, makes clear that they were increasingly becoming *invisible* and *voiceless* within criminal processes.

By the middle of the 20th century, victims in many jurisdictions actually became the “forgotten” or “missing” or “lost” party in criminal proceedings.²² Their needs and interests were relegated to a subservient position to those of the state and the public. They were viewed as *objects* of evidence, as opposed to subjects of the criminal process.²³ This entailed victims’ alienation from and dissatisfaction with the criminal process as well as its outcomes. This in turn engendered feelings of injustice, exclusion and distrust of the justice systems on the part of victims.²⁴

Of course, qualifications must be had so as not to imply that the criminal justice system as a whole is antithetical to victims and their interests. Unquestionably, victims are beneficiaries of the public nature of the criminal proceedings. They are relieved of many burdens and costs; most activities and burdens in criminal proceedings are shouldered and accomplished by governmental institutions – the police and public prosecution. Almost all things relating to the criminal process – starting from investigation and apprehension of offenders all through execution of punishment – fall under the responsibility of the state.

²² *Handbook on Justice*, *supra* note 2, p.1.

²³ McDonald, *supra* note 14, p.650; see also Wemmers, J., ‘Where Do They Belong? Giving Victims a Place in the Criminal Justice Process’, pp.1-4 (Paper presented at the National Victims of Crime Conference, Adelaide, Australia, 23-24 September 2008), available at: www.cicc.umontreal.ca/recherche/victimologie/adelaide_paper.pdf, [accessed on 2 March 2011]. In 2002, Andrew Sanders wrote that criminologists, policy makers and practitioners in England and Wales agree that “the criminal justice system neglected victims and, in many respects, treated them badly” during the last two decades of the 20th century: see Sanders, *supra* note 20, p.197.

²⁴ Garkawe, S., ‘The Role of the Victim during Criminal Court Proceedings’, *University of New South Wales Law Journal*, Vol. 17,1994, p.596.

1.2. Victims in Common Law and Civil Law Systems

The status and role of victims as well as the treatment, protection and rights that victims enjoy in criminal justice systems vary significantly from one legal tradition to another and to some extent from one jurisdiction to another within same family of legal systems.²⁵ Bearing such differences in mind and using a broad painting-brush, we shall, under the risk of generality, survey the place, role and treatment of victims in common law and civil law systems. Since the purpose of this Article is not to make detailed and specific surveys of the issues that relate to treatment, protection and rights of victims in criminal process, the discussion here is limited to the presentation of general overview on major issues and themes. Also, analysis of specific rights that victims may have in criminal processes, and discussion of tensions that may surface between rights and interests of victims and those of the criminal defendant, and of the public also fall beyond the scope of this work.

1.2.1. Victims in Common Law Jurisdictions

In the common law adversarial system, the two combating parties in criminal proceedings – the state (prosecution) and the defendant – bear all the procedural as well as evidentiary burdens and battle before a passive and neutral judge. At the pre-trial stage investigative police officers of the state and defense counsels of suspects do conduct partisan, non-neutral investigations and collections of respective incriminatory and exculpatory evidence. Victims have no formal position in these proceedings and do rely on police investigation.

Of course, victims may report the commission of crimes to the police or to other law enforcement agencies and participate as informants or as initiators of proceedings. Once the criminal justice system is set in motion and

²⁵ For more details read: Brienens & Hoegen, *supra* note 3; Pizzi W. & Perron, W., 'Crime Victims in German Courtrooms: A Comparative Perspective on American Problems', *Stanford Journal of International Law*, Vol.32, 1996 pp.41 *et seq.*[hereinafter Pizzi & Perron]; Joutsen, M., 'Listening to the Victim: The Victim's Role in European Criminal Justice Systems', *Wayne Law Review*, Vol.34, 1987- 1988, pp.97 *et seq.*; Jouet, M., 'Reconciling the Conflicting Rights of Victims and Defendants at the International Criminal Court', *St. Louis University Public Law Review*, Vol.26, 2007, pp.253-257[hereinafter Jouet]; McGonigle, B., 'Bridging the Divides in International Criminal Proceedings: An Examination into the Victim Participation Endeavor of the International Criminal Court', *Florida Journal of International Law*, Vol.21, 2009, pp.105-106; Erez & Roberts, *supra* note 21, p.279.

investigation is started, it is the responsibility of the police and the prosecution to define what course of action to follow and what to accomplish. Victims serve only as sources of information and as witnesses;²⁶ they do not have the right to demand the dropping out of their cases if they later happen to change their minds.

In the course of the criminal process, bail hearings may be held and victims have no say in such proceedings. Victims may not have information concerning their related civil rights, the progress of their cases, whether defendants are under detention or released on bail, etc. Following the completion of investigation, prosecutors may, invoking the principle of discretionary prosecution, decide not to prosecute if they believe that such serves public interests – despite sufficient evidence against suspected persons. In respect of certain common law jurisdictions, it is observed that victims do not have procedural mechanisms to challenge such decisions.²⁷

A system of plea bargaining gives public prosecutors the power to bargain with suspected persons. Based on the outcome of plea negotiations, prosecutors may charge defendants with lesser gravity offences or less counts or may prosecute such accused persons undertaking that the extent of punishment would be extenuated. Victims have had no voice or any say on such proceedings.

Throughout the criminal process victims have no standing or any other recognized position and role except serving as informants and witnesses. They serve as witnesses – as instrumental weapons – only when parties require them. As Erez and Roberts note:

“The victim of crime serves as the principal witness for the prosecution, and having served this function, has no further role to play. The victim is essentially a passive participant; she or he appears when called to testify and responds to examination in chief and cross-examination, if necessary.”²⁸

If victims are not called as witnesses, they do not get the chance to provide their inputs or to tell about the injury one sustained, about alleged crimes and/or defendants. If called as witnesses, they do get an opportunity to express their side of the story. Yet they, in the latter case, would be examined in a manner that suits the parties. Examiners frame questions as they found appropriate to win their sides. In answering questions, witnesses are coached

²⁶ Brienens & Hoegen, *supra* note 3, p.39.

²⁷ Jouet, *supra* note 25, p.255; Brienens & Hoegen, *supra* note 3, pp.270 and 490.

²⁸ Erez & Roberts, *supra* note 21, p.277.

and shaped by parties; witnesses are confined to answer questions as framed and posed.²⁹ They may not be able to narrate as they feel proper and often they are interrupted now and then before finishing or telling courts regarding their cases including the nature, extent and related aspects of the harm one might have sustained and other related circumstances.³⁰

Above all, victims/witnesses are subjected to *cross-examination*. Defendants or defense counsels can legally pose questions with a view to challenge and test veracity and accuracy of testimony, to discredit, or to spread doubt into their testimony or to dilute such with contradictions and inconsistencies. Cross-examination may expose victim-witnesses for ambushing and attacking, for vexation and bewilderment.³¹ The confrontational showdowns at trial, before a passive adjudicator, may engender fear, anxiety, pain, shame, confusion or bewilderment on the part of victim-witnesses, especially when that involves children and women witnesses suffering sexual violence or abuse.³² Further, certain victim-witnesses may suffer from publicity of their cases.

Victims in adversarial justice systems often experience harassment, intimidation and retaliation from defendants and relatives/friends of defendants before and after court trials (sometimes in court yards as well). Lack of protection mechanisms exposes many victims for various forms of secondary victimization. Some incur additional costs in following up their cases and in trying to avert reactions from defendants' side following the reporting/complaining or testimony. Unlike criminal defendants who enjoy due process rights such as access to legal counsel and speedy trial, victims do not have social, psychological and medical supports or legal aid/services.

Except in limited situations, victims have generally been invisible and voiceless in common law pre-trial, trial and sentencing proceedings until very recently, i.e., the mid 1980s and 1990s. The victim's main role in almost all common law systems has been confined to serving as a source of evidence for the prosecution. Victims lacked the procedural right to challenge or seek review of decisions of investigative police officers who decline to investigate reported cases. That has also been true in plea bargaining and decisions

²⁹ For a contrast, see the Continental German system as described by Pizzi & Perron, *supra* note 25, pp.42-43.

³⁰ *Id.*

³¹ *Id.*, pp.45-48.

³² *Id.*

thereof. Victims had no say in public prosecutor's decision regarding the institution or withdrawal of criminal charges and identification of witnesses. Also, victims have been doubly victimized by poor, insensitive or humiliating institutional responses and operations of adversarial proceedings as well as the publicity of their cases; they have been provided with little protection mechanisms. As the principal focus has been more on the public nature of criminal wrongs and protection of defendants, little attention has been paid to victims. Further, issues of reparations to victims have had no or little place in criminal proceedings since such have been perceived as issues of private individuals that could be entertained in civil proceedings.³³

1.2.2. Victims in Continental Law Jurisdictions

The picture has always been different in continental inquisitorial jurisdictions where victims have retained, to some degree, their historical position. In France, Germany, Austria, the Netherlands, Norway, Spain, Finland and many other European and Latin American countries, victims have, save some variations amongst jurisdictions, a well known and legally recognized status as a *civil party*.³⁴ In most of the inquisitorial jurisdictions, investigation and gathering of evidence is made by judicial police officers or by investigative judges or prosecutors. The investigation is accomplished in a neutral and non-partisan fashion using state resources. Investigative officers/judges act in the best interests of both the state and suspected persons in gathering incriminatory and exculpatory evidence at the same time. The role of defense counsel, if any, is minimal in pre-trial (and trial) proceedings. Though they are not decision-makers, victims are entitled to share or present their concerns and views; hence they do not suffer that much from inequality of arms or exclusion from the process at this earlier stage.

Apart from initiating criminal proceedings through reporting or complaining and serving as witnesses, victims follow up the progress of investigations and all the subsequent proceedings. At the pre-trial stage, they do participate in the enquiry. They can consult investigation files (dossiers) and can request that investigative judges/officers carry out particular

³³ Jouet, *supra* note 25, p.256.

³⁴ *Id.*, p.254; Brienen & Hoegen, *supra* note 3, p.39; Joutsen, *supra* note 25, pp.102-108.

investigations.³⁵ In some minor offences – referred to as complainant offences, victims may legally request that ongoing proceedings be dropped out; hence, that they have the veto.³⁶

Upon completion of investigation, if there is sufficient evidence, criminal charge shall be prepared by the public prosecution. Unlike the common law jurisdictions, most continental countries subscribe to the principle of legality or mandatory prosecution.³⁷ There is also no system of plea bargaining, despite certain changes in some countries recently. Also some jurisdictions allow, in some identified minor offences, victims to prosecute directly. In all other cases, public prosecutors are expected to institute charges before courts. In cases where public prosecutors decide not to prosecute on grounds of lack of sufficient evidence, aggrieved or disagreeing victims may have options to challenge such decisions. There are different avenues for this:³⁸ (a) victims may request that the decision-maker review its decision (internal review); (b) victims may appeal to the next superior body or to an independent board of complaints (administrative review); (c) victims may appeal to court (judicial review); (d) victims may personally prosecute (private prosecution) some or any offences against any or with the exception of some defendants.

In some jurisdictions investigative and prosecutorial authorities are required to inform victims of crime specific issues related to, for example, their roles, their rights (e.g. of filing private claims for compensation), and the possibility of presenting civil claims jointly with criminal proceedings.³⁹

In cases where public prosecutors institute criminal charges before courts of law, victims can join their civil claim against defendants and act as civil parties throughout the criminal proceeding: pursuant to the *adhesion procedure*, they are granted standing to participate in the proceedings in the form of *partie civile* (civil party).⁴⁰ In some jurisdictions, they may even

³⁵ See Hodgson, J., ‘Suspects, Defendants and Victims in the French Criminal Process: The Context of Recent Reform’, *International & Comparative Law Quarterly*, Vol.51, 2002, p. 792.

³⁶ Joutsen, *supra* note 25, p.98.

³⁷ *Ibid.*

³⁸ *Id.*, pp.109-114.

³⁹ *Id.*, p.104.

⁴⁰ *Id.*, pp.115-118; Jouet, *supra* note 25, pp.253-255; *Handbook on Justice*, *supra* note 2, p.1. Note that continental systems are categorized (with attendant distinctions on victims’

participate as subsidiary/auxiliary prosecutors and play corresponding roles where they have no civil claim.⁴¹

Trial proceedings in inquisitorial systems are very much different from that of the adversarial systems. As more emphasis is given to pre-trial investigations, trial proceedings are less rigorous. Pronounced battling and confrontations between public prosecutors and defendants –which characterize the common law adversarial system – do not exist in inquisitorial ones. There are no prosecution witnesses and defendant witnesses and other kinds of evidence known to Anglo-American systems. The idea and workings of burdens of proof in adversarial proceedings do not have that much place in inquisitorial systems. Of course, there are court witnesses and other kinds of evidence which judges would examine with little intervention of litigating parties. Yet, there is no strict examinations-in-chief, cross-examinations and re-examinations as is known in the adversarial systems.⁴² Judges examine victims/witnesses in sympathetic manner posing questions relating to cases. After informing victims/witnesses their obligation to testify truthfully and recording background pieces of information from witnesses, judges let witnesses to explain fully and completely what they know about the crimes under inquiry and surrounding circumstances. In testifying, victims/witnesses are not interrupted now and then – they are asked almost after finishing what they started to tell in a narrative fashion; they are not coached and shaped by litigants.⁴³ Thus, victim-witnesses will not experience the harsh confrontation, challenge and trick; hence, no or reduced attendant confusion, anxiety, shame and humiliation on the part of victims.⁴⁴

From pre-trial through trial proceedings, victims can express their concerns and needs. Should they stand as civil claimants or as private or subsidiary/auxiliary prosecutors, they are nevertheless allowed to participate actively in all the proceedings. They can argue their sides; can express their views and concerns. Also, in some inquisitorial set ups, they may examine witnesses to some extent.⁴⁵

participation in criminal process) as Germanic, Nordic, Romanic or mixed; see Brienen & Hoegen, *supra* note 3, pp.38 and 49.

⁴¹ Pizzi & Perron, *supra* note 25, pp.47-49.

⁴² *Id.*, p.55.

⁴³ *Id.*, p.42.

⁴⁴ *Id.*, p.48.

⁴⁵ Joutsen, *supra* note 25, pp.113-114.

From the perspective of the continental inquisitorial approach, the participation of victims throughout the criminal process has a lot to contribute: it ensures that investigators, prosecutors and judges properly perform their duties; it makes the process as transparent as possible; it enables victims to contribute to the establishment of truth. Furthermore, victims have the advantage of simultaneously getting court decisions on their civil claim, if defendants are found guilty.⁴⁶ If however defendants are acquitted, victims may, depending on the type of standing they took (as private prosecutor or subsidiary/auxiliary prosecutor) and the remedies recognized under criminal procedure laws of the concerned jurisdiction, either have recourse to appeal or may institute separate civil claims before civil courts.⁴⁷

Notwithstanding the better position and roles victims enjoy in civil law traditions, call for the enhancement of the degree of involvement of and attention to victims concern the inquisitorial criminal processes as well. Issues regarding, for example, provision of better treatment, support and assistance, and establishment of mechanisms of protection to victims as well as entitling victims more rights in criminal process have thus become shared agendas across the globe.⁴⁸

⁴⁶ *Id.*, p.115.

⁴⁷ Jouet, *supra* note 25, p.254.

⁴⁸ In this regard, the adoption in 1985 of the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and the Council of Europe's *The Position of the Victim in the Framework of Criminal Law and Procedure, Recommendation No. R (85)11* and similar other measures recently taken at the international, regional and national levels could be mentioned.

1.3. The Ascendance of Victims⁴⁹ in Contemporary Criminal Justice Systems

In view of the foregoing, it is clear that there used to be cognizable differences inhering in common law and civil law criminal justice systems regarding accommodation of victims and their interests, and overall approaches toward victims. Despite differing approaches, there has emerged widespread world-wide consensus that victims did not get sufficient attention, their plights remained unnoticed and their concerns, interests and rights remained unaddressed within national and international criminal justice systems.⁵⁰ Hence, the appellation the “forgotten person” has become a commonplace expression referring to the crime victim.

In the conventional retributive criminal process, especially in adversarial systems, much weight had been given to the *breach* of the (criminal) law, to the *handling* of defendants and to the *conviction* and subsequent *imposition of punishment* against convicted offenders. *Victims*, victims’ *personal harms* and consequent *grieve* as well as other *specific needs* and *interests* of victims were not within the spotlights of traditional criminal justice systems. Issues pertaining to treatment, protection and participation of victims in criminal process were not that much the concerns of national and international criminal processes until fairly recently.⁵¹

On the other hand, due process rights of criminal defendants have gained currency in the framework of domestic and international human rights schemes since the end of World War II.⁵² The Universal Declaration of

⁴⁹ Doak writes about the *ascendance* and *rebirth* of victims in contemporary criminal justice policy (Doak, *supra* note 2, pp.vi, 1, 7, etc). Similarly, the *return* or *rediscovery* of the “forgotten man” in the criminal justice system is discussed, e.g., in McDonald’s, *supra* note 14, p.649; Spencer, J., ‘Improving the Position of the Victim in English Criminal Procedure’, *Israel Law Review*, Vol.31, 1997, p.286; Sanders, *supra* note 22, p.201. After briefly outlining the historical *marginalization* and *elimination* of victims from the criminal process in common law countries, Moolman mentions the current upgraded status of victims in some common law countries; see Moolman, C., ‘Victim Rights in Anglo-American and Continental European Countries: What Can South Africa Learn?’ *South African Journal Criminal Justice*, Vol.10, 1997, pp.273-274.

⁵⁰ See the Preamble, UN Declaration on Victims; Sanders, *supra* note 23, p.197.

⁵¹ *Ibid*; Erez & Roberts, *supra* note 25, pp.277-280.

⁵² As of the 18th and 19th centuries, and especially since the end of World War II and until the 1980s, the emphases both in the domestic and international spheres had been solely on the criminal suspect/defendant. The priority had been to entitle criminal suspects, accused

Human Rights (1948), the International Convention on Civil and Political Rights (1966) and other international and regional human rights instruments pay attention to due process rights of criminal defendants. In contrast to this proper and commendable proliferation of rights and safeguards in favor of criminal suspects/accused persons and offenders from time to time, victims, who historically occupied central position and had pivotal roles in criminal justice, were increasingly becoming outsiders to criminal processes. As seen earlier, victims – particularly in the common law jurisdictions – were pushed aside to the periphery of criminal process. As a result, they suffered immensely from exclusion, unresponsive or insensitive institutional behavior, from lack of information, poor or offensive treatment, no or little assistance and service, and from lack of sufficient protection mechanisms.

As of the end of 1960s and beginning of 1970s, various victims' groups and advocates of victims' in USA and other common law jurisdictions started to challenge the relegated position of victims in the criminal justice systems.⁵³ The impetus of these movements spread to other national jurisdictions and by the 1980s it reached and attracted the attention of the international community. The movements and a consequent understanding of negative consequences of victims' exclusion from criminal process⁵⁴ triggered, for the first time in history, the adoption of an international declaration pertaining to victims of crime and abuse of power. Adopted on 29 November 1985 by consensus, the *UN Declaration of Basic Principles of Justice for Victims of*

persons and convicted offenders more substantive and procedural rights and protections against the daunting powers of states. As Doak notes, victims rarely featured within human rights instruments. See Doak, *supra* note, pp.28-30.

⁵³ The various victims' movements that took place, at different times, in the USA, UK, Canada, Australia and many other countries are known to have been triggered by the plights of victims. The adoption of the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and ensuing developments thereof in the 1990s has made the position of victims of crimes, their role and participation, their treatment, protection and support as well as their rights in criminal proceedings a common and shared agenda on international and national levels. See Doak, J., 'The Victim and the Criminal Process: An Analysis of Recent Trends in Regional and International Tribunals', *Legal Studies*, Vol.23, 2003, pp.6-10.

⁵⁴ Researches conducted in some jurisdictions reveal victims have become reluctant to report crimes, to appear in court when called upon as prosecution witnesses, have lost confidence in the administration of criminal justice.

Crime and Abuse of Power,⁵⁵ – referred to as the *Magna Carta* of crime victims⁵⁶ – requires, *inter alia*, that:

- victims be treated with compassion and respect for their dignity;⁵⁷
- victims be entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered;⁵⁸
- victims should be informed of their rights in seeking redress through judicial and administrative mechanisms;⁵⁹
- victims’ views and concerns be presented at appropriate stages of the criminal justice process;⁶⁰
- victims should be kept informed of progress of their cases and their roles within the criminal justice system;⁶¹

The Declaration also provides that victims be provided with proper assistance throughout the legal process.⁶² Article 14 of the Declaration stipulates that victims should be provided with the necessary *material, medical, psychological and social assistance* through programs run by the State or by non-governmental organizations. The Declaration recommends measures to be taken to improve victims’ access to justice and fair treatment, restitution, compensation and assistance. It further stipulates under Article 6(d) that states should take protective measures “to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.”

Following the adoption of this Declaration, many nations have thus moved to accomplish so many victim-centered/oriented initiatives and have embarked upon criminal justice reform activities partly with a clear motive to accommodate the concerns, needs and interests as well as some rights of

⁵⁵ For the full title of the Declaration, see *supra* note 3.

⁵⁶ *Handbook on Justice*, *Supra* note 2, p. 104; See also Aldana-Pindell, R., ‘In Vindication of Justiciable Victims’ Rights to Truth and Justice for State-Sponsored Crimes’, *Vanderbilt Journal of Transnational Law*, Vol.35, 2002, p.1425.

⁵⁷ Article 4, UN Declaration on Victims, *supra* note 3.

⁵⁸ *Ibid.*

⁵⁹ *Id.*, Article 5.

⁶⁰ *Id.*, Article 6 (b).

⁶¹ *Id.*, Article 6 (a).

⁶² *Id.*, Article 6 (c).

victims in their criminal justice policies, and in their substantive and procedure laws.⁶³ A closer scrutiny of the changes and reform measures undertaken by individual countries shows the differing approaches followed in addressing victims' plights as well as their concerns, needs, interests and rights. Moolman notes:

"The problem regarding *the elimination of the victim* from the criminal justice was a priority on the agenda in the United States, Britain and Australia. In Continental Europe the criminal justice system concentrated on *enabling* the victim to play *an active role* in the criminal justice process."⁶⁴(Emphasis added).

One may also observe that common law jurisdictions have emphasized more on *welfare issues* such as provision of information, treatment, assistance and compensation and to some extent on granting victims some participatory role during sentencing. Many continental law countries have, on the other hand, focused on *expanding* victims' roles and enhancing their rights (including their right of reparation) within the criminal process.⁶⁵

⁶³ Spinellis identifies the *needs of victims* in criminal process as including: i) prevention of victimization, ii) a kind of "first aid" immediately after suffering criminal injury, iii) reparation of material loss or damage – consisting in payment of compensation or in various services, iv) needs that are related to secondary victimization such as treatment by officials with sympathy and understanding, receiving of information about the criminal process and its developments, participation in the criminal process as subject as distinct from serving as mere object of evidence, protection from the accused, his friends and relatives. Also, moral recognition of the injustice the victim suffered, the just punishment of the offender, protection of privacy and the need for justice can be included. See Spinellis, *supra* note 1, p.337; Spencer, *supra* note 49, p.286; Doak, *supra* note 53, pp.1-2; Maguire, M., 'The Needs and Rights of Victims of Crime', *Crime & Justice*, Vol.14, 1991, p.363; Hodgson, *supra* note 35, p.792; Pizzi & Perron, *supra* note 25, pp.37, 56-59; Joutsen, *supra* note 25, p.95; Muller, K. & Van Der Merwe, A., 'Recognizing the Victim in the Sentencing Phase: The Use of Victim Impact Statements in Court', *South African Journal for Human Rights*, Vol.22, 2006, p.647.

⁶⁴ Moolman, *supra* note 49, pp.273-274.

⁶⁵ Victims in most European and Latin American countries such as France, Germany, the Netherlands, Sweden, Argentina and Colombia do now not only enjoy a "party" status in the form of *partie civile* (*civil party*) but also play key roles throughout the criminal process. See generally Hodgson, *supra* note 35; Maria, E., 'Protection of the Victims of Crime in the Austrian Criminal Proceeding', *Studia Iuridica Auctoritate Universitatis Pecs Publicata*, Vol.139, 2006, p.125 *et seq.*; Wergens, A., 'The Role and Standing of the Victim in the Face of Criminal Procedure Sweden', *Revue internationale de droit pénal*, Vol.73,

Significant progresses in favor of victims are also taking place at the international and EU levels.⁶⁶ It is noted that the 1998 Rome Statute of the International Criminal Court (ICC) has set a groundbreaking path by granting enhanced status for victims.⁶⁷ The Statute recognizes victims' participatory right in criminal proceedings. Victims are given the opportunity to be heard and to claim reparations; they are entitled to a *legal standing* to be represented by counsel and to formally participate throughout trial and other related court proceedings.

In nutshell, new ideas and approaches that improve victims' status and pay attention to their concerns, needs, interests and rights are increasingly evolving. Restorative justice approaches are more and more penetrating conventional criminal justice systems.⁶⁸

2002, p.259-300 (available at: www.cairn.info/revue-internationale-de-droit-penal-2002-1-page-259.htm) [accessed 25 May 2011].

⁶⁶ See Waller, I., 'International Standards for Victims: What Norms? What Achievements? What Next?', in Aromaa, K. & Viljanen, T. (eds.), *International Key Issues In Crime Prevention And Criminal Justice*, (Papers in celebration of 25 years of HEUNI, Helsinki 2006), p.148; Available at: http://www.heuni.fi_Satellite_blobtable [accessed 2 March 2011]. The Council of Europe has adopted a declaration in 1985 that sets standards for the improvement of the position and treatment of victims (see *supra* note 48) and other instruments pertaining to victims. For details see Brienen & Hoegen, *supra* note 3; Doak, *supra* note, pp.28-33.

⁶⁷ Articles 68(3) *cum* 75, UN General Assembly, Rome Statute of the International Criminal Court (last amended January 2002), 17 July 1998 [hereinafter Rome Statute] (entered into force July 1, 2002); see also Jouet, *supra* note 25, p.249; McGonigle, *supra* note 25, p.94; Gonzalez, P., 'The Role of Victims in International Criminal Court Proceedings: Their Rights and the First rulings of the Court', *Sur-International Journal on Human Rights*, Vol.5, 2006, pp.19 *et seq.* Issues relating to treatment, protection and compensation of victims are addressed. Despite arguments against their participation in criminal proceedings, now it has become patently clear that victim's participation in criminal process has pervaded national and international criminal proceedings. For arguments *for* and *against* read Spinellis, *supra* note 1, pp.350-359; Doak, *supra* note 53, p.2 *et seq.*; Doak, J., 'Victims' Rights in Criminal Trials: Prospects for Participation', *Journal of Law & Society*, Vol.32, 2005, pp.294 *et seq.*

⁶⁸ Goodey, *supra* note 3, p.21.

2. The Place and Role of Victims in the Ethiopian Criminal Justice System

2.1. Introductory Remarks

In light of the above-mentioned changes and ensuing paradigm shifts, examining the status and role of victims of crime under the Ethiopian criminal process today appears to be a timely venture, if not late.⁶⁹ As a state that did participate in the adoption of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (and other subsequent international instruments), Ethiopia is expected to incorporate into its national law and to implement major principles and rules embedded in the Declaration and other recent international instruments. Settling down with the *status quo* in the face of glaring developments across the globe would not be a wise choice to be heeded as such. “In an era where globalization and harmonization of criminal procedure seem set to continue indefinitely”, Doak observes, “it is inevitable that domestic processes and policy makers and criminal justice agencies will be increasingly influenced by international developments.”⁷⁰ It is unlikely that

⁶⁹ The utter paucity of literature and research on the subject matter of victims in Ethiopian criminal justice system is worrying. The only work (other than the mid-1970s writings of professor Stanley Z. Fisher) on the existing legal lacunas and insufficient legal framework relating to *victims' compensation* is written by an Indian professor; see Vibhute, K., ‘Adjudicating and Compensating Civil Claims of Victims of Crime in Criminal Proceedings in Ethiopia,’ *Ethiopian Human Rights Law Series*, Vol. III, 2010, pp.175 *et seq.* To the best knowledge of the author, research on the place, role and participation of victims, on the treatment, protection, assistance and service that victims are or should be entitled in the context of Ethiopian criminal process is lacking. Perhaps, some may have the impression that such matters are or should be the concerns of the civil justice system. However, it must be known that victims, the persons that are most affected by the acts of perpetrators, have legitimate concerns, interests and rights that the criminal justice process should accommodate. As shown above, the conventional attitude that relegates and restricts victims to civil proceedings and excludes from the criminal process has lost its support since 1980s. Read further: Spinellis, *supra* note 1, p.350-359; Doak, *supra* note 67, p.294 *et seq.*

⁷⁰ *Id.*, p.302; on the growing globalization and harmonization of criminal procedure, see generally Bradley, C., ‘The Emerging International Consensus as to Criminal Procedure Rules’, *Michigan Journal of International Law*, Vol.14, 1993, p.171 *et seq.*; Bradley, C., ‘The Convergence of the Continental and the Common Law Model of Criminal Procedure’, *Criminal Law Forum*, Vol.7, 1996, p.471; Amann, D., ‘Harmonic Convergence? Constitutional Criminal Procedure in an International Context’, *Indian Law Journal*, Vol.75, 2000, p.809 *et seq.*

Ethiopia would remain outside the globalised change in favor of victims. Furthermore, some reported cases and research, though limited, suggest that we pay attention to the victims' situation in Ethiopian criminal process.

For instance, some media and research reports indicate that some of the plights of victims, especially in cases of violence against girls and women, do arise, in part, from the operation of the country's system of criminal justice and the criminal process.⁷¹ The widely reported case of *Hermela Wosenyeleh* stands to testify this assertion.⁷² This author also knows from his limited judicial and research experience that many victims suffer in connection with the processing of "their" cases.⁷³ Poor reception and treatment of justice personnel, insensitivity to criminal offences such as sexual and domestic violence, delayed reactions to criminal complaints/reports, poor investigation of crimes, unavailability of psycho-social, medical and legal supports and services, little provision of timely information regarding pending cases, etc., are prevalent. In some instances victims or their families suffer additional

⁷¹ See, e.g., Original Wolde Giorgis, *et al.*, 'Violence Against Women in Addis Ababa', *BERCHI* (The Annual Journal of Ethiopian Women Lawyers Association), Vol.5, 2004, pp.161-250, 253-257; Sara Tadiwos, 'Rape in Ethiopia', in *Reflections Documentation of the Forum on Gender*, No.5, 2001, p.6.

Available at: www.preventgbvafrica.org/system/files/panosreflect5.excerpts.pdf [accessed on 18 April 2011].

⁷² Hermela's case gained wide media attention for it involved an infamous offender (who was allegedly in love with the victim) that inflicted repeated attacks on the victim. After being released on bail, it was reported that the man finally shot and wounded Hermela, as well as seriously harmed two of her sisters with a machete. The case triggered public demonstration organized by the Ethiopian Women Lawyers Association, in February 2001. See

<www.awf.or.jp/pdf/h0017.pdf>;

<http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/breifingkit>.

Another *Hayat Abdurazak* was reported to have repeated victimization after she took her case to justice (See, e.g., *Addis Admass*, 9th Miazia 2002).

⁷³ See, e.g., Dessie Seyoum & Worku Yaze, *Crime of Perjury in the Criminal Justice Administration of The Amhara Regional State: Prevalence, Causes, Adverse Effects and Remedies*, (Unpublished, November 2002 E.C /2009, in Amharic). The researchers identify intimidation by criminal defendants or their relatives have been one of the major causes for witnesses and victim-witnesses to testify falsely before courts of the Regional State. Another research conducted by Molla Ababu, Worku Yaze & Yonas Tesfa, *Protection of Human Rights of Women In Ethiopia: Assessment of problems in enforcing International Human Rights Instruments and Domestic Laws in the Amhara National Regional State* (Unpublished, March 2009) hint that some victim-witnesses fail to appear before courts due to fear of reprisals from defendants or relatives of defendants.

harms from criminal suspects or their close relatives/friends following primary victimization. There could be some suspects that continue their misdeeds directly or indirectly through their relatives and friends, either to complete what has been started, or to exacerbate the already inflicted injuries or to deter their victims and their relatives from complaining to and testifying about the matters before the police or courts. Sometimes one hears worst scenarios of victim-witness eliminations through the direct or indirect acts of criminal defendants or their relatives.

As the revision and drafting of the criminal procedure law of the country is still underway it is the right moment to worry about victims concerns, needs, interests and rights and to ask if there are pertinent norms that provide about or regulate matters such as the place, treatment, protection, role and rights of victims in our criminal process. It is time to evaluate whether our criminal justice system accommodates victims needs and interests: it is time to survey the ways in which victims can influence, if they are or ought to be entitled, the course of criminal cases starting from investigation and arrest of suspects all through charging, trial, sentencing, probation, parole, amnesty and pardon.

We hope that this Article will do some contributions in multiple ways. The very undertaking of this survey will, undoubtedly, produce some results concerning the status and role of victims- it will show us where we are in these regards. On the other hand, the mere opening of such a victim's agenda from a different perspective in the criminal justice system may probably impinge on the minds of many and may nag them to be very considerate of victims: victims, entities that work on victim advocacy, legal professionals, academics, draftspersons, legislatures, police officers, public prosecutors and judges are likely to be aroused to see other dimensions in the criminal process. The invocation of specific issues pertaining to victims here and there may also serve to provoke further discussions, debates and researches in this totally neglected area of the Ethiopian criminal justice system.

In this Section, therefore, I shall examine the place and role of victims in the current Ethiopian criminal justice system. However, before directly moving to the examination of the current criminal process, it is apposite to say a few points about the place and role of victims in Ethiopia before the promulgation of the 1961 Criminal Procedure Code.⁷⁴

⁷⁴ Criminal Procedure Code of the Empire of Ethiopia, 1961, *Negarit Gazeta*, Proclamation No. 185/1961, Extraordinary Issue No. 1 of 1961 [hereinafter Criminal Procedure Code].

2.2 The Place and Role of Victims Before 1961

As is the case in most other jurisdictions, ancient Ethiopian traditional legal system was essentially based on vengeance or retribution. In historic Ethiopia there were no classifications of wrongs into private (civil) wrongs and public (criminal) wrongs: there were no such divisions before the enactment of the 1930 Penal Code. Even then, there was no such division despite the name of the Code as “Penal”. Professor Krzeczunowicz wrote:

“As in ancient European societies, so in the Ethiopian society before 1930 G.C the neat modern division of legal wrongs into “penal” (public) and “civil” (private) ones was unknown. With few exceptions, as those of religious sacrilege or acts injuring the Emperor and his realm, wrongs now known as “penal” (e.g., homicide, rape or robbery) were private in the sense that they were not prosecuted by the organs of the Empire, but redressed at the instance of the victim or his blood-relatives, who were free to sue, not to sue, or compromise the issues.”⁷⁵

Direct victims or blood-relatives had all the discretionary power to take either revengeful measures against their wrongdoers or their close relatives, or to pursue other traditional remedial procedures. Victims or families (in cases of homicide) could exact justice from perpetrators or families of the latter by revenge or they could demand blood-feud (in cases of homicide), restitution or other forms of reparation. If victims were not able to identify their wrongdoers, they could have availed traditional mechanisms such as *leba shai*, *affersata* to identify their “enemies”.⁷⁶ These and many other traditional mechanisms that involved the *active participation* of victims were in place since earlier times and still seem to prevail in practice in different rural local communities outside of the regular justice system.⁷⁷

Until the dawn of the 20th century, there were no institutions of the police and public prosecution as we now know. The “criminal” justice system was essentially victim-driven. Victims could take revenge or could seek compensation and/or enter into compromise and resolve their disputes. Such

⁷⁵ Krzeczunowicz, G, *The Ethiopian Law of Extra-Contractual Liability*, Haile Selassie I University, Addis Ababa, 1970, p.6.

⁷⁶ Fisher, S., ‘Traditional Criminal Procedure in Ethiopia’, *American Journal of Comparative Law*, Vol.19, 1971, pp.716-726.

⁷⁷ For some details, see generally Pankhurst A. & Getachew A.(eds.), *Grass-Root Justice in Ethiopia: The Contribution of Customary Dispute Resolution*, French Center of Ethiopian Studies, Addis Ababa, 2008.

were supported by traditional state functionaries, different social institutions and religions and the *Fiteha Negast*. In the great bulk of offences considered “criminal” by modern laws, the injured party used to initiate and prosecute accused persons and to execute sentences against offenders.⁷⁸ In nutshell, victims of crimes assumed central position and played decisive roles in traditional criminal process until the 1940s.

Changes began to take place following the introduction of the institution of Public Prosecutors by Public Prosecutors Proclamation No.29 of 1942.⁷⁹ By virtue of this Proclamation, public prosecutors were authorized to take over and institute criminal cases which were previously handled by victims or their advocates. Victims were allowed to take actions before courts (personally or through their advocates) only where the public prosecutors fail to prosecute or private complaint offences are involved.⁸⁰

Where however public prosecutors instituted charges against accused persons, victims continued to actually play substantial roles. They closely followed up their cases from initiation to execution. Moreover, reported cases show that prosecution proceedings could be interrupted or dropped at any stage if victims inform courts that they settled the dispute through compromise or reconciliation. Also, victims could take appeal to next court(s) if they were aggrieved with decisions of lower courts which public prosecutors did not contest.⁸¹ In sum, that had been the general picture regarding the position and role of victims in the period between 1943 and 1961.

2.3 The Position and Role of Victims since 1961 to the Present

Ethiopia had undertaken a legal revolution between 1955 and 1965. Successive efforts to modernize the legal system of the country brought, *inter alia*, about the promulgation of six codes in ten years time. While the codes on substantive laws were largely inspired by material sources from the

⁷⁸ Fisher, *supra* note 76, p.742.

⁷⁹ See the observation of the Supreme Imperial Court of Ethiopia in *Tayetch v. Stella Giuseppe* case (1953) cited and discussed in Fisher, S., *Ethiopian Criminal Procedure: A Sourcebook*, Central Printing Press, Addis Ababa, 1969, p.343.

⁸⁰ *Ibid.*

⁸¹ Read the various cases cited in the above-mentioned book by Fisher, pp. 331-352. Also, observe that the earlier practice somehow continued even after the coming into force of the 1961 Criminal Procedure Code.

continental, especially the Romano-Germanic, legal tradition, the two procedure codes mainly fit in to the common law terrain.

The 1961 Criminal Procedure Code, a code still in force nationwide, is a product of the codification endeavor of mid-20th century. The preparation of this Code was somewhat unique in that it was subject to successive draftsmanship. The initial drafts, originally prepared by the Swiss professor Jean Graven – a continental comparative law scholar with more of inquisitorial flavor – were handed over to another common-law trained legal expert, Sir Charles Mathew of England, for further refinement in 1958. For different reasons, the Ethiopian Parliament failed to adequately deliberate on the refined draft prepared by Mathew. Eventually, Mathew’s draft code – with an overall adversarial flavor inspired by the Malayan Criminal Procedure Code, save however some fragments of inquisitorial elements – was promulgated the Criminal Procedure Code of the country.⁸²

One cannot tell the approach Ethiopia followed regarding victims without closely scrutinizing the provisions of the Criminal Procedure Code. The change of draftsmen amidst the preparation of the Code as well as the fact that the parliament did not aptly deliberate the final draft bar any automatic speculation regarding the approach adopted in respect of victims. Thus one must raise the following questions: What approach –whether continental, common law or “mixed” – is followed in the Code in respect of victims? Are there specific provisions that pertain to the treatment and protection of victims where the latter come in contact with criminal justice authorities following primary victimization? What is the place of victims? What recognized roles do they play in the criminal justice system?

Some amendments were made to the Criminal Procedure Code during the Transitional Period (1991- 1995) in 1993.⁸³ Aspects of the amendments, still remaining valid, pertain to victims of crimes. How far these amendments might have affected the legal position and role of victims needs, again, closer scrutiny. It is also important to examine what the new Criminal Code provides

⁸² *Id.*, pp. ix-xii. However, a myriad of shortcomings, gaps and defects were discovered in the aftermath of its entry into force.

⁸³ See in particular Articles 9, 19, 20 and 24, the Office of the Central Attorney General of the Transitional Government of Ethiopia Establishment Proclamation, 1993, *Negarit Gazeta*, Proclamation No.39/1993, 52nd Year, No.24 [hereinafter Central Attorney General Proclamation].

in respect of victims of crimes. The following discussion addresses the above questions and related issues.

i. General Observation

The Criminal Procedure Code contains some specific provisions that expressly deal with victims. There are two chapters in Book IV, Title I of the Code that solely deal with victims: Chapter 5, titled “Private Prosecution” and Chapter 6, titled “Injured Party in Criminal Proceedings”. In addition, there are some articles in other parts of the Code that pertain to victims. Also, the *Office of the Central Attorney General of the Transitional Government of Ethiopia Establishment Proclamation* contains rules regarding crime victims. Finally, the new Criminal Code includes some provisions that deal with certain substantive and procedural issues regarding victims in criminal proceedings. We shall see these closely as follows.

ii. Initiation of and Participation in Criminal Investigation

Article 11(1) of the Criminal Procedure Code provides that any person has the right to report any offence with a view to criminal proceedings being instituted. By virtue of this provision victims of crimes, like any other individuals, have the statutory right to report the commission of offences against them with a view to set in motion the machinery of government toward criminal investigation. Apart from this right to report the commission of crimes (and/or about suspected persons), victims are entitled to lodge complaints in cases of crimes that are punishable only upon complaint.⁸⁴

Under Article 16, accusations or complaints may be made to the police or the public prosecutor.⁸⁵ Accusations may be made anonymously.⁸⁶ This is very much useful to reduce the risk or possible attacks by suspects and/or their relatives/friends. Whether a private complainant can also keep ones identity secret is questionable as Article 12 explicitly and only deals with accusations, not complaints.⁸⁷

⁸⁴ Article 13, Criminal Procedure Code, *supra* note 74. Note that this article refers to “the injured party or those deriving rights [powers] from him”. This fits with the usage of the term ‘victim(s)’ in this Article.

⁸⁵ Note that there is a *duty*, as regards some serious offences, to make report to law enforcement agencies; see, e.g., Article 443, Criminal Code.

⁸⁶ Article 12, Criminal Procedure Code.

⁸⁷ “Accusation” here refers to reporting of the commission of non-complaint offences by any person, including victims. Whereas, “complaint” refers to lodging/ filing of suit or

Once an accusation or complaint has reached the police (or the public prosecutor, in which case the public prosecutor has to forward to the relevant police office), an investigating police officer *is duty bound to commence and conduct investigation*.⁸⁸ On the other hand, Article 212 of the Criminal Code, titled as “Crimes Punishable upon a Formal Complaint,” provides:

“Where the law in the Special Part of this Code or in any other legislation that complements criminal law provides that a crime is punishable upon complaint, no charge shall be instituted against the criminal unless the injured party or his legal representative institutes a complaint.”

Here, it is clear that victims of crime determine whether criminal investigation starts as regards offences punishable upon complaint. It is up to the particular victim to lodge a complaint or not. If s/he lodges a complaint, the police must conduct investigation; if the victim refrains from complaining, the police cannot start investigation even if it learns the commission of such an offence from other sources.⁸⁹ Hence, victims have decisive say in the commencement of investigation regarding complaint offences.

In case of accusation offences, on the other hand, reporting by victims is a sufficient, but not a necessary, condition for the police to commence investigations. Even without the reporting of victims, the police have the responsibility to carry out investigations where knowledge or reasonable suspicion of the commission of offences exists.⁹⁰

From the foregoing, it is obvious victims have clearly defined legal place and role vis-à-vis initiation of criminal process and investigation. They have a statutory right to report and complain, not only as ordinary persons but

grievance by victims of complaint offences. Article 212, Criminal Code provides a rule based on which distinction can be made between offences punishable upon complaint and offenses punishable without the need to receive complaint from victims or their legal representatives.

⁸⁸ Articles 14 *cum* 23, Criminal Procedure Code. Legally speaking, investigative police officers in Ethiopia lack the power to close files even when they learn from the collected evidence that no crime is committed or the committed crime is too trivial.

⁸⁹ Victims are thus granted with a ‘veto’ power in some offences. The justifications for such a legal approach in Ethiopia may include: some crimes are trivial or not that much serious to affect the public interest, or prosecuting such crimes without the active involvement of victims may be impractical, or prosecuting in such cases would further spoil the familial and social relationships and bondages of victims and offenders, or the protection to the right of privacy of victims is more important than prosecuting such offences.

⁹⁰ Articles, 22 *cum* 23, Criminal Procedure Code.

also as *victims*. They do have a recognized place as *injured parties* or *victims*. On the other hand, investigating police officers are under duty to seize the matter and to conduct investigation once they have received an accusation or complaint.⁹¹

Another point that should be raised at this juncture is whether there exist norms or guidelines that govern the reception and treatment of victims during the lodging of complaint before governmental (e.g. police and public prosecutor) or non-governmental bodies. To our dismay, no such norms or guidelines exist until this time. However, some positive developments seem to be evolving following reforms pertaining to, for example, business process re-engineering (BPR) of justice institutions. As the reforms aim, among other things, at the creation of customer-friendly institutions, it is hoped victims/witnesses would benefit. Still, there is no established system of psycho-social, legal and medical assistance and support mechanism which victims may avail to revive from their trauma or to prevent further exacerbation or deterioration of injuries. There is no established shelter service that victims may resort to avoid further attacks or to wait until they find somewhere to go.⁹²

The next sets of questions that must be answered are: What is the place of victims and what role do they play during the course of the investigative works of the police? How are police officers expected to treat them during the pretrial phase of the criminal process? What protections and assistance, if any, accrue to victims?

In contrast to victims' role in the initiation phase, the place and role of victims *during the course of investigation* is not provided for in the Criminal Procedure Code. Victims' right to participate in the process as *victim party* and be acknowledged as a party or a quasi-party with some *vested interest* is not recognized under the Code. Neither the Criminal Procedure Code nor any other law in force entitles victims to legally request or "advise" investigative officers to carry out particular investigation or to follow certain courses of actions. Also, there is no provision that requires instigative officers to receive

⁹¹ Should a police officer decline to conduct investigation following the report or complaint of a victim, it appears that the latter can seek administrative remedies within the police institution and/ or public prosecution.

⁹² Incidentally, it must be mentioned that the Ethiopian Women Lawyers Association and some other civic organizations that work on women and children rights and interests are giving some limited support and services to victims of crime.

the inputs of victims other than the ones which the latter may provide as witnesses.

While the constitutional⁹³ and procedural laws of Ethiopia have always entrenched major principles and rules on the treatment, protection and participation of arrested persons which investigative officers should recognize and realize, entitlements favoring victims have been absent. For example, arrested persons have constitutionally protected rights to be treated with respect and dignity, to be informed of the reason of arrest and the charge brought against them, to have speedy trial (which includes the timely accomplishment of investigatory tasks), etc.⁹⁴ In contrast, there are no similar norms that provide about the treatment of victims before the police or public prosecutor. Victims are not apparently entitled to inspect or consult investigation file of the police. It appears that victims are not entitled to be present and examine suspected persons during interrogation⁹⁵ and examination of witnesses,⁹⁶ etc.

Though there is no provision in the Criminal Procedure Code or any other law that obliges police officers to consult with victims or to provide them with information related to investigation, police officers may in fact discuss with victims matters related to, for example, suspected persons and the injury or harm the latter inflicted on the victim. Notwithstanding this, it is not clear whether police officers should behave cooperatively if a given victim wants to know whether suspects are to be arrested or not, or if arrested, whether they are to be released on bail or not, whether search and seizure is conducted or not, whether sufficient evidence is gathered or not, etc. Also, it is not clear whether victims can bring forward their views and concerns in “their” case and whether police officers should listen if victims want to say something about suspects or the matter under investigation.⁹⁷ In cases of

⁹³ See Articles 51-61, the 1955 Revised Constitution of the Empire of Ethiopia, Articles 44-45, the 1987 Constitution of the People’s Democratic Republic of Ethiopia, and Articles 18-23, FDRE Constitution which provide for norms favorable to suspected, accused and convicted persons.

⁹⁴ Arts 19 *cum* 21, FDRE Constitution.

⁹⁵ Article 27, Criminal Procedure Code.

⁹⁶ *Ibid*, Article 30.

⁹⁷ It appears that police officers would be duty bound to listen victims if the latter’s voice has to do with withdrawal of complaints vis-à-vis offences punishable upon complaint. Under Article 221 of the 1957 Penal Code, it was clearly enacted that victims have the right to withdraw any time prior to pronouncement of judgment by court. Pending the expected

applications of arrested persons to be released on bail, police officers or public prosecutors may most probably hear the voices of victims before they submit their opinions on such applications.⁹⁸ Yet, this is not an obligation that police officers or public prosecutors should carry out under pain of any sanction or which victims may invoke for administrative or judicial review.

Investigative police officers are expected to complete investigation without unnecessary delay. Article 37 Criminal Procedure Code enacts: "Every police investigation under this Chapter [Chapter 2, from Art 22-26] shall be completed without unnecessary delay." What this article provides is, if properly implemented, in the interest of suspected persons, public prosecutors, individual victims and the society at large as well. But, does this provision entitle victims, like suspects, to assert a right to speedy trial? Suspects, particularly if they are on bail, may actually try to stultify or prolong the investigation process. Can victims then intervene to solidify or speed up the investigation process? As the law stands now, it appears that the answer is "no". There is no law that expressly or implicitly enacts the right to speedy trial of victims.

iii. Victims and Decision-making in Criminal Prosecution

As the law stands now, investigative police officers do not have the discretionary power to close files, save where victims request dropping of cases involving offences punishable upon complaint. Files cannot be closed by the police notwithstanding investigations confirm there is no *prima facie* evidence establishing reported crime(s). The law merely requires the police officer to send to the public prosecutor the reports of investigation as soon as completed.⁹⁹

Upon receiving the reports, the public prosecutor decides, based on what is contained in the report, to either take the actions stipulated under Article 38¹⁰⁰ or close the file under Article 39.¹⁰¹ In cases where a public prosecutor

incorporation of this right in the upcoming revised criminal procedure code, the earlier practice set by the 1957 Penal Code still persists.

⁹⁸ Victims may give information which may help predict the behavior of arrested persons; see Article 67, Criminal Procedure Code.

⁹⁹ Article 37(2), Criminal Procedure Code. Though there is no law compelling police officers to inform victims, they do in practice inform victims the completion of investigation and the consequent dispatch of a report to the public prosecutor.

¹⁰⁰ The public prosecutor may: (a) prosecute the accused in accordance with Articles 109-122; or (b) order that preliminary inquiry be conducted (Articles 80-93); or (c) order further

closes an investigation file under the latter article, sub (3) provides that “the public prosecutor shall *send a copy of his decision* to the Advocate General, *the private complainant*, if any, and the investigating police officer.” If implemented, this *victim notification* satisfies the information need of victims to some extent for the procedure allows victims to receive up-to-date information about one’s case without any wastage of time, energy and money in search of what happened to one’s case. Yet, as sub (2) clearly indicates, the decision of the public prosecutor to close file is final and no victim has any alternative course of action in the criminal proceeding.¹⁰²

Whether victims will have a recognized position and role as a *victim party* in, for example, subsequent investigation (where the public prosecutor orders it) or preliminary inquiry is not stipulated. The Criminal Procedure Code however provides what must be done in respect of victims in cases where public prosecutors decide to prosecute or not to prosecute as shown below.

Public prosecutors are obligated under Articles 40(1) *cum* 109 to prepare formal criminal charge against suspects where the investigation files suggest there are sufficient grounds for prosecution. Here, the Code embraces the principle of mandatory prosecution. Prosecutors are required to institute charges within fifteen days¹⁰³ of the receipt of the investigation files of the police or the records¹⁰⁴ of preliminary inquiry of the committal

investigation to be carried out; or (d) refuse to institute proceedings (decide not to prosecute) as provided under Article 42, Criminal Procedure Code.

¹⁰¹ Under Article 39 files are closed where the accused (a) is died; (b) under 9 years of age; or (c) cannot be prosecuted under special law or international law or enjoys diplomatic immunity. Similarly, Article 214, Criminal Code also provides that “[a] prosecution may neither be instituted nor continued where an accused person dies before the institution of a charge in a court or before the pronouncement of judgment.”

¹⁰² However, victims may institute civil claim under the law of extra-contractual liability; the discharge of a wrongdoer in the criminal case can’t be invoked as a bar. See Articles 2149 *cum* 2028-2035, Civil Code of Ethiopia, 1960, *Negarit Gazeta*, Proclamation No. 165/1960, 19th Year, No.2 [hereinafter Civil Code].

¹⁰³ Article 109 (1), Criminal Procedure Code; If obeyed, this provision not only guarantees the right to speedy trial of criminal defendants but also incidentally meets both the interest of victims and the public as well.

¹⁰⁴ While Article 91(3), Criminal Procedure Code, provides that the copies of the record of the committal court be sent to the public prosecutor and the accused (by the registrar), it does not prescribe the same as regards victims.

court.¹⁰⁵ The determination of particulars that should be included in the charge including the type(s) of offence and number of counts is left to the determination of the public prosecutor. In this regard, victims are neither entitled to be consulted nor have a say, at least in the formal sense. At the moment, this may not be taken as a serious gap in our law since there is no system of plea bargaining. Yet, if such a system is to be introduced – and there are apparently some moves to introduce such a system in the upcoming criminal procedure code, it would be vital to pay good attention to victims' concerns and interests.

On the other hand, the position and role of victims in cases where public prosecutors have instituted criminal charges before courts of law appears to be clearly regulated. This matter gets attention both in the substantive and procedure codes.¹⁰⁶ The Criminal Code enacts:

“Where a crime has caused considerable damage to the injured person or to those having rights from him, the injured person or the persons having rights from him shall be entitled to claim that the criminal be ordered to make good the damage or to make restitution or to pay damages by way of compensation. To this end they may join their civil claim with the criminal suit.”¹⁰⁷

Also, Articles 154 *et seq.* provide for joinder of civil claims with criminal proceedings. Persons injured by a criminal offence or their representatives, “may at the opening of the hearing apply to the court trying the case for an order that compensation be awarded for the injury caused.”¹⁰⁸ This procedure resembles the *adhesion procedure* of continental inquisitorial jurisdictions.

Pending further discussions below, let us now observe the options available for victims in instances where public prosecutors decide not to institute criminal prosecution.

¹⁰⁵ *Ibid*, Article 42(2); unless justified by grounds provided under Article 42(1), public prosecutor cannot refuse to institute proceedings. But see, Article 9(7), Central Attorney General Proclamation, *supra* note 83.

¹⁰⁶ Yet, it is not clear how victims come to know whether public prosecutors instituted criminal charges or that “their” cases are still pending before the police or committal court or the office of the public prosecution, hence a critical gap in the law.

¹⁰⁷ Article 101, Criminal Code.

¹⁰⁸ *Ibid*, Article 154(1).

Aside from the grounds under Article 39,¹⁰⁹ the public prosecutor has the power to decide not to prosecute and thus to close files based on Article 42, Criminal Procedure Code. Accordingly, there shall not be criminal prosecution where:

- (a) The public prosecutor is of opinion that there is not sufficient evidence to justify a conviction; or
- (b) There is no possibility of finding the accused and the case is one which may not be tried in his absence;¹¹⁰ or
- (c) The prosecution is barred by limitation or the offence is made the subject of a pardon or amnesty; or
- (d) The public prosecutor is formally instructed not to institute proceedings in the public interest by the Minister or Head [of Ministry of Justice or Regional State Justice Bureaus].¹¹¹

Victims do not participate in this decision-making. The public prosecutor is not required by law to consult or hear victims before any decision not to prosecute. In refusing to institute criminal prosecution for any of the grounds listed above, the prosecutor is however required to *state its reasons clearly in written decision*. Furthermore, *a copy of the decision not to prosecute must be sent¹¹² to the victims or their representatives* listed under Article 47.¹¹³ The *victim notification* requirement entails that victims are not forgotten in the course of the criminal process. If implemented, this has immense advantages to victims.

If aggrieved, a victim of crime who is provided with this notification of “not to prosecute” may have, depending on the ground invoked by the prosecutor, some options to follow. The first option, available in any situation, is to take ones grievance to the next administrative hierarchy for review. This is

¹⁰⁹ See *supra* note 101.

¹¹⁰ See Articles 160-163, Criminal Procedure Code. It is only where offences that entail a punishment of twelve years or more rigorous imprisonment are involved that trial *in absentia* can be conducted (Article 161 (2) (a)). Note however that the applicability of sub (2) (b) of Art 161 is qualified by the principles/rules of the FDRE Constitution and the Criminal Code.

¹¹¹ It must however be noted that this sub-article is repealed by the Central Attorney General Proclamation which, *inter alia*, empowers the Central Attorney General to dismiss criminal cases. Whether this is still in force is debatable; see Articles 24 *cum* 9(7), Central Attorney General Proclamation, *supra* note 83.

¹¹² Article 43(2), Criminal Procedure Code.

¹¹³ This includes the spouse of the victim, aside from the legal representative of the victim.

always open for victims that are not satisfied with decisions of prosecutors.¹¹⁴ If the ground of the decision not to prosecute is for lack of sufficient evidence, there is another avenue to follow, albeit not always. Under Article 44(1), Criminal Procedure Code, the victim has the right to conduct *private prosecution* provided that the type of offence involved is punishable upon complaint. To realize this, the victim must first be authorized in writing to conduct private prosecution. As the law stands now, the authorization by the public prosecutor is not subject to conditions.¹¹⁵

Upon authorization, victims have to prepare a criminal charge within fifteen days and file the same before a court having jurisdiction.¹¹⁶ The victim may join with the criminal private prosecution a civil claim that he may have against the defendant.¹¹⁷

With regard to accusation offences, victims of crime used to have the right to challenge the decision of the public prosecutor not to prosecute for lack of sufficient evidence. It was proclaimed under Article 44 (2), Criminal Procedure Code that:

“Where the public prosecutor refuses to institute proceedings under Art 42 (1) (a) in relation to an offence which is not punishable on complaint, the appropriate person mentioned in Art 47 may, within thirty days from having received the decision of the public prosecutor, apply for an order that the public prosecutor institute proceedings.”

Also, Article 45 was made with a view to enable victims to exercise their right to have recourse to pertinent courts that could render judicial review. Nevertheless, Article 44(2) and Art 45, Criminal Procedure Code, are repealed by Central Attorney General Proclamation.¹¹⁸ Hence, this option is not anymore available to victims; thus, only administrative review is possible.

¹¹⁴ See Article 19, Central Attorney General Proclamation, which states: “Where any person or organization is dissatisfied with any decision of a subordinate Attorney, such person or organization has the right to submit a petition to a superior Attorney.”

¹¹⁵ In practice, there is no private prosecution by victims or their representatives. The author has not come across cases which attest the practical implementation of the procedure under Article 44(1), Criminal Procedure Code. Also, to the best knowledge of the author, the provision has not either been repealed.

¹¹⁶ Article 150 (1), Criminal Procedure Code.

¹¹⁷ *Ibid*, Art 154 (1) - (4).

¹¹⁸ Article 24, Central Attorney General Proclamation, *supra* note 83.

iv. Victims at Criminal Trials

This section examines the position and role of victims during court proceedings. As seen earlier, criminal proceedings may be instituted by either the public prosecutor or the victim or his/her representative as private prosecutor.

Where private prosecution is instituted as per Articles 44(1) *cum* 150-153, Criminal Procedure Code, victims of crimes have full standing as private prosecuting party and hence will be treated as one of the litigating parties for all intents and purposes. They assume and play key roles, burdens and responsibilities in the same manner as the public prosecutors would do in other cases. Nevertheless, courts are required to seek an amicable settlement of the disputes between victims and accused persons. Article 151(2) runs: "Before reading out the charge to the accused the court shall attempt to reconcile the parties. Where [...] reconciliation is effected, it shall be recorded by the court and shall have the effect of a judgment."

Failing reconciliation, the criminal proceeding will go on in accordance with the normal course of court proceedings as provided under Article 153.¹¹⁹ If the victim intends to institute a civil claim that originates from the alleged crime, s/he may prepare a written memorandum stating the nature and amount of compensation and apply at the opening of the hearing so that the same court may decide on both the criminal and civil matters.¹²⁰ Unless the court dismisses such an application on one or another ground provided under Article 155, the victim's criminal and civil suits are entertained and decided by same court at the same time.

Where however the public prosecutor decides to prosecute and thus institutes criminal charge against the accused person(s), the victim is not recognized as a party to the proceeding unless a civil claim is instituted vis-à-vis the accused. Otherwise, there is no law in force that gives some place and role for victims in such public proceedings.

Apart from the normally routine proceedings on the substantive matters, criminal proceedings in Ethiopia primarily involve bail hearings. Suspects and

¹¹⁹ As provided under Article 152, Criminal Procedure Code, the victim may be required to give security for costs before the case proceeds. During the proceeding, both the private prosecutor and the accused will have the same rights and duties as in public proceedings; see Article 153(3), Criminal Procedure Code.

¹²⁰ See Art 154 (1) and (3), Criminal Procedure Code.

accused persons have the constitutional right to be released on bail,¹²¹ save in exceptional cases prescribed by law. The nature of the offense – some offenses are non-bailable¹²² – or the defendant's alleged or assumed behavior¹²³ determines the denial of bail. A victim who reasonably fears that s/he will be attacked or threatened by accused released on bail cannot express her/his fear and sense of insecurity to the court granting bail. It is only the public prosecutor (and the police during investigation) who may invoke one of the grounds under Article 67 and request the court to deny the accused his right to bail. The victim's only chance would be to communicate her/his reasonable fear and sense of insecurity to the police or to the public prosecutor and see that the latter objects the accused before the court. Still, the victim must have the prosecutor or the police sufficiently convince the court of law to deny accused's right to bail.

Save in the exceptional scenario of *in camera* hearings as stipulated under Article 20(1) of the FDRE Constitution,¹²⁴ there are no clear provisions, guidelines or rules prescribing the treatment and protections of victims called by the court or parties to stand as a witness. As presentation and examination of witnesses is essentially accomplished by the litigating parties, victim-witnesses would be subject to inconvenience and adversity. They can be confronted, examined-in-chief and cross-examined by the public prosecutor or the accused or his counsel, depending on who called the witness.¹²⁵ Though there is a possibility in such instances for victims to express and inform (to the court) the degree of harm they suffered and its effect, they may however

¹²¹ Article 19(6), FDRE Constitution; also, suspects and accused persons enjoy the *right to be presumed innocent until proven guilty* (Article 20(3), FDRE Constitution).

¹²² Non-bailable offences are those which the legislature identified as such based on (1) the seriousness of the criminal act committed, (2) the gravity of the penalty that is likely to be imposed against the accused or (3) the danger that some crimes may pose on society. See Articles 63(1) Criminal Procedure Code; Article 6(3), Vagrancy Control Proclamation, 2004, *Federal Negarit Gazeta*, Proclamation No. 384/2004, 10th Year, No.19; Article 4(1), the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation, 2005, *Federal Negarit Gazeta*, Proclamation No. 434/2005, 11th Year, No.19.

¹²³ Article 67 (a)-(c), Criminal Procedure Code.

¹²⁴ Of course, a recently enacted law provides for different protective measures for witnesses (hence, victim-witnesses); see Articles 2(2) *cum* 3-4, Protection of Witnesses and Whistleblowers of Criminal Offences Proclamation, 2010, *Federal Negarit Gazeta*, Proclamation No. 699/2010, 17th Year, No.16.

¹²⁵ See Articles 136-143, Criminal Procedure Code; Article 20 (4), FDRE Constitution.

simultaneously experience secondary victimization in different forms.¹²⁶ From experience, this author may tell that victim-witnesses often experience mental anguish, humiliation and anxiety during cross-examination by, in particular, the accused or the defense counsel.

Some victims also suffer from lack of information: there are some that do not know the date of adjournment or the order given by judges, or what is going on, etc. There is no law that obliges judges and court personnel to provide information for victims.

Since there is no jury system, judges in Ethiopia decide both on factual and law matters. They accomplish everything in relation to a case. After the presentation of evidence is concluded, the judge(s) listen and record the final addresses of the public prosecutor and the accused. Both parties can forward their opinions on questions of law and fact.¹²⁷ The forum is not however open for victims, if any, to express their opinion. Also, the same unitary tribunal imposes punishment if the accused is convicted upon proof of guilt.

Before imposing punishment, the court hears the submissions of the public prosecutor and the offender on sentence.¹²⁸ The public prosecutor may submit aggravating or mitigating circumstances; the offender may submit mitigating circumstances. The victim has no room to express or share her/his opinion on the sentence that should be imposed. There is no law or practice that gives forum for victims to express/make statement regarding the impact of crimes on their lives. Of course, the court takes into account the general factors provided for under Articles 87-89, Criminal Code and the general and special aggravating and mitigating circumstances, one of which is the gravity of the crime.

The Special Part of the Criminal Code prescribes aggravated penalties where offenses affect vulnerable victims or where some extended results

¹²⁶ The victimization may take place in the court yards while victims are waiting for the calling of their case; it may even take place inside court rooms during the hearing and trial proceedings. The lack of facilities, e.g., segregated waiting areas, may expose victims for re-victimization. Undue delays and repeated adjournments of cases may bring further ups and downs. Despite this, mention must be had that some changes – some of which relate to victims particularly child witnesses and women sexual outrage victims – are taking place in courts following the implementation of the justice reform and business process re-engineering..

¹²⁷ Article 148, Criminal Procedure Code.

¹²⁸ *Ibid*, Articles 149 (3)-(4).

ensued from the criminal acts of offenders.¹²⁹ If, for example, the offender takes some positive restorative measures such as redressing the victim or exhibiting sense of repentance, it will be taken into account.¹³⁰ In addition, the court may order the offender to make a public apology to the victim.¹³¹ An undertaking by the offender to repair the harm s/he caused to the victim may be taken as a precondition for suspending the enforcement of the sentence for a specified period of probation.¹³²

The judgment of the first instance court on the subject matter is appealable to the next court in hierarchy. It is possible to lodge an appeal on grounds of fact or law or both; it is possible for the convicted person to appeal on the judgment of conviction and sentence, and for the public prosecutor on the judgment or order of acquittal, discharge or inadequacy of the sentence or on the conviction (in cases where the prosecutor is of the opinion that the court based its decision on a wrong provision of law) and sentence.¹³³ The victim has no recognized status and role in this regard, albeit an aggrieved victim may perhaps use the administrative channel to press the public prosecutor to take appeal.

As seen above, victims are entitled to join their civil claims in the criminal proceedings. Both the Criminal Code and the Criminal Procedure Code clearly establish avenues for victims to seek civil redress and reparations.¹³⁴ Accordingly, victims may present their written application

¹²⁹ See, e.g., Articles 589 (2)-(3); 590; 596(3); 620(2), (3)-(4); 623-628; 630(2); 631; 636, Criminal Code.

¹³⁰ See Articles 82(1) (e) and 181, Criminal Code.

¹³¹ Article 122, Criminal Code.

¹³² *Ibid*, Article 197.

¹³³ Article 185, Criminal Procedure Code. If convicted on his/her own plea of guilty, the accused may appeal only over the extent or the legality of the sentence.

¹³⁴ See, e.g., Articles 101, 102-610, Criminal Code; Article 154, Criminal Procedure Code. (The previous Penal Code, Articles 100-101, had comparable provisions) Nevertheless, the rules remain hollow promises to victims. In all my experience as judge in Amhara National Regional State and academic lawyer, I have hardly come across with cases wherein a victim joined his/her civil claim into the criminal proceeding. Similarly, the author's former senior student, Mesafint Demeke, who conducted a research on joinder of civil and criminal cases, failed to find any case to illustrate the law in practice despite relentless efforts; see Mesafint Demeke, *Joinder of Civil and Criminal Cases in the Amhara Regional State of Ethiopia*, 2010, Undergraduate Senior Thesis, Bahir Dar University (Unpublished). Compilations of reported cases originating from both regional state and federal courts add force to the assertion that the law is hardly practiced.

stating the nature of the injury sustained and the amount of compensation requested at the time of the opening of the hearing.¹³⁵ As provided in Article 145 (1) Criminal Procedure Code, the victim is not required to pay court fees when filing such an application. The moment the victim or the victim's representative filed such an application, s/he shall be shown the list of the witnesses to be called by the public prosecutor and the accused; then s/he shall be asked whether s/he wishes additional witnesses to be called.¹³⁶ Subsequently, the court decides whether the victim's claim for compensation or restitution¹³⁷ of property can be entertained jointly or not. The grounds for dismissal of such an application are listed under Article 155, Criminal Procedure Code.¹³⁸ If the application is dismissed, the victim may initiate a civil proceeding in a court having jurisdiction. Otherwise, the victim will not have any place and role in the proceeding once the application is dismissed, albeit he may be called as a witness to give testimony.

If the application for joinder is accepted by the court, the victim participates in the proceeding holding a party status and having the rights and responsibilities of any ordinary party in respect of the civil claim. Article 156, Criminal Procedure Code runs:

- 1) Where the application is allowed the injured party shall be entitled to take part in the proceedings and shall have with regard to evidence all the rights of an ordinary party.
- 2) The court shall at the close of the case for the defense permit the injured party or his representative to address the court in person or by advocate on the question of the amount of compensation to be awarded. The accused or his advocate shall have the right to reply.

¹³⁵ The amount of the claim should be within the material jurisdiction of the court, Article 155 (5), Criminal Procedure Code.

¹³⁶ *Ibid*, Article 145 (2); should additional witnesses be called, the victim covers the expenses of issuing witness summonses.

¹³⁷ Under Article 101, Criminal Code, the victim may apply for the restitution of properties.

¹³⁸ The court may refuse the application where:

- (a) A young person is the accused; or
- (b) The accused is being tried *in absentia*; or
- (c) The victim is found to have instituted the same claim in another court; or
- (d) The person making the application is not qualified for suing; or
- (e) The claim can't be determined without calling numerous additional witnesses; or
- (f) The claim is likely to confuse, complicate or delay the criminal proceeding.

Note that, the ruling of the court on this matter is final and not appealable (Article, 155 (3), Criminal Procedure Code).

A reading of sub-(2) seems to limit the participation of the victim to only the civil claim. It appears that the victim does not play a role in the criminal aspect of the proceeding. Surprisingly, Article 158 provides that the court shall not entertain and adjudicate on the question of compensation once it discharged or acquitted the accused on the criminal charge. In such cases, the victim is rather informed that s/he may institute the claim before a civil court.

In sum, the Criminal Procedure Code or any other law does not contain rules on the treatment of victims who attend “their” cases or appear as witnesses before courts of law. No special recognition is given to them. There are no specific norms that pertain to victim protections during the course of criminal hearings and trials except where *in camera* session is allowed when the victim’s interest is believed to be at stake.

v. Victims and post-trial criminal process

Victims’ issues often transcend the pretrial and trial proceedings. Their legitimate concerns, interests and rights may permeate post-trial criminal processes including probation, parole and pardon and amnesty. So now the questions are: what is the status and role of victims in post trial Ethiopian criminal proceedings? How are victims treated in such proceedings?

There is no single provision in the Criminal Procedure Code that deals with matters of probation, parole, pardon and amnesty. Such matters –which were previously governed by the 1957 Penal Code – are now dealt within the Criminal Code.¹³⁹ An examination of the relevant provisions of the Criminal Code reveal that crime victims have no recognized position and role vis-à-vis probation, conditional release (parole), pardon and amnesty proceedings. Obtaining victims’ consent, opinion or feed-back, if any, is not provided as a precondition to grant or order any of those post trial measures, though it can reasonably be assumed that their opinion would be taken note of by concerned authorities. There is no rule or guideline pertaining to victim notification and treatment (in case they appear to have opinions). What is clearly provided in

¹³⁹ See Articles 190-200 (on probation), Articles 201-210 (on conditional release), and Articles 229-231 (on pardon and amnesty), Criminal Code. With regard to pardon, see also Procedure of Pardon Proclamation, 2004, *Federal Negarit Gazeta*, Proclamation No. 395/2004, 10th Year, No.35.

all these provisions is that any of such measures would not affect the civil claim of victims, which of course goes without saying.

To conclude, victims of crimes in traditional Ethiopia had played decisive roles throughout the various phases of the criminal process. Victims used to play significant roles even after the establishment of modern police and public prosecution institutions in the 1940s. Since the introduction of the Criminal Procedure Code 1961, some changes have been brought. Despite the overall common-law adversarial flavor, the Criminal Procedure Code retains some strands of the continental inquisitorial elements put in by the original drafter, Jean Graven. This latter point holds particularly true in respect of the place and role of victims.

As seen above, victims are entitled to play decisive roles in respect of offences that are punishable upon complaint. However, it appears that victims do not have a legally recognized position as regards accusation offenses. Except when serving as witnesses, victims do not participate or play any other role in criminal proceedings involving accusation offenses. When aggrieved with the activities and decisions of the police and the public prosecution, they may petition for an administrative review. But they do not have any say or voice in the judicial proceedings unless they lodge private prosecution – a procedure which is hardly practical.

Victims have recognized place and roles when they institute civil claims within the criminal proceedings. In this regard as well, there are some obstacles and bottlenecks. More importantly, there are no provisions in the Criminal Procedure Code or any other laws in force that regulate and govern the treatment and protection of victims. There are no legal frameworks for support and service mechanisms.

Victim notification rules are too sparse and are only limited to the sending of copies of public prosecution decisions to victims. There are no provisions that entitle victims to share or impart – at the appropriate stages of the criminal process – their views and concerns to all the appropriate justice authorities including judges.

3. Contemporary Issues and Emerging trends regarding Victims in Criminal Process: Lessons for Ethiopia

From the foregoing, it is clear that the Ethiopian law pertaining to crime victims is essentially contained in the 1961 Criminal Procedure Code. The changes introduced in 1993¹⁴⁰ cannot be taken to favor victims.

On the other hand, since the adoption of the 1985 UN Declaration on victims, many states all over the world have embarked on victim-centered or victim-oriented initiative and accomplished notable criminal justice reforms that accommodate the concerns, needs and interests as well as rights of victims into the criminal justice system.¹⁴¹ As part of the international community, Ethiopia has a lot to learn from the internationally evolving trends as well as the experiences of other nations that accomplished reforms as regards crime victims.

It is evident today that earlier perceptions portraying crimes as merely public wrongs or wrongs committed against society and the state *per se*, and consequent retributive criminal justice doctrines that exclude and marginalize victims are increasingly giving way to new thoughts and measures that accommodate victims and their rights and interests. Marc Groenhuijsen notes:

“Up until some years ago, the criminal justice system used to be depicted as a battle between a suspected criminal on the one hand and the government-representing respectable society- on the other. It is now accepted that criminal law and criminal procedure could never really lead to justice being administered unless and until the system pays respect to the interests of victims of crime. This means that the victim should not just be viewed as an instrument enabling the prosecutor to procure convictions. Rather than dealing with the victim as a tool, which can be used in the process of reporting the crime and later on as a witness, he or she should be considered as the injured party, as a human being with rights of their own that should be structurally taken into account at all stages of the criminal investigation and eventual trial. The general direction of victims’ reforms

¹⁴⁰ See *supra* note 83.

¹⁴¹ Rauschenbach, M. & Scalia, D., ‘Victims and international criminal justice: a vexed question?’, *International Review of the Red Cross*, Vol.90, No.870, 2008, p.444 (Available at: http://www.icrc.org/eng/assets/files/other/irrc-870_rauschenbach.pdf.) [accessed 2 March, 2011]; Groenhuijsen, M., *Conflicts of Victims’ Interests and Offenders’ Rights in the Criminal Justice System – a European Perspective*, p.163 (Available at www.aic.gov.au/en/publications/previous%20series/proceedings/1-27) [accessed 24 May, 2011].

means that the victim has a right to be treated fairly, respectfully, and will have to be paid compensation or restitution for the damages incurred by the criminal offence.”¹⁴²

Explication of criminal proceedings focusing merely on offences and criminal defendants, construction of criminal justice models solely on and around the criminal defendant and the state, as has been the case in Herbert Packer’s *Crime Control and Due Process*¹⁴³ and Griffiths’ *Parental and Arm’s length*¹⁴⁴ models (and their modified versions), are increasingly changing as they paid no or little attention to the special concerns, needs, interests and rights of victims.¹⁴⁵

Especially since 1990s, victims have regained some of their lost historical position and started to have meaningful roles in various national, regional and international criminal justice systems. The reform activities undertaken and the various measures adopted in favor of victims in many national jurisdictions (as well as internationally, e.g. by criminal tribunals including the ICC) demonstrate that victims are somehow being moved from the periphery to the center of interest of criminal law and criminal justice

¹⁴² Groenhuijsen, *supra* note 140, p.163.

¹⁴³ See Herbert Packer, ‘Two Models of the Criminal Process’, *University of Pennsylvania Law Review*, Vol.113, 1964, pp.1 *et seq.*

¹⁴⁴ Griffiths, J., ‘Ideology in Criminal Procedure or a Third ‘Model’ of the Criminal Process’, *Yale Law Journal*, Vol.79, 1970, pp.367 *et seq.*

¹⁴⁵ See, e.g., Arenella, P., ‘Rethinking the Functions of Criminal Procedure: The Warren and Burger Courts’ Competing Ideologies’, *Georgetown Law Journal*, Vol.72, 1983, p.213; Damaska, M., ‘Evidentiary Barriers to Conviction and Two Models of Criminal Procedure: A Comparative Study’, *University of Pennsylvania Law Review*, Vol.121, 1973, pp.574-577; Sebba, L., ‘The Victim’s Role in the Penal Process: A Theoretical Orientation’, *American Journal of Comparative Law*, Vol.30, 1982, pp.231-238, (expressing that the traditional models “deal exclusively with the nature of the relationship between state and defendant but ignore the victim”, p.238); Beloof, D., ‘The Third Model of Criminal Process: The Victim Participation Model’, *Utah Law Review*, Vol.1999, 1999, pp.290-292 (maintaining that Packer’s “two models do not include a conceptual framework in which victim participation in the criminal process can be understood” p. 291); Roach, K., ‘Four Models of the Criminal Process’, *Journal of Criminal Law & Criminology*, Vol.89, 1998-1999, pp.671-699 (writing that “Packer’s model seem outdated today because they ignore crime victims” p.689; Read also, Stickels, J., *Victim Satisfaction- A Model of the Criminal Justice System*, A PhD Dissertation submitted to the Faculty of the Graduate School of the University of Texas at Austin, 2003, (Unpublished), pp.35-44. Available at: <http://repositories.lib.utexas.edu/bitstream/handle/2152/979/stickelsjw039.pdf?sequence=2>-, [accessed on 27 February, 2011].

policy.¹⁴⁶ Concerns for the welfare and rights of victims have now become dominant themes, in both Anglo-American and continental European countries.¹⁴⁷ Writing in 1991, Mike Maguire has thus observed:

“Over the past twenty years, but especially during the last decade, the rhetoric of North America and European criminal justice has been increasingly permeated with concern for the rights and welfare of the “the victim.” In their everyday decision-making, police officers, prosecutors, judges, probation officers, and parole boards are frequently enjoined-and, increasingly, compelled-to pay heed to victims’ interests as well as to those of the community and the offender. Legislation has granted new rights to victims to participate in court processes and to claim compensation. National and local government agencies have funded programs of victim and witness assistance. Voluntary organizations are providing services on a significant scale. Research projects and academic books on victims have become a growth industry. And, hardly mentioned in university courses even ten years ago, the needs and rights of victims have become regular topics of discussion in undergraduate classes in criminology.”¹⁴⁸

Victims issues – such as enhancement of their status and participatory roles within criminal process, provision of better treatment and protections, provision of information, socio-legal supports and services (medical, psychological and legal aid) and facilitation of conditions for compensation and reparations – are shared contemporary themes across the globe. And, no doubt Ethiopia has a lot to learn from these positive developments.

The trend now seems to swing between a *rights-based* approach and the *needs-based/welfare approach*. There are some countries that incorporated (some are on the way to incorporate) and committed themselves to the rights-based approach recognizing procedural rights of victims in juxtaposition to the due process rights of criminal defendants. A great majority of states in the USA, for instance, have amended their respective constitutions to include civil rights of victims. Also, there are attempts to get the U.S Federal Constitution amended to include civil rights of victims in juxtaposition to the due process rights of the criminal defendant.¹⁴⁹

Many other countries have taken measures to improve the status and role of victims, apart from provision of better assistance and support,

¹⁴⁶ Spinellis, *supra* note 1, p.337.

¹⁴⁷ Moolman, *supra* note 49, p.273.

¹⁴⁸ Maguire, *supra* note 63, pp.363-364.

¹⁴⁹ See Aaronson, D., ‘New Rights and Remedies: The Federal Crime Victims’ Rights Act of 2004’, *Pace Law Review*, Vol.28, 2008, p.625 *et seq.*; Belooof, *supra* note 145, p.289 *et seq.*

treatment, and protections. Countries such as South Korea, Thailand and Mexico are reported to have modified their respective constitutions to include a set of rights for victims.¹⁵⁰ Accommodating victims in sentencing process through the use of victim impact statements is becoming a common feature of many common law countries. Good examples are the US, Canada, England and Wales, Australia and New Zealand. To varying degrees, enhancing the involvement and participation of victims in criminal process has become common focal issue of reform measures in Africa (e.g. the Republic of South Africa and Uganda) as well.

As mentioned before, significant progresses in favor of victims have taken place at the international level. The 1998 Rome Statute of the International Criminal Court (ICC) has set a groundbreaking path by granting enhanced status for victims. The Statute recognizes victims' participatory right in criminal proceedings. Victims are given the opportunity to be heard and to claim reparations; they are entitled to a legal standing to be represented by counsel and to formally participate throughout trial and other related court proceedings. The Statute deals with matters of victims' treatment, protection and compensation in an unprecedented manner.¹⁵¹

There are also some other recently adopted international instruments that pay good attention to general and specific issues relating to victims in criminal process.¹⁵² Furthermore, a draft convention on victims' rights is being studied by the United Nations¹⁵³ consolidating claims that an idea of *human rights of victims* appears to be emerging.¹⁵⁴

¹⁵⁰ Waller, *supra* note 66, p.148.

¹⁵¹ Articles 68(3) *cum* 75, Rome Statute; see also Jouet, *supra* note 25, p.249; McGonigle, *supra* note 25, p.94; Gonzalez, *supra* note, p.19 *et seq.* The current debate is not on the propriety of victims' participation within the criminal process but on the *degree of their participation*. Despite arguments against victim participation in criminal proceedings, victim participation pervades national and international criminal proceedings. For arguments *for* and *against*, see Spinellis, *supra* note 1, pp.350-359; Doak, *supra* note 53, p.2; Doak, *supra* note 67, pp.294 *et seq.*

¹⁵² See generally Waller, *supra* note 66.

¹⁵³ Rauschenbach & Scalia, *supra* note 141.

¹⁵⁴ See Doak, *supra* note 67, pp.301-302; Doak, J., Henham R. & Mitchell, B., 'Victims and the Sentencing Process: Developing Participatory Rights?', *Legal Studies*, Vol.29, 2009, pp.658-660; Garkawe, S., 'Victims' Rights are Human Rights', Presentation to the 20th Anniversary Celebration of the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, held in Canberra on 16 November 2005, available

Amidst glaring victim plights, it is very unlikely that Ethiopia would remain inert to national, regional and international developments discussed above. Yet, mention must also be made that there are still some contentious issues that need further deliberation, debating and studies in respect of degrees of involvement and rights of victims within criminal proceedings.¹⁵⁵

Conclusions and Recommendations

As demonstrated in the adoption of the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 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 kept informed of the progresses of their cases, and to allow them play meaningful roles in the criminal process. That victims of crime should be entitled to prompt redress for the harms they may suffer due to primary victimizations is another subject which gained momentum internationally since at least 1985. Also, the protection of victims from secondary victimizations has become a universal agenda for national criminal justice systems worldwide.

On the other hand, the foregoing analysis of the legal framework in Ethiopia reveals victims of crime are not adequately recognized as injured party. They do not have meaningful involvement in the criminal process. The existing provisions, that in the main grant victims a party status to conduct private prosecution in complaint offence proceedings, are not seen put in practice. The provisions that deal with victim notification are too sparse and are limited to sending of copies of public prosecution decisions to victims. There is no legal framework for victims to share or impart their views and concerns to the appropriate justice authorities (including judges) at the appropriate stages of the criminal process.

There are no rules and standards within the present Ethiopian criminal justice system that guide and control treatment of crime victims; there are no provisions that direct police officers, public prosecutors, defense lawyers, and

at: <<http://www.victimsupport.act.gov.au/res/file/garkawe%20speech.pdf>>, [accessed on 27 February 2011].

¹⁵⁵ There are still ongoing debates over victims' procedural rights, modes and scope of victims' participation and the balancing of the rights and interests of criminal defendants, victims and prosecutions; the debate over the last issue appear to be the most controversial one.

judges on how they ought to treat victims. There are no sufficient legal mechanisms that ensure the protection of victims. Also, there is no law that addresses the social, medical and legal needs and interests of victims of crimes.

In the face of such legal lacunas at present, it is patently clear that Ethiopia needs to take some positive measures to address the various concerns, needs, interests and rights of victims in its criminal justice system. Without prejudice to the rights and interests of suspected, accused and convicted persons, it is necessary to undertake measures that aim at accommodating victims and their concerns, needs, interests and rights within the criminal process. It is timely to take measures that aim at preventing secondary victimization. The physical, emotional, financial, information and other related needs of victims should be addressed. It is timely to include provisions, in the upcoming criminal procedure code, pertaining to the treatment and protection of victims. Also, the place of victims within the criminal process needs to be improved. Victims should be allowed to play meaningful roles within the criminal process.

This author specifically submits the following recommendations:

- The upcoming criminal procedure law should acknowledge that victims have *special* and *distinct* concerns, needs, interests and rights which may differ from the needs and interests of the police, the public prosecution, the general public and other ordinary witnesses. Hence, provisions entitling victims to *present their views* and *concerns* at all appropriate stages of the criminal process must be included in the Code. Care should however be taken not to prejudice the rights and interests of suspects and accused persons;
- It is necessary to include some detailed provisions that guide and govern the *reception* and *treatment* of victims when they come to the criminal justice institutions (police, prosecution, courts and prison administrations) to complain or report, to testify, even to attend and follow up their cases.
- Without prejudice to the defendant's right to a fair trial, it is also necessary to include some detailed provisions that aim at ensuring *protection* of victims from secondary victimization. Apart from expressly proclaiming for physical escorting and provision of *facilities* that ensure the safety, physical and psychological well-being of victims, the new criminal procedure code should come up with some

protective measures for victims which *in very exceptional situations wherein real danger threatens vulnerable victims*, may include, *inter alia*,:

- Non-disclosure or delayed disclosure of victims' identity;
 - assignment of pseudonyms;
 - *In camera* hearings;
 - Giving of testimony through image or voice altering devices or via closed-circuit television;
- The existing provisions in the Criminal Procedure Code that pertain to *victim notification* need not only be retained but also further broadened so as to enable victims obtain relevant and up-to-date information including developments relating to their cases, about their rights, etc., at any appropriate stages of the criminal process;
- Those provisions in the Criminal Code that provide for the participation of victims in criminal proceedings as *civil party* should be revitalized in light of recent national, regional and international developments and evolving trends. The adhesion procedure which exists theoretically in the present Criminal Procedure Code should be reinforced and put in practice.