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## Procedural Safeguards & Fair Trials Rights of Detained Persons during Pretrial Crime Investigation in Ethiopia: The Law & Practice in the Case of Wolaita Zone, Southern Ethiopia

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# Procedural Safeguards & Fair Trials Rights of Detained Persons during Pretrial Crime Investigation in Ethiopia: The Law & Practice in the Case of Wolaita Zone, Southern Ethiopia

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## Acronym

ACHPR-----African Charter on Human and Peoples Rights

CC-----Criminal Code of FDRE

CJS-----Criminal justice system

CPCE-----Criminal Procedure Code of Ethiopia

FDRE -----Federal

Democratic Republic of Ethiopia

HRC-----United Nations Human Rights Committee

ICCPR-----International Covenant on Civil and Political Rights

PGFTLA -----Principles and Guidelines on the Right to a Fair Trial and Legal

## Assistance in Africa

PTD-----Pretrial Detention

SNNPR-----Southern Nation, Nationalities and Peoples Region of Ethiopia

UDHR-----Universal Declaration of Human Rights

US-----United States

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## I. INTRODUCTION

### a) Background and Justification of the Study

Under the UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (herein after UN 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 persons.<sup>1</sup> On the other hand, "untried prisoners" are defined as persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced.<sup>2</sup> "Deprivation of liberty" means any form of detention or imprisonment, or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at, will, by order of any judicial, administrative or other public authority.<sup>3</sup> The UN Committee on Arbitrary Arrest, Detention and Exile has defined the term "detention" to mean the deprivation of liberty that begins with the arrest, and that continues in time from apprehension until release.<sup>4</sup>

There is no single international human rights law that encompasses all the fair trials rights of detained persons during pretrial; however, there are some relevant treaty obligations mainly under the Universal Declaration of Human Rights (herein after UDHR)<sup>5</sup> and International Covenant on Civil and Political Rights (herein after ICCPR).<sup>6</sup> Besides, there are some relevant

<sup>1</sup> UN Body of Principles on the Protection of all Persons under any Form of Detention, or Imprisonment (herein after "Body of Principles on Detention"). UN Doc. A/Res/43/173. 198. The preamble, Para. a & d respectively.; see also Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Para. S (c) and (d) respectively.

<sup>2</sup> UN Standard Minimum Rules for the Treatment of Prisoners, General Assembly Resolution No.44/111. Rule 84, para.1.

<sup>3</sup> UN Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly resolution 45/113. Rule 11, Para. (a).

<sup>4</sup> UN Committee, Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile, 34 U.N. ESCOR, U.N. Doc. E/CN.4/826/Rev. I (1964). P.5.

<sup>5</sup> 1948 Universal Declaration of Human Rights [herein after UDHR]

<sup>6</sup> 1976 International Covenant on Civil and Political Rights (herein after ICCPR).

standards developed in non-binding instruments such as UN Body of Principles on Detention. The African Charter on Human and Peoples Rights (herein after ACHPR)<sup>7</sup> & the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (herein after PGFTLA in Africa) which is adopted by the African Commission on Human and Peoples' Rights, prescribes enumerations of fair trials rights of pretrial.<sup>8</sup>

Ethiopia ratified ICCPR on 11 June 1993; & it has acceded to the ACHPR;<sup>9</sup> hence, both of them become part of the law of the land according to the Constitution of Federal Democratic Republic of Ethiopia (herein after Constitution of FDRE).<sup>10</sup> The Constitution of FDRE demands that its provisions dealing with fundamental rights and freedoms to be interpreted in conformity to human rights principles adopted by Ethiopia;<sup>11</sup> prohibits not only arbitrary detention of a person, but also detention without a charge or conviction made against him/her;<sup>12</sup> and prescribes enumerations of fair trials rights of pretrial.<sup>13</sup>

However, studies conducted by different scholars and reports of different institutions show that violation of fair trials rights during pretrial is global problem. For instant, Alfred de Zayas stated that tens of thousands of persons throughout the world are subjected to indefinite detention, frequently incommunicado, and governments try to justify such irregular imprisonment on the basis of "national security"; "state of emergency"; "illegal migration"; and other so-called extraordinary circumstances.<sup>14</sup> Open Society Foundations (OSF) reported that excessive and arbitrary use of PTD is a global problem affecting both the developing and developed nations alike.<sup>15</sup> Indeed, OSF reported that in many countries, many of the pretrial detained persons are exposed to torture, & coercion; the arbitrary actions of police, corrupt officials,

other detained persons; and there are denial of access to lawyers.<sup>16</sup> Furthermore, it is demonstrated that persons in PTD are more likely to be found guilty than defendants from similar backgrounds, facing similar charges, who are released awaiting trial.<sup>17</sup>

#### b) *Statement of the Problem*

In Ethiopia, National Report under the Universal Periodic Review Mechanism (2009) reported that lack of awareness and narrow understanding of human rights norms in the society associated with inadequate promotion of human rights; and inadequate translation and dissemination of international human rights instruments into domestic languages are some of difficulties and constraints which affect the implementation of human rights.<sup>18</sup> FDRE the First National Human Rights Action Plan (2013-2015) stated that there is lack of provision of free legal aid service during pretrial to persons who do not have the means to pay for it by themselves; in some cases, arresting officers fail to inform detained persons their right to remain silent, and that any statement they make may be used as evidence against them in trial.<sup>19</sup>

The Human Rights Watch (2013) reported that there is arbitrary detention; violation of basic due process rights such as use of coercive methods like torture or other ill-treatments to obtain confession; and denial of access to lawyers and family members in Ethiopia.<sup>20</sup> US Country Reports on Human Rights Practices (2015) reported that detention authorities violate fair trials rights of detained persons; there is arbitrary arrest and detention; detention without charge and lengthy PTD in Ethiopia.<sup>21</sup> Research conducted in Oromia Special Zone Surrounding Finfine by Fisaha Getachew (2015) demonstrated that investigative police do not bring detained persons before a court of law within prescribed time; they do not inform detainees their fair trials rights; there is prolonged PTD without trial; and denial of bail right because of economic status; and

<sup>7</sup> 1986 African Human and Peoples' Rights Charter (herein after ACHPR), Art. 6, Para. 2 and 3.

<sup>8</sup> The African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance (herein after PGFTLA in Africa) in Africa, DOC/OS(XXX)247.

<sup>9</sup> FDRE Accession to the ACHPR, Proclamation No.114/1998.

<sup>10</sup> Constitution of FDRE, Proclamation No.1/1995, Art.9, Para.4. It declares that all international agreements ratified by Ethiopia are an integral part of the law of the land.

<sup>11</sup> Id., Art.13, Para.2. It states that the fundamental rights and freedoms prescribed under chapter three of the constitution shall be interpreted in a manner conforming to the principles of the UDHR, International Covenants on Human Rights and international instruments adopted by Ethiopia.

<sup>12</sup> Ibid, Art.17, Para.2.

<sup>13</sup> Ibid, Art.19.

<sup>14</sup> Alfred de Zayas, 2005, Human rights and indefinite detention, International Review of the Red Cross, Vol.87, pp.16.

<sup>15</sup> David Bery, 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/> Accessed on 3 April 2017. P. 12

<sup>16</sup> Id.

<sup>17</sup> Clive Davies, 1971, Pre-Trial Imprisonment: A Liverpool Study. British Journal of Criminology, pp.32-48; Marian R.

Williams, 2003, Effect of Pretrial Detention on Imprisonment Decisions, Criminal Justice Review, Vol.28, pp. 299-316; UN Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention (Geneva: UN Commission on Human Rights, E/CN.4/2006/7, 2006), Para.66.

<sup>18</sup> HRC Working Group on the Universal Periodic Review, 2009, Ethiopia's National Report under the Universal Periodic Review Mechanism. A/HRC/WG.6/6/ETH/1, pp.21.

<sup>19</sup> Federal Democratic Republic of Ethiopia National Human Rights Action Plan of 2013 - 2015, pp.37., [www.absinialaw.com.](http://www.absinialaw.com/) Accessed 6 March, 2017

<sup>20</sup> Human Rights Watch, 2013, Torture and Ill-Treatment in Ethiopia's Maekelawi Police Station; pp.1 and 6., [http://www.hrw.org.](http://www.hrw.org/) Accessed on 9 March 2017.

<sup>21</sup> US Department of State, Bureau of Democracy, Human Rights and Labor, 2015, Country Reports on Human Rights Practices for 2015, Ethiopia 2015 Human Rights Report, pp.1 and 4.

visits are infrequently allowed and only for a few minutes to speak through grills.<sup>22</sup> However, no research work has been done in the study area concerning the realization of procedural safeguards & fair trials rights of detained persons during pretrial.

c) *Research Question*

Are procedural safeguards & fair trials rights of detained persons recognized by law are realized during pretrial in the study area?

d) *Objectives of the Study*

i. *General Objectives*

To explore whether procedural safeguards & fair trials rights of detained persons recognized by law are realized during pretrial in the study area.

ii. *Specific Objectives*

To critically examine whether procedures prescribed by law to detain a person; and fair trials rights of detained persons prescribed by law are realized during pretrial in the study area;

iii. *Significance of the Study*

It helps the CJS actors involved in pretrial such as the police, public prosecutors and courts; legislature, policy makers, and human rights institutions involved in protection and promotion of human rights to take appropriate actions to enhance the extent of realization of procedural safeguards & fair trials rights of detained persons during pretrial. Furthermore, it will contribute to the existing discourse on the issue; and it provides insight for further research.

e) *Scope of Study*

The areal scope of the research is limited to Wolaita Nation, where there are 15 PTD centers and only 1 regional prison. It investigates the extent of realization of procedural safeguards & fair trials rights of detained persons on arrest or on remand in pretrial detention centers only.

f) *Methodologies of the Study*

i. *Description of Wolaita Zone*

Under the current Federal Structure of Ethiopia, the name Wolaita indicates both the name of the area and Omotic language-speaking peoples.<sup>23</sup> It is one of those nations<sup>24</sup> that comprise Southern Nation,

Nationalities and Peoples Regional (SNNPR) State of Ethiopia.<sup>25</sup> Besides, it is one of 14 Zones<sup>26</sup> located within SNNPR. It is located at about 330 KMs South West of Addis Ababa, and 160 KMs from Hawassa, the center of SNNPR. It is bordered on the South by Gamo Gofa Zone, on the West by Omo River, on the North West by Kambata Tambaro Zone, on the North by Hadiya Zone, on the North East by the Oromo State, on the East by Bilate River and on the South East by Lake Abaya; & its current total population is estimated to be above 2,463,000.<sup>27</sup> For administrative purpose, Wolaita Zone is divided into 12 Woreda<sup>28</sup> and 3 Reform Towns. In each of those 15 administrative units, there is police custody, which is serving as PTD center.

In order to get valuable and reliable data and to make the sample more representative of the study area, detained persons found in 53.33% of PTD centers were covered under this study. Those are, PTD centers found in Damot Gale, Damot Sore, Boloso Sore, Humbo, Boloso Bonbe, Kindo Koysha, Sodo Zuria Woreda and Sodo Reform Town.

ii. *Research Design*

To achieve the objectives of this research, quantitative research method was used. The quantitative method concerned with subjective assessment of attitudes, opinions and behavior.<sup>29</sup> Besides, the type of research conducted was descriptive research.<sup>30</sup>

iii. *Study Population*

Both detained persons & personnel of the government institutions involved in CJS are involved in this study. The former refers detained persons, who are detained in PTD center on arrest or on remand. Accordingly, 155 detained persons were involved in this research. Among them, 72.90% are those living within PTD center; and 27.09% are those released from detention pending investigation or trial and found while awaiting trial at the gates of courts. Among the total participants, 26 of them are females, the remaining 129 are males; and 44 are under the category of juvenile offenders.

<sup>25</sup> Id., Art.47, Para.1 (7). Accordingly, SNNPR is one of nine states that comprise of FDRE.

<sup>26</sup> Revised Constitution, 2001, of the Southern Nation, Nationalities and Peoples Regional State, Proclamation No.5/1995, Art.

80. Accordingly, „Zone“ means an administrative structure below state structure and comprises of Woreda administration and Reform Towns in the case may be

<sup>27</sup> FDRE Central Statistics Agency (CSA), 2016, People and Housing Census Extension Report.

<sup>28</sup> Revised Constitution of the State of SNNPR, Art.90. Accordingly, „Woreda“ means the administrative unit below Zone Structure and comprises of several kebele administrations. Kebele is the lowest administrative unit under the current Federal Structure of Ethiopia.

<sup>29</sup> CR Kothari, 1990, Research Methodology, New Age International Publishers, India. pp. 5.

<sup>30</sup> Id.,pp.2. According to C.R. Kothari, the major purpose of descriptive research is description of the state of affairs, as it exists at present.

<sup>22</sup> Fisaha Getachew, 2015, Respect for Human Rights in Pre-Trial Criminal Investigation, the Case of Oromo Special Zone Surrounding Finfine, pp.56. Unpublished LLM thesis. School of Graduate Studies, Addis Ababa University.

<sup>23</sup> Yilma Teferi, 2011, Dispute Resolution and Reconciliation Mechanisms in Wolaita, Gebre Yentiso (ed), Ethiopian Arbitration and Conciliation Center, Addis Ababa, pp.103-104

<sup>24</sup> Constitution of FDRE, Art.39, Para.5. Accordingly, a "Nation, Nationality or People" is a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory

From the CJS actors, heads of police office; heads of peace & security office; coordinators of the pretrial crime investigation core process & investigative police officers were involved. Since their total number is 40 in sampled research area, 34 (85%) of them were involved.

#### iv. *Sampling Techniques*

Among 15 PTD centers located in the study area, 40% of them were selected through simple random sampling while as 13.33% of them were selected purposely taking into account their accessibility and convenience to collect pertinent data. To sample the target population, purposive sampling technique was employed because of their number is minimal in each sampled area.

#### v. *Source of Data*

Both primary and secondary sources of data are used. For legal analysis section, the UDHR, ICCPR, UN HRC General Comments on provisions of ICCPR and its communications, and ACHPR are used as primary sources because all of them are adopted by Ethiopia. Besides, the Constitution of FDRE, CPCE, Criminal Code of FDRE, and Federal Detainees Treatment Regulation are used as primary sources among national laws. On the other hand, UN Body of Principles on Detention; and the African Commission on Human and Peoples “ Rights PGFTLA in Africa are used as secondary sources. For practical section, the target populations are primary source of data. Books, reports, and scholarly articles are used as sources of secondary data.

#### vi. *Method of Data Collection*

To collect quantitative data, self-completed questionnaire & interview are used as pertinent data collection tools. For legal analysis section, comparative approach was used to reveal the extent of procedural safeguards & protection to fair trials rights of detained persons during pretrial under the legal frameworks of Ethiopia.

#### vii. *Method of Data Analysis and Interpretation*

For legal analysis section, inductive-reasoning technique was employed as the main mechanism. For practical section, descriptive statistics like frequency and percentages in the forms of tables to analyze the qualitative data was used; and inductive reasoning technique was utilized.

#### viii. *Ethical Consideration*

Being patient and friendly; and smooth communications & depending on the principles of informed consent by explaining the purpose of the research to the participants was done to attain their prior consent.

## II. LEGAL FRAMEWORKS FOR RIGHTS OF DETAINED PERSONS

### a) *Manner of Detention*

The principle of legality adopted under the ICCPR not only demands the existence of national legislation prescribing the grounds and procedures of lawful detention, but also requires the concern state to comply with it.<sup>31</sup> The UN Body of Principles on Detention prescribes that detention shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose;<sup>32</sup> and a judicial or other authority empowered by law to order detention of a person shall order any form of detention.<sup>33</sup>

Similar to the ICCPR, the principle of legality is adopted under Article 6 of the ACHPR; & the PGFTLA in Africa prescribed that arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.<sup>34</sup> States are expected to specify the authority empowered to issue detention warrant and to carryout lawful detention under national legislation. If the alleged offence is of minor in terms of nature or gravity and its consequence, detention without warrant should be prohibited. Nevertheless, warrantless detention should be allowed in exceptional circumstances when obtaining a warrant from the competent authority is not possible such as the existence of flight risk, or a threat to public safety.

Ethiopia has ratified both the ICCPR & ACHPR. In Ethiopia, detention can be carryout with or without court warrant. For instant, in case of Flagrant Offence;<sup>35</sup> the CPCE allows to detain the offender without warrant where the alleged offence is punishable with simple imprisonment<sup>36</sup> for not less than three months.<sup>37</sup> Besides, the CPCE empowers any private person to detain flagrant offender without warrant, if the alleged

<sup>31</sup> ICCPR, Art. 9, Para.1

<sup>32</sup> UN Body of Principles on Detention, Principle 2.

<sup>33</sup> Id, Principle 4.

<sup>34</sup> PGFTLA in Africa, Para.M [1(b)].

<sup>35</sup> CPCE, under Articles 19-21, defines that the offence shall be deemed to be flagrant where the offender is found committing, or attempting to commit it, or has just committed it, or when the police are immediately called to the place where the offence has been committed, or a cry for help has been raised from the place where the offence is being, or has been committed. The offence shall be deemed quasi-flagrant after the offence has been committed if the offender who has escaped is chased by witnesses or by members of the public or when a hue and cry has been raised.

<sup>36</sup> Criminal Code of the FDRE, Proc. No. 414/2004. Art.106. It states, “Simple Imprisonment” means “a kind of sentence applicable to crimes of a not very serious nature committed by persons who are not a serious danger to society, and it may extend for a period from ten days to three years; however, it may extend up to five years having regard to gravity of the crime or where there are concurrent crimes punishable with simple imprisonment or the offender has been punished repeatedly”.

<sup>37</sup> CPCE, Art.50.

crime is not punishable up on complaint;<sup>38</sup> however, it requires him/her to hand over the detainee to the nearest police station without unnecessary delay.<sup>39</sup> Here, the law is strict only to preclude „unnecessary delay“; however, to what extent it tolerates as necessarily delayed is disputable. So, the provision has to be interpreted very narrowly having regard to the distance and transport access from place of detention to the nearest police station. Besides, the CPCE enumerates circumstances where any member of the police may arrest a person without warrant.<sup>40</sup> Thus, except circumstances enumerated therein, detention of a person shall be carryout through warrant issued by regular court. Under the CC of FDRE, detention contrary to law or in disregard of the forms and safeguards prescribed by law is declared crime; and punishable with rigorous imprisonment not exceeding ten years and fine.<sup>41</sup>

b) *Right to be informed of the reason of detention and any charge*

Under the ICCPR, the detainee shall be informed promptly the reasons of detention and any charges against him/her.<sup>42</sup> In the view of the HRC, the reasons of detention must include the general legal basis; the wrongful act, the identity of an alleged victim,<sup>43</sup> and the official basis for the detention;<sup>44</sup> and such information must be in the manner that enables the detained person to seek release if he/she believes that the reasons for detention are invalid or unfounded.<sup>45</sup> The HRC has demonstrated that if the detainee does not understand or speak the working language, he/she shall be provided with the support of impartial interpreter at the state expense within reasonable time.<sup>46</sup> The manner of notification can be any form, oral or written; however, the HRC has stated that oral notification is enough to satisfy the requirement.<sup>47</sup>

Regarding time requirement, only „prompt“ notification of both the reasons of detention and the

charge is required under the ICCPR. In the view of the HRC, the phrase “promptly” requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law,<sup>48</sup> or the individual is publicly named as such;<sup>49</sup> and the reasons of detention must be communicated to the detainee immediately upon arrest/detention,<sup>50</sup> except a delay, which is the minimum necessary, may be required before an interpreter can be present.<sup>51</sup> However, notice regarding charges shall not be made necessarily at the time of detention.<sup>52</sup>

The ACHPR do not specifically prescribe this right; however, the PGFTLA in Africa prescribes that any arrested person shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be informed of any charges against him or her promptly; in a language he or she understands.<sup>53</sup> Accordingly, „promptly“ shall mean as soon as a charge is first made by a competent authority;<sup>54</sup> such notice shall include details of the charge or applicable law and the alleged facts on which the charge is based in a manner sufficient to indicate the substance of the complaint against the accused;<sup>55</sup> and that would allow the detained person to prepare a defence and to take immediate steps to secure his or her release.<sup>56</sup> Moreover, it prescribes that the detainee has right to free assistance of the competent interpreter if he/she cannot understand the language during at all pretrial proceedings;<sup>57</sup> and this right shall applies to both written and oral proceedings; and encompasses right to have translation or interpretation of all documents or statements necessary to understand the proceedings.<sup>58</sup>

In Ethiopia, besides ratifying the ICCPR, the Constitution of FDRE prescribes that the arrested persons shall be informed promptly, in a language they understands, of the reasons of their detention and any charge against them.<sup>59</sup> Besides, it demands that on appearing before a court, the arrested persons have the right to be given prompt and specific explanation of the reasons for their arrest.<sup>60</sup> Accordingly, such notice shall be specific & only „prompt“ notice of both the reasons of arrest and charge is required. Under the CPCE, the

<sup>38</sup> Id., Art.21, Para.1. Under the FDRE Criminal Justice System crimes are classified in to crimes punishable upon public prosecution or compliant. The former refers cases when justice come into motion without the will of the victim while as the later refers cases when justice come into motion only when complaint is made by the crime victim or his/her legal representative.

<sup>39</sup> Ibid., Art.58, Para.1.

<sup>40</sup> Ibid., Art.51, Para.1.

<sup>41</sup> Criminal Code of FDRE, Art.423. It states that any public servant who, contrary to law or in disregard of the forms and safeguards prescribed by law, arrests, detains or otherwise deprives another of his freedom, is punishable with rigorous imprisonment not exceeding ten years and fine

<sup>42</sup> ICCPR, Art.9, Para.2 ; Art.14, Para.3 (a).

<sup>43</sup> HRC Communication No. 1177/2003, Wenga and Shandwe v. Democratic Republic of the Congo, Para.6.2.

<sup>44</sup> HRC Communication No.1812/2008, Levinov v. Belarus, Para.7.5.

<sup>45</sup> HRC Communication No.248/1987, Campbell v. Jamaica, Para.6.3.

<sup>46</sup> HRC Communication No.526/1993, Hill & Hill v. Spain, Para.12.2.

<sup>47</sup> Human Rights Committee, General comment No.35 on Article 9 of the ICCPR (herein after called General Comment No. 35). Para.26.

<sup>48</sup> HRC Communications No.1128/2002, Márques Morais v. Angola, Para.5.4.; Communications No.253/1987, Kelly v. Jamaica, Para.5.8

<sup>49</sup> UN Human Rights Committee, General Comment No. 32 on Article 14 of the ICCPR, Para.31.

<sup>50</sup> General Comment No.35, Para.27.

<sup>51</sup> Supra note 46.

<sup>52</sup> General Comment No.35, Para.30.

<sup>53</sup> PGFTLA in Africa, Para. M [2(a)].

<sup>54</sup> Id., Para. N [1(a)].

<sup>55</sup> Ibid., Para. N [1(b)].

<sup>56</sup> Ibid., Para. N [1(c)].

<sup>57</sup> Ibid., Para. M [4(a &c)].

<sup>58</sup> Ibid., Para. M [4(d)].

<sup>59</sup> Constitution of FDRE, Art.19, Para.1.

<sup>60</sup> Id., Art.19, Para.3, Sentence 2.

content of the charge shall encompass the day and exact time where the alleged crime is committed; the property against which or the person against whom the alleged crime is committed; the type of crime committed; and the complaint made by the crime victim or public prosecutor, if any.<sup>61</sup> Therefore, such notice shall include all of aforementioned elements; otherwise, it does not enable the detained persons to challenge the legality of their detention before court.

The Constitution of FDRE demands such notice to be made in the language the detained person understands or speaks; however, it does not expressly require detention authority to provide the detained persons, who are unable to understand the language properly, with impartial and competent language interpreter at the state expense during pretrial.<sup>62</sup> However, the CPCE guarantees this right during police interrogation. Hence, the authority should provide the detained persons with impartial and competent language interpreter during pretrial.

c) *Right to communicate with legal counsel*

Under the ICCPR, whether the detained person is entitled to have the assistance of a legal counsel at the stage of preliminary crime investigation is disputable.<sup>63</sup> However, HRC has demonstrated that states parties to the ICCPR should permit and facilitate access to counsel for detainees in criminal cases, from the outset of their detention.<sup>64</sup>

Similar to the ICCPR, the requirement of assistance of legal counsel at the first moment of arrest is not expressly acknowledged under the ACHPR.<sup>65</sup> However, the PGFTLA in Africa prescribes that the accused has the right to choose his or her own counsel freely; and this right begins when he/she is first detained or charged.<sup>66</sup> More importantly, it demonstrates that legal representation is the best means of legal defence against infringements of human rights and fundamental freedoms.<sup>67</sup> It demands, states must ensure that any person arrested or detained is provided with the necessary facilities to communicate, as appropriate, with his or her lawyer;<sup>68</sup> prompt access to a lawyer and, unless he/she has waived this right in writing, shall not be obliged to answer any questions or participate in any interrogation without his or her lawyer being present.<sup>69</sup>

Similar to both the ICCPR and ACHPR, the requirement of assistance of legal counsel during

pretrial is not expressly acknowledged under the Constitution of FDRE.<sup>70</sup> However, the CPCE demands any person detained on remand or on arrest shall be permitted forthwith to call and interview his advocate and shall, if so requests, be provided with the means to write.<sup>71</sup> On the other hand, the Ethiopian laws do not expressly require detention authority to provide free legal aid to those detained persons, who cannot afford the service, during pretrial. Under FDRE the First National Human Rights Action Plan, it is reported that there is lack of provision of free legal aid service to persons who do not have the means to pay for it privately during pretrial.<sup>72</sup> Thus, detained person must be provided with free legal aid service if he/she cannot afford it, provided that injustice will occur if the proceeding continued without such assistance.

d) *Right to remain silent and freedom from coercion*

The right to remain silent during police interrogation is not expressly acknowledged under both the UDHR and ICCPR. Indeed, whether the right not to be compelled to testify against oneself or to confess guilt during pretrial is enshrined under the ICCPR is contentious.<sup>73</sup> In the view of HRC, the right not to be compelled to testify against oneself or to confess guilty shall refer to the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt.<sup>74</sup> The UN Body of Principles on Detention bans using violence, threats or methods of interrogation that impair the detained person capacity to make decision or judgment;<sup>75</sup> taking undue advantage of the situation of a detained person for compelling him/her to confess; to incriminate him/herself otherwise; or to testify against any other person.<sup>76</sup> Besides, it demands non-compliance with aforementioned safeguards in obtaining evidence shall be taken into account in determining the admissibility of evidence produced against the accused;<sup>77</sup> however, it failed to acknowledge the right to remain silent during police interrogation.

Both of aforementioned rights are not expressly acknowledged under the ACHPR. However, the PGFTLA in Africa prohibits taking undue advantage of the situation of a detained person for the purpose of compelling him or her to confess, or incriminate him/herself or to testify against any other person;<sup>78</sup> and using violence, threats or methods of interrogation

<sup>61</sup> CPCE, see Art.92, Para.1 (a-e).

<sup>62</sup> Ibid., see Art.19.

<sup>63</sup> ICCPR, Art. 14, Para.3 (d).

<sup>64</sup> General Comment No.32, Para.32, 34 and 38.

<sup>65</sup> ACHPR, Art.7, Para.1 (c).

<sup>66</sup> PGFTLA in Africa, Para. N [2(d)].

<sup>67</sup> Id., Para. N [2(a)].

<sup>68</sup> Ibid., Para. M [2(e)].

<sup>69</sup> Ibid., Para. M [2 (f)].

<sup>70</sup> Constitution of FDRE, Art.19 and Art. 20, Para.5.

<sup>71</sup> CPCE, Art.61.

<sup>72</sup> Supra note 19.

<sup>73</sup> ICCPR, Art.14, Para.3 (g).

<sup>74</sup> General Comment No.32, Para.41.

<sup>75</sup> UN Body of Principles on Detention, Principle 21, Para.2.

<sup>76</sup> Id., Para.1.

<sup>77</sup> Ibid., Principle 27.

<sup>78</sup> PGFTLA in Africa, Para. M [7(d)].

which impair his or her capacity of decision or judgment during interrogation.<sup>79</sup>

In Ethiopia, the right to remain silent during police interrogation is recognized under both the CPCE and Constitution of FDRE;<sup>80</sup> and they demand an investigative police or other authority empowered to have the same power to inform the detained person the fact that any statement the later makes voluntarily during police interrogation will be produced at trial stage as evidence against him/her.<sup>81</sup> Moreover, the later prescribes that arrested person shall not be compelled to make confessions or admissions which could be used in evidence against him/her; and any evidence obtained under coercion shall not be admissible.<sup>82</sup> Besides, CPCE requires the court before which preliminary inquiry is being held to inform the accused person that he/she has the right to remain silent; and any statement he/she makes voluntarily will be produced at trial as evidence against him/her.<sup>83</sup> Besides, criminal code of FDRE has declared any improper practices used in violation of aforementioned rights of the detained persons during pretrial are criminal act.<sup>84</sup> Therefore, the legal frameworks of FDRE have recognized those rights without exception.

e) *Right to communicate with outside world*

The right to communicate with outside world, particularly with family members and friend, is not expressly recognized under both the ICCPR and ACHPR. In Ethiopia, the Constitution of FDRE states that all persons held in custody shall 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;<sup>85</sup> & it does not prescribe an exception. Thus, even though the law does not expressly prescribe as such, the detention authority should inform promptly the detainee this right during pretrial.

f) *Right to prompt appearance before court of law*

Under the ICCPR, anyone detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.<sup>86</sup> In the view of the HRC, this right applies in all cases without exception and does not depend on the choice or ability of the detainee to assert it;<sup>87</sup> and even before formal charges have been asserted so long as the person is arrested or detained on suspicion of

criminal activity.<sup>88</sup> In accordance with HRC, the significance of this right is to bring the detention of a person under judicial control.<sup>89</sup> Accordingly, once the detainee is brought before the judge, the judge should decide either to release or remand him/her in custody for additional investigation or to await trial.<sup>90</sup> The court must have the power to order the detainee brought before it in person, regardless of whether he/she has asked to appear.<sup>91</sup>

The meaning of “promptly” under the ICCPR may vary depending on objective circumstances; however, forty-eight hours is ordinarily sufficient to transport the detainee and to prepare for the judicial hearing;<sup>92</sup> and any delay longer than these hours shall remain exceptional and justified.<sup>93</sup> Besides, the detainee must be brought to appear physically before the judge or other officer authorized by law to exercise judicial power.<sup>94</sup> Hence, „other officer authorized by law“ under Article 9, paragraph 3, of the ICCPR should mean an authority, which is independent, objective and impartial in relation to the issues dealt with,<sup>95</sup> and it shall not include a public prosecutor.<sup>96</sup>

This right is not expressly acknowledged under the ACHPR; however, the PGFTLA in Africa demands that any arrested or detained person on a criminal charge shall be brought before a judicial officer authorized by law to exercise judicial power; and it states the purpose of such review is to assess whether sufficient legal reason exists for the arrest; to assess the necessity of detention before trial; to determine whether the detainee should be released from custody, and the conditions, if any, for such release; to safeguard the well-being of the detainee; to prevent violations of the detainee’s fundamental rights; to give the detainee the opportunity to challenge the lawfulness of his or her detention and to secure physical release if the arrest or detention violates his or her rights.<sup>97</sup>

Under both the Constitution of FDRE<sup>98</sup> and CPCE;<sup>99</sup> persons arrested shall be brought before court within 48 hours of their arrest; and such time shall not include the time reasonably required for the journey from

<sup>88</sup> HRC Communication No.1096/2002, Kurbanova v. Tajikistan, Para.7.2.

<sup>89</sup> HRC Communication No.1914/2009, Musaev v. Uzbekistan, Para.9.3.

<sup>90</sup> General Comment No.35, Para.36.

<sup>91</sup> Id., Para.42.

<sup>92</sup> HRC, Supra note 89, Para.7.3-7.5.

<sup>93</sup> HRC Communication No.336/1988, Fillastre v. Bolivia, Para.6.4 (budgetary constraints did not justify ten day delay).

<sup>94</sup> HRC Communication No.289/1988, Wolf v. Panama, Para.6.2. and Communication No.613/1995, Leehong v. Jamaica, Para.9.5.

<sup>95</sup> HRC Communication No.521/1992, Kulomin v. Hungary, Para.11.3.

<sup>96</sup> HRC Communication No.1547/2007, Torobekov v. Kyrgyzstan, Para.6.2.; and Communication No.1278/2004, Reshetnikov v. Russian Federation, Para.8.2.

<sup>97</sup> PGFTLA in Africa, Para. M [3(a)].

<sup>98</sup> Constitution of FDRE, Art.19, Para.3.

<sup>99</sup> CPCE, Art.29, Para.1.

<sup>79</sup> Id., Para. M [7(e)].

<sup>80</sup> CPCE, Art. 27, Para.2; Constitution of FDRE, Art.19, Para.2.

<sup>81</sup> Ibid

<sup>82</sup> Constitution of FDRE, Art.19, Para.5.

<sup>83</sup> CPCE, Art.85, Para.2.

<sup>84</sup> Criminal Code of FDRE, Art.424, Para.1 and 2.

<sup>85</sup> Constitution of FDRE, Art.21, Para.2.

<sup>86</sup> ICCPR, Art. 9, Para.3.

<sup>87</sup> HRC Communication No.1787/2008, Kovsh v. Belarus, Para.7.3-7.5.

the place of arrest to the court. Even the later demands as far as the local circumstances allow, the authority shall produce them as soon as possible.

g) *Right to challenge the lawfulness of detention*

Under the ICCPR, detained person shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.<sup>100</sup> UN Body of Principles on Detention states that detained person or his councilor shall take proceeding before judicial or other authority empowered by law to challenge the lawfulness of his/her detention at any time,<sup>101</sup> and such proceedings shall be simple and expeditious and at no cost for detained persons without adequate means.<sup>102</sup> In the view of HRC, if the court has ordered detention on remand, it should not involve a return to police custody, but rather to a separate facility under different authority, where risks to the rights of the detained person more likely mitigated.<sup>103</sup>

This right is not expressly recognized under the ACHPR; however, the PGFTLA in Africa prescribes that any arrested or detained person shall be entitled to take proceedings before a judicial body, in order that that judicial body may decide without delay on the lawfulness of his or her detention and order release if the detention is not lawful.<sup>104</sup> Moreover, it prescribes that any form of detention and all measures affecting the human rights of a person arrested or detained shall be subject to the effective control of a judicial or other authority; and the judicial official or other authority shall exercise control over the official detaining the person.<sup>105</sup> Furthermore, the later prescribes that Judicial bodies shall at all times hear and act upon petitions for habeas corpus, amparo or similar procedures; and no circumstances whatever must be invoked as a justification for denying this right.<sup>106</sup>

In Ethiopia, the Constitution of FDRE prescribes that detained person have inalienable right to petition the court where the arresting police officer or the law enforcer fails to bring him/her before a court within 48 hours from the commencement of detention.<sup>107</sup> The court reviewing such petition may order the applicant released, if detention is proved illegal; or may order the applicant to remain in custody where the interest of justice requires; or may order continued detention on remand for a time strictly required to carry out the necessary investigation;<sup>108</sup> or may order the applicant released on bail in accordance with the law.

h) *Right to release on bail pending investigation*

Terence Ingman, 1996, has defined that Bail means a release from custody, pending a criminal trial, of a defendant on balancing of competing interests and on the premise that a specified predetermined amount of money will be paid if he/she absconds.<sup>109</sup> It is not likely to release all detained persons on bail because of the danger that some of them might abscond; interfere with witness; or commit further offences.<sup>110</sup>

Under the ICCPR, this right is enshrined. Besides, this right is recognized under the UN Body of Principles on Detention;<sup>111</sup> & it prescribes that the arrest or detention of a person pending investigation or trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law.<sup>112</sup> In the view of the HRC, Bail should be granted, except in situations where the likelihood exists that the accused would abscond; or destroy evidence; influence witnesses; or flee from the jurisdiction of the state party.<sup>113</sup>

This right is not recognized unambiguously under the ACHPR; however, the PGFTLA in Africa prescribes that unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others, states must ensure that they are not kept in custody pending their trial; however, release may be subject to certain conditions or guarantees, including the payment of bail.<sup>114</sup>

In Ethiopia, this right is recognized under both the Constitution of FDRE<sup>115</sup> and CPCE.<sup>116</sup><sup>116</sup> The former states that in exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the person arrested. The CPCE prescribes the investigative police officer may in his/her discretion release the detained person on bail when the alleged crime do not entail rigorous imprisonment as sole or alternative punishment; or when it is doubtful to conclude that detained person has committed the alleged crime.<sup>117</sup>

The CPCE prescribes that detained person may be released on bail where the offence with which he/she is charged does not entail death penalty; or rigorous imprisonment for fifteen years, or more and where there is no possibility of the crime victim is dying.<sup>118</sup> On the

<sup>100</sup> ICCPR, Art.9, Para. 4.

<sup>101</sup> UN Body of Principles on Detention, Principle 32, Para. 1.

<sup>102</sup> *Id.*, Para. 2

<sup>103</sup> *Supra* note 90.

<sup>104</sup> PGFTLA in Africa, Para. M (4).

<sup>105</sup> *Id.*, Para. M [2 (h)].

<sup>106</sup> *Ibid.*, Para. M [5 (e)].

<sup>107</sup> Constitution of FDRE, Art.19, Para.4

<sup>108</sup> *Id.*; and CPCE, Art.59, Para.2.

<sup>109</sup> Terence Ingman, 1996, the English Legal Process, Ashford Colour Press, Gosport, Hampshire, p.109

<sup>110</sup> *Id.*

<sup>111</sup> UN Body of Principles on Detention, Principle 38-39

<sup>112</sup> *Id.*, Principle 36, Para.2

<sup>113</sup> HRC, *supra* note 50, Para.12.3

<sup>114</sup> PGFTLA in Africa, Para. M [1 (e)].

<sup>115</sup> Constitution of FDRE, Art.19, Para.6.

<sup>116</sup> CPCE, Art.28, and Art.59, Para.1.

<sup>117</sup> *Id.*, Art.28, Para.1.

<sup>118</sup> *Ibid.*, Art.63, a contrary reading of Para.1.

other hand, the court may deny release on bail if it has persuaded that the accused might abscond; interfere with witness; or commit further offences.<sup>119</sup> Besides, those corruption offences that are punishable by a term of more than 10 years imprisonment;<sup>120</sup> and the crime of vagrancy are declared non-bailable from the very beginning.<sup>121</sup>

The CPCE demands the court to render decision to release or not on bail within forty-eight hours.<sup>122</sup> It requires cooperation in finding guarantee for the accused if the later ordered to release on bail;<sup>123</sup> hence, such cooperation is required from the authority conducting investigation; or public prosecutor; or court in accordance with Article 13, paragraph 1, of the Constitution of FDRE.<sup>124</sup> The CPCE prescribes, if the court decided not to release the accused on bail, the later can appeal against such decision to the appellate court; and the decision of appellate court on the issue is final.<sup>125</sup>

*j) Protection from discriminatory treatment during pretrial*

Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.<sup>126</sup> Under the ICCPR, each state party is obliged to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>127</sup><sup>127</sup> Besides, it entitles all persons not only equality before the law and equal protection of the law, but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground.<sup>128</sup> A principle of non-discrimination is acknowledged under the UN Body of Principles on Detention;<sup>129</sup> and it prescribes that measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory.<sup>130</sup>

Under the ACHPR, every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed therein without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.<sup>131</sup>

Besides, it prescribes that every individual shall be equal before the law; and shall be entitled to equal protection of the law.<sup>132</sup> Moreover, the PGFTLA in Africa have adopted the principle of Non-discrimination, equality before the law and equal protection of the law.<sup>133</sup>

In Ethiopia, non-discrimination, equality before the law and equal protection of the law are recognized under both the Constitution of FDRE<sup>134</sup> and CC.<sup>135</sup> Besides, FDRE Council of Ministers Regulations on the Treatment of Federal Prisoners demands that treatment of prisoners shall be based on the basic principles of non-discrimination on grounds of gender, language religion, political opinion, nation, nationality, social status or citizenship.<sup>136</sup> Hence, all the human rights of the detained persons recognized by law should be realized without discrimination to all detained persons during trial.

<sup>119</sup> Supra note 119.

<sup>120</sup> FDRE Revised Anti-Corruption Special Procedure and Rules of Evidence, Proclamation No.434/2005, Art. 4, Para.1.

<sup>121</sup> FDRE Vagrancy Control Proclamation No.384/2004, Art. 6, Para.3.

<sup>122</sup> CPCE, Art. 66.

<sup>123</sup> Id, Art. 62

<sup>124</sup> Constitution of the FDRE, Art.13, Para.1.

<sup>125</sup> Supra note 122, Art.75.

<sup>126</sup> Lawyers Rights Watch Canada, 2013, Pre-Trial Release and the Right to be Presumed Innocent: A Handbook on Pre-Trial Release at International Law, pp.9.

<sup>127</sup> ICCPR, Art.2, Para.1.

<sup>128</sup> Id, Article 26.

<sup>129</sup> UN Body of Principles on Detention, Principle 5, Para.1.

<sup>130</sup> Id, Para.2.

<sup>131</sup> ACHPR, Art.2.

<sup>132</sup> Id, Art.3

<sup>133</sup> PGFTLA in Africa, Para. A [2 (a-d)].

<sup>134</sup> Constitution of FDRE, Art.25.

<sup>135</sup> Criminal Code of FDRE, Art.4.

<sup>136</sup> Council of Ministers Regulations on the Treatment of Federal Prisoners, Reg. No 138/2007. Art. 3.

### III. DATA INTERPRETATION

#### a) Type of offenders & Manner of detention

Table 1: Category of respondents & manner of their detention

No.	Status of detainees, type of crime and manner of detention	Frequency
1.	Flagrant or quasi-flagrant offenders	28
2.	Non-flagrant offenders	127
	Manner of detention of non-flagrant offenders	
3.	Those detained by police officer with court warrant	32
4.	Those voluntarily appeared in PTD center up on police summoning	0
5.	Detained by police officer without court warrant	48
6.	Detained by private person	0
7.	Detained by kebele militia up on the order of police officer	47
8.	By other officials up on their own initiation	0

Aforementioned data was gathered from the police investigation files of individual sampled detained persons. Hence, Table 1 above shows that among total respondents 18.06% are flagrant offenders and 81.93% are non-flagrant offenders.

The Ethiopian laws require obtaining arrest warrant from court to detain non-flagrant offender; however, only 25.19% non-flagrant offender were detained after obtaining court warrant. Among the total detained persons, 37.79% & 30.32% of them were detained by police officer without obtaining court warrant and kebele militia up on police order respectively. The data shows that the police issue an order of arrest to the kebele militia to arrest the suspect;

however, the law does not prescribe this power for the police. As regards this, all of the participants from the detention authorities strongly agreed that due to lack of enough police staff & lack of transportation facilities the investigative police issue an arrest order to kebele militia to bring the suspect before police office; provided that this is usually done after sufficient evidence is collected to assure that the suspect has committed the alleged crime. Similarly, 27 of them justify that since most of the alleged criminal acts are not serious by nature, they failed to obtain court warrant before arresting the suspects. However, the given justification is not valid according to the law; hence, the law strictly requires them to obtain court warrant.

#### b) Right to be informed of human rights

Table 2: The right of Detained Person to be Informed of Fair Trials Rights of Pretrial

No.	Information concerning	Responses	Frequency
1	Reasons of detention, or charge	Informed at the time of detention	28
		Informed after detention, but before police interrogation	36
		Informed simultaneously with police interrogation	91
2	The right to communicate with Families friends, etc.	Informed	155
		Not informed	0
3	The right to communicate with legal councilor of one's choice	Informed before police interrogation	0
		Informed simultaneously with police interrogation	0
		Informed after police interrogation	0
		Not informed at all	155
4	The right to remain silent during police interrogation	Informed	0
		Not informed	155
5	The right to challenge the legality of detention	Informed	0
		Not informed	155
6	The right to language interpreter	Informed	0
		Not informed	155

According to Table 2 above, among the total participant detained persons, 18.06%; 23.22%; and 61.93% are informed the reasons of detention or charge made against them at the time of detention; after detention, but before police interrogation; and simultaneously with police interrogation respectively. Accordingly, majority of them are informed of the reasons of detention at the time of police interrogation. Indeed, 100% of respondents are informed of their right to communicate with family and friend. On the other hand, 100% of them are not informed of right to communicate with legal counsel of their choice; right to remain silent during police interrogation; right to

challenge the legality of detention before court; and the right to have the assistance of competent language interpreter during pretrial, if they cannot understand or speak the language. Hence, the police do not comply with the law.

Among the participants from the detention authorities, 13 & 8 of them strongly agreed & agreed respectively that lack of knowledge of those rights by investigative police; 9 & 16 of them strongly agreed & agreed that the perception informing those rights will make the crime investigation ineffective are some of the justifications why detained persons did not informed of most of their rights during pretrial investigation.

c) *The right to communicate with legal councilor during pretrial*

*Table 3:* The right to communicate with legal councilor ones choice

No.	Human Rights Standard	Alternative Responses	Frequency
1	Is detention authority gives permission to communicate with legal councilor?	Yes	31
		No	82
		Neutral	42
2	If you are permitted, when?	Before police interrogation	0
		After police interrogation	31
		During preliminary inquiry	0
3	Is there favorable situation to communicate with counsel freely and privately?	Yes	6
		No	25
4	Is the time allowed to communicate with counsel is adequate?	Yes	0
		No	31
5	What are the challenges to communicate with counsel in PTD center?	Lack of awareness of such right	138
		Lack of permission from Investigative police	82
		Lack of funds to pay for the service	42
		Lack of access of the service	113
6	Is there free legal aid for those unable to pay for the service?	Yes	0
		No	42

According to Table 3 above, among the sampled detained persons, 20% of them are allowed to communicate with legal counsel of their choice; and 52.90% of them are denied such permission. All of those allowed to communicate with legal counsel of their choice have got such permission after police interrogation; however, 80.64% of them responded that there is no favorable situation to communicate with counsel freely and privately in PTD center; and the time allowed for such communication is not sufficient. Moreover, among the total respondents 89.03%; 52.90%; 72.90%; and 27.09% of them responded lack of awareness of this right; lack of permission from

detaining authority; lack of access to the service; and lack of fund to pay for such service respectively are some the challenges for the detained persons to exercise such right freely. Besides, detaining authorities do not provide free legal aid service for these, who are unable to pay for the service during pretrial.

Among the participants from the detention authorities, 34 of them strongly agreed that since this right is not directly acknowledged under Article 19 of the Constitution of FDRE the suspect cannot claim this right; 26 & 6 of them strongly agreed & agreed that the perception allowing the detained persons this right before police interrogation will make the crime

investigation ineffective are some of the justifications why most of the detained persons did not allowed to communicate with councilor of their choice during pretrial. Similarly, all of them strongly agreed that in case of grave offences the detainee should not be allowed

such right. Therefore, aforementioned data confirmed that detention authorities knowingly denied most of the detained persons their right to communicate with legal councilor of their choice during pretrial.

d) *The right to have the Assistance of Competent Language Interpreter during*

*Table 4:* The right to have the assistance of competent language interpreter during policeInterrogation

No.	Languages	Skills	Responses	Frequency
1.	Amharic Language	Speaking	Yes	93
			No	62
		Listening	Yes	93
			No	62
		Reading	Yes	77
			No	78
Writing	Yes	77		
	No	78		
2.	Wolaitigna Language	Speaking	Yes	146
			No	9
		Listening	Yes	146
			No	9
		Reading	Yes	68
			No	87
Writing	Yes	68		
	No	87		
3.	Is there provision of competent language interpreter during police interrogation for those unable to understand or speak the language		Yes	0
			No	105
			Neutral	50

Article 5, Paragraph 3, of the revised Constitution of the state of SNNPR, states that Zones may determine their working language. Accordingly, the working language of the Wolaita Zone is Wolaitigna language; however, the practice shows that this language has been serving only for oral communication and the Amharic language has been used for written communication. Hence, all the proceedings starting from police investigation up to final court rulings written down by using Amharic language in Wolaita Zone. Therefore, there must be the provision of neutral and competent language interpreter at state cost for those who cannot write and read Amharic language. This is because the law requires the answer for interrogation shall be recorded and the detained persons shall read that record and confirm that it is their response by signing.

that there is no provision of the assistance of language interpreter for the mere fact that the suspects cannot understand Amharic language. All of them stated that since all of the investigative police officers understand Wolaitigna language, they simply record in Amharic what the detained persons responded to them in Wolaitigna & order the detained persons to sign over it. Furthermore, all of them confirmed that they provide the assistance of language interpreter only when the detained person cannot understand both Wolaitigna & Amharic language only. This shows that there is clear violation of detained person’s right to have the assistance of language interpreter at the state expense during police interrogation.

Table 4 above shows that, among the total sampled detained persons, 50.32% of them cannot write and read Amharic language; however, 100% of them responded that they are not provided with the assistance of neutral and competent language interpreter during police interrogation. Similarly, all of the participants from the detention authorities confirmed

e) *The right to prompt appearance before court of law*

*Table 5:* Detained persons right to appear before court of law within prescribed time

Human Rights Standard	Responses	Frequency	100%
Are you appeared before court Within 48 hours from the Commencement of detention by the detention authority?	Appeared within 48 hours	0	0%
	Appeared after lapse of 48 hours	70	45.16%
	Not appeared at all	85	54.84%

The data under Table 5 above was taken from the police investigation file of each the sampled detained persons; & it was cross-checked by the detained persons themselves. It shows that 45.16% of the respondents are appeared before court after the lapse of 48 hours from their detention. On the other hand, 54.84% of them totally denied from appearing before court. Hence, the detention authorities do not comply with the time requirement prescribed by law.

Among the participants from the detention authorities, 18 & 11 of them strongly agreed & agreed that lack of enough personnel is one of the justifications

behind why they failed to produce most of the detained persons before court of law within 48 hours from the commencement of detention. Indeed, 24 of them reported that if the alleged crime is minor in nature instead of producing the suspects before court of law, they simply order them to produce sufficient warrant or bail bond to be released according to Article 28, paragraph one, of the CPCE. This implies that the detention authorities do not conform to the law; & their justification for failure to produce detained persons in accordance with the law is unsound..

f) *The right to challenge legality of detention before court of law*

*Table 6:* Detained persons right to challenge legality of their detention before court

No.	Human Rights Standard	Responses	Frequency
1	Have you made petition before court for review of the legality of detention?	Yes	28
		No	57
2	Why you did not petitioned for review of the legality of detention before court?	Lack of awareness of this right	39
		Lack of facilities to exercise such right	18

Table 6 above shows, from those who were denied from appearing before court by the detaining authority, only 32.94% of them petitioned before court to challenge the legality of their detention; and the remaining 67.05% of them do not.

Among those failed to make such petition, 68.42% and 31.58% of them responded that lack of awareness of their right to challenge the legality of detention before court; and lack of access to facilities to exercise such right respectively are factors hindering them from exercising such right. On the other hand, all of the participants from the detention authorities strongly agreed that they have no mandate as regards realization of the detained person's right to challenge their detention before court of law & to request their physical release.

g) *The right to be released on bail*

Table 7: Detained persons right to release on bail pending investigation

No.	Human Rights Standard	Responses	Frequency
1	Are you allowed bail right?	Yes	113
		No	42
	If you are allowed bail right, by which organ?	By Investigative police officers	57
		Lower court order	47
		Appellate court order	9
2	Among those allowed bail right	Those released up on satisfying required bail bond	72
		Those not released	41
3	Is the required bail bond is fair & affordable?	Yes	37
		No	62
		Neutral	14

According to Table 7 above, 72.90% of the respondents are allowed bail right pending investigation. Among those allowed bail right, 50.44% and 41.59% of them are allowed by investigative police upon his/her own motion; and by lower court order respectively. The remaining 7.96% of them were allowed bail right by appellate court after they were denied by both the investigative police & lower court. About 63.71% of those allowed bail right are released from the PTD center by satisfying the required bail bond & the remaining 36.28% are not. Among those allowed bail right, 54.86% of them responded that the required bail bond is not fair & affordable; and 69.02% of them responded that the amount of required bail bond is not similar for similar types of crime.

Concerning this point, all of the participants from the detention authorities strongly agreed that lack of guideline which helps to fix uniform amount of bail bond when the alleged crimes are even similar in terms of nature & seriousness is one of the challenge in the field. On the other hand, 15 & 13 of them strongly agreed & agreed that the amount of bail bond fixed by the investigative police is fair & affordable. Indeed, 17 & 10 of them strongly agreed & agreed that most of the time the required amount of bail bond may be greater than the fine against the offender under the criminal law of FDRE; & all of them justify that otherwise the suspects do not comply with the bail bond.

h) *The right to freedom from any kind of coercion during pretrial investigation*

Table 8: Detained persons right to freedom from coercion of any kind

No.	Human Rights Standard	Responses	Frequency
1	Is there freedom from any form of coercion during police interrogation?	Yes	53
		No	102
2	If there is coercion, indicate its type?		
	Use of threat/intimidation	Yes	102
		No	0
	Use of promise	Yes	0
		No	102
	Use of inducement	Yes	0
		No	102
	Insulting	Yes	91
		No	11
	Use of force	Yes	79
		No	23
	Separate detention in darkness	Yes	0
		No	102
	Denying access to food and drinking water	Yes	0
No		102	

Table 8 above shows that among the total sampled detained persons, 34.19% of them responded that investigative police do not use coercion against them to obtain admission or confession during pretrial investigation; however, the remaining 65.80% of them responded contrary. Among these responded that there is coercion in PTD center, 100%; 89.21%; and 77.45% of them responded that use of threat/intimidation; insulting; and use of force respectively are prevailing methods of

coercion. On the other hand, 100% of them responded that use of promise; inducement; separate detention in dark places; or denying access to food & drinking water are not used as methods of coercion.

On the other hand, 23 of the participants from the detention authorities strongly agreed that there is no coercion against the detained persons in PTD center; however, the remaining 11 of them hold neutral position.

i) *The right to protection from discriminatory treatment*

*Table 9: Detained Persons Right to Protection from Discriminatory Treatment*

No.	Human Rights Standard	Responses	Frequency	
1	Is there freedom from any form of coercion during police interrogation?	Yes	53	
		No	102	
2	If there is coercion, indicate its type?			
		Use of threat/intimidation	Yes	102
			No	0
		Use of promise	Yes	0
			No	102
		Use of inducement	Yes	0
			No	102
		Insulting	Yes	91
			No	11
		Use of force	Yes	79
			No	23
		Separate detention in darkness	Yes	0
			No	102
		Denying access to food and drinking water	Yes	0
No	102			

According to Table 9 above, among total sampled detained persons, 70.32% of them responded that there is discriminatory treatment in PTD center; while as the remaining 29.67% of them responded contrary.. Among those responded that there is discrimination in PTD center, 81.65%; 65.13%; 72.47%; 78.89%; and 84.40% of them responded that economic background; religious background; education level; language; and clan, nation, nationality or other social origin respectively are the prevailing grounds of discrimination in PTD center. However, 18.34%; 34.86%; 27.52%; 21.10%; and 15.59% of them confirmed that economic background; religious background; education level; language; and Clan, Nation, Nationality or other social origin respectively are not the prevailing grounds of discrimination in PTD center. On the other hand, 100% of these responded that there is discrimination in PTD center confirmed that political opinion and gender are not the prevailing grounds of discrimination.

On the other hand, 18 & 5 of the participants from the detention authorities strongly agreed & agreed respectively that there is no coercion against the

detained persons in PTD center; however, the remaining 11 of them hold neutral position.

#### IV. FINDINGS AND RECOMMENDATIONS

a) *Findings*

Detaining authorities, particularly the investigative police, do not respect procedures prescribed by law before arresting the non-flagrant offenders. For instant, the police detain the suspect without court warrant even when the alleged crime is punishable with simple imprisonment not exceeding three months such as assault and minor acts of violence, petty theft and slight petty offences against honour, or slight insult or offensive behavior. Moreover, the police issue detention order for kebele militia to arrest the suspect & brought before it; however, the law do not authorize the police this power. On the other hand, the detention authorities justify that the police issue such order due to lack of enough personnel & lack of transport facilities; hence, these justifications are not valid & sound.

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 inform detained persons reasons of their detention simultaneously with police interrogation; they do not inform the right to communicate with legal councilor; right to remain silent during police interrogation; right to appear before court within 48 hours of their detention; & right to challenge legality of their detention before court of law and to require physical release. Detention authorities justify that they failed to inform detained persons most of their rights during pretrial due to lack of awareness of those rights by the investigative police & due to the negative perception that informing those rights makes pretrial crime investigation ineffective.

Detained persons are prohibited from appearing before court of law not only within 48 hours prescribed by law, but also after the lapse of such time in most cases. Moreover, detaining authority never allows the detained persons to communicate with legal councilor of their choice before police interrogation in most cases; however, even in cases when they allow, they do not allocate sufficient time; and they do not create favorable condition to make the communication privately. There is no provision of free legal aid for those who cannot afford for the service during pretrial; and there is no provision of competent language interpreter during police interrogation for those who cannot understand properly the Amharic language.

The investigative police use improper methods such as threat or intimidation, insulting and use of force against detained persons to obtain admissions or confessions; which can be used as evidence against them in trial. Besides, there is also discriminatory treatment based up on economic and religious background, education level, language and clan, nation, nationality or other social origin.

Suspects remained detained for long time without their detention being reviewed by court; and because of the required bail bond is not affordable in most cases; and sometimes the required amount of bail bond may exceed the amount of fine the alleged criminal act entail as punishment.

#### b) Recommendations

*To the Federal Government:* The FDRE government should adopt comprehensive detention guideline, which clearly encompasses procedural safeguards & fair trials rights of the suspects; the rights and duties of law enforcement officials; administrative and disciplinary measures to be taken against the violators of detained persons rights; it should clearly require the authority responsible for detention to inform detained persons all of fair trials rights either at the commencement of detention or promptly after it; and it should prescribe uniform standards to fix the amount of bail bond having regard to the complexity of the case, the interest of

justice, and the character of the suspect. Moreover, the government of FDRE should adopt both the UN Body of Principles on Detention; and African Commission on Human and Peoples' Rights PGFTLA in Africa.

An independent and impartial department should be established under one of these institution involved in CJS to follow and investigate the realization of procedural safeguards & fair trials rights of detained persons during pretrial; otherwise, the FDRE government should made accessible to the general community national human rights institutions such as FDRE Human Rights Commission;<sup>137</sup> and FDRE Institution of Ombudsman;<sup>138</sup> and those institutions should have branch offices at least at Zone level. In so far, those institutions have branch offices only at state/regional level, which makes them inaccessible.

The FDRE government should ensure that those persons going to employ as investigative police throughout the country should have enough human rights training before they are recruited; & it should facilitate situations to give long & short term human rights training to investigative police. Moreover, the FDRE government should amend the provision of FDRE Charities and Societies Proclamation No.621/2009, which authorize only those NGOs that secure 10% of their fund from foreign sources to involve in human rights promotion and protection;<sup>139</sup> hence, the amendment shall empower all interested NGOs irrespective source of their fund, national or international, to involve in the field.

*To the local government:* Investigative police should collect sufficient evidence; & obtain court warrant before detaining the suspect, who is non-flagrant. During police interrogation, these detained persons who are unable to understand the language properly should be provided with the assistance of competent language interpreter free of costs. During pretrial, free legal aid should be given to those detained persons who cannot afford for legal counsel service privately. Thus, private advocates should strictly render 50 hours free legal service, in a year, free of charge or upon minimum payment, which is required from them under the FDRE Federal Court Advocates Code of Conduct Regulation No. 57/1999;<sup>140</sup> & the local government should create enabling environment for the advocates to render those services.

The local government should give human rights awareness in general & procedural safeguards and fair trials rights of detained persons in particular to the general community at kebele level. The local government should encourage the local media to involve actively in creating human rights awareness by using local language, Wolaitigna. As part of human rights awareness creation, local governments should officially compile and translate to the local working language, these laws dealing with human rights in general and human rights of detained persons in particular.

## V. COMPETING INTEREST

The author declares that he has no competing interest. Besides, this research work is original and it has never been published in any other journal. Besides, he confirms that other people's works and materials he has used have been duly acknowledged.

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