

The Practical Applications in the Protection of Persons under Police Detention during Pre-Trial Stage: Some Selected Rights, Case Study in Tachi Armachiho Wereda Sanja.

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Abstract: *The Ethiopia legislation has incorporated and recognized almost all the major international and regional human rights instrument on the rights of suspects; thereby gives special emphasis to the due process rights of suspects in police custody through domestic legislations. Despite the existences of such laws the administrative practice to the protection of those rights seems to be unavoidable challenge in Ethiopia. This research is envisioned to reveal the degree of practical realization of some of the selected rights of persons in police detention during pretrial stage by exploring the problems with the enforcements of those rights in practice in Tachi Armachiho Wreda. Despite the efforts to avoid these challenges through the lengthy debates to overcome this problem and despite the existence of many national researches in the area still the prevalence of violation of the rights of suspects in police custody in this Wereda is severe that seems ineradicable. As a result, this paper wants to explore the dangers of these practice in causing the gross violations of the rights of detained person during the pretrial stage and endeavors to describe the situations by investigating various cases in the implementation of those selected rights in one of the cities of the Amhara national regional states i.e. Tachi Armachiho Wereda as it's one of the cities in which most of the pretrial rights of detained persons are subject to gross violations. In doing so, the paper attempts to uncover the situation in this specific Wereda and the problem thereof. In the course of investigating, I use a case study which is one of the qualitative research methods, hence the methodology of data collection will be information deduced from both my personal experience as legal professional and from interviews of judges public prosecutors, police officers, examination of prior dead files and current dispensed cases by wereda court. The result of the research discloses the gross violation of the human rights of suspects in police custody/detention due to lack of conformity to those rights that are prescribed under our law.*

Keywords: pretrial detention, pretrial investigation, suspects, procedural safeguards of Pretrial rights of detained person, pretrial stage of criminal proceeding, administration practice.

UNIVERSITY OF GONDER SCHOOL OF LAW POSTGRADUATE PROGRAM ON HUMAN RIGHTS LAW

“THE PRACTICAL APPLICATIONS IN THE PROTECTION OF PERSONS UNDER POLICE DETENTION DURING PRE-TRIAL STAGE: SOME SELECTED RIGHTS, CASE STUDY IN TACHI ARMACHIHO WEREDA SANJA.”

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Acronyms

FDRE	Federal Democratic Republic of Ethiopia
ANRS	Amhara National Regional State
CPCE	criminal procedure codes of Ethiopia
FDRE	the federal democratic republic of Ethiopia
CGAZ	central Gondar Administration Zone
UN	United nation
UDHR	Universal Declaration of Human Rights
ICCPR	international convention on civil and political rights
PRT	pretrial detention
ACHPR	Africa Charter on Human and People’s Right.

ABSTRACT

The Ethiopia legislation has incorporated and recognized almost all the major international and regional human rights instrument on the rights of suspects; thereby gives special emphasis to the due process rights of suspects in police custody through domestic legislations. Despite the existences of such laws the administrative practice to the protection of those rights seems to be unavoidable challenge in Ethiopia. This research is envisioned to reveal the degree of practical realization of some of the selected rights of persons in police detention during pretrial stage by exploring the problems with the enforcements of those rights in practice in Tachi Armachiho Wreda. Despite the efforts to avoid these challenges through the lengthy debates to overcome this problem and despite the existence of many national researches in the area still the prevalence of violation of the rights of suspects in police custody in this Wereda is severe that seems ineradicable. As a result, this paper wants to explore the dangers of these practice in causing the gross violations of the rights of detained person during the pretrial stage and endeavors to describe the situations by investigating various cases in the implementation of those selected rights in one of the cities of the Amhara national regional states i.e. Tachi Armachiho Wereda as it's one of the cities in which most of the pretrial rights of detained persons are subject to gross violations. In doing so, the paper attempts to uncover the situation in this specific Wereda and the problem thereof. In the course of investigating, I use a case study which is one of the qualitative research methods, hence the methodology of data collection will be information deduced from both my personal experience as legal professional and from interviews of judges public prosecutors, police officers, examination of prior dead files and current dispensed cases by wereda court. The result of the research discloses the gross violation of the human rights of suspects in police custody/detention due to lack of conformity to those rights that are prescribed under our law.

KEYWORDS: pretrial detention, pretrial investigation, suspects, procedural safeguards of Pretrial rights of detained person, pretrial stage of criminal proceeding, administration practice.

CHAPTER ONE

1. INTRODUCTION

As far as fair trial rights of detained persons during pre-trial stage is concerned there is no single human rights instrument that is specifically enacted to embrace all the rights of detained person rather they are find under various relevant human right instruments, such as the universal declaration of human rights (here after the UDHR) and the international convention on civil and political rights (here after the ICCPR). In addition to the international human rights law, At regional level, there is the African charter on human and people's rights (here after the ACHPR) and the principle and guideline on the right to fair trial and legal assistance in Africa (here after the PGFTLA in Africa). These international and regional human rights instruments enumerate the various rights of detained person during pre-trial stage.¹ It's a universal culture that, a person who is alleged to have committed a crime passes through many stages in the administration of justice. Among Other things, the pre-trial detention is one part of the stage in the procedures of criminal investigation process before a final sentence is passed. under body of principle for the protection of all person in any form of detention , "detained person" means any person deprived of personal liberty except as a result of conviction for an offence while "detention" means the condition of detained person.² Some of the pretrial rights of suspects under police detention are; right to personal liberty, arrest with or without warrant, notification of the right to be informed the reason of arrest, promptly of any charge, the right to remain silence ,legal counsel before trial, in the language they understand and an interpreter if needed, right of detainees to have access to the outside world, the right to be visited by families, right of access to doctors and health care, right to be brought promptly before a judge, right of bail, right to challenge the lawfulness of detentions, prohibition of coercion and torture, rights during search and seizure , and equality before the law are some of the rights of persons under police detention during pre-trial stage.³ As it has been reported by the open society foundation one of the current global problem affecting the developed and the developing

¹ . Awol Alemayehu Dan, procedural safeguards and fair trials rights of detained persons during pretrial crime investigation: the law and the practice in the case of Wolaita Zone, southern Ethiopia. USA: global journals INC. page 34(2017).

² . UN Body of Principles on the Protection of all Persons under any Form of Detention, or Imprisonment (herein after "Body of Principles on detention).

³ . Amnesty international, fair trial manual, United Kingdom, published in London by Amnesty international publication. Page 31 (2nd ed. 2014).

nation similarly is the practice of excessive and arbitrary use of pre-trial detention.⁴ Almost all the laws dealing with the fair trial rights of detained person during pre-trial stages are incorporated in the Ethiopian legal system under the FDRE constitution,⁵ yet they are considered to be major challenges to the enforcement of some fundamental human rights and other principles recognized under the FDRE constitution. As a result, few Prior researches that had identified the greater benefits gained from effective practice which seeks to be in complies with the international standards on the fundamental human rights of persons under police detention on the same subject matter are referred, some of them are;

The first research related to this one is by Awol Alemayehu Dan, who on his finding concluded and recommended that, the authorities " i.e. police investigator, detaining authorities, do not respect procedures prescribed by law before arresting the non-flagrant offenders and the detention authorities justify that the police issue such order due to lack of enough personnel and lack of transport facilities; hence, these justifications are unsound. The investigative police do not inform detained persons most of their fair trials rights or they may inform them after unnecessary delay. For instant, they don't inform the reason of their arrest, they do not inform the right to communicate with legal councilor; right to remain silent during police interrogation; prohibition of communication with the outside world, right to appear before court within 48 hours of their detention; and right to challenge legality of their detention before court of law and to require physical release on bail are some of the many violated pretrial rights of detained person.⁶ In his research one of the problem with his findings is that, even if the government is ought to come up with a comprehensive body of rule for guidance of procedural safeguards and pretrial rights of the suspects in police detention, the law is still clear in this respect, so it's not lack of comprehensive body of guidance that results in consistency between the law and the practice, but lack of practical implementation of those rights in practice which is the problem with the administrative practice; the police officers including the judiciary. The other is that, there is no lack of laws which makes the authorities accountable, but the problem is the practice of making them liable for their. Furthermore, this research addresses all the rights of suspects under police detention which may be superfluous, however, my research will be conducted on some selected rights of suspects in police custody during pre-trial stage that are more vulnerable to violations than the rest of other rights of suspects during pre-trial stage.

On the other hand, Amnesty international on its report in 2011 which is titled as," Ethiopian Submission to the United Nations Human Rights Committee," on ongoing concerns about the human rights situation in Ethiopia focusing on some specific rights recommended as follow, in relation to torture and other ill-treatment to immediately end torture and other ill-treatment of prisoners, in line with the prohibition in the Ethiopian Constitution of cruel, inhuman or degrading treatment or punishment, and Ethiopia's obligations under the ICCPR; initiate independent and impartial investigations into all such allegations, and bring perpetrators to justice in accordance with international fair trial standards; extend access to prisons and other places of detention and to prisoners, to appropriate non-governmental bodies and also to international humanitarian agencies such as the International Committee of the Red Cross (ICRC), with particular focus on the international standards of fair trial and the human rights of detainees.⁷ One problem with this research is that, it was undertaken to specifically assess the situation of political prisoners and opposition leaders in general, so let alone to address the laws and administrative practice with respect to the rights of suspects under police detention during pretrial stage to the situation in Tachi Armachiho Wereda, in Sanja city, it doesn't even cover the situation of non-political prisoners in Ethiopia as a whole.

In reality it's for this reason that brought about the enactment of minimum standard rules intended to guide and regulate the administration of criminal justice system, especially during pre-trial stages as it's in this stage that most violation of rights of suspects are occurred.⁸ As we have attempted to see above, studies conducted by different researchers revealed that, violation of fair trial rights during pretrial stages are not the only problem of the Ethiopian justice system but also global problem they only differ in some degree. ⁹ Hence, it's huge problem that we encounter every day in Ethiopia as a whole and the problem becomes even more serious and severe in Tachi Armachiho Wereda.

⁴ . Awol Alemayehu Dan, procedural safeguards and fair trials rights of detained persons during pretrial crime investigation: the law and the practice in the case of Wolaita Zone, southern Ethiopia. USA: global journals INC,page 34 (2017)

⁵ . Drzewicki, K, An Introduction to International Protection of Human Rights in Rajja Hanski and Markku suksi. Finland: Abu Academy University, Institution for Human Rights.p.65(1999).

⁶ . Awol Alemayehu Dan, procedural safeguards and fair trials rights of detained persons during pretrial crime investigation: the law and the practice in the case of Wolaita Zone, southern Ethiopia. USA: global journals INC. page 34(2017).

⁷ . Amnesty international, Ethiopia Submission to the United Nations Human Rights Committee." UK published by Amnesty international publications international secretariat Peter Benensen house. Page (June 2011).

⁸ . Anketse Yohannes, pre-trial detention in Ethiopia: the law and the practice. Addis Abeba, Ethiopia.page1 (July 2008).

⁹ . Ibid

To begin with, the police agency, the judiciary and the office of public prosecutor are the most important government agency to which the protection of human right is entrusted because of the nature of their power and functions.¹⁰ When we examine the violations of human rights of detained person in this Wereda police station it's very huge in that the existence of law in general is questionable. As I have attempted to look into several researches undertaken despite the existences of many researches on pretrial rights of detained person in police detention almost all of them are conducted to address the situation of the federal state and the regional states and there is no single research that has been undertaken to address the circumstances of Tachi Armachiho Wereda Sanja city. In addition to these, most of the research seems to cover all categories of pretrial rights of suspects in police detention. Yet, we should bear in mind that, these are not the only researches undertaken on the subject matters under study, I intentionally left out some of them because they are intended to be included in the literature review and it would be a waste of time to repeat it. Yet even if there is no single researches undertaken to address the specific situation of this Wereda so far and also almost those researches undertaken at national level are similar in their findings. More importantly, the human right of suspects in police detention especially during pretrial stage is a least researched and overlooked subject. As I have been saying, in this Wereda the violations on some of the rights of suspect in police detention is unique compared to the other parts of the country, some of them are; police investigator and detaining authorities do not respect procedures prescribed by law before arresting the non-flagrant offenders and the detention, they do not inform detained persons most of their fair trials rights or they may inform them after unnecessary delay. For instant, they don't inform the reason of their arrest, they do not inform the right to communicate with legal councilor, the right to remain silent during police interrogation, prohibition of communication with the outside world, right to appear before court within 48 hours of their detention; and right to challenge legality of their detention before court of law and to require physical release on bail are some of the many violated pretrial rights of detained person, what is unbelievable is that in Sanja city there is also unofficial detention center Etc. The strict observance of those human rights of persons under police detention and the satisfaction of these requirements by the police are unavoidable and at the same time, constitute valuable contributions of the police toward the protection of human rights.¹¹ The police are duty bound to maintain peace security and order in their endeavor to fight crime when it happen, but in this Wereda in particular Sanja when compared to the judiciary and the office of public prosecutor the police institutions are well known for gross violation of the rights of persons in their detention.

Therefore, the core purpose of this paper is to examine how the practice looks like with regard to some of the selected pre-trial rights of suspects under police detention in Tachi Armachiho Wereda. Some of these selected pretrial rights are; condition and legality of detention, the protection against self-incrimination and the right to remain silent, the right to release on bail pending pretrial investigation and the right to human condition of detention and the prohibition of torture as these are some of the pretrial rights of individual under police detention that are subject to gross violations under the influence of the practice. Thus, after having addressed the various researches made on the same subject and despite the efforts of those researchers, this research will show how it didn't solve the problem of this Wereda. Furthermore, the nature of most of the researches undertaken in this areas are of general conveying to the situation the country as a whole, which makes this research important as it's specifically intended to describe and exhibit the nature of the same situation in Tachi Armachiho Wereda. This paper will examine as to the extent of the some selected human rights of persons under police detention which are highly violated especially the constitutional guaranteed and recognized rights are promoted and respected will be examined in Tachi Armachiho Wereda. In the process of investigation taking the city of Sanja as a case study area will be used to change these backward trends. Further it will attempt to show what the practice looks like on the ground in the lights of the laws, finally by taking into account the most violated rights of persons in custody in the police station, it seeks to provide not only the challenges faced but also some important measures that should be taken into account to be in compliance with the law thereby indicates a way forward for future solution as to the manner of realizing those rights of suspects during pretrial stage in order to overcome the existing challenges encountered in this Wereda.

2. STATEMENT OF THE PROBLEM

Despite the efforts made to recognize those laws on human rights of suspects under police detention during pre-trial stage in Ethiopia, it has been witnessed from experience and different researches concluded that, the protection and promotion of the laws dealing with regard to the rights of suspects in police detention during pre-trial stage are considered to be one of the major challenges to the enforcement of some of the fundamental human rights and other principles recognized under the FDRE constitution, criminal law and criminal procedure laws including those proclamations that deals with specific types of crimes in Ethiopian which Tachi Armachiho Wereda is not exception. Admitting this fact, as public prosecutor still working in this Wereda, I have personally heard it said that the practice in this Wereda has become the worst place where violation of basic human rights and fundamental freedoms of suspects under police detention seems to be the normal day to day activity of the criminal justice system. Even if the ultimate

¹⁰ . De Rover, C. To Serve and to Protect: Human Rights and Humanitarian Law for Police and Security Forces. Geneva: International Committee of the Red Cross, page.68-69(1998).

¹¹ . Drzewicki, K. An Introduction to International Protection of Human Rights in Rajja Hanski and Markku suksi. Finland: Abu Academy University, Institution for Human Rights.p.65 (1999).

objective of the criminal justice system is to bring peace, security and order for the interest of the general public, yet rumor has that, the law enforcers don't protect the procedural safeguards and the pretrial rights of suspects under police detention. More specifically, in Sanja Wereda, I have personally observed that the police forces, the formal and informal militants are presumed to be the main actor for neglecting and violating the pretrial rights of suspects making them vulnerable for the violation of their human rights recognized under our law. What is even worse is that the only legality recognized detention center for securing arrests of criminal suspect is the police station, however in Sanja Wereda local militias, other formal and informal law enforcement entities use "unofficial local detention centers" a place that is not legally recognized as detention center. Since they are kept outside the reach of the administration of justice this is also another factor that brought the aspiration to conduct this research in this Wereda as it also might attributes to the violation of the pretrial rights of persons. However, compared to other pretrial rights of persons under police detention only some of the selected pretrial rights are intended to be covered in this research, these are; condition and legality of detention, the protection against self-incrimination and the right to remain silent, the right to release on bail pending pretrial investigation and the right to human condition of detention and the prohibition of torture. However, It is not without reason that some of the selected rights are ought to be the prime concern of this study. This is due to the fact that, violation of most of the pretrial rights of suspect are not uncommon to Ethiopia which Tachi Armachiho Wereda Sanja city is no exception, however my professional experience in the study area trigger my curiosity to dig deep into the manner and the extent of violation of some of the selected pre-trial rights highly executed in this study area than any part of our country. The other is that, some of these rights are selected based on their interconnectedness as violation of one right might entail the violation of other pretrial rights of suspects in police detention. This is especially important since, on the one hand, addressing the whole rights of suspects during pretrial stage will be superfluous as it will also raise the question of reliability, on the other hand, conducting the research only in one of the pretrial rights of suspects will make other highly violated pretrial rights out of the reach of this study. Hence it was found necessary to find a middle ground where some of the most highly violated pretrial rights during practical application are selected to be the subject of the study.

These major gaps between the laws governing these pretrial rights and the violation of those rights in practice are presumed to be attributed to many factors witnessing the existing gap between what is ought to be in the eyes of those laws and what is really going on when the law is put into practice. As a result, I was motivated by the desire to find out if there is any violation of these rights in this Wereda were really true, then how long will it take to overcome these violations of human rights of suspects in police detention so that safeguarding their fundamental human rights and freedoms can be achieved in these Wereda? Will be the prime concerns of the study.

Therefore, this paper will examine whether there is a violation of some of those selected rights or not. In its attempt to come up with a solution to the problem to fill the gap between the practice and the law during pretrial detention in this wereda, it will also seeks to pave a way forward for future practice in the enforcement of those human rights and ensuring protection of the individuals under police custody during pretrial stage.

3. OBJECTIVES OF THE STUDY

GENERAL OBJECTIVES

The chief objective of this research is to investigate the practical applications of some selected rights for the protection of persons under police detention during pre-trial stage: in Tachi Armachiho Wereda in Sinja city.

SPECIFIC OBJECTIVES

Having this general objective in mind, the specific objective of this research is intended:

- ✓ To examine the reasons why there is a continued violation on the condition and legality of detention.
- ✓ To assess how and by whom the condition and legality of detention is violated.
- ✓ To examine the extent of violations on the protection against self-incrimination and the right to remain silent.
- ✓ To assess how and by whom the right to protection against self-incrimination and the right to remain silent is violated.
- ✓ To examine the nature and extent of violations on the right to release on bail pending pretrial investigation.
- ✓ To assess how and by whom the right to release on bail pending pretrial investigation is violated.
- ✓ To examine the violations on the right to human condition of detention and the prohibition of torture.
- ✓ To assess how and by whom the right to human condition of detention and the prohibition of torture are violated.
- ✓ To demonstrate the contribution of the practice in the application of the procedural safeguards and fair trial rights of detained persons recognized under our laws to the human right violations of suspects under police detention in pretrial stages, and
- ✓ To witness how the violation of rights of suspects during pretrial stage brings negative consequences on the public images and confidence against administration of justice in legal system.

4. RESEARCH QUESTION

The main question of this the paper is that, what are the nature and extent of the human right violations on practical application of some of the selected procedural safeguards and pre-trial rights of suspects under police detention during pre-trial stage in Tachi Armachiho Wereda in Sanja city?

Specific questions will be:

1. Who is responsible for the persistent grave violation of some of those selected pretrial rights of persons under police detention in Sanja Wereda?
2. What are the reasons that attribute for the practice to resort to violate the pretrial rights of suspects under police detention in Sanja Wereda?
3. To what extent do the human rights of suspects in police detention are susceptible to violation due the administrative practice in Sanja Wereda?
4. What are the practical problems encountered to the enforcement and protection on those selected pre-rights of suspects in police detention?
5. What are the contributions of the police department, the judiciary, the office of public prosecutor, and the formal and informal militants to the violation of the pre-trial rights of suspects in police detention in Sanja city?

5. RESEARCH METHODOLOGY

5.1. RESEARCH APPROACH

To achieve the objectives of the thesis and to get a deep understanding of the study, it's preferred to employ scientific approach in the field of qualitative research methodology as qualitative research method is essential in gaining insight and understanding the phenomenon of this kind of study.

5.2. RESEARCH POPULATION

The first crucial study populations are the individual suspects who were kept in police detention and who are still under police detention during re-trial stage, dead files on some of highly violated bail rights of suspects during police detention. In addition to this, the component population of the study comprises judges, public prosecutors and police officer that are working and residing within Sanja city including.

5.3. METHOD OF DATA COLLECTION

Questionnaire, Semi-structured interview, field observation and document analysis, recent literatures and researches relevant to this subject and other documents including court cases on the subject under study will be the paper instruments to collect the data from the electorates. As a result both primary and secondary method of data collection will be employed. The questionnaire will be used in order to get a standard form of answers or responses. However, the questionnaire will be distributed only to the suspects under police detention and also to those who are detained at unofficial detention. This is due to the fact that, currently the situation of covid19(corona virus) is one of the deadly viruses that is shaking our globe and the other is that there are many suspects which makes it impossible to interview all of them. The other main reason is that, most of the opinions of the detainees are similar in nature.

With regard to field observation the researcher will visit the Sanja Wereda police station and also the unofficial detention where the political bodies keep individuals under their detention outside the reach of the court, public prosecutors and police departments will be visited as well.

The researcher will also conduct both formal and informal open ended questions for interviews from both legal professionals such as; the judges, the public prosecutors, the police who are chosen based on their status and authorities and other concerned high officials including the president of the high court, the attorney general directive office of director and chief of police will be interviewed as they are the key informant. This is due to the fact that, the judges, the prosecutor and the police have a direct relation to the violation of the pretrial rights of suspects under police detention, as a result, more reliable and trustworthy data will be gathered from them if they are the key interview informants than respondents of the questionnaire.

5.4. STUDY DESIGN

The study will employ descriptive survey and exploratory technique with the hope of discovering reliable data from legal professionals; judges, public prosecutors police officers and detained persons who have experiences of the subject under study in this Wereda. This technique was found convenient because it is a very helpful tool toward finding out what is occurring and helps to search for detailed information about the characteristics, and also very simple to use.

5.5. SAMPLE SIZE

Since it's a case study that will be conducted in 2012 E.C on the basis of simple random sampling the sample size and its composition will be determined by looking the amount of similar cases decided by the Sanja court within 2012 E.C.

5.6. SAMPLING METHOD

In order to obtain representative of the various elements of the research population, this study will use both purposive and simple random sampling procedure in selecting respondents for responding to the questionnaire.

6. SIGNIFICANT OF THE STUDY

It's a well-known fact that, the gross violations of human rights of suspects in police custody during pretrial stage is prevalent throughout Ethiopia. Lack of proper application of the law has caused the matter to be controversially unsettled yet. Having in mind the above stated facts, investigating the nature of the administrative practice in relation to the rights of suspects under police custody during pretrial stage in Tachi Armachiho Wereda is so crucial to be undertaken, some of the reasons are; even if there are various researches on the same subject matter, it's important in that those researches doesn't specifically address the same issues in this Wereda, while this one does, the other is that even if violation of such rights are common in Ethiopia still the gravity and severity of the matter in this Wereda is so peculiar in that it will have unique findings, furthermore, since the studies undertaken so far doesn't specifically address the contexts of this area this research will reflect the major challenges of the city of Sanja in a way that it could be helpful to the judges, public prosecutors, police officers, persons under the police station and also those bodies who are entrusted with the protection and promotion of human rights to understand the situation of treatment of human rights of suspects in police custody in this specific Wereda. It's significant in that because most of the time the rights of suspects in this Wereda are also violated by unauthorized official who conducts unlawful arrests and detention of persons in unofficial detaining place with the silence acknowledgement of the concerned authorities, as a result this research will be fundamentally important in that it will warn them against their unlawful and unauthorized practice by various local militants. It's peculiarly significant to the law enforcers involved in the administration of justice so that, it could change the traditional trend in relation to the enforcement of the rights of suspects during pretrial stage. It's also very important in that, the research can be of useful for it will provide insights for further other researches. Thereby it helps the legal and non-legal actors involved in pretrial detention such as the police, public prosecutors and courts; legislature, policy makers, and human right institutions involved in the protection of human rights to take appropriate measures to enhance the extent of realization of procedural safeguards and rights of detained person during pretrial stage and thereby fill the existing gaps between the law and the administration practice toward to the promotion and protection of the rights of persons under police detention during pretrial stage in the same Wereda.

7. LIMITATION OF THE STUDY

In terms of time frame, the limitation of time has little impact on the research as it will not allow to some extent, to improve further the finding of the research, financial constraints will also another problem in which the researcher will not able to access all target population because of such financial constraints, the researcher's lack of previous familiarity in writing a research, the negative attitude of judges, prosecutors, police officers, to some extent persons in police custody and other bodies will make it problematic. More importantly, as the world community is currently having a trouble to deal with the so called covid-19 deadly virus there was a huge challenge during data collections especially when the questionnaire was to be distributed to the suspects in Sanja police station. The chief of the police was not willing to be cooperative with me when the questionnaire was to be distributed and collected in the name of Covid-19. Furthermore, to conduct interviews and focus group discussions might have negative impression on the course of data collection through the process. As a result, generalization of the research outcome might probably be a problem.

8. SCOPE OF THE STUDY

This research is intended to delimit itself in examining the administration practice with respect to the protection of the rights of suspects under police custody and investigating the extent of realization of procedural safeguards and fair trial rights of persons in police detention during pre-trial stages. Hence, the study will be geographically limited to look into the situations in Tachi Armachiho Wereda Sanja city as study target.

10. DATA ANALYSIS AND INTERPRETATION

After collecting the data by employing the means of the above mentioned instruments the question and interviews will be divided among judges, public prosecutors, police officers and detained persons and other relevant government organs. The data will be organized for comparing the different group's answer that will finally be reduced to specific category of variables. By using these approaches of analysis, it will undertake qualitative analysis as a primary ways of data analysis. Observation, interview and case analysis is examined in similar way. Hence, inductive reasoning techniques will be utilized as the main approach.

11. ORGANIZATION OF THE STUDY

In general, the research under study consists of four chapters. chapter one will address the proposal section, with particular emphasis on the core objectives and significant o the study including the general outlines of the research question, methodology and the delimitation of the study. Chapter two will be the description of a thorough discussion on the whole legal and conceptual frame work of the laws and the administration practice with respect to the protections of the rights of suspects under police detention during pretrial stages in Ethiopia general and Sanja wereda in particular. Chapter three will be exhaustion on the practice of the application of human rights of suspects under police custody during pre-trial stage with detailed discussion of the situation of the Tachi Armachiho Wereda in Sanja city and the extent to which of those legal rights of persons in detention are realized including the effects of violations of human rights of detainee during the pretrial stages. The final chapter will be the conclusion and personal recommendation of the researcher.

12. ACTIVITY PLAN

The activity plan and the schedule of this research paper will be determined according to the schedule of the university.

CHAPTER TWO

LITERATURE REVIEW AND LEGAL FRAMEWORK OF PRETRIAL RIGHTS OF PERSONS UNDER POLICE DETENTION

2.1. Introduction

Almost it's at pre-trial stage where the first criminal proceeding is set to motion. As a result PTD is one of the important activities in the administration of criminal justice before the trial stage. During criminal investigation a suspected person may be arrested based on the grounds specified under the law, however, the detained person has various human rights and the suspects should be allowed to exercise those rights. As we know human rights are developed based on the believe in the inherent dignity and worth of every human person. Hence; individual suspects in police detention also have many inherent rights. Whether it's an arrest with or without warrant once an individual is detained in police station he/she should be allowed to exercise his legally recognized human rights and also be treated with human dignity.

In this chapter an attempt is made to present a review of a related literatures conducted on the same subject under study that are specifically focused on some of those selected rights of persons in police detention during pretrial stage. Besides, all the available international, regional and domestic legal instruments dealing with those selected rights of detained persons during pretrial stage including other relevant documents to the subject will be addressed. This arrangement is intended to help the researcher to look into different researches and legal instruments dealing with this subject that can be useful to get an answer to the questions this paper aspires to find.

2.2. Overview of Conceptual framework for pretrial rights of persons under police detention

In this section particular emphasis is given to the discussion on the conceptual understanding of rights of suspects under police detention during pretrial stage. As a result, literature review will be overviewed on the following major concepts, such as, definition of detention, pretrial detention, the nexus between human rights and the pretrial rights of suspects under police detention and also some of the selected pretrial rights of suspects under police detention during pretrial stage will be highlighted as well.

Over the years different kind of definition has been given to the term detention and PTD in different countries which make it difficult to come up with a single commonly agreed definition. As a result, we will see some of the authoritative and formal definitions given to each concept.

The word detention can be understood as a situation whereby an individual person is deprived of his/her liberty by the concerned organs or authorities for any grounds with the exception of conviction of a crime. The legal definition of detention is fined under body of principle for the protection of all persons in any form of detention (herein after "Body of Principles on detention"). "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence while "detention" means the condition of detained person.¹² As far as criminal case is concerned, there are different kinds of detention that is detentions in police station before being brought to the court and also remand detention a situation where the judges will order the detention before the

¹² . UN Body of Principles on the Protection of all Persons under any Form of Detention, or Imprisonment Adopted by General Assembly resolution 43/173 of 9 December 1988.

trial. However, remand detention doesn't involve deprivation of liberty for the purpose of investigation by police or any other authorized persons.¹³

The same goes to the definition of PTD as there are different definitions. On the other hand, PTD can be understood as means of detaining a person before trial stage begins in court. For instance, when we see the definition of PTD under the Black's law dictionary, it defines PTD as confining of a suspect before the trial stage due to the denial of bail or release.¹⁴ If we take the definition given by Piquerez, who is a Swiss author, he defines PTD as the order of confinement of a particular person who is alleged to be a suspect on commission of an offence. For the purpose of crime investigation such confinement is carried out from the time of starting criminal investigation up to the time necessary to conduct the investigation which ultimately is necessary to render justice.¹⁵ For some PTD is a process that starts from the time of arrest up to the time of end of the investigation up until the trial stage. From this definition it's possible to infer that PTD is one type of detention that is carried out by the concerned authorities in order to investigate the crimes the detained person is alleged to have committed and to bring the suspects to justice through arrest. As a result PTD is concerned with the period of time that confines a suspect starting from the time of arrest yet before the trial stage. It's not intended to punish or rehabilitate the suspect rather it's intended to secure that a suspected person will not flee before the formal trial stages or that he will or pose a threat to the community by committing other crimes.¹⁶ In addition to these, the other ground for PTD could be attributed to the belief that the suspect will escape, disappear, the belief that he/she will be an obstacle to the investigation by interfering with the witnesses or tampering with evidences. On the other hand, when we read the guidelines on the condition of arrest, police custody and pretrial detention in Africa, it goes on defining PTD as follow, "pre-trial detention as it refers to the period of detention ordered by judicial authority pending trial." This definition don't include those detention carried out by police or any other place that is not ordered by the judiciary while the case is pending trial.¹⁷

This is just to highlight how PTD is defined differently, some use the term to the broader sense to include detentions undertaken by police and continue detaining him/her until release by courts or until the trial stage begins and others also use PTD to mean deprivation of liberty by police or by the order of the judges but before the trial stage. Yet, it has to be remembered that for our purpose the term PTD refers to the duration of time where the deprivation of liberty from the time of arrest by police or through the order of the court is made but until the time the trial stage begins.

It was right after the establishment of the UN that the legal instruments that gave a protection to persons who are detained or deprived of their liberty have been developed. Among other things, the right against the prohibition of torture and arbitrary arrest, the right to fair trial, the presumption of innocence has been recognized by the two mostly known instruments that are the UDHR and the ICCPR.¹⁸ Since then, the UN has promulgated various international human right instruments that deal with the prevention and control of crimes including the protection of human rights at the same time. Yet, there is no comprehensive single human rights instrument that is specifically concerned with the minimum standards for the protection of persons during pretrial stage, however, this doesn't meant that there are no any human rights instrument dealing with the minimum standards for the protection of persons during PTD.¹⁹ In fact majority of the UN's human right instrument incorporates a provision dealing with the human rights of persons in detention or what we call pretrial rights. Some of these legal norms are broader in that they are applicable to PTD, administrative detention and detention after conviction while other human rights instruments are specifically promulgated to be applicable to PTD. These international human rights instruments are originally intended to protect and promote the fundamental human rights, values

¹³ . Amnesty international, fair trial manual, United Kingdom, published in London by Amnesty international publication. (2nd ed. 2014).

¹⁴ . Bryyaa.grant Black's law dictionary (west publishing 8th Ed, 2009).

¹⁵ . Tadesse Gessesse, pretrial detention in Ethiopia law in light of human rights , the law and practice p.17(unpublished 1997) .

¹⁶ . Jailhouse lawyers manual, "The rights of pretrial detainees."

¹⁷ . International commission of jurist (ICJ) "Pretrial rights in Africa: A guide to international human rights standards." Geneva, Switzerland, published by international commission of jurist (September 2016).

¹⁸ . UN Centre for human rights and crime prevention and criminal justice branch Vienna, "Human rights and pre-trial detention." A Handbook of international standards relating to pretrial detention. Professional training serious No.3. Published by United Nations, New York and Geneva (1994).

¹⁹ . Ibid

and dignity of every individual. Among other things this is one of the very reasons the led for the development of international human right instruments.²⁰

In any case, right from the moment when an individual person is arrested by the authorities or the concerned organ through the whole time of his/her staying under police detention there are certain minimum standards of protection recognized under international regional and domestic laws that are known as a pretrial rights. Pretrial rights are those rights of person who are held in police detention or any other places legally recognized as detention center. Pretrial rights are commonly recognized as basic human rights of persons during pretrial stage. As it has been said, a person might be arrested for whatever reason he has done or has been suspected of and might be detained in police custody or detention before a formal charge is brought against him in a court. Even if there is no universally recognized single human rights instrument that is specifically enacted to embrace and enumerate all the fair trial rights of detained person during pretrial stage there are various international, regional and domestic human rights instruments that lists the pretrial rights of persons under police detention.²¹ It's undeniable fact that, some of these minimum standards of protection are applicable for both pretrial stage and at trial stage as well. Sometimes those rights are applicable only to PTD while others are applicable during and after trial. As a result, an individual person who is suspected or accused of a crime has various pretrial rights that guarantees the minimum standard protection for persons during detention, such as; right to liberty, arrest with or without warrant, the right to be informed the reason of arrest, promptly of any charge, the right to remain silence ,legal counsel before trial, in the language they understand and an interpreter if needed, right to legal counsel before trial, right to be brought promptly before a judge, right to challenge the lawfulness of detention, right of detainees to trial within a reasonable time or to release, right to adequate time and facilities to prepare a defense, right of detainees to have access to the outside world, the right to be visited by families, right of access to doctors and health care, rights and safeguards during questioning, rights to humane detention conditions and freedom from torture and ill-treatment, prohibition of coercion and torture, rights during search and seizure, equality before the law and the right to be kept legally recognized official detention center are some of the rights of persons under police detention during pre-trial stage.²²

Under the international law, member states are required not only to enact national laws dealing with the legal grounds, manners and procedures for carrying out detention but also mandatorily required for such legislation to be consistent with the principle of legality under international human right instruments including the protection of the pretrial rights of detained persons. For instance, the UDHR provides that, everyone has the right to life, liberty and security of person.²³ The ICCPR stressed that, everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.²⁴ The same legality requirement applies to the UN body of principles on detention which stresses that detention can only be undertaken by the competent authority or persons who are authorized to detain a person and also by judicial or other persons who are authorized to do the same and such detention can only be made on the grounds prescribed by law.²⁵ When it comes to the regional human rights such as the ACHPR and the PGFTLA the same principle of legality applies as well.²⁶ At domestic level, Ethiopia has ratified the ICCPR, CAT, CRC, and ACHPR which have a significant role to the promotion and protection of rights of persons under police detention during pretrial stage. In addition to this, one of the positive side of the FDRE constitution is that its inclusion to almost all the human rights. It guarantees the fundamental human rights and freedoms which also gives a great emphasis to the rights of suspects under police detention. The obligation to enforce and implement the human rights of the constitution rests upon the three branches of government (the executive,

²⁰ . Ibid

²¹ . Ibid

²² . Amnesty international, fair trial manual, United Kingdom, published in London by Amnesty international publication. Page 31 (2nd ed. 2014).

²³ . Universal Declaration of Human Rights (UDHR), adopted and proclaimed by United Nations General Assembly Resolution 217 A (III) of 10 December 1948. Article 3.

²⁴ . International Covenant on Civil and Political Rights (ICCPR), adopted by United Nations General Assembly, on 16 December 1966, entered into force 23 March 1976. Article 9 para 1.

²⁵ . Body of principle for the protection of all persons under any form of detention or imprisonment, adopted by the General assembly resolution 43/173 of December, 1988. Principle 2.

²⁶ .The African (Banjul) Charter on Human and Peoples' Rights (ACHPR), (Adopted 27 June 1981, entered into force 21 October 1986), Article 6 and the African commission on Human and Peoples' Rights, principles and guidelines on the rights to Fair Trial and Legal Assistance in Africa, Para.M [1(b)]

legislative and judicial organs of both the federal and regional government).²⁷ As per the interpretation of these provisions in line with article 13(2) of the FDRE constitution it's clear that violation of any of this constitutionally guaranteed rights will entail violation of the constitution and the international human right instruments which Ethiopia assumed to be obliged with. Despite the legal promise to protect those pretrial rights of suspect in police detention, the breaches of these rights are persistent problem that seems ineradicable challenge to our country. As per the FDRE criminal procedure code detention can be made with the procedures laid down by law²⁸ and such an arrest for detention can be undertaken with or without a court warrant in accordance with the law.²⁹ Yet, it's hardly practice not only in Tachi Armachiho Wereda but at national level. This is to mention some but these are not the only violated pretrial rights of detained persons, for instance, the right to remain silence, presumption of innocence, freedom from torture, the right to privacy are some of the most valued pretrial rights under article 18, 19,20 (3) and 24 of the FDRE constitution but also highly violated pretrial rights of persons in police detention.

A research undertaken by: Teferi Argaw Wodaj “Presumption of Innocence” suggested as follow, When we look at the pretrial detentions centers (police stations) police crime investigation in light of major national and international human rights, observed that there are serious violations of suspected person's rights at pre-trial stage of criminal administration system. These violations had attributed to many factors. This is to refer the existing legal gaps, personal and institutional factors.

On the other hand, Amnesty international in its journal about the treatment of prisoners stated that, the government should publicly declare that no arrested person should be tortured or subjected to other cruel, inhuman or degrading treatment or punishment, and ensure this is fully implemented by police and security agencies. Ethiopia was reportedly that access to people imprisoned in relation to the 2005 election demonstrations were not allowed, allow such bodies to independently inspect and monitor prison conditions, and consider their recommendations on prison improvements and humanitarian assistance to prisoners.

Under international and national human right instruments, it is clearly stipulated that the pretrial rights of suspects, as a minimum universal human rights, should be put into practice and apply to everyone regardless of anything. However, let alone at national level even at regional and international level it's not uncommon to see the gross violation of human rights of suspects under police detention during pretrial stage. Despite the universal nature of the violation of the pretrial rights of suspects, the degree, extent and the nature of manifestation of such violation are wide-ranging.³⁰ it has been reported that, there is huge amount of difference among states concerning the arbitrary and prolonged use of pretrial detention and the violation of those pretrial rights such as some detainees are vulnerable to torture, due to lack of proper health care exposed to disease, extortion, some are victims for unlawful arrest by police, corrupt officials. In addition to these, during their stay under police detention many of them never exercise their right to attorney or legal counsel and have no the slightest idea about their fundamental rights and freedoms. As a result most of the suspects under PTD have a high chance of being found guilty than those who with similar background and charges but are released conditionally till trial.³¹

In a nutshell, the practical application of the pretrial rights of suspects during detention can only be protected if all the concerned government authorities especially the police force, the detaining authority, the public prosecutors, the judiciaries and any other concerned organs are jointly committed to up hold and protect the pretrial rights of detained persons that are incorporated under the domestic and international human rights instruments as well.

2.3. Legal framework

2.3.1. Introduction

This section is devoted to the exploration of the legal instruments pertaining to the rights of persons under police detention during pretrial stage or the pretrial rights of persons under police detention. The rights of persons under police detention during pretrial stage has been explicitly and implicitly recognized and guaranteed by some of the grand international human rights instruments, such as; UDHR,ICCPR, convention against torture. In addition to the international instruments, there are also various regional human instruments such as the African charter on human and peoples' rights (ACHPR) guarantees those minimum standards of protection

²⁷ . The Constitution of the Federal Democratic Republic of Ethiopia, , proclamation No 1, Negarit Gazetta, and year 1995, No 1, Article 13(1)

²⁸ .Ibid. article17 (1).

²⁹ . The Criminal Procedure Code of Ethiopia, Negarit Gazetta, Proclamation No. 185/1961, Article 49.

³⁰ . David Berry, 2011, Socioeconomic Impact of Pretrial Detention: A Global Campaign for Pretrial Justice Report. Open Society Justice Initiative. New York, pp.4., <http://www.soros.org/> P. 12 “(Accessed on 3 April 2017).

³¹ .Ibid

to the pre-trial rights of persons under police detention. Furthermore, at domestic level, those pretrial rights of suspects in detention are recognized and guaranteed by the FDRE constitution, the FDRE criminal procedure code and other specific proclamations governing with specific crimes.

As I have said it so far, although the pretrial rights of persons under police detention are countless only those selected pretrial rights of suspects under police detention will be explored. This is due to the fact that, the manner and the degree of violation of some of those selected pretrial rights peculiar compared to the violation of other pretrial rights and also some of these rights are selected based on their interconnectedness as violation of one right might entail the violation of other pretrial rights of suspects in police detention. As a result, this section will no assess the whole pretrial rights of suspects under police detention but only those pretrial rights that are the main concern of the study will be addressed. Therefore, how much of those selected pretrial rights of suspects in police detention has been given a place and recognized under international, regional and national laws will be assessed according their sequences.

2.3.2. International legal framework

A. Condition and legality of detention

There are various international human right instruments dealing with the ways how detention is carried out. The UDHR and the ICCPR declares that everyone has the right to liberty and security of person.no one shall be subject to arbitrary arrest, detention or exile. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.³² The UN body of principles on detention goes on the same in prescribing the manner of detention, it stresses that not only that detention must be made in line with the procedures prescribed by laws but also that the person who can carry out the detention must be the one who is authorized to do the same or else by the judiciary.³³ As a matter of principle detention can't be made out of the blue there are certain legal requirements that must be satisfied before detaining a person. We can infer from these laws that, in order to detain a person state members are required to make national legislation that prescribes the procedures and the manner of carrying out detention and also that this laws must be strictly applied as per the requirements.³⁴ Due to this, detention must be carried out only when it's in accordance with the law of a particular state in question. In addition to this the law if that state must also explicitly put it the law the person who is authorized to make detention or the competent body. Therefore, any manner of detention other that what the law say is against the right to liberty. Such as act is a violation of the right to privacy as can be understood from the human rights commission (HRC) the General comment No.35 on article 9 of ICCPR that strictly condemns arbitrary arrest and detention.

When it comes to the right to challenge the lawfulness of the detention the ICCPR under articl9 (4) reads as, "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." this right is also protected by other human instruments such as; Article 17(2)(f) of the convention on enforced disappearance, article 37(d) of the convention on the rights of the child, article 16(8) of the migrant workers convention. As a result anyone whose right to liberty has been deprived due to detention he/she can take the matter to the court so that the court can examine the lawfulness of the detention. The court must decide immediately and if the detention is unlawful then release the detained person without delay. The right to challenge the lawfulness of detention can be useful to protect the human rights violations including; unlawful and arbitrary detention, secret detention, forced disappearance, torture...etc. the right to challenge the lawfulness of the detention is different from the right to be promptly brought before judges as the former is initiated by the detainees themselves. In most states jurisdiction, the remedy to the right to challenge the lawfulness of the detention is sought by claiming habeas corpus.³⁵

UN body of principle 32 addresses the procedures and the manner of bringing the case to challenge the lawfulness of the detention which reads as, "A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before

³² . Universal Declaration of Human Rights (UDHR), adopted and proclaimed by United Nations General Assembly Resolution 217 A (III) of 10 December 1948, Article 3, 9 and International Covenant on Civil and Political Rights (ICCPR), adopted by United NationsGeneral Assembly, on16 December 1966, entered into force 23 March 1976, article 9.

³³ . UN Body of Principles on Detention, Principle 2 and 4.

³⁴ .Pretrial Detention in Zanzibar, A Study of pretrial detainees under domestic law and practices, A thesis submitted to the partial fulfillment of Degree of masters in Norwegian Centre for Human rights, faculty of law, university of Oslo p.9,(2006).

³⁵ . Amnesty international, fair trial manual, United Kingdom, published in London by Amnesty international publication. Page 65 (2nd ed. 2014).

a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.” Therefore, the courts against which the case is brought must decide immediately and without delay the release of detainees if the detention was unlawful. Furthermore, what it is important to remember is the fact that once an individual person is detained there are certain standards of protection accorded to them. For instance, the person who is being detained must be informed the reason for his/ her arrest or detention at the time where their liberty is deprived. This reason must explain in clear words the reason as to why a person is being detained or arrested by elaborating the legal grounds and the factual circumstances that result the detention.³⁶ ICCPR article 9(2) states 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. As per the HRC general comment NO.32 and communication NO.1128/2002/ and 253/1987 the word “promptly” is included to imply that the detained person must be informed the reason of his arrest or any charge brought against him including other rights immediately when the arrest is carried out.³⁷ Hence, the law requires that not only the detained person must be informed the reason for his arrest but also that such reason must be told right at the time when the arrest or detention is made. In addition to this, the UN body of principle on detention states 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.” . As a result, informing these rights to the detained person have many purpose, for instance, it help them to request for bail right to challenge the lawfulness of the detention, to prepare for defense as early as possible or in some cases if there is prolonged detention without charge they could also request habeas corpus. Therefore the right to be informed the reason of arrest is a basic pretrial right as detained persons are weaker party which would make their rights at jeopardy. Still the other pretrial rights of detainees after an arrest is made are the right to be brought promptly before a judge. The first mechanism for oversight of pretrial detention is the right of everyone arrested or detained to be brought promptly before a judicial authority.³⁸ This right is recognized by the ICCPR under article 9(3). Bringing the detained person before judges secure the many rights of detained persons, such as; presumption of innocence, avoid possible human right violations , torture, excessive and arbitrary detention including forced disappearance and finally to guarantee that the fates of a detained person is not determined by the detaining authority but by law.³⁹In addition to this, the other purpose of bringing the detained person before court is to examine if there is convincing legal grounds for arrest or detention and to release him on bail or without bail, to ensure the welfare of the detained person are well observed, to avoid any further human right violation of the detainee.⁴⁰ What is worth to remember here is the fact that, bringing the detainee promptly before judge helps both the detained person for it will give him the opportunity to speak how he was detained and on what grounds so that he could to be release for free or on bail or else the court could order a remand detention according to the circumstances of the case,⁴¹he can bring compliant if any of his pretrial rights are violated or if he is unfairly treated and also for the administration of criminal justice. These minimum human right treatments are the pretrial rights of suspects under detention which are guaranteed by various international human rights instruments.⁴² Hence, the followings sub-sections are concerned with some of those selected pretrial rights of suspects under police detention.

B. The protection against self-incrimination and the right to remain silence

The other pretrial right of a detained person is the right to remain silent and the right not to be forced to testify against oneself. This right is recognized under the ICCPR in article 14(3) (g) which reads as, “Not to be compelled to testify against himself or to confess guilt.” Some argued that, the right to remain silent is not expressly recognized under both the UDHR and the ICCPR.⁴³ According to the view of the HRC, the right no to be compelled to testify against oneself or to confess guilt consist the protection against all form of direct or indirect physical and psychological imposition to the detained person by the authorities or the concerned body with

³⁶ . Ibid, Page 38.

³⁷ . Awol Alemayehu Dan, procedural safeguards and fair trials rights of detained persons during pretrial crime investigation: the law and the practice in the case of Wolaita Zone, southern Ethiopia. USA: global journals INC. page 37(2017).

³⁸ . Handbook of International standards on pretrial Detention procedure by American Bar Association, p.9(2010).

³⁹ . Amnesty international, fair trial manual, United Kingdom, published in London by Amnesty international publication. Page 57 (2nd ed. 2014).

⁴⁰ . Ibid.

⁴¹ . International Covenant on Civil and Political Rights (ICCPR), adopted by United Nations General Assembly, on 16 December 1966, entered into force 23 March 1976, article 9(4).

⁴² .Ibid.

⁴³ . Awol Alemayehu Dan, procedural safeguards and fair trials rights of detained persons during pretrial crime investigation: the law and the practice in the case of Wolaita Zone, southern Ethiopia. USA: global journals INC. page 37(2017).

the objective of getting the detained person to confess guilty.⁴⁴ It's important to know that, the right to self-incrimination and the right to remain silent are two elements that somehow seem too much related but also very different, however there is a difference between them. In addition to this, the UN body of principle on detention which says that on principle 21(1). It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person. And sub-article 2 of the same principle goes on saying that, no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment. However, it didn't include the right to remain silent during the investigation by police. Some states recognized the right to remain silent as absolute right. Furthermore until recently, there haven't been any restrictions placed on this right none of the international human right instruments.⁴⁵ Therefore, the right against self-incrimination and the right to remain silent are the two most important pretrial rights of suspects and any confession or evidence obtained in violation of these rights are presumed to be inadmissible by many jurisdictions.

C. The right to release on bail pending pretrial investigation

One of the most prominent pretrial rights of detained person is the right to bail. Bail is a system of releasing a suspect from custody on the basis of the condition in the bail bond or recognizance as a security that he will appear before a court when he is needed to.⁴⁶ In 1996 Terence Ingman also defined bail as a mechanism of releasing a person from custody by taking into account the public interest and on the condition that a specified a predetermined amount of money will be paid if the detainee escapes or fail to appear when required by law while the criminal case is still pending. It's known that, all detained persons cannot be released on bail because there are situations where by their right to bail could be denied for instances, if the detainee is likely to interfere with the investigation, the witnesses, or if he is likely to escape or commit further crimes.⁴⁷ The right to release on bail is acknowledged by both the CCPR and the UN body o principles on detention. The ICCPR in article 9(3), "..... It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment." The UN body of principle on detention under principle 36 also stated that, arrest or detention of a person while the investigation or trial is pending must be undertaken only if it's found necessary for the purpose of administration of justice based on certain conditions as per the reason and procedures prescribed by law. From this we can understand that, the right to release on bail pending trial or investigation is a principle and such right to release on bail can be denied on if it's found necessary to keep the person in detention for the purpose of administration and interest of justice. The HRC make it clear that the right to release on bail is a principle that should be permitted with the exception of certain circumstances such as; if the accused is likely to escape, interfere with the investigation or witnesses or evidences, or if he/she is likely to leave to other states.⁴⁸

D. Right to human condition of detention and the prohibition of torture

The right to freedom from torture is one of the most highly valued human rights. When we see article 7 of the ICCPR it explicitly says that, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. This right is an absolute right which no derogation is permitted at all (see article 4(2) of the ICCPR). The question of what amounts to torture; cruel, inhuman degrading treatment or punishment has been a subject of debate for a long time and still is unsettled matter. The HRC under its general comment 31 stressed that the right to freedom from torture and other ill-treatment is absolute right that has achieved the status of norms of customary international law which applies to all people at all-time without any exception including in time of war or state of emergency. The HRC general comment 20 paragraphs 5 it's stated that, the prohibition of torture includes any acts which results in physical, psychological and mental suffering. There are many other international instruments that prohibit torture and inhuman degrading treatment or punishment such as, article 5 of the UDHR, article 2 of the Convention against Torture, articles 37(a) and 19 of the CRC and article 10 of the Migrant Workers Convention also some of the instruments the protect the right on prohibition of torture.

The HRC in its general comment 21 and 29 recommended that, detainees must be treated with the inherent human dignity of persons. This obligation of the state to give a human dignity and respect for the detainees are considered as non-derogable norms of general international law which applies without discrimination everywhere to everyone all the time irrespective of any situation even in case of state of emergency. It doesn't depend on the existence or non-existence of resources. Furthermore, the special rapporteur on

⁴⁴ . UN human right committee General Comment No.13 and 32, Para.41.

⁴⁵ . Roselyn Karunگونjo-Segawa, Pre-trial Detention in Uganda, APGOF Policy paper in Conjunction with the Uganda Human Rights Commission, Executive summary, page 9 (2012).

⁴⁶ . Robet M.Anderson, LLB, Forrest cool, law review criminal procedure, P.23.

⁴⁷ . Awol Alemayehu Dan, procedural safeguards and fair trials rights of detained persons during pretrial crime investigation: the law and the practice in the case of Wolaita Zone, southern Ethiopia. USA: global journals INC. page 37(2017).

⁴⁸ .Ibid.

torture stated that, since the detainees are highly dependent on the detaining authorities the state must afford the detained persons basic needs such as; food, sanitation health care.....etc.⁴⁹

The HRC had established strong connection between article 7 and 10 of the ICCPR which are about the obligation of the state to the prohibition of cruel, inhuman or degrading treatment and the obligation to give human treatment. This is due to the reason that the violation of human condition to detention in article 10 of ICCPR might be a violation of the prohibition of torture under article 7 of ICCPR.⁵⁰

A person whose right to liberty has been deprived has the right to be detained in a situation where his/her human dignity is respected and protected. Torture shall not be tolerated by any means. The HRC recommended that, each state members of the UN have international obligation to guarantee that the right of detained peoples must be enforced to all detainees without any discrimination in any ground.⁵¹ The obligations of the state to secure the rights of detainees apply to private detention and also to those who under the authority of the state that have acted beyond their power. The HRC in its general comment 20 declared that, any person whose right to liberty has been deprived as a result of detention must be allowed to file a complaint about his/her treatment and such rights must be incorporated under domestic law as well. Each state must give training to the police forces and personnel working in detention Centre about the international standards of human right treatments and such training must also include the prohibition of torture and other ill-treatment, interrogation and so forth.⁵²

Especially concerning about the place of detention the HRC in its general comment 20 stressed that a person whose right to liberty has been deprived must be detained in a place that is officially recognized as detention place. Whether it's in officially recognized detention facilities or anywhere else state members are obliged not to keep detainees in secret detention facilities. Any interested person including the families of the detainees have the right to be informed the situation and place of detention of a detained person. The detained persons must be allowed to have accessed to courts, families, lawyers including adequate healthcare.⁵³

2.3.3. REGIONAL LEGALFRAMEWORKS

When we come to the regional legal frameworks on the pretrial rights of persons under police detention there are various regional human rights system, such as the European, the Inter-American, the African...etc. Among these regional organizations, Ethiopia is a member to the African regional human rights system. Due to this, the regional frameworks we will be exploring in the following discussions will be limited to the African regional human rights instruments since it's the only relevant human right system to this study. Therefore, the following section devotes itself in the discussion and exploration on those selected pretrial rights of persons in police detention under the African regional human rights system the same way it was addressed above on the section on international legal framework.

A. Condition and legality of detention

Those international human right standards that prohibit arbitrary arrest or detentions are also recognized under the African regional human rights system. Article 6 of the ACHPR reads as, "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained." The law is clear in that, there has to be predetermined laws and procedures that allow the grounds and circumstances in order to arrest or detain a person. More importantly, the legality principle in the African charter stresses that arbitrary arrest or detention is totally prohibited. Similarly, the principles and guidelines on the right to a fair trial and legal assistance in Africa (here after called PGFTLA) prohibits arbitrary arrest or detention and that any arrest should be made as per the

⁴⁹ . Awol Alemayehu Dan, procedural safeguards and fair trials rights of detained persons during pretrial crime investigation: the law and the practice in the case of Wolaita Zone, southern Ethiopia. USA: global journals INC. page 87(2017).

⁵⁰ .The UN human right committee general comment No.29.

⁵¹ . The UN human right committee general comment 15 and 31.

⁵² Awol Alemayehu Dan, procedural safeguards and fair trials rights of detained persons during pretrial crime investigation: the law and the practice in the case of Wolaita Zone, southern Ethiopia. USA: global journals INC. page 87(2017).

⁵³ .Ibid.

strict requirement of the law by the competent officials or persons who are legally authorized to this purpose.⁵⁴ Any arrest or detention carried out by persons who are not competent or authorized by law is unlawful.⁵⁵

The other most important provision to the right to challenge the lawfulness of the arrest or detention is incorporated under the PGFTLA in section M (6) (3) (B) (6) which reads as, “Give the detainee the opportunity to challenge the lawfulness of his or her detention and to secure release if the arrest or detention violates his or her rights. From this, it’s obvious that, state members to the African regional human right system are required to specify the grounds and the person who is authorized to undertake the detention as well. Hence the right to liberty can only be deprived lawfully on the legal grounds as are established by law and that arbitrary arrest or detention is totally condemned. Although it’s left for the state members to determine how detention should be made, in general detention can be made with warrant or it can be warrantless detention however, it’s only in exceptional circumstances that warrantless detention should be allowed. Hence, any person who’s right to liberty is deprived unlawfully by unauthorized person or by a person who is not competent to carry out arrest or even if the arrest is made by the competent authority but not based on the grounds specified under the national law, he/she can file a complaint to challenge the lawfulness of the detention. Although the right to challenge the lawfulness of the detention is not expressly recognized under the African charter, the jurisprudence of American commission showed that such right to challenge the lawfulness of the detention in fact exists in article 7(1) of the African charter.⁵⁶

This right is also recognized under PGFTLA which goes on as, anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a judicial body, in order that judicial body may decide without delay on the lawfulness of his or her detention and order release if the detention is not lawful and also they have the right to habeas corpus. This right must be allowed to be exercised always even in time of emergency situation.⁵⁷ In relation to this right the other important pretrial right is the right to be informed the reason of arrest, concerning this right there is no clear and specific provisions to this right in the ACHPR. yet, this right is recognized under the PGFTLA in section M(2)(a) its incorporated that, “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed, in a language he or she understands, of any charges against him or her.” As soon as the detainees are informed the reason of arrest if they think that their detention is unlawful then they can challenge it before the court of law. The promptness of the information is determined on case by case basis, however in the eyes of this law there will not be any or interrogation or questioning before a detained person is informed the reason for his arrest or detention. In the African regional human rights system under PGFTLA in section M (2) enumerates the list of the pretrial rights of detained person almost the same way they are incorporated under international standards. Still the other important right in relation to detention during pretrial stage is the right to be brought before a judge. Unlike the ICCPR in article 14 the ACHPR doesn’t recognized this right, due to this and despite the absence of explicit article to this right under the African charter the human right commission in Africa viewed that any person who is arrested or detained have the rights to be brought before a competent judicial authority as it’s important to safeguard the right to liberty and to prevent the violation of human rights. In addition to this, the PGFTLA under section M (3) it explicitly recognized the right to be brought promptly before judicial officer which reads as, “Anyone who is arrested or detained on a criminal charge shall be brought before a judicial officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.” Not only it acknowledges this right but also it expressly lists the purpose of such right, such as; assessing whether sufficient legal reason exist to arrest, whether detention before trial is necessary or not, safeguard the wellbeing of the detainee, to give the detainee the opportunity to challenge the lawfulness of the detention and to be released if the arrest or detention is unlawful, to prevent the human right violation of the detainees....etc.⁵⁸

Therefore, once a case is brought to challenge the lawfulness of the detention it’s the duty of the courts against which the case is brought to decide immediately and without delay the release of detainees if the detention was unlawful.

B. The protection against self-incrimination and the right to remain silence

Here again the ACHPR doesn’t recognized the right against self-incrimination and the right to remain silence. Under the African regional human right system taking the weakness of the detainees surrounding situations unfairly to compel them to confess or to incriminate against him/her or to testify against any other third person is totally prohibited and also during interrogation no detain

⁵⁴ . African commission on Human and Peoples’ Rights, principles and guidelines on the rights to Fair Trial and Legal Assistance in Africa (here after PGFTLA in Africa), Para.M [1(b)].

⁵⁵ . Ibid, Section M (1) (c-d) and (g).

⁵⁶ . Amnesty international, fair trial manual, United Kingdom, published in London by Amnesty international publication. Page 64 (2nd ed. 2014).

⁵⁷ . African commission on Human and Peoples’ Rights, principles and guidelines on the rights to Fair Trial and Legal Assistance in Africa Section M (4) and (5).

⁵⁸ . Ibid, Section M (3) (b).

person shall be subject to violence, threats or methods Of investigation which impair his or her capacity of decision or his or her judgment.⁵⁹ Furthermore, in connection with the admissibility of evidences obtained through coercion, in violation of the right against self-incrimination and the right to remain silence the PGFTLA also in section N (6) (D) also reads the same which says no accused person shall be compelled to testify against him/herself to confess guilt and any confession or evidence obtained from a detainees in violation of these rights will be inadmissible. A detainee in exercising his/her right to remain silence shall not be used as evidence to prove guilt and no adverse consequences may be undertaken against the detained person from exercising of his right to remain silent.

C. The right to release on bail pending pretrial investigation

It's almost recognized in all legal tradition that if a detained person is not brought to proceedings timely then their right to be released from detention pending trial is well protected. As far as the right to bail is concerned the ACHPR doesn't acknowledge it in an unequivocal manner. However, this doesn't mean that the African regional human right system don't give place to right to bail. As can be read from PGFTLA under section M(1)(e), As a principle a person who is charged with criminal offence has the right to bail unless of course it's found necessary to prevent the arrested or detained person for reasons such as; to stop him from escaping, to prevent him from interfering with wittiness or else posing a clear and grave risk to others.as a result, unless there is a sufficient evidence to these effect a detained person can't be held in detention pending the trial, yet the right of a detainees to bail is subject to conditions which will ensure his/her reappearance when he/she is needed that will be determined by the national law of the states. Therefore, the state members of the African regional human right system are required to guarantee the right to bail pending the trial unless the circumstance justifies that the right to bail is not granted in its national legislation.

D. Right to human condition of detention and the prohibition of torture

The African regional human rights instrument prohibit torture or other cruel, inhuman or degrading treatment or punishments the same way the international human rights. As it has been addressed broadly under international legal framework, this right is absolute right. It's considered as norms of international customary law which has achieved norms of Jus-cogence a right that can never be restricted nor limited under any circumstances even in time of emergency. Article 5 of the African Charter stated as follow, "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." In addition to this, the PGFTLA under section M(7)(g) grants the detained person or his/her legal representative or families the right to file a complaint to the concerned competent authorities regarding his/her treatment especially if the detainee has been subject to torture or other cruel, inhuman or degrading treatment or punishment. Under the same instrument in section M (7)(j) the state members are required to come up with legislations that incorporated the procedures upon which a person who has been subject to torture or any other ill-treatment could bring a claim to compensation as well.

Furthermore, the prohibition on torture or other cruel, inhuman or degrading treatment or punishment is strongly linked with the right to a human condition to detention. As a result, since the detained persons are deprived of their liberty at least they must be treated with respect to inherent dignity of human person and humanly. The HRC in its general comment NO.21 emphasized that the duties of the states to treat detainees with respect to human dignity are an international norm applicable everywhere. The treatment given to detained persons during pretrial stage should be different from those where are convicted of an offence. Hence, detained persons should be restricted to the extent necessary and proportional to conduct the investigation as compared to the restrictions imposed on the convicted prisoners.⁶⁰ The African human right instruments provides one of the best humanity treatment to detained persons, it gives emphasize to women and children's who are detained to be given separate treatment.⁶¹ More importantly under section M sub article 7 on the title to right to human treatment it requires member states to ensure that detained persons are treated in a humane manner and with respect for the inherent dignity of the human person and it also enumerates various human treatment to detained persons. What is more important to our study is the fact that a person can be detained in officially recognized place. Under section m (6) of the PGFTLA its caption reads as the "right to be detained in a place recognized by law." in this section not only the place is required to be official detention place , but also the history of the detainees and the detaining authorities, the place where he is kept, the time of arrest the reason, especially this information and the whereabouts of the detainees must be available to anyone who has an interest such as the judiciary, the lawyers , the prosecutorsetc must be officially known and registered. Under section M (8) such official detention place must also be supervised by the concerned government authorities. There should be psychological, medical and physical individual assessments especially to women's. Therefore, in addition to the African charter the

⁵⁹ .Ibid, Para. M [7(d)]. Para. M [7(e)].

⁶⁰ . Amnesty international, fair trial manual, United Kingdom, published in London by Amnesty international publication. Page 93 (2nd ed. 2014).

⁶¹ . African commission on Human and Peoples' Rights, principles and guidelines on the rights to Fair Trial and Legal Assistance in Africa, Section M(7)(c).

PGFTLA in Africa condemns torture or cruel or other inhuman treatment showing that even in the absence of physical or psychological torture how deprivation of human conditions to detention amounts to torture.

2.3.4. National Legal framework

A. Condition and legality of detention

As members of the UN and the OAU, Ethiopia has ratified many international and regional human right instruments such as; the ICCPR and ACHPR respectively. These international and regional human right instruments require member states to enact legislation that incorporates the procedures governing how arrest or detention should be made including the competent authorities who are authorized to carry out arrest or detention. One of the prime objectives of carrying out an arrest is to ensure to appearance of the suspect of investigation or examination and to keep him under the detention of the concerned authorities.⁶²

As a result of this, the Ethiopian government had enacted various legislations that govern the procedures and the authorities to undertake detention at national level. In Ethiopia, detention is legally allowed to be made with or without warrant. The criminal procedure codes of Ethiopia (here after called CPCE) under article 49 reads as, “Save as is otherwise expressly provided, no person may be arrested unless a warrant is issued and no person may be detained in custody except on an order by the court. An arrest without warrant may only be made on the conditions laid down in this Section.” The same CPCE under article 54 and 55 states that if arresting the alleged suspect is found to be absolutely necessary and that his appearance can’t be possible other than a court warrant then the police must apply for warrant of arrest before the court and the court must first examine whether his attendance can or can’t be obtained by any means other than arrest. In case of an argent situation where there is no enough time to make written application by convincing the court on the situation the police can get a court warrant through telephone or telegraph.⁶³ Hence, as a matter of principle arrest or detention can be made with a court warrant unless it’s a flagrant offence;⁶⁴ which is punishable with simple imprisonment for not less than three months.⁶⁵ In such kind of situation the CPCE under article 50 illustrates the procedure and the competent authorities who are authorized to carry out arrest. As a result where the alleged offence is a flagrant offence as defined under article 19-20 of the CPCE that is punishable with simple imprisonment for not less than three months and where the alleged offense is not punishable upon compliant the CPCE authorizes any private person or police to carry out detention without warrant. In such instances where arrest is made by private person then such person must bring the detainees to the nearby police station right away without unnecessary delay.⁶⁶ Article 51 of the CPCE enumerates other situations where arrest without warrant can be made by police and sun-article 2 of the same article empowers other government officials to carryout arrest without warrant under special provisions of other laws. Therefore, legally speaking, detention of an alleged criminal suspect must be made with warrant with the exception of those exceptional circumstances where warrantless detention might be permitted in Ethiopia. In addition to the CPCE, there are many other laws applicable to special crimes which also have a provision that allows warrantless arrest, such as; For instance in Terrorism case, the

former anti-terrorism proclamation No.652/2009 under article 19(1) permits the police to arrest any person without court warrant any person whom he reasonably suspects to have committed or is committing a terrorist act as provided under this Proclamation. However, this proclamation is repealed by the newly enacted proclamation on prevention and suppression of terrorism crimes proclamation No.1176/2020.the new proclamation doesn’t specify the competent authorities nor how arrest is made to a person suspected of terrorism crimes. Under article 48(2) of the same law it states that matters not covered by this proclamation can be governed by the criminal laws, as result it seems that even in terrorism cases the manner of arresting or detaining a suspect is governed by the CPCE.

Interestingly enough the right to challenge the lawfulness of the detention is recognized under the Ethiopian criminal justice system. The FDRE constitution in article 19(4) specifies that all individuals do have the inalienable right to petition the court to order their physical release where the arresting police officer or the law enforcer fails to bring them before a court within the prescribed time and to provide reason for their arrest. This is one way to challenge unlawful detention. Besides, the criminal code of the FDRE under the caption of “ unlawful arrest or detention” states that, Any sort of detention that is contrary to the law or in disregard of the procedural safeguards prescribed by law the requirement of the law is regarded as a crime punishable with rigorous imprisonment

⁶² . New South Wales law Reform commission: Report 66(1990)-Criminal procedure, Police powers of Detention and investigation after arrest, page 9(1990).

⁶³ . The Criminal Procedure Code of Ethiopia, Negarit Gazetta, Proclamation No. 185/1961, article 55(1) (2).

⁶⁴ .Ibid, Article 19-21 of the CPCE.

⁶⁵ . Ibid, Article 106

⁶⁶ .Ibid, Article 58

not exceeding ten years and fine.⁶⁷ The right to be informed the reason for arrest is also one of the crucial rights that must be overviewed here. Exercising this right gives the detainees the opportunity to challenge the legality of the arrest or detention. However such notification must include the factual circumstances and the legal grounds and must be clear, simple and easy to understand.⁶⁸ As a result, it's highly recommended that whenever an arrest or detention is made the detaining authorities must notify the detainees the reason for their arrest otherwise the detainees will be subject to other human right abuses. That is why it's required for the government to recognize this right at their domestic legislation. In Ethiopia this right is recognized under article 19(1) of the FDRE constitution. The constitution not only imposes the duty of informing the reason of their arrest but also the duty to inform them in the language they can understand. In addition to the right to be notified promptly the reason for the arrest during the time when arrest is made the constitution also requires that when such a suspect is brought before a court of law within 48 hours then on the appearance of the detainees the court will give them prompt and specific explanation of the reason for their arrest.⁶⁹ However, in a situation where the arresting authorities failed to inform the detainees the reason for their arrest they can bring their petition to the court to know why they are detained and if possible to be physically released.⁷⁰ They also have the right to accuse the officer who unlawfully arrested or detained them.⁷¹ Under Article 29(1) of the CPCE the police are required to bring the suspect before the nearest court within 48 hours of his/her arrest or immediately after the local circumstances and communications allow. The time taken in the journey to the court shall not be included. The constitution also require that the police must bring the detainees within 48 hours from their arrest and such time must not include the time reasonably required for the journey from the place of arrest to the court.⁷² Sometimes when the right to be informed the reason of arrest is violated it's this right that gives the detainees the chance to know the reason of arrest since the court has the duty to give prompt and specific explanation of the reason for their arrest once the detainees are brought before court of law.⁷³

The same right is recognized in terrorism cases, the anti-terrorism proclamation No.652/2009 under article 19(2) states that any arrested person has the right to be brought before court of law within 48 hours of his arrest. However, this proclamation is repealed by the newly enacted proclamation on prevention and suppression of terrorism crimes proclamation No.1176/2020 which doesn't say anything regarding the right to be brought promptly before court of law, hence, the right to be brought before court of law in terrorism case is governed by the CPCE as proclamation No.653/2009 is repealed. As a result anyone whose right to liberty is unlawfully deprived and kept under detention can file a complaint before a court of law stating that he is unlawfully detained. The right to be brought promptly before a judge is the other important right that should be highlighted here, this right

B. The protection against self-incrimination and the right to remain silence

The protection against self-incrimination and the right to remain silent are incorporated both under the FDRE constitution and the CPCE. The CPCE under article 27(2) it's provided that any detainees shall not be compelled to answer and shall be informed that he has the right not to answer and that any statement he may make may be used as evidence against him before court of law. It's during the interrogation time that the questioning or the investigating authorities must inform the detainees that they have the right to remain silent and anything they said will be used as evidence against themselves before the court. The same code under article 35(2) stressed the importance of the right to remain silence even before the preliminary inquiry or trial in court by declaring that during a record of any statements or confessions can't be made unless the court first ascertains that the detainees making such statement voluntarily and without any coercion. The constitution also acknowledges this right under article 19(5) which reads as "Persons arrested shall not be compelled to make confession or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible". Furthermore, any evidence or statement or confession made in violation of the right to remain silence through physical or psychological coercion should not be admitted for it can't help the administration of justice to reach to the truth. as a result any evidence obtain in violation of this right should be considered inadmissible as they are unlawful. It's due to this very reason that the international human right standards do condemn the concerned competent authorities to refrain from taking the weakness and the advantages on the situation of detained persons by coercing or compelling them to

⁶⁷ . The Criminal Code of the Federal Democratic Republic of Ethiopia, Federal NegaritGazzeta, Proclamation No. 414/2004, article 423.

⁶⁸ . Danish Institute for Human Rights (2002), Police and Human Rights Manual for Police Training, p.32.

⁶⁹ . The Constitution of the Federal Democratic Republic of Ethiopia, proclamation No 1, Negarit Gazetta, year 1995, No , article 19(3).

⁷⁰ .Ibid, Article 19(4).

⁷¹ . The Criminal Code of the Federal Democratic Republic of Ethiopia, Federal NegaritGazzeta, Proclamation No. 414/2004, article 423.

⁷² . The Constitution of the Federal Democratic Republic of Ethiopia, proclamation No 1, Negarit Gazetta, year 1995, No , article 19(3).

⁷³ .Ibid.

incriminate against themselves or other persons.⁷⁴ More importantly, the violation of the protection against self-incrimination and the right to remain silence entails a criminal liability in addition to the civil and the administrative liabilities. It's unambiguously stated under article 424(1) of the FDRE criminal code stressed that the officials or the public servant who is in charge with the arrest or detention or interrogation while performing his/her duty employs any improper method such as; inducement, or in a manner incompatible with the human dignity so as to obtain a statement or confession or for another reason is punishable up to ten years imprisonment and fine.

C. The right to release on bail pending pretrial investigation

As does the international human right instruments, the right to be released on bail is one of the most highly valued pretrial rights of detainees recognized under the Ethiopian criminal justice system. The right to bail attracts many scholars attention because it's an instrument through which the conflict between the right liberty, security and the individual freedom and the interest of the public at large are reconciled. The FDRE constitution under article 19(6) reads as, "Persons arrested have the right to be released on bail. In exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person." The constitution as a matter of principle permits the right to be released on bail and such right to bail can be denied in exceptional cases when it's prescribed by law. Hence, the constitution is not the only law governing the right to bail in Ethiopia as there are other laws that serves to govern the right to bail. Some of these laws are the following; the CPCE under article 63(1) specifies that "Whosoever has been arrested may be released on bail where the offence with Which he is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed dying." Apart from this the other case where the right to be release on bail might be deny is when one of the conditions under article 67 of the CPCE is available, these are if the detainee is unlikely to comply with the conditions laid down in the bail bond, if the detainee is set at liberty that he is likely to commit other crimes or that he/she will interfere with witness or tamper with the evidence. When such condition exists then the detainee can't be released on bail. As far as criminal cases are concerned this is the bench mark upon which judges rely upon to grant or deny the right to be released on bail but there are also other laws that governs the right to bail in special categories of crime; for instance, in corruption cases the revised anti-corruption special procedure and rules of evidence proclamation No .434/2005 under article 4(1) states that, "An arrested person for a corruption offence may apply to court to be released on bail. An arrested person charged with a corruption offence punishable for more than 10 years may not be released on bail." In addition to this, when the condition under article 4(4) exists the right to release on bail will be denied these are if the detainee is likely to escape or if he is likely to interfere with the witnesses or tamper with the evidences. In addition to these, the anticorruption proclamation No.882/2015 under article 3(1) states that, in case of concurrence crime of corruption the right to release on bail will not be granted in case of concurrent crimes punishable with less than ten years but more than four years in each of the count may not be released on bail.⁷⁵ Hence, the right to be released on bail pending the pretrial investigation is a principle and only in exceptional circumstances can the right to bail can be denied.

D. Right to human condition of detention and the prohibition of torture

As it has been discussed above, the prohibition against torture has attained the status of international customary law as norms of Jus-Cogence. Like the international human rights instrument, at national level the FDRE constitution gives recognition to the prohibition of torture. Even if the word "torture" is not indicated in unambiguous manner under article 18(1) of the FDRE constitution specifies that everyone, including arrested person, to be protected from all forms of cruel, inhuman and degrading treatment and punishment. Despite this, the emphasize given to the prohibition to torture can be understood from the reading of article 28 of the FDRE constitution which puts torture at equal foot with those other criminal liabilities that can't be barred by period of limitation. A person who commits a crime of torture can't be granted amnesty nor can it be pardoned by whomever whether it is the legislature or any other state organ. legally speaking, the same way it's protected under international law, in Ethiopia torture is prohibited absolutely this right can be neither limited nor suspended even in emergency situations.⁷⁶ Furthermore, the prohibition of torture is incorporated under the FDRE criminal code. Under article 424(1) of the FDRE criminal code it's incorporated that, any public servant charged with the arrest, custody, supervision, escort or interrogation of a person under detention, in the performance of his duty if he/she employs improper methods such as; inducement, threatens or treat the person concerned in an improper or brutal manner or in manner incompatible with human dignity or his office, especially by the use of blows, cruelty or physical or mental torture be it to obtain a statement or confession or for any other reason is punishable up to ten years imprisonment and fine. Therefore, torture is not only recognized under the Ethiopian justice system but also that the means and method of employing it including physical, mental and psychological torture has been acknowledged very well. As it has been stated broadly above, the HRC had created a connection between the prohibitions of torture with the right to human condition to detention. The UN HRC on general comment 21

⁷⁴ The UN Body of principle for the protection of all persons under Any form of Detention or Imprisonment, Adopted by the General Assembly Resolution43/173 of December,1988, principle 21(1).

⁷⁵ . Anti-corruption proclamation special procedures and rules of evidence no.882/2015 which came in to force on 3,Apr.2015.

⁷⁶ The Constitution of the Federal Democratic Republic of Ethiopia, 1995, proclamation No 1,Negarit Gazetta, year 1,No , Article 93(4)(c).

recommended on article 10 of the ICCPR that, arrested or detained persons whose right to liberty has been deprived must not be threatened with hardship or restrictions other than the deprivation of their liberty and that the international minimum standards of protection to human rights should be granted to them as if they are a free man. Furthermore, the prohibition against torture and the right to human condition to detention is a universal applicable rule. No state is allowed to violate this right under any justifications. As a result in addition to the ratifying the ICCPR the Ethiopia has the obligation to respect and protect those general comments given on the international human right instruments ratified by it. Surprisingly, the FDRE constitution Stressed that all person in custody have the right to treatments respecting their human dignity. They also must have the opportunity to communicate with, and to be visited by their spouses or partners, close relatives, friends, religious councilors, medical doctors and their legal counsel.⁷⁷ In addition to the prohibition of torture, the criminal code under the caption of use of improper method also addresses the right to human condition to detention very well.⁷⁸ The UN General assembly and the HRC stressed that “excessive incommunicado detention” such as detention in unofficial and secret places could result in for the violation of the probation of torture or other cruel inhuman degrading treatment or punishment which amounts to the violation of the right against the prohibition of torture.⁷⁹ More importantly, the newly enacted proclamation on prevention and suppression of terrorism crime proclamation No.1176/2020 under article 45 gives a great emphasis to the right to human condition to detention which reads as, “a person who is in detention center or prison on suspicion or accusation in connection with crimes provided for in this proclamation shall be protected in accordance with the constitution of FDRE , international agreements ratified by Ethiopia and other laws of the country concerning rights and conditions of suspected or accused persons.” Therefore it’s pragmatic to conclude that, the right to human condition to detention and the protection from torture or other cruel inhuman degrading treatment or punishment is well articulated and guaranteed under the Ethiopian legal framework.

CHAPTER THREE

3.1. INTRODUCTION

So far attempt has been made to address the literature reviews and the legal frameworks pertaining to the protection of persons under police detention during pre-trial stages. Hence, the main concern of this chapter is to analyze and interpret the datas collected in the light of the international and national laws dealing with some of those selected pretrial rights of suspects under police detention are the prime objective of the study.

Among other things, questionnaire, Simi-structured interview, field observation, document analysis, recent literatures and researches relevant to this subject and other documents including court cases on the subject under study were the major primary and secondary method of data collection. As a resul, 25 questionarie was distributed and collected from suspects who were still under police detention in Sanja police station. Besides, 1 president of the Sanja Wereda court and 2 other judges, the public prosecutors general directive office of director and 2 other public prosecutor, 1 chief of the police department and 2 criminal investigators police totally 9 individuals were interviewed.furthermore, five individuals who were detained in the unofficial detention center and two families of the those who were detained in the unofficial detention were interviewd as well. Furthermore, With regard to field observation since the researcher works as public prosecutor in this Wereda he has visited the Sanja Wereda police station and also the unofficial detention where the political bodies keep individuals under their detention. In addition to this, the researcher has also observed dead file cases on some of highly violated bail rights of suspects during police detention.

As I have mentioned it repeatedly, the main concern of this study is only some of those selected pretrial rights of suspects under police detention, these are Condition and legality of detention, the protection against self-incrimination and the right to remain silent, the right to release on bail pending pretrial investigation and, the right to human condition of detention and the prohibition of torture. Therefore, this chapter pays a particular attention to the analyzation and interpretation of the datas collected through the aforementioned methods in the light of the national laws and the international laws which Ethiopia has ratified. Thereby, seeks to witness the existing discrepancy between the law and the practices when the laws dealing with those selected rights are practically applied to the study area i.e. Tachi Armachiho Werda Sanja city. In the following sections each of these selected pretrial rights will be addressed according to their sequences.

⁷⁷ . The Constitution of the Federal Democratic Republic of Ethiopia, proclamation No 1995, Negarit Gazetta, year 1, No , Article 21.

⁷⁸ . The Criminal Code of the Federal Democratic Republic of Ethiopia, Federal NegaritGazzeta, Proclamation No. 414/2004, Articl424 (1).

⁷⁹ UN General Assembly, UN Doc. A/RES/60/148, 16 December 2005, Article 11; UN Commission on Human Rights, UN Doc. E/CN.4/RES/2005/39, 19 April 2005, article 9.

3.2. Condition and legality of detention

In Ethiopia there are numerous laws that govern the condition and legality of detention. Besides, the FDRE government had ratified different international and regional human right instruments, such as; the ICCPR, the ACHPR. Article 9 of the ICCPR strongly prohibits arbitrary arrest and detention and who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.⁸⁰ This laws are also applicable at domestic level(see article 9(4) and 13(2) of the FDRE constitution). As a result of this, in Ethiopian detention is legally allowed to be made with or without warrant. In principle criminal investigation must be undertaken before an arresting the suspect. Article 25 of the CPCE is clear in that the investigating police officer must summon when there is a reasonable suspicion or cause that the suspect has committed a crime unless it's a flagrant offence. Besides, as can be understood from reading of article 49, 54, 55 of the CPCE in principle no person can be arrested with out warrant is issued and no detention can be carried out without a court order, however there are exceptional circumstance where arrest can be carried out in a situation where it's expressly provided by law, for instance in case of flagrant offence ⁸¹which is punishable with simple imprisonment for not less than three months.⁸² In such situation article 50 of the CPCE illustrates the procedure and the competent authorities who are authorized to carry out arrest without warrant. In such instances where arrest is made by private person then such person must bring the detainees to the nearby police station right away without unnecessary delay.⁸³ In addition to this, there are other conditions that must be observed to make lawfull detentions while carrying out an arrest for instance; the arresting authorities have a duty to inform the reason for arresting that person, the right to be promptly be brought before court are also required to be protected as enshrined under article 19 of the FDRE constitution. Apart from this the FDRE constitution under article 17(2) strictly prohibits arbitrary arrest and detention.

Therefore, in Ethiopia, legally speaking detention of an alleged criminal suspect must be made with warrant with the exception of those exceptional circumstances where warrantless detention might be permitted. The right to challenge the lawfulness of the detention is recognized under article 19(4) of the FDRE constitution and article 423 of the FDRE criminal code which incorporates detention that is contrary to the law or in disregard of the procedural safeguards prescribed by law is regarded as a crime. As a result, arresting and detaining an individual in disregard of the requirement of these laws will be considered as unlawful detention and a person who has been a victim of arbitrary arrest and detention can file a complaint on unlawful detention.

To know the practical application on the condition and legality of detention on rights of suspects under police detention in the study area, apart from my personal observations as a public prosecutor, i have prepared a questionnaire to the suspects under police detention and key informant interview with the concerned government officials such as; judges, public prosecutors and polices. Concerning the key interview informants; the interview question was presented to each of the informants according to their professional roles in relation to suspects under police detention in this Wereda. As a result, each of the interview question was designed in a manner that fits to the duties of each respondent in relation to the suspects. In the next sub-sections I will present, interpret and analysis the datas according to the categories of each respondent as follow.

3.2.1. Datas collected from the detainees

When we come to the practical applications concerning on the condition and legality of detention a questionnaire holding 19 questions were distributed to 25 suspects who were detained in Sanja police tation but one questionnaire was not returned and also to those who were detained in other places. The questionnaire was prepared and distributed to the suspects. It consist different question format that is; yes or no question, choices and open ended question.

As results of the responses given by the suspects, 24 of them were arrested without summon for non-flagrant offences which is a practice against article 25 of the CPCE. In responding to this question, among them 14 of the suspects were arrested by police, 1 by Milisha, 5 by Tsere Shimik and 4 of them by other bodies such as the regional special force (Liyu Hail) and defence force (Mekelakeya). This shows that in this Wereda there are other militants apart from the police who carry out arrest and that the practice is not in compliance with article 25 and 49 of the CPCE. The other precondition to lawfull arrest/detention is the right to be informed the reason for the arrest, the right to the protection against self-incrimination and the other rights, however concerning this pretrial

⁸⁰ . International Covenant on Civil and Political Rights (ICCPR), adopted by United Nations General Assembly, on 16 December 1966, entered into force 23 March 1976, Article 9(3 and 4).

⁸¹ . The Criminal Procedure Code of Ethiopia, Negarit Gazetta, Proclamation No. 185/1961, Article 19-21.

⁸² . The Criminal Code of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazzeta, Proclamation No. 414/2004, Article 106.

⁸³ . The Criminal Procedure Code of Ethiopia, Negarit Gazetta, Proclamation No. 185/1961, Article 58.

rights 18 of them were not informed these rights during arrest. The other is that 12 of them were not informed the reason for their arrest right away. Even when it comes to the right to be promptly be brought before a court within 48 hours of their arrest, 21 of them hadn't been brought before court within 48 hours of their arrest. This shows how the practice is in violation of the due process rights of suspects that incorporated under article 19 (1-3) of the FDRE constitution. These are; the right to be informed the reason for arrest, the right to remain silent and the protection against self-incrimination are violated as they don't not practically implement in accordance with the law. In addition to these, the 24 of the suspects who were under police detention before pretrial stage has been kept under the Sanja Wereda police station for longer period of time which ranges from 4 days to 6 months without any charges brought against them. The crime they have been suspected of is different from one another. To mention some; 11 of the them are suspected of illegal restraint that are found in article 585 and abduction 590 of the FDRE criminal code who have been detained from 4 up to 6 months without any charge, 1 suspect for robbery that is found in article 670 of the criminal code, 6 suspects for homicide that is found under article 539 of the criminal code, bodily injury which is found under article 555 of the criminal code, 2 suspects for theft which is found under article 665 of the criminal code, 1 suspect for rape which is found under article 620 of the criminal code, 1 suspect for physical assault which is found under article 560 of the criminal code. These also witness how the practice violates the right to speedy trial, right to bail and the practice also witnesses how they violate the prohibition of prolonged pretrial detention enshrined under article 9(3) of the ICCPR, article 7(1)(d) of the ACHPR and principle 38 of the body of principles for treatment of persons under any form of detention or imprisonment which Ethiopia has ratified. Furthermore, the police are not the only responsible body for the violation of their right because the public prosecutor during their visit to the detention center was supposed to protect the rights of the detainees by exercising its power and give the proper order to the specific matters of each suspect. In addition to these, 20 out of them believed that the manner of their detention were illegal. Due to this 17 of them filed a complaint for the illegality of the arrest to the Wereda court, to the police and to the public prosecutor during visit of the detainees. However, when the suspects were asked the solutions for their complaint they responded different answers such as; many of them replied saying that they didn't give us any solution at all, while others said that; they didn't give us enough responses saying it's a covid-19 time there is no immediate solution, the court deny our bail right and so forth. As a result we can say that there is a complaint mechanism but when it comes to the result it's not effective yet. Although there is no practice of challenging unlawful detentions, still practically speaking, the result of the suspects complaint uncover the non-availability of remedy for unlawful detention. Furthermore, 9 of the suspects didn't know the place they were taken immediately after they get arrested. They said it was a place other than the police station. Still the families of the 9 suspects had no clue where the suspects were taken by the time they get arrested. According to this, the practice shows that in this Wereda there is also other detention center other than the one which is legally recognized for this purpose and also there is a violation of the right to be visited by the family and to communicate with the outside world. 11 detainees responded that they didn't know their pretrial rights during and after their arrest and also 19 suspects responded that their human rights have been violated. 15 of the suspects replied that their right had been violated by the police, 1 suspect replied his human rights had been violated by Tsere Shimik, 2 suspect replied their human rights had been violated by public prosecutor and 1 suspect replied by court. In addition to these, the public prosecutor is not fulfilling their duties of protecting and respecting the procedural safeguards of pretrial rights of detainees; because as per the newly enacted attorney general proclamation number 943/2016 the public prosecutor is mandated to create legal awareness to the public at large as they also have a duty to create legal awareness to the suspects as to their pretrial rights during visit of the detention center. 8 of the suspect replied that, the human right violation in this Wereda is very high, 3 of them replied high, 4 of them replied medium, 7 of them replied low while the 2 of them were neutral. Even if they filed a complaint of their human right violations to the chief of the police, to the prosecutors and to the courts, however the responses they get for their complaint varies depending on the organs to which the complaint is filed such as; to some no result at all, to others they said they will make a change in the future, to some they were told to wait patiently, to others they were told they will never be beaten again, to some others they were told that their case is still under investigation and still to some others they were told the responsible organ is other than the one they filed the complaint these are some of the responses they get for their complaint. Therefore, some organs of the administration of justice that are; the police, the public prosecutor, Tsere Shimik, Milisha, the regional Special Forces, the security army and the court have their own contribution to the violation of the suspects right regarding to the condition and legality of detention.

3.2.2. Data collected from the polices

With regard to the condition and legality of detention 2 major questions which consists many sub-questions was forwarded to police. However, in addition to my personal observation and the interview of the police, I have witnessed that most of the time suspects are brought without summons and without court warrant, it's in rare situation that they will be brought with warrant. Some times, even after having a court warrant the suspects escape in such case they will use their own technique to secure the arrest of the suspects. Most of the time the suspects are arrested before the completion of the investigation of the crime. Concerning the human right treatments of the detainees there is no enough detention class, the weather is hot and the room is crowded with many detainees.⁸⁴ The police also said that, most of the time in this wereda suspects are not willing to come with summons as a result, after being

⁸⁴ . Interview with Wana Inspector Libanos, who is the chief of the Sanja Wereda police station, Sanja, June/11/2012 E.C.

arrested by the local administration, Milisha and other militants from their villages they will be arrested without a court warrant against their will. Most of the suspects suffer from delayance of justice as the police don't bring them to court within 48 hours of their arrest.⁸⁵ Further more, they said that, when they arrest them almost all the police don't tell the suspects' basic pretrial rights. The police know the existence of these pretrial rights during the time when arrest is made, yet, when they arrest them other than telling them they are legally wanted there are no practice of informing them the reason for their arrest, the right to remain silent and the protection against self incrimination as well. Among other things, lack of enough personnels, light and other problems make it hard to practice these rights of suspects. There is a problem with the practice in this regard, it's after they are brought them to the detention center they tell them these rights but they have never practice immediately after an arrest is made.⁸⁶ As a result, as far as the condition and legality of detention in this wereda is concerned, almost all arrest is made without summon and court warrant which is a practice that violates article 25,49 and 55 of the CPCE. not only that but also arrest can be made by a person who is not competent to carry out arrest in disregard of he procedures incorporated under article 50 of the CPCE. This also witnesses the existences of arbitrary arrest and prolonged pretrial detention in violation of article 17(2) of the FDRE constitution. Furthermore, the arresting authorities carry out arrest in violation of the conditions that must be observed and protected. they don't inform the suspects the reason for their arrest, the right to be promptly be brought before court, the right to remain silent and other preconditions that must be satisfied as per the procedural safeguards that are ensirined under article 19 of the FDRE constitutions are not practically implemented. more importantly, while the law under article 423 of the FDRE criminal code protects unlawfull detention to be punishable offence, in practice in this Wereda there is no possibility of challenging unlawfull detention.

3.2.3. *Datas collected from the public prosecutors*

In addition to the police, the public prosecutors were interviewed. The first respondent of the public prosecutor said that, in our visit of the detention center we try our best to ensure the protection of the rights of suspects. for instances, we gave them legal awareness to ensure their right to be brought to court within 48 hours of their arrst, the right to remain silent and also informing the investigative police to not obtain any evidence through coercion.⁸⁷ Besides, the other interviewee said that, during our visit of the detention center we ask the suspects how they were arrested and if we find they are illegally arrested we will give them the proper solutions according to the cases each of them forwad. however, for both flagrant and non-flagrant offences they arrest them without summon and without court warrant, not only this but also that the arresting person don't inform them their basic rights, such as; the right to be informed the reason of arrest, the right to remain silent and the right to be brought before a court within 48 hours. It's easier to say that there is no practice in applying these rights; due to these problems what we can do is to tell them their rights including their right to be brought before court, the right to be release on bail the right to remain silent.⁸⁸ As a result, the public prosecutors are also confirming that, the condition and legality of detention is one of the pretrial rights which is highly violated by the police and the arresting authorities. however, confirming this, still the prosecutors play their part to the violation of this rights of suspects, for instance as per article 423 of the FDRE criminal code that any arrest or detention which is contrary to the procedural safeguards are punishable offence. Hence, they are supposed to make accountable the person responsible for the violation of the suspects' right. In this way the prosecutor can reduce the practical violation of the suspects' right during and after arrest. The prosecutors have also a duty to immediately release a detainee if he/she is detained and suspected for non-criminal case and also if it's a non-flagrant offence but they say nothing in this regard. Therefore, this all shows that the prosecutors also attribute for the violation of the detainees right by not ensuring their rights regarding condition and legality of detention are protected by the arresting and detaining authorities.

3.2.4. *Datas collected from the judges*

The other category of the key interview informants were the judges who work in Tachi Armachiho Wereda. With regard to the condition and legality of detention like that of the police and the public prosecutors I have designed an interview questions to the judges as well. The first respondent to these questions said that, there is no practice of ensuring whether the suspects were arrested legally or not, however once they are brought to the court we will release them by granting bail right or deny their bial rights as per article 63 and 67 of the CPCE, but most of the suspects are brought to court after several week or months pass from their arrest. The right to be promptly brought to court within 48 hours of their arrest is one of the most violated pretrial rights of suspects. As far as the rights of the suspect during arrest are concerned, such as; right to be informed the reason for arrest, the right to remain silent, the

⁸⁵ . Interview with Inspector Mekuanint, who is the chief criminal investigator of Sanja Wereda police station, Sanja, June/12/2012 E.C.

⁸⁶ . Interview with Wana Inspector Libanos, who is the chief of the Sanja Wereda police station and interview with Inspector Mekuanint who is the chief criminal investigator of Sanja Wereda police station, Sanja, June 11/2012 E.C and June/12/2012 E.C. respectively.

⁸⁷ . Interview with Ato Mekuanint Aweke, who is the chief director of the public prosecutor office of Sanja Wereda, Sanja, June 10/2012 E.C.

⁸⁸ . Interview with Ato Amsalu Tegen, who is a public prosecutor of Sanja Wereda, Sanja, June 10/2012 E.C.

protection against self-incrimination and so forth there is absolutely no practice of ensuring if these rights are told to the suspect immediately after they are arrested, not at all.⁸⁹ In addition to this, the other interviewee similarly said that, in the first place, since there is no practice of ensuring whether a suspect is arrested legally or not there is no any measure the court could take. When the suspects are brought before the court the first thing the court will do is ask the suspect if they know the reason why they were arrested and if they don't know the court will tell them but the police don't inform the suspects the reason why they were arrested and this happens after the suspect has been detained in the police station for several days, weeks and months for that matter. The right to be brought promptly before a court within 48 hours rarely applies.⁹⁰ Further more, one of the criminal bench judges responded that, frequently the only way we ensure if the suspects were arrested legally or not is when they file a complaint to be released on bail, there is no any other chance. Since the suspects are brought to court after they have been detained for longer time and when they are brought to the court they also bring different complains such as; I'm unlawfully detained, I was beaten and so forth. But the only measure the court can take is to telling the suspects to convey their complains to the concerned government bodies, for instance, to file a complain to the public prosecutor and tell their stories during a visit of the detention center and also we tell them to bring their complains to the chief of the police. When it comes to ensuring whether or not the suspects were informed the reason for their arrest let alone ensuring if the suspects were informed why they were arrested when they get arrested there are many instances where the police don't even know the reason why some of the suspects were arrested and the same goes to the public prosecutor.⁹¹

Here again, regarding the condition and legality of detention the judges also have a responsibility for the violation of the human rights of suspects under police detention. As guardians of the law, whenever a suspect is brought to court the judges are ought to ensure the constitutionally recognized procedural safeguards. As can be understood from article 9 of (3 and 4) of the ICCPR, the reason the detainees are brought to court is because if their detention is illegal then the court is legally required the immediate release of the detainees. The emphasis given to this right can be understood from the law as it also reward compensation to the detainees of arbitrary arrest and unlawful detention. Further more, the prime purpose of article 19(4) of the FDRE constitution is to ensure the condition and legality of detention. Even if the detainees don't challenge the unlawful detention (as they might not be aware of their right) the judges must examine the condition and manner of detention to the extent of ensuring the legality of the detention. If a suspect, who is brought to court, was arrested illegally then the judges must give the proper order in accordance with the law i.e. either release the suspect or order the arrested person to remain in custody or else to remand him (see article 59 of the CPCE). More specifically, the judges also have the duty to ensure if the suspect is brought to court within 48 hours of from arrest and ensure if they are informed the reason for their arrest because the constitution is clear in that if the reason of arrest is not informed to the suspect it could serve as a ground to release him however, in this wereda, it's proven that there is no practice of ensuring the legality of the arrest. In addition to this, as they have responded to the interviewee not only most of the suspects are brought to court after several week or months from arrest but also that many of the suspects even the police doesn't know the reason for the arrest of the suspects. If that is so, then the judges are legally required to order the immediate release of the suspect as per article 19 of the FDRE constitution, however the judges seems to be reluctant to fulfill their duty of ensuring the constitutionally recognized rights of suspects under police detention during pretrial stage. Therefore the judges are also responsible to the violation of the rights of suspects.

3.2.5. Summary

In spite of the existence of procedural safeguards regarding the condition and legality of detention, from the results of the questionnaire and the interviews above, it's possible to infer that, the practice of legal detention and the protection of the conditions that must be protected during arresting of the suspects are not in compliance with what is prescribed by law. For instance, all of the suspects choose they were arrested without summon and without court warrant by the police Tsere Shinik, Milisha, security army and by the regional special forces. The judges, the polices and the prosecutors have made it clear that arrest is made without summon and court warrant for all kind of crimes which is the violation of article 25 and 49 of the CPCE. However, article 26 of the CPCE stressed that if only the suspect has failed to appear as per article 25 that arrest could be possible. As far as the conditions that must be made during arrest is concerned majority of the suspects were not informed the reason for their arrest, they were not told their right to remain silent and that anything they say will be used against them as evidence a practice in violation of article 19 of the FDRE constitution. On the other hand, during their interview the police also confirmed that an arrest is predominantly made without summon and without court warrant to non-flagrant offences and also the rights of the suspect to be informed some of their rights during arrest are also violated. Not only that but also half of the suspects replied that they were not informed the reason for their arrest and also many of the suspects were not taken promptly to the court in 48 hours of their arrest. As far as this right is concerned the public prosecutor and the judges also responded saying that these rights are highly violated. Not only that, some of the suspects didn't know the place they were taken after they were arrested. Further more, as to the interview of the public prosecutor and the judges and the responses of the questionnaire of the suspect it's evident that the practice of challenging unlawful arrest is non-existence which in turn proves the existence of unlawful detention is a persistent practice of this wereda. Even if there is some complaining mechanism still it's not effective as

⁸⁹ . Interview with Ato Temesgen Asre, who is the president of Sanja Wereda court, Sanja, June 09/2012 E.C.

⁹⁰ . Ibid.

⁹¹ . Interview with Ato Adane Abate, who is one of the criminal bench judges of Sanja Wereda court, Sanja, June 09/2012 E.C.

they don't give them proper solution to their specific case. therefore, in addition to the Tsere Shimik, Milisha the police by violating the precondition and legality of detention the judges and the public prosecutors also violate the rights of the suspect with respect to the condition and legality of detention.

3.3. The protection against self-incrimination and the right to remain silent

The other procedural safeguards of the suspects under police detention is the protection against self-incrimination and the right to remain silent. according to the UN human right committee general comment no.32 para.41 the protection against self-incrimination includes the absence of any direct or indirect physical or undue psychological pressure of the suspects by the investigating authorities with the purpose of obtaining a confession of guilt. since Ethiopia has ratified the ICCP, this interpretation is also applicable at domestic level. besides, this right is recognized both under the CPCE and the FDRE constitution.⁹² Accordingly, as soon as the suspect is arrested the arresting authority has a duty to tell the suspect not only he has the right to remain silent but also anything he said or any statement he make might be used as evidence against him before court of law. In relation to the protection against self-incrimination article 19(5) of the FDRE constitution stressed that he/she can't be compelled to make a confession or admission that will be used as evidence against him and if such confession is made in violation of this right then as per the same article the evidence is inadmissible. Furthermore, the importance of this right is clear in that any person who violate this right will be criminally liable.⁹³ As far as the practical application of the protection against self-incrimination and the right to remain silent is concerned a questionnaire holding 8 questions were distributed to 25 suspects who were detained in Sanja police station but one questionnaire was not returned and also to those who were detained in other places as well. in addition to this, key interview informant with the concerned government officials such as; judges, public prosecutors and polices are undertaken the same way to under the section on condition and legality of detention. In the next sub-sections I will present, interpret and analysis the data according to the categories of each respondent as follow.

3.3.1. Data collected from the detainees

Regarding the practical application of this right a questionnaire holding 8 questions were distributed to 25 suspects that were detained in Sanja police station. 1 questionnaire was not returned and also to those who were detained in other places. It consist different question format that is; yes or no question and multiple choices. As a result of this, the detainees responded to the questionnaire in the following manner.

Among them 15 of the detainees didn't know about the existences of the right to remain silent and 7 of them didn't know they have a legal protection against self-incrimination. still 8 of the detainees didn't know that any statement they make will be used against them as evidence before a court of law. it's true that this rights are informed to the suspects as soon as or immediately after their arrests but according the responses of the suspect not only many of them lack the knowledge of these rights but also that it shows the failure of the arresting authorities to inform these rights of the detainees as required by the FDRE constitution.⁹⁴ As a result, we can imagine how the detainees are vulnerable to human right abuses. more importantly, 17 of the suspects hadn't been told that they have the right to remain silent and anything they say or any statement they make will be used as evidence against them. This witness the fact that the arresting authorities don't inform the suspect's right to remain silent and the protection against-self incrimination including the right to be told that anything they say will be used as evidence before the court when they arrest them. As a result, lack of knowledge of this right on the part of the suspect in itself could lead for the miscarriage of justice and we can imagine how the detainees are vulnerable to human right abuses. Not only this but also that 15 of the suspects responded that they were coerced to plea guilty, to incriminate themselves. in addition to this, 15 of them also responded that they they have been compelled to speak without their will about the crime they have been suspected of during introgation/ investigation. In replying to the question about the persons responsible for the violation of the right to remain silent and coercion 15 of the suspects said that they were compelled by police while 1 suspect replied he was compelled by public prosecutors. besides, 13 of the suspects said that, they were coerced to plea guilty on the crime they have been suspected of. hence, it's possible to infer that there is a violation of the right to remain silent and the protection against coercion. In fact, the investigative police before they start to take any statements or confessions of the

⁹² . The Criminal Procedure Code of Ethiopia, Negarit Gazette, Proclamation No. 185/1961, article 27(2), 35(2) and Constitution of the Federal Democratic Republic of Ethiopia, 1995, proclamation No 1, Negarit Gazette, year 1, No 1, article 19 (2).

⁹³ . The Criminal Code of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazzeta, Proclamation No. 414/2004, article 421(1).

⁹⁴ . Constitution of the Federal Democratic Republic of Ethiopia, 1995, proclamation No 1, Negarit Gazette, year 1, No 1, Article 19.

suspect they are legally required to inform the suspects that; he/she has the right not to answer and to choose to remain silent if he/she wishes to including any statements he/she make may be used against him/her.⁹⁵

In addition to these, there are also some real evidences that are gathered from the office of the public prosecutor like pictures of suspects who have been beaten and tortured that can show the high practice on the violation of the right to self-incrimination and the right to remain silent. For instance, Ato Tayeh Mekonen (see annex-1) and Ato Gizachewu Mekonen (see annex -2) Who has been detained for crime of theft. During their stay under police detention, one of the criminal who has been accused of rape and abduction break out of the prison through the roof and escape in the middle of the night. When the police find out his escape they started to torture and beat up every suspect that was under their detention. Finally when the detainees get tired of beaten up they exposed these two suspects to the police saying that they were the one who helped him to escape. As a result, since the police themselves will be accountable for failing to perform their duty the police turned their stick and firearm to these suspects and started to beat them up to death in every part of their body (as can be seen from annex-1 and 2 below). They were torturing them until they incriminate themselves and to plea guilty of aiding suspect to escape the prison. Finally, when they no longer bear the beating these suspects confessed that they were the one who helped the suspect to escape.

Therefore, in addition to the responses of the questionnaire, the existence of beating and torturing also witness the high prevalence of the violation of these rights.

3.3.2. Datas collected from the police

On this topic, 2 major questions which consists many sub-question was forwarded to police. as a result, both Inspector Libanos and Inspector Mekuanint in agreed manner said that, “ there is lack of practice with regard to informing the suspects that they have the right to remain silent and anything they said will be used against them as evidence before a court.” In addition to this, they said that, most of the time we tell these rights to the suspects after they get arrested and brought to the police station but before that there is no such practice of telling this right to the suspects. Especially the protection against self-incrimination hasn't been practiced.⁹⁶ The police also said that, there is no reporting mechanism if there is a violation on the right to remain silent and the protection against self-incrimination. However, the detainees mostly change the confessions they make during police investigations when they are brought to court.⁹⁷

Therefore, the practice of informing the suspect's right to remain silent and that anything they say will be used against them is non-existence in this wereda. there is also a prevalence violation of the right on the protection of self-incrimination. besides this, there is no reporting mechanisms on human right violations which in itself proves the non-availability of remedy to human right violations in practice.

3.3.3. Datas collected from the public prosecutors

When we come to the respondents from the public prosecutor, the first interviewee said that, the practice of informing the suspects they have the right to remain silent and anything they said will be used against, the protection against self-incrimination and other similar right at the time of their arrest is non-existence. practically, the detainees will be compelled to incriminate themselves on the crime they have been suspected of. Even they plea guilty due to coercion which is a violation of the right to remain silent and the right against self-incrimination.⁹⁸ In addition to this, the police let alone to inform the suspects they have rights like the right to remain silent, sometimes they beat up the suspects in order to coerce them to incriminate themselves.⁹⁹ He further said that, during our visit of suspects in the police station, we frequently find suspects being tortured during at night. When we ask the detainees why they

⁹⁵ . The Criminal Procedure Code of Ethiopia, Negarit Gazette, Proclamation No. 185/1961, article 27(2), and Constitution of the Federal Democratic Republic of Ethiopia, 1995, proclamation No 1, Negarit Gazette, year 1, No 1, article 19 (2 and 5).

⁹⁶ . Interview with Inspector Mekuanint, who is the chief criminal investigator of Sanja Wereda police station, Sanja, June 11/2012 E.C and June/12/2012 E.C. respectively.

⁹⁷ .Ibid

⁹⁸ . interview with Ato Mekuanint Aweke, who is the chief director of the public prosecutor office of Sanja Wereda, Sanja, June 10/2012 E.C

⁹⁹ . Interview with Ato Amsalu Tegen, who is a public prosecutor at sanja wereda, Sanja, June 10/2012 E.C.

were beaten they will say that, they were beaten to plea guilty on the crime they didn't commit which is a practice against these rights.¹⁰⁰

Therefore, we can infer from the above respondents that, there is no practice of informing the suspects that they have the right to remain silent and anything they say will be used against them including the right against self-incrimination. Especially the police not only violate this rights but also they practically coerce the suspects to plea guilty on the crime they are suspected of. This is a practice against the rights that are clearly recognized and protected under the FDRE constitution and the CPCE.

3.3.4. *Datas collected from the judges*

When we come to the last category of the key interview informants. The judges who work in Tachi Armachiho Wereda responded saying that, there are many situations where detainees are brought to the court beaten up and tortured and some times they even take their cloth off to show us how they were beaten. Even when the police themselves bring suspects saying that they have plead guilty we will ask the detainees if they pleaded guilty. But most of them will say that I didn't plead guilty and the most common rason they gave us is that, it's not my word or I didn't said like that, they were torturing me so I was coerced to put my signature and so forth. Torture is one of the most employed methods of investigation to obtain confession.¹⁰¹ In addition to this, the other judge said that, the police don't inform the rights of suspects during arrest. There is frequent practice of obtaining confession through torture and compulsion.¹⁰²

Therefore, according to the responses of the jduges, practically there is gross violation of this rights in this wereda. the legal protections given to suspects at the time, during and after arrest are highly breached particularly by the police and by any other arresting authorities.

3.3.5. *Summary*

As a result, regarding on the rights of suspects to be informed their rights during and after arrest, such as; the right to remain silent and anything they say will be used against them as evidence and the protection against self-incrimination including the prohibition of forced confession the responses of the suspects, the interview made with the police prosecutor and judges shows that these are the most highly violated rights. More importantly, informing the rights to remain silent and anything they said will be used as evidence before a courts has never been practiced which is also confirmed by the police themselves. Therefore, it's highly possible to conclude that, in Tachi Armachiho Wereda Sanja city the right to remain silent and the protection against self-incrimination, obtaining forced coffession and compelling the suspects are the most violated pretrial righs of suspects under police detention and the practice violates the rights which are guaranteed under article 19(2)(6) of the FDRE constitution and article 27,35 of the CPCE including article 14 of the ICCPR and general comment 32 of the human right committee of the UN.

3.4. *The right to be release on bail pending pretrial investigation*

As far as the right to bail is concernd the article 9(3 and 4) of the ICCPR and UN human right commission general comment 8 stressed that, in principle a person awaiting trial shall not be detained save in exceptional situations prescribed by law where shall he/she be detained awaiting trial. this right is also recognized under article 7(1)(d) of the ACHPR and Principle 38 of the Body of principles for the treatment of Persons under any form of detention or imprisonment. More specifically, under article 19(6) of the FDRE constitution unambiguously stressed that the right to be released on bail pending pretrial investigation is a principle and it's only in exceptional cercumstances prescribed by law that the right to bail can be denied. in adition to this, the right to be released on bail is a principle under article 63 of the CPCE. Among other laws, the grounds upon which the right to bail can be denied are incorporated under articl 63 and 67 of the CPCE. there are also other laws that deals with the right to bail, for instances, in corruption crime proclamation no 434/2005 for an offence that is punishable for more than 10 years may not be released on bail and according to the anticorruption proclamation no 882/2015 under article 3(1) for concurrence crimes punishable with less than ten years but more than 4 years in each of the count may not be released on bail. Hence, these are the threshold of granting or denying the right to be released on bail. therefore, it's only in exceptional cercumstances prescribed by law that the right to bail can be denied otherwise the right to be released on bail pending pretrial investigation is a principle.

¹⁰⁰ .Ibid

¹⁰¹ . Intrview with Ato Temesgen Asre, who is the president of the Sanja wereda court and the judge Dessalegn Yeneakal, who is the criminal benche directorate of judges in Sanja wereda, Gondar, June 09/212 E.C and Sanja, June 11/2012 E.C.

¹⁰² . Interview with Ato Adane Abate, who is one of the criminal benche judge at Snaj wereda court, June 09/2012 E.C.

Coming back to the practice which is the main concern of this study, to get a depth understanding on how the law is practically applied I have prepared a questionnaire, interview and also look into some of the dead files that have been opened in 2012 about bail right. A questionnaire holding 6 questions about this right were distributed to 25 suspects who were detained in Sanja police station but one questionnaire was not returned and also to those who were detained in other places. It consists of different question formats that is; 5 yes or no questions and 1 open ended question. Besides, key interview informant with the concerned government officials such as; judges, public prosecutors and police are undertaken the same way to other rights. The hard copy of some of the dead files on bail right will also be attached to the main thesis. In the next sub-sections I will present, interpret and analyze the data according to the categories of each respondent as follows.

3.4.1. Data collected from the detainees

To know whether the detainees know the right to bail or not a question was presented, however 8 of the detainees didn't know anything about the right to bail. Surprisingly, 20 of the detainees didn't know that they have the right to request their right to be released on bail within 48 hours of their arrest. Here, we can infer that they haven't been told to request their rights by the public prosecutors. Further more, only 13 of the detainees requested their right to be released on bail but only 2 of the detainees were granted their right to be released on bail through the court order. As a result, among the 11 detainees who were denied to be released on bail, 7 of the detainees are suspected of illegal restraint which is found in article 585 of the FDRE criminal code, 4 of the detainees were suspected of homicide which is found in article 539 of the FDRE criminal code, 5 suspects returned the questionnaire with a blank space, 1 detainee was suspected of robbery which is found in article 670 of the FDRE criminal code, 1 detainee was suspected of being an outlaw/bandit and they denied him the right to bail on the ground that if he gets out he will escape and disappear, 2 detainees said they were denied their right to bail on the ground that if they get out they will escape and disappear but they didn't include the crime they have been suspected of, 1 detainee was suspected for an arm fire which is found in article 808 of the FDRE criminal code and denied his right to bail for that crime, 1 detainee filled the blank space saying that he didn't request to be released on bail because the police was scaring me that if I do request to be released on bail they will deny me, 1 suspect also said I didn't request to be released on bail because I have no money to pay but he didn't mention the crime he has been suspected of, 1 detainee said I didn't request to be released on bail because, he said, "they brought me here yesterday as I was detained somewhere else than the police station." Finally, 17 detainees said that their right to be released on bail is not properly respected and 1 person chooses to remain neutral. When we examine the decision of the court on bail right, only two of the detainees were granted their right to bail out of the 11 of suspects who had been denied their right to bail and only 4 of them are justified to be denied and the rest of 9 of them were denied their right to bail on unjustified grounds. Therefore this uncovers the existing reality that the right to bail is not practiced with the strict observance and requirement of the law.

3.4.2. Data collected from the police

The same way to the above pre-trial rights, here under this section 1 major interview question which consists of many sub-questions was forwarded to police. The first respondent to these questions was Inspector Libanos; he said that, some detainees are released by police bail bond while others are granted bail right through the court order. Some of the crimes which we deny the right to bail are; homicide, grave willful injury and rape, in addition to these, when the crime committed is complicated we deny the suspects right to be released on bail by requesting remand to the court. The other interviewee also said that, when it comes to bail right most of the time there is a huge problem of shifting the burden to the court in order to escape from accountability, for instance when the crime was simple that the detainees could be released by police bond as per article 28 of the CPCE there is a situation when the detainees will be obliged to request bail right to the court. There is also a trend of denying the suspects right to be released on bail on the ground that if he is released he will never come back without any evidence on the matter. The other huge problem is, due to the fear that the court might grant the suspects bail right there is a practice of requesting remand immediately after the suspect is brought to the police station while the request for remand was not proper for the matter which in turn results in delayance of the case. Sometimes, even after the investigation was completed there is a practice of requesting a remand for investigation pretending that they needed additional time for investigation due to the need to charge the suspect by RTD and then sentence him as quickly as possible. As a result, we know what the law says regarding the right to be released on bail pending pre-trial investigation; however the problem with the practice is denying the right to be released on bail for offences that are bailable and then make the suspects and their family suffer from application to court of appeal where bail is refused. Therefore, there is a gap with the practice as there is a trend of refusing bail for bailable offences.¹⁰³ From the above responses it's possible to infer that, in this Wereda the police don't properly apply the law regarding bail right. When the crime they are suspected of is bailable they deny their rights on the grounds of article 67 of the CPCE without the presence of any of the conditions specified in the law. Therefore, regarding the practical application of the law on bail right the police violate the right of the detainees.

¹⁰³ . Interview with Inspector Mekuanint and assistance sajin Amare, who are the an investigative police at Sanja wereda police station, June, 12/2012 E.C.

3.4.3. Datas collected from the public prosecutors

Regarding the practical application of the right to be released on bail pending pretrial investigation an interview question was presented to the prosecutor. The first respondent said that, we grant and deny the bail rights of the detainees based on the grounds specified by CPCE, for instance, if it's a homicide case we refuse bail as per article 63 of the CPCE and if there is sufficient reason on the conditions specified under article 67 of the CPCE we refuse the right to be released on bail. The problem is that we frequently based our recommendations to grant or refuse bail right to court based on the opinions of the police on every matter.yet, since all the opinions of the police might not be reliable there are instances where we refuse the opinion of the police and give our own recommendation based on the requirement of the law.¹⁰⁴ the other prosecutor said that, we frequently use the law as a bench mark to grant or refuse the right to bail, such us; article 63 and 67 of the CPCE. However, there are instances where we give a recommendation on the right to bail in deviation to the law. for instances, if the alleged offence is not within our jurisdiction,if the crime is homicide case, grave robbery, crimes against tax law, corruption cases and so forth. if the crime is illegal constrain still we refuse the right to bail on the ground that the crime is grave in this community and most of the suspects in similar crimes won't return back once they are released on bail.¹⁰⁵ Here again the prosecutors themselves said it that they sometimes deny the right to bail on bailble offence in deviation from the law.they also deny bail right to crimes like robbery and illegal restrain while theses are crimes that can't serve as a ground to refuse bailright. Therefore, the public prosecutors also violate the right of the detainees to be released on bail pending pretrial investigation.

3.4.4. Datas collected from the judges

The judges were asked similar interview question like that of the public prosecutor. They responded that, we use article 63 and 67 of the CPCE as a threshold to grant or refuse the right to bail. We strictly apply the law; however article 67 of the CPCE is controversial.¹⁰⁶ In responding to similar question, another judges of this wereda court said that, we usally work base on the law; nevertheless, Tachi Armachiho Wereda is one of the places where much grave crime is committed. It's a place where illegal restraint and out law/bandit crimes are committed with high rate so if the suspects are released on bail there is a high chance of disappearing and never coming back. Hence, even if the laws don't deny their right to bail, we refuse their right to bail by considering the situation of this area.¹⁰⁷ He further said that, More importantly, in this Wereda, currently the community is fleeing to Gondar city and other places by leaving their village due to the fear that they will be the next victim of illegal restraint crimes.As a result of this, there is a trend of refusing the bail rights of suspects of illegal restrains by disregarding the law.¹⁰⁸ Additionally, the last interviewee of the judges said that, "the grounds upon which we refuse right to bail depend on the specific situation of each case. When the crime they are suspected of is the one that deny the right to bail we refuse their right to bail. In addition to this, by taking the particular situation of this Wereda such as; illegal restraint, fire arm and other crimes in line with article 67 of the CPCE there are situations where we deny the right to bail in deviation from the law."¹⁰⁹

As a result, the judges, in addition to the grounds of article 63 and 67 of the CPCE they also use the situation of the wereda and their own reasoning to grant or deny the right to be released on bail for instance illegal restraint is aailable offence but in this wereda the judges seemed that, they have reached at consensus to deny the right to bail on illegal restrain crimes. Therefore, the judges also violate the rights of the detainees to be released on bail pending pretrial investigation.

3.4.5. Datas collected from dead files of bail right

In addition to the questionarie and the interview, I have examined some of the dead files on bail right that has been adjudicated by Sanja Wereda court in 2012 E.C and also the recommendation of the public prosecutors to the court on the same right.let's see some of them, Ato Aluye Yilak were arrested due to a suspicion of trafficking and trading illegal firearms as a result they requested the court to be released on bail. Ultimately, the court decided denying their right to bail and the grounds for denying their right was that, since trafficking and trading illegal firearms are one of the most serious crimes which our country is current facing with high rate and since such kind of crimes are committed with many chain involving high amount of money, we believe that if the suspects are

¹⁰⁴ . Interview with Ato Mekuanint Aweke, who is the chief director of the public prosecutor office of Sanja Wereda, Sanja, June 10/2012 E.C.

¹⁰⁵ . Interview with Ato Amsalu Tegen, who is a public prosecutor at sanja wereda, Sanja, June 10/2012 E.C.

¹⁰⁶ . Intrview with Ato Temesgen Asre, who is the president of the Sanja wereda court, Gondar, June 09/212 E.C

¹⁰⁷ . Interview with Ato Adane Abate, who is one of the criminal benche judge at Snaj wereda court, June 09/2012 E.C.

¹⁰⁸ .Ibid

¹⁰⁹ . Interview with Ato judge Dessalegn Yeneakal, who is the criminal benche directorate of judges in Sanja wereda, Gondar, June 09/212 E.C and Sanja, June 11/2012 E.C.

released on bail they will not comply with the conditions laid down in the bail bond, as a result their right to bail is denied as per article 67(A) of the CPCE.¹¹⁰ However, the government considering the seriousness of this kind of crime has come up with the new firearm administration and control proclamation No.1177/2020 to specifically govern similar kind of crimes; however, it doesn't deny the right to be released on bail. Similarly, Ato Guade Ayalewu was arrested by police due to suspicion of theft and he requested to be released on bail. The court decided to deny his right to bail on the ground that since the surrounding of the Wereda is convenient for suspects to disappear we believe that if the suspect is released on bail he might to come back and he will not comply the conditions laid down in the bail bond as a result, as per article 67(A) of the CPCE his right to be released on bail is denied.¹¹¹ The other suspect was, Ato Abebawu Mekuanint who is suspected of illegal restrain requested his right to be released on bail and the court decided to deny his bail right on the ground that illegal restrain is predominantly committed a crime and that if his right to bail is granted the suspect might not comply with the precondition of the bail bond as a result his right to bail is denied as per article 67 of the CPCE.¹¹² Similarly, Ato Hunegnawu Lakewu was also a suspect of illegal restraint crime. When he apply to be released on bail to the court, the court said that, since it's highly committed crime in this Wereda and since suspects of this kind of crime will not comply with the condition of the bail bond and as the crime is committed with many chain his right to be released on bail is denied.¹¹³ These are just to show how the right to bail is not practiced with the strict requirement of the law, more importantly; article 67 of the CPCE is highly violated provisions both by the public prosecutors and the judges of the Wereda. In the above cited bail cases the public prosecutor also gave recommendation to the court by denying the rights of suspects to bail especially in case of illegal restraints the prosecutors seems to reach at agreement to deny bail right. However, the federal Supreme Court cassession division passed a binding decision regarding the practical application of article 67 of the CPCE. It decided that the court on denying bail according to article 67(A) of the CPCE to base their decisions with objective and indicative evidence that there is high chance the suspect will not comply with the conditions of the bail bond.¹¹⁴ Yet, in this Wereda they apply this law without considering the existence of circumstances that justifies for denying the right to bail and also disregarding the binding decision of the federal Supreme Court cassession division.

3.4.6. Summary

From the above analysis on the right to be released on bail pending pretrial investigation the responses of the detainees, the police the public prosecutor and the judges including the dead files that has been cited altogether can lead us to conclude on the existence of violation of the right to bail. Leaving the police aside, still the prosecutor and the judges are the main actor for the violation of this right by disregarding the conditions specified under FDRE constitution and the CPCE.

3.5. The right to human condition of detention and the prohibition of torture

The last section of this chapter is the right to human condition of detention and the prohibition of torture which is one of the fundamental pretrial rights. It's believed that, every detainees must be kept in a condition where their human dignity is protected consistently. Article 10(1) of the ICCPR required that, "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." besides, the right to be treated with humanity and with respect to the inherent dignity of human person is also recognized under the various international and regional human right instruments.¹¹⁵ as a result, It must be clear from the outset that, the UN HRC on its general comment 21 has created a strong connection between the prohibition of

¹¹⁰ . *Ato Maleda Telesu and Ato Aluye Yilak v public prosecutor, Tachi Armachiho Wereda Court criminal division on file number 0565291, in 2012 E.C.*

¹¹¹ . *Ato Guade Ayalewu v public prosecutor, Tachi Armachiho Wereda Court Criminal Division on file number 056508, in 2012 E.C.*

¹¹² . *Ato Abebawu Mekuanint v public prosecutor, Tachi Armachiho Wereda Court criminal division on file number 0565241, in 2012 E.C.*

¹¹³ . *Ato Hunegnawu Lakewu v public prosecutor, Tachi Armachiho Wereda Court criminal division on file number 0565293, in 2012 E.C.*

¹¹⁴ . *Ato Ayalewu Tesema (three people) V the Ethiopian Custom Authority, the federal supreme court cassession division on volume number 12 file number 59304, in 2003 E.C.*

¹¹⁵ . The Body of principle for the protection of all persons under Any form of Detention or Imprisonment, Adopted by the General Assembly Resolution 43/173 of December, 1988, principle 1, the African charter article 5, African commission on Human and Peoples' Rights, principles and guidelines on the rights to Fair Trial and Legal Assistance in Africa, section M(7).

torture (see article 7 of the ICCPR) with the right to human condition to detention(see article 10 of the ICCPR. As per its recommendation on article 10 of the ICCPR any detained person must be accorded the international minimum standards of protection to human rights as a free man with the exception of deprivation of their liberty. The UN General assembly and the HRC emphasized that “excessive incommunicado detention” such as detention in unofficial and secret places could result in for the violation of the prohibition of torture or other cruel inhuman degrading treatment or punishment which amounts to the violation of the right against the prohibition of torture.¹¹⁶ As a result in addition to the ratifying the ICCPR the Ethiopia has the obligation to respect and protect those general comments given on the international human right instruments ratified by it.more specifically, as per article 13(2) of the FDRE constitution, the fundamental rights and freedoms specified under chapter three of the FDRE constitution must be interpreted in a manner conforming to the principles of international human right instruments. Surprisingly, the FDRE constitution Stressed that all person in custody have the right to treatments respecting their human dignity. They also must have the opportunity to communicate with the out side world.¹¹⁷ in addition to this, as i have said it in chapter two,even if the word torture is not explicitly incorporated under article 18(1) of the FDRE constitution still it stressed the need for the protection of all persons, including suspects under police detention, from all forms of cruel, inhuman and degrading treatment and punishment.The strict prohibition of torture can be understood from the reading of article 28 of the FDRE constitution which puts torture with equal footing of other crimes that can’t be bared by period of limitation. The emphasize given to this right is evident when one take notice of a crime of torture in the category of a crime that can’t be granted amnesty nor pardon and the non- derogable nature of this right even in emergency situation makes it an absolute right. This can be understood from the reading of article 93(4) (c) of the FDRE constitution. Furthermore, article 424(1) of the criminal code recognizes and penalizes the various means and method of employing torture which includes, physical, mental and psychological torture. Besides, to the prohibition of torture, the criminal code under the caption of use of improper method also addresses the right to human condition to detention very well.¹¹⁸ And more importantly, article 19(6) of the FDRE constitution when an arrested person is compelled to make confession to the crime he has been suspected of such confession is ought to be inadmissible as evidence before the court. Legally speaking, the newly enacted proclamation on prevention and suppression of terrorism crime no. 1176/2020 can be appreciated for its incorporation of provisions dealing on the right to human condition to detention under article 45 of the same law which reads as, “a person who is in detention center or prison on suspicion or accusation in connection with crimes provided for in this proclamation shall be protected in accordance with the constitution of FDRE , international agreements ratified by Ethiopia and other laws of the country concerning rights and conditions of suspected or accused persons.” All in all it’s safe to conclude that the prohibition of torture and the right to human condition to detention is well covered under the Ethiopian law.

As far as the practical application of the law on prohibition of torture and the right to human condition to detention is concerned, a questionnaire, an interview, persona field observation had been undertaken. A questionnaire holding 11 questions about this right were distributed to 25 suspects who were detained in Sanja police station and also to those who were detained in other places. It consist different question format that includes; 6 yes or no questions, 2 multiple choice and 3 open ended question. Furthermore, to get depth understanding of the objective of the study, key interview informant with the concerned government officials such as; judges, public prosecutors and polices including those who had been detained at the unofficial center are undertaken the same way to other rights.the hard copy of some of the complaint files to the court will also be attached to the main thesis.In the next sub-sections I will present, interpret and analysis the datas according to the categories of each respondent as follow.

3.5.1. Datas collected from the detainees

In replying the the questionnaire, 16 of the detainees didn’t know they have the right on the protection of cruel, in human and degrading treatment. They also said that they were a victim torture, in-human or anyother similar treatments while they were under police detention. While 15 of the detainees’ right on prohibition of torture were violated by the police the rest of the detainees replied that, their rights were violated by Tseré Shimik. Due to this, the data showed that, 7 of the detainees filed a complaint regarding the violation of this right. Many of them bring their complaint to the police, some to court, some to public prosecutors and some to both the court and the prosecutors; however, the responses they get for their complaint were not effective; to some they didn’t get the proper solution at all and to others they only get the right to be heard.regarding the right to human condition to detention; 23 of the detainees said that, there was no enough facility service such as; food, water, shawor, clean toilet, enough sleeping bed, bespread, matters and healthcare services during you’re their stay under police detention. Due to lack of basic facility services, majority of the detainees requested the chief of the police to be provided with basic facilities, others bring their complain to the prosecutor. Yet, the

¹¹⁶ UN General Assembly, UN Doc. A/RES/60/148, 16 December 2005, Article 11; UN Commission on Human Rights, UN Doc. E/CN.4/RES/2005/39, 19 April 2005, article 9.

¹¹⁷ . Constitution of the Federal Democratic Republic of Ethiopia, 1995, proclamation No 1,Negarit Gazzeta, year 1,No 1, Article 21.

¹¹⁸ . The Criminal Code of the Federal Democratic Republic of Ethiopia, Federal NegaritGazzeta, Proclamation No. 414/2004, Articl424 (1).

only solution they get differs in nature; to some they were told it will get better, Other suspects wrote that, they has brought a petition to the police saying take me to jail for I will get enough facilities such as food, water and bed but they still don't take me yet, Some wrote saying they didn't take any action to get the service while many of them filled the blank space by listing the existing problem with the facility services in deviation to the intention of the question. However, it's worth to explain some of the problems they had listed in the blank space, these are; the suspects said that there is no enough class to sleep due to the narrowness of the room we sleep on turns as the room is not enough to let all the suspects who are more than 70 to sleep at the same time, there is no blanket nor mattress, no rug, no food sometimes they gave as roasted grains to eat but still there is high shortage of foods we spend most of our time with an empty stomach, and no healthcare service, when it comes to hygiene as the room is not clean. As far as shower is concerned even if we are allowed to take shower once every week but we take by our own money only those suspects who have money that can take shower while those who don't have money can't take shower, still the other problem is toilet as it's not cleaned and that there is only limited time to use are some of them. the other important point is that, 6 of the detainees were not taken to the court immediately after their arrest. They were taken to other places and it's after a while that they were brought to the police detention center. in addition to these, 10 of the detainees were prohibited to be visited and to have communication with their families and any other visitors and some of the reasons why they were prohibited to be visited by families and to have a communication to the outside world are different, such as; some say they don't know the reason why they were prohibited to be visited, other say there are times when our family come to visit us within the visiting time with foods but they were told to return by saying that it's not a visit time and we were prohibited to communicate with them, they also prohibit as to communicate and talk with our family when they come to visit us, they say don't talk too long and sometimes they stoped as saying you are running out of time while there was enough time, they don't allow as to consume the food and drinks our family brought us when we need it unless it's a comfortable time for themselves. we don't even have the right to take water timely, they prohibited me to communicate with my family and the reason they gave me was my son is a criminal and he is wanted badly and so forth.

According to the data, In addition to the existence of torture, as we can infer from the data, there is no enough facility service, the only food the government can provide them is roasted grain with limited amount, to say the least they can't even provide them sufficient water, no bespread, no rug or mattress. What is even wondering is the fact that more than 70 detainees are held within a room and as a result of that, they all can't sleep at the same time the have to wait their turn until half of them leep. There is also a violation on the right to be visited by families, relatives and close friends and to some they can't be allowed to have communication to the outside world. international laws stressed the need to keep detained persons whose liberty has been deprived in a place that is officially recognized.¹¹⁹ However, in this wereda, some of the detainees were also held in unofficial detention center other than the police station. the detainees were a victim of cruel in human degrading treatment and punishment in violation of article 18 of the FDRE constitution which is about the prohibition against inhuman treatment. therefore, the existence of all this inhuman degrading treatment and torture proves that in this wereda the violation of the right to human condition to detention and the prohibition of torture is real.

3.5.2. Datas collected from the police

Datas concerning this rights were also gathered from the interview of the police. Some major questions which consists many sub-question was forwarded to police. The first respondent to these questions was Inspector Libanos; he said that, the police have the duty to ensure the rights of the detainees are protected in accordance with the law. Even if the regional police commission gives training to the police, in particular in this wereda the suspects have a problem of coming to the police station peacefully; as a result the police will be obliged to take proportional forces to secure the arrest of the suspects. The police know the human right treatment given to suspects but it's hard to conclude that they are perfect in knowing all the police sciences. There are some police forces that lack the required training due to lack of enough training and other problem. Coming to the facility services, if there is a medical problem they will be medically treated immediately. There is two classes in the police station, one for women detention and the other for men, however the class is so narrow and the other problem is related with sleeping spaces. Therefore, the class is not as standardize as it should be. There is no problem with water but when it comes to food most of the time they are provided by their family and to those suspects who have no visitors we will provide them grain. But the police station have only limited amount of grain which is not enough. there is no enough budget to some services including to the classes. Sometimes there is a fear that the suspects will run due to the narrowness of the classes the local government has to do something about it. The other interviewee were Inspector Mekuanint and assistance Sajin Amare said that, The role of the police regarding to the protection of the human rights of suspects under police detention is so wide, starting from protection of the right to bail, the right to be brought to court in 48 hours and the right to be visited by the family including the right to get to speedy trial and transfer to jail where they could find better facilities are some of them. But we can't boldly say that the police are perfect to respect and protect this rights. When we see the understanding of the police on the human right treatments that should be given to the suspects some of them have better understanding but most of them have very

¹¹⁹ . The convention on forced disappearance, article 17(2)(c) and African commission on Human and Peoples' Rights, principles and guidelines on the rights to Fair Trial and Legal Assistance in Africa section M(6)(a).

low understanding. Right from the time of suspicion up until the time they get arrested there is huge human right violation by the police. There is also torture and beating up when they brought them. Not only do they coerce them to plea guilty but there are situations where they are brought being beaten and bleeding. As far as the human right treatments of the suspect is concerned in the police station there are times where 60 upto 80 suspects will be detained in a single narrow room which results violation of rights. Some times they degrade the suspects by calling them with the crime they are suspected of than by their real name. There is also a tendency of calling, insulting, considering and treating them as a criminal guilt than a suspect. Due to lack of Budget there is no enough food for them. The mjoor problem in relation to torture and in human treatment is because any militant and security force can arrest a suspect. The securiyt force works both in organized and unorganized manner forinstance; Tsere Shimik, Milisha, the regional special force (Liyu Hayil), security army and the regional police force they all can arrest a suspect in this wereda. the fact of the matter is that in all of them there is a human right violation. Though the government doesn't provide the detainees foods and water they are provided by their family. There are frequent human right violations such as, calling the suspects by the crime they are suspected of than by their own ser name, they don't brought the suspect to the court within 48 hours and so forth. with respect to the the protection of the human rights of suspects through facility services such as food, water, shawor, clean toilet, enough sleeping bed and healthcare services...Etc. the capacity or the resources of the police station is very low and limited due to lack of enough budgets, and paying little attention to the matters are some of the attributes of these problem. Further more; the chief of the police Wana Inspector Libanos said that, the detainees have a trend of bringing a complain on human right violations to us, for instance; the request to be released on bail, the right to be promptly be brought before the court, the right to speedy trial are some of them. However, we don't have trend of report mechanism on human right violation. Sometimes after the suspects are detained they tried to escape from the station in such situation the police will take proportional force such as beating.hoever, if the police violate the human rights of the detainees there is accountability. The human right treatment given to the suspect under police detention is not as we expected it to be. There is class narrowness problem sometimes more than 70 suspects will be detained under one class, the weather itself is another probem as it's a desert area. In general, taking the specific situation of the Wereda the human right treatment is not as it should be there are many problems. In this Wereda, in addition to the police station they keep suspects in other places. They use places like the Special Forces (Ye Liyu Hayiloch) camp for human trafficking and other similar criminal suspects. Sometimes they also detain suspects at local level by the local administrator (kebele Astedadari).The other interviewee Inspector Mekuanint, in responding to the similar question said that, the suspects bring some right violations such as food, sleeping space, they come after being beaten with flesh wound and injury but the responses they get is ignorant of the existing situation and pass their complain as if nothing happened. Human right violations are committed to the suspects by police, special force, security army, Tsere Shimik, and Milisha but there is no accountability because they will reply saying he started running, he was trying to escape so I use proportional force. Physical violation like beating and detaining a suspect more than 6 month without any charges are some of the frequently violated rights of suspects but there is no accountability. There is no reporting mechanism on the existence or non-existence of the human right violation as there is no responsible body. The only thing we can do is to say we can't accept a suspect with physical abuse and beating. Some times we refuse to receive the suspect until they take them to hospital for medical treatment. Among other things, the main reason for the low human right treatments are; the existing reality of the Wereda, the problem with the working procedures of the government forinstances; budget, lack of accountability to the violators, lack of awareness from the Wereda administrator upto the police as they don't consider human right violation is a punishable offence, lack of legal awareness, there is also a problem with the suspect, such; they have a trend of fleeing to the forest trather than coming to the police station and the culture of considering an out law as a bravery are some of the reasons for the human right violations.

As a result, in Tachi Armachiho Wereda, we can say that the police don't have sufficient knowledges on the human right treatments given to suspects under their detention. From the interview, the police themselves confirmed that, there is a practice of torturing suspects and giving inhuman and degrading treatments. In addition to this, they don't bring them to court within 48 hours of their arrest; they sometimes prohibited them to be vistited by families, relatives and close friends, they also prohibit them to have a communication with the outside world. What is even worse is the fact that, there are no basic facility services such as; as food, water, shawor, clean toilet, enough sleeping bed and healthcare services and so forth. Due to lack of resources of the police station there is only two rooms one for men one for women, but they held more than 70 detainees within a single narrow class. All these practice are considered as inhuman condition to detention. The existence of torture, coercion, violation on the protection of self-incrimination and forcing the suspect to plea guilty, lack of proper healthcare, unsanitary of the detention class, lack of sufficient sleeping place, calling the detainees with the crime they are suspected of than their real name, considering them as a guilty than a suspects, the absence of reporting mechanism on human right violation are all violation of the right to human condition to detention and the prohibition of torture. Despite the high prevalence on violation of thes rights, the absence of proper accountability on the perpetrator also makes the problem to persistently continue.therefore, we can safely conclude that, the practice of the police with regard to the right to human condition to detentionand the prohibition of torture are in violation of article 13(2),18 of the FDRE constitution, article 423 of the FDRE criminal code and also the international agreements which the country had ratified.

3.5.3. *Datas collected from the public prosecutors*

As far as the practical application of the right to human condition to detention and the prohibition of torture are concerned the other key interview informants were the public prosecutors. The first respondent said that, some of the complains the detainees bring are; we are brought without summon and without court warrant for non-flagrant offence, beating in a way that could result physical and psychological torture. In this Wereda the violation of human rights reached at alarming stage, for instance; during the time of investigation the investigator police don't inform them their rights like the right to remain silent, the protection against self-incrimination, the right to be brought promptly before court within 48 hours. Concerning the class of the detention centre; the class is not proportional to the number of the detainees as there is not enough space, they keep many suspects into one narrow class, there is not enough food and water facility service most of the time their food is covered by the visitors, even they held all the suspects including those suspected of grave crime and petty offence together, they also keep young offenders with adult offenders together, they often held some suspects with hand handcuff and chains illegally, there are also instances where they keep some suspects more than 3 to 4 months without bringing them to the court this happens especially to those suspects whose case is to the jurisdiction of the higher court than the Wereda court. This is due to the fact that the suspects are caught and arrested before the completion of the investigation. These violations are committed by many actors such as; the police, Tsere Shimik, Milisha, the regional special force (Liyu Hayil), the peace and security institutions are some of them. When the detainees tell us their cases during visit of the detention center we order their cases to be investigated as soon as possible, but since it's the police that investigate the crime they don't bring the investigations in efficient manner. Due to this, some times we report the human right violations to the concerned Zonal office of public prosecutor and to the Zonal office of the police. Furthermore, when we see the accountability of the right violators, since it's the police themselves that investigate the case and bring the file most of the time they don't respect our orders. As a result it's safe to say there is no accountability. The main factors for the violation of the human rights of suspects are; the legal institution themselves don't respect the law such as police and other security and peace forces, the low level awareness of the community about the human right treatments of suspects are some of them.¹²⁰ They also said that, we frequently find beaten and tortured suspects during our visit to the police station. They also bring us a complaint in this regard, but to take measure when we ask the police why the suspects were beaten or stricken they would say that they tried to escape or we take a proportional force when they tried to take our firearms away and so forth. As a result, the only measure we take is to give an order to the police to investigate the person responsible for the violation. Concerning facility service, drink water and food service is not enough and when we come across a suspect in need of medical attention we order the police to take them to the nearest hospital but if the suspects don't have money then they will not be taken to the hospital as there is no budget from the police intended for this purpose and sometimes other suspects contribute money to cover the expenses. The main reasons are; the fact that the concerned organs in the Wereda such as peace and security and the administration don't pay proper attention to allocate budget to this purpose, concerning food lack of enough budget, keeping the suspects whose investigation is completed and not completed together, the problem of detaining individuals for actions that has no criminal liability and the narrowness of the class are some of them.¹²¹ Furthermore they said that, of course, there is another detention center other than the police detention center. This place is not legally recognized as detention place; however, they use the public transport center to detain many people. Even from November up to the end of December 2012 E.C. they have detained more than 300 people in this place. To begin with the human right treatments of the detainees, first of all detaining in a place like this which is not legally recognized in itself is not legal to either the government or any individual, as a result of that, detaining in that place itself is inhuman action and illegal. Beside this, since it's a transportation center they detain them in a place where there is not enough basic facilities such as; no food, no water, no sleeping bed, they don't even have any bespread where they can lay on the ground, as the place is open air space and there is no classes that caused them to suffer from the warm heat of the sun on day time and chilly weather at night time. Besides, since it's a desert area that also causes them to suffer more from communicable disease such as flue and Typhoid fever (Tayifoyid). Some are detained for short time while others for longer time which ranges from 1 week upto 2 months concerning their right to be released on bail, to be visited by the police and the public prosecutors there is no possibility to visit them nor to release them on bail bond as the place is not legally recognized. Most of the detainees are elder parents and their age ranges from 40 – 80 years old. They didn't ask us their rights to be released on bail or any other rights but they organized a petition complaining on the human rights abuse they are suffering; saying that they are illegally detained. Due to this fact, we recommended them to apply to the court for request on their right to habeas corpus. Frankly speaking, there is no one who could take the responsibility to their detainment in this place, yet they were detained through the coordination of the peace and security forces from the regional government upto the Wereda government. The intention of detaining them in this place is to stop the predominant crimes of this specific Wereda which is "illegal restrain". Due to this fact, it was impossible to make them accountable of their illegal action, but we have taken the case to the regional human right commission and to the Zonal public prosecutors on human rights directorate

¹²⁰ . Interview with Ato Mekuanint Aweke, who is the chief director of the public prosecutor office of Sanja Wereda, Sanja, June 10/2012 E.C.

¹²¹ . Interview with Ato Mekuanint Aweke, who is the chief director of the public prosecutor office of Sanja Wereda and Ato Amsalu Tegen, who is a public prosecutor at sanja wereda, Sanja , June 10/2012 E.C and June 10/2012 E.C.

and they didn't give us any solutions. The main actors and responsible for the violation of these human rights are; as an institution the Wereda governments, of peace and security from the regional to the Wereda level, police, Tsere Shimik, Milisha they have a chain from the regional government to the Wereda government. Surprisingly, the regional government president Ato Temesgen Tiruneh on the Amhara mass media broadcasting corporation make a statement by taking this experience as a good example. He gave announcement on the eve of Christmas holiday in 2012 E.C. saying that we have controlled the illegal restrain criminals and we have detained the suspects while in fact the detainees were not the suspects of the illegal restrain crimes rather they were the relative, close friends and families of the suspects. The original intention of detaining the relatives, close friends and families of the criminals were intended to enforce them to bring the main criminal offenders because if their families, relatives and friends are detained for the crime the outlaws have committed the real criminal would give their hand to the government that was the aspiration for such illegal act.¹²²

In addition to the responses of the interview and the questionnaire, there are pictures of the suspects who had been beaten and tortured. A picture the public prosecutors had taken during a visit of the detention center when they find a beaten and tortured suspect. These happen when they are forced to incriminate themselves or when they were brought to the police station by the arresting persons. In this Wereda the existence of torture, inhuman, degrading treatment is true. As repeatedly said by prosecutors and judges, the detainees and their families even by the police beating and torture are committed by the Tsere Shimik, Milisha, and police and sometimes by the Special Forces and the security army. As the chief inspector Mekuanint said, most of the beating and torture are committed right from arresting the suspect up until they are brought to the Wereda police station (Annexed-3 and 6 below). Some of the pictures that are gathered from the office of the public prosecutor during their interview which shows suspects who had been beaten up are annexed (see annex 1-6 below).

Here again, according to the results of the interview of the prosecutors the violation of the pretrial rights of detainees under police detention certain while the detainees brought a complaint on violation of their right the result is ineffective. The human right violation is serious, they don't bring the suspect to court within 48 hours of their arrest, the detain adult and young offenders together, they arrest every suspect without completing the investigation, any security force and other militants arrest suspects without summons and without court warrant, held the detainees with handcuff and chains illegally, there is a high prevalence of prolonged pretrial detention, they even keep some suspects more than 3 to 4 months without bringing them to court, there is also torture and coercion, the right to remain silent and the protection against self-incrimination are some of the reasons why they torture and beat the detainees. Despite the violation of these rights almost there is no accountability of perpetrators. This in itself proves that the prosecutors are not fulfilling their duty toward the protection of the rights of the detainees. Since they can't make the perpetrator liable to their wrongdoing, the prosecutors are being manipulated by the police and other persons responsible for violation of the rights of the detainees. When we see the detention center, there is no food, no water, no bedding, no rug, no matters, no enough sleeping spaces, no proper hygiene in the class. In addition to this, in this Wereda there is also unofficial detention center where they keep many detainees other than the police station. As I have said it above, as per article 17(2)(c) of the convention on forced disappearance and section M(6)(a) of the principles on fair trial in Africa keeping detainees at a place that is not legally and officially recognized as detention center is a human right violation. In this Wereda, since they keep detainees in a place that is not officially recognized as detention center rather they are held at the public transportation center where there is no class, no roof, as a desert area we can imagine how they are suffering, it's simply an open air space where they suffer the heats of the sun during the day and the chilly weather during at night, there is no sleeping spaces no rug, no mattress, food and water including toilet and shower is unthinkable. Surprisingly, the detainees are not a criminal suspects rather they are a family, close relatives and friends of illegal restrain criminal suspects. The main reason for their detention is the believe that the real criminal suspect could come and give their hand. They compelled the detainees to bring the main criminal offenders otherwise they would suffer the harsh of this unofficial detention. In one season more than 300 hundred detainees were held in this place. To our wonder, detaining an innocent persons for the criminal acts of their family, friend or relative in itself is a punishable offence and detaining them in unofficial detention place is also another international crime against humanity. This place exists with the silent knowledge of the concerned regional government bodies up to the Wereda level. Therefore, we can safely say that, in this Wereda the practically there is a violation of the right to human condition to detention and prohibition of torture, cruel, inhuman and degrading treatment and punishment against the law such as the FDRE constitution article 18, the CPCE under article 27, the FDRE criminal code article 423 and 424 including the international human right instruments ratified by Ethiopia. Therefore, the right to human condition to detention and the prohibition of torture are highly violated pretrial rights of persons under police detention in Sanja Wereda.

3.5.4. Data collected from the judges

With regard to the right to human condition to detention and the prohibition of torture the other key interview informants were the judges. According to their responses the violation of these rights are ascertained. One of the judges said that, there are violations of human rights such as; the right to be brought to court in 48 hours, there is also torture and beating; sometimes the detainees take their

¹²² .Ibid

cloth off in the court room to show us how they were beaten and torture, as they don't assign investigator police timely there is a deleyance of investigation, sometimes there is a situation where no one know to which crime a person is detained. As a result there is a very low human right treatment in this wereda.the detainees always bring different complains by themselves and by their families some of their complains like our property is taken by Milisha and Tsere Shimik but it's not included as a exhibit in the charge and so forth. Most of the pretrial rights that are subject to violation are, the right to bail, the right to be promptly be brought to court in 48 of their arreste,physical wellbeing, beating, taking property of the suspect, changing the identity number of the suspects firearm, arresting before investigating, especially in relation to illegal restraint and abduction crimes compelling and beating the suspect to plea guilty, most of the time they brought the suspects saying they have plead guilty but when we ask them they say we didn't plead guilty it's not our word, the narrowness of the detainion class and the absence of food and water are also the main human right violation that happened in the police station.Usually it's the Tsere Shimik, the Milisha have huge problem during arrest as they are the one who mostly bring suspects to the police station, the police and even the public prosecutors don't respond their opinions on bail right timely so they also responsible for the violation. When we see the measures taken by the court, the law says to release them on bail or to deny them, but there are no any measures other than telling the police to finish their case as quickly as possible. Even the law doesn't have a solution to this, if the investigators don't respect the courts order the law is not clear as to the measure the courts can take. The main reasons for the violations are; lack of legal knowledge by the arresting authority, the bad faith of the investigating officer, problems associated with the illetracy and capacity of the investigator police, lack of enough personnel, the community and the suspects low level of legal awareness, there is also budget problem i don't think they even know the importance of it.¹²³ The other interviewee added that, some of the suspects are brought beaten up, shoted and wounded, still others are brought in chain, some are brought after they have been kept at the Tsere Shimik camp,when we compare the detention class with the weather of the Wereda it's very hot and narrow, due to its narrowness there is a situation where they spend the night sleeping in turn, they don't brought them to court timely, some times when the court grant them to be released on bail they would take and detain them to some other place, some times the police will refuse to release them after the court release them on bail for instance. The suspects bring their complain to court either orally or in written form, orally they mostly said that, we are beaten,they had detained us some other place for long time, and in written form they said, they can't bring us to the court, we are suffering from hunger and thirst and deleyance of justice. The human right violation is serious; the police violate their right by beating them and also by not bringing them to the court timely, by requesting remand unnecessarily, giving up the suspects to transfer to other place due to the pressure that comes from the Wereda administrator and from peace and security force including Tsere Shimik, in this wereda the political influence in the administration of justice is very high. Usually there are many actor for the violation of their right, most of the time, when the police arrests the suspect they employ unproportional forces, the Tsere Shimik and Milisha detains in its own camp, taking suspects to the forest for inducement and coercing them to plea guilty, the public prosecutor also violate their right in a negative and positive way by not fulfilling their duties,forinstance, while the prosecutor have the right to order the police to bring the suspects to court within 48 hours of their arrest they seem to be reluctant, they also don't protect the rights of the detainess to be release on bail,sometimes the police after detaining the suspect for 10 days wasting the time in vain when the suspect request to be released on bail then the police will request remand from the court, the court is also responsible for granting a remand time for unnecessary reason. As a resut, the public prosecutor and the judges are not working according to their capacity they are becoming passive so they are also responsible for human right violation. the measures the court tooks are different, to those who complain they had bean beaten up and had been detained for so long we reccommed them to bring their matter to the public prosecutor and to the higher police officer, to those who are detained for non-criminal offence we recommend them to request hobus corpes, there are many suspects whose bail right is refused yet that have been detained for a very long time with out a charge is made against them. As a result nobody is working in strict observance of its power. There are many reasons to these, such as; police, Tsere Shimik, Milisha and more specifically the peace and security forces are the main responsible organ as it interferes to the independent of the court and the public prosecutorwhich in turn make these instituions passive.¹²⁴ The other interviewee also responded to the similar question saying that, there is a huge difference between the law and the practice. While the suspects were arrested peacefully after they are detained there is frequent beating and torturing, the detention center is narrow and no enough facility service as there is lack of food water, sleeping place. The human right violation of the Wereda is too serious and twised that can't be resolved easily. Most of the pretrial rights that are subject to violations are; the right to be informed the reason of arrest,the right to remain silent and the protection against self-incrimination, there is high incidence of compelling the suspect to plea guilty, there is also a violation regarding remand and the right to bail,they don't respect the procedural requirement when they arrest them like summon and warrant, there is also a problem regarding food and most of the suspects don't have, matting, no bespread to sleep on,no blanket,no mattress, most of them they suffer from hunger and hygine are the most visible problem when we consider it in the light of the desert weather. Most of the human right violations are committed by the government organs. it seems as if the Wereda administrators are also leading the

¹²³ .Interview with Ato Temesgen Asre, who is the president of Sanja wereda court, Sanja, June 09/2012 E.C.

¹²⁴ . Interview with Ato Dessalegn Yeneakal, who is the directorate of the criminal bench of Sanja wereda court, Sanja, June 11/2012E.C.

administration of the criminal justice, however there is grave human right violation in police detention center, they have basic problem of refusing and disregarding the court order for the sake of excuting the wereda administrators order for instance; there were detainees whose right to be released on bail was granted by the court and releasing letter of the court was given to the police but they couldn't release them and when we call and ask the investigator police she said she was order by her superiors not to release them and finally when we call and ask the main chief of the police why he gave her the order, he in turn said that, the Wereda administrators particularly the peace and security director is the one that gave me the order detain them in disregard of the court releasing order. Afterward, when we investigate the reality, the detention was illegal and finally we decided to close the court and stop working until these suspects are released because we have decided that, if the law (the order of the court) is not respected and protected then we will stop working and when we tell them our determination they took the suspects and detained them somewhere else in another Wereda known as Maksegnit which we didn't know where by the time they were taken. Finally, when the families of the detainees go to the police station with the court releasing order they couldn't find them and when they ask them where they were? They were told as if they didn't know and that the only thing they know was they were taken by the peace and security organ. As there was high political interference and influence of the Wereda administrator there was a fear, as a result of this fear, taking measures was not the proper reaction at the time. Hence, we we decide to resolve the matter peacefully and told the existing reality to the president of the central Zonal Gondar high court Ato Cherinet and the central Gonar Zonal public prosecutors directorate drictor Ato Mehari Bere who finally came to the Wereda and resolve the matter and get the detainess released and be brought to this wereda. as an institution the public prosecutor also violate their rights because there are many suspects who are detained for too long, for instance; some are detained for 72 days upto 4 to 6 monthes without a formal charge is brought to them while they could have been released on bail pending a pretrial investigation had they not been denied their right to bail. The prosecutor could have pressured the investigator police to finish the matter and charge the suspects as a result the prosecutors don't accomplish their authority to the fullest. The main attributes to the violation of the human rights of suspects under police detention in these Wereda are; there is lack of legal awareness from the arresting to the investigator police, being reluctant, lack of giving proper respect and values to the detainees, and the suspects also have their share for the violation of their rights like lack of awareness, lack of fulfilling their duties by the concerned authorities, lack of sufficient resources from the concerned government organs and problems associated with budget, lack of cooperation from those instituions that works closely are some of them.¹²⁵ More specifically, to the other round interview question the judges replied saying that, "yes, there is unofficial detention center in this wereda.It's a place where they detain people illegally at the public transportation center of the wereda. To begin with, since it's not legally recognized as detention center it's detaining in this place itself is illegal, due to this, there is no possibility of bringing them to the court."¹²⁶ They further said that, even if it was possible to bring them to court we couldn't give them the proper service as there is no legal ground to do so.however, their families, relatives and friends bring a complain saying that, they are illegally detained, we don't know where they are and so forth.Yet, we still didn't give them the proper services as they didn't bring their claims with the proper working format and even if they do there is no one who can repond to their claims. The other thing is that these people are detained by a body who is not legally authorized to detain them as a result, the police and the public prosecutor even can't give us response to their complains.it's said that they are detained at the Wereda public transportation, at the special forces (Liyu Hyil) camp, security army camp.but most of the detainees are not criminal suspects rather they are the families,relatives and closed friends of the alleged criminal suspects and they are detained for being families,friends and relatives with the intention that they would bring the prime suspects of the illegal restrain crimes. The place is run by the Wereda administration, peace and security and other governmental instituions. But the suspects are also responsible for the violation of their rights because rather than coming to the court they have a trend of retreating and fleeing to other places like to the forest.¹²⁷ Ato Desalegn Yeneakal said that, "there is other place where they keep detainees but this place is not established for detention purpose, there is also Tsere Shimik camp which is also administered by the Wereda peace and security directorate. By the time when the number of detainees' was said to be minimum there were 80 detainees left, there was even one person who had a civil case in my benche and I remember when he followed his case from this detention place. There were no any measures the courts took. Since they are detained at illegal place they were not visited by public prosecutor or by police as they were out of the reach of the law. As a result, they don't ask for their right to bail and they don't bring them to us. The most known actor for the establishment of this unofficial detention center and the responsible organs for the violation of the human rights of the detainees are the Wereda peace and security director, the Wereda administration and Tsere shimik in coolaboration with the zonal and regional peace and security organ. The other respondent Ato Adane Abate and he said that, "out side of the legally established police station there is unofficial detention center located at the Wereda public transportation center. I think they torture people ther, but there is no body that could bring them to the court. As a result there is nothing the court can do and there were no any measures the courts could take." He further added that, The first thing you need to know is the fact that there is officially recognized police

¹²⁵ . Interview with Ato Adane Abate, who is one of the criminal benche judges of Sanja wereda court, Sanja, June 09/2012E.C.

¹²⁶ .Interview with Ato Temesgen Asre ,Gondar, June 09/2012 E.C., Ato Adane Abate, sanja, June 09/2012E.C. and Ato Desalegn Yeneakal,Sanja, June 11/2012E.C.

¹²⁷ .Ibid

detention center where criminal suspects are detained, yet, this detention center is another place which is not legally established. As a result of this, they don't brought the detainees to the court to request their right to be released on bail and if they do there is nobody that can give us a recommendation as to their condition as they are outside the reach of the police and the public prosecutor. But if they bring a complaint to the court there is no legal ground where the court can use to give them service. Therefore, I would say this place is intentionally set up to run political agenda.¹²⁸

As a result of the responses, the judges are also responsible to the violation of the human rights of the detainees. To mention some; the main reason for the law to require the detainees to be brought before court within 48 hours of their arrest is to make sure the legality of the arrest; however the only thing the judges did was to order the investigative police to finish the investigation speedily, the other is when the encounter a detainees who had been under detention for long time without any criminal investigation file the law requires to release the detainees with or without bail bond, there are many situations where the police disregard the orders of the court as it's contempt of court in such instance the judges must punish the police who had refused the orders of the court that is how the judiciary was supposed to ensure the supremacy of the law; for instance the judges can punish the police by referring article 449 of the FDRE criminal code but they didn't do that. This in turn can lead the police to continue violating the rights of the detainees. The reply of the judge that the place in itself is illegal can be a justification to refuse to give service to the victims of unofficial detention center. For stronger reason, the illegality of the detention center can't be an excuse to refuse the petition of the unofficial detainees. as it has been said repeatedly, article 17 (2) (c) of the convention on forced disappearance, and section M(6)(a) of the principles on fair trial in Africa required state members that, a person whose right to liberty has been deprived must be detained in a place that is officially recognized as a detention place. while the judges confirmed the existence of unofficial detention center they also said that there was no any measures the court could take, however one of the main reason for article 37 of the FDRE constitution is the right to access justice. as has been said above, this place exists with the silent knowledge of the concerned regional government bodies up to the wereda level and that is even the main reason why we need neutral body such as the judiciary to give justice. therefore, we can safely say that, in this wereda the practically there is a violation of the right to human condition to detention and prohibition of torture, cruel, inhuman and degrading treatment and punishment against the law such as the FDRE constitution article 18, the CPCE under article 27, the FDRE criminal code article 423 and 424 including the international human right instruments ratified by Ethiopia. therefore, the right to human condition to detention and the prohibition of torture are highly violated pretrial rights of persons under police detention in Sanja wereda.

3.5.5. Datas collected from the victims of the unofficial detention

Besides the police, the judges and the prosecutors who had been KIIs based on their status, there are also some interviews made with the detainees who had been detained in the unofficial detention center and also a family of the detainees had been interviewed. To begin with the detainees themselves, W/ro Adebabayi¹²⁹, who is the chief director of the Tachi Armachiho Wereda finance office, she said that, she had been detained at the unofficial detention center located at the public transportation center of this Wereda. Since we were detained illegally for political and administrative purpose we were not allowed to be visited by police and prosecutors. This is due to the reason that illegal restrain crime has placed this Wereda at high risk and since the wereda administrators themselves were presumed to be conspiring and instigating with this kind of crime. This illegal detention center was set up with the help of the community to eradicate this crime once and for all. That is why I was detained as I'm one of the person who run the administration organ in this Wereda. she also said that, in this place there was no class as it's open air space, no sleeping place, no rug or mattress, no food and drink, no hygiene, no toilet, while it's a hot weather we can't even take shower.

The other interviewee W/ro Anguachi Mulu Chaklu¹³⁰, who was the family of the detainees. she come to file a petition to the Centarl Gondar office of public prosecutor as she couldn't get a solution in Sanja Wereda. As I was interviewing her, she said that, her parents, W/ro Zoma Zenawu and Ato Mulu Chaklu, had a son named Ato Muket Mulu who is an outlaw and suspected of illegal restrain crimes in this Wereda. As a result, for the crimes my brother is alleged to be responsible my parents were detained for a long time in Sanja Wereda unofficial detention center. The main reason why they were detained was that a woman was illegally restrained and an instigator said that she was taken by my brother Muket. As a result of this, when they are unable to catch Muket they detained my parent with the believe that they had hide him somewhere so that he could escape from criminal liability while in fact my parents

¹²⁸ .Interview with Ato Adane Abate, who is one of the criminal benches judges of Sanja wereda court, Sanja, June 09/2012 E.C.

¹²⁹ . Interview with W/ro Adebabayi, who has been detained at Sanja wereda unofficial detention center, June 12/2012 E.C. at 4:00 am.

¹³⁰ . Interview with W/ro Anguachi Mulu Chaklu, family of detainee at Sanja Wereda unofficial detention center, February 16/2012 E.C. at about 5:00 am.

got nothing to do with it. While they still keep my father under their detention as a guarantee. After my mother had been detained for about 25 days they released her to bring her son who is my brother within 15 days otherwise that she would be detained again. They also told my mother that, unless she brings her son my father will never be released. When they were about to ask the court their rights to be released on bail they were prohibited by the Wereda administrator and also by the Wereda chief director of peace and security. They are detained at the public transportation center of the Wereda under the custody of Tsere Shimik. They can never be visited by the public prosecutor or by the police. They detain families, relative and close friends of the alleged criminals of illegal restrain. Finally when we can't get proper solution we go to the wereda court to request heabus corpse of my parents and the president of the court Ato Temesgen told us that the matter is beyond the capacity of the court. When we read article 37 of the FDRE constitution, everyone has the right to bring a justifiable matter to the court of law. the court against which a justifiable matter is brought must resolve the matter and give the proper decisions by applying the proper law. the right to heabus corpse is one of the pretrial rights of detainees who are detained for illegal reasons, yet the president of the Wereda court refused the application of the right to heabus corpse amounts to denying the right to access justice. hence, in this instances, we can safely say that the court in refusing the heabus corpse application of the detainee is violating their right.

The other interviewees, Ato Tezera Nigat Yehuala, Ato Agegnewu Zewude, Ato Belayi Astatikewu, W/ro Wubnesh Adane and Muket Astatikewu, said that, we were detained in Sanja wereda police station for our being a family, relative and close friends of individuals who are presumed to be illegal restrain criminal suspects. We were detained illegally so that the real suspects will come or be forced to come if they kept us under their detention i.e. their family, relatives and friends. As a result we requested the court to release us on bail and finally the court grant us the right to be released on bail. Yet, before our family come to the police station with the releasing order of the court the police, Tsere Shimik and the peace and security forces abducted us by their own patrol and took us to some other Wereda where our family couldn't know where we are and where they can't find us. When our family asked the police to release us they told them that we were taken by peace and security force but we didn't know where. As a result, they came to Central Gonder high court and communicate the president of the high court and the chief director of the office of the public prosecutor of central Gondar. They finally came to the Wereda and talked to the concerned administrations saying that if the abducted detainees are not brought in a single day then they will close the court. It was after all this trouble that we were finally released. Here again, the detaining of an innocent person because of their being a family of criminal suspect in itself is a punishable crime, in addition to that, when the court grant them the right to be released on bail abducting and taking them to other illegal place is also another punishable offences. the action of the police, Tsere Shimik, and peace and security of the wereda had committed various crime in violation of the right of the detainees, these are; refusing the releasing orders of the court which can be considered as contempt of court as per article 449 of the FDRE criminal code, abducting detainees, taking and detaining them to other place is another crime, prohibiting to be visited by their families, relatives and friends is also another huan right violation.

Fortunately, there are also documentary evidences that were retrieved from the wereda court. These documents were prepared and signed by those individuals who were detained in the unofficial detention center for the purpose of filing a petition of complaint to the Wereda court. for instance, the first petition is prepared 14 detainees that had been detained in the unofficial detention center on December 29/ 2012 E.C. (a coy of the petition paper will be attached with the hard copy of the thesis). The nature of the complaint specified in the paper says that, "we, whose name is listed below, were called for a meeting purpose and when we arrived they didn't ask us anything, the Tsere Shimik detained us in a field where there is no house no visitors. Since then we have been detained for about 17 days now. We are suffering with the hot weather in a day time and with the chilly weather at night. Our rights are violated; we have been ignored and became voiceless. The court and the prosecutors have done nothing so if there is any law at all please look into our cases and give as the proper answer." The other detainees who had filed a complaint on written document to the Wereda court were 86 detainees that had listed and signed in the petition paper but no date is included in it (a coy of the petition paper will be attached with the hard copy of the thesis). the nature of their claim is that, "we are unlawfully detained for about 4 months and 13 days since we were arrested." As a result, we can understand that the detainees were arrested by a person who has no authority to do so. They have never been visited by police or by prosecutors. They haven't been brought before a court of law. due to this fact, their pretrial rights and procedural safeguards recognized by the FDRE constitution has been breached, some of these are; the right to be arrested with summon or warrant, the right to be informed some basic rights during arrest such the right to remain silent and that anything they say will be used as evidence before court, the protection against self-incrimination. In addition to these, the right to be detained at legally recognized detention center, the right to request bail, the right to be visited by prosecutor, the right to be provided basic facilities like food, water, bespread, mattress, mat and enough space to sleep on are some of the highly violated rights to huam condition to detention.

3.5.6. Summary

The responses of the questionarie of the suspect and interview question from the police, public prosecutor, the judges the detainees and also the families of the detainees including my own personal experience as a prosecutor witnesses the existences of violation of the right to human condition to detention and the prohibition of torture. In Tachi Armachiho Wereda Sanja city, the existence of official and unofficial detention center is real. They beat up and torture detainees to incriminate themselves (as can be seen from

annex 1-6). The prohibition of torture has become an international customary law which derogation is not allowed regardless of a states membership to the UN. however, in this wereda it's one of the frequently committed crimes which practically violates article 5 of the UDHR, 7 of the ICCPR, article 2 of the convention against torture, principle 6 of the body of principles, articles 2 and 3 of the declaration against torture and article 5 of the African charter including article 18 of the FDRE constitution. Not only that, but also the suspects have said it that they were detained in another place than the police station and the existence of such illegal detention place is also confirmed by the police, the prosecutors and the judges. both at the police detention center and the unofficial detention center the violation of the right to human condition to detention is very high. Concerning the class of the police detention centre; the class is not proportional to the number of the detainees as there is no enough space, they keep many suspect into one narrow class, there is no enough food and water facility service. most of the time their food is covered by the visitors, even they held all the suspects including those suspected of grave crime and petty offence together, they also keep young offenders with adult offenders together, they often held some suspects with hand handcuff and chains illegally, the class is also overcrowded and unhygienic and there is also instances where they keep some suspects more than 3 to 4 month without bringing them to the court. When we see the unofficial detention center, since it's a public transportation center they detain them in a place where there is no enough basic facilities such as; no food, no water, no sleeping bed, no rug, no mattress, they don't even have any bespread where they can lay on the ground, as the place is open air space and there is no classes which results in suffering from the warm heat of the sun on day time and chilly weather at night time. besides, since it's a desert area that also causes them to suffer more from communicable disease such as flu and Typhoid fever (Tayifoyid). Some are detained for short time while others for longer time which ranges from 1 week upto 2 months. concerning their right to be released on bail, as the place is not legally recognized the police, the prosecutors can't visit them to make sure they are treated with human dignity. what is even worse is the fact that, the detainees are not a criminal suspects rather they are a family, close relatives and friends of illegal restrain criminal suspects. When we examine this realities in the light of international and domestic laws, firstly when we closely read the UN human right committee general comment 29, it gives emphasis to the right to human condition to detention and that the violation of the right to human condition to detention (article 10 of the ICCPR) amounts to the violation of torture or to cruel, inhuman or degrading treatment or punishment (article 7 of the ICCPR). Ethiopia, in addition to ratifying the ICCPR, the constitution under article 13(2) of the FDRE constitution also requires that the human rights and freedoms to be interpreted in a manner confirming to the universal human right instruments. As a result, in this wereda, there is a violation on the right to the prohibition of inhuman treatment; there is high prevalence of torture a practice against article 18 of the FDRE constitution. The state (the wereda administration) is also responsible for failing to fulfill its duty of providing basic needs and services to the detainees, which includes; enough food, washing and hygienic sanitary facilities, sleeping space, clothing healthcare...etc. Therefore, when we see the practical application of the laws regarding to the right to human condition to detention and the prohibition of torture, those individuals who had been detained and those who are still detained Tachi Armachiho Wereda Sanja police station and also at the unofficial detention center have been a victim of their right to human condition to detention and the prohibition of torture.

CHAPTER FOUR 4:

Conclusion and recommendation

4.1. Conclusion

The prime concern of this research was to investigate the practical applications of some of the selected rights for the protection of persons under police detention during pre-trial stage: in Tachi Armachiho Wereda in Sanja city. During the course of the investigation, it was possible to infer that the practical application of these rights were mostly violated pre-trial rights of detainees in this Wereda. To begin with the condition and legality of detention; the arresting authorities, particularly the Tsere Shimik, Milisha and the investigative police lack the proper respect to the condition and the procedural safeguards that are prescribed by law. To mention some; arrest and detention can be made by persons who don't have the authority to do so, particularly by local militant and Kebele administration, almost all arrest is made without summon and without court warrant for flagrant and non-flagrant offence. Despite the existence of legal regime on the right to challenge unlawfull detention; for instance article 423 of the FDRE criminal code make unlawfull arrest or detention a punishable offence, however, in practice the availability of this right is non-existence. During arrest the person who is carrying out the arrest don't inform some of the rights of the detainees such as; the right to be informed the reason of arrest promptly, the right to remain silent and anything they said will be used against them as evidence including the protection against self-incrimination are some of them. However the law don't authorize such kind of practice, this shows the existing practical problem in enforcing and protecting the condition and legality of detentions that are clearly incorporated under the FDRE constitution, the CPCE, the ICCPR and the ACHPR and also other international and national human right instruments. On the other hand, the right to remain silent and the protection against self-incrimination is the other pretrial right which is highly violated in this Wereda, the responses of the interview question, the questionnaire and my personal observation proves that, the right to remain silent and the protection against self-incrimination including the prohibition of forced confession are the most highly violated

rights according to the personal observation of the researcher, there are many situations where the police employ different improper coercion mechanisms against the detainees to get confession. As a result, the practice violates the rights which are guaranteed under article 19(2) (6) of the FDRE constitution and article 27, 35 of the CPCE including article 14 of the ICCPR and general comment 32 of the human right committee of the UN. The other practically violated pretrial right is the right to be released on bail, in addition to the review of the dead files on this right, the judges themselves, the prosecutor and the police confirmed that the practical application of the right to be released on bail pending pretrial investigation is in violation of what is prescribed under article 19(6) of the FDRE constitution and article 63 and 67 of the CPCE. Coming to the final pretrial rights of the detainees, that is the right to human condition to detention and the prohibition of torture. Torturing and beating up the detainees for different reasons such as; for forced confession, for compelling them to plea guilty are predominantly violated rights of the detainees in violation one of the most international crimes that had attained customary international law. The prohibition of torture is prescribed under article 5 of the UDHR, 7 of the ICCPR, article 2 of the convention against torture, principle 6 of the body of principles, articles 2 and 3 of the declaration against torture and article 5 of the African charter including article 18 of the FDRE constitution and article 424 of the FDRE criminal code. Unlike any other wereda, in this wereda there is official and unofficial detention center where they keep the detainees. More importantly, the existence of unofficial detention center is confirmed by the judges, the prosecutors, the police and the detainee's themselves. In this wereda, the violation of the right to human condition to detention is beyond anyone's imagination. What is even worse is the fact that, the treatment given to the detainees are in disregard of the prohibition of cruel inhuman degrading treatment and punishment. Currently, according to the general comment 29 of the UN human right committees on the nexus between article 10 and 7 of the ICCPR, the violation of the right to human condition to detention amounts to the violation of the prohibition of torture or cruel, inhuman or degrading treatment. Due to this fact, by virtue of article 9(4), 13(2) and 18 of the FDRE constitution and also the ICCPR and ACHPR the right to human condition to detention and the prohibition of torture is two of the most predominantly violated pretrial rights of detainees under police detention during pretrial stage.

As a result, there are plenty of factors that attribute for the violation of the pretrial rights of detainees which could be personal and institutional factors. The perpetrators of some of the selected pretrial rights of the detainees are the police, the local administrators, the Tsere Shimik, the Milisha, including the prosecutors and the judges are also responsible. More specifically, the political decision makers and the wereda administrators who set up the unofficial detention center and also who seems unwilling to allocate sufficient budget to the basic needs of the detainees such as food, drink, enough sleeping space, mattress, rugs, and so forth are also responsible for the violation of the pretrial rights of the detainees. Therefore, I strongly believe that, in Tachhi Armachiho Wereda Sanja city the practical applications for some of these selected pretrial rights that are; the condition and legality of detention, the right to remain silent and the protection on the right to self-incrimination, the right to be released on bail pending pretrial investigation and the right to human condition to detention and the prohibition of torture are most frequently and highly violated pretrial rights of suspects under police detention.

4.2. Recommendation

As a result of the finding of this study, it's evident that the violations of the pretrial rights of detainees are multifaced. Due to this fact, I would like to forward my recommendations as follow, so that the practical violations on the application of the pre-trial rights of suspects under police detention can be eliminated once and for all.

- The Amhara regional state government needs to come up with a new law that officially criminalizes detaining at unofficial center by the government organs itself as an institution such as peace and security organ so that the human right violations of the detainees at unofficial detention center could be totally eradicated in the future.
- The government of Tachi Armachiho Wereda in collaboration with the Wereda peace and security, the central Gondar zonal and Amhara regional state government must ban the unofficial detention center entirely and stop the practice of detaining innocent peoples (who are not a criminal suspect) but who are the families, relatives and close friends of the main criminal suspects and they should let the administration of criminal justice do their jobs independently.
- Especially, the government of Tachi Armachiho Wereda and other concerned political bodies must pay proper attention to allocate adequate budget for the Wereda police detention center that can be used to build enough detention classes in the police station proportional to the maximum number of the detainees and also to provide basic facilities such as; hygiene, food, water, mattress, Blanket...etc.
- Since it's lack of knowledge of the law that attribute for the violation of the rights of the detainees, the police institution should give proper and regular training to the police forces and to other stake holders such as the Tsere Shimik, the Milisha including other local militants so that they can come up with modern and skilled police forces, which in turn helps them to have a better police force that can properly understand how to carry out their duties while respecting and protecting the procedural safeguards of detainees under their detention.
- As far as capacity building is concerned, the judges and the public prosecutors should be given regular and persistent professional trainings.

- The the judiciary, the office of public prosecutor and the police institution should be independent from the Cabines such as the peace and security, the wereda governer and in order to do that the wereda police institution needs basic transformations from inside out.
- The perpetrators for the violation of the pretrial rights of the detainees should be accountable to their wrong deeds. There should be Criminal and civil liability and also disciplinary and other measures on those perpetrators such as; police, Tsere Shimik, Milisa and other local militants when they make unlawfull, arbitrary arrest and detention or when they violate the human rights of the detainees.
- The HRC and ombudsman rather than being reluctant they should give immediate responses to the human right violation reports forwarded to them. They should also pay frequent and persistent visit to the Wereda police detention center.

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10. Interview with W/ro Anguachi Mulu Chaklu, family of detainee at Sanja Wereda unofficial detention center, February 16/2012 E.C. at about 5:00 am.



Annex-1 a detainee who was beaten up and tortured to incriminate himself by Sanja wereda police.



Annex-2 a detainee who was beaten up and tortured to incriminate himself by Sanja wereda police.



Annex-3 a detainee who was beaten up and tortured when he was brought to Sanja wereda police station.



Annex-4 a detainee who was beaten up and tortured when he was brought to Sanja wereda police station.



Annex-5 a

detainee who was beaten up and tortured when he was brought to Sanja wereda police station.



Annex-6 a detainee who was beaten up and tortured when he was brought to Sanja wereda police station.

Questionnaire prepared to persons under police detention during pretrial stage

This questionnaire is prepared to study the human right treatments accorded to persons in police detention in Central Gondar zone Tachi Armachiho Wereda policestaion (Sanja city). The study was conducted for the fulfillment of post graduated program in Human Rights Law at University Gondar, School of Law. However, the questionnaire is not designed to address all the pretrial rights of suspects under police detention rather it's limited to some of those selected pretrial rights, these are;

- A. Condition and legality of detention,
- B. The protection against self-incrimination and the right to remain silent,
- C. The right to release on bail pending pretrial investigation and,
- D. The right to human condition of detention and the prohibition of torture.

First of all I would like to forward my gratitude for your willingness to fill the questionnaire. Knowing the truth that, this questionnaire is designed for academic purpose, it's expected that you will give me proper, honest and reliable response. Disclosure of personal identity is not required and your response to the questionnaire remains confidential.

Sex Male..... Female.....

Age A, 10-18 B,19-29 C, 30-40 D,41 and above

Education level A, Educated B, Not educated

Condition and legality of detention

1. How did you get arrested? A, with summon B, without summon
2. If your answer to the 1st question is "B", by whom did you get arrested?
A, By police B, by Milisha C, By Tsere Shimik D, by any other body
3. During your arrest, have they told you what rights you have such as; the right to be informed the reason for your arrest ,the right to remain silent, the protection against self-incrimination and other similar rights? A, Yes B, No
4. When they detained you did they inform you the reason for your arrest right away?
A, Yes B, No
5. Did they promptly brought you before a court within 48 hours from your arrest?
A, Yes B, No
6. How long have you been detained in here since you have been arrested due to suspicion of a crime?
7. What is the crime that you have been suspected off?
8. Do you believe the condition/ manner that you have been detained is legal? A, Yes B, No
9. If your answer to the above question is "B" then have you filed a complaint about the illegality of your arrest? A, Yes B, No
10. If your answer to the above question is "A" then to whom did you brought your complain?
A, to the court B, to the police C, to the public prosecutor D, to any other body
11. Can you explain the kind of solution they gave you to the complaint you have filed above?
.....
-
12. Did you know the place where they took you immediately after you were arrested? A, Yes B, No
13. If your answer to the above question is "A" then where was the place? A, police station, B, other place
14. After your arrest did your family know the place where you were taken? A, Yes B, No
15. Do you know your legal rights when you were arrested and when you were under police detention? A, Yes B, No
16. Do you believe that your human rights have been violated? A, Yes B, No

- 17. If you believe that your human rights have been violated then who is responsible for the violation?
 B, By Tserere Shimik C, by Milisha D, by the court E, By the public prosecutor A, By police
 is any other body F, if there
- 18. Have you filed a complaint about the violation of your human rights while you were under detention?
 B, No A, Yes
- 19. If your answer to the above question is "A" then to which institution?

A, to the court B, to the public prosecutor C, to the chief of the police department
 D, to any other body

20. Can you explain in short the results of the complaint you filed above?

21. How do you explain the violation of the rights while you were in police detention?

A, Low B, Middle C, High D, Very high

The protection against self-incrimination and the right to remain silent

- 1. Do you know that you have the right to remain silent on the crime you have been suspected of? A, Yes B, No
- 2. Do you also know that you have the right to the protection against self-incrimination? A, Yes B, No
- 3. Do you know that anything you said to the police/investigator will be used against you as evidence before a court?
 A, Yes B, No
- 4. Have you been told immediately after your arrest that you have the right to remain silent and anything you say will be used against you as evidence before a court?
 A, Yes B, NO
- 5. Have you been coerced to plea guilty or to incriminate yourself while you were under police detention?
 A, Yes B, No
- 6. Have you been compelled to speak without your will about the crime you have been suspected during interrogation/ investigation?
 A, Yes B, No
- 7. If your answer to the above question is "A" then who compelled you to speak?
 A, Police B, Public
 C, Court D, Minisha E, Tserere Shimik F, Any other body
- 8. Have you been compelled/ coerced or influenced to plea guilty on the crimes you have been suspected of?
 A, Yes B, No

The right to release on bail pending pretrial investigation

- 1. Do you know what the right to release on bail is? A, Yes B, No
- 2. Do you know that you have the right to request to be release on bail within 48 hours of your arrest?
 A, Yes B, No
- 3. Have you requested to be release on bail while you were under police detention? A, Yes B, No
- 4. If your answer to the above question is "A" then what was the result?

A, the right to be release on bail had been granted B, the right to be release on bail had been denied

5. If your answer to the above question is "B" then can you explain the crime that you have been suspected of and the grounds upon which your right to bail had been denied.....

6. Do you believe your right to be release on bail had been properly respected? A, Yes B, No

The right to human condition of detention and the prohibition of torture

- 1. Do you know that you have the right from the protection of cruel, inhuman and degrading treatment? A, Yes B, No

2. Have you ever been a victim of torture, in-human or anyother similar actions while you were in police detention? A, Yes B, No
3. If your answer to the above question is "A" then who is responsible for the violation? A, police, B, Tsereshimik C, Milisha D, Any other body
4. Have you filed a complaint on the violation of your right? A, Yes B, No
5. If your answer to the above question is "A" then to which institution did you file your complaint? A, to the public prosecutor B, to the court C, to the chief of the police, D, to anyother body
6. What responses did you get for your complaint.....

.....

7. Were there enough facilities such as food, water, shawor, clean toilet, enough sleeping bed and healthcare services during your stay under police detention? A, Yes there was B, it was not good enough
8. If your answer to the above question is "B" then what actions did you take to be provided with th service?.....
9. Where did you stay after you have been arrested? A, at the police station B, anyother place
10. Have you been prohibited to be visited by families or anyother visitors while you were in police station? A, Yes B, No
11. If your answer to the above question is "A" then could you explain the reason why you were prohibited to be visited?

Thank you for your cooperation.

ከክስ በፊት በፖሊስ ጠቢቅ ስር ላሉ እሰረኞች የተዘጋጀ መጠይቅ

በማዕከላዊ ጎ/ር/ዞን በታች አ/ወ ፖሊስ ጠቢቅ የታሰሩ ሰዎችን ሰብአዊ መብት አያያዝ ለማጥናት የተዘጋጀ መጠይቅ ነው። ጥናቱ የተካሄደው በጎንደር ዮኒቨርሲቲ ህግ ት/ት ቤት የድህረ ምረቃ ፕሮግራም በሰብአዊ መብቶች ህግ ክፍል ሟሟያ ነው። መጠይቁ የተዘጋጀው በሁሉም የሰብአዊ መብቶች ላይ ሳይሆን ከክስ በፊት ባሉት በተወሰኑ በተመረጡ መብቶች ላይ ሲሆን እነዚህም

ሀ/ በፖሊስ ቁጥጥር ስር የሚውሉበት ሁኔታና ህጋዊነት

ለ/ ዝም የማለት(ያለመናገር) እና እራስን በወንጀል ተጠያቂ ከማድረግ የመጠበቅ መብት

ሐ/ ከክስ በፊት በምርመራ ወቅት በዋስትና የመለቀቅ መብት እና

መ/ ከድብደባ ከብርን ከሚያዋርድ እና ኢ-ሰብአዊ ከሆነ አያያዝ የመጠበቅ መብት ሲሆኑ።

በመጀመሪያ መጠይቁን ለመሙላት ፍቃደኛ ስለሆኑ ከልብ እናመሰግናለን የመጠይቁ አላማም ለትምህርታዊ አገልግሎት ብቻ የሚውል መሆኑን አውቀው ትክክለኛ እና ተገቢ መልስ በመስጠት እንዲተባበሩን እተይቅዎታለሁ። ማንነትዎን መግለጻችን አስፈላጊ አይደለም። የመጠይቁ ሚስጥራዊነትም የተጠበቀ መሆኑን በቅድሚያ ልገልጸልዎት እወዳለሁ።

ፆታ	ወንድ	ሴት
ዕድሜ	ሀ/ 10-18	ለ/19-29
		ሐ/30-40 መ/ ከ41 በላይ

የትምህርት ደረጃ

U/ የተማሪ

ለ/ ያልተማሪ

U/ በፖሊስ ቁጥጥር ስር የሚወሉበት ሁኔታ እና ህጋዊነትን በተመለከተ

1. በቁጥጥር ስር የዋሉት እንዴት ነው?

U/ በመጥሪያ ነው ለ/ ያለ - መጥሪያ

2. ለ1ኛ ጥያቄ መልስዎ "ለ" ከሆነ በቁጥጥር ስር የዋሉት በማን ነበር?

U/ በፖሊስ ለ/ በሚሊሻ ሐ/ በጸረ- ሽምቅ ሙ/ ልላ አካል

3. ተጠርጥረው በቁጥጥር ስር እንደዋሉ ያለዎት መብት ማለትም ዝም የማለት ያለመናገር፣ እራስን በወንጀል ተጠያቂ ከማድረግ የመጠበቅ እና የመሳሰሉት መብቶች እንዳለዎት ተነግረዎታል?

U/ አዎ ለ/ የለም

4. በህግ ቁጥጥር ስር ሲውሉ የተያዙበት ምክንያት ተነግሮዎታል?

U/ አዎ ለ/ የለም

5. በታሰሩ በ48 ሰዓት ውስጥ ወደ ፍ/ቤት አቅርበዎታል?

U/ አዎ ለ/የለም

6. በወንጀል ተጠርጥረው እዚህ ፖሊስ ጣቢያ ለምን ያህል ጊዜ ታስረው ይገኛሉ.....

7. የተጠረጠሩበት ወንጀል ምንድን ነው.....

8. በቁጥጥር ስር የዋሉበት መንገድ ህጋዊ ነው ብለው ያምናሉ?

U/ አዎ ለ/ የለም

9. መልስዎ "ለ" ከሆነ በህገ ወጥ መንገድ ታስረያለሁ ብለው አብቱታ አቅርበው ነበር?

U/ አዎ ለ/ የለም

10. መልስዎ "ሀ" ከሆነ አቤቱታ ያቀረቡት ለማን ነበር??

U/ ለፍ/ቤት ለ/ ለፖሊስ ሐ/ ለዐ/ህግ ሙ/ ለሌላ

11. ከላይ ላቀረቡት አቤቱታ ምን አይነት ምላሽ ተሰጠዎት ቢገልጹልን.....

12. በቁጥጥር ስር ከዋሉ በኋላ የተወሰዱበት ቦታ የት እንደነበር ወዲያውኑ አውቀው ነበር?

U/ አዎ ለ/ የለም

13. ለ12ኛው ጥያቄ መልስዎ "አዎ" ከሆነ ቦታው የት ነበር?

U/ ፖሊስ ጣቢያ ለ/ ከፖሊስ ጣቢያ ውጭ የሆነ ቦታ

14 በቁጥር ስር ከዋሉ በኋላ የት እንደተወሰዱ ቤተሰብዎ ያውቁ ነበር?

U/ አዎ ለ/የለም

- 15. በህግ ቁጥጥር ስር ሲውሉና በፖሊስ ቁጥጥር ስር እያሉ ያለውን ህጋዊ መብት ያውቃሉ?? U/ አዎ ለ/ የለም
- 16. የመብት ጥሰት ደረሰብኝ ብለው ያስባሉ? U/አዎ ለ/ የለም
- 17. የመብት ጥሰት ደረሰብኝ ብለው የሚያስቡ ከሆነ የተፈጸመው በማን ነው?

U/ በፖሊስ ለ/ በጸረ-ሽምቅ ሐ/ በሚሊሻ ሙ/ በፍ/ቤት

ሠ/ በዐ/ህግ ረ/ ሌላ ካለ

- 18. በቁጥጥር ስር እያሉ ለደረሰብዎ የመብት ጥሰት አቤቱታ አቅርበዋል?

U/ አዎ ለ/ የለም

- 19. ከላይ ላለው ጥያቄ መልስዎ "ሀ" ከሆነ ለየትኛው ተቋም?

U/ ለፍ/ቤት ለ/ ለዐ/ህግ ሐ/ ፖሊስ ጣቢያ የበላይ ኃላፊ ሙ/ሌላ

- 20. ከላይ ያቀረቡት አቤቱታ ውጤቱ ምን እንደነበር ባጭሩ ቢገልጹልን.....

- 21. ፖሊስ ጣቢያ በነበሩበት ወቅት የመብት ጥሰቱን እንዴት ይገልጹታል?

U/ ዝቅተኛ ለ/ መካከለኛ ሐ/ ከፍተኛ ሙ/ በጣም ከፍተኛ

ለ/ ዝም የማለትና እራስን በወንጀል ተጠያቂ ከማድረግ የመጠበቅ መብትን በተመለከተ

- 1. በተጠረጠሩበት ጉዳይ ዝም የማለት ያለመናገር መብት እንዳለዎት ያውቃሉ?

U/ አዎ ለ/ የለም አላውቅም

- 2. እራስዎን በወንጀል ተጠያቂ ከማድረግ የመጠበቅ መብት እንዳለዎት ያውቃሉ?

U/ አዎ ለ/ የለም አላውቅም

- 3. ለፖሊስ/ለመርማሪ የሚሰጡት ማንኛውም ቃል ፍ/ቤት በማስረጃነት እንደሚቀርብብዎት ያውቃሉ?

U/ አዎ ለ/ የለም

- 4. ዝም የማለት ያለመናገር መብትና የሚሰጡት ማንኛውም ቃል በፍ/ቤት በማስረጃነት እንደሚቀርብብዎት በቁጥጥር ስር እንደዋሉ ወዲያውኑ ተነግሮዎታል?

U/ አዎ ለ/ የለም

- 5. በፖሊስ ጣቢያ በነበሩበት ወቅት እራስዎን ወንጀለኛ እንዲያደርጉ ወይም እንዲያምኑ ተፅዕኖ(ጫና) ተደርጎበዎታል?

U/ አዎ ለ/ የለም አልተደረገብኝም

- 6. በምርመራ ወቅት ስለተጠረጠሩበት ጉዳይ ከፈላጎትዎ ውጭ እንዲናገሩ ተፅዕኖ(ሚና) ተደርጎበዎታል?

U/ አዎ ለ/ የለም አልተደረገብኝም

- 7. ከላይ ላለው ጥያቄ መልስዎ "ሀ" ከሆነ ከፍላጎትዎ ውጭ እንዲናገሩ ተፅዕኖ ያደረገበዎት አካል የትኛው ነው??

U/ ፖሊስ ለ/ ዐ/ህግ ሐ/ ፍ/ቤት ሙ/ ሚሊሻ ሠ/ ፀረ-ሽምቅ ረ/ ሌላ

8. የተጠረጠሩበትን ወንጀል እንዲያምኑ የመገደድ ጫና እና ሌሎች መሰል ተግባራት ደርሶባቸዋል??

U/ አዎ ለ/ የለም

ሐ/ ከክስ በፊት በምርመራ ወቅት በዋስትና የመለቀቅ መብትን በተመለከተ

1. በዋስ የመለቀቅ መብት ምን እንደሆነ ያውቃሉ? U/ አዎ ለ/ የለም

2. በፖሊስ ቁጥጥር ስር በዋሉ በ48 ሰዓት ውስጥ ዋስትና የመጠየቅ መብት እንዳለዎት ያውቃሉ? U/ አዎ ለ/ የለም አላውቅም

3. በፖሊስ ጣቢያ እያሉ ወይም ክስ ከመመስረቱ በፊት በዋስትና እንዲለቀቁ አመልክተው ነበር? U/ አዎ ለ/ የለም

4. ከላይ ላለው ጥያቄ መልስዎ "ሀ" ከሆነ ውጤቱ ምን ነበር?

U/ ዋስትና ተፈቅዶልኛል ለ/ ዋስትና አልተፈቀደልኝም

5. ከላይ ላለው ጥያቄ መልስዎ "ለ" ከሆነ የተጠረጠሩበት ወንጀልና ዋስትና የተከለከሉበት ምክንያት ምን እንደነበር ቢገልፁልን _____

6. የዋስትና መብትዎ በአግባቡ ተከብሮልኛል ብለው ያምናሉ?

U/ አዎ ለ/ አላምናም

መ/ ከድብደባ ክብርን ከሚያዋርዱ እና ኢ-ሰብአዊ ከሆነ አያያዝ የመጠበቅ መብትን በተመለከተ

1. ጭካኔ ከተሞላበት ኢ-ሰብአዊ ከሆነ እና ክብርዎን ከሚያዋርድ አያያዝ እንዲሁም ቅጣት የመጠበቅ መብት እንዳለዎት ያውቃሉ?

U/ አዎ ለ/ የለም አላውቅም

2. በፖሊስ ቁጥጥር ስር እያሉ ኢ-ሰብአዊ ድብደባ እና መሰል ድርጊቶች ተፈፀሞባቸዋል?

U/ አዎ ለ/ የለም

3. ከላይ ላለው ጥያቄ መልስዎ "ሀ" ከሆነ የመብት ጥሰቱን የፈፀመው አካል ማን ነው?

U/ ፖሊስ ለ/ ፀረ- ሽምቅ ሐ/ ሚሊሻ ሙ/ ሌላ አካል

4. በደረሰባቸው የመብት ጥሰት ላይ አቤቱታ አቅርበው ነበር?

U/ አዎ ለ/ የለም

5. ከላይ ላለው ጥያቄ መልስዎ "ሀ" ከሆነ አቤቱታዎን ለማን ነበር ያቀረቡት?

U/ ለዐ/ህግ ለ/ ለፍ/ቤት ሐ/ ለፖሊስ ኃላፊ ሙ/ ለሌላ አካል

6. ላቀረቡት አቤቱታ ምን ዓይነት ምላሽ ተሰጥዎት? _____

7. በፖሊስ ጣቢያ እያሉ ጣቢያው በቂ አገልግሎት ምግብ፣ውሃ፣ሻወር፣ንፅህናትና የጠበቀ ሽንት ቤት በቂ የመኝታ ክፍል፣ እና የጤና ህክምና እና የመሳሰሉት የተሟሉበት ነበር?

U/ አዎ ለ/ የተሟላ አገልግሎት የለም

8. ከላይ ላለው ጥያቄ መልስዎ "ለ" ከሆነ አገልግሎቱን ለማግኘት የወሰዱት መፍትሄ ምን እንደነበር ቢያብራሩልን? _____

9. በቁጥጥር ስር ከዋሉ በኋላ በእስር የቆዩት የት ቦታ ነበር?

U/ በፖሊስ ጣቢያ ለ/ ከፖሊስ ጣቢያ ውጭ ሌላ ቦታ

10. በፖሊስ ጣቢያ እያሉ ከቤተሰብ ጋርም ሆነ ከሌላ ጠያቂ ሰው ጋር እንዳይገናኙ ተከልክለዋል/ነበር?

U/ አዎ ለ/የለም

11. ከላይ ላለው ጥያቄ መልስዎ "ሀ" ከሆነ ምክንያቱ ምን እንደነበር ቢያብራሩልን _____

ለትብብርዎ እናመሰግናለን

An interview model question to the police concerning to persons under police detention during pretrial stage

This interview model question is prepared to study the human right treatments accorded to persons in police detention in Central Gondar zone Tachi Armachiho Wereda policestaion (Sanja city). The study was conducted for the fulfillment of post graduated program in Human Rights Law at University Gondar, School of Law. However, the questionnaire is not designed to address all the pretrial rights of suspects under police detention rather it's limited to some of those selected pretrial rights, these are;

- A. Condition and legality of detention,
- B. The protection against self-incrimination and the right to remain silent,
- C. The right to release on bail pending pretrial investigation and,
- D. The right to human condition of detention and the prohibition of torture.

First of all I would like to forward my gratitude for your willingness to be interviewed. Knowing the truth that, this interview is designed for academic purpose, it's expected that you will give me proper, honest and reliable response. Disclosure of personal identity is not required and your response to the questionnaire remains confidential.

Initial questions for the interview

- 1. Can you explain the conceptual understanding of the police regarding the human right treatments given to criminal suspects under police detention? For instance, the prohibition of cruel, inhuman degrading, the right to remain silent, the right to be brought before court within 48 hours from arrest, the right to legal council, and the right to have a communication with the outside world, the right to be visited by the families and so forth.
- 2. what do you think is the role of the police regarding to the protection of the human rights of suspects under police detention?
- 3. What are the conditions and the manners of bringing criminal suspects to the police station? For instance, is it with summon or with out summon, is it with court warrant or without court warrant? Can you explain in short the human right treatments rendered to suspects under your police station? And if you say that there are violations of rights then what rights are violated frequently and who is responsible for the violation? Can you explain it ?
- 4. how do you apply the law regarding the right to bail? Can you tell me the difference when a suspect is released on bail by court and released on bail/release on bond by the police? What are the conditions upon which you grant and deny the right to be released on bail?

5. with respect to the the protection of the human rights of suspects under police detention is there enough facilities such as food, water, shawor, clean toilet, enough sleeping bed and healthcare services during your stay under police detention ? Does the police station have enough resources to provide these facilities? And if there is no enough resources to provide the facilities then what are the reasons?
6. do you know the existences of some rights for the suspect at the moment of their arrest? Such as; the right to be informed the reason of arrest, the right to remain silent and that anything they said or do will be used against them as evidence before a court of law, the protection against self-incrimination and other similar rights? Do you tell these rights to the suspects immediately after they get arrested? What does the practice looks like? do you inform the suspects on the right to remain silent and that anything they said or do will be used against them as evidence before a court of law including the protection against self-incrimination and other similar rights? Can you tell us what the practice looks like?
7. do the suspects have a trend of filing a complain when they encounter human right violations? If they do so, then can you explain by whom and what rights mostly violated? And also if there is any measure that can be taken?
8. Do you have a trend of human right violation report? If not, do you beleive all of the suspect’s rights ar protected all the time? can you explain if you haven’t ever encounter a human right violation, such as ; torture, beating, violation on the protection of self-incrimination and forcing the suspect to plea guilty, lack of sufficient food and water, lack of proper healthcare, unsanitary of the detention class, lack of sufficient sleeping place, and other basi facility services?
9. Is there any accountability for a person who violates their rights? Can you explain what the practice looks like regarding the accountability of the human right violator?
10. Finally, do you believe the human rights treatments given to the suspects are in compliance with what is required by law? if not, what are the main reason for this?

Thank you for your cooperation

ከክስ በፊት በፖሊስ ጥበቃ ስር የሚገኙ እስረኞችን በተመለከተ

ለፖሊስ የተዘጋጀ ቃለ መጠየቅ

በማዕከላዊ ጎንደር ዞን በታች አ/ወ/ፖሊስ ጣቢያ የታሰሩ ሰዎችን የሰብአዊ መብት አያያዝ ለማጥናት የተዘጋጀ ቃለ መጠየቅ ሲሆን ጥናቱ የተካሄደው በጎንደር ዩኒቨርሲቲ ህግ ት/ት ቤት የድህረ ምረቃ ፕሮግራም በሰብአዊ መብቶች ህግ ክፍል ሟሟያ ነው። መጠይቁ የተዘጋጀው በሁሉም የሰብአዊ መብቶች ላይ ሳይሆን ከክስ በፊት ባሉት በተወሰኑ በተመረጡ መብቶች ላይ ነው። እነዚህም

ሀ/ በፖሊስ ቁጥጥር ስር የሚውሉበት ሁኔታ እና ህጋዊነት

ለ/ ዝም የማለት (ያለመናገር) እና እራስን በወንጀል ተጠያቂ ከማድረግ የመጠበቅ መብት

ሐ/ ከክስ በፊት በምርመራ ወቅት በዋስትና የመለቀቅ መብት እና

መ/ ከድብደባ ክብርን ከሚያዋርድ እና ኢ-ሰብአዊ ከሆነ አያያዝ የመጠበቅ መብቶች ላይ ያተኮሩ ናቸው።

በመጀመሪያ ለቃለ-መጠይቁ ፈቃደኛ ስለሆኑ ከልብ እናመሰግናለን የቃለ መጠይቁ አላማም ለትምህርታዊ አገልግሎት ብቻ የሚውል መሆኑን አውቀው ትክክለኛ እና ተገቢ መልስ በመስጠት እንዲተባበሩኝ እጠይቃለሁ።የቃለ-መጠይቁ ሚስጥራዊነትም የተጠበቀ መሆኑን በቅድሚያ ልገልጸልዎት እወዳለሁ።

የቃለ መጠይቁ መነሻ ጥያቄወች

1. በጣቢያችሁ ያለውን የተጠርጣሪዎች ሰባዊ መብት አያያዝ በተመለከተ ፖሊሶች ያላቸውን ግንዛቤ ቢያብራሩልን? ለምሳሌ ከድብደባ ክብርን ከሚያዋርድ እና ኢ-ሰብአዊ ከሆነ አያያዝ የመጠበቅ መብት፣ ዝም የማለት መብት፣ በ48 ሰዓት ፍ/ቤት የማቅረብ መብትን ፣ ጠበቃ የማማከር፣ በዘመድና በቤተሰብ የመጠየቅ እና ልሎች መብቶች
2. በፖሊስ ጣቢያው በወንጀል ተጠርጥረው የታሰሩ ሰዎችን መብት ከማስከበር አንፃር የፖሊስ ሚና ምንድን ነው ብለው ያምናሉ?

3. የወንጀል ተጠርጣሪዎችን ወደ ፖሊስ ጣቢያው የሚመጡት በምን መልኩ ነው ለምሳሌ በመጥሪያ፣ በመያዣ ወይም ያለመያዣ ትዕዛዝ ፣ በፍርድ ቤት ወይም ያለ ፍርድ ቤት ትዕዛዝ ነው? በጣቢያቸው ያለውን የተጠርጣሪዎች የሰብአዊ መብት አያያዝ ባጭሩ ቢያብራሩልን? የመብት ጥሰት አለ የሚሉ ከሆነ የሚጣሱትን መብቶችና ለዚህም ተጠያቂ የሚሆን አካል ቢገልጹልን?
4. የዋስትና መብትን በተመለከተ ህጉ እንዴት ነው የሚተገበረው። በፖሊስ ዋስ ሲሆንና በፍ/ቤት ዋስ ያለውን ልዩነት እንዲሁም ዋስትና የሚፈቀድበትና የሚከለክልበትን ሁኔታ ቢገልጹልን?
5. በፖሊስ ጣቢያ ታስረው የሚገኙ ተጠርጣሪዎች ሰብአዊ ክብራቸውን ደህንነታቸውን ከማስጠበቅ አንፃር የሚቀርቡ እንደ ምግብ፣ ውሃ፣ መኝታ፣ ልብ፣ ህክምና እና የመሳሰሉትን አገልግሎቶችን የመስጠት አቅሙ ምን ይህል ነው? ያልተሟላ ከሆነስ ምክንያቱ ምን እንደሆነ ቢገልጹልን?
6. ተጠርጣሪዎች በፖሊስ ቁጥጥር ስር በሚውሉበት ሰዓት የተያዙበትን ምክንያት ዝርዝር ያለመናገርና ዝም የማለት መብት የተናገሩት ነገር በፍ/ቤት በማስረጃ የሚቀርብባቸው መሆኑ እራሳቸውን በወንጀል ተጠያቂ ያለማድረግና ሌሎች መሰል መብቶች እንዳሏቸው ታውቃላችሁ እነዚህን መብቶች ተጠርጣሪዎች እንደታሰሩ ወዲያውኑ ይነገራቸዋል? አተገባበሩ ምን ይመስላል??
7. ተጠርጣሪዎች የመብት ጥሰት ሲያጋጥማቸው ለእናንተ(ኃላፊ) ያመለክታሉ ወይ ካመለከቱ ብዙ ጊዜ ተጠሪ የሚሉት መብትና ማንን እንደሚከሰቱ ቢያብራሩልን እንዲሁም እሚወስድ እርምጃ ካለ ቢገልጹልን?
8. ሰብአዊ መብት ጥሰት ሪፖርት ይደረጋል ወይ ባይደረግ እንኳ እናንተ አራሳችሁ ያጋጥማችኋል ወይ? ምን አይነት የመብት ጥሰት ያጋጥማል ቢገልጹልን ለምሳሌ ድብደባ፣ እንዲያምን ማስገደድ በቂ ምግብ፣ ውሃ፣ ሻወር፣ ንፅህና ወይንም የጠበቀ ሽንት ቤት በቂ የመኝታ ክፍል፣ እና የጤና ህክምና እና የመሳሰሉት አገልግሎቶች ያለመሟላት..... እነዚህ ሁሉ መብቶች ይጠበቃሉ ብለው ያስባሉ?
9. የተጠርጣሪዎች የመብት ጥሰት ፈፀሞ በተገኘ አካል ያለው ተጠያቂነት ምንድን ነው? ተግባራዊነቱስ እንዴት ይገለጻል?
10. የተጠርጣሪዎች የሰብአዊ መብት አያያዝ በሚጠበቀው ልክ ካልሆነ ለዚህ ዋና የሚሏቸው ምክንያቶች ቢገልጹልን?

ለትብብርዎ እናመሰግናለን

An interview model question to the judges concerning to persons under police detention during pretrial stage

This interview model question is prepared to study the human right treatments accorded to persons in police detention in Central Gondar zone Tachi Armachiho Wereda police station (Sanja city). The study was conducted for the fulfillment of post graduated program in Human Rights Law at University Gondar, School of Law. However, the questionnaire is not designed to address all the pretrial rights of suspects under police detention rather it's limited to some of those selected pretrial rights, these are;

- A. Condition and legality of detention,
- B. The protection against self-incrimination and the right to remain silent,
- C. The right to release on bail pending pretrial investigation and,
- D. The right to human condition of detention and the prohibition of torture.

First of all I would like to forward my gratitude for your willingness to be interviewed. Knowing the truth that, this interview is designed for academic purpose, it's expected that you will give me proper, honest and reliable response. Disclosure of personal identity is not required and your response to the questionnaire remains confidential.

Initial questions for the interview

1. Could you explain, what does the human right treatments given to suspects under police detention looks like in this Wereda?
2. Have the suspects under police detention ever brought a human right violation complaint?
3. How seriously alarming do you think is the human right violation of the suspect under police detention?
4. Which of the pretrial rights are frequently violated?
5. Most of the time, who is the alleged body to be responsible for the human right violation?
6. Is there any measure the court can take? If there is then, what kind of measures can you take?
7. What do you think are the major factors for the human right violation of suspects under police detention?

8. What are the grounds upon which you refuse the right to release on bail during pretrial stage when the suspects under police detention apply to be released on bail? What does the practice looks like?
9. Do you make sure whether an individual suspect was arrested with legal rprocedures or not in the first place?
10. What are the measures the court can take if it finds out that the suspects were detained illegally?
11. When the suspects are brought before the court, does the court make sure if the rights of the suspects during the time of arrest are protected that is the right to be informed the reason of arrest?
12. is unofficial detention centers other than the police station which is not legally recognized? If there is, then is there any measure the court can take concernig the human right treatments given to these detainees?
13. Have these detainees ever request their right to be released on bail? Do the court give them service in this regard? If the courts can't give them the services like bail rights, then could you explain what the reasons are?
14. Finaly,who is responsible for the human right violation of the detainees?

Thank you for your cooperation.

ከክስ በፊት በፖሊስ ቁጥጥር ስር የሚገኙ እስረኞችን በተመለከተ

ለ ዳኞች የተዘጋጀ ቃለ መጠየቅ

በማዕከላዊ ጎንደር ዞን በታች አ/ወ/ፖሊስ ጣቢያ የታሰሩ ሰዎችን የሰብአዊ መብት አያያዝ ለማጥናት የተዘጋጀ ቃለ መጠየቅ ሲሆን ጥናቱ የተካሄደው በጎንደር ዩኒቨርሲቲ ህግ ት/ት ቤት የድህረ ምረቃ ፕሮግራም በሰብአዊ መብቶች ህግ ክፍል ሚሚያ ነው። መጠይቁ የተዘጋጀው በሁሉም የሰብአዊ መብቶች ላይ ሳይሆን ከክስ በፊት ባሉት በተወሰኑ በተመረጡ መብቶች ላይ ነው። እነዚህም

ሀ/ በፖሊስ ቁጥጥር ስር የሚውሉበት ሁኔታ እና ህጋዊነት

ለ/ ዝም የማለት (ያለመናገር) እና እራስን በወንጀል ተጠያቂ ከማድረግ የመጠበቅ መብት

ሐ/ ከክስ በፊት በምርመራ ወቅት በዋስትና የመለቀቅ መብት እና

መ/ ከድብደባ ክብርን ከሚያዋርድ እና ኢ-ሰብአዊ ከሆነ አያያዝ የመጠበቅ መብቶች ላይ ያተኮሩ ናቸው።

በመጀመሪያ ለቃለ-መጠይቁ ፈቃደኛ ስለሆኑ ከልብ እናመሰግናለን የቃለ መጠይቁ አላማም ለትምህርታዊ አገልግሎት ብቻ የሚውል መሆኑን አውቀው ትክክለኛ እና ተገቢ መልስ በመስጠት እንዲተባበሩን እጠይቃለሁ።የቃለ-መጠይቁ ሚስጥራዊነትም የተጠበቀ መሆኑን በቅድሚያ ልገልፀልዎት እወዳለሁ።

የቃለ መጠይቁ መነሻ ጥያቄዎች

1. በወረዳዉ ፖሊስ ጣቢያ ከክስ በፊት በቁጥጥር ስር የሚገኙ ተጠርጣሪዎች የሰብአዊ መብት አያያዛቸው ምን ይመስላል ባጭሩ ቢያብራሩልን?
2. በፖሊስ ቁጥጥር ስር ያሉ ተጠርጣሪዎች መብቶቻችን ተጣሰ ብለው አመልክተው ያውቃሉ?
3. በፖሊስ ቁጥጥር ስር ያሉ ተጠርጣሪዎች ላይ የሚደርሰው የመብት ጥሰት ምን ያህል አሳሳቢ ነው ብለው ያስባሉ?
4. ብዙ ጊዜ ተጣሱ የሚባሉት ከክስ በፊት ያሉ የተጠርጣሪዎ መብቶች የትኞቹ ናቸው?
5. ብዙ ጊዜ የመብት ጥሰቱን ፈፀመ/አደረሰ የሚባለው አካል የትኛው ነው??
6. የተጠርጣሪዎቹ መብት ተጥሶ ሲገኝ ፍ/ቤቱ የሚወስደው ወይም የወሰደው እርምጃ አለ ወይ??
7. በተጠርጣሪዎች ላይ ለሚደረሰው የመብት ጥሰት ዋነኛ ምክኒያቶች ምን ምን ናቸው ብለው ያምናሉ/ያስባሉ??
8. ክስ ከመመስረቱ በፊት በፖሊስ ቁጥጥር ስር ያሉ ተጠርጣሪዎች ዋስትና ሲጠይቁ ፍ/ቤቱ ብዙ ጊዜ ዋስትና የሚከለክልባቸው ምክኒያቶች ምን ምን ናቸው?
9. አንድ ተጠርጣሪ በቁጥጥር ስር የዋለበት አግባብ ህጋዊ መሆን አለመሆኑን በቅድሚያ ይረጋገጣል ወይ?
10. በቁጥጥር ስር የዋለበት አግባብ ህጋዊ እንዳልነበር ከተረጋገጠ ፍ/ቤቱ የሚወስደው እርምጃ ምንድን ነው?
11. ተጠርጣሪው በቁጥጥር ስር በሚውልበት ጊዜ የተያዘበትን ምክንያት ከማወቅ መብት ጋር ተያይዞ በምን ምክንያት እንደተያዘ የተነገራቸው መሆኑን ፍ/ቤቱ በቅድሚያ ያረጋግጣል ወይ?

12. በወረዳው ከመደበኛው ፖሊስ ጣቢያ ውጭ ሌላ በህግ እውቅና ያልተሰጠው የእስረኞች ማቆያ አለ ወይ ? መልስዎ አለ ከሆነ የሰብአዊ መብታቸውን በተመለከተ ፍ/ቤቱ የሚወስደው እርምጃ አለ?
13. በህግ እውቅና ከተሰጠው የእስረኛ ማቆያ ውጭ ታስረው የሚገኙ ተጠርጣሪዎች የዋስትና መብት ጠይቀው ፍ/ቤቱ ያስተናግዳቸዋል ወይ? መልስዎ ኢየስተናግድም ከሆነ ምክንያቱ ምንድን ነው ቢገልጹልን?
14. ለእነዚህ እስረኞች የሰብአዊ መብት ጥሰት ተጠያቂው የትኛው አካል ነው??

ለትብብርዎ እናመሰግናለን

An interview model question to the public prosecutor concerning to persons under police detention during pretrial stage

This interview model question is prepared to study the human right treatments accorded to persons in police detention in Central Gondar zone Tachi Armachiho Wereda police station (Sanja city). The study was conducted for the fulfillment of post graduated program in Human Rights Law at University Gondar, School of Law. However, the questionnaire is not designed to address all the pretrial rights of suspects under police detention rather it's limited to some of those selected pretrial rights, these are;

- A. Condition and legality of detention,
- B. The protection against self-incrimination and the right to remain silent,
- C. The right to release on bail pending pretrial investigation and,
- D. The right to human condition of detention and the prohibition of torture.

First of all I would like to forward my gratitude for your willingness to be interviewed. Knowing the truth that, this interview is designed for academic purpose, it's expected that you will give me proper, honest and reliable response. Disclosure of personal identity is not required and your response to the questionnaire remains confidential.

Initial questions for the interview

1. have the suspects under police detention ever brought a human right violation complaint during the visit of the station or any other time? If your answer is yes, then what kind of measures can you take?
2. do you first make sure the manner how the suspect was arrested whether it was legal or not during the visit of the detention center? For instance, during the time of visiting the suspects who are in the police detention center do you first investigate if the crime they are suspected of is a flagrant or non-flagrant offence, if the suspects right to know the reason for arrest, the right to remain silent, the right to be brought before a court within 48 hours are respected and protected and if it's an arrest with or without a court warrant? What does the practice look like?
3. How seriously alarming do you think is the human right violation of the suspect under police detention? What are the pretrial rights that are frequently violated? Are there any measures that you take when you find a human right violation of suspects under police detention? How about the practice?
4. Who is the alleged body to be responsible human right violator mostly? What is the extent of the liability of the human right violator? What do you think is the role of the public prosecutor regarding to this? Can you explain the practice, if there is any accountability or not?
5. What do you think are the major factors for the human rights of suspects under police detention?
6. What are the grounds upon which you refuse the right to release on bail during pretrial stage when the suspects under police detention apply to be released on bail? What does the practice look like?
7. How often do you encounter suspects who are beaten up either when they get arrested or after they being brought to the police station? What measures can you take when you encounter a suspect who has been a victim of cruel inhuman degrading treatment or punishment?
8. How about other basic human right treatments? Are there sufficient facility services for instance, the hygiene of the surrounding, good food and water, healthcare and so forth? If there is no sufficient services then what do you think is the reason and what measures can you take as a public prosecutor during visit?
9. what does the treatment of the police toward to the suspects in their detention look like regarding the right to the protection against self-incrimination and the right to remain silent?
10. Finally, is any other unofficial detention center other than the police station which is not legally recognized? If there is, then is there any measure the public prosecutors can take concerning the human right treatments given to these detainees, their right to be released on bail and other rights? What are the roles of the public prosecutor in this regard? If the prosecutors can't take any measure then, what are the reasons? And who is responsible for the human right violation of the detainees?

ከክስ በፊት በፖሊስ ጥበቃ ስር የሚገኙ እስረኞችን በተመለከተ

ለዕቃብ ህግ የተዘጋጀ ቃለ መጠየቅ

በማዕከላዊ ጎንደር ዞን በታች አ/ወ/ፖሊስ ጣቢያ የታሰሩ ሰዎችን የሰብአዊ መብት አያያዝ ለማጥናት የተዘጋጀ ቃለ መጠየቅ ሲሆን ጥናቱ የተካሄደው በጎንደር ዩኒቨርሲቲ ህግ ት/ት ቤት የድህረ ምረቃ ፕሮግራም በሰብአዊ መብቶች ህግ ክፍል ሚሚያ ነው። መጠይቁ የተዘጋጀው በሁሉም የሰብአዊ መብቶች ላይ ሳይሆን ከክስ በፊት ባሉት በተወሰኑ በተመረጡ መብቶች ላይ ነው። እነዚህም

ሀ/ በፖሊስ ቁጥጥር ስር የሚውሉበት ሁኔታ እና ህጋዊነት

ለ/ ዝም የማለት (ያለመናገር) እና እራስን በወንጀል ተጠያቂ ከማድረግ የመጠበቅ መብት

ሐ/ ከክስ በፊት በምርመራ ወቅት በዋስትና የመለቀቅ መብት እና

መ/ ከድብደባ ክብርን ከሚያዋርድ እና ኢ-ሰባአዊ ከሆነ አያያዝ የመጠበቅ መብቶች ላይ ያተኮሩ ናቸው።

በመጀመሪያ ለቃለ-መጠይቁ ፈቃደኛ ስለሆኑ ክልብ እናመሰግናለን የቃለ መጠይቁ አላማም ለትምህርታዊ አገልግሎት ብቻ የሚውል መሆኑን አውቀው ትክክለኛ እና ተገቢ መልስ በመስጠት እንዲተባበሩን እጠይቃለሁ። የቃለ-መጠይቁ ሚስጥራዊነትም የተጠበቀ መሆኑን በቅድሚያ ልገልጸልዎት እወዳለሁ።

የቃለ መጠይቁ መነሻ ጥያቄዎች

1. በጣቢያ ጉብኝት እና በሌላ ጊዜም ቢሆን በፖሊስ ቁጥጥር ስር ያሉ ተጠርጣሪዎች መብቶቻችን ተጣሳ ብለው አመልክተው ያውቃሉ? አመልክተው የሚያውቁ ከሆነ ምን አይነት እርምጃ ይወስዳል?
2. በጣቢያ ጉብኝት ጊዜ አንድ ተጠርጣሪ በቁጥጥር ስር የዋለበትን አግባብ ህጋዊ መሆን አለመሆኑን በቅድሚያ ያረጋገጣል ወይ? በቁጥጥር ስር የዋለበትን አግባብ ህጋዊ እንዳልነበር? ለምሳሌ የተጠረጠሩበት ወንጀል እጅ ከፍንጅ የሆነና እጅ ከፍንጅ ያልሆነ ሲሆን፣ የታሰረበትን ጉዳይ የማወቅ ልምናገር(ዝም የማለት) እና በ48 ሰዓት ውስጥ ፍ/ቤት የመቅረብ መብት ፣ በፍ/ቤት መያዝ እና መሳሪያ ጉዳዮችን በቅድሚያ ታጣራላችሁ ወይ አተገባበሩ ምን ይመስላል?
3. በፖሊስ ቁጥጥር ስር ያሉ ተጠርጣሪዎች ላይ የሚደርሰው የመብት ጥሰት ምን ያህል አሳሳቢ ነው ብለው ያስባሉ? ብዙ ጊዜ ተጣሉ የሚባሉት ከክስ በፊት ያሉ መብቶች የትኞቹ ናቸው? በጣቢያ ጉብኝት ወይም በሌላ በማንኛውም አጋጣሚ የተጠርጣሪዎቹ መብት ተጥሶ ሲገኝ እርስዎ የሚወስዱት ህጋዊ እርምጃ አለ ወይ? አተገባበሩስ?
4. ብዙ ጊዜ የመብት ጥሰቱን ፈፀመ/አደረሰ የሚባለው አካል የትኛው ነው?? መብቱን የጣሰው ሰው ተጠያቂነትን እስከምን ድረስ ነው። በዚህ ዙሪያ የዐ/ህግ ሚናስ ምንድን ነው ብለው ያስባሉ? ተጠያቂነት ካለ አተገባበሩን ቢያብራሩልን ተጠያቂነት ከሌለ ምክንያቱን ቢገልጹልን?
5. በተጠርጣሪዎች ላይ ለሚደርሰው የመብት ጥሰት ዋነኛ ምክንያቶች ምን ምን ናቸው ብለው ያምናሉ/ያስባሉ?
6. ክስ ከመመስረቱ በፊት በፖሊስ ቁጥጥር ስር ያለ ተጠርጣሪ ዋስትና ሲጠይቅ የዐ/ህግ ጽ/ቤቱ ብዙ ጊዜ ዋስትና የሚከላከልባቸው ምክንያቶች ምን ምን ናቸው?
7. በቁጥጥር ስር በሚውሉበት ጊዜ ሆነ ወይ ፖሊስ ጣቢያ ከገቡ በኋላ ድብደባ የደረሰባቸው ተጠርጣሪዎች ምን ያህል ያጋጥማል?? ኢ-ሰብአዊ ድርጊትና ድብደባ ተፈፀሞ በተገኘ ጊዜ ምን አይነት እርምጃ ይወስዳሉ??
8. የእስረኞች አያያዝ የአካባቢ ንፅህና የጤና፣ የመኝታ፣ምብግና ውሃ ህክምና በአግባቡ ተሟልቶ ይቀርባል ወይ? ተሟልቶ የማይቀርብ ከሆነ ችግር እና ምክንያቱ ምንድን ነው ብለው ያስባሉ እንዲሁም በጉብኝት ጊዜ ምን አይነት እርምጃ ይወስዳሉ?
9. እራስን ለወንጀል ድርጊ ተጠያቂ ካለማድረግ ካለመናገርና ዝም የማለት መብት ጋር በተያያዘ የወረዳ ፖሊስ ጣቢያ የእስረኞች አያያዝ ምን ይመስላል?
10. በወዳው ከመደበኛው ፖሊስ ጣቢያ ውጭ ሌላ በህግ እውቅና ያልተሰጠው የእስረኛ ማቆያ አለ ወይ? ሰባዊ መብት አያያዛቸውን በተመለከተ በጣቢያ ጉብኝት ከማረጋገጥ ከዋስትና ጥያቄና መሳሪያ ጥያቄዎች ጋር በተያያዘ የሚወሰድ እርምጃ አለ ወይ? የዐ/ህግ ሚና ምንድን ነው መፍትሄ የሌለው ከሆነስ ምክንያቱ ምንድን ነው? ለእነዚህ የእስረኞች ሰብአዊ መብት ጥሰት ጠያቂው የትኛው አካል ነው?