# ADDIS ABABA UNIVERSITY
# GRADUATE PROGRAM
# SCHOOL OF LAW AND GOVERNANCE


## ETHIOPIAN SENTENCING GUIDELINES AND THEIR APPLICATION: A CASE STUDY IN FEDERAL COURTS

BY: SEFIEW AYENEW

Advisor:Tsehai Wada (Associate Professor)

A Thesis Submitted to the School of Law and Governance, Addis Ababa University

in Partial Fulfillment of the Requirements for Masters Degree (LL.M) in Constitutional and Public Law

June, 2014

Addis Ababa, Ethiopia

# ADDIS ABABA UNIVERSITY GRADUATE PROGRAM
# SCHOOL OF LAW AND GOVERNANCE
# (APPROVAL SHEET)

## ETHIOPIAN SENTENCING GUIDELINES AND THEIR APPLICATION: A CASE STUDY IN FEDERAL COURTS


## BY: SEFIEW AYENEW


**APPROVED BY BOARD OF EXAMINERS**

| NAME | SIGNATURE | DATE |
|---|---|---|
| 1. _____ | _____ | _____ |
| ADVISOR | | |
| 2. _____ | _____ | _____ |
| Reader/EXAMINER | | |
| 3. _____ | _____ | _____ |
| Reader/EXAMINER | | |

## Declaration statement

I declare this work which is entitled "Ethiopian Sentencing Guidelines and Their Application: A Case Study in Federal Courts" is my own work that is independently produced by the devoted guidance of my advisor.

**Declared by:**

Name: Sefiew Ayenew

Signature: _____

Date: _____

**Confirmed by:**

Name: Tsehai Wada (Associate Professor)

Signature: _____

Date: _____

# Table of contents

# Chapter Three
# Data Interpretation, Discussion and Case analysis

# Chapter Four
# Conclusion and Recommendations

# Acknowledgements

I would like to thank my advisor, Associate professor Tsehai Wada for his continuous and valuable comments. This thesis could not have been materialized had it not been for his scholarly and friendly assistance.

It is my pleasure to express my deepest gratitude to Dr. Menbere Tadesse and Dr. Rasmus H Wandall, who thought me the course of criminal justice systems and shared their personal experience to me at the time interview and discussion on the data collection stage of this thesis.

I also thank the Ethiopian Civil Service University, Ethiopian Police University College, Addis Ababa University, Federal Supreme Court, Federal High Court, and Federal First Instance Court library workers, who allowed me to refer to various up-to-date books and allowed me to have access in the library. I also extend my appreciation to all my interviewees, who assisted me during the data collection by searching relevant cases and linking me to the pertinent persons related to the study. Last, but not the least, I owe a debt of gratitude to The Almighty God and my beloved family.

## Acronyms

**AP** Arithmetic Progression

**Art.** Article

**Ato** Mr.

**AV.** Average

**CC** Criminal Code

**CJS** Criminal Justice System

**CPC** Criminal Procedure Code

**E.C.** Ethiopian Calendar

**E.G**. Example

**Et al.** Others

**ETB** Ethiopian Birr

**FDRE** Federal Democratic Republic Of Ethiopia

**FSC** Federal Supreme Court

**FSCSGL** Federal Supreme Court Sentencing Guidelines

**HPR** House of People‟s Representative

**I.E** That Is

**LL.M.** Master of law

**Max** Maximum

**Min** Minimum

**PC** Penal Code

**PD** Public Defender

**PhD** Doctor of Philosophy

**PLC** Private Limited Company

**Proc. No**. Proclamation Number

**U.K**. United Kingdom

**U.S.A.** United State of America

**Wro** Married Women

**Wrt** Unmarried Women

# List of Tables and Figures



# List of Appendices

## Abstract

Sentencing is the most crucial stage in criminal justice system and crime is an inevitable phenomenon in human social life. In addition, sentencing is a means designed to give notice for the general public by described punishable crimes and to punish a criminal convicted by a court of law. In ancient times, punishment was premised on the principle of "an eye for an eye, a tooth for a tooth" and punishments were degrading and inhumane by today"s standard. Today"s punishments are relatively humane and focus on rehabilitation. Many universal human right instruments provide for the rights of convicted persons and many countries are members of these instruments. Sentencing disparity is a problem everywhere and countries have adopted sentencing guidelines to solve this problem. Ethiopia is one of them that adopted and revised the first and the second sentencing guidelines in 2010 and 2013 respectively. The main purposes of the sentencing guidelines are to ensure proportionality, consistency, predictability and fairness of sentencing throughout the country in federal matters. However, the principles of like cases- uniformity of decision - have not been realized in many cases; the sentencing guidelines from design to practices reveal that it was unable to stop unwarranted disparities of sentencing due to different factors. The lack of clarity of sentencing guidelines, the lack of mutual understanding of the legal practitioners to the sentencing guidelines, lack of supervision and controlling mechanisms of the sentencing guidelines can be considered as the root causes of sentencing disparities.



**Key words**: Sentencing Guidelines, Sentencing Disparities, Criminal Justice System, And Structured Sentencing.

# Chapter One
# Introduction

## 1.1 Background of the Study

Sentencing disparities have not only affected the individual‟s right, but also the government and the society‟s interest at large. Although universal features of crime and punishment have been seen in the contemporary societies, it would be "a serious mistake to view punishment as an automatic or uniform response to particular types of misconduct".[1] On the other hand, ignoring undesired disparities of sentencing among individuals is an irresponsible act. In fact, "how acts are defined and their legal treatment reflects the prevailing social, political, economic, and historical conditions of a society at any given point in time."[2] In addition, "Sentencing guidelines are a relatively new reform effort to encourage judges to take specific legally relevant elements into account in a fair and consistent way."[3]

Criminal sentences are required to "reinforce collective values, physically incapacitate and rehabilitate offenders, deter misconduct, provide restoration or compensation, and eliminate threats to the prevailing social order."[4] In addition, unwarranted disparities of sentencing could be minimized through sentencing guidelines. Even if Ethiopia had introduced its criminal law more than half a century, unwarranted disparities of sentencing were not controlled by structured sentencing guidelines until the first sentencing guidelines has been introduced in 2010.

In Ethiopia, disparities of sentencing have been seen in aggravating and mitigating circumstances and this is called warranted disparities.[5]Art.88 of the 2004 criminal code of Ethiopia provides that the Federal Supreme Court may prepare the sentencing guidelines and the Supreme Court came up with sentencing guidelines in the first time in 2010 and revised it in 2013. However, significant changes were not exhibited as the

---

[1]Terance D. Miethe and Hong Lu (2005), Punishment: A Comparative Historical Respective, Cambridge, 2005 p.10.
[2]Ibid.
[3] Brian J. Ostrom Charles W. Ostrom and et al and et al (2006), Assessing Consistency and Fairness in Sentencing: A Comparative Study in Three States, National State Courts, p.1.
[4] Terance D. Miethe and Hong Lu (2005), supra note 1.
[5] Art.82, 83, 84, 85 of the FDRE Criminal Code, 2004.

Ethiopian criminal justice expected. The main purpose of this research is therefore, to examine the application of Ethiopian sentencing guidelines in the federal courts.

## 1.2 Statement of the Problem

Disparities of sentencing in similar crimes cause a typical problem; Law scholars devoted their time to reconcile the debate "should the crime fit with the individual? Or should the individual behavior fit with the type of crime that she or he committed?" This has remained an issue in criminal sentencing.

The legislatures have already determined the minimum and the maximum of sentencing in continental legal traditional approach. Judges play a vital role in deciding specific cases within its range. Although each crime and sentencing is correspondingly designated in FDRE Criminal Code, the discretion power of the courts is too wide to minimize undesirable disparities of sentencing. A number of cases were decided contrary to consistency and fairness, proportionality, and predictability of sentencing. For these and other reasons, similar cases were not decided in the same way. Such disparities are contrary to the legal principles of equality before the law. To address these problems and protect human rights, the FDRE Supreme Court has introduced the first sentencing guideline in 2010.

This guideline tries to list out some specific labeling of crimes with their corresponding sentencing even if it had some defects. First of all, it failed to cover all sensitive and severe crimes. Secondly, it made the punishment more lenient than the criminal law. As a result, the deterrence objective of the criminal law failed to effectively deter theft and other similar criminals.

The second sentencing guideline, which is entitled "The Revised Federal Supreme Court Sentencing Guidelines," tried to rectify some inconsistent parts of the former guidelines. However, the coverage of labeling offences and sentencing are still inadequate. The new guidelines have also not clearly set some criteria to accept or reject the aggravating and the mitigating circumstances. It also puts a mere text mathematical formula, to calculate the period of sentencing for any type of crime that was not

explicitly determined in the manual. Therefore, the application of consistency and fairness, proportionality, and predictability of sentencing in federal courts are issues to be assessed and reflected on this research paper.

## 1.3 Research Questions

The main research question for this study is**:** What are the contributions of sentencing guidelines to minimize the sentencing disparities in Federal Courts of Ethiopia? Thus, the following are the specific questions for this study:

- What were the justifications to revise the first sentencing guidelines of the Federal Supreme Court of Ethiopia?
- What are the causes of sentencing disparities and its controlling mechanisms?
- What is the application of consistency and fairness, proportionality, and predictability of sentencing in federal courts?
- What is the development of sentencing guidelines and its relevance to the Ethiopian criminal justice system?
- What are the drawbacks of sentencing guidelines that affect the criminal justice system in Federal Courts?
- What could be the existing possible solutions to solve problems regarding sentencing guidelines?

## 1.4 Research Objectives

### 1.4.1 General Objective

The general objective of this study is to explore whether the Ethiopian Federal Supreme court sentencing guidelines could tackle the unwarranted sentencing disparities in federal courts or not.

### 1.4.2 Specific Objective

- To identify the justifications of revision to the first sentencing guidelines of the Federal supreme court of Ethiopia.
- To investigate the causes of sentencing disparities and its controlling mechanisms.
- To assess the application of consistency and fairness, proportionality, and predictability of sentencing in federal courts.
- To show the contribution of the sentencing guidelines to the Ethiopian criminal justice system.
- To examine the strengths and drawbacks of the Federal Supreme Court sentencing guidelines.
- To forward possible solutions in order to minimize gaps between the guidelines and practices.

## 1.5 Methodology

Having identified the above problem and objective, both quantitative and qualitative research methodologies are employed in this research. The data were collected from primary and secondary sources. The criminal laws, the sentencing guidelines, proclamations, statement of judgments, reports, trustworthy internet sources and unstructured interview had been taken as primary sources. In addition, various books, commentaries, journals, and articles had also been used as secondary sources.

Due to the nature of the subject area of the study, I used purposive sampling of non probability the composition of the interviewees was conducted from different stakeholders of the criminal justice systems. These were: three Judges from Federal Courts, one public prosecutor from Federal Public Prosecutors office, one legal expert and public prosecutor from Ministry of Justice, one Legal Expert and Secretariat Head of Judicial Administration from Federal Supreme Court, one legal practitioner and executive from Justice and Legal System Research Institute, three from private lawyers and one foreigner in the legal advisors and researchers in Ethiopia, one forensic investigator from Federal Police Headquarter. For comparison of sentencing guidelines

with the criminal law, I selected twenty-one types of crimes in purposive sampling. I also took ten real cases in purposive sampling for analyses and interpret the validity of sentencing. The compositions of the cases were: Four cases from Federal Supreme Court, four cases from Federal High Courts, two cases from the Federal First Instance First Instance Courts.

## 1.6 Ethical Considerations

As data collections required permission of individuals or authorities, the researcher secured consent from the participants of the study through formal cooperation letters that were written by the head of School of Law. Similarly, in the interpretation of the data, the researcher tried to provide an accurate and unbiased account of the information and refrain from using language or derogatory words that could dismay people for different reasons.

## 1.7 Scope of the Study

The scope of the study was delimited to sentencing and its guidelines in the Federal Courts of Ethiopia since 2010. Then, This research focused on sentencing of imprisonment and fine rather than any secondary punishments. It concentrated on consistency and fairness, proportionality, and predictability of sentencing in accordance with the guidelines rather than amnesty, parole, and inmate handling.

## 1.8 Significance of the Study

“Ethiopian Sentencing Guidelines and Their Applications: A Case Oriented Study In Federal Courts” is important to enhance the performance of the author for further experience in the research and it can also be considered as the pioneer thesis after the federal Supreme Court sentencing guidelines has been introduced in Ethiopia. It has also significance to future researchers, policy makers, judges, and Federal Supreme Court whenever it is necessary for them.

## 1.9 Limitations of the Study

The interviewees were taken in the form of purposive sampling among Judges, public prosecutors, private lawyers and other stakeholders in criminal justice. The victims and the defendants were presented by public prosecutors and private lawyers respectively. Due to time and financial constraints, the direct voices of victims and defendants were not included to the purposive sampling. As the result, the reflections of these parties were not directly addressed in this study.

## 1.10 Organization of the paper

This study is divided into four chapters. The first chapter deals with introduction, background of the study, statement of the problem, research questions, objectives, methodology, ethical consideration, scope, significance, and limitations of the study. The second chapter is concerned with a review of related literature. The third chapter deals with data interpretation, discussion, case analysis and key findings. The final chapter forwards conclusion and recommendations.

# Chapter Two
# Literature Review

## 2.1 Theories of Purpose of Punishment

A number of theories revolve in and around two extreme theories namely: Retribution (deontological) and utilitarian (consequentiality) theories of punishment. Crime is an inevitable phenomenon in the society. Some individuals have deviant behavior and the ultimate stage of deviant behavior leads to commit crimes. Hence, law abiding people and the community at large could have been harmed by the wrong doer and they would have sought legal remedy. Thus, the theory of retribution imposed punishment for its own sake that was motivated by revenge and reciprocity which was equivalent to the committed crime. The harshness of punishment in some cases extended to death penalty. On the other hand, the utilitarian theory of deterrence and reformation used punishment as a means to an end –the end being community protection by prevention of crime. It is believed on this theory that punishment should not be necessary equal to the committed crime.[6]

According to James A. Inciardi, "for more than 200 years, the public has alternated between revulsion at inhuman sentencing practices and prison conditions (denounced as " barbaric" and" uncivilized") on the one hand and dissatisfaction with excessively compassionate treatment see as "coddling criminals" on the other."[7] The fates of convicted criminals have repeatedly shifted according to prevailing national values and current perceptions of danger and fear of crime. Therefore, objectives of sentencing are based on six competing philosophies: retribution, incapacity, deterrence, rehabilitation, restoration of victims" right, and all inclusive theories.[8]

---

[6] Elias N.Stebek (2006), Ethiopian criminal law Digest Part I & II, St. Mary"s University College Faculty of Law, Addis Ababa, p.21.
[7]James A. Inciardi, (1984), Criminal Justice, Seventh Edition, Harcourt, Inc.p.424-425.
[8] Robert M. Bohm and Keith N. Haley (2007), Introduction to Criminal Justice, fourth edition, McGraw Hill, p.32.

### 2.1.1 Retribution

In the philosophy of classical retributive theory the purpose of punishment was relying on "the punishment should fit to the crime." This was the basic principle of western European in the nineteenth century. Nevertheless, it was later modified in neoclassical thought to recognize that some offenders who commit similar crimes may be less blameworthy due to diminish capacity, mental disease or immaturity. Under this revised theory the punishment should fit primarily the moral gravity of the crime and, to some extent the characteristics of the offender.[9]

According to Dejene Girma,"retribution is also known as retaliation or vengeance, punishment is imposed as retaliatory measure on a criminal for the wrong done to the society."[10]To use a 200 year old definition once offered by a classical scholar Cesare Beccaria, retribution is an effort" to make the punishment as analogous as possible to the nature of the crime "In modern terminology retribution involves creating an equal or proportionate relationship between the offense and the punishment-an effort to ensure that an offender‟s punishment is commensurate not only with the crime, but also with his or her moral blame worthiness and prior criminal record. Rather than the biblical "eye for eye, tooth for tooth", the philosophy of retribution typically reflects a desire for proportionality- a sentencing structure in which the most heinous offenders receive the harshest punishments and the lesser criminals receive lesser punishments.[11]

Criticisms: This theory has in due course become unacceptable in most contemporary legal systems. The theory relies on the belief that punishment is an end by itself. In addition, it does not worry about the treatment of offender‟s behavior. Hence, in today‟s context, it is neither wise nor desirable to apply. [12] According to Terance D. Miethe and Hong Lu:

---

[9]Terance D. Miethe and Hong Lu, 2005, supra note 1, P.16.
[10] Dejene Girma, 2013, A Hand book on the Criminal Code of Ethiopia, Addis Ababa, Fareast Trading, Plc, p.152.
[11] James A.Inciardi, Supra note 7, pp.424-425.
[12] Elias N.Stebek supra note 6,p.21

*"The principle of lextalionis (i.e., the "eye for an eye" dictum that punishment should correspond in degree and kind to the offense) has limited applicability. For example, how do you sanction in kind acts of drunkenness, drug abuse, and adultery, prostitution, and/or traffic violations like speeding?"*[13]

### 2.1.2 Incapacitation

Incapacitation is simply the removal of dangerous persons from the community.[14]It also refers to the "restraint "or" isolation" philosophy. Its goal is community protection rather than revenge. In this case the society gets relief from possible danger from criminals as the convicts are either sent to jail or forced to live in exile. Consequently, the community will get relief from further criminal activity.[15]

The punishment philosophy asserts that if our goals are crime prevention and community protection, "the sanctions would have to be quite severe to be effective, regardless of the offense, executions would have to be quite strain that can guarantee the elimination of future offenses against the community".[16]

Criticism: "life imprisonment without a possibility for parole and death penalty are the forms of restraint that will not guarantee the elimination of future offences against the community."[17] The other alternatives of incapacitation of the offender are temporary imprisonment until the society makes sure that future crimes can"t be committed.[18]However, the prediction of not committing further crimes could not be certain. There is also an economic dimension that should be taken into consideration. Isolation of offenders requires construction of more prison facilities, additional cost of supporting an increasing number of warden staff. Nevertheless, the use of isolation as premise for sentencing is a common current practice in any legal system.[19]

---

[13]Terance D. Miethe and Hong Lu, 2005, Supra note1, P.16.
[14]James A.Inciardi, Supra note 7, p.425.
[15] Ibid.
[16]Id., p.426.
[17] Andargachew Tesfaye (2004), the Crime Problem and Its Correction, Addis Ababa University Press.p.88.
[18]Ibid.
[19]Ibid.

Incapacitation of offenders may not always be a good solution. For example, a person may commit crime under the influence psychological stress or duress. In such cases the probability of committing further crime of this person is less. Therefore, in such conditions the theory of incapacitation seems to be incomplete to fulfill its purpose.[20]

### 2.1.3 Deterrence

Deterrence is one of the most widely propagated justifications for the purpose of punishment. Thus, as a sentencing philosophy; deterrence refers to prevention of criminal acts by making example of individuals convicted of crimes.[21] The deterrent effects on theories of punishment are to be a lesson for others, threat or example of punishment discourages criminals.[22]

When an offender is punished in imprison, "the intention is to deter the offender from committing further offences, not only during the period of incapacitation but also following his release from confinement."[23]In fact, deterrence is merely one possible method of crime prevention through sentencing. It relies on threats and fears, where as rehabilitation and incapacitation employ different methods of trying to achieve a similar end. It is important to draw the distinction between individuals who need special deterrence and general deterrence.[24] It works on two concepts: Inflicting severe penalties on offenders with a view to deterring them from committing further crimes; and creating a kind of fear in the mind of others by providing adequate penalty.

James A. Inciardi wrote the assertion of a certain judge**, "**the notion of punishment as deterrent is best illustrated in the worlds of an 18th –century judge who reportedly told a defendant at sentencing, you are to be hanged not because you have stolen a sheep but in order that others may not steal sheep."[25]

---

[20] Ibid.
[21] James A.Inciardi, 1984, supra notes 7, p.426.
[22]Sir Rupert Cross (1975), the English Sentencing, 2nd ed. Butterworth London, p. 121.
[23]Andargachew Tesfaye 2004, Supra note 17, p.88-89.
[24] Andrew Ashworth (2005), Sentencing and Criminal Justice, Forth Edition, United Kingdom at the University Press, Cambridge p.75.
[25]James A.Inciardi1984, Supra note 7, p.426.

Criticism: The particular deterrent effect of punishment appears to be great in case of persons with no previous experience of prison … but its effect diminishes in proportion to the number of times a person is sentenced. In addition it fails to deter individuals when they are permanently isolated in life imprisonment or death. On the other hand, the punishment could not have a deterrence effect on both general and particular deterrence for criminals and potential offenders because of the lighten offence and its correspondence punishment.[26]

### 2.1.4 Rehabilitation

Rehabilitation, "for nearly 100 years, between the 1870s and 1970s, the primary rationale for punishing criminal offenders was rehabilitation. In other words, it was an attempt to "correct" the personality and behavior of convicted offenders through educational, vocational, or therapeutic treatment."[27]

From humanistic points of view, the most appealing basis for sentencing and justification for punishment is that future crimes can be prevented by changing the offender"s behavior.[28]

The rehabilitative approach is closely linked with those forms of positivist criminology whose position was:

> *The causes of criminality in individual pathology or individual maladjustment, whether psychiatric, psychological or social whereas deterrence theory regards offenders as a rational and calculating, rehabilitative theory is aimed at those who are regarded as being in need of help and support. One key element in determining those needs a report from an expert –for example, a pre sentences reported by a probation officer or, occasionally, a psychiatric report.*[29]

---

[26] Andargachew Tesfaye 2004, Supra note 17, p.23.

[27] Robert M. Bohm and Keith N. Haley 2007, Supra note 8, p.321, noted that the goal was to return them to society as law abiding citizens, however, the rehabilitating offender was challenged on the grounds that we simply do not know how to correct or cure criminal offenders because of crime are not fully understood. Some critics have suggested that punishment and rehabilitation are incompatible ways of preventing and controlling crimes and that rehabilitation generally cannot be achieved in a prison setting. This criticism, however, has apparently not influenced judges, who continue to send criminal offenders to prison to rehabilitate them.

[28] James A. Inciardi, 1984, supra notes 7, p.426.

[29] Andargachew Tesfaye 2004, Supra note 17, p.82.

Criticism: There are two pitfalls in this theory. First, all individuals may not be freed from their criminal habit through reformative process. Second, some offenders may see reformative methods as an enjoyment. He or she may consider the imprisonment as living in a hostel.[30]

### 2.1.5 Restoration and Victims' Rights

In the last decades, "victims of crime and their survivors have generally been forgotten or neglected in criminal justice."[31]The victims did not get attention that whether their case is properly adjudicated or not. This problem was originated due to the public nature of crimes, the government was considered as the sole institution to frame the criminal charge, present the case before the court of law and give recommendations to the final judgment on behalf of individuals. This was the major thinking of criminal case handling so far. Consequently, judicial proceedings failed to bring together the offenders‟ and the victims‟ in harmony.

On the other hand, the case of restoration was often practiced to civil law; it could help to create smooth relationship between the offender and the victim as well as their families. As the result, the victims and their survivors cease to revenge against the offender and the offenders family. It is a new concept in the criminal law to consider the repentance of the offender that is expressed in action. Besides, the victims and their survivor have a right to get compensation from the wrong doer through reconciliation and negotiation. Thus, the victim‟s and the offender‟s relationship could be reinstated in their former positions through the means of formal and informal justice system.[32]

The global victim‟s rights movement is relatively new phenomenon. The principles of restorative justice have been applied to the study of both criminal and civil sanctions. For example, the institutionalized practice of "written apology" and "letter of forgiveness" is the Japanese criminal justice system that is designed to express remorse and make restoration. By accepting the apology, the victim forgives the offender."In all

[30] James A. Inciardi, Supra note 7, pp.424-426.
[31]Robert M. Bohm and Keith N. Haley 2007, Supra note 8, p.321.
[27] Ibid.

cases of restorative justice, the goal is to restore both the individual parties and their community‟s in the sense of wholeness.[33]

Criticism: Most of the crimes cannot be compensated, especially once the victim has passed away at the crime is committed. The life of the deceased can‟t be returned. As a result, the victims or their relatives‟ and the criminal relationship may not be smoothed like in the previous position. In addition, some crimes can‟t be measured in the exact monetary value such as bodily injury and the value of the deceased‟s life, due to such reasons, victims or their family may not always get fair compensation easily. Therefore, restoration of the victim can‟t be effective in some conditions.[34]

### 2.1.6 Inclusive Theory

According to Austin W. Scott, Jr., "for many years most literature on the subject of punishment was devoted to advocacy of a particular theory to the exclusion of others."[35] Nevertheless, all the above theories have their own advantageous and limitations. There is no a single theory that is self sufficient and could stand alone. As a result, "currently, it is held that the inclusive theory (also known as integrated or unified theory), that is using together, can be the best justification for punishment or perfect criminal system."[36]

There is another difficult problem that could be mentioned, "Namely, what the priority and relationship of this several aims should be? This problem must be confronted, as it is readily apparent that the various theories tend to conflict with one another at several points."[37]The theories like retribution, deterrence, and incapacitation focus on unpleasant experience against the offender but the chance of rehabilitations are often preceded by harsh punishment. On the other hand, rehabilitation theory sticks on the

[33] Trance D. Miethe and Hong Lu, Supra note 1, p.23.
[34] Ibid.
[35] Wayne R. LaFave and Austin W. Scott, Jr. (1986), Criminal Law, Second Edition, West Publishing Co. St. Paul, Minn., p.27.
[36] Dejene Girma, 2013, supra note10, p.154.
[37] Wayne R. LaFave and Austin W. Scott, Jr. (1986), Supra note 35, p.27.

change of the offender"s behavior either in short or long term reformative imprisonment.[38]

According to Dejene Girma," the legislature can, while making law, stipulate the punishment should be primarily retributive or deterrent or rehabilitate or disabling, as the case may be; but in the absence of the legislative answer to the question, judge should give priority to any of them on case by case base."[39]The above Author also mentions examples and claims that, "if the criminal is young person, rehabilitation should be given predominance over the other theories of punishment. On the other hand, if the criminal is a recidivist, deterrence or incapacitation will be given priority."[40]

In overall, inclusive theory is sound in many ways; it gives validity for each purpose of punishment and the objective of punishment can be accomplished through different means depend on the gravity of offenses and the act of offenders. On the other hand, a single theory alone could not bring significant change in crime prevention.

## 2.2 Objective and Purpose of Ethiopian Criminal Law

Let us evaluate the Federal Criminal Code (2004) in line with the aforementioned theories. The object and purpose of the Criminal Code of Ethiopia are stated as follows:

> *The purpose of the Criminal Code of the Federal Democratic Republic of Ethiopia is to ensure order, peace and security of the State, its peoples, and inhabitants for the public good.*
>
> *It aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective, by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others, by providing for their reform and measures to prevent the commission of further crimes.*[41]

From this provision, we can draw a conclusion that the purpose of Ethiopian criminal law is in line with all theories except retribution. Prevention of crime, deterrence, incapacitation, and rehabilitation are clearly envisaged in the purpose the Criminal Code.

---

[38] Ibid.
[39] Dejene Girma,2013, Supra note 10, p.155.
[40]Ibid.
[41] Art.1of the FDRE Criminal Code, 2004.

First, the criminal law gives a warning notice of punishable crimes to the offenders and potential criminals. Second, incapacitation is one of the purposes of criminal law that enable to isolate the offenders from the society either temporarily or permanently. Third, rehabilitation of inmates by giving education, vocational training and install a parole system either through short term or long term imprisonment except death penalty to return him or her to the society.

Other purposes are related to the restoration of the victim"s right that accredit for general extenuating circumstance in the current criminal code;"[42] whereas the purpose of retribution theory is outdated in Ethiopian legal system.[43]

## 2.3 Types of Punishment

Punishment can be imposed against the wrong doer to accomplish the objectives of the criminal law. The punishment may vary in different legal systems from time to time. In this regard Dejene Girma wrote that, "Many years ago, death penalty was executed in England by (hanging, beheading), drawn [dragging along the ground by the trail of a horse], cropping [clipping of ears], blinding, amputations of the hand, branding [burning with heated iron to make scar on the body of the criminal], whipping, pillory, fine, and imprisonment were imposed".[44]

In Ethiopia some of these harsh and inhuman punishments were used. For instance, flogging of the offender was recognized as a punishment in the 1957 Penal Code of Ethiopia.[45] However, this kind of sub human punishment is totally eradicated from the FDRE criminal code.[46]

In general, there are three types of punishment that are included in the criminal law of Ethiopia. First, principal punishments consist of pecuniary penalties, compulsory la-

[42] Art.82/1(e) of the FDRE Criminal Code, 2004.
[43] Art.87 of the FDRE Criminal Code, 2004.
[44] Dejene Girma, 2013, Supra note 10, pp.159-160.
[45] Art. 120 and172 of the Penal Code of the Empire of Ethiopia, 1957.
[46] Art.28 of FDRE Constitution, 1995; Art.87 of the FDRE Criminal Code, 2004.

bor, penalties entailing loss of liberty, and death penalty. Second, secondary punishments include caution, reprimand, admonishment, apology and deprivation of rights. Third, special measures are applicable for adults in special cases; and there are measures and penalties that are applicable only to young persons.[47]

Principal punishments are usually accompanied by Secondary punishments but special measures could be depending on the required changes in the individual‟s behavior or mental status or health conditions. The decision of a judge is not a decisive factor in special measures rather than the progressive improvement of inmate‟s health condition and behavioral change is the determinant factor to release him or her from rehabilitation center. However, the special measures shall not be undertaking in this research undertaking because the main target of this paper is to assess the consistency, fairness, proportionality, and predictability of sentencing.

## 2.4 Sentencing Entailing Loss of Liberty

Sentences can be classified into indeterminate, determinate, definite, and mandatory.
**I. Indeterminate Sentence**: A sentence of incarceration having a fixed minimum and a fixed maximum term of confinement, rather than a definite period.[48]The indeterminate sentence is an indefinite sentence of „not less than‟ and „not more than‟ a certain number of years. The exact term to be served is determined by parole authorities within the minimum and maximum limits set by court or by statute. However, according to some criminologists indeterminate sentence does not indicate any maximum or minimum sentence.[49]

The philosophy behind indicates that sentence should be based on the correctional model of punishment. However, the assumption is that the sentence should meet the needs of the offender. It is the responsibility of the paroling authorities to observe the inmate in prison. Once the rehabilitation process has been initiated, the nature and ex-

[47] Art.90-165 of the FDRE Criminal Code, 2004.
[48] James A.In ciardi,1984,Supra note 7, p.429.
[49]Andargachew Tesfaye, 2004, supra note17, p.92.

tent of rehabilitation is assessed, and if the evidence warrants that he has been reformed he should be released.[50]

Professor Andargachew Tesfaye argues that the main advantageous of indeterminate sentences is that they allow "effective" treatment to rectify socio-psychological problems, while the disadvantageous of indeterminate sentences is since the causes of crime and criminal behavior are not readily understood, they cannot be dealt with under the premise of indeterminate sentencing.[51]

**II. Determinate Sentence:** It is a sentence of incarceration for a fixed period of time, but with possible reduction by parole.[52]The concern over the rehabilitative goal of the indeterminate sentence has generated considerable interest and support for the determinate sentence on the assumption of deserved punishment. In determinate sentence, the offender is given a specified length of time to serve rather than a range of years or months.[53]The prisoner is automatically released at the end of the specified period of time.[54]

**III. Definite Sentence**: is a sentence of incarceration having a fixed period of time with no reduction by parole. This type of sentence is once fixed by the judge it should be completed in jail. Similarly, the reformative behavior of the criminals in the prison center is not taken into account by the parole officers. Due to this reason, the offender has a duty bound to finish the sentence in the prison. For example, the inmate may commit further crimes while serving the punishment in the prison center may not be released by parole.[55]

**Iv. Mandatory Minimum Sentence**: is a statutory requirement that a certain penalty shall be set and carried out in all cases upon conviction for a specified offences or series of offences. The mandatory sentence is effective for the minimum period and this

---

[50]Id.,p.93
[51]Ibid.
[52]James A.Inciardi, supra note 7, p.429.
[53]Andargachew Tesfaye, 2004, supra note 17, p.94.
[54]Ibid.
[55] James A.Inciardi, supra note 7, p.430.

may help to avoid unwarranted disparities of parole among inmates.[56]Sometimes the legislature may direct to execute the crime of punishment notwithstanding the good characteristics of the offender in the prison."[57]

The Ethiopian legal system profoundly follows determinate sentences because the criminal law in its special part specified the range of sentence; likewise the judge may decide a fixed period sentence against the perpetrator of the crime. However, this person may be released upon the parole officer reformative reports after the inmate completed two third of imprisonment. [58]

Imprisonment in Ethiopia is classified into two major parts. These are simple imprisonment and rigorous imprisonment. Simple imprisonment is a sentence applicable for less serious crimes that are usually not as much of endanger the society. Without prejudice to conditional release, simple imprisonment extend from ten days to three years and sometimes this may extend up to five years depending on the gravity of the crimes.[59]The second type of imprisonment is rigorous imprisonment; it is applicable for very serious crimes that highly endanger to the society without prejudice to conditional release, the punishment extends from one year to twenty five years but where it is expressly provided by law it may extend to life imprisonment.[60]

## 2.5 Sentencing in Civil Law and Common Law Legal Systems

To understand the criminal sentencing system of Ethiopia, we should explore two traditional legal system approaches in the world these are known as common law and civil law legal system. The tradition of common law is based on precedent judgments. A number of judicial decisions accumulate on a particular kind of dispute; general rules or precedents emerge and become guidelines for judges to decide similar cases in the future. For example, the Republic of Ireland does not currently have sentencing guidelines or a sentencing guidelines body. The Irish Constitution provides for the independence of the judiciary and, therefore, there is significant judicial discretion in

[56] Id., p.431.
[57] James A.Inciardi, supra note 7, p.314.
[58] Art.202 of the FDRE Criminal Code, 2004.
[59] Art.106 of the FDRE Criminal Code, 2004.
[60] Art.108 of the FDRE Criminal Code, 2004.

Irish Criminal law with regards to sentencing matters. However, there are some exceptions to judicial discretion sentencing such as a conviction for murder where the penalty is a mandatory life sentence. [61]

Canada is also categorized under the common law countries and it does not have sentencing guidelines or a sentencing administrative body; however, the Canadian Criminal Code makes provision for principles and purposes of sentencing and establishes mandatory minimum sentences of imprisonment. Judges do not have discretion to reduce sentencing in cases where the offence carries a mandatory minimum sentence.[62]

Criminal sentencing in the United State of America has undergone substantial changes during the past several decades. A major policy was shifted from non structured sentencing to structure sentencing. These are a relatively new reform effort to encourage judges to take specific elements into account in a fair and consistent way.[63]When Judges are deciding whether a convicted offender should be imprisoned, and if so, for what length of time? A common concern of state policymakers for limiting sentencing disparity under indeterminate sentencing is a fundamental rationale for the adoption of guidelines.[64]

In contrast, in the civil law countries, codification has played a vital role in the development of criminal law. The basic feature of a civil law legal system is the presence of a written criminal code. The code is a systematic and comprehensive compilation of legal rules and principles. Although the contents of the criminal codes may vary widely from country to country, all codes are intended as a blueprint of social regulation that attempts to guide individuals. For example, the Germany criminal law is sets out provisions with a broad range of sentences for particular offences. In France, the Penal Code divides criminal offences into three categories according to their seriousness: felonies, misdemeanors and petty offences. The penalty for a felony offence is a minimum period of five years imprisonment with a maximum life term.[65]

---

[61]Fiona O'Connell, (2011), Comparative research in to sentencing guidelines mechanisms, Northern Ireland Assembly, P.34.
[62]Ibid.
[63] Brian J. Ostrom, Charles W. Ostrom and et al,2006, Supra note 3,p.1
[64] Ibid.
[65]Fiona O'Connell, supra note 61, P.33.

Similarly in the Netherlands, the Penal Code enables judges to exercise discretion in sentencing as there are few limits contained within the Code on the type or severity of sanctions. The Code sets out a statutory minimum sentence of imprisonment of one day which applies to all crimes irrespective of seriousness. The statutory maximum prison term is 15 years which can be extended to 20 years in murder cases. Life sentences can be imposed for murder and in some manslaughter cases.[66]

When we look into the case of Ethiopia, the development of criminal law had gone through many stages and reached to the present time. This development has its own peculiarities and its development is highly influenced by the practical situation of the historical periods. As the practice of the civil law legal system, the criminal law of Ethiopia is accomplished by written laws. Those written and codified criminal legislation are Penal Codes of 1930, 1957 and 2004.

The criminal laws of Ethiopia were changed or amended from time to time in order to adjust themselves with modernization and coup up with the society"s development. The sentencing was part and parcel of each criminal code. Nevertheless, we should not deny the fact that some provisions in the special conditions of young offenders and partial responsible persons can be treated with indeterminate sentencing.[67] For example, art.132 (1) of the criminal code 2004 states that treatment and confinement shall be of indefinite duration but the court shall review its decision every two years. According to opinion of experts, when the offender exhibits a good progress the reason for the measure disappears through time. Therefore, the administrative authority shall, after having referred the matter to the court and upon its decision, put an end to the measure ordered.

In short, the Ethiopian criminal legal system predominantly adopts determinate sentencing by stating the minimum and maximum sentencing that is set by the legislative and the judge can choose either the period of imprisonment or the amount of fine or

[66] Id., P.34.
[67] Art.129-165 of FDRE Criminal Code, 2004.

both against the defendant.[68] For example, Art. 407(3) Abuse of power, in the current criminal code reads: Where two or more of circumstances mentioned in sub article (2) "i.e. where the purpose of the breach of responsibility or duty solicited, the amount of the money or gifts received in consideration, the official capacity or powers of the person corrupted or the extent of the harm to private, public or state interests renders the case of particular gravity" are found concurrently.

The above article grants a wide discretion for a judge to pick a sentence in the provision starting from the minimum ten years to the maximum twenty five years of rigorous imprisonment. In addition, the minimum from ten ETB to the maximum one hundred thousand ETB fine could be imposed. Therefore, the departure and the destination points of sentencing rely on the statute of the legislature.

Sentencing is an action that is made by the judge after the verdict of the defendant. Nevertheless, sentencing cannot be separated from the parent legislative of the criminal law. Therefore, law makers were considering that sentencing is part of the criminal law provisions. As the result, sentencing may get more weight like the criminal law of Ethiopia than the criminal procedure under the FDRE constitution.[69] For instance, art.22 (1)(2) of the FDRE Constitution clearly stipulates that unless it is advantages to the accused or the convicted person, no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. Nor shall a heavier penalty be imposed on any person than the one that was applicable at the time when the criminal offence was committed.[70]Which is reflected to no crime can be committed; no punishment can be imposed without having been prescribed by a previous penal law is a basic principle of the continental European legal thinking.[71]

---

[68]Meron Haile Selassie (2008), Disparity of Sentence in Ethiopia Courts with Special Emphasis on Sentencing Rape, Offenders, pp.29-40.

[69] In the case of Ato Siye Abreha Vs Public prosecutor in 2001, the issue of bail right was raised in the Federal Supreme Court. The defendant lawyer alleged that in the time of the suspect committed the crime, it was bail able in the 1961 of the criminal procedure law, but later on procedural law of anti-corruption proclamation was enacted in the condition of after the suspect arrested. The defendant"s private lawyer strongly argued that the suspect should be released on bail. The lion share of the criminal justice, which was the court, stated that non retrospective is availed in the FDRE constitution for only criminal law not includes the procedural law. As the result, the bail was denied.

[70] Art.22 of the FDRE Criminal Law and Art.2 (1-5) of the FDRE Criminal Code 2004.

[71]Mrs. Glory Nirmala K. and Ato Serkaddis Zegeye (2009), Criminal law I, teaching material, Prepared under the Sponsorship of the Justice and Legal System Research Institute unpublished, p.12.

## 2.6 The Process of Sentencing

Sentencing is generally a collective decision making process that involves recommendations by the prosecutor, the defense attorney, the judge, and sometimes the presence investigator. In jurisdictions where sentence bargaining is part of the plea, negotiation process, the judge almost in variability imposes what has been agreed on by the prosecution and the defense.[72]

In the federal system and the majority of sentencing a presentence investigation may be conducted prior to actual sentencing. This is undertaken by the court‟s probation agency or presentence office. The resulting report is a summary of the defendant‟s present offense, previous criminal record, family situation, neighborhood, school and educational history, employment record, physical and mental health, habit associates and group memberships.[73]

The reports may also contain comments on the defendant‟s remorse and recommendations for sentencing by the victim, the prosecutor and the officer who conducted the investigation.[74]The presence reports vary in detail and length depending on the resources and practices of the jurisdiction. Although presentence investigations are not mandatory in all jurisdictions, it is generally agreed that their value goes well beyond their use in determining appropriate sentences.[75]
For example:

- They aid probation and parole officers in their supervision of offenders.
- They aid correctional personnel in their classification, treatment and release programs.
- They give parole board‟s useful information for release decision making.[76]

After the presence report has been submitted to the judge, a sentencing hearing will be held. In most jurisdiction of common law legal tradition system, a convicted offender

[72] James A.Inciardi,supra note 7, p.437.
[73] Id., p. 438.
[74] Ibid.
[75] Ibid.
[76] Ibid.

has the right to address about himself prior to impose the sentence in the court known as allocation.[77]This practice is available so that the court can identify the defendant as guilty or not and this can be given the opportunity to plead for mercy or a pardon, move for an arrest of judgment or indicate why judgment ought not to be pronounced.[78]

The specific matters that a defendant might discuss at the allocation are limited and would not include attempts to reopen the question of guilt. Rather, among the claims that have been included in allocations are that the defendant is not the person against whom, there was a finding of guilt, and in the case of a women that the punishment should be adjusted or deferred because of a possible pregnancy( specially in the case of death sentence).[79]

Now, let us discuss the case of the Ethiopian criminal sentencing process in the following sequential proceedings. Where the accused is found guilty, the court shall ask the prosecutor whether he has anything to say regarding the sentence by way of aggravation or mitigation.[80]If the offence is aggravated by reason of previous conviction, the public prosecutors have to neither include such facts in the charge[81]nor enter in the record of the preliminary inquiry until he has been convicted. [82]It is therefore, after the conviction stage of the procedure that the public prosecutor could reveal to the court aggravating grounds such as previous conviction(s) of the accused so that the court could take this fact into consideration in the determination of the sentence for aggravation.[83]

The public prosecutor who has mitigated grounds shall inform to the court at this time.[84]Once the public prosecutor is given the chance to mention aggravating or mitigating grounds to the court the same chance should be given to the accused so that he could reply and mention mitigating grounds, if any. Then the court may demand the

---

[77] Id., p.439.
[78] Ibid.
[79]Id., p.440.
[80]Art 149/3/ of the Criminal Procedure Code of the Empire of Ethiopia, 1961.
[81] Art.114 (1) of the Criminal Procedure Code of the Empire of Ethiopia, 1961.
[82] Art.138 (2) of the Criminal Procedure Code of the Empire of Ethiopia, 1961.
[83] Art.114 (2) of the Criminal Procedure Code of the Empire of Ethiopia, 1961.
[84] Art.149 (3), 114 (2) of the Criminal Procedure Code of the Empire of Ethiopia, 1961.

production of evidences to prove these grounds. In this step again the accused or his advocate are entitled to rebut.[85]In practice most of our courts did not ask the production of prove or evidences on mitigating/aggravating ground mentioned by the parties.[86]

After the case has been concluded in the final stage and before the determination of the penalty (sentence), the public prosecutor may, at his option address the court on the questions of law and fact that are involved in the case. Then the accused or his advocate shall address the court, on questions of law and fact. He shall always have the last word; however, where there are more than one accused persons, the presiding judge shall decide in which order the accused or their advocate shall address the court.[87]

The court finally enters judgment and pass sentence after the final address of the parties. The sentence contains the record of articles of the law under which the sentence has been decided.[88] The judgment shall contain summary of facts on which the parties have been disputing, the evidence produced based on those facts, the reasons for accepting or rejecting evidence and should contain the provisions of the law under on which the conviction is made. This judgment shall be dated and signed by the judge delivering it.[89]After the court delivers its judgment the prosecutor and the accused shall be informed that they have the right to appeal.[90]

## 2.7 Disparities in Sentencing

Sentencing disparities have been one of the major problems in criminal justice systems. The basis of the difficulty is in three fold :( 1) the structure of indeterminate sentencing guidelines ;( 2) the discretionary powers of judges in sentencing; and (3)

---

[85]Art. 149(4) of the Criminal Procedure Code of the Empire of Ethiopia, 1961.
[86] Aderajew Teklu and Kedir Mohamed (2009),Ethiopian Criminal Procedure, Teaching Material, Sponsored by Justice and Legal System Research Institute, Addis Ababa,Unpublished,p.275.
[87] Art.148 (1-3) of the Criminal Procedure Code of the Empire of Ethiopia, 1961.
[88] Art.149 (5) of the Criminal Procedure Code of the Empire of Ethiopia, 1961.
[89] Art.149 (1) of the Criminal Procedure Code of the Empire of Ethiopia, 1961.
[90] Art.149 (7) of the Criminal Procedure Code of the Empire of Ethiopia, 1961.

the mechanics of plea bargaining,[91]the statutory between minimum and maximum terms of imprisonment combined with fines, probation or other alternatives to create a number of sentencing possibilities for a specific crime in sentencing; sanctions can vary according to the jurisdiction, the community and the punishment philosophy of particular judge. The dynamic of plea bargaining enable various defendants accused of the same crime to be convicted and sentenced differently. These problems exist both within the same court, indifferent benches, and across jurisdictions.[92]

Sentencing disparity is divergence in the length and types of sentences imposed on different individuals for the same crime or for crimes of comparable seriousness when no reasonable justification can be discerned.[93]Sentencing disparities have also serious problems in the criminal justice system. Disparities in sentencing among judges are ascribed to various factors including the ones listed here under:(1) conflicting goals of criminal justice;(2)the fact that judges are a product of different background and have different social values; (3) the administrative pressure on the judges and;(4) the influence of community values on the system.[94]

Andargachew Tesfaye on his book explained the statement of Inciardi that the structure of indeterminate sentencing guidelines and the mechanics of plea- bargaining add to the problem of sentencing disparity. Generally, the experiences of some countries indicated that the variance of sentencing have seen on females, youth offenders and the dominant group of the population (e.g. Whites), as compared to males, adult offenders, and minorities (e.g. blacks) respectively.[95]

Andargachew Tesfaye argued that those differences reflect the relationship between the statues and offense rather than the prejudices of judges. Those who support this argument indicate lower recidivism and lower serious Crimes among those referred to as favored groups could get the lesser punishment. Therefore, if one eliminates these complicating factors, sentencing severity will be reduced to significant level.[96]

---

[91] James A.Inciardi,1984,Supra note 7, p. 440.
[92] Id., p.433.
[93]Andargachew Tesfaye,2004,Supra note 17, p.94.
[94]Id., pp.94-95
[95]Andargachew Tesfaye,2004,supra note 17, p.95.
[96]Ibid.

As Andargachew Tesfaye reviewed on his book that Johnson‟s thinks disparity arises due to the conflict between different expectations in the correctional process as follow:

> *Sentencing disparities reflect the problem of reconciling individualization and uniformity. Individualization requires dealing with the offender in terms of his personality, his experience, and the nature of his offence. Therefore, similarity in offense is only one aspect of the treatment problem. On the other hand, goal of uniformity in sentencing arises from resentment of offenders, aggravated disciplinary problems in prison, and undermine rehabilitation program when claims of individualized sentences conceal capricious or erratic sentencing decisions*.[97]

Another delicate question in sentencing is whether or not defendants who plead guilty should be awarded a milder penalty compared to those defendants are found guilty upon evidence. Those who plead guilty are awarded milder penalty because they minimize the court‟s work load. It is also believed that it encourages defendants to cooperate with the police in the investigation process and helps in the recruitment of police informants.[98]Besides, legislatures could also be the causes of sentencing disparities by specifying penalties such as a fines and/or length of incarcerations for the violation of various laws they enacted.[99]

The outcomes of disparities in sentencing can be affected not only for convicted individuals but also for the court and correctional systems and the entire administration of justice. Variations in sentencing “make a mockery of the principle of equitable administration of the criminal law, thus calling in to question the very philosophy of justice”. Sentencing disparities have also rebounded effect on plea-bargaining and court scheduling. on the one hand, defendants may have option for negotiated plea rather than face trial before a judge known to be severe (plea bargaining is not provided for in the Ethiopian penal code but it has been existed in the current criminal justice policy, anti-corruption proclamation; Prisoners compare their sentences, and an inmate who believes that he/she received unfair sentences, or was a victim of judicial prejudice, often becomes hostile, resistant to correctional treatment and discipline and even

[97]Ibid.
[98]Ibid.
[99]Ibid.

riot prone. The image of the courts and of the process of justice is even further designated.[100]

In theory, we can get rid of disparity if prosecutors always present their charges fully; never bargain away counts or facts that could be proven; and if judges always strictly apply the guidelines based on facts and departed only when they come across extraordinary cases.[101]

In practice major reforms can be dictated from above if they result in outcomes that appear impracticable or unfair to the persons asked to implement them. For the goal of uniformity to be more fully achieved, judges should accept the policies of congress and the commission, even if they conflict with their own philosophy.[102]Nevertheless, in U.S.A., the congress and the commission should also inform those policies with the experience of prosecutors and judges who know first-hand the varying circumstances of crimes and the individual characteristics of offenders.[103]

## 2.8 The U.S.A. and Ethiopian Sentencing Guidelines: a Comparative Overview

Sentencing guideline is one of the most significant instruments of controlling mechanisms of unwarranted sentencing disparities. Nowadays, common law legal system countries are getting benefit from the sentencing guidelines. For example, the United States of America has developed the structured sentence both at the federal level and at the state level. Although Ethiopia has predominately influenced by Civil law legal system, it has started to implement the sentencing guidelines like common law countries for the last three and half years. As a result, Ethiopia has advantageous on adopted sentencing guidelines in addition to the codified laws. The following sub sections show the assessment of sentencing guidelines in the United States of America and Ethiopia in a comparative way.

---

[100]Andargachew Tesfaye,2004,Supra note 17,p.96.
[101] Paul J. Hofer, Kevin R. Blackwell et.al, the Journal of Criminal Law and Criminology,1999 Vol.90 No.1,p.306.
[102] Ibid.
[103] Ibid.

### 2.8.1 Basic Criteria's of Sentencing Guidelines

The criteria of sentencing guidelines have not been seriously considered so far. The basic criteria of sentencing guidelines should be known to its fundamental elements because it helps to get a lesson from other states. Meron based on the work of Michael and Don Cott-Fredson reviewed that there should be nine aspects of a meaningful sentencing guideline system.[104]Those are (1) the guidelines must provide an explicit general policy to guide decisions in individual cases;(2) they must employ explicit weights and criteria;(3)they must employee charts and a grid;(4) they must structure but not eliminate discretion; (5) judges must provide reasons for any departures;(6) there must be a monitoring and feedback system;(7) authorities must have the power to modify the guidelines whenever circumstances make modification desirable;(8) there must be some allowance for modifying the general policy, "in response to experience, result learning and to social change" and (9)the guidelines must be open to the public.[105]

The system was generally developed based on order statutory provisions and on study of past sentencing practices. The above author similarly suggests that sentencing guidelines is the best mechanism for Ethiopian courts for the following basic reasons. First, "sentencing guidelines creates uniformity in decisions not only in a specific bench but also uniformity in decisions in the whole country".[106]Second, "time can be saved and not expected to meet in every single case". Thirdly, "sentencing guideline limits judge"s discretion in a reasonable manner so that it helps to ensure transparency, certainty and fairness in the criminal justice". Finally, "rationality and proportionality of punishment is also attained".[107]On the other hand, Sentencing guidelines of the United States of America is engulfing all the criteria enumerated in the above discussion. However, some of the criteria"s are not functional in Ethiopia. These include the use of charts and a grid; employment of monitoring and feedback system; and making the guidelines open to the public.

---

[104] Meron Haile Selassie (2008), Supra note 68, p.54.
[105]Id., pp.53-54.
[106]Id., p.53.
[107]Id., P.55.

Monitoring, feedback system and making the guidelines open to the public are the temporary problems in the Ethiopian context because when the responsible institution is assigned, they will be functional. However, to set up grid in the Federal Supreme Court sentencing guidelines are impossible because the grid relies on the level of offence in vertical, and the criminal histories in horizontal. In other words, unlike the United State of America sentencing guidelines, the Ethiopian criminal recording system is not done the criminal history in horizontally. In some cases, the habitual criminals are punishable to the maximum penalty that was specified for the crime in special part of the criminal law; in other situation, the recidivist is punishable to the extent of maximum penalty specified for the crime in the general part of the criminal law.

This problem emanated from the statue that habitual offenders are considered as recidivist and the punishment against them is often too harsh. The habitual offenders in Ethiopia usually do not have more than three records. This is because our recording system is poor, not properly organized and dependent on manual records of figure prints. There are no digital recording systems to retrieval the data as quick as the user needs. Almost all courts adjudicate each criminal case as the first time offenders. As a result, aggravating sentencing against fresh criminal is common and aggravating sentencing against habitual offender is rare. In general, having horizontal categories in criminal history along the sentencing guidelines of Ethiopia is insignificant.

### 2.8.2 Structural Reform of the Sentencing Guidelines

Structural reform has seen in the United States sentencing guidelines than in the Ethiopian sentencing guidelines. In this section, first we examine the United States sentencing guidelines and next we investigate the Ethiopian sentencing guidelines. According to the U.S.A. sentencing, "indeterminate sentencing allows to judges considerable discretion with certain parameters. Determinate sentencing narrows the sentencing discretion that was given to the judges and relies on specific predetermined standards, often established by a sentencing commission".[108]

[108]Lawrence V. Brinkley (2003), Mandatory Minimum Sentencing, Nova Science Publishers, inc.p.3.

Between 1935 and 1975, the federal government of United State of America and the comprised states had indeterminate sentencing systems. Once viewed as a major reform designed to individualize the treatment of offenders and facilitate, rehabilitation, indeterminate sentencing came under attack as it was "perceived as promoting unwarranted disparity in sentences as well as uncertainty of punishment".[109]Changing attitudes about rehabilitating criminals, along with fears of a ring rate of violent crime, led to "efforts to revise sentencing laws in most jurisdictions throughout the country".[110]

Beginning in the mid 1970"s many states and local jurisdictions turned to determinate sentencing. Some policy makers favored determinate sentencing as a means of "fighting crime and getting "tough" on criminals while others saw it as a means to protect the rights of convicted offenders affected by sentencing disparities under the former indeterminate sentencing system".[111]The switch from indeterminate to determinate sentencing occurred on the federal level with "the enactment of the comprehensive crime control act of 1984."This act created a U.S.A. sentencing commission and charged it with "promulgating guidelines for federal sentencing, and provided for the phasing out of the U.S.A. parole commission."[112]

Meanwhile, "congress passed a number of new mandatory minimum sentencing provisions directed at drug and firearm related crimes".[113] Sentencing guidelines have been set at the federal level since 1987.However, "there is still no consensus about the extent to which the imposition of mandatory minimum sentencing the commission"s main goal of eliminating unwarranted disparity in sentencing."[114]

Critics argue that the minimum required by congress become the base sentence for certain offences, thus "skewing equitable sentencing and increasing prosecutorial discretion at the expense of the judiciary".[115]Sometimes, "mandatory minimum sentencing laws are so often inconsistently and unjustly applied. Conversely, if practitioners

[109]Ibid.
[110]Id., p.4.
[111]Ibid.
[112]Ibid.
[113]Ibid.
[114]Ibid.
[115]Id., p.5.

understand the logic and underling principles of a rule, they are more likely to apply it constantly and fairly even if they disagree with it."[116]

Thus, the Federal Sentencing Guidelines of United State of America used as good source of Ethiopian sentencing guidelines. In addition, the sentencing commission of U.S.A. should deal with the cases and provisionally adopt an agreed rational and set of purposes.[117]Setting the general purposes of sentencing is easy. Few people would "disagree that primary purposes include crime prevention and reduction, the affirmation of widely held public moral values and the imposition of deserved punishments".[118]

Unlike the case of the U.S.A. the Ethiopian sentencing guidelines have not made a shift from indeterminate to determinate sentencing because Ethiopia has already determinate sentence since 1930.However, the discretion power of the determinate sentencing was too wide to fix the actual sentence. The sentencing guidelines have been revised once since in 2010.The mandatory minimum sentencing is not an issue in the sentencing guidelines of Ethiopia because it was promulgated in the statute.[119]

### 2.8.3 Grading of Offenses and Its Implication

Grading of offence is another critical issue in the sentencing guidelines. Who is the pertinent authority of grading offences? The propagators of civil law tradition approach are arguing that grading offences and the corresponding punishment should be predetermined by the legislature. Others argued that sentencing guidelines should be left to the judicial commission, sentencing council or judges to determine sentencing.
The system of discretion penalties were applied in the pre-revolutionary law in France. Penalty was not determined by the law. Judges establishes them taking into account the particular circumstances under which the offenses were committed and the personality of the offender.[120]This system would allow penalties to be fitted to the guilt of the offender, to the possibilities of this reform or and to the needs of "social

---

[116] Sue Rex Michael Tonry (2002), Reform and Punishment, the Future of Sentencing Willan, p.89.
[117] Ibid.
[118] Ibid.
[119] Art.179 (a-f) of the criminal code, 2004.
[120] Ibid.

rehabilitation". On the other hand, it has disadvantage of tending towards the arbitrary and of weakling the intimidation valve of the penalty.[121]

Let us see the system of fixed penalties adopted by the legislature: It was introduced during the period of the French Revolution. In this period the legislative determination of penalty came to be applied to the infraction without any possible modification designed to fit the personality of the offender.[122]This system has the advantage of being strongly deterrent and therefore maintains the full intimidation value of the penalty. It has the demerit of being unjust and even ineffectual by not allowing the penalty to be fitted to the offense committed by the offender and his chances of reform.[123]

Modern penal law has endeavored to borrow from the system of discretion penalties adopted by the legislature; and the system of fixed penalties adopted by the legislature; thus the penalty is in principle established by the legislatures but individualized significantly in its application by the judge or the executive to the specific offender. This allows for the successive participation of the legislator, the judge and the administrative.[124]

How the modern law controls the sentencing disparities is the critical issue in criminal sentencing. These were discussed by Steven Lowenstein as: First, should the legislature prescribe a single definite and unvarying form of treatment for each type of offence? Two types of considerations seem to underlie this judgment. These are the kind of thing he did and the kind of person he is."[125]The second question raised and answered by Steven Lowenstein was, should the legislature fix the maximum punish-

---

[121] Ibid.
[122] Ibid.
[123] Ibid.
[124]Ibid.
[125] See Steven Lowenstein emphasized on P.314 that the first is the need of making the treatment fit the crime. Statutory definitions of offences are, of necessity, highly general categories covering a host of variant circumstances which are relevant to the blame worthiness of particular crimes. All the circumstances which are relevant in a particular case cannot be known until the case has been tried. The second type of consideration is the need of making the treatment fit the criminal so as to take into account not only the kind of thing he did but the king of person he is. Only in this way can room be allowed for the effective play, on the basis of individualized judgment, of the criminal law"s subordinate aims of reforming offenders or of disabling them where a special period of disablement seems to be needed. Both types of considerations indicate that discretion should be left to trial courts or correctional authorities, with respect both to the type of treatment-fine, imprisonment, probation, or the like and to its extent or duration.

ment, or the maximum severity of the treatment authorized, for particular types of crimes? The basic principles of liberty, as well as the logic of the aims of the criminal law dictate that it should.[126]

The third question that was raised and investigated by Steven Lowenstein is: should the legislature prescribed the minimum punishment, or the severity of treatment to be meted out, for the particular crime? The problem here is to make sure that society does not depreciate the gravity of its own judgments of condemnation through imposition by sentencing judges of disproportionately trivial penalties. Yet, the virtues of individualization have their claims, too. Perhaps a suspended prison sentence with probation may be the best form of treatment even for a convicted murderer, as it certainly may be for man slaughterer. [127]

The fourth question that was raised and discussed by Steven Lowenstein is: should grading of sentencing be proper? The traditional criminal law recognizes different grades of offences such as felony and misdemeanor, and modern statutes recognized different degrees within the grades. If the criminal law is concerned centrally with reforming criminals, this would scarcely be appropriate: a confirmed petty thief may have much greater need of reformation than a once-in-a life time man slaughterer.[128]

Fifth, he also raised the question that, how far up or down the scale of possible severity or leniency of treatment should the whole array be moved? Are they comparatively

---

[126] See Steven Lowenstein, 1965, on P.314 stated that men should not be put to death or imprisoned for a crime unless the legislature has sanctioned the penalty of death or imprisonment for that crime. Even with respect to penalties of an authorized type, the maximum of the permitted fine or term of imprisonment should be fixed by law. Only in this way can the integrity of the legislative‟s scheme of graduation in some fashion to the degree of blame worthiness of defendants‟ conduct be maintained. Only in this way can room be allowed for the beneficent operation, of theories of reformation, while shutting the door to their tendencies toward cruelty.

[127] Sue Rex Michael Tonry, Supra note 116, p. 314.

[128] See Steven Lowenstein, P.313 gave high attention as " If the thesis of this paper is accepted, however, it allows that grading is not only proper, but essential that the legislature is the appropriate institution to do the grading: that the grading should be done with primary regard for the relative blame worthiness of offenses( a factor which, of course, will take into account the relative extent of harm characteristically done or threatened to individuals and thus, to the social order by each type of offense); that the grading should be determinative severity of the treatment authorized for ach offense."

lenient ones? Here is a question of public policy which is pre-eminently for the legislature. On this question, its cardinal aims should be it cardinal guide.[129]

Steven Lowenstein, also in his book presented the Bentham‟s work wrote that punishment may be too small or too great; and there are reasons for not making them too small, as well as not making them too great. The terms minimum and maximum may serve to mark the two extremes.[130]With a view to make out the limits of punishment on the side of the first of these extremes, we may lay it down as a rule:

> *1. The value of punishment must not be less in any case than what is sufficient to outweigh that of the profit, but every advantage, real or apparent, which has operated as a motive to the commission of the crime.*
> *2. When two offences come in competition, the punishment for the quarter offence must be sufficient to induce a man to prefer the less.*
> *3. The punishment should be adjusted in such manner to each particular offence that for every part of the mischief there may be a motive to restrain the offender from giving birth to it.*
> *4. The punishment ought in no case to be more than what is necessary to bring in to conformity with the rules here given.*
> *5. That the value of the punishment may outweigh the profit of the offence, it must be increased in point of magnitude, in proportionate as it falls short in point of certainty.*
> *6. Punishment must be further increased in point of magnitude, in proportion as it falls short in point of proximity.*[131]

The profit of a crime is commonly more certain than its punishment; or, what amounts to the same thing, appears, so to the offender. It is generally more immediate: the temptation of offence is present and the punishment is at a distance. Hence there are two circumstances which weaken the effect of punishment, i.e., uncertainty and its distance.[132]

### 2.8.4 Sentencing Guidelines and Separation of Power Doctrine

Separation of power is a major principle of the American government where by power is distributed among the three branches of government legislative, executive, and

---

[129] See also Steven Lowenstein p.314, his view was that punishments should be severe enough to impress not only upon the defendants mind put upon the public mind, the gravity of society‟s condemnation of irresponsible behavior but the ultimate aim of condemning irresponsibility of reformation or formation of character in the generality of cases becomes at this point inexorably in the direction of eliminating capital punishment and minimizing both the occasions and the length of incarceration.
[130] Sue Rex Michael Tonry, Supra note 116, p.315.
[131] Ibid.
[132] Ibid.

judicial. The officials of each branch are selected by different procedures, have terms of office and independent of one another. The separation is not complete; however, each branch participates in the functions of other through a system of checks and balances. Nevertheless, the doctrine serves to ensure that the same person or group could not make the law, interpret it, and apply it.[133]

In an attempt to reduce disparities at the federal level, in 1985 Congress created the Federal Sentencing Commission, a nine –member committee whose task was to establish sentencing guidelines that would reduce judicial discretion and there by ensure more equal punishments.[134]After some two years of work, the new guidelines went to effect on November 1, 1987. It resulted in greater uniformity and at the same time tended to send more defendants to prison (although for a shorter period).For example, the following table shows the result of the first offenders.[135]

**Table 1 Comparison of sentencing before and after the U.S.A. sentencing guidelines**

| Types of Crimes | Average Time Served Prior to Guidelines | Sentencing Guidelines |
|---|---|---|
| Kidnapping | 7.2 to 9 years | 4.2 to 5.2 years |
| First degree murder | 10 to 12.5 years | 30 years to life in all cases |
| Income tax invasion ($5000 or less) | 4 to 10 months for the only 30% who serve time | Virtually all subject to some confinement for 1 to 7 months |
| Drug dealing e.g. cocaine | 21 to 27 months for the only 33% who serve time | Virtually all serve 21 to 27 months |

*Source:* James A. Inciardi (1984), Criminal Justice, Seventh Edition, Harcourt, Inc. p. 436

Although the new federal guidelines held out the promise of sentence perform, they were immediately attacked because of the way the united state sentencing commission had been formed. The commission was an independent body within the judicial branch of government, but it was argued that the act of writing guidelines was essen-

[133] James A. Inciardi, supra note 7, p.436.
[134] Ibid.
[135] Ibid.

tial legislative. As such, this represented un-conditional delegation of authority by congress and a violation of the separation of powers doctrine.[136]

By early 1988, hundreds of federal judge‟s were asked about constitutionality of the guidelines. Slightly more than half had struck them down, for the most part on the grounds of separation of power. It was at this point that the U.S.A. Supreme Court agreed to rule on the matter.[137]In 1989, by an eight to one majority, the court held that the creation of the federal sentencing commission was neither unconstitutional delegation of legislative discretion nor a violation of the separation of the powers doctrine.[138]

The United States of America is a federal state and comprised of fifty states. It has a dual government; powers are shared between the federal and state governments. The preparations of the sentencing guidelines are more widespread. In addition, we observe a substantial legal policy and the introduction of sentencing guidelines in at least 20 states and the District of Columbia. For example, Minnesota, Michigan and Virginia have implemented their sentencing guidelines since 2002. Each state has the power to enact laws applicable to their jurisdiction.[139]When we come to the Ethiopian case, the power to issue the sentencing guidelines is that of the federal government although the regional governments have ample chance to administer the federal sentencing guidelines. Nevertheless, the regional states will have taken longer time to adopt and implement their own sentencing guidelines.

On the other hand, the constitutionality of the Ethiopian sentencing guidelines is not yet an issue. Besides, the House of People‟s Representatives has delegated the power of issuing sentencing guideline to the Federal Supreme court. The federal Supreme Court prepared the sentencing guidelines under statute of the criminal law.[140]Unlike the U.S.A. Sentencing Commission, the Federal Supreme Court of Ethiopia is not standing independently as a separate organ under the judiciary branch of the government body instead it is part and parcel of the judicial branch of government.

---

[136] Ibid.
[137] Ibid.
[138] Ibid.
[139] Terance D. Miethe and Hong Lu, Supra note 1, p.1.
[140] Art.88 (4) of the FDRE Criminal Law, 2004.

There is some controversial issue that needs to address the duality feature of shared or concurrent power between the Federal government of Ethiopia and its regional states. Unlike the United States of America, the Federal government of Ethiopia left little space to issue sentencing guidelines to each state. For example, Dr.Assefa Fiseha explores that, "Concurrent powers provide an element of flexibility in the distribution of power enabling the federal government to postpone the exercise of potential authority in a particular field until it became a matter of federal importance."[141]

They enable both governments to exercise their respective powers depending on whether the matter remains an issue of regional or national importance. Particularly, the House of Peoples Representatives shall enact a penal code; however, states may enact penal laws on matters that are not specifically covered by the federal penal legislation. "It appears that this is more of a concurrent than parallel or framework-one because the states may enact only if the federal penal law does not exhaust the list of offences. Potentially, the federal parliament may by virtue of Article 55(5) exhaust the field leaving no room for the states."[142]

### 2.8.5 The Divergent Features of Each Sentencing Guidelines

In the above sub section, the criteria of sentencing guidelines, structural reform, grading of offense and separation of power are discussed in relation to the sentencing guidelines of the U.S.A. and Ethiopia. Each sentencing guidelines has peculiar features that identify one from the other. Some of these are compared and contrasted as follows. First, the sentencing guidelines of the U.S.A.is the product of the United States sentencing commission .It was created by the sentencing reform Act of 1984 and is being properly implemented since 1987.Whereas the sentencing guidelines of Ethiopia is the product of the Federal Supreme Court of Ethiopia and it was introduced in 2010 and revised in 2013.

Second, the sentencing guidelines of United States of America are not limited at the Federal Level. The American Law Institute and Bar Association have recommended

---

[141] Assefa Fiseha, the System of Intergovernmental Relations (IGR) in Ethiopia: In Search of Institutions and Guidelines JEL, (2009), p.9.
[142] *Ibid.*

such systems for all other states, and nearly half the states have such systems. However, each state in the Federal Democratic Republic of Ethiopia has not yet designed this system.

Third, the sentencing table is integral part of the U.S.A. sentencing guidelines; the offense level (1-43) forms the vertical axis of the sentencing table and the criminal history (I-VI) forms the horizontal axis of the table. The intersection of the offense level and the criminal history category displays the guideline range in months of imprisonment. Whereas, the guidelines of the Ethiopian sentencing level (1-39) forms the vertical axis of the sentencing table but the categories of criminal history on the horizontal axis of the table are missing.

Fourth, in the case of the U.S.A. sentencing guidelines, there are four sentencing zones A, B, C, and D and the minimum range is found is zone A that is 0-6 months while the maximum range is found in zone D that is 324 -405 months then the range is 81 months or 6 years and 9 months. The Ethiopian sentencing guidelines is divided in two major parts, from level 1 up to 15, the range of sentence is six months in each level and from level 16 up to 37 the range of sentence is increasing by 20 % in each level of intervals regardless of its accuracy. The minimum range is registered in the sentencing level 1 up to 15 that is 6 months (0-6 months), and maximum range is registered in offense level 37 that is 5 years (20 years -25 years).

Fifth, notwithstanding life imprisonment in the sentencing guidelines table, the maximum penalty of rigorous imprisonment in the case of the U.S.A. is 405 months (33 years and 9 months) while the maximum penalty of rigorous imprisonment in Ethiopia is 25 years (300 months). Sixth, death penalty is not enumerated in U.S.A. sentencing guidelines table; in fact the judge may increase the sentence above the authorized guidelines range. On the other hand, death penalty is stated on the FSC sentencing guidelines of Ethiopia, table 1, sentence level 39.

Sixth, the minimum fine in sentencing table 2 of the U.S.A. sentencing guidelines is found offense level 3 and below that is from$100-$500 but the maximum fine for offense level 38 and above entailing $25,000-$ 250,000.But this fine is overlapping in each offense level. In contrast, the minimum fine in sentencing table 2 of the Ethio-

pian sentencing guidelines is found sentence level 1 that entail up to 1,000 ETB and the maximum fine is found in sentencing level 23 that is above 2,000,000 ETB. Unlike the U.S.A. the amount of fine is not overlapping in each level.

Finally, the vertical axis of sentencing table of the U.S.A. indicates the level of offense while the vertical axis of the sentencing on table-1 in Ethiopia denotes the level of sentencing. Therefore, the mandate of classify each types of crime into different label of offenses were given to the Federal supreme court under FDRE criminal law. These were prepared in a separate section of tables in the entire document. However, they ought to be arranged in a manner confirming to the main sentencing table and maintain the wholeness of sentencing guidelines. Thus, the task of labeling each crime in the FSC sentencing guidelines needs to include more provisions than the present.

# Chapter Three

# Data Interpretation, Discussion, Case analysis and Key Findings

## 3.1 Data Interpretation

### 3.1.1 Top Ten Prosecuted Cases in all levels of courts

The sentencing guidelines were developed based on the high frequency and seriousness of crimes that were prosecuted in the Courts‟ file.[143] Now, it is analyzed and investigated whether the following top ten prosecuted cases were incorporated in the sentencing guidelines at the time of design or not. Furthermore, the two federal Supreme Court Sentencing Guidelines are compared and contrasted to the extent of their application.

**Table -2 Top Ten prosecuted cases at the national level from year 2000-2003 E.C. and the response of Federal Supreme Court sentencing guidelines (FSCSGL)**

| No | Types of Crimes | 2000 | 2001 | 2002 | Sum | Addressed by FSCSGL | |
|---|---|---|---|---|---|---|---|
| | | | | | | 2010 | 2013 |
| 1 | Willful body injury | 38,803 | 35,094 | 42,751 | 116,648 | Yes | Yes |
| 2 | Theft | 23,733 | 31,597 | 33,093 | 88,423 | Yes | Yes |
| 3 | Petty offense | 26,173 | 33,203 | 24,927 | 84,303 | No | No |
| 4 | Intentional//non intentional/ Homicide | 8943 | 9,741 | 14,213 | 32,897 | No | Yes |
| 5 | Grave Willful body injury | 8,488 | 11,923 | 5,643 | 26,054 | Yes | Yes |
| 6 | Breach of trust | 5,668 | 4,501 | 9,863 | 20,032 | No | No |
| 7 | Attempted-Homicide | 7023 | 6,896 | 3,886 | 17,805 | No | No |
| 8 | Robbery and Looting | 5,585 | 3,597 | 7,591 | 16,773 | Yes | Yes |
| 9 | fraudulent Misrepresentation | 5,523 | 5,079 | 5,432 | 16,034 | Yes | Yes |
| 10 | Rape | 2,658 | 2,801 | 3,662 | 9,121 | No | Yes |
| | Other crimes | 77,607 | 86,235 | 76,538 | 240,380 | - | - |
| | Total | 210,204 | 230,667 | 227,599 | 668,470 | - | - |

Source: Central Statistical Agency of Ethiopia

[143] Desalegn Demeke Secretariat Head of Federal Judicial Administration, Personal Communication January 03, 2014.

As table-2 indicates the order of general frequency of prosecuted cases in all levels of courts have been listed as: willful injury, theft, petty offense, intentional and non-intentional homicide, grave willful injury, breach of trust, attempted homicide, robbery and looting, fraudulent misrepresentation, and rape. Among these, Willful body injury, theft, grave willful body injury, robbery and looting, and fraudulent misrepresentation were incorporated in the FSC sentencing guidelines of 2010. In addition to these, prosecuted cases of intentional /non-intentional/ homicide, and rape were addressed in the FSC Sentencing Guidelines of 2013. Other crimes of prosecuted cases constituted 36 percent of the data but these were anonymous in the sentencing guidelines.

On the other hand, breach of trust and attempted homicide are not given full coverage in the first and the second FSC sentencing guidelines. Among these, breach of trust would get attention due to its severity and nature of crimes. For instance, 2,032 cases in the crime of breach of trust were prosecuted from year 2000-2003 E.C. This means averagely 6,667 breach of trust were prosecuted per year. Furthermore, 17,805 attempted homicide cases were prosecuted from year 2000-2003 E.C. This implies averagely 3,935 attempted homicides were prosecuted per year. In general, neither the prosecuted cases of breach of trust nor attempted homicide was incorporated in the FSC Sentencing Guidelines of 2010 and 2013.

In sum, petty offences were not a serious problem because the alternative and the range of punishment are very narrow by its nature. The drafter of the sentencing guidelines tried to incorporate major prosecuted cases into the sentencing guidelines except attempted homicide and trust of breach. Thus, both frequency of crimes and their seriousness would be taken into account properly.

### 3.1.2 The Comparative Analysis on the Scale of Penalties

Each of the consecutive sentencing guidelines divided the sentence into different strata. A number of substantive and numerical elements are included in each sentencing manual. In comparison, the sentence periods increased somehow in the second sen-

tencing guidelines but not declined at all. In addition, the two sentencing guidelines have been discussed in comparison as follow.

**Table 3 Scale of Penalties in the Two Sentencing Guidelines**

| Level of sentencing | Sentencing Guidelines no.1/2010 in months | | | | Sentencing Guidelines no.2/2013 in months | | | | Range of difference in months |
|---|---|---|---|---|---|---|---|---|---|
| | Min | Max | Av | R | Min | Max | Av | R | |
| Level -1 | 1d | 20ds labor | 10ds | - | 1d | 3mt labor | 45.5ds | - | - |
| Level-2 | 10d | 3 ms | 1.5ms | 3 | 10ds | 6ms | 3ms | 6 | +3 |
| Level-3 | 2 | 5 | 3.5 | 3 | 2 | 8 | 5 | 6 | +3 |
| Level-4 | 4 | 7 | 5.5 | 3 | 4 | 10 | 7 | 6 | +3 |
| Level-5 | 6 | 9 | 7.5 | 3 | 6 | 12 | 9 | 6 | +3 |
| Level-6 | 8 | 12 | 10 | 4 | 8 | 14 | 11 | 6 | +2 |
| Level-7 | 12 | 15 | 13.5 | 3 | 12 | 18 | 15 | 6 | +3 |
| Level 8 | 14 | 18 | 16 | 4 | 14 | 20 | 17 | 6 | +2 |
| Level-9 | 16 | 20 | 18 | 4 | 16 | 22 | 19 | 6 | +2 |
| Level-10 | 18 | 22 | 20 | 4 | 18 | 24 | 21 | 6 | +2 |
| Level-11 | 20 | 26 | 23 | 6 | 20 | 26 | 23 | 6 | 0 |
| Level-12 | 24 | 30 | 27 | 6 | 24 | 30 | 27 | 6 | 0 |
| Level-13 | 27 | 33 | 30 | 6 | 27 | 33 | 30 | 6 | 0 |
| Level-14 | 30 | 36 | 33 | 6 | 30 | 36 | 33 | 6 | 0 |
| Level-15 | 33 | 39 | 36 | 6 | 33 | 39 | 36 | 6 | 0 |
| Level-16 | 36 | 43 | 39.5 | 7 | 36 | 43 | 39.3 | 7 | 0 |
| Level-17 | 39 | 47 | 43 | 8 | 39 | 47 | 43 | 8 | 0 |
| Level-18 | 43 | 52 | 47.5 | 9 | 43 | 48 | 50.5 | 9 | 0 |
| Level-19 | 48 | 58 | 53 | 10 | 48 | 58 | 53 | 10 | 0 |
| Level-20 | 53 | 64 | 58.5 | 11 | 53 | 64 | 58.5 | 11 | 0 |
| Level-21 | 60 | 72 | 66 | 12 | 60 | 72 | 66 | 12 | 0 |
| Level-22 | 66 | 79 | 72.5 | 13 | 66 | 79 | 72.5 | 13 | 0 |
| Level-23 | 72 | 86 | 79 | 14 | 72 | 86 | 79 | 14 | 0 |
| Level-24 | 78 | 92 | 85 | 14 | 78 | 92 | 85 | 14 | 0 |
| Level-25 | 84 | 100 | 92 | 16 | 84 | 100 | 92 | 16 | 0 |
| Level-26 | 92 | 110 | 101 | 18 | 92 | 110 | 101 | 18 | 0 |
| Level-27 | 101 | 120 | 110.5 | 19 | 101 | 120 | 110.5 | 19 | 0 |
| Level-28 | 108 | 130 | 119 | 22 | 108 | 130 | 119 | 22 | 0 |
| Level-29 | 120 | 144 | 132 | 24 | 120 | 144 | 119 | 24 | 0 |
| Level-30 | 131 | 158 | 144.5 | 27 | 131 | 158 | 144.5 | 27 | 0 |
| Level-31 | 144 | 173 | 158.5 | 29 | 144 | 173 | 158.5 | 29 | 0 |
| Level-32 | 156 | 188 | 172 | 32 | 156 | 188 | 172 | 32 | 0 |
| Level-33 | 168 | 202 | 185 | 34 | 168 | 202 | 185 | 34 | 0 |
| Level-34 | 180 | 216 | 198 | 36 | 180 | 216 | 198 | 36 | 0 |
| Level-35 | 198 | 234 | 216 | 36 | 198 | 234 | 216 | 36 | 0 |
| Level-36 | 216 | 260 | 238 | 44 | 216 | 260 | 238 | 44 | 0 |
| Level-37 | 240 | 300 | 270 | 60 | 240 | 300 | 270 | 60 | 0 |
| Level-38 | Life | Life | - | - | Life | Life | - | - | - |
| Level-39 | Capital | Capital | - | - | Capital | Capital | - | - | - |

As shown in table 3, overlapping numbers in the consecutive levels of sentencing are still mysterious. In addition, some of the ranges of sentencing have mathematical errors. Unlike the first sentencing guidelines, the second sentencing guidelines have in range from level 1 to level 15 in six month‟s difference and it is perfect. On the contrary, both the first and the second sentencing guidelines are identical in their ranges

from level 11 up to 39. Some calculations in both sentencing guidelines were not properly workout. The sentencing guidelines show," From sentencing level 16 and above, the range of sentencing has gone by 20% from each base." These were not actual or correct calculation. For example, the corresponding range was not a right calculation as level 16 to 7 months, level 17 to 8 months, level 18 to 9 months, level 19 to 10 months, level 20 to 11 months and the like error continuous up to the maximum levels of sentencing. However, the right calculation amounts in level 16 to 7.4 months, level 17 to 8.8 months, level 18 to 10.6 months, level 19 to 12.7 months, level 20 to 15.2 months and the corresponding correction continuous to the maximum levels. In sum, there were mismatched between the tables of sentencing guidelines and written words in the text.

On the other scenario, the least and the greatest penalties of the crimes were specified in the special part of the criminal code. In addition, the minimum penalties specified in the criminal code provisions become the starting point of each crime in the sentencing guidelines. In contrast, the maximum penalties specified in the special part of the criminal code provisions were unattainable in the sentencing guidelines unlike to the minimum boundaries for each crime. The least possible boundary for each crime in the sentencing guidelines is identical to the special part of the criminal code provisions. Almost all are exhaustive.

On the other hand, the maximum boundary in each criminal sentencing is left to the special part of the criminal code. These are reserved for aggravating circumstances; besides, the above table demonstrates, major changes are introduced in the second sentencing guidelines compared to that of the first sentencing guidelines. In addition, the sentencing guidelines were not labeled particular crimes to the maximum punishment prescribed in the criminal code except aggravated homicide and aggravated robbery. In contrast, some people argue that the revised sentencing guidelines introduced more severe penalties than the former. Generally, each selected crime and the corresponding penalties can be illustrated as follow.

**Table 4 Scale of Penalties in the Criminal Law and Sentencing Guidelines**

| Articles of Criminal code, 2004 | | S C A L E O F P E N A L T I E S y stands for year/ m stands for month/ d stands for date/ | | | | | |
|---|---|---|---|---|---|---|---|
| | | In criminal code,2004 | | In Sentencing Guidelines no.1/2010 | | In Sentencing Guidelines no.2/2013 | |
| | | Min | Max | Min | Max | Min | Max |
| Abuse of power | 407(1) | 1y | 10y | 1y | 7y/2m | 1y | 7y/2m |
| | 407(2) | 7y | 15y | 7y | 10y/10m | 7y | 10y/10m |
| | 407(3) | 10y | 25y | 10y | 15y/8m | 10y | 19/6m* |
| Theft | 665 | 10d | 5y | 10d | 3y | 8m | 5y/4m* |
| Aggravated theft | 669 | 1y | 15y | 1y | 10y | 1y/6m | 13y/2m* |
| Fraud act | 692 | 10d | 5y | 10d | 3y | 8m | 5y* |
| Drawing of cheque with-out cover | 693(1) | 10d | 10y | 10d | 6y/7m | 6m | 8y/4m* |
| | 693(2) | 10d | 1y | 10d | 3m | 4m | 10m* |
| Robbery | 670 | 1y | 15y | 1y | 10y | 1y/8m | 12y* |
| Aggravated robbery | 671(1) | 5y | 25y | 5y | 14y/5m | 5y | 21y/8 m* |
| | 671(2) | Life | Death | Life | Death | Life | Death |
| Grave willful injury | 555 | 1y | 15y | 1y | 10y | 3y | 14y/5m* |
| Aggravated homicide | 539/1/ a | Life | Death | unspecified | unspecified | Life | Death |
| | 539/1/ b | Life | Death | unspecified | unspecified | Life | Death |
| | 539/1/ c | Life | Death | unspecified | unspecified | Life | Death |
| | 539/2 | Death | Death | unspecified | unspecified | Death | Death |
| Ord. homicide | 540 | 5y | 20y | unspecified | unspecified | 5y | 16y/10m |
| Extenuated homicide | 541/a/ b | 10d | 5y | unspecified | unspecified | 4m | 3y/7m |
| Homicide by negligence | 543/1 | 6m | 3y | unspecified | unspecified | 6m | 2y |
| | 543/2 | 1y | 5y | unspecified | unspecified | 1y | 3y/7m |
| | 543/3 | 5y | 15y | unspecified | unspecified | 5y | 12y |

As table 4 shows, the penalty for abuse of power in serious cases was increased from fifteen years and eight months to nineteen years and six months. In addition, the researcher conducted an interviewee with the front line legal professionals. Those are public prosecutors, judges and private lawyers. All the respondents assured that the current Federal Supreme Court sentencing guidelines is more severe than the former one.[144] According to one of my interviewees, "The sentencing shall be done by discretion power of the judge based on the malicious behavior of the individuals. This means whenever the offender shows repentance on his own fault and tried to rectify his or her wrong action as much as possible, the court may decide less punishment

[144] See name interviewees in the reference list of bibliography.

than rude criminals".[145]I think this assertion has relevant to adult and young offenders in special cases; for example, the sick person who recover soon in the hospital leave earlier than other similar patience; because, not only determinate sentencing had been introduced in Ethiopian criminal justice system but also the court could decided indeterminate sentence in rare cases.[146]

### 3.1.3 Coverage of the Two Sentencing guidelines in the Current Criminal code of Ethiopia:

To know the coverage of sentencing guidelines, the first step shall be eliminating petty offense from the proposed crimes. Because, petty offenses shall not be punished with rigorous or simple imprisonment prescribed for ordinary crimes.[147]The duration of arrest shall be of a minimum of one day and a maximum of three months.[148]In addition, fine may be between one ETB and three hundred ETB except in the case of recidivism where the law provides a maximum punishment.

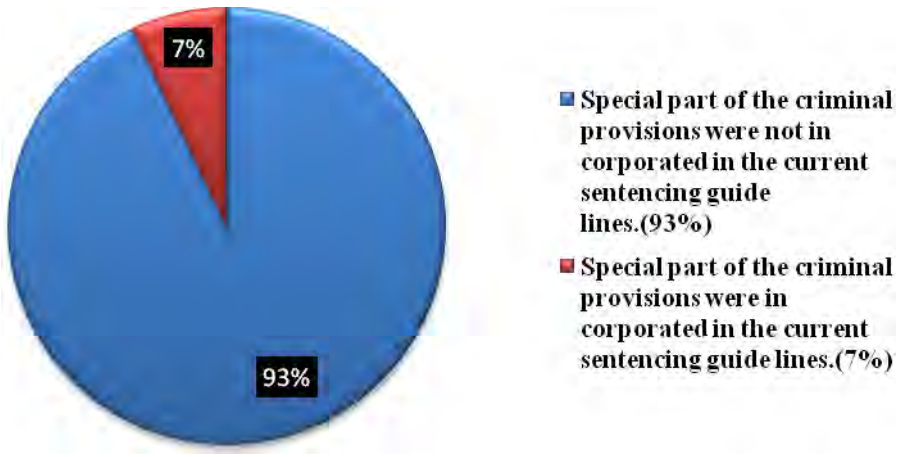
The purpose of sentencing guideline is to administer sentencing within a structured and specified range. In principle, the range of sentencing for a particular crime shall be neither too narrow nor too wide. It must leave some spaces for the judge"s discretion power. The sentencing guidelines have already ranged six months from level one to level fifteen uniformly, but from level sixteen to thirty-seven the range varies from six months up to five years of imprisonment in each interval**.** The ranges of fine are also categorized from level one to twenty in one thousand ETB uniformly but it varies from level twenty-one to twenty-three and above.

The architects of the sentencing guidelines have given priority to the special part of the criminal code. In general, this code consists of 495 provisions from Art.238-733.The first sentencing guidelines have taken 2 percent of the criminal code provi-

[145] Teka Mehari, Judge in federal first instance court, Lideta 9th Criminal Division, Personal Communication, January 02, 2014.
[146] Art.129-168 of the FDRE Criminal Code, 2004.
[147] Art.746 of FDRE Criminal Code, 2004.
[148] Art.747 of FDRE Criminal Code, 2004.

sions which also comprises twelve provisions.[149]Moreover, the second sentencing guidelines have also taken thirty five provisions in part of the criminal code provisions (7 percent).[150]This can be illustrated as follows:

**Figure -1: The Coverage of the Current Sentencing Guidelines in the Special Part of FDRE Criminal Code, 2004**.




As the pie chart shows, from 495 crimes listed in the special part of the criminal code, the contemporary sentencing guidelines took into account only 7% of the crimes clearly. On the other hand, 93% of the crimes listed in the special part of the criminal code were not clearly labeling and incorporated in the FSC sentencing guidelines. In addition, administration of unspecified provisions of the criminal law that were not clearly stated in the sentencing guidelines are still important to manage wisely. Although labeling the offense to each criminal provision in the sentencing guidelines are so difficult at a time, each provision of the special part of the Ethiopian criminal code needs to be labeling in the next amendment.

[149] Art.407,665,666,692,693,670,671,555,556,558,559,560 of the FDRE criminal code, 2004.
[150]Art.241,257,356,357,358,359,361,362,407,539,540,541,543,555,556,557,558,559,560,598,620,,621, 622,623,624,625,626,627,628,665,669,670,671,692,693 of the criminal code,2004.

### 3.1.4 Problems in Sentencing of Fine

The sentencing manual has introduced fine in its table two. Furthermore, the level of offences and the corresponding sentences of fine have been structured in the entire sentencing guidelines. The tables of fine can be illustrated as follow:

**Table 5 the Comparison of Fine in the two Consecutive Criminal Sentencing Guidelines of the Federal Courts**

| Levels of Fine | Manual No. 01/2010,fine in ETB | | | | Manual No. 01/2013,Fine in ETB | | | |
|---|---|---|---|---|---|---|---|---|
| | Max | Min | Av. | Range | Max | Min | Av. | Range |
| 1 | 1000 | 10 | 505 | 1000 | 1000 | 10 | 505 | 1000 |
| 2 | 2000 | 1000 | 1500 | 1000 | 2000 | 1000 | 1500 | 1000 |
| 3 | 3000 | 2000 | 2500 | 1000 | 3000 | 2000 | 2500 | 1000 |
| 4 | 5000 | 3000 | 4000 | 2000 | 5000 | 3000 | 4000 | 2000 |
| 5 | 7000 | 5000 | 6000 | 2000 | 7000 | 5000 | 6000 | 2000 |
| 6 | 10,000 | 7000 | 8500 | 3000 | 10,000 | 7000 | 8,500 | 3000 |
| 7 | 20,000 | 10,000 | 15,000 | 10,000 | 20,000 | 10,000 | 15,000 | 10000 |
| 8 | 30,000 | 20,000 | 25,000 | 10,000 | 30,000 | 20,000 | 25,000 | 10000 |
| 9 | 40,000 | 30,000 | 35,000 | 10,000 | 40,000 | 30,000 | 35,000 | 10000 |
| 10 | 50,000 | 40,000 | 45,000 | 10,000 | 50,000 | 40,000 | 45,500 | 10000 |
| 11 | 75,000 | 50,000 | 62,500 | 25,000 | 75,000 | 50,000 | 62,500 | 25000 |
| 12 | 100,000 | 75,000 | 85,250 | 25,000 | 100,000 | 75,000 | 85,2500 | 25000 |
| 13 | 125,000 | 100,000 | 112,500 | 25,000 | 125,000 | 100,000 | 112,500 | 25000 |
| 14 | 150,000 | 125,000 | 137,500 | 25,000 | 150,000 | 125,000 | 137,500 | 25000 |
| 15 | 200,000 | 150,000 | 175,000 | 50,000 | 200,000 | 150,000 | 175,000 | 50000 |
| 16 | 250,000 | 200,000 | 225,000 | 50,000 | 250,000 | 200,000 | 225,000 | 50000 |
| 17 | 300,000 | 250,000 | 275,000 | 50,000 | 300,000 | 250,000 | 275,000 | 50000 |
| 18 | 350,000 | 300,000 | 325,000 | 50,000 | 350,000 | 300,000 | 325,000 | 50000 |
| 19 | 400,000 | 350,000 | 375,000 | 50,000 | 400,000 | 350,000 | 375,000 | 50000 |
| 20 | 500,000 | 400,000 | 450,000 | 100,000 | 500,000 | 400,000 | 450,000 | 100,000 |
| 21 | | | | | 1,000,000 | 500,000 | 750,000 | 500,000 |
| 22 | | | | | 2,000,000 | 1,000,000 | 1,500,000 | 1,500,000 |
| 23 | | | | | >2,000,000 | 2,000,000 | Unknown | Unknown |

As table-5 indicates, the two sentencing guidelines are the same from level 1-20. However, the second sentencing guidelines, the amount of fine goes beyond the general part of the criminal code provisions. This is implied that the Federal Supreme

Court came across beyond its power to take the position of the lawmakers. As a result, the struggle of unwarranted disparities became doubtful.[151]

Fine shall always be in addition to the confiscation of the profit made. [152]Unlike the penalties entailing to the loss of liberty, pecuniary penalties are semi-closed at the upper boundaries. Fine is paid in money, and is forfeited to the state; this may be extended from ten ETB to ten thousand ETB.[153] On the other hand, if the crime was committed in the motive of gaining, fine should be imposed up to one hundred thousand ETB, without prejudice any special provisions of the law prescribing a maximum.[154]

The implication of the above statement "without prejudice any special provision of the law prescribing a higher maximum" has left a space for the legislator to enact pecuniary penalties, which is more than one hundred thousand ETB. The criminal code states that the conversion of fine from imprisonment is given for the juridical person as follows: fine up to ten thousand ETB for simple imprisonment not exceeding five years; fine up to twenty thousand ETB for rigorous imprisonment not exceeding five years; a fine up to five hundred thousand ETB for rigorous imprisonment exceeding ten years.[155]Therefore, it can be concluded that the upper boundaries of pecuniary penalties of fine are limited to the juridical person when the crime is punishable with imprisonment.

---

[151] See art.88 and 90 of the penal code of the empire of Ethiopia 1957; And art.90 and 92 of the FDRE criminal code 2004: were stated in the former penal code that the sentencing of fine extended from one ETB to five thousand ETB, in some exception the maximum of fine extended to ten thousand ETB. On the other hand, the current criminal code stated that sentencing of fine shall be extended for natural person from ten ETB to ten thousand ETB and exceptionally it goes to one hundred thousand; for juridical person this may extend from one hundred ETB to Five hundred thousand ETB. The critical debate may arise that the current criminal code is left a vacuum by stating that without prejudice to any special provision of the law prescribing a higher maximum, where the criminal has acted with a motive of gain or he makes a business of crimes in a way that he acquires or tries to acquire a gain whenever a favorable opportunity present itself, and where it appears to the court that ,having regard to the financial condition of ,and the profit made by, the criminal, it is expedient so to do, it may impose a fine which shall not exceed one hundred thousand ETB. The space of vacuum seems to left for natural person, so how can be the sentencing of fine goes beyond to five hundred thousand ETB.

[152] Art.92 (1) of FDRE Criminal Code, 2004.

[153] Art.90 (1) of FDRE Criminal Code, 2004.

[154] Art.92 (1) of FDRE Criminal Code, 2004.

[155] Art.90 (3) of FDRE Criminal Code, 2004.

Then the contemporary sentencing guidelines is influenced either by some conservative of the criminal code drafters or by the drafters of the sentencing guidelines. Some literatures show that the drafters of the FDRE Criminal Code were debating the severity and lenient features of the 1957 Penal Code of the Empire of Ethiopia.[156]In sum, "the philosophy of increasing the fine in the sentencing guidelines beyond the general part of the criminal law has not been yet clear."[157]

## 3.2 Discussion

### 3.2.1 The Content of the Federal Supreme Court Sentencing Guidelines

The FSC Sentencing Guidelines No.1/2010 is composed of a preamble, six sections, twenty-five detailed sub provisions, two main tables and eighteen sub tables. Selected crimes are incorporated and labeled in the guidelines.[158]A number of lawyers had presented their study before the preparation of the sentencing guidelines was started. Those professionals who involved in the process were Ato Haile Abreha, the President of Tigray Supreme Court, Ato Solomon Areda, the Vice President of Federal First Instance Court,Ato Teferi Gebru, a Judge in the Amhara Supreme Court,Ato Adugna (his father's name was not mentioned), a Judge in the Oromia High Court, Ato Zekarias Arkelo, a legal advisor in the prime office, Ato Mesfin Mare, a private lawyer and Ato Mekasha Abera, deputy director in federal justice training center.[159]

---

[156]In 2002 Tsehai Wada on his criminal law book (pp.239-240) in Amharic wrote his worry about the draft FDRE criminal code of 2004, "በቅርቡ በፍትህሚኒስቴር በተዘጋጀው የወንጀል ረቂቅ ላይ ቀድመው የነበሩት ቅጣቶች ከብደው ይታያሉ የቅጣት ማክበድ ተጨማሪ በጠቅላላ ክፍሉ መለጥ ከአስር ቀን እስከ ሶስት ዓመት ያስቀጣ የነበረው ቀላል እስራት ከሰላሳ ቀን እስከ አስርአመት፤ከአንድ አመት አስከ ሀያ አምስት አመት ያስቀጣ የነበረው ፅኑ እስራት ከአንድእስከ ሰላሳ አመት፤ከአንድ አስከ አምስት ሺህ ብር ያስቀጣ የነበረው የገንዘብ መቀጮ ከአስር እስከ ሃምሳ ሺህ ወይም አምስት መቶ ሺህ ብር እንዲያስቀጡ ተደርጎአል፡፡ የክስና የቅጣት ይረጋዎች በጠቅላላው የአምስት አምስት አመት ጭማሪ ተደርጎባቸዋ፡፡ ይህ ረቂቅ በህግ አወጣው ተቀባይነት ካገኘ የወደፊቱን የኢትዮጵያ የወንጀል ህግ የቅጣት አዝማሚያ ያመለክታል ማለት ይቻላል፡፡ከእነዚ ሁኔታዎች በተጨማሪ አሁን በስራላ ይያለው የወንጀለኛ መቅጫ ህግ ለተወሰኑ ወንጀሎች የተደነገገው ቅጣት አነስተኛ በመሆኑ የወንጀል ስራዎችንናወንጀለኞችንአበርክቶአል፡፡ስለዚህ ቅጣቶች ከበድ ብለው ሊደነገጉ ይገባል በማለት ቅሬታ ያቀረቡ ቡድኖች አሉ፡፡"

[157]According to some interviewee, the legal practitioners of the federal courts show that they didn't know the rationale behind how the sentencing manual was adopted to the unlimited sentencing of fine.

[158] The sentencing guidelines manual was denoted 18 types of specific crimes in its range vis-à-vis the current criminal code of federal democratic republic of Ethiopia: art.407(1); 407(2); 407(3); 665; 669; 692; 693(1); 693(2);670; 67(1); 671(2);555(1);555(2);556;557;558;559(1);559(2).

[159]መካሻ አበራ፣የቅጣት አወሳሰን ውኒትና ትክክለኛነትን ለሚጋገጥ የቅጣት ማዋል ዝግጅት ጥናትና የመፍትሄ አሚራሾች፤የፌደራል ጠቅላይ ፍርድ ቤት ከጀስትስ ፎር ኦል ፕሪዝን ፊሎሸፕ ጋር በመተባበር የተዘጋጅ ያልታተመ ጥራዝ፣2001 ዓ.ም ገፅ 2 ::

The study focused on ten selected types of crimes. These were: abuse of power, tax crime, crimes against humanity and health, larceny, fraudulent misrepresentation, robbery, rape, ordinary homicide, intentional homicide, non-intentional homicide.[160] On the other hand, the current sentencing guidelines possessed a preamble, six sections and thirty-one detail sub provisions. In addition, specific types of crimes are labeled in every section of the entire document unlike the former sentencing guidelines. A number of crimes were identified, included and labeled in the revised Federal Supreme Court Sentencing Guidelines that were not labeled in the first guidelines.[161]

The Revised Sentencing Guidelines added crimes against the government, crimes related to forgery and negotiable instruments, crimes of human trafficking, crimes against family, and especially crime against vulnerable groups such as crimes against women, children, and incapable persons are included in it.[162]The Revised Sentencing Guidelines have also solved some lenient sentence problems by increasing and decreasing one step per aggravated or mitigated circumstance. In addition, the sentence of rape is increased in the current sentencing guidelines; the guidelines comprise also some tables that are redundant instead of putting similar ranges of sentencing in a table. These provisions are Art.356 & 362; 357 &362; 358 & 362; 359 & 362; 356(1/a/) and 362.[163]

### 3.2.2 Administration of Sentencing guidelines in Ethiopian Perspective

Administrations of sentencing guidelines differ from country to country. For example, in the U.S.A., the sentencing guidelines are prepared and administered by the inde-

---

[160]መካሻ አበራ፣የቅጣት አወሳሰን ውሣኔ ትና ትክክለኛነትን ለሚጋገጥ የቅጣት ማዋዋል ዝግጅት ጥናትና የመፍትሄ አሚሬቻ፣የፌደራል ጠቅላይ ፍርድ ቤት ከጀስትስ ፎር ኦል ፕሪዝን ፈልውሽፕ ጋር በመተባበር የተዘጋጀ ያልታተመ ጥራዝ፣2001 ዓ.ም ገፅ 6 ::

[161] The current sentencing guidelines consists of detail sentencing guidelines in 62 types of labeling crimes including sub articles, based on the 2004 of the Federal democratic republic of Ethiopian criminal code: These articlesare:241;257;356&362;356;357&362;357;358 & 362; 358; 359&362; 359; 361(1)a&362; 361(1)a; 361(1)b&362; 361(1)b; 361(2)a; 361(2)b, 362(2)b; 407(1); 407(2);407(3); 539(1)a;539(1)b; 539(1)c;539(2);540;541(b);543(1);543(2);543(3);555;555 and 557; 556(1); 556(2);556(2)&557;558;559(1);559(2);560(1);598(1-3);620(1)&628;620(2)a-d &628;620(3);621& 628; 622 and 628;623 and 628;624 and 628;625&628;626(1) and 626(4) and 628; 626(2),626(4)b and 628; 626/3,626(4)c & 628;627(1) and 627(4)a; 627(5);627/2 &627/4/b ; 627/3,627/4/c & 628;627/5;665(1);669;670;671(1);671(2);692(1); 693(1);693(2).

[162] See those crimes are labeled in the entire chapter six of in the sentencing guidelines.

[163]Revised federal Supreme Court, sentencing guidelines manual no.2/2013, the manual structure is indicated that the same range of levels, unnecessarily put into five different tables.

pendent agency in the judicial branch of the government known as "U.S.A. Sentencing Commission"[164] Its principal purpose is:

> *to establish sentencing policies and practices for the federal courts including guidelines; to be consulted regarding the appropriate form and severity of punishment of offenders convicted of federal crimes;… the composition of its commission is seven voting members on the commission are appointed and confirmed by the senate and serve six year terms. At least three of the commissioners must be federal judges and no more than four may belong to the same political party. The commission staff of approximately 100 employees is divided into five offices. These are general counseling, educating and sentencing practice; research and data; legislative and public affair; and administration.*[165]

In the case of Ethiopia, the power of issuing the sentencing guidelines is already given to the Federal Supreme Court by delegation in the current criminal code.[166] Is the Federal Supreme Court effectively performing its function like the U.S.A. Sentencing Commission? No, it is not, because the Federal Supreme Court is engaged in many activities. For instance, it adjudicates both in civil and criminal cases in preliminary, appeal, and cassation division.

As a result, after six years of the criminal code authorized to the Federal Supreme Court, the first sentencing guideline was adopted on May, 2010. Similarly, the administration role of FSC appears to be too weak to bring a significant change. For example, there are no periodical evaluations, no compliant handling mechanism, and no various and regular systems of sentencing guidelines distribution in the Federal Supreme Court so far. [167]On the other hand, some law scholars suggest that instead of establishing an independent Sentencing Commission, it is better to create organizational department under the umbrella of the Federal Supreme Court. Subsequently, the department will be strengthened in human power with its corresponding mandate and other related resources to run its functions properly.[168]

### 3.2.3 Determination of Sentencing

---

[164] http//ussc.gov/about the commission/index.cfm, access on 31 Dec, 2013.
[165] Ibid.
[166] Art.88 (4) of the Criminal Code 2004.
[167] An interview made with Ato Desalgn Demeke, Supra note 144.
[168] Menbere Tadesse (PhD), the head of justice and legal system research institute and assistant professor of law in Addis Ababa University, personal communication, December 17, 2014.

Legal practitioners and legal researchers" have devoted adequate time to prepare sentencing calculations. Unfortunately, the behaviors of individuals affect the extent of sentencing either in aggravating or mitigating circumstances. The most decisive factor in sentencing is to fix the proper sentencing from its range or alternatives. Once the sentencing is determined, other works are left to the matters of adding aggravated or lessening mitigated circumstances. Unless the judges take preconscious measures, the consequences lead to two undesirable outcomes in the sentencing guidelines. These are either the defendants get sympathy of punishment through accepted three or more mitigating circumstances or get harsh punishment based on accepted aggravating circumstances. In the initial step, determinations of sentencing and the later aggravating and mitigating circumstances are the soul and the blood life of the sentencing guidelines. These are discussed in the following two sub sections.

### 3.2.3.1 Fix on Initial Sentencing

Had it not been aggravated and mitigated circumstances, what would have been the actual sentencing? Some Ethiopian researchers have forwarded their view to determine actual sentencing in the absence of general and special aggravated and mitigated circumstances.

Mekasha Abera explained:

> *Judges in their discretion power determined the minimum sentencing in numerically based on the general mitigating circumstance on Art.179 of the FDRE Criminal code and the minimum and the maximum sentencing specified for the crime. For example, Art.5 of Anti-Terrorism Proclamation no.652/2009 sated that whosoever, knowingly or having reason to know that his deed has the effect of supporting the commission of a terrorist act or a terrorist organization is punishable from ten to fifteen years of rigorous imprisonment. For this crime the range of sentencing shall be calculated as:*
>
> 1. *(1 year is the minimum mitigating penalty for the crime in Art.179/c +15 years of the maximum penalty for the crime) ÷ 2 = 8 years shall be the minimum penalty boundary*
> 2. *(10 years of the minimum sentencing for the crime + 15 years of the maximum sentencing for the crime) ÷2 =12.5 years shall be the maximum sentencing boundary.*
>
> *∴8-12.5 years shall be the range of sentencing for the above crime; then the judge will have fixed the exact sentencing in the range by considering Art.88(2) of the FDRE criminal code.*[169]

---

[169] መካሻ አበራ(2001).የቅጣት አወሳሰን ወጥነትና ትክክለኛነትን ለሚጋገጥ የቅጣት ማዋዠል ዝግጅት ጥናትና የመጭትሄ አሚፊኞች ያልታተመ ጥራዝ ገፅ.41 ፤ፍርድ ቤቶች መካሻ ቅጣት መመሰን ያለባቸው የቅጣት ማቅለያና ማክበጃ ምክንያቶች ከመሚመዛቸው በፊት ነው፡ለማዋሉ ሰሌት ሲባል የፅደሜ ልክ ፅኑ እስራት ጣራ በ 30 ዓመት ይወከላል፡፡ እንዲሁም የሞት ቅጣት የሚሰንን/በፍረድ ቤት የተሚጠ ሲሆን ይህን ሰሌት መከተል አያስፈልግም ፡

On the other hand, Tsehai Wada has explored on his work that sentencing shall be fixed in average. Then, it depends on the general and special aggravating and mitigating circumstances that go up and down from the average.[170]

Deliberately or unconsciously, the Ethiopian criminal sentencing is influenced by the subjective criteria in the last two consecutive sentencing guidelines. For example, Art.4 of the Revised Federal Supreme Court Sentencing Guidelines has referred to Art.88 (2) of the current criminal code. Nevertheless, this provision is subjective by its nature. It states that:"Art.88 (2) of the penalty shall be determined according to the degree of individual guilt, taking into account the dangerous disposition of the criminal, his antecedents, motives and purpose, his personal circumstances and standards of education, as well as the gravity of the crime and the circumstances of its commission.[171]From above provision, it is not speculated the predictability of sentencing regardless the general or special aggravated or mitigated circumstances.

The average sentencing shall be determined in the first place for a particular crime before the assessment has been done in the aggravating and mitigating circumstances. In order to increase the predictability of sentencing, the least plus the greatest sentencing should be added and then divided into two to get the average value. If the aggravating and mitigating circumstances do not exist, such average sentencing can be binding and final. Discrepancy of these, Art.26 (2) of the Revised Federal Supreme Court sentencing guidelines stipulates that the crimes which are not specified in the sentence of labeling shall be categorized into three: Low, Medium, and Severe.

For instance, Mr. „A" is convicted for committing an ordinary homicide. The labeling of sentencing was not typically specified in the sentencing guidelines, but the crime is punishable from five years up to twenty years of rigorous imprisonment according to the criminal law. Assuming that the level of offence is categorized under the law category, the court can decide ten years of rigorous imprisonment. Then, ten years of ri-

---

[170] ፀሐይ ወዳ የወንጀል ህግ ማብራሪያ ሚሆምች ፣ጥር 19 ቀን 1994 ዓ.ም ገፅ 205፤ የቅጣት ማክለያ ወይም ማክበጃ በሌለብት ጊዜ ሊወሰን የሚባው ለእያንዳንዱ ቅጣት በህጉ ለቅላላ ከፍል ወሰጥ የተደነገገው ወሰን አማክይ መሆን ይኖርበታል፡፡ ስለዚህም በ1949 ዓ.ም የወ/መ/ህ በቁጥር 105 ማብርት የእስራት ወሰን ከአስር ቀን እስከ ሶስት ዓመት ወይም( ሰላሳ ሰደስት ወራት አካባቢ) በማኑ የእስራት ዘጫም አስራ ስምንት ወራት አካባቢ ሊሆን ይገባል፡፡

[171] Art.88 (2) of FDRE Criminal Code, 2004.

gorous imprisonment is found in the sentencing level 27, 28 and 29; then, a Judge may decide level 27. In addition, the defendant may have at least one extenuating circumstance in the final sentence.

Then, the punishment of the defendant is getting low twice at a time due to lower category and an extenuating circumstance. Subsequently, true sentence can be hindered. On the other hand, any defendant may have at least one aggravating circumstances and the court can be lifting up the sentence from level 27 to 28 but ten years of imprisonment is still found in both levels. As the result, aggravating of sentencing is become insignificance. On the other hand, the levels of offence, leveling of sentencing and description of crimes are categorized in the entire document of the FSC sentencing guideline for the specific crimes as follow:

**Table 6 Ordinary Homicide (art.540), in the Revised Federal Supreme Court Sentencing Guidelines**

| Levels of offence | Discretion of crimes | Level of sentencing | Imprisonment period |
|---|---|---|---|
| Level 1 | When the causes of crime is the decease and the defendant didn"t use any weapon | 21 | 5 to 6 yrs |
| Level 2 | Fulfilled In level 1 criteria and use non dangerous weapon | 23 | 5yrs/6months to 6yrs/7months |
| Level 3 | Fulfilled In level 1 criteria and use arm and sharp dangerous weapon | 25 | 7yrs to 8yrs/4months |
| Level 4 | When the causes of crime is the defendant and didn"t use any weapon | 27 | 8yrs/5months to 10 years |
| Level 5 | Fulfilled In level 4 criteria of offences and use non dangerous weapon | 30 | 11yrs to 13years/2months |
| Level 6 | Fulfilled in level 4 criteria and use arm and sharp dangerous weapon | 33 | 14years to 16yrs/10months |

As table 6 shows, there are 6 levels of offense categories and these levels of sentencing started at 21 and ended 33 in an ordinary homicide. The imprisonment period was also extended from five years to sixteen years and ten months. The revised FSC sentencing guidelines tried to describe the defendants and the victim use of weapon when the crime is committed.

There are three controversial issues that have been depicted in the above table. First, is this table only appropriate for fixing the sentence regardless of aggravating and mitigating circumstances or including them? Second, the least imprisonment period started from five years like the criminal provision but ended sixteen years and ten

months. In fact, an ordinary homicide is punishable from five years to twenty years. Therefore, the revised sentencing guidelines lag three years and two months from the maximum years specified by the law. This reserved space to aggravate the sentence. On the contrary, there is no a reserved space for the extenuating condition because of the sentencing guidelines started from the minimum.

Third, another controversy of the current sentencing guidelines was the overlapping of the numbers in the sentencing levels of ranges. Let us say, the offender has been sentenced for ten years in an ordinary homicide. These were found sentence level 27, 28 and 29.Then the sentencing shall be fixed into the lower level of the sentence in favor of the defendant that is level 27; the defendant also incurs two aggravating circumstances, which will be the sentence level 29.However, 10 years of sentencing is still found between level 27 and 29. Then, can the judge be forced to impose sentencing beyond ten years to be accredited the two aggravating circumstances? Of course, the court may not be obliged to increase the sentencing but it will be obliged to increase two levels of sentencing. These could be done without substantial changes that are from level 27 to 29 and it may become worthless.

### 3.2.3.2 Extenuating and Aggravating Circumstances in the Criminal Code

Extenuating and aggravating circumstances are a personal nature which do not affect the offender‟s liability to punish but these can be taken into consideration at the time of the sentence is done. Judges have usually ascertained cases through investigation. Then, depending on the offender‟ character and effects, the court decided cases based on the general aggravating and mitigating circumstances (Arts.82 and 84).[172]

---

[172] Art.82 of the Criminal Code 2004 , the court shall reduce the penalty based on the general circumstance based on the five categories .(a)when the criminal who previously of good character acted without thought or by reason of lack of intelligence, ignorance or simplicity of mind;(b) when the criminal was prompted by an honorable and disinterested motive or by a high religious, moral or civil conviction;(c)when he acted in a state of great material or moral distress or under the apprehension of a grave threat or a justified fear, or under the influence of a person to whom he owes obedience or upon whom he depends;(d) when he was led into grave temptation by the conduct of the victim or was carried away by wrath, pain or revolt caused by a serious provocation or an unjust insult or was at the time of the act in a justifiable state of violent emotion or mental distress.(e). When he manifested a sincere repentance for his acts after the crime, in particular by affording succor to his victim, recognizing his fault or delivering himself up to the authorities, or by repairing, as far as possible, the injury caused by his crime, or when he on being charged, admits every ingredient of the crime stated on the criminal charge.

In the above two provisions, the court shall consider five points for each circumstance; if the individual has five general aggravating circumstances and five mitigating circumstance , these could be cancelled each other and the result would be the neutral level of sentencing.

Aggravating and extenuating conditions help us to identify the individuals‟ behavior except some crimes such as aggravated homicide and aggravated robbery which the crimes were framed by the legislature without considering the individuals‟ behavior. The judge has a discretional power to determine the sentence in the range of any level. The legislature left some space to consider the individuals‟ behavior either to increase or decrease the sentence based on the indistinct provisions of aggravating and mitigating conditions.

There are two basic provisions in the FDRE criminal code that influenced to accomplish the sentence. These are general aggravating (Art.84) and mitigating (Art.82) circumstances that are ruled the judge‟s decision either to decrease or increase the sentence within the scope of the special provisions. However, the court can decide cases out of the special provisions and proceed to apply the general provisions of the criminal code in the case of recidivist and concurrent crimes; besides, the court may decide below the minimum sentence that has been specified in the special part of the criminal code but not beyond the general extenuating mandatory sentence. The court may or may not take in to account un-specifying conditions into the sentence as aggravating or mitigating circumstances Art.83, 85, 86, and 179,182.[173]The court shall also give

---

Art.84 the court shall increase the penalty in the following cases(a) when the criminal acted with treachery, with perfidy, with a base motive such as envy, hatred, greed, with a deliberate intent to injure or do wrong, or with special perversity or cruelty.(b) when he abused his powers, or functions or the confidence, or authority vested in him.(c)when he is particularly dangerous on account of his crime or the means, time, place and circumstances of its preparation, in particular if he acted by night or under cover of disturbances or catastrophes or by using weapons, dangerous instruments or violence;(d)when he acted in pursuance of a criminal agreement, together with others or as a member of a gang organized to commit crimes and, more particularly, as chief, organizer or ringleader;(e)when he intentionally assaulted a victim deserving special protection by reason of his age, state of health, position or function, in particular a defenseless, feeble-minded or invalid person, a prisoner, a relative, a superior or inferior ,a minister of religion, a representative of a duly constituted authority, or a public servant in the discharge of his duties.

[173] Art.83of the criminal code of Ethiopia stated that (1) In addition to the cases specified under various provisions of this code to be special mitigating circumstances under article 180,the court shall, without restriction, reduce the punishment(art.180) when the criminal acted in a manner contrary to the law and

reasons to be accepted or rejected general extenuating or aggravating circumstances that were not clearly provided in the criminal code.[174]

The Ethiopian criminal statutes law is not only dominantly known by its determinate sentencing, but it has also some elements of indeterminate sentencing. If a case faces certain factors that should be considered in aggravation and in mitigation, the court must assess sentencing regarding to all of them**.** Thus, if „A", within five years of being released from prison and commits additional crime in a state of great material distress, the court must, according to Art.189(3), increase the penalty on the ground of distress.[175]

This operation, which is a rather delicate one, is to be effected as provided for by Art.189 (1). The precise implications are as follows. The court will first estimate the penalty that would be adequate and examines the existence of extenuating or aggravating circumstances in the case. This hypothetical penalty will then be increased regard the aggravating circumstance, but this increased penalty will itself be hypothetical since it is not the one that will ultimately be ordered, but the one that will be reduced "in light of the extenuating circumstances,". The actual penalty, therefore, will be thus reduced.[176]

When several aggravating circumstance are present in a given case, they must all be taken into account. This accumulation may appear unnecessary for objective as well as subjective reasons. On the one hand, it has not brought upon the upper limit of the

---

in particular failed in his duty to report to the authority or afford it assistance, made a false statement or deposition or supplied false information or assisted a criminal in escaping prosecution or the enforcement of penalty, for the purpose of not exposing himself, one of his near relatives by blood or marriage or a person with whom he is connected by specially close ties of affection, to a criminal penalty ,dishonor or grave injury. The court shall examine and determine the existence and adequate nature of relationships invoked.(2)If the act with which the accused person is charged was not very grave and if the ties in question were so close and the circumstance so dilemma of a particularity harrowing nature the court may exempted him from punishment other than reprimand or warning(art.122)(3)Nothing in this article shall affect the provisions of Arts.254(4),335(3) and 682(4); Art.85 of the criminal code, on the other hand stated the special aggravated circumstances. Concurrence and recidivism, in case of concurrence of crimes and recidivism, the penalty shall be aggravated according to the provisions of articles 184-188 of this code.

[174] Philips Graven (1965), an introduction to Ethiopian Penal Law, Haile Selassie I University, Addis Ababa, p.240.

[175] Id., p.268.

[176] Art.189(1)(2) of FDRE Criminal code 2004;Philippe Graven an introduction to Ethiopian penal law (arts.1-84 penal code),Faculty of Law, Haile Selassie I University, Addis Ababa, Ethiopia (1965),p.268

punishment, i.e. the court is always bound by the limits laid down in ordinary aggravation (Art.183) whatever the number of general aggravating circumstances, and by those laid down in Art.184 or 185.The case may be, regardless of the fact that general aggravating circumstances are present together with concurrence or recidivism, or that concurrence and recidivism are present together.[177]

On the other hand, the court that takes into consideration any aggravating circumstance that was specified in the special part of the FDRE criminal code; it reveals the actor‟s dangerous disposition. Thus, if he is a recidivist, this is sufficient evidence is dangerous, in particular where he carries arms or house breaking instruments, of assault or defense; where he has usurped the status of public servant, whether he has acted at night, by climbing over or breaking into within a group, under cover of an emergency, public disturbance or a disaster, such as a riot, a fire or a flood.[178]

In the above regard, the court has expected to refrain from accepting the same aggravating circumstances to the provision of aggravating theft because these have already engulfed and specified in the special part of the FDRE criminal code. Since the first circumstance suffices to show that he is dangerous, he is in any event punishable for aggravated theft.[179]

Art.539 (1) aggravated homicide as a member of a band organized for carrying out homicide or armed robbery; Art.671 aggravated robbery. These crimes are by their nature are aggravating and punishable in rigorous imprisonment. Therefore, there is no need of double aggravation. The same might be said for the cases where there exists accumulation of mitigating circumstances.[180]

---

[177] Art.183,184,185 of FDRE, Criminal Code,2004;Philippe Graven an introduction to Ethiopian penal law (arts.1-84 penal code),Faculty of Law, Haile Selassie I University, Addis Ababa, Ethiopia (1965),p.268.

[178] Philippe Graven(1965), an introduction to Ethiopian penal law (arts.1-84 penal code), Faculty of Law, Haile Selassie I University, Addis Ababa, Ethiopia p.268.

[179] Art.669(3)(a)(b) ,671 of FDRE, Criminal Code,2004;Philippe Graven an introduction to Ethiopian penal law (arts.1-84 penal code),Faculty of law, Haile Selassie I University, Addis Ababa, Ethiopia (1965), p.268.

[180] Art. Art.539, 669(3)(a)(b) ,671 of FDRE, Criminal Code,2004;Philippe Graven an introduction to Ethiopian penal law (arts.1-84 penal code),Faculty of law, Haile Selassie I University, Addis Ababa, Ethiopia (1965), p.268.

The first operation which the court is expected to make is to calculate the penalty so as to reflect all the grounds of aggravations that are present in that particular case. Although Art.189 (1) does not clearly state in what order aggravations ought to be considered; it may be inferred from Art.85 that the court will consider the initial concurrence, recidivism and then general aggravating circumstances (at any rate, the latter circumstances can obvious not be considered before concurrence, i.e. before it is known upon which of the various penalties they should bear).

Both in the case of recidivism and concurrence, the court may go beyond "the basic penalty", i.e. the penalties have set in the special part of the criminal code with respect to the offence committed. In each case, the court is prohibited from exceeding "the general maximum" specified by the general part of the criminal code with respect to the kind of penalty ordered, i.e. twenty-five years of rigorous imprisonment, three years of simple imprisonment(for grave cases five years) or 500,000 ETB in cases of fines (unless the accused repeated the crime a gain).[181]

The court will reduce the penalty if there are any reasons for doing so (note that, contrary to what is stated in Art.189 (2). Mitigation, at least on the grounds mentioned in Arts.82 and 83, is not compulsory unless the court decides that the accused is less dangerous on these grounds.) For example, after five years of release from prison, "A" in concert with "B", shelter his brother "C", and if the criminal was wanted for homicide in the first degree, and gives the police false information concerning "C"s" where about.[182]The court will fix which punishment would be adequate, taking into account the fact that there is concurrence (Art.447 false denunciation) and Art.448 (Refusal to Aid justice).The more serious offence is harboring (Art.448) and it is punishable with three years simple imprisonment).[183]

According to the 1957 Penal Code of the Empire of Ethiopia, the essential difference between recidivism and concurrence lies on the extent of penalty. The court may ex-

[181] Art.184 and 188 of FDRE Criminal Code, 2004.
[182] Art. 182,183,189(1) (2) of FDRE, Criminal Code, 2004; Philippe Graven an introduction to Ethiopian penal law (arts.1-84 penal code), Faculty of law, Haile Selassie I University, Addis Ababa, Ethiopia (1965), p.269.
[183] Art.182,183,189(1)(2) of FDRE, Criminal Code,2004;Philippe Graven an introduction to Ethiopian penal law (arts.1-84 penal code),Faculty of law, Haile Selassie I University, Addis Ababa, Ethiopia (1965), p.269.

ceed the basic penalty by not more than half times of the punishment specified in the special part of the criminal code in the case of recidivist; while in the case of concurrence, it may exceed to the penalty of crimes specified in the special part of the criminal code in some serious cases. Nevertheless, the penalty of recidivist was amended in the FDRE Criminal Code and gave similar interpretations to the concurrence crime that the sentence can be aggravated up to the maximum penalty laid down in the general part of the criminal code.[184]

Tsehai Wada has thoroughly examined the material and notional concurrence in his criminal book. He states that aggravation penalty in material concurrence is the rule but aggravation of notional concurrence penalty is exceptionally applied in light of Art.189 of the FDRE criminal code when it was clearly stated under Art.63 (2) of the FDRE criminal code, 2004.[185]

### 3.2.4 Challenges to the Proper Implementation of the Sentencing Guidelines

Challenges of the proper implementation of the sentencing guidelines were originated from different factors. Lack of training, imbalance between the litigating party, affiliation, Judges‟ internal and external pressure were some of the challenges to the proper implementation of the sentencing guidelines.

#### 3.2.4.1 Lack of Training

It is believed that professional training can solve many of the problems that arise from lack of experience and knowledge in the relevant laws and manual of sentencing. Training could be either long-term like in the judicial training program for the terms of two years or on duty training. In these days, judges are trained in the judicial training center before they are employed.

---

[184] Art.189 (2) of the penal code of the Empire of Ethiopia 1957; Art.184 (1) b and 188 of FDRE, Criminal Law 2004.

[185] In the case of material concurrence the court is bound to use the general part of sentencing but in the case of notional concurrence the court has two option either apply the general part of sentencing in the case of the suspect committed the crime intentionally or a penalty shall be imposed without exceeding the maximum penalty prescribed in the special part of the most serious crime when the suspect committed the crime negligently;Art.184 and 187 of FDRE Criminal Code 2004;ፀሀይ ውዳ፣ የወንጀል ህግ መሰረታዊ መርሆዎች፣ ጥር 19 ቀን 1994 ዓ.ም፣ ገፅ 220 ::

The judicial training module was prepared after it had introduced the sentencing guidelines No.1/2010.This module is more of explanatory and it needs further improvement.[186] Although the mandates of appointment of judges are reserved to the House of People"s Representatives (HPR) through the recommendation of the judicial administration council,[187]the courts have responsibilities to build their employees capacity on duty training. The current practice shows that the training is limited due to constraints of time and small number of judges.

### 3.2.4.2 Imbalance between the Litigating Parties

The public prosecutor offices are well organized in terms of staffing and facilities in addition to its experience in criminal trial. On the other hand, some defendants do not have knowledge of law and experience of litigation before the court. These conditions lead to strange him or her on the trail. Due to this reason, most of the defendants were not able to raise the preliminary objection by themselves. As a result, proof and disproof of the evidences are getting less weight on the side of defendants than the public prosecutor in the criminal proceedings. Legal aid is limited to only those who primarily defend cases involving genocide, juvenile delinquents, corruption, treason, and other serious criminal allegations. In addition, vulnerable groups like women and children are getting legal service through special means.[188]

The Federal Public Defender"s (PD) office was established in 1995 under the Federal Supreme Court and the expenses of legal aid are usually covered by government in criminal matters. Although adjudication of civil cases are not the very purpose of this thesis, legal aid assistance in civil matters is provided at federal and state levels through joint partnerships of NGO (Action Professionals" Associates for the People), the Bar Association, and the A.A.U. Alumni Association. The development of law school clinical legal aid programs at a national level is being explored. A few law stu-

---

[186]የወንጀል ቅጣት አወሳሰን መመሪያ፤ የፌደራል ፍትህ ሚኒስቴር ሚዛናዊ ለቅድመ ስራ ሰልጣኞች የተዘጋጀ የስልጠና ሞጁል፣ 2002 ዓ.ም፡፡

[187]Art.5 (1) of Federal Judicial Administration Commission Establishment Proclamation no.24/1996; and art.81 of the FDRE Constitution, 1995.

[188] Maria Dakolias (2004), Legal and Judicial Sector Assessment of Ethiopia, Legal vice Presidency, The World Bank, pp.30-31.

dents provided voluntary services through the legal aid offices in Addis Ababa. These were positive efforts and beginnings, but operated on a very small scale.[189]

Indigent criminal defendants have a constitutional right to legal representation at state expense. In practice, this guarantee has not been fulfilled because of limited resources and public awareness. As the result, the Federal Public Defenders are appointed to defend a dozen of accused people per head, and the public defenders of legal aid services for the poor are very limited and generally quite weak.[190]

### 3.2.4.3 Affiliation

Judges are human being who can establish social affiliation with other people. The legal actors are judges, public prosecutor, the defendant and the defendant‟s lawyer. These people may communicate each other through different social channels outside the courtroom. Their relation might be based on previous schoolmate, student-instructor relationship, worshiping in the same church, belonging to the same ethnic group. Then people by nature want to share their problems and try to get assistance in favor of them and at the expense of the right of others. In view of this, the issue of ethical dilemma in their professional duty often arises.[191]

The law prohibits judges to see the cases affiliated by affinity or consanguinity the dispute is related to a case in which one of the parties is a person for whom he acted as tutor, legal representative or advocate; he has previously acted in some capacity in connection with the case or the subject matter of the dispute; he has a case pending in court with one of the parties of the advocate thereof; when there are other sufficient reasons to concluded that injustice may be done.[192]

Notwithstanding the above provisions, where the party is of the opinion that a judge should not sit for one of the reasons specified above, he shall submit a written applica-

---

[189] Ibid.
[190] Ibid.
[191] Federal Supreme Court, An assessment of corruption on the federal courts Federal Supreme Court, 2010, PP.10-22.
[192] Art. 27 of Federal courts proclamation no.25/1996.

tion to the court requesting that the removal of the judge to see the case.[193]On the contrary, where a party makes an application without good cause the court may, in addition to dismissing the application, impose a fine not exceeding five hundred (500) ETB.[194]Although this provision tried to maintain the flow of the true application in general and the judges‟ dignity in particular, the "good causes" of the application become vague and controversial issue. There were no clear criteria and standard measurement to accept or reject the application. Therefore, informal and self-centered relations of legal professionals may affect the fairness of justice through invisible channel of social communication that was not blocked by effective controlling mechanisms.

### 3.2.4.4 Internal and External Pressure

Internal and external pressures could lead to sentencing disparities. Most criminal benches are held by a single judge, who is engaged in too much work and he/she is too busy to handle files. To decide cases as quickly as possible, he/she works full time including his/her spare time. Then he/she feels fatigue and burdensome. As a result of this, judgment is too weak to address all issues raised in the litigation. These judges may even fail to assess the mitigating and aggravating circumstances properly.[195]

In my points of view, the judges are also influenced by external pressure, which arises from the defendant‟s fellow or the victim‟s friends or family members who attained the courts proceeding regularly as an audience of the open criminal bench. These people may push him/her to pass enthusiastic or harsh punishment against the defendant.

## 3.3 Controlling Mechanisms of Sentencing Discretion

Different legal systems have various controlling mechanisms of sentencing discretion. For instance, the U.S.A. guidelines are the product of the sentencing commission

[193] Art.28 (1) of Federal Courts Proclamation no.25/1996.
[194] Art.28 and 30 of Federal Courts Proclamation no.25/1996.
[195]Wubshet Kibru (2000), the problem of criminal cases delay and the solution, Amharic version, unpublished, PP.4-30.

which was created by the sentencing reform Act of 1984.Its primary goal was to alleviate sentencing disparities as research works indicated the issue is prevalent in the existing sentencing system, and the guidelines reform was specifically intended to provide for determinate sentencing. Similarly, a Sentencing Council has been established in England to administer the sentencing guidelines.[196]

On the other hand, the Ethiopian experiences indicated that discretion power of judges is justified and limited to the range of the criminal law, the sentencing guidelines, and judicial review either through appeal or cassation.[197] If the ignorance of these comprehensive sentencing control mechanisms exist in the given country, this will be considered as the state leaves space for undesirable disparities of sentencing intentionally.

## 3.4 Pillars of Sentencing Guidelines and Disparities of sentence in Federal Courts: Case Analysis

### 3.4.1 Assessing Consistency and Fairness in Sentencing

One of the most decisive things at the stage of sentencing is to accept or reject mitigating circumstances that are raised by the defendant or his/her lawyer. Some of the earlier judicial decisions reveal that the absence of prior criminal record are not usually considered as mitigating circumstances in one juncture but taking into consideration in the other occasions. It was the judge‟s discretional power to decide cases as he or she wishes.

These practices might lead to corruption and nepotism. Here the researcher selected two real cases to show disparities of sentencing so as to show accepting or rejecting the mitigating circumstances in the federal courts. The first case shows that the past non-criminal records of the defendant did not get sentencing reduction from mitigating circumstances. For example, the facts in this case by *Public Prosecutor Vs Mulugeta Amsalu*,[198] are as follows:

---

[196] Meron Haile Selassie 2008, Supra note 68, pp.50-54; Art.28 of FDRE Constitution, 1995; http://en.wikipedia.org/wiki/ United_ States_ Federal_ Sentencing _Guidelines access 24Jan, 2014.
[197] *Ibid*.
[198] It is annexed; See all statement in the Criminal file No.84487/2002 E.C.

Mulugeta Amsalu was 17 years of age and a student in Addis Ababa. On 03/13/2001 E.C., the public prosecutor charged him in an ordinary homicide that could lead to a punishment of 5-20 years of rigorous imprisonment based on Art.540 of the 2004 FDRE criminal code. In addition, it was proved with the evidence before the court that the defendant killed youth Gashaw Awoke by hitting the deceased‟s head at one smash with a hard stick.

On 10 June 2001 E.C, the immediate cause for the outbreak of the crime was the younger brother of the defendant who was playing with his peers on the sand hill found at his living area while the deceased tried to stop them. The deceased ordered them to stop playing on the sand hill, which was the property of Ethiopian telecommunication deposited for the purpose of erecting pillars.

In the meantime, both opponents got very aggressive and exchanged words of insults. Gradually, squabble started between the defendant and the deceased. Accidentally, the defendant used a stick to hit the deceased on his head and he fallen on the ground. By the help of people gathered to stop the quarrel before it grew to cause any disaster ,the deceased is immediately taken to Abebech Gobena Clinic and then to the Black Lion Hospital for further treatment. Unfortunately, the injured person died due to the hitting, which caused stroke of blood in his right head.

On 28 January, 2002 E.C the Court decided the plea of guilty against the defendant based on Art.149 of the criminal procedure code and asked recommendation of sentencing from both parties before the sentencing of the judgment. The public prosecutor replied that there were no crime records, and no mitigating and aggravating circumstances against the defendant, and then he claims to decide proportional sentence.

On the side of the defendant, there were some points mentioned to mitigate the sentencing based on Art.82 (1) a. He appealed that he had good characteristics in the previous time and no prior criminal records. He was 17 years of age and not matured enough when he committed the crime. He committed the crime so as to save his younger brother‟s life; he earned income from washing vehicles and then helped his

parents and himself. He passed grade 10 national examination and ready for college learning.

On 11 Feb, 2002 E.C., the court decided the sentencing by stating that there was no any aggravating and mitigating circumstances accepted before the court in both sides. Nevertheless, the court stipulated Art.88 (2) of the criminal code and decided ten years of rigorous imprisonment against the defendant which was counted from the date of arrested.

The second comparative decision was done by *Revenue and Custom Prosecutor* Vs *Ato Fiseha Abay and Wrt Hiwot Yesraw;* [199]these can be considered as one of the significant events that took place in the history of criminal sentencing. The case was raised in federal first instance court and come to an end in the Federal Supreme Court. The FSC cassation division decided to the absence of prior criminal records of the defendant as one of acceptable mitigating circumstances. This fact indicated that the accused were charged before the federal first instance court with the offence of sale without value added tax (VAT) against Art.56 (1) and amended Article 22(1) and D (b) (1) of Proc No.285/1994 E.C in the sole business firm of Ato Fiseha Abay. He was charged because of owner responsibility that he failed to supervise the legalities of his business activities and she was charged because she failed to collect VAT from the buyer.

On May 18, 2001 E.C., in file No.144285, both defendants were found guilty and sentenced. Ato Fiseha Abay was sentenced one year of imprisonment and fine of 20,000 ETB. Wrt Hiwot Yesraw was also sentenced one year of imprisonment and fine of 10,000 ETB. However, the defendants appeal to the Federal High Court. Then the case was decided to Ato Fiseha Abay and he acquitted due to lack of sufficient evidence and convicted Wrt Hiwot Yesraw. Unfortunately, the revenue and custom prosecutor was dissatisfied and appealed to the federal Supreme Court.

---

[199]የ ፌደራል ጠቅላይ ፍርድቤት ሰበር ችሎት ውሳኔዎች ቅፅ 10፤ የ ጥናትና ህግ ድግጋፍ ማሚያ ህዳር 2003 ዓ.ምአዲስ አበባ ገፅ 204-206;See also in the annexed, The Decision of Federal Supreme Court Cassation Division, Criminal Cassation Files No.53612 Miazya 25, 2002 E.C.

The Federal Supreme Court decided two years of imprisonment against Ato Fiseha but the federal first instance court was confirmed fine the sentenced of fine upon him; the Federal supreme court again confirmed to the federal first instance court that both sentence of imprisonment and fine against Wr/t Hiwot Yesraw. Finally, the defendants exercised their appeal right and brought their appeal to the cassation division by invoking the mitigating circumstance of Art.82/1(a) which says the court shall reduce the penalty without prejudice of Art.179 of the criminal code and it is read as: "When the criminal who previously of good character acted without thought or by reason of lack of intelligence, ignorance or simplicity of mind."[200]

In the above case, the cassation court gets in dilemma whether this provision read in cumulative effect of "good character" acted without thought or good character of the defendant expressed in optional phrase. Then the case had been ended by taking the absence of prior criminal record as one of the mitigating circumstances. The final decision of the federal Supreme Court cassation division was confirmed to the federal first instance court. Therefore, it has a binding and precedent effect for the lower courts in future similar cases.[201]

On the above case, both the former and the current sentencing guidelines did not specify mechanisms to handle extenuating and aggravating circumstances that were brought before the court. Therefore, the writer of this paper believed that the previous good character of the defendant shall be interpreted as good character cumulative without thought. If she or he committed a crime intentionally or maliciously, he or she should not get extenuating in sentencing. The motives of the offender should be considered as the decisive factor prior to the non-criminal.

The third example of assessing consistency and fairness of sentencing is, *Public Prosecutor* Vs *Tesfa G/medihen,*[202] the defendant was accused of theft crime in violation of Art.665/1 and this crime was punishable up to five years of imprisonment. Through court proceeding, the defendant was convicted to the violation of Article 665/1 theft crime. Moreover, the decision of the court indicated that the objective of sentencing is

---

[200] Art.82 (1) a of FDRE criminal code, 2004.
[201] Proc.No.454/97 of Federal supreme court of cassation.
[202]See in the annexed, the decision of federal first instance Court File No. 208637, Hidar 03, 2006 E.C.

rehabilitating the offenders and deterrence not to commit similar offences. Then, the court decided eight months of simple imprisonment from the table in level 6 but the defendant asked to mitigate the sentencing because he admitted his guiltiness from the beginning and he had not any prior crime record. On the other side, the public prosecutor was silence. So the court reduced the sentencing from 6 levels to 4 levels based on the general extenuating circumstance Art.82/1/"a" and "e". Finally, it was decided 4 months of simple imprisonment.

Other crimes were committed similar to the above case but decided differently. For instance, Public Prosecutor Vs Danel Fikre,[203] The sentencing was done based on the Federal Supreme Court Sentencing Guidelines No.2/2006 E.C.; the defendant was convicted in the violation of Article 665/1 theft crime. This crime was labeled in the sentencing manual and the public prosecutor proposed to the sentencing level 12.The court emphasizes that the defendant had stolen the estimated cost of the property as 1660/One thousand and six hundred and sixty/ETB.

He availed two mitigating circumstances because he confessed from the beginning that he had no other criminal records. On the other hand, the public prosecutor was kept silence. So that, the court reduced the sentencing level from 12 to 10 based on the general extenuating circumstance Art.82/1/"a" and "e"; this was one year and six months of imprisonment.

The above two cases were similar in many ways because the cases were decided after the revised sentencing guidelines adopted; both cases have no any other aggravating circumstances; each case was benefited from two general extenuating circumstances. The only difference was indicted that the value of the stolen property was expressed in this case but the value of the stolen property was unspecified in the former case.

In a comparative study of these cases, the sentencing variation was one year and two months of simple imprisonment. It could be imagined into two pitfalls that one of the

[203] See in the annexed, the decision of Federal First Instance court 11th Criminal Bench at Lideta File No.209518, Tikimit 08, 2006 E.C.

defendants‟ rights were infringed to one year and two months than others. Otherwise, such a number of years were exempted and favored to the other defendant. Therefore, consistency and fairness of sentencing was to be remained impractical.

### 3.4.2 Assessing Proportionality in Sentencing

Sentencing is a crucial stage that influences the offender‟s behavior and his/her liberty as well as the victims and the society‟s satisfaction. It should be proportional and justifiable. In contrary to this, some cases were decided out of proportionality in Ethiopian federal courts. For instance, *the Public prosecutor Vs Berihanu Fikadu*, [204]the defendant was charged with an offence of an ordinary homicide violation of Article 540 of FDRE the criminal code at the federal high court in file no.87623.

On September 15, 2002 E.C around 8:30 the Ethiopian local time in the mid night, at the area of kirkos sub city of Addis Ababa. Birehanu Fikadu (defendant) nervously assumed in illusion that the victim (named Kedir Abdulkedir) attempted to hit down him when he drove the vehicle. As soon as the deceased got out of his vehicle, the defendant smashed him with his hands repeatedly with a glass on the defendant‟s right heads. As the result of this, he fallen down on the ground and died after a few minutes.

On April 22 and 26, 2001 E.C, based on the evidence, the federal high court decided that the defendant was criminally liable in an ordinary homicide and sentenced him 3/three years/ of rigorous imprisonment. However, the public prosecutor had dissatisfied with this decision and appealed to federal Supreme Court. On July 09, 2002 E.C, the appellate court confirmed to the sentencing of the lower court in the appeal file No.56605.

---

[204]የፌደራል ጠቅላይ ፍርድ ቤት ሰበር ችሎት ውሳኔዎች ቅፅ 12፤ የጥናትና ህግ ድግጋፍ መምሪያ ህዳር 2003 ዓ.ም አዲስ አበባ ገፅ 251-255; Decision of Federal Supreme Court Cassation File no.59356, June 03, 2003 E.C.

The public prosecutor was dissatisfied by the decision of appellant federal Supreme Court and took the case to the cassation division. Ultimately, the decisions of the lower courts were criticized thoroughly in the cassation division. For instance, the incidents of the crimes were wrongly considered as the mitigating circumstances. Likewise, the incidence of the crime constituted to the element of ordinary homicide. Therefore, the mitigating circumstance was taken as double mitigating and had paralyzed the fairness of justice. In addition, the absence of prior criminal records cannot launch to mitigate under the minimum period of sentencing specified in the special part of the criminal law.

Finally, On June 03, 2003 E.C, the cassation division of the Federal Supreme Court decided a sentence against the defendant for ten years of rigorous imprisonment based on the criminal procedure Art.195 (2) d and the federal Supreme Court sentencing manual. Overall, had the case not been taken to federal Supreme Court cassation division by federal public prosecutor diligently, the proportionality of sentencing would have been remained un-thrust worthy.

### 3.4.3 Assessing Predictability of Sentencing

#### 3.4.3.1 Disparities of Sentencing Emanated From Unjustified Framing of Charges

The crimes of fraudulent misrepresentations were committed by Askalukan Trading PLC workers in 2010.[205] Ato Girmay"s G/Michael Company ran a promotional campaign and guaranteed 10,000 VISA for a trip to South Africa. Nevertheless, the company failed to afford VISA for the people who had registered and had paid the fee. Then, the defendant flew from Ethiopia and sought asylum in Germany by invoking political reasons. Finally, he was arrested through Interpol negotiation and extradited to Ethiopia on 29 November, 2010.

[205] Federal High Court file No.**112074 "**Federal Public Prosecutor Vs Ato Girmay G/Michael Yihdago"; file No.97055 "Federal public prosecutor Vs W/ro Mena Terefe, Ato Dereje Bayu et al.

Except the managing director of the PLC, other workers were charged in two crimes: In fraudulent misrepresentation and engaging of trading activity without license.[206] Later, the federal high court sentenced them in four years and six months plus five thousand ETB; the Trading PLC was sentenced the fine of thirty thousand of ETB . In contrast, after Ato Girmay G/Michael Yihdago had extradited, the public prosecutor framed eight charges against him. These were seven fraudulent misrepresentations and one engaging in trading activity without license. Meanwhile, one of the charges in fraudulent misrepresentation was eliminated due to lack of sufficient evidence. Unlike the first case, the federal High court sentenced him six and half years plus eight thousand ETB in six concurrent fraudulent misrepresentations and engaging in a trading activity without license.

These were a controversial issue in sentencing guidelines. The crimes were raised from the same transaction. First, Askalukan Trading PLC was the organization of the accused people. Second, the crimes were committed in public with the free will of the offenders. Third, the defendants committed the crimes in a network while they were discharging their duty in the position of managing director, deputy managing director, administration and finance head, accountant, and commission agent.

Ato Girmay G/Michael‟s lawyer had raised the issue of constitutional rights on equality before the court of law and he defended him that he ought not to be accused more than two charges. The crime was raised from the same transaction and his co-offenders had already been charged and sentenced before his trail proceeding. He was also referred to the precedent charges of his co-offenders that were claimed and convicted in two crimes of Art.692 (1) cumulative Art.433 of the criminal code. However, this was being reluctant in federal high court. On the other hand, the defendants were also claimed in civil files:

[206]See Federal High court file No.97055 at the annexed: W/ro Mena Terefe, Ato Derje Bayu, Ato Girma Bekele and Ato Birehanu Bineham are manager, Administration and finance, accountant and commission agent of Askalukan trading respectively.

> *The PLC collected 37,582.65 birr from each of the 40 plaintiffs, birr 47,632.06 from one of the plaintiffs and price included her child, and birr 48,333.67 from the other plaintiff and the price included her child, and a total amount of 1,599,217.06 birr from the 42 plaintiffs. However, the company was unable to discharge its duties and even refuses to repay their money to the plaintiffs*.[207]

According to Endale Lijalem expression, "the federal high court decided that the Company (Askalukan PLC), the director (Ato Girmay G/Michael), and the manager (W/ro. Mena Terefe) were jointly and severally liable for the claims of the plaintiffs with legal interest rate (i.e. 9% per annum)."[208]As the case shows, the civil litigations are more concerned in protecting and serving the victims" rights. However, for the purpose of this paper, the researcher has focused on the criminal matters to identify the critical issue in sentencing. The two criminal cases were adjudicated in two distinct federal high courts. The first case was Public prosecutor Vs Mena Terefe and other three defendants and the second case was *Public prosecutor Vs Ato Girmay G/Michael*. In the first case, the public prosecutor assumed that the concurrent crime of fraudulent misrepresentation was considered it as an aggravating circumstance, and decided to frame it in a single charge. The notional concurrence crime is stated under the FDRE criminal code as follows.

> *In case of two or more concurrent crimes entailing loss of liberty the appropriate penalty for each crime shall be determined and added. However, the duration of the total penalty may not go beyond the general maximum fixed in the general part of the criminal code for the kind of penalty applied.*[209]

The second case shows, there were framed seven charges for similar occasions instead of the public prosecutor framed a single charge for fraudulent misrepresentation. The judge had also followed the pattern of public prosecutor. The defendant was dissatisfied with the decision of the Federal High Court that was rendered on the 17th June, 2005 E.C and appealed to the Federal Supreme Court on 13 October 13, 2006 E.C. Then, the federal Supreme Court cancelled the charge of engaging trading activities without license and confirmed six concurrent crime charges. Next, the Federal Supreme court changed the sentence of the federal High Court"s decision from six years and six months plus eight thousand ETB to five years of rigorous imprisonment

[207]EndaleLijalem (2011), the doctrine of piercing the corporate veil: its legal significance and practical application in Ethiopia, p.85; the statement of claim was prepared and submitted to the federal high court by the plaintiff in Sene 28/2002 E.C; it can also be seen the detail on civil file No.96230 in Ethiopian Federal High court archive.
[208] Ibid.
[209] Art.184 /1/ (b) of the FDRE criminal code, 2004.

plus eight thousand ETB respectively.[210] Finally, the fate of the defendant relied on the will of public prosecutor and judge but not the rule of law.

In fact, the above two cases were decided in the application of the federal Supreme Court sentencing guideline but these were complicated. There were two argumentative issues to frame the charge of concurrent crimes. First, in cases of two or more concurrent crimes entailing loss of liberty, the appropriate penalty for each crime would be added.[211] Furthermore, some public prosecutors strongly argue that when the offender is violating the same criminal provision against different people, the perpetrator is violating the protected rights of each individual that the offender should be charged in different files. In addition, the sentence should not be exceeded from the general part of the criminal code. Others argued that the defendant would have a possibility to be charged in a single file when the concurrent crimes are committed negligently. Then, the punishment could not exceed in the prescribed special part of the criminal code for the most serious crime.[212]

Although the first argument was sound in relation to interpretation of the legal provisions, there are some complicated cases in the real practice. For instance, Ato Girmay G/Michael was sued in a number of 42 civil files. Bering in mind this, had these been in crime files, the sum of each penalty would have created a sentencing inflation. This means the defendant would be punished to the maximum penalty in the general part of the criminal code (i.e. 25 years of rigorous imprisonment).In sum, the revised federal sentencing guidelines did not put a clear and precise direction in framing of the charge and sentencing procedure to the concurrent crimes. Therefore, the prediction of Sentencing and the trust of justice were diminished in these particular cases.

---

[210] See the annex, Federal public prosecutor Vs Ato Girmay G/Michael Yihdago, Federal Supreme Court, criminal file no.94301,On 08 March, 2006 E.C

[211] Art.60(c) and Art.184 (b) of the FDRE criminal code, 2004.

[212] Art.187 (2) b of the FDRE criminal code, 2004.

### 3.4.3.2 The Consequence of Unequal Weight Aggravating and Mitigating Circumstances

Another pitfall of the first sentencing guidelines is not only undesirable disparities of framing the charge but also unequal weight of aggravating and mitigating circumstances. According to the first federal Supreme Court sentencing guideline: If the crime was punishable up to one year in simple imprisonment, the punishment would be reduced one step per extenuating circumstance; if the crime was punishable from one up to seven years of rigorous imprisonment, the punishment would be reduced two steps per extenuating circumstance; if the crime was punishable from seven years up to life of rigorous imprisonment, the punishment would be reduced three steps per extenuating circumstance; if the crime was punishable in death penalty, the punishment would be reduced four steps per extenuating circumstance but was not reduced down beyond the minimum mandatory of penalty in each case.[213]

The above sentences were calculated in favor of the defendant by increasing in one level of sentencing per aggravating circumstance and decreasing from one up to four level of sentencing per mitigating circumstance. For example, *Public Prosecutor Vs Ato G/MedinTilahun*, [214]the accused was convicted in violation of Art.692 (1) of the criminal code of fraudulent misrepresentation in cheating of 820,000 ETB against the victim; the defendant had put the victim‟s state of mind that he would have been returning huge amount of money after he had paid it for oil and chemicals.

These oils and chemicals are fictional to mold the papers into U.S.A. dollars. In the introductory stage, the perpetrator,s demonstrated the chemicals and oils mixed with dollar size papers and hidden the true dollars. When the process over, the perpetrator gave to the victim some genuine dollars from the outcome in order to check its reality on foreign exchange in Bank. Then, the victim exchanged the U.S.A. dollar to ETB in the Bank without any forgery hesitation. So, the offender got trustworthy in the heart of the victim. In the next time, the victim voluntary relinquished his real much amount of Ethiopian birr to the offender and continuous his dreams to be richen within a few

[213] Art.179 of FDRE criminal code, 2004; Art.16 (4-9) of the federal supreme court sentencing guidelines no.1/2002 E.C.
[214] See File No.104498 on the annexed part the decisions of Federal High Court July 30, 2004 E.C.

days. Unfortunately, the offender misrepresented the victim and took huge amount of money without any return.[215]

The above case had been held in Ethiopian federal High court and the accused was found guilty.[216] Next, the judge asked the public prosecutor if there were sentencing recommendations to present. The public prosecutor alleged that the defendant acted in pursuant to criminal agreement together with others or as a member of a gang organized to commit crimes and, particularly, as a chief organizer.[217]It was then accepted as an aggravating circumstance.

Similarly, the accused was given a chance to present extenuating circumstances, if any. The defendant described the mitigating circumstances that he had no previous criminal record. This showed that he had good character and he is married and the father of three children. Totally he has ten dependent family members,[218] and he had a health problem.[219]Then all of them were accepted.

The Judge fixed the sentence two and half years of imprisonment plus 3000 ETB. Next, the court had confirmed that the public prosecutor proved an aggravating circumstance against the defendant. Then, the court had raised one step and sentenced him 3 years and seven months plus 7000 ETB. Finally, the defendant proved three mitigating circumstances and the court decreased two steps for each, totally down 6 steps and sentenced him 2 years and 2 months of rigorous imprisonment plus 4500ETB.[220]

Therefore, giving unequal weight of aggravating and extenuating circumstances in the sentencing guideline brought undesirable outcomes. However, this problem was eliminated because the Revised Federal Supreme Court sentencing guideline is structured

---

[215] Tamene Girma (Inspector), Forensic Investigation Division Head in Federal Police, Personal Communication, 06 March, 2014.
[216] Art.149 of the criminal procedure code, 1961.
[217] Art.184/1(d) of FDRE criminal code, 1961.
[218] Art.86 of FDRE criminal code, 2004.
[219] Art.86 of FDRE Criminal code, 2004.
[220]Art.14(4) and 16(4-9) of the federal supreme court sentencing guidelines no.1/2002 E.C[in Amharic]; See also aggravating circumstances enumerated in art.84 ,85,183,184,185,187,188,189 , extenuating Circumstances enumerated also in art.82,83,179,180, and the common provisions stated in art.86,181,189of the criminal code 2004.

them to aggravate or mitigate along sentencing level so as to increase or decrease one step per aggravating and extenuating circumstances.[221]

### 3.4.3.3 Barriers of True Sentencing

The barriers of true sentencing were classified in the previous section as external pressure, personal emotionality of judges or both. Judges are human beings and may be influenced by different factors. As the result, judges failed to interpret the law properly. For instance, "Public Prosecutor Vs Demisew Zerihun and Yacob Hailemariam,"[222] the individuals were charged for attempting to kill Kamilat Mehadine (who was the girlfriend of the former) in violation of Articles 32(2) (a), 27(1) and 539(1) and causing grave bodily injury to her sisters in violation of Articles 32(2) (a), 555(a) of 2004 criminal code by using sulfuric acid on 28 December 2007 at around 10:00 P.M. The particular importance at this juncture is the imposition of the death penalty.

The code clearly stipulated that death penalty can be imposed only for completed crimes. However, the federal high court sentenced Demisew to death for attempting to kill Kamilat and for causing grave bodily injury to Kamilat"s sister. Indeed, the crime of causing grave bodily injury was completed, but it does not entail death penalty. Had it been completed the crime of homicide, that would have entailed death penalty.

The general principle of Art.117 (1) of the criminal code states that sentence of death shall passed only in cases of grave crimes and on exceptionally dangerous criminals, in the cases specially dangerous criminals, in the cases specially laid down by law as a punishment for completed crimes and in the absence of any extenuating circumstances. Therefore, the high court blundered by not having the principles in giving the imposing death penalty before pronouncing its penalty.

Such blunder made the decision of the court contrary to Article 15 of the FDRE constitution which prohibits the deprivation of the right to life except in accordance with

---

[221] Art.21 (4) and 23(4) of the revised federal supreme court sentencing guidelines no.2/2014 E.C [in Amharic].

[222] James A.Inciardi ,Supra note 10, p.171; Federal high court file no.54027

the law and the existing law prohibits the imposition of death penalty under the circumstance. Luckily, the decision of the federal high court was appealed to the federal Supreme Court which dropped the death penalty and sentenced the criminal to imprisonment of 20 years.

In the above case, the high court judges were not only influenced by external pressure such as the public at large, mass-media, and women‟s association, but also emotional feeling after the judges had seen the burnt face of the victim. In real sense, if someone visits *http:www.ethiopia first.com.news.html* and see the burnt face of the victim, she/he will be shocked by the offenders‟ cruelty and sub-human action. However, the law is neutral and needs to apply as it is, and the judges should take care of every step not to out the scope of the legal limits. The intention of the legislature may not see too lenient the punishment of twenty years of imprisonment.

### 3.4.3.4 Controversies in Sentencing Guideline

Legal actors faced a number of controversial issues in their daily activities. To solve these problems, the cumulative effect of the experience, training and education are so important for judges, public prosecutors and lawyers. The primary functions of judges are not only interpreting the explicit law, but also address vague laws and guidelines. Before the final decision render, the controversial issue should be settled in the perspective of the societies‟ interest and the individual‟s rights. Two real cases have been selected to assess the controversies in the two consecutive FSC sentencing guidelines.

The first case was appealed to the Federal Supreme Court, "*Ato Yaregal Aysheshim Vs the Federal Anti-Corruption commission prosecutor",*[223] on 20 October 2004 E.C, the Anti-Corruption Commission prosecuted to Ato Yaregal Aysheshim, the ex-president of Benshangul Gumz Regional State in corruption crime. On 11 November, 2006 the

[223] See the annexed case on federal supreme court crime file no.00/001/978448, and the defendant‟s appeal that was written on 11Febrauary, 2006 E.C; the petition consisted 25 pages and the decision of the Federal supreme court consisted a page. Therefore, the writer of this thesis recommend to read the first two pages from the introductory part and connected to pages 22-25 and a page of the court‟s decision for the relevancy of the sentencing. However, the substantive elements of appeal from pages 3-21 have optional to read.

Federal High court convicted him. On 02 January, 2006 he was sentenced to seven years of rigorous imprisonment plus twenty thousand ETB.

The court accepted three extenuating circumstance and the sentence was reduced one step per mitigated circumstance. Then, reduction of three steps from sentencing level 27(8 years and 5 months -10 years) is equal to level 24(6 and half years- 7ears and 8 months) then judges decided 7 years. However ,the defendant and his attorney were expected to the reduction of nine steps that means three steps reduction per extenuating circumstance in light of the first sentencing guidelines and this is equal to level 18 (3years and 7 months-4 years and 4 months.)

Each aggravating and extenuating circumstance has increased one step up and down in the revised FSC sentencing guidelines respectively. In this regard, the most controversial issue was alleged to non-retrospective effect of the revised FSC sentencing guidelines. An argument was made on the defendant‟s side based on four legal grounds.

First, the defendant shall be treated by the repealed sentencing guidelines because the crime was committed prior to the coming into force of the revised FSC sentencing guidelines. Second, it is a constitutional rights no one shall a heavier penalty be imposed on any person than the one that was applicable at the time when the criminal offence was committed. Third, a law promulgated subsequent to the commission of the offence shall apply if it is advantageous to the accused or convicted person. Fourth, to accomplish predictability, consistency and proportionality of the very objective of the sentencing guidelines, similar offenders shall be treated by the same sentencing guidelines.

The court has followed irreconcilable approaches. In some criminal benches, the court has taken the position to apply the Revised FSC sentencing guidelines from the time of coming into force as of the 12$^{th}$ of October, 2013 albeit the crime was committed at the time of the repealed law. On the contrary, on other criminal benches, the court has applied the repealed sentencing guidelines for the criminal cases that were committed during this time and apply the revised sentencing guidelines for criminal cases that have committed after the coming into force this guideline. This problem

was created at the time of designing the sentencing guidelines. The revised sentencing guidelines have not precisely stated handling of criminal cases that were committed during the repealed sentencing guidelines.

The second controversial case was appealed to the Federal High Court. "*Public prosecutor Vs Tilahun Tibebu*,"[224] on February 20, 2004 E. C, at 4:40 estimated hours the defendant intimidated against priest Gedion Abebe in the place of Addis Ababa, Bole sub city, District 06.[225]Based on eye testimony, the accused was found guilty in the Federal high court. Then the court asked both parties, if any aggravating and extenuating circumstances had before the final sentence would be decided. The public prosecutor alleged that the crime should be categorized as medium level of offences, but did not have any aggravating condition.

On the other hand, the defendant alleged three extenuating circumstances. These were: He was the only person who helps his family by generating income. He got scholarship opportunity in abroad, and he had no any prior criminal record. Then, the court decided to accept the absence of prior criminal records as one mitigating circumstance, but rejected others due to lack of supportive documents. Therefore, the court decided to see the case in light of Art.13 of the Federal Supreme Court sentencing guidelines. After this crime was taken as unspecified crime, it was labeled to the medium crime. Besides, the crime was punishable six months of simple imprisonment or fine up to 500 ETB.

Finally, the Court preferred fine as an appropriate sentence. To make it more clear, the methods of calculation is put in a text form. The writer of this thesis has been changed the simplest numerical formula as follows.[226]

---

[224] See Appeal File no.120295 Federal High court on the annexed part of this thesis.

[225] Art.580 of FDRE criminal code, 2004:intimidation means, whoever threatens another with danger or injury serious as to induce in him a state of alarm or agitation is punishable upon compliant with fine not exceeding five hundred birr, or with simple imprisonment not exceeding six months.

[226]Art.13 (10) of pecuniary formula for non specified label of offences of FSC sentencing guidelines, no.1/2010; art.19 (12) of the Revised FSC sentencing guidelines, no.2/2013 cumulative with 90, 91 and 92 of FDRE criminal code, 2004.

$y_1 = m - \frac{1}{3}m$ for medium and severe labels of crime; $y_2 = m - \frac{2}{3}m$ for lower labels of crimes

Where $y_1$ = Refer to the medium or the maximum sentencing in fine;

$y_2$ = Refers to the minimum sentencing in fine;

m= the maximum pecuniary penalty in fine in the special part of criminal law;

$1/3$ = The constant number for medium and severe crimes;

$2/3$ = The Constant number for lower levels of crimes.

$y_1 = 500 - \frac{1}{3}(500) =$ 333 ETB and $y_2 = 500 - \frac{2}{3}(500) =$ 166ETB

Medium level of sentencing for this crime was from 166 up to 333ETB, and the court fixed 300 ETB. This sentencing is categorized under the first level of sentencing in table two, but it would be cut down in one step due to one mitigating circumstance and the result became zero level which led to acquit the defendant. Therefore, the court decided the case out of the sentencing manual. This was 200 ETB of fine against the defendant and the court was stating its reason in favor of justice to accomplish the sprit and objectives of the criminal law.[227]Nevertheless, the former deputy director of judicial training institution did not agree to this decision. He stated his reasons as:

> *The sentencing level can be reduced one level of sentencing in every one mitigating circumstance for the crime punishable in simple imprisonment until it reaches the minimum mandatory of sentencing that was specified in the general part of the criminal code; therefore, it would not be resulted zero level of sentencing.*[228]

Its vagueness had also continued in the revised sentencing guidelines. The minimum mandatory sentence for crimes punishable in simple imprisonment or fine is ten days and ten ETB respectively. This was insignificant to deter or rehabilitate the offender‟s behavior. In addition, fine from ten ETB to ten thousand ETB was confined in sentencing level one in table two. There is a controversial issue in this case: the defendant had a right to get one step down in his one accepted extenuating circumstance; on the

---

[227] Art.21 of the sentencing guidelines no.1/2002 E.C : the court had a departure right to decide cases out of the federal Supreme Court sentencing guidelines when the interest of justice deemed necessary and justified its reason.

[228]Mekasha Abera ,the first sentencing drafter and now he is working as a private lawyer in any level of federal courts, personal communication, Jan 02,2014,he argued also the extenuating circumstances could not set aside the minimum mandatory sentencing that was specified in the general part of the criminal law in to Zero sum game.

other hand, the defendant should get proportional sentencing for his wrong doer. This was the negative effect of the sentencing guidelines at the time of design.

## 3.5 Key Findings

### 3.5.1 The Implication of the Revised Federal Supreme Court Sentencing Guidelines

The Federal Supreme Court Sentencing Guideline is not clear whether it is a mere advisory or a binding document for all Courts.[229]The main objectives of the revised Federal Supreme Court sentencing guidelines are to make similarity, proximity and proportionality of sentencing based on the gravity of crime and dangerous of criminals.[230]

Using sentencing guidelines has many advantages to minimize the sentencing disparities. On the other hand, the court has autonomous to decide cases out of the sentencing guidelines. There are some controversial issues on the sentencing guidelines. The courts have rights to use or not to use the sentencing guidelines in its real sense. In addition, the contemporary sentencing guidelines stipulates, "The court can decide cases in other ways of the sentencing guidelines. However, federal courts and the regional courts through their respective Supreme Court send the copy of decisions to federal Supreme Court within 60 days."[231]

The practice also showed that the federal courts send a copy of their decision to the federal Supreme Court when they decided otherwise from the sentencing guidelines. The procedure of sending the decisions is either sealed by the respective president of court or directly by each of the criminal benches.[232]Therefore, the sentencing guideline is a binding document in general; however, exceptionally, the court has a discretion power of decision.[233]

---

[229] Art.27 of the Revised Federal Supreme Court Sentencing Guidelines No.02/2006 E.C.
[230] Art.32 of the Revised Federal Supreme Courts Sentencing Guidelines No.02/2006 E.C.
[231] Art.27 (1-3) of the revised federal supreme courts sentencing manual No.02/2006 E.C.
[232]Wubshet Shiferaw, the president of Federal high court of Ethiopia, Personal communication, Jan 02, 2014.
[233]Abeba Alemu, Judge in federal first instance court, Lideta 7th criminal division, Personal communication, January 02, 2014.

### 3.5.2 The Scope of FSC Sentencing Guidelines

The sentencing guidelines did not indicate the enforcement of the guidelines regarding to the cases that have been seen on trial and the crimes that were committed during or before the first sentencing guidelines. The defendant‟s lawyer persistently raised the legality of retrospective effect of the sentencing guidelines as far as the defendant is the beneficiary in the first sentencing guidelines. Unless the current sentencing guideline is favorable to the defendants, the suspects shall be punishable upon the first sentencing guidelines.

The lawyers‟ argument is supported by the federal constitution of Ethiopia which is stated,"… Nor shall be a heavier penalty is imposed on any person than the one that was applicable at the time when the criminal offence was committed and not withstanding this, a law promulgated subsequent to the commission of the offense shall apply if it is advantageous to the accused or convicted person."[234] In addition, the FDRE criminal code confirmed this interpretation as "where the criminal is tried for an earlier crime after the coming into force of this code, its provisions shall apply if they are more favorable to him than those enforce at the time of the commission of the crime.[235]

The defendants are beneficiary in the past sentencing guidelines for the crimes that are punishable more than seven years because the first sentencing guidelines benefits the defendants to get three steps down per extenuating circumstance and one step up per aggravating circumstance. The same is true for death penalty to four steps down per extenuating circumstance and one step up per aggravating circumstances. In this case, when criminals were sentenced by death penalty, they may have at least one extenuating circumstance, and then the death penalty shall be reduced from capital punishment. It had implied that death penalty was accidentally abolished in Ethiopian criminal law. On the other hand, the contemporary sentencing guidelines are increas-

[234] Art.1 and 2 of the FDRE Constitution 1995.
[235] Art.6 of the FDRE Criminal code, 2004.

ing or decreasing equally one step up and down based on the aggravating and extenuating circumstances.[236]

In short, the first and the second FSC sentencing guidelines of Ethiopia have silence about cases that was done before enacted these sentencing guidelines respectively. These led to create an argumentative issue before the court of law. Most of the lawyers considered the sentencing guidelines as the substantive law as well as part and parcel of the criminal law. Therefore, the principle of non-retrospective criminal law shall be applied and granted as constitutional rights.

### 3.5.3 Administration of Indefinite Extenuating and Aggravating Circumstances

The Current Sentencing Guidelines did not put some criteria to accept or reject the non specified extenuating and aggravating Circumstances in light of Art.86 of the Ethiopian criminal code, 2004. In this regard, the two consecutive sentencing guidelines did not put any criteria to accept or reject unspecified extenuating circumstances. The discretion is left for the judge to make out the similar fashion of the criminal code. The interviewees assured that the following are considered as an extenuating circumstance: None criminal records in the past, the head of the family and confession of the defendant for each ingredient of the crime are common mitigating grounds at any level of courts. Nevertheless, sick in insulin, blood pressure, HIV/AIDS are up to the judge"s discretion power to accept or not.[237]

Nowadays, the defendant desires to receive lenient punishment by invoking the head of the family, curable and incurable diseases. In this regard, some of the defendants attempted to use extenuating circumstance by producing wrong evidence before the court of law. It was remembered in the mind of public prosecutor that a man produced evidence as he was the head of the family, as it was written in his kebele. In the mean time, it was discovered that the defendant brought forgery evidence to get down sen-

[236] Art. 16(6-9) of the FSC Sentencing Guidelines no.1/2010;Art.21 (4) and (23(4) of the FSC Sentencing Guidelines no.2/2013.
[237] Abeba Alemu, Supra Note, 233; an Interview with Ashenafi Mengistu Public Prosecutor in Lideta Federal First Instance Court, Personal Communication December 28, 2013.

tencing; this was an impediment to achieve the purpose of criminal law.[238]In addition to this, most of the public prosecutors did not allege non-specified general aggravating or mitigating circumstance before the court of law because of two reasons: It is either professionally inefficiency or unethical conduct that exists in public prosecutor practitioners.[239]

### 3.5.4 Accessibility of the Sentencing Guidelines

One of the criteria of sentencing guidelines is transparent for all. These criteria are almost missed in the development of federal Supreme Court sentencing guidelines. One of my respondents in the interview expressed that the three triangular of criminal trial professionals are judges, public prosecutors and private attorneys. These professional actors shall get the sentencing manual at hand to create common understanding and ensured legal professionalism; without this, sentencing guidelines could not be implemented in a real sense.[240]

Another respondent of the interview stated that the sentencing guidelines were developed in the mandate of the federal Supreme Court and this was transitory power of the federal parliament to consider as the subsequent legislature of the criminal law. [241]Unlike federal Supreme Court cassation decisions publication,[242] the accessibility of the sentencing manual for all people was limited.

### 3.5.5 Independency of the Judiciary Under the FSC Sentencing Guidelines

Are federal Supreme Court sentencing guidelines deteriorating the independency of the Judiciary? Ato Begizew Azeze argues that Ethiopian legal system is dominated by the continental legal system. The type of crimes and the correspondence punishment

---

[238] Samson Tegene, Public Prosecutor In The Ministry Of Justice, Legal Study Enacting And Disseminated Directorate, Personal Communication, January 03, 2014.
[239]Ibid; Art.149 (3) Of The Criminal Procedure Code Of The Empire Of Ethiopia, Negarit Gazeta, Extra Ordinary Issue No.1 Of 1961, Addis Ababa.
[240] Rasmus H. Wandall (PhD), Legal Advisor And Visitor Professor At The School Of Law, Addis Ababa University, Personal Communication, January 21, 2014.
[241] Menberetsehay Tadesse (PhD), supra note 168.
[242] Proclamation no.454/2005 a proclamation to re-amend the federal courts proc.no.25/96;The decisions of cassation divisions of federal Supreme Court has publicized in a series of 14 volumes since 2005; it is a good progress and achievement in the history of Ethiopian courts.

was predetermined. The wide range of sentencing is left to the judge due to individualize the sentencing unlike common law countries. Judges could not be binding by the precedent judgment and expected to bring uniformity of sentencing because of the characteristics of individuality of criminals by its nature.[243]

Mekasha Abera, Desalegn Demeke, and et al. argued that Judges are the most important professionals in the criminal justice system; therefore, the sentencing guidelines are not totally restricted the discretion power of the judges instead it narrowed and structured its range.[244]The criminal code provisions regarding to punishment are very wide to cease the sentencing disparities in similar cases across in different criminal benches. As the result, the sentencing guidelines can be taken as a precondition to realize the main purpose of sentencing. It shall be understood that the sentencing guidelines cannot impose a new sentencing which is out of stated in the criminal law. The individuality nature of criminal sentencing can be treated in narrow range of sentencing among similar crimes and offenders to bring consistency and fairness of criminal justice systems.

### 3.5.6 The Contribution of Sentencing Guidelines Nexus Ethiopian Criminal Justice

Ethiopian sentencing guidelines has a number of contributions for the development of Ethiopian criminal justice system. Ethiopia had introduced modern criminal law eight decades ago. However, the demand of sentencing guidelines through time is necessary to minimize unwarranted disparities and enhance individual rights. Here, the contribution for criminal justice system is discussed in this section. The ranges of punishment in the criminal law have very wide in each criminal provision.

Every judge in different criminal benches followed his or her own philosophy of punishment before the enforcement of the first and the second FSC sentencing guidelines. As the result, similar offenders in similar crimes were punished differently. Due

[243] Begizew Azeze, private lawyer at any level of federal courts, personal communication, December 26, 2014.
[244] Menberetsehay Tadesse, Supra note 168; Mekasha Abera ,Supra note 228; Desalegn Demeke, one of the drafters of the current sentencing guidelines and the head of federal judicial administration ,personal communication January 01,2014.

to this reason, the need to use sentencing guidelines became a prerequisite of criminal sentence. Now, most of the legal practitioners particularly judges and public prosecutors have referred to the sentencing guidelines. However, most of the crimes in the sentencing guidelines are not specified and labeled sufficiently. Hence, the coverage of criminal provisions in the sentencing guidelines reaches only from 2% in 2010 to 7 % in 2013.

Some of the respondents of the interview stated that the development of Ethiopian sentencing guidelines is placed in the right way but it needs integrated application to save and protect the individual‟s right. Although the first sentencing guidelines (2010) repealed and replaced by the revised federal Supreme Court sentencing guidelines (2013), it was the foundation of the latter.[245] The contemporary sentencing guidelines are better than from the previous in many ways. First, it incorporated various types of crime labeling. Second, the punishment is severe than the former sentencing guidelines and these have the deterrence effect for criminals and potential criminals.

Besides, one of the respondents pointed out that the sentencing guidelines shall be seen from the perspective of "Trust in Justice."In addition, it can be also dealt with the level of satisfaction of the society at large.[246]In contrast, the practice showed that offenders of some similar crimes are convicted irregularly; one punished with three years of imprisonment and others released with probation.[247]Therefore, the sentencing manual shall put some criteria to probation that are equally applicable for all people with fairness, non discrimination, and consistency.

The experience of American and the other states showed that the development of sentencing guidelines is not a simple task and sometimes it took about thirty years to accomplish the final sentencing guidelines. Moreover, our sentencing guidelines are not expected defective free in this infant stage but it needs to be updated persistently.[248]

---

[245] Mekasha Abera, supra note, 228; Ashenafi Mengistu, public prosecutor, federal first instance court, personal communication, December 29, 2013.
[246] An interview made with Menberetsehay Tadesse, Supra note 168.
[247] Addis Shibabaw, a private lawyer in any level of federal courts, personal communication, December 31, 2013.
[248] An interview made with Menberetsehay Tadesse, Supra note 168.

### 3.5.7 The Major Drawbacks of the Federal Supreme Court Sentencing Guidelines

There are a number of limitations in the federal Supreme Court sentencing guidelines. For instance, the majority of the provisions of the criminal law were not incorporated in both sentencing guidelines; the imprisonment of sentencing is overlapping with each other in table-one of each sentencing guidelines; sentencing of fine is infinitive in the upper boundary of table-two, of the revised sentencing guidelines. Furthermore, some of the decisions of judges were not trustworthy because they denied and granted probation in similar scenarios.[249]

The sentencing guidelines also stated the imprisonment of sentencing level 16 and above increased by twenty percent but the fact that the numerical calculation brings us different outcomes which are inconsistent with the sentencing levels. It was only prepared in monolingual (which is in Amharic) since the first sentencing guidelines has been introduced. As the result, the application of sentencing guidelines either in English language or working language of each federal state in Ethiopia has been hindered; this is also encumbered the activities of professors at law school and researchers.

Not only the manual itself but also the legal practitioners have had their own limitation related to the current sentencing guidelines. For example, some of them do not have common understanding for the entire concepts and interpretation of the sentencing guidelines. The experiences of judges are less in this regards. Furthermore, the sentencing department/council has not been established, organized and equipped with necessary resources under the umbrella of the federal Supreme Court yet.

The accessibility of the contemporary sentencing guidelines is confined in some websites and some hard copies that are available for the users need. This instrument is present in the hand of public prosecutors and judges but not that much available in the hands of private lawyers and defendants. Auditing and inspection mechanisms of implementing the sentencing guidelines across in federal matters at any level of courts

[249] Addis Shibabaw, a private lawyer in any level of federal courts, personal communication, December 31, 2013.

are missed.[250]Finally, the sentencing guidelines did not show whether the sentencing guidelines are linked to the national criminal justice policy or not.

### 3.5.8 Summary of Cases

In the above subsection 3.4 the analysis part of cases indicated that the disparities of sentencing were significantly affected the criminal justice system before coming in to force the sentencing guidelines in Ethiopia. The typical example was discussed in the case of youth Mulugeta Amsalu, the extenuating circumstances were ignored by court. Similar homicide was committed by the accused Birehanu Fekadu but he was punished three times reduction from Mulugeta. Subsequently, it was rectified by federal Supreme Court. In other scenario, the crimes of fraudulent misrepresentation were done by Ato Girmay G/mecheal and Wro Mena Terefe. These crimes were committed in the same transaction as well as in the same business organization but the cases were charged and decided in different ways. These may affect the prediction of sentencing. Besides, the case analysis part show us, Ato Yaregal Aysheshim was raised the issue of retrospective of the sentencing guidelines. If his case had been decided in the repealed sentencing guidelines, he would have a benefit. Since the crime was committed at the time of the first sentencing guidelines, he appealed to the Federal Supreme Court so as to get sentence accordingly but the federal Supreme Court quashed the appeal. Then the principles of legality remain an issue.

[250] An interview made with Mekasha Abera, Supra note 228.

# Chapter Four
# Conclusion and Recommendations

## 4.1 Conclusion

Sentencing is the most crucial stage in the area of criminal justice systems because it can affect the life, liberty and pecuniary interest of individuals. It also affects the interest of the society, particularly the victim‟s right. There are two controversial issues in sentencing: individualized of sentencing and uniformity of sentencing. Uniformity of sentencing is governed by structured sentencing while the individualization of sentencing is realized by judges‟ full-fledged discretion power. Each side of the extreme thought was not effective, and it needs an integrated application.

The federal Supreme Court sentencing guidelines has claimed to accomplish transparency, accountability, predictability, consistency and proportionality since 2010.On the contrary, the first FSC sentencing guidelines for each extenuating circumstance was decreased: if the crime was punishable up to one year in simple imprisonment, the punishment would be reduced one step per extenuating circumstance; if the crime was punishable from one up to seven years of rigorous imprisonment, the punishment would be reduced two steps per extenuating circumstance; If the crime would punishable seven and above years, the punishment would be reduced three steps; and the extenuating steps could be down four steps for death penalty while each aggravating circumstance was increasing the sentence one step; however, this was rectified by the second sentencing guidelines.

The sentencing guideline contains a number of sub-tables that have structured and labeled for each crime. After the sentence has determined, increasing and decreasing along the sentence table is the matter of technical issue than substantive elements. The source of undesired sentencing disparities is emanated from different factors. These are affiliation, lack of sufficient training, and imbalance between litigating parties, internal and external pressures. Although evaluation, monitoring and feedback systems are important components of sentencing administration, these are invisible in the federal Supreme Court sentencing guidelines of Ethiopia.

Some extenuating and aggravating conditions are not specified clearly in the sentencing guidelines. As the result, the same things of extenuating circumstances are accepted in one court and rejected in another court. The same is true in sentencing of probation. Moreover, the complexity feature of the FSC sentencing guidelines has revealed that there is an overlapping range of sentence along the imprisonment table-1. Besides, the amount of fine is unlimited and this may be a triggered factor of arbitrary punishment. On the other hand, the victims‟ rights are surrendered to the public prosecutor and they did not get attention in the trial and sentencing stages.

Fixing of the sentence before aggravating and extenuating circumstances is considered as a fundamental decision in Ethiopian sentencing system. The architects of the sentencing guidelines are devoted their time to label each offense based on the criminal provision. They tried to label specific crimes in a separate table and the labels of offense are extended sometimes up to eleven levels. These levels are helping only to identify the first cutting point of sentencing. Consequently, the judge can move up and down along the main sentencing table based on the aggravating and extenuating conditions.

On the other hand, Ethiopian sentencing guidelines unlike the U.S.A. did not put criminal record history in a horizontal axis on its table. Thus, the differentiation between recidivist and other offenders who committed crime in the second time became difficult. Another controversial issue of the current sentencing guidelines was the overlapping number of ranges along each sentencing level. The possibilities of these effects come up with the rebirth of unwarranted disparities in sentencing.

The federal Supreme Court sentencing guidelines have introduced the philosophy of sentencing measurement in a monetary value that had never been implemented in the past. Sentencing labeling indicated that how much money the defendant gets unlawful enrichment as well as in how much money was the damage or the lose against the innocent victim or the government.

The doctrine of separation of power in U.S.A. by early 1988 was a great issue but in the Ethiopian experience, the House of People‟s Representative based on Art.55 (5)

and 78(2) of FDRE constitution has the power to enact the penal code and the states may, however, enact penal laws on matters that are not specifically covered by the federal penal legislation. In this way, the 2004 FDRE criminal law was enacted and it was the direct thesis of the 1957 penal code of the empire of Ethiopia except its some modifications. Article 88(4) of this criminal law, the power to enact the sentencing manual was unconditionally delegated to the federal Supreme Court.

The current practice of sentencing show us each state court adjudicated more than ninety-five percent of the federal criminal matters at the state level. Thus, it can be concluded that the federal government of Ethiopia has the responsibility and duty bound to issue laws and manuals related to crimes that are specifically covered up on it; while, states have the judicial administrative power to such laws and sentencing guidelines. Therefore, the issue of the separation of power and the constitutional legitimacy of federal Supreme Court to issues of sentencing guidelines has not a problem so far.

There was a serious issue of sentencing disparity in the Ethiopian CJS in the past as well as after the coming into force of the first guidelines. The discretional power of the judge was found in a very wide range such as from five years to twenty years of rigorous imprisonment for ordinary homicide and simple imprisonment not exceeding five years for negligence homicide and so on. Due to this reason the prediction and the consistency of sentencing was not realized. On the other hand, the federal Supreme Court sentencing guidelines has been introduced since 2010 and revised in 2013.

Sentencing guidelines claimed to achieve for the consistency and fairness, uniformity, proportionality, and predictability of sentencing in the criminal justice systems. However, there are a number of limitations in the FSC sentencing guidelines from conception to implementation. The absence of an independent and accountable department under the umbrella of the Federal Supreme Court with the clear job description to administer the sentence has been the main hindrance of the sentencing guidelines.

In sum, the first sentencing guideline was better than the criminal code provisions and the revised sentencing guidelines has shown a progress and rectify the past mistakes

that was done by the first sentencing guidelines. In addition, a number of cases were decided in the proper application of the sentencing guidelines. Furthermore, the scope of the revised sentencing guidelines coverage is well structured than the first sentencing guidelines. On the other hand, the revised sentencing guideline has a number of limitations that need to improve its technical and substantive elements mentioned so far.

## 4.2 Recommendations

To install trust of criminal justice system in Ethiopian legal system, the following points shall be done:

- The sentencing guidelines shall be redesigned to adjust its adaptability with international standards and the best interest of criminal justice system.
- The federal Supreme Court shall appoint the responsible department that enables to follow up, consistency and fairness, proportionality, and predictability of sentencing.
- Unspecified and permissive aggravating and extenuating circumstances in the criminal code shall be specified and criteria should be set in the sentencing guidelines either to accept or to reject them.
- The sentencing guidelines shall be prepared in English and each State working language in addition to Amharic that can be enabled to access in the form of booklet and journal in addition to posting on the internet.
- Periodic evaluation or assessment of the implementation of sentencing shall be done.
- Educating the people, training the legal actors and conducting sustainable research shall be taken as the best policy of sentencing guidelines administration.

I recommend my own view that the usage of numerical formula is easier than words in the text. The following seven derivative mathematical formulas are proposed as follow: No.1-2 can be applied in the current sentencing guidelines and No.3-7 can be used as the instrument of evaluation how the sentence made by the judges are deviated from the objective formula such as in standard deviation, variance, skew, aver-

age, mean, range and mode in terms of Consistence and fairness, proportionality, and predictability of the sentencing.

1. Pecuniary formula for non specified label of offences.[derived from art.19(12) of the Revised FSC sentencing guidelines,no.2/2013 cumulative with 90, 91 and 92 of FDRE criminal code 2004]

$y_1 = m - \frac{1m}{3}$ for medium and severe labels of crime;

$y_2 = m - \frac{2m}{3}$ for lower labels of crimes.

Where $y_1$ = Refer to the medium or the maximum sentencing in fine;

$y_2$ = Refers to the minimum sentencing in fine;

m= the maximum pecuniary penalty in fine in the special part of criminal law;

$\frac{1}{3}$ = The constant number for medium and severe crimes;

$\frac{2}{3}$ = The Constant number for lower levels of crimes.

2. The Sentencing formula for non specified label of offences against liberty except life and death. [Derived from art.19 (1-11) of the revised FSC sentencing guidelines, no.2/ 2013)]

It can be calculated by driving numerical application which has similar function in Arithmetic progress (A.P).

$A_1 = mi + \frac{d}{4}$

$A_2 = mi + \frac{2}{4}d$

$A_3 = mi + \frac{3}{4}d$

$A_4 = mi + \frac{4}{4}d$

Where "$A_1$, $A_2$, $A_3$, $A_4$" are the first, second, third and fourth level of sentencing for any natural numbers; mi is the minimum period of sentence in the special part of the law and "d" the difference between the minimum and maximum numbers.

3. General formula for most types of sentencing except for life and death, special aggravating and special extenuating circumstances. [It can be used for each types of crime to evaluate the sentencing fairness and equity. (Derived from art.21, 23, 25 of the Revised FSC sentencing guidelines no.2/2013 cumulative 84, 82 and 86 of FDRE criminal code 2004)]

$$y = \bar{x} + [(\bar{x}10\%)n_1] - [(\bar{x}10\%)n_2]$$

**key**

$y$ = final sentencing, where $y \leq$ 25 years of imprsinments or $y \leq$ 500,000 ETB fine;

$\bar{x}$ = mean($\mu$), average number of sentencing in the special part of criminal law;

$n_1$ = number of general agravating circumstance reason, where $1 \leq n_1 \leq 5$;

$n_2$ = Number of general extenuating circumstance reason, where $1 \leq n_2 \leq 5$;

10% = is the constant number that can help to increase and decrease the sentencing.

4. Special Aggravating circumstances in the case of either notional and material or notional concurrence for un-restricted period of sentencing (Derived from art.22 (1) a of the Revised FSC sentencing guidelines no.2/2013 cumulative 184 of FDRE criminal code 2004)

$$Y = \bar{x}_1 + \bar{x}_2 + \cdots + \bar{x}_n + (\bar{x}_G 10\%)n_1 - (\bar{x}_G 10\%)n_2$$

key

$y$ = final sentencing;

where $y \leq$ 25 years of imprisonment and $\leq$ 500,000 ETB of fine ;

$\bar{x}_1 + \bar{x}_2 + \cdots + \bar{x}_n$ = the sum of each average sentencing;

distinct or series of concurrence crimes were committed.

$\bar{x}_G$ = grand mean or mean of mean of sentencing for each crime;

$n_1$ = number of general aggravating circumstance reason, where $1 \leq n_1 \leq 5$ ;

$n_2$ = number of general extnuating circumstance reason , where $1 \leq n_2 \leq 5$;

10%= is the constant number that can help to increase and decrease the sentencing.

5. Special aggravating circumstances in the case of recidivist [Derived from art.22 (2) b of the Revised FSC sentencing guidelines no.2/2013 cumulative with 67 and 188 of FDRE criminal code 2004]

$Y = [n_1(\bar{x}) + n_2(\bar{x}\,10\%)]\text{-}[n_3(\bar{x}\,10\%]$

key

$Y$ = final Sentencing, where $y \leq 25$ years of imprisonments and/ or $\leq$ 500,000 ETB fine

$n_1$ = number of criminal records in the meaning of recividist, where n is N, $n \geq 2$;

$\bar{x}$ = average number of sentencing for the fresh crime was commited ;

$n_2$ = Number of general aggravating circumstance reason, where $1 \leq n_2 \leq 5$;

$n_3$ = number of general extnuating circumstance reason , where $1 \leq n_3 \leq 5$;

10%= is the constant number that can help to increase and decrease the sentencing.

6. Free mitigating circumstances in special cases [(Derived from art.24 of the Revised FSC sentencing guidelines no.2/2013 cumulative with 180 and 179 of FDRE criminal code 2004)]

$Y = [n(\bar{x}) - z]$

Key

$Y$ = final Sentencing,

where y

$\geq$ article 179 of the criminal code of the mandatory minimum sentencing

$n$ = *number of criminal records , where n is N*, $n \geq 1$

$\bar{x}$ = Average number of sentencing for the fresh crime was committed;

$z$ = free mitigating circumstance discretional power of the judge.

7. Exemption from and waving circumstances, when the criminal provisions explicitly stated within its statement of phrase that give the power to the court so do it. (Derived from art.24 of the Revised FSC sentencing guidelines no.2/2013 cumulative with art 28, 29,180 and 182 of FDRE criminal code 2004)

$Y = \bar{x} - \bar{x}$

Key

$Y = 0$

$\bar{x}$ = Average number of sentencing in the special part of the criminal law .

# Bibliography

## Books


Andrew A. (1995).*Sentencing and Criminal Justice, 3rd ed*., MacKay"s of Chatham.

Andrew A. (2005).*Sentencing and Criminal Justice, 4th ed*., United Kingdom at the Chatham plc, Chatham, Kent.

Bottomley, A.K (1973).*Decision in the Penal Process, Oxford, Martin Robertson*.

Cross R. (1975).The English Sentencing, 2nd ed. Butterworth London.

D. Miethe T. and Lu H. (2005*). Punishment: A comparative historical respective*, Cambridge.

Dejene G. (2013). *A Hand Book on the Criminal Code of Ethiopia,* Far East Trading, Plc Federal High Court, File No.54027, January 10, 2008, Addis Ababa.

Elias N. (2006).*Ethiopian Criminal Law Digest Part I & II,* St. Mary"s University College faculty of law, Addis Ababa.

Graven P. (1965). *An Introduction to Ethiopian Penal Law, (Arts.1-84 penal code),* the faculty of law, Haile Sellassie I university, Addis Ababa, Ethiopia.

Hogarth J. (1971). *Sentencing as a Human Process,* Toronto, and University of Toronto press.

James A. (1984).*Criminal Justice, 7th ed.,* Harcourt, Inc.

Lowenstein S. (1965). *Materials for the Study of the Penal Law of Ethiopia,* the faculty of law, Haile Sellassie I university, Addis Ababa, Ethiopia.

R. LaFave W. and Austin W. Scott, Jr. (1986). *Criminal Law, 2nd ed*., West Publishing Co. St. Paul, Minn.

Rex S.Mich ael,T .M(2002).*Reform and punishment, the future of sentencing*, Willan Publishing.

Robert M. Bohm and Keith N. (2007).*Introduction to Criminal Justice, 4th ed*., McGraw Hill. University Press, Cambridge.


## Legislations and Related Documents


The constitution of the federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, year 1,No.1,Proc.No.1/1995,Addis Ababa.

The criminal code of the Federal Democratic Republic Ethiopia, Federal Negarit Gazeta Proc.No.414/2004,Addis Ababa.

The criminal procedure code of the Empire of Ethiopia, Negarit Gazeta extraordinary issue No.1/1961, Addis Ababa.

The Penal code of the Empire of Ethiopia, Negarit Gazeta extraordinary issue No.1/1957, Addis Ababa.

Federal courts Proc.No.454/96 amendment proc.25/96.

Criminal justice policy of the federal Democratic of Ethiopia, 2011, Draft Legislation, ministry of Justice, Addis Ababa.

የወንጀልቅጣት አወሳሰን መመሪያ ቁጥር 1/2002 ዓ.ም፤የፌደራል ጠቅላይ ፍርድ ቤት፡፡

የወንጀል ቅጣት አወሳሰን መመሪያ ቁጥር 2/2006 ዓ.ም፤የፌደራል ጠቅላይ ፍርድ ቤት ፡፡

## Journals

Assefa Fiseha, *The system of Intergovernmental Relations (IGR) in Ethiopia*: In search of institutions and Guidelines JEL, 2009.

Mannheim, "*some aspects of judicial sentencing policy*" Yale Law Journal Vol.67 (1958).

Susan Easton and Christine piper, *Sentencing and punishment, the question for justice*, Ashford Color press, Gosport, Hampshire, 2005.

Brian J. Ostrom, and et al *Assessing consistency and fairness in sentencing: A comparative Study in three states*, National state courts, 2006.

Lawrence V. Brinkley, *mandatory minimum sentencing*, Nova science publishers, inc., 2003.

Maria Dakolias, *Legal and Judicial Sector Assessment of Ethiopia*, Legal vice Presidency, The World Bank, 2004.

Turnbladh, W.C,"*A critique of modern penal code, sentencing proposal, "Law and Contemporary problems*, Vol.23, 1958.

Julian V. Roberts (2011), *sentencing guidelines and judicial discretion evolution of the duty to comply in England and Wales*, Brit.J.Criminol (2011)51,997-1013.

የፌደራል ጠቅላይ ፍርድ ቤት *ሰበር ችሎት ውሳኔዎች ቅፅ 10*፤የጥናትና ህግ ድጋፍ መምሪያ ህዳር 2003 ዓ.ም አዲስ አበባ ገፅ 204-206፡፡

የፌደራል ጠቅላይ ፍርድ ቤት *ሰበር ችሎት ውሳኔዎች ቅፅ 12* የጥናትና ህግ ድጋፍ መምሪያ ህዳር 2004 ዓ.ም አዲስ አበባ ገፅ 251-255፡፡

## Unpublished Materials

Aderajew T. and Kedir M. (2009).*Ethiopian criminal procedure, teaching material*, sponsored by justice and legal system research institute, Addis Ababa, unpublished.

Meron H. (2008).*disparity of sentence in Ethiopia courts with special emphasis on sentencing rape offenders, LLB Thesis*, Addis Ababa University Faculty of Law.

Sheriff H. (1990).*Assessment of sentence, LLB Thesis*, Addis Ababa University, Faculty of Law.

Dejene G. and Mekonen F. (2009).*Sentencing and execution, teaching material*, Prepared under the Sponsorship of the Justice and Legal System Research Institute.PP.29-40.

Mrs. Glory Nirmala K. and Ato Serkaddis Z. (2009). *Criminal law I, teaching material,* Prepared under the Sponsorship of the Justice and Legal System Research Institute unpublished.

Endale L. (2011).*The doctrine of piercing the corporate veil: its legal significance and practical application in Ethiopia, LL.M Thesis*, Addis Ababa University, Faculty of Law.

ፌዴራል ፍትህ ሚኒስቴር (2002ዓ.ም) ፡፡ *የወንጀል ቅጣት አወሳሰን መመሪያ* የፌዴራል ፍትህ ማሰልጠኛ ማዕከል ለቅድመ ስራ ሰልጣኞች የተዘጋጀ የስልጠና ሞጁል፣፡፡

ፌዴራል ጠቅላይ ፍ/ቤት (2002ዓ.ም) ፡፡ *ሙሰናን አስመልክቶ በፌዴራል ፍ/ቤቶች የተደረገ የዳሰሳ ጥናት*፤ ያልታተመ፤አዲስ አበባ፡፡

ውብሸት ክብሩ (1992 ዓ.ም) ፡፡ *የወንጀል ጉዳዮች መጓተት አንዳንድ ምክንያቶችና የመፍትሄ ሀሳቦች* ያልታተመ፤ነሀሴ አዲስ አበባ፡፡

**Cases**

Revenue and custom prosecutor Vs Ato Fiseha Abay and Wrt/Hiwot Yesraw Judgment of Federal supreme court cassation division file no.53612,Meiazya 25,2002 E.C.

Public prosecutor Vs Mulugeta Amsalu Judgment of Federal High court Criminal files No.84487/2002 E.C.

Public prosecutor Vs Berihanu Fikadu, Federal supreme court Cassation division, File no.59356, On 03 Sene, 2003 E.C.

Federal public prosecutor Vs Ato Girmay G/Michael Yihdago, Federal Supreme Court, criminal file no.94301,On 08 March, 2006 E.C.

Public Prosecutor Vs Ato G/Medihen Tilahun, FDRE Federal High court Criminal division File No.104498 Hamile 30, 2005 E.C.

Public prosecutor Vs Demisew Zerihun and Yacob Hailemariam, See the book: Dejene Girma, A hand book on the criminal code of Ethiopia, Far East trading,

plc 2013, p.171; Federal high court, file no.54027, January 10, 2008, Addis Ababa.

Public Prosecutor Vs Tesfa G/medihen, Federal First instance court 12th criminal bench at Lideta File No. 208637 Hidar03, 2006 E.C.

Public Prosecutor Vs Danel Fikre, Federal First instance court 11th criminal bench at Lideta Tikimit 08, 2006 E.C.

Public prosecutor Vs Tilahun Tibebu, Federal high, file no.120295, Criminal bench appeal case at Lideta, megabit 13, 2005 E.C.

Ato Yaregal Ayesheshim, Federal Supreme Court, File no.00/001/978448,Criminal, appeal case, decided 06 April, 2006 E.C.

## Interview

Begizew Azeze, private lawyer at any level of federal courts, personal communication, December 26, 2014.

Addis Shibabaw, a private lawyer in any level of federal courts, personal communication, December 31, 2013.

Ashenafi Mengistu, public prosecutor, federal first instance court, personal communication, December 29, 2013.

Menberetsehay Tadesse the head of legal research institution and assistant professor of law in Addis Ababa University, personal communication, December 17, 2014.

Wubshet shiferaw, the president of Federal high court of Ethiopia, Personal communication, January 02, 2014.

Teka Mehari, Judge in federal first instance court, Lideta 9th criminal division, Personal communication, January 02, 2014.

Abeba Alemu, Judge in federal first instance court, Lideta 7th criminal division, Personal communication, January 02, 2014.

Mekasha Abera, the first sentencing drafter, now he is working a private lawyer in any level of federal courts, personal communication, January 02, 2014.

Desalegn Demeke head of secretary of federal judicial administration (personal communication January 03, 2014.

Samson Tegene, Public prosecutor in the ministry of justice, legal study enacting and disseminated directorate, personal communication, January 03, 2014.

Rasmus H. Wandall (PhD), legal advisor and visitor professor at the school of law, Addis Ababa University, Personal communication, January 21, 2014.

Tamene Girma (Inspector), Forensic Investigation Division Head in Federal Police, Personal communication, 6 March, 2014

## Observation

Federal high court, 7th criminal bench at Lideta, from 2:30 pm-5:00 pm, December 24, 2013.

Federal first instance court, 9th criminal bench at Lideta, from 3:30 am -5:30 am, December 30, 2013.

Federal high court, 7th criminal bench at Lideta, from 3:30 am -5:30 am, December 5, 2013.

Federal first instance court, 7th criminal bench at Lideta, from 3:30 am -5:30 am, January 02, 2014.

Federal Supreme Court criminal appeal bench, from 9:30 am-11:30 am, March 17, 2014.

Federal Supreme Court criminal appeal bench, from 9:30 am-11:30 am, April 09, 2014.

Federal Supreme Court criminal appeal bench, from 9:30 am-11:30 am, April 22, 2014.

Federal Supreme Court criminal appeal bench, from 9:30 am-11:30 am, May 08, 2014.