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The Constitutional Right of Persons under Police Custody in
Ethiopia: The Law and Practice

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ADDIS ABABA

Declaration

I, Sara Mustafa Amin, hereby declare that this thesis is my original work and has never been presented in any other institution. I also declare that where sources are used, they are duly acknowledged.

With Regards!

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ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
APTD	Arbitrary Pre-trial Detention
CPCE	Criminal Procedure Code of Ethiopia
ECHR	European Convention on Human Rights
ECOWAS	Economic Community of West African States
EHRC	Ethiopian Human Rights Commission
FDRE	Federal Democratic Republic of Ethiopia
HRC	UN Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic, Social, and Cultural Rights
IHRL	International Human Rights Law
ILC	International Law Commission
NISS	National Intelligence Security Service
PTD	Pre-trial detention
UDHR	Universal Declaration of Human Rights
UNCAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
WGAD	The United Nations Working Group on Arbitrary Detention

Abstract

This study examines the constitutional framework that protects the rights of individuals in police custody in Ethiopia. It investigates the legal safeguards available to persons in police custody by reviewing pertinent constitutional provisions, legislative enactments, and judicial interpretations. Using comparative legal perspectives and international human rights standards, this paper assesses Ethiopia's protection of the rights of people in police custody, including the right to legal representation, a fair trial, freedom from arbitrary detention, and the prohibition of torture and ill-treatment. The paper further examines the problems and limitations that exist in the practical application and enforcement of these rights, taking into account elements such as institutional capacity, legal knowledge, and sociopolitical dynamics. By highlighting these problems, this study hopes to assist policymakers, legal practitioners, and human rights advocates with insights on how to improve the protection of constitutional rights for individuals in police custody in Ethiopia.

Keywords: - Police custody, Arrested persons, Constitutional right of arrested persons,

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Chapter One

Introduction

1. Background of the study

Every person arrested on suspicion of committing a crime will undergo the process of police custody whether or not he or she is ultimately charged. Persons arrested on suspicion of commission of a crime are referred to as detainees. Detainees remain under police custody while the criminal investigation is undertaken and evidence is collected. Nevertheless, there is a high likelihood of detainees being subjected to mistreatment or committing self-harm while in police custody. In some cases, detainees died while in police custody. Although police custody is sometimes essential for criminal investigation, police officers are duty-bound to ensure detainees receive an appropriate level of care as provided under international, regional, and national legal instruments.

It is possible to distinguish between four different phases of detention under the Ethiopian legal system. First, detention by the police at which time the suspect is in police custody. The second phase of detention is pre-trial detention ordered by the court. The third phase of detention is the detention of the person while the case is on trial. Finally, detention of an individual following conviction. The scope of the thesis is primarily limited to the first phase of detention, namely police custody.

Detainees in police custody are entitled to their substantive and procedural rights including their right to be informed, to be brought before a judge, to be released on bail, not to be forced to testify against themselves and the right to be treated with humanity and the right to protection against torture. The effective implementation of the substantive and procedural rights of detainees in police custody requires knowledge, skills, and motivation on the part of the police. Nevertheless, there are various challenges and problems concerning the observance of the rights of detainees in police custody in Ethiopia. Detainees are required to stay in police stations or holding cells pending appearance before a court of law. The law requires the police to bring the suspect before a judge generally within a clear-cut 48-hour time limit considering the vulnerability of detainees in police custody. Nevertheless, there are serious concerns regarding detention in police custody including lack of access to legal representation, risk of ill-treatment or torture, and health concerns.

1.1. Statement of the Problem

There are treaties and other normative obligations under the Universal Declaration of Human Rights (UDHR),¹ the International Covenant on Civil and Political Rights (ICCPR),² and some relevant standards developed in non-binding instruments such as the UN Principles on Detention and Imprisonment. Among regional human rights systems, the African Charter on Human and Peoples Rights (ACHPR)³ prescribes the rights of persons under police custody.⁴ Ethiopia ratified the ICCPR⁵ and is a State Party to the ACHPR.⁶ According to Article 13(2) of the 1995 Ethiopian Constitution, the provisions of the Constitution on fundamental rights and freedoms shall be interpreted in conformity with the principles of the UDHR and international covenants on human rights and international instruments adopted by Ethiopia. Any person who is deprived of their freedom other than due to a conviction for a crime is considered a "suspected person" under the UN Principles on Detention and Imprisonment.⁷

General Comment Number 35 of the Human Rights Committee states that “All persons charged with a criminal offense should benefit from several safeguards such as the right to be informed promptly of the charges against him or her, the right to a lawyer of his choosing, the right to free legal assistance in some cases, and the right to “equality of arms” between the defense and the prosecution.”⁸ Article 14 of the ICCPR also protects against forced confessions. It underscores that forced confessions constitute violations of both Article 14 and Article 7 on the prohibition of torture and inhuman, cruel, or degrading treatment. Unduly prolonged trial is not just a violation of fair trial rights, but also of Article 9 (3) which provides that anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or to release.

There are several cases decided by international judicial and quasi-judicial bodies that dealt with violations⁹ and restrictions¹⁰ of the rights of persons under police custody, such as

¹ Universal Declaration of Human Rights (adopted 10 December 1948 UN GA Res 217A (III) (UDHR), Article 9.

² Ibid.

³ 1986 African Human and Peoples' Rights charter (herein after ACHPR), Article 6(2), 6(3).

⁴ 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR), Article 5(1).

⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered in to force 23 March 1976) 999 UNTS 171 (ICCPR)

⁶ Federal Democratic Republic of Ethiopia accession to the ACHPR, Proclamation No. 114/1998.

⁷ 1988 Body of Principles on the Protection of all Persons under any Form of Detention, or Imprisonment (hereinafter UN Body of Principles on Detention), UN Doc. A/Res/43/173, the preamble, at para (a) and (d) respectively.

⁸ CCPR ‘General Comment 35’ on the Article 9 (Liberty and Security of Person), adopted by the Committee at its 112th session (2014) UN Doc CCPR/C/GC/35

⁹ *Becerra Barney v. Colombia* (1298/2004) Commission Decision CCPR/C/87/D/1298/2004

severe restrictions, or denial of the right to communicate with their lawyers, particularly when held incommunicado.¹¹ Threats to the lawyers inadequate time for preparation of the case severe restrictions or denial of the right to summon and examine or have witnesses examined, including prohibitions on cross-examining certain categories of witnesses, such as police officers responsible for the arrest and interrogation of the defendant and other rights that are addressed by the international judicial bodies.¹²

In many present-day constitutional democracies, basic principles of criminal procedure are made part of the constitutions. For example, the Bill of Rights of the South African Constitution protects the fundamental rights of individuals when they come into contact with organs of the state which includes the police.¹³ It guarantees everyone's inherent dignity and the right to have their dignity respected and protected; the right to be free from all forms of violence from either public or private sources, not to be tortured and not to be treated in a cruel, inhuman and degrading way.¹⁴ Section 35 of the Constitution describes the rights of arrested, accused, and detained persons and section 35(2) extends a number of these rights to all persons under police custody. The Rights of arrested persons listed under the Constitution include the right to receive required information in a language one understands, the right to be informed promptly of the reason for being detained, the right to conditions of detention consistent with human dignity, communication, and visitation rights, the right to challenge the lawfulness of detention, the right to counsel, and the right to remain silent.¹⁵ Similarly, the Kenyan Constitution provides detailed rights of a person under police custody which include an arrested person's right to be informed of the reason for his arrest promptly in a language he understands, the right to remain silent, the right to communicate with an advocate, the right to have a fair trial which includes how, when and the approaches to the

10 August 2006 para.7.2

¹⁰ Gutiérrez Vivanco v. Peru (678/1996) Commission Decision CCPR/C/74/D/678/1996

15 April 2002, para. 7.1

¹¹ Polay Campos v. Peru (678/1996) Commission Decision CCPR/C/75/D/906/2000

9 October 2002 para. 6.4

¹² Ibid

¹³ Vinesh Basdeo, a constitutional perspective of police powers of search and seizure in the criminal justice system University of south Africa November 2009 p 1

¹⁴ Ss 10, 12(1)(c),(d) and (e), 1996 Constitution.

¹⁵ The Constitution of The Republic of South Africa, 1996, Act 108 of 1996", substituted by s.1 (1) of the Citation of Constitutional Laws, 2005 (Act No. 5 of 2005) [Assented to 10 December 1996] As adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional Assembly article Section 35

trial, it also includes a right on humane treatment of persons detained, held in custody or imprisoned by takes into account the relevant international human rights instruments.¹⁶

This study claims that the principles and rights protected under the FDRE Constitution and other laws in respect of persons under police custody are not fully implemented in reality. As noted above these rights include the right to be told about the reason for their arrest, the right to remain silent or the right to consult a lawyer. These rights are fundamental and determine the kind of treatment the detainee would get in the hands of the police, and further along the line, the kind of justice he will be getting in the criminal justice process. This study will also demonstrate that, the constitution does not provide an adequate enforcement mechanism for the right, and how the proceeding must be handled in case of any violation of the rights.

Moreover, a clear detailed law on the right of a person under police custody has yet to be developed. There is also a lack of awareness and consistency by the police in the enforcement of the constitutional rights of persons under police custody. Police officers arrest suspects without telling them their expressed constitutional rights. Therefore, this research paper attempts to assess some major problems that hamper the effective enforcement of constitutional rights of persons under police custody . Apart from that, it will also explore the existing legal gaps inherent in the legislation itself.

In recent years, the trend of respecting the rights of persons under police custody is dwindling significantly. There are a few research works on related subject matters. Research conducted by Awol Alemayehu Dana, Wolaita Soddo University, (titled ‘Procedural Safeguards & Fair Trials Rights of Detained Persons during Pretrial Crime Investigation in Ethiopia’ The Law & Practice in the Case of Wolaita Zone, Southern Ethiopia¹⁷); Zelalem Tegegne (on the ‘Rights of Arrested Persons in Ethiopia and Its Practices (Challenges) in Takusa Woreda Police Station’¹⁸); Abdi Jibril (on ‘Remedies for Human Rights Violations: A Reform, Proposal for Addressing Victims of Criminal Proceedings in Ethiopia’¹⁹). However, these studies have dealt with detained persons’ rights during pretrial investigation. This thesis deals

¹⁶ The Constitution of Kenya, 2010, *Published by the National Council for Law Reporting*, Article part 2 article 49-51

¹⁷ Awol Alemayehu Dana, ‘Due Process Rights of Suspects During Pretrial and the Existing Challneges under the Legal Frameworks of Ethiopia’ [2018] ISSN, Vol.8, No.12, p.58

¹⁸ Sintayehu Berecha, ‘Judicial Enforcement of the Rights of Arrested Persons under the Ethiopian Criminal Justice System: A case Study in the Federal Courts of Ethiopia’(LL.M Thesis, Jimma University 2023)

¹⁹ Abdi Jibril, ‘Remedies for Human Rights Violations: A Reform Proposal for Addressing Victims of Criminal Proceedings in Ethiopia’ (2021) Vol. 19(1) *Northwestern University Journal of International Human Rights* ≤ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3778059 ≥

with the overall rights of persons under police custody by focusing on Addis Ababa and will therefore extend the knowledge in the area.

1.3. Objective of the study

1.3.1. General objective

The main objective of the research is to show the lack of implementation of most of the constitutionally guaranteed rights of persons under police custody and identify the critical challenges that hinder the proper implementation of these rights by taking Addis Ababa as a case study.

1.3.2. Specific objective

- To explore the rights of persons under police custody in the FDRE Constitution and other legislation;
- To examine the conditions and critical challenges that impedes effective enforcement of rights of persons under police custody by taking Addis Ababa as a case study;
- To assess the existence of legal gaps in the rights of persons under police custody; and
- To put forward possible recommendations to tackle the challenge of implementation of the rights of persons under police custody.

1.4. Research Questions

In line with the above-stated objectives and the claim made earlier, the main research question of this thesis is to investigate the state of enforcement (or the lack thereof) of the constitutional rights of persons under police custody. To effectively respond to this question , the following specific questions need to be answered adequately:

1. Does the FDRE Constitution and other legal instruments of Ethiopia adequately protect the rights of persons under police custody?
2. Do police officers have knowledge, skills, and motivation on the part of the police to provide adequate protection for the rights of persons under police custody?
3. Is an effective judicial oversight of possible violations of rights of persons under police custody in place in Ethiopia?
4. What are the lawful, institutional and organizational constraints of observing the rights of persons under police custody?

1.5. Scope the study

The scope of the study will be on laws and practices regarding the rights of persons under police custody in Ethiopia and its practical application in Addis Ababa. Therefore, the research does not cover other parts of the country.

1.6. Significance of the Research

No prior research was undertaken specifically in the area of constitutional right of persons under police custody in Addis Ababa. Thus, this research paper will help to identify critical legal and practical challenges that hinder the proper enforcement of the rights of persons under custody. It will draw possible lessons from other countries that have better experience. The findings of the study will also supply valuable inputs to policymakers, legislators, and other concerned organs about the improvement of the existing legal and practical gaps. Furthermore, it can serve as a springboard for scholars who want to conduct further research in the area.

1.7. The Research Methodology and Sources of Data of the Study

This research will employ a combination of doctrinal and qualitative research method. Doctrinal analysis of primary and secondary data will be undertaken.. Primary sources include the Ethiopian constitution and relevant international, regional and national instruments relating to the substantive and procedural rights of persons under police custody. Reports and court cases will also be utilized. The research will also use secondary sources such as books and journal articles. The thesis adopts a legal and human rights perspective in the examination of the observance of the substantive and procedural rights of persons under police custody in Ethiopia. . The study also employs qualitative data that will be collected through interview of key informants comprising of sitting and former judges, human rights experts, attorneys, prosecutors, and police officers.

The interview sources were identified based on their familiarity with issues of persons under police custody in their professional works. The researcher also interviewed persons who previously were held in police custody. Accordingly, 39 key informants (nine judges, ten police officers, ten detainees, two prosecutors, seven lawyers, and one human rights experts) have been interviewed for the study.

1.8. Limitations of the Study

While conducting the study, the researcher encountered a high scarcity of written materials on the matter of the rights of persons under custody in Ethiopia and shortage of time in collecting relevant information from governmental bodies. Despite, these potential challenges the researcher managed to minimize the negative impacts of the aforementioned challenges.

1.9. Organization of the Study

This study is divided into five chapters. The first chapter introduces the study and highlights the background, the problem statement, research methodology, the objectives of the study, content, scope, and structure. The second chapter examines the international and regional legal framework, FDRE constitution and other legal framework's key reference points on the protection of the rights of persons under police custody. The third chapter examines the implementation of constitutional rights of a detainee during the process of detention and while under police custody. The fourth chapter focuses on the judicial safeguards of the the rights of persons under police custody. Finally, the fifth provides a summary of the findings and the conclusions drawn from the study. It also puts forward some action points to improve existing practices relating to the substantive and procedural rights of persons under police custody in Ethiopia.

Chapter Two

Conceptual and Legal Framework

Introduction

Every person arrested on suspicion of committing a crime will undergo the process of police custody whether or not he or she is ultimately charged. Persons arrested on suspicion of commission of a crime are referred to as detainees. Detainees remain under police custody while the criminal investigation is undertaken and evidence is collected. Nevertheless, there is a high likelihood of detainees being subjected to mistreatment or committing self-harm while in police custody. In some cases, detainees died while in police custody. Although police custody is sometimes essential for criminal investigation, police officers are duty-bound to ensure detainees receive an appropriate level of care as provided under international, regional, and national legal instruments.

It is possible to distinguish between four different phases of detention under the Ethiopian legal system. First, detention by the police at which time the suspect is in police custody. The second phase of detention is pre-trial detention ordered by the court. The third phase of detention is the detention of the person while the case is on trial. Finally, detention of an individual following conviction. The scope of the thesis is primarily limited to the first phase of detention, namely police custody.

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serious concerns regarding detention in police custody including lack of access to legal representation, risk of ill-treatment or torture, and health concerns.

2.1. Conceptual Framework

The right to personal liberty means one's right not to be subjected to imprisonment, arrest or other physical coercion in any manner in the absence of legal justification.²⁰ The right to personal liberty refers to freedom from confinement of the body.²¹ In other words, it refers to freedom from physical restraint.²² The right to personal liberty is not an absolute right and it can be subject to limitations or restrictions. For example, the right to personal liberty may be encroached upon for the purpose of enforcement of criminal laws. Police custody has been interpreted by the UN Human Rights Committee as an instance of deprivation of liberty.²³

Police custody refers to the period during which the person arrested remains under police control before being brought to a court of law. It refers to the place where people are taken once they have been arrested while the police investigate allegations made against them.²⁴ It is occasionally compared with a miniature prison although there are certain items of departure between the two.²⁵ Police custody is a place of sanctioned isolation, where detainees are purposefully and legally held in separation from the public and each other.²⁶ Police custody can also be defined as “a measure whereby, for purposes of criminal investigation and the establishment of the truth, a suspect is detained in a judicial police cell, wherein he remains for a limited period available to and under the responsibility of a judicial police officer.”²⁷ Police custody refers to the detention of a person for an initial period, following their arrest by the police.²⁸ As police custody is the initial contact that detainees have with law enforcement, it can be a stressful situation, particularly if it is the first time in

²⁰ Abdul Ghaffar, Protection of Personal Liberty under the Pakistan Constitution (1971), “*Journal of Education & Humanities Research* 42-51 p.16

²¹ Vannak Sun, Pre-Trial Detention and Its Alternatives in Cambodia: A critical Study of National Practice, Criminal Procedure Code, and Its Adherence to International Human Rights Standards (2021) p.20

²² Burak Tahsin Bahce, Diverging Interpretation of Personal Liberty and Security: Inconsistencies between the Jurisprudence of the UN Human Rights Committee and the European Court of Human Rights university of Wien *Netherlands Quarterly of Human Rights* 2022, Vol. 40(3) 222–243 p.22

²³ CCPR ‘General Comment 35’ (n 8)

²⁴ Andrew Woof and Layla Skinns, The role of emotion, space and place in police custody in England: Towards a geography of police custody *Punishment & Society* 2018, Vol. 20(5) 562–579

²⁵ Andrew Woof and Layla Skinns (n 23)

²⁶ Ibid.

²⁷ Mukete Tahle Itoe, A Study on the Protection of the Rights of Pretrial Detainees under International Law: The Case of Fundong, Boyo Division, Northwest of Cameroon Selinus University (2022)

²⁸ Police Resource Toolkit for professional, human rights-compliant Policing for professional, human rights-compliant Policing, p. 1

police custody.²⁹ Consequently, utmost effort must be made to minimize stay of detainees in police custody while allowing thorough investigation to be conducted.³⁰

Detention must comply with the fundamental principles of legality, necessity, proportionality, human dignity, and non-discrimination.³¹ The right to liberty and security of the person is guaranteed under international, regional, and domestic human rights instruments. Hence, deprivation of liberty would be arbitrary unless it is justified on the grounds, cases, reasons, and circumstances provided by the law.³² Even if a state has legitimate reasons for detaining someone, it still has obligations towards that person.³³ The right to liberty has to do in most cases with the arrest and detention of an individual within the purview of criminal proceedings.³⁴

Arrest means the act of apprehending a person for the alleged commission of an offense or by the action of authority and this will lead to the detainment of a person deprived of personal liberty before conviction for an offense.³⁵ Police have a role in protecting the liberties of individuals by respecting the human rights of individuals, but in the protection process, they may harm rights of the others.

Internationally, several early European documents, including the French Declaration of the Rights of Man and the Citizen, the Magna Carta, and the English Habeas Corpus Acts (1640 and 1679), mention the idea of freedom from arbitrary arrest and detention, which is connected to the protection of people under police custody.³⁶ These documents also recognize the right to personal liberty. Furthermore, natural and inalienable human rights—such as

²⁹ Heather Alexandra Callaghan, Improving Capacity Understanding in Police Custody Suites using Discrete Event Simulation Modelling, *Proceedings of the Operational Research Society Simulation Workshop 2021 (SW21)* M. Fakhimi, D. Robertson, and T. Boness, eds (2023) 13

³⁰ Ibid.

³¹ Police Resource Toolkit, Safeguards in Police Custody p. 2

³² Universal Declaration of Human Rights (adopted 10 December 1948 UN GA Res 217A (III) (UDHR), Articles 3 and 9, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Article 9; African Charter on Human and Peoples Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter), Article 6; The Constitution of the FDRE, Proclamation 1/1995, Federal Negarit Gazeta, Year 1, No 1, August 21, 1995, Article 14

³³ Ibid.

³⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered in to force 23 March 1976) 999 UNTS 171 (ICCPR), Article 9

³⁵ General Assembly Resolution 43/173 on Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment adopted on 09 December 1988

³⁶ Ibid

freedom from incarceration and arrest unless necessary to comply with the law—are incorporated into the French Declaration of the Rights of Man and the Citizen of 1789.³⁷

These documents were intended to protect citizens from "unlawful" arrest or detention. Both the UDHR and the ICCPR have made a significant contribution to further development of the concept of freedom from arbitrary arrest and detention by ensuring that individuals receive protection against "arbitrary laws" as well as against "unlawful acts."³⁸ In this manner, the provisions of these international instruments effectively prohibit states from manipulating their legislative systems to achieve oppressive ends.³⁹

2.2. Legal Framework

There is no single international instrument that sets out all the human rights standards on rights of persons under police custody. The rights of persons under police custody are protected in an array of international, regional and national legal instruments. Article 9(4) of the FDRE Constitution declares that treaties that are ratified by Ethiopia are part and parcel of the law of the land. Moreover, Article 13(2) requires that fundamental right and freedoms, including the right of arrested or detained person, which include the right of persons under police custody to be interpreted in a manner conforming to the principles of International Bill of Human Rights.

2.2.1 International Legal Framework on the Rights of Persons under Police Custody

Ethiopia is a party to various international and regional human rights instruments which have direct and obvious relevance for the protection of the rights of persons in police custody. The country has ratified at least seven of the nine core international human rights instruments adopted under the auspices of the United Nations.⁴⁰

³⁷Laurent Marcoux, Jr, Protection from Arbitrary Arrest and Detention Under International Law, Boston College International and Comparative Law Review, Vol. V, No.2 page 346

³⁸ Ibid

³⁹ Ibid

⁴⁰The seven core international human rights treaties ratified by Ethiopia include the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

2.2.1.1 The Universal Declaration on Human Rights (UDHR)

The Universal Declaration of Human Rights is a landmark and fundamental human rights instrument. It embodies important provisions concerning the protection of the right to personal liberty. The right to liberty and security of the person is recognized under Article 3 of the UDHR.⁴¹ Article 5 of the UDHR lays down that “no one shall be subjected to torture or to cruel, inhumane or degrading punishment.”⁴² Article 9 of the UDHR prohibits arbitrary arrest, detention or exile.⁴³ Article 8 of the UDHR provides for the right to an effective remedy.⁴⁴ Article 10 of the UDHR provides for fair and public trial by an independent and impartial tribunal. Article 11 of the UDHR provides for the principal principles of criminal justice.⁴⁵ Article 29(3) of the UDHR also imposes certain limitations on the free enjoyment of the right to personal liberty.⁴⁶

2.2.1.2 The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR recognizes the right of everyone to security and liberty.⁴⁷

Article 9(1) of the ICCPR reads as follows:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Interference with personal liberty restricts the individual more severely than interference with freedom of movement.⁴⁸ It requires that persons accused have to be brought before a court as soon as possible and have their case tried in a timely manner.⁴⁹ By so doing, the ICCPR protects the rights of persons deprived of their liberty.

In its General Comment No. 35, the Human Rights Committee expounded upon the provisions of Article 9 of the International Covenant on Civil and Political Rights. It was maintained that a State Party bears the responsibility of ensuring compliance with the provisions of Article 9 of the ICCPR even after granting authorization or empowering individuals or entities to arrest or detain.⁵⁰ Such measures need to be tightly restricted and

⁴¹ UDHR, Art. 3

⁴² UDHR, Art. 5

⁴³ UDHR, Art. 9

⁴⁴ UDHR, Art. 8

⁴⁵ Abdul Ghaffar (n 19), p. 48

⁴⁶ Ibid

⁴⁷ ICCPR, Art. 9

⁴⁸ Burak Tahsin Bahce, (n 21) p.20

⁴⁹ ICCPR, Art. 9(3).

⁵⁰ ICCPR, Art. 8.

monitored to prevent any kind of abuse or misuse. Prioritizing the use of alternatives like electronic bracelets, bail, or other conditions, courts should try to avoid using pretrial detention as much as possible. This is because extended pretrial detention can compromise the rights of those in police custody to be presumed innocent until proven guilty.⁵¹ In the *Taright &et alv. Algeria* communication, the Human Rights Committee reaffirmed the position that a pretrial detention must be legitimate in every way, rather than just being legal.⁵² The Human Rights Committee considered, *inter alia*, police custody, arraigo, remand detention, imprisonment after conviction, house arrest as cases constituting deprivation of liberty.⁵³

Article 9(3) of the ICCPR requires that an arrested person or detained person be brought promptly before a judge. The Human Rights Committee stated that ‘anybody who is arrested or imprisoned on suspicion of a crime should be brought before a judge or other official who is legally permitted to exercise judicial power as soon as possible.’⁵⁴ The Human Rights Committee has stated that forty-eight hours is normally sufficient to bring a suspect before a judge to determine the legality of his or her arrest.⁵⁵

They are also entitled to a trial within a reasonable time or to be released.⁵⁶ People who are awaiting trial should not be kept in custody as a general rule; instead, they may be released with conditions on their ability to appear for trial or at any other point in the legal process, as well as, in the event that a judgment needs to be executed.⁵⁷

Stateparties are required to refrain from violating Article 9 of the ICCPR in any manner. In addition, Article 9 of the ICCPR mandates that States Parties to take the necessary actions to safeguard individuals' rights to liberty from third-party infringement.⁵⁸

⁵¹ ICCPR, Art. 32.

⁵² **Abdelhamid Taright et al. v. Algeria, Communication No. 1085/2002, U.N. Doc. CCPR/C/86/D/1085/2002 (2006).**

⁵³ **Fongum Gorji-Dinka v. Cameroon, Communication No. 1134/2002, U.N. Doc. CCPR/C/83/D/1134/2002 (2005), para. 5.4.**

⁵⁴ ICCPR, ‘General Comment No 35 (n 8)

⁵⁵ *Ibid.*, para. 33

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ Human Rights Committee, „General Comment No. 35”, UN Doc. CCPR/C/GC/35 para. 7; Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant: Yemen, UN Doc. CCPR/C/YEM/CO/5 para. 24.

The United Nations Working Group on Arbitrary Detention was established in 1991⁵⁹ by the then United Nations Commission on Human Rights. The Working Group consists of five individual members to investigate cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the UDHR or in the relevant international instruments accepted by the states concerned”.⁶⁰ The Working Group has been mandated to “seek and receive information” about cases and to present report.⁶¹ The Working Group is entitled to seek and receive information from governments and intergovernmental and nongovernmental organizations as well as from individuals concerned.⁶² The Working Group addresses the issue of arbitrary detention and mandatory sentencing in the context of the countries concerned. It urges States to strengthen their cooperation by responding more effectively to regular communications, participating in follow-up procedures to report on the implementation of the Group's opinions (including providing appropriate remedies and reparations to victims of arbitrary detention), and agreeing to requests for country visits.⁶³ It also calls on States to re-evaluate laws that mandate minimum sentencing and to reassess sentences already issued under such schemes. This is to ensure that all sentences meet the principles of necessity and proportionality. Additionally, States are encouraged to revise relevant legislation and sentencing guidelines accordingly.⁶⁴ The Working Group also urges States to allocate sufficient and reliable resources to enable it to effectively and sustainably carry out its mandate. Additionally, it echoes the United Nations High Commissioner for Human Rights' call to bring an end to arbitrary detention and to release all individuals who have been detained arbitrarily.⁶⁵

2.2.1.3 Convention on the Right of the Child (CRC)

The Convention on the Rights of the Child (CRC) was adopted on 20 November 1989 by the General Assembly of the UN.⁶⁶ The Federal Democratic Republic of Ethiopia (FDRE) ratified the Convention on the Rights of the Child (CRC) on December 9, 1991.⁶⁷

⁵⁹ Human Rights Committee, Resolution No. 1991/42

⁶⁰ UN Human Rights Commission, Resolution 1991/42 (Arbitrary Detention), E.CN.4/1991/91, para. 2

⁶¹ UN Human Rights Commission, Resolution 1991/42 (Arbitrary Detention), E.CN.4/1991/91, para. 5

⁶² Human Rights Commission, Fact Sheet No. 26, The Working Group on Arbitrary Detention p. 3

⁶³ UN Human Rights Council, 'Report of the Human Rights Council on Its Fifty-Seventh Session' (Fifty-Seventh Session, UN Doc A/HRC/57/XX, 5 July 2024)

<https://documents.un.org/doc/undoc/gen/g24/120/85/pdf/g2412085.pdf> accessed 11 January 2025.

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC)

The CRC requires that resort to measures involving the deprivation of liberty of children, including arrest, detention, or imprisonment, should be measures of last resort and should be used for the shortest appropriate period of time.⁶⁸ This implies that, as a rule, children should not be deprived of liberty. The leading principles for the use of deprivation of liberty of children in conflict with the law are twofold. First, the arrest, detention or imprisonment of a child is to be used only in conformity with the law, only as a measure of last resort and for the shortest appropriate period of time.⁶⁹ Second, no child is to be deprived of his or her liberty unlawfully or arbitrarily.⁷⁰ Non-custodial measures should be used so as to restrict the use of pre-trial detention. International human rights standards emphasize that Pretrial Detention should be lawful and non-arbitrary, should be a measure of last resort and for the shortest appropriate period of time (shortest possible) and pretrial detention cannot be used to anticipate a sentence in violation of the principle of presumption of innocence.⁷¹ The high legal standard of detention as a measure of last resort implies the need for drastic reduction of children deprived of liberty in the context of administration of justice.

As a result, States Parties are required to establish non-custodial solutions to prevent the deprivation of the personal liberty of children.⁷² This is because deprivation of the personal liberty of children affects their optimal development. Arrest, detention, or imprisonment entail negative consequences on child development. The best interests of the child must be a primary consideration in all decisions concerning children in conflict with the law.⁷³ This implies the need to prioritize approaches which promote the rehabilitation and reintegration of children as opposed to criminalization.⁷⁴ States Parties must consider the negative consequences of imprisonment on child development.⁷⁵

The CRC particularly addresses a child's right not to be arrested or imprisoned in connection with a criminal investigation process, stating that states must acknowledge this right in order

⁶⁷ Convention on the Rights of the Child Ratification Proclamation 10/1992

⁶⁸ Convention on the Rights of the Child (CRC), Article 37(b)

⁶⁹ Ibid.

⁷⁰ UN Committee on the Rights of the Child (CRC), *General comment No. 24 (2019): Children's Rights in the Child Justice System*, 18 September 2019, para. 85

⁷¹ Convention on the Rights of the Child (CRC), Article 40(2)(b)(i);

⁷² Manfred Nowak, the United Nations Global Study on Children Deprived of Liberty (2019) 253

⁷³ Manfred Nowak (n 68) 355

⁷⁴ Ibid.

⁷⁵ UN Committee on the Rights of the Child (CRC), *General Comment No. 24 (2019): Children's Rights in the Child Justice System*, 18 September 2019.

to achieve equality. It covers the following: every accused child's right to be freed from unlawful or arbitrary detention; every child's right to be held in compliance with the law; special protection for all accused children; every accused child's right to be presumed innocent until proven guilty; prompt and direct notification of any charges made against him or her; the right to question or have questioned adverse witnesses; and the right to participate in and have a witness examined on their behalf under equal conditions.⁷⁶ As a result, the CRC places greater focus on the rights of children who are detained or arrested during the criminal justice system's arrest and custody procedures.⁷⁷

2.2.1.4 The Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment

The UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment defines torture by highlighting the three key elements of the concept namely the intentional infliction of severe mental or physical pain or suffering, with the direct or indirect involvement of a public official for a specific purpose.⁷⁸ According to Article 2 of the Convention, each signatory to the treaty bears the responsibility and obligation to take all necessary measures to prevent acts of torture, and other forms of Cruel Inhuman or Degrading Treatment or Punishment. These measures include legislative, administrative, judicial and other appropriate measures. The Convention imposes absolute prohibition of torture and precludes any form of justification for torture.⁷⁹ This Convention has a direct and obvious relevance in the context of police custody as people deprived of liberty are at heightened risk of torture. Although Ethiopia is a State Party to UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, it has not ratified the optional protocol to the Convention.

2.3. Other Relevant Instruments

2.3.1 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Adopted by the UN General Assembly on December 9, 1988, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment clarifies the

⁷⁶ Convention on the rights of child (CRC) Arts. 37 and 40

⁷⁷ Ibid

⁷⁸ UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, (adopted 10 December 1984, entered in to force 26 June 1987) 1465 UNTS 85 (UNCAT), UN Doc. A/RES/39/46, Article 1

⁷⁹ Ibid., Art. 2(2)

information that must be provided on arrest and outlines principles that apply for the protection of all persons under any form of detention or imprisonment.⁸⁰ This Resolution, while nonbinding, establishes authoritative broad guidelines that are widely acknowledged by the international community to safeguard individuals' rights to comprehensive information concerning criminal accusations. As such, these guidelines have a significant impact on how basic rights are interpreted.⁸¹ Anyone who is arrested must be told of the reason for their arrest at the time of the arrest as well as any charges that may be brought against them.⁸² Any order of detention, along with the justifications for it, must be promptly and fully communicated to the person who is being held and, if applicable, his legal representation.⁸³ The information that needs to keep in record shall include explanations behind the arrest, the moment of the arrest, the transfer of the arrested individual to a detention facility, and the initial appearance of the detained individual before a court or other authority, the names of the relevant law enforcement officers, detailed information about the custody location.⁸⁴ Therefore, the principles require that all individuals be given additional crucial information upon arrest, such as the time of the arrest, the identity of the law enforcement officers, and the location of custody. They also urge all nations to take all reasonable steps to guarantee the protection of the human rights of those who are detained or imprisoned.⁸⁵

2.3.2 The Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)

This instrument was passed with the understanding that non-custodial sanctions might be employed to the accused's and society's greatest benefit.⁸⁶ The Rules promote the widest possible use of non-custodial measures as well as minimum safeguards for persons subject to alternatives to imprisonment.⁸⁷ By the Rules, every criminal justice system should develop and provide for a wide-range of non-custodial measures that can be used at all stages of criminal proceedings and should be flexible enough to set the system on the track of

⁸⁰ UN General Assembly Resolution No. A/RES/70/175 adopted 17 December 2015

⁸¹ Ibid.

⁸² Ibid., Principle 10

⁸³ Ibid.

⁸⁴ Ibid. Principle 12

⁸⁵ Ibid.

⁸⁶ United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), General Assembly resolution 45/110 of 14 December 1990, Rule 1.4

⁸⁷ Tokyo Rules (n 84) Rule 1.4

decriminalization and depenalisation.⁸⁸ The rules encourage states to empower the prosecution, police or other relevant agencies to discharge accused persons where they find it unnecessary to proceed to trial and the state should provide set criteria for arriving at such decisions.⁸⁹ The Rules reaffirm the position that pretrial detention should be used as a last resort and that priority be given to alternative avenues of correction.⁹⁰ The Rules prohibit unnecessary use of pretrial detention and where administered, it is to be imposed humanely and with respect for the inherent dignity of a human being.⁹¹

2.3.3 The United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

These rules are based on an obligation to treat all prisoners with respect for their inherent dignity and value as human beings and to prohibit torture and other forms of imprisonment.⁹² Under the rule it provides all prisoners shall be treated with respect for their inherent dignity and value as human beings. Application of the rules applies to all categories of prisoners, including those in police custody. Provisions on healthcare, which are critical for persons under police custody. Guidance on registering and monitoring detainees, including those in initial police custody. The Rules also indicate that individuals should be humanely treated especially given that they are presumed innocent.⁹³ Young detainees should be separated from adult detainees and generally from convicts.⁹⁴ Detainees should each be allocated separate rooms,⁹⁵ allowed, if they desire, to procure their own food and wear their own clothing.⁹⁶ In accordance with the Mandela Rules, untried prisoners may not be required to work and should have legal advisers assigned to them if they are indigent.⁹⁷ The Nelson Mandela Rules, like the Tokyo Rules, are intended to serve as a reference for UN member states regarding the minimal criteria for the treatment of inmates, including those detained by the police.

⁸⁸ Tokyo Rules (n 84), Rule 1.4 and 2.7.

⁸⁹ Tokyo Rules (n 84), Rule 5.1.

⁹⁰ Tokyo Rules (n 84), Rule 6.

⁹¹ Tokyo Rules (n 84), Rule 6.2.

⁹² United Nations Chronicle 'The Nelson Mandela Rules: Protecting the rights of persons deprived of liberty'

⁹³ Nelson Mandela Rules (NML), Rule 111(2)

⁹⁴ NML (n 89) para 112

⁹⁵ NML (n 89) para 113.

⁹⁶ NML (n 89) paras 114 & 115.

⁹⁷ NML (n 89) paras 116 & 119(2).

2.4 Regional Instruments

2.4.1 Africa (Banjul) Charter on Human and Peoples' Rights (ACHPR)

The ACHPR generally guarantees the right to life, right to liberty, right to the respect of human dignity, right to be presumed innocent until proven guilty, right to be tried within a reasonable time, right against arbitrary arrest or detention and right against torture and other ill-treatment, all of which are relevant to persons under police custody.⁹⁸

State Parties to the African Charter on Human and Peoples' Rights (ACHPR) are required to adhere to basic criteria regarding the duration of pretrial detention. They are not permitted to use factors like the volume of ongoing cases as justification for unduly long delays.⁹⁹ Three years in pretrial confinement was deemed highly undesirable by the Commission and seven years of pretrial detention to be in clear violation of 'reasonable time' standard required.¹⁰⁰

2.4.2 Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (the Luanda Guidelines)

The instrument prohibits the imposition of detention for a criminal allegation that does not attract a custodial penalty.¹⁰¹ When pretrial detention is imposed, persons under police custody should be detained in facilities close to their homes or communities considering issues around caretaking and other responsibilities.¹⁰² The Guidelines provide that detention of person should be resorted to in line with the law and only where there are reasonable grounds to believe that the accused will abscond, commit another offence or where such release is against the interest of justice.¹⁰³ It further requires the provision of regular review of custody of a person in national laws and that no delay should be entertained in either investigation or judicial proceedings.¹⁰⁴ Other general safeguards including the right to be held in officially recognized detention facilities, the right to fair trial, trial within reasonable time, and the right to information are also provided for in the Guidelines.¹⁰⁵ The Guidelines complement the body of regional soft laws that seek to guide states on the rights of Arrest, Police Custody and Pre-trial Detention generally.

⁹⁸ ACHPR, Arts 4,5,6& 7.

⁹⁹ Article 19 v. Eritrea (2007) AHRLR 73 (ACHPR 2007).

¹⁰⁰ Abubakar v. Ghana (2000) AHRLR 124 (ACHPR 1996).

¹⁰¹ Adopted by the Commission at its 55th Ordinary Session in Luanda, Angola in 2014.

¹⁰² Luanda Guidelines, Art. 10(c).

¹⁰³ Luanda Guidelines, Art. 10(g).

¹⁰⁴ Luanda Guidelines, Art. 11(a)(ii).

¹⁰⁵ Luanda Guidelines, Art. 10.

2.5 Ethiopian Laws on the Rights of Persons under Police Custody

2.5.1 The FDRE Constitution

The FDRE Constitution protects the fundamental rights and freedoms of persons under police custody. The Constitution requires the State to protect the right to life.¹⁰⁶ It guarantees the right to personal liberty and security for every person.¹⁰⁷ The Constitution also prohibits cruel, inhuman and degrading treatment.¹⁰⁸ The FDRE Constitution also recognizes the right to be free from arbitrary arrest and detention as a fundamental human right.¹⁰⁹ The FDRE Constitution guarantees a panoply of rights of detained persons throughout the process of criminal investigation. The right to be informed is one of such rights. Article 19(1) of the FDRE Constitution provides the right to be promptly informed of reasons for arrest and detention and of any charges against oneself. The right to be promptly informed of reasons for arrest and detention and of any charges pressed against her/him allows the person arrested to know the grounds of his or her arrest and to defend himself or herself from the very outset of setting justice in motion.

Under Article 19(3), the FDRE Constitution enshrines the right of persons deprived of liberty to be brought before a judge. Article 19(3) of the FDRE Constitution provides that persons arrested have the right to be brought before a court within 48 hours of their arrest. The same provision goes on to state that such time shall not include the time reasonably required for the journey from the place of arrest to the court. The FDRE Constitution clarifies the notion of “promptness” by providing a clear-cut 48 hours’ time limit. The purpose of the right to be promptly brought before a judge or other judicial officer is to bring detention of a person held in relation to a criminal offence under judicial control.¹¹⁰

Article 19(6) of the FDRE Constitution provides the right of persons arrested to be released on bail. The provision goes on to state that in exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for conditional release of the arrested person. The Human Rights Committee held that pre-trial detention should be the exception and bail should be granted, except in situations where the likelihood exists that the accused

¹⁰⁶ FDRE Constitution, Art. 15

¹⁰⁷ FDRE Constitution, Art. 14

¹⁰⁸ FDRE Constitution, Art. 18(1)

¹⁰⁹ FDRE constitution, Art. 17

¹¹⁰ Communication No. 521/1992, V. Kulomin v. Hungary (Views adopted on 22 March 1996), in UN doc. GAOR, A/51/40

would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State Party.¹¹¹

The right not to testify against oneself is another important rights recognized by the FEDRE Constitution (Article 19(5)). It is thus provided that person arrested may not be compelled to make confessions or admissions which could be used in evidence against them. The inclusion of this right in Article 19(5) of the FDRE Constitution demonstrates the special importance of the right during police custody.

The Constitutional guarantee of the right to be treated with humanity and the right to protection against torture enshrined under Article 18 of the FDRE Constitution is relevant to the matter under consideration here. It provides that everyone has the right to protection against, cruel, inhuman or degrading treatment or punishment at any time, place and under any circumstances.

2.5.2 Criminal Procedure Code

The 1961 Criminal Procedure Code incorporated different provisions related to the right of persons in police custody. The Criminal Procedure Code provides for steps to be followed in conducting an arrest. In principle, a person cannot be arrested without an arrest warrant issued by a court as provided under Article 49 of the Criminal Procedure Code. This provision demonstrates the fact that arrest with warrant is the rule, while arrest without warrant the exception, in keeping with the principle of presumption of innocence. Article 51 of the Criminal Procedure Code provides the circumstances under which a police officer may effect arrest of an individual without warrant. The other situation whereby arrest may be effected without warrant is the case of flagrant offences where the offence is punishable with simple imprisonment for not less than three months as provided under Art 50 of the Criminal Procedure Code. These provisions demonstrate the fact that no one shall be deprived of his or her liberty except on grounds and procedures established by the law. By so doing, they protect individuals from arbitrary arrest and detention.

Article 56 of the Criminal Procedure Code also requires that the police officer conducting the arrest should read out the arrest warrant to the person to be arrested, informing the person of

¹¹¹ Communication No. 526/1993, M. and B. Hill v. Spain (Views adopted on 2 April 1997), UN doc. GAOR, A/52/40 (vol. II), P.17, PARA. 12.3

the reasons for his or her arrest or the charge against them and also allow him or her to take a look at it, if he or she desires.

Article 27(2) of the Criminal Procedure Code provides that any person summoned before police for interrogation shall not be compelled to answer and shall be informed that he has the right not to answer and that any statement he may make may be used in evidence. Article 29(1) of the Criminal Procedure Code also enshrines the right to be promptly brought before a judge or other judicial officer. Article 63 of the Criminal Procedure Code lays down the conditions to determine release on bail depending upon the gravity of the offence. However, there are also other grounds for denying application for release on bail. The Criminal Procedure Code provides several provisions meant to safeguard the principle of presumption of innocence. Article 31 of the Criminal Procedure Code provides that inducement, threat or promise undermines the voluntariness of one's confession. Article 61 of the Criminal Procedure Code is indicative of the fact that the right to legal counsel is exercisable from the moment of police custody shortly following arrest.

Article 29(1) of the Criminal Procedure calls up on the police or the private person who effected arrest of the persons accused, to bring him before the nearest court within forty eight hours of his arrest or so soon thereafter as local circumstances or communications permit. Article 32 of the Criminal Procedure Code provides for safeguards against arbitrary search and seizure. No arrested person may be searched in relation to the aforementioned searches and seizures unless there is a reasonable suspicion that he may be carrying any items that could be relevant evidence regarding the crime he is accused of committing or is suspected of committing. A search must be conducted by a person who is the same sex as the arrested person.¹¹² The arresting officer has the right to make an arrest even in the absence of a warrant, if the suspect is subject to one. In most cases, the person who is suspected has rights. The rights of suspected individuals stated above are uncontested and protected by Ethiopia's current constitution. Provisions in the Criminal Procedure Code also prohibit any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment.

¹¹² Criminal Procedure Code of the Empire of Ethiopia of 1961, *Negarit Gazeta Extraordinary Issue No.1* of 1961, Arts. 29 (1), 58, 32 (1), 49-51 (1) and (2)

2.5.3 Anti-Terrorism Proclamation (ATP)

When a person is arrested in relation to a terrorist activity, Proclamation No. 1176/2020 provides that a police officer may arrest a person when it has sufficient reason to suspect that a crime has been committed or is being committed or is about to be committed in a given place.¹¹³ The National Intelligence and Security Service or its officer shall not detain a person suspected of terrorism crime, unless it finds a person who is about to commit or is in the act of committing or has just committed a terrorism crime in which case it can arrest the concerned person and hand over to a police officer immediately.¹¹⁴

The National Intelligence and Security Service may conduct electronic surveillance on telephone and Internet communications of any individual or organization.¹¹⁵ It gives the Police a broader power to conduct both covert and overt searches with no regard for confidential information,¹¹⁶ which is against privacy rights recognized by domestic and international human rights instruments. Police were also empowered to arrest anyone suspected of committing a terrorist act without a warrant.

¹¹³ Prevention and Suppression of Terrorism Crimes Proclamation, *Negarit Gazeta* No.1176 of 2020, Article 32

¹¹⁴ Ibid article 37 /2/

¹¹⁵ Ibid Arts. 17 and 18

¹¹⁶ Ibid.

CHAPTER THREE

The Implementation of Constitutional Rights of a Detainee during the Process of Detention and while under Police Custody

Introduction

In Chapter Two, the thesis has attempted to show the slew of rights of persons under police custody under national and international law. The constitutional rights of a detainee during the process of detention are designed to ensure the protection of their fundamental freedoms, dignity, and fairness under the law. While the specifics may vary depending on the country, the following are common constitutional rights typically afforded to detainees. This chapter is devoted to consider how the implementation of constitutional rights of a detainee during the process of detention is practically implemented which shows the protection of detainee during the process of detention which includes the right to be promptly informed of reasons for arrest and detention of any charges against oneself, right to remain silent and arbitrary arrest it shows how in the process such right are protected and additionally, it included how such right are protected for the Implementation of Constitutional Rights of Detainees under Police Custody which include Prohibition of forced confession and torture, The right to be brought before a court of law, Right to bail, The Right to Visitation, The right to legal counsel are included in the chapter.

3.1 The Implementation of Constitutional Rights of a Detainee during the Process of Detention

3.1.1 The Right to be Promptly Informed of Reasons for Arrest and Detention and of any charges against oneself

The implementation of this right helps arrestees have a sufficiently detailed understanding of their situation and their rights to be prepared to defend themselves, protecting themselves from arbitrary arrest and detention. Most detainees must be provided with this information so that they can challenge the lawfulness of their detention. The participants of the study who experienced detention stated that the police officers did not inform them the reason for the arrest.¹¹⁷ The police, most of the time, only tell the detainees why the police have wanted them.¹¹⁸ Even when some of the detainees ask for their rights, the police inform them that they would know their rights when they reach the police station. It would take days before

¹¹⁷Interview with Anwar sadat, an arrestee at Arat kilo police stations, Addis Ababa, 15 April, 2024.

¹¹⁸Interview with Subagaderas G/medhen, a prosecutor at Kirkos Division, Addis Ababa, 18 May 2024

they knew the reason for their Arrest.¹¹⁹ In some cases, they would not know the reason for their arrest until they reach the court.¹²⁰ Thus, the requirements of the law are simply disregarded in practice. Asked about why they fail to tell the reason for arrest when they apprehend suspects, some police officers explained that in some cases, the police who actually apprehends the suspect herself would not be given the reasons but just get the instruction to apprehend persons of interest. As to why the police officer would not be told the reasons for the arrest, the researcher was informed that the knowledge of the reason by the arresting police officer might lead to corruption thereby thwarting the investigation.¹²¹ Additionally, it may lead to not confessing and their investigation will be interrupted.¹²² Another reason that may strike one as odd is the need for showing high performance by the police officers in question. The higher the number of arrests the higher becomes the accomplishments of a police officer in the eyes of the superintendents. This makes the arresting police officers concentrate more on headcount of arrestees than on the legal rights of the latter.¹²³

3.1.2 Right to remain silent

As discussed in the previous Chapter, every person has the right to remain silent and cannot be forced to testify against oneself.¹²⁴ Further, persons arrested have the right to be informed that anything they say can be used as evidence against them.¹²⁵ If the police officer has a warrant to make an arrest, he/she must read the warrant out loud to the person being arrested.¹²⁶

In carrying out their responsibilities, which include preventing and investigating crimes and other associated tasks, Ethiopian police have a duty to uphold human and constitutional rights.¹²⁷ In discharging its day-to-day tasks, the police must refrain from acts that violate the

¹¹⁹ Ibid

¹²⁰ Observation at Lideta High Court, and Arada First Instance Court from 27 March-15 April, 2024.

¹²¹ Interview with Inspector Mesfin Haile a head of interrogation and investigation unit Arat Kilo police station, March 30, 2024.

¹²² Interview with Inspector a head of interrogation and investigation Deputy Inspector Amenstisa Teshome, Unit Lebu Police Station, Addis Ababa, 10 July 2024.

¹²³ Interview with Inspector Ababayehu Alemu, an investigative police officer, Federal Police Bureau of Investigation, Addis Ababa, 13 May 2024.

¹²⁴ Article 19 of FDRE constitution

¹²⁵ Ibid

¹²⁶ Article 56 of Ethiopian Criminal Procedure Code

¹²⁷ Interview with Mulaw Dagnaw an Attorney at Federal Ministry of Justice Kirkos Bench, 18 May 2024.

constitutional rights of citizens.¹²⁸ the fundamental responsibility of law enforcement, particularly the police, to uphold and respect the constitutional and legal rights of individuals from the very beginning of the detention process. This responsibility begins with informing the person of their right to remain silent, a critical safeguard to protect their rights during interrogation and legal proceedings.¹²⁹

The right to remain silent is a major right and privilege recognized by law.¹³⁰ It gives protection to individuals to refuse to answer official questions during police interrogations or to produce some evidence having a testimonial nature.¹³¹ It also protects against the drawing of an adverse inference from silence during trial.¹³² It was found out that most the police do not know that they must tell the detainees about their right to remain silent.¹³³ Detainees interviewed for the study informed the researcher that the police officers did not inform them of their right to remain silent.¹³⁴

The police's reason for not informing the arrestee of her right to remain silent, as noted by the informants, again has to do with different factors, such as lack of proper training on the human rights of persons they deal with.¹³⁵ Additionally, the police are of the view that informing the arrestee of the right to remain silent may jeopardize their chances of getting an easy confession thereby prolonging or thwarting the investigation.¹³⁶ The wrong desire to enhance their level of performance by showing as many arrests as possible was also cited as another reason.¹³⁷

¹²⁸ Ibid

¹²⁹ Ibid

¹³⁰ The Right of Silence and Privilege against Self-Incrimination in Criminal Proceedings: An Appraisal of the Ethiopian Legal Framework, Wendmagegn Gebre Fantaye, Bahir Dar University Journal of Law, Vol.4, No.2 (2014)Awol Alemayehu Dana, The Right to Protection from Arbitrary Arrest and Detention under the Legal Framework of the Federal Democratic Republic of Ethiopia (FDRE). 46 Journal of Law, Policy and Globalization, 29, 48, at. 29 (2016).

¹³¹ Ibid

¹³² Ibid

¹³³ Interview with Melaku Mengestu, a prosecutor at Ledeta Division, Addis Ababa, 18 May 2024

¹³⁴ Interviews with Anwar sadat an arrstee at Arat kilo police stations, Addis Ababa, 15 April, 2024; Abent Dagnachew an arrstee at Nefaslik Lafto sub- city police division, Addis Ababa, 01 June 2024.

¹³⁵ Interview with Subagaderas G/medhen, a prosecutor at Kirkos Division, Addis Ababa, 18May 2024, Interview with Deputy Inspector Ezedin Ahmed, Addis Ababa lebu Police station, Addis Ababa, 10 July2024.

¹³⁶ Interview with Inspector, Nefaslik Lafto sub- city police division, Addis Ababa, 01 June 2024.

¹³⁷ Interview with Inspector Mesfin Haile a head of interrogation and investigation unit Arat Kilo police station, March 30, 2024.

3.1.3. Arbitrary arrest

The right of protection from arbitrary arrest and detention is another fundamental right of persons.¹³⁸ This right can be limited based on the grounds and according to procedures set forth by law. As discussed under Chapter Two above, the Criminal Procedure Code outlines the procedures for making an arrest and when a judge's order is required to carry out an arrest.¹³⁹ We have seen that a police officer needs an arrest warrant, or court warrant, to make an arrest, except in certain clearly provided circumstances.¹⁴⁰

According to the data gathered, the police frequently make arrests without a court order..¹⁴¹ Most of the time the arrest warrant is not issued in case of some national security issues and orders from the high government officials.¹⁴² An arrest warrant is therefore one of the duties of the police that gets easily bypassed. . A police without arrest warrant is prone to violating many other rights of the target individual, including the right to privacy of the person and her family and her home. No arrest warrant in fact precedes mass arrest of persons in connection with situations such as public emergencies as has been the case in relation to recent conflicts in Ethiopia.¹⁴³

In Ethiopia, arbitrary arrests often surge during periods of political or religious conflict, reflecting a troubling trend where government authorities target individuals under the pretext of addressing threats posed by specific groups. During the Tigray, Oromo, and also Amhara conflicts there have been numerous reports of arrests and detentions of individuals based on their ethnic affiliation or perceived political stance rather than concrete evidence of wrongdoing.¹⁴⁴ This pattern illustrates a broader issue where governments may exploit crises to suppress dissent and consolidate power, often by framing their actions as necessary for national security while infringing on the constitutional right to liberty.¹⁴⁵

¹³⁸ FDRE constitution article 17

¹³⁹ Article 49 of the criminal procedure code

¹⁴⁰ Criminal Procedure Code, of Ethiopia, Art. 50 and 51.

¹⁴¹ Inter Interview with Robel Teshom, a detainee, Aratkilo sub-city Police department, Addis Ababa, 9 Jun 2024, Interview with Ephrem Abebe, a judge at Federal High Court Ledta Division, Addis Ababa, 23 May 2024.

¹⁴² Interview with Getasew Tilahun, a detainee, Nefas silk Lafto sub-city Police department, Addis Ababa, 3 May 2024.

¹⁴³ End the arbitrary arrests of Tigrayans, <https://www.amnesty.org/en/petition/end-the-arbitrary-arrests-of-tigrayans/> Ethiopia's Deepening Crackdown on Dissent No One Appears Safe from Arbitrary Arrest, Detention <https://www.hrw.org/news/2024/03/04/ethiopias-deepening-crackdown-dissent> accessed on 08/06/2024

¹⁴⁴ Update on the Human Rights situation in Ethiopia June 2024 <https://www.ohchr.org/sites/default/files/2024-06/OHCHR-Update-HR-situation-in-Ethiopia-in-2023.pdf> page 3

¹⁴⁵ Ibid

3.2 The Implementation of Constitutional Rights of Detainees under Police Custody

3.2.1 Prohibition of forced confession and torture

We have seen in Chapter Two that, according to the law, it is prohibited to force someone who has been captured to confess or acknowledge guilt.¹⁴⁶ The use of “any inducement, threat, promise, or any other improper method” by an investigating police officer is prohibited.¹⁴⁷ This research shows that one of the causes of false confessions is the use of illegal interrogation methods, such as repeatedly slapping, kicking, punching, and beating with sticks and gun butts, causing physical and mental pain, or torture.¹⁴⁸ In some cases, these abuses and the resultant forced confessions are reported to court by detainees although as many of the abuses go unreported as well because of fear of retaliation or a lack of trust in the justice system.¹⁴⁹ When detainees file complaints, the court typically instructs only the police and the prosecutor to investigate the matter, rather than involving an impartial body.¹⁵⁰

This explains why an innocent person might admit to something they did not do.¹⁵¹ Confession is seen by police officers, investigators, and prosecutors as crucial to a successful prosecution. To obtain confessions and other evidence quickly, investigators frequently resort to torture and other illegal means; however, Ethiopian law recognizes the protection of human rights and the necessity of excluding tortured confessions. But in reality, torture and coerced confessions still happen.¹⁵²

The Ethiopian Constitution and the international human rights treaties it has ratified stipulate that the ban on torture and other forms of ill-treatment is non-derogable and cannot be suspended, even in times of emergency.¹⁵³ In practice, however, arrested persons are subjected to torture and other ill-treatments.¹⁵⁴ Government officials explained that torture is unacceptable and said that they brought to justice some law enforcement agents responsible

¹⁴⁶ Article 19(5) of the FDRE Constitution

¹⁴⁷ Article 31 of the Criminal Procedure Code

¹⁴⁸ Interview with Ahemed Mohammed, a Lawyer, Addis Ababa, 5 April 2024, Interview with Chalachew Fekadu Detainee at Kirkos sub-city police division, Addis Ababa, 01 June 2024.

¹⁴⁹ Ibid

¹⁵⁰ Ibid

¹⁵¹ Interview with Ahemed Mohammed, a Lawyer, Addis Ababa, 5 April 2024

¹⁵² Ibid

¹⁵³ <https://ehrc.org/download/executive-summary-national-inquiry-into-persons-deprived-of-liberty/> Ethiopian Human Right Commission Report on National Inquiry into persons deprive of Liberty March 2024, page accessed on 28/06/2024

¹⁵⁴ Ibid

for acts of torture and other ill-treatments.¹⁵⁵ Nonetheless, reports show that torture is widely used as a tool of criminal inquiry to extract confessions or as an abuse of authority for one's own benefit.¹⁵⁶

3.2.2 The right to be brought before a court of law

Arrested persons have the constitutional right to be brought before a court of law.¹⁵⁷ The time that would be reasonably required to travel from the place of arrest to the court is not included in the 48-hour window.¹⁵⁸ If the police or other law enforcement officer do not present the arrested individual before the court within 48 hours, the person has the right to petition the court for an order granting their physical release.¹⁵⁹

However, contrary to the requirements of the law, it was found out that often detainees were brought to court after 48 hours have lapsed¹⁶⁰ and some were never brought to court.¹⁶¹

3.2.3 Right to bail

The FDRE Constitution guarantees the right to bail unless the deprivation of liberty is found absolutely necessary.¹⁶² The Constitution allows the imposition of conditions that need to be met for bail to be granted. The Criminal Procedure Code provides for cases in which bail may be denied.¹⁶³

The participants of this study have intimated that most of the time, the police does not respect court order granting bail to persons under their custody.¹⁶⁴ This act of non-compliance is justified by the police officials as a preventive act against detainees that may not comply with the bail conditions. Often they appeal the bail decision and they normally keep the person granted bail until the higher court makes ruling on their appeal.¹⁶⁵ Sometimes, police filed

¹⁵⁵ Ibid

¹⁵⁶ Ibid

¹⁵⁷ Article 19 of the FDRE constitution

¹⁵⁸ The Criminal Procedure Code article 49

¹⁵⁹ Id Article 19 (4)

¹⁶⁰ Interview with Ahmedin Amin Detainee at Nifas Silk Lafto sub- city police division, Addis Ababa, 01 June 2024.

¹⁶¹ Interview with Berket Markos, Former Judge now a Lawyer, Addis Ababa, 5 April 2024

¹⁶² Article 19(6) of the FDRE Constitution

¹⁶³ Article 63 of the Criminal procedure code

¹⁶⁴ Interview with Ahemed Mohammed, a Lawyer, Addis Ababa, 5 April 2024, Interview with Chalachew Fekadu Detainee at Kirkos sub- city police division, Addis Ababa, 01 June 2024

¹⁶⁵ Interview with Inspector Mesfin Haile a head of interrogation and investigation unit Arat Kilo police station, March 30, 2024.

another charge immediately after the court's decision, filed repeated bail appeals, or transferred detainees to regional jurisdictions to face another charge.¹⁶⁶

As noted earlier, there are some circumstances based on the type of the case where the grant of bail by court is denied by the police. 'An example here is the case of the renowned journalists: Solomon Shumye, Meaza Mohammed, and Temesgen Desalegn who were granted bail by the Federal First Instance Court resulting in their release but the federal police immediately appealed the judge's decision to the High Court. The High Court overruled the lower court's decision, and the three journalists were returned to police custody'.¹⁶⁷

There is often an unwillingness among police to release suspects who have obtained bail from the court. They frequently face challenges when enforcing bail rights, including requests for money for release, even in cases where the crime could be addressed through a police warrant.¹⁶⁸ Additionally, some police stations may demand money or provide unjustified reasons for not releasing suspects, even when the court has ordered their release.¹⁶⁹

3.2.4 The Right to Visitation

Every person in custody must be permitted to communicate with and receive visits from their spouses or partners, close friends, family members, clergy, medical professionals, and attorneys.¹⁷⁰ The context in which this right may be denied as an exception is not stated in this clause. During visitation hours, families, friends, clergy, and legal representatives are permitted to see the detainees. However, according to a police officer, this right may temporarily be limited if permitting family members or legal representation to visitation could interfere with the inquiry.¹⁷¹ The time allotted for visits with the arrested individuals is

¹⁶⁶ Interview with Berket Markos, Former Judge now a Lawyer, Addis Ababa, 5 April 2024

¹⁶⁷ The reporter, Ethiopian police refuse to release journalists granted bail <https://www.thereporterethiopia.com/24161/> accessed on 25/07/2024 page 1

¹⁶⁸ Interview with Henok Workenh, was arrested, Ledeta sub-city Police station, Addis Ababa, 4 Jun 2024, Interview with Tedrowes Alelegn, was arrested, Lebu Police station, Addis Ababa, 4 Jun 2024. And Interview with Ahemed Mohammed, a Lawyer, Addis Ababa, 5 April 2024.

¹⁶⁹ Ibid

¹⁷⁰ FDRE constitution article 21 sub 2

¹⁷¹ Interview with Deputy Inspector Amenstisa teshom, Addis Ababa lebu Police station, Addis Ababa, 10 July 2024, And Interview with Inspector Ferezer Eanyew, Nefaslik Lafto sub-city police division, Addis Ababa, 01 June 2024.

sufficient; nonetheless, there are instances in which the police impose time restrictions, and guards at the detention center may refuse family visits.¹⁷²

The Commission's findings regarding Federal High Court case file No. 309065 (Federal Police crime investigation *Biro v. Defendants Bekele Birara*) reveal that suspects are held in secret locations and are denied their rights to communicate and receive visits from their families which violates the right to visitation.

In the case, *Ministry of Justice Attorney General vs. Suspected Bimerke Alelegn* (4 people), Federal First Instant Court Case File No. 250978, the detainees reported to the court that their constitutional rights were not being upheld which relates to their denial of visitation is experienced based the defendant appeals to the court upholds their right to visitation by ordering the federal police crime investigation to respect their right to visitation. After the order of the visitation, the prosecutor filed a charge against the *Suspected Bimerke Alelegn* (35 people), at the Federal High Court with File no 326224 They alleged that they were detained in a police facility without contact with other prisoners and that they were denied visits from family, religious figures, and legal counsel. The court directed the Addis Ababa Police Commission and the Federal Police Commission to ensure that these constitutional rights are strictly enforced without any conditions, requiring immediate corrective measures to address the violations reported. A week later, the suspects submitted a complaint to the court, alleging that the police officers had not followed the court's order. In response, the court reiterated its previous order to the police officers and additionally instructed them to provide a written explanation for their failure to implement the order the court issued a three month fine on the police from its monthly payment.

3.2.5 The right to legal counsel

The right to legal counsel is guaranteed both under the Ethiopian Constitution and the Criminal Procedure Code. The Criminal Procedure Code stipulates that anyone who is arrested or held in custody must be allowed to promptly contact and consult with their lawyer. They must also be provided with the means to communicate in writing if requested.¹⁷³

¹⁷² Interview with Henok Workenh, a detainee, Ledeta sub-city Police station, Addis Ababa, 4 Jun 2024,

¹⁷³ article 20(5) of the FDRE Constitution and Criminal Procedure Code of Ethiopia article 61

Legal representation is not necessary during the initial stages of an investigation.¹⁷⁴ However, everyone arrested has a right to immediately be entitled to phone and speak with their lawyer, and if needed, they will be given the tools to write.¹⁷⁵ In practice, the defendant is not allowed to appear with his representative during the police preliminary investigation or police questioning. Similarly, the law does not expressly require that custody authorities provide free legal aid services to individuals who cannot afford them on their own during the pre-trial phase.¹⁷⁶ In the case of detainees who are unable to be represented by a lawyer for financial reasons, legal representation by a public defender will kick in when the public prosecutor files charges against them.¹⁷⁷ Until then, they will manage all aspects of the interrogation procedure and bail arrangements independently. The response from both the police investigator and the public prosecutor remains the same.

A vital bulwark against the violation of someone's human rights when they are arrested or detained is the right to legal representation, especially for those who are being held pending trial. Detainees are frequently the subject of police investigations while in detention, and they run a higher chance of suffering cruel treatment during questioning if they don't have legal representation.¹⁷⁸ A criminal suspect needs legal counsel regarding the allegations made against them, whether it makes sense to use their right to silence when questioned by police, or the terms and length of their incarceration.¹⁷⁹ Defendants are also prohibited from having attorneys present for any first police questioning or inquiries.¹⁸⁰ Furthermore, the law does not require custody authorities to provide free legal representation to anyone who cannot afford it during the pretrial phase. Defendants are often informed that they will have legal representation following the filing of charges by the public prosecutor. Until then, they are in charge of overseeing the interrogation procedure and arranging the bail on their own.¹⁸¹

¹⁷⁴ Lamessa Gudeta Guder, 'The Right to legal counsel in Ethiopia: evidence obtained in absence of legal council ' *Jornal of Management and science*, 13 (1) 2023 page 59-64 p 44

¹⁷⁵ Interview with Berket Markos, Former Judge now a Lawyer, Addis Ababa, 5 April 2024

¹⁷⁶ Ibid

¹⁷⁷ Ibid

¹⁷⁸ Interview with Yonas Mulugeta, Human Rights expert, Ethiopian Human Rights Commission, Addis Ababa, 8 August 2024; Interview with Berhanmrskel wagari, a former president at high Court, Addis Ababa, 02 August 2024.

¹⁷⁹ Ibid

¹⁸⁰ Interview with Jemila Kebert, a Lawyer, Addis Ababa, 30 May 2024.

¹⁸¹ Interview with Yonas Mulugeta, Human Rights expert, Ethiopian Human Rights Commission, Addis Ababa, 8 August 2024; Interview with Melaku Menigistu , a prosecutor at Ledeta Division, Addis Ababa, 18 May 2024.

Even yet, to provide equal access to justice, the law provides everyone the right to legal representation.¹⁸² However, the legislation is silent on the best way to organize this consultation.¹⁸³ Those who can afford legal representation can speak with their lawyer directly or through an intermediary, while those who cannot afford one must wait for the court to assign one.¹⁸⁴ Due to the possibility that many people who are detained are ignorant of their rights, this leads to inequality and possible injustice.¹⁸⁵

¹⁸² Article 20(5) of the FDRE constitution

¹⁸³ Interview with Faris Abebaw, an detainee, Kirkos sub-city Police department, Addis Ababa, 11 May 2024; Interview with Anetnh deres, a Lawyer, Addis Ababa, 30 May 2024; and Interview with Weyeni G/gezabeher , a judge at Federal First Instance Court Arada Division, Addis Ababa, 9 July 2024.

¹⁸⁴ Interview with Asahiba Buzuneh, a judge at Federal First Instance Court ledeta Division, Addis Ababa, 22 May 2024; interview with Eayueal Amar, a detainee, Federal Police Crime Investigation Bureau Head office, Addis Ababa, 19 April 2024.

¹⁸⁵ Ibid

Chapter Four

Judicial safeguards of the rights of persons under police custody

4.1. Introduction

This chapter will discuss the state of judicial safeguards about claims and petitions regarding cases involving persons under police custody. In the next section, the researcher looks at the judicial body see judicial treatment of allegations of inhumane treatment and torture, specially cases involving such matters as equality before the law, The Right to Counsel, Temporary Release (Right to Bail), Habeas Corpus, Right to be Present during the Trial Federal court cases related to such rights violations and other system. Specifically, this chapter explores i) the rights of arrested persons that are commonly violated in Ethiopia, ii) remedies for such violations, iii) the role of judges in protecting and safeguarding the rights of those who have been arrested, and iv) the challenges and limitations of the country's court system in enforcing the rights of arrested persons during a criminal investigation.

4.2. Judicial Treatment of Allegations of Inhumane Treatment and Torture

It is clear by now that the Ethiopian legal system protects every person from cruel, inhuman, or degrading treatment or punishment.¹⁸⁶ The use of inducements, threats, promises, or any other improper methods by investigating police officers is strictly prohibited.¹⁸⁷ The Constitution aims to prevent the use of force or coercion to extract confessions or admissions by making evidence obtained through such means inadmissible in court.¹⁸⁸

In Chapter Three, the study has documented the practice of ill-treatment of people at the time of their arrest and during subsequent detention. The courts receive reports of incidents of physical confrontations by the police, lack of access to prescribed medication by detainees while in custody, and intensive solitary confinement are commonly cited in such reports.¹⁸⁹ In instances where a suspect is not feeling well, the police are usually advised by the court to make them available for immediate medical treatment. Detainees should be transferred to a

¹⁸⁶ Article 18 of the FDRE constitution

¹⁸⁷ Article Art. 31 of the Criminal Procedure Code of Ethiopia

¹⁸⁸ Article 19 (5) of the FDRE constitution

¹⁸⁹ Interview with Asahiba Bizuneh, a Judge at The Federal First Instant Court Ledeta Dision, Addis Ababa at 22 May 2024

place that has enough food and good sanitation, even if no complaints are received about the state of the prison cell.¹⁹⁰

If detainees make complaints about the failure of the police to comply with the orders, the court gives further orders to the police and also to the prosecutor to investigate. In some cases, the court directs the Ethiopian Human Rights Commission to investigate and submit a report to it. Informants of the study argued that if the allegation of mistreatment is confirmed, the court may impose monetary penalties or imprisonment.¹⁹¹

As noted in Chapter Two, it is illegal to force someone who has been arrested to confess or make admissions.¹⁹² Confessions made in court are considered judicial confessions,¹⁹³ while those made to the police are classified as extra-judicial confessions.¹⁹⁴ Confessions made in court are regarded as more reliable.¹⁹⁵ If arrested individuals claim that their confessions at the police station were coerced, doubts may arise about the evidence. Suspects are often under duress, and the court will remind them of their right to make a voluntary confession.¹⁹⁶ This frequently leads to revisions of earlier confessions, as forced confessions by the police are not uncommon.¹⁹⁷

One notable case highlighting the issues with arbitrary arrest and the resultant human rights violations is the *Federal Police Crime Investigator v. Defendants Debeb Bshawered (12 people)*, *Federal High Court Case File No. 309066*. In this case, the detainees reported to the court that their human rights were severely violated during their detention and they provided the names of those responsible for the mistreatment, and the court ordered the Ethiopian Human Rights Commission to investigate and report on the allegations. The Commission's investigation confirmed that human rights violations had indeed occurred. The findings

¹⁹⁰ Ibid

¹⁹¹ Interview with Belete Alemu a judge at Federal High Court Ledeta Division, Addis Ababa, 25 July 2024; Interview with Weyeni G/gezabeher , a judge at Federal First Instance Court Arada Division, Addis Ababa, 9 July 2024 and Interview with Berhanmrskel wagari, a former president at high Court, Addis Ababa, 02 August 2024.

¹⁹² FDRE constitution article 19 (5)

¹⁹³ Articles 35 and 134 of Criminal Procedure of Ethiopia

¹⁹⁴ Id article 27

¹⁹⁵ Id article 35 and 134

¹⁹⁶ Interview with Weyeni G/Eaziyabeher, and Biniyam mekibeb a Judge at The Federal First Instant Court Arada Division, Addis Ababa at 9 July 2024

¹⁹⁷ Interview with Melaku Mengistu, a prosecutor at Ledeta Division, Addis Ababa, 18 May 2024

revealed several cases of abuse: the individuals were arrested without a court order, subjected to unnecessary force in front of their families when they were arrested, and detained in camps and they were kept in dark rooms for periods ranging from six to twenty-two days, during which they were tortured both physically and psychologically. They were denied food and medical care, and their religious identity was disregarded. Additionally, their homes were searched without a court warrant.

Before the human rights report was presented, the defendants were released on bail. Despite the serious findings of the report, the court did not take any action based on it. Additionally, neither the Ethiopian Human Rights Commission nor the victims pursued further legal action, closing the case without any consequences or punishment for the violations that resulted in the report.

4.2.1. The Right to Counsel

We have noted in Chapter Two that the right to effective legal assistance is enshrined in Article 21(2) of the FDRE Constitution, which states that "all persons shall have the opportunity to communicate with, and be visited by, their spouses or partners, close relatives, friends, religious councilors, medical doctors, and their legal counsel." The FDRE Constitution also protects the right to representation, which includes free legal aid in cases when the suspect lacks adequate finance.

The FDRE Constitution does not clarify the exact moment where the right to legal counsel can be exercised. In fact, the absence of this specific right from the list of rights of arrested persons enshrined under article 19 of the Constitution has often been interpreted as non-recognition of the right for arrested persons. However, Article 61 of the Criminal Procedure Code provides that: "Any person detained on arrest or remand shall be permitted forthwith to call and interview his advocate and shall if he so requests, be provided with the means to write."

It is evident that the absence of legal counsel for individuals under police custody profoundly affects their rights and the judicial process. In the courtroom, it becomes apparent that detainees lacking representation often struggle to assert their legal rights, comprehend the charges, and effectively participate in their defense. This absence can lead to unfair

interrogations, coerced statements, and a heightened risk of wrongful convictions.¹⁹⁸ Individuals without counsel are more vulnerable to procedural abuses and are less likely to challenge the legality of their detention or the admissibility of evidence.¹⁹⁹ The lack of legal representation fundamentally undermines the principles of due process and justice, as it impedes the detainee's ability to mount an effective defense and compromises the fairness of the trial process.²⁰⁰ Ideally, public defenders should be appointed at the start of the police investigation.²⁰¹

Failure to promptly provide legal counsel to individuals under police custody significantly impacts their rights and the overall fairness of the legal process. Without timely access to a lawyer, detainees are deprived of crucial legal guidance and representation during interrogation and throughout their detention.²⁰² This lack of legal support are lead to coerced confessions, infringements on the right to a fair trial, and an inability to effectively challenge the legality of their detention.²⁰³ Consequently, delays in providing legal representation undermines the principles of justice and can result in significant legal and personal consequences for the affected individuals.²⁰⁴

In the case *Federal Police Crime Investigator and Federal Justice Office v. Suspected Bimerke Alelegn* (4 people), Federal High Court Case File No. 326224, the detainees reported to the court that their constitutional rights were not being upheld. They alleged that they were detained in a police facility without contact with other prisoners and that they were denied visits from family, religious figures, and legal counsel. The court directed the Addis Ababa Police Commission and the Federal Police Commission to ensure that these constitutional rights are strictly enforced without any conditions, requiring immediate corrective measures

¹⁹⁸ Interview with Asahiba Buzuneh, a judge at Federal First Instance Court ledeta Division, Addis Ababa, 22 May 2024.

¹⁹⁹ Observation from the researcher in court Ledeta and Arada court

²⁰⁰ Interview with Anetnh deres, a Lawyer, Addis Ababa, 30 May 2024.

²⁰¹ Interview with Weyeni G/Gezabeher , a judge at Federal First Instance Court Arada Division Bench, Addis Ababa, 9 July 2024, Interview with Subagaderas G/medhen, a prosecutor at Kirkos Division, Addis Ababa, 18May 2024 and Interview with Ameha Tadess , a former judge at First Instance Court, Addis Ababa, 20 February 2024.

²⁰² Interview with Berekt Markos, a Lawyer, Addis Ababa, 30 May 2024 and Ameha Tadess , a former judge at First Instance Court, Addis Ababa, 20 February 2024

²⁰³ Ibid

²⁰⁴ Interview with Jemila Kebert, a Lawyer, Addis Ababa, 30 May 2024.

to address the violations reported. A week later, the suspects submitted a complaint to the court, alleging that the police officers had not followed the court's order. In response, the court reiterated its previous order to the police officers and additionally instructed them to provide a written explanation for their failure to implement the order the court issued a fine on the police from its monthly payment.

4.2.2. Temporary Release (Right to Bail)

According to Article 63(1) of the Criminal Procedure Code, "Whosoever has been arrested may be released on bail where the offense with which he is charged does not carry the death penalty." Additionally, Article 19(6) of the FDRE Constitution states that in exceptional circumstances prescribed by law, the court may deny bail or demand an adequate guarantee for the conditional release of the arrested person. There is no clear answer as to what considerations sway the court in either direction since judicial practice in this area is not consistent, while others deny bail if the offense for which the person is being held is punishable by 15 years or more rigorous imprisonment, or if the person accused of the crime is likely to die. Article 67 of the Criminal Procedure Code specifies additional reasons for refusing bail applications.

The right to bail is a fundamental aspect of ensuring justice and protecting individual freedoms while balancing public safety. When individuals are granted bail, they face a range of challenges upon release, including potential difficulties in securing employment, reintegrating into their community, and managing the conditions imposed by the court.²⁰⁵ In the courtroom, it is evident that the process of setting bail and its subsequent impact can significantly affect a person's life.²⁰⁶ Detainees released on bail struggle with the stigma of their arrest, which can influence their social and professional standing. Additionally, the conditions attached to bail, such as frequent check-ins or travel restrictions, can further complicate their daily lives.²⁰⁷ Observing these challenges highlights the need for the judicial system to carefully consider both the conditions of bail and the broader implications for

²⁰⁵ Interview with Desta litamo, a former Judge at high Court, Addis Ababa, 5 August 2024.

²⁰⁶ Interview with Ephram Abebe a judge at Federal High Court Ledta Division Bench, Addis Ababa, 23 May 2024.

²⁰⁷ Interview with Jemila Kebert, a Lawyer, Addis Ababa, 30 May 2024.

individuals to ensure that justice is served while respecting their rights and facilitating their reintegration into society.²⁰⁸

When a court orders the release of an individual from police custody and the police fail to comply, the court typically takes several measures to address the situation. Initially, the court issued a formal order compelling the police to release the detainee immediately. If the police continue to ignore the order, the court can escalate the issue by holding the police in contempt. This may involve issuing a reprimand or a fine in severe cases. The court may also consider taking legal action against the responsible officers or the police department to ensure compliance with judicial orders and uphold the detainee's rights.²⁰⁹

When the right to bail is not upheld by the judge or enforced by police officers, it significantly impacts the rights and well-being of the arrested individual. Failure to grant bail or adhere to bail conditions can result in prolonged detention without due process, infringing upon the individual's right to a fair trial and personal freedom.²¹⁰ Such neglect leads to undue hardship, including psychological stress, loss of employment, and disruption of personal and family life.²¹¹ Nowadays, there is a growing concern that police are not consistently following court orders regarding the release of detainees. Despite court directives to release individuals from custody, there are reports that the police often fail to comply with these orders.²¹² Complaints are brought to court after individuals are released, but the police do not act on them. The police provide various reasons for their inaction, but these reasons are not legally justified.²¹³

²⁰⁸ Interview with Abdurahman Kiyar, a judge at Federal First Instance Court Arada Division, Addis Ababa, 18 May 2024. and Interview with Asahiba Buzuneh, a judge at Federal First Instance Court Ledeta Division, Addis Ababa, 22 May 2024.

²⁰⁹ Interview with Ephram Abebe, Sentayehu Berecha and Belete Alemu Judges at The Federal high court Ledeta Division, Addis Ababa, 25 July 2024.

²¹⁰ Interview with Antenh deres a Lawyer 30 May 2024.

²¹¹ Ibid

²¹² Interview with Habtamu Arefayne Judge at The Federal First Instance court Arada Division, Addis Ababa, 9 July 2024.

²¹³ Homsam Ali v. Immigration and Citizenship service, Federal First instance court case Fil number 315561, Federal Police Commission Crime Investigation Bearo v. en Melak Mesale Mengestu, Federal High Court Case File No. 309066. And Federal Police Commission Crime Investigation Bearo and federal justice office v. en Bimerk Alelegn Gesese(23 people), Federal High Court Case File No. 309067

In the case, *Bole Sub-City Police Office v. Suspects Deputy Sajen Saleamelak Keberet*, Federal High Court Case File No. 321432, the suspects were released on bail, but the police failed to release them for over three months. The suspects' families filed a complaint with the court. The court ordered (i) the police to explain their failure to implement the order, and (ii) the suspects to be brought to court. When the Bole Sub-City Police Office failed to comply, the court issued a new order for the arrest of the investigator from the Bole Sub-City Police Office. However, at the next court appointment, the investigator was still not present; instead, a representative who was unfamiliar with the case attended. Consequently, the court issued a third order for the arrest of Commander Yesema Jenber from the Bole Sub-City Police Office. The court imposed a one-month imprisonment on the commander for not following the order and mandated the immediate release of the suspects. Then, the court ordered the Addis Ababa Prison Administration to effect the imprisonment. This marks a significant milestone for the Ethiopian legal system in safeguarding the rights of individuals who are arrested or detained. The message from this decision is clear and assertive: A police officer is not exempt from accountability if they fail to fulfill their duty to lead criminal investigations and ensure the rights of those involved.

4.2.3. Habeas Corpus

All persons have the inalienable right to petition the court to order their physical release if the arresting police officer or law enforcer fails to bring them before a court within the prescribed time and to provide reasons for their arrest. According to Article 19(4) of the Ethiopian Constitution, "Where the interests of justice necessitate it, the court may order the detained individual to stay in custody or, when asked, remand him for the period strictly required to conduct the appropriate inquiry. In deciding the additional time required for investigation, the court must guarantee that the appropriate law enforcement authorities investigate by respecting the arrested people's right to a speedy trial." Article 177 of the Civil Procedure Code states that an application for habeas corpus may be filed in court "by the person restrained otherwise than in pursuance of an order duly made" under the Civil Procedure Code or Criminal Procedure Code if such restraint is unlawful or lacks legal justification, to seek immediate relief through the court for the restoration of personal liberty. If the person restrained cannot make the application, any other person may do so on his or her behalf, according to Article 177(2) of the criminal procedure code.

The importance of habeas corpus lies in protecting individual freedom and preventing abuse of power by the state. While compensation may be awarded in cases of wrongful detention, the ultimate goal is to secure the release of the individual and uphold the principle of due process.²¹⁴ Therefore, it is generally understood that the right to liberty protected by habeas corpus is of greater importance than any monetary compensation that may be awarded as a result of a violation of this right.²¹⁵ As unlawful arrests increase, individuals are filing Habeas Corpus petitions in court. Within one month, more than ten cases have been opened in a single court.²¹⁶ There has been an increase in the number of Habeas Corpus petitions filed, reflecting growing concerns about unlawful detention.²¹⁷

Individuals often face several challenges when filing a Habeas Corpus case, which can be daunting for those without legal expertise. Petitioners frequently struggle to understand the necessary documentation and proper format for their filings. Additionally, delays in the judicial process can result in extended periods of uncertainty for those involved.²¹⁸

The capacity and efficiency of the judiciary in handling the growing number of Habeas Corpus cases are critical factors affecting the timely resolution of these cases. As the volume of petitions increases, the judiciary's ability to process and address them effectively can be strained, leading to potential delays and extended periods of uncertainty for petitioners. Enhancing the capacity and efficiency of the judicial system is essential to ensure that Habeas Corpus cases are resolved promptly and that individuals' rights are promptly protected.²¹⁹

In the case *Hailemicheal Mama v. Addis Ababa Police*, Federal first instance court file no. 248049, the court sought an explanation from the police for their failure to release the suspect despite having presented him in court. The police reported that the suspect had been detained on formal charges and that the case had been transferred to the federal police for investigation under the emergency proclamation due to terrorism concerns.

²¹⁴ Gebregiyorgis Gidey v. Federal Prosecutor Federal High court case No. 292170

²¹⁵ Interview with Ephrem Abebe, a judge at Federal High Court Ledta Division, Addis Ababa, 23 May 2024.

²¹⁶ Interview with Habtamu Arefayne Judge at The Federal First Instance court Arada Division, Addis Ababa, 9 July 2024.

²¹⁷ Interview with Yonas Mulugeta, Human Rights expert, Ethiopian Human Rights Commission

²¹⁸ Interview with Antenh Deres a lawyer Addis Ababa, 30 May 2024.

The court reviewed the case and concluded that the suspect, arrested on 06/07/2016, was being held under conditions related to terrorism, which affected the application of normal criminal procedures. Article 9(4) of Emergency Proclamation No. 6/2021 exempts such cases from standard criminal procedure laws. Nonetheless, the court found that the decree under Article 8 did not sufficiently ensure accountability. Consequently, the court ordered the suspect's release on bail, as Article 6(7) of the proclamation prohibits such detention. Despite this order, the Addis Ababa Police failed to comply. Therefore, the court instructed the Federal Police Commission and the Director of the Addis Ababa Police Commission's Violation and Organized Crimes Directorate, Deputy Commissioner Sheferaw Tutu, to be arrested and brought to court within 24 hours. The court issued a Rebuke to the police to respect its decision.

4.2.4. Right to be Present during the Trial

The FDRE Constitution guarantees the right to appear before a court within 48 hours of being detained. The 48-hour period does not include the time required for the police station to relocate. The Constitution mandates the police to deliver a suspect within 48 hours who has been apprehended and detained in custody.²²⁰ Similarly, the Criminal Procedure Code of Ethiopia anticipates the suspects' production within 48 hours. The prisoners have the right to be given a prompt and specific clarification of the grounds for their detention on account of the alleged crime committed while appearing before a judge.

Police occasionally fail to make arrests within the legally prescribed timeframe. This delay undermines the efficiency of the judicial process and potentially infringes upon the rights of both the accused and the complainants.²²¹ The legal system mandates that arrests should be carried out promptly to ensure justice is administered without undue delay. When such delays occur, they compromise the integrity of investigations and affect the overall effectiveness of law enforcement.²²²

The judiciary issues orders to compel law enforcement agencies to adhere to statutory deadlines for making arrests. Additionally, the court will review the reasons for delays and assess whether they stem from administrative inefficiencies or procedural shortcomings. In

²²⁰ Article 20 of the FDRE constitution

²²¹ Interview with Abdurahman Kiyar Judge at The Federal First Instance court Arada Division, Addis Ababa, 18 May 2024.

²²² Interview with Melaku Mengistu a prosecutor at Ledeta Division, Addis Ababa, 18 May 2024

cases where systemic issues are identified, judges take measures to improve police responsiveness and ensure adherence to legal standards.²²³ Courts impose sanctions or recommend disciplinary actions against officers who repeatedly fail to comply with arrest protocols. These measures aim to enhance the accountability of police forces and reinforce the importance of timely arrests in maintaining the rule of law.²²⁴

In the cases between *Federal Police Crime Investigator vs Debeb Bshawered (12 people)*, *Federal High Court Case File No. 309066*, *Federal Police Crime Investigator v. Defendants Melaku Melase (16 people)* *Federal High Court Case File No. 309067*, the detainees reported to the court that their right to be present during their trial had been violated, as they had not been brought to court for several weeks after their arrest. Despite these claims, the court only issued an order for the Ethiopian Human Rights Commission to investigate the matter and did not take any additional measures to ensure accountability.

4.2.5. Equality before the law

The right to equality before the law and equal treatment by the law applies to everyone equally, regardless of race, nation, nationality, social origin, color, sex, language, religion, political or another viewpoint, property, birthplace, or other position.²²⁵ All judges say that every suspected person is equal before the law and that discrimination practically seldom occurs in court. This is a fundamental principle that judges must uphold to maintain the integrity and fairness of the legal system.²²⁶ By applying the law consistently, treating all parties with respect and fairness, and ensuring access to justice for all, a judge can help uphold justice.

In recent times, there have been numerous reports of individuals being arrested based on their religion, social origin, or political views.²²⁷ The researcher was informed by a former member of the judiciary that, as judges, they uphold the principle of impartiality, ensuring that every person is treated equally before the law. We meticulously review each case to determine if

²²³ Interview with Abdurahman, a judge at Federal First Instance Court Arada Division, Addis Ababa, 18 May 2024, and Biniyam Mekebeb Judge at The Federal First Instance Araada Division, Addis Ababa, 9 July 2024.

²²⁴ Interview with Weyeni G/Gezabeher Judge at The Federal First Instance court Arada Division, Addis Ababa, 9 July 2024.

²²⁵ Article 25 of the FDRE Constitution, Article 4 of the Criminal Code

²²⁶ Interview with Belete Alemu, Sentayehu Berecha and FatumabAman a Judge at The Federal High Court Ledeta Division Bench, Addis Ababa at 25 July 2024.

²²⁷ Interview with Yonas Mulugeta, Human Right expert, Ethiopian Human Rights Commission, Addis Ababa, 8 August 2024

there is a legitimate legal basis for the arrest. If we find that no such basis exists, we either dismiss the case or, if appropriate, issue a bail order for the individual's release.²²⁸ Furthermore, when an arrested person brings forward concerns about their treatment, the Ethiopian Human Rights Commission and the police are instructed to investigate whether their rights have been violated. This approach reflects the court's commitment to fair and equitable legal processes.²²⁹ Sometimes parties request the recusal of a judge if they believe there is a conflict of interest or bias.²³⁰ The request should be based on valid grounds such as a personal connection to the case or any other reason that might affect the judge's impartiality.²³¹

²²⁸ Interview with Desta Litamo a former Judge at The Federal High court of Ethiopia, Addis Ababa at 5 August 2024.

²²⁹ Interview with Fatuma Aman and Sentayehu brecha, a judge at Federal High Court Ledeta Division Adsis Ababa, 25 July 2024.

²³⁰ Interview with Berhanmrskel wagari, a former president at high Court, Addis Ababa, 02 August 2024; Interview with Asahiba Buzuneh, a judge at Federal First Instance Court ledeta Division, Addis Ababa, 22 May 2024.

²³¹ Ibid

Chapter Five

Conclusion and Recommendations

5.1 Conclusion

The summarised conclusions on the findings aim to enhance the provision of comprehensive collaborative protection of the rights of persons under police custody. It is clear that the protection of persons under police custody needs proper implementation of the FDRE constitution, Criminal Procedure Code, and other National and ratified international instruments.

This study has shown that persons under police custody are subject to Torture and ill-treatment, including incommunicado detention, and intrusive body searches in prisons. Arbitrary detention, including detention in informal places, arrest without warrant, repeated and prolonged detention as a means of preventing the exercise of rights, detention in violation of bail granted by the court, Denial of access to counsel, including denial of access to legal counsel during arrest or detention or failure to provide legal counsel at the cost of the state, limitations concerning family visits by detention center guards.

Some violations and problems are conducted like norms by the police which show such patterns of violation that apply to a significant number of the population. In some instances, detainees are unaware that the authority must report the detention to families and legal representatives, and in some cases, are not informed that such notification was done. Detainees cannot decide whom to notify, and the authorities notify whoever they think is most appropriate. Authorities do not provide those parties with complete and understandable information on the situation of the person in custody. Authorities rarely record that they have notified third parties about a person's custody.

The judicial enforcement of the rights of persons under police custody is considered essential to ensure their protection. After a person is legally arrested, their rights must be safeguarded during the period they are held in custody. Judicial oversight plays a key role in monitoring these rights, particularly in cases involving violations of legal procedures, such as failure to present the detainee in court within 48 hours. In such cases, the court primarily inquires about the reasons for the delay. However, in certain instances, the court may take further action by sentencing the police officers responsible for violating court orders.

The study evaluated Ethiopia's practices regarding the treatment of people detained by the police, with a focus on Addis Ababa, the country's capital. According to a general analysis and the Ethiopian Human Rights Commission report, several detainees have reported having their constitutional rights violated while they were in the custody of the police. Even though victims of constitutional rights abuses often do not pursue additional justice, there are situations in which a court may act to address constitutional rights violations committed against individuals detained by the police. In certain situations, the detainee may not be eligible for legal assistance, and their ability to see family and friends may be limited to a shorter amount of time.

5.2. Recommendations

The writer believes the following recommendations help to rectify the issues identified by this study:

- A law that specifies the consequences or measures of ill-treatment of persons in police custody is not properly in place in Ethiopia at the moment. It is necessary to enact such a law so that violations of the rights of detainees can be properly dealt with.
- Proper and complete investigation of allegations of violations of the rights of persons in police custody needs to be made whenever such allegations are presented by the victims to hold perpetrators accountable. Furthermore, reparation mechanisms have to be designed and implemented to provide compensation to the victims in violation of the detainee's constitutional rights.
- Internal Oversight Police departments should have internal oversight mechanisms to ensure compliance with the duty to report detentions to third parties. Internal affairs or police accountability units can investigate complaints of non-compliance and hold officers accountable.
- External Monitoring Independent bodies such as human rights commissions, ombudsman offices, or NGOs play an essential role in monitoring police compliance with detainee rights. They can investigate reports of non-compliance and advocate for systemic reforms.

- A detailed law is required to elaborate the right of a person under police custody to be represented by a legal counsel, including free legal aid service when needed, starting from when the person arrives at the police station, during interrogation.

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Appendix
Addis Ababa University
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School of Law

Interview with Suspects in Police Custody and Those Arrested by the Police Who Have Been Released on Bail or Conviction

Dear Participant:- I am interviewing for a study titled by conduct this interview as part of my study entitled "The Constitutional Rights of Persons Under Police Custody in Ethiopia." The research shall cover how these constitutional rights are constituted and exercised within the context of police custody.

Please, be assured that this interview is for academic purposes only. I am committed to the highest level of ethics in conducting research, including informed consent, no harm to participants, and protecting the privacy and confidentiality of your responses. Your participation will be anonymous, and publications of results provide aggregate findings without identifying any individual contributors.

Appreciate that you took the time to do so and for enlightening me with valuable insights. Your candid and reflective responses are critical to the success of this study.

1. What was the reason for your initial arrest by the police?
2. Have you been informed that you have the right to remain silent during the interrogation and that anything you say can be used as evidence in court?
3. Have you appeared in court within 48 hours of your arrest?
4. Was it explained to you by the person who arrested you that the purpose of your detention is to restrict your freedom of movement?
5. Have you been coerced by the police into giving an incriminating statement?
6. After your arrest, were you promptly released on bail once it was approved by the court?

7. Have the police informed you that you have the right to legal aid or representation by a lawyer and that if you cannot afford a lawyer, the government will provide one for you?
8. Did the police complete their investigation and charge you within a reasonable time frame, or was the investigation terminated due to insufficient evidence?
9. Was the treatment you received at the police station respectful of your human dignity? Have you been subjected to any acts by the police that violate your human rights?
10. While in police custody, were you allowed to meet with your spouse, close relatives, friends, religious advisors, doctors, and legal representatives?
11. After your arrest and during the investigation and court proceedings, was everything translated into a language you understand?

Addis Ababa University
College of Law and Governance Studies
School of Law

Interview with Federal and Addis Ababa Investigative Police Officers

Dear Participant:- I am interviewing for a study titled by conduct this interview as part of my study entitled "The Constitutional Rights of Persons Under Police Custody in Ethiopia." The research shall cover how these constitutional rights are constituted and exercised within the context of police custody.

Please, be assured that this interview is for academic purposes only. I am committed to the highest level of ethics in conducting research, including informed consent, no harm to participants, and protecting the privacy and confidentiality of your responses. Your participation will be anonymous, and publications of results provide aggregate findings without identifying any individual contributors.

Appreciate that you took the time to do so and for enlightening me with valuable insights. Your candid and reflective responses are critical to the success of this study.

1. When you arrest a suspect, how do you explain the reason for their arrest, and do you do so in a language they understand?
2. Do you inform the people you are arresting of their right to remain silent and that any statement they make may be used as evidence, and is this information provided in a language they understand?
3. Do you explain to the suspects the reason for their arrest when they appear in court?

4. Do you provide an explanation to the court for the time it takes for the suspects you arrest to appear before it?
5. Do you release arrested individuals immediately after bail is granted by the court? If not, what is the reason for any delay?
6. Are incarcerated individuals permitted to meet with their spouses, close relatives, friends, religious advisors, doctors, and legal representatives?

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Interview with Federal Judges and Former judges

Dear Participant:- I am interviewing for a study titled by conduct this interview as part of my study entitled "The Constitutional Rights of Persons Under Police Custody in Ethiopia." The research shall cover how these constitutional rights are constituted and exercised within the context of police custody.

Please, be assured that this interview is for academic purposes only. I am committed to the highest level of ethics in conducting research, including informed consent, no harm to participants, and protecting the privacy and confidentiality of your responses. Your participation will be anonymous, and publications of results provide aggregate findings without identifying any individual contributors.

Appreciate that you took the time to do so and for enlightening me with valuable insights. Your candid and reflective responses are critical to the success of this study.

1. According to Article 19 of the Ethiopian Constitution, which of the following rights are frequently violated?
 - a) The right to remain silent;
 - b) The right to appear in court within 48 hours;
 - c) The right to have their case expedited;

- d) The right not to be forced to speak or make a statement;
 - e) The right to bail.
2. What types of problems do you think suspects in police custody might face?
 3. What actions will the court take regarding claims of abuse by these suspects? Can you provide examples? If there are specific cases you recall, please share them.
 4. What do you believe is the source of the problems described above?
 5. If you are aware of any decisions related to the issues you've mentioned, please let me know so I can refer to them for my study.

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Interview with Prosecutors, Human Rights Experts, and Lawyers

Dear Participant:- I am interviewing for a study titled by conduct this interview as part of my study entitled "The Constitutional Rights of Persons Under Police Custody in Ethiopia." The research shall cover how these constitutional rights are constituted and exercised within the context of police custody.

Please, be assured that this interview is for academic purposes only. I am committed to the highest level of ethics in conducting research, including informed consent, no harm to participants, and protecting the privacy and confidentiality of your responses. Your participation will be anonymous, and publications of results provide aggregate findings without identifying any individual contributors.

Appreciate that you took the time to do so and for enlightening me with valuable insights. Your candid and reflective responses are critical to the success of this study.

1. How would you normally inform suspects in police custody about their right to silence? What, if any, is the most common problem or difficulty encountered in ensuring that this right is protected?
2. What is the process for ensuring suspects have their right to legal counsel during police custody? Are there systemic problems affecting the actual process of legal representation?

3. How are rights regarding bail handled in actual practice? Are the processes around bail often delayed or fraught with a series of challenges that suspects have to endure?
4. Are suspects brought to court within the constitutional 48 hours? If not, what is the standard reason for the delay?
Treatment while in custody: From your experience working, what do the suspects undergo while in police custody? Do you feel concerned about respect for human dignity and constitutional rights?
5. What is done to provide access to suspects from family, religious advisors, and lawyers during custodial detention?
6. How are language barriers dealt with while in police custody and during the court process? Are there translation services?
Reporting Violations: What avenues are available for reporting and addressing violations of constitutional rights during police custody?
7. What, in your opinion, are the reforms needed for the constitutional rights of people in police custody to be better protected in Ethiopia?