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ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES

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The Implementation of the Suspects' Rights Protection in *Gullele* Sub City
Police Investigation Department: Particular Emphasis on the Right to
'Presumption of Innocence'

By: Teferi Argaw Wodaj

Thesis Advisor: Anchinesh Shiferaw (LL.M)

A Thesis Submitted in Partial Fulfillment for the Requirement of the Degree of
Master of Arts for Human Rights at the Center for Human Rights, Addis Ababa
University

June, 2018

Addis Ababa, Ethiopia

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Declaration

I, Teferi Argaw, declare that this thesis is my original work and that where other works have been quoted; it is clearly indicated and all sources or materials used for this thesis have been duly acknowledged. This thesis is submitted in partial fulfillment of the requirements for the award of degree of Master of Arts in Human Rights to the College of Law and Governance, Addis Ababa University, through the Center for Human Rights. I confidently declare that this thesis never been submitted to this, or any other institutions.

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Acknowledgment

First of all I would like to thank the Almighty God for His blessing and help throughout my life. Second, I would like to express my deepest gratitude and heartfelt thanks to my thesis advisor, for her genuine and valuable constructive comments she made on the draft version of this paper. Thank you for inspiring me to do the best I can.

I also want to thank Commander Tariku Mengesha, Com. Woletaw Desse and Chief Inspector Meseret Fantaye who helped me in facilitating conditions for collecting data from five police stations. My thanks are also due to the individuals and government Representatives who generously provide me information I needed from them. Third, I would like to thank my wife Konjit Chekene; my thanks also go to my intimate friends Assefa Mulugeta and Kuma Beyene for their encouragement and patience throughout this study. All my friends especially my class mate Adam Dagn, and other peoples who helped during the work of this thesis had many thanks.

It is also my pleasure to express my heartfelt thanks to a number of people and institutions for their help and support in the process of producing this thesis. I would also extend great indebtedness to all my informants who unreservedly provided me with valuable inputs, without whom this thesis would not be accomplished. Thank you all for your supports.

Acronyms

AAGSCPID	Addis Ababa <i>Gullele</i> Sub-City Police Investigation Department
ACHPR	African Charter on Human and Peoples Rights
AU	African Union
BPR	Business Processing Reengineering
CAT	Convention against Torture and Other Cruel, in-human or Degrading Treatment or Punishment
CPC	Criminal Procedural Code
CRC	Convention on the Rights of the Child
ETB	Ethiopian birr
EIS	Early Intervention Systems
EHRC	Ethiopian Human Rights Commission
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
POI	Presumption of Innocence
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNECA	United Nations Economic Commissions for Africa

Abstract

This study assesses and evaluates the practical implementation of suspected person right at pre-trial stage with particular emphasis on the principle of presumption of innocence. It is carried out in five police detention centers found in Gullele sub city of Addis Ababa. The implementation of the principle of presumption of innocence at pre-trial stage of Criminal Administration in light of major national, regional and international human rights instruments is rarely treated in different literature. Thus, the main objective of this thesis is to fill this gap by assessing the implementation suspected person right in general and the presumption of innocence in particular at pre-trial stage of police detention centers by taking Gullele sub city police stations at the study area. To realize this intended objective the study employed qualitative research approach. Important data for the study were collected both from primary and secondary sources. Primary data was obtained through interview, Focus group discussion and participant observation whereas secondary data from different literatures, government files and legal documents are reviewed. Interview and focus group discussion were made with key informants from criminal suspects, investigating police, prosecutors, lawyers, judges, head of police stations and Justice Office. In interview and focus group discussion a total of 44 respondents are participated. In this study both simple random sampling and purposive sampling have used to draw a sample representation from the existing population. The findings of this study revealed that the principle of presumption of innocence in particular and suspected person rights in general has been violated in police detention center in the study area. For such violation the study also revealed that there are individual, institutional and the legal factors. The study has identified that sometimes police are arresting individuals without evidence, criminal suspects are not brought to court in the specified time, absence of notification of rights, long pre-trial detentions, condition of detention in police custody are below the minimum standard and absence of external monitoring system are major problems. Finally, the researcher has made recommendations that could address the existing problems.

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CHAPTER ONE

1. Introduction

1.1. Background of the Study

The protection of human rights should practically be realized when all government agencies function in line with the universal principles of human rights.¹ 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.² In any society the police are organized with the responsibility of keeping peace and order, ensure the rule of law, justice, and prevention of crime as well as protection of human rights.³ 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.⁴ The police are expected to comply with the arrest, search and seizure procedures designed to ensure the protection of human rights.

However, 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 pertaining to the human right principles but also the necessary institutional mechanisms that contribute to the proper application of human right principles are missing.⁵ The duty of the government to protect the human rights of individuals against public and private invasions is possible mainly through the proper discharge of the function of the police.⁶ From this, it appears that the duties and functions of the police are closely related to the protection of human rights.

¹ 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,p.68-69

² Ibid,p.149-150

³ Wilson, O.W. 1950.Police Administration. New York: McGraw Hill Book Company,p.17

⁴ Criminal Code of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazzeta, Proclamation No. 414/2004, Article 422.

⁵ Human Rights National Institution for the promotion and protection of Human Rights, facts sheet No.19:3-5

⁶ Crawshaw, F.D.1998.Human Rights and policing. Botson: Klawer Law International,p.9

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.⁷ 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.⁸ They are envisaged to enable the police to perform their functions without authorizing an unwarranted and undue interference against individual rights and freedom.

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. 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.⁹ 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.¹⁰

In light of the above, the Addis Ababa City Police Commission should perform its tasks in accordance with the Ethiopian law and other necessary international and regional legal documents ratified and adopted by Ethiopian government, so that trust and public confidence can easily be attained between police and the community. According to the Addis Ababa City Charter Proclamation (No.311/2003), 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. Hence, human rights are a great concern for the national government and the international community at large. Thus, the Addis Ababa Police Commission gives investigation due consideration in light of the dignity of human beings

⁷ Ibid, p.9

⁸ Ibid, p.10

⁹ 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.p.65

¹⁰ George, B.1969. The Democratic Policeman. Boston: Beacon Press.p.21

as proclaimed in the proclamation of its establishment.¹¹ The violation of human rights during investigation has a negative impact on suspected person, the community and the government. Therefore, the main purpose of this paper is to assess as to whether the human rights of suspected person especially the constitutionally guaranteed rights meaning presumption of innocence of suspected is protected or respected by Addis Ababa police in course of investigation by taking *Gullele* sub-city police departments as a case study area. In addition, this study attempts to shade lights on some important measures that shall be taken to protect the presumption of innocence during investigation, if there is /are violations of right in due course.

1.2. Statement of the Problem

The presumption of innocence dictates that one is presumed innocent until it is otherwise proved.¹² It refers to the fact that burden of proof regarding the guilt of the person is on the one who declares, not on the one who denies it.¹³ As such the prosecution bears the burden of proving the guilt of the suspected by collecting and presenting to the court of law legally admissible evidence that can convince beyond reasonable doubt or clear and convincing evidences. This is right of suspected person in a criminal trial. According to major international, regional and national human right instruments such as the Universal Declaration of Human Rights (UDHR) (Article 11), the International Covenant on Civil and Political Rights (ICCPR) (Article 14(2)) ,the Convention Against Torture (CAT) (Article 15 or 16(1)), the African Charter on Human and Peoples’ Rights (ACHPR) under Article 7 (1) (b) and the Criminal Procedure Code of Ethiopia(CPC), (Article 141 and 142), and Article 19 and 20(3) of the 1995 FDRE constitution have also recognized this right to presumption of innocence until proven guilty.¹⁴ The government organ especially police and public prosecutors that have a duty to

¹¹Addis Ababa City Charter, Charter of Addis Ababa City,Proclamation.No.311/2003.Addis Ababa, Berhanenna Selam printing press,2003

¹²International Covenant on Civil and Political Right (ICCPR) 1966, Article 14(2).

¹³Ryan, Andrea, Towards a System of European Criminal Justice: The Problem of Admissibility of Evidence (Routledge, 2014), p.114

¹⁴ See UDHR article 11, ICCPR Art.14(2), African Charter on Human and Peoples' Rights Art.7 (1) (b), Convention on Convention Against Torture (CAT) Art.15, The Criminal Procedure Code of Ethiopia, Article 141 And 142, the 1995 FDRE constitution under article 19 and article 20(3).

collect evidence that show the commission or omission of that act that provide for suspected right to be presumed innocent is liable for the alleged Criminal offence.¹⁵

The Addis Ababa police commission is established by Addis Ababa city charter proclamation No.311/2003 with a duty of maintaining peace and order, and at the same time entrusted to protect the fundamental rights of citizens.¹⁶ In other words, it is responsible for the prevention of offences and also at the same time abides by national, regional and international laws in due course of interrogating the person who are suspected of committing different criminal offences.

There are many researches on presumption of innocence. For instance, Simeneh Kiros, under his article entitled, *“The principle of the presumption of innocence and its challenges in the Ethiopian criminal process”*.¹⁷ He claimed that; there are various provision in the criminal law that limit (or arguable disregard) the constitutional principle. Such criminal law provisions assume as proved the existence of some of the elements of certain crimes without requiring the public prosecutor to submit evidence. So, the focus of his article is own showing legal norms that contravene the presumption of innocence as promulgated in 1995 FDRE constitution and other regional and international instruments.

Similarly, study by Addisu Gulilat on the other hand under the title *“The human rights of detained persons in Ethiopia: Case study in Addis Ababa”*¹⁸ show that treatment of detained persons expectations as it found challenges such as treatment based on sex, age, illness and nature of criminal; lack of organized and continuing education and training and absence of viable compliant hearing mechanism. Thus, the theme of this thesis is on violations of different rights of detainees except the presumption of innocence. Meaning the presumption of innocence of detained person has not exhaustively dealt in this paper.

According to Gebrehiwot Hadush, *“The legal limits to the police custodial interrogation methods: a comparative look at the British and Ethiopian interrogation laws”*. In this thesis, He

¹⁵ FDRE Constitution under article 20(3).

¹⁶ Charter of Addis Ababa City, supra note 11, Proclamation No.311/2003.

¹⁷ Assefa, S. K. (2012, December). The Principle of the Presumption of Innocence and its Challenges in the Ethiopian Criminal Process. *Mizan Law Review*, 6(2), 273-310.

¹⁸ Thesis on Addisu Gulilat under the title “the human rights of detained persons in Ethiopia: Case study in Addis Ababa”, December, 2012.

investigated that the legal safeguards and institutional mechanisms, that shape and govern the interrogation process in Ethiopia are too general and lack clarity to protect detainees against systematic abuses during interrogation.¹⁹ The focus of this thesis is also on showing the gaps within legal norms and institution entitled to make interrogations. Moreover, it is a comparative study of Britain and Ethiopia that did not shows practical situations in Ethiopia with regard to the presumption of innocence.

Thus, in general, the practical implementation of principle of innocence in the police stations that empowered to make interrogation has never been separately and properly addressed by these researchers and others. So, the main aim of this thesis is to fill this gap and investigate the practical implementations of the principle of presumption of innocence in course of interrogation in police stations in light of international, regional and national legal framework by taking *Gullele* sub city police stations as study area. This research is conducted on the suspects under investigation in crimes related to robbery and snatching; Armed with robbery; Homicide; attempted Homicide; various thefts; Auto theft; Theft of goods from motor car; Auto theft of goods; Pick pocket; Burglary; Assault and Injury; and Various social related crimes. These wide ranges of crimes are selected to get the real pictures of the states of the right under considerations. I took *Gullele* sub city my study area due to the wide spread of the above stated crimes in comparison with other sub city. Furthermore, the researcher has adequate knowledge and experiences to carry out and also develop recommendations that can possible the problem.

1.3. Objectives of the Study

1.3.1. General objective

The general objective of this study assesses and evaluates the extent to which crime investigators in Addis Ababa *Gullele* sub-city police the practical implementation of suspected person right at pre-trial stage with respect to the principle of presumption of innocence during the process of investigation.

¹⁹ Thesis on ,Gebrehiwot Hadush, “the legal limits to the police custodian interrogation methods: a comparative look at the British and the Ethiopian interrogation laws”, 2014

1.3.2. Specific objectives

The specific objectives of this study are:-

- Examining the criminal investigation process and mechanism in the area under study and its effectiveness in respecting human rights of criminal suspects in the presumption of innocence.
- Assess the criminal investigation mechanism in line with rights of suspects" person particularly the rights of the presumption of innocence at a pre-trial stage.
- Understanding different existing legal instruments and policy frameworks that promote and protect presumption of innocence.
- Identify the procedures investigators followed during the investigation process with respect to human rights standards.
- Suggest possible recommendations for the problems which could be revealed as research findings.

1.4. Research Questions

This study has attempted to address the following research questions;

- What are the challenges of implementing the right to presumption of innocence?
- What are the legal or the normative instruments that promote or protect the presumption of Innocence?
- What are the pre-trial rights of individuals suspected of certain crime and are the investigating authorities have deep understanding of these presumptions of innocence rights?
- How the *Gullele* sub-city police interrogation during investigation of criminal suspects are violated the right to presumption of innocence in due courses?

1.5. Significance of the Study

This research will contribute to the government and society in general and the criminal investigator in particular to identify problems related to crime investigation process. Especially, it will have a far reaching importance for police and prosecutor who are usually at the front of crime investigation, to identify their weakness on protecting fundamental rights of individuals during their investigation. It will give a recommendation on the problems identified so that any concerned body can take measure on those problems to realize the respect of suspects' rights of the presumption of innocence during criminal investigation. It will also contribute to the existing knowledge and used as reference for further studies of the related topics. Furthermore; this study contributes to the gap of the research on the topic.

1.6. Scope of the Study

Because of the complexity of police work, this research has focused only on the field of criminal investigation particularly in *Gullele* sub-city police investigation department has studied. To make the research manageable within the allocated time and resources, the scope of the study is limited to both thematic and geographical scopes. Thematically, it assessed the right to presumption of innocence of suspects' in *Gullele* sub city. While, geographically, the study is delimited to some selected Addis Ababa police special the five police stations of *Gullele* sub-city that are include *Addisu Gebeya, Paster, Mennen, Kechene, and Shiro Meda* area police stations centers. The Addis Ababa Police Commission has been organized into ten sub cities; consists of 10 police department and 116 numbers of woredas. At the proposal stage the plan from these *Gullele* sub-city police department five police stations are selected purposively based on their convenience for collecting data. The study only covers human rights pertaining to individuals undergoing protection of suspects' of presumption of innocence pre-trial criminal investigation. Therefore, emphasizes is given to pre-trial right of suspected person that are recognized in international, regional and national human rights documents and ratified by Ethiopia.

1.7. Limitation of the Study

This study was conducted within two major limitations. The first and foremost limitation was key informants don't have willingness of participants in freely discussion to participate in the study and to provide accurate information by fear of consequences. Secondly, due to lack of sufficient time, information could not be solicited from all parties that may have been pertinent to the issue; particularly it was challenging to conduct the focus group discussions with suspects due to security purpose. In addition, due to financial and time constraint the study is geographically limited to the capital, Addis Ababa. Due to these two major among many limitations the paper might miss some important points.

1.8. Methodology of the Research

This research is followed a qualitative research approach. Qualitative research is important to select because of its very helpful contribution to gather firsthand information and involves collecting a variety of empirical materials, case study, personal experience, interviews, observational, historical, interactional and visual texts that describe routine and problematic meaning in individuals' lives.²⁰ It is mainly to measure to what extent human rights are respected in the process of criminal investigation and to know the experience and feelings of individuals suspected of crime.

1.8.1. Study Design

The researcher has followed an empirical research design. The writer of this research has conducted studies of police in which their conclusions were based on experience or observation. It is one way of knowing things about crime and criminal justice.²¹ The production of knowledge was necessary in this research because it is on an existing problem in the police on which there is no adequate materials on topic under study. Moreover, the research topic is focused on

²⁰ Creswell, J. W.1998 .*Qualitative Inquiry and Research Design: Choosing among the Traditions*. California. Sage.p.15

²¹Maxfield,M.G. & Babbie, E.1995.*Research Methods for Criminal Justice and Criminology*.Boston:Wadsworth,p.4

investigation, an area in which the researcher has adequate knowledge and experience to carry out.

1.8.2. Sources of Data

There are two major sources for any study to gather data using the more appropriate data gathering instrument, these are primary and secondary sources. The primary data sources are those from which a fresh and a firsthand data have available. The secondary data sources on the other hand, contain those data which have already been available and has collected. The researcher has gathered and review information from primary sources such as interviews, participant observation and secondary sources from different literatures; journal, government files and legal documents. As stated earlier, the objective of this study is to explore the implementation of the suspects' rights with emphasis to the right to innocence protection in Addis Ababa Police Commission in *Gullele* sub city investigation department. Accordingly, the target populations of the study are the suspects, the investigators/police officer, prosecutor, lawyers and judges found in this sub city.

1.8.3. Sampling Techniques and Sample Size

The population in this study comprises of crime suspects, investigating police officers and prosecutors. Different types of techniques, procedures and steps have employed to select the sampled suspects, investigators, prosecutors, lawyers and judges. In this research proposal both simple random sampling and purposive sampling have used to draw a sample representation totally 44 respondents are participated from the existing population. In simple random sampling every unit of the population has a known, non-zero probability of being selected.²² It is a common and preferable in a probability sampling technique because its selection procedure is the best way to avoid bias.²³ Purposive sampling has been used to select a sample of police station up on which the investigation was made. Because of this type of sampling technique helps the researcher to select the respondents based on knowledge about which ones has the most useful or

²² Kultar Singh (2007), Quantitative Social Research Methods. P.103

²³ Mike M.C and Wing H.C (2007), Research Methods for Law, Edinburgh University Press. p. 55

representative respondent that have an insight understanding on the issue or on the area under discussion.

Accordingly, the researcher selected twenty suspects (from a total of 35), ten investigators (from a total of 25), five prosecutors (from a total of 10), three lawyers (from a total of 5) and three judges (from a total of 5). To select both the suspects and the investigators, the researchers are employed the simple random sampling technique. The specific procedure that has followed while selecting the 20 suspects of various crimes from the five police stations is such that the researcher first obtained lists cases of suspects from each of the five police stations and asked another person to randomly call numbers ranging from 1-35 and 1-25 respectively. In addition, to select the prosecutors, the lawyers and judges, the researcher has 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.

1.8.4. Instruments of Data Collection

As a qualitative study, different kinds of tools have been employed to gather information from primary and secondary sources. Major data gathering method to be used to gather information for this particular study has been in-depth interview, Focus Group Discussions (FGD), Participant observation, and document review.

1.8.4.1. 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. An interview schedule has been developed with due consideration to the research questions in particular and the objective of the research in general. The schedule has organized in semi-structured and open ended formats and has been 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. In-depth interviews 20 are suspects and 10 are participants, totally of 30 informants are interviewed for this study. Among this 11 of them are female while 19 are male.

1.8.4.2. Focus Group Discussions (FGD)

The method of Focus group discussions has been employed by the researcher to obtain information useful to this study. For the purpose of this study, two FGD group was conducted. In the first round a total of 10 discussants are participated from police officers, prosecutors, and heads of investigators. The second FGD was conducted with lawyers and judges and a total of 4 discussants are participated, totally of 14 informants are participated FGD for this study. But it was challenging to conduct additional FGD with suspects“ due to security purpose.

1.8.4.3. Participant Observation

To get a deep understanding about the case under study, observation is critical. In the progress of the study to know the police direction, whether achieve its desired outcome or not, as well as whether police investigation applying in its desired way, the researcher has made an observation on certain selected police station areas of *Gullele* police department. Particularly studied with special five police stations area *Addisu Gebeya, Paster, Mennen, Kechene, and Shiro Meda* area police stations, which are the scope of this research case study under investigation. In participant observation the researcher developed observation checklist to assess treatment standards in detention centers.

1.8.4.4. Document Review

Different international and national human rights documents which have direct relation to the topic were analyzed in relation to their practicality. These documents include FDRE

Constitutions, UDHR, ICCPR, and different principles, guidelines and standards on the rights as well as treatments of suspected and detained persons. In addition to these, relevant literatures like books, journals and research paper were used as other source of information for this study. Furthermore, various documents found in the study area include suspect handling of reports, pamphlets, memorandum, training manuals, guidelines and standards on the rights as well as treatments of suspected and detained persons were used as other source of information for this study.

1.9. Ethical Considerations

By taking into consideration, the sensitivity of the issue under study the researcher has taken different measures to comply with ethical consideration for the research. The researcher collected data depending on the principles of *informed consent*²⁴ by explaining the purpose of the research to the participants and that participation is only voluntarily. All participants have been required to give informed consent prior to participating in the study. Depending on the interest of the informants confidentiality of the interviewee have been protected. Different measures were taken to protect the participant from harm that may result from uncovering information during interview. The identity of complainants and key informants has been kept anonymous and confidential. The researcher also takes other measures while collecting data and asks for different government documents by being patient and approaching friendly with the informants. This has helped the researcher for gathering valid and reliable data from the informants.

1.10. Organization of the Paper

The research has been organized into five chapters. The first chapter provides an introduction to the study, which includes background of the study, statement of the problem, objective of the study, scope of the study, research methodology, significance of the study, limitation of the study and ethical consideration. The second chapter has been employed literature reviews and provides conceptual frameworks of the issue and the existing legal instruments that promote or protect the

²⁴ Jane R. and Jane L. ,2003 p.76

presumption of innocence. Chapter three is devoted to analysis of human rights of criminal suspects of presumption of innocence. Here, the contents of pre-trial rights of suspects recognized in the conduct of interrogation during investigation and the common mechanisms that widely used by police during interrogation process has been thoroughly discussed. Chapter four deals with analysis of data collected from various sources through different methods and finding of the research for the implementation of Presumption of Innocence in *Gullele* Sub-City Police Investigation Department. The final chapter is dedicated to conclusion of research and recommendations for implementation of the findings. At the end, bibliography and appendixes have provided.

1.11. Operational Definition of Key Terms

It is important to define terminologies with a view of clarifying the concepts related with the study. For this purpose the key theoretical concepts of this study are explained below:-

Crime: - crime is an act, which is prohibited and made punishable by law. The Criminal Code of Ethiopia put the definition of crime as; *“Crime is an act, which is prohibited and made punishable by law. In this Code, an act consists of the commission of what is Prohibited or the omission of what is prescribed by law”*.²⁵

Suspect: In criminal law, a suspect is someone who is under suspicion, often formally announced as being under investigation by law enforcement officials. The Ethiopia Criminal Procedure Code of Ethiopia put the definition of suspected person as; *“Where the investigating police officer has reason to believe that a person has committed an offence, he may by written-summons require such person to appear before him”*.²⁶

Police: The Amharic dictionary published by Ethiopian Linguistic study and research institute defines it as when we hear the word police we simply understand that it is a governmental organ that is indebted in the activities of ensuring the peace and security of the society, prevention of

²⁵ Criminal Code of Ethiopia pro.no.414/2004, supra note 4, Article 23.

²⁶ Ethiopia Criminal Procedure Code of Ethiopia.1961,Article 25

crime and investigation of committed crimes.²⁷ According to Walker (1977), the purpose of the police service is to uphold the law fairly and firmly; to prevent crime; to pursue and bring to justice those who break the law; to keep a country's peace; to protect, help and reassure the community; and to be seen to do this with integrity, common sense and sound judgment. This suggests that different countries possess different structural policies that define the duties and powers of the police force and regulate their functions.²⁸

Criminal Investigation: - is the process of legally gathering evidence of a crime that has been or is being committed. The ultimate goal is to determine, to the extent possible, the truth about how a crime occurred.²⁹ It is the process of examination that the police use to discover the truth when the law is breached by suspects.

Human Rights:- According to *De Rover 1998*, 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.³⁰

Presumption of innocence: -is fundamental and the cornerstone of the criminal justice system. It is an essential safeguard of a suspected person that he is presumed innocent until proved guilty.³¹ The right to be presumed innocent is one of the fundamental fair trial rights which is guaranteed under global, regional and under the FDRE constitution to protect the right of persons charged for criminal matters.³²

²⁷ Abiyou Girma (2013), the police and Human rights in Ethiopia. Available at www.abysiniaweb.com

²⁸ Walker, Samuel (1977). *A Critical History of Police Reform: The Emergence of Professionalism*. Lexington, MT: Lexington Books p.143.

²⁹ Brown, M. F. (2001). *Criminal Investigation: Law & Practice*. 2nd edition. Butterworth-Heinemann, p.3

³⁰ De Rover, C. 1998, supra note 1, p.68

³¹ Assefa, S. K. (2012, December), supra note 17, p.273-310.

³² The FDRE constitution under Article 20(3).

CHAPTER TWO

2. Literatures Review and Legal Frameworks

2.1. Introduction

This chapter presents a review of a related literature written on the topic under study, the topic directly related to concepts that mainly address issues of the presumption of innocence rights, the existing legal or normative instruments that promotes or protect presumption of innocence, the rights of suspects and their application of the principle, and the mechanism of police at the time of the pretrial investigation processes. Making this classification will help the researcher 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, research abstracts and journals. The researcher sought to find answers to questions by studying international, regional and national research proceedings, sources and experiences.

2.2. Conceptual and Legal Framework of Presumption of Innocence

2.2.1. Concept of Presumption of Innocence

The concept of presumption of innocence is fundamental and the cornerstone of the criminal justice system. It is an essential safeguard of a suspected person that he is presumed innocent until proved guilty.³³ The right to be presumed innocent is one of the fundamental rights which are guaranteed under international, regional and under the FDRE constitution to protect the right of persons charged for criminal matters.³⁴ The concept was first developed by Thaher and further clarified by Dean Wigmore.³⁵ Those scholars agree that presumption of innocence is required for public purpose that a person suspected of crime shall be treated with utmost fairness by shifting the burden of proof on the side of the state. As Wigmore argued, suspected persons are given the benefit of all reasonable doubts in the process to ensure the absence of prejudice for the mere

³³ Assefa, S. K. (2012, December), supra note 17, p. 273-310.

³⁴ The 1995 FDRE constitution ,Article 20(3)

³⁵ The Presumption of Innocence in Criminal Cases,3 Wash.& Lee L.Rev.82 ,Volume 3,Article 6, 1941, P.82

fact that they were arrested or subjected to trial.³⁶ He forwarded that presumption of innocence is synonym with the concept of burden of proof that the suspected is presumed to be innocent and the prosecutor has a burden of proof. The rationale behind presumption of innocence is to avoid the risk of suspecting innocent individuals that might be manipulated by state in the course of criminal justice administration by imposing the burden on the state to treat the suspected as innocent until it is decided by fair trial proceeding that he/she is innocent/guilty.³⁷ FDRE constitution provides that suspected persons have the right to be presumed innocent until proved guilty according to the law.³⁸ The constitution imposes the duty to presume persons suspected of crime as innocent as long as no guilty verdict is rendered against them. So, in Ethiopia it is a constitutionally guaranteed right which shall be respected and protected by all organs of state at all levels.³⁹

The constitution provides for suspected right to be presumed innocent which is to show that it is a duty of the prosecutor to prove that the suspected is liable for the alleged criminal offence. With regard to presumption of innocence and burden of proof, Simeneh argues that presumption of innocence shifts the burden on the prosecutor to convince the court. It is provided that during proceedings suspected persons have the right to be presumed innocent until proved guilty according to law and not to be compelled to testify against themselves.⁴⁰ He further contends that there are legislations found to limit this right by shifting the burden of proof to the suspected despite the absence of any exception to the right of presumption of innocence by the constitution.⁴¹ The legislations that shift the burden of proof on the suspect are: First, there are various provisions in the criminal law that limit (or arguably disregard) this constitutional principle. Such criminal law provisions assume as proved the existence of some of the elements of certain crimes without requiring the public prosecutor to submit evidence. Second, the Criminal Justice Administration Policy adopted in 2011 contemplates shifting the burden of

³⁶ Ibid, P.82

³⁷Worku Yaze Wodage, Presumption of Innocence and the Requirement of Proof Beyond Reasonable Doubt: Reflections on Meaning, Scope and their Place under Ethiopian Law” in Wondwossen Demissie (Ed.), Human Rights in Criminal Proceedings: Normative and Practical Aspects, Ethiopian Human Rights Law Series, Vol.III,2010, p. 118

³⁸ FDRE Constitution, Art .20(3), See also Articles of 11(2) UDHR and 14(2) ICCPR.

³⁹ FDRE Constitution, Article 13(1).

⁴⁰ FDRE Constitutions, Art 20(3)

⁴¹ Simeneh Kiros Assefa, supra note 17, pp. 287-288

proof to the defendant in selected serious crimes. Third, the courts also wrongly shift burden of proof to the suspected regarding certain facts in various court decisions. These laws and judicial practices deprive the suspected of the right to be presumed innocent until proven guilty.⁴² He also noted that neither general nor specific limitations are imposed on the right.⁴³ The constitution has clarified grounds for restricting those constitutionally guaranteed rights.⁴⁴ Creating exceptions to these rights by other legislation is unconstitutional since the constitution itself declares such laws null and void.⁴⁵ Therefore the constitution does not allow for exception to the right to be presumed innocent like in the case of the right to life and liberty.⁴⁶ It is to mean that there is no constitutional ground to create any restriction on the right to be presumed innocent.

2.2.2. The History of the Presumption of Innocence

The idea for the presumption of innocence, and more specifically that the prosecutor has the burden of proof comes from the Roman times.⁴⁷ Some argue that the idea originates from even earlier times and from the Babylonian law.⁴⁸ In written form the presumption of innocence can be found in the *Corpus Juris Civilis* collection from around the year 530 BC. According to the Justinian Code the prosecutor was obligated to prove the suspecting and the evidence had to be definite and unquestionable.⁴⁹ Modern law systems can be roughly divided into two different traditions, which are Civil law and Common law.

The historical basis of the presumption of innocence differs between these traditions. The continental European legal systems represent Civil law and their basis is more or less directly drawn from ancient Roman law and also the presumption of innocence has been adopted from Roman law. During earlier medieval times the principles of Roman law were, however,

⁴² Ibid,p.287-289

⁴³ Ibid,p.288-289

⁴⁴ FDRE Constitution, Article 15, 17(1) and (2)

⁴⁵ FDRE Constitution, Article 9(1)

⁴⁶ Simeneh Kiros Assefa, supra note 17,pp.288

⁴⁷ Stumer,A.The Presumption of Innocence – Evidential and Human Rights Perspectives. Oxford, Hart Publishing2010, p 1.

⁴⁸ Sassoon, J. Ancient Laws and Modern Problems: The Balance between the Justice and a Legal System. London,Third Millenium 2001, p.42.

⁴⁹ Justinian Code, Book IV, Title 19, Clauses 23 and 25.George W.Hopper Law Library, College of Law, University of Wyoming. www.uwyo.edu/lawlib/blume-justinian/ajc-edition-1/book-4.html.

displaced by religious law. There was no use for requiring conclusive proof as the final assertion of the guilt of the suspected was left by the procedure of trial to the absolute decision of God.⁵⁰ However, in 1215, the lawyers needed to acquire principles and procedures to make sure fact-finding was accurate with the elimination of the trial by ordeal pursuant to an order of the Lateran Council.⁵¹ For Canon law lawyers the Roman law was a valuable source comprehending the proof related principles and found that guilt should not be presumed but proved.⁵² Within Common law tradition the person who specifically referred to a “presumption of innocence” was a canonical lawyer named Johannes Monachus who died in 1313.⁵³ In England, the final decision concerning the guilt of the suspected was made by a jury and there probably was a possibility to acquire a conviction even without any real evidence other than the suspicion of the grand jury.⁵⁴ Ideas of proof in Roman law, however, placed the foundation for the acknowledgement of the principle that a person should not be convicted without strong evidence of the guiltiness.⁵⁵ In his famous collection Commentaries on the Laws of England first published in 1765, Sir William Blackstone recognized that convicting the innocent was a serious injustice and it also expressed a powerful need for certainty in the proof of guilt.⁵⁶

As legal representation became more customary in criminal trials by the middle of the 18th century, the concept of the presumption of innocence became to be commonly used by defense counsel to express the need for the proof of guilt.⁵⁷ Judges, however, were slower to adopt the presumption of innocence or even acknowledge that the suspected should receive the benefit of the doubt when facing charges or even facing their guilt.⁵⁸ *Ergo*, once the prosecutor had made their case and presented evidence that proved that the crime did happen and the suspected is guilty, the suspected had the burden to present exonerative facts that would prove their

⁵⁰Thayer, J.A Preliminary Treatise on Evidence at the Common Law. London, Sweet and Maxwell 1898, pp. 34-39.

⁵¹ Fraher, R. Conviction According to Conscience: The Medieval Jurists’ Debate Concerning Judicial Discretion and the Law of Proof. Law and History Review 1989, 7(1), p 23

⁵² Stumer, *supra* note 47, p 2.

⁵³ Pennington, K. Innocent until Proven Guilty: The Origins of Legal Maxim. The Jurist 2003, 63, pp 106-124, p.115.

⁵⁴ Stumer, *supra* note 47, pp. 2-3

⁵⁵ Baker, J. Criminal Courts and Procedure at Common Law 1550-1800. Crime in England 1550-1800. Cockburn, J. et al. London, Methuen, 1977, pp. 15, 39.

⁵⁶ Blackstone, W. Commentaries on the Laws of England: Book the Fourth. Oxford, Clarendon Press 1769, p 352

⁵⁷ Stumer, *supra* note 47, p. 3.

⁵⁸ Stumer, *supra* note 47, p .4

innocence. This made into a rule that the suspected had the burden of proof with respect to any “exception, exemption, proviso, excuse or qualification”.⁵⁹

The justification for the burden of proof of the suspected was found on the basis where the thought was that the burden of proof of the prosecutor would raise a presumption towards the suspected.⁶⁰ The history of the presumption of innocence is somewhat different in Civil law and Common law traditions but since the end of the 18th century, it has been recognized and used in legal proceedings within both traditions. The role and importance of the presumption did, however, gain its present status only during the 20th century with the modern basic human rights ideology.

2.2.3. Significance of the rights of Presumption of Innocence

The significance of presumption of innocence and its absolute protection by the constitution is to protect the rights of innocent individuals involved in the criminal proceedings. The Criminal Justice Administration Policy adopted by the Council of Ministers in 2011 anticipates shifting the burden of proof to the suspected will create substantial impact on the right of innocent individuals charged of crime.⁶¹ These provisions of the presumption of innocence allow for the implication that the suspected person is presumed to be innocent unless the prosecution has proved the defendant is guilty within beyond a reasonable doubt. This is because the world’s trends of democratization encouraged human rights issues and, are being a burning and sensitive issue. As a result, all people must find that the public prosecution has responsibility for the burden of proving the defendant is guilty beyond a reasonable doubt.⁶² It is quite clear that state and private individuals do not have equal power and resources in investigation and in gathering of evidences. Remanding individuals affect their right to produce evidence as defense while they are under custody. Hence, shift the burden of proof to the suspect will result in unfair trial of the proceedings, which might also be erroneous suspicion of individuals that could contribute for the occurrence of wrongful convictions.

⁵⁹ Stumer, supra note 47, p .5.

⁶⁰ Stumer, supra note 47, p .6

⁶¹The Criminal Justice Administration Policy adopted on March 4, 2011 by the Council of Ministers contemplates transforming the criminal justice Administration, Article 5(3)

⁶² Shealy, M. W. (2013).A Reasonable Doubt about “Reasonable Doubt”. Oklahoma Law Review, 225-302.

In addition to the absolute protection of presumption of innocence, there are contentions that there is a distinction on the beneficiary of the rights that the constitution provides for the right to be presumed innocent for persons suspected of crime.⁶³ The right to presumption of innocence is narrow in a sense that it is conferred for persons facing criminal trial and does not include persons in the pre-trial stages. However, rights provided in chapter three of the constitutions shall be interpreted in line with conforming to the international principles of human rights. International principles of human rights provide that the right to be presumed innocent should be applicable to both pretrial and trial phases of criminal proceeding.⁶⁴ Therefore, though the constitution provides for the right to be presumed innocent under the caption of the rights of persons suspected of crime; international jurisprudence provides that the right shall be interpreted to include individuals and the same shall be applied in Ethiopia.

2.2.4. Presumption of Innocence As Basic Human Right

The presumption of innocence is commonly recognized as a basic human right and it is registered in all important international human rights documents and declarations. One of the most important early Human Rights documentation is the Declaration on the Rights of Man which was given in France after the revolution in 1789. Presumption of innocence is one of the basic human rights defined in this declaration that has had a great impact on the development of modern democracies.⁶⁵ In 1948 the newly formed United Nations gave the Universal Declaration of Human Rights where in the Article 11(1) it is said that “*Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.*”⁶⁶ The same phrasing of the presumption of innocence can be also found in the International Covenant on Civil and Political Rights in the Article 14(2).⁶⁷ This multilateral treaty was adopted by the United Nations General Assembly in 1966 and is currently signed and ratified by 169 countries.

⁶³ Worku Yaze, supra note 37,p.118

⁶⁴ Article 11(1), 14(2),7(1) (b) of the UDHR, ICCPR and ACHPR respectively

⁶⁵ Smith, R. Textbook on International Human Rights. Oxford, Oxford University Press 2014, p.277.

⁶⁶ The Universal Declaration of Human Rights, Article 11(1), 1948.

⁶⁷ The International Covenant on Civil and Political Rights, Article 14(2), 1966.

However, even though the Covenant is monitored by the United Nations Human Rights Committee, there are no strong legal sanctions to endorse the Covenant and therefore malpractices are common in many countries. The African Charter on Human and Peoples' Rights (ACHPR), Article 7 (1) (b), provided that: "*the right to be presumed innocent until proved guilty by a competent court or tribunal*".⁶⁸ As the presumption of innocence has a spot in every human rights document, it is believed to be one of the least disputed rights.⁶⁹ There might be an objection that if the presumption of innocence were to be interpreted only as a procedural right, then it might be too easy to set aside when authorities regard a person as dangerous or guilty of horrendous crimes and have a need to convict him/her.⁷⁰ By the end of the 20th century, almost all the countries in the world have signed the basic human rights treaties of the United Nations and have therefore recognized the presumption of innocence to be respected in their judicature.

2.2.5. The Principle of Presumption of Innocence (PoI)

Various key international and regional human rights instruments⁷¹ as well as domestic jurisdictions have recognized the PoI as a bedrock principle.⁷² The principle gives every person the right to be presumed innocent until proven guilty; in doing so, protecting innocent defendants is its main aim.⁷³ It protects suspected persons from being oppressed by the immense power and resources of the government.⁷⁴ Accordingly, the principle requires judges and all other public officials to refrain from prejudging any case.⁷⁵ It implies that before suspected can be convicted, the judge must be satisfied beyond a reasonable doubt as to the existence of all the essential elements of the offense.⁷⁶ It connotes, among others, the onus of proof that lies on the

⁶⁸ African Charter on Human and Peoples' Rights ("Banjul Charter").Article 7 (1) (n.d.). Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986. Banjul.

⁶⁹ Ashworth, A. Four threats to the presumption of innocence. *The International Journal of Evidence and Proof* 2006, 10 (4), p 243.

⁷⁰ Lippke, R. *Taming the Presumption of Innocence*. New York, Oxford University Press 2016, p 38.

⁷¹ For example, see, ACHPR, Art.7 (2). See also, ICCPR, Art.14 (2); and, the UDHR Art. 11.

⁷² See, for example, the UK, Canada, the US, Indian and Ethiopian law.

⁷³ Ashworth, A, *supra* note 72, pp.253

⁷⁴ Gupta J, (2012) „Interpretation of Reverse Onus Clauses“, *National University of Juridical Sciences Law Review*, vol. 5. Rew.5 (2012),p.49

⁷⁵ S. Baradaran, *Restoring the Presumption of Innocence*“, *Ohio State Law Journal*, vol. 72(2011), p. 724

⁷⁶ Singh R, “Reverse onus Clauses: A Comparative Law Perspective”, *Student Advocate*, vol. 12 (2001).p.155.

prosecution.⁷⁷ The principle requires the presumption that suspects of crime or defendants in criminal trials did not commit the offence until proven guilty.⁷⁸ The prosecutor should prove every element of the criminal charge beyond a shadow of evidence. Unlike the international instruments,⁷⁹ many countries allow an express limitation to the principle of PoI.⁸⁰ Likewise, in countries where there is no express limitation, the principles of rationality and proportionality test have been used as a means to restrict the principle.⁸¹

Focusing on the Ethiopian law, the FDRE Constitution provides that “*During proceedings suspected persons have the right to be presumed innocent until proved guilty according to law and not to be compelled to testify against themselves.*”⁸² The FDRE Constitutional provision on the presumption of innocent has no an express limitation clause. Moreover, in Ethiopia, there is lack of jurisprudence on how this constitutional provision should be interpreted. Accordingly, unlike those countries that provide an express limitation to the principle, constitutionality is an issue under the Ethiopian legal tradition. Looking how limitations to fundamental rights are made under the FDRE Constitution, it is safe to say that the Presumption of innocence has no limitation.⁸³ Therefore, in Ethiopia, the right to be presumed innocent until proven guilty is an absolute right and any restriction to it is not tolerable. To conclude, undoubtedly, in Ethiopia, at least theoretically, the PoI is an absolute right. The FDRE Constitution as it is today allows no limitation for whatsoever reason. Moreover, unlike some countries such as South Africa,⁸⁴ there is no general limitation clause in Ethiopia. Therefore, under the current Ethiopian law, not only shifting but also easing the burden of the public prosecutor is not tolerable. It is contrary to the suspected right to be presumed innocent until proven guilty.

⁷⁷ Nelly G. Kamunde, NG (2010) „The Crime of Illicit Enrichment under International Anti- Corruption Legal Regime“ *Kenya Law Report Journal* 1-8,p.4

⁷⁸ M. Naughton, How the Presumption of Innocence Renders the Innocent Vulnerable to Wrongful Convictions“, *Irish Journal of Legal Studies*, vol. 2 (2011), 41.

⁷⁹ N. Jayawickrama, J. Pope, and O.Stolpe, p. 27.

⁸⁰ D. Wilsher (2006), „Inexplicable Wealth and Illicit Enrichment of Public Officials: A Model Draft that Respects Human Rights in Corruption Cases“ 45 (1) *Crime, Law and Social Change*, p. 29.

⁸¹ L. Muzila, M. Morales, M. Mathias, and T. Berger, p. 49.

⁸² The FDRE Constitution, Article 20(3).

⁸³ Simeneh Kiros Assefa, *Supra* note 17, p. 274.

⁸⁴ Adem Kassie Abebe, “Human Rights under the Ethiopian Constitution: A Descriptive Overview”, *Mizan Law Review*, vol. 5 (2011), p. 58

2.3. The Legal Frameworks for protection of Presumption of Innocence

2.3.1. International Level

Major international human rights treaties, such as the UDHR (Universal Declaration of Human Rights), ICCPR (International Covenant on Civil and Political Rights), and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), explicitly and implicitly guaranteed the human rights of presumption of innocence person. Moreover, regional human rights instruments and treaties such as African (Banjul) Charter on Human and Peoples' Rights (ACHPR), dealing with specific aspects of rights protection of presumption of innocence.⁸⁵ 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 interdependent and interrelated.⁸⁶ Therefore, with an intention to achieve this purpose, the international human rights law consists of the body of international rules, procedures and institutions. Presumption of innocence is recognized in international human rights instruments as well as in national legal codes and the FDRE constitution.

2.3.1.1. The Universal Declaration of Human Rights (UDHR)

Universal Declaration of Human Rights is one of the basic and fundamental human right document and was adopted 1948. The right of the presumption of innocence has been universally recognized in this document in its, Article 11(1) of the Universal Declaration of Human Rights (UDHR) states that "Everyone charged with a penal offense has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defense".⁸⁷ UDHR is a very important and fundamental constitutive document of the United Nation that represents the global expression of rights to which all human dignity of all people being the foundation of justice and peace in the world. Even though not legally binding, the declaration has influenced most national constitutions since 1948. It also

⁸⁵ Crawshaw, F.D, 1998. Human Rights and policing. Botson: Klawer Law International, p.7

⁸⁶ Ibid, p.7

⁸⁷ Universal declaration of human rights (UDHR), 1948, Article 11(1).

serves as foundation for two binding UN human rights Covenants, the ICCPR and ICESCR. It is also served as a foundation for a growing of international treaties and national laws protecting and promoting human right, and its principles are elaborated in international treaties such as the UN Covenant on the rights of the child, Conventions against Torture and other cruel, in-human or degrading treatment or punishment, and many more. It also used as the foundation for a growing number of international, regional and national institutions protecting and promoting human rights.

2.3.1.2. The International Covenant on Civil and Political Rights (ICCPR)

The right of suspected person has been universally recognized under international covenant on civil and political rights. ICCPR is a part of International bill of human rights along with the UDHR and ICESCR. It requires its parties to work toward the granting of civil, political right to individuals, including the right to hold opinion, the right to the protection of innocent person; it addresses the right to the suspected person in article 14(2).⁸⁸ The International Covenant on Civil and Political Rights (ICCPR), Article 14 (2) state: “Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law”.⁸⁹ ICCPR, further, elaborates what is stated under UDHR, hence every one charged with a criminal offence shall be presumed innocent until proved guilty, no one shall be arbitrarily suspected, no one shall be guilty of a penal offence for any act which did not constitute a penal offence at the time of omission and everyone is entitled to a fair and public hearing by an independent and impartial judiciary organ.

2.3.1.3. Convention against Torture and Other Cruel, in-human or Degrading Treatment or Punishment (CAT)

The right of suspected person has also been confirmed again in the 1987 Convention on against Torture and other Cruel In-human or Degrading Treatment or Punishment (CAT).The Convention is an international Convention adopted in 1984 by the United Nations General Assembly and came in to force in 16 June, 1987. The Convention is described as an international

⁸⁸ International Covenant on Civil and Political Right (ICCPR) 1966,Article ,14(2)

⁸⁹ Ibid

bill of rights for suspected person and define which type of treatment made by enforcement officer and it specifically addresses the suspected person at the time of crime investigation process. And different international human rights instruments including Convention against Torture (CAT) have also gave due emphasis the presumption of innocence rights under their various provision. *“Each state party shall ensure that any statement which is established to have been made as result of torture shall not be invoked as evidence in any proceedings, except against a person suspected of torture as evidence that the testament was made.”*⁹⁰CAT also similarly give protection to the suspected person as UDHR such that, each state party shall ensure that any statement which is established to have been made as a result of the torture shall not be invoked as evidence in any proceeding by the same token the Convention does not accept involuntary confession. Moreover, this Convention imposed an obligation to the member states legislative, administrative, judiciary or other measure to prevent act of torture in any territory under its jurisdiction.⁹¹

2.3.2. Presumption of Innocence Rights at the Regional Level in Africa

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 Africa Charter on Human and People’s Rights (ACHPR) 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 Union. 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.

2.3.2.1. Africa (BANJUL) Charter on Human and People’s Right (ACHPR)

The right of suspected persons” has also been confirmed again in 1986 in the Charter entitled “African Charter on Human and Peoples Right (ACHPR). The Charter was adopted 1981; by the African states members of the Organization of African Unity and came in to force October 21, 1986. This Charter as a human right instrument addresses different problems, related to the right

⁹⁰ Convention against Torture and other cruel in human or Degrading Treatment or punishment, Article 15

⁹¹ Ibid, Article 16(1)

of suspected person through crime investigation process. The African Charter on Human and Peoples' Rights (ACHPR), Article 7 (1) (b), states: *"the right to be presumed innocent until proved guilty by a competent court or tribunal"*.⁹² ACHPR specifically ensured the right of suspected person through the activity of crime investigation process, particularly similar to other international conventions it also described that, no one shall be suspected arbitrarily the right to defense, the right to be taken within reasonable time to an impartial court or tribunal, and no penalty may be inflicted for an offence for which no provision was made at the time it was committed.⁹³

2.3.3. Presumption of Innocence at National Level

This section focuses on the national laws laid down in Ethiopia legal system. It includes the FDRE constitution, Criminal Procedure Code of Ethiopia, the Criminal Justice and the government also adopted different laws related to the process of crime investigation.

2.3.3.1. Presumption of Innocence Protection under F.D.R.E Constitution

The FDRE constitution, under article 20 (3), also stipulated as *"during the proceedings suspected persons have the right to be presumed innocent until proved guilty according to law and not to be compelled to testify against themselves"*.⁹⁴ FDRE constitution provides that suspected persons have the right to be presumed innocent until proved guilty according to the law.⁹⁵ The constitution imposes the duty to presume persons suspected of crime as innocent as long as no guilty verdict is rendered against them. So, in Ethiopia it is a constitutionally guaranteed right which shall be respected and protected by all organs of state at all levels.⁹⁶ The constitution provides for suspected right to be presumed innocent which is to show that it is a duty of the prosecutor to prove that the suspected is liable for the alleged criminal offence.

⁹² African Charter on Human and Peoples' Rights ("Banjul Charter").Article 7 (1) (b).

⁹³ Ibid, Article 7(1) a, b, c, d and Article 7(2)

⁹⁴ FDRE Constitution under article 20(3)

⁹⁵ FDRE Constitution under article 20(3) See also Articles of 11(2) UDHR and 14(2) ICCPR.

⁹⁶ FDRE Constitution under, Article 13(1)

2.3.3.2. Presumption of Innocence on Criminal Procedure Code of Ethiopia

The 1961 criminal procedure law incorporated different provisions related to the right of suspect person through crime investigation processes. Our Criminal Procedure Code stipulated that all conditions related with the day-to-day crime investigation process in the detail manner. Even though the Criminal Procedure Code is the law which defines the whole steps from the commission of the crime up to due judgment or penalty is posed on the criminal by the proper court.⁹⁷ Article 23 states that, the processes of crime investigation began after receiving that the complaint or information they may have received is open to doubt.⁹⁸ Whatever the mode of initiation of investigation can be that is accusation, complaint or personal observation of the commission of the offence by the police, the investigation is said to begin when the information is communicated to the police.⁹⁹

The investigation proceeding is a proceeding for the purpose of gathering evidence to reach a decision the suspect is a probable offender or not. This part of the proceeding is basically constituted of four things.¹⁰⁰ These are arrest of the suspect's; Interrogation of him; Search of the person and premises of the suspect; and examination of witnesses and view of places and other things.¹⁰¹ Once the person is suspected, the police conduct interrogation over the suspected person. The police, before conducting the interrogation, must first inform the suspected person that he has the right to remain silent and should he make any statement such statement shall be recorded and used as evidence in his trial. As part of the investigation process, the police may conduct search with or without warrant.

The court shall issue such warrant of search only if it is satisfied that the purpose of justice of any other inquiry, trial or other proceedings in the criminal procedure code will be served by such warrant. In cases where the court grants the warrant, it shall specify the place where the search is to be conducted and the items to be searched and seized.¹⁰² The Criminal Procedure

⁹⁷ The Ethiopia Criminal Procedure Code, 1961, Article 172(2)

⁹⁸ The Ethiopia Criminal Procedure Code, 1961, Article 23

⁹⁹ Criminal Procedure Code of Ethiopia, pro. No 1 (1961), Article 11

¹⁰⁰ Ibid, Article 13

¹⁰¹ Ibid, Article 14

¹⁰² Ibid, Article 32

Code of Ethiopia, article 141 and 142 also guarantees that the suspected person to be presumed innocent until proven guilty by the prosecution.¹⁰³ These provisions of the presumption of innocence allow for the implication that the suspected person is presumed to be innocent unless the prosecution has proved the defendant is guilty within beyond a reasonable doubt. This is because the world's trends of democratization encouraged human rights issues and, are being a burning and sensitive issue. As a result, all people must find that the public prosecution has responsibility for the burden of proving the defendant is guilty beyond a reasonable doubt.¹⁰⁴

2.4. Police Investigation Mechanisms

A criminal investigation helps to gather evidence to identify a suspect and support an arrest.¹⁰⁵ Legal arrest cannot be made for an act that is not defined by statute or ordinance as a crime. Although everyone has a notion of what crime is investigators, usually police officers, must have a very precise understanding of what it means.¹⁰⁶ To be a Successful investigator a police needs to develop both scientific knowledge acquired by study and experience and the skills acquired by the artful application of learned techniques.

Conventionally, there are two ways of investigating crimes. According to the Crime Investigation of Ethiopia, there are tactical and technical crime investigations.¹⁰⁷ The tactical crime investigation responsibility of the investigator, which serves as the rationale for studying criminalist techniques, the potential of an object and/or characteristic is utilized in accordance with the knowledge, skill, experience, disposition and attitude of the criminal investigator; 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; He must maintain physical and evidential integrity in order to ensure the legal validity of the results of the investigation; and 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

¹⁰³ Criminal Procedure Code of Ethiopia Proclamation No. 185 of 1961, Article 141 and 142

¹⁰⁴ Shealy, M.W.(2013), supra note 65, p.225-302.

¹⁰⁵ Dennis Hoffman (2000), Criminal Justice: IDG Books Worldwide, Incp, p.4

¹⁰⁶ Karen M. Hess and Christine Hess Orthmann (2010), Criminal Investigation, 9th edition, Delmar, Cengage Learning , p.12

¹⁰⁷ Manual of Investigation for Federal Police of Ethiopia. Addis Ababa 2015,un published,P.11

use.¹⁰⁸ 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. On the other hand, the technical crime 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 in the fact that forensic investigation is conducted in a laboratory.¹⁰⁹

Therefore, everyone has a notion of what crime is investigators, usually police officers, must have a very precise understanding of what tactical and technical crime investigations means to respect suspects rights of the presumption of innocence.¹¹⁰ Moreover, any investigators before receiving case assignments, he must have a full knowledge on his part in the total investigative process and to accomplish their tasks should be establish the working schedule or an investigative procedure.¹¹¹ Whenever a police officer obtains information about the commission of a crime, he shall proceed to investigate the crime notwithstanding that he is the opinion that the information he has received is open to doubt.¹¹²

2.4.1. Process of Criminal Investigation

I. 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.¹¹³ 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.¹¹⁴ Searching

¹⁰⁸ Van der Westhuizen, J.B. 1996. Forensic Investigation. Second Edition, Heinemann Higher Further Education (Pty) Ltd Isando, p.16-17.

¹⁰⁹ Manual of Investigation for Federal Police of Ethiopia. Addis Ababa 2015. unpublished, P.9

¹¹⁰ Karen M, Hess Christine Hess, supra note 106, p.12

¹¹¹ Chales M.bozza, Criminal Investigation (Clarendon Press. Oxford, 1978)

¹¹² Criminal Procedure Code of Ethiopia ,(1961) article 23

¹¹³ Criminal Procedure Code of Ethiopia, 1961: article 32 & 33.

¹¹⁴ Ethiopian Constitution of 1995; article 26.

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.¹¹⁵ 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.¹¹⁶ 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.¹¹⁷ 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.¹¹⁸ Search warrants desire evaluation of a rationale to believe that there is probable cause that a crime was committed before issuing it.¹¹⁹

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.¹²⁰ It is a mandatory duty for the police to have a search warrant before searching any premises and property.¹²¹ As defined by Hess and Orthmann “*search is looking through a house or other building, a person or a vehicle to find contraband or illicit or stolen property, or some evidence of guilt to be used in prosecuting a criminal action or offense*”.¹²² It is mainly done to

¹¹⁵ Simeneh, K. 2001. *The law of criminal procedure commentaries and exercise Ethiopia*: unpublished,p.12

¹¹⁶ Lyman,D. 1999.*Criminal Investigation and Edition*. Prentice Hall, Inc.: USA,p.121

¹¹⁷ Criminal Procedure Code of Ethiopia, 1961 article 32.

¹¹⁸ Ibid cite at 116

¹¹⁹ Ibid cite at 116

¹²⁰ The Constitution of Ethiopia, 1995: Article 14 and article 17(1).

¹²¹ Criminal Procedure Code of Ethiopia, 1961: article 33.

¹²² Karen M. Hess and Christine Hess Orthmann , supra note 106, p. 8

develop associative evidence or to find evidence that could link a suspect to the crime.¹²³ Searching is a vital task in criminal investigations as through searching, evidence of crime and against criminals is obtained. However, what is equally important is that an investigators understanding of the laws relating to searches. Every search must be firmly based on an understanding of the restrictions under which police officers must operate.¹²⁴ However, search without a warrant is allowed as an exception to avoid any delay that may result in obstruction of justice.¹²⁵ Search without warrant is interpreted and applied narrowly and strictly.

Therefore, search without warrant may be conducted when: There is a flagrant offence as defined under articles 19 and 20 of the Criminal Procedure Code of 1961 of Ethiopia. Besides, 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; Suspected has been made against the person *vide* article 14 of the Criminal Procedure Code of Ethiopia, 1961; and the offence of which the person is suspected of is punishable with more than three years imprisonment.¹²⁶

II. Seizure

Seizure is one of the processes of criminal investigation that the 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.¹²⁷ Seizure can be conducted on the Suspects and some objects which have a relationship to the alleged crime. Evidence that is seized illegally will be of no value. It is among process of criminal investigation which authorizes the police to collect material evidence that might later be presented in court.¹²⁸ The police have to convince the court to obtain search warrant 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. Therefore, seizure can only be conducted in accordance with the law so as not to violate rights to liberty of individuals. Though seizure normally demands a seizure

¹²³James W. Osterburg and Richard H. Ward (2010), *Criminal Investigation: A Method for Reconstructing the Past*, Sixth Edition, p.96

¹²⁴ Karen M. Hess and Christine Hess Orthmann, *Supra* note 106,p.12

¹²⁵ Criminal Procedure Code of Ethiopia, 1961: article 32 (2).

¹²⁶ Article 32 of Criminal Procedure Code of Ethiopia, 1961

¹²⁷ Simeneh, K. 2001, *Supra* note 118, p.33

¹²⁸ Paul Roberts (2007), *Law and Criminal Investigation*, Willan Publishing Ltd, pp. 92-146

warrant, in cases of flagrant offence police have the right to seize the suspect and the objects that are linked to the crime without warrant.¹²⁹ According to the 1961 Criminal Procedure Code of Ethiopia flagrant offence is an offence, which the suspect has apparently been found committing or attempting to commit or has just committed the offence.¹³⁰

III. Arrest

Arrest is a preliminary step in the process of the prosecution of a suspected offender. Arrest in general terms is *“the taking of a person into custody in the manner authorized by law for the purpose of presenting that person before a court to answer for the commission of a crime.”* From this definition, we can understand that the primary purpose of an arrest is the apprehension of a person suspected of the commission of a criminal offence and to restrain him/her from committing, or continuing to commit a crime.¹³¹ It ensures the subsequent attendance of the suspected person before a court in the event that a prosecution is commenced. However, arrest is not the only means, as attendance can also be required by a summons, which states the matter of the information and requires the alleged offender to appear before a justice at a specified time and place. Though it does not specify the circumstances under which an arrest is considered reasonable, the ICCPR declares that any detention must be reasonable and necessary. Arrest should generally be based upon an arrest warrant issued by a neutral judicial officer or judge. An arrest without warrant is justified only in an extraordinary circumstances, where obtaining an arrest warrant is not practicable such as the existence of flight risk or a threat to public safety. As well, police can make a warrantless arrest for flagrant offence.

IV. Interrogation

Interrogation as a practical matter, involves some of the most important functions of police: the investigation of crime, the apprehension of offenders, the restoration of order, and the deterrence of future crime.¹³² The main purpose of interrogation is to elicit information from a suspect who may suppress the facts, or from people whose answers might be colour by close ties to a

¹²⁹ Criminal Procedure Code of Ethiopia, article 51

¹³⁰ Criminal Procedure Code of Ethiopia, article 19(1)

¹³¹ Paul Roberts, Supra note 130, pp. 92-146

¹³² Richard A. Leo (2008), Police Interrogation and American Justice, Harvard University Press

suspect.¹³³ Therefore, if done properly, interrogation can thus be an unmitigated social benefit and if not done properly, however, interrogation can be an unmitigated social disaster. Coercive interrogation can lead to police-induced false confessions, which, in turn, can lead to the wrongful prosecution, conviction, and imprisonment of the innocent.¹³⁴

2.5. Procedural Fairness during Interrogation

To mention few, procedural fairness comprises many but related rights such as, the right to be presumed innocent, the right to remain silent, and access to legal counsel.¹³⁵ These are core concepts that are always at stake during interrogation. Apart the opposing arguments one could come across in assessing whether these guarantees should be kept during interrogation, it is important to note that the means and outcome of interrogation may affect the quality of fair hearing during trial. There is no doubt that components of procedural fairness, as described above, apply not only in the actual hearing before the court, but also through all surfaces of the criminal justice including during interrogation.¹³⁶ The problem rather lies in determining the content and scope of the rights, and the extent these rights govern interrogation process, and the conduct of the interrogators. In the following paragraphs, this thesis analyzes the application of the presumption of innocence, the right to remain silent and the privilege against self incrimination and the right to legal assistance during interrogation.

2.5.1. Presumption of Innocence during Interrogation

The notion of presumption of innocence has been understood or applied as a procedural right of a suspected in relation to the conduct of Judges who handle his case.¹³⁷ However, such horizon was found to be narrow. The presumption of innocence would be violated if public officials including police officers make the impression that the suspected is guilty of an offence before he is proven guilty according to the law.¹³⁸ As such it is not necessary that the statement be made by a judge or a court, or a police officer; in all cases presumption of innocence will be violated.

¹³³ James W. Osterburg and Richard H. Ward (2010), *Criminal Investigation: A Method for Reconstructing the Past*, Sixth Edition, p.239

¹³⁴ Cited Richard A. Leo, *supra* note 132, p.9

¹³⁵ Annette Faye Jacobsen, *Human rights monitoring, a field mission manual*, 2008, p. 95

¹³⁶ *Ibid* ,p.184

¹³⁷ *Ibid* , p.185

¹³⁸ *Ibid* , p.185

Now, the most concrete question is how the notion of presumption of innocence would guide and control the interrogator. More specifically, can the interrogator, for example, say to the suspected „I know you are guilty, tell me how you committed the crime „;‘you damn cruel! How can you commit such awful crime...? The co- offender has testified this ...; your spouse has already informed the police about your involvement, etc Interrogators are more sophisticated than one could imagine.¹³⁹ They can formulate very tricky and smart leading questions that would give the suspected no chance to deviate from what the interrogator expected him to confirm. The objective of such tactic is to outsmart the suspect and to put pressure on him to confess. ¹⁴⁰

Some argues that in so far as the interrogator does not use force, he should be allowed to outsmart and lead the suspected to confess.¹⁴¹ Indeed, the interrogator may succeed with his deceptive and tricky question if the suspected is inexperienced and not informed that the state owes the burden to show beyond reasonable doubt that the suspected committed the alleged crime.¹⁴² However, it would be self-defeating for interrogators to formulate such leading questions to a suspected person who is well aware of his right, as he may conceive that his interrogator is in bad faith and disrespectful, and hence not worthy to assist him. Second, an informed suspect can totally exclude interrogation by exercising his right to remain silent. ¹⁴³ Then, interrogators would invariably have to make distinction between the informed and ignorant suspect in formulating their interrogation tactics. Perhaps, the interrogators would in questioning an informed suspect start with greeting and respecting his title or social rank, and try to encourage him smoothly to confess. On the other hand, the interrogators in questioning an ignorant suspect may make the impression that he had committed the alleged crime by mischievously stating that many people have testified to the police and that there is no way he can refute the allegation but confess and disclose his collaborators.

The interrogation tactics described above are not merely hypothetical. Several police interrogation manuals have endorsed tricks, deceptions, and over all taking advantage of the

¹³⁹ Joseph D.Grano, *Crime, Punishment, and Criminal procedure: Selling the idea to tell the truth: the professional interrogator and modern confession law*, book review, 84 Mich. L. Rev. 1986, p.2

¹⁴⁰ Ibid,p.2

¹⁴¹ Ibid,p.7

¹⁴² Ibid,p.7

¹⁴³ Ibid, p.8

inexperience of the suspect as an important tool.¹⁴⁴ One of the most widely published manual is the so called nine steps Reid interrogation techniques.¹⁴⁵ This is not to say that the interrogation shall put same question for every suspect. But using manipulation and deception, including prolonged interrogation and a threat of fear for the ignorant or the inexperienced; but decent or partner like interview with the informed can be nothing but a new form of discrimination. The manual guidelines in Ethiopia that guide interrogation are the manual of the nine steps of Reid interrogation techniques. The Reid states that an interrogation “should only occur when the investigator is reasonably certain of the suspect's involvement in the issue under investigation.”¹⁴⁶ There are nine steps to the Reid interrogation technique, briefly described below.

Step 1: The positive confrontation. The investigator tells the suspect that the evidence demonstrates the person's guilt. If the person's guilt seems clear to the investigator, the statement should be unequivocal.

Step 2: Theme development. The investigator then presents a moral justification (theme) for the offense, such as placing the moral blame on someone else or outside circumstances. The investigator presents the theme in a monologue and in sympathetic manner.

Step 3: Handling denials. When the suspect asks for permission to speak at this stage (likely to deny the accusations), the investigator should discourage allowing the suspect to do so.

Step 4: Overcoming objections. When attempts at denial do not succeed, a guilty suspect often makes objections to support a claim of innocence (e.g., I would never do that because I love my job.)The investigator should generally accept these objections as if they were truthful, rather than arguing with the suspect, and use the objections to further develop the theme.

Step 5: Procurement and retention of suspect's attention. The investigator must procure the suspect's attention so that the suspect focuses on the investigator's theme rather than on punishment. One way the investigator can do this is to close the physical distance between

¹⁴⁴ Ibid,p.9

¹⁴⁵ Ibid

¹⁴⁶ Starr, Douglas. Do police interrogation techniques produce false confessions? The New Yorker (Dec. 9, 2013).

himself or herself and the suspect. The investigator should also “channel the theme down to the probable alternative components.”

Step 6: Handling the suspect's passive mood. The investigator “should intensify the theme presentation and concentrate on the central reasons he/she is offering as psychological justification . . . and continue to display an understanding and sympathetic demeanor in urging the suspect to tell the truth.”

Step 7: Presenting an alternative question. The investigator should present two choices, assuming the suspect's guilt and developed as a “logical extension from the theme,” with one alternative offering a better justification for the crime. The investigator may follow the question with a supporting statement “which encourages the suspect to choose the more understandable side of the alternative.”

Step 8: Having the suspect orally relate various details of the offense. After the suspect accepts one side of the alternative (thus admitting guilt), the investigator should immediately respond with a statement of reinforcement acknowledging that admission. The investigator then seeks to obtain a brief oral review of the basic events, before asking more detailed questions.

Step 9: Converting an oral confession to a written confession. The investigator must convert the oral confession into a written or recorded confession. This provides some guidelines, such as repeating *Miranda* warnings, avoiding leading questions, and using the suspect's own language.

2.5.2. The right remains to silent

The right to remain silent has its roots in dignity and autonomy.¹⁴⁷ It sees the individual as an autonomous being, full of dignity, and capable of determining to speak or not to speak¹⁴⁸ of which forcing him to speak would be self-contradictory to the concept of dignity and autonomy. As such the right to remain silent can be understood as the logical implication of our faith in individual dignity and autonomy. The right to remain silent is broader in scope in that it covers

¹⁴⁷ Rinat Kitac, Sangero, Detention for the purpose of interrogation as modern torture, University of Detroit Mercy School of Law, 2008, p.12

¹⁴⁸ Ibid,p.12

the right not to provide information regarding any question, and the right not to testify against oneself (the privilege against self-incrimination).¹⁴⁹ Virtually, all countries recognize some form of the right to silence and privilege against self-incrimination.¹⁵⁰ This is so even when there is no specific law put in place that explicitly provides the right to remain silent. 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.¹⁵¹

*“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.”*¹⁵²

2.5.3. The right to counsel during Interrogation

The suspected has the right to the presence of a lawyer during custodial interrogation; and failure to do so entails mandatory exclusion of confession.¹⁵³ However, most of pre-trial detainees never see a lawyer or legal advisor and often lack information on their basic rights. Detainees reach trial without representation most likely beaten down by months of detention.¹⁵⁴ At a general level, the ICCPR guarantees for the right to legal assistance in the course of criminal proceedings.¹⁵⁵ However, the right to legal assistance during interrogation does not seem to be part of its innovations. The phrase to be” tried”...through legal assistance” more closely seems to exclude custodial interrogation. 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

¹⁴⁹ Gordon Van Kessel: European perspectives on the accused as a source of testimonial evidence, 100 W.Va. L.Rev.799(p.3)

¹⁵⁰ Ibid ,p.3

¹⁵¹ The Criminal Procedure Code of Ethiopia, 1961, Article 27(2), See also The 1995 FDRE Constitution, Art 19(2)

¹⁵² The 1995 Ethiopian Constitution, Art 19 (2), see also the 1961 Criminal Procedure Code of Ethiopia, Art.27 (2)

¹⁵³ Supra note 4, facts sheet No. 19:3-5

¹⁵⁴ David Berry (2011), the Socioeconomic Impact of Pre-trial Detention. A Global Campaign for Pre-trial Justice Report, Open Society Justice Initiative, New York.

¹⁵⁵ ICCPR, art.10

with their respective legal councilors. 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:art.21 (2)), the suspect must be provided, if needed, with stationary material (Criminal Procedure Code 1961, article 61)”.¹⁵⁶

2.6. The Criminal Justice Administrative Policy

Generally, in Ethiopia, the justice sectors are organized at the federal and regional level. The main actors in the criminal justice system are the courts, public prosecution, the police and prison institutions etc are among the major justice sector institutions. There are also specialized institutions like ethics and anti-corruption, revenues and customs involved in the criminal justice. These institutions are unique as they are accorded both police and prosecution powers.¹⁵⁷ The main duty of the Justice organs includes minimizing the rate of criminal offences in the country, and if crimes are committed, practicing an effective method of litigation so that offenders may get proportional punishment to the crimes they committed or omitted. Through doing this, peace and security of the society is ensured and the prevalence of the rule of law is maintained hand in hand with keeping the constitutional order.¹⁵⁸

The state of a nation’s suspect policy is a key sign of its commitment to a successful Criminal justice policy since it in turn has impact on any system as a whole. In Feb. 2011, the Ethiopian government, as a policy holder and maker, has come up with the Ethiopian criminal justice policy which encompasses various policy issues including the suspect policy of the country.¹⁵⁹ The policy provides for improvement of the crime investigation and prosecution services and for the efficiency and fairness of the criminal justice process. This, in turn, is expected to improve

¹⁵⁶ Constitution FDRE, 1995:art.21 (2), See also Criminal Procedure Code 1961, article 61.

¹⁵⁷ The Criminal Justice Policy of the Federal Democratic Republic of Ethiopia, 2011,p.9

¹⁵⁸ R. Jago and J. Fionda, *Comparative criminal justice policy Section C: Aspects of comparative criminal policy*, Published by the University of London Press,2005, - www.londonexternal.ac.uk-

¹⁵⁹ Ibid,p.9

the administration of criminal punishment and its efficacy.¹⁶⁰ Ethiopia, party to has designed polices and thereby implementing legislations for the protection and reformation of suspects. Among others, the 1995 constitution guarantees that suspected persons shall be treated with due respect to their dignity.¹⁶¹ With this realm that as a matter of policy the criminal justice policy is adopted in February 2011, which in fact contains section pertaining to the suspected policy as part of it.¹⁶²

Generally, the criminal justice policy has mandated the justice administrations of federal or region government bodies to design a further compressive suspects policy on the any issues of system, yet to date from the adoption of such policy there hasn't seen any rigorously dealt federal or regional justice administrations system policy manual, thus cognizant of its all importance such organs should take a step to enact manual in order to achieve the purpose of the countries criminal justice policy particularly emphasis the rights on presumption of innocence.

2.6.1.The Draft Criminal Procedure Code

Ethiopia has prepared a draft Criminal Procedure Code with the aim to reforming the existing and currently functioning Criminal Procedure Code because it is old enacted in 1961, and does not incorporate new legal thinking and practices such as the inclusion of the restorative justice ideal into the criminal justice system. The draft Criminal Procedure Code has the objective of incorporating this new thinking into the system; and to that end, it includes new provisions compatible and convenient to introduce restorative justice. Mirroring the new Criminal Justice Policy, the draft Criminal Procedure Code provides discretionary power to public prosecutors and judges to divert the criminal case to customary dispute resolution mechanisms With the aims to: utilize the limited resources for other serious crimes which cannot be referred to customary dispute resolution mechanisms;¹⁶³ to easily integrate the offender into his\her community and reduce recidivism; to help the offender take responsibility and show

¹⁶⁰ Ibid,p.10

¹⁶¹ Article 19 of the constitution has provided the right of persons suspected.

¹⁶² See section 5 sub section 5.3 of the FDRE criminal justice policy.

¹⁶³ Criminal Procedure Code of the Federal Democratic Republic of Ethiopia,2010, Draft Legislation, Ministry of Justice, Addis Ababa. Art. 170 (2) provides that serious crimes stated in the Ethiopian criminal code cannot be referred to CDR mechanisms.

remorse for his wrongdoings; and to protect and give voice to the victim and communities at large.¹⁶⁴

The draft Criminal Procedure Code tries to provide fertile conditions and rooms for the implementation of restorative justice ideals in the criminal justice system, which is lacking in the currently functioning Criminal Procedure Code. In particular, it gives recognition to customary dispute resolution mechanisms' application to criminal matters, and states the guiding principles and conditions to make referral to them thereby maximizing the possibilities to implement restorative justice. Nonetheless, the draft Criminal Procedure Code's recognition of customary dispute resolution mechanisms' application to criminal matters in the form of diversion is open to argument in the absence of a clear constitutional clause which recognizes their application to criminal matters. This is because any law or customary practice which contradicts with the Constitution is null and void.¹⁶⁵

The draft the Criminal Procedure Code (CPC) is consistent with Ethiopia's Constitution as well as its regional and international human rights commitments. The principal focus on provisions of the draft CPC that directly relate to the right to fair trial, such as notification of rights, right to an attorney, equality of arms, right to conditional release, prohibition of torture and other ill-treatment, admissibility of evidence, burden of proof and standards of proof. In general, the recommendations in the commentary Amnesty International are meant to encourage and promote full respect for:-

- The right to prompt notification of rights commencing from arrest or detention;
- The right to equality of arms in the preparation and presentation of cases, including the right to adequate time and facilities to prepare a defense and disclosure by the prosecution of material information;
- The right to liberty and presumption of innocence, including through processes that treat conditional release as the rule and remand in custody as the exception;
- Freedom from torture and other ill-treatment in the rules that govern admissibility of evidence; and

¹⁶⁴ Ibid, art.169.

¹⁶⁵ Constitution of the FDRE, Article 9.

- Presumption of innocence in the rules governing the probative value of evidence, especially confession statements.¹⁶⁶

Article 275(2) of the draft CPC states that;

“Unless the defendant rebuts them with evidence, confessions given outside of the trial court by suspected or accused, and confession statements in writing, voice recording, and video cassette or recorded in any mechanical or electronic device by [those] accused of terrorism charges shall be considered as proven without a need for additional prosecution evidence”. The provision violates the rights of the suspected or accused to presumption of innocence, a core general principle of international law. It also allows for violations of the suspected or accused’s rights to freedom from torture and other ill-treatment, since it shifts the burden of proof to the suspected to rebut confession statements made outside of the trial court.¹⁶⁷

The provision violates the rights of the suspected to presumption of innocence, a core general principle of international law. It also allows for violations of the suspected rights to freedom from torture and other ill-treatment, since it shifts the burden of proof to the suspected to rebut confession statements made outside of the trial court.

¹⁶⁶Amnesty International, Fair Trial Manual, Second Edition, 2014 (POL 30/02/2014), available at <https://www.amnesty.org/en/documents/POL30/002/2014/en/>.

¹⁶⁷ Article 275(2) of the draft of the Criminal Procedure Code(CPC) of Ethiopia,2010

CHAPTER THREE

3. The Pre-trial Rights of Suspects of a Crime

3.1. Introduction

The aspiration to protect the human dignity of all human beings is at the core of the human rights concept.¹⁶⁸ Human rights are legally guaranteed by human rights law, protecting individuals against actions which interfere with fundamental freedoms and human dignity.¹⁶⁹ Hence, human rights of suspects person is one of the principal issue in the human rights agenda and it is impossible to realize human rights without promoting and protection the human rights of suspects" person. Suspects persons have guaranteed various human rights and a lot is expected from government for respecting rights of suspects that are recognized nationally and internationally to establishing a system and institutions that protect and fulfill these rights in the whole criminal proceedings.

3.2. Significance of the rights of suspects

In countries where human rights are violated peoples and individuals lose human dignity that is entitled to every human being. And such kinds of countries are living in the situation poverty, instability and internal conflict.¹⁷⁰ As a result of these their citizens always flee to other countries to escape conflicts and violation of human rights or searching for a better life.¹⁷¹ Many African, Asian and Latin American countries can be taken as example. In countries where human rights violation is frequent citizens may be deprived to exercise their human rights either partially or fully. The reason for violation of citizen"s rights is mostly the mere fact that they exercise their rights. In such kinds of situations peoples fail to think and work themselves as well as others.¹⁷² And this will by itself create a hopeless society with a country that has no peace and development at all. Therefore, protecting and promoting human rights of citizens in general and suspects in particular contribute for citizens to use their potential for the development, peace and

¹⁶⁸ Wolfgang Benedek (2012), *Understanding Human Rights; Manual on Human Rights Education*. p.28

¹⁶⁹ Office of the High Commissioner for Human Rights, *Human Rights: A Basic Handbook for UN Staff*, United Nations. P.3

¹⁷⁰ Human Rights and Human Trafficking ,Fact Sheet No. 36 UNITED NATIONS New York and Geneva,2014

¹⁷¹ *Ibid*,p.14

¹⁷² Abiyou Girma (2013), *the police and Human rights in Ethiopia*. Available at www.abysiniaw.com

welfare of human beings and it will also help to create a civilized and stable society.¹⁷³ Since the main focus of this paper is to investigate the human rights situation of criminal suspect during criminal investigation, the next section basically deals about the normative frameworks recognized under different international, regional and national human rights documents.

3.3. Pre-trial Rights of Suspects

ICCPR provides protection for the civil and political rights. Most of rights guaranteed under this Covenant focuses mainly on protecting citizens from the abuse of state power. Countries bound by it or ratified it have an obligation to respect rights of its people. The covenant does not only oblige states to respect and protect human rights, but also to fulfill by taking the necessary steps, in accordance with its constitutional processes and with the provisions of the Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the Covenant.¹⁷⁴ Ethiopia is among states that ratified the ICCPR and hence has an obligation to implement provision contained in the covenant.

The risk of human rights abuse starts at the first moment that officials raise suspicions against a person, through the moment of arrest, in pre-trial detention, during the trial, during all appeals, right through to the imposition of any punishment.¹⁷⁵ Human rights needs to uphold in the police station, the interrogation room, the detention center, the court and the prison cell, otherwise the government has failed in its duties and the justice system itself loses credibility.¹⁷⁶ Criminal suspects are protected in varies international and national human rights instrument and as such guaranteed different rights to be respected in the whole trial process. The investigation stage of a criminal case has been recognized as more important than the trial phase because many more people are subject to investigative processes than will ever be brought to trial.¹⁷⁷ As far as this thesis focuses on the pre-trial rights of suspects, key rights of criminal suspects that are recognize

¹⁷³ Ibid,p.6

¹⁷⁴ ICCPR,article 2(2)

¹⁷⁵ See Amnesty International, Fair Trials Manual, December 1998

¹⁷⁶ Lu Yanbin (2010), A Critique of Human Rights Protection for Suspects in the Chinese Criminal Justice System: Doctoral thesis. Available at Durham University E-Theses Online: <http://etheses.dur.ac.uk/4111/>,March,2010

¹⁷⁷ Cape (2007), As cited in Clifford Msiska and Victor Mhango, et al (2013), Pre-Trial Detention Custody Time Limits Ensuring Compliance in Malawi, p.8

in the international human rights instruments that are ratified by Ethiopia and the national documents are discussed below.

3.3.1. The Prevention on Arbitrary Arrest and Detention

Article 3 of UDHR declares “Everyone has the right to life, liberty and security of person.” Similarly, ICCPR under article 9(1) states that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” African Charter on Human and Peoples’ rights has also recognized right to liberty in similar way. Ethiopia has ratified both ICCPR and ACHPR and as such has an obligation to implement this provision. For that matter the 1995 Ethiopia constitution has an explicit provision on the right to liberty. Article 17 of the Constitution states that;

“No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. No person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him”¹⁷⁸

However, when a detention becomes an arbitrary, is not clearly defined under the FDRE constitution as well as other human rights instruments. But, the Commission on Human Rights under resolution 1997/50 has considered that deprivation of liberty is not arbitrary if it results from a final decision taken by a domestic judicial instance and which is (a) in accordance with domestic law; and (b) in accordance with other relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned. Most police forces in the world follow the practice of stopping suspicious persons on the street for the purposes of questioning them and to conducting some form of investigation.¹⁷⁹ However; this might be against freedom of individuals if done without a proof or evidences that a crime has been committed. Thus such powers should be limited to situations in which it is strictly necessary and safeguards should be provided to prevent the exploitation of powers.¹⁸⁰ Every government has the duty to investigate and bring to justice those responsible

¹⁷⁸ FDRE Constitution, article 17

¹⁷⁹ Danish Institute for Human Rights (2002), Police and Human Rights Manual for Police Training, p.25

¹⁸⁰ Ibid, p.25

for crimes.¹⁸¹ For this purpose, governments may deprive right to liberty of individuals in certain prescribed and limited circumstances in accordance with the law. However, it must take certain steps to ensure that the deprivation is not arbitrary through safeguarding rights of detained person.¹⁸²

According to the Criminal Code of FDRE (2004) unlawful arrest or detention is punishable with rigorous imprisonment not exceeding ten years and fine if the perpetrator is public servant.¹⁸³ Furthermore, it declares that “whosoever commits illegal restraint against the other is punishable with simple imprisonment not exceeding three years. In such case, the punishment shall be rigorous imprisonment not exceeding five years where: the crime is committed on the false pretext of mental illness or dangerous condition of the victim; or the crime persists for more than five days. Where it is committed to compel the government, an international organization, a natural or a juridical person to do or to abstain from doing an act, by carrying out threats of endangering the life, person or liberty of the detainee or of prolonging his detention, the punishment shall be rigorous imprisonment from five years to ten years. Where such crime is committed by a public servant or official, article 423 of the same code shall apply.”¹⁸⁴

3.3.2. Informing the Reasons for Arrest

Individuals must be promptly informed of the reasons for an arrest, and of any charges, in a language that they understand and in sufficient detail to enable them to take proceedings to have the lawfulness of their detention decided speedily. This information is key requirement to allow detainees to challenge the legality of the arrest and detention. Therefore, the information on the reasons of detention must be specific, simple, non-technical language that he/she can understand and clear explanation of the legal and factual basis for the detention should be included.¹⁸⁵ The information must be sufficient to permit the detained to challenge the legality of his/her

¹⁸¹ Ibid, p. 26

¹⁸² Amnesty international, “Locked Away; Sri Lanka’s Security Detainees”, 2012, p.18, Available at www.amnesty.org.

¹⁸³ Criminal Code of the Federal Democratic Republic of Ethiopia (2004), article 423 under the caption “Unlawful Arrest or Detention”.

¹⁸⁴ Ibid, article 585(4).

¹⁸⁵ Danish Institute for Human Rights, supra note 179, P.32

detention. However, practically the issues of language would pose a question. For example what would be done if the arresting official cannot speak the language that the arrested person can understand? Such cases should be included in the law, if we deserve the practicability of the rights. Detaining a person simply for a presumed connection with subversive activities without providing an explanation as to the scope and meaning of „subversive activities“¹⁸⁶, is not sufficient justification. ¹⁸⁷“*Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*”¹⁸⁸

3.3.3. The Right to Legal Representation and Council

The Ethiopian constitution specifies that “Persons arrested have the right to be brought before a court within 48 hours of their arrest”.¹⁸⁹ The right to legal counsel is also essentially, even for the protection of other rights of suspects throughout the criminal proceedings and it should be protected from the very beginning of the proceedings, at least immediately upon arrest.¹⁹⁰ However, most of pre-trial detainees never see a lawyer or legal advisor and often lack information on their basic rights. Detainees reach trial without representation most likely beaten down by months of detention.¹⁹¹ Accordingly, the right to be provided and communicate with counsel has been identified as one of the most often violated pre-trial rights. The right to be provided and communicate with counsel has been identified as one of the most often violated pre-trial right.¹⁹²

¹⁸⁶ Ibid,p.32

¹⁸⁷ See HR Committee: Communication No. 33/1978, at paragraphs, 12-13.

¹⁸⁸ ICCPR, Art.9 (2)

¹⁸⁹ Constitution of the Federal Democratic Republic of Ethiopia, 1995, proclamation No.1,Negarit Gazetta, year 1, No 1, article 19(3), 20 & 21

¹⁹⁰ Jaan Ginter and Anneli Soo, „The Right of the Suspect to Counsel in Pre-trial Criminal Proceedings, Its Content, and the Extent of Application“, *Juridical International* xix/2012, p. 170-178.

¹⁹¹ David Berry (2011), the Socioeconomic Impact of Pre-trial Detention. A Global Campaign for Pre-trial Justice Report, Open Society Justice Initiative, New York.

¹⁹² See Lawyers Committee for Human Rights, What is A Fair Trial? A Basic Guide to Legal Standards and Practice, March 2000. p.5

3.3.4. Prolonged Pre-trial Detention and Investigation

Any individual detained on a criminal charge has the right to trial within a reasonable time or to be released pending trial.¹⁹³ The UN Human Rights Committee has also stated that “pretrial detention should be an exception and as short as possible.”¹⁹⁴ The right to trial within a reasonable time applies to anyone who is charged with a criminal offence, both detained and not detained. But in cases where the suspected person is detained, greater speed may be required in proceeding with the investigation and trial. The longer the suspect is kept in pre-trial detention, the more likely it is that the state is violating the right to presumption of innocence and liberty of individuals as this person is not criminal yet. Therefore, suspects should be held in police facilities only until the first judicial review of detention. However, practically suspects are held in police custody for several days or even months. This leads to heavy overcrowding in police cells, which is already under-resourced.

3.3.5. Rights During Interrogation

The interview of a suspect or interrogation is an investigative method to collect information that can further the investigation or be used as evidence at the trial. Interrogation is successful when it provides police with a lawful means of convincing perpetrators to confess their crimes. With some unknown degree of regularity, however, innocent suspects are also sometimes induced to confess to crimes they did not commit.¹⁹⁵ These will happen because of certain interrogation tactics used extremely like holding a suspect incommunicado for long time and presentation false evidence by interrogating authorities.¹⁹⁶ Police officers often enjoy a maximum freedom in their treatment of suspects during interrogation because of absence of monitoring mechanisms. Suspects are often interrogated without the presence of a lawyer or any independent monitors which allows officials to exert pressure through ill-treatment. According to a Global Campaign for Pre-trial Justice Report the vast majority of torture and other form of ill-treatment that occurs

¹⁹³ Article 9(3) of the ICCPR; Principle 38 of the Body of Principles; Principle M (3) (a) of the African Commission Principles on the Right to a Fair Trial.

¹⁹⁴ UN Human Rights Committee, General Comment 8, Para. 3

¹⁹⁵ Saul M. Kassin et al. (2010), Legal and Criminological Psychology- Interviewing suspects: Practice, science, and Future directions, 39-55.

¹⁹⁶ Ibid, p.44

around the world take place in pre-trial detention during investigation. It is most likely to occur at the early stage of detention, usually in the first days of police custody when it is applied to extract a confession. At this stage pre-trial detainees are exposed to different form of ill-treatments like extortion, arbitrary actions of police, corrupt officials, and even from other detainees.¹⁹⁷ Contrary to the widespread opinion that torture is exclusively the fate of political prisoners and suspected terrorists most victims of torture and other ill-treatment are ordinary people suspected of ordinary crimes.¹⁹⁸

3.3.5.1. The Right to Remain Silent and Prohibition against Coerced Confessions

Obtaining confessions from suspects is used as one technique for solving and proving crimes in which the suspect accept responsibility for wrongful acts that he/she commits.¹⁹⁹ Confessions may save a great deal of time and money in the investigation process. However, the way the confession has been obtained should be critically examined. The right to silence is inherent in the presumption of innocence. This right is at risk during the interrogation of suspects as investigating officials often use different methods to extract a confession or incriminating statements from the suspect, and it is to discourage these efforts that right to remain silent is safeguarded for the suspects. International law and standards prohibit the use of any form of coercion to extract confessions or other information from detainees. It declares that no one may be compelled to testify against themselves, to confess guilt, or be compelled to testify against others.²⁰⁰ Similarly, the Ethiopian constitution stipulates that persons arrested shall not be compelled to make confessions which will be used in evidence against them and any evidence obtained under coercion is inadmissible.²⁰¹

Additionally, the Ethiopian criminal procedure code states that any person summoned shall not be compelled to answer and shall be informed that he has the right not to answer and that any

¹⁹⁷ David Berry (2011), the Socioeconomic Impact of Pre-trial Detention. A Global Campaign for Pre-trial Justice Report, Open Society Justice Initiative, New York

¹⁹⁸ Ibid at cite 197

¹⁹⁹ Lawrence M. Solan and Peter M.Tiersma (2005), Speaking of Crime: The Language of Criminal Justice,p.53

²⁰⁰ See ICCPR, art.14 (3) and CAT, arts.1 and 16.

²⁰¹ FDRE Constitution, article 19 (5)

statement he may make may be used in evidence.²⁰² Human rights standards also provide that authorities should not take an advantage of the situation of a detained person for the purpose of compelling him/her to incriminate himself/herself or to testify against other person.²⁰³ However, study shows that in Ethiopia mistreatment and denial of access to basic services are sometimes used to put pressure on detainees and extract information, confessions and to compel them to testify against others and also as punishment for those who refuse to cooperate during interrogation.²⁰⁴ The presence of a lawyer during interrogations is a human rights standard to protect the suspect from abuse. However, Human Rights Watch report indicates that the presence of a lawyer during interrogations in Ethiopia, specifically in Addis Ababa police is very limited.²⁰⁵ In the absence of proper resource and well trained man power to use modern techniques of crime investigation, police found coercive confession as the easiest and even the only way of convicting suspects.²⁰⁶

3.3.5.2. Right to an Interpreter and Record of Interrogation

Ethiopian Criminal Procedure Code stipulate that “any statement which may be made during interrogation shall be recorded and if the suspects is unable to understand the language in which his answers are to be recorded, he/she must be supplied with a competent interpreter who shall certify the correctness of all questions and answers”.²⁰⁷ Interrogation of suspects must be recorded. The records have to contain the duration of each interrogation, the intervals between interrogations and the identities of the officials conducting the interrogation and other persons present during the interrogation. These records should be accessible to the detainee and their counsel.²⁰⁸ The Human Rights Committee has also stated that the time and place of all interrogations should be recorded, and that this information should be available for judicial and administrative proceedings.²⁰⁹

²⁰² Criminal Procedure Code of Ethiopia, article 27(2)

²⁰³ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly Resolution 43/173 of 9 December, 1988, principle 21(1)

²⁰⁴ Body of Principles, Principle 21

²⁰⁵ Human Rights Watch Report 2016, p.38

²⁰⁶ A Global Campaign for Pre-trial Justice, Pre-trial Detention and Torture: Why Pre-trial Detainees Face the Greatest Risk; Open Society Foundations, 2011.

²⁰⁷ Criminal Procedure Code of Ethiopia, article 27 (3) and (4).

²⁰⁸ Body of Principles, Principle 23

²⁰⁹ UN Human Rights Committee General Comment 20, para.11

CHAPTER FOUR

4. Presentation and Analysis of Data

4.1. Description of the Study Area

Addis Ababa is the capital city of Ethiopia. It is situated between 8055' and 9005' North Latitude and 380 40' and 380 50' East Longitude in the central plateau of Ethiopia. It covers an area of 540 sq. km. Addis Ababa is founded by the 19th century Ethiopian king Emperor Menelik II and his wife Empress Taitu in 1887.²¹⁰ Due to its average elevation of 2,500 meters above sea level, Addis Ababa has a suitable climate and moderate weather conditions. Besides, for political and administrative reasons, the city is made to be structured at three tiers: City Government at the top, 10 sub cities Administrations in the Middle, and one hundred sixteen Woreda administrations at the bottom.²¹¹

In 2003, the Charter of Addis Ababa City Government, Proclamation No. 311/2003, divided the city into ten parts and structured in sub-cities for the purpose of realizing good governance and administration.²¹² These ten sub-cities are *Bole, Nifas Silk-Lafto, Kolfe-Keraniyo, Yeka, Akaki-Kaliti, Arada, Gullele, Addis Ketema, Kirkos* and *Ledeta* Sub-city.²¹³ *Gullele* is one of ten sub cities of Addis Ababa. It has a total population of 284,865.²¹⁴ Its geographical area covers 30.18sq.km.²¹⁵ It is situated in the north of Addis Ababa and bounded by Arada sub city in the south, Yeka sub city in the east and Kolfe-Keranio sub city in the west and Entoto Mountain in the north.

²¹⁰ Amare Dawit and Fassil Ghiorgis 1986. Early architectural Development in Addis Ababa. In Symposium on the century of Addis Ababa. Addis Ababa, Nov. 24-25, 1986.p.7

²¹¹ Mulugeta Yednakachew. 2011. the Livelihoods Reality of Micro and Small Enterprise Operators: Evidences from Woreda One of Lideta Sub-city. Addis Ababa, Ethiopia.

²¹² *Gullele* Sub-City Strategic Plan 2000-2003 E.C., Addis Ababa, *Gullele* Sub-City Administration (unpublished Amharic version).p.6

²¹³ Federal Democratic Republic of Ethiopia.(2003). Addis Ababa City Government Revised Charter, Proclamation No. 311/2003, Addis Ababa, Addis Ababa.

²¹⁴ Central Statistical Authority (2011): Population and Housing Census of Ethiopia, Statistical Report, Addis Ababa, Ethiopia.

²¹⁵ Ibid at cite 214

Like its administration structure, the Addis Ababa City Charter Proclamation (No.87/1997), has been police commission into ten sub cities, where all have their own departments to investigate crime and also prevent crime. Among ten police departments created by same proclamation, the *Gullele* sub-city police department is the focus of this paper due to the fact that there are evidences that indicate the prevalence of crime of robbery and snatching; armed with robbery; homicide; attempted homicide; various thefts; and various social related many crimes committed in this sub-city, there are wide police stations than other sub cities, the majority of the people in the area have no regular income sources due to poverty many crimes has occurred, and so many suspects are arrested in the detention centers. The police stations that this study covers include *Addisu Gebeya, Paster, Mennen, Kechene, and Shiro Meda* area police stations centers.

With an intention of assessing the principle of presumption of innocence in these police stations, the writer of this paper has tried to make interview with detained criminal suspects. He has also approached different stakeholder to the case like, police investigator, public prosecutors, judges, lawyers and etc. to get the real picture about the concept under consideration. This chapter mainly presents a detailed empirical analysis of data collected in relation to the respects of suspects' rights during criminal investigation from sample police stations in Addis Ababa *Gullele* Sub-City Police Investigation Department (AAGSCPID). The study applies qualitative analysis of data produced mainly from in-depth interview, focus group discussion and participant observations. Accordingly, through interview and observation, the researcher has approached 20 criminal suspects, 10 police officer/investigator, 5 public prosecutors, 3 judges, 3 lawyers, 2 police station heads, and one justice of heads totally 44 participants of the research and methods of data collection used to obtain the intended data.

4.2. The Implementation of Presumption of Innocence in *Gullele* Sub-City Police Dept.

The concept of presumption of innocence carried important meaning both before and during trial. Historically, the presumption of innocence protected defendants from the time of charge to trial.²¹⁶ However, in light of state and federal changes in pretrial practice, as well as Supreme Court precedent restricting the presumption's application to trial, the presumption of innocence

²¹⁶ Shima Baradaran, Restoring the Presumption of Innocence", Ohio State Law Journal, vol. 72(2011), p. 724

no longer protects defendants before trial. These limitations on the presumption are fundamentally inconsistent with its constitutional roots. The results of the presumption's diminution are also troubling as the number of defendants held pretrial has steadily increased such that the majority of people in our nation's jails have not been convicted of any crime.²¹⁷ The practical results of the presumption's diminution are apparent and troubling. Presumption of innocence until proven guilty in a court of law is a legal right that the suspected enjoys in criminal trials in many nations. „Thus, the maxim of “innocent until proven guilty” signified that jurors convict only when there was enough proof that the crime was committed. It lost its greater meaning that the defendant was protected against any inferences or findings of guilt before trial.²¹⁸ As long as it was certain that the defendant would appear in court for his/her trial, he/she was entitled to avoid any punishment until the judgment of the court.”²¹⁹ Legal scholars very much equated the presumption of innocence with a legal burden and were less concerned with whether the defendant actually committed the crime. For instance, the government could have clear evidence that a defendant committed murder but the evidence, if it was obtained in violation of the defendant's right to counsel, would be inadmissible, thus leading the defendant to be acquitted.²²⁰ Thus, having in mind the general and universal human rights principle which state that human rights are indivisible and inter-related, the writer of this paper will try to raise some rights that had a great linkages with principle of presumption of innocence before trial and shows the status of the right under consideration for different crimes in *Gullele* sub-city police stations in light of some major international, regional and national human rights instruments.

Thus the condition of arrest and detention, the right to be informed the reasons of arrest, the rights to have legal representation and council, the right to promptly present detainees before court and the rights of detained person during interrogation and other rights are discussed with an intention of getting the real picture of presumption of innocence in police department by taking *Gullele* sub-city police stations.

²¹⁷ Ibid, p.723

²¹⁸ Ibid, p.738

²¹⁹ Ibid, p.735

²²⁰ Ibid, p.737.

4.2.1. Conditions of Arrest and Detentions

The international, regional, and national human rights are all prohibit arbitrary arrest and detention and state that no one may be deprived of liberty except on grounds and in procedures established by law. For instances, the African Commission on Human and Peoples' Rights has also stated that there should be a reasonable suspicion or probable cause that a crime has been committed by the person being arrested.²²¹ This indicates that a person cannot be arrested unless there is a strong and reasonable suspicion that they have committed a crime and there is sufficient proof that crime took place. The requirement of reasonable suspicion is an essential safeguard against arbitrary arrest and detention. Police officers cannot arrest individuals on criminal charges where there is insufficient evidence that the person has committed a crime.²²² Ethiopia has also adopted all these international and regional human rights documents. Article 17 (2) of the FDRE constitution also states that *"no person may be subjected to arbitrary arrest and no person may be detained without a charge or conviction against him."*²²³ Therefore Ethiopia has an obligation to ensure that arbitrary arrests and detentions do not occur within its jurisdiction and that, if they do take place, law enforcement officials are held accountable and the victims receive compensation.

The situation in which the Ethiopian government is responsible to compensate victims of human rights violation and crime is where terrorism victims fund established as pursuant to article 34 of the Anti-Terrorism Proclamation No. 652/2009.²²⁴ According to this article, upon the issuance of regulation by the Council of Ministers, terrorism victims fund shall be established. And such fund is not yet established by the Council of Ministers. But, in Ethiopia victims of human rights violations and crimes have legal root to claim and get compensation from those who violate their human rights. Thus any arrest or detention must have a legal basis.

²²¹ African Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (AC Principles), 2003, Article M (1) (b).

²²² Ibid, Article M (1) (e).

²²³ Constitution of the Federal Democratic Republic of Ethiopia, 1995, Article 17(2).

²²⁴ Article 34 of the Anti-Terrorism Proclamation No.652/2009.

However, most of the detainees in the police custody told the researcher that; *“they are detained on suspicion that they are involved in robbery, theft, conflict, violations of the rules proclaimed in state of emergency and other petty offences without having evidence against them”*. They said that, *“they are waiting in detention centers until police collect sufficient evidence and their cases are investigated”*. According to interview made with detainees, *“police are making detention without sufficient evidence to form a basis for a reasonable suspicion that the individual has committed a particular crime.”*

One suspect explains how he was arrested as follows;

*“On February 12, 2018, before two Months in Sululeta near to chancho town around 9:30 pm local time I was on my way to home. Five police men met me on the road and they asked me who I am and where I am going. Then I told them my name and that I am going home. Without further question they ordered me to turn back and showed me the direction to the police station. I asked them why I am going to the police station; they said you are suspected for participating in attempted to homicide a week earlier in the town. This time they start beating me turn by turn until I reach Addisu Gebeya police station. I am in this police station for around two months and nobody can show me the reasons of my arrest and also no evidence has yet been brought to attest my wrongs.”*²²⁵

Additionally, according to Criminal Procedure Code of Ethiopia no person may be arrested without warrant issued by court except exceptional cases like flagrant offence.²²⁶ However, based on data collected from AAGSCPID police has detained individuals without an arrest warrant who were not caught in flagrante delicto. Detainees told the researcher that police had appeared at their homes without a warrant and told them to go with them to a police station.²²⁷ The researcher found that, the police subsequently detained these individuals at the stations without an arrest warrant on suspicion of having committed different crimes. An arrest without warrant may only be made on the conditions laid down under article 50 and 51 of the Criminal Procedure Code of Ethiopia. However, most of the detainees figured out above are arrested

²²⁵ Interviewee with Current Criminal Suspect in *Addisu Gebeya* police station , April 19, 2018

²²⁶ Criminal Procedure Code of Ethiopia Proclamation No.185 of 1961, Article 49 & 50.

²²⁷ Interview with different individuals detained and released at different time in *Mennen* police stations, 27 April, 2018

without warrant and as the time without fulfilling these conditions listed under the specified articles.²²⁸

In short, the police may exercise the power of arrest. However, this power should only be exercised when necessary and law allows doing so, meaning, there shall be sufficient evidences that show the commission or omission of crime by suspected person and also simultaneously, there shall be a court warrant to make arrest. Hence, any arrest and detention made out of this legal provision is violation of rights of suspects including the principle of presumption of innocence as stipulated under different national and international human rights instruments.

To check as to whether these rights of suspected person are protected or violated, public prosecutors have an obligation to carry out regular inspections about the situations surrounding the arrest of suspects or to check that detainees were detained lawfully and as well as to ensure that conditions of detention complied with the obligation to ensure that detainees were treated humanely and with respect for their dignity. However, based on the evidences collected from AAGSCPID, the system of checking lawfulness of detention and treatment of detainees is not effective. In principle the head of investigating police and prosecutor together must visit the detainees once a day and check number of detainee, how they are detained and whether their rights are respected or not. However, during my observation this was not done smoothly. This happened because polices and prosecutor are busy with office work as number of staff is not compatible with number of society they are serving.²²⁹ It is also difficult to take administrative measures on polices“ mistreats and violate rights of suspects as it is difficult to find clear evidences and witness because such violation are usually done secretly.²³⁰

As a result of such bureaucracies and other factors, the researcher found that, there are many situations in which police make arrest without sufficient evidences and also without having a court warrant and went to the extent of beating and hitting the suspects. As human rights are indivisible and inter-rated by their nature, the violations of this rights has a lot linkage with

²²⁸ Criminal Procedure Code of Ethiopia Proclamation No.185 of 1961, Article 50 & 51.

²²⁹ Interview with head of justice office Mr.Sulieman A.,03 May, 2018

²³⁰ Interview with *paster* police station criminal investigator Chief Sergeant Meselu H., 19 April, 2018

principle of presumption of innocence which claim that the any suspected person has the right to presumed innocent and treated accordingly until his guilty is proved by competent court of law.

4.2.2. Informing the Reasons for Arrest

The ICCPR provides that any person arrested must be informed reason of arrest up on arrest and must be informed the charge brought against him/her as soon as possible.²³¹ The 1995 Ethiopian Constitution in similar fashion 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.*”²³² Knowing reason of detention is crucial for detainees to prepare themselves for defense and challenging their arrest. However, practically most of suspected persons informed why they are arrested when they brought before court, not at the time of their arrest. Giving adequate information on the grounds for deprivation of liberty can be regarded as an additional safeguard against arbitrary arrest and detention. Accordingly, if the person making the arrest cannot say why they are doing so immediately after the arrest has been made; they are unlikely to be able to demonstrate that it is not arbitrary.²³³ Therefore, not explaining reason of arrest for detainee is first it is a violation of rights of suspect by itself and second it is an indication that the arrest is unlawful and that it was done without evidence and reason. Police officers have told the researcher that they are usually informing the arrestees“ reason of arrest immediately.

Similarly, Principle 13 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly Resolution 43/173 of 9 December, 1988 states that at the moment of or promptly after the moment of arrest or the commencement of detention, a person must be given information and an explanation of their rights and how to exercise them. For instances, the detained must be told type of crime he/she is suspected of, the available evidences that shows the commission or omission said crime and etc. This information must be provided in a language the person understands.²³⁴ The police failed inform the reasons of arrests and also from the case files of show that the detainees are not

²³¹ See the International Covenant on Civil and Political Right (ICCPR) 1966, article 9(2)

²³² The FDRE Constitution, article 19 (1)

²³³ David Hoffman & John Rowe, Human Rights in the UK: An Introduction to the Human Rights Act 1998,2003, p,143- 223

²³⁴ Body of Principles, supra note 203,Principle 13

informed of their rights including their rights to be presumed innocent until proven guilty, which clearly show the arbitrariness of arrests and violations of rights. Moreover, about most of the interviewed prosecutors indicated that the police use suspects to speak to the media for the purpose of testimonial and learning the society before the court's decision regarding their guilt.²³⁵ 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.

4.2.3. Legal Representation and Counsel

The right to legal counsel is essentially, even for the protection of other rights of suspects throughout the criminal proceedings and it should be protected from the very beginning of the proceedings.²³⁶ However, most of pre-trial detainees never see a lawyer or legal advisor and often lack information on their basic rights. Detainees reach trial without representation most likely beaten down by months of detention.²³⁷ Accordingly, the right to be provided and communicate with counsel has been identified as one of the most often violated pre-trial rights. Accordingly, the right to be provided and communicate with counsel has been identified as one of the most often violated pre-trial right.²³⁸

The right of access to legal counsel begins from the moment an individual is deprived of his liberty. It should be granted to all those detained, arrested or imprisoned as a matter of right and at the earliest stage of the process. According to article 20 (5) of the FDRE constitution every suspected person is granted the right to be represented by legal counsel of their choice and if they do not have sufficient means to pay, to be provided with legal representation at state expense.²³⁹ This indicates that, a State should provide defense legal counsel only to those who are not able to pay for it and only if miscarriage of justice is believed to have resulted because of defense counsel is not provided. In all others cases, no legal counsel be provided to the suspected at the

²³⁵ Interview with public prosecutors conducted at *Addisu Gebeya* police stations, Mr. Wogene D, on 24 April, 2018

²³⁶ Jaan Ginter and Anneli Soo,, "The Right of the Suspect to Counsel in Pre-trial Criminal Proceedings, Its Content, and the Extent of Application", *Juridical International* xix/2012, p. 170-178.

²³⁷ David Berry (2011), *the Socioeconomic Impact of Pre-trial Detention. A Global Campaign for Pre-trial Justice Report*, Open Society Justice Initiative, New York.

²³⁸ See Lawyers Committee for Human Rights, *What is A Fair Trial? A Basic Guide to Legal Standards and Practice*, March 2000, p.5

²³⁹ Article 20 (5) of the FDRE constitution.

expense of the state. However, practically this right is not being exercised by all suspected persons in the study area. It only those who can afford to appoint a legal counsel at their own expense can do so.

Access to lawyer and defense council is a fundamental safeguard against different ill treatment on suspect in detentions. Communicating with defense counsel at the initial stage of the investigation is necessary as it helps to control the lawfulness of measures taken in the course of the investigation, the identification and presentation of evidence when it is still possible to trace new relevant facts through witnesses and making complaints in relation to his detention concerning its justification, length and conditions.²⁴⁰ As pointed out by Nihal Jayawickrama to deny a suspect upon his/her arrest of an opportunity to consult with counsel on the ground that an interview with a lawyer at that stage is likely to impede investigation is a violation of this right.²⁴¹ Accordingly, all persons who are suspected of crime and detained must immediately have access to legal counsel from the very beginning of investigation into an offence by the police and must have lawyer of their own choice.

However, the researcher has identified none of the detainees in the study stations have lawyers or legal consular. According to the information obtained of the detainees did not know that they have such rights while others have no financial capacity to pay for legal councilor and defense lawyers.²⁴² When asked by researcher as to whether they met with their family and/or legal councilors, the respondents“ replied that they were not allowed to meet with their family and legal counselors 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 counselors 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 counselors. Government officials on the other hand told me that there is no budget to assign legal counselors for every suspect except free legal

²⁴⁰Nihal Jayawickrama (2002), *The Judicial Application of Human Rights Law; National, Regional and International Jurisprudence*, p.95

²⁴¹ Ibid p. 556

²⁴² Interview result with Lawyer Mr. Mesfin M. Conducted on 04 May,2018

services provided by private lawyers for few serious crimes.²⁴³ Accordingly, every lawyer has to provide fifty two hours free legal services annually to renew their licenses.²⁴⁴ Inability to have legal consular has many effects on suspected person to go forward and prove or disprove his/her innocence both at interrogation and adjudication levels.

For Instance: 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 to arrested person is the respecting of human dignity is recognized under article 21/1 of the FDRE Constitution. Furthermore, the Criminal Procedure Code of 1961 under article 61 proclaims that; *“The suspect in police custody must also be provided with the chance of having contact with his family, friends, legal counsel and/or religious father²⁴⁵, the suspect must be provided, if needed, with stationary material.”*²⁴⁶

Therefore, the police have their own program to allow the suspects to communicate with their respective legal counselors. Nevertheless, according to 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 counselors. They commented that it would have been better if they were allowed to communicate with their respective legal counselors on their own.

4.2.4. Promptly Present Detainees before a Judicial Authority

Article 9 of the ICCPR requires an arrested person to be taken before a competent authority promptly after arrest so that the authority can determine whether they should be released or remain detained. A judicial authority in this case means a judge or a person exercising judicial power who is independent of the parties. The Body of Principles also stipulates that anyone detained must be given an effective opportunity to be heard promptly by a judicial or similar

²⁴³Addis Ababa Justice Administrations; Justice Bureau and police commission; A Manual on transformation of criminal investigation and trial, 2014, Addis Ababa.

²⁴⁴ Ibid at cite 253

²⁴⁵ The Constitution of FDRE, 1995:art.21 (2).

²⁴⁶ See Criminal Procedure Code 1961, article 61.

authority with the power to review as appropriate the continuance of detention.²⁴⁷ Prompt appearance before a Court helps to minimize the risk of arbitrariness by providing judicial control over the executive's interference with the right to liberty in the criminal process. Therefore, anyone arrested or detained on a criminal charge must be brought promptly before a judge.²⁴⁸

Similarly, under the FDRE constitution recognized that a detainee must be brought before a court within 48 hours of arrest and have the lawfulness of their detention been determined.²⁴⁹ Additionally, the prosecutors has the authority to order the release of detainees when there is arbitrary detention, without waiting for the detainee to be taken to the court as it is the duty of prosecutors to ensure lawfulness of detentions and the observance of legal timeframes for such detentions.²⁵⁰ However, mostly police do not present detainee to the court and other competent judicial authority within the specified period. To that extent some detainees are held in police custody for a week without appearing before court and then released for absence of evidence against them.²⁵¹ An individual detained in *Gullele* police station before a week explained to the writer of this paper what happened to him as follows.

“On April 10, 2018 a hotel owned by a foreigner was robbed by a servant that used to work in the hotel. The police have failed to arrest the said suspected person, instead, they caught me, and hence I was her handler. Then they brought me to the police station and asked me about her where about. I told them that I had no information about where the said suspected person is. I went further and told them that I have no idea about the said crime and request them to present any evidence to prove their claim otherwise to free me. However, the police men took me to the detention center and told me that I will be detained until the investigation of the case finalized. In such way I stayed in prison for

²⁴⁷ Body of Principle, Supra note 203 , Principle 11

²⁴⁸ International Covenant on Civil and Political Right (ICCPR), article 9

²⁴⁹ FDRE Constitution, article 19(3)

²⁵⁰ Interview result with public prosecutors conducted at *Paster* Police stations, Mrs. Mekedelawit A., on 19 April, 2018

²⁵¹ Interview with the head of in AAGSCPID police investigator Commander Tariku M. on ,30 April 2018

four days in the police detention center without any further interrogation, without charge and without appearing before court.”²⁵²

Here this individual, who is detained without any sufficient evidence against him with or with simple suspicion, was not brought before court timely and duly. Thus, it is a clear evidence that shows, that there are many facts on the grounds that indicates the suspected person detained by the police was not brought before the court timely which in turn show that there is a great probability for innocent person to detained for long period of time without being brought before the court within a reasonable time. As a result, many human rights guaranteed by international and national human rights instruments of the suspected person in general and the principle of presumption of innocence until proven guilty of suspected person is being violated by polices due their failure of bringing the suspected person to the court on time as per provided by different laws .

4.2.5. Prolonged Pre-trial Detention and Investigation

Any individual detained on a criminal charge has the right to trial within a reasonable time or to be released pending trial.²⁵³ The UN Human Rights Committee has also stated that “*pretrial detention should be an exception and as short as possible.*”²⁵⁴ The right to trial within a reasonable time applies to anyone who is charged with a criminal offence, both detained and not detained. But in cases where the suspected person is detained, greater speed may be required in proceeding with the investigation and trial. The longer the suspect is kept in pre-trial detention, the more likely it is that the state is violating the right to presumption of innocence and liberty of individuals as this person is not criminal yet.²⁵⁵ Therefore, suspects should be held in police facilities only until the first judicial review of detention. However, practically suspects are held in police custody for several days or even months. This leads to heavy overcrowding in police cells, which is already under-resourced. Due to over crowdedness and lack of space, detainees

²⁵² Interview with previous criminal suspect in *Kechene* police stations on 19, April 2018

²⁵³ Article 9(3) of the ICCPR; Principle 38 of the Body of Principles supra note at 203; Principles and Guidelines on M (3) (a) of the African Commission Principles on the Right to a Fair Trial.

²⁵⁴ UN Human Rights Committee, General Comment 8, Paragraph. 3

²⁵⁵ The Presumption Of Innocence And Its Role In The Criminal Process, Pamela R. Ferguson,2016

are sometimes forced to sleep in shifts or on a concrete floor in police cells which lack sufficient light and ventilation.²⁵⁶ The Human Rights Committee has stated that in such cases the suspects “*must be tried as expeditiously as possible*”.²⁵⁷ It is the duty of the Public Prosecution process owner to ensure that there are no cases of prolonged detention beyond the limits set out in law.²⁵⁸ However, sometimes the prosecutors may be busy at office and leave out visiting the detainees. Additionally on Saturday and Sunday prosecutors are not going to work (as these days are not working days for public servant) and it is must for detainees to wait Monday to meet prosecutor. During these days it is the police officers and warders who have full authority on the detainees. It is during this period that ill-treatment and sometimes torture become a fate of the detainees.

Though there are improvements after implementation of Business Processing Reengineering (BPR) which institutionalizes joint work of public prosecutors and police officers in criminal investigation, still there is delay of investigation. There is a time limit for criminal investigation to be finalized based on their seriousness; 15 days for simple/petty crimes, 1 month for medium and 3 months for serious crimes.²⁵⁹ However, the time limit is not strictly followed by investigators and prosecutors as there are investigations that last for one month and above for petty crimes. A case of a man arrested suspected of violating state emergency from Sululuta near to Chanco town and detained for more than two months without being brought before court can be cited as good example at this critical juncture.

As one public prosecutor explained that the main reason for prolonged investigation and trial is the delay of medical result from health institutions. Additionally, factors like the complexity of cases, the availability of witness and the behaviour of the person under investigation may affect the length of the investigation.²⁶⁰ Thus the failure to bring suspected person to the court of law on due time as clearly stipulated under different human rights instruments is violations of principle

²⁵⁶ Interview with Investigator *Shiromeda* police stations Chief Sergeant Tiringo W.,20 April, 2018

²⁵⁷ UN Human Rights Committee, General Comment 32, Para. 35

²⁵⁸ Interview with the head of in AAGSC justice office, 02 May, 2018

²⁵⁹ Addis Ababa State Administration; Justice Bureau and police commission; A Manual on transformation of criminal investigation and trial, 2014, Addis Ababa.

²⁶⁰ Interview with public prosecutors conducted at *Mennen* police stations, Mrs. Feven A.,on 24 April, 2018

of presumption of innocence in one way or other, hence the principle clearly underline that the suspected person is considered innocent until judgment is rendered by competent court.

4.2.6. Rights of suspected person during Interrogation

The main purpose of interrogation is to extract information from a suspect who may suppress the facts, or from people whose answers might be shade by close ties to a suspect.²⁶¹ It also involves the gathering of evidence in support of the suspicion that a certain crime has been committed by the alleged offender. Therefore, if done properly, interrogation can thus be an unmitigated social benefit and if not done properly, however, interrogation can be an unmitigated social disaster.²⁶² All steps during investigation will be taken with this purpose in view. Coercive interrogation can lead to police-induced false confessions, which, in turn, can lead to the wrongful prosecution, conviction, and imprisonment of the innocent.²⁶³

The interview of a suspect or interrogation is an investigative method to collect information that can further the investigation or be used as evidence at the trial. Interrogation is successful when it provides police with a lawful means of convincing perpetrators to confess their crimes. With some unknown degree of regularity, however, innocent suspects are also sometimes induced to confess to crimes they did not commit.²⁶⁴ These will happen because of certain interrogation tactics used extremely like holding a suspect incommunicado for long time and presentation false evidence by interrogating authorities.²⁶⁵ Police officers often enjoy a maximum freedom in their treatment of suspects during interrogation because of absence of monitoring mechanisms. Suspects are often interrogated without the presence of a lawyer or any independent monitors which allows officials to exert pressure through ill-treatment.

²⁶¹ James W. Osterburg and Richard H. Ward (2010), *Criminal Investigation: A Method for Reconstructing the Past*, Sixth Edition, p.239

²⁶² Ibid ,p.559

²⁶³ Richard A. Leo (2008), *Police Interrogation and American Justice*, Harvard University Press,p.9

²⁶⁴ Saul M. Kassin et al. (2010), *Legal and Criminological Psychology- Interviewing suspects: Practice, science, and Future directions*, 39-55.

²⁶⁵ Ibid, p.44

Obtaining confessions from suspects is used as one technique for solving and proving crimes in which the suspect accept responsibility for wrongful acts that he/she commits.²⁶⁶ Confessions may save a great deal of time and money in the investigation process. However, the way the confession has been obtained should be critically examined. The right to be silent is inherent in the presumption of innocence.²⁶⁷ This right is at risk during the interrogation of suspects as investigating officials often use different methods to extract a confession or incriminating statements from the suspect, and it is to discourage these efforts that right to remain silent is safeguarded for the suspects. International law and standards prohibit the use of any form of coercion to extract confessions or other information from detainees. It declares that no one may be compelled to testify against themselves, to confess guilt, or be compelled to testify against others.²⁶⁸ Similarly, the Ethiopian constitution stipulates that persons arrested shall not be compelled to make confessions which will be used in evidence against them and any evidence obtained under coercion is inadmissible.²⁶⁹

Additionally, the Ethiopian Criminal Procedure Code states that any person summoned shall not be compelled to answer and shall be informed that he has the right not to answer and that any statement he may make may be used in evidence.²⁷⁰ Human rights standards also provide that authorities should not take an advantage of the situation of a detained person for the purpose of compelling him/her to incriminate himself/herself or to testify against other person.²⁷¹ However, study shows that in Ethiopia mistreatment and denial of access to basic services are sometimes used to put pressure on detainees and extract information, confessions and to compel them to testify against others and also as punishment for those who refuse to cooperate during interrogation.

Thus, presence of a lawyer during interrogations is a human rights standard to protect the suspect from abuse. So that the presence of a lawyer during interrogations in Ethiopia, specifically in Addis Ababa police is very limited due to the absence of proper resource and well trained man

²⁶⁶Lawrence M. Solan and Peter M. Tiersma (2005), *Speaking of Crime: The Language of Criminal Justice* p.53

²⁶⁷ *Ibid*, p.53

²⁶⁸ See ICCPR, art.14 (3) and CAT, arts. 1 and 16

²⁶⁹ FDRE Constitution, article 19 (5)

²⁷⁰ Criminal Procedure Code of Ethiopia, article 27(2)

²⁷¹ Body of Principle, *supra* note 203, principle 21(1)

power to use modern techniques of crime investigation, police found coercive confession as the easiest and even the only way of convicting suspects.

Ethiopian Criminal Procedure Code stipulate that “*any statement which may be made during interrogation shall be recorded and if the suspect is unable to understand the language in which his answers are to be recorded, he/she must be supplied with a competent interpreter who shall certify the correctness of all questions and answers*”.²⁷² Interrogation of suspects must be recorded. The records have to contain the duration of each interrogation, the intervals between interrogations and the identities of the officials conducting the interrogation and other persons present during the interrogation. These records should be accessible to the detainee and their counsel.²⁷³ The Human Rights Committee has also stated that the time and place of all interrogations should be recorded, and that this information should be available for judicial and administrative proceedings.²⁷⁴

The following case from suspected of robbery can *partly* shows the interrogation mechanism exploited by police in Addis Ababa.

“On April 10, 2018 a hotel owned by foreigner was robbed by a worker that used to work in the hotel. The police have failed to arrest the said suspected person, instead, they caught me, and hence I am handler. Then they brought me to the police station and asked me about her where about. I told them that i had no information about where the said suspected person is. I went further and told them that i have no idea about the said crime and request them to present any evidence to prove their claim otherwise to free me. However, the police men took me to the detention center and told me that i will be detained until the investigation of the case finalized. In such way I stayed in prison for four days in the police detention center without any further interrogation, without charge and without appearing before court. On the fifth day one police man called my name and told me that you must go to the hotel and discuss with the owner of the hotel man. Then after they brought me back to police station and beaten me up and enforced me to confess

²⁷² Criminal Procedure Code of Ethiopia, article 27(3) and (4).

²⁷³ Body of Principle, supra note at 203, Principle 23

²⁷⁴ UN Human Rights Committee General Comment 20, paragraph.11

*as if the suspected woman gave me 50,000birr. But the police warders/Safeguards to hear shouted me at night then to tell him the police officer head this guy is to takes place violation of rights. Then the police station heads to consider all things”.*²⁷⁵

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. The interviewed suspects believe that 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 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; and purposely avoiding information relevant to the suspects.²⁷⁶ However, 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,*

²⁷⁵ Interview with the head of in AAGSCPID police investigator Commander Tariku M. on 30 April, 2018

²⁷⁶ Interview with the Prosecutors Mr.Wegene D.,in *Addisu Gebeya* police stations on 20, April 2018

*promise or any other improper method to any person examined by the police.”*²⁷⁷ Moreover, the Ethiopian Constitution, Art.19 (5) also 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”*.²⁷⁸ In relation to the right not to be compelled to testify against oneself; the Ethiopian Constitution Art.20 (3) stipulates that: *“During proceedings suspected/accused persons have the right ...not to be compelled to testify against them”*.²⁷⁹

Therefore, any statement which may be made during interrogation of suspects must be recorded. And also these records should be accessible to the detainee and their counsel and this information available for judicial and administrative proceedings. Because, any evidence obtained under coercion shall not be admissible with the court. In addition accountability mechanisms and provides the view of police officers can be strengthened during interrogation. The police officers also concern for the respect of suspect rights and believe that coercive interrogation can lead to police-induced false confessions, which, in turn, can lead to the wrongful prosecution, conviction, and imprisonment of the innocent.

4.3. Police Accountability Mechanisms

4.3.1. Police Accountability

Accountability is a very important provision in ensuring police neutrality. According to Walker (2006), defines police accountability as a fundamental principle of a democratic society which ensures that the police are held accountable for their actions. Accountability includes both what the police do and how they do it.²⁸⁰ Agency-level accountability involves the performance of law enforcement agencies with respect to controlling crime and disorder and providing services to the public. He also elaborates, individual-level accountability involves the conduct of police officers with respect to lawful, respectful, and equal treatment of citizens.²⁸¹ The procedures

²⁷⁷ The Criminal Procedure Code of Ethiopia, Article 31(1).

²⁷⁸ FDRE Constitution, article 19(5)

²⁷⁹ The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Article 20(3)

²⁸⁰ Walker, S. (2006). *Police Accountability: Current Issues and Research Needs*. Papers presented at the National Institute of Justice (NIJ) policing research workshop: planning for the future, Washington, D, November 28-29, 2006, p.2

²⁸¹ Ibid, p.2

involved in individual level accountability fall into two general categories: internal and external. Procedures that are internal to law enforcement agencies include controlling police officers conduct through written policies, routine supervision, regular performance evaluations, and the investigation of allegations of misconduct, and Early Intervention Systems (EIS). Whereas, external accountability procedures include citizen oversight bodies.²⁸²

Various proclamations and the recruitment practices that were dealt with are designed to make the police to be accountable to the people of the Federal Democratic Republic of Ethiopia. The recruitment of police officers is carried out with the full participation of the local community to ensure that undesirable individuals are not recruited. Police officers who were serving the community to be free from any crime or wrong doing in the special consideration for them.²⁸³ From the above, it could be inferred that accountability of police force under the Federal Democratic Republic of Ethiopia is to the people. The accountability is both direct and indirect. Directly, police is responsible to the local community and the community gives its consent for the police officer to be a police officer. Indirectly, the police is responsible to the democratically elected government. The federal government and regional government set the policy of policing and demand the implementation to that effect. Therefore, these governments appoint police commissioners to make sure that the government security policy is implemented and the need of the people is satisfied by police services.

4.3.2. Effectiveness of Police Accountability Mechanisms

The police have discretionary powers to carry out their mandate. In exercising these powers the police should operate within the framework of legality to ensure accountability, effectiveness and efficiency.²⁸⁴ According to Alemik (2010), there are four important reasons for police accountability and oversight as follows:²⁸⁵

²⁸² Ibid, p.3

²⁸³ Andargatchew, T. (2004). *The crime problem and its correction* Vol.2 No 2. Addis Ababa: Addis Ababa University Press, p.29

²⁸⁴ Olusola, K.O.A.F. (2012). A Comparative Analysis of Police Accountability in Nigeria and United States. *International Journal of Humanities and Social Science* Vol. 2 No.11: p.251

²⁸⁵ Alemika, E.O. (2010). *Enhancing Police Accountability Systems in Nigeria: The Missing Links*. Monograph Series. No 8. Jose: CLEEN Foundation, p.8

- Police have enormous powers that have profound impact on the rights and liberties of citizens and therefore it is necessary to establish mechanism to monitor the exercise of the powers in order to ensure that they are not used for repression – violation of the rights and liberties of citizens.
- The police are subject to political, economic and social pressures from different groups including the rulers, to use their powers in ways that are inconsistent with democratic norms and governance. Without effective accountability and oversight mechanism, the police are likely to succumb to partisan interferences to the detriment of democratic governance and economic development.
- The police draw substantial resources from the state for the purpose of carrying out their mandates. The use of the resources must be accounted for. Otherwise, there will be pervasive corruption and resource misallocation that will endanger the overall functional inefficiency.
- The police are established to carry out specific functions in order to promote and guarantee safety, security, peace, human rights and necessary conditions for economic development and equity in a nation-state. Therefore there must be an effective mechanism to determine the effectiveness and efficiency of the police in their functional performance.

According to Alemika (2010), the above mentioned reasons indicate that the purpose of police accountability is not for condemnation and criticism but for institutionalized mechanisms for enforcing answerability to democratic authorities with regard to performance, cost and conduct by the police.²⁸⁶ In Ethiopia, from 1941 to 1974, the effectiveness of police accountability measures was evaluated in the eyes of police loyalty to safeguard the name, integrity and throne of the Emperor and his country. Any measure taken to keep the integrity of the Emperor was correct and there was no police accountability to the general public. But, the accountability of police force under the Federal Democratic Republic of Ethiopia is to the people. 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 problematic tendency of police to resolve all issues by means of force and threat. 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.²⁸⁷

²⁸⁶ Ibid,p.10

²⁸⁷ Tsegaye, D. 2004. *Police and Ethics in Diversion*. Unpublished Teaching material,p.11-14

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.²⁸⁸

According to the Federal Police Commission Proclamation No. 720/2011, article 6, the mandate of the federal police can be summarized as to: Prevent and investigate any threat crimes and to prevent any activities in violation of the constitution that may endanger the constitutional order; Prevent and investigate any threat and acts of crime against the Constitution and the constitutional order, security of the government and the state and human rights; work in collaboration with the Attorney General and other relevant organs with respect to crime investigation; execute orders and decisions given by courts; Prevent and investigate crimes falling under the jurisdiction of federal courts other criminal related matters.²⁸⁹ Almost all the mandates of the federal police are highly related with the federal government and the federal structure ranging from the crimes prevented and investigated up to its contact with other organs of the justice system. Generally, according to article 9 of the Criminal Procedure Code of Ethiopia, police whether it is federal, city administration or regional are generally mandated to: prevent commission of crimes and protect life and property guarantees; preserve peace and order and investigate crime.²⁹⁰ These obligations of police are enumerated during the emperor's regime while the Criminal Procedure Code was enacted and these obligations of the police have stayed for a long period of time still now.

Generally speaking the police officers/administrators know that the process of crime investigation is the process of selecting of offenders and manifestation of truth in a rational and systematic way supported by sufficient evidence. It involves the gathering of evidence in support of the suspicion that a certain crime has been committed by the alleged offender. All steps including the right to presumption of innocence during investigation will be taken with this purpose in view. Otherwise, out of this police is accountable with police disciplinary as well as

²⁸⁸ Ibid,p.25-26

²⁸⁹ Federal Police Commission Proclamation No. 720/2011, article 6

²⁹⁰ Criminal Procedure code of Ethiopia, article 9

with promotion and demotion police administrations point of view. In Ethiopia police investigator have the technical training related with investigation although this may not be adequate and also the police investigator official's lack of knowledge in the detail about the systematic way of crime investigation. Police investigation, in most case, are by past record of suspected person and also some suspects may provoke them, due to this the investigation officers starts by biting the suspected persons on the street even in recent time as has been practiced similar to previous times. However, in most cases suspects seen to rise complain concerning the usage of force by police investigator's during their stay at custody of the police through the time when pretrial detention. But this types of activities not always truth. Though the government is the primary duty bearer, respecting and protecting human rights in general and rights of suspect in presumption of innocence in particular is a responsibility of every one. As a result, persons suspected of criminal act must enjoy all the human rights as other human beings do, except the restrictions that are imposed by law. These rights are recognized under numbers of national, regional and international human rights instruments.

CHAPTER FIVE

5. Conclusion and Recommendations

5.1. Conclusion

In Ethiopia legal systems, the issues in the pretrial detention in lights with human rights are expressed in the FDRE constitution and Ethiopia Criminal Procedure Code. The above mentioned laws and other international instruments gave due emphasis to the rights of the suspected person in the process of criminal justices at pretrial stage. Accordingly, this person has the right to remain silent, speed trial, the right presumption of innocent until proven guilty and the right to counsel and communicate with others and etc. Similarly, the same legal instruments have committed for the protection of peace and order of the public. Thus attempt has made by these legal documents to strike balance between public order and peace on one hand and suspected person pretrial rights on the other hand.

Therefore the main actors in the criminal justice administration that include the police, prosecution, courts and Lawyers had a duty to uphold these rights of suspected person in course of shouldering their responsibilities. For instances, when an offence is supposed to have been committed, the police may conduct investigation and collect relevant evidences that may substantiate the information pertaining to the commission of the said crime, but in this process the police must undertake this investigation activities in line with the procedure set out by both national and international laws adopted and ratified by the country. In other words, the police have to avoid the use of the “third degree” to extract information from the suspect and witnesses. In short, the police should have to handle criminal investigation with due care, or not to bypass legal restriction in place to protect the rights that presumed innocent persons and suspects had. This attention has to be given for both the means and the end of the criminal justice system.

However, the writer of this paper has find out that due to personal and institutional factors like; lack of knowledge and incompetence of criminal investigators, limitations in number of qualified officers and over flow of the criminal cases, the human rights of suspected person in general and the presumption of innocence in particular, are violated at different stages in pretrial by crime

investigators. For instances, the writer observed the fact that, there are a situation when the police without examining the grounds and procedures of remand, the police tend to grant unnecessary remand or deny the necessary remand. Plus to that, there are also a plenty of times that the police use different coercion mechanisms against the suspected person to get the information to substantiate the commission or the omission of crimes. In short, these violations may happen in two ways. In the first place, sometimes there are situation when police investigator consider the suspected person as guilty without having necessary evidences and treating him as guilty without court approval. Secondly, sometimes the investigator police suppress other rights of the suspected person and thereby make the presumption innocence meaningless. Institutional wise to, there are many factors that contributed for violations suspected rights at pretrial stage. For instances, absence of external monitoring system to ensure safety of detainees and denial of detainee's access to outside world are also major problems in police detention centers. Surprisingly, the researcher find out that it is only when a death occurs in police detention that police cells got public's attention.

In fact it is not only the personal or the institutions that contributed for the violations of suspected rights; the law itself sometimes contributes to. Article 59 of the criminal procedure code that relies on three options can be cited as good example at this critical juncture. According to this article, if a courts grant bail and the suspect is unable to produce surety or bail band some judges obligated to grant remand for waiting bail and other judges at the moment granting bail terminate or closed remand in file. And thus in such ways, it becomes open for interpretation and different application and as such the constitutionally guaranteed right to be presumed innocent until proven guilty is put on finger tips of judges to make decision she/he deems necessary.

Thus this and other legal lacunas along with the above stated personal and institutional factors has contributed a lot for the violation of the principle of presumption of innocence at pre-trial stage of criminal justice system in study .

5.2. Recommendations

When we look at the pre trial detentions centers (police stations) in Addis Ababa *Gullele* Sub-City police crime investigation in light of major national and international human rights, the researcher observed that there are serious violations of suspected person's rights at pre-trial stage of criminal administration system. As stated herein above, these violations had attributed to many factors. This is to refer the existing legal gaps, personal and institutional factors. Thus the writer of this paper makes the following recommendations.

- The investigating police officers must be equipped with necessary legal and technical knowledge particularly the rights of suspected to be presumed innocent until proven guilty and also monitored by concerned body. In other words, all police crime investigator's before coming to the profession they must take training, learned about human rights and other laws of the country with relation to the process of the crime investigation. This may includes, short and long term training on human rights particularly on respecting and protecting rights of criminal suspect should be provided for law enforcement officials, enabling police members to share the experience of other countries related to crime investigation, equipping police with modern technologies that help the police gather relevant information from multiple sources and etc. In addition to that the whole police investigators must take additional skill development trainings with regard to the systematic way of investigation.
- The police investigators and public prosecutors must work jointly. Even if it claimed that they started doing cooperatively, it did not yet materialized.
- The institutional capacity of the organs involved in administration of justice should be built. The government must take the responsibility of upgrading institutional (organizational) structures by providing competent and sufficient man power as well as facilities in detention centers. This may take different forms like,
 - ✓ Taking measure to reduce number of pre-trial detainees by applying alternative measure to detention,

- ✓ Pre-trial detention must be made last resort in criminal proceedings. This may help to improve conditions in police custody by reducing number of detainees in a cell.
 - ✓ Increasing the amount of money allocated for food to each detainee per day which is 16:00 birr. It is mandatory to make this revision in line with market prices so that all persons in detention centers will secure three meals a day.
 - ✓ Government must allocate budget for medical care or there shall be system by which detainees are sent to public health centers,
 - ✓ The sleeping and sanitary supplies of detainees must be improved hence majority of suspected person are sleeping on concrete. Of detainees so health service be available in the detention centers.
- Police stations and detention centers have to set up complaints reception offices within their jurisdiction to receive citizens' complaints of human rights violations. Such office must be led by impartial body outside of the law enforcing authority so that grievances are collected and analyzed by independent body.
 - There shall be monitoring mechanisms that make sure that impartial and independent investigations are carried out. For instances, instituting periodic evaluation programs to track human rights violation practices with the participation of the relevant stakeholders.
 - In case of commission of arbitrary arrest and detention or any other violations of rights of suspects, the individual police investigator or other law enforcement officials found responsible for these violations must be subjected to disciplinary proceedings and criminal proceedings as appropriate.
 - This study has found out that almost all of criminal suspects in the study area did not know what is human rights in general and rights of suspect in particular. Therefore awareness creation training is crucial for society at large at least to defend themselves from some of human rights violation during criminal investigation. Here Medias can be taken as one tools to create awareness of society on their rights. Besides, General Attorney, Ethiopian human rights commission and other stake holder should play their roles in this regard.

- The democratic institutions like the General Attorney, Ethiopian Human rights commission should shoulder their responsibilities of ensuring that citizens' rights provided in the constitution are respected by law enforcing organ. They shall also make necessary reviews to government directives and also ensure that the administrative decisions made by executive organs are conform to the Constitutional rights.
- As primary duty bearer, government must take courage in respecting and protecting human rights by open up the space for different human rights advocator, civil society group, human rights activists to play their role for protection of rights of suspected person in general and presumption of innocence in particular. For instances, Office must be available for civil society organizations including human rights commission in prisons and police custody so that inmates could easily lodge their grievance.
- Government has to make arrangements to provide child and women's offenders with separate accommodation in the police detention centers.
- Amendment shall also be made on some laws that trigger or pave the way for violations of suspected rights.

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Appendix 1: Interview Guidelines

1.1. English Version of the Interview

Interview Guidelines for Key Informant/in depth interview/:-

I. Questions related with Criminal Suspects

1. Are you told immediately the reason of your arrest and any charge against you?
2. Are you arrested with warrant or without warrant? Where you informed of the reason for your arrest? Did the police used force during arrest, if yes, why?
3. Was your home or any other belongings searched? Was there search warrant? Did the search warrant specified for what purposed it is issued? Did the police conducted a search in places where the search warrant did not authorized? Is there any property seized belonging to you upon search? In what conditions are these property kept in the police station?
4. Are you allowed to inform your family that you are detained and place of your detention? What means is allowed to contact your family?
5. Are you allowed to communicate to your family and other visitor? How often in a week? For how long?
6. During police interrogation, do the police respect your presumption of innocence? Do the police respect your right to silence?
7. Did the investigators bring you before court within 48 hours?
8. Do police and other authorities in the police station treat you humanely respecting your physical and psychological integrity?
9. Have you ever been sick in the police detention? What kind of help did you get?
10. How did you give confession? Did investigators force you to confess to the crime you were suspected of?
11. Generally, do you believe your presumption of innocence rights are respected during your stay at the police station? If not, what rights are violated?
12. Do you get the necessary service from the police station timely? Such as Accommodation, food, clean water, adequate ventilation, medical care, toiletry, room cleaning, Entrance of natural light, etc.

II. Questions Related with police officers/Investigators

1. Are you a criminal investigator? For how long have you been a criminal investigator?
2. How you understand human rights in general and rights of presumption of innocence specifically?
3. How you identify criminal from innocent?
4. How do police seize, search, arrest and conduct interrogate suspects?
5. How you treat criminal suspects during interrogation?
6. Which technique do crime investigators use to make suspects confess/admit to the crime they are suspected of?
7. Do the Addis Ababa city police apply human rights principles of detained persons in the process of crime investigation?
8. Do you respect the presumption of innocence of suspects when you investigate?
9. Has there been any punishment on an investigator for violating human rights of a suspect? Who are violated the human rights of the suspect?
10. Who is responsible to punish those acted beyond their mandate, if they use a different method of investigation?
11. What procedures do you apply to take measures on an investigator?
12. When the suspect is a women or a child, how they make arrests? Is there a separate accommodation for a women suspect or children?

III. Questions related with Prosecutors

1. For how long have you been working as a prosecutor?
2. What is your role in criminal investigation?
3. Do you recognize the rights of presumption of innocence of criminal suspect violates in criminal investigation?
4. Do you work closely with the police?
5. Have you made any efforts to protect rights of presumption of innocence of criminal suspects?
6. What are the challenges you are facing in dealing with rights of presumption of innocence?

7. What measures should be implemented to enable crime investigators to adhere to human rights principles of detained persons without influencing the investigation process?
8. What is the mandate of the prosecutor that is the suspected person fulfilling an investigation?

IV. Questions related with Judges

1. Do you accept or recognize the violation of rights of criminal suspects“ in criminal investigation?
2. Have you made any efforts to protect rights of presumption of innocence of criminal suspects?
3. 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?
4. Which rights of suspects are more prone to violation?
5. Did the court permit remand for investigators?
6. What is the power of the court to enforce human rights of suspects specifically presumption of innocence?
7. Who are responsible for violation of rights of suspects particularly presumption of innocence?

V. Questions related with Lawyers

1. Do you recognize the violation of rights of presumption of innocence of criminal suspect in criminal investigation?
2. Have you made any efforts to protect rights of presumption of innocence of criminal suspects?
3. What are the challenges you are facing in dealing with rights of presumption of innocence of criminal suspects?
4. Does the lawyer to take measures to protect suspect rights of presumption of innocence when the rights are violated?
5. What is the cause for the violation of presumption of innocence of suspect rights? What should be the measure that has been taken to protect presumption of innocence of suspect rights by courts and other organs?

6. What measures should be implemented to enable crime investigators to adhere to human rights principles of detained persons without influencing the investigation process?
7. Who are responsible for violation of rights of suspects particularly presumption of innocence?

VI. Questions related with the heads of the investigators

1. What are the human rights of suspects according to your experience?
2. Do you think that it is important for investigators to have knowledge of human rights of suspects?
3. What are the duties of an investigator in regarding to the rights of presumption of innocence suspected persons?
4. Which human rights of suspects are mostly neglected by investigators?
5. What influence measure does have if the investigator neglects to adhere to Human Rights of suspects during the investigation?
6. According to your opinion, which measures should be implemented to ensure that investigators adhere to the provisions of presumption of innocence rights legislation?
7. Are there complaints about police (crime investigators) during investigations? If so, about what issues are complaints made?

Focus Group Discussion (FGD) Guidelines for Target Groups

1. Would you tell me your full name? (If necessary).
2. How you understand human rights in general and rights of presumption of innocence in specifically?
3. Do the investigators finalize the investigation within a reasonable time?
4. Is the right of a suspect not to be compelled to confess to the cases they are suspected of not violated by crime investigators
5. Do the police apply human rights principles of detained person in the process of crime investigation?
6. Do you think there is ever a violation of human rights by Addis Ababa city police during crime investigation?

7. 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?
8. 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?
9. What problems are associated with the way crime investigators treat suspects when conducting crime investigation?
10. Who are responsible for violation of rights in criminal investigation ? and what measures are taken whenever violations of these rights occur?
11. To what extent the human rights of suspects particularly presumption of innocence is respected by authorized bodies?
12. What mechanisms the investigating authorities use to identify the criminal from Innocent and to what extent are they effective in respecting the rights of presumption of innocence of suspects?
13. Who are responsible for violation of rights of suspects particularly presumption of innocence?
14. What is the power of the court to enforce human rights of suspects specifically presumption of innocence?
15. Do you think that the rights of presumption of innocence are properly respected? If not, what are the causes for the violation of this right? What measures should be taken to protect this right of suspects particularly?

1.2. Amharic Version of the Interview

አዲስ አበባ ዩኒቨርሲቲ
ሰብአዊ መብቶች ማዕከል

ለተጠርጣሪዎች የቀረበ ቃለ-መጠይቅ

ይህ ቃለ-መጠይቅ የተዘጋጀው በጉለሌ ክፍለ ከተማ በተመረጡ የፖሊስ ጣቢያዎች ውስጥ በወንጀል መርምራ ወቅት ለተጠርጣሪዎች የሚደረግ የሰብአዊ መብት አከባቢር ላይ የዳሰሳ ጥናት ለማድረግ ነው። የዚህ የዳሰሳ ጥናት የሚውለው ለትምህርታዊ ጥናት ብቻ እንደሆነ ተረድታችሁ ጥያቄዎቹን በመመለስ እንድትተባበሩኝ በትህትና እጠይቃለሁ።

1. በፖሊስ ቁጥጥር ስር በዋሉበት ወቅት የተያዙበትን ምክንያት እና የቀረቡበት ክስ ተነግሮዎታል?
2. በቁጥጥር ስር የዋሉት በፍርድ ቤት ማዘዣ ወይም ያለፍርድ ቤት ማዘዣ ነው? በቁጥጥር ስር ስለዋሉበት ምክንያት የት አወቁ? ፖሊስ በሚታሰሩበት ወቅት ኃይልን ተጠቅሟል? ከሆነ ለምን?
3. ቤትዎ ወይም ሌላ ማንኛውም ንብረትዎ ተፈትሾ ነበር? የፍርድ ማዘዣ ወረቀት ነበር? የፍተሻው ማዘዣ ለተሰጠው ዓላማ የተገለጸው ለምን ነበር? የፍተሻ ትዕዛዝ ያልተፈቀደላቸው ቦታዎች ፖሊስ ፈተሾ ነበር? በፍለጋ ላይ የእርስዎ ይዞታ የተያዘ ንብረት አለ ወይ? እነዚህ ንብረቶች በፖሊስ ጣቢያ ውስጥ እንዴት ይቀመጣሉ?
4. እርስዎ በህግ ቁጥጥር ስር መዋልዎትንና ያሉበትን ፖሊስ ጣቢያ ለቤተሰብ እንዲያሳውቁ ተፈቅዶልዎታል? ቤተሰብዎን ለማነጋገር ምን አይነት ዘዴ ተፈቅዶልዎታል?
5. ከቤተሰብዎ እና ከሌሎች ጎብኚ ጋር ለመነጋገር ተፈቅዶሎዎታል ? በሳምንት ውስጥ በየስንት ጊዜው?
6. በፖሊስ ምርመራ ወቅት ፖሊሶች በፍርድ ቤት እስካልተፈረድብሆት ጊዜ ድረስ የንጹህ የመሆን መብትዎንና ቃልዎትን በሚቀበልበት ጊዜ ያለመናገር መብትዎ ተከብሮልዎታል?
7. መርማሪዎቹ በ 48 ሰዓታት ውስጥ ወደ ፍርድ ቤት ወስድዎታል?
8. በፖሊስ ጣቢያው ውስጥ ያሉ ፖሊስ እና ሌሎች የህግ አስፈጻሚ አካላት የአካላዊ እና ስነ-ልቦናዊ እንዲሁም በሰብአዊነት መደረግ ያለበትን እንክብካቤ አድርገውልዎታል?

9. በፖሊስ ማቆያ ውስጥ የጤና ችግር አጋጥመዎት ነበር? ምን አይነት እገዛ አገኙ?
10. የእምነት ቃል በሚሠጡበት ጊዜ መተማመን ለመፍጠር እንዴት መልስ ሰጡ? መርማሪዎች እርስዎ የተጠረጠሩበትን ወንጀል እንዲናገሩ አደረጉ?
11. በአጠቃላይ በፖሊስ ጣቢያው በሚቆዩበት ጊዜ የነፃነት መብትዎ መከበር እንደተጠበቀ ነው ብለው ያምናሉን? ካልሆነ ምን መብቶች ተጣሱ?
12. ከፖሊስ ጣቢያ አስፈላጊውን አገልግሎት በወቅቱ አግኝተዋል? ለምሳሌ፡- ምግብ, ንጹህ ውሃ, በቂ የአየር ዝውውር, የሕክምና እንክብካቤ, የሽንት ቤት, የጽዳት ማጽዳት, የተፈጥሮ ብርሃን መግባትን, ወዘተ. አገልግሎት ያብራሩ።

II. Questions Related with police officers/Investigators

1. እርስዎ ወንጀል መርማሪ ነዎት? ለምን ያህል ጊዜ የወንጀል መርማሪ ሆነው ሰርተዋል?
2. የሰብአዊ መብትን በጥቅሉ እንዴት እንደሚረዱት እና የተጠርጣሬ ንጹህ የመሆን የመጠበቅ መብት እንዴት ያዩታል?
3. ወንጀለኛን ከንፁሃን እንዴት ለይተው እንደሚያውቁ ቢገለፁልኝ?
4. ፖሊሶች ጥፋተኛውን ወይም ተጠርጣሪዎችን ለመፈለግ፣ ለመያዝ፣ በማረፊያ ለማቆየት እና ቃለመጠይቅ ለማድረግ የሚመሩት እንዴት ነው?
5. በምርመራ ወቅት የወንጀል ተጠርጣሪዎችን እንዴት ነው የምትንከባከቡት?
6. የወንጀል መርማሪዎች የወንጀል ተጠርጣሪዎችን ለተጠረጠሩበት ወንጀል መቀበልን/ማመንን ለመለየት የትኛው ስልት ይጠቀማሉ?
7. በአዲስ አበባ ከተማ ፖሊስ የጉለሌ ክፍለ ከተማ በወንጀል ምርመራ ሂደት ወቅት የታሰሩ ሰዎችን የሰብአዊ መብት ለመጠበቅ መርሆዎችን ተግባራዊ ያደርጋል? መርሆዎቹ ምን ምን ናቸው?
8. ምርመራ በሚያደርጉበት ወቅት ተጠርጣሪዎች ንጹህ መሆናቸውን ያከብራሉ? በቃለ መጠይቅ ወቅት ንጹህ መሆናቸው ካልተከበረ ውጤቱ ምን ይሆናል ብለው ይገምታሉ?

9. አንድ መርማሪ የሰብአዊ መብት ጥሰትን በተጠርጣሪ ላይ ቢፈፀም የሚቀጣበት አግባብ አለ? የተጠርጣሪውን ሰብአዊ መብት የሚጥሰው ማነው?
10. በተጠርጣሪው ላይ የሰብአዊ መብት ጥሰት የፈጸሙትን ፈፃሚ አካላት ለመቅጣት ማነው ኃላፊነቱን የሚወስደው?
11. በመርማሪው ላይ እርምጃዎችን ለመውሰድ ምን ዓይነት ቅደም ተከተሎች ትጠቀማለህ?
12. ተጠርጣሪው ሴቲቱ ወይም ህፃን ከሆነ እስር ቤት እንዴት ይያዛሉ? ለሴቶች ወይም ለህጻናት የተለየ መኖሪያ አለ?

III. Questions related with Prosecutors

1. እንደ ዐቃቤ ህግ ሆነው ለምን ያህል ጊዜ እየሰሩ ነው?
2. በወንጀል ምርመራ ውስጥ የእርስዎ ሚና ምንድን ነው?
3. በወንጀል ምርመራ ውስጥ የወንጀል ተጠርጣሪ በወንጀል ጥፋቶችን ንጹህ የመሆን መብትን ታስተውላለህ?
4. ከፖሊስ ጋር በቅርበት ይሠራሉ?
5. የወንጀል ተጠርጣሪዎች ንጹህ የመሆን መብትን ለማስከበር ጥረት ያደርጋሉ?
6. በንጹህነት የመገመት መብትን በማስከበር ላይ እያጋጠሙ ያሉት ችግሮች ምንድን ናቸው?
7. የወንጀለኞች መርማሪ በምርመራ ሂደቱ ላይ ተጽእኖ ሲያስከትሉ፤ በቁጥጥር ስር የዋሉ ሰዎችን የሰብአዊ መብት መርሆዎች እንዲከተሏቸው ለማድረግ ምን እርምጃዎች መወሰድ አለባቸው?
8. ተጠርጣሪው ሠው ምርመራ ሲያካሂድ የዐቃቤ ህጉ ሥልጣን ምንድነው?

IV. Questions related with Judges

1. በወንጀል ምርመራ ውስጥ የወንጀል ተጠርጣሪዎችን መብት መጣስ ዳኞች ከግምት ያስገባሉ ወይም ይቀበላሉ?
2. የወንጀል ተጠርጣሪዎች ንጹህ የመሆን መብትን ለማስከበር ዳኞች ጥረት ይደረጋሉ?

3. ተጠርጣሪዎች ፍርድ ቤት ቀርበው ለፖሊስ የሰጡትን የእምነት ቃል/የምትናዘዝ መግለጫ ይክዳሉ? መልስዎ አዎ ከሆነ ለምን? ለፖሊስ ስለሚሰጡዎቸው አስተያየቶችስ ምን ይላሉ?
4. ከተጠርጣሪ መብቶች የትኛዎቹ በአብዛኛው የመብት ጥሰት ይፈጸምባቸዋል?
5. የፍርድ ቤት ለመርማሪው ተጠርጣሪውን እስር ቤት በቀጠሮ ለማቆየት እንዲችል ፍቃድ የሚሰጥበት አግባብ አለ?
6. በተጠርጣሪዎች በተለይም በንጹህነት ላይ የሰብአዊ መብት ጥሰትን ለማስከበር ፍርድ ቤቱ ምን ሥልጣን አለው?
7. በተጠርጣሪዎች በተለይም በንጹህነት ላይ የመብት ጥሰት ተጠያቂዎች እነማን ናቸው?

V. Questions related with Lawyers

1. በወንጀል ምርመራ ውስጥ የወንጀል ተጠርጣሪዎችን መብት መጣስ ከግምት ያስገባሉ ወይም ይቀበላሉ?
2. የወንጀል ተጠርጣሪዎች ንጹህ የመሆን መብትን ለማስከበር ጥረት ይደረጋሉ?
3. በወንጀል ተጠርጣሪዎች ጥፋተኛ አለመሆንን በተመለከተ በሚታዩ ጉዳዮች ላይ እያጋጠሙ ያሉት ችግሮች ምንድን ናቸው?
4. የተጠርጣሪ መብቱ ተጥሶ ሲገኝ እንደ ጠበቃ የንጹሃን የመሆን መብትን ለመጠበቅ እርምጃዎች ይወስዳሉ?
5. በተጠርጣሪዎች መብት ላይ የንጹህነትን መብትን ለመጣስ ምክንያት የሆነው ምንድን ነው? በፍርድ ቤት እና በሌሎች አካላት ላይ ተጠርጣሪ የሆኑትን የጥቃት ነጻነት ለመጠበቅ የሚወሰደው እርምጃ ምን መሆን አለበት?
6. የወንጀለኞች መርማሪ በምርመራ ሂደቱ ላይ ተጽእኖ ሳያስከትሉ፤ በቁጥጥር ስር የዋሉ ሰዎችን የሰብአዊ መብት መርሆዎች እንዲከተሏቸው ለማድረግ ምን እርምጃዎች መወሰድ አለባቸው?
7. በተጠርጣሪዎች በተለይም በንጹህነት ላይ የመብት ጥሰት ተጠያቂዎች እነማን ናቸው?

VI. Questions related with the heads of the investigators

1. በእርስዎ ልምድ መሠረት የተጠርጣሪዎች ሰብአዊ መብት ማለት ምንድን ነው?
2. የምርመራ ባለሙያዎች የተጠርጣሪዎችን ሰብአዊ መብት ለመጠበቅ ዕውቀት እንዲኖራቸው አስፈላጊ ነው ብለው ያስባሉ?

3. የተጠርጣሪዎችን መብት አስመልክቶ የአንድ መርማሪ ግዴታዎች ምንድን ናቸው?
4. የትኛዎቹ የተጠርጣሪዎች ሰብአዊ መብቶች በአብዛኛው በመርማሪዎቹ ችላ የሚባሉ ናቸው?
5. መርማሪው በምርመራው ወቅት የተጠርጣሪዎችን የሰብአዊ መብት ጥሰትን ለመጠበቅ ካልቻለ ምን አይነት ተፅዕኖ አለው?
6. እንደርስዎ አመለካከት, የምርመራ አስፈጻሚዎች የንጹህ መብትን ሕጎችና ድንጋጌዎች ለማክበር የሚያስችሉት ምን ዓይነት እርምጃዎች መተግበር አለባቸው?
7. በምርመራ ወቅት ፖሊስ (የወንጀል መርማሪዎች) ቅሬታዎች አሉ ወይ? ከሆነስ, አቤቱታዎች ምንድን ናቸው?

Focus Group Discussion (FGD) Guidelines for Target Groups

1. ሙሉ ስምህን ትነግረኛለህ? (አስፈላጊ ከሆነ)?
2. ስለ ሰብአዊ መብት በአጠቃላይ እና በንጹህነትን የመገመት መብቶችን እንዴት ለይተው ይረዳሉ?
3. መርማሪዎቹ ምርመራውን በተገቢው ጊዜ ያጠናቅቃሉ?
4. ተጠርጣሪ በወንጀል መርማሪዎች ያልተጠረጠሩትን ወንጀሎች ለመናገር እንዲገደድ መብት አለውን? በወንጀል ምርመራ ወቅት ፖሊስ የሰብአዊ መብት መርሆዎችን ተግባራዊ ያደርጋል?
5. በወንጀል ምርመራ ወቅት በአዲስ አበባ ከተማ ፖሊስ የሰብአዊ መብት ድፍጠቶች አሉ ብለው ያስባሉ?
6. ተጠርጣሪዎች ፍርድ ቤት ሲቀርቡ ለፖሊስ የሰጡትን የእምነት ቃል/የምትናዘዝ መግለጫ ይክዳሉ? መልስዎ አዎ ከሆነ, ለምን?
7. ተጠርጣሪዎቹ ጥፋተኛ ከመሆናቸው በፊት የወንጀል መከላከል ስትራቴጂ አካል በመሆን በፖሊስ የመገናኛ ዘዴዎች አማካኝነት በተጠርጣሪ የወንጀል ፈጠራዎች ህብረተሰብን ለማስተማር ፖሊስ ተጠርጣሪዎችን ይጠቀማል? ይህ ፍትሃዊ እና ህጋዊ ነውን?
8. የወንጀል መርማሪዎች የወንጀል ምርመራ በሚካሄድበት ጊዜ የወንጀል መርማሪዎች, ወንጀለኞችን ከሚይዙበት ሁኔታ ጋር የተያያዙ ችግሮች ምንድን ናቸው?

9. በወንጀል ምርመራዎች ላይ የመብት ጥሰት ተጠያቂዎች እነማን ናቸው? እና እነዚህ መብቶች ሲጣሱ ምን እርምጃዎች ይወሰዳሉ?
10. የተጠርጣሪዎች ሰብአዊ መብት በተለይም ንጽህናን የመጠበቅ ተግባር በተፈቀደላቸው አካላት የተከበረው ምን ያህል ነው?
11. የምርመራ ባለስልጣናት ወንጀለኞችን ከንፁህን ለመለየት ምን ዓይነት ዘዴዎችን ይጠቀማሉ? የተጠርጣሪዎችን በንጽጽር የማግኘት መብትን በተመለከተ ምን ያህል ውጤታማ ናቸው?
12. በተጠርጣሪዎች በተለይም በንጽህነት ላይ የመብት ጥሰት ተጠያቂዎች እነማን ናቸው?
13. በተጠርጣሪዎች በተለይም በንጽህነት ላይ የሰብአዊ መብት ጥሰትን ለማስከበር ፍርድ ቤቱ ምን ሥልጣን አለው?
14. የተጠርጣሪዎች በንጽህነትን የመገመት መብቶችን በአግባቡ የተከበረ ይመስልህል? ካልሆነ, ይህንን መብት ለመጣስ ምክንያቶች ምንድን ናቸው? በተለይም የተጠርጣሪዎችን መብት ለማስጠበቅ ምን እርምጃዎች መወሰድ ይኖርባቸዋል?

Appendix 2: Checklists of Observation

The situation of the following treatment standards in the detention center by providing the mark (√) under the measurements adopted (no, extremely poor, very poor, poor, good, very good, excellent).

No	Standards	No	Extremely poor	Very poor	Poor	Good	Very good	Excellent
1	Food provision	quantity				√		
		quality		√				
2	Provision of drinking water						√	
3	Bedding services	bed			√			
		mattress			√			
		sheet				√		
4	Sport and exercise	Entrance of natural light				√		
		Sporting equipment and space				√		
5	toilet					√		
6	Entrance of natural light				√			
7	Clean and adequate air				√			
8	Artificial light						√	
9	Room hygiene					√		
10	Adequacy of floor space per individual		√					
11	Health care	Free treatment					√	

		Free medicine						√	
12	Laundry facilities	installation	√						
		soap	√						
		shower			√				
		water						√	
13	Separate accommodation	For women						√	
		For Children below 18 age						√	
		For Persons with communicable disease and disability						√	
14	Education and training		√						
15	Religious freedom							√	
16	Compliant procedure					√			
17	Forced labor		√						

Appendix 3: Statistical Review of Crimes

Ser. no	Police stations	Woreda	Types of Crime											Ranks	
			Homicide	Auto theft	Armed Robbery	Attempt Homicide	Theft of goods motor cars	Burglary	Robbery & Snatching	Theft goods in car.	Various theft	Pick pocket	Total	Police station	woreda
1	Shiro Meda	1	2	-	-	13	1	7	12	-	20	-	55		6th
		6	1	-	-	5	2	1	3	-	6	-	18		1st
	Total		3	0	0	18	3	8	15	0	26	0	73	2nd	
2	Menene	2	-	1	-	2	7	6	8	2	26	8	60		7th
		3	1	-	-	3	1	2	4	1	28	5	45		4th
	Total		1	1	-	5	8	8	12	3	54	13	105	3rd	
3	Kechene	4	-	1	1	1	5	6	2	-	9	1	25		2nd
		5	-	1	-	2	8	6	2	-	20	-	39		3rd
	Total		0	2	1	3	13	12	4	0	29	1	65	1st	
4	Addisu Gebeya	7	-	1	-	5	16	11	22	4	34	4	98		10 th
		8	-	-	-	5	18	9	16	4	35	2	89		9 th
	Total		0	1	0	10	34	20	38	8	69	6	187	5th	
5	Paster	9	-	-	-	4	19	3	11	5	29	12	84		8 th
		10	-	1	-	2	6	5	15	1	24	-	53		5 th
	Total		0	1	0	6	25	8	26	6	53	12	137	4th	
Total		10	4	6	1	42	83	56	95	17	231	32	567		

Source: Unpublished police crime statistics obtained from the *Gullele* Sub-City Police Investigation Department, 2010 E.C. Nine- months Report.