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SENIOR THESIS ON FREEDOM FROM TORTURE DURING INTERROGATION IN ETHIOPIA LAWS

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Abstract

This research evaluate Ethiopian laws with regard to international human right instruments in relation to the right of the suspect to be protected from torture during interrogation. It attempts to analyze how the right of the suspect under international human right instrument is protected from torture. The right freedom from torture is stipulated under provision of international human right instruments such as UDHR, ICCPR, CAT and ECHR. Additionally, the difference between torture and other ill-treatment also mentioned. The position of Ethiopian laws with regard to freedom from torture is accessed. The researcher mainly focus on the existence of difference between torture and other ill-treatment even if their difference is subjective one. The Ethiopian laws does not define and identify those ill-treatment. Finally, the researcher has made recommendations that could solve the existing problems.

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Acronyms

CAT	Convention against torture and cruel, inhuman and degrading treatment
ECPHR	European convention on protection of human right
ECtHR	European court on human right
FDRE	Federal democratic republic of Ethiopia
HRC	Human Right Committee
ICCPR	International covenant on civil and political right
UN	United Nation

1.1. **Back ground of the study**.

Interrogation is the most important ways of crime investigation. Some criminal cases are resolved through confession made by criminal and other is resolved through interrogation process[1]. Interrogation is the presumption that a suspect is lying or withholding vital information. If torture is available option interrogators are likely resort to torture when they believe a suspect is lying about what he or she know or does not know. However, even though interrogation is important in crime investigation there are situations when the right of the suspect is violated during interrogation. Therefore, it is important to analyze human right protection during interrogation.

Detention center is highly suspected that it is the place where human right is violated. Torture and Ill- treatment of prisoners are widespread in Ethiopia, particularly during interrogation in pre-trial police detention.

1.2. Statement of the problem

Human right law obliges states, primarily, to do certain things and prevent them from doing others. States have a duty to respect, protect and fulfill human rights. The fulfillment of human rights requires state to adopt appropriate measures, including Legislative measures in order to fulfill their legal obligations. CAT impose obligation on state members to adopt legislation in order to recognize right freedom from torture. Ethiopia as one of member state of this convention does not give emphasis as provided in the convention under the domestic laws for the protection this right. There is circumstance where numerous numbers of suspects suffer from torture, inhuman and degrading treatment or punishment. So it better to say that

[1] Geberhiwot Hadush: The legal limit to police custodial interrogation methods :a comparative look at the British and Ethiopian interrogation laws (2014),p.1

the right of the suspect is not protected or respected as provided under CAT. According to the report of US State Department, Human Right Watch Report and Amnesty International human right report, In Ethiopia the right to freedom from torture, inhuman and degrading treatment or punishment is frequently violated. This paper is therefore an endeavor to show incompatibilities of Ethiopian laws with International Human Right Document such as UDHR, ICCPR, CAT and among regional human right instruments ECHR with regard to freedom from torture during interrogation.

1.3. Objectives of the Study

This research has both general and specific objective. Both objectives are discussed as of the following.

1.3.1. **General objection**

The general objective of this research is to explore the position of International human right instrument and Ethiopian legal framework with regard to right freedom from torture during interrogation.

1. 3.2, Specific objective

- To evaluate position of the Ethiopian law on the right to freedom from torture during interrogation.
- To ascertain whether or not, right to freedom from torture has been incorporate in Ethiopia legal system properly and adequately.
- To ascertain the position of International human right instrument with regard to freedom from torture and cruel, inhuman and degrading treatment on the right of freedom from torture during interrogation.

1. 4. Research question

This research paper attempts to analysis normative standards of the individual's right to be free from torture during interrogation under international human rights document and Ethiopian legal framework.

- Whether or not, Ethiopian legal framework is adequately recognized the right freedom from torture during interrogation as provide under International human right instrument?
- Whether or not Ethiopian laws differentiate and define torture and other ill-treatments?

1.5. Significance of the study

This research paper will have significance in recognizing the right of suspect to be freedom from torture during interrogation. The finding of this paper would be in order to fill the gap of Ethiopian laws on the right of freedom from torture and it help the government to come up with new legislation to fill the gap. Suspects also will be benefited from this finding since the ultimate purpose of this research is to recognize freedom from torture during interrogation.

This paper also may contribute to and serve as source of and to aware the world community in general and Ethiopian in particular about impacts of interrogation mechanisms on the right to freedom the torture, cruel, inhuman and degrading treatment or punishment.

1.6. Research methodology

Having the objective of dealing with the normative standards of the right freedom torture and evaluation on enjoyment of this right during interrogation in Ethiopia and since this research papers consist of doctrinal type, the authorities are established both from primary and secondary source. As such the source of this research paper is sourced from constitution, revised criminal code, and proclamation. Accordingly this research touches some variety of issue in interrogation method and human right protection specifically on freedom from torture from perspective of Ethiopian legal framework and Convention against torture and cruel, inhuman and degrading treatment

1. 7. Scope of the study

This paper focus on normative frame work of the right of freedom from torture during interrogation to be recognized in Ethiopian laws. It will explore the Ethiopian laws and international human right instrument CAT, UDHR, ICCPR and among regional human rights instrument only ECHR used as compression of the study. Thus, it will explore national laws such as FDRE Constitution, Revised Criminal code and Torture and Ethiopian anti-terrorism Proclamation. The study only covers human rights pertaining to individuals undergoing interrogation by using torture as devise of crime investigation.

1. 8. Organizational structure

In order to have well organized research papers it is better to classify in to some chapters. Chapter one focused on proposal part .chapter two focus on what interrogation means? What torture means? Position of international human right documents in human right protection: specifically freedom from torture during interrogation. Chapter three deals with Ethiopia legal frame works on freedom from torture. In this chapter attempt is made to assess the position ofour legal system on freedom from torture.

Chapter four is concerned with conclusion and recommendations of the research.

1.9.**Limitation of the study**

The first limitation in the performance of this paper is the time limit. Since the time is very short, it is very difficult to see the other international human right document and other foreign case on this topic. The second limitation is financial constraint.

CHAPTER TWO

INTERROGATION AND POSITION OF INTERNATIONALHUMAN RIGHT INSTRUMENT IN RECOGINIZINGFREEDOM FROM TORTURE

2.1 Introduction

The use of physical force against the person deprived of their liberty and infringes the principle of rights human being. Interrogation is the most important way of crime investigation.But it shall have to be conducted in way it does not violate human right of the suspect. First,theresearch tries to see the definition of the interrogation and definition of torture, crueland degrading treatment or punishment and finally, the researcher tries to reveal why torture is used during interrogation.

2.2 Meaning and nature of interrogation.

Interrogation and confession-taking is often necessary in investigating and solving serious crime like murder and rape asitmay be difficult to obtain other evidence of guilt. Therefore,ifdone properly,interrogationcanthus bean unmitigatedsocial benefit and if not done properly, however, interrogation can be an unmitigated social disaster.[2]Coercive interrogation can lead to police-induced false confessions, which,inturn,canlead to the wrongful prosecution, conviction, and incarceration of the innocent.[3]Interrogation is the act of interrogating in other words questioning; examining by questions, inquiry.[4]

2.3 Nature and Definition Torture

Human right to personal integrity is usually expressed as the right not to be subjected to torture or cruel, inhuman or degrading treatment or

[2]Fisaha Getacho, the respect for human right in pre-trial criminal investigation(the case of oromia special zone surrounding Finfine), p.18, February 2015,Addis Ababa, Ethiopia.
[3]ibidp.8
[4] Bryan A.Garner, black law dictionary, 1999.

punishment. Government sometimes characterizes torture as indispensable interrogation tool for gathering strategic intelligence. Torture is one of the most extreme forms of human violence resulting in both physical and psychological consequence[5]. Torture has been used for thousands ofyears, and is still widespread, occurring through much of the world. Torture have enduring negativeeffects on both survivors and perpetrators and is ineffective for obtaining reliable information in interrogation.

The most comprehensive definition of torture is found in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)[6]. Under this Convention, the definition of torture is broken down into its component elements:

1. Intentional infliction of severe pain and suffering (whether physical or mental) on a person
For such purposes as:
A. obtaining information or a confession from him or a third person
B. punishing him for an act he or third person has committed or is suspected or committing
C. intimidating or coercing him or a third person
D. or for any reason based on discrimination of any kind.
2. The pain or suffering must have been inflicted by, at the instigation of or with the consent or acquiescence of a public official or a person acting in an official capacity.
3. It does not include any pain and suffering arising only from, inherent in or incidental to lawful sanctions.

2.4 Human dignity and International laws

[5] Social issues and police review, vol.3, No.1, p .179, available at:http://www.costzono...ion-1.pdf(accessed 12 January 2017)
[6]Prisoners abroad: Torture, cruel, inhuman, degrading treatment, January 2008,p 1-2,availabile at:http://www.prisonersabroad.org.uk(accessed 10 February 2017)

Human dignity is an elusive concept[7]. Human rights are norms that help to protect all people everywhere from severe political, legal and social abuses. These rights exist in morality and law at national and international levels. Human rights are given for all nature of human being and equally regardless of color, age, sex, religion, etc… Thefollowing instruments are some of International Human Right Instrument that give recognition for the right freedom from torture.

2.4.1 Universal declaration of human right

There are several international human right documents that provide and recognized the concept of human right. Among those human right documents, universal declaration of human right is the first international document that recognizes the right of the suspect freedom from torture.

Article 5 of the Universal Declaration of Human Rights 1948 reads, ‘‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.’’

Since this Article is widely prohibited use of torture and other ill treatment against suspects. This article deal with how the police officer treat the suspects at time of arrest. The police cannot use torture and other ill-treatment against the suspect during interrogation process.UDHR has got the status of international customer law. Since UDHR has status of international customary law all provision contained it shall apply to all state without theirconsent to be bound by the provision of UDHR. The prohibition against torture is so strong and universally accepted that it is now fundamental principle of customary international which means that even

[7]Supra note at 1

state which have not ratified any international treaties explicitly prohibiting torture are banned from using torture against everyone in everywhere regarded as expressing customary international law. Within the United Nations framework,torture and other cruel, inhuman or degrading treatment or punishment are explicitly prohibited under a number of international treaties, which are legally binding on those States which have ratified them[8].

Many treaties establish Committees, known collectively as the treaty bodies, which are mandated to monitorStates Partiescompliance with their obligations under the treaties.[9]They do this by issuingGeneralComments orRecommendations,which provide detailedinterpretationof specific aspects of the treaty. Some of the treaty bodies also adjudicate individual cases,provided the State in question has made a declaration recognizing the Committee competence in this regard.

2.4.2 **International covenant on civil and political right**

The other international human right instrument which is binding upon member state and playing significant contribution on protection of human right is ICCPR which reaffirms article five of UDHR, under its article 7. International Covenant on Civil and Political Rights (ICCPR) was the first universal human rights treaty explicitly to include a prohibition of torture and other cruel, inhuman or degrading treatment,[10] which aims to protect

[8]Torture in international law : A guide to jurisprudence ; Center for justice and international law,p.6, available at:http://www.cejil.org (accessed 7 January 2017),
[9]Ibid p.6
[10]Torture in international law : A guide to jurisprudence ; Center for justice and international law,p.7, available at:http://www.cejil.org (accessed 7 January 2017),

both the dignity and the physical and mental integrity of the individual[11]. Article 7 of ICCPR states that:

‘’No one shall be subject to torture or cruel, inhuman treatment or punishment. In particular no one shall be subjected without his free consent to medical and scientific experiment’’.

Even if ICCPR forbids torture or cruel, inhuman treatment or punishment in absolute terms, it does not contain a definition of the prohibited acts or ill-treatment those provided under Art.7. The suspect’s right is protected from any kinds of ill-treatment at time he/she come to under the control of police officer. The police officer is prohibited to use torture as device interrogation method.Human right committeeon its general comment on Art.7 does not establish sharp distinction among thoseill-treatment such as torture, cruel, inhuman or degrading treatment,though such distinctions depend on the nature, purpose and severity of the treatment applied.Additionally, on the concerned article Human right committee on its general comment does not differentiate among those ill treatments in clear manner which prohibition is breached simply states that there is violation of Art.7.Although the committee does not give distinction among those ill-treatment theyhave subjective difference.

In order to determine whether particular treatment constitutes a violation of Article 7 depends on all circumstances of the case, such as the duration and manner of the treatment, it’s physical or mental effects as well as the sex, age and state of health of the victim.[12]Elements such as the victim’s age and mental health maytherefore aggravate the effect of certaintreatmentso as to bring it within Article 7.

State member to ICCPR have a duty bound to take legislative and other measures to protect the right of individuals from torture or cruel, inhuman

[11]Ibid p.7
[12] Ibid. p 8

or degrading treatment whether it is inflicted by public official or private person. ICCPR does not qualified acts as torture or other ill-treatment rather it impose duty on states member to take measures to protect individuals from those ill-treatment. Stateshaveboth positive and negative obligation to give protectionfor individual right from all types of ill-treatment. Negative obligation is prohibition of ill-treatment not to be used by states or not engage in such treatment. Positive obligation on other hand imposes duty on the states to protect person under its jurisdiction from acts private individuals.

2.4.3 **Convention against torture and other cruel, inhuman degrading treatment**

Convention against torture and other cruel, inhuman degrading treatment appears to be the first international agreement to actually attempt to define the term torture. CAT Article 1 specifies that, for purposes of the Convention, torture is understood to mean any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[13]

As clearly provided in the above definition torture constitute that both physical and mental suffering and in order to say that such suffering isconstitute torture, it must bepurposefully inflicted. Additionally, the acts to be considered as torture it have to beinflicted by public officials or other person acting in an official.Thus, for example, if a private individual causes

[13]*Micheal Johon Garcia; UNCAT: overview and application to interrogation techniques; January 26, 2009, p.1, available at:http://www.crs.govRL32438 (accessed 9 January 2017).*

intense suffering to another, absent the instigation, consent, or acquiescence of a public official, such action does not constitute torture for purposes of CAT.[14]

To categorize acts as torture it must be sever nature it does not include all acts of mistreatment causing mental or physical suffering.

This understanding of torture as a severe form of mistreatment is further made clear by CAT Article 16, which obligates Convention parties to prevent in any territory under their jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to acts of torture,[15]thereby indicating that not all forms of inhumane treatment constitute torture.

The convention impose on state parties an obligation to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under theirjurisdiction.[16]

They are also forbidden from expelling, returning, or extraditing a person to another State where there are substantial grounds for believingthat he would be in danger of being subjectedto torture.As far as CAT is concerned it try to qualify act as torture or other cruel, inhuman or degrading treatment. The pain or suffering must be inflicted by public official or other person acting in official capacity. States are not responsible for acts beyond their control. However, they are responsible for acts of individual if they fail to respond adequately for them. The convention impose a number of obligation on the parties so as to take effective legislative,administrative, judicial or other measures to prevent acts of torture in territory;[17] to keep under systematic review interrogation rules, instruction methods and practices as well as arrangements for custody.[18]Under Art.4 CAT impose on member state to ensure in its legal systemthat the victim of torture obtainsredress and get adequate compensation for the victim.

[14] *Ibid p.2*
[15]CAT at art. 16(2)
[16] CAT at art. 2(1).
[17]CAT at art.2
[18]CAT at art.11

2.4.4 European convention on human right

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was opened for signature in 1950. The prohibition on torture and other forms of ill-treatment is enshrined in Article 3 of the ECHR, which simply states:

‘’No one shall be subjected to torture or to inhuman or degrading treatment or punishment.’’

As seen from the above article it does not define torture, nor inhuman or degrading treatment or punishment.[19]In determining whether act is torture or not the ECHR will normally consider whether treatment was for the purpose of obtaining information or confession, infliction of punishment. If the treatment is not used for the above purpose then it is considered as cruel, inhuman and degrading treatment. As far as ECHR is concerned to say an act is ‘’inhuman’’ it have to cause actual bodily injury or intense physical or mental suffering. Within the meaning

Of Art.3 to say an act is ‘’degrading’’ its objective is to humiliate and debase the person concerned and the consequence of the act resulted in affecting personality.

Accordingly, the European Court of Human Rights and the European Commission of Human Rights[20]have developed a complex and extensive body of jurisprudence to determine the constituent elements of these forms of abuse. Article 3 of the European Convention on Human Rights prohibits torture as well as other inhuman or degrading treatment or punishment. The same article of the European Court of Human Right has observed on many occasions, enshrines one of the fundamental values of democratic

[19]Interights manual for lawyers: prohibition of torture, inhuman or degrading treatment or punishment under the ECHR(article 3), available at :http://www.interights.org(assecced 21 January 2017)

[20]Ibid p.1

society[21]. The Convention prohibits in absolute terms such ill-treatment at time ofdifficult such as time state emergency, fight against terrorism and crime and it designed primarily to protect the physical integrity of person. In addition, the Court has interpreted the provision to protect against the infliction of pain or other acts that cause severe mental suffering. State have to refrain from engaging in torture or inhuman or degrading treatment or punishment itself i.e., a negative obligation.[22] In this regard, the State is responsible for the actions of all of its agencies, such as the police, security forces, other law enforcement officials, and any other State bodies who hold the individual under their control, whether they act under orders, or on their own accord.

In certain circumstances, convention imposes positive obligations on the State to protect against the infliction of treatment contrary to Article 3 by others.For example, where a privately run school inflicts punishment which reaches the level of severity envisaged by Article 3, the State responsibility is engaged for such acts, because the State is ultimately responsible for securing the right to education.

In order to satisfy the requirements of Article 3, the State must take appropriate action to sanction those who inflict the prohibited treatment or punishment.[23] Thus, where an individual has raised an arguable claim of ill-treatment contrary to Article 3, the State is under procedural obligation to investigate and, following an investigation, to prosecute and bring to trial those responsible and, where found guilty, to punish them for their acts, in accordance with the law. As with the right to life, this obligation means that the State must provide not only for an accessible procedure for complaints and investigations, but also for an effective criminal justice system.

[21]Ibid p.1
[22]Ibid. p.2
[23] Ibid.p.2

Furthermore, the State obligations extend to situations where private persons such as family members inflict pain and injury on children within their care. The Court has clearly stated that States are under an obligation to set up a framework that enables both public officials and private parties to be punished for, or discouraged from, treatment in violation of Article 3.

2.5 **INTERROGATION AND PROHIBITION OF TORTURE**

Interrogation is a process of crime investigation of which a suspect individual is subject to question by state officer usually a police. Historically it has been evident that the process inherently carries compulsion which includes physical and psychological pressure to break the will of the suspect and get what they need[24] . Compulsion, intimidation, humiliation and traits still continue to be the instrument of interrogation for breaking the will of the suspect and to collect information for criminalizing the suspect which provide that the suspects an object of criminal investigation not a person with full dignity[25].

There are state duties under some international human right instrument to investigate allegation on inhuman, torture or cruel, degrading treatments.

[24]Supra note 1
[25]ibid

For instance under CAT article 12 provided that each state party shall ensure that its competent authorities proceed to prompt and or a parties investigation wherever reasonable ground to believe that act of torture has committed in any territory under its jurisdiction[26].

CAT also had forbidden state from expelling, returning or extraditing a person to another state where there are substantial ground for believing that he would be danger of being subject to torture. CAT has the control objective criminalize objective all instance of torture acts committed during interrogation. Therefore, as we infer form ICCPR, CAT and other international instruments there are state duty. Among those duties of state parties are, first state have duty to investigate where there is a reasonable to believe that an act of torture has been committed in any territory under its jurisdiction as provided under article 12 of CAT. The state obligation to ensure prompt and impartial investigation does not depend on the submission of formal complaint. Secondly, state has a duty to enact and enforce legislation, criminalizing the torture. Thirdly, there is duty to explode statement obtained by torture or other ill treatment as provide under the 15 of CAT. Duty to train personnel and provide procedural and duty to grant redress and compensate the victim the duty mentioned under convention against torture, inhuman, cruel and degrading treatment or punishment.

CHAPTERTHREE

Ethiopian legal framework on freedom from torture

3.1 Introduction

Since Ethiopia is parties to international human right instrument, which provide protection for human right and obliged state to take steps to

[26]Torture in international law: A guide to jurisprudence ; Center for justice and international law,p.6, available at:http://www.cejil.org (accessed 7 January 2017),

recognize the enforcement of the right under take to protect. This can be by making legislation, administrative and other measure. The common methods are adopting the right under the constitution, criminalize the acts by the criminal law and prepare the police and program for the enforcement of the right. This paper accordingly investigates the Ethiopian legislation including the constitution and other legislation to protect the right to free from the torture, inhuman cruel and degrading treatment or punishment during interrogation.

Therefore, this chapter critically analysis the right to freedom from torture and other cruel, inhuman treatment or punishment under the 1995 FDRE constitution, the revised criminal code {2004} and Ethiopian antiterrorist proclamation.

3.1.1 The 1995 FDRE constitution

Chapter three of the FDRE constitution[27] is exclusively dedicated human right titles “fundamental right and freedoms”.

This chapter is divided into two parts as human right and democratic rights. Everyone is entitled to rights as inferred from the constitution. The FDRE constitution give wider recognition for human right. The constitution with, strict term, stated that international instrument ratified by Ethiopian are an integral part of the law of the land[28]. Ethiopian ratified CAT on March 14, 1994 and this instrument become the part of the constitution. The FDRE constitution, in addition to incorporating the instrument in the law of the land under its article 9(4) as general rule provides that all fundamental right and freedoms specified in the chapter 3 shall be interpreted in the manner it conforming to the principles of UDHR,ICCPR and other international human right instrument adopted by Ethiopian [29]

[27] FDRE constitution 1995 pro,No1 neg .Gaz. year 1,No 1 Hereinafter FDRE constitution
[28] FDRE constitution Art.9(4)
[29] FDRE constitution Art.13(2)

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Articles 18 of FDRE constitution verbally adopted Art. 5 of the ICCPR by stating[30] that

“Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment”.

This article does not contain the word "torture" as provided under ICCPR, CAT and UDHR. It seems that FDRE constitution give the same position for right freedom from torture with other form of ill treatment, which have some subjective difference among themselves.

The distinctions between torture and cruel, inhuman and degrading treatment:

- Torture might be considered as absolutely prohibited, Cruel, Inhuman and Degrading Treatment by definition is a relative concept[31].if the police beating the detainee by truncheon for the purpose of extracting confession is considered as inhuman and degrading treatment. But beating of non-peaceful demonstrator by truncheon is considered as justified lawful use force by public official. To considerthe act of public official as inhuman and degrading treatment against the unlawful demonstrator on street there must be excessive use of force. In order to determine whether the force used is excessive or not it depends on proportionality of force used. The Principe of proportionality is reveal that non absolute right of rights in question. So cruel, inhuman and degrading treatment is considered as relative concepts and but torture is prohibited from thevery begging.

[30]FDRE constitution Art18

[31]Manfred Nowak and Elizabeth MCArthur: The distinction between torture and cruel, inhuman or degrading treatment: TORTURE Volume 16, Number 3, 2006,available at:http://www.tort2006.3.2.pdf (accessed 6 January 2017)

- Although torture is defined in CAT, 'Cruel, inhuman and degrading treatment' is not defined by any international human rights treaties.[32] Cruel, inhuman and degradingtreatment does meet the level of severe pain or suffering as in case of torture.[33] Cruel, inhuman and degrading treatment have to be committed with the consent of a public official or other person acting in an official capacity. The distinction is made in order to attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering that which is classified as torture[34]. Although those ill-treatment such as cruel, inhuman and degrading treatment have less degree of severity when compared with torture they are also not permissible under any circumstances to be used against the right of the suspect. Even if the difference between torture and other ill-treatment are not clear sometimes they have subjective difference. The distinction between the two is also important because whilst cruel, inhuman and degrading treatment is prohibited, a State does not have the same extent of obligations to criminalize, investigate and prosecute acts of cruel, inhuman and degrading treatment that it has in relation to torture.
- The treatment in general to be leveled as ill-treatment must reach a minimum level of severity for it to constitute cruel, inhuman or degrading treatment. However, whether a particular act or incident constitutes torture or cruel, inhuman or degrading treatment depends on the specific circumstances of that incident. Many factors are relevant including the duration and effect of the treatment, the health, age and gender of the victim as well as the Particular treatment involved[35].

[32]Supra note at 6
[33]ibid
[34]Prisoners abroad: Torture, cruel, inhuman, degrading treatment, January 2008,p 1-2,availabile at:http://www.prisonersabroad.org.uk(accessed 10 February 2017)
[35] ibid

Cruel, inhuman or degrading treatment → Torture

More severe → most severe

Whilst the definition of torture remains the same or similar in most domestic legal systems, there can be difference in what is perceived sever pain and sufferingcan be differences in what is perceived to be ‘severe pain and suffering’ by national governments and courts. There may also be differences in the level of severity or relevant factors viewed necessary for particular treatment to amount cruel, inhuman or degrading treatment. In order to determine the treatment as torture or other ill-treatment international courts and bodies such as the European Court of Human Rights and UN Committee Against Torture as well as some domestic courts have developed a body of case law which may provide useful guidance and benchmarks as to what treatment is likely to be viewed as torture or cruel, inhuman or degrading treatment and what will fall below that level. INSelmouni v France (1999)[36], the applicant claimed that he had been tortured during his pretrial detention. The Court noted that the applicant had sustained numerous blows evidenced by widespread marks on his body. The Court stated that whatever a person’s state of health, it can be presumed that such intensity of blows would cause substantial pain, even if they did not leave visible marks on the body. Further, there was evidence that the applicant was dragged along by his hair, he was made to run along a corridor with police officers positioned on either side to trip him up. Besides, the violent nature of the above acts, the Court observed that they would be heinous and humiliating for anyone, irrespective of their condition. The applicant endured repeated and sustained assaults over a number of days of questioning. Accordingly, the Court concluded that the physical and mental violence committed against the applicant, considered

[36]Interights manual for lawyer: prohibition of torture, inhuman or degrading treatment or punishment under the ECHR(article 3), available at :http://www.interights.org(assecced 21 January 2017)

as a whole, caused “severe” pain and suffering. As it was particularly serious and cruel, it amounted to torture for the purposes of Article 3 of ECHR. Where asIn Tomasi v France (1992)[37], medical evidence suggested that the applicant had sustained bruises and abrasions, and that they had been inflicted during the period he spent in police detention. The Court found that the medical evidence established both the large number of blows inflicted on MrTomasi and their intensity. It concluded that these two elements were sufficiently serious to render such treatment inhuman and degrading. As far ECTHR is concerned to say an act is "inhuman" it have to cause actually bodily injury or intense physical or mental suffering, within the meaning of Article 3 ECHR.

- When we read article 1 of the CAT in conjunction with Article 16 of the some convention, which requires States parties to prevent “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1”. The cumulative reading of those two provisions show as that torture is an aggravated form of cruel, in human or degrading treatment or punishment[38]. Acts of ill-treatment which have not fulfilled the elements of definition providedunder Article 1of CAT particularly acts without the elements of intent or acts not carried out for the specific purposes, may considered as cruel or inhuman treatment under Article 16 of the Convention while acts aimed at humiliating the suspects constitute degrading treatment or punishment even where severe pain has not been inflicted.

The distinction between torture and less serious forms of ill-treatment, all of which are absolutely prohibited under Article 7 CCPR, other international

[37]ibid

[38]Manfred Nowak and Elizabeth MCArthur: The distinction between torture and cruel, inhuman or degrading treatment: TORTURE Volume 16, Number 3, 2006,available at:http://www.tort2006.3.2.pdf (accessed 6 January 2017)

and regional treaty provisions as well as customary international law, was introduced because some of the specific State obligations laid down in CAT were meant to apply to torture only above all, the obligation to criminalize acts of torture and to apply the principle of universal jurisdiction in this regard.[39] Other obligations aimed at prevention, in particular by means of education and training, by systematically reviewing interrogation rules and Practices and by ensuring an effective complaints mechanism, as laid down in Articles 10 to 13 of CAT, must be equally applied to other forms of ill-treatment as well.[40]

When we see the position of FDRE constitution on the right person in custody and convicted prisoners affirmed that detained person entitled to the right granted by constitution. Article 19(5) provides that person arrested shall not be compelled to make confession or admission which could be used in evidence against and obtained any evidence obtained under coercion shall not be admissible[41]. Additionally, article 27(2) civil producer code state thatthe arrested person shall not compelled to answer question at time of interrogation and article 31of the same code provided that the police officer shall not threat arrested person at the time of examination. But the FDRE constitutionon other hand does not give recognition freedom from torture, which police officer use as one type of interrogation device. However, apart from adopting the provision which prohibit inhuman, cruel and degrading treatment or punishment FDRE constitution do not define inhuman, cruel and degrading treatment or punishment or differentiate them. FDRE constitution does not include torture as one element of ill treatment under article 18. As Ethiopia is one member state of CAT does not fulfill the duty imposed by the convention member state. The convention impose on state party to make systematic review about interrogation rules, instruction and methods for proper

[39] Supra note at 31
[40] ibid
[41] FDRE constitution art 19(5)

treatment of person under deprivation of his liberty. Ethiopia under domestic law does not prepare such types of law for the protection of the right of the suspects under deprivation of liberty. The convention also impose on the state party to exclude statement made under torturer to use as evidence before any processing. But when we see Ethiopian anti-terrorism proclamation the truth is the opposite of what is stipulated under the provision of CAT article 15,Proclamation deems confession admissible without restriction on use of statement obtained through coercion.When we see draft of FDRE constitution under article 18 (1) the treatment given for the suspects by the police during arrest have to free from any kind of cruel, inhuman and degrading treatment. The draft made in Amharic language the meaning given for the word ‘‘cruel’’ is (chekane) the Amharic meaning of the word "torture “is (sikaye) this word does not mentioned under draft article 18 (1) of the constitution. From this point of view it is possible toconclude that"torture" (sikaye) isnot recognized under article 18 (1) of FDRE constitution. The fact that the separate term “torture” is not found clearly in the constitution may serve as a ground for someone to argue that torture is not recognized as provided under international human right document.

3.1.2 Revised criminal law of Ethiopia {2004}

A central objective of CAT is criminalizing all instance of torture. CAT under article 4 requires state parties to CAT to ensure that all acts of torture are criminal offense, subject to appropriate penalties given to their grave nature. State parties are required to apply similar criminal penalties to the person who attempt to commit and complicity or participation in torture.

CAT article 16 requires signatory state to take preventive measure to prevent “cruel, inhuman, or degrading treatment or punishment within any

territory under their jurisdiction". Therefore as Ethiopia is parties to CAT she is required to or obligated to criminalize torture

Therefore there is article which criminalizes torture acts under article 424 of Ethiopia criminal code[42]:

"any public servant charged with the arrest, custody, supervision, escort or interrogation of person who is under suspicion, under arrest, summoned to appear before court of justice detained or serving a sentencing, who, in the performance of his duties improperly induces or gives a promise, threatens or treat the person with torture ……is punishable with simple imprisonment or fine or in serious case with rigorous imprisonment not exceeding ten years fine".

According to this provision torture can be interpreted as not a very serious crime within the existing legislation. In addition to fine, the perpetrator of the crime of the torture can be punished with simple imprisonment. Crimes for which simple imprisonment can be imposed are defined in the code as of not a very serious nature committed by the persons who are not danger to society. The designated sentence also runs from ten days to three years. These punishments are in no way appropriate for the practice for the committed violation and not incompliance with article 4(2) of the convention against the torture**.**

However under our criminal code there is no provision which provides to take preventive measure to prevent cruel, inhuman, degrading, treatment or punishment and criminal code at anywhere and does not define torture and other ill treatment.

3.1.3 Torture and Ethiopian anti-terrorist proclamation

[42] Art 424 of *Criminal Code* Ethiopia, Proclamation No. 414/2004, 9 May 2005

Ethiopian anti-terrorist proclamation set new evidentiary standard for terrorism case under the legislation that are far more permissive than the rules covering ordinary case. Under these new rules hearsay or indirect evidence can be admitted in court without any limitation.[43] Official intelligence can be also admitted even if the report does not disclose the source or the method it was gathered[44].

By making intelligence report admissible in court even if the source and method are not disclosed, the law effectively allows evidence obtained under torture .Proclamation deems confession admissible without restriction on use of statement obtained through coercion or torture.[45]However, convention against torture and other, cruel, inhuman, degrading treatment or punishment, prohibit torture, cruel, inhuman degrading treatment or punishment to obtained information.

Article 19 of FDRE constitution also prohibit evidences obtained under compelled or torture by saying that" person arrested shall not be compelled to make confession or admission which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible"[46]. Therefore the proclamation contradicts with constitution and CAT on this right.

[43]Art. 23(2) of Ethiopian Anti-Terrorism Proclamation, No. 625/2009.
[44] Art 23(1)of Ethiopian anti-Terrorism proclamation, No.625/2009.
[45]Art. 23(5) of Ethiopian Anti-Terrorism Proclamation, No. 625/2009.
[46]Art 19(5) of FDRE constitution.

CHAPTER FOUR

Conclusion and Recommendation

CONCLUSION

Interrogation is very old and the mostly used by criminal investigator. Interrogation considered as a strong mechanism for effective prosecution of criminals. However, there is allegation that during interrogation there are human right violation which is protected under both universal human right and national human right document. But international human right document provide protection of suspected person from any kind of

compulsion during interrogation. But Interrogators use torture as one device of interrogation. Torture is one of the most extreme forms of human right violence resulting in both physical and psychological consequence. It have enduring negative effects on both survivors and perpetrators and is ineffective for obtaining reliable information in interrogation.

The bases of human right protection are human dignity which means human right is protected when human dignity is protected. Several human right documents provide protection for suspected person. ICCPR and UDHR mentioned that detained person should have treated with his dignity and also they are protected from torture and other cruel, inhuman degrading treatment punishment. Article 3 of the ECHR is also designed primarily to protect the physical integrity of person. In addition, the European Court has interpreted the provision to protect against the infliction of pain or other acts that cause severe mental suffering. Article 3 requires the State to refrain from engaging in torture orinhuman or degrading treatment or punishment itself (i.e., a negative obligation). In this regard, the State is responsible for the actions of all of its agencies, such as the police, security forces, other law enforcement officials, and any other State bodies who hold the individual under their control, whether they act under orders, or on their own accord.

CAT is another international human right document which was adopted for prohibition torture and other cruel, inhuman and degrading treatment. CAT differentiated from other human right document by providing what torture should contain without differentiated torture from other cruel, inhuman and degrading treatment. The main problem with this convention is absence of distinction between tortures and other cruel, human treatment. Some argue their distinction based on severity of pain or suffer. Human right committee also focused on severity of pain.

When we come to Ethiopian legal frame work there are law which concern with human right protection of suspected person. Among those, the FDRE constitution is the first and under its provision, FDRE constitution comprises some right of arrested person, among those right the right protection against cruel, inhuman and degrading treatment is one. Right of suspected person is also found under; criminal code, criminal procedure code and Ethiopian anti-terrorist proclamation. FDRE constitution does not include torture as one element of ill treatment under article 18 as provided under international human right document.Using torture as one device of interrogation is ineffective because it is against the constitutional rights of the suspects. FDRE constitution under article 18 (1) simply ban I'll treatment without giving any definition for them and there is also no law which regulate and supervise the interrogation process. Therefore, interrogators can be conducted interrogation the way they want by using torture and other ill treatment. However, state have obligation to protect, respect and fulfill human rights. Ethiopia, as member state to convention against torture or cruel, inhuman or degrading treatment does not adopted legislation and other measure to protect the right of the suspects from torture and other ill-treatment.

Recommendation

Depending up on the above finding the writer of this paper has the following recommendation:

- Article 18 of FDRE constitution have to comprise "torture" as one element of ill-treatment.
- The legislature shall have come up with law which make responsible the interrogators when they use torture as interrogation device.
- The right freedom from torture have to be recognized as it is provided under international human right document.
- Legislation shall have come up with rule which provide the amount of compensation to the victim of torture.
- Torture and other cruel, inhuman degrading treatment or punishment has to be differentiated.

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