

ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
CENTRE FOR HUMAN RIGHTS

**THE RESPECT FOR HUMAN RIGHTS IN PRE-TRIAL CRIMINAL
INVESTIGATION (THE CASE OF OROMIA SPECIAL ZONE
SURROUNDING FINFINE)**

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The Respect for Human Rights in Pre-Trial Criminal Investigation
(The Case of Oromia Special Zone Surrounding Finfine)

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Declaration

I, Fisaha Getachew, declare that this thesis is my own work and all sources or materials used for this thesis have been duly acknowledged. This thesis is submitted in partial fulfilment 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 has not been submitted to any other institutions.

Fisaha Getachew

Signature_____

Date_____

Acknowledgment

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List of Tables

- Table 1 Participants of the study and method of data collections used
- Table 2 Detainee's respondent sex, age and level of education
- Table 3 Arrest with warrant and without warrant
- Table 4 Information on the reasons of arrests
- Table 5 Notification of rights
- Table 6 Access to family in the detention centers
- Table 7 Extent of human rights respect in police stations

Acronyms

ACHPR	African Charter on Human and Peoples Rights
ACHR	American Convention on Human Rights
BPR	Business Processing Reengineering
CRC	Convention on the Rights of the Child
ETB	Ethiopian birr
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
OSZSF	Oromia Special Zone Surrounding Finfine
TB	Tuberculosis
UDHR	Universal Declaration of Human Rights
UN	United Nations

Abstract

This study examines the practical observance of human rights during criminal investigation in Oromia special zone surrounding Finfine. It attempts to analyze rights of suspects as it has been recognized in national, regional and international human rights instruments and effort is made to explore whether they are respected in the process of criminal investigation. Accordingly, data was collected from three police detention centers found the Oromia special zone surrounding Finfine. Data was collected both from primary and secondary sources. Primary data was obtained through interview, questionnaires and personal observation where as secondary data from different literatures, government files and legal documents are reviewed. Questionnaires were disseminated to 41 detained criminal suspects. Interview was made with key informants from criminal suspects, investigating police and prosecutors and head of police stations and Justice Office. The research mainly focuses on implementation of the already guaranteed rights of persons deprived of liberty for suspicion of committed crime. To this end, conditions during detention and interrogation as well as treatments in police custody are widely examined. Though the Ethiopia legal system has clearly indicated how criminal investigation should made and what rights should be respected in the process, they are not implemented well. 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 rectify the existing problems.

Table of contents

Declaration.....	i
Acknowledgment	ii
List of Tables	iii
Acronyms.....	iv
Abstract.....	v
Table of contents.....	vi
Chapter 1	1
1.1. Background of the Study.....	1
1.2. Statement of the problem	4
1.3. Objective of the study	6
1.3.1 General.....	6
1.3.2. Specific	6
1.4. Research Questions	6
1.5. Preliminary Literature Review.....	7
1.6. Significance of the study.....	8
1.7. Scope of the study	8
1.8. Methodology of the Research	8
1.8.1. Population	9
1.8.2. Sampling Technique	9
1.8.3. Data Collection Tools	10
1.9. Ethical Consideration.....	11
1.10. Organization of the Paper	11
CHAPTER 2	12
Conceptual and Legal Framework of Criminal Investigation.....	12
2.1. Introduction.....	12
2.2. What is Crime?	12
2.3. Criminal Investigation Defined.....	13
2.4. Process of Criminal Investigation	14
2.4.1. Search.....	14
2.4.2. Seizure.....	16
2.4.3. Arrest.....	16
2.4.4. Interrogation.....	17
2.5. Criminal investigations Procedure in Ethiopia	18

CHAPTER 3	21
Human Rights of Suspects of a Crime	21
3.1. Introduction.....	21
3.2. Pre-trial Rights of Suspects.....	22
1. The Prohibition on Arbitrary Arrest and Detention	23
1.1 Right to Liberty.....	23
1.2 Right to be Informed Immediately of the Reasons for Detention.....	25
1.3 Right to Notification of Rights.....	26
2. The Right to Legal Counsel and the Right to be Brought Promptly Before a Judge	26
3. Trial Within a Reasonable Time or Release on Pending Trial.....	27
4. The Right of Detainees to Have Access to the Outside World.....	30
4.1. Right to Inform Family of Arrest and Place of Detention.....	30
4.2. Right to Communicate and Receive Visits (Family and Others).....	30
5. Rights During Interrogation	31
5.1. The Right to Remain Silent and Prohibition Against Coerced Confessions.....	31
5.2. Right to an Interpreter and Record of Interrogation.....	32
6. Prohibition of Torture and the Right to Humane Conditions during Pre-Trial Detention	33
6.1. Prohibition of Torture	33
6.2. The Right to Humane Conditions of Detention	35
6.3. The Right to Adequate Medical Care.....	35
3.3. Obligation to Respect Rights of Criminal Suspects.....	36
Chapter 4.....	38
Presentation and Analysis of Data	38
4.1. Description of the Study Area-Oromia Special Zone Surrounding Finfine.....	38
4.2. Conditions of Arrest and Detentions.....	40
4.3. Informing the Reasons for Arrest and any Charge Against	42
4.4. Failure to Inform Rights and Progress of Cases.....	43
4.5. Legal Representation and Council	44
4.6. Promptly Present Detainees before a Judicial Authority	45
4.7. Failure to Release Pending Investigation.....	47
4.8. Prolonged Pre-trial Detention and Investigation.....	47
4.9. Treatment of Detainees	49
4.9.1. Food Provision	49
4.9.2. Medical Care	50

4.9.3. Bed and Clothes	51
4.10. Ill-treatment by Officials and Other Detainees	52
4.11. Family Access	53
Chapter 5.....	55
Conclusion and Recommendations.....	55
5.1. Conclusion	55
5.2. Recommendations.....	56
Bibliography	59
Annexe- Data Collection Tools.....	65

Chapter 1

1.1. Background of the Study

Adequate protection and promotion of all human rights and fundamental freedoms requires all government institutions to discharge an obligation of respecting human rights.¹ State has an obligation under international human rights law to respect human rights.² An obligation to respect human rights is simply refraining from interference in enjoyment of rights. It is an obligation to restrain from violation of rights. Accordingly, any organ of government should refrain from any act that violates human rights. The 1995 of the FDRE constitution under article 13 (1) clearly indicates that the federal and state legislative, executive and judicial organs have the responsibility to respect and enforce fundamental rights and freedoms. This requires all organs of government to discharge their duties in a way that does not violate human rights. Police, as part of the executive preventing and investigating crime, has an obligation to respect human rights. However, study shows that, it is the degrading actions of police like torture that create the main problem in the administration of criminal justice.³ Most critics on government for violating human rights are results of excessive use of force by police officers.⁴

Crime is as old as human society and criminals are part of every society whether modern or primitive.⁵ The term crime is defined in the Ethiopian criminal code as ‘an act which is prohibited and made punishable by law’⁶. It is an offence that is committed in the society and which is against the interest of the society that has been criminalized and punishable by law. Criminal law is the division of law that defines crimes and provides their punishment.⁷ It defines the elements of a crime, the criteria of criminal responsibility and guides police investigations.⁸ The primary objective of criminal law is to maintain law and order in the

¹ Basic Principles on the Role of Lawyers: Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990- preamble

² International Covenant on Civil and Political Rights (ICCPR), adopted by United Nations General Assembly, on 16 December 1966, entered into force 23 March 1976, article 2

³ Cherenet Gebrehiwot (1992), Protection of Fundamental Human Rights under the Criminal Procedure Law; with special reference to the criminal procedure code of Ethiopia, Senior Essay AAU, Faculty of Law.

⁴ Abiyou Girma (2013), The police and Human rights in Ethiopia, p13. Available at WWW.abysiniaweb.com.

⁵ R. K. Salman 2009, Rights of Accused Person under Nigerian Criminal Justice System: A Need for Improvement

⁶ Criminal Code of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazzeta, Proclamation No. 414/2004

⁷ Joycelyn M. Pollock (2012), Crime and Justice in America; An Introduction to Criminal Justice, Second Edition, p. 166

⁸ Tim Newburn, et al (2007), Handbook of Criminal Investigation, p. 95

society and hence to protect the life and liberty of people.⁹ It has an indispensable role in protection of human rights.¹⁰ It is through criminal law that serious human rights violations like torture, murder, genocide, crimes against humanity and others are criminalized as well as prosecuted. Punishment of human rights violations is necessary as it creates accountability, restores justice and dignity to the victims of abuse and ensures peace and security in the society.¹¹ However, balance should be achieved between the rights of the individual and the protection of society.

Criminal investigation is the process of answering questions of ‘how, where, when, why and by whom’ a crime was committed.¹² It is a police activity directed toward the identification and apprehension of suspected offenders and the gathering, preservation and presentation of evidence regarding their alleged crimes.¹³ It requires investigating authorities to assemble evidence from various sources and directions to arrive at a coherent account of a criminal event. The official purpose of criminal investigation is to retrieve information that can be used as evidence in court of law.¹⁴ The obtained evidence then becomes the basis for judges’ decisions concerning the guilt of prosecuted person and the sentences followed those found guilty. The investigation process involves various persons like the police officers, the prosecutor, accused person, arrested person, suspects, witness and the like.

Criminal investigations are conducted primarily for identifying and bringing criminals to court of law. It helps to prevent crime and ensure peace and stability in the society. However, in the name of crime investigation rights of individual should not be violated. Some people might think that law enforcement officials can do anything necessary to bring criminals to justice.¹⁵ Although it is necessary to bring criminals to justice human rights of individuals should be respected in the process. It is because of some potential problems that criminal investigation causes to rights of individuals, that rules of criminal procedure should exist to make sure that the government acts are in a responsible way during criminal investigations and prosecutions to

⁹ Ibid, p. 167

¹⁰ Wolfgang K. and Michael R. et al (2007), International Prosecution of Human Rights Crimes, Verlag Berlin Heidelberg, Germany Berlin, P.11

¹¹ Elin Skaar (2011), Judicial Independence and Human Rights in Latin America P.6

¹² Peter W. Greenwood, 1979, The Rand Criminal Investigation Study: Its Finding and Impacts to Date

¹³ Caldwell, R.G. (1965), Criminology 2nd edition. p.317

¹⁴ Karen M. Hess and Christine Hess Orthmann (2010), Criminal Investigation, 9th edition, Delmar, Cengage Learning , p.7

¹⁵ Buckner F. Melton, Jr. (2010) , Criminal justice-The Law, Infobase Publishing, p.97

safeguard those rights.¹⁶ Therefore, government's power to investigate crime should be limited to protect individual privacy and security from excessive government interference.¹⁷

Human rights of suspects must be observed from the moment the investigation starts until the criminal proceedings have been completed as violation of rights during one stage has an effect on another stage.¹⁸ Still the pre-trial stage is a crucial and sensitive stage in the criminal investigation process because there is confrontation between investigating and prosecuting authorities on one hand and the suspected person on the other hand. The investigating and prosecuting authorities require securing all available evidence and the suspect on his/her side needs protection from undue interference by the investigating authorities. However, the suspected person may not have knowledge of law and does not know what rights he/she has at this stage. Therefore, the pre-trial stage has a significant effect on the fairness of the proceedings as a whole.

In the process of a criminal investigation, although, certain limitations that are unavoidable in the deprivation of liberty may be inflicted, detainees continue to enjoy their fundamental rights and freedoms like other human beings. Accused or suspected person should enjoy human rights like other human beings except few rights like the right to liberty, that are limited by law for the purposes of protecting the rights of others and preventing crime. Therefore, all acts of investigating officials should be restricted by the rights which the law extends to the accused and suspected persons.

International and national human rights law have provided a strict protection for individuals accused or suspected of an offence.¹⁹ Article 11 of UDHR declares that 'everyone charged with a penal offence has the right to be presumed innocent until proved guilty'.²⁰ This indicates that anyone who is suspected or accused of a certain crime should be treated as innocent until proven guilty in trial according to law which guarantees them the right to

¹⁶ Ibid p. 94

¹⁷ Ibid p. 99

¹⁸ Lawyers Committee for Human Rights (2000), What is a Fair Trial? A Basic Guide to Legal Standards and Practice, p.4

¹⁹ See African Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force 21 October 1986, article 7. American Convention on Human Rights, Opened for signature and ratification on 22 November 1969, entered into force on 18 July 1978, article 5 & 8. European Convention for the Protection of Human Rights and Fundamental Freedoms, Adopted on 4 November 1950 by the Council of Europe and entered into force on 3 January 1953, article 5 & 6.

²⁰ See Universal Declaration of Human Rights (UDHR), adopted and proclaimed by United Nations General Assembly Resolution 217 A (III) of 10 December 1948, article 11.

defence.²¹ In addition to this, ‘*persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person*’²² not to be subjected to torture or cruel, inhuman or degrading treatment or punishment as it has been articulated in ICCPR. The ICCPR also guarantees safeguards for detainees during interrogation include the prohibition on compelling people to confess guilt or testify against themselves, the exclusion of evidence obtained as a result of torture or ill-treatment, the right to an interpreter and the right to have access to interrogation records.²³ The 1995 of FDRE constitution has explicitly recognized these rights as rights of arrested person, accused person, rights of persons held in custody and convicted person and prohibition against inhumane treatment.²⁴

1.2. Statement of the problem

Criminal suspects are frequently at risk in different ways. They are challenged by accommodation shortages, which sometimes not available at pre-trial detention centres.²⁵ Above this, they are exposed to various forms of ill-treatment in the investigation process, which is usually carried out by police. Individual suspected of crime are detained for days without any charge against him/her ²⁶ and search individual’s home as they like without search warrant from the court which is against the right to privacy. Study also shows that police usually uses torture as a method of investigation to elicit confessions from criminal suspects and above that to extort money from them and to punish them for their alleged crimes.²⁷ However, torture has been prohibited under customary international law.²⁸

Ethiopia has adopted and ratified different national and international human rights laws that safeguard rights of suspects and accused persons which set minimum standards for the

²¹ International Commission of Jurists, Trial Observation Manual for Criminal Proceedings- practitioners Guide No.5, 2009, p.69

²² ICCPR, Supra note 2, article 10

²³ Ibid, article 14 (3)

²⁴ Constitution of the Federal Democratic Republic of Ethiopia, 1995, proclamation No 1, Negarit Gazette, year 1, No 1, article 19, 20 & 21

²⁵ Addisu Gulilat (2012), The Human Rights of Detained Persons in Ethiopia; Case Study in Addis Ababa: A thesis Submitted to Addis Ababa University.

²⁶ Human Rights Watch Report (2013), They Want a Confession: Torture and Ill-Treatment in Ethiopia’s Maekelawi Police Station

²⁷ Cambodian League for the Promotion and Defence of Human Rights, Torture in Police Custody in Cambodia- Briefing Paper, April 2003)

²⁸ See United Nation Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification, and accession by General Assembly Resolution 39/49 of 10 December 1984

treatment of accused persons. However, these standards are not implemented in practice as they are honoured in words. Individuals are detained on suspicion of committing a crime and they are often held for weeks, months even for years before a judgment is passed on their case by a court. These individuals are exposed to various inhuman treatments and their rights are violated from the time of their arrest through interrogation and the whole time they spend in the detention. Amnesty International Report (2012) revealed that in Ethiopia there are ill-treatments like isolated detention in darks for prolonged periods, sleep deprivation and beatings, on detained persons who are under investigation.²⁹ Similarly, Human Rights Watch Report (2013) shows that in Ethiopia there is ‘insufficient’ respect for due process guarantees during pre-trial detention which places detainees at risk of abuse.³⁰ These make conditions of pre-trial detention and treatment at jails³¹ worse than the actual prison.

While investigation and prosecution of a case requires a certain amount of time, the injustice that the accused person is facing should be taken into consideration. The nature and level of gravity of the case should be considered in determining the duration of investigation.³² According to the UN standard, “pre-trial detention shall last no longer than necessary and shall be administered humanely and with respect for the inherent dignity of human beings”.³³ However, the Human Rights Watch World Report (2012) shows that in Ethiopia a long pre-trial detention without charge, even without access to counsel is common.³⁴ This undue delay of investigation and pre-trial detention has an adverse effect on the suspected person. Therefore, these and other issues that are observed in the pre-trial investigation and pre-trial detention need to be investigated and analyzed in relation to the duty of government to respect human rights.

²⁹ Amnesty International, World Report 2012: the State of the World’s Human Rights, United Kingdom

³⁰ Human Rights Watch, World Report 2013, events of 2012

³¹ *Jail is a detention place for pre-trial detainees*

³² Rakeb Messele (2002), Enforcement of Human Rights in Ethiopia: Action Professionals’ Association for the People (APAP), p.51

³³ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted by General Assembly resolution 45/110 of 14 December 1990

³⁴ Human Rights Watch, World Report 2012, (available at <http://www.hrw.org/world-report-2012>)

1.3. Objective of the study

1.3.1 General

The basic objective of this study is to explore the respects for human rights of suspected persons in the process of pre-trial criminal investigation and identify the major problems and their possible solutions.

1.3.2. Specific

This study aims at;

- ✓ Critically examining the criminal investigation process and mechanism in the area under study and its effectiveness in respecting human rights of criminal suspects.
- ✓ Assessing rights of suspects and accused person in line with the criminal investigation mechanism.
- ✓ Examine whether the investigation mechanism are designed in the way that safeguard human rights.
- ✓ Investigating the understanding and respect of human right among the investigating bodies.
- ✓ Identify problems and challenges around criminal investigation in maintaining rights of individuals involved in the process.
- ✓ Suggest possible recommendations for the problems which could be revealed as research findings

1.4. Research Questions

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

1. What are the processes of criminal investigation and how they inflict violation of rights?
2. What mechanisms the investigating authorities use to identify the criminal from innocent and to what extent are they effective in respecting human rights?
3. What are the pre-trial rights of individuals suspected of certain crime and are the investigating authorities have deep understanding of these rights?
4. Who are responsible for violation of rights in criminal investigation and what measures are taken when ever violations of these rights occur?

1.5. Preliminary Literature Review

Rights of individuals deprived his/her liberty for committing or suspected of committing certain crime can be violated in various ways at different stage of criminal administration. Hence, it can be scrutinized from different perspective. The existence of legal framework for the protection of rights of those individuals is one of these perspectives and the other one is the effective implementation of the law for respecting and observance rights of individuals deprived of their liberty.

Accordingly, different researchers have dealt with the rights of persons deprived of their liberty in one or other perspectives. For example, Addisu Gulilat (2012), *The Human Rights of detained persons in Ethiopia* has assessed the adequacy of legal protection for detained persons and has analyzed the practical condition of detained persons in Addis Ababa prisons. Similarly, Giday Meles (2013), *Condition of detentions in prisoners of Ethiopia*, has examined the treatment and provisions of basic services for convicted detainees in the Tigray Region Adigrat prison. Another is a research done by Tesfaye Tadesse (2011), *Freedom from Torture, Inhuman or Degrading Treatment or Punishment*, which evaluated the protections of rights of freedom from torture in some selected prisons in Oromia region. Gebrehiwet Hadush (2013), *Right to bail under federal anti-corruption laws; implication on the right of the accused*, has also tried to examine the extent to which proclamation No.434/2005 guarantees protection of arrested/accused on alleged corruption offense and its weakness in accordance with FDRE constitution and international human rights instruments. Additionally, Kelali Kiros (2011), *The Bail Justice in Ethiopia: Challenges of its Administration*, focus on the feasibility of administration of bail justice in Ethiopia in protecting the interest of the state and the rights of detainees and identifying its challenges.

Therefore, the researcher believes that rights of individuals pertaining exclusively to the process of criminal investigation are not addressed by those researchers. Some of the works only focus on the post-investigation rights like the conditions and treatment of detained person in the prison centres. Other mainly analyzed the legal framework and its implications on the rights of accused person which is basically a documents analysis. Hence, this research focuses on evaluating the practical observance of the already guaranteed individual rights in the process of criminal investigation.

1.6. Significance of the study

This study will help the government and society in general and the criminal investigator in particular to know problems related to 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 for human rights during criminal investigation. It will serve as one literature in providing insight knowledge for any further researches in the same area. It will also contribute knowledge to the existing discourse on the issue under study.

1.7. Scope of the study

To make the research manageable in the allocated time and resource, the scope of the study is limited to some selected towns of Oromia special zone surrounding Finfine. The Oromia special zone surrounding Finfine consists of 6 woredas and 8 town administration. From these two towns administration and one woreda are selected purposively based on their convenience for collecting data. These are Sululta town, Burayu town and Sululta woreda. The researcher is more familiar with these communities as compared to others and this will minimize the challenges on collecting data. The study only covers human rights pertaining to individuals undergoing pre-trial criminal investigation. Process during and after trial proceeding is not covered under this study. Therefore, emphasizes is given to pre-trial right of suspected person that are recognized in international human rights documents and ratified by Ethiopia.

1.8. Methodology of the Research

As described by Leedy and Ormrod methodology of a research is a general approach that the researcher follows in carrying out the research.³⁵ Hence, it describes the specific tools the researcher select in conducting the study. To achieve the objective of this study a mixed

³⁵ Leedy, P.D. & Ormrod, J.E. (2005), Practical research – planning and design 8th edition Research Design. P.12

research method³⁶ was used. As described by Dawson triangulation (combining both qualitative and quantitative research), is a good ways of approaching research as it enables us to work against the weaknesses in both qualitative and quantitative research.³⁷ Hence, integrating both qualitative and quantitative approach embraces the best of both methods. A mixed research is good to “gain fuller understanding of the research problem and to clarify a given research result”.³⁸ It also enhances the credibility of the research finding.³⁹ This methodology is selected based on the questions raised and objectives intended in the research. 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. Population

As stated earlier, the objective of this study is to explore the respect for human rights in pre-trial criminal investigation in Oromia special zone surrounding Finfine. Accordingly, the target population of the study are the investigators (police and prosecutor) and the suspects found in this zone.

1.8.2. Sampling Technique

Sampling is the process or technique of selecting a suitable sample or representative of the population from which it is taken, for the purpose of determining parameters or characteristics of the whole population.⁴⁰ Both simple random sampling and purposive sampling are used to draw a sample representation from the existing population. In simple random sampling every unit of the population has a known, non-zero probability of being selected.⁴¹ It is a common and preferable in a probability sampling technique because its selection procedure is the best way to avoid sample bias.⁴² Purposive sampling has been used to select a sample of police station up on which the investigation was made.

³⁶ “Mixed methods research is the type of research in which a researcher combines elements of qualitative and quantitative approaches for the purpose of breadth and depth of understanding and corroboration”. Johnson et al. 2007

³⁷ Catherine Dawson (2002), Practical Research Methods. P.20

³⁸ Cited in Yitayew A. and Wondemagegn .T (2013), Human Rights Research: A Practical Guide Book on Methodology and Methods. p. 151 Center for Human Rights, Addis Ababa University

³⁹ Ibid, p. 150

⁴⁰ Kultar Singh (2007), Quantitative Social Research Methods. P. 89

⁴¹ Ibid, P. 103

⁴² Mike M.C and Wing H.C (2007), Research Methods for Law, Edinburgh University Press. p. 55

1.8.3. Data Collection Tools

For collecting required data both primary and secondary sources are used to come up with more comprehensive understanding on the questions raised in this paper. However, as primary data are closest to the truth and are often the most valid, illuminating and the most truth- manifesting⁴³ more emphasize was given to it. Accordingly, the following tools of data collections were used to obtain the required data.

- **Interview-** An interview is used to collect primary data from individuals who have an experience of certain events or practice. For this purpose the researcher employed a semi-structured interview, which as stated by Dawson used to ‘know specific information which can be compared and contrasted with information gained in other interviews’.⁴⁴ The interview was made with key informants to generate information on the practical observance of human rights in the process of criminal investigation.
- **Questionnaires-** Both close ended and open ended questions were used to collect a quantitative data from informants on issues under investigation. Complimenting close ended question with open ended questions allows informants to give an explanation on the answers they give to the close-ended questions.⁴⁵ Accordingly, close ended questions are mainly prepared and supported by open ended questions to collect data from a sample drawn through simple random sampling.
- **Document analysis-** Different international and national human rights documents which have direct relation to the topic were analyzed in relation to their practicality. These documents include UDHR, ICCPR, FDRE Constitutions, and different principles, guidelines and standards on the rights as well as treatments of suspected, accused 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.

⁴³ Lee, P.D & Ormrod, J.E, Supra note 35, P. 89

⁴⁴ Supra note at 37, P. 28

⁴⁵ Yitayew A. and Wondemagegn .T (2013), supra note at 38, p. 103

1.9. Ethical Consideration

By taking into consideration, the sensitivity of the issue under study the researcher has taken different majors for ethics of research. The researcher collected data depending on the principles of *informed consent*⁴⁶ by explaining the purpose of the research to the participants and that participation is only voluntarily. 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 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 paper has been organized in 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. In chapter two conceptual and legal frameworks of criminal investigation has been discussed. Under this key term are defined, process and stages of criminal investigation are presented. Chapter three is devoted to analysis of human rights of criminal suspects. Here, the contents of pre-trial rights of suspects recognized in international Human rights instruments as well as the FDRE constitutions, their respects in criminal investigation as well as the role of duty bearer has been thoroughly discussed. Chapter four deals with analysis of data collected from various sources through different methods and interpretation and finding of the research. The final chapter is dedicated to conclusion of research and recommendations.

⁴⁶ *It involves ensuring that potential participants have a clear understanding of the purpose of the study, the funder, the organisation or individuals conducting it, how the data will be used, and what participation will mean for them.* (Jane R. and Jane L. ,2003 :76)

CHAPTER 2

Conceptual and Legal Framework of Criminal Investigation

2.1. Introduction

It would be necessary to have an insight idea about crime and criminal investigation before rushing into rights of criminal suspects which is discussed under chapter three. Accordingly, this chapter deals with the concept of crime and criminal investigation, process and procedure of criminal investigation to assist reader to have background knowledge on criminal investigation.

2.2. What is Crime?

The concept of crime articulates social unity in the way that it signifies what constitutes acceptable and unacceptable behaviour in certain society. Every society formulates certain rules to regulate the behavior of its members, the violation of which is forbidden and declared as crime. For this reason the definition of crime varies from society to society as it is recreated, affirmed and mobilized in daily lives of ordinary citizen. It is societal definition than just workers in the justice system.⁴⁷ The way society thinks about crime and how individuals supposed to be responsible for criminal behaviour influences law enforcement practices and the penalties administered.⁴⁸ Hence crime is a socio-political dynamic, not a static and natural phenomenon. What is a crime and is not varies with time and across country, as well as the penalties linked with it.⁴⁹ Therefore, it the state, through criminal law, which defines acts as a crime and determines its criminal penalties.

Blackstone, an English jurist, defined crime as “an act committed or omitted in violation of public law, either forbidding or commanding it”.⁵⁰ Similarly, a Criminologist Paul Tappan also defined crime as “an intentional act or omission in violation of criminal law committed without defence or justification, and sanctioned by the state as a felony or misdemeanor.”⁵¹ The criminal code of Ethiopia also put the definition of crime as;

⁴⁷ Kathleen Daly (2011), Aims of the Criminal Justice System. P. 4

⁴⁸ Nathalie Rosiers and Steven Bittle (2004), What Is a Crime? Defining Criminal Conduct in Contemporary Society.

⁴⁹ Kathleen, Supra note 47, P. 4

⁵⁰ As Cited in Joycelyn M. Pollock (2012), Crime and Justice in America; An Introduction to Criminal Justice, 2nd Edition. P.166.

⁵¹ As Cited in Dennis Hoffman (2000), Criminal Justice: IDG Books Worldwide. P. 25

“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”.⁵²

Crime has been adversely affecting the societies of both developed and developing countries by declining the quality of life through endangering human right and fundamental freedom and thus posing a serious challenge to the community.⁵³ The realisation of human rights protection is impossible in an environment of fear and insecurity, where there is a high level of crime. Beyond violating rights of victims, crime creates bitterness over the rights of criminals.

2.3. Criminal Investigation Defined

A criminal investigation is the process of discovering, collecting, preparing, identifying and presenting evidence to determine what happened and who is responsible.⁵⁴ It is orientated towards cracking crime, identifying perpetrators, launching prosecutions, proving guilt at trial and bringing offenders to justice.⁵⁵ To this end, clues from various sources are gathered and combined until a coherent story of the criminal event is obtained.⁵⁶ A criminal investigation helps to gather evidence to identify a suspect and support an arrest.⁵⁷ 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.⁵⁸ As explained by Hess and Orthmann;

“Police investigations involve great attention to detail, an exceptionally suspicious nature at the appropriate time, considerable training in the classroom and the field, an unusual ability to obtain information from

⁵² Criminal Code of Ethiopia, Supra note 6, article 23 (1)

⁵³ Leul Woldu (2003), The Application of Data Mining in Crime Prevention: The Case Of Oromia Police Commission. A Thesis Submitted to the School Of Graduate Studies of Addis Ababa University, P.44

⁵⁴ Supra note at 14, P.6

⁵⁵ Tim Newburn, Tom Williamson and Alan Wright (2007), Handbook of Criminal Investigation: Willan Publishing, New York, p. 95

⁵⁶ Karl Ask and Par Anders Granhag (2007), Motivational Bias in Criminal Investigators’ Judgments of Witness Reliability: Journal of Applied Social Psychology, 2007, 37, 3, pp.561–591. Blackwell Publishing, Inc

⁵⁷ Dennis Hoffman (2000), Criminal Justice: IDG Books Worldwide, Incp, p.4

⁵⁸ Karen M, Hess Christine Hess, Supra note 14, p.12

diverse types of personalities under adverse circumstances and endless patience and perseverance”.⁵⁹

Therefore, 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.

2.4. Process of Criminal Investigation

2.4.1. Search

Search is one of the tasks of the investigative police during investigation, in which search is conducted for items that are considered to be used as evidence during the trial. 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*”.⁶⁰ It is mainly done to develop associative evidence or to find evidence that could link a suspect to the crime.⁶¹ 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.⁶²

Search can be conducted either on the arrested person or on the premises of suspected person. Search requires a *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.⁶³ As explained by Jetmore probable cause is “less than proof, but more than suspicion that a crime is being, has been or will be committed”.⁶⁴ To conduct search police officers must appear before a judge and establish probable cause to believe that the location contains evidence of a crime and specifically describe that evidence. Accordingly, a court issue a search warrant only on finding that there

⁵⁹ Karen M. Hess and Christine Hess Orthmann , Supra note at 14, p. 8

⁶⁰ Ibid, p. 93

⁶¹ James W. Osterburg and Richard H. Ward (2010), Criminal Investigation: A Method for Reconstructing the Past, Sixth Edition, p.96

⁶² Karen M. Hess and Christine Hess Orthmann ,Supra note at 14

⁶³ Simeneh, K. 2001. The law of criminal procedure commentaries and exercise Ethiopia: unpublished material p.12

⁶⁴ Cited in Karen M. Hess and Christine Hess Orthmann, Supra note at 14, p. 96

is probable cause to believe that evidence of a specific crime will be found in the location to be searched.⁶⁵

Search as stipulated in the Ethiopian criminal procedure code could not be 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 right to privacy.⁶⁶ Search warrants represent an authorization by the court for investigators to enter a designated structure and search for specific items. Additionally, a search conducted with a warrant must be limited to the specific area and specific items named in the warrant, in accordance with the particularity requirement.⁶⁷

Lawful searches must satisfy certain procedural requirements, such as informing the person to be searched of the police officer's name and police station as well as the reason for the search.⁶⁸ Moreover, search is closely associated with the right to privacy of individual, so any neglect of the procedural requirements and formalities is an arbitrary interference with this protected right. Therefore, it is mandatory for the police to have a search warrant before searching any premises and property of suspects. Accordingly, court issues a search warrant only on finding that there is probable cause to believe that evidence of a specific crime will be found in the location to be searched.⁶⁹

However, search without a warrant could be allowed in some exceptional cases to avoid delay that may result in impediment of justice.⁷⁰ Hence, search without warrant is interpreted and applied narrowly and strictly. Accordingly, search without warrant may be conducted in the following cases;

- i. There is a flagrant offence,
- ii. 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
- iii. The offence of which the person is suspected of is punishable with more than three years imprisonment.⁷¹

⁶⁵ Martha Bridegam (2005), Search and Seizure; Chelsea House Publishers, United States of America

⁶⁶ Criminal Procedure Code of Ethiopia, Negarit Gazetta, Proclamation No. 185/1961

⁶⁷ Ibid article 33 (2)

⁶⁸ Paul Roberts (2007), Law and Criminal Investigation, Willan Publishing Ltd, ps. 92-146.

⁶⁹ Martha Bridegam, Supra note 65

⁷⁰ Criminal Procedure Code of Ethiopia, Supra note 66 article 32 (2)

⁷¹ Ibid article 32 (2)

2.4.2. Seizure

Seizure is among process of criminal investigation which authorizes the police to collect material evidence that might later be presented in court.⁷² 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. Seizure is conducted with court seizure warrants issued to perform seizures. 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 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.⁷³ 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.

2.4.3. Arrest

Once a suspect has been identified, the next step is an arrest. It is one of the most common means of controlling and preventing crime. Arrest is a preliminary step in the process of the prosecution of a suspected offender. As it has been defined in the Body of Principles for the Protection of All persons under any Form of Detention or Imprisonment arrest is *the act of apprehending a person for the alleged commission of an offence or by the action of an authority*. Unlike this, the term arrest is not defined in other international human rights instruments. Therefore, it is necessary for law enforcement officials to depend on the national legislation to exercise power of arrest.

⁷² Paul Roberts, Supra note 68, pp. 92-146

⁷³ Criminal Procedure Code of Ethiopia, Supra note 66, article 51

Arrest can also be defined as;

“The act of taking a person into custody under the authority of the law or by compulsion of another kind and includes the period from the moment he is placed under restraint up to the time he is brought before an authority competent to order his continued custody or to release him”.⁷⁴

Hence, 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.⁷⁵ 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. Additionally, police can make a warrantless arrest for flagrant offence.

2.4.4. **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.⁷⁶ As defined by Saul Kassin “interrogation is a guilt-presumptive process, a theory-driven social interaction led by an authority figure who holds a strong a priori belief about the target and who measures success by his or her ability to extract a confession”.⁷⁷ According to Osterburg and H. Ward the main purpose of interrogation is to

⁷⁴ United Nations, Study of the Right of Everyone to be Free From Arbitrary Arrest, Detention and Exile, 34 U.N. ESCOR Supp. (No.8) at 5, U.N. Doc. E/CN.4/826/Rev. I (1964).

⁷⁵ Paul Roberts, Supra note 68, pp 92-146

⁷⁶ Richard A. Leo (2008), Police Interrogation and American Justice, Harvard University Press

⁷⁷ Cited Richard A. Leo supra note at 76, p.9

elicit information from a suspect who may suppress the facts, or from people whose answers might be colour by close ties to a suspect.⁷⁸

Interrogation and confession-taking is often necessary in investigating and solving serious crime like murder and rape as it may be difficult to obtain other evidence of guilt. 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 incarceration of the innocent.⁷⁹

2.5. Criminal investigations Procedure in Ethiopia

The process of the criminal procedure begins with acquisition of information on the commission of crime either from the society or police member. The Public prosecutor is authorised to give the necessary orders and instructions to the police and must ensure that the police carry out their duties in accordance with the law.⁸⁰ The police have the authority to keep the suspected person in detention for 48 hours.⁸¹ If the police are of the opinion that same person should not be released, the police bring him/her before court. The judge can order the suspect to be held in custody for a period of 14 days. If the police investigation is not completed, the investigating police officer may apply to the court for another 14 days in order to enable the completion of the investigation.⁸² The police officer will then inform the judge about the development of the investigation conducted to date and explain the steps to be taken during the next 14 days. As long as the police have not completed their investigation, the defendant remains in custody being brought before the court every fourteen days. However, in the case of individual suspected of terrorism act, the period remand is longer to a minimum of 28 days for which a total time not more than four months.⁸³

After the police completed the investigation he/she send the case file to the office of the public prosecutor. It is at this time that the public prosecutor informed of the case and

⁷⁸ James W. Osterburg and Richard H. Ward (2010), *Criminal Investigation: A Method for Reconstructing the Past*, Sixth Edition, p.239

⁷⁹ Supra note at 76

⁸⁰ Criminal Procedure Code of Ethiopia, Supra note 66 article 8 (2)

⁸¹ See Criminal Procedure Code of Ethiopia, article 29 (1), supra note at 66 and FDRE Constitution article 19, supra note at 24

⁸² Criminal Procedure Code of Ethiopia, Supra note at 66, article 59 (2)

⁸³ Federal Democratic Republic of Ethiopia, anti-terrorism, Proclamation, 2009, proc. No. 652, *Negarit Gazetta*, Year 15, No.57

become aware of the investigation in detail. After this the defendant is no longer brought before the court on a regular basis expect for the trial. Therefore, the defendant must wait until the beginning of the trial for his or her next court appearance. It is the court that shall fix a date for hearing and sends a summons with the view of notifying the accused that a charge as against him is field and he shall appear personally on such a date as mentioned in the summons.

After receiving the investigation file from the police, the public prosecutor can take one of the following decisions:

I. Draw a charge and sent it to the court

When the charge has been sent to the court, the judge fixes a date for a first hearing. The first hearing deals only with the issues of plea and with the selection of the witnesses that the prosecutor and the defendant want to summon to court. It is at this point of the proceeding that the defendant hears the charge for the very first time. Only the charge, no written statements, no results of the police investigation are given to the defendant. If the defendant pleads not guilty, the judge will order the prosecutor to bring forward the evidence. The court fixes a date for a new hearing. A defendant has the right to be released on bail when the offence s/he is charged does not carry the death penalty or rigorous imprisonment for fifteen years.⁸⁴

If a defendant is free on bail and the judge finds the defendant guilty and imposes a prison sentence, the defendant is immediately re-arrested and returned to jail. If he/she appeals, he/she must ask the appellate court to set a new bail.

II. Orders the Police to undertake further investigation

The prosecutor may send the case back to the police for further investigation. Up on completion of the reinvestigation the police send the case back to the prosecutor. The prosecutor will then send the file to court.

⁸⁴ See Criminal Procedure Code of Ethiopia, Supra note 66, article 63 (1)

III. Dismiss the case

If the prosecutor decides to discontinue a case⁸⁵, he/she is required to send a detailed report giving the reasons for this decision and must receive a signed approval from the head of prosecutors. After giving the approval not to institute proceedings, the head of the public prosecutors also sends the file to the Minister of Justice or the Head of Justice Bureau, each of whom has the authority to repeal the decision.

⁸⁵ For criteria to dismiss cases, please read Criminal Procedure Code of Ethiopia, article 42, supra note at 66

CHAPTER 3

Human Rights of Suspects of a Crime

3.1. Introduction

Human rights are commonly understood as being those rights which are inherent to the human being. The concept of human rights acknowledges that every single human being is entitled to enjoy his or her human rights without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁸⁶ Hence the aspiration to protect the human dignity of all human beings is at the core of the human rights concept.⁸⁷ Human rights are legally guaranteed by human rights law, protecting individuals against actions which interfere with fundamental freedoms and human dignity.⁸⁸ They are expressed in treaties, customary international law, bodies of principles and other sources of law. Human rights law places an obligation on States to respect, protect and fulfil.

Human rights principally involve the relationship between the individual and the state, and sometimes also among individuals. Accordingly, the task of protecting and promoting human rights is primarily a national one. It is at the national level that the first line of defence must exist. The international instruments which stipulate contemporary standards and the international monitoring bodies which scrutinize national performance are essentially complementary in nature and hence they are not a substitute for domestic initiatives.⁸⁹ Hence it is the applications of those principles of human rights at the national and local level that matter in the respect, protection and promotion of human rights.

However, human rights are not absolute in their nature as there are limitations on certain rights.

“The enjoyment of certain rights can be restricted in specific circumstances. For example, if an individual is found guilty of a crime after a fair trial, the State may lawfully restrict a person’s freedom of movement by imprisonment. Restrictions on civil and political rights may only be imposed if the limitation is determined by law but only for the purposes of

⁸⁶ Vienna Declaration and Programme of Action, adopted by the world conference on Human Rights in Vienna on 25 June 1993

⁸⁷ Wolfgang Benedek (2012), *Understanding Human Rights; Manual on Human Rights Education*. p.28

⁸⁸ Office of the High Commissioner for Human Rights, *Human Rights: A Basic Handbook for UN Staff*, United Nations. P.3

⁸⁹ Nihal Jayawickrama (2002), *The Judicial Application of Human Rights Law; National, Regional and International Jurisprudence*, p.95

securing due recognition of the rights of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.⁹⁰

This chapter mainly focuses on human rights of criminal suspect during criminal investigation as they are recognized under different national and international human rights documents.

3.2. 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 fulfil 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.⁹¹ Ethiopia is among states that ratified the ICCPR and hence has an obligation to implement provision contained in the covenant.

The ICCPR also provide basic and comprehensive principles which are to be respected in developing and implementing various international instruments in crime prevention and criminal justice. Therefore it provides the direct and concrete guidelines in the criminal justice reform for the state party.⁹² The criminal justice must ensure a balance between the interest of the public to prevent crime and the protection of individual human rights. The criminal cases involve several stages before the actual trial and afterward. These processes include post-arrest or pre-trial phase, the trial, and the post-trial phase.⁹³

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.⁹⁴ Human rights needs to uphold in the police station, the interrogation room, the detention centre, the court and the prison cell, otherwise the government has failed in its duties and the justice system itself

⁹⁰ Office of the High Commissioner for Human Rights, Supra note 88, P. 5

⁹¹ ICCPR, Supra note 2, article 2(2)

⁹² Ibid

⁹³ Buckner F. Melton, Supra note 15, p. 111

⁹⁴ See Amnesty International, Fair Trials Manual, December 1998

loses credibility.⁹⁵ Criminal suspects are protected in various international and national human rights instruments 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.⁹⁶ As far as this thesis focuses on the pre-trial rights of suspects, key rights of criminal suspects that are recognized in the international human rights instruments that are ratified by Ethiopia and the national documents are discussed below.

1. The Prohibition on Arbitrary Arrest and Detention

1.1 Right to Liberty

Right to liberty is one of the fundamental human rights, recognized in international human rights instruments and national constitutions throughout the world.⁹⁷ Everyone has a right to individual liberty. Article 3 of UDHR declares that “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”⁹⁸

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

⁹⁵ Lu Yanbin (2010), A Critique of Human Rights Protection for Suspects in the Chinese Criminal Justice System: An Examination of the Extent to which There Is and Could in Future Be Compatibility between Chinese Law and Practice and International Human Rights Norms. Doctoral thesis, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/411/>

⁹⁶ 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

⁹⁷ United Nations Office on Drugs and Crime, Handbook of basic principles and promising practices on Alternatives to Imprisonment, New York, 2007.p.4

⁹⁸ FDRE Constitution, Supra note 24, article 17

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.⁹⁹ 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.¹⁰⁰ The United Nations resolution on Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions also encouraged world governments to ensure strict control, including a clear chain of command, over all officials responsible for the apprehension, arrest, detention, custody, and imprisonment, as well as those officials authorized by law to use force and firearms.¹⁰¹

Every government has the duty to investigate and bring to justice those responsible for crimes.¹⁰² 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.¹⁰³ International human rights standards only permit deprivation of liberty when there is a ‘reasonable suspicion’ that a person has committed an offence. Even though what may be regarded as reasonable depends on circumstance it may be understood as “the existence of fact or information, which would satisfy an objective observer that the person concerned might have committed the offence.”¹⁰⁴ Additionally, arrest and detention should only be carried out by authorized person for that purpose. However, it is a common practice

⁹⁹ Danish Institute for Human Rights (2002), Police and Human Rights Manual for Police Training,

¹⁰⁰ Ibid P.25

¹⁰¹ The United Nations resolution on Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (recommended by the Economic and Social Council Res. 1989/66, May 24, 1989).

¹⁰² Supra note at 95, p. 26

¹⁰³ Amnesty international, “Locked Away; Sri Lanka’s Security Detainees”, 2012, p. 18. Available at www.amnesty.org.

¹⁰⁴ Danish Institute for Human Rights, Supra not 99, P.28

in some countries that members of the security forces carry out arrests and detentions although they have no power in law to do so.¹⁰⁵

1.2 Right to be Informed Immediately of the Reasons for Detention

“Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly¹⁰⁶ informed of any charges against him.”¹⁰⁷

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.¹⁰⁸ The information must be sufficient to permit the detained to challenge the legality of his/her 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.

UN Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, Principle 12 requires that the following information be duly recorded and to be communicated to the detained person or to his/her council.

- The reasons for the arrest;
- The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
- The identity of the law enforcement officials concerned; and
- Precise information concerning the place of custody.

¹⁰⁵ Amnesty International, Supra note 94

¹⁰⁶ No time limits are clearly stated within the human rights standards, and it is to be determined on a case by case basis. The Human Rights Committee has stated that “. . . *delays should not exceed a few days*”. [Human Rights Committee General Comment 8, para. 2]

¹⁰⁷ ICCPR, Supra note 2, Art.9 (2)

¹⁰⁸ Danish Institute for Human Rights, Supra not 99, P.32

Detaining a person simply for a presumed connection with subversive activities without providing an explanation as to the scope and meaning of ‘subversive activities’¹⁰⁹, is not sufficient justification.¹¹⁰

1.3 Right to Notification of Rights

In order to exercise them, suspects must be informed their rights. International standards require detainees to be informed their rights and duties and all the rules governing their daily life.¹¹¹ The Body of Principle for the Protection of all Person Under any Form of Detention or Imprisonment stipulates that;

“Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights”.¹¹²

The notification of rights, therefore, must include both procedural rights and the way these rights could be claimed and practiced. Detainees are most vulnerable to police abuse during early stage detention, when officials are under pressure to secure information from them.¹¹³ At this time notification of their rights is crucial to prevent the abuses.

2. The Right to Legal Counsel and the Right to be Brought Promptly Before a Judge

International law requires that “anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power”.¹¹⁴ The Ethiopian constitution also specifies that “Persons arrested have the right to be brought before a court within 48 hours of their arrest”.¹¹⁵ Such time does not include a time required to journey from place of detention to court.

¹⁰⁹ Subversive activity is an *act which constitute a criminal offence under the relevant legislation*

¹¹⁰ See HR Committee: Communication No. 33/1978, at paras. 12-13.

¹¹¹ Standard Minimum Rules for the Treatment of Prisoners, Adopted by first United Nations Congress on the Privation of Crime & the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Rule 35.

¹¹² 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 13

¹¹³ Association for the Prevention of Torture (APT), Monitoring Police Custody; A practical guide, January 2013

¹¹⁴ Supra note at 2, article 9 (3)

¹¹⁵ Supra not at 24, article 19 (3)

Individuals arrested must be brought promptly before a judicial authority so that the court may determine whether an initial detention was justified and whether or not the accused shall be remanded in custody pending trial. This safeguard is contained within each of the major international and regional human rights instruments. When brought before such an authority, a detained person has the right to make a statement on the treatment received by him while in custody.¹¹⁶ As summarized by Gordan Kalajdziev et al (2002), the purposes of the review before a judge include:

- To assess whether sufficient legal reason exist for the arrest
- To prevent violations of the detainee's fundamental rights
- To assess whether detention before trial is necessary
- To safeguard the well being of the detainee

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.¹¹⁷ 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.¹¹⁸ 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.¹¹⁹

3. Trial Within a Reasonable Time or Release on Pending Trial

International standards governing pre-trial detention reflect the principle that pre-trial detention should be minimized whenever possible, and should be used only as a last resort, in certain, limited circumstances.¹²⁰ It means that, suspects should only be detained before trial where there is reasonable suspicion that they have committed an offence and

¹¹⁶ Lawyers Rights Watch Canada (LRWC) March 2013, Pre-Trial Release and the Right to be Presumed Innocent: A Handbook on Pre-Trial Release at International Law. p.29.

¹¹⁷ 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.

¹¹⁸ David Berry (2011), The Socioeconomic Impact of Pre-trial Detention. A Global Campaign for Pre-trial Justice Report, Open Society Justice Initiative, New York.

¹¹⁹ See Lawyers Committee for Human Rights, What is A Fair Trial? A Basic Guide to Legal Standards and Practice, March 2000. p.5

¹²⁰ United Nation Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted by General Assembly resolution 45/110 of 14 December 1990, article 6

where the authorities have substantial reasons to believe that and if released, they would escape or commit a serious offence or interfere with the course of justice. According to UN Human Right Committee factors that determines a period of pre-trial detention and its reasonableness include; the “seriousness of the offence alleged to have been committed, the nature and severity of the possible penalties and the danger that the accused will abscond if released”.¹²¹ The criminal justice system should resort to pre-trial detention only when alternative measures are unable to address the concerns that justify the use of such detention. Article 14(3) of the ICCPR stipulates that those accused of a criminal charge are entitled to a trial without undue delay. However, study shows that many of imprisoned persons in Africa are not convicted rather they are awaiting trial.¹²² Speedy trial is needed to minimize the period of pre-trial detention.

Prosecutors may send a case back to the investigating police for further investigation. In such cases police responds to the prosecutor’s requests after unnecessary delays. Studies shows that such delay may take more than five years till the police complete the re-investigation and send the case back to the prosecutor.¹²³ The suspect is being held in the custody waiting this pre-trial investigation for all this period which is against the internationally recognized human rights standards. Unreasonable delay of investigation is causing numerous violations of human rights of arrested or detained person in Ethiopia. There should be formal limit between acceptable and unacceptable delay or should be justified, as the amount of elapsed time is crucial to a trial, especially for detained suspects.¹²⁴

Detention for the sole purpose of further interrogation is not justifiable. Article 9(3) of the ICCPR provides that “it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial”. Additional General Comment No.8 makes clear that pre-trial detention “shall not be the general rule” and it implicitly provides a detainee with a legitimate claim to release in exchange for bail or some other guarantee of appearance at the trial.¹²⁵ Implementing an alternative to pre-trial detention mechanism may be one way to reduce suffering in the pre-trial detention. Release on bail is one of alternative to pre-trial detention in which suspect is released from detention

¹²¹ See *Kone v Senegal*, Comm. 386/1989, para 8.

¹²² Jeremy Sarkin (2008), *Human Rights in African Prisons*, Publish in South Africa by HSRC Press.

¹²³ FDRE Ministry of Capacity Building Justice System Reform Program Office, *Comprehensive Justice System Reform Program Baseline Study Report*, February, 2005

¹²⁴ Rakeb Messele, *Supra* note 32, P. 52

¹²⁵ See General Comment 8, Para 3.

pending investigation and the trial.¹²⁶ Bail is aimed at securing balance between bringing an offender to trial and protecting rights of the suspects to presumption of innocence and therefore helps for dispensation of criminal justice and the protection of human rights.¹²⁷

The right to bail has been recognized as one of the fundamental human rights of arrested persons under the FDRE constitution. Article 19 (2) of the constitution stipulates that “Persons arrested have the right to be released on bail”. In similar fashion, the Criminal Procedure Code of Ethiopia specifies that;

“Whosoever has been arrested may be released on bail where the offence with which he is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed dying”.¹²⁸

However, studies have shown that there are problems on realization of this right. Kelali Kiros (2011) has pointed out that Criminal Justice Policy of Ethiopia and other laws promulgated on this basis has placed many problems on the enjoyment of this right.¹²⁹ Similarly, Gebrehiwet Hadush (2013) has indicated that right to bail of person suspected of corruption offence is not respected according to the Ethiopian constitution and international human rights because of the Ethiopian anti-corruption laws.¹³⁰

Implementing effective alternatives to imprisonment will reduce the number of people and the time spent in pre-trial detention and also has the potential to significantly reduce the risk of torture and other ill-treatment in police custody. This will allow states to meet their basic human rights obligations to person deprived of their liberty.¹³¹

¹²⁶ Kelali Kiros (2011), *The Bail Justice in Ethiopia: Challenges of Its Administration*, A Thesis Submitted to the School of Law of Addis Ababa University, p.9. Available at www.Chilot.me.

¹²⁷ J. Namdi, et al (2009), *Bail and Criminal Justice Administration in Nigeria, The Theory And Practice in Africa*

¹²⁸ Criminal Procedure Code of Ethiopia, Supra note 66, article 63(1)

¹²⁹ For more information please read, Kelali Kiros (2011), *The Bail Justice in Ethiopia: Challenges of Its Administration*, A Thesis Submitted To the School of Law of Addis Ababa University, p.49-51. Available at www.Chilot.me

¹³⁰ Gebrehiwet Hadush (2013), *Right to bail under federal anti-corruption laws; implication on the right of the accused*, A Thesis submitted to Addis Ababa University.

¹³¹ United Nations Office on Drugs and Crime, *Handbook of basic principles and promising practices on Alternatives to Imprisonment*, New York, 2007.

4. The Right of Detainees to Have Access to the Outside World

4.1. Right to Inform Family of Arrest and Place of Detention

An important safeguard against ill-treatment in detention is that the detainee has the right to inform people (family and friend) outside prison about his or her deprivation of liberty.¹³² The information must include the fact of their detention and the place where they are detained.

4.2. Right to Communicate and Receive Visits (Family and Others)

Detainees need to receive frequent visits from relatives in order to maintain family relation and to preserve their psychological well being, and also to receive vital material assistance. Taking into consideration the shortage of accommodation in the police custody, family visits are the main source of supplies to the detainees.¹³³

International human right norms and Ethiopian legislation¹³⁴ emphasize that detainees should be able to communicate with their families and any visitors. According to international standards, detainees' communication with the outside world is both a key requirement for the protection of the rights of detainees and an aspect of humane treatment.¹³⁵ Restricting detained suspects from visits by lawyer, family members and isolation from the outside world by holding incommunicado¹³⁶ or in secret detention is a grave problem in pre-trial detention. Beyond itself constitute violation of rights of detainees, it facilitate the perpetration for torture and other cruel, inhuman or degrading treatment or punishment.¹³⁷ The UN Human Rights Committee has also stipulated that such detention constitutes inhuman and degrading treatment for both the detainees and their families.¹³⁸ However, in Ethiopia detainees are usually denied access to their families for long period.¹³⁹

¹³² Piet Hein van Kempen, The Protection of Human Rights in Criminal Law Procedure in The Netherlands, Electronic Journal of Comparative Law, vol. 13.2 (May 2009), <http://www.ejcl.org>.

¹³³ Tesfaye Tadesse (2011), Freedom from Torture, Inhuman or Degrading Treatment or Punishment: The Case of Some Selected Prisons of Oromia National Regional State; Thesis Submitted to Addis Ababa University, Unpublished. P. 147

¹³⁴ FDRE Constitution, Supra note 24, article 21 (2)

¹³⁵ See Standard Minimum Rules For The Treatment of Prisoners, Rule 92, supra note at 111 and Body of Principles on Detention, Principle 15, supra note at 112 .

¹³⁶ *Incommunicado* is a detention without contact with the outside world, particular lawyer, family an independent doctor and an impartial court. It is condemned by the international community as a human rights violation.

¹³⁷ See UN General Assembly resolution 62/148, 17 December 2007, Para 15; UNGA res. 63/166, 12 December 2008, para 20

¹³⁸ See Human Rights Committee, Mukong v. Cameroon, Communication No. 458/1991, para. 9.4

¹³⁹ Human Rights watch Report, Supra note at 26, p. 33

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.¹⁴⁰ 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.¹⁴¹

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.

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.¹⁴² 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.¹⁴³ 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

¹⁴⁰ Saul M. Kassin et al. (2010), *Legal and Criminological Psychology- Interviewing suspects: Practice, science, and Future directions*, 39-55.

¹⁴¹ *Ibid*, p.44

¹⁴² Lawrence M. Solan and Peter M. Tiersma (2005), *Speaking of Crime: The Language of Criminal Justice* p.53

¹⁴³ See ICCPR, art. 14(3) supra note at 2 and CAT, arts. 1 and 16, supra note at 28

under coercion is inadmissible.¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶

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.¹⁴⁷ 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 Maekelawi is very limited.¹⁴⁸

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.¹⁴⁹

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”.¹⁵⁰

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.¹⁵¹ The Human Rights Committee has

¹⁴⁴ FDRE Constitution, Supra note 24 article 19 (5)

¹⁴⁵ Criminal Procedure Code of Ethiopia, Supra note 66, article 27(2)

¹⁴⁶ Body of Principles, Supra note 112, principle 21(1)

¹⁴⁷ Human Rights Watch Report, Supra note 26, p.38

¹⁴⁸ Ibid p. 34

¹⁴⁹ A Global Campaign for Pre-trial Justice, Pre-trial Detention and Torture: Why Pre-trial Detainees Face the Greatest Risk; Open Society Foundations, 2011.

¹⁵⁰ Criminal Procedure Code of Ethiopia, Supra note 66, article 27 (3) and (4).

¹⁵¹ Body of Principles, Supra note at 112, Principle 23

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.¹⁵²

6. The Prohibition of Torture and the Right to Humane Conditions during Pre-Trial Detention

6.1. Prohibition of Torture

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

According to Article 1 of the United Nations Convention against Torture, torture is defined as:

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”¹⁵³

From this definition we can understand that the elements that constitute torture are; *intensity of the suffering*- that is if it inflicts severe pain or suffering either physical or mental, *specific purpose*- done for specific purposes as obtaining information or a confession, punishing, Intimidating or coercing, or for any reason based on discrimination of any kind, *Public official capacity*- if infliction by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, and *exclusion*- not include pain arising from lawful sanctions. Therefore, an act can be

¹⁵² UN Human Rights Committee General Comment 20, para.11

¹⁵³ CAT, Supra note at 28, article 1

determined as torture only up on fulfilment of these elements. However it may be difficult to understand these elements as intended by the convention and apply them in specific cases.¹⁵⁴

The ICCPR under its article 7 also states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”. Criminal suspects as human being therefore, are protected from torture or cruel, degrading or inhuman treatment or punishment by reason of their status. Under article 10 the ICCPR specifically addressed the rights persons deprived of their liberty. It states that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

Beside the prohibition of torture by the international human rights law, torture unfortunately goes on around the world. Even though torture is condemned through national policy, the act of torture may be carried out in innumerable police stations, detention centers, or prisons around a country because of the highly decentralized way in which it is carried out.¹⁵⁵ Torture is considered a useful way of extracting confessions and proof for convicting a suspect. But, information obtained through torture is unreliable as the suspect will say anything to avoid pain. Therefore, torture is more likely leads to false decision than help an investigation.¹⁵⁶

According to A Global Campaign for Pre-trial Justice Report the vast majority of torture and other form of ill-treatment that occurs 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.¹⁵⁷ Contrary to the widespread

¹⁵⁴ Tesfaye Tadesse Abebe (2011), Freedom from Torture, Inhuman or Degrading Treatment or Punishment: The Case of Some Selected Prisons of Oromia National Regional State; Thesis Submitted to Addis Ababa University, Unpublished. P.12

¹⁵⁵ Beth A. Simmons (2009), Mobilizing for Human Rights; International Law in Domestic Politics, Cambridge University press. P. 260

¹⁵⁶ Andrew Clapham (2007), Human Rights- A Very Short Introduction, Oxford University Press, p. 87.

¹⁵⁷ David Berry (2011), The Socioeconomic Impact of Pre-trial Detention. A Global Campaign for Pre-trial Justice Report, Open Society Justice Initiative, New York.

opinion that torture is exclusively the fate of political prisoners and suspected terrorists most victims of torture and other ill-treatment are ordinary people accused of ordinary crimes.¹⁵⁸

6.2. The Right to Humane Conditions of Detention

Theoretical, pre-trial detention does not constitute a human rights violation, in the words of Jeremy Sarkin if it is under “appropriate circumstance done under the right condition of detention and as a last resort with minimal periods of confinement”.¹⁵⁹

Extremely poor detention conditions and serious overcrowding of detention facilities often amount to cruel, inhuman, or degrading treatment or punishment. As explained by Stern (1999), ‘for many detainees in Africa’s prisons, who are compelled to spend long periods of time incarcerated under poor sanitary conditions, with inadequate nutrition, limited or no access to healthcare and acute overcrowding, a period of detention is a death sentence’.¹⁶⁰ Studies indicate that in many parts of the world pre-trial detainees live in worse conditions than convicted prisoners.¹⁶¹ Similarly, a research done on conditions of detained persons in Addis Ababa shows that, treatment of detainees in prisons is poor and far below minimum standard while treatment in police detention centres are almost in non existence in all its aspects.¹⁶² According to the HRC, States cannot invoke a lack of adequate material resources or financial difficulties as justification for inhuman treatment and are obliged to provide detainees and prisoners with services that will satisfy their essential needs.¹⁶³

6.3. The Right to Adequate Medical Care

Health care is very crucial for detainees as their health condition is unsafe because of overcrowding, stress, physical violence among detainees, the limited resources allocated for their care and mistreatments like torture.

The Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of all Person Under any form of Detention impose specific obligations on states to provide detainees and prisoners with healthy living conditions and quality health care, including mental health care.¹⁶⁴ Therefore person held in detention by law

¹⁵⁸ David Berry (2011), The Socioeconomic Impact of Pre-trial Detention. A Global Campaign for Pre-trial Justice Report, Open Society Justice Initiative, New York

¹⁵⁹ Jeremy Sarkin, Supra note 122, p.23

¹⁶⁰ Cited by Martin Schonteich, (2008), Human Rights in African Prison. P.108.

¹⁶¹ The Open Society Justice Initiative, Pre-trial Detention, 2008

¹⁶² Addisu Gulilat, Supra note 25

¹⁶³ See Human Rights Committee, General Comment No. 9/16, July 27, 1982.

¹⁶⁴ Supra note 111, Rule 22

enforcement officials have the right to be examined by a doctor and, when necessary, to receive medical treatment as well. This right is viewed as a safeguard against torture and ill-treatment, among other things, as well as an integral part of the duty of the authorities to ensure respect for the inherent dignity of the human person.¹⁶⁵

Because pre-trial detention is often assumed to be only for short period, there is tendency for lack of services and facilities¹⁶⁶ like medical, accommodation, food, clothing and etc in the detention centres. For example, Ethiopian Police detention centres, usually a waiting place for pre-trial detainees, are criticized for poor and sometimes unavailability of medical care.¹⁶⁷

3.3. Obligation to Respect Rights of Criminal Suspects

Government is the principal duty bearer of human rights obligations. An obligation to respect human right is simply refraining from interfering in the enjoyment of rights. Accordingly, any organ of government should respect human rights in their day to day activities. Under international law, police officers are obliged to fully respect human right as well as to protect human rights against violations by other individuals and hence their key functions call on them to be active agents for the enjoyment of human rights.¹⁶⁸

Law facilitates criminal investigations by conferring instrumentally useful powers on the police, yet it subjects police conduct to legal prohibitions, restrictions and procedural requirements.¹⁶⁹ Police officers are usually at the front of criminal investigation and have a direct contact with suspects. Hence, obligation to respect rights of suspects is highly related to functions of police. The Code of Conduct for law Enforcement Officials adopted in 1979 which applies to law enforcement officials, particularly members of the police force and other security forces asserts that those who exercise police power are to ‘respect and to protect human dignity and to uphold the human rights of all persons’. However, studies also show that most of human rights violations during criminal investigations are practiced by police. Therefore, police officers are required to perform their activities in

¹⁶⁵ Lu Yanbin, Supra note 95

¹⁶⁶ Megan Bastick , Women in prison: a commentary on the standard minimum rules for the treatment of prisoners, p.84, July 2005 available at: www.quno.org.

¹⁶⁷ Supra note at 162, p.72

¹⁶⁸ Association for the Prevention of Torture (APT), Monitoring Police Custody; A practical guide, January 2013, p.4

¹⁶⁹ Paul Roberts, Supra note at 68, pp. 92-146.

accordance with human rights standards and in a way that respect internationally recognized rights of suspects in all process of investigation.

States Parties are obliged to take effective legislative, administrative, judicial and other measures to respect, protect and fulfil rights of suspects that are recognized under international human rights law and national legislation.¹⁷⁰ Yanbin (2010) explain this obligation as;

“State has special obligation to protect rights of detainees which arise from the interest of this particularly vulnerable human beings, who are not in a position to satisfy their most basic needs by themselves, and who are subject to a different form of violence, ill-treatment and humiliation by police, prison wardens and fellow inmates alike”.¹⁷¹

Under International human rights law the State has an obligation to establish criminal law and systems that is sufficient to deter and respond to criminal acts. However, the criminal laws must not go so far as to deny individual rights of criminal suspects, including due process rights. For this reason, the State must establish a balance that ensures both the freedom and the protection of the individual as well as public safety and well-being. As summarized by Martin Schonteich;

“Deciding to place in custody an individual suspected of committing a crime is a difficult and usually complex process. The ability to make appropriate decision requires not only good laws but also good government, stable institutions, well trained and conscientious legal officials, adequate criminal justice recourses and an informed public.”¹⁷²

Therefore, simply throwing an individual suspected of crime to a jail or prison in the name of deterring crime is not fair. A lot is expected from government from respecting rights of suspects that are recognized nationally and internationally to establishing a system and institutions that protect and fulfil these rights in the whole criminal proceedings.

¹⁷⁰ ICCPR, Supra note at 2, article 2 (2)

¹⁷¹ Lu Yanbin, Supra note 95

¹⁷² Jeremy Sarkin, Supra note 122, p. 114.

Chapter 4

Presentation and Analysis of Data

4.1. Description of the Study Area-Oromia Special Zone Surrounding Finfine

Oromia Special Zone Surrounding Finfine (OSNSF) is found in the central part of the Oromia Regional State, surrounding the capital city of Ethiopia, Finfine (Addis Ababa). OSNSF is established in 2000 by proclamation number 115/2000 adopted by the Executive Organ of the Oromia National Regional State. The zone with its area coverage of about 4808km² accounts for about 1.5% of the total area of the National Regional State of Oromia. It comprises 6 rural woredas (Bereh, Akaki, Sebeta-Hawas, Welmera, Mulo and Sululta) and 8 town administration (Sululta, Sendafa, Lega-tafo, Gelan, Dukem, Sebeta, Holeta and Burayu).¹⁷³ Finfinne is the capital town of the Zone.¹⁷⁴

The astronomical location of the Zone lies between Latitude 8.5''9.5'N and Longitude 38.4''39.2'E. According to 2007 census, the population of OSZSF is estimated to 804,731 out of which 406,360 are male and the remaining 398,371 are female. 28.9% of the population are urban settlers while 71.1% are rural settler. The Zone is characterized by a serious immigration mainly, because of construction and establishment of new industries and residential houses. Most of them came as daily labourers from the surrounding rural areas and others as employees for these newly established businesses and for living.¹⁷⁵

This chapter mainly presents a detailed empirical analysis of data collected in relation to the respects of human rights during criminal investigation from sample police stations in OSZSF. The study applies qualitative analysis of data produced mainly from in-depth interview, case files and observations as well as quantitative analysis for data obtained from questionnaires. The following table shows participants of the research and methods of data collection employed to obtain the intended data.

¹⁷³ Source; Oromia special zone surrounding Finfine administration

¹⁷⁴ The National Regional State of Oromia; Basic Facts and Figures of Oromia Region Oromia Bureau of Finance and Economic Development, Regional Data And Information Preparation and Dissemination Core Process, February, 2012, Finfinne, P. 8

¹⁷⁵ Yazachew and Kasahun, The National Regional Government of Oromia; Physical and Socio Economic Profile of Finfinne Sorounding Special Zone; Bureau of Finance and Economic Development – Regional Data and Information core Process, January 2011, Finfinne

S.N	Participants category		Number	Method of data collection
1	Criminal suspects	in detention	41	Questionnaires and observation
		Out of detention	8	Interview
2	Investigative police		5	Interview
3	Prosecutors		6	Interview
4	Police station heads		3	Interview
5	Justice office heads		3	Interview
6	Justice Bureau head		1	Interview

Table 1. Participants of the study and method of data collections used

The study covers three police detentions found in Oromia special zone surrounding Finfine. These are Sululta town, Burayyu town and Sululta woreda police detention centers. Accordingly, the researcher addressed detained criminal suspects through questionnaires, interview and observation and police detention authorities through interview. As police detention is temporary place to wait suspects number of detainees varies from day to day and it is difficult to mention exact numbers. At the time the researcher disseminate questioners for detainees there were 17 detainees in Sululta town police detention, 30 detainees in Burayyu town police detention and 20 detainees in Sululta woreda police detention center. From these questionnaires are disseminated and filled with 41 detainees. Findings obtained from this sample as well as from key informants through interview, observation of the detention center and secondary sources are analyzed below.

Stations	Sex		Age			Level of education			
	M	F	30>	31-45	46<	Adult education	1-8	9-12	Diploma
Sululta town	10	1	9	2	0	1	8	2	0
Burayyu town	14	4	12	5	1	5	8	4	1
Sululta woreda	10	2	8	3	1	6	4	1	1

Table 2. Detainee's respondent sex, age and level of education

4.2. Conditions of Arrest and Detentions

Article 9 of the Universal Declaration of Human Rights (UDHR), Article 9 of the International Covenant on Civil and Political Rights (ICCPR), Article 37 (b) of the Convention on the Rights of the Child (CRC) and Article 6 of the African Charter on Human and Peoples' Rights (ACHPR) 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. Ethiopia has adopted all these international human rights documents. Additionally, Article 17 (2) of the FDRE constitution states that "no person may be subjected to arbitrary arrest and no person may be detained without a charge or conviction against him". 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.

Any arrest or detention must have a legal basis. The African Commission on Human and Peoples' Rights has stated that there should be a reasonable suspicion or probable cause that a crime has been committed by the person being arrested.¹⁷⁶ 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.

However, most of the detainees in the police custody told the researcher that they are detained on suspicion that they are involved in theft, conflict and other petty crime without having evidence against them. They are waiting until police collect sufficient evidence and their cases 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;

¹⁷⁶ African Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (AC Principles), 2001, Article M (1) (b)

“One day around 4pm local time I was on my way to home. Three police men meet 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’m 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’m going to the police station. This time they start beating me turn by turn until I reach the police detention center. It was later after three days in the detention center they brought me to the court and told me that I’m suspected for participating in unlawful demonstration a week earlier in the town.”¹⁷⁷

According to criminal procedure code of Ethiopia no person may be arrested without warrant issued by court except exceptional cases like flagrant offence.¹⁷⁸ However, based on data collected from OSZSF 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. The police subsequently detained these individuals at the stations without an arrest warrant on suspicion of having committed a crime. As it has shown in the table below about 83% of the detainees in the three police detentions are arrested without arrest warrant.

Stations	Arrests with warrant	Arrests without warrant
Sululta town	1	10
Burayu town	3	15
Sululta Woreda	3	9
Total	7	34

Table 3. Arrest with warrant and without warrant

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

¹⁷⁷ Interviewee with previous criminal suspect in Sululta Town, October 29, 2014

¹⁷⁸ Criminal Procedure Code of Ethiopia, Supra note 66, article 49 & 50.

Generally, in the course of investigation police may exercise the power of arrest. However, this power should only be exercised when necessary and law allow doing so. Hence, any arrest and detention made out of this legal provision is violation of rights of suspects and must be bunged.

In the process of criminal investigation public Prosecutors have an obligation to carry out regular inspections of places of detention 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 OSZSF, 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 detained and whether their rights are respected or not. However, during my observation this was not done smoothly. This is happen because polices and prosecutor are busy with office work as number of staff is not compatible with number of society they are serving.¹⁷⁹ 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.¹⁸⁰

4.3. Informing the Reasons for Arrest and any Charge Against

The ICCPR provides that any person arrested must be informed reason of arrest up on arrest and must be informed the charge being brought to him/her as soon as possible.¹⁸¹ 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.*”¹⁸² Knowing reason of detention is crucial for detainees to prepare themselves for defence and challenging their arrest. However, practically most of detainees 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

¹⁷⁹ Interview with head of OSZSF justice bureau 03 December, 2014

¹⁸⁰ Interview with Sululta town criminal investigation process owner 26 November, 2014

¹⁸¹ See ICCPR, article 9(2), supra note at 2

¹⁸² FDRE constitution, Supra note 24, article 19 (1)

been made, they are unlikely to be able to demonstrate that it is not arbitrary.¹⁸³ Therefore, not explaining reason of arrest for detain 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. However, as shown in the table below, the quantitative data obtained from the study area shows that about 68% of the detainees are not informed reasons of arrest promptly. There is no recorded documents show that the police are informing or not in the police stations, except suspects response.

Stations	Informed	Not informed
Sululta town	4	7
Burayu town	6	12
Sululta woreda	3	9
Total	13	28

Table 4. Information on the reasons of arrests

4.4. Failure to Inform Rights and Progress of Cases

The ICCPR provides that individuals must be told why they are being arrested at the time of their arrest¹⁸⁴ and must be informed promptly of the charges against them.¹⁸⁵ Principle 13 of the Body of Principles states that at the moment of or promptly after the moment of arrest or the commencement of detention, a person must be given information on and an explanation of their rights and how to exercise them. This information must be provided in a language the person understands.¹⁸⁶ As indicated in the table below from 41 detainee only 7 detainees which is about 17% are informed their rights during detention.

¹⁸³ David Hoffman & John Rowe, *Human Rights in the UK: An Introduction to the Human Rights Act 1998*, 2003, p.143- 223

¹⁸⁴ ICCPR, Supra note 2, article 9(2)

¹⁸⁵ Ibid article 14(3)(a))

¹⁸⁶ Body of principles 14 supra note at 112 and ICCPR article 14(3)(a) supra note at 2

Stations	Informed	Not informed
Sululta town	4	7
Burayu town	2	16
Sululta Woreda	1	11
Total	7	34

Table 5. Notification of rights

As indicated above in table 2 most of the detainees are only received elementary education while other only acquired basic (adult) education. This shows that detainees have no good knowledge of their rights as criminal suspect. To this end, response obtained from detainees on the question says “do you know your rights as criminal rights” proves this. From 41 respondent 33 (80%) of them answered ‘No’ while the remaining 8 (20%) of respondent says ‘Yes’. As it will be discussed below almost the entire respondent did not have a legal representative or counsellor, though there are serious cases like rape which requires legal counsel. Therefore, taking all these conditions into consideration it is possible to imagine the fate of the suspects. It will be up to the investigating authority to respect or not respect the rights of suspect as there is no means of ensuring their accountability without right claimer.

4.5. Legal Representation and Council

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 accused 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. 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 defence counsel not been provided. In all others cases, no legal counsel be provided to the accused at the expense of the state. However, practically this right is not being exercised by all accused persons. It only those who can afford to appoint a legal counsel at their own expense can do so.

Access to lawyer and defence council is a fundamental safeguard against different ill-treatment on suspect in detentions. Communicating with defence 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.¹⁸⁷ 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.¹⁸⁸

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 site has lawyer or legal consular. According to the information obtained most of the detainees did not know that they have such rights while others have no financial capacity to pay for legal councillor and defence lawyer. Government officials on the other hand told me that there is no budget to assign legal councillor for every suspect except free legal services provided by private lawyers for few serious crimes. Accordingly, every lawyer has to provide 52 hours free legal services annually to renew their licences.¹⁸⁹ Hence a prosecution made between the public prosecutor, who is trained in law, and the accused person on the one hand, often a layman who have no legal knowledge is not balanced and cannot be fair which would result in miscarriage of justice.

4.6. 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 authority with the power to review as appropriate the continuance of detention.¹⁹⁰ Prompt Appearance before a Court helps to minimise the risk of arbitrariness by providing judicial control over the executive's interference with the right to liberty in the criminal

¹⁸⁷ Nihal Jayawickrama, *Supra* note 89

¹⁸⁸ *Ibid* p. 556

¹⁸⁹ Oromia Regional State Administration; Justice Bureau and police commission; *A Manual on transformation of criminal investigation and trial*, 2014, Addis Ababa (roughly translated from Afaan Oromo)

¹⁹⁰ Body of Principle, *Supra* note at 112, Principle 11

process. Therefore, anyone arrested or detained on a criminal charge must be brought promptly before a judge.¹⁹¹

Similarly, under the FDRE constitution a detainee must be brought before a court within 48 hours of arrest and have the lawfulness of their detention been determined.¹⁹² Additionally, the prosecutors has the authority to order the release of detainees when there 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. However, sometimes 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.¹⁹³ An individual detained in Sululta police station before a week explained to me what happened to him as follows.

“On 03/01/2015 somebody whose hotel was robbed a day earlier told me that police is looking for me. Then I went to police station and asked them why police is looking for me. They told me that I’m suspected for the robbery made in the hotel yesterday. I explained to them that I have no idea about that crime and request them to present any evidence they had on to me other ways to free me. However, the police men took me to the detention center and told me that I’m waiting there till the investigation of the case finalized. Then I pass five days in the police detention without any further interrogation, without charge and without appearing before court. On the sixth day one police man called my name and told me that I’m freed as there is no evidence found against me.”¹⁹⁴

Here this individual is detained without any evidence against him with a simple suspicion. Additionally, he is not brought before court with the time limit. If he was brought to court in 48 hours as indicated in FDRE constitution, he would have been released early as there is no evidence submitted against him. Accordingly he was not passing a couple of days in detention center. From this we can understand the

¹⁹¹ ICCPR, Supra note at 2, article 9

¹⁹² FDRE Constitution, Supra note at 24, article 19(3)

¹⁹³ Interview with different individuals detained and released at different time

¹⁹⁴ Interview with previous criminal suspect in Sululta town on 14, January 2015

interdependency nature of human rights, denial of one right result in violation of other rights.

4.7. Failure to Release Pending Investigation

Even where it is decided that the arrest was lawful the court has to give serious consideration to releasing the detainee pending trial, subject to guarantee to appear before trial.¹⁹⁵ The law however states that release pending trial/investigation can be refused where there is strong risk of flight by the accused, that the course of justice will be obstructed, or that the person will disturb public, order or continue to carry out criminal activities.¹⁹⁶ International human rights law and standards are also recognizing these circumstances.¹⁹⁷

However, the researcher has observed that numbers of pre-trial detainees held for long periods seemingly without the opportunity of being granted conditional release because of their economic status. Most of the detainees are young men and unemployed, suspected for petty crimes like theft. These men did not have a place of habitual residence or enough money to pay bail. According to public prosecutors most of the pre-trial detainees are remand for the fact that they cannot pay for bail to avoid hindrance of investigation and prosecution of the case and therefore secure their attendance at trial. This happen because court is requesting excessive amount of money to deposit beyond the capacity of the suspect and sometimes beyond amount of money needed to secure appearance of the suspect to appear at trial.

4.8. 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.¹⁹⁸ The UN Human Rights Committee has also stated that “pre-trial detention should be an exception and as short as possible.”¹⁹⁹

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

¹⁹⁵ ICCPR, Supra note 2, article 9(3)

¹⁹⁶ Criminal Procedure Code of Ethiopia, Supra note 66, rticle 67

¹⁹⁷ Art 9(3) ICCPR supra note at 2 and Principle 39 of the Body of Principles supra note at 112

¹⁹⁸ Article 9(3) of the ICCPR supra note at 2; Principle 38 of the Body of Principles supra note at 112; Principle M(3)(a) of the African Commission Principles on the Right to a Fair Trial

¹⁹⁹ UN Human Rights Committee, General Comment 8, para. 3

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. Due to over crowdedness and lack of space, detainees are sometimes forced to sleep in shifts or on a concrete floor in police cells which lack sufficient light and ventilation.²⁰⁰ The Human Rights Committee has stated that in such cases the suspects “must be tried as expeditiously as possible”.²⁰¹

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.²⁰² 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. This time 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 improvement following implementation of BPR which institutionalize joint work of public prosecutors and police officers in criminal investigation, still there is delay of investigation. This indicates that the system designed to enable prosecutors work with police in cooperation is not satisfactory. 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.²⁰³ However, this time limit is not strictly followed by investigators and prosecutors as there are investigations last for 1 month and above for petty crimes.

According to interviewed public prosecutor 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

²⁰⁰ Interview with previous criminal suspects, 29 November, 2014

²⁰¹ UN Human Rights Committee, General Comment 32, para. 35

²⁰² Interview with the head of Sululta town justice office, 16 November, 2014

²⁰³ Oromia Regional State Administration; Justice Bureau and police commission; A Manual on transformation of criminal investigation and trial, 2014, Addis Ababa (roughly translated from Afaan Oromo)

investigation may affect the length of the investigation.²⁰⁴ Beyond these, Shortage and limited training of prosecutors and police officers due to financial constraints further add up to the problem. However, the manner in which the police investigation is conducted must not be a cause for any failure to meets this guarantee.

4.9. Treatment of Detainees

4.9.1. Food Provision

UN Human Rights Committee recommends that “ persons deprived of liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons.”²⁰⁵ The committee has also specified that “treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party.”²⁰⁶

One of the most serious issues regarding treatment of detainees in police custody is unavailability of food. According to information obtained from the head of justice office of the three police stations a budget allocated to feed detainees is only 8 ETB per day for each detainee. It is believed that with this amount of money the detainee eats breakfast, lunch and dinner. However, taking into consideration the inflation in the country, 8 birr can even not enough to buy one meal let’s say a breakfast. Therefore, it is possible to conclude that the detainees in the police custody are not given meals and had to depend on food brought in by family or the generosity of other detainees if they have no family or friends to bring them a food. For that matter, the detention center is only accessible in certain limited time for families and relatives bringing food. Above that their family have no information about their detentions. According to the data collected from the police stations, most of the detainees have no family and relative in the town as they are rural-urban migrant engaged on daily-labour. The detainees told the researcher that they are given a piece of bread and a cup of tea daily.²⁰⁷

²⁰⁴ High Commissioner for Human Rights (1997), Human Right and Law Enforcement; A manual on Human Rights training for the police, New York & Geneva

²⁰⁵ UN Human Rights Committee, General comment 21

²⁰⁶ Ibid

²⁰⁷ Interview with detainee in Sululta town police station 26, November 2014

The scarcity of resources like food and water results in discriminatory treatment and a high risk of tension among the detainees. As information obtained from police officers because the budget allocated for food (8 birr per detainee) is not enough priority is given for those detainees who have no support from family and relatives. This is discrimination as the budget of one detainee is transferred to another without considering his/her consent.

4.9.2. Medical Care

When government deprives people of their liberty it has to take the responsibility to look after their health in terms of both the conditions under which it detains and the individual treatment which may be necessary as a result of those conditions. However, in reality providing medical care for detainees seems benevolence of government not a legal requirement and rights of the detainees.

The Body of Principles recommends that "*a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment*".²⁰⁸ However, this does not exist in the police stations visited. For example one detainee in the Sululta Woreda detention center told me that he is brought to the police station because he quarrels with his neighbour over boundary of their land. This detainee has hid his head with a piece of cloth mixed with blood. I asked the detainee what happened to him and he told me that he has been beaten by his neighbour during the fight. I asked him whether he has been taken to clinic or not and he answered me that no one allow him to do so. He added that his head was bleeding while the police took him to the police station and put him in the cell without any medical treatment.

Leaving the health problems and injuries of detainees untreated and denying responsibility for their medical care can cause severe suffering and to that extent life-threatening complications on the detainees. This is a violation of rights to health of the suspects.

ICESCR stipulates that "everyone has the right to the enjoyment of the highest attainable standard of physical and mental health".²⁰⁹ It obliges states to realize the availability of medical service and medical attention in the event of sickness. Similarly, the ACHPR states that "Every individual shall have the right to enjoy the best attainable state of physical and

²⁰⁸ Supra note 112, Rule 24

²⁰⁹ International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly Resolution 2200 A (Xxi) of 16 December 1966, entered into force 3 January 1976, article 12

mental health and States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick".²¹⁰ In order to ensure that people in custody are able to enjoy the right to the highest attainable standard of physical and mental health, states are obliged to provide health care to them, as they cannot readily obtain it for themselves. This includes an obligation to take effective measures to prevent and treat transmissible diseases, providing relevant medication and appropriate conditions of detention in terms of fresh air, hygiene and absence of overcrowding and other measures to prevent the transmission of such diseases within the detentions centers.

However, during my observation of the detention center all of the cells are not free from these conditions contributing for transmission of diseases. There is only one cell for males and one cell for females in the three of police stations. And there is no means of identifying detainees affected with transmissible disease like TB and malaria. Additionally, there is no reserve cell to minimize number of detainees when there are large numbers of arrested suspects and detainees with special need.

Above these, according to the information obtained from the police stations there is no medical care for the detainees as there is no budget allocated by government for this purpose. It is only up on detainees' expense that the police station allows to visit health centre under the control of the police officer.²¹¹ For detainees who has no outside support it is police officers who collect money from among their members to send the sick detainee to the health center.²¹² Imagine how this can be effective at this time when cost of living is high and public servant salary is low.

4.9.3. Bed and Clothes

Based on personal observation and interview made with detainees and police officers I have identified that all of the police detention centres are not providing detainees with bed, mattress and blankets. Accordingly, they are sleeping on concrete floor without wearing night clothes. Detainees are also not provided with cloths and they are wearing their own cloths. There is no enough supply of water, soap and other facilities to wash their clothes. For these

²¹⁰ African Charter on Human and Peoples' Rights, Adopted 27 June 1981, entered into force 21 October 1986, article 16

²¹¹ Interview with Sululta town police station Criminal investigation process owner, 26/11/2014

²¹² Interview with police officer from Sululta Woreda, 02/12/2014

reason detainees are forced to wear a dirty cloth without washing as well as without changing it for long period, which will creates bad odour and will expose them to disease like influenza. In such conditions illnesses are common and the spread of communicable diseases is increased. Added to the problems on provision of medical care discussed earlier, these create a serious health problem to detainees. To that extent if there is spread of diseases in the detention center and no effective medical care, we have no guarantee that death is not occurring in the cell. Detaining suspect in this condition is inhumane and degrading and it is a violation of Article 10 of the ICCPR as well as article 18 of the FDRE constitution.

4.10. Ill-treatment by Officials and Other Detainees

Most of Interviewed detainees said that they had been beaten by police while arrested and held at police stations. I have proved this practice while I was at the detention center to disseminate questionnaires and interviewing the detainees. It was at the time when prosecutor and police officer visit the detainees to check whether the arrests are lawful or not and the detainees are brought before court or not. At the end of the visit all of the detainees have to go back to their cell where the door is closed to them till the lunch time. The detainees are expected to take off their shoes outside the cell. However, one of the detainees forgets this regulation and entered the cell with his shoes. And it was this time the warder pushed this man out of the cell and kicked him and slaps into his face and insulting him saying “you criminal farmer don’t know anything, this is not your hut where you act as you like”. The detainee frustrates and did not give any response rather doing what the warder orders him. From this I can deduce that the warder and other police officers can do whatever they like in and around the cell, and that there is no way of making them responsible for the ill-treatment they are doing on the detainees.

Despite this, the detainees are also experiencing ill-treatment from other detainees, especially from senior detainees. According to the detainees there is a representative of them who act on behave of the officials and given the responsibility of controlling the detainees inside the cell and report misconduct and sometimes punish himself anyone whom he feels disturbing the cell. However, the Standard Minimum Rules for the Treatment of Prisoners prohibit the employment of prisoners in the service of the institution and any disciplinary capacity.²¹³

Though there are standards and policies about how to humanely treat detainees in police detentions, it seems police officers view fair treatment of detainees to be inappropriate and

²¹³ Supra note at 111, Rule 28.1

undeserved. Above all, Police officers sometimes perceive a police detention as a place for revenge instead of a pre-trial waiting place that must be a safe space for suspects. According to public prosecutors the major cause for such mistreatments and other violations of rights detainees is lack of knowledge and awareness of law enforcement officials regarding human rights as well as their obligations in relation to criminal investigation and handling suspects.

4.11. Family Access

It has been stipulated under the FDRE constitution that any person held in custody has the right to communicate and to be visited by their spouses and partner, close relatives, friends and the like.²¹⁴ However, in practice it is only to give food for detainees that family members allowed access to detainees. Even this is allowed for the reality that police custody is not providing food for the detainees. As per the schedule of the police stations, relatives permitted only one day per week for very brief visits with detainees. Sometimes such access is even inconsistent and dependent on the impulse of the particular police on duty at the time. As it can be seen from the following table 20 (49%) of the respondent are not visited by family and relative either because they are denied the access or to inform about their detention during arrest by police. Denying access to family and relative is also denying detainees source to provision of food from outside word.

Stations	Allowed	Not allowed
Sululta town	7	4
Burayu town	8	10
Sululta Woreda	6	6
Total	21	20

Table 6. Access to family in the detention centers

Though detained suspects fear to uncover it, in such conditions there is no guarantee that torture is not committed in the detention centers. For this reason, lack of access to police stations and the unaccountability of officers during police investigations at detention stage are major impediment to the protection of detainees.

Generally, most of the detainees in the three police detentions believe that their rights are not respected for them in the police station. For the question “do you believe your rights are

²¹⁴ FDRE Constitution, Supra note at 24, article 21(2)

respected during your stay at the police station” that forwarded to the detainees in the questionnaires about 49% of detainees responded, “Not at all”, 39% responded “ To some extent” where as 12% of the detainees responded “very well”.

Stations	Not at all	To some extent	Very well
Sululta town	4	6	1
Burayu town	10	6	2
Sululta Woreda	6	4	2
Total	20	16	5

Table 7. Extent of human rights respect in police stations

This shows that the main focus of the investigating authority is on identify the perpetrator of the crime leaving aside the rights of the suspects. If a police is arrest an individual without developing evidence that shows the suspect has committed a crime or if a police beat a suspect to obtain confession, the police him/herself committed a crime and should be brought to justice. Ensuring justice must not be in unjust ways. Justice can only be realized when wrong doer punished and rights are respected simultaneously.

Chapter 5

Conclusion and Recommendations

5.1. Conclusion

Individuals have unalienable rights simply because they are human. Respecting these rights is essential for individuals to live a life in human dignity. Government has a duty to bring to justice individuals responsible for crimes. At the same time government must respect rights of individual suspected of crime. Accordingly, criminal justice system, while carrying out its function of ensuring those suspected of criminal offences are brought to trial and if convicted face penalties accordingly, must ensure that it respects the rights of all those involved. As a result, persons suspected of criminal act must enjoy all the human rights as other human beings do, expect the restrictions that are imposed by law. These rights are recognized under numbers of national, regional and international human rights instruments.

The UN Convention on Civil and Political Rights details a range of basic rights of individuals deprived of liberty. It includes the right to life, freedom from torture, freedom from arbitrary arrest, right to be informed immediately of the reasons for arrest, right to be brought promptly before a judge, right to silence and prohibition against coerced confessions, the right to humane conditions of detention among many others. Ethiopia is a signatory of the ICCPR and according to article 9(4) of the FDRE constitution “any international agreement ratified by Ethiopia are an integral part of the law of the land”. For this reason all rights recognized under this convention must be implemented as it exists. Above this, most of these rights are also enumerated under chapter three of 1955 of Ethiopian constitutions as well as other human rights documents of the country. What matter is whether these rights are practically observed in criminal investigation process or not.

Law enforcement officials are provided under law with the power to arrest and detain suspects in the course of investigating crime. However, findings of this study show that they are not exercising this power in a manner that respects rights of suspects. Police often arrest people before they have built up evidence. In such cases individuals are detained overnight and then released for reasons they do not know. Police are not bringing detainees before a court of law within a specified period of time. Arresting authorities are frequently not informing suspects their rights. Suspects are detained for long time without trial and denied right to bail because of their economic status.

This study has also found-out that conditions in the detention centers can be regarded as inhumane as it is far below human rights standards. Detainees are forced to stay in their cells, which are completely dark and had no ventilation, for most of the day. All of the cells did not have mattresses and detainees are therefore forced to sleep on floor. There is no provision of basic services such as health care, food and hygiene facilities. Hence, detainees are detained in conditions very serious for their health. There is no separated cell for juveniles or other vulnerable detainees who needs special treatment. Visits are infrequently allowed and only for a few minutes to speak through grills. In such case detainees could not see their families. All these contribute to inhumane treatment of detainees.

As compared to prison, police detention centers are generally neglected and usually there is no external inspection, and official visits. Even though, numbers of persons are detained in police cells every day, we know little about who is detained, why detained and the conditions they are experiencing. It is only when a death occurs in police detention that police cells got public's attention. For that reason, 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.

Among other the major factors contributing to human rights violation during criminal investigations are low level of education and lack of awareness on human rights, weak legal safeguards and absence of effective mechanisms for ensuring accountability of officials misuse their power and lack of enough budgets to improve facilities in the detention center.

5.2. Recommendations

Basically, it would be difficult to give technical recommendations that address the problems raised in this research once and for all. It requires further researchers and inquires. The following recommendations are what the researcher believes if implemented will help to solve the problems regarding respecting human rights in criminal investigation motioned in this paper.

- ❖ Ensuring that prosecutors and police officers possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professional training and through the provision of all necessary means for the proper performance of their role in preventing and investigating crime as well as respecting rights of individuals. Additionally, short and long term training on

human rights particularly on respecting and protecting rights of criminal suspect should be provided for law enforcement officials.

- ❖ Measures should be taken to improve the availability of (and through time the quality) services in police detention centers. The amount of money allocated for food to each detainee per day must be revised in line with market prices so that all persons in detention centers will secure three meals a day. Means of improving the sleeping and sanitary supplies in the cell must be improved so that detainees sleep on bed and mattress not on concrete.
- ❖ Government must allocate budget for medical care of detainees so health service be available in the detention centers. At least there should be a system by which detainees are sent to public health centers and served free of charge. There must be one department in each police detention centers who follow the health related issues in police custody.
- ❖ Measure should be taken to reduce number of pre-trial detainees by applying alternative measure to detention. Pre-trial detention must be last resort in criminal proceedings. This may help to improve conditions in police custody by reducing number of detainees in a cell.
- ❖ Police stations and detention centers have set up complaints reception offices within their jurisdiction to receive citizens' complaints of human rights violations. Such office must be lead by impartial body outside of the law enforcing authority so that grievances are collected and analyzed by independent body.
- ❖ Ensure that impartial and independent investigations are carried out into the cases of arbitrary arrest and detention and any other violations of rights of suspects and any police officers and other law enforcement officials found responsible for these violations must 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. A 'chilot' program which is transmitted on Ethiopian Broadcasting Corporation (EBC) every Tuesday can be taken as good example and other Medias must also encouraged to initiate such programs. Ministry of justice, Ethiopian human rights commission and other stake holder should play roles in this regard.

- ❖ The Institution of the ombudsman as per its objective must ensure that citizens' rights provided in the constitution are respected by law enforcing organ. The institutional also has to review government directives and ensure that the administrative decisions made by executive organs are conform to the Constitutional rights.
- ❖ There should be a visit of police detention centers by members of House of Peoples Representatives or Regional Council members, independent institutions like Human Rights commission and any other relevant bodies. The investigations should be conduct into credible complaints of human rights violation and the taking of appropriate measures where violations are proved to have occurred.
- ❖ Though government is the primary duty bearer, respecting and protecting human rights is a responsibility of every one. Therefore, everyone; human rights advocator, civil society group, human rights activists must take part in advancing human rights. Here also government has to create opportunities.
- ❖ Last but not least, the researcher recommends that it is necessary to make further researches on rights of criminal suspects and pre-trial detention. Unlike prison, conditions in police detentions are not researched that much. In this regard access to detainees and documents in the police stations needs an improvement.

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1. African (Banjul) Charter on Human and Peoples' Rights (ACHPR), (Adopted 27 June 1981, entered into force 21 October 1986)

2. American Convention on Human Rights, Opened for signature and ratification on 22 November 1969, entered in to force on 18 July 1978.
3. 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
4. European Convention for the Protection of Human Right and Fundamental Freedoms, Adopted on 4 November 1950 by the Council of Europe and entered in to force on 3 many 1953.
5. International Covenant on Civil and Political Rights (ICCPR), adopted by United Nations General Assembly, on16 December 1966, entered into force 23 March 1976
6. International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly Resolution 2200 A (Xxi) of 16 December 1966, entered into force 3 January 1976
7. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council in resolution 1989/65 of 24 May 1989
8. Standard Minimum Rules for the Treatment of Prisoners, Adopted by first United Nations Congress on the Privation of Crime & the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.
9. United Nation Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification, and accession by General Assembly Resolution 39/49 of 10 December 1984
10. United Nation Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted by General Assembly resolution 45/110 of 14 December 1990
11. Universal Declaration of Human Rights (UDHR), adopted and proclaimed by United Nations General Assembly Resolution 217 A (III) of 10 December 1948
12. Vienna Declaration and Programme of Action, adopted by the world conference on Human Rights in Vienna on 25 June 1993

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

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Annexe- Data Collection Tools

1. Questionnaires for Criminal Suspects

1.1. English version of the questionnaire

Addis Ababa University

Centre for Human Rights

This questionnaire is prepared to assess the respects for human rights of suspects in criminal investigation process in some selected police stations of special zone of Oromia surrounding Finfine. For this purpose, I kindly request you to cooperate in answering the following questions and I like to ensure that the result of this study is only used for academic purposes, and your responses are confidential. Thank you for your cooperation in advance.

NB. No need of writing your name.

Please indicate your answers by putting either "X" or "√" marks in the blank space.

1. Background information

1.1. Sex _____

1.2. Age _____

1.3. Level of education: Adult education 1-8 9-12 Certificate
Diploma Degree or above

1.4. Job _____

2. Knowledge of human rights

2.1. Do you know what rights you have as a criminal suspect? YES NO

If YES lists some of them.

3. Respects for rights in police detentions

3.1. Are you told immediately the reason of your arrest and any charge against you? YES
NO

3.2. Are you arrested with warrant or without warrant? YES NO

3.3. Was your home or any other belongings searched? YES NO If yes
how? With search warrant without search warrant

- 3.4. Do the police notify your rights? YES NO
- 3.5. Are you allowed to inform your family that you are detained and place of your detention? YES NO
- 3.6. Are you allowed to communicate to your family and other visitor? YES NO
- 3.7. Do you have a legal counsel? YES NO
If NO, why? _____
- 3.8. During police interrogation, do the police respect your right to silence? YES
NO
- 3.9. Do police and other authorities in the police station treat you humanely? YES
NO
- 3.10. Have you ever sick in the police detention? YES NO If YES, do you visit a doctor? YES NO

4. Conclusion

4.1. Generally, do you believe your rights are respected during your stay at the police station?

Not at all To some extent Very well

1.2. Amharic version of the questionnaire

**አድስ አበባ ዩኒቨርሲቲ
ሰበዓዊ መብቶች መዕከል**

ለተጠርጣሪዎች የተዘጋጀ መጠይቅ

ይህ መጠይቅ የተዘጋጀው በፍንጮ ኩሪያ የኦሮሚያ ልዩ ዞን ባሉት በተመረጡ ፖሊስ ጣቢያዎች ውስጥ በወንጀል ምርመራ ወቅት ለተጠርጣሪዎች የሚደረግ የሰባአዊ መብት አከባቢር ላይ የዳሰሳ ጥናት ለማድረግ ነው። የዚህ ዳሰሳ ውጤት የሚውለው ለትምህርታዊ ጥናት ብቻ እንደሆነ ተረድታችሁ ጥያቄዎቹን በመመለስ እንድትተባብሩ በትህትና እጠይቃለሁ።

- ስም መጻፍ አይጠበቅብዎትም
- መልስ በሚሰጡበት ወቅት በመልስ በስጫ ሳጥኖች ውስጥ "X" ወይም "✓" ያድርጉ

1. መሰረታዊ መረጃ

- 1.1. ያታ:- ወንድ ሴት
- 1.2. እድሜ _____
- 1.3. የትምህርት ደረጃ:- መሰረተ ትምህርት 1-8 9-12
ድፕሎማ ድግሪና ከዚያ በላይ
- 1.4. ስራ:- _____

2. በሰበዓዊ መብት ላይ ያለ እውቀት

- 2.1. እንደ ተጠርጣሪ ያለውትን መብት ያውቃሉ? አዎ አላውቅም

መልስዎ አዎ ከሆነ የተወሰኑትን ይዘርዘሩ

3. በፖሊስ ጣቢያ ውስጥ በሚቆዩበት ጊዜ ያለው የመብት አክብሮት

- 3.1. በፖሊስ ቁጥጥር ስር በዋሉበት ወቅት የተያዙበትን ምክንያት እና የቀረበዎት ክስ ተነግሮታል? አዎ አይደለም
- 3.2. በቁጥጥር ስር የዋሉት :- በፍርድቤት ማዘዣ ያለፍርድ ቤት ማዘዣ
- 3.3. ቤት ንብርትዎ ተፈትሾ ነበር ? አዎ አልተፈተሸም
- 3.4. መልስዎ አዎ ከሆነ ፍተሻው የተካሄደው :- በፍርድቤት ማዘዣ ያለፍርድ ቤት ማዘዣ
- 3.5. እንደ ተጠርጣሪ ያለዎትን መብት ፖሊስ አሳውቆታል? አዎ አላሳውቀኝም
- 3.6. በህግ ቁጥጥር ስር መዋልዎትንና ያሉበትን ፖሊስ ጣቢያ ለቤተሰብ እንዲያሳውቁ ተፈቅዶልዎታል? አዎ አልተፈቀደም
- 3.7. ቤተሰብዎን እና ሌሎች ጠያቂዎችህ እንድንገቡዎት ተፈቅዶልዎታል? አዎ አልተፈቀደም
- 3.8. የህግ አማካሪ አለዎት? አዎ የለኝም
መልስዎ የለኝም ከሆነ ለምን?

-
- 3.9. ፖሊስ ቃልዎትን በሚቀበልበት ጊዜ ያለመናገር መብትዎ ተከብሮልዎታል? አዎ አልተከበረም
 - 3.10. ፖሊስና ሌሎች የህግ አስፈጻሚ አካላት በሰበአዊነት መደረግ ያለበትን እንክብካቤ አድርገውልዎታል? አዎ አልተደረገልኝም
 - 3.11. በህግ ቁጥጥር ስር በቆዩበት ጊዜ የጤና ችግር አጋጥመዎት ነበር? አዎ አላጋጠመኝም
መልስዎ አዎ ከሆነ ህክምና አግኝተዋል? አዎ አላገኘሁም

4. ማጠቃለያ

በአጠቃላይ በፖሊስ ጣቢያ ውስጥ በቆዩበት ጊዜ ሰበዓዊ መብትዎ ተከብሮልኛል ብለው ያስባሉ? አልተከበረልኝም በተወሰነ መልኩ ተከብሮልኛል ሙሉ በሙሉ ተከብሮልኛል

2. Interview Guidelines

2.1. Interview guideline for police officers

- 1. For how long you have worked as crime investigator?
- 2. What is your educational background?
- 3. Do you take a course or training on human rights?
- 4. What is criminal investigation?
- 5. What is your role as crime investigator?

6. Why you undertake criminal investigation?
7. How you identify criminal from innocent?
8. How you understand human rights in general and rights of criminal suspects specifically?
9. Are human rights affecting the processes of criminal investigations?
10. Which rights of suspects are more affected during criminal investigation?
11. How you treat criminal suspects during interrogation?
12. Do you think human right are obstacles or foundations for criminal investigation?

2.2. Interview guideline for public prosecutor

1. For how long you worked as prosecutor?
2. What is your educational background?
3. What is your role in criminal investigation?
4. Do you recognize any violation of rights of criminal suspect in criminal investigation?
5. Which rights are more prone to violation?
6. What do you think are the causes of these violations?
7. Have you made any efforts to protect rights of criminal suspects?
8. What are the challenges you are facing in dealing with rights of criminal suspects?

2.3. Interview guide for criminal suspects

1. Do you know reason of your detention?
2. For how long you been detained?
3. How you treated during your arrival at police station?
4. Do you know your rights as criminal suspects?
5. Are those rights respected in the process of the investigation?
6. Do the police notify you your rights?
7. Do you have a legal counsel?
8. During your detention, are your rights respected?
9. If not which rights are violated?