

**THE LEGAL LIMITS TO POLICE CUSTODIAL  
INTERROGATION METHODS: A COMPARATIVE LOOK AT  
THE BRITISH AND ETHIOPIAN INTERROGATION LAWS**

By: Gebrehiwot Hadush

Submitted to

Central European University

Department of Legal Studies

In partial fulfillment of the requirement for the LL.M in Human Rights

Advisor: Professor Károly Bárd

Budapest, Hungary  
2014

## **Executive summary**

Custodial police interrogation process exposes detainees to a wide range of human rights violations. An important part of the problem pertains to the lack of clear and adequate regulations that govern police practice during custodial interrogation. Thus, the objective of this thesis is to examine and analyze the legal limits to custodial interrogation in Britain and Ethiopia. In view of this, the thesis investigates the legal safe guards and institutional mechanisms that shape and govern the interrogation process in both countries. The thesis also assesses the legal redress against harm caused during interrogation process. The thesis observes that while the interrogation process in Ethiopia is largely untouched either by the statutory or self regulatory mechanisms, the British interrogation process is dominated by series of statutory regulations as well as independent and external monitoring institutional frameworks. With this, the thesis reveals that the self regulation mechanisms and the existing laws that guide interrogation process in Ethiopia are too general and lack clarity to protect detainees against systematic abuses during interrogation. Hence, based on the findings of the thesis, therefore, the writer proposed for comprehensive police reform that offers strong legal and institutional frameworks to the custodial interrogation process in Ethiopia.

**Key words:** Human dignity, custodial interrogation, FDRE Constitution, PACE, Criminal Procedure, Code of practices (Code C, and Code E)

## Table of Contents

Executive summary.....	i
Acknowledgement.....	iv
Acronyms.....	v
Introduction.....	1
Research methods.....	4
Chapter One: Interrogation, and protections under international human rights instruments.....	5
1.1 Meaning and nature of interrogation .....	5
1.2 Human dignity as governing value.....	6
1.3 Human dignity and the bill of rights .....	7
1.3.1The universal declaration of human rights (UDHR).....	7
1.3.2 The new bill of rights and the UN CAT .....	9
1.4 Human dignity and interrogation .....	10
1.4.1 Protection from torture.....	11
1.5 Procedural fairness during interrogation .....	16
1.5.1 Presumption of innocence.....	17
1.5.2 The right to remain silent.....	20
1.5.3 The Right to counsel during interrogation .....	22
Chapter two: Procedural safeguards and institutional mechanisms.....	25
2.1 Introduction .....	25
2.2 Separation of custody officers from interrogators .....	30
2.3 Physical conditions of interrogations.....	33

2.4 Audio recording of interrogation .....	34
2.5 The right to legal advice .....	37
2.6 The time limit to detention without charge .....	39
2.7 The right to remain silent.....	41
2.8 Other protections .....	43
Chapter Three: Remedies against improper interrogation methods.....	46
3.1 What constitutes improper interrogation method? .....	46
3.2 Evidentiary remedy.....	49
3.2.1 Mandatory exclusion.....	51
3.2.2 Discretionary exclusionary rule for violation of protected rights .....	61
3.3 Criminal prosecution .....	62
2.4 Civil remedy .....	66
Conclusion and Recommendation .....	74
Bibliography.....	88

## **Acknowledgement**

I am thankful to my advisor Professor Károly Bárd for his meticulous guide and limitless support during and after CEU. I have no word for this; I would always remain indebted and grateful for everything he did for me. With this, I also express my words of thanks to Tünde Szabó for her kind help when I struggled with the ETD thesis submission. CEU is still in my mind because of the excellent learning environment, always top quality professors, and the love and care that pervade in the international students, and what's not. Thanks all, particularly my classmates, for making my stay in CEU comfortable and memorable.

## Acronyms

1. CAT      Convention Against Torture, and Other Cruel, Inhumane and Degrading Treatments
2. ECtHR    European Court of Human Rights
3. EHRC     Ethiopian Human Rights Commission
4. FDRE     Federal Democratic Republic of Ethiopia
5. GSS       General Security Service
6. HRA       Human Rights Act
7. ICCPR     International Covenant on Civil and Political Rights
8. ICESCR    International Covenant on Economic and Socio Cultural Rights
9. NGOs     Non-Governmental Organizations
10. PACE     Police and Criminal Evidence Act
11. PPSS     Police Professional Service Standard
12. UDHR     Universal Declaration of Human Rights
13. UN       United Nations

## Introduction

Custodial interrogation is the most indispensable instrument of crime investigation by police. It is a very critical moment to the crime investigating unite, particularly where prosecution relies on the statement of the accused himself<sup>1</sup>. As study shows, a significantly high percentage of criminal cases are resolved through confessions and other evidences obtained through custodial interrogation<sup>2</sup>. Studies also claim that ‘to obtain a written confession from an accused is tantamount to securing his conviction’<sup>3</sup>. As such, custodial interrogation can be backed as an efficient tool in the fight against crime.

However, in a system where the state accounts to the rule of law and human rights, state action cannot be justified solely on considerations of effectiveness in crime investigation. In this particular case, therefore, it is important to critically analyze the legal limits to the interrogation process in view of the rights of the accused.

In the 1966, the Miranda court asserted that custodial interrogation were highly coercive environment susceptible to police abuse and exploitations<sup>4</sup>. Of course, the court has not looked whether the investigation in the particular case has used coercion to get confession. For the court, the police environment itself is coercive. However, the Miranda

---

<sup>1</sup> Raymond J.Toney, disclosure of evidence and legal assistance at custodial interrogation: What does the European convention on human rights require?, international journal of evidence and proof, 2001, p.2,

<sup>2</sup> Id.

<sup>3</sup> Baldwin and M. McConville, Confessions in Crown Court Trials, Royal Commission on Criminal Procedure, Research Study No. 5, HMSO: London, 1980, p.19, cited in Raymond, supra note 1, p.2

<sup>4</sup> Miranda V Arizona, 384 U.S. 436, 1966

hypothesis can no longer be seen as a prejudiced view of the police detention and interrogation environment. Indeed, courts are facing real cases where the prosecution defends coercive and degrading interrogation tactics such as<sup>5</sup>: ‘Shacking’, ‘placing a sack over the head’, ‘playing loud music’, ‘tightening hands and legs with shuffles’, ‘sleep deprivation’, ‘intimidation’, ‘humiliation’, ‘tricks’, ‘deception’, and ‘prolonged detention’.

Courts have recognized that the dangers of custodial interrogation can be avoided by setting up strict rules, substantive and procedural safeguards, the nonobservance of which would entail the exclusion of any alleged statement given by the individual suspect<sup>6</sup>. These include: Access to legal counsel, the right against self incrimination, regulations that protect detainees against harsh and improper interrogation, and excessive remand, and the like<sup>7</sup>. However, experience has proven that observances of such substantive and procedural safeguards per se do not guarantee protection of suspects against harsh and improper interrogation tactics. Not surprisingly, some states have considered strong institutional mechanisms and protective infrastructures such as audio recording of interrogation, health facilities and access to medical examinations prior and after interrogation, separation of custody officers from interrogators, civilian oversight and independent police misconduct complaint mechanisms and the like.

This thesis accepts the view that regulating the interrogation process by law and putting in place strong institutional safeguards can improve police conduct and thereby reduce

---

<sup>5</sup> Amos N.Guiora, Constitutional limits on coercive interrogation, 2008, p.117

<sup>6</sup> Supra note 4

<sup>7</sup> Id



improper interrogation tactics. Thus, the thesis assesses and analyzes the institutional and legal safeguards of detained persons as well as the legal remedies against improper interrogation methods under both countries.

Accordingly, the thesis strives to demystify the legal limit against improper interrogation methods in both countries through structured outline, comprising three chapters. The first chapter discusses the concept of interrogation, and the underpinning international instruments of human rights that provide substantive and procedural safeguards of detainees during custodial interrogation. The second chapter critically analyzes the legal and institutional mechanisms imbedded under the British and Ethiopian interrogation laws. In this chapter, an attempt is made to assess whether the legal and institutional mechanisms put in place in Britain and Ethiopia have the potential to improve police practice in the interrogation process. Finally, the third chapter examines the availability of legal remedies against improper interrogation methods under British and Ethiopian legal system.

## Research methods

This thesis employs a doctrinal type of research in that authorities are established from primary and secondary sources of law such as constitution, legislations, directives and precedents as well as periodicals and journal articles. Accordingly, the thesis approaches the variety of issues on interrogation methods from the perspective of British and Ethiopian interrogational laws, and other international instruments such as the convention on the prohibition of torture and other cruel, inhumane and degrading treatments, the ICCPR, and the jurisprudence of the ECtHR. In so doing, the thesis would involve comparative analysis of the legal and institutional mechanisms limiting custodial interrogation methods in both countries.

The writer admits that a broader investigation is needed to make genuine and strong propositions on whether the interrogation regulations assessed under this study are properly functioning. However, due to financial and time constraints, the writer has not surveyed or studied the value system underpinning police function and the practical results on protection of detainees during interrogation in Britain and Ethiopia. The thesis, therefore, approaches the research questions from a legalistic point of view. Accordingly, the thesis examines and assesses the interrogation laws/regulations in Britain and Ethiopia under the assumption that careful and strict regulation and oversight mechanisms induce improvements in the treatment of detainees in the interrogation process.

# Chapter One: Interrogation, and protections under international human rights instruments

## *1.1 Meaning and Nature of Interrogation*

Black's law dictionary defines interrogation as follows:

“The formal or systematic questioning of a person; especially, intensive questioning by the police, usu. of a person arrested for or suspected of committing crime”<sup>8</sup>

This definition carries general and specific features of interrogation. At a general level, it seems to put that formal or systematic questioning outside police custody and non-police officers can be labeled as interrogation. Although such form of interrogation may not necessarily take the form of conversation or dialogue, it does not suggest pressure as its inherent element. However, the element of pressure seems to be supported by the second paragraph which plainly says that police questioning could be intensive.

Be that as it may, the most relevant point to this thesis is the meaning and nature of interrogation by police, particularly in custodial interrogation. According to the above definition, the difference between interrogation as understood in general, and as conducted by police lies on the use of the term 'intense'. As such, understanding of the term intense may elucidate our reference to police questioning or police interrogation. But, the problem is that there is no legally known definition of the term. In its ordinary usage, it includes the use of high pressure to do something. But, it is not, as such, clear whether the term 'intense' in the above definition was intended or actually refers to the use of pressure or compulsion in police question.

---

<sup>8</sup> Bryan A. Garner (ed. In chief), Black's law dictionary (7th ed.), 1999

Practically police interrogators believe that the accused will not confess if he is put in a position free of any pressure, thereby making their job meaningless. As such, it is a widely accepted view in many police interrogation manuals that there should be ‘certain amount of pressure, deception, persuasion and manipulation’<sup>9</sup> to break the will of the suspect. The major problem with this view is that it is biased, looking only from the perspective of the function of the interrogator to get confession from suspect. It does not respect the constitutional right of the suspect to resist and refuse to talk to the interrogator. Moreover, it is slippery slope in that it has the potential to exceed and cause at least mental suffering. Overall, such excessive focus on breaking the resistance of the suspect during interrogation undermines state obligation to treat suspects respecting their dignity.

## ***1.2 Human Dignity as governing value***

Human dignity is an elusive concept<sup>10</sup>. An attempt to make it specific and list the variety of rights it comprises could unnecessarily limit its scope. Conversely, a broader understanding of the concept of human dignity may impart the message not only that it is borderless, but it could pose uncertainties on the part of the law enforcing organs as to whether their act infringes the dignity of others. This thesis does not trace and examine the historical and the philosophical arguments underpinning the concept of human dignity. Nonetheless, this thesis cannot avoid discussing human dignity as it is central to some of the arguments raised in this thesis. As such, without making further theorization or recalling prior works, the following subsection will discuss the place and understanding of human dignity in international instruments of human rights, and the growing developments of the concept of human dignity.

---

<sup>9</sup> Gisli H. Gudjonsson, *The psychology of interrogations and confessions*, hand book, Wiley Series in the psychology of crime, policing law, 2002, p.7

<sup>10</sup> David Kretzmer and Eckart Klein ( editors), *the concept of human dignity in human rights discourse*, 2000, p. 6

### 1.3 Human dignity and the bill of rights

#### 1.3.1 The universal declaration of human rights (UDHR)

The UDHR is the first international bill of rights that recognized the concept of human dignity. The declaration refers to the concept of dignity ‘in five different places’<sup>11</sup>: twice in the preamble, most prominently in Article 1 and twice in the context of social and economic rights in Article 22 and 23 paragraph 3’.

Paragraph 1 of the preamble of the declaration provides:<sup>12</sup>

*“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”*

The above paragraph carries two basic points. First it signified that dignity is an inherent element of the human family. The obvious corollary of this is that the human family would be harmed if dignity is ignored or not respected. As such, it can be argued that the paragraph creates an obligation on the part of the state to recognize dignity. Second, and more strongly the paragraph puts that dignity is the foundation of freedom, justice and peace in the world. This revitalizes the first argument that state authority are obliged to respect and observe the dignity of human beings at their custody. The recognition of dignity as the foundation of freedom, justice and peace suggests that state authorities cannot have valid justifications for disregarding dignity; by so doing state authority would do nothing but undermine and violate fundamental freedom, justice and peace in the world.

---

<sup>11</sup> Id, p.14

<sup>12</sup> Preamble of the UDHR

In paragraph 5, the preamble reiterates the preamble of the UN Charter which reads<sup>13</sup>:

“The people in the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of human person.”

Not-arguably, the phrase “reaffirmed their faith” indicates that the concept of human dignity is not a new invention to the charter or UDHR. It rather presupposes that there was similar faith in pre-existing works. The significance of the invocation of the faith of human beings in dignity is that it strengthens the propositions in paragraph 51 that human dignity is inherent to the person of human beings. The most elaborate reference to human dignity is found in Article 1, which reads<sup>14</sup>:

*“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards another in a spirit of brotherhood.”*

To conclude, the declaration considers human dignity as inherent to human beings. It also stated that human dignity is the foundation of freedom, justice and peace. By this, it can be contended that the declaration set strong moral impulse against any acts of state authority that infringe and undermine human dignity. However, despite calling for respect to human dignity, the declaration abstains from defining dignity. It does not show how the state and its ever expanding organs should behave or act in actual terms and in their relation with the individual. In other words, the declaration made it open for varying political understanding of the context of dignity.<sup>15</sup>

---

<sup>13</sup> Id

<sup>14</sup> Id, art.1

<sup>15</sup> Supra note 10., p.122

### 1.3.2 The new bill of rights and the UN CAT

The universal declaration of human rights is not the only instrument that recognized human dignity as a foundation of freedom, justice and peace. The two covenants, ICCPR, and ICESCR, the torture convention, and other related instruments refer to human dignity as core value to be observed by states.<sup>16</sup> The ICCPR in its preamble asserts that fundamental rights derive from the inherent dignity of human person.<sup>17</sup> More specifically, art.10 of the ICCPR provides ‘all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person’. Similarly, the ICESCR, in its preamble, speaks of the “inherent dignity and of the equal and inalienable rights of all members of the human family” and asserts that “these rights derive from the inherent dignity of human person.”<sup>18</sup> However, like the UDHR, the covenants abstain from defining the concept of dignity, leaving its fullest observance uncertain.

The convention on the prohibition of torture is an obvious implication of the recognition of human dignity. It has its root both in the UDHR and the ICCPR, which each in single provision prohibit torture, other cruel inhuman or degrading treatment or punishment.<sup>19</sup> Apart from this, the ICCPR considers the prohibition of torture non-derogable by states even in time of emergency.<sup>20</sup> However, the UDHR and ICCPR left various issues open, particularly as regards to the definition of torture. The convention far advanced from its predecessors in elaborating what constitutes torture; it provides how rights in the convention may be asserted. The convention is considered to

---

<sup>16</sup> Id

<sup>17</sup> ICCPR, preamble

<sup>18</sup> ICESCR, preamble

<sup>19</sup> See art. 5 of the UDHR, and art. 7 of the ICCPR

<sup>20</sup> ICCPR, art. 4

have a special status in international law binding on all states, even if they have not ratified a particular treaty.<sup>21</sup> It cannot be contradicted by treaty law or by other rules of international law.<sup>22</sup>

#### **1.4 Human dignity and interrogation**

As discussed earlier, interrogation is the process of crime investigation of which a suspect individual is subjected to questioning by a state officer, usually police. Historically, it has been evident that the process inherently carries compulsion<sup>23</sup>. Putting it more plainly, it was found out that interrogations used both physical and psychological pressure to break the will of the suspect to what they need.<sup>24</sup> However, this is not only a past event that never occurs in our days. Compulsion, intimidation, humiliation and tricks still continue to be instruments of interrogation for breaking the will of the suspect, and thereby collecting information for criminalizing him or for persecuting and criminalizing others.<sup>25</sup> Such system of prosecution not only puts the suspect into an inferior position but also imparts the message that a suspect is an object of criminal investigation, not a person with full dignity. From this follows the question whether a person indeed retains his dignity even in times when he is held in custody for interrogation; whether a suspect is protected against physical or psychological pressure during his interrogation.

---

<sup>21</sup> Annette Faye Jacobsen, Human rights monitoring, a field mission manual, 2008, p. 95

<sup>22</sup> Id

<sup>23</sup> Supra note 1.

<sup>24</sup> Id

<sup>25</sup> Mary Ellen O'Connell, affirming the ban on harsh interrogation, 66 Ohio St.L.J., 2005, p. 2. also see Gisli in supra note 9



### 1.4.1 Protection from torture

Various international instruments such as the UDHR, ICCPR and IHL explicitly prohibit torture, cruel, inhuman or degrading treatment or punishment. Yet, such instruments do not say much as to the nature and definition of torture. An improved, but not full, definition of torture and other prohibited acts is found under the UN convention against torture, the CAT. According to Article 1 of the CAT, torture consists of the following elements:<sup>26</sup>

- a) the infliction of severe mental or physical pain or suffering;*
- b) by or with the consent or acquiescence of the state authorities and;*
- c) for a specific purpose, namely to obtain information or confession, to punish, intimidate or coerce.*

Apart from the attempt of the drafters of the Convention to define torture, however, it has been observed that article 1 is problematic instead of a solution.<sup>27</sup> It requires the fulfilment of three elements: Causing severe mental or physical suffering; explicit or tacit authorization of the state authorities; and a specific purpose to obtain information or to punish the suspect. The first requirement measures the degree of suffering or inflictions subjectively. It thereby gives courts unbridled discretion to judge on whether a severe physical or mental suffering indeed constitute torture. As discussed below, even some reputed courts had refused to state food and drink deprivation for long hours, and beating to the point of unconsciousness are torture. The second element is an ambush to states. It excuses the state when it establishes that it did not authorize or have not known the severe suffering that occur in the police custody. The third element is also narrower in that it focuses on the specific purpose of the severe suffering, leaving aside the whole

---

<sup>26</sup> See CAT art.1

<sup>27</sup> supra note 21.,p. 96

detention environment which can causes mental anguish even without additional pressure by the interrogator.

In the Public Committee against Torture case, the Israel Supreme Court found that the General Security Service (GSS) were using ‘shaking’, ‘waiting shabach position and placing a hood’, ‘frog crouch’, ‘excessively tight handcuffs’, and ‘sleep deprivation’ on a routine basis.<sup>28</sup> The court, investigated each of methods one by one. The Court defined shaking as: “the forceful shaking of the suspect’s upper torso, back and forth, repeatedly in a manner which causes neck and head to facilitate.”<sup>29</sup> Then it added that the consequences of shaking can include serious brain damage and harm to the spinal cord, which can cause the suspect to “lose consciousness, vomit and urinate uncontrollably, and suffer serious headaches.”<sup>30</sup> The Court concluded that the GSS does not have the authority for shaking that causes such consequences.<sup>31</sup> However, it refused to say that such act constitutes torture. With respect to placing a hood on the suspect’s head the Court stated that limiting eye-contact between suspects is a legitimate consideration, but having a hood that covers the entire head that causes the suspect to suffocate is forbidden.<sup>32</sup>

The Court refused to state that loud music is always prohibited.<sup>33</sup> Rather, it held that in circumstances of the current case, ‘loud music when combined with an impermissible method is

---

<sup>28</sup> Public Committee against torture V The State of Israel, HCJ 5100/94, paras.9,10,11,12,13, accessed from [http://www.law.yale.edu/documents/pdf/Public\\_Committee\\_Against\\_Torture.pdf](http://www.law.yale.edu/documents/pdf/Public_Committee_Against_Torture.pdf)

<sup>29</sup> Id.para.9,

<sup>30</sup> Id.para.24

<sup>31</sup> Id.

<sup>32</sup> Id.para.28

<sup>33</sup> Id.

forbidden'.<sup>34</sup> With respect to sleep deprivation, the court held that it may be allowed as an "inevitable result of an interrogation or one of its side effects."<sup>35</sup> However, it qualified this by stating that the suspect cannot be "intentionally deprived of sleep for a prolonged period of time, for the purpose of tiring him out or breaking him."<sup>36</sup>

In conclusion, although the court found that most of the interrogation methods applied by the GSS, as discussed above, were not appropriate, it failed to assess and determine that the coercive interrogation methods by the GSS constitute torture.<sup>37</sup> Rather, the court completely suppressed the issue of torture and overemphasized and ended with the question whether the GSS was, under the Israel law, authorized to use the coercive interrogation methods. Instead, the court took the view that some instances of physical means are legitimate.<sup>38</sup> But, it did not give any indications what physical measures can be tolerated.<sup>39</sup> It rather opined that the legislative can authorize to use some physical means by specific guidelines.<sup>40</sup>

The European court of human rights as well has opted to be reluctant to pronounce torture for similar acts. In its article 3 cases, the court overemphasised the intensity and level of severity factor. In the Ireland v United Kingdom case, the ECtHR noted that the definition of torture is

---

<sup>34</sup> Id

<sup>35</sup> Supra note 28, para.31

<sup>36</sup> Id

<sup>37</sup> Supra note 5

<sup>38</sup> Supra note 28, para. 36

<sup>39</sup> The court gave a case by case analysis of the propriety of the GSS interrogation tactics. The court took the view that interrogation by itself imparts certain pressure. In view of this, the court reiterated early decisions, *Cohen v The State of Israel*, 1974, 'Any interrogation, be it the fairest and most reasonable of all, inevitably places the suspect in embarrassing situations, burdens him, penetrates the deepest crevices of his soul, while creating serious emotional pressure'. See, para.24

<sup>40</sup> Id. para.37

limited to “extreme, deliberate and usually cruel practices – “the five techniques”<sup>41</sup>. In that case the Court analyzed whether the “five techniques” interrogation – wall standing, hooding, subjection to noise, sleep deprivation and deprivation of food and drinks constitute torture. The European Commission of Human Rights saw them as a torture, but the ECtHR noted that they are only inhuman treatment.<sup>42</sup> The Court stated:

*“Although the five techniques, as applied in combination, undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not of the particular intensity and cruelty implied by the word torture.”<sup>43</sup>*

In recent cases, the ECtHR has considered the purpose behind the unlawful treatment rather than on trying to measure the severity of pain.<sup>44</sup> In the *Keenan V. U.K.*, the Court noted that: “while it is true that the severity of suffering... has been a significant consideration in many of the cases decided by the Court under Article 3, there are circumstances where proof of the actual effect on the person may not be a major factor.”<sup>45</sup>

The boundary between torture, and other cruel, inhuman or degrading treatment or punishment is not precisely clear.<sup>46</sup> Some find the distinction in the level of the severity of pain or suffering inflicted.<sup>47</sup> As such, it is argued that cruel, inhuman or degrading

---

<sup>41</sup> *Ireland V. UK*, Eur.Ct.H.R 18 Jan 1978, series A no.25, p.67

<sup>42</sup> *Supra* note 41

<sup>43</sup> *Id.*, p.119

<sup>44</sup> *Keenan Vs. UK*, Eur.Ct.H.R 3 April 2001, A no.27229/95, p. 113

<sup>45</sup> *Id.*

<sup>46</sup> *Supra* note 21, p.97

<sup>47</sup> *Id.*, 104

treatment or punishment refers to instance of prohibited ill-treatment where the act does not cause severe mental or physical pain or suffering.<sup>48</sup> Nonetheless, the distinction between torture and other prohibited ill-treatment is not wide enough in that in reality ‘torture is itself an extreme form of the prohibited ill-treatment’.<sup>49</sup>

The Human Rights Committee found the following to be cruel and inhuman treatment<sup>50</sup>:

*“beating to point of unconsciousness; denial of appropriate medical care; incommunicado detention for more than a year; repeated beatings with, pipes and without medical attention; detainment in a cell measuring 20 by with 125 other prisoners and without any food or water; death threats; incarceration in a cell for 23 hours per day without bedding, food, sanitation or natural light; being force to stand for 35 hours, with wrist bound by coarse close and eyes continuously bandaged; and deprivation of food and drink for 4 days following arrest while being detained in unsanitary condition.”*

The Committee also found the following acts to be degrading:<sup>51</sup>

*dumping a bucket of urine on a prisoner’s head throwing his food and water on the floor and his mattress out of his cell; beating prisoners with rifle butts and subsequently refusing them medical treatment; detaining individuals in cages and them to the media; assaulting prisoners kept in tiny cells and limiting the number of visitors they may receive; chaining detainees to bed springs for three months; rubbing salt into prisoner’s nasal passages and forcing them to spend night chained to a chair, beatings requiring*

---

<sup>48</sup> Id

<sup>49</sup> Id., p.49

<sup>50</sup> Id. P.7

<sup>51</sup> Id

*stitches; blindfolding and detainees heads in a canal; denial of exercise, medical treatment and asthma medication; and whippings and beatings with a birch or tamarind switch*

However, in some cases the human rights committee ruled in terms of violation of the convention without indicating the distinction between torture and other cruel, inhumane and degrading treatments<sup>52</sup>. The same strand of reasoning has also been applied in the Ethiopia – Eritrea Claim Commission (2003). The Claim Commission took the view that ‘threatening and beating the prisoners during interrogation is contrary to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment’.<sup>53</sup>

### **1.5 Procedural fairness during interrogation**

To mention few, procedural fairness comprises many but related rights such as, the right to be presumed innocent, the right to remain silent, and access to legal counsel<sup>54</sup>. These are core concepts that are always at stake during interrogation. Apart the opposing arguments one could come across in assessing whether these guarantees should be kept during interrogation, it is important to note that the means and outcome of interrogation may affect the quality of fair hearing during trial.

There is no doubt that components of procedural fairness, as described above, apply not only in the actual hearing before the court, but also through all surfaces of the criminal

---

<sup>52</sup> Supra note 21, p.95

<sup>53</sup> Id. P.6

<sup>54</sup> Supra note 22, p.183

justice , including during interrogation<sup>55</sup>. The problem rather lies in determining the content and scope of the rights, and the extent these rights govern interrogation process, and the conduct of the interrogators. In the following paragraphs, this thesis analyzes the application of the presumption of innocence, the right to remain silent and the privilege against self incrimination and the right to legal assistance- during interrogation.

### **1.5.1 Presumption of innocence**

Traditionally, the notion of presumption of innocence has been understood or applied as a procedural right of an accused in relation to the conduct of Judges who handle his case.<sup>56</sup> However, such horizon was found to be narrow. The presumption of innocence would be violated if public officials including police officers make the impression that the accused is guilty of an offence before he is proven guilty according to the law.<sup>57</sup> As such it is not necessary that the statement be made by a judge or a court, or a police officer; in all cases presumption of innocence will be violated. Now, the most concrete question is how the notion of presumption of innocence would guide and control the interrogator. More specifically, can the interrogator, for example, say to the accused 'I know you are guilty, tell me how you committed the crime'; 'you damn cruel! How can you commit such awful crime.....? Who sponsored your crime? The co-offender has testified this..., Your spouse has already informed the police about your involvement, etc

---

<sup>55</sup> Id., p.184

<sup>56</sup> Id., p.185

<sup>57</sup> Id

Interrogators are more sophisticated than one could imagine.<sup>58</sup> They can formulate very tricky and smart leading questions that would give the accused no chance to deviate from what the interrogator expected him to confirm. The objective of such tactic is to outsmart the suspect and to put pressure on him to confess.<sup>59</sup>

Some argues that in so far as the interrogator does not use force, he should be allowed to outsmart and lead the accused to confess.<sup>60</sup> Indeed, the interrogator may succeed with his deceptive and tricky question if the accused is inexperienced and not informed that the state owes the burden to show beyond reasonable doubt that the accused committed the alleged crime.<sup>61</sup> However, it would be self-defeating for interrogators to formulate such leading questions to an accused person who is well aware of his right, as he may conceive that his interrogator is in bad faith and disrespectful, and hence not worthy to assist him. Second, an informed suspect can totally exclude interrogation by exercising his right to remain silent.<sup>62</sup> Then, interrogators would invariably have to make distinction between the informed and ignorant suspect in formulating their interrogation tactics. Perhaps, the interrogators would in questioning an informed suspect start with greeting and respecting his title or social rank, and try to encourage him smoothly to confess. On the other hand, the interrogators in questioning an ignorant suspect may make the impression that he had committed the alleged crime by mischievously stating that many

---

<sup>58</sup> Joseph D. Grano, *Crime, Punishment, and Criminal procedure: Selling the idea to tell the truth: the professional interrogator and modern confession law*, book review, 84 Mich. L. Rev. 1986, p.2

<sup>59</sup> Id

<sup>60</sup> Id. P.7

<sup>61</sup> Id

<sup>62</sup> Id., p.8



people have testified to the police and that there is no way he can refute the allegation but confess and disclose his collaborators.

The interrogation tactics described above are not merely hypothetical. Several police interrogation manuals have endorsed tricks, deceptions, and over all taking advantage of the inexperience of the suspect as an important tool<sup>63</sup>. One of the most widely published manual is the so called nine steps Reid interrogation techniques<sup>64</sup>. The Reid technique does not involve the use of force. However, it proposes the use of manipulations, deceptions, prolonged questioning<sup>65</sup>. Accordingly, the technique advises interrogators to study the background and moral situations of the suspect so that they use manipulation and deception tactics depending on the position of the suspect<sup>66</sup>.

However, while most of the debate over the Reid technique and other interrogation manuals focus on the expansive nature of such tactics to cause harm on suspect, the writer argues that the use of interrogation tactics based on personal background of the suspect raises concerns on human dignity<sup>67</sup>. This is because equality is a key and strong manifestation of human dignity.<sup>68</sup> This is not to say that the interrogation shall put same question for every suspect. But using manipulation and deception, including prolonged interrogation and a threat of fear for the ignorant or the inexperienced; but decent or partner like interview with the informed can be nothing but a new form of discrimination.

---

<sup>63</sup> Supra note 9

<sup>64</sup> Id

<sup>65</sup> Id

<sup>66</sup> Id

<sup>67</sup> Law V Canada, 1999, SCR 497; 170 DLR(4th) I, para.53

<sup>68</sup> Id

### 1.5.2 The right to remain silent

The right to remain silent has its roots in dignity and autonomy.<sup>69</sup> It sees the individual as an autonomous being, full of dignity, and capable of determining to speak or not to speak<sup>70</sup> of which forcing him to speak would be self –contradictory to the concept of dignity and autonomy. As such the right to remain silent can be understood as the logical implication of our faith in individual dignity and autonomy.

The right to remain silent is broader in scope in that it covers the right not to provide information regarding any question, and the right not to testify against oneself (the privilege against self incrimination)<sup>71</sup>. Virtually, all countries recognize some form of the right to silence and privilege against self incrimination.<sup>72</sup> This is so even when there is no specific law put in place that explicitly provides the right to remain silent.

*“there could be no doubt that the right to remain silent under the police interrogation and the privilege against self incrimination are generally recognized international standards which lies at the heart of the notion of fair procedure ...”*<sup>73</sup>

However, with the introduction of adverse inference in UK in 1980s, the right to remain silent has become vulnerable to curtailments through legislative actions.<sup>74</sup> While it is not

---

<sup>69</sup> Rinat Kitac, Sangero, Detention for the purpose of interrogation as modern torture, University of Detroit Mercy School of Law, 2008, p.12

<sup>70</sup> Ibid

<sup>71</sup> Gordon Van Kessel: European perspectives on the accused as a source of testimonial evidence, 100 W.Va. L.Rev. 799( p.3),

<sup>72</sup> Ibid

<sup>73</sup> The ECtHR made a universal claim on the right to remain silent in the Funke case. See Funk v.France, Eur.Ct.H.R 25 Feb 1993, A no 10828/84, p.44. However, the court didn't disclose the scope of the right until the Murray case. See Murray V U.K., Eur. Ct. H.R. 29, 1996, para.47

clear whether the ICCPR permits limitation, the ECtHR, in its decision *Murray V. UK*, noted that a court could draw adverse inferences from a failure of an accused to explain his presence at the scene of a crime during police questioning, and at trial.<sup>75</sup> In reaching to this conclusion, the court considered the following to be decisive.

*'Inferences were drawn only after the prosecution made out prima facie case: the judge had discretion to draw, and the reason for drawing them were explained in the court judgment'.<sup>76</sup>*

Apart from the direct protection against coercion, the right to remain silent also requires that the accused must be informed of the right to remain silent, and that any statement given by him would be presented in court as evidence against him.<sup>77</sup> Undoubtedly silence of the accused ends the function of the interrogators. In many respects to inform the accused of his right and to warn him further that he could be convicted by his own words is tantamount to advising and encouraging him not to say anything to his interrogator. Indeed, if interrogators were faithful to the warning, the interrogators process would become, not a crucial part of the crime investigation, but a useless and costly transit to trial before courts, as no one could normally be expected to testify against him in spite of clear warnings given to him.

---

<sup>74</sup> Initially, the British government applied adverse inference Northern Ireland with a justification that terrorist suspects are using the right to remain silent as an 'ambush' against prosecution. Later in 1994 the British parliament adopted adverse inference for its application Britain. Singapore is the second country that followed the British fabric of adverse inference. See Gregory W.O'Reilly, Criminal Law: England limits the right to silence and moves towards an inquisitorial system of justice, 85 J.Crim.L.&Criminology, 1994, p.424

<sup>75</sup> Ibid

<sup>76</sup> *Murray V U.K.*, 22 Eur. Ct. H.R. 29, 1996, para.45

<sup>77</sup> Supra note 72, p.3

Against this background, however, caution or warning requirements are often neglected by Interrogators.<sup>78</sup> Even in those States where caution requirement is explicitly provided, no further guarantees against non-compliance are put in place. In particular, in many states failure to warn the accused of his right to remain silent does not in its own result in the exclusion of statement obtained from the accused.<sup>79</sup> Exception to this is the United States which has handed strong sanction for not making the required warning.<sup>80</sup> In its famous Miranda case, the US Supreme Court flatly ruled that any evidence obtained without advance warning is inadmissible.<sup>81</sup>

### **1.5.3 The Right to counsel during interrogation**

As discussed earlier, the Miranda court pointed out the right to legal assistance as a counter mechanism to offset the coercive police environment. According to the court, the accused has the right to the presence of a lawyer during custodial interrogation; and failure to do so entails mandatory exclusion of confession<sup>82</sup>.

At a general level, the ICCPR guarantees for the right to legal assistance in the course of criminal proceedings.<sup>83</sup> However, the right to legal assistance during interrogation does not seem to be part of its innovations. The phrase to be "tried"...through legal assistance" more closely seems to exclude custodial interrogation. Similarly, no explicit reference to

---

<sup>78</sup> Ibid

<sup>79</sup> Id., pp.8-9

<sup>80</sup> Supra note 4

<sup>81</sup> Ibid

<sup>82</sup> Supra note 4

<sup>83</sup> ICCPR, art.10

the right to counsel during interrogation is found in the European Human Rights Convention.

However the jurisprudence of the European Commission of Human Rights and the European Court of Human Rights shows that the right to counsel during interrogation is covered by Art.6(3). In the *Can V Austria*, the commission noted the following concept:

*“The investigation proceedings are of great importance for the preparation of the trial because they determine the frame work in which the offence charged will be considered at the trial...It is therefore essential that the basis for the defense actively can be laid already at this stage.”*<sup>84</sup>

In a similar note, the ECtHR, in the *Imbrioscia V Switzerland*, held that:

Article 6/3/ gives the accused the right to assistance and support by a lawyer throughout the proceeding. To curtail this right during investigation proceedings may influence the material position of the defense at the trial, and therefore also the outcome of the proceedings.<sup>85</sup>

More specifically, the court rejected the argument of the Swiss government that Art.6 did not apply to custodial investigations. In analyzing the possibility of adverse inference in the *Murray* case, the ECtHR repeated the importance of legal counsel in pre-trial:

*“At the beginning of police interrogation, an accused is confronted with a fundamental dilemma relating to his defense. If he chooses to remain silent, adverse inference may be drawn against him....on the other hand, if the accused opts to break his silence during the course of the*

<sup>84</sup> *Can V Austria*, commission report, 12 July 1984, A no.9300/81, p.50

<sup>85</sup> *Imbrioscia V Switzerland*, Eur.Ct.H.R 24 Nov.1993, A no.13972/88,p.36

*interrogation; he runs the risk of prejudicing his defense without necessarily removing the possibility of inferences being drawn against him.*<sup>86</sup>

Then, the court concluded that where the defendant was confronted with “a fundamental dilemma relating to his defense”, the right to counsel during pretrial questioning” was of paramount importance”.<sup>87</sup>

However, subsequent decisions of the court has ascertained the importance of legal assistance during custodial interrogation, irrespective of whether the suspect is put in a dilemma of talking or not talking to interrogators. In *Dayanan*, the ECtHR noted that the right to fair trial under article 6(1) is violated when an accused is denied access to legal assistance ‘upon arrest and in pre-trial detention’<sup>88</sup>. Then, the court went on stating that ‘an accused is entitled to receive legal assistance even when he opted to remain silent during the initial stage of investigation’<sup>89</sup>. According to the court, the phrase legal assistance may include: “discussion of the case, organization of the defense, collection of evidence, preparation for questioning, support to an accused in distress, and checking of the conditions of detention”<sup>90</sup>. Similarly, in the *Kolesnik V. Ukraine*, the ECtHR reasserted its renewed position and ruled that ‘a conviction solely based on self-incriminating evidence obtained in the absence of a lawyer violates the right of defense as envisaged in art.6 sub secs.(1) and 3(c) of the convention’<sup>91</sup>.

---

<sup>86</sup> Supra note 76, para.66

<sup>87</sup> Ibid

<sup>88</sup> *Dayanan V. Turkey*, Eur.Ct.H.R 13 Jan 2010, A no.7377/03, Para. 31,32,33

<sup>89</sup> Ibid

<sup>90</sup> Ibid

<sup>91</sup> *Kolesnik V. Ukraine*, Eur.Ct.H.R 19 Feb 2010, A no.17555 , para.35-37

## Chapter two: Procedural safeguards and institutional mechanisms

### 2.1 Introduction

The place and the leverage that human rights occupy in a criminal justice system is a good indication of how a given state deals with persons at its custody while performing its conventional function of suppressing crime. Often, it is problematic to find and explain the line between protections of rights on the one hand and crime control on the other hand. At a general level, criminal justice system is affected and shaped by interests reflected in both goals: protection of people from injustice or oppressions labeled as ‘due process model’; and enforcing laws and maintaining social order which is all about ‘crime control model’<sup>92</sup>. However, these goals are far from being complementary to each other. In any given state, the administration of justice is expected to be either right conscious emphasizing on due process; or crime control focusing largely on preventing crime and apprehending criminal suspects even through improper ways;<sup>93</sup> or a balance of the two, if any. As such, one may not find a criminal justice system that is purely due process model or purely crime control model<sup>94</sup>. Thus, any criminal justice system would

---

<sup>92</sup>Excerpts from Herbert Parker, accessed from

[http://www.law.gmu.edu/assets/files/academics/schedule/2010/fall/TREYGER\\_CrimPro-IA.pdf](http://www.law.gmu.edu/assets/files/academics/schedule/2010/fall/TREYGER_CrimPro-IA.pdf). Parker used the phrases crime control and due process model to describe the competing interests in the administration of criminal justice system. See also a critical review of Parker in RICHARD JONES, Populist leniency, crime control and due process, *Theoretical Criminology*, Vol.14 no.3, pp.338-342, 2010.

<sup>93</sup> Ibid

<sup>94</sup> Parker, the ‘founder of the two models’ refrained to chose and glorify one model. He described the underlying values in the two models without indicating his preference. None the less the two models would continue to describe the competing interests in the administration of any criminal justice system. See Keith

invariably involve manifestations of the two models, though one character can be overwhelming to the other.

Features of due process and criminal control models can be reflected in each or all stages of criminal justice system from arrest, investigation to adjudication and sentencing processes. Thus, one has to look at the larger body of the criminal justice system incorporating crime detection, investigation, adjudication, and sentencing processes to make a fair judgment regarding the character of any criminal justice system as more right conscious, or more crime control or a mix of them. However, this chapter does not cover all such aspects of criminal justice system. This chapter touches only the crime investigation stage under British and Ethiopian criminal justice system with a focus on legal safeguards related to custodial interrogation. The writer asserts that the administration of custodial interrogation largely indicates the place and influence of such fundamental values of human rights in the overall criminal justice system. This is simply because in many countries ‘criminal justice sees the accused as a major source of evidence and that custodial interrogation is often such a critical point for the state to establish and develop evidence against the accused’<sup>95</sup>. This chapter, therefore, specifically examines the substantive and procedural safeguards guiding custodial interrogation under British and Ethiopian criminal justice system.

---

A.Findely, Toward a New Paradigm of Criminal Justice: How the Innocence Movement Merges Crime Control and Due Process, 41 Tex Tech L Rev.133, 2008-2009, P.139.

<sup>95</sup> Supra note 1, in Raymond, p.5



In line to the above points, it's important to outline the body of rules that govern custodial interrogation in British and Ethiopia. In many respects, the evolution and development of human rights in British is not comparable with Ethiopia. The system of protection of rights in UK in general is the oldest one traceable to the historical instruments of the Magna Carta, 1215, and the Bill of Rights, 1689<sup>96</sup>. These instruments envisioned liberty and freedom, and other procedural rights such as protection from arbitrary arrest, including the famous habeas corpus<sup>97</sup>. However, they were not comprehensive to govern all important aspects of the British criminal justice system. Moreover, due to the doctrine of 'parliamentary sovereignty, such instruments were subject to amendments by the statutes', and had slowly yielded to the interest of 'powerful groups'<sup>98</sup>.

The system of protection of right came again in to the spotlight after the Second World War when Britain signed a number of international human right instruments<sup>99</sup>. In 1953, the UK acceded to the European convention on human rights<sup>100</sup>. Similarly in the 1960's and 70's, it become party to various international instruments such as ICCPR, the convention on prohibition of torture and other cruel, inhuman and degrading treatments, the convention on the elimination of all forms of discrimination<sup>101</sup>.

---

<sup>96</sup> Denis Clark, *The Investigation of crime L: a guide to the law of criminal investigation* ( 3<sup>rd</sup> ed., )edited by Denis Clark, 2004, p.12

<sup>97</sup> Id

<sup>98</sup> Id

<sup>99</sup> Id

<sup>100</sup> Id p.28

<sup>101</sup> Id

However, the breakthrough for a comprehensive statutory approach to the protection of arrested and accused persons was signaled in 1984 when the UK enacted the Police and Criminal Evidence Act (PACE)<sup>102</sup>. The act which entered in to force in 1986 comprises six parts<sup>103</sup> which include: ‘the ‘detention, treatment and questioning of persons by the police’ (Code C), ‘Tape- recording of interviews with suspects’ (Code E). In ten years, the UK announced domestication of convention rights through the instrument of the Human Rights Act (HRA), 1998<sup>104</sup>. The Act has domesticated the rights and freedoms set out in the European convention on human rights as part of the UK law<sup>105</sup>. As regards to the interpretation of convention rights in UK, the HRA provides:

*“Any court or tribunal determining a question in connection with convention right must take in to account, inter alia, judgments, decisions, declarations and advisory opinions of the European court of human rights”*<sup>106</sup>

On the other hand, the system of protection of human rights began to root in Ethiopia just in the mid 1990’s when the country moved to a constitutional system<sup>107</sup>. In the 1960’s, the country entered in to the system of modern laws promulgating various codes such as civil code, civil procedure code, criminal code and criminal procedure code. Among other things, the criminal procedure code (still in force) incorporated some procedural

---

<sup>102</sup> Id.p12

<sup>103</sup> Id

<sup>104</sup> Id

<sup>105</sup> Id

<sup>106</sup> Id

<sup>107</sup> Ethiopia adopted a new Federal constitution on August 1995. This constitution provides the right of arrested and accused persons including persons convicted under arts.18, 19, and 21. There is no adequate data to assess and make statements regarding the performance of the state in the enforcement of those rights. The CAT committee, in its fifth session report, has noted that it has received from credible source allegations of torture in detention and prison centers. It can be accessed from <http://www2.ohchr.org/english/bodies/cat/docs/A.66.44.pdf>,

rights such as the right to remain silent<sup>108</sup>, the right to cross examine witnesses<sup>109</sup>, exclusion of evidence obtained by force<sup>110</sup>, the requirement of warrant for arrest<sup>111</sup>, and bail rights<sup>112</sup>. However, there was no trained man power and strong law enforcing institutions to enforce such rights in the criminal procedure code<sup>113</sup>. The slow legal transformation was finally chopped with the overthrow of the emperor by military junta known as Derg (1974-1991)<sup>114</sup>. The Derg ruthlessly persecuted dissents ‘arbitrarily and with impunity’<sup>115</sup>. ‘Many young people were murdered’, many disappeared, and a large number immigrated to the west and the US<sup>116</sup>. As such, human rights issues were not only touchy but evidently counterproductive.

The era of the Military Junta ended in 1991; and it was replaced by a civilian transitional government (1991-95)<sup>117</sup>. The charter of the transitional government (1991-94) envisaged for the protections of human rights making explicit reference to the rights and guarantees in the UDHR<sup>118</sup>. During the transitional period, the country signed major international human rights instruments such as the ICCPR, ICSCER, CAT, and CRC. In August 1995, the country went for a constitutional system of governance that created the

<sup>108</sup> Criminal Procedure Code of the Empire of Ethiopia, Proc.no.1,1961, Art.27

<sup>109</sup> Id.art.142

<sup>110</sup> Id. Arts.27 and 35

<sup>111</sup> Id.art.49

<sup>112</sup> Id.art.63

<sup>113</sup> Legal vice Presidency of the World Bank, Ethiopia Legal and judicial sector assessment, p.14, viewed from <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/EthiopiaSA.pdf>

<sup>114</sup> Id

<sup>115</sup> Bahru Zewde, “the history of the red terror: Contexts and Consequences,” in Tronvoll, Shaefer, and Alemu, eds., *The Ethiopian Red Terror Trials*, p.17. The Derg threw Ethiopia in a horrific and unprecedented era of “indiscriminate detentions, assassinations, extrajudicial killings and summary executions”, in Bahru, p.17.

<sup>116</sup> Id

<sup>117</sup> A prominent and strong rebellion( now the ruling party ) EPRDF defeated the Derg regime and established a transitional government through a transitional charter, Transitional period charter of Ethiopia, No.1/1991

<sup>118</sup> Transitional period charter of Ethiopia, No.1/1991, art.1

existing Federal constitution (The FDRE constitution)<sup>119</sup>. The FDRE constitution recognizes fundamental rights and freedoms<sup>120</sup>. In its human rights chapter, the constitution states with some detail the rights of arrested and accused persons<sup>121</sup>.

In pursuance to the FDRE constitution, the country has enacted various laws in different areas. However, the country has not promulgated a consolidated and detailed regulation like that of PACE to govern police conduct on crime investigation. The Police commission has not yet issued self regulatory directives that guide and control the police interrogation process, either. Rather, rules governing crime investigation, albeit deficient, exist scattered in different documents i.e. under the constitution, criminal procedure code, the criminal code, federal police commission proclamation, the council of ministers regulation on federal police investigation powers, and other special laws such as anti-corruption proclamation and the new anti-terrorism proclamation.

## ***2.2 Separation of custody officers from interrogators***

Unarguably, the state owes the responsibility to ensure that people under its custody are properly protected against abuses from its agents, including fellow detainees. However, research reveals that people under state custody for criminal investigation are often unprotected from various threats and harms that in some cases cost even death of

---

<sup>119</sup> The Constitution of the Federal Democratic Republic of Ethiopia, Neg.Gaz.,Year 1, No.1, Proc.1,1995

<sup>120</sup> Id. Arts.13-44

<sup>121</sup> Id., arts 19 and 20

detainee<sup>122</sup>. One of the main reasons that explain the lack of protective mechanisms in police custody accounts to the absence of defined roles of officers in charge of keeping custody of the detainees on the one hand, and the scope of the interrogation officer on the other hand<sup>123</sup>.

In Britain, the introduction of the PACE has heralded the separation of roles between the officer in charge of keeping detainees (known as custody officer), and the interrogation staffs.

*‘Notable features of the PACE system are the allocation of specific personal responsibility for the treatment of detainees to custody officers, and the exploitation of the traditional antipathy between uniform and detective officers. Custody officers are usually unwilling to tolerate behavior from investigating officers which could have serious consequences for them, including being called to court to account for a suspect’s treatment or face disciplinary offence’<sup>124</sup>.*

According to the PACE, the custody officer does not carry out or participate in the investigation of the person under his custody<sup>125</sup>. The role of the custody officer is ‘to keep record of the suspect, entering all facts that describe the suspect including scratches

---

<sup>122</sup> Supra note 69, p.139. See also Report of the UN special rapporteur for the prohibition of torture and other cruel, inhumane and degrading treatments, Human rights council, 13<sup>th</sup> session, February 2010, available at

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5_en.pdf)

<sup>123</sup> Mark Berger, legislating confession law in Great Britain: A statutory approach to police interrogation, Mich journal of law reform, 1990, pp 1-2.

<sup>124</sup> Id

<sup>125</sup> Police and Criminal Evidence Act, 1984, section 36.5, accessed from Home Office PACE web page [http://www.legislation.gov.uk/ukpga/1984/60/pdfs/ukpga\\_19840060\\_en.pdf](http://www.legislation.gov.uk/ukpga/1984/60/pdfs/ukpga_19840060_en.pdf)

or bleeding or any injury spot on the body of the suspect'<sup>126</sup>. More significantly, the custody officers has the duty to ensure the 'safety and well being of the suspect' in the detention including during the interrogation process.<sup>127</sup> The custody officer, in particular, has the power to prevent interrogation when the suspect is not ready for interview due to age or mental conditions of the suspect<sup>128</sup>. The custody officer also enjoys an important power to release the suspect when no charge is entered within a reasonable time<sup>129</sup>. Overall, the custody officer serves as a guardian to the wellbeing of the suspect from the moment the suspect is held in police custody and until the court acquits or convicts the suspect, in which case the suspect would be technically out of pretrial custody.

On the other hand, in Ethiopia no police officer takes the status of custody officer, with a power and privilege similar to the PACE codes. In the Ethiopian context, custody officer, if any, refers to a conventional detention guard that is in charge of keeping the suspect in custody. The detention guards have only machine guns to threaten the suspect against escape or disciplinary offences. There are no rules that specifically require the detention guard to keep the safety and well being of the suspect. Against this back ground, the interrogation staff exercise unfettered power to deal with the suspect in custody. It can hold interrogation at any time and many times, with no other authority preventing it. The detention guard does not have a say on the length of detention. Overall, the detention

---

<sup>126</sup> Id.sec39.a, cited in Denis, p.530

<sup>127</sup> Police and criminal evidence Act 1984, Code C, Code of practice for the detention, treatment and questioning of persons by police officers, 31 January 2008, Sec.12.3, accessed from Home of Office Code of Practice webpage <https://www.gov.uk/police-and-criminal-evidence-act-1984-pace-codes-of-practice>

<sup>128</sup> Id

<sup>129</sup> Supra note 125, Sec.37.2

guard is inferior to the interrogation staff in that the former has the duty not only to cooperate with the later but also to respect and enforce the instruction of the later.

### ***2.3 Physical conditions of interrogation***

There is no doubt that the physical situations of the interrogation room, the time the interrogation takes place and the health condition of the detainee can cause ill treatments even without the use of force by the interrogator<sup>130</sup>. The PACE, Code C governs the physical conditions of interrogation. According to the Code C, the custody officer has the duty to assess whether the detainee is in good health condition and ready for interrogation<sup>131</sup>. The Code in particular warns the custody officer not to allow interrogation where he can reasonably believe that the interrogation would cause physical or psychological suffering<sup>132</sup>. The Code also envisages for a normal conditions of interrogation room. It requires that interrogation shall take place in a room that is ‘properly heated, lighted and ventilated’<sup>133</sup>.

The Code also touches the physical position and the state of well being of the interview. It provides that the interviewee should not be forced to stand. It also requires that the person shall be allowed at least 8 hours continuous rest in any 24-hours<sup>134</sup>. By this it is understood that the person is free from interrogation at night. However, this is not

---

<sup>130</sup> Supra note 96. 530

<sup>131</sup> Supra note 127

<sup>132</sup> Id., sec. 12.3, Annex G

<sup>133</sup> Id., sec.12.4

<sup>134</sup> Id., secs. 12.6, 12.2

absolute. The rest time can be stopped or delayed when there exist reasonable grounds in which the rest period would<sup>135</sup>:

- a) *Involve a risk of harm to persons or serious loss of , or damage to property,*
- b) *Delay unnecessarily the person's release from custody, or*
- c) *Otherwise prejudice the outcome of the investigation*

Unlike England, the regulation of physical conditions of interrogation is virtually missing in Ethiopia. There are no known regulations or directives that determine or guide how and under what circumstance interrogation may take place. The FDRE constitution speaks of in such general terms as dignity of detained persons, and protection from cruel, inhuman and degrading treatment. These are important safeguards. However, they are not good enough to guide and discipline investigators to conduct interrogation in a normal room, without painning the detainee by forcing him to stand or to be in some hurting position and without depriving his rest time.

## **2.4 Audio recording of interrogation**

Strict recording of what takes place during interrogation is a commendable safeguard for both parties the police and a suspect. Conventionally interrogation recording is synonymous with note taking dominated by the police officer who writes and summarizes question and answer during interrogation. In the process, it is possible that some points particularly those that show harsh conversation or improper behavior of the interrogator

---

<sup>135</sup> Id



can be missed. As such, one can hardly consider such note taking form of recording as effective and reliable means.

Having realized the deficiency of note taking, the PACE, Code E, has placed a mandatory Audio recording system for interrogation taking place in police custody<sup>136</sup>. The Code also monitors the security of the audio recording against editing or modification<sup>137</sup>. Research suggests that the operation and explosion of the audio recording system has triggered police forces to reconsider their training for interview, as they know that any improper conduct may risk exclusion of evidence<sup>138</sup>.

On the other hand, tape recording of interrogation is unknown in Ethiopia. Documentation of interview still takes the form of note taking. As such, the prosecution relies on the notes taken by the police. The system requires the suspect to sign on the note written by the police<sup>139</sup>. However, this has always been problematic both for the suspect and the prosecutor. In many cases, the suspect assert that they were forced to state in the

---

<sup>136</sup> Police and Criminal Evidence Act (PACE), 1984, Code E, Code of Practice on Audio Recording Interviews with Suspects, sec.4.3 for non-digitally secured audio record, and Sec. 7.5 for digitally secured audio record. Also note that Code C uses the term 'interview' rather than interrogation. However, as discussed under chapter one of this thesis, the use of the term interview understates the difference between the police, which dominates and guides the questioning, and the suspect who is under pressure to collaborate to the police. Thus, this thesis consistently uses the term interrogation instead of interview as used in the Code C.

<sup>137</sup> Code E provides to security mechanisms. For the non-digitally protected audio record, the Code requires that the recording instrument shall be duly sealed after it is signed by the interviewee upon conclusion of the interview. The police do not have the authority to open or break the record without court authorization. The other and stronger security mechanism is the digital networked audio recording. 'Interview record files are stored in read only format on non-removable storage devices, for example, hard disk drives, to ensure their integrity. The recordings are first saved locally to a secure non-removable device before being transferred to the remote network device. If for any reason the network connection fails, the recording remains on the local device and will be transferred when the network connections are restored'. See Code E, sec. 4.18, 6.1, 6.2, 7.16,

<sup>138</sup> Supra note 96, 530

<sup>139</sup> Supra note 108, art.35 sub art.3

way recorded in the note, and in some cases the suspect state that the note missed some important points and unfairly emphasized on statements that are in favor of the prosecution<sup>140</sup>. In Mubarak vs. Public prosecutor, the defendant stated that he was mistreated during interrogation. He specifically explained to the court that he had been punched on face, and the interrogators were insulting and humiliating him throughout the interview, and that he had finally chosen to say what they want him to say<sup>141</sup>. Witnesses, who are detained for similar charges, confirmed that the defendant was forced to sign by indicating that his face close to his left eye was swollen and that they also noticed that the defendant collapsed after coming from interview room<sup>142</sup>. However, the court disregarded the statements of the defense by stating that the prosecution has a big responsibility to protect the right of suspects and that in this case it could not take that the investigators have acted in the manner that the defense states<sup>143</sup>. The court mentioned no further points as to why it could not consider the statement of the defense. Perhaps, these cases may be more connected with issues related to the difficulty of proving torture or forced confession. None the less, they give a signal that the absence of effective method of recording interview would expose suspects to ill treatment in the interrogation room.

---

<sup>140</sup> The Ethiopian federal High Court has in several cases, in one year alone, declined to accept witnesses testifying that the detainees were forced to sign on confession taking papers. The main reason of the court is that the suspect has signed on the confession taking paper and he has not challenged the statement before a court that verifies the voluntariness of confession. See Federal High Court cases, Abdu Shafia vs. Public prosecutor, 2008, file no. 60184; Mubarek Admasu vs. Public prosecutor, 2008, file no.56118; Abas Hussein vs. Public Prosecutor, 2000, file no.6000.

<sup>141</sup> Mubarak Admasu vs. Public prosecutor, 2008, file no.56118

<sup>142</sup> Id

<sup>143</sup> Id

## 2.5 The right to legal advice

Not arguably, access to a lawyer for a suspect in police custody is his most valuable protection<sup>144</sup>.

*“His motive for wanting it may stem from, inter alia, confusion as to his predicament, a desire for bail or the presence of a friendly face, or a fear of police malpractice. More objectively, he may need advice as to, for example, the substance of the charges against him or the conditions and length of his detention. The pressures of police interrogation and the technicality of the criminal law mean that the interests of a suspect can only be properly secured after he has received legal advice”*<sup>145</sup>

Law enforcing officers such as the police also recognize this rationale for the right to legal counsel. However, the right is usually impaired both due to legal and practical difficulties. In some cases the lawmakers don't explicitly instruct investigating officials or custody officers to communicate suspects that they have the right to get legal advice from a chosen lawyer or that provided by the state free of charges<sup>146</sup>. In other cases, even if the law provides so, officials make a lot of hassles that discourage the suspect to exercise his right to get legal advice<sup>147</sup>.

The PACE gives the police no discretion to deny the right to legal advice<sup>148</sup>. The PACE, as per sec.58.1, assures that “a person arrested and held in custody shall be entitled, if he so requests, to consult a solicitor privately at any time”<sup>149</sup>. But the right can be delayed in ‘serious arrestable offences’<sup>150</sup>. Yet, the delay is not indeterminate. Delay stays only up

---

<sup>144</sup> Supra note 96,.405

<sup>145</sup> Id

<sup>146</sup> Supra note 96, p.407

<sup>147</sup> Id. p.407

<sup>148</sup> Id

<sup>149</sup> Supra note 125

<sup>150</sup> Id., Sec.58.5

to 36 hours, in which the police shall obtain authorization of the magistrate if he wants additional time for suspension of the right to legal assistance<sup>151</sup>.

The most important departure of the PACE is its strict stand as to the requirement of notification of the right to legal advice<sup>152</sup>. According to the PACE, notification of the right begins from the moment a suspect is held in custody<sup>153</sup>. As such, it is incumbent on the custody officer to inform the suspect of his right to get legal advice. In any way, the notification of right must be carried out before any questioning begins<sup>154</sup>. Also, the custody officer is required to give the suspect a 'written notice repeating the right and explaining how he can obtain it; and the custody officer shall file'<sup>155</sup>. The notification requirement also provides for physical notification of the right in the form of posters in each station<sup>156</sup>. The PACE also provides for free legal aid to the indigent<sup>157</sup>. However, the PACE is not open to the consequence of denial of the right. Unlike the Miranda jurisprudence, the PACE does not guarantee for automatic exclusion of evidence for the denial of the right to legal assistance.

In Ethiopia, both the FDRE constitution and the criminal procedure code envisage the right to legal assistance. The FDRE constitution in particular provides for legal aid to the indigent at the expense of the state under the caveat of 'miscourage of justice'<sup>158</sup>. The term miscourage of justice is nowhere defined in the criminal justice system of the

---

<sup>151</sup> Id

<sup>152</sup> Supra note 96.,406

<sup>153</sup> Supra note 125, sec.58.1, and Code of Practice C, sec.6.1

<sup>154</sup> Supra note 127, Code C, sec. 3.1

<sup>155</sup> Id. Sec.3.2

<sup>156</sup> Id.Sec.6.3

<sup>157</sup> Id.,Sec.6D

<sup>158</sup> Supra note 119, art.20 sub art.5

country. Apart from the qualification test quandaries imbedded in the usage of ‘miscourage of justice’, however, the constitution does not explicitly guarantee the right to the presence of a lawyer and legal assistance during interrogation. Similarly, the criminal procedure code as well has bypassed the right to the presence of a lawyer during interrogation while permitting the right to call and interview a lawyer during arrest and upon remand<sup>159</sup>.

## ***2.6 The time limit to detention without charge***

Virtually, in all countries detention serves as an important tool for advancing investigation<sup>160</sup>. Whether states use detention as a device to break the will of the suspect in to what his interrogator wants needs to be verified through research. However, it is unarguable that prolonged detention inevitably increases the probability that the suspect succumb out of frailty to the will of the interrogators<sup>161</sup>.

In Britain, Code C provides the time limit for detention without charge<sup>162</sup>. As a general rule, a person can be detained without charge for the first 24 hours<sup>163</sup>. However, the 24 hour time limit can be extended by additional 12 hours ‘with the permission of a superintendent, with further extension up to 96 hours upon the authorization of the magistrate’<sup>164</sup>. As such, a person cannot be detained without charge after the 96 hours. It should also be noted that any extension of detention period beyond 36 hours can only be

---

<sup>159</sup> Supra note 108, art.61

<sup>160</sup> Supra note 69, p.141

<sup>161</sup> Id

<sup>162</sup> Supra note 96, in Denis, 349

<sup>163</sup> Supra note 125, sec.41.1

<sup>164</sup> Id., secs.42.1, 44.3 (a, b )

authorized for ‘serious arrestable offence such as murder, treason and other offence that entail five years imprisonment’,<sup>165</sup>.

On the other hand, the Ethiopian criminal justice system provides qualitative solution instead of fixing the time limit for detention without charge. Art.19 (4) of the constitution provides<sup>166</sup>:

*“...where the interest of justice requires, the court may order the arrested person to remain in custody, or, when requested remand him for a time strictly required to carry out the necessary investigation. In determining the additional time necessary for investigation, the court shall ensure that the responsible law enforcement authorities carry out the investigation respecting the arrested person’s right to a speedy trial.”*

According to this provision, an arrested person can be remanded to remain in custody for an imaginary time to be fixed by a court under the proviso that remand shall not defeat the right to a speedy trial of the arrested and detained person. The court can only ensure that officers are not deliberately prolonging detention with the purpose to increase pressure on the suspect, in which they have no objective standard to measure. Courts may consider the nature of the case and the type of investigation sought. But, it would not save them from the complications on the two competing interests: The interest of the State for successful investigation; and the right of the arrested person against prolonged detention.

Be that as it may, the issue of remand is expressly and more clearly addressed under the criminal procedure code than in the constitution. According to the criminal procedure code, courts can authorize remand several times. The maximum time limit that a single

---

<sup>165</sup> Id., 42.1 (b)

<sup>166</sup> Supra note 119

remand can carry is 14 days<sup>167</sup>, in which the investigation officer must bring fresh request for additional remand. There are no objective conditions for the court to refuse remand. Thus, the courts would mainly rely on the report of the police regarding its investigation; in which the criminal procedure is not open on whether courts can investigate and check steps taken to accomplish investigation by the police.

## **2.7 The right to remain silent**

The right to remain silent takes different history in both countries. In Britain, the evolution of the right to remain silent is associated with its ingrained accusatorial culture of criminal justice<sup>168</sup>. According the accusatorial approach, the main source of evidence is witness or external independent objects including forensic results<sup>169</sup>. Largely, relying on the testimony of the accused was considered to be an encroachment to individual freedom and liberty<sup>170</sup>. Politically as well, it had been wildly acclaimed as the true manifestation of limited government and democracy<sup>171</sup>.

Then, British parliament went for the enactment of the right to remain silent in the 1896<sup>172</sup>. However, nearly hundred years later, Britain introduced a curtailment known as adverse inference<sup>173</sup>. The new policy ‘forces a suspect to talk’ when the interrogator shows prima facie indications regarding his connection or involvement in a crime; and

---

<sup>167</sup> Supra note 108, Art.59

<sup>168</sup> Gregory W.O'Reilly, Criminal Law: England limits the right to silence and moves towards an inquisitorial system of justice, 85 J.Crim.L.&Criminology, 1994, p.408

<sup>169</sup> Id

<sup>170</sup> Id

<sup>171</sup> Id

<sup>172</sup> Id. 429

<sup>173</sup> Id

when commonsense dictates that he is expected to explain<sup>174</sup>. The underlying assumption is that the right makes interrogation irrelevant, as suspects can stop police questioning by saying nothing<sup>175</sup>. A modest view in support of the adverse inference is that the policy would help suspects to cooperate with the prosecution<sup>176</sup>. In the Murray case, the ECtHR backed the UK position, and noted that the right to remain silent is not absolute<sup>177</sup>. In its subsequent decisions, the ECtHR emphasized the importance of the presence of a lawyer where adverse inference is to be taken<sup>178</sup>. However, it has not yet knocked down the adverse inference policy. Thus, with the ECtHR endorsing the British adverse inference model, it follows that it may cross other boundaries as it continues to get momentum before other similar heavy weight courts.

In comparison to Britain, Ethiopia can only be addressed as a fresh receiver of the right to remain silent. The country has not spent a long and good history about the right to remain silent. The right was first adopted under the 1960 criminal procedure code when the country was lead by an emperor under a feudal system. The criminal procedure provides no exception or curtailment to the right.<sup>179</sup> However, as it was a new concept and largely unacceptable to the then incumbent feudal system, it is safe to argue that the right was kept only in the procedure code. The worst of all time came when a self declared military Junta known as Derg period (1974-1991) overthrew the emperor and took by force

---

<sup>174</sup> Id

<sup>175</sup> Id. 424-427

<sup>176</sup> Id. 426

<sup>177</sup> Supra note 76, para.45

<sup>178</sup> Id

<sup>179</sup> Supra note 108, art.27 sub art.2



government power. Authorities claim that the right has been completely shut and frequently replaced by state sponsored ill treatments and torture<sup>180</sup>.

After Derg, the right to remain silent regained its momentum and become a constitutional right (1995)<sup>181</sup>. The constitution is a restatement of the criminal procedure on the right to remain silent. Like the criminal procedure code, it obliges the police to inform the suspect that he has the right to remain silent and his words would be presented in the court of law as evidence against him<sup>182</sup>. The constitution as well does not provide any limitation to the right to remain silent. None the less, this is only a discussion of the right as imbedded in the constitution; as such, it does not give full picture of the application of the right. A comprehensive empirical research would be, therefore, appropriate to locate the situation surrounding the application of the right to remain silent.

## ***2.8 Other protections***

Other protections include, but not limited to, the right to communicate facts of arrest and the whereabouts, visit, and access to medical examination and treatment. The extent the rights affect the position of the detainee during custodial interrogation, and the outcome of the prosecution at large is not duly established. None the less, it is unarguable that protection of the rights has the potential to enhance the well being of the suspect. The availability of these rights indeed exposes police behavior or their misconduct to third persons. In a democratic system, where police is accountable to the public, then, these

---

<sup>180</sup> Supra note 115, in Bahru Zewde

<sup>181</sup> Supra note 119, art. 19 sub art.2

<sup>182</sup> Id

rights can produce additional scrutiny on police practice. Britain and Ethiopia explicitly recognize these rights, varying only on context and scope of application. In Britain, the rights exist with sufficient detail Under PACE and the Code of practice (Code C)<sup>183</sup> whereas in Ethiopia the rights are embedded only in the constitution of the country<sup>184</sup>.

As regards to visit, both countries provide virtually similar arrangements in that a suspect is guaranteed a right to be visited by family, friends or other close persons up on his consent. The duration of the visit and privacy issues still remain undetermined in Ethiopia. Largely, the duration of visit and privacy matters are left at the mercy of the custody officer on duty.

Similarly, the right to communication is available in both countries. Britain provides in detail clear regulations governing the manner, and conditions including expenses of communication. Suspects are allowed to communicate third persons through telephone and written message free of charges<sup>185</sup>. However, communication can be delayed if the officer believes that it might cause serious arrestable offence<sup>186</sup>. Moreover, any communication or letters are not protected from inspections.<sup>187</sup> Any communication can also be presented as evidence in court against the accused<sup>188</sup>. But, in that case the officers must warn the suspect that their words through letters or calls can be produced in court as evidence against him<sup>189</sup>. In Ethiopia, the constitution does not explicitly burden the state

---

<sup>183</sup> See PACE sec.56.1, Code of Practice C, sec.5.1, 5.4

<sup>184</sup> Supra note 119, art.21

<sup>185</sup> Supra note 127, sec.6.1

<sup>186</sup> Id., sec.5.6

<sup>187</sup> Id. Sec.5.7

<sup>188</sup> Id

<sup>189</sup> Id

to cover the cost of communication. Similarly, the constitution does not indicate whether the letters and calls of the suspect can be examined and intercepted and be used as evidence against him. All that exists concerning the right to communicate under the Ethiopian constitution is the right to communicate itself<sup>190</sup>, with no further detail.

Code C also provides detail rules on access to medical treatment<sup>191</sup>. At a general level, the right is available upon request and when the suspect appears to be injured or sick<sup>192</sup>. The code also requires the interviewing officers to stop interviewing the suspect when he shows sign of illness<sup>193</sup>.

---

<sup>190</sup> Supra Note 119, art.21

<sup>191</sup> Supra note 127, sec.9.5

<sup>192</sup> Id

<sup>193</sup> Supra note 127, sec.12.3

## Chapter Three: Remedies against improper interrogation methods

### 3.1 *What constitutes improper interrogation method?*

The toughest issue that one would face in the avalanche of the laws of interrogation begins with the question what is all ‘improper interrogation method’<sup>194</sup>. From the countries with shaky or primitive legal system to those that have well developed legal system, the bounds of improper interrogation method remains to be precarious. At a general level, it is agreed that coercion in the form of beatings or threats are improper interrogation tactics. However, apart from the act of “beating” which appears to be an obvious example, the term coercion is susceptible to various interpretations. The Bush Administration at once have authorized<sup>195</sup>, ‘isolation, sleep deprivation, sensory deprivation, stress positions, sensory bombardment, forced nudity, sexual humiliation, cultural humiliation, extreme cold, phobias, water boarding’ and the like. On the other hand, the Israel government defended seven interrogation tactics used by its intelligence, namely: ‘ Violent shaking, restraining in painful positions ( shabach or position abuse), hooding, subjection to loud music for prolonged periods, sleep deprivation for prolonged periods, threats ( including death threats), and exposure to protracted cold air’<sup>196</sup>. The

---

<sup>194</sup> No state has come with a list or definition of improper interrogation. Under British PACE, and the Ethiopian criminal procedure code, for example, improper interrogation tactic refers to the use of force, threat or promise for the purpose of obtaining confession. However, these can only be few examples of improper interrogation tactics.

<sup>195</sup> Joseph Lavitt, the crime of Conviction of John Yoo: The actual criminality in the OLC during the Bush Administration, Maine Law Review, Vol 62(1), 2010, pp.160-162

<sup>196</sup> Supra note 28, para.15,cited in Catherine M Grosso, International Law in the Domestic Arena, 86

Iowa L.Rev.305, 2000, p.420

government labeled and argued that such acts are ‘moderate physical pressure’<sup>197</sup> and not torture, and not cruel, degrading, or inhuman treatment. The camouflage on the so called moderate physical pressure waned quickly as the Supreme Court ruled that the GSS was not authorized to use moderate physical pressure<sup>198</sup>. Against this background, however, the court failed to pronounce that the interrogation tactics used by the intelligence were torture. Instead, the court noted that the Israel legislature may authorize the intelligence to use similar pressure in the process of extracting information from its detainees<sup>199</sup>.

It cannot be assumed that other countries like Britain and Ethiopia would consider the above acts as torture or other cruel, inhumane and degrading treatments. Apart from banning torture, and other cruel, inhumane, and degrading treatments, both countries have not defined acts that constitute ill treatment. However, this is an over generalization of the position of the two countries in their reaction to torture and, other cruel, inhumane and degrading treatments. Both countries significantly differ in how they deal with the interrogation process, and the sanctions they provide against improper interrogation method.

The PACE and the Code of Practices closely monitor the entire interrogation process and provide specific standards to supervise the police conduct during interrogation. They also address admissibility of confessions by setting mandatory exclusionary rule that apply to confessions obtained through ‘oppression’, or ‘other means that affect the reliability of

---

<sup>197</sup> Id

<sup>198</sup> Id.para.36

<sup>199</sup> Id

the confession’; and by conferring upon the judiciary the discretionary to exclude confessions on grounds of ‘procedural fairness’<sup>200</sup>.

On the other hand, Ethiopia delivers no legislative act to regulate and supervise the interrogation process. The interrogators enjoy unfettered hegemony over criminal suspects under police custody. Apart from the general prohibitions of torture, and other cruel, inhumane and degrading treatments, there are no rules that regulate physical conditions of interview, break time and time limit of interrogation, and other ethical and legal requirements affecting the well being of the suspects. As such, the interrogation process is almost entirely left in the hands of interrogators and their superior police staffs.

Of course, the interrogation process is not virtually and completely immune from judicial control and scrutiny. The current Ethiopian constitution provides for mandatory exclusion of evidence obtained through coercion<sup>201</sup>. However, although the mandatory exclusionary rule is a good measure; it does not prevent other improper interrogation methods that do not take the form of physical coercion. The exclusionary clause also suffers from lack of clarity as to the burden of proof, and the nature and degree of proof required. The big worry, if not more so, is the lack of initiatives for rigorous control and scrutiny of the interrogation process on the part of the government or civil society. There is also no significant public debate in the present Ethiopia as to whether the legal limit to interrogation process shall be spelt out through legislation, similar to the PACE and the subsequent codes of practices.

---

<sup>200</sup> Supra Note 125, Sec.76.2 (a, b)

<sup>201</sup> Supra note 119,19.4

### 3.2 Evidentiary remedy

The British exclusionary rule enjoys a wealth of a large body of case law. Initially, the exclusionary rule evolved out of ‘reliability based voluntariness test’<sup>202</sup>. In its early famous case, the king v Warickshall, the court ruled that:

*“Confessions are received in evidence or rejected as inadmissible, under a consideration whether they are or are not entitled to credit. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the stronger sense of guilt, and therefore it is admitted as proof of the crime to which it refers; but a confession forced by the mind by the flattery of hope or by the torture of fear, comes in to questionable a shape when it is to be considered as the evidence of guilt, that no credit ought to be given to it, and therefore it is rejected”*<sup>203</sup>

In the Warickshall, the court addressed admissibility of confession based on an inquiry whether the suspect has exercised his free will, emphasizing that ‘confession out of free will represents the highest sense of guilt’<sup>204</sup>. As such, the Court, in the Warickshall, was not interested to consider attending circumstances of the confession, the treats or compulsions that has preempted the confession. However, the Warickshall was not the only flagship of the early British confession law. In few cases, though, courts have twisted from the reliability based voluntariness case in to a ‘mechanical analysis’ that focused on whether the confession followed threat or promise<sup>205</sup>. The mechanical analysis avoided any inquiry on the mind of the suspect, and other considerations of

---

<sup>202</sup> Supra note 123

<sup>203</sup> Id

<sup>204</sup> Id

<sup>205</sup> Id

attending circumstances, all that matters is whether confession was obtained after a threat or promise<sup>206</sup>.

Finally, the ambivalence regarding the standard for admission of confession ended with the incorporation of mandatory and discretionary exclusionary rule under PACE, section 76, and 78 respectively<sup>207</sup>. Section 76 offers two pronged mandatory exclusion<sup>208</sup>: “First, no confession obtained by oppression would be admissible against the defendant; second, courts would have to exclude any confession obtained ‘in consequence of anything said or done which was likely, in the circumstance existing at the time, to render unreliable any confession which might be made by the accused person in consequence thereof’”. Hence, under section 76, courts would exclude confession based on ‘oppression’ or ‘reliability test’<sup>209</sup>. Under the oppression and reliability test, therefore, courts would verify ‘whether confession was obtained through oppression or following threats or promises’<sup>210</sup>. PACE also provides, as per section 78, the discretion to exclude ‘any evidence that, if admitted would have adverse effect on the fairness of the proceedings’<sup>211</sup>.

In Ethiopia, the exclusionary rule was first planted as part of the criminal procedure code, 1961<sup>212</sup>. The criminal procedure code, art.35, requires courts to record confession

---

<sup>206</sup> Supra note 96, in Denis, p.540

<sup>207</sup> Supra note 125, sec.76, 78

<sup>208</sup> Id.sec.76

<sup>209</sup> Id

<sup>210</sup> Id

<sup>211</sup> Id.sec.78

<sup>212</sup> Supra note, 108



ascertaining that it was given voluntarily<sup>213</sup>. However, the application of this provision is troubled by the absence of standard for ascertaining voluntariness or involuntariness; and the issue of whether confession given in police, but not recorded in court, may be presented in trial as evidence against the suspect.

Unlike the criminal procedure code, the FDRE constitution introduced coercion test. Similar to s76 of the PACE, the Federal constitution, under its art.19 (5) excludes confession obtained through coercion, thereby avoiding any inquires as to whether the suspect has exercised freedom to make statement or not. However, there is wide ranging difference between the FDRE constitution, art.19 (5), and the PACE s76. The similarity and/or dissimilarity between the FDRE constitution art.19 (5), and s 76 of PACE are further explained and analyzed in the following paragraphs.

### 3.2.1 Mandatory Exclusion

In Britain, the mandatory exclusion is established through the PACE, s76, known as ‘oppression prong’ and ‘reliability prong’<sup>214</sup>. Section 76 (2) (a) provides the oppression prong.

*‘Oppression includes torture, inhumane or degrading treatment and the use of threat of violence, whether or not amounting to torture’<sup>215</sup>.*

The definition, though non-exhaustive, targets extreme conduct that if proven would cause automatic exclusion. As the Royal commission states, such exclusion would be

---

<sup>213</sup> Id

<sup>214</sup> Supra note 96, in Denis, p. 540

<sup>215</sup> Supra note 125, sec.76 (2, a)

needed not because of the ‘possible impact on reliability but on the ground that such tactics are abhorrent’, and ‘unacceptable to a civilized society’<sup>216</sup>. None the less, it is understood that ‘PACE is potentially more comprehensive than the illustrated extreme conduct of torture, and inhumane and degrading treatments’<sup>217</sup>.

In the Regina Vs Fulling case, the court of appeal gave a dictionary meaning to ‘oppression’<sup>218</sup>. According to the Fulling court, the dictionary meaning of oppression refers to:

*‘Exercise of authority or power in a burdensome, harsh or wrongful manner, unjust or cruel treatment of subjects’*<sup>219</sup>

There is no doubt that the Fulling offered expansive definition of the term oppression over and beyond the extreme conduct illustrated in PACE<sup>220</sup>. Be that as it may, the court of appealed ruled that the circumstance in Fulling does not meet the dictionary meaning of oppression<sup>221</sup>. As the facts in the case show, ‘the defendant confessed after she was told by the police that her lover has been having an affair with another woman for the past three years and that woman just happened to be in the next cell to her’<sup>222</sup>.

The Fulling dictionary meaning sets that telling true story, including tricks and lies, that would cause the suspect to confess in consequence thereof, do not fall under the

---

<sup>216</sup> Supra note 123,P. 5

<sup>217</sup> Id

<sup>218</sup> Id

<sup>219</sup> Id

<sup>220</sup> Supra not 96, in Denis, p.545

<sup>221</sup> Id

<sup>222</sup> Id.pp.545-546

oppression prong<sup>223</sup>. However, this does not mark an end to the scope of the term oppression. The term oppression has expanded since Fulling, with the potential to expand more. Some cases after Fulling have established that even ‘aggressive and hostile questioning amount to oppression’<sup>224</sup>.

On the other hand, the PACE, s76 (2) (b), reintroduced a reliability test, as an alternative to the oppression test. Under s76 (2) (b),

*‘a confession is inadmissible if obtained in consequence of anything said or done which was likely, in the circumstances existing at that time, to render unreliable any confession which might be made by him in consequence thereof’*<sup>225</sup>

In contrast to the oppression prong, this reliability based test does not require specific police impropriety for exclusion of confession. The main issue to determine exclusion under this section is ‘whether the circumstances surrounding the making of statement were likely to render the confession unreliable’<sup>226</sup>. Unlike the pre-PACE voluntariness test, this section suggests an objective assessment of the attending circumstance surrounding the questioning, ‘regardless of whether the particular confession itself is reliable’<sup>227</sup>. As such, the section demonstrates huge potential to reach and expand beyond the oppression test.

---

<sup>223</sup> Id

<sup>224</sup> Id.p.545

<sup>225</sup> Supra note 125, sec76.2.b

<sup>226</sup> Supra note 96, in Denis, 548

<sup>227</sup> Id

A considerable number of cases indicate that the phrase anything said or done can encompass ‘threats or promises or the holding out of some advantage’<sup>228</sup>. In *Regina v. Phillips*, the defendant was questioned for credit card offence. After the initial denial, the police stated to the defendant:

*‘We have already told you if need be we will contact all the shops where the credit card was used. If we have to do this lengthy job we will have to charge you every single offence. If you tell us and co-operate the majority of the offences can be taken in to consideration when you appear at court’*<sup>229</sup>

The court noted that the police falsely induced the defendant to confess. Then, the court went on to state that it excludes the confession based on the reliability test, s76 (2) (b)<sup>230</sup>. In *Director of public prosecutions v Blake*, the court noted that police conduct can render a confession unreliable even where no explicit inducement was shown<sup>231</sup>. In that case<sup>232</sup>, ‘the police asked a juvenile, arrested in connection with a fire at a hostel she lived, to indicate her father.’ The juvenile refused to see her father in an interview with them, and later the social worker recommended against the presence of her father in the interview. However, regardless of the objection of the juvenile and the social worker, the police secured the presence of the juvenile’s father’.

The court observed that the interrogation defeated the spirit of the code of practice<sup>233</sup>. Then, the court ruled that the ‘interrogation had breached the reliability prong of PACE’,

---

<sup>228</sup> Id

<sup>229</sup> Id

<sup>230</sup> Id

<sup>231</sup> Id

<sup>232</sup> Id

<sup>233</sup> Id

and hence inadmissible<sup>234</sup>. In other cases, courts ruled that threats or promises external to the police, i.e. those perpetrated ‘by parents or employers may make confession unreliable’, hence inadmissible<sup>235</sup>.

To conclude, the PACE s76, provides broader protection against improper interrogation tactics. The defense can rely either on the oppression prong or the more expansive reliability test to object the admissibility of statements procured from him. Under s76, the prosecution owes the responsibility to prove that the statement was not obtained through oppressive tactics nor in consequence of threats or promises or through other mechanisms that would make the statement unreliable. However, it should be noted that the exclusionary rule is confined to confession in that it does not prevent material ‘evidence found as a result of the illegally obtained confession’<sup>236</sup>.

In Ethiopia, the mandatory exclusion exists in to two extreme tests: 1) under the coercion test, and 2) through the voluntariness based test. The Coercion test is envisaged under the constitution, art.19 (5).

*‘Persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. **Any evidence obtained under coercion shall not be admissible***<sup>237</sup>.

The constitution does not state acts that constitute coercion. The law making body has not ever dealt with that issue, either. However, under art.18 (1), the constitution explicitly

---

<sup>234</sup> Id

<sup>235</sup> Id

<sup>236</sup> Supra note 1125, sec.76.4.a

<sup>237</sup> Supra note 119, emphasis added

banned cruel, inhuman and degrading treatment or punishment<sup>238</sup>. As such, undoubtedly, the term coercion would cover interrogation tactics that amount to torture, and other cruel, degrading and inhuman treatment. However, like the oppression prong under the British counterpart that has increasingly expanded after its obvious initial list, the term coercion under art19 (2) as well has the potential to stretch well beyond acts of torture, and other cruel, degrading, and inhuman treatment.

The coercion test, like oppression prong, triggers strict mandatory exclusion. In other words, under the coercion test, courts would have to exclude confession obtained through coercion, without making individualized assessment as to whether the suspect exercised freedom to make the confession. However, unlike the PACE, the constitution does not make dichotomy between confession statement and derivative evidence. It appears that the phrase ‘any evidence...’ encompass derivative evidence which have been procured following and as a result of an illegally obtained confession.

However, the coercion test under art.19 (2) is further troubled by the lack of clarity as to the burden of proof. In the present Ethiopia, the overwhelming public discussion in connection to exclusionary rule concerns the burden of proof issues. The concern is intensified by the fact that interrogation is conducted in closed rooms in the absence of a lawyer, with no tape recording system, and no access for medical examination before and after interrogation. Considering the compulsive detention environment, it won’t be hard to imagine that people would place the burden on the prosecution.

---

<sup>238</sup> Id

Against this background, however, the Federal Supreme Court noted that it is wrong to place the burden of proof on the prosecution<sup>239</sup>. In the Federal Public Prosecutor v Tamrat Layne, the defense argued that the defendant gave confession after lengthy questioning, and by denying their right to consult lawyer<sup>240</sup>. In a judicially uncommon assertion, however, the court established a presumption of good conduct on the part of authorities. It went on saying that the assumption is that authorities perform their responsibilities in accordance to the law; hence asking the prosecutor to prove confession would be suspicious and improper<sup>241</sup>.

The assumption, rather own imagination of the court, appears very cynical and unfounded. In the first place, putting burden of proof on the shoulder of the prosecution does not emanate from a mere suspicion that the authorities act improperly. Rather, the rational for placing the burden of proof on the prosecution is well established on the notions of presumption of innocence, and the understanding that the state has to justify and explain first why it has trespassed individual freedom and liberty.<sup>242</sup>.

The implication of the Tamrat case is not yet known. As it stands today, no data is available as to whether or not courts are following the Tamrat case. Moreover, nothing can be asserted on whether the decision in Tamrat is dropped or maintained in the lower federal courts, and state courts in the regions. This is largely due to lack of documentation and dissemination of court cases at state and federal level, with the

---

<sup>239</sup> Wondwossen Demissie, reflective Analysis of procedural and evidentiary aspects of the Ethiopian Anti-Terrorism Law, in Ethiopian Human Rights Law Series, Addis Ababa University, V.III, P.108, 2010

<sup>240</sup> Id

<sup>241</sup> Id

<sup>242</sup> Supra note 168, p.420

exception of the federal supreme court cassation decisions in which cases are available online.

The voluntariness test is found under the criminal procedure code, art.35 (2)<sup>243</sup> which reads:

*‘ ‘ No court shall record any such statement or confession unless, up on questioning the person making it, it ascertains that such person voluntarily makes such statement or confession... ’ ’*

The voluntariness test established in article 35 (2) seems to be boundless as it concerns the factors that would convince the court to determine that such confession was given voluntarily or involuntarily. Like the Pre-PACE reliability based voluntariness test, it can be opined that the voluntariness test under art.35 (2) calls for subjective and individualized assessment of circumstances that affect the person making the statement. In both cases, admissibility of confession can be determined on a case by case basis. However, such similarity between the Pre-PACE reliability based voluntariness test, and the Ethiopian Criminal procedure code, art.35 (2) cannot be taken for granted. The Pre-PACE reliability based voluntariness test had been applied in all circumstances, irrespective of whether the defense indicates that he had been subjected to oppressive interrogation tactics including torture, or inhumane and degrading treatments<sup>244</sup>. Even in such cases, the courts would need to be convinced having regard to the individual

---

<sup>243</sup> Supra note 108

<sup>244</sup> Supra note 123, p.3



circumstance of the suspect that the statement were not only involuntary but also unreliable<sup>245</sup>.

On the other hand, the Ethiopian criminal procedure code, art.35 (2) does not attach reliability as a rational additional test to its inbuilt voluntariness test. Under the criminal procedure code, the voluntariness test appears to be established based on an inquiry of whether the suspect has exercised freedom to make the statement, avoiding hypothetical judgment on whether the conduct of the police would make the statement of the suspect reliable or unreliable. More specifically, the use of oppressive or coercive interrogation tactics per se does not give the court the authority to reject confession without asking the suspect whether has given the statement voluntarily, in which the British courts in the Pre-PACE would assume that the confession the suspect under such situation cannot be reliable. Hence, Ethiopian courts would have to refer to the constitution for automatic exclusion of confession obtained through oppression or coercion. None the less, article 35 (2) can be used to exclude other intrusive or manipulative interrogation tactics that do not take coercive nature as envisaged in art.19 (4) of the FDRE constitution.

However, much of the debate on art.35 pertains to the power of the court to receive and record confession. Stanley Z Fisher' argues that only courts are authorized to receive and record confession<sup>246</sup>. He further asserted that confession obtained in police but not recorded by a court would not be put in trail as evidence against the suspect<sup>247</sup>. Fisher argued that the draft evidence law that excludes confession given only in police indicates

---

<sup>245</sup> Id

<sup>246</sup> Supra note 241, p.105

<sup>247</sup> Id

the intention of the legislator<sup>248</sup>. More significantly, Fisher opined that art.35 shall be read in light of the Indian criminal procedure code, the source of the Ethiopian interrogation law<sup>249</sup>. According to the Indian criminal procedure code, Fisher asserted, confession not recorded by court cannot be presented in trial as evidence against the suspect<sup>250</sup>.

While asserting on the exclusive power of Ethiopian courts to record, Fisher has not addressed what factors or standards would the courts use to record or refuse receiving confession. If the suspect, for example, deny his statement in police or raise that he was forced to give the statement, would the court examine the interrogation record and the circumstances surrounding the interrogation. If that is so; what is the use in arguing that confession that is not recorded in court shall not be admitted? Indeed, it would not matter to belabor about the place where incriminatory statement was given if the courts do not examine the interrogation process, and where the burden of proof is shifted on the suspect in ascertaining voluntariness. On the other hand, it would be worth considering if courts under art.35 are bound to stop or refuse recording confession automatically when the suspect deny or indicate he was forced to give statement. In that case, the courts would not have to assess the circumstances surrounding the interrogation process. Instead, confirmatory or non-confirmatory statements of the suspect before the court would determine whether or not the prosecution can use the statement of the suspect in trial. If this is so, then, art.35 would be the most ideal and effective bludgeon against any form of improper interrogation tactics.

---

<sup>248</sup> Id

<sup>249</sup> Id.106

<sup>250</sup> Id

However, there is no research that supports the empowerment of the suspect to confirm or deny confession statements before court. No precedent in support of such proposition is established, either. In contrary to such position, the federal Supreme Court, in the Tamrat Layne case, disagreed with the proposition of Fisher that confession not recorded in court is invalid<sup>251</sup>. The court ruled that confession can be given before different authorities, including in police.<sup>252</sup> After Tamrat Layne case, the federal high court consistently relied on confession statements presented by the prosecution despite complaints by suspects that they were forced to give confession<sup>253</sup>.

### **3.2.2 Discretionary exclusionary rule for violation of protected rights**

Unlike the mandatory exclusion under the Miranda warning, the British and Ethiopian confession laws provide no guarantee for exclusion of confession obtained in violation of protected rights. In Britain, the code C requires the police to issue the Miranda warning: the duty to inform the suspect of his right to remain silence and to caution him that any statement that he may make could be produced in trial against him; and to offer the suspect an access to the consultation and presence of a solicitor<sup>254</sup>. However, breach of the code C such as failure to administer the warning before interrogation, and even denial of access to a solicitor does not entail automatic exclusion. Rather, courts in many cases relied on s78 of PACE which offers discretionary exclusion ‘if it appears to the court that having regard to all the circumstances, including the circumstances in which the evidence

---

<sup>251</sup> Id.106

<sup>252</sup> Id.107

<sup>253</sup> Supra note 141

<sup>254</sup> Supra note 96, 552

was obtained, the admission of the evidence could have such an adverse effect on the fairness of the proceedings'<sup>255</sup>.

In Ethiopia, the constitution as well enshrines the right of arrested person to be informed of their right to remain silent and to be warned that anything they say may be put in trial as evidence against them<sup>256</sup>. The criminal procedure code also endorses the right of the suspect to meet and consult their advocate<sup>257</sup>, even if no indications are there to assert on the right to the presence of an advocate during interrogation. However, neither the constitution nor the criminal procedure code envisage for discretionary exclusionary rule against denial or violations of protected right. It appears that the constitution and the criminal procedure code are entrenched in the coercive and voluntariness tests respectively, which targets physical and/or psychological compulsion other than mere disregard of administering a Miranda like warnings.

### **3.3 Criminal prosecution**

In both Britain and Ethiopia police misconduct entails criminal prosecution. The British criminal law forms part of the huge body of the common law, and other piecemeal legislations. As such, the list of offences that leads criminal prosecution of police officers cannot be exhaustively enumerated under this discussion. But, at a general level, it is understood that police misconduct such as body injury, including in custody death trigger criminal prosecution.

---

<sup>255</sup> Id.558

<sup>256</sup> Supra note 119, art.19(2)

<sup>257</sup> Supra note 108, art.61

Remarkably, In Britain, the power to investigate criminal allegations against police officers is taken out of the police power<sup>258</sup>. As of April 2004, complaints and criminal allegations against police officers are handled by the ‘Independent Police Complaints Commission’<sup>259</sup>. The Independent Police Complaints Commission (IPCC) is ‘an independent and impartial public body’<sup>260</sup>. ‘It does not form part of any government department’<sup>261</sup>. The independence of the commission is further guaranteed on the basis that its decisions cannot be reviewed except by a court<sup>262</sup>. However, it is not proven whether the advent of the IPCC enhanced public confidence, and there by reduced human rights abuses in detention or prison centers. Authorities claim that prosecution and conviction of police officers occurred only rarely<sup>263</sup>. As opposed to the option of criminal prosecution, civil actions were far more successful in finding misconduct than criminal prosecution<sup>264</sup>.

On the other hand, in Ethiopia, criminal law is a codified area of law. In contrast to the British criminal law, the Ethiopian criminal code criminalizes improper interrogation methods in broader context. On the use of improper methods, art.424 states<sup>265</sup>:

*‘Any public servant charged with arrest, custody, supervision, escort or interrogation of a person who is under suspicion, under arrest, summoned to appear before a court of*

---

<sup>258</sup> Stephen P.Savage, Give and take: The bifurcation of police reform in Britain, Australian and New Zealand journal of criminology, 2007, 318

<sup>259</sup> L.E.Porter, T.Prenzler, Police oversight in the United Kingdom: the balance of independence and collaboration, International Journal of Law, Crime and Justice 40(2010), 154

<sup>260</sup> Id

<sup>261</sup> Id

<sup>262</sup> Id

<sup>263</sup> Id.pp.154, and 169

<sup>264</sup> Id

<sup>265</sup> The criminal code of the federal democratic republic of Ethiopia, proc.414/2004

*justice, detained or serving a sentence, who, in the performance of his duties, improperly induces or gives a promise, threatens or treats the person concerned in an improper or brutal manner, or in a manner which is incompatible with human dignity or his office, especially by the use of blows, cruelty or physical or mental torture, be it to obtain a statement or a confession, or to any other similar end, or to make him give a testimony in a favorable manner, is punishable with simple imprisonment or fine, or in serious cases, with rigorous imprisonment not exceeding ten years and fine'*

Art.424 criminalizes not only torture or other cruel and inhuman and degrading treatments but also use of deceptions and promises as a means for procuring confession or 'to any other similar end'. The punishment varies depending on the seriousness of the matter. In the case of deaths resulting from torture, for example, the punishment can take life imprisonment or death penalty.

However, unlike the British system, the Ethiopian criminal justice leaves the investigation of criminal allegations against police officer to the police itself. According to the criminal procedure code of Ethiopia, the police are vested with the authority to investigate any criminal allegations against any person, including public officers<sup>266</sup>. One may mention the Ethiopian Human Rights Commission, as it is empowered to investigate any allegations of human rights violations at all government level, including detention and prison institutions. However, the commission has no mandate to enter in the realm of criminal investigation. Firstly, the Commission does not make or give decision; it

---

<sup>266</sup> See art.16 of the criminal Procedure code of Ethiopia. The Police are the only authority conferred with the power to investigate crime which includes arrest (art.26), search and seizure (art.32), and interrogation (art.27).

exercises a general power only to recommend the concerned government body to remedy and prevent further abuses<sup>267</sup>. Secondly, the Commission doesn't control the prosecution of the officer(s) in charge independent of fellow police<sup>268</sup>. Irrespective of the findings of the Ethiopian Human rights commission, only the police and the public prosecutor can handle criminal allegations of persons serving the police<sup>269</sup>.

It is not doubtful that the existing detention centers in Ethiopia as well, if not more so, host human rights abuses including torture<sup>270</sup>. In its State report to the UN Human Rights Council, the Ethiopian government included some findings of the Ethiopian Human Rights Commission which indicate the violation of human rights in detention and prison centers<sup>271</sup>. The report is very dubious in the sense that it does not state the mistreatments or unlawful acts that occurred in detention or prison centers. But the big worry is that there are no public reports or documents that show prosecution and conviction of police officers for human rights abuse. Thus, it follows that the criminal prosecution option in its present form is superficial and not a reliable one.

---

<sup>267</sup> The Ethiopian Human Rights Commission Establishment Proclamation, Proc.no.210/2000, art.26

<sup>268</sup> Id

<sup>269</sup> Id

<sup>270</sup> The UN CAT committee, in its forty fifth sessions, 1-19 Nov. 2010, expressed its deep concern about 'numerous, ongoing and consistent allegations concerning the routine use of torture by the police. The Committee also noted "consistent reports that torture is commonly used during interrogation to extract confession". It can be accessed from <http://www2.ohchr.org/english/bodies/cat/docs/A.66.44.pdf>, see in particular, pp.42-43

<sup>271</sup> Human Rights Committee, consideration of reports submitted by States Parties under article 40 of the Covenant, First Periodic report of States, Ethiopia, 28<sup>th</sup> July 2009, p.17, available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4b2600e12&skip=0&query=Human%20rights%20commission%20report%20July%202008&coi=ETH>

## 2.4 Civil remedy

As pointed out earlier, in Britain civil action remains the most successful remedy against police misconduct<sup>272</sup>. The Human Rights ACT 1998, in particular, entitles victims to sue the police for breach of their rights under the European Convention on Human Rights<sup>273</sup>. In practice, the main grounds for civil action are ‘assault, and prolonged detention’<sup>274</sup>.

The government is vicariously liable for police misconduct<sup>275</sup>. According to the Police Act 1996, the chief constable is also ‘liable for all wrongs committed by police in the performance or purported performance of their duties’<sup>276</sup>. As such, victims can sue either the responsible police officer or the Chief Constable for any harm or damage they might have sustained as the result of the unlawful actions of any individual or group of police members<sup>277</sup>. The compensation award also includes punitive or exemplary damages, in addition to actual and nominal damage.<sup>278</sup> Most significantly, indigent victims have access to free legal aid service to bring civil action against the police<sup>279</sup>. ‘The availability of legal aid to victims not only opened avenues for redress but it also improved police practice’<sup>280</sup>.

---

<sup>272</sup> Tamar Hopkins, *An Effective System for Investigating Complaints Against Police: A study of human rights compliance in police complaint models in the US, Canada, UK, Northern Ireland and Australia*, Victoria Law Foundation, 2009, accessed <http://www.victorialawfoundation.org.au/sites/default/files/attachments/VLF%20CLC-report-09.pdf> pp.149-150

<sup>273</sup> Id

<sup>274</sup> Id

<sup>275</sup> Id

<sup>276</sup> Id

<sup>277</sup> Id

<sup>278</sup> Id

<sup>279</sup> Id

<sup>280</sup> Id.,149



Civil action is available for victims of police misconduct in Ethiopia as well. However, it is a little drop of water in a big pond. Quite regrettably, the state has distanced itself from being subject to civil liability for the fault of its employees. Art.2012 provides<sup>281</sup>:

*1) Any civil servant or government employee shall make good any damage he causes to another by his fault;*

*2) Where the fault is a professional fault, the victim may claim compensation from the state provided that the State may subsequently claim from the servant or employee at fault;*

*3) The state shall not be liable where the fault is a personal fault'*

Article 2012 provides two pronged hurdles for civil actions against the state for the fault of its employees. First, the victim has to prove that the fault is a professional fault not a personal fault. However, this is not only difficult but it could as well be impossible to prove when it concerns to the so called professional fault of police officers. This is because Ethiopia does not have police officers professional standards code of conduct that can help distinguish professional fault from personal fault when the fault occurs at detention centers. Moreover, as most of claims for police misconduct relate to beatings, intimidation, insult and humiliations, excessive use of force, and other harsh treatments, police misconduct in that regard may be labeled as personal fault rather than professional fault.

The second condition provides even stronger hassle to suing the state for the fault of its employee. This is because the state becomes responsible and liable to pay compensation for professional fault of its employee only if it is in a position to claim it subsequently from its employee. The first question is whether the ability of the state to be reimbursed

---

<sup>281</sup> Civil Code of the Emperor of Ethiopia, 1960

from its employee is relevant to the victim who has suffered in some cases bodily injury due to the act of the employee of the state. From a pragmatic point of view, it may not be wrong to affirm the concern that the state must be in a position to collect public money that it pays for professional fault of its employee. But one has to be ready to accept that victims could be helpless for all cases where the state shows that it is not in a position to claim subsequently its money from its employee owing to the low salary or revenue of its employee. On the other hand, the victim does not have any means to predict on whether the State is able to collect back the compensation from its employee, as the State has not issued any directives as to the extent of damage that it can be held accountable. As such, it can be concluded that both for pragmatic as well as normative reason, State liability for police misconduct is virtually unavailable in Ethiopia. By and large, the available option for victims is to sue the responsible police officer/s, irrespective of the nature of the fault committed by the police officer/s.

No matter serious or lethal the degree of harm may be, courts cannot award punitive or exemplary damage other than actual and discernable future damage<sup>282</sup>. Apart from this, the government owes no obligation to provide legal aid to victims for civil action. But, even those who are able to hire an advocate may not wish to sue police for misconduct. Firstly, almost everyone is clear that police officers earn low salary, not more than 100 USD per month, which means that a police officer is not in a position to satisfy court award for financial compensation, if any. Secondly, victims can have a justified fear to envisage that their action may end up futile as allegations of police misconduct are conducted by their colleague police officers. It follows that the existing weak award

---

<sup>282</sup> Id. Art.2090, 2091, 2092

system and the immunization of the state from liability for wrongs committed by its employees not only shatter the opportunity to discipline the police but more seriously it leaves victims helpless.

### **3.5 Disciplinary measures**

As public servants, police officers are subject to disciplinary proceedings for breach of their duty. At a general level, disciplinary actions are used against any kinds of police misconduct that do not form criminal offence as defined under criminal law. Usually, disciplinary actions take non-criminal punishments such as reprimand, written warning, salary cut, demotion, and dismissal<sup>283</sup>. Yet, it is possible that disciplinary proceedings may go parallel to criminal investigations, like in case of serious abuses of human rights including torture.

There are no rich research reports that indicate the impact of disciplinary actions on improving the police practice. Some declines to buy the argument that disciplinary actions play any significant role in improving police practice. They say that disciplinary proceedings usually take longer time, resulting in fiasco<sup>284</sup>. The main reason for this pertains to the fact that complaints of police misconduct are investigated by fellow police officers, who are highly likely influenced by collegial relations<sup>285</sup>. But, it is not arguable that it has the potential to discourage police misconduct, as disciplinary actions if taken seriously would affect the promotion including job security of the officer.

---

<sup>283</sup> The Federal Police Commission Administration Council of Ministers Regulations No.86/2003, art.52

<sup>284</sup> Supra note 292

<sup>285</sup> Id

Britain could be an example for the optimism on disciplinary action. In general, Britain has experienced series of statutory regulations since 1996 Police Act<sup>286</sup>. One of proceeds of the statutory effort is regulation 2008<sup>287</sup>. The regulation sets out in great detail ‘standards of professional behavior for police officers’ (SPB)<sup>288</sup>. The SPB provides general ‘standards of ethics and other specific standards of care that emanate from convention rights such as the protection against torture and, other cruel, inhumane and degrading treatments under the ECHR’<sup>289</sup>. As per the police conduct regulation 2008, disciplinary offences are labeled as ‘misconduct’ and ‘gross misconduct’<sup>290</sup>. ‘Misconduct is a breach of the standards of professional behavior whereas gross misconduct means a breach of the standards of professional behavior so serious that dismissal would be justified’<sup>291</sup>.

Largely due to practical reasons, England as well has not divested the police power to hear and investigate complaints. Indeed, with the exception of certain cases which are investigated solely by and under the IPCC, ‘the police investigate the majority of complaints’<sup>292</sup>. However, the police have the obligation to refer to the IPCC where the conduct complained of has caused death, serious injury, serious assault, serious sexual

---

<sup>286</sup> Id.150

<sup>287</sup> Id

<sup>288</sup> Id

<sup>289</sup> Home Office Guidance, Police officer misconduct unsatisfactory performance, and attendance management procedure, July 2010, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330235/MisconductPerformAttendanceJuly10.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330235/MisconductPerformAttendanceJuly10.pdf), page 11

<sup>290</sup> Id.24

<sup>291</sup> Id

<sup>292</sup> Swati Mehta, Chri, Holding Police to account for misconduct: Police-Specific complaints agencies, p.5. [http://www.humanrightsinitiative.org/programs/aj/police/res\\_mat/police\\_specific\\_complaints\\_agencies.pdf](http://www.humanrightsinitiative.org/programs/aj/police/res_mat/police_specific_complaints_agencies.pdf)

assault, or criminal offence that would lead to disciplinary proceedings, and the like<sup>293</sup>. In addition to the mandatory referral, ‘the IPCC encourages appropriate authorities to refer complaints or incidents that do not come under the mandatory referral categories but where the gravity of the subject matter or exceptional circumstances justifies referral’.<sup>294</sup> Victim can also appeal to the IPCC when he thinks that conduct that he complained is subject to the mandatory referral<sup>295</sup>.

In Ethiopia, the police forces are established at Federal and regional states, independent to each other. At Federal level, the federal police commission proclamation, proc. no 313/2003, and the subsequent Council of Ministers police regulation, reg.no.86/2003, provide the disciplinary rules and the investigative powers. According to the police regulation, police misconduct entails simple disciplinary penalty or rigorous disciplinary penalty, depending on the nature of the act<sup>296</sup>. Human rights abuses, police corruption, abuse of power are some of the examples of the police misconduct which entail rigorous disciplinary penalties<sup>297</sup>.

However, allegations of disciplinary offences are investigated entirely by the police force itself; no other independent institution is established to handle allegations of police misconduct<sup>298</sup>. Simple disciplinary penalties can be handed by the immediate superior in rank<sup>299</sup>. Regarding rigorous disciplinary proceedings, the commission is mandated to

---

<sup>293</sup> Id

<sup>294</sup> Id

<sup>295</sup> Id

<sup>296</sup> Supra note 303, Art.53, 54

<sup>297</sup> Id. Art.54 ( 1, 13 )

<sup>298</sup> Id. Art.68, 69

<sup>299</sup> Id. Art. 55

establish disciplinary committee of five members<sup>300</sup>. The decision of the commission disciplinary committee is appealable to the commissioner, in which its decision is final.<sup>301</sup>

Apart from laying down the general principles governing police conduct, the police regulation does not envisage for separate professional code of conduct governing police service. The commission has not issued professional or operational standard or directives, a breach of which entails disciplinary penalty, either. The regulation has not also put in place any specific complaint mechanisms as it concerns to questions of when, how, and through what means, and before whom a complaint can be made regarding disciplinary offences. In the absence of any specific complaint mechanisms at hand, therefore, it can be assumed that the complaint mechanism for criminal allegations under the criminal procedure code apply for accepting and recording allegations of disciplinary offences. In that case, allegations of disciplinary offences would have to be communicated in person by the victim, unless he is a minor or an incapacitated person where a legal representative shall do so before a police officer on duty.

It is not known whether the public is using the disciplinary mechanism by the commission and superior police officers. There is also no data that show the number of cases that have reached the commission. Thus, in the absence of any data that could change the assertions here otherwise, it can be concluded that the present disciplinary rule for police misconduct as envisaged under regulation no.86/2003 is doomed as ill-

---

<sup>300</sup> Id.art 68, 69(2)

<sup>301</sup> Id. Art.57

conceived mechanism that does not prevent claimants from further desperation and suffering, let alone building their confidence on police accountability.

## Conclusion and Recommendation

Custodial interrogation is a very old but a living weapon of the police for soliciting incriminatory confessions from the accused himself. Normatively it is understood that it involves both physical and psychological pressure, which of course differs from country to a country largely depending on the reaction of the law maker to policing function, the value system operating police practice, its judiciary, the influence of national democratic institutions and civil societies, and including the political will. Research reveals that a high majority of cases are resolved on the basis of self incriminatory confessions obtained through custodial interrogations. However, in spite of its inherent potential to impair fundamental rights, virtually all states, democrat or undemocratic, maintain custodial interrogation as a strong mechanism for effective prosecution of criminals.

Since the 1960s famous Miranda warning, courts have realized that the custody environment itself, let alone other additional coercion by the police staff, is inherently formidable and coercive. Thus, the most important concern in relation to custodial interrogation shall not be whether a detainee in a specific case was mistreated but whether there exist proper safeguards that prevent coercion such as protection against self incrimination, the right to consult and to be interviewed before a lawyer,. The Miranda warning was meant to protect detainees against compulsions; but it has not been adequate as it underestimates control on the physical conditions of interview; and the fact that it has not dealt with other important issues such as transparency of interrogation recording, independent monitoring and oversight mechanisms, medical facilities, compulsory human right education in police training and the like. Be that as it may, it is believed that it had



triggered serious reform on policing functions in many countries including the UK. Now, in our time, Police code of practice, Police professional standard regulations, and other institutional reform measures on policing function as well, if not more so, play significant role in the protection of detainees.

The international bills of human rights as well envisage the protection of detainees against any forms of compulsions. The main theme of the protection emanate from a faith on human dignity. The ICCPR, in particular, asserts that detention or deprivation of liberty does not affect the treatment of the person respecting his dignity. The covenant also provides other important protections such as the right to remain silent, and an absolute prohibition of torture, and other cruel, inhumane and degrading treatments. However, it is short of explanation on what it means treatment respecting human dignity, and its use of torture, and other cruel, inhumane and degrading treatments. As such, it cannot be relied upon as a strong mechanism against systematic abuses in detention centers, particularly during custodial interrogations.

The convention against torture and other cruel, inhumane and degrading treatment which was adopted in 1984 defines torture. The definition dwells on three elements: Causing severe mental or physical suffering; permission by the state explicitly or by acquiescence; and a specific purpose to obtain information or to punish. However, this definition has never been supportive. It is rather complicated in its own circle. The first element opens for host of endless debates on what acts or infliction reach the level of torture. Reputed courts, such as the ECtHR, and the Israel Supreme courts, have once declined to assert

that beating, shaming, and sleep and food deprivation constitute torture. The second element excuses the state when it shows that it has not authorized the suffering, which the writer believes that states would always say so. The third element as well brings hurdles than solution. It targets only a specific purpose to obtain information or to punish from a specific person/s. it ignores the whole detention environment which in its own right could cause mental anguish even without the police or the interrogator using no coercive tactics. Over all, the convention definition is an entanglement that takes us in to cycle of disagreement than helping us curtail all intrusive and coercive tactics in the police custody.

The other problem with the convention is its failure to define the distinction between torture, and other cruel, inhumane and degrading treatments. While, torture is understood as an extreme form of the prohibited cruel, inhumane and degrading treatments, there is still ongoing disagreement as regards to the factors (the severity of pain or the purpose) which makes up torture. The human rights committee, in majority of its decisions, has focused on the level of the severity of pain. As such, the committee has declined to pronounce torture when it was confronted with the act of beating, deprivation of food and drink, incommunicado detention for more than one year. Prior to the *Keenan V. U.K.*, the ECtHR as well emphasized on the Severity test. However, in the *Keenan*, a recent case, the ECtHR has noted that proof of the effect of the harm of the person may not be a major factor.

None the less, the substantive protection against torture and other cruel, inhumane, and degrading treatments addresses only one side of the problem. Interrogation process involves manipulations, prolonged detention, intrusive confrontations, deceptions and some pressure that, in the words of courts, do not reach the level of severity of pain that constitute torture, and other cruel, inhumane and degrading treatments. As such, it is important to monitor and regulate the interrogation process through statutory or self regulatory mechanisms.

An important dimension for improved police practice in the interrogation process is to look at the right of the detainee. These include, but not limited to, presumption of innocence, the right to remain silent and protection against self-incrimination, and the right to legal counsel, access to medical facilities, visit and communication rights. It is not arguable that the denial of these rights during interrogation affects the outcome the fairness of the trial.

In line to the above discussions, it is important to assess and discuss the law of interrogation under Britain and Ethiopia. At a general level the system of protection under Britain law of interrogation is not comparable to the system of protection of detainees during custodial interrogation. Undoubtedly, Britain has benefited from history, where some of the human rights concepts have sprout from the giant Magna Carta, 1215, and the bill of rights, 1689. The system of human rights in Britain was again strongly pursued after the Second World War, in which the UK signed the European convention on human rights, and other international human rights instruments such as the ICCPR,

and the convention against torture, and other cruel, inhumane, and degrading treatments. However, the breakthrough for a strong and comprehensive regulation of the law of interrogation in Britain came with the enactment of the Police and Criminal Evidence Act (PACE), 1984, and the Human Rights Act (HRA), 1998. The PACE comprises six codes of practice, in which Code C specifically governs the ‘detention, treatment, and questioning of persons by the police’. The HRA further strengthened the PACE initiative by incorporating the convention rights and making them part of the domestic law. More significantly, the HRA obliged courts to take in to account the decision of the ECtHR.

On the other hand, the system of human rights protection in Ethiopia began in the 1990’s with the Transitional charter, 1991-1994, and the Federal constitution, (FDRE constitution) 1995. During the transitional period the country signed and acceded to the ICCPR, and the CAT. The FDRE constitution provides the right arrested and accused persons such as the right to remain silent, protection against cruel, inhumane and degrading treatments, the right to a speedy trial. However, Unlike Britain, Ethiopia has not promulgated a detailed or comprehensive regulation to respect the right of arrested and accused persons in detention centers, and during interrogation. On top of its blatant deficiencies, the relevant body of law governing interrogation is found scattered in the constitution, criminal code, criminal procedure code, and other special proclamations such as the new Anti-terrorism proclamation, and the federal police establishment proclamation and the council of ministers regulation of federal police investigative powers.

The writer does not claim that such huge historical differences in the evolution and development of the human rights system in the two countries justify the differences in the quality of their body of interrogation law. None the less, the thesis has found noticeable differences particularly with regard to the institutional and procedural safeguards of detainees during custodial interrogation. One of the measures taken in the PACE is institutional and functional separation of the custody officer from the interrogation department. The custody officer is responsible for the wellbeing of the detainee. He is required to check and ensure that the detainee is ready for questioning. It is also his duty to record the physical and psychological condition of the detainee before and after interrogation. Moreover, he can stop interrogation when it exceeds the break and free time of the detainee. As such, the detainee is no more vulnerable to physical assault by the interrogator. On the other hand, the custody officer in Ethiopia does not have any control on the interrogation department. The responsibility of the custody officer is to keep the detainee in the custody and to protect him against any compulsion from fellow detainee. However, he cannot protect the detainee from any form of coercion. Virtually the interrogator is in a superior institutional position to the custody officer; and hence not subject to any control by the custody officer.

The PACE, under Code E, has also demystified interrogation processes by introducing mandatory audio recording for custodial interrogations. Code E also regulates the security of the tape recording. It is widely believed that the introduction of audio recording has induced for self discipline and training within the police institution.

On the other hand, audio recording of interrogation is unknown and untried in Ethiopia. The only method of recording is note taking. Often the prosecution relies on the notes written and prepared by the interrogation department. It is highly unlikely that the note taking staff would keep the right balance in recording the questions and answers as well as the attending circumstances on whether the interrogator has used compulsion while questioning. Indeed, reliance on the note taking would in itself seriously impair the right of the accused to defend against the prosecution on equal footing.

The right to remain silent is another important right of an arrested and accused person. Both countries guarantee this right. Britain has a long history with the right to remain silent, adopted in 1896. However, as part of its counter terrorism measures, it has introduced an adverse inference police that forces detainees to talk without using physical force. The British position is not stopped even by the ECtHR. The ECtHR has basically endorsed the UK fabric of adverse inference even if it has put worth noting conditions as Britain such as the presence of a lawyer, prima facie fact for a commonsense inference, and the discretion of the judge to set aside adverse inferences. On the other hand, Ethiopia, which has adopted the right in 1960, has not put any condition or curtailment to the right to remain silent.

The other important point of discussion is the regulation of the right to legal assistance. The PACE requires the police to provide the accused with a lawyer from the moment of arrest. It also requires the police to make notification of the availability of a lawyer in writing. As such, except in few cases where legal assistance can be delayed the accused is

entitled to be questioned in the presence of a lawyer, own lawyer or for free through legal aid scheme. The Ethiopian federal constitution and its criminal procedure code as well envisage the right to legal assistance. However, the constitution and the criminal procedure code are not open on whether the right to the presence of a lawyer during interrogation is included in the right to legal assistance clauses. In the Tamrat Layne case the court has ignored the arguments of the lawyer that his client has been denied the right to legal assistance during interrogation. As it appears, accused persons are able to meet and talk to a lawyer only after the prosecution finishes its investigations.

Both countries also provide other protections such as the right to communicate facts of arrest, access to medical treatment, and visit. In addition to enhancing the wellbeing of the suspect, these rights expose police function and practice to public scrutiny. Thus, the fulfillment of the rights has strong potential to induce improvements in the police practice and treatment of detainees. In Britain the rights exist with sufficient detail as part of the PACE Code C; whereas the rights are hinging on only under the constitution, and not duly supported by subsidiary laws.

Britain and Ethiopia also provide remedies against improper interrogation methods. The remedies include exclusion of confession, and civil and criminal sanctions, and disciplinary measures. Certainly, the first and difficult issue revolves on what is meant or what constitutes improper interrogation method. International human right instruments are not open to a comprehensive understanding of the phrase. In fact, democracies such

as the United States and Israel have once authorized isolation, water boarding, sleep deprivation, shaking and the like.

Britain has responded to the conceptual deficiencies through statutory regulations such as PACE, and the Code of practices, and other subsequent professional standard code of conduct regulations. The Code C, in particular, monitors the interrogation process and the well being of the detainee. On the other hand, Ethiopia provides no legislative or self-regulatory measures to regulate the interrogation process. The constitution, other subsidiary laws are too general and lack clarity to govern and monitor the interrogation process in police custody.

Meanwhile, both countries provide exclusionary rules as a counter measure against improper interrogation tactics. The British Exclusionary rule began with the reliability based voluntariness test. Under the voluntariness test, the court considers only whether the suspect has exercised his free will leaving aside attending circumstances which induced the confession such as treats, false promises and denial of rights such as the right to consult a lawyer. Now, exclusionary rule occupies different features under the PACE. The PACE introduced mandatory and discretionary exclusionary rules. Under the mandatory exclusion, courts would inquire whether the confession was obtained through oppression or following threats or promises. Courts also have discretion to exclude confession on the basis of the outcome of confession on the fairness of proceeding. In all cases, the burden of proof is in the prosecution.



Similarly, the Ethiopian exclusionary rule envisages both voluntariness test and coercion or operation test. The Voluntariness test is planted in the criminal procedure code which requires courts to ascertain whether the confession was obtained voluntarily. However, the Federal constitution introduced coercion test which is similar to the operation test that automatically exclude confession obtained through coercion. However, unlike the PACE definition and the ever expanding of the oppression test, coercion is not defined under the Ethiopian laws. The other major difference is the burden of proof. Neither the constitution nor the criminal procedure code has explicitly determined the burden of proof. On the other hand, the Supreme Court, in the *Tamrat Layne*, has dismissed the argument that the prosecution shall have the burden of proof.

Both countries also provide criminal sanctions against improper interrogation methods. The British criminal law is part of the larger body of case law. While most of the cases over improper interrogation tactics are litigated in the civil court as civil action, ill treatments such as torture, and other cruel, inhumane and degrading treatments are subject to criminal sanctions. On the other hand, the Ethiopian criminal code exhaustively provides list of police misconduct that entails criminal sanction. Most notably, the criminal code criminalizes deceptions and threats.

Be that as it may, the effectiveness of criminal sanction heavily relies on the manner of investigation. In Britain criminal allegations against a police member is supervised and controlled by an Independent Police Complaints Commission (IPCC). On the other hand, in Ethiopia criminal investigation on police officers is entirely the jurisdiction of the

police itself. The Ethiopian Human Rights Commission of course can initiate and undertake investigations on allegations of human right abuses at any government level including detention centers; none the less, it is the police and the prosecution department that handles criminal investigation over a police officer.

Civil remedy also plays significant role in improving police practice in detention. It could also be the best remedy from the victim perspective. In Britain civil action remains the most successful mechanism against police misconduct. Since the adoption of the Human Rights Act, 1998, (HRA), victims have the right to sue for breach of rights under the European Human Rights Convention. Most importantly, victims can sue the chief constable for any harm or damage caused by an individual or group of police officers. Moreover, depending on the nature of the harm, compensation includes punitive or exemplary damage.

On the other hand, civil action is deficient and largely inoperative option in Ethiopia. The State is not directly accountable to a civil action for wrongful acts of police officers. The civil code provides two pronged hassles to civil accountability of the state: the act shall be a professional fault; and the State is responsible only when it is in a position to claim the amount of the civil damage from its employee. These requirements simply push victims to seek remedy only from the individual police officer responsible for the harm. However, as police officers earn very low salary, initiating civil action would be counterproductive, and hence irrelevant to victims.

Last but not least remedy for misconduct is disciplinary measure. Disciplinary proceedings can be carried separately or in parallel to criminal proceedings. If taken seriously, disciplinary measure can strongly induce improvements in police practice. In Britain, disciplinary proceeding as well is supervised by the IPCC. Except for simple misconduct which can be investigated by the police itself, gross misconduct that causes death, serious injury, sexual assault and the like are directly investigated by the IPCC.

In Ethiopia as well police misconduct may entail simple or rigorous disciplinary penalty. Acts that entail rigorous disciplinary penalty include violation of human rights of arrested and accused persons. However, disciplinary matters are investigated either by fellow one rank higher officer for minor offences, and the police commissioner for offences entailing rigorous penalty. Overall, the disciplinary option is problematic for a number of reasons. First, there is no regulation that governs the professional code of conduct of police officers. Second, there is no regulation or manual that directs the complaint hearing mechanisms, when, and how complaint shall be heard and recorded. More seriously, the supervision of disciplinary proceeding entirely by the police commission hinders public support to the improvement of police practice.

As discussed in this thesis, the British interrogation law is backed by rich experience and comprehensive body of law; technically speaking it leaves no room for human right violations during custodial interrogation. But, it is not yet proven and well established on whether a statutory approach could solve police misconduct during interrogation or in the pre-trial detention in general. There are prominent critics that see the British approach as

full of hurdle to the ordinary police function of crime control. The critics prefer self regulatory mechanism complemented by civilian oversight, and independent monitoring mechanisms. However, apparently the Ethiopian experience does not fall in either of the approaches. Neither the police force from within nor the legislature has taken significant steps to regulate and monitor police practice in the entire custodial interrogation process. The writer is of the opinion that the existing rules and institutional mechanisms are open and prone to wide range of human right abuses in the interrogation process..

Hence, in view of the discussions and findings in this thesis, the writer recommends the following points.

- The government shall initiate and undertake comprehensive police reform based on an unbiased and acceptable survey.
- The legislature shall enact specific proclamations that regulate treatment and questioning of detainees including access to a legal assistance during interrogation.
- The legislature or the Police commission itself shall issue police professional service code of conduct regulations.
- The police training manual shall include adequate coverage of human rights education as well as other relevant laws that stand to keep the well being of arrested and accused persons in detention, particularly during interrogation.
- The legislature shall reconsider the power of the police to investigate police misconduct. The legislature shall in particular take in to account public

confidence and the problem of conflict of interest and collegial influence during investigation.

- The police commission shall publish disciplinary or criminal measures taken against police officers for misconduct.
- The government shall be committed to redress victims with monetary compensation.
- The government shall amend the provisions of civil code on monetary compensation for a harm caused by its officers.
- Law schools shall give adequate focus to police and interrogation laws. They shall also push for police reform in view of the rights of arrested and accused persons enshrined in the constitution and international human right instruments ratified by Ethiopia.
- Civil societies and NGO's as well shall express their voices for improvement of police practice in detention centers, particularly during custodial interrogation

## Bibliography

### *Books and Articles*

1. Amos N.Guiora, Constitutional limits on coercive interrogation, Oxford University Press, 2008.
2. Bahru Zewde, the history of the red terror: contexts and consequences, in Tronvoil, Shaefer, and Alemu, eds, The Ethiopian red terror trials: Transitional justice challenged, African issue, 2009
3. Clair Finkelstein, when government lawyers break the law: the case for the prosecution, Pennsylvania law review, vol.158, 2010
4. Christopher Slobogin, criminal procedure: Regulation of police investigation, legal, historical, empirical and comparative materials, LexisNexis, 2007
5. Denis Clark, The investigation of Crime: A guide to the law of criminal investigation, LexisNexis UK, 2004
6. Eileen Skinnider, The Art of Confessions: A Comparative Look at the Law of Confessions – Canada, England, the United States and Australia, International Centre for Criminal Law Reform and Criminal Justice Policy, 2005
7. Gili H.Gudjonsson, The psychology of interrogation and confessions: a hand book. Wiley series in the psychology of crime, policing and law, 2002
8. Gordon Van Kessel: European perspectives on the accused as a source of testimonial evidence, 100 W.Va. L.Rev. 799, 1999
9. Gregory W.O'Reilly, Criminal Law: England limits the right to silence and moves towards an inquisitorial system of justice, 85 J.Crim.L.&Criminology, 1994

10. Kenneth Lesson, Torture, truth serum, and the ticking bombs: Toward a pragmatic perspective on interrogation, 39 Loy.U.J., 2007-2008
11. Joseph Lavitt, the crime of convictions of John Choon Yoo: The actual criminality in the OLC during the Bush Administration, 62 Me.L.Rev.155,2010
12. Joseph D. Grano, Crime, Punishment, and Criminal procedure: Selling the idea to tell the truth: the professional interrogator and modern confession law, book review, 84 Mich. L. Rev. 1986
13. Ian Dennis, Instrumental Protection, Human Right or Functional Necessity? Reassessing the privilege against self-incrimination, Cambridge Law Journal, 54 (2), 1995
14. L.E.Porter, T.Prenzler, Police oversight in the United Kingdom: the balance of independence and collaboration, International Journal of Law, Crime and Justice 40(2010)
15. Mark Berger, The exclusionary rule and confession evidence: Some perspectives on evolving practices and policies in the United States and England and Wales, 20 Anglo-Am.L.Rev.63, 1991
16. Mary Ellen O'Connell, affirming the ban on harsh interrogation, 66 Ohio St.L.J, 2005
17. Stephen P.Savage, Give and take: The bifurcation of police reform in Britain, Australian and New Zealand journal of criminology, 2007
18. Wondwossen Demissie, Reflective analysis of procedural and evidentiary aspects of the Ethiopian Anti-terrorism law, in Ethiopian Human rights law series, Vol.III,2010

19. Bryan A.Garner (ed. in chief), Black`s law dictionary (7th ed.), 1999
20. Ed Cape and Richard Young (editors ), The police and criminal evidence Act 1984 past, present and future, Hart Publishing,2008
21. Mireille Delmas( editor) The criminal process and human rights: toward a European consciousness, Springer publisher, 1995
22. Rintakitai-Sangero, Detention for the purpose of interrogation as modern “torture”, University of Detroit Mercy Law Review Vol.85
23. Tamar Hopkins: An effective system for investigating complaints against police: Study of human rights compliance in police complaint models in the US, Canada, UK, Northern Ireland and Australia, Victoria Law Foundation, 2009
24. Welsh S.White, James J. Tomkovicz, Criminal procedure: constitutional constraints upon investigation and proof, 4<sup>th</sup> ed., 2001
25. Willian Ranniam, Interrogation`s law, Yale Law Journal, Vol.118, 2008
26. Yue Ma, A comparative view of the law of interrogation, International Criminal Justice Review, vol.17, no.1, 2007
27. David Kretzmer and Eckart Klein, eds., The concept of Human Dignity in Human rights Discourse, The Minerva Center for Human Rights, The Hebrew University of Jerusalem Tel Aviv university, Kluwer law international 2000
28. Ben Emerson Q.C., Pro. Andrew Ashworth et al, eds., Human rights and criminal justice,3<sup>rd</sup> ed.,2001
29. Myron Moskovitz, cases and problems in criminal procedure: The police, NexisLexis,2010



30. Annette Faye Jacobsen (editor) Human Rights Monitoring, a field mission manual, Martinus Nijhof Publishers, 2008.

## **Laws**

### **A. Domestic Laws**

1. Police and Criminal Evidence Act, 1984
2. Police and Criminal Evidence Act 1984, Code C, Code of practice for the detention, treatment and questioning of persons by police officers, 2008
3. Police and Criminal Evidence Act 1984, Code E, Code of practice on audio recording interviews with suspects
4. Criminal Procedure Code of the Empire of Ethiopia, 1960
5. Civil Code of the Empire of Ethiopia, 1960
6. Revised Criminal Code of the Federal Democratic Republic of Ethiopia, 2005
7. Charter of the Transitional Government of Ethiopia, proc.01/1991
8. Constitution of the Federal Democratic Republic of Ethiopia, proc.no.01/1995
9. Federal level, the federal police commission proclamation, proc. no 313/2003
10. Council of Ministers police regulation, reg.no.86/2003

### **B. International Laws**

1. Universal Declaration of Human Rights, Paris, 10 December 1948, general Assembly resolution 217 A (III), accessed from <http://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx#>

2. International Covenant on civil and political rights, New York, 16 December 1966, resolution 2200A (XXI), accessed from  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>
3. International Covenant on Economic, Social and Cultural Rights, New York 16 December 1966, General Assembly Resolution 2200A (XXI), accessed from  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx#>
4. The Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment, New York, 10 December 1984 (resolution 39/46)  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

### ***Other internet sources***

1. Swati Mehta, Chri, Holding Police to account for misconduct: Police-Specific complaints agencies. Accessed from  
[http://www.humanrightsinitiative.org/programs/aj/police/res\\_mat/police\\_specific\\_complaints\\_agencies.pdf](http://www.humanrightsinitiative.org/programs/aj/police/res_mat/police_specific_complaints_agencies.pdf)
2. Police and Criminal Evidence Act, 1984, accessed from Home Office PACE web page [http://www.legislation.gov.uk/ukpga/1984/60/pdfs/ukpga\\_19840060\\_en.pdf](http://www.legislation.gov.uk/ukpga/1984/60/pdfs/ukpga_19840060_en.pdf)
3. Report of the UN special rapportuer for the prohibition of torture and other cruel, inhumane and degrading treatments, Manfred Nowak, Human rights council, 13<sup>th</sup> session, February 2010, available at
4. [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5_en.pdf)

5. Legal vice Presidency of the World Bank, Ethiopia Legal and judicial sector assessment, accessed from  
<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/EthiopiaSA.pdf>
6. The UN CAT committee, in its forty fifth sessions, 1-19 Nov. 2010, expressed its deep concern about ‘numerous, ongoing and consistent allegations concerning the routine use of torture by the police. The Committee also noted “consistent reports that torture is commonly used during interrogation to extract confession”. Accessed from  
<http://www2.ohchr.org/english/bodies/cat/docs/A.66.44.pdf>
7. Human Rights Committee, consideration of reports submitted by States Parties under article 40 of the Covenant, First Periodic report of States, Ethiopia, 28<sup>th</sup> July 2009, accessed from  
<http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?page=search&docid=4b2600e12&skip=0&query=Human%20rights%20commission%20report%20July%202008&coi=ETH>