MIZAN TEPI UNIVERSITY (MTU)

School of Law Department

A Proposal for the research entitled Critical Analysis of the Ethiopian Criminal Law in Light of Private Vengeance

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ACRONYMS

AAU Addis Ababa University

ADRMs Alternative Dispute Resolution Mechanisms

CPC Criminal Procedure Code

DSECJS Diagnostic Study of Ethiopian Criminal Justice System

DRMs Dispute Resolution Mechanisms

FDRE Federal Democratic Republic of Ethiopia

ERCFAA Educational Research Competencies For Analysis and Application

HPR House of Peoples' Representatives

ICC International Criminal Count

MTU Mizan Tepi University

UDHR Universal Declaration of Human Rights

1.1. BACKGROUND OF THE STUDY

Although all human beings are born free and equal in inherent dignity and inalienable rights recognized and protected by the Rule of Law (formally traced back to the Magna Carta of 1215) in which they should act towards one another in a sprit of brotherhood since they are endowed with reason and conscience (UDHR (1948), Preamble, para 1 & 3 and Art.1), they may unfortunately take the law into their own hands, inter alia, to avenge the slaying or injury of their respective family members, relatives, clans, or tribes as the case may be, contrary to the principles of the Rule of Law (FDRE Constitution; Art. 9) thereby they pave the way for a perpetual cycle of private vengeance or blood feud that may continue through generations (en.m.wikipedia.org).

The term vengeance refers to the act of taking revenge against a person in retaliation for his harmful act he has done, or it equates to such synonyms as retaliation, retribution, and revenge (WorldWeb Dictionary). Moreover, it Is defined as the act of hurting or punishing a person in retaliation (as retribution or revenge) for an injury or offense (especially murder) committed by such person (Merriam Webster Dictionary). A blood feud is a cycle of personal retaliatory violence committed for seeking vengeance by killing or injuring the culprits or their relatives (en.m.wikipedia.org). Thus, blood feud means private vengeance which refers to a prolonged retributive violence causing bodily injury or death of both feuding parties who equally conceive such feud with intense feelings of resentment that triggers such continual revenge (ibid) based on the Theory of Retribution in the sense that offenders must deserve equivalent punishment such as life for life, blood for blood, eye for eye, and limb for limb (Hammurabi Code of Law).

The term vendetta is defined as a private blood feud in which family members seek revenge on a person of another family (the initial killer or against any of his relatives) to avenge the slaying of the family member or of a nearest kin (Black's Law Dictionary: 8th ed; 2004, p. 4823). Hence, blood feud, vendetta, vengeance, retaliation, retribution, and revenge can be used here interchangeably (ibid; p. 516, 1853, 4105, & 4823) to refer to a private violence violating human rights and freedoms contrary to the principles, inter alia, of the Rule of Law and the Public Good.

Ethiopian Criminal Law compries the 1995 FDRE Constitution, the 2004 Criminal Code, the 1961 Criminal Procedure Code, and more than 120 Proclamations (Special Criminal Laws) containing penal provisions including their Regulations and Directives [Diagnostic Study of the Ethiopian Criminal Justice System (DSECJS) (2021), p. 2]. Moreover, Cassation Decisions of the Federal Supreme Count Cassation Division on criminal matters also constitute the Ethiopian Criminal Law (Federal Courts Proc. No. 1234/2021; Art.10 (2)). Other facilitative legal documents such as the Ethiopian Criminal Justice Administration Policy, Sentencing Manuals, and Explanatory Notes of such laws are supportive parts thereof. However, since all those parts of the Ethiopian Criminal Law may not be associated with private vengeance, only those relevant criminal laws are analyzed with respect to such vengeance. The Draft Criminal Law Procedure and Evidence Code is also treated here as one part of the Ethiopian Criminal Law though it is still waiting for approval of the HPR because such Draft law shows what legal gaps need to be filled by relevant legal reforms which shall guarantee the respect, protection, and promotion of human rights and freedoms by giving due concern, inter alia, to the ongoing problem of infringement of these rights and freedoms through the practice of private vengeance in the most parts of Ethiopia.

1.2. STATEMENT OF THE PROBLEM

Ethiopia is one of the countries of the world where private vengeance is practiced in its most parts (en.m.wikipedia.org) contrary to the general principles of: human rights and freedoms, the Rule of Law, the Criminal Law, morality, justice, punishment, and

sentencing determination.

Blood feud was commonly practiced in societies with a weak rule of law where family and kinship ties were the main source of authority and thus an entire family was responsible for the actions of any of its members (en.m.wikipedia.org). The original derivation of the concept of private vengeance formally traced back to the Code of Hammurabi (1700 BC) when the Theory of Retribution laid its base under 282 "Laws" (provisions) of the Code (George H. Gilbert) based on the Principle of Retaliation (Lex Talionis) which was more promoted later in 450 BC under the Roman Law called the Twelve Tables (W. Justin Ilboudo) with the view to giving offenders what they deserve by hitting them back with equal force (equivalent punishment like life for life, or body for body) to a blow they have struck on their victims (David Lyons) because they earned such punishment by their offense they did against others (Jones and Bartlett Learning LLC).

Having internalized the doctrine of retributive punishment as a tradition, individuals tend to involve in a perpetual cycle of retaliatory violence (private vengeance) due to different factors, inter alia, to reflect standard lethal altercations, increase social status or manhood through adventure killings and avoid sorcery effects by killing witches as this is practiced by the Gumuz people (Dolores A. Donovan and Getachew Assefa); to maintain the honor of feuding families and protect landholding rights usually in South Wollo Zone (Mekides Wonduante); because of disputes relating to adultery, annexation of farmlands and boundary issues, usurpation of property, excessive alcohol consumption, theft, and serious insults common in North Gondar Zone (Jejaw Amble).

Not only the commission of private vengeance entails unspeakable violation of human rights and freedoms of the feuding parties (competing avengers) themselves but also it ends with traditional sentencing practices during reconciliations that cause women, or girls to be given as blood compensation to the family of the victim to settle continual blood feuds as such cases are common particularly in Somali Regional State (Dolores A. Donovan and Getachew Assefa), Benshangul Gumuz Regional State (Gebreyesus Teklu Bahta), and Southwest Ethiopia Regional State, the Sheko people add boys as subjects

of blood compensation (Mengistu Fiseha).

Generally, violation of human rights and freedoms through private vengeance is an ongoing main problem needed to be handled by the Ethiopian Criminal Law. To rephrase each specific problems: Firstly, private individuals take the law into their own hands to avenge or punish their enemies without any legal means and thereby the constitutional rights to life, the security of person, and liberty are mostly violated through private vengeance thereby this results in the infringement of other human rights and freedoms due to their indivisible (interdependent and interrelated) nature (Art. 30 UDHR). Secondly, private vengeance has a perpetual nature that causes a continual breach of human rights and freedoms across generations unless some sort of intervention by the criminal law obliges such cyclic revenge to cease. Thirdly, avengers still continue to commit acts of revenge without having faced proper and special deterrence effects.

1.3. RESEARCH OBJECTIVES

The general objective of this study is to critically analyze the Ethiopian Criminal Law in light of private vengeance. Bearing this main objective in mind, this study has the following specific objectives in order:

To examine how the Ethiopian Criminal Law governs private vengeance or handles cases involving prolonged cycle of blood feuds so as to ensure the Rule of Law in Ethiopia;

To investigate penal provisions governing private vengeance in order to overcome the continuity of such retaliatory violence against human rights and freedoms; and

To identity penal provisions that determine sentences imposed upon convicted avengers and take private vengeance as an aggravating ground so as to deter them from committing further acts of revenge and thereby make them a lesson to others who might tend to retributive acts.

1.4. RESEARCH QUESTIONS

Does the Ethiopian Criminal Law give special attention to private vengeance in general?

How the Ethiopian Criminal Law governs private vengeance or handles cases involving prolonged cycle of private revenge?

Are there penal provisions governing private vengeance to overcome the continuity of such retributive violence against human rights and freedoms?

Which penal provisions determine sentence imposed upon convicted avengers and take private vengeance as an aggravating ground to deter them from committing further acts of revenge and thus make them a lesson to others?

1.5. LITERATURE REVIEW

There are many legal doctrines that justify for the cessation of private vengeance while the theory of retribution serves as an obsolete basis of revenge. Such doctrines against blood feud include: principles of human rights and freedoms, principles of Rule of Law, principles of morality, theories of justice, principles of criminal law, theories of punishment, and doctrines of sentencing determination. Human rights and freedoms are universal, inalienable, indivisible, interdependent, and interrelated (www.hurights.or.JP). The principles of universality and inalienability (UDHR; Art. 1) and of indivisibility including interdependent and interrelated natures of human rights and freedoms (ibid; Art. 30) can be briefly put that such rights and freedoms are inherent to everyone born everywhere thereby can never be taken away arbitrarily and they have equal status since their realization depends on or relates to the fulfillment of each of them.

The Principles of the Rule of Law particularly those stating that no person is above the law and no one shall take the law into his own hands require everyone must obey such

law and respect human rights and freedoms because the law empowers all persons to fulfill, among other things, just expectations and seek redress of grievances without fear or penalty of retaliation (Justice Anthony M. Kennedy; cited by Robert Stein). Thus, the Rule of Law guarantees protection of human rights and freedoms against retaliation or private vengeance and obliges everyone to maintain the doctrine of due process of law which provides that offenders shall be punished in accordance with the law thereby those who tend to take the law into their own hands to do what they want (i.e. to avenge their enemies) contrary to the principles of the Rule of Law are prohibited from violating human rights and freedoms in any form of illegal manner (eg. through private vengeance).

Principles of morality and justice provide, inter alia, that doing an injury in retaliation is wrong which never be right (justified) since return a wrong or defend oneself against injury by retaliation (harm for harm) is bad or unjust for unjust is immoral (The Crito p. 5 -7). The moral principle stating that no person shall profit from his own wrong shows that every wrongdoer shall be punishable in accord with the law; but not by private vengeance (Robert S. Summers).

The principle of individual criminal responsibility or liability provides that a person who commits a crime shall be individually responsible and liable for punishment in accordance with the law (Statute of the ICC; Art. 25) or in other words, no one can be punished for a crime for which he is not responsible and he has not been found guilty thereof under the law (Criminal Code; Art. 57). Thus, this principle of individual autonomy prohibits not only vengeful acts perpetrated against avengers because revenge is not in accord with the law but also those retributive acts targeting the family members and relatives of the avengers since such third parties are not personally liable for any wrong done or crime committed by others due to absence of vicarious liability in criminal matters. Hence, avenging third parties lacks both just and moral justifications.

Modern theories of punishment are updated doctrines which advocate that penalty be imposed to achieve the purposes and objectives of punishment that are deterrence, prevention, and rehabilitation of offenders (Sagar Shelke, Jyoti Dharm) excluding the

obsolete principle of retribution which directly or indirectly encourages private vengeance contrary to the aforementioned doctrines (David Lyons) since found to be archaic, inhuman and barbaric, such modern human rights philosophy condemns this cruel concept of retribution (Dr. Ravulapati Madhvi) or the principle of "an eye for an eye will turn the whole world blind" Mahatma Gandhi (as cited by Rustan Singh Thakur) unless it has to cease affecting human rights and freedoms.

The main principles of sentencing are reasonableness, proportionality, consistency (Burt W. Griffin and Lewis R. Katz), predictability, fairness (Sefiew Ayenew Demle), transparency and accountability (Revised Sentencing Guideline No 2/2013; Preamble, para 2) that are altogether designed in consistence with human rights law standards like humility, peace and justice principles and in conformity to elementary goals and rationales of sentences (Rabindra Bhattarai) to ensure the purposes and objectives of the criminal law or to balance competing private and public interests based on the individual autonomy and public good doctrines (Criminal Code; Arts.1 para 1 and 57). Thus, since only courts have the power to determine and pass sentences in accord with the law [CPC; Art. 149 (5)] or only the punishment given by a court of law is sentence (Rabindra Bhattarai, p. 194), traditional sentencing practices of giving women and girls or boys as blood compensation to the victim's family should no longer violate human rights and freedoms.

Different researches have been conducted concerning the practice of blood feud mostly in light of sociological and psychological viewpoints (perspectives) as well as with respect to alternative dispute resolution mechanisms (ADRMs) instead of giving attention to legal questions that motivate to conduct a doctrinal legal research to particularly analyze the Ethiopian Criminal Law in light of private vengeance.

And to the best of searches for finding close related researches to this study for the purpose to review relevant literatures, no former study has analyzed the Ethiopian Criminal Law in light of private vengeance with which this study uniquely concerns and thus claims to be taken as an original one in this regard. In other words, the legal questions of this study have been left unanswered with the problems of (violation of

human rights and freedoms that need to, instead, be respected, protected, fulfilled or promoted) private vengeance still insist some sort of legal intervention (the proper regulation of such vengeance by the criminal law).

However, those studies focusing on the above viewpoints are helpful for this study since their results emphasize the extent of the problems (here, violations of human rights and freedoms) caused by the practice of private vengeance in the most parts of the country as, for instance, such studies conducted by Mekides Wonduante, Jejaw Amble, Gebreyesus Teklu Bahta, Mengistu Fiseha, and Dolores A. Donovan and Getachew Assefa in particular, have revealed.

Thus, this study is crucial to analyze the Ethiopian Criminal Law how these legal questions can be answered and problems (violations of human rights and freedoms through private vengeance) be resolved under the law in question.

1.6. SCOPE OF The STUDY

This study will focus on critical analysis of the Ethiopian Criminal Law in light of private vengeance from the perspectives of human rights and freedoms which need to be protected by the law from being violated in any way particularly through perpetual retaliatory violences.

It also goes to examine how private vengeance is governed and cases involving such vengeance are handled under the Ethiopian Criminal Law which will again be analyzed as to whether it provides appropriate legal guarantees for the protection of human rights and freedoms.

The ambit of the study will further address the investigation of penal provisions of relevant laws governing private vengeance and it extends to the identification of penal provisions which determine sentences imposed on convicted avengers against whom they take private vengeance as an aggravating ground to deter them from further acts

of vengeance.

1.7. SIGNIFICANCE OF THE STUDY

To the best endeavor paid for searches to find close related or similar researches to this study, there has not been found any such researches conducted concerning the Critical Analysis of the Ethiopian Criminal Law in Light of Private Vengeance.

As a result, this study will be significant to create legal insight to both the societies affected by revenge and the government in giving due attention to the condonation of private vengeance infringing human rights and freedoms.

It will also be vital for revealing possible legal gaps to adequately regulate such vengeance matters under the Ethiopian Criminal Law and thereby insisting the concerned bodies to take appropriate legal reforms in order to fill such lacunae for the protection of human rights and freedoms from being violated through private vengeance.

The study will again be important to serve as an input for those who might conduct similar or related (but not same) researches on this area of law concerning blood feud with which perspective the Ethiopian Criminal Law will further be analyzed for more objectives.

2. METHODOLOGY (RESEARCH DESIGN OR METHODOLOGICAL APPROACH)

This study will employ critical analysis as a research method because the research type or nature is specifically theoretical and text based doctrinal legal research that aims to critically analyze the Ethiopian Criminal Law in light of private vengeance.

The study will also employ qualitative approach since its doctrinal or conceptual nature

tends to analyze, explain, and interpret source materials already available using descriptions to reach at conclusions on its specific objectives as this is possible through such appropriate approach.

The study uses mainly primary sources and secondary sources to some extent because being a doctrinal research makes it to have more inclination towards primary sources.

This study will use document analysis as its exclusive and specific data collection tool due to both the nature of the research which seeks to critically analyze relevant documents that constitute the Ethiopian Criminal Law and the type of data (mostly primary data) to be collected and analyzed.

2.1. SUBJECTS OF THE STUDY

Subjects of the study will include such legal documents or materials like the FDRE Constitution, relevant International Human Rights Declarations, Covenants and Instruments ratified by Ethiopia, the 2011 Criminal Justice Policy, the 2004 Criminal Code and its Explanatory Note, the Draft Criminal Justice Law Procedure and Evidence Code, the Diagnostic Study of the Ethiopian Criminal Justice System (2021), the Protection of Witnesses and Whistleblowers of Criminal Offences Proc No 699/2010, other relevant Proclamations and their Regulations that provide for private vengeance, the Revised Sentencing Guideline/Manual No 2/2013, and Federal Cassation Decisions. Moreover, those materials referred or annexed hereunder this proposal will also constitute the subjects of the study unless otherwise mentioned here in a separate manner.

2.2. SAMPLING TECHNIQUE

The study will employ purposive sampling technique to select the subjects thereof because the critical/analytical nature of the research requires more relevant and specific subjects in order to be able to analyze the Ethiopian Criminal Law to the point based on such important subjects.

2.3. SAMPLE SIZE

The study will take an estimated size of sample rather than exactly determined sample size for the following two reasons (AAU, Introduction to Research Methods (2009) p. 65):

Firstly, there is no any fixed rule for sample size in qualitative research like this study whose sample size by nature depends on what data is needed to be obtained from different perspectives which the study will take into account; and

Secondly, as it can be understood from the list of the subjects of the study and the type of sampling technique stated above, the population size wont exceed 100 and thus for such smaller size of population, there is little point in sampling, just survey the entire population is necessary (L.R. Gay, G.E. Mills, and P.W. Airasian) or the reason why this less attention for the accuracy of the sample size is because the richness of purposefully collected data wont loss its validity.

3. WORK AND BUDGET PLANS

3.1. WORK PLAN

ACTIVITIES	TIME (2014 E.C)
Analyzing legal documents or laws	June 6-9
Interpreting legal documents or laws	June 10-12
Preparing draft research paper	June 13-14
Writing final research paper	June 15-17
Submitting final research paper	June 18

3.2. BUDGET PLAN

ITEMS	REPITITION	QUANTITY	MONEY (BIRR)
Papers	1	100	100
Pens	3	3	39
Prints	2	50	100
Mobile cards	8	8	120
Internet (using data)			141
Transport	10		100
Total cost			600

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