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An Analysis of the Lawfulness and Nonarbitrariness of the Mass Arrests of 2022 Conducted In the Amhara Region

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AN ANALYSIS OF THE LAWFULNESS AND NON-
ARBITRARINESS OF THE MASS ARRESTS OF 2022
CONDUCTED IN THE AMHARA REGION

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School of Law,
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January 2024

Title Page

**THESIS TITE: AN ANLYSIS OF THE LAWFULNESS AND
NON-ARBITRARINESS OF THE MASS ARRESTS OF 2022
CODUCTED IN THE AMHARA REGION**

A Master's Thesis Submitted in Partial Fulfillment of the Requirements
for Degree of Master of Laws (LLM) at the School of Law, Bahir Dar
University.

By

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January 2024

Thesis Approval Page



The thesis titled “*An Analysis of the Lawfulness and Non-arbitrariness the Mass Arrests of 2022 Conducted in the Amhara Region*” by Yonatan Tibebeu is approved for the degree of Master of Laws (LLM).

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Declaration Page

Declaration

I, the undersigned, declare that the thesis comprises my own work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principle of academic honesty and integrity, misrepresentation/ fabrication of any idea/data/ fact/source will constitute sufficient ground for disciplinary action by the University and can evoke criminal sanction from the State and civil action from the sources, which have not been properly cited or acknowledged.

Signature

Name of Student

University Id. Number

Date

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List of Acronyms

ACHR- African Charter on Human and People's Rights

ACHPR- African Commission on Human and Peoples' Rights

CRPC- Criminal Procedure Code of Ethiopia

ECHR- European Convention on Human Rights

ECTHR- European Court of Human Rights

FDRE- Federal Democratic Republic of Ethiopia

HRC- Human Rights Committee

IACHR- Inter- American Commission on Human Rights

IACTHR- Inter-American Court of Human Rights

ICCPR- International Convent on Civil and Political Rights

PP- Prosperity Party

TPLF- Tigray Population Liberation Front

UDHR- Universal Declaration of Human Rights

UN- United Nations

WGAD- Working Group on Arbitrary Detention

Abstract

This study scrutinizes whether or not the mass arrests of 2022 conducted in the Amhara region was carried out in line with the lawfulness and non-arbitrariness preconditions for depriving liberty right. Qualitative research design was employed. Although the right to liberty guarantees freedom from unlawful and arbitrary deprivation of liberty, mass arrests were conducted in an arbitrary fashion. Neither regular enforcement procedures nor an emergency decree was in place to support the measure. The road to arbitrary deprivation of liberty is not long, rocky, or full of detours, and more often than not blocked. Procedural safeguards were more often breached than observed. It was a sobering illustration of how laws on paper can remain empty promises. Under the guise of maintaining peace and security, the measure depicted the whim of a few officials that were aimed at obstructing dissenting views. The study reveals that Ethiopia's legal system is ill equipped to protect the right to liberty as no effective remedies are provided for victims who are unlawfully and arbitrarily deprived of their liberty. Despite the right to liberty presumes in favor of release, automatic and excessive bail conditions are incorporated into numerous laws that jeopardize the essence of the right. Despite the immense importance of the Optional Protocol of ICCP, Ethiopia has not ratified it, which would allow an individual to make a claim to the Human Rights Committee. The study recommends that law enforcement bodies should deprive the right to liberty in accordance with grounds and procedures established by law. The legislature should minimize bail conditions and repeal automatic bail denial provisions. Compensation and an effective procedure should be available for victims.

Key Words: The Right to Liberty, Procedural Safeguards, Unlawful Arrest, Arbitrary Detention, Mass Arrest, Amhara Region, Ethiopia's Legal System

Chapter one

Introduction

1.1 Background of the Study

The adoption of the United Nations Charter has paved the way to developing impressive bodies of international human rights law.¹ The right to liberty is one of such fundamental human rights.² Particularly, freedom from arbitrary and unlawful arrest is an integral part of the right to liberty that would help an individual against the intrusive power of the government and its agencies.³ The liberty of persons ensures freedom from confinement of the body rather than unrestricted freedom of action.⁴ In essence, it protects every person from arbitrary detention, as it is omnipresent in human rights instruments.⁵

As its deprivation would likely have an adverse effect on the enjoyment of many rights, the ground of deprivation of the right to liberty should be an exception, not- longer than the duration that is absolute necessary, and objectively justified.⁶ Although the right to liberty is not absolute, it is safeguarded by various conditions in that any deprivation must be based on grounds and procedures established by law.⁷ The deprivation, which is not in conformity with national law, could be unlawful under national as well as international law.⁸ The provision that regulates detention must be clear, predictable and must not be retroactive in its application.⁹

¹ John W.Halder Man, 'Advancing Human Rights through the United Nations, Law and Contemporary Problems', 1979, Vol.43, No.2, P.275. [Here in after, John, Advancing Human Rights]

² Laurent Marcoux, 'Protection from Arbitrary Arrest and Detention under International Law', *Boston College International and Comparative Law Review*, 1982, Vol.5, No.2, P.345.[Here in after, Laurent, Protection from Arbitrary Arrest]

³ Yinka Olomjobi, Right to Personal Liberty in Nigeria, 2017, P. 1 [Herein after, Yinka, Right to Personal Liberty]

⁴ Human Rights Committee, General Comment 35: Article 9 Liberty and Security of Person, UN DOC. CCPR/C/GC/35 Para.3. [Here in after, General Comment 35]

⁵ Cathryn Costello, 'Human Rights and the Elusive Universal Aspect: Immigration Detention under Human Rights and EU Law', *Indian Journal of Global Legal Studies*, 2012, Vol.19, No.1, P.258. [Here in after, Cathryn, Human Rights and the Elusive Universal Aspect]

⁶ Monica Macovei, A Guide to the Implementation of Article Five of the European Convention on Human Rights, 2002, P.6. [Here in after, Monica, A Guide to Implementation]

⁷ Alice Edward, Legal and Protection Policy Research Series, the Right to Liberty and Security of Persons and Alternative to Detention of Refugees, Asylum-Seekers, Stateless Persons, and other Migrants, 2011, P.19. [Here in after, Alice, Legal and Protection Policy]

⁸ United Nations High Commissioner for Refugee, Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum- Seekers and Alternative to Detention,2012, P.14

⁹ ECHR, *Ammur v France*, Application No.19776/92, Judgment of 25 June 1996 ,Para 53, at<
<https://hudoc.echr.coe.int/fre?i=001-57988>> (Last accessed February 1,2023)

Alongside the lawfulness, an arrest must not be arbitrary. In this regard, the concept of arbitrariness incorporates elements such as inappropriateness, lack of predictability and injustice.¹⁰ It is an arbitrary deprivation of the right to liberty in the situation if a person is arrested by the state by the mere fact that he is exercising his rights enshrined under various international instruments, or detained without having been able to benefit from fair trial rights and held incommunicado, and then his right to liberty is violated.¹¹ Thus, the word arbitrary implies a wider meaning not only confined to illegality, but also embraces measures that do not conform to the principles of natural justice and human dignity.¹²

The need to provide effective remedies has been recognized under various international instruments as long as those enshrined rights are infringed upon.¹³ Rights and remedies are opposite sides of the same coin in the sense that if a person has a right, he should have the means to vindicate and maintain it and a remedy in case the right is violated.¹⁴ Under the International Covenant on Civil and Political Rights, states have an obligation to provide an effective remedy, including reparation on the condition that the right is violated which is protected under the convention.¹⁵ The United Nations Committee on Human Rights interpreted that reparation may include restitution, rehabilitation, and measures of satisfaction.¹⁶

The right to protection from arbitrary and unlawful arrest has been recognized as one of the fundamental rights under the FDRE constitution.¹⁷ Right to liberty, however, is subject to

¹⁰ Helena Sola Martin, *The Right to Liberty and the Prohibition of Preventive Detention: on the Use of Pre-trial Detention of Suspected Terrorists in the XXI Century within the Framework of the European Convention on Human Rights*, 2012, P.13. [Here in after, Helena, *The Right to Liberty*]

¹¹ OHCHR, Fact Sheet No.26, *The working Group on Arbitrary Detention*, at <

<https://www.ohchr.org/Documents/Publications/FactSheet26en.pdf> > (last accessed February 3, 2023)

¹² B.P. Srivastava, 'Right against Arbitrary Arrest and Detention under Article 9 of the Covenant as Recognized and Protected under the Indian Law', *Journal of the Indian Law Institute*, 1969, vol.11, No.1, P.32. [Here in after, B.P. Srivastava, *Right against Arbitrary Arrest and Detention*]

¹³ Lisa Tortelli, *Monetary Remedies for Breach of Human Rights: A Comparative Study*, Oxford and Portland, Oregon, 2006, P.1. [Here in after, Lisa, *Monetary Remedies*]

¹⁴ Antoine Buyse, *Lost and Regained? Restitution as Remedy for Human Rights Violations in Context of International law*, P.63. [Here in after, Antoine, *Restitution*]

¹⁵ *International Convent on Civil and Political Rights*, Adopted and Proclaimed by General Assembly Resolution 2200A (XXI) of 16 December 1966, Entry in to Force 23 March 1976, Article 3(a). [Here in after, ICCPR]

¹⁶ Human Rights Committee, *General Comment 31: Nature of the Legal Obligations Imposed on the States Parties to the Covenant*, 26 May 2004. [Here in after, *General Comment 31*]

¹⁷ Awol Alemayehu, 'The Right to Protection from Arbitrary Arrest and Detention within the Legal Framework of Federal Democratic Republic of Ethiopia', *Journal of Law, policy and Globalization*, 2016, Vol.48, P.30. [Here in after, Awol, *The right to Protection From Arbitrary Arrest*]

restrictions, which allow the state to arrest and detain in accordance with substantive and procedural conditions.

Ethiopia's government has arrested persons belonging to a specific religious, political, or social group despite these preconditions and recognitions.¹⁸ In such a situation, the issue of the legality and non-arbitrariness of the arrest is seriously questioned by arrested persons and organizations that work toward the promotion of human rights. It is good to bear in mind that the right to be free from unlawful and arbitrary arrest is an integral component of the right to liberty that could also be an issue when an individual is arrested though not belonging to any group.

1.2 Problem Statement

In 2022, more than four thousand persons were massively arrested by the law enforcement order of the Amhara region in a couple of weeks, alleging that these persons are members of the so-called Fano, opposition parties, activists, and former Amhara prosperity party officials.¹⁹ Detainees were arrested after 7:00 P.M local time without a court warrant, without communicating the reasons for their arrest, held incommunicado and their properties were searched and seized without having a search warrant.²⁰ Despite government forces carrying out the arrest, the detainees' whereabouts were unknown.²¹ As a result, this issue triggers to scrutinize how the mass arrest of 2022 was conducted in the Amhara region.

In Ethiopia, the protection of the right to liberty is questionable. Although the ICCPR requires parties to provide compensation for unlawful and arbitrary deprivations of liberty, neither the constitution nor any specific laws do so. The right to liberty presupposes arrest with a court warrant as the courts thoroughly investigate facts justifying deprivation of liberty. There are, however, broad exceptions to Ethiopia's Criminal Procedure Code allowing the police to arrest without a court warrant.²² Besides, the determination of the maximum duration of pretrial detention guards against prolonged detention. Nonetheless, it is not yet determined under the

¹⁸ "Ethiopia: Opposition Figures Held Without Charge", at < <https://www.hrw.org/news/2020/08/15/ethiopia-opposition-figures-held-without-charge>> (last accessed February 10, 2023)

¹⁹ "More than 4,000 Arrested in Amhara as Ethiopia Cracks Down on Militia", at < <https://www.theguardian.com/global-development/2022/may/30/more-than-4000-arrested-in-amhara-as-ethiopia-cracks-down-on-militia>> (last accessed February 11, 2023)

²⁰ Ethiopian Human Rights Commission, Report on Law Enforcement Order of the Amhara Region, 2022 P. 4

²¹ Ethiopian Human Rights Council, Report on Mass Arrest of the Amhara Region, 2022 P.1

²² Ethiopian Criminal Procedure Code, 1961, Imperial Ethiopian Government Proclamation No. 185/ 1961, *Negarit Gazeta*, Extraordinary Issue No.1, Article 50 and Art. 51.[Here in after, CRPC]

Criminal Procedure Code. This would lead to raise the question whether Ethiopia's laws duly protect the right to liberty and in turn freedom from unlawful and arbitrary arrest.

1.3 The Research Objectives

1.3.1 General Objective

To scrutinize whether or not the mass arrest of 2022 in the Amhara region was carried out in accordance with preconditions for deprivation of liberty

1.3.2 Specific Objectives

1. To scrutinize the government's authority to conduct mass arrests in the Amhara region in 2022 against specified groups.
2. To give an insight into the role of the judiciary and other stakeholders in regards to the rights of detainees.
3. To assess Ethiopia's remedies for unlawful and arbitrary deprivation of liberty in accordance with international instruments
4. To assess whether or not Ethiopia's laws protect the right to liberty and in turn freedom from unlawful and arbitrary arrest in accordance with international instruments

1.4 Research Questions

1.4.1 Central Research Question

Did the mass arrests in the Amhara region of 2022 comply with the requirements for deprivation of liberty?

1.4.2 Specific Research Questions

1. Did the executive organ have the authority to conduct mass arrests in 2022 against specified groups in the Amhara region?
2. What was the role of the judiciary and other stakeholders concerning detainees' rights?
3. What are the available remedies under Ethiopia's law in case of unlawful and arbitrary arrest in line with international standard instruments?
4. Are Ethiopia's laws protecting a person from arbitrary and unlawful arrest in accordance with international instruments?

1.5 Research Methodology

1.5.1 Methods of the Study

The researcher employed the qualitative method to address the aforementioned research questions and objectives. The method was imperative to examine how the mass arrests were conducted from the perspective of those targeted and those who participated in executing the orders. Accordingly, the study employed both empirical and doctrinal data sources. In terms of empirical data, firsthand information was collected from interviews and field observation. To gather doctrinal data sources, the researcher analyzed international and national instruments as well as academic writings.

The study utilized both primary and secondary data sources in order to get desired data that would answer the stated research questions and objectives. The primary data were achieved through observations, legal documents, and interviews (both structured and unstructured interviews). The interview was conducted with key informants of the study (judges, public prosecutors, arrested persons, lawyers, concerned government officials, and NGOs) working on the promotion of human rights. Besides, the secondary data source was achieved through previous research works, court decisions, literature, journals, articles, and reports by different organizations and governmental institutions.

1.5.2 Sampling Technique

The researcher employed purposive sampling. As per Kothari “items for the sample are selected deliberately by the researcher; his choice concerning the items remains supreme.”²³ It can be inferred that the researcher is left with the utmost discretion in selecting his participants whom he thinks would be of great importance in connection with the matter under investigation. It was opted for because doing so helps the researcher to select the respondents based on knowledge and experiences about which one has the most useful or representative respondent that has an insight understanding of the issue or the matter under investigation.

1.5.3 Sample Size

As there is no hard and fast rule by which qualitative research is expected to comply with the determination of sample size,²⁴ the sample size is determined at the stage of data saturation. The concept of data saturation requires bringing new participants repeatedly into the study until the

²³ Kothari, *Research Methodology: Methods and Techniques*, P.59. [Here in after, Kothari, *Research Methodology*]

²⁴ Bryan Marshall, et al, ‘Does Sample Size Matter in Qualitative Research? A Review for Qualitative Interviews in is Research’, *Journal of Computer Information systems*, 2003, PP.11-22. [Here in after, Bryan, *Sample Size*]

data is set to complete, as indicated by data repetition or redundancy. Thus, the number of participants cannot be determined before commencing data collection rather it should be determined by the criteria of redundancy of data. Accordingly, seventy-three persons were interviewed, of which fifty-nine were detained persons. The study involved four government officials, three judges, two public prosecutors, two employees of Human Rights Commission and Human Rights Council, and two lawyers.

1.5.4 Data Analysis

The qualitative method of analysis was utilized to interpret the data that were gathered from primary and secondary sources. Specifically, although there are different qualitative data analysis methods, the researcher employed thematic analysis because it enables the extraction of important information from raw data. Moreover, it simplifies the process of distilling large amounts of data into digestible summaries.²⁵

1.6 Scope and Limitation of the Study

The study focused on an analysis of the lawfulness and non-arbitrariness of the mass arrests of 2022 conducted in the Amhara region. It did not take into consideration other scenarios of arrest than the law enforcement order of the region, which would cause the arrest of persons and potentially raise the issue of lawfulness and non-arbitrariness of the arrest. Consequently, it was limited to incidents of mass arrest in 2022 in the Amhara region, law enforcement order.

The researcher faced challenges in collecting data. In particular, government officials were not willing to provide the data, as the issue involved sensitive information. It was strenuous to point out a responsible official to conduct the interviewee, for it was a messy situation and many persons participated in executing the order.

1.7 Significance of the Study

The study seeks to bring more attention to the area of the study concerned given that the study examines the lawfulness and non-arbitrariness of the mass arrests of 2022 conducted in the Amhara region. The study will provide input for scholars who seek to conduct further studies in the area. The paper will be an input for those who are working in the area of drafting and making a law for amendment concerning the right to liberty and freedom from arbitrary and unlawful arrest.

²⁵ "Research Guide: Data Analysis and Reporting Findings", at<
<https://library.up.ac.za/c.php?g=485435&p=4425510>> (last accessed February 14, 2023)

1.8 Organization of the Study

The study was organized into four chapters. The first chapter dealt with the background and essential structure of the study together with the objective of the study, the main and supplementary questions, and the significance of the study, scope, and research methodology. The second chapter assessed the conceptual and legal frameworks of the right to liberty. The third chapter scrutinized the lawfulness and non-arbitrariness of the 2022 mass arrests conducted in the Amhara region. The last chapter presented the conclusion and recommendation of the study.

1.9 Ethical Consideration

Each ethical requirement was respected. The literature, all ideas, and scholarly publications taken from other scholars were acknowledged and rules on intellectual property, fabrication of data, and plagiarism were duly adhered to. The study was conducted considering the needs and concerns of the people participating in the study through the principles of informed consent, confidentiality, and respect. The researcher selected participants based on their full and free consent. They were further informed of their right to withdraw when they deem it appropriate to do so at any time. Moreover, the researcher shielded the identity of the participants to keep the obtained information confidential.

Chapter Two

Conceptual and Legal Frameworks of the Right to Liberty

2.1 Introduction

This chapter contains six sections. The first section deals with the notion of the right to liberty, its development, and scope. The second section discusses the legal frameworks for the right to liberty. The third section explores procedural safeguards for the right to liberty. The fourth section assesses permissible grounds for deprivation of liberty. The fifth section covers the jus cogens status of freedom from unlawful and arbitrary deprivation of liberty. The last section devotes remedies for unlawful and arbitrary deprivation of liberty. In this chapter, it is argued that liberty is the norm, and detention is an exception. Deprivation of liberty should be carried out in line with the grounds and procedures established by law.

2.2 Notion

It is tough to provide a comprehensive definition of the right to liberty in which everyone would agree on. Dicey defined it as “a right not to be subjected to incarceration, arrest or any other physical coercion in any manner that does not admit to legal justifications.”²⁶ Similar to Dicey’s definition, Black’s Law Dictionary defines “liberties as freedom from all restraints except such as are justly permitted by law.”²⁷ From the aforementioned definitions, it is possible to infer that the right to liberty cannot simply be taken away, meaning the deprivation should be legally justifiable so that anything less than that safeguard would violate the right to liberty. It does not imply the ability to do anything, but rather the freedom to do acts in a manner that does not interfere with other people.²⁸ As the right to liberty is most often recalled in association with arrest and detention, it is imperative to grasp these terms.

According to United Nations study on the subject, “arrest is the act of taking a person into custody under the authority of the law or by compulsion of another kind the period from the moment he is placed under restraint up to the time he is brought before an authority competent to

²⁶ Dicey, *Introduction to the Study of Constitutional Law*, 8th ed., Macmillan Publisher, London, 1915, PP. 207-208. [Here in after, Dicey, *Introduction to the Study of Constitutional Law*]

²⁷ Henry Campbell Black, M.A, 6th ed., St. Paul Minn West Publishing Co., 1990

²⁸ Supra note 3, Yinka, *The Right to Personal Liberty*, P.3.

order his continued custody or to release him.”²⁹ As per this definition, the two key elements forming parts of the definition are the way the arresting authority restricts liberty and the length of time the suspect may be held in custody. The United Nations Human Rights Committee on human rights in its general comment on article 9 of ICCPR defined the term arrest as “the apprehension of a person that commences a deprivation of liberty.”³⁰ Moreover, arrest is understood as the act of apprehending a person for the alleged commission of an offence by the authority.³¹

Detention is deprivation of liberty in a confined place, whether or not in furtherance of arrest under a condition that prevents him from living with his family or engaging in his regular vocational or social activities.³² Alternatively, it could also be understood as a process by which a state or a private individual detains a person due to charges brought against him to protect a person or property.³³ The term detention does not always result from criminal matters as a person may be detained due to a psychiatric disorder,³⁴ or to prevent the spread of infectious diseases.³⁵ It addresses matters that may arise in both pre-trial and post-trial detention.³⁶ The nucleus of the term detention is deprivation of liberty, confinement to a certain place and may take many forms.

2.3 Development

The right to liberty can be traced back to Article 39 of the English Magna Carta, a key text on individual freedom and civil governance, established the right to be free from confinement in the absence of incarceration pending trial or other disposal of a criminal charge.³⁷

²⁹ United Nations Committee, Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile, U.N. Doc. E/CN.4/826/Rev.I,1964. [Here in after, United Nations Committee, Free from Arbitrary Arrest]

³⁰ General Comment No.35, Para.13.

³¹ Preamble of the Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment, UN DOC.A/Res/43/173, 1988.[Here in after, Body of Principles]

³² See UN High Commissioner for Refugees, UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers, 26 February 1999.

³³ “Detention”, at < <https://en.wiktionary.org/wiki/detention>>(last accessed March 10, 2023)

³⁴ Sherdian Rains et al, Variations in Patterns of Involuntary Hospitalizations and in Legal Frameworks: An International Comparative Studies, PP. 403-417.[Here in after, Sherdian et al, Variations in Patterns of Involuntary Hospitalization]

³⁵ Coker Richard *et al*, ‘Detention and the Evolving Threat of Infectious Diseases, Evidence, Ethics and law’, *Journal of Law, Medicine and Ethics*, 2007, Vol.35, No. 4, PP. 609-615.[Here in after, Cocker *et al*, Detention]

³⁶ Report of the Working Group to the Economic and Social Council, E/CN.4/1997/4, Para.66

³⁷ William J.Aceves, Commentaries on the Case Appellants George Walker et al, Consolidation of Case No. 02-5284 and 02-5288, P.6.

In spite of this, the protection did not extend to all citizens since free man referred to only a limited number of people, namely feudal noblemen.³⁸ Although the full effect of article 39 was not immediately evident, the Magna Carta, consequently, was one of the first significant steps toward the recognition of the right to freedom from arbitrary arrest and detention.³⁹ Protection against arbitrary arrest as an integral part of the right to liberty was further established in the 17th century by the Bill of Rights, Habeas Corpus Acts of England, and the scope of application was widened in the French Declaration of Rights where the right to liberty was guaranteed to all nationals.⁴⁰ Each of these documents was created to safeguard persons from unlawful arrest or detention, however, protection was not intended against arbitrary laws.⁴¹

2.4 Scope

A criminal proceeding is a context in which the right to liberty comes into play.⁴² Nonetheless, the protection is not restricted to such situations, as emphasized in General Comment 8; the provision that deals with the right to liberty is applicable to all deprivation of liberty whether in criminal cases, or other cases like mental illness, drug addiction, and immigration control.⁴³ The application of the right to liberty does not confine itself to peacetime but also extends to the situation of armed conflict.⁴⁴ As it is not an exhaustive list, other circumstances could be considered deprivation of liberty.⁴⁵ It has been determined that restriction upon movement within a state or a city is a limitation on the right to freedom of movement rather than a deprivation of liberty.⁴⁶ Concisely, matters falling under the right to freedom of movement are not within the ambit of the right to liberty, for the latter involves detention or arrest. *In De Tomasso v. Italy*, the court pointed out that the mere restriction on freedom of movement does not amount to

³⁸ J.B. Brebner, *Magna Carta*, In *Great Expression of Human Rights*, 1950, P.62.[Here in after, J.B.Brebner, *Magna Carta*]

³⁹ William Blackstone, *Commentaries on the Law of England*, P.423.(Here in after, William, *Commentaries on the Law of England*]

⁴⁰“The Right to Liberty”, at < <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-liberty> >(last accessed March 11, 2023)

⁴¹ *Supra* Note 2, Laurent, *Protection from Arbitrary Arrest*, P.348.

⁴² Sangetta Shah, *International Human Rights Law*, 4th ed., Oxford University Press, United Kingdom, 2014, P.259.

[Here in after, Sangetta, *International Human Rights Law*]

⁴³ *Ibid*

⁴⁴ Human Rights Committee, *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Sri Lanka*, CCPR/CO/79/LKA, Para.13

⁴⁵ Maryam Ishaku, ‘The Right to Liberty Under International Human Rights Law: An Analysis’, *Journal of Law, Policy and Globalization*, 2015, Vol.3, P.214.[Here in after, Maryam, *The Right to Liberty*]

⁴⁶ Human Rights Committee, *Karker v. France*, Communication No.833/1998, Judgment of 26 October 2000, Para.5.3, at < <https://www.refworld.org/cases,HRC,3f588efa0.htm> >(last accessed March 11,2023)

deprivation of liberty.⁴⁷ It is daunting to draw between what should be considered deprivation of liberty and restriction on the right to liberty; rather it is merely a degree or intensity, not an attribute of nature or substance.⁴⁸

2.5 International Instruments

International instruments both soft and hard recognize freedom from unlawful and arbitrary deprivation of liberty.

2.5.1 UDHR

While the UDHR was not intended to be a binding resolution, several domestic constitutions, laws, regulations and policies that safeguard fundamental rights have directly drawn inspiration from the soul and spirit of the UDHR.⁴⁹ Many UDHR provisions have been incorporated into customary law, which all states must abide by.⁵⁰ Indeed, Article 9 precludes arbitrary arrest, detention, and exile.⁵¹ Utilizing a prohibitive approach, it negates and precludes instead of reinforcing the protection and promotion the provision seeks to provide.⁵² However, the UDHR does not expressly incorporate grounds and procedures in which the right to liberty could be deprived; instead, it was formulated in general terms and prohibits simply arbitrary arrest.

2.5.2 ICCPR

The right to liberty and freedom from unlawful and arbitrary arrest is recognized under Article 9 of the ICCPR.⁵³ It stipulates that any deprivation of liberty must be on such grounds and in accordance with national laws, or else arrest is unlawful and arbitrary.⁵⁴ In similar fashion to the UDHR, the ICCPR does not provide lawful grounds for deprivation of liberty so that it is determined by national legislation. This does not mean that states have absolute discretion power to determine it; any underlying grounds for depriving of liberty must be lawful and non-arbitrary.

⁴⁷ European Court of Human Rights, *De Tommaso v. Italy*, Application No. 43395/09, Judgment of 23 February 2017, Para 76, at < <https://hudoc.echr.coe.int/fre?i=001-171804>> (last accessed March 11,2023)

⁴⁸ European Court of Human Rights, *Stanev v. Bulgaria*, Application No. 36760/06, Judgment of 17 January 2012, Para.115, at < <https://hudoc.echr.coe.int/eng?i=001-108690>> (last accessed March 13,2023)

⁴⁹ Hurst Hannum, 'The UDHR in National and International Law', *Journal of Health and Human Rights*, 1998, Vol.3, No.2, P.145.[Here in after, Hurst, The UDHR]

⁵⁰ *Ibid*

⁵¹ Universal Declaration of Human Rights(UDHR), Adopted and Proclaimed by United Nations General Assembly Resolution 217 A(I II) of 16 December 1948, [Here in after, The UDHR]

⁵² Paul Turay, Prolonged and Arbitrary Arrest and Detention: An Access to Justice Dilemma for South Sudan, 2021, P.51.(Here in after, Paul, Prolonged and Arbitrary Detention]

⁵³ ICCPR, Article 9

⁵⁴ *Ibid*

Within the meaning of the convention, the grounds that are required to deprive the right to liberty will be discussed.

2.5.2.1 Lawfulness

The state should specify in its legislation the grounds on which individuals may be deprived their liberty and the procedures applied for enforcing arrest or detention with the view to complying with safeguards provided under Article 9 of ICCPR.⁵⁵ Only acts carried out in conformity with such rules are considered lawful, thereby limits the discretion of the arresting officer.⁵⁶ The lawfulness of the arrest could be assessed by national law standards in the particular system in which judicial power is exercised.⁵⁷ To put it differently, arrest must be subject to judicial review apart from being carried out in conformity with the law.⁵⁸ It is a critical protection of a wide range of human rights to obtain judicial review of detention and order the release of a detainee if the detention is unlawful.⁵⁹ The lawfulness of the arrest must be determined not only by reference to domestic laws but also by the text of the Convention as it has been pointed out in the case of *Assenov and other V Bulgaria*:

The court recalls that the expression ‘lawful’ and in accordance with a procedure prescribed by law in Article 5(1) essentially refers back to national law and state the obligation to conform to the substantive and procedural rules thereof, but that they require in addition that any deprivation of liberty should be in conformity with the purpose of Article 5, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.⁶⁰

The law must be clearly defined, which entails that it must be written in precise language and be foreseeable.⁶¹ The criteria is met if a person understands the wording of the provision and, if

⁵⁵ Human Rights Watch, *Arbitrary Detention, Torture, and Extortion in Chechnya*, P.11.[Here in after, Human Rights Watch, *Arbitrary Detention*]

⁵⁶ *Ibid*

⁵⁷ Sam Blay and Ryszard Piotrowicz, ‘The Awfulness of Lawfulness: Some Reflections on the Tension Between International and Domestic Law’, *Australian Year Book of International Law*, 2000, Vol.21, P.7.[Here in after, Sam and Ryszard, *The Awfulness of Lawfulness*]

⁵⁸ Venus Gharehbaghi, ‘Right of Accused in Iran Under International Law’, *Global Science Research Journal*, 2013 Vol.1, No.1,P.3.[Here in after, Venus, *Right of Accused*]

⁵⁹ Amnesty International, USA: *Resorting the Rule of Law: The Right of Guantanamo Detainees to Judicial Review*, 2004, P.14. [Here in after, Amnesty International, *Resorting the Rule of Law*]

⁶⁰ European Court of Human Rights, *Assenov and Others v. Bulgaria*, Application No.24760/94, Judgment of 10 July 1999, at < <https://hudoc.echr.coe.int/eng/?i=001-58261>> (last accessed March 15,2023)

⁶¹ Daniel Gradinaru, *The Principle of Legality*, 2018, P.290. [Here in after, Daniel, *The principle of Legality*]

necessary with the assistance of the court's interpretation of it to determine what actions or omissions may subject him to criminal liability.⁶² Thus, it is a milestone not to override the right to liberty by ambiguous words.⁶³

2.5.2.2 Arbitrariness

Although the Convention protects a person from arbitrary arrest and detention, the notion of arbitrariness has not been precisely defined.⁶⁴ The Third Committee of the General Assembly intentionally refused to substitute the word 'arbitrariness' with 'illegality' while debating the matter, believing that the retention of the term 'arbitrariness' was fundamental to the article.⁶⁵ The Committee believed that the word arbitrariness denotes not only unlawfulness but also embraces unjust and inconsistent with the principles of natural justice and human dignity.⁶⁶ In the case of *Van Alphen V. the Netherlands*, the Human Rights Committee has clarified that:

Arbitrariness is not be equated only with against the law, but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all circumstances. Further, remand in custody must be necessary in all circumstance, for example, to prevent flight, interference with evidence or the recurrence of crime.⁶⁷

Indeed, the UN Commission on Human Rights established the Working Group on Arbitrary Detention in March 1991, giving it three years mandate to investigate arbitrary detention cases, which is inconsistent with international instruments accepted by states.⁶⁸ Its mandate has been consistently extended for three years period, most recently on September 30, 2016 for an additional three years, ending in 2019.⁶⁹ As a guiding principle, the Working Group has stated

⁶² *Ibid*

⁶³ New South Wales Bar Association, *The Principle of Legality and the Clear Statement Principle*, 2005, P.16. [Here in after, *New South Wales Bar Association, The Principle of Legality*]

⁶⁴ *Supra* Note 12, B.P. Srivasta, *Right Against Arbitrary Arrest*, P. 31.

⁶⁵ Report of the Third Committee, 9th December, 1948(A/4045); GAOR XII, Para.6-10. [Here in after, *Report of Third Committee*]

⁶⁶ *Id*, Para. 43-49

⁶⁷ Human Rights Committee, *Van Alphen V. The Netherlands*, Communication No.305/1988, Judgment of 23 July 1990, Para. 5.8, at < <https://hudoc.echr.coe.int/eng?i=001-57878> > (last accessed March 17,2023)

⁶⁸ Commission on Human Rights Resolution 1991/42, UN. DOC.E/CN.4/RES/1991/42,P.3.[Here in after, *Commission on human Rights Resolution*]

⁶⁹ Human Rights Council Resolution 33/30, UN. DO. A/HRC//RES/33/30, Sept.30,2016

that the concept of arbitrary detention is not to be equated with against the law, but must be construed broadly to encompass elements of injustice, lack of predictability, inappropriateness, and due process of the law.⁷⁰ If arbitrary had only implied illegal, not all harsh laws and autocratic activities of the government would have been challenged so long as they were in conformity with national law.⁷¹ Further, the Working Group has identified five grounds of arbitrary detention through the analysis of its methods of work:⁷²

1. When it is clearly impossible to invoke any legal basis justifying the deprivation of the right to liberty, as when a person is kept in detention after the completion of his or her sentence despite an amnesty law applicable to him (category I). The Working Group asserted that keeping the arrested person under detention after court ordered the release of the person through bail had no legal basis and was unlawful.⁷³
2. When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by article 7, 13-14, and 18-21 of the UDHR and, in so far as states parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR (category II). The Working Group discovered that the arrest of a human rights defender following her criticism of the government efforts to help citizens affected by a tropical storm was arbitrary as the detention resulted from the mere exercise of the right to freedom of expression and opinion under Article 7 of the UDHR and Article 26 of the ICCPR (category II).⁷⁴
3. When the total or partial non-observance of international norms relating to the right to fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the states concerned, is of such gravity as to give deprivation of liberty an arbitrary character (category III). A case of arbitrary detention

⁷⁰ UN Working Group on Arbitrary Detention, Deliberation No. 9 Concerning the Definition and Scope of Arbitrary Deprivation of the Right to Liberty under Customary International Law, as Cited the Human Rights Committee in *Mukong V. Cameroon*, Communication No. 458/1991, Para. 9.8.

⁷¹ Parvez Hassan, 'The International Covenants on Human Rights: An Approach to Interpretation', *Buffalo Law Review*, 1969, Vol.19. No.1, P.37.[Here in after, Parvez, The International Covenants]

⁷² Human Rights Council, Methods of Work of the Working Group on Arbitrary Detention, UN Doc. A/HRC/WGAD/2017/92

⁷³ See UN Working Group on Arbitrary Detention, Opinion Number 27/2020 Concerning Omoyele Swore, 54 U.N. Doc. A/HRC/WGAD/2020/27

⁷⁴ See UN Working Group on Arbitrary Detention, Opinion Number 6/2021 Concerning Houayheung Xayabouly, 59, U.N. Doc. A/HRC/WGAD/2021/6

occurs when it is revealed that the authority failed to ensure the detainee had access to a lawyer during investigation and resulted to detention.⁷⁵

4. When asylum seekers, immigrants, or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV).
5. When the deprivation of the right to liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or any other status, that aims towards or can result in ignoring the equality of human beings(category V). The detention of three young women living in a rural area with limited access to health services who suffered obstetric emergencies was arbitrary because the detention was made based on their sex or gender.⁷⁶

Apart from this, the Inter-American Commission on Human Rights found that there were three types of arbitrary detention: extra-legal detention,⁷⁷ indefinite detention,⁷⁸ and detention conducted with abuse of power.⁷⁹ A Commission of the African Union held that the massive arrest in Malawi on the accusation that they had utilized office supplies like photocopiers repair machines for nefarious purpose was arbitrary and violation of the right to liberty recognized in the charter.⁸⁰ Arbitrariness also encompasses unreasonable action, which is inappropriate and disproportionate in the circumstances of the case at hand.⁸¹ In short, although the arrest is carried out in compliance with substantive and procedural requirements, it might be arbitrary because the latter does not simply mean against the law. Thus, the term ‘arbitrary’ is understood broadly and embraces various things.

⁷⁵ See UN Working Group on Arbitrary Detention, Opinion Number 43/2020 Concerning Serikzhan Bilash, 84, U.N.DOC. A/HRC/WGAD/2020/43

⁷⁶ See UN Working Group on Arbitrary Detention, Opinion Number 68/2019 Concerning Sarl Del Rosario Rogel Garcia, Berta Margariat Arana Hernandez and Evelyn Hernandez Cruz, 116, U.N. DOC. A/HRC/WGAD/2019/68

⁷⁷ See Inter-American Commission Report on the Situations of Human Rights in Argentina, OEA/Ser.L/v/11.49, Doc. 19,140, 1980

⁷⁸ Annual Report of the Inter- American Commission Report , OEA/Ser.L/v/II.49, Doc. 9 Rev. 1,117, 1981

⁷⁹ Inter- American Commission, Report No.13/96, Case 11.430, Mexico, 1996

⁸⁰ Annual Report of ACHPR, *Chirwa v. Malawi*, ACHPR/RPT8th/Rev. I, 1994-1995.

⁸¹ Human Rights Committee, *Jalloh V. The Netherland*, Communication No.794/1998, , Adopted of 6 July 1999, Para.8.2, at < <https://www.refworld.org/cases,HRC,3f588ef3a.htm>>(last accessed March 22,2023)

2.5.3 The African Charter on Human and People's Rights

The member states of the organization of African Unity have ratified an African Charter on Human and Peoples' Rights, which aims to institutionalize human rights protection, following the footsteps of Europe and the organization of American states.⁸² The provision denotes that legality of arrest and absence of arbitrariness are preconditions to deprive the right to liberty. However, in contrast to Article 9(2, 5) of the ICCPR, Article 6 of the ACHPR does not clearly stipulate the right of a detainee person and reparation in case of unlawful or arbitrary arrest.⁸³ The right is enacted in a manner that leaves aspects of pre-trial detention.

To sum up, international instruments protect people from unlawful and arbitrary deprivations of liberty, not from detention. Although liberty is not an absolute right, it requires states not to unlawfully and arbitrarily detain persons.

2.6 Overview of Ethiopia's Law

The FDRE constitution recognizes the right to liberty as a fundamental right.⁸⁴ The right is, subject to limitation. The constitution provides conditions under which the persons' liberty could be deprived.⁸⁵ Specifically, deprivation of liberty should be on such grounds and in accordance with such procedures as established by law and must not be arbitrary. It follows that the Ethiopian Criminal Code prohibits retroactive application of criminal law unless it is more favorable for the accused.⁸⁶ It is strictly prohibited on the ground that retroactive laws, beyond the shadow of a doubt, erode fundamental principles of equality, certainty, and predictability of the law.⁸⁷ Prohibition of retroactive applicability of criminal law as a tenet of legality principle is pivotal instrument to safeguard the right to liberty from unfettered power of the government.⁸⁸

⁸² Obinna Okere, *The Protection of Human Rights in Africa and the African Charter on Human and People's Rights: A Comparative Analysis with the European and American System*, 1984, P.141.[Here in after, Obinna, *The Protection of Human Rights*]

⁸³ "The civil and Political Rights", at <<https://www.abysinnialaw.com/study-on-line/item/363-the-civil-and-political-rights-in-african-charter>> (last accessed March 22, 2023)

⁸⁴ Constitution of the Federal Democratic Republic of Ethiopia, Proc. No. 1/1995, *Federal Negarit Gazeta*, Year 1, No.1, Art. 17. [Here in after, FDRE Constitution]

⁸⁵ *Ibid.*

⁸⁶ Criminal Code of the Federal Democratic Republic of Ethiopia, 2004, *Federal Negarit Gazzeta*, Proc. No. 414, Art.5 and Art. 6.[Here in after, Criminal Code]

⁸⁷ Yarik Kryvoi and Shaun Matos, 'Non-Retroactivity as General Principle of Law', *Utrecht Law Review*, 2021, Vol.17, No.1, P.46. [Here in after, Yarik and Shaun, Non-Retroactivity]

⁸⁸ Anirut Chuasanga and Ong Argo Victoria, 'Legal Principles Under Criminal Law in Indonesia Dan Thailand', *Journal of Daulat Hukum*, 2019, Vol.2, No.1, P.131. [Here in after, Anirut and Ong, Legal Principle]

The FDRE constitution provides a range of procedural safeguards for arrested persons. They have the right to be informed promptly of the reason for arrest and of any charge brought against them in the language they understand.⁸⁹ It coincides with the right to challenge lawfulness of the detention, and be released provide that the detention is unlawful by virtue of Article 19(4) of the FDRE constitution. Arrested persons are entitled to remain silent, to be brought before a court within 48 hours of their arrest, and be released on bail unless the objective and subjective conditions for denying bail exist.⁹⁰

In Ethiopia's Criminal Procedure Code, the suspected person should be arrested with a court warrant.⁹¹ It is issued only in the circumstance of where the attendance of a person before a court is absolutely necessary and cannot be done otherwise.⁹² However, in exceptional cases, a person may be arrested without a court warrant as long as the ground of the arrest complies with things outlined under the Criminal Procedure Code in which the police are entitled to arrest without a court warrant.⁹³ It is on the ground that the right to liberty is a principle, and arrest is an exception so that arrest as a matter of principle should be carried out with a court warrant, as the court would thoroughly scrutinize the existence of facts that could satisfy an objective observer that a person might have committed the alleged crime. In short, similar to international instruments, Ethiopia's law recognize that any deprivation of liberty should be made in line with grounds and procedures established by law.

2.7 Procedural Safeguards

Deprivation of liberty should be carried out in conformity with procedural safeguards. Failures to comply with procedural safeguards render the deprivation of liberty arbitrary.

2.7.1 The Right to be Informed of the Reason for Detention

The right to be informed of the reason for detention is recognized under Article 9(2) of the ICCPR that stipulates, "anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him." In a similar fashion, this procedural safeguard for the right to liberty has been recognized under Article 7(4) of the American Convention on Human Rights and Article 5(2) of the European Convention on

⁸⁹ FDRE Constitution, Art. 19(1)

⁹⁰ *Id.*, Art. 19(2),19(3), and 19(6)

⁹¹ CRPC, Art.49

⁹² *Id.*, Art. 54

⁹³ *Id.*, Art. 50 and 51

Human Rights. Unfortunately, the African Charter on Human and Peoples' Rights does not have any specific provision regarding the right to be informed of the reasons for detention. However, the African Commission on Human and Peoples' Rights pointed out that the right to a fair trial, among other things, includes the right to be informed of the reason of arrest in a language in which he understands the reason of his arrest and shall be informed promptly of any charge against him.⁹⁴ According to WGAD, Article 9(2) of the ICCPR has two components: information as to the reason for arrest immediately and swift information about the charges brought thereafter.⁹⁵

The right as it has been recognized under a range of international instruments enables the detainee to challenge the lawfulness of the detention before the court.⁹⁶ In order for the person being held to quickly request a ruling on the legality of the detention, information about the detention must be swiftly provided.⁹⁷ The description must enable the detainee to understand the substance of the allegation against him and must transcend beyond merely referencing the legal grounds for detention.⁹⁸ To put it differently, a detailed explanation of the legal and factual grounds for detention should be provided, and the information regarding the reasons for detention must be presented in explicit, straightforward, non-technical language that the person can understand.⁹⁹ Each case must be evaluated in light of its unique characteristics to determine whether the information supplied was timely and of sufficient content.¹⁰⁰ Information as to the reason for arrest, the time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority, the identity of the law

⁹⁴ ACHPR, Media Rights, *Agenda v. Nigeria*, Communication No. 224/98, at

<http://hrlibrary.umn.edu/africa/comcases/224-98.html> (last accessed May 26, 2023)

⁹⁵ WGAD, *Mohammed Serria V. Egypt*, Opinion No. 30/207, Adopted Apr.16, 2017, Para.58

⁹⁶ Manfred Nowak, UN Convent on Civil and Political Rights: ICCPR Commentary, 1993, P.174.[Here in after, Manfred, UN Convent on Civil and Political Rights]

⁹⁷ Jelena Pejic, 'Procedural Principles and Safeguards for Internment: Administrative Detention in Armed Conflict and other Situations of Violence', *International Review of the Red Cross*, 2005, Vol. 87, No.858, P.384.[Here in after, Jelena, Procedural Principles]

⁹⁸ Scott N. Carlson and Gregory Gisvold, Practical Guide to the International Covenant on Civil and Political Rights, 2003, P.84. [Here in after, Scott and Gregory, Practical Guide]

⁹⁹ Danish Institute of Human Rights, Police and Human Rights Manual for Police Training, 2022, P.32

¹⁰⁰ ECHR, *Laden v Poland*, Application No. 11036/03, Judgment of 18 March 2008, Para.42, at <https://hudoc.echr.coe.int/fre?i=002-2097> (last accessed May 28, 2023)

enforcement officials concerned, and precise information concerning the place of detention should be duly recorded.¹⁰¹

2.7.2 The Right to be Brought Promptly before Judicial Authority

The right to be brought promptly before a judicial authority is an essential procedural safeguard against arbitrary detention in which the court would, *inter alia*, determine the necessity to detain the person or not with due consideration of factors such as the existence of reasonable suspicion, likely to abscond, and interference with the court of justice.¹⁰² Judicial control plays a tremendous role in reducing the risk of mistreatment, which is highest during the initial stage of detention; and it helps to control abuse of power by law enforcement officers or other authorities.¹⁰³

Prompt judicial oversight at the initial appearance of an arrested person is necessary to enable the detention of any mistreatment and to limit any unlawful interference with the rights to liberty.¹⁰⁴ However, the time in which the detainee should be brought before the judicial authority is different from one country to another country.¹⁰⁵ The HRC construed the term promptly to mean not exceeding a few days and ideally within 48 hours so that the judiciary can quickly determine the lawfulness and the necessity of detention.¹⁰⁶ It is an automatic right and does not solely depend on detainee's request.¹⁰⁷ Regarding the nature of the officer, the Human Rights Committee has held that the term officer does not confine to court so long as the organ has attributes of objectivity, impartiality, and independence.¹⁰⁸ Nonetheless, under Article 9(3) of the ICCPR, the public prosecutor that repeatedly extends persons pre-trial detention should not be regarded as possessing institutional objectivity and impartially.¹⁰⁹

¹⁰¹ UN Body of Principles, Principle 12(as cited by Lawyers' Rights Watch Canada, a Pre-trial Release and the Right to be Presumed Innocent , a Hand Book on International Law Rights to Pre-trial Release, P.37)

¹⁰²"Access to Judge", at< <https://www.apt.ch/en/knowledge-hub/detention-focus-database/safeguards/access-judge> >(last accessed May 28,2023)

¹⁰³ Supra Note 75, *Laden v. Poland* ,Para.72

¹⁰⁴ European Court of Human Rights, Guide on Article 5 of the European Convention on Human Rights: Right to Liberty and Security, P.36

¹⁰⁵ Supra Note 71, Manfred, UN Convent on Civil and Political Rights, P.176

¹⁰⁶ General Comment 35, Para.33

¹⁰⁷ Human Rights Committee, Concluding Observations: Republic of Korea, CCPR/C79/Add.114, 1 November 1999

¹⁰⁸ Human Rights Committee, *Vladimir Kulomin v. Hungary*, Communication No.521/1992, Judgment of 16 March 1994, Para. 11.3, at< <http://hrlibrary.umn.edu/undocs/html/VWS52156.htm>>(last accessed May 28,2023)

¹⁰⁹ *Ibid*

2.7.3 Right to Trial within a Reasonable Time, or to Release Pending Trial

The right to trial within a reasonable time is recognized under Article 9(3) of the ICCPR, 7(1) (D) of the ACHPR, and 5(3) of the ECHR. Detention before trial should be used only as a last resort in limited scenarios.¹¹⁰ This procedural safeguard recalls the right to be presumed innocent until proven guilty, ensuring a person's right is protected from being undermined by the government.¹¹¹ Due to the presumption of innocence, which is linked to the right to trial within a reasonable time, the state is obliged to prove that the suspect has committed a crime and, when the alleged crime is proven beyond a reasonable doubt, the burden is over.¹¹² To put it differently, the burden of proof has both bearer and standard: the former refers to the scenario in which the party could lose so long as the burden does not meet what is required by the law, and the latter requires the degree of persuasiveness of the evidence to carry the burden to prove.¹¹³

The right to trial within a reasonable time is an essential safeguard against protracted delay and that in turn would impinge the right to liberty.¹¹⁴ According to the Human Rights Committee, determining what constitutes a reasonable time depends on the circumstances of each case, however, the lack of an adequate budget to render the case and the fact that investigation is carried out by way of written proceedings do not justify the delay of trial.¹¹⁵ Detaining a person for one year and nine months without being tried in such a way that the absence of any satisfactory explanation was in violation of Article 9(3) of the ICCPR.¹¹⁶ Factors like the gravity of the offence alleged to have been committed, the nature and severity of the possible penalties, and the risk that the accused will abscond if released should be taken into account to determine

¹¹⁰ United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), Adopted by General Assembly Resolution 45/110 of December 1999, Art.6

¹¹¹ Pamela R. Ferguson, 'The Presumption of Innocence and Its Role in the Criminal Process', *Criminal Law Journal*, 2016, Vol.27, No.2, PP.131-135. [Here in after, Pamela, The Presumption of Innocence]

¹¹² P..J. Shwikkard, The Presumption of Innocence, What is it?, 1998, P.397. [Here in after, P.J Shwikkard, Presumption of Innocence]

¹¹³ Brbra Underwood, 'The Thumb on the Scale of Justice: Burden of Persuasion in Criminal Case', *Yale Law Journal*, 1977, Vol.86,P.1299.[Here in after, Brbra, The Thumb on the Scale of Justice]

¹¹⁴ Richard Moules, 'The Right to Trial within a Reasonable Time', *The Cambridge Law Journal*, 2004, Vol.63, No.2, P.265.[Here in after, Richard, The Right to Trial]

¹¹⁵ Human Rights Committee, *N. Fillaste V. Bolivia*, Communication No. 336/1988, Judgment of 5 November 1991, Para.6.5, at< <http://hrlibrary.umn.edu/undocs/html/dec336.htm>> (last accessed May 30,2023)

¹¹⁶ Human Rights Committee, *A. Perkins V. Jamaica*, Communication No. 733/1997, Judgment of 30 July 1998, Para. 11.3, at< <https://www.legal-tools.org/doc/jvgkc0>>(last accessed May 30,2023)

what constitutes a reasonable trial time.¹¹⁷ It should be construed as implying that from the time the trial should start, the time it should end and judgment rendered. Likewise, the African Commission revealed that the suspected person on criminal charges should not be held in custody until trial unless there is adequate evidence that doing so is required to prevent the individual from evading justice, interfering with witnesses, or constituting a blatant and serious risk to others

2.8 Permissible Grounds for the Deprivation of Liberty

The right to liberty does not guarantee absolute freedom; there might be scenarios where the right could be deprived.¹¹⁸ However, the deprivation should be carried out in a manner compatible with international instruments' obligations: lawfulness and non-arbitrariness.¹¹⁹ Measures entailing deprivation of liberty is firmly recognized and demand comprehensive procedural guarantees and the society bears a heavy responsibility in doing so.¹²⁰ Neither the ICCPR nor the UDHR specifies grounds for deprivation of the right to liberty apart from stating the conditions and procedural safeguards. Consequently, determining the grounds for deprivation of liberty is left to national legislation.

There is no doubt that international instruments permitted deprivation of liberty, such as detention following lawful conviction and detention for bringing a person before the competent judicial authority.¹²¹ Unlike other instruments, the European Convention on Human Rights exhaustively incorporates lawful grounds for deprivation of liberty.¹²² As per the Convention, permissible grounds of deprivation of liberty only refer to the lawful detention of a person after the conviction by a competent court, non-compliance with the lawful order of a court, detention for the purpose of bringing him before the competent legal authority on the ground of reasonable

¹¹⁷ Human Rights Committee, *Kone V. Senegal*, Communication No. 386/1989, Judgment of 21 October 1994, Para.8, at <<http://hrlibrary.umn.edu/undocs/html/vws386.htm>>(last accessed May 30,2023)

¹¹⁸ Olexandra Karpenko, 'Does Self-Isolation Violate the Right to Liberty ? An Analysis of the European Court of Human Rights Practice in Light of the Ukrainian Experience', *European Journal of Health Law*, 2020, P.377.[Here in after, Olexandra, Self Isolation]

¹¹⁹ *Id*, P.388

¹²⁰ Elisabeth Koch, 'Social Rights as Components in Civil Right to Personal Liberty: Another Step Forward in the Integrated Human Rights Approach', *Netherlands Quarterly of Human Rights*, 2002, Vol.20, No.1, P.39. [Here in after, Elisabeth, Social Rights]

¹²¹ Donna Cline, 'Deprivation of Liberty: Has the European Court of Human Rights Recognized a Public Safety Exception', *Utrecht Journal of International and European Law*, 2013, Vol.29, No.76, P.24. (Here in after, Donna, Deprivation of Liberty)

¹²² Jim Murdoch, 'Safeguarding the Liberty of Person: Recent Strasbourg Jurisprudence', *the International and Comparative Law Quarterly*, 1993, Vol.42, No.3, P.501. [Here in after, Jim, Safeguarding the Liberty of Person]

suspicion of having committed the crime.¹²³ Detention of a minor by lawful order for the purpose of educational supervision and detention of a person to prevent unauthorized entry to the country or of a person against whom action is being taken with a view to deportation are permissible grounds for deprivation of liberty.¹²⁴ However, the Convention's exception should be construed narrowly.¹²⁵ It is not without reason that as freedom is a rule, detention must keep an exception.¹²⁶

2.9 The Jus Cogens Status of Freedom from Unlawful and Arbitrary Deprivation of Liberty

As per Article 4 of the ICCPR, states may take measures that derogate obligations set out therein in times of public emergency provided that the action is carried out consistent with states' other obligations under international instruments.¹²⁷ The Human Rights Committee has construed Article 4 of the ICCPR in such a way that states must adhere to the principle of proportionality and any action taken in derogation must be "required by the exigencies of the situation" even though certain rights are derogable.¹²⁸ In addition, the Human Rights Committee articulated that rights listed under Article 4 as non-derogable purport the peremptory nature of those rights; however, peremptory norms extend beyond the ambit of the aforementioned provision.¹²⁹ The Committee expressed:

states parties may in no circumstance invoke article 4 of the Convent as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivation of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.¹³⁰

¹²³ European Convention on Human Rights, as Amended by Protocol Nos.11,14 and 15, Article 5

¹²⁴ *Ibid*

¹²⁵ European Court of Human Rights, *Engel, and Others V. The Netherlands*, Application No. 5100/71, Judgment of 8 June 1976, Para.57, at < <https://hudoc.echr.coe.int/tur?i=001-57479>> (last accessed May 26,2023)

¹²⁶ Marcello Di Filippo, *The Human Rights to Liberty in the Context of Migration Governance: Some Critical Remarks on the Recent Practice in the Light of the Applicable Legal Framework*, P.3. [Here in after, Marcello, *The Human Right*]

¹²⁷ ICCPR, Art.4

¹²⁸ Human Rights Committee, General Comment No.29, Article 4:States of Emergency, UN.DOC.CCPR/C/21/REV.1

¹²⁹ *Id*, Para.11

¹³⁰ *Id*

The WGAD in its opinion held that the prohibition of arbitrary detention is customary international law, authoritatively recognized as a peremptory norm of international law or *jus cogens*.¹³¹ It implies that the entire international community has accepted and recognized it as a norm from which no derogation is permitted and can only be altered by subsequent norms pertaining to international law having the same features.¹³² It embodies and safeguards the core values of the international community, which have universal applications and hierarchically superior to other values.¹³³ As a result, all states are obliged to uphold the duties enshrined under the ICCPR and the obligation extends to states not parties to the Convention.¹³⁴

2.10 Remedies

International instruments including conventions, principles, and declarations strongly insist on effective remedies for human rights violations. For instance, article eight of the UDHR states that “everyone has the right to effective remedies by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law.” In a similar fashion, Article 2(3) of the ICCPR recognizes effective remedies for human rights violations. Domestic remedies are important for two reasons. One, most human rights violations occur in the state’s interaction with its citizens; and second, it is notorious that the state is primarily responsible for human rights protection.¹³⁵ Although it is true that remedies cannot undo the harm done to an injured person, they can contribute significantly to restorative and therapeutic function by reducing the level of stigmatization.¹³⁶

We must first understand the concept of victim in order to comprehend the issue of remedies. The right to remedy requires a victim whose rights have been infringed on.¹³⁷ Despite the notion of a victim not provided under the ICCPR, victims are persons who individually or collectively

¹³¹ WGAD, *Liu Xiaobo V. China*, Opinion No. 15/2011, Adopted May 5, 2011, P.20

¹³² “Preemptory Norms of General International Law”, at <<https://legal.un.org/ilc/reports/2019/english/chp5.pdf>> (last accessed March 24, 2023)

¹³³ *Ibid*

¹³⁴ Working Group on Arbitrary Detention, 27th sess., Report, A compilation of National, Regional and International Laws, Regulation and Practices on the Right to Challenge the Lawfulness of the Detention before a Court, UN.DOC.A/HRC/27/47 (June 30/2014), P.26

¹³⁵ Jacob Abiodun, ‘Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal’, *Journal of Law, Policy, and Globalization*, 2013, Vol.10, P.2. [Here in after, Jacob, Judicial Remedy]

¹³⁶ Stuart Beresford, ‘Redressing the wrongs of the International Justice System: Compensation for Persons Erroneously Detained, Prosecuted, or Convicted by AD Hoc Tribunal’, *The American Journal of International Law*, 2002, Vol. 96, No.3, P.634. [Here in after, Stuart, Redressing the Wrongs]

¹³⁷ Liesbeth Zegveld, ‘Remedies for Victims of Violations of International Humanitarian Law’, *International Review of the Red Cross*, 2003, Vol.85, No.851, P.50. [Here in after, Liesbeth, Remedies]

suffer harm, including economic and psychological suffering.¹³⁸ Where appropriate and in line with domestic laws, the term victim includes the victim's family or dependents and other persons who have suffered harm due to the infringement of their rights.¹³⁹

Remedies refer to means of enforcing or redressing rights and compensating for infringements.¹⁴⁰ Remedies for unlawful detention consist of both procedural and substantive remedies.¹⁴¹ Procedural remedies denote the fact the procedure by which the court or other adjudicative bodies, including administrative agencies to hear and decide claims of unlawful detention.¹⁴² Substantive remedies purports the results of the proceeding, that is, the relief granted to the successful claimant in the form of compensation, release and other remedies like prosecution and punishment of those accountable for the unlawful detention.¹⁴³ In international and domestic law, other terminologies are often employed to deal with elements that make up remedies.¹⁴⁴

Reparation is often utilized in relation to inter-state claims of responsibility, which includes restitution, compensation, guarantee of non-repetition, and satisfaction though satisfaction as a measure does not agree by all authors.¹⁴⁵ Sometimes, reparation may refer only to compensation.¹⁴⁶

2.10.1 Compensation

Several international instruments provide compensation for unlawful and arbitrary detention. Article 9(5) of the ICCPR states that, "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". In the same vein, the European Convention on Human Rights, the American Convention on Human Rights, and the Arab Charter on Human Rights have recognized compensation as a remedy for unlawful detention.

¹³⁸ UN General Assembly, Basic Principles and Guidelines on the Right to Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution Adopted by General Assembly, 21 March 2006, A/res/60/147, Para.5

¹³⁹ *Ibid*

¹⁴⁰ Van Kempen, *Pre-trial Detention, Human Rights Criminal Procedural Law, and Penitentiary law*, 1st ed., Intersentia Publisher, United Kingdom, 2012, P.7. [Here in after, Van, *Pre-trial Detention*]

¹⁴¹ Dinah Shelton, *Remedies in international Human Rights Law*, 2005, P.7. [Here in after, Dinah, *Remedies*]

¹⁴² *Id*, P.40

¹⁴³ Black's Law Dictionary, 6th ed., 1990, S.V., "Substantive Remedy"

¹⁴⁴ *Supra* Note 116, Dinah Shelton, *Remedies*, P.16

¹⁴⁵ *Ibid*

¹⁴⁶ *Ibid*

Although reparation does not clearly stipulate under ACHPR in case of unlawful arrest, the Luanda guidelines expressly set out that states have a duty to establish a legal framework with the view to compensate those who have been unlawfully arrested.¹⁴⁷

Compensation refers to any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, which includes physical or mental harm, lost opportunities, material damages, moral damage, and any costs incurred for legal assistance, medical services, psychological and social services.¹⁴⁸ What is implied by the definition provided above is the fact that compensation includes both monetary and non-monetary damages.

The Human Rights Committee in many cases strongly insists states to provide adequate compensation, except purely symbolic compensation amounts.¹⁴⁹ Determining what amounts to adequate compensation is not a piece of cake, rather it should be determined by taking into account the form of breach, the circumstances of the situation and the harm sustained by the victim.¹⁵⁰ It must operate effectively and payment of compensation must be made within a reasonable period.¹⁵¹

2.10.2 The Right to Challenge the Lawfulness of the Detention

The right to challenge the lawfulness of detention is commonly called habeas corpus.¹⁵² Human rights instruments require that when a person is held by a state, habeas corpus process must be available.¹⁵³ For instance, Article 9(4) of the ICCPR stipulates that “anyone who is deprived of the right to liberty by arrest or detention shall be entitled to take proceeding before a court, in order that court may decide without delay on the lawfulness of his detention and order his release

¹⁴⁷ See Section M (1) (H) of Luanda Guideline on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa, 2017. [Here in after, Luanda Guideline]

¹⁴⁸ UN Basic Principles and Guidelines, Section 20, 2005: See also Principle 35 of Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988.

¹⁴⁹ Human Rights committee, *Griffin v. Spain*, Communication No. 493/1992, Judgment of 4 April 1995, Para.1, at <<http://hrlibrary.umn.edu/undocs/html/vws493.htm>>(last accessed June 15,2023)

¹⁵⁰ Reaching for Justice, The Right to Reparation in the Africa Human Rights System, 2013, P.39

¹⁵¹ General Comment No. 35, Para. 5.

¹⁵² Brian Farrell, ‘Does the Universal Declaration of Human Rights Implicitly Guarantee a Right to Habeas Corpus’?, *Washington College of Law Journals and Law Review*, 2008, Vol.16, No.1, P.2. [Here in after, Brian, Universal Declaration]

¹⁵³ Christina J Tams, The Abuse of Executive Powers: What Remedies?, P.9. [Here in after, Christina, The Abuse of Executive Power]

if the detention is not lawful.” In other words, international human rights law recognizes both the right to liberty and the means of ascertaining it through the procedure of habeas corpus.¹⁵⁴

It is worthwhile that such pivotal guarantees are applicable to all deprivations of the right to liberty, whether the deprivation results from criminal matters or administrative cases.¹⁵⁵ The right refers to a situation in which a person engages in legal action while he is in custody; the provision may also apply where a person is not in custody, but outcome of the appeal is crucial to determining whether his detention was lawful.¹⁵⁶ This procedural safeguard is a powerful device that protects a person from unlawful and arbitrary detention,¹⁵⁷ and should be applied soon as the person is detained-no significant waiting before bringing the first challenge.¹⁵⁸ Moreover, it is not backed by period of limitation.¹⁵⁹

The right to challenge the lawfulness of detention requires the right to access the court, as one cannot assume the procedural safeguard of habeas corpus without accessing the court.¹⁶⁰ The mere establishment of a court does not suffice, rather it should be independent of the detaining authorities, and its ruling should be binding and effective.¹⁶¹ It must guarantee detainee’s release so long as the claim is accepted.¹⁶² The court should evaluate the lawfulness of the detention in line with domestic laws and international instruments.¹⁶³ The evaluation should be prompt, and

¹⁵⁴ Fiona De Londras, ‘The Right to Challenge the Lawfulness of the Detention: An International Perspective on US Detention of Suspected Terrorists’, *Journal of Conflict and Security Law*, 2007, Vol.12, No.2, P.224. [Here in after, Fiona, The Right to Challenge the Lawfulness of the Detention]

¹⁵⁵ Human Rights Committee, *A.Vuolannen V. Finland*, Communication No.265/1987, Judgment of 8 July 1988, Para.9.4, at < <http://hrlibrary.umn.edu/undocs/session44/265-1987.htm>> (last accessed June 15,2023)

¹⁵⁶ European Court of Human Rights, *Oravec V.Croatia*, Application No.51249/11, Judgment of 11 July 2017, Para.65, at < <https://hudoc.echr.coe.int/eng?i=001-175138>> (last accessed June 17,2023)

¹⁵⁷ Carlton R.Stoiber, ‘The Right to Liberty: Comparison of the European Convention on Human Rights with United States Practice’, *Journal of American Bar Association*, 1976, Vol.5, No.3, P.379.[Here in after, Carlton, The Right to Liberty]

¹⁵⁸ Mdas Adenas, The Right of Anyone Deprived of His or Her Liberty to Bring Proceedings Before Court, In order that the Court may Decide without Delay on the Lawfulness of His or Her Detention: State Practice on Implementation of the Right, 2014, P.23. [Here in after, Mdas, The Right of Anyone Deprived of His or Her Liberty]

¹⁵⁹ *Ibid*

¹⁶⁰ European Court of Human Rights, *Al-Nashif v. Bulgaria*, Application No. 50963/99, Judgment of 20 June 2002, Para.92, at < <https://hudoc.echr.coe.int/rus?i=001-60522>> (last accessed June 17, 2023)

¹⁶¹ Human Rights Committee, *Torres V. Finland*, Communication No. 291/88, Judgment of 2 April 1990, Para.7.2, at < <https://www.refworld.org/cases,HRC,47fdaf5d.html>>(last accessed June 18,2023)

¹⁶² Fiona De Londras, *Counter-Terrorist Detention and International Human Rights Law*, 1st ed., Edward Elgar Publisher, United Kingdom, 2014, P.407.(Here in after, Fiona, *Counter-Terrorist Detention*)

¹⁶³ European Court of Human Rights, *Suso Musa V. Malta*, Application No.42337/12, Judgment of 23 July 2013, Para.50, at < <https://hudoc.echr.coe.int/fre?i=002-7632>> (last accessed June 18,2023)

protracted or burdensome constitutional or other legal challenges would not be adequate to satisfy this requirement.¹⁶⁴

The court's procedure should be simple and free of charge on the condition that the detainee cannot pay the required fee.¹⁶⁵ It must be fair and guarantee equal representation of all parties in the sense that parties should have the opportunity to present their side of the story and challenge the evidence brought against them.¹⁶⁶ The court then must rule on the lawfulness of the detention without any delay.¹⁶⁷ However, failure to respect the court order to release the detainee constitutes arbitrary detention and undermines the independence of the judiciary.¹⁶⁸

¹⁶⁴European Court of Human Rights, *Sanchez Reisse V. Switzerland*, Application No.9862/82, Judgment of 21 October 1986, Para. 59-60, at < <https://hudoc.echr.coe.int/eng?i=001-57571> > (last accessed June 19,2023)

¹⁶⁵ Working Group on Arbitrary Detention, Principles and Guidelines 9, Para. 74

¹⁶⁶ *Id*, Principle 12

¹⁶⁷ General Comment No.35, Para.47.

¹⁶⁸ *Id*, Para.41

Chapter Three

Arbitrary Detention in the Amhara Region: the Case of 2022 Mass Arrest, Inconsistency between the Law and the Practice

3.1 Introduction

The first section examines the lawfulness and non-arbitrariness of the mass arrests of 2022 conducted in the Amhara region. The second section deals with the government's authority to conduct mass arrest. The third section explores the role of the judiciary and other stakeholders regarding the rights of arrested persons. The fourth section scrutinizes the compatibility and adequacy of remedies for unlawful and arbitrary detention in Ethiopia's legal system in line with international instrument. The last section examines the protection of the right to liberty in Ethiopia by taking into account international standards and domestic laws. In this chapter, the researcher argues detention shall not be carried out to suppress the voice of the people, seeking to control the narrative and silence any dissent. Deprivation of liberty must ensure legitimate purposes, and is coupled with the requirement of proportionality and necessity. It must not be done in a full-blown, unbridled manner by officials.

3.2 Grounds that Render an Arrest Arbitrary

The arrest constitutes arbitrary so long as it is not carried out in line with the grounds and procedures established by law. It is per se a manifestation of arbitrary deprivation of liberty if arrest is politically motivated, results from the mere exercising of guaranteed rights, and is effectuated in total or partial non-observance of fair trial rights.

3.2.1 Arrest without a Reasonable Suspicion

This study discovered that there is a manifest violation of fundamental rights in practice. For instance, a key informant respondent, who is one of the arrested persons in the 2022 mass-arrest case in Amhara region, revealed the scenario of the arrest that they had done nothing to justify their arrest.

I had done nothing to justify the arrest. When push came to shove, I held the gun with the government's authorization and fought to defend the nation against the Tigray Liberation Front (TPLF). Unfortunately, after the war, the government started chasing Fanos' members. Even after spending a long time in jail, my eyes were filled with confusion. No

matter how hard I tried, I could not figure out why I was being arrested. The so-called Prosperity Party (PP), the ruling party, wants to tear us apart. Alas! I am pissed off.¹⁶⁹

Similarly, an official from the Amhara Regional Police Commission indicated that several persons were arrested on suspicion of terrorism, robbery, and arms trafficking.¹⁷⁰ He stated “to be frank, I do not think that prior actual assessment was made for each case as some of our staffs were also arrested.”¹⁷¹ Arrest should be carried out only if it is demonstrated that there is reasonable suspicion that the person may have committed the crime. Reasonable suspicion implies that suspicion must be based on reasons, which must also be derived from the existence of some fact, which is known to that person.¹⁷² Alternatively, reasonable suspicion is based on facts that would convince objective observers that the person may have committed the crime.

Ethiopia’s Criminal Procedure Code requires the existence of reasonable suspicion to set justice in motion unless the case is a flagrant one. It is a crucial safeguard for the right to liberty and relevant to a determination of arbitrariness. However, the mass arrests conducted in the Amhara region, in 2022, constituted an arbitrary deprivation of liberty as the government used a general formulation with respect to the requirement of reasonable suspicion. In the absence of any specific statement, vague and general references cannot justify the reasonableness of suspicion.¹⁷³ It would have met the requirement if the government had inquired based on facts and evidence whether the person committed a crime, rather than making general assessments about everyone arrested.

There were clear instances that depicted mass arrests conducted in contravention of the requirement of reasonable suspicion. To begin with, arrested persons were detained for the mere reason that they were wearing a jersey featuring Zemene Kasse.¹⁷⁴ It cannot satisfy objective observers that the detainees committed a crime. An objective observer cannot say that those persons should be detained, for they wear the jersey of their hero. It reminds the researcher that

¹⁶⁹ Interviewee with Anonymous Former Detainees in Gayint Unofficial Place of Detention, June 26, 2023

¹⁷⁰ Interviewee with Anonymous Concerned Official in the Amhara Police Commission, July 3, 2023

¹⁷¹ *Ibid*

¹⁷² European Court of Human Rights, *Selahttin v. Turkey*, Application No. 14305/17, Judgment of 22 December 2020, Para.51, at < <https://hudoc.echr.coe.int/eng?i=001-207173>> (last accessed July 3, 2023)

¹⁷³ European Court of Human Rights, *Akgun v. Turkey*, Application No.19699/18, Judgment of 20 July 2021, at < <https://hudoc.echr.coe.int/eng?i=001-211233>> (last accessed July 3, 2023)

¹⁷⁴ Interview with Anonymous Former Detainees in Sebat Amit Prison Administration, June 27, 2023

in the years under TPLF, plenty of persons were arrested for hearing Teddy Afro, the popular Ethiopian pop star, or Fasil Demoz, a traditional Ethiopian singer. In cases mentioned above, there was no objective link between the suspect and the alleged crime; the arrest was rather based on feelings, prejudice, and instincts. Besides, the police mistakenly detained and released detainees for more than a month without judicial oversight.¹⁷⁵ Indeed, considering the time when the mass arrest was made and the war in the North was over, it is arduous to say that the arrest was made in line with the safeguard of reasonable grounds of suspicion. A government's failure to investigate basic fact constitutes a deprivation of liberty arbitrarily.

3.2.2 Arrest without a Court Warrant

Arrested persons stated the circumstances of the situation that they were arrested without a court warrant. For instance, a former detainee indicates:

While I was feasting on dinner with my family, around ten men wearing military, militia, and police uniforms popped up and said that I was under arrest. When I asked if they had a court warrant, they pointed their guns at me and ordered me to move quietly. They slapped me when I told them they had no right to arrest me without a warrant.¹⁷⁶

Although the right to liberty is subject to deprivation, it is safeguarded by the conditions that arrest should be carried out on such grounds and procedures as are established by law. Only under the circumstances specified in Articles 50 and 51 of Ethiopia's Criminal Procedure Code (CRPC) may an arrest be made without a warrant being issued. Otherwise, a warrant should be obtained before an arrest can be made. However, the arrested persons were detained without a court warrant. Issues may not be raised on the condition that the arrests were carried out under the conditions laid down in the CRPC. As a matter of principle, an arrest should be made with a warrant. The court would thoroughly investigate whether any facts necessitate the arrest of someone suspected of committing a crime. Arrest without a court warrant should be limited. It should be enacted carefully, for faulty articulation would guarantee the police unfettered power with which the right to liberty would easily be compromised. When a police officer arrests without a warrant, the issue mostly depends on the subjective satisfaction of the police officer.¹⁷⁷

¹⁷⁵ Interviewee with Anonymous Former Detainees in Gayint Unofficial Place of Detention, June 28, 2023

¹⁷⁶ Interview with Anonymous Former Detainees in Yet Nora Unofficial Place of Detention, June 28, 2023

¹⁷⁷ Avayaraji Singh, 'The Perils of Unlawful Detention and Arbitrary Arrest', *Journal of Law, Management and Humanity*, 2021, Vol. 4, No.5, P.178. [Here in after, Avavaraji, The Perils of Unlawful Detention]

In contrast, when a warrant is used to arrest, a legal authority applies its judgment to the facts and circumstances of the case.¹⁷⁸

It is impossible to say that the detainees were arrested in accordance with CRPC given the mass arrest without warrants. A genuine assessment should be conducted before arrest to determine whether a person can be arrested without a warrant. The assessment should be made in line with the grounds mentioned in the CRPC under which a person may be arrested with or without a court warrant. The detainees, however, were arrested in a way that compromised their liberty. Arresting persons contrary to the procedures set out in the law is unlawful and arbitrary detention. Since numerous persons were arrested without warrants or summons and kept in detention without a court order, the right to liberty was seriously invaded. As it stands, mass arrests without a warrant are inadmissible because of the pitfalls involved.

3.2.3 Failure to Inform the Reason for Arrest

Although the international and national instruments require the reason for arrest should be informed to the arrested person at the time of arrest, the key informants stated that they had been arrested without being told the reason for the arrest.¹⁷⁹ It is a procedural safeguard designed to protect the right to liberty. Whenever and wherever someone is arrested, he should be informed of the reason for his or her arrest. Informing or not informing the reason for the arrest is not a matter of discretion on the part of the government, for failure to do so constitute deprivation of liberty arbitrarily.

A significant objective of requiring that all arrested persons be informed of the reasons for their detention is to allow them to seek release if they find the reasons to be incorrect and unjustifiable in the eyes of the law.¹⁸⁰ In other words, a person who is informed of the reasons for his arrest if he deems it necessary, petitions to the court to contest the lawfulness of the detention. As the arrest was made without due consideration of the obligation to inform the reason for arrest, it undermined the right to challenge the lawfulness of the detention as well. Conversely, some interviewees stated no more than the crime allegation disclosed to them.¹⁸¹ Even in this situation, the government did not fulfill its obligations. Reasons for arrest must include not only the legal

¹⁷⁸ *Ibid*

¹⁷⁹ Interviewee with Anonymous Former Detainees in Wera Illu Unofficial Place of Detention, June 28, 2023

¹⁸⁰ Human Rights Committee, *Campbell V. Jamaica*, Communication No.248/1987, Judgment of 30 March 1992, Para.6.3, at<http://www.bayefsky.com/html/139_jamaica248vws.php> (last accessed July 6, 2023)

¹⁸¹ Interviewee with Anonymous Former Detainees in Tilili Unofficial Place of Detention, June 29, 2023

basis but also sufficient details to indicate the substance of the complaint, such as the wrongful act and the identity of the victim.¹⁸² Legal and factual grounds should have been provided. Thus, the arrest was arbitrary since it was not carried out in line with procedural safeguards, notably the right to be informed of the reason for the arrest.

3.2.4 Failure to Bring the Detainees before a Court within 48 Hours

Arrested persons said that they had been detained for weeks and months before appearing in court.¹⁸³ The FDRE constitution requires arrested persons to be brought before a court within 48 hours.¹⁸⁴ The time reasonably required to travel from the place of arrest to the court should not be taken into account when calculating the time.¹⁸⁵ A person who has been arrested must appear before the judicial authority so that the court can decide whether the arrest was lawful in the first place and whether or not the accused should be kept in custody until their case is resolved.

The court must decide swiftly regarding the necessity and legality of detention. The right is inherent and does not depend on the detainee's request.¹⁸⁶ No one may be held in custody pending an investigation or trial without court permission. When ordering pre-trial custody or turning down a release request, the court must justify. In other words, the court cannot simply decide in the sense that a judgment of staying in custody or release should be supported by evidence.

When there is a week or month delay between being arrested and appearing in court, it violates Article 19(3) of the FDRE constitution. Any delay longer than 48 hours must be exceptional and justified by the specific situation.¹⁸⁷ It would not be acceptable to justify traveling to court would take a week or a month. In the 2022 mass arrest incident, there is no doubt that the detainees were not promptly presented in court due to case logs and a messy situation, in which it was strenuous to pinpoint by whose order they were arrested.¹⁸⁸ Security forces had not arrested all

¹⁸² Human Rights Committee, *Ilombe and Shnadwe, V. Democratic Republic of Congo*, Communication No.1177/2003, Judgment of 17 March 2006, Para.6.2, at <<http://hrlibrary.umn.edu/undocs/1177-2003.html>> (last accessed July 7, 2023)

¹⁸³ Interviewee with Anonymous Former Detainees in Dangila Prison Administration, June 29, 2023

¹⁸⁴ FDRE Constitution, Article 19(3) and CRPC, Article 29(1)

¹⁸⁵ *Ibid*

¹⁸⁶ Human Rights Committee, Concluding Observations, Republic of Korea, CCPR/C79/Add.144, 1 November, 1999, Para.13

¹⁸⁷ WGAD, *Yara Sallam V. Egypt*, Opinion No. 15/2015, Adopted December 14, 2015, Para.46

¹⁸⁸ Interviewee with Anonymous Employee of the Amhara Police Commission, June 4, 2023

suspects, which is why they were not promptly brought before the court.¹⁸⁹ That was a naïve and absurd reason! Accepting such justification would open the road to invading liberty in every trivial matter. Arresting officers must bring the detainees before a court, not the privilege rests solely on their willingness. It is coupled with the requirement that the court should be independent and can assess the lawfulness of the detention and give appropriate orders, either to release or to stay in custody. In any case, it is not justified to ignore the right to be promptly brought before the court. It is an arbitrary encroachment on liberty when an arrest violates the procedural safeguard of bringing the arrested person promptly before a judicial authority.

3.2.5 Lack of Legal Base

Depriving liberty right requires a legal basis. An arrest that cannot be justified by any legal grounds constitutes an arbitrary deprivation of liberty. In the 2022 mass arrest case, there were arrests that cannot be justified by legal grounds.

3.2.5.1 Detention after Release Order

In some cases, despite a court order to release them, the arrested individuals revealed they had been arrested by the federal police.¹⁹⁰ No one should be arrested at the government's whim. As part of this, the government should have a legal basis, and arrests out of the blue are strictly prohibited. Authorities must invoke that legal basis and apply it through the court process.¹⁹¹ If the arrest lacks a legal basis, then it is undoubtedly arbitrary detention under category one of the Working Group's methods of work. Arbitrary deprivation of liberty occurred when those individuals were arrested in violation of a court order to release them. It is not only an arbitrary deprivation of liberty but also undermines judiciary's independence. The establishment of the court without obedience to its orders is insignificant. Such an act disregards the judicial system and undermines the rule of law. It sets a dangerous precedent for future cases and should be condemned.

The court's order was not obeyed on the ground that the federal government claimed that the detainees were suspected of committing terrorism. There is no doubt that terrorism-related crimes are within the federal government's judicial jurisdiction. It must be noted, however, that

¹⁸⁹ Interviewee with Anonymous Official of Amhara Peace and Security Bureau, July 5, 2023

¹⁹⁰ Interviewee with Anonymous Former Detainees in Sebat Amit Prison Administration, June 29, 2023

¹⁹¹ WGAD, Concerning *Tran Thi Nag(Viet Nam)*, Opinion No. 75/2017, Opinion Adopted 24 November 2017, A/HRC/WGAD/2017/75, Para.35

regional courts have delegation power unless federal courts are established in the region.¹⁹² Constitutional delegation cannot be negated by the wishes of some officials. A constitutional revocation of the delegation is required.

3.2.5.2 Detention for Non-criminal Act

There are indications that the mass arrest was not related to criminal acts. One respondent noted, “although they (officials) did not tell us the reason why we were detained at the time of arrest, over time, we figured out that we had been arrested for the reason of supporting Fano in the region.”¹⁹³ “We indeed adore them (Fano) dearly as they are our cherished children, brothers, and sisters.”¹⁹⁴ Who else anticipated that he would be arrested for backing Fano? The answer to this question is to the negative. Hence, the arrests lacked predictability, which is an integral component of arbitrariness. Love and care for family are not taboo and criminal acts. Furthermore, it constituted unlawful detention since the Criminal Code does not explicitly prohibit giving hands to Fano.

Legality is the heart or the cardinal principle of criminal law. It aims to protect individuals from the unguided power of the government. The principle of legality requires that all criminal proceedings be conducted in line with established legal procedures. No one should be detained for an act, which was not a crime at the time of commission or omission of the act. It is something unreasonable to arrest persons for the reason of adoring Fano in their hearts. It is personal to choose what and whom you love in your heart regardless of government affiliation. What the ruling party did was a clear manifestation of its oppression. Hence, the detention violated the principle of legality and had no legal basis.

3.2.5.3 Substituted Arrest

Some arrested persons were detained for their family members who were suspected of committing a crime.¹⁹⁵ Criminal liability is inherently personal. It is, *inter alia*, the cardinal principle of criminal law. The liability or the accusation cannot be transferred to close relatives. In such a case, actions taken by the law enforcement organs would be arbitrary provided that they detained a person who did not do anything about the alleged crime. To ensure the right to liberty, the principle of legality must be strictly adhered to. There is no clear provision in the

¹⁹² FDRE Constitution, Article 78(2)

¹⁹³ Interviewee with Anonymous Former Detainees in Merawi Prison Administration, June 29, 2023

¹⁹⁴ *Ibid*

¹⁹⁵ Interviewee with Anonymous Former Detainees in Fogera Woreda Prison Administration, June 30, 2023

Criminal Code that allows the police to arrest a person as a substitute for their family members. It is inconceivable as it would defeat the pillars of modern criminal law and erode liberty. Detention must be employed as a last resort for legitimate purposes. In *Daniel Monguya v. Zaire*, the Human Rights Committee held that the fact that the victim had been detained for about 16 months to force him to disclose about his brother constituted a deprivation of liberty arbitrarily.¹⁹⁶ Consequently, the arresting officers lacked legal grounds to arrest persons for the reason that they were relatives of the suspect. It was an arbitrary deprivation of liberty as detention lacked an element of predictability.

3.2.5.4 Detention Regardless of Prohibition of Pre-trial Detention

Some detainees expressed that they were detained for disseminating dissenting views than what the ruling party narrated in its media.¹⁹⁷ The Ethiopian Media Law prohibits detention before the trial of those accused of crimes committed through the media.¹⁹⁸ It mandates that criminal cases involving alleged media-related offenses be investigated without the subject in detention. The Media Proclamation authorizes this special protection or ban on pre-trial detention for the media and anyone exercising their right to freedom of expression for various reasons. To begin with, in the construction of a democratic system, it is imperative to ensure freedom of expression, freedom of the press, the free flow of ideas, and opinions and freedom of media workers from undue control and influence.¹⁹⁹ As a crime committed through the media is recorded in writing, audio, or video, there is no reason for a person to be in custody for further investigation.²⁰⁰ In Ethiopia's oppressive political history, political violence against the media was used as a tactic for further criminal investigation.²⁰¹

The arrest of journalists regardless of the Media Proclamation prohibiting pre-trial detention not only constituted arbitrary deprivation of liberty but also defeated the very purpose of the proclamation. In particular, the government did not have legal grounds to detain those persons entitled to special protection under the Media Proclamation while the investigation was still

¹⁹⁶ Human Rights Committee, *Daniel Monguya v. Zaire*, Communication No. 16/1997, Judgment of 25 March 1983, Paras.20-21, at <<http://hrlibrary.umn.edu/undocs/newscans/16-1977.html> > (last accessed July 10, 2023)

¹⁹⁷ Interviewee with Anonymous Former Detainees in Sebat Amit Prison Administration, June 29, 2023

¹⁹⁸ Media Proclamation, Federal *Negarit Gazeta*, Proc. No. 1238/2021, Article 68(1)

¹⁹⁹ "Press Freedom and Pre-Trial Detention", at <<https://ehrc.org/press-freedom-and-pre-trial-detention/> > (last accessed July 11, 2023)

²⁰⁰ *Ibid*

²⁰¹ *Ibid*

ongoing. In 2018, Abiy Ahmed ordered the release of political prisoners, including journalists, with the promise of allowing them to operate freely, which was one of the major reasons for him winning the Nobel Prize, but actions speak louder than words.

3.2.5.5 Detained by Persons without Legal Authority

During the mass arrest conducted in the Amhara region, militias and employees of the security bureau detained persons.²⁰² The right to liberty guarantees freedom from unlawful and arbitrary deprivation of liberty. Although it is not an absolute right, deprivation should be carried out in accordance with the procedure and grounds established by law. Mere compliance with the procedure is not self-sufficient; the arresting person should have legal authority to take the detainee into custody.

Arrested by persons without legal authority is undoubtedly an intrusion into liberty, undermining the axiomatic principle that liberty right should be deprived in a limited and exceptional manner. Arbitrariness exists when persons act in inappropriate manner, which is a measure of their inappropriate action. The act was inextricably linked with the duly recorded identity of the arresting officers. In short, effecting detention without legal authority renders the deprivation of liberty arbitrary as the militia and employees of security did not have legal grounds to do so.²⁰³ It is a manifestation of abuse of authority and overstepping of mandate.

3.2.6 Unofficial Place of Detention

Arresting officers should hold the suspects in a place officially recognized as a place of detention to guarantee effective protection for detained persons.²⁰⁴ In registers accessible to those concerned, including relatives and friends, a list of incarcerated persons' names, places of detention, and persons responsible for their detention must be kept.²⁰⁵ In order to prevent torture and ill-treatment, keeping accurate records of the deprivation of liberty is a requirement for exercising due process rights, including the right to challenge the lawfulness of the deprivation

²⁰² Interviewee with Anonymous Former Detainees in Gayint Unofficial Place of Detention, June 29, 2023

²⁰³ WGAD, *Emile Bisimua V. Democratic Republic of Congo*, Opinion No. 25, 2015, Adopted September 3, 2015, Para.27, at < <https://digitallibrary.un.org/record/3932546?ln=en> > (last accessed October 2, 2023)

²⁰⁴ UN Human Rights Committee, General Comment No.20, Article 7(Prohibition of Torture, Or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, at < <https://www.refworld.org/docid/453883fb0.html> > (last accessed October 2, 2023)

²⁰⁵ *Ibid*

of liberty and the right to appear before a judge as soon as possible.²⁰⁶ The state party shall ensure that no one is detained in unofficial facilities and enact penalties for those responsible for detaining persons outside of authorized detention facilities.²⁰⁷

Conversely, arrested individuals stated they were held in non-official detention centers such as Yet Nora,²⁰⁸ Tili, ²⁰⁹ Gayint,²¹⁰ and Wera Ilu.²¹¹ The right to be free from arbitrary arrest is completely negated when someone is held in unauthorized detention facilities.²¹² Consequently, the procedural safeguards of liberty are violated.²¹³ In essence, it effectively removes detainees from legal frameworks and renders international instruments meaningless, including habeas corpus.²¹⁴ Apart from that, unofficial detention centers facilitate torture, inhumane and degrading treatment.²¹⁵ Detention in large-scale concentration camps heartens infringement of fair trial rights, which in turn jeopardizes the right to liberty. Freedom from unlawful and arbitrary deprivation of liberty requires detainees to be detained in a formal place of detention.

3.2.7 Incommunicado Detention

The researcher was informed that family visits were prohibited for detained individuals.²¹⁶ As the name suggests, incommunicado detention refers to the deprivation of liberty in which a detainee's communication with other human beings is either highly restricted or nonexistent.²¹⁷ Rarely if ever, would a few days of being kept without communication after an arrest amount to a breach of due process rights.²¹⁸ Before detention is considered arbitrary, the WGAD asserts the detainees must have been incommunicado for approximately two weeks.²¹⁹ It raises the question

²⁰⁶ UN Subcommittee on Prevention and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report on Honduras, CAT/OP/HND/1, Para.144

²⁰⁷ Committee against Torture, Concluding Observation on Rwanda, CAT/C/RWA/1, Para.11

²⁰⁸ Interviewee with Anonymous Former Detainees in Yet Nora Unofficial Place of Detention, June 28, 2023

²⁰⁹ Interviewee with Anonymous Former Detainees in Tili Unofficial Place of Detention, June 28, 2023

²¹⁰ Interviewee with Anonymous Former Detainees in Gayint Unofficial Place of Detention, June 29, 2023

²¹¹ Interviewee with Anonymous Former Detainees in Wera Ilu Unofficial Place of Detention, June 29, 2023

²¹² European Court of Human Rights, *Kurt V. Turkey*, Application No.15/1997/799/1002, Judgment of 25 May 1998, Para.124, at <<https://www.refworld.org/cases,ECHR,49997ae512.html>>(last accessed October 4, 2023)

²¹³ *Ibid*

²¹⁴ Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, A/HRC/13/42, P.4

²¹⁵ *Id*, P.6

²¹⁶ Interviewee with Anonymous Former Detainees in Tili Unofficial Place of Detention, June 29, 2023

²¹⁷ Jared Genser, *The UN Working Group on Arbitrary Detention: Commentary and Guide to Practice*, 1th ed, Cambridge University Press, United Kingdom, 2020, P. 244. [Here in after, Jared, *Arbitrary Detention*]

²¹⁸ *Id*, P.245

²¹⁹ WGAD, *Jose Gabriel et al V. Peru*, Opinion No.50/1993, Adopted September 30,1993, Para.5

of whether even short periods of incommunicado detention should be allowed since torture, ill-treatment, and enforced disappearance are particularly at high risks.²²⁰

Incommunicado detention constitutes the most egregious transgression of the norm protecting the right to liberty of human beings under customary international law.²²¹ This type of liberty deprivation is inherently arbitrary as the individual is left without legal protection.²²² Detainees held incommunicado would be denied access to legal counsel, their families, and judicial hearings, so they lack all potential avenues for challenging their detention. It may also facilitate or even constitute torture or other cruel, inhuman, or degrading treatment.²²³

As the detainees were prohibited from being visited by their families for protracted weeks or months, it constituted an arbitrary deprivation of liberty. Even those held incommunicado for a week cannot be justified since they did not have access to legal counsel. It is permissible to detain someone incommunicado for a week on the condition that there are exceptional circumstances that call for it, they have access to legal representation, and precautions are made to ensure their physical and mental well-being.²²⁴ Thus, as it was not done in compliance with the conditions that would permit incommunicado detention for a week, the mass arrest undoubtedly constituted an arbitrary deprivation of liberty. The more protracted incommunicado detention, the more challenging it is to identify where the person is, or the more limited it is to be represented by a lawyer and to challenge the lawfulness of the detention. This can also lead to the violation of fair trial rights, which render the deprivation of liberty arbitrary. In sum, incommunicado detention can have a devastating effect on human rights, particularly leading to the violation of the right to freedom from unlawful and arbitrary deprivation of liberty.

3.2.8 Enforced Disappearance

According to the arrested individuals, they had disappeared and their whereabouts had not been known for more than a week.²²⁵ Enforced disappearance is a grave violation of human rights.²²⁶

²²⁰ Human Rights in Administration of Justice, Para.211

²²¹ Human Rights Council, Report of the Working Group on Arbitrary Detention, A/HRC/22/44, December 24, 2012, Para.60

²²² *Ibid*

²²³ *Ibid*

²²⁴ WGAD, *Mikel Egiber V. Spain*, Opinion No. 26/1999, Adopted November 29, 1999, Para.10-11

²²⁵ Interviewee with Anonymous Former Detainees in Metema Town, June 29, 2023

No one shall be subjected to enforced disappearance; nothing such as a state of war, threat of war, internal political instability or any other public emergency may not be invoked as a justification for enforced disappearance.²²⁷ It involves abandoning a person's liberty regardless of the form of deprivation, refusing to acknowledge the deprivation, concealing the fate of the person, and placing them outside legal protection.²²⁸

Although Ethiopia is not a party to the Convention on Enforced Disappearance, it violates numerous rights incorporated into the ICCPR. It jeopardizes the right to life, the right to personal integrity, the right not to be arbitrarily deprived of one's liberty, the right to protection by the law, and the right not to be subjected to torture, cruel, inhuman, and degrading treatment.²²⁹ As per the FDRE constitution, enforced disappearance may be part of a crime against humanity.²³⁰ Criminal liability shall not be barred by the statute of limitations and may not be commuted by amnesty or pardon.²³¹ The practice of enforced disappearances renders the deprivation of liberty arbitrary, for it places the detainees beyond or outside the protection of the law. A single failure or denial of procedural safeguards constitutes arbitrary deprivation of liberty let alone placing the detainees totally out of the protection of the law. The government should set up mechanisms to ensure that enforced disappearances do not take place and that perpetrators are brought to justice. The Human Rights Committee held that Article 9 of the ICCPR was violated in cases where individuals had been made to disappear.²³²

3.2.9 Arrest in Contravention with Guaranteed Right

Arrested persons stated that they were arrested for criticizing the release of Abahoyi Sibhat Nega and that the way the Prosperity Party handled human rights.²³³ Indeed, freedom of expression includes the freedom to hold opinions, receive, and impart information and ideas without

²²⁶ Maria Clara, *The Work of the Committee on Enforced Disappearances; Achievement and Jurisprudence Ten Years After the Entry Into Force of the International Convention for the Protection of All Persons from Enforced Disappearances*, 2021, P.6. [Here in after, Maria, *Enforced Disappearance*]

²²⁷ *Ibid*

²²⁸ International Convention for the Protection of All Persons from Enforced Disappearances, Adopted and Proclaimed by General Assembly Resolution 47/133 of 23 December 2010, Article 2.

²²⁹ Gabriella Citroni et al, *A Guide to the International Convention for the Protection of All Persons from Enforced Disappearances*, P. 6. [Here in after, Gabriella et al, *A Guide*]

²³⁰ FDRE Constitution, Article 28

²³¹ *Ibid*

²³² Human Rights Committee, *Basilio Laureano V. Peru*, Communication No.540/1993, Judgment of 25 March 1996, Para.8.1, at < <http://hrlibrary.umn.edu/undocs/540-1993.html> >(last accessed October 8, 2023)

²³³ Interview with Anonymous Former Detainees in Sebat Amit Prison Administration, June 29, 2023

interference from the government and regardless of frontiers.²³⁴ Although freedom of expression is a fundamental right, it is a qualified right and may, under some circumstances, be restricted. The restriction must be in accordance with laws, must serve legitimate aims like protection of national security, public order, public health, and respect for the rights of others and the restriction must be proportionate.²³⁵ Any restriction on freedom of expression should adhere to these parameters.

The mass arrest constituted arbitrary detention as it resulted from the mere exercising of their rights without fulfilling conditions limiting freedom of expression. Freedom of expression is stifled and marked by intimidation, arrest, and torture. These practices further perpetuate a cycle of human rights violations, creating a culture of fear and intimidation. What is even worse is the fact that media equipment has been stolen. The ruling party arrested persons for exercising their rights, specifically freedom of expression in order to silence dissenting views. In such a situation, it is unthinkable to build a multi-party political system under which diverse voices are heard that would play a decisive role in the democratization and promotion of human rights. It has a chilling effect on people's freedom of expression, leading to silencing opposition voices and creating a monopolization of power.

3.2.10 Denial of Fair Trial Rights

The partial or total non-observance of norms relating to fair trial rights constitutes a deprivation of liberty arbitrarily. In the 2022 mass arrest case, arrest was carried out without observance of fair trial rights.

I. Prejudicial Statement

Arrested persons stated that government officials had made prejudicial comments against them in the media and during public meetings before detention. While the right to liberty mainly focuses on freedom from unlawful and arbitrary detention, it coincides with the right to the presumption of innocence. To put it differently, the right to liberty implies the right to the presumption of innocence as failure to maintain the latter constitutes arbitrary deprivation of liberty under category III of methods of work.

²³⁴ ICCPR, Article 19(2)

²³⁵ *Id.*, Article 19(3)

The Prime Minister made statements to Ethiopia Broadcast Corporation (EBC) that Fano killed soldiers of the Ethiopia Defense Force and took their guns. Likewise, officials of the Amhara Prosperity Party in media and public meetings, labeled Fano as criminals who committed various acts of crime. It is understood that the presumption of innocence is the axiomatic right of the suspect. The public prosecutor should prove the charge beyond a reasonable doubt, and the benefit of all reasonable doubts should be given to the suspect. The prosecutor must present sufficient evidence to prove the case. The evidence must be relevant, reliable, and convincing. The charge should be dismissed and the suspect should be found not guilty if there is a reasonable doubt. As implied by the right, no one should label the suspected person as a criminal before conviction by an independent and impartial tribunal. The dissemination of information declaring the suspect a criminal or attributed with similar phraseology before a trial undermines the presumption of innocence, which in turn, jeopardizes fair trials. It could create bias and prejudice in the minds of those who are assessing the case, which would hurt the outcome of the trial.

According to the Human Rights Committee, public authorities must refrain from prejudging the outcome of a trial, including refraining from publicly affirming the guilt of the accused.²³⁶ Statements that undermine the right to a presumption of innocence were made in the media. Of course, the media would play an immense role in reporting information about the crime and the crime preceding it, which would therefore contribute to the fair administration of the criminal justice system. However, the media must refrain from airing, printing, publishing, and reporting prejudicial pretrial statements that label the suspect as a criminal, dangerous person, or terrorist. The researcher repeatedly observes that a series of documentaries like ‘Addis Ababa ende Bagidad’, ‘Jahadwi Harrakit’, ‘Agony of Justice’, and Illusion have been aired in media owned by the ruling party during the reign of TPLF and Prosperity Party which portray the criminality of the suspect before conviction by the court. Overall, when officials publicly condemn individuals before conviction, WGAD considers that arrest constitutes an arbitrary deprivation of liberty.²³⁷

²³⁶ HRC, General Comment No. 32, CCPR/C/GC/32, 23 August 2007, Para.30

²³⁷ WGAD, *Egypt v. Ola Yusuf and Hosam al Din Khalaf*, Opinion No. 26/2018, A/HRC/WGAD/2018/26, Para.64, at <https://undocs.org/A/HRC/WGAD/2018/26>(last accessed October 15, 2023)

II. Denial of Representation

It is critical to the deprivation of liberty that prisoners have the right to be heard in person or, if necessary, through a form of representation.²³⁸ In particular, prisoners' appearance can be considered as a means of ensuring equal arms, one of the principal safeguards inherent in legal proceedings conducted under the convention of ECHR.²³⁹ That is, the right is a logical extension of the principle of equality of arms. Arrested persons stated that they had not been represented at the outset of custody.²⁴⁰ Suspects should have access to legal representation swiftly after being taken into custody by the police.²⁴¹ Regardless of whether the person remains silent, lawyers must be available at the beginning of custody and throughout the whole process.²⁴² Taking away an accused's right to defense limits his right to defense, resulting in a procedural imbalance that leaves him vulnerable to punishment. Legal representation can assist the detainee in understanding charges, the legal process, and possible consequences. It would have an immense role in making proceedings fair, for the government has the required resources both material and human.

It is imperative that a suspected person must be represented without a doubt. Detainees who cannot afford representation should have access to public defenders at no cost. It is the government responsibility to ensure that the rights of the suspected persons are not infringed upon. Representations should be practical and effective rather than purely theoretical. The sole purpose of doing so should not be to comply with procedural requirements. It would amount to not having technical legal representation if that were the case. Since they were held incommunicado, they could not access lawyers right away. In *Maria Chin Abdullah v. Malaysia*, the WGAD held that forty-eight hours delay is a violation of the right to consult with lawyers.²⁴³ Similarly, the mass arrest in Amhara region in 2022 was arbitrary, as the detainees did not have access to lawyers from the outset of their arrests under category III of WGAD's method of work.

²³⁸ European Court of Human Rights, *Kampanis v. Greece*, Application No. 19977/91, Judgment of 13 July 1995, Para. 47

²³⁹ *Ibid*

²⁴⁰ Interview with Anonymous Former Detainees in Wera Illu Unofficial Place of Detention, June 29, 2023

²⁴¹ European Court of Human Rights, *Dayanna v. Turkey*, Application No. 7377/03, Judgment of 13 October 2009, Para.31, at < <https://hudoc.echr.coe.int/eng?i=001-95015> > (last accessed October 19, 2023)

²⁴² *Id*, Para. 33

²⁴³ WGAD, *Maria Chin Abdullah v. Malaysia*, Opinion No.50/2017, Adopted 23 August 2017, Para.65

III. Torture and Degrading Treatment

Arrested persons stated that they were tortured, detained in overcrowded places and lacked sanitation.²⁴⁴ The right to be free from torture is recognized under international instruments. It is an absolute right, attaining the status of *jus cogens*. Inflicting torture on a person cannot be justified by an emergency measures or utilitarian acts. Every person should be free from torture under all circumstances. It cannot be restricted or limited in any manner. Torture is a violation of human rights and cannot be justified. It is an extreme form of violence that can cause physical and psychological trauma, and should never be used under any circumstances.

Whenever credible evidence of torture is found, the detainee's ability to prepare a defense is compromised.²⁴⁵ In the event of torture, equality between all parties is undermined before proceeding. It is primarily for obtaining evidence that the government tortures detained individual. It is clear that evidence extracted through torture violates the right to a fair trial. The partial or total observance of international norms relating to fair trial rights constitutes arbitrary deprivation of liberty under category III of WGAD's method of work. The admission of statements obtained through torture renders the proceeding completely unfair. It is like using a crooked ruler to measure something: no matter how accurate the rule is, any result would be skewed. Since they were detainees who were tortured due to measures taken by PP, deprivation of liberty constituted arbitrary as the act undermined fair trial rights and jeopardized the right to be free from self-incrimination. As a matter of due process law, suspects should not be forced to testify against themselves.

There was strenuous breathing, inadequate food, and poor sanitation in the concentration camps where the suspects were held.²⁴⁶ The treatment they received was below standard. In other words, the detainees were treated in a degrading manner. Degrading treatment is clearly against the detainees' dignity. It includes the use of physical and verbal abuse, solitary confinement, and other forms of humiliation. Such treatment undermines the inherent worth of the detainees and can have a long-term detrimental impact on their mental and physical well-being. In sum, torture and degrading treatment render the deprivation of liberty arbitrary.

²⁴⁴ Interviewee with Anonymous Former Detainees in Wera Illu Unofficial Place of Detention, June 29, 2023

²⁴⁵ WGAD, *Wag Quanzhang et al v. China*, Opinion No. 62, 2018, Adopted October 12, 2018, Para.78

²⁴⁶ *Supra* note 244, Interviewee with Former Anonymous Detainees in Wera Illu, June 29, 2023

3.2.11 Discrimination

Every person is equal before the law and has the right to equal protection under the law.²⁴⁷ The principle of non-discrimination along with equality before the law and equal protection under the law could have an overwhelming role in the protection of human rights.²⁴⁸ As per Article 2, Paragraph 1, a state party to the ICCPR has an obligation to respect and uphold the rights recognized in the Covenant for all individuals regardless of their race, color, sex, language, political opinion, social origin, or other status.²⁴⁹ States parties are obligated to take all necessary measures to ensure the effective enjoyment of the right.

In contrast, persons who were arrested following what the government called a law enforcement order stated that the arrest was politically motivated owing to their political outlook.²⁵⁰ It was discrimination based on political views to deprive someone of their liberty because they exercised their political right.²⁵¹ In particular, they were arrested because they criticized the PP for not protecting the Amharas in the Oromia region as several of them were killed, injured, and displaced due to their ethnicity. Let alone bringing the offenders before the court, even the government kept silent to release any press statement about the situation. As soon as arrested individuals began speaking, the government arrested them. The government is then suppressing the voices of the people, seeking to control the narrative and silence any dissent. It is a clear sign of the government's disregard for human rights. It is like a puppeteer manipulating strings to create a narrative that reinforces their control and leaves little room for alternative opinions. An arrest solely on a prohibited ground of discrimination is arbitrary under category V of the Working Group's method of work.

3.2.12 Denial of the Right to Challenge the Lawfulness of Detention

The right to challenge the lawfulness of detention is an integral component of the right to liberty, for if a person is detained arbitrarily, he or she can contest the lawfulness of the detention before the court. However, lawyers stated that detainees were denied the right to challenge the lawfulness of their detention.²⁵² It is a remedy for arbitrary deprivation of liberty and is not

²⁴⁷ ICCPR, Art. 26

²⁴⁸ UN Human Rights Committee, General Comment No.18: Non-Discrimination, 10 November 1989, at< <https://www.refworld.org/docid/453883fa8.html>> (last accessed October 25, 2023)

²⁴⁹ *Ibid*

²⁵⁰ Interviewee with Anonymous Former Detainees in Gayint Unofficial Place of Detention, June 29, 2023

²⁵¹ WGAD, *Thrumurugan Gandhi v. India*, Opinion No. 88/2017, 23 January 2018, Para. 43

²⁵² Interviewee with Anonymous Lawyers of the Detainees, October 5, 2023

barred by a period of limitation. Unlike the right to be brought before a court within 48 hours, habeas corpus is not an automatic right. The state party to the Convention should provide an effective habeas corpus remedy.

As the detainees were held *incommunicado*, it was arduous for them to contest the lawfulness of their detention. The Human Rights Committee stated that *incommunicado* detention undermines the right to challenge the lawfulness of one's detention.²⁵³ Besides, the fact that the detainees were not brought to a court within 48 hours, detained for more than a month, and released without appearing in court contributed to an infringement of the writ of habeas corpus. To put it differently, contesting the lawfulness of the detention is impossible when the detainees are not brought before a court and held *incommunicado*.

Failure to inform the reason for the arrest was also a hindering factor in challenging the lawfulness of one's detention. Detained persons cannot exercise their rights effectively unless they are promptly and adequately informed about the reasons for their detention.²⁵⁴ A detainee's right to habeas corpus is violated without legal counsel during their detention.²⁵⁵ The writ of habeas corpus has direct links with the procedural safeguards of liberty right. The infringement of those procedural safeguards such as the right to be informed of the reasons for detention, the right to be brought promptly before a judicial authority and the right to be represented by a lawyer render the writ of habeas corpus impossible.

In sum, the mass arrest was not carried out on such grounds and procedures established by law. The detainees did not benefit from the procedural safeguards of the right to liberty that render deprivation of liberty arbitrarily. They were held *incommunicado* in informal detention facilities. The mass arrest was *prima facie* arbitrary, for persons were detained in situations where the government cannot invoke legal grounds that justify deprivation of liberty. Detainees were detained for exercising guaranteed rights, notably the right to freedom of expression. They did

²⁵³ Human Rights Committee, *Guillermo Ignacio Dermis Barbato v. Uruguay*, Communication No. 84/1981, Judgment of 21 October 1982, Para. 10, at < <http://hrlibrary.umn.edu/undocs/newscans/84-1981.html> > (last accessed November 2, 2023)

²⁵⁴ European Court of Human Rights, *Vander Der Leer v. The Netherlands*, Application No.12/1988, Judgment of 21 February 1990, Para.28, at < <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57620%22%5D%7D> > (last accessed November3, 2023)

²⁵⁵ Human Rights Committee, *Berry v. Jamaica*, Communication No. 330/1988, Judgment of 7 April 1994, Para, 11.1, at < <http://hrlibrary.umn.edu/undocs/html/vws330.htm> > (last accessed November 3, 2023)

not benefit from fair trial rights that undermined the equality of parties and constituted an arbitrary deprivation of liberty. The arrest was politically motivated as they were detained on the grounds of their political outlook.

3.3 The Authority to Conduct Mass Arrests of 2022 in the Amhara region

Amahra's Police Commission assessed the mass arrests of 2022 conducted in the region.²⁵⁶ It was noted in the report that the government's measure lead to a great success.²⁵⁷ Aside from that, regular law enforcement agencies would not have been able to carry out the measures.²⁵⁸ Had it been such a genuine assessment, an emergency decree should have been proclaimed. Even so, in any situation, arbitrary deprivations of liberty cannot be justified. The researcher finds it surprising that the command post was set up. Despite not having the authority to restrict rights, it did so anyway. The mass arrests were conducted under the strict order of Prime Minister Abiy Ahmed.²⁵⁹ As the Council of Ministers has the power to enact regulations to maintain law and order, the establishment of a command post would not have been an issue if an emergency decree had been issued.²⁶⁰ Despite what the government claimed, it created deep fissures within the people. In some cities, protests were held. Several protesters were killed and injured by government forces during the dispersal efforts.

No one would think of setting up a command post without first declaring an emergency decree. An emergency decree should have been used in the conception and delivery of the command post. However, even city administrations established command posts and restricted residents' rights without legal basis. Legal grounds for establishing a command post aside, rights should have been restricted according to legality, necessity, and proportionality. Although maintaining peace and security is a minimal duty of the government, it should be done lawfully, not arbitrarily, as human rights would be at stake. Despite this, an emergency decree and a regular enforcement procedure were not in place to support the mass arrest, which was carried out without authority. The act was a clear violation of liberty right and a misuse of power.

²⁵⁶ Amhara Police Commission, Report on the Mass Arrests, 2022, PP. 2- 10

²⁵⁷ *Ibid*

²⁵⁸ *Ibid*

²⁵⁹ Supra note 145, Interviewee with Anonymous Concerned Official of Amhara Police Commission, July 3, 2023

²⁶⁰ FDRE Constitution, Article 93(4)

Using the excuse of peace and security, the ruling party infringed on the rule of law. Every decision was made according to the wishes and whims of Abiy Ahmed, commonly known as rule by men. It is daunting to maintain a check and balance, ensuring accountability so long as a de facto rule by men exists in the country, and therefore the protection of human rights, particularly the right to liberty is questionable. This has created a state of uncertainty and fear, where citizens cannot trust the government to act in their best interests, and has caused further instability. Although the ruling party claimed success regarding mass arrests, it cannot justify the way the detainees were deprived of their liberty arbitrarily. The end cannot justify the means. The ends can never justify the means, no matter how great the desired outcome may be.

The deed of Abiy Ahmed and his party depicts Ethiopia's political culture. The politics revolve around cursing the past and praising the present. Sadly, Ethiopia had a political outlook battle even over word pronunciation. Politics faces the senile problem of chronic delusion disorder under which entertaining a real plurality of voices is hard to imagine.²⁶¹ There is a strong resemblance between this political culture and that of Russell Prime 100 Serious Movies, season 6, where he was the king of Sanctum. He developed the technology that allowed the Primes to live for centuries, by hijacking bodies and presenting themselves as immortal gods to the Sanctum people. It needs a flash of magic to guard persons from unlawful and arbitrary deprivation of liberty. Hence, the mass arrest conducted in the Amhara region seems to be the result of such a political culture that is accustomed to crippling society.

3.4 The Role of the Judiciary and other Stakeholders Regarding Suspected Persons' Rights

Governmental and non-governmental organizations have an immense role for the protection and promotion of human rights. In the 2022 mass arrest incident, organs that work on human rights denied access to visit to carry out their tasks.

3.4.1 Court

Judicial control is essential to the protection of the right to liberty. The court scrutinizes whether a person is not deprived of his or her liberty arbitrarily. It is also the inherent power of the court to examine and give appropriate orders with regard to remedies for arbitrary deprivation of

²⁶¹ Sebisbe Alemineh, *The Nation's Identity Delusion*, 2019, PP. 97-112. [Here in after, Sebisbe, *The Nation's Identity*]

liberty: the right to compensation and the right to habeas corpus. The power of the court is visible in two scenarios: automatic application that refers to the right to be brought within 48 hours and claim by interested parties that purports to remedy of unlawful deprivation of liberty.

The Judges were not concerned with the lawfulness of the detention but only with remand issues when the detainees were presented.²⁶² The judges do not have a thorough understanding of the lawfulness and arbitrariness of arrests.²⁶³ Judges familiar with the notion were hesitant to address the issue, since there is no clear law that permits them to look into how the arrest is conducted.²⁶⁴ The detainees remained helpless and without any legal remedy for the unlawfulness of their detention.

In cases where the court fails to scrutinize the lawfulness of a detention upon the presence of detainees, it is an infringement of their rights to liberty. Procedural safeguards, particularly the right to be brought within 48 hours, enables the court to examine whether the arrest was made in accordance with the law and make an appropriate order. It is not worthwhile bringing the detainees before a court, entertaining remand, and other matters without dealing with and giving an order in respect of the lawfulness of one's detention. An absence of judicial oversight would make it difficult to protect the right to liberty. A court is the appropriate body that can determine whether the detention is lawful or not. Without judicial oversight, the detainees' right would be at risk. In the case of *Medvedyev and others v. France*, the European Court of Human Rights held that the right to be brought before a court within 48 hours provides an important measure of protection against arbitrary behavior, incommunicado detention, and ill treatment.²⁶⁵ If the judiciary does not give an order concerning lawfulness of one's detention, it cannot be considered as independent organ.²⁶⁶

Giving the power to the public prosecutor to scrutinize the lawfulness and arbitrariness of one's detention would raise the issue of the competence of the organ, as it is the government wing. It is

²⁶² Interviewee with Anonymous Judges on criminal bench, December 5, 2023

²⁶³ *Ibid*

²⁶⁴ *Ibid*

²⁶⁵ European Court of Human Rights, *Medvedyev and others v. France*, Application No.3394/03, Judgment of 29 March 2010, Para.118, at< <https://www.refworld.org/cases,ECHR,502d45dc2.html> > (last accessed December 5, 2023)

²⁶⁶ European Court of Human Rights, *Assenov and others v. Bulgaria*, Application No. 90/11997/874/1086, Judgment of 28 October 1998, Para. 146- 148, at< <https://caselaw.ihrda.org/en/entity/ok77zua4560?page=1> > (last accessed December 5, 2023)

something irony that the executive organ has the power to arrest and examine whether detentions are lawful and arbitrarily conducted. It is especially true when an arrest is politically motivated. An independent organ should examine the matter. It might be okay so long as the public prosecutor works on the issue alongside the court, for the organ may release those who were deprived of their liberty before they appear in court. In such a case, the public prosecutor would overcome the courts 'workload. However, taking away the inherent power of the court to public prosecutors is unconstitutional and unacceptable.

3.4.2 Public Prosecutor

Public prosecutors represent criminal matters unless the case is private upon complaint. It is said that public prosecutors represent the public interest, and therefore they have the entitlement to carry out the tasks that have been listed in Article 40-42 of the Criminal Procedure Code. Although the competence and impartiality of the organ are questionable, public prosecutors are entitled to visit the detainees and examine the lawfulness of the detention.²⁶⁷ They may order the release of the detainee on the condition that they firmly believe that the detainee was deprived of his or her liberty unlawfully.²⁶⁸

The public prosecutor did not perform its mandate of visiting the detainees and giving an appropriate order concerning the lawfulness of one's detention despite the mass arrests that were conducted in the region.²⁶⁹ It was believed that the detainees were suspected of committing crimes that fall under federal jurisdiction, coupled with the messy situation, making handling the matter difficult.²⁷⁰ It is a clear infringement of its mandate, jeopardizing suspected persons' rights. Had the public prosecutors performed their mandate, arrested persons who were detained owing to what the ruling party called law enforcement orders would have been released even before their appearance in the court. It is so because the detainees were unlawfully and arbitrarily deprived of their liberty.

As the mass arrest was politically motivated, no one would be wondering why the public prosecutor did not perform its task, which would have been of paramount importance to the rights of the suspected person because the public prosecutor is an executive organ. It is absurd

²⁶⁷ Attorney General Establishment Proclamation, 2018, Zikire Hig, Proc. No.263, Art.6(10)(e)

²⁶⁸ *Ibid*

²⁶⁹ Interviewee with Anonymous Amhara General Public Attorney, December 6, 2023

²⁷⁰ *Ibid*

that an executive organ conducts arrest and scrutinizes whether the detention is lawful. It defeats the functional separation of power proposed by Montesquieu. The organ, which is entitled to examine the lawfulness of the detention, should be separated from the organ that has the power to conduct arrest. Here, the impartiality of the organ is questionable. Even those public prosecutors who dared to carry out their tasks could not examine at the drop of a hat, for they would face various consequences ranging from detention to demolition. Despite their strong stand, in such situations, they preferred to be quiet.

3.4.3 Human Rights Commission

The Human Rights Commission played a crucial role with regard to suspected rights regardless of the challenges that the Commission faced.

Regarding mass arrests, the Commission played a significant advocacy role. Specifically, no matter how challenging it was, suspected persons were released and brought before the court due to the advocacy of the Commission. More importantly, the Commission held a national inquiry concerning mass arrests. Victims and their families, officials and concerned bodies took part in the inquiry. In the end, the participants reached a common understanding that the right to liberty of the detainees were arbitrarily taken away.²⁷¹

The Commission is an independent governmental body established as per the FDRE constitution and in accordance with proclamation number 210/2000(as amended by proclamation number 1224/2020). As part of its mandate to protect and promote human rights, the Commission played a significant role in respect to suspected rights. However, considering the number of its staff and the area where it is located, the accessibility of the Commission might be a persistent problem unless a device is put in place. Concisely, it is in the position that the Commission would properly perform its mandates when it has branches in different areas of the Amhara region. It is especially true that where mass arrests were conducted in different areas of the region for the fact that the Commission is located only in Bahir Dar city.

The Commission was denied access to visit the detainees.²⁷² It is insurmountable for the Commission to carry out its tasks when it is denied access to visit detainees. It cannot protect detainees' rights to the extent that is expected unless access to visits is granted. It is blatant that

²⁷¹ Interviewee with Anonymous Employee of Human Rights Commission, July 13, 2023

²⁷² *ibid*

the government must protect and promote human rights. In doing so, the government should create an enabling environment under which organs that are working on human rights would bring the tasks off to a greater degree. The protection of the rights of suspected persons requires that the government should collaborate and work hand in hand with different organizations. It is in such a way that a robust human rights culture can be created.

3.4.4 Human Rights Council

Because of the mass arrests conducted in the Amhara region, the Council released statements and prepared reports in which it claimed that rights were violated.²⁷³ The Council is an independent organ that has been established to work on human rights. The Council does not have any binding power to issue orders, so it merely releases statements that it will support human rights. Indirectly, however, the act would have a profound impact on the promotion of human rights.

The Council was denied access to visit the detainees.²⁷⁴ It seems that adding fuel to the fire in that the Council is not entitled to give enforceable orders. How would the Council carry out its tasks unless access to visit is allowed? As part of its duty, the government should allow the Council to work freely concerning the rights of detained persons. It is worthless to establish the Council without granting it access to visit the detainees. The Council must be granted the authority to visit the detainees to assess the situation, make recommendations, and monitor the implementation of those recommendations.

The Council faced difficulties as detainees were detained in different areas of the Amhara region.²⁷⁵ It is evident that numerous persons were detained in concentration camps in various parts of the Amhara region. As the Council is located only in Bahir Dar city, it would be inconceivable to expect that the Council did perform its tasks to a greater degree. Performing what is mandated requires human and capital resources. However, in this regard, the Council is not such a capable institution to bring off its mandates in any manner. It is especially apparent when mass arrests were conducted in several parts of the region. In short, even with the challenges that the Council faced, to some extent it contributed a lot concerning the rights of detainees as due to its efforts, although they were not considerable number, detainees were released and brought before the court.

²⁷³ Interviewee with Anonymous Employee of Human Rights Council, December 7, 2023

²⁷⁴ *Ibid*

²⁷⁵ *Ibid*

3.5 The Adequacy and Compatibility of Remedies of Unlawful and Arbitrary Deprivation of Liberty in Ethiopia Legal System

Recognition of the right to liberty entails an obligation to ensure remedies in case of violation. The ICCPR provides two remedies specifically designed to address unlawful and arbitrary detention of liberty: compensation and the right to challenge the lawfulness of the detention. Parties to the Convention must provide effective remedies.

3.5.1 Penal Remedy

The right to liberty guarantees freedom from unlawful and arbitrary detention. It is an incumbent party to the convention of ICCPR to provide effective remedies for violations of the right to liberty. Article 423 of the Ethiopian Criminal Code stipulates that “any public servant who, contrary to law in disregard of the forms and safeguards prescribed by law, arrests, detains or otherwise deprives another of his freedom, is punishable with rigorous imprisonment not exceeding ten years and a fine.” Criminalization is, *inter alia*, a remedy for unlawful detention under the Ethiopian legal system. Alongside imprisonment, a fine is also imposed against a person who unlawfully deprives liberty right. The criminalization of unlawful detention is noteworthy for the protection of the right to liberty.

The Criminal Code has two sections that address victim’s right to seek damages from the offender in the form of compensation for the harm done to him through a criminal proceeding.²⁷⁶ Articles 101 and 610(1) of the Criminal Code discuss, respectively the entitlement of an injured person to pursue compensation from the perpetrator for considerable damage.²⁷⁷ As per Article 101, the victim or a person deriving rights from him who has suffered considerable damage is entitled to claim through criminal proceedings.²⁷⁸ The victim would be entitled to compensation on the condition that the injury caused to him is considerable; the trivial damage does not fall within the ambit of the provision. As it does not set out parameters to determine what constitutes considerable damage, arbitrary characterization may occur.²⁷⁹

²⁷⁶ K I Vibhute, ‘Compensating Victims of Crime in Ethiopia: a Reflective Analysis of the Legislative Paradigm and Perspective’, *Journal of the Indian Law Institute*, 2009, Vol.51, No.4, P. 441. [Here in after, K I Vibhute, Compensating]

²⁷⁷ *Ibid*

²⁷⁸ *Ibid*

²⁷⁹ Silesh Abye, *Compensation of Crime Victims in Ethiopia: Lessons Draw from the Experience of Selected Countries*, 2013, P.67. [Here in after, Silesh, Compensation]

3.5.2 Civil Remedy

A person who is unlawfully deprived of his liberty can bring a claim against a person who caused the unlawful deprivation of liberty. Article 2035 of the Ethiopia Civil Code stipulates, “a person commits an offence where he infringes any specific and explicit provision of law, decree, or administrative regulation.”²⁸⁰ The phrase any specific and explicit provision of law implies that the violation of any recognized right entails the right to compensation. Consequently, as the right to liberty is protected under the FDRE constitution, compensation should be awarded to the victim of unlawful arrest by the wrongdoers. Besides, Article 2126(1) of the Civil Code articulates, “any civil servant or employee shall make good any damage he causes to another by his fault.”²⁸¹ It implies that the victim can claim compensation against the public servant if the arrest was unlawful. Since the provision generally refers to fault, negligence or intention may be involved.

On top of ratifying the ICCPR, states parties are obliged to introduce domestic legislation to provide compensation for arbitrary detention.²⁸² States parties must take appropriate action to ensure that victims of arbitrary detention are provided with adequate reparations. Despite such incumbents, in Ethiopia’s legal system, neither the constitution nor the criminal procedure codes recognize the obligation to provide compensation for victims of unlawful arrest.²⁸³ It is true that Ethiopian Criminal Justice Policy recognizes the right to compensation for wrongful conviction, but it does not recognize this remedy for arbitrary detention.²⁸⁴ Taking into consideration is not worthwhile, since it reflects government intent, which does not have a binding effect and the victim cannot bring a claim to court on its contents.²⁸⁵ Does it mean the victim cannot claim compensation by invoking the ICCPR provision? Article 9(4) of the constitution stipulates, “all international treaties ratified by Ethiopia are an integral part of the law of the land.” A constitutional provision allows the Federal President to publish international conventions

²⁸⁰Civil Code of the Empire of Ethiopia,1960, *Negarit Gazeta*, Proclamation No. 165 , 19th year No. 2, Art.2035

²⁸¹ *Ibid*, Article 2126(1)

²⁸² General Comment No. 35, Para.50

²⁸³ Awol Alemayehu, ‘Legal Remedy for Violation of the Right to Protection from Arbitrary Arrest and Detention under the Legal Framework of Federal Democratic Republic of Ethiopia’, *Journal of Law, Policy, and Globalization*, 2016, Vol.48, P.66. (Here in After Awol, Legal Remedy)

²⁸⁴ Criminal Justice Policy, para.4.8.2,P.43

²⁸⁵ “Distinguish between Law and Policy”, at< <https://portal.theedulaw.com/SingleArticle?uid=462>> (last accessed December 3, 2023)

following ratification by the House of People's Representatives (HPR).²⁸⁶ The Federal Negarit Gazeta Establishment Proclamation No.3/1995 expresses:

All Federal or Regional Legislative, Executive and Judicial organ as well as any national or judicial person shall take judicial notice of laws published in the Federal Negarit Gazeta.²⁸⁷

For ratified international human rights conventions to take effect in Ethiopia, the FDRE constitution is ambiguous as to whether publication is necessary.²⁸⁸ There are two opposing viewpoints on this matter.²⁸⁹ The first position asserts that ratification by the HPR is sufficient for the Convention to have effect internally by virtue of Article 9(4) of the FDRE constitution.²⁹⁰ Furthermore, the constitution does not specify that international instruments must be published to be used in the courts.²⁹¹ In their view, the Conventions are already valid simply because they have been ratified, and publishing them will not improve their validity.²⁹² Others argue that, as with any laws enacted by the HPR, publication is a mandatory requirement for the Convention to be applicable in Ethiopia.²⁹³

While making decisions, the court must uphold human rights.²⁹⁴ The court may encounter a situation that calls for the application of human rights law and could lead to a constitutional interpretation.²⁹⁵ However, courts in Ethiopia must refer constitutional disputes to the House of Federation (HOF) for resolution.²⁹⁶ Judicial review, a key instrument for preventing the violation

²⁸⁶ FDRE Constitution, Article 71(2)

²⁸⁷ Federal Negarit Gazeta Establishment Proclamation No.3/1995, Art.2(3)

²⁸⁸ Ibrahim Idris, The Place of International Human Rights Conventions in 1994 FDRE Democratic Republic of Ethiopia (FDRE Constitution), P.124. [Here in after, Ibrahim, The Place of International Human Rights]

²⁸⁹ *Ibid*

²⁹⁰ *Ibid*

²⁹¹ Rakeb Melese, Enforcement of Human Rights in Ethiopia, Research Subcontracted by Action Professionals' Association for the People, 2002, P.15. [Here in after, Rakeb, Enforcement of Human Rights]

²⁹² Girma Amare, The Ethiopian Human Rights Regime, Federal Democratic Republic of Ethiopia's Constitution and International Human Rights Conventions Ethiopia has Ratified, The Paper was presented to the International Conference on the Establishment of Ombudsman, from May 18-22, 1998, Addis Ababa Ethiopia.

²⁹³ Ibrahim Idris, What should be the Mission of the Future Human Rights Commission of Ethiopia, 1998, PP.21-23. The Paper was presented to the International Conference on the Establishment of the Ethiopian Human Rights Commission and the Institution of Ombudsman, from May 18-22, Addis Ababa, Ethiopia.

²⁹⁴ Tsegaye Regassa, Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia, P.328.[Here in after, Tsegaye, Making Legal Sense of Human Rights]

²⁹⁵ Samarawit Tadesse, The Power of Courts in Ethiopia in the Interpretation and Application of International Human Rights Provisions, P.11. [Here in after, Samrawit, The Power of courts in Ethiopia]

²⁹⁶ FDRE Constitution, Article 84(2)

of constitutionally guaranteed human rights has been taken away.²⁹⁷ As there is no specific and clear provision in Ethiopia that awards compensation for the victim of unlawful detention, coupled with the court does not have judicial review, it is just building a castle in the air to award compensation for a person deprived of his liberty arbitrarily.

The Civil Procedure Code recognizes the right to contest a detention's legality.²⁹⁸ It is a safeguard to protect people from arbitrary detention. The detainee can challenge the lawfulness of detention and release if his arrest is unlawful. It is a general rule that in civil matters, the one who alleges shall prove it. What is absurd is the fact that the burden of proof lies on the detainee on the condition that he or she contests the lawfulness of detention. Such a way of articulation is not compatible with international standards because it is obvious that the government has an obligation to prove the lawfulness of detention, not the detainee. Having the right to liberty, but being deprived of it in exceptional circumstance, and having the burden to contest detention, is paradoxical. A remedy being incorporated into the Civil Procedure Code raises the standard of proof required as well.

3.5.3 Administrative Remedy

Police have an obligation to protect and respect human rights. As part of the executive branch of the government, the police are expected to uphold the human rights guaranteed by chapter three of the FDRE constitution as well as any international human rights treaties Ethiopia has ratified. Police must refrain from actions that infringe on citizens' human rights while performing their duties, *inter alia*, preventing, and investigating crimes.²⁹⁹

Police establishment laws govern disciplinary actions that should be taken against police officers who violate human rights.³⁰⁰ In this regard, as per Article 54(1) of the Federal Police Commission Administration Council of Ministers Regulation No.86, 2003, it is a serious offence to violate constitutionally guaranteed human rights and doing so will result in severe disciplinary

²⁹⁷ Chi mgbako et al, 'Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and Its Impact on Human Rights', *Fordham International Law Journal*, 2008, Vol.32, No.1,P.261.(Here in after, Chi mgbako, Silencing the Ethiopian Courts)

²⁹⁸ Civil Procedure Code of the Empire of Ethiopia, 1965, *Negarit Gazeta*, Extraordinary Issue No.3 25th year, No.3, Article 177- 179

²⁹⁹ "The Police and Human Rights in Ethiopia", at<<https://www.abysinialaw.com/blog/the-police-and-human-rights-in-ethiopia>> (last accessed December 7,2023)

³⁰⁰ *Ibid*

measures.³⁰¹ Chapter 8 of the regulation deals with disciplinary rules of the police, ranging from verbal and written warnings, fines from salary, to demotion from rank and salary.³⁰² Since the constitution guarantees the right to be free from arbitrary and unlawful arrest, violating the right will entail administrative measures.

In short, an effective remedy for unlawful and arbitrary deprivation of liberty is not provided under Ethiopia's legal system given that neither the constitution nor other laws specifically award compensation in case of violation of liberty. An application of the ICCPR directly is inconceivable because it would raise constitutional issues. Although the Civil Procedure Code recognizes the writ of habeas corpus, it lacks an effective procedure. Therefore, the current legal system of Ethiopia does not provide adequate remedy for unlawful and arbitrary deprivation of liberty. It is akin to having a car with no engine.

3.6 The Duly Protection of the Right to Liberty in Ethiopia

The essence of liberty right presupposes in favor of release in case of detention. The maximum period of pre-trial detention should be determined to guard against prolonged detention.

3.6.1 Improper Articulation of Arrest without Court Warrant

Liberty is right of everyone regardless of differences. This does not, however, mean that the right to liberty is sacred and cannot be deprived. The right to liberty could be deprived if the deprivation is carried out in line with already established grounds and procedures. Accordingly, an arrest should be made using a warrant since a court examines the existence of facts justifying detention. The court cannot issue a warrant if it determines that police's facts are inadequate to demonstrate that the suspected person has probably committed the crime.

Article 51 of Ethiopia's Criminal Procedure Code contains various matters in which the police are entitled to arrest without a court warrant. Although the right to liberty is not absolute, it must be deprived in limited and exceptional circumstances. However, the provision adopts broad exceptions, allowing persons to be arrested without a warrant, which undermines their right to liberty. For instance, look at Article 51(1) in which the police are empowered to arrest any person whom they reasonably suspect of having committed or being about to commit a crime punishable by imprisonment for not less than one year. What else is subject to arrest with a court

³⁰¹ *ibid*

³⁰² *ibid*

warrant? The answer to this question is negative. It is noteworthy to reproduce the constructive remarks of assistant professor Worku Yaze regarding arrest and detention under Ethiopian law. As he puts it, “the principle becomes the exception and the exception becomes the principle.”³⁰³

It is apparent that the provision would grant the police unguided power. Whenever they are asked whether they have a warrant to arrest, they may replay that they reasonably suspect the commission or omission of the crime punishable by imprisonment for not less than a year on the condition that they want to exploit the provision in a manner that would obstruct the right to liberty. It is not permitted to construct the exception in a way that would alter the principle.

3.6.2 Failure to Determine a Maximum Period of Detention

Although it is impossible to determine acceptable detention periods, parties to the Convention should determine maximum detention times to guard against arbitrariness.³⁰⁴ WGAD has expressed that the law must establish a maximum period of detention and that the detainee be released immediately after the end of the specified period.³⁰⁵ It is designed to protect persons from prolonged detention. Authorities must provide compelling evidence no matter how short the detention is.³⁰⁶

Ethiopia’s legislation does not specify when an investigation begins.³⁰⁷ Despite the lack of legislation, police officers can launch an investigation at any time to put justice in motion.³⁰⁸ If the police investigation is still ongoing, the investigating police officer may request remand to complete the investigation.³⁰⁹ If detention is necessary, the court will determine how often and for how long it is needed.³¹⁰ It is not defined in the Criminal Procedure Code what the maximum duration of detention must be. Consequently, the detainee might be in custody for several months or years under the false pretense of not being able to complete the investigation.

³⁰³ Worku Yaze, Lecture on the Issue of Arrest and Detention in Ethiopia Legal System, March 17, 2022

³⁰⁴ Human Rights Committee, *Aage Spakmo v. Norway*, Communication No.631/1995, Judgment of 11 November 1999, Para. 6.3, at <<http://hrlibrary.umn.edu/undocs/session67/view631.htm>> (last accessed December 9, 2023)

³⁰⁵ UN WGAD Report, to the 13th Session of Human Rights Council, 18 January 2010, Para. 61

³⁰⁶ European Court of Human Rights, *Taze V. Romania*, Application No.29761/02, Judgment of 10 June 2008, Para.40, at <<https://hudoc.echr.coe.int/eng?i=001-86861>> (last accessed December 11,2023)

³⁰⁷ Andualem Nege, ‘Duration of Crime Investigation Quandary under Ethiopian Criminal Justice System,’ *Beijing Law Review*, 2019, Vol.10, No.3, P.391.(Here in after Andualem, Duration of Crime Investigation)

³⁰⁸ *Ibid*

³⁰⁹ CRPC, Article 59(2)

³¹⁰ *Ibid*

Detaining someone for an extended period is arbitrary, affecting his or her liberty. When political atmospheres are closed off to dissenting views, a lack of determination of the duration of detention may be used to silence a wide array of voices. In this situation, it is possible to exploit such a legal gap to compromise the rights of the suspect, including the right to a speedy trial. It is like squeezing water from the stone to deal confidently with the proper protection of the right to liberty without determining the maximum duration of detention. It is therefore important that to take measures to ensure that the duration of detention is limited and that the detainees are provided with a fair trial.

However, according to the Vagrancy Control Proclamation, “the investigating police officer who has arrested a person on suspicion of vagrancy shall complete his investigation and submit the investigation file to the public prosecutor within twenty-eight days after the arrest.”³¹¹ The public prosecutor shall institute proceedings within 10 days of receiving the investigation file.³¹² The court to which the vagrancy case is submitted shall give judgment within a maximum of four months since the institution of the proceeding.³¹³ This would protect liberty right as the proclamation sets out the times of completion of an investigation and the maximum time in which a court ruling should be rendered. The efficiency of any system must be evaluated in relation to two objectives that are equally important to society: the degree to which the system facilitates the enforcement of criminal law by bringing the suspect to speedy justice and the degree to which innocent persons are left undisturbed.³¹⁴ In doing so, the determination of the maximum duration of detention has an overwhelming role in ensuring the effectiveness of the criminal justice system.³¹⁵

3.6.3 Automatic Denial and Excessive Bail Conditions

As per article 19(6) of the FDRE constitution, “persons arrested have the right to be released on bail. In exceptional circumstances prescribed by law, the court may deny or demand an adequate guarantee for the conditional release of the arrested person.” Bail is strongly connected to or

³¹¹ Vagrancy Control Proclamation, 2004, Federal *Negarit Gazeta* Proclamation No. 384, 10th year, No. 19

³¹² *Id*, Article 8(1)

³¹³ *Id*, Article 9(1)

³¹⁴ Stanley Z. Fisher, ‘Some Aspects of Ethiopian Criminal Law: The Electric Approach to Codification’, *Journal of Ethiopia law*, 1996, Vol.3, No.2, P.465. (Here in after, Stanley, Some Aspects of Ethiopian Criminal Law)

³¹⁵ *Ibid*

inextricably linked to liberty right.³¹⁶ Consequently, anyone arrested has the right to be released on bail except for certain exceptions. Pre-trial detention is an exception, and should be used as a last resort. An arrested person should be released with a guarantee that he/she will appear at trial.

In Ethiopia, however, excessive conditions exist. In some instances, the judiciary is automatically excluded from assessing the conditions of bail. For instance, an arrested person charged with or suspected of a corruption offense punishable for more than 10 years shall not be released on bail.³¹⁷ The accused individual cannot be released on bail if there are concurrent offenses that are each punished by more than four years but less than ten years, and the combined sentence for the two crimes is more than ten years.³¹⁸ The existence of such allegations automatically prevents the court from making the decision to grant or deny bail. What is worse is the case of a person is suspected of Vagrant Proclamation in which a person does not have any space to apply for bail.³¹⁹ The Criminal Procedure Code also covers a wide range of bail conditions.³²⁰ The court should decide on the application of bail having regard to the seriousness of the charge.³²¹ The arrested person cannot be released on bail if the crime for which he is accused entails a death sentence or rigorous imprisonment for fifteen years or more, and if there is a chance that the person against whom the crime was committed would pass away.³²² Considering the seriousness of the crimes alleged, it is grueling to accept a bail denial. It is still an allegation and the person has the right to be released on bail and presumed innocence. Hence, why is a person kept in custody for a mere reason of the gravity of the crime without considering other factors such as danger of absconding, obstruction of the proceeding, destroying evidence and influencing witness? Whether such conditions exist requires evidence in which the mere

³¹⁶ Kelali Kiros, *The Bail Justice in Ethiopia, Challenges of its administration*, 2011, P.55.[Here in after, Kelili, *The Bail Justice in Ethiopia*]

³¹⁷ The Revised Anti-Corruption Special Procedure and Rules of Evidences Amendment proclamation No. 882/2015, Federal Negarit Gazeta, Proc. No. 882, 21th year, No. 37, Article 3(1).

³¹⁸ *Ibid*

³¹⁹ Vagrant Proclamation, Article 6(3)

³²⁰ See Article 63, 67 and 69 of the Criminal Procedure Code.

³²¹ *Id*, Article 69 2(a)

³²² *Id*, Article 63(1)

assumption that the detainee would interfere with the investigation or abscond if released on bail does not justify continued detention.³²³

Denial of bail based on seriousness of offences is unconstitutional since it is not a condition for denying bail. A court has inherent authority to order a detainee to stay in custody or be released through bail so that the legislature does not have to pass laws that automatically deny bail rights. In lieu of it, the legislature can enact conditions for bail right. Ethiopia's way of approach in respect to bail right is in contravention with the axiomatic norm that the right to liberty presumes in favor of release. In short, with no judicial oversight, automatic bail refusal is incompatible with the right to liberty.³²⁴

3.6.4 Inadequate Remedies

In accordance with the ICCPR, a person detained unlawfully or arbitrarily has the right to seek compensation and challenge its lawfulness. The Convention requires parties to provide these remedies in their legal system. In Ethiopia, conversely, there is no specific and clear provision that awards compensation to the victims of unlawful and arbitrary detention. Direct application of the Convention is inconceivable, as it raises constitutional interpretation issues. Courts lack the power of judiciary review to invoke the ICCPR provision that guarantees compensation in case of violation of the right to liberty. It must actually be effective in determining whether there has been a violation of human rights and in delivering reparations, rather than merely being provided for by the constitution or by law being publically recognized.³²⁵ Compensation is essential in order to ensure the right to liberty is properly protected.

On the other hand, the right to challenge the lawfulness of detention is recognized. It should not be construed as if the remedy for unlawful and arbitrary detention is duly entitled to the victim. This is so because the remedy is incorporated under the Civil Procedure Code, which depicts that the one who alleges shall prove it in the sense that the detainee should prove that he has been unlawfully detained, which deviates from the international standard. In other words, it is the

³²³ Human Rights Committee, *Aleksander Smantser v. Belarus*, Communication No. 1178/2003, Judgment of 23 October 2008, Para. 10.3, at < <https://digitallibrary.un.org/record/642794?ln=en> > (Last accessed December 15, 2023)

³²⁴ European Court of Human Rights, *Piruzyan v. Armenia*, Application No.33376/07, Judgment of 26 June 2012, Para.105, at < <https://hudoc.echr.coe.int/?i=001-111631> > (last accessed December 15, 2023)

³²⁵ Inter-American Court of Human Rights, *Castillo petruzzi et al V. Peru*, Judgment of 30 May 1999, Para. 185, at < https://www.corteidh.or.cr/docs/casos/articulos/seriec_52_ing.pdf > (last accessed December 19, 2023)

government's duty to show that the arrest was made in accordance with the grounds and procedures for deprivation of liberty. Shifting the burden of proof to the detainee is a clear infringement of the right to liberty that makes detention an exceptional departure from liberty. The standard of proof would also be raised as the remedy has been incorporated into the Civil Procedure Code.

The essence of arbitrariness is not synonymous with being against the law, but rather should be construed widely to encompass elements of inappropriateness, unfairness, lack of predictability, and due process of law, as well as elements of reasonableness, necessity, and proportionality.³²⁶ In contrast, Article 423 of the Criminal Code criminalizes only unlawful arrest, not arbitrary detention. As a result, unreasonable deprivation of liberty cannot be criminalized as long as it is carried out in line with the grounds and procedures established by the law. The same holds true for despotic laws that obstruct natural justice and inappropriate measures taken by law enforcement officers.

One cannot say that arbitrary detention is equally criminalized as unlawful detention through analogy interpretation. In criminal law, analogies are forbidden and only clear and unambiguous provisions are acceptable.³²⁷ Analogy contradicts the principle of legality that no one may be punished except under a statute that designates the offence as criminal and specifies the appropriate punishment.³²⁸ It coincides with the requirement that penal statutes must be narrowly interpreted and not applied retrospectively.³²⁹ The legal lacuna of criminalization of arbitrary detention would undermine the right to liberty.

Ethiopia is not party to the Optional Protocol to the ICCPR in which individuals could bring a claim to HRC when any of their rights enumerated in the Covenant have been violated after they have exhausted all available domestic remedies.³³⁰ The condition is not required where the

³²⁶ Human Rights Committee, *Gorji Dinka V. Cameroon*, Communication No.1134/2002, Judgment of 17 March 2005, Para.5.1, at <http://hrlibrary.umn.edu/undocs/1134-2002.html> (last accessed December 19,2023)

³²⁷ Ali Masyhar, 'Criticize the Use of Analogy Prohibition in Criminal Law', *Mimbar Hukum Journal*, 2015, Vol.27, No.1, P. 156.

³²⁸ Dana Giovannetti, 'The Principle of Analogy in Sino-Soviet Criminal Laws', *Delhousie Law Journal*,1984, Vol.8, No.2, P.383

³²⁹ *Ibid*

³³⁰ Optional Protocol to the International Covenant on Civil and Political Rights, Adopted and Opened for Signature, Ratification and Accession by General Assembly Resolution 2200A (XXI) of 16 December 1966 Entry in to Force 23 March 1976,Article 2

application of the remedy is unnecessarily prolonged.³³¹ As Ethiopia does not ratify the Optional Protocol, individuals cannot bring their grievances before the HRC.³³² It narrows the legal arena to seeking remedies where rights have been violated. The victim cannot bring a claim to HRC when they are dissatisfied with the decision of the national court and when the process of applying remedies is prolonged because the only viable mechanism is national remedy. Putting in place national and international mechanisms to protect the right to liberty is more feasible. It goes with the expression that two hands are better than one. Ethiopia's approaches, however, appears to only offer one alternative-use the national remedy or leave it. Ratification of the Optional Protocol would have a tremendous role in the proper protection of the right to liberty.

In sum, Ethiopia's legal system does not properly recognize the right to liberty. Given that, the improper articulation of arrest without a court warrant renders the exception into principle, under which the police exercise, unfettered power, which erodes the right to liberty. A lack of determining the maximum duration of pre-trial detention, inadequate remedies, automatic denial, and excessive bail conditions are major reasons why the right to liberty is not protected duly.

³³¹ *Id*, 5(2)(B)

³³² *Id*, Article 1

Chapter Four

Conclusion and Recommendation

4.1 Conclusion

This study explored the lawfulness and non-arbitrariness of the mass arrests of 2022 conducted in the Amhara region. Accordingly, it finds out that the 2022 mass arrest in the Amhara region was not carried out on such grounds and procedures as are established by the law. It was conducted in an arbitrary fashion that invaded liberty, which is the main flavor of life. Although deprivation of liberty should be done in line with procedural safeguards, the detainees were arrested without reasonable suspicion- the requirement that would satisfy the objective observer that the detained person had committed a crime. They were arrested without court warrants, a crucial safeguard for liberty, as the court would have thoroughly scrutinized whether there were any facts that justified their arrest. Neither the right to be informed of the reason for arrest nor the right to be brought before a court within 48 hours were complied with; prerequisites for challenging the lawfulness of the arrest.

The government lacked legal ground, for despite court orders to release detainees; the Federal Police arrested them anyway. The arrest was based solely on the fact that they were relatives of the suspects and adored Fano, which suggested an unpredictability and illegitimate motive for the detention. Despite the Media Proclamation banning pre-trial detention, journalists were frequently arrested for disseminating dissenting opinions. In essence, the proclamation was compromised and liberty was arbitrarily deprived. Apparently, military personnel and security bureaus arbitrarily detained individuals, as they did not have a legal basis to do so.

The right to liberty was negated as the detainees were held in informal place of detention. Detainees were held incommunicado that denied access to legal counsel, their families, and judicial hearings. The more prolonged an incommunicado detention is, the more challenging it is to find out where the person is. Since the detainees' whereabouts had not been known for weeks, they were outside the legal protection of the law. The measure was aimed at obstructing freedom of expression under the pretext of law enforcement on the account that several persons were detained merely for exercising their rights, notably the right to freedom of expression. It was discriminatory since the arrest was politically motivated. A parochial political culture, accustomed to backing to square one, strictly prohibited dissent.

The partial non-observance of norms relating to fair trial norms existed. Specifically, officials publicly affirmed Fano as dangerous criminals, jeopardizing the presumption of innocence. The arrest undermined equality of arms, for detainees were not represented at the outset of custody. Detainees were tortured and treated below a standard that constituted deprivation of liberty arbitrarily, rendering the proceeding unfair. Besides, they were denied the right to challenge the lawfulness of the detention. It was on the account of failure to comply with procedural safeguards and held incommunicado.

The study scrutinized the authority to conduct mass arrests of 2022 conducted in the Amhara region. Accordingly, it reveals that the government did not have the authority to conduct mass arrest, as regular enforcement procedures and an emergency decree were not in place to support the measure. A command post was established without an emergency decree being issued. It restricted rights in the absence of its conception and delivery. The practice depicted the wishes of higher officials: nothing more, nothing less.

The study examined the role of the judiciary and other stakeholders concerning detainees' rights. Consequently, it finds out that although numerous organs would play an immense role concerning protection and promotion of human rights, the court did not scrutinize the lawfulness of the detention than entertain remand issues. Public prosecutors were reluctant to carry out their tasks despite being entitled to examine how the arrest was conducted and give an appropriate order. Despite the fact that access to visit prohibited, the human rights commission and council contributed positively to suspected persons' rights. The prohibition of access to visit and their location impeded their capacity to perform their mandates as mass arrests were conducted in different areas of the Amhara region.

The study looked into remedies for unlawful and arbitrary deprivation of liberty in Ethiopia in line with international instruments. As a result, it discovers that Ethiopia's legal system does not provide adequate and effective remedies for unlawful and arbitrary deprivation of liberty. Despite the recognition of the right to challenge the lawfulness of the detention in Civil Procedure Code, it lacks effective procedures. A victim who is arbitrarily detained cannot claim compensation from the government since neither the constitution nor other specific laws recognize the right to compensation. It is not compatible with ICCPR, as the latter requires

providing effective remedies and the right to compensation for persons who have been arbitrarily deprived of their liberty.

The study examined the protection of the right to liberty in Ethiopia in accordance with international instruments. Accordingly, it finds out that the right to liberty is not duly recognized. The Criminal Procedure Code adopts broad exceptions, allowing persons to be arrested without a warrant that renders the exception to the principle. Maximum duration of pre-trial detention is not determined that would have been guard against prolonged detention. Despite the fact that bail coincides with the right to liberty, automatic denial, and excessive bail conditions are incorporated into numerous laws, impairing the axiomatic norm that the right to liberty assumes in favor of release. Moreover, parties to the ICCPR should provide adequate and effective remedies for the right to liberty in case of violation. Nonetheless, such incumbents are not observed in Ethiopia.

4.2 Recommendation

In light of the study's findings, the researcher calls on the following stakeholders to take action.

4.2.1 To the Law Enforcement Bodies

- Ensure that the deprivation of liberty right is carried out in accordance with such grounds and procedures as are established by law.
- Guarantee that procedural safeguards for deprivation of liberty are complied with.
- Ensure that detention is not effectuated when it is impossible to invoke any legal basis that justifies detention.
- Secure that detainees are held in a formal place of detention, communicate with the outside world, and their whereabouts are known.
- Warrant that detentions are not conducted for the mere exercising of guaranteed rights, notably the right to freedom of expression.
- Make sure that fair trial rights are not violated in total or in part.
- Secure that detention is not carried out in violation of the principle of non-discrimination.
- Ensure that either regular enforcement procedures or an emergency decree is in place to support the arrest.

4.2.2 To the Amhara's Regional Courts

- Judges should have a thorough understanding of the notion of unlawful and arbitrary deprivation of liberty.
- Judges should scrutinize arbitrary measures, inappropriate actions, and unjustifiable deprivation of liberty.

4.2.3 To the Amhara's Public Prosecutors

- Public prosecutors should examine the lawfulness and arbitrariness of the arrest and give an appropriate order, especially when the arrest is politically motivated.
- Public prosecutors should ensure that they carry out their mandates independently, and be directed solely by the law.

4.2.4 To the Human Rights Commission and Council

- The organs should have different branches in the Amhara region to carry out their tasks.
- Adopt various avenues, including internships to protect and promote human rights, especially when widespread mass arrests are conducted in the region.

4.2.5 To the Council of Ministers

- Sign the Optional Protocol to the International Covenant on Civil and Political rights that allows individuals to bring claims before the Human Rights Committee.

4.2.6 To the Federal Legislative Organ

- Enact a law that awards compensation to victims of unlawful and arbitrarily deprived liberties.
- Amend provisions that deal with the right to challenge the lawfulness of detention in a manner that clearly stipulates the burden of proof should lie on the arresting officers and determine the standard of proof in such a way that protects the right to liberty.
- The legislature should amend the provisions that seem to prioritize arrest without a court warrant to safeguard the right to liberty.
- Determine the maximum duration of pre-trial detention to guard against prolonged detention.
- Minimize excessive bail conditions as the right to liberty presumes in favor of release.

- Repeal automatic bail denial provisions, for it is the court's authority to give a judgment to the detainee either to stay in custody or release through bail.
- Add a provision to Article 423 of the Criminal Code provision that criminalizes arbitrary deprivation of liberty.
- The legislature should enact a law that entitles judges to examine the lawfulness and arbitrariness of the arrest.
- Ratify the Optional Protocol to the International Covenant on Civil and Political Rights upon signature of the Council of Ministers.

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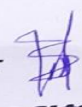

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Appendix

Annex I- Letter of Cooperation

<p>በብር ጳጳር ዩኒቨርሲቲ ሕግ ትምህርት ቤቅ በብር ጳጳር ዩኒቨርሲቲ</p>		<p>BAHIR DAR UNIVERSITY SCHOOL OF LAW Bahir Dar - Ethiopia E-mail- bdulaw.school@gmail.com</p>
<p>☒ 5001</p>	<p>☎ 251 058 820 9850 ፋክስ Fax: 251 058 320 3845</p>	<p>E-mail- bdulaw.school@gmail.com</p>
<p>ተገር <u>1/16/2020</u> Ref.No. <u>14/10/2020</u> ቀን <u>14/10/2020</u> Date</p>		
<p>ጉዳዩ:- <u>ትብብርን እንዲደረግላቸው ስለመጠየቅ</u></p>		
<p>ተማሪ የናታን ጥበብ መኮንን በባህር ጳጳር ዩኒቨርሲቲ በሕግ ት/ቤት የሁለተኛ ዲግሪ ትምህርቱን <i>Analysis of the Practice of Arbitrary Detention in Amhara Region; the case of the 2022 Mass Arrest</i> በሚል ርዕስ የመመረቁያ ዕሁፍ በመስራት ላይ የሚገኙ በመሆኑ የመመረቁያ ዕሁፋቸውን ለመስራት ያግዛቸው ዘንድ በእናንተ በኩል እስፈላጊውን ትብብር ታደርጉላቸው ዘንድ በእኩብርት እንጠይቃለን።</p>		
<p>ከሰላምታ ጋር </p> <p></p> <p>በብር ዩኒቨርሲቲ ሕግ ትምህርት ቤቅ የብር ጳጳር ዩኒቨርሲቲ</p>		
<p>መልስን ሲጻፉ የቺን ቁጥር ይጥቀሱ። In replying please quote our ref.no.</p>		

SCHOOL OF LAW
BAHIR DAR UNIVERSITY
PSOTGRATUDTAE PROGRAM

HUMAN RIGHTS AND CRIMINAL JUSTICE PROGRAM

This questioner is designed to scrutinize the practice of arbitrary deprivation of liberty in the Amhara region: the case of 2022 mass arrest. The researcher guarantees you that the information collected through interviewees is confidential and shall only be used for academic purposes and shall not be given or transferred to any other individual or organization. Thank you in advance!

i. Interviewee Questions for Detained Persons

1. When and how were you arrested?
2. Was your detention justified by anything you may have done?
3. What seems the right to be brought before a court within 48 hours?
4. Were you arrested on a court warrant? If yes, state the court that issued the warrant
5. Were you told the reason for the arrest? If yes, state what matters you have informed
6. How and by whom were you arrested? State organs and persons that participated in executing the order
7. Were you subjected to abuse in the process of detention? If yes, state the situation
8. What looks like the right to be represented by a lawyer from the outset of detention?
9. What seems the right to challenge the lawfulness of detention?
10. Were you arrested at an official place of detention and registered?
11. What seems the right to communicate with outside the world?
12. Was the arrest carried out in line with the dignity of human beings, and free from torture?

ii. Interviewee Questions for Concerned Government Officials

1. What was necessitating the mass arrest of 20022 in Amhara region?

2. Was the mass arrest carried out in line with the genuine requirement of reasonable suspicion?
 3. Were you conducting the mass arrest in accordance with the dignity of the arrested persons?
 4. Were you carrying out the mass arrest in line with the detainees' rights?
 5. Were the mass arrests free of political motives? If yes, state supporting evidence
- iii. Interviewee Questions for Court
1. Was the court examining the lawfulness of the detention in respect of the mass arrest and giving an appropriate order? If yes, support with evidence
 2. Have the judges a thorough understanding with regard to the notion of lawfulness and arbitrariness of arrest?
 3. What were you facing while you were entertaining the case?
- iv. Interviewee Questions for Public Prosecutor
1. Were you visiting a detention center and scrutinizing how the mass arrests were conducted in the Amhara region? If yes, support with evidence.
 2. Were you facing anything to carry out your mandate to examine the lawfulness and arbitrariness of the detention? If yes, state what you were faced with and the actions that were taken to overcome the challenge
- v. Interviewee Questions for Human Rights Council and Human Rights Commission
1. What were the contributions of the organ in regards to the rights of arrested persons?
 2. Was the organ facing anything that undermined its mandate? If yes, state what the organ was facing and the actions that were taken to iron out the challenge
 3. Do you think that the organ fairly performed its tasks given that the mass arrests were conducted in different areas of the Amhara region?
- vi. Interviewee Questions for Lawyers
1. Was deprivation of liberty carried out in line with grounds and procedures established by law
 2. What looks like the requirement that deprivation of liberty should be carried out in line with procedural safeguards?