



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.: General
16 February 2010

Original: English

Committee against Torture

**Consideration of reports submitted by States
parties under article 19 of the Convention**

Initial reports of States parties due in 1995

Ethiopia*

[28 July 2009]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

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List of acronyms

OHCHR	Office of the High Commissioner for Human Rights
CAT	Convention against Torture
MOFA	Ministry of Foreign Affairs
NISS	National Intelligence and Security Service
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
EHRC	Ethiopian Human Rights Commission
NGOs	Non-governmental Organizations

Introduction

1. Since 1994, Ethiopia has been a party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Although the country had to submit its initial report a year after and subsequently periodic reports every four years as required under art. 19 of the Convention, the Government was unable to live up to the expectation mainly due to technical and resource limitations. Now that such constraints have been eased, thanks to the technical and financial assistance of the OHCHR, it has been striving hard to get itself off the ground and relieved of all sorts of initial and predict reports overdue to this date.

2. This report constitutes the country's first ever communication in the form of an initial submission for the extended period of 14 years since the State has become a party to the Convention. It is prepared as per the Guidelines for CAT contained in CAT/C/4/Rev.3 entitled "Guidelines on the Form and Content of Initial Reports under article 19 to be submitted by States Parties".

3. It should be stated here that the Government has been doing all what it can in order to ensure the implementation of the Convention. Various legislative measures including the constitutional prohibition of such acts as cruel, in human or degrading treatment or punishment and administrative measures such as directing the police to comply with the rules and regulations enshrined in the international instrument have been taken. Although it is far from complete owing to lack of organized data from the relevant institutions, this report, the Government believes, would be fairly adequate to indicate a reasonable degree of the national implementation of the Convention.

I. General information

A. Background

4. The state has already submitted its Common Core Document prepared in compliance with the Harmonized Guidelines on Reporting Obligations to the International Human Rights' Treaties' Monitoring Bodies (HRI/MC/2006/3). Hence, the general background information regarding the country's human rights' situation is already contained in the said document, to which cross-references are extensively made here in this submission on a range of issues such as:

- General Political Structure
- General legal framework within which human right are protected
- Comprehensive framework within which human rights are promoted at the national level
- Non-discrimination, equality and effective remedies

5. With regard to the actual process, the project has been initial and being undertaken as part of an all-embracing endeavour of the country to discharge its long overdue human rights' implementation reporting obligations under the major international treaties, to which it is a party.

B. General legal framework under which torture is prohibited

6. To begin with, the Federal Constitution does, in a categorical formulation, provide for the right of everyone to be protected from all forms of cruel, in human and degrading treatment and punishment. It also guarantees the observance of human dignity of all persons held in custody and those serving prison terms due to their participation in and conviction for criminal activities. Not surprisingly, similar provisions are carried over to the Regional Constitution, as well.

7. Apart from the constitutional reference to and incorporation of the international human rights' treaties dealing with the subject, the country's Rev. Criminal Code which came into effect in 2005 specifically criminalizes and punishes the commission of torture and other forms of cruel, in human and degrading treatment or punishment. Consequently, members of the defence security forces, the police prison administrations and the prosecution officers are, as per their respective legislations and administrative regulation, required to treat persons under their custody for the purpose of investigation or correction in compliance with the observance of human dignity and protection of human and democratic right.

8. Regarding the status of the Convention in Ethiopia, please refer to the Common Core Document.

9. Article 18 of the Federal Constitution which provides for the prohibition against torture and other forms of cruel, in human and degrading treatment or punishment is not at all derogable under any circumstance. Even in those extraordinary situations empowering the Federal Council of Ministers to declare a state of emergency for reasons attributable to external invasion, partial or total breakdown of law and order, natural calamity or epidemic, the right to be protected from torture would not be subject for derogation as against other rights susceptible of temporary restriction as specified by the Constitution.

10. The Constitution also envisages the establishment of the State of Emergency Inquiry Board entrusted with the powers and responsibilities to see to it that no measure to be taken during the state of emergency is, in any way cruel, in human or degrading, having regard to the relevant considerations. Should the Board find any such incidence while conducting the inquiries, it is empowered to recommend corrective measures in order to insure the possible prosecution of those perpetrators of the alleged crime. The same is true with the procedure of declaration, approval and execution of the state of emergency by the National-Regional States as per their respective constitutions and jurisdictional limits.

11. In the Ethiopian legal system, it is not, as of necessity, a prerequisite to formally transform international rules adhered to by the country, including those of the Convention under examination into domestic legislations for their immediate enforceability.

12. The judicial, administrative and other authorities responsible for the implementation of the Convention against Torture are those same regular authorities competent to enforce other International Human Rights' Instruments outlined in the Common Core Document. However, emphasis may be placed on the institutions of the police, prosecutorial offices, courts and the prison administrations for their critical involvement in the day-to-day arrest, detention, investigation, prosecution, trial and imprisonment of criminal suspects or convicts, as the case may be.

Overview of implementation of the Convention

13. Although comprehensive data as to the status and extent of its implementation, isolated surveys so far conducted in relation to the matters covered by the Convention

roughly indicate that the country's criminal investigation bodies, prisons and detention centres have been exerting considerable efforts within their capacities so as to accelerate the implementation of its provisions thereof. Regardless of this nationwide effort, however, the full and effective implementation of the Convention throughout the country is far from reality.

14. A multitude of factors and difficulties could be responsible for the limited fulfilment of the country's obligations under the Convention. The most notable ones are:

(a) Lack of proper awareness on the part of the law-enforcement officials as to the governing rules and ideals stipulated in the Convention;

(b) The still prevailing view widely held by some of them that using a reasonable degree of coercion proportionate to the situation at hand is necessary to secure the truth while interrogating a hostile accused under criminal investigation; as well as

(c) Absence of sufficient skills in the acceptable techniques of investigation along with the desired level of professional conduct, likely to facilitate the disclosure of the required evidence in a prudent manner free from violence.

15. Unfortunately, an official documentation of factors, and difficulties affecting the full and effective realization of the Convention is not readily available. The only helpful account in this regard might be the recent report released by the Ethiopian Human Rights' Commission after having inspected up to 35 Federal and State prisons throughout the country.

II. Information in relation to substantive articles

Article 1: Definition

16. The national definition of torture may be looked into the relevant section of the Criminal Code where "crimes committed in breach of official duties" are punishable. In one of the articles under this section, "any public servant charged with the arrest, custody, supervision escort or interrogation of a person who is under suspicion, under arrest, summoned to appear before a Court of justice, detained or serving a sentence, who, in the performance of his duties ... threatens or treats the person concerned in an improper or brutal manner, or in a manner which is incompatible with human dignity or his office, especially by the use of blows, cruelty or physical or mental torture, be it to obtain a statement or a confession, or to any other similar end , or to make him give a testimony in a favourable manner, is punishable..." (article 424). The second paragraph of this article also says, "where the crime is committed by the order of an official, such official shall be punished with rigorous imprisonment..." Unlike the Convention, which defines torture as any act by which "severe pain or suffering, physical or mental" is inflicted, the Criminal Code uses the term "torture" without identifying what kind of pain or suffering constitutes torture. The criminal liability of public servants and officials under this article concurrently applies to the criminal liability under "wilful injury".

17. Any wilful physical or mental injury, under the Criminal Code, is punishable irrespective of who committed the crime under the chapter dealing with "Crimes against Person and Health". Here, causing pain against physical or mental health, which can be construed to include torture, is punishable. Hence, it could be said that public servants and officials, in addition to their criminal liability arising from the improper use of power stated in the previous paragraph, are criminally liable under the crime of wilful injury.

18. The definition of torture in the Code enumerates the purposes of the commission of the crimes: obtaining a statement or a confession, or to any other similar end, or to get a favourable testimony. Where the commission of torture as defined under the Convention does not fall under the articles outlined above for one reason or another, “abuse of power” provision of the Code, which has wider application than the Convention, would apply. Under this article, any public servant who, with intent to injure the right or interest of another “misuses his official position or the power proper to his offices, whether by a positive act or culpable omission” is punishable. Other than cases where the crime of torture is associated with official positions, torture is punishable wherever it is committed under crimes against international law, including cases of war crimes. It should also be recognized that in relevant cases the definition of the Convention may directly be invoked before courts of law and other tribunals.

19. In connection with cruel or degrading punishment, the Criminal Code prescribes, “penalties and measures [punishments] shall always be in keeping with the respect due to human dignity.” And no punishment in the form of torture or any other in human treatment is provided in the Criminal Code or any other law of the land.

Article 2: Prevention of all acts of torture

20. The Constitution prohibits all acts of “torture”. In the article that prohibits inhuman treatment, “Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment.” Although the word “torture” is not used, this article, which prohibits lesser crimes than torture, has more reason to apply to torture. In the article that provides for the rights of persons arrested, it also prohibits compelling persons arrested to make confessions or admissions. In another article, “all persons held in custody and persons imprisoned upon conviction and sentencing have the right to treatments respecting their human dignity.” The Constitution does not make distinctions as to the purposes of committing of cruel, inhuman or degrading treatment or punishment. The prohibition applies to all, whether committed by officials or other people. The Criminal Code also punishes torture in circumstances of crimes against humanity such as war crimes and also in the commission of such an act under other circumstances. In regulations and directives relating to the Defence Forces, the police and prison administrations, torture is prohibited. Rules governing the rights of arrested persons to have access to a legal service, medical examination, contact with their family, etc were made to comply with the Constitutional prohibitions of torture and other inhuman or degrading treatments.

21. The police are required to observe the fundamental rights provided in the Constitution; and any inhuman or degrading treatment or act by the police is prohibited. To prevent the occurrence of torture and similar crimes, where the likelihood of commission of such crimes is high, the federal police has devised several mechanisms. To that effect, weekly performance evaluation of police officers is carried out to make sure that the police officers abide by the standards provided in various legislations that they have to observe including the fundamental human rights of the Constitution and other police legislations. Weekly inspection of detention centres by a group led by management members is also carried out, with the aim of taking necessary measures such as disciplinary action on the bases of relevant laws. No undisclosed detention is permitted at the police. In fact lawyers are free to talk to detained persons. Visit by interested NGOs religious leaders and international organizations such as the ICRC to the detention centres is allowed.

22. In the prison administration as well, a prison warden is required to perform his/her duties by fully respecting the human and democratic rights enshrined in the Constitution and international instruments adopted by Ethiopia. Prisoners are also entitled to have the right to be treated with conditions of respect for human dignity. To prevent the occurrence

of inhuman treatment, frequent dialogues with prisoners and performance of evaluation of prison wardens are carried out on regular basis. Incoming inmates are pre-informed of their rights and obligations and, for continued reference, regulations and directives are provided to them at libraries. The regular visit of prisons by the director is another preventive measure. Visits by the parliamentarians and EHRC are additional mechanisms that would reduce the occurrence of degrading treatments.

23. In a rather crude assessment, measures so far taken to prevent and punish torture and similar crimes are believed to be encouraging. Yet, those measures have not been able to reduce these crimes to the point that the State considers them sufficient.

24. Although superior order is a defence recognized under the Criminal Code, it can not be used as a defence for the crime of torture. Without affecting the criminal responsibility of the person giving the order, which could be made by an administrative or military superior, “the subordinate shall be liable to punishment if he was aware of the illegal nature of the order, in particular if he knew that the order was given without authority or knew the criminal nature of the act ordered, such as cases of homicide, arson or any other grave crime against persons, or national security or property, essential public interests or international law”.

25. Two interrelated points could be underlined here: One is the fact that knowledge of the criminal nature of the order automatically bars the defence of superior order. The other point is the presumption that the subordinate knows the criminal nature of acts such as grave crimes against persons such as homicide. Thus, although torture is not mentioned in name, given its nature and the circumstances of the commission, it is a grave crime leading to the presumption of knowledge, which would prevent the operation of the defence citing superior order.

Article 3: Expulsion, deportation and extradition

26. The principle of “non-refoulement” is included under Ethiopian law. Accordingly, Article 9 of the Refugee Proclamation No. 409/2004 states that any person shall not be refused entry into Ethiopia or expelled or returned from Ethiopia to any other country or be subject to any similar measure if as a result of such refusal, expulsion or turn or any other measure, such person is compelled to return to or remain in a country where he may be subject to persecution or torture on account of his race, religion, nationality, membership of a particular social group or political opinion; or his life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination of events seriously disturbing public order in part or whole of the country.

27. Other than non-refoulement, a refugee, who is lawfully resident in Ethiopia, shall not be expelled except on the ground of national security and public order. But even in the latter cases, the order of expulsion may be made after allowing the refugee concerned to present his case and any expulsion order shall be communicated in writing to the refugee together with the reasons for the order. The execution of any expulsion order may, if the concerned refugee requests, be delayed for a reasonable period to enable such refugee, to seek admission to a country other than the country to which he is to be expelled.

28. Under Immigration Proclamation No. 354/2003, deportation order may be issued against a foreigner on the grounds specified therein including lack of means of support, being a notorious criminal, being a drug addict, furnishing fraudulent information, and being found to be a threat to the security of Ethiopia. The order of deportation shall specify the reason for the deportation of the foreigner, the date of departure from Ethiopia and the port of exit. The foreigner against whom the deportation order is issued shall be deported to his country of origin or to any other country if such other country is willing to receive him.

29. A foreigner who is aggrieved by a deportation order issued by the Authority may submit a petition against the order to the Grievance Hearing Committee. The committee shall review the petition and submit its recommendation to the Authority and the decision of the Authority shall be final.

30. Extradition is determined by bilateral or multilateral treaties Ethiopia has concluded with other States. On the basis of its powers of ensuring the implementation of international treaties, the Ministry of Foreign Affairs coordinates the issue of extradition. On the basis of the extradition agreements, requests by sovereign States of extradition are normally forwarded to the Ministry of Justice which would review the fulfilment of the condition for extradition stated in the agreements and order further actions. The grounds of extradition are normally determined by treaties and international custom, which usually take into account the traditional grounds of extradition.

31. Deportation of a foreigner is carried out by the National Intelligence and Security Service. The grounds of deportation are:

- Lack of visible means of support or the likelihood of becoming a public burden
- Being a notorious criminal
- Being a drug addict
- Suspicion of suffering from a dangerous contagious disease
- Being a threat to the security of the State
- Furnishing fraudulent information or
- Violations of the provisions of the Immigration Proclamation and other regulations issued

32. Expulsion of a recognized refugee is carried out by the National Intelligence and Security Service. The grounds of expulsion of a refugee are national security and public order. In determination of deportation, the Grievance Hearing Committee –constituted of representatives from the Ministry of Foreign Affairs, the Ministry of Justice, and the National Intelligence and Security Service –may review the petition of a foreigner against whom a deportation order is issued and submit its recommendations to the National Intelligence and Security Service, which will pass the final decision. It should also be noted that denial of asylum (i.e. refugee status) made by the NISS may be appealed to the Appeal Hearing Council, composed of representatives from the National Intelligence and Security Service, the Ministry of Foreign Affairs, the Ministry of Justice, and the Ministry of Federal Affairs. The United Nations High Commissioner for Refugees is invited as an observer. Any asylum-seeker has the right to stay in Ethiopia until he exhausted his right of appeal.

Article 4: Acts of torture, attempts, participation, and penalties

33. The Criminal Code specifically criminalizes torture in all its forms with severe penalties ranging from five to twenty years rigorous imprisonment and in exceptional cases life imprisonment or death.

34. In the case of crimes related to torture, the use of improper methods by any public servant is punishable with simple imprisonment or fine, or, in serious cases, with rigorous imprisonment not exceeding ten years and fine. This penalty is concurrent or in addition to the criminal liability the acts of torture are subjected to. In addition, the Criminal Code punishes injuries that are caused among others by torture, endangering life of person, permanently jeopardizing physical or mental health or maiming the body or essential limbs or organs, or disabling or gravely and conspicuously disfigures a person, or in any other

way inflicting upon a person an injury or disease of a serious nature is punishable, depending on circumstances and gravity of the injury, with rigorous imprisonment not exceeding 15 years or simple imprisonment for not less than 1 year.

35. Under the general principles of the Criminal Code, an attempt is always punishable unless otherwise is provided by law. Hence the crime of attempted torture is punishable as much as the crime intended. Likewise participants in the commission of any crime including torture are criminally liable like principal offenders. Instigators, accomplices, and conspirators are in principle assimilated with principal offenders.

36. Under the Federal Police Commission Proclamation No. 313/2003, any police officer has the duty to perform his responsibilities, among others, by fully observing human and democratic rights ensured by the Constitution. Specifically, any inhuman or degrading treatment or act is prohibited. Similarly, under the Federal Police Commission Administration Regulations No. 86/2003, violations of human and democratic rights stipulated in the Constitution would entail rigorous disciplinary measures, which include demotion and dismissal. These measures are in addition to the ordinary penalties which may be imposed under the Criminal Code. Under these same regulations, a police officer shall be suspended if he is formally charged with a criminal or disciplinary offence for which his dismissal is to be expected.

37. Under the Federal Prosecutor Administration Council of Ministers Regulations 44/1998, which determines the conduct of prosecutors in relation to the public, a prosecutor shall respect human rights and human dignity. Any serious offence by a public prosecutor would entail downgrading and dismissal. Similarly, under the Defence Forces Administration Directive/Regulation, it is stated that a member of the defence force shall not attack, violate, threaten, degrade, etc of the people. Violation of these regulations entails grave disciplinary measures without prejudice to any criminal liability under the Criminal Code.

38. Violations of human and democratic rights of prisoners also entail rigorous disciplinary measures under the laws of prison administration. The prison warden who has committed these violations has to be suspended which would likely be followed by dismissal.

39. Under article 28 of the Constitution, the criminal liability of persons who commit crimes against humanity such as genocide, summary executions, forcible disappearances or torture shall not be barred by statute of limitation. Save the power of the Head of State to commute death penalty to life imprisonment, such offences including torture may not be commuted by amnesty or pardon of the legislature or any other State organ.

Article 5: Grounds for criminal jurisdiction and extradition

40. Articles 11, 14, 15, 17 and 18 of the Criminal Code provide clear establishment of jurisdiction over acts of torture and attempt to commit same in the cases mentioned under (a), (b) and (c) of paragraph 1 of article 5 of the Convention. In terms of article 11 of the Criminal Code, the criminal jurisdiction of the State applies to any person whether a national or a foreigner who is suspected of having committed acts of torture or attempt to commit acts of torture specified in the Criminal Code on the territory of Ethiopia. The national territory comprises the land, air and bodies of water in the country within the meaning of the Criminal Code. If the suspect has taken refuge in a foreign country, his extradition shall be requested so that he may be tried under Ethiopian law in terms of article 11(3) of the Criminal Code. Where his extradition cannot be obtained, the Ethiopian authorities may request that he be tried in the country of refuge in terms of article 12 of the Criminal Code.

41. Article 14 of the Criminal Code also demonstrates a clear establishment of jurisdiction over acts of torture or attempt thereof committed by an Ethiopian citizen who cannot be prosecuted at the place of commission of the crime by virtue of international principles of immunity. Ethiopian jurisdiction extends to ordinary “crimes committed in a foreign country by a member of the defence forces” if the member is not tried in the country where he has committed the crime in terms of Article 15 of the Criminal Code. In cases of crimes against international law and specifically military crimes committed in another country, the member is always subjected to Ethiopian jurisdiction. More generally, an Ethiopian who has committed a crime abroad is punishable in Ethiopia, if the criminal was not tried in the foreign country.

42. In terms of article 18 of the Criminal Code, Ethiopia also has jurisdiction on any person who has committed a crime outside Ethiopia against an Ethiopian national where the criminal is not tried in the foreign country.

43. In terms of article 17 of the Criminal Code, Ethiopia has established universal jurisdiction for crimes against international law and universal order, such as international crimes identified in Ethiopian legislation or international treaties. In those cases, irrespective of the place of commission of the crime, the nationality of the offender or the victim and irrespective of the direct implication of the crime against Ethiopian interests, Ethiopian courts have jurisdiction to try those offenders.

44. Under the Criminal Code, any foreigner who commits an ordinary crime outside the territory of Ethiopia and who takes refuge in Ethiopia may be extradited. This extradition shall be determined in accordance with the provisions of the law, treaties or international custom. Extradition is normally granted on the application made in proper form by the State where the crime was committed and when the crime does not directly and principally concern the Ethiopian State. Since no Ethiopian national having that status at the time of the commission of the crime or at the time of the request for his extradition may be handed over to a foreign country, he shall be tried by Ethiopian courts under Ethiopian law.

Article 6: Investigation and other measures regarding a suspect of torture in the Ethiopian territory

45. Criminal proceedings in the State are executed on the basis of the Criminal Procedure Code. Generally, the procedure provided in the Code begins with accusation (anyone has the right to report the commission of the crime to the police or to the public prosecutor). This is followed by police investigation which involves gathering of evidence, summoning of the accused or suspected person and interrogation, release on bond, bringing the suspect before a court of law, when necessary and examination of witnesses. After police investigation is completed, the police would report the investigation to the prosecutor, who may institute proceedings before courts of law. The arrested person may be denied bail if, *inter alia*, there is reasonable ground to believe that the person is likely to abscond. The suspect can apply to court to be released on bail to the court of law. This is the procedure followed in all criminal proceedings. There is no special procedure available to foreigners, except in cases of diplomatic and consular officials whose case has to be determined on the basis of international custom and treaties to which Ethiopia is a party. However, there is a right to contact consular offices of one’s State in cases of foreigners. In police directives, this right of foreigners is provided and police officers are under obligation to ensure arrested foreigners contacted their consular offices. If there is any violation of this customary rule of the right to seek consular assistance, the MOFA may intervene.

46. Police, the Ministry of Justice, the MOFA and NISS are the Government organs involved in the custody, other comparable measures, inquiry, notification, criminal proceeding, and extradition concerning foreigners suspected of crimes.

Article 7: Prosecution of a person suspected of having committed acts of torture and related crimes

47. The legislative and other measures to ensure equality and minimum guarantees of fair trial for defendants would equally apply to all irrespective of the criminal charges brought against them and irrespective of their nationality. (Reference is made to paragraphs 114-153 of the initial and combined reports under the ICCPR, regarding the treatment of persons suspected of having committed crimes.) Standards of evidence required for prosecution and conviction in criminal cases are the same for foreigners as well as the types of crime.

Article 8: Torture and related crimes as extraditable offences

48. There is no separate legislation dealing with extradition in Ethiopia. However, some rules regarding extradition are provided in the Criminal Code. On the basis of the Code, ordinary crimes are extraditable. The Code makes reference to international agreements and custom for execution of extradition. In bilateral agreements Ethiopia has entered into, extradition is normally determined on the basis of the degree of the crime which has to be punishable by an imprisonment for at least one year. In these agreements non-political crimes are not extraditable. The State considers the existence of treaty, bilateral or multilateral, necessary for extradition.

49. There are a number of bilateral extradition treaties Ethiopia concluded with other States. In all of these extradition treaties, ordinary crimes punishable by imprisonment for at least one year are extraditable. Since it is punishable by imprisonment for more than a year, torture is clearly extraditable.

Article 9: Mutual judicial assistance

50. Judicial assistance in the forms of requesting evidence, execution of judgment and extradition are envisaged both in the Civil Procedure Code and the Criminal Procedure Code. In criminal matters, such assistance is mainly extended through international agreements. There are bilateral treaties concerning mutual judicial assistance with countries like Djibouti. Such co-operation usually includes exchange of information and documents, requests for service, letters rogatory, and pursuit of suspected criminals and execution of judicial decisions. Such cooperation applies to all kinds of crimes even civil matters.

Article 10: Education and information

51. It should be stated here that for law enforcement officials such as the police and the defence forces, human rights training in police and military academies and training institutions focused on the protection of the rights of persons suspected, investigated, arrested, or detained. (Reference is made to paragraphs 250–253 of the Common Core Document.) These rights included the right to protection from torture and cruel, inhuman or degrading treatment or punishment. Moreover, frequent training has been given to police officers in collaboration with the ICRC, Ministry of Justice, Federal Justice Training Institute, and other civic associations. Training has also been given for new prison wardens

regarding the Constitution, human rights protection, criminal law, the Proclamation to establish the Prison Administration, the regulations, etc. (Reference is made to paragraphs 236-242 of the Common Core Document.)

Article 11: Rules on arrest, detention or imprisonment

52. Rules on arrest, detention, and imprisonment are provided in various legislation and administrative regulations. Some of the sources of these rules are the Criminal Procedure Code, the Federal Wardens Administration Council of Ministers Regulations No. 137/2007, and the Treatment of Federal Prisoners Council of Ministers Regulations No. 138/2007.

53. There are also other detailed directives regarding these matters. In the *Duties and Responsibilities of the Investigation Police Officer Directive*, an investigation police officer is bound “to ensure statements of the accused are made voluntarily” and “to respect human and democratic rights of the suspected and the witnesses.” In the *Duties and Responsibilities of the Detention Police Guard Directive*, there is an obligation “to ensure the safety of those detained for investigation.” In the “Duties and Responsibilities of the Detainee Administration Division,” there is an obligation “to ensure prisoners obtain necessary food and medication, to allow prisoners take fresh air, to separate the rooms of men and women detainees, to address prisoners’ complaints, to allow the use of library by prisoners, recreational and traditional sports, and to ensure the protection of human and democratic rights of prisoners. In the *Duties and Responsibilities of Head of Clinic Directive*, there are obligations “to diagnose and treat prisoners and refer those beyond their capacity to higher medical centres and to take immediate measures when a contagious disease occurs.” In addition, there is a notice/directive for treatment of an arrested suspect. The following is a summary of the principal features of these directives:

- The right to sufficient sunlight and air; and adequate toilet and bath facilities
- The right to immediately inform of the detention to one’s family
- In time of sickness, the right to be treated in clinics and to hospital, if necessary
- The right to complain before the head official orally or in writing
- The right to consult one’s lawyers and the right to visit by family on the basis of schedule issued by the office
- If the detained person is a foreigner, the right to contact one’s embassy and consular office
- The right to consult any newspapers, magazines, and radio
- The right to borrow books from library
- The right to practice their religion
- The right to physical integrity and honour

Standards on treatment of prisoners

54. There are a number of items of legislation on the treatment of prisoners. Those legislations are made to comply with the constitutional and statutory principles of the protection of human rights. The Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles for the Treatment of Prisoners are fully reflected in regulations dealing with prisoners. The Proclamation on the Establishment of Federal Prisons Commission 365/2003, the Federal Wardens Administration Council of Ministers Regulations No. 137/2007, and the Treatment of Federal Prisoners Council of Ministers Regulations No. 138/2007 are three of the major instruments in the treatment of prisoners.

These documents reflect the two international instruments. Some of the rules as stated in these legislations and the practice as identified by prison administration:

- Prohibit discrimination on the basis of sex, language, religion, political status, nation, social status, and nationality is allowed
- Affirm the right to worship to all religions, in private or in groups, is protected to all
- Require that rooms of prisoners are lighted, with sufficient air, toilet, and clean water
- Require the registration of prisoners is kept; personal record is prepared for each prisoner and, after explaining the importance of registration, details of each prisoner are voluntarily registered
- Require the taking of personal effects of prisoners which are not allowed into prisons against receipts; if the prisoner wants to send them to relatives or he himself wants to use them, they are available and are to be returned at the time of release
- Require the provision of breakfast, lunch and dinner with sufficient clean water free of charge
- Require the provision of medical personnel, materials, and medicine in prisons to carry out disease prevention and treatment services
- Require the provision of libraries and television sets for common use; all Ethiopian programs and selected satellite programs may be viewed by prisoners; prisoners can use personal radio, books, and newspapers
- Permit house games such as table tennis, volley balls, physical exercise and others
- Allow a child less than 18 months to live with his mother in prison; food and medical treatment is allowed to the child; after 18 months, the child will be given to relatives or charities involved in child care
- Ensure the right to write letters (to correspond with friends and family); the right to be transferred to other prisons; and if a prisoner is transferred, family has to be informed
- Require the separation of convicted prisoners from those prisoners whose cases are not yet decided; of mentally-ill from healthy prisoners; of those with contagious disease from others
- Permit the visit by relatives and other of prisoners on Sundays and Saturdays and holidays; food, clothes, toiletries brought by visitors are allowed to prisoners at all times
- Permit prisoners to talk to lawyers and religious counsellors, without the prison wardens hearing the conversation

55. In addition to the regulations in connection with the treatment of prisoners, the Criminal Procedure Code (which deals with the procedure in the enforcement of criminal laws) and Federal Police Commission Administration Regulations 86/2003 and Police Directives (which deal with the police that carry out almost all arrest and detention) and Military Directives closely follow the “Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988”. All the principles found in this instrument are reflected in these items of legislation, particularly the Criminal Procedure Code. The principles of the Code of Conduct for Law Enforcement Officials are also embodied in the aforementioned legislation. Moreover, the “Standing Rules of Engagement” of the Defence Forces provide similar rules as the Code.

56. EHRC, parliamentary groups, international organizations such as the ICRC, and interested NGOs are allowed to inspect prisons and detention centres. Recommendations by those institutions are communicated to appropriate organs for remedial actions. In this regard, the report by the EHRC may be illustrative.

Article 12: Investigation

57. Criminal investigation is carried out on the basis of the Criminal Procedure Code. The police and public prosecutors' offices are the principal organs empowered to make such investigations. Allegations of crimes of torture, cruel, inhuman, and degrading treatment or punishment are investigated immediately and without discrimination. Where investigation is refused, victims of crimes are allowed to present their complaints at all levels. The procedure for investigation can be looked at the Criminal Procedure Code.

Article 13: Right to complain

58. The procedure to submit complaints by any victim of any crime including torture, cruel, inhuman or degrading treatment or punishment is provided for in the Criminal Procedure Code. The police are duty bound to make investigation into the facts once a complaint is submitted. Where necessary, protective measures towards the victim or other witnesses are provided. If there is fear of retaliation, police officers may be assigned to protect victims, their families and witnesses. If a police officer refuses to investigate a complaint, the victim has the right to complain to higher authorities in the police. Likewise the victim may petition to higher officials of prosecution offices if a prosecutor fails to institute a legal action after having obtained the necessary evidence.

59. Prisoners in prison institutions are allowed to present their complaints to prison authorities at various levels. Suggestion boxes are provided to present complaints anonymously. Prison administrations provide solutions for those complaints and suggestions. Any prisoner with complaints may also present their complaints to visiting human rights NGOs, the EHRC, and others. The same procedures are followed at police detention centres. In cases of violations of rights or any other unlawful act by an investigator or a police guard, the right to petition orally or in writing to the federal crime investigation department or to the head office of prison administration is available to detained prisoners.

Article 14: Remedies for victims

60. Remedies available for violations of human rights are discussed in the Common Core Document. These remedies are applicable to victims of torture. Moreover, the Civil Code provides that civil servant or government employee is liable for any damage he causes to another by his fault. This is applicable to a civil servant who has commits such crimes or faults as torture. Hence victims of torture have the right to institute civil suits against wrong doers and claim compensation. Moreover, the State shall be vicariously liable to the victims of such crimes if the fault committed is a professional fault.

Article 15: Statements obtained under torture

61. The Constitution prohibits the use of statements obtained through coercion. Persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible.

Under the Criminal Procedure Code, any person summoned or arrested shall not be compelled to answer and has to be informed of his right to remain silent. Use of any inducement, threat or any other improper method to any person examined by the police is prohibited. When a court records statements or confessions, it is required ensure that the person makes the statements or the confession voluntarily.

Article 16: Acts of cruel, inhuman or degrading treatment or punishment

62. Any acts of cruel, inhuman or degrading treatment or punishment are outlawed under Ethiopian laws. The constitutional as well as other prohibitions, the preventive measures and remedies stated with regard to torture equally apply to these acts as well.

63. The legislative and other measures taken with regard to living conditions in police detention centres and prisons are stated elsewhere. Summaries of the report prepared by the Federal Prison Administration regarding the situation of federal prisons, and by the EHRC regarding few prison institutions are presented in the following paragraphs.

64. **Federal Prison Administration:** According to the report of the Federal Prison Administration:

- Women prisoners live in a separate compound and home from men prisoners; female prisoners are escorted by female wardens when taken for medical treatment, or when they have permissions to go around either in the prison compound or outside
- Separation of prisoners: As far as capacity permits, prisoners are separated on the basis of sex, age, the type of crime they committed, type of sentences, as convicted prisoners or prisoners being tried
- Prisoners awaiting trial are treated as suspects and are not subjected to work
- Counselling, rehabilitation, academic and vocational training programmes are available to all prisoners
- Education and training to prisoners:- in collaboration with education bureaus, education up to tenth grade is provided by prison administrations; distance education is allowed to those capable or to those for whom sponsors could be found; woodwork, metalwork, plumbing, sewing, weaving, hairdressing, cooking, and agriculture trainings are available for most prisoners
- Disciplinary penalty and its execution: disciplinary offences are communicated in writing to the prisoner charged; replies are received; evidence is collected; the prisoner is given the opportunity to defend; and disciplinary penalties are imposed if the prisoner is found guilty on the basis of regulations and directives,. Depending on the gravity of the offence, one of the simple disciplinary penalties or rigorous penalties may be imposed on a prisoner for breach of discipline. Some of the penalties are oral warning, prohibition from participation in recreational activities for not more than one month, and prohibition of sending and receiving letters for not more than one month
- Prohibition of torture, inhuman or degrading treatment and punishment: these acts are prohibited and, supervision and education are carried out to prevent their occurrence

65. **Ethiopian Human Rights Commission, Prisons' Visit Report, July 2008:** Based on Article 21 of the Constitution (which provides for the Rights of Persons Held in Custody

and Convicted Prisoners and the Commission's Proclamation 210/2000, the EHRC visited about 35 prisons and detention centers, which are believed to represent the situation of prisons in the State. The prisons visited were selected from all the nine regional states, Addis Ababa, Diredawa, and federal prisons and house 50.7 per cent of prisoners' population.

66. Objectives of the visits were to identify the situation of the protection of human rights of prisoners, to identify problems associated with law enforcement officials in protecting human rights and suggest remedies. Hence the EHRC used the Standard Minimum Rules for the Treatment of Prisoners as the benchmark to examine the treatment of prisoners. The points considered during the visit were the situation of prison's housing and compound, food, water and health services, sanitation, female prisoners, children imprisoned with their mothers and juvenile delinquency, prisoner-officials relations, protection of rights of prisoners, parole, speedy trial and others. The visits included: dialogue with law enforcement officials in the locality of the prisons, prison officials, and prisoners, personal inspection of rooms and health and food services, and discussing the results of the finding and remedies/corrective measures with prison officials. The findings are summarized in the following paragraphs.

67. Most prison buildings are old originally built for purposes other than detention of prisoners. Their compounds and structures are varied: Some of the prisons visited have ample space, others not; congested buildings in some compounds; most of the buildings are not clean. In most of the prisons, prisoners enjoy open air. In most, women prisoners are separated from men prisoners and young prisoners from adults; in most prisons, areas for training and education, worship places, medical centres, kitchens, store houses are separated. However, in many prisons, youth and adults, sentenced and charged, healthy and ill live in one compound. They also live in a congested environment.

68. Recreation centres: recreation centres are few and limited. Except for televisions, recreational facilities rarely exist for women prisoners. Limited libraries, cafeterias, few sports activities (such as chess and table tennis), mini-media services, television services were observed in the prisons visited. Prisoners are free to practice their religion, consult religious fathers and access prayer houses.

69. Bed rooms: In several prisons, young and adults convicted and charged and even in some prisons, those sentenced to death share bedrooms. Bed rooms are congested with the increasing number of prisoners on the face of the same facilities. With few exceptions, the bed rooms are below standards, in some cases with high temperature, and with insufficient air and light. In most cases, they have poor hygiene. Hence in some instances it is difficult to state that the constitutional rights of persons held in custody and convicted prisoners are fully protected. There are efforts in some cases to build new prisons and centers for young offenders.

70. Food: Given the high level of inflation, the budget allotted for each prisoner is not enough. Although food is served three times a day, the quality is not the best. Shortage of water for drinking as well as sanitation is observed.

71. Health and sanitation: these services vary from prison to prison. Some of them are with good facilities and others worse. There is budget shortage for medicine; and in some cases, access to hospitals is easy while in others it is not.

72. Prison administration and human rights protection of prisoners: The right of prisoners to be visited is implemented; in most cases, the relationship of prisoners and prison officials is based on the objectives of rehabilitating the prisoners hence is healthy. In some prisons, however, degrading insults and beatings by wardens and labour exploitation were observed. In few instances, beatings of prisoners, immersing them into tankers full of water in order to prevent them from breathing, making them roll in the mud, flogging after

putting them in water, and cuffing were observed. In some prisons, however, periodic dialogue between officials and prisoners is common.

73. Registration of prisoners: Registration of history, duration of stay, court appointment, probation period, and behaviour in their stay of prisoners, although not modernized, is carried out in all prisons by departments established in all institutions visited for follow-up of prisoners' situation. But in a couple of prisons, the wardens in this division demand bribes to do their job.

74. The right to complaint: prisoners have the right to complaint to prison officials. But in few prisons, prisoners' committees and wardens harass prisoners to discourage the submission of complaints.

75. Disciplinary penalty: most prisons have committees to look into disciplinary offences by prisoners; disciplinary rules of some prisons are posted in conspicuous places and in some are broadcast via mini-media. If there are disciplinary offences, the disciplinary committees, mostly elected by prisoners themselves, consider the violations as ordinary proceedings and pass decisions. If the decisions are considered lawful, the administrations will implement the decisions.

76. Trainings on human rights: general trainings on principles of human rights and trainings on treatment of prisoners have not been delivered to prisons. But few trainings were organized to officials of prisons by Prison Fellowship, an NGO, and the ICRC for limited time. Since these few trainings were not extended to all wardens, it is not possible to say that there is full awareness on the rights and treatment of prisoners.

77. Summary of the Report: prisons visited have been doing their best within their capacity to implement the rights of prisoners. But still measures have to be taken to improve the situation of prisoners.
