ADDIS ABABA UNIVERSITY, FACULTY OF LAW
GRADUATE PROGRAM

A CRITICAL EVALUATION OF REAL TIME DISPATCH IN THE LIGHT OF THE CONSTITUTIONAL RIGHTS OF ACCUSED PERSONS: A CASE-BASED ANALYSIS

A THESIS SUBMITTED TO ADDIS ABABA UNIVERSITY, FACULTY OF LAW, GRADUATE PROGRAM IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE MASTERS DEGREE (LL.M) IN HUMAN RIGHTS LAW

By: Abraham Tadesse

ADDIS ABABA UNIVERSITY, FACULTY OF LAW
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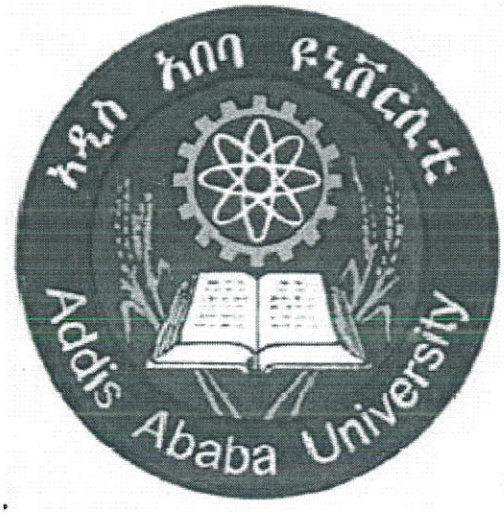

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By: Abraham Tadesse
Advisor: Wondwossen Demissie (Assistant Professor)

APPROVAL SHEET

ADDIS ABABA UNIVERSITY, FACULTY OF LAW
GRADUATE PROGRAM

A Critical Evaluation of Real Time Dispatch in the Light of the Constitutional Rights of Accused Persons: A Case-based Analysis

A Thesis Submitted to Addis Ababa University, Faculty of Law, Graduate Program in Partial Fulfillment of the Requirement for the Masters Degree (LL.M) in Human Rights Law

Approved by Board of Examiners

Advisor's Name — Signature &Date: 28 Dec. 11

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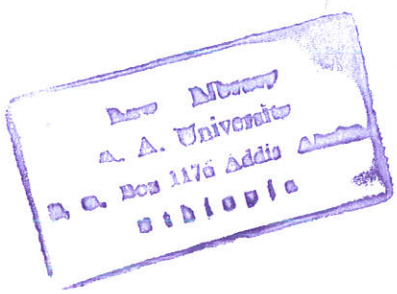


Declaration

I, the undersigned, declare that this thesis is my original work & has not been submitted for any academic institution and that all sources of materials used in the thesis have been duly acknowledged.

Declared by: Abraham Tadesse

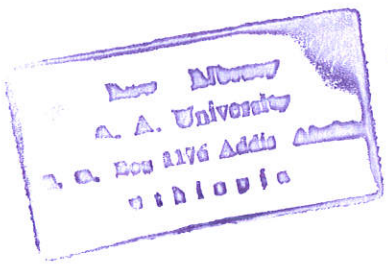
Signature _____

Date Nov. 8, 2011

Confirmed by: Wondwossen Demissie

Signature _____

Date Nov. 08, 2011



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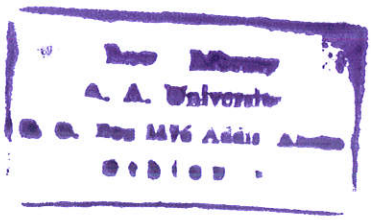

ACRONYMS

ACHPR	African Charter on Human People's Rights
ACHR	American Convention on Human Rights
Art.	Article
BPR	Business Process Reengineering
CC	Criminal Code
CPC	Criminal Procedure Code
ECHR	European Convention on Human Rights
FDRE	Federal Democratic Republic of Ethiopia
HRC	Human Right Committee
ICCPR	International Convention on Civil and Political Rights
P.	page
Para.	Paragraph
RTD	Real Time Dispatch
UDHR	Universal Declaration on Human Rights
UN	United Nation

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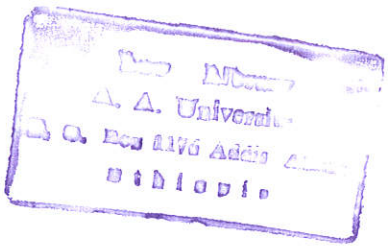
Abraham T.

November 2011



Abstract

Any criminal cases disposing procedure attempts to increase the efficiency of the criminal justice system and to protect constitutionally as well as internationally recognized rights of accused persons. In line with this, it is to realize all accused persons' rights in general and the speedy trial rights in particular that the government introduced RTD not to mention the desire to make criminal justice system efficient and effective. However, usually attaining these two objectives at the same time is difficult if not impossible. Even worse there are cases when the two interests come in conflict with each other. It is not a cliché that when undue emphasis is given to the efficiency of criminal proceedings, the rights of accused persons will be compromised. This is so because if accused persons are given a chance to exercise all the rights at their disposal, adjudication of criminal cases will take longer period of time making the criminal justice system less efficient.

This research paper, as its title promises, tries to examine to what extent the above stated facts have been reflected in RTD proceedings. Of course, after its introduction, RTD has managed to decrease criminal cases backlog. However, the research reveals that this result is obtained at the cost of accused persons' rights. Although RTD is basically introduced to ensure the speedy trial right of accused person, the extreme hurried nature of the proceeding accompanied by the absence of laws governing same have resulted in compromising the right to be tried within reasonable time itself and other fair trial aspects of accused person's rights which include the right to presumed innocent, the right to bail, the right to prior notification of charge, the right to demand adjournment of criminal proceedings, the right to defend oneself and defense counsel. To bring this phenomenon to an end, this paper recommends the pertinent government organs to issue a detailed law which regulates and delimits the scope of application of RTD and at the same time takes into consideration those rights put at risk as a result of the application of RTD. In the mean time, the paper urges judges and public prosecutors to refrain from treating RTD cases different from other ordinary criminal cases.

Key terms and phrases: RTD, Human Rights, Accused Persons, Rights of Accused Persons.

CHAPTER ONE

RESEARCH PROPOSAL

1.1Introduction

The need to dispose criminal matters within the shortest possible time has been there ever since adjudication of criminal case started. Through time this demand crystallized itself and acquired status of right called the right to speedy trial. It is in the 12th century that for the first time the right appeared in a legal code enacted by King Henry II.[1] One of the provisions in this code guarantees speedy justice to all litigants. Later the right was also articulated in the document known as the Magna Carta (1215).[2]Art.40 of this document states, "To no one will we sell, to no one will we deny or delay right of justice." Since then the right started to appear on various independence declarations.

However, considerable attention and efforts towards making world wide application of the right was ventured after the Second World War. Since then the right has been recognized in different international human rights instruments such as the UDHR[3] and the ICCPR[4]. But this wide recognition could not give it crystal clear definition nor did it delimit its proper scope. Expressing this feature of the right one author said "the right is so amorphous, slippery and generally difficult to vindicate as a result of which courts have not applied it consistently in legal cases."[5] Due to this nature of the right, usually the right is subject to abuse of discretionary power by the law enforcement officials to the detriment of the interest of the accused.

With all its defects, the right is also well entrenched in the Ethiopian legal system. To this effect various provisions in the FDRE Constitution[6] and the CPC have been incorporated. The CPC has provided detail provisions to give effect to

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[1] Speedy Trial Encyclopedia, available at www/lawencyclopedia.com,accessed on December 23/2010.
[2] Right to Speedy Trial –Problems and Solution available at http://www.legalserviceindia.com/article/1297-right-to speedy-Trial.html accessed on January 24/2011.
[3] UDHR, art.10.
[4] ICCPR,art.9(3).
[5] Brian P.Brooks,A New Speedy Trial Standard for Barker v.Wingo: Reviving a Constitutional Remedy in an Age of Statute,the University of Chicago Law Review,Vol.62,No.2,(spring 1994),p.587 as cited in Tsehai Wada, Timely Disposition of Criminal Cases in Ethiopia, (here in after Tsehai, Timely Disposition)Journal of Ethiopian Law, Vol.24 No.1,p.51.
[6] FDRE Constitution, art.19 and 20.

constitutionally recognized rights. With a view to ensuring speedy trial of accused persons, the criminal procedure code restricts the time period that should be devoted to investigations[7], with in which a charge should be instituted[8] and grounds of adjournments[9]. Despite these extensive limitations, more often than not criminal cases take unreasonably long period of time. Different researches conducted in the area have shown that on average one criminal case takes four years and one month period beginning from investigation till the end of its final disposition.[10] This fact remains to be one of the outstanding grounds on which the judiciary in Ethiopia has been criticized by many.

With a view to bring an end to the criticism, Comprehensive Justice Reform Program has been launched by the incumbent government. As part of the reform program, the Federal Government has prepared BPR document which deals with every forms of services being delivered by civil service institutions. This document sets different time limit with in which criminal cases should be disposed of. To give effect to this time limit, an aspect of criminal procedural matter which is alien to Ethiopian legal system, called RTD, has been introduced. Under this procedure, a suspect will be tried soon after the incident which brings criminal liability occurred. This paper tries to analyze the impact of this mode of adjudicating criminal cases on the rights of accused persons.

1.2 Back ground of the Study

It has been two years since RTD as one means of disposing criminal cases is put in place. Ever since its implementations, it has attracted the attention of many stakeholders. Many applauded the time with in which criminal justice started to be rendered. Some even dared to say that the maxim 'justice delayed is justice denied' as the saying goes has become part of Ethiopian legal system history. Of course, no one would deny that it has managed to realize the speedy trial right of accused persons. On the other hand, there are initial reflections on the new procedure doubting its consistency with other rights of the accused persons. To take

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[7] CPC, art.37(1).
[8] Id. art.109(1).
[9] Id. art.94.
[10] Centre for International Legal Cooperation, Comprehensive Justice System Reform Program, Baseline Research Report (Addis Ababa: FDRE Ministry of Capacity Building, 2005) (here in after Comprehensive Base Line Research Report), P.196.

either of the sides, the writer has had an informal discussion with public prosecutors working on the subject at hand and practicing lawyers. These discussions let the writer know some complicated issues that might be raised on RTD procedure. It is with this background information that the idea of undertaking research on RTD came to my mind.

1.3 Statement of the Problem

Timely disposition of criminal cases principally promotes the interest of the accused. That is why most of the time the right to speedy trial is mentioned with respect to rights of accused persons. Of course, the benefit of timely disposition of criminal cases is not limited to accused persons. Failure to dispense justice at the earliest possible time erodes the public confidence on the judicial system of the country.[11] Furthermore, unduly prolonged cases negatively affect the economy of the country as criminal cases are supposed to be run by government expenditures thereby resulting in human and material wastage.[12]

However, all the stated benefits of speedy trial should not be carried out at the expense of other equally important rights of accused persons. Justice requires accused persons to enjoy all other human rights recognized in different human right instruments during criminal proceedings. Otherwise if other rights of accused persons are denied under the guise of speedy trial, it will necessarily affect the outcome of the proceeding. The need to equally uphold all rights of accused persons looms larger when one takes into consideration the parties to a criminal proceeding. Any criminal litigation essentially involves two unequal parties: a government in its inherent capacity and a suspected individual. In order to narrow down this glaring inequality that accused persons are bestowed with extensive rights to be exercised during any criminal proceeding.[13] Failure to observe these rights will give undue advantage to a state there by giving ample opportunity for injustice to prevail. This neither promotes the interest of the public nor does it increase public confidence on the judiciary. Thus, to strike the balance it is necessary to set speed limit to speedy trial itself. Emphasizing

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[11] Wondwossen Demissie(ed.)Human Rights in Criminal Proceedings: Normative and Practical Aspects,(here in after Wondwossen(ed.), Human Rights in Criminal Proceedings) Editorial Note, Ethiopian Human Rights Law Series, Vol.III p.2.

[12] Ibid.

[13] Some of these rights are the right to be presumed innocent, the right to bail, the right to be represented by legal counsel, the right to defend oneself, the right to full access to any evidence presented against them, the right to be tried within reasonable time, etc.

the need to strike the balance between the right to speedy trial and other rights of accused person's one court said "surely we are not to go back to the system wherein an offender on Tuesday was tried on Wednesday and hanged on Thursday"[14]

It is taking into consideration this fact that the problem of RTD comes to picture. It is commendable to introduce this procedure to ensure the enforcement of speedy trial of accused persons. However, at the same time, it is equally important to make sure that the implementation of this procedure does not compromise other constitutionally recognized rights of accused persons. It is submitted that when a case is disposed swiftly, some injustices to parties to the litigation are bound to occur. It is this fact that gives rise to an old saying which goes 'justice rushed is justice ruined'. This research tries to reflect on to what extent this saying explains what is happening in the implementation process of RTD.

1.4 Literature Review

As said time and again, RTD as one means of disposing criminal cases is a recently introduced procedure. Due to this fact, it has not yet attracted the attention of scholars to the extent of inducing them to write on it. And hence one will not find literature directly dealing with it. In relation to the subject matter at hand, the available literature is dominated by the well known right of accused persons-the right to speedy trial. Despite this, Tsehai Wada in his recently published article in Journal of Ethiopian Law Vol.24 No.1entitled "Timely Disposition of Criminal Cases in Ethiopia" has touched up on it. In this article, he appreciated the introduction of RTD procedure as it shortens the time required to process criminal cases.[15] However, he also urged the need to undertake research to gauge whether the process has actually benefited accused individuals or not.

Moreover, Tesfaye Meressa in his senior paper entitled "The Effect and Challenges of RTD Technique on Flagrant Offences" has explained the potential role RTD has in reducing the huge case back log of criminal files. To this effect, he said that RTD if properly managed, as one part of case management technique, will help to solve the long lived problem of the

[14] As cited in Tsehai, Timely Disposition, supra note 5, p.55.
[15] Id. p.50-89.

Ethiopian criminal justice system i.e. delay in disposing criminal cases.[16] In the same paper, he also identified the rights of accused persons such as the right to bail, counsel and fair trial which are negatively affected by the application of RTD.[17]

1.5 Objective of the Study

1.5.1General objective:

The research principally assesses the application of RTD as one means of disposing criminal cases in light of the fundamental constitutional rights of accused persons.

1.5.2 Specific objectives:

- To explain the essence of RTD.
- To elaborate factors which necessitated the adoption of RTD.
- To assess the constitutionality of RTD.
- To determine the scope of application of RTD.
- To identify the procedures involved in RTD.
- To analyze to what extent RTD goes in line with accused persons' rights such as the right to be presumed innocent, bail right, the right to counsel, the right to speedy trial ,the right to bring (adduce) evidence in their favor.
- To point out areas where violations of accused person's rights occur during the implementation of RTD procedure and forward possible suggestions and recommendations on measures that should be taken with view to avoid human rights violations during implementation of the procedure.

1.6 Research Questions

- What is RTD?
- What are the justifications behind the adoption of RTD?
- Does RTD uphold fundamental rights of accused persons? To what extent is it amenable to promoting constitutionally granted right of accused persons? Would the procedure uphold the due process right of accused persons? Has the procedure managed to reduce time required

[16] Tesfaye Meressa, The Effect and Challenges of RTD Technique on Flagrant Offences, (unpublished), p.19.
[17] Id. pp.40-43.

to process criminal cases at the cost of accused persons' right? How speedy should a speedy trial be?

- Does the application of RTD have legal ground? Is it constitutional?
- What are the procedures involved in RTD proceedings?

1.7 Research Methodology

In undertaking the research, qualitative research method has been used. In line with this methodology, the research mainly relies on four sources of data.

First, for the conceptual understanding of RTD, policy instruments, working papers and legislative instruments related to RTD have been analyzed. Moreover, international human rights instruments as interpreted by human rights monitoring and enforcing organs have been considered. To complement this, books, periodicals and internet sources have been consulted.

The second category of source of data is information obtained from the concerned officials such as judges, public prosecutors, pertinent individuals from research department of the Ministry of Justice and prisoners convicted under these procedures. And to this effect, interview as tool of collecting data has been employed.

The third category of source of data is case. Real cases decided by courts using RTD procedures have been used.

The fourth source of data is observation. To complement information obtained through the above tools of data collection, the researcher has observed RTD benches.

1.8 Significance of the Study

Given the scarce resources of materials on the area under consideration, the research will have a modest contribution in adding to the body of knowledge relating to RTD. Connected to this, it is also hoped that the research will serve as a resource base for academicians who are interested in carrying out further research on the implementation of RTD. It provides an opportunity to develop it and utilize it in legal discourse. Putting it otherwise, the answer to the question whether application of RTD procedure as means of entertaining

criminal cases violate constitutional rights of accused persons is not only of scholarly relevance, but also and mainly of practical importance. As the number of cases to be adjudicated under the real time procedure has continued increasing, the research would have a significant contribution in this regard by indicating the proper way of handling the procedure. Accordingly, it may provoke the re-examination of the practice related to RTD and legislations, if any.

1.9 Scope of the Study

The research focuses on human rights implications of RTD procedures. Because of this, it has not considered other procedures, if any, which can be used for adjudication of criminal cases but at the same time affects human rights of accused persons. Moreover, for the purpose of this research, only cases decided by courts located in Addis Ababa have been analyzed.

1.10 Limitation of the Study

In undertaking the research, various challenges and limitations have been encountered. As the concept is new to the Ethiopian legal system, the researcher has encountered acute shortage of literature. This has hampered directly or indirectly the effectiveness of the research. To ameliorate the problem, resort to other means of generating information (interview) has been made. This source of information too has its own limitations. To undertake interview with principal actors of RTD procedure, it is necessary to secure the consent of the interviewees first. In the majority of cases, it was difficult to secure the consent of all the interviewees. Even when they consented, it was problematic to find them at the time agreed. Similar but different problems had been encountered while looking for pertinent cases for the research. Moreover, financial and time constraints have frustrated the research work.

1.11 Research Ethics

A research which involves human being as a participant needs to be guided by ethical considerations. In line with this, during the undertaking of the research, research participants have been informed about the purpose of the study. After this, effort to secure their free

consent has been attempted. Then, the interview has been conducted respecting all the rights of the interviewees. Whenever it becomes necessary, the identities of the interviewee have been kept secret. And also, all the information acquired through the interview has been used only for the purpose of research and shall remain confidential.

1.12 Organization of the Paper

As mentioned above, this paper is aimed at assessing the impact of RTD on the rights of accused persons. To achieve this objective, the paper has been divided into four distinct chapters.

The first chapter is, basically, devoted to introduce readers with the background, statement of the problem, objective, significance and limitation of the research.

The second chapter, generally, provides the historical development of RTD and the need to introduce it to the Ethiopian legal system. Moreover, this chapter appraises RTD in light of the criminal justice system models, its scope of application and procedure involved in it. It also assesses the constitutionality of RTD. Finally, the chapter describes how RTD is treated under the Federal Draft CPC.

The third Chapter, elaborates some of the rights such as the right to be presumed innocent, the right to be tried within reasonable time, the right to bail, the right to defend oneself, the right to defense counsel, the right to impartial court, the right to prior notification of charge and the right to request adjournment which are being violated by the introduction of RTD as one means of disposing criminal cases.

The last chapter of the paper provides concluding remark and recommendations.

CHAPTER TWO

REAL TIME DISPATCH IN ETHIOPIA

2.1 Historical Background of Real Time Dispatch

The historical development of RTD[1] as one mode of disposing criminal cases can be traced back to what happened in Europe during the 1980s and 1990s.During this time, the need to speed up and simplify criminal proceedings in general and trial hearing in particular had been a common goal in most European countries.[2] To achieve this objective, these countries had enacted different legislative instruments.[3] In these instruments, various methods of speeding up criminal proceedings have been adopted. Some of these methods include introducing new forms of criminal proceedings, accelerating preliminary proceedings, reducing the sentencing body, rendering the trial more informal, increasing the recognition of arrangements and restricting the means of legal redress.[4] The primary reason which was given to adopt such accelerating mechanism was that public interest in the shortest, least costly and time-consuming possible trial prevails over the rights of the individual accused person.[5]

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[1] RTD, although popular, is not the formal name of the new criminal proceeding introduced to dispose criminal cases swiftly. One may find this name in BPR document dealing with the criminal justice system and in the training manuals prepared to introduce stakeholders with the concept. In other instruments (Criminal Policy and the Draft CPC) incorporating this proceeding, it is formally named as Accelerated Procedure. However, for sake of better understanding the writer has preferred to use RTD.

[2] Sonja Kotnik, The Emergence of an Abbreviated Criminal Procedure in the Field of Criminal Law, (Here in after Kontnik, Abbreviated Criminal Procedure), P.1.See also, Francoise Tulkens, Criminal Procedure: Main Comparable Features of the National Systems in Mireille Delmas –Marty (ed.) The Criminal Process and Human Rights Toward a European Consciousness (1995), (Here in after Delmas –Marty (ed.),The Criminal Process and Human Rights) p. 12

[3] For instance, Portugal and Italy enacted new Code of Criminal Procedure in 1987 and 1988 respectively; Germany proclaimed the 1993 Act to Reduce Burden of Justice Administration. Czech Republic also amended her Criminal Procedure Code in 1993.

[4] Albin Eser, The Acceleration of Criminal Proceedings and the Rights of the Accused: Comparative Observations as to the Reform of Criminal Procedure in Europe, (Here in after Elser, Acceleration of Criminal Proceedings), 3 Maastricht Journal of European & Comparative Law 341 (1996), p.344. New criminal proceedings such as abbreviated, direct, immediate and summary procedure had been introduced. With the consent of the accused in the form of guilty plea and plea bargaining, some states also attempted to shorten and even to avoid criminal trial by reducing the formal rules of the trial processs. To reduce the sentencing body and to further simplify criminal trial, diminution of judges by widening the jurisdiction of judges sitting alone as a strategy had been implemented.

[5] Ibid

The main means designed by several European countries to accelerate criminal proceedings was to come up with procedural alternative to ordinary proceedings.[6] The new procedural alternatives adopted to speed up criminal trial include abbreviated, immediate, direct, summary and highly summary proceedings. These various forms of accelerated procedures tend to avoid the complicated pre-trial proceedings thereby making it possible to present the suspect directly before the trial judge and the trial hearing stage of the criminal proceedings enabling court to render final judgment at the earlier time than in the case of ordinary proceedings at the expense of procedural due process rights of accused persons.[7] Due to this, in some countries, these special procedures have been declared unconstitutional.[8] To avoid such kind of decision by Constitutional Courts, in most, if not in all European countries, these special procedures have been used to handle criminal cases only if the accused agreed to that effect.[9]

Although their goal is the same, the special procedures introduced to achieve the objective of accelerating criminal proceedings by the various European countries differ. Among European countries due to the fact that Ethiopia took the experience of France to introduce RTD to the criminal justice system, brief discussion of special procedures adopted by this country will be made. In France, to achieve the stated objective, various forms of special procedures had been adopted. Among these forms of special procedures, Eser considers 'direct presentation' in French '*comparution immidiate*' the harshest of all procedures due to the extreme hastiness of the criminal proceeding.[10] In this procedure, a prosecutor brings an accused person before a court having jurisdiction on the day of apprehension where the body of evidence is sufficient.[11]

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[6] Kotnik, Abbreviated Criminal Procedure, supra note 2, P.1.

[7] Ibid

[8] For instance, Italian Constitutional Court has declared abbreviated proceedings unconstitutional excluding their application in some criminal cases. Italian Constitutional Court declared Abbreviated Proceedings unconstitutional due to the fact that it denied accused persons the right to a reasoned judgment and the right to appeal.

[9] Eser, Acceleration of Criminal Proceedings, supra note 4, p.346.See also, Kotnik, Abbreviated Criminal Procedure, supra note 2, p.2. However, in some countries like Spain these procedures were being applied without the consent of the accused. Due to this, in Spain it becomes a norm as it is used to dispose about 90% of all criminal cases.

[10] Eser, Acceleration of Criminal Proceedings, supra note 4, p.348.

[11] Ibid.

To further speed up criminal proceedings, France adopted another mechanism of disposing criminal cases called RTD in 1994.[12]Beginning from this time, they continued applying it for fifteen consecutive years by actively engaging the three major actors of the criminal justice system-court, police and public prosecutor.[13] Throughout these years, the procedure had proved to be effective in rendering quality decisions and speeding up the slow-moving criminal justice process.

England also, with a view to solve the problem surrounding the criminal justice system, had prepared strategic plan for the criminal justice. In this strategic plan which remained in force from the year 2004 to 2008, it was envisaged to introduce a criminal procedure which promotes the interest of victims of crime and witnesses.[14] To this effect, taking the best experience of France into account, England introduced RTD in her criminal justice after making all the necessary changes to make it compatible with the common law legal system. In this way, as part of the strategic plan, England applied it for five consecutive years beginning from 2004 to 2008.[15] This had brought overwhelming change in the efficiency of the criminal justice system of England. In 2006, impressed by the speed within which justice started to be delivered under this procedure, they gave it a name called "Next Day Justice".[16]

Inspired by its achievement in western countries in general and in France in particular, to rectify the diverse problems which entangled the criminal justice system of the country, Ethiopia introduced RTD in 2007.[17] It was introduced as one instrument of implementing

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[12] Ministry of Justice, *Yefetan Fith Tsintse Hasab ena Ategebaber*, a Training Manual on RTD Prepared in Amharic for Public prosecutors,(Here in after , *Yefetan Fith Tsintse Hasab*), p.2.

[13] Aderajew Teklu and Kedir Mohammed, Ethiopian Criminal Procedure Teaching Materials, Justice and Legal System Research Institute (unpublished) (Here in after, Aderajew and Kedir, Ethiopian Criminal Procedure), p.110.

[14] *Yefetan Fith Tsintse Hasab*, supra note 12, p.2.

[15] Id.p.3

[16] Ibid. In my opinion, this naming does not have positive connotation as it imparts a message that justice will be delivered a day after the crime is committed which inevitably compromises the quality of the decision to be rendered.

[17] Id.p.4

the criminal justice system aspect of BPR program.[18] Before this time, the application of RTD has been limited to Christian religious ceremony- Qulibi Gebriel which is celebrated twice a year at Qulibi town.[19] However, in 2007 in the month of September, RTD started to be applied in minor flagrant offences and other non-complicated crimes such as drawing cheque without cover in a few selected pilot benches.[20] Proving its effectiveness in these selected benches, RTD proceeding started to be applied in all Federal and Regional courts.[21]

2.2 The Need for Real Time Dispatch

With a view to change the justice system, Ethiopia has launched a Comprehensive Justice Reform Program in the early years of 21th Century. Before the beginning of the implementation of this program, intensive research has been carried out to find out the problems surrounding justice system. In these researches, it was found out that the criminal justice system of Ethiopia is intertwined with diverse problems hindering it from dispensing justice to the satisfaction of the public at large.[22] Due to these diverse problems, the criminal justice had remained to be unpredictable. Moreover, properties held on exhibit used to stay for a long period on the hand of police officers forcing the victim of the crime to suffer from this problem. All these factors contributed their own share in denying the criminal justice system trust in the eyes of the public at large.

To solve the above stated problems of the criminal justice, among other things, it is believed that it is necessary to adopt new procedural mechanisms which proved to be effective in

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[18] Tesfaye Meressa, The Effect and Challenges of RTD Technique on Flagrant Offences, Senior Paper, Addis Ababa University, Law Faculty (unpublished), p.17. BPR is a cross-cutting document prepared by the Federal Government to change all facets of government services including the criminal justice administration. With regard to the criminal justice system, specifically the Federal Criminal Justice Administration Organs Criminal Investigation, Litigation and Decision Making Core Process Owner New Working Procedure document has been prepared. In this document, it is stated that the system that exist before the introduction of RTD involve procedures which are not result oriented and do not add value which satisfy the interest of the public.

[19] Aderajew and Kedir, Ethiopian Criminal Procedure, supra note 13, p.115.

[20] Interview with Ato Desalegn Berhe, President of the Federal First Instance Court, made with Wonber, Alemayehu Haile Memorial Foundation's Periodical,7th Half-year, September 2010,p.3. The selected pilot benches were Arada 5th Criminal bench and the 9th Lideta Criminal bench.

[21] *Yefetan Fith Tsintse Hasab*, supra note 12, p.4

[22] Comprehensive Base Line Research Report, Chapter one supra note 10, P.11. See also, Fasil Tadesse,*Beethiopia Yewonjel Fith Astedader yeteqelatefe ena yetefatene Fith Yemaskeber chgroch ena Mefthewochachew*,Higawinet Vol.3 No.1(1997),p.88.

other jurisdictions.[23] As a result of this, the new procedural mechanism of disposing criminal cases, i.e. RTD, has been introduced. It is provided in the FDRE Criminal Justice Policy that this procedural mechanism is amenable to give quality and rapid decision with the lowest possible cost playing crucial role in enforcing the speedy trial right of accused persons.[24] The quality of decision with minimum cost promotes the interest of the society at large. This is so because the society at large wants guilty persons to be punished thereby ensuring peaceful coexistence and safety of potential victims.[25]

By increasing the quality of court decisions, the introduction of RTD also aimed at increasing conviction rate.[26] Before its introduction, many files were closed due to absence of evidences necessary to establish the guiltiness of accused persons.[27] This problem will be mitigated, if not avoided, during the application of RTD proceedings as cases are thought to be decided immediately. Moreover, disposing criminal cases through RTD proceedings also furthers the interest of the justice system. It is instrumental in ensuring the predictability of the justice system by avoiding case backlog which in effect helps to win public trust.[28] This serves as another motivational ground for the public at large to extend assistance to the criminal justice system.

In same way, as stated in the Criminal Policy, it is hoped that disposing flagrant offences by RTD procedure will enable all actors of the criminal justice administration to engage efficiently in serious offences affecting public interest grossly.[29] This is so because it is asserted that RTD greatly saves time and resources of police officers, public prosecutors and

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[23] *Yefetan Fith Tsintse Hasab*, supra note 12, p.2.The same can be inferred from Background Policy Notes on Ethiopian Criminal Justice Administration Policy, Addis Ababa, December 2008,p.1.In this policy note, it is stated that the policy was prepared to provide for special procedures to deal with uncontested cases or with cases where the evidence is clear and uncontroversial.

[24] The FDRE, The Criminal Justice Administration Policy (2011), (Here in after FDRE Criminal Justice Policy or the Criminal Policy), Section 2.4.3. For the first time in Ethiopia's criminal justice history, the Council Ministers, as per art.77 (6) of FDRE Constitution which empowers it to formulate policies, adopted the Criminal Justice Administration Policy in 2011.

[25] Stefan Trechsel, Human Rights in Criminal Proceedings,(2005) (here in after Trechsel, Human Rights) P.7.

[26] *Yefetan Fith Tsintse Hasab*, supra note 12, p.14. This is also in line with the five years (2003-2007 E.C) strategic plan of the justice sector of both the Federal and Regional states. One of the goals stated in this strategic plan is to achieve 98% conviction rate. See p.92 of the strategic plan.

[27] Id. P.1.

[28] Id.P.4.

[29] Ibid

courts. Police officers who used to spend much of their time taking and returning back suspects on remand pending investigation have been relieved of this burden as under RTD proceeding. investigation is supposed to be completed within short period of time.[30] Moreover, since in RTD cases, investigation is carried out by police and public prosecutors, the number of files to be returned back by the latter as per art.38(c) of the CPC for further investigation will shrink down. This also reduces the workload of public prosecutors who used to spend much time reading and evaluating the report sent by police officers as per art.37(2) of the CPC.

Courts also benefit from RTD proceedings. In the regular proceedings, criminal trials are subject to repeated adjournments to hear witnesses of the prosecutor, the accused and to pass judgment resulting in wasting the precious resources and times of courts. However, in RTD proceedings. the criminal trial will not be adjourned on either of these grounds. In the latter proceedings, by carrying out all the stages of the criminal proceedings at a time and by avoiding all those adjournments, courts will be in a position to pass judgments within hours and days.[31] Also, in RTD proceedings witnesses of prosecutors appear before the courts and give their testimony with their fresh memory soon after the crime is alleged to have been committed. This incidentally relieves witnesses from incurring unnecessary expenses and wasting their time as a result of the repeated adjournments of criminal trials in the ordinary proceedings.[32]

With respect to victims of crime, it is well agreed that those who are affected by a crime want to see the speedy disposition of the case. In fact, research conducted in this area has shown that one of the greatest hardships victims endure in the criminal justice process is the delay of

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[30] Of course, a police officer who investigates a crime committed is duty bound by law to complete the investigation without unnecessary delay, see art.37(1) of CPC);but relatively speaking in the case of crimes to be adjudicated by RTD investigation takes a very short period of time.

[31] *Yefetan Fith Tsintse Hasab*, supra note 12, P.15.

[32] Witnesses in any judicial proceedings have legal obligations to testify if they are required to do so by courts. Failure to appear before court having lawfully summoned without good cause is made to be a punishable act as per art.448 (1) (a) of the Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No.414/2004.With view to avoid criminal responsibility, witnesses under regular proceedings are forced to appear bearing its consequence whenever it is adjourned due to various reasons. This will not be an issue in RTD proceedings.

scheduled proceedings.[33] To do away with this problem, in the United States of America, 27 states have recognized Victims' speedy trial rights in their constitutions.[34]

In Ethiopia too, victims' rights are recognized in the Criminal Justice Policy.[35] In this Policy, although no express right to speedy trial of victims is provided, it can be inferred from their right to be notified the progress and the final decision of the case.[36] To realize this victim's right, RTD proceeding plays crucial role as it delivers justice without delay. Moreover, after criminal proceeding is finalized, properties held on exhibits will be returned forthwith. RTD proceeding provides additional benefits to victims of crime in case when they want to bring civil action to get compensation for the damage they sustained as a result of the crime committed against them.[37] This is made possible due to the fact that the copy of the judgment of the criminal bench will be adduced serving as a conclusive evidence to vindicate his/her rights in a civil action.[38]

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[33] U.S Department of Justice Office for Victims of Crime, New Directions from the Field: Victims' Rights and Services for the 21st Century (1998) as cited in Crime Victims' Right to Speedy Trial(here in after Crimes Victims' Right) available at http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspxnz?DocumentID=42467 accessed on February 25/2011.

[34] Those states are Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Kansas,
Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio,
South Carolina, Tennessee, Utah, Vermont, Wisconsin and Wyoming. See generally, Crime Victims' Right, supra note 30.

[35] FDRE Criminal Justice Policy, supra note 23, Section Four.

[36] Id. Section 4.1.

[37] *Yefetan Fith Tsintse Hasab*, supra note 12, P.12.

[38] This can be discerned from art.2149 and art.158 of the Civil Code and the CPC respectively.Art.2149 of the Civil Code states that "In deciding whether an offence has been committed, the court shall not be bound by an acquittal or discharge by a criminal court." The *a contrario* reading of this provision tells us the fact that civil courts are bound by the decision of criminal courts which resulted in convicting the accused. This way of interpreting the Civil Code provision has been confirmed by the Cassation Division decision of the Federal Supreme Court in the case of *North Zone Custom Authority vs. Priest Birhane Neway and Hagi Abdulkadir Mohammed,* Cassation File No.37184. On the other hand, art.158 of the CPC provides that "Where the accused is acquitted or discharged, the court shall not adjudicate on the question of compensation and shall inform the injured party that he may file a claim against the accused in the civil court having jurisdiction." This provision of the code transfers a message that there is a possibility that a person acquitted by criminal court can be held civilly liable. This is so because the degree of evidence (beyond reasonable doubt) required in criminal case is higher than the degree of evidence (preponderance of evidence) in civil cases.

2.3 Evaluation of RTD in Light of the Criminal Justice Models

Criminal justice model affords a convenient way to describe the operational process of criminal process of a particular country. The kind of criminal model adopted in a particular country determines the extent of protection to be accorded to accused persons. Currently, two kinds of criminal justice models are widely recognized.[39] These are: Due Process and Crime Control models.

The Due Process model presupposes that the criminal justice system is operated by a human being and as such there will be a possibility of making error in criminal proceedings. Based on this assumption, this model of criminal justice system requires states to respect each constitutional procedural right of accused persons at the expense of the efficiency of justice system.[40] It mainly aims at ensuring the procedural fairness of criminal proceedings taking the risk that some persons who should have been convicted might go free while strictly complying with constitutional rights of accused persons. In addition, under Due Process model, justice is determined by following process rather than fact-finding through interrogation.[41] In this way, the Due Process model permits the accused, acting by himself or through his/her own agent, to play an active role in the criminal process. This fact provides adversary feature to Due Process model involving competition of litigating parties.[42] Thus, the Due Process model centers on the rights of the individual to ensure procedural justice.

Unlike Due Process model, the Crime Control model gives much emphasis to efficiency of the justice system than procedural rights of accused persons. According to scholars who adhere to this model, the main purpose of the criminal process is to punish those in conflict

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[39] These two Criminal Justice Models were developed by Herbert Packer in 1968 to show the two competing values in any countries criminal justice system. These models show the emphasis given by the criminal process of a country i.e. these models explain whether criminal process of a particular country gives priority to controlling crime or due process rights of accused persons. See generally, Herbert I. Packer, Two Models of the Criminal Process (here in after Packer, Two Models) available at Edocfind.com accessed on April 21, 2011, p.1.

[40] Which Models? Crime control or Due Process, available athttp://www.cliffsnotes.com/study_guide/Which-Model-Crime-Control-or-Due-Process.topicArticleId-10065,articleId-9911.html accessed on March 6/2011.

[41] Andrew Sanders and Richard Young, Criminal Justice, (2007) (here in after Sanders and Young, Criminal Justice) p.20.

[42] Packer, Two Models, supra note 39, p.4.

with the law as quickly as possible.[43] It is believed that this purpose of the Crime Control model can be achieved through highly summary processes.[44] This shows that the Crime Control model emphasizes on the outcome, effectiveness, speediness and finality of the criminal proceedings by minimizing occasions for challenges.

The Crime Control model operates heavily relying on the concept of presumption of guilt.[45] It is this assumption which enables the model to deal efficiently with large number of cases. The concept of Presumption of guilt presupposes that if the screening process of police and public prosecutor result in getting strong evidence, there is high probability that the suspect is guilty and as such court proceedings that follow investigation are less important to establish the guilt/innocence of the accused.[46] Indeed, the model considers the formal adjudicatory procedure less capable of identifying reliable facts relevant to the case at hand.

When one evaluates RTD in light of the two criminal justice models discussed above, it is easy to conclude that RTD is tuned to Crime Control model than Due Process model. This is so because as stated under the previous sub-topic, the government decided to introduce RTD as criminal disposing mechanism within the shortest possible time thereby increasing the efficiency of criminal justice system. With the adoption of RTD proceedings, overwhelming concern has been given to reducing the number of pending cases than the rights of persons accused under same procedure. In other words, in line with the Crime Control model disposing cases without challenges thereby ensuring the finality and speedy disposal of cases have been given considerable attention in RTD proceedings.

Moreover, in RTD proceedings, consistent with Crime Control model, the formal court proceedings are not given due consideration. Due to this, RTD trials are designed to be

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[43] Sanders and Young, Criminal Justice, supra note 41, p.19. See also Francoise Tulkens, Criminal Procedure: Main Comparable Features of the National Systems in Delmas –Marty (ed.),The Criminal Process and Human Rights, supra note 2 Chapter Two,p.9.

[44] Packer, Two Models, supra note 39, p.7.

[45] Presumption of guilt is not the opposite of presumption of innocence which occupies an important position in the due process model. The former involves complex attitude or mood developed by officials handling the case accompanied by prediction of outcome. The latter, however, is a direction to officials about how they are to proceed, not a prediction of outcome. See generally Packer, Two Models, supra note 39, p.9.

[46] Pat Krueger, What are the Two Models of the Criminal Justice? available at http://www.ehow.com/about_5371179_two-models-criminal-justice.htm accesed on March 6/2011.

finalized within extremely short period of time. The extreme shortness of RTD trials can be discerned from time lines for events involved in such proceedings. As provided in the Federal BPR document, RTD proceeding for low, middle and high level crimes is supposed to be completed within 6, 11 and 19 hours respectively.[47] Furthermore, against the principal tenet of the Due Process model which invite the active participation of the accused and in conformity with Crime Control model, persons accused under RTD proceedings are given no or minimal opportunity to participate in the criminal proceedings. In RTD, the evidences collected by police and public prosecutor are highly relied up on without being discredit by the accused or his/her legal counsel.

2.4 The Scope of Application of Real Time Dispatch

As a principle, RTD does not apply in all criminal cases. Its application is limited to offences that can be adjudicated by RTD procedure. In line with this, as enshrined in the Criminal Policy, accelerated procedure, a formal name of RTD, is made to be applicable on flagrant crimes and offences related to violations of regulations.[48] This does not mean that all flagrant offences can be disposed by RTD. A flagrant criminal act which is complex requiring further investigation such as documentary and forensic investigation will not be entertained under RTD.[49] In line with this, RTD is made to be inapplicable in terrorist and corruption cases.[50]

Moreover, depending upon the complexity of the case, RTD can be applied in non-flagrant offences having readily available evidences.[51] However, under no circumstance would "upon

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[47] Ministry of Justice, *Yefederal Mengist Yewonjel Fith Astedader Akalat Abetutan Tekeblo Yememermer Mekeraker Ena Wusane Mestet Wana Yesra Hidet(*here in after *Yefederal Mengist Yewonjel Fith Astedader)* Hamle 2001,Addis Ababa(Implementation Manual),PP.50-51. Here, one may question the application of this implementation of manual on RTD. In the implementation manual which determines its scope of application, it is stated that the manual applies on RTD. (See section 1.4 of the manual).To provide different time guide line for events, BPR documents have divided crimes into three- high, middle and low level crimes. High level crimes include those offences which are punishable with greater than 15 years rigorous imprisonment and death penalty; middle level crimes entail 5 to 15 years rigorous imprisonment and low level crimes are punishable with less than five years imprisonment.

[48] FDRE Criminal Justice Policy, supra note 24, Section 2.3.1.

[49] Interview with Desalegn, supra note 20, p.3.

[50] *Yefederal Mengist Yewonjel Fith Astedader*, supra note 47, p.17.

[51] This can be inferred from different provisions of the Draft CPC. For instance, art.252 (1) which deals with cases to be treated under RTD provides so.

complaint offences"[52] be disposed by RTD proceedings.[53] This is so because the speedy disposal of such offences by RTD will not give time to the parties to the case to settle the dispute peacefully. And so, with view to provide ample opportunity for reconciliation, upon complaint offences are made to be decided by ordinary proceedings. Thus, taking the nature of the crime under consideration, it will be public prosecutors who shall decide how a particular case should be adjudicated.[54]

The trend in France, a country Ethiopia took as the major reference in the application process of RTD is similar with some basic departures. That is to say France also uses RTD proceeding to dispose flagrant cases. But, in the case of France, it is only flagrant offences which are punishable with five and less than five years imprisonment that can be adjudicated by RTD.[55] But, in Ethiopia, the maximum punishment of crimes to be entertained by RTD proceedings has not been set. And furthermore, stretching the scope of application of RTD, the Criminal Policy envisages the application of RTD on any criminal trial provided that there is adequate evidence showing that the suspect has committed the crime.[56] Using this wide power, so far, in this respect, RTD has been applied on diverse crimes such as robbery, drawing cheque without cover and offences committed against intellectual properties.[57]

For successful handling of RTD procedure, special units following up RTD cases in public prosecutor office, police and courts are promised to be established in the Criminal Policy.[58] To this effect, public prosecutors and police officers who are fully engaged in RTD cases have been organized. In the same vein, RTD benches have been established in the Federal First Instance and High Court.[59]

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[52] Upon complaint offences are offences prosecutable and punishable only when the injured party or his legal representative lodges application to this effect. See Art.212 of the CC.

[53] Interview made with Ato Henok Tesfaye, Federal Public Prosecutor at Gulele Justice Office, on May 13, 2011, at 2:45 pm in his office.

[54] FDRE Criminal Justice Policy, supra note 24, Section 4.3.4.2.

[55] *Yefederal Mengist Yewenjel Fith Astedader*, supra note 47, p.3.

[56] FDRE Criminal Policy, supra note 24, Section 2.4.4.

[57] *Yefetan Fith Tsintse Hasab*, supra note 12, P.15.

[58] FDRE Criminal Policy, supra note 24, Section 2.4.3.2.

[59] It is not difficult to find these special units and the writer personally observed that in every justice office and Federal First Instance courts of each sub-city, there are public prosecutors and RTD benches working solely on RTD. In fact, these special units were established before the adoption of the Criminal Administration Policy.

2.5 Procedures Involved in Real Time Dispatch

Under the regular criminal proceedings, before a criminal case is disposed, it passes under four procedural stages. These procedural stages are investigation, prosecution, pre-trial and trial stage. The investigation of any crime committed is supposed to be carried out by police under the supervision of the public prosecutor.[60]After the investigation of the crime is completed within reasonable time, the report of the investigation will be forwarded to the public prosecutor.[61] On receiving the report, pre-trial stage of the criminal proceedings kicks off after the public prosecutor institutes a case against the suspect.[62] Soon after the public prosecutor instituted the charge, the court shall instantly fix the date on which trial would be conducted.[63] On the day fixed in this way, trial will be conducted.

However, in RTD proceedings the scenario is different. In RTD, unlike under the regular proceedings, one will not find all those distinct stages of criminal proceedings. In RTD, all stages of the criminal proceedings are merged together. To this effect, the public prosecutor will be informed of the commission of the crime soon after the police came to know same.[64] After informing public prosecutor, the investigation will be carried out by a police officer and prosecutor under strict supervision of the latter.[65] During the investigation, the prosecutor is supposed to provide legal assistance to the investigating police officer and assess the reliability of evidences collected.[66] Although public prosecutors were empowered to ensure that organs of investigations conduct their activities in accordance with the law or conduct investigation on their own by different legislations long before[67], active participation of

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[60] CPC, art.22-37.

[61] Id.art.37(2).

[62] Id.art.38 (a).Of course, public prosecutor institutes a case against the suspect unless he/she refuses to do so based on art.42 of the CPC. Under this provision, public prosecutor can refuse to institute criminal cases due to either of the following grounds:1)when the public prosecutor believes that there is no sufficient evidence to justify convictions ;2)there is no possibility of finding the accused and the case is one which may not be tried in the absence of the accused;3) when bringing an action is barred by period of limitation;4) when the public prosecutor is instructed not to institute criminal proceeding by the Minister of Justice.

[63] CPC, art.123.

[64] *Yefetan Fith Tsintse Hasab,* supra note 12, P.15.

[65] *Yefederal Mengist Yewonjel Fith Astedader*, supra note 47, Section 3.1.1.8.And also the fact that investigation of criminal cases is to be undertaken by a police and public prosecutor is provided under section 5.1.2.1of same.

[66] Id.Section 3.1.2.5.

[67] See for instance, A Proclamation to Provide for the Establishment of the Office of the Central Attorney General of the Transitional Government of Ethiopia, Proclamation No.39/1993,art.9(2),Definition of Powers

public prosecutors in any criminal investigation is a recent phenomenon witnessed following the launching of the Comprehensive Justice Reform Program in general and RTD in particular. This fact, repeating what prior legislations did, has been recognized in the proclamation providing the powers and duties of the executive organs of the FDRE government. In this proclamation, in its part stipulating the powers and duties of Ministry of Justice, it bestows the Ministry the power to undertake, direct and supervise investigation.[68] The same has been provided in the Criminal Policy. Its relevant part states that "[T]he investigation process shall be conducted under the guidance of the public prosecutor or authorities empowered to prosecute."[69] In this way, these binding instruments have given legal back force to the implementation of prosecutor-led investigation in Ethiopia bringing an end to the long established police-led investigation approach.[70] The Prosecutor-led investigation is also adopted by the Federal Draft Criminal Procedure Code.[71]

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and Duties of the Central and Regional Executive Organs of the Transitional Government of Ethiopia, Proclamation No.73/1993(as amended), art.2(4).

[68] Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, Proclamation No.691/2010,art16(5).

[69] FDRE Criminal Policy, Supra note 24, section 2.2.1.1.In addition, the same fact has been reiterated repeatedly in other parts of the policy. Under section 2.2.1.2 of the same, a public prosecutor is empowered to issue lawful orders to the concerned investigating body police regarding a pending investigation, and take steps to ensure the legality of a completed or pending investigation conducted by the concerned investigating body; police, and provide support to the investigation and when necessary the public prosecutor is obliged to undertake a joint criminal investigation in collaboration with concerned investigating body; regarding offences punishable with rigorous imprisonment or offences that are complex'

[70] In addition to Proclamation No.691/2010 which provides the powers and duties of the executive organs of the federal government and the Criminal Policy, there are legal scholars who assert that CPC also allow public prosecutors participation in criminal investigation. For this they cite art.8(2) of the CPC which authorizes public prosecutors to give necessary orders and instructions to the police and ensure that the police carry out their duties including investigation in accordance with law and this provision, they argue, empowers public prosecutors to carry out investigation. I personally do not agree with this. Because, first of all art.8 (2) of the Criminal Procedure does not allow public prosecutors to participate in criminal investigation. Second of all, the provisions of CPC governing investigation (art.22-37) nowhere invite public prosecutor to participate in investigation. Moreover, the title of the chapter which provides provisions dealing with investigation is 'police investigation' implying that investigation shall be carried out by police alone. Third of all, the Criminal Procedure under art.16 mandatorily requires public prosecutor to forward to police officer any complaint or accusation it received so that investigation be carried out by the latter. Moreover, there is also an opinion which asserts that art.8 (2) has been repealed by disuse. See generally, Comprehensive Baseline Research Report, supra note 22, p.15.

[71] The Federal Draft CPC, art.5.When the draft CPC was presented for discussion two divergent views have been raised in relation to the extent to which prosecutors should involve in criminal investigation process. The first view wants criminal investigation to be carried out under the leadership of public prosecutor without his/her personal involvement in investigation making direct engagement of public prosecutors in investigation an exception. The other view, however, requires direct participation of public prosecutor in criminal investigation to be the principle and as such investigation should be carried out by police officers alone in a very exceptional circumstance.

Completing the investigation, immediately the prosecutor prepares charge.[72] Soon after, the prosecutor makes telephone call to a judge adjudicating RTD cases to fix the time of trial. Then, the prosecutor appears before the court on time set together with the suspect, witnesses and exhibits, if any. Taking the speed with in which the prosecution is carried out in this way, some considered it as 'persecution' rather than prosecution.[73] The court reads the charge and asks the accused whether he pleads guilty or not. If the accused pleads not guilty, the court immediately hears witnesses of the prosecutor and rules on the case which either results in acquitting or requiring the accused to defend him or herself.[74] This Ato Legesse Alemu, the former Head of Legal Research and Drafting Directorate at Ministry of Justice, says is a 'full' trial in line with idea of continuous trial not a summary procedure which denies procedural due process.[75] What Ato Legesse erred in describing RTD as a form of continuous trial is that the application of continuous trial presupposes that all factual issues to be settled by the court are well identified during pre-trial stage after both parties produced their evidence.[76] As said, however, in RTD proceedings there is no a full-fledged distinct pre-trial stage in which the accused would be given the chance to produce evidence in his favor.

To dispose criminal cases through RTD as stated above, more than anything else requires strong co-ordination of the principal actors-police, public prosecutors and courts adjudicating criminal cases. To this effect, fast communications mechanisms such as fax, telephone and strong case flow management capacity are essential.[77]

With a view to let readers easily understand the difference that exist between procedures involved in regular criminal proceeding and in RTD proceedings, the writer has found it

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[72] *Yefetan Fith Tsintse Hasab*, supra note 12, P.6.

[73] http://www.legalserviceindia.com/article/l297-Right-To-Speedy-Trial.html accessed on February 24/2011.

[74] *Yefetan Fith Tsintse Hasab*, supra note 12, P.10.

[75] Interview made with Ato Legesse Alemu, former Head of Legal Research and Drafting Directorate at the Ministry of Justice on April 20/2011 in his office at 10:30 a.m.

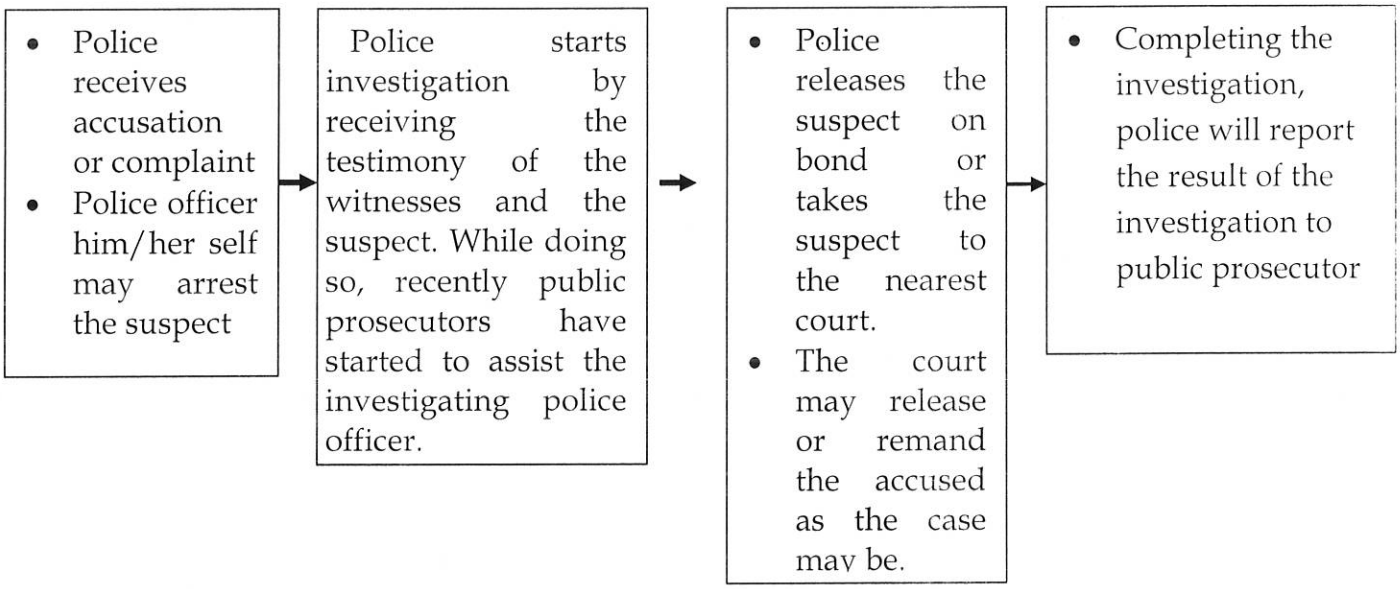
[76] Report on the Effects of the Continuous Trial System on Litigation Time and Output in the National Capital Region Submitted to the Supreme Court by the Institute of Judicial Administration U.P. Law Center Diliman, Quezon City, 1990, p.1.

[77] *Yefetan Fith Tsintse Hasab*, supra note 12, P.4.

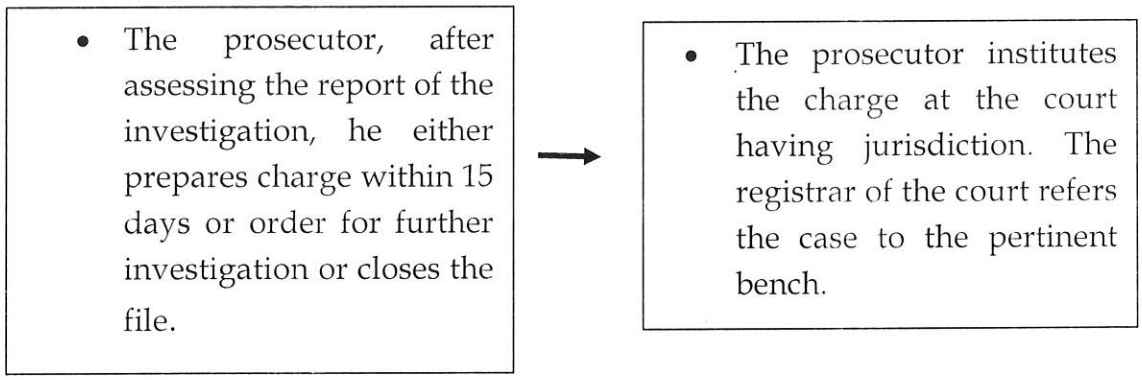
imperative to provide the following chart taken from the training manual prepared by Ministry of Justice for public prosecutors. The chart looks like the following.

Procedures under Regular Procedure

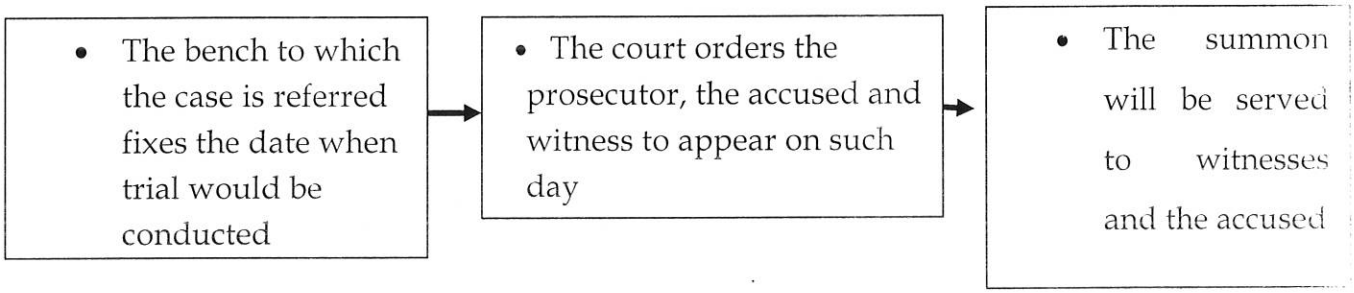
A) Investigation stage



B) Prosecution Stage



C) Pre-trial stage



D) Trial stage

- The court hears witnesses if they come. If they fail not to come for good cause, the case will be adjourned to some other day.
- After hearing witnesses, the court adjourns the case to rule .The ruling may either result in acquitting or ordering the accused to bring defense witnesses.

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- If the court orders the accused to bring defense witnesses, it hears these witnesses.
- The court passes judgment.

These are the activities involved in the four distinct criminal stages in ordinary criminal proceedings. On the other hand, the procedures in RTD in criminal proceeding are provided herein below.

Procedures under RTD proceedings

- The suspect will be taken to police station by the public and police officer
- Or the police arrests after he received accusation or complaint.

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- The police inform public prosecutor the fact that crime has been committed through telephone.
- The police hear the testimony of witnesses and the suspect.
- Public prosecutor orders the police to come up with additional evidences and hear the testimony of witnesses again.
- The public prosecutor prepares charge.
- Set time and date of trial having communicated with the court using telephone.
- The prosecutor takes the suspect, the witnesses and exhibits to the court.

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- The court reads the charge.
- The court asks whether the accused pleads guilty or not.
- The court hears witnesses of the public prosecutor or the accused.
- Immediately passes judgment.

As can be observed from the chart above, it is possible to see to what extent in RTD proceedings criminal stages are lumped together with view to abbreviate the proceedings.

2.6 The Constitutionality of Real Time Dispatch

As said, RTD is a formal criminal proceeding by which a person accused of committing crime is either convicted or set free depending on the strength of evidences adduced by a public prosecutor. In cases when the criminal proceeding ends up in convicting the accused, it usually results in depriving his/her liberty. And hence, if RTD results in such serious consequences, it is imperative to assess its compatibility with the constitutional provisions protecting against unlawful violations of rights.

It is repeatedly reiterated that before any person's liberty is restricted, he/she should pass through legally established procedures. Legality is one of the major principles of the modern criminal justice process. Laws which requires adherence to procedure in any criminal trial can be said to promote the general promise of due process as they limit and guide the function of judicial powers.[78] To underscore the importance of having legally stipulated criminal procedure rules Tulkens said "[R]ules of criminal procedure appeared as the first line of appearance to combat abuse of state power."[79] Otherwise, criminal trial, to use the expression of Mac Carrick "becomes public demonstrations where extraneous and improper considerations might impact upon the ultimate verdict."[80] Moreover, procedural laws play pivotal role in ensuring objectivity in trial by providing rules of engagement in advance by setting aside arbitrariness and impartiality.[81] Having this in mind, different countries have adopted CPC$_s$ within their domestic system. Any CPC provides procedures that should be complied with all the way from accusation or complaint to cassation level of criminal proceedings.

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[78] Gwynn Mac Carrick, The Right to a Fair Trial in International Criminal Law (Rules of Procedure and Evidence in Transition From Nuremberg to East Timor)(here in after Mac Carrick, The Right to Fair Trial), P.2.
[79] Francoise Tulkens, Criminal Procedure: Main Comparable Features of the National Systems in Delmas – Marty (ed.),The Criminal Process and Human Rights, supra note 2, p.7.
[80] Ibid
[81] Id.P.4.

Recognizing all these significance of procedural laws, states provide constitutional protection against not legally established criminal procedural rules. Ethiopia is not an exception to this. The FDRE Constitution under art.17 (1) provides that "No one shall be deprived of his or her liberty except on such grounds and **in accordance with such procedure as are established by law**."(Emphasis mine).This Constitutional provision requires every procedures having potential of denying the liberty of a person to be enacted by law. However, contrary to this constitutional provision, although the criminal cases that are being disposed by RTD usually results in depriving the liberty of accused persons, so far no legislation which legalizes RTD has been promulgated. As a result of this, the procedure is almost entirely remained uncontrolled by law. Despite this, thus far the procedure has never been declared unconstitutional. And to the best knowledge of the writer, no attempt has been made to this effect.

The only binding document which gives recognition to RTD is the Criminal Policy. In this Policy, it is stated that the pertinent government organs will promulgate laws necessary to implement RTD and other subject matters provided in the policy.[82] The writer of the paper has asked pertinent officials who are tasked with initiating and preparing draft laws why they failed to start the process with view to get RTD legalized. Some doubt the need to enact new law claiming that activities involved in RTD are sufficiently covered by the existing CPC.[83] This opinion comes from the conception that RTD is not a new special procedure but rather a different case management technique to be applied in flagrant cases.[84] As such, they think that it is not legal legislation but attitudinal change that is required for the implementation of the technique.[85] Some others think that RTD procedure is being tested whether it is effective

[82] FDRE Criminal Policy, supra note 24, Section 4.3.4.2.

[83] For instance, the writer has come to know this in an interview with Ato Legesse, supra note 74. Ato Wondu Mamo. a researcher at Legal Research and Drafting Directorate of Ministry of Justice, has informed me same in an interview made with him on April 5/2011 in his office at 11:30. As they are empowered to initiate laws by Proclamation 691/2010,supra note 68, art.10(1)(a), each Ministry has not only the power but also the duty to initiate laws within its area of jurisdiction.

[84] Aderajew and Kedir, Ethiopian Criminal Procedure, supra note 13, p.114.Ato Kedir Mohamed, Federal High Court Judge informed me the same fact in my interview with him on May 20, 2011at 2:00 pm at his office. See also Interview with Ato Desalegn Berhe, supra note 20, p.6.

[85] Ibid

or not. And hence, they assert that if the procedure is found to be effective, a law will be enacted in the future.[86]

In my opinion both reasons do not hold water. The first reason which says that RTD is a technique of case management not a procedure and as such can be governed by the existing procedural law is not tenable. This is so because firstly, the only binding document stipulating RTD i.e. the Criminal Policy does not take it as a technique of case management but as special procedure called accelerated procedure.[87] Recognizing it as a special procedure, the Policy promised that a law to that effect will be included in procedural and other related laws.[88] Moreover, had RTD been a case management technique, its scope would not have been limited to less complicated crimes. A case flow management technique is an administrative process applicable to all criminal cases which does not directly impact the substantial and procedural issues as it only involves supervision of time and events necessary to move a case.[89] But, RTD, like any other special procedural rules, directly affects procedural due process rights of accused persons.[90] And also, the inclusion of some provisions wholly devoted to RTD in the Draft CPC shows that RTD has special features which are not shared by the ordinary criminal proceedings.

The second reason given not to enact law legalizing RTD procedure is that it is under testing stage and as such if it proved to be effective, a law will be enacted making it compatible to the Constitution. This reason is also unsound due to the following reasons. First of all, it is wrong to test the effectiveness of a procedure while violating the Constitution. Second of all, it has been well over two years since RTD started to be applied. The government after testing its effectiveness in some selected benches for some time; it has been made operational in all benches of the Federal First Instance and Federal High Court.

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[86] Interview with Henok, supra note 53. He informed me that such question had been raised during the training on RTD was conducted and those who offered the training responded saying that a law governing RTD will be enacted after its effectiveness is proved.
[87] FDRE Criminal Policy, supra note 24, Section 2.4.3, 2.4.3.2, 2.4.4.
[88] Id. Section 4.3.4.2, para.2.
[89] Case Flow Management Guide, available at http://courts.michigan gov/scao/resource publication manual/cfgm.pdf. accessed on April 25/2011.
[90] See here in below Chapter Three.

Implementing RTD without having legal back up is also against rule of law. Rule of law imposes limits and provide guidance for exercise of official power.[91] Any system of conduct of proceedings which promotes due process and freedom from the fear of arbitrariness should be carried out in a manner 'not under men but under law.'[92] In the same way, Dicey elaborating rule of law said that "no one shall be deprived of his personal liberty by a procedure unsupported by law."[93]

2.7 Real Time Dispatch under the Draft Criminal Procedure Code

There has been an attempt to enact new CPC over about ten years. However, due to different reasons this procedure code could not be enacted till now.[94] The need to enact new CPC is motivated by diverse factors. Among other things,[95] one of those justifications given for preparing the draft criminal procedure is the introduction of new procedural mechanism of disposing criminal cases called accelerated procedure informally called RTD. This can be inferred from the preamble of the draft code which states that it is worthwhile to enact laws which are imperative to implement newly incorporated matters to the criminal justice system.[96] Thus, it can be said that among other things RTD lies behind the preparation of the Draft CPC.

In addition to what is stated in the preamble of the Federal Draft CPC, there are also specific provisions dealing with RTD matters inside the code. One of the prominent provisions is

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[91] Allen F. A, The Habits of Legality Criminal Justice and the Rule of Law. (1996) p.14 as cited in Mac Carrick, The Right to a Fair Trial, supra note 77, P.2.

[92] Mac Carrick, The Right to Fair Trial, supra note 77, p.7.

[93] Paulo Pinto De Albuquerque, The Right to Liberty in the Light of the European Convention of Human Rights,P.12 available at wp2-texto-definitive-EdocFind.com.pdf accessed on May 24/2011.

[94] In my interview conducted on May 4/2011 with Ato Kelemework Mideksa, a researcher at Legal Research and Drafting Directorate of Ministry of Justice, informed me that one of the factors which delayed the enactment of the CPC is related to who has the constitutional power to promulgate criminal procedure i.e. is it the federal or regional states that have constitutional power to enact CPC? The FDRE Constitution under art.55 (5) empowers the Federal Government to enact only substantive criminal law not criminal procedure. Based on this constitutional provision some regional states specially Oromia has objected the attempt to draft CPC at the federal level that would be applied across the country. As a result of this, currently each regional states and the federal government have started to draft their own respective CPC which would be applied within the territorial jurisdiction of the regional state which promulgated the procedure and in Addis Ababa and Dire Dawa respectively.

[95] Some of the rationales given for preparing Draft Criminal Procedure are the following: 1) to make the country's CPC compatible with FDRE Constitution and international human rights conventions ratified by Ethiopia and to enforce those rights; 2) it also aims at making criminal justice of the country effective, efficient and accessible which the existing laws failed to achieve; 3) it wants to provide procedure by which complex criminal acts are prevented and controlled; See generally, the preamble of the Federal Draft CPC.

[96] The Federal Draft CPC, Preamble, para.3.

art.43 enshrining procedures that should be followed in cases of flagrant offences. As per art.43 (3) of the Draft CPC, an offence is deemed to be flagrant when one is caught committing the crime, attempting to commit the crime or has just committed the crime or has escaped after the crime is committed and is being chased by the public, witnesses or police officers resulting in raising hue and cry and its investigation is undertaken immediately. Under this provision, with view to make the case ready for RTD proceedings, the Draft Code added new additional element which is not provided under CPC.[97] Under the Draft Code, in addition to elements provided under CPC, an offence will be considered flagrant only if its investigation is completed soon after the crime is committed. Thus, it requires the investigating organs i.e. public prosecutor and police to collect and consolidate evidences, when necessary to go to the place where the crime is committed, to hold pertinent materials as exhibit and to carry out further investigation when the surrounding circumstance demands so.[98] After this, making sure that all evidences which prove that the crime has been committed are obtained, the public prosecutor should immediately institute criminal charges against the suspect.[99] The same procedure is supposed to be pursued when non-flagrant but less-complicated offences are committed. This can easily be discerned from the title of art.252 of the Draft CPC which provides guidelines to determine cases to be adjudicated by RTD. The same provision stipulates that in flagrant and less complicated cases, a person who is accused under RTD proceedings shall be tried without conducting pre-trial conference.[100]

Except those discussed above, the Draft CPC does not have detail provisions governing RTD proceeding. What is succinctly provided in the code regarding procedures in RTD is that no pre trial conference would be carried out in this procedure. No other provision destined to regulate procedural steps involved during RTD trials is enshrined. This will give ample room to courts and public prosecutors to manipulate the procedure in a way they feel like allowing arbitrariness to reign.

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[97] This can be discerned from art.19 of the CPC in operation. Under this provision, there is no requirement of undertaking investigation to consider an offence flagrant.

[98] The Federal Draft CPC, art.1 (a-d).

[99] Id. art.43 (2).

[100] Id. art.252 (1).Pre-trial conference is a newly incorporated criminal proceeding stage where by the public prosecutor and the accused discuss about the charge, the evidence produced to prove it and evidences submitted by the accused as a defense under the supervision of registrar as per art.239 of the Draft CPC when it is decided by the judge as per art.36 of same. The report of the pre-trial conference undertaken in this way will be submitted to the judge who ordered the carrying out of the pre-trial conference.

CHAPTER THREE

IMPLICATIONS OF RTD ON HUMAN RIGHTS OF ACCUSED PERSONS

As stated in the second chapter of the paper, among other things, the implementation of RTD was motivated by the need to enforce the right to speedy trial of accused persons and victims of crime in addition to the need to increase the efficiency of the criminal justice system. However, the attempt to enforce the speedy trial rights in such way has its own negative implications on the right to speedy trial itself and other rights of accused persons. Cognizant of this risk of violating the rights of accused persons, the various documents which enshrine RTD procedure have repeatedly promised that rights given to accused persons by the constitution and subsidiary laws will not be compromised.[1] In this part of the paper, the extent to which this promise is respected will be assessed by discussing the enforcement of accused persons' rights recognized by the FDRE Constitution and international human right instruments which make a trial fair but highly endangered by the application of RTD proceedings.

3.1 On the Right to be Presumed Innocent

The right to be presumed innocent as one fundamental right of accused person was first recognized in 1895 by United States Supreme Court by reading it into the due process clause of the Constitution.[2] Long after this, now the right has been recognized in many international

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[1] FDRE Criminal Policy, supra note 24 Chapter Two, Section 1.2, See also *Yefetan Fith Tsintse Hasab*, supra note 12 Chapter Two, p.11.

[2] Neeraj Tiwari, Fair Trial vis-à-vis Criminal Justice Administration: A critical study of Indian criminal justice system,(here in after Tiwari,Fair Trial vis-a vis Criminal Justice Adminstration) Journal of Law and Conflict Resolution Vol. 2(4),P.68 available at http://www.academicjournals.org/JLCR accessed on April 28/2011. The Supreme Court in the case of *Coffin v. United States* described the right as an axiomatic and elementary right which lies at the foundation of the administration of the criminal justice system. Here, it is worth taking note of the fact that there are scholars who trace back the origin of the right to presumed innocent to Roman law .See Worku Yaze, Presumption of Innocence and the Requirement of Proof beyond Reasonable Doubt: Reflection on Meaning, Scope and their Place under Ethiopian Law (here in after Worku, Presumption of Innocence) in Wondwossen(ed.), Human Rights in Criminal Proceedings, supra note 11 Chapter One,p.114-115.

Conventions.[3] Ethiopia is also a party to some of these international conventions. In addition to this, FDRE Constitution has incorporated it as one right of accused persons.[4]

Despite the wide recognition of the right, its enforcement in RTD proceedings has been limited by diverse factors. The first limitation comes from the kinds of crimes to be disposed by RTD. As said above, criminal matters which can be disposed by RTD are cases which the prosecutor believes that there is adequate evidence against the defendant and the accused does not have any defense which exempts her/him from criminal liability. This fact by itself defeats the right to be presumed innocent unless otherwise proved guilty by a competent court as it involves prediction of outcome. Here one may question how doing so amounts to violation of the right to be presumed innocent. In RTD proceedings as in the case of ordinary proceedings public prosecutors are duty bound to institute a case only when they believe that there is sufficient evidence to prove the case.[5] However, in the case of RTD proceedings in addition to believing that there is sufficient evidence, public prosecutors further go one step ahead and convince themselves that the accused will not have any defense which exempts him/her from criminal liability. In other words, irrespective of the strength evidence produced to establish the guilty of the accused, public prosecutors must know that there is still a probability for the defendant to be acquitted and therefore should not be considered as guilty.[6] Thus, ruling out the probability of being found innocent and determining the result of a proceeding in advance before it comes to an end violates the right to be presumed innocent. Explaining this UN Human Right Committee in its General Comment No.32 on the right to equality before courts and tribunals and to fair trial said the following:

> The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must

[3] For example, see art. 14(2) of ICCPR, art. 11 of UDHR, art. 6(2) of ECHR, art. 8(2) of ACHR, art.7 (1) (b) of ACHP.
[4] FDRE Constitution, art.20 (3).
[5] CPC, art. 40(1). The same can be deduced from the *acontrario* reading of art.42 (1) (a) of CPC.
[6] Trechsel, Human Rights, supra note 25 Chapter Two, P.165.

> be treated in accordance with this principle. It is a duty for all public authorities to refrain from **prejudging the outcome of a trial.**[7] (Emphasis mine)

As it can be inferred from the General Comment of the Committee, art.14 (2) ICCPR prevents any public authorities including public prosecutors from prejudging the result of a criminal proceedings before trial. Contrary to the obligation imposed by the Covenant, public prosecutors who are assigned to institute criminal cases under RTD procedure take for granted that the accused has committed the crime. Finally, it this presumption of guilt that lead to decide public prosecutors to institute the case under RTD procedure. This is in line with the crime control criminal justice model nature of RTD procedure. This is so because, as discussed in the previous chapter, presumption of guilt is one of the most valued features of this model.

To put the above assertion differently, the right to be presumed innocent does not involve forecasting a result of criminal proceedings. Rather it provides a direction to officials about how they are supposed to handle criminal cases.[8] It tells them, in effect, to close their eyes to what will frequently seem to be factual probabilities that the suspect/accused has committed the crime.

The fact that what the public prosecutors are doing under RTD procedure amounts to violation of the right to be presumed innocent becomes vivid when it is evaluated in light of the broad understanding of the right to be presumed innocent. Although international human rights instruments[9] and the FDRE Constitution[10] have restricted the application of the right to be presumed innocent only to persons charged with criminal offence, now the trend has been changed and as repeatedly recognized by different international human right enforcing organs,

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[7] Human Rights Committee, General Comment No. 32, Art. 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007) adopted in its Ninetieth session, Geneva, 9 to 27 July 2007, (here in after General Comment No.32) available at http://www.unhchr.ch/tbs/doc.nfs accessed on February 16/2011.

[8] Packer, Two Models, supra note 39 Chapter Two, p.7.

[9] UDHR, art.11 (1), ICCPR, art.14 (2), ECHR, art.6 (2).All these instruments begin with the phrase "Every one charged with a criminal offence….." denying the right to be presumed innocent to persons not yet charged.

[10] The FDRE Constitution has recognized the right to be presumed innocent under art.20 entitled "The rights of accused persons."

the right to be presumed innocent is applicable to both the pre- trial and trial phases of the criminal process.[11] Thus, the right to be presumed innocent protects suspected persons against the eagerness of prosecutors who will tend to anticipate their own success and treat the suspect as guilty.[12] In this way, it requires not only judges but also public prosecutors to extend every right given to accused persons who falls in the hands of the criminal justice system.

Contrary to this protection given by the right to be presumed innocent, showing their eagerness to get the suspect convicted, in exceptional cases when an accused is given bail right by the court before which the suspect appeared as per art.59 of CPC[13], public prosecutors order police officers not to release the suspect asserting that charge will be instituted against the suspect soon.[14] The writer also came to know this scenario in an interview made with Wondimageng Shirega a prisoner convicted by RTD proceeding.[15]

The violation of the right to be presumed innocent in a way discussed above has negative implications on the exercise of other rights bestowed to accused persons by international instruments, constitution and subsidiary laws. If the concerned authorities do not presume the accused innocent, many other related rights of the accused would be at stake. In the upcoming few pages of the paper, some of these rights that are grossly affected by the violation of the right to be presumed innocent will be discussed.

3.2 On the Right to be Tried within Reasonable Time

One of the most widely recognized rights of accused persons is the right to be tried within reasonable time otherwise called the right to speedy trial. It is one of the factors which make

[11] For a long period of time, the application of presumption of innocence was limited to trial stage excluding the pre trial criminal process. For further explanation of how it applies to the pre-trial stage of criminal proceedings, see generally,Robert P Barnidge Jr, The African Commission on Human and Peoples' Rights and the Inter-American Commission on Human Rights: Addressing the right to an impartial hearing on detention and trial within a reasonable time and the presumption of innocence, (2004) 4 African Human Rights law Journal, p.108-120.

[12] Trechsel, Human Rights, supra note 25 Chapter Two, p.155.

[13] The reason why it is said in exceptional cases will be explained in Section 3.6 here in below.

[14] Interview with Ato Henok, supra note 53 Chapter Two. The writer has got the same information in an interview made with Ato Muluken Eskiel, Federal Public Prosecutor at Arada Justice Office on May 18, 2011 at 12:10 am.

[15] Interview made with Ato Wondimagegn Shirega, a prisoner sentenced to one year rigorous imprisonment by RTD proceeding, on May 14/2011 at Woreda 19 Prison House at 3:45 am.

criminal proceedings fair.[16] This right helps to promote not only the interest of the accused but also the interest of the public in general and victims of crimes in particular.[17] The accused, as the main subject of the right, will be saved from staying too long under charge. Staying for a long period under charge has its own adverse effect on psychological, social and economic aspect of accused persons.[18] Among other things, RTD as a new way of entertaining criminal cases is adopted primarily to avoid these negative consequences of delay in the criminal justice system.

However, this does not mean that the right to speedy trial is always in the interest of the accused. It should be noted that if it is not properly managed and unhealthily hurried, there are cases when it works to the disadvantage of accused persons especially when he/she is in custody.[19] Knowing this fact, some countries set minimum time periods during which trial may not begin. The US Speedy Trial Acts Amendments of 1979 provides that "[t]rial may not begin less than 30 days from the date the defendant first appears in court, unless the defendant agrees in writing to an earlier date."[20]

The right to be tried within reasonable time has been recognized by both international[21] and domestic instruments including the Constitution[22].Among other things, RTD procedure is introduced to promote this widely recognized right of accused persons. However, when one critically analyzes its application, it is against the underpinning concepts of speedy trial itself. The right to speedy trial aims at protecting accused persons from abnormal, excessive and unreasonable delays not the normal delay necessary in any system of justice that values due

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[16]Principles of Fair Trial, p.51 available at http://www.khmerrough.com/pdf/CriticalThinking-Eng/Part5-CriticalThinking.pdf accessed on April 21/2011.

[17] Treschsel, Human Rights, supra note 25 Chapter Two, P.136.

[18] Yoshio Suzuki, Speedy Administration of Criminal Justice: The Right of the Accused and Interest of society (in) UNAFEI Resource Material Series No 15(Nov.1977)Fuchu,Tokyo Japan as cited in Fasil Tadesse,*Beethiopia Yewonjel Fith Astedader yeteqelatefe ena yetefatene Fith Yemaskeber chgroch Mefthewochachew*,(here in after Fasil, *Beethiopia Yewonjel Fith Astedader*) Higawinet,Vol.3 No.1, p.91.

[19]Ibid

[20] Speedy Trial Act Amendments of 1979, Pub. L. No. 96-43, Section 3, 93 Stat. 327.Available at http://members.mobar.org/civics/SpeedyTrial.htm accessed on February 15/2011

[21] ICCPR, art.14 (3), ECHR, art.6 (1).

[22] FDRE Constitution, art.19 (4) and art.20 (1). In addition to this constitutional provision, in the CPC, there are provisions such as art.37 (1), art.94, art.109 (1), and art.123 which work together for the enforcement of the right to speedy trial of accused persons.

process rights of accused persons.[23] In other words, the speedy trial rights of accused persons presuppose the normal delay that is necessary to avoid crushing/ruining justice as the maxim goes "Justice rushed is justice crushed or ruined." Thus, if the procedural steps adopted to find justice are taken too fast there by reducing the active participation of either of the litigating parties in the process, it will necessarily spoil the outcome of the proceedings. To give emphasis to this point it is said that "the goal of speedy trial is to avoid keeping people in jail awaiting trial for indefinite periods of time, **not to truncate trials.**"[24](Emphasis mine)

In line with the above understanding of the right to speedy trial, Black's Law Dictionary describes it as '[A]trial conducted according to fixed rules, regulations, and proceedings of law free from unreasonably delay."[25] This definition of speedy trial envisages that trial takes reasonable time necessary to ensure fair trial ruling out trial conducted immediately after defendant's arrest. Moreover, it requires trial process to be dictated by fixed rules and regulation. Although courts tend to cite CPC provisions whenever the situation suits to do so, by in large RTD trials, as discussed in the second chapter, are being conducted without special rules totally devoted to govern RTD proceedings. This has resulted in arbitrary manipulation of RTD proceedings in a way judges feel like.

On the other hand, the right to be tried within reasonable period of time does not require the trial to take too short time. A criminal trial which is conducted for extremely short period of time will not be considered to have respected the speedy trial rights of accused persons. High lighting this fact the European Human Right Court in *Barbera case* said the following:

> The belated transfer of the applicants from Barcelona to Madrid ....***the brevity of trial*** and ...the very important pieces of evidences were not adequately adduced....under the watchful eye of the public considered as a whole, make the trial unfair.'[26](Emphasis mine)

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[23] Kwaku S. Asare, Can Judicial Inefficiency lead to Mob Justice, Vigilantism and Spiritual Justice? Available at http://www.ghanaweb.com/GhanaHomePage/features/artikel.php?ID=126545 accessed on April 24/2011.

[24] How Fast is a Speedy Trial? Available at http://www.wisegeek.com/how-long-is-a-speedy trial.htm accessed on May 23/2011.

[25] Bryan A. Garner (ed.) Black's Law Dictionary, p.1572.

[26] *Barbera,Messegue and Jabardo V.Spain* as cited in Trechsel, Human Rights, supra note 25 Chapter Two, P.86.

Moreover, the right to speedy trial should not be used to promote the interest of the prosecutors or those in office only; rather, it should also be used in the interest of the accused.[27] To this effect, even states which set specific time limit within which trial should begin have adopted a procedure by which the accused is allowed to waive his right to speedy trial. Accused persons who obtained bail right usually waive their right to speedy trial to get adequate time to prepare stronger defense.[28]

When one sees the enforcement of the right to be tried within reasonable time in RTD, more often than not RTD trials take extremely short period of time. This is so because in the majority of cases persons accused under RTD proceeding usually plead guilty. Ato Kedir Mohammed, a Federal High Court judge explained that majority of defendants plead guilty.[29] One also witnesses the same trend in Federal First Instance court. Explaining this Ato Fuad Kiyar, a Federal First Instance Court judge said that the pleading rate in RTD cases is high.[30] According to these judges, the reason why the number of pleading rate is so high in RTD cases is that those persons who are accused under RTD proceedings believe that adequate evidence has been produced by prosecutors and as a result of this they opt for pleading guilty to get mitigated punishment.

One also doubts that whether all these accused persons who plead guilty know under what circumstance one becomes criminally liable. These accused persons, as most of them are lay men facing the criminal proceedings without having defense counsel, may consider themselves guilty in all cases they did the alleged crime. But, legally speaking this may not be always the case. There are justifiable and legally permitted acts which exempts one from criminal liability even when one did the crime he/she is accused of. Despite this, there are RTD judges, due to their need to dispose a case quickly, who do not ask accused persons who plead guilty why he/she considers him/herself criminal liable to check whether these justifiable and legally permitted acts exist or not.[31]

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[27] The right to Speedy Trial, http://members.mobar.org/civics/SpeedyTrial.htm accessed February 15/2011.

[28] http://definitions.uslegal.com/s/speedy-trial/accessed on February 20/2011.

[29] Interview with Ato Kedir, supra note 84 Chapter Two.

[30] Interview with Ato Fuad Kiyar , a Federal First Instance Court, on May 13/2011 at 4:30pm in his office.

[31] I personally observed RTD benches at Federal First Instance Court, Arada bench and at Federal High Court, Lideta bench on May 9 and 12/2011 respectively. Contrary to this, there is also RTD judges who require

Even worse is that although the CPC allows courts to convict accused persons only when they admit every ingredient of the charged offence without reservations, with view to dispose cases quickly, sometimes RTD benches convict accused persons when plea of guilt with reservation is given. This has been witnessed in Ahmed Mohamed vs. Federal Public Prosecutor case.[32] In this case, the Federal Supreme Court reversed the decision of the Federal High Court stating that the court convicted the accused while pleading guilty with reservation. In such case, the Supreme Court underlined that trial should be conducted respecting all substantive and procedural due process rights of accused persons. If a trial is conducted without fulfilling these substantive and procedural due process rights of accused persons, the Court said that the result will not be healthy.[33](See Annex One).

In similar way, in *Federal Public Prosecutor vs. Habtamu Endale case*[34], the Court convicted the accused charged with art.525(4)(a) of the Criminal Code as per art.134(1) of the CPC asserting that accused has admitted every ingredient of the offence charged. But, the record of the court proceeding does not show this. What the accused admitted is only the fact that he has been caught having cannabis but he continued to explain the situation saying that the cloth within which the cannabis is found was given to him by another person and he did not know that there was cannabis in it. (See Annex Two) The last statement of the accused clearly shows that the accused has not admitted the mental element ingredient of the crime i.e. intention with which the accused is convicted of. This is so because the provision with which the accused is charged requires the fulfillment of intention as ingredient of the mental element of the crime.[35] But, despite this, the court convicted the accused immediately.

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accused persons pleading guilty to explain the details about how the crime was committed. I witnessed RTD judge doing so at Federal High Court, Bole bench on May 26/2011.

[32] *Ahmed Mohamed vs. Federal Public Prosecutor*, Federal Supreme Court, Criminal Appeal File No.57581.

[33] Id.para.7&8.

[34] *Federal Public Prosecutor vs. Habtamu Endale*, Federal High Court, Criminal File No.102942.

[35] The full statement of Art.525(4)(a) of the CC provides that whoever plants, buys, receives, makes, possesses, sells or delivers poisonous, narcotic or psychotropic plants or substances to be privately used by himself or another. In this provision no word or phrase telling the mental element required to constitute a crime has been provided. In such case, a person shall only punished by that provision when it is committed intentionally.(art.58(2) of the CC).This is so because art.59(2) of the CC prohibits punishing a person who committed a crime negligently unless it is provided expressly by the provision the accused is charged with.

The above two cases show how the right to be tried within reasonable time of accused persons is violated in RTD proceedings. This is so because had these courts given reasonable time for their procedural due process rights to establish the truth, they would not have convicted them so hastily. But, due to the rapid nature of RTD proceeding, in these two cases it is observed to what extent the quality of decision is compromised. Of course, for various reasons, it is possible that judges may commit similar mistakes in non-RTD proceedings too. However, in RTD proceedings the speedy nature of the proceeding itself would be one additional factor to negatively affect the quality of judgment given by courts.

On the other hand, here in above we said that the right to speedy trial should not be used to promote the interest of officials. Despite this, RTD, in the guise of ensuring the speedy trial rights of accused persons, is being used to achieve one of the strategic plan of the Ministry of justice i.e. increasing conviction rate.[36] To this effect ever since RTD is started, the number of cases being adjudicated by RTD proceedings has continued increasing. In the year RTD started i.e. in 2000 E.C, 3252 RTD cases were disposed.[37] In 2001 E.C, the number increased by 103% and reached 6629.[38] The trend continuing in 2002 E.C, 11,565 new RTD files have been adjudicated.[39] In 2003 E.C from July 1/2002 to April 30/2003, 11,003 RTD cases have been filed by public prosecutors and in the same year all these cases have been decided by RTD benches.[40] To entertain these increasing number of RTD cases, new RTD benches have been established. For instance, RTD benches in Federal High Court Lideta bench alone have reached four.[41]

The increment of RTD cases is attributed to the power given to public prosecutors by the Criminal Policy to decide what kinds of flagrant and minor non-flagrant cases should be disposed by same.[42] While exercising this power, due to the absence of detail guidelines public prosecutors use wide discretionary power to decide what kinds of non-flagrant minor

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[36] Interview with Ato Muluken, supra note 14 Chapter Three.
[37] Ministry of Justice Performance Report 1999-2002 E.C (here in after Performance Report 1999-2002) June 2002, Addis Ababa, p.20.
[38] Ibid
[39] Ibid
[40] Ministry of Justice, Ten Months Performance Report, May 2003 E.C, (Here in after Performance Report 2003).
[41] These RTD Criminal benches are the 9th, 10th, 16th and 17th.
[42] FDRE Criminal Justice Policy, supra note 24 Chapter Two, Section 4.3.4.2.

offences to be adjudicated under RTD procedure. This lacuna further aggravated by lack of subsidiary law which fills the gap. Because of this, although in the Criminal Policy it is stated that only flagrant and minor non-flagrant offences that can be disposed by RTD, currently public prosecutors widely believe that all criminal cases including high and middle level crimes can be judged by RTD procedure.[43] This is not only an opinion but it has been practically observed in a cases instituted by public prosecutors. As stated in this year's ten months performance report of the Ministry of Justice, 8204 criminal charges have been instituted at RTD benches.[44]

The other factor which motivates public prosecutors to bring their cases is that in RTD proceedings conviction rate is high.[45] Conviction rate on RTD cases is found to be 92.7%, 96% and 94% in 2000 E.C, 2001 E.C and 2002 E.C respectively.[46] In 2003 E.C from July 1/2002 to April 30/2003, conviction rate is 92%.[47]

3.3 On the Right to Defend Oneself

One of the rights which get recognition by international human right instruments[48] and by the FDRE Constitution[49] is the right of accused person to defend him/her self. This right springs from the concept of a fair trial for a rushed trial in which accused person is denied an opportunity to call evidence in his favor is a negation of fair trial.[50] Hence, it aims at making the trial fair there by giving equal chance of participation to the accused to influence the decision making process of the adjudicating court.[51]

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[43] Interview with Ato Muluken, supra note 14 Chapter Three.
[44] Performance Report 2003E.C, supra note 40 Chapter Three.
[45] This is so because in my interview with Ato Muluken, supra note 14 Chapter Three, informed me that one of the standards by which public prosecutors are supposed to be appraised is conviction rate. So, to meet the standard, they prefer to take the case to RTD bench in which there is high conviction rate.
[46] Performance Report 1999-2002 E.C, supra note 37 Chapter Three, p.20.
[47] Performance Report 2003E.C, supra note 40 Chapter Three.
[48] ICCPR, art.14 (3) (d), ECHR, art.6 (3) (b), ACHPR, art.7 (1), ACHR art. 8(2) (c).
[49] FDRE Constitution, art.20 (4).
[50] K. kibwana and k. M'Inoti, Human Rights Issues in the Criminal Justice System of kenya and the African Charter on Human and Peoples' Rights: A Comparative Analysis in M. Cherif Bassiouni and Ziyad Motala(ed.),The Protection of Human Rights in African Criminal Proceedings,(1995)(here in after kibwana and M'Inoti, The Protection of Human Rights in African Criminal Proceedings),p.122.
[51] Principles of Fair Trials, supra note 16 Chapter Three, p.48.

The right to defend is a broad concept which includes among other things the right to call witnesses.[52] In a country where to a large extent the litigation system take adversarial form, the importance of this right looms larger as parties to litigation are responsible to present their evidence.[53] Affirming this, Justice Stevens in one case said "Few rights are more fundamental than that of an accused to present witnesses in his own defense. Indeed, this right is an essential attribute of the adversary system itself."[54] The right to call witnesses also plays important role in narrowing down the difference that exist between the two arms of criminal litigations.[55] Just like prosecutors, it entitles accused persons to demand compulsory attendance of witnesses on their behalf.[56]

In order for accused person exercise his/her right to defend effectively, he/she should be given time sufficient enough to prepare defense. To this effect, the global and regional human rights instruments in similar way entitle accused persons to be given adequate time to prepare defense.[57] Moreover, the Human Right Committee, in some of the communications submitted to it, considered the right to have adequate time to prepare defense as an important element of the guarantee of a fair trial and a corollary of the principle of equality of arms.[58] In line with this, the Committee in *Smith vs. Jamaica* case, found Jamaica violating art.14 (3) (b) of ICCPR for not giving adequate time (only four hours) to prepare defense and

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[52] ICCPR,art.14(3)(e).In addition to calling witnesses, the right to defend oneself needs adequate time and facilities to be given for the preparation of the defense, the right to cross-examine witnesses, the assistance of an interpreter etc. See also,ICCPR,art.14(3)(f).

[53] Trechsel, Human Rights, supra note 25 Chapter Two, P.323. Of course, this does not mean that in Ethiopia courts adjudicating criminal cases do not have power to call witnesses. The CPC under art.143 (1) entitles a court to call any witnesses in the interest of justice. In a country where inquisitorial form of litigation is adopted, it is not parties to the litigation who are responsible to adduce evidence rather it is the adjudicating court itself that does so.

[54] *Taylor v Illinois* 484 US 400 (1988) 408.

[55] Right to Confront Witnesses available at http://defensewiki.ibj.org/index.php/Right_to_Confront_Witnesses accessed on April 18/2011.

[56] ICCPR, art.14 (3) (e).

[57] For instance, art. 14(3)(b) of ICCPR states that "In the determination of criminal charge against him, every one shall be entitled to ....*to have adequate time* and facilities for the preparation of his defense and to communicate with counsel of his own choosing.", Article 8(2)(c) of the ACHR provides that "Every person accused of a criminal offense has .....*adequate time* and means for the preparation of his defense.", article 6(3)(b) of the ECHR states "Every one charged with a criminal has .....*adequate time* and facilities for the preparation of his defense".(Emphasis mine)

[58] Communication No. 349/1989, C. *Wright v. Jamaica,* UN doc. GAOR, A/47/40, p. 315, para. 8.4; and see also Communication No. 702/1996, *C. Mc Lawrence v. Jamaica* (Views adopted on 18 July 1997), UN doc. GAOR, A/52/40, p. 232, para. 5.10.

determine which witness to call.[59] Thus, unless accused persons are given adequate time, it would not be possible for them to prepare defense potentially capable of exempting him from criminal conviction.

In addition to human rights monitoring organs, judicial bodies have also boldly recognized the need to give adequate time for preparing defense. For instance, in *Missouri case* one court said that:

> Surely, any defendant brought into court upon any charge is ***entitled to sometime after his arrest in which to prepare for trial.*** The length of time that should be given him cannot be gauged by any fixed rule. A few days might be ample or it might be necessary to continue the case until the next term.....We are of the opinion, however, that when a party is arraigned and **forced to trial immediately upon his arrest, and no time given him to prepare for trial, these facts show, without additional proof, that he has not been afforded a fair opportunity to prepare his defense.**[60]*(Emphasis mine)*

In the same way, another court said the time given by adjournment should afford reasonable opportunity to secure the personal attendance of defense witnesses.[61] On the same issue, Mueller also said that "Even the first defendant to be tried is entitled to a few days' time for preparation."[62]

When one sees the enforcement of the right to be given adequate time to prepare defense in general and the right to call witnesses in particular as recognized in human right monitoring and judicial organs in RTD proceedings as discussed above, one doubts its compatibility with these fundamental rights of accused persons. The speedy nature of the proceeding does not

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[59] Communication No. 282/1988, L. *Smith v. Jamaica*, UN doc. A/48/40 (vol. II), p. 35, para.10.4.
[60] http://members.mobar.org/civics/SpeedyTrial.htm accessed on February 15/2011.
[61] *State v. Wilcox,* 21SD 532,114NW678 as cited in Continuance in Criminal cases available at http://www.answers.com/topic/continuance accessed on April 21/2011.
[62] G.O.W.Mueller, The Position of the Criminal Defendant in the United States of America in J.A. Coutts(ed.), The Accused, A Comparative Study,(1966),p.109.

give any room to engage in looking for defenses. Explaining this concern Ato Daniel Fekadu, an advocate, said that RTD proceeding does not give ample time to look for strong defense witnesses having potential of exempting accused persons from criminal liability.[63] He continued saying that courts sometimes require accused persons to bring witnesses within a day or two.

What Ato Daniel said has been observed in cases decided by RTD benches. For instance, in *Federal Public Prosecutor vs. Wondye Worku and Tilahun Asrat case*[64], the court after hearing the witnesses of the public prosecutor ordered the accused to defend themselves. To bring their defense witnesses, the court gave them two days. The first defendant raised a defense of alibi and to this effect he brought two defense witnesses and these two witnesses testified that at the time the crime alleged to have been committed the defendant was at the work place as a result of this the court acquitted him. However, the second defendant could not succeed in bringing his defense witnesses and for this he gave a reason stating that one of the witnesses is sick and regarding the other witness the defendant thinks that he is a police by profession and due to his official duty the witness could not come. However, the court ruled that the defendant has waived his right to bring defense witnesses and entered judgment against the accused despite the defense of alibi raised by the second defendant like the first defendant acquitted. (See Annex Three pp.2 and 9) In my opinion, the court should have adjourned the case for another day to hear the defense witness of the second defendant. This is so because first, the defendant has good cause for not bringing his defense witnesses. Second, the court should have taken into consideration the fact that the defendant was under police custody and also the accused was facing the criminal charge without defense counsel and these factors have their own negative impact in an endeavor to secure the attendance of other pertinent defense witnesses. Third, the court should have checked whether the witnesses who failed to appear were served summon or not. If the witnesses failed to appear having received summon, the court should have required their compulsory presence. If not, the court should have issued bench warrant. Due to the above reasons, the court should have adjourned the case for another day. This position seems in line with the CPC rules

[63] Interview with Ato Daniel Fekadu, an advocate on May 19//20111 at 1:00 pm.
[64] *Federal Public Prosecutor vs. Wondye Worku and Tilahun Asrat* , Federal First Instance Court, Criminal File No.35176.

governing adjournment of criminal proceedings. The relevant part of the code says "An adjournment may not be granted unless defense witnesses are not present "[65] This provision, however, does not allow adjournment of criminal proceedings whenever the accused fails to bring his defense witnesses repeatedly. Thus, if the accused, due to his negligence or as delaying tactic, failed to come up with his/her witnesses, adjournment should not be allowed. However, in the case under consideration, the defendant had convincing reason for not bringing witnesses; as such he should have been given second chance to bring his defense witnesses.

Moreover, when persons accused by RTD proceedings are required by courts to bring their defense witnesses within one day, because they cannot bring them within this short period of time, usually defendants are obliged to waive their right. This has been witnessed in *Federal Public Prosecutor vs. Getachew Lembebo and Ibrahim Bedru case.*[66] In this case, the accused were given one day to bring their defense witnesses, on the day the case was adjourned to hear their defense witness the accused failed to bring them stating that their defense witnesses are outside Addis Ababa and as a result of this the accused waived their right to defend and requested the court to pass judgment.[67] The court also entered guilty against the accused. In similar manner, accused persons have waived their right to defend in other RTD cases.[68]

The writer of the paper has also encountered a prisoner convicted by RTD proceedings whose right to defend is violated. The prisoner Biniam Tibebe explained that he requested the court to adjourn the case to another day claiming that his defense witnesses have gone to Wellega.[69] But the court, he said, refused to adjourn the case claiming that it is RTD bench.

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[65] CPC, art.94 (2) (b).

[66] *Federal Public Prosecutor vs. Getachew Lembebo and Ibrahim Bedru,* Federal First Instance Court, Criminal File No.34722. (See Annex Four)

[67] In my opinion, one of the reasons which force accused persons to waive their right to defend themselves is that because, as they are litigating without defense counsel, they do not know their right to demand the court to adjourn the case for another day when they fail to bring their defense witnesses within such short period of time.

[68] See for instance, *Federal Public Prosecutors vs. Melaku Tumiso*, Federal First Instance Court, Criminal File No.34712, *Federal Public Prosecutor vs. Kasahun Dalol*, Federal First Instance, Criminal File No.34571, *Federal Public Prosecutor vs. Tina Gezmu and Alamayehu Samuel*, Federal First Instance Court, Criminal File No.34498.

[69] Interveiw with Biniam Tibebe, a prisoner convicted by RTD proceedings on May 14, 2011, at Woreda 19 Prison House at 10:00 am.

3.4 On the Right to Defense Counsel

Like the right to be presumed innocent, the right to defense counsel serves both as an end and a means to exercise other rights of suspected/accused persons. In this way, it enables accused persons to effectively utilize the rights given by the constitution, international conventions and CPC.[70] Taking this importance of the right to defense counsel during criminal proceeding, it is stated that:

> Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he is not guilty he faces the danger of conviction....." [71]

To get all these benefits of having legal counsel, accused persons should be given advocacy service right to the very first moment of the criminal proceedings when the suspect falls in the hands of the police. This is so because information obtained during interrogation is often decisive in determining whether the person should be charged or not and if he should be charged, with which provision of the criminal law the suspect be indicted.[72] In line with, although the early human rights conventions do not extend suspects' right to legal advice while he/she is under police interrogation, recently

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[70] Trechsel, supra note 25 Chapter Three, P.244.

[71] *Powell V. State of Alabama*, 287 U.S.45 (1932) as cited in Muradu Abdo, The Indigent's Right To Defense Counsel in Ethiopia in Wondwossen Demissie(ed.),Human Rights in Criminal Proceedings, supra note11 Chapter One, P.140.

[72] Zaza Namoradze and Anna Ogorodova, The Right to Early Access to Lawyer in Criminal Proceedings in Europe, Paper Presented at International Legal Aid Group Conference Wellington, New Zealand ,April 2009, (here in after Namoradze and Ogorodova, The Right to Early Access to Lawyer), p.1.

international human right enforcing organs have given recognition to this right at the preliminary stage of criminal proceedings.[73]

The importance of having defense counsel looms larger in adversarial form of litigation. In adversarial form of litigation, the outcome of the case heavily relies on the capacity to litigate and as such it does not properly work if there is inequality between parties to the litigation.[74] In other words, in this form of litigation, whosoever argues well and convinces the court shall become a winner of the case.

Considering this importance of having defense counsel, global, regional and domestic instruments have given recognition to this right.[75] To exercise this extensively recognized right, accused persons should be given time to look for defense counsel. Knowing the importance of giving time to exercise the right to counsel, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment has incorporated provision to this effect. The pertinent provision of the Body of Principles states that "a detained or imprisoned person shall be allowed ***adequate time*** and facilities for consultation with his legal counsel."[76](Emphasis mine).Moreover, the Federal Supreme Court, the Cassation division in *Captain Hussein Ali vs. Public Prosecutor of Somalia Regional State case*[77], has underscored the need to extend sufficient time to accused persons with view to let them exercise their right to defense counsel. (See Annex Five).

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[73] For instance, the Inter-American Commission for Human Right recommended that "all persons deprived of liberty shall have the right to a defense and legal counsel without delay or unjustified time limits from the time of their capture and arrest, and necessarily before the first declaration before the competent authority. The European Human Right Court recognized the right in *Imbrioscia V. Switzerland*, para.36. See generally, Namoradze and Ogorodova, The Right to Early Access to Lawyer, supra note 72 Chapter Three,pp.2-4.

[74] Sanders and Young, Criminal Justice, supra note 41 Chapter Two, p.14.

[75] See, ICCPR, art. 14(3(d), ACHPR, art.7 (1) (c) ECHR, art. 6(3)(c),ACHR art.8(2)(d) , FDRE Constitution, art.20(5).

[76] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 18(2). This body of principles was adopted by UN General Assembly on 9 December 1988, A/RES/43/173, available at: http://www.unhcr.org/refworld/docid/3b00f219c.html accessed on 8 July 2011.

[77] *Captain Hussein Ali vs. Public Prosecutor of Somalia Regional State*, Federal Supreme Court, Cassation File No.37050, Para.6.

But, despite this recognition of the right both at the international and domestic level, persons accused by RTD proceeding will not be given time necessary to hire defense counsel as they appear before court for trial hours after their arrest denying opportunity to obtain counsel. Reflecting this lack of time to hire defense counsel, Ato Aschalew Ashagrie, an advocate, said that RTD proceedings do not give breathing time let alone time necessary to hire counsel.[78] As a result of this, he said, persons accused under RTD proceedings will be left with the option of facing the criminal proceedings without the assistance of advocates. Due to this, some of these persons who happened to pass through RTD proceedings are forced to hire advocate for appeal purpose after the trial is concluded. To substantiate his assertion, Ato Aschalew mentioned one case[79] in which an accused is charged soon after he is arrested and on same day the trial concluded by convicting the accused. After that he became his advocate and lodged appeal to the Federal Supreme Court which reversed the decision of the lower court.

In addition, from the RTD trial I attended and the dead file observed, I came to understand that most of the accused persons were not represented by defense counsel. Although it is not possible to conclude that they were unrepresented by Defense counsel solely because they were charged by RTD proceeding, it will be logical to conclude that the hasty nature of RTD proceedings has contributed its own share to this as a process of hiring defense counsel requires adequate time necessary to effect it. As a result of this, in the majority of cases, lay accused persons under RTD proceedings will be forced to face the criminal proceedings without being represented by defense counsel thereby easily felling prey to the criminal justice conviction and punishment.

Facing a criminal charge without a defense counsel also subjects the accused found guilty to aggravated sentence which would otherwise be mitigated with an effective defense counsel. This is so because an accused who has defense counsel besides him would be in

[78] Interview with Ato Aschalew Ashagrie, an advocate on May 23, 2011 at 10:15 am.
[79] *Federal Public Prosecutor vs. Ahmed Mohamed,* Federal High Court, Criminal File No.94537.

better position to get the benefit of general and special extenuating circumstances recognized under the CC.[80]

Regarding the right to defense counsel of accused persons charged under RTD, one Federal First Instance judge said that since most of the crimes which are to be tried under RTD procedure do not entail serious punishment, conducting the trial without defense counsel would not adversely affect the interest of accused persons.[81] Of course, cases to be tried under RTD do not result in death or life imprisonment penalty but usually results in depriving the liberty of individuals who are found guilty. Irrespective of its length, any imprisonment punishments grossly affects the interest of a person considerably. And hence, it would not be legal to deny a person the right to defense counsel on the ground of the non-capital nature of the crime. Emphasizing this fact, the American Supreme Court in *Scott V. Illinois* said that "... regarding the need to have the right to counsel no distinction should be made between capital offences and lesser crimes."[82] In the same way, Justice Hugo Black quoting Justice Sutherland's declaration in *Powell v. Alabama* case laid down rigid rule preventing all federal courts to deprive an accused of his life or liberty in all criminal proceedings including non-capital offense unless he waives the assistance of counsel.[83]

Here I am not suggesting that the government should provide defense counsel to all persons accused under RTD proceedings but these person need to be given sufficient time to hire defense counsel by their own expense. As things stand now, even those who can employ defense counsel cannot realize it due to the hasty nature of the criminal proceedings. In a very exceptional case where it is possible to hire defense counsel, the defense counsel will not have time to conduct interview with the accused, potential witnesses and evaluate all evidence brought against the accused with view to come up with the most effective defense strategy. Otherwise an accused person who appears

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[80] The CC has recognized general extenuating circumstances and special mitigating circumstances under art.82 and 83 respectively.

[81] Interview with Ato Fuad, supra note 30 Chapter Three.

[82] *Scott v. Illinois*, 1158(1979).

[83] *Powell v.Alabama*, 304 U.S 458(1938) at 463 as cited in Arnold S.Trebach, The Rationing of Justice, Constitutional Rights and the Criminal Process (1964), (here in after Trebach, The Rationing of Justice), p.98.

before a court with a criminal defense lawyer who is ill prepared will be in worse condition than an accused person without advocate.[84]

3.5 On the Right to Impartial Court

The right to be tried by impartial court is by far one of the most important aspects of the fair trial rights of accused persons. It bestows them the right to be adjudicated by neutral authority. To show its importance, Treschsel compared it with the role the right to free election has in boosting democracy in any country. He said "Like the right to free election which protects the foundation of democracy; the guarantee to an impartial tribunal lays the foundation for rule of law."[85] As a basis for rule of law, the right to impartial court guarantees accused persons that a judge adjudicating the case would pass judgment on the ground of reasonable assessment of the evidence and the application of relevant laws.

Impartiality of courts refers to the attitude or conduct of a judge demanding to have state of mind which is free from bias towards the litigating parties.[86]They are prohibited from doing anything before judgment implying that the defendant has already been convicted. Explaining this the Human Right Committee in *Karttunen v. Finland* case said that "[i]mpartiality' of a court implies that judges must not harbor pre-conception about the matter put before them and that they must not act in ways that promotes the interest of one of the parties."[87] Thus, a judge sitting to adjudicate cases should be free from any bias and prejudice affecting the outcome of the case.

As said above impartiality of tribunal requires that judges should not start trial with the preconceived idea that the accused has committed the offense charged.Evaluating judges adjudicating RTD cases in light of this standard; I would say that they will not be free from any prejudice when they start trial taking into consideration the way the accused persons are brought before a court. In RTD case, accused persons appear before the trial

[84] James Stribopoulos, Pre-Trial Applications in Criminal Proceedings, p.177.
[85] Treschsel, Human Rights, supra note 25 Chapter Two, P.46.
[86] Tiwari, Fair Trial vis-a vis Criminal Justice Administration, supra note 2 Chapter Three, p.68.
[87] Communication No. 387/1989, *Karttunen v. Finland*, para. 7.2 as cited in Human Rights Committee General Committee No.32, supra note 7 Chapter Three, para.16. See also, Trechsel, supra note 25 Chapter Two, p.61.

court immediately after he/she is flagrantly arrested. Under this circumstance Worku Abebe, an advocate, said that it would be impossible for judges adjudicating the case to conduct the trial impartially.[88] To put it otherwise, it is difficult to expect judges adjudicating accused persons who are brought to trial being caught flagrantly to presume innocent.

The impartiality of RTD bench is also put in question in relation to the way the case is brought to RTD bench. It is said time and again that a case will be submitted to RTD benches when the prosecutor believes that the accused will not have any defense what so ever to the charge instituted against him/her. This ground of classifying where a particular case is to be adjudicated would have huge potential to let judges believe that the accused before them has committed the alleged offence. This is so because judges adjudicating RTD files fail to meet what the European Human Rights Court called the 'subjective test' of impartiality.[89] According to the Court, this test checks whether a judge has an impartial state of mind free from preconceived idea that the accused has committed s/he is charged with. One of the indicators to know whether judges are free from bias is the act they display and the statement they use while conducting the trial.[90] In this regard, I found some statements of judges adjudicated RTD cases to be prejudicial and biased. To mention some of the statements which display their prejudice, I heard RTD judges asking accused persons at the beginning of the trial who pleaded not guilty saying that "Do you have evidence establishing your innocence?"[91] Asking such kinds of question an accused person before a case is made against him reflects an opinion that the court has believed that the accused has committed the crime.[92]

Moreover, in relation to the matter at hand, in the second chapter it is stated that special benches handling only RTD cases have been established in Federal High Court and First

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[88] Interview with Ato Worku Abebe, an advocate on May 27, 2011 at 2:00 am. Federal High Court, Lideta bench.

[89] The Court has stated this test in many cases including *Incal v.Turkey*, Para.65 and in *Gautrin and others V.France*, para.58.

[90] Trechsel, Human Rights, supra note 25 Chapter Two, P.178.

[91] I heard judges saying this while observing RTD benches at Federal First Instance Court, Arada 5th Criminal bench on May 9/2011 and at Federal High Court Lideta 16th Criminal bench on May 12, 2011.

[92] As per art.142(1) of the CPC, a case is said to have been made against an accused when a court, after hearing the witnesses of the prosecutors, believes that if unrebutted, would warrant his/her conviction.

Moreover, in relation to the matter at hand, in the second chapter it is stated that special benches handling only RTD cases have been established in Federal High Court and First Instance Court. In relation to the trend to establish special benches, the Human Right Committee in its General Comment No.32 on art.14 expressed its fears saying that "Special [benches] may raise serious problems as far as the equitable, ***impartial*** administration of justice is concerned."[93](Emphasis mine) To avoid these problems, the Committee urged governments to take every necessary measure to ensure that such trials take place under conditions which genuinely afford the full guarantees of all facets of fair trial rights.

On the other hand, being tried by separate bench applying different procedures also violates the right to equality. Equality of persons requires everyone to be given the same procedural rights to all parties to criminal proceedings unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.[94] However, contrary to this authoritative interpretation of the right to equality, persons charged with RTD proceedings continued to be discriminated in the way the trials are conducted without having legal ground and objective criteria justifying distinction resulting in observable damage on persons accused under RTD procedure. Furthermore, the right to equality entitles everyone accused of minor or serious offences to exercise all rights given to these category of persons.[95] Despite this, usually the smallness of crimes is raised as an excuse to deny some rights of persons charged under RTD proceedings.

3.6 On the Right to Bail

In line with the right to be presumed innocent, as a principle any person who is suspected/accused of committing crime has the right to be released on bail. Primarily, the

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[93] General Comment No.32, supra note 7 Chapter Three, para.18.

[94] Id.para.12. In Communication No. 694/1996, *Waldman v. Canada*, the HRC has confirmed that distinction between people can only be made on reasonable and objective criteria in UN doc. GAOR, A/55/40 (vol. II), pp. 97-98, Para. 106.

[95] Amanda Whitfort, The Right to a Fair Trial in China: the Criminal Procedure Law of 1996, available at http://www.pennealr.com/media/articles/vol2/CLPR_v2_i2ps161pe171.pdf accessed on April 16/2011.

the accused. The fact that accused persons have the right to be released on bail has its own implications on the outcome of the trial. An accused person who remained in detention by being denied bail will likely be convicted as he/she would not be in a position to prepare his/her defense while imprisoned.[97]As said, there is huge difference between public prosecutor and accused persons with respect to resources at disposal in handling the case. This disparity grows further when the accused is in custody.[98] Explaining these negative implications of denying bail, Justice Douglas in one case has said "[I]mprisoned, a man may have no opportunity to investigate his case, to cooperate with his counsel, to earn the money that is still necessary for the fullest use of his right."[99]

Taking into account this importance of bail right, FDRE Constitution has given recognition to the right under art.19 (6) for all arrested persons. As per this provision, it is only in exceptional circumstances provided by law that courts are allowed to deny or demand adequate guarantee to release a person on bail. In addition to this overarching provisions governing bail issue, there are also subsidiary laws dealing with same.[100] In these subsidiary, legislations conditions and specific offences which deny bail right have been stated.[101] Although not specifically mentioned in any of the subsidiary legislations denying bail, usually those who appear before RTD bench are being denied bail. As a result of this, RTD has become "unwritten law" to deny bail. This has been practically observed in our court practices in both incidents when the issue of bail usually arise.

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[97] Trebach, The Rationing of Justice, supra note 83 Chapter Three, P.81. Wondwossen Demissie, The Right to Bail in Ethiopia: Respective Roles of the Court and Legislature, (here in after, Wondwossen, The Right to Bail) Journal of Ethiopian law, Vol.23 No.2, (2009), p.3.

[98] The Right to Adduce and Challenge Evidence and Adequate Facilities to prepare a Defense available at http://www.saflii.org/za/other/zalc/report/2001/2/2001_2-CHAPTER-6.html#Heading1521 accessed on April 18, 2011.

[99] Justice Douglas summarizing the importance of bail right in *Brady v. U.S* case as cited above supra note 96 Chapter Three.

[100] These subsidiary laws are the CPC (art.63-79), the Vagrancy Control Proclamation No.384/2004, art.6 (3), the Revised Anti-corruption Special Procedure and Evidence Rule(Amendment) Proclamation No.239/2001, art.4 (1).And also, detail provisions about bail has been provided in the Criminal Policy, supra note 24 Chapter Two, section 2.2.1.7.In this part of the policy, it is stated that bail right is a principle and specific offences such as terrorism, rape and sexual offences committed against children are made to be non-bail able offences.

[101] The constitutionality of providing specific offences which automatically deny bail right was contested before the Council of Constitutional Inquiry. The Council decided that providing specific offences which do not entitle one to get bail is in line with the constitution. See generally, Wondwossen, The Right to Bail, supra note 97 Chapter Three, P. 8-10.

The issue of bail arises for the first time when a suspect appears before a court as per art.59 of CPC. As provided under art.59 of the code, a person who shows up in this way before a court has two fates-either to be released on bail or to be kept in custody. Ever since RTD is started, the number of persons who are ordered by these courts to be detained on remand has dramatically increased.[102] To get the suspect remanded, the investigating police officer prays to the court stating reasons such as to complete the investigation and bring the suspect before RTD bench.[103] So as to enable public prosecutors to institute a case against the suspect at RTD bench, courts accepts the reasons given by police officers as justified grounds to deny bail.[104] As discussed in the second chapter of the paper, to institute a criminal case before RTD benches, it is necessary to have the accused under police custody. To protect the interest of the suspect, rather than releasing on bail, usually the court orders police officers to complete the investigation within few days and a case be instituted against the suspect at RTD bench.[105]

Though not to the extent stated above, there are accused persons who were denied bail after charge was instituted against them at RTD benches. These benches provide RTD as one reason in their rulings to refuse bail. For instance, the Federal First Instance court in *Federal Public Prosecutor vs. Girma Alemu & etal*(two defendants) case[106], all the three accused persons requested to be released on bail. The court denied all the three accused persons bail. One of the reasons given by the court to take this position is the fact that accused persons are charged under RTD procedure. (See Annex Eight p.2). In same way in *Federal Public*

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[102] For instance, in the month of Tir 2003 E.C 152 *yegize ketero* files were opened as per art.59 of the CPC at Addis Ababa First Instance Court, kirkos bench. Among these only in 20 files that suspects were accorded bail right in their first day appearance before court. On the rest 132 files, the suspects were denied bail. In similar manner, in the month of Ginboat 2003E.C 262 *yegize ketero* files were opened at Addis Ababa First Instance Court, Yeka bench. Out of these files only in the 48 files that suspects were accorded bail in their first day appearance before court. On the remaining 214 files suspects were remanded. I also arrived at this conclusion from my observation of proceedings at Addis Ababa First Instance Court, Arada bench on May 27, 2011.

[103] (See Annex Six).In these applications lodged by police officers to Addis Ababa First Instance City Court, RTD has been stated as one reason by the police officers to get the suspect remanded. The court also remanded the suspect denying bail.

[104]Some of *Yegize Ketero* files on which these facts are stated include 9609/03,9661/03,9666/03,9607/03,9607/03,9668/03,9668/03,9362/03,9395/03,9370/03,9305/03(all these yegize ketero files are available at Addis Ababa First Instance Court, kirkos bench). In similar fashion, in file no.3738/03, 3740/03, 3808/03, 3826/03, 3860/03, 3876/03, 3888/03(all these files are available at Addis Ababa First Instance Court, Yeka bench) the same fact has been stated. See also Annex Seven.

[105] Interview with Ato Tesfaye Negash, Addis Ababa First Instance Court Judge, Arada bench,on May 27, 2011at 11:30 am in his office.

[106] *Federal Public Prosecutor vs. Girma Alemu & etal*, Federal First Instance court, Criminal File No.89858.

Prosecutor vs. Eskndr Desalegn case[107] the court expressly provided as one reason saying that since the proceeding under which the accused charged is RTD, he should not be given bail right .(See Annex Six). In these two cases, though the court has stated the fact that the accused persons will not comply with the bail condition as one reason which is an accepted ground under art.67 (a) of the CPC to deny bail, stating RTD in bail ruling by itself shows that judges are using it as a supplementary factor to disallow bail.

In similar fashion, the Federal High Court in *Federal Public Prosecutor vs. Solomon Tabor case* [108]the court denied the accused bail accepting RTD as one ground. (See Annex Ten) In this case, after forwarding grounds provided under art.67 (a) and (b) of the CPC, the public prosecutor for stronger reason[109] argued saying that since the case is being entertained by RTD bench, the interest of the accused will not be affected as the proceeding comes to an end within a short period of time if bail is denied. The court accepted all reasons stated by the public prosecutor and ordered the accused to stay in imprison.

Contrary to the position taken by courts in the above stated cases, in some cases courts reject request made by public prosecutors to deny bail on the ground of RTD. In *Federal Public Prosecutor vs. Ketema Abebe case*[110], public prosecutor demanded the accused to be denied bail as the proceeding is RTD. However, the court allowed bail to the accused stating that the reason forwarded by the public prosecutor does not have legal ground. (See Annex Eleven pp.2 and 3) This shows that some judges, knowing the absence of any legislation legalizing RTD, refrain from denying bail right on RTD ground.[111]

And also with respect to the enforcement of the right to bail in RTD proceedings, Tilahun Mitku, an advocate, said that bail right will not be raised as an issue in RTD proceedings and

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[107] *Federal Public Prosecutor vs. Eskndr Desalegn*, Federal First Instance court, Criminal File No.90020.(See Annex Nine)

[108] *Federal Public Prosecutor vs. Solomon Tabor*, Federal High Court, Criminal File No.100615.

[109] I said for stronger reason because at the time when the public prosecutor forwarded RTD as one ground so that the accused be denied bail, he started using the Amharic expression "*yilkunm*"

[110] *Federal public prosecutor vs. Ketema Abebe*, Federal First Instance court, Criminal File No.91009.

[111] The same position has been taken by Federal High Court in *Federal Public Prosecutor vs. Mitiku Bogale*, Criminal File No.101898.

usually RTD judges pass over the issue and order the accused to stay imprisoned.[112] Strengthening what Tilahun said, I observed RTD files courts without giving any reason whatsoever leave accused persons to stay under police custody or in correction house.[113]

What is worse is that some judges adjudicating RTD case believe that bail is not a right which is at stake in RTD proceedings. Explaining this Ato kedir Mohamed, a Federal High Court judge said that since RTD proceedings take too short time, request for bail right in such proceedings will not be given due attention.[114] Furthermore, Ato Legesse Alemu, the former Head of Legal Research and Drafting Directorate at the Ministry of Justice said the issue of bail, to use his expression, is "irrelevant" as the criminal proceeding comes to an end within hours or days.[115]

The reason why courts avoid addressing the issue of bail in RTD proceedings when they are requested and the position taken by judges and officials is attributed to the narrow understanding of the importance of bail right. Traditionally, it was conceived that the right to bail attempts to protect the liberty rights of persons suspected/accused of committing crime. However, as discussed above, persons suspected/accused who are denied bail will be hampered from exercising, in addition to liberty rights, other fair trial aspects of criminal proceedings such as the right to defend oneself and the right to be presumed innocent. Moreover, law generally does not want one's right to liberty to be restricted arbitrarily even for a short period of time.[116] And hence, it is absolutely unjustified to deny bail right on sole ground that trial comes to an end within short period of time.

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[112] Interview with Ato Tilahun Mitku, an advocate, on May 27, 2011 at 2:45am at Federal High Court, Lideta bench.

[113] See for instance, *Federal Public Prosecutor vs. Tina Gezmu and Alamayehu Samuel*, Federal First Instance Court,Criminal File No.34498.In this case, bail was never raised as an issue and the accused were made to stay under police custody. See also, *Federal Public Prosecutors vs. Melaku Tumiso*, Federal First Instance Court, Criminal File No.34712, *Federal Public Prosecutor vs. Kasahun Dalol*, Federal First Instance, Criminal File No.34571.

[114] Interview with Ato Kedir, supra note 84 Chapter Two.

[115] Interview with Ato Legesse, supra note 75 Chapter Two.

[116] This can be inferred from art.2040 (1) of the Civil Code which makes a person who interferes with the liberty of another person even for a short period of time liable. The same can be inferred from art.585 (1) of the CC which penalizes a person who restricted the movement of another person contrary to the law, irrespective of the time of restriction, with not less than three months simple imprisonment.

3.7 On the Right of an Accused to Full Notice of the Charge before Trial

In any criminal proceedings, it is an established principle that accused persons have the right to be given charge prior to the date of trial. To this effect, for instance the American Convention on Human Right expressly provides that every person is entitled to prior notification of the charge against him.[117] This is made so with view to give accused persons ample time to prepare their defenses. The right to defend oneself can only be exercised effectively if the accused knows what he or she is charged with before trial.[118] Professor David Fellman described the value of the right as the "indispensable, classic minimum requirement of due process."[119]

Since the justification of requiring pertinent officials to give the charge before trial is to enable the accused to defend him/her self, it follows that to avail themselves of this benefit, accused persons should be given sufficient time and facilities to prepare the defense having chance of success.[120] To put it otherwise, between the date when the accused is informed of the charge and the date of trial, 'adequate' time should be granted taking into consideration the nature of the crime by which the accused is charged. The duty to give adequate time to prepare defense prevents accused persons from what the former European Human Right Commission in one case referred as 'hasty trial'.[121] In addition, it protects accused persons against unnecessary speed of criminal proceedings.[122] Regarding the issue at hand, Paul Mahoney said the following:

> [The right to fair trial]... embraces at the least the right to know with reasonable clarity **in advance** of the trial the exact nature of the offence with which one is to be charged; to have **reasonable time for preparing to meet the charge** and to have the aid of counsel in doing so.[123] *(Emphasis mine)*

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[117] ACHR, art.8 (2) (b). Here one may doubt the relevance of this provision of the ACHR to Ethiopia, but it is worthwhile to note that the jurisprudence developed in one regional system affects interpretation of related provisions of other regional system.

[118] Trechsel, Human Rights, supra note 25 Chapter Two, p.193.

[119] D.Fellman, The Defendant's Rights, p.30 as cited in Arnold Trebach, The Rationing of Justice, supra note 83 Chapter Three, p.93.

[120] ICCPR, art.14 (3) (b).

[121] *Krocher and Moller V. Switzerland*, Application 8463/as cited in Trechsel, Human Rights, supra note 25 Chapter Two, P.49.

[122] Trechsel, Human Rights, supra note 25 Chapter Two, P.49.

[123] Paul Mahoney, Right to a Fair Trial in Criminal Matters under Article 6 E.C.H.R.,(here in after Mahoney, Right to a Fair Trial)P.16.

Having in mind the importance of handing over charge prior to the date of trial, the FDRE Constitution and the CPC, require accused persons to be informed of the charge framed against them prior to the date of trial. The FDRE Constitution under art.19 (1) and 20(2) grant this right. Although no specific time period with in which charge is to be handed over before the date of trial has been stated in these Constitutional provisions,art.19(1) requires this to be done promptly. Moreover, as human right chapter of the Constitution to which art.19 and 20 belong is supposed to be interpreted in light of the international human rights instruments adopted by Ethiopia,[124] charge should be handed over to the accused giving adequate time to prepare defense. This is so because ICCPR, one of the international instruments acceded by Ethiopia[125], requires adequate time to be given to accused persons to prepare defense.[126] The same can be inferred from the CPC. The Code under art.109 (4) and 123 especially the former provision entitled 'Framing, filing and service of the charge' suggest that charge would be given to the accused soon after the public prosecutor instituted the case. Moreover, the Code under art.94 (2) (g) allows court to adjourn criminal proceedings in case when the accused has not been served with the copy of the charge or has been served too short time before trial. It is taking into account the adverse impact of being served with the charge on the date or soon before trial in preparing strong defense that the Code recognized it as one adjournment ground of criminal proceedings.

When one evaluates the enforcement of the right so widely recognized in RTD criminal proceedings, due to the swift nature of the process it is less likely that accused persons will be notified the nature and kind of the charge sufficient enough before the trial is held. This has been practically attested in cases adjudicated by RTD proceedings. In all RTD trials at both Federal First Instance Court and Federal High Court, I personally observed accused persons being given the charge by the judge adjudicating the case and immediately the judge asks the accused whether he objects the charge or not and he pleads guilty or not.[127]

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[124] FDRE Constitution, art.13 (2).

[125] Ethiopia acceded to ICCPR on June 11, 1993.See status of ratification, available at http://www2.ohchr.org/english/bodies/ratification/4,htm accessed on May 14/2011.

[126] ICCPR, art.14 (3) (b).

[127] I observed RTD trials at the Federal First Instance, Menagesha criminal bench on May 6/2011 in the afternoon, Arada 5th Criminal bench on May 16, 2011 in the morning and Lideta 13th BPR and RTD criminal

Moreover, in files already disposed by RTD proceedings, it is common to find an Amharic expression which says "*bekesash akabi hig yekerebew yekis mamelkecha letekesash* ***bechilot dersot*** *gebtot ena terditot kisun alqawemm wenjelun.....bilowal*(Having been served **before the trial bench** and well acquainted with the charge instituted by public prosecutor, the accused pleaded..... "[128] (Emphasis mine)This expression clearly tells us the fact that accused persons are being given the charge right at the beginning of the trial. It is doubtful that what judges state saying that the accused has understood the charge really describes what actually happens. Given the fact that these accused persons do not have advocate, it would be hardly difficult to presume that all persons would understand a charge full of technical terms with all their legal implications.

Regarding the enforcement of the right at hand, Federal First Instance Court judge, Fuad Reshid, admitted the fact that accused persons are served with the charge at the trial stage of the proceedings, he asserted that adjournment will not be denied because the proceeding is RTD and he continued saying that the case would be adjourned if the accused demands so.[129] But, it is hardly possible that persons who do not know that they have such rights would demand the adjournment of the case. In my opinion rather than waiting till accused persons demand adjournment on such grounds, it is better to carry out the legal duty of serving defendants the charge prior to the date of trial.

Contrary to what is happening in RTD proceedings and in line with art.123 of the CPC, to enable the accused prepare his/her defense, in non-RTD proceedings a public prosecutor institutes a case and on the same day the court fixes a day for hearing and orders a police to serve the charge to the accused before the trial date.[130]

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[128] See Annex Twelve. Annex Twelve-1, Twelve -2 and Twelve -3show that the accused persons were asked whether they plead guilty or not on the date the charge was written and instituted to the court on 26/5/02, 25/08/03 and 13/5/03 respectively. In each annex, look the date when the charge was written and the date the accused was required to enter plea guilty or not.

[129] Interview with Ato Fuad, supra note 30 Chapter Three.

[130] Look for instance *Federal Public Prosecutor vs. Amir Munir*, Federal First Instance Court, Criminal File No.34629 (See Annex Thirteen).

3.8 On the Right to Request Adjournment of Trial

To ensure fair trial right, accused persons have the right to demand adjournment. To this effect, subject to laws, courts have been given inherent discretionary power to decide whether adjournment should be given or not in response to request made by litigating parties. In using this discretionary power within the frame work of the law, courts should take all necessary care not to deny adjournments in case when it potentially results in miscarriage of justice. This right helps more the accused, the weak party in criminal proceedings, compared to its well equipped opposing party -the public prosecutor.

The right to grant adjournment works much to enable the accused and/or his defense counsel to prepare defense to the charge. One of the facilities which ICCPR envisages to be extended to accused persons to enable him to prepare his defense is adjourning cases.[131] Especially when one takes into consideration the procedures involved in RTD proceedings, this importance of getting adjournment looms larger. This is so because, as said before, trial in RTD proceedings starts without prior notice of the charge framed against the accused. So, to enable the accused to defend him/her self effectively, he/she must be given adequate time to prepare defense.

Recognizing this role of adjournment, the CPC has provided different adjourning grounds of criminal proceedings.[132] The Code further says for grounds mentioned under art.2 (a), (f), (g) and (h) the adjournment should not be allowed for more than a week.[133] Thus, courts are entitled to adjourn criminal cases for period greater than a week on other adjournment grounds depending on the nature of the case under consideration. Despite these legal provisions, persons who are accused by RTD proceeding are not being given adjournment on any of grounds provided under art.94 of the CPC.

In relation to the subject matter at hand, Ato Tilahun Mitiku, an advocate, cited one case, which he failed to remember the file number and the name of the accused, in which RTD

[131] ICCPR, art.14 (3) (b).Under this provision, every one charged with crime is accorded extensive minimum guarantees including to have different facilities for the preparation of defense.
[132] CPC, art.94 (2) (b).
[133] Id.art.94(3)

bench refused to adjourn a case.[134] In this case, he said that the charge was given to the accused by the court and immediately the judge requested the accused whether he objects the charge or not. By then, Tilahun, the defense counsel of the accused, requested the court to adjourn the case on the ground that charge was not given to the accused before the trial date. But, the court refused and proceeded adjudicating the case. In same manner, W/t Meron Teshome, former assistant judge at Federal High Court RTD bench and currently a registrar at Federal High Court Bole bench, informed me that demanding adjournment in RTD proceeding is considered as delaying tactic as a result of this courts tend to deny adjournment.[135]

Not only when requested by accused persons but also when demanded by public prosecutors that courts use RTD as an excuse to deny adjournment of criminal proceedings. This has been observed in *Federal Public Prosecutor vs. Belay Adamu case*.[136] In this case, on the first date the file was opened, the public prosecutor as per art.94 (2) (b) of the CPC requested the court to adjourn the case as witnesses of the prosecutor did not appear. The court, however, refused to adjourn the case and closed the file stating that since the bench is RTD, the witnesses of the public prosecutor should have appeared. (See Annex Fourteen). Though this case does not show the impact of RTD on the rights of accused persons, which is the subject matter of the paper, it confirms to what extent the lawful adjournment grounds are disregarded in RTD proceedings.

The discussion so far carried out shows to what extent the application of RTD violated some rights of accused persons despite the promise made in various documents incorporating RTD proceedings.

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[134] Interview with Ato Tilahun, supra note 112 Chapter Three.
[135] Interview with W/t Meron Teshome on May 26, 2011 at 10:30 am in her office.
[136] *Federal Public Prosecutor vs. Belay Adamu*, Federal High Court, Criminal File No.102743.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 CONCLUSION

Ever since its introduction, although RTD proceedings have been the object of much dismay, no or little study has been done on it. In this paper, modest attempt to rectify this disregard has been made. In so doing, the research has come up with the following major findings.

The first important finding is that RTD is a special criminal cases disposing procedure serving as one means of managing case flows. This is so because what is supposed to be achieved by RTD here in Ethiopia has been attempted in other country by adopting laws incorporating this special procedure. In line with this, the Criminal Policy and the Draft Federal CPC have recognized the process involved in RTD as Accelerated Procedure. Despite this, officials in charge of implementing RTD still believe that RTD is a case flow management technique which cannot be considered as a special criminal proceeding. Due to this, they tend to consider RTD as an administrative affair which does not affect procedural due process rights of accused persons.

Even worse, this widely held opinion has resulted in applying RTD without having legal force. In my opinion, to process criminal cases using a procedure not provided by law is unconstitutional. More often than not, adjudications of criminal cases result in denying accused persons their liberty right if the criminal proceeding comes to an end by convicting the accused. The FDRE Constitution under art.17 (1) guards against deprivation of liberty except in accordance to a procedure established by law. Despite this well entrenched constitutional provision, RTD has been used as one procedural means of disposing criminal cases without any instrument which legalizes it. Moreover, the absence of legal instruments regulating RTD proceedings has bestowed wide room for judges and public prosecutor to manipulate the procedure in a way they feel like. This has given ample chance for arbitrariness, instead of rule of law, to reign.

Due to the fact that RTD is being implemented without legal instrument regulating the procedure and further aggravated by its tendency to promote the value of the crime control

model of the criminal justice system, its application has resulted in violation of many fundamental rights of accused persons. In the way discussed in the paper, the criminal justice proceeding in RTD is found to be fraught with the violation of human rights due to departure from the standard set by the existing domestic and international human rights instruments. Such kinds of infringements are quite common when cases are adjudicated in hurry. Scholars who conducted research in this area also showed that human rights violations occur frequently in proceedings which dispose cases so rapidly.[1] Officials who justify RTD as a new criminal cases disposing procedure, try to undermine all the above stated procedural due process violations of accused persons on the ground that it is less complicated minor crimes which are supposed to be tried by RTD as such its impact on the rights of accused persons is very minimal. In my opinion, this would create fertile opportunity to repeat the "ideology of triviality"[2] what Sanders and Young coined to express the hiding tactic of human right violations of accused persons going on in Magistrate courts adjudicating minor crimes in England and Wales in Ethiopia.

Although it seems convincing to implement RTD as it has managed to increase the efficiency of the criminal justice actors, this research has shown to what extent the unwarranted emphasis given to speedy disposition of criminal cases has resulted in violating the fundamental rights of accused persons. A series of such violations of procedural rights of accused persons in this short cut , oversimplified and abbreviated procedure, which individually may be of minor significance usually compromises the person's right to fair trial. Fearing such consequences of unjustified need of rapid adjudication of criminal cases, one American district court judge warned the concerned officials in the following way:

> The number of cases resolved and **the speed with which they are resolved is some measure of the judicial system but it cannot and should not be the sole measure.** We are not engaged in manufacturing; **the quality of what we produce must be more important than the quantity.** We cannot and should not judge judging solely or even primarily by reference to the number of dispositions...the time has come

[1] D.Fellman, The Defendant's Rights as cited in Trebach, The Rationing of Justice, supra note 83 Chapter Three, p.93.
[2] Sanders and Young, supra note 41 Chapter Two, p.452.

to consider whether the **current emphasis on speed has created a new evil, one even greater than that caused by delay**.[3](Emphasis mine)

The impact of these violations becomes dangerous when one considers the fact that usually criminal trial comes to an end by convicting the accused which results in depriving myriad of rights of accused persons such as the right to life, liberty, property, association, expression, etc.[4] It is cognizant of these consequences of criminal proceedings that special category of rights are given to accused persons to limit excess of public officials having duties of enforcing substantive criminal law. In addition, failure to respect human rights of accused person would be to defeat the purpose of giving accused persons long list of rights to counter balance the inequality that exist between parities to criminal proceedings i.e. the public prosecutor and the accused.

Moreover, the need to ensure the efficiency of the criminal justice actors at the expense of accused persons' rights would not serve the over whole justice system as it, in the long run, erodes public confidence over the criminal justice system. This fear has been reflected in the decision of the Federal Supreme Court Cassation division. The Court reiterated that if rights of accused persons are not respected during criminal proceedings, public respect and acceptance towards court decision will decrease.[5]

4.2 RECOMMENDATIONS

The first important point which urgently needs to be taken in any endeavor to make RTD constitutional is to enact law dealing with RTD. In this respect, it is good to have some provisions being incorporated in the Draft Federal Criminal Procedure Code. However, these provisions of the Draft Code are insufficient to address all procedural due process irregularities resulting from the application of RTD. So, to make the Draft Code a full-fledged one capable of addressing all thorny issues related to RTD, detailed provisions dealing with the following matters should be added.

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[3] H.Lee Sarokin "Justice Rushed is Justice Ruined" in Rutgers Law Review, Vol.38 No.3 Spring 1986 as cited in Fasil, *Beethiopia Yewonjel Fith Astedader*, supra note 22 Chapter Two, p.124.

[4] kibwana and M'Inoti, The Protection of Human Rights in African Criminal Proceedings, supra note 50 Chapter Three, p.120.

[5] *Captain Hussein Ali vs. Public Prosecutor of Somalia Regional State case*, supra note 77 Chapter Three, para.5. (See Annex Four).

1) As stated in the body of the paper, currently, prosecutors are exercising unlimited discretion to opt for RTD proceedings resulting in increasing the number of cases to be adjudicated by same. As a result of this, different public prosecutors arbitrarily take criminal cases to RTD benches with view to swiftly dispose the case. To avoid such arbitrariness, clear and objective criteria which provide directive guideline to select criminal cases susceptible of being disposed by RTD should be provided in the Draft Federal CPC. In the absence of such guidelines, a consistent and fair approach in taking decision will not be realized. It is recognizing these negative consequences of exercising discretion that Guideline on the Role of Prosecutors adopted by the Eighth United Nation Congress recommended countries under Guideline 17 to enact law which regulates discretion exercised by public persecutors.[6]

2) In addition to providing guidelines to determine cases to be adjudicated by RTD, like in the case of France, a provision which prevents disposition of crimes punishable with greater than some fixed years of imprisonment by RTD should be included in the Draft Federal CPC.

3) As said, the Draft Federal CPC has recognized RTD as a special procedure called Accelerated Procedure. However, the Draft does not provide the details of the procedural steps involved in this special procedure. The Code should provide details about how a case is to be initiated and proceeded in this special procedure. In other words, in relation to the procedure, the Code should incorporate provisions dealing with when charge should be handed over to the accused and criminal proceedings be adjourned.

4) On the top of what is said above, due consideration should be given to balance the interest of the government to ensure the efficiency of the criminal justice system and the rights of accused persons. Putting it otherwise, the detail provisions which will be included in the Draft CPC to govern RTD should be designed in a way that violations of accused persons' rights will not occur or be kept to its minimum.

Up until a law governing RTD in the above stated way is enacted, judges and public prosecutors should handle every criminal case as per the procedural rules enshrined under the existing CPC. In line with this, judges should not treat criminal cases brought by RTD

[6] Guidelines on the Role of Prosecutors was adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, (here in after, Guidelines on the Role of Prosecutors).

different from other ordinary cases. To put it otherwise, all criminal cases should be adjudicated only based on the letter and spirit of the existing CPC and other piece of legislations which regulate criminal proceedings. Thus, judges should stop violating those rights identified in the paper in RTD. Moreover, they should refrain from conducts which put into question the impartiality of courts. Rather, judges should be active enough in any criminal proceedings including RTD with view to enforce rights of accused persons in cases when the accused does not have defense counsel.[7] This is to say that they should dare to explain the rights accused persons have in detail and give adequate time to exercise them as doing so forms one of the primary constitutional obligations of judges.[8]

Generally, in the campaign to increase the efficiency and effectiveness of the criminal justice system, human rights must continue to work consistently and pragmatically. Emphasizing the need to balance the two major purposes of criminal procedural laws - the need to increase efficiency of the criminal proceedings and to ensure better protection of accused person's right, Trechsel said "procedural justice is at least of the same importance as outcome-related justice."[9] Failure to balance these two interests by giving priority to the simplification and acceleration of criminal process to achieve the efficiency of the criminal justice system threatens individual liberty and reinforces repression.[10] In fact, a government has legal duty not only to get as many convictions as possible but also the responsibility of ensuring that rights of accused persons have been respected. Moreover, modern society values more about the protection of individuals' rights than its interest in obtaining conviction showing the fact the need to protect individual rights of accused persons' rights prevails over other purposes

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[7] Here, one may question the legality of the active role of judges in criminal proceedings. Some scholars argue that judges have the right to do so as per art.13 (2) which imposes the duty to enforce rights enshrined under Chapter three of the FDRE Constitution. For detail information see Muradu Abdo, The Indigent's Right to Defense Counsel in Ethiopia in Wondwossen(ed.), Human Rights in Criminal Proceedings, supra note 11 Chapter One, p.140-157.

[8] This duty of judges can be inferred from art.13 (1) of the FDRE Constitution. This duty of judges has been reaffirmed in recently decided case by the Federal Supreme Court, the Cassation division. In this case, the court starkly stated that judges have the duty to respect and enforce constitutionally recognized rights of accused persons. See generally, *Captain Hussein Ali vs. Public Prosecutor of Somalia Regional State case*, supra note 77 Chapter Three, para.5. (See Annex Four)

[9] Trechsel, Human Rights, supra note 25 Chapter Two, p. 243.

[10] Francoise Tulkens, Criminal Procedure: Main Comparable Features of the National Systems in Delmas – Marty (ed.),The Criminal Process and Human Rights, supra note 2 Chapter Two,p.12.

of criminal trial.[11] So, all government organs involving in the criminal justice system should shape their activities in line with this modern understanding.

[11] Worku, Presumption of Innocence, supra note 2 Chapter Three, in Wondwossen(ed.), Human Rights in Criminal Proceedings, supra note 11 Chapter One, P.122.

ANNEX ONE

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በላቸው አንሺሶ

ገበየሁ ፈለቀ

ይግባኝ ባይ፣ አህመድ መሐመድ ከጠበቃ ቀረቡ

መልስ ሰጭ፣ የፌ/ዓቃቤ ሕግ አቶ ወርቅነህ ዘነበ ቀረቡ

መዝገቡን መርምረን የሚከተለውን ፍርድ ሰጥተናል፡፡

ፍ ር ድ

የጉዳዩ መነሻ ይግባኝ ባይ የወ/ሕ/ቁጥር 693/1/ የተመለከተለውን ድንጋጌ በመተላለፍ በቂ ገንዘብ አለመኖሩን እያወቀ ከኦሮሚያ ህብረት ሥራ ባንክ ቀርሳ ቅርንጫፍ ወጪ ሆኖ የሚከፈል ብር 425,000 /አራት መቶ ሃያ አምስት ሺህ/ የሆነ ቁጥሩ ኦአር 155277 ቼክ ለአቶ ዓለማየሁ አስፋው ጽፎና ፈርሞ ከሰጠ በኃላ ቼኩ ለክፍያ ሲቀርብ በቂ ገንዘብ የለውም ተብሎ የተመለሰ በመሆኑ በፈፀመው ገንዘብ ሳይኖር ቼክ መስጠት ወንጀል ተከሷል የሚል ክስ በዐቃቤ ሕግ ቀርቦበት ማራቀቡን ያከራከረው የፌዴራል ከፍተኛ ፍ/ቤት ይግባኝ ባይ ድርጊቱን ስለመፈፀሙ አምኗል በማለት በወ/መ/ሥ/ሥ/ሕ/ቁጥር 134 መሠረት የጥፋተኛነት ውሣኔ በመስጠት 4 ዓመት ከ3 ወር ጽኑ እሥራት ቅጣት እንዲቀጣ በመ/ቁጥር 94537 በሆነው መዝገብ በመወሰኑ ቅር በመሰኘት የቀረበ ይግባኝ ነው፡፡ ይግባኝ ባይ ሰኔ 15 ቀን 2002 ዓ.ም በጠበቃ አማካይነት ተጽፎ የቀረበው ቅሬታ ፍሬ ቃሉ፡-

የሥር ፍ/ቤት ይግባኝ ባይን ጥፋተኛ ነው ብሎ የቀጣው ቼኩን የቆረጠ መሆኑን ማመኑን መሠረት በማድረግ ነው፡፡ ነገር ግን ቼኩ የተቆረጠው ለክፍያ በሚቀርብበት ጊዜ ለክፍያ የሚበቃ ገንዘብ ከባሌ ዞን ጊኒር ወረዳ 10 ሺህ ኩንታል ስንዴ ለቃሊቲ ምግብ ኮምፕሌክስ ለማቅረብ ስምምነት የነበረና በወቅቱ ጊኒር አካባቢ ከፍተኛ ዝናብ በመዝነቡ ምክንያት መኪና የማያንቀሳቅስ ጭቃ በመፈጠሩ

የታሰበው 10 ሺህ ኩንታል ስንዴ ባለመቅረቡ በቼኩ የተመለከተውን ገንዘብ ለመክፈል አለመቻሉንና ይህ ከአቅም በላይ የሆነ ድንገተኛ ሁኔታ ባይፈጠር ኖሮ ቼኩ ለባንኩ በሚቀርብበት ጊዜ ለመክፈያ የሚሆን በቂ ገንዘብ ይኖራል በማለት ይግባኝ ባይ በእርግጠኛነት በማመኑ ነበር፡፡ ስለሆነም የሥር ፍ/ቤት እነዚህን ሁኔታዎች ሳያገናዝብ እንዲሁ ይግባኝ ባይ ድርጊቱን በማመኑ ብቻ ጥፋተኛነቱን በማረጋገጥ የእምነት ክህደት ቃሉን ሙሉ በሙሉ አምኖ ባልሰጠበት የተሰጠው የጥፋተኛነት የቅጣት ውሣኔ ተሽሮ በነፃ ያሰናብተኝ የሚል ነው፡፡፡

ይህ ፍ/ቤትም ቅሬታውን ከመዝገቡ ጋር በማገናዘብ መርምሮ ዐቃቤ ሕግ መልስ እንዲሰጥበት አዝዞ ጥቅምት 8 ቀን 2003 ዓ.ም በዋለው ችሎት ግራቀኙ ቀርበው የቃል ክርክር አሰምተዋል፡፡

ይግባኝ ባይ በጽሑፍ ያቀረበውን ቅሬታ በማጠናከር የተከራከረ ሲሆን በዐቃቤ ሕግ በኩል የቀረበው ክርክር ደግሞ ይግባኝ ባይ ቼክ ሲፈርምም ሆነ ሲያወጣ በቂ ገንዘብ ያለው መሆኑን ማረጋገጥ ሲገባው ገና ስንዴ አምጥቶና ተሽጦ የሚገኝ ገንዘብ ይኖራል በሚል ተስፋ ቼክ ማውጣት እንዳለበት በሕጉ አልተመለከተም ስለዚህ የጥፋተኛነትና የቅጣት ውሣኔ በአግባቡ ነው በማለት መልስ በመስጠት ተከራክሯል፡፡

የግራቀኙ ክርክር ከዚህ በላይ በአጭሩ የተመዘገበው ሲሆን እኛም በሕግ ረገድ የውሣኔውን አግባብነት እንደሚከተለው መርምረናል፡፡

ከሥር ፍ/ቤት መዝገብ የክርክር ሂደት መገንዘብ የሚቻለው ይግባኝ ባይ ፍ/ቤት ቀርቦ ክሱ ተነቦለት ከተረዳ በኃላ በክሱ ላይ ተቃውሞ እንደሌለው ገልፆ የወንጀሉ ድርጊት መፈፀሙን.... የተፈፀመበትም ምክንያት ...... በመዘርዘር ላይ እያለ ፍ/ቤቱ "ድርጊቱን አልፈፀምኩም ካልክ በማስረጃ ይረጋገጣል" በማለት ሃሣቡን በማቋረጡ ይግባኝ ባይ "ድርጊቱን ፈጽሜለሁ" በማለቱ "እባ አስቀምጡት" በማለት "ዐቃቤ ሕግ የሚሉት ካለ" በማለት አስተያየት ሲጠየቅ ዐ/ሕጉ "ተከሣሹ የወንጀሉን ድርጊት መፈፀሙን ሙሉ በሙሉ አምኖ ቃሉን የሰጠ ስለሆነ ሌላ ማስረጃ መስማት ሳያስፈልግ ፍ/ቤቱ የጥፋተኛነት ውሣኔ እንዲሰጥበት" ሲል አስተያየት በመስጠቱ ፍ/ቤቱ የጥፋተኛነትና የቅጣት ውሣኔ የሰጠ ስለመሆኑ በመዝገቡ ላይ የሰፈረው የችሎት ሂደት /Proceding / ቁልጭ አድርጎ ያሳያል፡፡

ፌዴራል ጠቅላይ ፍ/ቤት
ትክክለኛ ግልባጭ
ፊርማ ... ቀን 17-03-03

በመሠረቱ በፍ/ቤቶች ውሣኔ የሚሰጠው በሕግ በተመለከቱ ሥርዓቶች ክርክር ተካሂዶ ከተጠናቀቀ በኃላ ነው። በሕግ ከተመለከቱ ሥርዓቶች /Substantive and procedural due process of Law/ ውጪ በሆነ ሁኔታ ክርክር የተደረገ እንደሆነ የክርክሩ ውጤቱ ሁልጊዜ ጤናማ አይሆንም። አሁን በተያዘው ጉዳይ ይግባኝ ባይ የወንጀሉ ድርጊት መፈፀሙን /ቼክ መቆረጡን/ በማመን ነገር ግን በጥፋተኝነት ረገድ መብቱን በመጠበቅ / ple of guilty with reservation/ ከመከራከር ውጪ ጥፋተኛ ነኝ በማለት ቃሉን አላስመዘገበም።

እንዲህ በሆነ ጊዜ ደግሞ የክርክሩ ሥርዓት ሙሉ በሙሉ መከናወን ያለበት ግዴታ ነው። በክርክር ሂደት ወቅት ተከራካሪዎች ጉዳዩን ለማጓተት ሳይሆን ለፍትህ አጋዥ በሆነ ሁኔታ የእምነት ክህደት ቃላቸውን ማሻሻል ሕገ መንግሥታዊ መብታቸው ሲሆን ፍ/ቤቶች ይህን ማስተናገድ ደግሞ ሕገመንግሥታዊ ግዴታቸው ነው። ከዚህ ሥነ ሥርዓት ሂደት ውጪ የተካሄደ ክርክር ጤናማ ሊሆን አይችልም። በመሆኑም ወደ ሌሎች ፍሬ ነገር ጉዳዩች ማለትም ቼኩ የተሰጠው በቸልተኝነት ነው ወይንስ አይደለም ወደሚለው ነጥብ መግባት ሳያስፈልግ የበታች ፍ/ቤት ይግባኝ ባይ የእምነት ክህደት ቃሉን ሲሰጥ መብቱን ጠብቆ በመከራከር ሂደት ላይ እያለና ጥፋተኛ ነኝ በማለት የእምነት ቃሉን ባልሰጠበት የሰጠው የጥፋተኝነትና የቅጣት ውሣኔ በአግባቡ አይደለም በማለት የሚከተለውን ውሣኔ ሰጥተናል።

ው ሣ ኔ

1. የፌዴራል ከፍተኛ ፍ/ቤት በወ/መ/ቁጥር 94537 በሆነው መዝገብ ግንቦት 17 ቀን 2002 ዓ.ም በዋለው ችሎት የሰጠው የጥፋተኝነትና ግንቦት 24 ቀን 2002 ዓ.ም በዋለው ችሎት የሰጠው የቅጣት ውሣኔ በወ/መ/ሥ/ሥ/ሕ/ቁጥር 195/2 መሠረት ተሽሯል። ይፃፍ።
2. ይግባኝ ባይ መብቱን ጠብቆ ለመከራከር ያቀረበውን ክርክር በመቀበልና እንዲሁም ከሣሽ የሚያቀርበውን ክርክርና ማስረጃ በመቀበል በሕጉ መሠረት በማከራከር ተገቢውን እንዲወሰን

ANNEX TWO

የፌዴራል ከፍተኛ ፍ/ቤት
9ኛ ወንጀል ችሎት
የወ/መዝ/ቁ 102942
ጥር 18 ቀን 2003 ዓ.ም

ዳኛ:- ሰዒድ ሀሰን

ከሣሽ ዐቃቤ ሕግ:- አቶ ኤርሚያስ ንጉሴ ቀርበዋል
ተከሳሽ:- ሀብታሙ እንዳለ ቀርቧል

❖ ተከታይ ፍርድ ሰጥቶአል

ፍርድ

❖ ዐቃቤ ሕግ በተከሳሹ ላይ በ17/5/2003 ዓ.ም የክስ ቻርጅ የመሰረተው ክስ የወንጀል ሕግ አንቀጽ 525/4/ሀ በመተላለፍ በሕግ የተከለከለ አደገኛ እጽ ለማዘዋወር አስቦ በ7/5/2003 ዓ.ም በግምት ከቀኑ 9:15 በአዲስ ከተማ ክፍለ ከተማ ፖሊስ ጣቢያ ጊቢ ውስጥ እስረኛ እንዲጠይቅ ገልጾ ከገባ በኋላ በፌስታል ውስጥ የያዘው ቲታ ሲፈተሽ በገበር ውስጥ 0.82 ግራም የካናቢስ እጽ በመገኘሁ ተከሳሽ በፈጸመው አደገኛ እጽ ይዞ በመገኘት ወንጀል ተከሶአል የሚል ክስ አቅርቧአል። ተከሳሽ በዛሬው እለት በችሎት ተገኝቶ የክስ ቻርጁ ደርሶት ተነቦለት እንዲረዳው ተደርጐአል ተከሳሽ ክሱን እንደማይቀወም ድርጊቱን እንደፈጸም ጥፋተኛ እንደሆነ ገልጾአል። ዐቃቤ ሕግም ተከሳሽ በአመነው መሰረት የጥፋተኝነት ውሳኔ እንዲሰጠው ጠይቆአል ፍ/ቤቱም ጉዳዩን እንደተመለከተው ተከሳሽ ሰው ነው የሰጠኝ እኔ በማለውቀው ጉዳይ ነው ዞሮ ዞሮ ይገቼ ተገኝቼአለሁ ብሎአል ተከሳሽ የካናቢስ እጽ ይዞ መገኘቱን የገለጸ መሆኑን ይሄም ጥፋት መሆኑን ያመነ በመሆኑ በሕጉ የተከለከለ መሆኑ ሲታይ ሌላ ማስረጃ መስማት ሳያስፈልግ ተከሳሽ በተከሰሰበት የወንጀል ሕግ አንቀጽ 525/4/ሀ ሥር ጥፋተኛ ነው ስንል በወንጀለኛ መቅጫ ሕግ ሥነ ሥርዓት ቁጥር 134/1/ መሰረት የጥፋተኝነት ውሳኔ ሰጥተናል።

❖ የቅጣት ሐሳብ ዐቃቤ ሕግ አስዝግቡ

ANNEX Three

የወ/መዝ/ቁጥር 35176

ጥቅምት 1 ቀን 2003 ዓ.ም.

ዳኛ፡- ፍቅርተ ተፈሪ

ከሣሽ፡- ዐ/ህግ ታሪኩ ጥላሁን

ተከሣሾች፡- 1ኛ ወንድዬ ወርቁ

2ኛ ጥላሁን አሰራት

1ኛ ተከሣሽ 2 መከላከያ ምስክሮቹ ቀርበዋል ይሰሙልኝ ብለዋል ምንድን ነው የሚመሰክሩልህ ምስክሮችህ?

የ1ኛ ተከሣሽ ጭብጥ

እኔ ስራ ላይ መሆኔን፣ መቼ? ወንጀሉ ተከሰተ በ14/01/2003፣ ከስንት ሰዓት ጀምሮ ነው ሰራ ላይ የነበርከው? ከጠዋቱ 2:00 ሰዓት እስከ ምሽቱ 3:00 ሰዓት ድረስ፣ አብረውህ የሚሰሩ ናቸው? አንዱ የኔ እረዳት ነው አንደውም አሁን ያለው አብረውኝ ነው የሚሰሩት አንድ መስሪያ ቤት ነው የምንሰራው ሁለቱ፣ ማን የሚባለው ነው አብሮ የሚሰራው? ሰለሞን ግርማ፣ ፍሬህይወት እንትናም፣ በስንት ሰዓት ነው ስራ የገባህው? እኔ 2:00 ሰዓት ጠዋት፣ እስከ ስንት ሰዓት ድረስ? እስከ ምሽቱ 3:00 ሰዓት ድረስ፣ ስራ ላይ እንደነበርክ ነው ሰለሞን ግርማ የሚመሰክርልህ? አዎ ስራ ላይ አብረን ነው የምንሰራው አንድ ማሽን ላይ ነው የምንሰራው ሁለታችን፣ 2ኛ ምስክርስ? እሱዋም አንድ ቦታ አንድ ግቢ አንድ ቤት ውስጥ ነው የምንሰራው፣ ማነው ስምዋ? ፍሬህይወት ታምራት፣ ፍሬህይወት ታምራት ምንድን ነው የምትሰመክርልህ? እሱዋም እንደዛው አንድ ቦታ ነው የምንሰራው ግቢው እና ፋብሪካው፣ እሱዋም አብራህ ነው የምትሰራው? አንድ ግቢ ውስጥ ነው የምንሰራው፣ አንድ ግቢ ውስጥ ነው የምትሰሩት እና ምንድን ነው የምትሰመክረው? ስራ ላይ መሆኔን በሰዓቱ ወንጀሉ ተፈጸመ በተባለበት ሰዓት እኔ ስራ ላይ መሆኔን ነው የሚያረጋግጡልኝ ሁለቱም፣ ይሄን ነው የሚመሰክሩት? አዎ፣

2ኛ ተከሣሽ መከላከያ ምስክሮቹ አልቀረቡም ነው የምትለው? አሞ እንመጣለን ብለው ነበር አንደኛው ታሞዋል አንደኛው፣ 2ኛ ተከሣሽ መከላከያ ምስክሮቹ አልቀረቡም፣ የ1ኛ ተከሣሽ መከላከያ ምስክሮች መሣል ይፈጽሙ፣

የምስክሮች ቃለ መላ፡- *በእውነት ለመመስከር በእግዚአብሔር ስም ምያለው።*

1ኛ የተከሣሽ መከላከያ ምስክር

ስም? ***ፍሬሀይወት ታምራት***

እድሜ? ***31***

ስራ? ***የግል ድርጅት***

መ/አድራሻ? ***የካ ክፍለ ከተማ ቀበሌ 01/02 የቤት ቁጥር 140***

ተከሣሽን ታውቂዋለሽ 1ኛ ተከሣሽን? የስራ ባልደረባዬ ነው፣ ዛሬ ለምንድን ነው ፍ/ቤት የቀረብሽው? በዛን እለት፣ ባጭሩ ለምንድን ነው የመጣሽው እዚህ ፍ/ቤት? ለምስክርነት፣

በተከሣሽ ዋና ጥያቄ የምስክሯ መልስ፣- በሰዓቱ የት ነበርኩኝ ማለት ወንጀሉ የተፈጸመው በ14 ከ3:00 እስከ 3:30፣ አትምራ እንድትመራ እኮ አይደለም ለምስክርነት ነው የቀረብሽው አይደለም? አዎ፣ ምንድን ነው የምትመስክሪው ንገሪን ምን ለመመስከር ነው የመጣሽው? የመጣሁት ስራ ላይ እንደነበረ ነው ጠዋት፣ መቼ? እረጅም ግዜ ነው ገርጂ ከሄድን 3 ወር ሆኖናል 3 ወር ድረስ ያለማቋረጥ አብረን ነው ስራ ላይ የነበርነው እኔ ጠዋት 1:00 ሰዓት እገባለው፣ ከመቼ ጀምሮ? 3 ወር ይሆነናል ገርጂ ከሄድን ወደ እዚሁ ፈረንሳይ ለጋሲዮን ነበርን ገርጂ ከሄድን 3 ወር ይሆነኛል እኔ እነሱ እንኳን ቀይተዋል ግን ስራ ላይ ነበርን አብረን ያለማቋረጥ፣ እኮ አብራችሁ ስራ ላይ የነበራችሁት ከመቼ ጀምሮ ነው? ከሐምሌ 27 ምናምን አካባቢ፣ እስከ መቼ ድረስ? እስከ አሁን እስከ እሱ እስከተያዘበት እስከ 21 ድረስ አብረን ነበርን እኔ አሁንም እላው ነኝ ያለሁት፣ በስንት ሰዓት ነው ስራ የምትገቡት? እኔ ጠዋት 1:00 ሰዓት ነው የምገባው እሱ 2:00 ሰዓት ነው የሚገባው ስወጣ 10:00 ሰዓት ነው የምወጣው እሱ 11:00 ሰዓት ነው የሚወጣው፣ ስራችሁ ሁል ግዜ? ሁል ግዜ ነው አዎ፣ ተከሣሽ እስከ

ስንት ሰዓት ነው ስራው? እኔ ጠዋት 1:00 ሰዓት ገብቼ 10:00 ሰዓት ነው የምወጣው እነሱ እንኳን ያመሻሉ ማምሸትም አለ ማደርም አለ፣ ታድያ የምታውቂው ነገር አለ እስክ ስንት ሰዓት እንደሚሰሩ? ጠዋት 1:00 ሰዓት ስገባ አብሮኝ ነበረ 2:00 ሰዓት ገብቶዋል እስክ 11:00 ሰዓት ድረስ አብሮኝ ነው የሚቆየው እስክ 10:00 ሰዓት ድረስ አብሮኝ ነው የሚቆየው እኔ እሳው ትቼው ነው የምወጣው 10:00 ሰዓት እወጣው እሱ የሚያመሽም ከሆነ ያመሻል 11:00 ሰዓት የሚወጣም ከሆነ ወጥቶ ይሄዳል፣ ከዛ በኋላ አንቺ ከወጣሽ በኋላ ይስራ አይስራ የምታውቂው ነገር አለ? የለም ምንም የማቀው የለም ያው፣ ተከሣሽ ያልመሰከረችልህ ነገር አለ? አይ በቃ እሱዋ የምታውቀው ይሄንን ነው፣

በዐ/ህግ መስቀለኛ ጥያቄ የምስክሯ መልስ፣ አንድ ቦታ ነው የምትሰሩት እንዴ? አዎ አንድ ቦታ ነው የምንሰራው፣ አንድ ቦታ? አዎ፣ የት ነው የምትሰሩት? ገርጂ፣ ገርጂ ምን ውስጥ? ግሪት አቢሲንያ የሚባል ድርጅት ነው ፈረንሳይ ሊጂዲን ለቀ ወደ እዛ የሄደው አሁን በጨረታ አሸንፎ፣ ግሪት አቢሲንያ ምንድን ነው የሚሰራው? ማተሚያ ቤት ወረቀቶችን ነው የሚያትመው፣ ማተሚያ ቤት ነው? አዎ፣ ግሪት አቢሲንያ? አዎ፣ የት ነው የሚገኘው ነው ያልሽው? ገርጂ፣ አንቺ እዛ ነው የምትሰሪው እንዴ? አዎ እዛ ነው የምሰራው፣ እስቲ ማን ማን ይሰራሉ አብሮሽ? ከኔ ጋር አብሮ የሚሰሩ ብዙ ናቸው በስም እስቲ ግለጪልኝ? መሰረት ሰማው የምትባል አለች፣ ምን ያህል ሰራተኛ አለው ግሬት አቢሲንያ? ግፋ ቢል ወደ 1000.00/አንድ ሺህ/ ሰራተኞች አሉት፣ አንድ ክፍል ውስጥ ነው እንዴ የምትሰሩት አንቺ እና ተከሣሽ? አዎ ትልቅ፣ 1000.00/አንድ ሺህ/ በጣም ብዙ ሰራተኛ ነው አይደለም? አዎ ማን ቀንሶ መስዶናል ግማሾቻችንን አሁንም በህትመት ያሉትን የተወሰኑትን ግማሾቹን ወደ እዛ መስዶዋል፣ ሰፊ ነው እንዴ ግቢው? ግቢው ሰፊ ነው አዎ፣ እንዴት ሰፊ ነው ግሬት አቢሲንያ ምንድን ነው የሚሰራው? ወረቀት ነው የሚያትመው፣ ሰፊ ነው አልሽኝ ግቢው? አዎ፣ ስንት ሰራተኛ አለው? 1000.00/አንድ ሺህ/ ሰራተኞች አሉ ግን የወሰደን ግፋ ቢል እኔ ወደ 400.00/አራት መቶ/ ምናምን 500.00/ አምስት መቶ/ እንሆናለን ግማሾቹን ነው የወሰደው፣ እሱ ጋር ማን ማን ይሰራሉ የምታውቂው ሰራተኛ? ያባት ስማቸውን

አላውቅም ሰለሞን የሚባል አለ አበበ ወንደሰን የሚባል አለ፣ የቅርብ ጓደኛው ማነች? ወንደሰን፣ ሌላስ ማን አለ በጣም የቅርብ ጓደኛ? አበበ፣ አበበ ወንደሰን የቅርብ ጓደኛ ናቸው እንዴ? የቅርብ ጓደኛው፣ አብረውት ነው የሚሰሩት? አብረው ነው የሚሰሩት፣ ቀኑን ሙሉ? አዎ፣ ቀኑን ሙሉ ይሰራሉ? ሙሉ ቀን አብረው ይሰራሉ፣ ስለዚህ አብረው መዋሉን ያውቃሉ ማለት ነው እነሱ? አዎ፣ ሁሉ አየዋለው ነው የምትይው አንቺ? አዎ፣ ምን ክፍል ውስጥ ነው የምትሰሪው? የህትመት ወረቀት ነው እኛ የምንለጥፍ እነሱ ያተሙትን ወረቀት እኛ እንለጥፋለና፣ ስለዚህ ስራ ላይ እንደሚውል ምን ያህል እርግጠኛ ነሽ አንቺ? እርግጠኛ ነኝ አብረን ነው እንደዚህ እና እንደዚህ ፊት ለፊት ነው እኔ ወረቀት እለጥፋለው እነሱ ማሽን ላይ ነው የሚሰሩት አንድ መጋዘን ውስጥ ነው ያለነው፣ አንቺ አንድ ክፍል ውስጥ ናችሁ የምትሰሩት? አንድ መጋዘን ነው አዎ መጋዘን ውስጥ ነው አንድ ላይ ያለነው፣ ስለዚህ ከመቼ ጀምሮ ነው አብረው የሚሰሩት ያልሽው? እኔ አንድ 3 ወር ይሆነኛል 3 ወራንም አልሞላሁም ከሄድኩኝ አብረን ነው ያለነው፣ እናንተ ክፍል ውስጥ ስንት ሰራተኛ አለ? አኔ በግምት ነው **እኔ** ምን ያህልም እንደሆነ አላውቅም፣ ስንት ሰራተኛ አለ ታውቂያለሽ እንጂ 3 ወር **ማለት** እኮ ብዙ ግዜ ነው አይደለም እንዴ? ብዙ ግዜ ነው አዎ፣ ስለዚህ እናንተ ክፍል ውስጥ ምን ያህል ሰራተኛ ነው ያለው? ግፋ ቢል 400.00/አራት መቶ/ ወይም 500.00/አምስት መቶ/ የሚሆን ሰራተኞች ይኖራሉ፣ እናንተ ክፍል ውስጥ? አዎ ድርጅቱ ከገዛቸው ሰራተኞች ጋር ነው እኛን ከመሰደው ሳይሆን የገዛቸው አሉ ከነሱ ጋር ነው፣ ስለዚህ ግራት አቢሲንያ ውስጥ ይዟን ታክል እሰራለው ነው ያልሽው? አዎ፣ ሁሉ መገኘቱን ታረጋግጫለች እንዴ? አረጋግጣለው አዎ፣ እንዴት ልታረጋግጪ ትችያለሽ ከ500.00/አምስት መቶ እስከ 600.00/ስድስት መቶ/ ሰራተኛ መሃል ማለት ነው? በቃ ማሽኑ ፊት ለፊቱ ነው ያለው የኛን እንደዚህ፣ ጨርሰናል፣

ተከሣሽ ድጋሚ ጥያቄ አለህ? የለም፣

በፍ/ቤቱ ማጣሪያ ጥያቄ የምስክሩ መልስ፣- አንቺ ምንድን ነው የምትሰሪው? እኔ ወረቀት አጣፊ ነኝ ለጣፊ ነኝ ያተሙትን ወረቀት፣ ተከሣሽስ? ተከሣሹ ማሽን ላይ ነው የሚሰራው የማሽን ሰራተኛ፣ ማሽን ላይ ምንድን ነው የሚሰራው እሱ? የኬክ ትሪዎችን

ይሰራል የኬክ ትሪ የሚባል አለ ለኬክም የሚሆኑ ትሪዎችን በማሽን ነው የሚሰራው በማሽን ቀርጾ ያወጣል፣ የወረቀት ቅርጽ ያወጣል ለወረቀጽ? አዎ፣ ጠዋት አንቺ ስንት ሰዓት ነው የምትገቢው? 1:00 ሰዓት፣ ተከሣሽስ? 2:00 ሰዓት፣ አንቺ ከገባሽ ቆኋላ? አዎ፣ ከሐምሌ ወር ጀምሮ እስከ አሁን ድረስም በስራው ላይ? አብሮኝ ነበረ አዎ አለ፣ ቀርቶ አያውቅም? አያውቅም፣ ጨርሰሻል፣

2ኛ የተከሣሽ መከላከያ ምስክር

ስም? ሰለሞን ግርማ

እድሜ? 22

ሰራ? ማሽን አረዳትነት

መ/አድራሻ? የካ ክፍለ ከተማ ቀበሌ 18 የቤት ቁጥር 353

ተከሣሽን ታውቃዋለህ 1ኛ ተከሣሽን? አዎ፣ እንዴት ነው የምታውቀው? ስራ ላይ አብረን በመስራት፣ ዛሬ ለምንድን ነው ፍ/ቤት የቀረብከው? ያው እሱ ስራ ላይ እንደነበረ ምስክርነት ለመስጠት፣ ተ

በተከሣሽ ዋና ጥያቄ የምስክሩ መልስ፣- ወንጀሉ በተከሰተበት ሰዓት ስራ ላይ እንደነበርክ የሚያረጋግጥልኝ ልጅ ነው አብረን የምንሰራ አንድ ማሽን፣ ልመስክር ነው ብለሃል የመጣህው አይደለም? አዎ፣ ምንድን ነው የምትመሰክረው? አሁን የምመሰክረው ነገር ወንጀሉ የተሰራው በመስከረም 14 ማለት ነው 2:00 ሰዓት ላይ አብረን ገብተን እኔ እስከ 11:00 ሰዓት ቆይቼ አሱ 3:00 ሰዓት ላይ እንዳመሸ ነው የማቀው፣ መቼ 14? መስከረም 14፣ ስንት ሰዓት ገባ? 2:00 ሰዓት፣ የት ገባችሁ? መስሪያ ቤት ከዛ እስከ 11:00 ሰዓት ቁየን እና አብረን እኔ 11:00 ሰዓት ላይ ስወጣ እሱ እስከ 3:00 ሰዓት እንዲያመሽ ተደረገ፣ አንተ ስትወጣ እሱ ምን ሆነ? አመሸ፣ የዛን ቀን ብቻ ነው ያመሸው? ከዛ በፊትም አምሽቶዋል፣ ተከሣሽ ያልመሰከረልህ ነገር ካለ ጠይቅ? አይ በቃ ይሄንን እንዲመሰክርልኝ ነው የጠራሁት እኔ፣

በዐ/ህግ መስቀለኛ ጥያቄ የምስክሩ መልስ፣- የት ነው የምትሰራው ነው ያልከው? አቢሲንያ፣ ምንድን ነው የምትሰራው አቢሲንያ? ማሽን እረዳትነት፣ ምንድን ነው

ድርጅቱ ምንድን ነው የሚባል ምንድን ነው የሚሰራው? ማተሚያ ቤት፣ እዛ ውስጥ ነው የምትሰራው? አዎ፣ ተከሣሹ እና አንተ አብራችሁ ነው እንዴ የምትሰሩት? አዎ የተለያየ ማሽን ላይ ነው የምንሰራው አዎ፣ ስንት ሰራተኛ ይኖረዋል? አላቀውም፣ እንዴት አታውቀውም? በጣም ብዙ ስለሆነ ስንት እንደሆነ አላውቃቸውም? በጣም ብዙ ነው? አዎ፣ ቢያንስ ካንተ ክፍል ስንት ሰራተኛ ይኖረዋል? ከማን ክፍል፣ አንተ ከምትሰራበት ክፍል ማለት ነው አንተ የምትሰራበት እሱ እና አንተ የተለያየ ክፍል ነው አይደለም ያንተን ትነግረኛለህ ከዛ የሱን ደግሞ ትነግረኛለህ? የተለያየ ክፍል ስልህ አንድ ዲፓርትመንት ነው ግን ማሽናችን ነው የሚለያየው፣ ማሽኑ የተለያየ ነው አንት ማሽን አካባቢ ምን ያህል ሰው ይገኛል? እኔ ማሽን አካባቢ ያው አንድ እረዳት እና አንድ ኦፕሬተር ነው ያለው፣ በሙሉ? አዎ፣ ግዚያዊም ሆነ ቋሚ ሰራተኛ ማለት ነው? አዎ፣ አንድ እረዳት? አንድ ኦፕሬተር በአንድ ማሽን ላይ ማለት ነው፣ እሱ ጋስ? እሱጋርም አንድ እረዳት አንድ ኦፕሬተር፣ ይሄ ግዚያዊም ቋሚም ሰራተኞች ጠቅላሉ ነው? እንዴት፣ አንድ እረዳት አንድ ኦፕሬተር ካንተ ክፍል ይሰራል አይደለም ካንተ ማሽን ጋር ማለት ነው? አዎ፣ ከሱ ማሽን ደግሞ አንድ እረዳት አንድ ኦፕሬተር ነው የሚሰራው? አዎ ግን ብዙ ማሽን ነው ያለው ውስጥ፣ እዛ ውስጥ ምን ያህል ሰዎች አሉ? ከ30 በለይ ሰራተኛ አለ ብዬ እገምታለው፣ ሳይሆን በግምት ሳይሆን አንተ ሰራተኛ ነህ አይደለም? አዎ፣ ወይ መታወቂያህን ታሳየናለህ ስለዚህ ቋሚ ሰራተኛ ነህ አንተ ቋሚ ሰራተኛ ከሆንክ ቢያንስ ጠጋ የሚለውን ግምት ምን ያህል ሰራተኛ ይሰራል የሚለውን ነገር ታውቃለህ ማለት ነው አይደለም? እርገጠኛ አይደለሁም እኔ፣ ስንት ይሆናል በግምት? ከ30/ሰላሳ/ በላይ ይሆናል፣ ካንተ ጋር ነው ወይስ ከሱ ማሽን? እንዳለ አንድ ቤት ውስጥ ነው፣ በአጠቃላይ 30/ሰላሳ/ አዎ፣ የማሽን እንትኖቹ ማለት ነው ሴቶች ሰራተኞች ምናምን ነገር አለ እሱዋ እንደምትሰራው ማለት ነው፣ ትተዋወቃላችሁ እንዴ ከተከሣሹ ጋር? አዎ ግቢ ውስጥ በስራ ዙሪያ እንተዋወቃለን፣ የሱን ጓደኛ ታውቃቸዋለህ? አላዉቃቸውም፣ አብረውት የሚሰሩትን ታውቃለህ? አብረውት የሚሰሩት አዎ ያው ብዙ እንትን ስለማንባባል ብዙም ስለማንገናኝ አውቃቸዋለው ጓደኞቹን፣ ታውቃቸዋለህ የሱን ጓደኞች? አዎ መስሪያ ቤት የሚሰሩት፣

እሱ ማሸን ጋር የሚሰሩ ሰዎችን ታውቃቸዋልህ? አዎ፣ ስለዚህ እሱ መኖሩን ያውቃሉ ማለት ነው በዛን ግዜ? አዎ ያውቃሉ፣ ስንት ሰዓት ነው የተገናኘነው ነው ያልከው አንተ እና እሱ? 2:00 ሰዓት ላይ ያው ሰርቪስ አንድ ላይ ሄድን እና 2:00 ሰዓት ስራ ጀመርን፣ ስራ ጀመራችሁ 2:00 ሰዓት? አዎ፣ ሁሌም ነው የምትጀምሩት በ2:00 ሰዓት? አዎ፣ ስለዚህ ድርጊቱ የተፈጸመበት ቀን እሱ በዛ መኖሩን እንዴት ታውቃለህ አንተ እስኪስፊክ ቀን ብቻ ጠቅሰህ ማለት ነው? አብረን ነው የገባነው፣ እንዴት ልታስታውሰው ቻልክ? ቀኑን አብረን ስለገባን ነዋ ቀኑን፣ ሁሌ አብራችሁ ትገባላችሁ ወይንም? አዎ ያው ሰራቪስ ላይ እንገናኛለን አብረን 11:00 ሰዓት ከወጣን 11:00 ሰዓት እንደወጣለን ካመሸንም ያው የተለያየ ምሽት ከሆነ እናመሻለን፣ ጨርሰናል፣

ተከሣሽ ድጋሚ ጥያቄ አለህ? የለኝም፣ ጨርሰዋል ምስክር፣ የሰው ማስረጃ አብቅተሃል? ከተጨመረ ሌላም ልጅ አለ አንድ ልጅ አለ፣ የሰው ማስረጃ በዚሁ አብቅቼአለው ነው የምትለው? አዎ በቃ 2 ነው ያስመዘገብኩዋቸው ተጨማሪ የሚፈቀድልኝ ከሆነ አለኝ፣ እና የፁሑፍ ማስረጃም አያይዘሃል? አዎ፣

በዐ/ህግ መዝጊያ ንግግር፡- የተከበረው ፍ/ቤት ተከሣሹ እንዲከላከል ብይን በተሰጠበት ትእዛዝ መሰረት 2 መከላከያ ምስክሮች አቅርቦ አሰምቶዋል ለችሎቱ 2 መከላከያ ምስክሮች የሰጡትን ቃል እንደሚከተለው ነው 1ኛ ምስክር ፍሬህይወት የተባለችው ተከሣሹ ጋር አብረን አንድ ድርጅት ውስጥ ግሪት አቢሲንያ ማተሚያ ቤት ከሚባል ድርጅት ውስጥ እንሰራለን ነው ያለሽው በክፍሉ ውስጥ 1000.00/አንድ ሺህ/ ሰራተኛ ይገኛል ወደ ሚጠጋ ከዛ ውስጥ ከ400.00/አራት መቶ/ በላይ የሚሆነው ሰራተኛ ግምቱውስጥ ገብቶ በቋሚነት የሚሰራ ነው ብላለች ድርጊቱ ከተፈጸመበት ቀን በእርግጠኝነት ባላስታውሰውም ከሐምሌ ወር ጀምሮ አስከ ተያዘበት ግዜ ድረስ በስራ ላይ በገበታ አብረን ነው የምንውል ነው ያለችው በኛ ክፍል ውስጥ 500.00/አምስት መቶ/ ሰራተኛ ይኖራል ብላ በመስቀለኛ ጥያቄ ውስጥ ከታለች ከሐምሌ ወር ጀምሮ በኔ ክፍል ውስጥ ይኑር እንጂ ድርጊቱ ከተፈጸመበት ቀን በእርግጥ ይኑር አይኑር የምታውቀው ነገር የለም በክፍል ውስጥ 500.00/አምስት መቶ/ ሰራትኛ እንደመኖሩ መጠን ከዛ ውስጥ ተከሣሹ እያንዳንዱን በቀኑ ድርጊቱ ተፈጸመበት በተባለበት ቀን

ይኑር ወይም አይኑር ብሎ ከ500.00/አምስት መቶ/ ሰው መሃከል ቼክ አፕ ማድረግ እና ማረጋገጥ በሰዎች አይምሮ እና አስተሳሰብ የማይቻል ነው እነዚህን ግምት ውስጥ ስናስገባ በመስቀለኛ ጥያቄ ውስጥ በተነሱት ጥያቄዎች መሰረት በሰጠችው መልስ መሰረት እነዚህ የተጠቀሱት ነገሮት ግምት ውስጥ ስናስገባ ሆን ብሎ የተጠና ምስክርነት በሚመስል አግባብ ነው የመሰከረችው ይሄም ደግሞ ለማረጋገጥ 2ኛ የመከላከያ ማስረጃ የሆነው ሰለሞን የተባለው መስከረም 14 ቀን 2:00 ሰዓት ግቢ ውስጥ መግባቱን ቢገልጽም እኔ እና ተከሣሹ የተለያየ ማሽን ውስጥ ነው የምንሰራው በተለያየ ማሽን ውስጥ ብንሰራም አንድ ክፍል ነው አንድ እረዳት እና አንድ ኦፕሬተር አለ እሱም አንድ እረዳት እና አንድ ኦፕሬተር አለ በአጠቃላይ 4 ሰው አለ ነው ያለው በክፍሉ ውስጥ 30/ሰላሳ/ ሰው የሚገመት ሰው ይኖራል ነው ያለው ይሄምኑ ደግሞ 1ኛ መከላከያ ማስረጃ ከሰጠችው ጋር እርስ በእርሱ የሚጣረስ ሆኖ ተገኝቶዋል ስለዚህ እነዚህን ግምት ውስጥ ስናስገባ የቀረቡት መከላከያ ምስክሮች የዐ/ህግ ማስረጃዎችን የሰጡትን ቃል የሚያጣርስ እና የሚያፈርስ ሆኖ አልተገኝም የቀረበው የሰነድ ማስረጃም ቢሆን ድርጅቱ ግሬት አቢሲንያ ማተሚያ ቤት የገል ድርጅት እንደመሆኑ ይታወቃል አንድ ሰራተኛ በዚህ በዚህ ቀን ውስጥ በስራ ገበታው አለ ተብሎ የሚቀሩ ማስረጃዎች የግል ድርጅት እንደመሆኑ መጠን የሚሰጡ በተለያዩ አግባብ ማለትም ሰዓቱን ዘግይቶ አርፍዶ ወይም ደግሞ በተለያየ ሁኔታ የሚገባበት ሁኔታዎች አሉ ከዚህ ይልቅ መከላከያ ማስረጃዎቹ ቀርበው የሰጡት ቃል ተአማኒነት አለው ያም ማለት ደግሞ እርስ በእርስ የሚጣረስ መሆኑ ማለቱ ነው እነዚህን ነገሮት ስናይ በአጠቃላይ ተከሣሽ ያቀረበው መከላከያ ማስረጃ የዐ/ህግ ምስክሮች የሰጡትን ማስረጃ የሚያስተባብል ሆኖ አልተገኘም ስለዚህ ባቀረብነው እና በጠቀስነው የህግ አንቀጽ ስር ጥፋተኛ ይባልልን ስንል ነው አስተያየታችንን የምንሰጠው፣

1ኛ ተከሣሽ የመዝጊያ ንግግር፣ - እኔ መናገር የምፈልገው አሁንም ከተፈቀደልኝ የተከሰስኩበት ወንጀል ትክክለኛ ወንጀል የኔ ወንጀል አይደለም 1ኛ ልጁ የመሰከረብኝን ልጅ አላቀውም በዓላል 2 ያደረገብኝ ነገር ሲጋራም ማጨስ እኔ ጭራሽ ምንም እንትን የለኝም ጓደኛዬን ከመስሪያ ቤት እዛ ተይገር መጥቼ ነው ጣቢያ ቀርቤ ደውዬ ጠርቼው

ከንደገና የመጣልኝ እና ከንደገና አንተም አለህበት ተብሎ የገባው አብሮ የሰረቀ ሌባ ተደውሎለት ስልክ ሲደወል መቶ የሚያዝ ሌባ አንድም ሌባ የለም፣ ስለማን ነው የምታወራው አሁን? ስለራሴ ነው የማወራው ክቡር ፍ/ቤት፣ አይ ጓደኛዬ እያልክ ነው? እሱ የመጣው ከኔ ጋር ነው አብረን የመጣነው፣ ስለ እሱ መናገር አትችልም ስለ እራስህ አስመዝግብ? ስለራሴ የማስመዘግበው ድርጊቱ ውስጥ እኔ የለሁበትም ያመጣሁዋቸው እንትኖች አብረውኝ የሚሰሩ አንድ ቤት ውስጥ የምንሰራ አንድ ፋብሪካ ውስጥ የምንሰራ ናቸው ያመጣሁትም ወረቀት ከመስሪያ ቤቱ ከራሱ ነው ከስራ ውጪ የትም የሄድኩበት ምንም አይነት ነገር የለም፣

<u>ፍ/ቤቱ</u>፣- 2ኛ ተከሣሽ የምትለው ነገር አለ የመከላከያ ምስክር አላቀረብክም?

<u>***2ኛ ተከሣሽ ማክርክር ማቆሚያ ንግግር***</u>፣- እኔ የመከላከያ ምስክር አላቀረብኩም አስመዝግቢያቸው ነበረ አንደኛው ታሞዋል አንደኛው የፖሊስ እንትን ነው እና እሱም ስራ ነው ይመስሰኛል እና ወንጀሉ ተፈጸመ በተባለበት ሰዓት እኔ የዘመድ ቤት እየጠበኩኝ ነበረ እነሱ ጊሸን ክፍል ሀገር ሄደው ነበረ ወንጀሉ ተፈጸመበት በተባለበት ሰዓት እኔ እዛ ቤት ነበርኩኝ ምክንያቱም የሰው ቤት አላፊነት ተቀብዬ እየጠበኩኝ ነበረ በአጋጣሚ እኔ ማሪያም ደርሼ ስመለስ እሱ ደወለልኝ ደውሎ እንዲህ እንዲህ ጣቢያ ታስሪያለውኝ እና ና ምናምን ብሎ ጠራኝ ከዛ እኔ መጣሁኝ ስመጣ አንተም አለህበት ወንጀሉ ውስጥ ተብሰን ሁለታችንም ታስረን ወንጀሉ በተፈጸመበት ሰዓት ግን እኔ በወቅቱ የሰው ቤት እየተጠበኩኝ ነበር ብዙ ንብረት አለ ክቡር ፍ/ቤቱ ይሄን ጉዳይ ተመልክቶ ውሳኔ ይስጥልኝ፣

ትዛዝ

2ኛ ተከሣሽ መከላከያ ምስክሮቹን ያላቀረበ ስለሆነ መከላከያ ምስክር ማሰማት እንዳልፈለገ ተቆጥሮ መከላከያ ምስክር የማሰማት መብቱ ታልፎዋል የ1ኛ ተከሣሽ መከላከያ ምስክሮች የሰጡት የምስክርነት ቃል ከመቅረጸ ድምጹ ተገልብጦ ከመዝገቡ ጋር ይያያዝ መዝገቡን መርምሮ ሰጥቅምት 2/2003 ዓ.ም 4:30 ላይ ተቀጠረ፣

ደብረወርቅ ጉግሣ

Annex Four

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ

የፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት

የ .... ችሎት

የ 34722

[illegible]

[illegible]

ANNEX FIVE

የሰ/መ/ቁ. 37050

ታህሣሥ 30 ቀን 2001 ዓ.ም.

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
ፌዴራል ጠቅላይ ፍ/ቤት

ዳኞች፡- ዓብዱልቃድር መሐመድ

ሂሩት መለሠ

ፀጋዬ አስማማው

አልማው ወሌ

አሊ. መሐመድ

አመልካች፡- ሻምበል ሁሴን አሊ - ጠበቃ መድህን መሐሪ - ቀረቡ

ተጠሪ፡- ሱማሌ ክልል ዐ/ሕግ - የቀረበ የለም

መዝገቡን መርምረን የሚከተለውን ፍርድ ሰጥተናል፡፡

ፍ ር ድ

ጉዳዩ ከባድ የሆነ የሰው ግድያ ወንጀል ሲሆን ክርክሩ የተጀመረው የጅጅጋ ዞን ዐ/ሕግ መስከረም 02 ቀን 1999 ዓ.ም በባፈው የክስ ማመልከቻ የአሁኑ አመልካች በኢ.ፌ.ዲ.ሪ የወንጀል ሕግ አንቀጽ 539/1/ሀ/ ስር የተመለከተውን በመተላለፍ ነሐሴ 26 ቀን 1998 ዓ.ም ከጠዋቱ 4፡00 ሲሆን በጅጅጋ ዞን ፖሊስ ጽ/ቤት ፊት ለፊት የሱፍ መሐመድ ሰዒም ይባል የነበረውን ግለሰብ ታጥቆት በነበረው ሽጉጥ አንድ ጥይት በመተኮስ ራሱ ላይ በመምታት ለህልፈት የዳረገው በመሆኑ ሊቀጣ ይገባል በማለት በመሠረተው ክስ መነሻ ሲሆን የአሁኑ አመልካች በተከሣሽነታቸው ቀርበው ክሱ ከተነበበላቸው በኋላ ፍ/ቤቱ ለክሱ የሚከራከርላቸውን ጠበቃ እንዲፈቅድላቸው ጠይቀው ፍ/ቤቱም ተከሣሹን የክሱ ማመልከቻ የሚለውንና የተነበበው የገባቸውና የተረዱት መሆኑን ጠይቋቸው ተጠሪም የተረዱት መሆኑን ለፍ/ቤቱ ከገለፁ በኋላ የድርጊት አፈፃፀሙን በተመለከተ ግን በዐ/ሕግ የክስ ማመልከቻ በተከሠሡበት ዓይነት አልፈፀምኩም ሲሉ የእምነት ክህደት ቃላቸውን ሰጥተዋል፡፡ ከዚህም በኋላ ለጥቅምት 08 ቀን 1999 ዓ.ም ለሆነው ቀጠሮ የዐ/ሕግ ምስክሮች እንዲቀርቡ አመልካች

1

ጠበቃቸውን ይዘው እንዲቀርቡ ተደርጎ የዓቃቤ ሕግ ምስክሮች ሊቀርቡ አለመቻላቸው የአመልካች ጠበቃም ያልቀረቡ መሆኑ ተረጋግጦ ተለዋጭ ቀጠሮ ተይዞ የዐ/ሕግ ምስክሮች ሲቀርቡ የአመልካች ጠበቃ በሌላ ቦታ ላይ በነበራቸው ቀጠሮ ምክንያት ያልቀረቡ መሆኑን በመግለጽ ተጠሪ ቀጠሮው በአዳሪ /ለተከታዩ ቀን/ እንዲለወጥላቸው ቢጠይቁም በዐ/ሕግ በኩል ነገሩን ያንቶተዋል የሚል ተቃውሞ ቀርቦ ፍ/ቤቱም ግራ ቀኙ አዳምጦ ጠበቃው የበለጠ ጊዜ ሊጠበቅ አይቻልም፣ ግራ ቀኙም ተስማምተውበታል በማለት የአመልካች ጠበቃ ሣይቀርቡ ወይም ሌላ ጠበቃ ሣይተካ የዐ/ሕግ ምስክሮች እንዲሰሙ ተደርጓል። አመልካች የወንጀል ድርጊቱን መፈፀማቸውን ዐ/ሕግ ከምክንያታዊ ጥርጣሬ በፀዳ ሁኔታ አረጋግጠባቸዋል ተብሎ እንዲከላከሉ ከተደረገ በኋላ መከላከያ ማስረጃ የማቅረብ መብታቸውን መተዋቸውን ገልፀዋል ተብሎ ከታለፈ በኋላ የዐ/ሕግ ተጨማሪ ምስክሮች እንዲሰሙ ተደርጓል። ከዚህም በኋላ ጉዳዩን በመጀመሪያ የተመለከተው የጅጅጋ ዞን ከፍተኛ ፍ/ቤት ጉዳዩን መርምሮ አመልካችን በዐ/ሕግ የክስ ማመልከቻ በተጠቀሰው ድንጋጌ ስር ጥፋተኛ አድርጎ በሞት እንዲቀጡ መስኖባቸዋል። ከዚያም የአሁኑ አመልካች ይግባኛቸውን ለክልሉ ጠቅላይ ፍ/ቤት አቅርበው ግራ ቀኙ እንዲከራከሩ ከተደረገ በኋላ ይኸው ፍ/ቤትም በአመልካች ላይ የተሰጠውን የጥፋተኛነትና የቅጣት ውሣኔ ሙሉ በሙሉ አጽንቶታል። የሰበር አቤቱታ የቀረበውም ይህንኑ የበታች ፍ/ቤቶች ውሣኔ በመቃወም ለማስለወጥ ነው።

አመልካች ሚያዚያ 04 ቀን 2000 ዓ.ም በዓፋት 7/ሰባት/ ገጽ የሰበር አቤቱታ በበታች ፍ/ቤቶች ውሣኔ መሠረታዊ የሆነ የሕግ ስህተት ተፈጽሟል የሚሉባቸውን ምክንያቶች ዘርዝረዋል። ይዘቱም በአጭሩ ጠበቃ የመወከል መብታቸው ያልተጠበቀላቸው መሆኑን፣ የወንጀል ድርጊቱን ስለመፈፀማቸው በማስረጃ ያልተጋጠባቸው መሆኑን መከላከያ ማስረጃ የማቅረብ መብታቸው የታለፈውም በቂ ጊዜ ሣይሠጣቸው መሆኑን፣ የተጨማሪ ማስረጃ አቀራረብ ሥነ ሥርዓቱን ያልጠበቀ

መሆኑን የጥፋተኛነት ውሣኔ የተሰጠበት ድንጋጌም አግባብነት እንደሌለው እና የሞት ቅጣት ፍርዱም ተገቢነት የሌለው መሆኑን በመዘርዘር የበታች ፍ/ቤቶች ውሣኔ ይሻርላቸው ዘንድ ዳኝነት መጠየቃቸውን የሚያሣይ ነው፡፡ የአመልካች የሰበር አቤቱታ ተመርምሮም በሰበር ችሎቱ ሊታይ ይገባዋል ተብሎ የክልሉ ዓ/ሕግ ሐምሌ 09 ቀን 2000 ዓ.ም በተፃፈ ማመልከቻ መልስ ሰጥቷል፡፡ አመልካች በበኩላቸው ህዳር 10 ቀን 2001 ዓ.ም በተፃፈ ማመልከቻ የመልስ መልሱን አቅርበዋል፡፡

የጉዳዩ አመጣጥ አጠር አጠር ባለመልኩ ከላይ የተገለፀው ሲሆን ይህ ችሎትም የግራ ቀኙን የጽሑፍ ክርክር የሰበር አቤቱታው ከቀረበበት ውሣኔ እና አግባብነት ካላቸው የሕግ ድንጋጌዎች ጋር በማገናዘብ በሚከተለው መልኩ መርምሮታል፡፡ እንደመረመረውም አመልካች የተከሰሱበት ጉዳይ ከባድ መሆኑ እየታወቀ በጠበቃ ሣይወከሉ ክርክሩ መካሄዱና ውሣኔ መሰጠቱ በአግባቡ መሆን ያለመሆኑ በጭብጥነት ሊመረመር የሚገባው ሆኖ አግኝቶታል፡፡

ከመዝገቡ የክርክር ሂደት መገንዘብ የተቻለው አመልካች በስር ፍ/ቤት የቀረቡትና የእምነት ክህደት ቃል የሰጡት መስከረም 04 ቀን 1999 ዓ.ም ሆኖ በዚህ ዕለት ጠበቃ ያልተወከለላቸው መሆኑን፣ ጥቅምት 08 ቀን 1999 ዓ.ም የዐ/ሕግ ምስክሮች እና የአመልካች ጠበቃ እንዲቀርቡ ተገልጾ ቀጠሮ በተያዘበት ቀንም የአመልካች ጠበቃ አለመቅረባቸው፣ በተከታዩ ቀነ ቀጠሮም የዐ/ሕግ ምስክሮች ቀርበው የአመልከች ጠበቃ ሣይቀርቡ የቀሩበትን ምክንያት አመልካች ለፍ/ቤት ገለፀው የዐ/ሕግ ምስክሮች ጠበቃቸው በበነጋው ሲቀርቡ እንዲሰመላቸው ቢያመለክቱም ተቀባይነት በማጣት የዐ/ሕግ ምስክሮች አመልካች በጠበቃ ባልተወከሉበት ጊዜ የተሰሙ መሆኑ መረጋገጡን ነው፡፡

በመሠረቱ በወንጀል ፍትህ አስተዳደር [illegible] የተከሰሱ ሰዎችን በተመለከተ በኢ.ፌ.ዲ.ሪ ሕገመንግሥት የተካተቱትን መብቶችን የሚያስከብሩ ድንጋጌዎች አቀራረፅና

ይዘታቸው ሲታይ በተቻለ መጠን ወዲያውኑ ሊተገበሩ የሚገባ መሆኑን ያስገነዝቡናል። ከዚህም በላይ በወንጀል ፍትህ አስተዳደር የተያዙና የተከሠሡ ሠዎች ሕገ መንግሥታዊ መብታቸውን የዳኝነት አካሉ የማክበርና የማስከበር ሕገ መንግሥታዊ ግዴታ ያለበት መሆኑን የኢ.ፌ.ዲ.ሪ. ሕገ መንግሥት በአንቀጽ 13/1/ ስር በግልጽ አስቀምጧል። በመሆኑም የተያዙና የተከሠሡ ሰዎች ሕገ መንግሥታዊ መብት የማክበርና የማስከበር ግዴታ በዳኛው ትከሻ የወደቀ ስለመሆኑ ሊስተዋል ይገባል። በወንጀል ፍትህ አስተዳደሩ ዳኞች ይህንኑ ግዴታ ሲወጡ ደግሞ ማህበረሰቡ የሂደቱን ፍትሃዊነት ከማክበሩም በተጨማሪ የሂደቱን ውጤትም በአክብሮት እንዲቀበል ያደርጋል። የሕግ ሥርዓቱ በሕገመንግሥቱ ጥበቃ የተደረገላቸውን የዜጎች መብቶች የማክበርና የማስከበር ግዴታ ካልተወጣ ደግሞ በማህበረሰቡ ዘንድ ያለው ተቀባይነትና አክብሮት እንደሚቀንስ ይታመናል። ስለሆነም በሕገ መንግሥቱ የተመለከቱትን ሠብአዊ መብቶች ማክበርና ማስከበር የግድ ይሏል።

አንድ በወንጀል ፍትህ አስተዳደሩ የተያዘና የተከሰሰ ሰው ከሂደቱ መጀመሪያ እስከ ፍፃሜ ድረስ በሕገ መንግሥቱ ከተረጋገጠለት ሠብአዊ መብቶች መካከል አንዱ በጠበቃ የመወከል መብት ነው። ይህ መብት ተከሣሹ በራሱ የሚፈልገውን ጠበቃ በማቆም ለጠቀመው የሚችለው ወይም ጠበቃ ለማቆም አቅም በማጣቱ ፍትህ ሊጓደል የሚችልበት ሁኔታ ሲያጋጥም በመንግሥት ወጪ ጠበቃ የማቆም መብቱ ሊከበርለት የሚገባው ስለመሆኑ የኢ.ፌ.ዲ.ሪ ሕገ መንግሥት አንቀጽ 20/5/ድንጋጌ ያስገነዝባል። ከድንጋጌው መነሻስ የምንገነዘበውም ተከሣሹ ራሱ በመረጠው ጠበቃ የመወከል ህገ መንግሥታዊ መብቱን አንዲጠቀም በቂና አሣማኝ ጊዜ ከመስጠት በተጨማሪ ይኸው መብት እንዳለውም በችሎቱ ሊገለጽለት የሚባው መሆኑን ነው።

ይዘታቸው ሲታይ በተቻለ መጠን ወዲያውኑ ሊተገበሩ የሚገባ መሆኑን ያስገነዝቡናል። ከዚህም በላይ በወንጀል ፍትህ አስተዳደር የተያዙና የተከሠሡ ሠዎች ሕገ መንግሥታዊ መብታቸውን የዳኝነት አካሉ የማክበርና የማስከበር ሕገ መንግሥታዊ ግዴታ ያለበት መሆኑን የኢ.ፌ.ዲ.ሪ. ሕገ መንግሥት በአንቀጽ 13/1/ ስር በግልጽ አስቀምጧል። በመሆኑም የተያዙና የተከሠሡ ሰዎች ሕገ መንግሥታዊ መብት የማክበርና የማስከበር ግዴታ በዳኛው ትከሻ የወደቀ ስለመሆኑ ሊስተዋል ይገባል። በወንጀል ፍትህ አስተዳደሩ ዳኞች ይህንኑ ግዴታ ሲወጡ ደግሞ ማህበረሰቡ የሂደቱን ፍትሃዊነት ከማክበሩም በተጨማሪ የሂደቱን ውጤትም በአክብሮት እንዲቀበል ያደርጋል። የሕግ ሥርዓቱ በሕገመንግሥቱ ጥበቃ የተደረገላቸውን የዜጎች መብቶች የማክበርና የማስከበር ግዴታ ካልተወጣ ደግሞ በማህበረሰቡ ዘንድ ያለው ተቀባይነትና አክብሮት እንደሚቀንስ ይታመናል። ስለሆነም በሕገ መንግሥቱ የተመለከቱትን ሠብአዊ መብቶች ማክበርና ማስከበር የግድ ይላል።

አንድ በወንጀል ፍትህ አስተዳደሩ የተያዘና የተከሰሰ ሰው ከሂደቱ መጀመሪያ እስከ ፍፃሜ ድረስ በሕገ መንግሥቱ ከተረጋገጠለት ሠብአዊ መብቶች መካከል አንዱ በጠበቃ የመወከል መብት ነው። ይህ መብት ተከሣሹ በራሱ የሚፈልገውን ጠበቃ በማቆም ሊጠቀመው የሚችለው ወይም ጠበቃ ለማቆም አቅም በማጣቱ ፍትህ ሊጓደል የሚችልበት ሁኔታ ሲያጋጥም በመንግሥት ወጪ ጠበቃ የማቆም መብቱ ሊከበርለት የሚገባው ስለመሆኑ የኢፌዲሪ ሕገ መንግሥት አንቀጽ 20/5/ድንጋጌ ያስገነዝባል። ከድንጋጌው መንፈስ የምንገነዘበውም ተከሣሹ ራሱ በመረጠው ጠበቃ የመወከል ህገ መንግሥታዊ መብቱን አንዲጠቀም በቂና አማማኝ ጊዜ ከመስጠት በተጨማሪ ይኸው መብት እንዳለውም በችሎቱ ሊገለጽለት የሚባው መሆኑን ነው።

ይህ ብቻ ሳይሆን ተከሣሹ ብቃት ባለው ጠበቃ መወከሉንም ሊያረጋግጥ ይገባል። ይህ ሁሉ የፍ/ቤቱ የስራ ድርሻ ነው። ስለሆነም በጠበቃ የመወከል መብት ትልቅ ሕገ መንግሥታዊ መብት መሆኑን ለመገንዘብ አያዳግትም።

እኛችን ወዳለው ጉዳይ ስንመለስም የአሁኑ አመልካች ከሂደቱ መጀመሪያ ጀምሮ እስከመጨረሻው በፈለጉት ጠበቃ የመወከል፣ ሕገ መንግሥታዊ መብታቸው በቂና አሣማኝ ጊዜ ተሰጥቷቸው በስር ፍ/ቤት የተከበረላቸው አለመሆኑን ከክርክሩ ሂደት ተገንዝበናል። በመሆኑም የአመልካች ሕገ መንግሥታዊ መብት ሣይከበር የተሰጠ የጥፋተኛነትና የቅጣት ውሣኔ መሠረታዊ የሆነ የሕግ ስህተት የተፈፀመበት በመሆኑ ሊሻር የሚገባው ሆኖ ተገኝቷል። በዚህም ምክንያት የሚከተለውን ውሣኔ ሰጥተናል።

ው ሣ ኔ

1. በጅጅጋ ዞን ከፍተኛ ፍ/ቤት በመ/ቁ. 001/99 በጥቅምት 01 ቀን 1999 ዓ.ም. ተሰጥቶ በሶማሌ ክልላዊ መንግሥት ጠቅላይ ፍ/ቤት ጥር 23 ቀን 2000 ዓ.ም. የፀናው የጥፋተኛነትና የሞት ቅጣት ውሣኔ በወ/መ/ሕ/ሥ/ሥ/ቁ. 195/2/ለ/1/ መሠረት ሙሉ በሙሉ ተሽሯል ይፃፍ።
2. አመልካች በመረጡት ጠበቃ የመወከል ሕገ መንግሥታዊ መብታቸው ሊከበር ይገባል ብለናል።
3. አመልካች በመረጡት ጠበቃ የመወከል ሕገ መንግሥታዊ መብታቸው ተከብሮ ጉዳዩ ከዚህ በፊት ባላዩት ዳኞች እንደገና ታይቶ ተገቢው ውሣኔ ይሰጥበት ዘንድ ጉዳዩን ለጅጅጋ ዞን ከፍተኛ ፍ/ቤት መልሰናል። ይፃፍ።
4. መዝገቡ ተዘግቷል፣ ወደ መ/ቤት ይመለስ።

የማይነበብ የአምስት ዳኞች ፊርማ አለበት።

ነ/ዓ

Annex Six-1

በየከ ክፍለ ከተማ ፖሊስ መምሪያ
ወንጀል ምርመራ ዋና ክፍል

ቁጥር የካ/ፖ/ወ/መ/ሳ/776/ሀ
ቀን 7/10/2003 ዓ.ም

ለአ/አ/ፖ/ኮ/ወ/መ/ [illegible]
አ/አበባ

[illegible] 7/10/2003 ዓ.ም [illegible] 216 ቀጠሮ [illegible]

[illegible]

[illegible]

[illegible]

የማታው አወቀ
ም/ሳጅን
YEMATAW AWOKE
D/Surgent
[illegible]

Annex Six-2

ቁጥር [illegible]
ቀን 30/05/03

በቂርቆስ ክ/ከተማ ፖሊስ መምሪያ
ደንበል ፖሊስ ጣቢያ
Charckios District Police Department
Denbel Police Station

[illegible]

[illegible]

[illegible]

[illegible]

Charckios District Police Department
Denbel Police Station

Annex Seven -1

የካ ክ/ከተማ ምድብ ችሎት

የመ/ቁጥር 3877/03
ቀን 7/10/03

ዳኛ፡- [illegible]

የመዝገብ ክፍል፡ [illegible]

ተጠርጣሪ/ዎች፡- 1ኛ. [illegible]
2ኛ. ___
3ኛ. ___
4ኛ. ___

ይህ መዝገብ ለችሎት ሲቀርብ የቻለው የ [illegible] በቁጥር 7760/03 በ 7/10 ቀን 2003 ዓ.ም. በተፃፈ ማመልከቻ ተጨማሪ የምርመራ ማጣሪያ ጊዜ እንዲፈቀድላቸው በማመልከታቸው ነው፡፡ (ዝርዝሩ ከመዝገቡ ጋር ተያይዟል፡፡)

ተጠርጣሪዎች [illegible]

መርማሪ/ፖሊስ [illegible]

ትዕዛዝ

- መርማሪ ፖሊስ የቀረበውን የዋስትና ጥያቄ ስላልተቃወመ መርማሪ ፖሊስ ተጨማሪ የምርመራ ማጣሪያ ጊዜ እንዲሰጠው ያቀረበው ምክንያት በቂ ሆኖ ስላልተገኘ ተጠርጣሪው/ዎች ሰብር ___ (___) የሚበቃ ተመጣጣኝ ግምት ያለው ንብረት ወይም ገንዘቡን በሞዴል 85 ሲያሲዙ ከእስር ይፈቱ ተብሏል፡፡ የተጠየቀውን ዋስትና ሲያሟሉ ካልቻሉ በክፍሉ መምሪያ በእስር ቆይተው መርማሪ ፖሊስ በተፋጠነ ሁኔታ የምርመራ መዝገቡን አጠናቆ እንዲልክ ታዟል፡፡ መዝገቡ ተዘግቷል፡፡ ወደ መ/ቤት ይመለስ፡፡
- መርማሪ ፖሊስ ተጨማሪ የምርመራ ማጣሪያ ጊዜ ለማግኘት ያቀረበው ምክንያት በቂ ሆኖ ስለተገኘ ___ ቀን ተጨማሪ የምርመራ ማጣሪያ ጊዜ ተፈቅዶለታል፡፡
- የምርመራ ውጤቱን ለመጠባበቅ ሰኔ : 10 ቀን 2003 ዓ.ም. ተቀጠረ፡፡

[illegible]

ዳኛ፡- [illegible]

Annex Seven-2

የአዲስ አበባ ከተማ አስተዳደር

ገጽ 02

የአዲስ አበባ ከተማ ____________ ጽ/ቤት ____________

የ ____________ ቁ. 3421/03

02/9/03

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 03/09/03 ዓ.ም [illegible]

[illegible]

[illegible]

[illegible]

[illegible] 03/09/03 ዓ.ም [illegible]

[illegible]

3/09/03

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 03/09/03 ዓ.ም [illegible]

[illegible]

[illegible]

Annex seven-3

የአዲስ አበባ ከተማ አስተዳደር

ገጽ ________

የአዲስ አበባ ከተማ ________ ፍ/ቤት ________

የ ________ ቁ. 351/8/03

ቀ [illegible]/09/03

ዳኛ ቀኛዝማች [illegible]

ተጠርጣሪ [illegible]

መርማሪ፦ — / የለም: [illegible]

መርማሪ፦ [illegible]

[illegible] ቀጠሮ: ይሰጠን::

ተጠርጣሪ፦ [illegible] ነገር: የለም::

ትዕዛዝ

[illegible] ተጠርጣሪው:

ከ13/09/03 ዓ.ም: ይቅረብ:: [signature]

Annex Seven-4

በአዲስ አበባ ከተማ አስተዳደር የመጀመሪያ ደረጃ ፍ/ቤት
የቂርቆስ ክ/ከተማ ምድብ ችሎት
የመስማትና ውሣኔ መስጠት ንዑስ የሥራ ሂደት !!

የመ/ቁጥር [illegible]

ቀን [illegible]

ዳኛ:- ~~የሱንስ አፈወርቅ~~ [illegible]

የምርመራ ክፍል:- [illegible]

ተጠርጣሪዎች:- 1ኛ. [illegible]

ዕድሜ ____ ሥራ ________ አድ/ክ/ከተማ ________ ወረዳ ___ የቤ.ቁጥር ______

2ኛ. ____________________

ዕድሜ ____ ሥራ ________ አድ/ክ/ከተማ ________ ወረዳ ___ የቤ.ቁጥር ______

3ኛ. ____________________

ዕድሜ ____ ሥራ ________ አድ/ክ/ከተማ ________ ወረዳ ___ የቤ.ቁጥር ______

ይህ መዝገብ ተከፍቶ ለችሎት ሲቀርብ የቻለው የ [illegible] በቁጥር [illegible] በ [illegible] ቀን ______ ዓ.ም በተፃፈ ማመልከቻ ከላይ የተጠቀሱት ተጠርጣሪዎች ____________ ወንጀል ተጠርጥረው [illegible] ቀን [illegible] ዓ.ም ______ ሰዓት በቁጥጥር ስር ውለዋል:: ስለሆነም ተጨማሪ የምርመራ ጊዜ እንዲፈቀድለት መርማሪ ፖሊስ አመለከተ::

ተጠርጣሪው ____________________

መርማሪ ፖሊስ [illegible]

ት ዕ ዛ ዝ

- መርማሪ ፖሊስ ተጨማሪ የምርመራ ማጣሪያ ጊዜ እንዲሰጠው ያቀረበው ምክንያት በቂ ሆኖ ስላልተገኘ ተጠርጣሪው ለብር ____________ (____________) የሚያበቃ የሰው ዋስ ሲያቀርቡ ወይንም ገንዘቡን በሞዴል 85 ሲያሲዙ ይፈቱ ተብሏል:: ዋስትናውን ሊያሟሉ ካልቻሉ በክ/ከተማው ፖሊስ መምሪያ በእስር ቆይተው መርማሪ ፖሊስ በተፋጠነ ሁኔታ የምርመራ መዝገቡን አጠናቆ እንዲልክ ታዟል:: መዝገቡ ተዘግቷል:: ወደ መዝገብ ቤት ይመለስ::

- መርማሪ ፖሊስ ተጨማሪ የምርመራ ማጣሪያ ጊዜ ለማግኘት ያቀረበው ምክንያት በቂ ሆኖ ስለተገኘ ____________ ቀን ተጨማሪ የምርመራ ጊዜ ተፈቅዶለታል::

የምርመራ ውጤቱን ለመጠባበቅ [illegible] ቀን [illegible] ዓ.ም ተቀጠረ::

ዳኛ ~~የሱንስ አፈወርቅ~~

[Stamp: illegible] [Signature]

Annex seven-3

02

በአዲስ አበባ ከተማ አስተዳደር የመጀመሪያ ደረጃ ፍ/ቤት
የቂርቆስ ክ/ከተማ ምድብ ችሎት
የመስማትና ውሣኔ መስጠት ንዑስ የሥራ ሂደት !!

የመ/ቁጥር [illegible]
ቀን [illegible]

ዳኛ:- ~~የ.ሐንስ አሬወርቅ~~ [illegible]

የምርመራ ክፍል:- ______

ተጠርጣሪዎች:- 1ኛ. [illegible]

ዕድሜ ____ ሥራ ______ አድ/ክ/ከተማ ______ ወረዳ ___ የቤ.ቁጥር ______

2ኛ. ______

ዕድሜ ____ ሥራ ______ አድ/ክ/ከተማ ______ ወረዳ ___ የቤ.ቁጥር ______

3ኛ. ______

ዕድሜ ____ ሥራ ______ አድ/ክ/ከተማ ______ ወረዳ ___ የቤ.ቁጥር ______

ይህ መዝገብ ተከፍቶ ለችሎት ሊቀርብ የቻለው የ [illegible]

በቁጥር [illegible] በ [illegible] ቀን [illegible] ዓ.ም በተፃፈ

ማመልከቻ ከላይ የተጠቀሱት ተጠርጣሪዎች ______ ወንጀል ተጠርጥረው

[illegible] ቀን [illegible] ዓ.ም ___ ሰዓት በቁጥጥር ስር ውለዋል፡፡ ስለሆነም ተጨማሪ

የምርመራ ጊዜ እንዲፈቀድለት መርማሪ ፖሊስ አመለከተ፡፡

ተጠርጣሪው ______

መርማሪ ፖሊስ [illegible]

ት ዕ ዛ ዝ

- መርማሪ ፖሊስ ተጨማሪ የምርመራ ማጣሪያ ጊዜ እንዲሰጠው ያቀረበው ምክንያት በቂ ሆኖ ስላልተገኘ ተጠርጣሪው ለብር ______ (______) የሚያበቃ የሰው ዋስ ሲያቀርቡ ወይንም ገንዘቡን በሞዴል 85 ሲያሲዙ ይፈቱ ተብሏል፡፡ ዋስትናውን ሲያሟሉ ካልቻሉ በክ/ከተማው ፖሊስ መምሪያ በእስር ቆይተው መርማሪ ፖሊስ በተፋጠነ ሁኔታ የምርመራ መዝገቡን አጠናቆ እንዲልክ ታዟል፡፡ መዝገቡ ተዘግቷል፡፡ ወደ መዝገብ ቤት ይመለስ፡፡

- መርማሪ ፖሊስ ተጨማሪ የምርመራ ማጣሪያ ጊዜ ለማግኘት ያቀረበው ምክንያት በቂ ሆኖ ስለተገኘ ______ ቀን ተጨማሪ የምርመራ ጊዜ ተፈቅዶለታል፡፡

የምርመራ ውጤቱን ለመጠባበቅ [illegible] ቀን [illegible] ዓ.ም ተቀጠረ፡፡

ዳኛ ~~የሐንስ አሬወርቅ~~

ANNEX Eight

01

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ

የፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት

የ [illegible] ችሎት

የ [illegible] ቁ. 89858

13/7/03

[illegible]

ኢትዮ ጥቁር አባይ አታሚዎች

የ [illegible] ቁ. 89·858

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፑብሊክ

የፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት

የ [illegible] ችሎት

[illegible]

ትእዛዝ

1. [illegible]
2. [illegible]
3. [illegible]
4. [illegible]

[illegible] 23/07/03 [illegible]

13/07/03

ቀን 23/7/03

[illegible]

[illegible]

ሊትት ጥቁር አባይ አታሚዎች

ANNEX NINE

06

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ

የፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት

የ [illegible] ችሎት

የ [illegible] መ.ቁ. 90020

22/07/03

[illegible]

[illegible]

ኢትዮ ጥቁር አባይ አታሚዎች

Annex TEN

የፌደራል ከፍተኛ ፍ/ቤት

በአዲሱ የስራ ሂደት /BPR/

9ኛ ወንጀል ችሎት

መዝገብ ቁጥር 100615

ጥቅምት 18 ቀን 2003

ዳኛ፡- ዘሪሁን ቦዴ

ከሳሽ፡- ዐ/ህግ /ግልፅ ያልሆነ/ ቀርበዋል

ተከሳሽ፡- ሰለሞን ታቦር ከማረሚያ ቤት ሆኖ ጠበቃ ታደሰ ባይሳ ጋር ቀርቧል

- መዝገቡ የተቀጠረው የዐ/ህግ ምስክር ለመስማት ነው ምስክሮች ካሉ ቃለመሀላ ይፈፅመ በእውነት ለመመስከር በእግዚአብሔር ስም ምለናል

የዐ/ህግ 1ኛ ምስክር

- ማን ነው ስምዎት?
- ገብረ ተንሳይ ገብረ እየሱስ
- ክፍለ ከተማ የት ነው መኖሪያ አድራሻዎ?
- ደብረ ሲባኖስ ገዳም
- የት ነው ክልሉ?
- ኦሮሚያ ክልል
- ዞን የት ነው?
- ፍቼ
- ከተማ?
- ከተማ አይደለም ገዳም ነው
- ለምን መጡ ፍ/ቤት ዛሬ?
- ተበዳይ ነኝ ዐ/ህግ ላቀረበው ክስ ምስክር ሆኜ
- በማን ላይ?
- በአቶ ሰለሞን ታቦር ላይ

- እጅ ከፍንጅ ነው መያዝ መብቴ ነው ስላለኝ ነው የያዝኩት መብቴ ነው እጅ ከፍንጅ የመያዝ ስራዬ ነው
- አውጥተዋል አላወጡም ይሄንን መልሱልኝ እባክዎትን?
- እጅ ከፍንጅ አይወጣም አልኩ እኮ
- አያስፈልገውም ብለው ካመኑ አላወጣሁም ማለት እኮ ነው ያው ነው?
- አዎ የሚያስፈልገው አይደለም
- ከዚህ ሌላ የሚያውቁት ነገር አለ?
- የለም
- አብቅቻለሁ ጥያቄ የተከበረው ፍ/ቤት
- ድጋሚ አለ?
- የለም
- የፍ/ቤት ማጣሪያ የለም ሌላ ምስክር አለ?
- የለም
- አበቃችሁ?
- /የማይሰማ/ የተለየ ነገር ስለማያስረዱልን በዚሁ እናበቃለን
- ዐ/ህግ ዋስትና ላይ?
- የተከበረው ፍ/ቤት ዋስትናው ላይ ተቃውሞ አለን ምክንያቱም ተከሳሹ ዳይመንድ ያልሆነ ነገር ዳይመንድ አለኝ ብለው 10ሚሊየን ብር የሚገመት ንብረት አለን ብለው አታለው የግል ተበዳዩን ወደ ስህተት በመምራት ወንጀሉን በመፈፀማቸው ባቀረብነው የሰው ማስረጃ አስረድተንባቸዋል እኚን ተከሳሽ የዋስ መብታቸው ቢጠበቅላቸው 200ሺህ ብር በእጃው ነው ያለው ያንን ገንዘብ አስይዘው መውጣት የሚችሉበት ሁኔታ ነው ያለው 2ኛ ተከሳሽ በዚህ በጣም የረቀቀ ዘዴ ተጠቅመው ነው ወንጀሉን የፈፀሙን አደገኝነታቸውን ያሳያል መሰል ወንጀል ለመስራት እድል አላቸው ያልተያዙም በተለይም ይሄ የማጭበርበሩ ስራ እየተሰራ ያለው በአሁኑም በከተማችንም ውስጥ ሆነ በአገር ደረጃ ትልቅ ፈታኝ የሆነ ችግር እየመጣ ያለው በፈረንጆች ሽፋን ጭምር ነው ይሄ ድርጊት እየተፈፀመ ያለው ሌሎች ያልተያዙ ግብረ አበሮች አሉዋቸው ተከሳሹ ቢለቀቁ ሌላ መሰል ወንጀል ለመስራት ሰፊ እድ አላቸው አቅምም ደህና ከተለያዩ ግለሰቦች ያታለሉት ገንዘብም ከኢትዩጵያ ውጪ ሊያስወጣቸው የሚችል እድልም

አለ በሌላ መልኩ ተከሳሹ የኋላ ታሪካቸው ሲታይ መልካም ፀባይ ያላቸው መሆኑን አያሳይም በእነዚህ ሁሉ ምክንያቶች

- ተቃውሞ?
- ተቃውሞዬ አንድ ተከሳሽ ጥፋተኛ ከተባለ በኋላ ነው ስለቀድሞ የህይወት ታሪኩ ሊነገርበት የሚገባው አስቀድሞ ሊነገርበት አይገባም?
- ተቀብለናል ስለቀድሞ ባህሪው አሁን ሊነገር አይገባም የሚለው ልክ ነው?
- በሌላ መልኩ ተከሳሹ በእኛ እምነት አስመስክረንባቸዋል ከዚህ በኋላ የሚጠብቃቸው በመከላከያ ማፍረስ ነው ካላፈረሱ ቅጣት ነው የሚጠብቃቸው እኚህ ሰውዬ ከሚጠብቃቸው ቅጣት ሊያመልጡም ስለሚችሉ ግዴታቸውን የሚወጡ አይደሉም በእነዚህ ሁሉ ምክንያቶች የተከበረው ፍ/ቤት በወ/መ/ሥ/ሥ/ሕ/ቁ/67/ሀ እና ሰ መሰረት የዋስትና መብታቸው ተነፍጐ ይልቁንም ይህ ፍ/ቤት ፈጣን የሆነ ችሎት የሚያከናውን ስለሆነ በመብታቸው ላይ የሚደርሰውም ጉዳት ስለሆነ በአጭር ቀጠሮ ውሳኔ ስለሚያገኙ እነዚህን ሁሉ ከግምት በማስገባት የዋስትና መብቱን ተነፍጐ በማረሚያ ቤት ሆኖ ክርክሩ እንዲቀጥልን በማክበር አመለክታለሁ

ት ዕ ዛ ዝ

- **በመቅረፀ ድምፅ የተቀረፀው ተፅፎ ይያያዝ ዋስትናን በተመለከተ እንግዲህ ከላይ ዐ/ህግ የነሱዋቸውን ነገሮች ፍ/ቤቱ ተቀብሏል በወ/መ/ሥ/ሥ/ሕ/ቁ/67 መሰረት ዋስትና አልተቀበልኩም አዲስ አበባ ማረሚያ ቤት ተከሳሹን ተረክቦ በማቆየት በቀጠሮ ቀን ያቆይ መዝገቡን መርምሮ ብይን ለመስራት ለጥቅምት 26 ቀን 2003 ዓ.ም ተቀጠረ::**

ANNEX Eleven

7ኛ ወንጀል ችሎት

የወ/መ/ቁጥር 91009

ቀን 21/8/2003 ዓ.ም

ዳኛ:- አበራ አማረ

ከሳሽ:- ዐቃቤ ሕግ ውበት ጋሻው:

ተከሳሽ:- ከተማ አበበ አብራ::

ተከሳሽ በቀረረበበት ክስ ክዶ ስለተከራከረ የዐቃቤ ሕግ ምስክሮችም መሀላ ፈጽመዋል ስለዚህ የዐቃቤ ሕግ መክፈቻ ንግግር

<u>በዐቃቤ ሕግ የመክፈቻ ንግግር:-</u>

ምስክሮቻችን እንደክስ አቀራረባችን ያስረዱልናል::

<u>1ኛ የዐቃቤ ሕግ ምስክር:-</u>

ስም? ጊዜ በየነ፣ እድሜ? 19፣ አድራሻ? የካ ክፍለ ከተማ፣ ቀበሌ? 21 የቤት ቁጥር 546፣ ስራ? ተማሪ፣ ተከሳሽን ታውቀዋለህ? አዎ አውቀዋለሁ፣ ጸብ ዝምድና አላችሁ ከተከሳሽ ጋር? አይ የትንሽ ግዜ መተዋወቅ ነው ያለን፣ ዝምድና ወይም ጸብ የላችሁም ማለት ነው? የለንም፣ የመጣህበት ምክንያት? በእንትን እምነት ማጉደል፣ አንተ ምን ልታደርግ ነው የመጣኸው ወደዚህ ፍርድ ቤት? ምስክር ለመስጠት፣ ዐቃቤ ሕግ ዋና ጥያቄ፤

በፍርድ ቤት ማጣሪያ ጥያቄ፡-

ምን አይነት ውስኪ ነበር? ሬል ሌብል፣ ከየት አመጣችሁት? ከቤት፣ /ግልጽ ያልሆነ/ ከቤት ስትል? ለአመት ባል ስጦታ የተሰጠ ነበረ ከዛ እሱን ለመሸጥ ነበረ ያወጣነው፣ ለምሳሌ የጊዜ የጊዜን ማለት ነው ማነው የሰጠው? ቤተሰቦቹ፣ ቤተሰቦቹ ሲባል? ከቤት ከመኖሪያ ቤታቸው ነው ያወጣው፣ የምትጠራው ሰው የለም ማን እንደሰጠው? ማአ ከቤተሰቦቹ፣ አዎ? አይ እሱን እንኳን አይደለም ከቤተሰቦቹ እንዳወጣ ብቻ ነው የማውቀው ከመኖሪያ ቤታቸው፣ አሁን ቤተሰቦቹ ያውቃሉ? አዎ ያውቃሉ፣ ውስኪ እንደጠፋበት? እንደጠፋበትም አውጥቶ ሊሰጥ እንደነበረም ያውቃሉ፤

ሶስት ውስኪ ነው የወሰደው ብለዋል? አዎ፣ እርሶ ከሰዋል እንዴ ሌላ ክስ ይዜን በተመለከተ አንዷን ውስኪ የማን ናት አንዷ ውስኪ? አንዷ ውስኪ የእኔ ናት፣ ተከሶዋል እንዴ እሱን በተመለከተ? ተከሶዋል፣ የት ነው የተከሰሰው? አራዳ ፓሊስ ጣቢያ፣ ጨርሰናል።

ዐቃቤ ሕግ፡-

ምስክሮቻችን እንደክሳችን አቀራረባችን ያስረዱ በመሆኑ ፍርድ ቤቱ ብይን እንዲሰጥልን እንጠይቃለን።

ብ ይ ን

ተከሳሽ በተከሰሰበት የእምነት ማጉደል ወንጀል በቀረበው የዐቃቤ ሕግ ምስክሮች ስለተመሰከረበት በወንጀል ሕግ አንቀጽ 65/1 ላይ እንዲከላከል በወንጀለኛ መቅጫ ሕግ ስነስርዓት ቁጥር 142/1 /ግልጽ ያልሆነ/ ብይን ተሰጥቷዋል። ባጭሩ እንድትከላከል ነው

ብይን የተሰጠህ የመከላከያ ምስክሮች አለህ? አዎ፣ የመከላከያ ምስክሮች አሉህ? አዎ አለኝ፣

ምንም እንኳን ተከሳሽ የተከሰሰበት የወንጀል አንቀጽ ዋስትና የሚያስከለክል እና አድራሻም ያለው ቢሆንም ሙሉ አድራሻ አለው ዋስትና የማያስከለክል ነው ነገር ግን እየታየ ያለው ባርቲዲ ነው ኬዙ እየታየ ያለው ባርቲዲ ነው በፈጣን ችሎት ማለት ነው ሁለተኛ ደግሞ እንደተመሰከረበት ስለሚያው ሊጠፋ ስለሚችል አጭር ቀጠሮ ተሰቶ እዚሁ ማረሚያ ቤት ቢቆይ::

ዋስትና በተመለከተ? የዋስ መብት ቢጠበቅልኝ የስራዬ ሁኔታ ሹፌር ስለሆነ ሊረከበኝ የሚችል ሰው የለም የቤተሰብ መኪና ነው የምይዘው አሁን በዚህ ሰዓት አቁሜው ነው ያለሁት እኔን ተክቶ የሚሰራ የለም በዛ መኪና ቤተሰብ ነው የሚተዳደረው ስለዚህ የዋስ መብቴን አቅርብ ፍርድ ቤት አቅርብ የሚለኝን ዋስ አቅርቤ ስራዬን እየሰራሁ ሁኔታውን ብከታተል ደስ ይለኛል::

ት ዕ ዛ ዝ

- ተከሳሽ የተከሰሰበት ወንጀል የዋስ መብት የሚነፍግ አይደለም በዐቃቤ ሕግ የቀረበው አስተያየት ደግሞ ህጋዊ ድጋፍ ስለሌለው ፍርድ ቤቱ አልተቀበለውም በዚህ መሰረት ተከሳሽ የዋስ መብት ተጠብቆለት ለሁለት ሺ አምስት መቶ ብር የሚበቃ ዋስ እንዲያቀርብ ወይም ገንዘብ በሞዴል 85 እንዲያስይዝ ተፈቅዶዋል ተከሳሽ ከሁለቱም አንዱን የማይፈጽም ከሆነ ግን በማረፊያ ቤት እንዲቆይ ታዞዋል ይጻፍ::
- ተከሳሽ የመከላከያ ምስክሮች ይዞ እንዲቀርብ ቀጠሮ ለሚያዝያ 25/8/2003 ዓ.ም 9:00 ሰዓት::

እ/አ

ብይን የተሰጠህ የመከላከያ ምስክሮች አለህ? አዎ፣ የመከላከያ ምስክሮች አሉህ? አዎ አለኝ፣

ምንም እንኳን ተከሳሽ የተከሰሰበት የወንጀል አንቀጽ ዋስትና የሚያስከለክል እና አድራሻም ያለው ቢሆንም ሙሉ አድራሻ አለው ዋስትና የማያስከለክል ነው ነገር ግን እየታየ ያለው ባርቲዲ ነው ኬዙ እየታየ ያለው ባርቲዲ ነው በፈጣን ችሎት ማለት ነው ሁለተኛ ደግሞ እንደተመሰከረበት ስለሚያው ሊጠፋ ስለሚችል አጭር ቀጠሮ ተሰቶ እዚሁ ማረሚያ ቤት ቢቆይ።

ዋስትና በተመለከተ? የዋስ መብት ቢጠበቅልኝ የስራዬ ሁኔታ ሹፌር ስለሆነ ሊረከበኝ የሚችል ሰው የለም የቤተሰብ መኪና ነው የምይዘው አሁን በዚህ ሰዓት አቁሜው ነው ያለሁት እኔን ተክቶ የሚሰራ የለም በዛ መኪና ቤተሰብ ነው የሚተዳደረው ስለዚህ የዋስ መብቴን አቅርብ ፍርድ ቤት አቅርብ የሚለኝን ዋስ አቅርቤ ስራዬን እየሰራሁ ሁኔታውን ብከታተል ደስ ይለኛል።

ት ዕ ዛ ዝ

- ተከሳሽ የተከሰሰበት ወንጀል የዋስ መብት የሚነፍግ አይደለም በፀቃቤ ሕግ የቀረበው አስተያየት ደግሞ ህጋዊ ድጋፍ ስለሌለው ፍርድ ቤቱ አልተቀበለውም በዚህ መሰረት ተከሳሽ የዋስ መብት ተጠብቆለት ለሁለት ሺ አምስት መቶ ብር የሚበቃ ዋስ እንዲያቀርብ ወይም ገንዘብ በሞዴል 85 እንዲያስይዝ ተፈቅዶዋል ተከሳሽ ከሁለቱም አንዱን የማይፈጽም ከሆነ ግን በማረፊያ ቤት እንዲቆይ ታዞዋል ይጻፍ።
- ተከሳሽ የመከላከያ ምስክሮች ይዞ እንዲቀርብ ቀጠሮ ለሚያዝያ 25/8/2003 ዓ.ም 9:00 ሰዓት።

እ/አ

ANNEX Twelve-1

የፌ/መ/ደ/ፍ/ቤት ውሣኔ መስጠጫ

ንዑስ የስራ ሂደት

የመ/መ/ቁ. 32970

ቀን 26/5/2002

ዳኛ፡- [illegible]

ከሳሽ ዓ/ሕግ [illegible]

ተከሣሽ፡- [illegible]

ይህ መዝገብ ተከፍቶ ለችሎት ሊቀርብ የቻለው ዓቃቤ ሕግ በቁጥር 0093/2002 ቀን 26/01/2002 ዓ.ም ጽፎ ባቀረበው ወንጀል ክስ መሠረት ነው፡፡

1ኛ. ተከሣሽ	2ኛ. ተከሣሽ	3ኛ. ተከሣሽ
ስም [illegible]	ስም	ስም
ዕድሜ 17 ዓመት	ዕድሜ	ዕድሜ
ስራ [illegible]	ስራ	ስራ
የት/ደረጃ [illegible]	የት/ደረጃ	የት/ደረጃ
አድራሻ [illegible]	አድራሻ	አድራሻ
ቀበሌ 01 የቤ/ቁ. [illegible]	ቀበሌ ___ የቤ/ቁ.	ቀበሌ ___ የቤ/ቁ.

ነው በማለት አስመዝግቦዋል፡፡ በከሣሽ ዓ/ሕግ የቀረበው የክስ ማመልከቻ በችሎት ለተከሳሽ/ሾች ደርሶና ተነቦለት/ላቸው እንዲረዳው/ዱት ተደርጎ ክሱን ሳይቃወም/ሙ [illegible]

ANNEX Twelve-2

የፌ/መ/ደ/ፍ/ቤት የውሣኔ መስጠች

ንዑስ የስራ ሂደት

የወ/መ/ቁ. [illegible]

ቀን 25/05/03

ዳኛ [illegible]

ከሣሽ ዓ/ሕግ [illegible]

ተከሳሽ /ሾች/ [illegible]

ይህ መዝገብ ተከፍቶ ለችሎት ሊቀርብ የቻለው ዓቃቤ ሕግ በቁጥር የአ/ቂ/ቤ/04765/03 በ 25/08/03 ጽፎ ባቀረበው የወንጀል ክስ መሠረት ነው፡፡

	1ኛ ተከሳሽ	2ኛ ተከሳሽ	3ኛ ተከሳሽ
ስም	[illegible]		
ዕድሜ	24		
ስራ	[illegible]		
የት/ደረጃ	—		
አድ. ክ/ከ	[illegible]		
ቀበሌ	01/02		
የቤ/ቁ			

በከሳሽ ዓ/ሕግ የቀረበው የክስ ማመልከቻ ለተከሳሽ/ሾች/ ደርሶና በችሎት ተነቦ እንዲረዱትም ተደርጎ ክሱን [illegible]

[illegible]

Annex Twelve-3 (please, look this together with the attached Charge)

9ኛ ወንጀል ችሎት

የወ.መ.ቁ 102903

13/5/2003

ዳኛ፡- ሰኢድ ሀሰን

ከሳሽ፡- ዐ/ህግ መንበረ አስፈራ ቀርበዋል፡፡

ተከሳሾች፡- እነ ጀማል ይማም ቀርበዋል፡፡

- ለተከሳሾቹ የክስ ቻርጁ ደርሶ ተነቦላቸው እንዲረዱት ተደርጓል፡፡ ተከሳሾች የእምነት ክደት ቃላቸው ሲሰጡ ክደው ዐ/ህግ በሰው ማስረጃነት ለተከሳሾቹ የክስ ቻርጁ ደርሷቸው እንዲረዱት ከተደረገ በኋላ የእምነት ክደት ቃላቸውን ሲሰጡ ክደው ተከራክረዋል፡፡ ዐ/ህግ ከቆጠራቸው አስራ አምስት ምስክሮች ውስጥ አምስቱን ለማሰማት ሌሎቹ እንዲሰናበቱ ጠይቋል ስለሆነም ፍ/ቤቱ አምስቱን ምስክሮች ይሰማቸዋል በቅድሚያ ቃለ መሃላ አስፈፅሟቸው፡፡
- በእውነት ለመመስከር በአላህ ስም ምያለሁ፡፡
- በእውነት ለመመስከር በእግዚአብሄር ስም ምያለሁ፡፡
- 1ኛ የዐ/ህግ ምስክር ማን ነው ስምህ ?
- ሸምሱ
- ሸምሱ ማን ?

ቁጥር የጉ/ክ/ከ/ፖ/ወ/መ/ቁ 230/03

ቀ/ቦ.....13-5-2003

ለፌደራል ከፍተኛ ፍ/ቤት

ወንጀል ችሎት

ለ/ሰበባ፣

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
የፍትህ ሚኒስቴር
የጉሌሌ ፍትህ ጽ/ቤት
The Federal Democratic Republic
of Ethiopia Ministry of Justice
Gulele Justice Office

የጉ/ፍ/ጽ/ዐ/ህ/መ/ቁ.ገበ2600/03

የጉ//ክ/ከ/ፖ/ወ/መ/ቁ 230/03

ከሣሽ ..... የፌደራል ዐቃቤ ህግ

ተከሳሾች.....1ኛ. አቶ ጀማል ኢማም አሊ ጌዳ እድሜ 45 አድ/ደቡብ ክልል ሰልጤ ዞን ቡናሻ ቀ/ገ/ማ ስልክ 0910 15 77 64

2ኛ. አቶ ሱሱጣን አንደሮ አህመዲን ዕድሜ 30 አድ/ ስልጤ ዞን ወራቤ ቡንሻ ቀ/ገ/ማ

3ኛ. አቶ በሸር ሰዩድ አህመድ ዕድሜ 23 አድ/ደቡብ ክልል ሳንኩራ ቀ/ገ/ማ

ጠንጀሱ

በ1996 ዓ/ም በወጣው የወ/ህ/ቁ 27/1/ ፣ 32/1/ /ሀ/ እና 598/1/ ስር የተመሰከተውን በመተላለፍ

የጠንጀሱ ዝርዝር

ተከሳሾች በህገወጥ መንገድ ኢትዮጵያዊያንን ለስራ ወደ ውጭ አገር ለመላክ አስበው በ9/5/2003 ዓ/ም ከሃምሸቱ 3:30 ሰዓት ሲሆን በጉ/ክ/ከተማ ቀበሌ 09/15 ክልል ልዩ ቦታው ጎጃም በር ኬላ ተብሎ ከሚጠራው አካባቢ 1ኛ ተከሳሽ የግል ተበዳዮች ከሆኑት 1ኛ/ አቶ ሸምሱ አብደላ በ8/5/2003 ዓ/ም አላባ ልዩ ወረዳ ወደ ሱዳን አገር ለስራ እልክለሀለሁ በማለት ብር 4800 በመቀበሉ 2ኛ/ ወ/ሪት መህቡባ ኡመር ወደ ሱዳን አገር ለስራ እልክሻለሁ በማለት ብር 1200 በመቀበሉ 3ኛ/ ወ/ሪት ፈቲያ ሰዩድ ወልበራ ወረዳ በዳመቂ ቀበሌ ገ/ማ/በ8/5/2003 ዓ/ም ወደ ሱዳን አገር ለስራ እልክሻለሁ በማለት ብር 900 በመቀበሉ 4ኛ/ ወ/ሪት ባይዳ ጫሚሶ በ8/5/2003 ዓ/ም ለልጤ ወረዳ ወልባረክ ወረዳ ደመቂ ገ/ማ/ ወደ ሱዳን አገር ለስራ እልክሻለሁ በማለት ብር 200 ከስዓቷ በመቀበሉ 5ኛ/ ወ/ሪት ሳይባ ባርጌን ወደ ሱዳን አገር ለስራ እልክሻለሁ በማለት እንድትስማማ በማድረጉ 6ኛ/ ወ/ሪት ሳኪና ሣማ ወደ ሱዳን አገር ለስራ እልክሻለሁ ወደ ፌት ሰርተሽ ትከፍያለሽ በማለት እንድትስማማ በማድረጉ 7ኛ/ ወ/ሪት ያሳቴ ኡሴንን ሱዳን አገር ለስራ እልክሻለሁ ሰርተሽ ወደ ፌት ብር 1000 ትከፍያለሽ በማለት 8ኛ/ ወ/ሪት ፈቲያ ደርሶባ ወደ ሱዳን አገር ለስራ እልክሻለሁ በማለት ወደ ፌት ሰርተሽ ትከፍያለሽ ብሎ በማስማማት 9ኛ/ ወጣት ሁሴን ሰንካም ወደ ሱዳን አገር ለስራ እልክለሀለሁ ወደ ፌት ሰርች ብር 5000 እንዲከፍል በመስማማቱ 10ኛ/ ተማሪ አምፊያ ጀማልን ወደ ሱዳን አገር ለስራ እልክሻለሁ በማለት ስትራንስፖርት ከመሳጅ አባቷ ብር 100 ተቀብሎ ወደ ፌት የሚከፈል ተጨማሪ ብር ወደ ፌት እንድትከፍለው ተስማምቶ በጠቅላላ ከሁሉም ተበዳዮች ላይ ብር 7,200 /ሰባት ሺህ ሁለት መቶ ብር ተቀብሎ/ በስሌዳ ቁጥር ኮድ 3-19067 ኦሮ ሚኒባስ ታክሲ አሳፍሮ ወደ ሱዳን ሀገር ለመላክ ሲጓዝ ለ/ሰበባ ጎጃም በር ኬላ ላይ በመያዛቸው 2ኛ ተከሳሽ የግል ተበዳዮች ከሆኑት 1ኛ ጠጣት መሀመድ ጀማል በ8/5/2003 ዓ/ም አጥላ ቡንሻ ቀ/ገ/ማ ወደ ሱዳን አገር ለስራ እልክለሀለሁ በማለት ብር 1000 በመቀበል 2ኛ [illegible] ወደ ሱዳን አገር ለስራ እልክለሀለሁ በማለት ወደ ፌት ሰርች የሚከፍለው ብር 4000 [illegible] ወደ ሱዳን አገር በስሌዳ ቁጥር ኮድ

Federal Democratic Republic of Ethiopia Ministry of Justice Gulele Justice Office

3-19067 ኦሮ በሆነ ሚኒባስ ታክሲ አሳፍሮ ለመላክ ሲሞክር ሰ/ስ/ ጎጃም በር ኬላ በመያዛቸው 3ኛ/ ተከሳሽ የግል ተበዳዮች የሆኑትን 1ኛ ወ/ሪት መዲና አማን ወደ ሱዳን አገር ለስራ እልክሻለሁ ወደ ፊት ስርተሽ ብር 4000 ትከፍያለሽ በማለት 2ኛ/ የግል ተበዳይ ወጣት አብዲ ሰኢድ ወደ ሱዳን አገር ለስራ እልክሀለሁ በማለት በ8/5/2003 ዓ/ም ወራቤ ዞን ብር 4000 ተቀብሎ በሰሌዳ ቁጥር ኮድ 3-19067 ኦሮ አሳፍሮወደ ሱዳን አገር ለመላክ ሲሞክር ሰ/ስ ጎጃም በር ኬላ ላይ በመያዛቸው በዋና ወንጀል ድርጊት ተካፋይ በመሆን በፈፀሙት በህገወጥ መንገድ ሰዎችን ለስራ ወደ ውጭ አገር በመላክ ወንጀል ተከሰዋል::

መንበረ አስፈራ

ዐ/ህግ

የማስረጃ ዝርዝር

ሀ/ የሰው

1ኛ/ አቶ ሽምሱ አብደላ /ተበዳይ/ አድ/ ደቡብ ክልል ስላባ ልዩ ወረዳ መያጀ ቀ/ገ/ማ /በ1ኛ ተከሳሽ ላይ/

2ኛ/ ወ/ሪት ሙህቡባ ኡመር /የግል ተበዳይ/ አድ/ስልጤ ዞን ወለበሬግ ወረዳ ደመቄ ቀ/ገ/ማ /በ1ኛ ተከሳሽ ላይ/

3ኛ/ ወ/ሪት ፈቲያ ሰይድ /የግል ተበዳይ/ አድ/ ወለበሬግ ወረዳ ደመቄ ገ/ማ /በ1ኛ ተከሳሽ ላይ/

4ኛ/ ወ/ሪት ባይዳ ጫሚሶ /የግል ተበዳይ/ አድ/ ደቡብ ክልል ስልጤ ወረዳ ወለበረክቀ/ገ/ማ /በ1ኛ ተከሳሽ ላይ/

5ኛ/ ወ/ሪት ሰይሳ ባርጌ /የግል ተበዳይ/ አድ/ ስልጤ ወረዳ በነሻ ቀ/ገ/ማ /በ1ኛ ተከሳሽ ላይ/

6ኛ/ ወ/ሪት ሳኪና ማሞ /የግል ተበዳይ/ አድ/ ስልጤ ወረዳ በነሻ ቀ/ገ/ማ /በ1ኛ ተከሳሽ ላይ/

7ኛ/ ወ/ሪት ያስቴ ኡሴን /የግል ተበዳይ/ አድ/ ስልጤ ዞን ወረዳ ወለበሬ ደመቄ ገ/ማ /በ1ኛ ተከሳሽ ላይ/

8ኛ/ ወ/ሪት ፈቲያ ደርሳቦ /የግል ተበዳይ/ አድ/ ስልጤ ወረዳ ደመቄ ገ/ማ /በ1ኛ ተከሳሽ ላይ/

9ኛ/ ተማሪ አምርያ ጀማል /የግል ተበዳይ/ አድ/ ስልጤወረዳ ደመቄ ገ/ማ /በ1ኛ ተከሳሽ ላይ/

10ኛ/ ወጣት ሁሴን ሰንከም /የግል ተበዳይ/ አድ/ ስልጤ ወረዳ ደመቄ ገ/ማ /በ1ኛ ተከሳሽ ላይ/

11ኛ/ ወጣት መሀመድ ጀማል /የግል ተበዳይ/ አድ/ ደቡብ ክልል አዋሳ ቡነሻ ቀ/ገ/ማ /በ2ኛ ተከሳሽ ላይ/

12ኛ/ አቶ ሬድዋን ኑር /የግል ተበዳይ/ አድ/ስልጤ ወረዳ ሰለም ገበያ ገ/ማ /በ2ኛ ተከሳሽ ላይ/

13ኛ/ ወ/ሪት መዲና አማን /የግል ተበዳይ/ አድ/ ቡሌ ክ/ከተማ ቀበሌ-- የቤ/ቁ-- /በ3ኛ ተከሳሽ ላይ/

14ኛ/ ወጣት አብዲ ሰኢድ /የግል ተበዳይ/ አድ/ ወራቤ ዞን ሰለም ገበያ ወረዳ በኖሻ ቀ/ገ/ማ /በ3ኛ ተከሳሽ ላይ/

15ኛ/ አቶ እስክንድር ድንበሩ /በሶስቱም ተከሳሾች ላይ ቀጥተኛ/ አድ/ጉ/ክ/ከ/ቀ/06 የቤ/ቁ979 ስ/ቁ/0912 89 121 2

ለ/ የሰነድ

1ኛ/ ሶስቱም ተከሳሾች በወ/መ/ሕ/ሥ/ሥ/ቁ/27 /2/ መሰረት የሰጡት ቃል 06 ገፅ

ኤግዚቢት

ከተበዳዮች ላይ ከተቀበሉት ገንዘብ ውስጥ በጊዜው ከሶስቱም ተከሳሾች እጅ የተያዘ ጥሬ የኢትዮጵያ ብር 8,300 /ስምንት ሺህ ሶስት መቶ ብር/ በፖሊስ ተይዞ ይገኛል::

መግለጫ

ተከሳሾች ከ9/5/2003 ዓ/ም ጀምሮ በእስር ላይ ይገኛሉ::

Annex Thirteen

የፌ/መ/ደ/ፍ/ቤት የውሣኔ መስጠት
ንዑስ የስራ ሂደት

የወ/መ/ቁ. 34629
ቀን 9/13/03

ዳኛ ማስተዋል ገ/መድህን

ከሣሽ ዓ/ሕግ
ተከሳሽ /ሾች/ ኡርሚር ውነር ገጋስ

ይህ መዝገብ ተከፍቶ ለችሎት ሊቀርብ የቻለው ዓቃቤ ሕግ በቁጥር ፌ/ዐ/ዐ/ወ/7925/03 በ 18/02/03 ጽፎ ባቀረበው የወንጀል ክስ መሠረት ነው።

ትእዛዝ

ክሱ እንዲሰማ የታዘዘው በ 5-3-04 ስለሆነ በዚሁ ቀን በ 3.30 ሰዓት ፌ/የመ/ደ/ፍ/ቤት የውሣኔ መስጠት ንዑስ የሥራ ሂደት ጳውሎስ ምድብ ተከሳሽ/ሾች/ እንዲቀርቡ ታዟል። የቀረበውን ክስ አውቀው መቃወሚያቸውንና የመከላከያ ማስረጃ ዝርዝርና ማስረጃቸውን ማቅረብ ይችሉ ዘንድ ከመጥሪያ ጋር የዓ/ሕግ ክስና ማስረጃ ይላክላቸው። ለዓ/ሕግ ምስክሮች መጥሪያ ይጻፍ። ተከሳሽ/ሾች/ ያላቸውን የመ/ማስረጃ ዝርዝርና ማስረጃ ከ ________ ቀን በፊት በችሎት ፀሐፊ በኩል ከመዝገቡ ጋር አያይዘው ለዓ/ሕግ እንዲደርስ እንዲያደርጉና ለምስክራቸውም መጥሪያ እንዲወስዱ ታዟል።

የፈ.ዳኛ ስም ____________

ፊርማ ____________

ANNEX Fourteen

ገጽ 1

የወ.መ.ቁ 10 27 43

10-05 ቀን 2003 ዓ.ም

ዳኛ:- ሠኢድ ሀሰን

ከሣሽ:- የፌዴራል ዐቃቤ ሕግ [illegible] ቀረቡ

ተከሣሽ/ሾች/:- [illegible]

ይህ መዝገብ ሊቀርብ የቻለው የከፍተኛው ዐ/ሕግ በቁጥር 540/03 ______________________ የተፃፈ የክስ ማመልከቻ ክስ በማቅረቡ ነው።

1.የተከሣሽ ስም [illegible]
ዕድሜ 33
አድራሻ [illegible]
የት/ደረጃ [illegible]

2.የተከሣሽ ስም ______
ዕድሜ ______
አድራሻ ______
የት/ደረጃ ______

3.የተከሣሽ ስም ______
ዕድሜ ______
አድራሻ --------------
የት/ደረጃ ______

4.የተከሣሽ ስም ______
ዕድሜ ______
አድራሻ --------------
የት/ደረጃ ______

5.የተከሣሽ ስም ______
ዕድሜ ______
አድራሻ --------------
የት/ደረጃ ______

6.የተከሣሽ ስም ______
ዕድሜ ______
አድራሻ --------------
የት/ደረጃ ______

ለተከሣሽ/ሾች/ የክስ ማመልከቻ ደርሶት /ደርሷቸው/ በችሎት ተነቦለት/ተነቦላቸው/ ክሱን እንዲረዳው /እንዲረዱት/ የተደረገ ሲሆን:- [illegible]

[illegible]

[illegible]

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G) Key Informants

- Interview with Ato Kedir Mohammed, a Federal High Court Judges, on May 20, 2011 at 2:00am in his office.
- Interview with Ato Fuad kiyar, Federal First Instance Court Judge, on May 13/2011 at 4:30 pm in his office.
- Interview with Ato Legesse Alemu, Head of Legal Research and Drafting Directorate at the Ministry of Justice on April 20/2011 in his office at 10:30 am.
- Interview with Ato Tesfaye Negash, Addis Ababa First Instance Court Judge, on May 27, 2011at 11:30 am in his office.
- Interview with W/t Meron Teshome, former assistant judge and currently a registrar at Federal High Court, Bole bench, on May 26, 2011 at 10:30 am in her office.
- Interview with Ato Aschalew Ashagrie, an advocate on May 23, 2011 at 10:15 am.

- Interview with Ato Worku Abebe, an advocate on May 27, 2011 at 2:00am at Federal High Court, Lideta bench.

- Interview with Ato Tilahun Mitku, an advocate, on May 27, 2011 at 2:45pm at Federal High Court, Lideta bench.

- Interview with Ato Daniel Fekadu, an advocate on May 19//20111 at 1:00 am.

- Interview with Muluken Eskiel, Federal Public Prosecutor at Arada Justice Office on May 18, 2011 at 12:10am.

- Interview with Ato Henok Tesfaye, Federal Public Prosecutor at Gulele Justice Office, on May 13, 2011, at 2:45 pm in his office.

- Interview with Ato Kelemework Mideksa, a researcher at Legal Research and Drafting Directorate of Ministry of Justice, on May 4/2011 at 9:15 am in his office.

- Interview with Ato Wondu Mamo, a researcher at Legal Research and Drafting Directorate of Ministry of Justice, on April 5/2011 in his office at 11:30 am.

- Interview with Ato Wondimagegn Shirega, a prisoner sentenced to one year rigorous imprisonment by RTD proceeding, on May 14/2011 at Woreda 19 Prison House at 9:45 am.

- Interview with Biniam Tibebe, a prisoner convicted by RTD proceedings on May 14, 2011, at Woreda 19 Prison House at 10:00 am.