

## **Methods and Mechanisms in the Prevention of Torture in Ethiopia**

**Prem Sam Ponniah Victor**

*Assistant Professor in Human Rights Law  
School of Law, Arba Minch University, Ethiopia*

---

**Abstract:** The research endeavored at assessing the torture prevention methods and mechanisms over the period of the last thirty years (1985-2014) in Ethiopia. This research paper examines the law and practice of detention procedures, prosecution of torture perpetrators and ending impunity, and finally the complaining and monitoring mechanism in Ethiopia.

**Acknowledgements:** The author immensely thank **Ms.BarbaraBernath**, Secretary General, Association for Prevention of Torture, Geneva, Switzerland, for her encouragement and consents to publish this research. This research project was guided by **Professor. Richard Carver** and the research methodology advised by **Professor. Lisa Handley** from Oxford Brookes University, U.K. The author profusely thankful for their continued supports and approval for this publication. Yonas Mebrahtu Aregawi worked with the author as a co-researcher of this project, without him the publication would have not been possible.

**Background:** The School of Law, Arba Minch University, Ethiopia, has organised a public lecture on “Does torture Prevention work?” by Professors. Richard Carver and Lisa Handley on January 17, 2020. This public lecture is based on an independent academic global research conducted in 16 countries including Ethiopia. This research work was commissioned by Association for the Prevention of Torture (APT), Geneva. The recent public lecture was actively participated by the staff members, students, Police and Prison officials, law enforcement agencies and other relevant stakeholders from Gamo-Gofa, SNNP Region, Ethiopia. Further, the participants were keen to know the Ethiopia situation in the torture prevention research report. It is the earnest desire of the author, that this publication would provide further insights on the need for a holistic approach to torture prevention in Ethiopia.

---

Date of Submission: 18-03-2020

Date of Acceptance: 03-04-2020

---

### **I. INTRODUCTION**

This research reports examines the law and practice of detention procedures, prosecution of torture perpetrators and ending impunity, and finally complaints and monitoring mechanisms. Extensive interviews were conducted with judges, prosecutors, lawyers, various NGOs, journalists, opposition political party members and survivors of torture in different parts of the country. Moreover, various reports from international and local NGOs were also analyzed.

The research has confirmed that, given the dictatorial nature of the Derg government in the 1980s and conflict and instability in the country, torture incidence was severe, frequent and widespread in the first five years of the study period. The absence of rule of law, the undemocratic nature of the government and the intensification of the civil war resulted in a high level of torture. In addition, the absence of international and domestic monitoring and complaints system and Ethiopia's isolation from regional and international human rights system contributed to the problem.

Impunity prevailed and Ethiopia was totally excluded from the international and regional human rights systems. Following the overthrow of the regime in 1991, however, the political and legal reforms declared by the transitional government of the EPRDF did not result in practical progress on torture. The conflict with dissident groups, ethnic tension and the purge of law enforcement organs in 1990s had a negative impact on human rights. Lack of professionalism among law enforcement organs, impunity and absence of monitoring and complaints mechanisms (both international and domestic) undermined the reforms. Torture remained server and frequent although less widespread than under the Derg.

President Mengistu Haile Mariam remained head of state, leader of the armed forces and chairman of the Workers Party of Ethiopia (WPE). The zero tolerance policy for any political dissent and armed insurgency

continued and the Derg maintained its cruel and dehumanizing responses.<sup>1</sup> Ethiopia was not a party to any major international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The 17-year military dictatorship was toppled in 1991 by ethnic-based insurgent groups, united under the banner of the Ethiopia People's Revolutionary Democratic Front (EPRDF). The recognition of various democratic rights such as freedom of expression, association and assembly in the Charter brought a glimmer of hope among a great number of Ethiopians. The ratification of major international human rights instruments such as ICCPR (1993) and CAT (1994) was also taken as major leap forward in the process of human rights protection including torture prevention.

The Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution, here in after) in 1995 declared an ethnic-based federal system and offered a wide range of recognition and protection of fundamental rights and freedoms. Worth mentioning point to torture prevention here is that the Federal government and the regional states<sup>2</sup> have been granted equal constitutional recognition and protection that has enabled them to establish their own legislative, executive and judicial organs and enjoy autonomy in their own jurisdiction.<sup>3</sup> In principle, the enforcement of Federal legislation vests upon the federal institutions and federal judicial organs.<sup>4</sup> This arrangement has been made with intention to put in place a uniform criminal system throughout the country. To this end, there is only one criminal code applicable nationwide. State courts, hence, adjudicate criminal matters by delegation<sup>5</sup>. Yet the position of the Constitution remains uncertain regarding the power of states to enact criminal procedure codes and has invited contention between the federal government and the states.<sup>6</sup> Despite the controversy, the 1961 criminal procedure code remains unchanged and applied uniformly throughout the country.

The other pertinent issue for prevention of torture is the law regulating institutions of police and security forces. Both the federal government and States are empowered to establish their own police forces by the Constitution. Accordingly, the federal government controls the Federal police and state police under the state jurisdiction. However, state police enforces the federal criminal and criminal procedure laws. The uncertain division of powers between the states and the federal government has affected torture prevention in the sense that it hinders the implementation of uniform policy of torture prevention.

Another important political factor that has affected torture prevention was the border conflict between Ethiopia and Eritrea from 1998 to 2000. Unofficial detention and ill-treatment frequently occurred in peripheral parts of the country and war prone zones such as the state of Tigray and Afar.

The 2005 national election is believed to be the key episode in the recent human rights situation and the incidence of torture in the country. The instability and conflict following the election which left more than 293 persons to death and tens thousands to detention, has enormously shaped the recent human rights situation of the country. The enactment of the civil society proclamation and the anti-terrorism proclamation in 2009, a response to the post-election instability, has excessively restricted the progress of human rights protection by curbing the role of civil society and media, and granting wide power to the police and security forces. This research has found that the enactment of these two laws is retrogressive from both the political and legal perspectives.

---

<sup>1</sup> US Department State, *Country Report on Human rights practice for 1988* (101st Congress 1st Session, S.Prt, 101-3, 1988); An interview with former Judge, prosecutor and Lawyer at federal Courts, (Addis Ababa, Ethiopia, June 10, 2014)

<sup>2</sup> Sub-national governments in Ethiopia are referred as States and nine regional states (the State of Tigray, Afar, Amhara, Oromia, Somalia, the State of Benshangul/Gumuz, the State of Southern Nation, Nationalities and Peoples, the State of Gambella People and the State of Harari People) are established based on the new constitutional arrangement. (Article 47 of Constitution of Federal Democratic Republic of Ethiopia, (Hereinafter the FDRE Constitution), Federal Negarit Gazeta, 1st Year, No 1, 21 August, 1995.)

<sup>3</sup> FDRE Constitution, Art. 51

<sup>4</sup> The principal Federal Judiciary organs consists of the Federal Supreme Court, Federal High Court and Federal First Instance Court. (FDRE Constitution, Art. 78). Given the uneasiness of establishing federal courts nationwide, the federal courts delegate their powers to state courts to adjudicate case of federal matters. Accordingly the Federal High Court has delegated its power to the State Supreme Courts as does the Federal First Instance Court to the State High Courts. (FDRE Constitution Art. 78)

<sup>5</sup> *ibid*

<sup>6</sup> The regional states' claim on the jurisdiction or power of enacting a criminal procedure relies on Article 52 of the constitution that states: "All powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the States are reserved to the States." (FDRE Constitution, Art. 52)

In the 2000s, slight improvements registered in detention practice, particularly access to a court within 48 hours, which can be attributed to continuous training provided for law enforcement organs. Yet the effects of prosecution and complaints and monitoring mechanisms in torture prevention remained insignificant.

The exclusion from international complaints and monitoring systems, coupled with the inefficiency of the national human rights institutions, thwarted the prevention process particularly when prisoners were politically affiliated.

The last five years of the study period revealed that torture remained severe and frequent though not geographically widespread, particularly in political and terrorist cases. Access to a lawyer, family notification and prompt access to court have been usually impractical. Yet marginal improvement exists in detention practice and complaints mechanisms for common crimes. The incidence of torture has increased in frequency, severity and geographical coverage during major political episodes such as armed conflicts both internal and international, the 2005 national election and ethnic tensions.

## **II. TORTURE INCIDENCE**

### **During 1985-1991:**

As pointed above, the first five years of the study period (1985-90) was the period that the civil war between the Derg regime (1974-1991) and northern armed insurgents had reached in its climax. The more the war intensified, the more the incidence of torture increased. Government forces were using the maximum of their potential to persecute, detain and torture anyone alleged to have connections with insurgent groups. As the power of EPLF and TPLF was rising and controlled wide areas in the northern part of the country, the incidence and gravity of torture was at its highest level.

During this period, the government increased and expanded the detention centres, police stations and prisons, and various governmental offices served as unofficial detention and torture centres. Many persons most of them in the young age were suspected of having political affiliation with the insurgents were subjected to detention, beatings, torture and execution without charge and trial. Political detainees did not receive a trial neither allowed to adduce evidence and defend their cases. Various reports and interviewees confirmed that the worst and widely practiced forms of torture.<sup>7</sup>

Impunity played the decisive role in the prevalence of torture throughout the country. Various draconian legislations were enacted during the provisional military government intended to enlarge and secure the political power of the government.<sup>8</sup> In particular, Proclamation No. 129/69 was perceived as legalizing torture everywhere under the pretext of fighting counter-revolutionaries and separatists. Hence, the security forces, the military and the so called "revolutionary guards" were rewarded for arresting, detaining and torturing anyone suspected of being counter-revolutionaries. The declaration of a state of emergency in the war-prone provinces of Tigray and Eritrea from 1988 to 1991 also fuelled the situation by granting power to police, security forces, military personnel and administrative officials to engage in detention and ill-treatment, and they did so widely and frequently.

The 1987 PDRE Constitution, adopted at the height of the violence, did not prohibit torture and cruel, inhuman treatment. Torture continued against members of critical opposition groups, including ethnic insurgents such as EPLF in Eritrea, TPLF in Tigray, and OLF in Oromia, as well as ideological opponents such as EPRP members. Overall, while most individuals were arrested and subjected to ill treatment in connection with the civil war, there were also huge numbers of political detainees held without charge and trial who were exposed to torture from 1974 onwards. In conclusion, during the period of military dictatorship, as informants testified and reports affirmed, torture was frequent, severe and geographically widespread.<sup>9</sup>

### **During 1991-2014**

In the early 1990s, during the transitional period, there was not significant improvement in terms of frequency and severity as well as geographical coverage of torture. The Ethiopian Peoples Revolutionary Democratic Front (EPRDF), a coalition of ethnic-based armed insurgents that toppled the military dictatorship in 1991, exerted some effort to respect the rule of law and build a democratic system that would permit a free

---

<sup>7</sup> Amnesty International, *Amnesty International Report 1988*, (AI Index: POL 10/01/1988); US State Department Country Reports on Human Rights Practices, *Country Report on Human rights practice for 1985* (99th Congress 1 2d Session, 1985).

<sup>8</sup> In this regard, proclamation no.1/67, 2/67, 91/68, 110/69, 129/69, 31/67 and 26/67 are among the key legislations that granted power to security forces and police to take measure to save the revolution which ultimately disregard human rights and freedoms during the Derg period.

<sup>9</sup> An interview with Ethiopian Human Rights Council officer (EHRC), (Addis Ababa, Ethiopia, 15 November 2014); Interview with **Ato Nardos** former Judge (n 1).

press and multi-party system. The transitional period and the process of readjusting the political system and legal institutions of the country led to the mass purge of judges, the police force and prosecutors. However, the law enforcement institutions were replaced by inefficient and incompetent personnel and this did not improve the human rights situation.

The government released many detainees and political prisoners of the former Derg government, and replaced them with thousands of the former Derg officials and soldiers. Apart from that, the withdrawal of the OLF and ONLF from the transitional government led to a resumption of the armed insurgency and the detention and torture of thousands alleged to have connections with these armed groups.

While Ethiopia's accession to major international human rights instruments such as ICCPR, ICESCR and CAT, in the early 1990s, increased the awareness of human rights and helped produce the 1995 FDRE constitution.

After the transitional period, the 1995 FDRE Constitution was adopted and nationwide elections were held. The new constitution provided a long list of human rights and freedoms, which laid a ground for human rights improvement. Until the end of the 1990s, however, neither international nor domestic monitoring and complaints mechanisms were in place. And the introduction of ethnic-based federalism has been accompanied by ethnic conflict in different parts of the country.<sup>10</sup>

From 1998 to 2000, during the armed conflict with Eritrea, the number of detainees and victims of torture and other ill-treatment increased. The unresolved issue of nationality as a result of the secession of Eritrea victimized Ethiopians and Eritreans in both countries under the pretext of national security concerns.<sup>11</sup> Reports of the Ethiopian Human Rights Council have indicated that ill-treatment of Ethiopians by the Eritrean government and Eritreans by the Ethiopian government were common in military camps and detention centres. Particularly in war-torn areas (Tigray and Afar) and in Addis Ababa, the government arrested and mistreated not only those Eritreans who used to reside in Ethiopia, but also some Eritrean soldiers and spies.<sup>12</sup>

The ethnic related conflicts are also contributing factors for human rights abuse during the late 1990s and early 2000s. For example, in Gambela (one of the regional states in Ethiopia), the Ethiopian National Military Force (ENMF) reportedly beat, tortured and arbitrarily executed many members of Agnuk ethnic group. The Ethiopia Human Rights Council, among allegations reported to it, stated that from 1991 to 2003 it documented 169 cases of torture and 210 cases of enforced disappearance.<sup>13</sup>

The 2005 national election raised the incidence of torture again. Conflict and riots in the aftermath of the election in connection with election fraud ended with the detention of hundreds of members and supporters of opposition political parties, journalists, and human rights activists. Reports affirmed that considerable numbers of persons who were detained in various police stations, prisons and military academies were mistreated and abused in ways that amount to torture.<sup>14</sup>

The enactment in 2009 of Anti-Terrorism Proclamation No 652/2009 and Charities and Civil Society Proclamation No 621/2009, among other laws, has negatively influenced human rights protections and the democratization process. The latter law, for example, totally prohibits foreign non-governmental institutions from human rights and democracy-related advocacy and activities. In addition, the anti-terrorism legislation has been used to charge and convict dissenters.<sup>15</sup>

The law generally empowers police and security forces to use any means at their disposal to extract information and secure confessions. The law has simplified the standard and proof of evidence required for terrorism charges and characterized intelligence reports, even if they do not disclose the source or the method by which the information was gathered, as admissible evidences.<sup>16</sup> And evidences gathered through interceptions or

---

<sup>10</sup> Ethiopian Human Rights Council, *Compiled Reports of EHRCO (Vol.II), from May 1997 to August 2002*, (Vol.II April 2003, Artistic Printing Enterprise.), p-V

<sup>11</sup> *ibid*

<sup>12</sup> Human Rights Watch Report, *Federal Democratic Republic of Ethiopia, Human Rights Developments, 2000* <<file:///C:/Users/Admin/Desktop/HRW/2000.htm>> accessed on November 15, 2014.

<sup>13</sup> *Compiled Reports of EHRCO* (n 12)

<sup>14</sup> US Department State, Bureau of Democracy, Human rights and Labor, 2007 *Country Report on Human rights practice* (march 11, 2008) <<<http://www.state.gov/j/drl/rls/hrrpt/2007/100481.htm>>> accessed on September 10, 2014; Interview with a journalist and survivor of torture, (Addis Ababa, Ethiopia, October 25, 2014) ; a *US Department of State Report, 2007*

<sup>15</sup> According to the new proclamation, any one may commit a terrorism by act or by being a member of terrorist group as labeled by the House of Peoples Representatives. (Anti-Terrorism Proclamation No.652/2009 (Here in after Anti-terrorism proclamation), Federal Negarit Gazeta No. 57 28 August 2009, Art.3 & 7)

<sup>16</sup> *ibid*. Art.23 (1)

surveillances are also admissible evidence under the law.<sup>17</sup> Police may use necessary and reasonable force which might include torture to take samples when the suspect remains unwilling. These samples may include blood, body fluids, saliva, hair and voices.<sup>18</sup> It should be noted that these procedural changes increase an incentive for torture and mistreatment during investigation.

Currently, most of terrorism cases are investigated in *Maekelawi*, the Federal Police Crime Investigation. Interviewees indicated that the investigation procedures are severe, with police officials using coercive methods to extract confessions, statements and other information.<sup>19</sup> The anti-terrorism law does not differentiate suspects on the basis of age. Allegations of torture and mistreatment are common among those suspected of terrorism.

Apart from terrorism crimes and cases subject to *Maekelawi*, there has been marginal improvement in the resort to torture,<sup>20</sup> in terms of frequency, intensity and geographic coverage. In some regions, according to informants, the continuous training on human rights and crime investigation, as well as the increased hiring of lawyers at the woreda level,<sup>21</sup> have contributed to minor progress in the rate of torture and mistreatment. But it should be remembered that the perception of law enforcement organs (police, prosecutor and judiciary) about the seriousness of the crime, and awareness on human rights issues, especially on prevention of torture remains inadequate.

### III. DETENTION LAW AND PRACTICE

The crimes of torture and inhuman treatment are usually committed during police investigation, therefore, effective detention procedures and evidence standards would be of paramount importance in reducing and preventing torture. Accordingly, this research reviews law and practice relating to unofficial detention, prompt notification of families of detainees, access to lawyers, prompt presentation before judges, medical examination after detention, and the requirement for video or tape recording of interrogation and monitoring of detention centres by cameras.

Over the period studied, Ethiopia has experienced a moderate level of improvement in detention legislation and to a lesser extent detention practice. The adoption of the transitional period charter in 1991, the ratification of the ICCPR (1993) and CAT (1994), the adoption of the 1995 FDRE Constitution and the Codification of the new Criminal Code in 2005 may be considered among the major legal reforms in the last thirty years that have affected the prevention of torture positively. Legal reforms emphasizing proper detention procedures have also made a positive contribution. However, the coming into force of the 2009 anti-terrorism proclamation, which widened the power of police and security forces to arrest and detain for long periods under the pretext of investigation, has had the opposite effect.

#### **During 1985-1991**

The criminal procedure code, adopted in 1961 which has been in force over the entire thirty years under study, plainly provides that any arrest may not be committed without an arrest warrant except in flagrant and quasi-flagrant cases. However, the enactment of Proclamation No 129/69 in 1969, which empowered security forces to take any measures to save the revolution, has limited the application of the criminal procedure laws in to common crimes, which are non-political. The same limit has been placed on the 1957 penal code, which criminalized unofficial detention. This law served as legal justification for arbitrary arrest and detention committed by Derg officials and security forces against any political dissidents, including members of Ethiopian People's Revolutionary Party (EPRP), All Ethiopian Socialist Movement (AESM,) and armed insurgents groups such as the TPLF, EPLF and OLF). In fact, this justification was raised by former Derg officials during the red terror trial from 1994 to 2007, though it was rejected by the court. Only ordinary criminals were at times protected against unofficial detention. The adoption of the 1987 PDRE Constitution that prohibited unofficial detention remained rhetoric.

The requirement to inform families about the detainee's situation has never been recognized under the law during the entire study period. In practice, there was no significant improvement in cases of unofficial detention and family notification particularly with regard to political prisoners. In fact, the proclamation licensing

---

<sup>17</sup> *ibid.* Art.23(4)

<sup>18</sup> *ibid.* Art 23

<sup>19</sup> Interview with, former Public Prosecutor at Minister of Justice anti-terrorism case team, (Dire Dawa, Ethiopia, November 15, 2014), Interview with survivor of torture (n,19).

<sup>20</sup> Interview with Survivor of Torture in Mekelawi, ( , Addis Ababa. Ethiopia October 21, 2014), Interview with Journalist and Survivor of Torture (n 19), Interview with Former prosecutor at Minister of Justice (n 24)

<sup>21</sup> Interview with Judge in Alamata Woreda Court, (Alamata, Ethiopia. September 15, 2014,) Interview with Human rights expert at Ethiopian Human Rights Commission, ( Addis Ababa, Ethiopia, October 10, 2014,).

security forces to arrest and detain anyone suspected of anti-revolutionary activity and threatening Ethiopian integrity has made the situation worse in both law and practice. The situation was also bad for non-political prisoners earlier in the study period. For example, as the US State Department report indicated, in March 1987 an estimated 3000 to 5000 unemployed Addis Ababa residents were detained on suspicion of street crime.<sup>22</sup>

Accesses to a lawyer as well as prompt presentation before a judge were protected under the criminal procedure code<sup>23</sup> as well as the PDRE Constitution.<sup>24</sup> Yet it is clear that these laws applied only to non-political crimes, for political crimes mainly fell under the proclamation that granted wide powers to detain until the fall of the Derg regime in 1991. However, no legislation required medical examination after detention nor were there laws requiring video or audio recording of interrogation. The monitoring detention of centres by camera was provided for nowhere in the law. In general, however, except for some non-political crimes, non-compliance with procedural guarantees such as access to a lawyer and family notification were normal during the Derg regime.

As the civil wars in northern Ethiopia intensified, the constitutional enactments did not change the practice. The 1988 declaration of a state of emergency in Tigray and Eritrea licensed security forces to apparently ignore these rights. Security forces used to stop, detain and hold anyone at any time without a court warrant. Long periods of detention without charge or trial were reported during this time. Significant numbers of detainees, including the family of deposed Emperor Haile Selassie, were detained for more than 14 years without charge and trial.<sup>25</sup>

The separation between the executive branch and judiciary was blurred during the period of the late 1980s, with law enforcement centralized in the public security sector of the Ministry of the Interior. The ministry used to bypass judicial procedure in the interests of security regardless of constitutional provisions.<sup>26</sup> Special emergency administrators were empowered to convene military courts to try civilians accused of political offences or offence against the revolution. Even when political prisoners were tried, the proceedings were held in secret and only the verdict was revealed publicly. One may safely argue that the political environment more than any factor affects the detention law and practice. Total ignorance of procedural safeguards emanated mainly from the political behavior of the government.

#### **1991-2014**

The 1991 transitional period charter prohibited arbitrary arrest and detention and implicitly repealed Derg Proclamation No 129/69. Yet the trend of detention and procedural rights did not show significant improvement in the 1990s. Detention law and practice during this period was affected mainly by four incidences: the issue of transitional justice against former Derg officials, the process of reestablishment of the law enforcement institutions by purging, the armed conflicts with insurgent groups such as OLF and ONLF, and finally the war with Eritrea from 1998 to 2000.

Although the criminal procedure code and penal code prohibited unofficial detention, the transitional government (1991-1995) arrested thousands of former Derg officials and individuals without warrant and formal charge. Apparently, detaining procedures were ignored and in their place the recommendations of local peace and stability committees (PSC)<sup>27</sup> served as the ground for detention. The complaints review and grievance clearing committee took charge of the investigation of allegations of corruption or abuse of power.<sup>28</sup> Prompt access to a lawyer, prompt presentation before a judge, and medical examination by independent doctors were not available.

The absence of strong and efficient law enforcement organs in the 1990s hindered the implementation of due-process rights. The purge of former police, public prosecutors and judiciary by the transitional government severely affected the trial processes of Derg officials and the overall human rights situation of the

---

<sup>22</sup> US Department of State, *Country Report on Human rights practice for 1987* (100th Congress, 2d Session, 1987).

<sup>23</sup> Criminal Procedure Code of the Empire of Ethiopia of 1961 (Here in after, Criminal Procedure Code), Federal Negarit Gazeta extra-ordinary issue No.1, Proclamation No. 185, 2 November 1961. Art 24 & 61.

<sup>24</sup> Constitution of Peoples Democratic Republic of Ethiopia (Here in after PDRE Constitution), Proclamation No. 1 of 1987, Negarit Gazeta, Vol.47, No.1. Addis Ababa, 12 September 1987, Art 20 & 44(1)

<sup>25</sup> Amnesty International *Amnesty International Report*, 1990, (AI Index: POL 10/03/1990)

<sup>26</sup> US Department of State Report (n.1).

<sup>27</sup> PSC refers to a temporary committees established in different parts of the country during the transitional period to bring peace and stability in the country. They used to serve as law enforcement organs without necessary legal qualification.

<sup>28</sup> US Department of State, *Country Report on Human rights practice for 1991* (102d Congress 2d Session, 1991).

country.<sup>29</sup>In 1996 alone the government dismissed 275 judges from the Oromia region, nearly a hundred qualified judges from Addis Ababa and Dire Dawa, and eighteen from Amhara Region.<sup>30</sup>Most of these judges, LL.B holders were replaced by civil service graduates and three- to six-month trained laymen.<sup>31</sup> Peace and Stability Committees (PSC) took on the role of police, but without basic investigative and legal skills<sup>32</sup>. Suspects were detained in PSC prisons without a formal charge or transferred to EPRDF custody. Judicial redress such as prompt presentation before court, access to a lawyer and a fair trial were beyond reach. People's courts used to serve as a judiciary, thought without necessary qualifications.<sup>33</sup> These "courts" were blamed for arbitrary decisions and summary trials.

The situation worsened following the separation of OLF and ONLF from the coalition transitional government in 1992 and 1995 respectively. The arbitrary arrest and detention of members of these parties and individuals suspected of being affiliated to them was carried out by the transitional government. In the areas of armed conflict with OLF and ONLF, there were numerous cases of arbitrary arrest and ill treatment in military camps, *kebeles* and peasant association houses. Contrary to the law, access to a lawyer and family notification were not permitted in most political detention cases.

After the introduction of ethnic-based federalism in 1991, the ethnic-based conflict increased. Under the guise of security and stability, the number of detainees without any formal charge and trial increased in ethnically diversified regions. For example, summary arrest and detention in Oromia, Southern Nation Nationalities, Addis Ababa and other provinces during 1990s were mainly caused by ethnic conflict.<sup>34</sup>

Although a significant part of the 1995 FDRE Constitution was devoted to human rights and freedoms, the trend of unofficial detention continued even after its adoption. In 1997, in one case that came to the attention of Human Right Council, 176 persons were unlawfully detained in Amhara, Oromia, Addis Ababa, Assosa and other detention centres.<sup>35</sup> Many of the detainees stayed in detention centres for more than two months without access to a lawyer or judge, and without charge and trial.<sup>36</sup>

As law enforcement organs were predominately inexperienced and unqualified, and there was a dearth of training on criminal prosecution and torture prevention, confessions remained at the heart of criminal investigation and trial. But the continuous training delivered to judges, police and prosecutors played a role in improving detention procedures and trial processes except in political cases, at least until the 2005 election.<sup>37</sup> The visit of some international monitoring organs such as ICRC (in 2003) and the African Commission Special Rapporteur on prison and detention conditions in Africa (2004) is also a factor in such improvements as access to family visits in police and prison centres, reduction of unlawful detention, and prompt presentation of suspects before court. These improvements, however, did not extend to the protection of a free press and the independence of human rights groups. The detention of numerous journalists and members and supporters of human right groups such as the EHRC and Ethiopian Teachers Association (ETA) contained and curbed their role in exposing human rights abuse.<sup>38</sup> The inadequacy of political freedom influences the detention practice even though there were better detention legislations.

The 2005 national election, the most heated and controversial election ever in Ethiopian election history, led to a downturn in detention practice. A 'decree' by the late Prime Minister Meles Zenawi in May 2005, which prohibited any demonstration for one month led to large-scale arrests. After the November 2005 anti-government demonstration, the commission of inquiry into post-election political violence reported that over 30,000 individuals including leaders of Coalition for Unity and Democracy (CUD), journalists and human right defenders were detained without charge.<sup>39</sup> More than 131 persons were formally charged, including higher

<sup>29</sup> *ibid.*

<sup>30</sup> Ethiopian Human right Council *The Human rights situation in Ethiopia*, (twelfth report, Nov 1997, Berhanena Salam Printing Enterprise. )p 71 and 72

<sup>31</sup> Interview with former expert at Justice office of Tigray Regions (n15), Interview with Judge in Alamata woreda, (n 27).

<sup>32</sup> Interview with former Judge and public prosecutor (n 1).

<sup>33</sup> An interview with Human Rights Council (n 11); EHRCO Twelfth report, (n 37). P. 70.

<sup>34</sup> Compiled Reports of EHRCO, VOL II, (n 12)

<sup>35</sup> EHRCO twelfth report, (n 37).

<sup>36</sup> *ibid*

<sup>37</sup> Interview with former judge for Red terror Trial and Public Prosecutor at federal courts, (Addis Ababa, Ethiopia. October 17, 2014.); Interview with Judge (n 27)

<sup>38</sup> EHRCO report, (n 12); Interview with Former prosecutor at Minister of Justice (n 24)

<sup>39</sup> US Department State, Bureau of Democracy, Human rights and Labor, 2007 *Country Report on Human rights practice*, (march 11, 2008) <<<http://www.state.gov/j/drl/rls/hrrpt/2007/100481.htm>>> accessed on September 10, 2014

officials of the CUD<sup>40</sup>, journalists, and civil society activists. During the trials, there were allegations of ill-treatment and in some cases police were unwilling to release acquitted prisoners.

The instances of arbitrary arrest and unlawful detention intensified in the Somali region of Ethiopia after the April 2007 ONLF attacks on Obole that ended with the death of nine Chinese workers at the oil field project. Military camps, local administrative prisons and prisons in Addis Ababa served as detention centres. An interviewee testified that the military held a broad and unchecked power to arbitrarily arrest, detain and abuse victims in Ethiopian Somali region.<sup>41</sup>

In cases of ordinary crimes during the 2000s, both at the state and federal level of jurisdiction, arrests without warrant still continue, albeit with some improvement. The criminal procedure code dictates that any arrest must be conducted by arrest warrant except in instances of flagrant offences and when the police have reasonable suspicion about the commission of the crime.<sup>42</sup> Yet the practice was that arrest without warrant using a police summons was common. An encouraging trend of presenting a suspect before a judge within 48 hours has been shown particularly after 2008. The main reason for this is the introduction of business processing re-engineering (BPR) from 2008-2009 onwards in which the public prosecutor works closely with police and frequently visits the detainees. Moreover, higher officials and commissioners of the anti-corruption engaged in the monitoring system extensively.

No detention centre has established a system that would enable the family to be notified about a detainee's arrest. It is the detainee's own effort that facilitates prompt family notifications. The right of access to a lawyer, though critical for fair trial, no significant improvement has been seen. In the majority of cases, access to a lawyer is minimal except for corruption and limited grave crimes. Even though an individual is entitled to meet his advocate from the moment of his arrest, it is not until the court room that the advocacy commences. In the 2011 and 2012 human rights commission reports, it is stated that almost no police have a telephone service for detainees under custody.<sup>43</sup> This affects communication between detainees and their families and lawyers. Contact with a lawyer is usually not in private, while appointed public defenders are often unavailable and unskilled.

Video and audio recording have never been used during interrogation, with the only exception being the very recent and rare practice in cases of corruption. Similarly, no detention centre uses cameras to monitor authorities. Some training has been provided to detaining officials, investigating authorities and custody personnel and this has been focused on general human rights. Since detention centres use public medical centres, there is in many occasions an independent examination practice for common crimes. Yet it should be noted that medical treatment that involves torture usually accompanied with police.

As of 2009, another trend in detention and prosecution has evolved in Ethiopia for serious and politically-affiliated cases. The new anti-terrorism proclamation has its own detention and evidence procedure which accords wide power to a coalition of national security and intelligence service, the federal police commission and the Minister of Justice. Since the coming into force of this law, which includes a broad definition of terrorism and a low standard of proof, politically-affiliated or terrorism cases include not only armed insurgents, but also journalists, bloggers, opposition political party members, and Muslim rights advocates.

The police are more likely to comply with the standard of prompt presentation before a judge in cases involving public figures. The law permits 28 days remand to complete the investigation renewable up to four months.<sup>44</sup> An evolving practice in this regard is that after four months of detention and mistreatment, police officials often release detainees without compensation.<sup>45</sup>

Although there is an improvement in medical examination as the centre itself has a medical centre, there is little practice of medical examination without security officials. In addition, medical officials inside the centre are affiliated with the government as they are former members of the armed forces.<sup>46</sup> This affects the independence of medical officials.

As with ordinary crime, there is no practice of video and audio recording. On the odd occasions when videos are recorded, they are for political propaganda not investigative or monitoring purposes.<sup>47</sup> There are no cameras installed in the detention centres, with one exception, but this camera is not functional.<sup>48</sup> While training

---

<sup>40</sup> Take a note that Coalition for Unity and Democracy (CUD) was the strongest opposition political party during the 2005 election.

<sup>41</sup> Interview with Survivor of Torture (Jigjiga, Ethiopia July 7, 2014, )

<sup>42</sup> Criminal Procedure Code of Ethiopia, Art 49, (n 30).

<sup>43</sup> *ibid*, Art.(45&46)

<sup>44</sup> Anti-Terrorism Proclamation, Art.20(3), (n20).

<sup>45</sup> Interview with Survivor of Torture (n 26)

<sup>46</sup> Interview with Journalist and Survivor of Torture (n 19)

<sup>47</sup> *ibid*

<sup>48</sup> Interview with Former prosecutor at Minister of Justice (n 24)



on torture and crime investigation could have an effect in reducing torture and mistreatment, this is rarely conducted. The use of confession as conclusive evidence is still the most acceptable prosecution system. There are various reasons behind this, including the lack of modern investigation systems, absence of basic investigation skills and low levels of human rights awareness on the part of the investigating officials. Police may receive a confession in two ways: in police custody during interrogation and in the court rooms before a trial or when an inquiry is initiated.<sup>49</sup> The court should never admit a confession as conclusive evidence, yet confession serves as essential evidence when it is accompanied by other corroborative evidence obtained based on the confession.<sup>50</sup> On top of this, the new proclamation has provided that confessions serve as conclusive and admissible evidence for terrorism cases.<sup>51</sup> The repressive political environment shapes the detention law thereby the practice.

#### **IV. PROSECUTION LAW AND PRACTICE**

Conviction and punishment of torture perpetrators is crucial in the reduction of torture incidents for its deterrent effect. To this end, CAT establishes jurisdiction over the crime of torture to end the culture of impunity. Ethiopia has been a party to the convention since 1994 and has made it the law of the land by virtue of the 1995 FDRE Constitution. Although it is at the heart of torture prevention, prosecution remains poor for much of the study period in Ethiopia and impunity prevails.

This research investigated whether Ethiopian law criminalizes torture, the statute of limitations on the crime, whether independent investigation is conducted into allegations of torture and whether a statement extracted under torture is admissible as evidence. In relation to practice, whether complaints of torture are being lodged, whether torture is really investigated, whether charges of torture against torturers are brought, whether alleged torturers are suspended from duty, the rate of conviction in comparison with other crimes, and whether the sentences imposed are commensurate with the seriousness of the crime. This research also concerned with the possibility of civil action against a torturer, whether a pardon or amnesty is given for torturers, and if there is torture prevention and torture investigation training.

The penal code of 1957 criminalized torture under Article 417, although the definition of torture was narrower than the definition provided under Article 1 of CAT. The law addressed it under use of improper methods committed by a public servant while discharging his duty. Other elements of torture were covered partly under the heading of abuse of power. The adoption of the new criminal code in 2005 brought no change in definition and structure of the law relating to torture except to raise the punishment slightly. The committee on CAT indicated its concern that the criminal code covers only some of the purposes envisaged in Article 1 of CAT and applies only to acts committed in the performance of duties by a public servant charged with arrest, custody, supervision and interrogation of the person under suspicion, arrest, detention or summoned to appear before a court or serving a sentence.<sup>52</sup> Thus, those acts of torture falling outside the aforementioned scope of the code are 'punishable only under offence of abuse of power.'<sup>53</sup> What is more, the 1995 FDRE constitution only prohibits cruel, inhuman or degrading treatment or punishment. It does not mention torture explicitly.<sup>54</sup>

Three years was the statute of limitation in the penal code before the 1995 FDRE constitution has completely barred the limitation. The 2005 revised criminal code, however, has made the statute of limitation five years for torture committed by a public servant on duty. The contradiction between the criminal code and the constitution should give rise to constitutional supremacy. However, the problem is that the constitution has barred a limitation for crimes of torture as proscribed under international instruments ratified by Ethiopia, such as CAT. The criminal code only criminalized torture on CAT's standard in time of armed conflict. In other words, the criminal code meets the standards set in four Geneva Conventions and two additional protocols - ratified by Ethiopia in 1969 and 1994 respectively. Thus, in other cases for all practical purposes, as criminal code criminalizes 'use of improper method' and not torture separately, the five year statute of limitation is likely to prevail.

Before the coming into force of the 2005 revised criminal code, the punishment for torture was a maximum of three years imprisonment or 5,000 birr unless the act was committed in relation to armed conflict,

---

<sup>49</sup> Criminal Procedure Code of Ethiopia, Art.27 & 35, (n 30)

<sup>50</sup> Interview with a public Prosecutor at Federal Minister of Justice, (Addis Ababa, Ethiopia. October 14, 2014.)  
Interview with Judge at Red Terror Trial (n 56)

<sup>51</sup> Anti-terrorism proclamation, art.23(4) (n 20),

<sup>52</sup> Committee against Torture, *Concluding observations of the Committee against Torture*, (Forty-fifth session 1–19 November 2010.)

<sup>53</sup> The criminal code of the Federal Democratic Republic of Ethiopia (Here in after FDRE Criminal Code), Proclamation No.414/2004, Federal Negarit Gazette, 9th of May, 2005, Art 424.)

<sup>54</sup> FDRE Constitution, Art 18.

where punishment may be extended to life imprisonment or capital punishment.<sup>55</sup>The new criminal code has imposed simple imprisonment – a maximum of three years except in serious cases of torture, in which the sentence may extend to ten years.<sup>56</sup>

Specific arrangements never exist in Ethiopia for the investigation of allegations of torture by an independent authority. The 2003 police administration regulation requires the police officer to be suspended from duty if he/she is formally charged with the crime of torture or disciplinary offences for which dismissal is to be expected.<sup>57</sup>

The criminal procedure code of Ethiopia clearly prohibits any threat, promise or improper method to be used against the suspect during investigation.<sup>58</sup> Furthermore, the law grants that the suspect shall be free from any compulsion and be informed of his right to remain silent. The 1995 FDRE Constitution (19(5)) plainly stated that ‘persons arrested shall be not be compelled to make confession or admission which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible.’ The criminal procedure code, under Article 146 entitles accused persons to challenge the admissibility of an admission or confession given by torture or any improper methods. However, the new anti-terrorism law has made admissible any intelligence report prepared in relation to terrorism even if the report does not disclose the source and the method by which it was gathered.

Regarding the prosecution of torturers, the last thirty years offered impunity to torturers throughout the entire period. Lack of a strong political commitment, the driving factor behind ending impunity, is the shared feature between the Derg regime and the EPRDF government. There is no recorded data so far available from the government that shows the rate of conviction of torturers.

Ethiopia was not a state party to basic human rights instruments including CAT until 1994. Despite widespread and severe forms of torture, prosecution of torturers was insignificant and its role in torture prevention minimal during this period. Cases worth mentioning during the Derg period, however, included the conviction of six *kebele* officials for three years in the then Shewa province, and the death penalty for a *kebele* chairman and imprisonment for seven other officials in a torture case.<sup>59</sup> The recommendation of Amnesty International for further investigation into torture received no response from the government.<sup>60</sup> Reports of torture were denied by the government at the meeting of the 43rd session of the UN Commission on Human Rights. It stated that a high level committee had been established in 1986 to investigate allegations of torture, but failed to provide the finding of that committee.<sup>61</sup>

The declaration of an indefinite state of emergency in Eritrea and Tigray provinces in 1988 empowered the military and security forces to ensure law and order and detain civilians. It protected them against any torture prosecution. When the civil war intensified in the northern part of the country at the end of 1980s, internal security reasons overrode justice. Hence, prosecution for torture during the latter part of the Derg regime was almost nonexistent.

The transitional government that followed the end of the Derg suffered from incompetent and inefficient institutions including the judiciary. The government dismissed hundreds of police, prosecutors and qualified judges, contending that they participated in the abuses of the Derg regime. As the police force was totally dissolved, the EPRDF’s armed wing assumed responsibility for policing and internal security duties throughout the country along with its national defence duty.<sup>62</sup> During the transitional period, the paramilitary group called peasant militias of the country served as a security force in rural areas. Thus, along with the army, they had power to detain and interrogate suspects.<sup>63</sup> These militias were also never held accountable for abuses of power and torture. This is attributed, at least in part, to the deterioration of the legal system as a whole.<sup>64</sup>

A progressive trend in relation to ending impunity was the establishment of a special prosecutor office in 1992 and the trial of former Derg government officials for the crimes they committed while in power. The office arrested more than 1,800 persons and brought its first charge before the central high court of the transitional government in October 1994. Some have argued that it was the first of its kind in Africa and elsewhere as it took place without the involvement of international community (as was the case in Rwanda and

---

<sup>55</sup> FDRE Criminal Code, (n 65). Art 424,

<sup>56</sup> *ibid*

<sup>57</sup> The Federal Police Officer Administration Council of Ministers Regulation, No.268/2012,(Federal Negarit Gazeta, May 2012) Art. 58

<sup>58</sup> FDRE Constitution. Art 19(5),

<sup>59</sup> Amnesty International *Amnesty International Report* 1986,( AI Index: POL 01/03/86)

<sup>60</sup> *ibid*.

<sup>61</sup> Amnesty International *Amnesty International Report* 1987,(AI Index: POL 01/02/87)

<sup>62</sup> Human Rights Watch/Africa, *Ethiopia, the curtailment of Rights*,December 1997, (Vol. 9, No. 8 (A) )

<sup>63</sup> *ibid*

<sup>64</sup> *ibid*; Interview with Former expert at Justice Office of Tigray Regions (n 15); Interview with Judge (n 27)

the former Yugoslavia).<sup>65</sup> The trial was conducted at the federal and regional level. In November 1995, the special prosecutor amended the charges and accused the defendants of genocide and crimes against humanity. Torture constituted one of the major elements of the charges. The special prosecution office charged a total of 5,198 people, of whom 2,246 were already in detention while the others were tried in absentia.<sup>66</sup> The court found 3589 of the accused guilty. The other 658 were acquitted. During this long trial, the office called 8047 witness and compiled 15224 pages of evidence.<sup>67</sup> Given the length of the trial, some of the accused died before the trial concluded.

The High Court convicted and sentenced the former Derg officials, including Mengistu Haile Mariam, for life and twenty years of imprisonment. A great number of suspected, however, were released for lack of evidence to charge them. After the decision, the special prosecutor's office made an appeal to the Federal Supreme Court of Ethiopia for the death penalty against Mengistu and 18 of his senior officials. The court complied, yet the president of the country pardoned them by commuting the death penalty to life imprisonment on June 1, 2011.<sup>68</sup> The most problematic scenario however was the release of sixteen officials upon pardon on October 5, 2011. The FDRE constitution clearly stated that persons convicted of genocide, crimes against humanity and torture are not subject to amnesty or pardon.<sup>69</sup> Some have argued that they were released because of parole as they served 20 years in prison. The position of the constitution remains unclear in this regard. Apart from that, there are other officials in similar cases—such as Major Melaku Tefera who has served more than twenty years—who have not been released.

The whole proceeding took more than twelve years to complete— from 1994 to 2006. Criticisms were raised about delayed trials, because there were many suspects who were detained for more than six years without charges. There were allegations about the fairness of the trial as well. Habeas corpus was ignored, and accused individuals did not have access to defence witnesses and the whole trial took very long time. The treatment of senior officials was better than that of others held, because various international organizations, including the International Committee of the Red Cross, had a chance to visit them.

Apart from the red terror trial, impunity for torture still prevails. Survivors of torture in the period under review have confirmed that out of fear of reprisals they have hesitated to lodge a complaint against the prison administration or police force. Various prisons in Ethiopia have established committees for prisoners addressing food, discipline, health, education and other issues. The committee chairmen are selected from among the prisoners and enjoy privileges in terms of hygiene, sleeping rooms and other facilities<sup>70</sup> and occasionally have access to outsiders. For this reason, monitoring organs and public prosecutors meet those committee chairmen during their visit. Attempts to complain may be waylaid by the committees, which try to persuade the survivor of torture to withdraw his case. As committees sometimes play a decisive role in decisions on parole by submitting a report on a prisoner's disciplinary record, this pressure often succeeds.<sup>71</sup> The rare instances in which complaints are lodged are often rejected for lack of evidence as the majority of acts of torture are committed during the night and leave no scars.

Usually victims are denied access to their families while their injury is visible. Sometimes they are transferred to other prisons to silence them and their families. Interviews with judges and public prosecutors have reiterated the fact that the rate of conviction for the crime of torture is insignificant. Even for those limited numbers of cases of torture that are investigated, the punishment would be a fine or disciplinary measure that are not commensurate with the severity of the crime. Alternatively the case is dismissed after reconciliation.

After 2009 and 2010 a new structure was introduced that enables police and public prosecutors to work closely together in investigating a case. The involvement of the public prosecutor has created a potential control mechanism over the police. Yet most investigators work at night on the investigation, meeting the suspects alone and using any force that they choose. Other reasons for the failure of prosecutors to investigate police for torture include the fact that many regard police as colleagues and prosecutors may feel insecure in their jobs.

---

<sup>65</sup>Girmachew Alemu Aneme, 'Apology and Trials; The case of Red Terror Trials in Ethiopia' (2006) (vol 6) African Human Rights Law Journal (AHRLJ), 64

<sup>66</sup> Human Rights Watch report (n 74)

<sup>67</sup>Girmachew Alemu 'The Rights of the Accused' in Kjetil Tronvoll (eds) *The Ethiopia Red Terror Trial: Transitional Justice Challenged*. African Issues (James Currey, UK, 2009)

<sup>68</sup>The 1995 FDRE constitution under Article 28(2) empowers the head of state to commute the death penalty into life imprisonment.

<sup>69</sup> FDRE Constitution, Art 28.

<sup>70</sup>Interview with Survivor of Torture in Dire Dawa, (Dire Dawa, Ethiopia, June 19, 2014); Interview with Survivor of Torture in Adama (Adama, Ethiopia, July 10, 2014,); Interview with, Human rights expert at Ethiopian Human Rights Commission, (n 27)

<sup>71</sup> *ibid.*

The criminal procedure code gives the Minister of Justice the power to order the public prosecutor to dismiss a charge, including a charge of torture, on the grounds of public interest. Interviews with public prosecutors have indicated that the Minister of Justice often dismisses cases without sufficient evidence to justify public interest. On the other hand, the judiciary appears too submissive to challenge the order of dismissal, although they are entitled by law to do so. Judges and law enforcement organs perceive torture as an ordinary crime and rarely use international human right instruments in their decisions. Thus, it may be concluded that lack of independent, specialized and effective mechanisms to hear complaints of torture and to investigate them promptly have contributed to the insignificant rate of conviction of torture. No single case prosecution for torture has been reported to CAT, nor have there been reports of disciplinary sanction or compensation to victims of torture.

The credible allegations of torture in 2004 in Gambella, the 2005 post-election violence, the 2007 counter insurgency operation against ONLF and a number of recent complaints of torture by victims of the anti-terrorism law<sup>72</sup> remain uninvestigated. Instead, allegations of torture are usually misperceived by the authorities as an insult to the institution responsible, leading authorities to defend themselves rather than investigate and punish the perpetrators. Clearly there is a lack of strong political commitment the part of the government to prosecute torturers.

## **V. COMPLAINTS AND MONITORING MECHANISMS; LAW AND PRACTICE**

The role and impact of monitoring and complaints procedures is insignificant for the prevention and reduction of torture in Ethiopia, because there has been very little in the way of effective mechanisms, even though the adoption of the 1995 constitution laid the foundation for a National Human Rights Institution (NHRI) complying with the Paris Principles.

For the first five years of the study period, Ethiopia recognized neither human rights norms nor human rights institutions. As Ethiopia was not a party to the major international and regional human rights instruments, the hearing of individual complaints and monitoring of detention centres by international and regional bodies was impossible. The rhetorical commitment of the 1987 PDRE Constitution towards human rights and freedoms did not lead to practical reforms. The transitional period - 1991 to 1995 – showed little progress in this regard except for a few ICRC visits to some detention centres.

The 1995 FDRE Constitution formally recognized the necessity of a NHRI for the first time and granted the mandate to establish such an institution to the House of People's Representatives (HOPR), the lower house of the legislature.<sup>73</sup> The Ethiopian Human Rights Commission and the institution of the Ombudsman were established five years later by proclamation no 210/2000 and 211/2000 respectively. However, the Ethiopian Human Rights Commission only began functioning in 2005. This is the formal domestic organ mandated with monitoring and receiving complaints in accordance with the standards of the Paris Principles.

The following discussion reviews the law and practice of monitoring and complaints handling by international as well as domestic organs and their impact on torture prevention in Ethiopia. It discusses the investigation of complaints, referral to the prosecutor office, effective redress, and publications of findings and availability of training on investigation. It looks at the powers and practices of monitoring mechanisms, including whether the mechanism conducts regular, frequent and unannounced visits, interviews detainees, publishes its findings, and if there is immunity for monitoring related activities and training on torture prevention and investigation.

### **International and Regional Mechanisms**

Although Ethiopia is a party to key international and regional human right instruments, the role of international monitoring and complaints mechanisms remained low in the period under review. Ethiopia's resistance to international monitoring and complaints mechanisms has made it difficult to assess its practical commitment to human rights.

Few cases have been brought against Ethiopia before the African Commission on Human and Peoples' Rights.<sup>74</sup> In the case against Ethiopia before the commission on the allegation of human rights abuses including torture in 2003 and 2004 in Gambella, the government responded that investigation in a domestic court was ongoing and therefore domestic remedies were not exhausted.

---

<sup>72</sup> Interview with Former Prosecutor at Federal Minister of Justice (n 24)

<sup>73</sup> FDRE Constitution, Art.55 (14 & 15)

<sup>74</sup> The majority of allegations against Ethiopia were brought before Ethiopia's accession to the Charter and hence rejected for lack of jurisdiction. The culture of complaints is now improving.

The Special Rapporteur on Prisons and Conditions of Detention in Africa established by the African Commission<sup>75</sup> has been empowered to examine the conditions of persons deprived of their liberty and make recommendations to states party to the African Charter on Human and Peoples' Rights. As the Special Rapporteur visited Ethiopia only once, its effect on torture prevention has been very limited. Yet the Special Rapporteur's visit and recommendation was the first of its kind and an encouraging step towards monitoring. Local NGOs have confirmed that despite the visit's shortcomings, the cooperation it engendered with local NGOs and the exchange of information was inspiring.<sup>76</sup> The Special Rapporteur's access to detention centres and publication of its findings was encouraging.

### **Domestic Mechanisms**

The Ethiopian Human Rights Commission was established in 2000 by proclamation 210/2000. The basic objective of the institution is to respect, protect and enforce human rights.<sup>77</sup> Hence, the legal basis encompasses constitutional rights and ratified international human rights instruments.<sup>78</sup> The commission has been provided with a broad range of powers including monitoring, complaints-handling and other human rights activities. The power granted to the commission by the law has largely met the requirements of the Paris Principles.

The commission has invited criticism because it was dysfunctional for the first five years of its establishment. Various reasons have been offered by the commission for this, including lack of professional staff, the unnecessary time taken to make nationwide public discussions and dialogue on the objectives of the commission and the Ethiopia-Eritrea war, which shifted the government's attention to national security.<sup>79</sup>

### **Domestic Complaining Mechanism**

As stated, one of the important functions of the commission is complaints-handling and investigation. This quasi-judicial institution may receive complaints from any person claiming his/her rights are at stake, his/her spouse, family member or representative or by any third party.<sup>80</sup> Anonymous complaints are also possible, dependent upon the gravity of the alleged human rights violation.<sup>81</sup> This increases the accessibility of the commission to victims of torture currently inside detention centres and those who hide themselves for fear of reprisal from the government. The law permits complaints to be communicated in any form, whether written or oral.<sup>82</sup>

The commission has been regarded as ineffective to date. One of the key factors explaining its ineffectiveness is its inaccessibility. Although the rate of complaints is rising, its accessibility in detention centres remains concerning. In a number of detention centres, the inadequacy of telephones and other means of communication have made the commission unreachable. What is more, detainees in prisons that do have telephone services are reluctant to use them for complaints because there is eavesdropping on private conversations.<sup>83</sup> The introduction of a free hot line number has brought an increase in the rate of complaints throughout the country.<sup>84</sup>

Conducting investigations is another one of the principal tasks of the commission. In accordance with the enabling legislation, investigations can be self-initiated or in response to a complaint.<sup>85</sup> The commission may order production of evidence and examination of witnesses before rendering its decision. The law imposes an

---

<sup>75</sup> The African Commission on Human and Peoples' Rights (The Commission) in accordance with its mandate under Article 45 of the African Charter on Human and Peoples' Rights (the Charter) has established the position of Special Rapporteur on Prisons and Conditions of Detention in Africa. It is empowered to examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and Peoples' Rights. (see art 45 of African Charter on Human and Peoples' Rights, (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982),)

<sup>76</sup> The Ethiopian Human Rights Council, (n 11)

<sup>77</sup> The Ethiopian Human Rights Commission Establishment Proclamation (Here in after EHRC Proclamation) no. 210/2000, Federal Negarit Gazeta - No. 40 4<sup>th</sup> July, 2000, Art 6(4) )

<sup>78</sup> *ibid*, art.2(5)

<sup>79</sup> Ethiopian Human Rights Commission, *Inaugural Report of the Ethiopian Human Rights Commission*, (February 2011, Addis Ababa, Ethiopia). p-4

<sup>80</sup> EHRC Proclamation, Art 22(1)(n 90)

<sup>81</sup> *ibid*, Art 22(2)

<sup>82</sup> *ibid*, Art 23

<sup>83</sup> Interview with Human rights expert at Ethiopian Human Rights Commission, (n 27) ; Human rights report on police, Amharic, (n 53)

<sup>84</sup> *ibid*.

<sup>85</sup> EHRC Proclamation, art 3 (n 90)

obligation on any person to assist the institution in achieving its objectives. Despite these powers, the commission's investigation of torture and the impact of its recommendations have not shown much improvement over the last ten years. As public awareness and the efforts of the commission to expand its service are increasing, the rate of complaints is on the rise. In a one-year period from mid-2012 to mid-2013, about 45 incidents of torture and ill-treatment, more than 10 allegations of unlawful detention, nine cases of the right to family visit and two cases of enforced disappearance were lodged with the Human Rights Commission.<sup>86</sup> Most of the allegations of torture were directed against police investigation centres and security agents. Interviews with survivors of torture revealed that many cases suffer from unjustified and unnecessary delay during the investigation.

The strongest challenge for the commission has been cases involving political affairs and most recently, cases of terrorism.<sup>87</sup> Particularly in the aftermath of the 2009 anti-terrorism proclamation, a number of torture allegations have been brought by journalists, opposition political members and other individuals.<sup>88</sup> Yet the commission has investigated none of the complaints effectively. Given the stance of the commission that Ethiopia is a torture-free country, it seems disinterested to comprehensively investigate and render remedies for allegations of torture. One reason may be because the commission lacks advanced and sophisticated investigation systems.

An interview with a commission expert revealed inadequacies in the enforcement and follow-up of recommendations. The enabling legislation has empowered the commission to propose a remedy to discontinue the act which has caused a grievance, to render inapplicable a law that violates human rights, and to propose redress measures.<sup>89</sup> However, the commission is not using its power effectively to ensure that proposed remedies are implemented.<sup>90</sup> There is no any mechanism to make a follow-up to determine whether the injustice has ceased.<sup>91</sup>

Cases involving crimes should be submitted to the public prosecutors. As the prosecutor demands concrete evidence to prosecute - higher than the standard required by the commission - cases referred to the public prosecutor usually end without prosecution.<sup>92</sup>

There is lack of consistent and frequent publications which implies that the functions of the commission are not transparent. There are different training commission personnel, but no comprehensive training has been delivered exclusively on torture prevention.<sup>93</sup> Moreover, the independence and impartiality of the commission has been questioned. In general, the firm stance of the commission that Ethiopia is a torture-free country has undermined its role in complaints-handling on torture.

### **Domestic Monitoring Mechanism**

The other important function of the Ethiopian National Human Rights Commission is to monitor the places of detention. It has conducted visits to various detention centres including police stations. As stated in its first publication, the commission made its first round of visits to 36 federal and regional detention centres in 2009-2010.<sup>94</sup> In its second round of visits, police station and prison facilities were monitored separately. In the monitoring conducted from 2010-11, visits were conducted to 119 (95.5%) federal and regional prisons. In 2011-12, the commission visited 170 (15%) federal and regional police stations.<sup>95</sup>

The commission has confirmed that after those visits, various detention centres have implemented reforms to improve detention conditions and treatment of prisoners. Both unannounced and regular visits have been conducted since 2012.<sup>96</sup> Because there is insufficient staff to cover all detention centres, random sample monitoring is deployed which may result in missing the worst prisons and police stations.

An unannounced visit has the advantage of ascertaining real conditions and treatment in detention centres. The report of the commission stated that visits were conducted without issuing any prior notice to the

---

<sup>86</sup>Registered complaints records of the Ethiopian Human Rights Commission ; an interview with an Expert in Ethiopia Human Rights Commission (n 25)

<sup>87</sup> Interview with Journalist and Survivor of Torture (n 19), Interview with Former prosecutor at Minister of Justice (n 24), and Interview with, Human rights expert at Ethiopian Human Rights Commission, (n 27)

<sup>88</sup>ibid

<sup>89</sup>The EHRC Proclamation (n 90), Art.26(4)

<sup>90</sup> Interview with Human rights expert at Ethiopian Human Rights Commission, (n 27)

<sup>91</sup>ibid

<sup>92</sup> Interview with an expert in Ethiopian Human Rights Commission (n 25).

<sup>93</sup> ibid

<sup>94</sup>Ethiopian Human Rights Commission Report (n 92) p-102

<sup>95</sup>Ethiopian Human Rights Commission *Human Rights Protection Monitoring in Ethiopian Prisons Primary Report*, (July 2012, Addis Ababa, Ethiopia), p-3

<sup>96</sup>ibid ; Interview with Human rights expert at Ethiopian Human Rights Commission, (n 27)

detention centres.<sup>97</sup> There is no guarantee, however, that prison officers do not exchange information.<sup>98</sup> The monitoring groups in both police stations and prisons have an opportunity to meet detainees. However, information obtained from the commission, as well as prisoners, indicates that the monitoring group was usually joined by prison guards and police officers, rather than being permitted to interview prisoners in private. Moreover, the discussion with detainees was not carried out randomly, but rather with prisoners who served as committee chairmen in prison compounds.<sup>99</sup> Committee chairmen enjoy better facilities and treatment. In return they cooperate with the prison administration. Hence the reports of the commission are often met with criticism from detainees and local human right groups.

The publication of findings from the monitoring activity is encouraging because, while it does not express strong criticism, it does document the conditions in prisons and detention centres. This has encouraged some governmental officials to visit prisons and take measures to improve prison standards. Thus, the publications and recommendations of the monitoring organ may contribute to improving detention centre conditions.

Yet it remains uncertain whether those recommendations have contributed to reducing severe forms of torture and ill-treatment committed against detainees, especially those who are politically affiliated. An inference may be drawn from the stance of the commission on the status of torture and ill-treatment in Ethiopia. The commission has repeatedly and vigorously claimed that there is no torture in Ethiopia and allegations of torture and mistreatment are baseless.

Even though the commission has admitted in its reports that there have been a few cases of beatings and threats during interrogation, this was attributed to the incompetence of the investigating officials and the lack of technology in police investigations. This leads to the conclusion that the role of monitoring to curb incidences of torture, particularly related to terrorism, has been minimal. Lack of access to detention centres and prisons by independent international monitoring organs and local human right institutions has exacerbated the culture of impunity. To make it worse, the 2009 civil society proclamation has totally excluded foreign non-governmental organizations from human right advocacy and democratic matters.<sup>100</sup> Local NGOs can be involved in those areas yet are unable to do so since they must derive 90% of their income from local sources. The silence of NGOs has allowed the government to deny allegations of torture, which remain undisclosed.

## VI. CONCLUSION

The change of government in 1991 promised relative freedom, democracy and human rights protection. There was a reduction in the incidence of torture, particularly for non-political detainees. This may be attributed to legal and political reforms, accession to major international human right instruments, and relative peace and stability in the country. However, the incidence of torture increased again during the intensified armed conflict, civil war and political violence that followed.

Detention law and practice has shown progress since the beginning of the 2000s mainly in relation to non-political crimes. This has reduced some of the opportunities for torture, but there remain considerable incentives to commit torture. The research has also demonstrated that recent legislation on terrorism has broadened the opportunity for torture. Domestic monitoring and complaints mechanisms have a long way to go to deal with allegations of serious and severe forms of torture and to ensure the independence and impartiality of the mechanisms.

The most insignificant torture prevention measure in the period under review is interrogation and prosecution of torturers, with the exception of the trial of the former government officials, which was motivated by political concerns rather than the issue of justice. The role of prosecution in reduction of torture incidence remained poor throughout the study period. Despite credible evidence of severe forms of torture, the government has shown no commitment to prosecute torturers and never included such information in its reports to international human right bodies including CAT.

## BIBLIOGRAPHY

### Books & Reports

- [1]. Alemu Girmachew, 'The Rights of the Accused' in Kjetil Tronvoll (eds) *The Ethiopia Red Terror Trial: Transitional Justice Challenged*. African Issues (James Currey, UK, 2009)
- [2]. Alston P., *International Human Rights in Context: Law, Politics, Morals* (2nd ed.), Oxford University Press, London 2000.

---

<sup>97</sup> *ibid.*

<sup>98</sup> *ibid.*; interview with Survivor of Torture, (Mekele, Ethiopia, September 20, 2014)

<sup>99</sup> *ibid.*

<sup>100</sup> Charities and Societies Proclamation No. 621/2009. Federal Negarit Gazeta No. 25 13th February, 2009, art 14(5)

- [3]. Amnesty International *Amnesty International Report* 1986,( AI Index: POL 01/03/86)
- [4]. Amnesty International *Amnesty International Report* 1987, (AI Index: POL 01/02/87)
- [5]. Amnesty International *Amnesty International Report*, 1990, (AI Index: POL 10/03/1990)
- [6]. Amnesty International, *Amnesty International Report* 1988, (AI Index: POL 10/01/1988);
- [7]. Augustus B., *Modern Abyssinia*, (Mathew and co., London, 1901)
- [8]. Cassese A., *International Criminal Law*, (2nd ed.), (Oxford University Press, New York, 2008.)
- [9]. Committee against Torture, *Concluding observations of the Committee against Torture*, (Forty-fifth session 1–19 November 2010.)
- [10]. Crawshaw R., *Essential Cases on Human Rights for the Police*, Martinus Nijhoff Publishers, Leiden, 2006.
- [11]. Devine C., *Human Rights: The Essential Reference*, The Oryx Press, Arizona, 1999.
- [12]. Ellis A, *Federal Prison Guidebook*, Law Offices of Alan Ellis, Sausalito, CA, USA, 2002.
- [13]. Ethiopia Human Rights Commission, *Inaugural Report Of the Ethiopian Human Rights Commission* ,February 2011, Addis Ababa, Ethiopia
- [14]. Ethiopia Human Rights Commission, *Human Rights Protection Monitoring in Ethiopian Prisons Primary Report* ,July 2012, Addis Ababa, Ethiopia,
- [15]. Ethiopian Human Rights Council, *Compiled Reports of EHRCO (Vol.II), from May 1997 to August 2002*, (Vol,II April 2003, Artistic Printing Enterprise.),
- [16]. Human Rights Watch Report, *Federal Democratic Republic of Ethiopia, Human Rights Developments, 2000* <<file:///C:/Users/Admin/Desktop/HRW/2000.htm>> accessed on November 15, 2014.
- [17]. Human Rights Watch Report, *Federal Democratic Republic of Ethiopia, Human Rights Developments, 2000* <<file:///C:/Users/Admin/Desktop/HRW/2000.htm>> accessed on November 15, 2014.
- [18]. Human Rights Watch/Africa, *Ethiopia, the curtailment of Rights*, December 1997, (Vol. 9, No. 8 (A) )
- [19]. Peel M. (Edi.), *Rape as a Method of Torture, Medical Foundation for the Care of Victims of Torture*, 2004.
- [20]. US Department of State, *Country Report on Human rights practice for 1987*(100th Congress, 2d Session, 1987).
- [21]. US Department of State, *Country Report on Human rights practice for 1991*(102d Congress 2d Session, 1991).
- [22]. US Department State, Bureau of Democracy, Human rights and Labor, 2007 *Country Report on Human rights practice* (,march 11,2008) <<<http://www.state.gov/j/drl/rls/hrrpt/2007/100481.htm>>> accessed on September 10, 2014;
- [23]. US Department State, Bureau of Democracy, Human rights and Labor, 2007 *Country Report on Human rights practice* (,march 11,2008) <<<http://www.state.gov/j/drl/rls/hrrpt/2007/100481.htm>>> accessed on September 10, 2014
- [24]. US Department State, *Country Report on Human rights practice for 1988*( 101st Congress 1st Session, S.Prt,101-3,1988)
- [25]. US State Department Country Reports on Human Rights Practices, *Country Report on Human rights practice for 1985*( 99th Congress 1 2d Session, 1985).

#### **Journal Articles**

- [1]. Alemu Aneme Girmachew, ‘Apology and Trials; The case of Red Terror Trials in Ethiopia’(2006) (vol 6) African Human Rights Law Journal(AHRLJ),
- [2]. James A., ‘The Vacuous Concept of Dignity,’ 2006 Vol. 5(2), Journal of Human Rights.
- [3]. Jessberg F., ‘Bad torture - good torture? 2005 Vol. 3, Journal of International Criminal Justice’, , Oxford University Press,

#### **LAWS**

##### **International and Regional**

- [1]. African Charter on Human and Peoples’ Rights,(Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982),)
- [2]. International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification, and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966.
- [3]. Office of the UN High Commissioner for Human Rights, Paris Principle relating to the status of national Institutions, Gneral Assembly Resolution 48/1993
- [4]. Optional Protocol to the Convention against Torture, Inhuman or Degrading Treatment or Punishment, Adopted on 18 December 2002 at the fifty seventh session of the General Assembly of the United Nations by resolution A/Res/57/1999.



- [5]. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification, and accession by GA Resolution 39/49 of 10 December 1984.
- [6]. Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly Resolution 217 A(III) of 10 December 1948.

#### **Domestic Laws**

- [1]. Anti-Terrorism Proclamation No.652/2009” Federal Negarit Gazeta No. 57 28th August, 2009
- [2]. Charities and Societies Proclamation No.621/2009. Federal Negarit Gazeta No. 25 13th February, 2009.
- [3]. Criminal Procedure Code of the Empire of Ethiopia of 1961,Negarit Gazeta extra-ordinary issue No.1,Proclamation No. 185, 2 November 1961.
- [4]. FDRE Government, Institution of Ombudsman Establishment Proclamation 211/2000,FederalNegaritGazetta, Addis Ababa,Ethiopia,2000.
- [5]. FDRE government, The Federal democratic Republic of Ethiopia Constitution, Proclamation No.1.1995,Addis Ababa,Ethiopia,1995
- [6]. PDRE government, Constitution of Peoples Democratic Republic of Ethiopia(PDRE Constitution,) Proclamation No.1 of 1987,Negarit Gazeta,Vol.47,No.1.Addis Ababa,12 September 1987.
- [7]. The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No.414/2004,9th of May, 2005)
- [8]. The Ethiopian Human Rights Commission Establishment Proclamation no.210/2000, Federal Negarit Gazeta - No. 40 4thJuly, 2000.
- [9]. The Federal Police Officer Administration Council of Ministers Regulation No.268/2012

#### **Lists of Interviewees**

- [1]. Interview with Ahmed Hussien ,Human rights expert at human rights commission (Addis Ababa, Ethiopia October 10,2014 July 7,2014)
- [2]. Interview with Andualem,Police investigator at Federal Police Commission (Dire Dawa,Ethiopia,November 7,2014)
- [3]. Interview with Anteneh Getachew- Former public Prosecutor at Minister of Justice,( Dire Dawa, Ethiopia October 29,2014)
- [4]. Interview with Ato Desalegn, Former Higher Expert in Tigray Regional State justice office, (Mekelle,EthiopiaSeptember 19,2014)
- [5]. Interview with AtoNuru former judge for Red terror Trial and Public Prosecutor at federal courts, (Addis Ababa, Ethiopia. October 17, 2014.)
- [6]. Interview with GebretsadikBelay,Survivor of Torture (Alamata, Ethiopia. September 14,2014)
- [7]. Interview with GemechisAbera,Public Prosecutor at Federal Minister of Justice (Addis Ababa,Ethiopia ,October 7,2014)
- [8]. Interview with Mekuaint-Survivor of Torture in Mekelawi, (Addis Ababa, Ethiopia October 21,2014,)
- [9]. Interview with Mohammed Jabar, Survivor of Torture (Jigjiga, Ethiopia July 7, 2014, )
- [10]. Interview with Muftah Adama Survivor of Torture (Adama,Ethiopia ,July 10,2014)
- [11]. Interview with Nardos ,former Judge in federal Courts and lawyer, (Addis Ababa,Ethiopia June 10,2014,)
- [12]. Interview With Rediet, Public Prosecutor at Federal Minister of Justice(Dire Daw,Ethiopia, November 8,2014)
- [13]. Interview with Sileshi Hagos, a Journalist and Survivor of torture, (Addis Ababa, Ethiopia October 25,2014)
- [14]. Interview with TekalignKass,Public Prosecutor at Federal Minister of Justice(Addis Ababa,Ethiopia,October 14,2014)
- [15]. Interview with Tewedaj Higher Expert at Ethiopian Human Rights Commission,( Addis Ababa, Ethiopia, October 13, 2014,).
- [16]. Interview with Yohannis, Judge in Alamata Woreda Court , (Alamata, Ethiopia September 15,2014)
- [17]. Interview with Yonas ,Survivor of Torture (Dire Dawa,Ethiopia, June 19,2014)
- [18]. Interviews with HayelomAbraham ,Survivor of Torture,(Mekele,Ethiopia,Septemebr 20,2014)

This article reflects the personal opinions of the researcher and the views expressed are not attributed to the Arba Minch University to which the author is affiliated.

Prem Sam Ponniah Victor." Methods and Mechanisms in the Prevention of Torture in Ethiopia." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*. 25(4), 2020, pp. 09-25.