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**COLLEGE OF LAW AND GOVERNANCE**

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**On**

**Human Rights and Criminal law**

**Examining the Duty of the Police in the Enforcement of Human Rights during Pre-trial Stages of Criminal Proceedings: The Case of Konso Zone, SNNPR of Ethiopia**

*A Thesis Submitted in partial fulfillment of the requirements for the degree of Master of Law in Human Rights and Criminal Law in the College of Law and Governance, Jimma University, 2021*

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**May 21, /2021**

**Jimma, Ethiopia**

## **Declaration**

I, **Samuel Gendisha Ukke**, hereby declare that the thesis entitled as ‘**Examining the Duty of the Police in the Enforcement of Human Rights during pre-trial Stages of Criminal Proceedings: The Case of Konso Zone, SNNPR of Ethiopia**’ is my original work and has never been presented in any University before. And also, all sources or materials that I have used for this thesis have been duly acknowledged.

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## Approval

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## ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
Body of Principles of Detention or Imprisonment	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
BPUFF	Basic Principles for the Use of Force and Firearms by Law Enforcement Officials
CAT	Convention against Torture and Other Cruel, in-human or Degrading Treatment or Punishment
CCLEO	Code of Conduct for Law Enforcement Officials
CPC	Criminal Procedure Code
EC	Ethiopian Calendar
FDRE	Federal Democratic Republic of Ethiopia
FGD	Focused Group Discussion
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
SMR	Standard Minimum Rules for the Treatment of Prisoners
SNNPR	South Nation Nationalities and Peoples Region
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific, and Cultural Organization
Victims Declaration Abuse of Power	Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

## **Abstract**

*It is well known that human rights impose on states and their agent's general duties such as: the duty to respect, the duty to protect and the duty to ensure and fulfill. However, they are not limited to the general duties alone rather they also lay specific duties which require daily observation of State (government). Thus, law enforcement officials as state gents are primarily under responsibility to enforce the specific duties of the human rights. Therefore, this study is aimed at to examining the practical implementation of the police duties of human rights (rights of suspects) during pre-trial stages of criminal proceedings. Hence, the study is carried out in four police station detention centers found in Konso Zone. the study employed qualitative research method. Therefore, data for the study were collected both from primary and secondary sources. Interviews, Focus group discussion and participant observation used as tools to collect data from primary source. And different literatures, government documents and legal documents are reviewed to acquire secondary data. Interview and focus group discussion were made with key informants; suspects, investigating police officers (including heads), attorneys, judges and advocates. In interview and FGD a total of 52 respondents are participated. To draw a sample representation from the existing population I have used both simple random sampling and purposive sampling. The study find out that there is serious problem in the enforcement of the police duty in the all the selected police stations of the area of the study. The major challenges for the improper implementation of the duty of police among others are; gap of knowledge which emanates from the lack of awareness about the law and human rights standards, lack of motivation, lack of adequate budget and work interference (from both internal and external). As a result, police is not effectively enforcing his duty of human rights both during arrest and detention as required by the law. For instance; criminal suspects are not brought before court in the specified period sought by the law, suspects are not notified their fundamental rights (the right to remain silent and the right to legal counsel) and high practice of prolong pre-trial detentions are thre over the area. Treatment in the detention centers is also full of problem due to the above mentioned challenges. Finally, up on the findings the researcher recommended amongst: government should prepare trainings on human rights of suspects to enhance the police knowledge of substantive and procedural laws of human rights, government must allocate adequate budget to minimize the problem of separation of treatment of detainees and other related problems*

*and unnecessary interference should be avoided to enable police to work freely as per the procedures under the law.*

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# CHAPTER ONE Introduction

## 1.1. Background of the Study

Human rights are rights that every human being has by virtue of his or her human dignity.<sup>1</sup> Human rights are rights inherent to all human beings.<sup>2</sup> These rights are recognized in numerous conventions and treaties at international, regional and national levels. At international level they are recognized under the three major instruments together with form what is commonly referred as the International Bill of Human Rights (the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR)) and various specific human rights conventions. Likewise, regional human rights systems also developed at regional level and came up with regional human rights instruments. Notwithstanding level of recognition human rights imposes on states and their agents general duties; duty to respect, duty to protect, duty to ensure and fulfill and not to discriminate human rights. Also, Vienna Convention on the law of treaties reaffirms these human rights duties by providing the principle of "*Pacta Sunt Servanda*" Every treaty in force is binding upon the parties to it and must be performed by them in good faith.<sup>3</sup> Thus, states are expected to handle smoothly human rights issues; for protection and promotion of human rights is the first responsibility of governments.<sup>4</sup>

Nowadays, all most all states in the world have recognized human rights under their constitution as well as by especial laws. However, there is problem in the enforcement of human rights and our eras daily hears chaos with human rights. Providing legislations for human rights at national level is the first step to ascertain the commitment of the general duties of human rights. But to make practically true the protection of human rights states have to go beyond enacting legislations. This means that both domestic legislation and the practice adopted by law enforcement agencies must comply with the applicable provisions of international human rights laws.<sup>5</sup> As representatives of the State, law enforcement officials are expected to fulfill the above obligations when carrying out their responsibilities, i.e. to maintain public order, to prevent and

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<sup>1</sup> Inter-Parliamentary Union and the United Nations Office of the High Commissioner for Human Rights, Human Rights Handbook for Parliamentarians No. 26 (2016) 19

<sup>2</sup> Ibid.

<sup>3</sup> Vienna Convention on the law of treaties, Concluded at Vienna on 23 May 1969, art. 26

<sup>4</sup> Vienna Declaration and Program of Action Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, S2, para. I

<sup>5</sup> International Committee of the Red Cross, International Rules and Standards for Policing, (Geneva, Switzerland June 2015) 18

detect crime and to provide aid and assistance in all kinds of emergencies.<sup>6</sup> They are also given specific powers to enable them to carry out their tasks: the power to use force and firearms, to arrest and detain, and to carry out searches or seizure.<sup>7</sup> Likewise, Police as a law enforcement official is under the same duty to enforce those human rights obligations. Police executes its responsibilities mostly during criminal proceedings at pre-trial stages. Hence, due to nature of its powers and functions daily faces with human rights issues. Human rights at pretrial stage of criminal proceeding which have interconnection with police functions are mostly the human rights of the suspected persons however victims of the crime with eye witness also have rights and police should treat them compassionately and in a respectful manner.<sup>8</sup> Accordingly, the paper focused on the duty of police in the enforcement of human rights of the suspected persons. There are various human rights of the suspects at pre-trial criminal proceedings which requires police to enforce them appropriately for example; the right to equality before the law, right not to be discriminated, presumption of innocence, privilege against self-incrimination and right to remain silent, right to freedom from coercion, duress, threat, torture or cruel, inhuman, or degrading treatment etc. Thus, these and other related rights lays specific duties on police such as; the duty to inform immediately the reason for arrest, the duty to notify the rights of the suspects, the duty to inform the right of access to counsel, the duty to inform the right to remain silent the duty to arrest in accordance with the law, the duty to provide an interpreter and record of interrogation, the duty to prevent prolonged pre-trial detention, the duty to release on bail, the duty to enable the suspect to communicate with the outside world and the duty to separate the treatment of the pre-trial detainees.

Police officials while they carrying their responsibilities and exercising their powers they are expected to implement these rights by observing the four fundamental principles: Principle of legality, Principle of necessity, Principle of proportionality and Principle of accountability.<sup>9</sup>

To make effective the role of police in the implementation of human rights at international level the international human rights treaties that are binding on all states Parties (and their agents) are increasingly complemented by soft law documents that provide guidance and establish more detailed human rights standards such as: Code of Conduct for Law Enforcement Officials

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<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted in 1985, principle, 4

<sup>9</sup> Code of Conduct, articles 2, 3, 5, 7 and 8; Principles on use of Force & Firearms, preamble and principles 2, 4, 5, 9, 11, 13, 14, 15, 16, 24, 25 and 26

(CCLEO),<sup>10</sup> Basic Principles for the Use of Force and Firearms by Law Enforcement Officials (BPUFF),<sup>11</sup> Standard Minimum Rules for the Treatment of Prisoners (SMR), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles),<sup>12</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Victims Declaration)<sup>13</sup> with additional standards,<sup>14</sup> guidelines<sup>15</sup> and professional trainings<sup>16</sup> etc. These standards provided for guidance, for example the Brussels Declaration stipulates that “In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons”.<sup>17</sup> Other international principles also advise police to have adequate training and qualified in use of force and government has to give special attention to the issue of police ethics and human rights especially in investigation process.<sup>18</sup> Albeit, the standards are soft laws they also requests for incorporation in to national legislation and practice.<sup>19</sup> The Human Right Committee also requesting states parties to show on these standards through their periodic reports<sup>20</sup> which indicate consideration of the standards to be binding. If police are found in violation of human rights it is the state which blamed for such act of police at international human right forums. Therefore, Law enforcement officials are obliged to know, and to apply, international standards for human rights.<sup>21</sup>

In Ethiopian police structure consists of a Federal Police Commission, 10 Regional Police Commissions (including Sidama, the currently established region) and the Police commissions of

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<sup>10</sup> Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169 of 17 December 1979

<sup>11</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 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.

<sup>12</sup> 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

<sup>13</sup> Victims Declaration, principle, 4

<sup>14</sup> Standards such as; United Nations High Commissioner for Human Rights Center for Human Rights International Human Rights Standards for Law Enforcement International, Committee of the Red Cross International Rules and Standards for Policing Geneva, Switzerland 2015, Amnesty International Toolkit - Legislating for the Security Sector International Police Standards 10 Basic Human Rights Standards for Law Enforcement Officials Geneva Centre for the Democratic Control of Armed Forces (DCAF).

<sup>15</sup> Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Human Rights Education for Law Enforcement Officials, Warsaw Poland 2012).

<sup>16</sup> Office of United Nations High Commissioner for Human Rights, Professional Training Series No. 5/Add.3 Human Rights Standards and Practice for the Police, Expanded Pocket Book on Human Rights for the Police (United Nations New York and Geneva, 2004).

<sup>17</sup> Code of Conduct, art. 2.

<sup>18</sup> Principles on use Force & Firearms, principles 18-21

<sup>19</sup> Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, Sec I. p. 1

<sup>20</sup> Office of the High Commissioner for Human Rights, UNHRC General Comment No. 21, para.5

<sup>21</sup> ICCPR, article 2(3) and Code of Conduct, art 2.

Addis Ababa and Dire Dawa. They have their own legal founding nonetheless, all regional forces, broadly speaking; have a structure that is similar to that of the Federal Police.<sup>22</sup> As commonly known, police commission established on the objective to maintain and ensure peace and security of the public and the state and Preventing and investigating crime.<sup>23</sup> However, the Federal Democratic Republic of Ethiopia Constitution<sup>24</sup> with subsidiary laws like criminal procedure code attempts to impose duty on police to respect and enforce human rights as government agent. Accordingly, they impose boundary lines on police power and duties to safeguard human rights of the criminal suspects. For example, to undertake investigation police may arrest a person however he/she is under duty to inform promptly the reason of arrest for the arrested person.<sup>25</sup> Similarly, The Revised Constitution of South Nation Nationalities and Peoples Region (here in after referred to as SNNPR)<sup>26</sup> imposes the same obligation of human rights on the police in the region. Therefore, police in SNNPR and in Konso Zone (the area of study) duty bound to respect and enforce human rights as the law provides. Also, police in carrying its duty expected to keep balance on the one hand the rights of the potential or actual victims as well as of society in general and on the other hand the rights of those who may be affected by law enforcement work.<sup>27</sup> Therefore, the main purpose of the thesis will be scrutinizing how police implements human rights during pre-trial stage of criminal proceedings in the area of the study and whether the police enforcement of human rights are practically compatible with international human right standards and principles for law enforcement officials as well as national laws .

## **1.2. Statement of Problem**

Today human rights laid down their foundation on principles of universality and inalienability, indivisibility, interdependence and interrelated, equality and non-discrimination, participation and inclusion, accountability and the rule of law.<sup>28</sup> However they were passed through different discourses to attain on this stage and still under discourses. To maintain their existence human rights imposes on states (and its agencies) duty to; respect, protect, ensure and fulfill and not to

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<sup>22</sup> Ministry of Capacity Building Justice System Reform Program Office, Federal Democratic Republic of Ethiopia Comprehensive Justice System Reform Program Baseline Study Report, February, 2005.

<sup>23</sup> For example see, Ethiopian Federal Police Commission Establishment Pro. No. 720/2011, art. 5.

<sup>24</sup> Constitution of the Federal Democratic Republic of Ethiopia Pro. No. 1/1995, art. 13 (1).

<sup>25</sup> Constitution of the Federal Democratic Republic of Ethiopia, art. 19 (1) and Criminal Procedure Code of Ethiopia Proclamation No.185 of 1961, art. 27.

<sup>26</sup> The Revised Constitution, 2001, of South Nation, Nationalities and Peoples' Region, Pro. No 35, 2001, art. 13(1).

<sup>27</sup> International Committee of the Red Cross (n3) 20.

<sup>28</sup> Vienna Declaration and Program of Action, Para. 5 with other international human rights instruments.

discriminate human rights in general. Among these general obligation police mainly owed duty to; respect, protect, and not to discriminate. Besides, human rights do not limited to these general obligations alone but also impose various specific duties on police during pre-trial stage of criminal proceedings. Hence, police as government agent with regard to enforcement of human rights during pre-trial stage of criminal proceedings are duty bound under the international human rights instruments at international level and nationally under the FDRE Constitution and Criminal Procedure Code. The FDRE Constitution together with the Criminal Procedure Code safeguards pre-trial human rights of the suspected persons by notifying police procedures and forms to be followed.<sup>29</sup> The Draft criminal Procedure Code provides the same in clear manner under chapter two recognizing the procedures as fundamental principles. Thus, police while undertaking its function like investigation should have to restrict himself with principles of the arrest, search and seizure and use of force. For instance, these laws ensure that arrested persons have right to promptly informed of reason for their arrest.<sup>30</sup> If police fulfilled this obligation it enables arrested persons to be protected from arbitrary arrest and prepared for defense. This means, police through its act is realizing the duty of enforcing of human rights. Furthermore, the FDRE Criminal Code provides for punishment on any public servant (including police<sup>31</sup>) who found in infringement of forms and safeguards prescribed by law with regard to; arrest, search and seizure, use of force and custodial treatment and abused his power.<sup>32</sup> To this end, police also expected to work in accordance with overarching principles (Principle of legality, Principle of necessity, Principle of proportionality and Principle of accountability) which particularly governs law enforcement officials including police while they exercising their powers and duties. However, due to the problem of practical noncompliance with the law, the principles and human rights standards the society is daily shouting “no justice” throughout the country. Thus, indicated that the claims and criticism against government in relation to violation human rights are typically from acts of police officers.<sup>33</sup> As of matter, reports also revealed that, practically detainees have been subjected to torture and other abuses while in detention in Ethiopia to

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<sup>29</sup> For example we can see; arts.19, 21 and 26 of FDRE Constitution and arts. 26, 27, 29, 31-34 and 60 of Criminal Procedure Code.

<sup>30</sup>Constitution of the Federal Democratic Republic of Ethiopia, art. 19(1).

<sup>31</sup> Criminal Code of Federal Democratic Republic of Ethiopia, Pro. No.414/2004, art.342 provides for the application of provision on public servant on police.

<sup>32</sup> Ibid, arts. 422-424.

<sup>33</sup>The Police and Human Rights in Ethiopia <<https://www.abbyssinialaw.com/blog-posts/item/1475-the-police-and-human-rights-in-ethiopia>> accessed 2 February 2020

punish, or to obtain information or confession.<sup>34</sup> Some previous works done on the pre-trial human rights likewise came up with findings which pointing out that there are practice of violation of those rights in different area of the country.<sup>35</sup> Accordingly, this problem is occurring from the outset of investigation to its end i.e. the whole process of arrest and detention. Although, these works are done on specific pre-trial human rights and as per my knowledge there is no research conducted on the topic under the study. Unfortunately, even there is no such similar work which deals with specific human rights issue on the area of study. Furthermore, some information on the area of study (Konso Zone) likes Konso Zone General Attorney department report of 2011 EC revealed the high prevalence of the problem in the area. The report exhibited that there are practices like: illegal arrest, problems during interrogation of suspects; Coerced Confession and showing involuntariness to notify the suspects his rights up on arrest, prolonged pre-trial detention, problems with treatment of detainees; overcrowding, problem of detainees segregations ( recidivist from fresh suspects, juveniles from adults), problem of hygiene, lack of adequate water etc.

These above facts in short show the occurrence of the problem of noncompliance of the police with its obligation to enforce human right during pretrial stage in the area of study. However, the researcher believes that these are not the only practical problems rather used as example and the researcher will come up with detail of the practical problems in the main study. Therefore, the main focus of this research will be scrutinizing the implementation of human rights duties by police during pre-trial stage of criminal proceedings in the area of the study and whether the police enforcement of human rights are practically compatible with national, international human right standards and principles for law enforcement officials. Further the study will extend to the evaluation of challenges which facing police in the implementation of human rights.

#### **1.4. Research Questions**

The study will attempt to address the following research questions;

- ✓ What are those duties pre-trial human rights imposes on police?
- ✓ Is police properly enforcing duties of human rights while it carrying out its pre-trial responsibilities?

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<sup>34</sup> U.S. Department of State, Human Rights Practice, 2016: Ethiopia 11 (March 3, 2017) <<https://www.state.gov/documents/organization/160121.pdf>>

<sup>35</sup> See Preliminary Literature Review.

- ✓ What are the practical challenges facing police in the area of study with regard to enforcement of duties of human rights of suspects during criminal proceeding?

### **1.3. Objectives of the Study**

#### **1.3.1. General Objective**

The general objective of the study is to examining and evaluating the duty of police in the enforcement of human rights during pre-trial stage of criminal proceedings practically in Konso Zone.

#### **1.3.2. Specific Objectives**

The study will have the following specific objectives:-

- Assessing the responsibility of police and their implementation which interconnected with pre-trial human rights.
- Examining the specific duties pre-trial human rights impose on police.
- Critically examining how police implements pre-trial human rights duties while it carrying out its pre-trial responsibilities.
- Identifying the practical challenges facing police with regard to pre-trial human rights duties.
- Finally suggesting possible recommendations for the problems which could be discovered as research findings.

### **1.5. Literature Review**

With regarding to previous studies in the area of the duty of policy in the enforcement of human rights during pre-trial stage of criminal proceedings there is no direct study made in Ethiopia rather as per my knowledge there are researches which conducted on the implementation of specific human right topics. For example there are researches like: research by, Teferi Argaw Wodaj (2018) “*The Implementation of the Suspects’ Rights Protection in Gullele Sub City Police Investigation Department: Particular Emphasis on the Right to ‘Presumption of Innocence’*” which is all about the assessment of implementation of particular right of presumption of innocence. Another, research 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 National Region State. Likewise, research by Giday Meles (2013), *Condition of detentions in prisoners of Ethiopia*, has evaluated the treatment and provisions of basic services for convicted detainees in the Tigray Region Adigrat prison. There is

also Research by, Addisu Gulilat (2012), “*The Human Rights of detained persons in Ethiopia*” this research also assessed of the adequacy of legal protection for detained persons and analyzed the practical condition of detained persons in Addis Ababa prisons. Additionally, to these researches papers the previous works which relatively more related with this topic are the dissertation study by Alemayehu ShiferawTulu (2010),*Evaluating the Application of Human Rights Principles in Crime Investigation in Ethiopia (a Case Study of the Addis Ababa City Police*, the study had focus on the evolution of implementation of rights during police investigation. Unfortunately, even there is no such similar work which deals with specific human rights issue on the area of study.

In addition to the above effort made to show the different of this research from other researches time and place should strongly recognized as reason of researching. Therefore, the research will have special focus on how police fulfilling its duty to enforce pre-trial human rights in criminal proceedings by examining the practical as aspect of the case in Konso Zone in line with international and national human rights standards.

### **1.6. Significance of the Study**

The study will contribute to the enhancement of knowledge of police duty in the enforcement of human rights in generally for the public, civil societies who interested in human rights issues, government institutions and particularly, investigator police officers and other police members. Especially, it will create an adequate awareness of human rights issue for police to be conscious while it exercising its power and duties such as; investigation, use of force, arrest and detention. It may also serve as reference for those whose mandated is to follow up police daily function like attorney office. It will give a recommendation on the problems will be identified thus any concerned body can take measure on those problems to realize the proper implementation of human rights during pre-trial stage of criminal proceedings. The study will also contribute to the existing knowledge and may serve as reference for the academic world and for further related studies. Furthermore; the study will contributes for gap filling of research on the area.

### **1.7. Scope of the Study**

Because of the police work is too complex; to effectively handle and come up with concrete facts this research has focused only on the examination of police duty in the enforcement of human rights of criminal suspects during pre-trial criminal proceedings in Konso zone. Thus, especially focus made on crime investigation department. Also, due to the time and resource limitation the

scope of the study were restricted to both thematic and geographical scopes. Thematically, the research was assessed the duty of police in the enforcement of human rights in the pre-trial criminal proceedings in Konso Zone. Whereas, geographically, the study conducted on the following selected police stations centers; Konso Zone police station, Karat Town Administration Police Station, Karat Zuria Woreda Police Station and Kena Woreda Police Station. In Konso zone there are, three woreda, one cluster and one Town administration which have police station centers and Zone police station center but the above police station centers selected for sample through simple random lottery method for the data collection purpose. Further, as the study is about the examination of police duty in the enforcement of human rights during pre-trial criminal proceedings the study also assessed; international, regional and national human rights instruments and international human rights standards which imposes duty on police in the enforcement of human rights in pre-trial criminal proceedings.

### **1.8. Limitation of the Study**

As almost common to all studies, this research also faced the time and financial problem. Unfortunately, because of it was conducted at the time of Covid-19 epidemic the research couldn't to get the budget allocated from the sponsor. Therefore, to perform the study the researcher has been self-sponsor. The existence of Covid-19 and security problem in the area restricted the researcher to made FGD in all the detention centers. Thus, FGD made only on two areas (Kena Woreda and Karat Town Administration). Generally, the current security situation in the country as whole and in area of study harmed the process of the data collection and created delay of the whole work.

### **1.9. Methodology of the Research**

The research employed qualitative research method. Qualitative researchers study things in their natural settings, attempting to make sense of or interpret an occurrence in terms of the meanings people bring to them. Thus, qualitative research is appropriate to this study because of its very helpful contribution to gather firsthand information and involves collecting a variety of empirical materials, case study, personal experience, interviews, observational, historical, interactional and visual texts that describe routine and problematic meaning in individuals' lives.<sup>36</sup> It is mainly to measure to what extent police is aware of its duty to implement human rights at pre-trial stage of

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<sup>36</sup> Creswell, J. W. *Qualitative Inquiry and Research Design: Choosing among the Traditions*, (California, Sage 1998) 15.

criminal proceeding and to know the experience and feelings of individuals suspected of crime. In addition to assess the knowledge and experience of those government offices that works is interconnected with police functions.

### **1.9.1. Study Design**

The research conducted on an empirical research design. Empirical research is the production of knowledge based on experience or observation. Therefore to attain the objective of the research the study used tools like; interviewing respondents, Participant observation, and document review.

### **1.9.2. Sources of Data**

There are two major known sources of data; these are primary and secondary sources. The primary data sources are those from which a fresh and a direct data where obtainable. Whereas, the secondary data sources, contain those data which have already been collected and open to use. Therefore data gathered and information reviews made from primary sources such as interviews, participant observation and secondary sources from different literatures like; journal, articles, government documents and laws, manuals. As per to the objective of the study “examining and evaluating the duty of police in the enforcement of human rights during pre-trial stage of criminal proceeding practically in Konso Zone the study has employed target populations such as; the suspects of crime, police officers, attorneys, advocates and judges found in the targeted areas of the study.

### **1.9.3. Sampling Techniques and Sample Size**

The population in the study encompasses of the investigating police officer, suspects of crime, attorneys, advocates and judges. Different types of techniques, procedures and steps also employed to select the samples of the target population. There are two types of sampling: probability sampling and non-probability sampling.<sup>37</sup> Each type of sampling has further classification but for the purpose of this research I have used simple random sampling from the probability sampling and purposive sampling from non-probability sampling. Therefore, the research used both simple random sampling and purposive sampling to draw a sample representation from the total existing population. In simple random sampling every unit of the population has a known, non-zero probability of being selected.<sup>38</sup> It is a common and preferable

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<sup>37</sup>Kultar Singh, Quantitative Social Research Methods, (Sage Publications, 2007) 102

<sup>38</sup> Ibid, 103.

in a probability sampling technique because its selection procedure is the best way to avoid bias.<sup>39</sup> Purpose sampling is one of the non-probabilities sampling and it is very useful for situations where researcher need to reach a targeted sample quickly and where a random process of selection or proportionality is not the primary concern.<sup>40</sup> Therefore, simple random sampling is already employed for the selection of sample of police station and the study also made accordingly. The purposive sampling techniques used for the selection of attorneys, judges and advocates. Accordingly, I selected 8 attorneys (2 from each study area) total of 20, 5 judges' (1 judge from the Karat Town Administration First Instant Court, 1 judge from Kena Woreda, 1 judge from Karat Zura Woreda and 2 judges from the Zone Center) total of 9 and 3 advocates total of 5 (all resides in Karat Town) and simple sampling techniques used through lottery method to select suspects and investigating police officers from each study areas. For the sake of convenience the researcher first selected suspects only among the detainees in the police detention centers. Hence, 2 suspects in Kena Woreda Police detention center out of 8, 3 suspects in Karat Zuria Woreda Police detention center out of 15, 4 suspects in Karat Town Administration Police detention center out of 22 and 8 suspects in Zone Center out of 40, totally 16 suspects interviewed out of the total 85 suspects. With regard to investigating police officers 1 police from Kena Woreda out of 2, 2 police from Karat Zuria Woreda out of 3, 2 police from Karat Town Administration out of 3, and 3 police from the Zone Center out of 5 and 2 investigating police heads out of the 4 total investigating police heads in the all the selected areas.

#### **1.9.4. Instruments of Data Collection**

Because of the research designed on qualitative method, the following tools; in-depth interview, Focus Group Discussions (FGD), Participant observation, and document review has employed to gather information from both primary and secondary sources.

##### **1.9.4.1. Interviews**

Interview commonly employed as one techniques of data collection in the social science research. It is used to generate primary information from individuals who have experienced an event or who have some knowledge or information. Hence, face-to-face in-depth interviews with the key informants made to collect information about the practical applications of human rights

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<sup>39</sup> Mike M.C and Wing H.C, Research Methods for Law, (Edinburgh University Press, 2007) 55.

<sup>40</sup> Singh (n 37) 107.

principles by police while performing its function in relation to pre-trial criminal proceedings. The interview made with 16 suspects and 26 other participants, totally of 42 informants are interviewed for this study. For that purpose interview schedule was prepared from the aspects of the objective of the research and research questions by using semi-structured interview guidelines.

#### **1.9.4.2. Focus Group Discussions (FGD)**

Focus group discussion technique has been employed on the objective to obtain further valuable information for the study from the informants. Thus, two FGD group formulated. The FGDs was made with suspects and other detainees who selected through simple random techniques in Kena Woreda police detention center (1 FGD of 5 members out of 15 detainees) and Karat Town Administration police detention center (1 FGD of 5 members out of 30 detainees), totally 10 peoples participated in the FGD. As, I already mentioned under the limitation of the research due to the problems of; the security and Covide-19 epidemic created challenge to confidentially formulate the FGD incorporated of all category of the target population and to go farther.

#### **1.9.4.3. Participant Observation**

Because of personal observation by researcher is helpful to have deep understanding about the case under study, observation made on the all the selected police station detention centers. Hence, for the evaluation of the treatment of the detainees in the detention centers observation checklist prepared.

#### **1.9.4.4. Document Review**

International and national human rights documents which have concern with the issue under study have been investigated from practical aspects. Accordingly, at international level those binding international human rights treaties and conventions which imposes general obligation on states and soft laws which have connection with police duty and pre-trial human right including; principles, guidelines and standards used for the discussion. Nationally, FDRE Constitution and other relevant subsidiary laws were discussed. In addition to legal documents, relevant literatures like interpretations, books, journals and research papers also employed as source of information for the study. Furthermore, valuable documents in the area of study also referred.

### **1.10. Ethical Considerations**

To bring the study successfully in to the end ethical consideration plays a vital role during data collection stage. Thus, I followed the principle of voluntary participation. Before requesting the

information from the participants and informants I was first asks their will by discussing the purpose of the study and assures for them the confidentiality of the information. In addition I also used other techniques which have potential to help the effectiveness of the data collection process.

### **1.11. Organization of the Study**

The research paper has been organized in to four chapters in the following manner. The forgoing chapter presents the background of the study, statement of the problem, objective of the study, research questions, literature review, scope of the study, research methodology, significance of the study, limitation of the study and ethical consideration. Chapter two discusses the responsibility of police and human rights duties during pre-trial stages of criminal proceedings. Particularly, the police responsibility of preventing and detecting of crime with the power to carry out this responsibility and the specific duties pre-trial human rights imposes on police. Chapter three devoted on examining the practical application of the duty of the police in the enforcement of human rights during pre-trial Stages of criminal proceedings in the area of the study. Under this chapter attention also made to explore challenges faces police in the enforcement of these human rights. Finally, the paper ends under chapter four by providing Conclusion and Recommendations for the findings of the research.

## CHAPTER TWO

### 2. The Responsibility of Police and Human Rights Duties during pre-trial Stages of Criminal Proceedings

#### 2.1. Introduction

There are three main police responsibilities: preventing and detecting crime; maintaining public order; providing protection and assistance for people in need.

To perform these responsibilities police is empowered with measures like; use of force and firearms, arrest and detention, and Search and seizure. Though, the police has devoted with these above duties for the sake of this research particular focus will be made on the duty of preventing and detecting crime for it is more interconnected with human rights suspects. Prevention and detection of crime is thus a key obligation of the State as part of its duty to protect the human rights of those who were already become or may become the victims of a crime.<sup>41</sup> This prevention and detection of crime encompasses of all process of “recognition, anticipation, identification of crime risk, and the initiation of necessary actions to reduce the instance of the crime from happening”<sup>42</sup> and the discovery of a committed crime, identification of suspects, and the gathering of evidence sufficient to charge the suspects in a court of law. Since, prevention and detection of crime in other means investigation of crime, so police while carrying out such actions required to interview witnesses, collect evidence, and additional relevant information that may lead to arresting and putting in police custody. Even though, this responsibility of prevention and detection of crime is aimed at safeguarding human rights of potential victims of crime it doesn't mean that state are discharged from keeping the human rights of the suspects. Therefore, police in carrying its duty expected to keep balance on the one hand, the rights of the potential or actual victims as well as of society in general and, on the other hand, the rights of those who may be affected by law enforcement effort.<sup>43</sup> To visualize the keeping of the balance law enforcement officials (especially investigator police) in the performance of their duty shall respect and protect human dignity and maintain and uphold the human rights of all persons.<sup>44</sup> Meanwhile, for the sake of this paper discussion will be only with the one side of the human

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<sup>41</sup>To Serve and to Protect, Human Rights and Humanitarian Law for Police and Security Forces (n 87) 148.

<sup>42</sup>ThePreventionandDetectionof Crime<https://www.researchgate.net/publication/340966516> THE ROLE OF COM, retrieved on October 5, 2020.

<sup>43</sup>International Committee of the Red Cross (n 3) 20.

<sup>44</sup> Code of Conduct, art. 2.

rights. Therefore, the focus of this paper will be on the duties of human rights of suspects of a crime provided during pre-trial Stages of Criminal Proceedings because of suspects are protected in various international and national human rights instrument and as such guaranteed different rights to be respected (imposes duty) in the whole *intra* trial process.<sup>45</sup> Accordingly, discussion will made with those human rights obligation required from police at this stage. Thus, it can be inferred from the wording of the human rights suspects<sup>46</sup> that police is owed to criminal suspect some obligations at the time and after the execution of arrest and detention. These duties are mostly of duty to inform about the rights and duties of respecting other procedural rights. The duty to inform among other includes clarifying for the suspect in a language he or she understands<sup>47</sup>: the reasons for the arrest and the charges against him or her, his or her rights and how to avail himself of such rights; including of the right to remain silent and also the right to legal counsel, the right not to confess guilt and not to testify against him- or herself. Other related procedural duties may be encompasses of: the duty to arrest in accordance with the law, the duty to provide an interpreter and record of interrogation, the duty to prevent prolonged pre-trial detention, the duty to release on bail, the duty to enable the suspect to communicate with the outside world and the duty to separate the treatment of the pre-trial detainees. Hence, discussion under this chapter will be with the police responsibility (particularly preventing and detecting crime) together with the power granted to police to carry out this responsibility and the specific duties of human rights of suspects on police.

## **2.2. Responsibility and Power of Police**

As already mentioned above it is not the purpose of this paper to deal with each responsibility of police but precise discussion will be made on the duty of preventing and detecting crime for it is more interconnected with human rights of suspects. Therefore, this specific duty of preventing and detecting crime will be discussed under this section together with power of police to accomplish this duty.

### **2.2.1. The Police Responsibility of Preventing and Detecting Crime**

As aforesaid preventing and detecting crime is among the core responsibilities of police. Crime prevention defined as;

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<sup>45</sup>Fisaha Getachew, *The Respect for Human Rights in Pre-trial Criminal Investigation, (The Case of Oromia Special Zone Surrounding Finfine)*, A Thesis Submitted to Addis Ababa University, (February 2015), Unpublished 24.

<sup>46</sup> ICCPR, art. 9.

<sup>47</sup> See ICCPR, art. 9; Body of Principles, principle 14.

“Strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes”.<sup>48</sup>

It also illustrated as “Crime prevention is the recognition, anticipation, identification of crime risk, and the initiation of necessary actions to reduce the instance of the crime from happening”.<sup>49</sup> Crime detection in other hand is a process that is encompassed of three stages: the discovery of a committed crime, identification of suspects, and the gathering of evidence sufficient to charge the suspects in a court of law. Police while carrying out both prevention and detection of crime is required to interview witnesses, collect evidence, and additional relevant information that may lead to arresting and putting in police custody. Since, at this stage police for the effectiveness of this duty may take measures like; use of force and firearms, arrest and detention, and Search and seizure. Police in Ethiopia also vested with this responsibility of prevention and detection of crime. The Federal Police Commission Proclamation No. 720/2004 clearly provides the same scenario while it stipulates objective and power and function of the federal police.<sup>50</sup> Similarly, police in SNNPR required exercising its power to prevent and detect crime within the region pursuant to article 9(1) of the proclamation.<sup>51</sup> In addition to the establishment proclamation of the police commissions both at federal and state level Criminal Procedure Code also empowers police to take action of prevention and detection of crime in comprehensive manner.<sup>52</sup>

### **2.2.2. Power of police**

To perform its responsibilities police is empowered with measures like; use of force and firearms, arrest and detention, and search and seizure.

#### **2.2.2.1. Use of Force and Firearms**

Use force and firearms is among the methods of enabling law enforcement officials to effectively fulfill their responsibilities. This power of law enforcement officials has potential to affect

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<sup>48</sup> The guidelines on crime prevention adopted by the Economic and Social Council in 1995 and 2002

<sup>49</sup> The Prevention and Detection of Crime–Crime Prevention and Law [hatecrimeri.org>crime\\_](http://hatecrimeri.org>crime_) retrieved on October 5, 2020.

<sup>50</sup> Federal Police Commission Proclamation No. 720/2004 art. 5 and 6.

<sup>51</sup> SNNPRS Revised Police Establishment Pro. No. 151/2014.

<sup>52</sup> Criminal Procedure Code of Ethiopia Proclamation No.185 of 1961, art. 9 and the following arts.

fundamental human rights where it is employed arbitrarily, excessively or otherwise unlawful. Thus, to limit the arbitrarily nature of use of force and firearms the basic principles provides that;

“Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review”.<sup>53</sup>

Hence, legal framework that domestically provided should determine the legitimate purposes and circumstances permitting the exercise of this power. Thus, law enforcement officials have to act in full compliance with the law governing the use of force and firearms and for them to comply with the highest possible standards of discipline and professionalism in that respect<sup>54</sup>. Furthermore, the law enforcement officials required to observe the principles which govern use of force such as; the principles of legality, proportionality, necessity and accountability. We will see these fundamental principles on use of force to know how they compromise use of force and human rights in next section. Also, the basic principles on the use of force and firearm under principle 9 provide that;

“Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”.<sup>55</sup>

Impliedly what we grasp from this particular principle is, it creating awareness for the law enforcement official in order to do not violet human rights under the guise of prevention of crime. For use of force may affect fundamental rights which recognized under the human rights instruments particularly: the right to life, liberty and security of person (article 3 of UDHR and article 6(1) and article 9(1) of the ICCPR) its enforcement should be in careful manner. Likewise, the code of conduct for law enforcement officials stipulates that force may only

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<sup>53</sup> Principles on the Use of Force and Firearms, Principle, 1.

<sup>54</sup> International Rules and Standards for Policing (n 5) 34.

<sup>55</sup> Principles on the Use of Force and Firearms, Principle, 9.

employed when strictly necessary and to the extent required for the performance of their duty.<sup>56</sup> With regard to firearms the code of conduct also clearly provides that firearms are extreme measures and to be used as a last resort.<sup>57</sup>

Up on this scenario, it may be asked that when police can exercise his power of use of force and firearms? Thus, there are certain circumstances in which police may opt to use this particular power such as: during policing unlawful assemblies<sup>58</sup>; during policing persons in custody or detention<sup>59</sup>; to make arrest<sup>60</sup> and to conduct a lawful search. Particularly, with regard to investigation, law enforcement officials may use force to: Protect a scene of crime, preserve or seize evidence and prevent destruction of evidence.<sup>61</sup>

When we see the legal framework of the police power of use of force and firearms in Ethiopia at the first glance we find the FDRE Constitution. The FDRE Constitution which is the supreme law of the land does not directly recognize the use of force however it imposes duty of human rights on all government organs of the state. Accordingly, police as from the institution of the executive branch of government is duty bounded to respect and enforces those fundamental human rights and freedoms enshrined under the chapter three of the constitution.<sup>62</sup> This obligation on police can also stretch to international human rights adopted by Ethiopia by the virtue of the same article as well article 9 (4) of the FDRE Constitution. The idea here is police has to be aware and take care of those vulnerable human rights under the constitution<sup>63</sup> when it opts to use force. Thus, police may use force but should be of legal ground when it dealing with those human rights. Next to the constitution subsidiary laws like, The Criminal Code of Ethiopia of 2005<sup>64</sup>, the Criminal Procedure Code of Ethiopia of 1961<sup>65</sup>, the New Draft FDRE Criminal Procedure and Evidence Law article 94 (5) and 119 (5), the new Anti-Terrorism Proclamation

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<sup>56</sup> Code of Conduct, art. 3.

<sup>57</sup> Ibid, Commentary (c).

<sup>58</sup> Principles on the Use of Force and Firearms, Principles, 12, 13 and 14.

<sup>59</sup> Ibid, principles, 15 and 16.

<sup>60</sup> Principles on the Use of Force and Firearms, Principles and Code of Conduct article 3 Commentary (a).

<sup>61</sup> Resource Book on the Use of Force and Firearms in Law Enforcement, (n 42) 129.

<sup>62</sup> FDRE Constitution art. 13.

<sup>63</sup> The Right to Life (art. 15), The Right of the Security of Person (art. 16), Right to Liberty, (art. 17), The Right of Prohibition against Inhuman Treatment, (art. 18), Right not to be Compelled to give Confessions.

<sup>64</sup> The Code provides permissible circumstances for the use of force by police officers in the performance of their duties under arts. 68, 78 and 79.

<sup>65</sup> The code allows police to use of force in order to enforce lawful arrest (art. 33(4)) and entry into the premises of suspected in order to conduct search (Art. 56(4)).

No. 1176/2020 (Prevention and Suppression of Terrorism Crimes Proclamation)<sup>66</sup> the Federal Police Officers Administration Council of Ministers Regulation No.268/2012<sup>67</sup>, provides for the conditions of the use of force and firearms as hinted under the footnote.

#### **2.2.2.2. Arrest and Detention**

The power to arrest is typically a discretionary power given to law enforcement officials. Thus, law enforcement officials may arrest a person under certain circumstances for a legitimate purpose. The Body of Principles for the Protection of All persons under any Form of Detention or Imprisonment defines both terms and also provides ways of implementation of these terms. Accordingly, arrest defined as; *means the act of apprehending a person for the alleged commission of an offence or by the action of an authority* and detention defined as; *means the condition of detained persons as defined above*, detained person also defined as; *means any person deprived of personal liberty except as a result of conviction for an offence*. As indicated above in the definition individuals may arrested for a reason of commission of an offence and reasons like; conviction, to ensure compliance with court orders or other legal obligations.<sup>68</sup>

Arrest is mainly against the right to liberty and security of person which is among the fundamental human rights recognized under numerous universal<sup>69</sup> and regional human rights instruments<sup>70</sup>. In broad sense, fundamental human rights of the arrested person encompasses of right to be informed the reasons for the arrest and of his or her rights as a result of the arrest, the right to be brought before the judicial authority, ensuring access to legal counsel, notifying the family, treating the person with humanity, etc. Therefore, the law also requires that arrest and detention shall not be arbitrarily in nature and only be executed according procedures prescribed under the law.<sup>71</sup>The body principles strength this message of law suggesting that; *Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.*<sup>72</sup> The exercise of the power of arrest or detention also sought not to be in abusive manner and should be subject to

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<sup>66</sup>Prevention and Suppression of Terrorism Crimes Proclamation, Proclamation .No. 1176/2020 art. 45 to use of force according to other laws.

<sup>67</sup>Federal Police Officers Administration Council of Ministers Regulation, art. 45.

<sup>68</sup> International Rules and Standards for Policing, (n 5) 38.

<sup>69</sup> For Example, UDHR, art. 3 and ICCPR, art. 9(1).

<sup>70</sup> African Charter, art. 6.

<sup>71</sup> UDHR, art. 9, ICCPR, art. 9(1) and African Charter, art. 6.

<sup>72</sup> Body Principles, Principle 2.

judicial review or other means of control.<sup>73</sup> The other means of the restriction of this power is ensuring the compliance with the overarching principles governing all law enforcement actions: legality, proportionality, necessity and accountability.<sup>74</sup> In short, “*arrest begins the process of detention and should only occur when authorized by law. Arrest must always be subject to judicial control or supervision to ensure that it is legal. Accurate records of arrests are vital for effective judicial supervision and the prevention of disappearance*”.<sup>75</sup>

As illustrated above in Ethiopia the law provides procedures for the execution of arrest. In principle arrest is to be effected either based on police summons<sup>76</sup> or court warrant<sup>77</sup>. However, in exceptional circumstance like; where the offence is a flagrant offence, or where the offence falls under the list of offences that justify arrest without warrant, arrest may be made without a court warrant.

### **2.2.2.3. Search and Seizure**

The power to conduct search and seizure is another vital power given for law enforcement officials to effectively undertake their responsibilities. These two powers of the law enforcement officials can be understood in the following manner;

Search is defined as, *the act of deliberately looking for a person, an object or information for a legitimate law enforcement purpose*.<sup>78</sup> Seizure in other hand defined as, *the act of taking possession of an object for a legitimate law enforcement purpose*.<sup>79</sup> Like that of previous two powers of law enforcement officials these powers of search and seizure may harm some human rights (mostly the human rights of the suspect of crime). It has likelihood to affect the human rights of; right to privacy and right to property. Thus, again law enforcement officials are bounded by the well-known principles governing their actions such as; legality, proportionality, necessity and accountability. Search may conduct for different purpose<sup>80</sup> but mostly occasioned on body or premises. Hence, police is under duty to comply with the elements of the above

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<sup>73</sup> Ibid, Principle 12.

<sup>74</sup> International Rules and Standards for Policing, (n 5) 38.

<sup>75</sup> Center for Human Rights Crime Prevention and Criminal Justice Branch, Human Rights and Pre-trial Detention, A Handbook of International Standards Relating to Pre-trial Detention, Professional Training Series No. 3, (United Nations New York and Geneva, 1994) Para. 44.

<sup>76</sup> Criminal Procedure Code, art. 25.

<sup>77</sup> Ibid, art.49.

<sup>78</sup> International Rules and Standards for Policing, (n 5) 44.

<sup>79</sup> Ibid

<sup>80</sup> Ibid, 44 and 45. For instance search can be conducted; to secure a suspect, to secure evidence, to ensure safety and security (in particular in the context of arrest and detention), to end an unlawful situation (e.g. with regard to illegal possession of prohibited goods) or to carry out court orders in civil or other proceedings.

mentioned fundamental principles and other requirements established under the law. For instance, procedures like, bodily search shall be conducted by the same sex should be respected by the police officer while he/she conducting bodily search. To conduct a search an investigator police officer also expected to possess court warrant but in some exceptional circumstances he/she may not compelled to issue court warrant. After all, Searches should be carried out in accordance with the law, and in a manner consistent with the inherent dignity of the person and the right to privacy.<sup>81</sup>

Seizure as early mentioned has a central message of authorizing police to collect material evidence that might later be presented in court. Seizure can be conducted on the suspects of crime and some objects which have a connection to the alleged offense. Illegal seizure is also prohibited thus evidence that is seized in unlawful manner will be of no value. Seizure can also be conducted with or without court warrant. For seizure is against both person and an object it has potential to affect individual right to liberty and property.

In Ethiopia those rights which have close relationship with search and seizure constitutionally protected and demanded a great care while interaction made with theme. For example, the FDRE Constitution stipulates right to privacy as;

Everyone has the right to privacy. This right shall include the right not to be subjected to searches of his home, person or property, or the seizure of any property under / his personal possession. Everyone has the right to the inviolability of his notes and correspondence including postal letters, and communications made by means of telephone, telecommunications and electronic devices. Public officials shall respect and protect these rights. No restrictions may be placed on the enjoyment of such rights except in compelling circumstances and in accordance with specific laws whose purposes shall be the safeguarding of national security or public peace, the prevention of crimes or the protection of health, public morality or the rights and freedoms of others.<sup>82</sup>

According to assertion of this provision search as a restriction to the enjoyment of the right of privacy, has to be interpreted narrowly thus there are only those circumstances that articulated under sub article three by which right to privacy can be limited. Therefore, police while dealing

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<sup>81</sup> Human Rights Committee, General Comment No. 16 (Right to Privacy), para. 8, as cited in “Resource Book on the Use of Force and Firearms in Law Enforcement, (n-42) 140”.

<sup>82</sup>FDRE Constitution art. 26.

with this specific right may not use other reason by his /her discretionary power to limit the right to privacy out of the above constitutionally provided grounds. For purpose of investigation police is authorized to intervene with both right to privacy and property but required to conduct such a work i.e. search and seizure according to the procedures under the law. The Ethiopian Criminal Code of 1961 under article 32-34 provides those procedures how search and seizure can be conducted. Therefore, police in Ethiopia during course of investigation has to be guided according to these procedures.

## **2.3. Human Rights Duties on Police during pre-trial Stages of Criminal Proceedings**

### **2.3.1. The Duty to Inform**

Immediately up on arrest human rights of the suspects requires police to inform the suspected persons some procedural safeguards in order to save the suspect from the evil of arbitrary arrest and detention. Therefore, police officer (investigator police) is under duty to inform the reason of arrest and duty to notify the rights of the suspects thereafter.

#### **2.3.1.1. The Duty to Inform Immediately the Reason for Arrest**

The rationale behind this particular duty is enabling the suspect to be ready for defense or petition for release if the reasons do not support detention.<sup>83</sup> Thus, provided that “*Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him*”.<sup>84</sup> To this end, the Human Rights Committee further clarified as, “the notice must sufficiently detail as to the fact and the law authorizing the person’s arrest that he can tell if the arrest is in accordance with law”.<sup>85</sup> This duty to inform requires being in language the suspected person understands.<sup>86</sup> Thus, this duty to inform embraces of two reasons which require immediate action from the side of police officer i.e. promptly informing the suspected person the reasons for an arrest and whether there is any charge against him/her. Further, the information should be given in language that the suspect understands. The information police officer expected to give for the reasons of detention should

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<sup>83</sup> Handbook of International Standards Relating to Pre-trial Detention, Professional Training Series No. 3 (n 78) para. 51.

<sup>84</sup>See ICCPR art. 9 (2) and Body of Principles, Principle 10.

<sup>85</sup>MonjaJaona vs. Madagascar (132/1982) (1 April 1985), as cited in Ibid para. 52.

<sup>86</sup> Body of Principles, principle 14.

be helpful: 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.<sup>87</sup>

This information for the purpose of the arrest also required to be recorded. The UN Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, under Principle 12 provided that the following information shall 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.

### **2.3.1.2. Duty to Notify the Rights of the Suspects**

Next to clarifying the reason of arrest police officer is expected to inform the suspect rights she /he have during arrest and detention. Police complying with this duty help suspects to exercise their rights and to know their duties also. Thus, person arrested should give some form of acknowledgement that he or she has understood his or her rights, for instance, by repeating, in their own words, what has been elucidated to them before.<sup>88</sup> The information here is not limited to rights only but includes of how the suspect can avail himself to such rights. Because the notion of giving notification for rights emanates from the human rights instruments<sup>89</sup> and serve as means for the implementation of the rights shall not be neglected. For instance, the Body of Principle for the Protection of all Person Under any Form of Detention or Imprisonment specifies 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”.<sup>90</sup>

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<sup>87</sup> Danish Institute for Human Rights, Police and Human Rights Manual for Police Training (2002) 32, as cited in FisahaGetachew, p. 25.

<sup>88</sup> Resource Book on the Use of Force and Firearms in Law Enforcement, (n 42) 140.

<sup>89</sup> See ICCPR art. 9 and Body Principle, Principle 13.

<sup>90</sup> Body of Principles, principle 13.

Accordingly, police officer during a course of arrest and detention is under duty to promptly inform arrested or detained persons to have information of all procedural rights they entailed up on the condition and how can they benefit from the rights. This also secures arrested and detained persons because of arrestee's or detainees are most vulnerable to police abuse during early stage of detention, when officials are under pressure to secure information from them.<sup>91</sup>

Hence, there are some rights of suspects which impose duty to inform on police officer up on arrest and detention such as: The right of access to Counsel, the right to remain silent, right not to confess guilt, the right not to testify against him or her-self. The objective of dealing with these rights here is not to discuss each right in detail rather demonstrating the duty of police in the enforcement of the rights. Therefore, discussion here is limited only to showing the responsibility of police officer to enable suspects to enjoy their rights effectively.

#### **2.3.1.2.1. The Duty to Inform the Right of Access to Counsel**

Access to legal counsel is one of the rights of suspects<sup>92</sup> but, in addition to being a right plays a vital role as means of ensuring whether the rights of detained persons are respected or not.<sup>93</sup> With regard to this issue the Body of Principle for the Protection of all Person Under any Form of Detention or Imprisonment provides under principle 17(paragraph1) that; “*a detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it*”. As per to the assertion of this principle the police officer is under duty to promptly inform the suspect his right to legal counsel and providing reasonable facilitation for that effect. This duty is extended to informing the suspect whether the suspect has capacity to recruit legal counsel of his own and if he has no capacity accessing legal counsel on cost of state as can be grasped looking in to paragraph 2 of the same principle.

#### **2.3.1.2.2. The Duty to Inform the Right to Remain Silent**

Right to remain silent is one of the core pre-trial rights and also called “*Mirand Warning*” for it found after *Miranda v. Arizona*, 384 U.S. 436 (1966).<sup>94</sup> This right to remain silent presupposes other procedural rights like; the right not to be compelled to testify against oneself or to confess

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<sup>91</sup> Association for the Prevention of Torture (APT), *Monitoring Police Custody; A practical guide*, (January 2013).

<sup>92</sup> See ICCPR art. 14 (d)

<sup>93</sup> *Handbook of International Standards Relating to Pre-trial Detention*, Professional Training Series No. 3 (n 78) para. 99.

<sup>94</sup> As provided in, Charles Weissel berg, *The Right to Remain Silent*, *University of Pennsylvania Law Review*, Vol. 159: 69 (2010) 70.

guilt.<sup>95</sup> Unfortunately, this right to remain silent during police interrogation is not specifically recognized under well-known international human rights instruments such as; UDHR and ICCPR and as well as ACHR however acknowledged under the Rome Statute of the ICC.<sup>96</sup> It can also be impliedly inferred from the interpretation of Human Rights Committee when it clarifies the right not to be compelled to testify against oneself or to confess guilty as “the right not to be compelled to testify against oneself or to confess guilty shall refer to the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt”.<sup>97</sup> The same scenario can also be grasped from the UN body of principles.<sup>98</sup> When we come in to Ethiopia, the right to remain silent during police interrogation is acknowledged under both the Criminal Procedure Code of Ethiopia (CPC<sup>99</sup> and constitution of Ethiopia.<sup>100</sup> The laws also demands an investigator police officer to inform the suspect that he/she have the right to remain silent at the commencement of interrogation together with informing the suspect that any statement he/she makes voluntarily during interrogation will be produced at trial as evidence against him/her. Accordingly, police officer at the beginning of interrogation is under duty to inform the suspect as he/she has the right to remain silent. Because of this particular right safeguard other rights such as the right not to be compelled to testify against one-self or to confess guilty which recognized both internationally and nationally police officer is under duty to enforce this right as prescribed by law.

### **2.3.2. Police Duty of Other Rights of Suspects**

As already mentioned above this classification of police duty of other rights of suspects is made by the researcher for the sake of convenience in order to differentiate from the foregoing discussed duty to inform. Therefore, this classification is an informal one and not recognized wherever by any authorized body. Accordingly, the duty to arrest in accordance with the law; the duty to provide an interpreter and record of interrogation; the duty to prevent prolonged pre-trial detention; the duty to release on bail; the duty to enable the suspect to communicate with the outside world; the duty to separate the treatment of the pre-trial detainees and duty to enforce the

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<sup>95</sup> ICCPR, art. 14(3(g)).

<sup>96</sup> Rome Statute of ICC, Article 55 (2(b)).

<sup>97</sup> HRC, General Comment No.32, para. 41.

<sup>98</sup> Body of Principles, principle 21

<sup>99</sup> Criminal Procedure Code, art. 27 (2).

<sup>100</sup> FDRE Constitution. art.19(2).

right to freedom from coercion, duress, threat, torture, or cruel, inhuman, or degrading treatment are categorized as police duty of other rights of suspects.

### **2.3.2.1. The Duty to Arrest in Accordance with the Law**

Arrest is against the right to liberty which is provided with substantive as well as procedural safeguards as can be understood from the wording of the law.<sup>101</sup> The law does not preclude execution of arrest or detention by the law enforcement officials rather what the law prohibit is being arbitrary of the arrest or detention. Therefore, at this juncture what constitute ‘arbitrariness’ may need interpretation? Hence, Human Rights Committee has illustrated that the notion of “arbitrariness” is not equivalent with term “against the law”, but it should be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, elements of reasonableness, necessity and proportionality.<sup>102</sup> It also suggested by some people, that detention must be without of arbitrariness and therefore be legal, reasonable and necessary in any circumstances.<sup>103</sup> The UN Body of Principles on Detention provides that; arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.<sup>104</sup> It also seeks the accountability of the police officer who enforces detention stating that detention shall be ordered by, or be subject to the effective control of, a judicial or other authority.<sup>105</sup> Under Ethiopian legal system like that of ICCPR and ACHPR what the law prohibits is the arbitrariness of arrest and detention.<sup>106</sup>The CPCE in addition provides detail procedures through which arrest can be issued. Thus, arrest can be issued with or without warrant up on the fulfillment of the pre-conditions provided under the law. In principle police officer expected to carry out arrest with warrant but if the offence is flagrant offence<sup>107</sup> or conditions under article 51of criminal procedure code fit a police officer can execute arrest without warrant.

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<sup>101</sup> See ICCPR, art. 9 (1), ACHPR, art. 6 and FDRE Constitution, art.17.

<sup>102</sup> HRC, General Comment No. 35,para. 12.

<sup>103</sup> Kristin Hausler and Robert McCorquodale, Pre-trial detention and human rights in the Commonwealth: Any Lessons from Civil law Systems? Journal of Human Rights in the Commonwealth, (Volume 2 Issue 12014) p12

<sup>104</sup> Body of Principles, Principle 2

<sup>105</sup> Ibid Principle 4.

<sup>106</sup> FDRE Constitution. art.17 (2) and Criminal Procedure Code, arts. 26 and 60.

<sup>107</sup> Criminal Procedure Code, arts.19-21.

### **2.3.2.2. The Duty to Provide an Interpreter and Record of Interrogation**

The duty to inform the suspect upon arrest requires clarifying for the suspect the reason of arrest and the rights he/she has thereafter in a language he or she understands.<sup>108</sup> However, if the suspect cannot understand the language he/she has the right to obtain an interpreter.<sup>109</sup> In this case the police officer is under duty to provide an interpreter. With regard to duty to record the Human Rights Committee interpretation as well as UN Body Principles made the record of each occasions (especially interrogation) mandatory. Human Rights Committee indicated that the time and place of all interrogations should be recorded, and that this information should be available for judicial and administrative proceedings.<sup>110</sup> Likewise, the UN Body Principles stipulates; the records have to information of interrogation with regard to; 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.<sup>111</sup> This is to enables the suspect to well defense his /her-self.

In Ethiopia the CPC provides the two duties simultaneously stating that “*any statement which may be made during interrogation shall be recorded; if the suspect is unable to understand the language in which his answers are to be recorded, he/she must be supplied with a competent interpreter who shall certify the correctness of all questions and answers*”.<sup>112</sup>

### **2.3.2.3. The Duty to Prevent Prolonged Pre-trial Detention**

The duty to prevent prolonged pre-trial detention is required to safeguard the right to trial within a reasonable time or to be released. Accordingly, ICPR provides that any individual arrested or detained on a criminal charge has the right to trial within a reasonable time or to be released pending trial.<sup>113</sup> The HRC has also specified that “pre-trial detention should be an exception and as short as possible”.<sup>114</sup> The HRC also tried to illustrate what mean ‘reasonable’ providing conditions of circumstances of each case such as: the complexity of the case; the conduct of the accused; and the manner in which the matter was dealt with by the executive and judicial

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<sup>108</sup> See ICCPR, art. 9; Body of Principles, principle 14.

<sup>109</sup> Ibid

<sup>110</sup> HRC, General Comment No. 20, para. 11.

<sup>111</sup> Body of Principles, Principle 23.

<sup>112</sup> Criminal Procedure Code, art. 27 (3) & (4).

<sup>113</sup> ICCPR, art. 9 (3)

<sup>114</sup> HRC General Comment No. 8, para. 3.

authorities.<sup>115</sup> Because of prolonged pre-trial detention has potential to affect other pre-trial rights like; presumption of innocence and right to liberty the above conditions used to explain reasonability should still critically examined and not to be guise for undo delay. Hence, suspects should be stayed in police custody only till the first judicial review of detention.

Accordingly, police officer is under duty to bring promptly the suspect before judicial authority. However, promptly brought of the suspect may be up on arrest or after detain. This can be understood from the HRC interpretation. The HRC clarified that the judge should decide either to release or remand him/her in custody for additional investigation or to await trial.<sup>116</sup> The right to be brought promptly before judicial authority in it-self is recognized under ICCPR and stated as “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”.<sup>117</sup> The UN Body of Principle provides the same requiring effective opportunity for the suspect to be heard promptly by a judicial or other authority.<sup>118</sup> This duty to bring the suspect promptly before judicial authority is also recognized under the FDRE Constitution therefore police officer in Ethiopia is under duty to enforce this constitutional right<sup>119</sup> in order to prevent prolonged pre-trial detention.

#### **2.3.2.4. The Duty to Release on Bail**

The right to bail is also one of the rights of suspects and enshrined under ICCPR.<sup>120</sup> It also guarantees other pre-trial rights like right to presumption of innocence.<sup>121</sup> However, this right is not an absolute right that all suspects can claim. It may be preclude due to the nature of the crime or existence of some conditions. With regard to the later the HRC indicated in its communications that, “Bail should be granted, except in situations where the likelihood exists that the accused would abscond; or destroy evidence; influence witnesses; or flee from the jurisdiction of the state party”.<sup>122</sup>

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<sup>115</sup> HRC General Comment No. 32, para. 35.

<sup>116</sup> HRC, General Comment No. 35, para. 36.

<sup>117</sup> ICCPR, art. 9 (3).

<sup>118</sup> Body of Principles, Principle 11.

<sup>119</sup> FDRE Constitution, art.19(3).

<sup>120</sup> ICCPR, art. 9(3 and 4).

<sup>121</sup> J. Namdi, et al, *Bail and Criminal Justice Administration in Nigeria, The Theory And Practice in Africa*, (2009), as cited in Fisaha Getachew, p.30.

<sup>122</sup> HRC Communication No.526/s1993, *Hill v. Spain*, at para 12.3. As cited in, Awol Alemayehu Dana, *Due Process Rights of Suspects During Pretrial and the Existing Challenges Under the Legal Frameworks of Ethiopia*, ISSN 2224-607X (Paper) ISSN 2225-0565 (Online) (Vol.8, No.12, 2018) 68, also visit [www.iiste.org](http://www.iiste.org).

The right to bail in Ethiopia has been recognized under both the FDRE<sup>123</sup> constitution and the CPC<sup>124</sup>. The CPC provides both the nature<sup>125</sup> and the pre-conditions<sup>126</sup> as instances of prohibition of releasing the suspect on bail. The constitution seems grant the power to release on bail for court alone but the CPC also authorizes an investigator police to release the suspect on bail.<sup>127</sup> Further, other laws like Anti -Corruption Proclamation on Special Procedure and Rules of Evidence empowers both court and investigator police to release on bail suspect of corruption offences.<sup>128</sup> Therefore right to bail can be claimed from both court and investigator police office. The law also requires duty of cooperation to facilitate for the effectiveness of the bail.<sup>129</sup> Because of suspect is often being in police hand can be argued that, this duty to cooperation must obtain from police than court? Yes, hence, to ensure the right to bail police officer is under duty to release on bail as well as duty to cooperate.

#### **2.3.2.5. The Duty to Enable the Suspect to Communicate with the Outside World**

The right to communicate with outside world encompasses of right to inform to people (family and friends) and the right to communicate with lawyer. This right may benefit the suspect to maintain family relation, preserve their psychological well-being, receive vital material assistance and prepare for defense.<sup>130</sup> This right is not clearly provided under ICCPR but demanded by soft laws.<sup>131</sup> The Body of Principles suggests that the suspect shall be visited by, and to correspond with members of his family; and he shall be given adequate opportunity to communicate with the outside world unless this right is subject to reasonable conditions and restrictions specified by law or lawful regulations.<sup>132</sup> It also demands that deprivation of this right should be for short time.<sup>133</sup> The Standard Minimum Rules also provides the same adding duty of cooperation like providing reasonable facilities for the communication.<sup>134</sup> This right is also recognized under the FDRE Constitution which read as, "... all persons shall have the

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<sup>123</sup> FDRE Constitution art. 19 (6).

<sup>124</sup> Criminal Procedure Code, art. 28 and 59 (1).

<sup>125</sup> Ibid art. 63.

<sup>126</sup> Ibid art. 67.

<sup>127</sup> Ibid art. 28.

<sup>128</sup> The Revised Proclamation to Provide for Special Procedure and Rules OF Evidence on Anti-Corruption, Proclamation NO.434/2005, art. 4.

<sup>129</sup> Criminal Procedure Code, art. 62.

<sup>130</sup> Fisaha Getachew, The Respect for Human Rights in Pre-trial Criminal Investigation, (The Case of Oromia Special Zone Surrounding Finfine), A Thesis Submitted to Addis Ababa University, (February 2015), Unpublished 24.

<sup>131</sup> Body of Principles and Standard Minimum Rules.

<sup>132</sup> Body of Principles, principle, 19.

<sup>133</sup> Ibid principle, 15.

<sup>134</sup> Standard Minimum Rules, Rules 92.

opportunity to communicate with, and to be visited by, their spouses or partners, close relatives, friends, religious councilors, medical doctors and their legal counsel”.<sup>135</sup> The right to communicate with advocate is also guaranteed under CPC.<sup>136</sup> Therefore, concerned police officer is under duty to enforce this right as sought by the law.

#### **2.3.2.6. The Duty to Separate the Treatment of the Pre-Trial Detainees**

This right to separate treatment is recognized under ICCPR. ICCPR provides that, “*Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons*”.<sup>137</sup>

Likewise, illustrated as;

The presumption of innocence requires that accused person be given treatment appropriate to their convicted status. One aspect of this treatment is that, if they are detained instead of being released pending trial, they should be separated from convicted persons and be given their own regime.<sup>138</sup>

Therefore, Separate treatment may be conducted based on different grounds such as sex, age, accommodation, criminal record, the legal reason for their detention and the necessities of their treatments<sup>139</sup> or may be understood as: juveniles from adults; women from men; and unconvicted persons from convicted persons.<sup>140</sup> Out of these above demonstrated grounds there may be other grounds of the classification but the idea here is police is mandated to put into effect this right of separate treatment of pre-trial detainees’ appropriately to their convicted status. This may help in keeping in mind the presumption of innocence of pre-trial detainees as well as saving them from being exposed to a contaminated environment. For example, separation based on criminal record has potential to protect pre-trial detainees from learning bad experiences of those criminal recidivists.

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<sup>135</sup> FDRE Constitution art. 21 (2).

<sup>136</sup> Criminal Procedure Code, art. 61.

<sup>137</sup> ICCPR, art. 10 (2).

<sup>138</sup> Handbook of International Standards Relating to Pre-trial Detention, Professional Training Series No. 3 (n 78) para. 93.

<sup>139</sup> Standard Minimum Rules, Rules 8 and 9.

<sup>140</sup> Expanded Pocket Book on Human Rights for the Police, Human Rights Standards and Practice for the Police, Professional Training Series No. 5/Add.3 (n 16) 18.

### **2.3.2.7. Duty to Enforce the Right to Freedom from Coercion, Duress, Threat, Torture, or Cruel, Inhuman, or Degrading Treatment**

The right to freedom from coercion, duress, threat, torture, or cruel, inhuman, or degrading treatment or punishment is recognized under both UDHR<sup>141</sup> and ICCPR<sup>142</sup> and demands that no one can be subjected under these situations. This right also related to the already discussed other pre-trial rights such as the right to freedom from self-incrimination and the right to silence. However, this right attained customary law status and regarded as an absolute and non-derogable right unlike those other rights. Thus, under no circumstance can the right to freedom from torture be violated and nothing can be invoked as a justification of torture.<sup>143</sup> However, the issue of what establishes torture or “cruel, inhuman, or degrading” is disputable. Some commentators see torture as an aggravated form of cruel, inhuman, or degrading treatment while other bodies, such as HRC view same as synonymous. It also believed that the treatment of torture or cruel, inhuman, or degrading only physical acts but it may be either physical or mental suffering.<sup>144</sup> This assertion can be grasped from the definition of torture under CAT, torture 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”.<sup>145</sup>

Therefore, it not limited to acts that causes physical pain but also includes those acts that inflict mental suffering to the victim.

Hence, for the purpose of this paper police while exercising its power to carry out its functions may not employed torture or cruel, inhuman, or degrading treatment as a means for extraction of evidence or wherever dealing with suspects or detainees. This right also is enshrined under the

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<sup>141</sup> UDHR, art. 5.

<sup>142</sup> ICCPR, art. 7.

<sup>143</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, art. 2.

<sup>144</sup> HRC General Comment No. 20, para. 5.

<sup>145</sup> CAT, art. 1 (1).

FDRE constitution and cannot be suspended even during emergence thus need special attention from the police officers.<sup>146</sup> Thus, detained person is protected from situation which impair their capacity of decision as well as circumstance which compelling him to confess, to incriminate himself otherwise or to testify against any other person.<sup>147</sup>

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<sup>146</sup> See FDRE Constitution, arts. 18 (1) and 93 (4(c)).

<sup>147</sup> Body of Principles, principle, 21.

## CHAPTER THREE

### Presentation and Analysis of Data

#### 3.1. Description of the Study Area-Konso Zone

Konso zone is found in SNNPR and one of the 18 Zones of the Region<sup>148</sup> which situated at the south edge of the Ethiopian plateau, with an elevation range between 560 and 2100m above sea level.<sup>149</sup> The zone covers area of about 2,022.87km<sup>2</sup>. It is bounded by Derashe, Amaro and Burji special woredas' in the north, Burji special woreda and Oromia Region in the east and South Omo Zone and Ali special woreda in the west and Oromia Region in the south. It comprises 3rural woredas (Karat Zuria, Kena and SegenZuria), 1 cluster (may be understand as 'on the way to be woreda' or sub-woreda) and 1 town administration. The capital town of the Konso Zone is called Karat.

The astronomical location of the Zone lies between Latitude5<sup>0</sup>17-5<sup>0</sup>56 N and Longitude 37<sup>0</sup>01-37<sup>0</sup>69E. The population of the Konso Zone is estimated to 308,836out of which 149,064 are male and the remaining 159,772 are female.<sup>150</sup> 51,733 populations are urban settlers while 280,930 are rural settler.<sup>151</sup>

The people who lives in the area is called "Konsita or locally pronounced as "Xonsita". They are Cushitic people and speak East Cushitic language.<sup>152</sup> They well known as agrarian people<sup>153</sup> and also registered by UNESCO as "an Icon of Hard Work" thus Konso Cultural Landscape heritage established under article 6 of proclamation number141/2011<sup>154</sup>.

With an intention of examining the duty of police in the enforcement of human rights of suspects during criminal proceedings the study made on the selected sample areas (police stations) of; Zone Center, Karat Town Administration, Karat Zuria Woreda and Kena Woreda through simple random sampling techniques of lottery method among the rests police stations. Thus, the writer of this paper has tried to make interview with detained suspects in each police station. To get the real image about the idea under consideration the researcher also approached different

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<sup>148</sup> Source: Konso Zone Plan and Government Communication Affairs Departments.

<sup>149</sup> KorraGarra, Konso Water and Gods, with a Preface by Enrico Castelli, (2006) 5.

<sup>150</sup> Konso Zone Plan and Government Communication Affairs Departments.

<sup>151</sup> Ibid.

<sup>152</sup> C.R. Hallpike, The Konso of Ethiopia, A study of the Values of a Cushitic People, (Oxford at the Clarendon Press 1972) 3.

<sup>153</sup> Garra (n 149) 5.

<sup>154</sup> The SNNPRS, Konso Cultural Landscape Heritage Conservation Pro. No. 141/2011.

stakeholder like, police /investigator, public prosecutors, advocates and judges. Thus, this chapter mainly presents a detailed empirical analysis of data collected in relation to duty of police in the enforcement of human rights of suspects in the above selected police stations. Hence, the analyzing of the data is the qualitative one: in-depth interview, focus group discussion and participant observations. Accordingly, through interview, the researcher has approached 16 criminal suspects, 8 police officer/investigator, 8 public prosecutors, 5 judges, 3advocates, and 2 police investigators heads and two FGD (held in two police stations each of 5 members) totally of 52 participants of the research and other methods of data collection used to obtain the intended data.

### **3.2. The Implementation of the Duty of Police to Enforce Rights of Suspects during Pre-trial Criminal Proceedings in Konso Zone**

This section deals with the practical implementation of the police duty of suspects' rights during pre-trial criminal proceedings. Therefore, analysis of data made with the particular duties of pre-trial rights of suspects on police such as: the duty to inform immediately the reasons for the arrest, the duty to notify the rights of the suspects, the duty to inform the right to remain silent and the right to legal counsel, the duty to arrest in accordance with the law, the duty to prevent prolonged pre-trial detention, the duty to release on bail, the duty to enable the suspect to communicate with the outside world and the duty to separate the treatment of the pre-trial detainees and finally the practical challenges which hindering police the implantation of their human rights duty.

#### **3.2.1. The Duty to Inform Immediately the Reason for Arrest**

As early discussed under chapter two the proper implementation of this specific duty helps suspects to get ready for a defense or to prepare for petition to release. In other words, it means that the right safeguards the suspect by protecting from arbitrary arrest and detention. However, all most all respondents (particularly the suspects) told the researcher that they are not informed the reason of arrest.<sup>155</sup> Very few of them responded positively however still they themselves not informed immediately as the right requires rather after they detained for a days. For instance; Golale Gome a suspect of theft crime in Kena Woreda police station told the researcher that, police informed him the reason of his arrest after he detained for a week in the custody. Other

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<sup>155</sup> Interview with different suspects in the detention centers of the four police stations, from 30 November-7 December, 2020

informants like prosecutors mentioned the right as the most neglected right. They expressed the scenario as, “police simply speak to the suspects that ‘you are required by the law’ then keep them in detention”<sup>156</sup>. On the other hand, investigator police responded to the researcher that they are properly enforcing their duty to inform the reason of arrest as the law provides. It seems there is disparity between the information obtained from police and other informants but can be argued that the data obtained from the other informants out of police is more reliable because of the problems with police such as lack of motivation and attitudinal problems as discussed under the section dealing with practical challenges.

The UN Body Principles in addition to informing the suspect the reason of his/her arrest requires the record of each occasion (including the reason of arrest)<sup>157</sup> but per the inquiry the researcher made no such record found with police.

Therefore, even though police/ investigators responded that they are complying with the duty to inform immediately the reason of arrest can be deduced from the above reality that police is not enforcing this particular duty as the law provides which has also potential to affect other related rights like; the right to defense and the right to challenges arbitrary arrest and detention.

### **3.2.2. The Duty to Notify the Rights of the Suspects**

After the police informed the suspect the reason for arrest the police is required to notify the suspect of his rights as the consequence of his being arrested. This duty to notify his/her rights to the suspects is not limited to giving information only but comprises of how the suspect can avail himself to such rights. Therefore, it is base for the exercise of other rights and also safeguards the suspect from police abuse.

Nevertheless, the suspects out of the all the four detention centers told the researcher that they not informed of their rights up on arrest or after. Other respondents of the research (attorneys and advocates) point out that police are not complying with this duty to inform his/her rights to the suspect as per their experience. Hence, suspects informed their rights like the right to legal representation when they brought before court.<sup>158</sup> Also during FGD the participants showed that “police even not think the duty to inform the suspect his/her rights as duty”.<sup>159</sup> However, some of the participants also suggested that rarely there are practices of telling the suspects the right to

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<sup>156</sup> Interview with Mr. Kabaraso O. Zone Attorney, November 30, 2020.

<sup>157</sup> See Body of Principles, principle, 10 & 12.

<sup>158</sup> Interview with Mr. Engida G. Advocate in Karat Town, December 1, 2020.

<sup>159</sup> The FGD made with Suspects in the Detention Centers.

remain silent by a few investigators. Thus, it is possible to conclude that the practice in the area indicates police is not executing this duty and suspects are not enjoying their right to be notified of the rights during arrest and detention.

### **3.2.3. The Duty to Inform the Right to Remain Silent and the Right of Access to Legal Counsel**

Both of the rights: the right to remain silent and the right of access to legal counsel is rights of suspected persons which imposes duty to inform on police officers/ investigators. Thus, investigator police officers are under duty to implement these rights by informing in comprehensive manner about the rights for the suspects on their hand. These rights in addition to requesting of being informed they are the most interconnected rights in course of implantation. For instance, if the suspected person informed properly both of the rights by investigator police the suspect may abstain from making any word by him/her-self and will speak through his/her legal representative which is more beneficiary for the suspect and even for the justice system because of the game will be between the two professional players (the advocate and attorney).

As already discussed under chapter two the duty to inform the right to remain silent and the right of access to legal counsel in Ethiopia has both constitutional as well as subsidiary laws (CPC)<sup>160</sup> base. Hence, investigator police officers in Ethiopia have to friendly inform the suspect his/her right to remain silent and the right of access to legal counsel.

When we see the practical application of the duty to inform the rights, the practice of informing the both rights by the investigator police in the study area seems not accustomed. Amazingly, one attorney told me that “telling his/her rights for a suspect may be a case but police himself don’t remember whether at this stage suspects have the right to legal counsel”.<sup>161</sup> Likewise, according to information obtained during interview with suspects in the detention centers indicated that none of the suspects informed by police whether he/she has the right to remain silent and the right to legal counsel as discussed above. But, some participants in the FGD time told to me that they informed by police the right to remain silent. Although, as per their information they did not informed in detail about the right whether if they are ‘voluntary to speak their utterance will be evidence on them’. Advocates also responded the researcher that there is

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<sup>160</sup> See Criminal Procedure Code, art. 27 (2) and 61.

<sup>161</sup> Interview with Zone Attorney Mr. Kefita G. Conducted on 30 November, 2020.

no such a habit of represented by legal counsel at the early pre-trial stage in the area may be due to the lack of information about the right or other factors.<sup>162</sup>

### **3.2.4. The Duty to Arrest in Accordance with the Law**

It is obvious that arrest is against the right to liberty. However, people who suspected for commission of crime may deprive of their freedom. Although, the law requires some procedures through which arrest can be executed and thereby prohibits arbitrary arrest and detention.<sup>163</sup>

Although, the procedure of issuing of arrest itself seems troublesome and may be difficult for police practical to comply with it.<sup>164</sup> However, because of any ground of restriction is exception to the rule and is to be interpreted strictly the same should apply for arrest.<sup>165</sup> Thus, police should cautiously comply with the procedure. For instance, for the purpose of the execution of arrest police may use force if he/she faced forcibly resistance.<sup>166</sup> However, the force shall be proportional.<sup>167</sup>

When we see the practice, some suspects told the research that police used force against them without any resistance from their side. For instance, Gashe Gemechu narrated the event of his arrest as;

“When I was in my home police came to my home telling me that you are suspected of crime of homicide. Then, immediately start beating me and tied my two hands together without any resistance from my side until I reach police station”.<sup>168</sup>

Handing over the arrested<sup>169</sup> person to the nearby police station also is a problem in the area. Suspects waited for a days in Kebele office custody because of arrest mostly made by unauthorized body (kebele Militias). Suspects during the interview time revealed for the research that before they came to police station they were kept in Kebele office custody for 3-4 days<sup>170</sup> which clearly indicate the existence of unnecessary delay and in itself is amount to illegal restraint.<sup>171</sup>

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<sup>162</sup> Interview with Mr. Engida G. (n 189).

<sup>163</sup> See discussion under chapter two for the detail of laws.

<sup>164</sup> SimenehKirosAssefa, *Criminal Procedure Law Principles, Rules and Practices*, (2009) 150. See also CPC art 26.

<sup>165</sup> *Ibid* 140.

<sup>166</sup> Criminal Procedure Code art. 56.

<sup>167</sup> *Ibid*.

<sup>168</sup> An interview conducted on 3 December, 2020.

<sup>169</sup> Criminal Procedure Code art. 58.

<sup>170</sup> For example, Interview with Mr. Guyita Rocho on 7 December, 2020 and Interview with Mr. Gashe Gemechu and Kefta Genale conducted on 3 and 4 December, 2020.

<sup>171</sup> Act of crime according to Criminal Code art. 585.

Therefore, police officer wherever he/she carrying out arrest should restrict him/herself to the procedures provided under the law otherwise arrest may construed as illegal for even summons issued in the absence of ‘ reason to believe’ according article 25 of Criminal Procedure Code made arrest illegal.<sup>172</sup>

### **3.2.5. The Duty to Promptly Present Detainees before a Judicial Authority and to Prevent Prolonged Pre-trial Detention**

These two duties are more related and have nature of continuity. After all, they established to secure the right of detainees to get accelerated relief of justice. ICCPR recognized both of the rights simultaneously as; *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 and shall be entitled to trial within a reasonable time or to release.*<sup>173</sup> Therefore, due to the nature of the duties if one of them enforced as the law requires there is probability of reducing arbitrariness of arrest and detention. The HRC has specified that “pre-trial detention should be an exception and as short as possible”.<sup>174</sup> The UN Body of Principle also provides the same requiring effective opportunity for the suspect to be heard promptly by a judicial or other authority.<sup>175</sup> Therefore, wherever there is arrest or detention of suspects it should be according the law as indicated above. Although, investigation of some crimes may requires long time which may result in prolonged detention but still it doesn’t mean that the law allows unreasonable detention. Hence, police officer whether he deals with crime which need long time of investigation he is also under duty to prevent prolonged pretrial detention. At domestic level both rights are recognized under the FDRE constitution and require police to comply with the duties they impose.<sup>176</sup>

When we see the practice in the area of the study there is no experience of promptly presenting the suspect within 48 hours before a judge and there is high prevalence practice of the prolonged pre-trial detention. The suspects with whom the interview made also responded for the researcher that they were brought before a court within time interval of 3 days to 2 months.<sup>177</sup> For example, Kefta Genale, who suspected of crime of arson, told the researcher that he brought before a court after 2 months of his arrest. He also said that when he asks police officer for release they were

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<sup>172</sup>Assefa (n 204) 144.

<sup>173</sup> ICCPR art. 9(3).

<sup>174</sup> HRC General Comment No. 8, para. 3.

<sup>175</sup> Body of Principles, Principle 11.

<sup>176</sup> FDRE Constitution, art.19(3 and 4).

<sup>177</sup> Information obtained through interview made with suspects in the all the selected police detention centers.

responding to him that he also suspected for other crime and they are investigating the crime.<sup>178</sup> As it is common that, attorneys are working in close (especial investigation) with police attorneys also informed the researcher that police is not enforcing his duty to brought suspects within 48 hours before judge as law provides rather they opt to detain suspects for a long time.<sup>179</sup> They also cited the right to brought before a judge the most violating right in the area. Likewise, among the attorneys one of them expressed the scenario as;

“It seems police here is not clear with the objective of the bringing suspects within 48 hours before a judge. For example, there is practice of arresting suspects Friday (the last working day) up to Monday in order to take no any action” and even used as a revenge.<sup>180</sup>

Other stalk holders like judges also informed the researcher that, Police officers are reluctant for their work (to bring the suspects before court in the time limited). Most of time they cite reasons like: the investigator who is responsible has gone somewhere else; the suspected arrested by the order of the police commander (head) and we don’t know the reason why the suspect arrested or by whose order the suspect arrested.<sup>181</sup> As a result, often, suspects brought the petition of “*Habeas Corpus*” before court.<sup>182</sup> Advocates who are giving legal service in the area also mentioned both duties as the most disregarded duties by the police because of police do not respect those rights which impose these duties on police.<sup>183</sup> Participants in the FGD also reflected the same problem with the duties of the police on discussion.<sup>184</sup> However, police officers the researcher approached told the researcher that they are well discharging their duties except one of them who said that they are not properly applying the law for sometimes they informed of detention of suspects after the lapse of the period of 48 hours.<sup>185</sup> Thus, as the inquiry revealed above the noncompliance of the practice with the law in addition affects other duties of police which emanates from the principles like presumption of innocence which determine that suspected person should considered innocent until last judgment is given by competent court.

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<sup>178</sup> Suspect from Zone Police detention center interviewed on 4 December, 2020.

<sup>179</sup> Interview made with attorneys within the selected areas.

<sup>180</sup> Interview with Mr. Kabaraso O. (n 187).

<sup>181</sup> Information obtained during interview made with judges in the area of study.

<sup>182</sup> Information obtained from the Zone High Court Judges.

<sup>183</sup> Interview with Advocates, Mr. Kumeda K and Mr. Geremew K on 01 December, 2020.

<sup>184</sup> FGD made with suspects in the Kena Woreda Karat and Town Administration Police Stations.

<sup>185</sup> Interview with Kifle S. Zone investigator police conducted on 07 December, 2020.

### 3.2.6. The Duty to Release on Bail

The right to bail is not an absolute right that all suspects can claim due to the factors like; the nature of the crime or existence of some conditions. Thus, up on the nature of the crime or occurrence of the pre-conditions the right to release on bail is restricted and thereby the duty to release on bail also ceased. The right to be released on bail is mostly required from court of law. However, in the incidents like petty offences police may release suspects on bail.

Closely looking to the laws in Ethiopia the power/duty to release on bail seems granted to both court and police together with the duty to cooperate for the effective implementation of the right to release on bail when it says “*any person on remand who may be released on bail shall be given the opportunity to find sureties*”.<sup>186</sup> Thus, for suspects stay on hand of police this duty to cooperation can be claimed from police.

When we see the practice of the release on bail on the study area most of the suspects informed the researcher that their right to release on bail guaranteed by court but police was not voluntary to release them. Among the suspects interviewed by the researcher one of the suspects narrated the situation of his bail right as;

“The high court of the Zone was ordered my release on bail however police was not voluntary to release me. Instead he brought accusation before other four courts against me by changing the title of the accusation. Also, after the order of the release on bail given by the high court 10 months passed yet”.<sup>187</sup>

Up on this juncture, the researcher also tried to extract information from judges through interview question, “do police respect the court order to release on bail wholly? If not, why?” Consequently, except to judge from Kena Woreda all judges from the other three study areas (the Zone High Court, Karat Town Administration First Instant Court and Karta Zuria Woreda Court) mentioned that police always being reluctant to respect the court order of release on bail and instead bring second accusation or the same accusation before other courts and sometimes contend against court by reasons like, “we ordered by the administrative body”. Advocates also told the researcher the unwillingness of the police to release suspects after they obtained bail right from the court and they facing challenges most of time from police when they enforcing bail right for their clients.

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<sup>186</sup> Ibid art 62.

<sup>187</sup> Interview with Mr. Kefta Ganale. conducted on 4 December, 202.

Therefore, as illustrated above it can be deduce that police on the study area is not properly enforcing the both duties of bail right, i.e. the duty to release on bail and the duty to cooperate with suspects to implement the order of court to release on bail.

### **3.2.7. The Duty to enable the Suspect to Communicate with the Outside World**

Peoples who deprived of their freedom due to their detention status have the right to communicate with the outside world. Thus, this right put on police the duty to enable the detainees to communicate with the outside world. The right is very important for the detainees for it keeps smooth their relationship with their family and relatives. Thus, it preserves the psychological wellbeing of the detainees and enables them to obtain material assistance from their family. It also enables suspects to prepare for defense especially in case of they get chance of communication with their advocates.

Practically, the researcher not observed as such deviant thing with regard to the enforcement of the right by police officers but one suspect recounted the challenge he faced as;

“At the early moment of my detention my brother was come to visit me but police officers took his telephone and threaten him. Then after, other family members and my friends were frustrated to visit me due to the fear of the police situation”.<sup>188</sup>

Hence, from this utterance it can be deduced that if further inquiry my made similar situations might occur\ . Therefore, due care required from the side of police to enable detainees to enjoy the benefit they entitled by the right.

### **3.2.8. The Duty to Treat Detainees According to the Law**

Individuals due to pre-trial detention may lose their right to liberty but they are entitled to the whole rest of their human rights.<sup>189</sup> The UN Human Rights Committee illustrated again this provision that “not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither they 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.”<sup>190</sup> Further, the committee has also indicated that “treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and

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<sup>188</sup> Interview made with Mr Berhanu A. in Karat Town Administration police Station Center Conducted on 02 December, 2020.

<sup>189</sup>Robert McCorquodale (n 130) 11.

<sup>190</sup> UN Human Rights Committee, General comment 21, para. 3.

universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party.”<sup>191</sup> And also recalls for the incorporation of measures of the implementation to the periodic state report.<sup>192</sup> Further, the Code of Conduct also requires that “In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons”.<sup>193</sup> Accordingly, except to the right to liberty individuals who arrested or detained should be treated like other human person outside the domain. Thus, effective treatment of detainees may be attained through respecting their humanity or inherent dignity or by providing some necessary supplies like, food provision, medical care<sup>194</sup> and bed and cloth. For that purpose detainees may be separated in categories based on their status.

On the scenario, the researcher attempted to observe the treatment of detainees in the selected police stations through checklist of observation. The checklists are prepared based on standards: (1) separate treatment on detainee’s status including; juveniles from adults, women from men, recidivist from fresh and dangerous from not dangerous and (2) separate treatment on detainees health status: persons with communicable diseases from others and disable persons from healthy. However, during my personal observation as well as interview of detainees and police officers only sex based separation treatment applying in all the police stations. Hence, it means that the absence of separation of other categories is there with its dangerous. Likewise, one chief investigator police secretly told me that, “17 of detainees made medical examination of hepatitis and the disease found in 5 of them. And then they shocked and stop the examination”. Thus, the practice is for example against procedures clearly provided under the law<sup>195</sup> with regard to young persons(juveniles) Although, I observed some new buildings in two police stations<sup>196</sup> which may minimize the problem to some extent but still need further steps.

Detainees also informed the researcher that sometimes they beaten by police without any reason. Further, I extended inquire whether measures taken against police officer who involved in to illegal treatment of detainees. Then I have get information from zone attorneys as they brought charge against some police officers who illegally treated suspects of homicide crime. After I

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<sup>191</sup> Ibid para. 4.

<sup>192</sup> Ibid para. 6.

<sup>193</sup> Code of Conduct, art. 2.

<sup>194</sup> See Body of Principles, Principle 24, ICESCR art. 12 and ACHPR art. 16. See also Standard Minimum Rules for the Treatment of Prisoners Rule 17-20.

<sup>195</sup> See arts 171ff. of the Criminal Procedure Code and art. 53 of the FDRE Criminal Code.

<sup>196</sup> In zone and Karat Town Administration Police Stations.

heard the history of the cases I interested to present the summary of the case (*Zone Attorney vs. S/Kanbro Azegaje et al*)<sup>197</sup>;

The file demonstrates that there was a man who killed and buried by unknown person. Therefore, police officers including investigator police and their heads mandated to investigate about by whom the crime was committed. Then, the investigation team suspected three individuals for the act of the crime. Hence, they employed illegal way of investigation techniques and tactics by taking off their cloth, and then began beating suspects with sticks and plastic rods on different parties of their bodies which caused bleeding, tied their hands and legs together, and forced to sleep on sand at day time, water bottle felt of soil hanged on their scrotum. They also coerced psychologically the suspects to speak to them by whom the deceased was killed. For your information, finally the police officers punished for their cruel act and put in to jail but the researcher believes that this is a typical act of torture and warning that this type of transgressor may exist somewhere else. Therefore, concerned government bodies have to notice carefully because of investigation of such crimes is susceptible to be hijacked by police.

Further, the researcher also observed the annual report of 2011 and 2012 EC of the Zone General Attorney office and learned the existence of the above discussed problems of treatment of detainees in all the selected police stations.

### **3.2.9. Challenges against the Police Duty of Human Rights**

As early discussed duties of human rights on police are legal standards and may serve as guidelines for police wherever police deal with human rights during pre-trial stage. However, due to the nature of police work we may not expect perfection in the implementation of the duties. That why said, “Law enforcement work is not a mathematical science that leads to clear-cut answers?”<sup>198</sup> Of course, yes, because police work is associated with many conflicting interests which can be solved only by the choice of the discretionary power accorded to police. Particularly, in the case of police responsibility of prevention and detection of crime there are interest of the actual victim and the society in general in one hand and the interest of the persons who suspected for the commission of the alleged crime on other hand. Thus, law enforcement officials are required to carefully balance these conflicting interests. Hence, police officials when implementing his/her duty of human rights may encounter practical problems because of the

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<sup>197</sup>F.No. 07539/10.

<sup>198</sup> International Rules and Standards for Policing, (n 5) 19.

nature of the work. Further, other external factors may also cause challenge against police when he/she executing his/her duty of human rights. Accordingly, the researcher will present the practical challenges which predominantly facing police as per the information obtained during data collection stage. The data obtained during the field work indicates that the constraints against police are of two sources: internal and external.

### **3.2.9.1. Internal Challenges**

**I. Gap of Knowledge:** skill gap is mentioned by the attorneys, judges and advocates as a main problem of police to comply with its duty of human rights. The respondents also illustrating that, in consequence, they are not clear with objective of the law. Therefore, police are not using their authority to set justice rather they use their power in abusively manner. Judges also specified that police to ask remand not precise their reason in detail but made in generic form saying “we not finished the investigation so we need additional time”.<sup>199</sup> The respondents further told the researcher that the cause root of the problem is lack of awareness of both substantive and procedural laws which can be solved by preparing short or long term skill gap filling trainings. Up on this scenario, by asking the investigator police officers I also ascertained that no any type of human rights concerned training given for them since they began the work of investigation.

**II. Lack of Motivation:** the informants also told the researcher that most of time police officers have no interest to work. Hence, they are ignorant and disobedient for their mandate. They are not executing their duty of human rights as the law provides. One, of the attorneys expressed this situation as, “rather than taking the measures of the due process of law police often opt to wait suspects for detention”.<sup>200</sup> Thus, the lack of motivation is taken as one of the internal challenge to the proper enforcement of police duty of human rights.

**III. Attitudinal Problems:** according to the information obtained through data, attitudinal problem is marked as one of the internal problem with police and can be reflected as;

- Thinking right as extra need (luxurious); thus, hesitating to release suspects on bail and showing no diligence to investigate not bailable crime in time.
- Thinking duty of enforcing human rights as the duty of attorney general and court alone.
- Showing no will to comply with the court and attorneys order of human rights concern.

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<sup>199</sup> Information obtained during interview with judges in all selected areas.

<sup>200</sup> Interview with Mr. Kabaraso O. (n 187).

### 3.2.9.2. External Challenges

**I. Lack of Adequate Budget:** out of the personal talent of the investigating police budget may play a vital role to facilitate the function of police. Heads of the investigators in all the selected police stations told the researcher that, very small budget allocated for police even in comparison with other government sectors thus lack of budget being constraint to provide effective work of police including enforcement of human rights. Therefore, the duty of treatment of detainees like; providing sufficient cells, toilet rooms, water and other necessary tools may not be achieved due to the budget constraint. They also mentioned lack of adequate human power, logistic problem and use not of advanced technology as the problem of lack of adequate budget which has potential to cause the delay of enforcement of duty of human rights.<sup>201</sup>

**II. Interferences:** among the respondents especially the attorneys and advocates informed the researcher that there are overt external interferences from the political personnel (administrative bodies) in to the work of police directly or through close officials. They do police to work of their own will. Thus, they order police to arrest individuals and wait in detention till they give order of release. In consequence, most of time because of the fear of the influence police is reluctant to obey court order of release on bail. Judges also told to me that when they order the release of suspects who detained for political reason police do not release the detainee rather they change venue (by bring the detainee before other court to ask remand or by lodging fresh accusation).

Furthermore, investigating police officers identified and told the researcher the obstacles of the enforcement of their duty of human rights;

- ✓ Lack of access of courts.
- ✓ Lack of awareness of the society about their rights.
- ✓ The existence bad custom (the people in the area being satisfied in pre-trial detention thus they bring accusation after the suspect detained).
- ✓ Lack of specific and clear working guidelines of investigation.
- ✓ Lack of especial security and better payment for the investigator police officers

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<sup>201</sup> Information obtained through interview with I. Assefa K. the Head of Zone Investigators on 04 December 2020.

## CHAPTER FOUR

### Conclusion and Recommendations

#### 4.1. Conclusion

Human rights are recognized under both international and national human rights instruments and impose general as well as specific duties on state and their agents. Ethiopia as member state of numerous human right treaties is under duty to enforce its commitment under the pertinent documents. The general obligations human rights demands from the states and their agents are the duty to; respect, protect, ensure and fulfill and not to discriminate human rights. The FDRE Constitution also provides similar duties under chapter three.<sup>202</sup> The specific duties of human rights are countless but for the purpose of this paper the researcher made an attempt to discuss with some well-known duties pre-trial human rights of suspects imposes on police. Accordingly, police are obliged to enforce the specific duties of pre-trial human rights of suspects such as; the duty to inform immediately the reason for arrest, the duty to notify the rights of the suspects, the duty to inform the right of access to counsel, the duty to inform the right to remain silent, the duty to arrest in accordance with the law, the duty to provide an interpreter and record of interrogation, the duty to prevent prolonged pre-trial detention, the duty to release on bail, the duty to enable the suspect to communicate with the outside world and the duty to separate the treatment of the pre-trial detainees.

These specific duties are mostly emanates from the rights to liberty and security of person which provided under the article 9 of the ICCPR and requires effective implementation. Further, international human rights treaties that are binding on all states Parties (and their agents) are increasingly complemented by many soft law documents which are playing and can play an important role of guiding the law enforcement officials providing detail human rights standards. Ethiopia as the signatory of the ICCPR and as per to article 9(4) of the FDRE constitution which states “any international agreement ratified by Ethiopia are an integral part of the law of the land” means that the duties are similarly works in Ethiopia. Hence, in Ethiopia the duties are recognized under both FDRE constitution and subsidiary laws (especially Criminal procedure code). The CPC which grant police the power to arrest and detain suspects in the course of investigating crime requires together with complying with the principles of human rights.

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<sup>202</sup> See art. 13 (1) of FDRE Constitution

However, there is a serious problem in the enforcement of rights of suspects in courses of both arrest and detention. The data revealed out that all most all duties of pre-trial human rights of suspects that the researcher approached to evaluate is not implementing as the law requires. Suspects are not properly informed of their rights which they entitled of being arrested and detained. Subsequently, police is not enforcing the duty to the right of access to counsel, the duty to inform the right to remain silent, the duty to arrest in accordance with the law whose appropriate implementation also safeguards other pre-trial rights. As law provides and also recommended by the HRC “pre-trial detention should be an exception and as short as possible”. Nevertheless, practically suspects are detained for a long period of time without brought before court of or leased on bond. The prolonged pre-trial detention also resulted from police reluctance to obey the court order of release on bail and other similar orders from prosecutors.

The condition of treatment of detainees in the detention centers also need worthy consideration. No separation of detainees made in all detention centers except sex based category. As a result, suspects are exposed to contaminated environment due to heath status of other detainees and learning of criminal behavior (from recidivists and dangerous criminals). Other treatment of supplies like, water, access to toilet and food are too problematic. Thus, keeping of personal and environmental hygiene is difficult for detainees.

Attempt also made to identify the challenges that restricting police not to comply with its duty of pre-trial human rights of suspects. And among others the major challenges are categorized in to internal and external challenges. The internal challenges are encompasses of gap of knowledge, lack of motivation and attitudinal problems of the police towards the human rights and external challenges are originates from the lack of adequate budget and external interferences (especially from the administrative bodies).

## 4.2. Recommendations

The finding of the study indicated that police in the all selected police stations is not properly enforcing its duty of pre-trial human rights of suspects due to many factors which I categorized as internal and external challenges. Therefore, the following points are recommended;

- The gap of knowledge is mentioned as the major problem in the enforcement of duty of pre-trial human rights of suspects in the area. Therefore, to enhance the police knowledge of substantive and procedural laws, awareness should be created through preparing short and long term human right oriented trainings. The training can be prepared through in collaboration with Attorney General, human rights commission, and well experienced investigator police officers.
- The problem of lack of knowledge of law is also pertained to society in general and criminal suspects in particular. Therefore, need awareness creation of human rights (especially pre-trial human rights of suspects) which can simply disseminated through Medias and Attorney General Awareness Creation and Law Inspiration Core Process Directorate. The study also found out the existence of bad custom of believing in pre-trial detention. Thus, the society should learn of procedures of accusation or compliant during community policing and during the field program of Attorney General Awareness Creation and Law Inspiration Core Process Directorate.
- To update police with the current reform of the country human rights concerned training has to be given for the police institution as a country.
- Government must allocate adequate budget to minimize the problem of separation of treatment of detainees and access of supplies which can be minimized through building additional cells and toilet rooms, providing adequate water and food etc.
- Adequate budget also required to solve the problem of lack of adequate human power, logistic problem and not use of advanced technology which has potential to cause the delay of enforcement of duty of human rights.
- Police in general and investigating police officers in particular have to make free to work independently as their profession requires without any interference (especially of political).

- To reap effective implementation of the police duty of human rights police should provide with specific and clear working guidelines of human rights in addition to the procedural laws.
- Attractive work environment should be created for investigating police officers by government through improving their salary payment and personal security.
- Police officers also have to be ready as responsible body to work in spirit of collaboration with court and prosecutors through implementing properly the order of human rights.
- In case of police found in the commission of arbitrary arrest and detention or any other improper implantation of the duty of the pre-trial human rights of suspects, the transgressor or other law enforcement officials must be subjected to disciplinary measures or criminal proceedings or both as circumstances requires.

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## **Appendixes**

### **Interview Guidelines for Key Informant/in depth interview/**

#### **1.1. Interview Guidelines (English Version)**

##### **I. Questions Related with Suspects**

1. Did the police inform you immediately the reason of your arrest and any charge against you?
2. Did you informed in language you understand? If not, have you provided an interpreter?
3. Are you arrested with warrant or without warrant?
4. Did the police used force during arrest, if yes, why? And what types of acts the force consist of?
5. Did the investigator police bring you before court within 48 hours?
6. How did you give confession? Did investigator police force you to confess to the crime you were suspected of?
7. Have you told of any right up on arrest by the police officer?
8. Have you told that you have the right to remain silent? And informed of if you voluntarily makes any statement during interrogation will be produced at trial as evidence against you?
9. Did the investigator police inform you as you have the right to legal counsel?
10. Is there any search conducted on your home or any other belongings? The search was with or without warrant? Did the police conduct a search in places where the search warrant did not authorize?
11. Did your bail right was respected? Is there any effort made by the police to execute the right?
12. Do police allows you to communicate with the outside world (your family and others)? How often in a week and for how long?
13. Do police and other authorities in the police station treat you according to your status? Did they humanely respecting your physical and psychological integrity?
14. Generally, do you believe police effectively enforcing his duty of human rights of criminal suspects? If not, which duty police often not enforcing?

##### **II. Questions Related with Police Officers/Investigators**

1. For how long you have worked as crime investigator?

2. Do you know that police as an investigator has duty to enforce human rights of criminal suspects?
3. Which duty of human rights police owe against criminal suspects? Do you enforcing such duties?
4. Do you inform immediately the reason of arrest and any charge against them for the suspects?
5. Do you arrest suspects according to the law? If not, what is obstacle for that?
6. Did you bring suspects before court within 48 hours? If not what hinders you to do?
7. Which technique as crime investigators you use to make suspects confess to the crime they are suspected of?
8. Did you cooperate with the suspects to enable them to enjoy their bail rights?
9. How you execute seizures and search?
10. Did you take a course or training on human rights?
11. Do you think human rights are obstacles or foundations for criminal for your work (investigation)?
12. Do you treat detainees in your police station according to their status?
13. What do you think generally as obstacle to enforce your duty of human rights?
14. Do you have mechanisms of making responsible police officers (investigators) for his failure to enforce suspect's rights? Have you take any measure yet?

### **III. Questions related with Attorneys**

1. For how long you served as a prosecutor?
2. Did you get the chance to work with police officer/investigators?
3. Did they enforce the duty of human rights of criminal suspects properly?
4. Which duty of human rights of the criminal suspects often ignored by police officers?
5. During your visiting of detainees in police stations which human rights duty police does not discharge effectively?
6. During your visiting of detainees how you observed the treatment of detainees? Did they treating according to their status properly?
7. What do you think as a challenge of police to enforce its human rights duties?
8. Do you think there is gap with police to enforce its human rights duty? If so, what are the causes of these problems?

9. Have you brought any charge against police officer as a result of violation of duty of human rights of criminal suspects?

#### **IV. Questions related with Judges**

1. Did you receive any complaint brought because of the failure of police to enforce criminal suspect's rights?

2. Which duty of human rights often violated by police officer?

3. Do police immediately bring suspects before court within 48 hours? If not what, she/he invoking?

4. Do you observed the suspects who denying their confession statement they gave to the police when they are brought before the court? If your answer is yes, what was their reason?

5. Do police respect the court order to release on bail wholly? If not, why?

6. Have you seen any complaint on remand? If your answer is yes, how you weigh the reason of the remand from the perspective of police as a duty bearer of the suspect's human rights?

7. Have you entertained any case police officer charged with because of the violation of duty of human rights of the criminal suspects?

#### **V. Questions related with Advocates**

1. Do you think police officers properly discharge their duty of human rights of criminal suspects?

2. As per your experience which duty of human rights mostly violated by police officers?

3. Have you tried to deal with that issue of police duty of human rights? If your answer is yes, is there any challenge you are faced?

4. Did you take any measure to correct such a problem?

5. What do you think as an obstacle for police officer to enforce the human rights duty of criminal suspects?

6. In generally, what you propose as a solution for the problem in order to enable police officers to enforce the human rights duty effectively?

#### **VI. Focus Group Discussion (FGD) Interview guidelines**

1. How you evaluate the implementation of police duty to enforce human rights of suspects?

2. Which duty of human rights of criminal suspects mostly violated by police investigators?

3. What do you think the cause of the problem?

4. Do police treat detainees according to their status? If not, what is the problem?
5. What do you think as a challenge for police to enforce the duty of human rights of criminal suspects?

2. Amharic Version of the Interview

በጅማ ዩንቨርሲቲ  
ህግና አስተዳደርኮሌጅ

የህግት/ቤት የሰብዓዊ መብቶችና የወንጀልህግ ድህረ-ምረቃ ፕሮግራም

ይህ ቃለ መጠይቅ የተዘጋጀው በኮንሶርቲየም ስር የፖሊስ ጣቢያዎች ውስጥ የቅድሚያ ስልጠናዎች ስለሚሰጡበት ሰብአዊ መብቶች (የወንጀል ተጠርጣሪዎች ሰብአዊ መብቶች)

የፖሊስ ግዴታ አተገባበር ላይ የዳሰሳ ጥናት ለማድረግ ነው። ስለሆነም የዳሰሳ ጥናቱ ወጤት የሚወለድለት ምህርታዊ ጥናታዊ ስራዎች ሆነ ተረድታችሁ ጥያቄዎቹን በመመለስ እንድትተባበሩ ጥሪ ስለሆነ ህትና እጠይቃለሁ።

I. ለተጠርጣሪዎች የቀረበ ቃለ-መጠይቅ

1. በፖሊስ ቁጥጥር ሥር በወሎ በትወቅት የተያዙ በትንሹ ክንያትና የቀረበ ብዙ ትክክለኛ ጥያቄዎች ታዩ?
2. የተነረሮዎት በምስሙት ቋንቋ ነው? ካልሆነ አስተርጓሚ ተጠቅሞታል?
3. በቁጥጥር የሁሉንም ጥያቄዎች ወይም የሌሎች ጥያቄዎች ማዘዣ ነው?
4. ፖሊስ ስም ተሰርቶ በትወቅት ኃይልን ተጠቅሟል? ከሆነ ለምን?  
ምን ዓይነት የኃይል ተግባር ነው የፈፀመብዎት?
5. መርማሪ ፖሊስ በ48 ሰዓት ውስጥ ወደ ፍርድ ቤት ወስድዎታል?
6. የእምነት ቃሉን በምስሙ በትገቢ መተማመን ለመፍጠር እንዴት መልስ ሰጡ?  
መርማሪዎች እርስዎ የተጠረጠሩበት ወንጀል እንደናገሩ አስገድዶታል?
7. በቁጥጥር ሥር በሁሉም ጊዜ ስላላቸው መብት ተነግሮዎታል?
8. ያለ መናገር መብት እና ዳላቸው ተነግሮዎታል?  
በፍቃድ ጥሪ ስለሆነ ጊዜ የተናገሩት በፍርድ ቤት ማስረጃ ሆኖ እንደተጠቀሙ ተነግሮዎታል?
9. መርማሪ ፖሊሶች የህግ አማካሪ መብት እንዳሉዎት ተነግሮዎታል?
10. ቤት ወይም ሌላ ማንኛውም ነብረት ወይም ተፈትሾ በበር? ፍተሻ ወይም ማዘዣ ወይስ አለማዘዣ ነው?  
በፍተሻ ህሳስ ያልተፈቀደላቸው ንቦታዎች ፖሊስ ፍትሾ በበር?
11. የዋስ መብት ወይም ተከብሮ ለዎታል? መብቱን ለማስፈፀም በፖሊስ የተደረገ እገዛ ነበር?
12. ከቤተሰብዎ እና ከሌሎች ጎበኚ ጋር ለመነጋገር ይፈቀድሎዎታል? በሃምንት ውስጥ ስንት ጊዜ ነው?
13. በፖሊስ ጣቢያ ውስጥ የፖሊስ እና ሌሎች የህግ አስፈጻሚ አካላት ባሉበት ሁኔታ ያስተናግዶዎታል?  
ሥነ-ልቦናዊ እንደሁም በሰብአዊነት መደረግ ያለበትን እንክብካቤ ያደርግሎዎታል?
14. በአጠቃላይ ፖሊስ የወንጀል ተጠርጣሪዎች ሰብአዊ መብቶች ግዴታን በሚገባ ያተገብራል ብሎ ያምናሉ? ካልሆነ ስለሆነ ጥያቄዎን ግዴታ ነው ፖሊስ በቤት ጊዜ የማያተገብረው?

**II. ለፖሊስ/መርማሪየቀረበቃለ-መጠየቅ**

1. ለምን ያህል ጊዜ የወንጀል መርማሪ ሆነው ሰርተዋል?
2. መርማሪ ፖሊስ የተጠርጣሪዎችን ሰብአዊ መብቶች ግዴታን ማተገበር እንደ ለበት ያውቃሉ?
3. ፖሊሶች የትኛው የተጠርጣሪዎች ሰብአዊ መብቶች ግዴታ አለባቸው?  
ግዴታውን እያተገበሩ ነው?
4. ተጠርጣሪዎች የተያዙበት ምክንያት እና የቀረበባቸውን ክስ ወዲያ ኑ ያሳውቃሉ?
5. ተጠርጣሪዎችን በህግ አግባብ ቁጥጥር ሥር ያውላሉ? ካልሆነ ምን መሰናከል አለብዎት?
6. በ48 ሰዓታት ውስጥ ተጠርጣሪዎች ለፍ/ቤት ያቀረባሉ? ካልሆነ ምን መሰናከል አለብዎት?
7. እንደ ወንጀል መርማሪ የወንጀል ተጠርጣሪዎች ለተጠረጠሩበት ወንጀል ጥፋተኛ ሆነው እንዲናገሩ ለማድረግ የትኛውን ዘዴ ይተቀማሉ?
8. ለተጠሪ ጣሪዎች የዋስ መብታቸውን እንዲጠቀሙ ለማስቻል ይተበበራሉ?
9. መያዝና መፈተሽን እንዴት ያተገብራሉ?
10. ሰብአዊ መብቶችን በተመለከተት ምህርት ወይም ሥልጠና ወስዶ ያውቃሉ?
11. ሰብአዊ መብቶች ለምርመራ ሥራዎ መሰናከል ይወምመሠረት ነው ብለው ያምናሉ?
12. በማቋያችሁ ውስጥ ተጠርጣሪዎችን እንደ የሁኔታቸው ታሰተና ግደላችሁ?
13. በአጠቃላይ ያሉብዎትን የሰብአዊ መብቶች ግዴታን እንዳያተገብሩ ምን ተግዳሮት አለብለው ያምናሉ?
14. የሰብአዊ መብቶች ግዴታቸውን የማያተገብሩ ፖሊሶች ተጠያቂ የሚታደረጉበት አስራ ርዕሳችሁ?  
እስከ አሁን እርምጃ ወስዳችሁ ታወቃላችሁ?

**III. ለዐ/ህግ የቀረበቃለ-መጠየቅ**

1. ዐ/ህግ ሆነው ለምን ያህል ጊዜ ሰርተዋል?
2. ከፖሊስ/መርማሪ ጋር አብረው የመስራት እድል አግኝተው ያውቃሉ?
3. ፖሊሶች የተጠርጣሪዎችን ሰብአዊ መብቶች ግዴታን በአግባቡ ያተገብራሉ?
4. በፖሊሶች በዙጊዜ ችላ የሚባለው የተጠርጣሪዎች ሰብአዊ መብቶች ግዴታ የትኛው ነው?
5. የእስረኞች ጉብኝት በምያደርጉበት ጊዜ የትኛው የሰብአዊ መብቶች ግዴታ ነው ፖሊስ አግባቡ የማይወጣው?
6. የእስረኞች ጉብኝት በምያደርጉበት ጊዜ አያያዛቸውን እንዴት ታዘበዋል?  
እንደ የሁኔታቸው አያያዝ ይደረግላቸዋል?
7. ፖሊስ የሰብአዊ መብቶች ግዴታውን እንዳይወጣ አንደተግዳሮት የምስያሰቡት ምን ድነው?

8. ፖሊስየሰብአዊ መብቶች ግዴታ ወንጌን ዳይወጣየ አቅም ማነስ ችግር አለበት ይላሉ?  
ከሆነ የችግሩ መንስኤ ምን ይላሉ?

9. ፖሊስ የሰብአዊ መብቶች ግዴታ ወንጌ መጣሱ ክስ አቅርቦ ያወጣል ይላሉ?

**IV. ለዳኞች የቀረበ ቃለ-መጠየቅ**

1. የተጠርጣሪዎች ሰብአዊ መብቶች ግዴታ ንባለ መተገበሩ በፖሊስ ላይ የቀረበ ንብረት ተቀብለው አይተዉ ያወጣሉ?

2. በፖሊሶች ብዙ ጊዜ የሚጣሰው የሰብአዊ መብቶች ግዴታ የቱነው?

3. ፖሊስ/መርማሪ ተጠርጣሪዎች ወዲያ ወጡ በ48 ሰዓታት ውስጥ ለፍርድ ቤት ያቀርባሉ?  
ሳይቀርቡ ሲቀሩ ምን ምክንያት ያለላሉ?

4. ተጠርጣሪዎች ፍርድ ቤት ቀርበው በመርማሪ ፖሊስ ፊት የሰጡት ንጽጽ ምን ቃል ሲቀይሩ አጋጥመዎታል? መልስ ያስቀምጡ ምን ምክንያት ያቀርባሉ?

5. ፖሊሶች በዋስትና ለቀቅ የፍርድ ቤት ትህዛዝን ሙሉ ሙሉ በአግባቡ ይፈጸማሉ? ካልሆነ ለምን?

6. የጊዜ ቀጠር ማመልከቻ ን አይተዉ ያወጣሉ?  
መልስ ያስቀምጡ ምን ምክንያት ፖሊስ የተጠርጣሪ ሰብአዊ መብቶች ግዴታ እንደሌለት አካል ለተጨማሪ ጊዜ መጠየቂያ የሚያቀርባቸው ምክንያቶች እንዴት መዘነዋል?

7. ፖሊስ የተጠርጣሪዎች ሰብአዊ መብቶች ግዴታ ንባለ መጣሱ የቀረበበት ንብረት አስተዋወቀው ያወጣሉ?

**V. ለጠበቆች የቀረበ ቃለ-መጠየቅ**

1. ፖሊሶች የተጠርጣሪዎች ሰብአዊ መብቶች ግዴታ ን በሚገባ ይወጣሉ ብለው ያስባሉ?

2. ባሉ ዎት ልምድ የትኛው የሰብአዊ መብቶች ግዴታ ነው ብዙ ጊዜ በፖሊስ የሚጣሰው?

3. የፖሊስ ሰብአዊ መብቶች ግዴታ ን በተመለከተ መግባባት ን ፈጥረው ያወጣሉ?  
መልስ ያስቀምጡ ምን ምክንያት ግርድኖራል?

4. ችግሩ ን ለመቅረፍ እርምጃ ወስደው ያወጣሉ?

5. ፖሊስ የተጠርጣሪ ሰብአዊ መብቶች ግዴታ ን እንዳይተገብሩ መሰናከል ነው የምሉት ምን ድነው?

6. ፖሊስ የተጠርጣሪዎች ሰብአዊ መብቶች ግዴታ ን በአግባቡ እንዳይተገብሩ በአጠቃላይ ምን መፍትሔ ያቀርባሉ?

**VI. ለጋራ ወይይት የቀረበ ቃለ-መጠየቅ**

1. የፖሊስ የተጠርጣሪዎች ሰብአዊ መብቶች ግዴታ ን አተገባበር እንዴት ገመግማ ላችሁ?

2. ብዙ ጊዜ በመርማሪ ፖሊስ የሚጣሰው የተጠርጣሪዎች ሰብአዊ መብት ግዴታ የትኛው ነው?

3. የችግሩ መንስኤ ምን ይላሉ?

4. ፖሊሶች በማረፊያ ያሉትን ተጠርጣሪዎች እንደየሁኔታቸው ያስተናግዳሉ?  
ካልሆነች ግሩምን ድነው?
5. ፖሊስ የተጠርጣሪዎች ሰብአዊ መብቶች ግዴታን እንዳያተገብር ተግዳሮቱ ምን ድነው?

## Appendix-2: Checklists of Observation

Personal observation is sought especially to evaluate the duty to separate the treatment of the pre-trial detainees in the selected police station detention centers. Therefore, the following treatment standards adopted with measurements tools (for selected (√) or not selected (X))

no	Standards	Measurements	
1	Separate treatment on detainees status	juveniles from adults	X
		women from men	√
		Recidivist from fresh	X
		Dangerous from not dangerous	X
2	Separate treatment on detainees health	Person with communicable disease from others	X
		Disable person from healthy	X