



## *Ethiopia: One step forward two steps back in fighting torture*

Joint Alternative Report submitted under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### Contributing NGOs:

- Association for Human Rights in Ethiopia (AHRE)
- Consortium of Ethiopian Human Rights Organizations (CEHRO)
- Ethiopian Human Rights Council (EHRCO)
- Ethiopia Human Rights Defenders Center (EHRDC)
- Center for Justice (CJ)
- World Organisation Against Torture (OMCT)

76<sup>th</sup> session of by the Committee Against Torture.

*Review of the second and third periodic report of the Federal Democratic Republic of Ethiopia*

*March 2023*

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## **Foreword and methodology**

This report has been produced jointly by the Association for Human Rights in Ethiopia (AHRE), the Consortium of Ethiopian Human Rights Organizations (CEHRO), the Ethiopian Human Rights Council (EHRCO), the Ethiopia Human Rights Defenders Center (EHRDC), the Center for Justice (CJ) and the World Organization against Torture (OMCT).

It is the result of a preparatory workshop carried out on February 23<sup>rd</sup> and 24<sup>th</sup>, 2023 in Addis Abeba bringing together a dozen Ethiopian civil society organizations. Participating organizations develop activities in the regions of the country and are committed to the protection of human rights, the fight against torture, the fight against violence against women, the protection of children and the protection of people with disabilities. This work took place in the presence and contribution of a representative of the Ethiopian Commission Human Rights Commission (EHRC).

During this workshop, participants assessed the second periodic report and the reply to the list of issues submitted by the Ethiopian government and noted its progress and shortcomings. Their work focused on the analysis of the legislative and institutional framework for the fight against torture and on the current reality of its implementation. The report is therefore based on their experiences, documentation and recommendations. The NGOs responsible for writing this report have verified the information contained therein.

Finally, the report also includes interviews carried out in the field by the OMCT and two network members AHRE and EHRCO with victims of torture, witnesses, heads of NGOs, political parties and the media. Interviews were also conducted with representatives of the government, the National Commission for Human Rights.

Additional information complementing the report was done through documentary research, the exploitation of reports and press articles.

## **Presentation of the organisations author of the report**

The **Association for Human Rights in Ethiopia** (AHRE) is a non-governmental, non-partisan, and not-for-profit organisation dedicated to the advancement of human rights in Ethiopia. The organisation was initially registered and based in Geneva, Switzerland. It was established through the initiative of an Ethiopian human rights activist who fled the country and other members of the Ethiopian diaspora, as an overseas human rights organisation carrying out activities that are difficult for organisations based in Ethiopia to undertake due to financial and administrative restrictions. The AHRE decided to base its office in Ethiopia and registered in November 2020.

The organisation works to improve the human rights situation in Ethiopia, mainly through advocacy and research. It is also involved in training local actors, raise awareness, build the capacity of local actors in Ethiopia, and call on those concerned to pay due attention.

The **Ethiopian Human Rights Council** (EHRCO) is an Ethiopian human rights non-governmental organisation created in 1991 by Mesfin Woldemariam and 31 colleagues shortly after the dictator Mengistu Haile Mariam was overthrown. The initial aims of EHRCO were described as helping the 1991 Transitional Government of Ethiopia in "respecting, protecting and fulfilling human rights. EHRCO's funds and staff were greatly reduced in 2009 as a result of a law limiting the role of foreign funds in citizens' associations, and restored by 2020, after Abiy Ahmed became the new prime minister, allowing EHRCO to expand its operations.

**Ethiopian Human Rights Defenders Center** (EHRDC) was established in December 2019, after 60 HRDs and human rights organizations met in Addis Ababa, Ethiopia), intending to establish a national human rights defenders' network that will protect and support human rights defenders who are at risk as a result of their human rights work and enhance their capacity.

The **Consortium of Ethiopian Rights Organizations** (CEHRO) was initiated in 2015 by Human Rights Organizations and was registered by the Federal Charities and Societies Agency (CHSA) as a consortium of Ethiopian Charities on March 16, 2018, under registration number 3932. CEHRO is mainly established to serve as platform to work on human rights and democratic governance with key stakeholders.

The **Center for Justice** (CJ) is a non-governmental, non-partisan, and not-for profit human right organization campaigning for the advancement of rule of law, human rights and democratic governance through a mix of advocacy, research and practical programmes. It was founded in 2007. Based on the new CSO proclamation no 1113/2019, CJ has re-registered at Federal Civil Societies Organizations Agency under registration number #0865. CJ has a mandate to operate at Federal level and all National regional states of Ethiopia .

The **World Organisation Against Torture** (OMCT) works with around 200 member organisations which make up its SOS-Torture Network, to end torture, fight impunity and protect human rights defenders worldwide. Together, we make up the largest global group actively standing up to torture in more than 90 countries. Helping local voices to be heard, we support our key partners in the field and provide direct assistance to victims.

Our International Secretariat is based in Geneva, and we also have offices in Brussels and Tunis. The OMCT's International Secretariat provides personalized medical, legal and/or social assistance to hundreds of torture victims worldwide, to protect individuals and fight impunity. As part of its work, the OMCT also submits individual communications and alternative reports to United Nations' special mechanisms, such the Committee Against Torture.

## **Introduction:**

Since its last review in 2011 during the 45<sup>th</sup> session, the Committee Against Torture (CAT), had already expressed numerous concerns on Ethiopia's implementation of the Convention against Torture. From 1995 to 2018 the country lived under an autocracy which used torture as a weapon of governance against human rights defenders and political opponents. For many years, Ethiopia anti-Terrorism Proclamation No. 652/2009<sup>1</sup> proved to have a detrimental effect on the protection human rights in the country by unduly restricting legal safeguards against torture.

However, when the current Prime Minister Abiy Ahmed took power in 2018, he initiated important political changes, including the closure of major detention centres, such as Maekelawi, and the release thousands of political prisoners – in particular, those arrested on “terrorism” charges. That reforming zeal that brought an end to the 20-year stalemate with Eritrea led him to be awarded the Peace Nobel prize in 2019<sup>2</sup>. The new president lifted restrictions on the independent media and invited the country's once-banned opposition groups back into the country from exile. He backed a woman to become president, created gender parity in the cabinet and established a ministry of peace<sup>3</sup>.

Unfortunately, Ethiopia has returned into new waves of turmoil since November 2020 when the Tigray Regional government attacked the national defense force in the north and the newly awarded peace novel prize ordered a military offensive to start a war. The war has been going on for over two years and half now destabilizing parts of the country and leaving tens and thousands of people in displacement. This situation led to a new proclaimed state of emergency on November 2 of 2021, throughout the country during which many massive and gross human rights violations have been committed including acts of torture and other forms of ill-treatment.

The government has not addressed all of the Committee previous main recommendations but has rather neglected legal and policy necessary changes and adopted a more violent approach against dissidents.

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<sup>1</sup>Anti-Terrorism Proclamation, Proclamation No. 652/2009 (15th year No. 57, Federal Negarit Gazzeta, ADDIS ABABA August 28, 2009) (Anti-Terrorism Proclamation).

<sup>2</sup> <https://www.nobelprize.org/prizes/peace/2019/summary/>

<sup>3</sup> <https://www.bbc.com/news/world-africa-43567007>

Our organisations have documented two decades of torture against human rights defenders and political activist in reports published in 2021<sup>4</sup> and 2022<sup>5</sup>. It appears that the government security forces have adopted a punitive strategy in conflict regions with an excessive use of force and resumed systematically using torture despite having started important democratic changes and reforms in 2018. On a second hand the government is resuming its old habits in the repression of dissenting voices, in particular human rights defenders and political opponents. Arbitrary arrests, torture incommunicado and secret detention placer have resumed. This report shows that the government is stepping back on its human rights obligations.

The current contribution of civil society organisations aims to provide to the Committee Against Torture factual elements to evaluate the implementation of the convention ahead of the upcoming review of Ethiopia, more than ten years after its previous report.

The critical concerns that are discussed in this report are based on list of issues raised by The Committee Against Torture in relation to the 2nd periodic report issued on 2 December 2022, CAT/C/ETH/Q/2.

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<sup>4</sup> OMCT, *“Ethiopia surviving torture a call of three decades of untold tragedy for torture victims in Ethiopia”*, <https://www.omct.org/site-resources/files/Ethiopia-Surviving-torture-Web-pages.pdf>, July 2021

<sup>5</sup> Ethiopian Human Rights Defenders Center, *“Keynotes on the one-year conflict, the state of emergency, and the situations of Human Rights Defenders in Ethiopia”*, <https://ethdefenders.org/tag/research/>, March 2022

## A. Legal safeguards

**Issue 1:** In its previous concluding observations, the Committee requested the State party to provide information on the measures it had taken in follow-up to the Committee's recommendations on fundamental legal safeguards, rape and other forms of sexual violence in the context of armed conflict, and coerced confessions (Paras. 12, 16 and 31, respectively).

### Comments

Sexual violence including gang rape were frequently intended to degrade and dehumanize an entire ethnic group” by belligerents, including the Ethiopian national Defense Force (ENDF), Amhara Special Forces (ASF), Eritrean Defense Force (EDF) and Tigrayan forces.<sup>6</sup> Reports of different parties including the joint investigation report of the Ethiopian Human Rights Commission and UNOHCHR published in 2021, proves this fact have continued and are ongoing in the various armed conflicts across the country.<sup>7</sup> Ethiopian Human Rights Council also revealed that in Amhara region a total of 712 girls and women were raped by Tigrayan forces since 2020.<sup>8</sup>

It has been common to use sexual violence as an instrument to humiliate attack the enemy party in conflict. Women and girls have been raped and experienced various types of gender based violence in the conflicts happened in different parts of the country. The government established a ministerial task force that would follow up and facilitate the implementation of the recommendations provided under the joint report. However, no significant measure has been taken so far particularly there are still gaps in holding perpetrators accountable. Reports of different institutions including Amnesty international<sup>9</sup> reveals how women and girls have been subjected to rape, gang rape, sexual slavery, sexual mutilation and other forms of torture. Violence has also been perpetrated against women fleeing the conflict. The (Joint Investigation Team) JIT also found that several men and boys were subjected to different forms of sexual violence.

Ethiopia's Criminal Code prohibits and punishes rape and is fully applicable to military personnel. While the scope of the definition of rape under the code falls short of international standards, it includes contexts where a woman has been compelled to submit to sexual intercourse by the use of violence or grave intimidation, or after the perpetrator rendered the victim unconscious or incapable of resistance.<sup>10</sup> It sets out a higher sentence for perpetrators committing rape against girls, and for rape by multiple perpetrators. The Ethiopia Military Justice System also protects civilian against sexual abuses. The Ethiopian Defense Force Proclamation No 809/2014 sanctions

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<sup>7</sup> Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia, available at <https://www.ohchr.org/sites/default/files/2021-11/OHCHR-EHRC-Tigray-Report.pdf>

<sup>8</sup> Ethiopian Human Rights Council, 151th special report, available at <https://ehrc.org/>

<sup>9</sup> <https://www.amnesty.org/en/documents/afr25/4569/2021/en/>

<sup>10</sup> <https://www.amnesty.org/en/documents/afr25/4569/2021/en/>

sexual Exploitation and Abuse in mission as a military offence. Ethiopia does not have deployable court martial to mission areas. However, disciplinary case can be handled at Battalion and Company level by the Unit Disciplinary Committee<sup>11</sup>

Although Prime Minister Abiy Ahmed eventually acknowledged the allegations and promised that the perpetrators would be punished<sup>12</sup>, the government failed to take concrete measures to stop and prevent such crimes — which continued unabated.

### **Recommendation**

State party should:

- Provide a credible roadmap to bring perpetrators to justice and to take victims interest into account.
- Issue clear orders to Ethiopian armed and security forces prohibiting sexual violence and any other violations of international human rights law and international humanitarian law
- Define all forms of sexual violence in accordance with the highest international standards. Ensure each of these acts are characterized, as appropriate, as torture, war crimes, crimes against humanity, and genocide so they can be prosecuted at the national level as crimes under international law.
- Ensure that all cases of sexual violence automatically give rise to effective and impartial ex officio investigations and proceedings in the ordinary courts and that perpetrators, including instigators and accomplices, are prosecuted and receive punishments commensurate with the seriousness of the acts committed;
- Capacitate courts and make the judicial system gender sensitive to deal with the prosecution of sexual violence in conflict situation properly
- Increase the number of judges specializing in sexual violence in areas where the issue is present and strengthen their capacity
- Ensure that armed and security forces, prosecutors and the judiciary are trained in best practices for investigation, prosecution and adjudication of crimes under international law and in identifying and addressing gender inequality in relation to access to justice and provide general gender sensitization training for conducting all their interactions with complainants and other members of the public in a gender-responsive manner.
- Facilitate access to justice for victims, including in remote areas, by educating the public, protecting witnesses and establishing mobile courts as necessary
- Provide protection to victims, witnesses and their families
- Provide reparation, rehabilitation and support to the victims following a victim centered approach

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<sup>11</sup> [https://peacekeeping.un.org/sites/default/files/ethiopia\\_fact\\_sheet\\_20181224.pdf](https://peacekeeping.un.org/sites/default/files/ethiopia_fact_sheet_20181224.pdf)

<sup>12</sup> Reuters, “Ethiopian PM confirms Eritrean troops entered Tigray during conflict,” 23 March 2021.

- Come up with a way to update the legislation and law in place in relation to gender-based violence

## B. Definition of torture (Articles 1 and 4)

**Issue 2:** With reference to paragraphs 7–11 and 85 of the State party’s second periodic report, 2 please specify the legislative measures taken or being taken to amend article 424 of the Criminal Code to incorporate a definition of torture that covers all of the elements contained in article 1 of the Convention. Please indicate whether a timetable has been set for this amendment. Please also specify whether the State party intends to ensure that neither statutes of limitations for criminal and civil proceedings nor mitigating circumstances are applicable to the crime of torture, including that no exceptional circumstances whatsoever may be invoked as a justification of torture, in accordance with article 2 (2) of the Convention, and that in no cases may an order from a superior officer or public authority be invoked as a justification of torture, in accordance with article 2 (3) of the Convention.

The FDRE Criminal Code<sup>13</sup> criminalises torture as both a war crime and a serious offence. Specifically, Article 424 of the Criminal Code lays down penalties for violence, including torture, inflicted by State agents. Furthermore, it states that an official who orders torture will receive a harsh prison sentence of up to 15 years, in addition to a fine. Prison guards and administrators are required to refrain from torturing detainees, to ensure that they are treated properly and not subjected to any kind of ill-treatment. The article 31 of the FDRE Criminal Procedure Code<sup>14</sup> reinforces the exclusionary rule stipulated in Article 19(5) of the FDRE Constitution by making any evidence secured through torture inadmissible. The Code prohibits police officers or authorities from using any improper method, including torture, to secure a confession or any information; and that evidence obtained through such method is excluded.<sup>15</sup>

Despite the 2011 Committee concerns regarding the definition of torture under Ethiopian law (article 424 criminal code), it still fails to fully comply with Article 1 of the Convention Against Torture. “Acts of torture falling outside the definition provided in Article 424 of the revised Criminal Code are punishable only as the offence of “abuse of power”<sup>16</sup>. This means that there is a lack of adequate punishment for acts of torture occurring during public demonstrations or in non-

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<sup>13</sup> The Criminal Code of Ethiopia, Negarit Gazeta, Proclamation No.414/2004 (Criminal Code).

<sup>14</sup> The Criminal Procedure Code of Ethiopia, Negarit Gazeta, Proclamation No. 185/1961 (Criminal Procedure Code).

<sup>15</sup> Criminal Procedure Code, Art 31.

<sup>16</sup> Concluding observations of the Committee against Torture on Ethiopia, CAT/C/ETH/CO/1, 2011, §9.

custodial settings. The article 9 of the Ethiopian Constitution provides that every international agreement ratified by Ethiopia are an integral part of domestic law. Unfortunately, national judges don't directly refer to the Convention to adjudicate cases of torture.

The criminal code has not been amended in a way to incorporate the definition of torture provided under the convention yet. No clear time table has been given to revise the code and the definition of torture remains to be the same. The absence of clear definition and criminalization of torturous acts under the domestic law of the country has created a huge gap in the justice system. The judiciary is punishing perpetrators using other legal provisions of the criminal law that provide lesser punishment. On the other hand, Article 28(1) of FDRE constitution criminalizes torture as part of crimes against humanity. The provision further implies that torture cannot be barred by period of limitation and is not subjected to amnesty or pardon. This implies an absolute prohibition of torture in Ethiopia.

### **Recommendation**

#### **The state party should:**

- Enact a specific law on the prevention and prohibition of torture which, expressly define and criminalize torture in line with the convention
- Incorporate in the law the absolute prohibition of torture in all circumstances including in non-custodial settings and in the context of conflict and emergencies
- Provide legal guarantee for the security and protection of victims who testify against perpetrators
- Take action to rehabilitate the victims of torture, including through allocation of budget and the establishment of victim funds, as necessary

### C. Legal safeguards for detainees (Article 1 and 4)

**Issue 3:** Any new measures taken by the State party to ensure that all detainees, in particular those detained for terrorism-related offences or during states of emergency, including in the context of the conflict in the region of Tigray, enjoy all fundamental legal safeguards, in law and in practice, from the outset of their deprivation of liberty. In particular, please provide information on any measure: to ensure the rights of detainees to be informed of the reasons for their arrest, the nature of the charges against them and their rights in a language they understand, to have ready access to an independent lawyer without delay, to notify a relative or any other person of their choice of their arrest, to receive a confidential medical examination by an independent physician of their choice and to be brought promptly before a judge and have the lawfulness of their detention reviewed by a court, in accordance with international standards; to keep detention registers up to date; and to ensure the provision of effective legal assistance and to facilitate access to such assistance by all disadvantaged persons at the initial stage of police questioning and at all stages of criminal proceedings, regardless of the penalties faced. Please also indicate the steps taken to amend article 19 (3) of the Constitution and article 59 (3) of the Criminal Procedure Code to ensure that the maximum duration of police custody, regardless of the reason and in all jurisdictions, does not exceed 48 hours, is renewable only once in exceptional circumstances duly demonstrated by tangible evidence, and that once that period has elapsed, the detained person is brought in person before a judge. Please provide information on further measures taken to ensure that court orders to release suspects on bail are strictly enforced.

There is a legal framework that forbid arbitrary arrestation and detention. The Law No. 313/2003 and Administration Regulation No. 86/2003 require police officers and federal police to perform their duties by respecting human and democratic rights ensured by the Constitution and if not, it can be punished by rigorous disciplinary measures<sup>17</sup>. Over the years Ethiopia has consistently failed to provide all detainees with all fundamental legal safeguards from the very outset of their detention. This is specially the case of hundreds of people arrested in the context of the Tigray war, who have never been presented to a judge and are facing prolonged and abusive pretrial detention.

In Ethiopia, in most of the state of emergency periods, it has been common to arrest and detain people unlawfully without due process of law. During the war in the northern part of the country thousands were unlawfully held in regular and irregular places of detention. Ethiopian Human Rights Commission reported that around 9,000 Tigrayans were unlawfully and unconstitutionally detained in Semera and Agatina camps in the town of Semera Afar regional state for months.<sup>18</sup>

<sup>17</sup> <https://www.omct.org/site-resources/files/Ethiopia-Surviving-torture-Web-pages.pdf> : OMCT, “Ethiopia surviving torture a call of three decades of untold tragedy for torture victims in Ethiopia”, p.19.

<sup>18</sup> \_EHRC, *People detained in Semera town and Agatina camp in Afar regional state shall be released urgently and unconditionally*, press release, report, 2021, available at <https://ehrc.org/%E1%89%A0%E1%8A%A0%E1%8D%8B%E1%88%AD-%E1%8A%AD%E1%88%8D%E1%88%8D-%E1%88%B0%E1%88%98%E1%88%AB-%E1%8A%A8%E1%89%B0%E1%88%9B-%E1%88%B0%E1%88%98%E1%88%AB%E1%8A%93-%E1%8A%A0%E1%8C%8B%E1%89%B2%E1%8A%93/>

In May 2022, the government unlawfully detained more than 4500 people, in Amhara region after a peaceful demonstration. They were illegally detained due to their ethnicity in different parts of the country. Moreover, many were also detained for months even after they were guaranteed bail.<sup>19</sup>

Article 19 (3) of the Constitution, which includes a “reasonable time taken in the journey to a court of law” before being presented to a judge has still not been revised. Similarly, Article 59 (3) of the Criminal Procedure Code, which provides for repeated prolongation of periods of 14 days in custody remains<sup>20</sup>. The concerns about arbitrary and prolonged detentions of persons suspected of being members or sympathizers of insurgent groups and members of the political opposition remains, despite CAT recommendations<sup>21</sup>.

In addition, in some areas, court orders have been ignored and people continued to be detained in violation of court orders and even after prosecution have dropped charges. In some police stations and irregular places of detention, detainees have been subject to unlawful treatment, extended pre-trial detention and beatings.<sup>22</sup> There are specific severe cases and issues of those detained and some have even been kept in detention for about 3 years.

The 1961 Criminal Procedure Code is currently under revision after being operational for more than half a century. Article 118 of the draft provides that the police are duty bound to bring the arrested person who is not released on bail to the nearest court within 48 hours. This does not include the reasonable time to produce the arrested person to court. Nevertheless, article 119(3) of the same draft dealing with remand puts as the police can obtain remand for four months. This gives wider room for the police and other stakeholders to detain and make suspects suffer for no reason. People are taken to various prison and police stations for years and months on end and their cases are not solved and their bail rights are denied and even if they are set free in one court and taken to another by police forces.

For those detained in police stations there is no possibility to provide access to justice and legal aid services. This issue is particularly harsh in various regions and it is only in Addis Ababa that there is legal aid service in police stations. One cannot help those detained in police stations to get legal aid services.

Regarding investigation time, in the process of remand, the new draft Criminal Procedure and Evidence law has limited the time for investigation in the process of remand, which shall not exceed four months from the application of the remand. In the absence of conclusion of the investigation, the court may release an accused on bail or remand the accused for twenty days until the public prosecutor charges the suspect.

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<sup>19</sup> EHRCO, *Unlawfully detained people shall be released immediately*, a periodic report, available at <https://ehrco.org/>

<sup>20</sup> Concluding observations of the Committee against Torture on Ethiopia, CAT/C/ETH/CO/1, 2011, §12

<sup>21</sup> Concluding observations of the Committee against torture, Ethiopia, 20 January 2011, p.6 §15.

<sup>22</sup> EHRC, Human Rights Situation Report on Ethiopia EHRC submitted to the House of Peoples’ Representatives, 2022, available at <https://ehrc.org/in-a-first-of-its-kind-human-rights-situation-report-on-ethiopia-ehrc-submitted-to-the-house-of-peoples-representatives-the-commission-call-for-government-to-protect-respect-and-guarantee-hu/>

Not observing court orders has become a common phenomenon in Ethiopia. The following examples demonstrate an apparent disregard of court orders. In 2020, the police refused to free three employees of the Oromia News Network who were arrested on March 7/2022 regardless of the court order for their release at three different times in March, April and May 2020.<sup>23</sup> Among the 19 journalists that were detained in June 2022, Solomon Shumye, Meaza Mohammed and Temesgen Desalegn appeared before the Federal First Instance Court and were granted bail of about \$190 each. However, the federal police force immediately appealed the judge's decision at the High Court. The High Court overruled the lower court's decision, and the three journalists were returned to police custody.<sup>24</sup>

Hussien Kedir's (PHD) - is the Dean of the Addis Ababa University College of Education and Behavioral Studies and an assistant professor at the same university- his story is one worth mentioning. Following the assassination of the prominent popstar and public figure, Hachalu Hundessa on the evening of 29 June 2020, Dr. Hussien was one of the individuals arrested in the aftermath. At the time he was not informed of his crimes when taken to Sebeta Police Station (where he was detained for 15 days) and then moved to Agarfa Woreda Police Station in the Bale zone of Oromia National Regional State where he was detained for an additional two months. After appearing at the Agarfa Woreda Court, the court then ordered a 10,000 ETB bail in the case of Hussien Kedir under case number 21245 in a letter dated 21 October 2020.<sup>25</sup>

The police refused on the pretext that a higher body had reprimanded the release of Dr. Hussien on bail. Two days later on 23 October 2020, the Federal Attorney General's Office wrote a letter to the Agarfa Woreda police ordering the closure of the case and release from detention of Dr. Hussien. He was not released for over two months after that. Later, he was moved to an unknown location before appearing in the Laga Tafo Laga Dadi Woreda Court on the same charges that were considered by the Agarfa court. The outcome, however, was the same in that the court ordered a similar bail of 10,000 ETB on 10 December 2020 under Criminal investigation File Number 02167 and the police refused to observe the decision once again.<sup>26</sup>

Moreover, in its report where the EHRC lays out its findings of monitoring of 21 police stations of Oromia in the period from November 20, 2020 to January 12, 2021, revealed that many of the

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<sup>23</sup> CPJ, *Ethiopian police ignore court orders to free journalists held since March, 2020*, available at <https://cpj.org/2020/05/ethiopian-police-ignore-court-orders-to-free-journ/>

<sup>24</sup> Ibid

<sup>25</sup> Addis Zeybe, *Ethiopian Courts: It was independence before, now it's puppet-hood, 2020*, available at <https://addiszeybe.com/featured/editorial/ethiopian-courts-it-was-independence-before-now-it-s-puppet-hood>

<sup>26</sup> Ibid

police stations have been holding suspects whose charges were dropped by prosecutors or who were supposed to be released in accordance with a court order.<sup>27</sup> These things have been very much common when politically motivated cases come to court, especially journalists who are very much critical of the regime.

## **Recommendation**

State party should:

- Adopt the new Criminal Procedure Code as soon as possible and ensure that the fundamental legal guarantees surrounding police custody are included therein and respected in practice, in particular the right to be informed of the reasons for one's arrest, the right to have access to a lawyer from the start of police custody, the right to notify relatives and the right to be examined by a doctor
- To ensure that the duration of police custody never exceeds forty-eight hours, after which any defendant must either be brought before an independent and impartial judge, or be released
- Ensure that persons in custody are not subjected to acts of torture and ill-treatment.
- Make sure that the criminal procedure code is in line with the international standards in relation to bail right and other rights of detained individuals even during the state of emergency
- Strengthen institutions with oversight functions on the Nigeria Police Force and other law enforcement agencies. Specifically, the accountability units within the Nigeria Police need to be unified, integrated and optimised for better achievement of their mandate and ease of tracking records of offending officers and ensuring that no one escapes accountability.
- Enact a detailed legislation ensuring compensation for victims of arbitrary arrest and detention
- Set in place administrative measures in cases where the legal system is failing in the release of those that are free on bail
- Ensure adequate funding of the Legal Aid Council to carry out its mandate effectively

## **D. Independence of national human rights institutions (NHRI's)**

With reference to paragraphs 52, 53, 56, 68, 70, 72, 94–96, 113, 122 and 124 of the State party's periodic report, please clarify the measures adopted to allow the Ethiopian Human Rights Commission to conduct regular and unannounced visits to all civilian and military places of deprivation of liberty, including

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<sup>27</sup> EHRC, *Oromia: Law enforcement operation should be lawful*, press release, <https://ehrc.org/oromia-law-enforcement-operation-should-be-lawful/>

unofficial detention centres, without any restriction and to ensure effective follow-up of the findings and recommendations of such systematic monitoring. Please indicate further steps taken to give the necessary weight to the conclusions of the Commission on individual complaints, including by communicating such conclusions to the public prosecutor's office in cases where torture or ill-treatment is found to have occurred. Please provide updated information, including statistical data, on the complaints examined by the Commission in relation to alleged torture or ill-treatment, and specify how many such cases have been submitted to the competent authorities for prosecution and the details of such cases. Please provide information on the measures taken to enable the Commission to fully execute its mandate in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including information on the steps taken to enhance its independence and impartiality. Please provide details about amendments made in July 2020 to Ethiopian Human Rights Commission Establishment Proclamation No. 210/2000. Please indicate whether the State party has considered ratifying the Optional Protocol to the Convention with a view to establishing a system of regular unannounced visits by national and international monitors, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. Please also clarify whether all human rights non-governmental organizations and institutions that ask to visit the country's detention centres are granted access and under what conditions. Please provide information on any such non-governmental organizations or institutions that have been denied access to places of detention. (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman and degrading treatment.

## **Comments**

The Ethiopian Human Rights Commission and the Ombudsman (the two NHRIs in Ethiopia) are passing through reforms both legally and institutionally to increase their independence. The government took a positive step towards the EHRC's independence manifested by the appointment of high profile human rights defenders to lead it, amending the law to broaden the mandate and adopting some indications to ensure its independence. The government has taken various positive measures in strengthening the human rights commission by ensuring its independence and widening its mandate.

The newly adopted establishment proclamation enables the commission to visit and monitor any correction center or prison or any place where people are held without prior notice. Nonetheless, for CSOs to visit detention centres, they need to obtain a pass permit from prison commissions of the responsible region or from the federal government. This is a very big obstacle because most of the time regional prisons and police commissioners refuse to give a pass permit for CSOs that work on human rights.

The visit of regional prison center is allowed and local CSOs can access them with the permission of the prison commissions. However, the police detention centers are hard to access. There are issues of detention that needs due attention, but the stations don't allow the human rights

organizations to visit. In some cases, the NHRIs are targeted and a case in point can be the office of the EHRC which was targeted in Gambella and its office closed.

## **Recommendation**

The state party should:

- Continue in ensuring the autonomy and independence of the commission
- Give due attention for the recommendations of the commission and implement the same.
- Ratify the optional protocol to the convention against torture and establish a National Preventive Mechanism (NPM) to conduct unannounced visits to the detention centres and carry out prevention activities.

## **E. Violence against women**

**Issue 5:** Measures taken to prevent and combat all forms of violence against women, including domestic and sexual violence, especially those cases involving actions or omissions by State authorities or other entities which engage the international responsibility of the State party under the Convention. In particular, please report on the steps taken: (a) to criminalize marital rape; (b) to strictly enforce legislation prohibiting gender-based violence and harmful traditional practices, such as female genital mutilation and early marriage, especially in rural areas; (c) to create effective conditions and procedures for victims to report incidents of domestic and sexual violence and harmful traditional practices without fear of reprisal or stigmatization; and (d) to provide victims with legal, medical, psychosocial and rehabilitative services, as well as with compensation. Please provide information, including statistical data, disaggregated by the age and ethnicity or nationality of the victims, on the number of complaints of gender-based violence, including harmful traditional practices, and the investigations, prosecutions, convictions and sentences imposed on perpetrators, as well as redress provided to victims since the consideration of the initial report. Please report on any assessments that have been conducted, and on the achievements of the national strategy and action plan on harmful traditional practices against women and children, addressing female genital mutilation, child marriage and abduction, since their adoption in 2013.<sup>10</sup>

## **Comments**

The Ethiopian criminal law includes provisions that are related to Gender-based violence (GBV). For example, article 620 of the criminal code criminalizes rape, chapter three of the criminal code

includes harmful traditional practices including female genital mutilation (FGM) and early marriage. The revised family code prohibits early marriage.

Ethiopia is also a party to CEDAW, the Maputo protocol and other declarations of the UN. These legal instruments are part of the law of the land, and the government is bound to respect, protect and fulfill the rights that are included in these instruments, but it made reservations to these instruments. However, the country made reservations to the MAPUTO protocol, which criminalizes marital rape in article 4(2)(a). Additionally, marital rape has not been criminalized in the country. Though the government revised basic laws and criminalize harmful traditional practices including the early marriage and FGM there are still a number of tasks to be dealt with. Though there are remarkable changes Ethiopia is still a home to 25 million circumcised women and girls. This accounts for the largest absolute number in Eastern and Southern Africa and makes up 12.5 per cent of the 200 million women and girls who have undergone FGM globally.<sup>28</sup>

The Government of Ethiopia is leading in costing and domestic financing the initiative pledging a 10 per cent annual budget increment in funding its National Costed Roadmap for FGM and child marriage. This is critical in decreasing dependence on external funding and assuring sustainability.<sup>29</sup>

The COVID-19 pandemic and the prolonged conflicts in Ethiopia contributed for the increment of FGM and early marriage in the country. The UNICEF/UNFPA annual reports Accelerating Change, which focuses on the achievements of the two agencies' Joint Programme on the Elimination of Female Genital Mutilation (across seventeen countries), provide for an overview of the enforcement of FGM legislation in Ethiopia in the period 2015-2018, and 2008-2015. In 2018, in the whole Ethiopia, there have been 13 arrests, 9 cases brought to court, and 4 FGM related convictions/sanctions. In the period 2015-2017 there had been 280 arrests, 77 cases brought to court, and 2 convictions/sanctions.<sup>27</sup> In the period 2008-2015, still based on data from the UNICEF/UNFPA Joint Programme Monitoring database, there had been in Ethiopia a total of 279 arrests and 1 conviction.<sup>30</sup>

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<sup>28</sup> EHRC, Female Genital Mutilation (FGM) and Human Rights, 2022, available at <https://ehrc.org/female-genital-mutilation-fgm-and-human-rights/>

<sup>29</sup> UNFPA and UNICEF in Ethiopia call for renewed commitment to end female genital mutilation in Ethiopia, 2022, available at <https://www.unicef.org/ethiopia/press-releases/unfpa-and-unicef-ethiopia-call-renewed-commitment-end-female-genital-mutilation-0>

<sup>30</sup> <https://www.unfpa.org/sites/default/files/pub-pdf/FGM-AR2021.pdf>

Studies also show that laws are rarely enforced, because many local officials value the social norm of FGM/C more than they value the law prohibiting it. Arrests – much less prosecutions and convictions – are extremely rare.

Too Many, in its report on the law and FGM/C in Ethiopia from July 2018, indicates that, ‘there is a reluctance by local officials to fully enforce the law’ and that ‘in many rural communities, it is not the police or courts that people naturally turn to: disputes are more likely to be settled through traditional or informal justice systems such as those run by elders.’<sup>31</sup>

## **Recommendations**

### **The state party should:**

- Adopt a specific law on violence against women that Criminalize among others marital rape and other forms of violence especially in conflict time
- Act with due diligence to prevent, investigate, punish and remedy all acts of violence against women
- Lift the reservations made to article 6 (b) of the Maputo Protocol about marital rape
- Ensure the accountability of perpetrators of GBV, in particular for security forces, as well as redress for victims.
- Conduct sensitization activities regarding FGM.
- Guarantee reparation for victims of gender-based violence and in particular of female genital mutilation by creating specialized infrastructures for girls and women who have fled their homes in order to escape this violence and supporting civil society initiatives aimed at providing assistance multifaceted to the victims of these acts

## **G. Trafficking in person**

**Issue 7:** Please provide updated information, disaggregated by the age, sex, ethnicity or nationality of the victims, on the complaints, investigations, prosecutions, convictions and sentences recorded in cases of trafficking in persons during the period under consideration. Please also provide information on measures taken to combat internal and external trafficking in persons, in particular trafficking of women and children for forced labour and sexual and other forms of exploitation, especially in Tigray, Amhara and Afar. 13 In particular, please indicate the steps taken: (a) to ensure the effective enforcement of the Proclamation for the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants, and to separate the crime of smuggling from that of trafficking; (b) to ensure that victims of trafficking have access to effective remedies and reparation, as well as to adequate victim and witness protection programmes; (c) to ensure that non-custodial accommodation is provided, with full

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<sup>31</sup> [https://www.28toomany.org/media/uploads/Law%20Reports/ethiopia\\_law\\_report\\_\(july\\_2018\).pdf](https://www.28toomany.org/media/uploads/Law%20Reports/ethiopia_law_report_(july_2018).pdf)

access to shelters and appropriate medical and psychosocial support, for potential victims of trafficking while identification processes are being carried out; and (d) to provide training to police officers and other public officials on how to identify and investigate cases of trafficking, forced labour and other exploitation and to address the protection needs of victims. Please indicate whether the national action plan to combat trafficking in persons and the national migration policy have been adopted and, if so, specify the budget allocated to them, as well as other steps taken to operationalize and support them.

## **Comments**

The government has adopted Proclamation 1178/2020, Proclamation to Provide for the Prevention and Suppression of Trafficking in Persons and the Smuggling of Persons. It has established a task force organized itself into four subgroups: prevention, protection, prosecution, and partnerships. Officials did not have a current anti-trafficking national action plan. The task force—led by the Attorney General’s Office and the Ministry of Labor and Social Affairs (MOLSA)—continued to raise awareness of trafficking risks in rural communities. Officials did not report whether previously established “community dialogue” sessions continued during the reporting period.

For the first time in 20 years, the Attorney General’s Office provided two separate prosecution datasets encompassing transnational and internal forms of the crime. In terms of transnational law enforcement efforts, authorities investigated 699 potential trafficking cases, prosecuted 30 suspects, and convicted 1,042 traffickers during the reporting period, compared with investigating 535 cases and convicting 1,028 transnational traffickers under the 2015 anti-trafficking proclamation in the previous reporting period. However, officials’ propensity to conflate trafficking and smuggling made it likely some of the 2018 and 2019 cases involved clients seeking to illegally cross international borders via irregular migration (human smuggling) and other crimes not involving exploitation through forced labor or sex trafficking.<sup>32</sup> Regarding efforts to hold accountable traffickers who exploited victims within Ethiopia, the Attorney General’s Office reported authorities investigated 2,119 cases involving sexual exploitation, convicting 558 of those traffickers. Additionally, officials investigated and convicted 153 traffickers who exploited victims in forced labor within the country. Corruption, especially the solicitation of bribes, including police and judicial corruption, remained a problem; however, there were no specific allegations of official complicity in trafficking during the reporting period, and the government did not report investigating, prosecuting, or convicting public officials for human trafficking offenses.<sup>33</sup>

Since 2019, the Amhara regional state’s Bureau of Labour and Social Affairs reported that a total of some 10,000 migrants and potential victims of human trafficking have been assisted through referral to protection services such as medical, legal and psychosocial support and shelters.

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<sup>32</sup> <https://2017-2021.state.gov/reports/2020-trafficking-in-persons-report/ethiopia/index.html>

<sup>33</sup> Ibid

## Recommendation

The state party should:

- Continue to increase efforts to investigate and prosecute alleged traffickers, including for both transnational and internal trafficking crimes, and seek significant prison terms for convicted traffickers.
- Expand training to all levels of government, including regional officials outside of Addis Ababa, on implementation of the standard operating procedures (SOPs) for victim identification and the national referral mechanism (NRM) to refer all victims to appropriate care.
- Continue to increase training for police, prosecutors, judges, immigration officials, and service providers on the newly adopted antitrafficking law and its implementation
- Collaborate with NGOs and international organizations to increase the government's capacity to provide long-term shelter and protective services to all trafficking victims, including adult males and foreign nationals.
- Increase protections for Ethiopian trafficking victims exploited abroad, including by providing pre-departure training to all migrant workers, training Ethiopian embassy staff to identify and assist victims, establishing and implementing additional bilateral labor agreements with destination countries, and assigning labor attachés to Ethiopian embassies to monitor migrants abroad.
- Develop and implement a comprehensive and centralized database to accurately report the government's anti-trafficking statistics and disaggregate data on trafficking crimes and migrant smuggling.

## H. Expulsion or extradition of refugees (Article 8)

**Issue 8:** In the light of reported cases of at-risk Eritrean refugees being forcibly returned to their country of origin, please provide updated information on the measures taken to effectively enforce Proclamation No. 1110/2019 on refugees and ensure, in practice, that no person is returned to a country where he or she is at risk of being tortured. Please indicate whether individuals facing expulsion, return or extradition are informed that they have the right to seek asylum and to appeal a deportation decision. If so, please indicate whether such an appeal has suspensive effect. Please also provide detailed information on the plans and procedures in place to identify and immediately refer vulnerable asylum-seekers, including victims of torture, trafficking in persons and gender-based violence, as well as unaccompanied minors or children separated from their families, to the appropriate services and to ensure that their specific needs are taken into consideration and addressed in a timely manner.

## **Comments**

Despite the adoption of proclamation No. 1110/2019 on refugees providing better protection, reports showed that Ethiopian government forces and Eritrean soldiers have forced Eritrean refugees to return to Eritrea or other locations where they may be in danger. For example, Eritrean refugees who fled to Addis Ababa to avoid the fighting in Tigray have been rounded up and returned to camps in Tigray.<sup>34</sup>

Moreover, the Proclamation has also introduced fundamental changes to the existing refugee framework. One of the major improvements of the proclamation is it permits the right to engage in gainful employment. Hence, refugees can secure lawful work without discrimination on the basis of their refugee status; access labour protections that safeguard them from exploitation or wage theft; Earn a fair wage.

In spite of UNHCR's proactive promotion of the 'Alternative to Camps' Policy (ACP) which advocated that refugees should be afforded an opportunity to live outside of camps, Ethiopia's 'Out-of-Camp policy' (OCP) has been applied only in a limited context in respect of Eritrean refugees – discriminating against refugees of other nationals. Concrete political commitment to expand the OCP regime was secured only recently – and even then, the new scheme would apply just to a fraction (10%) of the entire refugee community living in camps.<sup>35</sup>

If most (more than 10%) of the refugees' requests to engage in gainful employment the way they are selected might create discrepancy and open for mal-governance. It's not clear to whom the OCP will be applied. Agency for Refugee and Returnee Affairs (ARRA) facilitates the movement of refugees and asylum seekers. But regulations would yet need to provide details of how the right to freedom of movement will be implemented and what the government's discretion should be like.

## **Recommendation**

The state party should:

- proper implementation of the law and work more on the protection of Refugees

## **K. Education and training (Article 10)**

**Issue 11:** With reference to paragraphs 22, 26, 41–46, 93, 104, 133 and 140 of the State party's periodic report, please provide up-to-date information on any educational and training programmes developed by the State party to ensure that all law enforcement officials, prison staff, immigration and

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<sup>34</sup> Reports of Forcible Return of Eritrean Refugees in Ethiopia Cause for Alarm, available at

<https://reliefweb.int/report/eritrea/reports-forcible-return-eritrean-refugees-ethiopia-cause-alarm>

<sup>35</sup> <file:///C:/Users/Eden%20Hailu/Downloads/SSRN-id3406620.pdf>

border control officers and members of the military are fully acquainted with the provisions of the Convention and are aware that breaches will not be tolerated, that allegations of torture and ill-treatment will be investigated and that offenders will be prosecuted. Please indicate whether these training courses are mandatory or optional, how often they are conducted, how many law enforcement officials, members of the military, prison staff and immigration and border control officers have already completed them, what percentage of all such officials have completed them and what measures have been taken to train the remaining officials. Please also provide details on the programmes used in the training of police officers and other law enforcement officials in non-coercive investigating techniques. Please further indicate whether the State party has developed any methodology to assess the effectiveness of training and educational programmes in reducing the number of cases of torture and ill-treatment and, if so, please provide detailed information on that methodology. Lastly, please indicate the measures taken to give effect to the provisions of article 10 (2) of the Convention.

### **Comment**

In Ethiopia the justice machinery takes training on various issues however, the trainings are not tailored to a particular convention. There are annual trainings that are provided to the personnel but the trainings are more general and don't have a particular focus on a particular issue.

As a way to test the effectiveness of the trainings they are conducting an impact assessment once in a year or every two years to see what changes have taken place in the trainees. With respect to the trainings that are provided the personnel need to be trained on the fact that unnecessary force should not be used and applied. Here the main point to consider is that Ethiopia as a signatory of the major international laws has the obligation to ensure that force is not applied and law enforcement officials are well aware of such facts. The FDRE Constitution under article 9(3) has provided that the international agreements that the state has ratified are to be considered as part of the law of the land. This leads to the conclusion that there needs to be an awareness on the importance on the protection from torture and ill treatment and the trainings need to specifically focus on these issues.

Coming to the situation on the ground, the recent incident of the orthodox Ethiopian church in an incident in Shasemehne town it was observed that when the newly appointed Holy Synod of Oromiya arrived at the church sounded bells for the local followers of the religion. Following this the followers rushed to the church and the police opened fire to disperse the crowd and this led to

the death of 2 young men and the injury of 4 other people.<sup>36</sup> From other incidents as well it is evident that the police usually resort to the use of force in cases similar to the one indicated above or in other incidents.

On another incident that happened in Wolkite town where police fired and killed 3 people who were out on protest.<sup>37</sup> During the incident protesters were out regarding the discontinuation of water for more than a month.<sup>38</sup> Another recent occurrence is the use of force by police at the Adwa celebration which as per the report of the Ethiopian human rights commission. The report has indicated that the official ceremonies were handled peacefully and it was once the traditional gathering of the people began that the violence erupted.<sup>39</sup> The police are said to have used live and plastic bullets, tear gas and excessive measures which have resulted in the death of at least one and the several bodily injuries.<sup>40</sup> This again is evidence of the use of excessive police force and the need for proper trainings on use of force and torture to security forces.

### **Recommendations:**

The State Party should:

- Systematically and regularly provide training focused on the absolute prohibition of torture as well as on the international and national anti-torture framework;
- Insert chapters on the protection against torture personnel are trained on should include elements in the curriculums and manuals that the law enforce
- Ensure that training on the torture framework are made mandatory
- Provide all members of law enforcement with systematic training on the use of force, in particular those involved in protest control, with due regard to the Basic

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<sup>36</sup> <https://addisstandard.com/news-analysis-clashes-between-orthodox-faithful-local-police-claim-lives-of-many-in-shashemene-holy-synod-government-in-war-of-words-as-both-stick-to-their-positions-over-church/> cited on 3/7/2023

<sup>37</sup> <https://ehrc.org/%e1%89%a0%e1%8b%b0%e1%89%a1%e1%89%a5-%e1%89%a5%e1%88%94%e1%88%ae%e1%89%bd%e1%8d%a3-%e1%89%a5%e1%88%94%e1%88%a8%e1%88%b0%e1%89%a6%e1%89%bd-%e1%8a%a5%e1%8a%93-%e1%88%95%e1%8b%9d%e1%89%a6%e1%89%bd-2/> cited on 3/9/2023

<sup>38</sup> *ibid*

<sup>39</sup> <https://ehrc.org/regarding-2023-adwa-victory-day-celebration-related-incidents-ehrc-calls-for-implicated-law-enforcement-officials-to-be-subject-to-accountability/> cited on 3/9/2023

<sup>40</sup> *ibid*

Principles on the Use of Force and the Use of Force firearms by law enforcement officials.

- Establish regular and mandatory training for police officers, prosecutors, judges and lawyers, focusing on sexual and gender-based violence and its prosecution ex officio, as well as child protection

#### **L. Training for law enforcement bodies (Article 10)**

**Issue 12:** Please provide detailed information on the programs aimed at training judges, prosecutors, forensic doctors and other medical personnel who deal with persons deprived of their liberty to detect the physical and psychological consequences of torture, ensure the effective documentation of torture and verify the admissibility of confessions. Please indicate whether these programmes include specific training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), as revised.

#### **Comments**

Here there is a need to ensure the independence of the judiciary and thus the judiciary is usually able to get trainings from independent organs and not the government. In addition to this there is an independent body that is called “የዳኞች አስተዳደር ጉባኤ ጽ/ቤት” (Office of the Judicial Council) and they provide trainings to judges. However, one drawback of this is that the trainings that they mostly provide relate to the procedural issues and on the legislations. Moreover they are not that active in the provision of trainings. In addition to this they have taken part in various trainings on human rights through a project by the European Union. The other training opportunity that the judges have is the prison fellowship through which the judges get to take various trainings on but the training is not on human rights issues.

#### **Recommendations:**

The State Party should:

- Ensure that the justice machinery is well trained on effective identification, documentation and investigation of torture
- Ensure that all actors in the field concerned, in particular members of the medical profession, are specifically trained in the detection of cases of torture and ill-

treatment, and in the collection of evidence, in accordance with the Istanbul Protocol;

- Develop and implement a methodology for evaluating the effectiveness of education and training programs relating to the Istanbul Convention and Protocol;

### **M. Systematic review of interrogation rules (Article 11)**

**Issue 12:** Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on any interrogation rules, instructions, methods, practices or arrangements for custody that may have been introduced since the consideration of the initial report. Please indicate the frequency with which these rules, instructions, methods, practices or arrangements are reviewed and report on the procedures in place for reviewing them. Please also indicate the ministries, national security organs and agencies of the Government with powers of arrest and detention, including the conditions under which they may carry out arrests and detentions. Please comment on reports regarding the existence of unofficial places of detention, including detention facilities run by militia groups.

### **Comments**

In relation to the rules and procedures that relate to the procedures and conditions of interrogation we have to make reference to the criminal procedure code of FDRE.<sup>41</sup> The criminal procedure code under article 27 has provided the procedures to be followed for the interrogation. The article has stipulated that the person who has allegations against him is asked to answer for the allegations against him. However here the choice not to answer is also there for the defendant and he has the choice of not answering the allegations against him. In addition to this there is an option of being communicated in a language that the person understands. The criminal procedure code under article 29 has provided the possibility for the arrest of a person by police or a private person. The principles of arrest are provided under article 49 and have provided that a warrant is necessary for arrest. As per article 59 any person who has been arrested by a 3<sup>rd</sup> party has to be handed over to the police in cases of flagrant offences. Thus what could be understood from the above statement is that there is a possibility for arrest to be made either by a police officer or any 3<sup>rd</sup> party but such person has to handover the individual in the time set.

During the state of emergency declaration made in November 2/2021 up until its revocation Federal, Afar and Amhara region security forces have conducted various arbitrary arrests based on ethnic profiling.<sup>42</sup> Individuals were also arrested by ENDF, allied forces and federal police for

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<sup>41</sup> Criminal Procedure Code of Ethiopia 1961

<sup>42</sup> Ethiopian Human Rights Situation Annual Report, Ethiopian Human Rights Commission, p 26

their perceived affiliation with the TPLF.<sup>43</sup> There were findings that ENDF kept prisoners in secret locations and military camps in Mekelle, Northern command, Awash Camp, Martyrs Memorial Monument Centre and other places that were inaccessible.<sup>44</sup> During the state of emergency both federal and regional government had detained thousands of ethnic Tigrayans due to suspicion in collaborating with Tigray forces and as security threats.<sup>45</sup>

During the state of emergency that was declared due to the war in the north various people of Tigray ethnic group were arrested. The arrested individuals according to the report by the Ethiopian Human Right Commission have indicated that they have not been able to hand over some of their documents as they were arrested at their places of work or on the street.<sup>46</sup>

During the war in Tigray as the war was approaching Humera town the youth and Tigray Militia were arresting and beating civilians after taking them from their homes.<sup>47</sup> The arrest was made on the suspicion that the individuals are prominent ethnic Amhara and supporting the claim on west Tigray and are suspects in passing information to the ENDF and Amhara forces.<sup>48</sup> In a similar fashion in many parts of Tigray and other parts of the country many were arrested by the ENDF, allied forces, federal police for affiliation with the TPLF.<sup>49</sup> They were forcefully kept in incommunicado detention for longer periods of time without any formal charges or legal proceedings against them.<sup>50</sup>

The state of emergency proclamation enacted to avert the threat against national existence and sovereignty No 1/2021<sup>51</sup> has provided the possibility for the arrest and detention of individuals during the declarations for the reasons stated in the proclamation. The first power that is provided to the command post provides the following “Arrest any person without a court warrant upon reasonable suspicion that he cooperates with terrorist groups; detain such person for the period that this proclamation is in force or hold the same accountable under the law”. In addition to this the

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<sup>43</sup> Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia, p 38

<sup>44</sup> Id p 39

<sup>45</sup> Ethiopian Human Rights Commission, ‘Report on Violations of Human Rights and International Humanitarian Law in Afar and Amhara Regions of Ethiopia Executive Summary’ <<https://ehrc.org/wp-content/uploads/2022/03/English-Executive-Summary-AAIR.pdf>>

<sup>46</sup> <https://ehrc.org/addis-ababa-the-arrest-and-condition-of-persons-detained-in-connection-with-the-state-of-emergency-requires-urgent-attention/> cited on 2/8/2023

<sup>47</sup> Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia, P 38

<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> <https://addisstandard.com/update-details-of-ethiopias-state-of-emergency-proclamation/> cited on 2/14/2023

proclamation has provided that a person may be charged with a 3 years or 10 year imprisonment for violation of the proclamation depending on the gravity of the offense that is committed. This proclamation makes it evident that the command post has been provided with power of arrest and detention in addition to what has been provided in the criminal procedure law. The report of the commission has indicated that there are irregular places of detention for journalists.<sup>52</sup>

In the past year there has been arrest and detention of journalists and reports show that at least a dozen were detained.<sup>53</sup> The journalists are taken and the places of their detention are in some of the cases unknown and they are kept in incommunicado detention facilities.<sup>54</sup> For instance Journalist Temesgen Desalegn who is the editor in chief of “Fitih” magazine was kept in a detention facility that is unknown as he was moved from the primary police station which was in a local police station.<sup>55</sup> In addition to this the reports of the commission show that the detention of journalists ranges to 18 and they are subjected to unlawful detention, non-disclosure of whereabouts of the detainees and detention in irregular facilities is contrary to media law.<sup>56</sup>

The other report was the report by Ethiopian human rights council which provides that Bergader General Tefera Mamo and Mr Napolion G/eyesus who were arrested and whose whereabouts were unknown and even their families couldn’t find them even at police stations that they are claimed to be detained in.<sup>57</sup>

### **Recommendations:**

The State Party should:

- Clearly stipulate the law on those vested with the power of arrest and detention and update the legislations in place
- In cases of state of emergency declarations provide clear steps of detention to avoid illegal detentions

## **N. Treatment of prisoners (Article 11)**

**Issue 14:** Please provide annual statistics for the period since the consideration of the initial report, disaggregated by place of detention, sex, age and nationality of the detainee, on the total capacity and occupancy rate of all detention facilities, stating the number of remand and convicted prisoners at each facility. Please provide information on measures adopted to ensure the separation of pretrial

<sup>52</sup> <https://ehrc.org/over-a-dozen-media-personnel-in-unlawful-detention/> cited on 2/8/2023

<sup>53</sup> <https://www.voanews.com/a/dozen-journalists-held-in-ethiopia-crackdown/6592718.html> cited on 3/9/2023

<sup>54</sup> ibid

<sup>55</sup> ibid

<sup>56</sup> <https://ehrc.org/detention-of-journalists-and-media-personnel-update/> and <https://ehrc.org/over-a-dozen-media-personnel-in-unlawful-detention/> cited on 3/9/2023

<sup>57</sup> የኢትዮጵያ ሰብዓዊ መብቶች ጉባዔ (ኢሰመጉ)፣ በቂ ትኩረት የሚያስፈልጋቸው ሀገራዊ የሰብዓዊ መብቶች ጉዳዮች፣ ግንቦት 15/2014፣ ገጽ 1

detainees from convicted prisoners, minors from adults and men from women, and specify in which facilities detainees are not yet separated in this way. Please also provide information on the steps taken to promote alternatives to pretrial detention and imprisonment, such as community service or victim compensation orders, providing statistical data for the period under consideration on the use of such alternative measures, particularly for children in conflict with the law. With regard to paragraphs 28, 91 and 98 of the State party's periodic report, please provide further details on the measures taken, including disciplinary action, to ensure that detainees do not remain in pretrial detention for longer than the maximum period prescribed by law.

## **Comments**

With respect to conditions in prison there is a provision in the prison commission proclamation regarding the living conditions of prisoners. Accordingly, Article 33 of the proclamation has provided separate accommodation for prisoners and sets that, prisoners are to be kept in separate quarters based on their reason for detention, gender, age or health condition. In the context of the country at the moment women and men detainees are kept in separate areas and are not to mix with one another while detained. However, when we come to the case of minors they are kept in prisons alongside other offenders. A positive remark in relation to this could be the inauguration of the juvenile detention facility in Addis Ababa which will be used to correct and rehabilitate those between the ages of 9-15 and also help with the rehabilitation of those from trauma and mental depression as a result of being detained with adults.<sup>58</sup>

The other area of concern is the use of alternative penalties to imprisonment however, currently such forms of punishment are not applicable and used. The law is lacking in this regard and they are not widely used and the courts use arrest as punishment.

In some cases there have been incidences where the police have failed to release those who were detained even if the court has set them free and one such example is the case of Ato Sentayew Chekol whose release was ordered by court on bail but who was kept in detention by the police and even transferred to another police station.<sup>59</sup> Before the decision of the court Ato Sentayew was kept in pre-trial detention for a longer period of time before being brought before court.<sup>60</sup> On a similar note journalist Abay Zewdu was detained and the court decided to be released on bail was kept in detention by the police who refused to release him on bail.<sup>61</sup> There are cases of multiple individuals who were kept in pre-trial detention for longer periods of time beyond what has been already allowed.<sup>62</sup> This shows that there is a common trend of keeping individuals in detention for

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<sup>58</sup> <https://www.fanabc.com/english/the-capital-inaugurates-rehabilitation-center-for-children-involved-in-crime/> cited on 2/14/2023

<sup>59</sup> የኢትዮጵያ ሰብዓዊ መብቶች ጉባዔ፣ አስቸኳይ እና በቂ ትኩረት የሚያስፈልጋቸው የሰብዓዊ መብት ጉዳዮች፣ መስከረም 12/2015፣ ገጽ 1

<sup>60</sup> የኢትዮጵያ ሰብዓዊ መብቶች ጉባዔ፣ የተያዙ ሰዎች መብት በአስቸኳይ ይከበር!፣ ሰኔ 04/2014 ዓ.ም

<sup>61</sup> የኢትዮጵያ ሰብዓዊ መብቶች ጉባዔ፣ አስቸኳይ እና በቂ ትኩረት የሚያስፈልጋቸው የሰብዓዊ መብት ጉዳዮች፣ መስከረም 12/2015፣ ገጽ 1

<sup>62</sup> የኢትዮጵያ ሰብዓዊ መብቶች ጉባዔ፣ የተያዙ ሰዎች መብት በአስቸኳይ ይከበር!፣ ሰኔ 04/2014 ዓ.ም

longer periods beyond what is prescribed in the law during pre-trial stages and in some cases after their release on bail was ordered.

**Recommendations:**

The State Party should:

- In cases of arrest ensure that those detained are brought before courts of law within the specified period
- In cases of state of emergency ensure that those in custody are provided with all the necessary legal protection

**O. Conditions of detention (Article 11)**

**Issue 15:** With respect to paragraphs 14, 20, 82, 83, 110 and 114–119 of the State party’s periodic report, please provide detailed, up-to-date information on the progress of projects to improve conditions of detention in police stations, prisons and other places of detention. In particular, please indicate the steps taken to further reduce overcrowding in places of detention, including through the use of alternatives to imprisonment both before and after trial, and to improve sanitation, the quality and quantity of food and water, as well as the health care provided to detainees, including psychiatric care. Please describe what further measures have been taken to address the special needs of: (a) children in conflict with the law, including with regard to rehabilitation and education services; (b) women deprived of their liberty, in particular pregnant women and women held in detention with their children; and (c) persons with disabilities. Please provide further details on the State party’s legislation and practice on solitary confinement and include data on the use of solitary confinement during the period under review, indicating its average duration. Please indicate whether solitary confinement and other isolation or segregation regimes are subject to any oversight mechanism or external supervision.

**Comments**

With respect to the protection of the right of detainees the prison administration proclamation 1174/2020 has some positive aspects to it and shows improvement to its predecessor. However, as per an assessment that was seen there is a drawback in this regard and shows that the detainees are not as such provided with all the required materials.<sup>63</sup>

There are training opportunities for detainees and they are able to learn and train on various issues.<sup>64</sup> One of the drawbacks in this regard is however that the detainees are only able to train on courses on common areas and nothing new or out of the ordinary is provided.<sup>65</sup> Moreover in some

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<sup>63</sup> በጌ.ደ.ራ.ል ማረጋገጫ ቤቶች የሴቶች፣ ከእናቶቻቸው ጋር የሚኖሩ ሕፃናት እና የወጣት ታራሚዎች አያያዝ በተመለከተ የህግ እና ነባራዊ ሁኔታ ዳሰሳ ጥናት፣ሴንተር ፎር ጀስቲስ ከዩ.ኤስ.ኤ.አይ.ዲ ፍትህ (ጀስቲስ) አክቲቪቲ ጋር በመተባበር የተጠና ነሐሴ 4, 2014

<sup>64</sup> Id p 112

<sup>65</sup> Id P 114

of the detention facilities the participation of women and the youth in such activities is really low and they detainees only take the trainings to pass the time, lack of all necessary equipment and that its irrelevance after the trainees have left the centre.<sup>66</sup> In addition to this there are gaps in enabling detainees to get distance learning opportunities.<sup>67</sup> Regarding food the detainees are provided with food 3 times a day but the food is inadequate due to budget constraints.<sup>68</sup> Medical treatment is provided to the detainees 24 a day free of charge but some issues with this is that the service providing facilities have limitation on the necessary equipment and in some cases prisoners are required to pay for medical treatment.<sup>69</sup> In addition to this in some detention facilities the clinics fail to work for 24 hours a day and this could result in a serious injury in the detainees.<sup>70</sup>

For detainees who are below the age of 18 an assessment has provided that they are not kept in separate facilities from adult offenders.<sup>71</sup> In a report by centre for justice a detention facility in Amhara region was found to have had separate place of sleeping for juvenile detainees.<sup>72</sup> In the detention facilities in Amhara region there is no special attention given to young offenders with respect to their medical attention, discipline, education and training and counseling services.<sup>73</sup>

With respect to women detainees who are in the facilities with their children and those who are nursing mothers there are some positive and some negative points to consider. On a positive note there is a possibility for women with children below 24 months to be detained in the facilities.<sup>74</sup> For those children who are detained with their mothers as much as the budget allows the facilities try to ensure that the children get special attention.<sup>75</sup> As a negative point we can see the shortage essential meals and sanitary products that are needed for children detained with their mothers.<sup>76</sup> Another negative issue is with respect to women is the shortage of sanitary products.<sup>77</sup> Women who are pregnant and those who have children in the detention facility are not provided with special attention that is needed based on their condition.<sup>78</sup> Finally children who are detained with their mothers are not provided with all the support that is necessary for them and to learn and have recreational opportunities.<sup>79</sup> With respect to the provision of health care to women detainees and

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<sup>66</sup> በአማራ ክልል ማረሚያ ቤቶች የሴቶች፣ ከእናቶቻቸው ጋር የሚኖሩ ሕፃናትና የወጣት ታራሚዎች አያያዝ በተመለከተ የህግ እና ነባራዊ ሁኔታ ዳሰሳ ጥናት, ሴንተር ፎር ጀስቲስ ከዩ.ኤስ.ኤ.አይ.ዲ ፍትህ (ጀስቲስ) አክቲቪቲ ጋር በመተባበር የተጠና, ነሐሴ, 2014, P 107

<sup>67</sup> Supra note 19, p 114

<sup>68</sup> Id p 112-113

<sup>69</sup> Id p 113

<sup>70</sup> “በሀገሪቱ ባሉ የተለያዩ ማረሚያ ቤቶች ላይ በተሰራ የክትትል ስራ የተዘጋጀ የኢሰመጉ 152ኛ ልዩ መግለጫ አዲስ”, አዲስ አበባ፣ ኢትዮጵያ መስከረም 2015 ዓ.ም, P 10

<sup>71</sup> Supra note 19, p 113

<sup>72</sup> Supra note 22, p 105

<sup>73</sup> Supra note 22, p 109

<sup>74</sup> Supra note 19, P 112

<sup>75</sup> Ibid

<sup>76</sup> Id p 114

<sup>77</sup> Id 113

<sup>78</sup> Id P 114

<sup>79</sup> Id P 115

children detained with their mothers there is no special support that is provided to them.<sup>80</sup> Additional children who are detained with their mother it is possible to bring children up to the age of 11 to prison with them here there are points to consider.<sup>81</sup> First the mothers are claiming that they don't have any place to leave their children or relatives who can look after them and they are not willing to give them up for adoption.<sup>82</sup> On the other hand the children are used by the mothers as a way to obtain pardon and amnesty.<sup>83</sup> Due to the above reasons it was observed that this issue needs to be properly considered in the law when they are above the age of 24 months.<sup>84</sup>

In some of the detention facilities in Amhara region women detainees who are detained with their children are given separate rooms to sleep in and a pregnant women who just had her baby is kept in a separate cell.<sup>85</sup>

With respect to the disabled detainees the facilities haven't done much with respect to the provision of special support.<sup>86</sup>

The report of the commission in respect to the detention related with the state of emergency has indicated that complaints were coming from family members who were unaware of the place of detention of their facilities.<sup>87</sup> Some of the facilities of detention were overcrowded, lacked ventilation, light and sanitary facilities.<sup>88</sup> Only one toilet is available for the detainees in some of the facilities.<sup>89</sup> Places of detention where men and women were held together in the same room and detainees exhibiting signs of psychological distress were also observed during the visit conducted.<sup>90</sup> Majority of the detention facilities had not set up medical services and some of the detainees were seen to be in pain.<sup>91</sup>

The training facilities are crowded in their holding capacity and house plenty of detainees at once.<sup>92</sup>

Regarding the issue of solitary confinement the prison proclamation has provided that detainees may be kept in solitary confinement. Article 50(1) has provided that any "prisoner who attempted

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<sup>80</sup> Supra note 22, p 109

<sup>81</sup> Supra note 54 p 98

<sup>82</sup> ibid

<sup>83</sup> ibid

<sup>84</sup> ibid

<sup>85</sup> Id, P 105

<sup>86</sup> Id P 114

<sup>87</sup> <https://ehrc.org/addis-ababa-the-arrest-and-condition-of-persons-detained-in-connection-with-the-state-of-emergency-requires-urgent-attention/>

<sup>88</sup> <https://ehrc.org/addis-ababa-the-arrest-and-condition-of-persons-detained-in-connection-with-the-state-of-emergency-requires-urgent-attention/>

<sup>89</sup> <https://ehrc.org/addis-ababa-the-arrest-and-condition-of-persons-detained-in-connection-with-the-state-of-emergency-requires-urgent-attention/>

<sup>90</sup> Ibid

<sup>91</sup> Ibid

<sup>92</sup> Supra note 22, p 108

or is found preparing to abscond from prison or who inflicted or attempted to inflict harm on other prisoners or employees of the Commission or is unwilling to observe the administrative regulations of the prison or refuses to accept orders from the prison officials and police officers or because of his health condition attempted to inflict harm on himself may be kept, for a limited period, in a separate prison cell within the prison”. Sub article 2 of the same article however has provided the prohibition even for those kept in solitary accordingly it is prohibited to keep them:

- in a cell for longer than 15 consecutive days,
- in a dark room, and from getting natural light for at least 3 hours daily,
- in insufficient space without windows and electricity, bed, matters and beddings,
- in places where juveniles and women will be exposed to serious problems because of their health and
- from being visited

Thus what could be understood from this is that there is a clear legal stipulation on solitary confinement of prisoners and the procedures to follow.

One positive element of the new proclamation is the inclusion of the protection of the rights of disabled people. Article 55 of the proclamation has provided that the prison commission has to make all the necessary arrangements to ensure that the detainee if disabled is able to assist himself while in prison. The specifics of the support to be provided is to be indicated in the regulation but the regulation has failed to incorporate the same and the places indicated in the proclamation to be improved for disabled detainees are limited.<sup>93</sup>

### **Recommendations:**

The State Party should:

- Improve physical conditions in all places of deprivation of liberty by ensuring that prisoners receive, in a timely fashion and free of charge, the medical treatment and medicines required by their state of health, have access to nutritious and sufficient food, and enjoy appropriate sanitary conditions and adequate ventilation in cells, given the climatic conditions in the country
- Reduce prison overcrowding by making greater use of alternatives to detention
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- Ensure that detention facilities are able to accommodate women, pregnant women, children, youth and disabled prisoners and consider their specific needs like food, sanitation and medical services
- Establish care centers for children of women offenders who are above 24 months

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<sup>93</sup> Supra note 54, p 72

- Apply community service punishment for pregnant women and women with children
- Young offenders should have separate institutions that are able to rehabilitate and educate them and they are kept separate from adult offenders
- Allow non-governmental organizations to visit places of deprivation of liberty, to and inspect such places without hindrance, and to speak confidentially to all inmates;
- Provide prisons with sufficient qualified and trained staff.

### Q. Minimum age of criminal responsibility (Article 11)

**Issue 16:** With regard to paragraphs 127–132 of the State party’s periodic report, please provide information on measures taken to raise the minimum age of criminal responsibility, in accordance with international standards, and ensure that children above 15 and under 18 years of age are classified as “young persons” who are subject to the lighter penalties provided for in articles 157–168 of the Criminal Code and are strictly separated from adults in all places of detention. Please clarify the current legislation and policies in relation to juvenile remand and the use of alternative measures to conviction and imprisonment for juveniles.

#### **Comments**

The age of criminal responsibility has been determined under article 52 of the FDRE Criminal Code and has been set to 9 years. In line with this the criminal code under article 53 has also provided that the place of detention from young offenders should be separated from those who have attained majority.

As per article 167 the criminal may be sentenced to a fine as a penalty and might be required to carry it out in addition to another sentence. However the use of alternative penalty is low in Ethiopia and is not practiced at the moment. In respect to that of detention facilities all the detainees are kept in similar places of detention and do not have separate place designated for them. We can thus say that young offenders are not kept in separate detention facilities from other offenders which are a requirement.

#### **Recommendations:**

The State Party should:

- Raise the age of criminal responsibility from 9 to 12 and separate them from adults during detention.

- Ensure that alternative penalty is available for young offenders

### **S. Incommunicado detention (Article 11)**

17. In the light of paragraphs 55 and 98 of the State party's periodic report, and given the allegations of torture during incommunicado detention in unofficial facilities or military centres, particularly in the context of the armed conflict in Tigray, Amhara and Afar, and the fact that the use of such facilities in itself constitutes a violation of the Convention, please indicate which State officials have the authority to arrest and detain suspects, specifying in which locations and for how long they may be detained. Please also indicate whether the State party has opened investigations into the practice of incommunicado detention in unofficial facilities or military centres and, if so, what the outcomes of the investigations were. Please also comment on reports about the widespread practice of arrests without a warrant and arbitrary and prolonged detention without charges and judicial process, notably during the state of emergency that was declared on 2 November 2021, which disproportionately targeted suspected members or supporters of insurgent groups and members of the political opposition, in particular ethnic Tigrayans, as well as human rights defenders, dissenting journalists and protesters. Please provide information on the steps taken to ensure that all allegations of arbitrary arrest and detention are promptly and effectively investigated and that perpetrators are brought to justice. Please include statistical data in this respect for the reporting period.

### **Comments**

In the context of the war in the north the annual report that was published by the Ethiopian Human Rights Commission has provided the existence of torture in some parts. The report provided that the Tigrayan forces who took over some of the areas have been committing acts of torture.<sup>94</sup> They are said to have tortured and ill-treated individuals in the region to give them money, information and bring weapons out from places of hideout.<sup>95</sup> In addition to this members of the Ethiopian and Eritrean armed forces and Amhara forces were also subjected to torture and ill-treatment.<sup>96</sup>

In relation to the state of emergency that was declared on November 2021 the Federal, Amhara and Afar region security forces were unlawfully detaining individuals. In addition to this people were unlawfully arrested and kept in detention for longer periods of time without being brought before courts of law on the basis of membership and participation in opposition political parties.<sup>97</sup> In some cases those detained remained in custody even after the lifting of the state of emergency

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<sup>94</sup> Ethiopian Human Rights Commission, p 26

<sup>95</sup> Ibid

<sup>96</sup> Ibid

<sup>97</sup> Ibid

declaration.<sup>98</sup> Individuals in Amhara region were subjects of arbitrary arrest and detention, in places that are unknown, and they were not brought before courts of law in the time specified by law.<sup>99</sup> In violation of the legal principles many individuals were detained and kept in incommunicado detention for several months.<sup>100</sup>

In relation to journalists there were arbitrary arrests and forced disappearance and in some cases the whereabouts of the journalists was not known.<sup>101</sup> In relation to this a total of 22 journalists were detained and there were about unknown by their family and their lawyers from 2019-22.<sup>102</sup>

### **Recommendations:**

The state party should

- Always ensure that the detention and arrest of individuals should be in line with the law
- Make sure that the perpetrators are brought to justice and are held responsible for the crimes committed
- Strictly adhere to the obligations set in the international human rights instruments and national law with respect to conditions of arrest and detention
- Maintain closed all unofficial places of detention;
- Revise its legislative framework and practice to ensure that all arrests and detentions, are subject to oversight by the judicial authorities.

## **T. Investigation**

**Issue 2:** With reference to paragraphs 57–62, 64 and 88 of the State party’s periodic report, please provide more detailed information regarding which authorities are competent to initiate and carry out an investigation, at both the criminal and disciplinary levels, when there is reason to believe that an act of torture or ill-treatment has been committed by law enforcement officers, prison personnel or members of the military, and describe how these authorities interact with the public prosecutor’s office during the investigation and what safeguards are in place to ensure that there is no hierarchical or institutional link between the suspected perpetrators and the inspectors. In this regard, please also specify:

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<sup>98</sup> Ibid

<sup>99</sup> Id p 26

<sup>100</sup> Supra note 5

<sup>101</sup> Ibid

<sup>102</sup>

[https://cpj.org/data/imprisoned/2022/?status=Imprisoned&cc\\_fips%5B%5D=ET&start\\_year=2022&end\\_year=2022&group\\_by=location](https://cpj.org/data/imprisoned/2022/?status=Imprisoned&cc_fips%5B%5D=ET&start_year=2022&end_year=2022&group_by=location) cited on 2/15/2023

- a) Whether the public prosecutor's office is required to initiate an ex officio investigation where there is reason to believe that an act of torture or ill-treatment has been committed and to request that the potential victim undergo a forensic medical examination;
- b) Whether the alleged perpetrator is automatically relieved of his or her duties while the investigation is being conducted and prohibited from making any further contact with the alleged victim;
- c) What measures have been taken and resources allocated to strengthen the judiciary so that victims can safely obtain redress before the courts and all persons who have violated human rights law or committed acts of abuse are brought to justice, irrespective of their status and political, ethnic or religious affiliation.

### **Comments**

During the last three decades, courts in Ethiopia have failed to fulfil their role in the prevention and repression of torture. The victims interviewed by OMCT and its network members, testified that their confessions –obtained through torture–were admitted before courts which failed to order the stoppage of any act of torture or to hold the torturers liable<sup>103</sup>. The Committee was concerned in 2011 by numerous and consistent reports that the State party was persisting in failing to investigate and prosecute allegations of torture, including prosecute perpetrators, including members of the Ethiopian National Defence Force and the military or police officers responsible<sup>104</sup>. Following the launch of political reforms in 2018, one of the main priorities has been to ensure that perpetrators of serious human rights violations are brought to justice for their actions. Criminal investigations were conducted into senior federal and regional officials in relation to torture and most of the perpetrators are currently on trial<sup>105</sup>. Gross human rights violations committed in conflict regions remain uninvestigated<sup>106</sup>.

In cases of torture and ill treatment there is a possibility for the victims to come forth and describe that they have been tortured to independent organs of the state or that of the courts. It is common to see claims of torture being brought before courts of law. In such instance the various organs will look into the report of the torture. One problem in this regard however is that, the legal definition

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<sup>103</sup> <https://www.omct.org/site-resources/files/Ethiopia-Surviving-torture-Web-pages.pdf> : OMCT, “*Ethiopia surviving torture a call of three decades of untold tragedy for torture victims in Ethiopia*”, pp.49-53.

<sup>104</sup> Concluding observations of the Committee against torture, Ethiopia, 20 January 2011, p.3 §11.

<sup>105</sup> Second periodic report submitted by Ethiopia under article 19 of the Convention, due in 2014, 26 May 2020, pp. 10-11 §§57-64.

<sup>106</sup> United States Department of State • Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2020, <https://www.state.gov/wp-content/uploads/2021/03/ETHIOPIA-2020-HUMAN-RIGHTS-REPORT.pdf>,

and criminalization of torture is not accurate and compliant with the convention. This poses a problem by making investigation and changes before courts of law harder. However, regardless of this there could be investigation into cases of torture and ill treatment to be looked into and considered.

**Recommendations:**

The state party should

- Revise its legislation, ensure that the competent authorities routinely launch an investigation whenever there are reasonable grounds to believe that an act of torture has been committed and see to it that suspects are duly brought to justice and, if they are found guilty, receive sentences commensurate with the seriousness of their acts;
- Put in place an independent, effective, confidential and accessible complaints mechanism in all police custody facilities and prisons, and ensure that complainants, victims and members of their families are not at risk of reprisals
- Ensure that all cases of torture including sexual violence automatically give rise to effective and impartial ex officio investigations and proceedings in the ordinary courts and that perpetrators, including instigators and accomplices, are prosecuted and receive punishments commensurate with the seriousness of the acts committed;
- Equip and train all judiciary and police officers with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**V. System of confidential complaints (Articles 12 and 13)**

21. With respect to paragraphs 14, 21, 66–73, 100, 120, 125 and 138 of the State party’s periodic report, please clarify whether the State party has set up a dedicated, effective and independent system of confidential complaints that can be lodged with an independent body outside the prison administration and describe the measures put in place to ensure confidentiality and the remedies available to complainants when the competent authorities refuse to investigate their case. Please describe the mechanisms in place to protect victims of torture and their relatives, as well as witnesses and investigators, against any form of intimidation or reprisals that their complaints may provoke, including after visits undertaken by inspection bodies.

**Comments**

Article 28 of the Council of Ministers Regulation on the Treatment of Federal Prisoners 138/2007 and Article 35 of the United Nations Standard of Minimum Rules for the Treatment of Detainees clearly states that every prisoner has the right to lodge a complaint orally or in writing. Any Prisoner has the right to submit grievances to the official concerned if he/ she is dissatisfied with

the decision made by the prison administration. This provision indicates that prisoners are entitled to claim their rights or to lodge any complaints including torture and other ill treatments to the court of law or to other concerned bodies like the Ethiopian Human rights commission or civil society organizations. Even though this provision grants the right for prisoners to complain their cases, practically there is no clear and effective mechanism where prisoners lodge their complaint to independent bodies.

Ethiopian Human rights commission has the power to receive and investigate all complaints on human rights violations including torture and brought the case to the House of Federation and even to the court of law. However the prisoners get the chance to complain about their cases only when the commission visits prisons or through free legal aid service providers. In most cases specifically in rural areas Prisoners do not have access to communicate their cases to the concerned bodies. Due to this they choose silence and fail to exercise their right.

A research conducted by Association for human rights in Ethiopia shows courts in Ethiopia have failed to fulfill their role in the prevention and repression of torture. Victims of torture complained their cases to courts.<sup>107</sup> However courts fail to investigate allegations or order stoppage or follow up execution of order. This act worsens the situation and triggers the officials to commit more torture.

As far as the legal framework concerned, The protection of witnesses and whistleblowers of criminal offenses proclamation No. 699/2010 is not comprehensive enough to protect witnesses and whistleblowers because it does not incorporate provisions relating to establishment of independent investigative organ, allocation of budget for witness and whistleblowers protection, clear mechanism and clear understanding on how protection measures may be taken and organs responsible to protect witnesses and victims' relatives.<sup>108</sup> Furthermore this proclamation is not broad enough to covers enough criminal offences like torture and ill treatment; there is a need to extend its application to crimes punishable with lesser years envisaged in the proclamation.

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<sup>107</sup> Association for Human Rights in Ethiopia, ETHIOPIA: SURVIVING TORTURE A call to address three decades of untold tragedy, <https://www.omct.org/site-resources/files/Ethiopia-Surviving-torture-28-07-213.pdf>

<sup>108</sup> Proclamation 699/2010 protection of witnesses and whistleblowers of criminal offenses proclamation No. 699/2010

According to interviews conducted with ministry of justice officials it is understood that even though there is a legal framework to protect witnesses and whistleblowers <sup>109</sup>from intimidation or reprisal, its application is limited to crimes punishable with ten or more year's rigorous imprisonment or with death <sup>110</sup>and the law is not known that much to society and even to justice organ professionals.

## **Recommendations**

### The state party should:

- Provide clear effective complaint mechanisms and procedures at all prison centers and create communication methods in which prisoners lodge complaints to the concerned bodies.
- Establish and strengthen independent bodies to investigate torture cases,
- Proactively monitor the treatment of persons in custody and investigate allegations of torture and ill-treatment
- Amend the protection of witnesses and whistleblowers of criminal offenses proclamation No. 699/2010 and allocate necessary budget to protect victims, relatives, witnesses and whistleblowers.
- Enhance knowledge of justice professionals; to ensure the pivotal role of witness protection and create awareness about the right

## **X. Prosecution of grave human rights violations (Articles 12 and 13)**

**Issue 22:** Please provide updated information on the investigation and prosecution of serious and widespread human rights violations and abuses, including torture and ill-treatment, extrajudicial killings, enforced disappearances, arbitrary arrests and detention, and conflict related sexual and gender-based violence, by the federal and local security forces, the Ethiopian National Defense Forces, the Eritrean Defense Forces and affiliated forces against civilians alleged to be members of armed insurgent groups in the context of the armed conflict in Tigray, Amhara and Afar. Please also provide up-to-date information on the concrete measures taken to document and investigate the widespread reports of severe human rights violations and abuses committed by the Tigrayan special forces and associated groups, including killings, abductions, illegal detentions, acts of sexual and gender-based violence against civilians, and deliberate attacks on camps for refugees

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<sup>109</sup> Ibid

<sup>110</sup> Id, Article 3

and internally displaced persons, in order to identify, prosecute and punish the perpetrators of those crimes and provide effective redress to victims.

## Comments

Since the conflict in the northern part of Ethiopia erupted on 4 November 2020 troops fighting in support of the federal and security forces, Ethiopian national defense forces, the Eritrean defense forces and other armed groups have committed widespread human right violations and abuses including extrajudicial killings, torture and ill treatment, arbitrary arrest and detention, enforced disappearance and gender based violence.<sup>111</sup> According to the Ethiopian Human Rights commission and Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation and the Ethiopian Human rights council report more than two hundred Amharas were killed by an armed group in Maikadra, Dansha and Humera accompanied by Tigray police and militia and other government organs.<sup>112</sup> The Ethiopian Human Rights council in its 149th report exposed names, pictures and other details of civilians who are victims of human rights violations such as killings, systematic and widespread sexual and gender based violence against women and girls and physical injury.<sup>113</sup> Following this many Tigrayans were killed by the Fano group, more than hundred people killed by the Eritrean defense force in Axum .<sup>114</sup> The Ethiopian national defense force killed civilians in the enforcement of curfew restrictions.<sup>115</sup> Several Ethiopian National Defense Force camps in Tigray were used to torture captured Tigray forces or civilians suspected of providing support to Tigray forces, Tigray militia and civilians arrested and detained Amharas and torture them for several days.<sup>116</sup> Many suffered degrading treatment by the Eritrean defense forces. Captured Ethiopian national defense force soldiers were subjected to torture and ill-treatment by Tigray forces.<sup>117</sup> The Ethiopian national defense force, Amhara militia, Eritrean defense force and Tigray force engaged in arbitrary arrest and detention and enforced disappearance. According to the Ethiopian Human Rights Commission's report, Tigray forces detained civilians who are Amharas, Amhara militia, Fano and Tigriyan civilians for more than a month in the Tigray region Mikadra town located near the Sudanese border. <sup>118</sup> Furthermore, reports by Ethiopian Human Right council, Human rights watch, Ethiopian Human rights commission, UN high commissioner for human rights, CNN and BBC show widespread

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<sup>111</sup> Ethiopian Human Rights commission and Office of high commissioner of Human rights joint investigation report, [file:///C:/Users/o876/Downloads/Joint%20Report%20of%20the%20EHRC-OHCHR%20Joint%20Investigations%20on%20Human%20Rights%20in%20Tigray%20\(1\).pdf](file:///C:/Users/o876/Downloads/Joint%20Report%20of%20the%20EHRC-OHCHR%20Joint%20Investigations%20on%20Human%20Rights%20in%20Tigray%20(1).pdf)

<sup>112</sup> የኢትዮጵያ ሰብዓዊ መብቶች ጉባኤ ፣149 ልዩ መግለጫ፣ ታህሳስ 2014 ዓ.ም ፣ ኦሲ.ስ አበበ ኢትዮጵያ

<sup>113</sup> Ibid

<sup>114</sup> supra note 85

<sup>115</sup> [file:///C:/Users/o876/Downloads/Joint%20Report%20of%20the%20EHRC-OHCHR%20Joint%20Investigations%20on%20Human%20Rights%20in%20Tigray%20\(1\).pdf](file:///C:/Users/o876/Downloads/Joint%20Report%20of%20the%20EHRC-OHCHR%20Joint%20Investigations%20on%20Human%20Rights%20in%20Tigray%20(1).pdf)

<sup>116</sup> Ibid

<sup>117</sup> Ibid

<sup>118</sup> Ibid

detention and disappearance of ethnic Tigrayans in Addis Ababa and other parts of the country. During the conflict vulnerable groups were highly affected by conflict related sexual violence. Women, girls, men, and boys were victims of sexual gender based violence including gang rape. Combating parties committed abduction, unlawful detention and rape women and girls.<sup>119</sup> The report of the Ethiopian human rights commission shows the Eritrean defense force destroyed refugee camps which were shelter for Eritrean refugees.<sup>120</sup> This causes displacement and disappearance of hundreds of refugees.

On 29 November the government of Ethiopia established an inter- ministerial task force to follow recommendations of the joint report of Ethiopian Human Rights commission and cover the human rights abuses committed in Afar and Amhara regions. To carry out its work, the Taskforce has established four committees that focus on investigation and prosecution, refugees and IDP affairs and sexual and gender based violence. The four Committees are chaired by the Ministry of Justice, the Ministry of Peace and Ministry of Women and Social Affairs. Furthermore, the government establishes a secretariat that will facilitate, monitor and coordinate the day-to-day function of the Taskforce and its committees. <sup>121</sup>Accordingly the report of the inter-ministerial task force conducted at Amhara and Afar regions, 2831 extra judicial killings, 1315 body injury, 2212 rape and sexual violence and 452 inhuman and degrading treatments were committed by combating parties. To ensure accountability the military court of Federal ministry of Defense entertain a total of 60 cases on extra judicial killing, rape, serious bodily injury and assault. Accordingly judgment is passed on 27 of the cases and 33 are pending.<sup>122</sup>

As far as the investigation and accountability process is concerned there are some positive measures taken by the government. However it is important to note that much should be done to ensure accountability and provide effective redress for victims of Human Rights violation. The government must also take the right to truth into consideration and expose and redress human rights violations by ensuring accountability of perpetrators.

## **Recommendation**

### The state party should

- Ensure accountability of perpetrators of human rights violations,
- Show due diligence in respecting Human Rights and ensuring accountability

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<sup>119</sup> Ibid

<sup>120</sup> Ibid

<sup>121</sup> The Federal Democratic Republic of Ethiopia Inter-Ministerial Taskforce, on Accountability and Redress Investigation and Prosecutions Committee Criminal Investigation Report (Phase I) - Preliminary On Allegations of War crimes, Crimes Against Humanity and Other Violations of International Human Rights Law, International Humanitarian Law, and Domestic Criminal Law Committed by the Parties to the Conflict in Northern Ethiopia, September 19,2022

<sup>122</sup> Ibid

- Take all adequate steps and measures to establish a protection program for victims of human rights violations
- Create a welcoming environment for CSOs to investigate Human Rights violations and document evidence
- Exercise independence and make confessions obtained under torture inadmissible. Shorten the pre-trial detention period granted for investigations. Hear victims' statements regarding their treatment in detention centres and make decisions, as applicable, to guarantee the humane treatment of prisoners.
- Systematically undertake prompt, independent and impartial investigations to prosecute all perpetrators of torture and ill-treatment.

## F. Accountability of perpetrators

**Issue 6:** Please provide information on the measures taken, including through the inter-ministerial task force established to oversee the implementation of the recommendations contained in the joint report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Ethiopian Human Rights Commission, to investigate, prosecute and adequately punish members of the Ethiopian National Defence Forces, the Eritrean Defence Forces, the Amhara special forces, the Amhara militias, the Tigrayan special forces, Tigrayan militias and other allied groups who are allegedly responsible for widespread rape, including gang rape, and other forms of sexual and gender-based violence committed against women and girls in the context of the armed conflict in the regions of Tigray, Amhara and Afar. Please also provide information on steps taken to compensate and rehabilitate the victims, to prevent the recurrence of such crimes and to facilitate humanitarian access for international organizations and non-governmental organizations to areas where women and girls are affected by armed conflict.

### Comments

The task force chose to adopt a phased approach to pursuing the investigations in the three regions and published its investigation report on Amhara and Afar regions which generally took place between 15 September 2021 and 31 March 2022 recently.

The report has indicated the presence of reasonable grounds to believe the commission of 2831 cases of extra-judicial killing of civilians; 1315 cases of serious bodily injuries; 2212 rapes and various forms of sexual violence; 452 cases of inhuman and degrading treatment of civilians; 36 cases of enforced disappearance; 2516 cases of total and partial damage and looting of public and

private health infrastructure; and extensive and systematic looting of public and private property and sacred items of religious institutions in both region.<sup>123</sup>

It also stated that the investigation established the commission of 60 incidences of crimes - largely involving extrajudicial killing and sexual violence. The criminal prosecution of the sexual violence and extra-judicial killing cases had been initiated and submitted to the Military Court of the Federal Ministry of Defense. As of August 2022, the first batch of decisions of the prosecution proceedings with the Military Court rendered 25 convictions involving rigorous imprisonment of up to 25 years, including one life sentence, and 2 acquittals; 33 cases involving rape (16), extrajudicial killings (9), bodily injury (7) and assault (1) are still pending.<sup>124</sup>

With regard to compensating and rehabilitating victims almost much has not been done. As part of the peace deal with TPLF, Ethiopian government processed and facilitated access for international and national aid agents to the war-torn areas particularly Tigray region.

### **Recommendation**

The state party should

- Allow local CSOs to undertake investigation of the human rights violations committed Let the violations happened to be investigated by an independent organ
- Ensure accountability of perpetrators
- Rehabilitate and compensate victims

### **Y. Redress and compensation for victims (Article 14)**

**Issue 23:** Please provide statistical data on redress and compensation measures, including means of rehabilitation, ordered by the courts and actually provided to victims of torture or ill-treatment or their families since the consideration of the initial report. Please include data on the number of applications for State compensation for torture and ill-treatment, the number of time-barred claims owing to the courts' inaction, the number of applications granted and the range of awards in successful cases. With reference to paragraphs 74, 75 and 136 of the State party's periodic report, please clarify whether the State party has taken legislative and administrative measures to ensure that victims of torture and ill-treatment have access to effective remedies and can obtain redress in cases in which the perpetrator has not been identified or found guilty of an offence. Please also provide information on any ongoing rehabilitation programs for victims of torture and ill-treatment and on the resources allocated to them.

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<sup>123</sup> The Federal Democratic Republic of Ethiopia Inter-Ministerial Taskforce on Accountability and Redress, *Investigation and Prosecutions Committee Criminal Investigation Report (Phase I)*, 2022, PP 4

<sup>124</sup> *Ibid*, pp14

## **Comments**

The Ethiopian government has an obligation to provide adequate mechanisms for redress and reparation. Article 14 Convention against torture clearly states that states must ensure that victims of torture obtain redress and have enforceable rights to compensation, including the right to full rehabilitation as much as possible.<sup>125</sup> States need to ensure restitution, compensate victims, rehabilitate victims, and disclose truth for the public and take measures to combat immunity.<sup>126</sup> Despite this the government of Ethiopia failed to take any measure in redressing and compensating torture victims or their families. Victims need justice, medical support, psychological, legal and social support. So far no visible measures are taken by the government to rehabilitate victims of torture. It failed to provide access to effective remedies or any support.

Torture victims suffer wide range of challenges during their stay in prison and after their release according to information's collected by Association for human rights in Ethiopia, almost all torture victims suffer from mental illness, and other physical injuries which can affect their entire life. Despite this fact the government did not provide any compensative and rehabilitative measures to help victims or fulfill its obligation. AHRE's interviewee from torture victims association explained that most torture victims with the help of torture victims association claim their rights by approaching their regional offices. The regions promised to provide support for victims but failed to implement it. Practically most torture victim's received no support from the government. However, the government has provided some compensation for persons who lost their families due to torture. Research conducted by AHRE also shows better initiatives are taken by Somali and Oromia region to rehabilitate victims of torture.<sup>127</sup>

## **Recommendation**

### **State party should**

- Ensure that victims of acts of torture and ill-treatment have access to effective remedies and redress, including in cases where the perpetrator has not been identified;

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<sup>125</sup> UN convention against torture and cruel, inhuman or degrading treatment or punishment , <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

<sup>126</sup> Victims or survivors? The reform, torture victims, rehabilitation and justice , Association for Human Rights in Ethiopia, June 2021.

<sup>127</sup> Ibid

- Fully assess the needs of victims of acts of torture and ensure that compensation funds are operational and that specialized rehabilitation services are readily available.
- Provide security and protection for victims who testify against perpetrators,
- Design a national policy and strategy for the physical, economic, social and psychological rehabilitation of victims and their comprehensive social reinsertion
- Bring the perpetrators to justice before courts of law to deter others from further committing torture.
- Ensure the availability of a rehabilitation fund for the SGBV victims and establish and strengthen independent institution for rehabilitating SGBV victims

## **Z. Exclusionary rule (Article 15)**

**Issue 24:** With respect to paragraphs 76, 87 and 137 of the State party's periodic report, and given widespread allegations that detainees are still tortured to extract confessions or information for investigations, please describe the measures taken, including disciplinary measures, to ensure that the exclusionary rule with regard to evidence obtained under torture is fully implemented by the courts, in line with article 31 of the Code of Criminal Procedure. Please provide up-to-date statistics on the number of: (a) cases in which detainees have alleged that their confessions were extracted under torture; (b) cases in which confessions have been declared inadmissible; and (c) cases that have been investigated and the outcomes of those investigations, specifying whether a forensic medical examination of the alleged victim was carried out, the sentences handed down to those found guilty and the redress and compensation granted to victims

### **Comments**

The Criminal Code of Ethiopia under article 31 prohibits coerced confessions. According to interviews conducted with ministry of justice officials, ensuring the practical application of these prohibitions is proven to be a major challenge. Police and intelligence use torture and ill treatment to extract confessions. Specially in politically initiated cases confessions obtained with torture are admissible. Despite legal protections confessions obtained through torture are admissible in a court and the judges fail to order independent investigation or follow up claims lodged by victims.<sup>128</sup> This shows that courts in Ethiopia have failed to fulfill their role in the prevention of torture and declaring inadmissibility of evidence extracted through torture.

### **Recommendation**

#### **State party should**

- Create awareness and capacitate the judiciary to exercise independence and make confessions obtained under torture inadmissible.

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<sup>128</sup> Ibid

- Investigate cases regarding treatment of persons in detention centers and make applicable decisions.
- Establish an independent and impartial organ to investigate cases torture by the police and security forces
- Systematically undertake prompt, independent and impartial investigations to prosecute all perpetrators of torture and ill-treatment.

## I. Excessive use of force (Article 16)

**Issue 25:** With regard to paragraphs 15 and 123 of the State party's periodic report, please describe the measures taken to address the excessive use of force by members of the security forces and members of the military, including extrajudicial killings. Please provide information on the current legislative framework on the use of force, particularly lethal force, and describe its compatibility with the Convention and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Please update the Committee on the current status of the new draft law on the use of force that was being drafted in 2019 and indicate whether it has since been enacted. Please also indicate whether the State party has established an independent accountability mechanism that receives and investigates allegations of excessive use of force by law enforcement officers and military personnel. Please provide up-to-date statistical data, disaggregated by the type of offense and the sex, age and ethnic origin or nationality of the victim, on the number of cases of excessive use of force and extrajudicial killings by public officials identified during the period under consideration and the number of prosecutions sought, convictions secured and penalties imposed in relation to these cases. In particular, please report on the outcomes of criminal investigations conducted into cases of excessive use of force by law enforcement and security forces, including during protests that took place: (a) in Wolayita Zone on 9 and 10 August (b) in the region of Oromiya and in Addis Ababa, following the killing of Haacaaluu Hundeessaa in June 2020; (c) in Oromiya in October 2019; (d) in Sidama Zone in July 2019; (e) in Amhara in January 2019; (f) in Addis Ababa on 17 September 2018; (g) in the town of Weldiya, in Amhara, on 20 January 2018; and (h) in Oromiya and Amhara between November 2015 and October 2016. Please include information on any forms of redress provided to victims.

### Comments

In Ethiopia provisions governing excessive use of force are scattered across many laws and regulations. Legal frameworks governing excessive use of force includes but are not limited to criminal code, criminal procedure code and the Federal police officers administration council of ministers regulation no 268/2012 are inadequate and do not meet human rights standards. Taking this into consideration a new use of force law is being drafted by the ministry of justice. The ministry also established a team of experts to follow up the drafting process. However the craft of

the proclamation took years. This shows lack of commitment of the concerned body to adapt the proclamation and regulate issues related to excessive use of force.<sup>129</sup>

In Ethiopia there are many instances in which police officials violate human rights of citizens by excessive use of force. For instance in Wolayita Zone on 9 and 10 August, 2020 Security forces injured more than eighteen people<sup>130</sup>, On August 17, 2021 following the protest broke out in eastern Oromia in response to the continued detention of prominent Oromo opposition leaders Jawar Mohammed and Bekele Gerba, security forces arrested, beat, and used excessive force against scores of protesters, and allegedly killed over 40 people in eastern Oromia<sup>131</sup>, Over 170 people were killed, some by security forces following the killing of Hachalu Hundesa,<sup>132</sup> on October 23, 2019, following social media posts by the prominent activist Jawar Mohammed accusing the authorities of threatening his security, protests were erupted and 86 people died during the protests,<sup>133</sup> on July 2019, least 17 people have been killed in Sidama because clashes between Ethiopian security forces and activists seeking a new autonomous region for their Sidama ethnic group, on September 2018 number of civilians were injured and killed in burayu,<sup>134</sup> and on January 20 2018 dozens were killed in woldiya by security forces.<sup>135</sup>

Using excessive use of force in peaceful demonstrations and assemblies is becoming common in the country. Even though various types of human rights violations, particularly excessive use of force, are committed by government organs the possibility of being responsible is very rare. No criminal investigations are conducted and no redress is provided for victims. According to interviews conducted by AHRE it is understood that all human rights violations are ignored by the government. The crime was supposed to be promptly and effectively investigated and all suspects for criminal acts must be brought to justice, on contrary perpetrators are awarded promotions for their act rather than being accountable. In most cases Perpetrators go unpunished and this creates a challenge to victims to claim their right.

### **Recommendation**

State party should:

- Ensure that impartial and thorough investigations are conducted without delay into any allegation of excessive use of force, torture, ill-treatment or extrajudicial executions

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<sup>129</sup> The Reporter, October 29, 2022 <https://www.thereporterethiopia.com/27459/>

<sup>130</sup> <https://www.opride.com/2018/01/22/woldia-massacre-ethiopian-security-forces-kill-dozen-turning-holiday-procession-nightmare/>

<sup>131</sup> <https://www.hrw.org/world-report/2021/country-chapters/ethiopia>

<sup>132</sup> Ibid

<sup>133</sup> <https://www.hrw.org/news/2020/04/01/ethiopia-justice-needed-deadly-october-violence>

<sup>134</sup> <https://addisstandard.com/news-more-than-twenty-three-killed-in-a-spate-of-mob-attack-in-burayu-thousands-displaced/>

<sup>135</sup> <https://www.opride.com/2018/01/22/woldia-massacre-ethiopian-security-forces-kill-dozen-turning-holiday-procession-nightmare/>

targeting political opponents, human rights defenders and members of civil society organizations, and bring proceedings as necessary.

- Promptly prosecute security officers who are implicated into human rights through excessive use of force during peaceful demonstrations
- Prioritize the enactment of the law on the maintain of order prohibiting illegal, unnecessary and disproportionate use of force by law enforcement officers.
- Develop and implement clear guidelines on the use of force and weapons, and bring the laws and regulations governing the use of force into line with international standards, in particular the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted in 1990.

## II. Death penalty (Article 16)

**Issue 26:** With reference to paragraph 112 of the State party's periodic report, please provide information on the measures taken to ensure that the death penalty is imposed only for the most serious crimes, in line with international legal standards that limit its application to crimes of extreme gravity involving intentional killing. Please indicate whether the State party is considering the possibility of reviewing its policy with a view to abolishing the death penalty in law or taking affirmative steps to formalize the moratorium on the death penalty. Please inform the Committee of efforts made to commute all death sentences into alternative penalties and to ensure that conditions of detention for condemned prisoners do not constitute cruel, inhuman or degrading punishment or treatment by taking immediate steps to strengthen legal safeguards and guarantees of due process in all phases of the proceedings and concerning all offences. Please provide the Committee with updated information for the reporting period on the precise number of death sentences passed, the courts responsible and the crimes for which those sentences were handed down, as well as on the current number of prisoners on death row.

### **Comments:**

Death penalty and sentences are still legal in Ethiopia today, but no executions have been carried out since 2007<sup>136</sup>. In Ethiopia death penalty is given for serious criminal acts like aggravated homicide, terrorism, incest genocide and other aggravated crimes. In most cases, this punishment is not converted to life imprisonment. According to interviews and data gathered by AHRE in providing capacity building training in three prisons of Amhara region it is understood that most prisoners who are sentenced to death are requesting the concerned bodies to convert their penalty into life imprisonment or to execute the penalty imposed on them. However without any response the prisoners are on their death row. There are prisoners that are sentenced to death who are unaware about the enforcement of their penalty. The prisoners are damaged, wondering when they

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<sup>136</sup> <https://worldcoalition.org/pays/ethiopia/>

will be executed. This is considered as torture because it causes psychological damage to the prisoners as well as their families.

In Ethiopia there are 124 prisoners on death row who are sentenced for serious criminal offenses like aggravated homicide.

### **Recommendations:**

The State Party should:

- Commute all death sentences already handed down to prison sentences and initiate a process to formally abolish the death penalty in law
- Ensure that all prisoners in death row are not subjected to torture and that their conditions of detention do not constitute cruel, inhuman or degrading punishment or treatment
- Ratify the second optional protocol of the ICCPR on the abolition of death penalty

### **III. Prevention of torture and cruel and inhuman treatment against human rights defenders (Article 16)**

**Issue 27:** Please respond to allegations that human rights defenders, political opponents, civil society activists and journalists who are critical of the Government have been subject to harassment, intimidation, arbitrary arrests and prolonged detention, torture and ill-treatment, and threatened with criminal charges of terrorism or disinformation. Please provide statistical data for the reporting period on the number of related complaints, the outcomes of any investigations opened following these complaints and the sentences and penalties handed down.

### **Comments**

During the political transition of 2018, the government decided to free political opponent, journalists, and human rights defenders. However most recently, the Ethiopian government risks rolling back this progress and started arbitrary arrests of Journalists and Human Rights Defenders and blatantly derogate the due process of law.

They have been subjected to torture, extra judicial killings, threaten of murder, arbitrary arrest, enforced disappearance and prolonged detention. They face arduous challenges from governmental, non-governmental actors and individuals<sup>137</sup>

An assessment conducted by the Ethiopian Human Rights Defenders Center shows that in recent year's defendants have been victims of false accusations, physical assault, unfair trial and conviction.<sup>138</sup> Illegal arrest of journalists and Human rights defenders is becoming a trend even if

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<sup>137</sup> Ethiopian Human Rights defenders center, 'The post 2018 situations of Human Rights defenders in Ethiopia', 2022.

<sup>138</sup> Ibid

it is a clear violation of Human Rights. Ethiopian human rights commissions and Ethiopian Human Rights Councils press statements show over dozens of human rights defenders and journalists face prolonged detention in irregular detention facilities.<sup>139</sup> Arrest and prolonged detention of journalist, Human Rights defenders, opposing political party members like Temesgen Desalegne, Yayeew Shimeles, Abebe Bayu, Wegderes Tenaw, Meaza Mohammed, Gobeze Sisay, Abay Zewdu, Tadiwos Tantu, Sintayew Chekol and Tamrat Negera are evident for repeated unlawful arrest, physical assault and enforced disappearance by police officers.<sup>140</sup> Since 2019 – 2022, twenty two journalists have been illegally detained and imprisoned.<sup>141</sup> Some of them are released on bail after forcefully disappeared and detained for days incommunicado with their families and legal counsel.<sup>142</sup> In addition, the Article 86 of Media Proclamation No. 1238/2021 clearly gives protection for media personnel by allowing them to appear promptly before a court, without being remanded. Despite these clear provisions of the law, the government has continued to detain journalists.

With the conflict that is now taking place in Tigray human rights defenders have been the target of executions, torture, beatings, arbitrary arrest and detention, death threats, harassment, and defamation, as well as restrictions on their freedoms of movement from both sides of warring parties. They are also targeted with acts of intimidation and reprisals for their cooperation with the international human rights organization on human rights issues. Journalists were also subject to arbitrary arrest and detention for the mere reason of reporting. Women human rights defenders might confront risks that are gender-specific and require particular attention. In the areas of conflict happening in Ethiopia women, girls and children are more vulnerable to the violation of human rights<sup>143</sup>.

Following the Committee, recommendations to lift the financial restrictions imposed on local NGOs working in the field of human rights by Law n°621/2009 and to release all frozen funds belonging to these NGOs<sup>144</sup>, the law n°1113/2019 has been and has removed the financial and other restrictions on CSOs. Therefore, national civil society organizations working on human rights can now raise significant funds

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<sup>139</sup> Ethiopian Human Rights Commission, <https://ehrc.org/over-a-dozen-media-personnel-in-unlawful-detention/>

<sup>140</sup> Addis standard, <https://addisstandard.com/news-detained-journalist-temesgen-desalegn-physically-assaulted-by-police-family-members/>

<sup>141</sup> Committee to protect journalists (CPJ), [https://cpj.org/data/imprisoned/2022/?status=Imprisoned&cc\\_fips%5B%5D=ET&start\\_year=2022&end\\_year=2022&group\\_by=location](https://cpj.org/data/imprisoned/2022/?status=Imprisoned&cc_fips%5B%5D=ET&start_year=2022&end_year=2022&group_by=location)

<sup>142</sup> Ethiopian Human Rights Commission, press statement, <https://ehrc.org/detention-of-media-personnel/>

<sup>143</sup> <https://ethdefenders.org/tag/research/>: Ethiopian Human Rights Defenders Center, “Keynotes on the one-year conflict, the state of emergency, and the situations of Human Rights Defenders in Ethiopia”, pp.8-9.

<sup>144</sup> Concluding observations of the Committee against torture, Ethiopia, 20 January 2011, p.14 §34.

from foreign sources and locally registered foreign civil society organizations can directly participate in local activities<sup>145</sup>.

### **Recommendation**

#### **State parties should:**

- Immediately release all human rights defenders who remain in custody for having defended their opinions or demonstrated peacefully, and guarantee the payment of compensation to victims of arbitrary detention;
- Ensure that all human rights defenders including representatives of civil society and journalists are protected from acts of intimidation and violence to which they may be exposed because of their activities;
- Adopt a law that provides protection to Human Rights Defenders that will enable a safe and protective environment in which Human Rights defenders can carry out their activities without risks

## **IV. Corporal punishment of children (Article 16)**

**Issue 28:** With reference to paragraph 133 of the State party’s periodic report, please indicate the steps taken to amend article 576 of the Criminal Code and article 258 of the Family Code with a view to explicitly prohibiting corporal punishment of children in the home and alternative care settings. Please provide information on the measures taken to investigate cases of corporal punishment of children and to raise public awareness of positive, participatory and non-violent forms of discipline.

Corporal punishment against children in the school and home setting is a culturally accepted, widely practiced phenomenon in Ethiopia. Article 576 of the Criminal Code 2005 recognizes the power of parents and others with parental responsibilities to take “a disciplinary measure that does not contravene the law, for the purpose of proper upbringing” and article 258 of the Revised Family Code 2000 states that “the guardian may take the necessary disciplinary measures for the purpose of ensuring the upbringing of the minor”. These provisions need to be amended but the government fails to take any measure. Furthermore no visible steps are taken to create awareness, investigate cases of corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings.

### **Recommendations:**

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<sup>145</sup> Second periodic report submitted by Ethiopia under article 19 of the Convention, due in 2014, 26 May 2020, p.8 §46 ; pp. 22-23 §§146-147.

The State Party should:

- Raise awareness among the general population about corporal punishment and its consequence
- Amend article 576 of the criminal code and 258 of the revised family code.
- Ensure proportionate accountability for perpetrators of corporal punishment of children.
- Prohibit corporal punishment in all circumstances, including at home.

## V. Prevention of terrorism and counterterrorism

**Issue 29:** With respect to paragraphs 24, 97 and 138 of the State party's periodic report, please provide updated information on the measures taken by the State party to respond to threats of terrorism, including the new Prevention and Suppression of Terrorism Crimes Proclamation. Please describe whether those measures have affected human rights safeguards in law and in practice and, if so, how they have affected them. Please also describe how the State party has ensured that those measures are compatible with its obligations under international law, especially the Convention. Furthermore, please indicate what training is given to law enforcement officers in this area; the number of persons who have been convicted under legislation adopted to combat terrorism; the legal remedies and safeguards available in law and in practice to persons subjected to antiterrorism measures; and whether there have been complaints of the non-observance of international standards in applying measures to combat terrorism and, if so, what the outcome was.

### Comments

Ethiopia has amended the Anti-Terrorism Proclamation No. 652/2009 and replaced it with a Proclamation to provide for the Prevention and Suppression of Terrorism Crimes No. 1176/2020. Provisions of the former proclamation which provided for the prosecution of certain crimes associated with terrorist activity, which was often broadly interpreted. This law permits the police to arrest any person without a court warrant and requests an additional investigation period of 28 days each from a court before filing charges, for a maximum of up to four months.<sup>146</sup>

The new proclamation protects rights and freedoms of individuals and prevalence of accountability of law enforcement bodies. Moreover this proclamation recognizes the human right approach as its basic principle which has to be observed during enforcement of counter-terrorist measures. However, some of the substantive parts of the proclamation are contradictory to international human rights principles. For instance Art 3 sub Article 2 of the proclamation provides the death penalty as punishment. The State Party has not yet ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at the abolition of the death penalty but

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<sup>146</sup>National Legislative Bodies / National Authorities, *Ethiopia: Proclamation No. 652/2009 of 2009, Anti-Terrorism Proclamation*, 7 July 2009, available at: <https://www.refworld.org/docid/4ba799d32>

international trend moved to abolish death penalty,<sup>147</sup> Furthermore the proclamation provides disproportionate punishments, permission of sudden investigation, interrogation, interception, and others without a court warrant which are against international principles and standards .<sup>148</sup>

As far as training of law enforcement officials concerned the government established justice reform centers at all regions and city administrations to train officials regarding different laws and legislations including the new terrorism proclamation. Furthermore from interviews conducted with ministry of justice officials it is understood that the government trains law enforcement officials in their respective offices on a timely basis.

Article 10 of the Constitution of Ethiopia makes all international human rights instruments ratified by Ethiopia an integral part of the law of the land. However the application of international standards in judiciary and executive organ is rare. Most training provided by the justice institutes and by the concerned bodies are focused on the national legislation. This creates lack of awareness and rare implementation of international instruments.<sup>149</sup>

### **Recommendation**

#### The state party should

- Follow human rights approach in implementing the Prevention and Suppression of Terrorism Crimes No. 1176/2020
- Strengthen its effort on training government officials especially the executive and judiciary organs of the government on international legislations

## **VI. COVID -19**

**Issue 30:** Given that the prohibition of torture is absolute and cannot be derogated from, not even within the framework of measures related to states of emergency and other exceptional circumstances, please provide information on any steps taken by the State party during the coronavirus disease (COVID-19) pandemic to ensure that its policies and actions comply with its obligations under the Convention. In addition, please specify the measures taken in relation to persons deprived of their liberty, including in places of confinement such as homes for older persons, hospitals or institutions for persons with intellectual or psychosocial disabilities.

### **Comments**

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<sup>147</sup> Acts Considered as Terrorism Crimes and Compatibility of Counter-terrorist Measures to International Standards: In Context of Ethiopia, Petros Fanta Choram, Athens Journal of Law - Volume 8, Issue 4, October 2022 – Pages 487-504

<sup>148</sup> <https://www.hrw.org/news/2009/06/30/analysis-ethiopias-draft-anti-terrorism-law>

<sup>149</sup> Ethiopian Human Rights Defenders Center, 'The post 2018 situation of Human Rights Defenders in Ethiopia', p15, 2022 , <https://ethdefenders.org/reports-assessments/>

On March 13, 2020, the Federal Ministry of Health confirmed the first COVID-19 case in Addis Ababa. The rapid spread of the virus forced states to declare a state of emergency to counter the expansion of the virus. Consequently, Ethiopia has declared a state of emergency on April 8, 2020 to tackle the expansion of the virus.<sup>150</sup> The state of emergency which lasted for five months had introduced more prohibitions and imposed additional duties. The measures suspending people's freedoms and rights were introduced in 'A State of Emergency Proclamation Enacted to Counter and Control the Spread of COVID-19 and Mitigate Its Impact Proclamation No. 3/2020<sup>151</sup>, 'State of Emergency Proclamation No. 3/2020 Implementation Regulation No.466/2020<sup>152</sup>, and 'A Directive issued for the Prevention and Control of the COVID-19 Pandemic No. 30/2020'.<sup>153</sup> These laws adopted a 'command-and-control' approach in the fight to control and counter the spread of the pandemic.<sup>154</sup>

In the implementation of the COVID-19 emergency measures, arbitrary arrest, and inhuman treatments were affected in Addis Ababa, Dire Dawa, Oromia, Amhara, Tigray, Afar, Southern Nations Nationalities and peoples, Benishangul gumuz and Tigray.<sup>155</sup> A research conducted by Association for Human Rights in Ethiopia states that Security forces beat individuals who violate the restrictions and prohibitions. Police officers were brutal in enforcing restrictions.<sup>156</sup> Many were severely beaten by police officers and arrested in the station with inadequate food and water for days without being brought before court of law.<sup>157</sup> People were also denied of enforcing their rights and claims in a court of law; movement and freedom of speech were highly restricted; prisoners were denied visit by families and detained for a prolonged time without being charged and granted bail. People were exposed from harassment and inhumane treatment to killings by law enforcement officials.<sup>158</sup>

## **Recommendation**

### **The state party should:**

- Provide training to law enforcement organs about the human rights-friendly way of enforcing measures ,
- Investigate and prosecute human rights violations committed in the enforcement of emergency measures,

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<sup>150</sup> Association for Human Rights in Ethiopia, The impact of Covid 19 on Human Rights in Ethiopia

<sup>151</sup> A State of Emergency Proclamation Enacted to Counter and Control the Spread of COVID-19 and Mitigate Its Impact Proclamation No. 3/2020

<sup>152</sup> State of Emergency Proclamation No. 3/2020 Implementation Regulation No.466/2020

<sup>153</sup> A Directive issued for the Prevention and Control of the COVID-19 Pandemic No. 30/2020

<sup>154</sup> Supra note 103

<sup>155</sup> Ibid

<sup>156</sup> Ibid

<sup>157</sup> Ibid

<sup>158</sup> Ibid

