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SCHOOL OF LAW

TITLE: THE RIGHT TO FAIR TRIAL IN ETHIOPIA: SOME SELECTED CASES OF OROMO POLITICAL PRISONERS

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DECLARATION

I, Anane Dereje Deressa, hereby declare that the thesis entitled “The Right to Fair Trial in Ethiopia: Some Selected Cases of Political Prisoners” is my original work and that it has not been submitted for any degree or examination in any other university. I also pledge that, to the best of my knowledge; all sources used in any form are duly acknowledged

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ACRONYMS

UDHR: Universal Declaration of Human Rights.

ICCPR: International Covenant on Civil and Political Rights.

ECHR: European Convention on Human Rights.

ACHPR: African Charter on Human and Peoples' Rights.

FDRE: Federal Democratic Republic of Ethiopia

CPC: Criminal Procedure Code of Ethiopia

ATP: Anti-Terrorism Proclamation No.1176/2020

ECHR: Ethiopian Commission Human Right

Abstract

The study examines the extent to which the right to a fair trial of political prisoners which get recognition under Ethiopian laws and international and regional convention ratified by Ethiopia is implemented during the Pretrial and trial phase. The study mainly employed doctrinal and non-doctrinal legal research and uses qualitative methods of legal analysis, case analysis, and analysis of practice. In addition to analyzing the existing legal framework and practice, interviews with judges, Public prosecutors, Defense lawyers, and police officers were conducted. Even though the right to a fair trial is recognized under the Ethiopian legal system and conventions ratified by Ethiopia, in practice almost all principles of right to a fair trial of political prisoners are not respected during the pretrial and trial stage. In most cases, a decision given by the court and public prosecutor is not respected by the police and other security body. There is direct and indirect influence on the judiciary body by other organs of government. Police investigators are not regularly trained on the development of human rights, and in most cases, they are not held accountable when they violated the rights of suspects. The other issue is that the power of the police is not limited and they lack the skill to technically investigate a case in a short time, and these are the major challenge for the implementation of the right to a fair trial. Finally, it argues that the court has to be independent of direct and indirect influence and the decision rendered by it has to be respected by other organs of the government, police investigators have to be held accountable in a case where they violate the right of suspects, and investigating police officer needs periodic training on issues of human rights and further training is also needed to improve their skills to enable them to finish investigations and gather evidence on time.

Key terms: Right to a fair trial, political prisoners,

CHAPTER ONE

INTRODUCTION

1.1. Background of The Study

The right to a fair trial is a norm of international human rights law and is also adopted by many countries in their procedural law. It is designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of their basic rights and freedoms, the most prominent of which is the right to life and liberty of the person.¹

The right to a fair trial applies to both the determination of an individual's rights and duties in a suit at law and the determination of any criminal charge against him or her.² The right must be observed from the moment the investigation against the accused commences until the criminal proceedings, including any appeal, have been completed, as a violation of rights during one stage affect another stage.³

The standards against which a trial is to be assessed in terms of fairness are numerous, complex, and constantly evolving and they may constitute binding obligations that are included in human rights treaties to which the state is a party.⁴ But they may also be found in documents that, though not formally binding, can be taken to express the direction in which the law is evolving.⁵

The right to public and fair trial consists of several concrete rights as a minimum guarantee including the right to know the reason for arrest, the right against torture and ill-treatment, the right to be presumed innocent, the right to be tried without undue delay, the right to prepare a defense and defend oneself in person or through counsel, the right to have access to an impartial, independent and competent court, the prohibition on self-incrimination and right to silent and right to bail are among the protected rights. These principal rights must be effectively ensured to the accused persons in the process of determination of any criminal charges against them.⁶

¹ Neeraj Tiwari, Fair trial vis-à-vis criminal justice administration: A critical study of Indian criminal justice system, Indian Law Institute, New Delhi, India. April 2010

² Lawyers Committee for Human Rights, "WHAT IS A FAIR TRIAL?", A Basic Guide to Legal Standards and Practice, March 2000, p.1

³ *Ibid.*

⁴ Neeraj Tiwari, cited above at note 1

⁵ *Ibid.*

⁶ Kalkidan Dereje, "courtroom journalism and fair trial rights: Ethiopian law and practice", (September 2020 college of law and governance Addis Ababa university). p 1

Adequate protection and promotion of all human rights and fundamental freedoms require all government institutions to discharge an obligation of respecting human rights. The state has an obligation under international human rights law to respect human rights.⁷ An obligation to respect human rights is simply refraining from interference in the enjoyment of rights. It is an obligation to restrain from violation of rights.⁸

The judicial body and executive body as an organ of the government should respect and ensure the respect for human rights. However, reports show courts set high amounts of bail that few citizens could afford, Although the civil courts operated with a large degree of independence, criminal courts remained weak and overburdened as the report shows in addition to this because of lengthy legal procedure, a large number of detainees, judicial inefficiency and staffing shortage, the right to a fair and public trial without undue delay was not also respected as the report shows.⁹

The primary objective of criminal law is to maintain law and order in society and hence to protect the life and liberty of people and it has an indispensable role in the protection of human rights.¹⁰ Punishment of human rights violations is necessary as it creates accountability, restores justice and dignity to the victims of abuse, and ensures peace and security in society, balance should be achieved between the rights of the individual and the protection of society.¹¹

The right to a fair trial is a norm of international human rights law which is a cornerstone of a just society and without fair trials, innocent people are convicted and the rule of law and public faith in the justice system collapses.¹² It is a key role of any Government to maintain Law and Order on behalf of the whole society.¹³ In the battle against crime and delinquency, the state and its Officers cannot on any account forsake, the decency of State behavior and have recourse to extra-legal methods for the sake of detection of crimes and even criminals.¹⁴ In a Democratic

⁷Fisaha Getachew, “The Respect for Human Rights in Pre-Trial Criminal Investigation (The Case of Oromia Special Zone Surrounding Finfinnee)”, (February 2015, School of law Addis Ababa University), p.1

⁸ Ibid.

⁹ United states department of state, country reports on human right practice for 2020;Ethiopia 2020 human right report, p,10

¹⁰Fisaha Getachew, cited above at note 7, p.1

¹¹ Ibid.

¹²Sir, T.mallinkayu Rao, General principle of fair trial, p.2

¹³ Ibid.

¹⁴ Ibid.

society, even the rights of the accused are sacrosanct. The right to a fair trial means that people can be sure that process will be fair and certain, and it prevents the Government from abusing its powers.¹⁵

The formal account of the concept of fair trial has been accepted as human rights jurisprudence in the Universal Declaration of Human Rights, the major features of a fair criminal trial are preserved in Articles 10 and 11 of the UDHR.¹⁶ Article 14 of the International Covenant on Civil and Political hereinafter ICCPR reaffirmed the objects of UDHR and provides the Rights.¹⁷ Under the European system, the right to the protection of human rights and the right to a public and fair trial is governed under Art 6 and 7.¹⁸ The African Charter on Human and Peoples' Rights governs the Right to public and fair trial under Articles 3, 7 and 26¹⁹

As far as Ethiopia's legal system is concerned these rights are recognized by many levels of Ethiopian law. These legislations include the Ethiopian Constitution, the Ethiopian Criminal Procedure Code, and the treaties that it has ratified. In Ethiopia, the reference to interpreting rights in compliance with International Human Rights Documents is much stronger. Article 13 (1) of the Ethiopian constitution indicates that the federal and state legislative, executive, and judicial organs have the responsibility to respect and enforce fundamental rights and freedoms.²⁰ Therefore, this study is aimed to assess the legal and practical gaps which affect the effective implementation of the right to a fair trial for political prisoners in Ethiopia.

1.2. Statement of the Problem

The right to a fair trial is one of the basic human rights, to which every human person is entitled in any suit at law.²¹ The basic principle of the right to a fair trial is that proceedings in any criminal case include the right to a competent, independent, and impartial court, the right to

¹⁵ Ibid.

¹⁶ See Universal Declaration of Human Rights (UDHR), adopted by adopted by United Nations General Assembly, on 10 December 1948, Art 10 and Art 11

¹⁷ see International Covenant on Civil and Political Rights (ICCPR), adopted by United Nations General Assembly, on 16 December 1966, entered into force 23 March 1976, article 14

¹⁸ See European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), adopted on 4 November 1950 by the Council of Europe and entered into force on 3 January 1953, article 5 & 6)

¹⁹ See African Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force 21 October 1986, article 3, 7 and 26. (herein after cited as the ACHPR)

²⁰ The Constitution of the Federal Democratic Republic of Ethiopia Proclamation no. 1/1995, August, 1995, Art. 13/1, Fed. Neg. Gaz., 1st Year, no.1 (hereinafter cited as the FDRE Constitution or the Constitution)

²¹ Kalkidan Dereje, cited above at note 6, p.3

know the reason for arrest, the right to legal counsel, the right to equal access and equality before the court, the right to a fair hearing, the right to public hearing, a presumption of innocence, the right of bail and others.²² Ethiopia has adopted and ratified different regional and international human rights treaties that safeguard the rights to a fair trial of prisoners however, these rights are not implemented in practice as they are honored in words. As the finding released by the Ethiopian Human rights report show, several OLF leaders were detained without due process of law²³. Courts and prosecutors' decisions have been repeatedly violated by police and security forces, some detainees had been in detention for months to two years and prosecutors fielded no charge and had been subjected to various forms of abuse and ill-treatment.²⁴ In addition to the EHRC report United states department of state, country reports on human right practice for 2020; Ethiopia's 2020 human right report, also shows the criminal proceeding courts lacks the right to independent and impartial courts when it's compared to a civil proceeding in addition to this the right to be brought before the court without undue delay is not respected, Lengthy legal procedures, large numbers of detainees, judicial inefficiency, and staffing shortages contributed to frequent trial delays, in some cases lasting years.²⁵ The report also shows a Lack of transparency regarding those being charged and tried in courts of law which is a basic element of a fair trial, another violation is the amount of money required by the court for the right of bail is not affordable by many citizens.²⁶ What makes political prisoners different from other prisoners is, most of the time the legal process is set in motion not for the determination of guilt and innocence but for political expedience. And most of the time public officials have been observed making statements of guilt on suspected political prisoners with ongoing cases which violate the right to a fair trial of the suspects. Thus the objective of the study is to examine the implementation of the right to a fair trial of political prisoners during the pre-trial and trial stage. It will assess the practical challenges that affect the application of the right to a fair trial of political prisoners by examining some specific cases of Oromo political prisoners.

²² Sir, T. Mallinkay Rao, cited above at note 12

²³ Ethiopian human right commission report, *የተረዘመቅድሙ ክስአስር (prolonged pre-trial detention)* ሰዎች በፍትሕ አስተዳደር ላይ ያላቸው ንጹህ ነገር ያጠፋል, May 19, 2022

²⁴ Ibid.

²⁵ United states department of State, country reports, cited above at note 9

²⁶ Ibid.

1.3. Objective of The Study

1.3.1. General Objective

The general objective of the research is to assess and analyzes the implementation of the right to a fair trial of political prisoners during the whole trial process

1.3.2. Specific Objective

- To assess the normative foundation of the right to a fair trial for political prisoners under international and regional human rights instruments
- To examine the legal framework of rights to a fair trial under the Ethiopian legal system
- To know the level of implementation of the right to a fair trial for political prisoners
- To identify the major challenges against the implementation of the right to a fair trial of political prisoners
- To examine the role of stakeholders in the protection and exercise of the right to a fair trial of political prisoners
- To recommend alternative means for effective implementations to address the gap

1.4. Research Question

In achieving the intended goal this study rises and will address the following questions;

- Is the right to a fair trial of political prisoners properly enforced in Ethiopia?
- What challenges hinder the effective implementation of the right to a fair trial of political prisoners in Ethiopia?
- What is the role of stakeholders in the realization of the right to a fair trial for political prisoners?
- What are alternative solutions, if there is a legal and practical problem that needs reform?

1.5. Research methodology

1.5.1. Research Method

The researcher employs a qualitative research design. The underlying reason for carrying out qualitative research is to gain a richly detailed understanding of a particular topic, issue, or

meaning based on first-hand experience.²⁷ For this research, the justification behind choosing this type of research design is, to explore the implementation of the right to a fair trial of political prisoners during the pretrial and trial stages and to analyze practical challenges political prisoners face during the pretrial and trial stages. The researcher also used this research design to analyze the legal rules and to intertwine them with the constitutional rights of exercising the right to a fair trial of political

The research employs both doctrinal and non-doctrinal legal research methods. The doctrinal research method is used to analyze and explain what the law stipulates and what it ought to say in the area of the study.²⁸ Accordingly, international and regional legal instruments such as UDHR, ICCPR, UNCAT, ECHR, and ACHPR and domestic laws such as the FDRE constitution, criminal laws, criminal procedure law, Prevention and Suppression of Terrorism Crimes Proclamation, and other relevant subsidiary laws were examined. Non-doctrinal research method gives prominence to the relationship of law with people, social values, and social institutions.²⁹ It is used to know to what extent certain legal rules work or have worked.³⁰ This study is used to understand the level of implementation of the right to a fair trial of political prisoners by analyzing some specific cases and identifying the legal and practical challenges that affect the implementation of this right.

1.5.2. Sources of Data

Both primary and secondary data sources are employed to provide the desired outcome mentioned in the study's objective.

1.5.2.1 Primary Sources

International law, regional law that Ethiopia has ratified, the FDRE constitution, criminal code, criminal procedure code, and Prevention and Suppression of Terrorism Crimes Proclamation are utilized to assess the right to a public and fair trial of political prisoners.

²⁷ Available at <https://www.djsresearch.co.uk/glossary/item/Qualitative-Research-Design#:~:text=The%20underlying%20reason%20for%20carrying,based%20on%20first%20hand%20experience>, accessed on December 7, 2022

²⁸ Salim Ibrahim Ali, Dr. Zuryati Mohamed Yusoff, Dr. Zainal Amin Ayub, "Legal Research of Doctrinal and Non-Doctrinal", *International Journal of Trend in Research and Development*, Volume 4(1), p.493

²⁹ Khushal Vibhute & Filipos Aynalem, *Legal Research Methods*, (Teaching Material), 2009, p.70

³⁰ Ibid.

A comprehensive interview with Two judges, one public prosecutor, one police investigator and two lawyers, was done in addition to the analysis of a few cases that have acquired media attention.

1.5.1.2. Secondary Sources

As a secondary source of data, significant works of literature were acquired from books, journal articles, and published, and unpublished publications. These supplementary materials will be acquired from journals, libraries, and online resources. To analyze how effectively the legislation is being practiced, all collected data were assessed.

1.5.1.3 Data Collection Tools

A semi-structured interview guide was prepared following the objectives and questions of the study. As such, interviews with a key informant (i.e., judge, public prosecutor, police officers, and defense lawyer of prisoners) were conducted to get sufficient information regarding the implementation of the right to a fair trial for political prisoners, and the challenges and prospects there.

The interview guide questions were prepared meticulously considering the data needed for the study. The interview responses were properly recorded according to the questions presented. To facilitate the interview sessions with participants the questions were prepared in English language and translated into Afaan Oromo language.

The number of interviews was limited as the requirement of data saturation or redundancy test was accurately met.

1.5.1.4. Sampling Techniques

The researcher used a purposive/non-random sampling technique. The rationale for selecting this technique was purposive sampling allows the researcher to gather qualitative responses, which leads to better insights and more precise research results.³¹ The populations of this study were 1 police officer, 2 judges, and 1 public prosecutor who have a direct relationship with the issue. Thus, since the study was only focused on these targeted groups; a purposive sampling technique was used.

³¹ Available at <https://www.formpl.us/blog/purposive-sampling#:~:text=Purpose%20sampling%20allows%20the%20researcher,relevant%20to%20the%20research%20context>, accessed on December 10-2022

1.5.1.4. Method of Data Analysis

This study's data analysis was begun with an interpretation of data acquired through in-depth interviews. The participants recorded in-depth interviews utilizing a voice recorder and notes. These participants' voices and responses were carefully transcribed and recorded. To provide a reliable record, careful note-taking and attention-listening were needed while taking out this task. The information will then be appropriately translated from Afan Oromo into English completing the translation. To do this, the researcher used narrative as a method for data analysis

1.6. Ethical Considerations

By outlining the objectives of the study to the participants, the researcher collected data while conforming to the principles of informed consent. The researcher was able to collect accurate and valid data due to informed participation.

1.7. Significance of The Study

The researcher believes it would be a good starting point for future researchers in the area and a good reference for those interested to have basic knowledge of the issue. The study is considered to have academic and other public significance. For instance, it makes a useful contribution towards indicating the possible practical limitations concerning the enforcement of the right to a fair trial, it will give critical specific information to the concerned body as to the practical limitations. So that it will take into account such Facts and take necessary responsive action towards the matter also the paper may be used as input for further studies that will be made in the area.

1.8. Scope of The Study

Fair trial guarantees must be observed from the moment the criminal investigation commences until the criminal proceedings, including any appeal, have been completed. In the Pretrial and trial phase, numerous principles of the right to a Fair trial are guaranteed to safeguard at most fairness. This study has chosen to assess the fair trial rights of political prisoners at the pretrial and trial stages. The study mainly focuses on critically analyzing international and regional instruments ratified by Ethiopia and Ethiopian law and practice. Hence all the legal instruments are scrutinized and practically the study is mainly based on some specific cases of oromo political prisoners in Ethiopia.

1.9.Limitation of The Study

Undertaking research is not an easy task because of many reasons that hinder the proper performance of the study. Lack of cooperation from the government's side, lack of sufficient time in dealing with the normal course, preparation for the National Exit exam, and preparing the research at an equal time is the most notable limitation of my study. But I tried to solve the limitation by exerting maximum effort in the research work.

1.10.Organization of The Study

This research has five chapters. Chapter one, which is generally captioned as an introduction, comprises a background of the study, a statement of the problem, the research question, and objective of the study, the research methodology and sources of information, the significance of the study, the scope of the study and organization of the study. Chapter two deals with the general overview of the right to a fair trial and its legal framework under international law, regional laws, and the definition and concept of political prisoners. The third chapter deals with the right to a fair trial under the Ethiopian legal system. The fourth chapter assesses the right to a fair trial of political prisoners, the law and practice of the right to a fair trial of political prisoners with the constitutional right of political prisoners to a fair trial. The fifth chapter deals with the conclusion and recommendation. This part provides a holistic overview; it draws together the questions that have been raised and the conclusions that have been reached.

CHAPTER TWO

The RIGHT TO FAIR TRIAL UNDER INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK

2.1. General Overview of Public and Fair Trial

One of the most remarkable developments in the history of human rights was the development of national, regional, and global mechanisms for the defense of fundamental freedoms and rights following the Second World War.³² As a result of unprecedented atrocities witnessed throughout the world during the 20th century, the protection of human rights has become not only a permanent item of national and international court agendas but also a common concern of each individual.³³

The codification of human rights, including fair trial, in international instruments, and the establishment of international and constitutional courts after the Second World War have paved the way for the effective protection of human rights.³⁴

Fair trial concepts and principles are defined in many ways by national, regional, and international legal systems and instruments. But under legally binding international agreements and national constitutions, we cannot find a precise meaning of the term "fair trial." Instead of defining fair trial, those documents list the principles, rights, and freedoms related to the concept. It was argued, that the concept of a fair trial is impossible, in advance, to formulate exhaustively or even comprehensively. Only a body of judicial decisions gives content to the concept.³⁵ In this context, judgments and decisions which are directly relevant to the question of fairness may not be of much use, since the practical content of the fairness may be expected to "vary with changing social standards and circumstances", and "what might be fair in one case might be unfair in another".³⁶

³²Bahadır KILINÇ, A Trial to Understand the Concept of Fair Trial, p. 316

³³Ibid.

³⁴Ibid.

³⁵Ibid.

³⁶Id., p.317

The right to a fair trial does not focus on a single issue, but rather consists of a complex set of rules and practices. The right to a fair trial is interpreted here as the rules administered through courts of justice following established and sanctioned legal principles and procedures, and with safeguards for the protection of individual rights.³⁷

Although the term “fair trial” can be construed as new due to its “official appearance” in the second half of the 20th century, the core assets, concept and the notion of fair trial principles can be considered as old as the concept of justice.³⁸ Most of the fair trial principles have been implemented by various legal traditions under different names such as “justice, divine justice, natural justice, law of the land, rule of law, due process, etc.”³⁹ Among written sources; Codes of Hammurabi, Codes of Solon, Torah, Lex Duodecimo Tabularum, Bible, Hindu Vedas, Quran, Analects of Confucius, Medina Document, Farewell Declaration, Magna Carta Libertatum, Codifications of Sultan Suleyman I “The Legislator”, the English Bill of Rights, the French Declaration on Rights of the Citizen and of the Man and the American Bill of Rights can be given as the most spectacular examples before the codification of international human rights instruments.⁴⁰ Therefore, the concept of a fair trial is a universal value and a fruit of international human rights legislation, which in some ways has origins in many different legal systems both historically and culturally.

The formal account of the concept of fair trial has been accepted as human rights jurisprudence in the UDHR. The major features of a fair criminal trial are preserved in Articles 10 and 11 of the UDHR. Article 10 of UDHR provides that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations of any criminal charge against him.”⁴¹ Article 11 extends the rights conferred by Article 10 and states that “everyone charged with a penal offense has the right to be presumed

³⁷ Available at, <https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-due-process&ved=2ahUKewjA1faqvs77AhWn7rsIHWZED1g4ChAWegQIHxAB&usg=AOvVaw3qtsA2SaX0XCJVgImfpCrE>

³⁸ Bahadır KILINÇ, cited above at note 32, p.317

³⁹ Ibid.

⁴⁰ Ibid

⁴¹ UDHR, cited above at note 16, Art 10

innocent until proven guilty according to the law in a public trial at which he has had all the guarantees necessary for his defense.”⁴² Apart from the UDHR, the right is very much presented in almost all subsequent treaty-based human right instrument. Such instruments include ICCPR, ECHR, and fundamental freedom, ACHPR, the Convention against torture and other cruel, inhuman, and degrading treatment or punishment, and the convention on the right of the child. And the African charter on the rights and welfare of the child.⁴³

Article 14 of the International Covenant on Civil and Political Rights reaffirmed the objects of UDHR and provides that, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.⁴⁴

The right to a fair trial is governed under the European system for the protection of human rights by Articles 6 and 7 of the European convention for the protection of human rights and fundamental freedom. On its part, the African system the right to a fair trial is governed by Article 7 of the African charter on human and People Rights.

As a state party of ICCPR and ACHPR, Ethiopia has to take appropriate measures to protect the right to a fair trial. The right to a fair trial is one of the constitutional rights recognized under article 20 of the FDRE and the right to a public hearing is safeguarded by the constitution. Protecting the right to privacy of the parties concerned, public morals, and national security are set as legitimate grounds for the court may hear cases in closed session.⁴⁵ Furthermore, the fair trial rights guarantees are strengthened by the judiciary organ established by the Constitution. Article 79 of the FDRE Constitution affirms that judges shall exercise their functions in full independence and be free from any interference or influence of any governmental body, government official, or any other source. Therefore, all legislative, executive, and judicial organs at federal and state levels have the responsibility to respect and uphold the right to freedom from arbitrary arrest and detention.⁴⁶

⁴² Id., Art 11

⁴³ Basil Ugochukwu, checkmate, “A comparative evaluation of the protection of fair trial rights under the African and European human right system”, p.30

⁴⁴ ICCPR, cited above at note 17, Art 14

⁴⁵ FDRE constitution, cited above at note 20, Art 20 sub-2

⁴⁶ Id., Art, 13 sub-1

A fair trial means a trial before an impartial judge, a fair prosecutor, and a judicial atmosphere in which bias for or against the accused, the witnesses, or the cause which is being tried is eliminated.⁴⁷

One of the pillars of a just society is the right to a fair trial. Without fair trials, innocent individuals are sentenced to prison, which undermines the rule of law and public confidence in the legal system. Any government's primary responsibility is to safeguard law and order on behalf of the entire society.⁴⁸ The state and its officers cannot, under any circumstances, abandon the decency of state behavior in the struggle against crime and delinquency and turn to extralegal techniques to identify crimes and even criminals.⁴⁹ Thus the right to a fair trial guarantees that the legal system will operate in a just and transparent manner, preventing the government from abusing its authority.

The fundamental importance of this right is illustrated not only by the extensive body of interpretation it has generated but, most recently, by a proposal to include it in the non-derogable rights provided for in Article 4(2) of the ICCPR. The right to a fair trial applies to both the determination of an individual's rights and duties in a suit at law and the determination of any criminal charge against him or her.⁵⁰ The right to a fair trial on a criminal charge is considered to start running not "only upon the formal lodging of a charge but rather on the date on which State activities substantially affect the situation of the person concerned."⁵¹

Fair trial rights are guaranteed as a minimum requirement to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and to limit the abuse of power by the government.⁵²

The period during which a person is entitled to a fair trial on a criminal accusation is deemed to have begun not only upon the official filing of the charge but also upon the date on which the State acts materially alter the person's condition. Fair trial guarantees must be observed from the moment the investigation against the accused commences until the criminal proceedings, including any appeal, have been completed.

⁴⁷kalkidan Dereje, cited above at note 6, p.10

⁴⁸Sir, T.Mallinkay Rao, cited above at note 12

⁴⁹ Ibid.

⁵⁰ Lawyers Committee for Human Rights, cited above at note 2

⁵¹ Ibid.

⁵² Ibid.

2.2. Principles of a Fair Trial Under International and Regional Laws

Fair trial rights and principles, according to which a trial or a related proceeding is to be assessed in terms of fairness, are numerous and still evolving. However, fair trial rights and principles may be classified roughly under three groups: pre-trial, trial, and post-trial rights.⁵³ This separation is sometimes helpful for identifying which issues will be of particular interest during different periods of the trial process.⁵⁴

2.2.1 PRE-TRIAL RIGHTS

Fair trial rights and principles have to be granted and implemented at the first contact of the “alleged responsible person” with the “first act or negligence” of the authorities using public power.⁵⁵ Major rights and principles at the pre-trial stage may be summarized as follows,

2.2.1.2. The Right to Know the Reason for Arrest

“Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.⁵⁶ Individuals must be promptly informed of the reasons for an arrest, and of any charges, in a language that they understand and in sufficient detail to enable them to take proceedings to have the lawfulness of their detention decided speedily.⁵⁷ This information is a key requirement to allow detainees to challenge the legality of the arrest and detention.⁵⁸

European Convention on human rights states that an arrested person should “be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, to be able, if he sees fit, to apply to a court to challenge its lawfulness.⁵⁹

2.2.1.3. The Right to Legal Counsel

The right to legal counsel is another element of the right to a fair trial. The right to legal counsel is a safeguard for the right to remain silent and is mainly related to the right to defense. The accused has the right to defend him or herself in person or through legal assistance of his or her

⁵³Bahadır KILINÇ, cited above at note 32, p.322

⁵⁴ Lawyers Committee for Human Rights, cited above at note 2, p.3

⁵⁵Bahadır KILINÇ, cited above at note 32, p. 322

⁵⁶ ICCPR, cited above at note 17, Art 9 sub2

⁵⁷Fisaha Getachew, cited above at note 7, p.25

⁵⁸ Ibid.

⁵⁹ ECHR, cited above at note 18, Art 5 sub2

choosing. Legal representation is regarded as the best means of legal defense against infringements of human rights and fundamental freedoms.⁶⁰

A legal counsel supports a defendant with the necessary legal knowledge balancing the legal knowledge of the prosecutor. This right applies during all stages of any criminal prosecution, including preliminary investigations in which evidence is taken, periods of administrative detention, and trial and appeal proceedings.⁶¹

The accused has the right to choose his or her counsel freely. This right begins when the accused is first detained or charged. A judicial body may not assign counsel for the accused if a qualified lawyer of the accused's choosing is available.⁶²

The right allows all persons suspected of a criminal offense to defend the case with the help of legal assistance of his or their choosing. The right contains two basic elements; the right to have legal assistance to defend the case and the right to choose that legal assistance. Choosing legal assistance is a right granted by all legal systems.

According to ICCPR In the determination of any criminal charge against him, everyone shall be entitled to the To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his choosing To be tried in his presence, and to defend himself in person or through legal assistance of his choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.⁶³

According to ECHR, everyone who is charged with a criminal offense has the right to defend himself in person or through legal assistance of his choosing or, if he has no sufficient means to pay for legal assistance, to be given it free when the interest of justice requires.⁶⁴ the African charter on human and peoples' rights states that an accused person or a party has the right to defense, including the right to be defended by counsel of his choice.⁶⁵

⁶⁰ The African Commission on Human and Peoples Rights, “principle and guidelines on the right to fair trial and legal assistance”, p. 13

⁶¹ Ibid.

⁶² Ibid.

⁶³ ICCPR, cited above at note 17, Art 14 sub-C and D

⁶⁴ ECHR, cited above at not 18, Art 6(3(c))

⁶⁵ ACHPR, cited above at note 19, Art 7 sub-C

2.2.1.4. The Prohibition of Torture and The Right to Humane Conditions During Pretrial Detention

The prohibition of torture and other ill-treatment is customary law which is regarded as an absolute and non-derogable right under any circumstance.⁶⁶ It is universally accepted, which means that all states are bound by this prohibition and may not withdraw from this obligation under any circumstance and it cannot be modified in any way, like national law or custom.⁶⁷

Torture and other ill-treatment are prohibited by numerous human rights instruments, both at the international and regional levels, including the UNDHR, the ICCPR⁶⁸, the UN Convention against Torture⁶⁹, the ACHPR⁷⁰, and the ECHR⁷¹.

2.2.2. The Trial Stage

Hearing is the most important proceeding of the trial and at this stage, Parties should have all opportunities to reflect their point of view and challenge the acts of the other parties and the court proceedings during the trial.⁷²

Rights at the hearing include a right to equality before the law and courts, a right to equal access to the courts, a right to trial by a competent, independent, and impartial tribunal established by law, a right to a fair hearing, a right to a public hearing, principle of the presumption of innocence, right not to be compelled to incriminate oneself, right to remain silent, exclusion of evidence obtained in violation of international standards, right to be tried without undue delay, right to defend oneself in person or through counsel, right to an interpreter and to translation, right to a public judgment. Some of these principles are going to be discussed below

2.2.2.1. The Right to Trial Without Undue Delay

Every person charged with a criminal offense has the right to a trial without undue delay and the right to a trial without undue delay means the right to a trial which produces a final

⁶⁶Fisaha Getachew, cited above at note 7, p.34

⁶⁷ Ibid.

⁶⁸ ICCPR, cited above at 17, Art 7 and 10

⁶⁹ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1, September 2018. (Herein after cited as UNCAT)

⁷⁰ ACHPR cited above at note 19, Art 5

⁷¹ ECHR, cited above at note 18, Art 3

⁷² Bahadır KILINÇ, cited above at note 32, p.322

judgment and, if appropriate a sentence without undue delay.⁷³ Factors relevant to what constitutes undue delay include the complexity of the case, the conduct of the parties, the conduct of other relevant authorities, whether an accused is detained pending proceedings, and the interest of the person at stake in the proceedings.⁷⁴

The right of the accused to be tried without undue delay is provided under article 14, paragraph 3 (c), of ICCPR. The article is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice.⁷⁵

Anyone who is arrested or detained on a criminal charge shall be brought before a judicial officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release as stated under the ACHPR⁷⁶ and the ECHR, state that Everyone charged with a criminal offense is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.⁷⁷

2.2.2.2. Presumption of Innocence

The principle that the accused person is presumed to be innocent unless his guilt is proved beyond a reasonable doubt is of cardinal importance in the administration of justice and This right is granted to an accused person throughout criminal investigations and trial proceedings, up to and including the end of the final appeal.⁷⁸

As a basic component of the right to a fair trial, the presumption of innocence, inter alia, means that the burden of proof in a criminal trial lies on the prosecution and that the accused has the benefit of the doubt.⁷⁹ The presumption of innocence is a legal instrument created by the law to

⁷³ The African Commission on Human and Peoples Rights, cited above at note 69, p.15

⁷⁴ Ibid.

⁷⁵ UN Human right committee (2007), General comment no.32, Article 14, “Right to equality before courts and tribunal and to fair trial”,(23 August 2007,CCPR/GC/32) p.10

⁷⁶ ACHPR cited above at note 19, Art. 7(1)(d)

⁷⁷ ECHR, cited above at note 19, Art. 6(1)

⁷⁸ Neeraj Tiwari, cited above at note 1, p. 67

⁷⁹ Ibid.

favor the accused based on the legal inference that most people are not criminals and this principle is based on the legal adage that ten criminals should escape than that one innocent person is wrongfully convicted.⁸⁰ The court, before rendering its decision should always regard the defendant as innocent and address him in the same manner. In addition to courts, the obligation also lies on other state bodies and all public officials⁸¹ This notion is incorporated as a right of the accused person under many Conventions.

Under the UDHR, the right of the presumption of innocence has been recognized. And it states that "Everyone charged with a penal offense has the right to be presumed innocent until proven guilty according to the law in a public trial at which he has had all the guarantees necessary for his defense".⁸² In addition to UDHR the right to presumption of innocence is recognized under ICCPR. Article 14 (2) of the convention state: "Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law."⁸³

Convention against Torture and other cruel in human or Degrading Treatment or punishment, have also given due emphasis to the presumption of innocence rights under Articles 15 and 16.

ACHPR, similar to other international conventions also ensured the right to be presumed innocent until proved guilty by a competent court or tribunal under Article 7(1)(b). under Article 6 of the ECHR, the same right is protected by stating that: Everyone charged with a criminal the offense shall be presumed innocent until proved guilty according to law.⁸⁴

2.2.2.3. The Right to Defend One Self

The right to have your cause heard is the definition of a fair trial as it embodies the principle of equality of arms.⁸⁵ If the prosecutor has an opportunity to present his case and evidence to prove that the defendant shall have a similar opportunity to present his story and evidence in support of that.⁸⁶

⁸⁰ Id., p. 68

⁸¹ Ibid.

⁸² UDHR, cited above ate note,16, Art 11 sub-11

⁸³ ICCPR, cited above at 17, Art 14 sub-2

⁸⁴ ECHR, cited above at not 18, Art. 6(1)

⁸⁵ Akilile Solomon, "Balancing and safeguarding the right to fair trial for suspects of terrorism in Ethiopia" (November, 2017 central European university) p.18

⁸⁶ Ibid.

Any information, small or big, will be essential to defend thus the right to be informed is a component of the right to defend oneself and this right enable the defendant to receive all information about his charge promptly, in detail, and in the language, he or she understands⁸⁷ In this word prompt has no specific predetermined time frame on which the defendant shall get this information because of this the determination shall be made on a case-by-case basis.⁸⁸

Finally, the defendant should receive information in a language he or she can understand this may entail interpretation of the charge in the language he or she understands as well as an elaboration of legal standards or legal language. This means vague, informal knowledge doesn't amount to fulfillment of this right. And this right shall exist at all stages of the process and should be provided free of charges⁸⁹

The right of all persons charged with a criminal offense to be informed promptly and in detail in a language which they understand of the nature and cause of criminal charges brought against them, enshrined in paragraph 3(a), is the first of the minimum guarantees in criminal proceedings of article 14 of the ICCPR

The ECHR state that, everyone charged with a criminal offense has the right to be informed promptly, in a language that he understands and in detail, of the nature and cause of the accusation against him.⁹⁰

The African Commission on Human and Peoples' Rights has held that Article 7(1)(c) of the ACHPR implies the right of the accused to be informed of the charges against him and the evidence upon which they are based and that where these are not brought to the knowledge of the accused, that guarantee is violated, by using the mandate given to the commission under Article 45(c) of the ACHPR charter.

2.2.2.4 The Right to Fair and Public hearing

The right to a fair hearing lies at the heart of the concept of a fair trial. Everyone is entitled to a fair hearing. The right to a fair hearing in criminal trials is underpinned by several specific rights set out in international standards, sometimes referred to as "due process rights".⁹¹ They include

⁸⁷Ibid.

⁸⁸Ibid.

⁸⁹ Id, p.29 and 30

⁹⁰ ECHR, cited above at note 18, Art 6 (3) sub a

⁹¹Amnesty International, "Fair Trial Manual"(2ndedn, Amnesty International Publications 2014), p. 118

the rights to be presumed innocent, to adequate time and facilities to prepare a defense, to be tried without undue delay, to defend oneself in person or through counsel, to call and examine witnesses, not to incriminate oneself, to appeal, and to protection from retroactive criminal laws.

⁹² The single most important criterion in evaluating the fairness of a trial is the observance of the principle of equality of arms between the defense and the prosecution⁹³

The right to a fair hearing is found under, Article 10 of the Universal Declaration, Article 14(1) of the ICCPR, Article 6(1) of the European Convention, Section A(1)-(2) of the Principles on Fair Trial in Africa.

In addition to a fair hearing, The right to a public hearing is an essential safeguard of the fairness and independence of the judicial process, and a means of protecting public confidence in the justice system.⁹⁴ The right to a public hearing means that not only the parties in the case (and victims, in jurisdictions where they are not considered to be parties) but also the general public and the media, have the right to be present.⁹⁵ In addition to safeguarding the rights of the accused, this right embodies and protects the public's right to know and monitor how justice is administered, and what decisions are reached by the judicial system.⁹⁶

The public's access to part of or all hearings in a criminal case may be restricted only in a limited number of specific, narrowly defined, circumstances, all of which are to be strictly construed.⁹⁷

The right to a public hearing incorporates the principle that justice should not only be done but be seen to be done, by subjecting legal proceedings to public scrutiny.

The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large.⁹⁸

Courts must make information regarding the time and venue of the oral hearings available to the public and provide adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the oral hearing.⁹⁹

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Id., p.121

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Id., p. 122

⁹⁸ UN Human right committee, cited above at note 75, p. 8

⁹⁹Ibid.

public may be excluded from all or part of the trial in the interests of morals, public order, or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice¹⁰⁰

Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons. Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence, and legal reasoning must be made public, except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.¹⁰¹

The second sentence of paragraph 1 of Article 14(1) of the ICCPR, Article 7(1) of the ACHPR, and Article 6 of the ECHR entitles for a fair and public hearing and also mandates the judgment be pronounced publicly. But this right is not absolute under those international and regional conventions. The press and public may be excluded from particular proceedings if such exclusion serves the interest of morals, public and national security.

2.2.2.5. Right to Have Access to Competent, Independent, and Impartial Court of Law

The basic institutional framework enabling the enjoyment of the right to a fair trial is that proceedings in any criminal case are to be conducted by a competent, independent, and impartial tribunal established by law and the rationale of this provision is to avoid the arbitrariness or bias that would potentially arise if criminal charges were to be decided on by a political body or an administrative agency¹⁰²

The right to be tried by a competent tribunal is the central element of fair trial upon which all other elements rest and the full realization of fair trial rights depends on the existence of this right.¹⁰³ The judiciary will evaluate restrictions on fair trial, assess the action of a state official to protect suspects, and follow a procedure that ensures the right. Similarly, another fundamental right is dependent on this right.¹⁰⁴ The judiciary as a branch of government is an aspect of democracy that ensures checks and balances as well as the accountability with other branches of

¹⁰⁰ Jordan Daci, Right to a fair trial under International Human Rights Law, (Albanian University, Tirana, East European) p.11

¹⁰¹ Ibid.

¹⁰² Lawyers Committee for Human Rights, cited above at note 2, p.12

¹⁰³ The African Commission on Human and Peoples Rights, cited above at note 60, p.3

¹⁰⁴ Ibid.

the state. This right also ensures access to justice which is central to rule of law and access to a court shall be understood as access to a competent tribunal.¹⁰⁵

Competence is related to the power to make a binding decision.¹⁰⁶ A tribunal shall have the power to affect rights and obligations through its decisions, by which other institutions are bound.¹⁰⁷ This competence comes from the establishment of the judiciary as an institution and a tribunal shall be established by the law to have the power to make binding decisions.¹⁰⁸

On the other hand, the independence of courts is one of the most essential elements for an independent judicial system. Independence presupposes a separation of powers in which the judiciary is institutionally protected from undue influence by, or interference from, the executive branch and, to a lesser degree, from the legislative branch.¹⁰⁹

The independence of the judiciary means that the court may make decisions independent of any other branch of the government. Its decisions may be reviewed only by appellate courts that are themselves independent from the other branches.¹¹⁰

The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension, and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature.¹¹¹

¹⁰⁵ Akilile Solomon, cited above at note 85, p. 26

¹⁰⁶ *Id.*, 26 and 27

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ Lawyers Committee for Human Rights, cited above at note 2, p.15

¹¹⁰ Jordan Daci, cited above at note 100, p.50

¹¹¹ Lawyers Committee for Human Rights, cited above at note 2, p.15

On the other hand, the judgment delivered by these courts shall not be changed by a non-judicial body with exceptions of amnesty or pardon recognized by the constitution and delivered by the Legislative Body and the Head of State.¹¹²

Another aspect of the judiciary, which is essential to secure fair trial is impartiality. The decision by tribunals should be based on laws, facts, and evidence.¹¹³ Impartiality refers to the neutrality of the judge from internal bias against the defendant and it reflects on the internal bias of individual judges.¹¹⁴ This principle is recognized under different conventions.

Under ICCPR, The requirement of competence, independence, and impartiality of a tribunal is an absolute right that is not subject to any exception¹¹⁵ In addition to this convention the principle of competence, independence, and impartiality of a tribunal is stated under 6 sub one the ECHR and Article 7 sub 1 (c) of the ACHPR charter

2.2.2.6. The Prohibition on Self-Incrimination and The Right to Silence.

In the determination of any criminal charge against a suspect, everyone is entitled Not to be compelled to testify against himself or to confess guilt and the right to remain silence is inherent in the presumption of innocence.¹¹⁶ The right to remain silent protects suspects from being forced to give information either by answering questions or providing evidence and courts cannot interpret a suspect's silence as indicative of guilt.¹¹⁷ This right tries to protect the right of presumption of innocence by placing the burden to proof on the prosecutor.¹¹⁸ This means when a suspect remains silent, the burden to proof will shift to the public prosecutor the right to remain silent have two justifications, the first one is it has a direct relationship with human dignity which is the core principle of human right and it requires the suspect will which includes their will not to answer questions¹¹⁹. The second justification is giving the right to remain silent to suspects will protect them from being subject to cruel, inhuman, and degrading treatment or

¹¹² Jordan Daci, cited above at note 100, p. 10

¹¹³ Akilile Solomon, cited above at note 85, p.30

¹¹⁴ Ibid.

¹¹⁵ ICCPR, cited above at 17, Art 14 sub-1

¹¹⁶ Lawyers Committee for Human Rights, cited above at note 2, p.19

¹¹⁷ Akilile Solomon, cited above at note 85, p.16

¹¹⁸ Ibid.

¹¹⁹ Ibid.

punishment. And this right is protected by the exclusion of evidence obtained by violating this right.¹²⁰

The right not to be compelled to testify against oneself and the right not to confess guilt include two elements: the right to freedom from self-incrimination and the right to silence these two rights are entered related but somehow, they got a differences.¹²¹

The right to silence encompasses only oral representations made by a person and refers to a person's right not to make an oral statement to the police or any other criminal justice actor during the investigation of a criminal offense, While the freedom from self-incrimination is bordered in scope and refers to both oral representation and to the provision of any materials that may tend to incriminate a person¹²²

The right not to be forced to testify against oneself or to confess guilt is protected under article 14, clause 3 (g) of the ICCPR. This protection must be viewed in terms of the absence of any direct or indirect physical pressure or excessive psychological pressure applied to the accused by the investigating authorities to elicit a confession of guilt.

This element of a fair trial is not included under Article 6 of the ECHR, so the European court included by inference the right to remain silent or the rule against self-incrimination as an element of the right to a fair trial.¹²³ The court established a relationship between the right to silence and the provisions of Article 6 sub 2 of the convention which place the burden of proof in criminal cases on the prosecution.¹²⁴

The accused has the right not to be compelled to testify against him or herself or to confess guilt. Any confession or other evidence obtained by any form of coercion or force may not be admitted as evidence or considered as probative of any fact at trial or in sentencing and Any confession or

¹²⁰ Ibid.

¹²¹ Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers available at [\[PDF\] Chapter 4: Rights of the Suspect and the Accused - Free Download PDF \(Silo. Tips\)](#) accessed on December,24

¹²² Ibid.

¹²³ Basil Ugochukwu, cited above at note43, p. 44

¹²⁴ Ibid.

admission obtained during incommunicado detention shall be considered to have been obtained by coercion, in addition to this Silence by the accused may not be used as evidence to prove guilt and no adverse consequences may be drawn from the exercise of the right to remain silent as The African Commission on Human and Peoples' Rights stated under principle and guideline on the right a fair trial and legal assistance in Africa which aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African states which they may base their legislation.¹²⁵

2.2.2.7 The Right to Equality Before the Law and Equality Before the Court

The guarantee of equality in the administration of criminal justice is multifaceted. It prohibits discriminatory laws and discrimination in the implementation of laws. It includes the rights to equality before and equal protection of the law; equality before and equal treatment by the courts; and equal access to the courts.¹²⁶

Equality before the law relates to the equal treatment of persons in the application and enforcement of the law it applies to all public officials including judges, prosecutors, and police officials, and requires that they treat all persons equally.¹²⁷ Equality of treatment, however, does not mean identical treatment for all persons. Instead, it means that persons in like positions should be treated in the same way.¹²⁸

This general principle of the rule of law means that everyone is entitled to equal access to the courts and that the parties to a case are treated without discrimination. This is a "key element of human rights protection and serves as a procedural means to safeguard the rule of law"¹²⁹

The right to equality before courts and tribunals also ensures the equality of arms. This means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.¹³⁰ Equality before courts and tribunals also

¹²⁵ The African Commission on Human and Peoples Rights, cited above at note 60, p.15

¹²⁶ Amnesty International, Fair Trial Manual, stated above at note,91, p.103

¹²⁷ Human Rights in the Administration of Justice, cited above at note 101

¹²⁸ Ibid.

¹²⁹ Amnesty International, Fair Trial Manual, stated above at note,91 p.104

¹³⁰ General comment no 32 cited above at note75, p.3

requires that similar cases are dealt with in similar proceedings. If, for example, exceptional criminal procedures or specially constituted courts or tribunals apply in the determination of certain categories of cases, objective and reasonable grounds must be provided to justify the distinction.¹³¹

Articles 2(1), 3, and 26 of the ICCPR Articles 2 and 3 of the African Charter, Article 14 of the European Convention deal with equality before the law, and Article 10 of the Universal Declaration, while, Article 14(1) of the ICCPR, Section A(2)(b) and (d) of the Principles on Fair Trial in Africa, Articles 6 and 14 of the European Convention deal equality before the court.

2.2.2.8. Right to Bail

The right to bail of the accused or the suspect is not absolute; it rather goes with the circumstance and the degree of the offense committed. But it is one of the most important rights of the accused. The main purpose of the bail is to allow the accused to remain free so that the normal activities of life can be maintained including work and family support and allow the defendant to prepare a defense to the charge. But there is another important aspect of bail as well. Besides its contribution to the defense of the accused, the disadvantages of pretrial detention are the financial burden on society to maintain jails and the cost of the loss of liberty including the appalling conditions in many of the jails, which threaten the life, and limbs of the prisoners.

The right to bail is incorporated under International human rights instruments. Art 11(1) of UDHR, Art 9(3) of the ICCPR, and Art 7(1) (c) of the ACHPR

2.2.3. Post-Trial Rights

Judgment is the most important and expected result of a trial. Even it can be argued that the fairness of all the proceedings depends mainly on the fairness of the judgment. In this respect, punishments and judgments have to conform with international standards, retroactive application of lighter penalties, right to appeal and retrials, right to have the judgment reviewed by a higher tribunal, right to a retrial or reopening on grounds of newly discovered facts, right to retrial and reopening of cases after findings of international human rights bodies¹³²

¹³¹Ibid.

¹³²Bahadır KILINÇ, cited above at note 22, p. 8

2.2.3.1. The Right to Appeal

Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to Article 14(5) of the ICCPR. The right to appeal is aimed at ensuring at least two levels of judicial scrutiny of a case, the second of which must take place before a higher tribunal. This right to appeal is also known as the right to be reviewed.¹³³ The Human Rights Committee considers that the right to appeal is absolute.

The African charter recognizes the right to court, which it refers to as the right to an appeal to competent national organs to redress violation under Art 7 sub 1 of the charter while The European human right convention did not provide for the right to an appeal in the original text. This right was, however, incorporated in protocol No 7 of the convention concerning criminal cases

2.2.3.2. The Right to Compensation for Miscarriage of Justice

International standards require states to compensate victims of miscarriages of justice in particular circumstances.¹³⁴ This right is distinct from the right to compensation for unlawful detention.¹³⁵ It is also distinct from the right to reparation for violations of other human rights, including fair trial rights.¹³⁶

When a person has by a final decision been convicted of a criminal offense and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him as per Article 14 (6) of the ICCPR. It should be noted that compensation for miscarriage of justice may be granted only after a conviction has become final and that the claim may be brought regardless of the severity of the offense involved.¹³⁷ Three additional conditions must be cumulatively met: at first a miscarriage of justice must have been subsequently officially acknowledged by a reversal of the conviction or by pardon; secondly the delayed disclosure of the pertinent facts must not be attributable to the convicted person, and at

¹³³ Lawyers Committee for Human Rights, cited above at note 2, p.21

¹³⁴ Amnesty International, Fair Trial Manual, stated above at note,91, p.227

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Id., p.22

last the convicted person must have suffered punishment as a result of the miscarriage of justice.¹³⁸

2.4. Political Prisoners

The concept of a *political prisoner* is increasingly found in international documents, media publications, and reports by national and international organizations. However, the concept is often understood in different ways.¹³⁹

The concept of a political prisoner, like many concepts in social sciences, is undefined in international law and human rights treaties. Several organizations involved in human rights issues, as well as scholars studying them, have developed their definitions, some of which are presented below.¹⁴⁰ Amnesty International defines a political prisoner as a person accused or convicted of an ordinary crime carried out for political motives, such as murder or robbery carried out to support the objectives of an opposition group or a person accused or convicted of an ordinary crime committed in a political context, such as at a demonstration by a trade union or a peasants' organization or a member or suspected member of an armed opposition group who has been charged with treason or "subversion".¹⁴¹ Governments often say they have no political prisoners, only prisoners held under normal criminal law. AI however describes cases like the examples given above as "political" and uses the terms "political trial" and "political imprisonment" when referring to them. But by doing so AI does not oppose the imprisonment, except where it further maintains that the prisoner is a prisoner of conscience, or condemns the trial, except where it concludes that it was unfair.¹⁴² Assistance Association for Political Prisoners defines a political prisoner as "anyone who is arrested because of [their] perceived or real involvement in or supporting role in opposition movements with peaceful or resistance means".¹⁴³ The US Congressional-Executive Commission on China, defines a political prisoner broadly as any individual who is detained for exercising "[they're] human rights under

¹³⁸ Ibid.

¹³⁹ Available at, [Guidelines on Definition of Political Prisoner | Human Rights Center MEMORIAL \(memohrc.org\)](https://www.memohrc.org/)/accessed on January 12, 2023

¹⁴⁰ Available at, [Political prisoner - Wikipedia](https://en.wikipedia.org/wiki/Political_prisoner)/ accessed on January 12, 2023

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

international law, such as peaceable assembly, freedom of religion, freedom of association, free expression including the freedom to advocate peaceable social or political change and to criticize government policy or government officials.¹⁴⁴

it should be noted that as a rule classification of a person subjected to persecution as a political prisoner does not per se depend on the person's motives.¹⁴⁵ It is not the motivation of the person's actions that is essential, but the evaluation of the actions as such.¹⁴⁶ It is not important whether this person is an opposition politician, human rights defender, journalist, or any other public figure, but it is rather the actions of which the person has been accused the response of the authorities, and the actual motivation of the actions taken by the authorities.¹⁴⁷ The fact in itself of their opposition political activity cannot serve as a sustainable basis for viewing the person as a political prisoner, even in case of deprivation of liberty, although it provokes heightened public interest in the case.¹⁴⁸

¹⁴⁴Ibid.

¹⁴⁵ Cited above at note, 153

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

CHAPTER THREE

THE RIGHT TO FAIR TRIAL UNDER ETHIOPIA LEGAL FRAMEWORK

3.1.Ethiopian Constitutions

Ethiopia is bound by national legislation as well as regional and international law. The universal human rights treaties that Ethiopia has ratified are part and parcel of the law of the land. The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT) are some of these. Ethiopia is also obliged by regional treaties signed in Africa, like the African Charter on Human and People's Rights.

Article 9 of the constitution provides that it is the supreme law of the land and no law in contravention of the federal constitution is of any force or effect. In addition to these international agreements ratified by Ethiopia are an integral part of land law and the fundamental rights and freedoms laid down in the Constitution must be interpreted in a manner compatible with the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.¹⁴⁹

The FDRE Constitution has stipulated various guarantees to a fair trial for arrested persons; persons held in custody and convicted persons under different provisions.

Arbitrary detention is prohibited under the constitution. If a person is detained in the absence of a charge or conviction made against him, he is arbitrarily detained or arrested.¹⁵⁰ In addition to this Article, 13(2) of the FDRE constitution forces all federal and regional legislative, executive, and court organs to be under a duty to respect and enforce the right to protection from arbitrary.

Under Article 19 of the constitution, Persons arrested have the right to be informed promptly, in a language they understand, of the reasons for their arrest and of any charge against them.¹⁵¹ The arrested person also has the right to remain silent and the right to be informed properly in a language they understand, that any statement they make may be used as evidence against them in

¹⁴⁹ FDRE constitution, cited above at note 20, Art 9(4) and 13

¹⁵⁰ Id., Art 17

¹⁵¹ Id., Art19(1)

court ¹⁵² in addition to this they the right to be brought before a court within 48 hours of their arrest and the right to petition the court to order their physical release when they fail to appear before the court within the prescribed time.¹⁵³ unlawfully arrested or detained or who is not brought before a court of law within the prescribed period, are allowed to exercise the Habeas corpus right and get remedy available to him or her as the constitution says.¹⁵⁴ The right not to be compelled to make confessions or admissions which could be used against them¹⁵⁵ and the right to be released on bail ¹⁵⁶are among those right that gets recognition under the FDRE constitution. It is added that in exceptional circumstances prescribed by law, the court may deny bail or demand an adequate guarantee for the conditional release of the arrested person.

Article 20 of FDRE constitution also secured some right to fair trial among them, the right to be informed with sufficient particulars of the charge, the right to be presumed innocent until proved guilty according to law, the right not to be compelled to testify against oneself, and also guaranteed the right to access to any evidence presented against them, to adduce evidence produced in their defense, the right of appeal and the right to request for the assistance of an interpreter, the provision also entitles accused persons to be represented by legal counsel of their choice and those who do not have sufficient means to pay for it (legal counsel of their choice) and miscarriage of justice would result, to be provided with legal representation at state expense, The right to a public hearing is safeguarded by the same provision, Protecting the right to privacy of the parties concerned, public morals, and national security are set as legitimate grounds the court may hear cases in closed session

All persons held in custody and persons imprisoned upon conviction and sentencing have the right to treatment respecting their human dignity.¹⁵⁷ All persons shall have the opportunity to communicate with and be visited by, their spouses and partners, close relatives, friends, religious councilors, medical doctors, and their legal counsel.¹⁵⁸ Furthermore, the Constitution's Article 28(1) specifically refers to torture as one of the crimes against humanity. arrest and detention.

¹⁵² Id., Art19(2)

¹⁵³ Id., Art,19 and 9

¹⁵⁴ Id.,Art,19(4)

¹⁵⁵ Id., Art,19(5)

¹⁵⁶ Id., Art,19(6)

¹⁵⁷ Id., Art,21 (1)

¹⁵⁸ Id., Art,21(2)

Additionally, the judiciary body established by the Constitution strengthens the guarantees of fair trials according to Article 79 of the FDRE Constitution judges shall exercise their functions in full independence and be free from any interference or influence of any governmental body, government official, or any other source.

3.2 THE Ethiopian Criminal Procedure

The Criminal Procedure Code contains provisions that are intended to further the principles endorsed by the Constitution. Regarding the administration of the criminal justice system's due process clause, there are provisions relating to the right of the suspect or defendant to remain silent,¹⁵⁹ Right to be released on bail¹⁶⁰ protecting the suspect against unreasonable search and seizure.¹⁶¹ Right to be treated with dignity.¹⁶² The law also requires that the arrestee be detained on the conditions that are prescribed for prison.¹⁶³ Right to be visited by relatives and religious fathers¹⁶⁴ Right to be represented by an attorney¹⁶⁵ Right to have access to and examine prosecution witnesses¹⁶⁶ Right to present his defense,¹⁶⁷ and right to be presumed innocent until proved guilty by the prosecution.¹⁶⁸ These are the inherent process values of the administration of criminal justice.

3.3. The Ethiopian Criminal Code

the right to be free from arbitrary detention is protected by the criminalization of unlawful deprivation of liberty in the Ethiopian Criminal Code.' Moreover, the criminal code of FDRE states unlawful arrest or detention is punishable. Under Art 423 and 585(4) of the criminal code

¹⁵⁹ Criminal Procedure Code of Ethiopia, NegaritGazetta, Proclamation No. 185/1961, Art 27

¹⁶⁰ Id., Art,51 ff

¹⁶¹ Id., Art,32 and 33

¹⁶² Id., Art,56(3) and Art 127(2)

¹⁶³ Id., Art 60

¹⁶⁴ Ibid.

¹⁶⁵ Id., Art, 61 and 127

¹⁶⁶ Id., Art,136(2) and 137

¹⁶⁷ Id., Art 142

¹⁶⁸ Id., Art, 141 and 142

3.4 Prevention and Suppression of Terrorism Crimes Proclamation (pro.No.1176/2020)

Treatment of Suspect or Accused in Detention or Prison A person who is in a detention center or prison on suspicion or accusation in connection with crimes provided for in this Proclamation shall be protected by the Constitution of the Federal Democratic Republic of Ethiopia, International Agreements ratified by Ethiopia and other Laws of the country concerning Rights and conditions of suspected or accused persons.¹⁶⁹ This means every principle of the right to fair and public trial recognized under these conventions and the constitution is protected for an accused person.

A professional to be assigned as an investigator shall be a person who has taken training on matters of crimes of terrorism and protection of human rights and who possesses the required experience, skill, and good ethical behavior.¹⁷⁰ Federal Attorney General Lead the investigation of terrorism crime and conduct litigation in a court of law, assign a professional who leads the investigation and conduct litigation, and where necessary, set up a special work unit and follows up the treatment of detainee suspected of committing a crime complies with the law to prevent the violation of the right to fair and public of accused under this proclamation by the police investigator.¹⁷¹

¹⁶⁹ The Ethiopian Prevention and Suppression of Terrorism Crimes Proclamation.1176/2020, Art 45

¹⁷⁰ Id., Art, 36(3)

¹⁷¹ Id., Art,38

Chapter Four

Right to a fair trial in practice: some selected cases of political prisoners

The legal framework of the right to a fair trial under international and regional conventions ratified by Ethiopia and the legal framework of Ethiopia is briefly discussed in the previous chapters, in this chapter the implementation of the principles of the right to a fair trial will be discussed by analyzing some selected cases and interview with the judge, public prosecutor, police officer and defense lawyers of political prisoners.

4.1 The right to know the reason for arrest

Mr. Abdi During the period from February 29 through March 16, authorities did not inform him of the grounds for his detention nor did they bring him before a court.¹⁷² Following the assassination of Hachalu Hundessa, Lammi Begna, Dawit Abdeta, Gada Gabisa, Kenessa Ayanssa, and Dr. Gada Woljira was detained in the same way from Addis Ababa and taken to the Oromia police commission, during their arrest, they have not informed the reason of their arrest by the police officer said defense consular of those individuals.¹⁷³ Mrtuil also told to the researcher that Gada Gabisa and Dr. Gada Woljira have been detained now for almost Three (3) years without knowing the reason why they are kept under custody.¹⁷⁴ Informing the Reasons for Arrest is a pretrial principle for the protection of the right to a fair trial which got recognition under ICCPR, ACHPR, and FDRE constitution. However, practically most political prisoners are informed why they are arrested when they were brought before a court, not at the time of their arrest.

But the police investigator the researcher spoke with argued that like other prisoners, political prisoners are told the reason for their arrest at the moment of their arrest and any charge against them in the language they understand.¹⁷⁵

¹⁷² Interview with Tuli Bayissa, Attorney at Law and Consultant at Federal and Oromia Courts, conducted 8th February, 2023

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

4.2. THE RIGHT TO LEGAL COUNSEL

In the case of Mr. Abdi Regassa, throughout his detention, he has had virtually no contact with his family or his lawyer and during his first court appearance on March 16, 2020, he appeared before the court without the presence of a lawyer.¹⁷⁶ At this time, Mr. Abdi appealed to the Sululta district court to gain access to his family, and the court allowed him access to his family and his lawyer on July 29, 2020, after five months of imprisonment, for the first time, he met with his brother and his lawyer at the courthouse, but the lawyer did not given the chance to speak with him about his case.¹⁷⁷The only time I was able to see him was in court, where we were not allowed to talk privately.¹⁷⁸A lawyer of Michael Boran and KenessaAyyansaa told the researcher that, he was not able to meet those arrested when they were first arrested and the place, they were detained was unknown by him or their family, they had been arrested in 18 different palaces.¹⁷⁹In the above two cases, Article 20FDRE constitution, Art 61&127 of criminal procedure of Ethiopia and Art 14 sub-C and D and ART 7 sub-C of ICCPR and ACHPR, international and regional conventions ratified by Ethiopia that deal with the right to legal counsel is violated. While, the police officer, assured the researcher that political detainees are given access to their lawyers upon arrest and are given lawyers at the government's expense when they are unable to pay for lawyers as required by the law.¹⁸⁰

4.3. The prohibition of torture and the right to humane conditions during pretrial detention

In the case between the public prosecutor VS QasimAbdulahi and the other 16 accused individuals, The seventh defendant was physically attacked by a police officer to make him confess and provide evidence. As the accused testified in court.¹⁸¹In the other case Mr. Abdi

¹⁷⁶Interview with Tuli Bayissa, cited above at note, 172

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Interview with MilkiasBulcha, Attorney at Law and Consultant at Federal and Oromia Courts,conducted, 9th February, 2023

¹⁸⁰Interview with Sajin ChalaTeshome,shagar city administration Burayu city police station, conducted 30th , January 2023

¹⁸¹ Public prosecutor Vs QasimAbdulahi and the 16 others, (criminal file No 353319, Oromia supreme court, December 20,2022) unpublished

during his detention, was physically beaten, tortured, and faced other health problems and they did not even provide food for him.¹⁸² He also told me that he was infected with hepatitis, We asked for him to be provided medical treatment several times; however, they denied him access to medical treatment.¹⁸³ This shows the violation of the right to the prohibition of torture and other ill-treatment which is customary law and regarded as an absolute right and is universally accepted principle and defined under different international and regional conventions and the FDRE constitution. While the police argued that, During pretrial detention, all detainees are treated humanely and every human right they have will be respected by the police¹⁸⁴ If any detained is treated inhumanely and tortured, there is an internal procedure through which the police investigator is punished and in addition to this they will be accountability by the court¹⁸⁵

4.4. The Right to Trial Without Undue Delay

The right to trial within a reasonable time applies to anyone who is charged with a criminal offense, both detained and not detained.¹⁸⁶ But in cases where the suspected person is detained, greater speed may be required in proceeding with the investigation and trial.¹⁸⁷ The longer the suspect is kept in pre-trial detention, the more likely it is that the state is violating the right to presumption of innocence and liberty of individuals as this person is not criminal yet.¹⁸⁸

The failure to present a suspect in court on time, as expressly required by various human rights instruments, constitutes a violation of various principles of a fair trial, such as the presumption of innocence, which states that a suspect is presumed innocent until a competent court has rendered a decision, So as much as possible the public prosecutor failed charge against them with in time said MrTekele.¹⁸⁹ However, the time of the investigation can be influenced by elements including the complexity of the cases, the availability of witnesses, and the behavior of the person being investigated says the public prosecutor¹⁹⁰ Therefore, suspects should be held in police facilities only until the first judicial review of detention.¹⁹¹ When a crime is being investigated, numerous

¹⁸² Interview with Tuli Bayissa, cited above at note 172

¹⁸³ Ibid.

¹⁸⁴ Interview with sajinChala Teshome, cited above at note, 180

¹⁸⁵ Ibid.

¹⁸⁶ Pamela R. Ferguson, *The Presumption Of Innocence And Its Role In The Criminal Process*, 2016

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Interview with TekeleFikadu, Public Prosecutor at Oromia supreme Court, Criminal Bench, On 31 January 2023

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

investigative techniques are utilized by police officers depending on the complexity and type of the case or the offense.¹⁹² Despite these differences, the police officer upholds all of the accused person's human rights, including the right to appear in court within a reasonable 48-hour period.¹⁹³ If it turns out that the police did not finish their investigation, the court will order remand. When a case is straightforward and poses no harm to society, the detained person's right to bail is recognized; nevertheless, if the case is complicated and it does pose a threat to society, and thus the right to bail is prohibited by law, the accused could still be arrested.¹⁹⁴

In May 2022 the Ethiopian human right commission conducted a review and the reviewed work of the commission shows that, there have been individuals imprisoned for months to two years, without any charges, and who the public prosecutor has not filed any charges against.¹⁹⁵ For instance, Abdi was arrested on February 29, 2020, and was brought before Sululta district court On March 16, 2020.¹⁹⁶ In the other case, Mr. Gada Gabisa and Dr. Gada Woljira were arrested following the assassination of Artist Hachalu Hundessa, however, they have been imprisoned for nearly three (3) years without any charge and the public prosecutor has not filed any charge against them till today.¹⁹⁷ Michael Borana and Kenessa Ayanssa's lawyer also disclosed to the researcher that they were held in different places for more than a month before being brought to court to challenge the legitimacy of their arrests.¹⁹⁸ Therefore the right to a speedy trial that got recognition under ICCPR, ACHPR, and the Ethiopian constitution is not respected for political prisoners.

4.5. Presumption of Innocence

The concept of presumption of innocence is fundamental and the cornerstone of the criminal justice system. It is an essential safeguard for a suspected person that he is presumed innocent until proven guilty.¹⁹⁹ All organs have a responsibility to the suspect to maintain this presumption. The facts and evidence offered must be the only factors the court considers when making decisions. Before making a judgment, the court should always treat the defendant as

¹⁹² Interview with Chala Tashom cited above at note 180

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Ethiopian human right commission report, cited above at note 23

¹⁹⁶ Interview with Tuli Bayissa, cited above at note 172

¹⁹⁷ Ibid.

¹⁹⁸ Interview with Milkias Bulcha, cited above at note 179

¹⁹⁹ Simenehkiros, *The Principle of the Presumption of Innocence and its Challenges in the Ethiopian Criminal Process*. (2012, December, Mizan Law Review) p. 273-310

innocent and address him in the same way, and this is the way the court works.²⁰⁰ The presumption of innocence may be infringed not only by a judge or court but also by other public authorities for instance public officials have been observed making statements of guilt on a suspect with an ongoing case said Mr. Dereje.²⁰¹ Anyone charged with a crime, including political prisoners, is assumed innocent until proven guilty by the court, according to the public prosecutor the researcher spoke with.²⁰² Since the constitution and other international and regional laws that Ethiopia has ratified require the public prosecutor to carry out this duty.²⁰³

The police officers also told the researcher that anyone who is in police custody and whose case is still pending will be presumed innocent unless proof of guilt is obtained and presented to a court of law.²⁰⁴

In the case between the public prosecutor and Damee Bacha and Ejoo, the public prosecutor did not present the original document to the court in the case instead, they transcribed the document and presented it to the court as a chart.²⁰⁵ Additionally, the public prosecutor did not report to the court how the evidence was gathered.²⁰⁶ The public prosecutor's methods for gathering the evidence were not also questioned by the court, rather the accused were asked to present their defense based on the evidence used against them.²⁰⁷ Although the Prevention and Suppression of Terrorism Crimes Proclamation Art. 42 states that the original document must be provided to the court and required a court order to gather evidence, in the above case there is a violation of this rule which affects the right to self-defense of the suspects and right to be presumed innocent until proven guilty.²⁰⁸ So the right to be presumed innocent which is guaranteed under international, regional, and the FDRE constitution to protect the right of persons charged with criminal matters is violated by different organs.

4.6. The Prohibition of Self-incrimination and The Right to Silence

²⁰⁰ Interview with Dereje Fayee, judge at Oromia supreme Court, Criminal Bench, On 31 January 2023

²⁰¹ Ibid.

²⁰² Interview with TekeleFikadu, cited above at note,189

²⁰³ Ibid.

²⁰⁴ Interview with ChalaTeshome, cited above at note 180

²⁰⁵ Interview with MilkiyasBulcha, cited above at note,179

²⁰⁶ Ibid.

²⁰⁷ Ibid .

²⁰⁸ Federal attorney Vs. Damee Bacha and Ejoo Fate (criminal file no 24904, Lideta federal high court criminal bench) unpublished

A key constitutional right of the accused is the right to silence or the privilege of self-incrimination. A defendant shall not be required to respond and shall be informed that he has the right to refuse and that any statement he may make may be used as evidence, i.e., he shall be warned and cautioned against making any statement because it may be used as evidence in a court of law during the trial and this principle is stated under the FDRE Constitution and international and regional law ratified by Ethiopia. As a result, any confession obtained by violating this right is not admissible, and the court always confirms whether or not this right is respected by asking the accused during a trial.²⁰⁹ This is because doing so would be a violation of the constitution as well as international and regional law ratified by Ethiopia.²¹⁰ For instance, the seventh defendant was physically assaulted by a police officer in the case of the public prosecutor VS. QasimAbdulahi and the 16 othersto get him to confess and give testimony. The court rejected the police-gathered evidence, contrary to the accused's testimony in court.²¹¹

On the other hand, the Ethiopian Human Right commission work reviewed that there are political prisoners who have experienced bad treatment and even been beaten during their stay which resulted in bodily harm and health problems.²¹²

However, the police officer told the researcher that any accused person, including political prisoners, has the right to remain silent and the privilege against self-incrimination.²¹³ If police officer violates this right, they will be punished according to the institution's internal regulations, which may range from a fine to dismissal. Additionally, police investigators work with public prosecutors who are more knowledgeable about human rights than police, thus there is no way for the suspect's right to be violated said the police officer.²¹⁴

4.7.TheRight to Have Access to Competent, Independent, and Impartial

An independent and impartial tribunal with the competence to oversee cases is the first essential element of a fair trial that cannot be compromised. The right ensures other elements of a fair

²⁰⁹ Interview with Dereje Fayee, cited above at note,192

²¹⁰ Ibid .

²¹¹QasimAbdulahi and the 16 others cited above at note,177

²¹² Ethiopian human right commission report, cited at above at note, 189

²¹³ Interview with Chala Teshome, cited above at note,163

²¹⁴ Ibid.

trial. It can receive complaints on such elements where it finds a violation. It can redress it by giving orders to other state organs. The judiciary can only play this critical role when its independent, impartial, and has the necessary competence to give a ruling.

In the case between the public prosecutor and Colonel GamachuAyannaa and five others²¹⁵ The Sululta District Court on July 3, 2013, ordered the Oromia Police Commission and the Burayu Prison Administration to justify not releasing those detained individuals whose release was ordered if the public prosecutor fails to bring a charge against them However,they disregarded the court's order and did not present a justification.²¹⁶

In the case of Mr. Michael Bekele and KenessaAyanssa, their case was closed following Art. 41 of the Criminal Procedure Code by the public prosecutor because no charges had been filed against them for two years.²¹⁷ The court also ordered their immediate release, but the police refused to abide by the court's decision. ²¹⁸

Arresting the judge as a result of the decision they rendered and considering the accused as guilty while the case is still pending by state officials is the indirect influence taken by the government against us.²¹⁹ In addition to this the decision rendered by the court is not respected by police and other security forces says Dereje Fayee judge at the Oromia supreme court.²²⁰The court has taken different measures including the punishment of that institution that does not respect the decision given by the court.²²¹This shows the violation of the constitution, the FDRE constitution state that,Judicial body is established by the constitution, and the judge shall exercise their function in full independence and be free from any interference or influence of any governmental body, governmental official, or any other source and the decision given by this competent body needs to be binding decision and other institution including the police are bound by the decision given

²¹⁵Public prosecutor VS colonel GamachuAyanaa and five others (criminal file np 12307, sululta district court, November 10,2020) unpublished

²¹⁶ Ibid.

²¹⁷ Interview with MilkiyasBulcha, cited above at note 174

²¹⁸ Ibid.

²¹⁹Interview with TolosaHirko, judge at Oromia supreme Court, Criminal Bench, On 31 January 2023

²²⁰ Ibid.

²²¹ Ibid.

this body, and the decision given by the court shall be on the base of laws, facts, and evidence presented to it.²²²

Most of the time decision given by the court is not respected by the police and in some cases the court ordered the police to present the defendants, to release the defendant upon bail or habeas corpus but the police fail to do so.²²³ On the other hand, the police officer the researcher spoke with stated that the court's judgment must always be respected. The issue is that political prisoner cases are frequently complex, there may be fresh discoveries, and the police will need more time to investigate.²²⁴

4.8. The Right to Bail

In the case of the public prosecutor vs Abdi Ragassa, the court ordered 15,000 ETB bail because, after four months, the police failed to produce sufficient evidence.²²⁵ Despite the orders for his release, the police refused to set him free.²²⁶ In the case between the public prosecutor and LammiBegna and Dawit Abdata, the supreme court of Oromia ordered the police to free them, but instead, they were taken to Sabata police station and were detained.²²⁷ In the other case Colonel Gamachu who was arrested after the assassination of HachaluHundessa and terrorism charges were instated, for 18 months, he remained jailed after he was repeatedly granted bail and rearrested multiple times, and transferred to over 18 formal and informal detention camps without the knowledge of family or lawyers said the lawyer of Colonel Gamechu.²²⁸ This shows the violation of the right to bail that is reorganized under the FDRE constitution and international and regional instruments ratified by Ethiopia. The right to bail is not recognized in absolute terms for there may be cases where the condition of release does not safeguard the interests of the public and both the ICCPR and the FDRE Constitution declare pretrial release on bail as the norm and detention pending trial as the exception.²²⁹ The right to bail may not be denied exclusively based on the offense of which the accused is suspected.²³⁰ Rather, the prosecutor has to establish the necessity of continued detention on the primary ground that detention is

²²²FDRE constitution, cited above at note 20, Art 78 and 79

²²³colonel GamachuAyanaa and five others, cited above at note,215

²²⁴ Interview with ChalaTashome cited above at note, 180

²²⁵ Interview with Tuli Bayissa, cited above at note 172

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Interview with MilkiyasBulcha, cited above at note 179

²²⁹WondwossenDemissie, The Right to Bail in Ethiopia: Respective Roles of the Court and the Legislature, p.19

²³⁰Ibid.

necessary to ensure the attendance of the accused at trial or on these secondary ground that detention is necessary for the protection or safety of the public including any substantial likelihood that the accused will if released, commit a criminal offense or interfere with the administration of justice.²³¹ Generally, the right to bail of political prisoners is not respected.

The Right Public Hearing

The right to a public hearing is an essential safeguard of the fairness and independence of the judicial process, and a means of protecting public confidence in the justice system.²³² The right to a public hearing means that not only the parties in the case (and victims, in jurisdictions where they are not considered to be parties) but also the general public and the media, have the right to be present.²³³

However in most of the cases this right is violated. For instance in the Oromia supreme court most of the cases are held in the office because of this the public are not be able to attend the proceeding.²³⁴ On the other case the trial is held at palace where family and the public can not attend the trial.²³⁵

²³¹ *Ibid.*

²³² Amensity international, fair trial manual, cited above at note 91

²³³ *Ibid.*

²³⁴ Interview with Milkiyas Bulcha, cited above at note 179

²³⁵ *Ibid.*

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusion

The right to a fair trial is a human right, which is designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, the most prominent of which is the right to life and liberty of the person. The right to a fair trial is universally applicable guarantees recognized under UDHR, ICCPR, ECHR, ACHPR, and other international and regional treaties as well as a non-treaty standard adopted by the UN and by regional intergovernmental bodies. This right has become binding on all states as part of customary international law or as part of laws of state up on ratification of those international treaties. There is no precise meaning of the term under those international and regional binding and non-binding agreements, rather those documents list principles of the right instead of defining the term. And those principles apply from the moment the investigation against the accused commences until the criminal proceedings, including any appeal, have been completed. When an individual stands trial on criminal charges he or she is confronted by the machinery of state. How the person is treated when accused of a crime provides a concrete demonstration of how well that state respects individual human rights and the rule of law. The principles of the right to a fair trial should be upheld during arrest and in the police station, in the interrogation room, in the detention center, in the courtroom, and in the prison cell. If the state has failed in its duties and betrayed its responsibility, the criminal justice system of the state its self-losses credibility.

Concerning the Ethiopian legal regime, the FDRE constitution recognizes, the right to a fair trial in different provisions. In addition to the constitution, criminal procedure code, criminal code, prevention and suppression of terrorism crimes proclamation, also uphold the right to a fair trial. Ethiopia has also ratified other binding international and regional agreements that uphold this right and those conventions require states to realize and carry out suspects' rights to a fair trial. According to the Ethiopian constitution, international laws that have been ratified by the state are part and parcel of law of the land.

In principle even when a person is accused of crimes that threaten the security of society such as an act of terrorism, a crime against humanity, a war crime, or a crime which have the power to threaten the security of those who hold power, the fair trial principles right of the suspects which got recognition under the constitution and international and regional convention that has ratified by Ethiopia has to be respected by organs of the government. In Ethiopia, almost all political prisoners are charged with terrorism-related offenses and other criminal activities. However, practically the right to a fair trial of political prisoners is not respected.

An interview with the legal counsel of the political prisoner reveals that most principles of the right to a fair trial are violated during an investigation by law enforcement officials. Most political prisoners were taken into custody by police officers without a court warrant, and they were not informed of the reason for their arrest or allowed to speak with their families or lawyers. Detained individuals should, in theory, be brought before a court of law within 48 hours, but in the majority of political cases, this right is disregarded, and on top of that, they are mistreated and tortured by police investigators. Additionally, the investigation process is not adequate, modern, or supported by technology, which causes delays in the gathering of evidence and the investigation process. Those police investigators are also not regularly trained on the issue of human rights, and most of the time they are not held accountable when they violated the rights of suspects.

Furthermore, it is vital to have an independent, impartial, and competent tribunal with the required competence, which cannot be restricted or repealed from. And the existence of such a tribunal is essential in assuring other aspects of a fair trial as well as guaranteeing checks and balances with other branches. However, in practice, decisions made by the judiciary are not respected by the police or other government bodies. In addition, government officials publicly declare that they believe the accused is guilty in cases that are still pending, which has an indirect effect on the judge. In some parts of the country, judges are detained because of the judgments they render, which has a direct impact on the independence of the judiciary body. And the direct and indirect influence of the judiciary affects the rights of defendants, including political prisoners. And if individuals are subjected to unfair, partial, and dependent trials, justice is not served for the accused as well as the public at large, and the public loses faith in the justice system as a result, which undermines the credibility of the justice system.

5.2. Recommendation

In light of the study conducted so far, the following points are to be considered in measures to be taken as a way forward:

1. Having an independent, impartial, and competent court from any government organ directly or indirectly, that ensure fundamental right and freedom, check the legality of detention, that ensure whether an individual is subject to torture, ill-treatment, or not, which disregard evidence that has been obtained in such manner is needed.
2. a superior body that is independent of any state organ with the necessary enforcement mechanism is needed to ensure the implementation of the right of suspected Individuals including the right to fair trial found under the constitution and international and regional laws ratified by Ethiopia. For this Ethiopia shall ratify the optional protocols and make appropriate declarations that would allow individuals to submit complaints against the State alleging violations of UN human rights treaties. And review its declaration to allow access to the African Court on Human and Peoples' Rights for individuals.
3. The police and security forces should comply with and enforce court and prosecutor orders and decisions should facilitate the immediate release of all detainees held without due process and whose right to bail is respected by the court.
4. Continuous capacity-building training should be provided for investigating police officers on issues of human rights as well as impacts of violation of human rights in general and the right to a fair trial, in particular, is needed. Furthermore, training with improving their skills in the investigation process enables them to finish investigations and gather evidence on time.
5. The government should take appropriate action and ensure accountability on police officers and other law enforcement officials found responsible for violations of principles of the right to a fair trial.
6. To avoid a trial with undue delay, that affects the right to presumption of innocence, strict rules and procedures should be introduced by the government.

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Interviews

1. Interview with Dereje Fayee, judge at Oromia supreme Court, Criminal Bench
2. Interview with Tekle, Public Prosecutor at Oromia supreme Court, Criminal Bench
3. Interview with Sajin ChalaTeshome,shagar city administration Burayu city police station
4. Interview with Tuli Bayissa, Attorney at Law and Consultant at Federal and Oromia Courts, conducted on 8th
5. Interview with MilkiasBulcha, Attorney at Law and Consultant at Federal and Oromia Courts

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Interview Guide to Judge and Court

An interview is very important for this research thesis to evaluate and address the research question concerning the object of the study. For example, to assess the legal framework of the right to a fair trial and its practice in the light of Ethiopian and other international law. So due to these, the researcher hopes that the Oromia supreme court will volunteer to support and give information about practice to the right to a fair trial.

Interview with Ato Dereje Faye and Tolesa Hirko, Judge of Oromia Supreme court on January 23, 05, 2015 E.C at 4:00 AM local time.

1. Do you accept and recognize the violation of the right of a fair trial criminal suspect in a criminal investigation?
2. Have you made any effort to protect the right to a fair trial of political prisoners?
3. Among the right of the suspect which is more prone to a violation?
4. What is the power of the court to enforce the human right of suspects, especially those related to the principle of a fair trial?
5. What is the cause for the violation of the right to a fair trial? what is the measure taken by the court and another organ?
6. While rendering a decision is the court impartial competent and independent?

Interview Guide for Police Crime Investigators Officers

An interview is very important for this research thesis to evaluate and address the research question concerning the object of the study. For example, to assess the legal framework of protection for a fair trial in the Ethiopian criminal justice system and its practice in the light of Ethiopian and other international law. so due to this reason, the researcher hopes that the Burayu police investigators will volunteer to support and give information about the practice of the right to a fair trial.

Interview with inspector Chala Teshome and Assistant Inspector Fikru Bahiru crime investigation police officer on January 22, 2015, at 5:00 Am local time.

1. Are you a criminal investigator? For how long have you been a criminal investigator?
2. How do you understand and implement the right to a fair trial for political prisoners that got recognition under the constitution?
3. Do the Burayu city police apply the right to fair and public trial principles of detained political prisoners in the process of crime investigation?
4. Has there been a punishment on an investigator for violating the right to a fair trial of a suspect? if the answer is yes, what procedure do you apply to take measures on an investigator?
5. Is there any training given for the police investigators about human rights development at a different time and is there any module prepared for them?

Interview Guide for Public Prosecutor Officers

An interview is very important for this research thesis to evaluate and address the research question concerning the object of the study. For example, to assess the legal framework of protection for a fair trial in the Ethiopian criminal justice system and its practice in the light of Ethiopian and other international law. so due to this reason, the researcher hopes that the Oromia supreme court public prosecutor officer will volunteer to support and give information about the practice of the right to a fair trial.

Interview with Ato Tekele Fikadu, the public prosecutor of Oromia Supreme court on January 23, 05, 2015 E.C at 9:00 PM local time.

1. What do you think is the role of the public prosecutor in the protection of the right to a fair trial of political prisoners?
2. Have you made any effort to protect the right to a fair trial of political prisoners?
3. What is the cause for the violation of the right to a fair trial? what is the measure taken by the public prosecutor?
4. What is the power of the public prosecutor to enforce the human right of suspects, especially those related to the principle of a fair trial?

Interview Guide for Defense Lawyer

An interview is very important for this research thesis to evaluate and address the research question concerning the object of the study. For example, to assess the legal framework of protection for a fair trial in the Ethiopian criminal justice system and its practice in the light of Ethiopian and other international law. So due to this reason, the researcher hopes that the defense lawyers of the prisoners will be volunteers to support and give information about the practice of the right to a fair trial.

Interview with Ato Tuli Bayissa and Milkiyas Bulcha, Attorney at Law and Consultant at Federal and Oromia Courts, conducted 8th February, 2023 G.C at 4:Am and 8:PM

1. Do you recognize the violation of the right to a fair trial of political prisoners in criminal investigation?
2. Have you made any efforts to protect the right to a fair trial of political prisoners at pre trial and trial stage ?
3. Does the lawyer take measures to protect the political prisoners the right to a fair trial when the rights are violated?
4. What is the cause for the violation of the right to a fair trial of political prisoners ? What should be the measure that has been to be taken by courts and other organs?