

Exploring Victim-Centered Compensation Right for Homicide Survivors in the Ethiopian Criminal Justice System: Understanding Legal and Economic Impacts.

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ABSTRACT

This article gives light to Ethiopian law makers to give attentions and promulgate the clear and independent law to treat the homicide survivors in proportion to the economic and moral loss. And aimed to initiate the government to establish the victim's compensation scheme. The objectives of the study are: to access challenges of homicide survivors to get compensation, to examine the factors that influencing the compensation strategy in Ethiopia, to study compensation payers to homicide victims in the Ethiopian Criminal Justice system. To achieve the planned objectives the study employed socio legal and qualitative approach. The study founded that, the lack of law provision, and independent legal document concerning compensation to crime victims, new for the compensation scheme to the country, and economic status of the society and awareness of the victims to get compensation for injury and economic loss affects the right to get compensations. The study recommends, Ethiopian experience which gives the attention on the offender only to be criminally responsible and that replaces the civil responsibility should be amended and renewed in the sense of contemporary legal development. And the government should plan to enact an independent law to modernize the entertainment of the crime victims, to stable and balance the lost economy, maintain the future income and reimburse the cost of the victims caused by the crime.

Keywords: Compensations; Homicide Survivors; economy; Victims; Ethiopia

1. Introduction

The status of victims as well as the treatment, protection and rights that victims enjoy in criminal justice systems vary significantly from one legal tradition to another and to some extent from one jurisdiction to another within same family of legal systems.¹ The crime victims were forgotten in the criminal justice for long times. It was reminded and came to be remembered after 1970s. There were imbalances in criminal justice system between the offender and the crime victims. The rights of offender were bold and incorporated in the many legal system in many criminal justice systems. They have generally been invisible and voiceless in pre-trial, trial and sentencing proceedings until very recently, i.e., the mid 1980s and 1990s.² The victim of crime serves as the principal witness for the prosecution, and having served this function, has no further role to play. The victim is essentially a passive participant; she or he appears when called to testify and responds to examination in chief and

¹ Pizzi W. & Perron, W. 1996. Crime Victims in German Courtrooms: A Comparative Perspective on American Problems. Stanford Journal of International Law, Vol. 32. Pp.41 et seq; Joutsen, M. 1988. Listening to the Victim: The Victims Role in European Criminal Justice Systems. Wayne Law Review. Vol.34, p.97.

² Davis, R., Lurigio, A. & Herman, S. 2007. Victims of Crime. Sage Publications, Inc, Los Angeles. p.277.

cross-examination, if necessary.³ Victims serve only as sources of information and as witnesses in the many legal jurisdictions. In some extent in continental inquisitorial jurisdictions where victims have retained, to some degree, their historical position. In France, Germany, Austria, the Netherlands, Norway, Spain, Finland and many other European and Latin American countries, victims have, save some variations amongst jurisdictions, a well-known and legally recognized status as a civil party.⁴ In United States of America, there were many practices were undergone in the different states. For example, in 1965, the first crime victim compensation program was established in California State, and in 1972 the second program started in Maryland State. After 2010s sophisticated laws were legislated to treat any kinds of crime victims, whether to protect, to compensate, rehabilitate, retribute and exercise the rights in the courtroom.⁵ Significant progresses in favor of victims are also taking place at the international and EU levels.⁶ The Council of Europe has adopted a declaration in 1985 that sets standards for the improvement of the position and treatment of victims. This declaration consists many guidelines to set the rights of the crime victims in the different scenario. Finally, the demand to the rights of victim in the criminal justice system moved to tackle with the negative consequences of victim's exclusion from criminal process, for the first time in history, the adoption of an international declaration pertaining to victims of crime and abuse of power on 29 November 1985- referred to as the Magna Carta of crime victims⁷. This declaration has swiftly recovered the prejudiced and injured history of the crime victims and they are started to be considered as the active party in the criminal justice system. In this respect, apart from initiating criminal proceedings through reporting or complaining and serving as witnesses, victims follow up the progress of investigations and all the subsequent proceedings. At the pre-trial stage, they do participate in the enquiry. They can consult investigation files in the hands of police officer and can request that investigative judges, officers carry out particular investigations.⁸ In some Petty offences referred to as complainant offences, victims may legally request that ongoing proceedings be dropped out; hence, that they have ultimate authority to it.

Upon completion of investigation, if there is sufficient evidence, criminal charge shall be prepared by the public prosecution.

The idea of crime victims' compensation is as old as civilization. The Holy bible, in several instances depicts that if one stole the property belonging to another person and caught, that person was to pay double to the victim.⁹ Similarly, there was the idea of restoring the victim his property by the offender. Besides, the principle of compensation to the victims of crime or wrong has been a part of most legal systems. In initial year of human civilization when the human started living together especially after Stone Age, because of absence of rule of law and political institution, right to punish or rather might to punish (in from of eye for eye or money) was with the individual and hence in crude sense the concept of compensation existed at that time even but line of caution that need to be bear in mind is

³ Ibid.

⁴ Jouet, M. 2007. Reconciling the Conflicting Rights of Victims and Defendants at the International Criminal Court. St. Louis University Public Law Review. Vol. 26, Pp.253-257.

⁵ <https://www.mdcimevictims.org/legislative-efforts/history-victims-rights/>

⁶ International Key Issues in Crime Prevention and Criminal Justice, 2006. Papers in celebration of 25 years of HEUNI, Helsinki, p.148; Website (http://www.heuni.fi_Satellite_blobtable.) Accessed on March 02, 2017.

⁷ Aldana-Pindell, R. 2002. In Vindication of Justiciable Victims' Rights to Truth and Justice for State-Sponsored Crimes, Vanderbilt Journal of Transnational Law, Vol.35. p.1425.

⁸ Hodgson, J. 2002. Suspects, Defendants and Victims in the French Criminal Process: The Context of Recent Reform. International & Comparative Law Quarterly. Vol.51. p. 792.

⁹ The Holy Bible, King James Version, Exodus 22.

the fact that in primitive society criminal victim relationship was based on brutal mentality of attack being the best defense.¹⁰ In the 12th and 13th centuries a distinction was made between various kinds of wrongs, i.e., civil wrongs and public wrongs.¹¹ In the case of civil wrongs the injury was specific to the individual; hence the perpetrator was necessitated to pay compensation. However, given that in public wrongs the offence affected the public at large, the State took responsibility upon itself to punish the accused.¹² The idea of providing compensation to victims of crime through civil redress either through restitution from offenders to victims or state compensation programs has a long history of support. In this regard, in ancient Babylonia, the Hammurabi code specifies that: "If a man has committed robbery and is caught, that man shall be put to death. If the robber is not caught, the man who has been robbed shall formally declare what he has lost . . . and the city . . . shall replace whatever he has lost for him. If it is the life of the owner that is lost, the city or the mayor shall pay one maneh of silver to his kinsfolk."¹³ The Summerian Code of Ur-Namma (c. 2050 B.C.E) and the Code of Eshnunna (c. 1700 B.C.E) provided for compensation even in the case of violent offenses.¹⁴ The Roman Laws of the Twelve Tables (449 B.C.E) required thieves to pay double restitution; if the property was found in their houses they would pay triple damages; for resisting the search of their houses, they paid quadruple restitution.¹⁵ Similarly, the Lex Salica (c. 496 C.E), the earliest existing collection of Germanic Tribal Laws had included compensation for crimes ranging from theft to homicide. Compensation to victims of crime is also evident in the early African settings i.e. during the pre-colonial era. For instance, in the Kilimanjaro area, Dundas favoured reconciliation which was accompanied by compensation to the wronged parties. In cases of homicide, where compensation was to be paid, the blood money was usually contributed by the whole clan and was not appropriated by an individual, but was shared by all members of the wronged clan.¹⁶

the era in which the social control in terms of mechanical solidarity creped in the society and the offence against an individual lost its individualistic character and the offence was considered to be against the tribe or clan to which individual belongs and from this era, due to advent of concept of collective responsibility clan or tribe started replacing the victim's right.¹⁷

In the Ethiopian, the Criminal code¹⁸ only recognize the possibility of claiming compensation from the offender by bringing civil action as part of criminal proceeding. Besides, the 1960 civil code of Ethiopia allows bringing a separate civil action to claim compensation under tort law for criminal liability¹⁹. It is said that in the existing provisions in the different substantive and procedural laws of the country, the crime victim has no significant role in criminal process as well as no legislative right to claim compensation for identified violent crimes from the state. On other hand, bringing a civil suit

¹⁰ Abhishek, A. Compensation to the Victim of Crime: Assessing Legislative Frame Work and Role of Indian Courts', Website (<http://www.legalserviceindia.com>.) Accessed on March 10, 2017.

¹¹ K.D. Gaur, 2004. Justice to Victims of Crime: A Human Rights Approach, in Criminal Justice: A Human Rights Perspective of the Criminal Justice Process in India. p. 350-351

¹² Jhalak, K. and Shruti, O. An Analysis of the Vanishing Point of Indian Victim Compensation Law. Journal of Indian Law and Society Vol. 2: Monsoon p.315

¹³ Ibid. P. 318

¹⁴ Daniel W. and Karen, H. 2010. Strong, Restoring Justice, An Introduction to Restorative Justice. 4th ed.

¹⁵ Ibid.

¹⁶ Leonard P. 2011. Traditional, Colonial and Present-day Administration of Criminal Justice in Tibamanya Mwene Mushanga (ed). Criminology in Africa.

¹⁷ Abshihek, supra note 10, P. 10.

¹⁸ The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation No. 414/2004, *Federal Negarit Gazeta*, Year 10, No. 59.

¹⁹ Criminal Procedure Code of Ethiopia, 1961, Arts. 2027,2028.

separately on the basis of extra-contractual law for a harm which occurred as a result of an offence is expensive, time consuming and does not automatically guarantee that he/she will be compensated. In the case of compensation of crime victims in the murder survivors' case are different from directly injured and property lost victims. When the crime resulted the death of the head of household, the young who maintains his family, the employee supports his family, parents and anybody under his supervision and maintenance and if she or he is the source of their income and life matters, the compensation system is different and needs strong and detailed legal system, the awareness, economic and educational level of the society. The family of the killed should have strong belief that can convince them to get compensation for their cost of mourning and the funeral and the current and the future maintenance of the survivors regardless of the cultural belief and religions.

2. Methodology of the study

This study employed the exploratory research approach on social-legal framework. The basic reason for this is, the participants or victim's and judges, public prosecutors were interviewed for more elaborations and come up with concert findings. The research had planned to access the access to justice, the awareness of the crime victims, economic level, access to compensation scheme and the payers of the compensation to crime victims. Three cities were selected to interview crime victims (33 in numbers), 45 Judges, and 13 Public prosecutors were interviewed as a key informant to the authors.

3. Discussions And Results

3.1. Who is the crime victim?

To know who will be compensated, we must know the crime victims first. As many legal documents, crime victims are categorized as the primary victims (those who suffered directly as a result of a crime) or secondary victims also (those who are witnesses to a crime, family members, friends, neighbors', even whole communities, who may also suffer trauma). It is an issue whether victims, be it primary or secondary, be delimited to physical persons or extended to juristic persons, including administrative bodies of state.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power²⁰ has come up with an exhaustive definition of crime victim at international level. Accordingly, article 1 of the Declaration defines victim of crime as "Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal law."

According to Article 2 "A person may still be considered a victim, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. Besides, the term "victim" also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization." Thus, the definition of crime victim under the declaration is broader in scope as it encompasses primary and secondary victims.

Therefore, crime victim can be broadly defined as a person who of crime and may include the immediate family members of a minor, an incompetent person or a homicide victim and someone previously and properly designated by a homicide victims to make decisions for such victims.

²⁰ Arts. 1 & 2 of UN doc. A/Res/40/34

3.2. The rights of Crime victims

Crime victims have rights enshrined in the international, regional and national human rights instruments as a human being. They have the right to get information about their issue, to express their pain at any place and stages of criminal justice process. Victims should be asked about their health status of any body parts resulted by crime. As a human being they have to get the permission to handle their case in alternative dispute resolution methods, out of the court room or any justice processing bodies. They can entertain their right to participate in any phases of criminal proceedings to raise the questions, give any suggestions, opinions concerning the injury caused by the offender. They have the right to restore their economic injury or property or pecuniary loss, they can ask the compensation to the loss, and any cost caused by the crime. The offenders should make fair restitution to victims and states are encouraged to ensure that restitution is available as a sentencing option in criminal cases.²¹

3.3. The Victims' Compensation

The development of victims of crime compensation, financial assistance and support schemes has been traced by Miers, who noted that publicly funded criminal injuries schemes were a product of initiatives taken in the 1960s and 1970s.²²

In Ethiopian Legal system of the compensation for homicide survivors is not adequate and clear. The FDRE constitution predominately includes principles and rules that protect criminal suspects, accused persons and convicted offenders.²³ However, it does not deal with the right of crime victim to obtain compensation from the state for the injury that resulted due to crime. Moreover, there is no piece of exclusive legislation that deal with the crime victim rights in comprehensive manner.

It is defined as the cost which is paid by the victims due to the commission of the crime, the restitutions, rehabilitation cost, maintenance and supporting cost to homicide survivors. In addition, the cost consists the funeral and mourning costs of the victims as result of the death by the offender. Moreover, it is the cost of treatment of body injury, internal and external health treatments, emotional and moral costs.

3.4. The Economic impact of Crime Victims compensation in the Ethiopia Criminal Justice

One of the dangerous effects of the crime is leaving the crime victims in less or no economy because of the death of the source of the economy. This may be one of head of households, family member, one of the couples, or one of the parents, or two parents. Crime effects can disturb all the society making in the economy. First it affects the economy and livelihood of the one or two family and members then the society is the second organ who takes the negative effect of the crime. To correct these effects, there should be legally, academically, economically, educationally, culturally and politically strong country. The government should promulgate the laws which is maintain the economy of individual or group crime affected persons. Strong and modern law systems take care of the crime victims to be compensated what they lost in the crime. It may be the cost incurred by the crime victims directly or indirectly by the survivors. When the case is body injury, internal health problem, property and pecuniary case, moral and emotional injury, temporary and permanent injury caused by the offender, it should be corrected in treatment, medication, restituting, rehabilitating and proportionally compensated to the crime victims in the civil case in addition to crime responsibility

²¹ The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power ,1985, Article,8 and 9

²² Robert Guthrie (2020): Victim/survivors of crime in the workplace: interactions between workplace injuries and criminal injuries compensation and financial assistance, Psychiatry, Psychology and Law, DOI: 10.1080/13218719.2019.1702490

²³ FDRE Constitution, Articles 17-23.

in the criminal justice process.²⁴ If the offender is unable to come up with this compensation issue the government has to take the responsibility of the crime victim as the minimum requirement to its citizen. To materialize this modern criminal justice system the state, may build the program of the crime victim compensation scheme and project in the country. The above-mentioned mechanisms may correct the economy of any potential crime victims in the country.

Table 1.

Cities selected	No. of Judges	No. of public prosecutors	No. of victims participated
Wolaita Sodo City	20	6	15
Arbaminch City	15	4	10
Dilla City	10	3	8
Total no. of the key informants from the three cities	45	13	33

Table source: the survey, 2025

3.4.1 Access to justice and practice,

During the interview, most judges (among 45 judges participated) 30 judges had said in the areas, Wolaita Sodo City, Arbaminch and Dilla City, victims of homicide could no participate in asking the compensation to reimburse the cost of funerals and mourning. And they have no access and legal sufficiency and practicability of the existing laws. The target of the criminal justice of the country is making the criminal responsible in crime, that is punishing the criminal being guilty. Due to these reasons the justice could not be accessed to crime victims in Ethiopia. Ten public prosecutors (among 13 interviewed public prosecutors from three cities) support this idea in their practice in the office. In this case the economy lost could not be compensated to the victims in the society because of lack of clear laws and economic bases of the crime victims to access the justice.

3.4.2. The Victims Compensation Scheme in the Country

There is no victim's compensation program in the country. Criminally affected society could not get its moral, emotional, and property loss in the compensation system. The bodily injury and health problems could not be treated in medication and cultural curing system by the offender. There are no clear law provisions and independent laws to balance the economic loss of the crime victims and the homicide survivors in the country, Ethiopia. In other countries, such as United States of America, Germany and Most European Countries, the compensation payers are clear. First, the offender must pay the compensation for the living victims and the homicide survivors, second if the offenders fail to pay the compensation the state is responsible to pay the victims compensation to balance the economy of the real and potential victims.²⁵ By this way the state treats the tax payers in this manner. The selected legal practitioners agree on these explanations in their interviews. The victims also tell that they do not know that they have the right to claim these losses and maintenance, financial support and cost reimbursement

4. Conclusions and Recommendations

The Ethiopian criminal justice system in the victim's compensation is not strong. The main target of the criminal justice system in Country is making the offender responsible in criminal punishment. Restoring what the victims in the crime lost has not been given the attention. The crime causes body

²⁴ Sasha Baglay (2020): Access to Compensation for Trafficked Persons in Canada, Journal of Human Trafficking, DOI: 10.1080/23322705.2020.1738144

²⁵ Takako Tsujimura-Ito, 2019, State of damage to and support for victims of motor vehicle accidents in Japan, DOI: <https://doi.org/10.1016/j.iatssr.2019.06.001>

injury, moral and emotional loss, property and economy loss. If it could not be corrected by the law, it brings psychological, moral and economic crisis in the society. Making the offender responsible and criminally liable is the main objective of the criminal law of the country. However, lack of the attention in returning back or rehabilitation of what affected and lost in the crime should be given special treatment in the law. In Ethiopia, the existing laws, even Constitution, civil code, Criminal Code, Criminal procedure code do not have clear provisions which governs the compensation of crime victims. The most society member do not have the awareness about the compensation to the crime victims and access to justice in less cost. There is no compensation scheme or program in the country to access, evaluate, decide and give compensation to crime victims as their degree of loss. The concept new despite it is the very widely applicable in other jurisdiction such as, United States of America, Germany, UK, South Africa, and others in the contemporary criminal justice system. The study recommended, Ethiopian experience which gives the attention on the offender only to be criminally responsible and that replaces the civil responsibility should be amended and renewed in the sense of contemporary legal development. And the government should plan to enact an independent law to modernize the entertainment of the crime victims, to stable and balance the lost economy, maintain the future income and reimburse the cost of the victims caused by the crime. Primary the government should think about establishing the crime victim compensation scheme/program in the country to treat and rehabilitate their loss in bodily and economically.

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Competing interests

Here we declare that the authors have no any competing interests.

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