



JOURNAL OF THE INDIAN LAW INSTITUTE

VOLUME 51

OCTOBER-DECEMBER 2009

NUMBER 4

**COMPENSATING VICTIMS OF CRIME IN ETHIOPIA:
A REFLECTIVE ANALYSIS OF THE LEGISLATIVE
PARADIGM AND PERSPECTIVE****K I Vibhute*****I Introduction**

THERE IS no exclusive proclamation dealing with reparation of a victim of crime in Ethiopia. However, one finds a couple of provisions in the codes, criminal and civil in nature, enacted in the second half of the twentieth century during the reign of Emperor Haile Sellassie I, that provide for, or deal with, reparation of, and/or compensation to, a victim of crime. These codes are: (i) the Penal Code of the Empire of Ethiopia of 1957¹ (replaced in 2004 by the Criminal Code of the Federal Democratic Republic of Ethiopia),² (ii) the Criminal Procedure Code of the Empire of Ethiopia of 1961,³ (iii) the Civil Code of the Empire of Ethiopia of 1960,⁴ and (iv) the Civil Procedure Code of the Empire of Ethiopia of 1965.⁵ The statutory provisions scattered in these codes, in the absence of a distinct legislative instrument, if webbed and perceived in a logical manner, depict the legislative paradigm designed for reparation of, or restorative justice to, a victim of crime.

Law as it stands today in Ethiopia allows a victim of crime to resort to certain civil⁶ as well as criminal measures for seeking reparation for

* Substantial work was done during the period when the author was associated with Addis Ababa University (AAU), Addis Ababa (Ethiopia) as Professor of Law.

** Professor of Law, Sultan Sharif Ali Islamic University (UNISSA), Bandar Seri Begawan (Brunei Darussalam) and Emeritus Professor of Law, National Law University (NLU), Jodhpur (India).

1. Proclamation No. 158/1957.

2. Proclamation No. 414/2004. However, the basic framework of the Emperor's Penal Code of 1957 is retained in the new Criminal Code.

3. Proclamation No. 1/1961.

4. Proclamation No. 165/1960.

5. Decree No. 52/1965.

6. See, 'Title XIII: Extra-Contractual Liability and Unlawful Enrichment, Chapter 1-Extra-Contractual Liability' of the Civil Code of the Empire of Ethiopia of 1960. Art. 2027, which lays down a general principle of liability for offence, states that a person is liable for the damage he caused to another by an offence. While art. 2028 makes it clear that an offender has to make the damage caused good.



the damage caused and/or injury suffered by commission of a crime.

The instant paper, however, attempts to have a deep analytical peep into the legislative paradigm and the legal entitlement of a victim of crime in Ethiopia to seek compensation or reparation through criminal proceedings for the injury suffered or loss incurred by commission of a crime.

II Compensation to a victim of crime: Legislative scheme and spirit

The Criminal Code of the Federal Democratic Republic of Ethiopia of 2004 (hereinafter the CC),⁷ which has repealed and replaced the Penal Code of the Empire of Ethiopia of 1957 (hereinafter the PC), is a major penal law of Ethiopia. A couple of provisions incorporated therein are loaded with the idea of reparation of, payment of pecuniary compensation to, or restorative justice to, a victim of crime. They are governed by certain procedural norms stipulated under the Criminal Procedure Code of the Empire of Ethiopia of 1961 (hereinafter the CrPC),⁸ in ultimate analysis, crystallize a set of legal norms for a victim of crime to seek compensatory relief from the offender for the injury caused to him.

These statutory provisions, substantive and procedural, if contextually webbed, however, exhibit three different approaches to, and legislative paradigms for, compensating a victim of crime. A few of them allows a victim of crime to seek compensatory relief for the 'harm' sustained as his 'entitlement' and, subject to certain procedural requisites, to participate, as a matter of right, in the criminal proceedings instituted for adjudicating guilt of the perpetrator. While others, empower a court of law, in its discretion, to compensate a victim of crime. One also finds a couple of provisions in the CC that deal with compensatory claim of a victim of crime when the offender is released on certain conditions, pardoned or granted amnesty.

'Entitlement' of an 'injured party' to seek compensation or restitution from the 'criminal' through criminal proceedings: substantive and procedural contours

There are two provisions in the Criminal Code that speak in terms of 'entitlement' of an 'injured person' to claim damages, through criminal

7. Proclamation No. 414/2004. It came into operation from May 9, 2005.

8. Proclamation No. 185/1961.



proceedings, in the form of compensation from the ‘criminal’ for the ‘damage’ caused to him. Article 101 and article 610(1) of the CC deal respectively with the ‘entitlement’ of an ‘injured person’ to seek compensation from the offender for ‘considerable damage’ and for ‘damage to honour or reputation’ caused to him.

Compensation for ‘considerable damage’ caused by an offence

Article 101 of the CC carves out an assertive legal ‘entitlement’ of an ‘injured party’ (or persons having rights from him) to ‘claim’ restitution of the property lost or compensation for the damage caused. It reads:

Article 101. - *Restitution of Property, Compensation for Damages and Costs.* 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.

Such claim shall be governed by the provisions laid down in the Criminal Procedure Code.

A plain reading of article 101 reveals that a victim of crime (or a person having rights from him), who has suffered ‘considerable damage’, is ‘entitled’ to ‘claim’, through criminal proceedings regulated by the CrPC, that the ‘criminal’ be ordered to ‘pay damages by the way of compensation’ or to ‘make restitution or to make good the damage’. In order to claim the entitlement, it becomes necessary for the crime victim to show that: (i) he has suffered ‘damage’, (ii) such ‘damage’ has been caused by the crime, and (iii) the damage caused was ‘considerable’. Mere proof of the first two facts does not entitle the claimant to seek compensation if he fails to convince the court about the third one.

However, the legal ‘entitlement’ of the ‘injured party’ carved out in article 101 of the CC is subjected to two limiting requisite riders. They are: (i) damage caused by the criminal must be ‘considerable damage’, and (ii) the ‘claim’ must be governed by appropriate provisions of the CrPC.

An ‘entitlement’ of the ‘injured person’ against the ‘criminal’, articulated in article 101, thus, arises *only* when the latter, by committing a crime, has caused ‘considerable damage’ to the former. The requirement



of ‘considerable damage’⁹ is *sine qua non* for invoking article 101 of the CC and seeking the redress against the criminal as provided thereunder. However, the word ‘considerable’ prefixed to the term ‘damage’, by any standards, is not only imprecise but is susceptible to varied judicial interpretations. It allows the court, seized of the matter, to articulate and employ its own subjective normative parameters and ‘heads’ of damage to decide as to whether the damage caused by the criminal was ‘considerable’ or not. Further, it makes the task of ‘quantification’ of the ‘damage caused’ and of the ‘damages’ to be awarded to the ‘injured party’ complicated and difficult, if not impossible.

However, a comparative reading of article 101 of the CC and its corresponding article [article 100] from the PC reveals three interesting attributes of the ‘entitlement’ of the injured party carved out in the new Criminal Code.

Firstly, article 101 of the CC, unlike article 100(1) of the PC, does not direct the court to take into account damage caused by ‘*death, injuries to the body or health, defamation, damage to property or destruction of goods*’ (as the case may be) and ‘*expenses in hospital or expenses for medical treatment*’ incurred by the injured party while calculating ‘considerable damage’ mentioned therein. It gives unguided freedom to the court to adjudicate upon the ‘considerable damage’ for invoking article 101 and thereby to give compensatory relief to the ‘injured party’. A mere look at article 100(1) of the PC will make the point more clear. It ran as under:¹⁰

Article. 100. - *Compensation for damages caused by an offence.*

(1) Where an offence has caused considerable damage to the injured person or to those having rights from him, *particularly in cases of death, injuries to the body or health, defamation, damage to property or destruction of goods*, the injured person or the persons having rights from him shall be entitled to claim that the offender be ordered to make good the damage or to make restitution or to pay damages by way of compensation.

9. In this context, it is important to note that Civil Code of the Empire of Ethiopia of 1960 speaks in terms of ‘damage’ only. It states, with emphasis, that a person is liable for the ‘damage’ caused to another by committing an offence. A perpetrator of a crime has to make good the damage. See, arts. 2027(1) and 2028. By virtue of art. 2141 of the Civil Code, the burden of proof lies on the victim of injury to establish the quantum of damage and the circumstances that render the defendant liable to make it good. However, the parties may compromise on the quantum of damage and the mode of its payment. [vide art. 2142]

10. Emphasis supplied.



Such claim shall include any *expenses in hospital or expenses for medical treatment* to such amount as may be assessed by expert evidence.

The part of article 100(1) *italicized*, by the present writer, undoubtedly furnished legislative indicators of ‘heads’ of damage that the courts were required to take into account while quantifying ‘considerable damage’ and thereby adjudicating on the applicability (or otherwise) of the article to the case at hand. It seems that authors of article 101 of the CC, plausibly in their zeal to make article 101 simple and short, have lost sight of these different ‘indicative heads’ of ‘damage’ mentioned in its corresponding article [article 100(1) of the PC] as well as unintended consequences thereof. The omission of these ‘indicators’ in article 101 of the CC, in ultimate analysis, has introduced a sort of judicial ambivalence in the entitlement of an injured party to seek compensation. It relieves the court, unlike under its corresponding article from the PC, from the legislative mandate of taking into account the ‘heads’ of damage, though illustrative, while computing the ‘considerable damage’. The court is left with its discretion to invent ‘heads’ of damages and to rely thereon to compute the ‘considerable damage’. Further, such an omission makes it contestable as to whether the ‘injured party’ [or a person having right from him] invoking article 101 of the CC can, as a matter of right, claim damages for the heads of damage mentioned in article 100(1) of the PC. It is also unclear from phraseology of article 101 of the CC as to whether a court, seized of the matter, is expected to assess ‘considerable damage’ by taking into account ‘all’ heads of damage, including that mentioned in article 100(1) of the PC. In either case, the judicial ambivalence in the interpretation of article 101 of the CC cannot be ruled out.

Secondly, article 101 of the CC, unlike article 100(2) of the PC,¹¹ does not leave any scope for the criminal and the injured person(s) to settle mutually the amount of compensation and to subsequently seek the court’s approval therefor. There hardly seems any justification, legislative or pragmatic, for precluding a criminal and his victim to arrive at a ‘just’ pecuniary settlement for the injury caused and suffered respectively and to seek the court’s assistance in legalizing it.

11. The relevant part of art. 100(2) ran: ‘... The court ... shall make an order according to its findings and where the parties have reached an agreement which in the opinion of the court is just, it shall make an order accordingly. The payment of any sum due to on such order may be secured by the seizure of goods of the offender, not being goods which are necessary for his livelihood or for the exercise of his trade or profession.’



Thirdly, the revised article 101, unlike its corresponding article, does not make any reference to the explicit power of the criminal court to secure the payment of compensation by the seizure of goods of the offender, if necessary.

Compensation for ‘damage to reputation’ of the injured party

Article 610(1) of the CC, by necessary implications, creates a legal ‘entitlement’ in favor of a defamed person to claim compensation for the injury caused to his ‘reputation or honour’. It explicitly mandates a court to compensate the injured person. While quantifying the amount of compensation, the court is required to take into account gravity and extent of the injury caused and the position of the criminal as well as of the injured person. However, the court is obligated to follow the procedural norms indicated in article 101 of the CC. Articulating this ‘entitlement’ of the injured person and the court’s ‘obligation’, article 610(1) runs as under:

Article 610. - Compensation.

(1) Damages for the material or moral injury done to the injured party, shall be fixed by the Court in accordance with the general provisions (Art. 101), having regard to the gravity and extent of the crime and to the positions of the criminal and the injured party. —

An explicit reference to the ‘general provisions’ of article 101 in article 610(1) of the CC, for obvious reasons, subjects the claim for, and the payment of, compensation for damage to reputation to three legal riders. *Firstly*, the ‘injury to reputation’ of the injured person needs to be causally traced to the contemptuous assault(s) of the offender. *Secondly*, injury to his reputation has caused him ‘considerable damage’. *Thirdly*, the claim for compensation of the injured person and its determination by the court is subject to appropriate provisions of the CrPC.

Reflections of the present writer on the requirement of ‘considerable damage’, highlighted in the preceding paragraphs, become relevant for the instant ‘entitlement’ of the injured party.

Seeking compensatory relief - procedural paradigm and pitfalls

The procedure designed for regulating ‘entitlement’ of an injured party for compensatory relief, as outlined here below, is not only cumbersome but also bridled with a couple of unintended pragmatic disincentives. An



injured party, therefore, may prefer to suffer in silence rather than to pursue his 'entitlement' for pecuniary judicial relief.

Articles 154-157 of the CrPC, constituting chapter 6 of book IV of the code captioned 'Injured Party in Criminal Proceedings', lay down the procedure to be followed by a criminal court when a victim of crime [or a person injured by commission of a crime] seeks damages from perpetrator of the crime by way of compensation in a criminal proceeding.

It allows a person injured by a criminal offence or his representative to intervene, at the opening of hearing, in the criminal proceedings initiated by the public prosecutor or by a private complainant. He, through a written application without paying any court fees therefor, can urge the court seized of the matter to order the accused to pay him compensation [claimed in the application] for the injury caused by him. Thereafter, the prosecutor and the defence lawyer are obliged to show him the list of witnesses to be called by them and to ask him whether he, for substantiating his compensatory claim, is willing to add to the list of witnesses. However, if the applicant claiming compensation happens to be a private complainant, and thereby a private prosecutor,¹² he has to specify the witnesses who he wants to call in support of the prosecution and in support of his claim for compensation.¹³

The court, on its own or on the motion of either the prosecution or the defence, is allowed, rather mandated, to reject such an application for compensation on any of the grounds enumerated in article 155(1) and (2) of the CrPC. They are: (i) the accused happens to be between nine and fifteen years of age, (ii) the accused is being tried in his absence, (iii) the injured party has already instituted proceedings in a competent civil court for damages, (iv) the applicant is not qualified to sue the accused, (v) the amount of compensation claimed exceeds the pecuniary jurisdiction of the court, (vi) the claim for compensation, in the opinion of the court, can not be determined without calling 'numerous witnesses in addition to those to be called by the prosecution and defence', and (vii) 'the hearing of the injured party's claim for compensation is likely to confuse, complicate or delay the hearing of the criminal case'. The first five grounds for rejecting the applicant's claim are mere facts. A simple proof of their existence *ipso facto* empowers, rather mandates, the court to dismiss the applicant's application for compensation. While the last two grounds for dismissal of the application, being subjective, warrant judicial deliberation

12. See arts. 44 and 47, CrPC.

13. Art. 154, CrPC.



on, and determination of, the fact as to whether determination of the applicant's claim for compensation cannot (or can) be determined without summoning 'numerous witnesses' or its hearing is (or is not) 'likely' to 'confuse, complicate or delay' the case at hand.¹⁴

Dismissal of application soliciting compensation on any of the above-mentioned grounds, technical or subjective, is final. No appeal, on any ground whatsoever, lies therefrom.¹⁵ However, dismissal of application by the court does not debar the injured person from pursuing his claim for compensation against the accused in a competent civil court.¹⁶

A victim of crime, thus, is allowed to participate in the criminal proceedings and pursue his claim for compensation *only* if his application for compensation is not dismissed by the court. However, on the admission of his application, he is required to pay the court fees on the amount claimed as compensation (as if it were a civil suit) and to bear the cost of summoning witnesses and calling experts, if any.¹⁷ Thereafter only, he, like any other party to the criminal proceeding, acquires the right to adduce evidence to substantiate his claim for compensation.¹⁸ He has also the right to address the court, at the close of the case for the defence,¹⁹ in person or through his attorney, on the question of the amount of compensation to be awarded to him.²⁰ After evaluating the evidence adduced by the prosecution and the defence, if the court finds the accused guilty and convicts him, it is required to adjudicate the applicant's claim for compensation and to order the accused to pay it to the applicant or his representative.²¹ The court is also required to order the offender to pay the injured person the court fees that he has paid when his application for compensation was allowed by the court and the costs incurred by him for summoning witnesses and calling experts, if any, in support of his

14. It seems that the last two grounds are premised on the legislative intent that a victim's claim for compensation through criminal proceedings should not be allowed to disturb the criminal proceedings. Compensatory claim of a crime victim is merely an accessory to the criminal case.

15. Art. 155(3), CrPC.

16. *Ibid.*

17. Art. 222(1), CrPC. Provisions of art. 222(1) are in direct conflict with that of art. 154 of the CrPC. A combined reading of these articles creates a sort of legislative ambivalence.

18. Art. 156(1), CrPC.

19. Any time before the case is closed for the defence, the applicant can withdraw his application for compensation and initiate civil action against the accused in a competent civil court. See, art 157, CrPC.

20. Art. 156 (2), CrPC.

21. Art. 159(1) (a), CrPC.



claim.²² However, when the court holds the accused not guilty and acquits or discharges him, the court is barred from adjudicating on the applicant's claim for compensation.²³

Nevertheless, a victim of crime may prefer an appeal to a court higher to the trial court when the latter refuses to order the criminal to pay him damages by way of compensation for the 'considerable damage' caused to him. Similarly, the criminal, who is ordered by the court to pay compensation to the injured party, may ventilate in the appellate court his

22. Art. 222, CrPC. Also see, art. 159(1) (b) of the CrPC. However, art. 159(1) (b), if read in the backdrop of, and along with, art 222(1) (a) & (2), seems to be operationally ambiguous. The former mandates the court 'to order the accused to pay the court fees as if it were a civil case' while the latter mandates the court 'to order the accused to pay the court fees (paid by the injured person) to the injured party'. A combined reading of these two articles reasonably creates an impression that the accused has to pay the court fees on the amount of compensation awarded against him as well as to reimburse the court fees paid by the injured party when his application for compensation was admitted by the court. Relying upon this legislative ambivalence, one may argue that the accused need to pay the court fees referred to in art. 222 of the CrPC and not the one that is referred to in art. 159(1)(b) of the CrPC or *vice versa*. This legislative ambiguity deserves attention of the legislature.

23. Art. 158, CrPC. It reads: 'Where the accused is acquitted or discharged, the court shall not adjudicate on the question of compensation and shall inform the injured party that he may file a claim against the accused in the civil court having jurisdiction.'

However, there hardly seems any justification for art. 158 to disqualify the court to rule on the question of compensation when it has heard and weighed all the evidence pertaining to the charges leveled against the accused including the injured person's compensatory claim against him. It is difficult to perceive any convincing rationale for disqualifying the court to pronounce its judgment on the compensatory relief sought by the injured party when it has heard all the evidence pertaining thereto even though the criminal trial ended with acquittal or discharge of the accused. It also seems illogical and unjustified to make the accused, who is exonerated or discharged after a full criminal trial, to re-face the civil court proceedings initiated by the person purportedly injured by commission of a crime committed by a person other than the accused. Adjudication of the claim for compensation of the victim of crime in the criminal proceeding, rather than initiating civil processes for the same claim, would save time and energy of the courts. It would also spare the courts from hearing unnecessary repetitive evidence and the parties from unwarranted expenses. Further, influence of the judgment acquitting or discharging the accused of a criminal court on the civil court cannot be completely ruled out when it adjudicates on the compensatory claim of the injured party. Nevertheless, art. 2149 of the Civil Code mandates a civil court, while deciding civil claim, not to feel bound by a ruling of acquittal or discharge of a criminal court.

A scholar has argued, and rightly so, that art. 158 of the CrPC, being unwise and dangerous proposition, deserves to be effaced from the CrPC. See, Stanley Z Fisher, *Ethiopian Criminal Procedure: A Sourcebook* 352 (1969).



grievances against the compensation order. Article 186 of the CrPC, dealing with the right to appeal of an injured person and of an offender, runs as under:

Article 186. - *Appeal where injured party claims compensation.*

(1) Where the court refuses to grant compensation under Art 100 Penal Code (now Art. 101 of the Criminal Code) the injured party may appeal against such decision.

(2) Where the court grants compensation the accused may appeal against such decision.

(3) An appeal shall lie against the amount of compensation awarded in accordance with the provisions of Art. 2153 Civil Code.

(4) An appeal under this Article shall be heard by the criminal court of appeal where there is an appeal against conviction or sentence,²⁴ but shall be heard by the civil court of appeal where there is no appeal against conviction or sentence or such appeal is withdrawn.

A court of appeal, while hearing an appeal, has to dismiss the appeal, if, in its opinion, there is no sufficient ground for interference.²⁵ However, when it considers that there is sufficient ground for interference, it, in an appeal from an order of acquittal or discharge, can reverse such an order and direct the court of competent jurisdiction to put the accused on retrial or find him guilty and sentence him 'according to law'. On an appeal from conviction and sentence, the appellate court is empowered to alter or reverse the lower court's finding of conviction and sentence.²⁶ In an appeal from conviction only, the appellate court can reverse the finding of, and sentence imposed by, the lower court and can acquit the accused.²⁷ While in an appeal from sentence only, it may maintain, increase or reduce the sentence passed by the lower court.²⁸

However, by virtue of article 186(3) of the CrPC, an appeal contesting the quantum of compensation adjudged by a criminal court is curiously regulated by article 2153 of the Civil Code of the Empire of Ethiopia of 1960 (hereinafter the Civil Code), which reads as under:

24. For the courts having jurisdiction to entertain appeal against conviction and sentence, see arts. 181, 182 & 185 of the CrPC.

25. Art. 195(1), CrPC.

26. Art. 195(2) (b), CrPC.

27. Art. 195(2) (c), CrPC.

28. Art. 195(2) (d), CrPC.



Art. 2153. - Exceptions.

The provisions of Art. 2152 shall not apply where:

- (1) the court has taken into consideration circumstances which it should not have taken into account or has failed to take into consideration circumstances which it should have taken into account; or
- (2) the amount of damages fixed by the court is manifestly unreasonable and could only have been inspired by prejudice or improper motive; or
- (3) the amount of damages is due to an error of calculation on the part of the court.

A cursory reading of article 2153 reveals that it carves out an exception to article 2152 of the Civil Code. Therefore, it becomes necessary to refer to article 2152 for proper appreciation of gamut and tenor of article 2153. Article 2152, laying down a general principle of appeal pertaining to damages, says:

Article. 2152. - No appeal.

No appeal shall lie against the judgment of the court of first instance relating to the amount of damages to be paid.

A mere look at article 2152, in the backdrop and context of article 186 of the CrPC, conveys that the amount of compensation determined by the trial criminal court, as a rule, is final and no appeal therefrom lies to the appropriate higher criminal court. However, a combined reading of articles 2152 and 2153 of the Civil Code and article 186 of the CrPC leads to a legal proposition that the propriety and adequacy of the compensation fixed by a criminal court can be questioned in an appellate court on any of the three grounds mentioned in article 2153 of the Civil Code. The amount of compensation awarded by the lower court can be assailed in an appellate court on the ground that: (i) the court, while fixing the amount of compensation, has relied upon some irrelevant circumstances or has overlooked the relevant ones, (ii) the amount fixed is manifestly unreasonable, plausibly tainted with prejudice or improper motive, and (iii) the court has erred in calculating the amount of compensation. However, these grounds for assailing the amount of compensation granted by the trial court are not only very restrictive in their application but are also highly subjective in nature. It would obviously be very difficult, if not impossible, for the victim of a crime or the offender to substantiate his claim for the upward or downward revision of the amount of compensation respectively. An appellate court would be



reluctant to disturb the amount of compensation fixed by a court subordinate to it unless it is ostensibly tainted with either of the cogent reasons mentioned in article 2153 of the Civil Code.

A careful peep into the web of procedural norms regulating compensatory claim of an injured person, however, reveals that a couple of pertinent issues are left untouched. It also discloses some crucial gaps in the procedural web. These unaddressed issues and procedural gaps, in the preset submission, not only make the law relating to compensation to a victim of crime in Ethiopia incomprehensive but also operate as major disincentives for a crime victim to pursue his compensatory claim against the offender. A few prominent among them deserve attention.

Firstly, article 155 of the CrPC allows the prosecution and defence to participate in the court's decision as to whether to allow (or not) the injured person's application for compensation but it, for reasons left to one's own guess, does not allow the injured person to have his say in the judicial deliberations leading to the dismissal (or otherwise) of his application. It even denies him the opportunity to draw attention of the court that the amount sought by him has some proximate causal connection with the crime (committed by the accused). Similarly, it does not accord him any opportunity to assert, contrary to the assertion of the court and of the prosecution and defence, that determination of his 'claim for compensation' can be determined 'without calling *numerous* witnesses' and/or that 'hearing' of his claim for compensation is *not* 'likely to confuse, complicate or delay the hearing of the criminal case'.

Secondly, dismissal of his application, on any of the grounds enumerated in article 155 of the CrPC, is final. The injured party does not have any right to appeal against it. He, for undisclosed reasons, is precluded from contesting dismissal, even on some unsubstantiated technical and subjective grounds, by the court of his application for compensation in a superior court. He, therefore, has no alternative except to, with mute and untold sufferings, honor the court's verdict disallowing him to pursue his claim for compensation through criminal processes and to pursue it, if he wishes, through lengthy civil processes. Such an unequal participation, compared with that of the prosecution and the defence, of an injured person in the judicial proceedings determining the fate of his claim for compensation, for obvious reasons, puts him at the disadvantageous position and denies him the right to equality and fair opportunity to defend his claim for compensation and its propriety.

Thirdly, the legal stipulation requiring the injured person claiming compensation in a criminal case to pay the court fees on the sum claimed as it were a civil suit and the cost of summoning witnesses and calling



experts²⁹ may, in most of the cases, result in the negation of the injured person's legal entitlement for compensatory relief. Owing to financial inability to pay the requisite court fees and to bear the costs, an injured person may be compelled to claim compensation lesser than that corresponds to the injury caused to him or to forgo his legal entitlement and to just suffer in silence. He, of course, is entitled to get the paid court fees and the cost back from the offender, if he succeeds in getting compensation from the criminal.³⁰ Interestingly, the CrPC is silent about the repayment of the court fees paid, and the costs incurred, by the injured party if he loses his claim against the accused or trial of the accused ends in acquittal or discharge of the accused.³¹ In such a situation, the injured person is left to curse himself for being an unfortunate victim of the crime and for paying the court fees and incurring the costs in his quest for seeking 'relief' from the criminal and 'justice' from the court. Such a scenario, in ultimate analysis, leads to a sort of double victimization, one by the criminal and the other by the law that treats him unfairly.

Fourthly, an injured party is required to pay the court fees on the amount of compensation sought, while the court, on conviction, is bound to order, and the criminal is required to pay, the court fees *only* on the amount of compensation awarded. An injured person, for obvious reasons, has to forgo the court fees paid and the cost incurred by him for calling his witnesses and experts in support of his claim, in case of acquittal or discharge of the accused.³² If the amount of compensation ordered against the criminal is substantially lesser than the amount of compensation claimed by the injured party, the accused obviously gets away with the lesser amount of court fees than that paid by his victim. An injured party, therefore, needs to bear the loss with the mere consolation that his claim for compensation, though partially, is accepted by the court. He is also bound to be greeted by the similar fate when the offender, who is ordered to pay him compensation and court fees, goes in appeal and convinces the appellate court to reduce substantially the amount of compensation and the corresponding court fees ordered by the lower court. The CrPC does not, even by necessary implications, address either of the situations. Equity demands that an injured person should not incur such a pecuniary loss.

29. Art. 222(1), CrPC.

30. Arts. 159(1) & 222(2), CrPC.

31. A court is mandated not to adjudicate the compensatory claim of the injured party if it has ordered acquittal or discharge of the accused. See, art. 158, CrPC.

32. See, art. 222(2), CrPC.



Fifthly, the payment of compensation in a criminal proceeding to a victim of crime is linked with conviction of the accused. A court, by virtue of article 158 of the CrPC, is precluded from adjudicating the question of compensation when it acquits or discharges the accused. Article 158, read with article 156, permits a victim of crime to claim compensation within the scope of criminal proceeding and, at the same time, mandates the court to put aside the decision on the question of compensation, if it decides to acquit or discharge the accused. Further, the CrPC does not empower an injured person to introduce 'evidence' having significant bearing on culpability of the accused, if the public prosecutor, by default or design, refuses or fails to do so. In such a situation, his entitlement for compensation is at stake as conviction of the accused and the order for compensation and costs linked therewith is in jeopardy. It also seems that he does not have any claim to cross-examine the witnesses summoned by the prosecution and/or defence to unravel the truth leading to conviction of the accused and to the judicial dictum on the payment of compensation and of costs. Further, a victim of crime, unless he happens to be a private prosecutor, does not have *locus standi* to go in appeal against an order of acquittal or discharge.³³ The public prosecutor, in his discretion, has the right to appeal against a judgment of acquittal or discharge 'on the ground of inadequacy of sentence'.³⁴

Sixthly, the entitlement of an injured party to seek compensation from an offender becomes hazy when the latter, without any reservations, admits the charge(s) leveled against him and enters into the plea of guilty and the court 'forthwith' convicts him therefor.³⁵ Conviction of an accused based on his plea of guilty also raises a couple of unanswered queries that have significant bearing on the compensatory claim of his victim. A few prominent among them are: (i) Does the plea of guilty entered by the accused empower the court to *suo motu* order him to pay compensation to his victim for the (obvious) injury suffered and loss incurred? (ii) If yes, is the injured person allowed, as a matter of right, to participate in the judicial deliberations leading to determination of the amount of compensation? (iii) If the court is not empowered to award compensation on its own, is the victim of crime entitled to put in his application for compensation (required under article 154 of the CrPC), if yes, at what stage of the criminal proceedings? Is he expected to put in his application

33. A victim of crime has the right to go in appeal *only* when a court refuses to grant him compensation for the considerable damage caused to him by the criminal (under art. 101 of the CC, that corresponds with art. 100 of the old PC) in his favor. See, art. 186(1) of CrPC.

34. Art. 185(2), CrPC.

35. Art. 134(1), CrPC.



before the accused pleads guilty or after the court records his plea of guilty but before it convicts him and passes sentence? Is the court obliged to entertain and allow the application, unless it, in its opinion, is liable to be rejected on any of the 'technical' grounds enumerated in article 155 of the CrPC³⁶ [as the 'subjective' grounds indicated therein³⁷ become hardly relevant when an accused pleads guilty] and to award compensation?, and, (iv) Is the crime victim allowed to contest the court's refusal to entertain his application for compensation or its dismissal (after entertaining it) and/or the amount of compensation awarded, as the case may be, in an appellate court? In the absence of clear-cut procedural norms in the CrPC, these posers are bound to receive varied judicial response.

Compensation to the injured party by a criminal court in its discretion

The CC, in certain situations, allows a criminal court, in its discretion, to award compensation to a crime victim for the loss suffered, or injury sustained, by commission of a crime. These situations and legal framework designed to compensate victims of crime therein are outlined, in brief, in the following paragraphs.

Inability of a criminal to pay compensation

However, when it appears to the court that the criminal (or a person liable on his behalf), due to 'circumstances' of the case at hand or peculiar 'situations' in which he is placed, is unable to pay compensation for damages, it, in its discretion, can order pecuniary compensation to the injured party. It may order that (i) the sale proceeds (or part thereof) of distraint articles,³⁸ (ii) the sum guaranteed as surety,³⁹ (iii) a part of fine⁴⁰

36. See, arts. 155(1) (a), (c) & (d), and 155(2), CrPC.

37. See, art. 155(1) (e) & (f), CrPC.

38. By virtue of art. 94(3) of the CC, property of an offender can be confiscated and sold [subject to the procedural norms and restrictions enumerated in art. 98(3) of the CC], if he is unable to pay the fine or deliberately fails to produce the required surety or security. Also see, art. 98(2) of the CC.

39. When fine imposed on the convict is not paid forthwith, the court may ask the offender to produce sureties or security, determined by the court in the light of the circumstances of the case at hand, the condition of the criminal and the interests of justice, for the payment of the fine during the specified period. If the fine is not paid during the period fixed by it, the court orders that the surety or security be deposited. See, art. 94(1) & (2) of the CC.

40. Fine, in principle, is paid in money and is forfeited to the state. In fixing the amount of fine, the court is required to take into account the degree of guilt, the financial condition, the means, the family responsibilities, the occupation and earnings therefrom, and age and health of the criminal. See, art. 90(1) of the CC.



imposed on the offender, (iv) a part of the yield of the conversion of fine into work,⁴¹ or (v) confiscated property⁴² be paid to the injured party.⁴³ Conferring such a wide discretion on the court to compensate a victim of crime, article 102(1) of the CC reads as under:

Article 102.-Compensation to Injured Party.-

(1) Where it appears that compensation will not be paid by the criminal or those liable on his behalf on account of the circumstances of the case or their situation, the Court may order that the proceeds or part of the proceeds of the sale of the articles distrained, or the sum guaranteed as surety, or a part of the fine or of the yield of the conversion into work, or confiscated property be paid to the injured party.

Phraseology of article 102 makes it clear that it is for the court to judge, in the backdrop of the 'circumstances' of the case at hand and the 'situations' in which the criminal and/or the persons liable on his behalf, the feasibility (or otherwise) of the payment of compensation. If the case at hand, in its opinion, warrants the payment of compensation, the court, in its unguided wide discretion, is not only empowered to opt for either of the sources, in isolation or combination, mentioned in article 102(1) of the CC to compensate the victim of crime but also to fix the amount of pecuniary relief.

However, it is significant to note that article 102(1) of the CC, compared with its corresponding article [article 101] from the PC, has introduced three changes of far reaching consequences on the court's power to award compensation (from either of the sources indicated therein) and on the plight of the injured person. *First*, an injured party, unlike under the corresponding provision of the PC, is not required to initiate such a redress through a written application.⁴⁴ A court is empowered to

41. Art. 95 of the CC vests in the court the power to ask the criminal, if fine imposed on him remains unsettled during the period extended by the court (under art. 93) or the order for surety or security (issued under art. 94) has failed to yield any positive result, to settle the fine 'by doing work for the State or for any public authority' during the period specified (up to two years) by the court.

42. See art. 98 of the CC.

43. The CC, like its predecessor - the PC, has designed a variety of novel ways, which are unfamiliar to the penal codes of Asian countries, for recovery of unpaid fine from a defaulted offender. It makes the offender to: (i) pay it in installments; (ii) through security or sureties, and (iii) by doing work for any state or public authority. The fine can also be recovered by selling the property confiscated or distraint articles. See, arts. 93-99 of the CC.

44. For example see, *Boke Negassa & Ors v. Public Prosecutor*, Crim. App. No. 126/59, decided by the High Court, Addis Ababa, in 1967 (unpublished), cited in Stanley Z Fisher, *supra* note 23 at 349.



award compensation on its own. *Secondly*, article 102(1) of the CC, unlike its corresponding provision [article 101(2)] from the PC,⁴⁵ does not mandate the court to award compensation that is ‘proportionate’ to the ‘damage suffered’ by, and the ‘needs’ of, the injured party and his family members. *Thirdly*, the amount of compensation, unlike under article 101(2) of the PC, need not exceed the amount of damage assessed by the court or agreed by the parties. A cumulative effect of these changes effected in the revised article of the CC is that the order for the payment of compensation as well as quantum thereof is entirely left to the sweet will and unguided discretion of the court. Such discretion obviously depends upon the court’s sensitivity to, and concern for, the victim of crime, rather than on the extent of damage suffered by him and his needs as well as of his family members, if any.⁴⁶ A mere cursory comparative glance at the text of article 102(1) of the CC and of article 101(2) of the PC, in the absence of any background material (in English) shedding light on the underlying legislative intent of these changes and of reported judicial pronouncements, lends support to the present writer’s assertions.

However, in certain circumstances a court is not allowed to order the payment of compensation even though it holds an accused guilty of the offence(s) charged and convicts him. A court is precluded from passing a compensation order when it orders a criminal, convicted for committing an offence of minor importance punishable with simple imprisonment for a term up to six months, to serve his sentence of compulsory labor without any restriction but under supervision.⁴⁷ It is also not empowered to order the payment of compensation in favor of the injured party when the offence committed by the criminal is not of serious nature and it orders the

45. Art. 101(2) of the PC read: ‘The granting of such compensation shall not be awarded except upon express application. It shall be proportionate to the extent of damage suffered and to the needs of the injured party and the members of his family and shall be limited as a maximum to the amount of the damage as assessed by the Court or agreed by the parties.’

46. Nevertheless, art. 2091 of the Civil Code, as a principle, declares that the damages due to the person legally declared to be liable should be equal to the damage caused to the victim.

47. Art. 103 of the CC. The offender is required to serve his sentence of compulsory labor at the place of his normal work or employed, in a public establishment, or on public works. However, interestingly by virtue of sub-art (2), he is required to forgo an amount not exceeding one-third of his wages or profits (as determined by the court) in favor of the state. The legislative intent for not making a similar provision (or provision in lieu of the state’s claim over his wages or profits) for compensating his victim is left to one’s own guesses. Further, art. 103(2) of the CC, compared to its corresponding art. 102 (2) from the PC, has increased the outer limit of such deduction from one-fourth to one-third.



perpetrator to undergo simple imprisonment for a term between ten days and three years.⁴⁸ Similarly, a court not empowered to pass a compensation order against the criminal when he, as punishment, is deprived of certain rights.⁴⁹

Liability of a young and petty offender to compensate his victim

Invariably, penal law of a country adopts and designs a sort of curative and corrective approach towards young offenders. Charged with this motto, the CC has incorporated in it a set of curative, educational and corrective measures for the offenders between nine and fifteen years of age.⁵⁰

Nevertheless, the CC permits a court to impose fine on the young offender, when it realizes that the curative, educative or corrective measures employed against him have failed. The quantum of fine, however, has to correspond to the gravity of the crime committed and to be proportionate to means of the young offender.⁵¹ The court is also authorized to convert the fine imposed on a young offender into school or home arrest when he intentionally fails to pay it.⁵²

The CC, however, specifically provides that none of these measures, if the circumstances of the case warrant and justify, affect the reparation of the moral and material compensation for the damage by the offence to the injured person.⁵³

Further, penalties imposed in respect of petty offences are made subject to pardon or amnesty with usual conditions attached to, and effects of, pardon and amnesty⁵⁴ mentioned in the following segment of the paper.

Conditional release or pardon of a convict *vis-à-vis* compensatory claim of the injured party

The CC, with a view to promoting reformation and social resettlement of the criminal, allows a court to suspend sentence of a criminal and to release him on probation.⁵⁵ Charged with the similar motto,⁵⁶ the CC also

48. Art. 106 of the CC.

49. See, arts. 123 & 124 of the CC.

50. See, art. 158-162 of the CC.

51. Art. 167(1) of the CC.

52. Art. 754(2) of the CC. Also see, art 161 of the CC.

53. Art. 755 of the CC.

54. Art. 774 of the CC.

55. See, arts. 190 & 196 of the CC. For requisite conditions and withdrawal of suspension and effects thereof on penalty, see arts. 195, 191-192, 194, 199, 205 and 197-198, 200 of the CC. Also see, the Treatment of Federal Prisoners Council of Ministers Regulations No. 138/2007.



permits a court to release, on certain conditions,⁵⁷ a convict before the expiry of his custodial punishment. A competent authority, subject to relevant provisions of public law, is also empowered to remit, with certain conditions, sentence of a convict or to commute, by an act of pardon, it to a penalty of lesser gravity.⁵⁸ A competent authority may grant amnesty, with or without conditions, in respect to certain crimes of classes of criminals.⁵⁹

However, the conditional suspension of punishment, conditional release from custody, and executive pardon or amnesty does not alter the responsibility of the convict to restore damage caused to the injured party.

A convict, on his conditional release on probation, is required to give a formal undertaking that he, *inter alia*, will repair, to the fullest extent possible, the damage caused to the victim of crime and will pay the indemnity to the injured person for 'considerable damage' caused to him.⁶⁰ He is also required to give security for such a formal undertaking.⁶¹ His probation is liable to be revoked by the court if he violates the terms of his formal undertaking or behaves contrary to the rules of conduct imposed by the court on him.⁶² A convict, who has served two-thirds of his sentence of imprisonment or has undergone twenty years of imprisonment if he happened to be a lifer and is not a persistent recidivist, is, in discretion of the court, entitled for conditional release. However, such an order for conditional release from custody becomes feasible if the convict, during his confinement in prison, has, *inter alia*, repaired, as reasonably expected of him, the damage caused to the injured person (as determined by the court or agreed with the aggrieved party).⁶³

Similarly, an act of pardon of a competent authority,⁶⁴ which cancels the sentence of the convict, does not nullify 'other effects' of the sentence.⁶⁵ An amnesty, on the other hand, not only cancels sentence but also 'all its other consequences under criminal law'. The conviction of such a criminal becomes non-existent.⁶⁶ However, an act of pardon as

56. Art. 201 of the CC.

57. Arts. 202 & 205 of the CC.

58. Art. 229 of the CC.

59. Art. 230(1) of the CC.

60. Art. 197(1) of the CC.

61. Art. 197(2) of the CC.

62. Art. 200 of the CC.

63. Art. 202(1) (b) of the CC.

64. For further details see, art. 28 of the FDRE Constitution and the Procedure of Pardon Proclamation No. 395/2004.

65. Art. 229(2) of the CC.

66. Art. 230(2) of the CC.



well as of amnesty does not at all affect civil reparation of, and the payment of damages to, the injured person.⁶⁷

A cumulative reading and analysis of these propositions revolving around an act of pardon and of amnesty and consequences thereof, lead to an impression that a compensation order passed in favor of an injured person by a court (under article 102 of the CC), being one of penal 'effects' of the sentence, remains intact and operative in case of pardon. However, it becomes 'non-existent' in case of amnesty. In other words, a person, who has been injured by the commission of a crime and has been compensated by a court, does not have any claim over the compensation awarded to him if the criminal has received amnesty. Nevertheless, his restorative claim of civil nature against the criminal who has been a recipient of pardon or amnesty remains intact and operative.

III Recovery and payment of compensation

A criminal court, as outlined in the preceding pages, is empowered to order the criminal to pay compensation to the injured person for causing 'considerable damage' or damage to his reputation. If the perpetrator of the crime, owing to peculiar circumstances of the case or situations in which he is placed, is, in the opinion of the court, unable to pay the compensation, the court is further empowered to order the payment of compensation from sale proceeds of the distrained articles or of confiscated property, the amount of surety or security, fine imposed on the offender, yield from the work assigned to the criminal, or from confiscated property.

The injured party or the person having right from him, who has been compensated, in either of the forms mentioned in the CC, by the court, is not allowed to execute the pecuniary part of the judgment in his favor. He is required to 'assign' his 'claim' to the state so that it, on his behalf, can enforce the claim against the person who has caused the damage. Article 102(2) of the CC, laying down the rule, says:

The claim of the injured party who has been compensated shall be assigned to the State which may enforce it against the person who caused the damage.

Article 210 of the CrPC, which, in turn, regulates the procedure for claiming the payment of compensation and costs awarded by a criminal court, stipulates that a judgment of a criminal court dealing with the award of compensation and of other legal costs needs to be executed in

67. Art 231(1) of the CC. However, by virtue of art. 231(2), the unpaid cost incurred towards the state is presumed to be remitted.



the 'same manner' in which a 'judgment of a civil court' is executed. It runs as under:

Where a judgment given by a criminal court contains provisions for the payment of legal costs or compensation, such part of the judgment as contains such provisions shall be executed in the same manner as a civil judgment.

A part of the judgment of a criminal court directing the payment of compensation (and of other legal costs), thus, for the purpose of execution, becomes at par with a decree of a civil court for the payment of money, which is governed by the procedure laid down in the Civil Procedure Code of 1965 (hereinafter the CPC). The criminal and the injured victim of the crime, who has assigned his claim for compensation to the state, thus, by analogy, steps respectively into the shoes of the judgment-debtor and of the decree-holder. Article 394 of the CPC, dealing with the mode of execution of a decree for the payment of money against a recalcitrant party, proclaims:

- (1) [E]very decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the attachment and sale of the judgment-debtor's property.
- (2) The value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.⁶⁸

However, a careful look at the phraseology in which article 102(2) of the CC, article 210 of the CrPC, and article 394 of the CPC are couched, reveals that: (i) an injured party is legally required to *assign* his compensatory claim to the state, (ii) compensatory claim of a victim of crime *has* to be executed like a civil claim, and (iii) monetary claim of a crime victim *may* be satisfied by attaching and selling property of the criminal. In other words, the institutional arrangement designed for compensating a victim of crime leaves it to the discretion of the court to 'attach and sale' property of a criminal to recover and pay compensation to his victim.

IV Compensation to a victim of crime by the state - an alternative paradigm

In Ethiopia, a victim of crime, as evident from the legislative paradigm outlined in the preceding pages, does not have any right to claim

68. For types of property that are not liable for attachment and sale, see art. 404, *et seq* of the CPC.



compensation from the state, unless the government itself infringes the law. Such a claim, in principle, comes within the domain of the CPC and falls within the jurisdictional orbit of a civil court of competent jurisdiction. The question as to whether the state is, or should be, responsible for re-compensating a victim of crime, as a matter of right, for the financial loss and injury, mental or physical, sustained by commission of a crime, thus, remains unaddressed to in the Ethiopian criminal justice system.

Compensatory claim of a victim of crime against his state, in fact, stems and seeks support from the 'social contract theory'. One of the main functions of a state is to protect limb, life and property of its citizens. Inflicting punishment on an offender by the state is justified on the ground that he, by violating the socially approved code of conduct articulated in the penal law, has breached the contract. With the same logic, one may argue that the state, by virtue of the contract, is bound to compensate a victim of crime for the loss incurred and/or injury suffered at the hands of the wrongdoer. State, therefore, is under legal obligation to compensate a crime victim as it, contrary to its assurance given to him, has failed to protect his limb, life, or property.⁶⁹ He, in ultimate analysis, has incurred loss or suffered harm because the state has failed to: maintain law and order; ensure peace, harmony and tranquility in society; enforce law; protect its subjects and their property; and use its authority to suppress crime. Further, compensation from state can also be justified on the ground that the state system, *namely*, its political, economic and social institutions, as asserted by modern criminologists, generates crime by poverty, discrimination, unemployment and insecurity. A victim of such a socio-economic-political system, therefore, deserves compensation from the state.⁷⁰ Reparative justice by a state to a crime victim can be justified on some moral, humanitarian and compassionate grounds, as he has been a 'victim' of, and 'unfortunate recipient' of, some 'harm/injury' for no fault of his. Similarly, the payment of compensation by the state to victims of crime can be justified on the notions of: 'equitable justice' (between the offender and his victim) and 'grace of the government' (to the victims of crime), and 'alleviation of the feeling of injustice' (on the part of victims of crime).⁷¹

69. P. Burns, *Criminal Injuries Compensation* (1980).

70. See, Chapter XV: Victimology, Law Commission of India, *One Hundred and Fifty Fourth Report on the Code of Criminal Procedure, 1973* (Government of India, New Delhi, 1996).

71. See, Theorvaldson, "On Recovering Compensation Funds from Offenders" 5 *Victimology* 18 (1980) and D. Miers, "Compensation and Conceptions of Victims of Crime" 8 *Victimology* 704 (1983).



It would be worth to recall here that in 1985 the UN General Assembly (UNGA), through a Declaration,⁷² urged its members to treat ‘victims’ with ‘compassion and respect for their dignity’.⁷³ With this spirit, the UNGA, *inter alia*, urged states to ‘establish, strengthen and expand national funds for compensation to victims’⁷⁴ and to endeavor to provide pecuniary compensation to victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes.⁷⁵

Designing such a victim-compensatory scheme in Ethiopia, one of the least developed and poorest countries in the world, obviously, involves an in-depth analysis of, and intensive deliberations on, a host of inter-related complex socio-politico-economic and crimino-penal policies and priorities. Financial constraints would indeed be one of the major obstacles and challenges to make such a scheme a reality in Ethiopia. Nevertheless, she may initiate, through law, a sort of ‘Victim Assistance Fund’ or ‘Victim Compensation Fund’ at the federal as well as regional state levels for compensating, at least, victims of most serious and violent offences against human body, life and sexual liberty. Such a fund, to start with, can be created without much financial burden on the state exchequer by pulling together fines imposed on, and recovered from, offenders; a specified part of prison wages earned by prisoners during their confinement; a part of earnings by ex-prisoners after their release from custody; sale proceeds of the confiscated properties by the state as a part of punishment, donations from philanthropists and NGOs-sensitive to, and working for social and psychological rehabilitation of victims of crimes, and specified surcharge on insurance policy-holders and tax-payers. Tax exemptions for the donated amount may act as an incentive for donors to contribute to the fund. International donors may also be pursued to contribute to the fund. The

72. The United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Powers (UN Basic Principles), UN Resolution No. 40/34 of 29 Nov. 1985. It, in fact, outlines for the UN Member-States a well-articulated ‘victim-oriented’ restorative justice paradigm. The ‘restorative justice’ system contemplated under the UN Basic Rules, among other things, deals with victims’ right: to have an access to justice & fair treatment; to seek restitution by offenders or third parties responsible for their behavior; to get compensation from offender and/or state, and to seek necessary medical; psychological and social assistance from government or NGOs. Subsequently, in 1999 the International Centre for Prevention of Crime, has prepared the *Handbook on Justice for Victims* as a tool for implementing the victim service programs and for developing victim-sensitive policies, procedures and protocols for criminal justice agencies contemplated under the UN Basic Principles.

73. Principle 4 of the UN Basic Principles.

74. Principle 13 of the UN Basic Principles.

75. Principle 12 of the UN Basic Principles.



payment of compensation should be regulated through well-defined eligible criteria for optimum and judicious use of the fund. The proposed fund should be kept at the disposal of a sort of multi-faceted body or institution composed of judges, prison authorities, and the police. Ethiopia, while designing such a scheme and making it operative, may undertake a careful study of some of the 'successful' overseas legislative instruments and the state-sponsored compensatory schemes designed thereunder.⁷⁶ A comparative assessment of weaknesses and strengths of the statutes and schemes⁷⁷ operative in foreign jurisdictions will certainly help the Ethiopian lawmakers to make the scheme less defective and more effective. Ethiopian legislature, in fact, may learn a lot from experiences (and mistakes) of their overseas counterparts. They may also take inspiration from some of the Asian countries, like India,⁷⁸ Hong Kong, Japan, the Philippines, Singapore, and Thailand that have re-designed and overhauled their victim-compensatory schemes to make them more victim-oriented.

76. A look into the compensatory laws and schemes in vogue in New Zealand, England, Scotland, the Netherlands, Norway, France, Poland and American States, to mention a few, may be quite helpful in designing legislative paradigm of the state-sponsored compensatory scheme in Ethiopia. A look into here below mentioned comprehensive Reports on victim-compensation may also give further insight into the existing state-sponsored compensatory schemes. They are: Council of Europe, *European Convention on Compensation for the Victims of Crime of Violence* (1984); Home Office, *Report of the Working Party on Compensation for Victims of Crimes of Violence* (Cmnd. 1406, HMSO, London); Home Office, *Review of the Criminal Injuries Compensation Scheme: Report of an Independent Working Party* (HMSO, London, 1978); Pearson, *Report of the Royal Commission on Personal Injury and Criminal Liability*, (Cmnd. 8081, HMSO, London, 1978); Home Office, *Criminal Injuries Compensation: A Statutory Scheme* (HMSO, London, 1986); Shapland, *et. al.*, *Victims in the Criminal Justice System: Final Report to the Home House* (1981); Shapland, *Compensation to Victims of Violent Crime: Final Report to the Home House*, (1982); Home Office, *Victim's Charter: A Statement of the Rights of Victims* (HMSO, London, 1990); Law Reform Commission of Canada, *Restitution and Compensation : Working Paper No. 5*, (1974), and Justice, *Victims in Criminal Justice: Report of the JUSTICE Committee on the Role of Victims in Criminal Justice* (JUSTICE, London, 1998).

77. Particularly of the New Zealand, which is the first country in the world that through a statute introduced the state-sponsored compensatory scheme for victims of crime, and of the Great Britain, which subsequently followed New Zealand.

78. For further deliberations on different legislative paradigms for compensating victims of crime, see, Law Commission of India, *Forty- Second Report: Indian Penal Code*, (Government of India, New Delhi, 1971); Law Commission of India, *One Hundred and Fifty Fourth Report on the Code of Criminal Procedure, 1973*, *supra* note 70; Law Commission of India, *One Hundred and Fifty Sixth Report on the Indian Penal Code* (Government of India, New Delhi, 1997), and Government of India, *Committee on Reforms of Criminal Justice System* (Ministry of Home Affairs, New Delhi, 2003).



V Conclusion

The law relating to compensating a victim of crime in Ethiopia is fragmentary. It is not in tune with the prevailing idea of restorative justice for, and reparation of, victims of crime.

The Criminal Code, revised in 2004, contains a couple of articles that entitle a victim of crime to claim, through criminal proceedings, compensation for 'considerable damage' caused to him by the offender. However, the CrPC unduly restricts his entitlement. It makes obligatory for a crime victim to claim compensation through a written application but confers wide and unguided discretion on the court to dismiss it, on its own or on the motion of the prosecutor and/or defence, even without 'hearing' him. The court's ruling dismissing his application is final. It leaves him to suffer in silence without any further judicial solace. He encounters with another impediment if his application for compensation is 'allowed' by the court. He is required to pay the requisite court fees on the amount claimed (as it were a civil case) and to bear the cost for summoning witnesses in support of his compensatory claim. Limited financial resources at his disposal might compel him to claim compensation much lower than the desired one just to make it to commensurate with his ability to pay the prescribed court fees and to bear the cost for summoning witnesses. Further, he takes the risk of forgoing forever the court fees paid and the cost incurred if the court acquits or discharges the accused as the court is barred from adjudicating his claim for compensation. He does not have any legal standing to appeal against the judgment of acquittal or discharge. The CrPC authorizes the public prosecutor, in his discretion, to do so. The CrPC also provides for a very restricted avenue for a victim of crime to contest the adequacy of the compensation awarded to him by a criminal court. It virtually makes the court's determination of compensation final.

The CC also confers very wide discretionary powers on the criminal courts to award compensation to a crime victim when it appears to it that the criminal, owing to circumstances of the case or his situation, is unable to pay the compensation. In such a situation, it, in its discretion, is allowed to compensate the victim by ordering the payment of compensation from sale proceeds of the articles distrained or confiscated, fine, yield of the conversion into work in lieu of imprisonment, or sum guaranteed as surety.

The CrPC mandates a victim of crime, who has been compensated by a court, to assign his claim to the state, which, in its discretion, may enforce it, subject to appropriate provisions of the CrPC, against the offender. The institutional mechanism designed under the CrPC seems to be far from satisfactory.



However, in the absence of reported judicial pronouncements of the courts⁷⁹ awarding compensation in criminal proceedings and of appeals therefrom, it becomes difficult, rather impossible, for the present writer to assess efficacy and adequacy of the fragmentary legislative paradigm governing compensation to victims of crime and the judicial approach and attitude to the hitherto compensatory claims brought before them.

Nevertheless, it is evident from the foregoing analysis that the existing legislative framework, webbed through different proclamations, dealing with the payment of compensation to a victim of crime is neither satisfactory nor in tune with the global spirit and concern for victims of crime. It, as highlighted in the instant paper, is bridled with certain pertinent inbuilt weaknesses, inner contradictions, glaring gaps and ostensible ambivalences.

In fact, the CC seems to be more offender-oriented. It shows much more concern for offender and his rehabilitation. It, however, does not exhibit similar concern for victims of crime. Article 1 of the CC, outlining object and purpose of the code, *inter alia*, makes mention of reformation of criminals (with a view to preventing commission of future crimes). Article 87 of the code makes it more explicit that penalties and measures provided thereunder, as a principle, are required to apply in accordance with the spirit of the code and to achieve reformation of criminals. Articles 109 and 111 of the CC respectively give emphasis on educational spiritual welfare of prisoners and their reformation rehabilitation. Article 112 of the CC, in unequivocal terms, stresses that the prison administration has to execute custodial sentence in such a way that it leads to 'reformation' of the prisoner and enables him to 'resume a normal social life on his release'. Articles 190 and 201 perceive conditional suspension of penalty and conditional release as a means of 'reform and social reinstatement' of the criminals. Article 21(2) of the FDRE Constitution, the supreme law of the land, confers on a person held in custody and a convicted prisoner the fundamental right 'to treatment respecting his human dignity'. Article 87 of the CC, echoing the constitutional spirit, mandates that the penalties and measures provided under the Criminal Code be applied 'with respect

79. Unlike in most of the overseas jurisdictions, there is no systematic publication of judicial pronouncements, including that of the Federal Supreme Court, in Ethiopia. Hardly, any body, other than the judges themselves, litigants, and their lawyers, has access to judicial pronouncements of different courts. However, a recent Proclamation (No. 454/2005) has made it mandatory for the Federal Supreme Court to publish and distribute decisions of the Cassation Division of the Federal Supreme Court as they are made binding on the lower courts.



to human dignity'.⁸⁰

However, the CC, against this backdrop, offers a shabby treatment to victims of crime. It shows lesser, rather unequal, concern for the unfortunate victims of crime and overlooks their legitimate interests, hardships and dignity. However, legislative drive, zeal and spirit for reformation and rehabilitation of offenders, in the backdrop of tenor of the right to equality and equal protection of law as well as of rule of law that occupy central place in the FDRE Constitution, should not be allowed to eclipse the legitimate claim of unfortunate victims of crime of restorative justice and their reparation, at least, through pecuniary compensation.

It is, therefore, high time for the Ethiopian legislature to do away with this legislative parity by effecting appropriate amendments in the substantive and procedural legislative instruments to overcome the prevalent legislative ambivalence and gaps highlighted in the instant paper and to make the administration of criminal justice equally 'victim-oriented'. It, to start with, should: (i) mandate a court to award compensation to the victim of crime as an additional punishment whenever it convicts an offender, (ii) to do away with the inbuilt weaknesses, gaps and inconsistencies in the existing substantive and procedural laws to make the existing legislative paradigm governing compensation to victims of crime more effective and 'victim-oriented', and (iii) to ponder seriously upon the feasibility of a state-sponsored compensatory scheme.

It may be, with a view to stressing the urgent legislative move to do away with inadequacies in the law, recalled that during the imperial regime in Ethiopia, through the *Fetha Nagast*,⁸¹ the injuring party offered a certain monetary satisfaction or something of economic value to the injured party, and if the latter accepted it, then revenge was satisfied and the 'criminal procedure' was complete. The monetary satisfaction was due entirely to the victim or his family, and served as a requital of the injury.

How long, modern Ethiopians, the proud claimants of progressive civilization and modernity, are going to continue to deny victims of crime of their legitimate claim for restorative justice and reparation and on

80. The Federal Prisons Commission Establishment Proclamation (No. 365/2003), which establishes the Federal Prisons Commission, also mandates the Commission to provide reformatory and rehabilitative service to the prisoners to enable them to make attitudinal and behavioral changes and to become law-abiding, peaceful and productive citizens. [*vide* art. 5]. While the Treatment of Federal Prisoners Council of Ministers Regulation No. 138/2007 mandates that treatment of prisoners should be based on the basic principle of respect to their human dignity/ [*vide* art. 3]

81. 'The Book of Kings'. It, in essence, was replaced by the Penal Code of 1930 enacted during Emperor Haile Sellassie I regime.



what grounds? In this context, it becomes difficult to resist remembering Barnes and Teeters who have, in 1966, said:⁸²

Our barbarian ancestors were wiser and more just than we are today, for they adopted the theory of restitution to the injured, whereas we have abandoned this practice to the detriment of all concerned. Even where fines are imposed today, the state retains the proceeds and the victim gets no compensation.

How long and on what justifications, legal or moral, can the legislature afford to neglect victims of crime and their reparation, and to continue negation of equality, *Rule of Law*, and a 'just' system of criminal justice?

82. Harry Elmer Barnes and Negley K Teeters, *New Horizons in Criminology* 288 (1966).