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Prosecuting Crime of Genocide in Ethiopia: A Case Comment on *SPO vs. Tekleberhan Negash et al*

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Abstract: The crime of genocide was first enshrined under the 1948 Convention on the Prevention and Punishment of crime of Genocide. Before 1948, acts that constituted to genocide documented during WWII were never articulated as crimes of genocide in the International Military Tribunal and International Military Tribunal for the Far East. Instead, these conduct formed part of crimes against humanity and their prosecution was limited to that. However, after the adoption of the 1948 Genocide Convention, subsequent instruments such as the ICTR Statute, ICTY Statute and the Rome Statute in the 1990s specifically enshrined the crime of genocide independent and separate from crime against humanity. Ethiopia is not new to prosecuting and punishing international core crimes. In Ethiopia, the "Derg" era was characterized by the execution and disappearance of thousands of dissidents. This article critically analyses the sentencing judgment issued on 04 November 2002 by the Tigrian State Supreme Court in the case of *Tekleberhan Negash* and his co-accused who had been tried, among others, on charges of genocide crime. This case was only one of the numerous cases decided by Ethiopian Courts for genocide crime committed during the "Derg" regime. Thus, it is a doctrinal legal research by using Ethiopia's and International Criminal Law, Decided Case, and conceptual approaches. Accordingly, it has analyzed this nationally prosecuted international core crimes cases in light of international criminal law standards with special reference to the law of genocide.

Keywords: Genocide, Criminal Law, Ethiopian Penal Code, Special Prosecutor Office

1. Introduction

The prosecution of international crime is not solely a matter of international courts. States are under international treaty obligation to provide for effective domestic measures, including the adoption of criminal laws, to prevent and punish genocide [1]. The crime of genocide is considered as a part of international customary law and, moreover, a norm of "*jus cogens"*. As a result, the obligation to prevent and punish genocide exists independently of a state's treaty obligations.

Ethiopia, as a signatory to the GC recognized that at all periods of history genocide has inflicted great losses on humanity; and confirmed that genocide is a crime under international law, which it undertake to prevent and to punish. Thus, Ethiopia, by its delegate Mr. Akililu, ratified the Convention on 11 December 1948 and deposited with the Secretary-General of the UN its instrument of ratification on 1 July 1949. In order to give effect to its international obligation, Ethiopia, expressly criminalized genocide under its penal code [2]. This penal code at the time was progressive in its inclusion of the prevailing international criminal law governing genocide.

After the overthrown of the military regime headed by the former president Mengistu Hailemariam on May 1999 by the military forces of the Ethiopian People's Revolutionary Democratic Front (EPRDF), the EPRDF had decided to pursue criminal justice for the serious crimes committed during the seventeen-year-rule by the Military regime called "*Derg*." It then established Special Prosecutor Office *(*SPO) to commence the prosecution task [3].

The case between *SPO vs. Tekleberhan Negash et al*, as one of the national prosecution of international crimes conducted against "*Derg"* officials was decided by Tigrian State Supreme Court [4]. This case was only one of the numerous cases decided by Ethiopian Courts for genocide crime committed during the "*Derg"* regime. The aim of this Article is to analyze this case in light of international

criminal law standards with special reference to the law of genocide.

This article is presented in five sections. Following introductory; the second section discusses the genocide crime under International Criminal Law and Ethiopia's Criminal Law. The third section present background of the cases at hand. The fourth sections analysis the cases at hand. Finally, concluding remarks are forwarded.

2. Genocide Under International Criminal Law and Ethiopia's Criminal Law

2.1. Evolution and Definition of the Concept of Genocide

Genocide term was coined in legal terminology in 1944, by Raphael Lemkin in his book "Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposal for Redress" that was written about Nazi crimes in Europe during World War II to mean the intentional destruction of national groups on the basis of their collective identity [5]. He derived the word from the Greek word *"genos*" which means race and *"caedere"* which means *"to kill"* in Latin [6]. Lemkin's purpose was to use this term to bring about a framework of international law with which to prevent and punish what the British Prime Minister Winston Churchill had described as *"a crime without a name"* [7]. In this, Lemkin was extraordinarily successful: by 1948 the new UN had been persuaded to draft the UN GC.

The newly established crime of genocide was then repeatedly the subject of discussions within the UN; special mention is due to the reports submitted by Ruhashyankiko [8] and Whitaker and to the work undertaken by the ILC resulting in article 17 of the 1996 Draft Code of crimes against Peace and Security of Mankind [9]. Article II of the GC was incorporated tel quell into the statutes of the ICTY and the ICTR. On 2 September 1998, the ICTR, in *Prosecutor v. Akayesu*, rendered the first international conviction ever for genocide and until now the ICTR remains the international criminal jurisdiction with the most elaborate case law on the crime of genocide. Again without any change, article II of the GC was transposed into article 6 of the ICC Statute. The elements of crime of the ICC contain a number of important indications as to the more specific content of the crime.

2.2. Crime of Genocide Under International Criminal Law

Genocide, as GA Resolution 96 (1) declared, "Is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings [10]." It is a crime simultaneously directed against individual victims, the group to which they belong, and human diversity [11].

The solid definition of genocide is contained in Article II of the GC, which is adopted verbatim in the statutes of the ad hoc Tribunals and of the ICC. It is any of the following acts committed with the intent to destroy; in whole or in part, a national, ethnical, racial or religious group, as such:

a) Killing members of the group;
b) Causing serious bodily or mental harm to members of the groups;
c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d) Imposing measures intended to prevent births within the group;
e) Forcibly transferring children of the group to another group (GC, Article 2).

However, clarifying the legal definition of the crime of genocide, Article II and III of the GC were reproduced in a verbatim form in the statutes of ICC and tribunals, such as the ad hoc tribunals for the former ICTY [12] and ICTR [13] or the ICC [14].

Broadly speaking, the crime of genocide is comprised of material elements (*actu sreus*) and mental elements (*mens rea*) which can be divided into [15]:

i. The common physical element: victims must belong to a particular national, ethnical, racial or religious groups;
ii. An additional contextual element with regard to the ICC: the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect the group's destruction;
iii. The common mental element: Specific intent of the crime of genocide. The perpetrator intended to destroy, in whole or in part, the national, ethnical, racial or religious group, as such;
iv. The physical (*actusreus*) and mental elements (*men srea*) required for each specific or so-called underlying offence.
v. Even though the definition of genocide, as set down in the international criminal law, has subsequently been reproduced in essentially the same form in Statutes of the ICC and tribunals, its interpretation is still highly contested and has been the subject of much debate [15].

2.3. Crime of Genocide Under the Ethiopia's Criminal Law

Long before the enactment of the EPC, Ethiopia has been the member of the GC in 1948. Thus, Ethiopiaratified the Convention on 11 December 1948 and deposited with the Secretary-General of the UN its instrument of ratification on 1 July 1949. This means that genocide was criminalized before the enactment of EPC.

Ethiopia's Criminal Law defines genocide as intentional actions meant:

"to destroy, in whole or in part, a national, ethnic, racial, religious or political group, whether in time of war or peace, in the form of (1) killings, bodily harm or serious injury, (2) measures to prevent the propagation or continued survival of a group, or (3) compulsory movement or dispersion of people, or placing them in living conditions meant to result in

their death or disappearance. Anyone who organize, order, or engage in of such genocidal acts is punishable with imprisonment from five years to life, or in exceptional cases, with death [2]."

The title of the above mentioned provision appears to treat genocide and crimes against humanity as a single offence [16]. But, when we read the content of the article, it is more or less similar with definition of genocide under international law [17]. The merge of the two crimes means nothing in practice, since the elements enunciated in the provision speaks about genocide.

According to this provision, for a crime of genocide to have been committed, it is necessary to prove that one of the acts listed under provision of the code be committed, that the particular act be committed against a specifically targeted group, it being a national, ethnical, racial, religious or political group and that the act was committed with the specific intent to destroy "*in whole or in part* [2]."

However, the 1957 Penal Code was later repealed by the 2004 Federal Democratic Republic of Ethiopia (FDRE) Criminal Code. According to the FDRE Criminal Code, genocide means:

"to destroy, in whole or in part, a nation, nationality, ethnical, racial, national, colour, religious or political group organizes, orders or engages in time of war or in time of peace: (a) killing, body harm or serious injury to the physical or mental health of members of the group, in any way whatsoever or causing them to disappear; or (b) measures to prevent the propagation or continued survival of its members or their progeny; or (c) the compulsory movement or dispersion of peoples or children or their placing under living conditions calculated to result in their death or disappearance [18]."

With the exception of adding *"colour"* to the list of protected group, "*causing members of the group to disappear"* to the list of underlying offences and shortening the default punishment to rigorous imprisonment of five to twenty five years and adding life imprisonment to the punishment of more serious cases, it largely retained the elements listed above. Unlike its 1957 counterpart, it does not mentioned crimes against humanity.

Not all groups of people are protected by the FDRE Criminal Code. The FDRE Criminal Code lists only national, ethnic, racial, colour, religious and political groups, and the list is an exhaustive list. The inclusion of political groups and *"colour*" makes the FDRE Criminal Code definition of genocide and scope of possible victims wider than the definition of genocide stated in the GC. However, there is no definition of the terms used to designate the type of group protected. Further, it is also difficult to attribute a distinct meaning to each, since they overlap considerably. Therefore, the best option to find a solution for the meaning of the words is to resort to international courts jurisprudence.

The International Criminal Tribunal for Rwanda (ICTR) has attempted to give each one a meaning. It has described, a national group as a:

"collection of people who are perceived to share a legalbond based on common citizenship, coupled with reciprocity of rights and duties'; aracial group 'as a group based on the hereditary physicaltraits often identified with a geographical region, irrespective of linguistic, cultural, nationalor religious factors'; an ethnic group as "a group whose members share acommon language or culture'; and 'a religious group includes denomination or mode ofworship or a group sharing common beliefs [19]".

There is no accepted definition of what political group constitute. Since it is believed that political groups, as *"mobile"* groups that one joins through individual voluntary commitment, were beyond the scope of protection of the GC, there were no attempts to define what it means [19].

When we see the acts that are necessary to be committed for a conviction of genocide crime, only those material elements mentioned in sub article (a), (b) and (c) may form of genocide crime. A look at the sub articles, all of the underlying crimes are defined by reference to victims in the plural. There is no indication on the fact that one victim may be sufficient to constitute genocide if the relevant act is committed with the necessary intent. Though the other acts listed in sub articles are the same with the GC, sub Article (c) has a unique feature. Under sub (c), the general public is designated as a victim which is not the case under GC. The convention only put children as a victim.

With regard to the mental element necessary to prove genocide we need to see article 281 cumulatively with article 58 of the the penal code [2]. According to these two provisions, the mental elements of genocide comprise both the requisite intention to commit theunderlying prohibited act (such as killing) and the intent special to genocide. A mere intention to kill is not sufficient to convict under genocide, rather the perpetrators special intention to destroy in whole or in part must be proved. The accused act of killing a victim must accompany with the intention to destroy the group in which the victim is a member. It means that the victim is chosen not because of his individual identity, but rather on account of his membership of a national, ethnical, racial, religious or political group. Since intention is intrinsic, it may be difficult to prove using direct evidence. In such case, I think it is better to deduce from circumstantial evidence including the actions and words of the perpetrators.

3. Background of the Case

In the case, the *SPO vs. Tekleberhan Negash et. al*, the SPO filed charges against 20 defendants before Tigrian State Supreme Court on 12 February 1999. The charges filed against defendants were based on genocide crime in violation of article 281 of the 1957 EPC or alternatively on aggravated homicide in violation of article 522 and willful bodily injury in violation of article 538 of the EPC. The genocide charge had three components which include murder; bodily harm and placement under living conditions calculated to result in death or disappearance. Additionally, one of them was charged for the crime of abuse of power in violation of article 414 of the EPC.

The trial started on 15 June 1999. The court, before

hearing the cases, ordered free legal assistance to the defendants by public defender office and ordered the publication of appearance order to the defendants by appropriate newspaper. On 27 October 1999, the defendants brought their preliminary objection. On the same date the court, after ascertaining the publication of summons by "*Adiss Zemen"* newspaper to non-appeared defendants, ordered trial to continue in "*absentia*."

The defendants, in their 9 pages application, raised various objections. Among the objections raised, the basic one's were: the inclusion of political groups as protected groups against genocide under article 281 of the 1957 of the EPC is incompatible with GC; the victims' political groups allegedly targeted were not clearly identified; it is illegal to charges the accused both for genocide and alternatively for aggravated homicide due to the significant differences between the nature of both crimes, the number of victims and the consequences of conviction. They also raised the charges based article 414 of the EPC is barred by statutory limitation. Surprisingly, before raising the objections, the defendants requested the government to give them amnesty in their objections application.

These objections were rejected by the court for inconsistency to the rules of procedure and lack of legal bases. Specially, the court holds that the objections raised by the defendants were not in line with article 130 of the Ethiopian Criminal Procedure Code [20]. The court didn't want to address the merit of most objections, except the one related to period of limitation. The rejection of the objections paves the way for the continuation of the cases to the merits phase and barred the issues not to be raised in the latter proceedings.

The court after hearing plea of defendants started hearing witnesses of SPO. The court heard 38 witnesses that took long time. Documentary evidences also produced. Then, the court analyzed prosecutor evidences and orders defendants to bring their defense evidences in line with the allegations found in the charges.

However, on 13 March 2000, without hearing defense evidence, the court, in its first judgment, pronounce guilty verdict on the no. 1st, 2nd, 3rd, 4th, 9th, 20th defendants whom cases was heard in "*absentia"* and on the no. 10th and 15th defendants who were not willing to defend their case. The court freed defendant number 12 for lack of evidences.

The other defendants, who were present and willing to defend the charge, brought their witness and documentary evidences to the court. Most of the defense evidence was presented to prove facts like their membership to the targeted political group, their non-membership to the *"derg"* regime and lack of authority in government office and defense of *"alibi"*.

After the completion of hearing of defenses evidence, the court pronounced three judgments for different defendants in different time. In the second judgment, pronounced on 13 June 2002, the court found no. 6th, 11th, 13th, 14th defendants guilty of the charges. But, the 2nd judge dissented on guilty verdict passed against no. 13th and 14th defendants. In the third judgment, given on 04 October 2002, the court found no. 19th defendant guilty of the charge pronounced against him. In the fourth judgment, given on 04 November 2002; the court found no. 7th, 8th and 16th defendants guilty of the charges. In each of the four judgments, the court, after hearing the aggravatingand extenuating circumstances of both parties, passed sentence on all of the defendants.

4. Analysis of the Case

4.1. Elements of the Crime

Though, elements of genocide crime involve discussing each genocidal acts, the context element, the protected groups and the special genocidal intent in detail, author has chosen to analyze the group protected under the cases and the genocidal intent that must be ascertained in the cases. I have arrived on this decision based on the gravity of the issues and the gap involved in the cases.

4.1.1. The Protected Group

The charges brought against the defendants were based on genocide crime committed against political group. As pointed out above, unlike the Penal Code of Ethiopia, political group is not a protected group under international law. Thus, the four protected groups in the GC have something in common, stability and permanence, as rightly spelled out by ICTR under *Akayesu case* [19]. But, a political group has no such stability and permanence [19].

Defendants strongly object the charges based on the inclusion of political group as a victim of genocide crime. They specifically argue that there is no genocide against a political group, article 281 of the EPC is contrary to the GC, the charge doesn't specify which political group is targeted, and the group listed in the charge is not registered. SPO in its part replayed that the EPC is not contrary to the GC, since it is left to states whether to include or not of the political group and it is not prohibited to include other group in domestic law. However, the court ruled out the objection based on incompatibility to article 130 of the ECPC.

Here in, the court has made a mistake in its ruling. It should have analyzed the legality of defendant's objection. Articles 111, 112 and 118 of the ECPC oblige the prosecutor to bring its charges in strict conformity with the legal elements of the provision thought to be violated by the defendants. Article 130 doesn't bar the court to analyze the objection. Article 130 (1), specifically, provide, form of the charges to be one ground of objection. Thus, by analyzing the form of the charges brought against the defendants, the court should have analyzed whether political group should be included in the protected group or in other words the court should analyzed which law-the GC or the EPC - is the appropriate law. In other similar cases, the then central high court ruled that Ethiopia could go beyond the minimum standards laid down in the GC [21].

The other thing deserve analysis is whether "*woyaneor hiwhat*" was the protected political group under the EPC [22]. The accused argued that "*woyane* or *hiwhat"* was not

registered political group. As discussed earlier, political group as a target of genocidal act, has no legal recognition and meaning under international law. But, in my view, since the law was enacted to criminalize such a heinous act against a group, the definition or meaning of the political group should be interpreted broadly so as to include any organized group for pursuing political goal. Registration and recognition should not be used to assess whether the group is protected or not. Such processes are formality requirements and are done by the government offices which may be controlled by the perpetrators. Thus, requiring the group to be registered political group may go against the purpose of the genocide law and may also goes contrary to Ethiopia's international obligation to prosecute genocide.

4.1.2. Genocidal Intent

The special intent required for genocide necessitates each individual perpetrator to have the intention to destroy the group or part of it when committing any of the prohibited acts [19, 23, 24]. Special intent of a crime is the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged. Where a perpetrator is liable for a genocidal act, the requirement of genocidal intent should be satisfied.

In the case at hand, the court simply ascertains liability of the defendants for genocidal acts. It didn't analyze whether genocidal intent of the defendants were satisfied or not. The court simply analyzed evidence of SPO to ascertain the factual issues related to genocidal acts- killing and bodily injury. In its four judgments, I found no argument or justifications which show the fulfillment of genocidal intent of the defendants. The mental element of the defendants, whether by knowledge-based approach or purpose-based approach, must be ascertained [2]. It is the special intent *"to destroy in whole or in part [a protected group]"* that distinguishes genocide from other crimes [23, 25]. Hence, in my analysis of established facts of the case, I can safely conclude that there was no genocidal intent in the cases. The acts were isolated ordinary criminal conducts. The documentary evidences produced to prove genocidal intent element was irrelevant, it doesn't show the defendants have a special intent and knowledge of the general plan. Even though the documentary evidence shows the overall genocidal plan, it only manifests the collective intent of high level "*Derg"* officials. It doesn't establish the special intent of defendants in the case at hand. Since intent involves knowledge of the plan by the individual perpetrator, there is no evidence that show the defendants were aware of the general plan.

Furthermore, in all charges there was no indication that shows there was a manifest campaign targeting "*woyane* or *hiwhat"* group. And also, if it was believed that there was a campaign, there was no prove which shows the defendants acted in furtherance of a campaigntargeting members of a protected group.

4.2. Modes of Liability

The principle of personal culpability requires the demonstration of a meaningful link between the personal conduct of the accused and the criminal offence with which the accused was charged. The general principles of liability apply across the various different offences and provide for the doctrines by which a person may commit, participate in, or otherwise be found responsible for those crimes [11].

In the case at hand, the defendants who were found guilty of genocidal acts were found liable as principal perpetrators, co-perpetrators and Joint Criminal Liability. Some of them were found liable for committing the act directly by themselves and in collaboration with others. Others like defendant no. 17th and 19th did not commit the act directly by themselves, they were held liable for fully associating themselves with the commission of the act and the intended result. This second type of liability might resemble the international law type of liability called Joint Criminal Enterprise [26]. Because, in the case, under charge no. 6, 7, 9 and 11, the defendants were charged for not directly committing the killing, rather they were charged for killings committed by others. Thus, the existence of plurality of persons, existence of a common criminal plan, design or purpose which involves the killing of members of the "*hiwhat* or *woyane"* members, and the participation of the defendants in the common criminal plan, design or purpose involving the act of killing shows the mode of liability, by which some of the defendants were held liable, was Joint Criminal Enterprise.

On the other hand, except for mode of liabilities discussed above, there was no Superior Responsibility, Planning, Instigating and Ordering, Complicity, Aiding and Abetting under the case. I think this was so because all of the defendants were low level officials and ordinary members of the "*Derg"* regime.

4.3. Gaps in the Proceeding and Judgment

4.3.1. The Absentia Trial

In the case at hand, when the trial begins accused no. 1, 2, 4, 9 and 10 were not appeared at the trial. Police confirm that the 1st and 20th accused were abroad, but the other accused persons where about was not known. In spite of the fact, the court publicized the summons by News Paper. Then, the court order the case to proceeded in absentia. Finally, the court pronounces its judgment without their appearance. According to articles 160 and 161 of the ECPC, a trial "*in absentia"* is allowed if the accused fails to show up for his trial after being summoned and notified to do so, including publication of summons in a widely-circulated paper.

In my assessment of the case, the court has failed to respect the defendant's right to be tried in their presence [27]. The court did not prove the fact that the defendants were summoned and notified about the proceeding. Further the publication of summon by a news paper should have been used as a last chance. The court can order the notice to be stamped in the registered address or business area of the defendants. Since newspapers were not accessible to regions and local peoples, the court should have take due diligence to summon the defendants. The court have an affirmative obligation to see

that due notification has been made to inform the defendants of the date and place of trial and to request their attendance. Thus. it is possible to submit that the court has failed to protect defendant's right to be tried in their presence.

4.3.2. The Delay

Though it was not exaggerated like other genocide trials of "*Derg"* officials, the case at hand has taken above 3 years [21]. The most outstanding reasons for this delay were lengthy appointments by the court, SPO failure to bring its witness in short time, lack of sufficient legal assistant to the defendants, lack of facilities and support to the defendants for bringing their witness. Since most of the reasons for delay ware attributable to problems of the court and since trial without undue delay is a right recognized under Human Right Law, it is possible to say that the court has failed to protect human rights of the defendants [28].

4.3.3. The Defense Council Argument

Analysis of the case reveal that the defense council has failed to argue focusing on legal issues and failed to present evidence that will show non existence legal elements of genocide crime. Defendants line of argument that focused on their membership to the targeted political group, their non membership to the "*Derg"* regime and lack of authority in government office and defense of alibi was not successful. There defense could have been more successful, had they raised non existence of genocidal intent.

4.3.4. The Ruling and Judgment

When the court ruled on the objection of defendants, it has failed to evaluate legal arguments of the defendants. Under other case, the Federal High court addressed the issues raised by defendants [21]. Specially, the insertion of political group under the protected group scheme and the disparity between Penal Code and the Genocide Convention were also issues that deserve discussion by the court.

The court has employed completely a different approach from the procedure code, i.e. it pronounces four judgments in a single case. The court opted to render decision step by step. But, the procedure code obliges the court to pronounce judgment after it complete the whole proceeding [20]. Splitting the judgment may also be against the purpose of joining the charge and the defendants. Besides this, all judgments focused on whether the Prosecutor had managed to prove the commission of the crimes beyond reasonable doubt. The court failed to analyze legal issues, it only focused on analyzing factual issues and witness testimony.

5. Conclusion

In nutshell, the case between *SPO vs. Tekleberhan Negash et al* represents one of national prosecutions conducted by Ethiopia against those who committed heinous acts on human beings. But, the legal status of the acts committed by the defendants remains still controversial. It is also possible to submit that the Tigrian Supreme Court misunderstood the special nature of the crime and the proceeding. It gave no attention to the international law and jurisprudence. Thus, it failed to address very important and historic arguments raised by both parties. With regard to the law, both under the EPC of 1957 and the FDRE Criminal Code of 1996, there is a clear divergence with the international criminal law on the definition and scope of genocide crime. Under both Codes, definition of genocide and scope of possible victims are wider than the definition of genocide stated under GC. The fact that genocide law has enacted to criminalize such a heinous act against a group and also international criminal conventions provides only minimum standards, it was persuasive to include the political group as a target of genocidal act under Ethiopia's Criminal Law. Therefore, such holistic definition of genocide crime should not be point of confusion as it gives a wider range of human rights protection than international criminal law.

Conflict of Interest

The author confirms that the presented data do not contain a conflict of interest.

References

[1] Convention on the Prevention and Punishment of the Crime of Genocide Adopted by the General Assembly of the United Nations on 9 December 1948, Article 1 and 4.

[2] The 1957 Ethiopian Penal Code, Article 281.

[3] Proclamation Establishing the Office of the Special Prosecutor (herein after cited as the SPO), Proclamation 22/1992 (8 August 1992).

[4] *Special Prosecutor Office vs. Tekeleberhan Negash et al*, file no 1/91, Tigrian Region Supreme Court.

[5] Schabas. *An Introduction to the International Criminal Court*, 3rd edition, New York: NY, Cambridge University Press, 2007.

[6] Schabas, William. *Genocide in International Law: the Crime of Crimes*, New York: NY, Cambridge University Press, 2000.

[7] Leslie Alan Horvitz & Christopher Catherwood. *Encyclopedia of War Crimes and Genocide, "Genocide",* New York: NY: Facts on file Inc, 2006.

[8] Study on the question of the prevention and punishment of the crime of genocide, U.N.Doc. E/CN. 4/Sub. 2/416, 4 July 1973.

[9] Revised and updated report on the question of the prevention and punishment of the crime of genocide, U.N.Doc. E/CN. 4/Sub. 2/1985/6, 2 July 1985.

[10] Robert C *et al*.. "*An Introduction to International Criminal Law and Procedure"*, 1st Ed., Cambridge University Press, 2007a.

[11] Robert Cryer*et al*. *An Introduction to International Criminal Law and Procedure,* Cambridge University Press, 2nd edition, 2010b.

[12] Updated Statute of the ICTY*,* S/Res/827 (1993) of 25 May 1993, Article 4.

[13] Statute of the ICTR, S/Res/955 (1994) of 8 November 1994, Article 2.

[14] Rome Statute of the ICC, 1998, Article 6.

[15] Dr. Misa Zgonec-R,."*International Criminal Law Manual,* 2010.

[16] Frew Kebede Tiba. The Mengistu Genocide Trial in Ethiopia, 5 *Journal of International Criminal Justice,* 2007.

[17] Ayalew, A. G. Approaching Ethnic Cleansing Within the Criminal Law of Ethiopia. Beijing Law Review, 10, 869-881. doi: 10.4236/blr.2019.104047, 2019.

[18] The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation no. 414/2004, Article 269: (herein after cited as the FDRE Criminal Code).

[19] *Akayesu* ICTR T. Ch. I 2.9.1998 para. 511-515.

[20] The Criminal Procedure Code of Ethiopia, Proclamation No. 185/1961, Article 130: (herein after cited as the ECPC).

[21] *Special Prosecutor v. Col. Mengistu Hailemariam et al.,* Ruling on Preliminary Objections, 10 October 1996, File No. 1/87, Ethiopian Federal High Court.

[22] The Court repeatedly said the victims were killed by the accused because of their membership to "*hiwhat* or *woyane*."

[23] *Kayis hema* ICTR T. Ch. II 21.5.1999 Para. 88.

[24] *Musema* ICTR T. Ch. I 27.1.2000 Para. 164.

[25] *Kambanda* ICTR T. Ch. I 4.9.1998 para. 16.

[26] *Prosecutor v Tadic* (Appeals Chamber Judgment) ICTY-94-1-A (15 July 1999), Para. 220-227.

[27] As per Article 14 (3) (d) of the ICCPR, a defendant have the right to be tried in his presence.

[28] ICCPR, Article 14 (3) (c); African Charter on Human and Peoples Right, Article 7 (d) and FDRE Constitution, Article 20 (1).