

# Due Process Rights of Suspects During Pretrial and the Existing Challenges Under the Legal Frameworks of Ethiopia

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## Abstract

This is doctrinal legal research; hence, comparative approach and critical legal analysis were used. The result shows, the law do not oblige the detention authority to inform the suspects all of their due process rights. Suspects are not entitled to present with their advocates during both police interrogation and preliminary inquiry. Their right to speedy trial is not adequately safeguarded. They are not entitled to appeal against the order of remand or the period of remand in general. It is the discretion of the court to determine the type of guarantee or amount of bail bond and the suspect is not entitled to appeal against such order. The application of habeas corpus remain the jurisdiction of civil bench court of Regional High Court, which is not accessible for the suspect who is detained in Woreda police station. There is ambiguity and inconsistency among domestic laws. The government of Ethiopia should either adopt the UN Body of Principles on Detention and/or Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa or should reform domestic laws to conform to them, the Rome Statutes of ICC, ACHR and ECHR to enhance protection to due process rights of suspects.

**Keywords:** Ethiopia; Fair Trial Rights; Suspects; Pretrial; Remand; Habeas Corpus

## SECTION ONE

### 1. INTRODUCTION

#### 1.1. Background and Justification of the Study

Under the UN Body of Principles on the Protection of all Persons under any Form of Detention, or Imprisonment ('Body of Principles on Detention'), the 'suspected person' means any person deprived of personal liberty except because of conviction for an offence.<sup>1</sup> 'Deprivation of liberty' means "any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority."<sup>2</sup>

Regarding due process rights of suspected persons, there are some relevant treaty obligations mainly under the Universal Declaration of Human Rights (UDHR)<sup>3</sup> and International Covenant on Civil and Political Rights (ICCPR)<sup>4</sup>; and some relevant standards developed in non-binding instruments such as Body of Principles on Detention. Among regional human rights system, the African Charter on Human and Peoples Right (ACHPR)<sup>5</sup>, European Convention on Human Rights (ECHR)<sup>6</sup> and the American Convention on Human Rights (ACHR)<sup>7</sup> have adopted some provisions that prescribe due process rights of suspected persons.

Ethiopia ratified the ICCPR on 11 June 1993. Ethiopia acceded to the ACHPR.<sup>8</sup> Thus, both of them become part of the law of the land according to the 1995 Constitution of Federal Democratic Republic of Ethiopia (herein after Constitution).<sup>9</sup> Constitution demands its provisions dealing with fundamental rights and freedoms to be interpreted in conformity to human rights principles [emphasis added] adopted under UDHR and other international human rights instruments ratified by Ethiopia.<sup>10</sup>

In Ethiopia, both Addisu Gulilat (2012),<sup>11</sup> and Fisaha Getachew (2015)<sup>12</sup> have demonstrated that there were violations of fair trials rights of suspects during pretrial. The Human Rights Watch (2013) demonstrated, there is arbitrary detention; violation of basic due process rights such as use of coercive methods like torture or other ill-treatments to obtain confession; denial of access to lawyers and family members during pre-trial in Ethiopia.<sup>13</sup> US Country Reports on Human Rights Practices (2015) stated that authorities responsible for

<sup>1</sup> 1988 Body of Principles on the Protection of all Persons under any Form of Detention, or Imprisonment (herein after UN Body of Principles on Detention), UN Doc. A/Res/43/173, the preamble, at para (a) and (d) respectively.

<sup>2</sup> UN Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly Resolution 45/113, Rule 11, at para (a).

<sup>3</sup> 1948 Universal Declaration of Human Rights (herein after UDHR), see Article 9.

<sup>4</sup> 1976 International Covenant on Civil and Political Rights (herein after ICCPR), see Article 9, at para 1.

<sup>5</sup> 1986 African Human and Peoples' Rights charter (herein after ACHPR), Article 6, at para 2 & 3.

<sup>6</sup> 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (herein after ECHR), Article 5, at para 1.

<sup>7</sup> 1969 American Convention on Human Rights (herein after ACHR), Article 7.

<sup>8</sup> Federal Democratic Republic of Ethiopia Accession to the ACHPR, Proclamation No. 114/1998.

<sup>9</sup> Constitution of Federal Democratic Republic of Ethiopia (herein after Constitution), Proclamation No. 1/1995, Article 9, at para 4.

<sup>10</sup> Id, Article 13, at para 2.

<sup>11</sup> Addisu Gulilat, 2012, the Human Rights of Detained Persons in Ethiopia, Case Study in Addis Ababa, P.104. Unpublished LLM Thesis, School of Graduate Studies, Addis Ababa University.

<sup>12</sup> Fisaha Getachew, February 2015, the Respect for Human Rights in Pre-Trial Criminal Investigation, the Case of Oromo Special Zone Surrounding Finfine, P.56. Unpublished LLM thesis, School of Graduate Studies, Addis Ababa University.

<sup>13</sup> Human Rights Watch, October 2013, Torture and Ill-Treatment in Ethiopia's Maekelawi Police Station, P.1 and 6, available at

detention in Ethiopia violate fair trials rights of suspected persons; arbitrary arrest and detention; detention without charge and lengthy PTD are common human rights problems in Ethiopia.<sup>1</sup> The research revealed that there is violations of due process rights of detained persons in Wolaita, Southern Ethiopia.<sup>2</sup> However, no doctrinal legal research has been done regarding the adequacy of the legal frameworks of Ethiopia in safeguarding due process rights of suspects.

## 1.2. Research Questions

- a) Is the legal frameworks of Ethiopia adequately protects due process rights of suspects during pre-trial?
- b) What are the existing challenge(s) within the legal frameworks of Ethiopia with respect to adequately protecting due process rights of suspects during pre-trial?

## 1.3. Objectives of the Study

To explore whether due process rights of suspects are adequately protected or not under the legal frameworks of Ethiopia and to reveal the existing challenges (if any).

## 1.4. Significance of the Study:

The outcome of this research helps the legislature, policy makers, and other concerned body to take actions to curve the existing challenges (if any) and it will enhance the realization of due process rights of suspected persons; and it will contribute knowledge to the existing discourse in the field.

## 1.5. Methodologies of the Study

### (i) Source of Data

Both primary and secondary sources were used. The Constitution of Ethiopia, Criminal Code of Ethiopia and Criminal Procedure Code among national laws; the UDHR, ICCPR, and UN HRC General Comments on provisions of ICCPR among international human rights laws; and the ACHPR were used as primary sources of study. The UN Body of Principles on Detention; Rome statute of ICC<sup>3</sup> and the ACHR and ECHR were used as secondary sources for the sake of comparison. Besides, Books and scholarly articles were used as sources of secondary data.

### (i) Method of study

Systematic analysis of legal provisions, and principles, and logical and rational ordering of them; and comparative approach were used as the main study mechanism.

## SECTION TWO

### LEGAL FRAMEWORKS FOR DUE PROCESS RIGHTS OF SUSPECTS DURING PRETRIAL

#### 2.1. The Right to be arrested in accordance with the law

##### (i) Under the International and Regional Human Rights Laws

The right to personal liberty constitutes one of the oldest and most fundamental guarantees constitutive of a free society and the rule of law.<sup>4</sup> In recognition of arrest or detention as a legitimate means of the exercise of state authority in the administration of criminal justice, this right is not enshrined absolute like that of any other human rights, but both substantive and procedural safeguards are enshrined against unlawful deprivation of liberty by state authorities.<sup>5</sup> Hence, only arbitrary detention or arrest is prohibited under Bill of International Human Rights.<sup>6</sup> The standard established by the UDHR and the ICCPR encompasses protection against arbitrary laws in addition to protection against unlawful acts; hence; these instruments establish an international standard to which the content of national legal systems must conform.<sup>7</sup>

Both the UDHR and ICCPR failed to define the term ‘arbitrariness’. In its jurisprudence, the HRC has stated that the notion of “arbitrariness” is not be equated with “against the law”, but it should be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law

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<http://www.hrw.org> [last accessed 10 September 2019].

<sup>1</sup> United States Department of State, Bureau of Democracy, Human Rights and Labor: Country Reports on Human Rights Practices for 2015, Ethiopia 2015 Human Rights report, at p.1 and 4.

<sup>2</sup> Awol Alemayehu Dana, 2017, Procedural Safeguards & Fair Trials Rights of Detained Persons during Pretrial Crime Investigation in Ethiopia: The Law & Practice in the Case of Wolaita Zone, Southern Ethiopia, Global Journal of Human-Social Science: H-Interdisciplinary, Volume 17, Issue 7.

<sup>3</sup> 1998 Rome Statute of the International Criminal Court (herein after the Statute of ICC).

<sup>4</sup> Manfred Nowak, 2005, UN Covenant on Civil and Political Rights – ICCPR Commentary, 2nd edition, Kehl/Strasbourg/Arlington, P. 211ff; see also Pieter van Dijk/Fried van Hof/Arjen van Rijn/Leo Zwaak (eds.), 2006, Theory and Practice of the European Convention on Human Rights, Antwerpen/Oxford, P. 455ff.

<sup>5</sup> ICCPR, Article 9, at para 1; ACHPR, Article 6; Constitution, Article 17.

<sup>6</sup> The UDHR, ICCPR & its optional protocols and the ICESCR are considered as Bill of International Human Rights.

<sup>7</sup> Laurent Marcoux, Jr., *Protection from Arbitrary Arrest and Detention under International Law*, 5 B.C.Int'l & Comp. L. Rev. 345 (1982), p. 375. Available at: <http://lawdigitalcommons.bc.edu/iclr/vol5/iss2/3>

elements of reasonableness, necessity and proportionality.<sup>1</sup>

Kristin Hausler and Robert McCorquodale, have stated that detention must be devoid of arbitrariness and therefore be legal, reasonable and necessary in any circumstances.<sup>2</sup> Similarly, Claire Macken, 1966, has stated, the word ‘arbitrary’ should be understood to mean arrest and detention either on grounds or in accordance with procedures other than those established by law or under the provisions of a law the basic purpose of which is incompatible with respect for the right to liberty and security of person.<sup>3</sup>

Not only the UDHR and ICCPR, but also the ECHR, ACHR and ACHPR do not provide enumeration of the permissible grounds for depriving the right to personal liberty. However, all of them clearly prescribe that a person may be detained on criminal charges. On the other hand, all of them adopted principles of prohibition of retroactive effect of penal law and retroactive increase in penalty;<sup>4</sup> and prohibition of ‘Double Jeopardy’<sup>5</sup> as ways of diminishing scope of arbitrary detention. The ICCPR and Protocol one of the ECHR expressly prohibits imprisonment on the ground of inability to fulfil a contractual obligation;<sup>6</sup> and the ACHR has been prohibiting detention on the ground of debt.<sup>7</sup>

Detention is only reasonable under the ECHR if: (a) there is a reasonable suspicion that he/she has committed an offence; or (b) is attempting an unauthorized entry into a country or has been ordered extradited or deported to another country; or (c) has failed to comply with a lawful court order or fulfill any obligation prescribed by law.<sup>8</sup> The African Commission on Human Rights has stated that a person can be detained only on ‘Reasonable suspicion or for probable cause’<sup>9</sup>

The ‘Principle of Legality’ adopted under the ICCPR<sup>10</sup>, ACHPR<sup>11</sup>, ACHR<sup>12</sup> and ECHR<sup>13</sup> presupposes the existence of prior enacted law that prescribes the grounds of detention and procedures to execute lawful detention. In this regard, the HRC has demonstrated, the national law shall state any substantive grounds for detention, and such ground is defined with sufficient precision to avoid overly broad or arbitrary interpretation or application;<sup>14</sup> and it shall establish procedures for carrying out lawful deprivation of liberty. States parties to the ICCPR should ensure compliance with such procedures.<sup>15</sup>

The UN Body of Principles on Detention demands detention shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.<sup>16</sup> It also states that a judicial or other authority empowered by law to order detention of a person shall order any form of detention.<sup>17</sup> Nevertheless, a warrantless detention is justified only in extraordinary circumstances, where obtaining a warrant from the court is not possible (such as the existence of flight risk, or a threat to public safety).<sup>18</sup>

*(ii) Under Domestic Laws of Ethiopia*

Ethiopia ratified the UDHR, ICCPR and ACHPR. Constitution has recognized the right to protection from arbitrary arrest and detention.<sup>19</sup> It has adopted the ‘principle of legality’ and it demands a charge or conviction made against the person as prerequisite to execute lawful detention.<sup>20</sup> However, the English version of Article 17, Paragraph 1, of Constitution provides procedural and substantive safeguards while as the Amharic version only provides for the procedural safeguards. Since the Amharic version has a final authority over the English Version,<sup>21</sup> inconsistency between the two versions creates ambiguity and difficulty.

Constitution proclaims human rights and freedoms, emanating from the nature of humankind, are inviolable

<sup>1</sup> HRC General comment No. 35, at para 12.

<sup>2</sup> Kristin Hausler and Robert McCorquodale, 2014, Pre-trial detention and human rights in the Commonwealth: Any lessons from civil law systems? *Journal of Human Rights in the Commonwealth*, Volume 2 Issue 1, p.7.

<sup>3</sup> Claire Macken, 1966, Preventive Detention and the Right of Personal Liberty and Security under the ICCPR, (2005) 26 *Adelaide Law Review*, p. 40.

<sup>4</sup> UDHR, Article 11, at para 2; ICCPR, Article 15; ECHR, Article 7; ACHR, Article 9; ACHPR, Article 7, At para 2.

<sup>5</sup> ICCPR, Article 14, at para 7; ACHR, Article 8, at para 4; Protocol 7 to ECHR, Article 4.

<sup>6</sup> Id, Article 11; Protocol 1 of ECHR, Article 1.

<sup>7</sup> ACHR, Article 7, at para.7. It states, ‘No one shall be detained for debt. This principle shall not limit the orders of competent judicial authority issued for non-fulfillment of duties of support’.

<sup>8</sup> ECHR, Article 5, at para 1; The European Court of Human Rights Communication No.11152/84, *Ciulla v Italy*, 22 January 1989, at para 36.

<sup>9</sup> African Commission on Human and Peoples’ Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa [herein after the PGRFTLA in Africa], at para M [1 (b)].

<sup>10</sup> ICCPR, Article 9, at para 1.

<sup>11</sup> ACHPR, Article 6.

<sup>12</sup> ACHR, Article 7, at para 2.

<sup>13</sup> ECHR, Article 5, at para 1.

<sup>14</sup> HRC General Comment No.35, at para 22.

<sup>15</sup> Id, at para 23.

<sup>16</sup> UN Body of Principles on Detention, Principle 2.

<sup>17</sup> Id, Principle 4.

<sup>18</sup> American Bar Association Rule of Law Initiative, 2010, *Handbook of International Standards on Pretrial Detention Procedure*, p.6.

<sup>19</sup> Constitution, Article 13, at para 1; & Article 17.

<sup>20</sup> Id, Article 17, at para 2.

<sup>21</sup> *ibid*, Article 106.

and inalienable;<sup>1</sup> hence, it has adopted the indivisibility, inseparability and universality principle of human rights. Constitution and the 2004 Criminal Code of ETHIOPIA<sup>2</sup> adopted principles of non-retroactivity of criminal law<sup>3</sup> and prohibition of Double Jeopardy.<sup>4</sup> However, the legal frameworks of Ethiopia do not clearly prohibit detention on the ground of non-fulfillment of contractual liability.

Constitution requires all the federal and state legislative, executive and judicial organs to respect and enforce fundamental rights and freedoms prescribed under Chapter three;<sup>5</sup> nevertheless, it precludes the judiciary from interpreting the constitution.<sup>6</sup> It demands provisions dealing with fundamental rights and freedoms shall be interpreted in conformity with the principles of international human rights adopted by Ethiopia.<sup>7</sup> This helps to maintain the standard of universality, indivisibility and interdependence of human rights, which are confirmed by the world community during the World Conference on Human Rights in 1993 in Vienna.<sup>8</sup>

Under the CCE, causing arbitrary detention against the other entail both criminal<sup>9</sup> and civil<sup>10</sup> responsibility. Detention can be carryout with or without warrant. For instant, in case of Flagrant Offence<sup>11</sup>, the CPCE allows to detain the offender without warrant where the alleged offence is punishable with simple imprisonment<sup>12</sup> for not less than three months.<sup>13</sup> The CPCE empowers any private person to detain the flagrant offender without warrant, if the alleged crime is not punishable up on complaint;<sup>14</sup> but it requires him/her to hand over the detainee to the nearest police station without unnecessary delay.<sup>15</sup> Here, the law is strict only to preclude ‘unnecessary delay’; however, to what extent the law tolerates it as necessarily delayed is disputable. The CPCE enumerates circumstances where any member of the police may arrest without warrant;<sup>16</sup> however, the grounds are very broad and may be subject to abuse by police. Irrespective of aforementioned challenges, the current legal frameworks of Ethiopia demands detention of a person must be carried out in accordance with the law.

## 2.2. Right to be Informed of the Reason of Detention and Any Charge

### (i) *Under International and Regional Human Rights Laws*

Under the ICCPR, the suspect shall be informed promptly the reasons of detention and any charges against him.<sup>17</sup> UN Body of Principles on Detention demands the authority responsible for detention to provide the suspect with information on and an explanation of his/her rights; and how to avail him/herself of such rights at the commencement of detention or promptly thereafter.<sup>18</sup>

Among the regional human rights system, both the ECHR<sup>19</sup> and ACHR<sup>20</sup> prescribe this right. Even if the ACHR failed to acknowledge this right, PGRFTLA in Africa acknowledged it.<sup>21</sup>

Neither the UDHR and ICCPR nor the ECHR and ACHR provide enumeration of elements to be included under such notification. The HRC has stated the reasons of detention must include the general legal basis; enough factual specifics such as the wrongful act and the identity of an alleged victim,<sup>22</sup> and the official basis for

<sup>1</sup> *ibid*, Article 10.

<sup>2</sup> Criminal Code of the Federal Democratic Republic of Ethiopia (CCE), Proclamation No. 414/2004.

<sup>3</sup> *ibid*, Article 22; CCE, Article 5.

<sup>4</sup> The Constitution, Article 23; CCE, Article 2, at para 5.

<sup>5</sup> The Constitution, Article 13, at para 1.

<sup>6</sup> *Id*, Article 62, at para 1. Accordingly, “The House of the Federation (HF) has the power to interpret the constitution”. HF is composed of representatives of Nations, Nationalities and Peoples [see also Article 61(1) of the same].

<sup>7</sup> *ibid*, Article 13, at para 2.

<sup>8</sup> The Vienna Declaration and Programme of Action state that ‘all human rights are universal, indivisible and interdependent and interrelated’.

<sup>9</sup> CCE, Article 423. Accordingly, “Any public servant who, contrary to law or in disregard of the forms and safeguards prescribed by law, arrests, detains or otherwise deprives another of his freedom, is punishable with rigorous imprisonment not exceeding ten years and fine”.

<sup>10</sup> *Id*, Article 101.

<sup>11</sup> CPCE, Articles 19-21 state that the offence shall be deemed to be flagrant where the offender is found committing, or attempting to commit it, or has just committed it, or when the police are immediately called to the place where the offence has been committed, or a cry for help has been raised from the place where the offence is being, or has been committed. The offence shall be deemed quasi-flagrant after the offence has been committed if the offender who has escaped is chased by witnesses or by members of the public or when a hue and cry has been raised.

<sup>12</sup> CCE, Article 106. Accordingly, “Simple Imprisonment” means “a kind of sentence applicable to crimes of a not very serious nature committed by persons who are not a serious danger to society, and it may extend for a period from ten days to three years; however, it may extend up to five years having regard to gravity of the crime or where there are concurrent crimes punishable with simple imprisonment or the offender has been punished repeatedly”.

<sup>13</sup> CPCE, Article 50.

<sup>14</sup> *Id*, Article 21, at para 1.

<sup>15</sup> *ibid*, Article 58, at para 1.

<sup>16</sup> *ibid*, Article 51, at para 1.

<sup>17</sup> ICCPR, Article 9, at para 2 and Article 14, at para 3 (a); HRC General Comment No.35, at para 24.

<sup>18</sup> UN Body of Principles on Detention, Principle 13.

<sup>19</sup> ECHR, Article 5, at para 2. Accordingly, everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

<sup>20</sup> ACHR, Article 7, at para 4. Accordingly, anyone who is detained shall be informed of the reasons for the charge or charges against him.

<sup>21</sup> African Commission on Human and People’s Rights, PGRFTLA in Africa, at para M [(1(a))].

<sup>22</sup> HRC Communication No. 1177/2003, Wenga and Shandwe v. Democratic Republic of the Congo, At para 6.2.

the detention in particular.<sup>1</sup> In the view of the HRC, such information must be in the manner that enables the suspect to seek release if the later believes that the reasons given by the detention authority are invalid or unfounded.<sup>2</sup>

The UN Body of Principles on Detention states a suspect and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefore.<sup>3</sup> It demands reasons of arrest; time of arrest, and time of first appearance before a judicial, or other authority; identity of the law enforcement officials; and information of place of custody shall be recorded in the form prescribed by law (if any) and shall be communicated to the suspect or his counsel.<sup>4</sup> The Rome Statute of ICC states that the accused is entitled to be informed promptly and in detail of the nature, cause and content of the charge.<sup>5</sup>

Regarding language requirement, UN Body of Principles on Detention,<sup>6</sup> Rome Statute of ICC and ECHR<sup>7</sup> prescribe that suspects shall be informed in the language he/she understands or speaks. The HRC has demonstrated that if the detainee does not understand or speak the working language, he/she shall be provided with the support of impartial interpreter at the state expense within reasonable time.<sup>8</sup> The same right is enshrined under the Rome Statute of ICC, ACHR and ECHR.<sup>9</sup> The manner of notification can be any form, oral or written; however, the HRC has stated that oral notification is enough to satisfy the requirement.<sup>10</sup>

Regarding time requirement, only 'prompt' notification of both the reasons of detention and the charge is required under the ICCPR, ECHR<sup>11</sup> and ACHR.<sup>12</sup> Under the ICCPR, "promptly" shall be understood to require "notification by the time of initial interrogation, and not longer than 72 hours after arrest/detention."<sup>13</sup> The HRC has demonstrated that "promptly" requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law,<sup>14</sup> or the individual is publicly named as such.<sup>15</sup> According to HRC, reasons of detention must be communicated immediately upon arrest/detention,<sup>16</sup> except a delay, which is the minimum necessary, may be required before an interpreter can be present;<sup>17</sup> however, communication regarding the charges shall not be necessarily at the time of detention.<sup>18</sup> The UN Body of Principles on Detention has stated that the detainee shall be informed the reasons of detention at the time of detention and shall be promptly informed of any charge against him/her.<sup>19</sup> This approach seems logical and it has adopted HRC demonstrations and it can be a good precedent to the national legislations.

*(ii) Under the Ethiopia Domestic Laws*

In Ethiopia, Constitution has recognized this right,<sup>20</sup> and it seems direct verbatim of the ECHR. In addition, it has stated that on appearing before a court, the suspected persons have the right to be given prompt and specific explanation of the reasons of arrest.<sup>21</sup> It demands that such notice shall be specific and explained. The time when such notice shall be made and the scope of such notice remain controversial among law practitioners.

Under the CPCE, the police officer is required to read out the arrest warrant and to show it when requested where the arrest is made with a warrant;<sup>22</sup> however, the law do not provide enumerations to be included necessarily in arrest warrant. On the other hand, the CPCE demands the criminal charge shall encompass the day and exact time where the alleged crime is committed; the property against which or the person against whom the alleged crime is committed; the type of crime committed; and the complaint made by the crime victim or public prosecutor, if any.<sup>23</sup> Therefore, it is recommended that such notice shall encompass all of the aforementioned elements; otherwise, it does not enable the suspect to challenge the legality of detention.

Constitution demands such communication shall be in the language the suspect understands or speaks.

<sup>1</sup> HRC Communication No.1812/2008, *Levinov v. Belarus*, at para 7.5.

<sup>2</sup> HRC Communication No.248/1987, *Campbell v. Jamaica*, at para 6.3.

<sup>3</sup> UN Body of Principles on Detention, Principle 11, at para 2.

<sup>4</sup> *Id.*, Principle 12.

<sup>5</sup> Rome Statute of ICC, Article 67, at para 1 (a).

<sup>6</sup> UN Body of Principles on Detention, Principle 14.

<sup>7</sup> ECHR, Article 8, at para 1 (a).

<sup>8</sup> HRC Communication No.526/1993, *Hill & Hill v. Spain*, at para 12.2; ACHR, Article 8[2(a)]; and ECHR, Article 6[3(e)].

<sup>9</sup> Rome Statute of ICC, Article 55, at para 1 (a); ACHR, Article 8[2(a)] and ECHR, Article 6[3(e)].

<sup>10</sup> HRC General Comment No.35, at para 26.

<sup>11</sup> ECHR, Article 5, at para 2 and Article 6, at para 3 (a).

<sup>12</sup> ACHR, Article 7, at para 4 and Article 8, at para 2 (b).

<sup>13</sup> American Bar Association Rule of Law Initiative's, p.7.

<sup>14</sup> HRC Communications No.1128/2002, *Márques de Morais v. Angola*, At para 5.4; Communications No.253/1987, *Kelly v. Jamaica*, At para 5.8.

<sup>15</sup> HRC General Comment No. 32, at para 31.

<sup>16</sup> HRC General Comment No.35, at para 27.

<sup>17</sup> HRC Communication No.526/1993, *Hill & Hill v. Spain*, at para 12.2.

<sup>18</sup> HRC General Comment No.35, at para 30.

<sup>19</sup> UN Body of Principles on Detention, Principle 10.

<sup>20</sup> Constitution, Article 19, at para 1.

<sup>21</sup> *Id.*, Article 19, at para 3, Sentence 2.

<sup>22</sup> CPCE, Article 56, at para 2.

<sup>23</sup> *Id.*, Article 92, at para 1 (a-e).

When the suspect cannot understand and speak the language, yet the Constitution does not require the authority carrying out interrogation to provide impartial language interpreter at the state expense during interrogation,<sup>1</sup> the CPCE demands this.<sup>2</sup>

### 2.3. Right to Have Assistance of a Legal Counsel

#### (i) *Under International and Regional Human Rights Laws*

Under the ICCPR, whether the suspect is entitled to have the assistance of a legal counsel at the stage of preliminary investigation is disputable.<sup>3</sup> However, HRC has demonstrated that states parties to the ICCPR should permit and facilitate access to counsel for detainees in criminal cases, from the outset of their detention.<sup>4</sup> UN Body of Principles on Detention states that suspects shall be informed that he/she has right to have the assistance of a legal counsel promptly after arrest by the competent authority<sup>5</sup> and he/she shall be allowed adequate time and facilities for consultation with his legal counsel.<sup>6</sup> Indeed, it states this right may be suspended or restricted in exceptional circumstances specified by law or lawful regulations when considered indispensable by a judicial or other authority in order to maintain security and good order;<sup>7</sup> nevertheless, not for more than a matter of days.<sup>8</sup>

The Rome Statute of ICC prescribes suspect has the right to be assisted by legal counsel of his/her choice during preliminary investigation and the right to informed of this right prior to interrogation,<sup>9</sup> and requires him/her to be questioned in the presence of his/her counsel unless he/she has voluntarily waived this right.<sup>10</sup> Moreover, under both the Rome Statute of ICC and UN Body of Principles on Detention, the suspects shall have the assistance of legal councilor at the state expense only when supposed injustice would appear if the pre-trial investigation continued without such assistance.<sup>11</sup>

Similar to the ICCPR, there is no requirement of assistance of legal counsel at the first moment of arrest under the ECHR, ACHR and ACHPR.<sup>12</sup> However, the Inter-American Commission sets forth that “the accused... shall have the right to communicate privately with their counsel, without interference or censorship, without delays or unjustified time limits, from the time of their capture or arrest and necessarily before their first declaration before the competent authority.”<sup>13</sup> Similarly, in accordance with the African Commission on Human Rights, a suspect has right to answer any questions or participate in any interrogation when his lawyer present.<sup>14</sup>

#### (ii) *Under the Ethiopia n Domestic Laws*

In Ethiopia, there is no requirement of assistance of legal counsel at the stage of preliminary investigation under Constitution<sup>15</sup> However, CPCE states that any person detained on arrest or on remand shall be permitted forthwith to call and interview his advocate and shall be provided with the means to write if he/she requires.<sup>16</sup> Nevertheless, the suspect is not entitled to present with his advocate during both police interrogation and preliminary inquiry. Similarly, the law do not require detention authority to give legal aid services free of charges for those who are unable to afford it by themselves during pretrial in any case.

### 2.4. Right to Remain Silent during Police Interrogation and Preliminary Inquiry, and Prohibition of Self-incrimination

#### (i) *Under the International and Regional Human Rights Laws*

The right to remain silent during police interrogation is not specifically acknowledged under both the UDHR and ICCPR. Indeed, whether the right not to be compelled to testify against oneself or to confess guilt during preliminary interrogation is enshrined under the ICCPR is contentious.<sup>17</sup> In the view of HRC, the right not to be compelled to testify against oneself or to confess guilty shall refer to the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt.<sup>18</sup>

<sup>1</sup> *ibid*, see Article 19 in general and Article 20, at para 7.

<sup>2</sup> CPCE, Article 27, at para 4.

<sup>3</sup> ICCPR, Article 14, at para 3 (d).

<sup>4</sup> HRC General Comment No. 32, At para 32, 34 & 38; Concluding observations Togo 2011, At para 19.

<sup>5</sup> UN Body of Principles on Detention, Principle 11, at para 1; Principle 17, at para 1; and Principle 18.

<sup>6</sup> *Id*, Principle 18, at para 2.

<sup>7</sup> *ibid*, at para 3.

<sup>8</sup> *ibid*, Principle 15.

<sup>9</sup> Rome Statute of the ICC, Article 55, at para 2(c).

<sup>10</sup> *Id*.

<sup>11</sup> *ibid*; UN Body of Principles on Detention, Principle 17, at para 2.

<sup>12</sup> ECHR, Article 6, at para 3(c); ACHR, Article 8, at para 2(d) and ACHPR, Article 7, at para 1(c).

<sup>13</sup> Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle V.

<sup>14</sup> African Commission on Human Rights, PGRFTLA in Africa, at para M (1) (f).

<sup>15</sup> The Constitution, Article 19 and 20, at para 5.

<sup>16</sup> CPCE, Article 61.

<sup>17</sup> ICCPR, Article 14, at para 3 (g).

<sup>18</sup> HRC, General Comment No.32, at para 41.

The UN Body of Principles on Detention has prohibited using violence, threats or methods of interrogation against the suspect that impair his/her capacity to make decision or judgment;<sup>1</sup> taking undue advantage of the situation of a suspect for compelling to confess; to incriminate him/herself otherwise; or to testify against any other person.<sup>2</sup> In addition, it has prescribed non-compliance with aforementioned safeguards in obtaining evidence shall be taken into account in determining the admissibility of evidence produced against the suspected person.<sup>3</sup> However, it does not specifically acknowledge the right to remain silent during interrogation. The right not to be compelled to testify or to confess guilt and to remain silent during police interrogation are acknowledged under the Rome Statute of the ICC.<sup>4</sup>

The ECHR and ACHPR do not specifically prescribe the right to remain silent and the right against self-incrimination. However, the ACHR enshrines only the right not to be compelled to be a witness against oneself or to plead guilty.<sup>5</sup>

*(ii) Under the Ethiopia n Domestic Laws*

In Ethiopia, the right to remain silent during police interrogation is recognized under both the CPCE<sup>6</sup> and constitution of Ethiopia.<sup>7</sup> Moreover, the CPCE demands an investigative police officer or other authority empowered to have the same power by law to inform the suspect that he/she have the right to remain silent at the beginning of interrogation.<sup>8</sup> Besides, both the Constitution and CPCE demand the authority carrying out interrogation to inform the suspect that any statement he/she makes voluntarily during interrogation will be produced at trial as evidence against him/her. Similarly, the CPCE requires the court before which preliminary inquiry is being held to inform the accused the same right.<sup>9</sup>

The constitution of the ETHIOPIA prescribes arrested person shall not be compelled to make confessions or admissions which could be used in evidence against him/her; and it declares any evidence obtained under coercion shall not be admissible.<sup>10</sup> Besides, Criminal Code of ETHIOPIA (2004) has declared any improper practices against those rights during pretrial as criminal act.<sup>11</sup> The legal frameworks of ETHIOPIA do not prescribe exceptions to these rights. However, the legal frameworks remain silent concerning who shall bear the burden of proving the existence or otherwise of coercion during interrogation against the accused.

## 2.5. Right to Communicate with Outside World

*(i) Under the International and Regional Human Rights Laws*

Albeit the right to communicate with outside world, particularly with family members and friend, is not clearly and specifically recognized under the ICCPR, the UN Body of Principles on Detention prescribes that the suspects shall be visited by, and to correspond with members of his/her family; and he/she shall be given adequate opportunity to communicate with the outside world unless this right is subject to reasonable conditions and restrictions specified by law or lawful regulations.<sup>12</sup> Moreover, the later demands deprivation of this right shall be allowed only for not more than a matter of days.<sup>13</sup> It authorizes the detainee to require the competent authority to notify members of his/her family or other appropriate persons of his/her choice about his arrest or detention or transfer from one place of detention to another; and the place where he/she is kept in custody promptly after arrest or detention, and after each transfer.<sup>14</sup> However, the authority may delay such notification for reasonable period where exceptional needs of investigation so require.<sup>15</sup>

The ACHPR fail to recognize this right; however, the African Commission has stated that suspects shall be given reasonable facilities to receive visits from his/her family and friends, subject to restriction and supervision

<sup>1</sup> UN Body of Principles on Detention, Principle 21, at para 2.

<sup>2</sup> *Id.*, at para 1.

<sup>3</sup> *ibid.*, Principle 27.

<sup>4</sup> Rome Statute of ICC, Article 55, at para 2(b) and Article 67, at para 1 (g).

<sup>5</sup> ACHR, Article 8, at para 2 (g).

<sup>6</sup> CPCE, Article 27, at para 2.

<sup>7</sup> Constitution, Article 19, at para 2.

<sup>8</sup> CPCE, Supranote111.

<sup>9</sup> *Id.*, Article 85, at para 2.

<sup>10</sup> Constitution, Article 19, at para 5.

<sup>11</sup> CCE, Article 424, at para 1 & 2. Accordingly, "Any public servant charged with the arrest ..., or interrogation of a person who is under ..., arrest, ..., detained ... who, in the performance of his duties, improperly induces or gives a promise, threatens or treats the person concerned in an improper or brutal manner, or in a manner which is incompatible with human dignity or his office, especially by the use of blows, cruelty or physical or mental torture, be it to obtain a statement or a confession, or to any other similar end, or to make him give a testimony in a favorable manner, is punishable with simple imprisonment or fine, or, in serious cases, with rigorous imprisonment not exceeding ten years and fine. Nothing in this Article shall affect the concurrent application of the relevant provision where the act constitutes an additional crime. Where the crime is committed by the order of an official, such official shall be punished with rigorous imprisonment not exceeding fifteen years and fine."

<sup>12</sup> UN Body of Principles on Detention, Principle 19.

<sup>13</sup> *Id.*, Principle 15.

<sup>14</sup> *ibid.*, Principle 16, at para 1.

<sup>15</sup> *ibid.*, at para 4.

only as necessary in the interests of the administration of justice and institutional security.<sup>1</sup> It further demonstrate that States must ensure that any person arrested or detained is provided with the necessary facilities to communicate, as appropriate, with his or her lawyer, doctor, family and friends, and in the case of a foreign national, his or her embassy or consular post or an international organization.<sup>2</sup>

*(ii) Under the Ethiopia n Domestic Laws*

In Ethiopia, Constitution states that all persons held in custody shall have the opportunity to communicate with, and to be visited by, their spouses or partners, close relatives, friends, religious councilors, medical doctors and their legal counsel.<sup>3</sup> This provision does not prescribe an exception to this right.

## **2.6. Right to Prompt Appearance before Court Established by Law**

*(i) Under the International and Regional Human Rights laws*

The ICCPR requires anyone detained on a criminal charge brought promptly before a judge or other officer authorized by law to exercise judicial power.<sup>4</sup> The reason why it enshrines this right to those detained on criminal charge is that it prohibits detention of a person for non-fulfillment of obligations arising from contract.<sup>5</sup> UN Body of Principles on Detention demands the detaining authority to produce without unreasonable delay the suspect before the reviewing authority.<sup>6</sup> It prescribes a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority;<sup>7</sup> and it urges the authority before which the suspect first appeared to decide upon the lawfulness and necessity of detention immediately.<sup>8</sup>

The HRC demonstrates that this right applies in all cases without exception and does not depend on the choice or ability of the detainee to assert it,<sup>9</sup> and even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.<sup>10</sup> In accordance with HRC, the significance of this right is to bring the detention of a person in a criminal investigation or prosecution under judicial control;<sup>11</sup> and once the individual is brought before the judge, the judge should decide either to release or remand him/her in custody for additional investigation or to await trial.<sup>12</sup> The court must have the power to order the detainee brought before it in person, regardless of whether the detainee has asked to appear.<sup>13</sup>

In the view of the HRC, the meaning of “promptly” under the ICCPR may vary depending on objective circumstances;<sup>14</sup> however, it has demonstrated that forty-eight hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing;<sup>15</sup> and any delay longer than these hours shall remain exceptional and justified under the circumstances.<sup>16</sup> In addition, the HRC has stated the individual must be brought to appear physically before the judge or other officer authorized by law to exercise judicial power.<sup>17</sup> Besides, HRC has demonstrated that other officer authorized by law under article 9(3) of the ICCPR shall understood to mean an authority, which is independent, objective and impartial in relation to the issues dealt with;<sup>18</sup> and it shall not include a public prosecutor.<sup>19</sup>

Among the regional human rights system, the suspect is enshrined this right under both the ECHR<sup>20</sup> and ACHR.<sup>21</sup> However, this right is not specifically recognized under the ACHPR. According to the African Commission on Human Rights, anyone who is arrested or detained on a criminal charge shall be brought before a judicial officer authorized by law to exercise judicial power.<sup>22</sup>

*(ii) Under the Ethiopia n Domestic Laws*

In Ethiopia, Constitution states, persons arrested have the right to first appearance before court within 48 hours

<sup>1</sup> African Commission on Human and People’s Rights, PGRFTLA in Africa, at para M (g).

<sup>2</sup> Id, at para 2 (e).

<sup>3</sup> Constitution, Article 21, at para 2.

<sup>4</sup> ICCPR, Article 9, first sentence of at para 3.

<sup>5</sup> Id, Article 11.

<sup>6</sup> UN Body of Principles on Detention, Principle 32, sentence two of at para 2.

<sup>7</sup> Id, Principle 11, sentence one of at para 1.

<sup>8</sup> ibid, Principle 37.

<sup>9</sup> HRC Communication No.1787/2008, Kovsh v. Belarus, at para 7.3-7.5.

<sup>10</sup> HRC Communication No.1128/2002, Marques de Morais v. Angola, at paras 6.3-6.4; HRC Communication No.1096/2002, Kurbanova v. Tajikistan, at para 7.2.

<sup>11</sup> HRC Communication No.1914/2009, Musaev v. Uzbekistan, at para 9.3.

<sup>12</sup> HRC General Comment No.35, at para 36.

<sup>13</sup> Id, at para 42.

<sup>14</sup> ICCPR, Article 9, At para 3.

<sup>15</sup> HRC Communication No.1787/2008, Kovsh v. Belarus, at para 7.3-7.5.

<sup>16</sup> Id; see also HRC Communication No.336/1988, Fillastre v. Bolivia, At para 6.4 (budgetary constraints did not justify ten day delay).

<sup>17</sup> HRC Communication No.289/1988, Wolf v. Panama, at para 6.2; HRC Communication No.613/1995, Leehong v. Jamaica, at para 9.5.

<sup>18</sup> HRC Communication No.521/1992, Kulomin v. Hungary, at para 11.3.

<sup>19</sup> Id; HRC Communication No.1547/2007, Torobekov v. Kyrgyzstan, at para 6.2; HRC Communication No.1278/2004, Reshetnikov v. Russian Federation, at para 8.2.

<sup>20</sup> ECHR, Article 5, at para 3.

<sup>21</sup> ACHR, Article 7, at para 5.

<sup>22</sup> African Commission on Human and People’s Rights, PGRFTLA in Africa, at para 3 (a).

of their arrest; and demands such time shall not include the time reasonably required for the journey from the place of arrest to the court.<sup>1</sup> In addition, the CPCE has recognized this right in the same manner.<sup>2</sup>

## 2.7. Right to Challenge the Lawfulness of Detention

### (i) *Under the International and Regional Human Rights Laws*

The ICCPR states, suspects shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.<sup>3</sup> In addition, the ICCPR empowers only court to review the lawfulness of detention. Regarding the possible decisions of the court after review, the HRC has stated that if there is no lawful basis for continuing the detention, the judge must order release;<sup>4</sup> or if additional investigation or trial is justified, the judge must decide whether the detainee should be released (with or without conditions) pending further proceedings.<sup>5</sup> In the view of HRC, if the court has ordered detention on remand, it should not involve a return to police custody, but rather to a separate facility under different authority, where risks to the rights of the suspect more likely mitigated.<sup>6</sup>

UN Body of Principles on Detention states, the suspect or his councilor shall take proceeding before judicial or other authority empowered by law to challenge the lawfulness of detention at any time;<sup>7</sup> and it demands such proceedings shall be simple and expeditious and at no cost for suspected persons without adequate means.<sup>8</sup>

Among the regional human rights system, both the ECHR<sup>9</sup> and ACHR<sup>10</sup> enshrine the detainee this right. Interestingly, the later proclaims this remedy may not be restricted or abolished; and empowers the interested party or another person to seek this remedy in behalf of suspected person.<sup>11</sup> The ACHPR do not specifically recognize this right; however, the African Commission on Human Rights stated that anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a judicial body, in order that that judicial body may decide without delay on the lawfulness of his or her detention and order release if the detention is not lawful.<sup>12</sup>

### (ii) *Under the Ethiopia n Domestic Laws*

In Ethiopia , Constitution entitles suspect right to petition for 'habeas corpus' where the arresting police officer or the law enforcer fails to bring him/her before the nearest court within forty-eight hours from time of detention.<sup>13</sup> Where the person restrained if for whatever reason unable to make such application and/or affidavit himself, then the same may be made by any person on his behalf and the affidavit shall be in the name of the person restrained and that he is unable to make such application and/or affidavit himself.<sup>14</sup>

The court before which such application is made may order the applicant to remain in custody where the interest of justice requires; or may remand the applicant for a time strictly required to carry out the necessary investigation according to Article 19, Paragraph four, of the constitution; however, this provision is silent with regard to whether such court can give the order of physical release of the suspect if it is satisfied that the restraint is unlawful. When the interest of justice requires the court to order suspect to be remain in police custody is vague and it require constitutional interpretation; however, the court is precluded from interpreting the constitution.

Under the criminal procedure law,<sup>15</sup> it is stated that the police shall bring the person arrested to the nearest court [emphasis added] within the time prescribed; hence, the practice shows that the police is producing them to the nearest Regional First Instant Courts. On the other hand, the High Court is empowered to receive the application of habeas corpus and it shall order the immediate release of the person restrained when it is satisfied that suspect is unlawfully arrested under the Civil Procedure Code of Ethiopia.<sup>16</sup> Except an order of physical release of the suspect under restraint; aforementioned provision failed to provide other types of remedies that such court can order. However, unlawful restraint of a person is declared criminal act,<sup>17</sup> which is punishable up on public proceeding<sup>18</sup> under the criminal code of Ethiopia ; therefore, the victim can lodge complaint to the

<sup>1</sup> Constitution, Article 19, at para 3.

<sup>2</sup> CPCE, Article 29, at para 1.

<sup>3</sup> ICCPR, Article 9, at para 4.

<sup>4</sup> See Concluding observations Tajikistan 2005, At para 12; HRC Communication No.647/1995, Pennant v. Jamaica, At para 8.2.

<sup>5</sup> ICCPR, Article 9, second sentence at para 3; HRC General Comment No.35, at para 36.

<sup>6</sup> Id.

<sup>7</sup> UN Body of Principles on Detention, Principle 32, at para 1.

<sup>8</sup> Id, at para 2.

<sup>9</sup> ECHR, Article 5, at para 4.

<sup>10</sup> ACHR, Article 7, at para 6.

<sup>11</sup> Id.

<sup>12</sup> African Commission on Human and People's Rights, PGRFTLA in Africa, at para 3 (a).

<sup>13</sup> Constitution, Article 19, at para 4.

<sup>14</sup> The Ethiopian Civil Procedure Code of 1965 [herein after Civil Procedure Code], Article 177, at para 3.

<sup>15</sup> CPCE, Article 29, at para 1.

<sup>16</sup> The Ethiopian Civil Procedure Code, Article 179, at para 2.

<sup>17</sup> CCE, Article 423.

<sup>18</sup> Id, Article 211.

competent public authorities such as public prosecutor with intent to institute public proceeding against the police or private person or government official who unlawfully detained him/her.<sup>1</sup>

Under the current federal structure of Ethiopia, it is the First Instant Civil Jurisdiction of Federal First Instant Court to receive and adjudicate application of habeas corpus according to the Ethiopia n Federal Courts Establishment Proclamation;<sup>2</sup> hence, the Regional High Court is delegated to exercise such power under the constitution.<sup>3</sup> On the other hand, it is the First Instant Criminal Jurisdiction Awradja Courts to adjudicate the crime of unlawful restraint;<sup>4</sup> hence, the practice shows that it is the jurisdiction of the Regional First Instant Court under the current federal structure of Ethiopia.

## 2.8. Right to be Released on Bail Pending Investigation or Trial

### (i) *Under the International and Regional Human Rights Laws*

Terence Ingman, 1996, has defined that Bail means a release from custody, pending a criminal trial, of a defendant on balancing of competing interests and on the premise that a specified predetermined amount of money will be paid if he/she absconds.<sup>5</sup> It is not likely to release all suspected persons on bail because of the danger that some of them might abscond; interfere with witness; or commit further offences.<sup>6</sup>

Under the ICCPR, the right to be released on bail is enshrined.<sup>7</sup> In the view of the HRC, “Bail should be granted, except in situations where the likelihood exists that the accused would abscond; or destroy evidence; influence witnesses; or flee from the jurisdiction of the state party.”<sup>8</sup> HRC demonstrates that detention-pending trial must base on an individualized determination that it is reasonable and necessary in all the circumstances, for such purposes as to prevent the suspect from flight; interference with evidence; or the recurrence of crime.<sup>9</sup> The UN Body of Principles on Detention has recognized this right,<sup>10</sup> and it has stated that the arrest or detention of a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law.<sup>11</sup>

Among the regional human rights system, bail right is acknowledged under the ECHR<sup>12</sup> and ACHR.<sup>13</sup> Even if bail right is not recognized under the ACHPR, the African Commission on Human and People’s Rights demonstrates unless there is sufficient evidence makes it necessity to prevent a person arrested on a criminal charge from fleeing; interfering with witnesses; or posing a clear and serious risk to others, states must ensure released on bail pending trial.<sup>14</sup>

### (ii) *Under the Ethiopia n Domestic Laws*

In Ethiopia, suspected persons right to be released on bail is recognized under both the constitution of Ethiopia<sup>15</sup> and CPCE.<sup>16</sup> The former states that in exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release; hence, only court is empowered to adjudicate the issue of bail right. However, the CPCE authorises the investigative police officer to release the suspect on bail when the alleged crime do not entail rigorous imprisonment; or when it is doubtful to conclude that suspect has committed the alleged crime.<sup>17</sup> Rigorous imprisonment is a sentence applicable only to crimes of a very grave nature committed by criminals who are particularly dangerous to society and is intended also to provide for a strict confinement of the criminal and for special protection to society.<sup>18</sup> Without prejudice to conditional release, the sentence of rigorous imprisonment is normally for a period of one to twenty-five years but where it is expressly so laid down by law it may be for life.<sup>19</sup>

The CPCE prescribes, suspect may be released on bail where the offence with which he/she is charged does not entail death penalty; or rigorous imprisonment for fifteen years, or more and where there is no possibility of

<sup>1</sup> *ibid.*

<sup>2</sup> Federal Democratic Republic of Ethiopia, Federal Courts Proclamation No. 25/1996, Article 5, at para 10 & Article 11, at para 1 (a).

<sup>3</sup> Constitution, Article 80, at para 4.

<sup>4</sup> CPCE, FIRST SCHEDULE, p.81.

<sup>5</sup> Terence Ingman, 1996, *The English Legal Process*, Ashford Colour Press, Gosport, Hampshire, p.109.

<sup>6</sup> *Id.*

<sup>7</sup> ICCPR, Article 9, at para 3.

<sup>8</sup> HRC Communication No.526/1993, *Hill v. Spain*, at para 12.3.

<sup>9</sup> HRC Communication No.1502/2006, *Marinich v. Belarus*, at para 10.4; HRC Communication No.1940/2010, *Cedeño v. Venezuela*, at para 7.10; HRC Communication No.1547/2007, *Torobekov v. Kyrgyzstan*, at para 6.3.

<sup>10</sup> UN Body of Principles on Detention, Principle 38-39.

<sup>11</sup> *Id.*, Principle 36, at para 2.

<sup>12</sup> ECHR, Article 5, at para 3.

<sup>13</sup> ACHR, Article 7, at para 5.

<sup>14</sup> African Commission on Human and People’s Rights, *PGRFTLA in Africa*, at para M (1) (e).

<sup>15</sup> Constitution, Article 19, at para 6.

<sup>16</sup> CPCE, Article 28, and Article 59, at para 1

<sup>17</sup> *Id.*, Article 28, at para 1.

<sup>18</sup> CCE, Article 108, at para 1.

<sup>19</sup> *Id.*

the crime victim is dying.<sup>1</sup> On the other hand, the court may deny release on bail if it has persuaded that the accused might abscond; interfere with witness; or commit further offences.<sup>2</sup> Besides, those corruption offences that are punishable by a term of more than 10 years imprisonment;<sup>3</sup> and the crime of vagrancy are declared non-bailable from the very beginning.

The type of bail either the police or the court may order the suspect to produce to be released from custody on bail is only a bail bond with or without sureties.<sup>4</sup> The choice of guarantors and the amount of bail bond to be guaranteed is in the discretion of the court.<sup>5</sup> To determine the amount of bail bond to be guaranteed, the court shall take into account the seriousness of the charge, the alleged crime committed; the likelihood of the suspect's appearance; the danger to the public order which the release of the suspect may occasion and the resource of the accused and his guarantors.<sup>6</sup>

The CPCE demands the court to render decision to release or not on bail within forty-eight hours.<sup>7</sup> It requires cooperation in finding guarantee for the accused if the later ordered to release on bail;<sup>8</sup> however, it does not identify which authority is required to cooperate. Therefore, such cooperation is required from the authority conducting investigation; or public prosecutor; or court. The CPCE prescribes, if the court decided not to release the accused on bail, the later can appeal against such order to the appellate court; and the decision of appellate court on the issue is final.<sup>9</sup> Thus, in principle, the legal frameworks of Ethiopia enshrine the suspect right to release on bail pending investigation.

## 2.9. Right to Trial within Reasonable Time

### (i) Under International and Regional Human Rights Laws

Under ICCPR, suspect is entitled to trial within a reasonable time, or release pending trial.<sup>10</sup> In the view of the HRC, suspected persons who are not released pending trial must be tried as expeditiously as possible, to the extent consistent with their rights of defense.<sup>11</sup> The reasonableness of any delay in bringing the case to trial shall be assessed in the circumstances of each case having regard to the complexity of the case; the conduct of the accused; and the manner in which the matter was dealt with by the executive and judicial authorities.<sup>12</sup> In the view of the HRC, impediments to the completion of the investigation may justify additional time,<sup>13</sup> but general conditions of understaffing or budgetary constraint does not.<sup>14</sup> The UN Body of Principles on Detention prescribes a judicial or other authority provided by law before which a suspect promptly appeared shall decide upon the lawfulness and necessity of detention immediately.<sup>15</sup>

Among the regional human rights system, the right to trial within a reasonable time or release pending investigation or trial is enshrined to the suspect under the ECHR,<sup>16</sup> ACHR<sup>17</sup> and ACHPR.<sup>18</sup> The American Bar Association Rule of Law Initiative has stated, "The judicial officer must ask whether the justification put forward for detaining the accused can justify the time the accused has spent in detention prior to the adjudication."<sup>19</sup> The diligence of the prosecuting or investigating authority in bringing the case to trial; the complexity of the case; the conduct of the accused;<sup>20</sup> and the proportionality of the detention period to the penalty that may be imposed for the offense<sup>21</sup> are relevant factors to assess whether speedy trial right of the accused is ensured or not. Hence, this right is universally acknowledged fair trials right of suspected person.

<sup>1</sup> CPCE, Article 63[a contrary reading], at para 1.

<sup>2</sup> Id, Article 67.

<sup>3</sup> FDRE Revised Anti- Corruption Special Procedure and Rules of Evidence, Proc. No.434/2005, Article 4, at para 1

<sup>4</sup> CPCE, Article 28, at para 1; and Article 63, at para 2.

<sup>5</sup> Id, Article 69, at para 1.

<sup>6</sup> ibid. at para 2.

<sup>7</sup> ibid. Article 66.

<sup>8</sup> ibid, Article 62.

<sup>9</sup> ibid, Article 75.

<sup>10</sup> ICCPR, Article 9, at para 3.

<sup>11</sup> HRC General Comment No. 32, At para 35.

<sup>12</sup> Id.

<sup>13</sup> HRC Communication No.721/1997, Boodoo v. Trinidad and Tobago, at para 6.2.

<sup>14</sup> HRC Communication No.336/1988, Fillastre v. Bolivia, at para 6.5; HRC Communication No.818/1998, Sextus v. Trinidad and Tobago, at paras 4.2 & 7.2.

<sup>15</sup> UN Body of Principles on Detention, Principle 37.

<sup>16</sup> ECHR, Article 5, at para 3; Article 6, at para 1.

<sup>17</sup> ACHR, Article 7, at para 5.

<sup>18</sup> ACHPR, Article 7, at para 1 (d).

<sup>19</sup> American Bar Association, at p.12.

<sup>20</sup> Reid, 1998, A Practitioner's Guide to the European Convention of Human Rights, Sweet and Maxwell, P. 309; see Inter-American Commission on Human Rights, supra note 169, p.6. It states, "Three criteria shall be taken into consideration when determining if a judicial proceeding complied with the reasonable time requirement: the complexity of the case; the conduct of the applicant; and the conduct of the relevant authorities"

<sup>21</sup> Council of Europe, Recommendation (2006)13 on the Use of Remand in Custody, the Conditions in which it takes place and the Provision of Safeguards against Abuse, At para 22(2)

*(ii) Under the Ethiopian Domestic Laws*

In Ethiopia, Constitution demands the court to take into consideration the right to speedy trial in determining the remand period.<sup>1</sup> Both the Constitution and CPCE requires the authority responsible for detention to bring arrested person before court within 48 hours from the moment of commencement of detention.<sup>2</sup> The later demands such authority to bring the accused before court so soon after his/her arrest if the local circumstance and communication permits. The CPCE also demands the court to render decision on the application of to release on bail within 48 hours of time.<sup>3</sup>

However, some of the challenges in this junction are: (i) the law do not prescribe specific time to be taken to hand over the arrested person to the nearest police station by private persons or other officials empowered to arrest flagrant offenders; (ii), lack of legally prescribed time to be taken to complete pretrial crime investigation by police officer; and (iii), lack of limitation on occasion of requesting for remand by investigative police by law.

## SECTION THREE

### 3. FINDINGS AND RECOMMENDATION

#### 3.1. Findings of the Study

- The legal frameworks of Ethiopia do not specifically entitle suspected persons the right to present with the legal councilor of their choice during police interrogation; or right to have the assistance of free legal aid if the suspect cannot afford it during pretrial in general;
- The suspected person's right to speedy trial is not adequately guaranteed because of: (i), the law do not prescribe specific time to be taken to hand over the arrested person to the nearest police station by private persons or other officials empowered to arrest flagrant offenders; (ii), lack of legally prescribed time to be taken to complete pretrial crime investigation by police officer; (iii), lack of limitation on occasion of requesting for remand by investigative police by law.
- The legal frameworks do not urge the detention authority to inform suspected persons about all of their human rights during the commencement of arrest or promptly after arrest except duty to inform the reason of detention and the charge made promptly after arrest and right to remain silent during police interrogation and Miranda warning;
- The law urges the detention authority to produce the suspected persons before the nearest court, the Woreda Court or Regional First Instant Court under the current federal structure of Ethiopia. However, the power to receive and adjudicate application for habeas corpus is the First Instant Civil Jurisdiction of Federal First Instant Court or the Regional High Court through delegation; hence, those courts are not accessible in terms of distance from the Woreda<sup>4</sup> police custody. Besides, even though unlawful restraint or detention is criminal act under the criminal law of Ethiopia; an application for habeas corpus is declared civil matter under the Civil Procedure Code of Ethiopia and the Federal Courts Establishment Proclamations and the court is empowered to order only immediate physical release of the suspect if it is satisfied that the restraint is unlawful.
- Even though the right to be released on bail is acknowledged by law, the choice of guarantors and the amount of bail bond to be guaranteed shall be only in the discretion of the court; hence, this may be abused by judges and it may lead to unequal or discriminatory treatment among the poor and rich sections of the society. Besides, the law is silent with regard to whether the suspect can appeal against the order of the subordinate court regarding choice of guarantors and the amount of bail bond.
- There is ambiguity as regards the status of international and regional human rights laws adopted by Ethiopia in the hierarchy of law, particularly with respect to Constitution. The constitution simply states that international treaties ratified by Ethiopia become part of law of the land;<sup>5</sup> hence, the controversy as regards which one shall prevail if they contradict each other is continued among law practitioners. The Constitution demands its provisions dealing with fundamental rights and freedoms to be interpreted in conformity with principles of UDHR and international human rights instruments adopted by Ethiopia. However, this interpretative provision of the constitution does not demand the interpretation of its provisions to conform to each specific provisions of international human rights instruments adopted by Ethiopia; it disregards the roles that regional human rights instruments like ACHPR can play as standard of interpretation; and it is designed to apply to only provisions under Chapter three. However, there are provisions dealing with human rights under other Chapters of the Constitution such as Articles 78-81 dealing with independent judiciary, Article 93 dealing with state of emergency and Article 105(2) dealing with amendment procedures. Therefore, those provisions

<sup>1</sup> Constitution, Article 19, at para 4.

<sup>2</sup> Id, Article 19, at para 3; CPCE, Article 29, at para 1.

<sup>3</sup> CPCE, Article 66.

<sup>4</sup> The Revised Constitution, 2001, of the Southern Nation, Nationalities & Peoples (SNNP) Regional State Proclamation No.5/1995, Article 90. Under the current federal structure of Ethiopia, the lowest administrative structure comprising of kebele administrations below Zone.

<sup>5</sup> Constitution, Article 9, at para 4.

dealing with human rights found under other Chapters of the constitution and other domestic laws of the country dealing with human rights are not required to be interpreted in conformity with international human rights instruments adopted by Ethiopia.

➤ Even though Ethiopia ratified the ICCPR and ACHPR, yet they are not officially translated to national working language, Amharic; and not published in Official Federal Negarit Gazeta. However, international treaties are required to be published in the Federal Negarit Gazeta and all Federal or Regional legislative, executive and judicial organs as well as any natural or juridical person shall take judicial notice of laws published therein.<sup>1</sup>

### 3.2. Recommendation

➤ The legal reform is required so as to acknowledge the suspected persons right to present with legal councilor of their choice during police interrogation; and right to have the assistance of free legal aid if the suspect cannot afford it during pretrial when the interest of justice so requires. Furthermore, the suspected persons should be guaranteed right to speedy trial; hence, the time to be taken to hand over arrested person to the nearest police station by private persons or other officials empowered to arrest flagrant offenders, restriction on the total occasion of remand, and the maximum period to be taken to complete pretrial investigation must be prescribed by law. Besides, remanded suspects should be entitled to appeal against the order of remand in general and the period of remand in particular as the case may be. Detention authority should be obliged to inform all the human rights of suspects during arrest or within reasonable period after arrest. Regional First Instance Courts should be authorized to receive and adjudicate application of habeas corpus because of its accessibility than Regional High Courts. Besides, the application for habeas corpus should be considered as criminal matter; rather than civil matter because unlawful restraint or detention is already declared criminal act and the court should be empowered to punish the offender if it is satisfied that the restraint or detention is unlawful. The suspect should be entitled to appeal against the decision of subordinate court regarding the order of choice of guarantors and the amount of bail bond ordered to be guaranteed.

➤ The government of Ethiopia should adopt the UN Body of Principles on Detention and African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa or should reform domestic laws in line with both of them so as to enhance protection for due process rights of suspects in general.

➤ All the UDHR, ICCPR and ACHPR should be interpreted to national working language and should be published in Federal Negarit Gazeta so as to enhance their domestic implementation; otherwise, the constitution should be amended to incorporate specific provision to the effect that it shall demand all federal or regional legislative, executive and judicial organs as well as any natural or juridical person shall take judicial notice of those international or regional human rights laws ratified by Ethiopia before the constitution comes into force without necessarily satisfying those requirements.

➤ the interpretative provision of the Constitution, Article 13, Paragraph two, should be designed to use not only principles but also each specific provisions of both international and regional human rights instruments adopted by Ethiopia as a standard of interpretation of not only provisions of Chapter three of the constitution, but also all other provisions of the constitution and other domestic laws in general which are dealing with human rights so as to meet the requirement of independence, indivisibility and universality of human rights and to enhance their realization. The ambiguity as regards the status of both regional and international human rights instruments adopted by Ethiopia in the hierarchy laws in line with the constitution should be avoided.

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I, Awol Alemayehu Dana, ensure that I am sole author of this article; and all the works of other authors used are duly acknowledged. He has took the principal role in the conception of idea, development of methodology, analysis and write up of the manuscript. Finally, the author declares that he has no competing interest.

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