2023

The Rome Statute and its Significance in Combatting Impunity for Rape in Ethiopia

Kassahun Yibeltal Sahilu
Walden University

Walden University

College of Psychology and Community Services

This is to certify that the doctoral dissertation by

Kassahun Sahilu

has been found to be complete and satisfactory in all respects,
and that any and all revisions required by
the review committee have been made.

Review Committee
Dr. Sean Grier, Committee Chairperson,
Criminal Justice Faculty

Dr. Evaristus Obinyan, Committee Member,
Criminal Justice Faculty

Dr. Carolyn Dennis, University Reviewer,
Criminal Justice Faculty

Chief Academic Officer and Provost
Sue Subocz, Ph.D.

Walden University
2023

Abstract

The Rome Statute and its Significance in Combatting Impunity for Rape in Ethiopia

by

Kassahun Sahilu

LLM, Addis Ababa university, 2006

LLB, Addis Ababa university, 1991

BA, Addis Ababa University 2003

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Criminal Justice

Walden University

February 2023

Abstract

The goal of ending impunity for atrocity crimes including rape is globally appreciated and accepted with little reservation; however, the actual relevance to the domestic situation in Ethiopia has not been previously explored. The purpose of this study was to examine the role of the Rome Statute, a treaty on atrocity crimes, in combating impunity for perpetrators of rape in Ethiopia in light of Feminist Theory and Domestic Politics of Theory of Treaty Compliance. The research explored the significance of the treaty considering the actual condition of the country by conducting semi-structured group and personal interviews with two lawyers working for nonprofits, government agencies, and private firms. The data were analyzed through theme development. The conclusion was that participants consider the statute both legally and practically relevant to the current situation of the country. Accordingly, it was recommended that stakeholders advocate both for the implementation and ratification of the statute. Thus, the study will have positive social change by triggering advocacy for the rights of women, encouraging prosecution of rapists, and urging for changes in policy.

The Rome Statute and its Significance in Combatting Impunity for Rape in Ethiopia

by

Kassahun Sahilu

LLM, Addis Ababa university, 2006

BA, Addis Ababa university, 2003

LLB, Addis Ababa University 1991

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Criminal Justice

Walden University

February 2023

Dedication

I dedicate this study to those girls and women who suffered from all forms of sexual violence during various internal conflicts in Ethiopia. In particular, I want the study to serve as a lasting reminder of those girls, women, and children in Amhara, Afar, and Tigray regional states, who were victims of rape because of their ethnic identity.

Acknowledgments

I am grateful to Dr. Sean Grier, my chair, and Dr. Evirstus Obinyan, my committee member, for their constructive support and active follow-up. Thanks to their wisdom, I learned that a doctoral study is not only about proving knowledge and skill but also about learning how to be a scholar in the real sense of the word. I also thank editors at Walden for their editorial service especially Steve for his kind and unreserved assistance in editing my proposal. Likewise, Carolyn Roney at Walden Disability Service and Amy Seales at Arlington County Government Employment Center supported my effort to successfully complete the study by providing services I needed. I am also indebted to Mr. Amha Mekonnen for his unreserved cooperation he showed while I was doing the study in Ethiopia. The data collection process would have been much more challenging than it actually was without his kind assistance. I am also indebted to Dr. Endale Haile, director of the Ethiopian Institute of the Ombudsman, for his generous and unreserved cooperation. Tigist Tarekegn and Hiwote Mekonnen, thank you for your meaningful help. I also thank my family and friends whose encouragement helped me move forward to the goal. Finally, I cannot overlook the indispensable contribution made by my wife, Kenubish Abebe. I am grateful to her because she generously gave me the freedom to focus on the workday and night at the cost of our companionship. Her overall care was also the source of my strength. Thank you, my mom and my lifelong friend.

Table of Contents

List of Tables

Chapter 1: Introduction to the Study

Introduction

The Rome Statute is an international treaty that established the International Criminal Court (ICC) and was adopted by 120 states at the Rome Diplomatic Conference held in July 1998 (Bellelli, 2016; Garcia, 2021). Having learned of the role of individuals in atrocity crimes, the international community wanted to establish the court immediately after the Second World War; however, the court did not materialize until the 1990s (Belleliti, 2016). The Rome Statute was adopted in 1998 and entered into force in 2002 when the ICC started its work. As of the writing of this study, 123 states were parties to the treaty and 137 countries were signatories. (United Nations [UN], 2022). In addition to the main treaty, additional rulings were adopted by the ICC, including the Elements of Crime in 2000 and the Rule of Procedure and Evidence in 2002 (The Rome Statute, 1998). The purpose of the statute and of the court is to end impunity and prevent atrocity crimes committed within states and territories (Harry, 2019; Okpe, 2020; The Rome Statute of the ICC, 1998). These crimes are genocide, war crime, crimes against humanity, and aggression as provided under Article 5 of the Statute (Abaya, 2019; ICC, 1998). In this study, I focus on one specific crime against humanity. Rape is a crime against humanity as provided under Article 7 of the Statute. As an international judicial institution, ICC operates globally, but its work takes effect on a local basis; hence, I examine the influence of the treaty in Ethiopia regarding rape and impunity for perpetrators.

From the very beginning, state parties anticipated the ICC would be an independent and permanent, international criminal tribunal (Kim, 2011). It was and is assumed to be independent because the judges enjoy the autonomy necessary to decide who should appear before the court (De Bertodano, 2002). Another justification for the claim of independence is that it does not operate under the direction of the UN (Kim, 2011). It is related with the UN; however, the relationship is guided by an official agreement made between the court and the organization (The Rome Statute of the ICC, 1998). The ICC is permanent as well, since the international community did not intend it to be an ad hoc structure, as was the case for the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

Even so, the court's independence is sometimes deemed controversial. For example, Fenistein (2009) disagreed with the claim that the court is independent. For Feinistein, the ICC is rather weak and dependent for many reasons: (a) it cannot freely exercise its judicial power without the full cooperation of states, (b) it has no reliable financial resource and is subject to the supervision of the Assembly of States, and (c) Nongovernmental Organizations (NGOs) and politicians monitor its judicial activities.

Significance to Social Change

The study is about the protection of women and girls, and in it, I examine rape, a threat that women and girls frequently face in their lives. The crime of rape is one of the most serious problems in Ethiopia, both in times of peace and during conflict (Amogne et al., 2018). Sexual violence, especially rape, is always a security risk to women in the country. Stanhope et al. (2020) stated that gender violence is common in Ethiopia;

therefore, research such as this supports any program working to improve conditions for those vulnerable to the risk of such violence. The other focus of this study is the Rome Statute. Rape is one of the issues covered by Article 7G in the Rome Statute (1998); however, Ethiopia has unfortunately not yet ratified this treaty. Therefore, the discussion and promotion of the instrument could facilitate its ratification by bringing the agenda to the forefront.

Additionally, this study may serve as material input to efforts made to bring perpetrators to justice. Practically, a contribution to the prevention of impunity for rape represents an effort to improve the conditions and well-being of women and girls in the country. At the same time, the study may help to raise social awareness about the Rome Statute of the ICC, as well as its significance for the protection of women against the crime of rape in Ethiopia. From this perspective, the findings may add something to the public's knowledge of the international standards and their application to the problem of impunity. Given that violence is common, and a culture of impunity prevails in Ethiopia, a study of this nature helps to fight against this impunity. Such work must be done to convince the Ethiopian government of the importance of the treaty and ratify it.

This study may also provide a legitimate foundation for advocacy of the rights of girls and women by introducing the practical advantage of complying with the ideals and practices of the Rome Statute. The study could also serve as a catalyst for policy and legislative reconsideration of how rape victims' rights should be handled and how perpetrators of the crime should be held accountable. This will, in turn, foster the general well-being of women by creating better access to justice. Ultimately, the formation of

better policies and a better legal environment to protect women from rape represents an important step in bringing change in both the judicial and social landscapes in the country.

Background

A large number of people were killed in the 20th century; to be exact, the world has lost more than 200 million persons, of whom more than 50% were killed by their own governments (Anonymous, 2008). Undoubtedly, few of those who killed millions have been put on trial, and most of them escaped justice (Anonymous, 2008). For example, those who committed wartime rape in the first and Second World Wars enjoyed absolute impunity, except for attempts at the military tribunal in the Far East (Sara, 2016).

This was why the Rome Statute was adopted as a mechanism of ending impunity and preventing atrocity crimes by ensuring the prosecution and punishment of perpetrators of such crimes, including rape (The Rome Statute of ICC, 1998). Ending impunity simply means punishing perpetrators to prevent crime or deter criminals from committing more crimes (Caster, 2015).

An international, legal mechanism of ending impunity has been effectively designed through the Rome Statute of the ICC and implemented by ICC, at least for the most serious crimes; however, that does not mean that the history of international criminal justice began with the adoption of the Rome Statute. Rather, the process of creating an international criminal justice system started much earlier. The most important moment in the development of international criminal law and the idea of individual accountability was when the Nuremberg and Tokyo military tribunals were held. The

Nuremberg trial had almost the same goal of preventing impunity and deterring criminals. The victors of World War II decided to bring the Nazi war criminals to justice to ensure that the atrocity witnessed then would not be repeated (Marrus, 2018). This measure of punishing war criminals was also useful to promote peace and security (Rauxloh, 2010; The Rome Statute of ICC, 1998).

For this reason, Simmons (2009) and Elis (2009) described the establishment and functioning of these historic military tribunals as unprecedented judicial achievements of the 20th century; however, not all writers agree with this view. For instance, Harry (2019) argued that the process of forming an international criminal court started much earlier than 1945. Arpita (2009) and Lyons (2021) also concurred with Harry that the first international criminal trial was the one held in 1474 to try and punish Sir Peter von Hagenbach for rape and other offenses committed by his soldiers. Hagenbach's trial was ordered by the Austria's first archduke for not obeying the laws of God and man; the accused was then convicted and executed (Harry, 2019).

Nevertheless, this rejection of Nuremberg as a starting point for the formal practice of international criminal tribunal is an exception. Most authorities agree that the idea of individual criminal accountability materialized for the first time at the trial of Nuremberg (Rau, 2012). In other words, it is generally accepted that the unprecedented atrocities committed during World War II led to the establishment of international tribunals for the prosecution and trial of the Nazi war criminals. It means that unlike the traditional practice in which states were subject to international law, individuals also have assumed the same legal status since the Nuremberg trial. It is important to note here that

although this historic event marked a great step forward in the development of international criminal justice, the task of establishing individual criminal accountability as an acceptable international judicial practice was not simple for two reasons. For one, it was not easy for states to recognize individuals as new subjects of international law; additionally, states were not ready to allow foreign intervention in their internal affairs for the purpose of international criminal justice (Werle & Jesberger, 2020).

The role of the Nuremberg and Tokyo military tribunals was so important in the history of international criminal law that many writers continued to recognize the peculiarities of the tribunals. For example, Drian (1987) outlined three unique features of the Nuremberg trial: (a) punishment for human right violation began; (b) the term "crime against humanity" was coined for the first time; and (c) the experience of the tribunals served as positive inspiration for the international community to establish an international criminal court, which was created nearly 50 years later. Considering all these important contributions, the Nuremberg Military Tribunal of 1945–1946 paved the way for the creation and formalization of an international criminal judicial system, as well as for the development of the international criminal law (Heller, 2006). As enshrined in the International Military Tribuals' charter, the Nuremberg Principles were particularly important in fostering the development of international criminal justice (Werle & Jesberger, 2020).

On the other hand, it is important to note that the military tribunals did not deliver full justice. For instance, they were and are still criticized for their failure to prosecute sexual violence, including rape. There was sufficient evidence to prove that thousands of

women had been victims of rape; however, the Nuremberg Military Tribunal did not take the crime seriously and failed to pay sufficient attention to it (Arpita, 2009). Arpita (2009) further indicated that the crime was considered at the Tokyo Tribunal, but it was only tried as part of other crimes. Therefore, despite their historic significance to the fight for impunity, the Second World War military tribunals failed to do justice by overlooking one of the heinous crimes committed against women.

Even though the Nuremberg Trial was historically significant and contributed much to the process, it can be said that the Rome Statute of the ICC is the first comprehensive international criminal law that clearly provides for individual liability and aims at ending impunity, especially for serious crimes. Werle and Jesberger (2020) described the statute as the first comprehensive, codified international criminal law. Consequently, the Rome Statute can be credited for effectively filling the crucial gap and reducing the controversy of legality raised about the Nuremberg Trial.

One of the outstanding debates over and critiques of the Nuremberg trial was the issue of retroactivity and lack of preexisting formal legislation that the prosecution and sentencing of the defendants were founded on (Mark, 2022). This critique was technically about the principle of "nullum crimen sine lege and nulla poena sine lege," which roughly means that the prohibited act and punishment thereof must be predetermined in the law (Olasolo, 2007). This principle means that a person can be prosecuted and held criminally responsible only if there is an enforceable law in existence at the time the crime was committed (Harmen, 2015). Some justifications were given to defend the Nuremberg Trial against this objection, but no justification was

sufficient to address the fact that the trial was held in the absence of the law with predetermined prohibitions and the punishment.

Furthermore, the Rome Statute altered international law tradition by confirming the legitimacy of prioritizing individual responsibility over state sovereignty (Henry & Theodor, 1999). This means that individuals, like states, are now subjects of international law. As a result, those individuals in present day who rape women and girls are held responsible for the crime and are liable to punishment under the Rome Statute. In fact, one of the most important and unique features of the Rome Statute is its provision on rape as an international crime. The Hague Conventions of 1899 and 1907 prohibited pillaging but not rape (Inal, 2013). The Rome Statute (1998), however, included rape as a crime against humanity, thus making it an international crime. Of course, the effectiveness and relevance of the treaty to the lives of people in individual states is more important than the mere formal international legal arrangement. The recognition of rape as an international crime should mean something to the lives of female citizens in the respective state, which is the central point of the current study.

Some Facts About Ethiopia

The history of Ethiopia is interesting in many ways. The first is that it is one of the oldest states in the world and is the only African country that successfully combatted colonialism, remaining independent throughout its history (Blackburn & Matthew, 2011; Graham, 1992). Recognizing the positive historic national image of the country, renowned U.S. scholar W.E.B. DuBois wrote that Ethiopia was the “savior of black pride and dignity” (Wayne, 2019, p. 1). Wayne (2019) further noted that Ethiopia had a special

place in the hearts of many Africans, including Nelson Mandela, who considered the country to represent their historic identity. In addition, Ethiopia has been seen as a symbol of African solidarity because the country played a leading role in the formation of the Organization of African Unity, later the African Union, founded in 1963 by Emperor Haileselassie, king of Ethiopia (New African, 2013). Moreover, many writers have spoken of Ethiopia's historic hospitality to Muslim refugees as the first foreign country to welcome them in 615 AD; Ethiopia also facilitated the expansion of Islam when persecution drove them from their homeland, the Kingdom of Saudi Arabia (Gebeyehu, 2018; Hussein, 2006). Nevertheless, it should be recognized that despite the historic friendship of Muslims and Christians, there have also been occasional conflicts between the two groups since then (Hussein, 2006). Yet, as a Christian country that welcomed Muslim refugees who were in difficulties, Ethiopia is still considered to be an example of religious tolerance. The country is also described as the origin of humankind. A 3.2 million-year fossil known as Lucy was discovered in the Southeast part of the country (Tsegaye, 2015). Williams (2016) confirmed the same fact that Ethiopia is the birthplace of *homo sapiens*.

Ethiopia was also featured heavily in 20th century international relations. For example, the country joined the League of Nations in September 1923 after Great Britain and its allies blocked the application filed in 1919 for 4 years because of the Ethiopian slave trade (Marcos, 2002). In the book, *A History of Ethiopia*, Marcos (2002) noted that Ethiopia resumed its active engagement in international relations after the 5-year Italian occupation (1936–1941). At this point, the United States took Ethiopia as a postwar

strategic partner. Accordingly, President Roosevelt and Emperor Haileselassie met in Egypt in 1945 to discuss possible cooperation and development assistance to Ethiopia (Marcus, 2015). In addition, Ethiopia was also one of the 50 founding members of the United Nations and was represented by six delegates at the historic Conference of San Francisco of 1945 (UN, 2022).

Despite all the positive features discussed above, the country and its people have also many negative experiences. For instance, it has suffered from devastating, protracted war, conflict, violence, and political instability for many years (Blackburn & Matthew, 2011). During the reign of Derg, officially known as the Provisional Administrative Council led by Mengistu Hailemariam, thousands of Ethiopians suffered from not just oppression and maladministration but from heinous crimes including genocide. About 5,119 people were arraigned and over 2,000 middle and high officials of the Derg regime were prosecuted for various crimes, including atrocity and genocide, committed between 1974 and 1991 (Thijs, 2018). In addition, an ethnic federalism introduced in 1991 by the TPLF, an ethnic group itself, aggravated the political friction and undermined national unity (Merie, 2018). The excessive emphasis on ethnic identity and group right approach adopted by the regime reduced the level of attention given to individual citizens' rights and human rights (Barata, 2019). In other words, the ethnic-based federalism opened the way for ethnic conflict as the multiple ethnic groups began to demand for their respective rights. Barata (2019) also indicated that the overall inequalities that existed before and after the introduction of the ethnic politics in the country triggered violent conflicts and remained evident threats to the general well-being of the people. The latest conflict broke

out when TPLF, which ruled the country as of 1991, was forced to leave power in the face of widespread popular uprising. Furthermore, another wave of civil war began when the Tigray People Liberation Front (TPLF) attacked the National Defense Force of the country stationed in the border area between Tigray and Eritrea in November 2020; this has caused pillaging and rape in the Afar, Amhara, and Tigray regions (Ethiopian Human Rights Commission (EHRC) & Office of the High Commissioner for Human Rights, (OHCHR) (2021). The violence associated with the ethnic-oriented political policy has, in turn, exposed female citizens to potential security threats and real sexual violence, including rape (Ethiopian Human Right Council, 2020). Therefore, conflict and human atrocity has remained the predominant feature of life in Ethiopia.

Problem Statement

The protection of women and girls from sexual violence, especially rape, is one of the crucial areas of advocacy in Ethiopia. But despite the advocacy effort, rape has remained a serious sexual violence against female Ethiopians (Amnesty International, 2020; EHRC & OHCHR, 2021). The problem has escalated during the last four years due to frequent ethnically motivated conflicts that occurred in various areas of the country. The sexual violence committed during the civil war sparked in November 2020 against thousands of women, girls, and even children is unprecedented (EHRC and OHCHR, 2021). On November 7, 2020, in northern Ethiopia, Tigray region, an ethnically motivated group of youth, supported by the local Tigray armed militia and police, killed over 600 people and raped women from the Amhara ethnic group in a town called Maikadra in just a few hours (Ethiopian Human Right Council, 2020). This was what

may be called “ethnic rape” (Eriksson, 2011). According to the report, the youth organized by the Tigray Peoples Liberation Front (TPLF) gang-raped ten women. Having committed the rape, the perpetrators of the crime reportedly left for Sudan and could not, therefore, be held criminally liable. Human Rights Watch (2018) reported that in a prison called Jail Ogaden in the Ethiopian Somali regional state under the former State president, Abdi Mohamoud Omar (nicknamed Abdi Illey), prison security forces and members of the paramilitary group called Liyou force committed human right abuse, torture, rape, and caused many to suffer humiliation. The report also indicated that although the Ethiopian Human Right Commission had made multiple visits to Jail Ogaden in 2011, it issued no official report on the situation, nor is there evidence of prosecution of the perpretrators (Amnesty International, 2018).

Regrettably, despite the prevalence of violence against women, those who commit the crime frequently escape punishment for various reasons. In certain cases, rape is handled by clan or tribe elders and is a matter negotiated between the perpetrator and the family of the survivor without ever considering the victim herself (Gebereiyesus, 2014). This means that parents or relatives of the victim are redressed at the cost of the human dignity of the victim. In fact, the reconciliation and mediation tradition or culture of Africa has undermined accountability for many crimes, including rape (Agwu, 2020).

On the other hand, so many regional and international agreements and treaties are adopted, and resolutions are passed to respect the rights and dignity of citizens and prevent violence. For instance, more than two-thirds of African states ratified a pledge to combat impunity for atrocity crimes. The Statute was meant to fight impunity for certain

egregious crimes (The Rome Statute, 1998); however, little is known about the actual impact the Statute has either in Africa, or more specifically, in Ethiopia. Even worse, African states are not in good terms with the court, and some of them had even threatened to withdraw from the treaty (Manisuli, 2017). In fact, Burundi, one of the African member countries, has already withdrawn from the treaty (Nel, 2017).

In an effort to remedy these situations, the African Union adopted the Malabo Protocol to extend the jurisdiction of the African Court of Justice and Human Rights. The purpose of the amendment was to enable the court to try transnational and international criminal cases, including those under the jurisdiction of the ICC (Sarah, 2019). According to Agwu (2020), the Malabo (Equatorial Guinea) Protocol was meant to protect perpetrators of international crimes from prosecution at ICC; that is to say that the Protocol is likely to hamper the effective implementation of the ICC-designated Rome Statute by providing a safe haven for those who may commit rape (Agwu, 2019).

This shows that although sexual violence and rape is widespread in Ethiopia and elsewhere, there is no strong policy protection for female victims. Perpetrators of the crime still have the chance to escape punishment, and victims barely have access to justice. Despite several international and regional treaties signed and ratified to protect girls and women against sexual violence of various forms, little is known about how much the initiatives have changed on the ground, or they mean little to the domestic situation of the country in question. If not, there is no evidence to show that the treaties and agreements are relevant to the domestic reality at all.

Purpose

The purpose of this study is to understand how the Rome Statute and the ICC impact the task of preventing impunity for instances of rape in Ethiopia.

Research Question

What is the impact of the Rome Statute and the establishment of the International Criminal Court on the crime of rape committed against females in Ethiopia?

Theoretical Frameworks

The theories and concepts that ground this study include the feminist theory, the feminist framework plus approach, and the domestic politics theory of treaty compliance. Feminist theory, both radical and liberal, emphasizes men's power and domination as an explanatory factor in the experience of rape by women. Hooks (2014) argued that male violence against women generally arises out of the overall hierarchical male domination in society. Likewise, the feminist liberal theory advanced by Susan Brownmiller (1975) posits that rape is essentially not a sexual issue, but a matter of political power manifested through men's domination over women. Similarly, the radical-liberal feminist approach does not accept rape to be a sexual act. Rather, it focuses on the central idea of man's domination and priority of masculinity. In her book, *The Second Sex,* published in 1949, Beauvoir emphasized that man was the standard of everything; a female was just the 'other sex' (Beauvoir, 2012). The same man-as-monopoly approach was capitalized in feminist jurisprudence (Barnett, 1998).

On the other hand, McPhail (2016) put forward an approach called feminist framework plus that argues for the integration of some five-feminist theories with the

goal of developing a comprehensive and complete presentation of rape. For McPhail, this is called theory-knitting and represents a unique approach to theory development leading to a completer and more comprehensive model.

The third theory that supports the study is the domestic politics theory of treaty compliance. This theory developed by Simmons (2009) holds that treaties influence domestic politics. The argument is that when a state commits itself to an international treaty, it is likely to change its behavior toward its own citizens. The logical connections between the framework presented and the nature of my study include the fact that rape in Ethiopia, whether committed in conflict or peace, is a manifestation of male domination and assessment of liability in the crime of rape. Additionally, the theories support my study in that the same male domination operates in policy decisions concerning timely ratification and effective implementation of international treaties on women's rights. It may be logically assumed, for instance, that Ethiopia would ratify the Rome Statute if it were women ruling the country, or at least enjoying political power strong enough to influence policy decisions on international relations.

Nature of the Study

This study involves an investigation of an international project on ending impunity, and its practical and theoretical impact on the local situation in terms of establishing accountability for rape committed in the country. In other words, the study evaluates the impact of the statute's ideals and principles on the effort made to punish those who systematically and widely rape girls and women (the Rome Statute, 1998).

Rationale and Significance of the Study

This study hopes to contribute to the prevention of sexual violence and protection of girls and women against rape in Ethiopia in three ways. First, it will provide some evidence for the national women's right advocacy organizations to use when advocating for the government to take measures consistent with the ideals and principles of the Rome statute. Secondly, it provides good ground for a review of criminal policy to avoid the practice of impunity for rape. Thirdly, the study may also help stakeholders raise their legal consciousness about the philosophy, purpose, and principles of the statute, which, in turn, serves as a useful ideological tool to promote accountability for the crime of rape. Finally, the study is likely to inspire domestic actors to debate on the need for joining ICC and encourage the government to ratify the Rome Statute. Cumulatively, the research may serve as an advocacy tool to align international standards to the domestic laws and policies, thereby working toward the goal of ending impunity.

Limitation of the Study

The study does not include participants from all regional states. Although some rape cases will be included as part of the materials consulted, no participant was recruited from regional states. Moreover, the study did not include the view of a supreme court official, although that consent was initially obtained. Otherwise, the rest of the participants were able to provide enough relevant and rich data to answer the research question.

Summary

This chapter has identified the general basis of the research by addressing the purpose, problem, significance, theoretical framework, rationale, nature, and limitation of the study. The research explores the theoretical and practical significance of the Rome Statute of the ICC as an attempt to show if the treaty has any impact on ending impunity for the crime of rape in Ethiopia. The importance of the study lies in its ability to provide a sound basis for women's rights advocacy and prevention of impunity for rape in Ethiopia through applying international standards of criminal justice and discussing implementation conditions of the Rome Statute. In the next chapter, I will present the literature reviewed for the study.

Chapter 2: Literature Review

Introduction

This chapter is a synthesis of literature previously published in the field of study, which I reviewed to establish the foundation of knowledge for the research (Paul & Criado, 2020). The literature review chapter also includes the discussion of the theories that support this study. The materials consulted concern the Rome Statute of the ICC, and its significance for rape and the policy and legislative situation in Ethiopia. Some discussion of the African Union has also been included, as well as definitions of a few terms relevant to the discussion. Therefore, the chapter is mainly about the knowledge already established in the field, the theory identified to support the study, and some terms defined to facilitate the discussion.

Literature Review and Search Strategy

Understanding the importance of using an efficient and effective search strategy to a successful dissertation, I tried my best to identify the right procedure to find the appropriate articles. I always started with the Walden library homepage general search field. In many cases, I found articles of interest, even at my first search attempt, but when I failed to get the material needed in the main library home page, I proceeded to specific library databases arranged alphabetically from A to Z. Before selecting the database type, I always reflected on my search topic to determine if it would be appropriate to be searched there. I often found the materials I looked for in one of the databases, but if an article was missing in the databases, I resorted to such general libraries as vital source

bookshelf and other governmental and nongovernmental websites, including those of the United Nations and its specialized agencies and other human right organizations.

In all cases, I followed a clearly defined data search procedure. First, I selected the keywords relevant to my search topic. Then, I combined the key words using the mechanism of Boolean operators (Walden University, 2020). Very often, the system displayed too much information. In such a case, I either modified my search for a manageable quantity of information or selected the article I believed to be most relevant to my topic. In this connection, I found the Boolean operators a useful tool to narrow down the search (Walden University, 2020).

Basic Terms and Concepts

Some key concepts and phrases relevant to the discussion are defined here. The list includes complementarity, gender-based violence, international crime, and treaty.

Complementarity

Within the context of the implementation of the Rome statute, complementarity refers to the status of ICC. As provided in the preamble of the Statute, the role of ICC in the general work of the investigation and prosecution of international crimes is complementary to the national jurisdictions (The Rome Statute, 1998). Therefore, complementarity is a term that designates the alternative jurisdiction of ICC (Nabil, 2017; the Rome Statute, 1998). It is an arrangement by which individual states enjoy a primary jurisdiction over the crime in question before the ICC takes over (Imoedemhe, 2016). The principle of complementarity was provided under Article 17 of the statute, where the provisions clearly stipulate that the primary responsibility of prosecuting and preventing

international crimes rests in national courts with ICC intervening in exceptional cases such as when states fail or are unable to do it (The Rome Statute, 1998). Complementarity, as laid down in the Rome Statute, is a jurisdictional principle adopted by the international community to recognize the primary responsibility and competence of national courts. Writing to the same effect, Muyiwa (2021) described complementarity as a means of completing the tasks of national courts upon their failure to perform their function. It is, therefore, clear that every state has a primary jurisdiction over criminal cases as part of its sovereignty, in so far as the state in question is able and willing to do so.

At the same time however, it is accepted that the sovereignty exercised in this context is not absolute because international tribunals can also have complementary jurisdiction over individuals that domestic courts cannot prosecute for some reason (The Rome Statute, 1998). In other words, the jurisdiction may shift from a state court to ICC, but only when a state is unable or does not want to try perpetrators of international crimes. In short, the jurisdiction claimed under the principle of sovereignty depends on whether states are able and willing to prosecute and try suspected perpetrators of the atrocity crimes (Bachmann & Sowatey-Adjei; 2020). Nevertheless, ICC is not a substitute for domestic jurisdiction. It always remains complementary to national jurisdictions. The international criminal court is not a substitute for national jurisdictions (Corell, 2000). Therefore, the idea of complementarity consists in the relationship of the ICC with national courts (Krings, 2012).

Equally important is the consideration of the advantage of complementarity. The fact that national courts exercise primary jurisdiction over international criminal cases is practically useful to ICC. This is because ICC cannot try all the cases due to resource limitation (Boudreau & Foutz, 2018). Hence, complementarity is not only about adherence to the traditional practice of state sovereignty; it is also about economic efficiency and convenience.

However, the actual implementation of the principle of complementarity is not so simple. One major difficulty is the tendency in Africa to create continental criminal courts instead of recognizing the principle of complementary jurisdiction of the ICC (Agwu, 2020). For instance, African states claim to establish an African Court of Justice and Human Rights to try African criminal cases. This is not a feasible proposal because the establishing instrument of the court has not yet been ratified by enough African states (Ronald et al., 2019). Similarly, lack of sufficient expertise in the field, inefficiency of the national judicial system, and political intervention are all serious challenges to the effective implementation of the principle of complementarity (Imoedemhe, 2016). It was recognized that these factors prevent individual states from successfully discharging their responsibilities.

For Imoedemhe (2016), these problems can be solved by the way complementarity is executed and applying the idea of inclusive interpretation. By inclusive interpretation, Imoedemhe (2016) meant that both the ICC and the local judicial system should have equal or the same chance to investigate and prosecute the crime instead of one party taking the responsibility to the exclusion of the other. In other words,

both local and international courts should exercise jurisdiction over the same case at the same time, however, that may not be the only way out.

Ellis (2009) offered a different solution. According to Ellis, launching a capacity building program is a more feasible and useful solution to improve the functional competence of the national law enforcement authorities. In any event, complementarity, as it appears in the Rome Statute, is an arrangement that emphasizes the primary responsibility of states to investigate and prosecute an international crime.

Gender-Based Violence

There is no common definition for the phrase *gender-based violence*, but the UN Declaration on the Elimination of Violence Against Women (1993) defines it as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life." Simply, gender-based violence is also defined as a form of violence committed against women (Hilde, 2014). In this sense, the terms *gender-based violence* and *violence against women* appear synonymous. What is important here is that sexual violence is part of gender-based violence and constitutes a crime against humanity (The Rome Statute of ICC, 1998).

International Crime

Despite some disagreement among the legal scholars, the phrase international crime very often refers to the category of offenses specified under the Rome Statute (Heller, 2017; The Rome statute, 1998). These crimes are also called "core crimes" (Politi, 2017). The crimes under this category are the crimes of genocide, crimes against

humanity, war crimes, and crimes of aggression. They are also called atrocity crimes (Capicotto, 2018). Thus, at least for the purpose of the Rome Statute, the phrase international crime applies only to the crime of genocide, crime against humanity, war crime, and crime of aggression.

It should be noted, however, that disagreement on the concept and application of the phrase *international crime* persists. For instance, Imoedemhe (2016) argued that the phrase international crime is used both in a narrow and broad context. If interpreted broadly, international crime refers both to treaty and atrocity crimes (Imoedemhe, 2016). Treaty or transnational crimes are those crimes whose commission usually transcends nations and crosses state boundaries (Cyrille, 2000). Crimes of this nature include money laundry, human trafficking, piracy, etc. The term also refers to those crimes covered by treaties that require states parties to criminalize certain acts defined by the treaty in question.

On the other hand, there is little difference of opinion about the nature of those crimes provided under the Rome Statute. Atrocity crimes are those crimes that are so grave that they threaten the values of the international community as a whole and shock the human conscience (Einarsen, 2013; Fisher, 2012; The Rome Statute, 1998). These crimes are also called jus cogens crimes (Heila, 2009). Jus cogens is a peremptory norm that cannot be derogated (Vienna Convention on the Law of Treaty, 1969). A jus cogens crime is, therefore, a crime that cannot be tolerated. In any event, it is widely accepted that the phrase international crime refers to those crimes provided under the Rome Statute, namely, genocide, crime against humanity and crime of war. In other words, the

international community and international lawyers agree that those crimes listed under Article 5 of the Rome Statute of the ICC are international crimes.

Treaty

Technically, a treaty is defined as "an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or two or more related instruments and whatever its particular designation" (Vienna Convention on the Law of Treaties, 1969). This means that a treaty is an international agreement in which states voluntarily assume obligation to be met within their respective jurisdictions. Although a treaty implies an imposition of an obligation of some kind in the legal sense, it practically functions as a collective mechanism of problem solving (Ahmad, 2021). A treaty is a legal mechanism by which international obligations are created for the state parties to implement them domestically. In other words, a treaty represents an international contract to be implemented at home. As a result, treaties provide a strong foundation for moral commitment and compliance. It should also be noted that treaties constitute the most important source of international law. Article 38 of the Statute of International Court of Justice (1945) lists three sources of international law (treaties, custom and general principles of law), and treaty is the major source (Arajurvi, 2014).

The three terms *covenant*, *convention*, and *treaty* are used synonymously, but there are also other designations of international agreements (Brian, 1987). For example, the term *statute* is equivalent to a treaty or convention. Therefore, for all practical purposes, the Rome Statute of the ICC is an international treaty.

According to Brian (1987), U.S. President Woodrow Wilson was the first to use the term *covenant* within the context of international law. That may be true given that President Woodrow Wilson is known to have taken the initiative to sponsor the formation of the League of Nations in 1919. Although Congress later declined to ratify the founding treaty in 1920 and kept the United States out of the League, the president worked passionately to establish the organization under the Treaty of Versailles (The League of Nations, 2012).

The adoption of the founding treaty and the establishment of the League was a significant development in international law. The acceptance of the treaty was remarkable particularly for the development of international justice, partially because the International Permanent Court of Justice (IPCJ) was established under the League in 1920 (The League of Nations, 2012). True, IPCJ was not a criminal tribunal, but it was an international body of justice and, therefore, has some relevance to the formation process of the international criminal court. Moreover, the League was the first forum where the idea of establishing a permanent international criminal court was discussed. Therefore, the ratification of the founding treaty of the League was a significant progress.

Ratification is an important action in treaty business as an act "whereby a State establishes on the international plane its consent to be bound by a treaty" (Vienna Convention on the Law of Treaty, 1969). Hence, Ratification is a useful state measure that gives life to treaties. When a treaty is not ratified, then, it is defeated, (Gyung-ho, 2017). Moreover, it symbolizes the state's decision to participate in a particular international agreement (Koubi & Bernauer, 2020). Legally, states are assumed to have

officially undertaken obligations under international law when they ratify the treaty. For this reason, ratification is not only a legal formality buta high-level policy decision.

In general, the domestication process of international treaties involves three steps: signing, ratifying, and enacting legislation for compliance (Brian, 1987). These tasks are performed at various stages and have specific purposes. When signing, a state is committing not to do anything that may contradict the objective of the treaty; upon ratifying, the state agrees to be bound by the treaty and its provisions (Vienna Convention on the Law of Treaties, 1969; Pompeo, 2002: Koubi & Bernauer, 2020). The third step, enacting legislation, refers to the creation of laws to implement the treaty domestically. Although the domestication process necessarily involves these stages, the actual implementation may take a form specific to each jurisdiction. For instance, in the United States, the domestication process of a treaty involves negotiation of the state agency concerned, signature of the president, consideration by the Foreign Relations committee and Senate deliberation (Sitaraman, 2016).

At this point, however, one may wonder why countries ratify treaties. Simmons and Alison (2010) held that countries generally ratify international treaties to show their commitment to the rule of law. Countries that survived major conflicts and had weak institutions are more willing to ratify treaties because they want to demonstrate a positive relationship to law (Simmons and Alison, 2010). Not all agree to this view, however. Chapman (2013) argued that so many countries hesitate to ratify a treaty because they feel uncomfortable and perceive ratification to be a risky business. Wayne (2017) noted two reasons why states are reluctant to ratify international treaties. First, states are

concerned that the treaty to be ratified may entail some political, social, or economic cost. Secondly, they do not want to risk a possible conflict between treaty norms and domestic and national values (Wayne, 2017). The nature of the domestic polity may also affect the decision to ratify a treaty. Sitaraman (2016) argued that whether a state is democratic or undemocratic influences their commitment to ratify the treaty in question. Sitaraman added that the concern about the international institutional capacity required for the treaty's implementation can also prevent the state from accepting the treaty.

The foregoing discussion implies that each state has a unique reason for refraining from treaty ratification. For instance, in the year 2008, the Czech Republic was the only European state that did not ratify the Rome Statute of the ICC, because she had to first revise her domestic laws and harmonize them with the content of the Statute (Křivánek, 2008). Whatever the reason, no treaty is legally relevant or practically useful unless ratified by a specific number of states, as put forth by the treaty. Fortunately, the Rome Statute has already been ratified by 123 countries, more than 50 percent of the legally required number (The Rome Statute, 1998; UN. 2022).

The Rationale of Ending Impunity

Impunity is about punishment and bringing perpetrators to justice. The logic for punishing individuals under international criminal law differs little from that of the domestic criminal justice system. In his book entitled *The Theory of Punishment* (2021), Altmon indicated that punishment generally serves two purposes: deterrence and retribution. Deterrence is about preventing potential criminals from committing offenses (general deterrence), and retribution is punishing the perpetrator to take public revenge

on the criminal. Punishing perpetrators and prevention of atrocity crimes are clearly stated in the preamble of the Rome Statute as objectives of the law (the Rome statute, 1998). As a result, one can understand why the Rome Statute was adopted: individuals who commit atrocity crimes should face punishment for their actions, and other potential perpetrators should be discouraged. Dutton and Alleblas (2017) also agreed to the view that the Statute helps to deter criminals, citing a Kenyan study that demonstrated a positive result of ICC intervention to support their position.

In contrast, Malmin and Ragnhild (2022) argued that there is no clear evidence to show that trials or ending impunity either influence or stop rape in war or conflict. The two researchers reported to have studied all armed conflicts from 1989 to 2011 and did not find a clear and strong evidence of deterrence of ending impunity. Although the researchers' report did not conclusively show that ending impunity has no deterrent effect, it is difficult to deny that punishing perpetrators has a deterrent effect. Therefore, it can be practically suggested that more research is needed to evaluate the statute's effectiveness in preventing crime; however, it is also important also to remember that the statute's goal should be evaluated not only in light of the theory or consequentialism, but also in light of the theory of retributivism (Altmon, 2021).

Historically, impunity prevails everywhere. For instance, as Thomas Wright reported in his book *Impunity, Human Rights and Democracy* (2014), immunity prevailed in Chile and Argentina during the 1970s and 1990s when perpetrators of atrocious crimes escaped liability and punishment because of the amnesty laws. Wright (2014) also indicated that later, the situation was reversed in favor of justice, and repressors were

prosecuted when the supreme court in Argentina ruled the amnesty laws of 1986-87 unconstitutional. At that point, democracy was restored in Chile.

Development, Significance, and Implementation Challenges of the Rome Statute

Toward the Rome Statute

The Rome Statute is a relatively recent development. There was no formal and permanent criminal tribunal to try individuals before ICC came into existence in the year 2002 (Natalie, 2019). Therefore, the Rome Statute is the first treaty to provide a permanent, legitimate, and relatively credible mechanism of enforcing international criminal law. In fact, the statute can be said to have provided both the law and the court as both were missing prior to its establishment (Natalie 2019; Sang-Hyun, 2012). This means that the Rome Statute presented a clear international criminal law on impunity and defined both the crime and the subjects of the law.

Defining the scope of the law, Article 25 provides for the responsibility of individuals or natural persons (the Rome Statute, 1998). Before officially being recognized under the Rome Statute, the idea of individual criminal accountability under international law had been slowly developed. The first attempt to create an international criminal court was in 1919 when the Treaty of Versailles was adopted (The League of Nations, 2012), but the history of international tribunals dates even back to the 1474 trial of Peter von Hagenbach, which was held in the town of Breisach, Southwest Germany (Lyons, 2022). Despite these attempts, the first successful international judicial forum to try individuals at the international level were the 1945–1946 Nuremberg Military Tribunals (Drian, 1987; Imoedemehe, 2016). As briefly discussed in the introductory

chapter of this study, it was at this first international tribunal that officials and individuals involved in the Second World War atrocities were prosecuted (Henry, 2017). This tribunal was historic because it opened the way for holding individuals responsible under international criminal law. Furthermore, the Nuremberg trial was important because it provided the foundation for the development of international law, laid the ground for modern international justice, and helped genocide evolve as a legal concept (Kyriakides & Weinstein, 2005).

It is also important to note that initially, Great Britain and the United States had no intention to establish a tribunal to try the war criminals. Rather, they wanted a summary execution (Klearchos & Sturart, 2005; Imoedemhe, 2016; Marrus, 2018). Alternately, the Soviets pushed for a due process and later convinced the United States and Great Britain. They decided upon a judicial process, but there was no legal authority (an international criminal law) to guide the investigation or prosecution. For this reason, in 1943, United States, Great Britain, Russia, and France had to sign the London Agreement so that the military tribunals would have a criminal law to apply to the cases before it. Ethiopia also later signed this agreement. The rationale for their agreement was the need to establish accountability for the atrocities committed during the war (Theresa 2019). Hence, one can say that the London Agreement (Nuremberg Charter) was the first document used as international criminal law.

This also means that there while the first interntional war crime tribunal was held on May 9, 1474, there had been neither a criminal court nor a criminal law before the Nuremberg and Tokyo trials (Lyons, 2022; Harry, 2019; Arpita, 2009). Although there

were some international instruments already adopted, they were not sufficient to support such an unprecedented international Tribunal (Hiromi, 2011). Initially, only the four countries, the United States, the then Soviet Union (Russia), Great Britain, and France, were signatories to the agreement, which later became the London charter. In 1945, however, many other countries including Ethiopia joined them expressing their respective adherence to the charter (Imoedemhe, 2016). Hence, the trials and procedure of 1945–1946 were mainly a result of negotiation among the victors rather than a conventional and straight forward prosecution and trial process.

At the time, scholars and interested politicians expected the 1946 judicial undertaking to immediately evolve into a permanent international criminal court (Politi, 2017; Drian, 1987; Alchavan, 2003). Instead, the international community had to wait almost half a century after Nuremberg and Tokyo before adopting the Rome Statute as an important legal authority. In 1948, the International Law Commission was instructed by the general assembly to establish the international criminal court, which led to drafts of the statute in 1951 and 1953 (Jimy, 2002). According to Jimmy (2002), the process came to a halt due to a disagreement over the definition of the term "aggression" until the United Nations returned to it in the late 1980s.

It is important to note that the process of forming an international criminal court started before the Nuremberg trial. Although the Nuremberg trial was the first formal initiative for impunity in prosecuting individuals for atrocity crimes, the effort to establish an international court had begun much earlier. For instance, the purpose of establishing a committee expert jurists by the League of Nations in 1920 was to design a

mechanism to create a permanent international court (Theresa, 2019). Yet, the practical process of establishing ICC began in 1989 when Trinidad and Tobago requested to form an international criminal court (Payam, 2003). The initiative had to go through various stages including a draft statute by the International Law commission in 1994, establishment of a preparatory committee in 1995, and ultimately adoption of the statute in 1998 at the conference held in Rome, Italy (Corell, 2003; Jimmy, 2002; Payam, 2003). Therefore, it can be said that the adoption of the Rome Statute and creation of ICC are products of years of historic effort.

Significance

The adoption of the Rome Statute and the establishment of ICC is an important initiative in many ways. Edward (2020) considered the statute and ICC to be crucial progress in international law. For Adjei, ICC is a useful tool to challenge impunity and sovereignty (2020). It has been recognized as a significant achievement in international law in general, and international criminal law in particular. According to Politi & Nesi (2001), the Rome Statute was the most important achievement in the history of the United Nations after the San Francisco Charter. No matter how late the project was, the creation of an international court competent to try individuals who commit international crimes was considered to be a giant step forward in the history of international law (Roach, 2006; Politi, 2017). It has even been asserted that the ICC was the greatest achievement the international community made in the 20th century (Harry (2019; Leslie, 2016). The legal development is also significant in that it demonstrated the international community's determination to put an end to impunity (Polity, 2017). According to Ellis

(2009) the ICC is a practical manifestation of the states' commitment to the international rule of law by attempting to establish a standard of justice by ensuring accountability for international crimes. This was because ratifying the statute was one step forward in the general effort to end impunity. Carsten (2015) appreciates the positive role of the international criminal justice in raising consciousness and empowering local courts. The implication is that the establishment of the criminal court and the international community's commitment to abide by the treaty has been a great success in the administration of international criminal justice.

Generation of Norms and Standards

In addition to the general positive features of the statute, it is also possible to identify some specific areas in which the statute is important. The Rome Statute plays a key role introducing international standards and norms, strengthening the national criminal justice system, inducing policy and legislative measures, improving human right conditions, and elevating the focus on rape. Like any other treaty, the Rome Statute serves as an important source of legal norms and standards that are relevant to domestic life in the states. As noted by the court's president, Sang Hyun Song (2016), the Rome Statute provides a foundation to generate norms that may bind states. This means that societies in individual states can learn and internalize the treaty's values and norms, thus building resistance to atrocities at all times.

Inducing Legislative and Policy Changes

The Rome Statute requires states to take the necessary legislative measures consistent with the purpose of the treaty. This expectation sounds reasonable and may not

be strongly challenged, at least theoretically, because the states are bound by the rules of international law (Simmons, 2009). The required reform may include legislative changes favorable to women. The measures taken to adopt the treaty norms and to make them part of the domestic legal system is advantageous for the states because it helps them exercise jurisdiction over crimes committed in their own territories (Arpita, 2009).

In addition to facilitating legislative reforms, the statute may also help to introduce domestic policy changes. Historically, the activities of global governmental and nongovernmental organizations significantly changed domestic life, particularly in the spheres of human and women's' rights by promoting treaty implementation (Alasuutari, 2013). For instance, at the 1945 United Nations founding conference held in San Francisco, so many nongovernmental organizations challenged delegates, including those of the United States, to have the question of human right effectively incorporated in the UN Charter. Consequently, the Charter mentions the term "human right" seven times throughout the document (Brian, 1987). Likewise, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1979) requires that states parties take the necessary legislative and policy measures to promote and protect the rights of women. Sub-articles F and G provide for the modification or abolition of discriminatory civil and criminal legislation. Accordingly, the Family Code of Ethiopia was amended to harmonize the provisions of the legislation with the international norms on the rights of women (The Revised Family Code Proclamation of Ethiopia, 2000). Additionally, the 1957 Penal Code was revised to prohibit and punish female circumcision (Blackburn & Matthews, 2011). This implies that the interaction of ICC

with the individual states and the ideals contained in the Rome Statute are likely to bring about a positive change in their criminal policies.

Promotion of Human Rights

The other practical importance of the statute relates to its positive implication on human rights. In his book entitled *Cry of the Oppressed: The History and Hope of Human Rights Revolution* (1987), Drian noted that One of the useful legacies of the Second World War experience was the internationalization of human rights. This means that following the atrocities committed during the war, states began to consider the issue of human rights seriously, to the point of viewing criminal accountability of individuals to be more important than state sovereignty and national jurisdictions. Of course, this may not be directly attributed to the Rome Statute as it was not yet adopted then; however, as an international criminal law, the Statute shares the credit. Moreover, Politi (2017) emphasized the contribution of the Rome Statute to the protection of human rights. The statute plays a positive role in this respect because it prohibits any conduct that would, otherwise, amount to serious violation of fundamental human rights (The Rome Statute, 1998). The understanding is that when individuals are prosecuted for serious human right violations like rape, others may have the chance to learn (Adjei, 2020). In fact, one of the purposes of the treaty is to deter criminals and prevent atrocity crimes.

The generous support given by the human rights organization to the development and enforcement of the Rome Statute shows the necessary link between the treaty and the human rights agenda. For instance, many human rights organizations joined the United Nations and other democratic countries and supported the statute (Pompeo, 2006).

Similarly, the human rights groups were pleased to see the issuance of an arrest warrant for the former Sudanese leader al-Bashir in March 2009 (Alexis, 2010). Therefore, one can certainly say that the Rome Statute is instrumental and relevant to the promotion and protection of human rights.

Implementation Challenges

Having ICC as a tool to fight impunity is obviously commendable; however, it is also important to realize that its operation is fraught with obstacles. The problem starts from its delicate status as both a political and judicial institution (Roach, 2006); its position at the point where politics and law converge opens the way for controversy. According to Roach (2006), ICC may suffer from external and internal politicization. The external politicization concerns the attempt by the West to promote political interest through the administrative involvement of the Security Council in matters relating to the court. The internal politicization, according to Roach (2006), refers to the internal mechanisms of the court to develop policies and strategies. This happens for instance, when the powerful countries in the Assembly of State Parties tries to influence policies and strategies to be implemented through the prosecutor. On the other hand, Bensouda (2014) argues that politics have no room in the decisions of the prosecutors. Despite Bensouda's defense of ICC's internal administrative autonomy, the practice does not speak to the same fact. Instead, as an institution involving states, it is not surprising to find that the court's work becomes an object of political friction (American Society of International Law, 2008). Ochs (2021) argued that describing ICC as a political institution is simply a propaganda move, that such labeling of the court as a "neo-

colonialist regime" represents a state strategy to avoid investigation of and prosecution for atrocity crimes. This argument sounds valid when one considers the fact that a political accusation has nothing to do with a legal or criminal charge to be proved before a court of law.

The second challenge relates to the low level of commitment shown by the powerful states, as well as the United States' opposition to the court. The United States, China, and Russia were among the 21 states that voted against the adoption of the Rome Statute at the 1998 diplomatic conference (Lucrecia, 2021). Particularly, the U.S. has remained opposed to the International Criminal Court since its inception (Drian, 1987. When the United Nations began the process of forming a permanent international criminal court, the U.S. was the first to reject the idea, as advised by the American Bar Association. It signed the statute on December 31, 2000. Nevertheless, President George W. Bush declared that the United States would not ratify the statute and announced that the signing made by Bill Clinton would have no legal effect (Kate, 2020). This was a clear policy decision showing that United States would not be a state party to the Rome Statute. Furthermore, the United States Congress adopted the American Service-members' Protection Act (ASPA) in 2002 to ban states involved with the Rome Statute of from receiving military and other forms of assistance unless they sign Article 98 agreement (Rosen & Gruner, 2007). Article 98 agreements are those agreements made between countries based on article 98 of the Rome Statute. The treaty under Article 98 provides for ICC's incompetence to seek surrender of a suspect (the Rome Statute, 1998). Using this provision, the United States concluded a number of bilateral agreements with

both members and non-members of the Rome Statute to avoid jurisdiction of the court over U.S. nationals by preventing states from surrendering suspects (Attila, 2008). Itis important to bear in mind that, in view of its global political influence, the non-membership of the United States has certainly had an adverse implication on ICC and its effectiveness.

Unfortunately, the country has not changed its policy toward the court, even to the point of this study's completion. In its effort to defend her citizens who may commit international crime anywhere in the word, the United States has continued to vehemently attack the court. For instance, on April 4, 2019, the U.S. government revoked the visa issued to Fatou Bensouda, who was then the prosecutor of the court (Galbraith, 2019). The purpose of the revocation was to prevent the court from investigating war crimes in Afghanistan committed by the U.S. personnel. More concerning is that the United States challenges the court's legitimacy, not only to defend its own citizens but also her allies. This situation certainly impairs the court's functioning regarding a number of states since the U.S. has multiple allies due to its huge political and economic power. It should be noted, however, that the adverse position of the United States toward ICC may place the nation in difficult circumstances. For instance, the U.S. may lack the moral ground required to promote human rights or ever be able to see international criminals punished through the ICC (Brittney, 2019).

The United States has a long history of neglecting international treaty obligations and rejecting jurisdictions of international tribunals. For instance, in the aftermath of the First World War, the allied powers worked hard to establish an international court to try

war criminals, but the United States strongly objected to the proposal and helped war criminals escape punishment as a result (Marrus, 2018). This failure later relegated the world to another devastating conflict, the Second World War. In other words, if an international criminal court had been established and war criminals had been punished, it would have likely deterred individuals who initiated the Second World War.

Moreover, the anti-global court position of the United States affected international justice in many ways: (a) it contributed to the nonexistence of an international court ready to immediately try the war criminals, (b) it caused the legality controversy concerning the Nuremberg trial and overshadowed its legitimacy because there had been no international criminal law for the military tribunals to apply for the cases before them, (c) the establishment of ICC was delayed at least by half a century. This United States' paradoxical stand of both supporting and objecting initiatives for international criminal justice sometimes appeared negatively affect the nation's own values. Moynihan (1990) indicated that the country stresses its national interest at the cost of its democratic values. This excessive emphasis on national interest has now been a serious barrier to the global effort to combat impunity. Additionally, Moynihan (1990) noted that the United States declined the jurisdiction of the International Court of Justice in Mining of Nicaragua Harbor. Moreover, any reservation or hesitation about the promotion of international criminal justice may contradict its convention on the rule of law throughout the world (Feneisteni, 2009).

In addition, the attitude of the Security Council presents an obstacle to the effective implementation of the treaty. The reason is that many members of the Council

do not pay sufficient attention to the crimes against humanity because those issues are of little importance to their national interest (Agwu, 2020). In support of this view, Agwu (2020) gave an example of the failure of the United State to actively oppose the Rwandese genocide in which nearly one million people were killed.

As an act of dissatisfaction with the court policy, some African states have already begun withdrawing from the statute. For example, by the year 2016, Burundi, Gambia, and South Africa submitted their respective withdrawal notifications (Manisuli, 2017). Burundi effectively left the court, whereas South Africa and Gambia later withdrew their notification and continued their membership. The trend of African member states withdrawing from the treaty may be considered a serious problem since the continent is a place where the court is needed most, especially on account of the prevalent conflicts and frequent violations of human rights. Additional and outstanding challenges for implementation of the statute include universality, cooperation, complementarity, institutional integrity, judicial independence, efficiency, and relationship with the assembly of member states (Song, 2016). All these difficulties are likely to adversely affect the operation of ICC and the implementation of its statute, thus reducing its significance both globally and domestically.

Similarly, sensitivity to state sovereignty poses another serious challenge to smooth application of the Rome Statute's provisions and standards. The idea of sovereignty as a concept of international law has its originated with the theories of Jean Bodin and Hugo Grotius in the 16th and 17th century (Martinez, 2020). The notion of sovereignty refers to the competence of each state to exercise jurisdiction over its

subjects, as well as the capability to apply laws and policies to the lives of the people (Vaughan, 2015). Since the concept of sovereignty became popular and important to the states, it was incorporated in the charter of the United Nations as one of the core principles to be observed by members (U.N. Charter art. 2, para. 1).

However, states have been so sensitive to sovereignty that they have stuck to it to avoid the jurisdiction of ICC, even in justified cases. In addition, in view of colonialism history in Africa, states tend to reject a form of external control and intervention, no matter how legitimate it may sound (Rechner, 2006). State sensitivity to sovereignty has even adversely affected OAU's and probably AU's capability to prevent violence and conflict in member states. This is because sovereign equality was the foundation of the African Charter (Rechner, 2006). Moreover, the exaggerated passion for sovereignty pushed African leaders to realize a more perfect unity by realizing their dream for the United States of Africa (Guy, 2013).

Rape as an International Crime

Rape is an old social and legal problem that has victimized women and girls throughout history. As a form of sexual violence, rape was once described as "history's oldest but least condemned crime" (AllAfrica Global Media, February 7, 2014). It has existed since the Biblical times, Hammurabi, and Babylon (Inal, 2013; Eriksson, 2011; Brownmiller, 2013). Rape existed in ancient times, not only just as a social fact, but also as an acceptable practice of war (Sara, 2016). In other words, enemy combatants would legitimately rape women of the opposing group.

After all these ages, even today, rape has continued to exist as a major crime committed daily in every society, both in ordinary and conflict situations. As Susan Brownmiller (cited in Inal) (2013) noted, rape, whether in war or conflict, has continued to serve as an effective tool to demoralize the enemy and moralize the victorious. Likewise, hundreds of women and girls are reported to have been raped in the recent civil war waged in the northern part of Ethiopia since November 2020 (EHRC & OHRCH, 2021). The crime of rape is not such an ordinary offense that it has been reprehensible throughout human history. Even today, it remains one of the heinous international crimes, a form of atrocity punishable under international criminal law (Rome Statute, 1998; Castellano, 2020). It is also described as one of the "radical evils" (Agwu, 2019). The crime offends human dignity, threatens peace, and violates the fundamental value of international law (Robert, 2008). For instance, in Sierra Leon, it was designated as "invisible war crime," which means that the crime is not only an issue of domestic discussion, but a matter of international concern. All that implies the brevity of the crime.

Rape is a Crime Against Humanity Under the Rome Statute

This does not mean, however, that the history of rape as a crime started with the adoption of the Rome Statute. In fact, the attempt to criminalize rape began much earlier. It was indicated in the 1625 masterpiece *War and Peace* by Hugu Grotius that raping and killing women was prohibited even in the ancient civilizations (Crawford & Pert, 2020). Similarly, rape was a crime and was punishable under the 1883 Lieber Code, which was issued by the U.S. Federal government as Code Order 100, a remarkable legislative effort prohibiting rape and important contribution to international law. This implies that raping

women and girls has been wrong throughout history, even though victims were not effectively protected.

The reason for the sanction and the purpose of protection against rape varied across time. Initially, a person who raped a woman or girl was held responsible not because the victim had to be protected, but because the interest of her father, husband or brother was adversely affected (Brownmiller, 2013). In fact, rape was considered a property crime committed against a father. Even worse, the girl or woman raped was sometimes equally blamed and condemned along with the person who raped her. Although in the times of Hammurabi, the victim was not blamed; in contrast, in Babylonian times, she was severely punished, bound with the man, and thrown into a river (Brownmiller, 2013). This means that although rape was a prohibited act even in ancient times, it was a crime because it affected the interest of her relatives, not hers. The ground of the criminal liability was not the sexual autonomy or human dignity of the girl or women raped. Instead, the criminal was held liable because he "stole" virginity and "embezzled" the price of the girl (Brownmiller, 2013). The perpetrator was blamed for devaluing the female in terms of her market price, as the sale of a girl with virginity would earn her owner a good amount of money (Askin, 2003). In addition to forming part of the man's property, the female's chastity, sexual purity, and fidelity were protected as essential elements of the family's social reputation and honor (Canto & Martin, 2017). This means that rape was socially condemned because it was an attack against the man through the violation of the female's sexuality. Therefore, the social practice of rape had

remained wrong throughout history; but the object of the protection was not the interest of the female aggrieved.

It is true that when considered in a conflict or wartime context, rape still causes psychological and cultural harm to the women, but also to the men of the group and family the female belonged to. This is because when men commit rape against women in conflict or wartime situations, they do it with the intention of destroy the culture of the opponent's group and convey a message that the latter fails or is unable to protect their families (Eriksson, 2011).

However, even when rape was sanctioned to protect females, it was found to be incomplete because it focused on her honor, not her sexual autonomy or dignity. The need to emphasize women's sexual autonomy rather than personal honor was addressed in two criminal ad hoc tribunals, the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), where the definition of rape was debated. The discussion resulted in the shift from mere honor harm to a more serious damage to dignity; however, the first formal international definition of rape by the two tribunals left the concept open for another controversy (Eithne, 2018). ICTY and ICTR gave their respective definitions. ICTR defined rape as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive" (Prosecutor v. Jean-Paul Akayesu, 1998). In contrast, ICTY defined it as,

> (I) the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b)

of the mouth of the victim by the penis of the perpetrator, (ii) by coercion or force or threat of force against the victim or a third person.

Despite the unavoidable controversy, the two tribunals were the first judicial bodies to give official, internationally-decided definitions of rape that emphasized sexual autonomy and dignity (Ellis, 2007). The ICC definition of rape is a progressive one because it focused more on sexual integrity and autonomy of the victim rather than personal honor, as was the case in the 1907 and the 1949 conventions (Baumeister, 2018). It is important that the definition capitalizes on sexual autonomy or dignity because the experience of rape entails more serious harm than a mere assault on personal honor of the victim.

In discussing sexual autonomy, Eriksson (2011) Introduced two versions of it: positive sexual autonomy and negative sexual autonomy. According to Eriksson (2011), the purpose of any policy is not to protect unconstrained or positive sexual autonomy, which implies that the right holder can be assured of sexual access. Instead, the policy or legislation sought is to protect the freedom of the individual from unwanted violation of sexual access (Eriksson, 2011). Unfortunately, sexual autonomy is not an absolute requirement in many societies since patriarchal domination and coercion still function.

No matter how it is defined, rape undeniably represents a heinous crime of international concern (Rome Statute, 1998). It has been a crime of this magnitude for many reasons. First, it threatens fifty percent of the world population UN (n.d.). Moreover, rape is a harm not just to an individual or group, but is rather a risk to the general social, economic, and political life of a community (Eriksson 2011). Secondly,

when it is committed particularly in wartime or conflict situations, rape can be called "gender communal terrorism" (Matusisz, 2017). Matusisz (2017) further noted that it is so called because the purpose of the crime in such a context is to exterminate an ethnic group, as was the case in Bosnia, Rwanda, and the DRC Second War (Matusisz, 2017; Human Rights Watch, 1996; Rebecca, 2006). As Matusisz (2017) indicated, a collective sexual act by a group of men against a group of women in war situation is called sexual terrorism, sex-based terrorism, gender massacre, and war rape. Rape has been the most damaging experience to many in these situations (Mccrummen, 2007). The horrible nature of the crime of rape was especially evident when thousands of Yugoslavs, Bosnian, and Rwandan women were massively raped during the wars of 1991-1995 (Arpita, 2009). Rape also represents a grave violation of human rights (Heineman, 2011).

Despite the seriousness and prevalence of rape both in war and peace time, perpetrators escape criminal liability in many instances. For example, thousands of girls and women were reportedly raped during the Second World War; however, as noted in the background section of this study, no suspect was put on trial, nor did the Nuremberg tribunal judgement mention rape or any other form of sexual violence. The London Agreement, or Nuremberg Charter as it was later called, did not include rape in the list of crimes against humanity (Ellis, 2007). Although some military officials were prosecuted and convicted of sexual violence at the Tokyo Tribunal, the case of two hundred thousand females used as comfort women for Japanese troops were not considered (Ellis, 2007).

Half a century later, the international community began taking judicial and administrative measures to protect women against sexual violence. Ad hoc criminal tribunals were set up, the Rome Statute was adopted, and ICC began its work. Moreover, the United Nations Security Council passed Resolution 1325 in October 2000 to encourage the participation and involvement of women in peace and security matters (Yuda, 2020). The resolution also calls for measures to protect women and girls from sexual violence, especially rape. In addition, Resolution 1325 aims at presenting women as bearers of their own rights, not mere objects; despite glaring implementation challenges, both actions were useful in promoting the security of women especially in conflict situation (Dian & Henri, 2022).

The first international criminal trial after Nuremberg and Tokyo was the international criminal tribunal for the former Yugoslavia that began on May 7, 1996 (Ellis, 2007). The defendant, Dusko Tadic, a café owner and karate instructor, was the first suspect to be charged with rape and sexual violence as a crime against humanity at an international tribunal (Ellis, 2007). The first conviction following the adoption of the Rome Statute was of three Serbian soldiers rendered on February 22, 2001 (Bergoffen, 2003). According to Bergoffen (2003), that was a landmark event in history because of the prosecution, condemnation, and classification of rape as torture, and thereby, a crime against humanity.

The prosecution of sexual violence by the ICC has at least three important benefits: deterrence, prevention of impunity, and advancement of women rights (Kiran, 2010). Yet Kiran (2010) noted that, although sexual violence became a matter for the

ICC, the track record of such cases is not that congratulatory. Kiran argued that even in the groundbreaking case of Akayesu, the prosecution did not initially inlcude rape for evidence-based reasons (Kiran, 2010). In addition, although large-scale rape and sexual violence were committed during the period of genocide, only 30 percent of the charges were related to rape, out of which ten percent ended up in convictions (Kiran, 2010). For example, Germain Katanga was acquitted for the rape charge in the first prosecution by the ICC in 2014 due to a lack of proof (Adams & Alexandra, 2015; Haffajee, 2006). It was also noted that at the Sierra Leon tribunal, only one of four cases contained a discussion of sexual violence. Besides, victims who appeared before the tribunals were not treated well; they were discouraged and paid little attention. One may argue that the ICC tribunals did little in terms of prosecuting individuals who committed rape. Kiran (2010) said that legal prohibition was not something to be celebrated because that had been the case even long before the creation of ICC and other international criminal tribunals. Thus, we can see from all this that the rape charges were not properly tried, and perpetrators effectively escaped criminal liability.

Theoretical Framework

The three theories relevant to this study are the feminist theory, the feminist framework plus theory, and domestic politics theory of compliance. Both the radical and liberal versions of feminist theory of rape hold that rape is a manifestation of power and control, not a matter of sexual gratification (Brownmiller, 2013). Feminists also describe rape as a mechanism used by men to subjugate women (Brownmiller, 2013). Brownmiller listed three types of myths about rape: (a) rape is a part of patriarchy, (b)

men created a “mass psychology” of rape, and (c) rape is part of normal life. McElroy (2016) challenged the validity of all three, arguing that it is not logical to assume that the patriarchal system is favorable for all men alike and oppresses all women. Secondly, the mass psychology description is also not realistic since Brownmiller implied in the same book that 75% of men do not rape. Thirdly, the judgement that rape is part of a normal life is not acceptable because if rape is something that women experience only in wartime, it means that they are safe in peace time, which negates the assumption about the normalcy of rape in life (McElroy, 2016).

This is not the only criticism against Brownmiller’s gender perspective. One element of Brownmiller’s argument is that women are raped because men consider them to be enemies (Eriksson, 2011). However, it is difficult to comfortably accept the argument that rape arises out of gender animosity. Hence, while the gender hostility explanation may not sound logical, the argument based on gender inequality and power relations makes more sense.

In any case, the theory is relevant to the subject of this study in so far as it holds that rape is a manifestation of male domination and reflects cultural gender role definitions. Denying rape as an individual or personal experience, feminism understands the phenomenon to be a cultural or system problem (Beverley, 2016). According to feminism, men commit rape to maintain their supreme gender position or role in the society and maintain the patriarchal system (Beverly, 2016). However, Beverly (2016) argued that the power-oriented understanding of feminism is not complete in its

discussion of rape. Consequently, a more comprehensive model of presentation is required to address the topic, which is called feminist framework plus (Beverly, 2016).

Contrary to this view, the French philosopher Michel Foucault once argued that rape was not any different from an attack on any part of the body, like a punch in the face. As a result, he suggested that sexual violence be decriminalized (Henderson, 2007). For Foucault, rape should be punished like any other physical form of violence. Conversely, the feminist view of rape considered Foucault's position as an attempt to take rape out of the social context (Henderson, 2007). As noted by Henderson and from the perspective of feminists (2007), Foucault underestimated the impact of power relations between the two sexes, noting that decriminalization of rape would just further legitimize sexual oppression. The implication is that Foucault paid little attention to the seriousness of rape, whereas the feminist wanted to strictly associate rape with the power structure and institutional arrangements in society. Nevertheless, Henderson (2007) feels that Foucault has a point in his "body politics." Considering rape to be an ordinary crime of violence, instead of a unique sexual offense, is misleading because it repositions the victim in a subject-to-subject position in which case she can defend herself against the violent attack in a rape situation (Henderson, 2007). Therefore, rape is not like any other ordinary crime of violence when the condition of the commission of the crime, gravity, and extent of the harm caused is considered. On the other hand, Palmer and Thornhill (2000) disagreed with the feminist view that rape is not caused by sexual gratification. For Palmer and Thornhill, the argument that rape had a nonsexual cause was a scientifically incorrect ideological statement (Palmer & Thornhill, 2000).

In addition to the afore-mentioned theories on rape, this study can also be supported by domestic politics theory of compliance. As developed and advanced by Simmons (2009), the theory holds that expressed commitment to international treaties produces a positive result by changing the state's behavior toward its citizens. For Simmons, international treaty law changes the human rights condition domestically by mobilizing actors for the treaty's implementation, which the state has committed itself to (Simmons, 2009). This is to say that the fact that a state has pledged to comply with a particular international treaty by itself creates a positive condition for the implementation of the standards contained in the treaty. I will do the research within the framework of these theories; however, I may also consider some other related theories as I refine further the theoretical part of the study.

African Union on Women's Rights

The international community has already developed several treaties and development initiatives to promote and protect the rights of women. The Convention on the Elimination of All Forms of Discrimination Against Women (1979), Declaration on the Elimination of Violence Against Women (1993), Convention on the Rights of Persons with Disabilities (2006), the 2030 Agenda for Sustainable Development (2015) etc., are all important international development policies. Such treaties and policies adopted by the United Nations are meant to promote and protect the rights of women in general. Some of the treaties concern the entire female population, whereas others target women with specific interests. For example, Article 6 of the Convention on the Rights of

Persons with Disabilities (2006) provides exclusively for the rights of women with disabilities.

In addition to such global development frameworks and instruments, there are similar policy endeavors made by such continental/regional organizations as the African Union. Of course, regional organizations may not necessarily endorse the international standards as adopted because the ideas of gender and gender equality are usually framed within socio-cultural settings (Anna & Anouka, 2020). For instance, as Anna and Anouka noted (2020), the European Union and African Union follow different norms on gender equality. This section of the research outlines what policy measures the AU has taken so far to promote gender equality under the reality prevailing on the continent.

About the African Union in Brief

The African Union is a continental organization established in 1963 in Addis Ababa, Ethiopia by 32 independent countries. It was then called the Organization of African Unity (OAU) and was intended to achieve the dream of the United States of Africa (Guy, 2013). It was later renamed the African Union in the year 2002 (Baffour, 2013; Constitute Act of African Union, 2000). Since then, it has been called the African Union (AU).

The organization was a direct product of Pan-Africanism, which initially created two movements in Africa, the Casablanca and Monrovia groups (Rechner, 2006). Although the two groups agreed to form a continental organization at the time, they differed in the form and level of the unity sought. The Casablanca group was more revolutionary, and thus wanted a continent more united to form the United States of

Africa (Rechner, 2006; Guy, 2013). Ardent pan-Africanists like Kwame Nkrumah stood for such a level of unity because they wanted the continent to be strong enough to resist former colonialists and neo-colonialist, as well as the continued economic domination of Africa (Chitja, 2014). Conversely, The Monrovia group (gradualist/functionalist) wanted a loose integration that may recognize independence and sovereignty of individual states. Eventually, the two groups managed to accommodate their differences and were able to sign the founding charter on May 25, 1963, thus forming the Organization of African Unity in Addis Ababa, Ethiopia. As noted above, OAU was later renamed as the African Union in 2002 (Baffour, 2013). When the organization changed its name from OAU to AU, it also replaced the founding charter with a Constitutive Act adopted by the Assembly on July 11, 2000, at its ordinary session (Packer, 2006). The continental organization born out of a compromise between two groups was finally established in 1963 and continues to function as the AU today.

However, the transformation from OAU to AU was not a mere change in name. More importantly, when the AU took over, it had a special role to play by filling some practical gaps. For instance, the organization sought to remedy the weaknesses of OAU in controlling internal conflicts of member countries. In addition, the new organization hoped to address some structural challenges (Rechner, 2006). Packer & Rukare (2002) also added that OAU had to change because the original objectives it was established for (racism, colonialism, etc.,) were no longer relevant. Hence, one can say that the AU came to transform the OAU by accomplishing tasks that the latter did not for one reason or another.

The important aspect for this research is the significance of the organization to women's rights. It is important, for instance, to assess if the organization has taken any policy and legislative measure to change the lives and protect the rights of women on the continent, as well as to consider the progress made in protecting women against sexual violence, especially rape. In short, it is appropriate to evaluate the relevance of the organization to the general wellbeing and protection of women.

From this, one can see that the OAU and AU formulated various policies, strategies, and instruments to promote the rights and interests of females on the continent. The policies and strategies designed provide useful guidance for action. Agenda 2063, the core development plan of AU, has placed gender equality as one of the seven major aspiration areas for the plan period (African Union, 2013). Furthermore, the organization has already developed a strategy called Gender Equality and Women Empowerment (African Union Commission, N.D.) to ensure inclusion of women in the African development agenda (AU, UNECA, and UN Women, 2021). The strategy focuses on six key areas including social justice and protection of women's rights. The organization also issued the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) to urge member states to take legislative measures to protect women and girls against any discrimination. In addition, the AU Constitutive Act states under Article 4 that the promotion of gender equality is one of the core principles of the Union (Constitutive Act of African Union, 2000). The Constitutive Act (2000) also stresses the role of women in the promotion of inclusive development, and it calls for their participation in leadership and decision-making. To realize this strategic objective,

the African Union launched an initiative called African Young Women Leaders Fellowship Program (Sindigate Inc., 2019). This program is strategically and practically useful because it links the Union's works on women's rights with the UN development initiatives and treaties designed for the same purpose.

The AU also took certain actions that may specifically help to prevent sexual violence. For instance, it signed an agreement with the United Nations to combat impunity for the crime (AllAfrica Global Media, 2014). Again, this initiative is crucial because it involves the United Nations. Moreover, on March 28, 2011, survivors of sexual violence across the continent, who gave their testimony of their experiences at the Open Session of the African Union Peace and Security Council, demanded for an end to impunity and legal enforcement by member states (States News Services, 2011). Nevertheless, it should be noted that mere adoption of laws, policies and agreements do not end impunity for rape. A lot more should be done to prevent perpetrators from going unpunished. The Union itself understands the challenge and the long road ahead to obtain justice for victims and hold perpetrators accountable for their action (AllAfrica Global Media, 2017). Additionally, the low level of commitment to treaty obligation and lack of a compelling mechanism by the African Union render the policy initiatives less beneficial to women in terms of effectively protecting them against rape and other forms of sexual violence. Although the African Union has taken steps to adopt important policies, strategies, and agreements, they still fall short of effectively implementing the instruments.

The Situation in Ethiopia

The discussion of the Rome Statute within the context of Ethiopia is particularly meaningful because Ethiopia was the only African country that signed the London Agreement (Nuremberg Charter) in 1945 (Imoedemhe, 2016). Imoedemhe (2016) further noted that by then, almost all other African countries were under colonialism except Ethiopia. Ethiopia had also joined the League of Nations in 1923 (Marcus, 2015).

Much atrocity has been committed in the country over the last nearly fifty years (Ethiopian Human Right Council, 2020). For instance, a member of the former Derg, or more officially the Provisional Military Administration Council, was identified and prosecuted in the Netherlands. The convict, Eshetu Alemu, proved to have committed atrocity crimes in the province of Gojam in the northern part of the country. Accordingly, he was sentenced to life imprisonment in the Netherlands, where he lived under acquired citizenship (Yanev, 2019). Eshetu Alemu's case represented just one case of several individuals who committed similar grave crimes under the military administration. During the civil war that started in the northern part of the country in November 2020, a large number of women and even children were gangraped (Ethiopian Human Rights Commission, 2022). The Commission indicated that the sexual violence committed may qualify as a war crime.

Policy and Legislative Framework

Even in times of peace, rape is almost a culture in the country. Rape culture refers to the beliefs and practices that encourage, normalize, and condone rape (Amber, 2019). For all these reasons, a discussion of the Rome Statute within the context of Ethiopia is

justified. To do so successfully, I will present a brief overview of policies concerning women in general and protective measures against the crime of rape.

In nearly every nation, a constitution represents the highest legal authority and policy in the hierarchy of the legal system. As constitutionality is considered an achievement of human civilization, all countries today have a constitution (Grimm, 2016). Likewise, Ethiopia has a nearly century-old constitutional history. The first constitution was adopted in 1931 under Emperor Haileselassie, the king who claimed to have "granted" the constitution at his own will. So far, the country has developed four constitutions that were each put in force at various times (Teshale, 2020). The first one was adopted in 1931 and revised in 1955. The revised constitution is considered to be the country's second constitution. The last two were adopted in 1987 and 1995, respectively (Tsegay, 2015). However, Gedion (2013) did not consider the 1931 and 1955 constitutions to be separate documents since they were both adopted by the same imperial regime, and one is the revision of another.

The fact that the country adopted different constitutions with little connection to one another implies a lack of constitutional continuity and ideological inconsistency in both the constitutional and political history of the country. All four constitutions are ideologically disconnected except the first two, which were adopted by the same government with similar political ideologies. The 1955 constitution was a revision of the one adopted in 1931. The other two, however, negated each other. While the military government of 1974 suspended the previous constitution and replaced it with the one introduced later in 1987, the Ethiopian People Democratic Front, (EPRDF), the political

force that overthrew the military regime, adopted its own constitution in 1995. This constitution is the most controversial due to the introduction of the alien concept of ethnic federalism. It is also criticized for lacking sociological and moral legitimacy (Berihun, 2017). According to Berihun (2017), the reason for the criticism was that the drafting and adoption process fell under an active influence of the ruling party with little public participation.

This shows that the conventional legal concept of constitutional amendment is alien to the constitutional history of Ethiopia. Furthermore, one can see that the experience in Ethiopia is contrary to that of the United States. In the United States, the initial constitution has so far been amended 27 times; however, the initial constitution remains intact and has, in fact, represented the first and oldest constitution in the world still in force (Grimm, 2016). On the contrary, the constitutional development in Ethiopia is characterized by a complete rejection or change of the previous constitution. This is evidenced by the fact that each constitution stood by itself with its own ideological and theoretical peculiarities.

It is true that the 1931 and 1955 constitutions were adopted within the monarchical system with similar ideological inspiration. but the Constitution of the People's Democratic Republic of Ethiopia adopted in 1987 was developed in line with the Marxist-Leninist principles, as modeled by the Socialist camp (Jenbere, 2011). Nevertheless, it should be noted here that the 1931 constitution is not the beginning of the legal history of Ethiopia. Despite the lack of a uniform system of law, the political authorities that ruled the country at various times would use a traditional and religious

authority called Kebrenegest, which is translated to mean “glory of kings,” as a source of rules to adjudicate administrative and criminal cases.

Constitutional Basis of Women’s Rights

Ethiopian women have been sources of national pride because of their heroic deeds during difficult times for the country. For instance, Taytu Bitul, empress of Ethiopia and Menelik’s consort during his rule from 1889 to 1913, is one of the most appreciated and respected women in history for her wisdom and great work in the battle of Adwa of 1896 (Belete, 2001). Yet, as noted by Belete (2001), the male dominated society has subordinated their role and contribution to that of men (Belete, 2001). This shows that Ethiopian women have also been victims of patriarchal system.

The conditions of women have improved little even today, but a constitutional recognition of women’s rights may be taken as a positive, but insufficient, development. Specific laws are required to effectively implement constitutional provisions; however, Salmot and Birhanu (2021) argued that Ethiopia has not made sufficient laws regarding gender violence despite the seriousness of the problem. The country has, however, taken some policy and legislative initiatives to promote gender equality. For example, Article 35 of the 1995 constitution provides for some fundamental rights of women. Additionally, the 1960 Civile Code was amended to repeal provisions that were prejudicial to the rights of women and include more progressive ones. Moreover, a new family code was adopted in the year 2000 (The Revised Family Code 213, 2000). On top of that, new provisions specific to the protection of women’s rights have been included in the revised criminal code of 2004.

The first criminal code of Ethiopia was adopted in 1957; it revised in 2004 to accommodate the political, social, and economic changes that had occurred since then (Criminal Code of the Federal Democratic Republic of Ethiopia, 2004). The code amended in 2004 contains a provision on rape. Article 620 (1) provides as follows:

> Whoever compels a woman to submit to sexual intercourse out of wedlock whether by the use of violence or grave intimidation or having rendered her unconscious or incapable of resistance shall be punishable with rigorous imprisonment from five years to fifteen years (Criminal Code of the Federal Democratic Republic of Ethiopia, 2004 art.621, para. 1).

As can be understood from the provision, marital rape is not recognized under Ethiopian criminal code. On the other hand, it may be interesting to note that men are also protected against women who may rape them. The criminal code in Article 621 (2004) reads: "A woman who compels a man to sexual intercourse with herself shall be punishable with rigorous imprisonment not exceeding five years." Hence, the revised constitution provides for rigorous imprisonment, not exceeding fifteen years, and recognizes the possibility of a man being raped, while imposing less rigorous punishment for a woman who rapes a man.

There is little evidence for the influence of the Rome Statute on the definition of rape under Ethiopian criminal code; however, one can see a glaring difference between the ICC definition of rape and that of Ethiopia. The ICC definition looks more detailed and specific, describes what sexual intercourse really means, what tool the perpetrator may use, and which organs the means or objects are applied to (Ellis, 2007). In addition,

it can be argued that the Ethiopian definition is more gender specific. This is because it recognizes that both sexes may commit rape against each other. Yet, the definition does not imply a situation where a man may commit rape against a man. In fact, raping a man is a punishable crime in itself. Article 629 provides that "Whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment" (Criminal Code of the Federal Democratic Republic of Ethiopia, art. 629, 2004). This means that a homosexual act is not an issue of rape, but it is an independent crime punishable on its own. Therefore, there is no discussion of rape because a homosexual act is an absolute prohibition and is punishable as an indecent act (Criminal Code of the Democratic Republic of Ethiopia, 2004). On the other hand, it is not clear if the term "sexual intercourse" also includes anal or oral sex, as present in the ICC and ICTY definitions. Nevertheless, it is understandable if the lawmaker shows some reservation in expressly conflating all forms of sexual acts, since anal and oral sex are not culturally approved in Ethiopia.

In addition to the domestic legislative and policy measures, Ethiopia has also ratified treaties on women's right including the Convention on the Elimination of all forms of Discrimination Against Women. Ethiopia is also a party to the Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa. In addition, as member of the Union, Ethiopia is required by the Maputo Protocol to take the necessary legislative and policy measures to punish sexual violence (Peace, 2017). The global and regional instruments that Ethiopia has signed and ratified can be an important ground of legislative and policy protection for women in the country.

Impunity Factors

Some factors help individuals escape from criminal liability for rape in Ethiopia. These may include prevalence of conflict, limitation in institutional capacity, low reporting rate, cultural tolerance, and a low-level of social awareness.

Ethnic Conflict

Ethiopia has been a place of war and conflict for years; however, the ethnic conflict that began in 1991 is unprecedented in a number of ways. First, it has balkanized and polarized the society along ethnic lines, thus opening the way for greater conflict and violence (Tafere, 2017). Lovise (2011) also confirmed that ethnic federalism in Ethiopia caused "ethnicization of socioeconomic dispute." Lovise further noted that the situation may threaten national unity in the pretext of self-rule (2011). Secondly, ethnic-based federalism caused the justice system to be politicized and tribalized, causing federal and regional state officials to either visibly support or condone violence.

Undoubtedly, such a general negative environment affects women and girls in many ways, including placing them in a vulnerable condition. For instance, the Human Right Council report (2020) stated that the group rape committed in the town of Maikadra in Tigray was motivated by ethnic hostility. Similarly, the attack in a town called Burayu near Addis Ababa is another example. Another way the environment is challenging for women and girls is how when the officials take sides with an ethnic line, victims are likely to lose interest and even fear to report sexual abuses, including rape. In such a case, the state officials fail to protect girls and women (Eke & Tonwe, 2016). When officials take sides along their respective ethnic lines, government fails to prevent

conflict, thus leaving individuals, including girls and women, unprotected. Ethnic politics inevitably drive officials to follow sectional interest where justice is then placed in jeopardy. Law and order may not be properly maintained, thus opening the door for impunity for crime in general, and rape in particular.

Failure to Report Cases

Normally, a criminal trial begins with the investigation of reported rape cases, but the problem is that victims do not report for fear of blame and shame (Peace, 2017). It means that they want to avoid the second risk of negative social reaction. In many cases, not all rape crimes are reported due to the pressure that victim blaming exerts (Rimmer & Birch, 2019). According to Rimmer and Birch (2019), the 23,851 cases reported in England and Wales in 2015–2016 would have been ten times more if not for underreporting impacted by negative attitude toward victims. The same is true of Ethiopia.

The Literature Gap

A large volume of literature is available on the Rome Statute and related issues. However, little has been written on its significance to the domestic reality of each state in general, and Ethiopia in particular. Therefore, this study is likely to fill some gap in the field by examining the legal and practical implication of the statute within the context of Ethiopia.

Chapter 3: Research Method

Introduction

This chapter discusses the method selected for this specific research and provides details associated with research design, rationale, and data collection. This includes participant selection and the criteria to be used, data collection technique, instrumentation, data management analysis, the role and philosophical orientation of the researcher, and bias management mechanism. Therefore, the chapter is generally about the method to be employed and the steps and procedure to be followed in the data collection process.

Philosophical Orientation and the Role of the Researcher

The decision to use a specific research method depends on the philosophical orientation one endorses. In fact, one's assumption about reality determines the actual methodological choice (Burkholder et al., 2016). If I believe that reality is something objective to be verified independently of me, the researcher, I would opt for a more traditional method. On the contrary, if I accept the subjectivity or relativity of reality and knowledge, I will go for the traditional scientific approach (Burkholder et al., 2016). Therefore, how I think about reality determines what research method I should use.

Another important consideration in the discussion of qualitative research is the role of the researcher. Ravitch and Carl (2016) described the role of a researcher in a qualitative study as instrumental in the process of data collection and analysis. This means that the researcher plays a key role in their interaction with the participants and the data they provide. Although the researcher is there in the field to collect data, they are

likely to impact the process as they are the one who designs the study, deals with participants, and does the analysis.

My role in this study is that of a researcher. Accordingly, what I will do in the data collection process is simply interview participants, record their responses, do the interpretation, and complete the analysis. This does not mean, however, that I will remain neutral in the research process. I understand that the nature of a qualitative study does not allow that level of independence. Undeniably, I have my own values, assumptions, and philosophical orientation. For instance, I do not consider reality to be objective and independent of the researcher as is the case for positivists (Tricia, 2018). This means that I do not take research to be a process of verifying a single reality. Rather, I consider it to be an investigative undertaking through which the researcher realizes the multiplicity of realities and truths. I also realize that knowledge is generated through the interaction of the researcher and the object of the study (Burkholder, 2016). For Gillani (2021), a researcher cannot carry out a value-free qualitative research since qualitative approach is not intended to be value-free. For this reason, I do not claim to be independent and conduct value-free research as that is not the nature of a qualitative research.

At the same time, I recognize the need to strike the balance between the value of the researcher and the object of the study. As noted above, in qualitative research, the position of the researcher in the whole investigation process is a critical consideration. This is about both reflexivity and positionality (Yao & Vital, 2018). Reflexivity is about examining oneself and one's thoughts within the context of the research. It refers to the subject-object relationship of the research (Bianchi, 2016). The subject denotes the

personal views and thoughts of the researcher while object concerns the issue under investigation. According to Bianchi (2016), whenever researchers undertake an academic investigation, they usually come with their biases and experiences. This implies that neutrality, no matter how important it may be, cannot be achieved.

It is true that the researcher should appreciate the significance of the issue. The questions of independence and neutrality are always crucial to attaining credibility in research (Patton, 2015). On the other hand, it is equally problematic that there is not a unanimously agreeable or acceptable level of influence, need for controlling the bias, or the way of managing it (Ortlipp, 2008). This is what Deniz (1994) as cited in Otrlipp (2008) called an "interpretive crisis." Ortlipp (2008) suggested that keeping and using a reflexive journal may help to maintain the balance.

The most important aspect here is being aware of the possibility of influencing the research process and appreciating the importance of exercising caution. Therefore, I should take the utmost care not to allow my bias about the widespread human right malpractice in Africa and Ethiopia. For instance, during the period of my service as an attorney, I witnessed several instances of human right violation in the country where I am to conduct the research, but I understand that if I am not sensitive to the potential for my personal conviction to influence the process of data collection, interpretation, and analysis, and fail to take the necessary care, the research will lack credibility. The acknowledgement and thorough analysis of the possible influence of my personal values will help manage any bias (Nectaria, 2018). As a researcher, I need to be able to control my personal values so the research output is both methodologically and substantively

credible. Whereas I am aware of the serious human rights violations of girls and women in Ethiopia and Africa in general due to my experiences, I will take due care to control my negative experience so as not to affect my neutrality and bias. It is very important to appreciate the need for empathic neutrality (Patton, 2015).

Research Method Selection and Rationale

The research method to be employed in this study will be qualitative approach. The methodological choice is appropriate because qualitative research is naturally exploratory and helps me understand the issue of investigation (Burkhold et al., 2016). Likewise, Hancock and Ockleford (2009) noted that a qualitative approach is essentially used to properly understand human behavior. In other words, a qualitative approach represents a means of understanding a social issue or phenomenon through the views and experiences expressed by participants (Amanda, 2018). Ravitch and Carl (2016) described qualitative research as an attempt to understand people and phenomena in a natural setting. Hence, the method selected for the study is suitable to and compatible with the purpose.

The purpose of this study is to understand the impact of the Rome Statute on combating impunity for rape in Ethiopia. The study explores the perspectives of the selected participants about the significance of the treaty as well as the ICC and how they relate to the process of establishing criminal liability for rape committed in the country. Therefore, the study hopes to reveal the practical contribution to, or relationship with, the prevention of impunity for rape in Ethiopia. The research also advances some level of

understanding about the relevance of the treaty to the domestic effort made to end impunity for rape in Ethiopia.

Given that I will do the research in Ethiopia, and more particularly Addis Ababa where the participants live and work, and interview them to gain their perspectives in their own professional and geographic context, the qualitative method is the right choice. In addition, I will do document analysis to supplement the qualitative method. The documents to be reviewed include treaties, human right reports, resolutions of the United Nations and its agencies, African Union policies and strategies on women's rights, gender policies, and criminal laws of Ethiopia.

The specific approach to be used in the study is qualitative pragmatic inquiry. Whatever the finding of the study will be, it will have a practical implication on the problem of impunity for rape in Ethiopia. Pragmatic inquiry essentially involves the practical consequence and utility of knowledge (Patton, 2015). In other words, the responses of the participants, whatever their nature, will ultimately contribute to what can be done to address impunity for rape in Ethiopia through the instrumentality of the Rome Statute. Since the study attempts to explore the relevance of the Rome Statute to the problem of impunity, the results of a pragmatic approach will be useful to inform action (Patton, 2015). This means that the approach is appropriate for the study because the problem to be examined focuses on the practical utility or the relevance of the Rome Statute and the International Criminal Court (Patton, 2015). The research is an assessment of the role of the Rome Statute in combating rape against female citizens in Ethiopia. It is basically an attempt to explore and understand the general perception of the

participants about the role of the treaty in ensuring the legal accountability of individuals who commit rape both in conflict and peace time. Accordingly, the research output is expected to provide some ground for future policy action. Therefore, a qualitative method with a pragmatic approach effectively serves the purpose of the research.

Research Question

The research question to be answered through this study is: What is the impact of the Rome Statute and the establishment of the International Criminal Court on the crime of rape committed against female victims in Ethiopia?

A research question is intended to reflect on the purpose of the study to be conducted (Simmons, 2011). For this reason, the research question formulated focuses on the impact of the Rome Statute and ICC on combatting impunity for the crime of rape committed against females in Ethiopia. When I learned for the first time in one of my courses at the Addis Ababa University law school that international law was not as effective as domestic law due to not having a formal enforcing mechanism, I began to question the relevance of the international standards of human rights to local jurisdictions. Furthermore, the persistent commission of atrocities in Ethiopia after 1991 increased my curiosity about the role of international norms in addressing domestic issues. By the time I got the opportunity to work on my capstone project, the idea that was haunting me shaped itself into my qualitative research inquiry. Then, I realized that the experience of a researcher may inform a research question (Ravitch & Cox, 2016).

The central purpose of my study is to explore the relevance of the international effort made to end impunity for rape through the Rome Statute. The intention is to find

out if such an international legal initiative has any impact on the effort made to combat impunity In Ethiopia. Therefore, the research question is consistent with the goal of the investigation, which is a basic quality of any research question (Simmons, 2011).

Research Design and Rationale

Research design may refer to the general idea of alignment of the research components (Saldana, 2011). In this sense, research design denotes the required harmony of the research components such as the study problem, purpose, research question, theoretical/conceptual framework research method and approach. For this reason, research design is like the glue holding the entire project together (Burkholder et al., 2016). This means that research becomes an integrated unit because of its design. Burkholder et al. also noted that research design is about the specific approach used. For instance, a researcher may employ case study, narrative inquiry, ethnography, etc. As previously noted, pragmatic inquiry is a qualitative research approach used in a study from which the knowledge generated may be applied to solve a practical problem (Patton, 2015); however, research design may also refer specifically to the general plan or data gathering arrangement.

In any event, what is most important here is that the research should be designed in such a way that it can properly address the research question (Hancock & Ockleford, 2009). When the research is so designed, the participant selection, recruitment criteria, content of the instrument, data gathering method, and analysis will all be organized to successfully answer the research question. Tolley et al. (2019) also stressed the importance of a careful study design and data management. In other words, failure to

design the research properly and to deal with data carefully can have a devastating impact both on the process and result of the research.

Understandably, an initial research design can change at any stage in the process for unexpected reasons. Essentially, a research design is always flexible and emergent (Patton, 2015). In this connection, Saldana (2011) also indicated that a research plan is always a provisional one. This means that the initial plan may change at any stage in the process. spite this possibility, it is always necessary to set a proper plan of work. The first thing I did to execute my research design was obtain cooperation letters from the appropriate authorities, including partner organizations. This was quite important either to access information or documents relevant to the study or recruit participants.

Data Sources

The two data sources for this study are participant interviews and document analysis. Ravitch and Carl (2016) argued that the researcher's reflexivity memo and journal, as well as fieldnotes, can also serve as important sources of data. For them, a researcher collecting data is not only collecting data from participants but also "co-construct" data, which is called researcher-generated data (Ravitch & Carl, 2016). Nevertheless, for my purpose, I relied only on document analysis and participant interview.

Participants

The research plan was to interview representatives of human rights and government agencies and organizations operating in Ethiopia as well as professionals and attorneys who are engaged in issues related to treaty standards and their domestic

implementation. The purpose was to examine the views and experiences of the participants about the Rome statute and its relevance to the prevention of impunity for rape in Ethiopia. The participants selected for the study work in fields close to international treaties and implementation of domestic laws. They are also aware of the criminal policy of the country regarding sexual violence, and especially rape, in view of their engagement in human rights and women's right advocacy. For this reason, their perspective and experiences are relevant to assess the impact of the Rome Statute on impunity for rape in Ethiopia.

I had two categories of participants: group and individual interviewees. I formed a focus group of 10 people comprising representatives of human rights organizations, women's rights advocacy groups, appropriate government agencies, two private attorneys and one professor of international law. Initially, my plan was to form two separate focus groups for nonprofit organizations and government agencies representatives, but upon further reflection, I thought it would be a good idea to have one focus group of carefully selected government and nongovernment agency representatives. Given that the phenomenon involves a complex issue of domestic and international law, it might be more effective to obtain rich data when representatives of different agencies are brought together in a single discussion group than divided in separate sessions. Government agencies whose representatives were included in the focus group discussion are Ministry of Women and Social Affairs and Ethiopian Institute of the Ombudsman. Ministry of Justice was included in the original plan, but it was later replaced by the Ethiopian Institute of the Ombudsman because the Minister was reluctant to participate in the study.

The institutional Review Board approved the participant replacement. The Ministry declined to participate in the study because they did not want to comment on or share views about the Rome Statute and ICC.

The second category of participants consisted of individuals who were interviewed personally. I planned to interview two individuals/officials from the Ethiopian Human Rights Commission and the Supreme Court. Although there is an element of organizational representation here too, I thought an in-depth interview with these individuals would be beneficial because of their special position in the judicial and executive branches. Fortunately, I had a successful personal interview with the women and children's commissioner of the Ethiopian Human Rights Commission; however, my effort to interview the chief justice was not successful despite them initially agreeing to participate in the study and confirming their consent by writing an official letter of cooperation. As discussed in detail in the next chapter, they were not available for the interview due to illness and workload. Ethiopian Human Rights Commission has been a semi-autonomous agency for the last three years dealing with human rights violations, including rape and other forms of sexual violence, committed throughout the country.

The rationale for this arrangement has to do with the mandate of the respective participant, policy interest area, and nature of the subject of the study. For instance, the participants in the focus group are nonprofit organizations engaged in human rights. Some of them also work exclusively on women's rights advocacy. Both groups supposedly work for the promotion and implementation of norms and standards in international treaties. Additionally, all participants are lawyers. Likewise, private

attorneys will be included in this group because they too work to implement treaties in support of their cases while they litigate at courts. On the other hand, government representatives also work for the promotion of human rights and international treaties; however, one cannot say that their focus and concern is identical with that of participants in the focus group. Yet, they serve as important data sources because they reflect the views and policy ideas of the government concerning treaties and their relations with the domestic social problems like rape. The category of individual participants is assumed to represent a professional and technical interest independent of an institutional commitment as well. This plan as based on the consideration of diverse organizational and individual perception and orientation may allow me to obtain rich data relevant to answer the research question.

Document Analysis

In addition to interviewing participants, reviewing appropriate documents helps to obtain supplementary data or information. Therefore, I will consult regional and international treaties, UN resolutions, criminal laws of Ethiopia, and gender policies for better understanding. Critical reading of the legal instruments adopted, and the decisions given at the international, regional, and national level will help me learn the theoretical and conceptual linkages that exist in all geographic contexts regarding the domestication process of ending impunity for atrocity crimes.

Participant Selection Criteria

A researcher should always have a sufficient reason to have a group of people as participants in the study. Burkholder et al. (2016) emphasized the need to describe the

criteria used to select participants in qualitative research, indicating that such concepts as sampling and population are not so important in a qualitative approach. This is to say that the standards like representativeness and sample size are rarely used in qualitative study. Consequently, participant criteria description is more meaningful and desirable in qualitative research. The explanation given about how the participants were selected helps readers appreciate the logic of data source identification as a requirement unique to qualitative research.

The ground for the recruitment of the participants in this study was their experience and exposure to issues concerning international treaties and their interaction with domestic law and practice. Their advocacy experiences and proximity to the criminal justice system of the country also offered an additional advantage. Considering their appropriateness to the subject of the study, I have selected the participants to be interviewed both individually and in groups using a purposive or judgmental sampling method. Purposive or judgmental sampling is a strategy employed to select participants based on their knowledge or suitable position in relation to the theme of the study (Babbie, 2016). When a researcher decides to use purposive sampling, as is the case in this study, it is important to specify the participant selection criteria and the strategy for determining the criteria (Burkholder et al., 2016).

For this reason, I have identified my study participants based on their exposure to, experience on, concern, and knowledge about matters relating to international treaties and their functioning in domestic legal and social environment. For instance, women's advocacy organizations are concerned and have vast experience with the problem of rape

and the challenge to bring perpetrators to bring to justice. Such advocacy groups provide free legal aid to victims of sexual violence and certainly hold some view of the Rome Statute, in relation to rape crimes committed in Ethiopia. Furthermore, the organizations are competent to discuss international standards since they putatively use them as advocacy tools to promote and protect women's rights and interest in the country. Likewise, human right networks and organizations apply norms of international treaties in their effort to promote human right locally.

As a result, my understanding is that the group recruited was the right group for the interview. Speaking of the significance of suitability, Saldana (2011) noted that when appropriate participants are selected, they can provide substantive responses useful to answer the research question. Therefore, I hope that the data to be obtained from these participants will be relevant and practically useful because the participants have been selected based on their knowledge and experience about the subject matter of the study.

Communication Strategy

Having access to participants and their organization is an important aspect of the research process. This is a question of where to start the communication. For the sake of easy access, I started with the Civil Societies Organizations Agency database. The agency is the right entry point because this is where nonprofits are incorporated and certified as required by the Civil Organizations Proclamation no. 1113/2019. The second approach was to contact consortiums. Individual organizations form networks with others with similar focus. Civil society organizations engaged in human rights have formed a network of their own. In this case, approaching the umbrella body may be a useful entry

point to reach out to its member organizations. The second approach worked well as I was able to contact the network and reach out to the participants. The means of communication used was email, telephone, and personal visits.

Sampling Strategy and Data Size

As noted above, the sampling strategy used for this study is purposive sampling. Purposive sampling is the right choice when a researcher seeks to identify specific respondents capable of providing the data appropriate to the study planned (Campbell et al., 2020). The respondents are selected for the special position they hold in relation to the data required. Babbie (2016) also agreed that judgmental or purposive sampling is a method by which participants are selected on the basis of their knowledge or suitable position in relation to the theme of the study. The participants selected for this study are organizations and individuals with special exposure to human rights and treaty issues. The organizations engaged in general human rights or those dealing with women's rights essentially handle provisions of domestic and international law. Their knowledge and experience are the rationale for their selection for the study.

Another issue related to sampling strategy is data sample size. In any qualitative study, the question of how many participants a researcher should interview is an important consideration. How many participants a researcher should interview depends on the criteria of data saturation (Greg et al., 2006). Data saturation, according to Guest et al. as cited in Viet-Thi (2016), is "the point in data collection and analysis when new information produces little or no change to the codebook" (Viet-Thi et al. 2016, p1). However, Greg et al. (2006) argued that the concept of saturation may not be a useful

criterion to determine the number because data saturation may be attained at when the researcher has interviewed a certain number of participants, although they have a planned for larger size. This means that it is hardly possible to specify a number of interviewees in absolute terms since a point of data saturation may be achieved at any point in time when a certain number of participants have been interviewed (Viet-Thi et al., 2016). Nevertheless, it should be noted that whatever the sample size, it is necessary to make sure that the determination of the sample size will enable the researcher to attain the point of saturation. In other words, the ultimate test for the sufficiency of a purposive sample size is data saturation (Monique et al., 2017). My understanding is that depending on the nature of the topic of investigation, the most important consideration is whether or not the point of data saturation has actually been attained. I intended to combine individual and group interview. For this reason, my expectation was that when added to the number of personal interviewees, I would have between ten and fifteen participants and to do two personal interviews in addition to the focus group interviews.

Instrumentation

I will use interviews to collect data for this study. For research of this kind, focus group and individual interviews are the two important techniques of data collection (Burkholder & Newton, 2016) because interview is a good choice to obtain in-depth information about the views of participants (Moynihan, 2010). In this research, I will ask my participants about their perception and opinion relating to the phenomenon/theme of the study. In other words, I expect to elicit rich information from the participants so that I

can answer my research question about the relevance of to the prevention of impunity for rape in Ethiopia.

Equally important is the modality in which the interview is conducted. In a qualitative study, interviews can be conducted a number of ways. My plan was to do a face-to-face interview. As a result, there was no need for alternative designs to conduct the interviews in a different format such as email, telephone, or even zoom video conferencing. According to Raymond (2006), alternative interview techniques can be used when a face-to-face interview is not possible for any reason.

Another issue concerns the interview format. According to Burkholder (2016), interviews may be structured, semi-structured, and unstructured. I opted for semi-structured interviews because of their suitability. As recommended by Burkholder (2016), semi-structured interview is appropriate for a novice researcher. Since I am doing research of this kind for the first time, the recommendation works well for me. This interview type is also preferable because it makes room for probing questions while simultaneously using ordered questions.

Similarly, Moynihan (2010) described three types of a qualitative research interview design. This formatting is like the interview variety discussed above. Moynihan (2010) indicated that interview design may be informal conversational interview, general guide approach interview, and standardized open-end interview. The first type represents the most unstructured kind of interview, while the second one is more structured and focused. The standardized open-ended interview is highly structured leaving the least

room for flexibility. Even here, I preferred to use the general guide approach interview since it is suitable to my research design and purpose of the research.

To find the information relevant to the study, I carefully formulated qualitative questions that enabled participants to express their perspective about the importance of the statute to the prevention of impunity for rape in Ethiopia. Questions in qualitative research should always be designed in such a way that they are consistent with the purpose of the study (Simmons, 2011). Consequently, I made sure that the interview questions were responsive to the research's purpose. Qualitative research questions are typically meant to describe the experience of participants about the study issue (Raymond, 2006). Therefore, interview questions need to be pertinent to the study purpose and appropriate to the kind of data to be collected.

The interview questions developed may slightly vary from one interviewee to another depending on capacity or representation but generally include the following:

1. Can you tell me a bit about yourself and profession?
2. Do you think international treaty standards play any role in domestic life of Ethiopia in general? If so, can you give examples?
3. How about the Rome Statute and ICC? Do you think they are relevant to Ethiopia in any way? If so, how?
4. What are the challenges to ensuring accountability for committing rape in Ethiopia?
5. Do you think the Rome Statute and the existence of ICC help in this respect? If so, how?

6. Do you think Ethiopia should ratify the Rome Statute? Any advantage and disadvantages?
7. Do you think the Rome Statute can serve any purpose in Ethiopia especially in combatting impunity for rape even without being ratified? If so, how?
8. What role do you think non-government actors play in implementing treaty standards and those of the Rome statute?
9. What international initiatives on sexual violence has Ethiopia been part of so far?
10. Do you think the adoption of the 1998 Rome Statute had any impact on the amendment process of the 2004 criminal code of Ethiopia?
11. Do you make use of the Rome Statute and its provisions on sexual violence in your professional and advocacy practice? If so, what is your experience?
12. What domestic policy and legislative tool do you rely on to combat sexual violence against women and especially rape ?Any gap?
13. What is the policy for Ethiopia to ratify treaties?
14. Does Ethiopia have any concern about the ratification and implementation of the Rome Statute?

I also recognize that preparing a list of questions by itself does not suffice. It is also important to write an interview protocol, which is the procedure of preparing a script of what is to be said before and after interview (Stacy & Paige, 2012). According to Stacy and Paige, an interview protocol is appropriate for a researcher doing their first qualitative research interview. This recommendation is appropriate to my case because I am doing qualitative research for the first time without any experience conducting a

research project of this level. An interview protocol is also useful to achieve consistency in the interview process (Burkholder, 2016). It means that if I determine what to do at each stage, I will not miss a step in the procedure with the participants. For this reason, I developed an interview protocol with a proper introduction and conclusion. Despite all that, I understand that executing an effective interview instrument plan requires proper skill and sufficient preparation. After I developed my interview questions, I arranged an external interview practice with a colleague or two ahead of time. This helped me identify some possible expressions or responses I shouldn't share during or before the interview. For instance, an interviewer should refrain from expressing such emotions as surprise, pleasure, or agreement when the participants responses to questions (Burkholder, 2016)

Data Analysis Plan

Planning for data analysis is not always an easy task in qualitative research. In support of this argument, Rudestam and Newton (2014) noted that determining the kind of data analysis ahead of time is difficult in qualitative study. As I understood the need to have at least a tentative or indicative plan subject to any change as the research went on, I selected thematic analysis for the study, which involves identification of themes, forming patterns, and designating categories based on relevance of the study, research question and theory (Roberts et al., 2019). According to Roberts et al. (2019), this approach permits the qualitative data to be interpreted and described for the purpose of finding meaning. The task involves coding, theme identification, categorization, and pattern grouping.

Data Management and Organization Strategy

It is important to understand that how data is handled and organized is an important part of the research process. Ravitch (2015) stressed that data management and organization is crucial. To avoid unexpected loss of data or disorganization of documents, I adopted a clear file creation system, using separate folders for each interview event in the name of the individual and focus group both on my laptop and digital recording device. To avoid unexpected recording failure, I used at least two digital recording audio devices. Video recording was avoided for privacy concerns. IRB did not also approve it for the same reason.

Once the data collection was complete, I had the recorded interview transcribed. The interview was held in Amharic, the participants' native language. Participants speak English as well, but we did the interview in Amharic for the sake of effective communication. Therefore, the first transcription was in Amharic, which I then translated into English. I did the translation myself because I claim to be fluent in both languages. The transcription was done manually; no software was used for this purpose. However, I had to use volunteers to help in transcription. The interview questions were prepared in English.

It is common to use a field note, transcript, and audio recording while doing interviews. For instance, Sophie (2012) recommended the use of a combined approach that involves all three data recording methods; however, I avoided taking notes while recording so that I could effectively focus on the question-and-answer process. Forgoing taking notes gave me a better opportunity to pose follow up questions. In addition, I was

concerned that it could distract participants because I would likely noise while taking notes due to the nature of the device I would use.

Researcher-Participant Relationship

As a disability and human rights activist, I used to attend workshops and meetings organized by some of the organizations included in the participants' list. I also did occasional office-to-office business communications with some of the organizations when the need arose. For instance, we came together with some of the organizations to participate in policy advocacy initiatives representing our respective organizations. All of that was eight years ago before I moved to the United States; however, I learned that one of my former acquaintances still worked for one of the organizations that I intended to include in the list of potential participants. On the other hand, some of the human rights organizations whose representatives participated in this study were newly created or incorporated. In any event, for the purpose of the study, the unit of analysis was organizations, not individuals. In the next chapter, I will give a full account of participants and the data analysis procedures.

Chapter 4: Results

Introduction

The purpose of this study is to understand how the Rome Statute and the International Criminal Court (ICC) impact the task of preventing impunity for the crime of rape in Ethiopia. The Rome statute is the treaty that established the ICC. The statute was adopted at the diplomatic conference held in Rome, Italy on July 17, 1998 (Werle, 2020). To understand how the treaty impacts the crime of rape and impunity in Ethiopia, I observed and documented the views of lawyers working for human rights organizations, government agencies, and private practice law firms. The views, experiences, and perspectives of these professionals are presented in both this chapter and in Chapter 5. The research question is, "What is the impact of the Rome Statute and the establishment of the international criminal court on the crime of rape committed against females in Ethiopia?"

Setting

I did the study in Ethiopia where the participants lived and worked. Most of the participants were also recruited from the capital city, Addis Ababa, except one who was included from Hawassa University, located in the southern part of the country. Before I moved to Ethiopia from the state of Virginia in the United States, I contacted an organization called Lawyers for Human Rights to see if they could help me coordinate the process and identify participants. The director of the organization was kind enough to express his commitment to help with the study. I arrived in Addis Ababa, Ethiopia in October 2021 for the research; however, I could not start the process right away because I

had to wait for IBR approval as required by the university research regulations (Walden University, n.d.).

Before starting the research, I completed Form C: Ethics Self-check for IBR approval, translating all IBR materials into Amharic, obtaining signed letters of cooperation from each partner organization, and receiving a certificate of approval from the local research ethics review agency. The materials had to be translated into Amharic because that was the language in which the study would be conducted. As a result, being a native speaker of the language, I did the translation myself, as advised by IBR. Yet, a person who was fluent in both languages had to review the translation to determine similarity in tone.

After that phase, I collected signed letters of cooperation from partner organizations, which was quite challenging. Finally, IBR granted me approval on December 9, 2021, but the approval was conditional upon obtaining a certificate from the local research ethics review body and submitting the remaining letters of cooperation. I still had to complete the local research ethics approval process before I start recruiting participants and collecting data. As a result, I submitted my research proposal and associated documents to the Ethiopian Society of Sociologists, Social Workers, and Social Anthropologists (ESSSWA) with a cover letter. ESSSWA asked me to submit the following documents:

- Application form
- Consent form both in Amharic and English

- Letters of invitation both in Amharic and English Interviews and FGD questions both in Amharic and English
- Walden University supporting letter
- Resume

Having reviewed the documentation submitted, the board of ESSSWA issued me a certificate of protocol approval no. 026-2021, teference no. ESSSWA/L/AA/0475/21, dated December 23, 2021.

Upon receiving the necessary documentation from all partner organizations a and Protocol Approval Certificate from ESSSWA, the Walden Institutional Review Board officially notified me of approval for the doctoral study proposal and my application to IBR on January 12, 2022. I had to apply for a change in procedures because the Minister of Justice, one of the partner organizations, declined to give me the required cooperation letter and was replaced by another participant, the Ethiopian Institute of the Ombudsman. The request for a change in procedure was accepted and approved. Then, I conducted my individual and group interviews and flew back to the U.S. on March 6, 2022.

Participant Demographics

The study participants were drawn from civil society organizations (NGOs) working in human and civil rights advocacy, government agencies, and individuals. Eleven individuals participated in this study. Nine of them were focus group discussion participants, whereas two of them were personal interviewees. Out of nine participants, five of them represented partner organizations, two participants were private attorneys, and the other two came from government agencies. One of the individual interviewees

was from the Ethiopian Human Rights Commission, and the second participant was a university law professor.

Initially, the plan was to conduct a focus group discussion with eight to ten participants, six of whom were from human right organizations, two private attorneys or practicing lawyers, one professor of international law, and two representatives of government agencies. In addition, the study design included three individuals for personal interview. The plan worked well despite some readjustment. First, the university professor was interviewed personally, not as a member of the focus group discussion. This was because he lived and taught at a university out of the capital city where most participants resided. Besides, the focus group size had to be kept at the maximum number of ten. Second, The Ministry of Justice was replaced in the focus group discussion by the Ethiopian Institute of the Ombudsman because the former declined to provide a signed letter of cooperation as required by IRB. Third, the Federal Supreme Court of Ethiopia consented to the study and even provided a letter of cooperation required for participation. The Chief Justice also agreed to give a personal interview; however, the chief justice was later unable to give the interview due to illness. Even after she recovered and returned to the office, I could not meet her due scheduling conflicts.

The list of participants consisted of two private individuals (a human right scommissioner and a law professor) and a focus group discussion in which representatives of five civil society organizations, two private attorneys and two government agencies participated. The tenth participant representing the sixth civil organization, Ethiopian Human Right Council, was absent from the FGD meeting held on

February 1, 2022, although they had confirmed their attendance. A total of eleven participants were interviewed both in person and in a group. Five were women, six were men, and they were all lawyers. Six participants had undergraduate degrees, four of them held master's degree in various fields, and one had a PhD.

Table 1

Gender and Educational Level of Participants

Number	Designation	Gender	Profession	Level
1	P1	Female	Law	Master's
2	P2	Male	Law	PhD
3	P3	Male	Law	Undergraduate
4	P4	Male	Law	Master's
5	P5	Male	Law	Master's
6	P6	Male	Law	Undergraduate
7	P7	Female	Law	Undergraduate
8	P8	Female	Law	Undergraduate
9	P9	Male	Law	Master's

Data Collection

I started the data collection process by seeking a complete list of contact information of participants. Fortunately, my first partner organization, Lawyers for Human Rights, provided me with that information. The organization agreed to circulate an email to the participants attaching letters of invitation and consent forms. As a consent form is of special importance when informing participants about their participation and documenting their willingness (Burkholder, 2016), it was important to make sure that sufficient information was included. The form contained statements of purpose, procedure, voluntary nature of the study, the issue of privacy, study benefit and time and

transport compensation for the participants. I also included contact information for the researcher and Walden University for any inquiries about the study.

As it took me some time to get responses from all participants. I sent follow up emails, made phone calls, and even went in person to some of the organizations to verify if they had actually received the emails. Slowly but surely, participants replied to my emails with their respective consent remarks. Their replies varied. When I sent the consent forms, I had suggested a uniform way of expressing consent as follows: "if you understand the study well enough to participate and wish to volunteer you can reply to this email with the words 'I consent,' but some of them did it their own way. For instance, one of them responded as follows: "I hereby declare that I consent to participate in the interview." Another one said, "This is to confirm my consent for the interview." In any case, each participant confirmed their consent in one way or another. Moreover, I confirmed their consent in their respective emails at the beginning of both personal and group interviews. Although the documents emailed were both in Amharic and English, I also sent them some additional information about the study when they requested for it.

The Ministry of Justice, one of the partner organizations, declined to participate in the study, noting that the Minister did not want to comment on ICC issues as a government official, as the international community was putting pressure on Ethiopia because of the war being waged in the northern part of the country. As a matter of coincidence, the Human Rights Council of the United Nations had passed a resolution (S-33/1 of December 17, 2021) and set up a team of experts to investigate the human rights situation in Ethiopia during the conflict. As a result, I applied to IBR for a change in

procedures. Upon approval of my request for a change in procedure, the Ministry of Justice was replaced by the Ethiopian Institute of the Ombudsman. This was the right measure since the decision to participate in a study should always be based on the explicit consent of the participant. In addition, the Chief Justice was unable to give interview despite their initial agreement officially expressed in a letter of cooperation.

Some of the participants asked me to email them the interview questions before they made their decision. That was useful because making the interview questions available to the participants would help them be well-informed about the study. I sent the questions not only to those participants who requested for them, but also to those who did not. After I received replies to my email with confirmation of the participant consent, I proceeded to schedule interviews.

Fourteen questions had been prepared for the individual interview and five for the group discussion. I also transcribed all the questions and the entire protocol into Braille. This served two purposes: first, it was perfectly convenient for me to read directly from the text and ask the questions. Second, it helped me control any external sound or noise that I might make when reading the questions from my talking devices. Consequently, my recordings of all the interviews were clear and audible.

The first to be interviewed was the law professor. He lives and teaches in a town called Hawassa, 155 miles from the capital city, Addis Ababa. We agreed to do the interview via telephone on January 28, 2022. I informed the participant and recorded the telephone interview, and it was clear, loud, and lasted 48 minutes and 45 seconds. I recorded the interview putting him on loudspeaker.

The next person to be interviewed was a high-ranking individual at the Ethiopian Human Right Commission. The interview lasted 1 hour, 15 minutes and 40 seconds. At the beginning, I introduced myself and read the protocol with the confidentiality and privacy policy and informed her that the interview would be recorded. The full interview was recorded with a talking digital voice recorder called Eltrinex. I intentionally avoided notetaking during the interview to prevent disruption and to remain focused on the complex discussion of legal issues. The same strategy was employed in all the interviews.

Once the personal interviews were completed, I prepared for the focus group discussion. The first task was to find a venue suitable for the discussion. I found appropriate rooms at two hotels but one was better both for its privacy and convenience for participants to come from any direction of the city. I selected this venue because the discussion room was far from the lobby, restaurant, bar, and any other noisy places. It was also important to make sure that no sound was heard from the outside while we were conducting the discussion.

The focus group discussion was conducted for two hours, 51 minutes, and 32 seconds. At the beginning of the group discussion, I read the protocol, the confidentiality policy, and the privacy policy as I did in the previous personal interviews. Although they had already expressed their consent to participate in the discussion via email, I also mentioned that in my introduction just to doble check in case anyone had changed their mind. This was simply to confirm the consent they had already given by email.

Nine of the ten expected participants were present. The participant from the Ethiopian Human Rights Council, an NGO, was absent. Before starting the actual

discussion, each participant had some time to introduced themselves. I had also to clarify my role as a moderator. As such, I informed them that I would be there simply to facilitate the meeting and only to raise questions when necessary. My personal assistant was also there to help me coordinate the meeting, guide newcomers to the conference room, arrange seats, and so on, but once the meeting was in order, he left the room and would come in only if I called him for assistance. We began the discussion with me reading all five questions. Next, participants answered questions one at a time. Then, I closed the discussion by thanking them for their time and providing them with my contact information for any communication.

Data Analysis

Data analysis is an effort to obtain information to answer the research question. It is a process of finding an answer to the research question using the collected data as a starting point (Rubin & Rubin, 2011). It also provides a means of transforming the data into finding (Patton, 2014). Effective data analysis requires proper data management, organizing, and planning (Ravitch & Carl 2016). For the task of data analysis to be be effectively performed, the activities associated with the process should be properly executed. Such tasks include transcribing, managing, and organizing the data.

I recorded, transcribed, and translated the interview data. The device used for this purpose is called an Eltrinex talking voice recorder. The device records data in excellent quality and saves the files with its full characteristics. It has also many useful features that allow for saving the file with the date and length information. Moreover, the device has a USB cable to establish connection with a PC. This function helped me to copy the

audio files to my laptop after each interview. Making a backup even before transcription is always a useful practice (Walden University, n.d.).

Transcription

Before transcribing the interview, I made a backup of the audio recording and copied the audio file onto my PC. I did not do the transcription myself. Instead, I hired two individuals to help me with the transcription of the audio, which was in Amharic. In the interest of the basic research ethics of privacy and confidentiality, it was necessary to give a half hour orientation to the transcribers before they started the work. I hoped the orientation would help them understand how to do the transcription and what to be careful about. Additionally, I advised them to transcribe verbatim, not because that mode of transcription was necessarily required for the purpose of my research but because transcribing verbatim is recommended as a means of ensuring fidelity to participants views and experience (Ravitch and Carl, 2016). According to Rubin and Rubin (2011), the degree of transcription precision depends on the nature of the research. For my purpose, it sufficed to make sure that the transcript was a thorough representation of what participants said. Therefore, I did not want to leave room for transcribers to do any editing. We agreed that the transcribers would put a question mark when they had something that they did not understand while transcribing. In addition, I had them sign a confidentiality agreement so they would appreciate the seriousness of the issue. The nondisclosure agreement specifies, among other things, the duty not to share the data or any part thereof with anybody, as well as the need to do the transcription in a private room. Moreover, I told them to delete all the audio and text copies of the interview files

after they finished the transcription. I also reminded them of doing so when they delivered the transcript. While there is no guarantee that they did so since I did not have any monitoring mechanism, I relied more on the fact that both transcribers were my close acquaintances.

While waiting for the transcription work, I had time to listen to the audio files multiple times to thoroughly capture their content before I started reading the transcript. This exercise helped me later check the accuracy of the transcription and see if any part of the interview was not missing. When the transcript was ready, I created two folders, one for the individual interviews and another for the focus group discussion. The folder for the personal interviewees had a subfolder for documents relating to each individual. I then read the Amharic transcript several times from my PC. When I had any doubt anywhere in the transcript, I went back to the audio to cross check. The purpose of studying the Amharic transcript was not only to maintain accuracy but also to be confident that I understood the content before I started translating it into English.

Translation

The personal interviews and group discussion were conducted in Amharic. Therefore, the transcript had to be translated into English. Being a native speaker of and fluent in the language, I did the translation myself. While doing so, I tried my level best to make the English version similar in tone to the Amharic text. Once I completed the first round of translations, I read and compared the English version to the corresponding Amharic text for any discrepancies. I revised the translation several times until I was satisfied that I had a good English translation of the Amharic text. Then, I made a copy of

the English version and saved both the original Amharic transcript and the English translation as my master copies for subsequent reference. The reason I made an extra police officer is that I wanted to have a separate document to work on.

Once I properly filed the transcript and translation in their respective folders, I had to designate participants from P1 to P11 to maintain anonymity throughout the research. To avoid any possible confusion, I used the alphabetic letter of the participants to determine their sequence. For this reason, only I know who said what in the study.

Coding

Coding is a crucial task in quality data analysis. Saldana (2013) argues that how skilled one is in qualitative data analysis depends on how well they code. Strauss (1987) as cited in Saldana also associated the quality of research with the quality of coding. Coding involves an effort to represent the intention of the participant, and the entire research project depends on making sense of participants' perspectives. In short, if something is wrong with coding, the data analysis may also be wrong. For this reason, I spent a lot of time on precoding trying to understand and familiarize myself with the data corpus. In fact, as a novice researcher, I found coding to be the most challenging part of the study.

I began the coding process with precoding. Precoding involves repetitive reading, notetaking, and questioning the text or any part thereof (Ravitch & Carl, 2016). When precoding, I did not do anything else but try to understand what the whole text was about. The coding process began with the personal interview transcripts.

From my preliminary reading of the interviews and focus group discussion, I learned about the frequency of term use, similarity of the parlance, etc. The most frequently emerging words and phrases included rape, ratification, accountability, politicization, treaty implementation, state responsibility, jurisdiction, blaming the victim, and significance.

To identify a segment of the data that was relevant to my study, I followed a strategy most suitable to my situation. For example, I did not use such techniques as highlighting, bolding, underlining, or coloring of the relevant text as recommended by Saldana (2013) because such techniques are more visual and less appropriate for this study. While reading the text, I inserted comments at the end, which I thought was interesting for coding. In the second round of reading, I changed those comments into first level coding through further analysis. I then copied all those codes on to a separate document created only for first level codes. Then that file was designated by the name of the interview. For example, when I finished the first cycle coding for P1, I named the file P1; I followed the same strategy both for the individual and group interview.

After I created a code file derived from the original transcript for each interview, I kept on working on each file to regroup the codes or data under similar or related topics or headings. Each single file became a document with categories and subcategories of its own. I also created a third common file to put together codes of all the files. Considering the third file as my final document with all the codes together, I first reclassified codes into categories and described the codes. At this stage, the total number of codes, which was 190, was reduced to 36 as a result of recoding and merging codes with similar ideas

and concepts. Eventually, I had a file of 36 codes, three categories, one subcategory and 17 themes.

Among several coding techniques available, I found three of them appropriate for my purpose: process coding, in vivo coding, and pattern coding (Saldana, 2014). Process coding refers to the use of the gerund form of a verb, whereas in vivo involves taking the language of the participant (Saldana, 2014). From the coding process, I formed the following categories, categories, and sub-categories. Under each category, I listed the themes framed from that specific category. After first, second, and third review, I was able to determine the number of codes for each file. Accordingly, 61, 24 and 105 codes were generated from P1, P2 and FGD participants, respectively. The total number of codes forming my dissertation code book was 190. Three major categories and one sub-category were formed out of the 190 codes. I framed 17 themes out of these categories.

Thematic Analysis

In the process of analytical theme formation starting from precoding to actual theme framing, I wrote three short memos to record my reflections, provisional thoughts, and impressions. These useful analytic tools are precoding memo, formative data analysis memo and coding memo (Ravitch & Carl, 2016). After a lengthy process of precoding, coding, recoding, reorganizing, and categorizing, the following 17 themes were identified.

Table 2

Headings and Themes

Number	Level	Heading	Themes
1	Major	National significance of treaty	
			A means of access of supernational justice
			Alignment of international standards to national laws and policies
			Increase in citizen legal consciousness
2	Sub-category	Treaty enforcement challenges	
			Evasion of international responsibility
			Ineffective enforcement
3	Major	Rome Statute significance	
			Legal relevance
			Practical relevance
			Reinforcement of domestic criminal law
			Deterrence against rape
			Access to international criminal justice
			A cause for advocacy
			Developing scholarship on domestic criminal justice
4	Major	Factors for impunity gap	
			Politicization of ICC
			Commitment for combatting impunity
			Impediment to evidence production
			Low motivation to advocate for the Statute
			Passive role and power of women

National Significance of Treaties

Some participants recognized the positive role that treaties may play in the domestic life of the country. They especially emphasized the importance of the treaties in providing access to supernational justice, aligning international standards to national laws and policies, and increasing citizens' legal consciousness.

Access to Supernational Justice

Citizens of a state are normally subject to the judicial authority of that particular country. Nevertheless, because of the provisions of certain regional and international treaties, they can sometimes have the chance to use extraterritorial tribunals and seek remedy under the treaty in question. The African Commission on Human and Peoples' Rights is one platform that Ethiopians may go for supernational justice.

P1 discussed two important cases reviewed and decided by the Commission. The first case concerned the long trial of officers from theProvisional Administrative Council commonly called 'Derg,' which ruled the country from 1975 to 1991. These were senior officers of the former military government who came to power following the 1974 revolution. They were arrested and put on trial for a long time when the armed group controlled the capital city and overthrew the military government in 1991. The case was originally initiated by the officials' attorney and the Institute of Human Rights and Development in Africa (IHRDA), a civil society organization based in Gambia. The attorney later resigned, reporting that she had received a clear and present threat to her life. Therefore, only IHRDA followed up with the case. The ground of the complaint was denial of the right to fair trial. The concept of fair trial includes free legal aid, trial within a reasonable time, an independent, competent, and impartial trial, the right to presumption of innocence, etc. The individuals even cited the Rome Statute and the ad hoc tribunals before that.

According to P1, the commission seriously examined the communications of both the complainants and that of the respondent state, the government of Ethiopia. Finally, it

was found out that the complaint under Articles 55 and 56 of the African Charter were legal, and the officers' rights to a fair trial had been violated under the charter and other important international human right conventions. P1 said the following regarding the decision.

> The commission gave a decision with good analysis and reasons that victims had to be paid compensation because Ethiopia did not respect the fair trial standard. The decision also contained a provision about compensation for the victims. According to that decision, 1. Ethiopia was responsible. 2. She had to pay compensation. The idea contained in the decision that although whether the accused were guilty or not, the fair trial standard should not be violated was a good message.

P1 considered this decision to be a landmark in the enforcement of human rights that may serve as an important authority on the continent, based on the concern that the trial at the domestic courts failed to meet the standard trial test.

Another case involved a thirteen-year Ethiopian girl who was abducted and raped multiple times. The title of the case was Equality Now and Ethiopian Women Lawyers Association (EWLA) v. The Federal Democratic Republic of Ethiopia. Organizations called Equality Now and Ethiopian Women Lawyers Association filed a complaint on behalf of Woineshet Zebene Negash (the complainant) against the respondent, the Federal Democratic Republic of Ethiopia, pursuant to Articles 55 and 56 read with rule 102 of the rules of procedure of the African Commission on Human and Peoples' Rights. The victim was a thirteen-year-old girl who was abducted and raped multiple times and

even forced to sign a contract of marriage. While detained by the accused, the girl somehow managed to run to a police station nearby. The police then arrested the suspect and his accomplices who were also prosecuted and sentenced.

Nevertheless, the high court and the criminals later reversed the decision were set free. Regrettably, the prosecutor declined to object to the release. According to P1 and P9, the case was submitted to the Commission because the government of Ethiopia could not exercise the duty to prosecute criminals while the girl had been seriously abused.

After reviewing the case, the Commission expressed its disapproval of the trial standards. The commission gave its verdict on the case that the government of Ethiopia had to pay compensation to the victim since it failed in its duty. Unfortunately, the government did not pay the compensation because the decision had to be approved by the heads of states, and the head of the government of Ethiopia did not do so.

The relevant point is that the victim had the opportunity to have her case reviewed by an external tribunal, as entitled by the African Charter on Human and Peoples' Rights. This second chance was possible because of a treaty that opened her case to a regional avenue. The commission admitted and reviewed the case due to the mandate given by the treaty. It also serves as a regional venue for similar cases when they fail to act on the circumstance. According to P1, the opportunity to access justice through a venue outside the national system was an advantage that treaties offer.

Alignment of International Norms to National Laws and Policies

This is about incorporating international standards into national laws and policies. Treaties open the door for international norms and standards to be part of the domestic

life of state parties. P2 spoke to this effect, saying that the Constitution of the Federal Democratic Republic of Ethiopia recognizes the importance of international conventions and covenants. Although P2 did not specifically mention the constitutional provisions in the interview, Articles 9 and 13 read to this effect. Article 9 (4) of the constitution reads as follows: "Article 9 (4) All International Agreements ratified by Ethiopia are an integral part of the law of the land." Similarly, Sub-article 2 of Article 13 of the constitution reads as follows.

> Article 13 (2) The fundamental rights and freedoms specified in this chapter shall be interpreted in a manner confirming to the principles of the Universal Declaration of Human Rights, International Convention on Human rights, and international instruments adopted by Ethiopia.

For P2, the constitutional provisions opened a way for international standards and norms to be aligned to the national laws and policies of the country and represents an area of treaty significance.

International treaties can also serve as guidance for mainstreaming women's right in domestic development policies. P5 indicated that CEDAW and other treaties ratified by Ethiopia are used to promote and implement gender mainstreaming in the respective development sectors of the country. This shows that the international agreements can play a role in informing domestic development strategies and serve as a substantive source of norms on women's rights.

Maximizing Citizens' Legal Consciousness

The third area of treaty influence is raising the awareness of citizens about their legal rights. P1 noted that the decisions of the African Union in the cases concerning Ethiopia conveys useful lesson to citizens. When the commission gives decisions and award remedies to victims, citizens start to understand that there are laws that enable them to go beyond the national judicial venues. In the opinion of P1, the decisions may give the impression that the state has the duty to prosecute, and even that it can be sued and appear before regional or international tribunals. This may imply the psychological significance of the treaties.

In affirming the positive role of international treaties in domestic life, P4 added that Ethiopian courts had begun to consider treaties in litigation. They said, "courts have begun to implement treaty standards." P4 further noted that in a case in which P4 was involved as an attorney, the Federal Supreme Court of Ethiopia rendered a decision affirming the right to bail under the International Convention on Civil and Political Rights. Therefore, P4 stated that the application of treaty standards in court cases helps the legal development of Ethiopia and implies the national significance of treaties.

Implementation Setbacks

Despite their contribution to the domestic social and legal development, treaties are not easy to implement. P1, P7, P8, P9 and P10 were of the opinion that Ethiopia has no problem with signing and ratifying treaties. P9 said that the country ratifies treaties easily, especially those with little political concern. However, they indicated that there is a serious gap in implementation.

Evasion of Responsibility

The state tends to avoid treaties that may entail strict liability. P9 mentioned the Maputo Protocol as an example and said, “Ethiopia made too much reservation.” P5 also added that there is a general disposition to avoid protocols because they allow individuals to go to international tribunals and submit complaints against their government. In addition, P5 indicated that Ethiopia had reserverations because it would be a problem to ratify the protocol in full before adjusting domestic laws. In any case, the inclination to avoid optional protocol associated with the main treaty and making excessive reservation to treaties represents a means of evading responsibility under international law.

Ineffective Enforcement

Treaty enforcement requires much more than simply accepting the standards. For instance, P7 noted the need for training professionals, lawyers included, on treaties ratified. P7 stated that those treaties ratified by the parliament are deposited in the archive and are not promoted among the relevant sectors. P8 also agreed that professionals lack the necessary knowledge and fail to pay due attention to treaties on women’s rights. P10 and P11 also added that there is a serious gap in implementing domestic laws on women’s rights, much less the international treaties.

The Relevance of the Rome Statute

Participants were divided on the legal significance of the Rome Statute to the crime of rape in Ethiopia. For some of them, the statute is not applicable as it stands now due to its ratification status and scope. Others argued for its relevance by giving their own legal reasons. For instance, P1, P2, and P6 said that the statute is applicable to Ethiopia

for at least three reasons. P1 and P2 said that although Ethiopia has not yet ratified the treaty, it remains applicable because the Security Council of the United Nations can refer a situation to ICC for investigation and prosecution without considering the requirement of ratification. For the participants, state consent is irrelevant in such a case. P2 also agrees with P1 on the possibility of the Security Council referral. P2 noted that consent is the foundation of state obligation; H=however, there is a mechanism of bringing perpetrators before ICC through the United Nations system under the Rome Statute if the security council so decides. For P2, the nature of the crimes under the statute are so grave that the Security Council can bypass the ratification procedure. Therefore, it is understandable that the security council refers the case without requiring the state to accept the statute.

P1 also noted the customary law nature of the Rome Statute, which means the statute still binds states that have not ratified it. Likewise, P6 argued for the legal relevance of the statute on a third and different ground. For P6, crimes against humanity, as provided under Article 7, represent a jus cogens rule (peremptory norms). According to the Vienna Law of Convention (1969), a peremptory norm is.

> A norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified by a subsequent norm of general international law having the same character.

Therefore, in the opinion of P6, the Rome Statute binds Ethiopia as it contains a peremptory norm that cannot be derogated even if the nation has not ratified it. P6 also

indicated that peremptory norm in turn entails an erga omnes effect, or implication. For P6, by virtue of the operation of the principles of jus cogens and erga omnes, the Rome Statute binds Ethiopia even short of ratification.

In contrast, some participants disputed the relevance of the statute to the crime of rape in Ethiopia. For instance, P4 argued that the statute does not apply to the crime of rape in Ethiopia because the scope of the treaty is limited to the rape crimes committed in special circumstance. According to P4, although rape is a crime against humanity, the statute applies only when rape is committed "as part of a systematic or widespread attack." P4 further argued that while it is true that rape is widespread in Ethiopia, it is not systematic and widespread. It may be committed in conflict situation, but that happens "once in a century." P4 also argued that even if the statute is relevant for any ground other than its scope, it still does not apply to rape cases that occur in Ethiopia since the country has not yet ratified it. Therefore, for P4, the statute is irrelevant to the ordinary crime of rape as committed daily in secret locations or behind closed doors. P8, and to some extent, P9 agree with P4 that the scope of the statute is limited to systematic and widespread rape as provided under Article 7 of the statute.

In addition to the scope of the statute, these participants understand ratification to be an essential requirement for a treaty to be domestically relevant. They argue that no state has an obligation under a treaty without giving its consent to be bound by it. P7 had a slightly different position on this point. They accepted the need for ratification; but at the same time appreciated the relevance of the statute to manage the rape crimes

committed in recent conflicts. P7 argued that if Ethiopia ratifies the treaty immediately, it can use it to prosecute suspects of the crime of rape committed in recent conflicts.

This position provokes an argument about the principle of retroactivity. For instance, P4 did not agree with P7, stating that even if Ethiopia ratified the statute now, it might be applied to future crimes rather than the ones already committed. This argument has a legal ground because Article 11 of the Statute provides to the same effect. Article 11 (2) of the Statute provides as follows.

> If a state becomes a state party to the statute after its entry into force, the court can exercise its jurisdiction only with respect to the crimes committed after the entry into force of this statute for that state unless that state has made a declaration under Article 12 para. 3.

This means that, in principle, the Statute applies to crimes committed after its entry into force (i.e., July 2002) unless a state that accepts the statute after this date agrees otherwise. In other words, a state may agree that the court may try crimes committed even before the statute entered for that state, if the state accepts the jurisdiction of the court by declaration to be lodged with the registrar. Article 12 (3) is an exception to the principle and provides the following.

> If the acceptance of a state which is not a party to this statute is required under paragraph 2, that state may, by declaration lodged with the registrar, accept the exercise of the jurisdiction by the court with respect to the crime in question. The accepting state shall cooperate with the court without any delay or exception in accordance with part 9.

Therefore, one may accept the argument put forward by P7 about the possibility of immediately ratifying the statute and sue it for investigating and trying crimes committed either before or after ratification. It means that if quickly ratified, the statute can be used to prosecute those heinous rape crimes committed in recent conflicts in many areas of the country.

On the other hand, it is important to note that state consent may sometimes not be required for the ICC to exercise its jurisdiction on crimes committed in a certain country. The Security Council may refer a case to the court using its mandate under the charter regardless of consent by the state in question. This is the position taken by P1 and P2. Accordingly, the situation in Ethiopia may be referred to the ICC in accordance with Article 13 (b) even against the will of the government. Articles 11 and 12 apply to 13 (a) and (c), in which a state party to the statute can refer a case to the court and the prosecutor may, on its own motion, initiate investigation. Yet, the importance of the state cooperation cannot be underestimated for the successful functioning of the court.

Practical Significance of the Statute

As indicated above, participants differed in their views about the legal relevance of the statute. Some took a position that the statute is relevant even without ratification because of the availability of options to refer a case through the Security Council. Others rejected this argument because of the scope of the statute, requirement of ratification and the principle of nonretroactivity.

Ethnic Conflict

Although participants disagreed on the legal impact of the statute, some of them mentioned certain critical areas in which the statute is important, regardless of its legal status. Both P3 and P5 said that ethnic conflict has remained the major problem in Ethiopia. P5 underlined that women and girls are commonly raped in ethnic clashes. They gave examples by referring to those regions of the country where the local residents attacked people and raped women and girls whom they claim to be from other regions. P3 indicated that ethnic conflicts have been there for years but became more common over the last three years. P3 further indicated that when people are brought to justice, suspects and their affiliates give an ethnic explanation to avoid legal action. For instance, several women and girls were raped in Welega (Western part of the country) and Northern Shwa (central part of the country) by the armed groups. P3 said, "People begin to hide in their ethnic groups when action for accountability is taken." P3 noted that they had recently talked to a number of women and girls who were raped in recent conflicts.

P9 also added that ethnic partisanship was opening the way for impunity for rape. P9 pointed out that in a discussion they had once with the minister of justice about accountability, they learned that people are suspected and arrested for rape but not properly prosecuted and convicted due to ethnic bias. P9 said that they many people were escaping justice because of labeling by the police, the prosecutor, or the judge as a member of this or that ethnic group.

Filling in the Law and Policy Gap

Participants identified certain gaps in the domestic law and policy that the statute might fill and either directly or indirectly contribute to preventing impunity for rape. For example, P9 indicated that the criminal code of Ethiopia contains no specific provision on crimes against humanity. According to P9, although the issue has been mentioned in the constitution, the criminal code makes no reference to it. Moreover, P9 noted that the code does not sufficiently address all forms of sexual violence or include sexual harassment. In addition, P1 questioned the sufficiency of the definition of rape provided by the criminal code, noting that the statute might help in that respect too. They all mean that the statute might trigger some legislative and policy measures in areas relevant to rape or any other forms of sexual violence.

Deterrence Against Impunity

Another purpose the statute was said to serve is deterrence. P1 said that if individuals and state officials are aware of the existence of the statute and an international criminal court, they may be careful and refrain from committing atrocity crimes like rape. P5 also agreed that even though individual criminals may be punished at home, the existence of the treaty can provide the opportunity to bring senior political officials to justice as well when they commit similar offenses.

Creating Access to International Criminal Justice

Some participants expressed concern about the domestic criminal justice system. For instance, P2 stated that Ethiopia remained in protracted war, and its justice system was flawed. P2 further noted that the armed groups and the government were in dispute

as to which judicial platform should manage rape and other crimes committed in recent conflicts. The government claimed to investigate and prosecute crimes of rape and associated offences committed during the conflict. On the other hand, the armed groups expressed their distrust in the domestic criminal justice system and appealed to ICC. According to P2, in the case of such a controversy, ICC may be a good option as an independent body. Likewise, P9 agreed that international schemes like the Rome Statute are important mechanisms to investigate and prosecute the crime of rape committed during the war between the government and TPLF, as revealed by the joint investigation of the United Nations High Commission for Human rights and Ethiopian Human Rights Commission. P9 suggested that the prosecution should not only be limited to the result of the joint investigation that covered the period between June 28 and November 3, 2021 but should also include crimes committed even before that, including those instigated by some politicians.

P3 spoke of the need for an international mechanism like the statute. Such mechanisms are useful to punish officials who are usually above domestic law. P5 also concurred with P3, pointing out that the statute is more important for holding political officials responsible than punishing private individuals. For P5, it is typically easy to bring individuals to justice under the local criminal justice system as far as the necessary evidence is available; however, it will not be easy to do so when it comes to senior officials. In such a case, it is appropriate to resort to international justice.

A Cause for Advocacy

P1 and P2 said that the Rome Statute could serve as an advocacy tool for NGOs in Ethiopia. P1 emphasized that NGOs can use the statute to support their advocacy for the rights of women and girls in two ways. First, they can include the standards and ideas contained in the statute in their programs to educate the public. Second, they can also lobby policy and lawmakers to ratify the treaty. P1 cited an international experience called "coalition for ICC," which NGOs used to advocate for international justice. P2 also added that NGOs may also serve as the voice of the victims by exposing rape crimes committed in the country, and officials want to hide.

Developing Scholarship on Domestic Criminal Justice

There were participants who commended the role of the statute in enriching the domestic criminal justice system and legal literature. P1, for instance, pointed out that the Rome Statute may help domestic experts acquire useful concepts and definitions about rape and other forms of sexual violence. Besides, P5 mentioned the precedence of the decisions of the International Tribunal for Rwanda. They noted that in one of the decisions of the ITR, rape was ruled to be an act of genocide. According to P5, this precedence is useful for Ethiopia when developing the domestic legal literature and case law development. P4 also admits the role of the statute in developing the domestic jurisprudence. Furthermore, P9 accepted the norm setting role of the statute, as it can provide certain rules to be applied in the domestic system of criminal justice.

Factors Opening Gap for Impunity

Although participants spoke of both the legal and practical influence of the Rome Statute on rape in Ethiopia, the effort to fight impunity is not simple due to multiple challenges. Participants mentioned some of such problems.

Politicization of ICC

The ICC is not popular among African states these days, and Ethiopia is not an exception. Even so, the commitment to prosecute atrocity crimes, to ratify the Rome Statute, and to cooperate with ICC is of great concern for human rights lawyers, human rights organizations, and all other stakeholders. Participants also expressed their views on these issues.

Five of the eleven participants talked extensively about what they call the "politicization of ICC." P2 and P9 discussed the leading role Ethiopia played in coordinating the mass pull out of the African states from the Rome Statute while her former prime minister Hailemariam Desalegn was chair of the African Union. P5 also indicated that the late prime minister Meles Zenawi had a strong position on the Al-Bashir case. It is important to note here that Ethiopia worked so actively to push other African state parties to withdraw from the Statute, whereas she herself did not even ratify the treaty.

For P9, African governments want to avoid ICC and its establishing statute and claim to use their own system of justice. However, P9 said, "they are not committed even to their own decisions." They reject ICC, but at the same time do not show commitment to the regional decisions or mechanisms. It is like escaping from both platforms. For

example, Ethiopia is a state party neither to the Rome Statute nor to the 1998 protocol to the African Charter on Human and Peoples' Rights that established the African Court on Human and Peoples' Rights. For P9, if an African government wants to establish a regional criminal justice of their own, they should prove that they can do better justice. Otherwise, withdrawing from the Rome Statute while also rejecting the regional mechanisms is simply an evasion of justice. P5 agreed with P9 in that there is no uniform enforcement practice. The statute is not enforced in cases happening in Europe.

Participants also expressed their concern about the attitude of the West toward the ICC. P2, 4, 5, and 9 said that the West, including the United States, tends to use the court as a political tool to advance their interests in Africa. For example, P5 noted that Europeans and United States abuse the international judicial mechanism to seek policy compliance of African states. P9 described the attitude of both Africans and the West as "conspiracy" against international justice. African states blame the West for politicizing the court and threatened to withdraw from the statute. Likewise, the West worked hard to punish those African states to force for policy change. For this reason, P4 went to the extent of suggesting avoiding the ICC altogether and resort to regional mechanisms. Nevertheless, for Agwu (2020), any attempt to substitute ICC for a regional platform is unwise.

Role and Power of Women

Most of the participants except P10 and 11 spoke of rape as a problem for women even in peacetime, and they attributed the experience to culture, economic and social dependence, and impunity. P4, P8 and P9 do not see the Rome Statute as a solution to the

problem. They understand impunity to prevail but do not think international criminal law can help much. Rather, they want to focus on social awareness raising and advocacy.

On the other hand, P1, P2, P3, P5, and P6 appreciated the relevance of the Rome Statute to the lives of women experiencing rape. particularly suggested that Ethiopia should ratify the Rome Statute, and that women should engage in advocacy to get the treaty ratified. This challenging task requires much pressure, and its success depends on the role and power of women. P1, P7, P8, and P10 stated that there is no effective implementation of treaties on women's rights. P1 stated "I do not see much women representation in international delegation and consular services," noting that men dominate in such representation. They also noted, however, that mere representation makes little difference unless women are empowered starting from the grass roots level. P1 emphasized that two or three female delegates make no difference in in treaty negotiation.

Although this is not about rape, the lack of women represented in international affairs that concern them is a function of gender inequality. Hence, it is not easy to refute feminist theory in a situation where women are represented by men, even in women's affairs. Article 8 of the Convention on the Elimination of all Forms of Discrimination Against Women (1979) provides for the opportunity to represent national government in international affairs and participate in works of international organization as follows. Article 8: "State parties shall take appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their governments at the international level and to participate in the work of international

organizations." Therefore, P1 emphasized the need to strengthen the power and role of women in international representation.

Impediment to Evidence Production

P7 outlined the problems encountered in producing evidence to prove rape. They said that the nature of the crime itself, underreporting, and rape culture are major hindrances to collecting evidence. For P7, the nature of rape is such that it is committed in private; thus, obtaining evidence or getting witnesses is not simple. In addition, due to the practice of victim blaming, the crime is not always reported. This, then, becomes a serious impediment to evidence production. The concerns presented by P7 are associated with what is commonly called rape myth acceptance. As defined by Burt (1980) and cited in Maxwell and Scott (2014), rape myths are "prejudicial, stereotyped, or false beliefs about rape, victims, and rapists" (p. 217). Because of rape myth and other impediments to evidence production and admission, impunity prevails. This applies to rape cases committed in wartime contexts as well.

Commitment to Combatting Impunity

Accepting the functional importance of treaties in general P1 explained government's reservation to commit to localizing and implementing the treaty standards. P1 noted, "It is important to localize human right treaties. How much have we localized them? How much have domesticated them? How much have we made part of the domestic policy or institution?" The questions posed by P1 speak to the level of commitment to accept treaty standards, including those contained in the Rome Statute. P9 also questions the commitment of the government about the statute. P9 stated, "There

were so many recommendations that Ethiopia had to ratify the Rome Statute. Of course, as they usually do it, they marked as *noted*." P8 and P10 also expressed their concerns about the government's commitment to implement treaty standards.

Evidence of Trustworthiness

Issues of trustworthiness and study validity are serious concerns in any qualitative study. As Lincoln and Guba cited in Cope (2014) suggested, the mechanism of confirming a quality is measuring the research using the tests of credibility, confirmability, dependability, and transferability. At the same time, it is important to remember that not all researchers take these criteria as absolute means of ensuring research quality (Welch & Piekkari, 2017). This is to mean that although research that meets these criteria is of acceptable quality, there is no unanimous decision on whether a particular research product is rigorous. Even so, it is vital to take extreme care to make sure that one's research meets these criteria.

Credibility

Credibility is about presenting correct information and giving the true picture of the study phenomenon (Andrew, 2004). In this study, I have tried to present what participants have said and discussed accurately. To check for any inconsistency or omission in the transcripts, I emailed the transcripts back to the two participants interviewed personally to confirm their interviews. Concerning the focus group participants, I did not send them the interview transcript. I thought it would be possible to follow the same procedure used for personal interviewees, and even extracted the first two participants' remarks for emailing. Due to the interactive and dialogic nature of the

meeting, it was not as useful of an option. However, I did call one of the participants to clarify a response. Although I did not check with each of the focus group participants, I carefully recorded and transcribed the entire discussion, as well as comparing the Amharic and English versions for any possible discrepancy. Therefore, I made sure that the interview data were participants' exact words. Furthermore, the transcription was verbatim.

Transferability

I cannot claim that the study is applicable to all situations because the study was context-specific from all perspectives. For instance, the treaty domestication process of each country is unique. Countries may also differ with respect to the ratification status of the treaty. Some of the states have already ratified the statute, while others have not. The nature and development of the political system also matters. As a result, the study is short of being replicable in absolute terms; however, the results may be relevant in a situation with more or less similar context.

Confirmability

I did my best to represent the views and perspectives of participants in this study. I did not ask leading questions or comment on any responses. Some participants sought a verbal response from me to their statements. For instance, P1 had the habit of posing such tag questions as, "Isn't it?" My response to such inquiries was, "What do you think?" That strategy helped me keep the participant on their own track without inviting my view into the discussion. Likewise, some focus group participants asked me for my personal view about some of the discussion issues. All I said was that I was there to listen and

reiterated my role as a moderator. That approach allowed them to focus on their respective views about the issues being discussed. At all stages of the data collection and data analysis, I did not allow my bias to interfere in the research.

Chapter 5: Discussion, Conclusions, and Recommendations

Introduction

This study's aim was to understand how the Rome Statute and the establishment of the ICC influences impunity for rape in Ethiopia. The research question was, "What is the impact of the Rome Statute and the establishment of the International Criminal Court on the crime of rape committed against females in Ethiopia?" To answer the research question, both personal and group interviews were conducted. The participants were all lawyers recruited from nonprofit human rights organizations, government agencies, and private firms. The selection criterion included knowledge about, experience in, or exposure to the operation of treaties and their interaction with the domestic life of individual states. Two of the eleven participants were interviewed individually, and nine of them participated in a focus group discussion. The results were presented in Chapter 4. In this final chapter, I will discuss and interpret the findings, indicate the limitations, make some recommendations, and provide my conclusions.

Findings

The findings of the study concern three major areas: the significance of treaties in general, the relevance of the Rome Statute, and the factors contributing to the impunity gap in the country. The issues of selective ratification, poor enforcement, and recognition of treaty contribution are also discussed under the major theme of treaty significance. Similarly, the finding about the relevance of the Rome Statute has two aspects, both legal and practical. The last finding regards factors that may contribute to the impunity gap. All the findings are based on the themes framed and presented in Chapter 4.

Significance of Treaties

As a major source of international law, treaties have remained an important part of legal and international relations for years. Today, there are thousands of multilateral and bilateral treaties in operation, but little evidence is available as to what exactly has changed in the respective countries following the enforcement of each treaty (Simmons, 2009). Here, we are concerned about the functional importance of treaties, especially those treaties dealing with human rights in Ethiopia.

There are two theories, dualism and monism, concerning the relationship between international and domestic law. According to monism, a treaty automatically becomes part of the domestic legal system and is implemented by national courts upon its ratification. On the other hand, a state is dualist if it requires an enabling legislation to incorporate the treaty in question into the domestic legal system (Retselisistoe, 2021; Kelsen, 1945). In other words, for dualists, the treaty should not only be ratified but also supported by a local legislation following its ratification.

Ethiopia follows the dualist approach because the House of Peoples' Representatives (Parliament) is supposed to enact law to locally enforce an international agreement ratified pursuant to Article 55 paragraph 12 of the Constitution (Constitution of the Federal Democratic Republic of Ethiopia, 1995). Only then does the treaty become part of the national legal system. The constitution is not implicit on the additional legislative procedure required. Articles 9 and 13 of the constitution contain provisions on international treaties. Article 9 (4) reads that, "All international agreements ratified by Ethiopia are an integral part of the law of the land." (EFDE Constitution, 1995).

Likewise, Article 13 (2) requires that the rights and freedoms enshrined in that specific chapter should be interpreted in a way that is compatible with the international human right conventions ratified by Ethiopia (Constitution of the Federal Democratic Republic of Ethiopia, 1995). In both cases, only ratification has been expressly mentioned. Yet, in practice, the parliament enacts legislation after ratification. The implication is, then, that treaties must go through those two steps before they are enforced as part of the municipal law. The rigor of the process may vary from country to country. For example, in the United States' legal system, the process of treaty ratification is more complicated. As noted in Chapter 2, the ratification of a treaty in the American system involves the administrative agency concerned, the president, foreign relations committee, and the Senate (Sitharaman, 2016). In any event, the question posed here is to what extent are treaties substantively important especially to the rights of women in Ethiopia?

The finding is that although treaties have a role to play in domestic life, they are not always effectively enforced. Most of the participants reported that there is no problem in ratifying treaties, especially when they are not politically sensitive; the problem is implementing the ratified treaties. P9 indicated that although the government ratifies treaties, it does so selectively. For P9, the government usually refrains from adopting agreements that entail legal accountability. P5 also added that a cautious approach is taken with optional protocols and agreements that are inconsistent with the domestic laws of the country. In any case, the general understanding is that the country does not do as well in implementation as it does in ratification. For many of the participants, treaties still play a positive role in at least four areas: (a) strengthening the domestic laws and policies

with international standards, (b) influencing litigation, (c) creating access to regional justice, and (d) increasing the legal consciousness of citizens.

The first contribution is alignment of the international standards to the domestic laws and policies. As P2 indicated, the constitution recognizes international agreements and covenants as important sources of norms and standards for domestic policy consumption purpose. Besides, based on such international norms, the government has formulated gender policy to mainstream women's right in development programs. Clearly, certain legislative and administrative measures taken by the government in the field of women's right are informed by the ideas and practices of the relevant treaties. In effect, this will mean that international norms and standards find their way into the domestic system and serve as input for national development.

The second advantage of treaties is that they create access to transnational justice. According to P1, some treaties adopted at regional level have served, at least for a few individuals, as an inroad to regional tribunals. Two cases referred to by P1 and adjudicated by the African Human Rights Commission are good examples of the benefits treaties offer to citizens. One of the cases involved a 13-year-old Ethiopian girl who was kidnapped and repetitively raped by an individual and his accomplices. After being abused several times, the girl managed to escape from the attackers and ran to the police station nearby. Although the suspect and the accomplices were initially sentenced to imprisonment, they were later released by the higher court with no objection by the prosecutor. Two nonprofit organizations then took the case to the African Human Rights Commission, which decided in favor of the victim and even awarded her compensation

(Equality Now, 2003; EWLA, v. Federal government of Ethiopia, 2003). Nevertheless, the girl did not receive the compensation because the government did not approve the decision.

Similarly, the African Human Rights Commission tried a second case first filed in 2004 by an Ethiopian attorney and joined in March 2006 by a regional organization called Institute for Human Rights and Development in Africa (IHRDA) The case involved over 106 former officials of the Derg (Provisional Administration Committee). The communication was filed with the African Human Rights Commission under Article 55 of the African Charter on Human and Peoples' rights (Hargadon G &IHRDA vs the Federal Democratic Republic of Ethiopia). The ground of the petition was the violation of the rights of the accused to fair trial. Having heard the complainants and the respondents, the Commission found that the officials' trial did not meet the standards for a fair trial. According to P1, although the decision changed little in the conditions of the accused, it was a well-grounded verdict that aired the fair trial right of the officials, and the Commission served as an independent venue for the accused whose rights were blatantly violated. These cases and the availability of such regional treaty options potentially enlighten individuals about the possibility of supernational bodies coming to their aid. Individuals become conscious of the fact that a citizen can petition against his own government for the duty to prosecute.

Some of the study participants shared their views about what they called a paradigm shift in the understanding of treaties as manifested in Ethiopian court practices. For instance, P4 indicated that unlike previously, courts currently use treaties as a basis

for adjudication or cite them as legal authority in litigation when appropriate. This means that attorneys can invoke international treaties to defend cases, and judges apply them in orders and decisions when they find them appropriate. According to the participants, this can be taken as a positive judicial practice that allows treaty standards to be applied in the interest of citizens litigating at courts. P4 stated, "This is indeed a paradigm shift."

On the other hand, it should be noted that treaties are not effectively enforced, and little benefit from them is reported for various reasons. First, as learned from the interviews, treaties are not well-integrated into national development policies and programs, except in few mainstreaming practices. Second, the state tends to avoid optional protocols that can potentially benefit individuals who may file complaints with international tribunals after they have exhausted the domestic remedy. Third, it is common to make reservations to treaties, including those useful to women's rights. The Maputo Protocol was a case in point. P9 said, "Ethiopia made too many reservations to the Maputo Protocol." Although Ethiopia has ratified a number of human rights treaties and integrated them into its legal system, they are not effectively enforced. P10 also stated, "As we all know, Ethiopia has signed so many international treaties. She has no problem in signing. There is a good will. The problem is in implementation."

In fact, ratification and compliance are two separate processes. Ratification is about acceptance, whereas compliances is about implementation. When a state ratifies a treaty, however, one may logically assume that the ratification occurred with the intention to implement the treaty in question. Yet, that is not necessarily always the case. As Simmons (2009) indicated, states ratify treaties for various purposes. Some states accept

treaties to genuinely implement them and make changes in their society. Others do so to avoid criticism or maintain a positive international image. Still others commit themselves to the principles but decline to ratify. The first two groups of states are called sincere and strategic ratifiers, while the third category are called false negatives. Others also do so to avoid blame or maintain national image. Thus, the finding regarding the significance of treaties in general is that although Ethiopia has ratified many treaties, including those concerning women's rights, the nation did not go far in implementing the standards.

Relevance of the Rome Treaty

The second finding concerns the Rome Statute, more specifically its impact on impunity for rape in Ethiopia. It includes two aspects: legal and practical. This section discusses these two aspects in greater detail.

Legal Relevance

Participants are slightly divided as to what the statute legally means to Ethiopia. Seven of them agreed that, in one way or another, the statute and the ICC potentially influence the crime of rape and impunity for perpetrators, but the other two participants did not agree to the view that the statute is an important international legal instrument to fight impunity for rape in Ethiopia. For example, P4 and P8 were not convinced of the functional importance of the statute to the crime of rape committed in the country. The other two participants did not comment on this issue. P4 and P8 challenged the legal pertinence of the statute on four grounds: the scope of the treaty, the nonratification, the nonretroactivity, and the infrequent nature of conflicts in the country. Regarding the scope of the statute, P4 said that ICC has jurisdiction on for crimes: genocide, crime

against humanity, war crime and aggression. They further stated that for rape to be governed by the statute, it must fall under these crimes or must be committed systematically. Otherwise, P4stated, “I do not think ICC has jurisdiction over isolated rape cases. I do not think ICC is the appropriate platform to address rape cases committed domestically and in secret places and corners.”

Furthermore, P4 argued that even if rape is committed systematically and in a widespread attack, Ethiopia has not ratified the treaty. P4 explained, “Our cases cannot be tried there while we are not a state party.” They further argued that it would not have made a difference even if she had ratified it, as rape is committed, in most cases, in peace time. In addition, if Ethiopia ratifies it any time here-after, the ICC cannot try the crime of rape committed during the war because the statute may be applied for the crimes to be committed in the future. The statute cannot be used retroactively.

In contrast, P1, P2, and P6 argued for the positive impact and relevance of the statute on three grounds. First, ratification may not be required in the case of the Rome Statute as the UN Security Council is mandated to refer a situation to the ICC. There is an exceptional mechanism in which a nonparty state may appear before the ICC regardless of ratification. In such a case, the jurisdiction of the ICC originates from the resolution of the Security Council, not from the consent of the state in question. Perpetrators of rape from a nonratifying country may be prosecuted and tried by the court on the basis of the mandate of the UN Security Council. In addition, P6 suggested that rape being a crime against humanity, the principles of jus cogens and erg omnes apply to it. The principle of jus cogens refers to peremptory norms of importance to the international community,

whereas erga omnes refers to an obligation towards another state in the area. Speaking in favor of the statute's importance and arguing from the principle of jus cogens, P6 said the following: "Generally, impunity prevails over the local environment. The Rome Statute is a binding law because rape has been classified as a crime against humanity, and a crime against humanity, in turn, has a jus cogens effect." P5 also agreed that some rape crimes committed in recent ethnic attacks can be classified under crimes against humanity. They stated, "We know some cases in which certain political groups committed ethnic attacks on groups coming from other regions. So, although such attacks may not qualify as genocide, they may be classified as crimes against humanity." The third ground of argument in favor of the statute's relevance is its customary nature. P1 recognized the importance of the treaty and said

> I do not agree to the view that the statute does not totally have any use on the ground that the country has not signed it, and we are unable to take individuals to the international tribunals. Instead, I agree to the argument that the statute is a customary law.

Finally, the participants who appreciated the impact of the treaty said that they did not accept the argument that conflict occurs "once in a century" because the country had already been in conflict since the adoption of the Rome Statute. P7 stated that the treaty can be used to prosecute crimes committed in recent conflicts if Ethiopia ratifies it now.

At this point, it is important to examine the perspectives of participants considering the available evidence. It should first be noted that there are authorities in support of both sides. For example, paragraph 1 of article 7 of the Rome Statute is in line

with the position held by P4 and P8 concerning the scope of the statute. The paragraph describes the context in which rape can be committed so that it can be called a crime against humanity. It reads as follows: “For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” In order for a crime of rape to be governed by the Rome Statute, it must have been committed in the circumstance described under Article 7 (1) of the Statute. This implies that the scope of the statute is limited to the kind of rape crimes in the circumstance described therein. Paragraph 2 of the same article further elaborates on paragraph one.

> For the purpose of paragraph 1, attack directed against any civilian population means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit such attacks.

Therefore, the position of P4, P8 and to some extent P9 has its root in this provision. Owing to the serious nature of the crime against humanity, the ICC suggested that the provisions of Article 7 be strictly construed (ICC, 2013). Therefore, one may imply from the strict criteria set under Article seven (1) that the statute cannot apply to isolated rape cases, no matter how frequent they are in Ethiopia.

However, as admitted by almost all participants, there have been several severe armed conflicts in the country since the adoption of the Rome Statute. For instance, P3 noted that there had been devastating conflicts in various parts of the country that were ethnically motivated, systematic, and widespread within the meaning of Article 7 of the

statute. For P3, such incidents left so many girls and women victims of rape. In certain cases, even old women were gangraped. According to the joint investigation by the Ethiopian Human Rights commission and the Office of the High Commissioner for Human Rights (2021), 50 percent of the rape survivors interviewed were victims of gang rape. Undoubtedly, Article 7 of the statute applies to the crimes committed in these conflicts as they occurred in "systematic and widespread attacks(s)." In responding to these remarks however, P4 stated that rape committed in conflict situations occur "once in a century." For this reason, the crime of rape that occurs in a "systematic and widespread attack" is not a serious concern in Ethiopia. Conversely, it can be argued that no matter how rarely the crime of rape is committed, the Rome Statute applies to it in so far as it falls within the meaning of Article 7 of the statute.

Another point of discussion was based on the fact that Ethiopia has not ratified the statute. The issue was whether the statute can play any role regarding the domestic crime of rape given that Ethiopia has not yet ratified the treaty. Understandably, ratification is an important step toward adopting a treaty and infers consent to be bound by treaty implementation (Sitaraman, 2016; Vienna Law of Convention 1969). In other words, ratification is typically the legal means of joining a treaty. Technically, the Rome statute becomes a binding agreement in Ethiopia only when she ratifies it as provided under Articles 125 and 126 of the treaty, or accepts the jurisdiction of the court under Article 12 (3) of the same instrument (The Rome Statute, 1998). In addition, the court can assume and exercise jurisdiction only on state parties or those that may accept its jurisdiction by declaration pursuant to Article 12 (3) (The Rome Statute, 1998).

At the same time, it is important to remember that the Security Council can exceptionally refer a situation to the ICC by virtue of its mandate under the UN charter. Article 13 C of the statute (1998) stands to this effect. This procedure makes it possible for the treaty to be applied to the situation in the country, although Ethiopia has not ratified it (Jeangene, 2016). As provided under Articles 14 and 15, in addition to the referral by the Security Council, the jurisdiction of the court may also be triggered through two more procedures such as referral by a state party or initiation of the prosecutor of the ICC itself (The Rome Statute, 1998). In the case case of the Rome Statute, ratification is not the only requirement to be considered for the ICC to initiate investigation and prosecution. Yet, it is important to remember that the cooperation aspect of the process is still vital for the successful judicial functioning of the ICC. On the other hand, Ethiopia can still ratify the statute in accordance with Articles 125 and 126 or accept the jurisdiction of the court pursuant to Article 12 (3) of the statute. The question in such a case is when the ratification will take effect and which crimes it concerns.

The other debatable issue was whether Ethiopia can ratify the treaty at any time so that she can prosecute rape crimes committed in recent conflicts. For P7, this seems valid, but P4 disagreed on the grounds that the ICC cannot have jurisdiction with respect to the crimes committed before ratification since doing so will violate the principle of retroactivity. P4 further argued that even if Ethiopia ratifies the statute now, she can apply it to prosecute crimes committed only after she has ratified it. For P4, prosecution is legally only possible for those crimes committed after ratification.

It is true that in principle, the ICC can investigate and try those crimes committed after the entry into force of statute. Articles 11 and 126 (2) of the Rome Statute (1998) provide to that effect. As the statute entered into force as of July 2002, the statute may be applied only to those crimes committed since then. Likewise, pursuant to Article 11 paragraph 2 of the statute, if a state ratifies the treaty after 2002, the ICC can try crimes committed after the date of ratification for that specific state (The Rome Statute, 1998). Understandably, a state can ratify the statute either before or after its entry into force.

As provided under Article 12 (3), a state can also accept the jurisdiction of the court through declaration, even though she has not formally ratified it or is not a party to the treaty. Thus, it is true that if Ethiopia ratifies the treaty at any time, the statute can be applied with respect to the crimes committed after her ratification. Nevertheless, it is important to note that she can agree to backdate the effective date of the statute at her will. Otherwise, the principle of retroactivity as provided under Article 24 of the statute (1998) is maintained. Article 24 provides that "No person shall be criminally responsible under this statute for conduct prior to the entry into force of the Statute." (The Rome Statute, 1998). The principle of nonretroactivity has also been provided under Article 22 of the Ethiopian Constitution (Federal Democratic Republic of Ethiopia, 1995).

The foregoing discussion implies that the treaty can be used to prosecute crimes committed in the recent conflict in Ethiopia depending on the decision of the country and that of the Security Council, but why do states decline to ratify the Rome Statute at all? Before leaving the issue of ratification, it is important to reflect on what makes some states stay out of ICC. As already noted, Simmons (2009) outlined the reasons why states

want to ratify treaties, but there are also reasons they do not. One reason is a fear of investigation (Salla, 2017). According to Salla (2017), there are two types of states that do not want to ratify the Rome Statute: those who "engage in military activity and those who "involve [themselves] in grave human rights violation." Ethiopia does both. It may make sense to note here that P2, P5 and P9 recalled that two prime ministers of the country, Meles Zenawi and Hailemariam Desalegn, worked hard to lobby African state parties to pull out of the statute. Nevertheless, it is also important to remember here that Ethiopia is not an exception in this respect. The United States and many other states are still out of the Rome treaty and the ICC system. The United States withdrew from the process initially showing cooperation; however, the nation is now known for a negative attitude toward the ICC (Roger, 2011). I will say more on this point later in the discussion.

P1 and P6 mentioned the idea of customary international law and the principle of jus cogens respectively to justify the application of the Rome Statute to the situation in Ethiopia. P1 argued that the Rome Statute is already a customary international law, and therefore, binds even nonstate parties. While recognizing the authority of international custom, however, it is important to also remember the challenges associated with its application. Undeniably, international custom is a significant authority and even constitutes one of the three major sources of international law (Statute of the International Court of Justice, 1945; Lepard, 2016). As expressly provided under Article 38 paragraph 1 b of the statute, ICJ applies customary international law to determine cases before it, which means that international custom is equally law like the conventions listed under

Article 38 paragraph 1 A of the statute. Therefore, it makes sense and is legally acceptable to invoke the Rome Statute as a customary international law if the norms contained in the Statute are indisputably part of international custom. As norms on crimes against humanity are considered to be customary and peremptory norms, no controversy may arise as to their status (Lepard, 2016).

It is necessary to note that the use of customary international law is not so smooth, and depends on the fulfilment of two common criteria: settled practice and opinion juris. First, the conduct or practice must be settled in the sense that the states must have practiced the conduct for a reasonably long period of time. Second, there must be an opinion juris, which means that states believe that the norm is binding (Arajarvi, 2014). So, the question is whether the Rome Statute meets these criteria to qualify as a customary international law and become applicable to the situation in Ethiopia; however, despite such conceptual and practical difficulties regarding the nature of customary international law in general, there is little controversy as to the status of the Rome Statute as a customary international law. Consequently, it can be suggested that there is sufficient ground to support its relevance as a customary international law to the crime of rape in Ethiopia, regardless of the requirement of ratification. Werle and Jesberger (2020) also agree that the Rome Statute is a customary international law. As Amit (2021) indicated, custom has already part of the Rome Statute as the ad hoc tribunals had developed customary law. Allan and Weston (2014) also affirmed that unlike convention or treaty law, customary law binds all states. As a result, P1's view that the Rome Statute is a customary law and binds Ethiopia has a sound legal basis.

P6 also defended the functional importance of the statute to the discussion of impunity for rape in Ethiopia by referring to the principle of jus cogens, or peremptory norms, and Erga Omnes (Lepard 2010; Vienna Convention on the Law of Treaties, 1969). For P6, norms of crime against humanity represent jus cogens norms. Erga omnes refers to an obligation of a state with another state, whereas jus cogens obligation is a state's obligation toward the international community as a whole (Lepard, 2010). According to Lepard (2010) and due to the importance of the rights involved, in the case of jus cogens, all states are interested in maintaining them. In summary, the arguments presented by P4 and P8 based on the scope, nonratification, nonretroactivity of the statute, and rarity of the occurrence of rape committed in conflict provide plausible grounds to challenge the legal relevance of the Statute to the situation in Ethiopia. At the same time, the possibility for the Security Council to refer a case under Article 13 B, the application of the statute as a customary international law, as the operation of the principle of jus cogens and the occurrence of active conflicts in Ethiopia are more convincing evidence of the statute's role in preventing impunity for rape in the country.

Practical Significance

Participants did not differ much in perspective regarding practical situations that may call for the enforcement of the Rome Statute. Even P4, who disputed the legal application of the statute, recognized the commission of the crime of rape in recent conflicts. To this point, P4 stated, "We are at war; we hear reports of rape; even the joint investigation of EHRC and OHCHR report revealed the commission of such crimes, and the government admitted and is preparing to take measures to ensure accountability."

Other participants also referred to other situations in which women and girls are exposed to a systematic and widespread sexual violence, especially rape.

In ethnic clashes, female members are usually the first to suffer from attacks. As stated by P3, P5 and P9, ethnically motivated conflicts affect Ethiopian women and girls in two ways. First, they become the immediate victims of the attack by the opposite group, which uses rape as a symbol of superiority over the other. Second, it obstructs justice. Recalling their discussion with the Minister of Justice, P9 noted that perpetrators of rape escape from punishment due to the ethnic identities of the police, the prosecutor, and the judge because the law enforcement officers and judges take sides on the basis of the suspect's ethnic identity. P9 stated the following.

> People are suspected and arrested for crimes but are not properly prosecuted and convicted. This is because of the ethnic bias that materializes in the consideration that the police, the judge, or the prosecutor belongs to this or that ethnic group.

This way, impartial justice is threatened, and those who commit rape escape from liability. P3 indicated that individuals hide in their respective ethnic group, seeking protection after they have committed rape against members of the other ethnic group. P3 stated, "When the attack comes under the legal domain, they look for an ethnic explanation…it has now been common to use ethnic identity as a cover up for a crime." Therefore, as ethnic conflict has been common over the last many years and is likely to continue causing females to be sexually abused and raped, an international framework like the Rome Statute is necessary to protect victims against the crime. For P9, the Rome

Statute may open the opportunity for the realization of impartial justice because it represents an external justice system without local affiliation.

The second advantage of the Rome Statute is the possibility it creates to access international criminal justice. Normally, citizens rely on their own domestic jurisdiction for criminal justice, at least when the system works well. If the system does not function properly, it may be practically useful to resort to international tribunals. For example, P2 indicated that the domestic justice system of Ethiopia is deeply flawed. As a result, it is unlikely that fair justice can be delivered. One participant stated, "It is difficult to generally say that the Rome Statute offers no benefit in a country like Ethiopia whose justice system suffers from many distinctive flaws and instability caused by a protracted war and lack of peace." They added that the warring factions and the government are in dispute about the neutrality of the local justice system to try the rape offenses committed during conflict. Therefore, in such a case, the ICC would be a good option both to fill the gap and to serve as an independent platform, thereby contribute to preventing impunity. P3 and P5 pointed out that an external tribunal like the ICC offers a fair venue to prosecute and try high political officials whose accountability is not easily challenged under the domestic system because of the influence they can exert on law enforcement.

The third importance of the Rome Statute is its contribution to filling policy and legislative gaps in the domestic system. P9 mentioned that the Criminal Code of Ethiopia has no clear provision on crime against humanity. They stated that the constitution makes a reference to it under Article 28, but the criminal codes does not clearly provide for it. P9 discussed the limitation of the criminal code in offering effective or sufficient legal

protection in sexual offenses. According to P9, the code does not, for instance, contain provisions on sexual harassment.

It is acceptable that the Rome Statute play a practically useful role reinforcing the domestic legal system and criminal policy of Ethiopia. Eithne (2018) discussed this function of the statute in an approach called "norm transfer." Eithne (2018) introduced a two-level process of the domestic influence of the Statute: first and second stage norm transfer. The first stage, norm transfer, occurs when the ICC requires states to adopt laws and policies to address domestic sexual violence effectively. The second stage of norm transfer is about when national laws and policies include the content of the statute in their domestic system and improve the legal and policy framework (Eithne, 2018). In both cases, the statute serves as a tool to improve the domestic legal and policy environment for the protection of women and girls against sexual violence, especially rape, by reinforcing the domestic legal system with international norms and standards.

Another function of the Rome Statute is it can support the local advocacy effort made for its domestication process. For example, P1 specified two strategically important ways that women's rights advocacy groups and stakeholders may use the content and ideology of the statute for advocacy: (a) lobbying policy and lawmakers for ratification, and (b) incorporating the content in their respective programs for social awareness. By doing so, they can contribute to the social and legal advocacy for the adoption of the treaty, thereby strengthening the ground for advocacy. Speaking on the same point, Abaya (2019) argued that the civil society can play a role in advocacy for international

justice and promotion of the rule of law. Striving for the ratification of the Rome Statute by the government of Ethiopia represents advocacy for international justice.

Finally, it is important to note that participants also recognized the contribution and practical importance of the statute in developing the domestic jurisprudence around sexual violence, especially the criminal law of rape. P1, P4, and P9 recognized the positive role of the statute in knowledge transfer and development of legal scholarship. They stated that Ethiopia can benefit from the rich resources already made available in the field. In addition, the idea and concepts included in the statute can serve as good ground for policy and legislative input. The two-stage norm transfer process discussed above may be a good example for this particular significance of the Rome Statute (Ethne, 2018). Furthermore, P2 mentioned that the statute is sometimes a subject of academic discussion at universities, which provides an opportunity for students to enlighten themselves about the legal instrument and its relevance to the reality in Ethiopia.

Nevertheless, not everything is positive about the Rome Statute. It is criticized for its narrow scope of protection. Turan (2017) indicated that the Rome Statute applies only in inter-group conflict and mass-scale atrocities. For Turan, this omitted application leaves victims of the crime committed within the same group. Moreover, the statute may block the possibility of punishing a crime to its fullest extent when individual states rely on the statute, which is limited in scope. Such a gap may be created when local jurisdictions tends to favor the statute, as the latter operates with the former (Turan, 2017). In other words, the Rome Statute is advantageous in many respects, but it has also some limitations.

In summary, one can say that despite some differing views on the legal implications of the Rome Statute, the majority of participants concurred both on the legal and practical (or theoretical, as P4 called it) significance of the statute. This means that there is already a sufficient legal ground to use the Rome Statute as an international instrument to prosecute perpetrators of rape in Ethiopia. In addition, there are occurrences that provide empirical evidence making it imperative for Ethiopia to ratify the Statute. Regrettably, there are serious challenges that affect the effort to fight impunity.

Factors Opening Impunity Gap

The central purpose of the Rome Statute is to fight impunity for the serious crimes that pose a threat to the international community, but this goal is not simple to achieve for various reasons. Many factors at national, regional, and international levels adversely affect the effort to fight impunity. In this section, I will discuss some of the factors that open the way for impunity for rape in Ethiopia and even in Africa.

Politicization of ICC

Politicization refers to the use of the ICC for nonjudicial purpose especially for a political end. Five of the participants expressed their strong concern about the politicization of the statute and the court established thereunder. According to them, both the West and the developing world are abusing the ICC and its operation. P2, P4, P5, and P9 stated that the West, the United States included, uses the ICC as a political tool to advance their policy interests in Africa. For example, P5 stated, “We do not see this law implemented in the West where the crime is committed. It is practically observed that the laws are applied only to weak African states, especially to those advancing a political

policy/view that deviates from that of the West." P5 and P9 indicated that because of the Western policy toward the ICC, both Meles Zenawi and Hailemariam Desalegn, prime ministers of Ethiopia, supported the African position and even actively lobbied the states to withdraw from the statute. P4 also agreed that the West is using the ICC to meet their own interests by politicizing the issue of human rights.

> Previously, we started to advocate for the signing and ratification of the Rome Statute by Ethiopia. But now, we are moving to the opposite direction. Unfortunately, the political situation brought up the bias to the extent that we lack the appetite even to think about ICC.

P9 said, "the politicization of human rights does not provide the opportunity to solve one's own problem through self-initiative." These are all concerns about the position of the West toward the ICC. P9 described the attitude of both Africans and the West as "conspiracy," indicating that both the Western nations and African states are abusing the ICC.

The participants who criticized the United States and the West for abusing the ICC also disapproved of the attitude of the African states. For the participants, despite their support showed in the formation of the ICC, the African states later developed a negative position toward the system. Some of them even began to withdraw from the treaty altogether. For P9, the African states' withdrawal from the ICC opens the way for impunity. P9 stated, "If you avoid the international tribunal, and you do not work at home to improve justice, by the end, what will happen is that individuals who commit rape will escape prosecution." P9 emphasized that African States want to use their own criminal

justice system, but the mechanism at African level is not that strong. They said, “For example, Ethiopia is not member of the African Court on Human and Peoples’ Rights. It means that she is not a member there; she is not a member here either. So, what is the position of Ethiopia?”

P3 also considered the political controversy between the West and Africans to be an opportunity to escape criminal liability. P3 stated, “An individual commits these crimes; then, when the international community moves to punish the criminal, there will be quick complaints about being attacked on political motive.” For P3, the international mechanisms are important to punish those individuals above the domestic law. P6 concurred with P3 in that the international mechanism is useful for domestic use. P6 stated, “If the goal or target of the domestic government is to better protect the rights of citizens, withdrawal from the international instruments cannot be an issue.”

On the other hand, although they are not fully convinced of the position of the African states, P1 shares their concern. For P1, “The ICC system is biased and target a specific group.” P1 further stated, “Even Ethiopia may be targeted.”

According to P1, although African states intend to establish their own criminal court, it took them a long time to establish one. P1 said, “They want to bring the practice of the Rome Statute here,” but for P1, that initiative has not yet materialized. In addition, many African states including Ethiopia do not want to appear even before an African court. For P1, “The issue is about reluctance to go to any court, a pure lack of accepting any kind of tribunal for action.” P1 further stated, “Their problem is not only with the ICC, but also with their own regional system.” P1 indicated that for example, only eight

out of 54 countries signed the protocol for the establishment of the African Court on Human and Peoples' Rights.

From the participants' position presented above, it is understand that the attitudes and actions of both African nations and the West are adversely affecting the work of the ICC and contributing to impunity. As indicated in Chapter 2 of this study, the United States "unsigned" the Rome Statute in a way that was unprecedented in the history of treaties (O'Keefe, 2011). By doing so, the United States, an ardent advocate of the rule of law and justice, became a bad model by challenging the Rome Statute and encouraging impunity. In addition, the three most powerful states in the UN Security Council (China, Russia, and the United States) are not state parties to the Rome Statute. Yet, they push the ICC to actively pursue African cases. Offended by this move, African States began to develop a negative attitude toward the ICC and even mobilized for a massive withdrawal from the statute (Geangene, 2016). The disposition of the West to target Africa and the subsequent anti-ICC attitude taken by Africa is likely to open the door for greater impunity. The political dispute may hinder the work of the ICC, allowing perpetrators to escape from punishment. Moreover, the attitude of the African States and their tendency to avoid the court may serve as pretext for the other states to stay out of the international criminal justice system. The cumulative effect of the whole disagreement is agap in impunity in Africa in general, and Ethiopia in particular.

On the other hand, as noted by participants, it does not sound either legally or morally appropriate to use the court to target states of a particular region for a political motive. Second, the ICC should exercise its jurisdiction uniformly to all member states

regardless of geography or level of development. As P5 mentioned, it is important to uniformly enforce the law everywhere in the world. That will be proper if there is such a thing as the rule of law at the international level, and states are equal before the law. The purpose of the Statute is to punish criminals no matter where they live or which state they belong to. Otherwise, if the focus is simply on Africa, then the task of combatting impunity becomes incomplete.

On the contrary, the mere fact that the ICC has so many cases before it from Africa cannot be a good reason either to withdraw from the statute or question the independence of the court. If all the accused are from Africa, it is inevitable that all cases before the ICC will be from Africa and does not take anyone by surprise. The argument for Africa should instead be for uniformity not for impunity. A criminal should not escape from punishment for any reason. The impunity of one should not be an excuse for the impunity of another. Regrettably, politicizing the international legal regime on both ends is creating an impunity gap by preventing accountability. Ethiopia is a case in point. As explained by P5 and P9, the two prime Ministers of Ethiopia, Meles and Hailemariam, used the disagreement of the two camps to push African states to pull out from the statute. In other words, the abuse of the international criminal justice system and its consequences made Ethiopia not only avoid ratifying the treaty but also stand against it.

Role and Power of Women

A follow up question was posed to participants about the role that women play in the process of adoption and enforcement of treaties. The purpose of the follow up question was to learn about the possibility of their bargaining position in treaty

negotiation and implementation, and the impact they may create toward impunity prevention. In responding to the question, P1 indicated that the representation of women in country delegation teams and international institutions is not satisfactory. They added that there are two or three female ambassadors and one or two female staff in New York and Geneva. P5 pointed out that treaties on women's right are implemented under the gender mainstreaming strategy; however, the problem is that government agencies know little about the national commitment to women's rights. P7 said that general policy and legal prescriptions help little. According to P7, specific and measurable stipulation is required so that women can be effectively represented both in domestic and international positions. Otherwise, including one or two women in any agency or assignment may inappropriately be taken to be a standard of effective participation. P8 also stated, "I think [the] women's agenda is simply politicized." They added that people working in the legal domain know little about the treaties on women's rights. Finally, P11 raised the issue of placing women themselves in government positions. P11 said, "Women make up for 50 percent of the previous cabinet." But according to P11, the proportion has now gone down about to 43%.

The overall power and participation of women in social, professional, and official life impacts their ability to defend their rights and interests. Unfortunately, in many societies, the level of participation of women in political life is less than that of men (Mudege & Kwangwari, 2013). The lack of political access in turn undermines their overall competence to influence policy in their favor, and even deprives them of the

power to protect themselves from all forms of violence including rape. The problem is even worse in the societies of the developing world like Ethiopia.

This has much to do with power relations between men and women, as well as the general social attitude (Susan, 2013; Roy & Dastidar, 2018). Women are still far from taking the political positions that may enable them to influence general criminal policy and the criminal justice system. If women's access to power is less than that of men, it follows that they are compelled to live under the general arrangement designed by men. This justifies the acceptability of the feminist theory, which holds that rape is generally not about sex; rather, it is about power (Susan, 2013).

The same theory works for what happens with treaty adoption and implementation. P1 and P5 indicated that women's participation both in national delegation to the United Nations and representation in other institutions is limited. This practically means that male delegates will have the upper hand to accept or reject treaties or terms in treaties. Ethiopian women lack the chance to be involved in the negotiation and adoption of treaties concerning the rights of women. To conclude, as Donovan (2012) suggested, the position of women can hardly improve, and their right of self-determination can barely be realized in so far as they remain under a male-centered society and lasting economic dependence. They cannot change society in their favor, and even effectively protect themselves from sexual violence in so far as they remain under subjugation.

Impediment to Evidence Production

Perpetrators of rape may go unpunished either for lack or insufficiency of evidence gathered. One of the reasons why perpetrators manage to escape prosecution is underreporting. Victims usually fail to inform authorities due to rape culture or myth, lack of trust in authorities, fear of reprisal, and negative social reaction (Parti & Robinson, 2021). If information about the crime does not get to law enforcement officers because of social pressure, no investigation can be initiated. As Parti and Robinson (2021) indicated, underreporting is still a serious problem, even in Europe.

Similarly, five of the participants of this study indicated that underreporting is common in Ethiopia too. P7 mentioned three reasons why perpetrators of the crime of rape are not traced and not brought to justice, noting the nature of the crime itself, failure in reporting, and victim blaming culture. P7 stated, “Rape is something committed in private, not in public; it is hard to find witness.” Victims do not go to authorities quickly, thus causing evidence to be lost. P7 further said that the female blaming culture contributes to the victim’s failure to take the right actions at the right time. This, in turn, prevents investigation from being initiated. It means that no evidence is gathered and filed for prosecution. Consequently, there can be no follow up prosecution or conviction.

Participants discussed the problems associated with evidence in connection with rape offenses committed in regular life or peacetime; however, most of it applies to wartime rape as well. For example, the first problem is the timeliness of the evidence gathering. Like any other form of rapes, wartime rape also requires immediate action after the incident. Victims need to go or be taken to medical institutions for quick

assessment and intervention. Unfortunately, this was not possible for the rape victims in the three war-affected regions: Amhara, Afar, and Tigray. P7 spoke of being late for medical or legal attention, but there was not another option available for wartime rape victims. As most of the medical facilities were destroyed and even robbed during the war, especially in the Amhara region, women, girls, and children had no chance to access the services, even if they wanted to. As a result, many of them were left with complicated health conditions, unwanted pregnancies, and even HIV infection (Joint Investigation Report, 2022). Even worse, some of them do not want to identify themselves as victims. One victim said, "I did not tell anybody. I have [to] just kept quiet." Victims like this woman are not expected to come forward and give testimony against the perpetrator. Hence, if any future prosecution is planned, the issue of evidence is still a challenge. Successful investigation, prosecution, and conviction depend greatly on the availability and reliability of evidence.

Limitations of the Study

The study has limitations in that it did not include the views of the Chief Justice and Minister of Justice. It would also have been richer if the latest views of the African Union had been considered. Most importantly, the study does not provide a full account of the sexual violence, especially rape, which hundreds of women and girls experienced during the war in Amhara, Afar, and Tigray regions. The crimes were reportedly systematic and widespread. Even with all these flaws, the findings can offer some value to trigger policy discussions about the statute in Ethiopia.

Recommendations

Women and girls in Ethiopia are prone to sexual violence, especially rape, due to incessant conflicts and war. To protect them from this risk, the government should take the necessary preventive and punitive measures. Understanding the value of the Rome Statute to their protection, the government should adopt this mechanism so that perpetrators can be brought to justice. Ratifying the treaty could be a good gesture of commitment to the wellbeing of women and girls. Additionally, the government should pay attention to this study, examine the relevance of the treaty to the reality of Ethiopia, and reconsider its policy toward the ICC. After all, for a government claiming to work on gender equality, ratifying the Rome Statute is an action consistent with the policy.

Moreover, the government of Ethiopia should pay due attention to the implementation of the United Nations resolutions 1325, 1820, and other relevant global policies to benefit women and to generate and maintain peace. Women are likely to help society cohere and prevent war and conflict (Donovan, 2012). Maximizing women's participation and increasing their role in the general affairs of the country, and specifically in matters of peace and security, guarantees the positive future of Ethiopia.

Furthermore, as noted in the study, nonratification may not completely bar the application of the treaty to rape offenses committed in Ethiopia. In the interest of peace and security, the United Nations may refer the situation in Ethiopia to the ICC when the circumstance justifies it, which means that the government cannot avoid the statute and the ICC altogether. Hence, it is diplomatically beneficial and politically rewarding for Ethiopia to accept the Rome Statute in the regular way.

Likewise, it is recommended that the United Nations and the ICC make additional effort to draw Ethiopia and the rest of Africa into the system smoothly through ratification rather than to force them through the mechanism of the UN Security Council. As an international judicial body relying much on cooperation of states, the ICC should always opt for the diplomatically friendly way of having states as parties to the Statute. The ICC should not also give way to the powerful states to manipulate the system and attack Africa. This study revealed that the politicization of the judicial system is influencing not only the politicians but also the civil society. When the civil society takes a stand against the ICC, the domestic advocacy for the ratification and promotion of the Rome Statute may refrain from pushing their governments to withdraw from the Rome Statute.

Furthermore, it is recommended that NGOs, particularly those engaged in human and women's rights advocacy in Ethiopia, should promote the ratification of the statute. I have observed in this study that some stakeholders have reservations about the statute and the need for ratification. NGOs should not be obsessed with the issue of politicization of the ICC. States may have all the reason to be conscious of politics, but the civil society should stick to the rights, security, and wellbeing of women, girls, and children. Therefore, appreciating the legal and practical significance of the Rome Statute, the NGOs operating in Ethiopia should advance the advocacy work and lobby policymakers for ratification.

In addition, to support and encourage the domestic effort made for ratification, it is necessary to organize local and national workshops on the Rome Statute and the ICC.

That may also help to mobilize the civil society toward advocacy and help stakeholders unite their voice. Moreover, active dialogue with the African Union is essential to capture the attention back and encourage nonstate parties to join the ICC.

Implications of the Study

The study demonstrates, first, how the Rome Statute can be used to prosecute rape offenses committed during the conflicts in Ethiopia, although the country has not yet ratified the treaty. This is because ratification is not required if a case is referred to the ICC through the United Nations Security Council as per Article 13 paragraph (b) of the statute (The Rome Statute, 1998). It should also be mentioned that many study participants emphasized the need for ratification. Second, the study also implies that the treaty can functionally help deal with the crime of rape committed in ordinary and peacetime situations. In these cases, the statute helps the domestic system by sharing legal knowledge achieved through the jurisprudence developed in the field and norm transfer (Eithne, 2018). It means that the statute can contribute to improvement in policy and legal environment to protect women and girls against rape. Third, the study also implies the negative effect of politicizing the statute and the ICC on domestic advocacy effort in favor of the treaty. To this point, it is important to remember P9's statement that, "If considered in the strictest sense of the concept, the statute is useful. The problem is that there is conspiracy on the part of the West to achieve a political mission."

Conclusion

In summary, it can be said that considering the level of development achieved in international criminal justice, it is hardly possible to continue to use sovereignty as a

shield against legal accountability. True, Ethiopia is concerned about being targeted by those states who want to use the ICC for their political gain. Nevertheless, fighting impunity for grave crimes is not any longer a matter of discretion of individuals states but a serious security concern for the international community. Furthermore, policymakers in Ethiopia and other African states should remember that when others tend to abuse the international criminal justice system, the best strategy is not to evade justice but to fight the abuse. In addition, it is important to note that the Rome Statute does not attack national sovereignty; rather, it fights impunity. It demands the prosecution of perpetrators of grave offenses under the national criminal justice system. The problem arises only when the government is either unable or unwilling to do so, in which case the ICC will necessarily and legally interfere. Therefore, in effect, what the Rome Statute does is to push the domestic system to address atrocity crimes under the domestic criminal justice system. If that does not work, then the principle of complementarity will inevitably take effect. Finally, it is important to understand that women and girls will remain victims of sexual violence unless gender equality is achieved in a real sense. Achieving gender equality and maximizing the role and participation of women in both peace and security is vital not only for the safety of Ethiopian women, but also the general wellbeing of mankind.

References

Abaya, M. (2019) Ordinary citizens: The hope for international criminal justice in Africa. *UCLA Journal of International Law and Foreign Affairs, 23*(1), 1-45.

Adjei, W. E. (2020). The development of individual criminal responsibility under international law: Lessons from Nuremberg and Tokyo war crimes trials. *Journal of Legal Studies, 25*(39), 69-97. https://doi.org/102478/jles-2020-0005

Agwu, F. (2021). *Africa and International Criminal Justice: Radical evils and the international criminal court.* Routledge.

Ahmad, G. (2021). Democratizing foreign policy: Parliamentary oversight of treaty ratification. *Statute Law Review,* 42(2), 137-155. https://doi.org/10.1093/slr/hmz023.

Alasuutari, P. (2013). *National policymaking*: *Domestication of Global Trends.* Routledge.

AllAfrica Global Media. (2017, July 7). *Ending Rape and Sexual Violence impunity in the Democratic Republic of Congo*. http://allafrica.com/

Altmon, M. C. (2021). *A Theory of Punishment.* Routledge.

Arajarvi, N. (2014). *The changing nature of international customary law.* Routledge. https://doi.org/10.4324/9780203522868

Arpita, S. (2009). Rape as a war crime: The position of international law since World War II. *Journal of East Asia and International Law*, *2*(2) 10-10. https://doi.org/10.14330/jeail.2009.2.2.10

Amogne, M. D., Balcha, T. T., & Agardh, A. (2019). Prevalence and correlates of

physical violence and rape among female sex workers in Ethiopia: a cross-sectional study with respondent-driven sampling from 11 major towns. *BMJ open*, *9*(7), e028247. https://doi.org/10.1136/bmjopen-2018-028247

Askin, K. D. (2003). Prosecuting wartime rape and other gender-related crimes under international law: extraordinary advances, enduing obstacles. *Berkeley Journal of International Law*, *21*(2), 288.

Babbie, E. R. (2016). *The Basics of Social Research.* 7th Edition. Cengage Learning.

Bachmann, S. D. & Sowatey-Adjei, N. (2020). African Union-ICC controversy before the ICJ: A way forward to strengthen international justice? *Washington International Law Journal, 29*(2), 247.

Barnett, H. (1998). *Introduction to feminist jurisprudence.* Cavendish.

Bauemeister, H. (2018). *Sexualized Crimes, Armed Conflict, and the Law.* Routledge. https://doi.org/10.4324/9781315111490

Beauvoir, S. D. (2012). *The Second Sex*. Random House Digital Inc.

Belete, B. (2001). Women in Ethiopian History: A bibliographic review. *Northeast African Study, 8*(3), 7-32.

Bellelli, R. (2010). *International Criminal Justice.* Routledge.

Berihun, G. (2017). Toward making a proper space for the individual in the Ethiopian constitution. *Human Rights Review, 18*(4), 439-458. http://doi.org/10.1007/s12142-017-0471-5

Bergoffen, D. B. (2003). Toward a politics of the vulnerable body. *Hypatia, 18*(1), 116-134.

Beru, T. (2015). An outline for the study of Ethiopian constitutional law. *International Journal of Legal Information, 43,*234.

Beyond law enforcement: Human right violations by government security forces in Amhara and Oromia regions (2020, May 29). Amnesty International. Retrieved October 14, 2022 from http://www.amnesty.org

Bianchi, A. (2016). *International law theories*: *An inquiry into different ways of thinking*. Oxford University Press.

Birch, P., & Rimmer, B. (2019). Exploring factors affecting attitude towards rape survivors: The role of sexuality and religiosity. *Journal of Forensic Practice, 21*(1) 139-144. https://doi.org/10.1108/JFP-01-2019-0004

Blackburn, A., & Matthews, M. (2011). Crime and punishment in Ethiopia: A country profile. *School of Criminal Justice, 35*(2) 167-187. https://doi.org/10.1080/01924036.2011.561968

Boudreau, T. & Foutz, B. (2018). Minimalist international order: Enforcing jus cogens norms through the fiduciary jurisdiction of national courts. *Journal Jurisprudence, 36*, 111-195.

Brownmiller, S. (2013). *Against our will*. Open Road Media.

Burkholder, G. J., Cox, K. A., & Crawford, L. M. (2016). *The scholar-practitioner's guide to research design.* Laureate Publishing.

Campbell, S., Greenwood, M., Prior, S. Shearer, T., Walkem, K., Young, S., Bywaters, D., Walker, K. (2020). *Journal of Research in Nursing, 25*(8), 652-661. https://doi-org.ezp.waldenulibrary.org/10.1177/1744987120927206

Canto, J. C., Fabiola, P., & Jesus, S. M. (2017). Culture of honor and the blaming of women in cases of rape/la cultura del honor y occupation de la mujer and casos de violation. *International Journal of social Psychology*, *32*(1) 80-107. https://doi.org/10.1080/02134748.2016.1250488

Capicotto, S. (2018). National mechanism for the prevention of atrocity crimes. *Genocide Studies and Prevention: An International Journal*, *11*(3) 6-19. https://doi.org/10.5038/1911-9933.11.3.1502

Carsten, S. (2015). Evolution, revolution, or new culture? A changing anatomy of international criminal justice and some of its curiosities. *International Criminal Law Review, 15*(6), 1122-1137. https://doi.org/10.1163/15718123-01506007

Castellano San Jose, P. (2020). The rapes committed against the Yazadi women, A genocide? *Comillas Journal of International Relations*, (18), 50-71.

Chitja, T. (2014). The 56 years struggle of the organization of African unity (OAU): A search for developmental paradigm in Africa. *Journal of Social Sciences, 39*(1), 103-109.

Chon, D. S. & Clifford, J. E. (2021). The impacts of international rape laws upon official rape rates. *International Journal of Offender Therapy and Comparative Criminology*, *65*(2/3), 244-261. https:/doi.org/10.1177/0306624X20952399

Cope, D. G. (2014). Methods and meanings: Credibility and trustworthiness of qualitative research. *Oncology Nursing Forum, 41*(1), 89-91.

Crawford E., & Pert, A. (2020). *International humanitarian law (2nd ed.)* Cambridge University Press.

Drian, R. F. (1987). *Cry of the oppressed: The history and hope of human right Revolution.* Society of Jesus.

de Bertodano, S. (2002). Judicial independence in international criminal court. *Leiden Journal of International Law, 15*(2), 409-430.

Dutton, Y. M. & Alleblas, T. (2017). Unpacking the deterrent effect of the International Criminal Court. Lessons from Kenya. *St. John Law Review,* 91, 105-175.

Einarsen, T. (2014). The concept of universal crime in international law. *Journal of International Justice*, *12*(1), 162-163. https://doi.org/10.1093/jicj/mqt062

Ellis, M. (2007). Breaking the silence: Rape as an international crime. *Case Western Reserve Journal of International Law, 37*(2), 225-247.

Eithne, D. (2018). Conceptualizing the role of consent in the definition of rape at the international criminal court: A norm transfer perspective. *International Feminist Journal of Politics, 20*(4), 624-643. https://doi.org/10.1080/14616742.2018.1447311

Eke, S. J. & Tonwe, D. A. (2016). Address causes not symptoms: Engaging the festering culture of impunity from the dimension of fragility in Nigeria. *African Studies, 75*(1), 139-152. https://doi.org/10.1080/00020184.2015.1129135

Elizabeth W. (2019). Rape, representation, and the endurance of hegemonic masculinity. *Violence Against Women, 25*(13), 1613-1630.

Ellis, M. S. (2022). The Arc of Justice: From Nuremberg to the fall of the Berlin Wall. *Case Western Reserve Journal of International Law, 54*(1-2), 7-16.

Ethiopian Human Right Council (December 25, 2020). *EHRCO preliminary investigation*

report on major human rights violations in and around Maikadra. https://EHRCO-Preliminary-Investigation-Report-on-Major-Human-Rights-Violations-in-and-around-Maikadra-1.pdf

Ethiopian Human Rights Commission and the United Nations Office of the High Commissioner for Human Rights. (2021). *Joint report of EHRC-OCHR HCHR joint investigation on human rights in Tigray.* https://humanrightsconnected.org/organizations/ethiopian-human-rights-commission-ehrc

Fisher, K. J. (2012). *Moral accountability and international criminal law.* Routledge.

Garcia, I. L. (2021). Al-bashir did not start the fire: Diversity, low-contentedness, and the adoption of the Rome Statute of the International Criminal Court. *Cambridge Review of International Affairs*, *34*(1), p105-136. https://doi.org.ezp.waldenulibrary.org/10.1080/09557571.2020.1751070

Gebeyehu, B. T. (2018). Muslims in Ethiopia: History and Identity. *African Studies,77*(3), 412-427. https://doi.org/10.1080/00020184.2018.1475634

Grimm, D. (2016). *Constitutionalism*. Oxford University Press.

Hans, L. (2018). The Rome Statute: Global justice and the asymmetries of recognition. *Indiana Journal of Global Legal Studies*, *25*(2), 617-699.

Harmen, V. W. (2015). Nullum crimen and international criminal law: The relevance of forceability test. *Nordic Journal of International law, 84*(3), 515-531. https://doi.org/10.1163/15718107-08403007

Henry, K. T., & Theodor, T. C. (1999). From Nuremberg to Rome: A step backward in

U.S foreign policy. *Case Western Journal of International Law*, *31*(1), 647.

Hilde, J. (2014). What is gendered about gender-based violence? An empirically grounded theoretical exploration from Tanzania. *Gender and Society*, *28*(4) 537-561. https://doi-org.ezp.waldenulibrary.org/10.1177/0891243214532311

International Court of Justice. (2017-2022). *The Statute of the International Court of Justice*. http://webtv.un.org

International Criminal Court. (1998). *The Rome Statute of International Criminal Court*. http://www.icc-cpi.int/asp/statesparties.html

Jackson, R. H. (1945). Opening statement at the international military tribunal Nuremberg, Germany (21 October 1945).

Heller, K. J. (2017). What is an international crime? (A revisionist history). *Harvard International Law Journal*, *58*(2), http://dx.doi.org/10.2139/ssrn.2836889

Hiromi, S. (2011). *Before the adoption of the Nuremberg Charter. Execution of illegal orders and International criminal responsibility,* 15-48.

Hooks, B. (2014). *Feminist Theory.* South End Press, 2nd Ed.

Huda, A. (2020). Promoting implementation of Resolution 1325 in Palestine. *Palestine-Israel Journal of Politics, Economics, and Culture, 25*(3-4), 119-124.

Human Rights Watch. (2018). *We are like the dead: Torture and other abuses in Jail Ogaden, Somali Regional State, Ethiopia.* http://allafrica.com/view/resource/main/main/id/00120558.html

Imoedemhe, O. C. (2016). *The complementarity regime of the International Criminal Court: National implementation in Africa.* Springer.

Inal, T. (2013). *Looting and rape in wartime: Law and change in international Relations.* University of Pennsylvania Press.

Kelsen, H. (2017). *General theory of law and state*. The Lawbook Exchange, Ltd.

Kim, S. (2011). Maintaining the independence of the International Criminal Court: The legal and procedural implications of an article 16 deferral request. *Agenda International, 18*(29).

Koubi, V. & Bernauer, T. (2021). Ratification of multilateral environmental agreements: Civil society access to international institutions. *Journal of Civil Society,16*(4), 351-371. https://doi.org/10.1080/17448689.2020.1859227.

Krings, B. L. (2012) The Principle of Complementarity and Universal Jurisdiction in International Criminal law: Antagonists or perfect match? *Journal of International law,4*(3), p737-763. https://doi.org/10.3249/1868-1581-4-3

Křivánek, D. (2008). Prospect for ratification and implementation of the Rome Statute by the Czech Republic. *International Criminal Law Review, 8*(1-2), 161-164. https://doi.org/10.1163/156753608X265277

Kyriakides, K. & Weinstein, S. (2005). Nuremberg in retrospect. *International Criminal Law Review*, *5*(3), 373-385. https://doi.org/10.1163/1571812054940094

Lepard, B. D. (2010). *Customary international law*. Cambridge University Press.

Lyons, M. (2022). Months Past May. *History Today,* (5), 26-27.

Malmin, B. H., & Ragnhild, N. (2022). Conflict-related sexual violence and the perils of impunity. *Journal of Conflict Resolution, 66*(6), 1066-1090. https://doi.org/10.1177/00220027221078330

Manisuli, S. (2017). African failed withdrawal from The Rome Statute of the ICC, of the International Criminal Court: From withdrawal notifications to constructive engagement. *International Criminal Law Review*, *17*(5), 749-802. https://doi.org/10.1163/15718123-01705003

Marcus, H. G. (2015). *A History of Ethiopia.* Library of Congress.

Marrus, M. R. (2018). *The Nuremberg Trial 1945-46* (2nd ed.). Bedford-st. Martin.

Martin, G. (2013). Dream of unity: From the United States of Africa to Federation of African States. *African and Asian Studies, 12*(3), 169-188. https://doi.org/10.116315692108-12341261

Maxwell, L. & Scott, G. (2013). A review of the role of radical feminist theories in the understanding of rape myth acceptance *Journal of Sexual Aggression*, *20*(1), 40-54. https://doi.org/10.1080/13552600.2013.773384

Moynihan, D. P. (2014). *On the Law of Nations.* Library of Congress.

Mudege, N. N., & Kwangwari, C. (2013). Women and participation in civil society: Do women get empowered? The case of women in Goromonzi District Zimbabwe. *Journal of Women, Politics, and Policy, 34*(3), 238-260. https://doi.org/10.1080/1554477X.2012.722429

Muyiw, A. (2021). The principle of complementarity: A reflection on its meaning, origin, and types in international criminal law. *African Journal of International and Comparative Law,29*(1), 82-94. https://doi.org/10.3366/ajicl.2021.0351

Nabil, J N., (2017). The complementarity regime of the International Criminal Court in practice: Is it truly serving the purpose? Some lessons from Libia. *Leiden Journal*

of International Law, *30*(1), 199-220. https://doi.org/10.1017/S0922156516000571

Nectaria, K. (2018). The complexities of the researcher's role in qualitative research: The power of reflexivity. *International Journal of Interdisciplinary Educational Studies*, *13*(1), 19-31. https://doi.org/10.18848/2327-011X/CGP/v13i01/1-31

Nel, M. (2017). Withdrawal from the International Criminal Court: Does Africa have an alternative? *African Journal on Conflict Resolution, 17*(1), 79-103.

New Africa. (2013). The birth of OAU. *528*, 132-137.

Ochs, S. L. (2021). Propaganda warfare on international criminal court. *Michigan Journal of International Law, 42*(3), https://doi.org/10.36642/mjil.42.3

Okpe, S., (2020). Anti-impunity norm of international criminal court: A curse or blessing for Africa? *Journal of Asian and African Studies. 55*(7), https://doi.org/10.1177/00219096209094

Olasolo, H. (2007). A note on the evolution of the principle of legality in international criminal law. *Criminal Law Forum: Dordrecht, 18*(3-4), 301-319. https://doi.org/10.1007/s10609-007-9042-9

Packer, C. A. A. & Rukare, D. (2002). The new African Union and its constitutive act. *American Journal of International Law, 9*(2) 365:6

Patton, M. Q. (2015). *Qualitative research & evaluation methods: Integrating theory and practice* (4th ed). Sage Publications.

Paul, J. & Criado, A. R. (2020). The art of writing literature review: What do we know and what do we need to know? *International Business Review*, *29*(4),

https://doi.org/10.1016/j.ibusrev.2020.101717

Payam, A. (2003). Commentary on Rome Statute of the International Criminal Court. *American Journal of International Law*, *97*(3), 712-721. https://doi.org/10.2307/3109871

Politi, M. & Nesi, G. (2001). *The Rome Statute of the International Criminal Court*: *A challenge to impunity.* Routledge.

Pompeo, M. R. (2002). U.S. policy regarding the International Criminal Court. *Congress Research Service: Issue Brief,* (Proceeding), 2-29.

Proclamation No. 414 (2004). The Criminal Code of the Federal Democratic Republic of Ethiopia.

Rauxloh, R. E. (2010). Negotiated history: The historical record in international criminal law and plea bargaining. *International Criminal Law Review, 10*(5), 739-770. https://doi.org/10.1163/157181210X527091

Ravitch, S. M., & Carl N. M. (2016). *Qualitative research: Bridging the conceptual, theoretical, and methodological.* Sage Publications Inc.

Rau, K. (2012) Jurisprudential innovation or accountability avoidance? The International Criminal Court and proposed expansion of the African Court of Justice and Human Rights. *Minnesota Law Review, 97*, 669.

Rechner, J. D. (2006). From the OAU to the AU: A normative shift with implications for peace keeping and conflict management, or just a name change? *Vanderbilt Journal of Transnational Law, 39*(2), 543-576.

Roach, S. C. (2006). *Politicizing the International Criminal Court.* Rowman &

Littlefield.

Rubin, H. J. (2012). *Qualitative interviewing: The art of hearing data* (3rd ed.). Sage Publicationss Inc.

Rudestam, K. E., Newton, R. R. (2014). Surviving your dissertation: A comprehensive guide to content and process, (4th ed.). Sage Publications.

Sadat, L. (2009). Trans judicial dialogue and the Rwandan genocide: Aspects of antagonism and complementarity. *Leiden Journal of International law*, *22*(3), 543-562.

Saldana, J. (2016) *The coding manual for qualitative researchers* (3rd ed.). Sage Publications Inc.

Salemot, M. A., & Birhanu, A. (2021). The Ethiopian legal frameworks for the protection of women and girls from gender-based violence. *Pan-African Journal of Governance and Development,2*(1), 82-102.

Simmons, B. A. (2009). *Mobilizing for human rights.* Cambridge University Press.

Sitaraman, S. (2016). *State participation in international treaty regimes.* Taylor &

Stanhope, K. K., Cammack, A. L., Perreira, K. M., Fernandez-Rhodes, L., Cordero, C., Gallo, L. C., Isasi, C. R., Castaneda, S. F., Daviglus, M. L., Kominiarek, M. A., Suglia, S. F. (2020). *Psychology and Sexuality, 11*(3), 198-211. https://doi-org.ezp.waldenulibrary.org/10.1080/19419899.2019.1667418

State News Service. (2011, March 28). Survivors of sexual violence testify before the African Union Peace and Security Council.

Song S. H. (2016). International criminal court-centered; International criminal justice

and its challenges. Rome Statute of the International Criminal Court, July 17, (1998). *Melbourne Journal of International Law*, *17*(1), 1-14. https://perma.cc/R5Y3-nklr

Tafere, M. K. (2017) Perceptions of ethnic federalism and the Ethiopian diaspora community in the US (Doctoral dissertation, Walden University). Walden ProQuest Dissertation Publishing.

Teshale, S. (2020). Constitutional hurdles to exercise secession right and argument on its inclusion in the Ethiopian Constitution *Journal of Legal Studies, 26*(40), 37-47 https://doi.org/10.2478/jles-2020-0010

Thijs, B. (2018). Eshetu alemu: 'the black sheep of the Derg' - Ethiopian war crimes and universal jurisdiction in the Netherlands. *International Journal of Transitional Justice,* (3), 549-559.

The Revised Family Code of Ethiopia, (2000). Revised family code proclamation no. 213. *Federal Negarit Gazeta Extraordinary Issue,* https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=700331

Ulf, L. (2012). What is so special about jus cogens? On the difference between the ordinary and peremptory international law. *International Community Law Review*, *14*(1), p3-18. https://doi.org/10.1163/187197312X617665

United Nations declaration on the elimination of violence against women, (December 20, 1993). http://untreaty.un.org/

Vinjamuri, L. (2016). The International Criminal Court and the paradox of authority. *Law and Contemporary Problems, 79,* 275.

Walden University. (2020). Library-home-Academic Guides at Walden University. library https://academicguides.waldenu.edu/library

Wayne, S. (2017). Domestic law and human rights commitments: The convention against torture. *Journal of Human Rights*, *16*(1), 25-43. https://doi.org/10.1080/14754835.2015.1103164

Welch, C., & Piekkari, R., (2017). How should we not judge the quality of qualitative research? A re-assessment of current evaluative criteria. *Journal of International Business, 52*(5), 714-725. https://doi.org/10.1016/j.jwb.2017.05.007

Werle G., & Jeßberger F. (2020). *Principles of international criminal law*. Oxford.

Wright, T. C. (2014). *Impunity, human rights and democracy.* University of Texas Press.

Yao, C. W. & Vital, M.L., (2018). Reflexivity in international context: Reflections for U.S. doctoral students international research preparation. *International Journal of Doctoral Studies*, (13) 93-210. https://doi.org/10.28945/4005

Appendix A: Interview Questions - English

1. Can you tell me a bit about yourself and profession?

2. Do you think international treaty standards play any role in the domestic life of Ethiopia in general? If so, can you give examples?

2. How about the Rome Statute and ICC? Do you think they are relevant to Ethiopia in any way? If so, how?

3. What are the challenges to ensuring accountability for committing rape in Ethiopia?
4. Do you think the Rome Statute and existence of ICC help in this respect? If so, how?
5. Do you think Ethiopia should ratify the Rome Statute? Any advantage and disadvantages?
6. Do you think the Rome Statute can serve any purpose in Ethiopia especially in combatting impunity for rape even without being ratified? If so, how?
7. What role do you think non-government actors play in implementing treaty standards and those of the Rome statute?
8. What international initiatives on sexual violence has Ethiopia been part of so far?
9. Do you think the adoption of the 1998 Rome Statute had any impact on the amendment process of the 2004 criminal code of Ethiopia?
10. Do you make use of the Rome Statute and its provisions on sexual violence in your professional and advocacy practice? If so, what is your experience?
11. What domestic policy and legislative tool do you rely on to combat sexual violence against women and especially rape ?Any gap?
12. What is the policy for Ethiopia to ratify treaties?

13. Does Ethiopia have any concern about the ratification and implementation of the Rome Statute?

Appendix B: Interview Questions - Amharic

ለቃለመጠይቅ የተዘጋጁ ጥያቄዎች

1. እስቲ ስለራስዎና የሞያ ልምድዎ ትንሽ ይንገሩኝ?
2. የአለም አቀፍ ውል ድንጋጌዎች ባጠቃላይ ሲታይ በኢትዮጵያ ሁለገብ ህይወት ውስጥ ሚና ወይም ፋይዳ ያላቸው ይመስልዎታል?? ከሆነ እስቲ በምሳሌ ያስረዱኝ?
3. የሮም ውልና የአለም አቀፍ ፍርድቤትስ? በኢትዮጵያ ጉዳይ ፋይዳ ያላቸው ይመስልዎታል? ከሆነ እንዴት? ካልሆነስ ለምን?
4. በኢትዮጵያ የአስገድዶ መድፈር ወንጀል የህግ ተጠያቂነትን በማረጋገጥ በኩል የሚያጋጥሙ ፈተናዎች ምንድናቸው?
5. የሮም ውልና የአለም አቀፍ የወንጀል ፍርድቤት መኖር በዚህ ረገድ ሊረዳው የሚችል ነገር አለ? ከሆነ እንዴት??
6. ኢትዮጵያ የሮምን ውል ማፅደቅ ያለባት ይመስልዎታል? ጥቅምና ጉዳቱስ ምንድነው?
7. አለማቀፍ ውሉ በኢትዮጵያ ፓርላማ ባልፀደቀበትም ሁኔታም ቢሆን የአስገድዶ መድፈር ወንጀል ፈፅሞ ከተጠያቂነት ማምለጥን በመከላከል ረገድ ውሉ ሊረዳ የሚችልበት ሁኔታ ይታየወታል? ከሆነ እንዴት?
8. መንግስታዊ ያልሆኑ ድርጅቶች የአለምአቀፍ ውሎች ድንጋጌዎችንና በተለይም የሮምን ውል ይዘት አፈፃጸም ያላቸው ሚና ምንድነው?
9. ኢትዮጵያ አባል የሆነችባቸውና የምትሳተፍባቸው አለማቀፍ የፆታዊ ጥቃት መከላከል መርሃግብሮች ምንድናቸው?
10. የ1998 የሮም ውል መፅደቅ በ2004 የኢትዮጵያ ወንጀል ህግ መሻሻል ሂደት ላይ ተፅእኖ የነበረው ይመስልዎታል?
11. በለት ተለት የሞያና ድርጅታዊ የሙበት ስራ የሮም ውል የፆታ ጥቃትን አስመልክቶ ያሰፈራቸውን ድንጋጌዎች የሚጠቀሙበት አጋጣሚ አለ?? ከሆነ ልምድዎን ቢያካፍሉን?

12. ዖታዊ ጥቃትን በተለይም ደሞ የአስገድዶ መድፈርን ወንጀል በመከላከል ስራ መነሻ የሚሆኑ ሀገራዊ ፖሊሲዎች የትኞቹ ናቸው?በዚህ ረገድ የሚታይ የፖሊሲ ክፍተት ካለ ቢነግሩኝ?
13. በኢትዮጵያ ማንኛውንምአለማቀፍ ስምምነት ለማፅደቅ ሀገሪቱ የምትከተለው ፖሊሲ ምንድነው?
14. ኢትዮጵያ የሮምን ስምምነት ለማፅደቅና ስራ ላይ ለማዋል የሚያሳስባት ጉዳይ ምንድነው?