

**EVALUATING THE APPLICATION OF HUMAN RIGHTS PRINCIPLES IN CRIME
INVESTIGATION IN ETHIOPIA (A CASE STUDY OF THE ADDIS ABABA CITY POLICE)**

by

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**Submitted in fulfillment of the requirements for
the degree of**

MAGISTER TECHINOLOGIAE

In the subject POLICING (INVESTIGATION)

At the

UNIVERSITY OF SOUTH AFRICA

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OCTOBER 2010

DECLARATION

I, ALEMAYEHU SHIFERAW TULU (student number 39661210), declare that EVALUATING THE APPLICATION OF HUMAN RIGHTS PRINCIPLES IN CRIME INVESTIGATION IN ETHIOPIA (A CASE STUDY OF THE ADDIS ABABA CITY POLICE) is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

ALEMAYEHU SHIFERAW TULU

21 FEBRUARY 2010

SUMMARY OF THE DISSERTATION

In any society the police are organized with the responsibility of keeping peace and order, ensuring the rule of law, justice, prevention of crime as well as protection of human rights. Regardless of the circumstances in which the police find them, they should act towards every human being with a sense of duty and care for human rights; it is the responsibility of the police to conduct the process of arrest, search and seizure according to the law with no neglect of duties. The police are expected to comply with the arrest, search and seizure procedures designed to ensure the protection of human rights. Nevertheless, usually, the task of investigation is vulnerable to human right violation. This is particularly true in the case of the developing countries where the process of democratization is so infant that most of them not only lack the required level of awareness/understanding pertaining to the human right principles but also the necessary institutional mechanisms that contribute to the proper application of human right principles are missing. The report of the Ethiopian Federal Police Inspection Service conducted in the year 2003 indicated that there were some suspects arrested without court warrant and with the existence of reasonable doubt for their guiltiness. Moreover, findings of a research conducted in the same year on certain Addis Ababa sub-city police stations also clearly indicate this fact. The objective of the this research is to evaluate the extent to which crime investigator, who are duty bearers in the Addis Ababa city police, adhere to the human right principles pertaining to the rights of suspected, accused and arrested person that are recognized in pertinent international instruments and enshrined in the Federal Democratic Republic of Ethiopia (FDRE) constitution and other related laws of the country while fulfilling their duties and responsibilities throughout the crime investigation process. Specifically the study is also aimed at exploring the form and type of commonly violated human right, if any and the determinant factors behind the respective types of human right violation by crime investigation belong to the Addis Ababa police .Methodologically the study followed and is mainly relied on the qualitative empirical approach to social science research.

Acknowledgements

First of all, I would like to thank the almighty God with out whom everything is impossible.

Then, my acknowledgment directly goes to my supervisor Dr. Nick Olivier, for the thoroughly and constrictive advise and guidance he has made ever since the outset of this research project till its finalization. Indeed words can not summarise his efforts.

My deepest gratitude also goes to my immediate boss assistance commissioner Tadesse Meseret for facilitating me the time needed to conduct the research, as well as attending my education in the master technological policing. Last, but not least I would like to thank my friend Ato Zelalem Getachew for his in valuable comment he has made through out the research process.

ACRONYMS/ABBREVIATION

| | |
|---------------|---|
| ACHPR | Africa charter on human and people right |
| ACHR | America convention on human right |
| ACOHR | America convention on human right |
| AHRC | America human right commission |
| APAP | Action professionals association for the people |
| ECOHR | European convention on human right |
| ECOSOC | UN economic and social council |
| EHRC | Ethiopia International covenants human rights |
| EWLA | Ethiopian women lawyers association |
| FDRE | Federal democratize republic of Ethiopia |
| HRC | UN human right committee |
| IAC | Inter American commission |
| ICCPR | International covenants on civil and political right |
| ICCPR | International covenants on economic social and cultural right |
| ICJ | International court of justice |
| NCPL | National crime privation |
| NGOs | Non-government organization |
| OAU | Organization for Africa unity |
| SRS | Simple random sampling |
| UDHR | Universal declaration of human right |
| UN | United nation |
| USA | United States of America |

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CHAPTER ONE

GENERAL ORIENTATION

1.1 INTRODUCTION

The protection of human rights should practically be realized when all government agencies function in line with the universal principles of human rights. The police agency is the most important government agency to which the protection of human right is entrusted because of the nature of its powers and functions (De Rover, 1998:149-150).

The purpose of the existence of police organizations is to maintain peace and order which is an essential component of the full and effective realization of human rights (Wilson, 1950:17). The duty of the government to protect the human rights of individuals against public and private invasions is possible only through the proper discharge of the function of the police (Crawshaw, 1998:9). From this, it appears that the duties and functions of the police are closely related to the protection of human rights.

The corresponding duties of the police towards human rights serve to check police powers by safeguarding human rights. They are the results of a compromise prescribed by the law. Based on this compromise, the police are justified in exercising their powers, only to the extent limited by the law while performing their duties. The powers of the police are the result of the compromised balance between the human rights of individuals and the desire to ensure a free and secured society (Crawshaw, 1998:10). They are envisaged to enable the police to perform their functions without authorizing an unwarranted and undue interference against individual rights and freedom.

The task of maintaining the balance by exercising their powers in line with the purpose placed on them is principally burdened on the police. This balance is accomplished successfully when the police strictly comply with the duties intended to safeguard human rights. In a way, the police, through the proper discharge of their duties, play a role in human rights' protection.

It is mandatory for the police to keep in mind that the duties imposed on them that limit their powers, are required to safeguard the rights of all human beings. Regardless of the circumstances in which the police find themselves, they should act towards every human being with a sense of duty and care for human rights. It is the responsibility of the police to conduct the process of arrest and seizure according to the law with no neglect of duties (Article 415, Penal Code of Ethiopia, 1957). The police are expected to comply with the arrest and seizure procedures designed to ensure the protection of human rights.

The duty of the police towards individuals in their custody is to treat them humanly and with due respect, for inherent human dignity is an intrinsic component of the individuals' fundamental human rights (Drzewicki, 1996:65). The strict observance of those human rights and the satisfaction of these requirements by the police are unavoidable and at the same time, constitute valuable contributions of the police towards the protection of human rights. A democratic police service should be aware that a lawful and ethical investigation of crime may ensure a fair trial, whereas unlawful and unethical investigations can subvert that even before the trial has commenced.

In light of the above, the Addis Ababa City Police Commission should perform its tasks in accordance with the Ethiopian law, so that trust and public confidence can easily be attained between police and the community. According to the Addis Ababa City Charter Proclamation (No.27/1997), the metropolitan police are in charge of maintaining peace and order, in combating crime and investigating crime when it is perpetrated. The Addis Ababa Police Commission has been organized into ten sub cities, where all have their own departments to investigate crime and also prevent crime proactively. In addition, a department of investigation found at the center has the responsibility to co-ordinate departments at the sub city level and conduct investigations, if crime exceeds the capacity of the sub cities police departments to do so. Hence, human rights are a great concern for the national government and the international community at large. Therefore, the Addis Ababa Police Commission gives investigation due consideration in light

of the dignity of human beings as proclaimed in the proclamation of its establishment (No.27/1997).

The violation of human rights during investigation has a negative impact on the community, the government and the international community at large. For this reason, this study attempts to evaluate why and how police violate human rights' principles and what measures shall be taken to protect them during investigation.

1.2 STATEMENT OF THE PROBLEM

In Addis Ababa City, like cities of other developing countries, there is population density, unemployment, poverty and other social problems that may cause crime (Mehert, 2001:3). Despite these problems, the city does not have a high crime rate. This may be attributed to the norms and culture, values and traditions of the populace. However, this may not continue as these values and traditions are gradually withering away and losing their importance. Part of the solution should be giving more and more attention to the issue of crime since it is becoming a transnational one and it can also be easily and rapidly spread or transferred across cultures.

The Addis Ababa police commission is entrusted to protect the fundamental rights of citizens, including the right to life and the right of property of individuals to be protected from offenders. The Commission is responsible for the prevention of offences, in accordance with the national and international law to deal with persons who are suspected of committing criminal offences according to the law, beginning with seizure and ending with the conclusion of the investigation (Addis Ababa City Government Charter proclamation No.57/1997). However, for different reasons, the Addis Ababa City Police violate human rights while performing their duties. For example, as stated in the Report of Federal police 2003:5, there were some suspects arrested without court warrant and where reasonable doubt as to their guilt existed. Moreover, findings of a research conducted in the same year on certain Addis Ababa sub-city police stations, has confirmed the truth of the scenario. These suspects were, therefore, detained illegally and their rights had been infringed

because of the police's failure to carry out their arrests in accordance with the law. According to the Inspection report of the Federal police (2003:7), the police often expose dangerous criminals to the public through the media, with the purpose of making society aware about crime to enable them to take care of themselves against any acts of criminals. However, this violates the right of suspects not to be exposed without their consent before the decision of the court has been reached (Federal Police Report, 2003:5). This is one of the ways that the police furnish information to the people that breaches the right of suspects guaranteed by the Federal Democratic Republic of Ethiopian Constitution (FDRE Constitution, 1995, Art. 20 (3)).

There are also problems with the process of conducting interrogations, as well as upholding Article 27 of the Criminal Procedure Code of Ethiopia. For example, the right of the suspected person not to be compelled to answer questions (i.e. his/her right to remain silent). In practice, however, some investigators have been found to use force or make promises to suspected persons if they admit to a crime or confess to a case. In doing so, they violate the laws of the country and the rights of suspects (Federal Police Report, 2003:6). In view of this, both the police inspection reports held by the Federal Police and complaints submitted to the Federal First Instance and Federal High Courts have revealed that there are violations of the rights of suspects while police conduct investigations and interrogations against them. The suspects often deny the veracity of their statements given to the police during investigation and claim that they gave their statements under duress, which is illegal according to the law.

Another violation of a person's rights during criminal investigation occurs when the police take immediate action to bring a suspect before a court of law. Article 19 of the Constitution of the FDRE, requires the police to bring the suspect to court within 48 hours to ensure that there is no violation of the suspects' rights, or to request a remand for further investigation whilst the suspect remains under arrest. In this case, the police official should state the reason why he wants the detainee to remain in custody. A full explanation should be furnished to the court. According to the penal procedure Code of

Article 59, the police official should also announce his or her intention of further inquiry, if any, the assistance that he or she requires from the court at this point in the investigation and any obstacles that the police official anticipates that he/she may encounter if the suspect is released on bail or otherwise. In practice, as the police Inspection Service Report confirms, some suspects are not brought to court within 48 hours of being seized by police, despite the law obliging them to do so (Constitution of FDRE, Art, 19). This confirms that there is a violation of the suspects' rights by the police.

The delay with laboratory examination results is one of the impediments which have had an impact on the performance level of the Addis Ababa Police, which is explained in terms of poor quality service (Federal Police Report, 2003:6-7). This may be attributed to the fact that there is only one laboratory in the country that provides this service to the nation. This laboratory conducts examinations of Fingerprints, Arson, Document investigation, Weapons investigation and Bio-Chemical analysis. The regional police also use the services of the laboratory and this also impacts on its efficiency due to a shortage of skilled manpower required to manage its needs and the necessary equipment to facilitate services in the area. This has an impact on criminal investigations, as well as on suspects' rights.

Moreover, in addition to the shortages of material and skilled manpower, there is a dearth of pathologists and psychiatrists. This has a major influence on the service of the criminal investigation department to satisfy the needs and expectations of its customers (Federal Police Report, 2003:8). This problem may lead to the violation of the rights of persons, as they are forced to remain in police custody awaiting the results of forensic investigations that might prove them innocent. The above-mentioned problems (there are others not even indicated) have inspired the researcher to identify the main causes that contribute to the violation of the rights of suspects and which are contrary to the constitution.

1.3 AIM AND PURPOSE OF THE RESEARCH

1.3.1 Research Aim

The aim of this research is to evaluate the extent to which crime investigators in Addis Ababa City Police follow the human rights principles regarding detainees (suspects and accused persons) during the investigation process.

1.3.2 Purpose of the Research

The purposes of this study are to:

- Evaluate the investigators' current level of adherence to human rights, with the specific intention of identifying the shortcomings and weaknesses of investigators (Denscombe, 2002:27).
- Suggest new ideas and procedures for investigators to follow during the investigation with respect to human rights standards in the investigation process.
- Moreover, the researcher hopes that the findings of this research, which materialized by means of reviewing existing literature and through the analysis of primary data, will present workable solutions to the problem and which will improve the image of the police in the future.

1.4 RESEARCH QUESTIONS

The following questions were formulated for investigation:

1. What is the general understanding of human rights?
2. What is the historical background and development of police and the Ethiopian police?

3. What processes does crime investigation entail and how are the principles of human rights applied by the Addis Ababa city police investigators during crime investigation?

1.5 KEY THEORETICAL CONCEPTS

The key theoretical concepts of this study are explained below:

1.5.1 Police

In the modern world, the term “police” generally refer to the persons employed by the government for the purpose of maintaining public order (Critchely, 1967:47). The term “police service” may have many denotations but in this study, it refers to that “department of government which is concerned with the maintenance of order and the enforcement of laws”.

1.5.2 Role of the Police

The police are given a variety of powers and responsibilities by law. Some of the most common and familiar are the powers of search and seizure, interrogation, arrest, detention, power of entry into places, localities and homes where a crime has been committed (or has left traces), powers to search those places for evidence and to confiscate the evidence for the purpose of prosecution and the power to seize a person and/or objects related to the crime committed or thought to have been committed (Criminal Procedure Code of Ethiopia 1961, Art 9-11). Each of these powers and the authority to use force where necessary, are clearly defined in law for the achievement of legitimate law-enforcement objectives.

1.5.3 Investigation of Crime

It is the process of examination that the police use to discover the truth when the law is breached by suspects. (It is a fact-finding process undertaken by police for the establishment of the occurrence or non-occurrence of an alleged offence). According to Cladwell (1965:317), it is a police activity directed toward the identification and apprehension of alleged criminals and the

accumulation, preservation and presentation of evidence regarding their alleged crimes.

Horgan (1979:2) says that investigation amounts to observation and enquiry in order to collect factual information on allegations, circumstances and associations. On the other hand, Ward (1975:17) views crime investigation in terms of gathering information. Essentially, criminal investigation involves gathering information, assigning it some value, sorting it and finally utilizing it to develop facts. Dowling (1979:1) regards criminal investigation as a systematic process of identification, gathering and preservation of information with a view to bringing the transgressor to trial.

1.5.4 Human Rights

According to De Rover (1998:68), the term “Human Rights” can be explained as “the legal entitlements which every person as a human being possesses” that are universal and belong to everyone, rich or poor, male or female, criminal or suspect. For the purpose of this study, “human rights” constitute the inviolable and inalienable right of every person to life, the security of person, liberty and the right to be treated humanely in accordance with the law.

1.6 RESEARCH DESIGN AND APPROACH

1.6.1 Research Design

Basically a research design consists of a clear statement of the research problem, as well as plans for gathering, processing and interpreting the observations intended to provide some resolutions to the problem (Singleton & Straits, 1999: 91). The researcher followed an empirical research design. Empirical research is the production of knowledge based on experience or observation. The researcher conducted studies of police in which their conclusions were based on experience. Empirical research is one way of knowing things about crime and criminal justice (Maxfield & Babbie, 1995:4). The production of knowledge was necessary in this research because it is on

an existing problem in the police on which there is not much written. Furthermore, the research topic is focused on investigation, an area in which the researcher has adequate knowledge and experience to carry out and also develop recommendations that can possibly solve the problem.

1.6.2 Research Approach

The research approach followed in this study is a qualitative one. Qualitative research is multi method in focus, involving an interpretive, naturalistic approach to its subject matter. This means qualitative researchers study things in their natural settings, attempting to make sense of or interpret a phenomenon in terms of the meanings people bring to them. Qualitative research involves collecting a variety of empirical materials – case study, personal experience, introspection, life stories and interviews, observational, historical, interactional and visual texts that describe routine and problematic meaning in individuals' lives (Creswell, 1998:15).

1.7 POPULATION AND SAMPLING PROCEDURE

1.7.1 Population

The population in this study comprises of crime suspects detained in police custody for crime investigation purposes, police officials doing investigation and prosecutors working in Addis Ababa City, Ethiopia.

1.7.2 Target Population and Sampling

Target population is a population to be sampled from whom information is gathered to conduct the research (Cochoran, 1990:5). Similarly, Welman and Kruger (1999:12) define the target population as the population to which the researcher ideally would like to generalize his or her results. Here, in this research, target population refers to the total number of people who have engaged in the process of crime investigation, in the two selected police stations and to which the findings of this study will be generalized. Currently, in Addis Ababa, there exist a total of 10 sub-city police stations namely Bole, Arada, Yeka, Akaki, Kolfe Keranyo, Nefas Seleke Lafto, Gulele, Lideta, Kirkos

and Addis Ketema. In all these sub city police stations, crime investigation was held to identify suspects and bring them to court for trial.

For the purpose of this study, out of the ten sub-city police stations listed above, two police stations known as Arada and Addis Ketema were selected using the simple random sampling technique. To make the Random Sampling technique clear in this study, as noted by Ray (2003:425), it is the selection of participants in an unbiased manner so that each potential participant has an equal possibility of being selected for the experiment. The specific procedure that was followed while selecting the two police stations is the lottery method, in which the names of the ten stations were first written on a piece of paper then concealed and finally picked randomly by one person.

The target population is 175 persons who were involved in the criminal investigation process in the two specified police stations (Arada and Addis Ketema). This total number of persons comprised 130 suspects, 35 investigators and 10 prosecutors. "Sample" refers to the small portion of study units (people) selected from the total number of the target or study population in a way to represent the latter. A related concept here is sampling and sample size. Whereas sampling refers to the process to be followed in selecting the sampling units, sample size refers to the number of the samples to be drawn from the total population.

In this study, sample refers to those persons who were selected from the target/study population to be interviewed by the researcher to generate the relevant information to be used as an input and analyzed to come up with the study findings. Accordingly, a total of 25 persons, i.e. ten suspects, ten investigators and five prosecutors were selected to represent the target population as the respondents of the study. In what follows in the following sections is a description for the justification of determining each of the specified sample sizes, the type of sampling technique used, as well as the specific procedures and steps followed in the course of selecting the samples.

- Sample Size determination: As to the sample size determination, from among different methods (both mathematical and rule of thumb) the

researcher used the method developed by Carvalho (1994) as cited in Girma Tegenu (2004) , as presented below.

| Table for Determining Sample Size | | | |
|--|--------------------------------|---------------|-------------|
| Population | Recommended Sample Size | | |
| | Low | Medium | High |
| 51-90 | 5 | 13 | 20 |
| 91-150 | 8 | 20 | 32 |
| 151-280 | 13 | 32 | 50 |
| 281-500 | 20 | 50 | 80 |
| 501-1,200 | 32 | 80 | 125 |
| 1, 201 -3200 | 50 | 125 | 200 |
| 3,201-10,000 | 80 | 200 | 315 |
| 1,001-35000 | 125 | 315 | 500 |
| 35,001-150,000 | 200 | 500 | 800 |

Source: Carvalho (1994)

- 1) Population denotes the total number of items to be sampled
- 2) The sample size depended upon the homogeneity of the records. Low sample sizes are to be taken for files which are very similar in terms of content and subject matter, while high sample sizes are needed for more diverse series.

The sample size determined by this study is justified by the fact that if we take each of the three groups of people (i.e. suspects, investigators and prosecutors) separately, they are virtually homogeneous in nature, implying the possibility of taking low sample size. For this study, therefore, the researcher decided to draw low sample sizes for the suspects, prosecutors and investigators which are with population numbers of 130, 35, and 10 respectively. Accordingly, the researcher selected ten suspects (from a total of 130), ten investigators (from a total of 35) and five prosecutors (from a total of 10). Thus, as per the recommendation made by Carvalho (1994) (as can be

seen in the above table), the corresponding sample size of each of the three groups is acceptable.

- Sampling technique, procedure and steps

Different types of techniques, procedures and steps were followed to select the sampled suspects, investigators and prosecutors. This is described as follows:

➤ Selection of Suspects

To select the suspects, the researcher employed the Simple Random Sampling Technique. The specific procedure that was followed while selecting the 10 suspects from the two police stations is such that the researcher first obtained lists of names of suspects from each of the two police stations and asked another person to randomly call numbers ranging from 1-130. The corresponding names to the identified numbers in the obtained lists of suspects written in the serial number column are, then, included as samples of the study. In doing so, with the intention of ensuring an equal representation of the suspects found in each of the two selected police stations, five from each of the two police stations were selected (a total of 10 suspects).

➤ Selection of Investigators

To select the Investigators, the researcher employed the Simple Random Sampling Technique. The specific procedure that was followed while selecting the 10 investigators from the two police stations is such that the researcher first obtained lists of names of Investigators from each of the two police stations and asked another person to randomly call numbers ranging from 1-35. The corresponding names to the identified numbers in the obtained lists of suspects written in the serial number column are, then, included as samples of the study. In doing so, with the intention of ensuring an equal representation of the suspects found in each of the selected two police stations, five from

each of the two police stations were selected (i.e. a total of 10 suspects) .

➤ **Selection of Prosecutors**

To select the prosecutors, the researcher employed the Purposive Sampling Technique which is a method by which a researcher intentionally draws samples considering certain factors that are deemed to be relevant for the research. Here, the factor that was considered by the researcher is the experience or period of service of the prosecutors. The specific procedure that was followed when selecting five of the ten prosecutors which have been working in the two police stations is such that the researcher first obtained lists of prosecutors and their corresponding service period. Then, the top five prosecutors with the longest service period were intentionally included in the sample.

1.8 METHODS OF DATA COLLECTION

This study has employed various techniques to obtain data useful to the study. In doing so, it mainly included analyzing documents, conducting observations and interviews with potential informants.

1.8.1 Literature Review

Regarding literature written on the topic under study, it was difficult for the researcher to find literature directly related to the topic. Therefore, he broke the topic into concepts that mainly address issues of human rights, crime investigations and application of human rights principles during the time of the investigation processes. Making this classification helped him to identify books and research abstracts done on the topic as well.

Moreover, the researcher collected information related to matters on human rights and investigations from written documents such as books, newspapers, police reports, police manuals, circulars, research abstracts and journals. The information generated from these sources includes the way in which police

perform criminal investigations and how they should maintain or protect human rights. Stipulations stated in the relevant laws and certain regulations that permit and/or prohibit police handling of human rights were compared with data about police practices gathered through observation and the interviewing of different key informants about investigation. The researcher sought to find answers to questions by studying international and national research proceedings, sources and experiences.

1.8.2 Interviews

An interview is one of the data collection techniques apparent in social science research. It is used to generate primary information from individuals who have experienced an event or who have some knowledge or information. The researcher employed face-to-face, in-depth interviews with the key informants to collect information about the practical applications of human rights principles by police while performing criminal investigations. Before conducting the interview, the items included in interview questions were tested through conducting pilot interviews in order to get feedback on questions' relevance (i.e. have they properly addressed the aims or not?).

An interview schedule was developed with due consideration to the research questions in particular and the objective of the research in general. The schedules are organized in semi-structured and open ended formats and were used while discussing the research issues with the key informants. The types of questions asked of the respondents are mainly related to the actual practices of the police made during the crime investigation process, observed violations of human rights principles during crime investigation, factors which contributed to the observed human rights violation and recommended actions to improve the proper application of the human right principles in the course of crime investigation (amongst others).

Following the notes particularized by Leedy and Ormrod (2005:159-160) on interviewing, the guidelines detailed below were what the researcher utilized in conveying his interview schedules:

1. found a suitable location to conduct the interview
2. took a few minutes to establish rapport
3. the researcher explained the nature of the study and his plan for using results
4. during the interview, the developed interview schedule with open ended questions based on the research questions were used
5. the researcher at no time put words in the respondent's mouth
6. The responses from the respondents were record verbatim by writing it down.

By using the random sampling selection the researcher ensured that the respondents were representative of the group.

1.8.3 Focus Group Discussions (FGD)

According to Robson (2000:93) a focus group is effectively a type of semi-structured interview carried out in a group setting. A list of about half a dozen topics is selected and turned into question form. The benefit of group interviews is the possibility of additional insights being gained through the interaction of ideas and suggestions from the group.

The method of FGD was employed by the researcher to obtain information useful to the study. In this deliberation, investigators, prosecutors and suspects participated in the discussion after being selected using the simple random sampling technique. The requirements used to draw samples, were first to identify the level of education and profession that directly relates to the criminal justice system. In addition, suspects were drawn based on the records secured in police stations, as well as the frequency of participation in criminal acts. The researcher arranged a room for investigators and prosecutors that hopefully made the discussion comfortable, based on their consent to determine the date and venue of the meeting. The group comprised 8 people for each of the three groups. The FGD's were conducted by people belonging to the three categories of the study namely suspects, prosecutors and investigators.

Questions presented to subjects representing Crime Investigators were as follows:-

- What are the objectives of crime investigation?
- What is the difference between crime investigation and forensic investigation?
- How do you define human rights?
- Which section of the human rights affects the custody of an arrested person?
- What kind of human rights violations do you observe in your detection experiences?
- Is there any guiding rule that you employ while conducting interviews with suspects?
- Does the application of human rights principles negatively affect the effectiveness of the crime investigation process?

Questions presented to prosecutors were as follow:-

- How do you understand the investigation process of police in accordance with the rights of persons afforded by the constitution?
- Do crime investigators apply human rights principles during crime investigation process?
- What type of violation appeals are most often presented to your respected section?
- Do suspects refute their confession statements provided to the police during their appearance in court? If so, mention the types of infringements by the police that are usually claimed at court?
- Does the application of human right principles negatively affect the effectiveness of the crime investigation process?

Questions asked to suspects were as follows:-

- Were you allowed to meet with your family, legal counselor and/or your visitors whenever you needed to meet with them?
- How was the search conducted in your premises?

- Did you appear in court within 48 hours after being arrested by police?
- Were you informed by the investigator that you could remain silent if you wished during interrogation?
- Were you informed that any statement made by you would be used as evidence before a court in the future?
- Were you treated humanely and legally by investigators during the crime investigation?

1.8.4 Personal Experience

As the researcher has had 20 years of professional experience in the area of crime investigation and particularly his many years experience as head of the crime investigation department of the Ethiopian Federal Police, this helped him greatly to identify the variables that precipitate the problem and also obtain relevant information on the topic. In addition, the researcher graduated with a B.A. degree in Political Science and International Relations (P.S.I.R) and he also has a diploma in law. Certainly, this also assisted him to link the existing practice related with the crime investigation process and the theories associated with human rights issues. Besides, his personal observation of suspects in custody during the time of data collection, further served him to substantiate the study findings.

1.9 METHOD OF DATA ANALYSIS

Data analysis takes place whenever theory and data are compared (Singleton & Straits, 1999:455). In data analysis researchers arrange and portray the data in ways that help detect patterns or problems, explore associations that exist in the data and generally see that the data is consistent with the hypotheses and theories (Neuman, 1997:427). For the data analysis, the researcher followed Techs' eight step methods (Technikon SA, 2006:62). These are: Reading all the transcriptions of the interviews, picking one interview and going through it, asking: "what is this?", writing the researcher's thoughts in the margin and making a list of topics that emerge, clustering those similar topics together, taking the lists of the clustered topics, going back to the data, writing codes against the appropriate segments of the text,

finding the most descriptive words for the topic, making a final decision and assembling the data material belonging to each category in one place and finally, conducting a preliminary analysis of the data.

In the analysis, reiteration and elaboration of key concepts and suggestions were made on the finding that fits with the existing literature under investigation. In doing so, the researcher identified dissimilarities while comparing the findings secured against literature reviews.

1.10 METHODS USED TO ENSURE VALIDTY

Validity is a judgment about whether data analysis is valid and/or whether or not it measures, explicates or illustrates whatever it claims to measure or explain (Mason, 1998:89). Validity is accuracy of our ideas and our research and the degree to which these are true and capable of support. On the other hand, Denscombe (2002:100) explains validity as referring to the accuracy of the questions asked, the data collected and the explanation offered. Generally, it relates to the data and the analysis used in the research.

To ensure that the envisaged study is valid, the researcher compared the information possessed and also conducted cross checks against the interview questions employing triangulation methods. This means that one set of research information will also be compared with others held in focus group interviews in referring to the individual interviews and with the observation that has been made where similar questions were asked for each group. In order to ensure the validity of the information, cross checking was done on the basis of the triangulation principle, by checking the data collected from one source against data collected form another source, as well as the data collected using one method against another method.

One set of the research information was tested against another by comparing the individual interviews and with the observation conducted, where the same questions were asked of each group. Leedy (1990:168) specifies that validity in research design is highly dependent on the usefulness of the information and on the contextual completeness of the researcher's reporting style.

1.11 METHODS USED TO ENSURE RELIABILITY

Concerning reliability, different proponents have raised various ideas to define it. However, Leedy and Ormrod (2001:169) have agreed to the concept of validity in terms of its use that the reliability of findings improves when there is long term involvement with the subject that is being investigated.

Reliability is concerned with the questions of stability and consistency. Do repeated applications of the operational definition under similar conditions yield consistent results? According to Singleton and Straits (1999:114), reliability relates to the methods of data collection and the concern that they should be consistent and not distort the findings. Generally, it entails an evaluation of the methods and techniques used to collect the data. It refers to the ability of the research process to provide results that do not vary from occasion to occasion and that do not vary according to the particular persons undertaking the research (Denscombe, 2002:100). In order to ensure that this research is reliable, the researcher triangulated the data by comparing and cross-checking its consistency with data derived by different means at different times i.e. comparing the data that is collected from different respondents at different places on similar issues with the information collected through observation and interviewing.

1.12 ETHICAL CONSIDERATIONS

Throughout the research process, the researcher abided by the ethical principles of the research and in particular, the important aspect of honoring the privacy of respondents. To this end, Technikon SA (2000:10-12) has reflected in such a way that the researcher should follow the strict standards of the principle of anonymity (this essentially means that the participant will remain anonymous throughout the study). Accordingly, the principle of voluntary participation was followed, where respondents were not forced to participate in the research. With the exception of the information that is found to be useful for the purpose of the study, any confidential information revealed

by the respondents was not revealed. The researcher not only treated the informants with respect but he also informed them that they would never be victimized as a result of having participated in the research (Van As, 2001:179). Following Leedy and Ormrod (2005:101-102), the principles of ethicality in social science research were strictly adhered to in the conduct of the research and enumerated as follows:-

- Protection from harm: the researcher will treat the research participants with respect and will not victimize them in any way.
- Informed consent: the principle of voluntary participation will be followed, where respondents will not be forced to participate in research.
- Right to privacy: any confidential information revealed by the respondent will not be revealed.
- Honesty with professional colleagues and only information useful to the purpose of the study will be revealed.

1.13 ORGANIZATION OF THE RESEARCH

The research report is organized in such a way that the forgoing chapter presents the introduction, background, purpose and objective of the research as well as the methodological issues employed by the study.

- Chapter two deals with the international definitions and nature of human rights principles and conventions of Human Rights conceived by different scholars through evaluating different theories of Human Rights.
- In chapter three the readings mainly deal with the historical background and evolutions of the role, mandate, organization and main functions of the police both globally and in Ethiopia. It also discusses the dynamism in the conception of the police in light of the principles of human rights protection, the concepts and processes of crime investigation, as well as the major issues pertaining to the duties and accountability and ethical conduct of the police.
- Chapter four of this report is specifically devoted to a brief review of the overall practices that are apparent in the process of crime investigation in general and the constitutional stipulations, promulgations, Criminal Procedure

Code as well as institutional arrangements that are put in place to guide or govern the process of crime investigation in Ethiopia, in particular.

➤ Chapter five presents the description of the major findings that are obtained from the analysis of qualitative and quantitative information generated from both primary and secondary sources. It also provides conclusions drawn out of the findings and recommendations put forward to elucidate the problems as well.

CHAPTER TWO

HUMAN RIGHTS

2.1 INTRODUCTION

The human being has travelled a difficult journey from the days when he lived in a primitive society to the present time, where he is part of the social structure of immense and growing complexity in the world. Nowadays, the development of common values within the new diversified structures of the world has made clear that all people deserve recognition and respect for their inherent human dignity (Piechowiak, 1999:6). People should be able to develop their personalities and order their own lives. As a result, the world community is in broad agreement concerning the basic values and fundamental principles of Human Rights.

This chapter deals with the international definition and nature of principles and conventions of Human Rights by different scholars, by evaluating different theories of Human Rights widely adopted in various international organizations in different times and places. We begin with historical evolution to the present status of Human Rights instruments adopted for the protection of Human Rights internationally, regionally and in Ethiopia (i.e. from the past to the present).

2.2 HUMAN RIGHTS: DEFINITION AND NATURE

The contemporary idea of Human Rights is formulated and consolidated as a result of the shock of public conscience by the sadistic brutality, horror and inhuman picture of the Second World War and the founding of the UN in 1945. Nevertheless, the idea has roots early in human thinking.

The expression 'Human Rights' is a name for what were formerly called the 'Rights of Man'. It was Eleanor Roosevelt in the 1940s, who promoted the use of the term 'human rights', when she discovered that the rights of man were not understood in some parts of the world to include the rights of women. The rights of man at an earlier date had itself replaced the original term "natural rights" (Journal of the American Academy of Arts and Science, 1985:173).

An attempt to arrive at a clear cut and conclusive definition for the term 'Human Rights' is almost impossible, as it is an issue of great controversy. So far it is difficult to come up with a complete definition encompassing all fundamental principles and features of Human Rights. Consequently, there is no universally formulated and accepted definition although there are many definitions by different scholars.

Despite the absence of a universal definition, the world community of nations recognizes the general standards and fundamental principles of Human Rights based on the international instruments of Human Rights. So, the absence of a definition does not mean that human rights are vague, uncertain and unenforceable for they are clearly understood and would be given effect according to the legal definition in which they are found.

Keeping the above fact in mind, as it is not possible to proceed with a discussion about Human Rights without defining the term, the writer employs (for the purpose of this paper) the following definition proposed by Cranstasn as cited by Fowler (1987:70):- Human Rights, by definition, are a universal moral right. Something which all men everywhere, at all times ought to have, something of which no one may be deprived without grave affront of justice, something which is owing to every human being simply because he is human" (Fowler, 1987:70).

A close observance of the above definition reflects what Human Rights are and how they are established. The term "Human Rights" indicates both the nature and source: they are rights one has simply because one is a human being (Asfaw, 1987:6). If a right is determined to be a Human Right, it is general and universal in character, equally possessed by all human beings (Claude & Weston, 1992:17). All human beings should enjoy human rights because of the mere fact that they are human beings. Human Rights are held by all people and all human beings without distinction as to race, color, sex, language, religion, nationality, ethnic origin, family or social status, or political or other convictions (Gane, 1997:19). Irrespective of their differences, all human beings are entitled to human rights.

The universality of Human Rights is not an implication to do away with or neglect valuable differences within the society and among human beings. The universal character only upholds and emphasizes the common element 'humanity' without any prejudice to any other reasonably promoted differences. To call them Human Rights, 'rights' implies that they are claimed 'as of right' not merely appealing to grace, or brotherhood, or love and they need not be earned or deserved. They are more than aspirations or assertions of the good but claims of entitlement and corresponding obligation in some political order under a moral law (Fowler, 1987:71).

Apart from this, human rights are also inalienable. For they are rights derived from the inherent dignity and worth of a human person and being a human cannot be lost or forfeited (Asfaw, 1987:6). The inalienability of human rights is implied in one's humanity. This means human rights are not dependant on the ability of the individual to exercise nor are they dependant on the acts of the person. They are irrevocably attached to a human person throughout his life.

Moreover, human rights are dynamic. This is to say, there is no fixed exhaustive list of human rights. They are in a dynamic movement that always adds new ones and allows old ones to fade away as economic and social conditions change. It is not a body of law written on stone, with the content fixed by laws developed over a century or even a decade ago. Rather, it is an expedient body of general principles capable of adaptation and application to the basic concept of people living in widely different, often changing circumstances (Freeman, 1988:12).

Human rights are best understood as those rights enshrined in international instruments, such as the UDHR (Universal Declaration of Human Rights), ICCPR (International Covenant on Civil and Political Rights), ICESCR (International Covenant on Economic, Social and Cultural Right), regional human rights instruments and treaties dealing with specific aspects of human rights protection, such as the prohibition of torture (Crawshaw, 1998:7). As can be seen from these international instruments, Human Rights are of different characteristics and hence differently categorized: civil and political

rights, economic and social rights, group rights etc. Nonetheless, all human rights are universal, indivisible, and inter-dependent and inter-related (Crawshaw, 1998:7).

To the question: “Give the definition of human rights” all five public prosecutors and nine of the ten investigators said that it is a right that human beings get by birth and is fundamental with having general and universal character. These are impartially ratified by all human beings to serve them everywhere because all human beings are created equally and these rights are included in the constitution, so that it should not be violated.

One of the ten investigators said that even though it is a right given to all human beings, suspects are denied this right they are given by the constitution. Therefore, except for one of the interviewees, the remaining respondents have a similar understanding that directly coincide with literature written on the definition of human rights. The reason for one interviewee being different from the others may result from inadequate training given on human rights.

The process of categorization of human rights has its own origins and reasons, which require more discussion beyond the scope and purpose of this paper. In any case, the categorization is proper and essentially helpful in the understanding of human rights. However, it does not imply an absolute demarcation and distinction among the different categories. More specifically, it does not entail a hierarchy of importance or priority of treatment in favor of one against the other. The full realization and enjoyment of the one is dependant on the sound and effective realization of the others. So the international community must treat human rights globally in a fair and equal manner on the same footing and with the same emphasis (Crawshaw, 1998:7).

Generally, although the term “human rights” possesses a definite universal definition, the world is in a dilemma or confusion as to what human rights are and what their nature is. For the purpose of human rights to be complete, however, this fact is not enough, though it may be an essential step. It is a

matter of common knowledge that, like all other rights, human rights require an integrated system of legal means for their enforcement. Therefore, with an intention to achieve this purpose, the international human rights law consists of the body of international rules, procedures and institutions. The reasons and composition of these will be discussed in the following sections. There are also international mechanisms to protect human rights, which shall be discussed as follows:

2.3 THE INTERNATIONAL SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

Human rights rely on an international system of human rights protection as one of their enforcement mechanisms. International protection emanates from the international community as a whole, which has a responsibility and a duty to ensure the enjoyment of human rights by every human being. The standard of responsibility of the international community is to guarantee inviolability of internationally recognized norms on human rights (Ramcharin, 1982:356). This implies the existence of international concerns and claims about the situation of human rights in the national forum. The concern is not a simple curiosity but an international commitment that entails a duty to respond properly, based on the available internationally accepted measures.

The concern for human rights protection requires the international community to take effective and practical actions aimed at ensuring human rights in all countries to all human beings. The whole purpose of international human rights protection focuses on whether individuals are actually treated according to the international standards of human rights by their own nations. The concept of international human rights protection, in its real sense, makes governments accountable to the international community with regard to their activities that affect the human rights of their own nationals. This inevitably involves the question of sovereignty. Until relatively recent times, attempts by one nation to tell another how to treat the latter's own citizens in its territory would have been dismissed as a blatant interference in the internal affairs of a sovereign state (Feldman, 1993:54).

Human rights, though principally entrusted to a national government for their implantation are not compartmentalized to the sole arbitration of a nation's boundaries. Human rights are common values which all human beings strive towards for their protection as an end by themselves. In addition to this, the widespread recognition of their interdependence with international peace and security recognizes the necessity of international systems for their protection. In these modern times, human beings live in an ever increasing interrelated world and there is a growing wave of a need to promote common good and avert common dangers through an organized international security system. As human rights are common goods by their nature, their violation is common danger. The denial of human rights and fundamental freedoms is not an individual and personal tragedy but also creates conditions of social and political unrest sowing the seeds of violence and conflict within and between societies and nations (UN and Human Right, 1984:20).

In other words, the effect of human rights violations is not limited to the individual victim or to the territory of the violating state. It is said that human rights violations are a source of war and instability. Due to the close interdependence of parts of the world they can, in the long run, disturb the stability of the whole world. Thus, it appears that one state can claim and enjoy a land of peace and stability, while some part of the world is suffering from human rights violations. Human rights violations threaten the survival of human beings and endanger international peace and security (Ramcharin, 1982:356). Consequently, mankind cannot and should not allow any act of human rights violation to endanger its survival as a result of irresponsible behavior of a delinquent nation. Thus, any worthwhile international security system has to come up with adequate means and institutions with a view to controlling such violations (Sieghurt, 1992:23).

The justification for international protection is strongly reinforced by the existence of a moral urge against human suffering within all human beings. Human beings will not stand idly by and watch their fellow human beings murdered, tortured, enslaved or recklessly incarcerated by errant governments (Ramcharin, 1982:356). International human rights protection is

not exclusively limited to correcting the wronged states which deliberately violate human rights. Even states with the most perfect institutions and progressive social forces in power, as well as those with the most reactionary ones, are subject to making mistakes, heavy injustices and infringement of the rights of their own citizens (Asbjorn & Schou, 1968:190). This time the role of international protection must also be available to the individual victims as a means of recourse. Furthermore, when the political culture is not sufficiently influenced by requirements of human rights, international protection is required to influence governments to keep within the political frameworks which are compatible with the international human rights system (Bloed, 1993:190).

Given the rationale and objectives of international protection, it is not possible to anticipate a successful accomplishment from it without the full support and participation of all states and governments in the world. In general terms, the international protection for human rights should be prompt, adequate and effective (Ramcharin, 1982:357). It must enable our fellow human beings (the man in the street), of whom all states are constituted, to struggle to secure their basic rights and fundamental freedoms beyond the frontiers of the state (Asbjorn & Schou, 1968:48). If not, the very fact of its existence or the general consensus of its importance cannot be claimed as international protection but merely seen as an important measure in the process.

In consideration of the necessity of the international human rights protection, the UN charter, underlining the significance of human rights, entrusted the UN to achieve universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion, as one of the principal purposes of the UN under Art. 55(c) of the UN charter. Art 56 of the UN charter also provides for all members to take joint and separate action in co-operation with the organization for the achievement of the purpose set forth in Art. 55. Having the purpose of discharging its objective with regard to human rights protection, the UN has been engaged in various activities aimed at ensuring human rights protection internationally.

A review of the activities of the UN, together with the structures and methods utilized by the UN, reveals that the UN is an indispensable organ in the process in an endeavor to protect human rights by way of an international system. Nevertheless, it is important to note that neither the UN as an organ nor its activities are sufficient enough to achieve the purpose of international human rights protection. As the UN, apart from its efforts to discharge its responsibility, is institutionally limited, particularly with regard to the way it operates, as it is susceptible to specialized political manipulations and the organization cannot investigate every alleged violation of human rights or bring relief to all victims (Human Rights National Institution for the promotion and protection of Human Rights, facts sheet No. 19:3).

More importantly, each country is bound to respect the human rights of any person under its jurisdiction. Thus, it is the proper discharge of these obligations that amounts to an effective protection of human rights. The duty of states in the protection of human rights needs a little more detailed discussion which the following section deals with.

2.4 THEORY OF HUMAN RIGHTS

The state is a set of institutions which has supreme power over the subjects within a given territory. The issue of human rights is mostly associated with the state and its subject. Many scholars have explained their opinions in trying to reconcile the power of the state and the fundamental rights of the subjects, by trying to limit the power of government (Piechowiak, 1999:9-10).

The theoretical bases of the classical versions of fundamental rights were developed by philosophers like John Locke and Jean Jacques Rousseau, which were the theories of social contract and natural law (Pennegard, 2001:20). The theory of social contract provides that the state is the result of consent among people, where the people have got their freedom to ensure their safety, private property, other personal rights, etc. (Rendel, 1978:304). Moreover, Locke in his natural law theory argues that God guarantees basic rights to all men, including life and own property (ibid). In addition to that, people secure their rights, men and women enter into a contract with their

governments so that men and women obey the rules of the government while the government has the responsibility to make laws and to defend its citizens from foreign enemies (Miller, 1984:452).

John Locke again agreed to limit individuals' rights to the extent necessary for the organization of the state and for carrying on public affairs. Furthermore, he developed a theory for the protection of natural rights, stood for the men overlooking women, along with savages, servants and wage laborers, who were not recognized by right holders (Rendell, 1978:300).

Democratic systems try to prevent law enforcement officials from misusing or abusing their powers by constitutional principles that create checks and balances among the organs of state. One of the most common abuses of power occurs by officials seeking certain unnecessary benefits towards either political or economic ends (De Rover, 1998:143). Various methods have been used to resolve the problem posed by abuses and violations of human rights. According to De Rover (1998:143) these include:-

- Decentralization of power
- Creation of independent agencies (like Ombudsmen)
- Special commissions of inquiry, the media and publicity etc.

The formations of powerful, independent and distinct bodies, which are empowered to control state organs, are necessary to protect the individual's rights from any government official's violation. However, the theory of human rights is very wide and requires more discussion which is beyond the scope and purpose of this paper. Therefore, the intention to achieve the purpose of human rights protection at international level consists of the body of international rules, procedures and institutions. The reason and composition of these will be discussed in the following section.

2.5 INTERNATIONAL MECHANISMS AND PROCEDURES FOR ENFORCING HUMAN RIGHTS

The signing of the Human Rights Charter of the United Nation was a significant step in bringing human rights within the sphere of International law, in the history of human rights (Ramcharin, 1982:356). The preamble of the Charter of the United Nation arises from the atrocities committed during the Second World War, which pointed to the need to create an organization that would work to save succeeding generations from the scourge of war, reaffirm faith in fundamental Human Rights, establish conditions under which justice can be maintained and promote social progress and better standards of life in greater freedom (Pennegard, 2001:23).

The UN activities aimed at ensuring human rights protection internationally can be summarized as follows: “.... of great importance is the complex machinery, which has been set up under nations, international covenants and conventions to establish standards, monitor implementation, promote compliance and investigate violations of human rights” (Sieghurt, 1992:23). The United Nations has also developed, on the basis of the charter of specific conventions, various complaint procedures, fact finding procedures and diplomatic or conciliatory procedures (Ramcharin, 1982:356). In addition, the UN provides practical assistance to states in their efforts to protect and promote human rights and informs the public about the right to which it is entitled (Ramcharin, 1982:356).

United Nations structure and its methods is an indispensable organ in the process of endeavoring to protect human rights. Nevertheless, the activities of the UN as an organ are not sufficient enough to achieve the purpose of International human rights protection. The UN, apart from its efforts to discharge its responsibility - is institutionally limited - particularly with regard to the way it operates, as it is susceptible to specialized political manipulation and infested with financial constraints (Human Rights National Institutions for the promotion and Protection of Human Rights, fact sheet, No.19:20).

From the literature, the researcher understands that international human rights protection is a recent concept. Its institutional arrangements and objectives are relatively new. For these reasons, the international system for the protection of human rights practically strives for the full support and co-operation of regional human rights protection arrangements and their relation to the UN activities in respect to human rights, is an illustration of this. The support from national and international non-governmental organization, such as Amnesty International and Human Rights Watch, concerned with human rights is an indispensable ingredient for the international protection of human rights (Sieghurt, 1992:23). To enforce human rights, different mechanisms exist, such as the United Nations Commission on Human Rights, the Human Rights Committee, the International Court of Justice and Amnesty International.

2.5.1 United Nations Commission on Human Rights

The Commission on Human Rights was established by the UN Economic and Social Council on 16 February 1946 for the protection of human rights at international level (Mukherjee, 2001:217). The commission drafted the principle and the purpose of the universal declaration of human rights and the original mandate to submit to the council proposals, recommendations and reports about human rights (Drzewicki, 1999:66).

As the principal human rights organ in the United Nations, the commission in its 53rd session, by highlighting violations, dialoguing with its partners, focusing on poverty and lack of development and identifying solutions for the future, demonstrated that it still remains the only body capable of serving as a point of reference on the state of human rights worldwide (Mukherjee, 2001:217).

Regarding the procedures, there are various United Nations procedures, both political and Quasi-Judicial Petition Systems. The principal resolution based petitioning system was established in 1970 pursuant to ECOSOC resolution I503 (Dezayas, 2001:70). Since then, millions of petitions have been received and examined by what used to be known as the 'communication unit' of the

secretariat of the center for human rights in Geneva (Dezayas, 2001:70) and then it summarized and forwarded the complaints to the states concerned and intervened on behalf of the victims.

2.5.2 The Human Rights Committee

The international covenant on civil and political rights and the optional protocol were adopted by the general assembly on 16 December, 1966 (Mavrommatis, 2001:147). This optional protocol entered into force on 23 March 1976. In accordance with article 28 of the covenant, the states parties established the Human Right Committee on 20 September 1976 (Mavrommatis, 2001:147). According to Dimitrijevic (2001:185-200), the committee has many responsibilities including:

- Consideration of reports submitted by state parties under article 40 of the covenant
- For emulation of general comment under article 4014 of the Covenant i.e. elucidating the content of articles of covenant, so as to assist states parties not fulfilling their respective obligations
- Examining petitions and complaints made by individuals alleging violations of any of the rights set forth in the covenant, as provided for optional protocol thereto.

It is worth mentioning that the decisions of the Human Right Committee (HRC) are neither obligatory nor is there an enforcement mechanism. Nonetheless, the degree of state compliance with the committees' decision of the HRC is encouraging due to its highly persuasive nature (Dimitrijevic, 2001:185-200).

2.5.3 International Court of Justice

The international Court of Justice (ICJ) was set up to rule on disputes between sovereign states and to provide advisory opinions to United Nations Organs. However, the Jurisdiction of the court excludes human rights issues (Grimheden, 2001:470). The international court of the tribunals plays an important role as a pre-eminent judicial organ, capable of speaking up for non-

state actors in the crucial move of furthering the justifiability of human rights (Grimheden, 2001:470). In addition, the International Court of Justice gives more emphasis to the recommendations of the Security Council or General Assembly, subject to state consent for the justifiability of human rights.

2.5.4 Amnesty International

The international human rights organization known as Amnesty International was founded in 1961, by a British lawyer known as Pete Benson, as a campaign to work for freedom of prisoners of conscience (Eyjolfsdottir, 2001:855). Since Amnesty International contributes to the protection of human rights and covers a wide spectrum of human rights, it has created a formal and influential relationship with international institutions with the same objective (Eyjolfsdottir, 2001:855). Particularly due to almost similar views, Amnesty international has an indispensable relationship with the UN Economic and Social Council (ECSOC) and other International Organizations (Tomasevski, 1999:122).

At present, Amnesty international's activities aim to free all prisoners of conscience, ensure fair and prompt trails for political prisoners, abolish the death penalty, torture and other cruel, inhuman or degrading treatment of prisoners and extra-judicial executions and disappearances (Newberg, 1980:87-89). Hence, in pursuing this objective, Amnesty International has established a dual task namely, promoting awareness, Universal Declaration of Human Right (UDHR) and adherence to human right instruments and to actively campaign against the violation of certain civil and political rights (Newberg, 1980:87-89).

To conclude, Amnesty International plays a significant role as an advocate. Due to the fact that it is neither a government or formed under the umbrella of the UN with coercive powers, it struggles for the protection of human rights by exposing the violations of such rights to the concerned state (Eyjolfsdottir, 2001:855).

2.6 REGIONAL INSTITUTIONS ENFORCING HUMAN RIGHTS

To enforce human right there are some regional institutions, such as the council of Europe, the Inter- American Commission on human rights and the African commission on human rights. The following discussion describes these regional institutions:

2.6.1 Council of Europe

Council of Europe was founded in 1950 as a European Organization, which included all European member states, promulgated the European Convention for the protection of Human Rights and fundamental Freedoms (De Rover, 1998:96). Currently, this institution is known as the council of the European Union with the same function that it had when it was Council of Europe i.e. legislative organ of former European community and for the current European Union (Merrills, 1999:275). Since then it has developed a legislative procedure as well as committed itself to different human rights conventions and treaties, so as to pursue its goal namely, the realization of human rights and freedoms as provided for in article one of the organization's statute.

The council of the European Union, which is one of the five organs of the European Union, tries to protect an individual's rights in collaboration with the European Court of Justice which has the jurisdiction in deputies involving member states and as well as with other institutions of the European Union (Merrills, 1999:276). Since one of the requirements for admission of countries in the European Union is a good record in respect of human rights and due to the fact that even a member state can be expelled if it fails to respect its obligations, let alone other sanctions, the Council of Europe has a broad spectrum of power to pursue it's goals due to it's excellent enforcement mechanism (Drzemczewki, 2001:526).

2.6.2 The Inter-American Commission on Human Rights

The Inter- American commission on human rights was originally organized and established in 1950 to protect the social and economic rights of citizens.

Later on it was promoted to American Human Right Commission (AHRC) in 1978. It comprises seven human rights experts each of whom is elected in their personal capacity, not as representatives of countries, by the general assembly of the AHRC and serve four year terms (Harmen & Krsticevic, 1999:375).

Though the powers of the commission have been limited by articles of the statutes of the commission, in order to make general recommendations on human rights situations a part of promoting research and education, the commission managed this limitation by interpreting the same statutes so as to make general recommendation to each individual (Harmen & Krsticevic, 1999:375).

The commission was able to condemn any member state found in gross human rights violations and also, in order to attract attention to human rights abuses, the commission established a documentation mechanism of violation of human rights which would be forwarded to the General Assembly (Hunsungule, 2001:679). Moreover, at an Inter-America conference held in Rio De Janeiro in 1965, the petition system was formalized and expanded and was further strengthened by the adoption of the American Convention on Human Rights (ACHR) in 1996 (Harmen & Krsticevic, 1999:372). The petition system provides for the commission to receive individual petitions alleging violation of rights contained in the declaration and it can examine interstate complaints. This shows American Human Rights Commission functional progress with the development of new inter-America conventions and protocols (De Rover, 1998:95).

According to Harmen and Krsticevic (1999:374), there are three significant developments of the American Human Rights Commission:-

1. Systematic submission of the cases to court to test political will of states in complying with court judgments.

2. The adoption of three Inter-American Human Rights Instruments viz. violence against women, disappearance and abolishment of death penalty and the struggle of the Commission.

3. Creation mechanism for timely multilateral responses to threats of coups to democratically elected governments through Santiago committee and the general Assembly resolution 1080.

2.6.3 African Commission on Human and Peoples Rights

The Africa Charter on human and people's rights which deals with the protection of individual and collective human rights was adopted on 27 June 1981 by the assembly head of state members of the Organization of African Unity. The entering into force of this charter, on 21 October 1986, was considered a significant step since it showed African states organized commitment to protecting human rights. On the one hand, the commission introduced human and people rights to be promoted and protected with the respective duty of an individual and on the other hand, it was established to supervise the adherence of member states towards the agreed instrument (Flinterman & Henderson, 1999:387).

It is also worth mentioning that the African Charter, unlike most regional human rights instruments such as the European convention on human rights, guarantees civil and political rights of the people (An-Naim, 2003:1-29). However, such a long list of rights has been criticized by scholars for its necessity to establish a court and a preference or emphasis on reconciliation and negotiation. This, they believe, limits the enforceable capacity of the commission which would be better served had it been for legally binding judgments (Arts, 2000:366).

The structure of the African Commission on Human and People Rights consists of eleven members (usually senior government officials) who are elected for a term of six years by the OAU assembly of heads of states. These members are expected to participate and contribute in their individual capacity and not as representatives of their government (Flinterman & Henderson,

1999:391). The commission understands the problem and convenes conferences to study and disseminate information regarding human rights. In its protection function, it refers to the receipt of complaints procedurally provided for in art. 46-54 of the African Charter and protocol of the African Court of Human and peoples' rights but this was not practiced objectively. Rather, its activity is restricted to that of an advisory opinion to the OAU (De Wet, 2001:713-729).

The establishment of the African Court of Human Rights should create a new area in the protection of human rights on the African continent. However, whether this will indeed be the case remains to be seen (De Wet, 2001:713-729).

Although it is certain that all major changes to the present African enforcement mechanism, such as the African commission and also African Union court etc. will encounter considerable resistance among African governments, it cannot be avoided in the long run. This is mainly due to the reluctance on the part of the individual leaders to share their state sovereignty.

2.7 HUMAN RIGHTS PROTECTION IN ETHIOPIA

The respect and protection of human rights is an international concept which gained its momentum after the Second World War. In particular, the signature and adoption of the UN charter and other covenants by the member states has played an indispensable role in protecting human rights within their territories.

According to Girma (1995:5), Ethiopia has implemented different constitutions at different times and with different regimes in keeping with international law regarding human rights agreements that Ethiopia has been signatory to:

- The 1931 constitution of Ethiopia was the first written constitution of the country. In this document, there were only a few statements about Human Rights.

- The 1955 constitution of Ethiopia included Human Rights principles such as a right to life, a right to liberty, etc.
- The 1987 constitution of Ethiopia was similar to that of 1955 regarding Human Rights
- After the overthrow of the Dergue Regime, the Transitional Government of Ethiopia developed a charter that meets the principles of Human Rights and it is considered to be better than the first constitution mentioned above.
- The 1995 constitution of Ethiopia has provided ample room for the respect of human rights in the country.

The comparison made by the researcher leads him to conclude that the 1995 constitution had accommodated all the necessary human rights elements and accounted for one third of the total proclamations read about compared to the two preceding constitutions.

2.7.1 Human Rights pre- FDRE Constitution of 1995

Before the Federal Democratic Republic of Ethiopia (FDRE) Constitution of 1995, there was a traditional unwritten constitution, three written constitutions and one transitional charter which were adopted in 1931, 1955 and 1987 and a transitional charter of 1991 in which the country is led and governed according to the international covenants and agreements of human rights protection.

Before the 1931 constitution, Ethiopia had a traditional unwritten constitution, which was described by three instruments, namely the Fetha Negest, Kebra Negest and Serat Mengist. These documents existed before there was any enacted constitution in Ethiopia in its early stage. These documents hold constitutional principles. They were related to religious rule and used by governors to govern state functions. This unwritten constitution included the ideal of the monarchy and an imperial court system involving monarchy, church and nobility in an intricate power relationship. This traditional constitution neither provided for the relationship between the monarchies and subjects, nor any notion about the rights of the subjects. Rather, it

emphasized the monarchy's dynasty claim and its profession of the orthodox Christian faith, as well as absolute fidelity thereafter (Fasil, 1997:16).

2.7.1.1 The 1931 Ethiopian Constitution

The 1931 Constitution is the first written constitution in Ethiopian history, which was promulgated on 16 July 1931. This constitution did not establish civil and political rights as a working law (Calpham & Paul, 1967:92). Moreover, the coming into effect of the constitution held two major objectives namely, consolidation of the power into the hands of the emperor and to exhibit to the world that Ethiopia was a modern state. The creation of a sovereign power, which is the prerequisite and the basic element of a modern state, enabled Ethiopia not only to participate in international affairs but also increased the credibility of the government and the enforcement of agreements that might be reached (Fasil, 1997:17).

When Ethiopia requested membership of the League of Nations in 1923, she was required to abolish slavery and to enhance the rights of her subjects. Despite the objection of some countries that Ethiopia was not 'civilized enough', she joined the League of Nations by promising to fulfill the requirements to be a member of the League of Nations (Fasil, 1997:20). After studying the 1931 constitution of Ethiopia, it can be said that the recognition of fundamental rights of a person was the cumulative result of the establishment of a modern Ethiopia and the influence which the international community exerted on it.

Though Ethiopia had agreed to respect the rights of her subjects, as well as to abolish slavery, Ethiopia reluctantly began the prohibition of slavery (Fasil, 1997:20.)

Although certain rights had been recognized in the 1931 constitution it was, according to Calpham and Paul (1967:340-341), hardly implemented due to reasons such as:-

- Lack of adequate legislation (codes) to implement the rights of the subjects and provide the limitation.
- The prerogative and discretionary power given to the Emperor would enable the emperor to suspend or abolish such rights at any time.
- A lack of strong and independent institutions such as the judiciary, to protect such rights.

2.7.1.2 The Revised Constitution of 1955

The revised constitution was proclaimed on 4 November 1955. Since 1931, there had been political and social changes which necessitated the revision of the 1931 constitution (Fasil, 1997:24-26). Moreover, Ethiopia became a member of the United Nations Organization in 1945, which also paved the way for the introduction of new ideas in political and socio-economic affairs. However, the revision of the 1931 constitution was mainly attributed to the ratification of the 1948 Universal Declaration of Human Rights (Fasil, 1997:24-26).

The Federal Act had been modeled on the 1948 Universal Declaration of Human Rights (UDHR), as well as other humanitarian concepts. Thus, the need for constitutional amendment was indispensable in order to reconcile those adversaries (Calpham & Paul, 1967:92). This revised constitution contained 27 articles about human rights which were adopted from the developed European countries and also the American Bill of Rights (Spencer, 1993:340). Although this constitution, which had included the modern concepts of fundamental rights of individuals, it was nevertheless subject to the prerogative power of the Emperor.

In defining the powers and duties of the regime, the executive part is the most significant with respect to the individual human rights and freedom based on the UDHR. However, in contrast to the exercise of fundamental rights and liberties enshrined therein (Fasil, 1997:24-26), the executive were not elected by a democratic process but appointed by the emperor. Their power was exercised only for personal advantages. There were no political parties to

defend illegal practices and also there were no enforcement mechanisms to protect the rights of the subjects. The regime enshrined its capacity to challenge public violence, which appeared in different areas of the country.

During the Dergue regime from 1974-1987, no written constitution existed in the country. Moreover, the socialist ideology that had been adopted by the military government was one factor that greatly limited the fundamental rights of citizens, such as freedom of expression, free elections and the freedom of religion (Fasil, 1997:28).

2.7.1.3 The 1987 Constitution

The 1987 Ethiopian constitution is the first and only constitution ratified by referendum thus far. Moreover, scholars stated that there has been no such constitution in Ethiopian history, which has provided for the protection of inalienable human rights but in practice, the opposite occurred (Fasil, 1997:30). In general, it can be said that human rights have hardly been protected, be it in legislation or in practice.

To conclude the experience of the researcher, the military regime (1974-1991) given its nature and characteristics, did not care about or only paid lip service to individual rights because there have been gross violations of human rights. Above all, the 1974 revolution would have resulted in a better political, economic and social situation if the Dergue (government) officials had shown a willingness to transfer power to the elected government as promised, or even their willingness to share power.

2.7.1.4 Human Rights Protection in the 1991 Transitional Charter

After the fall of the Dergue government by the Ethiopian Peoples Revolutionary Democratic Front (EPRDF) in 1991, the transitional government charter was enacted. The preamble of the Transitional Government charter stated that the charter is a new chapter in Ethiopian history, in which freedom, equal rights and self-determination of all people shall be the governing principle of economic and social life. The charter was more or less similar to

the principle outlined in the African Charter of Human and People Rights, adopted in 1983. This highlights community rights next to individual rights. However, the charter does not take into account the historical ethnic group identities and the current phase of political mobilization regarding ethnicity (Abbink, 1997:159-174).

Therefore, it can be said that the human rights section of the charter is mainly characterized by the provision of collective rights. On the other hand, the charter articles explain that individual rights will be respected without any limitation whatsoever (Mutua, 1995:14-16). However, during the transitional government period, Ethiopia accepted the Universal Declaration of Human rights but the Judiciary part, which places more emphasis on the protection of individual rights, was not maintained in the charter (Mutua, 1995:14-16).

The problem of the independence and observance of the judicial power is connected to that of its relation to the legislative and the executive powers (Abbink, 1997:159-174). For example, the Minister's council letters of 24/07/92 (Ref. M80867/3), which instructed the courts not to decide on matters related to property that was illegally confiscated by the defunct regime and also suspended enforcement of their judgments regarding such properties (Mutua, 1995:14-16). Besides that, the suspension of Habeas Corpus, which was provided for in the civil procedure code, as a remedy for illegal detention, as well as civil and political rights of the subjects, was not practical in the Judiciary Organ (Mutua, 1995:14-16).

Some observers, as stated in Abbink (1997:54), like Goudapper and Oosterhagen, Henze and Aberra, have already noted that the Judiciary and the executive relationship are not balanced. The power leans strongly towards the executive body (Abbink, 1997:170).

Therefore, the human rights in the charter were hardly respected, due to the fact that there has not been a mechanism for enforcing it (such as an independent Judiciary).

2.7.2 Human Rights Protection under F.D.R.E Constitution

The current constitution of the country is an exception that led the country to a federal form of government. This is based on ethnic identity and forms the ideological basis of political organization and administration and has also been enshrined in the federal constitution of December 1994. It forms the outlines of the new Ethiopia (Abbink, 1997:159). In the preamble to the first formal constitutional, similar to the charter, emphasis is on collective rights by the self-declared sovereign power simply imposed on the minority (Minasse, 1996:20-24). One of the fundamental human rights is the right to have property. The Dergue Regime unlawfully confiscated private property and land in the rural area without compensation and again, the F.D.R.E Constitution declared the rural land as government property (Abbink, 1997:159).

To the rural population, the Constitution has simply made them perpetual tenants of the state. Therefore, it creates an ultimate feeling of insecurity among the rural population and it will inhibit long-term investment (Mutua, 1995:33-44). The other related but significant problem in the protection of human rights, is an absence of judicial review by the courts over the state executive and legislative power. It creates an imbalance of power and gives a controlling mechanism to the three organs of the state (Fasil, 1997:18).

2.8 THE ROLE OF GOVERNMENT AND NON-GOVERNMENTAL HUMAN RIGHTS ASSOCIATION IN PRESENT ETHIOPIA

The introduction of an Ombudsman in Ethiopia described that, as elsewhere, the growth of state control and extension of government powers have not been accompanied by a similar growth in institutional protection of individuals against public maladministration (Institution of ombudsman of Ethiopia 2000, proclamation no 210). Ethiopian society has undergone a major transformation and in the recent past, it adopted the western model of economic development around the middle of the 20th century and the socialist model approach after the 1974 Revolution (APAP, 2000:1).

The present Ethiopian government adopted decentralized powers, public participatory and democratic system policies. These policies are supported by the constitution of the Federal Democratic Republic of Ethiopia which adopted the fundamental rights conforming to the principle of the Universal Declaration of Human Rights, International Covenants of Human Rights and International Instruments (Meaza, 2003:29). The constitution includes the individual fundamental rights and more importantly, the necessity for popular participation for good governance besides other political, civil, economic, social and cultural rights (APAP, 2000:1).

As a result, in present day Ethiopia, there are governmental institutions and non-governmental voluntary human rights associations which have been established in the country to promote and control or preserve human rights activities in the country.

2.8.1 Human Rights Protection Activities under Governmental Institution

The Constitution promised to establish an Ethiopian Human Rights Commission and the Institution of an ombudsman. These institutions were founded by proclamation No.210/211-2000. The aim of the institution of the ombudsman is the government's effort to establish a link between the activities of the decision-making power with the daily lives and the rights of citizens. Secondly, it prevents the unjust decision by order of executive organs and officials. Thirdly, the citizens having suffered from maladministration are not left without redress. They want an institution before which they may complain and seek remedies, with easy access and needs to be fulfilled. These objectives have been listed in the 210/2000 proclamations.

The Ethiopian Human Rights Commission is responsible for protecting the fundamental rights being guaranteed by the constitution. No organ of the state can act in contravention of such rights and any act by the state which is repugnant to such right, must be avoided. The object behind the inclusion of certain individual rights in a Constitution is to ensure limited government abuse of power (Asfaw, 1987:24).

2.8.2 The Role of Non-Governmental Organizations

Non-governmental organizations, particularly those dealing with human rights protection, are relatively new in Ethiopia and still very few in numbers (APAP, 2002:1). From 1994 to 2004 a total of 436 local NGOs were registered with the Ministry of Justice. Almost all of them focus on welfare and development. However, NGO's devoted exclusively to human rights work number very few (Meaza, 2003:30).

Some of the most active non- governmental organizations working on Human Rights are the following:-

2.8.2.1 The Ethiopia Human Rights Council (EHRC)

This institution was established on 10 October 1991. It is a non- profit making and non-partisan humanitarian organization. The founding members are professionals and businessmen who are committed to the cause of human rights (Mutua, 1995:1).

In addition, the Human Rights Council struggled for the establishment of the democratic process in order to:

1. Promote the rule of law and due process.
2. Encourage respect for and to monitor violations of human rights in Ethiopia.

The Ethiopian Human Rights Council (EHRC) often found itself in conflict with the government since some of its activities involved sensitive issues, such as monitoring and reporting on political prisoners (Meaza, 2003:30).

2.8.2.2 Ethiopian Women Lawyers Association (EWLA)

The Ethiopian Women Lawyers Association (EWLA) is a private non-profit and non-partisan voluntary organization. It was founded by a group of Ethiopian women lawyers and registered on 7 June 1995 (EWLA, 2001:6).

According to the EWLA (in unpublished bulletins) the EWLA association has the following objectives:-

1. Minimize all forms of legal and traditional sanctioned discrimination against women.
2. To ensure the equal treatment of women and men regarding education, employment and access to public services and benefits.
3. To advocate for remedial and affirmative measures for women and to redress the consequences of discrimination.

The council gets popular recognition by giving service to the public, especially for women, with support and legal advice and monitoring the human rights activities during the crime investigation process.

2.8.2.3 Action Professional Association for the People (APAP)

Action Professional Association for the People (APAP) is a civic and legal rights educational association formed and run by young lawyers since 1992. It is actively engaged in human rights education and legal aid provision (APAP, 2000:3).

2.9 SUMMARY

According to the UN charter, the recognition of the inherent, equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace (Drzewki, 1996:65). Due to the close interaction of people and the effect of human rights violations, the international community is responsible for the protection of human right at international level (Gane, 1997:20).

With an objective to discharge this responsibility, the UN is entrusted to ensure respect for human rights for all human beings in all countries. To promote human rights activities, there are rules and regulations established internationally, regionally and nationally. Countries are bound to follow charters ratified by the UN so as to enhance the law that it is there to serve all human beings throughout the world. To sum up, human rights definitions are

contained in various literature and respondents agree on similar perspectives of human rights. Nevertheless, the response obtained from one interviewee indicates that there is a difference of opinion which denies suspects their rights. The reason for this difference may be due to poor or inadequate training and which requires a change of attitude towards human rights principles and laws.

Therefore, in order to avoid this kind of misconception and to increase levels of awareness of police officers regarding human rights issues, the police institution should attempt to implement training that mainly addresses the rights of human beings.

CHAPTER THREE

HISTORICAL BACKGROUND ON THE EMERGENCE AND DEVELOPMENT OF POLICE AND THE ETHIOPIAN POLICE

3.1. INTRODUCTION

The readings in this chapter are made possible through the review of authentic and relevant literature on the subject, which are selected on the basis of their relevance, consistency and acceptability. The chapter mainly deals with the historical background and evolutions of the role, mandate, organization and main functions of the police both globally and in Ethiopia. It also discusses the dynamism, which is increasingly becoming apparent in the conception of the police in light of the principles of human rights protection and the link between the two. Meanwhile, it also discusses the concepts and processes of crime investigation, as well as the major issues pertaining to the duties, accountability and ethical conduct of the police without compromising its role of keeping peace and order. At the same time, the police must abide by human rights principles.

3.2 THE GLOBAL HISTORICAL EVOLUTION OF THE POLICE

Society on the whole wants to be protected from criminal attacks. People want to feel secure in their homes and on the streets from any kind of attack (Sowle, 1962:31). The police are an important organ in human rights protection for its indispensable contribution through its function of maintaining peace and order in society. Police departments maintain public peace by preventing riots, unlawful assemblies and by ensuring the rights of every citizen that are granted to him/her in the constitution (Wilson, 1950:17).

The origins of the term “police” are found in the Greek word ‘polity’, which referred to the organization and government of the city. When it is used in the modern phrase “police power”, it refers to the power of the state to regulate or govern; hence the original meaning of the word becomes more apparent (Fyfe & Jand, 1997:4). The French, who established a police force as early as the

fourteenth century, used the word referring to the act of bringing order, to civilize or organize (Fyfe & Jand, 1997:4). In Britain, the word began to be used in a similar sense from the eighteenth century onwards (Raymond, 1986:4).

As long as there has been a need to maintain order and to control conflict, policing has always existed in some form or another whenever people have lived in groups. In fact this is witnessed in early tribal societies. When we look at the evolution of the organization of the police, in medieval free cities in Europe, civic authorities assumed responsibility for safety and security. However, there was no such organized police force. It was the emergence of national states after the middle ages that created the need for a more organized form of policing. There is also evidence of formalized policing in ancient China, Egypt and the Greek city-states and Rome (Kelly, 1973:38).

The necessity for laws to govern the growing relations in society did not only result in creating laws and customs. It also resulted in organizing the society at different levels and establishing enforcement bodies for the practical application of the law. Organized society throughout the whole period of civilization has employed public officers to enforce rules and to bring to justice those who are charged with breaking them (Critchley, 1967:28). The fact that the institution of the police is one of the indispensable machineries in the administration of criminal justice, is indeed a reality beyond dispute in every country of the world since early times (Raymond, 1986:16). Nevertheless, police as an institution in its modern sense is mainly the phenomenon of the 19th century (Critchley, 1967:47) and can be traced back to the era of the development of modern industry and technology (Critchley, 1967:47).

When the law enforcement bodies gradually institutionalized and enlarged so as to respond adequately to the demands of the society, they required separate departments and agents for their function. Primarily the law enforcement bodies were only concerned with the application of the law but later on with the passing of time, specialized agencies dealing with different issues has come into existence. Among other institutions, the police were created as a result of this evolution (Raymond, 1986:18).

Different countries may organize their police agencies in either a centralized form or decentralized form. The advantage that the decentralized system of policing has over the centralized one is that it avoids manipulation of power and increases the degree of accountability. A centralized police force leads to undue influence or power in the hands of a group outside and above the community and law enforcement should not be controlled by authorities located at a distance from the scene. It is necessary to feel the pulse of the community (George, 1969:21). It is the fear of manipulation of power that leads to the preference of the decentralized police over the centralized one. Under a decentralized police agency, power is divided and weakened and it is said that it cannot be abused and utilized to oppress individuals (George, 1969:21). On the other hand, it is commonly observed that decentralized police suffer from frequent confusion and overlapping between the different agencies (George, 1969:21).

3.3 THE HISTORICAL EVOLUTION OF THE ETHIOPIAN POLICE

Generally, the history of the police in Ethiopia can be divided into three distinct periods, such as the EPRDF Regime (Post 1991), the Haile Selassie Regime (1930-1974), and that of the Dergue Regime (1974-1990). In what follows is a discussion of the history of the police in Ethiopia during each of these periods.

3.3.1 Pre-1930

Although not proven by historians, there was an institution which served as the institution of Police in Ethiopia before the reign of Menelik (1889-1909) but the actual functioning of the Police in Ethiopia started during the reign of Menelik II in 1920 (Mogos, 1970:224). Menelik II started a modern administration in Ethiopia by deviating from the practice of his predecessors. Hence, the police in its “modern” sense in Ethiopia are the creation of Menelik II (Mogos, 1970:224).

3.3.2 The Haile Selassie Regime

What was started by Menelik II, with certain interruptions by the Italians, was continued by Haile Selassie I and accelerated in line with the ambition of having a strong centralized government denying power to the regional lords and concentrating power in the hands of the emperor (Mogos, 1970:224). Thus, during the Haile Selassie period (1930-1974), there was a massive increase in the number of police officials reaching every corner of the country. This is evidenced by police statistical records. However, compared to the Emperor, the Dergue regime (1974-1991) gave more attention to the army than to the police for it was a military government.

After it had been functioning under different names and structures starting from the reign of Menelik, it is in 1942 that the police was established as a distinct national institution with its powers and duties stipulated under Ethiopian Police proclamation No. 6/42. According to this proclamation the functions of the police are provided as follows:-

“The force shall be employed for the prevention of crime, the maintenance of peace and good order, the apprehension of offenders, the safety of persons and property and the control of traffic.”

In spite of this, it was in the second half of the 1940s that the country saw the elements of modern policing in Ethiopian police history. This development is manifested by the fact that the police underwent different training inside and outside of Ethiopia. Considerable efforts were also made to equip the institution with the necessary materials and members of the police were also encouraged to upgrade their level of education including part-time education (Mogos, 1970:217). In addition, the massive increase in the number of police officials reaching every corner of the country, evidenced by police statistical records, is a clear indication of the relative emphasis given to the police during this period.

3.3.3 The Dergue Regime (1974-1990)

However, compared to the Emperor, the Dergue regime (1974-1991) gave more attention to the army than to the police for it was a military government. The Dergue, because of its negative impression regarding the police, carried out certain actions. The first thing it did after it came to power, was to transfer a number of qualified police officers to the army and to neutralize the police power by delegating it to numerous organizations (Markos, 2000:2).

It also interrupted the process of recruitment of police members from 1974 to 1981. Speaking at a symposium on 2 February 2002, Ato Markos W/senbet described the police during the reign of the Dergue as follows: “It is commonly agreed by the public and by those who serve the police that Haile Selassie’s police were better than the Dergue’s, particularly when compared to their organizational structure and skilled manpower (translation by the write). One thing common to both i.e. the Emperor (1930-1974) and Dergue regimes (1974-1991), is that the police were organized on a centralized power system.”

The scanning of the preamble of the police establishing proclamation no 8/1992 shows that the government is following another philosophy, different from that of the previous ones of arranging government structure, i.e. ruling the country based on a decentralized system of governance.

3.3.4 The Ethiopian Federal Democratic Republic Regime (Post 1991)

The current government, in organizing the police according to the decentralized power system arrangement follows a complete deviation, as a result of the dictation of the federal arrangement. Currently, the Federal Government and the states share the police structure. Apart from the federal police headed by the Ministry of justice, the power to organize and determine the structure of state police is within the states’ jurisdiction (Art.52 (2) (9) of Federal Democratic Republic of Ethiopia (FDRE) Constitution: 1995).

The participation of the public in recruiting and evaluating the activities of the police, so as to enable the police to protect human rights and discharge its functions with the co-operation of the public, is highly emphasized. With regard to the decision to share police power between the regions and the federal government (in Ethiopia at present, this is dictated by political reasons) the powers and functions of police have emanated from the constitution - article 52 sub article 2 (g) - which gives power to regional states to own and administer regional police officers with the aim of maintaining public order and peace within the state. In addition, article 51 sub article 6 embraces the right of the Federal Government to institute a Federal Police Force.

With regard to the police in the existing government, as stated in the preamble of proclamation no 8/1992 (police establishing proclamation) the government promised that the past experience should not be repeated and the line of arrangement which existed until then (centralized structure) should not be followed, for it was a means of subjugating people in the name of unity. At present, the country has a police force organized at central and regional levels. As stated in the Constitution of the Federal Democratic Republic of Ethiopia (FDRE), the Federal Government has its own police force and the states have their own police agencies (Constitution of FDRE,1995: Art, 51(6) and 52(2)(9) respectively.

Hence, after the Dergue regime (1974-1991), the central police institution dissolved and the new restructuring process has been based on the Federal structure. This means that the police forces are under the jurisdiction of local governments. Likewise, the 1995 Constitution created a federal form of state and the division of power has resulted in different district police forces being created in different regional governments and some charter city administrations, which are accountable to the Federal Government (Constitution of Ethiopia, 1995 article 46/1: 1st year No 21 August, 1995).

According to Article 49 of the constitution of the F.D.R.E, Addis Ababa is the capital city of the Federal Government. Moreover, it is stated in the same article that Addis Ababa shall have a full measure of self-government and is accountable to the Federal Government under the ministry of Federal Affairs.

Under Addis Ababa City administration police commission, there are four heads in the center and ten sub-cities police, in which police duties are performed. The four heads under the commission at the center are the following:-

1. Crime Investigation head
2. Crime prevention head
3. Traffic Controlling and Accident Investigation heads and
4. Human Resource Administration and General Service.

This division of tasks is also present under each of the ten sub-city police heads in division status, which enable them to perform their duties according to the law i.e. during arrest, search and seizure, in the process of interrogation, presenting the arrestee before the court of law and during custody.

3.3.4.1. Mandate and responsibility of the Ethiopian Police

According to the Federal Police Commission Proclamation No. 313/2003, article 7, the mandate of the police is to:-

1. Prevent and investigate crimes and to prevent any activities in violation of the constitution that may endanger the constitutional order.
2. Prevent violence against public peace, hooliganism terrorism, trafficking in and transferring of drugs.
3. Prevent crimes against the interests and institutions of the Federal Government.
4. Execute orders and decisions of courts.
5. Execute orders issued by the federal public prosecutors regarding the investigation of crime.

According to the Criminal Procedure code of Ethiopia, 1961, article 9, the primary responsibilities of the police are:

1. To protect life, property and constitutional guarantees
2. To preserve order
3. To investigate crime

3.3.4.2. The main function of the Ethiopian Police

According to the Federal Police Commission proclamation no.313/2003 article 6, the functions of the Federal Police Commission is to maintain peace and security of the public by complying with and enforcing the constitution and other laws of the country and preventing crime through participation of the people.

3.4. CRIME AND THE POLICE

Under this section, an attempt will be made to briefly discuss the meaning of crime, crime prevention, the opportunities to crime and causes of crime. The following sections are devoted to address each of these topics in their turn.

3.4.1 The Meaning of Crime

Generally, crime is an act that violates a criminal code enacted by an officially constituted political authority (Sullivan, 2003:302). Similarly, Stevens views crime as the commission of an act prohibited by Criminal Law (Steven, 2003:37).

Crime is a costly and demoralizing problem affecting all of us. The victim of crime suffers injury, financial loss and intimidation [National Crime Prevention Institute (NCPI), 2001:1]. Lab (2004:1) on his part, describes crime as an indisputable fact of life for many members of society. It has continued to increase or remain at unacceptably high levels regardless of whether crime is measured by official records or victimization surveys.

As to the definition of crime, the respondent of the research, the prosecutors and the investigators all answered in the same way by saying that it is the violation of a law. This can be by an omission required by a law or by the

commission of an act that is prohibited by the law. This is similar to the definition of crime set out in literature.

3.4.2 The Opportunity to commit Crime

According to the National Crime Prevention Institute (NCPI, 2001:3) there are three ingredients which must be present for a crime to occur or be committed:

1. The desire, interest or motivation on the part of the criminal
2. The skill and tools needed to commit crime (like teaching each other) and as any one else learns by doing (personal associations that teach crime skills)
3. Opportunity, which refers to the opportunities the community gives to commit a crime

3.4.3 Causes of Crime

As to what the causes of crime are or what promotes it, Stevens and Dennis (in Steven, 2003:110) believe that most crime is a natural kind of social activity. As an integral part of all healthy societies, it is a result of living conditions, relationships, expectations, pure selfishness and lack of self control. There are other causes of crime suggested by scholars. One of these is Elliot's observation that the strong and underlying causes of crime are economic and social inequality (as cited in Ward, 1998:14).

3.4.4 Crime Prevention

Crime prevention is aimed at stopping crime before it occurs (Robinson, 2002:60). The aim of crime prevention is to control events before the occurrence of crime by prevention through different mechanisms. Crime prevention mainly functions at grassroots level by co-operation between the police and the inhabitants through the principle of community policing or proactive policing.

Community policing is a preventive approach through an empowered problem- solving partnership of police and community to control crime, reduce

the fear of crime and enhance life style experiences of all community constituents (Steven, 2003:12). The principle can be applied by supporting professional policemen and by using the different advanced technological instruments which are used to prevent crimes in removing the criminal desire and measures (Wilson, 1950:17).

The police's major aim of preventing crimes is by securing the suspect persons in an acceptable degree of human rights protection, crime prevention is a significant task of police work to the protection of fundamental human rights. The primary function of police is crime control. Crime prevention is the process of eliminating or reducing the opportunity to commit an offence or it can be said that crime prevention is the denial of access to crime targets (Fyfe & Jand, 1997:548).

One of the methods of crime prevention is police patrol. This embraces many activities other than just the physical act of patrolling a designated area. Patrol officers are responsible for the performance of all primary police tasks mostly related to the police's interaction with citizens on a daily basis in a variety of situations. This includes preventing crime, engaging in problem-solving activities, maintaining or restoring order where it has been breached, aiding persons in need of assistance, engaging in conflict resolution, controlling traffic and other activities (Fyfe & Jand, 1997:589).

These activities account for the majority of the contact between police and citizens and to a great extent, the public's view of the police is formulated by its impression of the patrol officer. Indeed because patrol officers are the most visible street-level representatives of officialdom. Their behavior and willingness to serve has an enormous impact on how citizens perceive all government operations. These factors and the diverse nature of patrol activities have led many scholars to generally conclude that patrol officers are among the most important decision-makers in both police departments and local governments (Fyfe & Jand, 1997:538).

In virtually every department, patrol is the largest independent police organizational subdivision and the only operational unit the police

administrator cannot afford to disband. It functions as the nucleus of a police department and all other units should be organized to support it. In fact, the patrol division is organized to be a department's first responder, bringing police services to those who need them as quickly as possible. Consequently, they must be available as first responders on a 24-hour, 7-day-a-week basis. In jurisdictions so small that they cannot staff such an arrangement, round-the-clock service typically is accomplished through contracts or mutual-aid agreements with state or county police or with neighboring departments. Often, this is supplemented by "on-call" systems, in which designated officers remain available to respond to calls for service during their off-duty hours. A simple call-forwarding system that transfers calls from police facilities to the homes of on-call officers is usually sufficient to facilitate such operations (Fyfe & Jand, 1997:538).

Patrol officers reduce tension by responding in a timely manner to citizens' requests for service, conducting investigations of the facts and circumstances involved with these requests and deciding on the best approach to resolve the situation at hand. Patrol officers, as stated in (Goldstein, 1979:73), are "diagnosticians" and "problem solvers". When not responding to calls for service, they are expected to maintain a visible presence and a sharp eye on their respective patrol areas.

When patrol officers observe suspicious circumstances, dangerous conditions, or threats to order, they are expected to do whatever is reasonable and constitutional to maintain the security and safety of the communities they police. One of the methods of crime prevention is patrol; it also has different methods. Responsibility for the performance of police tasks within areas is placed on individual patrol officers. The accomplishment of these duties requires not only competency in police procedures but also knowledge of the citizens and conditions in the assigned area. Automobiles, motorcycles, scooters and increasingly, bicycles are the most frequently used patrol vehicles. Choices of whether and when to use each of these should be based on an appraisal both of the primary purpose of the patrol or specific tasks to be accomplished and of the area involved (Goldstein, 1979:73).

3.5 ISSUES RELATED TO THE POLICE AND HUMAN RIGHTS

Under this section, police and human rights issues will be the subject of discussion. Specifically, the discussion will pay attention to such topics as the general background to the conception of the role of police pertaining to Human Rights protection, discretion of the police vis-à-vis fulfilling the protection of human rights, police accountability and ethics while performing its responsibilities in the course of crime investigation.

3.5.1. General background to the concept of the role of police regarding Human Rights Protection

Historically, the national states of continental Europe that emerged after the Middle Ages developed policing systems, whose purpose was to serve the interests of the political authority that created them and were responsible for controlling political opposition, as well as citizens' behavior. Reaction against the pervasive and intrusive nature of continental policing systems led to the Anglo American belief that excessive centralization of police power should be avoided and that the police should be held accountable for the methods they use to perform their duties (Fyfe & Jand, 1997:4).

The protection of human rights is also closely linked to the police, although it is to be realized in real sense of its effect, where all government agencies function in line with the universal principles of human rights. The police are the most important governmental agency to which the protection of human rights is closely related because of the nature of its powers and functions (De Rover, 1998:149). The major challenge in historical, current and future policing will be to create and sustain the balance between policing a society and its individuals and also protecting their human and individual rights (De Rover, 1998:150).

The Police role sometimes calls for coercive intervention in social confrontations, when and insofar as the solutions for the problems may require the use of force at the point of their occurrence e.g. forcible interventions in domestic confrontations, demonstrations, crowd control,

forcible interventions in domestic confrontations, traffic control etc. Exercising of the coercive powers of arrest, detention, search and seizure, etc (Crowe, 1991:11). It is this fact of police having authority to use force to execute its roles that confuses it as to what extent it can use the power. It perpetuates a problem tendency of police to resolve all issues by means of force and threat. A tendency of police to be force orientated (always be coercive, superior, controlling, etc.) may become the predominant conduct. This could lead to inappropriate behavior and acts that involve the misuse of power. Therefore, there should be moral standards to control the potential misuse of power.

The policing service is not the kind of profession where standard solutions are applied to standard problems. Problems faced by police and the services expected from them, do not often have a specific pattern. There is no universally applicable solution. They need the art of understanding of the law, policing principles and techniques and unique circumstances of particular cases/incidents. Police work involves discretionary judgment; there is considerable scope for judgments (Tsegaye, 2004:11-14). This might be arbitrary, inconsistent or unfair.

Police have the power to get information of a confidential nature and which is not normally accessible to people other than police. Correct and professional treatment of policing services includes protection against consequences of malpractice and disclosure of confidential information to a third party (Tsegaye, 2004:25-26).

3.5.2 . Police Discretion

The use of discretion is one of the major challenges facing all police officers today. Police officers, unlike any other occupation (e.g. one in which sub-professionals work alone) exercise wide discretion in matters of utmost importance (life and death, honor and dishonor) and in an environment which is apprehensive and perhaps hostile.

The police really suffer the worst of all worlds: they must exercise broad discretion behind a façade of performing in ministerial fashion. They are

expected to realize a high level of equality and justice in their discretionary determinations though they have not been provided with all the necessary means, most commonly relied upon in government to achieve these ends (Tsegaye, 2004:25-26).

The nature of policing needs personal discretion or enjoying freedom of judgment while enforcing the law. Because of the unpredictability, uncertainty and difficulty of criminal behavior, it is impossible to draw up hard-and fast rules for executing police duties. Discretion means the availability of a choice of options or action one can take in a situation. It involves the selection of one option from a group of options and involves making a judgment and decision.

The entire criminal justice system is based on the concept of discretion. A judge can release a defendant on bail or order him/her incarcerated until trial. Prosecutors can reduce charges against a defendant, or drop the charges entirely. A parole board or the administration of a correctional institution can parole a person from prison or order him/her to serve the complete sentence (Kleinig, 1996:13).

According to Kleinig (1996:13-14), the police officer is generally the first decision maker in the criminal justice system and is often important. The police exercise discretion to perform the following crucial actions:

- To arrest
- To stop, question, or frisk (search)
- To use physical force
- To use deadly force
- To write traffic summonses (order somebody to answer charges in court)
- To issue a warning
- To take a report on a crime
- To investigate a crime

Research undertakings in the USA showed that the exercises of discretion rates in felony cases (serious cases) are lower when compared with misdemeanor (lighter) cases. This lessens the risk of liability. Therefore,

officers tolerate many misdemeanors without enforcing them on a regular basis (Kleinig, 1996:14).

According to Kleinig (1996:14), the following are reasons why the police exercise discretion:

1. If the police attempted to enforce all the laws all the time, they would be forced to stay in stations or courts all the time and would not be on the street maintaining order and protecting life and property.
2. Because of political realities. Sometimes politicians influence the police not to enforce strictly.
3. Sometimes lawmakers pass some laws that are vague and ill-defined which makes it difficult for the police to interpret their meaning.
4. Most violations are minor and do not require full enforcement e.g. traffic violations.
5. The complete enforcement all the time would alienate the public from the police and the entire criminal justice system.
6. The full enforcement by all the police would overwhelm the courts, jails and/or prisons.
7. Limited resources of the police. While it is expected of them to perform many duties, prioritizing cases requires good judgment and lessens the workload.

According to Berg (1999:255), the factors that influence police discretion include:-

- 1 Characteristic of the crime: Felonies give the police less freedom to ignore than do misdemeanors.
- 2 Relationship between the alleged criminal and the victim.
- 3 Relationship between the police officer and the criminal or victim. A respectful or well mannered complainant is take more seriously and treated better by the police than an antagonistic one. The same is observed with regard to the perpetrator.
- 4 Department policies and priority given by police chiefs and local politicians who hold office.

Discretion by individual police officers should be controlled and not exceeded beyond reasonable judgments. If the discretion exercised in similar cases by different officers at different times and places vary widely, the consequence is that the positive image of the agency will be prejudiced and bring sharp criticism on the effectiveness of police performances. Therefore, policy guidance is necessary to correct unreasonable discretion in order to minimize the discrepancy. Detailed work manuals and limited decision options should be formulated and continuous appraisals and on-the-job training are necessary (Berg, 1999:256).

3.5.3 Police Accountability

Accountability means to answer for (held to account) for what one does, or to be able to answer for what one did (Kleinig, 1996:209). There are still controversial arguments as to the nature of police accountability. Advocates of police professionalism argue that policing requires that police and their department be freed from unreasonable control from politicians. Police should be strong and independent of politics and politicians. To accomplish this, police chief executives should pass along training and experiences at different levels by holding lifetime tenure in their jobs like their subordinates. Therefore, by virtue of training and experience, police chiefs should be exclusively responsible for holding officers accountable for their actions. Clear and delineated tasks based on written policies and work manuals are essential to evaluate misconducts (Doerner, 1998:173).

There is still controversy as to whom the police should be held accountable. Advocates of policing as a criminal justice agency argue that officers should be liable for their actions by reporting to the court. Similarly, advocates of police professionalism argue that police should be accountable to the court but more significantly, to the professional associations. On the other hand, advocates of policing as community servants argue that police officers should predominantly be accountable to the community and to its local administration (Tsegaye, 2004:27).

3.5.4 Police Ethics

While ethics in general is meant doing the right thing, when nobody knows if you do the wrong thing, professional ethics deals with behavior that all members of professional or occupation groups should adhere to because they are members of the groups (Lersch, 2002:3). Broadly speaking, ethics is the philosophical study of moral judgment and standard on what should be right or wrong in a specific aspect of action or behavior. Human beings, as social beings, do have their own way of understanding the world. Based on this, they make different judgments in specific courses of action. What ought to be good or bad, right or wrong, may differ from person to person based on their cultural foundation. However, for a society to function smoothly there must be some sort of agreement (Lersch, 2002:4). This agreement lies in the assumption that goes to say what is good for the greatest majority is good for all (Kleinig, 1996:17). Ethics helps society to function properly by reconciling individual interest with that of public interest.

Ethics is all about justice. At face value, it is similar to law. Ideally, ethical and legal principles should coincide with one another because they both have a common goal. Whereas, legal principles tell people the right way to act in order to live with others, ethical principles tell people the right way to act in order to live with their own consciences (Tsegaye, 2004:18). This is the difference between the two. In reality, we do not have universal ethics in all spheres of social interaction. Hence, a variety of ethics are found, such as business ethics, legal ethics, criminal justice ethics, ethics in scholarly pursuit, medical ethics, police ethics etc.

In summary, ethics is a search for principles that justify the moral standards that we seek to apply and secondly, those moral standards that are appropriate to a particular occupation. According to Tsegaye (2004:17-19), the police all over the world have accepted the following principles that emanated from famous philosophical arguments, though they are not complete in themselves:

- Fairness, integrity and impartiality. The police should act with fairness carry out responsibilities with integrity and impartiality. Fairness carries with it the idea of even-handedness. For something to be fair suggests that it is well done in the right place at the right time. Fairness has several dimensions for the police. In particular, it requires that investigations should be conducted in an objective way, seeking the truth in order to ensure a fair trial (Crawshaw, 1998:130-131).

The word integrity means that something is complete with all its parts together. Integrity implies that police officers should act consistently based on what they expect of themselves and also on what is expected of them by other persons, or by the community. The word impartiality means not favoring one thing more than another.

According to the deontological view, the police should have some form of written document that spells out the standards to which officers are required to comply. Besides, the idea that we should always act according to principles that could be held for all persons, is supported by the idea that we should always treat persons as ends in themselves. Failure to abide by the rules should be rewarded with punishment according to utilitarianism (Kleinig, 1996:19).

Police officers have an obligation to presume each individual to be innocent of wrong doing without evidence to the contrary. They should not use persons as a means to justify good ends. Fairness, integrity and impartiality are also the means by which actions are carried out. It is sometimes said that if the end result is good, it does not matter how such a good result is accomplished. Or, as some people say, the end justifies the means.

This takes us to the contradiction between the ethical dilemma posed by utilitarianism and Kantianism. Yet if an action is unfair, the result of the action cannot be ethically justified. If the action is fair then the result may also be fair. If the action is impartial then the outcome may be so. The underlying principle is “do not use persons as a means to justify good ends” (Lersch, 2002:8).

- Care and attention. The police should perform duties with diligence and proper discretion. Diligent activity requires steady perseverance. Attentive haste is given as a definition of diligence, yet to pay careful attention while acting is also essential.

Police officers need to be discreet to observe care and attention when making decisions. The act of sorting and deciding what to do with information, for instance, obviously requires particularly careful awareness of the consequences when choosing appropriate action. Discretion does involve making choices. It is the art of suiting actions to particular circumstances but choosing the better option in some circumstances may always be difficult. Police officers are expected to perform their duties with dedication and commitment. Discretion is an integral part of the responsibility of a police officer – It must never be abused (Lersch, 2002:9).

The exercise of discretion is based on the philosophical foundation of social contract and utilitarianism. Police officers decide to take action or to ignore an incident by weighing the consequences for the benefit of the greatest number and to ensure peace and order within the community.

- Control and courtesy. While dealing with all individuals, both outside and inside the police service, police officers should display self control, tolerance, understanding and courtesy appropriate to the circumstances. The exercise of these qualities is implicit in the exercise of police authority and discretion and necessary prerequisites of integrity and impartiality (Tsegaye, 2004:21).

The nature of lack of self-control would be difficult to describe, just as a display of self-control certainly varies from one individual to another. In an unfamiliar situation where people act in unexpected ways, tolerance is essential. Misunderstanding is generally less likely to arise in situations where an effort is made to understand.

Courtesy involves acts of social behavior that range from quite elaborate formal exchanges of politeness to the simple acknowledgement of another

person's presence. Acting with courtesy and self control is probably the greatest challenge the individual police officer faces on a day-to day basis. Appropriate behavior in policing is not simply built into the training and during experience; it is in the process of socialization during childhood in the family, school and neighborhood. Thus, this ethical principle is in the heart of communicants and virtue ethics (Tsegaye, 2004:22).

- Respect: The police should uphold fundamental human rights, treat every person as an individual and display respect and compassion towards them. Rights that are most fundamental to humans may be defined as food and shelter. Yet persons require more than just physical survival. The individual in society should also enjoy a right to freedom of opportunity and freedom from undue restriction. Arrest should not be arbitrary (Crawshaw, 1998:102). That is, unless based on evidence that can be sustained.

The response made by subjects to the questions: "To what extent do crime investigators apply ethical standards while conducting crime investigations?" and "Do crime investigators apply human rights principles during crime investigations?" The respondents reacted as follows:-

- Three of five public prosecutors and five of ten suspects said that ethics shown by crime investigators indicate that they comprehend their tasks with due regard to the necessity of the rights of human beings. According to their replies, it can be demonstrated in terms of taking care and treating suspects with fairness and diligence for their task during investigation.
- Two of five public prosecutors and five of ten suspects said that the investigators ethics are not good because they did not respect human rights and did not take care of suspects and others when they conducted their investigations. Furthermore, the two public prosecutors described the reasons why the investigators did not apply human rights as being due to incompetence and a lack of understanding of the basic and fundamental rights of human beings

and the law, lack of equipment and material needed for investigation and corruption.

3.6 SUMMARY

As long as the need to maintain order and control is there, policing has always existed in some form or another whenever people have lived in groups. The emergence and role of police is related to the development and complexity of the social process. The ultimate purpose of policing is to maintain public safety and peace. Accordingly, although the explanation as to police role and function differ from one to another, the most commonly identified roles of the police include:-

- ❖ Prevention and investigation of crime
- ❖ Enforcement of law
- ❖ Maintenance of public order
- ❖ Assisting the public in difficult circumstances

In Ethiopia the actual functioning of the police in its modern sense is said to have started during the reign of Menelik II (1889-1909). At present, in Ethiopia, the function of the Federal Police Commission is to maintain peace and security of the public by complying with and enforcing the constitution and other laws of the country and preventing crime through the participation of the people.

The respondent's feedback from the interviews about the ethics of crime investigators is different. Three of five public prosecutors and five of ten suspects agreed with the investigators ethicality at the time of the crime investigation. In their agreement they said that their ethicality can be credited to respect of human beings in which taking care of suspects and treating them with fairness, integrity and diligence are considerations of police credibility to human beings.

Meanwhile, two of five public prosecutors and five of ten suspects said that the investigators ethics are not good because they did not respect human

rights and did not take care of suspects and others when they conducted criminal investigations. In conclusion, the reason why seven respondents agreed with improper service of investigators is, according to the views of the researcher, due to a lack of continuous training and periodic testing of police personalities. These are, among others, reasons attributed to the unethical behavior of crime investigators.

CHAPTER FOUR

THE PROCESS OF CRIME INVESTIGATION AND THE APPLICATION OF HUMAN RIGHTS DURING INVESTIGATION

4.1 INTRODUCTION

This chapter is specifically devoted to a brief review of the overall practices that are apparent in the process of crime investigation in general and the constitutional stipulations, promulgations, Criminal Procedure Code, as well as institutional arrangements that are put in place to guide or govern the process of crime investigation in Ethiopia in particular and the application of human rights during crime investigation. The chapter is organized in such a way that the first section and the sub-topics under it discuss concepts, issues and practices that are relevant to the process of crime investigation.

The second section is devoted to the review of the process of crime investigation and related topics apparent in the literature and put in place in the Ethiopian legal instruments.

4.2 UNDERSTANDING CRIME INVESTIGATION AND RELATED CONCEPTUAL ISSUES

This section presents the overall understanding of crime investigation in terms of its meanings, phases and the roles expected of crime investigators in the process of criminal investigations. It also provides the meaning and definitions of some selected concepts associated with the process of crime investigation that are so overlapping that they are often considered to be confusing. The researcher made use of the review of books that are devoted to the description of the crime investigation process and the clarification of conceptual issues related to it.

4.2.1 Crime Investigation

Crime investigation is a systematic search for the truth with the primary purpose of finding a positive solution to the crime with the help of objective and subjective clues (Van der Westhuizen, 1996:1). Van der Westhuizen describes the objective clues as the factual proof and objective explanation of these, that is, the so-called mute, indirect or circumstantial evidence. Subjective clues on the other hand, are defined by him as the evidence offered by people (victims, complainants, eye witnesses and culprits) who have direct relations with the events (Van der Westhuizen, 1996:188). Furthermore, it is the assignment and office of the criminal investigator in respect of clearance which can be defined as the discovery of relevant facts, the drawing of inferences from these facts, the reconstruction of the crime scene, the identification and apprehension of the offender and the preparation of the case for the prosecution and trial of the suspects (Van der Westhuizen, 1996:1).

Criminal investigation is, according to Cladwell (1965:317), a police activity directed toward the identification and apprehension of alleged criminals and the accumulation, preservation and presentation of evidence regarding their alleged crimes. Horgan (1979:2) says that investigation amounts to observation and enquiry in order to collect factual information on allegations, circumstances and associations. Ward (1975:17) emphasis the gathering of information. Essentially this (criminal investigation) involves gathering information assigning it some value, sorting it and finally utilizing it to develop facts. Dowling (1979:1) regards criminal investigation as the systematic process of identification, gathering and preservation of information with a view to bringing the transgressor to trial.

Responses of respondents to the question: "What is crime investigation and its objectives? What is the difference between crime investigation and forensic investigation? (These questions are forwarded out of 25 sample respondents only for crime investigators and public prosecutors) The respondents reacted as follows:-

- Four of five public prosecutors and eight of ten investigators said that it is a process of finding the truth which enables the police to distinguish the innocent from the criminals based on the evidence collected through the crime investigation process. Its purpose is to bring criminals before courts of law to make them liable for their act that is prohibited in law and by so doing it guarantees peace and order in society.
- Forensic investigation is an investigation done in the forensic laboratory to identify the technical evidence such as fingerprints, arson, document examination and biochemical examination that give assistance to the effectiveness of crime investigation and the difference between the two lies in the fact that forensic investigation is conducted in a laboratory.
- One of the five public prosecutors and two of the ten investigators explained that crime investigation is a process that will be done to confirm whether the alleged act or attempted act is true or false with the support of witnesses who can provide technical and circumstantial evidence that will finally be submitted to court for prosecution. By doing so, the main purpose of crime investigation is to maintain and ensure peace and order among the society. Forensic investigation is an investigation that will be conducted in a laboratory as one aspect of crime investigation rather than as a separate one.

Therefore, there is no difference in the understanding of respondents towards the definition of crime investigation and forensic investigation. Also, the objectives are both forward looking and confirm points indicated in literature authored by different proponents.

4.3. OBJECTIVES OF CRIME INVESTIGATION

The main objectives of crime investigation are to detect crime, to identify the offender, to locate and preserve evidence and bring offenders before a court of law for justice to be served (Cladwell 1965:317). The successful detection of crimes and the apprehension of criminals have its own contribution to the general function of maintaining peace and order in society. In order to detect the crime, the police officer or investigator should follow the procedural law

enacted to perform the crime investigation process. The general objectives of criminal investigation include the identification of the crime, gathering of evidence, individualization of the crime, arrest of the criminal as well as the recovery of stolen property and involvement in the prosecution process. In what follows is a discussion of each of the above objectives in their turn (Van der Westhuizen, 1996:4-7).

4.3.1 Identification of the Crime

This concerns situation identification; that is to say, the type of crime committed, if any and also the kind of information or clues that can possibly be collected. The crime situation must therefore be identified not only by means of set juridical elements but also by means of preliminary observations made at the scene of the crime. The information and facts gathered must therefore confirm that an act, judged by the set juridical elements of particulate crimes, has been committed. Indeed that it amounts to unlawfulness and that a specific person or persons is/are responsible. Also, that the basis for the identification are the elements of the crime (Van Westhuizen, 1996:4).

According to Van Heerden (1986:199), direct sources of information include:

1. Victims and complainants
2. Witnesses directly involved in the events
3. Persons involved in the events in question but not present when they occurred or persons who are simply sources of information (for example informers)
4. Accomplices of suspects.

On the other hand, indirect information, that is the so-called dumb evidence of physical clues, which reveal the circumstances of the events, consists of all solid or liquid material which could establish an associative relationship between people, as well as weapons or vehicles and the crime or the victim (Van Heerden, 1986:216). Indirect information (circumstantial evidence) at the scenes of the crime can also consist of the following (Ward, 1975:17-18 and Calitz, 1986:19-20):

1. Body material such as hair and semen
2. Prints such as fingerprints
3. Trace elements such as flakes of paint
4. Instruments such as weapons and tools and
5. Personal belongings such as clothing.

Examples of such information in turn include the following ((Ward, 1975:17-18 and Calitz, 1986:19-20):

Materials from the victim's body in the form of blood and hair:

1. Indentations such as wounds and scratch marks.
2. Trace elements such as soil or paint on the body or property of the victim
3. Instruments such as weapons found in the possession of the criminal and which are compared with objects of dispute at the scene of the crime and
4. Personal belongings which were removed from the scene and found in the possession of the criminal. Also, direct or original evidence is an actual sensory observation or experience described in words by the witness.

4.3.2 Gathering Evidence

4.3.2.1 Evidence

Schmidt (1989:3) defines the term "evidence" as follows:

It encompasses in its normal meaning all the information presented to a court in order to enable it to settle a factual dispute so that it includes the written and oral statements by witnesses as well as objects submitted for inspection.

Evidence is all the means by which any alleged matter of fact, the truth of which is submitted to inquiry, is established or disproved (Simeneh, 2001:34). Investigators obtain evidentiary facts which tend to prove or disprove the elements of the offences that they are investigating. Fact in issue means any

fact from which either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability of disability, asserted or denied in any suit or proceeding necessarily follows (Simeneh, 2001:34).

In a criminal prosecution, to be admissible, evidence must be relevant and competent. If a fact offered in evidence relates in some logical way, it is relevant (Simeneh, 2001:33). The word relevant implies a traceable and significant connection. A fact needs to bear directly on the principal fact. It is sufficient if it constitutes one link in a chain of evidence or that it relates to facts which would constitute circumstantial evidence that a fact in issue did or did not exist (Simeneh, 2001:33).

One fact is logically relevant to another if taken by itself or in connection with other facts and if it proves or tends to prove the existence of the other fact. If the fact is logically relevant, it is also legally relevant unless it is barred by some rule of evidence. The principal question to be reserved in determining relevancy is: “would the evidence be helpful to the finder of the fact in resolving the issue”?

An investigator should obtain and report all facts, which logically relate to the subject of his/her investigation. He/she should not omit any significant facts because of doubt regarding this relevance. There are no absolute and concrete standards for relevancy because the facts vary in each instance. Therefore, judges have a broad discretion in determining what evidence is relevant. Likewise, the investigator should not omit evidence because of doubt as to its materiality or competency (Simeneh, 2001:34).

Evidence is the means of proof and may be presented in different ways e.g. orally, in writing, by means of documents and entering objects as exhibits (Simeneh, 2001:43). During the investigation, the investigating officer must put a case together, which consist of the different types of evidence. Other evidential material obtained by, for instance, judicial notice and presumptions supplement this evidence.

According to the Detective and Crime Intelligence Academy (2002:3) and the draft Law of Evidence of Ethiopia (1961), not yet declared as law of the country, stipulated evidence in the following way:-

- Oral evidence: this form of testimony or evidence by a person given by means of his word of mouth (*viva voce*) while testifying on the witness stand. This testimony is usually made under oath or affirmation (Detective and Crime Intelligence Academy, 2002:19).
- Circumstantial evidence: evidence of a fact or facts from which an inference can be drawn about primary facts in a given issue (Law of evidence of Ethiopia, 1961:9).
- Documentary evidence: evidence derived by the court from the inspection of some document produced to it (Detective and Crime Intelligence Academy, 2002:19).
- Real evidence: evidence derived by the court from the examination of physical objects (Law of evidence of Ethiopia, 1961:9).
- Hearsay evidence: evidence of some fact actually perceived by a witness with one of his senses but alleged by him or her to have been stated by some other person. The witness says (or writes) what he or she heard (or read) (Law of Evidence of Ethiopia 1961).
- Best evidence: evidence, which in itself, suggests that in the circumstances, it is the best or in such that it does not in itself suggest the existence of any better evidence (Law of Evidence of Ethiopia 1961)
- Secondary evidence: in itself it suggests that there exists other or better evidence. A clue is relevant information which is gathered and applied during the process of crime investigation in an effort to trace physical evidence. It is thus a directive or suggestive fact or principle in an investigation or study (Law of Evidence of Ethiopia 1961)

To the question: “What is the meaning of evidence and its purpose and kind”?
The respondents reacted as follows:-

- Ten of ten investigators and five of five prosecutors said that it is proof that a certain act was committed by the suspect and presented to the court in order to confirm the alleged crime with evidence collected against suspects.
- Regarding the kind of evidence, all agreed that it differed depending upon the specificity of the crime that may be related with material evidence, oral evidence (eye witnesses) and documentary evidence. Therefore, no difference was detected by respondents when comparing it with concepts incorporated in literature.

Gathering evidence can be conducted through surveillance and from crime scene area through different techniques.

4.3.2.2 Information Gathering from Crime Scene Area

This important definition must always be borne in mind because gathering information commences at the scene of the crime and a definite distinction regarding the collection of information can be made between direct and indirect sources of information. Direct information is indicative of people's real sensory experience of the relevant crime situation; a witness who furnishes information concerning a crime committed in his presence is therefore providing direct information (Marais, 1988:16).

Although the crime scene area and kind of information is different according to the specific crime, the exact location and position of objects at the scene of the crime are very important when reconstructing the crime situation. The method by which access was gained, the manner in which the criminal departed from the scene and the exact location of weapons, objects and furniture can contribute to a reconstruction of the actual crime. Examples of additional information are letters, notes and any other objects or articles which relate to the scene of the crime and which could serve as further background information (Marais, 1988:16).

Direct information is indicative of people's real sensory experience of the relevant crime situation, a witness who furnishes information concerning a

crime committed in his presence is therefore providing direct information (Marais1988:16). Direct or original evidence is an actual sensory observation or experience described in words by the witness. According to Van Heerden, (1986:199) direct sources of information include:-

1. Victims and complainants
2. Witnesses directly involved in the events
3. Persons involved in the events in question, but not present when they occurred or persons who are simply sources of information (for example informers)
4. Accomplices of suspects.

To the question: “what is the definition of crime scene?” The respondents gave the following answers:-

- Ten of 10 said that it is a place where a crime is committed and the place where first hand information will be secured. Different kinds of technical evidence are found and it helps investigators to identify the criminal and to collect evidence about the crime to bring to court. Therefore, respondents who answered the questions are in a position that will make their views similar to those of the definitions provided in literature.

To the question: “is the mode of gathering evidence by investigators effective?” public prosecutors reacted as follows:-

- Five of five prosecutors said that it is not effective because they often focus on oral information and confessions of suspects rather than using technical evidence.

4.3.3 Individualization of the Crime

According to Van Heerden (1985:12 & 1986:194), the emphasis here is on the involvement of the perpetrator or alleged criminal in the act committed and

based on establishing probability from the information and facts collected that the crime was committed by a specific person. Kirk (1974:12-19) discusses the important difference between identification and individualization. This distinction is of great importance to criminal investigation. Van Heerden (1986:11-12) declares that the former is merely concerned with the identification of something or somebody belonging to a specific category, in other words "A" is simply "A" and a hair is simply a hair. No comparisons are drawn.

Individualization on the other hand, involves comparison, usually of the disputed object found at the scene of the crime with one of known origin obtained (for example, from the suspected criminal). An example is a fingerprint found on a murder scene (print in dispute) which is compared with the fingerprints of a known criminal. A comparison is thus made to determine whether the print in dispute at the scene of the murder is that of a known criminal with previous convictions whose fingerprints are on record.

A process of individualization takes place to determine individuality. It normally consists of a series of identifications and comparisons, which have a twofold aim (Caldwell, 1965:321):

- 1 To individualize positively the various objects in dispute; only on eventual conviction can one talk of positive individualization. This also underscores the fact that individualization as a process begins at the scene of the crime and only ends after the presentation of evidence in court.
- 2 To conclusively determine the criminal involvement of the object or persons on providing the standard of comparison

The overall aim of individualization is to individualize the crime as the act of a particular person or persons (Van Heerden, 1986:194). It is important, however, that identification is followed by individualization and that they complement one another. Important categories of identification used in criminal individualization are mentioned below (Van Heerden, 1985:195-199):

- 1 Situation identification relates to the crime situation and individualizes the unlawful nature of the situation.
- 2 Witness identification individualizes the part of the alleged perpetrator by means of the account of events that emerges from the statements of complainants and witnesses.
- 3 Victim identification concerns in particular the identification of the dead victim.
- 4 Imprint identification attempts to achieve individualization by comparing a disputed imprint with a control imprint of the alleged object.
- 5 Origin identification is mainly concerned with the analysis of organic and inorganic solids and fluids to determine whether the disputed sample and the exemplar have a common origin.
- 6 Action identification refers to the identification of human acts that are directly related to the crime and indeed constitute the essential element of the crime. Individualization touches on the question of whether the disputed handwriting in a case of forgery of instance is the work of a particular person.
- 7 Culprit identification is concerned with the positive identification of the offender as a person rather than the identification of his unlawful conduct.
- 8 Cumulative identification is where contributions of different specialists are collectively considered within the framework of the history and relevant circumstances of the crime situation as a whole.

4.3.4. Arresting the Criminal

Once all the relevant information and facts have been collected and the criminal has been identified, the criminal investigator can proceed to have him arrested, that is, to ensure that the criminal will be present at his trial (Marais, 1988:19). It is, however, very important to remember that the presence of the offender at the trial can also be ensured in other ways. In the Republic of South Africa, it is stipulated that issuing a summons, a written notification and a deed of accusation can also ensure the presence of a person at his trial.

Arrest is a drastic act by the authorities with far-reaching implications and the alternative measures are preferable, especially in the case of less serious or minor offences and if there is no reason to believe that a perpetrator will not stand trial (Section 38 of the Criminal Procedure Act of South Africa: Act No 51 of 1977). The definition of arrest under Ethiopian law is a restriction over the liberty of a person who is alleged to have committed a crime by a person who has the power to effect such restrictions for the purpose of investigation, ensuring his presence before the court or to prevent further crime either by the person himself or his pursuers (Simeneh, 2004:9). In the Ethiopian case, there are three situations in which the police can make arrests. These include:-

1. Authorization by law (Criminal Procedure Code of Ethiopia, 1961: article 19, 20, 49 and 51).
2. Authorization by a court of law (Criminal Procedure Code of Ethiopia, 1961: art 34), and
3. Authorization by the council of representatives of the federation (Constitution of FDRE, 1995: article 54 (6), 63(1&2). 4.8.3. Arrest during custody.

The Constitution and the procedural laws dealing with rights of individuals in the investigation of crime give protection to the suspects in police custody. According to the FDRE Constitution, article 19:-

1. Persons arrested have the right to be informed promptly, in a language they understand, of the reasons for their arrest and of any charges against them.
2. Persons arrested have the right to remain silent. Upon arrest they have the right to be informed promptly, in a language they understand, that any statement they make may be used as evidence against them in court.
3. Persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them.
4. In custody the suspect is accorded legal protection. Among the legally accorded protections not to be denied human dignity (Constitution of

FDRE, 1995 article 21 (1)) is the one to be cited. The suspect in police custody must also be provided with the chance of having contact with his family, friends, legal counsel and/or religious father (Constitution FDRE, 1995: art 21 (2)). Suspects must be provided with stationary if required (Criminal Procedure Code 1961, article 61).

Respondents asked to reflect their understanding on the objectives of crime investigation furnished the answers expressed below:

All respondents (public prosecutors and crime investigators) said that the objective of crime investigation is to gather evidence, identify criminals and bring them before court. In compliance with what they revealed, it directly relates to that set out in literature.

To the question: “How were you arrested by crime investigators?” the detained respondents reacted as follows:-

- 7 of 10 suspects said that they were arrested illegally without court warrants and were innocent and the investigators did not have any evidence against them.
- 3 of 10 suspects said that they were arrested legally by way of court warrants because the police had evidence against them so they worked in accordance with Ethiopian law.

To the question: “Did investigators promptly inform you of the reason(s) for arrest?” the detained respondents reacted as follows:-

- 5 of 10 suspects confirmed that the investigators had promptly told them the reasons why they had been arrested
- 5 of 10 suspects said that they had not been informed of the reasons why they had been arrested.

To the question: “Did the investigators allow you to meet your family, friends, legal counselors and others when you were under arrest?” they responded as follows:

- 6 of 10 said that the crime investigators did not allow them to meet with their families and others
- 2 of 10 said that they were allowed to meet with their families and others when they requested this.
- 2 of 10 suspects said that they did not request to meet with their family and legal councilors therefore they remained silent with regard to this question.

To the question: “Does an investigator apply human rights principles during crime investigation?” Suspects have given their opinions as follows:-

- 8 of 10 suspects said that crime investigators do not apply human rights principles but rather violate them. This is because they did not apply the suspect’s rights when they conducted investigations.
- 2 of 10 suspects agreed that investigators respect human rights principles when they conduct investigations.

As seen from the responses made by suspects, most felt that the investigators are violating human rights principles. This may be because of inadequate training which they (i.e. the investigators) have received on human rights standards and principles.

To the question: “Does an investigator apply human rights principles during crime investigation?” the public prosecutors reacted as follows:-

- 4 of 5 public prosecutors said that investigators do not apply human rights principles appropriately because of inadequate training they are given with regard to crime investigation on human rights principles and standards.
- 1 of 5 of the public prosecutors said that the investigators apply all human rights principles quite appropriately.

4.3.5 Recovery of Stolen Property

According to Caldwell (1965:26), this objective of criminal investigation is of a twofold nature:

1. to restrict the victim's losses to a minimum and
2. to present the recovered property as evidential material at the trial.

While observing this in accordance with the Ethiopian law, the objective of crime investigation is to identify the criminals and bring them to a court of law to be punished. In addition, it has the other objective of recovering and returning the stolen properties back to the victim and to redress them.

4.3.6 Involvement in the Prosecution Process

This objective is to assist the public prosecutor in the prosecution process. Caldwell (1965:321) underlines the importance of this objective of criminal investigation and declares quite rightly: 'The successful prosecution of criminals depends upon the skill and efficiency of those who conduct the criminal investigation.' The investigator's involvement here lies mainly in the presentation of the information gathered and in making sure that everyone and everything is present in the court on the trial date. To realize these identified aims and objectives of criminal investigation, the present-day criminal investigator has no choice but to turn to scientific methods of criminal investigation (Caldwell, 1965:321).

This idea noted by Caldwell is also applied in the Ethiopian crime investigation context which mainly addresses the issue that investigators are there to help the prosecution process by presenting the evidence, exhibits and witnesses to the prosecutors.

4.4 PHASES OF CRIME INVESTIGATION RELATED TO THE SCENE OF CRIME

4.4.1 The Pre-Investigative Phase

This phase commences as soon as the first policeman arrives at the scene of the crime. This police investigator is very seldom the criminal investigator who will eventually bear the responsibility of investigating the occurrence. A start is made with the activities mentioned hereafter and documentation thereof by means of investigative notes. After the scene has been handed over to the

investigator, a comprehensive crime report in the form of a statement is prepared for him in which all relevant information is set out chronologically and accurately in accordance with the general requirements which apply to reporting (Van der Westhuizen, 1996:21).

As Van der Westhuizen emphasizes, in Ethiopia, the first policeman who arrives at the crime scene performs the pre-investigative phase and hands over the scene to the investigator with the report that gives clues to the investigator to commence his investigation process.

Takeover and control of the scene of the crime has a dual purpose. In the first place, it prevents any possible information from being disturbed or destroyed. Secondly, it enables the investigator to make a preliminary identification of the situation by using the reports by witnesses and people directly involved and to obtain a tentative description of the offender (Marais & Van Rooyen, 1990:28). The investigator initially checks on the crime situation in general. He then observes the people at the scene of the crime and evaluates their presence and involvement, after which he establishes in a synoptic way and through personal observations obvious peculiarities and anomalies (Van der Westhuizen, 1996:22).

According to Van der Westhuizen (1996:22), the following steps should be taken where circumstances permit:-

- 1 Take immediate charge of the scene and request back-up if no arrangements have been made.
- 2 Remove all witnesses, complaints and bystanders to a safe place where they can be provisionally questioned in a brief but critical way.
- 3 Record particulars of all the people at the scene for a possible succeeding consultation.
- 4 Take any suspect{s} present to a safe place as quickly as possible in order to prevent any suggestion, association and prejudice among other persons involved. This is necessary since procedures must be applied in a fair, just and valid way in the interests of all the interested parties in particular and the community in general.

- 5 Keep suspects away from the witnesses as it can compromise questioning and identification of both parties at a later stage.
- 6 Take precautions so that possible witnesses do not discuss the events since evidence, which can lead to human and legal misconception, could be fabricated inadvertently on account of suggestion.
- 7 Particulars of the case (for the same reasons) should not be discussed with witnesses, onlookers or the media.
- 8 Observe bystanders unobtrusively. In this way valuable information can be gleaned.

The eight steps noted above as essentials in crime investigation are also considered in Ethiopian investigation procedures so as to make the investigation easy and effective.

4.4.2 The Investigative Phase

This phase is generally referred to as searching, which gives a very narrow description of the process itself. The duties of a criminal investigator do not merely include the searching of a scene. Without the analytical power, specialized knowledge, functional skill and organizational proficiency of the investigator, the exclusive activities which have relevance to searching are of no value and searching is therefore only one facet of a continuous process (Van der Westhuizen, 1996:24). It is during this phase that crime information is collected and determined. This leads to the following (O'Hara, 1956:52):

- 1 *Corpus delicti* information, representative of the juridical criteria for a crime, according to which research hypotheses are planned and judged.
- 2 *Modus operandi* information, as a typical operational method employed by the criminal
- 3 The identity of the offender and his part in the crime

The principles and requirements regarding reporting, video recording, photography and sketches, as well as other techniques are applied at greater precision in this phase. By applying the principle of concentricity consistently, attention is concentrated on the finer detail of the scene of the crime. The

investigator must use to the maximum, all possible potential evidence which the scene of the crime may contain during the investigative phase (Marais & Van Rooyen, 1990:42).

According to the Manual of crime investigation of Ethiopia (2004:7-8), all the above activities are applied by the crime investigators during crime investigation phase at crime scenes in Ethiopia and they are applicable in practice.

4.4.3 The Post-Investigative Phase

This phase, being the rounding off phase of the scene search, serves as the primary investigation. This phase includes the gathering of information, utilizing it during the secondary investigation and coordinating, controlling and integrating it for the purpose of individualization (Van der Westhuizen, 1996:28). Particularly high demands are made on the knowledge and skills of the investigator, a fact which provides the rationale for a study of criminalistics as a specialized system of knowledge. The heterogeneous nature of scenes makes it once again impossible to formulate a rigid set of rules regarding the gathering and handling of substantive crime information. According to Van Heerden (1986:13), the following principles conform to the requirements of causality, integrity, continuity and legality:-

- Causality is important since it has relevance to a behavior which causes a prohibited condition. It therefore amounts to the associative interaction between material information, the perpetrator and the identification situation. The cumulative effect of a series of identification is therefore emphasized again. The interpretation of crime information must be connected with and serve as a link between situation, action and culprit identification at the scene of the crime. When evidence is presented, there must be no doubt as far as the associative relationships between the aforementioned factors are concerned, as it will invalidate the individualization of guilt (Van der Westhuizen, 1996:29).
- The handling of physical or material crime information determines its physical integrity. This implies that the information must reach the

laboratory undamaged or uncontaminated. That is, in the same condition in which it was uncovered at the scene (Van der Westhuizen, 1996:29). According to the Manual of Crime Investigation of Ethiopian police (2004:10), this principle is called the chain of possession of exhibits and it means that all the information from the crime scene must be collected cautiously and systematically to enable easy identification of the exhibits at a later stage. They must be packed and sealed and sent to the laboratory for examination, without damage and uncontaminated.

- The different types of crime information require unique and objective methods of handling and packaging at which the investigator must be adept. It appears, according to Marais and Van Rooyen (1990:62), that a fair amount of physical crime information is damaged or contaminated on receipt as a result of faulty packaging methods and materials. See also the bullet discussion under 'maintaining continuity of possession'.
- Reporting is also of cardinal importance when recording the gathering, marking, packaging and dispatch of physical information, stating in detail the ways in which these were carried out (Van der Westhuizen, 1996:29).
- Maintaining continuity of possession implies the continuous, safe possession and identification of physical information, which is also of the greatest importance for the purpose of individualization (Van Heerden, 1986-13). The degree to which physical integrity and continuity of possession is maintained determines the quality of the substantive integrity, which implies the acceptability of physical crime information, its interpretation and the result of the investigation. The question as to whether it meets all the juridical requirements for legal validity is consequently brought to the fore. Even if gathering, marking, packaging and sealing of physical crime information take place in accordance with generally accepted rules and procedures, doubt about people and their motives for handling it during the process of investigation can seriously prejudice the integrity of the evidence (Van der Westhuizen, 1996:29-30).

The investigation is not concluded when the primary investigation has ended. Unused and potential information must be pursued and carried through to its logical conclusion. Research results supplied by experts and analysts must be coordinated and integrated according to their cumulative contribution towards the individualization of the offence and the guilt of the accused. Lacunas and discrepancies must be identified, pursued and verified. An intellectual analysis and reconstruction of the crime situation must go on continuously so that the crime hypothesis can be fully tested against the evidence presented (Van der Westhuizen, 1996:30)

The post investigation phase is applied in Ethiopia which has similarity with points mentioned above. This will be clear after receiving the results of laboratory examinations and other relevant findings helpful to the process of the investigation.

4.5 THE ROLE AND COMPETENCIES OF A CRIME INVESTIGATOR

The specialized system of knowledge upon which crime investigation is based comprises the processing and management of information as a strategic resource. This implies the collection, study, evaluation, categorizing and utilization of information of a factual nature within a unique situation in which it is put in to practice. It is the duty of the investigator to collect information on crime with singleness of purpose and in an impartial and serious way.

This is information which may be obtained in a wide variety of formats and which may substantiate the actual events of a matter under dispute. The application of knowledge and insight according to their potentialities is by way of identification, selection and integration of the information gathered and synthesized with related variables in one or other format of descriptive categories and classification of systems. Through mutual exclusion and/or conjugation, evidence is cumulatively established with regard to association with the offender's act, in accordance with the elements of the particular crime and the requirements concerning criminal liability (Van der Westhuizen, 1996:16). According to the Manual of Crime Investigation of Ethiopia

(2004:11), the elements referred in above exist and are applicable in practice, too.

The tactical responsibility of the investigator, which serves at the same time as the rationale for studying criminalistic techniques, can be summarized as follows ((Van der Westhuizen, 1996:16-17):

1. The potential of an object and/or characteristic is utilized in accordance with the knowledge, skill, experience, disposition and attitude of the criminal investigator.
2. He must be able to identify and utilize the latent presence of information in a subjective and/or objective format by ensuring that it is obtained for analysis, interpretation and evaluation.
3. He must maintain physical and evidential integrity in order to ensure the legal validity of the results of the investigation.
4. Continuous possession of information from the time it is first collected until it is presented in court must be assured, as well as its control, co-ordination and cumulative use.

The manual that guides Ethiopian investigators (2004:9) accommodated the responsibilities of investigators which mainly emphasize the following as major ones:-

- Help the victims of the crime and preserve the crime scene to protect physical evidence from any damage.
- Take photos and videos of the crime scene as it is.
- Sketch the crime scene.
- Collect the evidence carefully to save it from contamination.
- Identify the witnesses and interview them.
- Evaluate the evidence and identify the suspect.
- Arrest the suspect and if necessary, conduct a search.
- Interrogate the suspect.
- Evaluate the evidence and finalize the investigation to file for prosecution.

In light of the above, investigators in Ethiopia carry out their investigation processes with due account to their responsibilities made available in the procedural manual, which is important to be applied in all matters of crime investigation.

4.6 DEFINING CONCEPTS RELATING TO CRIME INVESTIGATION

This section deals with some of the most important conceptual issues linked to crime investigation. The specific concepts to be addressed include: questioning, interviewing and interrogation.

It can be deduced from Van Heerden (1986:202-206) that he uses questioning as an umbrella term for two related techniques, namely interviewing and interrogation. Both these techniques imply questioning for the purpose of obtaining information. The difference lies in the type of person who is questioned, the information required and the requirements basic to questioning (Van Heerden, 1986:203). Also, the distinction between the two techniques is associated with the difference in meaning, the way in which each one is carried out and the fact that each type of questioning determines the freedom to question and also restrictions (Gilbert, 1986:104).

In respecting the background detailed above, the concepts are extensively defined as follows:

4.6.1 Questioning

Questioning is the putting of questions to any person in a formal or informal manner with the purpose of obtaining information in respect of the commission of a crime (Marais & Van Rooyen, 1990:163). The respondents' answers to the question: "What is questioning?" is similar to the above.

4.6.1.1 Approaches/Techniques Related to Interrogation, Questioning or Interviewing

Marais and Van Rooyen (1990:175-178) refer to certain approaches and techniques which may be followed during interrogation. These include: the

emotional approach, the indirect approach, the single purpose technique and techniques based on guilt feelings.

The aim of the emotional approach is to arouse emotions or to appeal to the individual's feelings. According to the direct approach, the interviewee is confronted directly with convincing and positive evidence. The indirect approach can only be used in respect of suspects whose degree of involvement in the crime cannot be proved with reasonable certainty.

During the single purpose technique, the interviewee is left with the impression that he is beholden to the interviewer under the pessimism technique. Fear of the unknown and doubts about what lie ahead play a big role at that time. Techniques based on guilt feelings are intended to induce the suspect to tell the truth as reference is made to the disappointment and shock of family and friends at his conduct.

There is a fine line between the acceptability and unacceptability of the approaches and techniques employed during questioning. It is by nature unacceptable when it is instituted to exact evidence. Questioning should take place in such a way that individual rights (on privacy and freedom) and collective interest (the demands of the community that the state will collect evidence: '... the interests of the state to obtain evidence which is vital in the fight against crime must not expose an overriding discretion to exclude by virtue of fairness evidence obtained by dubious methods'), Questioning is then also subject to definite restrictions (Van Rooyen 1990:179).

4.6.1.2. Legal restrictions related to Questioning

Van Heerden (1986:78) declares that extraction is a blatant violation of the individual's psychological privacy. It involves forcing a person to reveal by word or deed those portions of his memory or personality that he regards as private. This relates to extraction, coercion and aids such as the lie-detector, truth serums and hypnosis as well as protracted questioning under bright lights and the confinement of a suspect without food and water for a long period (Marais & Van Rooyen, 1990:180). It also refers to sexual mortification

and sexual abuse, force causing pain and fear without leaving marks, for instance pulling hair (Van der Westhuizen, 1996:84).

The test for improper influencing is simply inducing the prisoner to tell what was not true. In broad outline, domestic rules portend among other things that a policemen may question a suspect in an attempt to determine his possible innocence but not before a warning has been given to him that he is not obliged to say any thing and that what he says may be written down and used as evidence against him. It is accepted that an admission or confession will not be inadmissible only because the judges' rules were not adhered to but non-compliance with any of the rules can, in light of all circumstances, show that the statement was not made voluntarily. Even compliance with the requirements does not necessarily mean that the statement will be admissible (Schmidt, 1989: 490-91).

Questioning, however, is restricted by policing itself. Firstly, by the scope of the authority of the police (those actions associated with the maintenance of social order according to the differentiation of powers in the administration of justice, excluding judicial and legislative, powers). Secondly, by the power of the police i.e. the power they may legally exert and the freedom to take decisions affecting the freedom and privacy of other people (Van Heerden, 1986:62-64). Finally, they are also restricted by the principles of policing in a democratic system (Van der Westhuizen, 1996: 85). In respect of these principles, Van Heerden (1986:79-80) underlines, among others, the following:

1. Policing is dependent upon and subject to public approval and the ability to secure and retain the respect of the public.
2. The attainment of public approval and respect is partly dependent on the voluntary co-operation of the public in obeying the law. The extent to which the public co-operates proportionally diminishes the need for the use of physical force and compulsion.
3. The favor and approval of the public must be sought , not by pandering to public opinion but by enforcing the laws with impartiality, giving friendly service to all members of society regardless of status, social position or

national affiliation, being courteous and friendly and being ready to make personal sacrifices in order to save lives.

4. The integrity of policing is reflected by the degree of personal moral responsibility evident in the behavior and actions of every individual member of the police.
5. The stability of a country and the vitality and continuity of democratic ideals are dependent upon policing (Van der Westhuizen, 1996:86) which:
 - Is constantly aware of the sensitive balance between individual freedom and collective security.
 - Is constantly aware of the dangers inherent in illegal and immoral coercive actions and procedures and
 - Will never give in to the temptation to sacrifice principles by resorting to evil means to secure good ends.

In general, we can say that the police, before attempting to conduct investigation of crime, must be reasonably certain that a violation of law which he is enforcing, has taken place and this violation must be the cause for conducting a police investigation. After having established that an offence has been committed, the police have to gather information from the suspect, the victim and the witnesses as well.

According to the Criminal Procedure Code of Ethiopia dealing with the witness and suspect, the police are duty bound to respect the legally protected rights of the witness (Criminal Procedure Code of Ethiopia, 1961: article 30). This mainly encompasses not forcing them to give their statements to the criminal investigator. Similarly, suspects also have the right not to be coerced to give confession or release information that may be used in evidence against them (The Constitution FDRE, article 19(5)). During interrogation, the investigating police officer should tell the suspect that he/she has the right not to give his statement to police about what he is suspected of (Criminal Procedure Code of Ethiopia, 1961, article 27(2)).

4.6.2 Interviewing

This can be defined as the questioning of any person who is ready, willing and qualified to tell what he/she knows (Buckwalter, 1984:4). It is generally regarded with minor variation as a conversation with a view to ascertaining what the interviewee knows about a specific situation. Also, interviewing concerns only one type of person - one who has not violated the law. Van Heerden's (1986:204) succinct definition goes to say interviewing is a face to face conversation with someone who is not a suspect, for the purpose of obtaining information.

To the question: "What is an interview? All investigators said that it is a means of gathering information from human beings by asking them what they observed about the incident through their sensory organs. This is used often when interviewing witnesses.

4.6.2.1 Preparation to Start an Interview

➤ Time

Interviews take place as soon as possible after the incident while interrogations usually take place at a later stage. In-depth interrogation is in fact deliberately delayed until the interviewer has obtained as many facts as possible. Premature interrogations will probably make no contribution towards the investigation, especially where the interviewer has to do with an experienced criminal (Buckwalter, 1984:207).

➤ Place

Marais and Van Rooyen (1990:168-169) refer to the requirements of privacy and emphasize the point that factors which can lead to interruptions during the interview should be avoided. Buckwalter (1984:20-70) draws attention to the disposition of the interviewee as he offers information voluntarily and his interests regarding the choice of place (and time) are thus taken into consideration. As far as interrogation is concerned, the interviewer determines the place to his advantage (Buckwalter 1984:207).

As far as the interview is concerned, preparations should centre on:

1. Definite perspectives: the interviewer's aim is to collect facts, listen and learn, be interviewee-centered and interaction-orientated
2. Personal actions: the interviewer should gather all possible information, know enough about the relevant matter prepare a list of key questions and make the best arrangements possible regarding place, time and privacy (Buckwalter, 1984:8-22; Marais & Van Rooyen, 1990:169).

Experiences and procedural manuals advocate and show the investigator how to apply all the prerequisites raised above before conducting interviews with witnesses and suspects.

4.6.2.2 Conducting the Interview

➤ Taking notes

Taking notes can evoke one of two important reactions. Taking notes during an interrogation can cause the interviewee to feel insecure - the perception can take hold of him at a later stage. Taking notes can also distract attention and thwart important disclosures (Buckwalter, 1984:207-208). It is essential that the person with whom the interview is conducted feels that he is receiving the full attention of the interviewer. Although notes are important, the interviewer should regard them as less important than the discussion with his source of information. Taking notes should be restricted to a minimum during the interview; it ought to be done as soon possible after the interview (Swanson, Chamelin & Territo, 1981:94). The best documentation is of course not written notes but audio-visual recordings. Although such recordings can be useful when interviewing they can become vital during interrogation - not only as records of the disclosures by the suspect (Swanson, et al. 1981:94), but also as a record of action by the police (Swanson et al. 1981:94-95).

In Ethiopia, during interview the investigator should appear with aids to record the information in written and audio-visual recordings.

4.6.2.3 The Questions to be asked and Considerations by the Investigator

During the interview, the interviewee explains his version of what happened in his own words and in his own way. Thereafter, he is questioned by the interviewer to elucidate his evidence and to furnish additional detail. Interrogation, on the contrary, leads to the disclosure of information by putting precise and incisive questions to a reluctant person. Yes/No questions assist the reluctant witness in that he does not have to give an explanation of facts (Marais & Van Rooyen, 1990:171).

According to Marais and Van Rooyen (1990:165-168), the interviewer should be intelligent and should have some general knowledge. He must also have a profound knowledge of human behavior, be able to evaluate information and be able to instill confidence and faith in the witness. This confidence and faith is based on personal integrity, sympathy and understanding. The interrogator should have the ability to detect resistance by the interviewee, to understand and to comprehend. He should also have the ability to show empathy for someone who resists him, to question persistently and to listen patiently, to change opposition to co-operation and to avoid the role of an antagonist. Successful investigators do not interrogate persons who can be interviewed (Marais & Van Rooyen, 1990:165-168).

The following are important during the interview (Marais & Van Rooyen, 1990:169):

1. Use an informal conversational tone
2. Put the interviewee at ease
3. Display a personal interest in the interviewee
4. Create a relationship of trust
5. Persuade the interviewee to talk
6. Listen
7. Allow the interviewee to tell his story
8. Formulate the questions in such a way that they are comprehensible
9. Maintain control over the interview

10. Accept without criticism the emotions of the interviewee
11. Allow sufficient time for the interview
12. Gather all the facts
13. Listen carefully to the final casual remarks of the interviewee
14. Place on record all substantiate facts and data
15. As far as interrogation is concerned, the preparation should center on:
 - Definite decisions : the approach that should be followed to link the available facts concerning the crime with a specific person
 - Definite physical aspects: the room, furniture and setting arrangements should be planned in such a way that they favor the interrogator

The standards spelt out above are seemingly correct when comparing their prevalence with Ethiopian crime investigation procedures.

Meanwhile, to the question put forward on the definition of an interview, the sample respondents of crime investigators and public prosecutors responded as follows:-

Ten of ten investigators and five of five public prosecutors said that interviewing is a conversation conducted by police with witnesses that aims to get information about the situation of the alleged crimes. Therefore, the responses made by the respondents are similar to the definitions written in the various literatures.

4.6.3 Interrogation

Interrogation generally has a negative connotation (Marais & Van Rooyen, 1990:172). It is in fact a right which the interrogated person can claim as it affords him the opportunity to make a voluntary confession or to make an exculpatory statement demonstrating his innocence (Van Heerden, 1986:20 and 50). For Buckwalter (1984:4), interrogation is the more formal questioning of a suspect, or of a reluctant or hostile witness, or of any one who is unwilling to discuss freely any information he or she possesses. The interrogator is to probe and draw out reluctantly disclosed information by asking precise, incisive questions. The unique feature of his definition is that

he somewhat further includes the unwilling or hostile witness. What he actually says is that the difference between the interview and interrogation is in the sphere of voluntariness and co-operation, rather than a distinction between witness and suspect.

In fact, Buckwalter (1984:4) prefers this view to the traditional dichotomy of interview/witness and interrogation/suspect, especially if it is taken into consideration that it will discourage the assumption that interrogation will only be applied to obtain an admission or a confession (Van der Westhuizen, 1996:80).

The logical result of the preceding discussion is, therefore, that questioning can be defined as a conversation between interviewer and interviewee where questions are put to the interviewee for the purpose of obtaining information about an alleged crime and in the course of which the techniques of interviewing (where the interviewee voluntarily offers his cooperation) and interrogation (where the person addressed with the interrogation is hostile or unwilling to co-operate) are applied (Van der Westhuizen, 1996:80-81). It follows that: "Interrogation can be defined as the questioning of any person who is reluctant, hostile or unwilling to volunteer the information at his /her disposal" (Van der Westhuizen, 1996:80-81).

It is obvious that both techniques will make use of the question-and-answer method but that the difference lies in the attitude of the interviewee and the resultant reaction of the interviewer (Van der Westhuizen, 1996:81).

To the question: "what is meant by interrogation?" The research sample of crime investigators and public prosecutors answered as follows:-

Respondents subjected to this have a similar understanding in that it is often a means used to get consent of suspects through conversation for use as evidence against them in court.

- Eight out of ten crime investigators and four out of five prosecutors responded that it is questions put to suspects during crime investigation

by investigators, in order to find the truth by using eight golden questions viz. when, why, where, which, who, whom and how the case happened. Thus, interrogation is a means to obtain information from suspects through conversation with investigators about the alleged crime they are suspected of.

- The remaining two of ten investigators and one of five public prosecutors answered that interrogation is used in police stations by investigators during crime investigation and in court when the suspect of crime appears before a court of law. Therefore, the answers of the respondents and the definition of interrogation in the literature are more or less similar.

4.6.3.1. Considerations during Interrogation

It is important during interrogation to (Marais & Van Rooyen (1990:165-170) :

1. Work from the viewpoint of the suspect
2. Treat the suspect as a fellow human being
3. Maintain a friendly atmosphere
4. Show respect and deference for the interviewee
5. Place use of language on the level of the suspect
6. Follow a relaxed conversational tone
7. Give undivided attention to the interviewee
8. Stay in command of the interrogation
9. Keep an open mind
10. Pose objective questions
11. Restrict interruptions
12. Place no time limit
13. Acknowledge the rights of the suspect
14. Interrogate on a one-to-one basis.

Buckwalter (1984:195-202) notes the use of the word 'suspect', which could just as well have been replaced by 'interviewee'.

In the replies from potential respondents to this question (about the definition of interrogation) eight of ten investigators and four out of five prosecutors were able to confirm that interrogation is a conversation conducted by police with suspects, that aimed to get a confession from suspects to the act of which they have been suspected. Therefore, there is a clear similarity to what is spelt out in the literature.

To the question: “do investigators inform you that you can remain silent before taking your statement?” The respondents reacted as follows:-

- All suspects interviewed said that investigators did not inform them of their right to remain silent before taking their statements.

To the question: “is the right of suspects not to be compelled to confess to the case they are suspected of honored by crime investigators?” or “were you compelled by investigators to make admissions when you gave your statements?” the suspects responded as follows:

- 8 of 10 suspects said that they were compelled by the investigators to make confessions to the crimes they were suspected of. Furthermore, they said that they were beaten when they said that they did not know about the case
- 2 of 10 said that they were not compelled to confess about the crime they were suspected of when they gave their statements to crime investigators.

To the question: “do suspects refute their statements given to police during crime investigations when they appear before court? The sample respondent of public prosecutors reacted as follows:

- All of them replied in the affirmative. They claim that the accused contest the statements by claiming that the police compel them to confess to the crime(s) and also the investigators did not tell them that the statements they gave will be considered as evidence when they appear before court.

Furthermore, they said that they dispute their statements because of the advice given to them to do so by others when they appear before court.

4.6.4 Exhibits

An exhibit is physical material which can be presented at a trial as proof of certain relevant facts. It is in reality an article of evidence (Simeneh, 2001:24). Exhibits are collected from crime scene areas and they differ depending on the type of crime committed. Therefore, their collection cannot be viewed according to a fixed set of rules but rather as broad guidelines as to what can and must be applied in practice. However, according to the Detective and Crime Intelligence Academy (2002:5), for handling and safe-keeping of exhibits the following measures should be taken:-

1. To prevent exhibits from getting mixed up, careful annotations must be made as to where an exhibit was found and by whom.
2. To avoid contamination, evidence must be handled in such a way that the possibility of contamination never forms the basis of a defense.
3. Exhibits must be marked properly: No identification marks must be made on the exhibits themselves, as this can influence the evidential value thereof. Tie- on labels must be used for this purpose.
4. To prevent the obliteration of important information, use an ink-or ball-point pen when particulars of exhibits are annotated.
5. For the safe-keeping of exhibits, suitable containers must be used. The container must be clean, exhibits must not escape from them and they must be resistant to rust and decay.

The response of investigators to the question: "What are exhibits and their purpose?" are listed below:

- Ten of ten investigators said that an exhibit is a material thing that the suspect commits a crime with and it can be taken as evidence that explains how it was used in the commission of the offence before a court of law. The difference between an exhibit and evidence is that while an exhibit is evidence that has been used by the criminal to commit a crime,

evidence does not only consist of the exhibit but also others like eye witnesses (human beings), documents and other material things.

4.7 THE PROCESS OF CRIME INVESTIGATION: KEY STEPS, RULES AND PROCEDURAL ISSUES

This section is devoted to the description of the legal and procedural rights, as well as the technical issues that should be considered in the process of crime investigation. In doing so, an attempt is made to consider the major key steps of the process of crime investigation. The writings in the forthcoming sections are based on the practical, rather than conceptual aspects of the process of crime investigation. Besides, the constitutional and legal provisions, as well as the Criminal Procedure Code of Ethiopia are integrated into the overall practices of crime investigation that is obtained from the literature.

4.7.1 Setting Justice in Motion: Prosecution and Inquiry

An accusation is the rule in this regard and criminal cases may be initiated by any interested citizen against any alleged offender in respect of an offence that is punishable without complaint. There are also criminal cases that can be initiated by way of a complaint that is easy and personal like insults and defamation (Simeneh, 2001:11). The police, before attempting to conduct an investigation of a crime, must be reasonably certain that a violation of a law which he is enforcing has taken place and this violation must be the cause for conducting the police investigation. After having established that an offence has been committed, the police have to gather information from the complainants, victims, witness, informers and even suspects (Simeneh 2001:13).

In the Ethiopian case, the police begin crime investigation when it obtains information as to the commission of an alleged offence. The information may be obtained through accusation (Criminal Procedure Code of 1961 article 11 & 12), complaint (article 13 Criminal Procedure Code of 1961) or police personal observation (article 19, 20 & 51 of Criminal Procedure Code of Ethiopia, 1961).

Complaint is a formal statement made by a complainant to the police or a public prosecutor with a view to criminal proceedings being instituted. Accusation is defined in Art 23 of draft Criminal Procedure Code of Ethiopia as “information given to a competent authority by any person about the commission of an offence”. In flagrant offence, those offences covered under flagrant (article 19 of the Criminal Procedure Code of Ethiopia, 1961), quasi – flagrant (art. 19(2) of Criminal Procedure Code of Ethiopia, 1961) and assimilated offences. However, investigation commences with the arrest of the alleged offender provided the offence is punishable without complaint.

Flagrant offence is an offence where the suspect has been found apparently committing or attempting to commit or has just completed committing an offence (article 50 of Criminal Procedure Code of Ethiopia, 1961.)

The police, after recording the accusation or complaint, gather evidence which is sufficient to constitute “reason to believe” that the suspect has probably committed the offence. Once the information is communicated to the police in any way, police shall conduct the investigation in accordance with the provision of the law dealing with investigation (article 22 and 23 of the Criminal Procedure Code of Ethiopia, 1961) and the establishing proclamation of the Federal Police Force (article 6(2) Federal police proclamation of 2003). It is responsibility of the police to conduct investigations.

Once the information of committing a crime is communicated to the police they will, after recording such information, accusation or complaint in the manner laid down (in article 14 of Criminal Procedure Code of 1961 of Ethiopia.) begin their investigation by eliciting information from the person who made the accusation or complaint (including the person who effected the arrest) as to all relevant facts. Such relevant facts may be the date and hour the offence was committed, the manner of commission of the offence and other relevant facts and for the investigation and proof of the offence which are available (article 15 and 24 of Criminal Procedure Code of Ethiopia, 1961).

To the question:” how is crime investigation initiated or started?” The respondents reacted as follows:-

- All investigators said that it is initiated in three ways. Firstly, when complainants bring their case to the investigators known as cases of complaint and cases through accusation. Secondly, when police obtain information from any person about crime using different means like telephone calls, mail or by appearing physically at the police stations. Thirdly, a case starts to be investigated when police observe the crime happening in areas where they patrol. Sometimes it is also ordered by public prosecutors and judges of courts to start investigations in some cases. Therefore, it is also initiated by public prosecutors and courts.

This question was not forwarded to other sections of the respondents of this research - specifically to the suspects of crime.

Therefore, it is possible to understand (as per the responses made available) that the motion of investigation begins in accordance with what is clearly stipulated in the literature. This is also relevant in the Ethiopian situation.

4.8 SEARCHES

In the course of investigation, one of the activities of the investigative police is conducting searches for items that are considered to be used as evidence during the trial. Searches can be conducted on the arrested person or on the premises of the suspects. The premises can be a residence or business premises. Searches can be conducted with or without a warrant (criminal procedure code of Ethiopia, 1961: article 32 & 33). Searches can also be conducted at any stage of the investigation. Search is stipulated in Ethiopian law and it is not conducted unless the police officer or member of the police is in possession of a search warrant from the court so as not to affect the constitutional right of privacy (Ethiopian constitution of 1995; article 26).

Searching is a specific law in order to investigate a specific crime. It is a specific law to prevent a crime or to protect the public. To execute a search

requires probable cause. Probable cause is the minimum amount of information necessary to cause a reasonable person to believe that a crime has been or is being committed by a person who is about to be arrested or suspected (Simeneh, 2001:12).

The search warrant is one of the most useful tools in the crime investigation process. Search warrants allow the searching of homes, businesses, companies and vehicles of suspects (Lyman, 1999:121). Among the various techniques used for collecting criminal evidence in the investigation process, the search warrant has proved to be the basic advantage. Search warrants represent an authorization by the court for investigators to enter a designated structure and search for specific items (criminal procedure code of Ethiopia, 1961 article 32). Search warrants can be valuable to criminal investigators in many situations. The search warrant can be used for different specific crimes to obtain evidence or exhibits (Lyman, 1999:121). Search warrants desire evaluation of a rationale to believe that there is probable cause that a crime was committed before issuing it (Simeneh, 2001:12).

In the Ethiopian case, the police may search persons, premises and property. The right to privacy is one of the constitutional rights recognized by the Federal Democratic Republic of Ethiopian Constitution of 1995, article 17 which stipulates that “No person shall be deprived of his or liberty except on such grounds and in accordance with such procedures as are established by law”. Search is closely associated with the right to privacy, so any neglect of the procedural requirements and formalities is an arbitrary interference with the protected right of privacy of individuals (The Constitution of Ethiopia, 1995: Article 14 and article 17(1)).

It is a mandatory duty for the police to have a search warrant before searching any premises and property (Criminal Procedure Code of Ethiopia, 1961: article 33). However, search without a warrant is allowed as an exception to avoid any delay that may result in obstruction of justice (Criminal Procedure Code of Ethiopia, 1961: article 32 (2)). Search without warrant is interpreted and applied narrowly and strictly. Therefore, search without warrant may be conducted when:

1. There is a flagrant offence as defined under articles 19 and 20 of the Criminal Procedure Code of 1961 of Ethiopia.
2. Information is given to the police that:
 - There is reasonable cause for suspecting that items which could be used as material evidence in respect of an offence may be destroyed
 - An accusation or complaint has been made against the person *vide* article 14 of the Criminal Procedure Code of Ethiopia, 1961.
 - The offence of which the person is suspected of is punishable with more than three years imprisonment (article 32, of Criminal Procedure Code of Ethiopia, 1961).

The police officer has good grounds for believing that by reason of the delay in obtaining a search warrant, such item is to be destroyed or removed (Criminal Procedure Code of Ethiopia, article 32 (2) (b), Of 1961). In the absence of any of the four requirements, the search is to be considered unlawful.

To the question on how searches of their premises were carried out by crime investigators, the suspects replied as follows:-

- 5 of 10 suspects said that their premises were searched by investigators without court warrants and reasonable doubt and nothing was found on their premises.
- 3 of 10 suspects said that their premises were searched by investigators with court warrants in accordance with an order of court.
- 2 of 10 suspects said that their premises were not searched by investigators

On a similar question forwarded to 5 public prosecutors and appeals presented to them by suspects and their families on the search of premises by crime investigators, they responded as follows:

- 3 of 5 public prosecutors said that most of the time police conduct searches without court warrants. Even though they do search with court

warrants, police often seize irrelevant things that are not ordered in the warrant and therefore, frequent complaints are made to the courts that indicate the illegal performance of police duties in relation to searching.

- 2 of 5 public prosecutors said that previously, investigators failed to search with court permission. This has resulted in complaints to courts and public prosecutors. Nowadays, an improvement has been observed and police perform searches with court warrants and therefore rely on the provisions of the law.

From the above information it is possible to say that investigators violate the rights of suspects when they conduct searches and this can result from insufficient knowledge of crime investigation.

4.9 SEIZURE

According to Simeneh (2001:33) seizure is the arrest of a suspect in order to conduct an investigation to bring him before court or to prevent further offences being committed by him and the seizing of items that may be considered as evidence during the trial. Seizure, in the researcher's view, means that conduct by police in seizing or capturing suspects who are wanted by police for criminal acts they are suspected of having committed.

It is normally conducted with court seizure warrants issued to perform seizures after the police have convinced the court by satisfying it that the suspect is the offender and the court issues the seizure warrant to seize the person whenever and wherever he/she is found by police. Furthermore, seizure of other material is also possible. Seizure can be conducted on the suspects and some objects which have a relationship to the alleged crime.

However, it can only be conducted in accordance with the law so as not to violate rights to liberty as stipulated in article 17 of the Ethiopian constitution of 1995. The seizure can be affected by police with either the court warrant or without court warrant for seizure as it depends on the type of crime i.e. for flagrant cases police have the right to seize the suspect and the objects that are linked to the crime. In other cases, police may request the court to issue a

court warrant to seize a suspect or object as the type of case may determine (Semineh, 2001:17).

In flagrant offences where the offender is followed in hot pursuit and he/she enters premises or disposes of articles which may be the subject matter of an offence and information is given to the police that an item which may be relevant as evidence in respect of an offence is concealed or lodged in any place in the premises, the police can seize the suspect, together with the object that he stole, without court warrant (Simeneh, 2001:25).

Normally in Ethiopia, if a suspect is wanted and does not voluntarily go to the police for investigation purposes by way of police summons, police apply to the court to issue a seizure warrant. The court examines the request of the police as to whether the suspect actually committed the crime and it is proved by the evidence collected by investigator, the court authorizes the police to seize the person by issuing the seizure warrant to the investigators by describing in the warrant the person's name and address (Criminal Procedure Code of Ethiopia, 1961 article 53).

The police may then find and seize the suspect at any time and place. Although the rule is that police should seize suspects and objects that are connected to the crime by way of court warrant, in exceptional cases, the police can conduct seizures without warrant in flagrant offences (Criminal Procedure Code of Ethiopia, 1961: article 51). In Ethiopia 'seizure of a suspect' means the arrest of the suspect.

Flagrant offence is an offence which the suspect has apparently been found committing, or attempting to commit or has just committed (Criminal Procedure Code of Ethiopia, 1961: article, 51). For example, if the person is found taking the property of another person, knowing it never belonged to him. Likewise, if a person is found attempting to commit an offence, it is a clear case of flagrancy for two reasons. First, it states that an attempt is a flagrant offence and a secondly, attempt is an offence in itself as provided for in Art 27 of Penal Code of Ethiopia, 1960.

Sample public prosecutors and suspects were questioned about how police conduct seizure of suspects when investigators conducted their investigations. Were the processes of seizure legal or not and if there were any complaints from public prosecutors regarding seizure of suspects or materials. They answered as follows:-

- 3 of 5 public prosecutors said that when investigators conduct seizures of persons and materials without court warrants, they violate their right to liberty and therefore, a number of persons appeared in court for alleged illegal police acts.
- 2 of 5 public prosecutors said that previously, there were problems regarding police conduct as far as seizures were concerned. Nowadays however, there is an improvement with regard to police getting permission from the courts for the seizure of persons and material.

Ten Interviewees (all suspects) responded to the question of how the police seized them as follows:-

- 5 of 10 said that they and their items were seized by police without court warrants, so that their right to liberty was violated.
- 4 of 10 said that when they and their items or material were seized by the police, the police possessed court warrants, so they were legal.
- 1 of the 10 suspects said that he was seized when committing a crime and no item of his was seized by the police.
- Therefore, from this it is possible to conclude that police do not always conduct seizures in accordance with the law. A reason why the answer differs from the sample interviewees can be as a result of investigators lack of knowledge of crime investigation techniques (as indicated in their background information). Some of them did not receive sufficient crime investigation training.

4.10 PRESENTING THE ARRESTEE BEFORE COURT

More than anything, the issue of bail is found to be very important at this particular juncture. The traditional purpose of bail is to ensure the accused

presence at trial. The variable amount of bail is statistically the best predictor of sentence length. Bail set at a figure higher than the amount calculated to ensure the accused return to court can be construed as "excessive". However, there are five (5) circumstances the court can consider in setting bail (Ferdico, 1996:19):

- Seriousness of the offence (in some crimes, no bail can be given).
- Weight of the evidence against the accused.
- Ties with the community, family and employment.
- A prior criminal record.
- A history of failure to appear or attempts to escape.

Many times a judge may release a person on their judicial discretion (pre-trial release) and attach conditions, such as promises to remain in the community, refraining from using drugs and alcohol or attending a rehabilitation program. Such persons are called supervised releases or deferred prosecutions. Third parties, such as relatives, are expected to supervise them (Ferdico, 1996: 16).

In the Ethiopian case it is required from the police to give a decision as to the release on bail of the arrestee or his/her remaining in custody in accordance with the type of crime the suspect is suspected of. If the case is bail- able i.e., if the offence complained of is not punishable with rigorous imprisonment as a sole or alternative punishment, or if it is doubtful that the offence has been committed or that the arrested person has committed the offence, the investigating officer may release the arrested person at his discretion, with or without surety by satisfying himself that the suspect will appear at such place on such day and at such time as may be fixed by the police (Criminal Procedure Code of Ethiopia,1961 art:28).

If the person is not released by the police for whatever reason, the suspect has the right to appear before the court within 48 hours (FDRE Constitution of 1995: article 19). This is to make known to the court that the person has been arrested for a particular offence and the findings of investigators in the process of investigation. Also, set out his intention of further inquiry (if any) and any assistance that the investigator requires from the court at that stage.

Further, any obstacles that the police may encounter if the suspect is released on bail and to request a remand of the suspect in custody as the case may be (Criminal Procedure Code of Ethiopia, 1961: Article 59).

Responses to interviews conducted with investigators and public prosecutors to the question: “Does the application of human rights principles negatively affect the effectiveness of the crime investigation process?” are listed below:-

- 5 of 5 public prosecutors agreed that it does not affect the investigation processes.
- 7 of 10 investigators said that it would not disrupt crime investigators from effectively gathering evidence useful to criminal prosecution.
- 3 of 10 investigators said that it affects the effectiveness of crime investigation because the suspect refuses to co-operate with police. Therefore, the situation that arises is that as a result of suspects not co-operating, the police score poor results in investigation.

The reason why three respondents answered the question in different ways may be due to a lack of understanding of human rights and others lawfully use them during crime investigation.

Interviews conducted with suspects regarding the rights of suspects to appear before court within 48 hours of arrest and the right to bail elicited the following responses:-

- 9 of 10 suspects agreed that crime investigators brought them before court within 48 hours, without giving them bail.
- 1 of the 10 suspects said that the crime investigator did not bring him before court within 48 hours and denied him the right to bail.

To the question: “Did the crime investigators accord suspects their human rights during the crime investigation process?” The suspects responded as follows:-

- 8 of 10 said that crime investigators did not apply human rights principles, rather they violated them.

- 2 of 10 replied in the affirmative adding that they fully applied human rights principles when they conducted investigations. From the response of sample suspects mentioned above, the majority of investigators did not do their work in accordance with the law. In some cases, they violated suspects' rights given by the constitution and other laws of the country. The reason is (as indicated by the background information of investigators) that some of them did not receive adequate investigation training and therefore, they lacked the knowledge to properly apply it.

4.11 SUMMARY

Crime investigation is a systematic search for the truth with the primary purpose of finding a positive solution to the crime with the help of objective and subjective clues. Investigation amounts to observation and enquiry in order to collect factual information on allegation circumstances and associations. The main objectives of crime investigation are to detect crime, to identify the offender, to locate and preserve evidence and to bring offenders to the court of law for Justice.

The general objectives of criminal investigation include: identification of the crime, gathering of evidence, individualization of the crime, arrest of the criminal as well as recovery of stolen property and involvement in the prosecution process. Police chiefs should be exclusively responsible for holding officers accountable for their actions. While undertaking the task of crime investigation, the police are expected to abide by certain duties and responsibilities. These include: respect, fairness, integrity, impartiality, care and attention, control, courtesy and confidentiality.

Generally, there are three distinct but interrelated phases of crime investigation. These are the Pre-Investigative Phase, the Investigative Phase, and the Post-Investigative Phase.

The Pre-Investigative Phase commences as soon as the first policeman arrives at the scene of the crime. Takeover and control of the scene of the crime has a dual purpose. In the first place, it prevents any possible

information from being disturbed or destroyed. Secondly, it enables the investigator to make a preliminary identification of the situation by means of reports by witnesses and people directly involved and to obtain a tentative description of the offender. During the Investigative Phase, crime information is collected and determined. The Post-Investigative phase includes the gathering of information, utilizing it during the secondary investigation and coordinating, controlling and integrating it for the purpose of individualization.

As to setting justice in motion, accusation is the rule and criminal cases may be initiated by any interested citizen against any alleged offender in respect of an offence that is punishable without complaint. There are also criminal cases that can be initiated only with application of complaint of those cases that are easy and personal like insults and defamation. The police, before attempting to conduct investigation of crime, must be reasonably certain that a violation of a law which he is enforcing has taken place and this violation must be the reason for police conducting an investigation.

After having established that an offence has been committed, the police have to gather information from the complainants, victims, witnesses, informers and even suspects. In the Ethiopian case, the police start a crime investigation when it obtains information as to the commission of an alleged offence. The police are an important organ in human rights protection and for its indispensable contribution through its function of maintaining peace and order in the society. While in the practical application it has some deficiencies in applying human rights principles during crime investigations due to different reasons, one is a major lack of knowledge and that gap should be filled by proper training.

CHAPTER FIVE

FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

5.1 INTRODUCTION

This chapter presents the description of the major findings that are obtained from the analysis of qualitative and quantitative information generated from both primary and secondary sources. The analysis is undertaken in such a way that the actual practices of the Addis Ababa police in the process of crime investigation is tracked against selected human right principles enshrined in the constitution and assured by subsidiary proclamations. Specifically the 1961 Criminal Procedure Code of Ethiopia has served as a benchmark against which the observed practices of the police, in the process of crime investigation, are evaluated so as to identify gaps, if any. The chapter also provides certain conclusions and some other pertinent recommendations that are drawn from the findings.

5.2 DISCUSSION OF THE MAJOR FINDINGS

5.2.1 Knowledge and understanding about the meanings and concepts related to Crime Investigation.

So as to understand the level of knowledge and understanding of the interviewed investigators and prosecutors pertaining to the overall process of crime investigation, they were asked to indicate the training they have received so far and also to give the definitions of key terminology, objectives of crime investigation and about their attitude towards the relevance of protecting human rights principles. Their response is summarized as follows.

From the total number of the interviewed prosecutors, it is found that about 60% of them have received a diploma in law. Whereas, the remaining 40% of them have not received long term training that helps them to be prosecutors. Besides, of those who received diplomas, all of them are found to have been provided with additional short-term training related to the profession of a prosecutor. It is learned that from the total number of the interviewed

investigators, all of them are found to have received at least one training course related to crime investigation. About 60% of them have received short-term training that lasted from four to six months. Only 20% of them are found to have received training that lasted from one to three years. Meanwhile, it is learned that all of the respondents have been specifically provided with short-term training in human rights principles.

The respondents were also asked to give the definition of “police”. Invariably, all of the respondents replied that police is the institution of the government established by law to perform the task of preventing crime and to safeguard public peace and order. They also provided their answers regarding the functions of the police. Accordingly, the patterns of their responses show that almost all of them have understood such functions of the police as preventing crime, detecting crime and bringing offenders before court. The respondents also believe that police personnel should follow certain ethics when doing their task in accordance with the code of conduct that the police profession demands.

The respondents of this study also responded similarly with the literature about crime prevention, by saying that crime prevention is proactively combating the crime before the commission of an offence and to maintain public peace and order. The literature reveals that crime investigation is the process of selection of offenders and manifestation of the truth in a rational and systematic way supported by sufficient evidence. The process of investigation is broad and it includes the gathering of evidence in support of the hypothesis that a certain crime has been committed by the alleged offender because it is the court that is the ultimate body to dispose of the case and which needs to be satisfied to a certain degree.

Analysis of the patterns of responses shows that the respondents of this study understand crime investigation in the following way:

A process of finding truth which enables one to identify the innocent from criminals based on the evidence collected through the crime

investigation process. Its purpose is to bring criminals to court to make them liable for their acts prohibited in law and by doing so its ultimate goal is to guarantee peace and order in society.

As to the process of crime investigation, the respondents described it as follows:

After the information of a Crime having been committed is communicated to the police by way of complaint or by others through any means of communication, crime investigators receive information about the offence and the offender and start to collect evidence. They do this by taking witness statements and in accordance with the type of offence committed, police or crime investigators may perform arrests, searches, interviews and interrogation of suspects and witnesses to gather information and to compile a file with the necessary evidence and send the file to the public prosecutor for prosecution of the offender.

To the question: "What is the meaning of forensic investigation and its difference from crime investigation" all respondents except one public prosecutor replied in the following way:

Forensic investigation is an investigation made by scientific methods in police laboratories, like fingerprints, biochemical analysis, arson and document examination, while crime investigation is a process to get the truth used by forensic investigation plus other evidence like witness testimony, written documents or auditing of documents and other objects related to the offence.

The respondents also furnished their own understanding about the meaning of evidence. Almost all of them responded by saying that evidence is a means which can enable investigators to confirm whether the alleged offence was committed by the alleged person or not. Besides, they managed to identify different types of evidence like witness testimony, writing materials or objects that are offered to prove the existence or non-existence of facts. Their

responses also indicate that most of them understand physical evidence as evidence that can show the relationship between the offence, offenders and victims and it is seen physically and brought to court in order for judges to understand how and with what the offences were committed by the offender and it is normally called an exhibit. As to the meaning of evidence, they have the understanding that an exhibit is something that has a relation with the committed crime and mostly it is an object with which the crime was committed.

The respondents were also asked to give their opinions on whether proper application of human right principles may negatively affect the effectiveness of the process of crime investigation. Accordingly, all of the interviewed public prosecutors and 70% of the crime investigators replied in the negative. For them, this will not stop crime investigators from effectively gathering evidence.

Whereas nearly 30% of the interviewed crime investigators said that it stops crime investigators from gathering evidence, they reasoned that if suspects refuse to cooperate with police during crime investigations, police cannot force them and collect the necessary information as he/she would like. For instance, police cannot take suspects blood for investigation purposes by force for fear of violating human rights principles.

5.2.2 The Actual Practices of the Addis Ababa Police in Crime Investigation

In relation to the practice of police during crime investigation, it is learned that police first receive information or an accusation. Then based on this, police will start to gather information and finally when the police prove that a crime has been committed and informed about the suspect, it starts interrogation.

Among the respondents of this study, four public prosecutors or 90 percent of the respondents replied to the question: “Do the police (crime investigators) apply human right principles in the process of crime investigation and if not why not?” in the negative. Crime investigators did not apply human rights principles during crime investigation process because some investigators do not have the necessary understanding regarding the provisions pertaining to

human rights and the law and others violate it due to different reasons (e.g. corruption).

About 10% of the respondents said 'yes', crime investigators apply human rights principles during the crime investigation process, although not in an absolute way because of lack of skills and equipment/material that are necessary for investigations.

Regarding the actual process of crime investigation, all of the respondents answered that it has many processes. However, the most common process of crime investigation starts after police obtain information about the committed crime, either by complaint or by police observation and any interested person's information. Hence, crime has a public nature and police can investigate on their own initiative or when any interested persons inform police in the cases of crimes that do not necessarily need complaints for their initiation. Therefore, concerning the process of investigation, the actual practice of crime investigation by the Addis Ababa police is somehow consistent with the literature. Among others, the most common aspects of an investigation process are the arrest of suspects, search and seizure and interviewing and interrogation.

5.2.3 Rights of Suspects in Custody

l) the right to remain silent and to be told that any statements made may be used as evidence against them in court:

The 1995 Ethiopian Constitution, Art 19 (2), provides that: "persons arrested have the right to remain silent. Upon arrest, they have the right to be informed promptly, in a language they understand, that any statement they make may be used as evidence against them in court. Similarly, the 1961 Criminal Procedure Code of Ethiopia, Art.27 (2) states that "he [the person arrested] shall not be compelled to answer and that any statement he may make may be used in evidence."

All the respondents of this research responded to the question whether the investigators tell suspects before taking their statement about their rights (including the right to keep silent) by saying that the police do not inform them about their rights before taking their statements. Rather, according to the respondents, the investigators used coercion against them to obtain their statements and exerted pressure on them to admit to the crime they were suspected of. Hence, it can be said that the police did not practice its responsibilities in accordance with the Criminal Procedure Code of Ethiopia, 1961, Article 27(2) that orders the investigators to tell the suspect that he/she has the right to remain silent

ii). the right to be informed about the reasons for arrest

The 1995 Ethiopian Constitution, Art.19 (1), Provides that

“Persons arrested have the right to be informed promptly, in a language they understand, of the reasons for their arrest and of any charges against them.”

The respondents were asked: Did the police promptly inform them of the reasons for their arrest and of any charge(s) against them and were they allowed to meet their family and legal councilors?. All of the respondents replied that they were not immediately informed of the reasons for their arrest when they were arrested. Rather, they became aware of the crime they were accused of when they were brought before court.

As to whether they met with their family and/or legal councilors, 60% of the respondents' replied that they were not allowed to meet with their family and legal councilors while they were in police custody. About 20% of the respondents made it clear that they were allowed by police to meet with their family and legal councilors and the remaining 20% said that they were not asked by the police investigators whether or not they wished to meet with their family and/or legal councilors. Therefore, according to the respondents, most of the police investigators did not tell the suspects the reasons why they were

arrested and the police investigators did not allow the suspects to meet with their family and/or legal councilors. This is a violation of the rights of suspects and the constitution which reads: "Persons arrested have the right to be informed promptly of the reasons for their arrest and of any charges against them. FDRE Constitution, 1955: article 19(1)."

iii). the right not to be denied human dignity and to communicate with others
In custody - the suspect is accorded legal protection. Among the legally accorded protections not to be denied human dignity (Constitution of FDRE, 1995 article 21 (1)) is the following:

*The suspect in police custody must also be provided with the chance of having contact with his family, friends, legal counsel and/or religious father (Constitution FDRE, 1995:ar t21 (2)),
The suspect must be provided, if needed, with stationary material (Criminal Procedure Code 61, article 61).*

As to whether the suspects were allowed to communicate with their legal councilors, responses indicate that most of them were not allowed to do so. However, it was also established that police have their own program to allow the suspects to communicate with their respective legal councilors. Nevertheless, according to most of the interviewed suspects, such an arrangement by the police based on its program is so inconvenient for them that they face difficulty communicating with their respective legal councilors. They commented that it would have been better if they were allowed to communicate with their respective legal councilors on their own.

5.2.4 The practice of arrest

The practice of arrest in the Addis Ababa city police is analyzed and discussed based on the response of the respondents. To the question: "How were you arrested by police?" 60% of the interviewed suspects said that they were arrested by the police without court warrants and without reasonable grounds. Meanwhile, they also indicated that their cases were not flagrant ones. Nothing was found in their possession and no witnesses heard or

confirmed that they had committed a crime. Of the rest, 40 percent of the respondents (suspects) gave different answers. 30% of them said that they were called to police stations by police summonses or went to the police station by themselves. The remaining 20% said that they went to the police station to visit their friends and police arrested them without any warrant. Therefore, although the law orders police to arrest with a warrant, according to the respondents, the police perform arrests without court warrants. This is illegal and definitely resulted in the violation of human rights as this is against the Constitution and legal provisions of the country.

Besides specifically commenting on the practice of police while arresting, searching and interviewing suspects, the interviewed investigators said that the practice is such that police tend to commonly arrest suspects for a long period of time without considering differences in the seriousness of accusations. Moreover, they indicated that arrest and search without warrant at the moment of seizure and collection of information from the suspects rather than from another independent person, are among the major practices common to the Addis Ababa Police. Be this as it may, the interviewed prosecutors and investigators also indicated the fact that nowadays, there exists a positive improvement in the practice of police in abiding by the law and protecting the rights of suspects.

The problem here is partly attributed to the lack of awareness among the public at large regarding the identification of a flagrant offence and an offence that is punishable with simple imprisonment for not less than three months. Even some of the police members have the problem of identifying this offence. The other one is the Criminal Procedure Code of Ethiopia, 1961: Article 51 that opens the door for arbitrary arrest. This article is also contrary to the new FDRE Constitution of 1995, especially to the principles of the universal declaration of human rights, international conventions on human rights and international instruments adopted by Ethiopia. In practice most arrests are made without warrant. Arrest with warrant is made if the suspect absconds. Nowadays, the institution of the warrant is becoming a forgotten practice. Sometimes mass arrests for violating human rights occur. If this

practice cannot be abolished, the violation of human rights cannot be stopped. The problem regarding arrest with a warrant is also the one apparent in Art 54 of the Criminal Procedure Code. It states that in issuing the arrest warrant, the attendance of the person is absolutely necessary but the person's attendance is absolutely necessary when the police officer is able to present probable cause showing the alleged person committed the crime.

5.2.5 Conditions under which to make a search

The 1961 Criminal Procedure Code of Ethiopia, Art. 32 (1) states that:

“No arrested person shall be searched except where it is reasonably suspected that he has about his person any article which may be material as evidence in respect of the offence with which he is accused or is suspected to have committed. A search shall be made by a person of the same sex as the arrested person.”

Similarly, the 1961 Criminal Procedure Code of Ethiopia, Art. 32 (2) states that:

“No premises may be searched unless the police officer or member of the police is in possession of a search warrant, except where: a) an offender is followed in hot pursuit and enters premises or disposes of articles the subject matter of an offence in premises; b) information is given to an investigating police officer or member of the police that there is reasonable cause for suspecting that articles which may be material as evidence in respect of an offence in respect of which an accusation or complaint has been made...(Elipsis added).”

Among the suspect respondents of this research, 60% of them responded to the question: “How were your homes and premises searched by police?” they replied that their homes and premises were searched without court warrants and the rest, 20 percent, said that their homes were searched with court warrants in the presence of the ‘Kebele’ administration. The remaining 20%

of them made it clear that police did not search their homes and premises at all. Therefore, this implies that police investigators mostly undertake searches during crime investigation without a court warrant. Indeed, this is against the right to privacy that is enshrined in the FDRE Constitution, 1995: Article 26.

One of the interviewed suspects indicated that police officers came to his house without a warrant and forcefully searched the house and also physically punished the family members.

5.2.6 The Practice of Seizure

Answers as to how seizure was made by the police, differed. Some 40 percent of the interviewed suspects stated that they were seized by the police without court warrants and without reasonable grounds that a crime was committed. On the contrary, about 30 percent of them said that they were seized with court warrants as per the law and the remaining 30 percent of them made it clear that they were called by police with police summonses and they were arrested by crime investigators. Therefore, here also, it can be said that in the majority of the cases, the searching of suspects was not performed in accordance with the law.

*In relation to **the 48 –hour rule**, the 1995 Ethiopian Constitution, Art.19 (3), provides that:*

“Persons arrested have the right to be brought before a court within 48 hours of their arrest. Such time shall not include the time reasonably required for the journey from the place of the arrest to the court. The 1961 Ethiopian Criminal Procedure Code Art .29(1) provides that: “the police shall bring the accused before the nearest court within 48 hours of his arrest or so soon thereafter as local circumstances and communications permit.”

The respondents of this research were also asked to indicate the length of time which it took the police to bring them before court after they were

arrested. Some 90% of the interviewed suspects were taken to court within 48 hours of their arrest. About 10% of the respondents stayed from two to five days in prison without being taken to the court.

Therefore, regarding presenting the suspects before court, it is possible to say that although relatively speaking crime investigators did more or less act in accordance with the law and constitution of Ethiopia, 1995: article 19(3), that orders that persons arrested have the right to be brought before court within 48 hours of their arrest (this occurred in some 90% of the cases) good practice prevailed.

5.2.7 The practice of obtaining information from suspects

In relation to inducements offered and the right not to be compelled to confess/ inadmissibility of coerced confessions/, the Criminal Procedure Code of Ethiopia, Art. 31(1) reads as follows:

No police officer or person in authority shall offer or use or make or cause to be offered, made or used any inducement, threat, promise or any other improper method to any person examined by the police.

The Ethiopian Constitution, Art.19 (5) states that;-

“Persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible”.

The right not to be compelled to testify against oneself; The Ethiopian Constitution Art. 20(3) stipulate that:

“During proceedings accused persons have the right ...not to be compelled to testify against them” (Ellipsis added).

When asked to respond as to how the suspects were treated by the police before investigators interviewed them, 50% of the interviewed suspects pointed out that they were physically and psychologically harassed by the

police. However, the remaining 50% indicated that they had not been physically punished by the police. It is understood that the investigating police stopped beating them when they told them what they wanted to hear but they furnished false information to the police.

About 60% of the respondents mentioned that police had physically and psychologically pressurized them to admit to the crime they were suspected of. When the interviewed suspects were asked to evaluate the application of human rights principles by the police in the process of crime investigation, 30% of them evaluated them as good. However, the remaining 70% (an overwhelming majority) believe that police commit serious violations of human rights principles in the process of criminal investigations.

Most of the interviewed suspects believe that most police members have a mistaken belief that they have an absolute right to physically attack anybody who they believe is a violator of the law. Some of them associate police violation of human rights with a lack of knowledge, accountability and concern for the respect of human rights principles. In addition, the interviewed prosecutors also indicated that most of the complaints made against the investigators are attributed to the following major areas:

- Not taking suspects to court in time
- Improper arrest of suspects
- Not letting the suspects have charge documents
- Forcefully interviewing suspects
- Taking material which is irrelevant as exhibits
- Purposely avoiding information relevant to the suspects.

As to whether suspects refute information they have given to investigators before the court, all of the interviewed prosecutors replied in the affirmative. The respondents attributed this mainly to the following major reasons:

- Because the investigator initially got the information from suspects through the use of force.

- Because the suspects are usually told by the investigator that the information they would give will be used as evidence against them
- Because suspects believe that the information they provide to the court is more credible than that which they have given to the police.
- Because suspects are usually advised by other experienced offenders with whom they stay in prison.

Regarding what suspects usually say about the information they have given to the police, the respondents have managed to identify the following:

- They were forced to sign statements without them being read to them
- They gave the information fearing attack by the police

As to the mode of gathering information, some of the interviewed prosecutors commented that police tend to focus on and believe in the tactical rather than the technical aspect of crime investigation. According to them, police do not focus on gathering more sophisticated information about the suspects. Rather, they focus more on gathering oral information from the suspects and using it as evidence. This is particularly true when the suspect is under arrest. They also added that the practice is based on force and is against the law.

Regarding the means which police usually employ to find out relevant information from the suspects, the interviewed prosecutors mentioned the following:

- Threatening suspects
- Forcing suspects to sign written information without reading it
- Making undue promises to the suspects
- Writing the investigators own beliefs and then getting the signature of the suspects.

In addition, about 90% of the interviewed prosecutors indicated that the police use suspects to speak to the media before the court's decision regarding their guilt. They strongly believe that this action is illegal because nobody should be considered a criminal until he/she is proved to be guilty by the court.

The respondents also gave their own recommendations which they think are helpful in improving the protection of human rights principles in crime investigation. These include the following:

1. Provision of training to the police
2. Encouraging investigators to use alternative sources of information beside the suspects.
3. Equipping the police with the necessary skills that are relevant to unearthing complicated facts

5.3 RECOMMENDATIONS

On the basis of the above findings, the researcher forwarded the following recommendations with the intention to improve the way of applying human rights principles in the process of crime investigation:

- 1 Provision of training to the police and other duty bearers who participate in the process of crime investigation.
- 2 Equipping the police and other responsible duty bearers with the necessary skills that enable them to investigate complicated crimes compatible with the ever evolving and dynamic socio/economic and theological environment.
- 3 Enabling police members to share the experience of other countries related to crime investigation.
- 4 Instituting periodic evaluation programs to track human rights violation practices with the participation of the relevant stakeholders.
- 5 Creating awareness among the public about human rights principles and encouraging them to demand their rights whenever they think that they have been violated.
- 6 Encouraging the private media to actively participate in the tracking of human rights violations in the process of crime investigation.
- 7 Creating opportunities or enabling vibrant civil society groups who would be able to actively participate in the promotion and protection of human right principles in crime investigation, to become actively involved.

- 8 Introducing modern technologies that help the police gather relevant information from multiple sources.

5.4 CONCLUSION

This dissertation is devoted to assessing the practices of the Addis Ababa Police in the application of human rights principles in the process of crime investigation. It is specifically aimed at identifying the gaps between constitutional provisions and legal proclamations, as well as procedures that are put in place to ensure the protection of human rights in the process of crime investigation on the one hand and the actual practices of the police in applying human right principles while fulfilling their duties and responsibilities during crime investigation on the other hand. To reach the findings, the study made use of both qualitative and quantitative information from both primary and secondary sources. Based on the analysis of this information, the study has come up with certain conclusions. On the basis of the conclusions drawn from the findings, it also provides some recommendations that are deemed to be important for improving the protection of human rights principles during crime investigation.

Analysis of the information obtained from prosecutors, investigators and suspects revealed that there are violations of human rights principles in the process of crime investigation. Physical and verbal harassment, as well as threats to suspects and forcefully getting their signatures, failure to tell suspects about their rights, not allowing suspects to make contact with their families and/or legal councilors are the major violations of human rights of suspects by the police during criminal investigations. Survey results also show that there are multiple factors that contribute to the violation of human rights principles by the police in the process of crime investigation. These include lack of awareness among members of the Addis Ababa police and their perception they have a vested right to forcefully search out facts from suspects. Failure to internalize human rights principles that govern their day to day behavior, focusing on the tactical rather than the technical aspects of crime investigation, considering suspects as the only source of information and consequently a failure to generate information from independent sources.

In addition, they lack the necessary skills to search out complicated information and there is a lack of awareness among the public about their rights that are stipulated in the FDRE constitutions and assured in subsidiary proclamations, among others.

REFERENCES

- Abbink, J. 1997. *Ethnicity and Constitutionalism in Ethiopia*. Leiden: African Student Center.
- Addis Ababa City Charter. 1997. Charter Of Addis Ababa City, Proclamation No.57 /1997. Addis Ababa, Berhanenna Selam printing press.
- Alpert, G. & Durham. 1992. "Community policing" in *critical issue in policing*, editing by Roger G. Dunham and Alpert prospect Heights, IL: Wave Land press.
- An-Naim, A.A. 2003. *Human Rights Under African Constitution*, In Abdulahi Ahmed An- Naim (Ed). *Expanding legal Protection of Human Rights In African Context*. Philadelphia: University of Pennsylvania press
- Action Professional Association for the People (APAP), 7th year Anniversary Magazine, 2000. Legal Right Educational Association: Addis Ababa. Unpublished.
- Arts, K. 2000. *Integrating Human Rights Development Cooperation*. Hague: Klawer Law International.
- Asbjorn, E. & Schou, A. 1968. *International Protection of Human Rights* Nobel Symposium.
- Asfaw, G. 1987. A Human Rights Commission Ethiopia. Addis Ababa, Artistics Printing Press.
- Bailey, K.D. 1987. *Methods of social Research* 3rd Edition, New York: The Free Press.
- Berg, B.L. 1999. *Policing in modern society*. Boston : Butterworth.
- Blockier, N. 1993. *Analyzing Quantitative Data*. London: SAGE.
- Bloed, A. 1993. *Monitoring Human Rights in Europe - comparing International Procedures and Mechanisms*. Dordrecht: Martinus Nijhoff publisher.

- Buckwalter, A. 1986. *Investigative Methods*. Boston: Butterworth.
- Caldwell, R.G. 1965. *Criminology* 2nd edition: New York .Ronald Press.
- Calpham, C. & Paul, J.C. 1967. *Ethiopian Constitution Development*. Oxford University press.
- Claude, R. & Weston, B.H. 1992. *Human Right in world community, Issue and actions*. 2nd Edition. Hague: Martinus Nijhoff publisher.
- Cochoran, W. 1990. *Sampling Techniques*. 3rd Edition. New York: Praeger.
- Constitution of FDRE .1995 .Negarit Gazzeta, 21st year, No.1, August 1995, Addis Ababa. Berhanenna Selam printing press.
- Crawshaw, F.D. 1998. *Human Rights and policing*. Botson: Klawer Law International.
- Creswell, J. W .1998 .*Qualitative Inquiry and Research Design: Choosing Among the Traditions*. California. Sage.
- Criminal Procedure Code of Ethiopia. 1961. Negarit Gazzeta, 21st year. No.7/1961. Addis Ababa. Berhanenna Selam Printing Press.
- Critchely, B. 1967. *A History of Police in England and Wales*. London: Constable and Company.
- Crowe, T.D. 1991. *Crime prevention Through Environmental Design*. New York: Mc Graw-Hill, Inc.
- De Rover, C. 1998. *To Serve and to Protect: Human Rights and Humanitarian Law for Police and Security Forces*. Geneva: International Committee of the Red Cross. Gane, C. 1997. *The Administration of Human Rights and of justice International Instrument*. Boston: Clawer Law international.
- Deluca, S. 1994. *Police Administration: An Introduction*. Leiden: Prentice-Hall.

- Denscombe, M. 2002. *Ground Rules for Good Research: A 10-point Guide for social Research*. Philadelphia: Open University press.
- Deraewicki, K. 1999. *An Introduction to International Protection of Human Rights*. In RajaHanski &Markku Suksi (eds), *Internalization of Human Rights and their Jurisdiction*. Finland, Abu Academic Universty,Institute for Human Rights.
- Detective and Crime Intelligence Academy. Training Manual .2004, Detective training investigation learner”s guide,South Africa: unpublished
- De Wet, E. 2001. International Human Rights monitoring mechanism, in Gudmunder Alferdsson, *The protocol on African court of Human and peoples Rights*. Hague : Martinus Nijhoft publishers.
- Dezayas, A. 2001.International Human Rights Monitoring Mechanism in Germander Alfredsson. *The examination of Individual Complaints by the United Nations Human Rights Committee*. Hague: Martinus Nijhoff publishers.
- Dimitrijevic, V. 2001.International Human Rights monitoring mechanism, in Gud munder Alfredsson, state Report. Hague: Martinus Nijhoff publishers.
- Doerner, N. 1998. *Introduction to law Enforcement*. London: Hutchinson.
- Dowling, J.L. 1979.*Criminal Investigation*. New York: Harcourt Brace Jovanovich.
- Draft Law. 1961. Draft law of evidence of Ethiopia. Addis Ababa, unpublished.
- Drzemczewki, A. 2001. International Human Rights Monitoring Mechanisem in Gudmunder Alferdsson. Monitoring by Council of Europe. Hague,,Martinus Nijhoff Publishers.

- Drzewicki, K. 1999. *An Introduction to International Protection of Human Rights* in Rajja Hanski and Markku Suksi. Finland : Abu Academy University, Institution for Human Rights.
- Ethiopian Federal Police. 2003. *Annual Crime Report of Federal Police*. Addis Ababa, unpublished.
- Ethiopian Federal Police Commission. 2003. Proclamation no. 313/2003, 9th year No.30, Addis Ababa, 4th January, 2003). Addis Ababa. Brehanenna Selam Printing Press.
- Federal Police. 2006. *Manual for the Federal Police Intelligence and operation Division*, 2006. Addis Ababa, unpublished.
- EHRC. 2000. Ethiopian Human Rights Commission Proclamation No 210.2000. Addis Ababa, Berhanenna Selam Printing Press.
- Ethiopian Institution of Ombudisman, proclamation No.211, 2000. Addis Ababa, Berhanenna Selam Printing Press.
- EWLA. 2001. Ethiopian women Lawyers Association, bulletin, 2001. Addis Ababa. Artistics Printing Press
- Eyjolfsdottir, J.K. 2001. International Human Right Monitoring Mechanisms, in Gudmunder Alfredsson, Amnesty International: *A Candle of hope*. Hague: Martinus Nijhoff publishers.
- Fasil, N. 1997. Constitution for a National of Nation the Ethiopian Prospect. Asmara: the Red Sea Press.
- Feldman, D. 1993 .*Civil Liberties and Human Rights in England and Wales*. New York: Oxford University press.
- Fielding, N.G. 1995. *Community Policing*. Clarendon press: Oxford.
- Flinternam, C. & Henderson, C. 1999. *An Introduction to the international protection of Human Rights*, in Rajja Hanski and Markku Suksi (eds).

The African Charter On Human Rights. Finland: Abu Academy University Institute for Human Rights.

Fowler, M. 1987. *Thinking about Human Rights contending approaches to Human Rights*.vol.VI, 1987.Edited by Dennis P. Rosenbaum. Beverly Hills:Sage.

Freeman, C. 1988. *Human Rights: Today's world*. London: B.T. Batsford.

Fyfe, J. & Jand, L. 1997. "Police Administration" in Wilson,O.W. (1950).*Police Administration*. New York: McGraw Hill Book Company, fifth edition.

Gane, C. 1997. *Human Rights and the Adminstration of Justice*. International Insturments Boston, Kluwer Law International.

George, B.1969.*The Democratic Policeman*. Boston: Beacon Press.

Gilbert, J.N. 1986. *Criminal Investigation* 2nd edition Columbus:Charles E Merrill.

Girma, A. 1998. Paper presented to the international conference on the establishment of the Ethiopian Human right commission. Addis Ababa:Ethiopia,unpublished.

Goldstein, H. 1979. *A Problem Oriented Policing*. NewYork. Mc Graw-Hill,Inc.

Grimheden, J. 2001. International Human Right monitoring Mechanism, in Gudmunder Alfredsson. *The International Court of Justice in furthering the justifiability of Human Rights*. Hague: Martinus, Nijhoff publishers.

Hanski, F. & Marku, S. (eds) 1999.*The Concepts of Human Rights and their Extra-Legal Justification*. Finland: Abu Academic University press.

Harmen, V. & Krsticevic, V. 1999. *An introduction to the International protection of Human Rights*, In Raija Hanski and Markku Susksi(eds), *The OAS system for protection of Human Rights*. Finland : Abo Academic University.

- Horgan, J.J. 1979. *Criminal Investigation* 2nd edition New York:mc Graw-Hill.
- Human Rights National Institutions for the promotion and protection of Human Rights, facts sheet No. 19. 2002. Ethiopia Addis Ababa unpublished.
- Hunsungule, M. 2001. International Human Rights monitoring mechanism, in Gudmunder Alfredsson.*Protection of Human Rights under the Inter-American system*. Hague: Martinus Nijhoff publishers.
- Intelligence Division Operational Manual, 2006.Ethiopia : Addis Ababa.un published.
- John, M. 1974. *Ethiopian Anatomy of Traditional Policy*. Great Britain: Clarendon press
- Journal of the American Academy of Arts and Science, 1985:173. Washington D.C. unpublished.
- Jubert, C. 2001. *Applied Law for Police Officials*. Second Edition : Cape Town.
- Kelly, A. 1973. *Decisions in the penal process*. London: Lloyds of London press.
- Kirk, P.L. 1974. *Crime Investigation*. New York: Interscience.
- Kleinig, J. 1996. *The Ethics of Policing*. Cambridge University Press : London.
- Koul, L. 1997. *Methodology of Education Research*.3rd Revised Edition, Vikas Publishing PVL.
- Lab, P. 2004. *Crime Prevention Approach, Practice and Evaluation*. 5th Edition.
- Leedy, D. & Ormrod, J. 2001. *Practical Research: planning & Design*. 7thEdition. Ohio:

- Lersch, K. M. 2002. *Policing and misconduct*. Prentice Hall: Upper Saddle River.
- Ludes, F.J. & Gilbert, H.J.1951. *Corpus Juris Secundum*.
- Lyman, D. 1999. *Criminal Investigation and Edition*. Prentice Hall, Inc.: USA.
- Manual of Investigation for Federal Police of Ethiopia. Addis Ababa 2004.un published.
- Markos, W. S. 2002. *Police Problem and Democratic System In Ethiopia*. Paper Delivered At National Conference In Ethiopia, 2003. Addis Ababa.
- Mavrommatis, A. 2001. *International Human Right monitoring mechanisms*, in Gudmender Alfredsson. The first 10 years of the Human Rights committee Hague: Martinus. Nijhoff Publishers.
- Maxfield, M.G. & Babbie, E.1995.*Research Methods for Criminal Justice and Criminology*. Boston: Wadsworth.
- Meaza, A. 2003. *Human Rights Under African Constitution and Development in Ethiopia*. Philadelphia.University of Pennsylvania Press.
- Mehert, A. 2001. Paper presented to the workshop on Decentralization and Democracy in Merrill Prentice Hall.
- Merrill, J, G. 1999. *An introduction to the International Protection of Human Rights* in Raija Hanski and Markku susksi. The Council of Europe-Finland: Abuakademi University.
- Minasse, H. 1996. *The New Ethiopian Constitution - Its impact upon Unity, Human Rights and Development Research Paper*, university of Addis Ababa. Unpublished: Addis Ababa University Faculty of Law.
- Miller, E. D. L. 1984. *Question That Matter - An Invention to Philosophy*. USA McGraw,Hill Inc.

- Mogos, B. 1970. *Gizena Police*. Ethiopia : Addis Ababa, Artistic printing press.
- Mouton, J. 2001. *How to Succeed in your Master's and Doctorate Studies*. Pretoria: Van Schaik.
- Mukherjee, B. 2001. *International Human Rights monitoring Mechanisms*. Gudmunder Alfredsson (etal) 53rd session of the commission, on Human Rights Hague : Martinus Nijhoff Publishers.
- Mutua, M.W. 1995. *Democracy Rule of Law and Human Rights in Ethiopia* Addis Ababa: the Ethiopian Human Right council.
- National Crime Prevention Institute (NCPI), 2001:1, *Handing training investigation Learner's Guide*, South Africa, unpublished
- Neuman, W. 1997. *Social research methods: qualitative and quantitative approaches*. Boston: Allyn and Bacon.
- Newberg, P.R. 1980. *The politics of Human Rights*. New York: Ocean A publication Inc.
- No Lan, J.R. 1991. *Blacks law dictionaries*. West publishing co: USA.
- O'Hara, E. 1956. *Fundamentals Of Criminal Investigation*. Thomas Publisher: USA, Charles C.
- Penal Code of Ethiopia*.1957.Proclamation No.158,1957.Addis Ababa. Berhanenna Selam Printing Press.
- Penal Procedure Code of Ethiopia*,1961. Proclamation No. 7 Addis Ababa, Berhanenna Selam Printing Press.
- Pennegard, A.M. 2001. *International Human Rights Monitoring Mechanism Overview of Human Rights in Germander Alferedsson*.Hague: Martinus Nijhoff publisher.

- Piechowiak, M. 1999. *An introduction to the protection of Human Rights* in Rajja Hanski and Marku Suksi (eds), *The concept of Human Rights and their extra legal Justification*. Finland, Abu Academic University, Institute for Human Rights.
- Police Report. 2001. *Conference on Crime Investigation Held in Ethiopia* Addis Ababa, unpublished.
- Police Proclamation No. 6/42. 1942. Ethiopia. Addis Ababa. Berhanenna: Selam Printing Press.
- Police Proclamation No.8/92 1992. Ethiopia, Addis Ababa. Berhanenna Selam Printing Press.
- Ramcharin, B.G. 1982. *The concept and present status of International Human Rights protection, forty years after the universal Declaration* Boston: Martinus Nijhoff Publishers.
- Roymond, K. 1986: *Data Constriction and data Analysis for survey research*. London. Stevens and Sons.
- Rendell, M.J. 1978. *An Introduction to Political Thought - Key Writing from the Major Political Thinkers*. London: Sedgwick and Jackson Ltd.
- Robson. C. 2000. *Small Scale Evaluation Principle and Practice*. London: SAGE.
- Schmidt, C.W.H. 1989 &1990. *Bewysreg* 3rd edition Durban: Butterworth's.
- Simeneh, K. 2001. *The law of criminal procedure commentaries and exercise Ethiopia*: unpublished.
- Sieghurt, P. 1992. *International Law Of Human Rights*. Oxford: Clarendon Press.
- Singleton, R A. Jr. 1999. *Approach to Social Research*. Third edition Oxford University Press: New York.

- South African Police Service. 2002. *Basic Interview and Interrogation*. Detective and Crime Intelligence Academy, unpublished.
- South Africa Police Service. 2002. *Informer Handling Learners Guide*. Detective and Crime Intelligence Academy, unpublished.
- Sowle, C. R. 1962. *Police Power and Individual Freedom*. Oxford. Pergamon Press.
- Spencer, J.H. 1993. *Ethiopian at Bay*, Addis Ababa: commercial printing press.
- Steven, J. 2003. *Applied Community Policing in 21st Century*. London. University of Massachusetts.
- Sullivan, J. 2003. *Introduction to Social Problem*: Pearson educating. Inc Maclin USA 6TH edition.
- Swanson, R, Chamelin, N.C & Territo, L. 1981.*Crime Investigation*. Santa Monica: Good Year.
- Taylor, R.B. 1994. *Research Methods in criminal Justice*. Sydney: McGraw Hill.
- Technicon, South Africa. 2000. *Research & Information Management: Research Methodology*. Technicon SA. Florida, SA
- Tomasevski, K. 1999. *International Study on Human Rights, Hague*: Martinus Nijhoff publishers.
- Transition Period Charter of Ethiopia.1991. *Negarit Gazeta*, 50thYear, No. I, 1991, Addis Ababa : Berhanenna Selam Printing Press.
- Tsegaye, D. 2004. *Police and Ethics in Diversion*. Unpublished Teaching material.

- UN. 1945. United Nation charter. 1945. Article 55(c).New York. United Nations Publication.
- UN. 1984. United Nations Department of public Information. New York. United Nations Publication.
- Van As, M. 2001. *Research and Information Management IV and Research Methodology*. South Africa.
- Van Heerden, T.J. 1985. *Criminalistics*. Pretoria : Unisa.
- Van Rooyen, H.J.N. 2007. *Investigation* . Pretoria Henmar.
- Van der Westhuizen, J.B. 1996. *Forensic Investigation*. Second Edition, Heinemann Higher Further Education (Pty) Ltd Isando.
- Ward R.H. 1975. *Introduction to Criminal Investigation*. Massachusetts Addison-Wesley.
- William. J.R. 2003: *Towards a science of Behavior and Experience*. USA
- Wilson, O.W. 1950. *Police Administration*. New York: McGraw Hill Book Company.

ANNEXURE A

INTERVIEW SCHEDULE

SECTION A: Background Information.

1. Are you a criminal investigator?
2. If yes, for how long have you been a criminal investigator?
3. Did you undertake the basic training of crime investigation?
4. How long was this basic training?
5. Have you had training in how human rights relates to crime investigation?

SECTION B: Human Rights which has an effect on Criminal Investigation.

6. How will you define Human Rights?
7. According to your experience, what is the meaning of criminal investigation?
8. What are the objectives of criminal investigation?
9. What is the purpose of criminal investigation?
10. What is the meaning of Forensic investigation?
11. How crime investigation is initiated or started?
12. What, according to your experience, is the difference between criminal investigation and forensic investigation?
13. Which Human Rights in Ethiopia have an effect on the arrest of a person?
14. How does the section of the Human Rights affect the arrest of a person?
15. How does this section affect the investigation process?
16. Which Human Rights in Ethiopia have an affect on custody of an arrested person?
17. How does this section of the Human Rights affect the custody of an arrested person?
18. How does this section of the Human Rights affect the custody of an arrested person and influence the investigation process?
19. Which Human Rights in Ethiopia has an affect on the prosecution of an arrested person?

20. How does this section of the Human Rights affect the prosecution of an arrested person?
21. How does this section of the Human Rights affect the prosecution of an arrested person and influence the investigation process?
22. Which Human Rights section in Ethiopia guides the representation by an attorney of an arrested person?
23. How does the section of the Human Rights regarding representation conducted during crime investigation process affect the investigation?
24. How does this section of the Human Rights regarding representation affect the prosecution of an arrested person?
25. How does this section of the Human Rights affect representation of an arrested person and influence the investigation process?
26. Which Human Rights section deals with the supplying of information to the arrested person regarding the case?
27. How does the section of the Human Rights regarding the supplying of information to the arrested person regarding the case influence the investigation process?
28. How does this section of the Human Rights regarding the supplying of information to the arrested person regarding the case affect the prosecution of an arrested person?
29. How does this section of the Human Rights regarding the supplying of information to the arrested person regarding the case influence the investigation process?
30. Which Human Rights section in Ethiopia guides the interviewing of the arrested person?
31. How is the section of the Human Rights regarding the interviewing of the arrested person conducted?
32. How does this section of the Human Rights regarding the interviewing of an arrested person affect the prosecution of an arrested person?
33. How does this section of the Human Rights regarding the interviewing of the arrested person influence the investigation process?

SECTION C: Human Rights Most Neglected by Investigators.

34. What according to your experience is the meaning of an investigator?
35. Is it, according to your experience, important for investigators to have knowledge of the law?
36. What, according to your experience, are the duties of an investigator?
37. Which Human Rights are mostly neglected by investigators?
38. What influence, according to your experience, does it have on a case if the investigator neglects to adhere to Human Rights provisions during the investigation of a case?
39. According to your opinion, which measures should be implemented to ensure that investigators adhere to the provisions of Human Rights legislation?

Back ground Information of Suspects.

1. Why were you arrested? When were you arrested?
2. How were you seized by police? Was it with a court warrant or without?
3. How were you and your premises searched by police?
4. Were you allowed to meet with legal counsel and family whenever you requested this?
5. Did you give your statement to an investigator? What did he or she tell you before taking your statement?
6. Were you compelled by the investigator to give your statement by admitting to the case you were suspected of?
7. When were you arrested? How long were you kept in the police station?
8. Were you brought before court and within how many hours after being arrested?
9. Did the court permit remand for investigators?
10. How did police conduct the seizure, search, arrest and interrogation?

11. Did investigators force you to confess to the crime you were suspected of?

Back ground Information of Prosecutors.

1. For how long have you been working as a prosecutor?
2. Did you undergo training to be a prosecutor? Where and for how long did this training take place?
3. Do you work closely with the police?

Questionnaire

1. How do police conduct crime investigations?
2. How is crime investigation initiated or started?
3. How do police seize, search, arrest and interrogate suspects?
4. Do the investigators bring suspects before court within 48 hours?
5. Do the investigators finalize the investigation within a reasonable time?
6. Are there complaints about police (crime investigators) during investigations?
If so, about what issues are complaints made?
7. Is the right of a suspect not to be compelled to confess to the cases they are suspected of not violated by crime investigators?
8. Do the police apply human rights principles in the process of crime investigation?
9. Do you think there is ever a violation of human rights by Addis Ababa city police during crime investigation?
10. Do suspects deny their confession statement they gave to the police when they are brought before the court of law? If your answer is yes, why? What do they say about the statements they give to the police?
11. Which technique do crime investigators use to make suspects confess/admit to the crime they are suspected of?
12. Do police use suspects to teach society about dangerous criminal occurrences, through police media releases, as part of their crime prevention strategy before the suspects are convicted? Is this fair and legal?
13. What problems are associated with the way crime investigators treat suspects when conducting crime investigation?

14. What measures should be implemented to enable crime investigators to adhere to human rights principles without influencing the investigation process?